

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, JUNE 14, 2010

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

Also Present: Ald. Crossley, Harney and Rice

Others Present: Candace Havens (Interim Director, Planning & Development), Maria Rose (Engineering Dept.), Anne Phelps (Conservation Planner), Juris Alksnitis (Sr. Planner), David Banash, Leslie Burg (Planning & Development Board members), Phil Herr, Karyn Dean (Committee Clerk)

#89-10(2) HIS HONOR THE MAYOR re-appointing CANDACE HAVENS as Interim Director of Planning and Development effective July 1, 2010 until a permanent replacement is hired, but not to exceed 90 days when the temporary appointment may be extended with Board of Aldermen approval pursuant to §3-6 of the City Charter. [06/01/10 @ 6:18 PM]

ACTION: **APPROVED 7-0 (Ald. Sangiolo not voting)**

NOTE: Candace Havens, Interim Director of Planning, is being recommended for re-appointed until a permanent replacement is hired. Ald. Yates asked when the Mayor would be making a decision on a permanent replacement and Ms. Havens said the advertisement went out today. Ald. Yates moved to approve the re-appointment and the Committee voted in favor.

#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]

ACTION: **HELD 8-0**

NOTE: Ald. Yates explained that the heavy rains in March brought the flooding situation in the Laura Road area to his attention. There was flooding in almost all of the yards and basements in that area and at the end of Rokeby Road. A subdivision was done at Laura Road with the approval of the Planning Board acting as Board of Survey as well as the approval of the Conservation Commission with both entities requiring extensive lists of conditions to be met during and after construction. Ald. Yates checked with the Conservation Commission and found that at least one replicated wetland is indicated in the plans on both the Board of Survey and the Conservation Commission permits. When he visited the area he noted that there was some construction and yard waste debris in the area. It did not seem to him to be a functional replicated wetland as the water was in the

yards and not in the wetlands. He wants to know if the owners of that land were originally in compliance, what they are supposed to do to maintain the wetland, and if it is still in compliance with the conditions of the Planning Board and the Conservation Commission.

Replicated Wetland

Anne Phelps, Conservation Planner, addressed the Committee. She pointed out on a map the areas of the wetlands and floodplains. The map may be viewed online. She explained that the state and federal government require no net loss of wetlands. Therefore, if a bordering vegetative wetland is filled, it must be replaced in an adjacent area. The same is also true for flood storage space so compensatory flood storage area must be replicated in the same area if it is filled. The replicated area was about 4K square feet for this project. She said it was very possible that there may have been other wetlands in the area in the past and this is definitely a wet area. Ald. Crossley said she read through all the provided documents from the Engineering Dept. and according to them, much of the drainage was taken care of with underground culverts.

Ms. Phelps said that groundwater rises first, then eventually the ground is saturated and there is run off into the river, then the river rises and floods laterally. She said there are relatively small amounts of water in the replicated wetland and she does not think it is responsible for the problems in that area. Ald. Crossley agreed it was not responsible but people are suffering in the area and the situation needs to be looked at.

Dumping

Anne Phelps, Marie Rose and Ald. Crossley and Yates all reported that dumping of debris was evident in the area, particularly behind the retaining wall which was built as a condition of the development. This likely exacerbates the situation and may clog drainage, damage the vegetation that was so carefully replicated there and change the landscape. It is the obligation and responsibility of the owners in that area to maintain the wetland. Conservation has a restriction over these lots primarily to prevent any building, but the owners are responsible for maintaining the wetland area and are responsible for removing any debris according to that restriction. Ald. Crossley said the dumped materials are mainly yard waste. Ms. Rose noted that the dumping happens at all the points where there is easy access. Ms. Phelps noted that she sends out notices regarding dumping in areas all over the City from the Conservation Commission. Ald. Sangiolo asked that Ms. Phelps notice the people in this area about the dumping immediately and she said she would. The Law Department would be the ones to bring a complaint against homeowners for noncompliance with the conservation restriction regarding maintaining the wetland.

