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**From:** jeigerman@gmail.com  
**Sent:** Wednesday, November 15, 2023 7:27 AM  
**To:** Rick Taintor; Ed Cameron  
**Cc:** Connie Preston; Mark Wright; Andrew Port; Jennie Donahue  
**Subject:** Re: Ordinance 164 -- PUBLIC HEARING -- Nov. 15, 2023

I have a typo in my letter. I meant to write: “ Uses allowable in an R-3 district include: Public Parking, Retail Trade, and Retail Services.”

I typed “not,” mistakenly.

Jared Eigerman  
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On Nov 14, 2023, at 7:11 PM, Jared Eigerman <jeigerman@gmail.com> wrote:

Dear Chairs Taintor and Cameron:

Please accept this written testimony regarding Ordinance 164, dated October 30, 2023, sponsored by Councillors Donahue, Cameron, and Preston (the ‘Ordinance 164’), and coming before a joint public hearing of the Planning Board and the City Council’s Committee on Planning & Development on Wednesday, November 15.

Ordinance 164 is referenced in a Development Agreement dated November 14, 2023, between the City of Newburyport and Clipper City Development LLC (the ‘Developer’), regarding the proposed development of 107 State Street (Assessor’s Map / Lot 33-43) and 95 High Street (Assessors Map / Lot 33-42) (together, the ‘Former Mobil Gas Station’).

I have personal knowledge and professional expertise relevant to Ordinance 164.

My wife and I own and reside at a residential condominium located at 83 High Street, which is located several lots easterly, and approximately 320 feet, from the edge of the Former Mobil Gas Station. We are not, however, “abutters” under the Massachusetts Zoning Law (MGL c. 40A) and the Newburyport Zoning Ordinance.

In 2021, in my capacity as then-President of the City Council, I presided at a public hearing on October 25, 2021, November 29, 2021, and December 13, 2023, to adjudge whether the Former Mobil Gas Station was “a nuisance to the neighborhood or dangerous,” and if found to be so, to prescribe “its disposition, alteration or regulation.” Happily, the parties agreed to a settlement.

I have been practicing as a land use attorney, specializing in real estate development, since 1998. (See <https://www.linkedin.com/in/jaredeigerman/>.)

My practical experience began 40 years ago when I interned at the Cambridge Historical Commission, aged 14. After college, I interned at the Boston Redevelopment Authority, working in Mission Hill. In the 1990s, I earned graduate degrees in city planning and law, all the while working in local government for course credit.

I started my career as a San Francisco Deputy City Attorney, then went into private law practice representing both for-profit and non-profit real estate developers in two of the most difficult regulatory environments in the U.S., San Francisco and Boston.

Over 25 years, my project experience has ranged from rehabilitation of single historic structures to high-density transit-oriented projects, and mixed-use proposals on tidelands subject to the public trust.

For example, I negotiated the development agreement with and obtained all land use entitlements from the City and County of San Francisco for the Trinity Plaza Project at Market and 8<sup>th</sup> Streets, including 1,900 multifamily dwelling units (including 591 deed-restricted affordable units) and 65,000 square feet of retail, across the street from troubled UN Plaza (<https://sfplanning.org/project/trinity-plaza>).

Personally, I support facilitating the development of four (4) dwelling units within two buildings at the Former Mobil Gas Station, consistent with the “Concept Plan” appended to the Development Agreement. I have concerns, however, about Ordinance 164 as proposed, and I urge the Planning Board and City Council to address these concerns, as explained below.

Without contingencies, Rezoning the Former Mobil Gas Station from *HSR-A* to *R-3* is illegal “spot zoning,” and so vulnerable to legal challenge. (*Lanner v. Bd. of Appeal of Tewksbury*, 348 Mass. 220, 229 (1964) (quoting *Marblehead v. Rosenthal*, 316 Mass. 124, 126 (1944) [Illegal spot zoning occurs where there is “a singling out of one lot for different treatment from that accorded to similar surrounding land indistinguishable from it in character, all for the economic benefit of the owner of that lot.”].)

To ensure that Ordinance 164 is not a one-sided economic benefit to the owner of the Former Mobil Gas Station, the effectiveness of reclassifying that property as *R-3* must be made contingent upon the four-unit multifamily development depicted in the Concept Plan.

Otherwise, if the project depicted in the Concept Plan does not go forward, non-residential uses will be allowed at the Former Mobil Gas Station, contrary to the City’s stated intention. Uses not allowable in an *R-3* district include: Public Parking, Retail Trade, and Retail Services.

To facilitate the project, Ordinance 164 would amend the definition of “Multifamily” (Use 103) for the entire City of Newburyport, not just the Former Mobil Gas Station. Obviously, this is a big leap for the City to take, and so must be considered carefully.

Section VI-C(1) currently provides “Except as otherwise permitted in this section VI-C or elsewhere in this zoning ordinance, only one (1) building containing residential dwelling units shall be erected, placed or converted to use as such on any lot.”

The Planning Board and City Council must ask themselves if they want Ordinance 614 to overrule Section VI-C(1) for multifamily projects of four or more units.

If the answer is “yes,” then the Planning Board and City Council must amend Ordinance 164 to close a loophole through which multifamily projects in multiple buildings could be approved by right. It would be unusual, not to mention unwise, to allow the placement of multiple residential buildings on a single lot without some government scrutiny.

At present, Site Plan Review in Newburyport applies to residential projects only where they include five (5) units or more. (See Section XV-C (Applicability).)

Therefore, to close the loophole, Ordinance 164 should also be amended Section XV-C (Applicability), to read: “Major and minor projects: site plan review shall be

required for any structure intended for residential use which includes ~~five (5)~~**four (4)** or more residential units on one ~~property~~**lot** and for any and all other new nonresidential uses or structure(s) including, but not limited to, industrial/infrastructure, marine, business or institutional/government/medical use(s).”

It would not be heavy-handed for Newburyport to require site plan review of multifamily projects of four (4) or more units, a slight reduction from today’s five (5). Many cities and towns in Massachusetts require site plan review for all multifamily projects. A good example is Boxborough, Massachusetts, whose Planning Board is represented by the law firm of Mead, Talerman & Costa, which also represents the developer, here.

If, in the interest of time, Clipper City Development, LLC, wishes to avoid having to appear before the Newburyport Planning Board for Site Plan Review, then, as an alternative, they must agree to pay the reasonable costs for peer review of the project by a qualified architect and/or civil engineer, employed by the Zoning Board of Appeal.

Again, this is not an onerous requirement for developers in Massachusetts to bear. The practices of Mead, Talerman & Costa’s client, the Boxborough Planning Board, again, provides a useful example.

In fact, what appears to be missing from both the Development Agreement dated November 14, 2023, and Ordinance 164 is any assurance that the project will be reviewed under sensible criteria to ensure that it will include adequate vehicular access, parking, open space, and, most important of all, will be consistent with “community character.” The Concept Plan does not include any elevation drawings, and, normally, the Newburyport Zoning Board of Appeal is not equipped to evaluate such drawings without assistance.

Thank you.

- Jared Eigerman  
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