

**CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM**

DATE: February 12, 2016
TO: All Members, City Council
FROM: Ouida C. M. Young, Associate City Solicitor
Suzanne P. Egan, Assistant City Solicitor *SPE*
RE: 135 Wells Avenue, LLC v. Housing Appeals Committee, et al,
Land Court Misc. No. 16 PS 000034-RBF

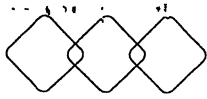
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Newton City Clerk
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David A. Olson, CMC
Newton, MA 02459

Attached for your review prior to the Executive Session scheduled for February 16, 2016 is 135 Wells Avenue, LLC's ("Wells") settlement offer made in connection with its recent appeal of the Housing Appeals Committee's (the "HAC") decision upholding the Newton Zoning Board of Appeals' (the "ZBA") denial of Wells' comprehensive permit application. This litigation arises out of Wells' request for a comprehensive permit to construct a 331 multi-family development at 135 Wells Avenue located in the Wells Avenue Office Park.

As background, Wells initially requested both the Board of Aldermen and the ZBA release the deed restriction. The Board denied the request. The ZBA then decided that only the Board of Aldermen had the authority to release the deed restriction and denied Wells' comprehensive permit application. Wells appealed the denial to the HAC. At issue was whether the ZBA could waive a deed restriction held by the City which restricted the use of Wells Avenue Office Park property to light manufacturing and imposed dimensional controls as well as no-build zones.

HAC upheld the ZBA's denial ruling that the deed restriction is an interest in real property and therefore was not a requirement or regulation over which the ZBA has authority. Wells has appealed the HAC decision to the Land Court. As a part of the Land Court appeal, Wells has resubmitted a settlement proposal offering the same public "benefits" to the City as its March 11, 2015 offer made during the HAC litigation, with one exception, it no longer has offered to create additional commercial development in the park.

The Settlement Offer is attached and will be discussed during the Executive Session.



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February 5, 2016

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Re: *135 Wells Avenue, LLC v. Housing Appeals Committee*,
Land Court Case No. 16 PS 000034

Dear Attorneys:

In accordance with the Land Court's Case Management Conference order dated January 19, 2016, this letter transmits 135 Wells Avenue, LLC's offer of settlement in this matter.

135 Wells presents its offer against the following backdrop. 135 Wells first began discussing plans with City officials for residential uses of 135 Wells Avenue in 2013. In the intervening years, in public forums, private meetings, and HAC-ordered mediation, 135 Wells has made offer after offer to the City to obtain approval of a multi-family development at 135 Wells Avenue. At no time has the City given 135 Wells a counter-offer.

135 Wells thus renews what it believes to be the last offer it presented to the City, made in March 2015 in connection with the parties' HAC-ordered mediation. The proposals below go well beyond any condition or mitigation ever ordered by HAC under chapter 40B under the circumstances facing the parties in this case. 135 Wells remains open, as it has at all times since 2014, to negotiate in good faith over development of 135 Wells Avenue, provided that such negotiations result in a meaningful multi-family project.

The Proposal

1) Notwithstanding the City's favorable peer reviews of the project's traffic impacts, in order to further improve traffic capacity and safety into and out of the Wells Avenue Park and enable future commercial development, 135 Wells will expend **\$1,000,000 to redesign and reconstruct the Wells Avenue/Nahanton Street Intersection** (based on the plans and conditions previously submitted to the Newton Zoning Board of Appeals (the "ZBA")) with customary City design review and approvals and customary City coordination. This removes a major permitting and marketing barrier to the expansion of commercial space within the Park.

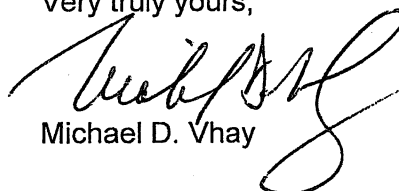
2) 135 Wells will provide **\$1,000,000 for the funding of other affordable housing initiatives within the City of Newton**. The funding may be directed by Board of Aldermen to

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either existing City or non-profit agencies or to a newly created agency, and the funds used as the Aldermen direct.

- 3) 135 Wells will pay **\$223,000 in infiltration and inflow fees.**
- 4) 135 Wells will pay **\$170,226 in tree-removal fees.**
- 5) 135 Wells will provide **\$750,000 for traffic and other Wells Avenue infrastructure improvements within the Wells Avenue Park.**
- 6) Any 135 Wells project-permit obligations requiring financial funding may be met by 135 Wells by the payment of such funds to the City (or its designated agencies or escrows) within ten days after the issuance of a building permit for the construction of the 135 Wells project.
- 7) In exchange for the foregoing promises, (a) the Housing Appeals Committee, with the City and the ZBA's consent, shall grant a Comprehensive Permit, and (b) the City shall grant all necessary waivers of the Restrictive Covenant, for construction and operation of the 135 Wells project as 135 Wells proposed it in December 2014, including 334 units of workforce housing with 25% affordable units (as per Chapter 40B). The City and the ZBA also shall promise not to oppose the 135 Wells project further, in any manner or in any forum.
- 8) The Housing Appeals Committee, the City and the ZBA shall approve this Settlement no later than February 29, 2016.

Very truly yours,



Michael D. Vhay

cc: Mr. Jay Doherty
Valerie Moore, Esq.