



Zoning & Planning Committee **Report**

City of Newton **In City Council**

Thursday, May 7, 2020

Present: Councilors Crossley (Chair), Danberg, Albright, Baker, Krintzman, Leary, Ryan, and Wright
Also Present: Councilors Kelley, Greenberg, Markiewicz, Malakie, Kalis, and Downs

Planning Board: Peter Doeringer (Chair), Sonia Parisca, Jennifer Molinsky, Kevin McCormick, and James Robertson

City Staff: Jennifer Steel, Senior Environmental Planner; Claire Rundelli, Assistant Environmental Planner, Barney Heath, Director of Planning and Development; Nicole Banks, Commissioner of Parks, Recreation and Culture; Jonathan Yeo, Chief Operating Officer; Luis Perez Demorizi, Open Space Coordinator; Katy Hax Holmes, Senior Planner; Carol Stapleton, Rec Program Manager; Nathan Giacalone, Committee Clerk

#178-20 Adoption of the Open Space and Recreation Plan Update

DIRECTOR OF PLANNING requesting discussion of the 2020-2027 Open Space and Recreation Plan, a letter stating that the Zoning and Planning Committee reviewed the Plan, and adoption of the plan as an amendment to the 2007 Comprehensive Plan.

Action: **Zoning and Planning Held 8-0; Public Hearing Closed 05/07/2020**

Notes: Chair Crossley introduced the item and noted that an overview of the Open Space and Recreation Plan (OSRP) was introduced at the March 23rd Zoning & Planning meeting. Jennifer Steel will present key elements of the plan, after which we will open the public hearing.

Ms. Steel reiterated that the OSRP is a seven-year plan and is required to be in effect for the city to apply for state grants. The current plan expires at the end of May 2020. The 188-page OSRP includes an overview of the history of open space protection and development in the City, current inventory, challenges, and environmental conditions. This presentation focuses on the needs, vision, goals, and objectives derived from a careful citywide assessment and well-attended public input sessions.

There were online surveys and public listening sessions. Ms. Steel highlighted how the proposed OSRP is an improvement over the 2014-2020 Open Space Plan, the results of community feedback, and the six goals that organize the plan. These goals are:

1. Engage in strategic implementation
2. Increase Maintenance and Improvement

3. Increase Accessibility
4. Minimize Gaps in the Availability of Open Space Resources
5. Expand Connectivity
6. Optimize legal Protections

Ms. Steel then presented specific objectives within each goal for maintenance and improvement, accessibility, availability, connectivity, and protection, which will be used as guides for implementation.

Her PowerPoint presentation is attached.

Ms. Steel concluded the presentation with a timeline, explaining that the public comment period ends on May 14. Staff will then work to incorporate public feedback as it edits a second draft. The draft will be sent to DCS, the Mayor, and the MAPC for preliminary review. The final draft will then be sent to the DCS for approval. This final draft will be presented to the City Council for a vote to adopt it as an amendment to the Comprehensive Plan. City Council adoption and the associated process is entirely up to the City; DCS does not require any such adoption.

The OSRP tries to identify the most important actions, not precise priorities and not the specifics of each action, especially with the city funding in such a state of uncertainty right now.

Committee members began by asking a few questions as follows:

This is a dense document, could the public comment period be extended for a week until May 21 to give people more time to understand the OSRP?

A: The current plan will expire at the end of May at which point grant eligibility will end. An extra week will cut it close, but it may be possible.

A letter received expresses concerns over which city agencies will control certain assets. Will these decisions be made between the two drafts, allowing the Committee to move the first draft forward? Or do these decisions have to be made before submission of the draft?

A: Every action in the plan is a recommendation. In gathering public input early in this year, some asked to have a conversation on the most efficient/effective means of open space management. Currently the Conservation Commission and the Parks, Recreation and Culture Department have custody over certain parcels. They use their own contractors. They also work with the various Friends groups. The OSRP identifies that discussions should be had to determine whether there are opportunities to increase efficiency and effectiveness of the management of the City's open spaces.