Engineering Perspective

A homeowner said that the drain in the area was completely dry when the flooding occurred and she had water in her yard and basement. Maria Rose, from the Engineering Dept. explained that older topographical maps show that the area is quite bowl shaped. It is a 3 foot deeper area and is in a floodplain, therefore, the water has to rise to a certain level before the outlet can provide some relief. Ms. Rose showed photographs of two

drains that were unobstructed. The water needs to reach an elevation of 72 which is 2.5 feet about the current elevation, in order for the relief to begin. This could be changed and a rivulet could be added but that is not what the Conservation Commission approved and probably not what they would want. The dumping is shown clearly in some photos as well and it should be cleaned up and enforced. From an engineering perspective, the project was built in accordance with the plans. It is a private road and the infrastructure there has to be maintained by the people who own homes there. There is not anything structurally wrong with any of the culverts that go beneath Irwin Road. The line closest to 65 Rokeby Road that goes directly to the Charles had been jetted clean and checked. DCR has been cleaning and jetting out their lines as well.

Appropriate Committee

Ald. Baker said this was an important issue to look at and he wanted to be as helpful as possible, but he wondered if this would not be better dealt with by the Conservation Commission. Because it was a site specific problem, he did not feel that the Zoning and Planning Committee was the appropriate venue. Ald. Yates said that it is the Committee's job to oversee the Conservation Commission as well as the Planning & Development Board acting as Board of Survey. This has been a long standing problem and he wants to see some action by the appropriate entities. Ald. Baker said that if the Conservation Commission does not respond or there is an institutional problem, he agrees that it should come to the Zoning and Planning Committee. Ald. Lennon said the issue is in the Committee at this point and therefore they need to take some initiative and not transfer the responsibility elsewhere, further frustrating the residents.

Follow Up

Ald. Yates moved to hold this item. He would like to hear back from the Conservation Commission the result of their notification to the homeowners in that area and what action the homeowners have taken. The Committee voted to hold this item 8-0.

#141-10(2) ZONING & PLANNING COMMITTEE requesting discussion with the Planning Department regarding changes in the City of Newton Ordinances **Section 22-22 Floodplain/watershed protection provisions.**
[05/25/10 @ 10:23 AM]

ACTION: NO ACTION NECESSARY 7-0 (Ald. Sangiolo not voting)

NOTE: This item arose from the Committee's discussion of ordinance changes that were necessary to conform to new FEMA regulations regarding floodplains and watershed protection. There was a timeframe in which the ordinance changes had to take place in order to keep the City protected by flood insurance so the Committee acted upon the changes. However, there were some questions that needed to be answered and Ms. Havens addressed the Committee.

Notification

The Committee had asked Ms. Havens about notification of residents regarding the status of their homes within floodplains. She reported that the notification process that FEMA uses is to issue two legal notices in the newspaper of record in the area. They also held

some informational meetings in Middlesex County (Winchester, Cambridge, Arlington and Medford) and issued press releases to over 300 media outlets in the county over a 3 month period of time. FEMA does not issue letters directly to homeowners but they will provide the City with templates if the City wants to send letters. Some insurance companies do send letters directly to their customers. The staff has received a lot of calls from people who are aware of changes in the floodplain maps so she believes that indicates the notification process works.

Street, Bridge, Dam Name Changes

The Committee had also been concerned that the amended ordinance noted some name changes to streets, bridges, dams and other markers in the City that they did not understand. Ms. Havens explained that those were changed to be consistent with floodplain insurance maps. In some cases they may not be the common or familiar names. At municipal boundaries, the name was changed to be consistent with the official name on the Newton side. Maria Rose explained, for example, that Kendrick Street in Needham turns into Nahanton Street in Newton, so she changed the name in the ordinance to Nahanton Street. She carefully matched up the names of the Newton streets and the names that are used in the floodplain insurance maps to be consistent.

