

CITY OF NEWTON

IN BOARD OF ALDERMEN

RULES SUB-COMMITTEE REPORT

WEDNESDAY, MAY 7, 2008

Present: Ald. Freedman (Chairman), Baker, Brandel, Johnson

Also Present: Ald. Fischman, Mansfield, Swiston, Merrill

Others Present: Karyn Dean (Committee Clerk)

REFERRED TO LAND USE & PROGRAMS & SERVICES COMMITTEES

#37-08 ALD. BAKER, MANSFIELD & FISCHMAN proposing a revision to the Rules & Orders of the Board to allow Land Use Committee public hearings to be held on more than one night per month.

LAND USE APPROVED 7-0 on 2-12-08

ACTION: **HELD 4-0**

NOTE: Ald. Fishman explained that the point of this item was to provide some flexibility to the Chairman of the Land Use Committee to call a second public hearing during the month. Currently, the Land Use Committee has a public hearing at the second meeting of the month and the first meeting of the month is a working session. There is a possibility of a third working session in the month. The President of the Board as well as the Chairman and Vice Chairman of Land Use felt it would be beneficial to have the flexibility to allow 2 public hearings per month, if needed, instead of the one that is currently allowed.

Need for Flexibility

Ald. Fischman said that petitioners often try to rush to meet the monthly deadline. If they miss the deadline then they forfeit the ability to have their public hearing and they would have to wait 6 weeks for their next opportunity. This tended create a big push on the Planning Dept. staff all at once. The Land Use Committee also tends to miss meetings because they meet on Tuesday nights which would normally be the day for any election. Monday holidays require full board meetings to get pushed to Tuesday and thus pre-empt Land Use. In December of 07 and March of 08 no regularly scheduled working sessions occurred, and in 2007 there were only 5 months in which the 3 meetings per month occurred due to those circumstances. There were also "black out" periods in July and August during which time applications can not come in. At the end of the two year session, public hearings can not be held after October on major projects. Ald. Mansfield agreed that the calendar was very limiting and petitions come in en masse to meet the

deadline. Having some further flexibility, petitions would be filed when they were ready instead of on a monthly deadline.

The 2nd public hearing could be on a separate night or could be a public hearing on a short agenda prior to the working session. It would be at the discretion of the Land Use Chairman to determine, at the beginning of the month, based upon what he/she would see on the agenda, whether there was a need for more than one public hearing. It would be a docketed item that would go before the board to be voted up or down. It would not simply be the decision of the Land Use Chairman. The expectation would be that petitioners would not rush to get in at the end of the month over burdening the Planning Department but rather spread the work load out a bit more evenly. It would allow a little more time for petitioners to gather all of their information as the Committee often encounters items that get to a public hearing with key information missing or incomplete. The public hearing then gets extended to the next working session to gather the information and in more controversial cases, allow for neighbors and abutters to be heard. With this flexibility, the public hearing could be canceled and rescheduled for a time when the petitions were complete.

Default Meeting Schedule

Ald. Johnson suggested that if a 2nd public hearing was to be called, it would need to be on a night that other Committees were not meeting and would like that specifically stated. Ald. Baker said they would likely stay to Tuesday night and leave the possibility for a Thursday night as a rare instance under special circumstances. Ald. Swiston would like to keep the schedule predictable by keeping the 2nd Tuesday as the “default” for the public hearings should only one be needed.

Ald. Fischman said that the new language would be:

“On the Tuesdays following the 1st, 2nd, and 3rd Monday of each month, the Chairman shall determine the meeting at which public hearings will be conducted with all determinations of time and place for such public hearings to be confirmed prior to such hearings by a vote of a majority of those present at the regular meeting of the Board of Aldermen.”

This contemplates the elimination of the current requirement that the public hearing can only be on the Tuesday following the 2nd Monday each month. It would provide the flexibility to provide a public hearing on potentially 3 of those days if necessary. The likelihood would be 2 meetings on 2 Tuesdays.

Criteria

Ald. Johnson would like to have some criteria for determining the need for scheduling more than one public hearing or moving it from the 2nd Tuesday each month. Ald. Baker did not feel it was necessary to craft criteria as circumstances could be many and varied. He would like to rely on the discretion of the Chairman. Ald. Swiston said that

documenting the intention of this decision in the Rules would help keep consistency in the future. She was concerned that without criteria, the intent could morph into convenience. Ald. Baker was concerned with making this so specific that they could run into trouble with a challenge from a Land Use attorney saying they did not meet the criteria as specified. He did not want to put something in the Rules that could become a burden.

Ald. Johnson noted that Ald. Baker, Ald. Mansfield and Mr. Kruse drafted the Rules Pertaining to Special Permits and Site Plan Approval. She said this was in direct response to what a Chairman of Land Use was doing in scheduling meetings related to Star Market. She just wanted to be careful that the flexibility in this proposed item didn't turn into a loophole leading to unintended consequences. She felt the Board should hear from the Chairman of Land Use, the reason(s) why an additional public hearing was needed. Ald. Fischman said perhaps a compromise could be a memo attached to the Rule change with the rationale of how they came to this decision. Ald. Johnson was convinced of the need for flexibility, but she felt there needed to be some guidelines. Ald. Fischman said this was really just a way to de-congest a very congested process in the Land Use Committee and the Planning Department.

Ald. Mansfield said that Public Facilities and Zoning and Planning have regularly scheduled public hearings that are voted on by the Board. Those public hearings are not specified in the Rules as to in which meetings of each Committee they can be scheduled. He did not understand why Land Use would need criteria for this scheduling.

Amended Language

Ald. Mansfield suggested changes the proposed language to "...the Chairman *may* determine the meeting at which public hearings will be conducted..." Ald. Brandel said he would support this.

There was a general sense that they agreed on changing the language to "may determine" and perhaps adding some language around "additional meetings" and having the default meeting remain the 2nd Tuesday after the 2nd Monday of the month. Ald. Johnson and Swiston would work on some language for the next Rules Subcommittee meeting which will be June 4 at 7:15pm.

Ald. Brandel moved to hold this item and the Committee voted 4-0 in favor.

Meeting adjourned.

All other items were held without discussion.

Respectfully Submitted,

John Freedman, Chairman