



## Zoning & Planning Committee Report

### City of Newton In City Council

**Monday, July 18, 2016**

Present: Councilors Hess-Mahan (Chair), Danberg (Vice Chair), Leary, Yates and Albright

Absent: Councilors Sangiolo, Baker and Kalis

City Staff: Maura O'Keefe (Assistant City Solicitor), Karyn Dean (Committee Clerk)

*Public Hearing Continued on the following item:*

**#182-16**     **Citizens petition to prohibit zones changes without surrounding owner's approval**  
FRED ARNSTEIN ET AL., submitting a petition, pursuant to Article 10, Section 2 of the Newton City Charter, to establish a moratorium to prohibit the change of the zoning district applicable to any land in Newton without the written approval of a majority of the owners of land within 1,000 feet of the land contained in said proposed changed zoning district. [04/28/16 @ 10:34 AM] (90 day 8/14/16)

**Action:**     **No Action Necessary 6-0**

**Note:** This meeting is a continuation of the Public Hearing which was opened on June 27<sup>th</sup>.

Councilor Hess-Mahan called attention to the two Law Department memos which were provided to the Committee. The first was presented at the June 27<sup>th</sup> meeting and the other was provided in the Friday Packet prior to this meeting. They are attached for reference.

Councilor Hess-Mahan explained that public comment would continue and asked that those who had not already spoken at the June 27<sup>th</sup> meeting speak first. He would then allow comments from those who had already spoken but asked that they do not repeat previous statements.

Please note that the comments are from both the June 27<sup>th</sup> and the July 18<sup>th</sup> meetings.

#### Public Comment

**Fred Arnstein, 7 Briar Lane**

JUNE 27: Mr. Arnstein addressed the Committee and provided a presentation which is attached. He said that there is a tremendous push for development in the City and the Mayor's report that just came out emphasized this even further. The group that created this petition is from Newtonville and the impetus was the Orr Block project. The group supports the goals of housing diversity, careful planning, preserving what is good and learning as you go. Developers see Newton as a great place to make money, which is fine, but must be guided by the right zoning and other constraints. The consequences of development can be troubling for the residents and need to be carefully considered and built into a guiding framework for developers. The Mayor wants to take

the decision making out of the hands of the City Council and he does not think that is proper. The group wants things to slow down.

The Orr Block builder wants to build a project that is way out of proportion to the village center. A zoning change is required in order to build the project and the developer is driving the project. The City should be deciding the zoning, not the developer. He could build within the current zoning and that would be reasonable, at least, for the area. Do not change the zoning as requested by developers to allow for overbearing projects.

JULY 18: Mr. Arnstein the points of the June 27<sup>th</sup> speakers and provided handouts, attached.

- There is widespread sentiment in the City against unfettered development. Various groups throughout the City have been working to limit high density projects and have support.
- Building many new units to gain a relatively small number of affordable units does not make sense in Newton. More units in a wealthy community mean higher land prices and rents. The result is less affordability in the City. Development often destroys naturally affordable housing.
- Traffic and parking studies by developers can be erroneous. Local residents and business owners should have a voice on how new traffic will affect their neighborhood and they are not being heard.
- Fiscal costs from new developments to the City include fire, schools, and other City resources
- Developers misunderstand transit-oriented development relative to Newton.

**Pamela Geib, 7 Briar Lane**

JUNE 27: *Pamela Geib* said she was moved to see democracy in action especially in the light of the fact that the Mayor thinks this process should be removed. Seeing this meeting, she can see how slow the process is but being a resident of Newtonville she experienced how fast it is. In the course of one year there have been three projects, each bigger than the other that will now add 700 people to a very small square block area. That is fast. She is a resident who didn't know anything and didn't have a voice and she is also a senior trying to age in place. There is wishful thinking about mobility. She has mobility issues that sometimes force her to drive 2 blocks to CVS to get a prescription filled and sometimes she has been unable to park close enough to get out of her car and get her prescription filled. That is without any development at all. This very fast development and density is going to affect her mobility and her ability to stay an independent older person. She is a licensed psychologist and some things that keep older folks healthy are green space and community ties. The merchants they know and love in Walnut Street that they will go out of business if these projects go forward. These are community ties that will be lost. If you are in a hospital and can look out onto green space you will get better faster – green space is needed and Newtonville has a great lack of that. Community outreach needs to be done and that is why this moratorium is necessary to allow people to be educated and have their voice heard in decisions in their neighborhoods.

JULY 18: Ms. Geib they are asking for this moratorium in order to evaluate the impact of current development and to survey and assess citizen's need for and response to the Mayor's current rezoning intentions. Further and denser development should be on hold. The Mayor has stated that 90% of Newton housing is single-family but the actual number is 55% as listed in the City's Housing Needs Analysis of 2016. This is an enormous difference and data needs to be accurate. Eliminating more parking lots across the city and building more structures is something that can't be reversed. Local businesses can be destroyed by dense urban projects. The City must move slowly with citizen input and assessment. Traffic and parking patterns, usage of schools and other city resources must be watched. This moratorium will allow a holistic review of rezonings.

**Susan Reisler, 11 Claflin Place**

JULY 18: Ms. Reisler said that a few years ago this Committee added mixed-use districts to the ordinance. According to the Transit Oriented Development Institute of the US Department of Transportation, which promotes this concept, it requires that stores and buildings in a given location be appropriate for the transit capacities of that location. The primary focus is on public transportation, not development. Newton's transit capacity is limited at best, handicapped inaccessible, senior unfriendly and dangerous in bad weather. Green line stops are more accessible but don't provide the transit amenities envisioned by the DOT. Newton's transit capacity cannot support gargantuan mixed-used developments. Development should conform to the transit that actually exists here. Business 1 and 2 is appropriate for what exists in Newton and would correlate to what the Institute calls transit neighborhoods wherein density is relatively low and establishments serve the local area. The moratorium should be enacted in order to prevent zoning which is inappropriate to the local transit capacities of the villages. The existing zones are sufficient.

**Peter Harrington, Lowell Avenue**

JUNE 27: Peter Harrington's comments and other documents were also submitted in writing and are attached. He also said the petitioners would be amenable to lifting the condition of having the neighbors vote on any zone changes and would just like to propose the moratorium without that possibility of relief.

JULY 18: Mr. Harrington said that the Transit Oriented Development Institute recommends different typologies for different types of neighborhoods. The transit oriented development concepts could be misused by developers and they could be built where they don't belong. The Department of Transportation supports this type of development so tax money or tax credit must be available to communities to ensure the success of the project is achieved. Shouldn't we look into this and take advantage of those opportunities to meet goals and protect the villages and nearby neighborhoods. He would be sad to hear that the Committee knew about the Institute and did nothing to incorporate that into the multi-use transit oriented zoning districts. People give their thoughts based on experiences and beliefs. They are not experts or skilled presenters or public speakers. They assume the Committee listens with an open mind as they give their best effort to explain what they want relative to this moratorium. It is their best opinion that the high

density projects will happen all over the city and Newton will become a City of urban enclaves. Mr. Harrington provided documents which are attached.

**Julia Malakie, 50 Murray Road**

JUNE 27: Ms. Malakie's comments were also submitted in writing and are attached.

**Jill Geiger, 72 Madison Avenue**

JULY 18: Ms. Geiger supported this moratorium. Zoning decisions about a village should be made in consideration of the character and scale of the village as a whole and not just a parcel of land. Decisions to rezone should be made in response to a desire to improve a village with input from its residence, not as a response to a developer's request to rezone in order to maximize the profit of the project.

**Isabel Albeck, 240 Winsor Road**

JULY 18: Ms. Albeck supports the petition and the moratorium. She is concerned about single residences being rezoned to multi-residences. It took her five minutes to come up with 7 lots that lost their trees. On Welles Avenue 70 trees were cut and she was not counting those smaller than inches. On Fuller Street a lot supposedly undevelopable had 9 big trees cut and a new house is going up. Dartmouth Road was 60 trees and a Valentine Street lot which is 60K square feet lost all its trees. Wesley Road, Beacon Street, Goddard Street lost trees or had homes turned from single to multi-residence. Trees are important for the City and National Geographic had an article showing that people who looked at trees felt emotionally better than those looking at concrete and brick facades. She asked for support for the petition.

**Kathleen Kouril Greiser, 258 Mill Street**

JUNE 27: Ms. Kouril Greiser hoped that Land Use and zoning decisions will remain in the City Council's hands. She supports this item for a one-year pause in spot-zoning changes. The idea of allowing the relief of letting the neighbors decide is a zone change should happen, was just that – a relief and not at the crux of the petition. The one-year pause in approving zoning changes is what is wanted because zoning reform is underway. She agreed with Lynn LeBlanc's statements relative to the costs of development. The Comprehensive Plan states that residential development in Newton pays less in taxes than it costs to service, so the higher the density of a residential development the more of a fiscal loss it represents. Open space and parking lots provide little or nothing to operate and generate revenue. Newton has a housing affordability problem but not a housing shortage. There are many apartments available and for sale listings but they are just too expensive. Under state law the City has reached its 1.5% threshold for affordable units. There is support for preserving naturally affordable housing that fits into neighborhoods, but widespread opposition to large luxury projects that masquerade as affordable housing. The Orr Block rezoning will lead to the eviction of renter families who are members of protected classes under the Fair Housing Act. Legal liability will follow and that has an enormous fiscal impact. Residents also can not afford the rising costs of maintaining infrastructure. At the NVA, they are hearing from people who are having trouble paying water/sewer bills. More full-time hires are needed to support the higher density and this is a fiscal problem as well. The school system has a history of



underestimating how many children will come to the schools from high density projects. For Arbor Point, the schools projected 19 students and it ended up being 53, with other examples as well. Rezoning for higher density hurt Newton school children for those here and those to come. It is the City Council's fiduciary responsibility to vote for this moratorium.

JULY 18: Ms. Kouril Greiser urged the Committee to vote in favor of this petition. Zoning occurs when land is divided by appropriate authorities into zones within which various uses are permitted or restricted. It is how heavy industry is separated from homes, how open space is set aside and how water is kept clean. She has lived in countries without zoning and it is not pleasant, safe or healthy. Zoning has to be stable and predictable otherwise how can any property owner know that what they want to build or to what use they want to put their property to will be allowed in the future. How can one make plans or invest without that stability. The legal theory of reciprocity of mutual advantage is the underpinning of stable zoning. It means that limits on one's ability to extract the highest use or profit from a given property is balanced by the same limits on owners of neighboring properties. This reduces uncertainty, conflict and money wasted on legal battles. There is a lot of uncertainty in Newton right now and many requests for spot zoning for higher density. This is because land use attorneys and developers are eager to get their upzoning request in now just in case zoning reform doesn't go their way and in case we get a new Mayor who is not such an enthusiastic cheerleader for urbanization. The Housing Strategy has added fuel to the frenzy of development. Spot zoning provides benefits to particular owners while undermining the rights of adjacent property owners. Austin Street opened the floodgate to more and more upzoning requests. Accommodating them is profoundly unfair and they are out of control. This moratorium will give zoning reform a chance and see if the policy or people in local government change in response to resident concerns.

**Peter Bruce, Claflin Place**

JUNE 27: Peter Bruce's comments were also submitted in writing and are attached.

JULY 18: Mr. Bruce said time is needed to deliberate to the rash policies of the Mayor and the moratorium would allow for that. The Mayor thought that 90% of the total housing stock was single-family homes and he is completely wrong. He doesn't know that 40% of housing is multi-residence. This kind of ignorance on the part of the Mayor disqualifies him from leading a 5-year plan in our housing policy. There is no recall provision in the Charter and checks and balances are needed. This moratorium would be a good check.

**James Pacheco, 48 Circuit Ave**

JUNE 27: Mr. Pacheco said that as an engineer he has worked on many projects in the Boston area, other states and foreign countries. The unabridged growth with special permits and requests are concerning and the moratorium is needed to review them. The growth in Newton with Austin Street, Court Street and Orr Block projects has exploded. There will be over 300 plus new residents with population increases over 700 all within the Newtonville neighborhood in a short period of time. The infrastructure will need to grow with it. The Fire Department and safety services will be taxed. The City will need a new fire ladder truck at \$1M each and a new fire unit which will cost

more money. Water, lines and hydrants will need to be upgraded as well. Neighbors will be at higher risk because the firetrucks can't reach the north side of the building. There is little detail of the plan for public safety. The structure needs to be built to code and there are issues there.

JULY 18: Mr. Pacheco provided a written copy of his comments which are attached. He supports this moratorium.

**Gerard Slattery, 227 Walnut Street**

JUNE 27: Mr. Slattery said he was very alarmed by the Mayor's proposal and their only recourse is through the City Council. The Orr Block project can be built up to two-stories, by right, and he has no problem with that. The moratorium will help with environmental issues and the trying to have a holistic plan. The building and developer will deal with asbestos, gasoline, lead paint, etc and he believes that. There needs to be an environmental plan that anticipates from a building standpoint. The greater macro city standpoint is the capacity of anything over 8 units has to be absorbed by the village. The villages need to be preserved and the City Council needs to fight for that. If Newton wants to become Cambridge, Somerville, Brooklyn or Queens then that should be a different discussion. The only way this will work is to build the continuous area to that density otherwise there will be islands of density that will choke everything else. The project is too large based on the type and number of requests that have been made. As far as affordable housing goes, the City needs to replace any affordable units that were demolished to build new units. Counting those destroyed units when replaced with newer units will never advance the need.

JULY 18: Mr. Slattery was speaking on behalf of his father who is the owner of their family business Slattery Real Estate and General Contracting. Most of the properties they have developed they have tried to do in the character and style of the City of Newton that they think is best. He asks the Committee to vote for the moratorium because every needs the same rules. Peoples investments in their homes are the biggest they will ever make. Developers putting in large scale projects can have a detrimental effect on their livelihood and investment. Newton has the public transportation system it has not the one they wish they had. The most development should be along the Green line if they are hoping to focus on transit. There also needs to be enough parking for a large scale project for the commuters as well as the businesses. The Newtonville area developments do not provide enough parking. Small businesses will be put out of business as they will not be able to survive and won't be able to afford the rents that bigger chains can.

**Lynne LeBlanc, 43 Brookdale Road**

JUNE 27: Ms. LeBlanc said the push for density in Newton is renewed with the Mayor's newly released Housing Strategy but it incorporates the same unsuccessful policies seen in so many other cities – the belief that more housing will equal lower cost. This oversimplified equation does not work in real estate. The building boom in many cities results in higher land costs, which translate into higher real estate costs, which translate into less rather than more affordable housing. To mitigate these costs, the most popular strategies are building more affordable or subsidized housing. The buyer or the renters of the market rent units subsidize those costs. This entices builders to build more expensive housing. Naturally affordable housing is eliminated in favor of

new, unaffordable housing. This is the case for Orr Block and Court Street where 9 units that were affordable were torn down for more expensive units. How does it makes sense to displace residents then claim victory for subsidized units that those residences either which do not qualify or cannot afford without a subsidy. Affordable housing should only start to count after lost, naturally affordable housing is replaced. Using Court Street as a model that would mean replacing the 9 units at \$800-\$1200/month for one and two bedroom apartments, renting them at the same rate and only then tabulating the 20% affordable or subsidized units, otherwise this is nothing but a shell game. There is little room for Newton's middle-income residents who can't afford the high costs or don't qualify for subsidy. This does not allow for an economically diverse population. A more inclusive and comprehensive view of zoning in Newton is needed and this moratorium would allow time for consideration of that. The Mayor has engaged with developers, builders, etc. but only minimally with the residents of the City. The residents need to be included. There is little to no planning done relative to infrastructure. Unplanned growth in these areas will drive up taxes and make it less affordable to only the wealthy or the subsidized. Adam Greenfields "Against the Smart City" notes that problem solving should not come from top-down but rather inclusive strategies respectful to residents and businesses. This is an opportunity for Newton to lead with innovations other than build. She urged a vote in favor of the moratorium.

**John Koot, 430 Winchester Street**

JUNE 27: Mr. Koot said that planners plan, developers develop and residents reside. That is important to remember because when the planners and developers that finish their work it's the residence who have to live with their work. Any flaws in that process will be experienced by residents over many years. This is why there is such interest in what the planners and developers have in mind and want some input in what will be developed. This is the reason for the moratorium. It is high time to involve the residents in the area of any large zone change to let them weigh in.

**Chris Pitts**

JUNE 27: Mr. Pitts's comments were also submitted in writing and are attached.

**Chris Markiewicz**

JUNE 27: Mr. Markiewicz's comments were also submitted in writing and are attached.

**Amy Wayne, 1616 Centre Street**

JUNE 27: Ms. Wayne feels the moratorium is important for the vast silent majority whose voice has been under the radar. With the start of all these projects there is great concern. There is now a push in Newton Highlands by residents to have a historic district because they don't want to see the character of the village center ruined. Contributions are coming in because people are concerned. Time is needed for the vast voters in Newton who have not been aware of what has been going in. They are not starting to wake up to what is going on and the City Council needs their input.

**Ron Mauri, 35 Bradford Road**

JUNE 27: Mr. Mauri said he wanted the committee to think about the changes in individual projects and the traffic problems. Is there a plan? The Newton in Motion project does not show anything about traffic trends or lists of streets that are congested and are rolling parking lots. That information is needed for a plan. He reported that the traffic problems in Newton have gotten progressively worse in the 40 years he has lived here. Why has that happened? The Committee should find out. He suggested the Planning Department provide data on the traffic trends. The School department documents the contribution of development to enrollment and shouldn't the City do the same when it comes to a special permit or zoning change. He felt they should. It is time to pay more attention to externalities. People are affected by things you are doing even though they are not party to the decision. From the Fact Book of Newton in Motion, Mr. Mauri said there is a quality of life question and of the 86 responses only 3 are listed. It states "traffic is ruining quality of life" "it's a time suck, road rage, air pollution". "Slow growth in the City. Every development brings more cars." The time cost to Newton residents because of traffic problems is an issue and it's time to take into account the full cost of what is going on. It's not just the benefits of additional housing, but what it's doing to lives.

