



Zoning & Planning Committee Report

City of Newton

In City Council

Monday, March 22, 2021

Present: Councilors Crossley (Chair), Danberg, Downs, Albright, Bowman, Baker, Leary, Humphrey Oliver, Greenberg, Krintzman, Wright, Kelley, Markiewicz, Ryan, Malakie, Lucas, Lipof and Noel

City Staff Present: Director of Planning and Development Barney Heath, CPA Program Manager Lara Kritzer, Associate City Solicitor Andrew Lee

#438-20 **Request to create Newton Housing Trust to help 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 Held 8-0**

Note: The Committee was joined by members of the Planning Department, Planning Board, Fair Housing Committee, the Community Preservation Committee, Newton Housing Partnership (MHP) to discuss details of creating a housing trust in Newton to support the development of affordable housing. Mass Housing Partnership Senior Program Manager Shelley Goehring presented an overview of how a municipality can establish and regulate a housing trust. A copy of her presentation is attached to the end of this report. Ms. Goehring provided an overview of the services provided by the MHP in support of affordable housing, including the MHP community assistance team, the One Mortgage program, the Center for Housing data. The Community Assistance Team provides training and technical assistance for municipalities, housing authorities and non-profits trying to develop affordable housing or dispose of public land for the creation of affordable housing. Their mission is to help communities create Trusts and provide ongoing support for communities that have Trusts.

Affordable Housing Trusts are governed by MGL C 44 Section 55 C. Ms. Goehring noted that there are currently 120 Housing Trusts operating in Massachusetts. A municipal affordable housing trust is a public body created by majority vote of the legislative body. The Trust is given a degree of authority to act to create and preserve affordable housing. Ms. Goehring explained that it is key to the establishment of a Housing Trust that the community define what affordable housing means in its community, in terms of the levels of affordability the city seeks to achieve. The Housing Trust is led by a local group of appointed trustees, who must observe procurement, designer selection and Open Meeting laws. Creation of a Housing Trust enables municipalities to address local affordable housing needs and support local housing

initiatives. Once created, the Trusts actions are not subject to further legislative approval, enabling quicker real estate transactions as the market dictates.

Ms. Goehring explained that the statute is flexible on the appointment of Trustees, but requires a minimum of 5 member Trustees for 2-year terms. Membership must include the Chief Executive Officer/Mayor and the rest to be appointed by the Mayor in collaboration with the legislative body. Municipalities may appoint more members. The average ranges between 7-9 members. While some communities require specific skill sets, MHP cautions that additional requirements may make it difficult to fill vacancies. Ms. Goehring noted that MHP recommends that vacancies are filled by members not on other Boards and/or Commissions as there can be a significant time commitment and these individuals may not have expendable time. She explained that each community has an opportunity to create controls/restrictions on powers. For example, some require a 2/3 vote of the trustees to purchase property, a review process when the Trust is considering borrowing funds and restrictions on spending in excess of \$50,000.

Ms. Goehring explained that trusts may receive funds from different sources. She reviewed case studies from Beverly, Amherst, Somerville and Brewster. In Beverly, the Trust has been funded using Inclusionary Zoning payments. That City completed a housing plan to allow their Trust to start with current data and identify which residents in the community are cost burdened. Ms. Goehring emphasized the importance of data collection and a needs analysis for the development of a Housing Production plan to guide the Trust. She noted that using real time data is critical to addressing a municipality's needs. Other communities have used CPC funding, Inclusionary Zoning funds, marijuana tax funds, funds from free cash, tax title sales, short-term rental fees, private donations and bonding to fund their Trusts. As the statute for affordable housing trusts was revised to align with the requirements prescribed for CPA funds, any CPA dollars appropriated may be used by the Housing Trust. Ms. Goehring noted that some communities have hired a consultant to develop a strategic plan. She noted that trusts should have support for funding, purpose, vision/mission, leadership and transparent/open operations in the community. Typically, Housing Trusts are supported by paid part-time administrative staff.

Ms. Goehring noted that Housing Trusts have different roles in different communities. These include: review of funds, administrative project? reviews and determinations, rental assistance programs and property management. Ms. Goehring explained that each municipality must consider existing resources and gaps of service and decide how a Housing Trust might be a way to collaborate to fill the gaps, rather than duplicate existing services.

Director of Planning and Development Barney Heath confirmed that the City of Newton has a *Housing Strategy* but not a Housing Production Plan. The Housing Strategy was created in 2016 in concert with RKG Housing Consultants. They reviewed issues related to affordability in Newton and laid out strategies for creating affordable housing. The Housing Strategy includes detailed, site specific information and has been used as a guide by the Planning Department.

