

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY DECEMBER 12, 2011

Present: Ald. Johnson, Yates, Baker, Swiston, Shapiro, Sangiolo, Lappin

Abset: Ald. Lennon

Also Present: Ald. Crossley, Hess-Mahan, Gentile

City Staff: Seth Zeren (Zoning Code Official), Candace Havens (Director of Planning and Development), Jen Molinsky (Chief Planner for Long Term Planning), Marie Lawlor (Assistant City Solicitor), Rebecca Smith (Committee Clerk)

**ITEMS SCHEDULED FOR DISCUSSION:**

Appointment by His Honor the Mayor:

#389-11        JANE SENDER, 47 Kingswood Road, Auburndale, appointed as a member of the Conservation Commission for a term of office to expire December 31, 2014 (60 days 1/20/12). [11/14/11 @ 1:22PM]

**ACTION:**        **APPROVED 7-0**

**NOTE:**        Jane Sender joined the committee to discuss her appointment. Ms. Sender has been an associate member of the Commission since 2009 and is now being appointed as a full voting member. She has strong interest in conservation land and expressed her desire for the city to step up a little bit with funding for such land. We need to ramp up our level of activity with such land. Ald. Yates inquired about the Quinobequin trails, which Ms. Sender stated it is a sensitive topic which the Commission will have to look in to. Ald. Sangiolo moved approval of this appointment.

Appointment by His Honor the Mayor:

#390-11        WILLIAM MCLAUGHLIN, 117 Hammond Street, Chestnut Hill, appointed as a member of the Zoning Board of Appeals for a term to expire on September 30, 2012 (60 days 1/20/12). [11/12/11 @ 11:46 AM]

**ACTION:**        **REFERRED TO 2012-2013 BOARD OF ALDERMEN**

**NOTE:**        There was some confusion about whether Mr. McLaughlin was already a full member of the ZBA or an associate member. Additionally, Ald. Yates noted that Mr. McLaughlin is listed as being on the advisory Board of Can-Do. Whether or not this is a current position is not clear on his resume, but as Can-Do has had multiple 40B projects in front of the ZBA this may be a conflict. Finally, Ms. Havens needs to determine whether this is a one year term or a three year term. Ald. Yates moved referral, which carried unanimously. Mr. McLaughlin will have to join the Committee for a discussion on his appointment in January 2012.

Appointment by His Honor the Mayor:

#391-11        THOMAS PHILLIPS, 139 Algonquin Road, Newton, appointed as a member of the Zoning Board of Appeals for a term to expire on September 20, 2014 (60 days 1/20/12). [11/14/11 @ 4:46 PM]

**ACTION:**        **APPROVED 7-0**

**NOTE:**        Thomas Phillips joined the Committee. He shared that he has been an associate member of the ZBA since 2008 and is now being appointed as a full voting member. Mr. Phillips is a practicing land use attorney and has enjoyed the experience of being an associate member of the ZBA very much. He shared that the last few years have been very interesting and much slower in terms of activity- a sign of the economic times; he looks forward to things turning around and having a full agenda again. Ald. Sangiolo asked Mr. Phillips to take back to the ZBA her request for them to meet with the law and planning departments to discuss attaching conditions to the comprehensive permits. Ald. Yates asked about Mr. Phillips thoughts on having the ZBA take on some of the special permit granting authority. Mr. Phillips stated that he would be in favor of that as he thinks the ZBA is underutilized. Ald. Baker moved approval of the appointment which carried unanimously.

Appointment by His Honor the Mayor:

#392-11        TREFF LAFLECHE, 86 Prince Street, West Newton, appointed as an *associate* member of the Zoning Board of Appeals for a term to expire December 31, 2012 (60 days 1/20/12). [ 11/14/11 @ 4:53 PM]

**ACTION:**        **REFERRED TO 2012-2013 BOARD OF ALDERMEN**

**NOTE:**        Mr. Lafleche could not attend tonight so Ald. Johnson moved referral of this item. This appointment will be taken up on January 9<sup>th</sup>, 2012.

Appointment by His Honor the Mayor:

#393-11        PETER KILBORN, 31 Buswell Park, Newton Corner, appointed as an *associate* member of the Zoning Board of Appeals for a term of office to expire December 31, 2012 (60 days 1/20/12). [11/12/11 @ 11:45 AM]

**ACTION:**        **APPROVED 7-0**

**NOTE:**        Peter Kilborn shared with the committee his history as an attorney, a Chief Justice of the Land Court, and most recently a member of the Zoning Reform Group. Ald. Baker stated that it's a pleasure to see the former Chief Justice take the time to do this. Ald. Yates asked Mr. Kilborn what his thoughts are on the standards of granting a variance in ZBA decisions. Mr. Kilborn stated that the statute that dictates this is ferocious; as long as neighbors don't object, variances tend to get granted. If someone objects to a variance, it's hard to find, on appeal, that the statutory requirements have been met. The general court sets the statutes and it isn't a matter of case law. Following these comments the motion to approve was made and carried unanimously.

Appointment by His Honor the Mayor:

#394-11        BARBARA HUGGINS, 122 Albemarle Road, Newtonville, appointed as an *associate* member of the Zoning Board of Appeals for a term of office to expire December 31, 2012 (60 days 1/20/12). [11/12/11 @ 11:45AM]

**ACTION:**        **APPROVED 7-0**

**NOTE:**        Barbara Huggins explained that her desire to serve on the ZBA stems from her significant interest in Zoning, which is what her law practice is centered around. Ald. Yates inquired about Ms. Huggins opinion on the standards for granting variances. She agrees with Justice Kilborn that the statute is very clear. If a variance was granted and appealed the courts would have a hard time not reversing the decision because the statute requirements are so difficult to meet; those standards, however, are up to the legislature to amend; they are not at the discretion of the courts.

Ald. Sangiolo brought up the point that Ms. Huggins, as well as a number of other appointees, are currently serving on other committees. While there isn't a conflict in having people serve two positions on appointments, it would be beneficial for the City for the positions on those other committees to open up now that they are appointed to the ZBA. Candace Havens, Director of Planning and Development, will look into this, but also stated that it's up to the commission members to step down.

Appointment by His Honor the Mayor:

#395-11        STUART SNYDER, 30 Erie Avenue, Newton Highlands, appointed as an *associate* member of the Zoning Board of Appeals for a term of office to expire December 31, 2012 (60 days 1/20/12). [11/12/11 @ 11:45 AM]

**ACTION:**        **APPROVED 7-0**

**NOTE:**        Stuart Snyder, currently on the Planning Board, has a strong interest in Zoning and would prefer to be a member of the ZBA as the Planning Board is an advisory body whereas the Zoning deals with substantive decision making that has an immediate effect. Mr. Snyder is a practicing attorney and the function of the ZBA is more along the lines of what he does and where his strengths lie. The motion to approve was made, which carried unanimously.

Re-appointment by His Honor the Mayor:

#396-11        BROOKE LIPSETT, 54 Kirkstall Road, Newtonville, re-appointed as a member of the Zoning Board of Appeals for a term of office to expire September 30, 2014 (60 days 1/20/12). [11/12/11 @ 11:46 AM]

**ACTION:**        **APPROVED 7-0**

**NOTE:**        After reviewing the resume of Ms. Lipsett, the motion was made to approve her re-appointment which carried unanimously.

Re-appointment by His Honor the Mayor:

#397-11        VINCENT FARINA, 24 Manemet Road, Newton, re-appointed as a member of the Zoning Board of Appeals for a term of office to expire September 1, 2014 (60 days 1/20/12). [11/12/11 @ 11:46 AM]

**ACTION:**        **APPROVED 7-0**

**NOTE:** After reviewing the resume of Mr. Farina, the motion was made to approve his re-appointment which carried unanimously.

Re-appointment by His Honor the Mayor:

#398-11 HARVEY CREEM, 110 Huntington Road, Newton Corner, re-appointed as a member of the Zoning Board of Appeals for a term of office to expire February 1, 2013 (60 days 1/20/12). [11/12/11 @ 11:46 AM]

**ACTION:** **APPROVED 7-0**

**NOTE:** After reviewing the resume of Mr. Creem, the motion was made to approve his re-appointment, which carried unanimously.

Re-appointment by His Honor the Mayor:

#399-11 JAMES MITCHELL, 83 Countryside Road, Newton Centre, re-appointed as a member of the Zoning Board of Appeals for a term of office to expire December 31, 2012 (60 days 1/20/12). [11/12/11 @ 11:45 AM]

**ACTION:** **REFERRED TO 2012-2013 BOARD OF ALDERMEN 7-0**

**NOTE:** It was discovered that James Mitchell is currently an associate member of the ZBA, and therefore should have been submitted by the executive department as an appointment, therefore, Mr. Mitchell will need to come in to speak with the committee. Furthermore, Ms. Havens needs to determine whether this is a one year term or a three year term. A motion to refer was made, which carried unanimously.

