

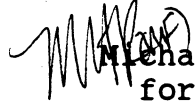


CITY OF CAMBRIDGE
COMMUNITY DEVELOPMENT DEPARTMENT

MICHAEL ROSENBERG,
*Assistant City Manager for
Community Development*

MARY FLYNN,
*Deputy Director for
Community Development*

To: Robert W. Healy, City Manager

From:  Michael H. Rosenberg, Assistant City Manager
for Community Development

Subject: Response to the City Council's request for
further information on the City Manager's
agenda item #14 dated October 5, 1992

Date: October 14, 1992

At the City Council meeting of October 5, 1992, questions were raised regarding the provisions in the Cambridgeport rezoning of February, 1992 regarding the mechanism by which the City would achieve new open space. The community's desire to obtain new open space for active recreational use was fully supported by all involved in the rezoning negotiations.

The lease is rent free to the City. It was an innovative response embraced by all participants in the effort because it provided the best way to make the land available to the City right away. The lease is a legal mechanism that will allow the City to utilize the public open space within one year and will expire when the City takes title to the land, after MIT has used its development rights.

This memo will briefly outline the background of the open space provisions, review the language and intent of the zoning, and clarify related issues of concern to the City Council.

Background

In the Spring of 1991, two rezoning petitions were filed for lower Cambridgeport. One was filed by the Planning Board. The other, the Lynch petition, was filed by neighborhood residents. Although neither petition was adopted, both contained provisions for the transfer of development rights in exchange for land being set aside for new public open space and allowed various legal mechanisms to achieve the transfer of the private land to the City for open space purposes.

However, the petitions did not identify a specific site where open space could be made available, nor did they provide for a way to transfer the land in advance of utilizing the development rights. This meant that the City's access to the land would be delayed until new development occurred and transfers of land would only be proportional to the development rights used. This could take many years. All parties agreed that this was not the desired situation. It became important to both identify a site and make it available to the City as quickly as possible. A mechanism was sought to achieve this end.

New zoning petitions were filed for lower Cambridgeport in the Fall of 1991. The Lynch petition was refiled by the neighborhood residents. At the same time, the Burke petition, a revised version of the earlier Planning Board petition, was submitted by Cambridgeport property owners. The Burke petition identified a MIT owned site, shown on the attached map, and proposed new language in the open space transfer provisions to resolve the timing issue.

Since there were still differences between the two petitions on a number of other zoning issues, negotiations were initiated by the neighborhood and the landowners to resolve the outstanding issues. Agreement was quickly reached on the open space transfer language and site proposed in the Burke petition which offered the lease mechanism to achieve a timely conveyance of the open space site to the City. This language was incorporated into the Lynch petition adopted by the City Council in February, 1992.

The lease provision, described further below, was proposed and agreed to as the way that the City can obtain full use of the property in the near term, followed by ownership of the site once the development rights have been utilized. In negotiations, M.I.T. stated its willingness to enter into a lease for the open space land well in advance of exercising its development rights which will require a special permit process.

Summary of the Open Space Transfer Provisions

The provisions, contained in Section 17.86 of Special District 8 (See Attachment B), are intended to provide an incentive for private owners to donate, to the City, land suitable for open space use in exchange for the right to use the commercial or residential development potential of that land on another site in specified areas within nonresidential Cambridgeport.

The transfer of development rights and the conveyance of the land to the City are secured through a special permit process before the Planning Board. The property owner is required to convey a suitable site, which meets environmental standards normally applied by the Massachusetts Department of Environmental Protection and the City to any public recreational facility. The owner is not obligated to improve the site for recreational purposes.

