

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE AGENDA

MONDAY, APRIL 26, 2010

7:45 pm
Room 222

ITEMS SCHEDULED FOR DISCUSSION:

- #93-10 ALD. JOHNSON AND SANGIOLO requesting revision of **Section 30-27** of the City of Newton Ordinances governing membership of the Zoning Board of Appeals by providing selection criteria guidance and process so that the level of expertise in related areas, or the equivalent combination of experience and/or education is present in order to enhance the ability of the Board to increase its level of service to Newton. [03/26/10 @ 12:31 PM]
- #92-10 ALD. JOHNSON AND SANGIOLO requesting revision of **Section 22-3(a)** of the City of Newton Ordinances governing membership of the Planning Board by providing selection criteria guidance and process so that the level of expertise in related areas, or the equivalent combination of experience and/or education is present in order to enhance the ability of the Board to increase its level of service to Newton. [03/26/10 @ 12:29 PM]
- #30-10(2) POST AUDIT & OVERSIGHT COMMITTEE requesting a discussion with the Planning & Development Department relative to the governance process of the Newton Community Development Authority (NCDA), including recommendations and potential changes to the NCDA. [01/26/09 @ 9:00 PM]
- #122-09 ALD. SANGIOLO on behalf of Armando Rossi requesting a discussion of the proliferation of signage in the city.

ITEMS NOT YET SCHEDULED FOR DISCUSSION:

- #114-10 ALD. YATES AND RICE requesting reports from the Conservation Commission and Board of Survey on compliance with condition of permits given to allow the development of the Laura Road subdivision. [04/07/10 @ 10:59 PM]

REFERRED TO FINANCE AND APPROPRIATE COMMITTEES

- #121-10 HIS HONOR THE MAYOR, in accordance with Section 5-1 of the City of Newton Charter, submitting the FY'11 Municipal/School Operating Budget totaling \$340,073,328, passage of which shall be concurrent with the FY'11- FY'15 Capital Improvement Program.
EFFECTIVE DATE OF SUBMISSION: 04/20/10

- #61-10 ALD. CICCONE, SWISTON, LINSKY, CROSSLEY AND HESS-MAHAN requesting a discussion relative to various solutions for bringing existing accessory and other apartments that may not meet the legal provisions and requirements of Chapter 30 into compliance. [02/23/10 @ 2:48 PM]

- #60-10 ALD. HESS-MAHAN proposing that sections 30-15(s)(10) and 30-24(b) of the City of Newton Ordinances be amended to substitute a 3-dimensional computer model for the scaled massing model in order to facilitate compliance with recent amendments to the Open Meeting Law and that sections 30-23 and 30-24 be amended to reflect the filing procedures in Article X of the Rules & Orders of the Board of Aldermen. [02/23/10 @ 3:24 PM]

- #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.

- #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.

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.

REFERRED TO FINANCE AND APPROPRIATE COMMITTEES

- #376-09 HIS HONOR THE MAYOR submitting the FY11-15 Capital Improvement Program, totaling \$140,377,285 and the FY10 Supplemental Capital budget, which require Board of Aldermen approval to finance new capital projects over the next five years.

- #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]

- #164-09(2) ALD. HESS-MAHAN requesting that the Planning Department study the dimensional requirements for lot and building size for accessory apartments and make recommendations for possible amendments to those dimensional requirements to the board of Aldermen that are consistent with the Newton Comprehensive Plan. [01/07/10 @ 12:00 PM]

- #475-08 ALD. HESS-MAHAN, DANBERG, JOHNSON, SWISTON, & PARKER proposing that the City of Newton accept the provisions of GL chapter 43D, a local option that allows municipalities to provide an expedited permitting process and promote targeted economic development. [12/09/08 @ 9:41 AM]

- #474-08 ALD. HESS-MAHAN & VANCE proposing that Chapter 30 be amended to transfer from the Board of Aldermen to the Zoning Board of Appeals and/or the Planning & Development Board the special permit granting authority for special permit/site plan petitions not classified as Major Projects pursuant to Article X of the Board Rules. [12/09/08 @ 3:26 PM]

- #336-08 ALD. LAPPIN requesting a discussion re the creation of an index for the zoning ordinances. [9/12/08 @ 10:31 AM]

- #150-08 ALD. GENTILE proposing that Chapter 30 be amended to clarify that for a commercial vehicle to be parked legally at a residential property, it must be registered to the owner/occupant of that residential property. [4/15/08 @ 2:17PM]

- #365-06 ALD. YATES requesting the establishment of an education program for realtors concerning properties in historic districts.