#81-11 ALDERMEN JOHNSON, CROSSLEY, HESS-MAHAN, LAPPIN & DANBERG requesting the Director of Planning & Development and the Chair of the Zoning Reform Scoping Group provide updates on the Scoping Group's Progress. These updates will occur at the frequency determined by the Chair of the Scoping Group and the Chair of the Zoning and Planning Committee. [3/14/2011 @ 11:16PM]

**ACTION:** **REFERRED TO 2012-2013 BOARD OF ALDERMEN 7-0**

**NOTE:** Ald. Crossley provided the committee with an update on zoning reform. She informed the committee about a meeting with the Mayor that took place to determine the next steps for this project, during which he pledged his support to the effort and for funding the reform of the ordinances. She stated that the start to this work should come underway this upcoming year and that it will take approximately \$100k per year for the next three years to reach completion. \$50k of the funds appropriated for the first year would be used for consultant services. It was stated that there will be much staff involvement in this project, and additional staff time will undoubtedly be necessary next year. Ald. Crossley also stated that there will need to be active citywide engagement for this process. The planning department will work to initiate this engagement by the community. She also expressed how important it is to have a roadmap for this process, and while it may seem premature to talk about funding for the succeeding two years of this project, it is important to have a plan in place. Ald. Johnson agreed with this

sentiment. Ald. Crossley announced to the committee that the report of the ZRG's final recommendations should be ready for distribution by the end of this week. The motion to refer the item to the next Board was made; the motion carried unanimously.

#391-09      ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN  
requesting an amendment to §30-19 to allow payments-in-lieu of providing required off-street parking spaces when parking spaces are waived as part of a special permit application.

**ACTION:**      **REFERRED TO 2012-2013 BOARD OF ALDERMEN 7-0**

**NOTE:** Items #391-09, #391-09(2), #152-10, #207-09(2), and #411-09 were presented and discussed together. Seth Zeren, Chief Zoning Code Official gave a presentation on the topic of parking, specifically payments-in-lieu. For the details of this presentation please see the attached power point.

Following the presentation, Mr. Zeren accepted questions from the committee. The first of which was the question of what other towns have spent their collected revenue on from programs such as this. He explained that though he doesn't know the details of exactly what other communities put the money towards, the funds collected through payment-in-lieu programs typically go towards new infrastructure and parking improvements. Ald. Sangiolo stated that this is reminiscent of other mitigation funds that the city manages where if the money is not used by a certain date then it must be returned; she inquired as to whether that would be the case in this program. Though Mr. Zeren couldn't speak to the details of the financial mechanics, and stated that that is something that would need to be looked into. He also expressed his favor towards the proposed system of a single management fund though so that the money could be continuously pooled and would accumulate more quickly to address improvements.

Though Ald. Yates thinks this program seems like a good idea, he expressed his skepticism that it would actually do any good; he requested that Mr. Zeren look into whether other communities have any reports that this has been successful. Ald. Baker expressed similar concern, explaining that the idea behind parking requirements is that uses create a real demand; he stated that he feels a bit troubled by the idea of ignoring a demand in exchange for a fee. Going forward, Ald. Baker would like the question of how to satisfy the demand to be answered in addition to investigating the idea of a fee.

Ald. Shapiro addressed the concept of the reoccurring or annual fee. He sees the consistency of the fee to be unpredictable in the eyes of businesses depending on the city's need for revenue. Because of this, he thinks this could be a disincentive for business development.

Ald. Danberg shared with the committee that this item developed from the parking issues in Newton Centre. Currently, there is a discussion between people in that village about creating some kind of parking structure. The payment-in-lieu would help to provide an income stream and could fund a potential structure and perhaps increase pedestrian amenities in the area. She concluded the discussion by stating that this is the very beginning of a much larger discussion to be had next term.

Ald Lappin moved referral which carried unanimously.

**REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES**

#391-09(2) ALD. DANBERG, MANSFIELD, VANCE AND HESS-MAHAN requesting the establishment of a municipal parking mitigation fund whose proceeds, derived from payments-in-lieu of providing off-street parking spaces associated with special permits, will be used solely for expenses related to adding to the supply of municipal parking spaces, improving existing municipal parking spaces, or reducing the demand for parking spaces.

**FINANCE VOTED NO ACTION NECESSARY 10/12/11**

**ACTION: NO ACTION NECESSARY 7-0**

**NOTE:** The Committee decided that the proper course of action for this item is No Action Necessary. This motion carried unanimously.

#152-10 ALD. BAKER, FULLER, SCHNIPPER, SHAPIRO, FISCHMAN, YATES AND DANBERG recommending discussion of possible amendments to **Section 30-19** of the City of Newton Ordinances to clarify parking requirements applicable to colleges and universities. [06/01/10 @ 4:19 PM]

**ACTION: REFERRED TO 2012-2013 BOARD OF ALDERMEN 7-0**

**NOTE:** Ald Baker requested a motion for referral. He explained that this item has sat idle for a little while because more research needs to be done on what the proper path for this is. He explained that there are two tracks that this item could take. The first option is that there could be an amendment to the ordinance to allow for institutions to have the multiuse parking credit available presently for non-institutional use. The alternative would be for institutions to proceed as Boston College did, on an adhoc basis, completing a parking analysis to suggest that the parking would support whatever the use. The issue with this, Ald. Baker stated, is that this is a process opposed to an outcome and he's unsure as to whether this would satisfy the requirement of the state law. Ald. Baker requested, in addition to a motion to refer, that the planning department come up with some recommendations for this by the time the next Board takes it up. The motion to refer was made and carried unanimously.

#207-09(2) ALD. PARKER, DANBERG & MANSFIELD, proposing that chapter 30 be amended to allow additional seating in restaurants. [07/07/09 @ 12:42 PM]

**ACTION: REFERRED TO 2012-2013 BOARD OF ALDERMEN 7-0**

**NOTE:** Ald. Yates moved referral of this item which carried unanimously.

#411-09 ALD. DANBERG, MANSFIELD, PARKER requesting that §30-19(d)(13) be amended by adopting the Board of License Commissioners' current informal policies, which waive parking stall requirements for a set maximum number of seasonal outdoor seats in restaurants and require that indoor seats be temporarily reduced to compensate for any additional outdoor seats while they are in use, by establishing a by-right limit based

on a proportion of existing indoor seats that will allow seasonal outdoor seats to be used without need for additional parking.

**ACTION:** **REFERRED TO 2012-2013 BOARD OF ALDERMEN 7-0**

**NOTE:** Ald. Danberg explained that the purpose of this item is to ask for the four seats allowed outside at cafés to be formalized into the zoning ordinance. She stated that currently the practice of the Licensing Board to allow these is working against the parking regulations; the allowed seating outside needs to be brought into compliance with what is in the ordinance. Ald. Yates made a motion to refer this item, and also encouraged that the Planning Department take a look at other communities who do outdoor seating successfully. The motion to refer carried unanimously.

#400-11 ALD. GENTILE, HARNEY, SANGIOLO requesting establishment of a Business 5/Riverside Zone: a mixed-use transit-oriented district at the site of the current Riverside MBTA rail station. The proposed new zone shall allow by special permit a single commercial office building not to exceed 225,000 square feet with a maximum height of 9 stories, two residential buildings not to exceed 290 housing units in total, retail space not to exceed 20,000 square feet, along with a multi-use community center.  
[11/17/11 @3:36 PM]

**ACTION:** **REFERRED TO 2012-2013 BOARD OF ALDERMEN 7-0**

**NOTE:** Ald. Gentile spoke to this item and stressed the importance of moving this along as quickly as possible. There is a lot to be done on this front and it's important that the petitioner has a zone to file a special permit in so we need to expedite this. He shared with the Committee that the petitioner has filed a request for a site approval at this location for a 40B project. Though this has been done, the petitioner would still rather have a mixed use development on the site. Timing is of great importance in this scenario and this issue needs to be addressed as soon as possible.

Ald. Sangiolo shared that in scenarios like this it is the Board's practice to do scoping sessions and to properly vet the proposal and she hopes that that practice will continue for this project as well.

Ald Yates questioned the procedure as outlined in the docket item. He thinks that the first sentence implies putting it onto this site, not just establishing a zone. He believes it would be more proper to move forward next term with creating a district and then file a separate docket item to zone this location into the newly established district and then apply for a special permit under that. Marie Lawlor, Assistant City Solicitor, said she would look into this. Ald. Sangiolo and Gentile responded to Ald. Yates by stating that this was, in fact, the intent. Ald. Hess-Mahan stated that if there's an issue with the language it can be amended to reflect something more accurate for the advertising language, which is the language that is important. .

After this brief discussion the motion to refer was made; the motion carried unanimously.

#49-11 ALD. JOHNSON, Chair of Zoning and Planning Committee, on behalf of the Zoning and Planning Committee requesting that the Director of

Planning & Development and Commissioner of Inspectional Services review with the Zoning & Planning Committee the FAR data collected during the eight months prior to the new FAR going into effect and the 12 months after. This committee review should occur no less than bi-monthly but could occur as frequently as monthly, based on the permits coming into the departments. [02-15-2011 @8:44AM]

**ACTION:** **REFERRED TO 2012-2013 BOARD OF ALDERMEN 7-0**

**NOTE:** The Committee made the motion to refer the item to the 2012-2013 Board of Aldermen. The motion carried unanimously.

