



Real Property Reuse Committee Report

City of Newton **In City Council**

Tuesday, May 17, 2016

Present: Councilors Albright (Chair), Lennon, Brousal-Glaser, Crossley, Danberg, and Kalis

Absent: Councilors Gentile and Fuller

City staff present: Ouida Young (Assistant City Solicitor)

#71-09(4) Amend Board Order 71-09(2) to allow the purchase of a subsurface easement
TERENCE P. MORRIS on behalf of HERRICK ROAD REALTY TRUST seeking to amend Board Order #71-09(2) for a renewable lease for a subsurface easement beneath city-owned land 1294 Centre Street, Newton Centre, for vehicular access to 17-31 Herrick Road; the petitioner is seeking to purchase the easement. [04/20/16 @ 8:44 AM]

Action: **Real Property Reuse Approved 5-0-1 (Kalis abstaining)**

Note: The petitioner is seeking an amendment to a previous board order authorizing the Mayor to enter into a renewable lease for a subsurface easement with the petitioner. The petitioner received a special permit for 17-31 Herrick Road from the Board of Aldermen on December 3, 2009 for a mixed-use building with four dwelling units, commercial space, and underground parking. The parking required an easement through the city owned property at 1294 Centre Street to provide access the underground parking. On April 6, 2009, the Board of Aldermen approved the renewable lease of a subsurface easement at 1294 Centre Street. The City's Law Department since determined that a renewable lease for a subsurface easement cannot be implemented.

When the special permit was granted in 2009, the City was considering constructing a parking garage over the MBTA tracks and the petitioner's property. The petitioner did not exercise the special permit within the allowed time due to the possibility that the City would move forward with the parking lot. The petitioner, Stuart Rothman, was very cooperative and willing to work with the City during the discussions related to the public garage, which lasted a number of years. In the end, the Administration determined that it did not wish to pursue the parking garage.

The petitioner petitioned for and received a new special permit with a condition that the petitioner obtains an easement from the City that allows access to the underground parking garage from Herrick Road prior to the issuance of a building permit for the construction. By amending Board Order #71-09(2), the Mayor would have authorization to grant and sell the petitioner the subsurface easement for the proposed underground garage at 17-31 Herrick Road. The subsurface easement would be located in the side setback of 1294 Centre Street. The easement is unlikely to cause any problems with the reuse of that property and may limit the size of any new construction on the site.

There was a statement that public parking is still an issue in the Newton Centre area and a public parking garage across the MBTA tracks would resolve the issue. If the City Council approves the authorization of the easement, and no alternate action is offered by the Mayor regarding the proposed land swap it will essentially end any chance of building a public garage in that location. It was pointed out that there are other potential locations in Newton Centre for a parking garage and that the City has not moved forward with the garage over the tracks. It does not seem appropriate to hold up the petitioner any longer. The Committee discussed docketing a request for a discussion with the Administration regarding a public garage over the MBTA tracks and the possibility of a land swap with the petitioner in order to proceed with the construction of a public garage. The petitioner and his attorney, Terrence Morris, worked for a number of years to get a land swap to no avail. Mr. Rothman would be open to a land swap with the City, as long as the petitioner's project can proceed, as the petitioner has a definitive timeframe in which to exercise his special permit. The petitioner intends to continue being cooperative with the City in regards to the parking garage.

Associate City Solicitor Ouida Young stated that before the City Council authorizes the Mayor to grant an easement, it should set a minimum price for the subsurface easement. The petitioner agreed to pay an independent appraiser to set a minimum value for the easement. The Committee agreed that the minimum price should not be less than the appraised value for the subsurface easement. In addition, the petitioner needs to submit a stamped plan of the subsurface easement before the City Council meeting. With that, Councilor Danberg moved approval, which carried by a vote of five in favor with one abstention.

