

CITY OF NEWTON

IN BOARD OF ALDERMEN

POST AUDIT & OVERSIGHT COMMITTEE REPORT

TUESDAY, FEBRUARY 23, 2010

Present: Ald. Swiston (Chairman), Shapiro, Rice, Lennon and Sangiolo

Absent: Ald. Schnipper, Freedman and Johnson

Also Present: Ald. Lappin

City Staff: Chief Joseph LaCroix (Newton Fire Department), Art Cabral (Interim Commissioner Public Buildings Department), Amy Yuhasz (Associate Director for Housing and Community Development Planning & Development Department), Candace Havens (Interim Director of Planning & Development), Josephine McNeil (Executive Director of CAN-DO), Alice Ingerson (Community Preservation Program Manager) and Clint Schuckel (Traffic Engineer)

#375-09(2) COMMITTEE ON COMMUNITY PRESERVATION requesting explanations from the Inspectional Services and Fire Departments regarding requests for changes in the Brigham House Rehabilitation Project from the Project Plan that they had previously approved that resulted in increased project costs. [11/30/09 @ 10:33 AM]

ACTION: HELD 4-0 (Ald. Sangiolo not voting)

NOTE: Ald. Lappin, Chief Joseph LaCroix, Newton Fire Department; Art Cabral, Interim Commissioner Public Buildings Department and Alice Ingerson, Community Preservation Program Manager joined the Committee for discussion on this item.

Interim Commissioner Lojek provided the Committee Clerk with a summary from the General Contractor on changes made to the plans and additional work required to complete this project dated January 27, 2010, attached to this report.

Ald. Lappin said the Committee on Community Preservation docketed this item because this was a project that was initially approved by the Board and returned for approximately \$15,000 of additional funding and the work was completed without the Boards approval for the additional funds. This permit was issued based on plans that were signed off by Inspectional Services and the Fire Department and later required additional requirements. She said constituents have the same problem once their plans are signed and later changed. She asked once a City department signs a plan it should not mean it can be amended in order to prevent this from again happening and to help constituents with a policy the City adheres to.

Mr. Cabral described to the Committee what happened. He said the plans were reviewed; permit was issued for one bathroom. The only intention was to renovate and modify one bathroom but during the renovation an additional bathroom had to be installed on the first floor and the renovation of a third bathroom. Costs for these renovations and redesign were approximately \$24,000 for the extra bathroom, redesign and to renovate the third bathroom. Ald. Rice said five

years ago, the original requirement was to only install one bathroom. Mr. Lojek's summary only addressed a change order to add the second bath which is required by Plumbing Code requirements based on change of use. There is no mention of the third bathroom. Chairman Swiston asked Mr. Cabral for the original request.

Chief LaCroix gave a brief history of what happened. He said the initial plans were reviewed and completed in July 2008. At that time, the plans were not approved because they were not submitted to the Fire Department. An initial approval was given to receive the building permit but the plan was missing the electrical plans. A building permit was issued to complete demolition. Chief LaCroix said an electrician must submit drawings and also pull a permit for a fire alarm system. During the demolition which caused the initial damage a master box was tripped causing broken wires and all devices were contaminated and became useless. At this point, Fire Prevention advised the petitioner a permit would be necessary to complete a new system. The petitioner did not have the proper plans in October and still needed to provide additional information; a diagram, battery calculations and wiring plans which are required by code and in this case were not code compliant. The petitioner was to meet with Mr. Cabral in October 2008 but neglected to. In November 2008, final revised plans and all correct paperwork were submitted requesting additional fire smoke detectors be installed.

Ms. Ingerson said the Community Preservation Committee (CPC) has an annual funding deadline to request CPA funds. The only current exception to the annual deadline is for real estate acquisitions. In response to requests from project managers, the CPC recently introduced a new supplemental funding request option, with the same deadline but a shorter process. This policy was intended to dissuade applicants from submitting a less careful original proposal, knowing they could correct it at any time of year by through a supplemental proposal. The once a year deadline helps the CPC compare all proposals. In this case, the CPC had been informed earlier by Public Buildings that the original appropriation was enough to complete the project.

