



Ruthanne Fuller
Mayor

Barney Heath
Director of
Planning & Development

Malcolm Lucas
Housing Planner

Members

Ted Hess Mahan, Chair
Vacant, Vice-Chair
Kathy Laufer
Esther Schlorholtz
Josephine McNeil
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Tatjana Meschede
Judy Korzenowski
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CITY OF NEWTON, MASSACHUSETTS

Fair Housing Committee

MEETING AGENDA

Date: March 2, 2022

Time: 8:00 a.m.

Place: Virtual (Zoom)

Zoom Online Meeting: <https://us02web.zoom.us/j/81574857649>

The Fair Housing Committee will hold this meeting as a virtual meeting on Wednesday, March 2, 2022, at 8:00 am. No in-person meeting will take place at City Hall. To view and participate in this virtual meeting on your smartphone, download the "ZOOM Cloud Meetings" app in any app store or visit www.zoom.us. At the above date and time, click on "Join a Meeting" and enter the following: **Meeting ID: 815 7485 7649.**

You may also join the meeting from your smartphone by dialing 1(646) 558-8656 and entering 81574857649#. For audio only, call 1(646) 558-8656 and enter **Meeting ID: 815 7485 7649.**

To view and participate in this virtual meeting on your computer, at the above date and time, either copy the attached link into your browser or visit www.zoom.us, click "Join a Meeting" and enter the following **Meeting ID: 815 7485 7649.**

- 1. Approval of December 2021, January 2022, and February 2022 minutes**
- 2. Update on Open Meeting Law Complaint**
- 3. Discussion re Formation of Committee to Follow Up on Lottery Results vs. Lease-Ups**
- 4. Discussion re Updating Guidelines for Reviewing Project Consideration of Fair Housing Goals**
- 5. Subcommittee Updates**
 - **Membership Sub-Committee**
 - **Fair Housing Award Sub-Committee**

- **Fair Housing Literature Sub-Committee**

6. Fair Housing Committee goals for 2021-2022

- **Diversity, Equity, and Inclusion**
- **Bring in a Fair Housing Attorney to talk to committee about purpose and goals**
- **Updates on AI/Consortium Fair Housing Testing**
- **Resolution to request that developers report annually on minority rentals**
- **Use of ARPA Funds**
- **Collaborate with Human Rights Committee on Fair Housing Complaint Process and Form**

7. Next meeting Wednesday, April 6, 2022

*Supplementary materials are available for public review in the Planning Department of City Hall (basement) the Friday before the meeting. For more information contact **Malcolm Lucas at 617.796.1149**. The location of this meeting/event is wheelchair accessible and Reasonable Accommodations will be provided to persons with disabilities who require assistance. If you need a Reasonable Accommodation, please contact the city of Newton's ADA/Section 504 Coordinator, Jini Fairley, at least two business days in advance (2 weeks for ASL or CART) of the meeting/event: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711



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CITY OF NEWTON, MASSACHUSETTS

Fair Housing Committee

DRAFT MEETING MINUTES

Date: February 2, 2022

Time: 8:00 a.m.

Place: Virtual (Zoom)

Members Present: Theodore M. Hess Mahan, Chair
Kathy Laufer
Tatjana Meschede
Esther Schlorholtz
Donna Rigg
Alexandra Weiffenbach
Ellen Tanowitz
Josephine McNeil

Members Absent: Judy Korzenowski

Staff Present: Malcolm Lucas, Housing Planner
Jini Fairley, ADA/Sec. 504 Coordinator
Hattie N. Kerwin Derrick, Director of Community
Engagement & Inclusion
Barney Heath, Director of Planning and Development
Eamon Bencivengo, Housing Development Planner

Public Present: Councilor Pamela Wright
Councilor Alicia Bowman
Lee Mondshein

Malcolm Lucas, Housing Planner served as recorder, Ted Hess-Mahan, Chair called the meeting to order at 8:00 a.m.

