

**Between Plan and Project: Identifying gaps in plan implementation
through development projects in Santa Monica and Newton**

By

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B.S. Architectural Design
Massachusetts Institute of Technology, 2009

Submitted to the Department of Urban Studies and Planning
in partial fulfillment of the requirements for the degree of

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Abstract

This thesis explores the relationship between plans and their implementation through development projects. Specifically, it asks: Do local plans that specify priority sites for development lead to the approvals of those projects? To answer this question, I look at the recent planning initiatives and their associated priority development projects in two cities – Santa Monica’s Land Use and Transportation Element (LUCE) and Bergamot Transit Village project, and Newton’s Comprehensive Plan and Austin Street project. Specifically, I look at the permitting process of each project to determine if the plans had any role in facilitating project approvals.

I conclude that while plans play an important role in defining community priorities, they have a limited ability to facilitate project approvals. Instead, I find that each city’s specific legal framework around land use decisions, including state laws on voter referendum and local policy on special permits, play a much more definitive role. In light of underlying legal and political undertones around development, I offer two suggestions to cities aiming to improve plan implementation. First, facilitate direct ideation from community members through the appointment of citizen task-forces that promote citizen leadership and co-learning around community concerns, while maintaining traditional public hearings as a platform for structured support and dissent. Second, build up and maintain confidence in this enhanced task-force process by insulating carefully-vetted outcomes from outright repeal. Together, these recommendations encourage a more politically-strategic and engaged approach to planning, suggesting that plan implementation will occur best when legal mechanisms and community political will align with the vision set forth in a city’s best laid plans.

Thesis Supervisor: James Buckley
Title: Lecturer, Department of Urban Studies and Planning

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To Ben, and our future life together.

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Chapter 1 Introduction

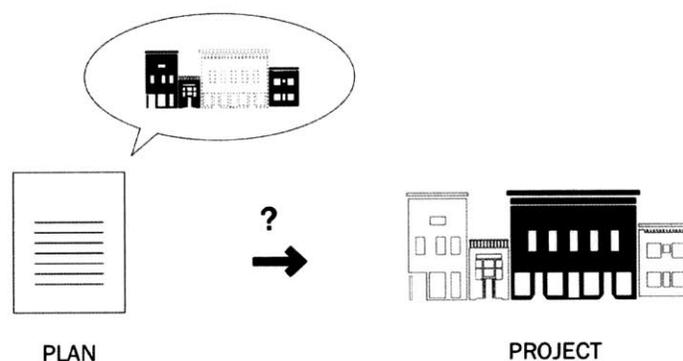
“The real difficulty is that “selling” the idea of planning and getting specific planning measures into effect are two different matters.”

-- ROBERT WALKER, THE IMPLEMENTATION OF PLANNING MEASURES

1.1 RESEARCH QUESTION

This thesis explores the relationship between plans and their implementation through development projects. Specifically, it asks: Do local plans that specify priority sites for development lead to the approvals of those projects? To answer this question, I look at the recent planning initiatives and their associated priority development projects in two cities – Santa Monica’s Land Use and Transportation Element (LUCE) and Bergamot Transit Village project, and Newton’s Comprehensive Plan and Austin Street project. Specifically, I look at the permitting process of each project to determine if the plans had any role in facilitating project approvals. While both cities’ plans clearly identified sites for priority development, the outcomes of projects proposed on those sites differed. Given these results, I question the role of the plan in facilitating project implementation, and investigate other forces at play in the local development process that have a more definitive impact on project outcomes.

Figure 1. Diagram of Research Question



1.2 CASE SELECTION RATIONALE: WHY SANTA MONICA AND NEWTON?

My objective was to study the effect that having a local plan that identified priority development sites had on the outcome of that project. I developed a set of criteria to select cities that could serve as illustrative case studies, including the following requirements:

- Must have recently adopted a local plan, with wide public and political support
- Must have enumerated at least one priority development site in the plan
- Must have attracted a sponsor to propose a development for one of the priority sites identified in the plan
- Must have fully completed the approvals process for the proposed project

These criteria were the core characteristics needed to observe the outcomes related to my research question. Given these requirements, I selected the cities of Santa Monica, CA and Newton, MA

as illustrative case studies. Not only did they satisfy each of the above criterion, but they were also jurisdictions with which I was personally familiar and, for research purposes, able to physically access with relative ease.

1.3 METHODOLOGY

I utilized a qualitative research methodology that relied heavily on semi-structured interviews, policy review and document review. Interviews were conducted with individuals from three stakeholder groups – local community groups, city planners and project sponsors – for both case study projects. I spoke with local community groups in support and opposition to the projects to understand local awareness of plan priorities and determine whether the plan influenced their views in support or opposition of the project. I also spoke with city planners to learn about the planning process around both the plan and the project. Lastly, I spoke with project sponsors, consisting of developers and their investment partners, to find out if they relied on local plan objectives to marshal support for their project. A total of 20 interviews were conducted in person and over the phone between January and March 2016. Each interview lasted between 45 and 90 minutes. Other primary source documents for the Bergamot Transit Village project and Austin Street projects were accessed through materials provided on city websites and archives.

Figure 2. List of Interviewees

<i>Name</i>	<i>Organization</i>	<i>Project / Topic</i>	<i>Stakeholder Type</i>
Peter James	Senior Strategic Planner, City of Santa Monica	Bergamot Transit Village	City planner
Kyle Fersted	Planning Commission Secretary, City of Santa Monica	Bergamot Transit Village	City staff
Varun Akula	Hines 26th Street LLC	Bergamot Transit Village	Developer
Christina Hill	CSHV Pen Factory LLC	Bergamot Transit Village	Developer
Dean Rotovsky	CSHV Pen Factory LLC	Bergamot Transit Village	Developer
Dan Herman	Skidmore Owings and Merrill, LLC	Bergamot Transit Village	Architect
Remy Monteko	HR&A Advisors	Bergamot Transit Village	Consultant
Jason Islas	Editor, Santa Monica Next	Bergamot Transit Village	Journalist
Jerry Rubin	Resident	Bergamot Transit Village	Resident, community activist
Armen Melkonians	Founder, Residocracy	Bergamot Transit Village	Resident, community activist
Rachel Blatt	Urban Designer, City of Newton	28 Austin Street	City planner
Jennifer Molinsky	Former Senior Planner, City of Newton	28 Austin Street	City planner
James Freas	Acting Director of Planning, City of Newton	28 Austin Street	City planner

Figure 2. List of Interviewees (continued)

<i>Name</i>	<i>Organization</i>	<i>Project / Topic</i>	<i>Stakeholder Type</i>
Alexandra Ananth	Chief Planner, City of Newton	28 Austin Street	City planner
Chryse Gibson	Oaktree Development	28 Austin Street	Developer
Scott Oran	Dinosaur Capital Partners	28 Austin Street	Developer
Jennifer Van Campen	Metro West Collaborative Development	28 Austin Street	Developer
Andrea Kelley	Friends of Austin Street	28 Austin Street	Resident, community activist
Amy Dain	Columnist, Commonwealth Magazine; Public policy consultant; Resident	28 Austin Street	Resident
Robert Engler	SEB, LLC	28 Austin Street	Consultant

1.4 CHAPTER SUMMARIES

The preceding content in **Chapter 1** frames my research question and research methods. In **Chapter 2**, I provide context around the role of discretionary review as it relates to plan implementation through development projects. This overview helps set up a framework for the case studies of Bergamot Transit Village in Santa Monica, CA and the Austin Street project in Newton, MA presented in **Chapters 3 and 4**. For each case, I review the local demographic context and municipal structure before providing an in-depth history of the city's plan and the success or failure of its associated development project. As part of the study, I include original data from 20 original interviews with resident and community groups, city planners and project sponsors. In **Chapter 5**, I discuss 2 specific political and legal mechanisms, voter referendum in Santa Monica and the politicization of the discretionary review process in Newton, that played a much larger role in each project's success or failure than the plan. **Chapter 6** concludes with recommendations for cities endeavoring to more effectively bring the visions in their current or future plans to implementation.

Chapter 2 An Overview of Discretionary Review in the Local Development Process

This research looks at the effectiveness of plan implementation through the metric of specified priority development sites. Given that plans rely on zoning to govern development parameters and projects that exceed this baseline zoning are typically subject to discretionary review, I focus this literature overview on the various organization and procedures which relate to this discretionary review. My survey includes an examination of the independent planning board, the organization traditionally charged with discretionary review, and two forms of discretionary permits, the development agreement in California and the special permit in Massachusetts.

2.1 A BRIEF HISTORY OF THE INDEPENDENT PLANNING BOARD

As appointed bodies of citizen experts, planning boards are unique in local government as a non-elected body with considerable power over land use decisions and no direct consequence from voters. Historically, planning board members have substantial professional experience in the building, construction and architectural industries and are valued for their ability to act as an independent objective review board when making discretionary decisions. Though most local governments have a planning board, the question of their utility has been a topic of debate as early as the 1950s.¹ Walker provides a concise critique. Arguing that a model of planning that relied on an independent body is inherently ineffectual, Walker advocated for replacing independent planning commissions with planning advisors reporting directly to the executive.² If implementation were to be the ultimate goal, then a direct connection between planning thought-leaders and the policymakers who would ultimately be responsible for implementation would be required.³ For Walker, planning boards, if merely “citizen boards without political responsibility”, would never be able to get past planning into implementation.

In response, Howard argued in ardent defense of the political and philosophical value of the planning commission.⁴ Presumably insulated from politics, an independent appointed body of perceived citizen-peers could “take the heat” or speak as the voice of objective review in a politically unpopular decision in a way that planning staff, the legislative body or the executive office could not. In this way, the independence of this body from the political sphere actually played an important political role. Moreover, for Howard, the philosophical value of an “independent citizen commission” that gave material power to the public was irreplaceable. The citizen planning board literally operationalizing the principle that “[p]lanning should not be purely executive, nor purely legislative; it must be related to both, but also related directly to the private public.”⁵

More than a decade following Walker and Howard’s dialogue, Nash and Durden proposed a new framework for independent citizen planning board. Their new task-force approach phased out the traditional independent planning board that served regular terms in favor of “a flexible number of temporary citizens advisory boards” or ‘task-forces.’⁶ These short-term task-forces would be staffed by appointed citizen experts, selected specifically for their talent in the particular planning issue of study. The number of these bodies would adjust based on the needs of the city at the time, with potentially multiple bodies developing ideas for a variety of planning concerns in parallel. Similarly, the composition of these bodies would change based on the topic of study at hand. The overall object would be “to provide deeper local insights by raising and broadening the dialogues between the citizen expert and the resident planner and between any consultants and the citizens.”⁷ Nash and Durden

argued that this system would retain the elements of real citizen participation that an independent planning board offered while resolving concerns over the inefficiency, duplication of roles, and political friction that planning boards were alleged to create.

Regardless of the form of the planning board, it is typically agreed that one of its major functions is to provide objective review of development projects seeking approvals. I now go into an overview of two types of approvals that are often sought, the development agreement in California and the special permit in Massachusetts.

2.2 THE DEVELOPMENT AGREEMENT IN CALIFORNIA

In legal terms, a development agreement is a binding contract between two private parties, the city, a municipal corporation, and a private developer, regarding the terms by which a development project is to be accomplished. In 1979, California passed an enabling statute to become the first state to allow municipalities to enter into development agreements.^{8,9} With over 700 development agreements adopted since, California is viewed as a leader in their use.¹⁰ The California statute considers the development agreement a legislative act, though this is not consistent across the other 15 states that have also adopted enabling statutes.¹

Discussion of the development agreement should be preceded by an overview of discretionary review in land use regulation.¹¹ Daniel Selmi provides a useful summary of the issues. While Euclidean zoning was first established to separate incompatible land uses, Selmi suggests that after time cities were faced with public pressure to address other social objectives, including environmentalism, economic development, design standards, historical preservation and combating housing discrimination, and saw land use regulations as a means to accomplish these ends.¹² Selmi suggests that the outcome included a rise in informal bargaining as cities worked to achieve expanded social outcomes.¹³ In conjunction with this, other formal measures also increased the discretionary scope of the city. Planned Unit Developments (PUD), which became widespread in the 1950s, allowed developers to propose their own zoning within specified limits on a given parcel, then submit it to the city for review. PUDs prompted negotiation activity between city and developer to ensure that developers' likely biased initial proposals would not be unilaterally accepted. Within this context, development agreements emerged as another example of negotiating customized development parameters, but executed through the legal form of a contract.

The legal implications of contracts as they relate to zoning alone are well-reviewed, with courts repeatedly moving to curb municipal discretion. *Durand v. IDC Bellingham* (2003) decisively outlaws "contract zoning," the practice of a municipality "[bargaining] away" its police powers outright in exchange for beneficial zoning granted to a private developer.¹⁴ Additionally, prior to *Durand*, the rulings of *Nollan v. California Coastal Commission* (1987) and *Dolan v. City of Tigard* (1994) had already dampened municipal negotiating power, requiring that "essential nexus" and "rough proportionality" exist between the exactions requested from developers and their project impacts, with the burden of proof falling on the city.^{15,16} While the case law doesn't explicitly prohibit the ability of cities to negotiate, it puts bounds on what material benefits can be bargained for, limiting the ability of the city to achieve optimal public benefits.

i Or across other cases of the use of development agreements in states without explicit enabling statutes. Kent, Michael B. (2006). Forming a Tie That Binds: Development Agreements in Georgia and the Need for Clarity. *Environs: Environmental Law and Policy Journal*. Volume 30. Number 1.

In contrast to the contract zoning specifically prohibited by the courts above, the voluntary, consensual nature of a development agreement contract permits the city to negotiate more flexibly across development parameters, including those typically encompassed by the zoning code. Thus, the development agreement, as a contract between two private parties, treads a special territory between public and private interest that provides the city with wide discretion around development terms.

2.3 THE SPECIAL PERMIT IN MASSACHUSETTS

While the above discussion reviewed the role of development agreements, particularly in California, as a broad discretionary tool applied separately from baseline zoning, this next section focuses on the special permit in Massachusetts, a tool codified within the zoning code that also permits wide discretionary review.

The most basic scope of zoning is composed of a zoning code and map which together designate the geographical extents of districts and enumerate their associated allowable uses. Together, these two tools guide the type of development desired in each area of the city, though they may be updated and revised as a city adopts new directions for growth.¹⁶ Proposed projects that are consistent with the uses outlined in the code are given “by-right” administrative approvals. In Massachusetts, projects seeking approval of uses not permitted by baseline zoning may elect to seek a special permit through a discretionary process overseen by the municipality’s Special Permit Granting Authority.

Given the rigid nature of Euclidean zoning, the special permit fills the gap between uses that are permitted by-right and uses that may fulfill the spirit of the ordinance, but necessitate special review to as to ensure appropriate mitigation of impacts. Massachusetts General Laws Chapter 40A, §9 clearly states that special permits may be issued for uses “which are in harmony with the general purpose and intent of the ordinance or by-law.” Newton’s zoning ordinance further states that “[t]he Board of Aldermen may grant a special permit when, in its judgment, the public convenience and welfare will be served, and subject to such conditions, safeguards and limitations as it may impose.”¹⁷ In *SCIT v. Planning Board of Braintree* (1984), the courts reaffirmed the important role that special permits play in zoning:

“The role of the special permit in land use planning is not something new. Special permit procedures have long been used to bring flexibility to the fairly rigid use classifications of Euclidean zoning schemes...by providing for specific uses which are deemed necessary or desirable but which are not allowed as of right because of their potential for incompatibility with the characteristics of the district.”

Not only do statutory law and case precedent clearly establish the purpose of special permits, state law also clearly requires that the uses for which a special permit may be granted also be fully outlined in the zoning ordinance. These uses are to be distinct from the by-right uses, but fully spelled out in local by-laws along with any other requirements necessary for approval.

Even with requirements for special permit approval codified by ordinance, the granting of a special

ii Some cities, such as Boston, are known to strategically keep their zoning outdated that is, “underzoned” compared to the actual desired level of development, to put the city in a stronger position when it comes time to negotiate with a developer about a given site.

permit remains a fully discretionary process. That is, fulfilling the requirements of a special permit does not require that one must be granted.¹⁹ Complete discretion is given to the special permit granting authority in evaluating a proposal in relationship to specified requirements, but the SPGA is justified in denying the permit even if these requirements are satisfied. Case law repeatedly affirms this:

*“The mere fact that the standards set forth are complied with does not compel the granting of a special permit...”*²⁰

*“[T]he board, in the proper exercise of its discretion, is free to deny a special permit even if the facts show that such a permit could be lawfully granted.”*²¹

*“...[R]efusal to grant a special permit does not require detailed findings...The granting authority has the full range of discretion in shaping its decision. Neither the Zoning Enabling Act nor the town zoning by-law gives...an absolute right to the special permit... The board is not compelled to grant the permit.”*²²

In practice and by statute, the special permit is a discretionary exercise, wholly dependent on the review and affirmative vote of the city's special permit granting authority.

1 Robert A. Walker (1950) The Implementation of Planning Measures, *Journal of the American*
Institute of Planners, 16:3, 122-130, DOI: 10.1080/01944365008979287

2 Ibid.

3 Ibid.

4 John T. Howard (1951) In Defense of Planning Commissions, *Journal of the American Institute*
of Planners, 17:2, 89-94, DOI: 10.1080/01944365108979319

5 Ibid.

6 Peter H. Nash & Dennis Durden (1964) A Task-Force Approach to Replace the Planning Board,
Journal of the American Institute of Planners, 30:1, 10-22, DOI: 10.1080/01944366408978084

7 Ibid.

8 Smith, B. (1988). California Development Agreements and British Planning Agreements: The
Struggle of the Public Land Use Planner. *The Town Planning Review*, 59(3), 277-287.

9 Cal. Gov't Code § 65868.5

10 Curtin, Daniel J. Property Development Agreements in an Era of Smart Growth Legislation.
Real Estate Law. Volume 18. Number 2. March 2001.

11 Selmi, Daniel P., Land Use Regulation by Contract (December, 14 2009). *Loyola-LA Legal Studies*
Paper No. 2009-51.

12 Ibid.

13 Ibid.

14 *Durand v. IDC Bellingham, LLC*, 793 N.E.2d 359, 366 (2003).

15 *Nollan v. California Coastal Commission*. 483 U.S. 825 (1987)

16 *Dolan v. City of Tigard*. 512 U.S. 687 (1994)

17 Newton Zoning Ordinance Chapter 30. 7.3.3 Grant of Permit.

18 *SCIT v. Planning Board of Braintree*, 19 Mass. App. Ct. 101, 109 (1984)

19 *Humble Oil & Refining Co. v. Board of Appeals of Amherst*, 360 Mass. 604, 605 (1971)

20 Ibid.

21 *Pioneer Home Sponsors, Inc. v. Board of Appeals of Northampton*, 1 Mass. App. Ct. 830, 831 (1973)

22 *MacGibbon v. Board of Appeals of Duxbury*, 369 Mass. 512, 515 (1976)

Chapter 3 A Case Study of Santa Monica, CA

This chapter moves from the overview of discretionary review in the local development process provided in the previous chapter to its application in two cities. In Santa Monica, CA, the city's 2010 Land Use and Circulation Element (LUCE) identified priority development sites, among them the site for what would become the most contentious project in the city's recent history, the Bergamot Transit Village. Similarly, in Newton, MA, the city's 2007 comprehensive plan also enumerated potential development sites and initiated a process by which one of the identified parcels became the site for the Austin Street project, which would also polarize the city. In both cities, the projects were direct outgrowths of plans that explicitly identified development sites, however, they ultimately experienced different outcomes. After 8 years of project development and community process, the Bergamot Transit Village was denied its approvals and abandoned by its project sponsor. On the other hand, the Austin Street development, after facing its own 7-year contentious community process, was ultimately granted its approvals.

