

CITY OF NEWTON

IN BOARD OF ALDERMEN

RULES SUB-COMMITTEE REPORT

WEDNESDAY, OCTOBER 22, 2008

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

Also Present: Ald. Hess-Mahan, Mansfield, Sangiolo

Others Present: Karyn Dean (Committee Clerk)

**REFERRED TO LAND USE & PROGRAMS AND SERVICES COMMITTEES**

#274-07      ALD. SANGIOLO proposing that Article X of the Rules & Orders of the Board relative to Special Permit and Site Plan Approval Petitions be amended to require the applicant to post on the subject property a notice that would include but not be limited to identifying the subject matter and the date and time of the public hearing.

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

**ACTION:      APPROVED 4-0**

**NOTE:** Ald. Freedman noted that this item was approved in the Land Use Committee. He explained that there were some instances wherein neighbors of projects had not had a timely notice of public hearings. A straightforward way of improving communication of public hearings would be to post notice on the subject property for all to see. There was some discussion about the size of the signs.

Ald. Hess-Mahan said this issue came out of a Paul St. petition where a number of the neighbors said they had not received notice. A number of other communities follow this model of posting signs on properties. The sign would contain all the relevant information and dates of public hearings and be posted so that it could be viewed by neighboring properties and from the street. It would be a coated paper sign that is filled in with a marker. The sign would be posted by the petitioner as part of the responsibility of applying for the permit. The petitioner would get the signs from the Planning Department and would charge the petitioner a fee. A recommendation for posting requirements was made at the February 12, 2008 working session and was accepted by the Land Use Committee. It is attached to this report. Some sample signs were brought into the Land Use Committee meeting by Candace Havens but were not available for this meeting.

Ald. Baker said the normal model is that there is a check on compliance with the Board rules because the Planning Department makes sure everything is in order before a petition can be filled. He asked what the consequence would be if the petitioner did not post the sign as required. Ald. Mansfield said that it would be part of the requirements for public

notice, so he felt the consequences would be the same as if notice weren't mailed to abutters (and abutters to abutters) or advertised in the newspaper, although those requirements were in the ordinance and in the state statute. It would be deemed a faulty hearing and the hearing could not be opened. He said that it was not discussed in Land Use. Ald. Baker and Mansfield suggested some sort of affidavit stating that the posting had occurred. Ald. Baker wondered if there had to be some process of checking to make sure the sign remained posted during the required time. That could introduce grounds for an appeal if the sign was not maintained.

Ald. Baker said that when they did the Board Rules relating to the Special Permit process 2 or 3 years ago, there was a specific capacity in the Board of Aldermen acting to make rules for the process of the land use process. It is authorized by statute Chapter 48. These rules have more than the conventional force because they are, in effect, part of the means of making the statutory scheme effective. The appeal comes from the Board's process and decision. Ald. Baker said that to the extent someone wanted to say there was a failure of adequate notice, there was some learning to the effect that those outside the abutters and abutters to the abutters could be affected and could file for an appeal.

Ald. Johnson wondered if a fee needed to be set and documented somewhere.

#### Rules vs. Ordinance

Ald. Freedman wondered how this procedure could be binding if it was just in the Rules and not in an ordinance. Ald. Johnson also was concerned that all the noticing rules weren't in the same place. There was a concern that a petitioner would not know to look in two places for all the requirements. Ald. Hess-Mahan said it would become a part of the Planning Department's procedure and they would learn of it that way. Ald. Johnson would like a link on the Planning Department website that leads a petitioner to all of the necessary information and requirements.

Ald. Mansfield said that Ouida Young of the Law Department recommended that this be in the Rules. The committee clerk contacted Ms. Young and asked her why it should be done this way. She said that it was just an easier process to put this in the Rules as opposed to adopting a zoning ordinance change. She said that if the Rules had been in existence at the time of the crafting of the special permit process, it probably would have been better to put all of it in the Rules. She also said that the Planning Department may need to do some fine tuning in terms of location of signs depending on individual properties and having this in the Rules would give them the ease and latitude to do that. This made Ald. Mansfield think that they should move all the process parts into the Rules from the Ordinances as they have the authority to do that. Ald. Johnson thought it was best to have them in the same place as well and it would also make the process more user friendly.

Ald. Johnson moved approval of this item and the committee voted in favor.

