

Preliminary Development Feasibility Study

1 Upland Road
Norwood, MA

Forbes Hill Estate



Forbes Mansion

Prepared by the Norwood Planning Department

February 22, 2018

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Executive Summary

This report examines the development options for the Forbes Hill property. The Development Feasibility Study will not only help to inform the Forbes Hill Task Force with basic information about the property, it will also be made available to the public in order to inform them about the property, and to maintain transparency between them and their government. It is the hope of the Planning Department that the information contained in the Study will help the Task Force & the Board of Selectmen make decisions based on the same baseline data.

Town Meeting Members voted to purchase the Forbes Hill property at the November 6, 2017 Special Town Meeting. The purchase required a two-thirds vote. The passage of the article came as a surprise to most people, especially because of the 13 million dollar purchase price needed to obtain the property.

The Forbes Hill Task Force will be identifying and evaluating future options for the use of the land and the Forbes Mansion. The goal of the Task Force is to obtain public input in an effort to gain a consensus on how the recently purchased Forbes Hill property should be used in the future.

There are three general scenarios for the future use of the Forbes Hill property:

1. Conservation & Preservation
2. Limited Development
3. Full Development

A brief explanation of each scenario is presented below.

Conservation & Preservation

This scenario would involve measures to protect the undeveloped portion of the property from future development. A Conservation Restriction (CR) would be placed on the property that would limit future use to those uses related only to passive recreation. The CR would be recorded at the Norfolk County Registry of Deeds that would protect the property in perpetuity.

The Forbes Mansion could be protected from future demolition and/or undesirable alterations in the future by placing an historic preservation restriction on the property that would also be recorded at the Norfolk County Registry of Deeds, which would protect the building's historic architectural integrity in perpetuity.

Limited Development

This scenario would include protecting and preserving a portion of the property and allowing for development on the remaining portion of the property. The Town could control the type of development using our existing Zoning regulations or the Zoning Bylaw could be amended to allow certain other uses desired by the Town.

Full Development

In this scenario the Town would allow the entire property to be developed, including the mansion. As would be the case with the limited development scenario, the Town could control the type of development using our existing Zoning regulations or the Zoning Bylaw could be amended to allow certain uses desired by the Town. The Town could issue a Request for Proposals to seek development proposals from people wanting to develop the land. In addition to uses that are currently allowed in the Zoning Bylaw, the full range of development options should be on the table, including but not limited to: (1) age restricted residential use (55+), (2) mixed-use village that could have commercial enterprises on the first floor and residential above, (3) commercial uses that would support or complement the existing uses in the area such as, commercial or retail uses.

At this point in time all options for the use of the land and mansion are on the table. This Development Suitability Analysis focuses on the development options. We would like to make it clear that the authors of this study are not advocating for development of the property or preservation. The report is intended to focus on how the property could be used in the future, if the decision is made to develop the property.

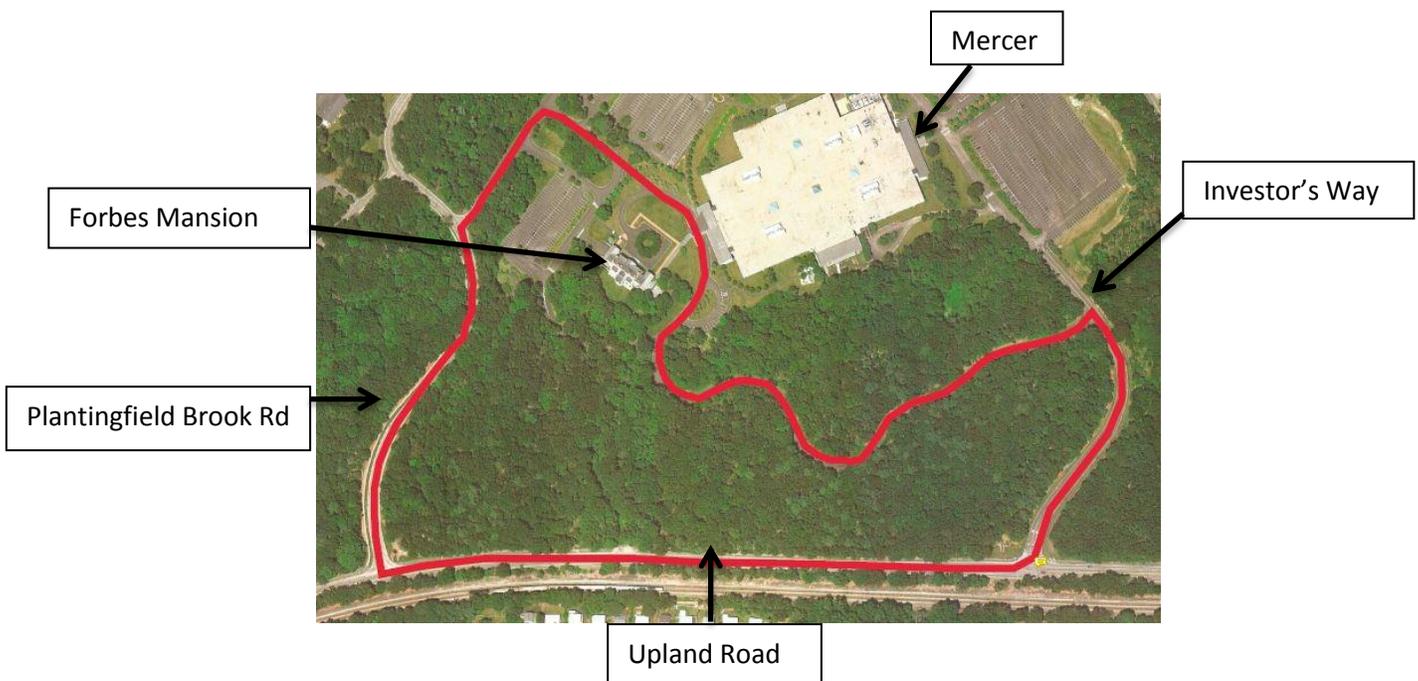
This report is divided into two sections, the first section focuses on the 26.87 acres of land. The second section discusses the Forbes Mansion.

Forbes Hill Land

Location

The subject property consists of 26.87 acres of land with the 23,475 S.F. Forbes Hill Mansion, built in 1915. The property is located off of Upland Road / Rte. 1A, which forms its southern border. The eastern property line is formed by Investor's Way. Plantingfields Brook Road comprises the western property line. The northwest property line falls along an existing, paved, gated emergency access road. The Forbes Mansion is located in the northwestern corner of the property as shown below.

The Towns geographical proximity to Boston, three train stations, an airport, and a hospital adds value to the Forbes Hill property. The subject property abuts Upland Road. / Route 1A, a primary arterial road between Norwood and Westwood. The property is easily accessible from route 128.