To better understand what role, if any, the plan had in facilitating these projects' outcomes, I undergo a review of each city's local governance structure, planning process and outcome of each corresponding project.

3.1 DEMOGRAPHIC OVERVIEW

Santa Monica is a small, dense city of 92,987 residents located about 15 miles west of downtown Los Angeles. With the Pacific Ocean to the west, Santa Monica bounded by the City of Los Angeles on all other sides, namely by the affluent neighborhoods of Pacific Palisades and Brentwood to the north, Sawtelle and Mar Vista to the east and Venice to the south. As a residential neighborhood, Santa Monica has 46,439 households, over 72% of whom are renters.¹ About 77% of the city's 50,912 housing units are in multi-unit structures.² Santa Monica has a median household income of \$73,439, which ranked 100 out of Los Angeles County's 272 communities in median household income in 2000.³ The city is composed of seven neighborhoods and a Downtown commercial area. The Interstate 10 freeway bisects the city, running through the center of the Mid-city neighborhood and terminating in the Downtown area. The major east-west boulevards (from northernmost to southernmost) are Montana Avenue (neighborhood commercial), Wilshire Boulevard (mixed-use), Colorado Boulevard (low-rise mixed-use), and Pico Boulevard (neighborhood commercial). The major north-south corridors are Lincoln Boulevard and the California State Route 1 Pacific Coast Highway.

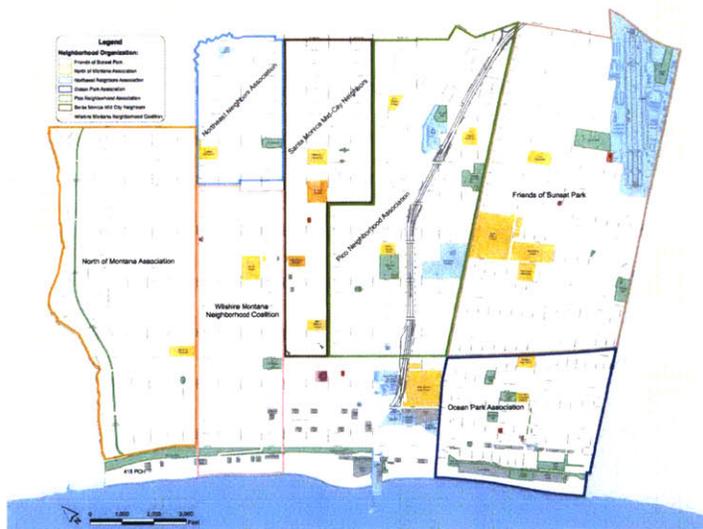
Santa Monica's relationship with Los Angeles has been a recurring force in shaping the social identity of the city. As one of the original streetcar suburbs of Los Angeles, Santa Monica essentially became a resort destination overnight after track was laid to connect the seaside town to LA's downtown in the 1870s. Soon after, the residents of the settlement voted to incorporate as a city in 1886 and the city grew steadily through the 1920s, developing hotels, amusement piers and other beachfront attractions to attract visitors from Los Angeles. A burgeoning aerospace industry carried the city's economy and jobs base through the postwar period, but the city struggled economically during the 1960s and 70s, due in part to the rise of highways, cars and the exodus of the middle class. However, in the 1980s, a hugely successful redevelopment campaign repositioned a failed mall into what is now the Third Street Promenade, an open-air mixed-use upscale commercial corridor that quadrupled the city's revenues

Figure 3. City of Santa Monica Demographic and Housing Overview (2010)⁴

Population (2014 estimate)	92,987
Population, percent change from 2010 to 2014	+3.6%
White alone	77.6%
Black or African American alone	3.9%
Asian alone	9.0%
Hispanic or Latino alone	13.1%
Two or more races	4.4%
Other	0.5%
Total housing units	50,912
Total households	46,439
Homeownership rate, 2009-2013	27.4%
Housing units in multi-unit structures	77.0%
Median household income, 2009-2013	\$73,649
Median value owner-occupied housing units, 2009-2013	\$999,900
Persons below poverty level, percent 2009-2013	11.2%
Land, square miles	8.42
Persons per square mile	10,664

between 1988 and 1999, and jumpstarted the city's economic health.⁵ The 1990s saw strong growth in the commercial office sector clustered in the Mid-City neighborhood, while the 2000s saw the rise of a tech sector in Santa Monica's Downtown neighborhood. Despite this growth and the city's location adjacent to Los Angeles, the 2nd largest city in the country, a popular perception exists in the city that it is still a "sleepy beach town" akin to the stagnation that occurred in the 1970s.⁶

Figure 4. Map of Santa Monica Neighborhoods



While the city saw strong development and commercial growth in the past few decades, the relationship between the city's progressive resident base and the city's pro-business community was not always harmonious; attitudes toward growth have shifted and evolved with the times. Tending toward progressive politics, each of seven neighborhoods currently operates its own neighborhood association. The city also has its own local political party, Santa Monicans for Renters' Rights (SMRR), which was formed in 1978 by local residents that organized to fight rapidly escalating rents. The party was successful in influencing the passage of the city's rent control law in 1979, and has since played a significant role in local politics to actively uphold rent control and strongly discourage development in the city.⁷ In 1981 and 1989, SMRR was able to effectively use its majority position in the City Council to institute an outright moratorium on commercial developments.⁸

Parallel to this activism, Santa Monica began to be perceived as a difficult place to do business or development, even prompting the Chamber of Commerce to form a blue-ribbon task force in 1986 to study the city's economic climate and devise strategies to counteract this perception.⁹ However, the resulting report, which recommended policies ranging from permit streamlining to priority development projects to jump-start confidence in the city's local economy, was never voted on by the City Council. A member of the task force representing the business community at the time claimed that this was because "[the City Council] might eventually have to act on the report as part of their official duties."¹⁰

This broad overview of Santa Monica's urban form, history and politics illustrates a local context in tension with its historic identity as a "sleepy beach town" and more recent runaway success as a hub of commercial development. I now go into a close study of Santa Monica's local policy and governance context, its 2010 Land Use and Circulation Element (LUCE) plan, and the outcomes of the Bergamot Transit Village.

3.2 THE LOCAL POLICY AND GOVERNANCE CONTEXT

Santa Monica is a charter city that has operated under the Council-Manager form of local government

Figure 5. Demographic Overview of Santa Monica Neighborhoods (2010)

	<i>Median Household Income</i>	<i>Population</i>	<i>Area</i>	<i>Density</i>
North of Montana	\$114,429	8,316	1.5 sq mi	5,480
Wilshire/ Montana	\$66,964	18,812	0.9 sq mi	20,606
Northeast	\$157,248	3,441	0.4 sq mi	7,673
Mid-city	\$66,414	17,520	1.3 sq mi	13,520
Pico	\$54,581	15,044	1.4 sq mi	10,493
Ocean Park	\$70,251	9,745	0.7 sq mi	13,213
Sunset Park	\$65,392	14,391	1.8 sq mi	7,939
City of Santa Monica	\$67,438	89,790	8.42 sq mi	10,664

since 1945.ⁱ The City Council is composed of seven councilmembers elected at-large who serve four year terms. Every two years, the City Council selects one of its members to serve as the Mayor and another to serve as the Mayor Pro Tempore for the next two years.ⁱⁱ The Planning Commission was established by the city's 1946 charter and acts "to promote the health, safety and general welfare by encouraging the most appropriate use of land" in the city.ⁱⁱⁱ Per Santa Monica Municipal Code Section 1008, the Commission has four responsibilities:

- 1) After a public hearing, recommend to the City Council the adoption, amendment or repeal of a plan related to the physical development of the city
- 2) Oversee land subdivision
- 3) Make recommendations on public works or urban renewal projects
- 4) Exercise any functions pertaining to zoning as required by ordinance

Within this framework, the roles of the three bodies involved with regulating development in the city – the city planning department known as Planning & Community Development (PCD), the Planning Commission, and the City Council – are complementary and well-defined. On a day-to-day basis, city planners are the main point of contact for engagement work, and also serve a technical advisory capacity to support the Planning Commission in plan and project review.

On the other hand, the Planning Commission primarily reviews plans and larger development projects as required by ordinance. Upon review of planning documents, the Planning Commission makes a recommendation to the City Council for adoption or amendment. Upon review of development projects, the Planning Commission grants or denies permits. Lastly, the City Council as the local legislative body votes to officially adopt the plans that have undergone PCD and Planning Commission review. Importantly, the City Council does not have authority to grant development permits outright.ⁱⁱⁱ

3.3 THE PLAN: THE LAND USE AND CIRCULATION ELEMENT (LUCE)

"The LUCE places Santa Monica at the forefront of sustainable planning practices."
-- -- SANTA MONICA LAND USE & CIRCULATION ELEMENT 2010

In July 2004, the Santa Monica City Council initiated the process to prepare an update to the Land

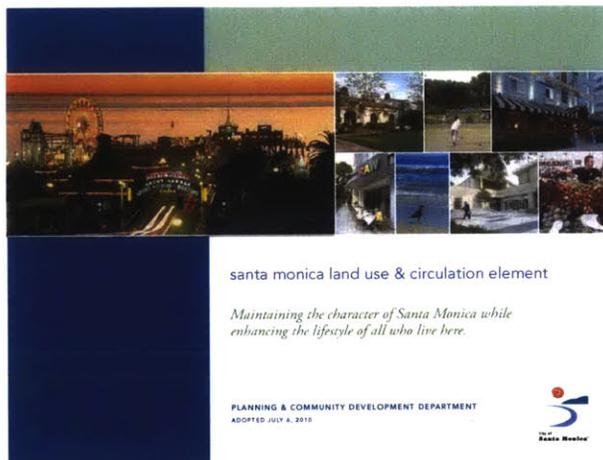
i Nearly half of the cities in the U.S. with populations of 2,500 or more operate as a Council-Manager form of government, in which a governing body is elected and a manager is hired by that body to carry out the policies it establishes. "A Brief History of Santa Monica and its Charters." Santa Monica City Council. www.smgov.net. Retrieved March 29, 2016.

ii Per Santa Monica City Charter art. X §1008, the Planning Commission acts also to "provide adequate open spaces for light and air; prevent undue concentrations of population; lessen congestion on streets; facilitate adequate provisions for community utilities and facilities such as transportation, water, sewage, schools, parks and other public requirements; and, designate, regulate and restrict the location and use of buildings, structures and land for residents, commerce, trade, industry and other purposes."

iii The City Council, however, hears permit appeals cases. Interview with Kyle Ferstead, Santa Monica Planning Commission Secretary. March 30, 2016.

Use element of their general plan.^{iv} By the end of the year, the scope had increased to include both the Land Use and Circulation elements into one plan. After a six year planning process, the LUCE was unanimously adopted by the City Council in July 2010 as the first update of these elements from the City of Santa Monica General Plan since 1984.¹²

Figure 6. Cover of the Santa Monica 2010 Land Use and Circulation Element (LUCE)



According to city planning staff, the LUCE was the most ambitious plan ever adopted by the city.¹³ The LUCE “set forth a twenty year vision for the entire City” encompassing land use, transportation, housing, environmental, open space and commercial mixed-use issues in a 500+ page comprehensive and progressive smart growth planning document. Among its many outcomes, the LUCE utilized three planning tools – land use regulations, specific plans for priority development sites and entitlements reform – to implement its planning priorities. First, the LUCE called for changes in land use that would “preserve existing land uses and density in 96% of the city, while focusing new development along transit boulevards and near three Expo light rail stations.”¹⁴ In essence, 4% of the city’s area was upzoned for development while 96% of the city was preserved. Limiting upzoning to areas along commercial boulevards had the dual purpose of “[redirecting] residential market pressure away from existing neighborhoods” and reinforcing the vitality of the city’s existing commercial streets through enhanced pedestrian traffic.¹⁵

Second, the LUCE commissioned a series of updated Specific Plans and new Area Plans to implement LUCE priorities in particular areas of the city.^v One of the new area plans called for by the LUCE was the Bergamot Transit Village Area Plan, which was charged with “[establishing] a new neighborhood focused around the Bergamot Light Rail Station and including expanded housing opportunities, local-serving retail uses, creative arts, employment, and consolidated parking in a small grid network of streets and pedestrian pathways.”¹⁶ In meetings to envision the future of the city’s industrial lands,

iv California state law requires every local jurisdiction to maintain a General Plan to guide city growth, land use, infrastructure and planning for city services. The state requires that the plan consist of seven specific “elements” or subject categories, including land use, circulation, housing, conservation, open-space, noise and safety. General Plan Guidelines. State of California. Governor’s Office of Planning and Research. October 2003. www.opr.ca.gov

v State law (California Government Code Section 63450) authorizes cities to adopt Specific Plans to implement their General Plan in designated areas of the city.

community members endorsed the Bergamot Station area as a top priority development site. Once a historic Pacific Electric rail station that connected the city to downtown Los Angeles until the 1950s, Bergamot Station had been re-envisioned in the 1990s as an art gallery complex that retained its former industrial character.¹⁷ Now a popular cultural and tourist destination with over 600,000 visitors annually, the pending addition of a new MBTA light rail station at the site expected in 2016 provided the chance for existing creative commercial uses to be enhanced with residential and other mixed uses.¹⁸

Figure 7. Bergamot Light Rail Station Existing Conditions



Lastly, the LUCE formalized a system of Tiers for permit review in most areas of the city. Once adopted, Tier I would allow for “by-right” development of baseline FAR and height through a non-discretionary process for projects under 7,500 square feet. Tier II would grant additional FAR and height with the approval of a discretionary permit and the provision of community benefits. Tier III would allow for still more FAR and height with approval of a Development Agreement and the provision of additional community benefits.¹⁹ By incentivizing developers to work closely with the city in order to be granted the more development rights, the Tier system aimed to leverage the strong market of the city to extract the most community benefits possible for the public.

The process for creating the LUCE was extensive. Six years passed between the initial motion of the City Council in 2004 to the formal adoption of the plan in 2010. During this time, city staff facilitated 25 public hearings before the City’s Boards, Commissions and City Council, 12 community workshops, numerous Internet and phone surveys, and on-site walking tours.²⁰ Eighteen public hearings took place before the LUCE Strategy Framework alone.²¹ These public hearings were often televised to reach an at-home audience.²² Overall, an estimated 4,000 residents of all ages were directly involved in some capacity through this outreach.²³

Over the six-year process, the bulk of community workshops took place between 2007 and 2010. About 1,000 community members attended the initial placemaking workshops that were initiated in 2007. The outcome of these initial workshops was a set of community values that focused on preserving neighborhood character, creating community places and providing community benefits.²⁴ In subsequent community workshops in 2008, topics such as the future of industrial lands, transportation and the city’s boulevards were the focus of discussion. Later workshops in 2008 to 2009 integrated these concepts into a framework of land use guiding principles and additionally focused on specific

locations, the Downtown and Civic Center complexes, to envision principles for redevelopment and steps for implementation. The Land Use Guiding Principles included 5 broad land use categories and their goals, including neighborhoods, boulevards, mixed-use centers, local employment and commerce uses, and community and public uses. In April 2010, the Draft LUCE was completed and presented to the public for review.

Figure 8. List of Major Community Workshops for LUCE Between 2007-2010

Workshop Focus	Date	Priorities
Initial Placemaking	Early 2007	<ol style="list-style-type: none"> 1. Preserving neighborhood character 2. Creating community places 3. Providing community benefits were determined
Industrial Lands #1 & #2	Sat 6/21/2007 Thu 10/25/2007	<ol style="list-style-type: none"> 1. Locate new neighborhood centers in areas served by transit 2. Bergamot Transit Village: Focus on Arts and Sustainability 3. Memorial Park: A Central Park within a New Urban Neighborhood
Transportation #1, #2 & #3	Sat 10/6/2007 Thu 12/6/2007 Sat 3/1/2008	<ol style="list-style-type: none"> 1. Minimize congestion 2. Regain pedestrian control over city streets 3. Reduce dependency on car 4. Commit to goal of No Net New Trips
Boulevards	Sat 2/9/2008	<ol style="list-style-type: none"> 1. Recognize that streets do more than just move cars 2. Have streets that provide complete experiences
Integrating the Plan	Wed 4/2/2008	<ol style="list-style-type: none"> 1. Balance economic viability with community benefits 2. Focus on new housing opportunities: affordable, workforce, family, senior, congregate housing
Downtown and Civic Center	Mon 5/11/2009	(Meeting documentation unavailable)
EIR (Environmental Impact Report) Scoping	Mon 5/18/2009	<ol style="list-style-type: none"> 1. Determine scope of issues to be reviewed in EIR, as required by California Environmental Quality Act (CEQA)
Neighborhood Conservation	Sat 6/6/2009	<ol style="list-style-type: none"> 1. Protect existing housing stock 2. Appropriate transition in building scale and height
Taking Charge of Our Future	Tue 7/7/2009	<ol style="list-style-type: none"> 1. Affordable and workforce housing 2. Open space 3. Creative arts 4. Historic preservation 5. Traffic demand management 6. Programming for children, teens & seniors
Draft LUCE	Wed 4/7/2010	Presentation of Draft LUCE to public

After an additional 13 public hearings with the Planning Commission and City Council, the final LUCE was unanimously approved and adopted by the City Council in July 2010. The update to the zoning ordinance that implemented the LUCE citywide occurred in June 2015. In parallel, the city initiated planning processes to update and create the new area plans commissioned by the LUCE. The Bergamot Area Plan was among the first of these initiatives. In November 2010, the city was awarded a competitive \$625,000 grant through the HUD/TIGER II Sustainable Communities Challenges, a collaboration between HUD-DOT-NEA federal agencies aimed at encouraging compact, mixed-use

development linked to transit.²⁵ Synergy in timing and vision allowed for this grant to be utilized in support of the planning process for the Bergamot Area Plan, which itself took another 3 years. After 5 community workshops, 4 neighborhood meetings, 5 Planning Commission meetings and 2 City Council hearings, the Bergamot Area Plan was adopted by the City Council in September 2013 by a 6-1 vote.