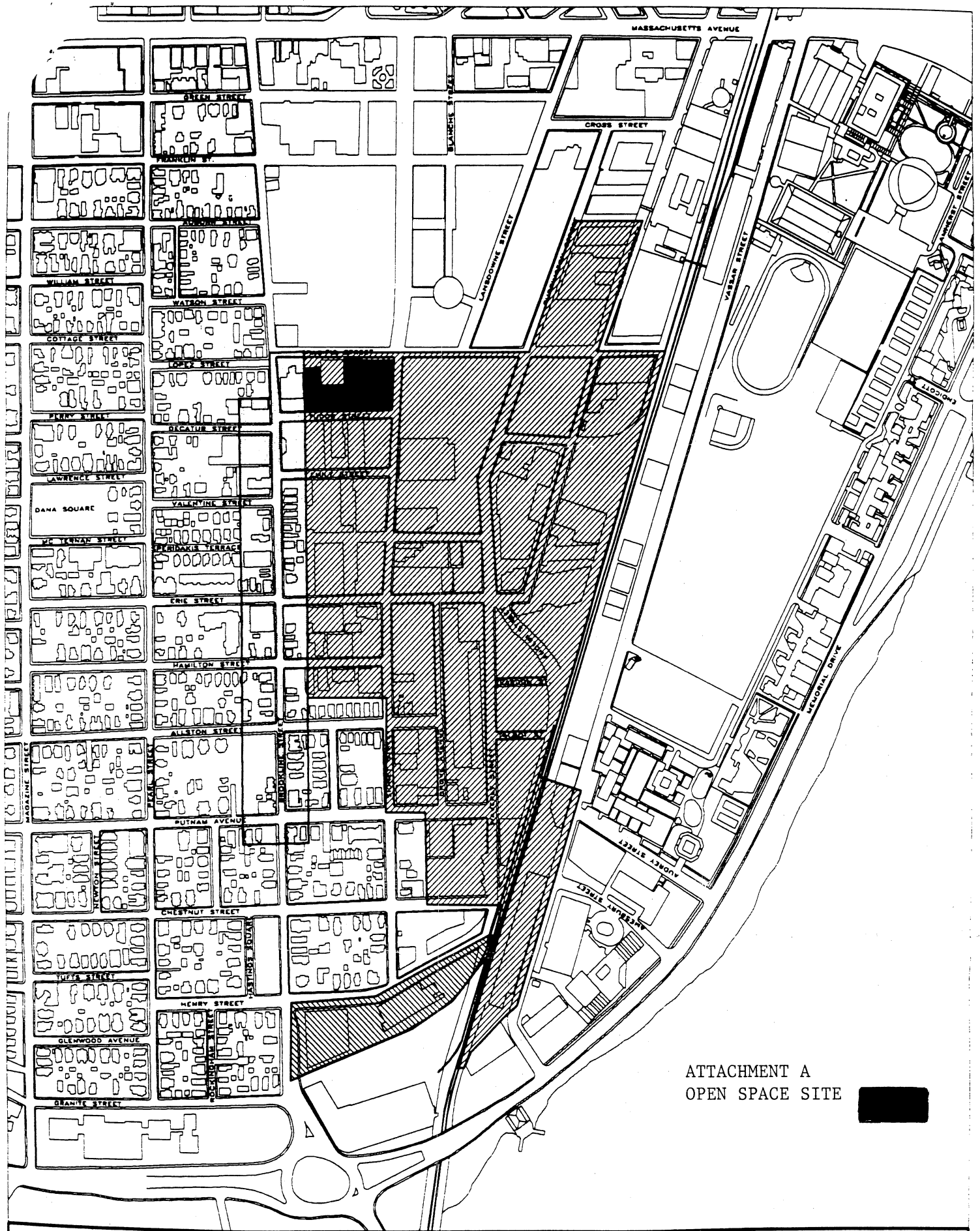
The property owner is required to make the permanent transfer of title (which can be by fee interest, lease, or easement although fee conveyance is anticipated) to the City only as the development rights transfer is utilized, as demonstrated by the issuance of a certificate of occupancy for a building. Anticipating that a special permit may authorize development which is constructed in phases over an extended period of time, Section 17.86 requires that a lease for the whole site be executed immediately to permit interim public use of all the land from which a transfer of development is authorized until all development rights have been exercised and a permanent conveyance of the land secured. However, the zoning ordinance provides that should any public action (like a rezoning) eliminate unused development rights, such an interim lease is immediately terminated and the remaining, unprotected property restored fully to its original owner without any encumbrance.

Section 17.86 requires that a specific site on Pacific Street, of about 59,000 square feet, be conveyed to the city before the owner of any other parcel in Cambridgeport may take advantage of the provisions of the Section.

Related Issues

Two additional issues were raised regarding the open space site. The first pertains to the environmental condition of the property. The zoning requires that the owner provide the city a site which meets environmental standards. Environmental assessment, and any required clean-up, will be done by the owner under the direction of the Massachusetts Department of Environmental Protection in accordance with M.G.L. Ch. 21E.

