

Meeting Minutes
Article 7: Public Hearing and Guest Panel
May 4, 2016, City Council Chambers

Opening Remarks by Josh Krintzman

Public Comment

Phil Herr, 20 Marlboro St.

Has had career focused on planning and wishes to comment on reference to Comprehensive Plan in Chapter 7(3)a of current charter. He points out that if the council acts in a way that is not consistent or “at odds” with the comprehensive plan (and adopts change), this is the same as amending the comprehensive plan. He does not believe this has happened and warrants examination. As far as the question of Special Permit Granting Authority, the question is “who gets to change that”. It’s his understanding that the council gets to make that change according to MGL.

Karen Manning and Chris Steele make comments and introduce the Article 7 panel. Highlight that other Massachusetts charters do not have planning articles, and do not assign the Special Permit Granting Authority.

The charter review process reveals issues, but not all issues are resolved through the charter. Either way, the testimony and research should be helpful as the city maps its future in planning

The 5 panelists provide their backgrounds: Councilor Laredo is an attorney and the current land use chair. Councilor Hess-Mahan is also an attorney the former land use chair. Candace Havens was planning and development directory, City of Newton 2007-15. George Mansfield is a professional planner, former alderman and land use chair, and is currently director of planning with the City of Carlisle. Ed Tarallo, Sr. is a planning professional and former president of Waltham’s City Council, and head of the Ordinances and Rules Committee.

Chris Steele overviews discussion points that were sent to panelists and overviews components of planning. (comprehensive plan, ordinances, special permits) and asks what might be helpful in improving procedures.

Panel Discussion Highlights:

Marc Laredo: Work is conducted under legal framework (zoning code) and the Comprehensive Plan. Zoning code allows for doing things by right or special permit. There are reasons and configurations that justify changes, and zoning ordinance provides flexibility for things that are not automatically allowed. The City Council can attach conditions to provide controls. Special permitting is very important - can’t be overly rigid or just say yes or no. Special Permit issuance is a quasi judicial-role and the council is expected to exercise judgment.

This is inherently political and belongs with elected officials and not appointed officials. He describes planning professionals providing insights and excellent legal counsel. However, an elected body balances out the needs of the applicants and those around them and need to be sensitive.

He fears concentration of power in an appointed board if executive had power to create that body. He understands that the process is very cumbersome and there are many components, but is committed to streamlining where possible. He values public comment and input and elected body is well suited for hearing those concerns. Perhaps some smaller items could be outsourced but it is difficult to know where to draw the line. Sometimes seemingly simple projects become surprisingly complex. (example of dance studio.) Delegation of some items to an appointed body is good idea but does not belong with the charter.

Hess-Mahan: An elected body is the wrong place for Special Permit Granting Authority, (SPGA), but not for the Charter Commission to designate. 40A explicitly states that SPGA authority under Home Rule is for legislative body to decide. Describes his experience (Land use, 8 years, Housing Appeals Committee, for comprehensive permits), which are both quasi judicial bodies.

In MA, we do not elect judges. Elected judges can be voted out for unpopular decisions, even if the judges were adhering to the law. He has the same problem with an elected body having SPGA because they are supposed to find facts and look at 40A and their ordinances. In addition to special permits, they also evaluate comprehensive permits under 40B and

variances that are examined by ZBA. In his legal experience, sees that ZBA or planning board makes SPGA decisions and are elected, but not the legislative body. His problem is with the legislative. He and Candace when working together streamlined the SPGA process. Candace (when planning director) oversaw creation of the design review teams which has been beneficial. Some projects were vetted out or modified. Gives example of numerous "FAR" petitions. (projects which exceed floor-area-ratios) and a project that involved 24 people reviewing a permit for an extra 19 square feet for a tall teenager. The problem is zoning, not the process. There is a temptation to micromanage.

1) These kinds of problems could be fixed with zoning reform, which has been initiated. They should not use special permits for this kind of case.

2) Major projects only (if any) should be with legislative body - there is an argument that they are very important. Otherwise, for smaller projects, if neighbors are waging a campaign, councilors can be influenced in a political way. This becomes neighbor vs. neighbor and councilors should not be deciding.

Another important issue re: the charter commission straw vote to eliminate ward councilors~ believes that ward councilors elected at-large can also be parochial and would be in special permit decisions.

Candace Havens: As far as strengths and weaknesses, believes legal and planning staff have optimized processes. Development review team works great and eliminate certain issues. Coordination with land use staff is helpful for smoother meetings. Having many perspectives, including public input, is a strength of the process. With elections occurring every 2 years, committees will change and there is a steep learning curve for land use. Switching hats can be difficult (in quasi judicial role) can be difficult when councilors are used to advocating for constituents. It is difficult to not "pre-judge" a project, so the process is politicized.

