

CITY OF NEWTON

IN BOARD OF ALDERMEN

REAL PROPERTY REUSE COMMITTEE AGENDA

TUESDAY, MAY 27, 2014

7:00 PM
Room 222

- #71-09(3) 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.
- #47-14(4) ALD. ALBRIGHT & JOHNSON proposing a RESOLUTION requesting His Honor the Mayor assure the redevelopment of the Austin Street parking lot is handled in a way that carries out the objectives of the Board of Aldermen's Reuse Board Order and fulfills all requirements of the city's special permit process, including community input, parking, traffic/circulation, architecture/massing/design, outdoor space, and site plan details
- #47-14(3) ALD. NORTON proposing a RESOLUTION requesting His Honor the Mayor extend the time in which to choose proposals for the development of the Austin Street parking to afford applicants the opportunity to submit new proposals that are more consistent with the Board of Aldermen's intent in declaring the parcel surplus and with the preferences of the Newtonville community, such that in order to be considered new proposals must be limited to a height of three stories or less, include no more than forty units of housing, and include sufficient parking for current and future uses of Newtonville Square, including possible additions to existing structures and additional buildout of the area to the extent allowed by law.

Respectfully submitted,

Susan S. Albright, Chairman

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 the Newton ADA Coordinator, John Lojek, at least two days in advance of the meeting: jlojek@newtonma.gov or 617-796-1145. For Telecommunications Relay Service dial 711.

Terrence P. Morris, Esquire
Attorney at Law
57 Elm Road
Newton, MA 02460
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 yeas 0 nays

(SGD) DAVID A. OLSON
City Clerk

(SGD) DAVID B. COHEN
Mayor