CITY OF CAMBRIDGE
COMMUNITY DEVELOPMENT DEPARTMENT
City Hall Annex - Inman & Broadway - Cambridge, Mass. 02139

498-9034

October 18, 1985

MEMO

To: Robert W. Healy
City Manager

From: Jim Campbell
East Cambridge Project Director

Re: Status of Relocation Activities for Davenport (Webb) Building

Below is an update on the relocation of tenants, and particularly Mudflat Pottery School, from the Davenport Building (formerly the Webb Building).

Background

In January, 1984 the City applied for the Lechmere Canal Development UDAG to, among other activities, assist the Marcus Organization in the renovation of the Davenport Building. Although not required to do so by the Federal or state government, the City imposed upon the developer the conditions that 1) they pay relocation benefits to all tenants equivalent to what would be required under the State Relocation Act, and 2) they set-aside space at below market rents for artist studios in the renovated building.

Upon approval of the grant, Marcus gave all tenants 120 day notice, as required under the state act. All tenants were tenants-at-will, except Mudflats who had a lease until November 1984. Therefore, Mudflat was subsequently notified by the developer to vacate upon termination of the lease. All tenants eventually requested and received extensions. The developer hired a relocation consultant to assist tenants to find new space and fill out relocation claims. A relocation process was established; explained to all tenants; and agreed to by all parties. The process specified that the Community Development Department would arbitrate disputes between the developer and tenants.

During the Spring and Summer of 1984 the City instructed the developer to work with a consortium of artist tenants to find and buy a building in Cambridge for new studios, in lieu of the set-aside. Several buildings were investigated but no appropriate, viable buildings were ultimately available. Thereafter, the artist tenants sought separate studios throughout the Boston area.

On June 11, 1984, the City Council passed a resolution stating that the City should include in its contract with the developer that the cash value of the "set-aside space" should be established and paid by the developer as a fund to, among other things, provide an on-going rent subsidy or building acquisition assistance to Mudflat. The resolution also called for Mudflat to be allowed to stay in the Davenport Building until the end of January 1985.

In January 1985 the City Council authorized the City Manager to execute with the developer the "Tenant Relocation Plan and Agreement", implementing the provisions at the June 11, 1984 Resolution. The Agreement called for the developer to do the following:

A. Make all payments as required under M.G.L. 79A, the State Relocation Act;

B. Allow all tenants still in the building to remain until January 31, 1985;

C. Establish a fund of $220,00 for grants to artists for capital improvements over and above those paid for under M.G.L. 79A, including a grant of $37,500 to Mudflat;

D. Set-aside 5,000 square feet in the renovated building for artist space;

E. Pay Mudflat an annual rent subsidy of $20,000 for 8 years or a one-time grant of $110,000 in lieu of the annual payments.

In January, 1985 the developer signed a separate agreement with Mudflat (the City was not a party to the agreement), which we understood to be an agreement to implement the "Tenant Relocation Plan and Agreement" as it related to Mudflat.

Status of Tenants

To date all 33 tenants have vacated the building, and found new studio space (most outside of Cambridge). All tenants vacated prior to January 31, 1985 with the exception of Mudflat. The developer allowed Mudflat, at their request, to remain in the space until May, 1985 so that they could close on the acquisition of a new building in Somerville.

All tenants have received their relocation payments as required under M.G.L. Ch. 79A, with the exception of the two discussed below.

Marcus Compliance with "Tenant Relocation Plan and Agreement"

A. State Relocation Act Payments: With the exception of two tenants, Mudflat and Shelly Brooks, all relocation benefit claims have been completed and paid. Total payments, as they relate to relocation benefits equal $211,140.

Shelly Brooks received payment for all moving expenses last April. She has just recently requested arbitration of a disputed claim for an additional $3,682. An arbitration meeting has been scheduled for October 24th.

Mudflat has received payment for all direct moving expenses, plus the installation of new kilns. Total relocation benefits paid on behalf of Mudflat to date equals approximately $50,000.

