

CITY OF NEWTON

IN BOARD OF ALDERMEN

SPECIAL MEETING OF THE ALDERMEN

&

COMMITTEE OF THE WHOLE

WEDNESDAY, MARCH 1, 2006

Present: Ald. Baker (President), Albright, Burg, Coletti, Fischman, Gentile, Harney, Hess-Mahan, Johnson, Lappin, Linsky, Mansfield, Parker, Salvucci, Samuelson, Sangiolo, Schnipper, Vance, Weisbuch, Yates

Also present was Rob Juusola from the Turner Construction Company

From the City: Assistant City Solicitor Gayle Smalley, Election Commission Executive Secretary Peter Karg, Building Commissioner Nick Parnell; Chief Administrative/Chief Budget Officer Sandy Pooler; and Superintendent Jeffrey Young

School Committee members present: Members Glick, Murphy, Larner, Yeo, Heyman, Sokoloff, Laredo, and Zaleznik

President Lisle Baker called the meeting to order at 7:45 p.m. A request for a suspension of the rules to allow the members of the School Committee and the design team within the rail to join the evening's discussion was made and approved. After briefly attending to some aldermanic items not admitting of delay, a motion to go into Committee of the Whole was made and seconded, and passed by voice vote.

COMMITTEE OF THE WHOLE

Ms. Smalley and Mr. Karg presented information involving the process for including voters in the decision-making about Newton North. Ms. Smalley's and Mr. Karg's memos that were submitted in preparation for this meeting are attached.

Ms. Smalley addressed some of the types of election issues that can come up in a project such as the Newton North Project.

The City does not have any general authority to create ballot issues. Instead, whenever ballot issues are put to the public they must always follow from one of the statutory authorities or the authority under the City charter. In a context such as this, there are three likely types of ballot issues to discuss. At this time, there is nothing before us, but here are the three types that come under our existing authority. The first is an advisory question, the second is a referendum and the third is a Proposition 2 ½ which has two types of votes.

An advisory question is a citywide non-binding election to gauge voter sentiment. One of the advantages and interesting things about advisory questions is that the city is free to structure the question just about any way it wants. It is simple to put on the ballot. It requires the vote of the Board of Aldermen and then the board order goes to the Mayor. The timing of an advisory question is inflexible. The statute only allows the City to put this type of question on the regular municipal election. The next regular municipal election is 2007.

The second type of ballot question is a referendum. This is the voters attempt to overturn the Board of Aldermen or School Committee's vote. 5% of the voters as counted from the participants in the previous election (2,500) may submit a petition within 20 days of the vote and then the City charter sets out a number of time frames that must be adhered to. If the board sticks to its vote and the Mayor does not veto, then the item is put to the voters through a citywide ballot. The City can choose to either do this through a special election or wait until the next regular election.

The third type is a vote that would come up under proposition 2 ½. Proposition 2 ½ allows overrides and debt exclusions. An override is a technique of changing the levy limits that the City works under. It can increase the limit and that change carries forward permanently. Debt exclusion is a way that cities and towns create an exclusion to their levy limit for the period of time it takes to pay for a particular project. There is a difference in the vote. A majority of the Board is necessary to place an override on the ballot, but a two-thirds affirmative vote of the Board is needed for debt exclusion. A Proposition 2 ½ question can be placed on a City election, a special election, or a state election. There is a timeframe for getting it onto the November ballot.

In an Advisory Question or a referendum, there is the possibility of getting special legislation to put it on the November ballot. The State has been very discouraging of granting special legislation to getting items on the September primary ballot because of the partisan nature of the primary. A Proposition 2 ½ item can go right on in November, by vote, under the law.

Mr. Karg announced that with the September primary the City would be implementing touch screen and voice activation voting for those with disabilities.

The Election office needs about a three-month window to put an election together. Ballots and absentee ballots need to be printed, voter registration, citywide notice, voter lists printed, memory cards need to be tested, sandwich board inserts need to be ordered and scheduling with the polling locations. If we go the special legislation route, we need the time to get it through the legislature and the legislation will end its session in July this year.

For a special election held on a day other than a state or municipal election, we would need a three-month window and a special appropriation of about \$60,000. Care would need to be taken if it was around a scheduled state or municipal election, as the memory cards that were programmed for that election would need to be reprogrammed for the special election.

