



Real Property Reuse Committee Agenda

City of Newton In City Council

Tuesday, May 22, 2018

7:00 PM
Room 211

Item Scheduled for Discussion:

#208-18 **Discussion regarding non-compliance with Stanton Ave Council Order**
COUNCILOR GENTILE requesting a discussion regarding non-compliance with Council Order #360-16, the Stanton Avenue water tower site, including rescinding the Council Order and reopening the reuse process to all interested parties.

Respectfully submitted,

Victoria Danberg, Chair

The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

CITY OF NEWTON
IN CITY COUNCIL

April 3, 2017

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

ORDERED:

That His Honor the Mayor be and is hereby authorized to sell the land commonly known as the Stanton Avenue Water Tower site, located behind 160 Stanton Avenue, containing approximately 16,900 square feet of land, identified as Section 43, Block 45, Lot 33, in Ward 4, in a Public Use zoned district, and,

The property shall be sold, subject to the minimum financial terms and conditions as voted by the Honorable City Council as set forth as follows:

TERMS OF SALE

That the minimum price for the sale of the property shall be set at \$500,000 less the costs to the purchaser of demolishing the existing water tower within 6 months of closing in accordance with the demolition specifications provided by the Department of Public Works, including any environmental remediation if needed. In addition the purchaser shall also provide the following benefits to the City as part of the purchase price: a) provide a temporary and permanent site(s) for the City's utility monitoring antenna(s) located on the existing water tower according to the needs and specifications of the Department of Public Works; b) create permanently deed restricted affordable housing units; and c) include, at a minimum, the additional public benefits set forth in the resolution section of this Council Order. The monetary purchase price shall also be reduced by any expenses the purchaser may incur in relocating the City's monitoring antenna(s).

FURTHER BE IT RESOLVED:

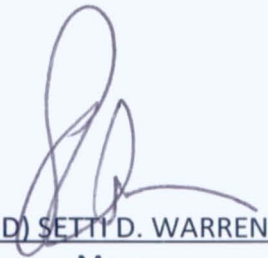
1. In recognition of the significant need for affordable housing options serving Newton's growing senior population that the property be sold for the purpose of creating permanently deed restricted affordable housing that will qualify for the SHI inventory and to the extent permitted by law and regulation include a local residence preference for Newton seniors.
2. That development of the site should incorporate design practices to minimize energy use and mitigate stormwater impacts.

3. That prior to the issuance of a Request for Proposals to dispose of the property, the property should be rezoned to an appropriate zone.
4. That the City should provide sufficient information to the purchaser regarding the existing site conditions including, but not limited to, land surveying, contamination, adequacy of water and sewer services, and traffic data that may help determine the need for additional infrastructure improvements and/or development costs provided that the gathering of such information can be performed in-house and within existing departmental budgets.
5. As part of the disposition agreement, require that the purchaser work with the surrounding neighborhood, abutting properties owners, the Ward 4 Councilors and the Director of Transportation and/or Planning Department staff as appropriate regarding the following issues: a) on-site and off-site traffic and parking issues; b) impact of any proposed structure(s) on the property including visual and/or shadows; and c) mitigation of construction related impacts.

Under Suspension of Rules
Readings Waived and Adopted
24 yeas 0 nays



(SGD) DAVID A. OLSON
City Clerk



(SGD) SETTI D. WARREN
Mayor

Date: 4.10.17



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

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Barney S. Heath
Director

MEMORANDUM

TO: Victoria Danberg, Chair, Real Property Reuse
FROM: Barney Heath, Director of Planning & Development
DATE: May 18, 2018
SUBJECT: Stanton Avenue Water Tower Site

Cc: Jonathan Yeo, James McGonagle, Ouida Young

I am providing the following update in response to your discussion item regarding the Stanton Avenue Water Tower Site.

1. **Status of Agreement to Sell the Property to Jewish Community Housing for the Elderly III (JCHE)** - Please find enclosed a signed Memorandum of Intent (MOI) between the City of Newton and JCHE, which outlines terms and sets the Option to Purchase date no later than May 31st.
2. **Status of Water Tower Demolition** - JCHE and the City have been working closely to coordinate around the demolition of the existing water tower. The City just this past week provided JCHE with their complete demolition specifications. JCHE is working with their contractor, Colantonio, to set the schedule for the demolition of the water tower and relocation of the City's communication antenna to their roof on the existing Golda Meir. Upon request of the Braeburn Golf Course, they have scheduled the actual demolition of the tower at the end of October following the close of the golf season. The antenna relocation will take place prior to that date.
3. **Status of Housing Development** - JCHE has advanced has advanced in their plans for a housing addition of 60-80 units to their existing building. Their schedule includes filing for a Comprehensive Permit for the project in September. The project will include 9-12 units of housing for individuals who are defined as "chronically homeless", which will meet the City's Conciliation Agreement with the Supporters of Engine 6.