Elevation Changes

There were also some changes to the measurements of the elevations and in some cases, the changes seemed significant and this concerned the Committee. Maria Rose explained that no new study was done within the watershed and there are no significant or substantive changes in the June 4, 2010 maps. The small changes in the numbers occurred due to a national movement to go from small community maps that make it look as if the city exists as an island, to county specific maps which brought Newton from five maps to a dozen or so maps; they also changed from paper to digital mapping and the older maps do not include homes, but the new maps include aerials of the area; and they converted from the 1929 vertical datum to a 1988 vertical datum. All of these changes led to some changes in the numbers on the new maps.

Ms. Rose explained that the current ordinance is based on City of Newton datum. She looked at the hand drawn maps from 1985 that correlated with the first floodplain ordinance. There were a couple of errors in those hand drawn maps and she corrected them after lining them up with the FEMA map. That is why an area or two seems to be significantly changed, but the change is due to the correction of an error, not the change in an actual elevation.

Ms. Rose explained that she is a certified floodplain manager and received her training at FEMA to support the Planning Department. By law, the floodplain graphs have to be used when elevations are taken. Therefore, they have to be taken at points that can be identified, so they pick a bridge or a culvert so that it can be easily pinpointed on the graph. That also explains some of the changes that she made in the new ordinance. She wanted to reiterate that the new ordinance and the new maps do not change anyone's placement in a floodplain or the actual elevations.

The Committee thanked Ms. Rose for her diligent work in this area and moved to vote No Action Necessary as their concerns were addressed. The Committee voted in favor.

Public Comment

Maureen Meagher, 342 Quinobequin Rd., Newton addressed the Committee. She felt the Board needed to encourage the community to come and speak about their concerns. She hoped there could be more forums in which that could happen. She also stated that many people on Quinobequin Rd. have had to replace hot water heaters and furnaces much more often than 90% of the other residents in the City. She wanted the Board to take into account the amount of money residents had to pay in insurance and replacement costs when deciding some issues such as how to allow the allocate the storm water assessment fees that are collected. She would like the full Board to hear from the residents on Quinobequin Rd.

Valerie Hutchins, 120 Quinobequin Rd., Newton addressed the Committee. She said she has lived on Quinobequin Rd. since the 1970s and she has noted that within the past 15 years there are many residents who have needed to put in French drains and manual shut offs to their sewer systems. This problem is not specific to the rains in March even though that is what brought it to everyone's attention. She said the residents did not have these problems in the 70s and something has changed. She would also like the Engineering Dept to look at the elevations on Laura Road and compare them to past elevations. The water is not moving through there and into the wetlands as it did in the 70s.

#142-10 **THE PLANNING AND DEVELOPMENT BOARD** requesting adoption of an amendment to **Chapter 20, Offenses and Miscellaneous Provisions**, of the City of Newton Ordinances relative to regulation of scenic roads. [05/10/10 @ 5:18 PM]

ACTION: **APPROVED 7-0 (Ald. Sangiolo not voting)**

NOTE: Leslie Burg, member of the Planning & Development Board (P&DB), addressed the Committee. She explained that the P&DB developed regulations to govern the administration of the city's scenic roads. There is currently a statute which gives the PD&B jurisdiction over scenic roads, but no local regulations. The statute is very vague and they thought it would be helpful to have local regulations to protect primarily trees and stone walls along the scenic roads. Ms. Burg noted that there could be development in the City and the goal is to protect these roads. Ms. Burg said that a subcommittee worked on developing these local regulations which included Doug Sweet, Phil Herr, Eve Tapper, Ted Kuklinski and Marc Welsh, the Director of Urban Forestry.

Definition and Designation of "Scenic"

Newton has designated 17 roads or parts of roads as "scenic" which means that any repair, reconstruction, maintenance, or paving work involving the cutting or removal of trees or stone walls within the public right-of-way by private developers or City Departments requires the approval of the P&DB. Trees and stone walls on private property are not affected by the law. The list of scenic roads is attached.