Has the plan considered repurposing underused parking lots for future developments for use in future open space projects?

A: The OSRP has not gotten into this level of specificity. A few parcels have been identified for development, but the OSRP does not have a dedicated section on repurposing parking lots.

The Public Hearing was opened.

Kathleen Kouril Grieser spoke on behalf of the Bullough's Pond Association in support of the OSRP. She agreed with comments to increase the period for public comment. She also stated that this plan should be further developed before being sent to the state. She referred to a letter sent to the Council today from BPA President Laura Studen, noting concerns that there would be duplication in effort if Conservation (part of the Planning Department) engaged in management activities. She also noted her interest in seeing the Planning Department looking ahead to acquire more public space for Newton.

Alan Noguee said the draft plan represents a large amount of good work with a clear commitment to stewardship, maintenance, and protection of land. He appreciates that there is no stated intent to prioritize certain projects, but the plain language appears to do this as the terms used in certain action items range from "renovate" to "explore" and "consider." If prioritization is not the intent then the language should be changed to reflect this. He also supports greater dialogue between city agencies which manage public spaces to improve coordination and avoid duplication.

Jeff Zabel said that he thinks the most important step to make the plan effective is the implementation committee (described within the plan) to prioritize actions according to how well they meet the goals. He also agrees that the Council needs to pay attention to how this Committee is formed and what its purview will be.

Rena Getz agreed with earlier requests to extend the period for accepting public comment to make the draft as good as it can be before being submitted to the state for approval.

Harry Sanders said that formalizing a plan does not mean a more efficient handling of the situation. The ongoing COVID-19 crisis may lead to more unfunded mandates and thus more uncertainty. The city should consider greater use of volunteers and Friends groups in light of these uncertainties, and the OSRP does not cover volunteers enough.

Carolyn Kraft said that her concern is whether the mention of evaluating the management structure meant that there is an intention for using Newton's open spaces for other purposes. Is there a loophole (in the OSRP) that would allow using these spaces for development?

A: No. One objective is to identify high priority key parcels that need more legal protection such as conservation restriction or a confirmatory deed. There is no land-grab intended by the OSRP.

Bob Jampol liked all of the projects described in the OSRP but was concerned that there would not be enough funding for them all. As a member of a Friends group, Mr. Jampol said that he hopes to a void a situation where these groups are fighting with each other for funding.

Nicole Banks, the new Commissioner of Parks, Recreation and Culture, said that since beginning her job two months ago, she has worked to review the OSRP and has had many positive interactions and conversations with city departments regarding the OSRP.

Katherine Kouril-Grieser said that she thought it would be a good idea to invite the leadership of the Friends groups to a meeting with Ms. Steel and Ms. Banks to talk about their experiences managing Newton's open spaces to share their different strategies.

Joyce Leonardo asked whether Ms. Steel has had time to study the impact on personnel from transferring the maintenance responsibilities from Parks, Recreation and Culture to Conservation since Parks, Recreation and Culture uses more city employees and Conservation utilizes private contractors?

A: This was discussed earlier, that the OSRP has one action stating that all stakeholders in open space management gather for conversations about best management practices going forward. The OSRP does not determine that course of action.

The Zoning & Planning Committee voted 8-0 to close the public hearing.

Councilor and Committee member questions, answers, and comments are as follows:

Part of the challenge is that open spaces are looked after by both the conservation commission and Parks, Recreation and Culture. These two bodies need to continue working together to determine how to best balance their duties. There are also legal challenges presented with the difference between conservation land and park land that will need to be explored. There needs to be more conversation around the Implementation Group as it does not clearly specify who needs to be involved with it.

This plan is designed as the first step for other plans and a foundation for later plans, not a specific manual for project implementation. In some cases, the details should not be worked out ahead of time.

What was the objective of reviewing the management of open spaces? Is there an explicit requirement in the plan?

A: It is a topic that has been raised in prior OSRPs and in public comment.

