

CITY OF NEWTON

IN BOARD OF ALDERMEN

REAL PROPERTY REUSE COMMITTEE REPORT

TUESDAY, MAY 23, 2006

Present: Ald. Lipof (Chairman), Ald. Johnson, Salvucci, Baker, and Danberg

Absent: Ald. Gentile, Samuelson, and Weisbuch

Also present: Ald. Mansfield

City staff: Michael Kruse (Director of Planning & Development) and Linda Finucane (Chief Committee Clerk)

A Public Hearing was opened and closed on the following item, after which it was taken up in a working session.

#164-06 TRIPLE A REALTY TRUST requesting renewal of a lease for a surplus parcel of city-owned real property running from Walnut Street to Beacon Street over the Cochituate Aqueduct, containing approximately 22,871 sf of land, identified as Section 62, Block 4, Lot 15, used for part of the Whole Foods Market parking lot at 916 Walnut Street.

ACTION: APPROVED 4-0 (Baker not voting)

NOTE: The Chairman opened the public hearing. Attorney Jason Rosenberg and Whole Foods manager Robert Ryan represented Triple A Realty Trust and Whole Foods. Mr. Rosenberg explained that the subject parcel runs over a large conduit, a no-build area, between a portion of the Whole Foods parking lot and the site of the recently closed Mobile gas station. Over the course of sixty years, the parcel has been leased for parking to previous food stores that have occupied the current Whole Foods building. The current lease negotiated with the Mayor in 1987 in accordance with the minimum price and resolves contained in Board Order #152-87 expires in 2007. Mr. Rosenberg reported that Whole Foods has a lease for \$75,000 per year with the owner of the former Mobile gas station property at 1082 Beacon Street at the corner of Walnut and that a special permit will be sought within the next few months to locate accessory parking for Whole Foods on that lot.

The subject parcel currently contains 54 parking spaces (15 spaces are provided on the actual Triple A/Whole Foods site; another 10 spaces are provided through a licensing agreement with the MWRA; an additional 75 employee parking spaces are located on the former Red Sauce site). The charge of the Board of Aldermen is to set the minimum lease price for the approximate 23,000 sf of land. An appraisal prepared by the *Appraisers Group* of Belmont (excerpt attached) considered monthly lease rates per space the best measure in the rental analysis. Comparable parking data indicate a total rent between \$55 and \$65 monthly per space an appropriate price. Currently, the lessee pays \$28,190 annually, which works out to \$43.60 per month for each space. The lessee is responsible for property taxes and maintenance, snow removal, and paving, etc., as well. The committee did not receive in time for the meeting an appraisal from the city but, as the Chairman pointed out, the Mayor will consult with the Assessing Department prior to negotiating a new lease. Mr. Kruse indicated the city is not interested at this time in selling the parcel.

Public comment:

Bob Conley, 1071 Beacon Street, said prior owner Bread & Circus had been uncooperative, but praised Whole Foods as a good neighbor. He suggested that if Beacon Street is reconstructed, it be widened by taking the berms to allow better traffic flow and that Whole Foods have a dedicated entrance and exit.

Clare McCully, 46 Pine Crest Road, remembered when there were four gas stations at Four Corners and agreed that Whole Foods has improved the area. Citing several traffic incidents, she suggested locating a detail police officer on Beacon Street as well as on Walnut Street. She said that noise from the roof top HVAC equipment, although baffled, seems to carry up hill.

Alvana Suescon and Ronna Krozy, 14 Carthay Circle, have lived there for six years and gotten used to the noise. As to reports of parking problems on their street which has resident permit parking, they noted that it really only becomes a problem at the holidays when Whole Foods is very busy.

Bruce Beck, 1056 Beacon Street, thinks noise reflects off the roof. Although baffled, he suspects it was a "carpentry solution" as opposed to an "engineering solution." Idling trucks prior to 7:00 am, often with refrigeration compressors, are noisy as well.

