

1. Agenda

Documents: [AGENDA 08.21.13.PDF](#)

2. Packet

Documents: [HCDPACKET08212013.PDF](#)

CITY OF PORTLAND, MAINE
Notice of Meeting

Housing and Community Development Committee

DATE: 8/21/2013
TIME: 5:30 PM
LOCATION: City Council Chamber
Second Floor, Portland City Hall

AGENDA

1. Congress Square Plaza

– Review and recommendation to City Council on draft Purchase and Sale Agreement to sell a portion of Congress Square Plaza to RB Portland Building, LLC for construction of an event center for the Westin Harbor View Hotel (f/k/a The Eastland Hotel).

a. Please see enclosed Memorandum and draft Purchase and Sale Agreement from Greg Mitchell, Economic Development Director.

b. NOTE: Pursuant to 1 M.R.S.A. 405(6)(C) and (F), the Committee may go into executive session to discuss negotiations for this sale

Councilor Nicholas Mavodones
Chair



PORTLAND MAINE

Strengthening a Remarkable City, Building a Community for Life • www.portlandmaine.gov

HOUSING AND COMMUNITY DEVELOPMENT COMMITTEE

DATE: August 21, 2013 (Wednesday)
TIME: 5:30 – 7:30 p.m.
LOCATION: City Council Chamber, Second Floor
Portland City Hall

A G E N D A

Congress Square Plaza

– Review and recommendation to City Council on draft Purchase and Sale Agreement to sell a portion of Congress Square Plaza to RB Portland Building, LLC for construction of an event center for the Westin Harbor View Hotel (f/k/a The Eastland Hotel).

- a. Please see enclosed Memorandum and draft Purchase and Sale Agreement from Greg Mitchell, Economic Development Director.
- b. **NOTE:** Pursuant to 1 M.R.S.A. 405(6)(C) and (F), the Committee may go into executive session to discuss negotiations for this sale

Councilor Nicholas Mavodones
Chair



PORTLAND MAINE

Strengthening a Remarkable City, Building a Community for Life • www.portlandmaine.gov

Economic Development Department
Gregory A. Mitchell, Director

MEMORANDUM

TO: Housing and Community Development Committee

FROM: Greg Mitchell, Economic Development Director

DATE: August 16, 2013

SUBJECT: CITY PROPERTY DISPOSITION OF CONGRESS SQUARE PLAZA

SUMMARY OF THE ISSUE

This is being presented to the Housing and Community Development Committee (HCDC) for a vote (in the form of recommendation to the City Council) on the sale of a portion of Congress Square Plaza to Rockbridge Capital to support construction of an event center for the Westin Harbor View Hotel (f/k/a The Eastland Hotel). A Draft Purchase and Sale Agreement for this transaction is attached, and this Memo contains staff's analysis and listing of public benefits.

Overview of Draft Purchase and Sale Agreement Terms

Parcel Size proposed for sale: 9,500 +/- square feet. It is noted that the remaining area of the Plaza which is planned to be city owned is 4,800 +/- square feet.

Purchase Price: \$523,640 based upon \$55.12 per square foot based upon a market appraisal.

Deposit: \$50,000 to match the City's available \$50,000 for Congress Square redesign services. This Deposit becomes non-refundable at the end of the Due Diligence Period.

Due Diligence Period: Thirty (30) days from contract execution.

Deed Conditions:

1. Event Center, as the primary use, for at least ten (10) years;
2. After ten (10) years of primary use as an Event Center, the parcel can be converted to uses customarily found in hotels; and,
3. Conversion of non-hotel related uses, allowed by zoning, require City Council approval.

Performance Requirements:

Buyer Rescission – If Buyer does not receive all approvals for Event Center by February 15, 2014, Buyer can rescind this transaction and sell property back to City at Purchase Price.

Seller Rescission – City can rescind this transaction if Buyer does not receive, by June 1, 2014 approvals, from the Planning and Historic Preservation Boards. It is noted that final design of the event center shall be in substantial conformance to the quality of the plans presented at the May 29, 2013 HCDC meeting.

Plaza Development Conditions:

Planning and Approvals. Rockbridge Capital and City agree to work closely together to integrate future concept design plans for Congress Square (entire intersection) and future Plaza design plans.

Congress Square Plaza Salvage Rights. The City's Union Station Clock is not part of the sale. City to retain salvage rights for the Clock and any granite materials.

Event Center Design Coordination with Plaza (remaining public space) and Congress Square Concept Plan. Design of the Event Center shall be compatible and integrated with adjacent Plaza.

Phasing and Coordination with Plaza and Square Redevelopment. The City will provide Rockbridge Capital with Plaza final design elevation information for Rockbridge to design an Event Center.