#153-11 ALD. DANBERG, ALBRIGHT, HESS-MAHAN, JOHNSON requesting that Chapter 30 be amended by adding a new Sec. 30-14 creating certain Retail Overlay Districts around selected village centers in order to encourage vibrant pedestrian-oriented streetscapes which would allow certain uses at street level, including but not limited to financial institutions, professional offices, and salons, by special permit only and require minimum transparency standards for street-level windows for all commercial uses within the proposed overlay districts. [05-10-11 @3:19 PM]

**ACTION:** **REFERRED TO 2012-2013 BOARD OF ALDERMEN 7-0**

**NOTE:** The Committee made the motion to refer the item to the 2012-2013 Board of Aldermen. The motion carried unanimously.

#153-11(2) ALD. DANBERG, ALBRIGHT, HESS-MAHAN, JOHNSON requesting the map changes necessary to establish certain Retail Overlay Districts around selected village centers. [05-10-11 @3:16 PM]

**ACTION:** **REFERRED TO 2012-2013 BOARD OF ALDERMEN 7-0**

**NOTE:** The Committee made the motion to refer the item to the 2012-2013 Board of Aldermen. The motion carried unanimously.

#65-11(3) ZONING AND PLANNING COMMITTEE requesting that the terms “flat roof” and “sloped roof” be defined in the zoning ordinance.

**ACTION:** **REFERRED TO 2012-2013 BOARD OF ALDERMEN 7-0**

**NOTE:** The Committee made the motion to refer the item to the 2012-2013 Board of Aldermen. The motion carried unanimously.

#65-11(2) TERRENCE P. MORRIS & JOSEPH PORTER proposing amendments to the Zoning Ordinance to revise the definition of “height” in Section 30-1 B) and to add a provision in Section 30- 15(m) to allow accessory structure height limits to be waived by special permit. [03-30-11 @ 4:12PM]

(Public Hearing closed 4-25-2011; 90 day expiration July 22, 2011)



**ACTION:** **NO ACTION NECESSARY 7-0**

**NOTE:** The committee decided the most appropriate action for this item was a vote of No Action Necessary. The motion was made and it carried unanimously.

#154-10(2) ZONING AND PLANNING COMMITTEE requesting to amend **Section 30-1 Definitions** by inserting revised definitions for “lot line” and “structure” for clarity. [04-12-11 @11:34AM]

**ACTION:** **REFERRED TO 2012-2013 BOARD OF ALDERMEN 6-0 (Baker not voting)**

**NOTE:** The Committee made the motion to refer the item to the 2012-2013 Board of Aldermen. The motion carried unanimously.

#154-10 ALD. JOHNSON, CROSSLEY and HESS-MAHAN requesting to amend **Section 30-1 Definitions**, by inserting a new definition of “lot area” and revising the “setback line” definition for clarity. [06/01/10 @ 9:25 PM]

**ACTION:** **REFERRED TO 2012-2013 BOARD OF ALDERMEN 6-0 (Baker not voting)**

**NOTE:** The Committee made the motion to refer the item to the 2012-2013 Board of Aldermen. The motion carried unanimously.

#150-09(3) ALD. ALBRIGHT, JOHNSON, LINSKY proposing that a parcel of land located in Newtonville identified as Section 24, Block 9, Lot 15, containing approximately 74,536 square feet of land, known as the Austin Street Municipal Parking Lot, currently zoned Public Use, be rezoned to Business 4. (12/10/10 @9:21AM)

**ACTION:** **REFERRED TO 2012-2013 BOARD OF ALDERMEN 6-0 (Baker not voting)**

**NOTE:** The Committee made the motion to refer the item to the 2012-2013 Board of Aldermen. The motion carried unanimously.

#153-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-15 Table 1** of the City of Newton Ordinances to allow a reasonable density for dwellings in Mixed Use 1 and 2 districts. [06/01/10 @ 9:25 PM]

**ACTION:** **REFERRED TO 2012-2013 BOARD OF ALDERMEN 6-0 (Baker not voting)**

**NOTE:** The Committee made the motion to refer the item to the 2012-2013 Board of Aldermen. The motion carried unanimously.

#183-10 ALD. JOHNSON, CROSSLEY AND HESS-MAHAN requesting to amend **Section 30-13(a) Allowed Uses in Mixed Use 1 Districts** by inserting a new subsection (5) as follows: “(5) Dwelling units above the

first floor, provided that the first floor is used for an office or research and development use as described above;" and renumbering existing subsection (5) as (6). [06/07/10 @ 12:00 PM]

**ACTION:** **REFERRED TO 2012-2013 BOARD OF ALDERMEN 6-0 (Baker not voting)**

**NOTE:** The Committee made the motion to refer the item to the 2012-2013 Board of Aldermen. The motion carried unanimously.

Respectfully Submitted,

Marcia Johnson, Chairman

Jane E. Sender, Esq.

Jane has been President of the Newton Conservators since 2009 and an alternative Member of the Newton Conservation Commission since 2010. She has lived in Newton since 1988.

Jane was the Out of State Attorney Voter Protection co-coordinator for the winning Obama campaign in the State of Florida in 2008. She was formerly a member of the Executive Committee of the Charles River Watershed Association, and was President of the Women's Bar Association of Massachusetts, a 1300 member statewide organization, in 1995-96, and President of the Women's Bar Foundation in 1996-97.

Jane is a graduate of the University of Oxford (Somerville College), and a graduate of the University of Florida College of Law where she was an editor of the Law Review. After law school, Ms. Sender clerked for Henry A. Politz, who was the Chief Judge of the United States Court of Appeals for the Fifth Circuit. She was a litigation associate with Troutman Sanders in Atlanta, Georgia and Posternak, Blankstein & Lund in Boston from 1982 to 1989. She has been a member of the Massachusetts since 1985. She has run her own legal recruiting firm, [www.senderlegalsearch.com](http://www.senderlegalsearch.com), since 1995.

Jane is an avid birder and an impassioned advocate for the environment. She recently led a panel discussion for the League of Women Voters on Newton's sewer and flooding issues, as well as participated on a Newton Library Forum on environmental leadership in March, 2011.

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CITY CLERK  
NEWTON, MA 02459

William M. McLaughlin

- Newton Resident for 16 years
- Massachusetts Native (grew up in Arlington and Belmont)
- BA in Economics from Harvard College (1986)
- Real Estate Development and Investment Professional for 23 years
  - Extensive Land Use/Zoning Experience
  - Overseen Approx. \$3 Billion in Ground Up Development, Rehabilitation, and Investment
  - Managed Local and State Level Entitlement Processes in over 20 MA communities and elsewhere
  - Frequent Guest Lecturer at Area Graduate School Programs on Topics of Real Estate Development, Investment, and Finance; Affordable Housing; Planning and Zoning Issues.
  - Leading Expert on Mixed Income Housing Development
  - On Board of Managers of Large Somerville MA based Industrial Real Estate Investment LLC.
- Charitable and Other Community Activities Include:
  - Can-Do Advisory Board
  - Newton Wellesley Hospital Board of Overseers
  - Board of Directors, Caritas Communities, Inc.
  - Current or Former Coach, NCLL, NGS, NAA
  - Past Chair, Greater Boston Real Estate Board, Past President, Rental Housing Association
- Married (Linda), with 6 children ages 7-17.

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## Thomas J. Phillips

14 Nobscot Road, Newton Centre, Massachusetts 02459  
617-964-2444 ♦ tphillips@brownrudnick.com

### Commercial Real Estate Attorney

Commercial real estate attorney admitted to practice in Massachusetts. Practice includes representing owners, developers, institutions, tenants, lenders and other businesses and high net worth individuals in a variety of sophisticated real estate transactions, including purchases and sales, leases, debt financings, joint ventures and equity financings, workouts and restructurings, development transactions and zoning, permitting and land use projects.