Enforcement and Fines

The P&DB said an ordinance was needed in order to deal with noncompliance of the regulations and that is what they are proposing in the draft language which is attached. The penalty for noncompliance would be \$300 with an additional \$300 for each day the violation continues. A fine can not be imposed to compel compliance. The language has been reviewed by the Law Department.

Ald. Swiston said she was made aware of some trees that were being damaged by low-level gas leaks. She wondered if NStar could be held responsible if any of those were on scenic roads. Ms. Burg said she did not think so but that Ald. Swiston could check with the Law Department.

Ald. Lennon asked if this item needed to go to the Finance Committee since fines were involved. The Rules of the Board do not require fines, outside of parking fines, to go to the Finance Committee. Ald. Sangiolo thought that the fines would also need to added to the fines section of Chapter 20.

Photographs

Ald. Swiston asked if photographs will be taken to record the current conditions of the roads. Ms. Burg said that has been done and is on file. Ald. Johnson asked what the responsibility of the City is in maintaining the trees or stone walls in the public right-of-way. Ms. Burg said the City is aware of the location of the scenic roads and they are extremely careful when they are doing work in those areas. She knows that they have sometimes diverted their work to prevent damage to a tree in those areas.

Notification

Ald. Baker asked that any notice that goes to the Historical Commission should also go to the Historic District Commission. This is referenced in the regulations, not the proposed ordinance. Ms. Burg said she would speak to the P&DB about that.

Ald. Crossley said it would be a good idea to have general notification of this ordinance. Ald. Johnson said the people living on the scenic roads should be notified. Ms. Burg said individual notices were not sent out to the hundreds of residents on the roads, but a public hearing was held on this and the scenic roads were identified. Ms. Havens said the ISD/Planning Dept. counter provides notices of all new regulations. Ald. Yates reminded the Committee that these regulations do not affect private property – only trees and stone walls on the public right-of-way.

Ald. Yates asked if signs would be posted to designate the scenic areas. Ms. Burg said that was not discussed.

The Committee voted to approve this item and the proposed language by a vote of 7-0.

Public Hearing assigned for June 28, 2010:

#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]

ACTION: **HELD 7-0 (Sangiolo not voting)**

NOTE: Ald. Johnson noted that there will be a public hearing on this item on June 28, 2010. Because this item requests a revision to Chapter 30, the Committee is required to hold a public hearing. Ald. Lappin thought the Committee would still be working on the language. The most restrictive language was used in the legal advertisement for the public hearing, so the language could be amended to be less restrictive. This will be worked out following the public hearing. The Committee voted to hold this item 7-0.

#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]

ACTION: **HELD 8-0**

NOTE: Ald. Johnson noted that Ald. Yates provided some alternative language for the selection criteria for the Planning & Development Board as follows:

The members of the board shall so far as practicable be selected to provide expertise in the fields of real estate/land use, law, city planning, community development/human services, architecture/engineering and so far as practicable be selected to provide representation from as many wars as possible.

Ald. Yates explained that he crafted this language to offer a more open-ended option to find people with some expertise but not be hamstrung by overly specific language.

Models from Other Communities

Ms. Havens said there were four models that they found in neighboring municipalities in regard to selecting candidates for Planning Boards which include:

1. *Rely on administrative procedures* (Newton).
2. *Incorporate limited board member composition requirements* (Brookline).
This would include language stating baseline requirements for professions,

- education or experience applicable to a limited number of member positions.
3. *Incorporate more extensive member composition requirements* (Urban Design Commission approach). This would include language establishing the “universe” of applicable professions, education, or experience which must be reflected in the membership so far as practicable.
 4. *Enact an ordinance setting out the procedures and requirements for filling board positions* (Watertown approach). This would establish the procedure, but the responsibility for providing job descriptions and establishing board member qualifications would remain with the Executive.

Ms. Havens said that part of what seems to contribute to good membership is the process by which the public is solicited for interest and an appropriate vetting process.

Ald. Sangiolo said she has a meeting with the member of the Planning & Development Board next week and will report back her discussion.