Developer Contribution to Plaza Construction. Rockbridge agrees to contribute \$45,000 to City to invest in public infrastructure including a new sidewalk along the Congress Street edge of the Plaza.

Public Use of Gallery Space. Rockbridge and future owners agree to meet with the City and Creative Portland twice a year to plan use of the Gallery space for Arts District events, and Rockbridge agrees to make the space available not less than six (6) times per year, however, they retain final decision authority with proper notification.

Outdoor Space Adjacent to Plaza. Exterior space, adjacent to the Plaza, will be city owned public space or subject to a public access easement.

Public Benefits

The Event Center Project in Portland's Downtown Arts District will:

- Westin Hotel Redevelopment. Support a \$40+ million dollar private investment with the redevelopment of the former Eastland Hotel,
- Increased Visitors. Attract more visitors to be "customers" for downtown merchants.
- Activate Space. Balance private and public use of the area.
- Remaining City Owned Plaza Property. Enable redevelopment of a 4,800 +/- square feet remaining Congress Square Plaza for public use.

- Land Sale Proceeds. Generate land sale proceeds for future City investment.
- Increased Property Tax Revenue. Generate increased property tax revenue to the City from a tax exempt property.
- Remaining City Owned Plaza Property. Enable redevelopment of a 4,800 +/- square foot remaining Congress Square Plaza area for public use.

It is noted that the City has undertaken a significant public discussion process regarding the possible sale of Congress Square Plaza, and a current planning process is underway for the entire Congress Square intersection.

REASON FOR SUBMISSION

City owned property disposition requires recommendations to the City Council from the Housing and Community Development Committee along with the Tax Acquired Property Committee. The City Council has the final decision making authority over the City property disposition.

INTENDED RESULT

Recommended actions by the Housing and Committee Development Committee, along with the Tax Acquired Property Committee, to forward to the City Council.

COUNCIL GOAL ADDRESSED

Support and assist in the successful redevelopment of the following projects while ensuring neighborhood involvement: Thompson Point, Bayside, Downtown (Old Port, Waterfront, Arts District), University of New England.

FINANCIAL IMPACT

Property Sale Proceeds:

Market appraisal was the basis for determining the fair market sale value of the property at \$55.12 per square foot, for a purchase price of \$523,640.

Rockbridge Capital Contributions:

- \$50,000 cash
- \$45,000 for public infrastructure (sidewalks)

STAFF ANALYSIS

Housing and Urban Development (HUD) Urban Development Action Grant (UDAG) funds were used to support some investment in the redevelopment of Congress Square Plaza, in 1979, along with investment in the Portland Museum of Art, the former Public Library, and several other buildings in the area.

HUD requirements associated with the property sale include:

- Public notification. This will be handled by public notice of any HCDC and City Council meetings.
- HUD National Objectives. The reuse of the land must meet one or more HUD national objectives (Low to Moderate Job Creation and/or Elimination of Blight).
- HUD Eligible Activities. The funds from the sale of land are considered “miscellaneous revenue” from the UDAG program. Use of these funds must be for UDAG and CDBG eligible activities which may include investment in redevelopment of the remaining public owned Plaza area.

RECOMMENDATION

City staff recommends the Housing and Community Development Committee recommends the sale of a portion of Congress Square Plaza under the terms included in the provided Draft Purchase and Sale Agreement.

LIST OF ATTACHMENTS

Draft Purchase and Sale Agreement dated 7/25/2013.

May 29, 2013 Event Center Plan

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT made and entered into as of _____, 2013, by and between the CITY OF PORTLAND, a Maine municipal corporation with a place of business in Portland, Maine and mailing address of 389 Congress Street, Portland, Maine 04101 (“Seller” or “City”) and RB PORTLAND BUILDING LLC, a Delaware limited liability company with a place of business at 157 High Street, Portland, Maine and mailing address of 4100 Regent Street, Suite G, Columbus, OH 43219 (the “Buyer”).

WITNESSETH:

WHEREAS, Buyer expressed to Seller an interest in acquiring a portion of the Seller’s Congress Square Plaza property to provide for the construction of an Event Center to be used as an integral part of the Westin Hotel Operations; and

WHEREAS, Seller has conducted public meetings in order to determine the most appropriate use of the Congress Square Plaza property, at the conclusion of which Seller determined to sell a portion of that property to the Buyer; and

NOW THEREFORE, FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Property to be Sold. Seller agrees to sell and Buyer agrees to buy a certain lot or parcel of land with all buildings, fixtures and improvements thereon, located adjacent to 157 High Street, Cumberland County, Maine, being a portion of the property shown as City of Portland Tax Map 037, Block E, Lot 1 comprising 9,500 square feet of land, more or less, with frontage on High Street, (the “Premises”). The determination of the precise area to be conveyed shall be by mutual agreement of Buyer and Seller.

