

PLANNING AND DEVELOPMENT BOARD MINUTES

March 1, 2010 City Hall, Planning and Development Department Rm 209, 7:30 p.m.
1000 Commonwealth Avenue, Newton, Massachusetts 02459

Full Members Present:

Tabetha McCartney, Chair
Joyce Moss, Vice Chair
David Banash
Leslie Burg

Alternate Members Present:

Howard Haywood

Staff Present:

Susan Abele, Jackson Homestead
Danielle Bailey, Community Development Planner
Kathleen Cahill, Community Development Senior Planner
Trisha Kenyon Guditz, Housing Program Manager
Rob Muollo, Housing Development Planner
Carol Schein, Parks and Recreation Department
Eve Tapper, Chief Zoning Code Official
Amy Yuhasz, Associate Director of Housing and Community Development

Public Present:

Ruth Apfelbaum	Jeremy Munn
Rob Caruso	Justin Sallaway
Bethel Charkoudian	Gary Sinclair
Stuart Cleinmen	Ken Sinclair
Jayne Colino	Jeanne Strickland
Dorothy Derick	Joanne Vancon
Martin Healy	Stanley Ward
Phil Herr	Carol Warner
Michael Lepie	Phil Whitback
Josephine McNeil	Kathy Zegarelli
Sheila Mondshein	

T. McCartney, Chair, called the meeting to order at 7:30 p.m.

Community Development Board

- 1. Minutes: Approve the minutes of the January 4, 2010 meeting of the Planning and Development Board acting as the Planning Board and Community Development Board.**

On request of T. McCartney for a motion to approve the minutes, H. Haywood so moved. L. Burg seconded the motion. The Board voted 4-1-0 to approve the minutes.

2. Action Item: Presentation of the DRAFT FY2011 – FY2015 Consolidated Plan and the DRAFT FY11 Annual Action Plan.

Housing and Community Development staff presented a background on the three sources of federal funding (Community Development Block Grant, HOME Investment Partnerships Program, Emergency Shelter Grant) that Newton receives annually. Staff explained priority needs and strategies in each program area (housing, homelessness, human services, architectural access, target neighborhood improvements, and economic development). Several applicants representing human service projects that were recommended for funding by the Human Service Advisory Committee described their programs and services. These applicants included the Newton Community Development Foundation, Newton Department of Senior Services, Newton Child Care Commission and Fund, and the Barry Price Rehabilitation Center. Applicants representing access projects that were recommended for funding by the Mayor's Committee also described their proposed projects.

H. Haywood asked about the process for selecting infrastructure improvement locations in the target neighborhoods. Staff explained that although sidewalk improvements provide a direct benefit to the property owner abutting the new infrastructure, the improvement also provides important community-wide benefits. Each neighborhood advisory committee evaluates potential improvement locations to determine the value to the community as a whole.

The accessibility of the Bibbo Center was discussed and Gary Sinclair of Newton Community Development Service Center (NCSC) explained that the lifts provide access to two floors and each of these floors are mostly accessible. There is a portion of the building that remains inaccessible but NCSC staff is able to relocate programs to accessible portions of the building in order to accommodate people with disabilities.

J. Moss wondered why the housing priority needs and strategies did not emphasize linking affordable housing with transportation or targeting subsidies to developers who incorporate "green building" practices into their developments. Staff responded that the housing strategies in the Consolidated Plan were formulated as a response to the focus groups that were held. Proximity to transit is one element of conversations between affordable housing developers and staff.

J. Moss wondered what the City's response will be to the rising administrative costs that are occurring in most municipalities, including Newton. Staff indicated that several strategies for dealing with these rising costs were proposed in the reports completed by the Citizen Advisory Committee and the Blue Ribbon Commission. These strategies were part of the Mayor's campaign and may be part of the upcoming budget discussion.

J. Moss asked for some background on the Crystal Lake Master Plan. This master plan for the park, bathhouse, and beachfront area has been vetted with different boards and commissions. The Mayor has not yet approved the final master plan.

The consensus of the Board was to continue to review the FY11-FY15 Consolidated Plan and the FY11 Annual Action Plan over the next month and take a vote on both plans at the April meeting.

