

Special City Council Meeting Sullivan Chamber 2:00pm
Cambridge City Hall, 795 Massachusetts Ave, Cambridge, MA 02139

The City Council will meet to consider whether to approve an Order to take via a “friendly” eminent domain proceeding a parcel of land located at 41 Bellis Circle, Cambridge.

CITY MANAGER’S AGENDA

1. A communication transmitted from Yi-An Huang, City Manager, relative to a recommendation that the City Council approve an Order to take via a “friendly” eminent domain proceeding a parcel of land located at 41 Bellis Circle, Cambridge (as shown on Cambridge Assessors Map 271, Lot 44) (the “Parcel”), which is owned by 41 Bellis Circle LLC. The Premises consists of an asphalt parking lot. Upon the taking, the Premises would be used for general municipal uses, which may include municipal operations, stormwater management and/or affordable housing. (CM23#220)

August 23, 2023

To the Honorable, the City Council:

I am writing to recommend that the City Council approve an Order to take via a “friendly” eminent domain proceeding a parcel of land located at 41 Bellis Circle, Cambridge (as shown on Cambridge Assessors Map 271, Lot 44) (the “Parcel”), which is owned by 41 Bellis Circle LLC. The Premises consists of an asphalt parking lot. Upon the taking, the Premises would be used for general municipal uses, which may include municipal operations, stormwater management and/or affordable housing.

Pursuant to Section 30 of Chapter 43, Section 14 of Chapter 40, and Chapter 79 of the General Laws, all as amended, the City Council is authorized to take in fee in the name of the City for any municipal purpose any land within the limits of the City not already appropriated for public use. I recommend that the City Council take the above referenced Parcel of Land by eminent domain for the purpose of assisting with municipal uses.

Background

The Parcel consists of one large parcel totaling 40,383 square feet (0.9 acres). The Premises currently serves as a parking lot. The ability to purchase approximately one (1) acre of land within the City is a rare opportunity. The acquisition of the entirety of the Premises will allow the City to use the land for general municipal uses. The City will evaluate what it will use the Parcel for as part of a comprehensive review of City owned property and City needs. This Parcel could fill a significant need that the City has for land to use for municipal operations and infrastructure, but it also may ultimately be land that could be used for affordable housing.

41 Bellis Circle LLC has agreed to sell the Parcel to the City (via the proposed friendly eminent domain taking) for \$8,325,000. The taking will result in the acquisition of the entire Parcel of Land.

Process

If the City chooses to move forward with the eminent domain taking and purchase of the Premises, then funds need to be

transferred to the appropriate budget and the taking of the Parcel needs to be completed.

The City intends to acquire the Parcel through what is commonly referred to as a “friendly taking.” A friendly taking describes the use of the statutory eminent domain procedure to acquire a property that an owner seeks to sell to the City. An appraisal of the Parcel of Land, conducted by LPC Commercial Services, Inc., has determined that the fair market value of the Parcel at its highest and best use is \$8,000,000. The City’s Chief Assessor, Gayle Willett, has reviewed LPC Commercial Services, Inc.’s appraisal as an additional examination to ensure that the appraised value represents the current fair market value of the property. For the Parcel of Land, the City would pay the amount allowed by law as a *pro tanto* to 41 Bellis Circle LLC. A *pro tanto* is an initial payment that the property owner can accept without prejudice to its right to bring a claim for the full amount of damages that it asserts is due. Here, the *pro tanto* would be a payment of \$3,676,500. In addition, under the law, the property owner has the right to challenge the amount of the *pro tanto* payment in a legal proceeding and could seek to persuade a court that it is entitled to the current fair market value of the property. The eminent domain procedure allows the City to exceed the limits that G.L. c. 40, §14 and G.L. c.43, §30 impose on the purchase price of a property (which limit the purchase price that the City may pay to the average of the three prior years’ assessed value plus a 25% increase) after an owner of land taken by eminent domain has sought damages for the remainder of the fair market value or purchase price of the property. The City intends, subject to the City Council’s approval, to pay the remainder of the agreed upon purchase price of \$8,325,000 which includes carrying costs for 41 Bellis Circle, LLC., through the settlement of the 41 Bellis Circle LLC’s eminent domain damages claim.

The following steps must be taken to satisfy legal requirements for this friendly taking:

1. The City Council must vote to approve a transfer of funds into the appropriate budget code in order to pay the *pro tanto* for the Cambridge Parcel, as set forth above and below;
2. The City Council, by a two-thirds vote, must vote to approve the Order of Taking;
3. The City Council must vote to approve a transfer of funds into the appropriate budget code in order to settle the eminent domain damages claim and to pay the remainder of the purchase price of \$8,325,000 which includes carrying costs for 41 Bellis Circle, LLC.

Requests for Transfer of Funds

I am hereby requesting a transfer in the amount of \$3,676,500 from the General Fund Department of Public Works Salary and Wages account to the General Fund Law Department

Travel and Training account (Judgement and Damages) to cover the *pro tanto* payment toward the expenses of acquisition as required by the above referenced Sections of Chapters 40 and 43 of the General Laws for the Parcel of Land owned by 41 Bellis Circle LLC. Once the City's Free Cash amount is certified by the state, I anticipate submitting a recommendation to the City Council for a Free Cash appropriation to the Department of Public Works Salary and Wages account to cover this transfer.

