

**CITY OF NEWTON
LAW DEPARTMENT
MEMORANDUM**

Date: June 6, 2016
From: Robert J. Waddick *RJW*
To: Councillor Mark Laredo, Chairman
Land Use Committee
Subject: Zone Change – 255-257 Newtonville Avenue

David A. Olson, Clerk
Newton, MA 02459

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Chairman Laredo,

The Land Use Committee requested a memorandum summarizing issues that would be presented by a rezoning of the property at 255-257 Newtonville Avenue, the site of a proposed storage facility. A petition for a special permit to allow the storage facility is currently before the Committee.

While the City Council is an entity empowered to amend the Newton Zoning Ordinance, There is no request to rezone the parcel in question currently before the City Council or the Land Use Committee. Although the rezoning of the parcel in question could be entertained by the City Council, a decision to rezone the parcel to prohibit its use for a storage facility, in the wake of a denial of the special permit currently before it, would very likely face a legal challenge.

In determining the validity of zoning amendments, the courts have shown great deference to local legislative bodies. “If the reasonableness of a zoning regulation is fairly debatable, the judgment of the local legislative body should be sustained and the reviewing court should not substitute its own judgment. National Amusements, Inc. v. City of Boston, 29 Mass.App.Ct. 305 at 309, 560 N.E.2d 138 (1990) (citations omitted). “Nevertheless, a zoning ordinance or by-law will be held invalid if it is unreasonable or arbitrary, or substantially unrelated to the public health, safety, convenience, morals or welfare.” Id. (citations omitted). Land use planning considerations to be taken into account before a rezoning include the physical characteristics of the land, its location, size and the nature of adjoining uses. Id. at 310 (citations omitted).

In the National Amusements case, a landowner seeking to develop a shopping center on a vacant parcel successfully challenged the validity of the rezoning of the parcel from business to multiple unit residential which effectively prevented the development of the shopping center. In its decision, the Court pointed out that the rezoning was not supported by land use planning and analysis by the municipality. Id. at 310. In affirming the Land Court’s decision to invalidate the rezoning of the parcel, the Appeals Court stated “zone changes which have no roots in planning objectives but which have no better purpose than to torpedo a specific development on a specific parcel are considered arbitrary and unreasonable. Id. at 312.

Based on the National Amusements case, a challenge to the validity of a rezoning of the parcel at 255-257 Newtonville Avenue would have a high probability of success if the rezoning is viewed as a means of preventing a specific development on the site.

It is worth noting that the Newton Comprehensive Plan included among its goals for the City, one to “maintain land and building inventory zoned and utilized for commercial uses without major shifts to exclusively non-commercial uses.”¹ “The key for the City will be to maintain the current land area used for business use and to ensure that land needed for business use is not lost as land becomes redeveloped in the future.”²

Thus, to the extent that the Newton Comprehensive Plan represents Newton’s goals in terms of land use planning and development, it appears that a rezoning of the parcel in question to exclude commercial uses such as the proposed storage facility would be inconsistent with the Comprehensive Plan.

It should also be noted that a rezoning of the parcel which would adversely affect its value by limiting the owner’s rights to develop and use the parcel would likely be viewed as tantamount to a taking and entitle the owner to damages.

¹ Newton Comprehensive Plan, November 19, 2007, page 3-28

² Newton Comprehensive Plan, November 19, 2007 page 3-28