



Zoning & Planning Committee Report

City of Newton In City Council

Monday, November 9, 2020

Present: Councilors Crossley (Chair), Leary, Albright, Wright, Krintzman, Danberg, Baker and Ryan

Also Present: Councilors Bowman, Downs, Greenberg, Malakie, Kelley and Humphrey

City Staff: Jonathan Yeo, Chief Operating Officer; Barney Heath, Director of Planning and Development; Lara Kritzer, CPA Program Manager; Amanda Berman, Director of Housing and Community Development and Nevena Pilipovic-Wengler, Community Engagement Planner

Planning & Development Board: Peter Doeringer, Chair; Christopher Steele, Kevin McCarthy and Barney Heath, Ex-Officio

Newton Housing Authority: Hannah Cross and Vince O'Donnell

Others Present: Mark Armstrong, Chair, CCP

#371-20 Appointment of Denise Chicoine to the Zoning Board of Appeals

HER HONOR THE MAYOR appointing Denise ~~Chicone~~ Chicoine, 275 Islington Road, Newton, Newton, as an associate member of the ZONING BOARD OF APPEALS for a term to expire on October 15, 2021. (60 days: 11/20/2020)

Action: Zoning & Planning Committee Approved 8-0

Note: Ms. Chicoine joined the Committee for her appointment to the Zoning Board of Appeals (ZBA).

The Chair invited Ms. Chicoine to join the Committee to explain why she was interested in serving on the ZBA. Ms. Chicoine stated that she has been a Newton resident since 2004; and has followed the City's re-zoning and development plans. Ms. Chicoine is an attorney specializing in land use law for over 26 years. She stated that it would be an honor to serve on the ZBA as she has the experience and interest.

Committee members comments, questions and answers.

Comments:

A Committee member stated that having 26 years land use experience would be an asset to the ZBA.

Questions and Answers:

What does the definition of rights in the intertidal zone mean? Ms. Chicoine explained that this refers to waterfront issues. This is about riparian rights, such as people arguing over beach front and easements. The Colonial Ordinance of 1641 makes Massachusetts and Maine different than any other state in the Nation with regard to asserting private rights to the waterfront.

Is Ms. Chicoine involved in the Mahajan Case in the City of Boston, Article 97 (Environmental Protections)? Ms. Chicoine answered yes, the Mahajan Case was her second time at the Judicial Court.

Are there benefits or conflicts in Ms. Chicoine's legal work and the work of the ZBA? Ms. Chicoine answered that she did not foresee any conflicts and that she would not take a case in Newton moving forward.

How much experience does Ms. Chicoine have with zoning variances the ZBA discusses? Ms. Chicoine answered that she has represented applicants from neighboring towns. The most recent case was in Cambridge, MA where she represented an opioid addiction clinic who were seeking a variance to perform drug counseling. Unfortunately, neighbors were opposed. Ms. Chicoine then explained that she went through the special steps including obtaining a special permit. She then stated that she has also done small administrative hearings and is familiar with the process.

Committee members thanked Ms. Chicoine for her willingness to serve on the ZBA. Councilor Krintzman moved approval and the Committee voted in favor unanimously.

Referred to Zoning & Planning and Finance Committees

#420-20 **CPC Recommendation to change the purpose of Homebuyer Assistance funding** COMMUNITY PRESERVATION COMMITTEE recommending a change in the purpose of the remaining seven hundred sixty two thousand, seven hundred and twenty two dollars and ninety cents (\$762,722.90) from the Newton Homebuyer Assistance Program for the creation of new affordable homebuyer units to the preservation of existing homebuyer units.

Action: **Zoning & Planning Committee Approved 7-1, Councilor Albright abstaining**

Note: Mr. Heath, Ms. Kritzer, Ms. Berman, Mr. Armstrong and members Chair Doeringer, Mr. Steele and Mr. McCarthy of the Planning & Development Board joined the Committee for discussion on this item.

Ms. Kritzer described in detail her PowerPoint presentation, attached. Ms. Kritzer provided Committee members with the program overview, results of consultant evaluation and recommended program changes.