#154-08      ALD. JOHNSON requesting to establish a definition and appropriate usage of the Committee of the Whole of the Board of Aldermen as are all committees of the Board. [4-10-08 @9:09 AM]

**ACTION:**      **HELD 4-0**

**NOTE:** See Note below.

#130-08      ALD JOHNSON, SANGIOLO AND BRANDEL requesting establishment of a new Rule of Board of Aldermen requiring that referral of any and all new business, communications, petitions and orders docketed before the Board of Aldermen be restricted to one or more of the standing committees of the Board of Aldermen: Land Use, Programs and Services, Public Safety and Transportation, Zoning and Planning, Finance, Real Property Reuse, Post Audit and Oversight, Public Facilities and Committee on Community Preservation. [03-24-08 @ 9:11 AM]

**ACTION:**      **HELD 4-0**

**NOTE:** See Note below.

#129-08      ALD. JOHNSON, SANGIOLO AND BRANDEL requesting establishment of a new Rule of Board of Aldermen stating that any new item submitted but not yet approved or accepted by the Full Board of Aldermen is prohibited from any formal or informal discussion by any formal, informal or special committee of the Board.  
[03-24-08 @ 9:11 AM]

**ACTION:**      **HELD 4-0**

**NOTE:** Ald. Freedman said that 154-08, 130-08 and 129-08 were all subject to a similar discussion. Ald. Johnson noted that this discussion would also apply to 153-08 which speaks to the appropriate use of the Long Range Planning Committee. That item, however, was not on the agenda for this meeting. She noted that the definition for appropriate uses of the Long Range Planning Committee and Committee of the Whole was not in the Board's Rules. Briefly, her concerns for each were as follows:

- #154-08  
Ald. Johnson said she was concerned that President of the Board was referring items to the Committee of the Whole that would be best dealt with in committee(s). Ald. Baker said that Roberts Rules provide for referral to a Committee of the Whole as a basic tool of any kind of governmental body. Things that are not covered in the Board's Rules are covered in Robert's Rules. He said he checked with the Law Department and found that any matter can be referred to the Committee of the Whole. He said there was a history, at least during his tenure as President, to use the Committee of the Whole for various purposes. He had some examples of uses of the Committee of the Whole that was prepared by the City Clerk. The budget discussions were an example. Ald.

Johnson would like to see how Committee of the Whole had been used historically to discuss and vote items. That information will be provided in advance of the next discussion of this item.

Ald. Baker said that if the question was should it be feasible to docket items in Committee of the Whole directly, he sensed it was useful to do that and it has been worthwhile. Ald. Johnson said that it should be feasible, but she felt there should be some parameters around how it should be done. She had done some research and had some wording to recommend but she inadvertently left her papers elsewhere. She was concerned that the discussion in the Committee of the Whole wasn't as productive as discussion in Committees. The cameras and the audience tended to evoke grandstanding.

- #130-08  
The Rules stated that items should be docketed to one of the standing committees. There was no other outlet for items to be docketed anywhere else.
- #129-08  
Ald. Johnson recalled an item that was late filed by the Mayor which was subsequently not allowed by the Board, but yet it was discussed. Her point was that if an item was not docketed and was not on an agenda, it could not be discussed. She felt this was a violation of their Rules. An item can not be taken up unless it accepted and on an agenda. Ald. Baker then brought the matter up in a Chairman's meeting and she felt that was not appropriate and it was an attempt to circumvent the Rules. Ald. Baker said he has used the Chairman's meeting from time to time as informational resources on a variety of questions.

Ald. Johnson said it appeared to her and others as well, that the Rules were being made up and bent as they were going along. She understood that the President had some flexibility but that committee chairs and members had roles and they needed to be careful of unilateral decisions.

Ald. Brandel asked what the purpose was of a Committee of the Whole. He didn't think they were as productive as Committee meetings because each committee looked at the issue through their particular lens. Ald. Baker indicated that the President has the capacity to appoint Special Committees as are deemed necessary to the matters that affect the jurisdiction of more than one committee or deal with temporary matters, or both. For instance, that was how the Long Range Planning Committee came about. This committee dealt with discussion items that were not action items in other committees and acted as an incubator. He only referred 3 items to Long Range Planning directly.

Ald. Baker explained that the Committee of the Whole has been used in a couple of different ways. One would be for large, Board level general informational discussions. The other would be for a specific item that held interest for everybody. In the initial

stage of the discussion about Newton North High School, it was known that the new high school was coming but there was no formal proposal. He had appointed a special Design Advisory Committee which was in anticipation of the new high school. In 2006, they went into Committee of the Whole to discuss the high school without having a docket item. These were anticipatory discussions with quite extensive presentations by the Executive Department and various consultants for the city. The second function of the Committee of the Whole would be to refer a specific item that could go to multiple committees but everybody was interested in. He said it was a tool that was used rarely and had only been used for a couple of actual docket items.

Ald. Johnson pointed out that the Rules say that “unless objection is made and except as otherwise provided herein, the President shall refer all new business, communications, petitions and orders to the several Committees as follows:” It was not stated that Committee of the Whole was an option for referral. She wanted to put some structure around this and make it clearer. She will have her recommended language for the next discussion.

The committee voted to hold these items.

Motion to adjourn.

Respectfully Submitted,

John Freedman, Chairman