1. Approval of December 2021 and January 2022 minutes

➤ THM discussed the approval of the December 2021 and January 2022 meeting minutes and asked if everyone had any comments. ES

motioned to approve the December minutes TM seconded. 7 in favor 1 abstained.
December minutes have been approved. ES to approve January 2022 meeting minutes KL seconded 7 in favor 1 abstained. January minutes have been approved.

2. Updates/Reports/Discussions

- **Washington Street West Newton Armory Project**

- There was not any discussion on this matter.

- **136-144 Hancock Street (Walker Center)**

- There was not any discussion on this matter.

- **Crafts Street SRG Senior Living/Mark Development**

- There was not any discussion on this matter.

- **Affordable Housing Trust Committee Membership**

- BH stated that they would act as a Municipal Housing Trust modeled after all of Massachusetts housing trusts. There will be a funding body for affordable housing proposals. BH stated that the funding source will come from CPA. He stated that it would be a seven-member committee and part of it is statutory. The mayor has to be on the committee, a city councilor, and a member of the CPC. The remaining seats will be for at-large seats for Newton residents. The criteria will be set out in the ordinance as to what kind of background folks would have in order to be considered for the committee. THM asked if there is a criterion listing because when he checked the website there were not any.

- HKD stated she met with legal and explained that there will be a full description on Planning's' webpage. HKD stated that there is a brief description and stated that she thought that the information was sent to the committee recently. THM stated that they have it and was just talking about the public having access to it. JM asked about the composition of the group. Has anybody look at this from a conflict aspect. She feels that it would be a closed society if they get the usual people, and it needs to be looked at deeply. HKD stated that they are going to look at different people. She also stated that they are looking into trying to ensure that anyone who might go before the housing trust isn't involved or represent someone who might go before the Housing Trust.

- **MBTA Communities Act**

- JM asked THM is there a role for the FHC. JM stated that there are some items on the agenda that did not get covered last meeting and think that they should focus on things they would have a roll in so they could make decisions that are in their wheelhouse. THM stated that it is a fair housing issue, and he has had a discussion with Planning about the topic and stated that it would not be an extended discussion. THM would like people to be aware of what is going on in the city particularly on this project. THM stated that most items that are on the agenda are updates on previous discussed items so that the Committee will be proactive instead of reactive.

- Zachery LeMel, Long Range Planning started his presentation and stated that the MBTA Communities amendment to the State's Zoning Act was part of a large economic development bill that passed last January. It is focusing on just this portion

of MBTA Communities. The law stated that an MBTA community shall have at least one zoning district at a reasonable size in which multifamily housing, which as defined as three or more units are permitted as of right and meets the other criteria in the statute. The statute goes on about the minimum gross density, the location that it needs to be near transit. Developers can't have age restrictions, and it has to be suitable for families. ZL stated that if these communities are not in compliance, they are subject to lose state funding

- DHCD has put out guidelines to explain the requirements and this is the time to submit public comments to them and the state. ZL encouraged the FHC to submit any comments or questions if they had any and referred them to the state website to get any further information.
- THM asked about the terms of the money that Newton could lose including discretionary funding. ZL stated that they did put those numbers together, but he stated over the last 10 years the grants (Housing Choice and Mass Works) they have received add up to millions. THM asked if the committee could have some guidance on how it relates to Fair Housing as well as be a support. THM stated that he is more interested in the review once they have the guidelines and the plan that the city has put together. He stated that he would like the FHC to be involved in this and asked if ZL could point to any specific fair housing issues that the Committee should be aware of with the MBTA Communities Act. ZL stated that he would get back to THM.
- BH stated that there is very little reference to that issue. The only issue that relates is that a developers can't restrict the size of the units in these districts, and you can't make them age restrictive. These were the only two pieces of guidance that came out in DHCD's original guidance that came out on December 15.
- KL stated that PATCH has a good summary of the monies that have been received under these programs over the past few years and most of the funding goes to infrastructure. KL stated that it may be and housing issue, but it impacts other areas of funding for Newton that has nothing to do with housing.
- ES stated that this feels like it is right down what the FHC is doing and is a valuable issue that should be followed up on by the committee. She stated that this item certainly fits into their review of projects, developments. She stated that multifamily housing offers a variety of options to many people. She stated that it is valuable to also comment to DHCD. ET asked if the existing buildings could be used to get to the number of units allowed. ZL this program does not take into count of the buildings that is already there. Its only what the district allows. It does not care what is on the ground.
- Lee Mondshein asked will there be any outreach in getting this information out because he feels that it will be misinterpreted and cause some opposition. ZL stated that his is open to discuss this with interested parties and explained that there is some time for a zoning district to be created and does not need to be in place until the end of 2023. BH agreed with LM and stated that he made a great point and stated that the number of affordable units (8000) will capture people and they will have questions about that but explained that this is just a zoning number. BH stated that Newton has not met its capacity so this may be a reason for the community wrapping their minds around the number. BH stated that there is opportunity in Newton and other MBTA communities but said in order for that to happen, it requires a willing seller and a buyer, and this process happens over time. BH stated