There should be an objective within the OSRP to focus on raising money specifically for Newton to meet the goals within the plan.

How do the priorities account for parks that do not currently have Friends groups to take care of them?

A: The Conservation Office has organized a group of volunteer stewards for individual conservation parcels. They serve a variety of functions such as monitoring and direct upkeep. There are also other programs and initiatives currently in place that Newton residents can use to get involved in open space management.

Would it be possible for the OSRP draft to go before the full Council for approval before it gets submitted to the state?

A: Yes, City Council adoption and the associated process is entirely up to the City; DCS does not require any such adoption. All that the state requires is a letter of support from the "Planning Board" (i.e. P&D). A letter from the Mayor is required. A letter of support from the Council is recommended but not required.

Once the Implementation Committee is formed it can make recommendations on a variety of subjects. Does it need an official ordinance or is it done through the mayor's office?

A: The Climate Action Plan serves as a good model for structuring the Implementation Committee. Staff will better articulate that model within the OSRP.

The difference between the groups behind the OSRP and the Climate Action Plan is that the Citizens' Energy Commission worked with the city as an official group on the Climate Action Plan. How best should the Implementation Group for the OSRP be made official?

A: An official designation for the OSRP Implementation Group would be ideal. It is important to keep in mind that the language in the plan is intentionally broad as the state is not looking for the same level of specificity that the city would be. The most important step right now is to get a broad plan to the state for approval so that the city has more flexibility in how it deals with the plan.

When does the old OSRP expire? If the Zoning & Planning Committee votes to recommend the OSRP at its May 19 meeting, what happens when it moves to the full Council?

A: The current OSRP expires on May 31. The vote is first on whether P&D supports the OSRP so that a letter of support can accompany the submission to the state. If the Council supports the OSRP it can also submit a letter to the state, which is advised. Secondly, Council will vote on whether to adopt the OSRP as part of the Comprehensive Plan.

Provided it would not interfere with the work of the Planning Department on the OSRP, the Committee should hold the item so that further questions on the current draft can be answered.

The OSRP should not delve deeply into the details of the Implementation Team. The Implementation Team is a critical component that should be set up carefully and with input from many players.

How much does Newton typically receive every year in open-space related grants?

A: The exact figure is not available now, but it is significant.

Is it possible for the Council to extend the applicability for the current plan to account for any gap?

A: No, this deadline is a state requirement. A request can be made of the state to change this deadline, but no guarantee can be given.

The Committee came to consensus to extend the public comment period through Monday May 18, one day ahead of its next meeting.

Many Councilors lauded the quality of effort and resulting OSRP, noting the Comprehensive approach and dramatic improvement over previous Open Space Plans.

The Planning & Development Board retired to a "Zoom" breakout room to deliberate on the item. It voted to hold the item and reconvene with the Zoning & Planning Committee on May 19.

Councilor Danberg motioned hold which carried 8-0.

#29-20 **Review and possible amendment of Demolition Delay and Landmark Ordinances**
COUNCILORS KELLEY, ALBRIGHT, AUCHINCLOSS, CROSSLEY, GREENBERG, KALIS,
KRINTZMAN, LEARY, LIPOF, MARKIEWICZ, BOWMAN, HUMPHREY, RYAN AND NORTON
requesting a review and, if appropriate, an update of Chapter 22, Sections 22-50 to 22-76
that relate to demolition delays, historic designation, and landmarking.

Action: **Zoning & Planning Held 8-0**

Notes: The Chair opened the item, noting that the historic ordinance working group has nearly completed revisions to the landmarking section of the ordinance. The working group came to unanimous agreement on most items within the proposed draft. Items that could not be decided, or where there was some disagreement, are highlighted in the text for further Committee discussion. Director Heath, Katy Hax Holmes and Andrew Lee, who staff the working group, joined the Committee for this discussion. The working group members are Councilors Albright, Baker, Crossley, and Kelley, along with Newton Historical Commission (NHC) representative Doug Cornelius. Director Heath and Atty. Lee presented the ordinance, describing its restructuring, intent to clarify both criteria and procedures, and comparing the proposed draft to the current ordinance. The PowerPoint presentation and draft ordinance is attached to this report.

