



Ruthanne Fuller
Mayor


City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

M E M O R A N D U M

To: Councilor Danberg, Chair of the Reuse Committee
Members of Reuse Committee

From: Barney S. Heath, Director of Planning & Development 
Jennifer Caira, Deputy Director
Neil Cronin, Chief Planner

Date: March 19, 2021

Subject: Public Hearing on Reuse of Parcel ID 83036 0003A on Countryside Road

CC: Andrew Lee, Assistant City Solicitor
Jonah Temple, Assistant City Solicitor

The subject property is the site of the former Baldpate Water Tower on Countryside Road (the "Water Tower Parcel"). The Water Tower Parcel was declared available for sale or lease on September 10, 2020, the item was heard by the Real Property Reuse Committee (the "Committee") on October 20, 2020 and on February 24, 2021. At those meetings, the Committee discussed whether the Water Tower Parcel is a buildable lot and whether the site could be used for a wireless facility.

The Water Tower Parcel contains 16,900 square feet, has no frontage, and is located within the Public Use district (the "PUB zone"). The Water Tower Parcel abuts the Single Residence 1 zone (the "SR-1 zone") to the west and south and the Multi Residence 1 zone (the "MR-1 zone") to the north (**Attachment A**). Accordingly, these adjacent zones are improved with a single-family dwelling at 197 Countryside Road, a golf course use at 483-655 Dedham Street, and a multi-family use at 421 Dedham Street. As a response to the Committee's discussion regarding potential uses, the Planning Department has analyzed the Water Tower Parcel's development possibilities regarding zoning for residential uses and wireless facilities within the PUB, SR-1, and MR-1 zones.

If the Water Tower Parcel remains within the PUB zone:

- Residential development is not possible because residential uses are not allowed within the PUB zone.
- Wireless communication equipment in the form of a monopole or a tower is allowed by special permit. Such facilities are limited to 100 feet in height and must be set back 125 feet from the property line. Given the required setbacks and the Water Tower Parcel's dimensions, approximately 130 feet by 130 feet, a tower or monopole might be impracticable.

If the Water Tower Parcel was rezoned to the SR-1 zone:

- To allow residential development, the Water Tower Parcel would require variances from the Zoning Board of Appeals (the “ZBA”) for lot size and for frontage because 25,000 square feet and 140 feet, respectively are required for a new lot within the SR-1 zone.
 - If the variances were granted, there is the practical problem of access. Because there is no frontage, one cannot access the Water Tower Parcel without crossing adjacent private property.
 - If the variances were granted and access was created, a single-family dwelling with a floor area ratio (“FAR”) of 5,070 square feet would be allowed as of right.
- A tower or monopole would be allowed by special permit with the same dimensional standards required in the PUB zone.

If the Water Tower Parcel was rezoned to the SR-1 zone and combined with the adjacent parcel at 197 Countryside Road (the “Combined Parcel”):

- The Combined Parcel would contain 160 feet of frontage and 42,778 square feet of lot area. The Combined Parcel could not be subdivided without variances for lot area and frontage from the ZBA to create two separate buildable lots.
- The allowable FAR would increase from the currently allowed 6,728 (at 197 Countryside Road) to 11,122 square feet.

If the Water Tower Parcel was rezoned to the MR-1 zone:

- The Water Tower Parcel would comply with the lot area requirement of 10,000 square feet for a new lot within the MR-1 zone.
- The Water Tower Parcel would require a variance from the ZBA for frontage because 80 feet is required for a new lot within the MR-1 zone.
 - If the variance was granted, there is the practical problem of access.
 - If the variance was granted and access was created, a single-or two-family dwelling would be allowed as of right, with an FAR of 7,774 square feet, or three dwelling units in the form of Single-Family Attached Dwellings would be allowed by special permit.

If the Water Tower Parcel was rezoned to the MR-1 zone and combined with the adjacent parcel at 421 Dedham Street:

- The adjacent parcel at 421 Dedham Street (the “421 Dedham Street Parcel”), a multi-family use known as “The Gables”, is governed by a special permit and that portion adjacent to the Water Tower Parcel is subject to a conservation restriction held by the Conservation Commission (**Attachments B&C**). Any improvement to the 421 Dedham Street Parcel in the form of a road or driveway would likely require review from the City Council for changes to the approved site plan and from the Conservation Commission to amend the conservation restriction.

In addition to the above scenarios, the Committee could also decide to retain ownership of the Water Tower Parcel and leave the parcel in the PUB zone or rezone the property to the Open Space/Recreation District akin to other City parcels.