**Mike Vahey, 33 Stanley Road**

JUNE 27: Mr. Vahey said he did not support the petition. A moratorium is a bit much and having someone 1000 feet away decide what is happening is too much as well. It should be limited to direct abutters. He does rental and development and what happens is there is a generation of older people who have lived here a long time, selling their home and asking top dollar. They are making out very well. Renters are a mix of those who can't afford to be in Boston so the younger generation gravitates to Newton for that reason. They are here for jobs but when the job ends they are gone. You can't take the City and put it in a snow globe. Times are changing and housing needs are changing. He can never picture a time that it was middle class in Newton. It has always been pretty affluent. Asking to "keep" the diversity is a reality that never really happened.

**Susan Reiser 11 Claflin Place**

JUNE 27: Mr. Reiser said in the past 6 six weeks 1,912 have signed a petition to stop the Orr Block project. The vast majority are the result of face to face interaction with citizens who are registered voters and are a good cross section of ages, renters, owners, retirees, workers, long time residents and newcomers. They come from all over Newton on this petition. She supports the moratorium because the comments on that petition had to do with Austin Street. Why would there be a newer, bigger development when Austin Street hasn't been built yet and the effect is unknown. The petitioner's heartfelt comments confirm that the residents are concerned about the overcrowding of schools and streets and the loss of village character. The moratorium will help us find out how to preserve what we love about Newton.

Councilor Hess-Mahan accepted a motion to close the public hearing with 5 voting in favor, none opposed. The public hearing was closed.

#### Committee Comments

It was unclear to some what the relationship was between the petition and the comments. Mr. Harrington said the issues have arisen from the rush to change zone. Since this Committee sets the tone and pace for development, the petitioners are asking it to slow down to hear more from the community before allowing zone changes in order to allow denser development. The Chair reminded that Mr. Harrington that the Land Use Committee hears the projects, and not the Zoning & Planning Committee.

The issues raised were many and varied and trying to roll that up into a moratorium on zone changes may not be the appropriate way to handle them.

The Committee appreciated the residents coming forward to express their concerns and helping raise the issues. Some felt the City was already moving extremely slow on housing and it has been a long and arduous process.

Some members felt that there was a relationship between the moratorium and the issues raised. The idea of slowing things down is compelling and since they just received the suggestions for the housing strategy, the conversations need to continue. It was hoped the Housing Strategy and Zoning Reform would address some of these issues.

It was asked what the time limit would be on this moratorium. It was explained that the request had been for the moratorium to end no sooner than December 31, 2017.

Many Councilors agreed with many of the sentiments expressed in the public hearing. They want development to be undertaken responsibly and trees to be preserved among other things. However, the power to zone may not be delegated to private citizens as was pointed out in the Law Department memos. Peter Harrington, however, had some opinions contrary to that judgment.

The Chair asked for comment from the Law Department. Maura O'Keefe, Assistant City Solicitor explained that a moratorium would have to be pursuant to a specific planning purpose and there is not one presented. More importantly, however, is that the request that has been made is an impermissible delegation of authority. The statute is very clear in Chapter 40A that the power to zone has been vested with the City Council and cannot be delegated to residents. (Please refer to the attached memos for more details). There are also procedural issues with the petition. Section 10-2 of the City Charter, the vehicle which was used to submit this proposal, is very broad and in its entirety states:

*"Section 10-2. Group Petitions; Action Required. The city council or the school committee shall hold a public hearing and act with respect to every petition which is addressed to it,*

*which is signed by at least 50 voters, and which seeks the passage of a measure. The hearing shall be held by the city council or the school committee or, in either case, by a committee or subcommittee of either the city council or school committee and the action by the city council or school committee shall be taken not later than 3 months after the petition is filed with the city clerk. Hearings on 2 or more petitions filed under this section may be held at the same time and place and the city clerk shall mail notice of the hearing to the first 50 certified signers whose names appear on each petition at least 48 hours before the hearing. Notice by publication of all such hearings shall be at public expense."*

M.G.L. Chapter 40A provides very specific requirements under which a zoning amendment must be submitted, noticed, heard and voted along with required timelines.

<https://malegislature.gov/Laws/GeneralLaws/PartI/TitleVII/Chapter40A/Section5>

The provisions of Section 10-2, as noted above, do not demand those requirements. The only proper vote on this request would be No Action Necessary.

A Councilor noted that there is a provision in Chapter 40A which allows 10 registered voters to submit a petition for a zone change to be considered. Residents could also ask a Councilor to docket the item. So while the petition could be re-submitted through the proper channels and follow the requirements of Chapter 40A procedurally, the delegation of authority issue would remain and would still be improper and impermissible.

It was noted in the Law Department memo that "...Giving neighboring landowners who are unbounded by any official duty unrestricted authority to prohibit particular use of land in question was repugnant to the due process clause of the 14<sup>th</sup> Amendment. " This could be very chaotic and it is best to leave the decisions to the City Council who are elected to represent the residents. If the residents do not think they are being represented well, they have the option at the voting booth to change that.

A Committee member noted that many good issues were raised, but the remedy being requested would not solve those issues. Many of the issues can be changed through the special permit and Land Use process. To summarize:

- The Mayor must have misspoken on the data relative to single-family homes because that date has been available since the fall.
- The Committee members who have served on Land Use know that much of what was requested in the public hearing happens in the Land Use process. Each project is weighed, measured and reviewed on its own merits based on the requirements of the zoning ordinance. The comment that development is unfettered is not accurate as all projects are vetted through the Land Use project and the zoning ordinance.
- The transit related issues definitely need work and that should be continued to be raised with Massachusetts DOT. The Newtonville bus is well used, but the train station definitely needs help.

- Trees are an issue and the ordinances and requirements have recently been changed in order to make it harder for developers to cut trees down.
- The issue of stability was interesting as many people feel a Council of 24 is difficult and too big, so asking all the residents within 1000 square feet of a project would be unwieldy and stability would not be gained.
- As for the recent slate of up-zonings, those 3 or 4 were scheduled together for ease of scheduling and they were all the requests that have come in for the year, outside of the special permit process.
- Footbridges are a wonderful idea and one across Route 9 to connect the Chestnut Hill Square and The Street would have been wonderful but requests to the developers went unanswered. More should be implemented.
- Multi-modal transportation is exactly what is needed and hopefully the ongoing Transportation Study will suggest something along those lines.

A Committee member said that many issues that were raised in public comment were beyond the scope of this petition but better notification is something that could be worked on and perhaps that would help with some of those issues.

The Chair noted that the project in Newtonville on the Orr Block seemed to be the genesis of this item. He reminded everyone that there is a process and a forum to be heard on the rezoning of that parcel as well as the special permit for the project in the Land Use Committee. That opportunity will not be denied. There is a remedy if 20% of neighbors object to the rezoning which would then require a  $\frac{3}{4}$  vote of the City Council (18 votes) instead of a  $\frac{2}{3}$  vote (16 votes).

Councilor Yates felt that if a purpose for the moratorium were stated that the Committee could move this forward if submitted in proper form. The zone change for the Orr Block could be turned down and the project could be changed to suit the current zoning and better suit the neighborhood. A presentation was given in Land Use Committee showing the project with and without the zone change. He felt this could be re-drafted and re-filed for appropriate action.

Councilor Albright moved No Action Necessary. The Committee voted in favor with Councilor Yates abstaining.

Chairman's Note: Councilor Hess-Mahan reminded the Committee members to submit to the Committee Clerk or James Freas those interim zoning items they would like to see addressed in the coming months.

Meeting adjourned.

**Respectfully Submitted,**

**Ted Hess-Mahan, Chair**

**LAW DEPARTMENT MEMORANDUM**

TO: Councilor Hess-Mahan, Chair, Zoning and Planning Committee

CC: Members of the Zoning and Planning Committee

FROM: Marie M. Lawlor, Assistant City Solicitor

RE: Docket Item #182-16  
Citizens Petition Requesting a Moratorium to Prohibit Zone Changes without Written Approval of a Majority of Landowners within 1000 Feet

DATE: June 24, 2016

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Docket Item #182-16, a Citizens Petition filed pursuant to Section 10-2 of the City Charter, requests the City Council to establish a moratorium to prohibit zoning district changes without the written approval of a majority of the landowners within 1000 feet of the land proposed to be re-zoned. You have asked my opinion as to whether such a prohibition would be valid.

**Issue**

Would a zoning ordinance establishing a moratorium during which a change of the zoning district applicable to any land in Newton would be prohibited without the written approval of a majority of landowners within 1000 feet be valid?

**Short Answer**

No. Such a prohibition, which gives final authority over approval or disapproval of a zoning amendment to surrounding landowners, would constitute an improper delegation of zoning authority to private citizens, and would be in direct conflict with the Zoning Enabling Act, M.G.L. c. 40A as well as the due process clause of the 14<sup>th</sup> Amendment.

**Discussion**

The power to zone stems from the police power reserved to the Commonwealth by the Massachusetts Constitution. Under the Home Rule Amendment, the police power, including the zoning power and certain other state powers may be directly exercised by the municipalities of the Commonwealth. In Massachusetts, the zoning authority of cities and towns is regulated by G.L. c. 40A.



It is well settled law that the police power of local governments, including the power to zone, may not be delegated to private citizens. In *Washington ex. rel. Seattle Title Trust Co. v. Roberge*, 278 U.S. 116 (1928) the U.S. Supreme Court invalidated a municipal zoning ordinance permitting a particular use of land only if more than one-half of the landowners within a particular distance approved. The Court stated that giving the neighboring landowners, who are unbound by any official duty, unrestricted authority to prohibit the particular use of land in question was "... repugnant to the due process clause of the 14<sup>th</sup> Amendment." 278 U.S. 166, 172. See e.g. *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116 (1982) (Massachusetts statute that vested in the governing bodies of churches and schools unrestricted power to veto issuance of liquor licenses within a 500 foot zone is improper delegation of police power to private parties).

M.G.L. c. 40A provides strict procedures for municipal approval of zoning amendments, including amendments to zoning districts. Section 5 of the statute clearly states: "Zoning ordinances or by-laws may be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided." [Emphasis supplied]. The procedure for approval is spelled out in the section:

No zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the ... city council ...

Section 5 does, however, provide some relief for neighboring landowners. If, in cities such as Newton with a council of fewer than twenty-five members, "... owners of more than twenty percent of the land proposed to be included in the zoning change or of the area of the land immediately adjacent extending three hundred feet therefrom ..." file with the City Clerk a written protest with their reasons against the change prior to final action by the City Council, then the amendment may only be approved by a three-quarters vote of the City Council, rather than two-thirds. In Newton, a two-thirds vote would require sixteen votes; a three-quarters vote would require eighteen votes. The City Council, however, retains the final authority to approve or disapprove the zoning amendment.

### **Conclusion**

To the extent that Citizen's Petition, Docket #182-16, seeks, during the period of a proposed moratorium, to delegate the final approval of a zoning amendment (in this case a change in zoning district) to a majority of landowners within a thousand feet of the land proposed to be re-zoned, it calls for an improper delegation of the City of Newton's zoning authority to private citizens. In my opinion, any ordinance proposing such a delegation, whether the delegation is contained in a temporary zoning ordinance (a moratorium) or a permanent zoning ordinance would be in direct conflict with M.G.L. c. 40A and the due process clause of the 14<sup>th</sup> Amendment.

**LAW DEPARTMENT MEMORANDUM**

TO: Councilor Ted Hess-Mahan, Chair  
Zoning and Planning Committee

CC: Members of the Zoning and Planning Committee

FROM: Ouida C.M. Young, Deputy City Solicitor

RE: Docket Item #182-16  
Citizens Petition Requesting a Moratorium to Prohibit Zone Changes  
without Written Approval of a Majority of Landowners within 1000 Feet

DATE: July 15, 2016

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You've asked whether a group petition filed pursuant to sec. 10-2 of the City Charter can amend the Zoning Ordinance. The question is raised in the context of Docket Item #182-16, a group petition filed pursuant to sec. 10-2 of the City Charter. The group petition requests the City Council establish a moratorium to prohibit zoning district changes without the written approval of a majority of the landowners within 1000 feet of the land proposed to be re-zoned.

**Short Answer and Discussion**

No. As noted in the June 24, 2016 memorandum from Assistant City Solicitor Lawlor, a moratorium is a temporary zoning amendment which can only be adopted in accordance with the requirements of sec. 5 of G.L. c. 40A. With the exception of Boston, G.L. c. 40A, sec. 5 controls the procedure to be followed for the adoption and/or amendment of zoning ordinances or by-laws throughout the Commonwealth of Massachusetts. In accordance with the General Laws, sec. 7.2 of Newton's Zoning Ordinance states that all amendments to the Zoning Ordinance are to be undertaken pursuant to G.L. c. 40A, sec. 5, and further provides in sec. 7.2.B. that "any person making application to the Board of Aldermen for a change in this Chapter shall pay to the City Clerk at the time of filing such application...." a fee set out in sec. 17-3 of the City Ordinances, *i.e.*, \$350.00.

Section 5 of Chapter 40A identifies both who can file a zoning ordinance or by-law amendment and what happens when the zoning amendment petition is filed. While sec. 5 does allow, among others, 10 registered voters in a city to file a petition requesting an amendment to that city's zoning ordinance, sec. 5 requires the city council submit the requested amendment to the planning board within fourteen days of receiving the requested amendment.

Submission of the requested amendment to the planning board is a critical step in terms of amending zoning ordinances or by-laws. While both the city council and the planning board must hold public hearings, either together or separately, on the requested amendment, the city council cannot act on the requested amendment until the planning board has either submitted its recommendations to the city council, or 21 days following the close of the planning board's public hearing have elapsed.

An equally critical step in terms of adopting a zoning amendment is the requirement in sec. 5 for various notices to be published, posted, or mailed prior to the public hearing before either the city council or the planning board. These notices include a notice published in a newspaper of general circulation in the city "once in each of two successive weeks, the first publication to be not less than fourteen days before the day of said hearing." The notice also must be posted "in a conspicuous place in the city ... hall for a period of not less than fourteen days ..." before hearing. Finally, the notices must be mailed to the Massachusetts Department of Housing and Community Development, the regional planning agency, if there is one, and the planning boards of all abutting cities and towns.<sup>1</sup> The information to be included in these legal notices is also prescribed by sec. 5.

While group petitions filed pursuant to sec. 10-2 of the City Charter would satisfy the requirement that 10 voters may file a request for a zoning amendment, the Charter has no requirement that the planning board hold any public hearing on a group petition. And to the extent that there is any requirement in the Charter regarding notice of the public hearing on the group petition, it is simply that the City Clerk "mail notice of the hearing to the first 50 certified signers whose names appear on each petition at least 48 hours before the hearing." While sec. 10-2 also appears to have some requirement that there be a published notice at "public expense", the Charter is silent as to the information to be contained in the notice, or when or how the notice is to be published.

Finally, given that sec. 10-2 does not require that the City Council adopt measures proposed by group petitions by any particular vote, such measures could be adopted by a simple majority vote of those present and voting. *See*, sec. 2-6(b) and sec. 11-13. In contrast, sec. 5 of Chapter 40A requires zoning amendments be approved by a 2/3rds vote of all members of a city council (or a 3/4ths vote if there is a protest filed as to a map change amendment.)

Accordingly, for the reasons stated above, a group petition filed pursuant to sec. 10-2 of the City Charter does not satisfy the procedural requirements set out in sec. 5 of Chapter 40A for amending a zoning ordinance and cannot be used to amend the Newton Zoning Ordinance.

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<sup>1</sup> Non-resident property owners can also pay to receive notice of all zoning amendment petitions, and notice must also be given to the Commonwealth's farmland advisory board if the zoning amendment involves agricultural or aquacultural practices.

# **Petition for A Moratorium on Rezoning**

**Neighbors for A Better Newtonville  
Presentation to the City of Newton  
Zoning and Planning Committee**

**June 27 2016**

# Why This Petition?

- Winds of development are strong
  - 76 properties listed
  - 12 in process
  - 21 parking lots
- Comprehensive Plan and Mayor's new report — clearly in favor of
  - Housing diversity
  - Careful planning process
  - Learn as you go
  - Preserve what's good
- We support these goals

# Why This Petition?

But...

- Developers will come in as soon as they can
- Consequences of development can be seriously negative — should be explored first
- Mayor's report wants to place decision-making in hands of administrators.
- Slow down — stay within current zoning limits and keep the City Council as an active participant
- That's why our petition.

