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The Winthrop Square Garage
Development Process

Winthrop Square Garage Development

The Winthrop Square parking garage has been an underperforming municipal asset for decades but that will change when the fifty-year parking garage lease expires on June 30, 2007. The pending sale of the garage and subsequent development of the site by Trans National Properties presents the City of Boston with an exciting opportunity to change the City's skyline and downtown area. But in addition, the sale of the property should result in a significant financial return to the City of Boston.

The Finance Commission supports the development of this signature high rise in the financial district of the City. The Commission also agrees with having the Boston Redevelopment Authority (BRA) manage the process as it possesses some of the necessary expertise to work with the developer to fulfill the promise of the proposed project. The property is a valuable municipal asset. The revenue from the sale of the Winthrop Square Garage as well as the revenue from the operation of the parking garage until the building is demolished should accrue to the City of Boston and not the BRA.

The BRA informed the City's Off Street Parking Facilities Board in May, 2006 that it planned to take the Winthrop Square garage by eminent domain. It has yet to take that step. The Commission is concerned that if the BRA takes the property and manages the development process in a similar manner as it did with the Haywood Place development that it would be a financial disaster for the taxpayers. Six years after the Haywood Place parking lot was taken by eminent from the City by the BRA for development purposes not much has changed. The revenue from the sale of that property was to be used to fund the construction of a new school in the Chinatown neighborhood but there is no meaningful progress on that front. The original development RFP issued by the BRA was to sell the parcel but the BRA changed the terms and entered into a ground lease with the developer. There are no taxes being paid on the property. The property is still a parking lot but instead of the City receiving the revenue from the operation of the lot, it is all going to the developer. The Winthrop Square parcel is much too valuable to risk having a similar situation occur.

History of the Winthrop Square Garage

The Winthrop Square parking garage is leased to First Federal Parking Corp. under an agreement that dates back to 1952. The initial lease was for forty years and it was extended in 1967 when the operator added another floor to the garage increasing its capacity to 1,125 vehicles. The amendment extended the lease term by fifteen years with an expiration date of June 30, 2007. The annual lease payment to the City is only \$76,875.

The City of Boston, at one time, owned and operated thirteen revenue producing parking garages and parking lots all under the jurisdiction of the City of Boston Off Street Parking Facilities Board. Eighty percent of the revenue from the leases was deposited into the general fund of the City with twenty percent allocated to the Parking Facilities Fund (PFF). The PFF revenue was used to maintain the facilities and to construct new facilities, a number of which were built in various neighborhood business districts. The revenue was significant at one time. The Government Center Garage had 1,865 parking spaces and generated \$1.5million annually in 1980. The St. James Avenue facility with 625 spaces was leased for \$740,000 at the same time. A number of surface parking lots with between 120 to 250 spaces were leased for amounts of \$100,000 to \$350,000 yearly. The City generated over \$4million annually in 1980 and the PFF had a balance of \$2.7 million to maintain the facilities. The Finance Commission pointed out in a 1981 report on municipal parking garages that the worst lease in place at that time was the Winthrop Square garage lease. The Commission noted that if a new lease could have been reached through public advertising in 1980 it would have generated in excess of \$1 million annually.

The last three revenue producing parking facilities owned by the City were the Lafayette Place garage, the Haywood Place parking lot and the Winthrop Square garage. The Lafayette Place parking garage is managed under a forty year lease. The City receives \$300,000 annually, an amount which is well below market value. The Haywood Place lease generated \$537,000 annually for the City of Boston prior to it being taken by the BRA and leased for development purposes. The Winthrop Square lease expires in June of 2007. Until the garage is demolished it will generate a significant amount of revenue for the City, unless the BRA mismanages the process as it did with Haywood Place.

Development and Operation of the Winthrop Square Garage

The key point in the development of the Winthrop Square garage is that it is a municipal asset that remains under the control of the Parking Facilities Board. The Commission's staff has visited the garage on a number of occasions recently. The garage fills up by 8:30am every weekday morning. The average daily rate is just over \$8 per vehicle. While there is some weekend parking it is minimal in relation to the overall capacity of the garage. The annual gross revenue of the garage at this time is conservatively \$2.5million.