that this could be very difficult for people, so he thinks many communities and states that have changed their zoning, and slowly see changes.

3. Discussion re Consultant and Formation of Committee to Follow Up on Lottery Results vs. Lease-Ups

- BH gave an overview and briefly discussed the flowchart Eamon Bencivengo, Housing Development Planner that describes the process and stated that it was extremely helpful for him. BH stated that he did not realize the extent lotteries where and applicant received their number was so preliminary. BH stated that the agent has basic information about and applicant in the beginning. BH stated after this there are other checks and balances and applicant that has to go through this extensive process. He stated that these process bumps people out for all sorts of reasons, including the people that are in the lottery pool that probably had no intention of actually taking a unit in Newton if it was offered to them.
- BH stated because of the shortage of affordable units throughout Massachusetts, people apply everywhere, when there's an opportunity, and sometimes applicants decide to proceed and sometimes they don't for a variety of reasons. BH stated that there are various reasons an applicant does not get chosen to lease up (credit, insufficient income, and criminal background checks) even if you are chosen in the lottery. BH stated at the last Newton Housing Partnership meeting this topic has been discussed as well. BH stated that the Newton Housing Partnership had a representative from the Boston Housing Authority speak to them. The representative who spoke is the head of the Housing Navigator program, a new online system where people can look for affordable housing opportunities. The representative stated that this issue is a systemic issue that needs to be looked at not only in Newton.
- KL stated that she appreciates the flow chart and asked a question about information that can be put on the application that would address the issues of why people are getting knocked off. THM stated that it would be important to keep track of why people are leaving and asked the city could be involved if they have any control over it.
- JM answered KL question about what would be allowed in collecting this type of data. JM stated that she thinks that people would comment that these are barriers, asking these types of questions could end up being discriminatory so she does not think that this would be allowed. JM also stated that the Planning Department has so much on their plate she does not know how they will be able to manage adding this to their list.
- JM stated that Nadine Cohen, GBLS was at a Mass Housing Coalition on this past Friday, and they did a presentation and spoke about a client who she feels is being discriminated against by virtue of the software that is being used in the screening process for tenant selection. GBLS is going to file a claim against the company and the software. JM thinks that Nadine Cohen should come and speak with the committee. THM asked if JM can ask, JM stated that she would ask.
- JM asked BH Planning could reach out to Jennifer Maddox, DHCD about the letter that was submitted to them about the lottery process. BH stated that the follow up should come from the FHC since they drafted and submitted to DHCD.
- JM asked if the Committee could create a subcommittee that she will serve on in terms of the application because she feels that there may be some nuances in a depending on who the lottery agent is. She stated possibly a standing committee. JM then asked about the flow chart and the submitting of the ads to planning from the marketing agents. because it did not happen in the past. EB stated this is new and derived from the meeting about Cherry

Street two years ago from the FHC's recommendation. He works to get that information to show the dates. JM stated that is good that this is being done. THM asked if anyone would want to work with JM on this project and KL, ES and TM would. Lottery sub-committee is the title. THM stated that JM motioned to start this sub-committee and ES seconded. All in favor. JM asked if JF could join. JF stated that she will. HKD stated that she will set up a Zoom for this meeting.