# **The Petition**

The undersigned voters of the City of Newton petition the Newton City Council to adopt the following measure:

**The Newton City Council shall establish a Moratorium to prohibit the change of the Zoning District applicable to any land in Newton, without the written approval of a majority of the owners of land within 1,000 feet of the land contained in said proposed changed Zoning district.**

# Among Topics We Will Talk About

- Jurisdiction of the Council
- Rationales for development — sometimes faulty
- Impacts of development on city and residents



# **The Council Does Have The Authority**

# Results To-Date from Orr Block Petition

Since mid-May, petitioners have gathered 1912 signatures — online and on paper — to request the City Council deny rezoning of the Orr Block parcel:

1577 Paper signers

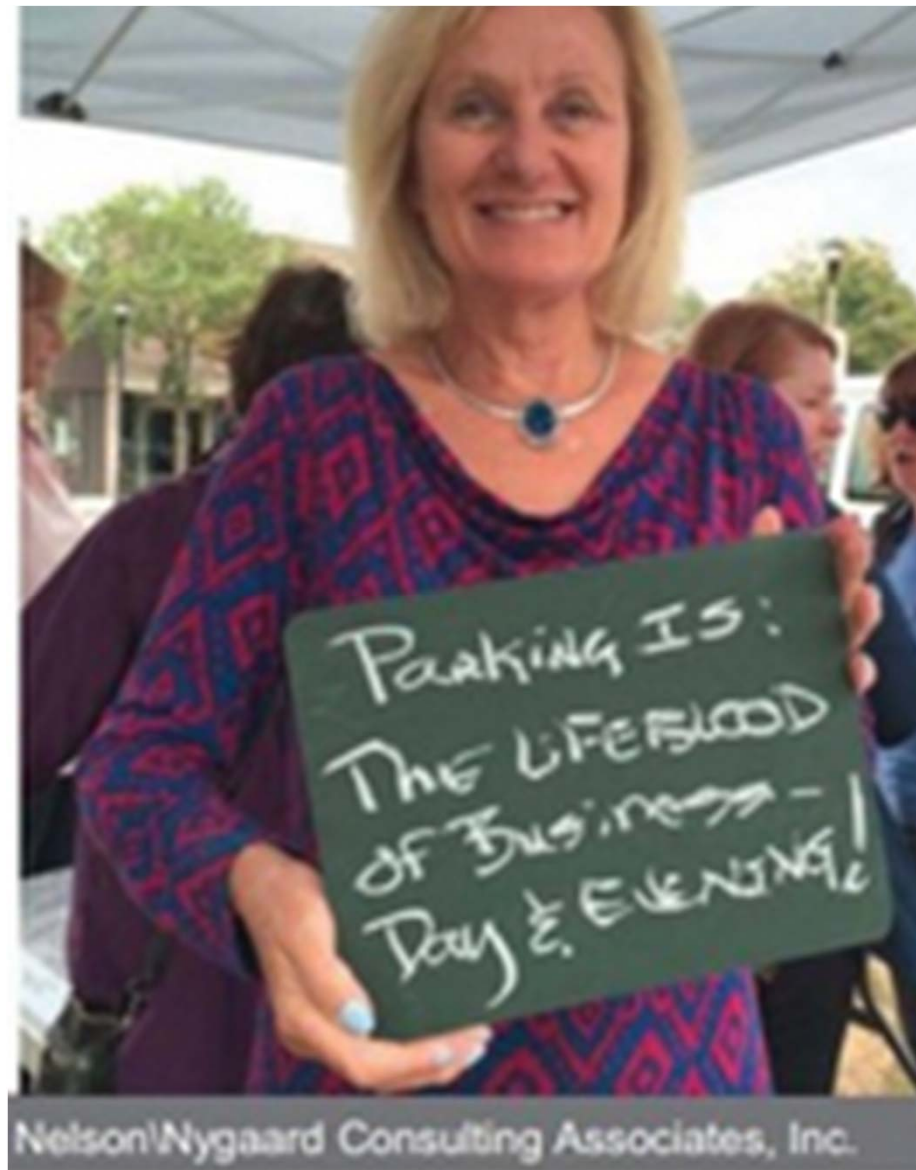
323 Online signers

See petition at  
[www.betternewtonville.org/petition](http://www.betternewtonville.org/petition)

# Important Topics for Further Discussion

- Transit Oriented Development — correct understanding
- MU4 Districts
- Village and neighborhood input of small project 40B developments
- Citizen involvement in establishing municipal goals
- Rethinking the purpose of Special Permit permission for expansion.
- Rethinking the purpose of allowing parking waivers and their impact on the village.

# Parking is the Lifeblood of Business



# The 85% Rule

- When 85% of spaces are taken, drivers are likely to abandon the area rather than wait for parking

# Walnut Street Between Washington and Foster — Winter Scene



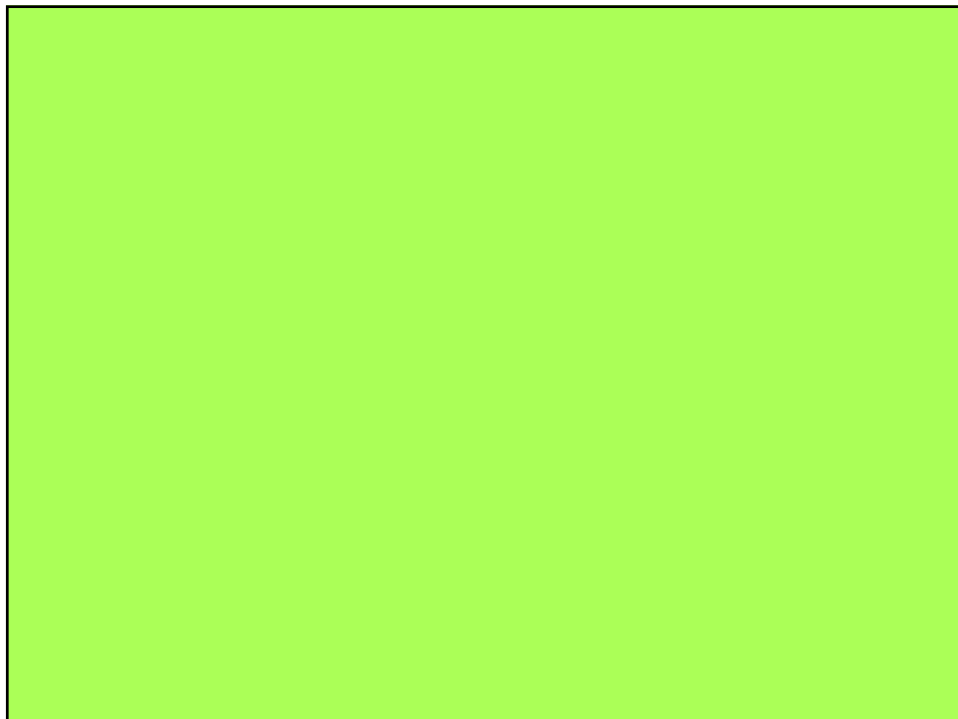
## Around Newtonville Center

- Currently, available parking can accommodate about 45 more vehicles.
- But new construction will add 177 more vehicles.
- About four times more than current system can bear.

# **Petition for A Moratorium on Rezoning**

**Neighbors for A Better Newtonville  
Presentation to the City of Newton  
Zoning and Planning Committee**

**July 18 2016**



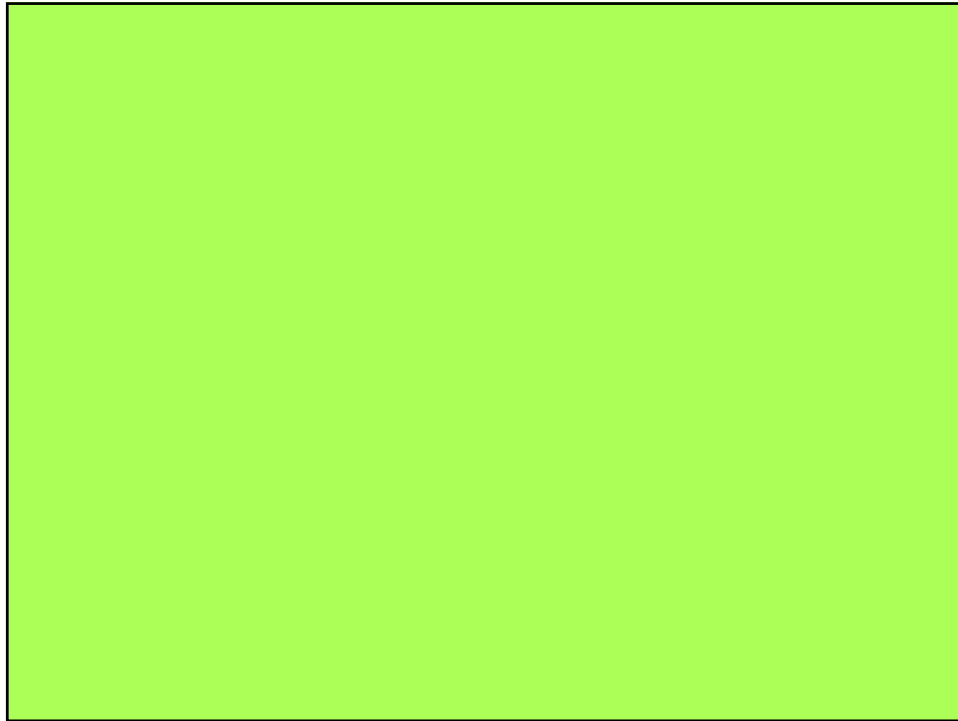


Measure Twice  
Cut Once



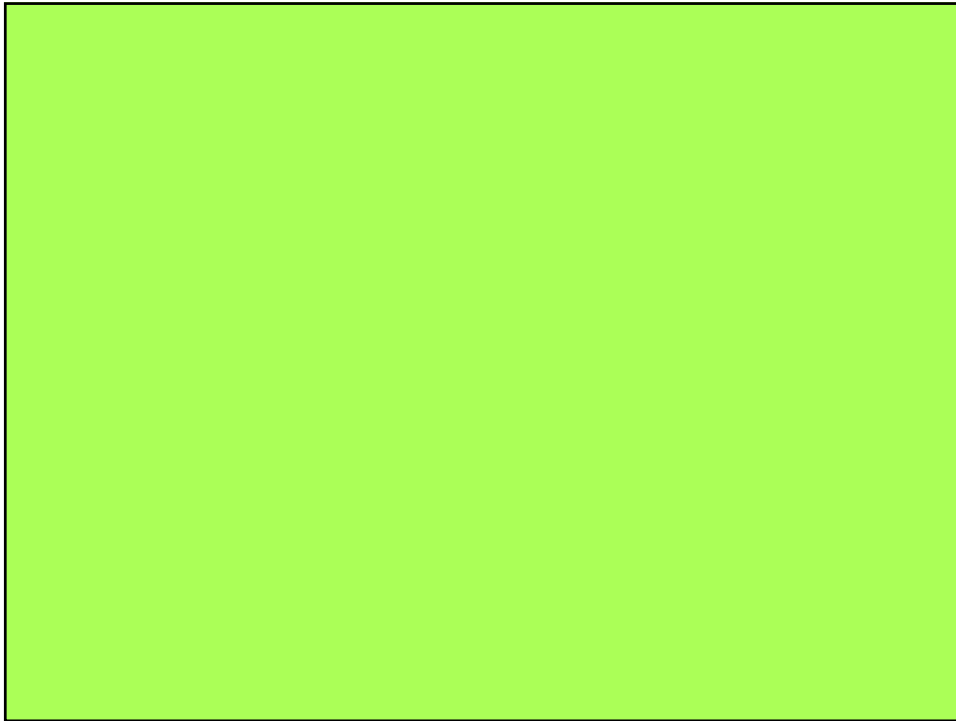
Marry in Hastē  
Repent at Leisure





## **Highlights from Last Time**

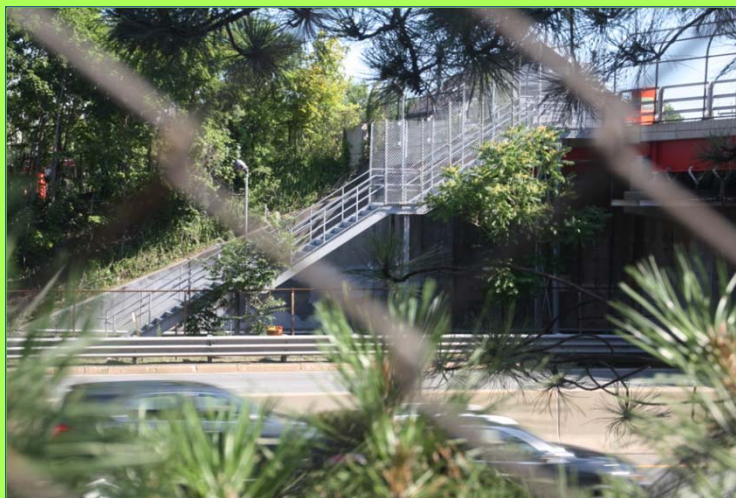
- Widespread concern
- Affordable housing
- Traffic and parking
- Fiscal costs to the city





Commuter  
Station

Commuter Station



## Green Line Station



## Characteristics of BU1 and BU2

- Low to moderate **density**
- Businesses serve **local** customers
- Buildings are **low-rise** — contain both residential and commercial units

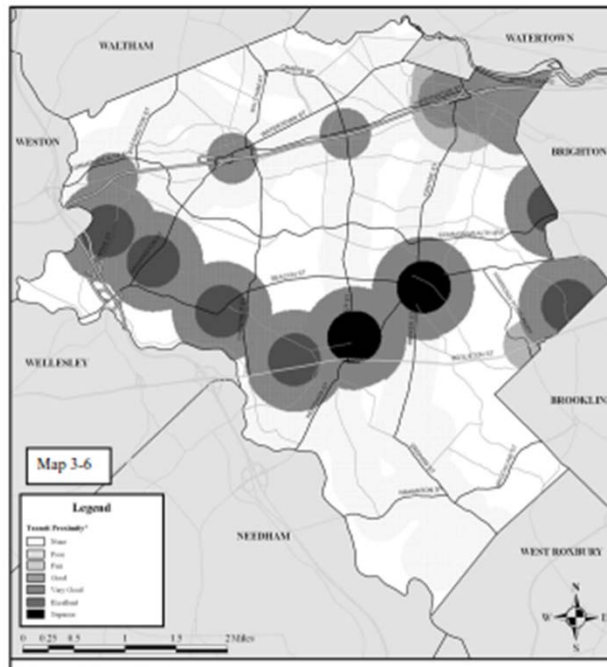
**Green Line  
Stops Qualify as  
Transit  
Neighborhoods**

Source:  
Comprehensive  
Plan

Darkest = G line  
with bus

Next = G line (bus  
status not clear)

Next = Express bus  
or G line w bus  
@1/2 mile



## Key Characteristics of a 'Transit Neighborhood'

<b><i>Transit modes</i></b>	Includes MBTA trolley/subway and bus
<b><i>Peak frequency of transit</i></b>	15-30 minutes
<b><i>Land use mix and density</i></b>	Low- to moderate- residential uses
<b><i>Retail characteristics</i></b>	Primarily serves local area
<b><i>Major planning and development challenges</i></b>	Integrating moderate-density housing and local-serving retail

Source: TOD202 Station Area Planning manual

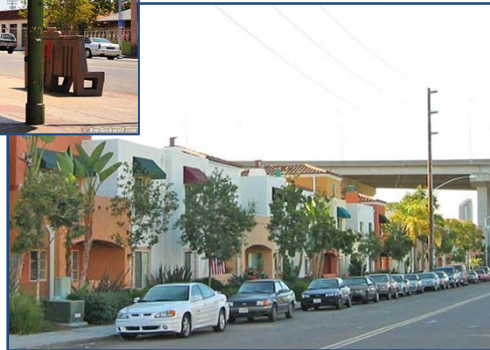


## Appropriately Developed Transit Neighborhood



Business is LOCAL

LOW-RISE buildings



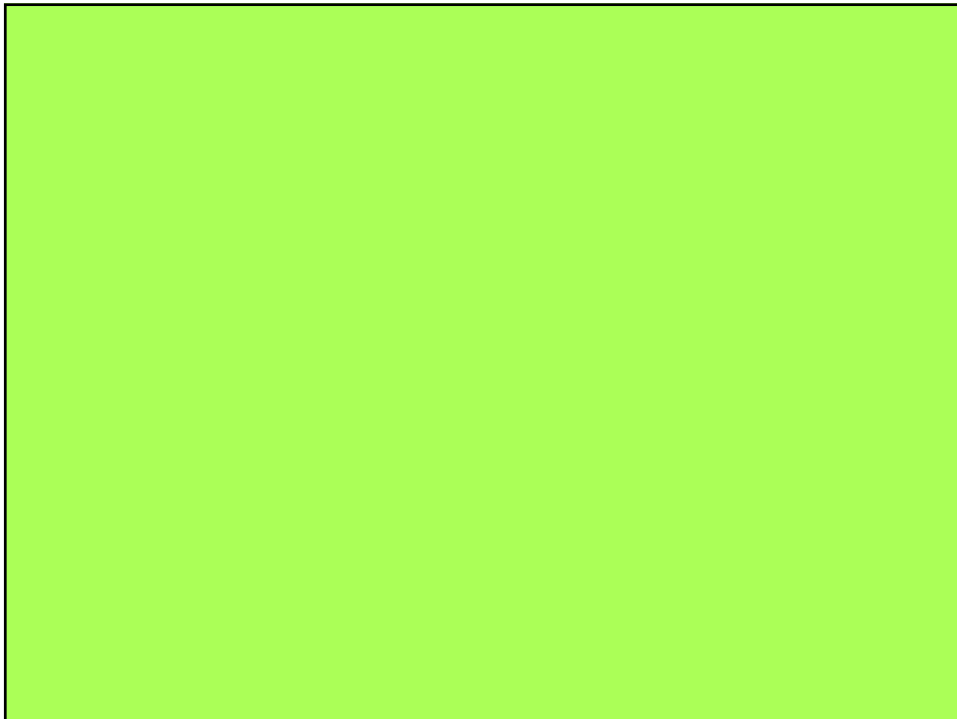
## Appropriately Developed Transit Neighborhood (cont'd)



‘Transit Neighborhood’ development  
is already allowed by BU1 and BU2

MU4 zoning is inappropriate and  
unnecessary.

This is why we are asking for a  
moratorium on rezoning.







MEMORANDUM

Date June 26, 2016

To the Zoning and Planning Committee

From: Peter F. Harrington

re: Legal Authority to Approve the Citixen Petition for a Moratorium

For every question, lawyers can provide at least two answers, one for and one against. On the question of your authority to declare this moratorium, the Mayor's Law Department says No. I say Yes. You do have the authority to declare a moratorium. Your authority comes from the Home Rule Amendment, Article 89 of the Massachusetts Constitution, Section 1.

