



Town of Brookline

Massachusetts

**Department of Planning and
Community Development**

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**Kara Brewton
Director**

TO: Brookline Select Board

FROM: Kent Street Negotiation Committee
Planning Staff

DATE: April 12, 2022

SUBJECT: **Negotiation Committee Recommendation – 2Life Communities**

BACKGROUND

Three developers responded to a July 2019 Request for Proposals (RFP) issued by the Town for the redevelopment of the Kent/Station St. parking lot, a 15,997 s.f. +/- Town-owned parcel. The RFP stated the Town's interest in redeveloping the site as affordable rental senior housing while retaining the existing public parking as part of the development program.

Prior to the pandemic, a Kent Street Developer Evaluation Committee was convened by the Chief Procurement Officer. The Committee met seven times from October 2019 – May 2020 to review RFP responses and to make a recommendation on whether the Town should proceed with a proposal deemed to be advantageous to the Town's goals, as stated in the RFP. After shortlisting two prospective developers (2Life Communities and B'nai B'rith), conducting interviews, and thoroughly reviewing the proposals, the Evaluation Committee recommended that the Town begin negotiations with 2Life Communities. The Committee's recommendation to the Select Board in July 2020 was:

That, while it finds both the 2Life and B'nai B'rith proposals to be of high quality, the Selection Committee prefers 2Life, while recognizing that its financial request is excessive and needs to be significantly reduced. The consensus of the Selection Committee is to authorize the Town to enter into negotiations with 2Life to see if the Town and 2Life can reach agreement on an appropriate subsidy amount and a mutually acceptable Letter of Intent.

After considering the Evaluation Committee's recommendation, the Select Board voted to authorize the Housing Advisory Board to form a Kent Street Negotiating Committee, to be staffed by the Planning and Community Development Department. The Board's charge to the Committee was to begin a negotiation process with 2Life Communities for the purpose of determining whether the parties could reach agreement on a Letter of Intent that laid out acceptable terms and conditions for the redevelopment of the Kent/Station Street parking lot. The Committee was also charged to report back to the Select Board at the end of negotiations for an update and to offer a recommendation.

NEGOTIATION COMMITTEE RECOMMENDATION

The Kent Street Negotiation Committee met five times in executive session over the course of February 2021-March 2022 to discuss strategies related to a potential disposition of the Kent/Station Street parking lot to 2Life Communities. A non-quorum working group of the Committee met separately with Planning Staff and 2Life representatives in December 2021 to discuss possible paths to move the disposition process forward. Following the working group meeting, the Town and 2Life agreed to seek clarity on a number of project-related details that would inform next steps, including options for leased off-site parking and a legal determination of whether the project would be subject to public bidding requirements.

The Negotiation Committee met on March 18, 2022 for what would be its final meeting. After Staff presented new information to the Committee, including a revised construction budget, a determination of public bidding requirements and other items with cost implications, **the Negotiation Committee recommended no action by the Town on the disposition of the Kent/Station Street parking lot to 2Life Communities.** The following factors informed the Committee's recommendation.

Increased Labor and Materials Costs:

Over the course of discussions, the Negotiation Committee and 2Life representatives acknowledged that certain costs had increased since the time of 2Life's initial RFP response in August 2019 RFP. In May 2021, 2Life adjusted their initial proforma assumptions to account for significant changes in labor and materials costs that had risen in large part due to the pandemic. In particular, the updated proforma showed that costs to replace public parking had increased from \$3.7 to \$4.5 million. Increased parking costs led to an additional request of \$800,000 in Town subsidy since it was assumed that Town funding would be the primary source to pay for replacement parking. (See Table B below.)

Using the revised proforma numbers, Planning Staff submitted an Expression of Interest for MassWorks infrastructure funding in May 2021 and an ARPA funding application through the Town's Open Gov portal in October 2021 to help address rising project costs.

Public Bidding for Replacement Parking and Parking Alternatives:

In December 2021, Staff and the Negotiation Committee's working group met with 2Life representatives to discuss a number of critical issues, including public bidding requirements, an expected increase in project costs due to public bidding, and possible ways to address an impending financing gap.

At that meeting, 2Life's legal counsel flagged an instance where a project similar to Kent Street was found to be subject to MGL Ch. 149 (public construction bidding laws). This and other prior decisions of the Attorney General's Office were cited as examples and were used to inform this legal opinion. The parties acknowledged that Ch. 149 requirements would affect the project budget due to cost and time inefficiencies associated with the public bidding process. At the conclusion of the meeting, it was agreed that Planning Staff would work with Town Counsel to seek further guidance on the Ch. 149 issue and explore the possibility of leased off-site parking as a way to significantly reduce parking construction costs.

To address the public bidding question, Town Counsel and Planning Staff met with counsel from the Attorney General's office. Counsel from the AG's office had made bidding determinations for other projects initiated by public sponsors, including a public parking project cited by 2Life's counsel. After a detailed discussion, the AG's counsel opined that, since the public is the primary beneficiary of the replacement parking, the replacement parking structure would be subject to the requirements of MGL Ch. 149. In short, the Attorney General's office advised that a private developer cannot be required to build a parking structure which, upon completion, would be used for a public purpose (public parking) without publicly bidding the project.