If done on the same day as a state or primary election, this option would present the most challenges. In a simultaneous but separate election a separate paper ballot would need to be

created for this question, two voter lists would need to be generated, additional poll workers hired, a system for holding the ballot would need to be created as the old ballot boxes have been discarded, separate absentee ballots and additional set up at the polling locations to keep the elections separate.

The third option is an election that is held as part of an existing state or municipal election. Despite special legislation, this option would be the easiest way to proceed from the perspective of the Elections Office and the voters. The only additional expense would be a citywide mailing letting voters know of the question.

The floor was open for questions

Alderman Parker asked for clarification on the Debt Exclusion. Do you name the project but not the dollar figure, is that correct? And, is the calculation of the amount the total cost of the project minus any state or federal aid plus interest on the project. Is that the amount that could be taxed in addition to the base?

Ms. Smalley responded that the language for the ballot question is precise and that there is no dollar amount included. She did not know the answer to the calculation.

Mr. Parker then asked that if there were a 2/3 consensus of the board to put the debt exclusion on the November ballot what would be the procedure for doing so.

Ms. Smalley responded that she would need to check if there was any particular requirement for the identity of the person docketing, but other than that it would be a 2/3 vote of the Board. The Board Order would go to the Mayor and then the final Board Order would need to be in the hands of the Secretary of the Commonwealth no later than the first Wednesday of August.

Mr. Parker followed up by asking if the Board would have to wait until the Mayor has submitted the bond authorization request for the project prior to passing a debt exclusion, or can the Board anticipate it and pass it in the meantime?

Ms. Smalley responded that a vote for a debt exclusion is separate from the appropriation per se. The debt exclusion vote paves the way for an appropriation. As far as Ms. Smalley knows there is not front-end restraint on the Board, you could act immediately. She will check to see who docketed the item.

Alderman Mansfield wanted to make it clear that just because they were asking questions tonight about one option or another did not mean that they supported one option or another.

Alderman Mansfield asked if special legislation would be required for all of the alternatives to get it on the November ballot or just the advisory question. Ms. Smalley responded that an advisory question is only allowed for regular City elections. In a referendum, the City has two choices, a special election or the regular City election.

Alderman Mansfield asked if we wanted a referendum on the November ballot would we need special legislation. Ms. Smalley responded that yes we would if we wanted it on the ballot.

The third possibility, Proposition 2 ½ the statutory authority is already there to go on the November ballot. We would not need special legislation.

Alderman Mansfield asked about initiative petitions where 60 voters proposed something. Ms. Smalley responded that she did not cover it because she focused on the three most obvious alternatives. There is a possibility that there is a proposal that the voters could come up but she can look into that. It is hard to be definitive on an initiative because you do not know what creative item might be proposed. There is no obvious initiative that might be proposed.

Ms. Smalley stated that she did not want to leave the Board with the impression that it would be easy to place a referendum on the November ballot. The timing of the steps would have to be precise and carefully done. – Timing would be everything.

Aldermen asked what is the time frame that we have to get through for a referendum. Ms. Smalley responded that in our charter the board is given two thirty-day windows - first to reconsider the item and then to decide to call a special election. The special election must be within 120 days. And the information must be to the Secretary of State 60-90 days in advance of the election. For an advisory question, it would just be the time to get it through the legislature in time to be courteous to the State Secretary and get it to him 60 – 90 days in advance of the election so that he can print it on the ballot.

Alderman Gentile wanted to make it clear that he had not heard support for a debt exclusion override. If we went ahead with the Mayor's plan, which does not include a debt exclusion override would the Board have the opportunity in the future to propose a debt exclusion or is there a certain window up front to put this to the voters?

Ms. Smalley was not familiar with that having been done but would check to see if there was any way to do that. President Baker added that the debt exclusion refers to debt that has not been issued and was not sure if it applied to debt in the process of being paid.

Alderman Sangiolo asked if the debt exclusion was project specific and if it was limited to one project or is it possible to bundle projects for a request?

Ms. Smalley responded that it is project specific, but on the second part of the question, she was not sure, but would check on that. She mentioned that the Department of Revenue has sample questions for city and towns and she will look at those.

Alderman Coletti thought that since we would be selling bonds at least nine years out into this project, the debt service exclusion on debt that would be sold into the future would be appropriate at anytime in the process, but that it would have to be on debt that has not been sold yet.