Recommended program changes include that the program be amended to preserve Newton's existing affordable homebuyer units rather than create new homebuyer units as originally envisioned. Due to the high cost of land in Newton, the program has been unable to serve its intended function since 2015. There are 79 units that have been purchased using these funds; the consultant the consultant found that eight of them use a formula that would make the units unaffordable to new buyers. To maintain these units as affordable to new buyers to maintain these units as affordable requires using the remaining \$762,722.90 already allocated to the Homebuyer Assistance Program to buy down the resale price of those units that are no longer affordable to income-eligible buyers. A new universal deed rider would be placed on the property to ensure future affordability. In addition, up to \$15,000 of this CPA funding would be used to hire professional assistance to maintain the affordable housing program and handle any future resales. This recommendation is only to reallocate existing program funding. If additional funding is needed in the future, a new application must be submitted.

Mr. Armstrong stated that the CPC's vote was unanimous in favor of approval. Chair Crossley asked Mr. Armstrong to explain why the units have different formulas that control their future affordability. Ms. Kritzer explained that the units were created over a long period with different types of deed restrictions. Not all deed restrictions take into account the changes in the market median income over time. Better deed restrictions were put in place taking care of unexpected consequences.

Committee members questions and answers.

Questions and Answers:

Please clarify the term 'buying down' and who would receive the money? Ms. Kritzer answered that the funding goes to the current property owner who has been guaranteed a specific sale price, even if the price is more than an affordable homeowner can purchase. CPA funding would cover the gap funding between the price affordable to the homebuyer and the resale price guaranteed to the owner.

Must buyers be income eligible to purchase the units? Ms. Kritzer answered yes. When an affordable housing deed restriction creates a formula for the resale price. The resale price will always be below market value and is determined by the formula.

Is the formula more than an eligible home buyer can purchase? Ms. Kritzer answered yes. For example, if a resale price for a unit is \$300,000, and the affordable home buyer can only afford \$250,000, the City would provide the additional \$50,000. Once the unit is transferred, it becomes subject to the universal deed restriction.

At this time, are properties up for sale? Ms. Kritzer said that there are several (of the 79 units) coming up for sale but does not know if any are one of the eight units. The City would like to be ready when these units come up for sale. The deed will be changed when the home is resold.

Is \$762,722.90 a proper amount to set aside to maintain these affordable homebuyer units? Ms. Kritzer answered if all units were sold now, the City would have enough money. The \$762,722.90 is the current funding in the program. Currently, the market is too high to make a home affordable under this program. This solution to use the existing funds for the purpose of preserving existing home buyer units. The money is in a bank account, the City put aside this money in order to create new units. Unfortunately, people were not able to take advantage of the affordable homebuyer units. Rather than terminate the program, the CPC recommends we use this funding to address a known problem.

Is it necessary to have the entire \$762,722.90 in the bank account? Ms. Kritzer answered that the City may not always have the time to request this funding. In 2018, the housing program returned approximately \$815,000 from this program to the general CPA fund. It is not the intent to have the money just sitting in a bank account for a long time. It is the intent to have the program in a better place after many years of being stagnant.

Please describe the eight housing units, are they condos or single-family homes? Ms. Berman answered that the units differ. The units are one, two, three- and four-bedroom units. The affordable units are set to be affordable to folks at 70% AMI, priced to be 10% lower than the 80% AMI limit. The units would resale anywhere from \$194,000 to \$313,000.

Are homeowners required to return funding to the City, if they make additional money? Ms. Berman explained that some units are recaptured units. When a unit is resold, the deed restriction states that any money which was put into the unit (by the City) will be returned to the City. The majority of the units are resale which continue to be sold to income eligible homeowners. If an income eligible buyer cannot be found within the time frame, some deed restrictions allow the City to sell the unit to a non-income eligible buyer at a fair market rate. The excess money is returned from the retail price at what it sold for.

You mention using up to \$15,000 of CPA funding to hire professional assistance to maintain the affordable housing program and handle any future resales. Is this per unit or all eight units? Ms. Kritzer answered that the \$15,000, would be set aside for three years and would be used for the eight units or the number of units the money would cover.