- #288-06 ALD. MANSFIELD, DANBERG, PARKER proposing that Sec 30-11(a), (b), and (d) of Chapter 30 be amended to allow banks and other financial institutions only by special permit in Business 1, 2 , 3 and 4 districts.

REFERRED TO ZONING & PLANNING AND FINANCE COMMITTEES

- #48-06 ALD. HESS-MAHAN, BURG, JOHNSON, DANBERG, PARKER & WEISBUCH proposing that the city provide financial incentives to rent

accessory apartments to low- to moderate-income households at affordable rates that can serve housing affordability goals.

FINANCE VOTED NO ACTION NECESSARY ON 3/8/10

- #10-06 ALD. JOHNSON, DANBERG, SANGIOLO, BAKER, & HESS-MAHAN requesting the adoption of legislation to enable the establishment of neighborhood conservation districts in Newton.
- #440-04 ALD. JOHNSON, BAKER & LAPPIN proposing a definition of “accessory structure” which will include mechanical equipment.
- #294-03 ALD. BAKER, YATES, JOHNSON AND MANSFIELD requesting analysis and discussion of possible remedies for demolition of modest housing and replacement with oversized structures out of character with the surrounding neighborhood, including examining the experience of other communities, including those out of state, who have worked to address this problem. **(Recommitted by Full Board 8-14-06)**
- #133-03 ALD. YATES proposing an amendment to Chapter 30 requiring a special permit for a so-called "snout house" (one with excessive/intrusive garage on the front) following the example of Fort Collins, Colorado.
- #217-00 ALD. YATES requesting that Chapter 30 be amended to require a special permit for the demolition of a structure aged 100 years or more, containing one or more residential units in any residential district.
- #20-99 ALD. YATES proposing that Chapter 30 be amended by removing radio and television towers as allowed uses in the Mixed Use 1 district.
- # 7-99 ALD. PARKER requesting discussion of possible zoning amendments to create additional residential districts with different FAR and lot size requirements.
- #333-97(2) ALD. YATES proposing that Chapter 30 be amended to prohibit without a special permit in any zoning district the approval of a subdivision that would be accessed by any public way on which the Level of Service at the point of access is already a D, E, or F, for at least one hour per week or if the additional traffic to be generated by the subdivisions would cause the Level of Service at the point of access to a public way to fall to D, E, or F for at least one hour per week. [8-7-07 @2:05 PM]

Respectfully submitted,

Marcia Johnson, Chairman

Zoning Board of Appeals – Section 30-27

Members shall include at least one citizen who has expertise or demonstrated interest in real estate/land-use law, at least one citizen who has expertise or demonstrated interest in planning, at least one citizen who has expertise or demonstrated interest in building construction/development, ~~at least one citizen who has expertise or demonstrated interest in professional design/engineering,~~ and at least one citizen who has experience or demonstrated interest in the zoning process in Newton.

Deleted: and

Planning and Development Board – Section 22-3

Members shall include at least one citizen who has expertise or demonstrated interest in real estate/land-use law, at least one citizen who has expertise or demonstrated interest in planning, at least one citizen who has expertise or demonstrated interest in building construction/development, ~~at least one citizen who has expertise or demonstrated interest in professional design/engineering,~~ and at least one citizen who has experience or demonstrated interest in the zoning process in Newton.

Deleted: and

NEWTON CODE - ZONING

**ARTICLE VI. ZONING BOARD OF
APPEALS**

Sec. 30-27. Zoning Board of Appeals.

A zoning board of appeals is established and shall consist of five (5) members to be appointed by the mayor, subject to confirmation by the board of aldermen.

Each member shall be appointed for a term of three (3) years. Vacancies shall be filled for the balance of the unexpired term in the same manner in which original appointments are made. The zoning board of appeals shall annually elect a chairman from its members and a clerk. No member shall act in a case in which he is in any way interested.