There are significant challenges to developing the Water Tower Parcel. The development option, without any regulatory approval, would be to combine the Water Tower Parcel with the adjacent parcel at 197 Countryside Road to allow for a larger single-family dwelling. All other identified scenarios require variances from the ZBA which, per Mass. Gen. Laws Chapter 40, Section A, require findings relating to soil conditions, shape, or topography. It is difficult to predict how the ZBA may act on such a request, but there is certainly no guarantee that variances would be granted.

In addition to the variances needed to create a buildable lot, the issue of access is also a significant barrier. The adjacent property owner at 197 Countryside would need to combine the two parcels and subdivide (with variances) to create two parcels with frontage or grant an easement across 197 Countryside Road. The Gables development at 421 Dedham Street could grant an easement, which would require petitioning the City Council to amend their site plan and the Conservation Commission to lift or amend the conservation restriction.

Creating a buildable lot at the Water Tower Parcel would likely require numerous discretionary actions from multiple boards/commissions as well as actions by private property owners. Given that development hinges upon these decisions, most importantly variances from the ZBA, and the granting of access from an adjacent property owner, the Planning Department recommends the Water Tower Parcel be sold at 'fair market value'. If the goal is to receive the highest price, a Request for Proposals would be tailored to require submissions that describe the planned use for the parcel and the plan for the development of the parcel, if any. Since the feasibility of development is currently unknown, the City Council could recommend setting the minimum price at the fair market value. Fair market value accounts for a parcel's development potential and would require the City to assess what the parcel would be used for in negotiating the price for sale. Such a recommendation is the minimum amount the City would be required to accept for sale of the parcel.

ATTACHMENTS:





- ATTACHMENT A:** Zoning Map
- ATTACHMENT B:** Plan of Land
- ATTACHMENT C:** Conservation Restriction

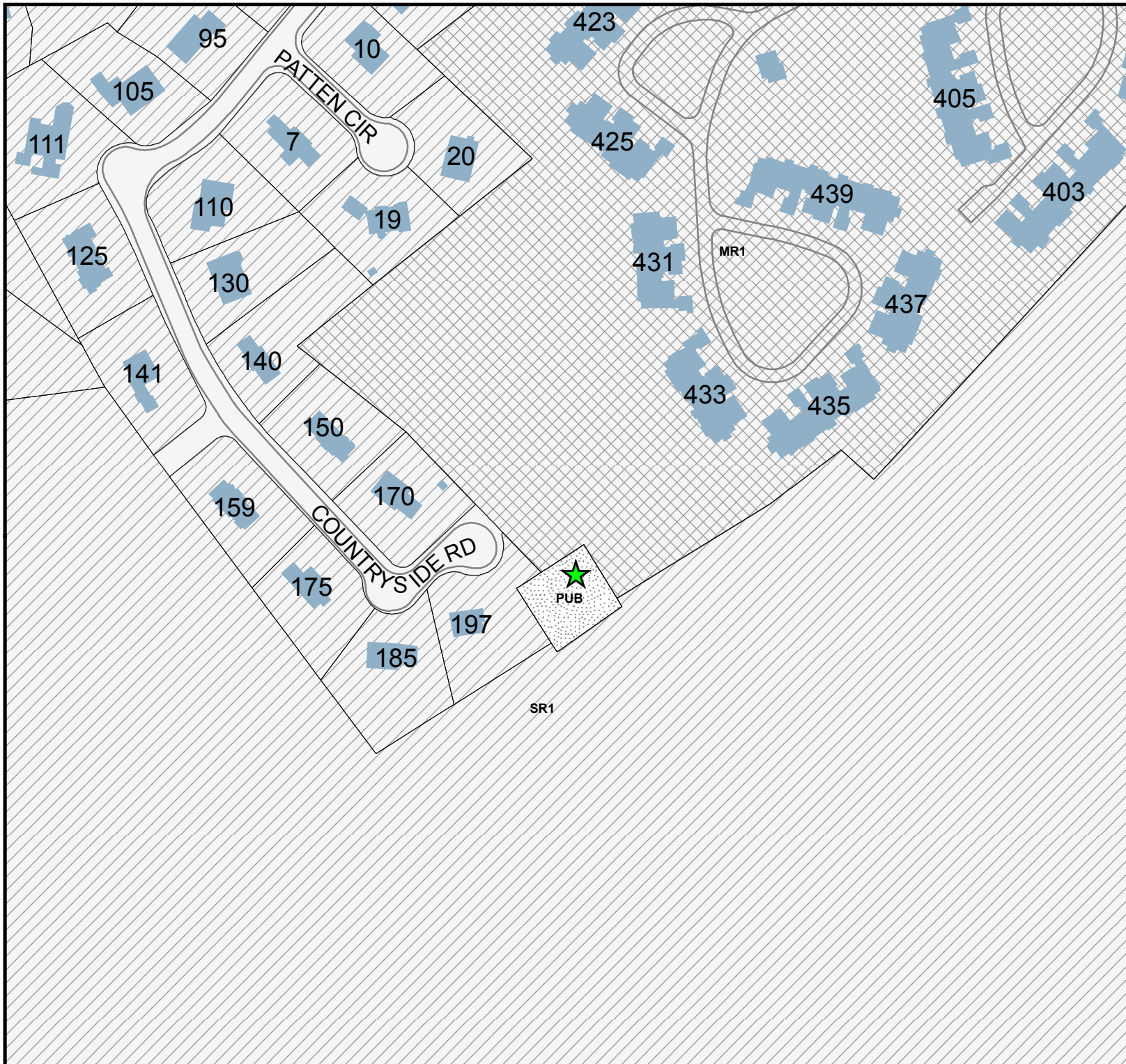
Attachment A Baldpate Water Tower Zoning Map