Figure 9. Cover the Santa Monica 2013 Bergamot Area Plan

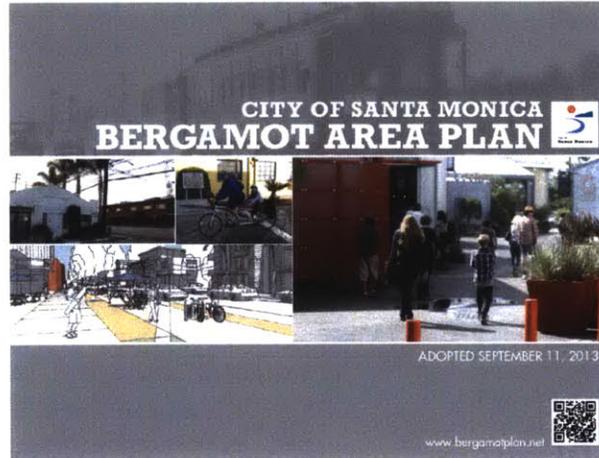


Figure 10. List of Major Meetings for Bergamot Area Plan Between 2011-2013²⁶

Meeting Type	Date	Agenda
Workshop #1	Thu 2/17/2011	Bergamot Transit Village #1
Workshop #2	Wed 7/13/2011	Creative Economy
Workshop #3	Wed 12/7/2011	Bergamot Transit Village #2
Workshop #4	Tue 2/7/2012	Community Benefits
Workshop #5	Mon 4/23/2012	Designing the Districts
Neighborhood Meeting #1	Mon 10/10/2011	Local Westside Artists
Neighborhood Meeting #2	Tue 10/11/2011	Bergamot Station Gallery Owners
Neighborhood Meeting #3	Thu 10/13/2011	Pico Neighborhood Association
Neighborhood Meeting #4	Mon 11/28/2011	Bergamot Businesses
Planning Commission #1	Wed 5/16/2012	Preliminary Framework
Planning Commission #2	Wed 5/16/2012	Core Components of the Plan
Planning Commission #3	Wed 2/13/2013	Draft Plan
Planning Commission #4	Wed 2/20/2013	Draft Plan (continuation)
Planning Commission #5	Wed 6/12/2013	Review Final Draft
City Council Hearing #1	Tue 3/12/2013	Draft Bergamot Area Plan
City Council Hearing #2	Tue 9/10/2013	Bergamot Area Plan Adoption

While the LUCE was aimed at citywide strategies, the Bergamot Area plan focused exclusively on the formerly industrial 142.5 acre site located next to the new Bergamot Light Rail Station expected in 2016. The 270-page plan included land use regulations, design guidelines, street design standards, and steps for implementation to execute 6 core components of the plan through a 10 guiding principles. Most importantly, the plan created 4 new land use districts – the Bergamot Transit Village (BTV), Mixed-Use Creative (MUC), Conservation: Art Center (CAC) and the Conservation: Creative Sector (CCS) – to coordinate new growth as well as protect existing creative uses on-site. As established by the LUCE, the plan outlined height and FAR regulations for each Development Tier. Regulations pertaining to

the Bergamot Transit Village (BTV) District outlined below demonstrate the increase in buildable density allowable in exchange for increased discretionary review and extraordinary community benefits provided. The plan also provided detailed design guidelines for buildings, open space and complete streets that incorporated multimodal transportation along the parcel's main boulevards.

Figure 11. Location of Bergamot Area Plan within City of Santa Monica.



Figure 12. Bergamot Area Plan Land Use Districts, Building Heights and FAR (2013).

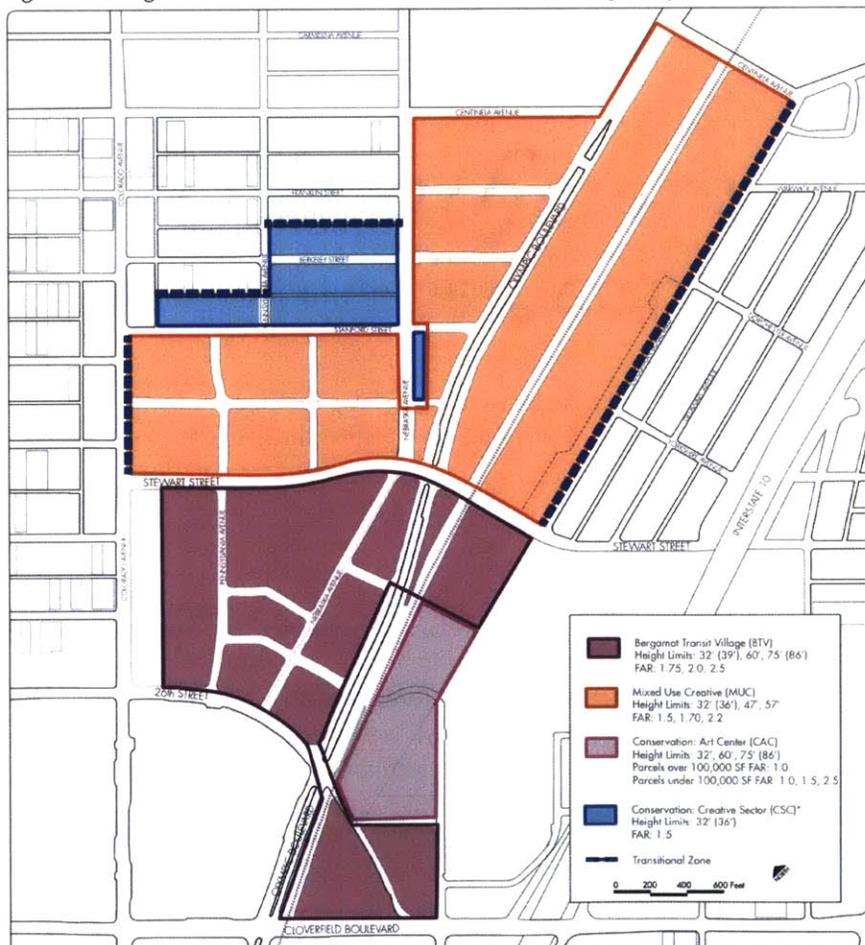


Figure 13. Major Development Standards for Bergamot Transit Village (BTV) District

	Tier I Baseline	Tier II Discretionary Permit	Tier III Development Agreement
Mix of uses	Commercial (60%), Residential (40%) for all Tiers		
Height Limit	32' (up to 39' if housing is included)	60'	75' (up to 86' if ground floor-to-floor is increased from 13.5' to 18.5ft)
FAR	1.75	2.0	2.5
Max Floor Plate	35,000sf for all Tiers		
Min Open Space			
>80,000sf	20%	20%	25%
40,000-80,000sf	15%	15%	20%
<40,000sf	10%	10%	15%
Min Size of Primary Open Space	4,000sf	4,000sf	6,000sf

Figure 14. Potential Community Benefits Needed for Tier II and Tier III Developments

Category of Community Benefit	Potential Programmatic Element
Social and cultural facilities	<ul style="list-style-type: none"> Arts and cultural facilities in building Childcare, senior or youth facilities Community meeting rooms
Affordable housing	<ul style="list-style-type: none"> Housing affordable to workforce in excess of City's baseline affordable housing requirements (30% of new units)
Community physical improvements	<ul style="list-style-type: none"> Connected streets in excess of plan requirements Pedestrian paths in excess of plan requirements Improved streetscapes in excess of plan requirements Public parks in excess of plan requirements
Vehicle trip reduction and traffic management	<ul style="list-style-type: none"> Strategies in excess of City's baseline and Plan requirements
Historic preservation	<ul style="list-style-type: none"> Adaptive reuse Rehabilitation of historically significant sites
Sustainability	<ul style="list-style-type: none"> Development practices in excess of City's sustainability requirements (ie. conformance with Living Building Challenge)

From an implementation perspective, the Bergamot Area Plan was the first tangible step towards realizing a major anchor project set forth in the LUCE. In essence, the Bergamot Area Plan operationalized LUCE principles to a real-world transit-oriented development-ready site with the support of a cross-sectoral resident, employee and business community base. In the city's densely developed fabric, the Bergamot area was the largest site left for development in the city and presented an opportunity to implement the LUCE's new development norms in the city. Not only that, but as early as 2010, there was already friendly developer interest in the site and, in the words of the Bergamot Area Plan, the plan was "not designed to sit on a shelf." Leveraging developer interest with the plan's new development tiers and community benefits requirements seemed like natural way to ensure a strong start to the LUCE and Bergamot Area Plan's implementation.

3-4 THE PROJECT: THE BERGAMOT TRANSIT VILLAGE

Figure 15. Artistic Rendering of Bergamot Transit Village Urban Plaza



“This is direct democracy in action...This is the power of Residocracy and our Hammer of Strength.”

-- -- ARMEN MELKONIAN, FOUNDER, RESIDOCRACY.ORG²⁷

“This site was envisioned for much more than what we’re going to make it.”

-- -- DEAN ROTOVSKY, CLARION PARTNERS

“We were too caught up in the trend.”

-- -- PETER JAMES, SENIOR PLANNER, CITY OF SANTA MONICA

Hines, a Texas-based developer with national reach, was not a newcomer to Santa Monica. Since 1998, Hines had been involved with the renovation and expansion of the Lantana Media Campus, located directly north of the Bergamot Transit Village site.²⁸ For the Lantana, Hines underwent a 5 year entitlements process, triggering a Tier III Development Agreement that eventually required over \$2 million dollars in community benefits agreements in exchange for the right to expand the existing 344,000 square feet of creative office space by an additional 194,000 square feet.²⁹ The successful execution and leasing of this project yielded Hines a price of over \$310 million upon sale of the complex 6 years later.³⁰

In 2007, in the midst of the Lantana process, Hines acquired a 7-acre parcel, the site of the former Papermate factory, located adjacent to the Lantana. The site featured an existing 206,000 square foot factory building and surface parking lots used by the pen manufacturer. Given concurrent LUCE community workshops and Hines' experience with the city's Development Agreement process, the site seemed like an ideal location to build off of the Lantana's success and the city's new development priorities. According to Project Manager Varun Akula, Hines was confident they "knew the city process and thought [they] could leverage it."³¹

Figure 16. Bergamot Transit Village Site and Existing Conditions



As early as 2009, Hines engaged the surrounding community before approaching the Planning Commission and City Council in a series of preliminary "float up" meetings from 2010 to 2011. At the time, the initial scheme proposed office alone, but Akula remarked that they "worked with the city" to come up with a higher density proposal in light of emerging priorities from the LUCE.³² Formal Planning Commission review of the final began in late 2013 and extended into the next year, until the permit application was ultimately narrowly approved in February 2014 by a 4-3 vote. Akula noted that the contentious final public hearing before the City Council ended at 2am and featured comments from over 100 community members, 65 in opposition and 30 in support.³³

Utilizing a Tier III Development Agreement, the approved Bergamot Transit Village project consisted of a total of 765,000 square feet, with a mix of about 40% residential and 60% commercial space, including 473 residential rental apartments, 25 artist live/work units, 374,000 square feet of creative office, about 15,500 square feet of restaurant space and 14,000 square feet of retail space over 3 residential buildings, 2 commercial buildings, 4 acres of open space, 2 acres of parks, paseos and plazas, 2 acres of sidewalks and streets and a main 31,675 square foot central public plaza.^{34, 35} The unit mix featured predominantly studios (211 units) and 2 bedrooms (156 units), with substantial numbers of 1 bedrooms (93 units) and some 3 bedrooms (13 units). The entire complex provided a total of 1,924 underground parking spaces and 1,284 bike spaces on-site. With an FAR of 2.5 and maximum height of 85'6", the project was in compliance with Development Tier III requirements.

Figure 17. Bergamot Transit Village Proposed Site Plan



Figure 18. Artistic Rendering of Bergamot Transit Village Proposed Open Spaces



In exchange for Tier III entitlements, Hines committed to a substantial \$32.2 million community benefits package encompassing 15 community beneficiaries through one-time and annual contributions over 55 years. These included physical improvements (construction of additional streets, sidewalks, and affordable housing), subsidies for community services (childcare, transit passes and vanpool), contributions to local transit operators (bike share, city Big Blue Bus, parking cash out policy), contributions to miscellaneous city funds (Parks and Open Space fund, Historic Preservation fund), local preference in hiring and housing, funding an internship program for high school and community college students, and the creation of the most robust Traffic Demand Management (TDM) program in the city that actually proposed significant financial penalties on the project sponsor for failing to meet projected trip caps.³⁶ Additionally, the project was estimated to generate 2,325 jobs during construction, 2,109 permanent jobs, bolster the city's image as a cutting-edge media and creative offices cluster and generate \$385 million in annual economic output for the city.³⁷

The approval of the Bergamot Transit Village Development Agreement seemed to be proof-of-concept of the LUCE. Over a 7 year process, the city was able to enact the Bergamot Area Plan, a progressive planning document that operationalized the LUCE's significant smart growth standards, and even

extract additional extraordinary community benefits from a developer who cooperated with the understanding that the site's fantastic location in a strong market would eventually compensate for their upfront investment. The next 30 days, however, removed this possibility for good.

3.5 THE OUTCOME: REFERENDUM, REPEAL AND PROJECT ABANDONMENT

"Residents hold the power to create change."

-- LAND USE VOTER EMPOWERMENT (LUVE) INITIATIVE, RESIDOCRACY

"No one speaks for all the residents."

-- JERRY RUBIN, SANTA MONICA RESIDENT AND COMMUNITY ACTIVIST

On February 11, 2014, the City Council voted 4-3 to approve the Bergamot Transit Village Development Agreement. Procedurally, this meant that the City Council had approved a contractual agreement between the City of Santa Monica and the developer that had the same effect as law. The approved development agreement, as with all other state and municipal laws, was subject to referendum per California Constitution Article II, Section 9.^{vi} By gathering 13,440 petition signatures, Santa Monica residents exceeded the required threshold of 10% of the city electorate to legitimately place the referendum on the ballot for the next November general election. Per state law, City Council was required to either repeal the development agreement themselves, or enable the general election vote. Swayed by intensifying local unrest around the Bergamot Transit Village proposal, the City Council voted 4-1 (2 abstaining) on May 13, 2014 to repeal the development themselves, rather than trigger greater division in the city in a future general election. After 7 years of community process and \$32.2 million in negotiated direct community benefits, the Bergamot Transit Village, was dead.

Figure 19. Homepage for Residocracy

The Residents' Direct Democracy Solution

Hot E-Petitions

• Stop the proposed 12-story (148-ft high) development project at 4th/5th and Arizona Avenue

LUVE
Land Use Voter Empowerment
Ballot Initiative

Residocracy
LUVE Initiative
Land Use Voter Empowerment

The resident's initiative to protect Santa Monica from overdevelopment

A grassroots movement to control

RESIDOCRACY.ORG
JOIN NOW

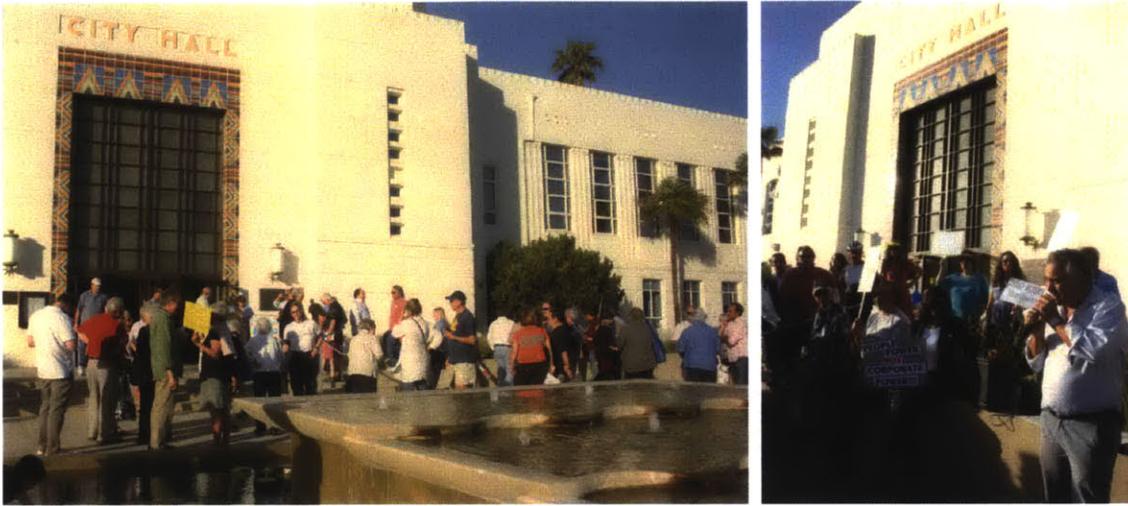
- Join your Community Network of Residents and Take Your City Back
- Its easy and free to join

Make a Contribution to Residocracy through PayPal

Donate

vi Referenda allow the California electorate the opportunity to veto an adopted law by putting it on the ballot for popular vote in a general election. California Secretary of the State. Retrieved from <http://www.sos.ca.gov/elections/ballot-measures/referendum/>

Figure 20. Anti-Hines Protesters in Front of Santa Monica City Hall



Following the vote to repeal the project, Hines sold the Papermate site for \$113 million to a venture of Clarion Partners and the Lincoln Property Company in October 2014.³⁹ Within 6 months, the Clarion-Lincoln venture proposed an adaptive reuse of the Papermate building requiring only Tier I by-right administrative approval. Named the Pen Factory for the site's former industrial past, the proposal consisted of an interior renovation of the existing manufacturing building and a 7,499 square foot addition, just shy of the 7,500 square foot threshold that would trigger discretionary review.⁴⁰ As a Tier I by-right development, Pen Factory would not be required to provide any community benefits or traffic mitigation measures, despite adding 2,500 new daily trips.⁴¹ By August 2015, less than a year from acquisition and just 5 months after initial review, the Pen Factory received its permits.

Figure 21. Pen Factory Site Plan

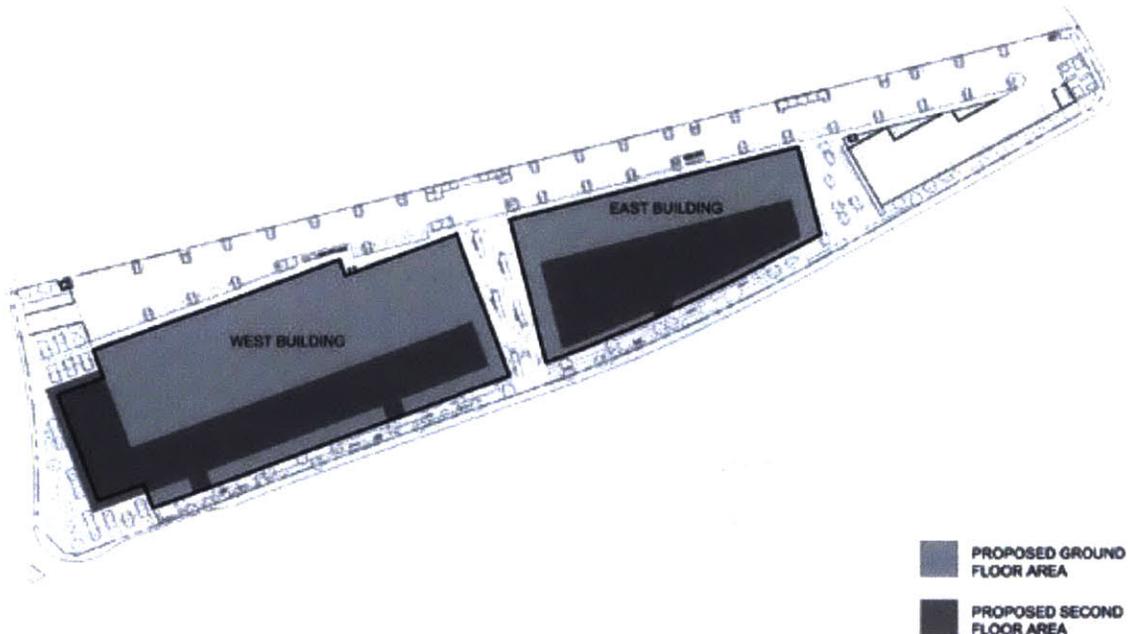


Figure 22. Artistic Renderings of Pen Factory



According to city planners, the death of the Bergamot Transit Village chilled development throughout the city. The momentum that had built up with near unanimous passage of the LUCE and Bergamot Area Plans died with the repeal of the plans' flagship project. The missed opportunities on the site itself were also significant. The city gave up a substantial \$32.2 million community benefits package

that would have supported the creation of new green space, local jobs, funded a number of community services over a period of 55 years and created one of the most robust traffic management programs in the city. In an urban design sense, the approved Pen Factory was also not subject to the same design standards that would have yielded more and higher quality pedestrian-friendly paths, cut-throughs and open space that were able to be negotiated in the Hines proposal. Lastly, the approval of 100% commercial use on the parcel also ensured that there would be a lock on developing badly needed housing units on what was the city's largest remaining developable site. City Council members had previously voted against the Hines proposal citing the project's failure to provide the required 30% of affordable units on-site (Hines only provided 93 affordable units or 20% of the total), however, the by-right Pen Factory proposal was within its legal right to provide none at all.