4. Subcommittee Updates

- **Membership Sub-Committee**

- HKD reminded the committee that they need to reserve a space for a Human Rights Commission member and Commission for Disability.
- KL expressed a concern about recruiting an attorney to the committee who has Fair Housing expertise for quite a while. She stated that if this person would be excluded from participating because we are waiting on members of these other committees to express interest this is a problem. DR and HKD stated that there is not an attorney in waiting so there is not any exclusion and stated if the committee has an attorney who is interested to have them fill out an application. HKD also stated for the committee to feel free and recruit.
- KL asked who was in the pipeline and HKD stated there was about three people from the Commission on Disabilities and asked JF to speak on it since she staffs that commission. JF agreed and stated that there was a position on the FHC that was held by a Human Rights Commission member and stated that one of the parties from COD stated that they would not be able to participate. JF stated that she will reach out to the others and give THM and ML an update.
- KL stated that she wanted to express that there have been many attempts to reach out to the Human Rights Commission that there has not been any interest since Shelia Mondshein from anyone. KL stated that because of the Fair Housing Discrimination Complaints use to go to the Commission, gives more of a reason to have representation on the FHC. THM agreed and stated that he did not think there is an avenue for people in the city to go to with a fair housing complaint. JM stated that this is something the FHC should be discussing and to be on top of the list.

- **Fair Housing Award Sub-Committee**

- THM stated that he met with ES about the Fair Housing award this year and he consulted Lee Mondshein about recommending selecting Phil Herr as the next recipient of the Fair Housing Award. THM stated that Phil Herr has just a lifetime of achievements and participation, providing the city with the invaluable services around planning, fair housing, affordable housing, and community planning. THM stated that he would like someone to move that Phil Herr is nominated and get the committee to vote. ES motioned and THM seconded the motion. All in favor. THM stated that he would coordinate with him. JM stated that THM should check with his family. THM stated he would, and Phil Herr also did not have to be present if there are conflicts, but he would like him to be present. THM also mentioned it could be done on Zoom.

- **Fair Housing Literature Sub-Committee**

- THM stated that he and ET exchanged drafts of fair housing information that they wanted for the website and handouts. ET stated that there is a fact sheet that she

drafted and stated that she and THM will meet in February and will report in March with a draft for the Committee to review.

5. Fair Housing Committee goals for 2021-2022

- **Diversity, Equity, and Inclusion**
 - THM stated that the Committee has discussed about bringing a fair housing attorney, update on fair housing testing, a resolution and request developers report annually on minority rentals. THM stated that the Committee just formed a subcommittee to deal with that use of ARPA funds and stated that they just discussed collaboration with the Human Rights Committee on Fair Housing complaint process and forum.
 - KL asked if they could invite the Chair of the Human Rights Commission. THM stated yes that he would be happy to coordinate that. HKD stated that she could work with THM on that.
- **Bring in a Fair Housing Attorney to talk to committee about purpose and goals**
 - There was not a full discussion on this matter. It was touched on in the membership sub-committee discussion.
- **Updates on AI/Consortium Fair Housing Testing**
 - There was not a discussion on this matter
- **Resolution to request that developers report annually on minority rentals**
 - There was not a discussion on this matter.
- **Use of ARPA Funds**
 - There was not a discussion on this matter.
- **Collaborate with Human Rights Committee on Fair Housing Complaint Process and Form**
 - There was not a full discussion on this matter. It was touched on in the membership sub-committee discussion.