2. Action Item: Recommendation from the Economic Development Advisory Committee to transfer \$110,900.63 in CDBG economic development loan pool funds to the Newton Housing Rehabilitation Program.

Staff provided a brief background on the request. The \$110,900.63 represents CDBG funds that were received by the City in fiscal year 2000. Housing and Urban Development Department regulations require that revolving loan funds are expended before letter of credit funds. After the transfer of these funds the Economic Development Loan Pool will have \$90,000 remaining. These remaining funds are enough to sustain the 1 to 2 loans the Economic Development Committee has been approving, on average, annually. The \$110,900.63 in funds would enable four rehabilitation cases to be completed under the Housing Rehabilitation Program. This program currently has a wait list of over 38 projects.

D. Banash observed that throughout the history of the economic development program staff has experienced difficulty in obtaining applicants. He asked if staff had considered eliminating the program and if the program was eliminated he wondered if the city would lose these funds. Staff responded that the elimination of the program seems premature in the wake of the new administration's emphasis on economic development and the hiring of a new full time economic development planner. The City is only in danger of losing CDBG funds if the funds are not spent in a timely manner. Newton has a history of timeliness with regard to the expenditure of federal funds.

J. Moss wondered if the microenterprise loan thresholds were too low at \$35,000 per loan. She recalled a separate city economic development program where the threshold was set at a higher amount. Staff responded that although the threshold for the loan program is set at \$35,000 larger loans can be approved, on an exception basis, by the Economic Development Advisory Committee (EDAC) and the Planning and Development Board. Recently an applicant submitted an application for over \$100,000 loan but this request was not approved by the EDAC. The program guidelines were changed to include a lower threshold because the EDAC believed it was too risky to put the majority of the fiscal year's loan pool funds into one project. Working with banks to leverage funds and increase the total level of assistance is included as an economic development strategy in the Consolidated Plan.

D. Banash moved that the recommendation from the Economic Development Advisory Committee to transfer \$110,900.63 in CDBG economic development loan pool funds to the Newton Housing Rehabilitation Program be approved. H. Haywood seconded the motion. T. McCartney opened the motion up to discussion by the Board. J. Moss asked staff what affordability restrictions were part of the rehabilitation program. Rehabilitation funds are only used to assist non-owner occupied units when these units are deed restricted. Although there are no deed restrictions on owner-occupied properties the rehabilitation loan is repaid to the City if/when the property is sold or changes hands. The Board voted 5-0-0 to approve the recommendation from the Economic Development Advisory Committee to transfer

\$110,900.63 in CDBG economic development loan pool funds to the Newton Housing Rehabilitation Program.

4. Action Item: Update from Citizens for Affordable Housing in Newton Development Organization, Inc. (CAN-DO) on the organization's progress in meeting the goals outlined in their July 8, 2009 letter to the Planning and Development Board.

Josephine McNeil, the Executive Director of CAN-DO, provided the Board with a history of the organization. CAN-DO was formed in response to the availability of federal funds for a Community Housing Development Organization (CHDO) in Newton. The City approached Newton Community Development Foundation (NCDF) for assistance in identifying potential board members for Newton's CHDO. In 1994 Ms. McNeil became one of six initial CAN-DO board members. CAN-DO collaborated with the Second Step to develop its first project, Garfield House, in 1996. Garfield House is a transitional home for survivors of domestic violence. In 1999 CAN-DO received a CDBG capacity building grant from the City. This grant enabled the organization to hire Ms. McNeil as a part time Executive Director. In last ten years, CAN-DO has developed 37 units, 30 of which are deed restricted. CAN-DO worked with Newton Community Service Center to develop the Christina Street project. This project was the organization's first experience with a Chapter 40B project. Due to neighborhood opposition Christina Street took a year longer to complete than was originally anticipated.

CAN-DO has expanded their development and management portfolio to include affordable rental units. These units currently house families with Section 8 vouchers. CAN-DO has assisted a total of 45 homeless families (including 80 children). An additional 26 families (including 30 children) have been assisted with permanent rental housing and eight families have been provided with homeownership opportunities in Newton as a result of CAN-DO's work.

