

August 2, 2019

Mark R. Reich

Hon. Mark S. Sideris and
Members of the Town Council
Watertown Administration Building
149 Main Street
Watertown, MA 02472

Re: Arsenal Park Development

Dear Members of the Town Council:

I am writing at the request of the Town Manager regarding the development project at the Arsenal Park and the proposed public-private partnership intended to benefit the Park project. Attached for you information is an e-mail from the Town Manager regarding this matter as well as two letters received from Mr. William McQuillan of Boylston Properties regarding this matter. Of particular concern, and the primary impetus for this letter, is the insistence of Mr. McQuillan that the Town pay Boylston Properties a 5% construction management fee as part of the proposed public-private partnership

As you are aware, on April 9, 2019, the Town Council approved a Resolution Authorizing Filing with the General Court of a Petition for a Special Act for a Public-Private Partnership to Undertake Renovations and Improvements at Arsenal Park. The special legislation which was the subject of this resolution was intended to allow the Town to work cooperatively with Boylston Properties on the development of and improvements to Arsenal Park in order to leverage the funding required from Boylston Properties from the permitting for its adjacent Arsenal Yards project. It was explained to the Town Council that significant benefits would be derived by the Town from this public-private partnership, allowing the Town to coordinate with the developer and accelerate the improvements to the eastern portion of Arsenal Park.

The concept for this special legislation arose from discussions between the Town's Community Development and Planning Director, the Town Attorney, and representatives of Boylston Properties, including Mr. McQuillan. These parties met in the Community Development Office at Town Hall on April 1, 2019 to discuss mechanisms by which the Arsenal Park project could be accelerated. While such acceleration would benefit the Town, it has a clear benefit for Boylston Properties as completion of that portion of the Arsenal Park improvements adjacent to Arsenal Yards would improve the marketability of the Boylston Properties site. The Boylston Properties representatives suggested that use of contractors working on the private Arsenal Yards project to undertake the public Arsenal Park project could accelerate the public project and result in considerable savings for the Town. In reviewing the procurement issues which would prevent such an undertaking, the Town Attorney suggested that special legislation, similar to that obtained for the Coolidge School project, may be an avenue to allow for a public-private partnership to accomplish the stated goals. Substantial discussion ensued as to the special legislation process, including the

Hon. Mark S. Sideris and
Members of the Town Council
August 2, 2019
Page 2

Town Council schedule and agenda-setting, and the likely support of the Town's legislative delegation. The Boylston Properties representatives indicated a need to achieve this special legislation as quickly as possible to take advantage of the construction season. Specific aspects of the special legislation were discussed, including exemptions from bid laws and retention of obligations under the Prevailing Wage Law. Discussion was also had as to the responsibility for designer services and the costs of those services going forward. At no time, however, was there any discussion of a construction management fee to be paid to Boylston Properties for its oversight of the project. Clearly, such a request would have been negatively received by the Town representatives at that meeting as the concept of any public-private partnership was understood to be unusual and potentially controversial.

The presentation of the resolution and the accompanying special legislation to the Town Council focused on the benefits to be received by the Town. A number of questions were asked by Councilors regarding the control of the project from design through construction. There was concern that the Town portion of the project would be controlled by the private developer. Assurances were given that the Town would retain control of the design through the Town's own design consultant, and that the Town would retain involvement in selection of the construction contractor. No mention was made of any management fee to be paid to Boylston Properties, as no such fee was anticipated by the Town administration. The unanimous approval of the resolution did not address any such fee, nor was any provision made for the funding of a fee. The fee was simply not part of the matter for consideration by the Town Council or the Town administration.

The matter of a construction management fee to be paid to Boylston Properties first arose when a draft Memorandum of Understanding ("MOU") was received by the Town from Boylston Properties' attorney on May 8, 2019. The MOU detailed the purposes of the agreement and the duties and obligations of each party, together with the financial and contracting procedures. Within that agreement was contained the first known reference to a 5% construction management fee to be paid to Boylston Properties "in consideration of the performance by the Developer of its obligations under this Agreement with respect to the construction of the Phase 1 Project". As noted above, this fee had not been discussed with Town representatives at the initial April 1st meeting at which the concept of the public-private partnership was developed, nor was it referenced by Boylston Properties in its review of the resolution and special legislation in advance of its presentation to the Town Council. And it was certainly not referenced in the Town administration's presentation to the Town Council on April 9, 2019. In reviewing the draft MOU, the Town Attorney deleted the provisions addressing the construction management fee. A redlined version of the MOU demonstrating that deletion was provided to Boylston Properties.