6. Next meeting Wednesday, March 2, 2022

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NEWTON FAIR HOUSING COMMITTEE

Newton Department of Planning and Development
Newton City Hall, 1000 Commonwealth Avenue, Massachusetts 02459
Phone 617-796-1149

REVIEWING PROJECT CONSIDERATION OF CITY FAIR HOUSING GOALS

September 21, 2016; revised 5/13/2019

The City of Newton agreed with HUD in 2015 to “...review all applicable projects for their inclusion of fair housing goals and note in writing in all applicable project reviews a statement that ‘the objectives of the City’s *Consolidated Plan*, including fair housing, have been considered in this review” as a part of the Engine 6 Conciliation Agreement¹. That charge complements the usual review by City staff in that it is asking for review that focuses on goals and policies that are documented in a plan and asks about the consideration of those goals and policies, not necessarily consistency with them.

The City has a well-structured process for reviewing project proposals at the various stages in moving from conceptual early sketches to highly detailed construction documents, with a good record in timely reviews and inspections. However, there is less structure and documentation at early stages regarding objective consistency with considerations that are documented not in regulations but rather in less-familiar documents which bear on fair housing, including the *Newton Consolidated Plan* and other documents that are cited in it, so are within the scope of the agreed reviewing, these in particular:

- *Newton FY11-15 Analysis of Impediments to Fair Housing Choice*, in its sixth year;
- *Newton’s Fair Housing Action Plan*, drafted in 2008, and the
- *Newton Comprehensive Plan*, now nearing 10 years old.

No developer could be expected to study those many hundreds of pages of relevant guidance in deciding project location, design, and operation by seeking beyond rules for consistency with those documents. However, after careful review seven ways stand out through which developers might go beyond regulation to serve the City’s currently documented fair housing goals:

- Going beyond the required minimum share of project housing units that are committed to being affordable;
- Going beyond the regulated minimum share of project housing units that meet housing accessibility standards;
- Providing “visitability” for housing units not required to be fully accessible;
- Developing at a site that is well located in relation to commercial services and job accessibility;
- Developing at a location close to good public transportation; and
- Going beyond legal obligation to avoid any possible discriminatory impacts on “protected classes.”

¹ Page 6 of “Conciliation Agreement...between Supporters of Engine 6...and...City of Newton ...,” 5/12/2015.

None of those actions are obliged by current law or regulation, but each of them would be supportive of fair housing through goals cited in the *Consolidated Plan* and/or documents that that *Plan* cites, and all but one of them (“visitability”) has been provided in one or more recently approved developments in Newton.

AFFORDABILITY

Is the project planned for more units priced below-market than is required by law?

0. No, the number of below-market units will equal that required
1. Yes, but fewer than twice the required number of units will be below market
2. Yes, at least twice as many units as required but not all will be priced below market
3. Yes, all of the units will be below market.

ACCESSIBILITY

Is the development planned for more units meeting accessibility rules than are required by State or federal regulation?

0. No, the number will be that which is required, if any.
1. Yes, but fewer than twice the required percentage will be accessible;
2. Yes, and at least twice the required percentage will be accessible;
3. Yes, 100% of the units will be accessible.

VISITABILITY

A “visitable home” as noted in the Newton *FY11-15 Analysis of Impediments to Fair Housing Choice* must have “(1) at least one entrance is at grade (no step), approached by an accessible route, such as a sidewalk; (2) that entrance door and all interior doors on the first floor are at least 34 inches wide, offering 32 inches of clear passage space; and (3) at least one half-bath is on the main floor.”

To what extent do the dwelling units in the proposed development meet that description of what is called “visitability?”

0. No dwelling units meet all three criteria
1. A few housing units meet all three criteria
2. Most housing units meet all three criteria, or all meet most of them
3. All housing units meet all three criteria.