Please explain the maximum allowed column in the Capital Improvement column on the chart. How is this amount determined for each unit? Ms. Kritzer answered that it is based on their deed restriction which specifies what is allowable. The owner is seeing a bit of their investment back. Ms. Berman answered that the standard language allows up to 1% of the maximum affordable price or it may be tied to the number of years a person has owned the home.

Please explain the different types of deed restrictions? Ms. Kritzer answered that there are four categories of deed restrictions and some use other factors to determine resale price.

What is an approximate time frame people stay in the units? Ms. Kritzer answered that she does not know, this analysis has not been completed on the 79 units. Some residents have been in their home since 2003, 2012, 2017 and 2018. Over the last several resale years, some have been in their home for five years and some fifteen years plus. Many homeowners stay for long periods because they are unable to access increased equity the same way an owner with a market rate does. Finding another ownership affordable unit can be challenging.

If a person's salary increases and perhaps double, does the City require income verification?

Ms. Kritzer answered no, not for ownership units. Only income eligible units are reviewed at the time of purchase.

Is there some way to use the funding now to obtain a deed restriction and is it worth it? Ms. Kritzer answer no.

Is CPC willing to start off with fewer funds in this bank account? Mr. Armstrong answered that the first money allocated was for this purpose and the reallocation of the funding was based on the current needs that would be entirely used or held in an account.

In closing, Ms. Kritzer stated that if two units were to become available tomorrow, the City would have the funding to afford buying down the units, properly selling them to an income eligible buyer.

Without further discussion, Councilor Krintzman made a motion to approve this request. Committee members agreed 7-0-1, Councilor Albright abstaining.

Referred to Zoning & Planning and Finance Committees

#437-20 **CPC Recommendation to appropriate \$77,900 in CPA funding**
COMMUNITY PRESERVATION COMMITTEE recommending appropriation of seventy-seven thousand nine hundred dollars (\$77,900) in Community Preservation Act funding for the Newton Housing Authority to construct the Haywood House Senior Affordable Housing Development on Jackson Road.

Action: **Zoning & Planning Committee Approved 8-0**

Note: Mr. Heath, Ms. Kritzer, Ms. Berman, Ms. Cross and Mr. O'Donnell joined the Committee for discussion on this item.

Ms. Kritzer described in detail her PowerPoint presentation, attached. Ms. Kritzer provided Committee members with the project location, project overview, current funding request, proposed material lift design and location, sources of project funding and the timeline.

Ms. Kritzer stated that the funding request is due to changes made to the design during the special permit approval process which added new design elements to the project: a material lift and accessible walkway. Construction estimates have increased since the project budget was

initially created in 2018. The current request is for \$77,900 in additional CPA funding to pay for the material lift for trash removal (installation, lighting, wiring, inspections and certificate). The accessible ramp walkway will be installed between JFK Circle and Jackson Road.

Chair Crossley stated that this was a 40B project which also required a special permit. The special permit was required due to changes to the site plan. It was necessary to amend the site plan due to the configuration and to accommodate parking. The lift became necessary and an additional cost to the project.

Committee members questions, answers and comments.

Questions and Answers:

Why wasn't a curb cut installed for trash pickup on the street level? Ms. Cross answered that the curb cut for the trash was discussed in a design review meeting. She explained that the City did not want vehicles stopping on Jackson Road. The City requested that traffic including deliveries, be diverted to JFK Circle. The garbage shoot is on the lower level of the building but has to be lifted one floor to the JFK Circle to be picked up. Mr. O'Donnell stated that the Newton Housing Authority (NHA) received opposition from neighbors indicating that vehicles and traffic should be prohibited. Additional funding would be necessary to protect the culvert. These factors led the NHA to believe this is the best decision.

Comments:

The Haywood House will be an asset to the City, it is great to see the project come to fruition.

It was stated that neighbors' concerns included the curb cut, to prohibit parking on Jackson Road and that traffic should be diverted due to the close proximity of four schools.

Without further discussion, Councilor Leary made a motion to approve this request. Committee members agreed 8-0.