To address the question of parking options, Planning Staff had a conversation with representatives from Children's Hospital's real estate team to discuss the possibility of long-term leased parking at the Brookline Place garage. This option was viewed a potential alternative to building a new parking structure, or perhaps would allow for a reduction in the amount of parking to be built on the Kent/Station site. The discussion revealed that CHB's projected future parking demands were expected to grow once the 2-4 Brookline Place buildings were fully occupied and tenanted. While amenable to increasing the amount of market rate

residential parking provided, which is governed by the project’s special permit, CHB could not commit to leasing parking to third parties except for a limited, short-term duration. For this reason, leased parking at the Brookline Place garage to accommodate the replacement parking needs of the Kent/Station project is not an option.

Prevailing Wage Requirements:

More recently, 2Life’s legal counsel opined that, since the Town will retain ownership of the land through a long-term ground lease, the project’s affordable housing component would be subject to Massachusetts prevailing wage requirements. Prevailing wage rates are issued by the MA Department of Labor Standards. A trigger for the requirement is when a public agency engages in a process to facilitate a “public project”, such as the process for the disposition of the Kent/Station St. lot. After discussing the cost implications with 2Life Communities and peers from other municipal organizations, Staff concluded that prevailing wage requirements would result in higher labor costs and a significant increase in construction costs.

BASIS FOR RECOMMENDATION

With information in hand about public bidding and prevailing wage requirements, 2Life adjusted their proforma for a second time in February 2022 to account for projected cost increases. The Negotiation Committee reviewed 2Life’s revised proforma at its March 2022 meeting, focusing in on development costs and expected subsidy requirements.

As **Table A** shows, the total project costs for the housing and replacement parking components have increased by approximately \$6.0 million from 2019 - 2022:

Table A – Total Project Costs

| August 2019 Proforma | May 2021 Proforma | February 2022 Proforma |
|-----------------------------|--------------------------|-------------------------------|
| \$30,451,432 | \$31,249,454 | \$36,767,004 |

As **Table B** shows, the amount of subsidy required to accommodate both the affordable housing and public parking programs has risen significantly, from just under \$7.0 million in 2019 to over \$12.0 million in 2022.

Table B – Requested Town Subsidy

| Town Resources | August 2019 (Initial Proforma) | May 2021 Updated Proforma (Initial Increase due to Pandemic) | February 2022 Updated Proforma (Additional Costs due to Public Bidding and Prevailing Wage) |
|-----------------------|---------------------------------------|--|---|
| Residential Project | \$3,150,000 | \$3,500,000 | \$6,276,527 |
| Public (Town) Parking | \$3,760,657 | \$4,542,260 | \$5,784,900 |
| TOTAL | \$6,910,775 | \$8,042,460 | \$12,061,427 |

With respect to the proforma numbers from August 2019 to May 2021, it is important to note that unanticipated labor and supply chain issues have led to increased project costs. However, Ch. 149 (public bidding - 30% cost premium added to the parking component) and Massachusetts prevailing wage requirements (20% cost premium added to the housing component) have also increased project costs and, as a result, the amount of subsidy required by the developer for project feasibility. The Negotiation Committee based its recommendation of no action on the projections in the updated February 2022 proforma, which accounted for all of these cost increases.

CONCLUSION

The RFP issued by the Town required a developer to replace the public parking as part of a new affordable housing development. While it is understandable that the Town sought to retain parking for residents and merchants, replacement parking is a major cost driver for this project.

There are few public subsidies outside of the Town's own resources that can pay for replacement public parking. MassWorks and ARPA funds were explored as potential resources, but these sources are competitive, based on readiness or have a spending timeframe that does not currently align with the Kent St. project. Replacement parking has been a challenging obstacle to overcome and, coupled with recent findings about public bidding and prevailing wage requirements, project costs have grown significantly.

For the Kent Street development effort to move forward as envisioned, the project will need significant local and state resources to proceed. The Negotiation Committee questioned the wisdom of investing more than \$12.0 million in resources (\$6,276,527 for the residential program, \$5,784,900 for replacement parking) to create 54 units of affordable rental senior housing. Assuming that amount of Town-controlled subsidy is even available in the coming years, or if other outside resources can be leveraged, it may be more prudent to invest resources in multiple projects that could potentially yield many more affordable units rather than investing in one very expensive project.

While the Town could revisit the development program of the RFP, any substantive changes to the program (i.e. a lessened parking requirement) should be viewed through the lens of MGL Ch. 30B, which governs disposition of public land. Town Counsel advised that to substantively change a program requirement without allowing all proposers to respond does not allow fair competition, keep proposers on a common footing, or allow manageable and meaningful comparisons. If a significant change to the program is desired in the future, the Town will likely need to revise and reissue the RFP.

Kent Street Negotiation Committee

Heather Hamilton (Chair)
Roger Blood
Virginia Bullock
Steve Pratt Otto
Don Warner