

**City of Newburyport  
Joint Public Hearing  
Planning Board and Planning & Development Subcommittee  
March 5, 2014  
MINUTES**

The meeting was called to order at 7:11 PM.

**1. Roll Call**

In attendance for the Planning Board: Dan Bowie, Paul Dahn, Sue Grolnic, Noah Luskin, Jim McCarthy, Bonnie Sontag, Don Walters and Cindy Zabriskie

In attendance for the Planning & Development Committee of the Council: Ed Cameron, Jared Eigerman, and Barry Connell

In attendance for the City Council as a Whole: Bob Cronin, Larry Giunta, Allison Heartquist, Meghan Kinsey, Charles Tontar, and Bruce Vogel

Absent: Planning Board member Henry Coe and City Council President Tom O'Brien

Also present was Andrew Port, Director of Planning and Development.

***2. Joint Public Hearing with Planning and Development Committee of the Council***

***a) Interim Downtown Overlay District" (IDOD)***

***b) Interim Demolition Control Overlay District (IDCOD)***

***c) Off-street Parking Regulations, Unmet Parking Need Credit UPNC***

***Continued from February 19, 2014***

Chairman Bowie said only the zoning districts would be addressed tonight and introduced the Planning Board members. Subcommittee Chairman Cameron introduced the Planning & Development Subcommittee members. The committee heard almost two hours of public comment at the last public hearing. In an effort to work through all concerns put forth, the parking ordinance will not be addressed this evening.

Councilor Eigerman explained revised ordinance language that incorporated some suggestions from the last meeting. He met with business and property owners to work directly with their concerns. Currently, the city does not have any design review for downtown. Wholesale demolitions of National Register buildings have occurred because land is valuable. Newly incorporated into the proposed ordinances are: 1) De facto demolition now refers only to vacant or unoccupied buildings that have to be secured; 2) The definition of demolition of an entire building has been clarified. Removing an entire wall is not considered a demolition because it was not 25% of everything the building consisted of, or 25% of the entire building. The point was to keep buildings on the National Register standing; 3) Decision-making cannot be delegated outside Planning or Zoning boards. Materials will go to the Historical Commission ahead of time for review and comment for the record. For example, if someone wants to take down brick firewalls, the Historical Commission can give an unbinding opinion; 4) A 3<sup>rd</sup> party peer report is required for a demolition request; 5) If the Planning Board doesn't have enough information on market value of a property, they can ask for an appraisal; 6) Included is a link to

**Planning Board Joint Public Hearing**  
**March 5, 2014**

the National Register list, but the list isn't official yet. Volunteers went to the public archives and rectified the list that will be posted. The volunteers found transcription errors from 1984, and some buildings need to be added and others removed; 7) Added to this version of the proposal is why a building is listed as part of the downtown overlay district; 8) The word 'interim' has been stricken; we cannot bind a future City Council; 9) The maintenance obligation was eliminated; 10) One and two-family houses will be excluded from the downtown overlay district. A map reflecting those changes is forthcoming.

Committee Chairman Cameron said there may be public comment at the end of the committee and board discussion, who both needed to focus on their own comments first, and a possibility exists this meeting will continue. Chairman Bowie said public comments were taken first at the last meeting. Tonight, a Planning Board discussion and then a City Council discussion will occur before public comment.