Although the BRA contacted the City's Parking Facilities Board in May 2006 informing it that it planned to take the property by eminent domain for development purposes that has yet to occur. The BRA issued an RFP to develop the site in May 2006. The RFP set forth conveyance terms and the disposition process. There was only one proposal submitted this past November, that of Trans National Properties. The BRA voted on January 25, 2007 to recommend to the City the tentative designation of Trans National for the site. According to the terms of the RFP, once tentatively designated, the developer would have ninety days to submit a satisfactory financing plan. The developer was to pay the City 1% of the purchase price at the time of tentative designation. The developer would pay 25% of the purchase price when the proposal receives its Article 80 approval, but not later than June 30, 2007. The balance of the purchase price is due when the building permit is issued but not later than November 30, 2007. Thus, under the terms of the RFP the City should receive the entire amount of the purchase price by November 30, 2007.

There are several factors that affect the timetable set forth in the RFP. First, the purchase price has yet to be established and no appraisals have been conducted. There are several additional steps that must be completed prior to the developer completing the purchase. The developer must resolve the concern of legislative acts that protect the Boston Common and the Public Garden from the effects of shadows. Due to the proposed height of the building and proximity to Logan Airport there will be a formal review conducted by the Federal Aviation Administration. The BRA hired Eclat Consulting to review the FAA issue and the consultant concluded that the structure would be considered an obstruction, but not a hazard to air navigation. They further concluded that the project will be subject to FAA review but it will ultimately be found to have no adverse affect on aeronautical operations at the airport. Trans National is unlikely to move forward without FAA clearance and there is certainly the chance that the FAA may have an issue with the height. There is a provision in the RFP that extensions to the tentative designation shall be at the discretion of the BRA and its Board of Directors. It is unlikely that all the issues will be resolved prior to November 30, 2007 and thus extensions will be allowed by the BRA.

Short Term Revenue Concerns

The short-term concern of the Finance Commission is that the current parking lease expires in less than five months at which time the City will still own the parking garage. Because the garage is municipal property its sale or lease must comply with the provisions of the public bidding law, Massachusetts General Laws, Chapter 30B (Chapter 30B). The City cannot extend or amend the present lease terms to manage the garage. The City must have a new lessee in place to insure it is receiving full and fair value from the operation of the Winthrop Square garage by July 1, 2007.

The short term lease revenue from the operation of the garage is significant. BRA intended to allow the developer to manage the garage as of July 1, 2007 and pay the City 75% of gross revenues until the property was fully conveyed to the developer but not later than November 30, 2007, a period of only five months. The Commission conservatively estimates that annual gross revenues are \$2.5 million. Under the proposal of the BRA seventy-five percent of gross revenue on an annual basis, using the current rate structure, would amount to \$1,875,000. Over the five month proposed by the BRA, the City would receive \$781,000 and beginning in December, 2007, the developer would retain the revenue. Such an arrangement is similar to what transpired with the Haywood Place parking lot. There is no reason to allow the developer to retain any of the parking revenue unless the sale is completed.

The City, through its Off Street Parking Facilities Board, should develop a bid package to publicly advertise the management and operation of the garage. Such a lease must be in place by July 1, 2007. The City does not need to require that the current rate structure is kept in place. A higher rate structure would increase revenue to the City to perhaps as much as \$2.5 to \$3 million annually and with the expected delays in the development process, the City may end up owning the garage for two to three years. Regardless of what transpires, it is clearly in the best interest of the City to enter into a new parking lease at Winthrop Square.

Sale Revenue

The City of Boston treasury is where the proceeds from the sale of the property should be deposited. Ideally the revenue would be used to help fund the City of Boston's Capital Budget. It is a unique property and with the opportunity to build a one thousand foot structure on the site, its value is greatly enhanced. The BRA, currently acting as an agent for the City, should be reimbursed for its costs associated with the development but it should not retain all of the sale revenue or change the terms of the RFP and enter into a ground lease.