The second issue concerns responsibility for funding future improvements to the site to make it suitable for recreational use. From the earliest discussions regarding the open space transfer provisions, it was agreed that the responsibility for site improvements rests with the City.



ATTACHMENT A
OPEN SPACE SITE



ZONING PETITION OVERLAY DISTRICTS

OVERLAY DISTRICT A



OVERLAY DISTRICT B



OVERLAY DISTRICT C



10/91

100 0 250 500 1500 FEET

floor area permitted on the lot, notwithstanding the fact that all such allowed gross floor area is not in fact proposed to be constructed.

- 17.85.4 No special permit shall be issued in this district which permits the total number of parking spaces on a lot to exceed (a) that number permitted in Section 17.84.3 for development authorized by the special permit plus (b) any additional parking present on the site before the date of application for uses not located on the lot, which parking is provided as legally established required accessory parking, not exceeding the minimum required in Article 6.000 at the time of the granting of the special permit in the zoning district applicable to such uses.

Where the parking provided on the site at the time of the special permit approval exceeds that quantity permitted above, the approved Special Permit shall provide a schedule by which the parking on the development parcel shall be brought into compliance with this subsection 17.84.4.

17.86 Transfer of Development Rights and/or Additional Height to secure Publicly Accessible Open Space.

Notwithstanding the limitations imposed by the definitions of lot in Article 2.000 or the dimensional limitations imposed in **this Section 17.80** the Planning Board may allow by special permit: (1) the transfer of all of the gross floor area permitted as of right or by special permit **either in this Section 17.80, or provisions of the Special Districts IX and X Sections 17.90 and 17.100** on one or more lots (donating lots) **located in either Special District IX and X or this Special District VIII**, held either in common or separate ownership to one or more other lots (receiving lot), held either in common or separate ownership in **special District VIII** and/or (2) may allow an increase in the permitted height on the receiving lot(s), for the purpose of creating an open space facility of approximately fifty-nine (59,000) square feet and such other additions to that space or the creation of other such open spaces as may be offered, accessible to the general public and designed and intended to be used for active and/or passive recreation, meeting the following requirements:

1. One open space parcel containing an area of approximately fifty-nine thousand (59,000) square feet, as shown on Lots numbered 48 and 57 on Assessor's Plat numbered 95, shall be a donating lot **and must be secured as an open space as required in this Section 17.86 before any other lot may be considered a donating lot**; other open space parcels within the **Special District VIII or Special Districts IX and X** may also be donating lots.
2. The FAR on the receiving lot(s) does not exceed 2.5 for nonresidential uses or 3.0 FAR for residential and dormitory use.
3. The receiving lot(s) for the one hundred three thousand, two hundred fifty (103,250) gross square feet or more of floor area to be transferred is located in **Special District VIII**.
4. The maximum height of any structure on the receiving lot does not exceed the

extent as if the zoning ordinance had not been amended or otherwise changed), the lease of the donating lot to the City of Cambridge shall terminate automatically upon the effective date of that amendment or other change in the zoning ordinance.

Any special permit issued under the provisions of this Section 17.86 shall be in force and effect for the length of lease of property for open space purposes as required in this Section 17.86. For the purposes of Section 10.46, the use authorized by any special permit issued under this Section 17.86 shall be deemed to have commenced with the granting of the lease of land for open space purposes as defined in this paragraph 8.

17.86.1

In granting a special permit under **this** Section 17.86 the Planning Board shall consider the following:

1. The proposed open space is consistent with the objectives of this Section 17.86 to create a useable open space or recreational facility addressing the unmet needs of the adjacent residential neighborhood and those of the new residents of the district and, if one is adopted, is consistent with a plan for the distribution and use of open space in the District.
2. If less than one acre, the open space is clearly an element of a plan to be implemented incrementally created through the issuance of additional special permits, or is clearly acceptable as an independent facility.
3. If it is intended to be a part of a larger facility, the open space is useable on its own, as an independent facility, it intended future special permits are not sought or granted.

following limitations:

- (a) Sixty (60) feet in that area lying between Sidney Street and a line, which line is parallel to, southeasterly of and one hundred (100) feet distant from Sidney Street;
 - (b) Ninety (90) feet in that area lying between the parallel line described in paragraph (a) above and Albany Street;
 - (c) One hundred (100) feet in that area lying southeasterly of Albany Street.
5. The donating site for an open space contribution of approximately fifty-nine thousand (59,000) square feet is located at 82 Pacific Street as shown on lots numbered 48 and 57, on Assessor's Plat numbered 95.
6. Open space facilities shall be under the control of, and be programmed and maintained by the City of Cambridge or its designated agent. Transfers of open space facilities shall be by fee simple conveyance, easement, lease (see Subsection 8) or other legal mechanism, and shall be made as a condition precedent to the issuance of the first building permit for a project on a receiving lot which utilizes development rights granted by Special Permit for that project. Special Permits granted under this Section 11.507 shall run with the land.
7. The site is physically suitable for the recreational uses proposed and **certified by the City to meet environmental standards such as they are applied to other such open spaces in the City** at the time of transfer to the City of Cambridge.
8. If the development rights transferred by the Special Permit to a receiving lot are not fully utilized or applied in the construction of a project, the remaining development rights shall remain available for use or application, on a phase by phase basis, on the receiving lot. If development rights are applied by a landowner, on a phase by phase basis, the donating lot (from which the development rights derive) shall be leased, on a completely "net" basis, by the owner of the donating lot to the City of Cambridge, or its designated agent, until such time as the receiving lot has fully utilized or applied the development rights derived from the donating lot. When those development rights are fully utilized or applied, which shall be determined by the issuance of a certificate of occupancy for any building making use of such rights, fee simple title to the donating lot shall be conveyed to the City of Cambridge or its designated agent; in its decision the Planning Board shall determine if fee simple title shall be conveyed in phases as development rights are utilized or applied or when the entire amount of development rights is fully utilized. If development rights are applied or utilized on a phase by phase basis, and if, because of an amendment or other change in the zoning ordinance of the City of Cambridge, the owner of the receiving lot is unable to receive the full benefits of those development rights (in the same manner and to the same

32.



CITY OF CAMBRIDGE

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EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

October 19, 1992

To the Honorable, the City Council:

In response to the City Council's request for further information on City Manager's Consent Agenda Item #14, dated October 5, 1992, also Awaiting Report Item #42, regarding the Cambridgeport rezoning provisions for the transfer of development rights to achieve new open space, I am transmitting the attached memorandum from the Assistant City Manager for Community Development.

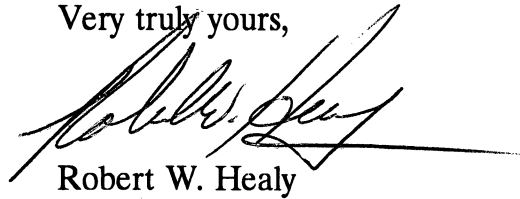
The memorandum describes the history of that rezoning and the manner in which the language passed by the City Council was incorporated. I think an important factor in the process leading to the adoption of the final language was the direct negotiations between the neighborhood and the business community. As I am sure you will recall, the stalled process of rezoning for that neighborhood prompted an intense process of negotiation to bring the matter to a close.

While zoning is the exclusive province of the Council, I responded to requests to approve payment to Attorney Sandra Shapiro to be present for long hours during the final days of negotiations to review proposed language and to provide advice to members of the Council. Ms. Shapiro and the Law Department worked with members of the Council and representatives of the neighborhood and businesses on the night of final adoption reviewing draft language and responding to any questions put to them.

In fact, from what I can glean from the zoning provisions, and from the attached memorandum, the input from City staff appears to have improved the ability of the City to obtain the open space at the earliest possible date.

Whatever one may think of the provisions finally included in the zoning amendments, it is unfair to criticize my staff regarding the terms of the ordinance. Those terms were largely determined by direct negotiations between the neighborhood and the businesses in the district.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Healy", with a long horizontal flourish extending to the right.

Robert W. Healy

Agenda # 32

S-837

Awaiting Report Item Number 42 regarding further information on the Cambridgeport rezoning provisions for the transfer of developmetn rights to achieve new open space.

In City Council,

Oct. 19, 1992

*Referred^{ask} to the
City Manager
on motion of
Councillor Wall
Copy sent to City Manager
10/21/92 @.*