CAN-DO's mission driven efforts have led the organization to assume considerable risk. For example, CAN-DO recently utilized one of their vacant rental units to house a homeless single mother with a child. The family was taken in with the expectation that the City would soon receive Homeless Prevention and Rapid Re-Housing Program (HPRP) funds, as part of the American Recovery and Reinvestment Act, which could be applied to this situation. These funds took six months longer than anticipated to come through.

Another example of this risk is exemplified in the Millhouse project. Four of the six units were affordable in this project. When the housing market declined, CAN-DO was unable to financially recover, because the sale of the market rate units no longer supported the affordable units. Millhouse took over three years to complete and CAN-DO had no developer fee to show for the project. The project had a detrimental effect on the organization's financial situation and left CAN-DO operating off of credit card debt. The debt forgiveness approved by the Planning and Development Board in June 2009 offered some financial relief.

Over the next several years CAN-DO plans to develop a two unit, rental development targeted to veterans. The developer fees anticipated as a result of this project are expected to improve CAN-DO's financial situation further.

Ken Sinclair, CAN-DO's treasurer, reviewed the financial information submitted in the Planning and Development Board member's packets. Mr. Sinclair explained that each property should be able to financially stand on its own. Each project should be making a management payment to CAN-DO's central operating budget. This is currently not the situation due to the organization's diminished and/or lack of developer fees. However, CAN-DO's fundraising has gone up 18% from 2008 to 2009. This is particularly remarkable given the current economy.

The 2009 audit is in progress and CAN-DO will be submitting the results of that audit to the Planning and Development Board. The organization's profit and loss statement, which includes the direct loan forgiveness, shows an \$18,000 loss for 2009. However, without this loan forgiveness CAN-DO would have had a \$29,000 to \$30,000 loss in 2009. In 2010 projections show that the organization will experience a year end gain of \$4,000. While this is not where CAN-DO hopes to be it represents a good start to regaining better financial control.

T. McCartney indicated that she was not pleased with the financial information submitted by CAN-DO and stated that more thought should have been put into the pro forma. Instead of carrying over all costs as a constant CAN-DO should account for increasing costs and anticipated vacancies. There were several individual property management fees, which include salary, payroll fees, and standard maintenance, that were very high. T. McCartney would like CAN-DO to strive toward a standard management fee of 5% to 10%, instead of the current 18% to 20%. In addition, certain maintenance costs in a rental property operation should be capitalized instead of expensed (as is currently being done). A balance sheet, showing the debt on each property and the organization's cash position should also be submitted to the Board. T. McCartney would like CAN-DO's board to evaluate the operating numbers with the goal of increasing the financial effectiveness of each property. For example, the expenses at Garfield House account for 80% of the property's income. Going forward CAN-DO should provide information to the Board on these expenses. In addition, the services grant that goes along with the (off setting) services expense for Christina Street should be shown as income for the property. T. McCartney would also like quarterly meetings to take place between the Board and CAN-DO.

J. Moss wondered why the developer fee for Veteran's House would be higher than the other properties developed by CAN-DO. Ms. McNeil responded that CAN-DO plans to take the maximum developer fee (12.5%) in order to enable the organization to set aside reserves for each property. In the past CAN-DO's developer fee was 5% to 7% but this has not been enough to sustain the financial viability of the organization.

D. Banash stated that he believes CAN-DO should hire an internal auditor to provide the type of financial analysis that T. McCartney completed as a volunteer. Ms. McNeil stated that the perspectives and methodologies of financial analysts differ from person to person. For example, while T. McCartney has one philosophy with regard to capitalizing expenses, CAN-DO's bookkeeper adheres to a different methodology.

It was Ms. McNeil's understanding that the Board was looking for a comparison of CAN-DO financial status prior to the loan forgiveness, after the loan forgiveness, and going forward. A financial analysis on each property was not conducted. If the Board would like to review this

type of analysis they need to be aware that additional funds will need to be expended by CAN-DO to pay the bookkeeper for additional hours of work. T. McCartney responded that obtaining this type of help is also a matter of board development.