**Brown Rudnick LLP, Boston, MA, 2002 – present**

- *Partner and Chair of Real Estate Practice of 220-attorney law firm operating in six cities.*

**Hutchins, Wheeler & Dittmar P.C., Boston, MA, 2000 – 2002**

- *Partner and Chair of Real Estate Department of 120-attorney law firm.*

**Sullivan & Worcester LLP, Boston, MA, 1997 – 2000**

- *Partner in Real Estate Department.*

**Goodwin, Procter & Hoar LLP, Boston, MA, 1987 – 1997**

- *Associate in Real Estate and Corporate Departments.*

### Professional Recognitions

**Chambers USA: America's Leading Lawyers for Business, 2010 – present**

**Woodward/White: The Best Lawyers in America, 2011**

**Thomson Reuters: Super Lawyers, 2004 - present**

### Professional Organizations

**International Council of Shopping Centers (ICSC)**

- *State Director for Massachusetts, Maine, New Hampshire, Rhode Island and Vermont, 2009 – present*
- *Chair, New England Idea Exchange conference, 2009*
- *Next Generation Chair, Eastern Division, 2007 – 2009*
- *Next Generation Advisory Board, 2005 – 2010*

**National Association of Industrial and Office Properties (NAIOP)**

**Real Estate Finance Association (REFA)**

**Real Estate Bar Association (REBA)**

**American Bar Association**

**Massachusetts Bar Association**

- *Property Law Section Council, 1995 - 1998*

**Boston Bar Association**

**National Retail Tenants Association (NRTA)**

**Retailers Association of Massachusetts (RAM)**

**Speaking Engagements**

**CLE International**

- *Assignment of Leases and Subletting, Negotiating Leases Conference, Boston, MA, September 2002 and September 2003*
- *Retail Leasing Workshop, Negotiating Leases Conference, Boston, MA, May 2005, May 2006 and October 2007*

**National Retail Tenants Association**

- *Hot Topics in Retail Leasing and Development, NRTA Boston Regional Meeting, May 2003*

**International Council of Shopping Centers**

- *Whose Shopping Center is it Anyway: Who Controls the Uses?, ICSC Retail Leasing Symposium, Boston, MA, December 2004*
- *The Development Process, ICSC New England Idea Exchange / Next Generation Breakfast Panel, Boston, MA, July 2006*
- *Legal Issues in Mixed-Use Developments, ICSC Retail Leasing Symposium, Boston, MA, January 2007*
- *Deal or No Deal: Live Ground Lease Letter of Intent Negotiation, ICSC Spring Convention Workshop Session, Las Vegas NV, May 2007*

**Massachusetts Continuing Legal Education**

- *Lease Renegotiations and Exit Strategies, Hot Topics in the Real Estate Downturn seminar, Boston MA, April 2009*

**Community**

**Zoning Board of Appeals, Newton, MA**

- *Associate Member, 2008 – present*

**Combined Jewish Philanthropies (Real Estate, Construction and Design Team)**

- *Campaign Co-Chair, 2010*
- *Annual Dinner Co-Chair, 2009*
- *Annual Market Update Co-Chair, 2008*

**Temple Emanuel, Newton, MA**

- *Annual Appeal Committee, 2008 - present*

**Education**

**Boston University School of Law, Boston, MA**

- *J.D., 1987*
- *Editor, Boston University Law Review*

**Bowdoin College, Brunswick ME**

- *A.B., 1984*
- *Dean's List*

**Personal**

- Raised in Haverhill MA
- Newton resident since 1995
- Married with two teenage children
- Interests include hiking, biking, genealogy, sports memorabilia and following all Boston sporting teams

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# TREFFLE E. LAFLECHE, AIA, LEED AP

Principal



Treff's professional experience has focused on providing client focused and context sensitive design and project management services. Treff has achieved local and national recognition for his expertise in the merging of historic and contemporary aspects of New England residential and institutional architecture. He is a creative leader in a collaborative search for appropriate design solutions. His dedication to excellence is evident from the smallest detail to the broadest planning gesture.

## COMMUNITY EXPERIENCE

### City of Newton FAR Zoning Working Group

This 7-person team of Newton professionals and citizens has been working closely with the Newton Planning and Inspectional Services departments as well as Newton ZAP to examine, evaluate and make recommendations regarding current FAR regulations in response to the elimination of Footnote 7 in the Newton Zoning Ordinances.

### Chair, Historic Newton Capital Campaign Steering Committee

This sub-committee of the Joint Board of Historic Newton is responsible for raising the \$5.5M Historic Newton Capital Campaign goal.

### Member, Historic Newton Board of Directors

### Durant-Kenrick Homestead & Grounds Transition Committee

This sub-committee of the Joint Board of Historic Newton is responsible for the design, public approval, acquisition and construction of the restoration and renovation of the historic 1732 Durant-Kenrick Homestead & Grounds in the City of Newton.

## PROJECT EXPERIENCE

### Jesuit Community of the Weston School of Theology, Boston, MA

Residences for 65 members of the Jesuit Community on Boston College's Brighton Campus

### Appalachian Mountain Club, Crawford Notch, NH

Highland Center Lodge and Education Center, in collaboration with Carlone & Associates

### First Unitarian Society in Newton, Newton, MA

Master plan, exterior and interior renovations

### First Parish Unitarian Universalist, Beverly, MA

Master plan and feasibility study

### Marist Brothers Retirement Community, Framingham, MA

Housing, dining and chapel

### Commonwealth School, Boston, MA

Multiple Renovations including; dining room, kitchen, library, and science labs

### Lesley University, Cambridge, MA

Office of Student Affairs, renovation and addition

### Private Residences throughout New England



### Professional Experience

LDA Architects, LLP, Cambridge, MA, 1992-Present

### Education

University of Virginia  
Master of Architecture, 1987

Dartmouth College

Bachelor of Arts, 1977

### Certification

Registered Architect  
Massachusetts, New Hampshire, Maine, Connecticut, New York, South Carolina

NCARB Certified, 2000

### Teaching

Boston Architectural Center  
Design Instructor/Thesis Advisor

University of Virginia School of  
Architecture Studio Instructor

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Peter W. Kilborn Resume

Peter Kilborn was the Chief Justice of the Massachusetts Land Court from 1996 until his retirement in 2003. He was an Associate Justice of the Court from 1990 to 1996. Prior to becoming a judge, he was an attorney in private practice, most recently since 1968 at Rackemann, Sawyer & Brewster in Boston, where he was a director and Managing Director. He is a graduate of Harvard College and Harvard Law School. His practice as a lawyer included extensive experience in real estate matters, including title-related issues, leasing, financing, subdivision, zoning, other land-use matters, and other regulatory matters, and bond financing, including representation of major educational and medical institutions in the Boston area. Since leaving the bench, Mr. Kilborn has been active as a mediator and arbitrator, including membership on the panel of neutrals at REBA Dispute Resolution, Inc. and the panel at Mediation Works, Incorporated. He has served as a faculty member in training programs for Massachusetts Continuing Education, Inc., as a court-appointed master, and as a hearing officer for the Commission on Judicial Conduct and the Board of Bar Overseers. He received mediation training at Mediation Works, Incorporated.

He chaired a committee appointed by the Supreme Judicial Court which reviewed the Rules of Judicial Conduct, resulting in revisions to the Code which took effect in 2003.

In December 2010, he was appointed a member of the City's Zoning Reform Group, which is charged with reviewing, and suggesting changes to, the Newton Zoning Ordinance.

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**Barbara Huggins**

**Academic**

*Master of Arts  
Tufts University  
Graduate Department of  
Urban and Environmental  
Policy and Planning*

*Juris Doctor  
Boston University  
School of Law*

*Bachelor of Arts  
University of Pennsylvania*

**Professional**

*Admitted to the bar  
in Massachusetts  
and Mississippi*

**INTRODUCTION**

Barbara Huggins is a partner in the law firm of Huggins and Witten, LLC, where her practice includes municipal and land use law. Prior to joining the firm, then Daley and Witten, Ms. Huggins served as Law Clerk to the Hon. Mark V. Green, then-Associate Justice of the Massachusetts Land Court; as Law Clerk to Hon. Joseph Trainor and Janice Berry, Associate Justices of the Massachusetts Appeals Court; and as Editor of Landplanner Magazine and the Land Court Reporter. She has a masters degree in planning from the Tufts Department of Urban and Environmental Policy and Planning, where she wrote her thesis on Chapter 40R and Chapter 40B. While pursuing her planning degree, she interned in the Newton Planning Department for the Zoning Administrator. Recent civic activity includes serving on the Zoning Task Force appointed by the Board of Alderman, examining the "de minimis" rule in the Zoning Ordinance. She has a daughter in the F.A. Day Middle School and Newton Youth Hockey.

**REPRESENTATIVE PROJECTS**

Town Counsel: Town of Stow, Massachusetts 2005-Present:  
Represents the Town of Stow in legal matters relating to zoning, land use, subdivision control, permitting, and telecommunications.

Town Counsel: Town of Marion, Massachusetts 2005- Present:  
Represents the Town of Marion in legal matters relating to zoning, land use, subdivision control, and permitting.

Special Town Counsel: Town of Middleborough, Massachusetts 2005- Present: Represents to Board of Appeals for legal matters relating to comprehensive permit applications and appeals.

Special City Solicitor: City of Amesbury, Massachusetts 2005-Present: Represents the City of Amesbury for legal matters relating to comprehensive permit applications and appeals.

Special City Solicitor: City of Gloucester, Massachusetts 2009-Present: Represents City of Gloucester in an appeal from a comprehensive permit decision by the Housing Appeals Committee.

Special Town Counsel: Towns of Wareham and Bourne, Massachusetts 2005-Present: Represents Towns' Boards of Appeals for legal matters relating to comprehensive permit applications.