The Haywood Place Development

The performance of the BRA in its management of the Haywood Place Development process should convince city officials that the costly mistakes made with that development process cannot be repeated with Winthrop Square. Mayor Thomas M. Menino wrote to the BRA on January 22, 2001 that the city-owned Haywood Place parcel has remained idle for the last several years and requested that the BRA take such parcel by eminent domain as a Demonstration Project permitted by MGL Ch 121B s 46(f). Such a step would revitalize the area, positively impact job opportunities and provide tax growth for the City of Boston. The BRA has failed to meet those objectives.

The BRA took the Haywood Place parcel by eminent domain in April of 2001. It then issued an RFP for the sale of the parcel and its subsequent development. Under Article X of that RFP, the BRA defined the Contract Terms and Conditions explaining that there would be compliance with M.G. L. Chapter 30B. Despite that language, the BRA made two significant changes from the original RFP that are inconsistent with the public bidding law.

The parcel was to be sold in an, “as is” condition. But instead of a sale the BRA entered into a ground lease for the property. The BRA set the minimum bid price at \$13 million. There were eight bidders with the high bidder being Lincoln Properties at \$23 million. Seven of the eight proposals were to build housing on the site. The BRA then went through a second stage process and ultimately designated Millennium Haywood LLC as the designated developer. Millennium’s initial bid was \$20.5 million but they were allowed to increase the bid to \$23 million to match the price of the high bidder.

One of the financial objectives of the Haywood Place sale was that \$13 million of the proceeds would be used toward the development of the new Josiah Quincy Upper School in the South Cove/Chinatown neighborhood. Even the ground lease required the developer to pay the lessor (BRA) that amount in prepaid rent. The \$13 million is identified in the City’s capital plan as being available as a funding source for the school project but it will be years before a new school is opened. The remainder of the purchase price, \$10 million, has not been paid and the developer is not required to make that payment until it commences construction, which may not occur until 2013.

A second major change involved the income from the operation of the parking lot. The RFP called for the City to receive that revenue until the time of commencement of construction by the developer. But the BRA changed that requirement, a decision that has been costly to the City. Under the terms of the ground lease signed in June, 2003, the developer was only required to pay the City an amount equal to the annual rent of

\$537,000 for two years. Thus, since July 1, 2005, the developer has been operating the parking lot and retaining all the revenue. The developer has increased the parking rates, which significantly increased profits, and they may continue to operate the property as a parking lot until 2013. The decision of the BRA to allow the developer to retain all the income beginning in July, 2005 is costing the City millions of dollars. There are also no property taxes being paid to the City of Boston as the property is owned by the BRA.

The RFP Process

The public is protected when its property is sold or leased by the provisions of Chapter 30B. The law requires an open competitive bid process using appraisals to determine value. The City can establish objectives and incorporated them into a bid or an RFP but once set, the terms and conditions in a Chapter 30B contract cannot be altered. The BRA cited Chapter 30B in the RFP for the development of Haywood Place. But there was no compliance with Chapter 30B. The BRA subjectively changed the terms of the RFP to benefit the developer at the expense of the City.

There is no mention of Chapter 30B compliance in the Winthrop Square RFP, despite the fact that the property is owned by the City. The Commission suspects that the BRA may look at certain exemptions to Chapter 30B as it manages the process or attempt to take the property by eminent domain. But the fact is that Chapter 30B sets a reasonable standard for the disposition of public property that would serve the city well as the Winthrop Square development moves forward.

It has been over six years since the Mayor directed that the Haywood Place site be revitalized because the parcel had been idle for too long. Yet Haywood Place is still a parking lot and all of the operating revenue goes to the developer.

It has been known for years that beginning in July 2007 that the financial dynamic of the Winthrop Square garage would change. Based on recent news articles, it is apparent that the developer was well aware of the opportunity and positioned himself as far back as 1994 to be prepared to purchase the property. The taxpayers have a right to expect that City officials are will be equally vigilant. The proposed 1000 foot office tower is an exciting development for the City of Boston. But it is equally critical to take full financial advantage of the sale of the Winthrop Square garage and retain the income from the operation of the garage until its sale is completed.