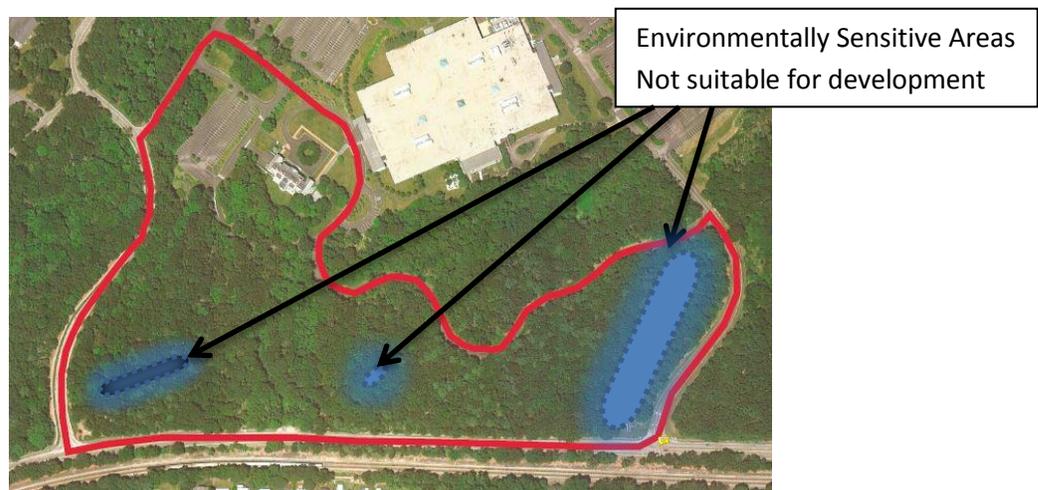


Topography

The property is located on the side of a hill, the mansion at the top of the hill at elevation 188' above sea level, the hill slopes down to Upland Road at elevation 128' representing a 60' changing in elevation. There is an area adjacent to the access road leading to the mansion is flat and could easily be developed.

Wetlands & Vegetation

The property is predominantly mature forest land with a mix of northern hardwoods and white pine trees. The steep slope of the hill is one of several development constraints. The northern edge of the land abutting Investor’s Way has a brook running down the hill parallel to Investor’s Way. The property has numerous rock outcrops and ledge. There are groundwater seeps, indicating a high or perched water table. Two smaller areas of wetland exist on the site as shown below. The development constraints limit the buildable area of the property. Any proposed development activities within 100 feet from the wetlands will be required to file a Notice of Intent with the Conservation Commission. Although there are several development constraints, the seller of the property was able to design a large multifamily housing development and fit it into the landscape. However, because the apartment proposal was a 40B development they did not have to design the project to comply with the Norwood Wetlands Protection Bylaw. As a result, the Davis Marcus plan called for filling in the two smaller wetland areas. Any development on the property will need to design a storm water management system that can accommodate the groundwater seeping from the hill and prevent storm water from impacting the Bird Road neighborhood.



The portion of the property on the right side abutting Investor's Way has a brook and wetlands; this area is environmentally sensitive, and is unsuitable for development. There are also two small areas of wetlands approximately located in the areas shown above.

Site Access

The property has over 1,560' of frontage on Upland Road, including one existing curb cut. The property can be accessed from Upland Road however; construction of an access road up the steep slope of the hill will require a retaining wall and extensive clearing of the forest. Between a 30' – 70' wide swath will need to be cleared to build the road. The plans for the apartment complex included a driveway up the hill, so the access road is feasible and has already been designed.

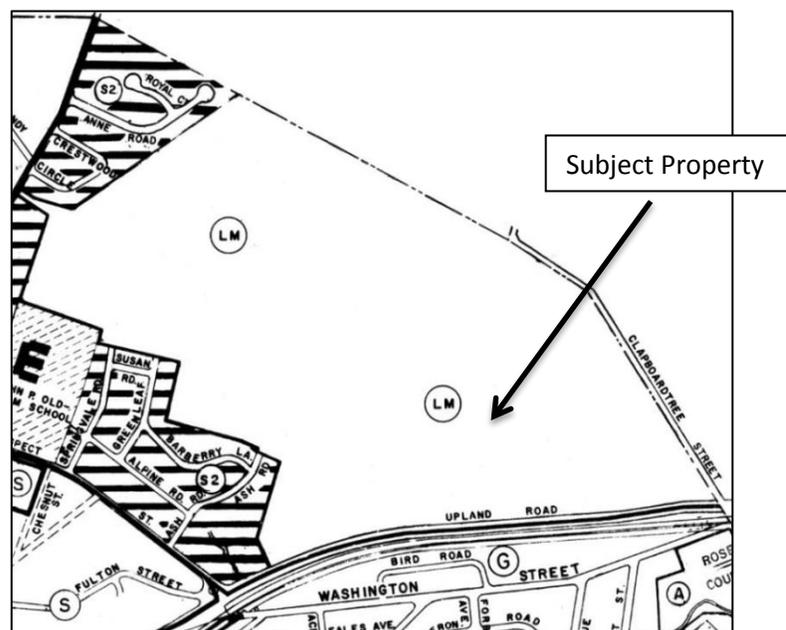
Site Utilities

There is access to electricity, broadband, water and sewer along Upland Rd. that could provide necessary utilities to the property.

Zoning & Land Use

The property is located in the limited Manufacturing Zoning District, it abuts property owned by Marshwood Property LLC. The major tenant of the neighboring property is Mercer. Further up the hill and across Plantingfield Brook Rd, there is a biotech company, Moderna Therapeutics which is in the process of renovating an existing 200,000 S.F. building. In addition, neighboring buildings include Universal Technical Institute and a 262 unit multifamily apartment complex, Upland Woods.

Zoning Analysis- Current Zoning: Limited Manufacturing (LM)



The Norwood Zoning Bylaw, section 3, Use Regulations, lists the types of uses allowed in the LM Zoning District. The complete list of uses and the types of permits required for each use is listed in Appendix B.

Generally speaking, the LM district allows various types of commercial uses. Residential uses are currently not allowed, except for assisted living facilities. Since the Bylaw does not allow single family residential use, a residential subdivision would not be allowed. In addition, age restricted housing (55+) is also not allowed in the LM Zone. The land uses that are currently allowed in the LM district were intended to be uses that will generate more tax revenue and create jobs. Norwood has a split tax rate; commercial uses pay twice as much real estate taxes as residential uses. Therefore if the Town’s goal is to generate tax revenue and create more jobs, the current LM Zoning should not be changed. However, if the Town would like to allow any residential uses, the Zoning Bylaw will need to be amended by a two-thirds vote of Town Meeting.

Zoning regulations have two main components: (1) Use Regulations that specify the types of land uses allowed and types of permits needed for approval and (2) Intensity & Dimensional Regulations. The Intensity & Dimensional Regulations specify the maximum building height, density, residential units per acre, minimum lot size, floor area ration, lot coverage, street frontage and setbacks from property lines.