Chair's Note: *Director of Planning & Development Barney Heath, will update the Zoning & Planning Committee on the status of the City's inclusionary housing fund.*

Note: Mr. Heath joined the Committee for discussion on this item.

Mr. Heath provided Committee members with the City's inclusionary housing funds collected to date. The IZ funds have historically been apportioned 50% to the City and 50% to the Housing Authority, which was kept when amendments were made to the IZ Ordinance. Both funds were substantially helped this past year by a contribution from the Benchmark Facility at Andover Newton, with a 1.5 million contribution which was divided between the Housing Authority and the City.

In the past five years, there have been very few IZ contributions. The new Ordinance favors providing units, rather than fee alternatives.

Housing Authority fund balance

\$643,000

City fund balance

\$890,000. This balance represents a source of flexible City funding, which is rare with housing funds. Usually it is Federal funds or CPA funds. It is important not to have particular restrictions associated with the fund. It is important for projects including the West Newton Armory. Flexible funding is helpful.

Committee members questions and answers.

Questions and Answers:

Who prioritizes the use of these funds? President Albright answered that the Ordinance was approved before this question came before this Committee.

#438-20 **Request for creation of Trust in Newton to support affordable housing development**
COUNCILORS ALBRIGHT, CROSSLEY, HUMPHREY, DANBERG, MALAKIE, KELLEY, BOWMAN, KALIS, GREENBERG, DOWNS, WRIGHT, RYAN, NOEL, LEARY, LIPOF AND NORTON requesting the Planning Department analyze mechanisms already in use in other cities and towns, identify funding sources, and create a Housing Trust in Newton to facilitate and foster the development of affordable housing in Newton.

Action: **Zoning & Planning Committee Held 8-0**

Note: Mr. Heath, Ms. Berman and Ms. McNeil joined the Committee for discussion on this item.

President Albright stated that a similar item was docketed approximately eight years ago; and was voted out no action necessary as the time was not right. Many communities created these housing trusts by Home Rule Petition. Today, there is a legislation that allows communities to create housing trusts. There are many ways housing trusts are created. When people want to develop affordable housing, they are usually rushed. The City's process through the Planning Department, City Council and the Community Preservation Committee takes a lot of time. Housing trusts were built to facilitate the creation of more affordable housing which may be able to be completed through the City's processes.

We hope the Planning Department will begin to explore what neighboring communities are doing with their housing trusts. It is necessary to research their structures, whether they've been successful, and recommendations based on their experience. Perhaps a housing trust can be created in Newton using Community Preservation funds. Due to the high cost of land in Newton, it is very difficult for 100% of affordable housing developers to work in the City. This docket item

may be one tool to assist affordable housing developers. Successful neighboring communities have been able to create various funding sources.

Committee members questions, answers and comments.

Questions and Answers:

How would the disbursement of funds work? Mr. Heath answered that the Planning Department has not had the opportunity to explore this docket request. His experience with housing trusts is that they have been created in smaller communities that do not have the same resources as Newton. Some neighboring communities may have a flexible approach. Ms. Berman stated that there may be structures in place to divert the money in Newton. It is important to understand what a housing trust is and the system in place.

Comments:

It may be appropriate to request the Planning Department complete some research and return to this Committee with their findings.

A housing trust provides an opportunity for the City to act quickly, be pro-active, take advantage of opportunities and better planning.

Please research how the City of Cambridge uses their housing trust and how it is working.

Mr. Heath stated that the Newton Housing Partnership has many experts in affordable housing matters, and may be able to provide him with a better sense of the pros and cons associated with creating a housing trust.

Ms. McNeil stated that a housing trust can expand opportunities to create additional affordable housing.

Mr. Heath asked the Committee to allow several months for the Planning Department to conduct the proper research and the pros and cons of creating a housing trust.

Without further discussion, President Albright made a motion to hold this item. Committee members agreed 8-0.

Chair's Note: *The following item is to discuss the community engagement plan meetings focusing on the December 2 and 3, 2020 public meetings.*

#88-20 Discussion and review relative to the draft Zoning Ordinance

DIRECTOR OF PLANNING requesting review, discussion, and direction relative to the draft Zoning Ordinance.

