

City of Cambridge

MASSACHUSETTS

Agenda # 2 city's settlement of a suit against the

MBTA regarding the construction of the
Alewife Garage, on a portion of Rindge
Ave. Extension without having title.

In City Council

October 2

1989

	YEA	NAY	ABSENT	PRESENT
Mr. Thomas W. Danehy			✓	
Mr. Francis H. Duehay	✓			
Ms. Sandra Graham			✓	
Mrs. Sheila T. Russell	✓			
Mr. David E. Sullivan	✓			
Mr. Walter J. Sullivan			✓	
Mr. William H. Walsh	✓			
Ms. Alice K. Wolf	✓			
Mayor Alfred E. Vellucci	✓			

6

0

3

MU
MS
RF

2-4



City of Cambridge

Agenda # 2 IN CITY COUNCIL

October 2, 1989

WHEREAS:

The City of Cambridge has challenged the Massachusetts Bay Transportation Authority's purported taking of a portion of Rindge Avenue, City of Cambridge v. Massachusetts Bay Transportation Authority, Land Court, Misc. Docket No. 101054, which the parties wish to settle; and

WHEREAS:

The Massachusetts Bay Transportation Authority (hereinafter "the MBTA") has agreed that in settlement of this litigation and in compensation for the transfer by the City of Cambridge of a portion of Rindge Avenue to the MBTA, it will transfer to the City of Cambridge two parcels of land on Massachusetts Avenue in North Cambridge; now therefore be it

ORDERED:

A. That the City Manager execute the Agreement by and between the Massachusetts Bay Transportation Authority and the City of Cambridge for Property Exchanges and Settlement of Lawsuit (hereinafter "the Agreement") in the form annexed hereto to transfer title to the City of Cambridge of Parcel Nos. C-232D-B and C-232D-C, on Massachusetts Avenue, Cambridge, and shown on an MBTA "Land Disposition Plan - City of Cambridge, Massachusetts, dated April 2, 1982; prepared by Sverdrup and

Parcel Associates, Inc. (hereinafter "Massachusetts Avenue Parcel B and/or Parcel C");

B. That the MBTA transfer and convey title by deeds to the City of Cambridge for the Massachusetts Avenue Parcels B and C;

C. That the City Manager accept title to said Massachusetts Avenue Parcels B and C;

D. That the MBTA transfer and convey title by deeds to the City of Cambridge for \$1.00 and other consideration as set out in the Agreement and the City Manager accept title to roadways and related facilities constructed by the MBTA, at its own expense, on the following parcels around the Alewife Station, as shown on Plan No. 54388A, sheets 1-4, titled "Land Disposition Plan - City of Cambridge, Massachusetts";

- (1) Parcel C-267 containing 10,795 $\pm$ sq. ft.
- (2) Parcel C-268 containing 29,127 $\pm$ sq. ft.
- (3) Parcel C-272 containing 168 $\pm$ sq. ft.
- (4) Parcel C-274 containing 845 $\pm$ sq. ft.
- (5) Parcel C-277 containing 49,079 $\pm$ sq. ft.
- (6) Parcel C-271 containing 11,384 $\pm$ sq. ft., to be acquired by the MBTA from the MDC and thereupon conveyed to the City.

The deeds transferring and conveying title to the City of Cambridge of the above referenced Parcels shall be delivered to the City upon execution of the Agreement (except for Parcel C-271, which shall be conveyed upon acquisition of title by MBTA) and shall be subject to the following reservations:

- (a) A permanent right of access for the benefit of the

MBTA and the public;

(b) A permanent easement in the roadways constructed in Parcels C-268 and C-277 for future mass transportation or rail use;

(c) A reserved right to approve all traffic signalization systems to be installed in the parcels;

(d) A reserved right to approve all proposed curb cuts to be made in the parcels;

(e) A permanent easement in the roadways constructed in the parcels for future highway use.