George Mansfield: Describes that the 3 most recent land use chairs are on the panel (GM, T. HM, ML) and most of the time Candace was serving as Newton's chief planner and planning director. Coordination between planning staff and land use has improved even as land use issues have become more complex over the last 12 years. He believes that a lot of the criticism is based on issues from long ago and there have been great improvements.

Certain details and SPGA decision do not fit in the charter (or any charter). The *town* of Walpole's charter, adopted in 1999, designates planning board as SPGA. This would be different for cities. As a home rule city, Newton's planning board and dept. are established by a petition to the state legislature - Act of 1975, Chap. 705, and is the foundation for how the city operates planning-wise. Changes need to be made through that process, but Charter Commission can make recommendations. Candace helped draft more precise rules and regulations to standardize the process for both petitioners and abutters. When he started as chair of land use, there were no rules beyond the ordinances. There is a need for more rules which might be part of the Charter Commission recommendations.

Chris Steele mentions that we have reached out to other municipalities and we hope to hear from them via email or phone call.

Ed Tarallo: Agrees with previous speakers' points. SPGA does not belong in the charter. In all of his roles, he never felt the charter should have that kind of control. The way state law is enacted, 1975, Ch. 808 (newer version of zoning act), SPGA belongs in the Zoning Ordinance, which is written by the city council in their elected role, not quasi judicial role. When doing the special permits, they do become quasi-judicial and have to listen to the whole case.

When 1975 changes in state law occurred, special permits could be granted by four bodies only 1) ZBA (original) 2) Planning Board 3) City Council or 4) Zoning Administrator (rare - appointed by ZBA). Special permits in other communities are sometimes "split" among board of appeals, planning board, city council.

In most towns, planning boards are elected. In cities, in accordance with 4181A, Mayor's appointments are confirmed with city council. A special act can change this, but [again] with state laws today the planning board would be appointed by mayor and confirmed by council. Councils are the only elected body who can issue permits. The council does have a role and the ability to represent constituents and may have better geographic understanding, etc. than an appointed board. They have different skills and expertise. He agrees not all should be concentrated in city council. Smaller items could be handled with planning board or ZBA. (goes back to Ted's example - thinks a board of appeals would handle). It should not

be a variance. Most variances cannot withstand challenges in court. Special permits allow for flexibility without necessarily warranting change to ordinance. Some special permits can be assigned to planning board or ZBA as he noted, but high impact decisions should probably go with City Council. (has merit).

Waltham's City Council did not have ability to rely on planning professionals/staff, but he provided counsel (as planning director) in Malden and Woburn as part of projects. He helped avoid court and legal issues. Over his career, he advised planning board, ZBA, and City Council. These entities have different authorities and powers and expertise which affects where special permits should be placed. Again, big projects should be with Council. The right kind of counsel helps bodies being advised make the right decisions.

He never lived where he worked as a professional, so he did not always know "nuances" of a neighborhood, etc. Electeds/ZBA understand community "nuances" that professional planners don't. The law allows for those differences, and these cases should not be in court. The judges are fair and make decisions that are backed by judicial precedence.

CS recaps how our discussion reflects that SPGA rooted in zoning ordinance and Council rules. His next question is about reference to the Comprehensive Plan within the Charter.

Marc Laredo: A Comprehensive Plan is a good idea and is repeatedly cited by colleagues or planning department to support their own points of view (said facetiously). He is not convinced it needs to be enshrined in the charter. It is driven in part by legislative and in part by executive. He would opt to take out references to the Comprehensive Plan because it currently doesn't currently work. The Comprehensive Plan and Zoning code both need to be updated periodically. Refers to the need for "zoning fixes" within ordinances. Again, Comprehensive Plan is important but not necessarily to be enshrined in the Charter.

Ted Hess-Mahan: Believes that reference to the Comprehensive Plan should be in the charter. State Law 41, Section 81(D) requires a Master Plan, sometimes called Comprehensive Plan. The difference is that the authority for creating and establishing the Master Plan is with the planning board, an appointed body. He believes the Comprehensive Plan needs to be changed more frequently. Do not confuse the Master Plan and Comprehensive Plan, and note that both are important. Strengthen Sec. 7-3 (of the charter), and periodically report to the city council about zoning and regulations to ensure they are they consistent with the Comprehensive Plan. It is an effective planning tool. As member of "HAC" (Housing Appeals Committee), if your community is struggling to reach its affordable housing goals, HAC can look at its Comprehensive Plan.