After the City Council votes on the Transfer Order to fund the *pro tanto* payment and votes by a two-third vote on the Order of Taking, I am also hereby requesting that the City Council vote to approve a second transfer, in the amount of \$4,648,500, from the General Fund Department of Public Works Salary and Wages account to the General Fund Law Department Travel and Training account (Judgement and Damages) in order to pay for the settlement of 41 Bellis Circle LLC's remaining eminent domain claim. Once the City's Free Cash amount is certified by the state, I anticipate submitting a recommendation to the City Council for a Free Cash appropriation to the Department of Public Works Salary and Wages account to cover this transfer.

I strongly recommend that the City Council approve this unique opportunity to acquire the Parcel of Land and vote to approve the Orders of Taking and Purchase and for the transfer of funds.

Very truly yours,

Yi-An Huang
City Manager

Agenda Item Number 1b Aug 23, 2023

WHEREAS: By Section 30 of Chapter 43, Section 14 of Chapter 40, and Chapter 79 of the General Laws, all as amended, it is provided that the Cambridge City Council may take in fee in the name of the City for any municipal purpose any land within the limits of the City not already appropriated for public use; and

WHEREAS: The City Manager of Cambridge and City Council, in order to provide for municipal operations and other general municipal uses, have approved and authorized that the City should under the provisions of the aforesaid Chapters of the General Laws take and hold for municipal operations and all accessory uses thereto or any other municipal purposes the parcel of land located at 41 Bellis Circle, Cambridge, County of Middlesex, Massachusetts as hereinafter bounded and described and any buildings and trees thereon (the "Parcel of Land"); and

WHEREAS: A transfer duly made by the City Council on August 23, 2023, is sufficient to cover the estimated *pro tanto* expenses of acquisition as required by the aforesaid Sections of Chapters 40 and 43;

WHEREAS: by virtue of and in pursuance of the authority conferred by said Chapters of the General Laws and by every other power and authority it thereto enabling, the City of Cambridge by its City Council does hereby take the land located at 41 Bellis Circle, Cambridge, County of Middlesex, Massachusetts and hereinafter described, and all privileges and appurtenances thereto belonging as well as all trees and all structures thereon, excepting any easement of record, for municipal operations and all accessory uses thereto or any other municipal purposes and for all purposes and uses accessory thereto. Intending to take and hereby taking in fee simple all land,

excepting any easement of record, included within such description by whomsoever the same may be owned, vis:

A certain piece or parcel of land with any improvements thereon situated in Cambridge, County of Middlesex, and Commonwealth of Massachusetts, bounded and described as follows:

Beginning at a point on the westerly side line of Sherman Street so-called, South 3°2'29" East forty-four and seventy-two hundredths (44.72) feet from Station 220+ twenty-seven and thirty-four hundredths (27.34) feet on the Center line of location of the Boston Division Fitchburg-Main Line of the Boston and Maine Railroad thence running along the westerly side line of said Sherman Street, so-called, South 3°2'29" East ninety-six and forty-two hundredths (96.42) feet thence turning and running along John F. Bellis Circle, so-called, North 78°10'10" West 385.52 feet to land of Beulah Morrison and Harriet Lovey thence turning and running along said last-mentioned land on the following two courses: North 3°16'40" West sixty-three and nineteen hundredths (63.19) feet thence North 78°02'29" West ninety-one and ninety-six hundredths (91.96) feet to land now or formerly of Bay State Brick Company, thence turning and running along said last-mentioned land North 2°11'29" West twenty-seven and four hundredths (27.04) feet, thence turning and running along land of Boston and Maine Railroad on the following four (4) courses: South 83°36'30" East one hundred seventy-eight and ninety-seven hundredths (178.97) feet South 72°21'21" East fifty-seven and fifty hundredths (57.50) feet thence South 76°17'57" East eighty-five and thirty-three hundredths (85.33) feet thence South 77°12'19" East one hundred fifty-five and eleven hundredths (155.11) feet to the point of beginning, be all of said measurements more or less said parcel containing an area of about 40,383 square feet and being shown upon a plan marked "Land in Cambridge, Massachusetts, Boston and Maine Railroad to Satineg C. Margosian, J.F. Kerwin, Assistant Chief Engineer, Scale: 1"=50' March, 1961" recorded in Book 9867, Page 266.

Containing according to said plan consisting of 40,383 square feet of land. Be all measurements more or less or however bounded or described.

The *pro tanto* damages awarded with respect to said Parcel of Land is Three Million Six Hundred Seventy-Six Thousand and Five Hundred (\$3,676,500) Dollars and the supposed owner is 41 Bellis Circle LLC.

NOW THEREFORE BE IT

ORDERED: The taking of fee simple title in the Parcel of Land, excepting any easement of record, along with all buildings and trees thereon herein described is hereby authorized in accordance with General Laws, Chapter 40, Section 14, Chapter 43, Section 30 and Chapter 79, all as amended for municipal operations and all accessory uses thereto or any other municipal purposes and for all purposes and uses accessory thereto.