The mayor shall annually appoint for a term of one year, subject to confirmation by the board of aldermen, five (5) associate members of the zoning board of appeals. The associate members shall be sworn and shall qualify in the same manner as regular members. In the case of a temporarily unfilled vacancy, inability to act, or interest on the part of a regular member, the chairman shall designate one of the associate members to fill such vacancy or serve in place of such regular member, as the case may be. Members and associate members of such board shall serve without compensation.

(a) Appeals may be taken to the zoning board of appeals as provided in chapter 40A, sections 8 and 15 of the General Laws, as at the time in effect. The zoning board of appeals shall hold a hearing upon any appeal or other matter referred to it or on any petition for a variance in the manner provided in, and after notice given as required by, chapter 40A, section 11 of the General Laws, as at the time in effect.

(b) The zoning board of appeals shall have the following powers:

(1) To hear and decide appeals taken by:

a) Any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of chapter 40A; and

b) Any person, including an officer or board of the city, or of any abutting city or town, or the metropolitan area planning council, aggrieved by an order or decision of the commissioner of inspectional services, or other administrative official, in violation of any provision of Chapter 40A or any section of this chapter. Any appeal under subsection (b)(1) shall be taken within thirty (30) days from the date of the order or decision which is being appealed.

(2) To grant, upon appeal or upon petition in cases where a particular use is sought for which no permit is required with respect to particular land or structures, a variance from the terms of this chapter where it is determined that owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a

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literal enforcement of the provisions of this chapter would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that the desired relief may be granted without substantial detriment or the public good and without nullifying or substantially derogating from the intent or purpose of this chapter, but not otherwise.

Prior to the exercise of any of the powers enumerated above, the zoning board of appeals shall hold a hearing on any appeal, application or petition transmitted to it by the city clerk within sixty-five (65) days from the transmittal to the board.

The board shall cause notice of such hearing to be published and sent to parties in interest as provided by section 11 of chapter 40A, and by the rules of the board.

In exercising the foregoing powers the zoning board of appeals may, in conformity with this chapter, reverse or affirm in whole or in part, or may modify any order or decision and may make such order or decision as ought to be made and to that end shall have all the powers of the commissioner of inspectional services, and may direct the commissioner of inspectional services to issue a permit.

In exercising the powers under paragraph (2) of this subsection, the zoning board of appeals may impose conditions, safeguards and limitations both of time and use, including the continued existence of any particular structures but excluding any condition, safeguards or limitations based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner. If the rights authorized by a variance are not exercised within one year of the date of the grant of such variance or within such a lesser period as the board may determine, they shall lapse, and may be re-established only after notice and a new hearing pursuant to this section.

(c) The concurring vote of four (4) members of the zoning board of appeals shall be necessary to reverse any order or decision of the commissioner of inspectional services, or to decide in favor of the appellant for a permit on any matter upon which it is required to pass under this chapter, or to effect any variance in the application of this chapter.

(d) No appeal, application or petition which has been unfavorably and finally acted upon by the board of appeals shall be acted favorably upon within two (2) years after the date of such final unfavorable action unless the following criteria are met:

- (1) At least four (4) members of the board must find specific and material changes in the conditions upon which the previous unfavorable action was based, and must describe such findings in the record of its proceedings;
- (2) All but one member of the planning board consents thereto; and
- (3) Notice is given to parties in interest as to the time and place of the proceedings when the question of such consent will be considered.

(e) The zoning board of appeals shall adopt rules, not inconsistent with the provisions of this chapter, for conducting its business and otherwise carrying out the purposes of this chapter; a copy of these rules shall be filed with the office of the city clerk. Meetings of the board shall be held at

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the call of the chairman and also when called in such other manner as the board shall determine in its rules. Such chairman, or in his absence the acting chairman, may administer oaths, summon witnesses and call for the production of papers. All hearings of the zoning board of appeals shall be open to the public.