You also have the authority to provide conditions to the moratorium, such as a condition to lift the moratorium if requested by a majority of the voters in a defined area.

Chapter 40A, footnote in Section 1, says, in part, "The purposes of this act are to facilitate, encourage, and foster the adoption and modernization of zoning ordinances and by-laws by municipal governments in accordance with the provisions of Article 89 of the Amendments to the Constitution and to achieve greater implementation of the powers granted to municipalities thereunder. ..."

This statement is a most unusual expression of legislative intent and supports the position for your authority.

This expression of legislative intent is in conflict with the Mayor's Law Office claim that In Massachusetts, the zoning authority of cities and towns is regulated by G.L. c. 40A.

If you are opposed to the Moratorium I ask you to consider the rights you are surrendering before you accept the argument from the Mayor's Law Office. If you agree with the Petitioners, please support our argument. I will leave some supplemental papers with the Clerk.

Thank you.

## CITY COUNCIL AUTHORITY TO DECLARE A MORATORIUM

In 1974 the Joint Committee on Urban Affairs recommended, and the Massachusetts Legislature passed, a comprehensive revision of MGL c. 40A. After approval by both the Senate and the House, the Bill, including amendments and the marked up copy, was sent to the Engrossing Division to prepare a clean copy for signature by the Speaker, Senate President and the Governor. The Bill was physically removed from the Engrossing Division, a secure and locked room, and disappeared. It was too late in the year to reconstitute the legislation and have it approved.

In 1975 it was rumored that Senator John Bulloch of Arlington was the culprit. He also had additional language he wanted inserted in the Bill to guaranty that the legislation would not inhibit the rights of Cities and Towns, under Article 89 of the Amendments to the Constitution, to maintain control over their rights to enact any zoning laws they deemed appropriate.

The Bill was refilled in 1975, Senate Counsel was able to prepare language to satisfy Senator Bulloch. After adding Section 2A to what became chapter 808 of the Acts of 1975, the Bill was passed and signed into law. Section 2A is often identified to as one of the outside sections as it is included in the Acts & Resolves of 1975, but is referred to as an outside section and is included as a footnote under Section 1 of c.40A.

I mention the above as an historical comment to what is an unusual and remarkable expression of legislative intent. Section 2A is an expression of legislative intent concerning 40A and it supports the position that a fair reading of the complete Act (808 of 1975) leads to the conclusion that the restrictions imposed in 40A are minimum guidelines as to the local zoning controls and municipalities have a wide latitude, under Article 89 of the Amendments to the Massachusetts Constitution, to vary them.

Section 2A says, in part, "The purposes of this act are to facilitate, encourage, and foster the adoption and modernization of zoning ordinances and by-laws by municipal governments in accordance with the provisions of Article 89 of the Amendments to the Constitution and to achieve greater implementation of the powers granted to municipalities thereunder. ..."

The purloined Bill prompted a great discussion about the changes brought about by Article 89. Among those interested in the theory of government, some likened it to the Declaration of Independence because of its wide ranging change in the concept of the origin of governmental powers. (see Article II. Section 1. Right of Local Self-Government)

The Petition before the Zoning and Planning Committee is an exercise of those rights reserved under Article 89.

Chapter 40A, Section 5, fifth paragraph, sets guidelines concerning the number of members of the City Council required to approve a change of zoning district.

The Item before ZAP is related to the establishment of a Moratorium on changes of zoning districts for a temporary period of time (approximately one year), except in the case where a majority of the owners of land within 1,000 feet support the zone change.

A contrary interpretation would be to say that the City Council has no Authority to declare a moratorium on changes in zoning districts or if they do have that power they can not provide conditions on its use.

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**Articles of Amendment to the Constitution of the Commonwealth**

Article LXXXIX. Article II of the Articles of Amendment to the Constitution of the Commonwealth, as amended by Article LXX of said Articles of Amendment, is hereby annulled and the following is adopted in place thereof:

*Article II. Section 1. Right of Local Self-Government.* - It is the intention of this article to reaffirm the customary and traditional liberties of the people with respect to the conduct of their local government, and to grant and confirm to the people of every city and town the right of self-government in local matters, subject to the provisions of this article and to such standards and requirements as the general court may establish by law in accordance with the provisions of this article

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**Chapter 40A, Section 5**, fifth paragraph, provides:

No zoning ordinance or by-law or amendment thereto shall be adopted or changed except by a two-thirds vote of all the members of the town council, or of the city council where there is a commission form of government or a single branch, or of each branch where there are two branches, or by a two-thirds vote of a town meeting; provided, however, that if in a city or town with a council of fewer than twenty-five members there is filed with the clerk prior to final action by the council a written protest against such change, stating the reasons duly signed by owners of twenty per cent or more of the area of the land proposed to be included in such change or of the area of the land immediately adjacent extending three hundred feet therefrom, no such change of any such ordinance shall be adopted except by a three-fourths vote of all members.

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**PETITION TO THE NEWTON CITY COUNCIL UNDER  
ARTICLE 10 ~ §2 OF THE NEWTON CITY CHARTER**

The undersigned voters of the City of Newton petition the Newton City Council to adopt the following measure:

**The Newton City Council shall establish a Moratorium to prohibit the change of the Zoning District applicable to any land in Newton, without the written approval of a majority of the owners of land within 1,000 feet of the land contained in said proposed changed Zoning District.**

**The Moratorium shall not expire sooner than December 31, 2017**

**The City Council shall publish such notice as is required to take action on this proposed Moratorium within twenty days of receipt of this Petition.**

**Articles of Amendment to the Constitution of the Commonwealth**

Article LXXXIX. Article II of the Articles of Amendment to the Constitution of the Commonwealth, as amended by Article LXX of said Articles of Amendment, is hereby annulled and the following is adopted in place thereof:

*Article II. Section 1. Right of Local Self-Government.* - It is the intention of this article to reaffirm the customary and traditional liberties of the people with respect to the conduct of their local government, and to grant and confirm to the people of every city and town the right of self-government in local matters, subject to the provisions of this article and to such standards and requirements as the general court may establish by law in accordance with the provisions of this article.

*Section 2. Local Power to adopt, revise or amend Charters.* - Any city or town shall have the power to adopt or revise a charter or to amend its existing charter through the procedures set forth in sections three and four. The provisions of any adopted or revised charter or any charter amendment shall not be inconsistent with the constitution or any laws enacted by the general court in conformity with the powers reserved to the general court by section eight.

No town of fewer than twelve thousand inhabitants shall adopt a city form of government, and no town of fewer than six thousand inhabitants shall adopt a form of government providing for a town meeting limited to such inhabitants of the town as may be elected to meet, deliberate, act and vote in the exercise of the corporate powers of the town.

*Section 3. Procedure for Adoption or Revision of a Charter by a City or Town.* - Every city and town shall have the power to adopt or revise a charter in the following manner: A petition for the adoption or revision of a charter shall be signed by at least fifteen per cent of the number of legal voters residing in such city or town at the preceding state election. Whenever such a petition is filed with the board of registrars of voters of any city or town, the board shall within ten days of its receipt determine the sufficiency and validity of the signatures and certify the results to the city council of the city or board of selectmen of the town, as the case may be. As used in this section, the phrase "board of registrars of voters" shall include any local authority of different designation which performs the duties of such registrars, and the phrase "city council of the city or board



of selectmen of the town" shall include local authorities of different designation performing the duties of such council or board. Objections to the sufficiency and validity of the signatures on any such petition as certified by the board of registrars of voters shall be made in the same manner as provided by law for objections to nominations for city or town offices, as the case may be.

Within thirty days of receipt of certification of the board of registrars of voters that a petition contains sufficient valid signatures, the city council of the city or board of selectmen of the town shall by order provide for submitting to the voters of the city or town the question of adopting or revising a charter, and for the nomination and election of a charter commission.

If the city or town has not previously adopted a charter pursuant to this section, the question submitted to the voters shall be: "Shall a commission be elected to frame a charter for (name of city or town)?" If the city or town has previously adopted a charter pursuant to this section, the question submitted to the voters shall be: "Shall a commission be elected to revise the charter of (name of city or town)?"

The charter commission shall consist of nine voters of the city or town, who shall be elected at large without party or political designation at the city or town election next held at least sixty days after the order of the city council of the city or board of selectmen of the town. The names of candidates for such commission shall be listed alphabetically on the ballot used at such election. Each voter may vote for nine candidates.

The vote on the question submitted and the election of the charter commission shall take place at the same time. If the vote on the question submitted is in the affirmative, the nine candidates receiving the highest number of votes shall be declared elected.

Within [ten months] after the election of the members of the charter commission, said commission shall submit the charter or revised charter to the city council of the city or the board of selectmen of the town, and such council or board shall provide for publication of the charter and for its submission to the voters of the city or town at the next city or town election held at least two months after such submission by the charter commission. If the charter or revised charter is approved by a majority of the voters of

the city or town voting thereon, it shall become effective upon the date fixed in the charter. [See Amendments, Art. CXIII.]

*Section 4. Procedure for Amendment of a Charter by a City or Town.* Every city and town shall have the power to amend its charter in the following manner: The legislative body of a city or town may, by a two-thirds vote, propose amendments to the charter of the city or town; provided, that [1] amendments of a city charter may be proposed only with the concurrence of the mayor in every city that has a mayor, and [2] any change in a charter relating in any way to the composition, mode of election or appointment, or terms of office of the legislative body, the mayor or city manager or the board of selectmen or town manager shall be made only by the procedure of charter revision set forth in section three.

All proposed charter amendments shall be published and submitted for approval in the same manner as provided for adoption or revision of a charter.

*Section 5. Recording of Charters and Charter Amendments.* - Duplicate certificates shall be prepared setting forth any charter that has been adopted or revised and any charter amendments approved, and shall be signed by the city or town clerk. One such certificate shall be deposited in the office of the secretary of the commonwealth and the other shall be recorded in the records of the city or town and deposited among its archives. All courts may take judicial notice of charters and charter amendments of cities and towns.

*Section 6. Governmental Powers of Cities and Towns.* - Any city or town may, by the adoption, amendment, or repeal of local ordinances or by-laws, exercise any power or function which the general court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court in conformity with powers reserved to the general court in conformity with powers reserved to the general court by section eight, and which is not denied, either expressly or by clear implication, to the city or town by its charter. This section shall apply to every city and town, whether or not it has adopted a charter pursuant to section three.

*Section 7. Limitations on Local Powers.* - Nothing in this article shall be deemed to grant to any city or town the power to (1) regulate elections other than those



prescribed by sections three and four; (2) to levy, assess and collect taxes; (3) to borrow money or pledge the credit of the city or town; (4) to dispose of park land; (5) to enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power; or (6) to define and provide for the punishment of a felony or to impose imprisonment as a punishment for any violation of law; provided, however, that the foregoing enumerated powers may be granted by the general court in conformity with the constitution and with the powers reserved to the general court by section eight; nor shall the provisions of this article be deemed to diminish the powers of the judicial department of the commonwealth.

*Section 8. Powers of the General Court.* - The general court shall have the power to act in relation to cities and towns, but only by general laws which apply alike to all cities or to all towns, or to all cities and towns, or to a class of not fewer than two, and by special laws enacted (1) on petition filed or approved by the voters of a city or town, or the mayor and city council, or other legislative body, of a city, or the town meeting of a town, with respect to a law relating to that city or town; (2) by a two-thirds vote of each branch of the general court following a recommendation by the governor; (3) to erect and constitute metropolitan or regional entities, embracing any two or more cities or towns or cities and towns, or established with other than existing city or town boundaries, for any general or special public purpose or purposes, and to grant to these entities such powers, privileges and immunities as the general court shall deem necessary or expedient for the regulation and government thereof; or (4) solely for the incorporation or dissolution of cities or towns as corporate entities, alteration of city or town boundaries, and merger or consolidation of cities and towns, or any of these matters.

Subject to the foregoing requirements, the general court may provide optional plans of city or town organization and government under which an optional plan may be adopted or abandoned by majority vote of the voters of the city or town voting thereon at a city or town election; provided, that no town of fewer than twelve thousand inhabitants may be authorized to adopt a city form of government, and no town of fewer than six thousand inhabitants may be authorized to adopt a form of town government providing for town meeting limited to such inhabitants of the town as may



be elected to meet, deliberate, act and vote in the exercise of the corporate powers of the town.

This section shall apply to every city and town whether or not it has adopted a charter pursuant to section three.

*Section 9. Existing Special Laws.* - All special laws relating to individual cities or towns shall remain in effect and have the force of an existing city or town charter, but shall be subject to amendment or repeal through the adoption, revision or amendment of a charter by a city or town in accordance with the provisions of sections three and four and shall be subject to amendment or repeal by laws enacted by the general court in conformity with the powers reserved to the general court by section eight.

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# **CITY OF NEWTON MASSACHUSETTS**

## **COMMITTEE ON ZONING AND PLANNING**

Newton, MA

July 18, 2016

Docket            Item #182-16  
Citizen Petition Requesting a Moratorium to Prohibit Zone Changes

### **REQUEST FOR RELIEF**

**FACTS:**        Sufficient Newton Citizens have filed a Petition with the Newton City Council requesting a moratorium to prohibit zone changes. The Mayor's Law Department has raised a number of objections to the petition. The Newton Citizens seek relief from the objections so raised.

**First Argument:**        In the Law Department Memorandum dated June 24, 2016, the Mayor's Law Department has taken the position that the City Council is prohibited from approving the citizen's petition for a moratorium on zone changes because the safety release mechanism in the Moratorium allowing a waiver upon approval of the neighbors would be a violation of MGL chapter 40A and the 14<sup>th</sup> Amendment to the US Constitution.

I respectfully disagree.

a. The City Council has the authority to declare a moratorium or temporary ban on the change of zoning districts.

b The Petitioners provided a safety valve, that is, to allow a lifting of the ban under certain circumstances. This relief is not prohibited by MGL Chapter 40A. The Mayor's Law Department says the City Council does not have the authority to provide a safety valve.

**Request for Relief 1.**        Rather than become bogged down disputing this authority the Petitioners say that they will accept, as a friendly amendment, a motion to remove the offending safety valve language.

**Second Argument:**        In the Law Department Memorandum dated July 15, 2016, the Mayor's Law Department, says, c. 40A, §5 provides "Zoning ordinances or by-laws may be adopted and from time to time changed by amendment, addition or repeal, but only in the manner hereinafter provided. Adoption or change of zoning ordinances or by-laws may be initiated by the submission to the city council or board of selectmen of a proposed zoning ordinance or by-law by a city

council, a board of selectmen, a board of appeals, by an individual owning land to be affected by change or adoption, by request of registered voters of a town pursuant to section ten of chapter thirty-nine, by ten registered voters in a city, by a planning board, by a regional planning agency or by other methods provided by municipal charter. The board of selectmen or city council shall within fourteen days of receipt of such zoning ordinance or by-law submit it to the planning board for review."

The first issue is, does the responsibility for categorizing and classifying the nature and requirements of a Petition to the City Council fall upon the Petitioners or upon the City Council?

If it falls upon the Petitioners, how far do these obligations extend? How much of the administrative process will they control or influence? Where are the lines drawn and why?

It is my understanding that the City Council did not submit the Moratorium Petition to the Planning Board and as a result now wants to blame the Petitioners for this failure and dismiss the petition.

This raises the question of the proper assignment of Legislative obligations to third parties, in this case the Petitioner's. Is it the Council's position that the Petitioner's have the authority to require the Planning Board to hold a hearing and make a decision on their petition when the Commonwealth has assigned that authority to the local legislative body?

There is also the question of the downstream impact of the failure of the Legislature to perform its statutorily dictated obligations. In the instant case will the filing of the petition be treated as a nullity because of the inability of the City Council to take action on the Petition? Will the Petitioners be allowed to re-file the petition as an original petition and outside of any restriction imposed by statute or the Charter, such as in Article 10.3?

**Request for Relief 2.** The Petitioners request the filing of the Petition be declared a nullity and the Council order the Petitioner's to re-file the Petition.

**Third Argument:** The Mayor's Law Department also states that Newton Ordinance 7.2 of the Newton Zoning Ordinance requires any person filing for a change in the zoning ordinance must pay a fee of \$350.00 to the City Clerk, as set forth in Section 17-3 of the City ordinances. I suggest that the City Clerk, properly, did not ask for the payment of such a fee and the Petitioners should be excused from such payment.

- a. As precedent for this deferment of fee payment I point out that City Councilors routinely file petitions to change the City's Zoning ordinance and do not pay a fee.

b. Also, one can argue that c. 40A, §5 does not provide for fees and the requirement to pay a fee is in violation of the authority granted by §5 since “GL c. 40A, sec. 5 controls the procedure to be followed for the adoption and or the amendment of zoning ordinances or by-laws throughout the Commonwealth of Massachusetts.” Newton Law Department Memorandum, July 15, 2016.

c. The Petitioners should be excused from any such payment because under the City Charter (that takes precedent over Newton Ordinances) the petition was filed under Article 10, titled Free Petition. Applying the longstanding rule of law that that municipal ordinances should be read strictly against the municipality and liberally in the favor of the petitioner, the Charter statement that the Petition was a Free Petition can not be otherwise interpreted.

**Request for Relief 3.** The Petitioners request that the Council rule that petitions for a zone change file by Newton Citizens or landowners under the provisions of Article 10 of the Newton Charter or under a similar provision of state or federal law allowing free petition to the Newton City Council be excused from the requirement of paying fees set forth in Newton Ordinance Section 17-3.