*City of Newton,
Massachusetts*




Legend

-  Property Boundaries
-  Single Residence 1
-  Multi-Residence 1
-  Public Use



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield

01235 50 75 100125150175200225250275
 Feet



SITE PLAN
MURPHY COURT
IN
NEWTON, MASS.

CITY OF NEWTON

601195

CONSERVATION RESTRICTION

THE GREEN COMPANY, INC., a Massachusetts corporation having an usual place of business at 65 Williams Street, Wellesley, Massachusetts, or its nominee, for consideration paid grants to the CITY OF NEWTON, a Massachusetts municipal corporation, situated in Middlesex County, having an address at 1000 Commonwealth Avenue, Newton, Massachusetts, a Conservation Restriction, pursuant to the provisions of Massachusetts General Laws, Chapter 184, Sections 31 through 33, as hereinafter specified, on the land hereinafter described, and to that end, the grantor, for itself and its successors and assigns, hereby specifies, provides, covenants with the grantee, and grants as follows:

1. The Conservation Restriction hereby granted shall be perpetual and the right to enforce the same shall be managed and controlled by the Conservation Commission of the City of Newton, pursuant to provisions of General Laws, Chapter 40, Section 8C.

2. The land affected by said Conservation Restriction is that portion of the land of the grantor in said Newton shown as and marked Conservation Easement on a plan on file with the Newton Conservation Commission in the City of Newton entitled "Site plan, Murley Farm in Newton, Mass.;" dated April 2, 1980 by Hayes Engineering, Inc., Melrose, Mass., Peter J. Ogren, Professional Engineer, being a portion of the premises conveyed to the grantor by Jordan M. Friedman, Trustee of Peace Realty Trust, under Declaration of Trust dated November 21, 1977, and registered November 23, 1977 as Document No. 564244 in the Land Registration Office for the South Registry District of Middlesex County by deeds dated August 6, 1980, recorded on August 11, 1980 and reflected on Certificate of Title #161325 in Book 936 at Page 175.

1-6

601195-

3. The rights hereby granted constitute the perpetual right to enforce the restrictions, and the grantor hereby covenants, for itself and its successors and assigns as aforesaid, to stand seized and hold title to said premises subject to the restrictions, that, except as herein-after specifically provided in the following paragraph 4 hereof, said premises shall be retained predominantly in their natural scenic and wooded condition in existing and natural vegetational cover, in order to protect the natural, wildlife and watershed resources of the City of Newton, and to that end, except as otherwise provided in said paragraph 4 hereof, the grantor, and its successors and assigns, during their respective periods of ownership, shall neither perform nor permit others to perform, nor shall the Conservation Commission perform or permit others to perform any of the following activities on said land including the restrictions herein imposed:

- (i) Construction or placing of any buildings, mobile homes, roads, signs, billboards or other advertising, utilities or other structures on or above ground;
- (ii) Dumping or placing of soil or other substance on the ground as landfill, or dumping or placing of trash, waste or unsightly or offensive materials;
- (iii) Removal or destruction of trees, shrubs or other vegetation except for proper horticultural, forestry and landscape practices including planting, cutting and pruning of trees, shrubs, and other vegetation, or to improve the scenic view and to implement disease prevention measures;
- (iv) Excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance or natural deposit in such manner as to affect the surface of said land;
- (v) Use of said land for cook-outs, picnicking, barbeques or the setting of fires, except for horticultural, forestry or other outdoor recreational purposes or purposes permitting said land to remain predominantly in its natural condition;

2-2

- (vi) Activities detrimental to drainage, flood control, water or soil conservation or erosion control; or
- (vii) Other acts or uses detrimental to the preservation of said land in its present open and natural condition.