The decision of the board shall be made within one hundred (100) days after the date of the filing of an appeal, application or petition. Failure by the board to so act within said one hundred (100) days shall be deemed to be a grant of relief, application or petition sought. The board shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact and setting forth clearly the reasons for its decision, and of its other official actions, copies of all of which shall be immediately filed in the office of the city clerk and shall be a public record, and notices of decisions shall be mailed forthwith to parties in interest as designated in subsection (a) of this section, to the planning board and to every person present at the hearing who requests that notice be sent to him and states an address to which such notice is to be sent. (Rev. Ords. 1973, §24-30; Ord. No. 190, 12-20-76; Ord. No. 284, Pt. XI(A)-(J), 6-19-78; Ord. No. R-2, 5-7-79; Ord. No. T-8, 1-17-89; Ord. No. T-40, 8-14-89; Ord. No. T-116, 12-3-90)

State law reference—Zoning boards of appeal, G.L. c. 40A, § 12

Editor's Note—The original appointments of members under this section were for staggered terms of one, two, three, four and five years.

NEWTON CODE

Sec. 22-3. Planning and development board; establishment, powers and duties.

(a) There is hereby established in accordance with chapter 705 of the Acts of 1975, as amended, a planning and development board of five (5) members appointed for five (5) year overlapping terms such that the term of one member expires on February first of each year. In addition to these five members, another member shall be appointed by the state Secretary of Housing and Economic Development for a three (3) year term; and another member shall be the director of planning and development, ex officio. The planning and development board shall be consulted by the mayor and board of aldermen for its recommendations on the comprehensive plan, modification or implementation thereof. Its recommendations to the board of aldermen shall be in writing within a time specified by the board of aldermen. There shall also be appointed not more than five (5) alternate members. In the event that any member, except the state appointee or the director, is absent or unable to act for any reason, the chair shall designate an alternate member to act.

(b) The director shall submit to the planning and development board, for its review, plans, proposals or agreements for the acquisition of real property and/or the selection of developers thereof.

(c) The planning and development board shall exercise responsibility for the formulation and submission of recommendations for the annual community development plan authorized by federal law, including the conduct of public hearings thereon.

(d) The planning and development board shall exercise authority of review and approval over acts of the director as provided in section 22-2(c).

(e) All boards, commissions, committees and other agencies incorporated in the department and assigned advisory responsibility to the planning and development board, shall be granted a right to appear three (3) times per year before the planning and development board to discuss matters within their purview. (Rev. Ords. 1973, § 15-1; Ord. No. 102, 12-15-75)

Cross reference—Rules governing appointments to and service on commissions and boards, § 2-8

State law references—Acts of 1975, chapter 705; Acts of 1982, chapter 479; Acts of 1989, chapter 499; and Acts of 2007, chapter 73.

CITY OF NEWTON

IN BOARD OF ALDERMEN

POST AUDIT & OVERSIGHT COMMITTEE REPORT

TUESDAY, FEBRUARY 23, 2010

Present: Ald. Swiston (Chairman), Shapiro, Rice, Lennon and Sangiolo

Absent: Ald. Schnipper, Freedman and Johnson

Also Present: Ald. Lappin

City Staff: Chief Joseph LaCroix (Newton Fire Department), Art Cabral (Interim Commissioner Public Buildings Department), Amy Yuhasz (Associate Director for Housing and Community Development Planning & Development Department), Candace Havens (Interim Director of Planning & Development), Josephine McNeil (Executive Director of CAN-DO), Alice Ingerson (Community Preservation Program Manager) and Clint Schuckel (Traffic Engineer)

#30-10(3) POST AUDIT & OVERSIGHT COMMITTEE requesting a discussion with the Planning & Development Board to review the actions on the decision making process that lead to the forgiving of the Newton Community Development Authority (NCDA) loans on June 1, 2009. [02/08/10 @ 4:06 PM]

ACTION: NO ACTION NECESSARY 5-0

NOTE: Amy Yuhasz, Associate Director for Housing and Community Development Planning & Development Department and Josephine McNeil, Executive Director of CAN-DO joined the Committee for discussion on this item.

Chairman Swiston said she spoke with Tabetha McCartney, Chair of the Planning & Development Board. Ms. McCartney informed her she has requested financial information from CAN-DO and will share this information when she receives it.

Ms. Yuhasz provided Committee members with a PowerPoint presentation on the review and approval process of CAN-DO, attached to this report.

