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CAMBRIDGE MA.
From: John R. Moot and

44 Coolidge Hill Road
Cambridge, MA 02138

Howard D. Medwed
58 Washington Avenue
Cambridge, MA 02140

May 19, 1994

To: The Cambridge City Council

Subject: Purchase and Sale Agreement between the City of Cambridge and the Trustees of Memorial Realty Trust, dated November 30, 1993. (relating to the Stop & Shop Memorial Drive site.)

We have reviewed this Agreement with a view to ascertaining whether the interests of the City are adequately protected in the Agreement. We have the following observations:

- 1.- The sale price of \$1 million is low unless there are significant public benefits to be derived from this transaction. Riverside Road covers 27,500 square feet and fronts on two major roadways. We understand that a neighboring 8,000 square foot parcel recently was sold to Polaroid for \$1 million. The Riverside Road site has greater synergy for Stop and Shop by joining three separated parcels and consists of more land. By any reasonable extrapolation, in our opinion the price for this parcel should be in the range of \$3-4 million. We realize that the City would be justified in selling at a below market price if there were a clear commensurate public benefit. We do not believe that this contract can be construed to assure any benefits to the City.
- 2.- The contract is not primarily with Stop & Shop. Rather, it is with a straw, Memorial Realty Trust (MRT). Further, MRT may assign its rights to anyone at any time without restriction. The City might find its remedies for breach of this contract to be illusory if it were necessary to go to court.
- 3.- The Agreement will tie up the property for at least seven years unless MRT buys the property or voluntarily relinquishes its purchase rights. The City has only one possible way out under the Agreement. This out depends upon the refusal of the MDC to issue a truck access permit. Even if the MDC were to refuse to issue a truck access permit now, the land may still be tied up by MRT. MRT may demand that the City support their efforts to secure a truck access permit from the MDC year after year.

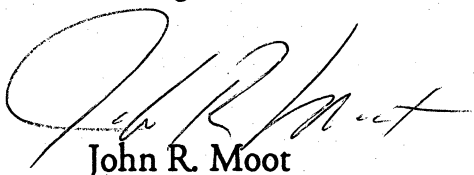
4.- MRT can opt out of this agreement easily. For example, MRT may not seek title insurance or other permits. Further, after two years MRT may terminate the Agreement at will if they do not have all their permits.

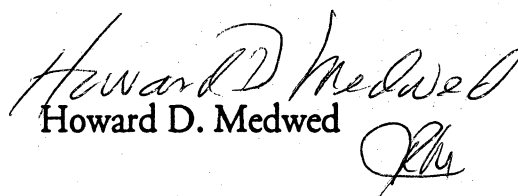
5.- If a sale were consummated, MRT and Stop & Shop have neither the obligation to build a food store in a timely fashion nor any obligation to keep a food store open for any definite period of time. Thus, the City is not assured of the operation of a food store at this location for any preditable period of time. If the justification for a low price for Riverside Road was the benefit of a food store on this site, then the Agreement does not assure that public benefit.

6.- Once Stop & Shop opens and closes its store, MRT (or its assignee) can develop the entire 5 acres of land to its full potential with minimal limitations (no fast food for 11 years, and a limit of 35 foot height and 0.6 FAR in the areas presently zoned residential.)

7.- We believe that the procedure followed in approving this Agreement by the City Council may have been legally flawed. The Council vote on June 30th which delegated to the Manager the determination of the final terms and conditions and the securing of the separate approvals of six councilors does not appear to comply with the applicable City ordinance. There was no emergency justification as evidenced by the fact that the Council met on numerous occasions between the June 30 vote and the November 30 signing. The final approval did not reflect public deliberations in an open meeting where all the City Councilors and members of the public had a chance to review and comment on the proposed Agreement.

8.- To protect its interests, the City should seek the advice of outside counsel as to whether the City is bound by this Agreement and the effect of this Agreement. Such counsel should be independent and not have participated in any part of the negotiations, drafting, or public approval process in respect to this Agreement


John R. Moot


Howard D. Medwed

Consent Comm. # 3

5-246

Comm. from John Moot and Howard Medwed
regarding the Purchase and Sale Agreement
between the City of Cambridge and the
Trustees of Memorial Realty Trust.

In City Council,

May 23, 1994

*Referred to the
City Manager for
opinion
Copy sent to City
mgr 5/24/94 (d)*