



Zoning & Planning Committee Report

City of Newton **In City Council**

Monday, April 11, 2016

Present: Councilors Hess-Mahan (Chair), Sangiolo, Danberg, Yates, Kalis, Baker, Albright and Leary

Also Present: Councilors Fuller, Ciccone, Norton, Brousal-Glaser, Blazar and Lappin

City Staff: James Freas (Acting Director, Planning Dept.), Maura O'Keefe (Assistant City Solicitor), Karyn Dean (Committee Clerk), Shawna Sullivan (Committee Clerk)

Referred to Zoning & Planning and Finance Committees

- #125-16** **Community Preservation Committee funding for Allen House**
COMMUNITY PRESERVATION COMMITTEE recommending the appropriation of two million dollars (\$2,000,000) from the Community Preservation Fund to the Planning & Development Department, for a grant to the Newton Cultural Alliance, for the historic rehabilitation of the Nathaniel Allen House (35 Webster Street, West Newton) as a community cultural center, as described in the proposal submitted to the Community Preservation Committee in February 2016. [03/16/16 @ 12:46 PM]
- Action:** **Finance Approved 6-0**
 Approved 8-0

Note: The Zoning & Planning and Finance Committees met jointly on this item. Please refer to the April 11, 2016 Finance Report for details of the discussion.

- #103-16** **Petition to rezone lots on Glen Avenue from MR1 to SR2**
COUNCILORS DANBERG, BLAZAR, SCHWARTZ, SANGIOLO AND YATES petitioning to rezone land known as Section 61, Block 39, Lots 01, 02, 03 and 04 located at 41, 45, 47 and 51 Glen Avenue from MULTI RESIDENCE 1 to SINGLE RESIDENCE 2 [03/17/16 @ 1:50 PM]
- Action:** **Held 8-0**

Note: Councilor Hess-Mahan explained that the purpose of putting this item on the agenda was to announce a public hearing date of May 23rd. It cannot be scheduled for the May 9th meeting as the Committee will be hearing budget presentations. The Planning Department also needs some time to speak with the property owners and neighbors and prepare a memo. Councilor Danberg noted that she received some information from one of the property owners on Glen Avenue, Simon French. She asked that the information be included with the agenda for the public hearing. Councilor Hess-Mahan will assign the public hearing at the next Council meeting.

The Committee voted to hold this item 8-0.

Referred to Zoning & Planning and Finance Committees

#115-16 Funding for Zoning Reform Phase 2

HIS HONOR THE MAYOR requesting authorization to appropriate one hundred twenty five thousand dollars (\$125,000) from Free Cash and authorization to transfer the sum of two hundred thousand dollars (\$200,000) from the Planning Department's Full-time Salaries Account to the Planning Department's Consultants Account for the purpose of funding Zoning Reform Phase 2. [03/15/16 @ 4:52 PM]

Action: Approved 7-0-1 (Councilor Yates abstaining)

Note: The Committee previously discussed this funding in a joint meeting with Finance Committee on March 28th. Two consulting firms, Sasaki Associates and TPUDC, submitted proposals which went through the procurement and bidding process. Sasaki Associates was the successful candidate. Both Committees held the item as they had not had the opportunity to review the proposals from the vendors. The proposals were made available to the Committee members and, therefore, the item is back for discussion. The ratings done on each firm were attached to the agenda and both scored extremely high and were fairly comparable in ratings.

Committee Comments/Questions

Some Committee members noted that after reading both proposals, they preferred the one from TPUDC over the Sasaki Associates proposal, conceding that the price was significantly higher for the former. It was felt that the Sasaki legal team's experience was primarily with 40R and affordable housing. Since Sasaki Associates have been working on the City's housing plan, perhaps a different set of eyes would be better to work on zoning reform. The TPUDC's legal team experience in community and neighborhood outreach was more appealing than Sasaki's experience with the Boston Redevelopment Authority and state experience with 40Rs. Perhaps TPUDC could participate in some way in conjunction with Sasaki.