#92-16 Amendments to the Real Property Reuse Ordinance

COUNCILORS ALBRIGHT AND KALIS requesting amendments to Chapter 2, Section 7. Sale or lease of city owned real property, of the City of Newton Revised Ordinance, 2012 (The Real Property Reuse Ordinance) to clarify how properties are classified in regards to purpose, use, and ownership; the procedure to handle reused properties; and to address any other changes that might be needed. [02/17/16 @ 12:04 PM]

Action: Real Property Reuse Held 6-0

Note: The Committee held the above item on March 22, 2016 for further discussion and a draft ordinance that incorporated a number of suggestions that were discussed at the meeting. Associate City Solicitor Ouida Young provided the Committee with the attached draft. She requested that the Committee members take some time to review the draft ordinance and provide feedback then take comments from the public regarding the proposed ordinance amendments.

Ms. Young also informed the Committee that there is still some additional work needed on the draft ordinance related to simplifying the wireless communication equipment and easements process. It seems to make sense to combine those provisions into a single procedure and to clarify the easement process.

The Committee will review the draft and Ms. Young will continue to work on the draft. She will provide the Committee with redline and clean versions of the draft ordinance. The Committee will continue to discuss the draft ordinance at its next meeting on June 21, 2016

It was pointed out that the Real Property Reuse Process Flow Chart needs to be modified to reflect any changes to the Real Property Reuse Ordinance. Vice-chair David Kalis agreed to work with Ms. Young to update the flow chart to reflect any changes. Councilor Danberg moved hold on the item, which carried unanimously.

The Committee adjourned at 8:12 PM.

Respectfully submitted,

Susan S. Albright, Chair

CITY OF NEWTON

IN CITY COUNCIL

2016

That, pursuant to Section 2-7 of the Revised Ordinances of 2012, as amended, upon the recommendation of the Real Property Reuse Committee through its Chair Susan S. Albright, it is hereby

ORDERED:

That Board Order #71-09(2) approved on April 6, 2009 be amended by authorizing His Honor the Mayor to grant a subsurface easement for vehicular access consistent with proposed plans prepared for the Herrick Road Realty Trust for a portion of land containing approximately 845 square feet, which is part of a city-owned parcel containing 16,160 square feet of land located at 1294 Centre Street, Newton Centre, known as Section 61, Block 35, Lot 3, in a Public Use zoned district and rescinding the authorization to enter into a lease for the subsurface easement,

ORDERED:

That the easement be granted for a monetary consideration of at least the appraised value of the land as determined by an independent appraiser obtained by the City but paid for by the grantee,

FURTHER BE IT RESOLVED:

- a. That if any relocation of utilities is necessary, the utilities shall be located underground at the grantee's expense.
- b. That the grantee shall pay all costs related to the grant of the easement including preparing the plan of easement to be recorded. There shall be no expense to the City of Newton.

That if any relocation of utilities is necessary, the utilities shall be located underground at the grantee's expense.

Under Suspension of Rules
Readings Waived and Adopted

(SGD) DAVID A. OLSON
City Clerk

(SGD) SETTI D. WARREN
Mayor

May 17, 2016 Draft – for discussion purposes only

Sec. 2-7. Disposition of interests in~~Sale or lease of~~ city owned real property.

A. Whenever a vote is taken or a policy decision has been adopted by the appropriate city agency or officer to declare any city owned real property or portion thereof available for potential sale or lease, or for continued use of such real property by the city agency or officer for a different purpose, the procedure for determining the use to which the real property shall be put and the terms of any disposition thereof shall be in accordance with the provisions of this section. Notwithstanding the foregoing, an easement in city owned real property or the lease of city owned real property for the purpose of wireless communication equipment or solar energy generation shall be granted in accordance with the procedures in subsection () of this section. ~~this section shall not apply to the lease of city owned real property for wireless communication equipment which is permitted as of right pursuant to section 30-6.9, provided, however, where the lease of city owned real property for wireless communication equipment is subject to the requirement of a special permit pursuant to section 30-6.9, then the procedures outlined in subsection (8) of this section shall apply. Notwithstanding the foregoing, this section shall not apply to the lease of city owned real property for solar panels; provided, however, that in the case of such a lease the procedures outlined in subsection (9) of this section shall apply.~~

