



# Real Property Reuse Committee Agenda

## City of Newton In City Council

Tuesday, May 17, 2016

7:00 PM  
Room 211

### Items Scheduled for Discussion:

- #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]
- #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]

Respectfully submitted,  
  
Susan S. Albright, Chair

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The location of this meeting is handicap accessible and reasonable accommodations will be provided to persons requiring assistance. If you need a special accommodation, *please contact Jini Fairley, at least two days in advance of the meeting: [jfairley@newtonma.gov](mailto:jfairley@newtonma.gov), or 617-796-1253. For Telecommunications Relay Service dial 711.*

*=Terrence P. Morris, Esq.*  
*Law Offices of Terrence P. Morris LLC*  
*57 Elm Road*  
*Newton, MA 02460*  
*617 202-9132*

April 20, 2016

***By electronic transmission***

Ald. Susan Albright, Chair  
Real Property Reuse Committee  
Newton City Council  
1000 Commonwealth Avenue  
Newton, MA 02459

Re: Board Order 71-09(2)  
1294 Centre Street

Dear Madam Chair:

On March 25, 2014, I sent the attached letter requesting the Board of Aldermen take action to amend the above-referenced Board Order, which had authorized the Mayor to enter into a "renewable lease" for a subsurface easement under city-owned land located at 1294 Centre Street. The purpose of the easement was to provide vehicular access to 17-31 Herrick Road for which a special permit (#272-09) was subsequently granted on December 3, 2009. As detailed in the earlier letter, Board Order 71-09(2) contained the words, "renewable lease" in conjunction with the word "easement", which language was subsequently determined by the Law Department to have rendered the Order impossible to implement.

The request was docketed as #71-09(3) and heard before the Real Property Reuse Committee on May 27, 2014. There were several factors that caused the matter to be disposed of with a vote of "No Action Necessary" ("NAN") by the Board in October 2014. At the time and for some years prior, there was considerable interest in the construction of a public garage on the site of the Cypress Street municipal parking lot. The plan would have included my client's property as well, thus precluding the exercise of his special permit. My client had been a willing and cooperative participant in this effort, which ultimately ended in futility in the face of a consultant report that questioned the efficacy of such a venture. The second issue that influenced the Board's action was the ongoing discussion of the JPAG and Planning Department reports on the disposition of 1294 Centre Street.

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NEWTON CITY COUNCIL  
2016 APR 20 AM 8:44  
DAVID A. OLSON, CLU  
NEWTON, MA 02459

Throughout this extended period it should be stated that the members of both committees who dealt directly with these variable issues, have been sensitive to my client's need to reach closure regarding the development of his property. Accordingly, when my client re-filed for the special permit in 2015 it was approved unanimously. Most recently my client and I met with the Mayor in the company of representatives of the Law and Planning Departments to ascertain that the creation of the easement would not run counter to any long-term plan for the former library property. With that assurance, we believe that the previous request for an amendment to the language in Board Order 71-09(2) is timely.

Accordingly, by copy of this letter, I am requesting that the Committee Clerk re-docket an item to amend the Board Order 71-09(2) to provide for the sale of the aforesaid subsurface easement referenced therein.

Thank you for your consideration.

Sincerely,

***Terrence P. Morris***

Terrence P. Morris  
For Herrick Road Realty Trust

Attachments (3): Order, Letter & Plan

Cc: Real Property Reuse Committee  
Shawna Sullivan, Clerk of Committee  
Ouida C. M. Young, Assistant City Solicitor  
James Freas, Acting Director of Planning and Development  
Stuart Rothman, Herrick Road Realty Trust

*Terrence P. Morris, Esq.*  
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*57 Elm Road*  
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*617 202-9132*

March 25, 2014

***By electronic transmission***  
Ald. Susan Albright, Chair  
Real Property Reuse Committee  
Newton Board of Aldermen  
1000 Commonwealth Avenue  
Newton, MA 02459

Re: Board Order 71-09(2)  
1294 Centre Street

Dear Madam Chair:

On April 6, 2009, the Board of Aldermen, upon the recommendation of the Real Property Reuse Committee, passed Board Order 71-09(2) authorizing the Mayor to enter into a renewable lease for a subsurface easement under city-owned land located at 1294 Centre Street. The purpose of the easement was to provide vehicular access to 17-31 Herrick Road for which a special permit (#272-09) was subsequently granted on December 3, 2009.