Barbara Huggins  
122 Albemarle Road  
Newton MA 02460

#### PRIOR EMPLOYMENT

Intern: Department of Planning and Development, City of Newton, Massachusetts Spring 2005: Reviewed applications for residential construction under city ordinance, and researched and drafted memoranda on zoning topics.

Law Clerk: Massachusetts Appeals Court 2001-2003: Law clerk to the Hon. Joseph Trainor and the Hon. Janis Berry.

Editor, Department of Environmental Protection Reporter and Land Court Reporter; Editor-in-Chief, Landplanner Magazine. 1999-2000: Prepared case summaries and digest entries for decisions issued by the Land Court and the DEP, including cases under the state Wetlands Protection Act. Prepared and edited articles on issues arising from zoning, development, and the permitting process for Landplanner Magazine.

Law Clerk: Land Court Department, Trial Court of Massachusetts 1997-1999. Law clerk to Hon. Mark Green. Court's jurisdiction includes zoning and subdivision control law.

Associate, Maxey Wann & Begley, Jackson, MS 1994-1995  
Practice focused on administrative, gaming, and business law.

Senior Staff Attorney, Mississippi Supreme Court, Jackson, MS. 1995-1996. Prepared memoranda on cases and motions before the Court. Drafted and edited opinions and orders for publication.

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# STUART L. SNYDER

## Professional Experience

Law Office of Stuart L. Snyder, P.C., Wellesley, MA 1996 to present

- Thousands of residential and commercial real estate transactions: buyer/seller representation; preparation/review of offers and purchase and sale agreements; compliance with time-sensitive pre-closing and post-closing lender documentation requirements and correspondent instructions (purchases and refinances); review of title reports; identification/resolution of title clouds and defects; examination of surveys/mortgage inspections; preparation of zoning opinions; negotiation with title insurance companies regarding risk and coverage – drafting affirmative policy language and exceptions to coverage; 1031 exchanges.
- Title insurance issuing agent for Old Republic National Title Insurance Company. Also have been agent for Lawyers Title Insurance Company, Ticor Title Insurance Company and First America Title Insurance Company.
- Residential landlord/tenant matters: preparation/review of residential and commercial leases; advice regarding landlord/tenant rights/responsibilities; dozens of residential Summary Process cases, including trials in District Court and Housing Court
- Client representation before municipal boards
- Chapter 93A consumer protections claims
- Managed two offices, including as many as four paralegals/support staff.

Law Office of Goldman & Goldman, Swampscott, MA 1991 to 1996

- Civil Litigation: responsible for client representation in lawsuits arising from all areas of firm's general practice, including: banking matters; condominium fee collections; landlord/tenant matters; claims against estates; individual and corporate matters. Tried and won first Superior Court jury trial.
- Real Estate: represented individual clients and lenders in closings for residential and commercial transactions. Conducted foreclosures.

Law Office of Englander & Sooho, Newton, MA 1990 to 1991

- As sole associate of two partners, involved at all levels in litigation of diverse matters stemming from general practice focused on civil litigation, domestic relations and real estate. Appeared in court for trials, pre-trial conferences, and motions. Met with clients, negotiated with opposing counsel, conducted legal research, attended depositions, and drafted litigation related documents.

### Trained Mediator

- Completed forty hours of mediation training in accordance with M.G.L. ch. 233, § 23C with Mediation Works, Incorporated, Boston, MA in March, 2008.

### Bar Membership

U.S. District Court for the District of Massachusetts, 1991  
Commonwealth of Massachusetts, 1990

### Education

Suffolk University Law School, Boston, MA  
J.D., 1990

Honors: ATLA National Trial Team, Regional Semi-Finalist  
Third Year Mock Trial Competition, Semi-Finalist  
First Year Moot Court Competition, Best Oral Advocate

Skidmore College, Saratoga Springs, NY  
B.A., English/Philosophy, 1986

Honors: Dean's List

Activities: Social Integrity Board, Appointed Chairperson  
Academic Integrity Board, Elected Member

### Volunteer Work

Newton Girls Soccer, Coach/Grade Coordinator

West End House Girls Camp, Inc., Board of Directors

Congregation Dorshei Tzedek, Former member of Board of Directors/Former Chair of Space Committee  
City of Newton, Planning and Development Board, Alternate Member

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## BROOKE K. LIPSITT

Personal

50-year Newton resident  
Married to Paul Lipsitt, LL.B., Ph.D., a forensic  
psychologist  
Mother of Sarah Lipsitt, M.A., teacher, Newton Public  
Schools  
Graduate of Newton High School, 1959  
A.B. from Pembroke College, Brown University (major in  
International Relations), 1963  
2006 recipient (with husband, Paul D. Lipsitt) of the  
Community Service and Training Award, presented by the  
Massachusetts School of Professional Psychology

Newton Board of Aldermen

Alderman-at-Large, Ward 7, 1992-2003  
President, 1998-2003  
Chairman, Post Audit & Oversight Committee, 1994-5  
Vice Chairman, Land Use Committee, 1992-3; 1996-7

Current Community Involvement

Newton Zoning Board of Appeals, Associate Member, 2005-08;  
Member, 2008-; Vice Chair, 2009-; Chair, 40B Task  
Force, 2009-  
Green Decade Coalition/Newton, Founding Member; Steering  
Committee, 1990-; Clerk, 2008-  
High Performance Building Coalition, Founding Co-Chairman,  
2004-08; member, 2008-  
Newton Communications Access Center, Inc., Board of  
Directors, 2004-; Finance Committee, 2006-; Vice  
President, 2006-; Executive Committee, 2006-  
Newton Historical Society, Strategic Planning Committee,  
2004; Board of Directors, 2005-2008, 2009-; Clerk,  
2010-; Executive Committee, 2010-; Chair, Durant  
Kenrick Transition Committee, 2010-  
Jewish Alliance for Law and Social Action, Board of  
Directors, 2007-2008; Advisory Committee, 2008-;  
REACH (Refuge, Education, Advocacy, and Change) Beyond  
Domestic Violence, Advisory Committee, 2003-  
UCHAN (Uniting Citizens for Housing Affordability in  
Newton), Member, 2002-; Treasurer, 2004-05  
Strategic Planning Committee, 2011-  
Social Science Club of Newton, 1993-; Auditor, 1995-96;  
Chairman, Scholarship Committee, 1996-97;  
Vice President, 2002-04; President, 2004-06;

Director, 2006-08; Chairman, Finance Committee, 2008-10

### Prior Community Involvement

Comprehensive Plan Mixed Use Task Force, 2010  
Sustainable Newton Advisory Committee, 2003-09  
Newton Symphony Orchestra, Board of Trustees, 1996-2006  
Newton Free Library, Policy & Planning Committee, 2004  
Massachusetts Municipal Association, member, Environmental  
Policy Committee, 2003  
Brown University, National Alumni Schools Program volunteer,  
1982-98; Alumnae President, Class of 1963, 1973-78;  
Vice President, 1998-2003  
Traveling Meals, volunteer, 1993-99  
Cooperative Living of Newton, Advisory Board, 1995-98  
Bicycle-Pedestrian Task Force, Founding Chairman, 1994-96  
Day Junior High School PTA Board, 1992-3  
Underwood Elementary School PTA, Board Member, 1985-91;  
Treasurer, 1987-91  
Chairman, Mayor's Steering Committee on the Peace Dividend,  
1990  
Watertown Cooperative Nursery School, Board of Directors,  
1983-85; President, 1984-85  
People's Theatre, Cambridge, Board of Directors, 1982-84;  
Clerk, 1983-84

### Political Involvement

Ward 2, Democratic City Committee, member, 2008-; Treasurer,  
2011-  
Ward 7, Democratic City Committee, member, 1988-2008;  
Secretary, 1991-96; Vice President, 1996-2006  
Mass Equality, Board of Directors, 2005-08; Chair,  
Nominating Committee, 2006-07  
Newton Action for Nuclear Disarmament, 1981-92; Political  
Action Coordinator, 1982-84; Treasurer,  
1985-88; President, 1986-91  
Massachusetts Sane Freeze, Board of Directors, 1986-1990  
Massachusetts Freeze Voter Education Fund, President,  
1986-89  
Massachusetts Freeze Voter, Co-Founder; Executive  
Committee, 1983-88  
Disarmament Action Network, Steering Committee, 1985-88  
Arms Control Advisory Committee to Senator John F. Kerry,  
1985-87  
Peace Boutique, Newton, Steering Committee, 1974-75  
Campaign "junkie": volunteer or staff member on numerous  
local and national political and issues campaigns

### Professional Experience

The First Years, Avon, MA

Marketing Manager, 1978-80  
Product Manager, 1977-78

Committee to Elect U.S. Congressman Robert F. Drinan  
Assistant Campaign Manager, Administration, 1976  
Office Manager, 1974

Eve of Roma, Division of the Gillette Company, Boston  
Sales Promotion Coordinator, 1970-71  
Assistant Product Manager, 1968-70

Selame Associates, Newton  
Program Coordinator, 1967-68

Buyers Laboratory, Inc., New York, NY  
Assistant Director, 1966-67  
Director of Research, 1966-67  
Assistant Director of Research, 1964-66

Policy interests

Affordable housing, environment, civil liberties, education,  
transportation

August, 2011

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Vincent Farina

**OBJECTIVE:** To continue to utilize my experience as a residential real estate broker in the City of Newton and surrounding communities

**EXPERIENCE:**

2005-present **COLDWELL BANKER RESIDENTIAL REAL ESTATE BROKER**

1991-2005 **PARSONS BRINCKERHOFF QUADE AND DOUGLAS**

1998-2005 **Field Engineer**

Provide construction oversight and quality control for the immersed tube tunnel construction portion of Boston's Central Artery Third Harbor Tunnel Project. Monitored construction activities associated with dredging the Fort Point Channel, drilled shaft construction, immersed tube tunnel construction including float out and docking procedures and attached cast in place cut and cover concrete construction.