Alderman Coletti asked if Ms. Smalley could provide in a confidential memo what would happen in a ten-taxpayer suit in terms of the delays and what could be anticipated.

President Baker asked Mr. Parnell to provide some updates on the high school and the design review process. He also asked for information on updating the cost estimates from the cost estimator.

Mr. Parnell announced that the Design Review Committee met on February 16 and talked about vehicular and pedestrian traffic, access, field orientation, and other issues surrounding the site. They voted to take the renovation, the hybrid, and the Walnut Street Schemes off the table. Still on the table are the Elm Road Option and the Center of the Site option.

They also asked the designers to come back tomorrow evening, Thursday, March 2, 2006, at 6 pm in the Newton North High School Library to show if there was a possible combination of options two and three that might be acceptable. They also asked to reconfigure the ball fields with certain schemes and see if there was a way to come in from of Lowell Avenue instead of the existing entry off of Elm Road. They have meetings also set up for March 9 and 16 at 6 pm.

President Baker asked for an update of the cost Estimates and Rob Jusola responded that he had been speaking with Craig Holmes of Rider, Hunt, Levett, and Bailey. They have been trying to clarify the comparison between Newton North and other comparable high school projects in Massachusetts. They have been working on making appropriate comparisons between building costs; not including any other associated costs because site costs and soft costs vary widely on each project. They want to compare apples to apples and will look at the construction costs of three local projects and have looked at Lincoln-Sudbury, Groton-Dunstable, and Everett and the adjusted construction costs are in line with the Newton North costs.

Nick Parnell added that when there is a specific building and site plan chosen, then more accurate cost estimates would be provided.

President Baker asked that the information be summarized in a memo by the 15th so that the Board can be working with the most current information and set of data. Alderman Sangiolo would also like some of the back up information that was obtained from the other three school projects. The more information that we have the better we can understand where you get your numbers from and where some of us get our numbers.

Why aren't we doing a post mortem on Newton South to discover what might happen with costs at Newton North? Nick Parnell responded that he would look at the new construction costs at Newton South.

Alderman Coletti commented that he thought it was time to give the architects a number and have this project designed to the number so that we can be assured that we are not dragged out into some black hole of expense. Set the cost limit. For every other project, we have always set a limit. We need to tell Design Review that this is the number.

Alderman Hess-Mahan asked if his assumption that this price estimate was higher because of the volatility of the market was correct. Mr. Parnell responded that his assumptions were correct. He is working with all the participants so that when he comes back with site plan approval there is a number that everyone can live with. This is a lot of money and they understand that, they want to be sure that when we come forward we have an estimate that is geared towards that project and that everything is covered and there are not things that will come out to scare us.

Alderman Sangiolo asked what happens when the Design Review Committee and the Mayor come forward with a design that costs \$140million and we say we cannot afford it. What happens then? This is where the delay comes in. We need to figure out when we come up with this number, otherwise we look like we are causing the delay and we are just following the process.

President Baker responded that he thought it was very important to allow the process that we have to work its way forward because we are not operating with full information until we have the information from Design Review, the cost estimators and the City finance people.

Alderman Albright asked that once a number was agreed upon and it was lower than was requested, wouldn't it go back to the school committee to adjust the program? Isn't there a give and take that is necessary between the school committee and us so that they can let us know what the options are and make sense? President Baker responded that part of the challenge is that costs escalate even through the process of rethinking and redesign.

Alderman Salvucci commented that we have built three tier 1 schools under budget because they came into us with a request for what they wanted. It was priced and we built it. How can you put a price on a concept? Why don't we give these guys a chance to locate, design and cost this building.

Alderman Weisbuch asked if the cost of site preparation were included in the cost estimates. Mr. Jusola responded that those costs were included in the estimates. They are not itemized but are included. We do not have a design yet, so we cannot hone in on those numbers yet.

Alderman Parker is looking forward to a response from Craig Holmes who at the last meeting indicated that the costs might be high. Alderman Parker does not want to have artificially high numbers out there because it will cause the bid prices to be on the high end rather than on target.

Alderman Parker asked for a copy of a 2004 document from Turner Construction that estimated the cost of a new high school at \$72 million. He also requested an analysis of how we got from that figure to the figure of \$104 million we have today.

Alderman Mansfield asked that Rob Jusola's information be written out and gotten to the Aldermen soon, preferably for the Board packets this weekend. He also requested that David Wilkinson's updated numbers get to the Board in written form as soon as possible.