Ald. Lappin asked if the person responsible for the demolition work could be held responsible for the cost to this project for damage caused. Mr. Cabral said the City paid for ten extra smoke detectors but the person responsible for the demolition paid for the re-wiring. Chief LaCroix said he does not know where the petitioner came up with the initial number of detectors necessary. Chairman Swiston asked what could be done to prevent this from happening again. Mr. Cabral said this is the only plan the Public Building Department was not ready for the number of detectors necessary.

Ald. Lennon said it appears from Mr. Lojek's summary the total amount is \$40,040 for change orders. Mr. Cabral answered yes, for all projects listed on the summary sheet. Change order #3 and #5 are in question. The redesign work for the bathroom is not listed on the summary sheet. Ald. Lennon asked that Public Buildings, CCP and all involved provide an update to the Board when a project appears to go over the estimated cost that they request supplemental money beforehand. Ms. Ingerson said bids received were under the total appropriation. She asks that in the future, bids are received at a higher rate because unspent funds are returned perhaps avoiding this from happening again. Ald. Rice said items were cut back in the Brigham House in order to get into the exact dollar amount.

Chairman Swiston said there are two main issues to remember. First, the process of managing a City project and what oversight the Board can provide. Second, this experience has proved that constituents face the same issues in the permit process.

Mr. Cabral said he felt uncomfortable discussing anything further because there are other issues. Ald. Shapiro said he is concerned to hear this because the Post Audit & Oversight Committee reviews issues and this may be an appropriate time to review Mr. Cabral's concerns. Mr. Cabral said he does not share the same views as Chief LaCroix on the information received because there was more of a review prior to the permit and now he is hearing from Chief LaCroix that this didn't happen. Chief LaCroix said plan reviews are witnessed by the inspectors and filed. Ald. Shapiro asked if this is the same type of problem happening to constituents, do we have an idea how often this is happening and how do we prevent it from happening again. Chairman Swiston asked for the paperwork and time lines on this project. Mr. Cabral said he would obtain the notes from the architect.

Ald. Lennon made the motion to hold this item until Mr. Lojek can attend a meeting. Chairman Swiston also asked for additional back up material including time lines from Chief LaCroix and Mr. Cabral and said perhaps this item will be held again in April. The Committee voted in favor 4-0, Ald. Sangiolo not voting.

#30-10(3) POST AUDIT & OVERSIGHT COMMITTEE requesting a discussion with the Planning & Development Board to review the actions on the decision making process that lead to the forgiving of the Newton Community Development Authority (NCDA) loans on June 1, 2009. [02/08/10 @ 4:06 PM]

ACTION: NO ACTION NECESSARY 5-0

NOTE: Amy Yuhasz, Associate Director for Housing and Community Development Planning & Development Department and Josephine McNeil, Executive Director of CAN-DO joined the Committee for discussion on this item.

Chairman Swiston said she spoke with Tabetha McCartney, Chair of the Planning & Development Board. Ms. McCartney informed her she has requested financial information from CAN-DO and will share this information when she receives it.

Ms. Yuhasz provided Committee members with a PowerPoint presentation on the review and approval process of CAN-DO, attached to this report.

Ms. Yuhasz said each year the City receives approximately 3 million dollars in Federal Community Development Block Grant (CDBG), Home Investment Partnerships Program and Emergency Shelter Grant money based on a formula. Within the CDBG program there are six different areas including grants and loans which are funded by the City. Every five years, the Housing and Urban Development (HUD) requires the City to provide a consolidated plan. The City is currently in the process of completing their annual action plan for FY11. The plan will outline projects to be undertaken during the fiscal year using the grant funds and will provide a proposed budget for each program. The CDBG funds are primarily used for low to moderate income residents. Home Funds are used solely for the creation and development of affordable

housing. The Emergency Shelter grant is specifically to help emergency shelters or transitional housing programs.

Approval Process

There are nine different advisory committees and approximately forty different programs working with the City. Recommendations made by an advisory committee are forwarded to the Planning & Development Board for review, recommendation and approval which is submitted to the Mayor for approval of the project and which program will undertake these funds. Ald. Shapiro asked if the Mayor has ever changed a project submission. Ms. Yuhasz answered no, not in the ten years she has worked with the City.