As the special legislation proceeded through the legislative process, a clean version of the draft MOU was prepared, including the deletion of the construction management fee provision. That clean version was provided to the legislative delegation as well as the Office of the Inspector

Hon. Mark S. Sideris and
Members of the Town Council
August 2, 2019
Page 3

General, which had raised some questions regarding the proposed special legislation. On July 16, 2019 the Community Development and Planning Director and the Town Attorney attended meetings first with Senator Willian Brownsberger and subsequently with the Senator, Representative John Lawn, and the Inspector General and members of his staff. At these meetings, the terms of the special legislation were discussed, but particular concerns were raised regarding provisions of the MOU. The Inspector General and his staff were concerned that Boylston Properties was receiving a significant benefit at the expense of the Town. Assurance was provided that the management fee, which had been deleted from the draft MOU, would not be reinstated and would not be paid. The Inspector General requested additional revisions providing for the Town's greater involvement in selection of the construction contractor, and assurance that any project cost savings would inure to the benefit of the Town and not Boylston Properties. It was very clear from this meeting that the MOU must be favorable to the Town and its taxpayers, and cannot provide a windfall to the developer. The Inspector General further requested that the MOU be executed before the special legislation is enacted, to ensure that the final MOU document was acceptable.

It is my understanding that prior to the July 16th meeting Mr. McQuillan reached out to the Town Manager, the Town Council President, and Senator Brownsberger to discuss his unhappiness with the deletion of the construction management fee. The Town received the first letter on this topic from Mr. McQuillan on July 18, 2019. That letter indicated that lack of such a fee "represents a deal-breaker" and that Boylston Properties "don't do our work for free, no more than the Town issues Building Permits for free." Notwithstanding this letter, and based upon communication between the Community Development and Planning Director and another representative of Boylston Properties, the Town Attorney further revised the MOU to reflect the requests of the Inspector General. That revised MOU was forwarded to Boylston Properties for review.

A second letter from Mr. McQuillan dated August 1, 2019 was addressed to the Community Development and Planning Director. This letter reiterated Mr. McQuillan's position regarding the necessity for a construction management fee and proceeded to take the Town to task for claimed excessive fees and tax assessments. This letter placed blame squarely upon the Town for its "unwillingness ... to accept a commercially reasonable Construction Management Fee to Boylston Properties". The letter makes clear that the lack of such a fee will prevent Boylston Properties from executing the MOU.

The above recitation of events is intended to provide the Town Council with a full understanding of the circumstances as they currently stand. It is important to note, as mentioned above, that at no time during the discussions that lead to the Town Council being asked to approve a resolution authorizing the submission to the general Court of a petition for special legislation did anyone from Boylston Properties mention their requirement for a construction management fee. Boylston Properties came to the Town seeking a mechanism to accelerate the development of Arsenal Park for the benefit of their Arsenal Yards project. The Town administration entertained

Hon. Mark S. Sideris and
Members of the Town Council
August 2, 2019
Page 4

this request as it presented an opportunity to advance a portion of the Arsenal Park project at a cost savings to the Town and on a faster pace, with the Town retaining control over the design and implementation of the Park improvements. Never did the Town consider that there would be an added cost to its partnership with Boylston Properties. In good faith, and understanding the need to achieve the special legislation in order to meet the looming construction schedule, the Town administration proceeded with its presentation of the special legislation to the Town Council and strongly urged support. The Town Council acted in kind, voting unanimously to support an action it understood to be in the best interests of the Town. Never was the Town Council asked to consider paying Boylston Properties to undertake the very efforts it had proposed to the Town as being in both parties' interests.

As further consideration in this matter, please note that construction administration services constitute services subject to procurement by the Town. There is no exemption found within G.L. c. 30B, the Uniform Procurement Act, for such services. Therefore, if the Town were to seek such services, a procurement process would be necessary with proposals being solicited by the Town. In addition, an appropriation would be necessary to support the payment for such services, which appropriation would need to be authorized by the Town Council. As you are aware, no such appropriation has been requested, as the Town administration at no time entertained the procurement of such services. The Town is not able to simply, by virtue of an MOU, commit to making payments of tens of thousands of dollars to a developer without public appropriation and procurement procedures being followed. Thus, there is no mechanism under law by which the Town could have agreed to these terms of the proposed MOU.

I hope this recitation provides the Town Council with a complete understanding of the facts and circumstances surrounding the status of the Special Act for a Public-Private Partnership to Undertake Renovations and Improvements at Arsenal Park and the concerns that have arisen since the Town Council authorized the submission of that special legislation to the General Court. I will, of course, be available to answer any questions in this regard.

Very truly yours,



Mark R. Reich

cc: Town Manager
Community Development and Planning Director

Mark R. Reich

From: Driscoll, Michael <mdriscoll@watertown-ma.gov>
Sent: Friday, August 02, 2019 4:36 PM
To: Brownsberger, William (SEN); Jonathan Hecht - Rep., (HOU); John Lawn
Cc: Mark Sideris; Magoon, Steven; Mark R. Reich
Subject: Fwd: Resolution Authorizing Filing with the General Court of a Petition for a Special Act for a Public Private Partnership to Undertake Renovations and Improvements at Arsenal Park
Attachments: 20190802063909958.pdf
Importance: High

2nd of 2 emails.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Driscoll, Michael" <mdriscoll@watertown-ma.gov>
Date: 8/2/19 7:36 AM (GMT-05:00)
To: "Mark R. Reich" <MReich@k-plaw.com>
Cc: Mark Sideris <srdsmark@aol.com>, "Magoon, Steven" <smagoon@watertown-ma.gov>
Subject: Resolution Authorizing Filing with the General Court of a Petition for a Special Act for a Public Private Partnership to Undertake Renovations and Improvements at Arsenal Park

Good morning Sir/ Mark; this is the second of 2 emails related to the subject that I am forwarding to you this morning.