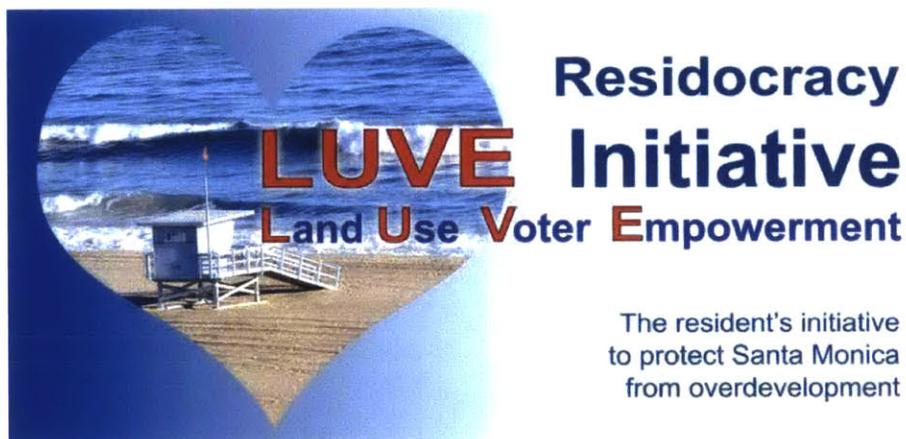
Figure 23. Comparison of Bergamot Transit Village and Pen Factory

	Bergamot Transit Village (Hines)	Pen Factory (Clarion/Lincoln)
Development Tier	Tier III (Development Agreement)	Tier I (By-right)
Entitlements Timeline		
Acquisition	July 2007	October 2014
Community Outreach	December 2009	None
Public Hearings	January 2010-December 2013	August 2015
EIR	January 2012-July 2013	None Required
Final Approval	Approved by City Council February 2014 Rescinded by City Council May 2014	Approved by Architectural Review Board and Administrative Review August 2015
Total Timeline	7 years	10 months
Community Benefits	\$32.2 million	None
Total Area	765,095 sf	203,816 sf
Commercial	418,351 sf (55%)	203,816 sf (100%)
Residential	346,744 sf or 498 units (45%)	None
Height	6 stories (85'6")	1 story (23'5" to 29')
Parking Spaces	203,816 sf	748 total
Surface	203,816 sf (100%)	302 surface
Below grade	None	466 below grade
Bike Spaces	1,284 spaces	488 spaces
Pedestrian/Public Amenities	Extensive cut-throughs	Limited cut-throughs

While the opportunities for public good lost on the Papermate site were significant, a deeper effect of the failed Bergamot Transit Village was the rise of the city's anti-growth opposition. Following the initial 4-3 approval of the Hines proposal, a citizen organization called Residocracy was formed by Santa Monica resident, Armen Melkonians, for the purpose of gathering the required signatures to place the referendum on the ballot.⁴² After the success of repealing the Hines project, Residocracy mobilized further to launch the Land Use Voter Empowerment (LUVe) initiative in March 2016, a ballot initiative that would require majority electorate vote approval for any development project that exceeded by-right baseline Tier I requirements, with some exceptions made for 100% affordable housing projects.⁴³ If approved in the pending November general election, LUVe would eliminate Tier II and Tier III entitlements and effectively remove all agency of the city to negotiate with developers for community benefits. Touting direct democracy as the solution for perceived overdevelopment, Residocracy suggests that referendum-based electorate vote is a more effective tool than the planning

process that led the city to the LUCE. In describing how Residocracy.org works, the website highlights their key strategy: “[if] just 10% of the Registered Voters sign the [Referendum Petition], within 30-days of the City Council passing a law, then the City Council must suspend the law.”⁴⁴ Residocracy operates by leveraging the power of a vocal oppositional electorate veto to effectively halt actionable policy.

Figure 24. Promotional Material for Residocracy's Land Use Voter Empowerment (LUVE) Ballot Initiative



Compared to its short existence, the impact of Residocracy and its allies in anti-growth opposition in the city have been substantial. In addition to effectively pressuring the City Council to rescind their vote on the Hines proposal, the rise of anti-growth sentiment in the city led to the addition of a non-negotiated Tier III option in the most recent revision of the Downtown Specific Plan.⁴⁵ As a result, the Development Agreement, the city's most direct tool for leveraging community benefits from a development, was essentially eliminated. Moreover, the staying power of groups like Residocracy point to a larger story of public attitude shifting to favor the incumbent, be it residents or businesses. Campaign fund disclosure forms revealed that Residocracy's largest financial backer, contributing \$10,000 of the \$22,489 raised by the group as of March 3, 2014, was the Huntley Hotel, a Santa Monica beachfront hotel that previously hired a legal team organize grassroots opposition to dismount the expansion of the neighboring Miramont Hotel.^{46, 47} The Huntley Hotel is reported to have also contributed \$20,000 to Santa Monicans for Responsible Growth (SMRG), another anti-growth resident organization.⁴⁸

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Chapter 4 A Case Study of Newton, MA

“That coupling of widely requiring special permits and having the legislative body act upon them is an unusual arrangement, but not unique in Massachusetts.”

-- -- NEWTON COMPREHENSIVE PLAN 2007

The previous chapter walked through Santa Monica’s unsuccessful experience of a plan that did not ultimately lead to the project envisioned. I now contrast this with the experience of Newton, which underwent a similarly contentious 7 year process for another project linked to the city’s general plan. However, in Newton, the project ultimately did succeed, though it is questionable whether the plan had any role in facilitating its approval.

4.1 DEMOGRAPHIC OVERVIEW

Known as the Garden City, Newton is an inner-ring suburb of Boston with a population of 88,287 located about 10 miles west of downtown Boston. About twice the size of Santa Monica but with a comparable population, Newton has half about the residential density of the California city over its 17.8 square miles. Just 30% of Newton’s 31,295 households are renters, compared to Santa Monica’s 72%.¹ Newton’s housing stock consists of 32,648 units, of which just about 39% are in multi-unit structures, compared to Santa Monica’s 77%.² Located in the wealthy MetroWest region of the state, Newton is bounded by the suburbs of Waltham to the north, Brookline to the east, Dedham to the south, and Needham, Wellesley and Weston to the west. Additionally, with a median household income of \$119,148, Newton ranks 25th of the states 351 municipalities in this measure.³ The city is composed of 13 villages each with its own village town center, rather than a single major downtown area. The villages do not have formal boundaries, but nonetheless are more popularly identified with rather than formally defined wards, which are used for administrative purposes.^{vii} The Interstate 90, known locally as the Massachusetts Turnpike, passes east-west through the northern one-third of the city, while Massachusetts Route 9 (Boylston Street) crosses at the southern third. A third highway, the Interstate 95 that is locally known as Massachusetts Route 128, runs north-south closely along the city’s western border.

4.2 THE LOCAL POLICY AND GOVERNANCE CONTEXT

“Aldermen play an unusual dual role as both zoning legislators and special permit decision-makers under rules they have created.”

-- -- NEWTON FRAMEWORK PLAN 2001

Settled as early as the 1630s as an extension of what is today the city of Cambridge, Newton became its own town in 1688, then city in 1781.⁵ Newton operates under an elected Strong Mayor-Council form of government. The mayor is popularly elected to serve a four year term, while the City Council

vii The lack of formal boundaries has led to a back and forth on the actual number of villages. A 1930 report by the city Board of Assessors named just 11 villages (leaving out Newton Corner, Thompsonville and Oak Hill), while a 1986 report commissioned by the city and prepared by Connery Associates, Paul C.K. Lu and Associates, and Segal/DiSarcina Associates named 14 villages by including Four Corners.

Figure 25. City of Newton Demographic and Housing Overview (2010)⁴

Population (2014 estimate)	88,287
Population, percent change from 2010 to 2014	+3.7%
White alone	82.3%
Black or African American alone	2.5%
Asian alone	11.5%
Hispanic or Latino alone	4.1%
Two or more races	2.4%
Other	0.1%
Total housing units	32,648
Total households	31,295
Homeownership rate, 2009-2013	69.6%
Housing units in multi-unit structures	38.8%
Median household income, 2009-2013	\$119,148
Median value owner-occupied housing units, 2009-2013	\$696,500
Persons below poverty level, percent 2009-2013	5.7%
Land, square miles	17.8
Persons per square mile	4,774

Figure 26. Map of Newton Villages

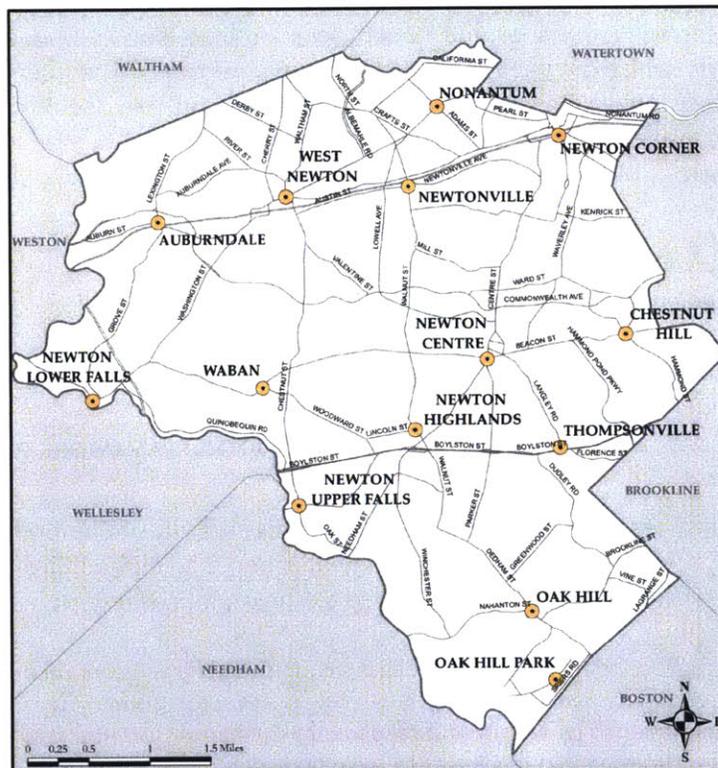
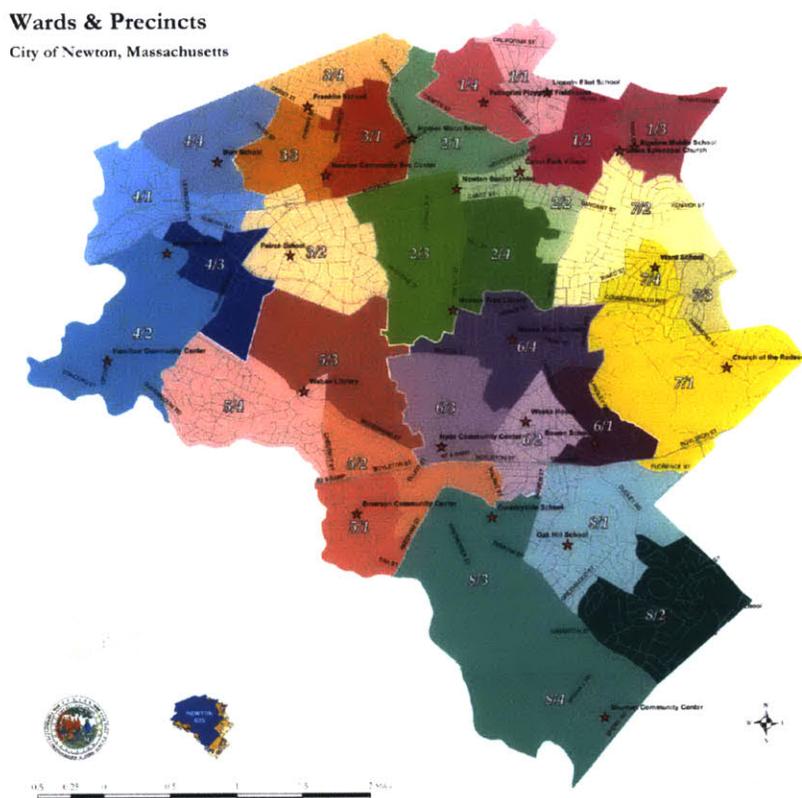


Figure 27. Map of Newton Wards



(formerly the Board of Aldermen) consists of 24 members (16 councilors at-large and 8 councilors representing each of 8 wards) who are elected to serve two year terms. The city's Planning and Development Board was established in 1975 by a revision to the city's municipal code authorizing it to provide "recommendations on the comprehensive plan, review of plans, proposals or agreements for the acquisition of real property, for the formulation and submission of recommendations for the annual community development plan, and for review and approval of the acts of the director of planning and development."⁶ Unlike virtually all other Massachusetts communities, the Planning Board does not issue special permits. Instead, special permits are issued by the City Council.⁷ This results in an atypical division of responsibilities for regulating development in the city. City planning staff serve the expected technical advisory role to the City Council and Planning Board as well as execution of day-to-day planning and engagement tasks. However, rather than the Planning Board performing an objective review of development projects seeking special permits, the City Council does so, before then also voting on whether to grant the permit as well. This leaves the responsibilities of the Planning Board as providing recommendations to the Mayor on allocating federal subsidies like CDBG, HOME and ESG.

A consequence of Newton's non-standard special permit process is that regulating development becomes the responsibility of a political body, rather than an objective appointed review board.⁸ This coupling of legislative authority and special permit granting authority in one elected body is not unique

to Newton, though it is not the prevailing arrangement in local governments throughout the state.^{viii} While a typical process would charge the Planning Board with the duty of ruling on the suitability of a proposed development, instead, according to James Freas, Acting Director of Planning for Newton, the special permit-granting nature of Newton's City Council results in "each individual project being viewed 'de novo,' with no one asking 'how'."⁹ A deeper challenge lies in the inherent difficulty of a large political body coming together to define any set of collective priorities. With 24 members on the council, Newton has the distinction of having both the largest city council and largest special permit granting authority in the state.¹⁰ Calling on the example of the recent Mayor-initiated Housing Strategy Forum to envision residential growth in the city, Freas likened the Mayor's attitude toward housing as "We need [housing], but where does it go?" while the Council's could be characterized as "24 different perspectives on 'We're not sure if we need [housing].'"¹¹

In addition to formal governing bodies, there are a plethora of citizen organizations around neighborhood and local issues. Each of Newton's 13 neighborhoods has its own Neighborhood Advisory Council. Three Historic District Commissions exist between Chestnut Hill and Newton Upper Falls. Additionally, about 30 other neighborhood organizations exist, facilitated by the Newton Neighborhood Network.¹² In the next section, I look at how these citizen groups as well as the formal planning bodies interacted for Newton's planning and development process.

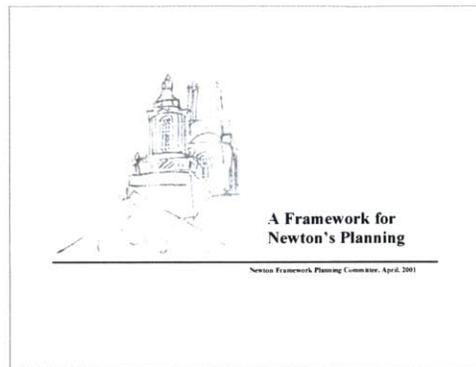
4.3 THE PLAN: NEWTON COMPREHENSIVE PLAN

Adopted in 2007, Newton's Comprehensive Plan was the last full update of the city's general plan since 1979.^x The process for the 2007 Comprehensive Plan began 9 years earlier with a 3-year process around establishing a framework for the plan. Initiated in 1998, a Mayor-appointed committee was charged with "[identifying] consensus values for a planning framework" to "guide later, more detailed studies."¹³ This Framework Plan Committee was composed of about 30 resident professionals who were, according to the plan text, "chosen to reflect a diversity of views from across the City and the interests within it" and chaired by Phil Herr, a longtime Newton resident and respected MIT planner.¹⁴ The working process for the committee began with initial brainstorming of the committee's members followed by a structured review of the city's planning legacy. The committee then formed topical working groups to draft "statements of values." In April 1999 and April 2000, two citywide workshops were conducted to draw public participation, with input from city agencies integrated in follow-up meetings. In August 2000, the Framework Committee presented a draft framework to the Mayor, which was then finally adopted by the then Board of Aldermen in April 2001.¹⁵

viii More common is an independent planning commission or planning board acting as the SPGA, with the council or the Zoning Board of Appeals composed of city councilors serving as the body overseeing appeals hearings. State law requires that all cities with populations exceeding 10,000 establish a planning board composed of between 5 and 9 members who are appointed by the mayor and confirmed by city council. Massachusetts General Law. Chapter 41. Section 81A.

ix The state of Massachusetts requires every community to have a general plan "to provide a basis for decision making regarding the long-term physical development of the municipality." The state requires 9 specific elements: Goals and Policies, Land Use, Housing, Economic Development, Natural and Cultural Resources, Open Space and Recreation, Services and Facilities, Circulation, and Implementation. The Newton City Charter also mandates the creation and adoption of a Comprehensive Plan for the city. In 1979, a Comprehensive Plan containing Land Use, Housing and Open Space elements was written by the Newton Planning Department. The 1998 Framework Plan was the first to undertake the full scope since that time. (A Framework for Newton's Planning. Newton Framework Planning Committee. April 2001.)

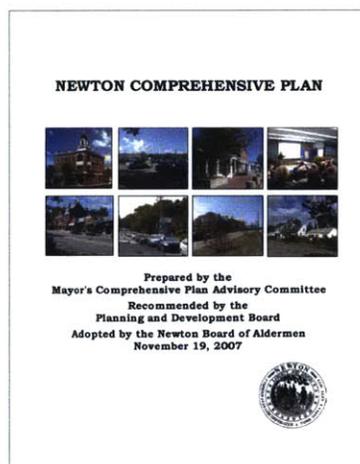
Figure 28. Cover of 2001 Newton Framework Plan



The Framework Plan highlighted four areas of focus – open space and recreation, historic preservation, land use and transportation – for detailed attention in the actual Comprehensive Plan. In spring of 2002, the mayor appointed a Comprehensive Plan Advisory Committee (CPAC) chaired again by Phil Herr to oversee the Comprehensive plan process, which was submitted in draft form to the Mayor in October 2006. Finally, after 8 years between the initial framework committee and final plan, the Comprehensive Plan was adopted by the Board of Aldermen in November 2007.¹⁶ In contrast to other plans written by the planning department, the plan was authored by the Comprehensive Plan Advisory Committee with input from planning staff the and the community.