601195

4. The grantor shall have and hereby reserves unto itself to be exercised at the sole election of said The Green Company, Inc. or its successors and assigns, and there are hereby excluded from said Conservation Restriction the rights and easements: (a) to lay out and maintain paths and trails for passage for the private use of residents of dwellings on lands now of the grantor in said Newton, provided that the cleared areas of any such path or trail shall not exceed eight (8) feet in width, (b) to trim, cut and remove, selectively, bushes, shrubs, trees and other vegetation for purposes of opening and maintaining (i) such paths and trails and (ii) views from dwellings on said land now of the grantor, (c) to use such paths and restricted areas for the quiet outdoor recreation of such residents, (d) to cultivate and harvest crops and flowers, to plant and maintain trees, shrubs and the mowing of grass and to construct and maintain fences necessary therewith, (e) to install, maintain, repair, replace and use such underground utility lines as may be reasonably necessary or appropriate to serve such dwellings and restricted area, and any excavation or construction necessary to undertake the same, (f) to enter upon and use the land during the construction period related to the exercise of the Special Permit issued by the Board of Aldermen for any and all purposes as may relate to construction, landscaping and grading work authorized by said Special Permit, (g) subject to the requirements of G.L. Ch. 131, Sec. 40, to install and maintain water or flood control devices necessary in the judgment of The Green Company, Inc. or its successors and assigns, for the development and use of the above said property, (h) to place and

32

601195

display small signs to designate the conservation area and to set forth the regulations applying thereto, all of said signs conforming to the Rules and Regulations of the Conservation Commission and City Ordinances (i) to place fencing at or near the legal lot line separating the Conservation Restriction Area from adjacent land, and (j) to lay out and maintain an easement for the right to cross the Conservation Restriction Area of such size and in such places and for such purposes as may be required by any governmental agency, provided, however, that prior to conducting any such activity on such premises, the grantor or successors or assigns shall give written notice to the Newton Conservation Commission to conduct such an activity.

5. By hereby establishing said Conservation Restriction, the grantor does not hereby grant either to said City or to the public any right to enter said premises or any portion thereof, except that the grantor hereby grants to said City an easement of access, at reasonable times, for the purpose of inspecting the premises and enforcing the foregoing restrictions and remedying any violation thereof. The rights hereby granted shall be in addition to any other remedies available to the City of Newton for the enforcement of the foregoing restrictions.

(Required by G.L. Ch. 184, Sec. 32)

6. This Conservation Restriction shall be binding upon and may be enforced against the grantor and its successors and assigns, during their respective periods of ownership, by the Conservation Commission of the City of Newton and its successors as holders of this Conservation Restriction.

4

601195

IN WITNESS WHEREOF, the said The Green Company, Inc. has hereunto
set its hand and corporate seal by Alan J. Green, its President and
Treasurer this 11th day of August, 1980.

Alan J. Green
Alan J. Green, President

Alan J. Green
Alan J. Green, Treasurer

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

August 11, 1980

Then personally appeared the above-named Alan J. Green, President
and Treasurer, aforesaid, and acknowledged the foregoing to be the free
act and deed of The Green Company, Inc., before me

Eliot K. Cohen
Notary Public Eliot K. Cohen

My Commission Expires: January 19, 1984

2-5

601195

DOCUMENT NO. 601195

6-6

50. MIDDLESEX LAND COURT
 REGISTRY DISTRICT
 RECEIVED FOR REGISTRATION

AT 12 H 40 M P

SEP - 5 1980

NOTED ON CERT. NO. 161325

REG. BK. 936 PAGE 175

CLERK 6 JOHN F. ZAMPARELLI
 ASSISTANT RECORDER

M. M. W.
Aug 25
2200
Aug 15
2215

DUPLICATE DELIVERED TO
John X. L. W. 11/10

John X. L. W.
93 Union St
Newton 02459