



Real Property Reuse Committee Report

City of Newton In City Council

Tuesday, May 22, 2018

Present: Councilors Danberg (Chair), Greenberg, Albright, Cote, Gentile, and Downs

Absent: Councilors Grossman and Kalis

Also present: Councilors Krintzman and Markiewicz

City staff present: Barney Heath (Director of Planning & Development), Ouida Young (Acting City Solicitor), and James McGonagle (Commissioner of Public Works)

#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.

Action: **Real Property Reuse Held 6-0**

Note: Councilor Gentile explained that he docketed the item in order to have a discussion regarding the Stanton Avenue water tower site and the City's agreement with Jewish Community Housing for the Elderly III (JCHE), the anticipated purchaser of the property, to remove the water tank. The Council voted in April 2017 to authorize the Mayor to sell the Stanton Avenue Water Tower Site on Stanton Avenue. The Real Property Committee worked to draft an order recognizing that the property should be sold to an entity that would use it to create additional affordable senior housing to address the growing senior population. The price for the property was set at \$500,000 less the cost of demolishing the existing water tower. The order also included language stating that within six month of the closing, the tower would be demolished. In addition, the purchaser would also provide a temporary and permanent place for the City's utility monitoring antennas that are currently located on the water tower.

Councilor Gentile is not interested in rescinding the Council Order but is interested in hearing that the removal of the water tank is moving forward and that the City and JCHE concur regarding the timeline for removal.

There has been progress with the removal of the Stanton Avenue Water Tower and the sale of the property. Director of Planning & Development Barney Heath summarized the attached memo. The City and the JCHE have entered into a Memorandum of Intent (attached) that outlines all the terms including removal of the tower and sets an option to purchase date. The City and JCHE are working together to coordinate the removal of the water tower. The demolition of the tower is scheduled for the end of October and the antenna relocation will take place prior to that date.

Acting City Solicitor Ouida Young explained that the issue of taking down the decommissioned water tower is more complicated than she realized in terms of the timeline and financing for the proposed housing project. The City and JCHE's timeline for the closing is different. In order for JCHE to qualify for state and federal funding JCHE must meet their requirements, which include specific phasing of the project. In addition, the JCHE cannot make any capital improvements on their property before getting federal funding. It is critical that JCHE qualify for the funding to move the housing project forward. The JCHE has worked with the City to figure out how to get the water tower down and not jeopardize the funding for the housing project. Ms. Young feels that the Memorandum of Intent accomplishes the goal of a fall demolition.

Commissioner of Public Works Jim McGonagle has met with JCHE and their contractor on the demolition of the tower. Commissioner McGonagle is concerned with the structure stability of the tower. While it is highly unlikely, there is a chance that if there was a severe storm, the tower could come down. It is in the City's best interest to get the tower down as quickly as possible, as it would be liable for any damage.

JCHE Chief of Real Estate and Innovation Lisbeth Heyer stated that the original intent of the JCHE was to take the tower down when it received title for the property but that is two or three years down the road. The JCHE will borrow money from a lender to take the tower down before applying for any federal funding. JCHE will also be asking for approximately \$3 million in CPA funding for the project.

The project includes additional 60-80 units of housing at the Golda Meir House including 9-12 units for individuals that are chronically homeless. The project will need a 40B Comprehensive Permit from the Zoning Board of Appeals before it receives the housing project is moving forward and that there have been two neighborhood meetings to get neighbor input and concerns. The general contractor is working to try to be respectful of the neighbors during the entire project.

There was a request that the Administration update the Committee on the tower takedown and relocation of the antenna as work progresses. Councilor Albright moved hold, which carried by a vote of six in favor and none opposed.

Respectfully submitted,

Victoria Danberg, Chair



Ruthanne Fuller
Mayor

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

#208-18
Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

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 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: R Fuller
Its: Mayor
Date: 5/18/18

Approved as to form:

By: [Signature]
Acting City Solicitor

DESIGNATED DEVELOPER

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

By: [Signature]
Title: Authorized Agent
Date: 5/18/18