The LM Zoning District has the following Intensity & Dimensional Regulations in place.

Dimensional Requirements

District	Min. Lot Area	Min. Lot Frontage	Max. Lot Cover	Min. Open Space	Max. Floor Area Ratio	Required Lot Width Through Building or Structure	Min. Front Setback	Min. Side Yard	Min. Rear Yard	Max. Building Height
LM	3 Acres (3)	250ft.(3)	50%	25%	0.67	250 ft.	50ft.(12)	25ft.(8)	25ft.(8)	60ft.

(3) One-story accessory structure have no requirement

(8) But not less than 150’ from a residential district boundary. No yard required abutting a railroad right-of-way.

(12) Increase to 150’ where the opposite side of the street is in a residential district (including any in an adjacent municipality)

If the existing Intensity & Dimensional Regulations become an impediment to the scale of development the Town wants on the property, they can be amended by a two-thirds vote of Town Meeting.

Other Development Options Not allowed by Current Zoning

There is a wide variety of development options that are currently not allowed by the Zoning Bylaw. Some types of developments are specifically prohibited, others such as an age restricted (55+) housing development or an Open Space Residential Development aka cluster development are not included in the Zoning Bylaw and are therefore not allowed. Some residents have expressed an interest in developing an age restricted development. That option should be explored, the Town could benefit from a market analysis to determine what the market demand is for that use. When considering residential options for the property the Task Force should put all options on the table. An example of this could be the development of a cluster of small, starter homes for first time home buyers and young families. There are very few small starter homes in town, forcing people who grew up in Norwood to buy elsewhere.

There are other types of developments that are allowed, but the Zoning Bylaw is overly restrictive, to the extent that the developments are not financially feasible. An example of this is mixed-use development.

Mixed-use developments involve a combination of both commercial and residential uses. Examples of two types of mixed-use developments are provided below.

Mixed-Use Building

The most common type of mixed-use developments are the kind that were historically developed in downtown areas across the United States. Buildings that have commercial space, often retail stores, on the first floor and residential, predominantly apartments, on the second and third floors. Over the last 15 - 20 years communities have changed their zoning regulations to allow these types of mixed-use buildings. Norwood has some preexisting non-conforming mixed-use buildings downtown, however the current Zoning Bylaw contains a density restriction that does not make mixed-use buildings commercially viable or cost effective. The demand is there, and there is interest in building new and redeveloping mixed-use buildings, but the Zoning Bylaw has restrictions that do not make it profitable to property owners.

Mixed-Use Developments

This type of development divides a property into two separate areas, one for residential and the other for commercial development that will not adversely impact nearby residential uses. Sometimes the two areas are separated by a common area such as a park or town green to physically separate the uses but make them both available to utilize as a shared amenity. Examples of this are found in many New England town centers.

Mixed-use buildings or developments could be built on the Forbes Hill property if the Zoning Bylaw and/or Zoning Map were amended by a two-thirds vote of Town Meeting.

Development options should take into consideration the types of development in the surrounding neighborhood. Currently there are six major entities within general proximity to the property. Three companies, Mercer, Transamerica, and Moderna; one school, Universal Technical Institute; one apartment complex, One Upland and one senior living facility, Benchmark Senior Living. All of these uses are allowed in the Limited Manufacturing Zone. Development options that can complement or provide goods and services that have synergy with the existing uses should be given positive consideration.

If for any reason a developer cannot meet the Zoning restrictions for the Limited Manufacturing Zone, they could seek relief through the form of a variance from the Zoning Board of Appeals. If for whatever reason the Task Force feels that a zoning amendment would be needed to allow a desired type of development that is currently not allowed by Zoning, the Town could propose an article for Town Meeting to make the necessary changes to the Bylaw.

Real Estate Market

In the Planning & Economic Development office we have people telling us what they would like to see developed at certain locations in town, or people tell us what restaurant or store they would like to see locate downtown. What people want and what drives the real estate market are two different things. There has to be a market demand for any type of development to move forward. Banks will not provide financing for projects that cannot demonstrate that they will be profitable. The real estate market is driven by many different factors; unfortunately, the Town's desired type of development is not one of them. Therefore, the Town will need to be somewhat flexible on what the property can be used for, type of use, and the density or extent of development. If one of the Town's priorities is to get the \$13M it paid for the property back, it may need to allow a density that exceeds what is allowed in the Zoning Bylaw. More density often translates to more impacts, such as traffic. This is an example of the types of trade-offs we may face in determining the best use of the property.

Disposition of Real Property

If the Town decides to sell or lease any of the Forbes Hill property it will be required to follow State Law, MGL CH 30B. Chapter 30B sets for the legal requirements for the disposition of real property. A copy of the applicable section of CH 30B is attached as Appendix C. If the Town decides to sell the property, it has two options: (1) auction open to the public or (2) to sell or lease the property, the Town is required to issue a Request for Proposals (RFP).

Forbes Mansion

Property Information

Year Built: 1915
Living Space: 16,960 S.F.
Current Use: Vacant Office Building
Exterior: Brick/Masonry
Roof Structure: Gable/Hip
Roof Material: Slate
Heating Type: Gas/Forced Hot Air (Will need additional furnace.)
Air Conditioning: In place but needs new HVAC
Additional Feature: Elevator
Stories: 3



Building Sub-Areas (sq ft)			Legend
Code	Description	Gross Area	Living Area
FUS	Upper Story, Finished	7,157	7,157
BAS	First Floor	5,579	5,579
FHS	Half Story, Finished	3,764	3,011
SFB	Base, Semi-Finished	1,617	1,213
FEP	Porch, Enclosed, Finished	132	0
FOP	Porch, Open, Finished	1,198	0
UBM	Basement, Unfinished	4,028	0
		23,475	16,960

2018 Assessed Value

Total Value: \$11,863,500
Improvements - \$6,245,700
Land - \$5,617,800

Forbes Mansion

The original owner of the house was William Cameron Forbes (May 21, 1870 – December, 24 1959). A member of the Forbes family, He was born in Milton, MA to William Hathaway Forbes and Edith Emerson. His father William Hathaway Forbes was a Civil War soldier who later became President of the Bell Telephone Company. His mother Edith Emerson was the daughter of poet Ralph Waldo Emerson. His paternal grandfather was John Murray Forbes, a successful merchant and railroad president as well as abolitionist and philanthropist. Along with his brother Captain Robert Bennet Forbes, the family earned their initial wealth as early successful traders with China. The preserved Forbes House Mansion in Milton, MA stands today as a gift the boys gave to their mother Margaret Perkins Forbes in 1833.



William Cameron Forbes

William Cameron Forbes himself was a very accomplished man. An investment banker and diplomat, he is most well known as serving as the Governor-General of the Philippines from 1909-1913. Other positions he held in the Philippines were Vice Governor (1908-1909) and Commissioner of Commerce and Police (1904-1908). Forbes also served as the ambassador to Japan from 1930-1932. Forbes was a Harvard graduate with a particular interest in polo.