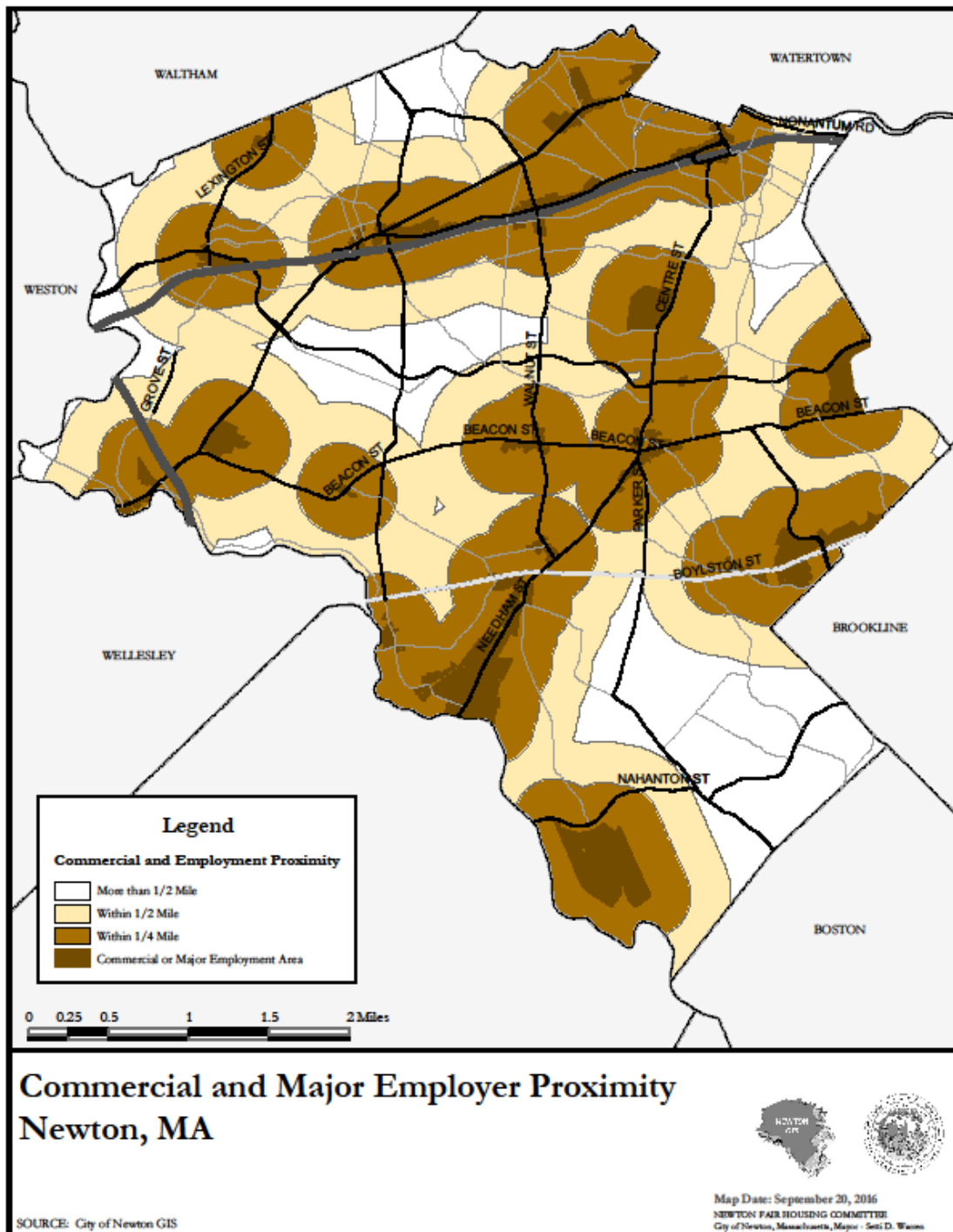
HOUSING/EMPLOYMENT/TRANSPORTATION PROXIMITIES

Newton’s *FY 11–15 Analysis of Impediments to Fair Housing Choice* speaks highly of how many locations in Newton benefit from their proximity to employment opportunities, commercial services, community services, and proximity to public transportation for access to such assets that may be beyond walking distance. Some locations within the City are far richer than others regarding those opportunities and services, and locations within the City differ in proximity to and frequency of service of public transportation than are others. It is important for affirmatively furthering fair housing that sites of affordable housing be served no less well than other sites in those two regards. The following two maps enable evaluating how well a proposed housing development serves that consideration as expressed in the *Analysis of Impediments*.