Ms. Yuhasz said each year the City receives approximately 3 million dollars in Federal Community Development Block Grant (CDBG), Home Investment Partnerships Program and Emergency Shelter Grant money based on a formula. Within the CDBG program there are six different areas including grants and loans which are funded by the City. Every five years, the Housing and Urban Development (HUD) requires the City to provide a consolidated plan. The City is currently in the process of completing their annual action plan for FY11. The plan will outline projects to be undertaken during the fiscal year using the grant funds and will provide a proposed budget for each program. The CDBG funds are primarily used for low to moderate income residents. Home Funds are used solely for the creation and development of affordable housing. The Emergency Shelter grant is specifically to help emergency shelters or transitional

housing programs.

Approval Process

There are nine different advisory committees and approximately forty different programs working with the City. Recommendations made by an advisory committee are forwarded to the Planning & Development Board for review, recommendation and approval which is submitted to the Mayor for approval of the project and which program will undertake these funds. Ald. Shapiro asked if the Mayor has ever changed a project submission. Ms. Yuhasz answered no, not in the ten years she has worked with the City.

Ms. Yuhasz said the loans which were forgiven last year for CAN-DO came under the Housing Rehabilitation Program. The Housing Rehabilitation Program has specific guidelines for what the City can fund. Those guidelines when initially adopted and each time they are revised they go through the Newton Housing Partnership, Planning & Development Board and the Mayors review and approval. She said each of these were responsible for the forgiveness process for CAN-DO.

Awarding of Loans

A loan agreement, mortgage, note and deed restriction if it is a housing development project where the City is securing long-term affordability. Loan documents are issued between the NCDA and Subgrantee (MOU between NCDA and the City). Many years ago, the Law Department said the City could not hold mortgages on private property. The Department of Revenue said it was okay if the City held mortgages on private property. The NCDA has the authority to exercise the right of first refusal on these properties but can step into the process to purchase the property while the City works to find another non-profit. The City is allowed to do this through the Board.

Process for Loan Forgiveness

CAN-DO was experiencing a financial difficulty due to a loss of income on the Millhouse Commons project. CAN-DO submitted a request to the Planning Director to forgive \$529,817 for seven CDBG funded direct payment housing rehabilitation loans. The forgiveness would result in an annual savings of \$32,376 for CAN-DO. NCDA was the mortgagee of seven additional direct payment loans with the Newton Housing Authority, and three non-profit agencies. Staff notified the NHA and other agencies of this incident and the Newton Housing Partnership recommended approval. The Planning & Development Board recommended approval of the forgiveness of the loan contingent upon receipt of additional documents. The Mayor must also approve the request. Chairman Swiston asked what criteria the City uses to forgive the loans. Ms. Yuhasz said the City is allowed to forgive loans. The loans were forgiven and reported in the NCDA annual financial statements for FY09. Ms. Yuhasz said the loans were not completely forgiven they were converted to deferred payment loans. The loans are still on the City books and if the property is sold to someone who did not keep it as affordable housing the City would be paid back. Currently, the City is not receiving the monthly program income of approximately \$32,000 per year.

Chairman Swiston said the purpose of this item is to discuss how the forgiveness happened and how it was not tracked and not noticed until October 2009. It is not to question the decision

making process of the Planning & Development Board. Ald. Shapiro understood the Home Rule Petition the City filed granting the Planning Director authority to forgive the loans. Ms. Yuhasz said when the City was forgiving the loans the Law Department advised them it should be the Planning & Development Board acting as a Community Development Advisory Board. The Board became aware of the problem when the financial statements were issued for the Newton Community Development Authority in October 2009. The funding for the loans was in the name of the NCDA even though the Planning Board was the board who approved this forgiveness.

It is the plan to have NCDA bank accounts be incorporated into the City system by July 1. CAN-DO will continue to update the Planning & Development Board on their financial well-being every six months. FY10 changes to Housing Rehabilitation Program guidelines include switch from direct payment loans to deferred, with payment due when ownership changes. Further changes will be proposed during FY11.