The Mansion sits on top a hill in the northern section of Town near the border of Westwood. Its brick façade and massive pillars are said to exhibit a mix of both classical and colonial revival architecture. The inside of the mansion has been kept in good condition, but with the exception of the library, the mansion has been converted to modern office space. This conversion was professionally done and is a quality example of adaptive reuse. There is still room for improvement though if to be used as office space in the future. Currently the mansion is without a proper furnace and HVAC system.

Site Access

The best access to the mansion is over a section of Investor's Way that leads to a 20' wide paved road leading to the mansion. Investor's Way is technically an access driveway to the building leased by Mercer; it is not a private road and it is not a Town accepted road. At this point in time the Town's legal rights to use Investor's Way to access the mansion or the adjacent land need to be verified. We recommend that Town Counsel provide a written legal opinion that will advise the Town on exactly what rights it has to use Investor's Way and the access road leading to the mansion. The plans for the property show that the property line runs along the center line of the access road to the mansion. This may mean that the Town only has the legal right to use half (10') of the access road. If this is the case, there are four options for securing access over the road.

1. Purchase the other 10' of paved road from the owner, Marshwood LLC.
2. Negotiate an access easement over the other 10' of paved road from the owner.
3. Construct a new 10' wide strip of road on the Town's property to make the road all located on the Town's land.
4. Take the 10' strip on Marshwood's property by eminent domain.

Securing permanent, legal access to the mansion is very important for the future use of the property regardless of who owns the mansion. Legal access to the mansion will have a significant impact on the value of the mansion if it is leased or sold by the Town. We recommend that the Selectmen proactively address the access issue.

Utilities

- **Electricity** for the mansion is provided from an existing line from the Mercer building to the mansion. The Town or a future owner of the mansion will need to make a separate, permanent electric connection to the building. We understand that there is no telecommunications or internet access provided to the building. Since the Town has its own municipal Light Department, the Town is capable of providing new electrical and broadband service to the building. This is an issue that will need further consideration.
- **Sewer** for the mansion is provided by the Town via the MWRA public sewer system
- **Water** for the mansion is provided by the Town via the MWRA public water supply system
- Since the existing sewer & water lines cross over property owned by Marshwood Property LLC, easements should be acquired for these utilities.

Land Development Feasibility

There are approximately 18-20 acres of property suitable for development. Due to the steep slopes buildings will need to be built into the hill and/or large amounts of fill material will be required to level an area for buildings. Any construction will need to avoid adverse impacts to the wetlands and brook on the property. An access road will probably need to be constructed to provide access to portions of the site. The existing access road could also be used to gain access to the higher areas of the property. The legal right to utilize that access road needs to be confirmed. The Zoning Bylaw limits the use of the land to certain types of commercial businesses. Residential uses are prohibited, except assisted living. Therefore if the Town wants to entertain the possibility of any other residential uses, the Zoning Bylaw will need to be amended. If the Town wants to allow mixed-use developments, it will need to amend the Zoning Bylaw. If the Town wants to recoup as much money as it can to offset the cost for the land, it will likely need to amend the Zoning bylaw to allow greater density than is currently allowed in the Bylaw. If long term tax revenue for the property is a priority for the Town, it should only allow commercial uses. If meeting certain community needs is a priority, such as housing for the elderly or young first time home buyers; the property presents opportunities that will likely be met by the commercial real estate market.

Protecting and preserving land for future generations is a priority for many communities. Conservation land protects natural resources, provides wild life habitat and provides places for active and passive recreation. Conservation land also cost the Town little for Town services but also provides no tax revenue. The Forbes Hill Task Force needs to find out what the Town resident's priorities are by following an open, transparent, robust public participation process that solicits input from residents of all ages.

Forbes Mansion

The Forbes Mansion offers a range of possibilities for future use. These include but are not limited to:

- Intuitional use by an educational institution or private non-profit;
- Community use by community and non-profit organizations;
- Commercial use by a corporation;
- Residential use as a single family residence, or for several condominiums or apartments; any residential use would require an amendment to the Zoning Bylaw.

Because of the building's historic, distinctive architecture, we recommend that the Town place restrictions on any external alterations to the building and prohibit it from being demolished. Allowing flexibility on the interior use of the building will allow the town to achieve the best value for reuse of the vacant building.

Conclusion

The Task Force has its work cut out for it, to determine the best use of the property. The Planning Department is ready to assist the Forbes Hill Task Force and the Board of Selectmen in:

- Determining what the best options are for the Town;
- Leasing or selling the property;
- Writing Zoning Bylaw amendments that will allow for the desired uses;
- Determining the best ways to protect the mansion and preserve the land; or
- Planning for recreational use of the property as protected open space.

Appendix A

Assessor's Property Card

Map 14 Block 9 Lot 1A

INVESTORS WAY

Location INVESTORS WAY

Mblu 14/ 9/ 1/A /

Acct# 86541

Owner TRUMBULL CENTER LTD PSHP
ET AL

Assessment \$11,863,500

Appraisal \$11,863,500

Building Count 1

Current Value

Appraisal			
Valuation Year	Improvements	Land	Total
2018	\$6,245,700	\$5,617,800	\$11,863,500
Assessment			
Valuation Year	Improvements	Land	Total
2018	\$6,245,700	\$5,617,800	\$11,863,500

Owner of Record

Owner	TRUMBULL CENTER LTD PSHP ET AL	Sale Price	\$33,000,000
Co-Owner	C/O THE DAVIES COMPANIES	Certificate	
Address	125 HIGH ST 21ST FL BOSTON, MA 02110	Book & Page	12702/ 0094
		Sale Date	07/31/1998
		Instrument	1G

Ownership History

Ownership History					
Owner	Sale Price	Certificate	Book & Page	Instrument	Sale Date
TRUMBULL CENTER LTD PSHP ET AL	\$33,000,000		12702/ 0094	1G	07/31/1998

Building Information

Year Built: 1915
Living Area: 16,960
Replacement Cost: \$1,893,173
Building Percent 76
Good:
Replacement Cost
Less Depreciation: \$1,438,800

Building Attributes	
Field	Description
STYLE	Office
MODEL	Commercial
Grade	Above Ave
Stories:	1
Occupancy	1
Exterior Wall 1	Brick/Masonry
Exterior Wall 2	
Roof Structure	Gable/Hip
Roof Cover	Slate
Interior Wall 1	Drywall/Sheet
Interior Wall 2	

Building Photo



(<http://images.vgsi.com/photos/NorwoodMAPotos/\00\01\15\0>)