1991-1998 **Property Management Supervisor**

Responsible for providing overall activities and services in the area of Facilities Management. Responsibilities include, but are not limited to: management of services for and coordinate use of Right of Way properties with construction, Massachusetts Highway Department, Massachusetts Port Authority, the City of Boston, Massachusetts Bay Transportation Authority and the Massachusetts Turnpike Authority; lease negotiations for and management of Central Artery/Third Harbor Tunnel Project occupied buildings; administration of property management contracts; coordination of major office relocations. Act as General Contractor for office build out for Bechtel/Parsons Brinckerhoff and Massachusetts Highway Department Right of Way and project leased properties.

**WANG LABORATORIES, INC. 1984-1991**

1988-1991 **Regional Facilities Manager, Northeast Region**

Actively managed over 22 facilities from Maine to Delaware. Particular responsibilities included consolidations, relocations, lease negotiations and administration, construction and building maintenance contracts.

1987-1988 **Facility Manager**

Managed the Boston and Lawrence facilities. Responsible for contract negotiations with all vendors utilized in the operation of both facilities. Assumed responsibility for the departmental budget. Managed a staff of 23 electric, HVAC, general maintenance and custodial personnel.

1985-1987 **Manager, Corporate Mail Service**

Redesigned corporate mail services department. Developed a cost cutting, time sensitive method for the distribution of internal/external mail.

- 1984-1985 Facilities Supervisor**  
Responsible for general maintenance of the Lowell Towers Headquarters. Responsibilities included construction, consolidation and relocation of personnel, office systems and furniture.
- 1978-1984 DUNKIN DONUTS FRANCHISE**  
Owned and operated a Dunkin Donuts franchise. Responsible for the financial reporting, inventory, production and development of extensive retail business.
- 1964-1978 JAMES FARINA CORPORATION**  
Started as a Field Engineer. Responsible for building and road layouts, lines and grades. Developed my construction career to the position of Superintendent. Overall manager of the Harvard Garage construction, Everett Street, Cambridge. Managed the concrete sub-contract for the New England Medial Center Dental Tower, Boston, and St. Joseph's Hospital addition, Lowell.

**EDUCATION:** Wentworth Institute - 1961  
Construction Management

**ADDITIONAL COURSES:** Harvard University Graduate School of Design - 1990  
Fundamentals of Real Estate Investment Analysis - 1990  
Managing at Wang - 1987  
Managing Effective Communications, Wang Laboratories - 1986  
Conflict Management, Wang Laboratories - 1985  
Several classes through Bechtel/Parsons Brinckerhoff  
Several management courses with Parsons Brinckerhoff

**LICENSE:** Mass. Construction Supervisor, License No. 024113  
Mass. Real Estate Brokers License. License No. 46531

**Activities** Current member Newton Zoning Board of Appeals

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HARVEY A. CREEM

*Business Experience*

For in excess of thirty years, I have been providing business advice to corporate management, boards of directors, corporate counsel, and to my peers. My perspective on problem solving has been influenced by my work experience as an auditor and business adviser, as a workout and restructuring adviser, as an expert witness, and as the risk management leader for my Firm.

I was associated with PricewaterhouseCoopers (and its predecessor Coopers & Lybrand) between 1966 and 2002; I was a partner in the Firm for twenty-nine years. For the first twelve to fifteen years, I had responsibility for my Firm's providing audit and consulting services to my clients. In this capacity, I worked with large entities, start-ups, and those in between; I worked with public entities, closely held entities, and family owned entities. I helped my clients go public, acquire businesses, raise funds, sell their businesses, and to improve control of their operations. During the following ten years, I switched my focus to emphasize business reorganizations and restructurings (both within and without of bankruptcy proceedings), investigations of alleged fraud and financial misrepresentation, investigations of business claims and expert witness testimony related thereto. In this capacity, my clients were corporate management, trustees, lenders, and attorneys. The last seven years of my career were as the Firm's US leader for internal risk management matters. In this later capacity, I consulted with my partners as to business risks and our Firm's response thereto.

At all times as a partner in the Firm, one of my assignments was to help other partners think through difficult accounting and business problems.

*Other Experience and Associations:*

I commenced work with PricewaterhouseCoopers after having attained an MBA from Harvard Business School and a Bachelor of Science in Business Administration from Boston University. I am a Certified Public Accountant and a Certified Fraud Examiner.

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#399-11

# Application for Committee Appointment City of Newton, MA



Name: James H. Mitchell

Date: November 30, 2006

Wife: Nancy Brunell Mitchell, Esq. – Assistant General Counsel, Commonwealth of Massachusetts  
Department of Conservation & Recreation (1979-Present)

Children: Jenna NSHS '02, Cornell '06, Columbia '07  
Emily NSHS '04, Cornell '08

Occupation, if applicable: Lawyer & Partner in Real Estate Management & Development firm

Committee(s) you might wish to serve on:  
License, Board, Zoning Board of Appeals

What activities or issues interest you?

As a lifelong resident, I am interested in serving the City of Newton to give back, and to help maintain and improve its unique character and quality of life for its residents

Relevant expertise, experience, and education"

Lifelong resident of Newton. Graduate of Bowen School, Meadowbrook Jr. High & Newton South High School '68; Graduated University of Massachusetts Amherst B.B.A. '72 with an area of concentration in Urban & Regional Studies; Graduated Suffolk University Law School (evening division) '76. Member in good standing of the Massachusetts Bar since 1977. Practiced law in Boston from 1977 to 1981 concentrating in real estate and municipal taxation. Since 1972, I have been a principal in Bobson Realty, a family-owned real estate investment, management and development firm. I have had experience practicing and appearing before various zoning and planning board in eastern Massachusetts.

List you community activities with offices held, if any:

Member, Newton Board of License Commissioners (2005 to present) Past President of Temple Beth Avodah ('95-'97); Member, Mayor's Needham Street Advisory Committee (1998); Active volunteer pilot with AngelFlight Northeast with over 25 missions (1996-present)

Please provide the names of three references:

Name

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# Department of Planning and Development

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## INTRODUCTION TO PAYMENTS IN LIEU OF PARKING ZONING AND PLANNING COMMITTEE DECEMBER 12, 2011

**#391-09** Ald. Danberg, Mansfield, Vance And Hess-Mahan requesting an amendment to Section 30-19 to allow payments-in-lieu of providing required off-street parking spaces when parking spaces are waived as part of a special permit application.

**#391-09(2)** Ald. Danberg, Mansfield, Vance And Hess-Mahan requesting the establishment of a municipal parking mitigation fund whose proceeds, derived from payments-in-lieu of providing off-street parking spaces associated with special permits, will be used solely for expenses related to adding to the supply of municipal parking spaces, improving existing municipal parking spaces, or reducing the demand for parking spaces.

## Payments In Lieu of Parking

### Newton's Current Parking Regulations

Payments in Lieu

Options for Consideration

Related Parking Items

## Why parking regulations matter

- Parking needed for customers and residents
- With the rise in car ownership, on-street parking became inadequate
- Zoning evolved to require off-street parking to meet demand
- In older areas:
  - Close-set buildings and small lots
  - Great pedestrian experience
  - Little room for off-street parking
- Barrier to the reuse of commercial space



## Payments In Lieu of Parking

### Newton's Current Parking Regulations

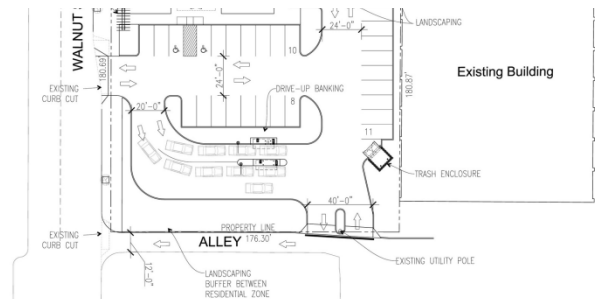
Payments in Lieu

Options for Consideration

Related Parking Items

## Newton's Current Parking Regulations

- Every use is required to provide off-street parking
- Section 30-19(d) contains ratios, e.g.:
  - 1 stall per 250 square feet for office
  - 1 stall per 3 seats and per 3 employees on largest shift
- Parking must be on-site
  - On-street or public parking lots do not count
  - Shared parking only allowed by special permit
- Requirement may be waived by special permit
- Shared parking allowed by special permit