Chairman Swiston asked how many applicants and who qualifies for the Housing Rehabilitation program. Ms. Yuhasz said in a household family of four the income can not exceed \$65,000. The program was under utilized for many years but because of recent guideline changes the City has an extensive waiting list. Ald. Lennon asked if an income limit has been determined. Ms. Yuhasz answered no; it still needs to be determined.

Ald. Shapiro asked if the financial situation with CAN-DO has been solved preventing this from happening in the future. Ms. McNeil said this has not totally fixed the problem but has put CAN-DO in a better financial position allowing them to move forward with another project. The problem occurred because of the Millhouse Commons and Elliot House projects. The process of permits and funding is very lengthy and the Elliot House even had an appeal. Over the past three years CAN-DO has worked on two projects and during that time CAN-DO received no income because there was no development fee. Sixty percent of the units have to be affordable housing set by a formula by the state which says how much money can be charged based on individuals' income. All housing costs can not exceed 30% of the income, condominium fees and taxes are included. Ms. McNeil said the City is still paying off a \$200,000 construction loan. Out of eleven units seven units were affordable units making such an impact. She said she explained to the past Mayor and it was his opinion he wanted to continue the program and did not want CAN-DO to become obsolete. The way to prevent this from happening was to relieve CAN-DO finances. Chairman Swiston said on March 1 the Planning Board will be discussing CAN-DO's financial situation at their meeting.

Chairman Swiston opened the discussion to members of the public:

Michael Leppi, 422 Chestnut Street, provided Committee members with the current financial documents from CAN-DO dated February 16, 2010, attached to this report. Mr. Leppi said he still has not heard why the \$529,817 was forgiven, it is actually \$920,000. How do loans get forgiven to pay off other loans when they are given for a particular project. Ald. Swiston said this item in this Committee is to follow the process of the City and not to question the decision made by the Planning Board.

Ald. Lennon made the motion for No Action Necessary. The Committee voted in favor 5-0.

ZONING & PLANNING COMMITTEE REPORT

MONDAY, NOVEMBER 13, 2006

Present: Ald. Yates (Chairman), Ald. Weisbuch, Lappin, Danberg, Burg, and Sangiolo; absent: Ald. Baker and Johnson; also present: Ald. Gentile

City staff: Michael Kruse (Director of Planning & Development), Gayle Smalley (Associate City Solicitor), Marie Lawlor (Assistant City Solicitor), and Linda Finucane (Chief Committee Clerk)

REFERRED TO ZONING & PLANNING & PROGRAMS & SERVICES COMMITTEES

#265-04(2) HIS HONOR THE MAYOR requesting that Home Rule Legislation approved by the Board of Aldermen on June 1, 2004 to amend statutes governing the Newton Community Development Authority (NCDA) and the Newton Housing Authority (NHA) re the acquisition of affordable housing by the NCDA and to update the enabling acts reflecting more accurately the current operations of both the NCDA and the NHA, be upon the suggestion of the Senate Counsel's office further amended and re-voted by the Board of Aldermen for re-filing in December 2006 for the new legislative session.

ACTION: APPROVED 6-0

NOTE: This item is a re-file of a Home Rule petition voted by the Board for submittal to the General Court for submission two years ago. Instead of the usual course of referral to Committee, action in one House followed by action in the other, this item had somehow been seized by the Senate Council's office and languished there for the whole legislative term. Associate City Solicitor Gayle Smalley explained the substance of the suggested changes recommended by the Counsel's office. They seemed minor but acceptable improvements. Jonathan Hacker of the Newton Housing Authority had expressed concern about the NHA's ongoing ability to manage future construction projects and asked that the provision concerning it be made discretionary on the Authority's part. Mr. Kruse and Ms. Smalley both expressed surprise at this change in the NHA's position. Since the petition must also be approved by the Programs and Services Committee that oversees the NHA and all Home Rule Petition, the Committee voted 6-0 to approve it subject to such changes as PMS should make to reflect this concern. Alderman Sangiolo will convey those concerns to the Committee. Mr. Kruse and Ms. Smalley will work with the NHA Director to settle them before the Committee's meeting on this topic. Alderman Yates urged that all possible steps be taken to get the item through the regular legislative process in a timely manner. "I don't want to see this item back before the Committee next term."