Under regulations, 40B, and case law, if you can establish a project is inconsistent with Comprehensive Plan, this might be a reason not to have the project. If you are principled and stay in conformity with your Comprehensive Plan, it serves as a defense. Newton's Comprehensive Plan (created in 2005-2006, adopted in 2007) despite best efforts does not have enough teeth in it. There have been amendments and a housing bust, market changes, and it is now [if not] obsolete/in need of updating. HAC deliberates in executive session and they struggled with recent cases that came before them. Exceptions to Comprehensive Plan had been made and this shot holes in their defense. Arguments can be made for a particular project if there is a strong Comprehensive Plan based on public outreach that has gained consensus from public.

Candace Havens: Has similar comments. Thinks the charter reference to Comprehensive Plan is helpful, as is the charter reference to adopting land use and dev. regulations, but there would be benefit to strengthening the connection between the two. Clear understanding of goals and how they are executed at the level of zoning and mapping makes good planning sense. Zoning reform should be an iterative process that reconciles the two, but thinks Comprehensive Plan reviews, perhaps once a year would be wise. Take review recommendations forward to body making any changes and keep things on track.

George Mansfield: Agrees it is useful and essential for charter to have provisions to establish a Comprehensive Plan and describe its functions. Tweaking needs to be done, though he is not entirely familiar with the Article. Some components are not generally observed, so they should perhaps be omitted or figure out how they should be observed. The Planning and Development Board (1975) is our version of a planning board. In the case of any ordinance, the planning and development board should recommend/report in writing if ordinance is in compliance with Comprehensive Plan. Phil Herr brought up the point that if something is not in conformance, then changes should be

made to the plan. No one effectively recognizes this.

7(3) b - Urban Renewal language in our charter is outdated, using 1970's terms. Should reflect language of the current Comprehensive Plan, i.e. preservation, diversity, and sustainability.

Ed Tarallo: It is unique that Newton's Charter contains Article 7, but he likes it. Many communities don't recognize what is important about the planning process and how a Comprehensive Plan could be adopted. There were no rules in Waltham about how to adopt a Comprehensive Plan that could have guided the Mayor and City Council. Planning can come under scrutiny during tight budgetary times, so it is beneficial to have a section of the charter that takes more work to change than changing an ordinance. Section 3 is weakest.

The charter shouldn't be used to indicate how something should be implemented or to control its future. Agrees with George about the Urban Renewal section reflected outdated terms. Last U.S. Supreme Court changed how the things can be done and governed. 7(3) needs to be reviewed re: what is necessary and what isn't or what should be brought in. The first two sections of Article 7 have a place and a role and make Newton a better community.

Comments from Howard Haywood: He is in favor of the Comprehensive Plan, but is not sure the city complies with it. There were meetings across the city about changes to the Comprehensive Plan but the same 30 people attended. There is the question if it should even be in the charter, and if it is, consider accountability. Describes 7(3)b as being obsolete and specific to the past.

Ted Hess-Mahan: Agrees that 73(b) is obsolete. The Comprehensive Plan is of little utility unless it is revised and updated. The Planning Department (or whomever) needs to report to City Council about the work toward goals. This is a general guide more than a map. Special permit issuance includes reference to being consistent or not with goals of the Comprehensive Plan. He was reading over what should be done to amend a zoning ordinance, and the Council doesn't follow what is outlined. They need to do more to adhere to charter as it is, but there is [also] a reporting requirement related to conform goals to the Comprehensive Plan. This is similar to the Council submitting an annual action plan to HUD to justify what they are doing to meet the goals in the consolidated plan (to receive funding). He is in favor of "putting teeth" into this section.

George Mansfield: Thinks this is important, and a problem is no penalty for violating 4181D and for cities who do not have master plans. He thinks the section should stay but it needs work.

Marc Laredo: Listening to panelists has changed his thoughts and he is persuaded that on balance it is better to have a reference to a Comprehensive Plan. Shares thoughts about making changes to the section, i.e. opening instead with "We shall have a Comprehensive Plan". This should be broad-based and he is hesitant about annual reporting requirements, etc. The charter should not dictate to a planning director that another report that will be put on the shelf is required. The success of the plan depends on the people. He advises not being "too much in the weeds" and sticking with broad concepts or principles for the city government to follow.

Ed Tarallo: Establish a framework for city - not how to do it or what to do. Should [who prepares] the Comprehensive Plan be included? Ordinances in Waltham related to Capital Improvement Plan were incorporated because of the resistance of the Mayor (to CIP at the time). The initial parts of Article 7 are stronger.

Josh Krintzman asks question about planning staff and their responsiveness re: special permit process. Can the charter help with responsiveness?