**MEMORANDUM OF INTENT
TO NEGOTIATE OPTION TO PURCHASE**

This Memorandum of Intent ("MOI") is made and entered into this 18 day of May, 2018, by and between the CITY OF NEWTON (the "City"), a political subdivision of the Commonwealth of Massachusetts, with an address of Newton City Hall, 1000 Commonwealth Avenue, Newton Centre, MA 02459, acting by and through its Mayor, but without personal liability to her, and Jewish Community Housing for the Elderly III, Inc., a duly organized Massachusetts nonprofit corporation, with an address of 30 Wallingford Road, Brighton, MA 02135, (the "Designated Developer") (together referred to as the "Parties").

WHEREAS, the City has issued a Request for Proposal #18-17 ("RFP") to purchase 0.39-acre (16,900 square feet) parcel of land containing an existing water tower, located behind 160 R Stanton Avenue, Newton, Massachusetts, also known as Section 43, Block 45, Lot 33 (the "Parcel") for development as a Multi-Family Project in accordance with the Project Description contained in the RFP;

WHEREAS, terms not otherwise defined herein are shall have the meaning as defined in the RFP; and

WHEREAS, after evaluation of the Proposals submitted in response to the RFP by the Evaluation Committee and recommendation by the Committee and the Director of Planning and Development, the Mayor has determined that the Proposal submitted by the Designated Developer is the most advantageous proposal for the City; and

WHEREAS, the City and the Designated Developer recognize and acknowledge that the feasibility and scope of the Multi-Family Project proposed by the Designated Developer has not been determined to the satisfaction of the City, and the purpose of this MOI is to allow the City and the Designated Developer to undertake additional study, planning, and analysis to determine the feasibility and scope of the proposed Project and to negotiate the terms of an Option to Purchase for the Parcel consistent with the Proposal, including the Financial Proposal.

NOW, THEREFORE, the Parties agree as follows:

1. NEGOTIATIONS

- 1.1 Unless terminated earlier in accordance with this MOI, the period of negotiations between the Parties shall be ninety (90) days, commencing on the date of this MOI; provided, however, that the Negotiation Period may be extended as provided in this MOI.
- 1.2 **Good Faith Negotiations.** The City and the Designated Developer shall negotiate diligently and in good faith during the Negotiation Period toward an Option to Purchase ("Option") transferring the Parcel for a Mixed Use Project in accordance with the Project Description contained in the RFP for a sum equal to or exceeding the Financial Proposal. The Parties contemplate that the Option will set forth the terms and conditions for the purchase of the Parcel to the Designated Developer; include a conceptual description of the Project; and include the timeline within which it shall be developed. The terms of the Option to Purchase shall include those requirements of both the Designated Developer's RFP Response and the City's Re-Use Order #360-16. The Option to Purchase shall also include a requirement that the Water Tower be removed and the City's antennas be relocated no later than the first quarter of 2019, provided that the Designated Developer has received all necessary information from the City in a timely manner, and further provided that the Designated Developer as given the City timely written notice as to any necessary information it lacks.

- 1.3 If the terms of a mutually satisfactory Option have not been negotiated by the Designated Developer and the City during the Negotiation Period or any agreed upon extension thereof, or if the City, acting through the Mayor in her sole discretion, declines to approve the Option for any reason, then, without further action, this MOI shall automatically terminate and neither Party shall have further rights or obligations to the other.
- 1.4 Exclusive Negotiations. The City shall not negotiate with any other person or entity during the Negotiation Period or any agreed upon extension thereof.

2. GOOD FAITH DEPOSIT

- 2.1 An RFP security in the amount of \$5,000 has been submitted to the City as part of the Designated Developer's Proposal. During the Negotiation Period, the RFP security shall be retained by the City as a Good Faith Deposit without any obligation on the part of the City to pay interest thereon. If the Designated Developer and the City enter into an Option for the Parcel, the Good Faith Deposit may be applied toward any deposit which shall be required under the Option.
- 2.2 If the Designated Developer fails to reach agreement with the City, or the City, acting through the Mayor in her sole discretion, otherwise declines to enter into an Option, the Good Faith Deposit shall be returned to the Designated Developer; provided, however, if the City has terminated the MOI following a material default by the Designated Developer in accordance with the provisions of Section 4.3 herein, then the City may, in its sole discretion, retain the Good Faith Deposit. The Parties agree that it would be impractical to estimate the damages which the City may suffer in the event that the Designated Developer fails to meet its obligations herein. Therefore, the Parties do hereby agree that a reasonable estimate of the total net detriment the City would suffer in the event of the Designated Developer's default is and shall be the retention of the Good Faith Deposit as the only liquidated damages.