- (1) The city agency or officer declaring said property available for sale or lease, or for use by the same city agency or officer for a different purpose, shall submit to the clerk of the city council a written record of the vote or policy decision. The city agency or officer shall also state whether such sale or lease shall be conditioned upon continued municipal use of the real estate for the same or a different municipal purpose within thirty (30) days of said vote or decision. The clerk of the council shall forthwith notify the director of planning and development of said vote or decision. Within thirty (30) days of said notification, the director of planning and development shall submit a written report to the clerk of the council with recommendations as to whether this property, or any portion thereof, should be transferred to another city agency or officer or declared available for sale or lease including any conditions regarding continued municipal use unnecessary for all municipal purposes. Upon receipt of the report of the director of planning and development, the clerk of the council shall place the matter on the docket of the city council for referral to its real property reuse committee. The membership of the real property reuse committee shall include one councilor from each ward in the city, to be designated by the president of the city council. The chairman of the real property reuse committee shall be designated by the president of the city council.

Comment [OCMY1]: No sure that 30 days is sufficient time for this report to be written. Plus, as a practical matter, planning should be initially determining if any other City agency or officer wants to have the real property transferred to the custody of that agency or officer.

- (2) The real property reuse committee shall oversee the following steps:

- a) There shall be an initial determination made as to whether some or all of the subject property shall ~~be continue to be used by the sending city agency or officer, transferred to another city agency or officer, or declared available for sale or lease including any conditions regarding continued municipal declared available for sale or lease use.~~ Prior to making this initial determination, the real property reuse committee [may][shall] hold a public hearing to solicit public comment. If the decision is made that the property continue to be ~~utilized~~used by the sending city agency or officer, or if the decision is made to transfer the care, custody, management or control over the subject property to another city agency or officer, then this recommendation shall be referred to the city council. In such event, the city council may, by a vote of two-thirds (2/3) of the full city council, transfer the care, custody and control of the subject property to another city agency or officer, or to the same city agency or officer for use

Comment [OCMY2]: Is this the right time for a public hearing? Notice requirements? Note, no specific notice requirements for the public hearing that the re-use ordinance requires following the

for another purpose subject to the approval of the mayor, pursuant to G.L. c. 40, § 15A. Should the vote to transfer the subject property to another city agency or officer or to the same city agency for use for another purpose fail to pass by the required two-thirds vote, then the subject property shall return to the sending agency for use for the same purpose.

- b) In the event that the city council does not determine that the property continue to be utilized by the sending agency or be transferred to another city agency or officer, then there shall be created a joint advisory planning group (the "JAPG"). ~~The JAPG is group~~ shall consist of not more than fourteen (14) persons, half of whom shall be appointed by the city council and half appointed by the mayor. ~~The is group JAPG~~ shall elect its own chairperson. It shall be the responsibility of ~~the is group JAPG~~ to work with the department of planning and development to identify alternatives for the future use of the subject property, including possible continued municipal use. ~~The joint advisory planning group JAPG and the department of planning and development~~ shall file separate written reports containing their respective recommendations to the real property reuse committee. ~~Such reports shall be filed simultaneously. The JAPG shall file its report with the real property reuse committee within one hundred and eighty (180) days from the date when all members have been appointed, or within such is process shall be completed within ninety (90) days from the date of the initial referral of the matter to the real property reuse committee or within such~~ further time as the ~~city council JAPG real property reuse committee~~ may determine.
- c) Following submission of the JAGP report ~~of the department of planning and development and the report of the joint advisory planning group~~ to the real property reuse committee, the item shall be assigned by the city council for a public hearing before said committee, which hearing shall be held not less than thirty (30) days nor more than sixty (60) days from the date of submission of said reports. The purpose of this hearing shall be to hear the views of the public and all interested parties with regard to the future use of the subject real property. Notice of said public hearing shall be provided in accordance with G.L. c. 40A, § 11 as amended.
- (3) Within sixty (60) days of the public hearing, the real property reuse committee shall make its recommendation to the city council. In making its recommendation the real property reuse committee shall take into account the effect of the proposal on the neighborhood and on the city as a whole and determine that its recommendation is consistent with the goals and policies of the Comprehensive Plan for the City of Newton. The committee's recommendation shall include recommendations as to (1) the disposition and future use of the subject real property; (2) the specific use characteristics of the subject real property, including recommendations with respect to zoning and other land-use controls; and (3) the minimum financial terms for sale or lease of the property or any portion or portions thereof.
- (4) The city council shall, within sixty (60) days from receipt of the recommendation of the real property reuse committee, submit its recommendations by resolution to the mayor for the disposition and future use of the subject real property, and may authorize the use of the subject real property, and may authorize the mayor to sell or lease the subject real property and set the minimum financial terms for such sale or lease.
- (5) Notwithstanding the foregoing, in the case of the potential sale or lease of all or a portion of city owned real property without buildings thereon, the real property reuse committee may, upon a majority vote, waive the requirement contained in subparagraph (2)(b) that there be created a joint advisory planning group.