Planning Board Perspective

The Planning & Development Board sent a letter conveying that they were opposed to the proposed changes. David Banash of the Planning & Development Board addressed the Committee. He said he saw the Planning Dept. memo on this item only this afternoon and thought it might have some strong support from the Board. One of the main problems the Board faces is the lack of applicants. They currently have only 8 members of what could be a 10 member Board. The concern is that a wish list of criteria could limit even further interested candidates and could easily eliminate a valuable member. What they would most like to do is attract more candidates to choose from and determine a way to do that. They felt that perhaps there could be an administrative procedure that summarizes the functions of the Board and a vetting process that determines whether or not a candidate is a good match. Ald. Baker said he was concerned as well about making the criteria too strict and perhaps screening out a very able member.

Outreach

Ald. Sangiolo asked how current members of the Board were identified or recruited. Mr. Banash was not sure but that outreach is definitely a problem and is obviously not effective. Ald. Sangiolo said that it was also difficult for people to know when there are vacancies on Boards and Commissions. If they don't know, they can't apply. Ald. Baker said the description of the duties need to be clear and in language that the general public understands. All of this information should be on the City's website.

Job Description

Ald. Johnson said that having a good job description, good public relations program, and good selection process is necessary. She provided the Warren administration with a template of what should be in a job description and she felt that would go a long way to finding good candidates. There could then be something in the ordinance that refers to the job description. That job description could be updated as necessary without having to keep changing the ordinance. It would be specific to the functions and responsibilities of the board as well as qualifications of the members.

Mr. Herr's Comments

Phil Herr addressed the Committee. He agrees that any changes should take place through an administrative process rather than a legislative action. He was also concerned about missing a valuable candidate due to overly restrictive guidelines. The legislative body could provide ideas and guidelines to the Executive but they do not have to be in the form of an ordinance which constrains his choices. A memo with his further comments is attached to this report.

Follow Up

Ald. Johnson would like to work with the Planning & Development Board and the Planning & Development Department to put together a job description for the Committee's consideration. The Committee voted to hold this item 7-0.

Respectfully Submitted,

Marcia Johnson, Chairman

PROPOSED ORDINANCE: Scenic Roads

May 10, 2010

Insert, after Article VIII. VACANT BUILDINGS, a new Article IX as follows:

ARTICLE IX SCENIC ROADS

Sec. 20-71 Regulation of Scenic Roads

1. **Role of the Planning and Development Board.** The Planning and Development Board (hereafter Planning Board) is authorized to promulgate rules and regulations to implement its administration of scenic roads under the provisions of section 15C of Chapter 40 of the General Laws.
2. **Enforcement and Penalties**
 - a. Failure to obtain approval of the Planning Board prior to cutting or removing trees, or tearing down or destruction of stone walls, or portions thereof, within the layout of a designated scenic road shall require the immediate filing of an application with the Planning Board and shall be subject to restoration of the features or other remediation plan, as the Planning Board may order. Work under an approved remediation plan must proceed in good faith continuously until completion by any time limit required in the plan, unless amended in writing by the Planning Board.
 - b. **Penalties.** Each violation of section 15C of Chapter 40 of the General Laws, or of any rule and regulation pertaining to scenic roads shall be punished by a fine of three hundred dollars \$300.00; each tree cut or stone wall removed and each day such violation continues shall constitute a separate offense. The Commissioner of Inspectional Services may revoke or withhold any current or pending permit on the property associated with said violation.
 - c. **Enforcement.** The Commissioner of Inspectional Services and the Tree Warden shall each have authority to enforce the provisions of this section upon request of and on behalf of the Planning Board, and shall keep the Planning Board apprised of the status of any such enforcement. Any person found to be in violation of this section shall receive a written warning and a minimum of thirty (30) days to remediate all violations or to enter into a Planning Board approved remediation plan prior to the institution of an enforcement action. Unless amended by the Planning Board, failure to comply with an approved remediation plan, including failure to proceed in good faith continuously until its completion, may result in an immediate enforcement action.