On August 9, 1985 Mudflat submitted a claim for an additional $31,184.02, plus some related costs estimated at $2,000. On or about September 1, 1985, the developer responded that their evaluation of the claim suggested that only about $25,000 was eligible under Ch. 79A, but that they would agree to pay $28,000 if Mudflat would sign-off that this completed any and all claims. Through negotiation that amount was increased to $29,200; however Mudflat refused to agree not to submit for additional payments under their separate two-party agreement with Marcus. Without the sign-off Marcus stated they would abide by the strict obligations of Ch. 79A and only make a final payment when a final claim is submitted backed by actual completed work receipts. (Under M.G.L. Ch. 79A Marcus had no obligation to have paid the previous $50,000 in advance).

Prior to submitting their August 9 claim, Mudflat requested resolution of what items would be eligible for reimbursement as relocation benefits (before assigning dollar costs to these items). The Community Development Department agreed to arbitrate the issue solely related to eligibility of items. All parties, including Mudflat representatives, at the outset of that meeting agreed it would be a "final arbitration" with regards to eligibility under M.G.L. Ch 79A. A copy of the arbitration decision is attached. All parties agreed that any further arbitration would be specific to cost disputes within already designated eligible items.

B. Vacancy Date All remaining tenants were allowed to stay through January 31, 1985; Mudflat until May 1985.

C. Grant Fund Developer has paid a total of $224,200 (exceeding the $220,000 required) in grants to artists for capital improvements and related expenses. Mudflat received their grant of $37,500.

D. Set-aside Artist Studio Space: The building renovation plans call for 5,000 square feet to be renovated accordingly.

E. Mudflat Rent Subsidy In lieu of the annual payment, the developer paid, at Mudflats request, a $110,00 one time grant.

Recommendation

Although the process has been long and difficult, we believe the tenants and developer have acted in good faith in following agreed to procedures and meeting obligations under the approved "Tenant Relocation Plan and Agreement". To date, the developer has expended in excess of $560,000 for tenant related benefits.

With regards to Mudflat's claim for additional benefits, we do not believe they are justified under M.G.L. Ch. 79A, or the approved "Tenant Relocation Plan and Agreement". Also, we do not believe it would be fair to the developer or all of the other former tenants to retroactively change a final arbitration decision based on an arbitration process agreed to in advance by all parties.

The City was not a party to the separate two-party agreement between Mudflat and Marcus. Any claim Mudflat may make for benefits over and above those specified in M.G.L. Ch. 79A and the "Tenant Relocation Plan and Agreement" is subject to resolution through appropriate legal channels. However, it was clearly our understanding at the time of that agreement that the intent of the two-party agreement was simply to put into writing the steps necessary to implement the "Tenant Relocation Plan and Agreement" as it relates to Mudflat.

cc: Mary T. Flynn

CITY OF CAMBRIDGE
COMMUNITY DEVELOPMENT DEPARTMENT
City Hall Annex - Inman & Broadway - Cambridge, Mass. 02139

498-9034

To: File, Mudflat's Arbitration Concerning Item Eligibility

From: Kathy A. Spiegelman
Assistant City Manager for Community Development

Re: Final Arbitration Concerning Item Eligibility

Date: August 20, 1985

On August 7, 1985 a final arbitration session was held to determine final status as to the eligibility for relocation assistance payments of numerous items. That session was reconvened and continued on August 14, 1985. All parties were in agreement as to the intent of the meeting as a final arbitration on eligibility issues and that all eligibility matters were on the table. This memorandum reflects the final decision by the City as to the eligibility of all items in dispute.

Determining eligibility of items for relocation assistance under Chapter 79A is an extremely difficult and confusing process. The regulations are often vague, and at times seemingly contradictory; thus they are prone to legitimate competing interpretations. The City believes that all parties have acted in good faith in presenting their positions.