As Director Heath presented each section of the ordinance, Atty. Lee highlighted items that require further discussion. Clarifications on eligibility for nomination, who may nominate, public notice requirements, criteria for acceptance or rejection of nomination, the role of the NHC, the role of the Planning and Development Board (P&D Board), public hearing requirements, designation criteria, voting requirements for designation, and administrative and judicial appeal options were presented.

Flow charts showing the current versus the proposed decision-making process were also shown, primarily to compare notice periods between the current and the proposed ordinance.

The Chair requested that in their discussion, Councilors provide feedback on the matters identified as unresolved by the working group:

- Regarding staff determining eligibility-was there something gained by having an impartial outside body making the decision for properties not on the National Register (Formerly done by Mass Historic)?
- Regarding who nominates, if Councilors are able to nominate properties, should at least one nominating Councilor be from within the ward in which the property is located?
- Regarding who nominates, should two members of the NHC alone be able to nominate a property, or should the second nomination be from outside that body?
- Settle the appeals process: should there be a local administrative body and to what degree should its role be substantive versus procedural.

Committee member and Councilor questions, answers, and comments follow, organized according to topic area:

Multiple Councilors commended the quality of the effort put in by the staff and working group to date.

What is the process on this item going forward?

A: The plan is for the working group to finish its work, incorporating feedback from this session and interim and for this ordinance to come to a final review and vote before the Committee at the May 19th Zoning & Planning meeting. In the meantime, Councilors can be considering this draft in order and ask questions of the working group in advance of May 19.

Regarding notification:

Is it intentional for different notification methods to be used for direct abutters only for hearing nominations and (then expand notification to) those within 300 feet of the affected property for the Public Hearing?

A: Yes. The current practice is to only notify direct abutters for considering nominations. In the proposed ordinance there are different notification procedures for the nomination and designation stage. This is because if a property is not nominated the process ends. If the process continues past the nomination stage, then abutters further out from the property are notified as there is a greater chance the property will receive the designation.

One Councilor thought that the public notice of 14 days should be lengthened, perhaps to two different stages, within 30 days.

Regarding who may nominate:

Councilors were divided on whether there needs to be a Councilor from the ward if another Councilor nominates a property for landmarking.

One said: Any councilor should be able to nominate any property from any ward. But if the Council is to better work together on landmarking, then Councilors should at least speak with the councilors from a ward about a property they wish to nominate for landmark designation.

Another felt that the proposed ordinance narrows who may nominate and creates an unnecessary choice between development and historic preservation.

The Chair noted that there have been multiple unanimous decisions in the working group, such as requiring at least two people to make a nomination.

Others said: Although a nomination can come from a Councilor from anywhere, it should be required that this also involves at least one Councilor from the ward.

A Councilor felt that if the NHC is removed from the nomination process, then any Councilor should be able to nominate any building from any ward in case the three Councilors from a certain ward chose against historic preservation.

A: The working group has discussed, and will continue to consider whether, if Councilors continue making nominations, should one of them be from the ward and should notification of that ward's councilors be required before the process proceeds.

A Councilor expressed support for removing two NHC members alone to make a nomination. She would like to hear more discussion on requirements to have one of the nominating councilors be from the property's ward as sometimes the Council acts too much based on individual wards instead of the City as a whole.

Some working group members and Councilors felt it is important for NHC members to retain the ability to nominate properties on their own. Others questioned whether NHC input on nominations presents a conflict of interest with their voting authority.

Regarding Eligibility and Designation Criteria:

What is meant by considering a property in context in relation to City policies and adopted plans in the property's surrounding area?