Mr. Lepie stated that he does not believe CAN-DO addressed how they were improving the financial status of the organization and explaining their plans for the future. He also believes that there are accessibility issues with CAN-DO's new project, Veterans House. T. McCartney responded that it is unreasonable to expect CAN-DO to have completed a 180 turn in the past nine months but the Board is satisfied with the organization's progress.

It was agreed that CAN-DO will return to the Board quarterly to meet about the organization's financial progress. At the June Planning and Development Board meeting, CAN-DO will present the following financial information to the Board: the 2009 audit, and for all properties, revised financial statements that account for increases in costs and anticipated vacancies, a balance sheet showing the debt on each property and the organization's cash position, and a financial analysis (which will include detailed expenses).

Planning Board

1. Action Item: Approval of draft Scenic Road regulations.

L. Burg provided an update on the status of the draft Scenic Road regulations. The regulations were brought to both the Conservation Commission and the Historic Commission. Both commissions endorsed the regulations.

The proposed regulations that are currently before the Planning Board are different than the regulations that were presented at the January meeting. The majority of the changes that were made were a result of the Law Department's input. These changes were relatively minor. For example, the Clerk's Office was originally designated as the department that notified various parties of a new Scenic Road designation. According to the Law Department the Planning Board does not have the authority to assign this role to the Clerk's Office. The draft regulations now indicate the parties to be notified without assigning this responsibility to one department.

Previously, the Planning Board required a bond to be provided by the applicant (except for City agencies) of any Scenic Roads project approved by the Board. The new regulations state that the Planning Board may require a bond to cover the costs of required work and the protection of resources, unless a bond for the work is required by another City Department. Both the Historical and Conservation Commission requested that the applicable section of the Massachusetts General Law (Chapter 40 Section 15C) be reiterated in the regulations. The Board decided this reiteration should be included in Section 1.

There was some discussion about whether or not sidewalks on Scenic Roads were protected under the regulations. The regulations define road as the entire right-of-way of a vehicular traveled right-of-way including any necessary appurtenances including bridge structures, drainage systems, retaining walls, traffic control devices, sidewalks, but not intersecting streets. The

regulations cannot be used to regulate how sidewalks are designed, however, if the damage to the tree damages the sidewalk this is within the purview of the regulations.

The Historic Commission recommended that the Planning Board consider altering the regulations to include the protection of a Scenic Road's features if those features were among the reasons the road was originally designated as a Scenic Road. It's unlikely that this is within the Board's legal right but E. Tapper is checking with the Law Department.

There was some discussion about the ability of the Board to impose a penalty for the failure to comply with the decision issued by the Planning Board. The Board is unable to impose this penalty without an ordinance. If an ordinance is enacted by the Board of Aldermen then this penalty can be imposed by the Board. After the proposed regulations are approved by the Board the Scenic Road Sub-committee will then draft language for an ordinance to be passed by the Board of Aldermen.

Dorothy Derick, a Newton resident, asked if there were any Scenic Roads that had already been designated. There are 17 Scenic Roads. These roads are already subject to the Massachusetts General Law (Chapter 40 Section 15C). The public way is measured from each street's centerline. Property lines differ from street to street and can be determined by the City surveyor. If a property owner was planning to do work within the public way of a scenic road they must apply to the Planning and Development Board for permission.

Stanley Ward, a Newton resident, stated that the City has a bizarre track record with regard to the plans for existing trees. For example, the City cut down a tree in front of his property but never removed the large stump. Eventually Mr. Ward hired his own landscaper to take care of the situation. Sidewalks in various areas of the city have cracked and heaved due to the roots of trees. This is a hazard to many pedestrians. Mr. Ward believes that the City should consider adjusting the regulations to make sure the City will take the necessary responsibility for future planning around improvements such as tree planting. T. McCartney responded that while Mr. Ward's points were valid the Planning Board does not any authority over this situation. It was suggested the Mr. Ward contact his Aldermen.