**Fourth Argument:** The Newton City Council, under Article X, Section 5 of the Rules and Orders of the City Council, 2016-2017, has treated the imposition of limited moratoriums on certain matters subject to the provisions of GL c. 40A, §5 as an administrative matter when it authorized the refusal of certain applications or petitions that would inconvenience the schedule of the City Council.

Article X, Section 5 of the Rules and Orders of the City Council, 2016-2017, says, in part, “Due to the City Council's reduced summer schedule for meetings as well as the need to afford the public an opportunity to participate at the public hearing, the City Clerk shall not accept for filing a completed application for a proposed project that is classified as a Major Project during the period from June 1st through July 20th in any year. Due to the expiration of the two-year term for councilors at the end of every odd-numbered calendar year and the need for sufficient time for the Land Use Committee to review proposed projects and the Council to reach a decision regarding such projects, the City Clerk shall not accept for filing a completed application for a proposed project that is classified as a Major Project after the second Tuesday after the first Monday in September through November 15th during the last year of any term of the City Council.”

That same process can be applied to the Petitioners request and the matter can be treated as an administrative matter not subject to GL c. 40A, sec. 5

**Request for Relief 4.** The Petitioners request that the Council determine that their Petition for a Moratorium as a request to adopt a previous Council policy to declare a delay on the acceptance and receipt of Petitions for a change of Zone as an administrative

matter. The reasons for the delay are those that seem most appropriate to the Council, including, if the Council so deems, the need for time to review the recommendations and proposed significant changes expected in the Report of phase 2 of the Zoning Review being conducted by the Zoning and Planning Committee of the Newton City Council.

**Fifth Argument:** In dealing with various zoning matters and land use matters, the City Council has a policy that it extends to Developers and others to ask that one or both of the parties waive their rights to require action within a specified time and/or the time within which the City Council must act, proscribed by ordinance or statute. The purpose of this agreement for an extension is to allow certain other activities to take place or to give a longer time to consider the matter before the Council. The Newton Zoning Board of Appeals has a similar policy.

**Request for Relief 5.** The Petitioners in this matter request such an extension and further ask the City Council to refer the matter to the Planning Board and resolve the other outstanding issues raised by the Mayor's Law Department memoranda of June 24, 2016 and July 15, 2016.

The Petitioners in this matter say that if the Request for Relief 5 is granted they will waive Request for Relief 2 and Request for Relief 4.

By their Attorney

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July 18, 2016

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#182-16

A justification we hear for the alleged "need" to greatly expand housing units in Newton is the Metropolitan Area Planning Council (MAPC)'s projected regional growth in population, from their January 2014 report, "Population and Housing Demand Projection for Metro Boston."

MAPC provided two alternative scenarios for population and household growth from 2010 to 2040:

A "Status Quo" projection of a 6.6% population increase, and 17% increase in both households and housing units, based on "continuation of existing rates of births, deaths, migration and housing occupancy."

And a "Stronger Region" scenario of 12.6% population growth, 23% increase in households, and 24% increase in housing units. It is this higher projection which MAPC encourages communities to use for planning purposes, not because they say it's more likely, but because it's more consistent with MAPC's own goals, called "MetroFuture."

Please realize that MAPC is a regional planning agency with a \$21 million budget whose stated mission is to promote so-called "smart growth and regional collaboration."

The main problem with the "Stronger Region" scenario is it's circularity. Because of the phenomenon of "induced demand," we know that adding a lane to a congested highway will ultimately lead to more vehicles using it.

Similarly, adding units of housing in an attempt to increase supply will only lead to more people and more households deciding to live in Metro Boston instead of elsewhere.

MAPC's report actually admits this, stating: "Policies to promote housing construction will facilitate the higher in-migration rates that characterize the Stronger Region scenario."

While this might be desirable in a region that wants to grow, why would we want to encourage growth, especially in view of the recent "State of the Built Environment" report by A Better City, which is based on the MAPC's own projections. This report outlines the insufficiency of



our current transportation and other infrastructure *today*. Among other points, it notes that "typical AM and PM commuting speeds" on highways within Greater Boston "are below 25 mph and on many segments below 20 mph," while forecasting a 5% increase in vehicles on the road by 2030.

This projected rate of population growth is not inevitable; it's a policy choice. In a region already over capacity on infrastructure, with no improvement in sight, and with green spaces large and small disappearing to development, Newton should be taking the lead in slowing growth, not enabling it.

A second problem with the "Stronger Region" scenario is the assumptions on which it's based:

1: the region will attract and retain more people, especially young adults, than it does today

2: younger householders (born after 1980) will be more inclined toward urban living than were their predecessors, and less likely to seek out single family homes

and 3: an increasing share of senior-headed households will choose to downsize from single family homes to apartments or condominiums

With regard to young people, Boston has been attracting young people for decades, who come for college and graduate school and want to stay. There is no basis to assume a substantial increase. And research on housing preferences shows that while young singles may prefer urban living, once they marry and have kids, they want a single family house with a yard. And I've met these young couples — they moved to Newton from Boston or Cambridge or Brookline precisely to have more space, and a yard for the kids.

And if more seniors "will choose" to downsize than previous generations, maybe that's because they'll be living in 5,000 square foot houses instead of 2,400 square foot Colonials or 1,500 square foot Capes and bungalows. In my part of West Newton, seniors are happily living in the houses they've always lived in, because *they're not too*

*big.* If our zoning did not encourage teardowns, and did more to encourage retention of modest size houses, more seniors could choose to do what they'd really prefer, and stay put.

MAPC also claims "the current population of young adults is barely sufficient to fill the positions vacated by retiring Baby Boomers." But there are networks of involuntarily downsized workers looking for jobs. People are living longer and working longer. Instead of encouraging "in-migration" of young workers, we should encourage the retraining and employment of pre-retirement age people who are already here.



## HOW COULD A ZONING MORATORIUM HELP NEWTON OVERCOME ITS PARKING PROBLEMS?

Newton has a well-defined Ordinance for parking lots that stipulates the size and number of spaces required for various uses, along with screening, landscaping, and other amenities. Yet developers almost always ask for, and are usually granted, waivers, which permit them to avoid such obligations. Why should Councilors waive the requirements of our Ordinance? We should be minimizing the exceptions we grant. If our current laws aren't good enough, we should re-examine them.

Pious optimism that customers will largely travel by foot, bus, commuter rail, or bicycle, especially in cold weather, is not realistic. Nor are assumptions that people won't mind parking, and maneuvering in smaller spaces, and that vehicles for the disabled will comfortably fit in spaces much smaller than today's. Nor will "smart meters" create sufficient parking capacity. Rejecting wishful thinking, we may decide that our past zoning norms have experiential wisdom we should retain.

**"PARKING IS THE LIFEBLOOD OF OUR BUSINESSES."** (SLIDE. Quote from Councilor Danberg)  
Let me use Newtonville as a case study of how the easy granting of waivers can harm a village's "lifeflood."

Newtonville currently has three large developments (at Court, Austin, and Washington/Walnut Streets) in the works, which could add 275 new units and 700 residents within a square mile. How well will our parking system handle this stress? The industry standard for judging this is the "85% rule."<sup>i</sup> Once 85% of spaces are taken, drivers are likely to begin circling for parking and may abandon the area rather than wait for a space. They may also resolve to return to the area less frequently in the future. [SHOW SLIDE of 85%] [Aside: Newton Centre already appears to have such problems. See Nelson/Nygaard's parking report about Newton Centre last January.]

In Newtonville, **metered** parking is **especially important to commerce**. GPI, Newton's first Austin Street parking consultant, noted that our 295 metered spaces, the heart of our parking system, are located closest to our businesses, and are thus key to customer convenience.<sup>ii</sup>

Newtonville's parking situation is already often close to capacity or overcapacity at peak times, especially on Saturdays, but also during the week.<sup>iii</sup> [SLIDE: MAP OF NEWTONVILLE CENTER] Although GPI pronounced Newtonville's parking system generally functional, according to the 85% rule,<sup>iv</sup> it ignored parking in cold or inclement weather, when we most need it.<sup>v</sup> And Star Market had not yet closed its lot to non-customers. Doing so in 2015, appears to have pushed an hourly average, in high-usage times (10 am to 2 pm, and 5pm to 7 pm) of 33 vehicles, which GPI counted as would-be "public parkers" in 2014, into the public, metered Austin Street lot.<sup>vi</sup>

Focusing on the much more frequent high-usage times (30 hours during weekdays) rather than the busiest hour of the week, or even weekdays, reveals a more typical picture of the Newtonville parking experience. Everybody knows Saturdays around noon can be very difficult, especially in the colder half of the year. So, looking at these high-usage times, if we add the (33) aforementioned "public parkers" in Star's lot to GPI's weekday average for high-usage hours (168),<sup>vii</sup> our metered system averaged 201 vehicles in March 2014 during the six busiest hours every weekday, to the extent that GPI's sample was

representative. (Saturdays, as noted, are even busier). Replicating, as closely as I could, their study a year later, in 2015, I found an average of 210 vehicles during the same, high-usage, weekday hours.<sup>viii</sup> Since 85% of capacity is 251 vehicles, the whole metered public parking system can functionally tolerate **no more than 41-50 more vehicles at high-usage times**. Yet **current zoning** suggests that there will be 177 additional vehicles at those times, by requiring **80 more spaces for Austin Street, and 97 more** for Washington Place than developers will provide. The developers have requested waivers for this – a total almost **four times** what the system can bear. [SLIDE: 41-50 VERSUS 177.]

Many experts viewed metered parking north of the Pike as a back-up for overflow from Austin Street. But it has been two-thirds full in high-usage times,<sup>ix</sup> and will be jammed by Washington Place parkers. The latter will also congest traffic around the Washington/Walnut Street intersection, recently graded “D” by an impartial agency.<sup>x</sup> As former DOT official Ron Mauri noted last night, E and F ratings are basically “rolling parking lots.” At busy times, this intersection is just a little better than that.

After public criticisms of GPI, the Administration chose Nelson/Nygaard, as its parking consultant. When that firm announced parking counts for three weekdays they counted last October, they ignored the fact that these were near or exceeded 85% capacity. That criteria also vanished from its earlier written report on Austin Street’s transportation impact.<sup>xi</sup>

Losing this sort of practical wisdom, along with that embodied in the Zoning Ordinance, makes it more likely that our businesses’ ‘bloodflow’ will be constricted if we don’t think anew about our parking systems. We should enact a zoning moratorium to facilitate this.

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<sup>i</sup> Greenman, Pedersen, Inc. *Parking and Traffic Engineering Study: Village of Newtonville*. July 2014. Submitted to the Planning Department, Newton City Hall. See Executive Summary and p. 8. It is also the standard of top academics in the field. See Donald Shoup, *The High Cost of Free Parking*. Chicago: Planners Press, 2005, Chapters 11-13.

<sup>ii</sup> Op. Cit. GPI, p.2.

<sup>iii</sup> Peter Bruce, “Newtonville’s Parking Needs and the Austin Street Project.” Report submitted to Newton’s Board of Aldermen, May 2015.

<sup>iv</sup> GPI, Executive Summary and many other places ff.

<sup>v</sup> Bruce, Op. Cit. Executive Summary and many other places ff.

<sup>vi</sup> Op.Cit. GPI, p. 25, for specific hourly counts.

<sup>vii</sup> Ibid. See *Appendix* to GPI’s study, pp. 14 and 27 for raw data. Available on Newton’s City Hall website in the Austin Street Project Archives. I’ll have tables and graphs ready for a more detailed presentation of this report to the Land Use Committee, July 12.

<sup>viii</sup> More detailed evidence, tables and graphs for that study will also be presented to the July LUC meeting.

<sup>ix</sup> Op. Cit. See *Appendix* to GPI’s study, pp. 14 and 27 for raw data.

<sup>x</sup> Chen-Yuan Wang. “Technical Memorandum: Washington Street Sub-regional Priority Roadway Study in Newton.” Boston Region Metropolitan Planning Organization. 1/22/15.

<sup>xi</sup> Nelson/Nygaard. 28 Austin Steet – Transportation Impact Study. Technical Memo in support of application for special permit. May 12, 2015.



## NEWTONVILLE'S PARKING NEEDS AND THE AUSTIN STREET PROJECT

### EXECUTIVE SUMMARY

This study analyzes the evolution of Newtonville's public metered parking to assess how well it has met the public's needs, and how well it would accommodate the Austin Street Project (ASP). It replicates many aspects of GPI's study last year, and follows the same methodology. Like GPI, it assumes that metered public parking is crucially important as the main parking resource available to our retail, commercial, and other businesses.

It comes to different conclusions, however, because it focuses more on winter and a larger number of weekdays, and because it integrates its Saturday observations into a broad time-series of data for the Austin Street lot (ASL). It finds the whole system is often overcapacity (dysfunctional) on Saturdays and approaches that level on weekdays, while the ASL, itself, is often overcapacity on Saturdays *and* weekdays. The study also shows that Newtonville parking has distinctive seasonal rhythms, and that it has undergone robust growth over the years, forcing it increasingly into overcapacity situations.

Within all six zones of public metered parking, the study finds the ASL has by far, the fastest growing demand and largest capacity, making it the system's main source of resilience. That, and its proximity to the ASP's added parking demand, justify the emphasis this study and others have placed on it.

The issue of functionality in parking is key to this study, because overcapacity situations waste peoples' time, increase pollution, and make people less likely to return to neighborhoods perceived to be congested — a blow to area commerce and social life. The study estimates how much added demand the ASP might generate, and finds that it would not only make peak times more dysfunctional, but also make the more frequent, less congested "times of high usage" overcapacity as well. Finally, the study finds that the City and GPI's neglect of winter, the current sketchiness of the project regarding what kinds of businesses will inhabit its retail floor, and the Austin Street Partners' underestimating the public's parking needs during construction, indicate bad planning, which bodes ill for the introduction of a project of this size into an increasingly overloaded system.

## NEWTONVILLE'S PARKING NEEDS AND THE AUSTIN STREET PROJECT

I recently wrote in the *Newton Tab* that parking in the Austin Street lot (ASL) has distinctive seasonal rhythms, that its usage has increased robustly,<sup>1</sup> and that this growth is throwing the lot increasingly into overcapacity situations (according to GPI's criteria that a parking lot is not "functional" above 85% occupancy — the industry standard).<sup>2</sup> I also showed that while winter is the season in which the lot is most overcrowded, spring and fall are also fast approaching frequent overcapacity levels which discourage commerce and social life. Since that article, until Easter/Passover weekend, I continued to count and photograph vehicles in the Austin Street lot. I also expanded my observations to cover other days, time periods, and parking zones, in an effort to replicate and update GPI's study, provide a more general and evolutionary picture of Newtonville's parking needs, and assess these in light of the Austin Street Project's parking requirements.

**These new observations have generally confirmed** and pointed to the broader relevance of my earlier findings, and lead me to the conclusion that the Austin Street Project (ASP) does not fit with Newtonville's parking needs.

GPI's study provided a useful tool for analyzing public parking supply and demand in and around Newtonville center. Regarding supply, it inventoried publicly available metered and unmetered spaces near that center, and classified these into six different zones. On four Saturdays, two in March and two in May, and on two weekdays in March last year, it analyzed parking demand in these zones with intensive, hourly counts to assess average and peak demand. It also surveyed people parking in both the Austin Street and Star's lots, to find their destinations, occupancy times, and whether or not they were shopping at Star.<sup>3</sup> Their efforts produced large and useful increments of knowledge about these behaviors. And their emphasis on analyzing the biggest parking zone, the ASL, at peak times on its busiest day (Saturdays), also fit well with, and contributed valuable data points using a similar methodology, to a time-series of data begun two years previously by various city officials, and continued this year by one of them and myself.<sup>4</sup> GPI's study also analyzed weekday parking, and thus provides a sound baseline from which to analyze trends in weekday parking this year. Indeed, weekday parking has grown exponentially in importance, with the closing of Star's lot to non-shoppers, and their expulsion into Newtonville's metered parking and elsewhere.