A: This is designation criteria that the NHC should consider in its decision on whether to designate a property for landmarking: the property's context in relation to the City's plans for the surrounding area. Such plans are normally adopted as part of the Comprehensive Plan (Climate Action Plan, Washington Street and other vision plans, etc.). The Planning Board may make a recommendation to the NHC regarding how well landmark designation of the property would align with these adopted plans.

The eligibility and nomination/acceptance criteria of "excellent craftsmanship" for nomination seems too broad to have as a criterion for landmark eligibility as the highest level of protection in the city.

A: You are talking about the proposed eligibility criteria and the current designation criteria as these are the same. This is a major change since the designation threshold criteria in the existing ordinance were thought to be too broad. What has been done is that the same criteria have been moved to the start of the process at the nomination eligibility stage. It is intended to be broader at this stage, but the requirements tighten up as the process continues (the nomination criteria must be vetted by further research).

Regarding Appeals:

If a local administrative body is used over the courts, does this alter the standard of review?

A: This exact point has not been finalized yet. The local administrative bodies prescribe no statute and no law states that it must be any particular way. These allow the city more flexibility.

A Councilor added that the intent behind revisions to the review process was to imitate the standards of the MAPC as if it had remained in the process. Atty. Lee confirmed that MAPC will not perform this role.

The landmark ordinance is built on local home-rule initiatives, allowing the City more flexibility in this process.

There are administrative review options which differ. One option is simply reviewing the information originally brought to the historic commission regarding the property in question. Another option is those that allow new evidence. The working group will continue to discuss which approach is best.

It was noted that based on much of the feedback received and impetus for engaging in this review, there needs to be a more accessible appeals process.

Some councilors felt that it is good to have an administrative review as an alternative to the judicial review.

One Councilor said that establishing a local administrative body is a good idea, but the working group should consider the difficulty of finding enough volunteers at times to run such a body.

A: As presented, the working group recommended that three members serve on an administrative appeals body: the Chair of the Urban Design Commission, the Chair of the P&D Board, and the Chair of the Historic District Commissions, or their designees. This is to provide flexibility and a large enough pool to draw from.

Is there a provision to save the facades on historic buildings up for demolition in cases where this is feasible, and the facades are historically significant?

If there is an administrative review, should it focus on critical process details rather than hearing the entire case over again? Should new evidence be allowed?

A: There is not yet consensus on this point in the working group. IT continues to discuss how best to clarify the standards for appeal.

Miscellaneous:

Is there a binding result from the administrative review? What is its intended reach?

A: If the Council pursues an administrative review, a person aggrieved by a decision of such a body, may then appeal for a judicial review in superior court. It is believed that the clearer standards and procedures in the ordinance as revised will make appeals less likely.

Has the NHC seen these conditions?

A: The NHC is represented on the working group by Doug Cornelius. Ms. Holmes noted the draft was put on their April agenda for discussion, but the meeting went late so they tabled the item. NHC has not had a chance as a group to discuss these changes yet. NHC members received the draft revisions in advance of their April 23 meeting to begin reviewing for their next meeting.

One Councilor thought the orientation of this draft ordinance seems to be to make landmarking harder. The push in the city right now seems to be pro-development but that could change. If a historic building is demolished as a result of this process, then it is lost forever.

Another Councilor countered that the proposed ordinance is not making it harder to landmark properties, but rather makes the process clearer and fairer for all parties involved.

What is the number of years for properties to be eligible and will this timeframe be reviewed? Is the one-year moratorium on restarting the landmark designation on a previously denied property going to remain?

A: This has to do with the demolition delay ordinance rather than the landmark ordinance. If a property is more than 50 years old, the NHC is charged to decide whether a property should be 'preferably preserved,' and if so, there is a delay placed on its partial or full demolition. That is the next section of this ordinance the working group plans to address.

Multiple Councilors urged members of the public to submit comments on the proposed landmark ordinance to the Clerk's Office for distribution to the working group and Council.

Councilor Albright motioned hold which carried 8-0.

The meeting adjourned at 10:16 PM.

Respectfully Submitted,

Deborah J. Crossley, Chair