A Councilor asked for clarification on the process for determining whether or not to use a Trust and what the benefits are for the City. Ms. Goehring repeated that deciding whether or not to create a Trust is by a majority vote of the Council. She stated that one major reason communities create a Housing Trust is to achieve the ability to act nimbly in the real estate market.

In response to a question, Mr. Heath explained that the City currently has approximately \$600,000 in the Inclusionary Zoning fund. He noted that this payment was made by one developer and additional large quantities of funds are not anticipated. He stated that the City more typically receives IZ funds from leftover units in developments.

Ms. Goehring responded to questions from the Committee regarding lessons learned. She noted that the use of prescriptive language for the trustee positions has created challenges for filling vacancies and that lack of clarity in the role of the Trust has been problematic in other communities. She also explained that the community must be committed to creating distinct funding sources.

It was noted that one community bonded funds for their Trust. Councilors noted that earmarking funds from different taxes are still using dollars from the general fund. The Chair asked that Ms. Goehring provide examples of success based on structures that have been adopted in different communities. Ms. Goehring noted that while there is limited data at this time on the types of projects that Trusts have funded, the use of CPA funds requires additional reporting and data collection.

Chair of the Newton Housing Partnership, Lizbeth Heyer, noted that MHP has presented information and had conversations with NHP and the CPC. While NHP is not ready to provide a recommendation at this time, they recognize the benefit of the opportunities for flexibility and creativity. Ms. Heyer noted that if structured right, the creation of a Trust could send a strong message of support to the affordable housing community. She noted that the NHP is looking forward to discussions relative to structure and the creation of clear guidelines. She reiterated that the time associated with the various City review processes can be a barrier for some organizations (especially non-profits) that work within a subsidized housing role. She suggested that streamlining the process by using a Trust can be beneficial.

Josephine McNeil, also a member of NHP, expressed support for the creation of an affordable Housing Trust. She suggested that the City will find success in having a housing trust by finding a balance in control and flexibility. She urged Councilors to conduct a housing needs assessment with a focus on equity and inclusion and noted that there is high demand for housing residents earning below 50% AMI.

The Chair and committee members expressed great appreciation to Ms. Goehring for her clear and informative presentation. It was generally agreed that an assessment of city entities that provide affordable housing and supportive service organizations, such as NHP, the Newton Housing Authority, CAN-DO, NHCD, etc. should be assembled for a next discussion on how a Housing Trust could best work in Newton.

With that, Councilor Danberg motioned to hold the item which carried unanimously.

Chairs note: Law and Planning staff will provide an update on regulations governing compliance with the Housing Choice element of the recently adopted Economic Development legislation.

Note: Director of Planning and Development Barney Heath and Associate City Solicitor Andrew Lee joined the Committee to provide an update on regulations governing compliance with the Housing Choice element of the recently adopted Economic Development legislation.

Mr. Heath explained that the state issued materials which provide some information about conditions under which the voting threshold must be lowered to a simple majority. He noted that the state's guidance however, remains somewhat unclear. Atty. Lee explained that the Department of Housing and Community Development (DHCD) are still working to develop complete guidance. He noted that there are two components; a.) voting thresholds for special permitting and b.) voting thresholds for zoning amendments. It was explained that the Planning and Development Board makes a recommendation to the Council on whether approval of a project can be satisfied by a simple majority or requires a 2/3 vote. The Law department issued its most up to date guidance on the matter in its Memorandum of March 17, 2021 (attached).

Councilors noted that where a project or zoning ordinance creates new housing opportunities according to the Housing Choice rules, a simple majority is now required. Where a project or zoning ordinance is unrelated to housing development does not fit into the housing choice category, it still requires a 2/3 vote. A Committee member questioned how the legislation contemplates a comprehensive zoning redesign project, where there are non-housing and housing elements. It was noted that that statute is silent on this situation, so it is possible that changes to the zoning would have to be voted separately. Atty. Lee explained that the ultimate decision with respect to the voting threshold is made by the City Council but noted that there may be some discussion on what vote the Council must take to determine the threshold.

The Committee asked Atty. Lee to provide clarification on whether the proposed amendments to the MU-3/TOD zone for the Riverside development will require a majority or 2/3 vote.

The Housing Choice element also requires that MBTA communities, like Newton, must create a district "of reasonable size" that allows multi-family dwellings (3 or more units) by right, at a minimum density of 15 units per acre, within a half mile radius of public transit. In response to a question from a Committee member, he explained that the guidance at this stage is very limited, but the district must be within ½ mile radius to satisfy the rule.

Seeing no other Committee member who wished to speak, the Committee agreed to resume discussion on the topic at a later date.