PROGRAMS AND SERVICES COMMITTEE REPORT

WEDNESDAY, DECEMBER 6, 2006

Present: Ald. Johnson (Chair) Hess-Mahan (Vice Chair) Ald. Lipof, Merrill, Parker, Sangiolo, Baker, Coletti

Also: Susan Burstein (Chief Budget Officer)

REFERRED TO ZONING & PLANNING & PROGRAMS & SERVICES COMMITTEES

#265-04(2) HIS HONOR THE MAYOR requesting that Home Rule Legislation approved by the Board of Aldermen on June 1, 2004 to amend statutes governing the Newton Community Development Authority (NCDA) and the Newton Housing Authority (NHA) re the acquisition of affordable housing by the NCDA and to update the enabling acts reflecting more accurately the current operations of both the NCDA and the NHA, be upon the suggestion of the Senate Counsel's office further amended and re-voted by the Board of Aldermen for re-filing in December 2006 for the new legislative session.

ACTION: **APPROVED 7-0 (Coletti not voting)**

NOTE: Steve Gartrell, Associate Director for Housing and Community Development, explained that the Community Development Authority can only acquire property from the City. In the last ten years, there have been a number of programs that have had affordable housing with deed restrictions. In foreclosure situations, Mr. Gartrell said they would like to have the right of first refusal. The Law Department has informed Mr. Gartrell that the City cannot step in that case so the Community Development Authority is the next best model for doing that. There was a question raised in the past by Jonathan Hacker (Director of Newton Housing Authority) regarding the way the legislation was written. Currently if the Community Development Authority develops any rental housing projects on behalf of the Housing Authority, the Housing Authority **shall oversee and manage the construction job**. It has been requested that the word "**be**" be changed to "**may**" so that would allow **but not** require them to oversee and manage construction jobs that the Community Development Authority would undertake.

The Committee voted to approve 7-0

CITY OF NEWTON

IN BOARD OF ALDERMEN

December 18, 2006

ORDERED:

That the Board of Aldermen hereby requests and authorizes His Honor the Mayor to submit a home rule petition to the General Court requesting the following amendments to chapter 705 of the acts of 1975, as amended:

AN ACT relative to the Newton Community Development Authority and the Newton Housing Authority

SECTION I. Section 4 of chapter 705 of the acts of 1975 is hereby amended by striking out, in lines 2 to 3, inclusive, and in lines 10 to 11, inclusive, the words “state secretary of communities and development” and inserting in place thereof, in both instances, the following words:- director of the Massachusetts department of housing and community development.

SECTION 2. Section 5 of chapter 705 of the acts of 1975 is hereby amended by striking out the second paragraph, as appearing in section 2 of chapter 499 of the acts of 1989, and inserting in place thereof the following paragraph:-

The director, as sole member of the community development authority, shall not receive additional compensation, and the community development authority need not elect officers. So far as practical, the community development authority shall make use of the services of the department for staff and administrative functions, and the department may charge the community

development authority for these services an amount agreed to by the department and the community development authority with the approval of the mayor. The community development authority shall have independent authority to develop housing programs, including but not limited to affordable housing projects involving public and private ventures, congregate housing for the elderly, and community residences for people with disabilities. Nothing in this section shall be construed to prevent the housing authority from undertaking similar projects. Whenever the community development authority or the housing authority determines that it will develop such a project, it shall give immediate written notice to the other authority. If both the community development authority and the housing authority desire to develop the same site, the authorities shall immediately confer in good faith to determine which authority is better able to promote affordable housing through the project, but if the housing authority intends to develop the site as a rental housing project, it shall be given first preference.

SECTION 3. Section 7 of chapter 705 of the acts of 1975 is hereby amended by striking out subsection (h) and inserting in place thereof the following subsection:-

(h) to acquire by purchase, exchange, transfer, lease, gift, grant or assignment any property, real or personal, or any interest in property, found by it to be necessary or reasonably required to carry out its purposes, and to hold, sell, exchange, transfer, lease or assign this property to the city, the housing authority or to any other person;.

SECTION 4. Section 7 of chapter 705 of the acts of 1975 is hereby further amended by striking out subsections (j) and (k), as appearing in section 2 of chapter 479 of the acts of 1982.