Interior Floor 1	Vinyl/Asphalt
Interior Floor 2	Carpet
Heating Fuel	Gas
Heating Type	Hot Water
AC Type	Central
Bldg Use	OFFICE BLD
Total Rooms	
Total Bedrms	00
Total Baths	0
1st Floor Use:	3400
Heat/AC	HEAT/AC SPLIT
Frame Type	MASONRY
Baths/Plumbing	AVERAGE
Ceiling/Wall	CEIL & WALLS
Rooms/Prtns	AVERAGE
Wall Height	12
% Comn Wall	

Building Layout

BAS[5579]	FHS[3764]	FOP[1198]	FUS[7157]	SFB[1617]
	UBM[4028]	FEP[132]		

Building Sub-Areas (sq ft)			Legend	
Code	Description	Gross Area	Living Area	
FUS	Upper Story, Finished	7,157	7,157	
BAS	First Floor	5,579	5,579	
FHS	Half Story, Finished	3,764	3,011	
SFB	Base, Semi-Finished	1,617	1,213	
FEP	Porch, Enclosed, Finished	132	0	
FOP	Porch, Open, Finished	1,198	0	
UBM	Basement, Unfinished	4,028	0	
		23,475	16,960	

Extra Features

Extra Features					Legend
Code	Description	Size	Value	Bldg #	
ELV	ELEVATOR	3 STOP	\$45,600		1

Land

Land Use

Use Code 3400
Description OFFICE BLD
Zone LM
Neighborhood IW
Alt Land Appr No
Category

Land Line Valuation

Size (Acres) 26.87
Frontage
Depth
Assessed Value \$5,617,800
Appraised Value \$5,617,800

Outbuildings

Outbuildings						Legend
Code	Description	Sub Code	Sub Description	Size	Value	Bldg #
STB2	W/IMPROVEMENTS			1001 S.F.	\$12,500	1
FGR1	GARAGE-AVE			576 S.F.	\$7,200	1
PAV1	PAVING-ASPHALT			50000 S.F.	\$50,000	1

Valuation History

Appraisal			
Valuation Year	Improvements	Land	Total
2017	\$882,200	\$7,617,800	\$8,500,000
2016	\$1,554,100	\$7,617,800	\$9,171,900
2015	\$1,043,400	\$10,820,100	\$11,863,500

Assessment

Valuation Year	Improvements	Land	Total
2017	\$882,200	\$7,617,800	\$8,500,000
2016	\$1,554,100	\$7,617,800	\$9,171,900
2015	\$1,043,400	\$10,820,100	\$11,863,500

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Appendix B

Zoning Use Regulations

Limited Manufacturing

Appendix B.

Zoning Use Regulations - Limited Manufacturing

Residential Uses

Single-family dwelling	N
Two-family dwelling	N
Two family dwelling by conversion	N
Multifamily dwelling	N
Dwelling units in combination with stores or other permitted commercial purposes:	
One or two dwelling units	N
Three or more dwelling units	N
Assisted Living Residence	BA

Institutional Uses

Religious or educational use exempted from prohibition by G.L. Chapter 40A, Section 3	Y
Library or museum open to the public or connected with an allowed institutional use and not conducted as a gainful business	Y
Child care center	Y
Hospital, nursing, rest or convalescent home, other institution not for correctional purposes	N
Social, civic or recreational use by a club, lodge, owned by members and customarily conducted as a nonprofit activity	N
Municipal services	Y
Sheltered Workshop operated by a nonprofit charitable organization for handicapped persons	BA
Essential services	BA

Open Land of Extensive Uses

Agricultural use:	
Extensive	Y
Intensive	BA
Farm stand	Y
Extension of an existing cemetery	Y
Reservation, wildlife preserve or other conservation area of a nonprofit organization or membership club	Y
Commercial recreation, outdoors	N
Commercial golf course with a minimum area of thirty acres and all golf course activities to be restricted to daylight hours	Y

Retail Uses and Places of Assembly

Motor vehicle, boat, motorcycle, trailer, truck or farm implement sales or auctions:	
Wholly within a closed building	BA
With open-lot sales or storage	N
Other open lot sales area	N
Showroom for building supplies (including plumbing, heating and ventilating equipment)	N
Other retail stores	
Enterprises under 25,000 net square feet floor area	BA
Larger enterprises	PB
Restaurant:	
With drive in, drive-through, or similar service subject to Section 7.3	PB
With service to persons standing or sitting outside the building	N
With both the above	N
With neither the above	BA
Commercial recreation, indoors	BA
Adult uses as provided by Section 7.1	N
Drugstore	BA
With drive-in, drive-through, or similar service subject to Section 7.3	PB
Hotel or motel, rooming house, boarding house or lodging house	BA

Office Uses

Business or agency office, bank or other monetary institution	BA
With drive-in, drive-through, or similar service subject to Section 7.3	PB
Office for administrative, executive or professional purposes	Y
Place of business of a building tradesman or caterer	N
Cable Television Studio	BA
Flex Space	Y

Service Establishments

Personal or consumer service	BA
Mortuary, undertaking or funeral establishment	N
Medical or dental laboratory; clinic	Y
Shop of a cabinetmaker, sign painter, job printer or upholsterer	N
Printing or publishing establishment	Y
Power laundry; dry cleaning plant or dyeing works; carpet or rug cleaning plant	BA
Private school conducted for profit, including business or trade school, dancing or music school	Y
Body Art Establishment	N
Commercial kennel, animal or veterinary hospital	N
Fitness Center	BA

Wholesale Business & Storage

Wholesale showroom, with storage limited to floor samples only	Y
Storage warehouse or distribution plant:	
Less than 25,000 gallons of toxic or hazardous materials	Y
More than 25,000 gallons of toxic or hazardous materials	BA
Other material or equipment	Y
Open lot storage	N

Vehicular Service and Transportation Uses

Parking facility:	
Commercial	Y
Community or group facility solely for the parking of noncommercial motor vehicles of residents of nearby buildings	Y
Motor vehicle service:	
Motor vehicle service station	N
Washing and cleaning of motor vehicles	N
Auto repair facility, with all major repairs conducted wholly within a building	N
Motorcycle, truck, trailer, or farm implement repair	N
Bus or railroad passenger station	Y
Taxi office or stand	Y
Ambulance dispatch operation	BA
Truck terminal or motor freight station; servicing of trucks or buses	N
Municipal airport or other municipal landing and servicing facility	Y
Leasing motor vehicles	N

Manufacturing, Processing and Related Uses

Laboratory engaged in research, experimental or testing activities	Y
Food processing, bottling or packaging	BA
Light manufacturing	Y
Manufacturing	N
Earth removal (see Section 7.2)	BA

Accessory Uses

Home occupation (see Section 3.3.1)	Y
Licensed family day care home	Y
Farm stand	Y
Room and board for not more than two persons not members of the household (whether regular or transient)	N
Light manufacturing (see Section 3.4.3)	Y
Dwelling for caretaker, watchman	N
Transient accommodations for business visitors to the premises	Y
Repair (conducted wholly within a building) and service for vehicles used in conjunction with the principal use of the premises	Y
Scientific research and development, as provided at Section 3.4.4	BA
Clinic located within drug store or other principal use	BA