**Planning Board comments:**

The proposals are one of many ways to show support for creating a local historic district. The ordinances do not stop change; they require review, approval and permits in order to make some changes. The Historical Commission will be officially involved in the review process, reviewing documentation 21 days before the Zoning Board receives an application for consideration. Many people have trouble with the idea of 'compatibility' for new construction. A good example of compatibility for new construction is Mill #5 at the Tannery, which in several ways, fits in and reflects the architecture of the original tannery mill buildings across the street. Does it make sense to have a representative of the Historical Commission come to board meetings when the board is discussing an application? At present, the board is dependent on the applicant to clarify their intentions. A clear explanation of 'individually listed and contributory listed' in the IDOD is needed. Does the Zoning Board still have permit granting authority for use and dimensional controls for the downtown? If so, a change is needed in section 4D. The language changes were good so far. More deliberation is needed. In general, what are the biggest problems in Newburyport? Over regulation is not welcome, but the effects of financial pressures is something to fear because property has become more expensive. Developers can now cobble together two or three properties, changing the landscape measurably. There's nothing the board can do to stop that without controlling demolition. Two pieces of direct evidence create great concern. One is the High Street ridge where properties have been joined. The other example by the Bresnahan School is a subdivision created by joining two properties. The design review portion would be a struggle, but the board would do its best. Because liberal use of dormers has occurred there was concern that rooflines are not mentioned. A suggestion to include rooflines in the definition for demolition was made. Many times, historic details cannot be duplicated. Concern about requirements for coming before the board to demolish parts of a home was voiced, but hope for compromise to lessen the burden on property owners was present. Chairman Bowie appreciated efforts to revise the language and remained concerned over how the ordinances would operate on the ground. He thought the ordinances were moving in the right direction.

**Planning & Development Subcommittee comments:**

Councilor Connell said the draft had improved, particularly on issues of demolition by neglect and the 25% rule. The roofline comment was appreciated. How would rooflines be incorporated if they do not characterize historic structures?

**Planning Board Joint Public Hearing**  
**March 5, 2014**

Councilor Kinsey had asked several questions of many people and Councilor Eigerman had been available to help her address their comments. People have said or written that if we vote for this, we're socialists, and if we go against this, we're barbarians. She never plans to have an accident when leaving her driveway by car, but uses a seat belt anyway. She viewed the ordinances as a seatbelt for the city.

Councilor Heartquist had not reviewed the multi-page changes, but liked that applications would go to the Historical Commission 21 days prior to board review and that single and two-family homes were excluded from downtown.

Councilor Cronin met with many people and heard many viewpoints. The city seemed more comfortable with the revised draft. The National Register list needed to be certified before a vote was taken. An appeal of list membership in case an error is discovered should also be included. A true definition was needed for an uninhabited house. We want to give the building inspector, and ZBA and Planning Board the best tools we can in order to make this work.

Councilor Vogel often heard residents ask why the city was trying to tell them what to do. Residents say they take care of their homes. He agreed with Councilor Kinsey. He was not worried about who was here now, but was worried about those coming in the future.

Councilor Tontar's one concern was a precise list of the structures in the demolition overlay district. He was confident a list could be nailed down. He brought a market frame to the issue. Markets work well when all costs and all benefits are borne by all parties in an exchange between buyers and sellers. However, when there were costs and/or benefits not borne by the agents in the exchange, the markets would dysfunction. You do not get an optimal allocation of resources. Our housing market is a critical example of that. The historic character of the downtown gives a significant net benefit to people all over the city. That fact is not taken into consideration for property owners. When changes interfere with the property rights of other individuals, that's the moment for government to step in to make the market work better. It's hard to quantify the external benefits or costs. What damage is done to other properties when there is a historic demolition? It's hard to quantify, but we know it's there.

Councilor Guinta said the public feedback resulted in amendments to address concerns. Revised ordinances reflect that the City Council was listening to residents.

Committee Chairman Cameron said the changes were good and demonstrate we've listened to public comments. A home addition will not be a problem. He was pleased the Historical Commission would have a role and satisfied with clarifications on demolition. He needed more clarity about when and how the National Register list would be verified. Original documents in the library were transcribed and put on the web. The transcription process contained errors. Did it fall to the Planning Office to clarify the list? The appeal mechanism was important to discuss further. Excluding single and two-family homes addresses many peoples' concerns. Homeowners' rights are valued and important but not exclusively connected to your property. What's going on around you is equally important. Tearing down historic properties to build a structure that's not in keeping with what you'd expect for the streetscape has a negative impact on the community.

