

10/29 (11)

Christine Joyce

From: Steve Ledoux
Sent: Friday, October 19, 2012 10:10 AM
To: Christine Joyce
Subject: FW: Acton/GenSel - MBTA Draft Order of Taking No. 670 South Acton Station
Attachments: BOS Motion re MBTA Order of Taking No. 670 (A0167511-3).DOCX; ORDER OF TAKING MBTA No. 670 - Final - Reference Plan 10-05-12 (A0168707).DOC; South Acton Land Acquisition Plan - Date 10-05-12 (A0168706).PDF

This is the attachments for 10/29 agenda

Steven L Ledoux
Town Manager
472 Main Street
Acton, MA 01720
Telephone (978) 929-6611

When writing or corresponding, please be aware that the Secretary of State has determined that most email is a public record and, therefore, may not be kept confidential.

From: Stephen D. Anderson [<mailto:SAnderson@AndersonKreiger.com>]
Sent: Friday, October 19, 2012 9:27 AM
To: Steve Ledoux; 'Rush, James'; 'Joe Nolan'
Cc: Corey York; Ryan Pace; Nina Pickering Cook
Subject: Acton/GenSel - MBTA Draft Order of Taking No. 670 South Acton Station

Steve: I have attached the following documents for the Board of Selectmen's meeting on 10/29/12:

- 1. Acton Board of Selectmen Vote on Motion Re MBTA Order of Taking No. 670; ✓
- 2. MBTA Order of Taking No. 670; and ✓
- 3. Land Acquisition Plan dated 10/05/12. ✓

James: Assuming the Board approves the motion, Steve L will email you and me a scan of Document #1, signed by the clerk of the Board before a notary, by Tuesday morning. I assume that will suffice for your purposes. Let me know if you need the original as well, and I will arrange for Steve to send it along. (FYI, the attached Order of Taking matches the one you emailed me on Tue 10/16/2012 3:17 PM; the Plan matches the one you emailed me on Fri 10/19/2012 7:53 AM. I gave them names to match their contents.)

Corey: Please review the Plan and related documents and let me know if you see anything that needs to be corrected.

Please let me know if you have any questions.

Thanks.

Steve

Stephen D. Anderson
ANDERSON & KREIGER LLP
One Canal Park, Suite 200
Cambridge, MA 02141
t: 617-621-6510
f: 617-621-6610

ACTON BOARD OF SELECTMEN VOTE ON MOTION
RE MBTA ORDER OF TAKING NO. 670

WHEREAS, by MBTA Order of Taking No. 670, the MBTA proposes to take from the Town of Acton, for mass transportation purposes, the fee interest in a certain parcel of land consisting of 818± square feet described as Fee Acquisition Parcel FBL-9 shown on a plan entitled "Massachusetts Bay Transportation Authority, Fitchburg Commuter Rail Line Improvement Project Contract No. G67PS01, Land Acquisition Plan, Town of Acton, Middlesex County," dated 10/05/12, prepared by Bryant Associates, Inc., Sheet 1 of 1 ("Parcel FBL-9").

WHEREAS, Parcel FBL-9 comprises a portion of the real property acquired by the Town of Acton pursuant to the deed recorded in the Middlesex South District Registry of Deeds at Book 12943, Page 38, as corrected by the Release recorded in the Middlesex South District Registry of Deeds at Book 12974, Page 673, and is in the charge of the Selectmen pursuant to the vote under Article 16 of the October 1975 Special Town Meeting.

NOW THEREFORE, pursuant to Town Charter § 4-3(g)(9) and Massachusetts General Laws c.40, § 15, c. 79, and c. 161A, § 3(o), it is hereby moved that the Acton Board of Selectmen:

- (a) find that Parcel FBL-9 is no longer required for the Town of Acton's public purposes;
- (b) confirm that any permanent interference with the Town's public use is not substantial; and
- (c) authorize the Town Manager to compromise the Town's claim for damages sustained by reason of the aforesaid taking by acceptance of a zero land damages award from the MBTA and to execute all necessary documents to effectuate the same.