Comment [OCMY3]: Should the maximum number of members be lowered?

Comment [OCMY4]: Do you want to add this to the charge of the JAPG?

Comment [OCMY5]: 90 days is tight, especially when it takes time to set up the JAPG. Timing could run from the date all the members are appointed, and then how long? Also, the public complained that it wasn't clear what happened if the dead line of 90 days wasn't met. Should there be a formal extension of time, and if so, why not from real property reuse committee rather than the City Council.

Comment [OCMY6]: Again, is this sufficient time, and what happens if the hearing is in the summer. Think more flexibility in hearing date. What about also requiring that there be a posting on the site of the public hearing, same way that special permits are posted on site.

Comment [OCMY7]: Again, this deadline hasn't been met, and does there really need to be a deadline?

Comment [OCMY8]: The issue of reversing the initial determination regarding making the property available should be expressly identified as a possible outcome.

Comment [OCMY9]: Whether this should be a majority vote or 2/3rds should be spelled out.

In such event, the city council shall utilize the report prepared by the director of planning and development as required in paragraph (1). Provided that notice as set forth in subparagraph (2)(c) has been given, the public hearing required by subparagraph (2)(c) may be held on the same night on which the real property reuse committee votes to waive the requirement that there be created a joint advisory planning group, but in any event, such public hearing shall be held no more than sixty (60) days from the date the real property reuse committee votes to waive such requirement.

- (6) ~~Notwithstanding the provisions of subparagraph (2)(a) above, proposals for inter departmental transfers of real property initiated by city departments or agencies shall not be subject to the provisions of section 2-7, but shall comply with the provisions of G.L. c. 40, § 15A.~~
- (7) Requests for the sale or lease of city owned property, including the abandonment of the city's rights in real property, shall first be made to the city agency or officer having custody of such property. The provisions of section 2-7 shall apply in the event that such city agency or officer declares such property available for sale or lease.

Comment [OCMY10]: This is already provided for as part of the 2-7 outcome, so saying that 2-7 doesn't apply is confusing.

These provisions need to be revised into a single procedure that also addresses the easement issue.

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- (8) In any instance where the lease of city owned property for wireless communication equipment is subject to the requirement of a special permit pursuant to section 30-6.9, the following procedures shall apply:
 - a) The executive department shall submit a proposal for such lease to the city council for approval which proposal shall indicate the location of the city owned property for which a lease is sought and such other relevant information as may be available as to the likely types of wireless communication equipment that may be placed at the site. In preparing the proposal, the executive department consultation shall be made with such city departments, councilors for the ward involved and neighborhood groups as the executive department may consider appropriate.
 - b) At the earliest opportunity, the city council shall, for the purposes of this section, assign the proposal for public hearing before its committee dealing with matters of public buildings and this committee shall hold a public hearing. Due notice of such public hearing shall be given to the abutters of the city owned real property which is proposed for lease and to the abutters of such abutters. Said notice shall include the location of the property proposed for lease for wireless equipment and, if available, a description as to the likely types of wireless communication equipment that may be placed at the site. The committee shall deliberate and, if recommending approval, may affix such restrictions and conditions to the lease terms, other than financial conditions, as it deems in the public interest. The committee shall make a recommendation to the city council within forty-five (45) days following the public hearing as to whether the proposed lease is in the public interest.
 - c) Within sixty (60) days of receipt of the committee report, the city council shall vote as to whether to authorize the mayor to lease such city owned property for wireless communication