**While useful, however, there are problems with GPI's study**, stemming mostly from its small number of observation days, and its drawing overly broad conclusions from these. For instance, it concluded that Newtonville's public parking supply and demand were well within functional limits.<sup>5</sup> To do so, it treated winter as a season that did not exist, ignoring the fact that there is more demand for parking in winter and cold weather than in warmer times. (See Chart 1 below.) They also had to reject half of their March Saturday peak-hour data as an "outlier," to reach this conclusion. [That is, for 3/22/14, when the Austin Street lot (ASL) with 119 vehicles, was clearly overcapacity.]<sup>6</sup>

Chart 1

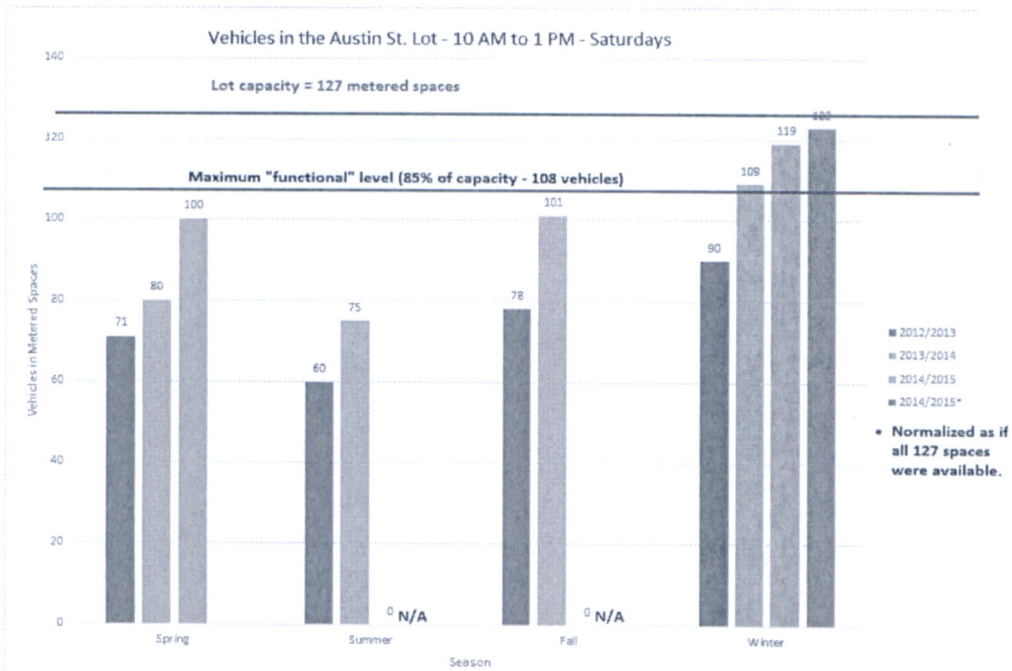
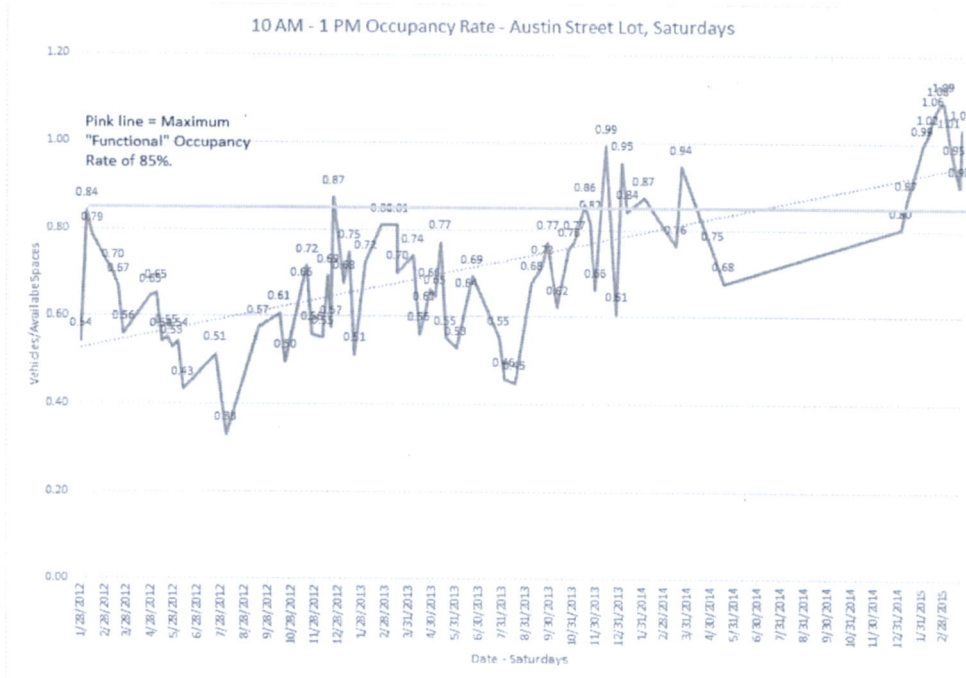


Chart 2





Ironically, however, this “outlier” was really more typical of cold weather parking demand than GPI’s other March Saturday data (3/15/14, with 97 vehicles and 76% occupancy) which, as one can see from Chart 2, was the lowest count of either that winter or this past one, and is thus the real outlier.

Indeed, GPI’s conclusion that the ASL is always functional needs to be stood on its head for peak times in winter and cold weather, as the lot was usually overcapacity from December-through-March two winters ago, and again on ten of the eleven Saturdays observed this year, from January through March. Likewise, such overcapacity situations, have also plagued the ASL increasingly on weekdays, and Newtonville’s metered public parking system as a whole zones on Saturdays. On weekdays too, the whole system is getting very close to becoming overcapacity at peak times (See Charts 1-3 and Table 1). For instance, while the highest weekday peak reading for this year was 253 (See Table 1 below), for last year it was 189.<sup>7</sup>

Chart 3

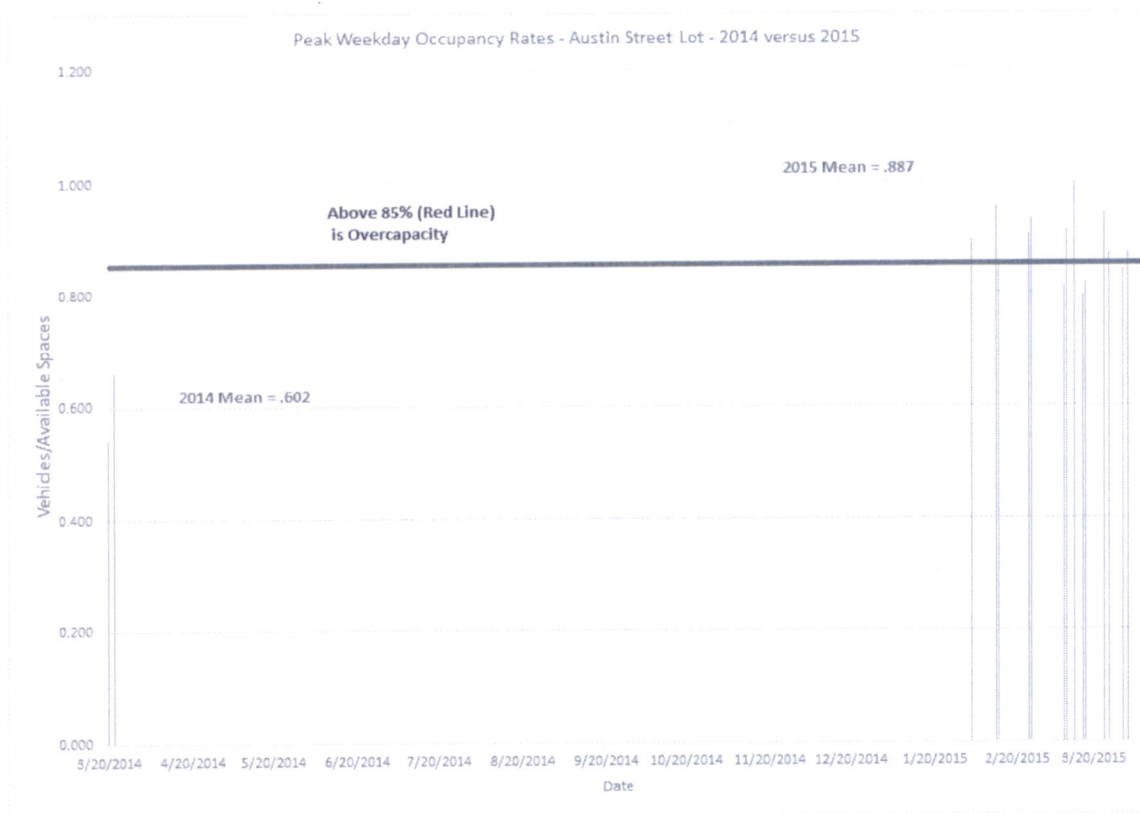


Table 1

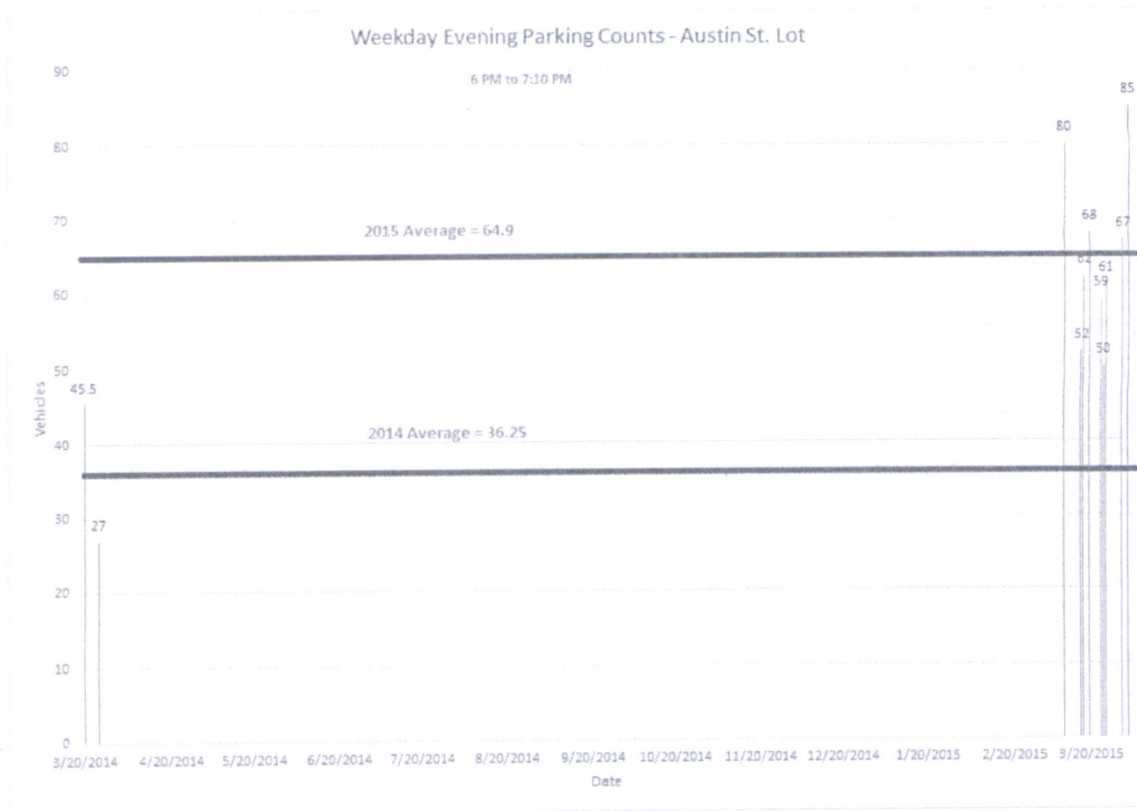
	2014			2015			
	Total Metered Parking*			Total Metered Parking*			
	Saturday **			Saturday		Weekday ***	
Parking Zone - Metered only	Supply	Demand	Occupancy	Demand	Occupancy	Demand	Occupancy
Zone 1: ASL	127	93	0.73	117	0.92	116	0.91
Zone 2: Austin St.	15	8	0.53	14	0.93	11	0.73
Zone 3: Walnut St., south of 90	31	27	0.87	30	0.97	29	0.94
Zone 4: Bowers, N'ville, Madison	22	9	0.41	13.5	0.61	18	0.82
Zone 5: Highland Avenue	5	4	0.80	4.5	0.90	4	0.80
Zone 6: Washington, Walnut no. of 90	103	68	0.66	79	0.77	75	0.73
<b>Total</b>	303	209	0.69	258	0.85	253	0.83
<b>All- Zone Occupancy Rate 2014****</b>	0.690						
<b>All- Zone Occupancy Rate 2015****</b>	0.851						
Increase = 23.3%**** Saturdays only							
*Figures are averages from peak-hour Saturday observations.							
** GPI's average excludes March 22 data as an outlier. Including it increases ASL demand to 99.							
Source 2014: "GPI Parking and Traffic Engineering Study," p. 29.							
Source 2015: Saturday counts 3/14 and 3/21. Tuesday 3/10 count was the highest of all weekdays.							
*** I observed all zones on six weekdays.							

Another weakness with GPI's study was its failure to analyze weekday parking as frequently as Saturday parking. It did this for only two days in March, and none in May, so that we have no baseline measures for late spring. Also, on the Saturdays it observed in May, it failed to count vehicles on Washington Street, and Walnut Street north of the Pike (Zone 6), for no apparent reason.<sup>8</sup>

Regarding its weekday analyses, GPI concluded that demand in all zones combined peaked between 1 PM and 2 PM.<sup>9</sup> For the six weekdays I observed, however, parking peaked in 3 days between 11 AM and noon (3/10, 3/17, and 3/31), in 2 days between 1 and 2 PM (3/9 and 3/16), and on one day (4/2) between 6 PM and 7 PM. The latter anomaly is especially revealing, as it indicates an unusually large number of vehicles in the ASL for this time of day (85). Usually parking in the ASL declines sharply after 2 PM. But 6-to-7 PM vehicle counts in the ASL are running almost twice as high as last year, and what seemed to be abundant capacity in Newtonville's evening parking is becoming much less so. (See Chart 4 on p. 5.)

**Finally, the study was not evolutionary**, because GPI failed to integrate its statistical snapshots of last spring's parking into the larger time-series of peak-time Saturday data available in the Planning Department. Thus, it lacked historical data and trendlines from which to anticipate future changes in parking demand. By ignoring such trends, and not taking into account how possible changes brought about by the ASP could radically increase parking demand, GPI's study is overly oriented toward the past and fails to assess adequately whether the ASP could successfully fit with Newtonville's parking supply.

Chart 4



Due to bureaucratic bungling, there was a need to replicate GPI's study this past winter. Newtonville's parking crisis began in earnest in winter 2013-14, but was masked by hidden parking congestion concealed by the safety valve of Star's open lot, and by hidden data. Many residents argued that GPI cherry-picked its data after releasing its study. In response, Joy Huber presented Planning Department data in the *Newton Tab* (8/20/14) for the previous fall showing similar results to GPI's, and inferred they were representative.<sup>10</sup> But, we wondered, "what about winter?"

Huber's failure to publicize winter data was understandable, since her spreadsheet had *no counts from 1/11/14 to 3/22/14, ten weeks in the heart of winter!*<sup>11</sup> In response to a query, one of the "car counters," Tim Stone, forwarded to me emails of all his counts. One, 111 vehicles for February 1, had been sent to the Planning Department, and Alderwoman Susan Albright, but was absent in Huber's spreadsheet.<sup>12</sup> Albright received it and suggested to Stone organizing such data into a spreadsheet.<sup>13</sup> This was done, but Stone's data was omitted for no good reason.<sup>14</sup> Once added, there is a count for every winter month last year. Combined with GPI's counts, a coherent picture emerges, showing that in winter 2013-2014 people needed parking in the ASL much more than in other seasons.

It is strange that the City did not commission a parking study for winter 2014-2015. Adequate data showing the previous winter's frequent overcapacity counts was in their hands, and the ASL's crowded conditions in winter are well known to postal workers, police, and business managers observing the lot. And, of course, the Planning Department needs such information to make sound decisions about the ASP. But this was not done. Perhaps, the City does not want to know (or does not want the public to



know) about Newtonville's parking conditions in winter, the season when we and our flourishing local businesses need it most? And, as noted, this winter, Newtonville's public parking passed from hidden to manifest crisis, as the continued growth of parking demand and the closing of Star's lot have made our metered and public parking system increasingly dysfunctional.

**Replication Methodology – An Overview.** In January, Alderwoman Emily Norton took pictures and counted cars in the Star and Austin Street lots. When she stopped for a few Saturdays, I assumed that task. With the closing of Star's lot, I realized weekdays were often overcapacity and needed study. Near the anniversary of GPI's field work, I decided to replicate their study, as best I could, for weekdays and Saturdays, to get a broader picture of Newtonville's parking demand and how it had changed.

**Adhering to GPI's delineation of six metered parking zones** in Newtonville, and concurring with its assessment of how many spaces each provides, I used a small cell-phone camera at first, then an iPhone, to photograph and count vehicles in these zones on six weekdays and two Saturdays. Working alone, I found that it took a little over an hour to do all six zones. To ration my time well, I decided to count vehicles for those hourly periods which would best determine how fragile or resilient Newtonville's parking supply was. So, I chose *times of relatively high usage*. Like parking lots serving churches or sports arenas, public metered parking is highly variable: understanding how resilient it is in times of relatively high demand and stress is more important than finding mere averages, given that such lots are often very underutilized. Thus, I decided to observe the following time periods: 9 AM – 10 AM, 11 AM – 12 PM, 1 PM – 2 PM, and 6 PM – 7 PM, which are busier than the hours before 9 AM, in the mid-afternoon, or after 7 PM.<sup>15</sup> Since GPI's team had counts for the beginning and end points of my hourly observation periods, I compared my counts with the average of theirs at each end of these periods.<sup>16</sup>

Also, since many of the unmetered public spaces were filled by snow when I started this project, and since it took an hour or more just to count and shoot metered spots, I decided to confine my observations to metered spaces only. GPI also focused *primarily* on metered spaces, which they "considered the primary resource of parking available to retail/commercial uses in the Newtonville area," and thus crucial to village vitality.<sup>17</sup> Perhaps this is why they counted unmetered spots only in March. (For more detail on my methodology, see Appendix. Available on request.)