**Planning Board Joint Public Hearing**  
**March 5, 2014**

Chairman Bowie continued to have concerns about the reference to the Secretary of Interior standards. There is a link from the city website to the standards. After reading them, he has no problem with the guidelines and restrictions. While not fully cognizant of all their detail, the implementation of 140 pages of guidelines would be a significant undertaking for the board, which would be applying the guidelines to numerous properties without previous experience in their application. The board should consider more aspects of how the standards would be implemented because that was where the issues to be hammered out currently exist. A late email from Mark Griffin pointed out several practical points of applying the standards he had not yet considered and Attorney Griffin's points were worth discussing before moving forward.

Councilor Eigerman said money and economics were the way real estate worked. He represented developers who, as a whole, always find it more expedient to cut corners. Currently, the city has no way to ensure a developer's work will be compatible. The city has to think long term. In the past, design reviews had been done by the NRA with standards the city could reuse today. He had the previous NRA standards at the meeting for review. The language was both more detailed and more vague than what was under consideration tonight. Structures had to be harmonious. The only thing prohibited on windows was reflective glass. The rest would be case-by-case. Consideration of rooflines was a valid point. A roofline change downtown would be regulated because it represented an alteration to an historic feature. In the neighborhoods, under the demolition control, rooflines were not included in the draft. Modern buildings were sometimes a better approach downtown and were explicitly permitted. There should be one decision-making body within the respective overlay districts to avoid going before multiple boards. That's an improvement over current codes. He noticed a philosophical anxiety in the discussions, indicating that if a building were on the National Register there would be a policy commitment that demolishing it would not be good. Attorney Griffin's email pointed out that approving demolition of a National Register building would be tough. But, if a building can't be saved, it has to come down. If it can be saved, the city values its historic character as the sum of its historic structures. Shouldn't there be a vetting before a structure goes to the landfill? Having our downtown look a certain way was a successful strategy that made us rich. The alternative is to modernize downtown buildings. All the deed restrictions expired in 2005. He was sensitive to the 'bad for business' argument. If you don't have any vetting for a design, your business is at risk. He thought it appropriate to strike a balance of what would be, and what would not be, covered. The Chase and Lunt building, for example, was not on the National Register. The parking ordinance was poorly written, but he tried to be sensitive to downtown businesses. Reconsidering 'unoccupied' was an excellent point and the Subcommittee would work on that and Chapter 40A issues. One and two-family homes have special status in Massachusetts. He disagreed with Chairman Bowie on the Secretary of Interior standards. All the legislation says that these standards have to be considered. The tax credits are less viable for a single-family homeowner, but a developer does want them and in order to get them has to comply with those standards. If you're in the historic preservation bucket, like the Firehouse, in order to get Community Preservation Act funds, you have to comply with Secretary of the Interior standards. It's a safe harbor. He wanted the Planning Board to have to consider the guidelines when working with developers. Every time someone brings an issue forward, it is our responsibility to deal with it. The city has a fiduciary responsibility to, and was committed to, preservation.

**Planning Board Joint Public Hearing**  
**March 5, 2014**

Councilor Tontar asked if Chairman Bowie's concern about the standards was that they would be too demanding on a property owner or the board in implementing them? Chairman Bowie said his concern was related to what it would mean to a homeowner. He didn't have any problem with the board considering them. What he didn't want was language that potentially could be used to file an appeal with respect to language such as "...may consider but not required to consider...." An appeal on the basis that the board did not consider something was possible. Councilor Eigerman said the word 'not' had been dropped. Chairman Bowie concern was how the standards would operate on the ground. Subcommittee Chair Cameron said the 'need not adhere to' clause could be dropped. Would that work? Chairman Bowie said no, the word "reasonable" was subject to interpretation. If it could say, "sole discretion" that would be better.

Councilor Cronin said an issue that came up was the phrase "amended from time to time." The concern was that an outside entity could change the guidelines without a vote. Ordinance review process language should change to addresses that. Councilor Eigerman acknowledged that concern and said maybe we should check with the city solicitor. A board member suggested using the word 'current' instead of 'time to time.' Councilor Tontar said a building owner who concerned himself with complying to the standards in order to get a tax break would have to comply with the new standards to get the tax break. Councilor Eigerman said the language should give the ordinance flexibility and people wouldn't have to return to the board with every change. Councilor Cronin said they hadn't addressed whether the city was open to litigation if standards became more stringent because regulations are not time-stamped. Councilor Vogel asked why the ordinance wouldn't flow with the standards? Councilor Eigerman said, in practice, they are only floating. For example, someone can go to the National Register and get a building delisted or added. He didn't think that should bind the city. A building owner should come before the city for delisting or adding.

