



Town of Arlington
Legal Department

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To: Select Board

Cc: Adam Chapdelaine, Town Manager

From: Douglas W. Heim, Town Counsel

Date: May 24, 2021

Re: Follow up Re: Closing on 1207 Massachusetts Ave Sale

Members of the Board, I write to follow up on last week's Select Board Meeting to resolve remaining issues and questions relative to the sale of the Town's property located at 1207 Massachusetts Avenue (otherwise known as the "DAV" property) governed by the Purchase and Sale Agreement ("P&S") and Special Permit No 3602 issued on August 17, 2020.

Special Permit Fees & Building Permit Fees – Section 4.01

The Buyer agrees that waiver of both special permit fees and overall building permit fees under section 4.01 of the purchase and sale agreement shall be halved (50%) given the co-development of the parcel being sold by the Board (1207) with the abutting parcel located at 1211 Massachusetts Avenue (separately and privately owned).

Initials on P&S

The Buyer confirmed that the initials on page 2 of the P&S are the Buyer's initials – James Doherty. Minor scrivener's corrections to the Mixed Use Deed restriction previously provided to the Board will also be initialed.

Seller's Costs – Section 13.2

Permit me to confirm that there are no anticipated Seller's costs to close. The P&S contemplated three categories of potential Seller's costs – fees for counsel, real estate transfer deed excise stamps or documentary taxes owed, and recording fees “required to delete Title Objections” in Section 13.2.

As you know, this Office does not charge additional fees to the Town for legal services associated with closing or recording. Thus there are no fees or counsel. Further, the Town is exempt from real estate transfer excise stamps and related taxes under c. 64D sec. 1. Hence, there are no excise stamps or documentary taxes owed. Finally, the Buyer is paying the recording fee and bore the costs of title searches and surveys. No title objections have been identified, and as such no instruments required to delete Title Objections are anticipated. Accordingly, there are no Seller's costs due at closing.

Public Space Easement

The parties agree to the development of a public space easement consistent with the terms Special Permit No. 3602 (provided for your reference). The full easement does not need to be developed prior to closing. It is a requirement of the Special Permit prior to opening the proposed business, but not the P&S. This Office will work with the Buyer to develop an easement for your future review.

Mixed-Use Restriction & 1211 Mass. Ave.

The decision for Special Permit No. 3602 and the Mixed-Use restriction will be recorded alongside the deed transferring ownership of 1207 Massachusetts Avenue from the Select Board to 1207DAVPOST, LLC. Accordingly, both the special permit's specific conditions for allowing for a mixed-use hotel and restaurant commensurate and the 40-year deed restriction attached to the Quitclaim Deed (which references the conditions of the special permit) will link the 1207 and 1211 Massachusetts Avenue properties. The restriction is not placed directly upon 1211 Massachusetts Avenue, which the Town does not own. The restriction and the special permit however specifically require the properties to be developed as a mixed-use hotel and restaurant.

I hope this summary proves helpful. If the Board is inclined towards favorable action, the following motion should be entered:

VOTED:

That the Select Board hereby approves Final Sale of 1207 Massachusetts Avenue, as previously authorized by Town Meeting, subject to the terms and conditions set forth in the Purchase and Sale Agreement; Special Permit for EDR Docket No. 3602; and the Agreement for 40-year Mixed Use Restriction (as amended);

And further that it authorizes the execution of a Quitclaim Deed (as amended) to transfer ownership at closing to 1207 DAVPOST, LLC on the conditions and terms set forth therein.