## MAJOR FINDINGS

**My GPI replication study for all six of Newtonville's metered parking zones** provides a broad picture of Newtonville's parking supply and demand trends. I found that problems of overcapacity have been becoming more common throughout the whole system. For instance, for all zones combined:

- Both Saturdays observed were overcapacity at peak times (3/14, 3/21) this year. (See Table 1 for this and the next two bulleted items.)
- Weekday parking was overcapacity on one of six observation days (3/10, 11 AM-12 PM).
- The highest peak weekday count in 2015 (3/10) was 253, versus 189 in 2014, representing an increase of 34%, or 64 vehicles, which is much larger than the average number of cars expelled from Star's lot on weekdays (35). (+++)
- Growth in parking demand has been very strong over the past year, and not just at peak times. This last point is clear from my "high-usage" daily averages, as well as from peak-time counts. The former were based on averaging all counts for each zone for each day, then averaging these across the six observation weekdays in 2015. I then compared them with GPI's daily average

counts for these same hourly periods in 2014. (See Table 2 below). Regarding high usage daily averages, in 2015, Newtonville's overall metered parking demand averaged 210 vehicles (out of 295 available spaces), versus 171.5 vehicles in 2014. This was an increase of 22.5%, or 38.5 vehicles. Like the previous bulleted item, this increase is an indicator of increased economic/social demand for metered parking going beyond what can be explained by Star's expulsions. (+++)

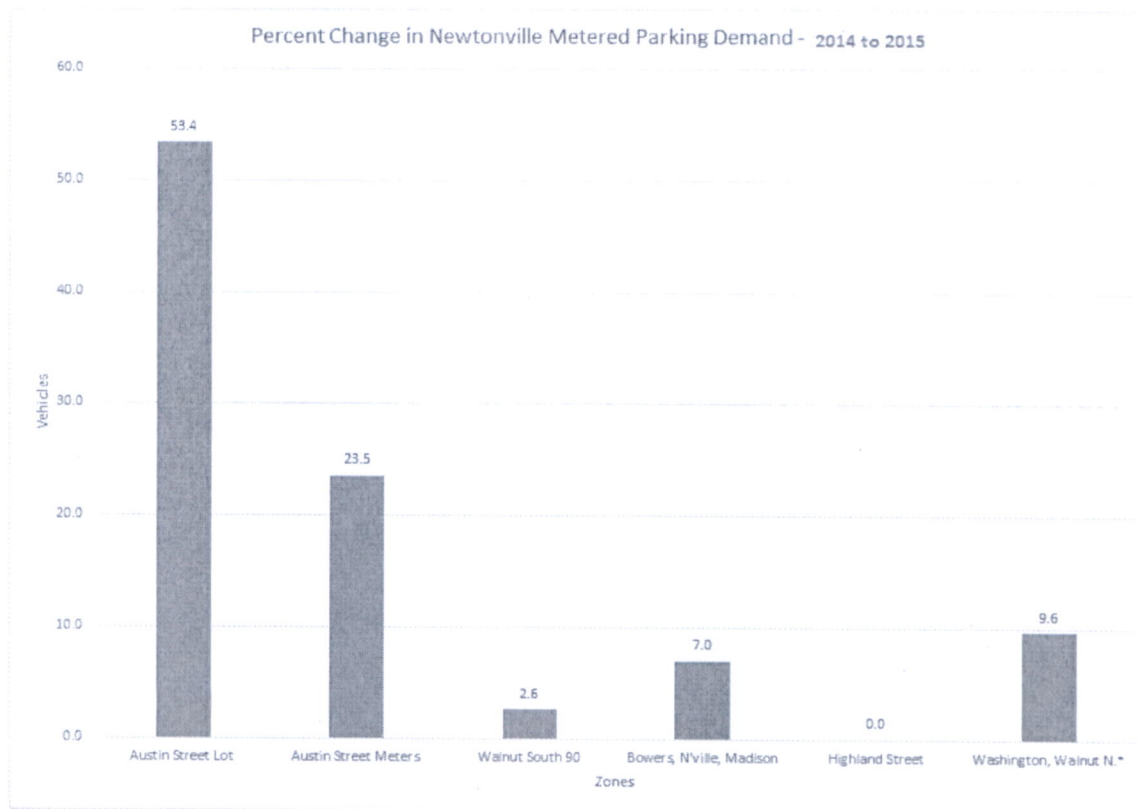
As one can see from Chart 5, which is also based on data for "High Usage Times" for weekdays, and is thus more representative than our Saturday peak-time data, the ASL was the focus of such growth, and its growth in parking demand (53%) was several times higher than that of the next highest zone (Austin Street meters – 23.5%). Modest growth was also registered in the Bowers Street and Washington/north Walnut Street zones (7-10%). But no year-over-year growth occurred in the Highland Street metered zone, and there was less than a 3% increase of parking demand on Walnut Street south of the Pike. (GPI found the latter two zones almost full last year, so their minimal increase is not surprising.) Given the ASL's capacity, dynamic growth, and the role it plays in keeping Newtonville's parking system resilient (as for instance, when side streets have their parking capacity eliminated by snow), it is clear that the lot deserves the importance it has been given in previous observations and parking studies.

**Table 2**

WEEKDAY PARKING IN NEWTONVILLE			
Summary of daily averages for "High Usage" Times			
	2014	2015 *	2015 **
Parking Zone - Metered only			
Zone 1: ASL	57.25	87.8	87.8
Zone 2: Austin St.	8.5	10.5	10.5
Zone 3: Walnut St., south of 90	25.3	25.95	25.95
Zone 4: Bowers, N'ville, Madison	12.85	13.75	13.75
Zone 5: Highland Avenue	4.25	4.25	4.25
Zone 6: Washington, Walnut no. of 90	63.3	69.4	67.75 **
<b>Total</b>	<b>171.45</b>	<b>211.65</b>	<b>210 **</b>
* Assuming 4/2 data is excluded for Zone 6, due to the unusual lack of morning commuters, since it was the day before Good Friday and Passover.			
** Not making those assumptions.			
2014 Source: GPI "Parking and Traffic Engineering Study" data from 3/20 and 3/25.			
2015 Source: Counts from 3/9, 3/10, 3/16, 3/17, 3/31, and 4/2.			



Chart 5



Turning to the ASL itself, Chart 1 shows that over the last three winters, peak Saturday parking counts have gone from 90 to 109 to 119 vehicles on average (in this 127 stall lot), with 108 vehicles being GPI's 85% functional limit. If one adjusts for snow-eliminated spaces and for cars parked in "Tow Zone" and illegal areas, as if the lot were fully available, that normalized count goes up to 123 vehicles this past winter. Spring has seen growth from 71 to 80 to 100 vehicles on average, and summer from 59 to 75 between 2012 and 2013. Unfortunately, no counts were made last summer or fall. Fall average counts rose from 78 in 2012 to 101 in 2013. Winter and spring thus experienced growth over three years of 32% (37% normalized) and 41%, respectively. From 2012 to 2013, summer and fall counts rose by 27% and 29%. With growth rates like these, spring and fall will soon be regularly overcapacity like winter. They also, for the most part, grew before and independently of the closing Star's lot, thus indicating Newtonville's increasing popularity and economic utility. (+++)

Here are more key findings about it:

- Winter (January through March) 2014-15 occupancy rate in ASL averaged 99%, extremely overcapacity. (+++)<sup>18</sup>
- As noted, the ASL was overcapacity at peak times for 10 out of 11 observed Saturdays this winter (including 3/28), as opposed to 4 out of 7, the previous winter (12/14- 3/22). (+++) (See Chart 2).
- Peak weekday occupancy rates in ASL this winter averaged 89%, versus 60% last year (113 vs. 76 vehicles). (See Chart 3.)

- Weekday evening average vehicle counts in the ASL (6-7 PM) grew to 64.9 in 2015, from 36.25 in 2014. (+++) (See Chart 4.)
- As also noted earlier, regarding Chart 5, average high usage counts in the ASL during weekdays increased 53% (or 30.5 vehicles) between 2014 and 2015, from 57.3 to 87.8 vehicles.

**Future scenarios: Growth trends.** GPI's study failed to consider how long-term trends in Newtonville's parking demand could increase the village's future need for parking, but the findings above revealed powerful trends in the growth of parking demand. Some were so large that they exceeded the increase that would have resulted even if all of Star's "illegal" parkers moved into the ASL and other metered parking zones, as indicated in all findings above marked "+++" (GPI asserted in its section on "Shaw's Parking" that these averaged 35 on weekdays and 27 on Saturday's.)

Whether demand in findings not marked "+++" exceeded what can be explained by the closing of Star's lot is more ambiguous than in the "+++" situations. But it also seems probable in many cases. For instance, it is unrealistic to assume, as I did above, that all former "illegals" who were deterred from parking in Star's lot, subsequently parked in metered parking spaces. Star's initial closing of its lot (before the added threat of "immediate towing") had the effect of expelling all-day commuters who had been using the lot for free. That all of these people subsequently decided to pay for 12-hour meters in the ASL or on Washington Street, seems unlikely given the availability of free parking on residential streets, and their desire to save money. If we assume instead that many of Star's illegal parkers continued to seek out free parking, even if it meant walking farther, then that many more people, than those indicated earlier, would have been using metered parking due to its economic utility. While these trends could reverse with bad economic or political circumstances, barring those, it seems likely that metered parking demand in all these zones will continue growing in coming years. That, in turn, would be compounded by parking demand created by the ASP, which will first be considered in the context of these economic trends, and then in isolation from them.

**The Austin Street Project and Newtonville Parking.** The ASP's most recent proposal suggests it would "retain" 127 spaces in the ASL. This statement is disingenuous, however, since on Saturdays, the busiest day of the week, parking is *technically* legal in all 159 spaces in the lot, even if many potential parkers are deterred by the Tow Zone bags on the Tiger spaces.<sup>19</sup> When the bags are covered with snow, or when the lot is extremely overcapacity, however, these spaces have been a refuge for up to a dozen parkers, plus, sometimes, several government (usually postal) vehicles.<sup>20</sup> With the building itself occupying the same amount of area as the current Tiger spaces, the physical space in the lot, as well as this sort of safety valve parking on Saturdays, will be shrunk by at least 30-32 spaces.<sup>21</sup>

Also constraining vehicle maneuverability in the lot would be "screen walls" between parking rows, as rendered in a recent ASP presentation,<sup>22</sup> to dispel the impression that the building is up on stilts. This and the reduction of 30-32 physical spaces will make circulation within the lot more confined and likely more frustrating on high occupancy days. The requirement that one pass through a portal in the building to enter the public parking lot from Austin Street would also likely slow traffic circulation, make the lot seem less public, and give people more incentives to avoid Newtonville.

As Chart 1 suggests, if supply remains at 127 spaces, the lot will usually be overcapacity on peak times on Saturdays (more than 107 vehicles) in spring and fall as well as winter, if current trends in parking continue. Of course, as the foregoing analysis has shown, the lot will also be overcapacity on many



weekdays. Proposing a project as large as the ASP when the ASL and is already often overcapacity, and trending toward becoming even more so, shows bad planning, and is bad policy.

This becomes even more apparent regarding when the extra stress the Project would place on Newtonville's metered parking supply is examined in more detail. The last proposal, of course, features 68 units of housing, retail stores, a "café-sized" restaurant, and/or an "Innovation Center."<sup>23</sup> (The Austin Street Partners are still quite vague about what businesses would inhabit this space.) The retail area, 5,000 square feet, according to Newton zoning codes, would require at least 15 parking stalls for its employees and customers.<sup>24</sup> Since five spaces for retail are to be provided in underground parking, the remaining ten would be relegated to the ASL, adding to its existing parking demand.

Also adding to ASL parking demand would be any parking generated by the 68 units that goes beyond the 85 stalls the project says it needs. This 1.25 ratio of stalls to units meets the city's minimum legal zoning requirements, but seems unrealistically low.<sup>25</sup> Newton has recently averaged 1.68 vehicles per household,<sup>26</sup> with Newtonville's rate differing little from Newton's in surveys featuring both.<sup>27</sup> Likewise, if the ASP were a "by-right" development, rather than a special-permit project, zoning rules would require 2 parking spaces per unit.<sup>28</sup>

Since Newtonville is not a mass-transit hub, apart from the commuter rail to Boston in rush periods, people in the ASP would need their own vehicles as much as other Newton residents. A more realistic formula, would be to assume they would have 1.68 vehicles per unit, like other villagers and Newtonians. This would better accommodate two-car households and demand from residents' friends, relatives, caretakers, and others. That would require 114 parking stalls, or 29 more spaces than the 85 household spaces than the ASP envisions, and add that much more parking demand to the ASL.

**Here's how the ASP's extra demand would affect the ASL**, which is overcapacity at 108 vehicles today. If the ASP were to add 39 vehicles (10 for retail and 29 for housing) to the lot's demand, the ASL would become even further and more frequently overcapacity in the following situations.

First, recall Chart 1, "Vehicles in ASL by Season," for peak times on Saturdays. If 39 vehicles of extra ASP demand is added to the most recent counts, it results in the following amounts of additional parking demand for each season:

- Winter 2015 = 119 + 39 vehicles = 158 vehicles.
- Winter 2015 (Normalized for snow and irregular parking) = 162 vehicles.
- Spring 2014 = 100 + 39 vehicles = 139 vehicles
- Summer 2014 = 75 + 39 vehicles = 114 vehicles
- Fall 2014 = 101 + 39 vehicles = 140 vehicles

With **127 spaces of total capacity**, the ASP's added demand would make the lot **overcapacity even in summer on most Saturdays!** Given the mismatch between capacity and demand, it seems likely that ASP and the city administration might again propose expanding the ASL's parking supply to the 150 spaces ASP had promised in their March 1 presentation at NNHS. The latest parking fix, after the rejection of angle parking, valets, and car stackers, appears to be "smart meters." These allow payment by credit card or smart phone, and have potentially adjustable rates. Combatting the "high cost of free parking,"<sup>29</sup> they hike rates, increase ticketing, generate more revenues, and induce a more rapid turnover and "more efficient" use of parking. Somerville's and Brookline's smart meters, for instance,

charge \$1/hour versus 50 cents (3 hour meters) or 75 cents/hour (12 hour meters) for ASL parking.<sup>30</sup> Near Fenway Park, Brookline meters charge \$10 per hour after the first two hours. Perhaps such meters could create the equivalent of **150 available spaces** in the ASL by abolishing free Saturdays and doubling current charges. But even accommodating these extra vehicles, the lot would **still usually be overcapacity (i.e., more than 127 vehicles, 85% of 150)** at peak times on Saturdays **in all seasons, except summer**, as one can see from the figures above. If ASL parkers were mostly “destination-oriented,” however, and little “incentivized” by price increases, parking capacity would not increase as they would not leave. Smart meters can improve the allocation of capacity, but not increase it.

As for weekdays, with an average of 113 vehicles counted at peak times this year, the projected total from added ASP demand (152) would also usually surpass the 107 and 127 vehicle thresholds.

**Of course, peak times are by definition unusual.** What about more usual situations, like the four hours of relatively high usage I observed? For the ASL, the morning and evening counts were much lower than those around noon. Average weekday counts in the ASL were 88. If the ASP added 39 vehicles to this, the lot’s count would be 127 vehicles, **easily surpassing the 107-vehicle overcapacity limit for a 127-space lot, and equaling the functional threshold for a 150-space lot.**

**Looking at all six parking zones.** Adding 39 ASP vehicles to Saturday peak counts for all six zones would make them even more overcapacity, as the Saturdays observed had average peaks of 258 vehicles, already over the 255 vehicle functional limit for the current 295 metered spaces. Their total would be 297 with these added vehicles, **way over the 272 threshold**, if valets’ double-parking, and/or smart meters increased the total number of metered (or otherwise paid) spaces from 295 to 320.

Likewise, peak weekday usage, 231 vehicles, plus added ASP parkers would **exceed the functional threshold for a 295 stall system**, and approach the limit for 320 spaces, with a total of 270 vehicles.

**As for non-peak times**, given the high usage average weekday parking count of 210 vehicles, when ASP’s increment of 39 is added to this, the total is 249 vehicles, slightly within functional capacity (255), for the village’s existing metered parking supply. With an average count of 212, much the same can be said about the area’s metered parking on Saturdays in times of high usage (251 vehicles with the added ASP increment). While the latter two cases are just barely functional with added parking from the ASP, it should be recalled that we assumed no growth in parking demand from economic trends, by simply adding would-be ASP extra parkers to the latest demand readings to obtain these numbers. But if *ongoing economic trends continue to also add demand, they will likely push the whole Newtonville paid parking system into frequent overcapacity situations in non-peak, high usage times*, and further exacerbate Newtonville’s problems of increasingly inadequate metered parking supply.

Also because so much is still unknown about the businesses likely to inhabit the retail floor, the fairly modest estimates for their parking demand might need to be radically revised. For instance, a very popular restaurant about half the size, and with half the parking demand of Fiorella’s (100 seat restaurant), would likely require about 25-30 parking stalls (see Appendix), much more than the existing retail proposal. The same is possible for the Innovation Center, which, as a primarily office environment, would likely have longer-term parkers, and require more parking than traditional retail. Like the Cambridge Innovation Center, whose president recently asserted “we’ve got to be sure that transportation issues don’t kill the goose that lays the golden egg,” it will need functional traffic flows



and functional parking capacity for its workers.<sup>31</sup> Star academics and entrepreneurs giving presentations and holding conferences there will also create added traffic and parking demand.

## CONCLUSION

Newtonville's metered parking system is becoming increasingly overcapacity in peak and high usage times. In a system often saturated and overstressed, does it make sense to increase stressors another quantum level or two? Newton's Mayor and Planning Department seem intent on doing just that, demonstrating bad planning acumen. By making our parking system even more overcapacity, it would discourage people from going to Newtonville, and likely harm our local businesses.

That the administration never did a winter parking study also makes it difficult to trust the Mayor's and the Planning Department's planning skills.

**They, along with the developers, also showed sub-optimal planning** foresight in their March 1 slide show at NNHS, when they pointed to the need to provide **"100+" "interim parking" spaces** for the ASL in the **"one year construction" period** they estimated the project would require.<sup>32</sup> This would match, they asserted, Saturday peak parking of "100+" vehicles in the ASL. They also claimed they would work with the community to find this much more interim parking, ostensibly on other streets. That **would not be nearly enough**. As Chart 1 shows, that figure should be 123+ just to meet average Saturday peak demand, at least for winter and early spring, 130+ to meet this year's highest peak demand, and 139+ to meet the latter demand, normalizing as if the snow mountains had not existed, and all Tow Zone and illegal parkers had been accommodated.<sup>33</sup> Finding those extra spaces will be a challenge, especially with large snow piles and public parking being illegal on many nearby streets. If we want a resilient parking system, one that can handle large and extreme, not just average, amounts of parking demand, the Mayor and developers should be planning for 140+, not just 100+ interim spaces.

