

October 22, 2018

Board of Aldermen
City Hall
[93 Highland Avenue](#)
[Somerville, MA 02143](#)

RE: Public Hearing: #204755 – Requesting the transfer of a City-owned parcel (82-D-1) in the North Prospect Block to the Redevelopment Authority.

Dear Honorable Members of the Board of Aldermen,

I write today regarding the proposed land transfer by the Board of Aldermen of the remaining parcel of the D2 block to the Somerville Redevelopment Authority (SRA). This would allow the SRA to eventually complete the sale of the D2 block to the Union Square Master Developer US2 such that US2 could begin construction on D2 once they satisfy all the other pre-conditions required. **To be brief, I believe that at this juncture, the Board of Aldermen should not transfer this remaining parcel to the SRA, in order to retain necessary leverage to improve the D2 design. Going forward, however, the situation will change, and the Board of Aldermen will have to consider all the circumstances.** This statement is somewhat lengthy, but I wish to elaborate on all the details at play here, considering what I have been hearing from different advocacy groups in Somerville.

As I understand it, most people writing about this land transfer or who plan to speak at the public hearing will not be arguing the financial merits of transferring this parcel. This parcel was an accidental remainder that was expected to be transferred to the SRA for eventual sale to US2 as laid out in the Master Land Disposition Agreement (MLDA). Therefore, I presume all the public comment will primarily be about whether or not the Board of Aldermen should continue to hold this piece of land as their last remaining piece of leverage for negotiating a better development with US2. Such a circumstance does put this Board of Aldermen in an interesting position.

As I understand it, because US2 did not receive a phase 1 MEPA waiver, there can be no closing on the sale of D2 until the full MEPA document is submitted by US2 and approved. This gives a number of months, probably into early 2019, before US2 could even begin to build anyway. However, because it appears there will be no closing on the D2 parcel before December 31, the City will have to pay settlements on the D2 land in the short term, which as I understand from the September 12 Finance Committee – Committee of the Whole is about \$5 million. The City recommended taking this money from the free cash appropriation. This will drain about half that fund until US2 pays the City for the D2 land in the closing.

I can divide the issues over the D2 development into two categories. One is the overall D2 design plan that US2 has been working on through the process laid out in the Union Square Zoning Overlay. The other is the community benefits agreement (CBA) currently being negotiated by US2 and the Union Square Neighborhood Council (USNC).

With regard to the development plans, the community has given immense amounts of feedback, of which I believe US2 has not taken enough consideration. They have tweaked the designs at the edges, but have not yet made significant changes based on community feedback, especially regarding, but not limited to, the green and open space, the “alley” (which should really be considered a full road with appropriate access for pedestrians and cyclists) facing Allen Street, and creative methods to decrease the amount of above-ground parking. This doesn’t even include all the detailed feedback from the Design Review Committee, which listed a multitude of design issues under which US2 was not compliant.

Thankfully, there are a number of urban planners and architects in the Union Square community who have developed alternative D2 designs. They are currently working with US2, George Proakis, and other City staff to hopefully make those alternatives a reality, including, but not limited to, creative methods to minimize above ground parking. US2 has already gone through all the steps required in zoning for the D2 block, except for submitting final plans to the Planning Board. Given the track record of the Planning Board in approving projects that have not met proper design criteria, I am not that optimistic that the Planning Board will be critical enough with US2 to ensure they improve the D2 plans. Therefore, the remaining leverage in that regard lies with the Aldermen, both via this land transfer and via their power of appointments. (However, the Mayor may choose to keep Planning Board members in their seats even if not re-appointed by the Aldermen, which decreases any actual leverage of that action.)

With regard to the CBA negotiations between US2 and the USNC, I believe some amount of caution must be taken. For reference, I continue to work with the USNC, attending the regular meetings and working on the USNC Built Environment Committee. More recently, I have been working with a number of USNC members on preparing permanent bylaws for the USNC, as the current bylaws were defined as interim for one year, and therefore the community still must vote on a permanent version.

As I understand it, many community members are requesting that this land transfer not occur until a CBA between US2 and the USNC is signed. However, my concern in that regard is that I have not heard any timeline yet for when that might be completed. Because the USNC has chosen to have all of its negotiations and discussions about the CBA in Executive Session, only USNC Board members know the details of the current state of affairs. Usually at every regular USNC meeting, there is a five-minute update on CBA negotiations, but this only briefly mentions broad topics that have been discussed by the negotiating team and what topics will be discussed going forward. Such updates have also included information US2 tells the negotiating committee regarding a specific community benefits area, but as far as I can tell, all the information the USNC states publicly was already known to the community, whether through zoning, the US2 Coordinate Development Special Permit (CDSP), or what US2 has said at neighborhood meetings. Everything else is discussed in Executive Session “to discuss strategy and tactics for further CBA negotiations.” (Note that I understand the possible reasons for Executive Session for some of these discussions of strategy, but it does mean that the broader community will not know the details for some time.) Based on what is publicly known, it seems like the negotiations, which began in late summer, may take many months.