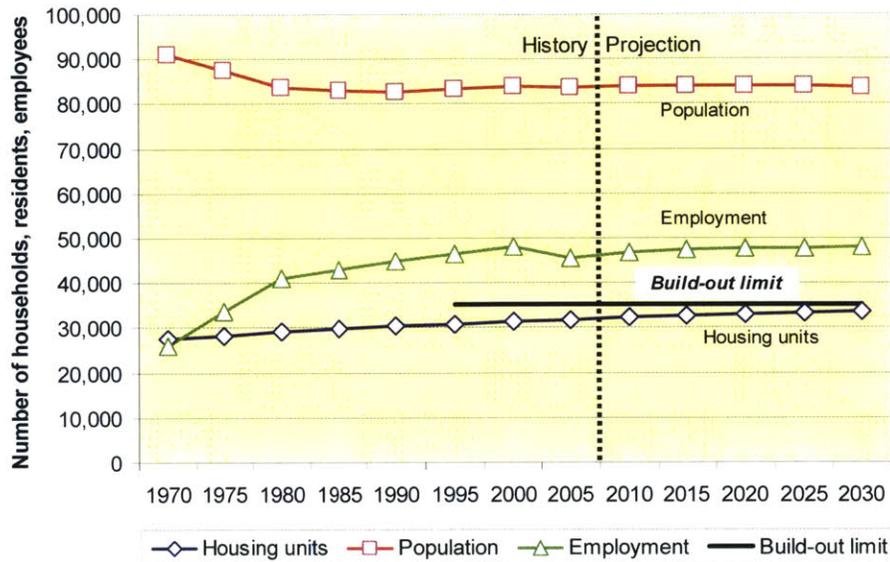
The Comprehensive Plan took the approach of balancing anticipated future growth based on physical capacity with a future vision for the “Newton that we want.” First, through a rigorous analysis of the city’s land area, zoning limitations, average household size and expected population growth, the plan found that existing parameters allowed for an additional 3,500 units in housing, 70% increase in commercial floor area and 6% decrease in population in 2030 compared to the 2002 baseline year.¹⁷ Then, taking into account the community’s desires for “how much we plan to grow,” the plan set actual targets for a 4,500 units increase in housing units while maintaining jobs at baseline levels or with a small decline.^x

Figure 29. Cover of 2007 Newton Comprehensive Plan



x The much more conservative jobs target mirrored the desire to maintain the near 1-to-1 jobs to employed resident population ratio, though both CPAC and MAPC estimates confirmed a far greater commercial growth capacity. (Newton Comprehensive Plan. City of Newton. 2007)

Figure 30. Newton Comprehensive Plan Projections for Full Housing, Employment and Population Capacity in 2030.



In addition to setting growth targets for housing, the Comprehensive Plan reviewed existing land use to determine what kind of housing typologies should constitute this growth. With 31,700 total housing units in the 2002 baseline year, the plan initially estimated a “base case” scenario resulting an additional 3,500 housing units at full build-out, consisting of an additional 2,600 single-family units and two-family units, but just 900 multifamily units located in mixed-use village centers. Recognizing that existing zoning regulations actually provided the least growth potential “in the very places where as a matter of sound planning it would be most appropriate, that is, in village centers and other mixed-use areas,” the plan proposed a “high case” scenario with adjusted zoning that would more than double the increase of multifamily mixed-use village center units to a total of 1,900 additional units. The rationale for this 1,000 unit increase was linked in part with satisfying the Chapter 40B 10% affordability requirement. At the time of writing, the city was estimated to have a shortfall of about 800 subsidized units. Meeting this gap by relying on the base case build-out alone would have required a substantial one-half of all new two-family and multifamily units to be eligible for the SHI, while raising the total build-out by 1,000 units would require a slightly more realistic one-third.

Figure 31. Newton Comprehensive Plan Base Case and High Case Scenarios for Increases in Housing Stock by Typology

Type of Area	Housing Units		
	2002	Base Case	High Case
Predominantly single-family (SR1, SR2, SR3 districts)	17,500	18,300	18,300
Mixed single-, two- and small multifamily (MR1, MR2 districts)	10,900	12,700	12,700
Large-scale multifamily (MR3, MR4 districts)	1,700	2,000	2,600
Village centers, mixed-use (BU1, BU2, MAN, MU1, MU2 districts)	1,600	2,000	2,600
Total	31,700	35,200	36,200

Lastly, given the above targets for total unit and typologies for residential growth, the Comprehensive Plan also identified tentative sites to potentially accommodate this future development. Four sites, used at the time as parking lots, were included in the plan to illustrate “hypothetical possibilities for housing and mixed-use development.” The plan featured initial massing on these sites, but the lack of specifics pertaining to zoning seemed to suggest that the schemes were illustrative and not meant to represent plans for immediate implementation.

Figure 32. Potential Development Sites Identified in Newton Comprehensive Plan



Newton Corner: Richardson Street parking lot



Newtonville: Crafts St Education Center parking lot



Newtonville: Austin Street parking lot



Newton Centre: Lyman Street parking lots

Compared with the Framework Plan, the Comprehensive Plan was more thorough and analytical in its approach towards planning for the city’s future. However, the Comprehensive Plan still tended to be abstract rather than propose specific implementable changes. For instance, though a rationale for an increase in build-out capacity was proposed, the plan did not include specific zoning changes that would allow this to happen. Additionally, the impetus for increased build-out came about as a reaction to external state-mandated housing affordability requirements rather than proactively visioning for holistic change citywide. Perhaps as a reflection of an overall “slow-growth” attitude in the city, the lack of specificity may also have been the result of CPAC serving as the primary author of the plan, rather than city planning staff, who have more technical experience in drafting such changes. Regardless, the Comprehensive Plan reinforced certain benchmarks for the city, but it was clear that additional enforceable steps would be needed to bring its ideas to execution.

4.4 THE PROJECT: THE AUSTIN STREET PROJECT

Figure 33. Artistic Rendering of Austin Street Project



A city-owned parking lot on Austin Street in the neighborhood of Newtonville was one of the four “hypothetical” sites identified in the Comprehensive Plan in 2007. In the years following the plan’s adoption, the Austin Street parking lot rose up in the minds of Newton citizens as a major opportunity to actually fulfill some of the Comprehensive Plan’s goals. Known locally as the Austin Street project, the proposal would ultimately consist of a total of 68 housing units (33% affordable for households 80% AMI or below), about 5,000 square feet of retail and restaurant space, and 214 parking spaces provided on-site.¹⁸ However, in the process of securing its approvals, the Austin Street project would also trigger a lengthy and divisive public hearing process and lead to the formation of an anonymous anti-development organization that continues to be active in Newton today.

Soon after the Comprehensive Plan’s adoption, the Newtonville neighborhood became the subject of a 2008 student design charrette sponsored by Sasaki Associates in order to develop ideas to “reunite” the north and south sides of the neighborhood which lie on opposite sides of the Mass Pike.¹⁹ While the Austin Street parking lot was not the main focus of the charrette, the study helped raise the profile of this area of city and spurred community conversation with its concept of a higher density mixed-use center in the area. In 2008, a volunteer citizen’s group called the Newton Housing Action Plan Initiative (HAPI) formed to pursue implementation of housing-related tasks from the Comprehensive Plan and other existing city plans. Chaired again by Phil Herr, HAPI’s efforts drew the support of the Newton City Planning Department and Economic Development Commission.²⁰ In 2009, a series of 5 community workshops hosted by HAPI heightened discussion around repurposing underutilized public sites, with a special focus on the Austin street parcel.

As city-owned land, the Austin Street parcel was under the domain of the city’s Real Property Reuse Committee. Following HAPI’s work to envision alternative uses to the parking lot, the Real Property Reuse Committee issued a Request for Interest (RFI) from potential developers for the Austin Street parcel in 2009. The RFI also contemplated a rezoning of the site to Business 4 (BU4), one of the city’s most intensive use districts.²¹ The RFI elicited 3 written and 2 verbal responses, giving confidence to the Reuse Committee that there was sufficient developer interest in the property to declare it available for reuse. In 2010, the Austin Street parcel was declared “surplus” on the condition that at least 85 parking spaces be provided on site.²²

Figure 34. Austin Street Project Site and Existing Conditions

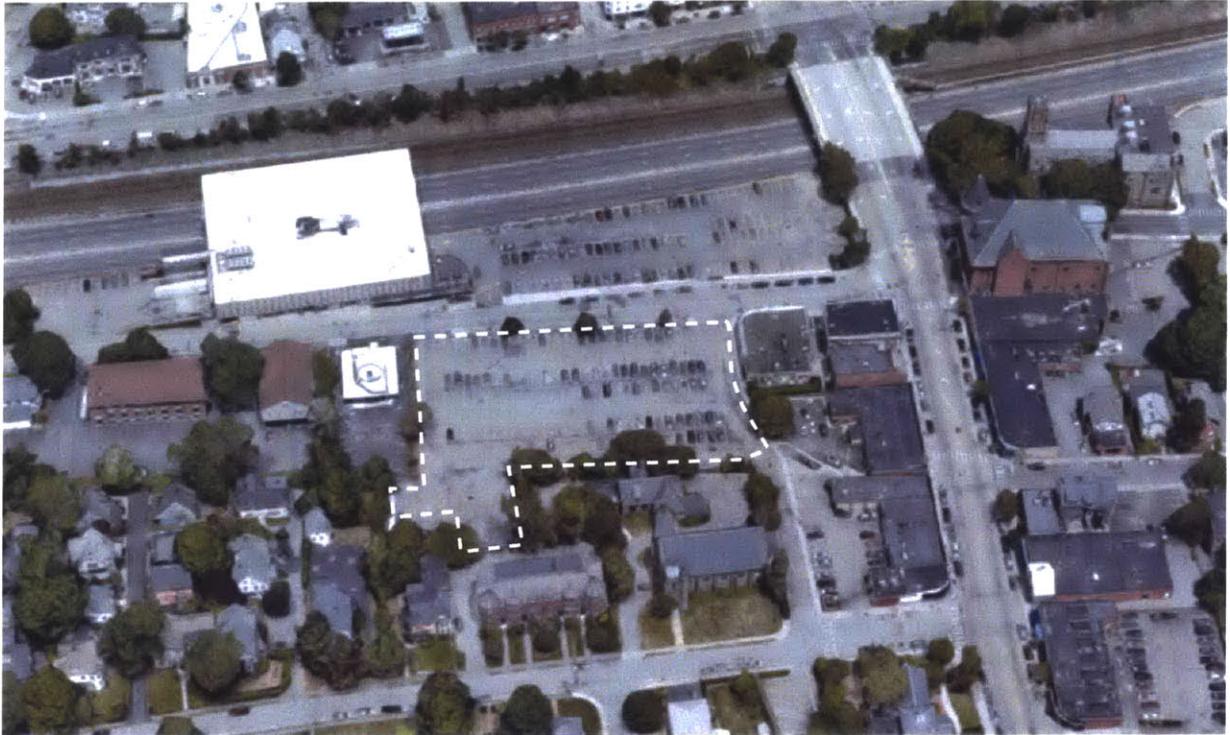
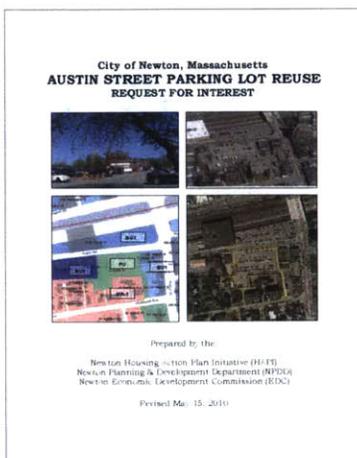


Figure 35. View of Austin Street Existing Site

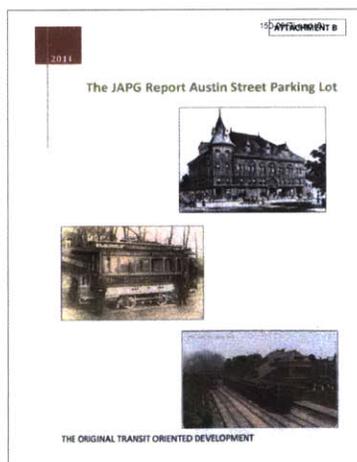


Figure 36. Cover of Austin Street Parcel Request for Information (RFI)



Next, per Real Property Reuse regulations, a Joint Advisory Planning Group (JAPG) composed of Newton residents including some direct abutters of the site, was then appointed by the Mayor and Board of Aldermen in order to offer an official recommendation on the site's reuse. After meeting biweekly for three months, the 14-member JAPG recommended the parking lot be used toward "transforming Newtonville's village center" with the following specific programmatic requirements: a minimum of 18 housing units on site, with at minimum 25% of units affordable for 80% AMI households, a minimum of 5% of units fully accessible to disabled persons, 5% of the site maintained as open space, provision of at minimum 85 parking spaces on site, the redesign of adjacent streets and intersections to be more pedestrian friendly, and rezoning the parcel, currently zoned Public Use for parking to a Business 4 district.²³ During the same time as the JAPG's study, city planners also produced their own recommendations for the site, which concurred on all points except for the recommendation to create a new zone designation rather than utilizing the Business 4 district, which would allow up development as high as 8 stories and thought to be out of scale for the area.²⁴

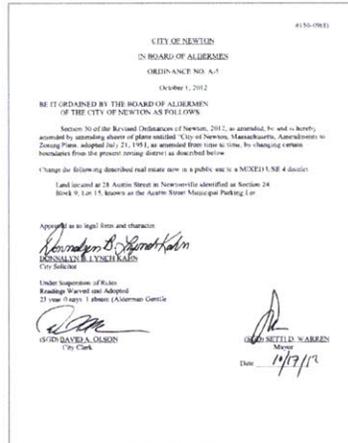
Figure 37. Cover of Joint Appointed Planning Group (JAPG) Report on Austin Street Parking Lot



Based on these recommendations, the next two years were devoted to drafting new zoning guidelines for the site. In May 2010, the Mayor appointed a 17-member Mayor's Mixed-Use Task Force (MMUTF),

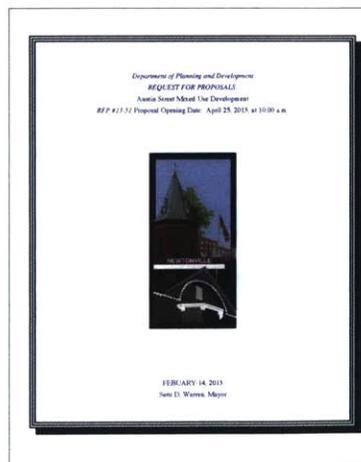
which was again chaired by Phil Herr, to create the city's first mixed-use zoning ordinance. In February 2011, a public meeting was held to review a draft of the ordinance and in October 2012, the Board of Aldermen voted unanimously (23-0) for its adoption, creating the Mixed Use 4 district²⁵ and rezoning the Austin Street parcel as the first in the city with this designation.²⁶

Figure 38. Mixed Use Zoning Ordinance A-4



The adopted Mixed Use 4 zoning ordinance codified specific by-right and special permit guidelines that would actually be able to implement the goals set forth in the Comprehensive Plan. The next step was to find a developer to take all these plans and make them into a project. In February 2013, the city issued a formal RFP for the site and a resident professional evaluation team was selected to create evaluation criteria and ultimately judge the 6 proposals that were received. In May 2014, the Mayor announced the long-awaited selection of Austin Street Partners, LLC as the chosen developer. However, after 7 years of community process since the Comprehensive Plan, review by the HAPI, JAPG, Real Property Reuse and Mixed-Use Task Force committees, the creation of a new zoning district and rezoning of the parcel, the Austin Street project was still far from a reality.

Figure 39. Cover of Request for Proposals



In compliance with the newly adopted zoning and guidelines in the Request for Proposals, the initial Austin Street proposal had featured a 4 and 5 story building with 80 new units of market-rate rental housing, 9,000 square feet of commercial space and a total of 182 parking spaces provided on site (102 spaces on-grade). However, once the project began to officially proceed, the proposal was met with a flurry of concerns from both residents and City Council. The issues ranged from the loss of total number of parking spaces, impact to existing businesses during construction of the project, the height and density of the project (though the proposal complied with newly adopted zoning requirements), the loss of public land through sale to a private developer and a call for deeper and more affordability.

After another year of community input and changes, a revised proposal was submitted to the Board of Aldermen in May 2015 requesting a Special Permit. The revised proposal reduced the scope to a 3 and 4-story building with 68 units including 17 affordable units (25%), 5,000 square feet of commercial space and 217 parking spaces provided on site. The revision also proposed a 99-year land lease as opposed to an outright sale of the parcel and also matched all 127 existing surface parking spaces on grade by lifting substantial portions of the building on silts. In the updated proposal, what was once a 127-space municipal parking lot now accommodated 217-parking spaces, including all existing 127 spaces on-grade, as well as new homes for 68 families and space for local businesses.

Figure 40. Site Plan for Austin Street Project



Figure 41. Artistic Renderings of Austin Street Project



Figure 42. Comparison of Original and Revised Austin Street Proposal

Original Proposal	Revised Proposal
80 middle-income apartments	68 middle-income apartments, including 25% affordable (17 apartments)
9,000 sf commercial space	5,000 sf commercial & retail space, including innovation center
4-5 story building	3-4 story building (height reduced by 6 feet)
Outright sale	99-year lease with single upfront payment
102 public surface parking spaces	127 public surface parking spaces (matching existing supply)
1 underground parking space per home	1.25 parking spaces per home & employee parking (90 total)

4.5 THE OUTCOME: RESIDENT COALITION DRIVES SUCCESSFUL VOTE

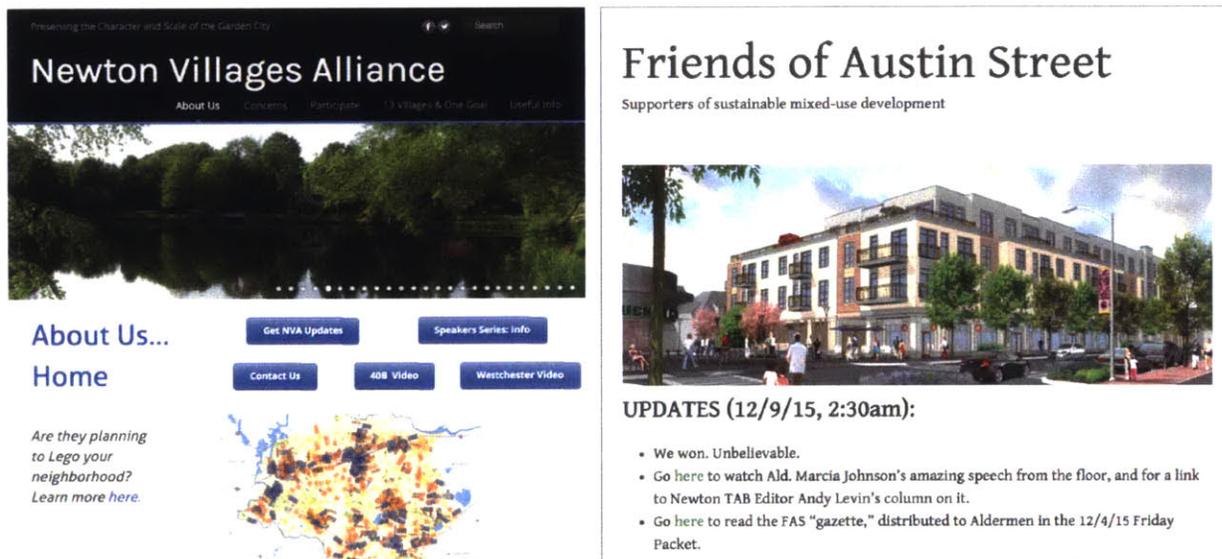
After six months of hearings and changes to the project, the final vote for the Austin Street Special Permit was slated for December 8, 2015, but the outcome was highly uncertain. In order to pass, the City Council had to approve the request for special permit by a two-thirds majority, 16-8, but when the application had first been submitted in May, only about 4 or 5 councilmembers had been in support of it. On the evening of the vote, after hours of public testimony, internal debate, caucusing and even texting that lasted well past midnight, the Board of Aldermen approved the project by a vote of 17-6, 1 vote more than needed to clear the 16 vote 2/3rds majority required for special permit approval.²⁹

According to resident activists, the vote turned on the decisions of 2 aldermen who had been back and forth on the issue until the last moment, and their decision had turned on a last minute increase of affordable units in the project from 17 to 23 units. The change had come from an impromptu meeting between the Mayor and developer the night before the vote, where an agreement was reached to increase the number of affordable units from 25% to 33% of the project total.³⁰

Since the approval of the permit, at least two lawsuits have been filed by opposing residents in an effort to derail or delay the project. While the developer has communicated confidence that the suits will be dismissed, they have also elected to hold off on proceeding with the project, potentially for other reasons as well. Securing financing had become more difficult due to the increase in affordable units creating lower returns on the project.³¹ According to Oran, their new strategy to secure financing was to look for a socially-motivated long-run minded investor that would accept lower returns in the near term, recognizing that the “long-term [housing] shortage will appreciate the property” over time. For the developer, the small upside of such an anti-development climate was the ability to spin it as virtually guaranteed supply scarcity in the future. Given the experience of Austin Street, a site that had been in Newton’s planning discourse since the 2007 Comprehensive Plan, perhaps it wasn’t such an unreasonable forecast.