Ms. Derick suggested that the Scenic Road regulations should be marketed as an opportunity for residents to get involved in the preservation of their street. The Planning Board should emphasize the collaborative opportunities instead of the punitive elements of the regulations. T. McCartney responded that since neighbors will need to work together to propose the designation of a road as scenic neighbor collaboration is inherent in the regulations. Ms. Derick thought that the current designations of Scenic Roads must have come from the City's Historical Commission. E. Tapper stated that the Conservation Commission was the body that recommended many of these roads. The impending alteration or reconstruction of roads did influence the designation of some Scenic Roads.

Mr. Lepie looked for confirmation that the only time a private property owner must come before the Planning Board under the authority of the Scenic Roads regulations is for a driveway curb cut. T. McCartney responded that Planning Board permission is required in this situation if the driveway curb cut impacts a stone wall or a tree within the public way. Mr. Lepie wondered

if the regulations presented redundancy within other City procedures since a property would need to go through the Building and Engineering Departments as well as the Tree Warden when altering a tree or a sidewalk or creating a driveway curb cut (in the case of the Building and Engineering Departments). The hearings before the Tree Warden and the Planning Board will be consolidated into one hearing. Phil Herr also stated that the Tree Warden was one of the major authors of the Scenic Road regulations and he does not believe these regulations are redundant.

The Board discussed having a public hearing on the Scenic Road regulations. One of the members of the public suggested that the abutters of the current Scenic Roads should be notified by mail of the public hearing. T. McCartney responded that there are hundreds of abutters making this mailing cost prohibitive. This resident believed that the advertisement in the Newton TAB noticing the Scenic Roads agenda item was too small. Planning staff agreed to send a press release to the Newton TAB. An advertisement noticing the public hearing in April will also be published in the News Daily. Residents also requested that the information about the public hearing be posted on NewTV. A front page advertisement in the Newton TAB was also suggested.

Planning staff will be uploading the draft Scenic Roads regulations and photos of the Scenic Roads to the website (the map of the Scenic Roads is already online). Staff will also try to get a link to the Scenic Roads material from the homepage.

Mr. Lepie wondered if the City was also required to abide by these regulations and come before the Planning Board when they were planning to widen a Scenic Road. The City will need to come before the Board and the Commissioner of Public Works is aware of the scope of the applicable Massachusetts General Law and the proposed City regulations. Mr. Lepie looked for confirmation that a homeowner will only need to come before the Planning Board when they plan on creating or altering a curb cut that touches a stone wall or tree on a Scenic Road. The Board confirmed that this understanding was correct.

Martin Healy of Goodwin, Proctor is working with Steve Bookbinder on the Riverside project. The Scenic Roads regulations will impact this project because it is on Grove Street, a Scenic Road. A re-zoning process, special permit, and site plan approval must take place as part of the project's overall approval. Traffic mitigation on Grove Street will be one element of these discussions. Mr. Healy suggested that the Planning Board could comment on the Scenic Roads as part of the other abovementioned Board of Alderman processes. Mr. Herr asked Mr. Healy if he could suggest a way inside the Massachusetts General Law that the Planning Board could change their process. Mr. Healy believes there is a way that the Planning Board can do this but this needs to be investigated through the City Law Department.

J. Moss moved that the Planning Board conduct a public hearing on the proposed Scenic Roads regulations at their April meeting, which is the first Monday in April. H. Haywood seconded the motion. D. Banash asked if the Planning Board was required to have a public hearing to which T. McCartney responded that this was not a public hearing was not a requirement but the Board still wanted to have the hearing. The Board voted 5-0-0 to hold the public hearing. E. Tapper will change the regulations to include the reiteration of the public statute.

2. Other Business.

K. Cahill announced that the public hearing for the historic landmark designation on 17-19 Channing Street will take place on Thursday March 25. The Board is invited to attend the meeting to comment on the report. K. Cahill also distributed information to Board members on the online ethics course.

On request from T. McCartney to adjourn the meeting D. Banash so moved. L. Burg seconded the motion and the Board voted 5-0-0 to adjourn the meeting at 11:35 p.m..

Respectfully Submitted,

Amy Yuhasz
Secretary