## Payments In Lieu of Parking

### Newton's Current Parking Regulations

Payments in Lieu

Options for Consideration

Related Parking Items

## Grandfathering

- Many commercial buildings built before parking regulations
- Many do not have required number of off-street parking
- Section 30-19(c):
  - $A - B + C =$  total requirement
  - Parking credits equal to previous use's requirement less the spaces provided
- Grandfathering offers credit for parking spaces that aren't provided but are required today



## Payments In Lieu of Parking

### Newton's Current Parking Regulations

Payments in Lieu

Options for Consideration

Related Parking Items

## Special Permit Waivers

- E.g., If a restaurant wants to add seats or a medical office wants to replace a bank, the parking requirement increases

### OPTIONS:

- **Either:**
  - Provide more off-street parking
  - Obtain a waiver through special permit process
- **Special permits approved at Boards discretion**
  - Developers propose “mitigation”
  - Mitigation varies
  - Over 1,000 required stalls waived in last eight years

| Year                | Address                 | Use                              | Stalls Waived          |
|---------------------|-------------------------|----------------------------------|------------------------|
| 2006                | 33-55 Boylston St.      | bioretention facility            | 3                      |
|                     | 200 Wells Ave.          | dance studio & math school       | 12                     |
|                     | 1165 Chestnut St.       | earth station/satellite antennas | 1                      |
| 2007                | 225 Boylston St         | annual rug sale (2 weeks)        | 90 (temporary)         |
|                     | 349 Dedham St.          | Chabad                           | 61                     |
|                     | 109 Oak St.             | office building                  | 35                     |
|                     | 18 Station Ave.         | dental office                    | 3                      |
|                     | 218 Newtonville Ave.    | three-family dwelling            | 1                      |
| 2008                | 149A California St.     | adult day care                   | 16                     |
|                     | 342 Eliot St            | restaurant                       | 6                      |
| 2009                | 35 Morseland St.        | temple                           | 137                    |
|                     | 118 Needham St.         | restaurant                       | 10                     |
|                     | 1239-43 Centre St.      | restaurant                       | 23                     |
|                     | 1-27 & 304-06           |                                  | 126                    |
|                     | 39 Herr                 |                                  | 8                      |
|                     | 2345 C                  |                                  | (never built)<br>53    |
| 2010                | 751-75                  |                                  | no other SP)           |
|                     | 796 Be                  |                                  | no other SP)           |
|                     | 225 Bo                  |                                  | 11                     |
|                     | 200-23                  |                                  | up to) 467             |
|                     | 1012-1                  |                                  | 1                      |
|                     | 481 Ha                  |                                  | 1                      |
|                     | 1347 W                  |                                  | 3                      |
|                     | 286 Waverly St.         | Durrant Kenrick Museum           | 20                     |
|                     | 70 Union St.            | proposed diner                   | 18 (no other SP)       |
|                     | 152 Adams St.           | mixed-use development            | 1                      |
|                     | 675 Washington St.      | retail expansion                 | 1                      |
| 175 Allerton Rd.    | three family            | 1                                |                        |
| 1479 Washington St. | funeral home            | 38                               |                        |
| 2011                | 429 Cherry St.          | NCSC conversion to office        | 19 (no other SP)       |
|                     | 1-33, 33-55 Boylson St. | Chestnut Hill Shopping Center    | 590 (in the alternate) |
|                     | 53-57 Union St.         | St. Petersburg Café              | 8                      |
|                     | 149A California St.     | adult day care                   | 6 (no other SP)        |
|                     | 111 Elm St.             | mixed-use building               | 9                      |
|                     | 543 Commonwealth Ave.   | restaurant                       | 9 (no other SP)        |
|                     | 1648 Beacon St.         | restaurant                       | 9 (no other SP)        |

• **Over 1,000 parking stalls waived between 2003 and 2011**

• **At least 100 stalls waived where no other special permit required**

# Payments in Lieu of Parking

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- “In lieu fees” or “payments in lieu” are fees charged to developers or property owners when parking space requirements are waived
- Fees typically used to provide or improve public parking or reduce parking demand

## Payments In Lieu of Parking

Newton's Current Parking Regulations

Payments in Lieu

Options for Consideration

Related Parking Items

## Advantages of Payments in Lieu

- a) Supports public parking infrastructure from new revenue source
- b) Encourages shared parking
- c) Balances peaks of parking demand
- d) Supports foot traffic
- e) Consolidates parking
- f) Encourages infill
- g) Encourages reuse of existing and historic buildings which lack parking capacity
- h) Offers predictable and expeditious outcomes

## Payments In Lieu of Parking

Newton's Current Parking Regulations

Payments in Lieu

Options for Consideration

Related Parking Items

## Concerns About Payments in Lieu

- **Developers' Perspective**
  - Lack of on-site, owner-controlled parking
  - Fear of high fees
  - No guarantee about when/where public parking will be provided
- **City's Perspective**
  - Need to monitor parking supply to ensure that waivers do not create a problem
  - Creates equity and consistency

## Payments In Lieu of Parking

Newton's Current Parking  
Regulations

### Payments in Lieu

Options for Consideration

Related Parking Items

## Examples of Payments in Lieu

| City              | In Lieu Fee        |
|-------------------|--------------------|
| Northampton, MA   | \$2,000*           |
| Braintree, MA     | Variable, unused   |
| Ashburnham, MA    | Market rate        |
| Orlando, FL       | \$9,800            |
| Delray Beach, FL  | \$4,000 - \$18,200 |
| Hollywood, FL     | \$5,000            |
| Miami, FL         | \$5,000 - \$12,000 |
| Palo Alto, CA     | \$17,848**         |
| Lake Forest, IL   | \$9,000**          |
| State College, PA | \$5,850**          |
| Kirkland, WA      | \$6,000**          |

\* Discontinued in October, 2011

\*\* Figures from 1999 survey by D. Shoup

# Options for Consideration

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1. Allowed citywide or in certain districts?
2. Is the fee a one-time payment or annual?
3. Is the fee market rate or discounted?
4. Allowed for all uses or only commercial?
5. Administrative or special permit only?
6. Can the fee itself be waived?
7. What could the fee be used for?

# 1. Allowed citywide or within districts?

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## Citywide

- No appropriate projects left out
- Largest potential revenue
- More difficult to administer

## Specific Districts

- Limited scope is easier to manage
- More easily determine if existing parking is adequate
- Some desirable projects left out due to location



## 2. Is the fee a one-time payment or annual?

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### One-Time Payment

- Potential to quickly raise large amount of revenue
- Larger burden on new businesses
- Hard to budget projects for fluctuating income

### Annual Payment

- Reliable ongoing cash stream
- Lower burden for new businesses
- Can discontinue before fully paid if use requiring waiver goes away
- Smaller initial revenue

### 3. Is the fee market rate or discounted?

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#### Market Rate

- Larger revenues
- Revenues better able to pay for new parking facilities/mitigation
- May be too expensive for many businesses, nonprofits, and institutions

#### Discounted

- Easier for businesses, nonprofits, and institutions to pay
- Revenues may not be able to pay for new parking facilities

## 4. All uses or only commercial uses?

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### All Uses

- In mixed-use areas, dwellings may require significantly fewer cars per dwelling unit
- If also citywide, has the broadest potential impact
- Includes residential uses, including single-family, accessory apt., etc.
- Market for single-family dwellings demands the same or more than required parking

### Commercial Uses Only

- Emphasizes reuse of existing commercial space for new uses
- New mixed-use development would not be able to apply for waivers for residential component

## 5. Administrative or Discretionary?

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### Administrative

- Faster
- More predictable
- Decreases professional costs
- Fewer staff resources
- Criteria needed:
  - availability of parking,
  - not more than 10 stalls, e.g.
- No public review

### Special Permit

- Public review
- Board review of parking adequacy
- No change in timing, predictability, or cost of process

## 6. Can the in-lieu fee itself be waived?

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### Waived by Special Permit

- Relieves some small businesses or nonprofits of costs that may be difficult for them to bear
- Some tenants/property owners pay disproportionately for mitigation
- Less revenue for mitigation

### Cannot be waived

- All tenants/property owners treated equally
- No lost revenue
- Nonprofit and new small businesses may not be able to afford fees

## 7. What could the fee be used for?

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- **New Infrastructure**
  - A public parking garage
  - New or upgraded public parking lots
- **Better Parking Management**
  - New parking meters that use demand pricing to ensure availability
  - Better wayfinding signage to direct motorists to parking facilities
- **Reducing Demand**
  - Improvements to pedestrian and bicycle infrastructure
  - Improvements to public transit service and stations

## Payments In Lieu of Parking

Newton's Current Parking Regulations

Payments in Lieu

Options for Consideration

Related Parking Items

## Other Parking Items

- **#152-10:** Ald. Baker, Fuller, Schnipper, Shapiro, Fischman, Yates And Danberg recommending discussion of possible amendments to Section 30-19 of the City of Newton Ordinances to clarify parking requirements applicable to colleges and universities.
- **#411-09** Ald. Danberg, Mansfield, Parker requesting that §30-19(d)(13) be amended by adopting the Board of License Commissioners' current informal policies, which waive parking stall requirements for a set maximum number of seasonal outdoor seats in restaurants and require that indoor seats be temporarily reduced to compensate for any additional outdoor seats while they are in use, by establishing a by-right limit based on a proportion of existing indoor seats that will allow seasonal outdoor seats to be used without need for additional parking.