Accessory Parking

Automobiles, recreational vehicles, passenger vans (See Section 3.4.5)	Y
Pickup trucks, not more than 6250 pounds gross vehicle weight	Y
One other vehicle which neither exceeds 12,000 pounds gross vehicle weight, nor which exceeds 21 feet in length	Y
Larger or additional commercial vehicles	Y
Accessory trailer (see Section 3.4.5)	Y
Employee restaurant, lunchroom, cafeteria or similar place for serving on-premises employees	Y
Retail sale of products manufactured or stored as the principal use	Y
Open lot display or storage of goods, products, materials or equipment:	
Occupying less than 25% as much area as covered by buildings on the premises	Y
Occupying a larger area	BA
Incinerator for disposal of waste materials incidental to the principal use	BA
Rental or leasing of motor vehicles	BA
Livestock raising, for personal use and enjoyment of residents of the premises, but not for gain	Y

Appendix C

State Law for the Disposition of Real Property

MGL CH 30B

The Chapter 30B Manual: Procuring Supplies, Services and Real Property

- Legal Requirements
- Recommended Practices
- Sources of Assistance



Commonwealth of Massachusetts
Office of the Inspector General

Glenn A. Cunha
Inspector General

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Real Property Dispositions

For any disposition of real property, regardless of value, you are required to declare the property available for disposition and determine the value of the property. Also, if you dispose of the property for less than the value determined, you must post a notice in the *Central Register* explaining the reasons for your decision and disclosing the difference between the value and the price to be received.¹²¹ If the value of the property exceeds \$35,000, you must solicit proposals to dispose of the property. The requirement for competition is triggered by the *value* of the property, not the price your local jurisdiction expects to receive for the property.

If you are leasing space, you determine the value of the disposition by calculating the fair market value of the lease over the entire contract term. For example, if you are leasing out a portion of a municipal building for five years with a market value of \$1,000 per month, the entire contract is valued at \$60,000. Therefore, it must be awarded using an advertised solicitation process.

In assessing whether and how to dispose of surplus property, consider both current and possible future needs. It is best to be systematic. Develop an inventory of your local jurisdiction's property, survey department heads and invite public comment. If you find that your local jurisdiction might need the property in the future, be sure to structure a lease term so that the property is available for use when needed.

Step 1: Declare property available for disposition and identify reuse restrictions

Before you can sell or lease property, regardless of its value, it must be declared available for disposition by the individual or body with the authority to make such a determination for your local jurisdiction. If your local jurisdiction wishes to impose any restrictions on the use of the property, these restrictions must be specified as part of the declaration that the property is available for disposition. For example, if you are selling or leasing a surplus school building, you may not care how the new owner or lessee will use the building, as long as the building use is legal and conforms to local zoning

¹²¹ Appendix B provides the website address for the online submission form for this notice, and Appendix D provides contact information for the Secretary of the Commonwealth.

requirements. In that case, you would not specify a use restriction. However, if you were leasing only part of a school building, M.G.L. c. 40, § 3, would require you to specify that the use be compatible with the functioning of the school.

Step 2: Determine the value of the property

You must determine the value of the property before you can dispose of it. Chapter 30B requires that you determine the property's value by using procedures customarily accepted as valid by the appraising profession. You may hire an appraiser, although you are not required to do so. You may also rely on the municipal assessment of a property's value if it is current, if the municipality is assessed at 100 percent, and if the assessment is determined through valid procedures. The value of most parcels of property will likely exceed the \$35,000 threshold for advertised competition. For a lease, you may use market rent data, or even advertised rental rates, if the number of similar properties on the market is sufficient to determine the lease value.

Step 3: Develop the solicitation

If the value of the property exceeds \$35,000, you must solicit proposals. Your solicitation provides interested parties with the information they need to decide whether they want the property and to submit a responsive proposal. The major components of a real property disposition solicitation are as follows:

- a description of the property and interest in the property you plan to sell or lease (the "property description") and any use restrictions;
- evaluation criteria;
- rule for award;
- proposal submission requirements; and
- the contract terms and conditions.

Property description. The property description must be detailed enough for interested parties to understand what you are offering. Be sure to identify use restrictions established by your local jurisdiction. If the property is being offered for sale, include a reference to a deed or survey. Also identify in the property description the buildings and structures included in the disposition and any restrictions on their use, such as deed restrictions. Drawings, plot plans and other relevant documents should either be

appended to the specifications or be incorporated by reference.¹²² The notice must state the terms of the disposition, including whether it is a sale or lease. If it is a lease, state its duration and whether utilities will be included in the lease price or whether they must be paid separately by the lessee.

Evaluation criteria. Indicate how you will select a proposal from among the competing proposals. The process is similar to developing evaluation criteria for supplies or services (described in Chapters 4 and 5). You should establish:

- criteria to evaluate *responsiveness* (whether the proposer agrees to meet your terms and the proposal contains all the required documents and forms, properly completed) and *responsibility* (whether the proposer has the capability, integrity and reliability to perform under the contract);
- *comparative criteria* if you decide that you want to weigh the relative merits of proposals rather than selecting the responsive and responsible proposal that offers the best price; and
- a method to evaluate *prices*.

Note that although Chapter 30B requires proposals, you have the discretion to structure your solicitation so that it is, in effect, an IFB. If your objective is simply to dispose of property that you do not need, you should sell the property to the proposer offering the highest price. In this instance, your solicitation should set out simple criteria and award the contract to the qualified proposer offering the highest price for the property. Your criteria might include:

- a proposal deposit requirement to ensure that only serious proposers participate (a successful proposer that fails to close on the deal would forfeit the deposit);
- evidence of the proposer's ability to obtain financing; and
- best price.

You may establish any rating scheme that preserves open and fair competition, keeps proposers on a common footing, and allows manageable and meaningful comparisons. You have the option to use the same rating categories that are used in Chapter 30B RFPs for supplies and services: highly advantageous, advantageous, not advantageous and unacceptable. However, you are not required to do so.

¹²² You can incorporate a document by reference in your specifications. Describe the document, and indicate where the document is located and how it can be obtained.

You should inform proposers how you will determine the best price. For example, in a multi-year lease, specify whether proposers may propose level monthly payments over the term, or if they may propose escalating rents for each year of the lease. If rent escalators may be proposed, you should state how you will calculate the present value of the rental payments and include the formula in the solicitation. To simplify lease price comparisons, it is helpful to provide a standard price form for all proposers to complete.

If you are interested in promoting a public purpose and price is less important, you will have to carefully think through what you want and how you will evaluate it. The box on the next page presents information on dispositions to promote public purposes.