Councilor Hess-Mahan said there is an argument that Sasaki, because it has done some other work in the City, has an advantage in knowing the City well and will not have to spend as much time as another firm getting up to speed. They have done the housing strategy and the management study for the Planning Department. However, he did share some of the same concerns that using Sasaki would not provide a fresh set of eyes but it was made clear in later discussions with them that they do have people on their team who could provide new perspective.

TPUDC was very open and willing to work with the community and they seemed to have good success with their methods. Sasaki also had good ideas about using store fronts, coming to farmers markets, etc. for community outreach. Both had different methods of outreach, but they both rated that component as extremely important and high priority. Charrettes would be employed by both firms as well (TPUDC called them "Planapaloozas"). As to Sasaki's public sector experience, they do have knowledge of more than 40R but that was just the example they gave of codes they have written.

TPUDC was also not very familiar with local control over zoning as is done in Newton. They typically have dealt with regional planning commissions and master planning, which is why Sasaki was rated higher on that score. TPUDC brought Mark Barborowski onto their team after the bid was put together so it's difficult to know how that might have affected their bid since he would be bringing the local knowledge and experience to the team.

There was some talk of phasing the work to have more than one firm on the project, but it would require a new bidding process in order to comply with state bidding laws so at this point having them participate would not be possible. Several Committee members felt phasing would not be desirable or effective.

A Councilor asked about the cost differences between the two firms as TPUDC's bid came in at about 50% higher than Sasaki's. Councilor Hess-Mahan explained that there had originally been a "placeholder" budget of \$150K for the project but they were waiting to see where the bids came in to set the final amount. The bids were not opened until after the rating process was completed, so they were independent of each other.

There were also questions about the timeline. Sasaki proposed a very short timeline, but the City has laid out an 18-month timeline. This concerned some members because it seemed as though Sasaki was being unrealistic about the task. Councilor Hess-Mahan noted that Sasaki is on board with the timeline and it's possible that the project could take longer than that. The contract is not for 18 months, the contract is for the deliverable. The approval process could take a considerable amount of time once the consultants have finished their draft.

A Councilor asked how the docket items currently on the agenda will be dealt with. In Committee discussions, many of those items were held for action because they would be covered by the work in Phase One. The Committee had been told that the Law Department would have resources available to work on Phase One but that turned out not to be the case adequately. It was not the fault of the lawyers, but just a factor of the amount of work on their plate. A wholesale reform of the zoning code is an extremely work-intensive project. The last recodification of the zoning ordinance included Gayle Smalley, a retired lawyer from the Newton Law Department and that proved invaluable. The Councilor would have a higher level of comfort if the Committee/Council had an advisor to help with the project, a more independent set of eyes. Other Committee members noted that there have been discussions for many years relative to having independent counsel for the legislative body in general, and agreed that an advisor would be helpful with this project.

A Councilor asked why TPUDC stated that the most successful adoption process are led by city staff and they will support the adoption with creating audience specific presentations and consult and strategize with staff. James Freas, Acting Director of Planning explained that consultants do the work and then staff carries the ball in terms of presenting it in public hearings and so forth. Staff are the ones who will have to work with the ordinance going forward so that know the material very well. The Long Range Planner will be the primary staff person to work on this project.

Another Councilor was worried about the policy as well as the drafting which is why he would like to see an advisor as mentioned earlier.

A Committee member asked if the Committee could make any changes and Councilor Hess-Mahan explained that this can be voted up or down. Any changes, for example, adding an advisor, phasing the project, choosing a different vendor, etc. would require a new bidding and RFP process. These are both eminently qualified firms and there are some reasons why TPUDC came in higher, but he's not sure 53% higher is justifiable. If TPUDC had come in at the same price as Sasaki, he may have chosen them.

A Councilor suggested that the Committee might say they are prepared to do this as long as there are assurances that independent resources would be available. The City's Law Department cannot support the time that would be needed. Perhaps someone like Mark Barborowski would be appropriate as an advisor. This is the biggest piece of work that the Committee and Council is going to be doing for years and it will have a long-range impact on the City. Councilor Baker reminded the Committee that he spent considerable time on his own going over the Phase One document and he does not want to see that happen again. When Gayle Smalley was hired, it was through a consultant fund in the Clerk's office. There is policy work that has to go on before drafting begins and it would have to be determined how much money should be budgeted and at what point they would need to come on board.

