

TOWN OF ARLINGTON
MIDDLESEX COUNTY, MASSACHUSETTS



JOHN F. MAHER
TOWN COUNSEL
AND
DIRECTOR OF LABOR
RELATIONS

OFFICE:
50 PLEASANT STREET
ARLINGTON, MA 02476
781-316-3151
781-641-4889
FAX 781-316-3159

MEMORANDUM

TO: Town Meeting Members, Finance Committee, and Redevelopment Board
FROM: John F. Maher, Town Counsel
DATE: December 24, 2001
RE: Purchase and Sale Agreement

The purpose of this memo is to summarize the particulars of the recently executed Purchase and Sale Agreement between Lahey/Advantage Partnership, the current owners of the Symmes property, and the Town acting by and through its Board of Selectmen. A proposed motion will be presented to Town Meeting to approve the purchase, to approve a bond issue to fund the purchase and related carrying costs, to approve an urban renewal plan, and to give authority to the Selectmen to enter into a lease back provision to the Partnership. A copy of the executed Purchase and Sale and the Lease Terms is enclosed. In the hope of aiding the clarity of this complicated matter, I will treat the major terms below.

A. PURCHASE PRICE. The proposed purchase price is 7.1 Million Dollars. The Town and the Partnership have had discussions for several years about the future use of the site. The Partnership, which includes both Lahey Clinic and HealthSouth, formerly Advantage Health of Birmingham, Alabama, agreed last winter with the Town's suggestion that the best way of beginning discussions about the Town acquiring the site was to secure a joint appraisal. The parties hired the firm of Hunneman Appraisal and Consulting Company of Boston, Massachusetts, to conduct this appraisal. The appraisal itself was prepared by the firm's president, Mr. Emmett T. Logue, an expert specializing in hospital site

appraisals. A copy of Mr. Logue's appraisal dated March 15, 2001 is enclosed. In determining fair market value an appraiser looks at what a willing buyer will pay to a willing seller in an arms length transaction after determining the "highest and best use" of the property. Mr. Logue opined that the value of the Symmes property as of March 15, 2001 was 8.1 Million Dollars, with its highest and best use being commercial office use.

Negotiations subsequently ensued during which a wide variety of issues were discussed between the parties. At some point in early September the negotiating team for the Town at the suggestion of the Symmes Advisory Committee, with the full support of the Board of Selectmen and Town Manager, took note that the office market had sharply diminished. These misgivings were exacerbated by the events of September 11th. The Town invited the Partnership to jointly secure an updated appraisal so as to ascertain a more current value. The Partnership declined to do so. The Town nonetheless requested Mr. Logue to provide such a update which he did on October 15, 2001. A copy of this appraisal is likewise enclosed for your review.

In summary, Mr. Logue took into account the very sharp decline of the demand for office space in the Greater Boston area. He concluded that the reduction was so severe and pronounced that the highest and best use of the property was no longer for office use. The highest and best use now was for large-scale residential development. He determined that the fair market value for this highest and best use of the property was 6.45 Million Dollars. Please note that the purpose to which the Town will put the property is not a relevant consideration in determining the present market value of the property. The current use of the property by the Partnership is also not relevant to this calculation. The legal inquiry is what the most valuable use of the property is at the time of the purchase regardless of present or intended future use. This, by extension, therefore, forms the appropriate benchmark consideration in negotiating a purchase price.

Although the negotiated price of 7.1 Million Dollars is somewhat above Mr. Logue's October value, it is still a fair price for the property. One needs to look at the totality of the Agreement and take into account several other factors, which will be treated below. The negotiated amount is fully One

Million Dollars below the 8.1 Million Dollars tentatively agreed to early in the negotiations which was based upon Logue's March appraisal. It is approximately \$750,000 below the Board of Assessors valuation of the property.