Moved by Selectman _____; Seconded by Selectman _____
Record of Vote: In Favor: ____; Opposed: ____; Abstaining: ____

The foregoing is an accurate record of the proceedings of the Acton Board of Selectmen on October __, 2012.

Michael J. Gowing, Clerk

Notarization

On this __ day of October, 2012, before me personally appeared Michael J. Gowing, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the Clerk of the Acton Board of Selectmen whose name is signed on the preceding or attached document as Clerk.

Notary Public
My Commission Expires: _____

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

**ORDER OF TAKING MBTA No. 670
TOWN OF ACTON
MIDDLESEX COUNTY**

WHEREAS: The Board of Directors of MassDOT who govern the Massachusetts Bay Transportation Authority ("MBTA"), a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts established by General Laws, Chapter 161A, deem it necessary for the purpose of providing and extending mass transportation in said Commonwealth and for the purpose of performing such other work as may be necessary in connection therewith, under the power granted to the MBTA by General Laws, Chapter 161A, Section 3 (o), and in accordance with the provisions of General Laws, Chapter 79, to take for and on behalf of the MBTA a certain parcel of land or interests in land in the Town of Acton, Middlesex County, in said Commonwealth.

AND WHEREAS, the said Board of Directors deem it necessary for such purposes to take certain interests in land located in Acton, Middlesex County, Massachusetts, and described as follows:

A. Parcel Taken in Fee

<u>Parcel</u>	<u>Square Feet ±</u>	<u>For Title Reference</u>	
		<u>Book</u>	<u>Page</u>
FBL – 9	818	12943	38
		12974	673

The aforementioned parcel is shown on a plan entitled "Massachusetts Bay Transportation Authority, Fitchburg Commuter Rail Line Improvement Project Contract No. G67PS01, Land Acquisition Plan, Town of Acton, Middlesex County", dated 10/5/12, as prepared by Bryant Associates, Inc., Sheet 1 of 1, recorded herewith.

WHEREFORE VOTED:

1. That the parcel of land with the trees and structures thereon in Section A of this Order of Taking be and hereby is taken in fee for the purpose of constructing, operating and maintaining South Acton Station, by the Board of Directors on behalf of the MBTA under the power granted said MBTA by General Laws, Chapter 161A, Section 3(o) and Chapter 79, and by virtue of every other power said MBTA hereto enabling.
2. For damages sustained by reason of the aforesaid taking by persons in the properties listed below, and in accordance with the provisions of General Laws, Chapter 79, Section 6, as amended, no award of damages will be made.

Parcel
FBL – 9

Supposed Owner
Town of Acton

Order of Taking MBTA No. 670
Town of Acton
Middlesex County

IN WITNESS WHEREOF, WE, the undersigned Directors of MassDOT who govern the Massachusetts Bay Transportation Authority, hereto set our hands this _____ day of _____ in the year Two Thousand Twelve.

Executed as a sealed instrument.

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY

By:

John R. Jenkins, Chairman

Ferdinand Alvaro, Jr.

Richard A. Davey, Secretary/CEO

Joseph C. Bonfiglio

Janice Loux

Alan G. MacDonald

Andrew Whittle

A true copy:

Attest: _____
Paula Fallon
Recording Secretary
Board of Directors MassDOT

N/F
**INGSWOOD
 CORP.**

BOOK 45122 PG. 135
 DEED BOOK 12416, PG 122

IDE DRIVEWAY EASEMENT

**RAILROAD STREET
 DEVELOPMENT, LLC**

DEED BOOK 34320, PG. 422
 PLAN IN DEED BOOK 7054, PAGE 490

N/F

**RAILROAD STREET
 DEVELOPMENT, LLC**

DEED BOOK 34320, PG. 423

N/F

THOMAS E. NUTTING

DEED BOOK 15544, PG. 55
 PLAN IN DEED BOOK 12416, PG 122

Note!