Director Port said the board could, where appropriate, apply the standards. As a starting point, there was already a mechanism for relief. He had seen it in many other regulations. With stormwater, the Planning Office amended regulations without going before the City Council. Guidelines don't change frequently. Subcommittee Chair Cameron said more due diligence was needed before a vote. The Subcommittee should research how often the standards change and how substantive those changes were. 'Sole discretion' language allowed the board to ignore the standards if they chose. Councilor Vogel said there might be disagreement about the legal application of the standards. The City Council would add that to the list of review items for the city solicitor. A board member said use of the standards didn't present a legal question because standards were applied at the board's discretion; that was a critical word. It didn't matter if the standards changed and made no sense to spend hours researching something that was moot.

A board member said the first public hearing was on February 19<sup>th</sup>, the board had draft meeting minutes on February 24<sup>th</sup>, the board received revised ordinances on March 1<sup>st</sup>, and today the board has further revised the ordinances. The ordinances are on a fast track. Saying that historic preservation will maintain a neighborhood is one perspective. The member could find an expert to say just the opposite. Standards say 'shall' or 'will,' guidelines will say 'could.' The language was great because no matter what the board would say, if there were enough economic value on the table, it would be litigated. There was a section with respect to the Historical Commission bringing in an appraiser. Checks and balances are needed there, based on the board member's

**Planning Board Joint Public Hearing**  
**March 5, 2014**

experience in 2002 researching W.R. Grace. If the City Council wanted interim ordinances they would have to specify whether ordinances were good for 18 months or longer.

Public comment opened.

James Shanley, 15 Olive Street, liked what he heard and observed a good working meeting. He thought it would be bad if structures such as his, built in 1795, were torn down.

Matthew Blanchette, 88 Prospect Street, was in favor of the masonry language because he'd seen some horrendous work done. As a restoration mason, he participated in the Preservation Trust. He shared concern about the people coming up after us. The historical character of the city was more than the sum of its individual historical structures.

William Hallett, 23 Olive Street, said when an old structure that could be saved is torn down, it's a nail in the coffin of historic preservation.

Everett Chandler, 34 Winter Street, a land surveyor, said builders and developers prefer clarity around their primary concern: what they're required to do and what steps they have to take to get to there. The phrase "no substantial remaining market value or reasonable use" lacks clarity, and would prevent him, his clients, and anyone else going before a board from conceiving a reasonable plan to present to the board. The language could mean either that nothing can be torn down, or that if the applicant couldn't afford it, someone else could.

Mary Haslinger, 299 High Street, said the working meeting was impressive. Those who couldn't come to the first hearing were disadvantaged. All property owners count on the integrity of zoning not to be arbitrary when cobbling lots together occurred. She had told the Zoning Board they didn't have the authority to change zoning. She'd like to see the National Register list to be assured that the historic downtown is authentic, from its footing to its roofline, firewalls and chimneys. As the basis of our economic welfare, downtown would benefit if enlarged to capture the Dalton House, the library, and other important structures there.

Nancy Caswell, 37 Ashland Street, owns businesses at 38 and 25 State Street, and owns the property at #38. Would she have to go before the boards for simple maintenance items such as changing the design of her space to put in a new AC or had a leak and needed to repair bricks? If having to go before boards for maintenance, what would the timing of that be? What is a landlord's responsibility versus the owner's responsibility? Regarding comments at the last meeting about 'who cares if restaurants come and go in Newburyport,' she cared and needed further clarification on what would change for downtown businesses and the timing involved.

