



Real Property Reuse Committee Report

City of Newton **In City Council**

Tuesday, March 22, 2016

Present: Councilors Albright (Chair), Lennon, Brousal-Glaser, Crossley, Danberg, Fuller, and Kalis

Absent: Councilor Gentile

City staff present: Ouida Young (Associate City Solicitor)

#92-16 Amendments to the Real Property Reuse Ordinance

COUNCILORS ALBRIGHT AND KALIS requesting amendments to Chapter 2, Section 7. Sale or lease of city owned real property, of the City of Newton Revised Ordinance, 2012 (The Real Property Reuse Ordinance) to clarify how properties are classified in regards to purpose, use, and ownership; the procedure to handle reused properties; and to address any other changes that might be needed. [02/17/16 @ 12:04 PM]

Action: Real Property Reuse Held 7-0

Note: The current Real Property Reuse Ordinance language is not in line with the processes used for the last several real property reuse items. Councilors Albright and Kalis are proposing amendments to the ordinance to better align it with the current processes. The purpose of the meeting was to orient members to the current ordinance language and to get thoughts on what changes should be incorporated into the ordinance. Associate City Solicitor Ouida Young provided the attached flow chart of the real property reuse process (prepared by the Planning Department), which does not include how the City handles easements or lease of city property for solar panels and/or wireless antennas. The Committee will not address the easements or lease of city property for solar panels and/or wireless antennas in their discussions, as they are referred to a different Committee of the City Council for action.

Portions of the Real Property Ordinance are required by state statute. When the city is going to dispose of real estate, the City is required to go through certain steps, which depend on what entity has custody of the property and whether the land was acquired through purchase or eminent domain. There are three different sections of Massachusetts General Law (MGL) that address real property reuse. The City's ordinance attempts to satisfy the statutory requirements that are in MGL Chapter 40 Section 3, Chapter 40 Section 15, and Chapter 40 Section 15A in a process that is unique to Newton.

Interests in real estate are held in custody by a particular department or agency. If a department or agency is not specified, the Executive Department has custody. Largely, an agency or department has custody, which means that if the City ever wants to sell the property, the agency with custody over the property must decide it no longer needs the property. When that occurs, the legislative body makes a decision on whether they agree that the agency no longer needs the property. The legislative body then makes one of three determinations: 1) the agency retains the

property, 2) the property is transferred to another agency, or 3) no other agency has a need for it and the property is available for reuse. The City's ordinance includes additional steps in the process that go beyond what the statutory process is.

The ordinance deals with what the process is if the City does not want to retain a piece of property anymore but not what happens if the City wants to keep the property but do something different with a piece of that property like a shared use. Ms. Young explained that MGL does broadly address it, but if the City is going to lease or deed a portion of a property, it must go through the statutory process to execute the disposition of real estate. The Austin Street Parking Lot is an example of the City looking to have a shared use on a city-owned property. The MGL statutes have not caught up with active reuse of property with retention of a municipal presence. It is important to think about how that can be accomplished in the ordinance. If there is going to be a sale or lease of any sort, it will have to go through an authorization by the legislative body of the City to authorize the Mayor to engage in a sale or lease and setting a minimum price for city-owned property by statute. There are certain votes that the City Council has to take as part of the reuse process.

It is important to examine the various kinds of real property activities the City is involved in and to determine if the current process works for what the City or if the process needs to change. It may make sense to look at a slightly different process that allows for some shared use with a municipal aspect. It should be noted that the City would always have to follow the State statutes. The Committee will look at what aspects of the current ordinance did not work well for any of the three recent dispositions of property and determine if the issues could be addressed with ordinance amendments and/or changes to the real property process.

There was discussion regarding whether the reuse process should be triggered when a license to use a city-owned property is given by the Administration or School Department. Ms. Young explained that there are permitting processes for various facilities and that MGL Chapter 40, Section 3 looks to the entity that has control of a building for licensing. The City Council does not have the authority to require Council approval of a license.

Ms. Young and the Committee reviewed the flow chart to determine what could be changed to improve the reuse process. Whenever the Council finds that there is no City interest in a property, a Joint Advisory Planning Group (JAPG) is formed to make recommendations to the City Council through the Real Property Reuse Committee within 90 days of formation. It was pointed out that the Planning Department also makes a recommendation, which can be different from the JAPG recommendation. The Committee discussed whether 90 days was enough time and the consensus was that it is usually not long enough.

The JAPG generally consists of volunteers with some type of experience with real estate and community members with an interest in the property. The Mayor and Council President select the JAPG members. The Committee could decide that it is appropriate to add language to the ordinance to define the size, representation, and what constitutes a quorum of a JAPG. The

Committee may want to consider whether the JAPG should be involved in the initial determination of whether a property is available for lease, reuse, transfer, or the City should retain the property.

The Committee discussed what the best point in the process would be to hold public hearings. During the discussions on the Austin Street lot, several citizens stated that they did not feel that there was any opportunity for public input before the lot was offered for sale. Various proposals were imagined regarding the best places to require hearing. It might make sense to open a public hearing after the item is docketed but before the Council makes a recommendation to the Mayor regarding whether the property is available for sale or lease, which would also be before a JAPG is formed. Holding a public hearing before the JAPG is formed would provide a larger pool of candidates to serve on the JAPG. The JAPG could also hold public hearings. The Committee (JAPG or RPR) could keep the public hearing open throughout the real property process or set aside time for public comment at real property meetings. However, keeping a hearing open does not have the same implications as it does in Land Use. The Committee members felt that it is important to build in plenty of opportunity for public input during the reuse process.

Often times the City Council sets a de Minimis price for a property, and it would be good to clarify what the philosophy is and what the City is trying to achieve by setting that type of price. Ms. Young responded that it may not be possible to put language like that in the Ordinance but it could be added to the Council Order. The Committee also identified that the Planning Department process identified places for Council votes that are not in the ordinance.

Newton resident Elaine Rush-Arruda stated that the Real Property Reuse Committee did not make a recommendation within 60-days of the public hearing for the Austin Street property, which resulted in distrust in the City and the City Council. It was noted that these timelines were not in the ordinance. Newton Resident Lynn Leblanc pointed out that timing of the subject property rezoning as regards the finalization of the JAPG and Council votes was difficult. Committee members agreed that the coordination regarding any rezoning with Council votes needs to be improved.

Ouida Young will work on drafting amendments to the Real Property Reuse Ordinance based on the issues raised. The Committee will review the draft language at its next meeting on May 17, 2016. A motion to hold the item was made and approved unanimously.

Respectfully submitted,

Susan S. Albright, Chair

"STEP-BY-STEP" REAL PROPERTY REUSE PROCESS

START HERE