Numerous items were brought to the City for clarification prior to and during the arbitration session. First, I will restate and clarify the City's final position on all items previously discussed. Then I will state the final decision on these items brought to arbitration. The City's decisions relate specifically and solely to eligibility under Chapter 79A.

1. <u>8' Partitions:</u> Eligible. Since the partitions were destroyed by the demolition contractor, the Marcus Organization must rebuild them at the new location.

2. <u>Fireproof Exit Staircases and Firedoors:</u> Ineligible.

3. <u>Fire Alarm, Smoke Detectors, Panic Hardware:</u> Ineligible.

4. <u>Distribution of Electrical Services:</u> Eligible to the extent that it is comparable to service in the Webb Building.

5. Upgrade Electrical Service: Eligible to the extent that it is necessary to run equipment, and limited to the upgrading of service from the nearest wall panel to the equipment.

6. Gas Line and Booster: Eligible.

7. Utility Sinks: Eligible.

8. Hot Water Heater: Eligible.

9. Wedging Table, Miscellaneous Tables: Eligible. Since tables were destroyed in demolition, the Marcus Organization must rebuild them at the new location.

10. Shelving: Eligible.

11. Ventilation: Eligible, and must be installed to provide reasonably comparable "services" as in the Webb building.

Items Disputed in Arbitration

1. Glaze Room, Kiln Room, and Clay Mixing Room Walls: Ineligible. Walls are part of the real estate and, as such, were paid for by the developer as an acquisition expense and are, thus ineligible for payment under relocation assistance. In addition, new walls at the new location add value to the real estate in general and are thus an ineligible expense.

2. Floor Support: Ineligible. The cumbersome and detailed procedures deliniated in Chapter 79A for approving improvements to real estate indicate that such approval requires the most serious of consideration. The tenant's selection of a non-industrial property, with insufficient floor strength to accomodate their kiln, was specifically related to their often-stated goal to secure either ownership of property or a long term lease. The relocating agency (the developer) has no obligation to relocate the tenant into a situation substantially superior to the original, unless no other options are available. Based on our experience with other relocations, it is evident that other industrial space, with sufficient floor strength, was available on shorter term leases. Since Mudflat's Webb Building lease expired in November 1984, the developer has no obligation to bear an expense related specifically to the selection by the tenant of space with a long-term lease or ownership.

In addition, two other factors were considered in determining the ineligibility of the floor support were, 1) the developer expended funds as acquisition expenses to acquire the columns and beams at the Webb Building sufficient to support the kiln and therefore is not obligated to pay for them again at the new location; and 2) the proposed floor supports would add to the general value of the real estate at the new location.

3. Flourescent and Gallery Lights: Eligible. The lights are eligible to be relocated or replaced, and reinstalled and reconnected in full, from the nearest electrical lines or service panel. Although the status of the lights as lease-hold improvements to the real property appeared to be a gray area, under the definition of "personal property" in Chapter 79A they must be considered personal property and thus eligible for full relocation assistance. The Courts have genrally ruled in favor of the tenants in cases involving the removal of fixtures originally paid for and installed by the tenants, wherein the removal did not damage the real estate and wherein there was no prior written agreement governing the removal. Since no prior written agreement on the matter was presented at the final arbitration session, we therefore determine that the tenants would otherwise have the legal right to remove the lights in question. Thus, they are eligible for full relocation assistance as personal property.

6.

CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139
TEL. 498-9011

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
DEPUTY CITY MANAGER

October 21, 1985

To the Honorable, the City Council:

With respect to Awaiting Report Item No. 45 relative to issues raised in connection with the Mudflat Pottery School, enclosed please find copy of an updated report from Jim Campbell, East Cambridge Project Director, on the relocation of tenants from the Davenport Building (formerly the Webb Building).

Very truly yours,

Robert W. Healy
City Manager

RWH/mbf

Agenda Item No. 6

S-763

Re: response to Awaiting Report Item No. 45 on the issues raised in connection with the Mudflat Pottery School.

In City Council,

October 21, 1985

Referred to the Hearing at 6:30 pm this day