Marc Laredo: City Council benefits from the City Clerks office (who work for them). The Planning Department works cooperatively with the land use committee, which is a testament to the people in charge. Additionally, the Legal Department works exceptionally well with the committee, but that is due to the personalities involved. To balance power more, City Council could have more of its own staff. It may be beneficial to have more independent legal advice (vs. planning advice). Two planning departments would not be sensible and would be a poor use of city resources.

Balancing and exercise of good faith is what is helpful. Perhaps the Director of Planning could be a joint appointment between executive and legislative, but he hasn't thought through.

George Mansfield: In Carlisle, Walpole, Pawtucket, he and staff are working for an elected body--the planning board (who have SGPA). Staff is therefore responsive~ their department has to give good advice or they will get fired. Our City Council cannot do that with the Planning Department. Refers to time at HUD when he learned that planning is about policy. Policy is the responsibility of the legislative body and administration is the responsibility of the executive office. The city's Planning Staff is responsible to executive. Perhaps it would be useful to better balance that in Newton, though difficult to craft.

Ted Hess-Mahan: He thinks it is better not to look for problems that don't exist. To rebalance power as George is suggesting, city could have city council/city manager form of gov't: Mayor is member of legislature and legislature appoints city manager in that case. The City Council gets to approve or not approve new planning director and other department heads. Sometimes the Council takes the advice of law dept. and planning dept. and sometimes not. He doesn't see a problem that needs to be fixed.

Ed Tarallo: His value as a planning professional was bridging the gap among multiple bodies, though this was not written down anywhere. Planning directors work with mix of people and range of departments. This can't be captured in the charter and there is no ordinance to craft. Some zoning ordinances require or indicate that the planning dept. provides reports and counsel to SPGA or ZBA but this would not be directed through the charter.

Planning departments provide professional expertise and the elected officials make policy, as George points out. Staff does not make policy, though sometimes there is a need to convince stakeholders. Planning professionals bridge gaps among appointing and confirming authorities, boards, commissions, etc. State Law Chap. 40 or 44 Sec. 53G allows for the planning board, board of appeals, etc. to hire outside consultants with particular expertise (w/council approval). This is a valuable tool if needed.

Candace Havens: There is a clear chain of command. Mayor appoints dept. heads for approval of the council. Zoning regulations provide framework, i.e. land use has 3 staff people at every meeting. There is good balance and responsiveness, which is all based in the ordinances.

Bryan Barash: Would we better off fixing outdated language, removing, or being more general?

Marc Laredo: Cautions against using specific language that may become outdated, and encourages using good judgment. Give some details about having a Comprehensive Plan. Don't talk about report generating specifics. He recommends taking out the urban renewal piece, but there is not a need to substitute other words. Broad principles and concepts that can stand the test of time and guide executive and legislative are what is needed.

Ted Hess-Mahan - Believes accountability is needed through the charter.

Candace Havens: Recommends a stronger link between the Comprehensive Plan and other pieces that execute the vision.

George Mansfield: Encourages Commission to review Chapter 22 of the City Ordinances. We shouldn't duplicate them, but may want to move elements over to Article 7. Doesn't have to be that comprehensive, but clear and strong.

Howard Haywood: Someone needs to be accountable for enforcing the Comprehensive Plan if we are serious about it.

Brooke Lipsitt: The Comprehensive Plan is largely ignored except when an occasional special permit request would come in with a reference to it. Should there be a requirement in the charter that a Master Plan be developed?

Ed Tarallo: Chapter 41 Sec. 81 D takes care of that in many ways. Can wrap that and put something in the charter, but Master Plan is a living document. Provides example of Malden's plan for schools. It took 25 years for Malden schools to "get done", and it was beneficial to always go back to the original report. Things can take a long time but stay focused on goals which are outlined in the master plan. Keep plans live and updated, but realize that implementation takes time.

Ted Hess-Mahan: For a long time (and as Long Range Planning Chair), he has advocated for a Strategic Plan. Mayor has done a good job creating one that integrates into budget, etc.. Lack of a provision for requiring a strategic plan leads to lack of incentive. Describes a community in Saco, Maine that do a great job with strategic plan, and they adapt the plan if needed. It's required in their charter and they take the living document seriously. Our city's budget process is more an overview now vs. line items. Strategic planning is more up to the Mayor (now) and he views it as always a good idea.

George: It is not stated in the charter, 4181 D or in Chap. 22 of our ordinance, but a major component for success (Comprehensive Plan development, etc.) is community involvement. A vocal section of the community is needed for success. George is beginning a master planning process in Carlisle updating a 1995 plan which has grown. The first step is engaging the community, though Carlisle is small. It is important to have a steering committee behind the Comprehensive Plan or Master Plan.