2. Purchase Price; Deposit. Buyer shall pay to Seller \$55.12 per square foot, for a total, presuming the Premises is determined to be 9,500 square feet, of Five Hundred Twenty-Three Thousand Six Hundred Forty Dollars (\$523,640) (the “Purchase Price”) in the manner provided in this Section.

a. Contemporaneously with the execution of this Agreement or at the latest, within 5 days of execution, Buyer shall Deposit with Seller the sum of Fifty Thousand Dollars (\$50,000.00) in immediately available funds (the “Deposit”). At the end of the Due Diligence Period, if Buyer does not terminate the contract, the deposit becomes non-refundable and may be used by the City to match the City’s \$50,000 set aside for Congress Square Redesign Services. The Deposit, once it becomes non-refundable, may be used by the City for its planning efforts to redesign Congress Square.

b. At the closing, Buyer shall pay to Seller the Purchase Price by certified or bank cashier's check or wire transfer. The Deposit shall not be credited against the Purchase Price.

3. Title. Seller shall convey the Premises to Buyer at the closing in fee simple with good and marketable title, free and clear of all liens, claims and encumbrances, excepting those described herein, and by Quitclaim deed without Covenant. In the event that Seller is unable to convey title as aforesaid, Seller shall be given a reasonable period of time (not to exceed 30 days), after notice in writing, in which to remedy any title defects. In the event that said defects cannot be corrected or remedied or in the event that Seller elects not to remedy same, then the Deposit shall be returned to Buyer and this Agreement, and Seller's and Buyer's obligations hereunder, will terminate. Buyer may, at Buyer's option, elect to close notwithstanding such defects as may exist. Seller agrees to convey the Premises using any new survey description resulting from Buyer's boundary survey.

4. Closing. Unless this Agreement is otherwise terminated, this transaction shall be closed on or before the 15th day following the end of the Due Diligence Period (the "Closing Date") at the offices of Buyer's lender or, if the Seller and Buyer shall mutually agree in advance, at another time and place. At the closing, Seller shall execute and deliver to Buyer, against payment of the Purchase Price, the following documents:

- (a) a Quitclaim Deed without Covenant to the Premises; and
- (b) such other customary instruments, documents and affidavits as Buyer may reasonably request.

5. Risk of Loss, Damage, Destruction and Insurance. Before closing, Seller shall bear the risk of any loss to the Premises by fire or otherwise.

6. Representations and Warranties of Seller. Seller represents and warrants to Buyer that there is no litigation, administrative hearing, arbitration, or any other proceeding pending or, to the knowledge of Seller, threatened against Seller or with respect to the Premises any violation of law, rule or regulation. Seller has received no notices of violation from any Federal or State agency alleging a violation of any environmental law, rule or regulation with respect to the Premises.

7. Due Diligence Period. Buyer shall have 30 days from contract execution to conduct due diligence including title, engineering, environmental, general feasibility and lender consent. If the results of the due diligence are unsatisfactory to Buyer in its sole discretion, Buyer may terminate contract and receive back the Deposit. Buyer shall have a one-time right to extend the Due Diligence Period for up to 30 days. At all reasonable times during this period, Buyer and any prospective lender or investor of Buyer's shall have the right to enter the Premises and perform, at Buyer's expense, any and all inspections, tests, surveys or other due diligence inquiries with respect to the Premises as Buyer deems necessary or appropriate. Buyer agrees to return the Premises as nearly as reasonably possible to their original condition after all of such tests and inspections. Seller shall cooperate with Buyer in such inspections. Buyer's option to

terminate this Agreement and receive back the Deposit as provided in this Section shall expire unless such written notice is delivered to Seller not later than 5pm EST of the Due Diligence Period (the "Due Diligence Completion Date"). If such written notice is not delivered to Seller prior to Due Diligence Completion Date, Buyer shall be deemed to have waived its right to terminate this Agreement as set forth in this Section.

8. Possession. Seller shall deliver the Premises to Buyer at closing free and clear of all leases, tenancies and occupancies by any person.

9. Deed Conditions. The sale of property is predicated upon development of an Events Center associated with the Westin Harbor View Hotel on the Premises and its primary use as an Events Center for at least 10 years from the Closing Date. Thereafter other uses, customarily found in hotels may be developed as a primary use on the Premises, provided that any future conversion of the Premises to non-hotel related uses shall require the approval of the City Council. The Deed of conveyance shall contain covenants reflecting these agreements.

10. Rights of Rescission.

(a) Rescission by Buyer: In the event Buyer does not receive all requisite approvals for the Event Center on terms reasonably satisfactory to Buyer by February 15, 2014, then Buyer can rescind this transaction and convey the Property back to the City for the Purchase Price.