Another Councilor felt it would be best to have additional staff in the Law Department assigned to this project. This would also allow that resource to be available after the consultants have left and the ordinance is in effect

It was asked if a budget resolution for funds for an advisor would be appropriate. The burden on the Planning and Law Departments need to be taken into consideration. Mr. Freas explained that he has been building the Planning Department over the last year or so with an eye towards this project and other related projects. The Long Range Planner position is being filled, and he created and filled the Urban Designer position and the Community Engagement Manager position. He sees those three positions working as a team to shepherd this project. He will be returning to the Deputy Director position when a Planning Director is hired and he will be able to step in and spend time on this as well. There will be staffing from the Law Department as well.

Councilor Yates said he was going to abstain because he did not have a chance to review all of the materials. He also felt that an advisor would not be necessary and they would look incompetent if they could not get through the process with a Planning Department and a consultant team.

Councilor Hess-Mahan reminded the Committee that the consultants will deliver a draft and the Zoning & Planning Committee will start their review and work on it along with Planning and Law Department staff.

The Committee felt that Sasaki was extremely capable and is the best choice for the project. Councilor Sangiolo moved to approve the item and asked that the concerns relative to a legal

advisor to the Committee/Council be brought to the administration through the Chair and the President.

The Committee voted to approve 7-0-1 with Councilor Yates abstaining.

#22-16 Resolution requesting appropriate training of Fair Housing laws

COUNCILOR HESS-MAHAN proposing a RESOLUTION to the Mayor and City Council requesting that all members of municipal public bodies that have decision-making authority or an advisory role with respect to land use, zoning or housing issues be required to receive appropriate orientation or training concerning applicable rights and obligations under Fair Housing laws and regulations. [02/07/16 @ 3:01 PM]

Action: Held 8-0

Note: Councilor Hess-Mahan explained that one of the provisions of the HUD conciliation agreement, which was a result of the suit between the Supporters of Engine 6 et al. and the City of Newton, was to require training for staff in Fair Housing Laws. The Law, Planning and Purchasing Departments along with a handful of other staff did receive the training (approximately 45 in all). Many decisions that are made by these municipal public bodies have implications for fair housing issues and while there is an orientation for City Councilors on Chapter 40A and the Zoning Board of Appeals get orientation on variances, there is no training on fair housing laws. The Statement on Fair Housing In Newton (which was attached to the agenda) mirrors much of the language in the proposed resolution and is just a summary of the fair housing laws.

He felt it was likely that members of the City Council, ZBA and Planning Board may not be aware of all the protected classes and the protection to which they are entitled, including familial status. Councilor Hess-Mahan raised familial status because when developers come in and propose 1, 2 and 3 bedroom units, there are Councilors telling them they don't want 3-bedroom units, which infers a bias against families. This runs a risk of violating the Fair Housing laws.

Fair housing laws apply to all types of housing, with very few limited exemptions, whether in public or private sectors and regardless of whether public funds are involved. There is an extra duty involved if federal funding is involved which is that the City has to affirmatively further fair housing.

Councilor Hess-Mahan is not suggesting full-day training sessions, but he would like to see members provided with materials and orientation and an opportunity to ask questions and get answers.

Committee Comments/Questions

It was asked if there would be any cost involved in this training. James Freas thought the cost was \$200 or so for the 3-hour training that the various departments received. Councilor Hess-Mahan noted that the Clerk's office along with the Law and Planning Departments put together trainings for the Land Use Committee. He did not feel the cost would be prohibitive. He would like the City Council, ZBA, the Community Preservation Committee and the Planning & Development Board to get the training together for simplicity and knowledge-sharing.

A Committee member disagreed with this concept and reported that the Chairman of Land Use did not think this should be a requirement. They did not feel it was within the scope of the Council's authority. Councilor Hess-Mahan noted that it is a resolution to the City Council to require it of themselves, and the Mayor to require it of other public bodies such as the ZBA and Planning Board. There are some qualifications of service, such as understanding the Conflict of Interest laws. That is a required training. There was a claim against the City and there are many residential projects that come before the City, both large and small. While the work may be done in the Zoning & Planning Committee or the Land Use Committee, the entire Council votes on these petitions. It is problematic when a Councilor states that they don't like a project because it will be bringing families into the City and stressing the school system. This is illegal and there is an obligation to follow the federal law. The Fair Housing Committee has been concerned with this for a while now. He would rather have the Council and others forearmed with knowledge and not stumble into a fair housing violation.