Zoning & Planning Held on 01/27/20, 02/10/2020, 02/24/2020, 03/09/2020, 03/23/2020, 04/13/2020, 04/27/2020, 05/19/2020, 06/01/2020, 06/15/2020, 06/29/2020, 07/09/2020, 07/16/2020, 08/13/2020, 09/14/2020, 10/01/2020, 10/15/2020, 11/05/2020

Zoning & Planning Committee Held 8-0

Note: Mr. Heath, Ms. Berman, Ms. Pilipovic-Wengler, Councilors Downs and Humphrey joined the Committee for discussion on this item.

Chair Crossley stated that this item is to discuss the community engagement plan meetings focusing on the December 2 and 3, 2020 public meetings and to receive an update from the Planning Department.

Ms. Pilipovic-Wengler provided Committee members with a brief PowerPoint presentation, (attached). Ms. Pilipovic-Wengler provided a calendar through December 2021, where the City is in the redesign process. A presentation outline, proposed ZAP Committee member roles and guiding questions. She then stated that two public zoom events are scheduled for Wednesday, December 2nd, 7:00 p.m. to 9:00 p.m. and Thursday, December 3rd, 12:00 p.m. to 2:00 p.m.

Ms. Pilipovic-Wengler suggested Councilors invite their constituents to participate in these events. She asked Committee members to act as co-hosts with the Planning Department staff who can work together to engage Newton community members for the Zoning Redesign in 2021.

Committee members questions, answers, suggestions and comments.

Questions and Answers:

What does “establish a baseline understanding of zoning redesign in the PowerPoint directly mean? Ms. Pilipovic-Wengler answered that the presentation explains what zoning redesign is about, the timeline of zoning redesign, what the articles are, the process of zoning redesign and communicating what types of community conversations can be held about the articles in order to receive input on how residents would like to be engaged. Mr. Heath said that some residents are well acquainted with the zoning redesign project and others are not. It is necessary to have public events in order for residents to be informed.

Are the events open to the public? Mr. Heath answered that the Zoom meetings are open to the public and will provide the ability to break out into “Rooms” with a host member from this Committee and the Planning Department to facilitate the communication.

How will the surveys be conducted? Ms. Pilipovic-Wengler answered that the survey will be conducted through the software SurveyMonkey, utilizing a mix of ranked choice, multiple choice, and open-ended questions. The link to the survey will be shared on the City of Newton Zoning Redesign website and through stakeholder engagement, open to anyone in the Newton communities to complete. Staff aims to close the survey at the end of December.

How will the public be reached to answer the survey? Ms. Pilipovic-Wengler answered that the public will be notified using the Zoning Redesign list serve, the Mayor's newsletter and posting the survey on the City's website. A suggestion was made to contact NewTV to record the meetings and ask City Councilors to use their email contact lists notifying residents of these two events.

Suggestions:

"The engagement process should be held until the Zoning Redesign is complete. "
Chair Crossley responded that these zoom events will not be a public hearing. The intent of these public meetings is to notify residents on where we are in the process what subjects we are considering in the future of the Zoning Ordinance and why. Unfortunately, some residents have been misled by incorrect information put out by some of our colleagues and others. Chair Crossley then stated that the Planning Department is working on developing a video for the purpose of explaining where the Zoning Ordinance stands and what types of items are under consideration.

Please provide a calendar of upcoming various meetings.

Please provide this Committee with the presentation prior to sharing at the public events.
Mr. Heath answered that time constraints may not allow this to happen.

It is necessary to engage and provide basic information to residents and ask them how they would like to be notified in the future.

Please be careful on how you explain the goals. Mr. Heath stated that he will reference the goals that derive from adopted city plans, including the Comprehensive Plan, Economic Development Plan and the Climate Action Plan.

It is necessary to reach out to the public regarding all public engagements before decisions are made, especially during zoning reform.

Comments:

Committee members agreed the community public events will be beneficial TO informing the residents.