3. EFFECT OF NEGOTIATIONS

- 3.1 The Designated Developer understands and acknowledges that any Option resulting from the negotiations arising from this MOI shall become effective only if and only after such Option has been approved and executed by the Mayor. The Designated Developer understands that the Mayor retains the sole and absolute right to approve or not approve the sale of the Property.

If the terms of a mutually satisfactory Option have not been negotiated by the Designated Developer and the City during the Negotiation Period, as it may be extended in writing by mutual agreement of the Parties, then, without further action, this MOI shall automatically terminate, and neither Party shall have further rights or obligations hereunder except with regard to the return or forfeiture of the Good Faith Deposit. If a mutually satisfactory Option has been negotiated during the Negotiation Period, but has not been executed by either Party prior to the expiration of the Negotiation Period for whatever reason, then, without further action, this MOI shall automatically terminate, and neither Party shall have further rights or obligations hereunder except with regard to the return or forfeiture of the Good Faith Deposit.

4. DEFAULT AND TERMINATION

- 4.1 Time of the Essence. Time is of the essence in this Agreement. Any Party's failure to timely perform according to the terms and conditions of this MOI shall be considered a material breach of this MOI.
- 4.2 Notice of Material Breach. In the event that either Party fails to perform a material obligation of such Party pursuant to the terms and conditions of this MOI within the time herein specified, the other Party shall promptly give the defaulting Party notice of such default. The defaulting Party shall have a period of ten (10) calendar days from receipt of such written notice within which to cure such default, or within such additional time as may be agreed upon by the Parties.
- 4.3 Termination upon Default. If the defaulting Party fails to cure any material default during the cure period described above, this MOI shall be terminated upon delivery of a written notice of termination to the defaulting Party, and thereafter neither Party shall have any further rights or obligations under this MOI, except for the City's right to either retain or refund the Good Faith deposit as more particularly described herein.

5. LIMITATIONS

- 5.1 This MOI does not obligate the City to sell the Parcel to the Designated Developer or any other person, nor does it obligate the City to approve the Project or any other project. Any costs incurred by Designated Developer, Designated Developer's members or partners, or other members of the Project development team to comply with its obligations under this MOI or to negotiate the Option shall be the sole responsibility of the Designated Developer, and in no event shall the City have any responsibility to pay for or reimburse the Designated Developer for any of said costs.
- 5.2 The Designated Developer understands and acknowledges that the City is subject to Massachusetts Open Meeting and Public Records laws, and that the City must make information regarding the Parcel, the Project, the Designated Developer, and this MOI available to the public upon request as required by said laws.

6. NO ASSIGNMENT

- 6.1 This MOI is personal to the Designated Developer and is not assignable to any other person or entity without the prior written consent of the City. Any attempt to assign this MOI or any part of the MOI without the prior written consent of the City shall constitute a breach of this MOI and shall be void and of no force and effect.

7. NOTICES

- 7.1 All notices under this MOI shall be sufficiently given if hand delivered, mailed by certified mail, postage prepaid, or by Federal Express delivery, addressed to:

DESIGNATED DEVELOPER: Jewish Community Housing for the Elderly III, Inc.
c/o Jewish Community Housing for the Elderly, Inc.
30 Wallingford Road
Brighton, MA 02135
Attn: Chief Executive Officer

Copy to: Teresa M. Santalucia, Esq.
Klein Horning LLP
101 Arch Street, Suite 1101
Boston, MA 02110

CITY: Ruthanne Fuller, Mayor
Newton City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02459

Copy to: City Solicitor
Newton City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02459


Written notice shall be deemed received and shall be effective upon actual receipt by the addressee.

8. GOVERNING LAW

- 8.1. This MOI shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, this MOI has been executed by the Parties as of the date first written above.

CITY OF NEWTON

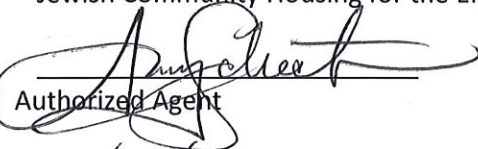
By: 
Its: Mayor
Date: 5/18/18

Approved as to form:

By: 
Acting City Solicitor

DESIGNATED DEVELOPER

By: Jewish Community Housing for the Elderly III, Inc.

By: 
Title: Authorized Agent
Date: 5/18/18