Rule for award. Your solicitation should contain a clear rule for award stating how the winning offer will be selected. For example, if you plan to select the highest-priced offer meeting your evaluation criteria, your rule for award might be stated as follows:

The highest-priced proposal from a responsive and responsible proposer will be selected.

If you plan to weigh offers from responsive and responsible proposers, your rule for award might be stated as follows:

The most advantageous proposal from a responsive and responsible proposer, taking into consideration price and all other evaluation criteria set forth in the solicitation, will be selected.

If, when leasing surplus real property, your objective is to promote a public purpose, such as an affordable day care center, you may award a fixed-rent contract to the responsive and responsible proposer that meets your evaluation criteria. Thus, your rule for award would not include price as a selection factor; for example:

The most advantageous proposal from a responsive and responsible proposer, taking into consideration all evaluation criteria set forth in the solicitation, will be selected.

The box below contains additional information about real property dispositions to promote public purposes.

Real Property Dispositions to Promote Public Purposes

Your local jurisdiction may want to offer property for lease or sale in order to promote a public purpose rather than to raise revenue. Based on long-standing interpretations of Massachusetts's constitution, if you intend to dispose of real property for less than its fair market value, you must define a valid public purpose to be achieved. Individuals or private organizations may realize incidental benefits from a disposition of public property, but the primary purpose must be to promote the public welfare. You must structure an open, fair and competitive disposition process to accomplish your public purpose.

If you dispose of the property for less than the fair market value, you must post a notice in the *Central Register* explaining the reasons for your decision and disclosing the difference between the property value and the price to be received. To be consistent with its purpose, this notice should be published prior to entering into a binding agreement to dispose of the property.

Example 1: Affordable day care. Your local jurisdiction has a shortage of affordable day care and you decide to lease available space to a day care provider. Since the primary objective of this disposition is not to obtain the maximum amount of rent, you set a fixed rent and specify the lease terms, such as those for insurance, utilities and maintenance. You require all proposers to meet requirements such as staff training and experience, staff-to-child ratio, number of children from low-income families to be served, parent participation on governing board, nutrition programs and hours of operation. You then develop evaluation criteria to choose the proposal that best meets your objective of providing high-quality, affordable day care. For example, you might require proposers to submit a sliding-fee scale based on family income, and select the responsive and responsible proposal offering the lowest fees to the maximum number of families in need of affordable day care.

Example 2: Affordable housing. You decide to create affordable housing by dividing surplus land into lots for sale to low-income or moderate-income purchasers. You specify qualifications for purchasers, including maximum income and asset limitations, and determine the methods you will use to verify these qualifications. You restrict the use of the property and the profit that can be realized by the resale of the property to ensure that the plan meets its objective of creating and preserving affordable housing and does not result in a windfall profit to any individual. You create a fair and accountable method for proposal selection. You could, for example, establish a set price for each lot, advertise for proposals from eligible families and individuals, and use a public lottery to select winners from among the responsive and responsible proposals.

Proposal submission requirements. Your solicitation should state the rules for proposal submission. Specify when (date and time) and where sealed proposals must be delivered, how proposal packages should be marked, and how proposers may correct, modify, or withdraw proposals. If the disposition is a lease, include any options to renew or extend the lease. State that the selected proposer will be required to submit a disclosure of beneficial interests to DCAMM, as required by M.G.L. c. 7C, § 38, and include any standard forms proposers must submit.

Price and non-price proposals need not be submitted separately. Unlike Chapter 30B's RFP requirements for supplies and services, Chapter 30B does not require separate submissions of price and non-price proposals for real property transactions. Moreover, real property proposals, including price proposals, are not confidential after they are opened.

Contract terms and conditions. Any terms and conditions you will require in the agreement must be specified in the solicitation and in the contract, including use restrictions and the terms of any renewal, extension or purchase options. It is important to note that Chapter 30B does not limit the length of real property contracts. That is, the Chapter 30B majority vote requirement for supply and service contracts exceeding three years¹²³ does not apply to Chapter 30B real property contracts. However, there may be other statutory or local restrictions that apply to your real property contracts. For example, M.G.L. c. 40, § 3, limits towns to public building leases of 30 years and leases of school houses in use as schools to 25 years. A Massachusetts Appeals Court decision affirmed a Superior Court ruling that held that an automatic renewal clause on the same terms that exceeded the limit violated M.G.L. c. 40, § 3.¹²⁴ Your legal counsel can advise you regarding restrictions that may apply to your local jurisdiction's real property transactions.

¹²³ M.G.L. c. 30B, § 12(b).

¹²⁴ *Comets Community Youth Center, Inc. v. Town of Natick*, 56 Mass. App. Ct. 1109 (2002).

The box on below contains information about contract terms and conditions for real property dispositions.

Real Property Dispositions: Contract Terms and Conditions

Sales. If you are selling real property, have your attorney draft any terms that you require into the purchase and sale agreement. Include any use restrictions and any mandatory purchase terms in the solicitation. Require a certification of tax compliance from the purchaser (M.G.L. c. 62C, § 49A) and a disclosure of beneficial interests (M.G.L. c. 7C, § 38).

Leases. If you are disposing of property by lease, mandatory lease terms must be spelled out in the solicitation. A typical lease should:

- Name the parties to the lease and the responsible parties to receive any notices under the lease and any use restrictions.
- Incorporate by reference the proposal chosen, including a detailed description of the leased property.
- Specify the duration of the lease, including any renewal, extension, or other options. If the lease will include a renewal option, you must specify how the rent will be determined for the renewal period.
- Identify the payment terms, including when payments are due.
- Spell out all of the responsibilities and obligations of the parties for maintenance, cleaning, utilities, rubbish disposal, snow removal, liability and casualty insurance, and other requirements.
- Specify that lease amendments must be in writing and signed by individuals authorized to contract on behalf of your local government.
- Prohibit assignment or subletting without written approval.
- Specify what constitutes cause to terminate the lease, what notice must be provided prior to termination, and what opportunity must be granted to correct any problem.
- Prohibit any activity that would constitute a violation of the conflict of interest law (M.G.L. c. 268A).
- Specify that the lease constitutes the entire agreement and that there are no agreements other than those incorporated therein.
- Require a certification of tax compliance by the lessee (M.G.L. c. 62C, § 49A) and a disclosure of beneficial interests (M.G.L. c. 7C, § 38).

Step 4: Advertise for proposals

You must advertise for proposals in a newspaper with a circulation sufficient to inform the people of the affected locality.¹²⁵

The advertisement must be published at least once a week for two consecutive weeks before the day you select for opening the proposals. The last publication must occur at least eight days before the proposal opening. You may, of course, advertise in more newspapers, in newspapers outside your area, and more frequently.

The advertisement must specify the geographical area, the terms and conditions of the proposed transaction, and the time and place for the submission of proposals and awarding of the contract. It must also state where and when prospective proposers may obtain a copy of the solicitation.