As you are aware, subsequent to receipt of the attached July 18th correspondence @ 343pm that day, Mr. Magoon had a scheduled 430pm meeting with Mr. Copelotti, Boylston Properties on various issues including but not limited to review of a revised MOU which incorporated feedback from the Inspector General. At that meeting and given receipt of this July 18th correspondence, Mr. Magoon informed Mr. Copelotti that the Town would inform the Town's Legislative Delegation, the Inspector General and the Honorable Town Council that efforts related to moving forward with the proposed Special Act should cease as Boylston Properties would not sign a MOU without a 5 % Construction Management Fee. Mr. Copelotti requested Mr. Magoon to hold off on informing of Boylston's Properties position as he indicated they would work this out.

Given receipt of the attached August 1, 2019 correspondence, the Town will move forward with informing the Town's Legislative Delegation and the Inspector General of Boylston Properties decision which will result in not moving forward with the proposed Special Act.

I respectfully request that you provide correspondence that outlines your, Mr. Magoon, the Town's Legislative Delegation and the Inspector General's efforts in this matter and the related issues of same beginning with a meeting with Boylston Properties in advance of bringing forward the proposed Special Act to the Honorable Town Council at their April 9th meeting; and the subsequent discussions/ meeting with State officials in trying to move forward with a proposed Special Act that would be acceptable to the Inspector General, lawmakers and Governor Baker.

Subsequent to receipt of this correspondence, we will forward same to Town Council.

Thank you.



BOYLSTON
PROPERTIES

July 18, 2019

Via email

Mr. Mark Sideris- Town of Watertown, Town Council President
Mr. Michael Driscoll- Town of Watertown, Manager
149 Main Street
Watertown, MA 02472

Dear Mark and Mike,

I had a helpful phone call update from Senator Brownsberger regarding the Senate taking up the Public/Private Partnership process to involve us in the Arsenal Park renovation. He's been working through questions from the Inspector General and believes that the language insertions in the MOU are being requested by the Inspector General, will be agreeable to all when he has them.

He was very clear that the Senate will not take up the matter until they have a signed MOU in front of them, and I have told him that we will not sign the MOU until the Construction Management Fee paragraph is retained in the agreement. As you have both heard from me, we have paid the Town over \$4,000,000 in Building Permit fees over the last several years and if the approximately \$65,000 that the 5% Construction Management Fee represents is a deal-breaker for the Town, we have a broken deal. We don't do our work for free, no more than the Town issues Building Permits for free.

I just wanted to be clear and on the record regarding execution of the MOU so the Town can receive our \$500,000 contribution to the Arsenal Park work.

Sincerely,

William McQuillan

Cc: Andrew Copelotti – Boylston Properties (via email)
Steve Magoon – Town of Watertown, Assistant Town Manager (via email)



**BOYLSTON
PROPERTIES**

August 1, 2019

Via email (smagoon@watertown-ma.gov)

Mr. Steve Magoon
Director
Watertown Department of Community Development & Planning
149 Main Street
Watertown, MA 02472

Re: Arsenal Park MOU

Dear Steve,

As a follow up to my phone call with you yesterday, we cannot finish and sign the draft MOU with the Town on the Arsenal Park Public/ Private Partnership. The unwillingness of the Town to accept a commercially reasonable Construction Management Fee to Boylston Properties of 5% of Total Project Costs is unacceptable to us, as we cannot do free work. Of course, at the same time, contributing \$500,000 to those Capital Costs.

I don't know who the Town will pay to organize and manage that construction, but I suspect it won't be for free, nor will they contribute \$500,000.

As you know, for us this Issue has become the tip of the iceberg in the gross imbalance between what we give to the Town versus what the Town provides to us.

We've paid over \$4 million in Building Permit Fees to Watertown in the last four years and the Town "shares" an inspector with Belmont! The Town has been raking in these dollars into your General Fund and yet constantly demanding more from us. For years it has been "take, take, take" from Town Hall, and a completely one-way street.

The Real Estate taxes were tripled at the Watertown Residence Inn last year, they exceed our taxes at the Boston/Fenway Residence Inn by 30%. The Real Estate taxes at the LINX lab building exceed the taxes paid in Kendall Square for lab buildings.

Without more reasoned taxes from the Town, we can only fear that taxes on our prospective "G" Life Sciences building wouldn't be double any logical estimates, making it impossible to lease or finance.



**BOYLSTON
PROPERTIES**

We enjoy working with the various parties on the Arsenal Park renovation but the failure on the Town's part to be fair has become the tip of the Iceberg of economic peril for us in the immediate future on our new hotel, and for the creation of additional lab space.

Sincerely,

William McQuillan

Cc: Mark Sideris – Town of Watertown, Town Council President (via email)
Mark Deschenes – Boylston Properties (via email)
Andrew Coppelotti – Boylston Properties (via email)
Leo Martin – Town of Watertown, Conservation Commission Chair (via email)