Both of the design and CBA categories are additionally complicated because they overlap with each other. For example, one goal of the CBA is to increase and improve the green and open space, both on D2 and the other D blocks. However, local community members independently are working with US2 to design underground parking, which would immediately allow for more green and open space on D2 anyway.

Therefore, my concern is what happens if US2 improves the D2 design based on community feedback and collaboration, gets their MEPA documents approved, and the CBA negotiations are still on-going. How long should we wait before allowing D2 construction to begin, especially considering that the Green Line Extension Construction will happen regardless, and there will be a new T stop (hopefully) in 2021?

This consideration was posed to Eileen M. McGettigan, Esq. Special Counsel Office of Strategic Planning & Community Development City of Somerville. If the Board of Aldermen chooses to hold onto the parcel for a prolonged period, then Ms. McGettigan stated that one of two things are likely to happen:

“Under the MLDA, transfer of the City-owned parcel to the SRA is a pre-condition to closing. US2 has no obligation to close on the D-2 Block until such time as the City parcel is transferred. However, if US2 has met all of its pre-closing conditions, it may opt to compel the SRA to convey those portions of the D2 Block that the SRA owns. This would mean that US2 could require the SRA to convey only that portion of D2 that is necessary to build the proposed residential building. Given the location of the City-owned parcel, US2 could not build their proposed commercial building until the City-owned parcel is transferred to the SRA for conveyance to US2. Alternatively, US2 could opt to terminate the MLDA in its entirety; the practical effect of this would be no development at all on the D2 Block, or payment to the City, within the timeframe needed to pay the eminent domain judgments.”

If US2 chooses to, they may be able to just start building the residential portion of the development anyway (assuming the Planning Board approves the entire D2 block design). This would be a bad scenario considering that one goal of the D2 block was to get commercial properties built as soon as possible to increase the City’s commercial tax base and develop a day-time population in Union Square to support other local businesses in the area. If US2 were to only build the residential property, it would probably be a net negative on City finances and could leave the temporary build-out of the development pretty poor.

If US2 chooses to terminate the MLDA, then there would be no development on D2 in the near-term, no payments to the City and therefore significant financial liabilities, and presumably a continued lack of community benefits. However, were US2 to take this option, they also would not make any money on the development.

As such, this is a tricky situation, where the City and community want certain things, and US2 of course wants to build their development and make a large profit.

Given the complexities of the situation, I believe the best course of action at this juncture is for the Aldermen to not transfer the land to the SRA immediately. They should continue to put pressure on US2 to improve the design plans based on community feedback and by working with those engaged community members and the City. If necessary, they should seek out creative financial solutions that may even include non-profit benefactors, especially for underground parking. US2 should continue to negotiate with the USNC for community benefits.

Going forward, US2 may improve the D2 designs based on community feedback and fulfill all their other pre-closing requirements such as MEPA approval. If at this point, US2 has negotiated a CBA with the USNC, then it should be an easy decision for the Aldermen to transfer this remaining piece of land to begin construction.

However, if US2 is still negotiating a CBA with the USNC, then I believe the Aldermen must get specific details about the current state of the negotiations, where US2 and the USNC have reached agreement and where the remaining disagreements exist. I will presume the negotiations and strategy will remain in Executive Session, thereby preventing the rest of the community from providing feedback on any of this until the USNC puts a CBA up for a vote by the community. As such, I believe the Aldermen cannot simply take the word of the USNC Board or that of US2 in deciding whether the CBA negotiations are proceeding in good faith. Evidentiary documents must be provided to the Aldermen regarding the CBA negotiations if the Aldermen are to continue at that point to hold leverage against US2 regarding the development. **I primarily want to ensure that community benefits are being negotiated for Union Square residents, Union Square small business owners, and Union Square workers (and such benefits should extend to all of those in Somerville as well to some degree).**

I will make note of two final considerations. One, the Covenant still requires US2 to negotiate in good faith with the USNC, even if US2 were to be able to begin construction on D2. I do believe that this legal clause is still less leverage than the Aldermen currently hold via this parcel of land, but there would be some legal recourse should the USNC seek it. Two, assuming US2 improves the D2 design, I believe that the Aldermen would have additional leverage when US2 wants to begin building on the other D blocks. The Aldermen will have to approve the transfer of at least some of those D parcels, though please correct me if I am mistaken. Additionally, I understood from discussions with Dan Bartman at OSPCD that parts of the D1 design from the CDSP would not comply with current Somerville Zoning. US2 would therefore need further approvals on that front, though I do not know the specific details.

Thank you for your time on this matter. I am always happy to discuss these issues further.

Sincerely,

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