E. That the MBTA transfer and convey title by deeds to the City of Cambridge for \$1.00 and other consideration as set out in the Agreement to certain parcels of land located on Massachusetts Avenue in the City of Cambridge as described in Exhibit B to the Agreement, subject to the following conditions:

(a) that portion of the Massachusetts Avenue Parcels designated as Parcels C-232D-B, containing 26,858 sq. ft., more or less, will be conveyed to the City, in an as-is condition, upon execution of this Agreement;

(b) that portion of the Massachusetts Avenue Parcels designated as Parcel C-232D-C, containing 10,787 sq. ft., more or less, will be conveyed to the City, in an as-is condition, upon execution of this Agreement, subject to an easement for the MBTA to continue to operate existing transit facilities on the property until such time as said facilities are removed, with an obligation on the part of the MBTA to use its best efforts to remove said facilities

within a 3-year period following transfer of title. In any event, upon removal of said facilities by the MBTA the easement provided for by this sub-paragraph shall cease by its own terms and the MBTA shall vacate the property in the condition stipulated on the construction plans for Phase II - Transportation Facility "MBTA Contract No. ROCNO1 dated January 7, 1985" as approved by the City. The City will be indemnified by the MBTA for any liabilities incurred as a result of the MBTA's use of the easement area.

(F) That the City accept title to parcels C-267, C-268, C-271, C-272, C-274 and C-277 upon delivery thereof, in conformity with law, to lay out the streets as public ways, and to maintain such roadways and related facilities at no cost to the Authority. Such related facilities include sidewalks, lights, signals, signs, landscaping, drainage, and so forth. Such roadways and other facilities shall at all times be open to MBTA vehicles and to the public, and shall be maintained in the same manner (including clearance of snow or other obstructions) as emergency arterial streets in the City.

(G) That the City allow said roadways constructed in Parcels C-267, C-268, C-271, C-274 and C-277 to be used by the Commonwealth and by the MBTA for any lawful purpose.

(H) That the City discontinue as a public way that portion of Rindge Avenue which is the subject of litigation in Land Court Misc. Docket No. 101054, and transfer to the Authority upon the execution of the Agreement all of its right, title, and interest in and to said discontinued public way.

(I) That the City restrict, for a period of twenty years from the effective date of the Agreement, the use of Parcel C-232D-B and Parcel C-232D-C conveyed to it under the provisions of Paragraph B(6) of the Agreement, for a public benefit purpose such as, by way of example and not by way of limitation, a public building, mixed income housing, or a health care facility. Any such public benefit project may include the provision of social and health care services for its residents. Any such project, including its construction and management, may be undertaken by the City, itself, or through arrangements with private developers and/or providers of health care services and may, without limitation, include the lease of land so long as said arrangements are not inconsistent with the provisions of paragraph C(5) of the Agreement.

(J) That the City give the MBTA four months prior written notice of any use of Parcels C-232D-B and C-232D-C. In the event the City at any time realizes a net profit by selling, leasing, or conveying an interest in Parcel C-232D-B and/or Parcel C-232D-C to accomplish the public benefit purpose set forth in Paragraph C(5) of the Agreement, the City shall pay fifty percent (50%) of any such net profit received by the City to the Authority.

(K) That the City acknowledge that the MBTA intends to continue its use of a parcel of land containing 73,806 square feet, more or less, which is contiguous to Parcel C-232D-C as a Transportation Facility. That the City assure that construction specifications for the public benefit project by any developer

will make adequate provision for the reduction of such noise as may be emitted from the Transportation Facility, and not object to its future use by the MBTA provided that activities are limited as follows:

(a) Repair and service activities will be confined to four enclosed maintenance bays.

(b) The Authority will use its best efforts to keep all material storage areas closed.

(c) No more than 32 trackless trolleys shall be stored at the site.

(L) That the City cooperate with and assist the MBTA in its accomplishment of the Roadway Project identified as Red line Extension Northwest Contract No. 091-602, dated 12/8/83, prepared by Ellenzweig, Moore and Associates, Inc. That the City review all plans, specifications and other documents relating to the Project which are submitted to it as soon as reasonably practicable. City approval of documents submitted for review shall not be unreasonably withheld.