*Full size plan
 will be in your
 Hard copy Packet
 on Monday Nite*

DRILL HOLE
 STONE BOUNDARY
 (FOUND)

	TYPE OF ACQUISITION	REGISTRY OF DEEDS		TOWN OF ACTON ASSESSOR		AREA IN SQ. FT.	COUNTY
		BK.	PG.	MAP	PARCEL		
	FEE ACQUISITION	12943	38	H-2A	9	818±	MIDDLESEX

COG
 P
 P40
 P41
 P42
 P43
 P44

Christine Joyce

From: Steve Ledoux
Sent: Tuesday, October 16, 2012 3:20 PM
To: Christine Joyce
Subject: FW: Acton/GenSel - MBTA Draft Order of Taking No. 670 South Acton Station
Attachments: TAKING670Acton.doc

For the 10/29 agenda

Steven L Ledoux
Town Manager
472 Main Street
Acton, MA 01720
Telephone (978) 929-6611

When writing or corresponding, please be aware that the Secretary of State has determined that most email is a public record and, therefore, may not be kept confidential.

From: Rush, James [<mailto:JRush@MBTA.com>]
Sent: Tuesday, October 16, 2012 3:17 PM
To: Steve Ledoux; Stephen Anderson; Donlon, Dennis
Subject: RE: Acton/GenSel - MBTA Draft Order of Taking No. 670 South Acton Station

The corrected Order of Taking is attached. I will get you the plan before COB 10/24.

From: Steve Ledoux [<mailto:sledoux@acton-ma.gov>]
Sent: Tuesday, October 16, 2012 3:13 PM
To: Rush, James; Stephen Anderson; Donlon, Dennis
Subject: RE: Acton/GenSel - MBTA Draft Order of Taking No. 670 South Acton Station

Correct

Steven L Ledoux
Town Manager
472 Main Street
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When writing or corresponding, please be aware that the Secretary of State has determined that most email is a public record and, therefore, may not be kept confidential.

From: Rush, James [<mailto:JRush@MBTA.com>]
Sent: Tuesday, October 16, 2012 3:11 PM
To: Steve Ledoux; Stephen Anderson; Donlon, Dennis
Subject: RE: Acton/GenSel - MBTA Draft Order of Taking No. 670 South Acton Station

I will have a draft license agreement no later than Friday with the MOU to follow. I will check on the elevator maintenance agreement. The material needed by for the next meeting is the Order of Taking and the plan. Is this correct?

From: Steve Ledoux [<mailto:sledoux@acton-ma.gov>]
Sent: Tuesday, October 16, 2012 2:58 PM
To: Stephen Anderson; Rush, James
Subject: RE: Acton/GenSel - MBTA Draft Order of Taking No. 670 South Acton Station

We did not vote as I do not like springing unseen materials to the Board at the last minute. The next meeting is 10/29. We would need the material by COB on Wednesday, October 24th. Also, I thought there was to be an MOU in general.

Steven L Ledoux
Town Manager
472 Main Street
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From: Stephen D. Anderson [<mailto:SAnderson@AndersonKreiger.com>]
Sent: Tuesday, October 16, 2012 2:55 PM
To: 'Rush, James'
Cc: Steve Ledoux
Subject: RE: Acton/GenSel - MBTA Draft Order of Taking No. 670 South Acton Station

I don't believe the Board voted on the Motion last night as it needed the final package on the Thursday before the meeting. I am copying Steve Ledoux to inquire as to the next opportunity. If it is this Thursday, can you get me the plan by tomorrow COB? What about the other documents below?

Steve

From: Rush, James [<mailto:JRush@MBTA.com>]
Sent: Tuesday, October 16, 2012 2:53 PM
To: Stephen D. Anderson
Subject: RE: Acton/GenSel - MBTA Draft Order of Taking No. 670 South Acton Station

I made that correction, thanks. We need to correct a property line that relates to the Comm. Of Mass. Parcel. Once that is complete we will get you the final version of the plan. That should be any day hopefully. Did the Board of Selectmen vote on the motion last night?