As you will see from the October appraisal Mr. Logue reduced the value of his assessment of the property for residential use by two development cost factors after initially appraising it at about 10.5 Million Dollars based on an income analysis. First, he determined that in order to have a large-scale residential development, the existing buildings on the site would have to be demolished at a projected cost of 2 Million Dollars. This resulted in a reduction of the value for residential use from 10.5 Million Dollars to about 8.5 Million Dollars. Mr. Logue further reduced the amount by another 2 Million Dollars to arrive at 6.45 Million Dollars since any large-scale residential use would require either a rezoning of the property or a long, drawn out, expensive Chapter 40B Comprehensive Permit process with all of its attendant uncertainty. Given that the Town at this time intends neither to demolish the buildings nor to proceed on a large-scale 40B development, one can reasonably assume that the sharp reductions of value described above contemplated by Mr. Logue are less relevant if one assumes Town ownership. This consideration should be seen as an upward influence on the actual current value of the property of 6.45 Million Dollars determined by Mr. Logue. Town officials unanimously believe that given all factors, including those discussed below, that the purchase price of 7.1 Million Dollars is a fair price for the property.

B. LEASE TERMS

Although all the technical language for the lease to the Partnership has yet to be finalized, the business terms have been settled. The area to be leased will be 25,000 square feet. A copy is enclosed. It is a 10-year lease wherein either party may opt out without adverse ramifications at the end of two years and five years. There is a Right of First Opportunity, limited to the first two years, which requires the Town to first provide Lahey with the option of providing any particular medical service before the Town accepts offers from other health care providers for such service. Although this does permit Lahey to exert some limited control over additional medical uses on the site in order to protect its market share in this

very competitive medical services environment, it is doubtful the Town will be in a position to solicit proposals for medical uses for a minimum of 12 months. After the expiration of the Right of First Opportunity, Lahey has the right to terminate the lease at any time if the Town seeks to bring in a new medical provider which would provide a service in direct competition with the then current services being provided by Lahey on the site.

In years one and two of the lease Lahey will pay \$21.00 per square foot gross for 25,000 square feet of space yielding rental income to the Town of \$525,000.00 per year. The rental rate increases for years three to five is \$23.50 with a return of \$587,500.00. In years six through ten the rental increases to \$25.50 per square foot with a return of \$637,500.00. There are cost of living adjustments in several of these years not exceeding 3 percent that will increase the yield to the Town. These rental rates are consistent with rental rates in Arlington and somewhat in excess of the fair rental values suggested in the Logue appraisals. Lahey has waived all relocation entitlements at the expiration or cancellation at years two and five by the Town to which they would have been otherwise entitled by law, which could have amounted to a liability for the Town well into the six-figure range.

C. ENVIRONMENTAL

There are currently two known hazardous waste releases on the site; one as a result of a hydraulic fluid leak probably coming from an elevator based on the site, and one from a leaking oil storage tank. The Purchase and Sale requires the Partnership to be solely responsible for all remediation required by the Department of Environmental Protection and further agrees to indemnify the Town from any third-party claims for any release that goes beyond the boundaries of the site. The latter is considered by all licensed site professionals involved including our own to be unlikely. All parties will retain statutory liability for any unknown releases, i.e., those, if any, yet to be discovered. None are anticipated, however, the Town will be securing relatively low-cost insurance for additional protection for any unknown releases. In any acquisition consideration of the environmental status of the site is paramount. The provisions of the Purchase and Sale along with the proposed insurance are very protective of the Town and should be

considered as a major advantage for the Town in the agreement. A letter from the Town's environmental counsel appears later in these materials, which is more explanatory of the issues involved.

D. MISCELLANEOUS

A limited obligation of the Town is an agreement to assist in removing non-biomedical debris from the site with a limit of Town involvement pegged at \$50,000.00. The Town has also agreed, consistent with common commercial leasing practices, to pay for some of the renovation of the area that Lahey will occupy with a cap of \$37,500.00. The Town will derive about \$27,000 per year for a cable antenna license on the site.

Also included in your packets is an assessment of the current condition of the physical plant prepared for the Town by TWB Associates, Inc., which provides information concerning the structural integrity, HVAC and other operating components of the buildings. With the notable exception of the heating, ventilation and cooling system the physical plant is rated as "good and the building has been well maintained...The cost to restore and maintain the main building base systems over the next five years to allow for full occupancy...is estimated to be approximately 1.3 Million Dollars." (See Executive Summary, page 3).

In negotiating this Purchase and Sale under the direction of the Board of Selectmen, the Town has utilized the services of various law firms including Foley, Hoag & Eliot; Palmer & Dodge; Keegan, Werlin & Pabian; and the local firm of Keshian & Reynolds. All of the attorneys that have worked with the Town on this matter fully support our recommendation that the Purchase and Sale agreement represents a fair and reasonable transaction for the Town of Arlington.