In an effort to stimulate economic development, the State Legislature passed legislation in 2010 and again in 2012 providing for extensions of time on all approvals in effect or existence between a tolling period of 8/15/08 to 8/15/12. In recent months my client, Herrick Road Realty Trust, has initiated discussions with the Executive Department to finalize the value of said easement. During the course of these discussions it was discovered that the disposition of the easement in terms of a lease in Board Order #71-09 (2) creates significant complications for the exercise of the special permit granted in #272-09.

On January 2, 2009 I had sent a letter to Michael Kruse, then Director of Planning and Development to formally initiate the process for obtaining the "*subsurface easement*" in accordance with section 2-7(7) of the city ordinance. For some unknown reason, letters from both the Commissioners of Health And Human Services and Public Buildings were submitted to the city clerk referencing a *subsurface lease*, and rather than *easement*, as requested. Since the record contains no further explanation, we are left to conclude that it was simple misunderstanding of the request, rather than a conscious intent to effect a substantive change.

As a result there were two matters placed on the Aldermanic docket:

#71-09 Commissioners of Health And Human Services and Public Buildings submitting a declaration that a portion of land located on the northeast corner of the Health Department building at 1294 Centre Street, Newton Centre, is available for a subsurface lease and requesting that the Board of Aldermen waived by two-thirds vote formation of a Joint Advisory Planning Group pursuant to 2-7(10).

#71-09(2) Terrence P. Morris on behalf of Herrick Road Realty Trust seeking a subsurface easement beneath city-owned land occupied by the Health Department at 1294 Centre Street, Newton Centre.

The latter was advertised for public hearing to be held on March 24, 2009 exactly as it appeared on the docket. The Planning Department Memorandum prepared for the Reuse Committee's discussion appears to have simply echoed the language in the Commissioners' letters without comment on the ramifications of a lease vs sale. Consequently, the Committee reported out docket item #71-09(2) characterizing the easement in terms of a lease rather than a sale, which was adopted by the Board. Given the necessity of obtaining financing for the development, the easement instrument should have certainty and permanence, which a renewable lease cannot provide.

Accordingly, by copy of this letter, I am requesting that the Committee Clerk docket an item to amend the Board Order 71-09(2) to provide for the sale of the aforesaid subsurface easement referenced therein.

Thank you for your consideration.

Sincerely,

***Terrence P. Morris***

Terrence P. Morris  
For Herrick Road Realty Trust

Cc: Real Property Reuse Committee  
Linda Finucane, Clerk of Committee  
Ouida C. M. Young, Assistant City Solicitor  
Stuart Rothman, Herrick Road Realty Trust

CITY OF NEWTON

IN BOARD OF ALDERMEN

April 6, 2009

That, pursuant to Section 2-7 of the Revised Ordinances of 2007, as amended, after a public hearing and upon the recommendation of the Real Property Reuse Committee through its Chairman Carleton P. Merrill, it is hereby ORDERED:

That His Honor the Mayor be and is hereby authorized to enter a renewable lease for 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.

ORDERED:

That the property be leased subject to the minimum financial terms and conditions as voted by the Honorable Board of Aldermen and set forth as follows:

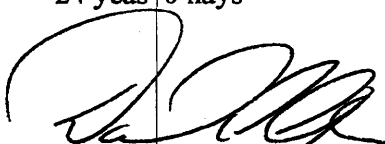
TERMS OF LEASE:

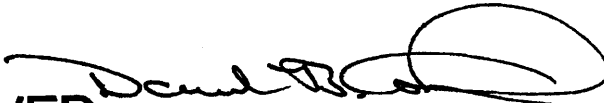
That the financial terms for the renewable subsurface lease for vehicular access shall be established by an independent appraisal obtained by the City but paid for by the prospective lessee, but no lower than a minimum of \$15.01 per square foot/\$12,683 per year with an annual increase in the lease payment tied to the Boston area Consumer Price Index.

FURTHER BE IT RESOLVED:

- a. That if any relocation of utilities is necessary, the utilities shall be located underground at the lessee's expense.
- b. That the subsurface lease shall become invalid should the lessee fail to seek or obtain a special permit.

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

  
(SGD) DAVID A. OLSON  
City Clerk

  
**RECEIVED** (SGD) DAVID B. COHEN  
Mayor

JUN 12 2009

MAYOR'S OFFICE