From: Stephen D. Anderson [<mailto:SAnderson@AndersonKreiger.com>]
Sent: Monday, October 15, 2012 4:24 PM
To: Rush, James
Cc: 'Steve Ledoux' (sledoux@acton-ma.gov); 'Corey York' (cyork@acton-ma.gov); Ryan D. Pace; Nina Pickering Cook; Donlon, Dennis
Subject: RE: Acton/GenSel - MBTA Draft Order of Taking No. 670 South Acton Station

Thanks Jim. On the attached draft Order of Taking, I redlined a correction to a typo. Also, I highlighted the date of the Land Acquisition Plan dated 10/5/12, because it does not match the date on the last version you sent me. Please email me the updated plan so I can reference it in the Motion.

Also, I continue to look forward to receiving from you the draft license agreement for the temporary rights, the revised draft MOA as to the allocation of various tasks, and an update as to MBTA's review of the revised draft Elevator Maintenance Agreement which I had circulated on 9/1/12. Thanks.

Steve

From: Rush, James [<mailto:JRush@MBTA.com>]
Sent: Monday, October 15, 2012 2:14 PM
To: Stephen D. Anderson
Cc: "Steve Ledoux" (sledoux@acton-ma.gov); 'Corey York (cyork@acton-ma.gov)'; Ryan D. Pace; Nina Pickering Cook; Donlon, Dennis
Subject: RE: Acton/GenSel - MBTA Draft Order of Taking No. 670 South Acton Station

Steve,

The motion looks fine and I added the deed reference. I didn't incorporate the text "corrected by" but if you think it is necessary that's not a problem. Attached is the revised Order of Taking. Sorry for the delay, I thought I already got back to you.

From: Stephen D. Anderson [<mailto:SAnderson@AndersonKreiger.com>]
Sent: Monday, October 15, 2012 10:12 AM
To: Rush, James
Cc: "Steve Ledoux" (sledoux@acton-ma.gov); 'Corey York (cyork@acton-ma.gov)'; Ryan D. Pace; Nina Pickering Cook
Subject: RE: Acton/GenSel - MBTA Draft Order of Taking No. 670 South Acton Station

Hi Jim:

I didn't hear back from you on the email below. Can you let me know where matters stand from your perspective?
Thanks.

Steve

From: Stephen D. Anderson
Sent: Wednesday, October 03, 2012 11:46 AM
To: 'Rush, James'
Cc: "Steve Ledoux" (sledoux@acton-ma.gov); 'Corey York (cyork@acton-ma.gov)'; Ryan D. Pace; Nina Pickering Cook
Subject: Acton/GenSel - MBTA Draft Order of Taking No. 670 South Acton Station

Hi Jim:

Following receipt from you yesterday of the draft Order of Taking No. 670 for the South Acton Station, I drafted the attached proposed Selectmen's vote/motion to address the proposed taking. Please let me know if you have any questions or comments, and please let me know if it addresses all issues from your standpoint. By copy of this email, I am asking the Town to do the same (and must of course reserve the Town's rights pending those comments).

In the interim, I wanted to point out that you should probably edit the Town's title reference in your draft Order of Taking No. 670. As I understand it, the Town's acquisition of the property that includes Parcel FBL-9 was authorized pursuant to a vote under Article 16 of the October 1975 Special Town Meeting (attached). There followed the 2/19/76 deed to the Town (referenced in your draft Order of Taking) that is recorded in the Middlesex South District Registry of Deeds at Book 12943, Page 38 (attached). Unfortunately, that deed incorrectly identified the grantee as the Town through its Conservation Commission. That oversight was promptly corrected by a 5/3/76 Release from the Conservation Commission recorded in the Middlesex South District Registry of Deeds at Book 12974, Page 673 (attached). See the second Whereas clause in my draft of the Selectmen's vote/motion as to potential language to address this issue.

I look forward to receiving from you the draft license agreement for the temporary rights, the revised draft MOA as to the allocation of various tasks, and an update as to MBTA's review of the revised draft Elevator Maintenance Agreement which I had circulated on 9/1/12. Thanks.

Steve

Stephen D. Anderson