An important lasting consequence of the Austin Street process was the emergence of a new formalized anti-development cohort, the Newton Villages Alliance (NVA). During the Austin Street development review process, NVA formed in opposition to the project and sustained its activities by opposing development in the city in general. According to activists during the approvals process, NVA became known for its anonymity. Other than a few of its members acting as spokesmen on behalf of the organization, NVA refused to publish a list of its membership even upon request.

Figure 43. Homepages of the Newton Villages Alliance and the Friends of Austin Street



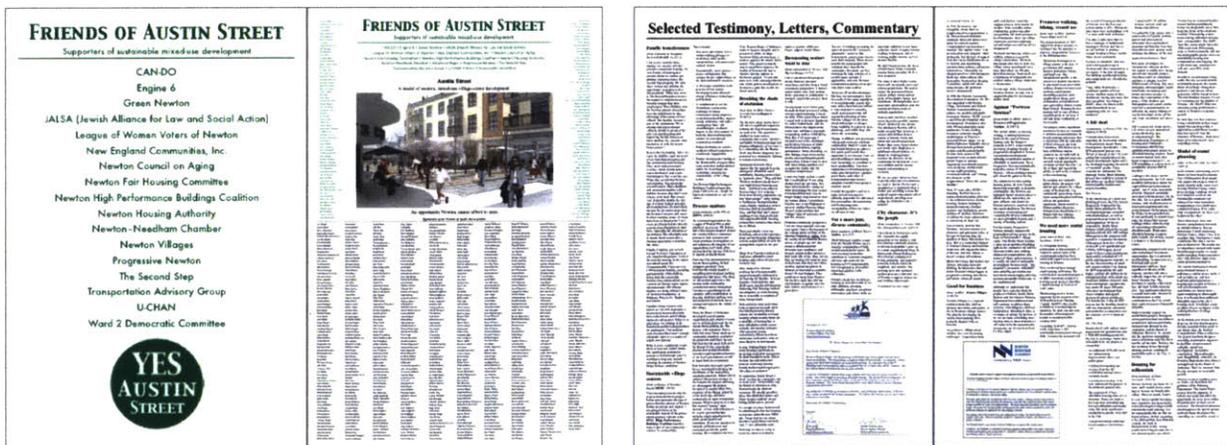
In stark contrast, the Friends of Austin Street (FAS) emerged as a counterpoint to NVA. FAS, composed of over 200 individual members and 17 existing Newton citizen organizations, was an outgrowth of another resident organization, Engine 6, that had formed in support of an affordable housing project in another part of town. In 2013, local non-profits proposed to convert the historic Engine 6 firehouse in Waban into up to 12 units of supportive housing for formerly homeless individuals, but political pressure from NIMBY residents resulted in the Mayor preemptively refusing to allocate public subsidy to the project.³² Residents in support of Engine 6 organized to petition the Mayor and write letters of support, ultimately filing a letter of complaint to HUD on the basis of potential violation of the Fair Housing Act. In May 2015, the City of Newton signed an agreement with HUD that required the city to “affirmatively facilitate” the Engine 6 project.

The signing of the Engine 6 HUD agreement in May 2015 coincided with the revised Austin Street proposal application for special permit, and members of Engine 6 viewed the Austin Street project as a natural extension of their activist efforts for a more inclusive, sustainable built environment. Andrea Kelly, one of the organization's leaders, noted that from the beginning FAS was a platform for coalition-building, recognizing that "people from all different organizations would be more effective than just the housing advocates."³³ FAS members actively asked existing Newton organizations, volunteer or non-profit, if they would be interested in participating in a coalition, but tailored their outreach to a highlight how Austin Street met a specific part of that organization's mission. In whole, FAS had the support of 16 existing Newton organizations, including: CAN-DO, Engine 6, Green Newton, Jewish Alliance for Law and Social Action, League of Women Voters of Newton, New England Communities, Inc, Newton Council on Aging, Newton Fair Housing Committee, Newton High Performance Buildings Coalition, Newton Housing Authority, Newton-Needham Chamber, Newton Villages, Progressive Newton, The Second Step, Transportation Advisory Group, U-CHAN and the Ward 2 Democratic Committee.³⁴

In addition to organizational support, FAS elicited individual efforts from over 200 supporters that executed well-coordinated on-the-ground efforts to inform other residents of reasons to support the project. These included events like coffee chats, where FAS members invited neighbors and their Ward representatives for informal discussion in their homes, and the creation and distribution of physical fact sheets, which were aimed at directly correcting misinformation that was being propagated by the Newton Villages Alliance.³⁵ Kelly remembers "the louder and more atrocious NVA got, the more committed we were."³⁶

Lastly, FAS also executed targeted campaigns to councilmembers with undecided votes on the project, each tailored to the representative's personal values. Their careful tactics are possibly best represented by the creation of a faux Newton TAB newspaper spread, a local Newton paper, which was physically distributed to all Councilmembers in their weekly "Friday Packet," a compilation of papers that each councilmember was given at the end of the week. FAS included their Newton TAB mockup, which featured a full list of supporters and the text of letters to the Editor in support for the project, in the packet before the pending Wednesday evening vote. Kelley remarked that the TAB mockup was key in "[showing] the aldermen visually all the names" that were in support of the project.

Figures 44 & 45. Friends of Austin Street Faux Newton TAB (Front and Back)



1 U.S. Census Bureau 2014.
2 Ibid.
3 Ibid.
4 Ibid.
5 Ritter, Priscilla R.; Thelma Fleishman (1982). Newton, Massachusetts 1679–1779: A
Biographical Directory. New England Historic Genealogical Society.
6 “Rules and Regulations of the Planning and Development Board.” City of Newton.
Planning & Development Board. City of Newton. Retrieved from [http://www.newtonma.gov/
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7 Interview with James Freas. Acting Director of Planning, City of Newton. March 2, 2016.
8 Ibid.
9 A Framework for Newton’s Planning. Newton Framework Planning Committee. April 2001.
10 Interview with James Freas. Acting Director of Planning, City of Newton. March 2, 2016.
11 A Framework for Newton’s Planning. Newton Framework Planning Committee. April 2001.
12 Appointment letter to members from Mayor David B. Cohen. October 16, 1998.
13 A Framework for Newton’s Planning. Newton Framework Planning Committee. April 2001.
14 Ibid.
15 Newton Comprehensive Plan. City of Newton. 2007.
16 Ibid.
17 Frequently Asked Questions. Austin Street Project. City of Newton. Retrieved from [www.
newtonma.govt/austinstreet](http://www.newtonma.govt/austinstreet) [http://www.newtonma.gov/documents/Planning/
151216_FAQUpdated.pdf](http://www.newtonma.gov/documents/Planning/151216_FAQUpdated.pdf)
18 2008 Interim Charette. Newtonville, Massachusetts. Sasaki Associates.
19 Austin Street Parking Lot Reuse: Request for Interest. May 2010.
20 Memo to Real Property Reuse Committee of the Board of Aldermen. Department of Planning
and Development. City of Newton. March 28, 2014.
21 Ibid.
22 JAPG Report Austin Street Parking Lot. Joint Advisory Planning Group. June 20, 2011.
23 Memo to Real Property Reuse Committee of the Board of Aldermen. Department of
Planning and Development. City of Newton. March 28, 2014.
24 Newton, Massachusetts. Ordinance No. A-4. Adopted October 1, 2012.
25 Ibid.
26 Ibid.
27 Interview with Andrea Kelly, Friends of Austin Street. March 2, 2016.
28 “Newton aldermen approve Newtonville development.” The Boston Globe. December 8, 2015.
29 Interview with Scott Oran, Austin Street Partners. March 3, 2016.
30 Ibid.
31 History. Engine 6. www.supportengine6.org/history
32 Interview with Andrea Kelley. Friends of Austin Street. March 2, 2016.
33 Friends of Austin Street. <http://friendsofaustinstreet.org>
34 Interview with Andrea Kelley. Friends of Austin Street. March 2, 2016.
35 Ibid.

Chapter 5 Discussion

“Comprehensive plans should be serious statements of intention, but are not regulations or final commitments to action.”

-- – NEWTON FRAMEWORK PLAN 2001

Santa Monica and Newton provide two illustrative examples of the complexity and challenges that surface when a city attempts to move from a plan to implementing it through a project. Both cities had detailed local plans with specific priorities for development sites that were adopted with near unanimous support from their respective City Councils. But when the principles behind the plans became concrete development proposals, both cities experienced extremely contentious review processes that left both the city council and community divided. The following chapter reviews the major issues present in each case and considers the role, if any, of the plan in facilitating implementation.

I conclude that while plans play an important role in defining community priorities, they have a limited ability to facilitate implementation into built projects. Instead, I find that each city’s specific legal framework around land use decisions, including state laws on voter referenda and local policy on special permits, play a much more definitive role in project outcomes.

In light of underlying legal and political undertones around development, I offer two suggestions to cities aiming to improve plan implementation. First, facilitate direct ideation from community members through the appointment of citizen task-forces that promote citizen leadership and co-learning around community concerns, while maintaining traditional public hearings as a platform for structured support and dissent. Second, build up and maintain confidence in this enhanced task-force process by insulating outcomes from outright repeal. Together, these recommendations encourage a more politically-strategic and engaged approach to planning, suggesting that plan implementation will occur best when legal mechanisms and community political will align with the vision set forth in a city’s best laid plans.

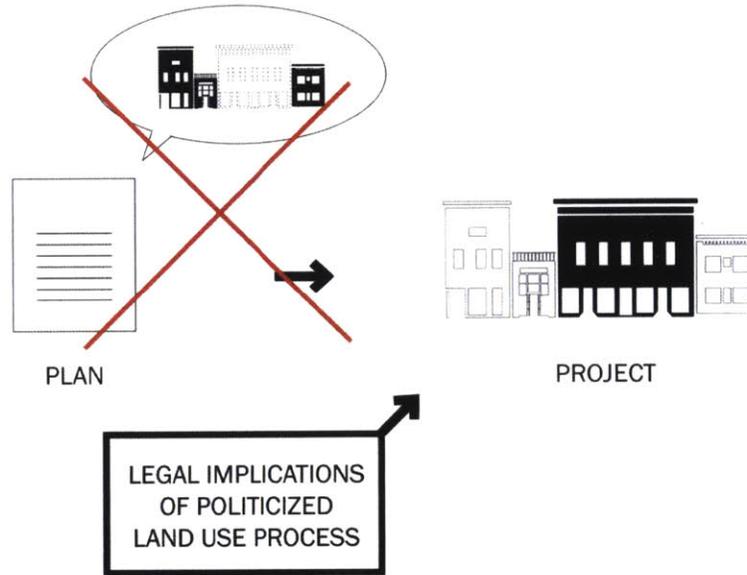
5.1 BETWEEN PLAN AND PROJECT: THE ENFORCEABILITY GAP

The motivation of this research was to understand the relationship between plan and project. In examining cases in Santa Monica and Newton, I find that the plans helped lead to the initiation of specific projects, however, they lacked any other enforceability to facilitate project success. In legal terms, a plan is a policy document that serves as guide for a city’s future physical development, while preserving flexibility around implementation within a framework of agreed-upon goals.^{xi} However, the cases in Santa Monica and Newton illustrate that support around a project hardly translates to any level of enforceability when put up against the often politicized legal tools by which a project can be halted or

xi Section 65302 of the California Code states: “The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals.” Similarly, Section 81D of Massachusetts General Laws state: “Such plan shall be a statement, through text, maps, illustrations or other forms of communication, that is designed to provide a basis for decision making regarding the long-term physical development of the municipality.”

overturned. In the following sections, I review how two of these legal procedures, the electorate-initiated referendum in Santa Monica and the special permit discretionary review process in Newton, were at the core of the challenges faced in the implementation of plan objectives in each city.

Figure 46. Diagram of Research Findings



5.2 SANTA MONICA: DEVELOPMENT AGREEMENTS AND THE RISE OF DIRECT DEMOCRACY

“It’s a disgusting climate to serve in. We need to pull together and work things through.”

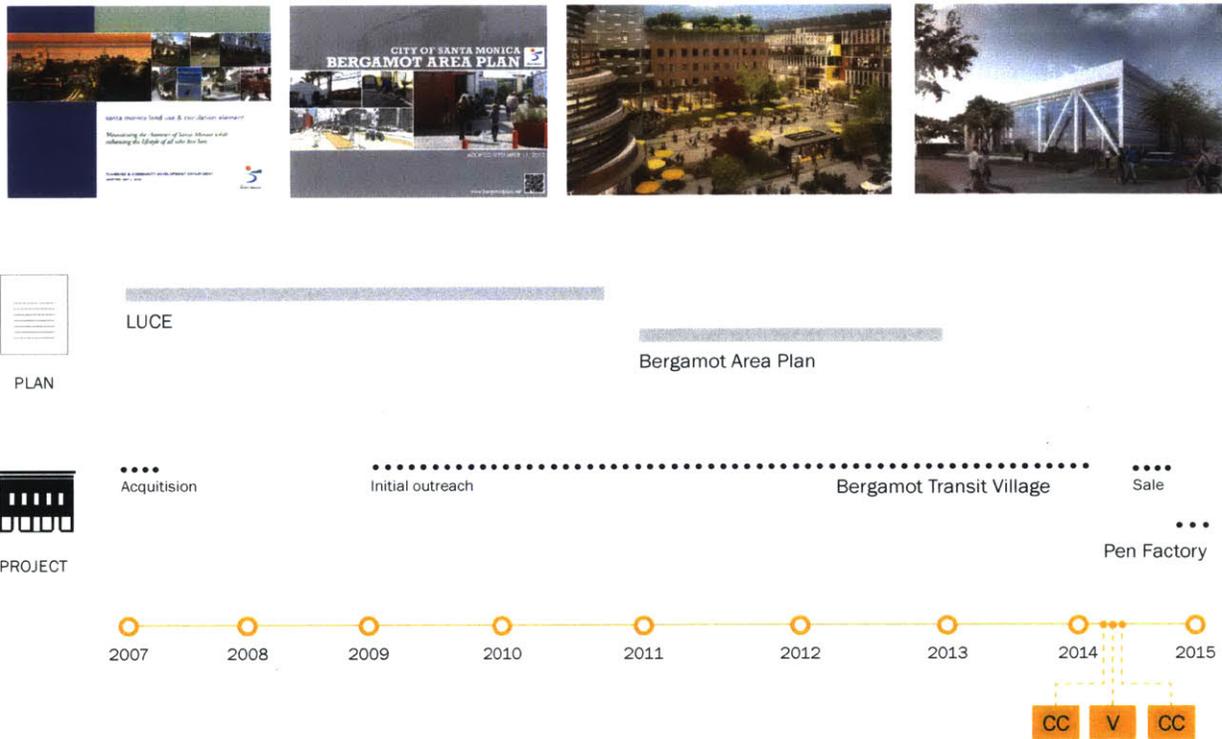
-- COUNCILMEMBER BOB HOLBROOK, CITY OF SANTA MONICA

As a policy document, the Land Use and Circulation Element (LUCE) crystallized priorities that had been developed over 6 years of community process and affirmed through unanimous vote by City Council. The subsequent adoption of the Bergamot Area Plan, also with near unanimous vote, reinforced the LUCE’s development priorities. The Bergamot Transit Village proposal was even passed by the City Council, albeit by a narrow 4-3 vote in favor of the project. However, nothing in the plans was able to protect the Bergamot Transit Village against legal challenge in the form of referendum.

5.2.1 Implications of Development Agreements and the Initiative Process in California

The categorization of the development agreement as a legislative act in California comes with particular legal repercussions. The initiative and referendum process, a form of direct democracy that has been a part of California politics since the early 1900s, enables voters to directly create new legislation through

Figure 47. Diagram of LUCE and Bergamot Transit Village Process



ballot initiative, or repeal newly adopted or existing legislation through referendum.^{xii, 1} Development agreements, as legislative acts of local city council, are therefore also subject to referendum.^{xiii} In the case of newly adopted ordinances, California state law requires that the ordinance does not go into effect until 30 days after approval by City Council. During this time the voters of the jurisdiction are given the opportunity to submit a petition of “no less than 10 percent of the city’s voters” at which point “the effective date of the ordinance shall be suspended and the legislative body shall reconsider the ordinance.”² On March 11, 2014, thirty days following the adoption of the Bergamot Transit Village Development Agreement, a referendum petition in excess of the required signatures was filed with the City Clerk, requiring the City Council to reconsider and repeal the ordinance, or submit it to Santa Monica voters at the next general election.³

The 30 days that had passed between the council’s affirmative vote and the referendum petition were a period of public incivility that the city had not experienced in recent times. According to residents and planners who observed the process unfold, the tenor of public discourse had reached a point of such vitriol that members of the City Council began to seriously consider rescinding their decision, rather than send the vote to a general election in November and risk “tearing apart the city.”⁴

xii According to the National Conference of State Legislatures, 24 states in the country allow the initiative process. The majority of these states are located west of the Mississippi.

xiii This is in contrast to a standard building permit, which is considered an administrative order and therefore challengeable by appeal, but not by voter referendum.