Ms. Yuhasz said the loans which were forgiven last year for CAN-DO came under the Housing Rehabilitation Program. The Housing Rehabilitation Program has specific guidelines for what the City can fund. Those guidelines when initially adopted and each time they are revised they go through the Newton Housing Partnership, Planning & Development Board and the Mayors review and approval. She said each of these were responsible for the forgiveness process for CAN-DO.

Awarding of Loans

A loan agreement, mortgage, note and deed restriction if it is a housing development project where the City is securing long-term affordability. Loan documents are issued between the NCDA and Subgrantee (MOU between NCDA and the City). Many years ago, the Law Department said the City could not hold mortgages on private property. The Department of Revenue said it was okay if the City held mortgages on private property. The NCDA has the authority to exercise the right of first refusal on these properties but can step into the process to purchase the property while the City works to find another non-profit. The City is allowed to do this through the Board.

Process for Loan Forgiveness

CAN-DO was experiencing a financial difficulty due to a loss of income on the Millhouse Commons project. CAN-DO submitted a request to the Planning Director to forgive \$529,817 for seven CDBG funded direct payment housing rehabilitation loans. The forgiveness would result in an annual savings of \$32,376 for CAN-DO. NCDA was the mortgagee of seven additional direct payment loans with the Newton Housing Authority, and three non-profit agencies. Staff notified the NHA and other agencies of this incident and the Newton Housing Partnership recommended approval. The Planning & Development Board recommended approval of the forgiveness of the loan contingent upon receipt of additional documents. The Mayor must also approve the request. Chairman Swiston asked what criteria the City uses to forgive the loans. Ms. Yuhasz said the City is allowed to forgive loans. The loans were forgiven and reported in the NCDA annual financial statements for FY09. Ms. Yuhasz said the loans were not completely forgiven they were converted to deferred payment loans. The loans are still on the City books and if the property is sold to someone who did not keep it as affordable housing the City would be paid back. Currently, the City is not receiving the monthly program income of approximately \$32,000 per year.

Chairman Swiston said the purpose of this item is to discuss how the forgiveness happened and how it was not tracked and not noticed until October 2009. It is not to question the decision making process of the Planning & Development Board. Ald. Shapiro understood the Home Rule Petition the City filed granting the Planning Director authority to forgive the loans. Ms. Yuhasz said when the City was forgiving the loans the Law Department advised them it should be the Planning & Development Board acting as a Community Development Advisory Board. The Board became aware of the problem when the financial statements were issued for the Newton Community Development Authority in October 2009. The funding for the loans was in the name of the NCDA even though the Planning Board was the board who approved this forgiveness.

It is the plan to have NCDA bank accounts be incorporated into the City system by July 1. CAN-DO will continue to update the Planning & Development Board on their financial well-being every six months. FY10 changes to Housing Rehabilitation Program guidelines include switch from direct payment loans to deferred, with payment due when ownership changes. Further changes will be proposed during FY11.

Chairman Swiston asked how many applicants and who qualifies for the Housing Rehabilitation program. Ms. Yuhasz said in a household family of four the income can not exceed \$65,000. The program was under utilized for many years but because of recent guideline changes the City has an extensive waiting list. Ald. Lennon asked if an income limit has been determined. Ms. Yuhasz answered no; it still needs to be determined.

Ald. Shapiro asked if the financial situation with CAN-DO has been solved preventing this from happening in the future. Ms. McNeil said this has not totally fixed the problem but has put CAN-DO in a better financial position allowing them to move forward with another project. The problem occurred because of the Millhouse Commons and Elliot House projects. The process of permits and funding is very lengthy and the Elliot House even had an appeal. Over the past three years CAN-DO has worked on two projects and during that time CAN-DO received no income because there was no development fee. Sixty percent of the units have to be affordable housing set by a formula by the state which says how much money can be charged based on individuals' income. All housing costs can not exceed 30% of the income, condominium fees and taxes are included. Ms. McNeil said the City is still paying off a \$200,000 construction loan. Out of eleven units seven units were affordable units making such an impact. She said she explained to the past Mayor and it was his opinion he wanted to continue the program and did not want CAN-DO to become obsolete. The way to prevent this from happening was to relieve CAN-DO's finances. Chairman Swiston said on March 1 the Planning Board will be discussing CAN-DO's financial situation at their meeting.