Proximity to commercial or major employment

How close is the housing site's proximity to commercial activity and employment as shown by City data on the map below?

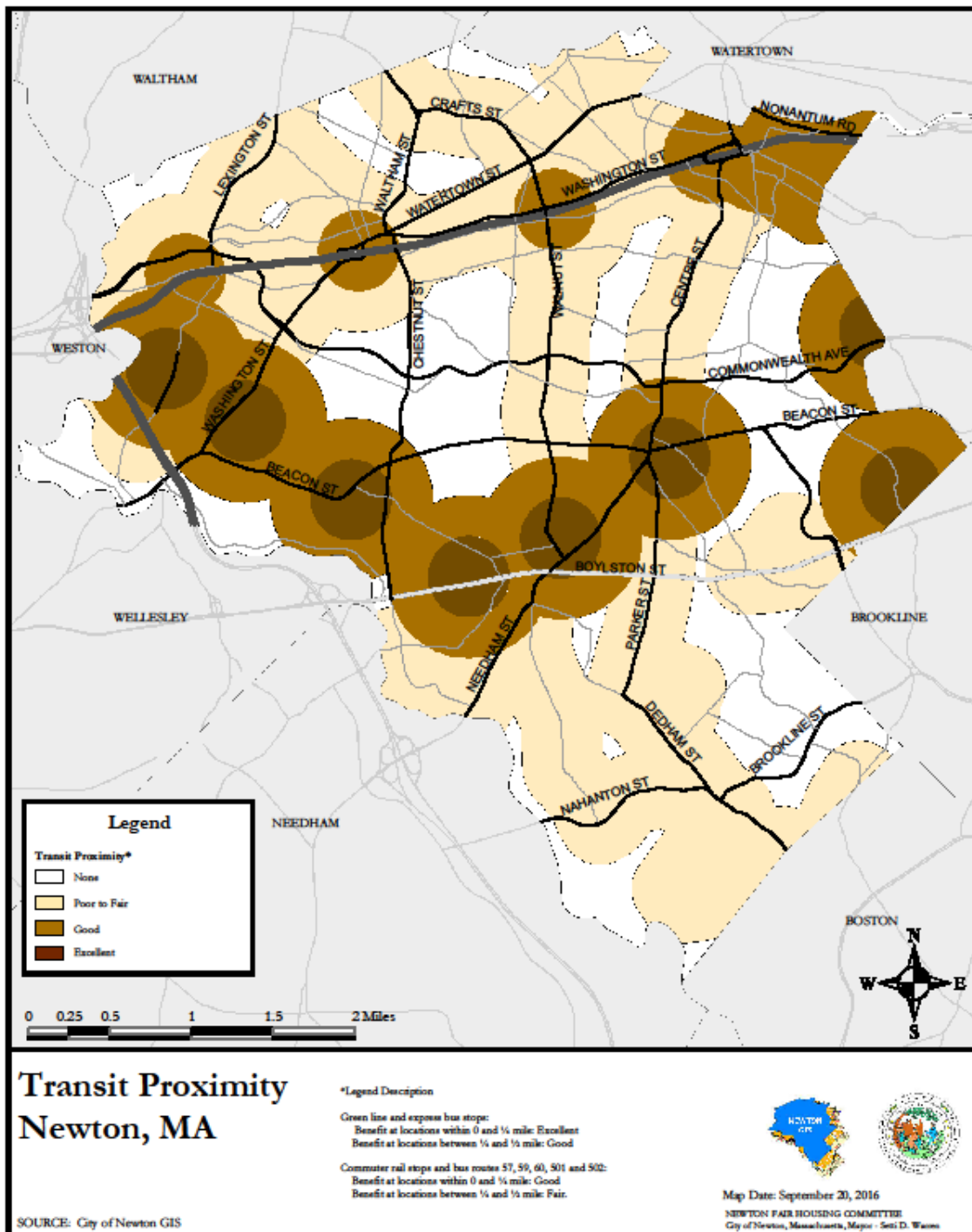
0. More than 1/2 mile from such a site
1. Within 1/2 mile of such a site
2. Within 1/4 mile of such a site
3. Within or adjacent to a commercial or major employment site



Proximity to good public transportation

How good is the site's transit proximity as City-defined?