equipment. If the vote is in the affirmative, then the mayor may proceed to issue a request for proposals on such terms and conditions as determined by the mayor to be in the public interest. If the vote is in the negative, then the mayor shall not lease such property for wireless communication equipment, provided, however, that nothing herein shall be construed to preclude the council from authorizing the mayor to lease such property pursuant to a subsequent request to lease such property.

- d) The requirement of notice and a public hearing may be waived by a three-fourths vote of those members of the city council present and voting.
- (9) In any instance where the lease of city owned property for solar panels is part of an arrangement under which the city uses power produced by the solar panels and/or receives net metering credits pursuant to state law, the following procedures shall apply:
- a) The executive department shall submit a proposal for such lease to the city council for approval. Such proposal shall indicate the location of the city owned property for which a lease is sought and such other information as may be available regarding the likely types of solar panels and related equipment that may be placed at the site. In preparing the proposal, the executive department shall consult with such city departments, councilors for the ward involved and abutting property owners as the executive department may consider appropriate, taking into account the procurement requirements applicable under the General Laws.
 - b) At the earliest opportunity, the city council shall, for purposes of this section, assign the proposal for public hearing before its committee dealing with matters of public buildings and/or other city owned real property and this committee shall hold a public hearing. Due notice of such public hearing shall be given to the abutters of the city owned real property which is proposed for lease and to the abutters of such abutters. Said notice shall include the location of the property proposed for lease for solar panels and related equipment and, if available, a description as to the likely types of solar panels and related equipment that may be placed at the site. The committee shall deliberate and, if recommending approval, may affix such restrictions and conditions to the lease terms, other than financial conditions, as it deems in the public interest. The committee shall make a recommendation to the city council within forty-five (45) days following the public hearing as to whether the proposed lease is in the public interest.
 - c) Within sixty (60) days of receipt of the committee report, the city council shall vote as to whether to authorize the mayor to lease such city owned property for solar panels and related equipment. If the vote is in the affirmative, then the mayor may proceed on such terms and conditions as determined by the mayor to be in the public interest. If the vote is in the negative, then the mayor shall not lease such property for solar panels and related equipment, provided, however, that nothing herein shall preclude the council from authorizing the mayor to lease such property pursuant to a subsequent request to lease such property.
 - d) The requirement of notice and public hearing under subsection (9)(b) may be waived by a three-fourths vote of those members of the city council present and voting.
- (10) In any sale of city owned real property for which community preservation funds have previously been expended to rehabilitate or restore historic resources pursuant to the provisions of the Community Preservation Act, G.L. c. 44B, such real property shall be bound by a perpetual historic preservation restriction pursuant to G.L. c. 184, sec. 31-33 held by the City or its designee, in a form acceptable to the Massachusetts Historical Commission.

- (11) The requirements of this section that are not otherwise required by law or by charter may be waived in whole or in part by a two-thirds (2/3) vote of those members of the city council present and voting.
(Rev. Ords. 1973, § 2-10; Ord. No. 222, 6-6-77; Ord. No. 315, 2-20-79; Ord. No. S-52, 4-2-84; Ord. No. S-52A; Ord. No. T-31, 6-5-89; Ord. No. T-212, 1-21-92; V-209, 11-2-98; Ord. No. X-196, 03-06-06; Ord. No. X-243, 12-4-06; Ord. No. Z-28, 05-19-08; Ord. No. Z-106, 04-02-12)