Chairman Swiston opened the discussion to members of the public:

Michael Leppi, 422 Chestnut Street, provided Committee members with the current financial documents from CAN-DO dated February 16, 2010, attached to this report. Mr. Leppi said he still has not heard why the \$529,817 was forgiven, it is actually \$920,000. How do loans get forgiven to pay off other loans when they are given for a particular project. Ald. Swiston said this item in this Committee is to follow the process of the City and not to question the decision made by the Planning Board.

Ald. Lennon made the motion for No Action Necessary. The Committee voted in favor 5-0.

#174-08(4) ALD. SWISTON & SHAPIRO requesting the Traffic Engineer provide a status report on the implementation of the recent parking meter rate increases and their impact on parking. [01/12/10 @ 2:27 PM]

ACTION: HELD 5-0

NOTE: Clint Schuckel, Traffic Engineer joined the Committee for discussion on this item.

Mr. Schuckel said the meter conversion process began on January 18. A contractor was hired taking approximately one week to complete the project. The estimated cost of \$4,000 was used from the expected revenue. He said the biggest challenge was to open the locks in mid winter. Some meters were changed but the rate plate was not because the meters could not be opened. Chairman Swiston asked why meters were left with a discrepancy. Mr. Schuckel said the City returned to correct approximately 40 out of 1,000 meters Citywide. He said two people completed the project and it became a communication error between them; one person reprogrammed the meter and the second person changed the rate plates. 95% of the meters were correct and 5% were not leaving complaints and angry people. Currently, 450 meters are charging the old rates and still have the old rate plate. He anticipates the new meters arrival next week. Mr. Schuckel is hopeful the new meters will be installed in March through early April making all rates consistent. He said the rate plates were changed in short term meters to reflect the following changes: 6 minutes to 4 minutes for each nickel, 12 minutes to 8 minutes for each dime and 30 minutes to 20 minutes for each quarter.

Ald. Sangiolo asked why a card compatible type meter was not implemented. Mr. Schuckel said two docket items remain relative to this question. He said the City's recent purchase of \$90,000 bought card compatible type meters. The City felt the rate increase and the ability to continue bringing in coin for the next year will help fund the infrastructure for this type of meter. Card compatible meters will be installed on the streets and if the decision is made to use pay stations in the municipal lots those meters would then be installed on the streets. 450 broken meters will be replaced out of 1,700.

Mr. Schuckel said the Public Works Department submitted a five year plan to accept card compatible type meters Citywide at a cost of approximately \$100,000 per year. Including in this plan is the cost to purchase card compatible type meters for all municipal lots. The City anticipates approximate revenue of 1.5 million dollars per year. Mr. Schuckel is hopeful the meter increase will also increase the number of commercial parking permits sold making coin collection less of a task.

Chairman Swiston asked if \$90,000 included the installation of the meters and how much money the City is losing with the 450 broken meters that are unable to charge the correct amount. Mr. Schuckel said the new meters would be installed using in-house crews and the City is losing approximately \$4,000 per week with the broken meters because they are unable to charge the correct amount.

Chairman Swiston said she anticipates a hold on this item and it will be discussed again in June when the implementation of the meter rate increase has been in effect for six months. Ald. Sangiolo made the motion to hold this item until June. The Committee voted in favor 5-0.

#401-08 ALD. JOHNSON, ALBRIGHT AND LINSKY requesting discussion of the overall project management and communication of the Newton North High School Project. [11-10-08 @ 8:53 AM]

ACTION: **NO ACTION NECESSARY 5-0**

NOTE: Chairman Swiston said Ald. Johnson approves the Committee voting no action necessary on this item.

Ald. Shapiro made the motion for No Action Necessary and the Committee voted in favor 5-0.

At approximately 9:55 pm, Ald. Shapiro moved for adjournment and the Committee voted in favor 5-0.

Respectfully submitted,

Greer Tan Swiston, Chairman