Alderman Coletti expressed concern with the pace of this project and wondered who was driving the project. Newton-Wellesley Hospital started its expansion project at the same time we started. Newton-Wellesley has gone through the City's grueling permitting process and has completed its project, which included moving an historic building, and we are still trying to get started.

President Baker announced that a Committee of the Whole meeting would take place on March 15, 2006. David Wilkinson will present information on some changed assumptions about the financing plan and Sandy Pooler will provide a briefing on the FY07 budget so that we will have a sense of the current fiscal year to come.

A motion was entertained to go out of Committee of the Whole and seconded. Alderman Schnipper moved to adjourn and it was seconded.

CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

DATE: February 24, 2006
TO: Board of Aldermen
FROM: Gayle A. Smalley, Associate City Solicitor
RE: Newton North High School - potential ballot processes

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Introduction

This memo is provided in response to President Baker's request for an outline of various approaches for assessing voter sentiment regarding the Newton North project.

Various types of ballot questions are authorized by statute and City Charter. However, there is no general authority that would allow referral of a binding question to the voters. Instead, the City must work within the framework of existing laws.

In this context, three types of ballot questions may be relevant: 1) advisory question, 2) referendum and 3) Proposition 2 1/2, each of which is discussed below.

Advisory Question - G.L. chapter 53 sec. 18A

- The purpose of an advisory question is to gauge voter sentiment via a non-binding city-wide vote.
- The process, which requires a vote of the Board of Aldermen to put an item on ballot, can begin with a petition from ten voters. However, even in the absence of such a petition, the Board of Aldermen can vote to refer such a question to voters. The board order is subject to the Mayor's approval, or veto, in the usual manner.
- The ballot question appears on the ballot for a regular municipal election only (odd years). Placement of such an item on the ballot for a special municipal election, or the state biennial election (even years) would require special legislation.
- The question must be received by the Election Commission at least 35 days prior to an election.¹
- The statute also allows voters to place an advisory question on the ballot by petition. This provision, which applies if the Board has not approved a question at least 90 days prior to election, calls for the Election Commission to place the question onto the ballot upon receipt of a petition signed by 10% of the voters.

¹ G.L. chapter 53 section 18A actually specifies a 30 day deadline for the Board's vote on an advisory question. However, G.L. chapter 54 section 42C sets out a 35 day deadline for submission of items to be printed on a ballot. The latter statute appears to control.

- The board order states the wording of the advisory question as it will appear on the ballot. A municipality enjoys a great deal of flexibility in crafting the wording for an advisory question.

Referendum - City Charter section 10-10 *et seq.*

- The purpose of a referendum is to overturn a specified vote of the Board of Aldermen (or the School Committee).
- The process begins upon presentation of a petition signed by 5% of the voters registered for preceding municipal election (approx. 2500). Such a petition must be filed within 20 days after Board's final passage of underlying item. Section 10-10.
- Whenever referendum procedures are started in accordance with the Charter, the underlying measure is suspended from taking effect. The suspension continues until the referendum is concluded. Section 10-10.
- The Board of Aldermen may place a referendum question onto a regular municipal ballot or call a special election. Section 10-15. The Mayor would have a role in seeking funding for a special election.
- Following receipt of referendum petition, the Election Commission examines and certifies the signatures. Assuming that petition sets out the requisite signatures, the Board must reconsider the measure. The Board votes whether to repeal the measure. The Board's vote to repeal is subject to mayoral veto. Section 10-19.
- If the Board votes not to repeal the measure, it must refer the question to the voters. Section 10-11.
- The text of the ballot question is based on the underlying board order, as prescribed by City Charter section 10-16.
- Assuming that the Board votes not to repeal the measure, the whole referendum process takes roughly 3 months to 6 months, measured from the date of the Board's vote on the underlying measure to the date the Election Commission certifies the results of the election. That amount of time is based on the various steps and timeframes set out in the City Charter and state law, as follows - 1) Section 10-14 provides that the Election Commission shall examine the signatures and then the City Clerk shall hold the petition for 2 days; if objections to signatures are filed, a statutory process provides for a hearing and decision; 2) then the City Clerk presents the petition to the Board of Aldermen, pursuant to Section 10-14; 3) Section 10-11 requires Board to reconsider the underlying matter within 30 days of presentation; 4) If the Board votes not to repeal, Section 10-15 allows Board 30 additional days within which to call the election; and 5) Section 10-15 requires that a special election be held within 120 days of such call; 6) Under state law, the Election Commission may not certify election results until the 10th day following an election, which is also the deadline for filing a recount petition. G.L. chapter 54 section 95. In such an event, the Election Commission certifies the results after the conclusion of the recount process, which takes roughly 2 to 4 weeks.