- 0 - None
- 1 - Poor, Fair
- 2 - Good, Very good
- 3 - Excellent, Superior



Discretionary Impacts

(A) Would the proposed development be free of disparate negative impacts for “protected classes” based on race, national origin, color, religion, sex, familial status, or disability, even though no regulation might be violated? For example,

- A sizable development that contains only one-bedroom and studio apartments could be seen as having disparate impact on families with children under 18, or
- A proposed townhouse development having no units that have first-floor bedrooms and bathrooms could be seen as having a disparate impact on persons having a disability; or
- A housing proposal might be proposed at a site at which accessibility would be disparately poor for some.

(B) Might the City’s approval of the development be seen as creating, increasing, reinforcing, or perpetuating segregated housing patterns based on protected class status?

(C) In either such case, what is the justification provided for that proposal? Is the justification supported by the facts? Is the proposal necessary to achieve a “substantial, legitimate, nondiscriminatory interest”? If so, can that interest be served by modification of or an alternative for the proposal which has less discriminatory effect?

These are the potential findings:

0. Whether or not in compliance with all regulations, the proposed development would have disparate impact on a protected class, as illustrated at (A) above, and/or it would perpetuate segregated housing patterns, and there is no feasible means of lessening impact through modification or an alternative.
1. Whether or not in compliance with all regulations, the proposed development would have a disparate impact on a protected class, as illustrated at (A) above, and/or it would perpetuate segregated housing patterns, but the impact could possibly be lessened through major modification or an alternative.
2. Whether or not in compliance with all regulations, the proposed development would have a disparate impact on a protected class, as illustrated at (A) above, and/or it would perpetuate segregated housing patterns, but the impact could possibly be lessened through small revisions or minor alteration.
3. The proposed development appears to have no disparate impact on any protected class, nor does it perpetuate segregated housing patterns.

SOURCES FOR RELEVANT CONSOLIDATED PLAN OBJECTIVES

Affordability

FY 16-20 Consolidated Plan

Page 112: "...this Consolidated Plan puts the need for affordable housing at the top of the priority list..."

Page 113: SP-25 Priority needs table, row 2, "Provide affordable housing in mixed income developments."

Page 113: SP-25 Priority needs table, row 4, "Increase production of new affordable housing units."

Page 132: SP-45 Strategic Goals table, row 1, "Increase production of new affordable ... units."

FY11-15 Analysis of Impediments to Fair Housing Choice,

Page 16: "providing incentives to developers to exceed the mandated amount of inclusionary zoning."

Accessibility

FY 16-20 Consolidated Plan

Page 113: SP-25 Priority needs table, row 3, "Additional accessible rental units ..."

Page 132: SP-45 Strategic Goals table, row 1, "Increase production of new ... accessible ... units."

Visitability

FY 16-20 Consolidated Plan

Page 113: SP-25 Priority needs table, row 3, "Additional ... visitable housing"

FY11-15 Analysis of Impediments to Fair Housing Choice,

Pages 26 - 27: "Visitability in Housing" discussion at length.

Proximity to commercial or major employment

FY11-15 Analysis of Impediments to Fair Housing Choice,

Pages 21-25: "Employment- Housing – Transportation" discussion at length.

Proximity to good public transportation

FY11-15 Analysis of Impediments to Fair Housing Choice,

Pages 21 – 25 as above, especially page 23: Proximity to Transit Legend Description.

Discriminatory impacts

FY11-15 Analysis of Impediments to Fair Housing Choice,

Pages 12 – 13, "B. 2002 Analysis of Impediments to Fair Housing Choice Update.