After the public hearing, the committee discussed the petition. Parking on Carthay Circle is an enforcement issue. Alderman Mansfield said the Police Department has refused to issue tickets for resident sticker violations on weekends. The Chairman agreed to speak with the Police Chief. Mr. Rosenberg said Whole Foods would use posters alerting customers not to park on Carthay Circle. Whole Foods will speak with vendors about the early morning deliveries before 7:00 a.m.

Mr. Rosenberg said that although the HVAC roof equipment meets the requirements of the noise ordinance, an acoustical engineer would be engaged to devise a solution. However, since it is unlikely this will be accomplished in 90 days, the issue will be reviewed during the special permit process, but hopefully be resolved before then.

The \$75,000 annual lease for the Mobile property reflects the highest and best use of that particular property because it is a buildable lot on which a 1500 sf structure could be built independent from the Whole Foods and the city-owned parcels. Mr. Kruse noted that the Planning Department is looking to create pedestrian access with additional landscaping on the Mobile site.

Alderman Baker moved a minimum price of \$65 per space with an escalator clause and property taxes included in the lease. The committee agreed 4-0.

The committee reviewed Board Order #152-87 and decided after a brief discussion that the Consumer Price Index is the appropriate escalator. Condition (2), relative to the installation of landscaping, was removed because the landscaping has been installed. Condition (3) became new condition (2) and amended to require the lessee, not the city, to arrange in year 9 of the lease prior to its automatic renewal a meeting with the neighborhood and Ward Aldermen to review the site

and operation of the business. In Condition (7), a reference to the light trespass ordinance was added. Condition (9) cites the section of the noise ordinance relevant to idling engines. Condition (10) now allows freestanding sign(s) by special permit.

#19-06(2) PACKARD COVE ASSOCIATES, LLC requesting that two of the deed restrictions per Re-Use Board Order #83-96(3) contained in the Restrictive Covenant for property identified as Section 41, Lot 35, Block 14, on the City Of Newton Assessors Map located at 130 Rumford Avenue be modified by reducing the 50-foot buffer zone by approximately 30% to allow for the construction of the proposed parking facilities and to allow for the second office building to extend up to 48 ft. in actual height for a principal structure and up to 60 feet in actual height solely for the decorative roof feature at the building entrance in accordance with Special Permit #19-06, granted on April 18, 2006.

ACTION: APPROVED 4-0 (Baker not voting)

NOTE: Attorney G. Michael Peirce represented Jerry and Paul Capasso, owners of the former incinerator property on Rumford Avenue. Approval of the special permit to construct a second office building essentially sanctioned these two amendments to the deed restriction; however, because a reuse board order generated the covenant, the Law Department advised that the item be referred to the Real Property Reuse Committee. Deed restrictions and their amendments, unlike special permits, must be approved by the Mayor. This covenant, which runs for a period of fifty years, contains three restrictions, two of which this item would amend. The Law Department assumes the responsibility for re-writing the restrictions and subsequent recordation of the covenant.

The amendment to restriction a) eliminates approximately 1/3 of the 50-foot buffer zone that originally ran along the eastern boundary of the property. Additional landscaping will be added in the remaining areas] of the buffer zone and in a significant landscape border between the Capasso property and the Lexington Street properties in accordance with the landscape plan approved in the special permit.

Restriction b) limits the maximum height to the top of any building on the site to 46' above the lowest point along the site frontage of Rumford Avenue. The new building approved in the special permit is 48 feet above that low point, i.e., 2 feet above the restricted height. In addition, the 'tent shaped' decorative roof feature at the building entrance requested by the Land Use Committee and approved in the special permit is 60 feet above that low point on Rumford Avenue.

Restriction c), limiting the use of the premises to office, research and development or similar combined flexible space, remains the same. After nominal discussion, Alderman Salvucci motioned approval of both amendments, which carried 4-0.

Respectfully submitted,
Richard A. Lipof, Chairman