Setti D. Warren  
Mayor

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Candace Havens  
Director

WORKING SESSION MEMORANDUM

RECEIVED  
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2011 DEC -9 PM 3:58  
David A. Olson, CMC  
Newton, MA 02459

DATE: December 9, 2011  
TO: Alderman Marcia T. Johnson, Chairman  
Members of the Zoning and Planning Committee  
FROM: Candace Havens, Director of Planning and Development  
Jennifer Molinsky, Chief Planner for Long-Range Planning  
Seth Zeren, Chief Zoning Code Official

RE: **Working Session, December 12, 2011**  
#391-09 Ald. Danberg, Mansfield, Vance And Hess-Mahan requesting an amendment to Section 30-19 to allow payments-in-lieu of providing required off-street parking spaces when parking spaces are waived as part of a special permit application.  
#391-09(2) Ald. Danberg, Mansfield, Vance And Hess-Mahan requesting the establishment of a municipal parking mitigation fund whose proceeds, derived from payments-in-lieu of providing off-street parking spaces associated with special permits, will be used solely for expenses related to adding to the supply of municipal parking spaces, improving existing municipal parking spaces, or reducing the demand for parking spaces.  
#152-10 Ald. Baker, Fuller, Schnipper, Shapiro, Fischman, Yates And Danberg recommending discussion of possible amendments to Section 30-19 of the City of Newton Ordinances to clarify parking requirements applicable to colleges and universities.  
#207-09(2) Ald. Parker, Danberg & Mansfield, proposing that chapter 30 be amended to allow additional seating in restaurants.  
#411-09 Ald. Danberg, Mansfield, Parker requesting that §30- 19(d)(13) be amended by adopting the Board of License Commissioners' current informal policies, which waive parking stall requirements for a set maximum number of seasonal outdoor seats in restaurants and require that indoor seats be temporarily reduced to compensate for any additional outdoor seats while they are in use, by establishing a by-right limit based on a proportion of existing indoor seats that will allow seasonal outdoor seats to be used without need for additional parking.

CC: Mayor Setti D. Warren  
Board of Alderman  
Planning and Development Board  
Marie Lawlor, Assistant City Solicitor



The following memorandum provides brief background discussions of the five agenda items before the Zoning and Planning Committee at its working session on December 12, 2011.

**#391-09: Payment in lieu of providing required off-street parking**

In many areas of Newton, commercial uses cannot fulfill the parking requirements set out in Sec. 30-19 on site; this is particularly true in village centers characterized by small lots. Because their buildings were constructed before the advent of cars, space for parking is often not available. Such legally nonconforming uses receive parking space credits that count toward the Zoning Ordinance's parking requirements. Customers make use of on-street parking, municipal lots, and various private parking lots on larger parcels. The Zoning Ordinance allows waivers for parking requirements for changes to these properties (for example, when a restaurant wants to add seats or when a second floor salon is converted to a dentist's office) by special permit from the Board of Aldermen. On average the special permit process can take two to three months, requires a \$750 filing fee, and sometimes professional fees. In addition, the Board may require mitigation from the applicant in the special permit process that is difficult to predict or factor into a business plan.

The payment-in-lieu model works by setting an up-front fee that can be paid "in lieu" of providing required off-street parking. These fees would be used to increase the supply of public parking or reduce parking demand through various measures. In-lieu payments can either be part of a special permit or could be granted under certain conditions by administrative review. Particularly for those businesses that require a special permit solely for waiving parking, an administrative review would make starting a business faster and more predictable. Examples of criteria for an administrative review process could include a parking study or staff finding of adequate parking in the vicinity or a maximum number of stalls that can be waived administratively. Possible topics of discussion are: 1) whether in-lieu payments should be available City-wide or only in specific districts; 2) whether the payment should be annual or a one-time fee; 3) the fee amount, balancing the need for adequate revenue to manage parking supply with what small businesses can afford to pay; 4) whether the fees should be available for all uses or just commercial ones; 5) and exactly how the fees should be used, for example, only near where they were generated or as part of a City-wide plan. Such fees could potentially support the creation of new parking facilities (including a possible garage), but would require pooling from multiple areas of the City; fees could also support the upgrading of existing facilities with new market-rate meters and improved way finding, or reducing the need for parking overall through improved transit, bicycle, and pedestrian alternatives.

**#391-09(2): Parking mitigation fund to manage payment-in-lieu fees**

This petition supports docket item #391-09 by proposing a parking mitigation fund be established to set aside the fees received from payments-in-lieu.

**#152-10: Clarification of parking requirements for colleges and universities**

In a 2003 Appeals Court of Massachusetts case, *Trustees of Boston College vs. Board of Aldermen of Newton*, the Court ruled that the application of the parking regulations in Newton's Zoning Ordinance as written result in an overcounting of parking spaces required by colleges and universities because some uses, such as classrooms, dorm rooms, and cafeterias would be separately included in parking calculations when, in fact, an individual student or staff member could be in only one place at

a time. The Court expressed support for a provision of Section 30-19(d)(13) that allows discounts for restaurants, theaters, etc. in conjunction with a hotel, but noted that this provision is not written so as to apply to a multi-use college campus. Ultimately, the application of Section 30-19 to the Boston College Middle Campus Project was overturned and the Court recommended that the City's zoning regulations be amended to arrive at a more reasonable parking regulation for colleges and universities. One method of addressing this goal is to explicitly include a discount for associated uses on a college campus, as is done for hotels. Going beyond this step, a new regulation could be added to Section 30-19(d) which requires state-of-the-art assessments of parking supply and demand that are context-sensitive.

**#207-09(2): Amend parking regulations to allow additional seating in restaurants**

Presently, restaurants are required to provide one on-site parking stall per three seats plus one stall per three employees on the largest shift. The Zoning Ordinance permits businesses that lack adequate parking under Section 30-19 through a "grandfathering" clause in Section 30-19(c) that gives credit for the number of parking stalls that would be required for the existing use. In order to add seating, restaurants without adequate off-street parking may request a special permit from the Board of Aldermen to waive the parking requirement. Currently, no restaurant can have more than fifty seats without a special permit, a threshold that affects many locally-owned, small businesses.

The Zoning Ordinance could be amended to allow additional seating in restaurants without a special permit. One way to do that would be to raise the 50-seat limit to a higher number (e.g. 100 seats), which would still provide increased review for larger restaurants while allowing smaller restaurants reasonable opportunities for growth. The in-lieu proposal described above could also help; if in-lieu payments for parking waivers were managed administratively, restaurants would be able to purchase waivers that translate into additional seating capacity.

Another possible approach is to lower the ratio between parking and seating, but this would not likely help most restaurants, as the lower ratio would also reduce the grandfathered parking spaces. For example, Bill's Pizza in Newton Center recently received a special permit waiver of nine parking stalls; if the ratio were changed to one stall per four seats, a seven-stall waiver would still have been required. In order for restaurants to add seats on the basis of grandfathered parking credits, a wholly new calculation, rather than a new ratio, would be required in Section 30-19(c).

**#411-09: Formalize parking requirements for seasonal outdoor seating**

The Board of License Commissioners currently allows up to four seats and two tables outside on the public sidewalk for each restaurant. Some restaurants that have private patio space also provide outdoor seating in fair weather. This outdoor seating is a significant public benefit in enlivening the streetscape. The Zoning Ordinance does not explicitly allow the sidewalk seating permitted by the Board of License Commissioners, but any seating placed outdoor in warmer months must be offset by reducing interior seating in order to comply with Section 30-19 for off-street parking requirements unless the business obtained a special permit for parking relief.

This docket item recommends that temporary outdoor parking in warm months be allowed without the provision of additional off-street parking or the removal of interior seats. This item raises a

number of important questions including: How many outdoor seats should be allowed without a parking waiver? For what length of time would the additional seats be allowed? How would the increased seating affect parking demand? For seating located on public sidewalks, a minimum free-flowing corridor would need to be provided for pedestrian accessibility; what other criteria should determine the siting and number of seats allowed?

Where outdoor seating extends over the publicly-owned sidewalk, the Board of License Commissioners and the Health Department would still have to approve any permit. Furthermore, Section 20-5 of Newton's Ordinances requires approval from the Chief of Police to serve alcoholic beverages in the public way. Some communities have adopted sidewalk café licenses and permits that address such issues, which are worthy of exploration and could address related issues through a single process.