(M) That no changes shall be made in the Roadway Project which affect the City's interests hereunder without the approval in advance of the City, which shall not be unreasonably withheld.

(N) That the City will make no claim against the MBTA, its successors and assigns based upon the ownership, occupation and use of the Transportation Facility as a Transportation Facility, whether on account of noise, vibration, fumes, odor, electrical interference or other causes arising from the MBTA's permitted ownership, occupation and use, so long as the MBTA maintains the

Transportation Facility in accordance with the aforesaid terms and conditions, and in accordance with law.

(O) That the City together with the MBTA execute and file a Stipulation for Dismissal, pursuant to Massachusetts Rules of Civil Procedure, Rule 41(a)(1), in the Land Court litigation, Land Court Misc. Docket No. 101054 and release each other from all damages arising from or relating to said litigation.

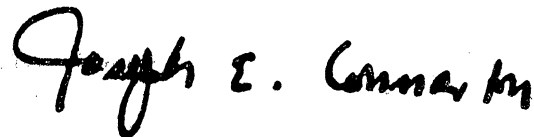
(P) That the City accepts each and every provision contained in the Agreement by and Between the Massachusetts Bay Transportation Authority and the City of Cambridge for Property Exchanges and Settlement of Lawsuit, dated Second day of October in the year nineteen hundred eighty-nine.

cc\9589.agr\jan

In City Council October 2, 1989.
Adopted by a yea and nay vote:-
Yeas 6; Nays 0; Absent 3.
Attest:- Joseph E. Connarton, City Clerk.

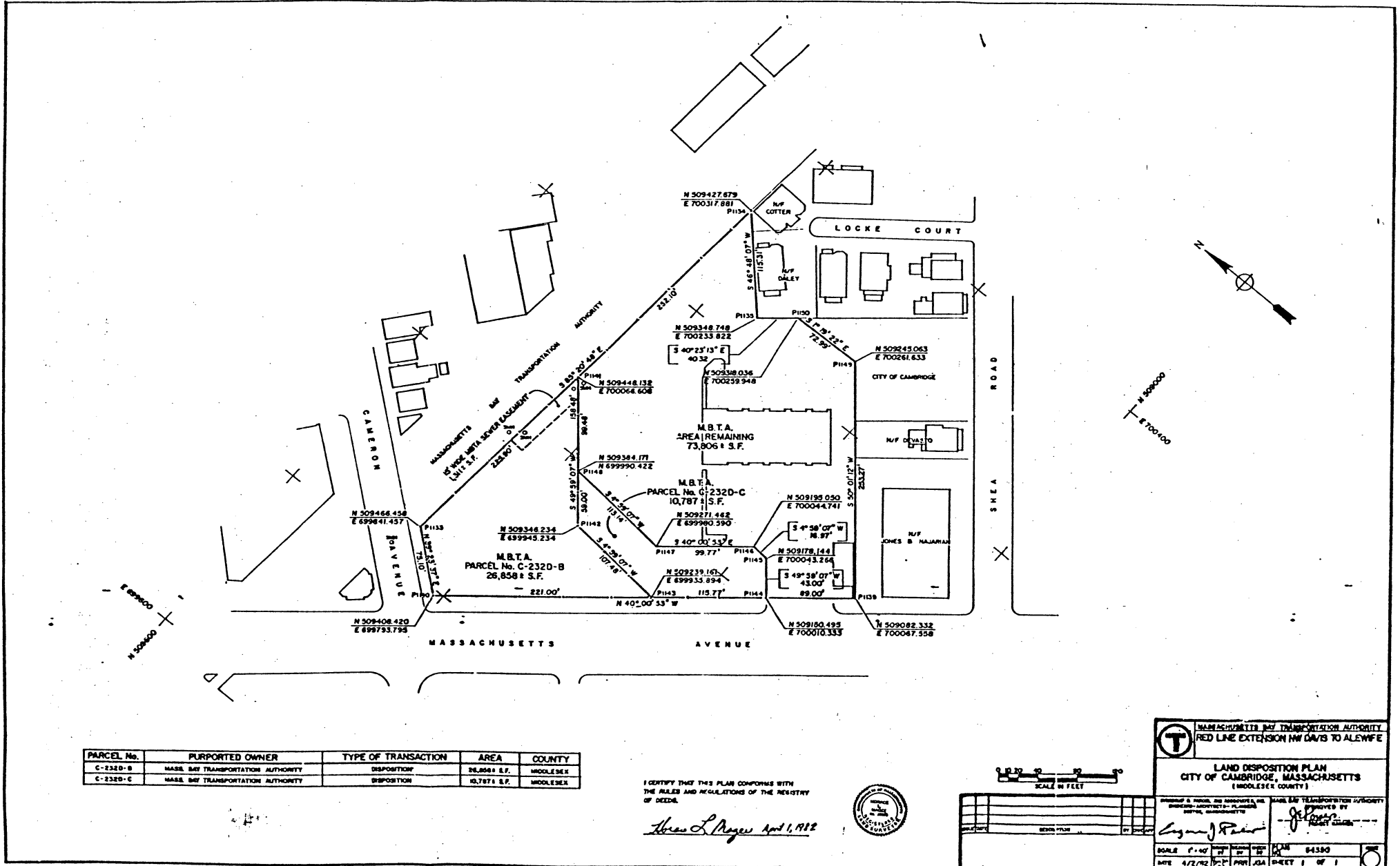
A true copy;