Chris Currier, 18 Monroe Street, was satisfied with the direction of changes to the ordinances. A site review with an advisory report made sense. Tearing down a home made some get emotional. He saw no number for those occurrences. When voting on a project, the outcome is of such importance that an expert's site visit and report had value. The expert chosen should be agreed upon rather than dictated. If a replacement structure were approved prior to the demolition, money would have been spent without knowing whether the demolition would be approved. This would cost people money. A seamless and known process would make that easier.

**Planning Board Joint Public Hearing  
March 5, 2014**

Jerry Mullins, 7 Parsons Street, said the last public hearing was long. Chairman Bowie concluded with concerns about the gold standard that Mr. Mullins shared. The section on historic preservation was elaborate. Residents were trying to understand the standards. The 10 basic standards were easy to understand because they were principles. Could those 10 standards be listed in the ordinance? Otherwise, people would need to hire consultants at a cost. Everyone living here could understand the basic 10 standards.

Mark Griffin, Attorney, office at 11 Market Square and residence at 4 Otis Place, said his email was based on the draft posted online, not the version under review tonight. In specific reference to demolition language he supported Everett Chandler's statements regarding representing people with projects going before boards. People were concerned with consistency in the application of ordinances. Before embarking on an addition or a new project, people needed to understand the criteria in order to determine if their goal was achievable. Continue the good work of amending to create better ordinances for application purposes. 'No remaining market value' was not a substantially useful standard. If you are not tearing down a building, that standard may not make any sense. Regarding the replacement structure language, he didn't think the thrust was to consider what would replace a tear down. It seemed unnecessary information and created a need to apply for rebuild relief concurrently with the teardown relief. There was no sense spending time and money for a rebuild effort if the teardown may not be approved.

Steve Rudolph, 349 High Street, said the process was good and addresses an extraordinary circumstance in our society. The whole of Newburyport was greater than the sum of its parts and we are stewards of that whole. The City Council was engaged in a once-in-a-generation opportunity to shape the community for many years to come, with far-reaching and impactful results. As stewards of legislation, continue to push for compromise and get something done.

Sharif Zeid, 192 Water Street, was surprised not to hear more dissent when no one actually knows what the ordinances mean. What does 'could be saved' mean? The issues are subjective. Some holes were closed, but others opened. Getting approval for what you want built involved jumping through many hoops; there are a lot of hurdles to surmount. Passage would stop change because the process is expensive or difficult, or both. You can't assure that the ordinances would be applied the same way over the years with future board members. Taking away a property owner's control and rights decreases the value of their own home and places them at the mercy of the changing faces on the board.

Lyndi Lanphear, 347 High Street, liked having one entity that would bring simplicity to a process that was not one step. The Historical Commission review would slow a project down by at least a month. She tried to send a letter to the Planning Board and recommended the board's contact information be made public.

Linda Miller, 20 Ship Street, said since the last public hearing, the Zoning Board had issued a special permit for a new house to be built at 17 Ship Street where a viable house now exists that will be demolished. There was no reason for the demolition other than the owners wanted a new house. The demolition negatively impacts her, the neighbors, and the entire streetscape.

**Planning Board Joint Public Hearing**  
**March 5, 2014**

Robert Levinson 84 Federal Street, said the downtown overlay district made more sense, but the IDCOD was weak in terms of the public benefit compared to the additional and significant burdens placed on property owners. Confusion remained on the National Register list and the standards. These misunderstandings should be clarified and better understanding promoted in the community. The Secretary of the Interior standards for the treatment of his properties were only regulatory for projects receiving federal funds; otherwise they were only guidance. The standards should always be used when seeking federal tax benefits. The force of law was vague at best. Chapter 40A of Massachusetts Zoning, Section 4 was cited. How would the cited chapter and section influence the application language in the IDCOD that proposed to treat contributory properties differently than non-contributory properties? He reminded the board that one of the items for the public hearing was the parking ordinance.