Marc Laredo: He agrees that public should be part of the process. However, turnout is small even at the Charter Commission meetings which could greatly impact the city's future.

Public Comment (Round 2). The Panel may answer questions.

Councilor Lisle Baker: Provides background about ordinances. Re: the 19 sq. foot addition case that Ted raised, the ordinance had been amended in another context to allow for modest special permits to come through as a right. It is not a necessity that small matters stay with land use. He does not agree with Councilor Hess-Mahan that there is an inherent conflict of interest [with SPGA]. Land use meets on nights when there are not other meetings to allow for participation. Over 32 years, he has observed special permit process as being helpful and useful, and is not sure about enshrining the Comprehensive Plan as some kind of mandate. He advises the Commission to be cautious about it. The Planning Board prepares the Comprehensive Plan under state law.

During the comprehensive planning process, the document was read line by line and there were amendments. It is a legislative declaration that passes by majority vote. A zoning amendment requires a super majority. He doesn't want something too binding, and recommends using the standard of "not inconsistent" rather than "consistent" for flexibility~ the more liberal standard. Don't constitutionalize everything that goes on in the city by putting it into the charter. The provisions of the planning ordinance itself says that the planning director advises the City Council. Much of what is talked about belongs in ordinance versus the charter. Charter sets framework but shouldn't tie hands through too much structure. Avoid making too many changes if things are working for the city.

Kathleen Hobson, 128 Dorset Rd.

She is a housing activist active with Engine 6 who likes having Article 7 included in the charter. Without mandating that the planning department check their plans, i.e. against regional plans, fair housing plans, etc. we are at risk for negative consequences. She supports submitting reports with respect to long term goals. She understands SPGA lies with the Council, but believes some guidance may be in order re: SGPA especially if the Council is downsized. She agrees with Councilor Ted Hess-Mahan that land use decisions should be depoliticized and more rational.

Nathaniel Wickman, 53 Pinecrest Road.

Supports keeping Comprehensive Plan in charter and feels the Charter Commission should consider mandating update. This should be a living document if it is going to benefit the city, so a mandated review process is beneficial.

Lynn Weissberg, 5 Alden Street, Newton.

Concurs with Kathleen Hobson's remarks. Asks everyone to look at the question of whether special permits are political or not. To apply certain criteria to a special permit is not political, in her opinion. It is necessary to take law and apply it to a set of facts.

Marc Laredo: This process is different from a judicial proceeding. It is discretionary and requires judgment, so is inherently political, but this is not necessarily "bad". Councilors need to balance legitimate interests and craft appropriate resolution with discretion. It's not just applying facts. An appointed body would also bring their own views, biases, and preconceived notions but elected officials are accountable to the public/voters. Refers to Mr. Tarallo's comments that

major projects have a political element to them. They are not just about applying fact and law and are best left with elected body, accountable to citizens.

Ted Hess-Mahan: "Political" is the wrong word~ this is more about policy decision. He is not averse to electing body that decides. In most communities, the planning board or ZBA is elected and make the decisions. Having both district and at-large representation is not necessarily a bad thing, as long as it doesn't become political. [SGPA] should be a policy process and there should be good policy decisions. Councilors wear two hats, constituent and quasi-judicial. There is a steep learning curve and it is tough to balance. People running for office are like "free-range chickens" but face something different once in the actual quasi-judicial role. Some projects brought forth as permits are brought forth as 40B's or projects by right. This does not do a lot of good. Policy not politics.

Candace Havens: There is a benefit to having an appointed and balanced board with experts and citizens at-large reviewing the bulk of special permits. This ensures balance and is inherently less political. However, major projects should go with the legislative body.

George Mansfield: Emphasizes that we are really discussing public policy. Reads 3 sentences from a mission statement from a MA Engineers and Planning Association handbook: Planning exists to promote public good..., advocate for informed and inclusive process for public decision making... to reach rational decisions.

Ed Tarallo: Constituents view issues as black and white, but if that were the case there would never be a need for judges, boards, etc. There are always two sides to a story with special permits. A professional planner can judge, but the elected official must balance with the discretionary part. The elected officials will have a bias, but those appointed by the Mayor are political too, because they are appointed by the Mayor. You can take anything to any degree.

Councilor Baker: A value of a large board is needing 16 votes to grant a special permit. The current process has served the city well. Major projects should be heard when the public could attend and testify. Drawing the line between major and minor is difficult, and this line cannot easily be drawn in the charter. This is a challenge even in the City Council rules.

The meeting closes at 9:30p.m.