#96-21 Requesting to honor The Fair Housing Committee with a resolution
COUNCILORS ALBRIGHT, BOWMAN, CROSSLEY, DANBERG, HUMPHREY, NOEL, RYAN, DOWNS, KALIS, KRINTZMAN, GREENBERG AND GROSSMAN requesting to honor The Fair Housing Committee with a resolution recognizing their important work in fair access to housing and providing equal opportunity for all.

Action: Zoning & Planning Approved 6-0-2 (Councilors Baker and Wright abstaining)

Note: Councilor Bowman presented the request to honor the Fair Housing Committee with a Resolution. She explained that April is Fair Housing month and the proposed resolution was drafted in

recognition of the FHC's work as well as with the understanding that Fair Housing continues to be an issue in this country, state and within the community. A copy of the Resolution is attached to the end of this report.

Councilor Baker complimented Councilor Bowman for her advocacy and commitment. He expressed concern relative to one provision in the resolution as shown below:

"...Whereas, the Fair Housing Committee's expertise and focus will be important in addressing other action items from the AI including the review of restrictive zoning policies that limit the amount of multi-family and affordable housing as well as compliance with recently passed state legislation that requires the creation of at least one by-right multi-family zone close to transit and..."

He said that this aspect of the draft resolution relates to zoning policy which is different from housing discrimination. He expressed support for celebrating the work of the Fair Housing Committee but stated that he felt that it is inappropriate to tie in policies that are still under deliberation by the Council. Councilor Bowman noted, however, that the Analysis of Impediments to Fair Housing (AI) is a five-year plan to "affirmatively further fair housing" – a requirement of the Law - in Newton. The AI has been signed by the West Metro Home Consortium, of which Newton is a member and coordinator. She noted that the Analysis of Impediments to Fair Housing (AI) identified key strategies and actions that need to be taken to improve Fair Housing in Newton and stated that the language in the resolution is taken directly from the AI which the City has already committed to. She suggested that the City cannot affirmatively further fair housing (AFFH) without creating more, and specifically multi-family, housing.

Councilor Baker motioned to strike the language in the resolution. Councilors were not supportive of the motion to strike the language from the resolution, noting that it is a critical component to furthering fair housing and speaks to the creation of new housing opportunities. The Chair noted that although the language speaks to a goal, it does not create a rule. Councilors noted that certain aspects of the zoning code have been identified as obstacles to low-income housing development in Newton.

Chair of the Fair Housing Committee Ted Hess-Mahan noted that under the Fair Housing Act the City has an obligation to promote equality, diversity and inclusion. He noted that restrictive zoning in the suburbs was specifically intended to segregate people of color.

On Councilor Baker's motion to strike the language from the resolution, The Committee voted 2 in favor (Councilors Baker and Wright) and 6 opposed. Councilor Leary motioned to approve the resolution which carried 6-0-2 (Councilors Baker and Wright abstaining).

#92-21 Reappointment of John Wyman to the Chestnut Hill Historic District Commission
HER HONOR THE MAYOR reappointing John Wyman, 47 Old Orchard Road, Newton, as a full member of the CHESTNUT HILL HISTORIC DISTRICT COMMISSION for a term to expire on November 15, 2023. (60 days: 05/14/21)

Action: Zoning & Planning Approved 8-0

#93-21 Reappointment of Matthew Montgomery to the Chestnut Hill Historic District Commission

HER HONOR THE MAYOR reappointing Matthew Montgomery, 57 Bowen Street, Newton, as a full member of the CHESTNUT HILL HISTORIC DISTRICT COMMISSION for a term to expire on November 15, 2023. (60 days: 05/14/21)

Action: Zoning & Planning Approved 8-0

#94-21 Reappointment of Robert Imperato to the Chestnut Hill Historic District Commission

HER HONOR THE MAYOR reappointing Robert Imperato, 145 Washington Street, Newton, as a full member of the CHESTNUT HILL HISTORIC DISTRICT COMMISSION for a term to expire on November 15, 2022. (60 days: 05/14/21)

Action: Zoning & Planning Approved 8-0

#95-21 Reappointment of Samuel Perry to the Chestnut Hill Historic District Commission

HER HONOR THE MAYOR reappointing Samuel Perry, 26 Old Orchard Road, Chestnut Hill, as an alternate member of the CHESTNUT HILL HISTORIC DISTRICT COMMISSION for a term to expire on November 15, 2021. (60 days: 05/14/21)

Action: Zoning & Planning Approved 8-0

Note: The Committee expressed no concerns relative to the reappointments of John Wyman (#92-21), Matthew Montgomery (#93-21), Robert Imperato (#94-21) and Samuel Perry (#95-21). Councilor Baker moved approval of the items which carried unanimously.

With that, the Committee adjourned at 10:00 pm.

Respectfully Submitted,

Deborah J. Crossley