Malcolm Carnwarth, 22 Strong Street, said the changes in Newburyport over time have been extremely subtle. A replica of an antique house is not an antique house. Antique houses have been demolished with new buildings replacing them on Vernon Street, Dove Street, Strong Street, Franklin Street, Warren Street, Bromfield Street, Chestnut Street, Lime Street, and Ship Street. A problem in our culture was that things had to be new all the time, that we have to change things constantly, making this a complex issue. Developers have been altering the city for a long time. Today, on a street of 18<sup>th</sup> century buildings, someone can tear down a building and put up a new structure without having to recognize that the history of an 18<sup>th</sup> century English seaport with architectural treasures was important.

Leslie Eckholdt, 36 Warren Street, spoke in reference to renovations at 16 State Street and the demolition approved for 17 Ship Street. Ghlee Woodworth gave a talk about shipbuilders in Newburyport. Two days later the Zoning Board approved tearing down a home that is part of our important history. We are celebrating history and tearing it down at the same time.

Betsy Ware, 84 Federal Street, would submit a letter stating that the ordinances should be adopted as a general bylaw. She objected to considering ordinances a Chapter 40A issue. She was concerned about a review process that included the board hiring someone to perform a review. A provision in Chapter 40A for soliciting consultants existed. The condition of the survey for the National Register was not good. The ordinance stated it was the owner's responsibility. The city should do the certifying to better understand exactly what is put into the district.

Public comment closed.

Chairman Bowie said the Planning Board's job was to make a recommendation to the City Council in favor, not in favor, or remain silent within 21 days of the close of a public hearing. Was the board comfortable making a recommendation now? A board member recommended continuing or invoking one for the board, with respect to the 21-day clause. It had come down to a definition of standards. Another member could make a decision with conditions. A member requested a regular board meeting to continue their deliberation. Chairman Bowie said the board could also continue the public hearing if needed.



**Planning Board Joint Public Hearing  
March 5, 2014**

Subcommittee Chair Cameron said the Planning & Development Subcommittee could take a vote or continue the hearing. Councilor Connell said new information surfaced tonight that hadn't been considered. He wanted a clean copy of the ordinances with the changes agreed upon this evening before voting. Councilor Eigerman wanted the board to have an opportunity to deliberate. He would incorporate changes into a clean copy of the ordinances for everyone. Subcommittee Chair Cameron said if both parties continued the hearing, could the Planning Board meet separately to continue their discussion? Director Port said the parties could continue discussions separately and rejoin in a final public hearing. Councilor Eigerman saw no need to meet jointly again and favored giving the board a chance to have their meeting. He suggested closing the public hearing. The public had provided their comments. Developing the Subcommittee recommendation didn't require another public hearing. Subcommittee Chair Cameron asked the Subcommittee if they wanted to take action on the ordinances tonight, close the public hearing, or bring to the Council as a Whole? Councilor Eigerman said the subcommittee should wait for the Planning Board's recommendation before proceeding. The board's report was due in three weeks; their next meeting was in two weeks. Councilor Connell's preference was to keep the public hearing open. Subcommittee Chair Cameron didn't see the need to do that, as there remained plenty of time for additional public comment.

Betsy Ware said no one had an opportunity to discuss parking. Councilor Eigerman said the parking proposal would be renoticed. There would be more public meetings, even if the public hearing closed. The Subcommittee needed to get the clock going on the 21-day clause.

Subcommittee on Planning & Development Motion: Councilor Eigerman made a motion to close the public hearing. Councilor Connell seconded and all voted in favor.

Planning Board Motion: Don Walters made a motion to continue the public hearing for the Planning Board. Cindy Zabriskie seconded and all voted in favor.

Director Port said discussion of the proposals would continue with a public hearing at the next Planning Board meeting on March 19. The 21-day clause would start on March 19<sup>th</sup>. The City Council cannot act for 21 days unless a report from the Planning Board was received before that date.

Councilor Vogel asked if the Council was bound to wait until the public hearing closed to act. Director Port affirmed, adding that until the Council received the Planning Board's recommendation they could not act. Councilor Tontar asked what the statute said? Director Port read the statute and recommended closing the public hearing.

**5. Adjournment**

Jim McCarthy made a motion to adjourn. Noah Luskin seconded and all voted in favor. The meeting adjourned at 9:43 PM.

Respectfully submitted -- Linda Guthrie, Note Taker