SECTION 5. Section 7 of chapter 705 of the acts of 1975 is hereby further amended by striking out subsection (n).

SECTION 6. Section 7 of chapter 705 of the acts of 1975 is hereby further amended by adding the following subsections:-

(o) to assist low and moderate income property owners, low and moderate income tenants, and owners of property used as housing for low or moderate income tenants with housing rehabilitation, including making grants and unsecured and secured loans and holding mortgages and other security interests;

(p) to assist organizations and persons carrying out programs of affordable housing with the acquisition, development, rehabilitation and management of properties used as housing for low or moderate income tenants, including making grants and unsecured and secured loans and holding mortgages and other security interests;

(q) to provide and operate home-buying assistance programs to assist low, moderate income and upper-moderate income persons in the acquisition of property for their use as owner-

occupied housing, including providing technical assistance, training and counseling, making loans and grants, and exercising rights of first refusal, options and other property interests to promote and preserve affordable housing for qualified low and moderate income buyers;

(r) to provide economic development assistance to businesses that create jobs for low, moderate and upper-moderate income employees and businesses owned by low, moderate or upper-moderate income owners, including making grants, unsecured and secured loans and holding mortgages and other security interests;

(s) to acquire and hold interests in privately-owned real properties, including covenants, restrictions, options and rights of first refusal, that provide for use of these properties for housing for low or moderate income tenants; to exercise all rights under these interests; and to transfer these interests to persons of low or moderate income, the Newton Housing Authority or any other qualified organization or entity; and

(t) on a temporary basis, to operate, manage and maintain properties, including the rental or lease of properties, or to engage the Newton Housing Authority or an organization or person for the operation, management and maintenance of properties, but only as reasonably necessary in order to provide for continued operation and preservation of the affordable housing status of these properties until the authority can transfer its ownership to a person of low or moderate income for use as owner-occupied housing or to an organization or person qualified to carry out a program of affordable housing.

SECTION 7. Section 11C of chapter 705 of the acts of 1975, as appearing in section 6 of chapter 499 of the acts of 1989, is hereby repealed.

SECTION 8. Section 11D of chapter 705 of the acts of 1975, as appearing in section 6 of chapter 499 of the acts of 1989, is hereby repealed.

SECTION 9. Chapter 705 of the acts of 1975 is hereby further amended by striking out section 11E, as appearing in section 6 of chapter 499 of the acts of 1989, and inserting in place thereof the following section:-

Section 11E. The community development authority may, in its discretion, assist the housing authority with site selection and acquisition, site engineering, land use and zoning analysis, permitting, funding assistance, financial analysis, design and architect selection and development of specifications and working drawings. At its option, the housing authority may exercise independent authority to oversee and manage all phases of construction of rental housing projects developed by the community development authority for operation by the housing authority, from the date of construction contract award, subject to its powers and authority under chapter 121B of the General Laws.

SECTION 10. Section 11F of chapter 705 of the acts of 1975, as appearing in section 6 of chapter 499 of the acts of 1989, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:- The housing authority and the community development authority shall participate jointly in final design and architect selection for projects developed by the

community development authority for operation by the housing authority.

SECTION 11. Chapter 705 of the acts of 1975 is hereby further amended by inserting after section 12 the following section:-

Section 13. For purposes of this act, the following definitions shall apply:

low-income: those persons and families whose gross annual income is less than or equal to 50 per cent of the area median income as determined by the guidelines of the United States Department of Housing and Urban Development.

moderate income: those persons and families whose gross annual income is more than 50 per cent and less than or equal to 80 per cent of the area median income as determined by the guidelines of the United States Department of Housing and Urban Development.

upper-moderate income: those persons and families whose gross annual income is more than 80 per cent and less than or equal to 100 per cent of the area median income as determined by the guidelines of the United States Department of Housing and Urban Development.

affordable housing: housing for low income, moderate income, or upper-moderate income persons and families, including owner-occupied housing and publicly and privately owned rental housing.

Under Suspension of Rules
Readings Waived and Adopted
22 yeas 0 nays 2 absent (Aldermen Sangiolo and Weisbuch)

(SGD) DAVID A. OLSON
City Clerk

(SGD) DAVID B. COHEN
Mayor