However, there was also significant awareness from supporters of the Hines project of what repealing the Development Agreement would mean. While the opposition cited traffic among their chief concerns, supporters and city councilors who voted for the project reminded their colleagues of the alternative: in a Tier I proposal, Hines would have the right to reoccupy the site and add up to 7,499 square feet for 100% commercial use fully by-right. In such a scenario the city would have no ability to ask for any of the public benefits they were able to negotiate in the current Tier III proposal. The carefully deliberated \$32 million community benefits package would disappear, replaced by a total of 310,000 square feet of commercial use estimated to add 2,500 daily trips with no additional open space, housing, or traffic mitigation required. Two councilors in support of the project, Glean Davis and Terry O'Day, wrote an open letter to the public that summarized the Hines' project benefits and defended their vote for the project:

"What would be added to the project is about 60,000 square feet of commercial space, almost 500 units of housing, including for seniors and disabled residents, at roughly 20 percent affordable in total, and artist live-work lofts for this arts district. Our community has an imbalance of jobs and housing, which fuels the traffic problems in this area. Most everyone agrees that adding housing on this property is a wise decision.

In exchange for adding mostly housing, our negotiations produced important benefits in circulation and traffic control that we would not get in reoccupation. First, the superblock is broken and the grid is restored...Second, major additional traffic improvements are required for the site, totaling over \$4.7 million, and connecting the property to our new light rail station, the Bergamot Arts Center, and office and housing to the north.

The City Council also negotiated the most stringent traffic caps in any project in the city history through a unique mechanism that has not been used anywhere else in the region to our knowledge...The result is 12 percent fewer peak-period outbound trips...from the whole project than the reoccupied site would produce.

The approved project is also 25 percent less square feet than allowed under our unanimously-approved general plan, and then there are more benefits. The City Council negotiated \$11 million for child care programs throughout the city, \$3 million in public art, \$1.4 million for a bike sharing program, and \$2 million for parks, including one that buffers the Expo Line maintenance yard, an important improvement for the neighborhood.

Our City Council approved the project because the question before us is not whether to develop the site or not. Rather it is whether we want to add housing, break up the superblock and create safe, walkable streets next to the new train station versus reoccupy a giant building."⁵

Still, public discourse around the referendum intensified.

On May 13, 2014, the City Council voted 4-1 (2 abstaining) to rescind their vote, triggered by the swing vote of Councilmember Davis, one of the co-authors of the previous column in defense of the Hines project. In explanation of her changed vote, she cited her concern over the immaterial social damage that a referendum vote would inflict on the city:

“Putting this on the ballot in November will run a serious risk of creating great rifts in this city that will take a long time to heal...[People would pour] a lot of money into the election on both sides...Inviting the kind of bloodletting – financial and political – that would happen in November if we were to have this project on the ballot really troubles me.”⁶

Campaign disclosure statements submitted by referendum petition organizers in March had revealed that the Huntley Hotel, an opponent of the redevelopment of neighboring Miramar Hotel, had donated to cover about half of Residocracy’s funds.⁷ If the referendum were to continue on to a November general election, it seemed plausible that special business interests would also take the opportunity to continue speak with their financial support, perhaps in a way that could unduly sway the public. Another councilmember, Bob Holbrook, a native of Santa Monica and the Council’s longest serving member, addressed an entirely different concern regarding the tenor of the debate. Quoting some of the commentary, including cursing and insults that had been directed at councilmembers, Holbrook concluded saying “[it’s] a disgusting climate to serve in. We need to pull together and work these things through.”⁸

The referendum that instigated this painful process was the project’s core legal vulnerability, and was only possible because the project was executed through a Development Agreement, rather than a standard discretionary permit. It is fitting that now both developers and the city are backing away from the Development Agreement as a reliable tool for development in the city. From the developer’s side, Clarion Partners, Hines’ successor to the Papermate site, is a clear example. The more conservative developer made a calculated decision to move forward with a severely pared down Tier I by-right entitlement that would effectively guarantee their right to proceed even if it provided lower returns. Their estimation was right; in just 5 months after initial review, their project had been approved.

5.2.2 The Aftermath: Curbing Representative Decision-making for Rule by Opposition

From the city’s perspective, the spectacular and painful end of the Bergamot Transit Village became a pivot point in planning norms. In the next major planning document called for by the LUCE, the Downtown Specific Area Plan, city planners actually removed the negotiated Development Agreement from the Tier III as it was envisioned in the LUCE, replacing it instead with a non-negotiated discretionary permit.⁹ Released in a February 2016 draft of the plan, the removal of the Tier III negotiated development agreement was in direct response to the “wake of the real of the Hines Development Agreement” and years of mounting backlash from the public against what was perceived as a lack of transparency of the case-by-case nature of the agreements.¹⁰

Development Agreements had had a long history in California, but their widespread use in Santa Monica was a recent phenomenon. The city had processed just 8 major Development Agreements over the 25 years prior to the LUCE. In just 2 years after LUCE adopted, the city was engaged in reviewing 26 active Development Agreement applications, and by 2015, the city had processed 61 such applications.^{11,12} As early as December 2012, city planning staff had submitted a recommendation to the City Council to adopt regulations to effectively temper the rate of new development agreement applications.¹³ Though motions in 2013 helped create processing priorities around development agreements,^{14,15} it wasn’t until after the repeal of the Hines project that more serious consideration around curbing Development Agreements was entertained in City Council.

The controversy around the Bergamot Transit Village had the effect of eroding away public confidence

in its local representative government. The critique of the negotiated project was a critique of the City Council and planning staff's abilities to both represent "the community's" best interests and impartially apply objective standards to projects that were necessarily negotiated on a case-by-case basis. In the face of this broken trust, a vocal minority instead felt empowered to rise up as the new representative voice on behalf of the community. Led by Residocracy-founder Melkonians, the intentionally-named Land Use Voter Empowerment (LUVE) ballot initiative launched in March 2016, if passed, would enact new legislation requiring all projects seeking Tier II or Tier III entitlements to be approved directly by the voters. If successful, LUVE would effectively chill all development in the city to Tier I by-right projects and wipe out the ability of the city to negotiate any public benefit as envisioned by the LUCE.

When the LUCE was unanimously adopted in 2010, the city had viewed Development Agreements as a tool to leverage the desirability of Santa Monica as a strong real estate market to extract substantial public benefits from developers, all while acting as representatives of the public good. The material shift in Santa Monica planning policy away from negotiated development agreements towards discretionary permits, per amended Tier III requirements in the Downtown Specific Plan, demonstrate the power granted to this vocal minority within the city's legal framework.

5.3 NEWTON: THE DISCRETIONARY NATURE OF THE SPECIAL PERMIT AND THE NEED FOR OBJECTIVE REVIEW

"Aldermen play an unusual dual role as both zoning legislators and special permit decision-makers under rules they have created."

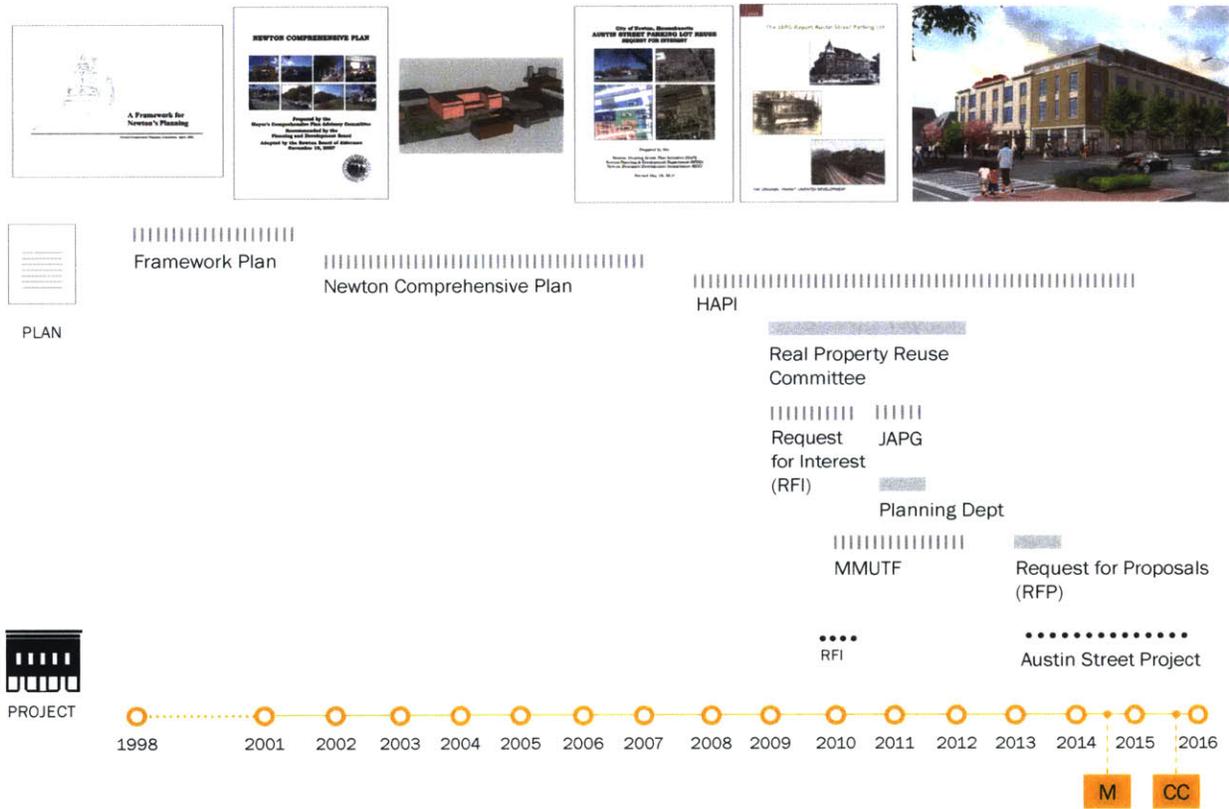
-- -- NEWTON FRAMEWORK PLAN 2001

The passage of the Austin Street project was contentious for reasons of substance, but also due in part to the structure of land use decisions in Newton. The project was approved, but through what kind of process? In the case of Austin Street, the project could be traced to as early as the Framework plan, which led to the Newton Comprehensive Plan, which led to HAPI, a citizen-initiated group that coalesced with a vision around the project site. This in turn prompted the city to convene a committee to review the feasibility of developing on the site, convene another committee to develop a new zoning district for the site, and convene yet another committee to develop and issue RFP through which a developer and proposal were competitively chosen for the site. When it finally came time to implement the chosen project, a special permit was sought in accordance with city ordinance, and despite being in compliance with the provisions outlined through the above process, very nearly denied. In the following sections, I review the role of the special permit and the special permit granting authority as discretionary agents in zoning, and consider how Newton's land use decision-making structure lends itself to an especially politicized process.

5.3.1 *Mixing Politics and Discretionary Duties*

With the City Council acting as both legislative body and special permit granting authority, Newton's system lacks the objective voice of review offered by an independent planning board. Garnering approvals for the Austin Street project was contentious, in part due to this reason. The proposal satisfied the guidelines set forth in the Comprehensive Plan, Mixed Use 4 zoning district and RFP for the site, but aspects of the project were still intentionally politicized in order to hold back approvals. The anti-development opposition led by the Newton Villages Alliance continued to cite concerns around

Figure 48. Diagram of Newton Comprehensive Plan and Austin Street Project Process



standards of parking, massing, density and height – parameters that had all been defined and approved by the special permit granting authority and issued for public comment and review before the proposal had even existed. In the hypothetical scenario in which the special permit were denied, the only rationale would have been that the proposal was objectionable because the special permit requirements themselves were objectionable.

The law affirms the right of the special permit granting authority to deny a permit even if all special permit requirements are met. However, the question of whether the SPGA can deny a permit precisely because it *did* meet the specified requirements is an entirely different matter. The possibility of this nearly occurring with the Austin Street project is a signal that politics mixing with discretionary duties can potentially result in unreasonable outcomes. An independent board that can exercise discretionary review insulated from political influences is a safeguard against the most vocal energetic participants undoubtedly getting their way with elected representatives.

Figure 49. Summary of Santa Monica and Newton Case Studies: Plan, Project and Permit Processes

	<i>Santa Monica</i>	<i>Newton</i>
Plan	LUCE 2010	Newton Comprehensive Plan 2007
Purpose	Began as update of Land Use element, but scope expanded to include both Land Use and Circulation elements of General Plan, the first update of these elements since 1984.	First full update of General Plan since 1979.
Timeline & Engagement Process	Six (6) years between 2004 motion by City Council to adoption of final plan in 2010, including 25 public hearings and 12 community workshops.	Nine (9) years between appointment of Framework Plan Committee in 1998, adoption of Framework Plan in 2001, appointment of the Comprehensive Plan Advisory Committee (CPAC) in 2002 to final adoption of the plan in 2007.
Plan Author	City planning staff	Comprehensive Plan Advisory Committee (CPAC), 29 member appointed group of resident professionals
Plan Adoption	Recommendation by Planning Commission to the City Council. City Council approved by unanimous vote of 7-0. Adopted July 2010.	Recommendation by Planning and Development Board to the Board of Aldermen. Board of Aldermen approved by near unanimous vote of 20-1 (3 absent). Adopted November 2007.
Land Use/Zoning	Downzoned 96% of city area. Upzoned along mixed-use boulevards and in priority districts (Bergamot Station, Downtown). Formalized three-tier entitlements system (By-right, Discretionary Permit, Development Agreement)	Proposed increasing “build-out” capacity by 1,000 housing units, but no specific zoning changes were proposed.
Priority Sites	Three (3) priority development areas -- Bergamot Station, Downtown and Civic Center, Memorial Park – and a city-wide strategy along city boulevards.	Four (4) parking lots used for illustrative purposes: Austin Street, Richardson Street, Craft Street, Lyman Street
Project	Bergamot Transit Village	28 Austin Street
Process	Initial proposal Bergamot Area Plan Public hearings	HAPI: Citizen’s group initial recommendations City RFI: Request for Interest solicited from private developers JAPG: Appointed body approves “surplus-ing” the site MMTUF: Appointed body creates new zoning designation suitable for intensity of use desired on the site City RFP: Request for Proposals solicited from private developers Evaluation: Creation of criteria, formation of committee, evaluation of submissions, confirmation by Mayor

Figure 49. Summary of Santa Monica and Newton Case Studies: Plan, Project and Permit Processes (continued)

	<i>Santa Monica</i>	<i>Newton</i>
Petitioner	Hines 26th Street, LLC	Austin Street Partners, LLC with City of Newton as co-petitioner
Applicable Zoning	Bergamot Area Plan Tier III requirements	Mixed Use 4 (MU 4) per zoning ordinance adopted October 2012
Zoning Relief Requested	None, per Tier III requirements	None
Resident Organizations	Residocracy	Newton Villages Alliance Friends of Austin Street
Approvals Requested	Tier III Development Agreement	Special Permit
Description	A contract between the City of Santa Monica (a municipal corporation) and Hines 26th Street LLC (a limited liability company) that is approved by City Council and adopted by municipal ordinance.	An administrative order by the City of Newton that grants the petitioner permission “to construct a building or establish a use that is not allowed by right.” In Newton, special permits are always required for multifamily housing and larger commercial projects. ¹⁶
Granting Authority & Approval Process	Residocracy City Council, upon consideration of recommendation by Planning Commission (an appointed group of 7 resident professionals). City Council majority vote of 7 (4-3) needed for approval.	City Council, upon consideration of recommendation by Land Use Committee (a committee of the City Council). City Council two-thirds vote of 24 (16-8) needed for approval.
Outcome	Approved 4-3 (February 11, 2014) Rescinded 4-1 (2 abstaining) (May 13, 2014)	Approved 17-6 (1 absent)
Subject to	Referendum, within 30 days of adoption	Lawsuit or appeal Rezoning

1 Gordon, Tracy M. (2004). The Local Initiative in California. Public Policy Institute of California.
2 California Elections Code Section 9237.
3 Certification of Qualification of Referendum Petition and Direction to City Staff. Report to Mayor and
4 City Council. April 22, 2014.
5 Interview with Jerry Rubin, Santa Monica Resident. February 19, 2016.
6 Davis, Gleam and Terry O'Day. Defending the Hines Vote. Santa Monica Daily Press. February 28, 2014.
7 Islas, Jason. "City Council Scuttles Plans for Bergamot Transit Village." Santa Monica Next. May 2014.
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9 Ibid.
10 Draft Downtown Community Plan. City of Santa Monica. Planning & Community Development.
11 February 2016.
12 Martin, David. Memo: Updated on Status of Downtown Specific Plan and Anticipated Approach to
13 Negotiating Community Benefits. City of Santa Monica Planning & Community Development.
14 October 13, 2015.
15 "A Dangerous Rise in Development Agreements." Santa Monica Daily Press. October 10, 2015.
16 Martin, David. Memo: Development Agreement Application and Processing Procedures and
Consideration of Policy Related to Average and Minimum Unit Sizes in Mixed Use Developments.
December 11, 2012.
Ibid.
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"Special Permits Step-by-step." City of Newton. Retrieved from [http://www.newtonma.gov/civicax/
filebank/documents/32194](http://www.newtonma.gov/civicax/filebank/documents/32194)

Chapter 6 Implications

“It is a common error of technicians to confuse what is technically possible with what is politically possible.”

-- -- ROBERT WALKER, THE IMPLEMENTATION OF PLANNING MEASURES

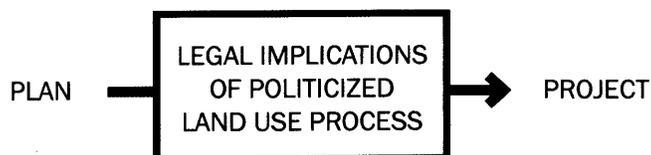
The cases of Santa Monica and Newton illustrate two different settings, projects and legal constructs, with one commonality: belying both cases were NIMBY forces that leveraged the legal tools available to them to politicize a land use decision beyond reason. In Santa Monica, the Residocracy-led referendum was able to force the City Council into rescinding their vote, not based on substance, but through the threat of a social breakdown in civility and reasonableness. In Newton, anti-development Newton Villages Alliance stirred up such militant resistance to development of any kind that the City Council was nearly pressured into de-legitimizing the carefully negotiated development standards that the city had itself issued.

The prevalence of discretionary review in both cities makes the question of how avoid the pitfalls that these projects experienced a salient one. Drawing on the cases of Santa Monica and Newton, I revisit the role of politics in local land use decision-making, make a case for integrating political safeguards in planning, and offer a framework of strategies to enable the city planner to best operate in this politicized landscape.

6.1 EMBRACING POLITICS AS THE PLANNER

The conclusion that land use decisions can and do become politicized is not a new one. However, while the fact of it may be widely acknowledged, it is uncertain whether this translates to any proactive changes in planning and development processes that actually improve implementation outcomes. As Walker points out in his 1950 essay, maintaining a planning body outside of the executive branch may seem to rightly insulate planning from politics but it also effectively disconnects it from implementation. His recommendation to replace the free-standing planning department with an advisory board directly embedded in the executive branch has not been realized, and I do not recommend its strict adoption here either. However, I do rely on Walker’s core embrace of politics as a tool for planning implementation, and suggest that cities might benefit from adopting more tactical strategies to get their plans closer to being built projects.