LIST OF SCENIC ROADS IN NEWTON, MA AS OF JUNE 10, 2010

Brookside Avenue (entire length)
Chestnut Street (from Boylston Street to Washington Street)
Concord Street (from Washington Street to the Charles River)
Dudley Road (from Boylston Street to Brookline Street)
Fuller Street (west from Chestnut Street to Commonwealth Avenue)
Grove Street (entire length)
Hammond Street (from Ward Street to Longwood Road)
Hancock Street (entire length)
Highland Street (from Valentine Street to Hunter Street)
Hobart Road (from Commonwealth Avenue to Beacon Street)
Lake Avenue (from Walnut Street to Beacon Street)
Mill Street (entire length)
Sumner Street (from Willow Street to Commonwealth Avenue)
Valentine Street (from Commonwealth Avenue to Highland Street)
Waban Avenue (from Beacon Street to E. Quinobequin Street)
Woodcliffe Road (from Centre Street to Elinor Road)
Woodland Road (from Washington Street to Central Street)

Philip B. Herr

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MEMORANDUM

To: Aldermen's Zoning & Planning Committee
From: Phil Herr
Date: June 14, 2010
Re: Docket items #92-10 and #93-10: P & D Board and Board of Appeals
appointment criteria.

Having only recently become fully aware of the proposals to establish criteria for new members of the Planning & Development Board and the Zoning Board of Appeals, following are my thoughts. They are based upon my having worked with many Planning Boards and Boards of Appeals over long periods of time, having observed the contributions of a great variety of their members over that time, having taught aspiring professional planners from a broad variety of backgrounds, having just reviewed what the American Planning Association has to say on the topic (*Growing Smart Legislative Guidebook*, 2002, Chapter 7), and having discussed the subject with some other interested Newton folks.

1. It is gratifying that the Mayor is asking a legislative body for guidance on one of his key administrative prerogatives, and to note the good spirit of cooperation with which the effort is being undertaken.
2. The Planning Department staff memo for this working session is quite apt in noting that making ordinance changes as a means of guidance on this topic with these boards deserves further consideration. My several reasons for believing that are these.
 - Criteria need to reflect roles, and roles may be changing: e.g. CLURPA, the P & D taking on regulatory roles (both Scenic Roads and potentially SPGA); and the ZBA potentially becoming an SPGA. It may be appropriate to proceed without waiting for those uncertainties to settle down, but to do so with the permanence implied by ordinances as opposed to Mayor-adopted guidelines.
 - Experience with explicit criteria may quickly reveal refinements that might be appropriate.
 - Especially without a public hearing on one of the changes, there hasn't been much of any public input. That is hardly the transparency the current administration has been promoting.
 - There are possible revisions to the draft provisions not yet fully considered, as I understand it. The list of mine follows as items 3 through 7.

3. The draft guidance should be as carefully crafted as it would if it were to be made into ordinances. It then should be given to the Mayor as assistance to enable him to provide predictability about his appointments by his stating what HIS criteria will be, after their having been prepared in conjunction with the Board of Aldermen and after consideration of public input.
4. The draft should make clear that the expertise sought can be that gained through either or both education and experience.
5. Categories of relevant expertise should be broadened beyond the draft to explicitly include both housing and community development.
6. Some communities elsewhere use what they believe to be even better indicators of constituency reflection than is the ward of residence. Examples include seeking to have at least one member who is resident in affordable, rental, or multi-family housing; seeking at least one member who operates a business within the community; seeking diversity in such attributes as gender and ethnicity.
7. The words should make clear that each candidate need not fall within both the cited expertise and constituency categories, and that in some circumstances the nomination of a candidate who falls within neither may be appropriate.
8. The communication to the Mayor should call for providing new appointees with appropriate orientation, training and ongoing support to enable them to perform in a well-informed way. Design of that support will be a substantial but potentially valuable undertaking.