There was an opinion that while the City Council should perhaps be required to take this training because they are elected officials, putting that on to the volunteers on the other Boards of Commissions may not be appropriate. Some of the Commissions have vacancies and it is not easy to keep them all staffed. Adding another requirement or strain on a volunteer's time might just add to that problem. The Conflict of Interest training is done online, which makes it quite easy. Maybe this could be done in a similar way, or anyone appointed to a Board of Commission could receive materials as is done with the Opening Meeting Law material. Councilor Hess-Mahan disagreed, saying that he has seen too many times, misinformation from members of those Boards that could lead to problems for the City. Chapter 40A should also be clearly understood.

Another Committee member said that if someone was interested in serving on a board or commission as a volunteer it did not seem overly burdensome to attend a 3-hour training session to be sure they were doing the job as well as possible. A Councilor suggested having a training session for Zoning & Planning and then decide if it's something that should be required for others. He did not feel the full Council would be amenable to making this a requirement. Another Councilor suggested having some training in a Committee of the Whole.

A Councilor said that she just went through various trainings at the University where she works and feels this is a good idea. She would also like the Statement of Fair Housing to be posted in City Hall. Councilor Hess-Mahan noted that it is not the City's website.

There was a friendly amendment to ask that the materials be made available instead of making this a requirement. One of the Councilors noted some Aldermen at the time worked with some residents to put together a training session on affordable housing and only 4 aldermen showed up - that is what happens when something is "provided" instead of required. Councilor Hess-Mahan agreed with that sentiment, but he would consider changing the language to requesting members to take the training or be offered the opportunity to take the training. He noted that in the future, he will ask re-appointments when they come through Committee or through the Council if they took the training. If they did not, then they would not get his vote.

The Committee was split on whether this should be a requirement. Councilor Hess-Mahan would rather hold the item and get more information before voting. He would like strong support. Councilor Kalis moved hold and the Committee voted in favor.

#55-16 Ordinance to require fair housing statement and HUD logo on certain meeting notices
COUNCILOR HESS-MAHAN requesting an ordinance to require that all notices of public hearings and/or meetings concerning permitting and/or funding of any residential development contain a brief statement concerning the City's policy regarding fair housing practices pertaining thereto and HUD's Equal Housing Opportunity logo. [02/03/16 @ 1:51 PM]

Action: Held 8-0

Note: Councilor Hess-Mahan provided draft language which was attached to the agenda. This would apply to meetings or notices by the ZBA, the Planning Board and the City Council for special permits, comprehensive permits and CDBG funding. The Statement of Fair Housing in Newton, which was attached to the agenda, would go out with the letter. Adding the statement and the HUD logo to ads published in the Boston Globe would add about \$165 to each ad. Special Permit application public hearing notices published in the Boston Globe have ranged from \$250-\$1200.

The statement and the language in the ads would be giving notice to the public including petitioners, developers, neighbors and anyone else involved in the process of what the fair housing requirements are.

Committee Comments/Questions

It was asked if every residential project would require this and Councilor Hess-Mahan said it would. It does not matter whether public funding is involved or not. A Committee member said that the special permit applicant would be paying for their own ad so she was not concerned with the cost. She wondered if the applicant should sign a statement that they are complying with the Fair Housing laws. Mr. Freas said that is not a current requirement and has not been brought up as an issue before to his knowledge.

A Committee member was concerned that this is only one particular issue that public bodies need to be informed about and aware of and is it appropriate to single this one out. Councilor Hess-Mahan said the HUD conciliation agreement brought this to the fore. He also believes it is important for people to hear that Newton is a proponent of equal housing.

The Committee would like more information about this and an opportunity to discuss this again. Councilor Hess-Mahan moved hold and the Committee voted in favor.

Meeting adjourned.

Respectfully Submitted,
Ted Hess-Mahan, Chair