Figure 50. Diagram of Research Findings



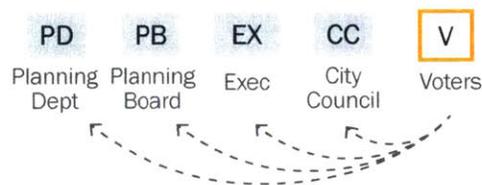
I offer two strategies at the opposing ends of the spectrum. First, facilitate direct ideation from community members through the appointment of citizen task-forces that promote citizen leadership and co-learning around community concerns, while maintaining traditional public hearings as

a platform for structured support and dissent. By integrating more citizen leadership through a distributed task-force approach, planning priorities receive thorough grassroots vetting and propagate through a network of peers. Second, build up and maintain confidence in this enhanced task-force process by insulating outcomes from outright repeal. This reinforces the legitimacy of its preceding process and motivates stakeholders to imbue both planning and project-related hearings with genuine commentary of substance.

6.2 INTEGRATE CITIZEN LEADERSHIP TO PROMOTE PLANNING PRIORITIES

Public engagement in its current individualistic binary form does not yield true buy-in or nuanced dissent. Many variations of the community meeting exist, with one common thread throughout with city planners playing the role of the facilitator aiming to draw out opinions or reactions from the invited public. The structure of the official public hearing before either City Council or Planning Board is less varied, with members of the public given the opportunity to state their opinions, support or objections to a process or project at hand within a specified span of time. Much has been said in critique of both typologies of public discourse; James Freas of Newton offers, "...public hearings are the lowest form of community engagement." With the intent to promote the long-term alignment of discretionary decision-making with public opinion, I propose a revisitation of the task-force approach to planning, which I will demonstrate already exists to a surprising capacity in Newton, to ensure that more plans get built into projects.

Figure 51. Diagram for Integrating Citizen Leadership in Planning Process



6.2.1 Getting from Plan to Project: The Task-Force Approach

I argue that a version of Nash and Durden's task force approach to planning is already in place in Newton, and responsible for a large part of the grassroots support around the Austin Street project that eventually secured its special permit approval. The progression of ideation to implementation for the Austin Street project approximated the core of Nash and Durden's suggested process, that is, tapping diverse citizen expertise to develop planning priorities and be an advocate presence in the community. For the Austin Street project, this process involved at least 6 separate appointed citizen or citizen-representative-mixed task-forces which helped create a distributed network of committed citizen leaders in sustained dialogue around the project. This, more than any other formal city-led planning process, was the driving force in laying the groundwork for the Friends of Austin Street broad-based coalition of grassroots community groups that was ultimately able to get the project approved.

Of the 8 committees tasked with approving the Austin Street project along some point in its public review, six were citizen or predominantly citizen groups. The city's 8-member Real Property Reuse Committee declared "surplus" status of the parcel and the City Council, acting as the city's special permit granting authority, executed final approval of the project. However, all other stages of review were performed by six other appointed and volunteer organizations composed predominantly of citizen

experts. These included the Framework Plan Committee, Comprehensive Plan Committee, Housing Action Planning Initiative (HAPI), Joint Advisory Planning Group (JAPG), Mayor’s Mixed-Use Task Force and Austin Street RFP Evaluation Committee.

Figure 52. List of Committees Involved with Austin Street Project Approvals

	Formed by	Membership (if known)
Framework Plan Committee	Mayoral appointment	25 members (3 Aldermen, 22 residents)
Comprehensive Plan Advisory Committee (CPAC)	Mayoral appointment	29 members (4 Aldermen, 25 residents)
Housing Action Planning Initiative (HAPI)	Citizens' volunteer	Unknown
Real Property Reuse Committee	Subcommittee of Board of Aldermen	8 members (8 Aldermen)
Joint Advisory Planning Group (JAPG)	Mayoral and Board of Aldermen joint-appointment	14 members (14 residents, including 7 direct abutters)
Mayor’s Mixed Use Task-Force (MMUTF)	Mayoral appointment	17 members
Austin Street Project Evaluations Team	Mayoral appointment	7 members ² (1 Alderman, 6 residents)
Special Permit Granting Authority	City Council	24 members (24 Councilmembers)

At first glance, the process to getting to the Austin street proposal seems circuitous and longwinded. However, I argue that this series of appointed working groups was the key that involved a diverse network of citizen leaders in sustained meaningful dialogue around the project’s goals, eventually leading to the formation of the Friends of Austin Street (FOAS). By many accounts, the Friends of Austin Street was the sole reason the project was approved. In the words of Andrea Kelly, the Friends of Austin Street pro-project lobby created a force of support for the project that was a “[p]hysical reminder [to the councilmembers] that there was support for change.”³

Figure 53. Friends of Austin Street Homepage on Date of Austin Street Vote



Despite its eventual success, it is doubtful whether the Austin Street process could (or should) be intentionally replicated for another project. Rather, the takeaway is for cities to embrace, not deny, the political nature of their land use decisions and to therefore recognize the need for visionary citizen involvement in capacities outside of the public hearing context. In effect, cities benefit by being able to do planning and engagement at once. By putting a distributed group of peer leaders at the helm of a planning process in a way that serial touch-points of public hearings do not, appointed citizens educate themselves and their fellow task force members as they strive to do well the task of planning they have been charged with. At the same time, these citizens are already ideally embedded in the city as resident peers to facilitate informed substantive discussion with the diversity of opinions that assuredly exist in the community. By distributing leadership responsibilities to motivated citizen experts, the task-force approach takes the best of both worlds, combining technical proficiency and community authenticity in a group empowered to make real decisions.

Looking towards implementation, cities without such processes need not suddenly disrupt their established planning norms, but should rather gradually build up involvement from citizen leadership through the addition of appointed task-forces for specific planning initiatives. To prepare, cities can take concrete steps to inventory existing resident organizations and interest groups in the city. A specific high-interest planning initiative should then be selected as the pilot for the initial task force roll-out. Utilizing information learned from the inventory exercise, city representatives or the mayor's staff can offer appointments to citizen leaders that meet predetermined standards of professional experience and civic excellence. Alternatively, the city could develop an accessible application process that clearly ascertains relevant expertise, then, solicit applications from the community at large to serve on the task force. Each of these implementing approaches should result in increased involvement of citizen talent, both as expert advisors and in the important role of creating a distributed network of local thought-leaders with personal buy-in into the city's future.

6.3 PROTECT TASK-FORCE OUTCOMES FROM OUTRIGHT REPEAL

Disruption of the public decision-making process can result in breakdown of public confidence in the project or plan itself. The Hine's Bergamot Transit Village is a clear example. Vulnerable to late-stage repeal by referendum, the project's repeal pierced the process of structured public input that had taken place over 7 years, and resulted in a breakdown of confidence around the LUCE itself. However, the aftermath went further than just the plan or project alone. The launch of Residocracy's ballot initiative to enact mandatory voter approval for all non-by-right development projects points to a deeper rejection of the local planning structure itself. In Santa Monica, the salient fact is that a well-organized oppositional group was able to orchestrate these interventions through fully legal mechanisms; in effect, the law provided a way for its own public decision-making process to be undercut. I propose that if confidence in public decision-making processes are to continue to be a bedrock of public policy, cities must take measures to bolster legitimacy of their review processes by protecting the outcomes of these carefully vetted public process from outright repeal.

The prevalence of discretionary review in Santa Monica and Newton makes pertinent the particular role of discretionary decision-making in planning implementation.^{xiv} In the context of zoning, the

xiv In Santa Monica, discretionary review is required for any project seeking above Tier I entitlements or anything exceeding 7,500sf of new construction. In Newton, discretionary review is required for any project exceeding 9,000sf of new construction.

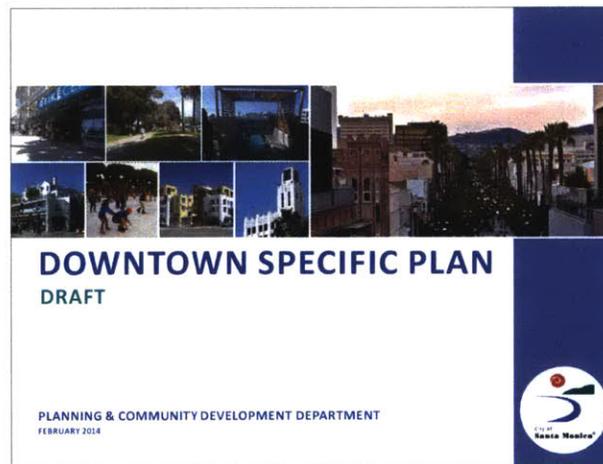
discretionary review decision-making process relies on the ability of the reviewing agency to make objective judgment on behalf of the greater community. If the reviewing agency can be swayed by political pressure, the system of objective discretionary review defaults to a political one.

This is not to say public input through vigorous representation of all points of view should not be undertaken. There are specific legal and procedural measures a city can take to ensure both meaningful citizen input and uphold the purpose of discretionary review. The efficacy of these considerations depend wholly on the existing development review structure in each city. In Santa Monica, the ability to repeal legislative acts is codified through the right to voter referendum. Barring the highly unlikely repeal of voter right to initiative and referendum, the city would need to navigate the existing legal construct in other ways, such as avoiding the use of Development Agreements or reclassifying Development Agreements as administrative acts instead of legislative acts.

6.3.1 Protect Against Vulnerability of Development Agreement to Referendum

Santa Monica has already begun attempting to enact the first strategy in its draft of the Downtown Community Plan, which removed the negotiated Tier III Development Agreement in favor of a non-negotiated Tier III option.⁴ Currently under review by the public in its draft form, the Downtown Community Plan won't reach final adoption until Spring 2017, but the impending review of the revised Tier III option will likely yield illuminating results for testing the viability of this strategy for broader implementation.⁵

Figure 54. Cover of Santa Monica Downtown Specific Plan Draft



By removing the negotiated Development Agreement from the Downtown entitlements system, the city is responding in the most nimble terms available to try to sidestep voters' right to exercise referendum. A second but more ambitious strategy to insulate discretionary review from late-stage repeal would to revise the core legal categorization of Development Agreements from legislative act to administrative order.

Additionally, states that have adopted legislation to enable cities to enter into Development Agreements are not uniform in their consideration of what a development agreement, a contract entered by the local government as a municipal corporation, is. Hawaii is one such state that has deemed development agreements "an administrative act of the government body made party to the agreement" rather

than a legislative act.⁶ If California were to make the same categorization, development agreements would then be the same in legal terms as any other discretionary permit, and no longer be subject to referendum.^{xv} Though this strategy has the dual benefit of maintaining the Development Agreement as a viable tool as well as insulating it from late-stage referendum, it is also a lofty and unlikely change that the city is right to not rely on.

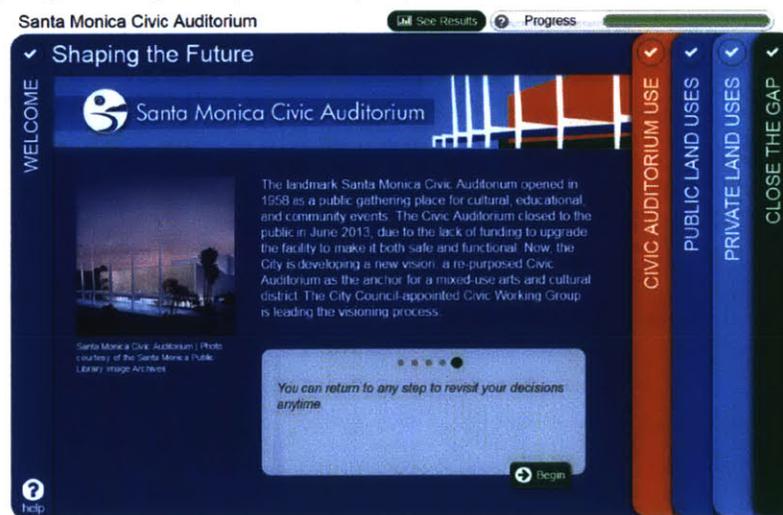
6.4 AUXILIARY TOOLS FOR INNOVATION AND REFORM

An engaged, informed and civilized community base is the core requisite to a functioning local government. The above task-force approach presents cities' best option for cultivating long-term authentic planning priorities and effective citizen leadership. However, cities also have other auxiliary tools available to them to better facilitate implementation of planning priorities into projects. I touch on two notable examples of technological tools and procedural reform pertinent to the discussion here. Platforms piloting new forms of participatory engagement have emerged in recent years.

6.4.1 "Trade-off" Public Engagement Tool

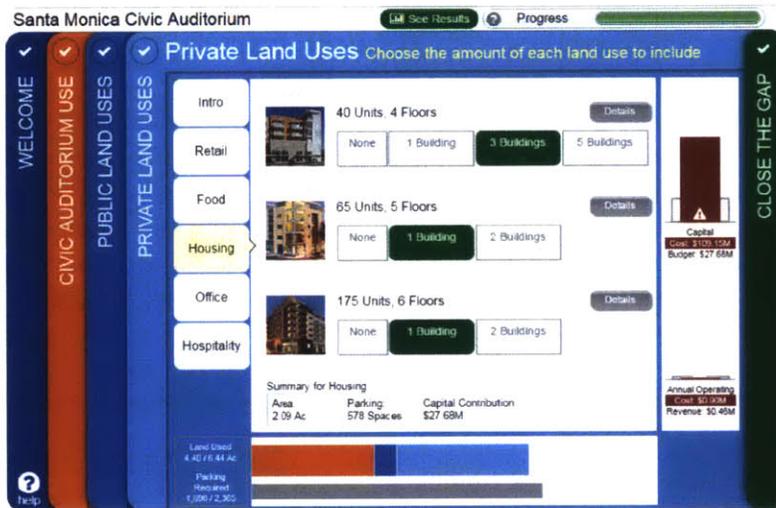
Among such tools, MetroQuest, a Canada-based software company, stands out for its customized public engagement platforms that assist cities in both educating and gathering community input towards land use decisions. In February 2015, the City of Santa Monica had the experience of utilizing MetroQuest's services in a community visioning process around the redevelopment of the city's Civic Auditorium and surrounding 10-acre site.⁷ The "tradeoff tool" featured an online web interface that could be accessed by the public for 2 weeks following an in-person 2-day community workshop, and allowed participants to select different programmatic and massing approaches to the site. The software provided participants with real-time financial feedback, including capital and net operating costs and as well as potential sources of funds ranging from private development, taxes, bonds or philanthropy.⁸ Programmatic and financial tradeoffs that resulted from the selections were communicated back to participants in real-time, resulting an interactive education process that made the tradeoffs associated with land use decisions transparent to participating members of the public.

Figure 55. MetroQuest Software Interface for Santa Monica Civic Auditorium Project



xv If categorized as administrative order, Development Agreements would likely still be subject to appeals.

Figure 56. Options Available for Participant Selection in Santa Monica Civic Auditorium MetroQuest Software



Remy Monteko of HR&A Advisors, consultant to the city for the project, commented that MetroQuest's tool was selected after the evaluation of over 70 other engagement services, most of which were surveys that were "not complex enough to show tradeoffs."⁹ Analysis of the 1,698 responses received shows evidence that perhaps MetroQuest's software was able to promote critical thinking around tradeoffs: when participants took into account the need to balance the project budget, preferences converged around one proposal which contained more privately operated uses but was more financeable than other options focused on non-profits and local community space.¹⁰

6.4.2 Charter Reform

Tools like MetroQuest's software have the potential to help members of the public better understand the tradeoffs that political decision-makers are asked to consider when they represent their communities. However, sometimes the decision-makers face procedural processes that are themselves a hindrance to effective decision-making, and amendment of these procedures may be the central change needed to achieve better planning outcomes; Newton is a clear example of this.

Figure 57. Homepage of the Newton Charter Commission



While the average size of the city council for Massachusetts cities of comparable size is 11 members,^{xvi} Newton currently has 24 active members, making it the largest local legislative body in the state. Additionally, the city council also serves as the city's special permit granting authority, thus requiring land use decisions in Newton to reach agreement by a 2/3rds vote – 16 of the council's 24 members.^{xvii} As demonstrated by the Austin Street project, reaching consensus on land use decisions between 16 voices is no small a feat. In an effort to reform this structural hurdle in Newton's decision-making procedure, there have been multiple movements to reform the city charter in Newton's history, with a promising initiative currently underway. In November 2015, Newton voters elected a 9 member Charter Commission that began meeting in February 2016 to review the city's charter.^{xviii, 11} In April 2016, the Commission voted unanimously in a straw poll to recommend the reduction of the current 24-member council with 3 members from each of 8 wards, to a 13-member council with 1 member from each of 8 wards and an additional 5 members elected at-large without a residency requirement.¹² The Charter Commission will continue to meet biweekly and hold a total of 3 public hearings before issuing their final recommendation in September 2016.^{xix}

6.5 CONCLUSIONS

This research was originally motivated by the desire to understand why plans that undergo thorough public engagement processes and are adopted with broad-based support still encounter enormous opposition when it comes time for implementation. My examination of Santa Monica and Newton reveal that while a plan is a useful tool for enumerating planning priorities and even priority development sites, it ultimately remains a public policy document that outlines intention without equal means for implementation. Recognizing the power of the actual underlying legal framework in planning raises the question of what other tools with real legal effect actually do exist. My case studies yield two specific examples: the voter-initiated referendum in Santa Monica and the special permit approvals process in Newton. Taking lessons learned from the illustrative cases, I offer recommendations for cities aiming to improve plan implementation outcomes.

First, cities should attempt to objectively gauge the level of politicization in their land use processes, and strive to more meaningfully integrate citizen leadership to mitigate the effect of particularly politicized structures. This may look like an examination of current public engagement practices, and complementing them with a task-force approach that could better tap citizen expertise, establish broader legitimacy in the process and cull the most broadly supported community priorities from motivated citizen leaders.

xvi Cities with populations greater in 50,000.

xvii State law requires a 2/3rds vote by the city's special permit granting authority for approval.

xviii Massachusetts law permits cities two methods of amending their charters, (1) petitioning and electing a home rule charter commission or (2) petitioning the state legislature for special legislation. In Newton, the League of Women Voters initiated a charter reform petition in November 2012, which was certified by the city clerk as surpassing the required threshold of 15% of the city's voters in July 2015.

xix Charter change specifically to reduce the size of the municipal legislative body has a long history in the state, and recent successful precedent. According to DHCD, over 130 charter commissions have been elected by voters in the state since the Home Rule Amendment was adopted into state law in 1966. The city of Everett, before the successful amendment of their charter, had a 25-member bicameral legislature instituted by its 120-year old charter, which was subsequently reduced to a single 11-member council in 2011.

Second, cities should carefully consider the legal mechanisms by which they engage developers. If referenda are permitted in the city, the use of development agreements should be weighed carefully before action. Depending on how development agreements are categorized by the state, executing a project through this mechanism could open up the project to a referendum that could forcibly kill the project. Therefore, the political climate and legal framework that development agreements take place in should be carefully understood.

Underlying each of these recommendations is clear recognition of the inevitable role of politics in planning. In one sense, the politicization of planning suggests that planners should perhaps get more involved in the politics themselves; the integration of citizen task-forces appointed with motivated resident experts may be the key. On the other hand, this politicization of planning points to the need to protect decisions that are the outcome of a careful public process from outright repeal; cities with experience with referenda and development agreements should take heed. Together, these recommendations encourage a more politically-strategic and engaged approach to planning, suggesting that plan implementation will occur best when legal mechanisms and community political will align with the vision set forth in a city's best laid plans.

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