ASP's one year construction time frame may also suggest wishful thinking and bad planning. How long, after all, will it take to dig out and replace Austin Street's 1877 six-inch diameter water mains and aged sewers as the *2010 Request for Interest* suggested for a project with only 30 units of housing?<sup>34</sup> Imagine the extra impact of 38 additional household dishwashers, showers, and toilets, forcing their waste into these old pipes, joined by the waste from an office business (innovation center) and/or restaurant! And, of course the street would have to be repaved. That is why some experts say this could take much longer than ASP's one-year projection. Perhaps other blocks and streets with connecting infrastructure of similar vintage would also need such reconstruction (especially Austin Street up the hill, and perhaps Madison Ave., Washington Park.) Why isn't this issue being publicly discussed?

That the city administration and developers are planning so poorly (we still don't know if the project will have a restaurant, an innovation center, or both) leaves one doubtful about how effectively they would implement it, how accurately they are assessing its costs, and why they are rushing to get it approved.

Alders: It is your responsibility to withhold approval of this special permit — despite pressure from the Mayor, developers, and other interest groups — until the following issues are addressed.

- Given the explosive growth in metered parking demand in Newtonville, we need a *professional parking study, including winter*, to assess parking counts *and* the behavior of parkers. As the numbers have grown, so might newer parkers have different behaviors.

- The developers must also explain how they would prevent Newtonville's metered parking from becoming even more overcapacity than it often is, with added ASP demand, and especially with the elimination of 30-to-32 physical spaces on Saturdays, plus the need to find parking for 30 displaced Tiger permit/ASL parkers.
- We need to know what specific businesses would fill the project's retail area.
- An engineering study is needed to assess whether the project is compatible with the area's 140-year-old infrastructure, and if not, how long it would take to replace it. How much would this cost? And how would the City and developer apportion and share costs?
- Speaking of costs, with a 99-year lease, Newton would continue to "own" the land. Would there be property taxes assessed on it, the building, or both? If so, who would pay? And would the assessed land value be based on the lease payment or market value of the land? Is tax liability covered in the proposed lease agreement?
- Can Engineering assess and guarantee the safety of such a building, three-quarters on pillars?
- What is the plan for "interim parking," for a year or two of construction and infrastructure replacement? How many parking spaces? Where? Will construction occur in winter?
- We need a real, professional traffic study to assess the ASP's traffic impacts, especially on Walnut and Lowell, from Washington to Commonwealth. The Boston Region Metropolitan Planning Organization recently did this for Newtonville, and graded the Washington/Walnut intersection "D."<sup>35</sup> It did not study Lowell Avenue or Walnut Street farther south. The 2010 RFI claimed *its* project would increase area traffic where Austin intersects with Walnut and Lowell by two or three percent.<sup>36</sup> Wouldn't the bigger ASP be as bad or worse? While the RFI projected a small increase, it could throw straw onto the camel's back, and perhaps earn Newtonville traffic an "F," especially in rush and heavy school traffic periods. We need to assess these costs.

Without better planning, more specifics from the developers, and research addressing these issues, this project is less than half-baked and does not warrant your approval.

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<sup>1</sup> Peter Bruce, "Parking jams in the Austin Street lot." 2/25/15. *Newton Tab*.

<sup>2</sup> Greenman, Pederson, Incorporated (GPI). 2014. "Parking and Traffic Engineering Study: Newtonville, MA," p. 8.

<sup>3</sup> *Op. Cit.* GPI, pp. 29-32.

<sup>4</sup> Planning Department data files received by email from Nancy Hyde, 9/10/14.

<sup>5</sup> *Op. Cit.* GPI, Executive Summary, p. 1.

<sup>6</sup> *Ibid.* pp. 12-13.

<sup>7</sup> See data files. Available on request.



<sup>8</sup> *Ibid.* p. 24.

<sup>9</sup> *Ibid.* p. 8.

<sup>10</sup> Joy Huber. "More Public Parking Needed." 8/20/14. *Newton Tab*.

<sup>11</sup> *Op. Cit.* Planning Department data files.

<sup>12</sup> Tim Stone email to Susan Albright, other Aldermen, and Nancy Hyde. 2/17/14. At 12:02 AM, Stone wrote: "Hi Aldermen and Economic Development Director Hyde, FYI – On Sat Feb 1<sup>st</sup>, at 11:30am, I counted 111 cars in the Austin St Lot. For Nancy's record-keeping benefit, I am also including the last few emails sent to you about Austin occupancy levels."

<sup>13</sup> Susan Albright email to Tim Stone. 2/17/14. At 10:59 am, Albright wrote to Stone: Hi Tim, I know you've been doing this for a while....You know what would be great? Let's create a google docs spreadsheet – you can add the date and data as the weeks go by. That would make it very easy to see the data over time. What do you think?" Stone replied "Definitely."

<sup>14</sup> Discussion with Nancy Hyde 3/1/15.

<sup>15</sup> *Op. Cit.* GPI. pp. 14, 27, 39, 52, 63, 71. Also, see "Appendix." Available on request.

<sup>16</sup> *Ibid.* GPI.

<sup>17</sup> *Op. Cit.* GPI, Executive summary, p.1.

<sup>18</sup> See Data Files, available on request.

<sup>19</sup> *Op. Cit.* GPI, p.5. Stephen Linsky email to me (through the Newtonville List). 3/12/15. For more on this ambiguous situation, see Appendix.

<sup>20</sup> Postal trucks and other government vehicles in the Tiger spaces, of which there were often several, were not counted. See Appendix.

<sup>21</sup> The ambiguity about the number of Tiger spaces, and ultimately stalls in the ASL is deliberate and discussed at length in the Appendix. It is also evident in GPI's report. See pp. 4-5.

<sup>22</sup> Werner Hofmann of Stantec, presenting for ASP, used this term at a meeting of Newton's Urban Design Commission (UDC), 5/15/15.

<sup>23</sup> Informal discussion with an Austin Street Partner at the UDC meeting, 5/15/15.

<sup>24</sup> Discussion with Tom Kraus, Vice-President Newtonville Area Council, 5/21/15.

<sup>25</sup> *Newton Zoning Ordinances*. "Planned Multi-Use Business Developments (PMBDs)," Section 30-15(d). "If the PMBD's mix of commercial and residential uses share parking facilities...in no event shall the required parking for residential units be less than 1.25 spaces per dwelling unit."

<sup>26</sup> This figure comes from Boston Region Metropolitan Planning Organization. "Vehicles per Household in Massachusetts Towns, 1980, 1990, 2000, and 2010." See their spreadsheet, especially the 2010 American Community Survey "5-year summary file."

<sup>27</sup> See for instance: <http://www.clrsearch.com/Newton-Demographics/MA/02458/Number-of-Vehicles-per-Household?compare=02460>. Its 2012 data puts Newtonville's ratio at 2.1, and Newton's at 2.0.

<sup>28</sup> *Op. Cit.* Kraus.

<sup>29</sup> Donald Shoup. 2005. *The High Cost of Free Parking*. Chicago. American Planning Association.

<sup>30</sup> My observations this month on Beacon and Kent Streets in Brookline, and on Bow and Washington Streets (Union Square) in Somerville.

<sup>31</sup> Robert Weisman. "As Kendall Square grows, so do the traffic jams." *Boston Globe*. 5/18/ 15.

<sup>32</sup> Austin Street Partners, "Slide Presentation," at NNHS 3/1/15. See the "Seventh Must Have," p. 34. In City's Austin Street Project Archives.

<sup>33</sup> See Chart 2. The highest occupancy rate, 1.09, corresponds to 118 vehicles, filling 108 available spaces (19 being filled with snow) and 13 vehicles parking in "Tow Zone" and illegal spaces. To normalize as if all spaces were available, normal capacity is divided by existing capacity, then the total number of parked vehicles is multiplied by that ratio. Hence,  $127/118 = 1.176$ .  $1.176 \times 118 = 138.76$ . Data files available on request.

<sup>34</sup> *Request for Interest*. City of Newton, MA. 5/25/ 2010. Austin Street Project Archives. p. 2-3 (Section 2, p.3).

<sup>35</sup> Chen-Yuan Wang. "Technical Memorandum: Washington Street Sub-regional Priority Roadway Study in Newton." Boston Region Metropolitan Planning Organization. 1/22/15.

<sup>36</sup> *Op. Cit.* *Request for Interest* p. 6-18 (Section 6, p. 18).

## Moratorium in Newton – A Need to Widen Bridges and Walkways or Alternatives

Good Evening chairman, council members, fellow Newtonites and concerned parties.

My name is James Pacheco. I reside at 48 Circuit Ave, Newton Highlands 02461  
I'm a retired Engineering Consultant with over 40 years experience.

In my request for a moratorium, I'm proposing that we evaluate the construction of outriggers to existing bridges for bicyclists and pedestrians as this relates to significant increases in Newton's population. Preferably they would be wide enough for both pedestrians with wide carriages and travel luggage on wheels and bicyclists. There is possibly a need to consider new walkways and bicycle paths over the pike, similar to Route 9 Eliot MBTA Green Line connection.

Having Newton's bridges with these outrigger walkways for pedestrian and bicyclist will help unify our villages. For example, I consider Newtonville to be a great place to start. A covered walkway for pedestrians and bicycles would be ideal, especially in the winter months and it also adds an extra degree of safety and simplifies maintenance and snow removal. Also, let our city request State and/or Federal government support to improve the Light Rail Stop in Newtonville with handicap accessibility { ie. We need a Covered Train Station with an elevator and kiosk booths/machines for patrons and travelers}. I have more suggestions to propose for the city's future growth. Every bridge will have unique requirements and we need to consider their benefits. Let's talk. Let us have more civic engagement.

Has Newton considered these concepts before?

If not, we should. If so, we should reconsider it, and do it!

Has it been done before?

- In NY City: Bike and Pedestrian Lanes on: The Queensboro Bridge, The Brooklyn Bridge, The Williamsburg Bridge - At least a dozen bridges from Manhattan to the other boroughs offer these pedestrian lanes.

Has it been done before, here in Newton?

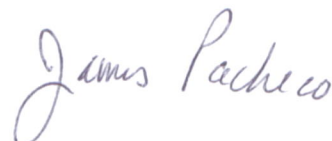
- The Eliot T-Stop + Route 9:  
A footbridge, built in 1977, crosses Route 9 adjacent to the MBTA railroad bridge  
Riverside D green line. Wheelchair and bicycle friendly.

Is it under consideration elsewhere?

- Staten Island Bridges Program, Modernization and Capacity

The installation of new *outrigger* support beams and concrete slabs, extending the new *walkway/bikeway* approximately 6 feet beyond the existing *bridge* width

I consider our bridges to be a critical component in Newton's Transportation Oriented Development, – We need to have vibrant multiple modes of transportation throughout our city for our growing population.





Some of the key factors of Transportation Oriented Development, TOD, are:

- Safety for pedestrians and bicycles
- Supporting Unity and Connectivity in our Villages
- Multiple modes of transportation throughout our city
- Adequate parking to support community centers of activity
- Identifying the TOD goals and planning their implementation.

We need to build Newton's infrastructure first before allowing more large scale housing growth by developers. Our city's growth needs to be a controlled and planned growth, and consistent with our needs for a Transportation Oriented Development.

All the transportation studies should be required to identify how they support Newton's Transportation Oriented Development goals.

We have insufficient evidence showing the need for large scale developments. We are currently seeing significant traffic congestion on many of our major roadways in Newton. I can't emphasize this enough, we need to have a moratorium to evaluate the impact of the current large scale developments that are in progress, and ensure all the future projects are consistent with these TOD goals.

Here in my write-up, I have an internet link to an outrigger design for a bridge. There are many variations that should be considered.

[https://books.google.com/books?id=OOQPBQAAQBAJ&pg=PT98&lpg=PT98&dq=Outrigger+walkways+on+bridges&source=bl&ots=q1rPbb2pRd&sig=ICnu2MSuM3JX\\_5AhvZTM9KZIDsk&hl=en&sa=X&ved=0ahUKEwilvqmp4vXNAhXBmx4KHTN0CH8Q6AEIYjAN#v=onepage&q=Outrigger%20walkways%20on%20bridges&f=false](https://books.google.com/books?id=OOQPBQAAQBAJ&pg=PT98&lpg=PT98&dq=Outrigger+walkways+on+bridges&source=bl&ots=q1rPbb2pRd&sig=ICnu2MSuM3JX_5AhvZTM9KZIDsk&hl=en&sa=X&ved=0ahUKEwilvqmp4vXNAhXBmx4KHTN0CH8Q6AEIYjAN#v=onepage&q=Outrigger%20walkways%20on%20bridges&f=false)

Here in my write-up, I have a link to an example company that has built many bridges and has alternative designs for this concept.

<http://www.bigrbridge.com/en/home/products/prefabricatedbridges/pedestriantrailbridges/default.aspx?gclid=Cly3tb3k9c0CFQckhgodZP0MOA>

Thank you for considering one of my rationales for a moratorium.

**Karyn Dean**

---

**From:** Cpitts <cbpitts@gmail.com>  
**Sent:** Monday, June 27, 2016 11:26 PM  
**To:** Karyn Dean  
**Subject:** Approve the moratorium

Newton is consistently ranked one of the best places to live in the country. I ask: why would anyone want to change the qualities that make it that way?

It's precisely Newton's suburban scale and density, trees, open space, winding streets, and historic appearance that make it one of the best places to live in the country – not over-priced high-density housing developments.

Adding 800 affordable units that would “count” on the state's Subsidized Housing Inventory is a front for a much larger market rate plan. Using 40B or inclusionary zoning levels, those 800 more units translates to 3200 (at 25%), 4000 (at 20%), or 5300 (at 15%). Multiply by Newton's average household size of 2.5 persons, and imagine 8000 to 13,000 more people, and their cars.

We've been looking critically at projects with total unit numbers that are 24, 48, 170, 300, and weighing the adverse impacts these will make on villages, our schools, and our stressed infrastructure, so now the Administration is proposing up to 5300?

If rapid urbanization, densification, and economic gentrification actually helped working and middle class families, it wouldn't be opposed to all over the country. Go to Seattle, San Francisco, New York, Boston, Brookline, and what you will see under this type of unbridled development is rich people getting richer, and the middle class getting squeezed out.

Former New York Mayor Bloomberg, knows this plan, he's on record stating that today a successful city must be primarily a "luxury product" - a place that focuses on the very wealthy whose surplus can underwrite the rest of the population. Korff is already proposing a second tier of subsidized housing for middle class tenants. Is this what the Administration considers to be a “progressive” innovation? Taking the middle class – who want to live in houses they pay for themselves – and turning them into a landless class of renters who must be subsidized?

Zoning changes are often initiated by developers and rubber-stamped by the Planning Department, against the wishes and best interests of Newton residents. We had no say in the creation of the new MU4 zoning category. **This has to stop.** Your constituents are counting on you to protect them from eviction, displacement, unaffordable property tax burdens, rates and fees, and diminished quality of life. You were elected to represent and protect us. Please support this petition for a zoning change moratorium, and take back control of our community's destiny from an out-of-control Administration.

Chris Pitts  
 Sent from my iPhone



From: Chris Markiewicz cjm  
Subject:  
Date: June 27, 2016 at 6:45 PM  
To:



My name is Chris Markiewicz, I represent the RRDA. I will provide more details in a moment about the RRDA.

We are in favor of a moratorium. We recognize that a blanket moratorium may impact requests coming from private individual homeowners, and suggest that if there is a moratorium that some leeway be provided in anticipation for homeowners wanting to exercise reasonable property rights. Again these would be requests below some threshold based on size or scope.

The tenet of the request before the Council today that we want to call out is the requirement to meet with the neighbors and secure their approval for zoning changes or projects that affect them. We are also by the way opposed to any reduction of the Council's right to review special permits. We cannot understand why anyone would surrender the right of local and informed review and supervision.

Back to my point about meeting with the neighborhood.

The RRDA was formed 2 years ago. It was a grass roots response to a proposed 150 unit 4 story apartment building on a 2.5 acre lot. At the time, the densest concentration of housing units in Aurburndale was 12 units per acre, the 70 Rowe Proposal was equivalent to 60 units an acre. It was proposed as a 40b project.

During the 18 months that the ZBA conducted hearings the RRDA met with the developer and made presentations at hearings that were counter proposals to the 150 unit proposals. The RRDA understands the need for affordable housing and supports affordable housing. Our approach was to find a middle ground that all parties could live with. We prepared several proposals over time as discussion and hearings progressed. Our proposals were not merely asks for fewer units, they were proposals for which we prepared financial analysis and conducted research and analysis on things like safety and traffic so we could in good conscience provide viable alternatives that would be appropriate for the site, address the need

for affordable housing and provide a fair return to the Developer on his investment.

While the Developer chose ultimately to withdraw his application and to pursue another use for the site, we believe our initiative is an example of how all parties can try to work together to reach a reasonable outcome. It is built on dialogue, it is also built on being informed and doing the work to be informed. At the time the Developer withdrew his application, his attorney acknowledged the efforts made by the neighbors throughout the process.

So, in summary I want to say that our support for a moratorium is a manifestation of our belief that requests for exceptions should be reviewed with caution, we have zoning laws for a reason, we should proceed with due care with respect to large projects which can individually and in aggregate change the City in unforeseen ways that may be ultimately not to the residents' benefit. We urge due care and careful analysis and open dialogue.

I would like to add a request to the Council. Now, it is my personal opinion that a large number of residents have a limited awareness of the scale of development now in process or planned. Some councilors do reach out to a portion of their constituencies on a regular basis to inform them of matters affecting development and zoning. I ask that the Council consider ways to implement broader and more comprehensive communications to the public, neither pro nor con, but with the objective of being clear about the direction of the City with respect to growth and development and with the recommendation that they get educated and provide their input regarding the Newton of the future.