ATTEST:-



Joseph E. Connarton, City Clerk.

EXHIBIT B



PARCEL No.	PURPORTED OWNER	TYPE OF TRANSACTION	AREA	COUNTY
C-232D-B	MASS. BAY TRANSPORTATION AUTHORITY	DISPOSITION	26,858 S.F.	MIDDLESEX
C-232D-C	MASS. BAY TRANSPORTATION AUTHORITY	DISPOSITION	10,787 S.F.	MIDDLESEX

I CERTIFY THAT THIS PLAN CONFORMS WITH THE RULES AND REGULATIONS OF THE REGISTRY OF DEEDS.

Thomas L. Rogers April 1, 1982



SCALE IN FEET
0 10 20 30 40 50

DATE	BY	REMARKS
4/1/82	J. P. [Signature]	RECORDED

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY
RED LINE EXTENSION HW DAVIS TO ALENWFE

LAND DISPOSITION PLAN
CITY OF CAMBRIDGE, MASSACHUSETTS
(MIDDLESEX COUNTY)

APPROVED & FORWARDED BY: [Signature]
DATE: 4/1/82

MASS. BAY TRANSPORTATION AUTHORITY
RECORDED BY: [Signature]
DATE: 4/1/82

SCALE: 1" = 100'
DATE: 4/1/82
SHEET: 1 OF 1

M.B.T.A. RECORD COPY



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139

TEL. 498-9011

EXECUTIVE DEPARTMENT

ROBERT W. HEALY

City Manager

RICHARD C. ROSSI

Deputy City Manager

October 2, 1989

The Honorable, The City Council:

Enclosed for your approval, is an order which settles the City's suit against the M.B.T.A., regarding the construction of the Alewife Garage, on a portion of Rindge Avenue Extension without having title.

The essential elements of the settlement are that the M.B.T.A. will convey to the City two parcels of land on Massachusetts Avenue in North Cambridge, containing approximately 37,000 feet for a public benefit purpose, including but not limited, to a health care facility (Nursing Home).

Additionally, the City will take title to, and maintain the roadways, immediately surrounding the Alewife Garage, constructed by the M.B.T.A.

The process of acquiring title to the North Cambridge site spans approximately ten years and three votes of the M.B.T.A. Board of Directors.

This order represents the opportunity for the City to culminate this lengthy effort and settle the court case.

Passage is recommended.

Very truly yours,

Robert W. Healy
City Manager

RWH/mev

enclosure

Agenda #2

S-649

City's settle of a suit against the MBTA
regarding the construction of the Alewife
Garage, on a portion of Rindge Avenue
Extension without having title.

In City Council,

October 2, 1989

Order adopted

6-0-3