If the proposed disposition involves more than 2,500 square feet, you must also publish an advertisement, at least 30 days before the opening of proposals, in the *Central Register*, which is published by the Secretary of the Commonwealth.¹²⁶

You may inform potential proposers, including brokers and developers, of the availability of the solicitation. Be careful to avoid favoritism or the appearance of favoritism.

You can contract with a broker to help dispose of property. The broker's job will be to show the property and encourage the submission of sealed proposals on the due date. Your contract with the broker is subject to Chapter 30B.

Advertise where you will maximize exposure to potentially interested parties. For example, if you are offering to lease office space, you will probably reach more potential lessees by advertising in the classified section under "office space" rather than advertising in the legal notices section.

¹²⁵ M.G.L. c. 30B, § 16(d).

¹²⁶ Appendix B provides the website address for the online submission form for this advertisement, and Appendix D contains contact information for the Secretary of the Commonwealth.

Step 5: Distribute the solicitation

The solicitation documents must be made available on an equal basis to all who request a copy. You may inform potential proposers, including brokers and developers, of the availability of the solicitation. Keep a record of the names, email addresses, telephone numbers and fax numbers of everyone who has received the documents. If you later issue an addendum to the solicitation, send the addendum to everyone who has received the solicitation. To avoid misunderstandings or protests, you may want to require proposers to acknowledge in writing their receipt of each addendum. Also, if proposers are likely to require additional time to respond to the addendum, extend the proposal due date and opening.

Step 6: Open and evaluate proposals

Proposals must be opened in public at the time and place specified in the solicitation. Chapter 30B affords no confidentiality to real property proposals. You should record the name of each proposer and the proposal price. The proposals become public information when they are opened.

You must evaluate the proposals using only the criteria you identified in the solicitation. If your solicitation states that you will make an award to the responsive and responsible proposer who offers the best price (in essence, a bid process), you may simply identify the highest-priced proposal, and then evaluate that proposal's responsiveness and responsibility against the quality requirements specified in the solicitation. If you determine that a proposal is not responsive or responsible, reject it and proceed to evaluate the next highest proposal.

If your solicitation states that you will evaluate proposals using comparative evaluation criteria, it will usually be most efficient to look first at the responsiveness and responsibility of the proposals and reject any you find to be not responsive or not responsible. Then evaluate all the remaining proposals on both your comparative criteria and price. Prepare written evaluations and then decide which proposal best meets the needs of your local jurisdiction, considering the comparative criteria and price.

If you determine that it is not in the best interest of your local jurisdiction to award the contract you may choose to cancel the proposal process.¹²⁷ You may do so before or after you open and evaluate proposals. However, once you have executed a contract, you will not be able to cancel the transaction.

Step 7: Submit disclosures

You must submit the name of the selected proposer and the amount of the transaction to the *Central Register*, which is published by the Secretary of the Commonwealth.¹²⁸ If you intend to dispose of the property for less than the value determined in Step 2, your *Central Register* notice must explain the reasons for your decision and disclose the difference between the value and the price to be received.¹²⁹ To be consistent with its purpose, this notice should be published prior to entering into a binding agreement to dispose of the property.

Also, M.G.L. c. 7C, § 38, requires disclosure of all beneficial interests in real property acquired or disposed of by a public agency. The selected proposer's disclosure of beneficial interests must be filed with DCAMM. No contract to lease or sell property, and no renewal or extension of such an agreement, is valid until the seller or lessor files this form with DCAMM.¹³⁰ An updated disclosure form must be filed within 30 days of any change in beneficial interests during a lease term.

Step 8: Execute the contract

If you are selling real property, have your legal counsel draft a purchase and sale agreement that incorporates all of the mandatory terms and conditions required by the solicitation. If you are disposing of the property by lease, execute a lease that incorporates all the terms and conditions stated in the solicitation.

¹²⁷ See *Mangano v. Town of Wilmington*, 51 Mass. App. Ct. 857 (2001).

¹²⁸ M.G.L. c. 30B, § 16(f). Appendix B provides the website address for the online submission form for this disclosure, and Appendix D contains contact information for the Secretary of the Commonwealth.

¹²⁹ M.G.L. c. 30C, § 16(g).

¹³⁰ Appendix B contains the website address for DCAMM's real estate transaction disclosure form for this purpose, and Appendix D provides contact information for DCAMM.

Step 9: Retain records

You must maintain a file of all written documents required by Chapter 30B for six years from the date of the final payment under the contract. These documents include the following:

- the declaration that property is available for disposition;
- the solicitation documents and any amendments;
- the public advertisement;
- all *Central Register* notices;
- all proposals received;
- all evaluation materials;
- a copy of the disclosure of beneficial interests; and
- the signed purchase and sale agreement or lease.

Emergencies

If an emergency arises and the time required to advertise for the disposition of real property would endanger the health or safety of people or their property, you may shorten the advertising period or waive it completely. Simple administrative inconvenience will not suffice as a justification for invoking the emergency provisions of Chapter 30B; a genuine emergency must exist. If you have reason to know in advance that a tenant will be vacating a facility, and you fail to advertise in advance, you will not be able to justify using the emergency provisions. Note that the right to waive or shorten the required procedures in an emergency applies only to the advertising requirement; even in an emergency, all other requirements continue to apply.

If you invoke this provision, you must publish a notice in the *Central Register* at the earliest opportunity stating the reason for declaring the emergency.¹³¹

M.G.L. c. 7C, § 38, requires disclosure of all beneficial interests in real property acquired or disposed of by a public agency. The selected proposer must file the

¹³¹ Appendix B provides the website address for the online submission form for this notice, and Appendix D provides contact information for the Secretary of the Commonwealth.

disclosure of beneficial interests with DCAMM. No contract to lease or sell property, and no renewal or extension of such an agreement, is valid until the seller or lessor files this form with DCAMM.¹³² An updated disclosure form must be filed within 30 days of any change in beneficial interests during a lease term.

Intragovernmental and Intergovernmental Dispositions

Intragovernmental real property transactions, such as the transfer of use of a property from one department to another department within a single city or town, are not subject to Chapter 30B. However, intergovernmental real property transactions, such as the sale of land by one local government to another local government, are subject to some Chapter 30B requirements.¹³³ If you intend to dispose of real property to the federal government, the Commonwealth, another state, a county or another local jurisdiction, you must first declare the property available for disposition, identify use restrictions and determine the property's value. If you are going to dispose of the property for less than the determined value, you must publish a notice in the *Central Register* explaining the reasons for your decision and disclosing the difference between the value and the price to be received.¹³⁴

¹³² Appendix B contains the website address for DCAMM's real estate transaction disclosure form for this purpose and Appendix D provides contact information for DCAMM.

¹³³ M.G.L. c. 30B, § 16(i).

¹³⁴ Appendix B provides the website address for the online submission form for this notice and Appendix D provides contact information for the Secretary of the Commonwealth.