Other Councilors questions and answers:

Questions and Answers:

Please clarify why Committee members are concerned about holding the scheduled zoom events? A Committee member reiterated that the engagement process should be held until the Zoning Redesign is complete.

In closing, Ms. Pilipovic-Wengler stated that the Planning Department has a final draft of the invitation and will begin inviting residents to the December public events. It is hopeful, Council members will receive the invitation on November 13, 2020. Ms. Pilipovic-Wengler will be meeting with the Committee members willing to co-host the events prior to December 2 and December 3 scheduled meetings. Committee members agreed to co-host the meetings.

Without further discussion, Councilor Danberg made a motion to hold this item. Committee members agreed 8-0.

#372-20 Reappointment of Michael Quinn to the Zoning Board of Appeals
HER HONOR THE MAYOR reappointing Michael Quinn, 115 Staniford Street, Newton, Newton, as an associate member of the ZONING BOARD OF APPEALS for a term to expire on October 15, 2021. (60 days: 11/20/2020)

Action: Zoning & Planning Committee Approved 8-0

Note: The Committee unanimously approved the reappointment of Michael Quinn as an associate member of the Zoning Board of Appeals with a motion from Councilor Krintzman.

#373-20 Reappointment of Treff LaFleche to the Zoning Board of Appeals
HER HONOR THE MAYOR reappointing Treff LaFleche, 1603 Commonwealth Avenue, Newton, as an associate member of the ZONING BOARD OF APPEALS for a term to expire on October 15, 2021. (60 days: 11/20/2020)

Action: Zoning & Planning Committee Approved 8-0

Note: The Committee unanimously approved the reappointment of Treff LaFleche as an associate member of the Zoning Board of Appeals with a motion from Councilor Krintzman.

#374-20 Reappointment of Lei Reilley to the Zoning Board of Appeals
HER HONOR THE MAYOR reappointing Lei Reilley, 130 Pine Street, Newton, as an associate member of the ZONING BOARD OF APPEALS for a term to expire on October 15, 2021. (60 days: 11/20/2020)

Action: Zoning & Planning Committee Approved 8-0

Note: The Committee unanimously approved the reappointment of Lei Reilley as an associate member of the Zoning Board of Appeals with a motion from Councilor Krintzman.

#405-20 Reappointment of Joyce Plotkin to the Economic Development Commission
HER HONOR THE MAYOR reappointing JOYCE PLOTKIN, #1611N Hammond Pond Parkway, Chestnut Hill, as a member of the ECONOMIC DEVELOPMENT COMMISSION for a term to expire on October 30, 2023. (60 Days: 12/18/2020)

Action: **Zoning & Planning Committee Approved 8-0**

Note: The Committee unanimously approved the reappointment of Joyce Plotkin as a member of the Economic Development Commission with a motion from Councilor Krintzman.

#406-20 Reappointment of Brett Catlin to the Chestnut Hill Historic District Commission
HER HONOR THE MAYOR reappointing BRETT CATLIN, 121 Suffolk Road, Chestnut Hill, as a member of the CHESTNUT HILL HISTORIC DISTRICT COMMISSION for a term to expire on May 31, 2021. (60 Days: 12/18/2020)

Action: **Zoning & Planning Committee Approved 8-0**

Note: The Committee unanimously approved the reappointment of Brett Catlin as a member of the Chestnut Hill Historic District Commission with a motion from Councilor Krintzman.

#407-20 Reappointment of Peter Vieira to the Chestnut Hill Historic District Commission
HER HONOR THE MAYOR reappointing PETER VIEIRA, 67 Old Orchard Road, Chestnut Hill, as a full member of the CHESTNUT HILL HISTORIC DISTRICT COMMISSION for a term to expire on July 31, 2023. (60 Days: 12/18/2020)

Action: **Zoning & Planning Committee Approved 8-0**

Note: The Committee unanimously approved the reappointment of Peter Vieira as a full member of the Chestnut Hill Historic District Commission with a motion from Councilor Krintzman.

At approximately 10:10 p.m., Councilor Danberg made a motion to adjourn. Committee members agreed 8-0.

Respectfully Submitted,

Deborah J. Crossley, Chair