"Proposition 2 1/2" - G.L. Chapter 59 section 21C

• In this context, there are two types of Proposition 2 1/2 ballot questions, as follows:²

Levy Limit Override

• The purpose of a Levy Limit Override is to increase the municipality's levy limit on a permanent basis. It allows a municipality to increase its property tax revenue beginning in the year of the vote. G.L. chapter 59 sec. 21C(g).

• A majority of the entire Board of Aldermen must vote to place an override on the ballot. G.L. chapter 59 sec. 21C(g).

• The board order is subject to the Mayor's approval, or veto, in the usual manner under City Charter sec. 3-8.

• A ballot question may be placed on the ballot for a regular or special municipal election. The statute also allows a municipality to place such a question on the state ballot. To do so, the municipality must provide formal certification to the Secretary of the Commonwealth no later than the first Wednesday of August.

• The wording of the Prop. 2 1/2 ballot question is strictly prescribed by statute.

Debt Exclusion

• The purpose of a Debt Exclusion is to allow the municipality to raise funds for a specific capital project. Such a vote allows a municipality to "exclude" from the levy limit the costs of debt service payments. G.L. chapter 59 sec. 21C(k).

• A two-thirds affirmative vote of the entire Board is required to place a debt exclusion on the ballot. G.L. chapter 59 sec. 21C(k).

• Same

• Same

• Same

² Although they do not appear to be relevant here, there are two additional types of Proposition 2 1/2 votes. A "Capital Expenditure Exclusion" is similar to a Debt Exclusion except that it would be used for a one-time specific capital project in circumstances which do not involve borrowing, i.e. cash payment. The final type of vote is an "Underride," which is used to decrease the levy limit.

CITY OF NEWTON
ELECTION COMMISSION

Memorandum

To: Honorable Board of Aldermen

From: Peter Karg, Executive Secretary

PK

Subj: Ballot Question Options/ Newton North

Date: February 24, 2006

At the request of President Baker, I have outlined some of the issues and choices surrounding the scheduling and operations of a ballot question relating to a new Newton North High School.

I do want to point out that under the provisions of the Help America Vote Act (HAVA), all municipalities, starting with the September 19th State Primary Election, will be implementing touch screen voting to assist the disability community. This system will present new challenges for our election workers as they must be trained on the technology.

1) What is involved for a Special Election held on a day other than a State or Municipal Election?

In the event, the Board of Aldermen were to call for a Special Election, the Election Commission would need at least 3 months from the date of authorization by the Board of Aldermen. The election would require a special appropriation of approximately \$60,000.

The Special Election would have to be scheduled so as not to coincide with the timing of the state primary or state election in order to prevent constraints on voting equipment and programming of memory cards.

2) What is involved for an election held simultaneously but not part of a State or Primary Election?

This option presents the most difficult challenges. This was the approach taken by the Election Commission in November of 2000 when a separate referendum election was held on the same day as the presidential election. A paper ballot was used and several logistical and administrative issues surfaced in the conduct of this election.

This option entails a special appropriation, hiring and training additional poll workers, developing a secure system to house voted paper ballots, as the city no longer has the old style ballot boxes. Other difficulties are maintaining separate voting lists, absentee ballots and logistical issues with voting location set-ups.

3) What is involved for an election held as part of an existing State or Municipal ballot?

Adding a municipal ballot question to the state ballot, even though it requires special legislation, from my office's perspective is the easiest way to proceed. Also, this would be the simplest approach from the voters' perspective.

The only additional election expense for this option would be a summary and notice mailer to the voters as required under section 10-16(c) of the City Charter. This expense would be approximately \$8,000 for printing and postage costs. This same expense is occurred under all the options. I see no further costs or obstacles for the Election Commission under this option.

I look forward to discussing this memorandum and any questions that you may have at your Wednesday, March 1st 2006 meeting.

c. Sandy Pooler, Chief Administrative Officer