(b) Rescission by City: In the event that Buyer does not receive Site Plan approval from the Portland Planning Board, approval from the City's Historic Preservation Board and a determination by the Planning Authority (which shall be provided prior to the time of the public hearing on Final Site Plan Approval) that the final design of the event center is of substantially equivalent quality to the plans presented at the May 29, 2013 HCDC meeting, by June 1, 2014 then the City can rescind the sale and repurchase the Property for the Purchase Price.

11. Default and Remedies. In the event that Buyer fails to close hereunder for any reason other than (i) a default by Seller or (ii) termination of this Agreement by Buyer as provided herein, Seller shall retain the Deposit as full and complete liquidated damages in lieu of any other legal or equitable remedy, whereupon this Agreement will terminate and neither party will be under any further obligation hereunder. In the event of Seller's default hereunder, Buyer shall have available all remedies at law and in equity, including without limitation the right of specific performance.

12. Assignment. Buyer may assign this Agreement and all its rights and obligations hereunder to an affiliate of Buyer's.

13. Brokers. The parties represent to each other that neither has had any dealings with any real estate broker in connection with this transaction. Each party agrees to indemnify the other from and against the claims of any brokers arising from this transaction, which indemnity shall survive the closing and shall include reasonable costs of collection, including reasonable attorney's fees.

14. Development of Congress Square Plaza.

(a) Planning and Approvals: Buyer and the City acknowledge that the City will be hiring as soon as possible an urban design consultant to redesign Congress Square and Congress Square Plaza. "Congress Square" means the roads, sidewalks and plaza areas bordered by the Hay Building, the Children's Museum, the Portland Museum of Art, the Channel 6 Building, the Schwartz Building, the State Theatre Building, and the "Eastland Hotel" Building and the buildings adjacent to the Plaza. The Buyer and the City agree to work closely to integrate the concept design plan for Congress Square and the Plaza in particular and the design of the Event Center. The Event Center will be subject to review and approval by the Historic Preservation Board and Planning Board. The "Plaza" means the portion of the current Congress Square that will remain in City ownership after this sale.

(b) Congress Square Salvage Rights: Excepted from this sale is the City's Union Station Clock on display at Congress Square Plaza. The City and Buyer shall coordinate the Historic Clockworks removal, crating and storage (in a location selected by the City) by a competent specialist in such clocks (e.g. Balzer Family Clock Works or equivalent) in a manner that conserves all component parts without damage. The City shall be responsible for the expense of such removal, crating, and storage. Any remaining granite materials if and as requested by the City may also be removed and stored at City expense. Logistics of completing Congress Square Salvage Rights shall be compatible with the project timing for Buyer's concurrent hotel and Event Center construction.

(c) Event Center Design and Coordination with Plaza and Congress Square Concept Plans: The Buyer's purpose for purchasing the Premises is to construct an event center (the "Event Center") that meets the B-3 and Historic Preservation ordinance design standards for new construction. Design of the Event Center shall be compatible with the City's design of the adjacent Plaza and Congress Square to achieve a creatively designed, high-quality public open space in which the Event Center, the Plaza, and the Square are well integrated and enhance each other.

The Buyer's event center design team shall work with City planning staff and hired consultants to coordinate the interface of the structure with the public realm, both functionally and architecturally, and will meet with the City's design team as needed, with up to six meetings, prior to Buyer's completion of design development and submission for approvals. This coordinated design process shall extend up to four months from the City Council's authorization to proceed with this Agreement.

Design and construction execution shall be subject to the approval of Buyer's historic tax credit investor, mortgage lender, and hotel franchisor.

Buyer's architect will work with City hired design consultants to coordinate with such professionals' conceptual design of the Plaza in particular and Congress Square generally. For purposes of procurement and design coordination, Buyer shall share with the City applicable design documents and deliverables.

(d) Phasing and Coordination with Plaza and Square Redevelopment. The City will provide Buyer the final elevation datum for the Plaza during Buyer's design development phase. The City will endeavor to fund and construct the Plaza by a date certain; Buyer may construct a usable paved interim condition as needed in the event that the Event Center is open before the Plaza is under construction by the City.

(e) Developer Contribution to Plaza Construction. Buyer agrees to pay as its contribution towards the anticipated improvements to Congress Square Plaza, an amount not to exceed \$45,000, including for a new sidewalk 100' x 15' in dimension along the Congress Street edge of the Plaza.

(f) Public Use of Gallery Space for Arts District Events. Buyer and its successors in ownership and management of the hotel agree to meet with Creative Portland and the City twice a year to discuss opportunities for making the Gallery space (the glassed in area between the plaza and the lower level event space) available for City sponsored Arts District uses, such as First Friday Art Walk, appropriate for such Gallery space and not incompatible with adjacent hotel/Event Center uses. Buyer and its successors agree to make good faith efforts to make that space available from time to time but not less than 6 times per year when it is not otherwise committed, but reserve the right to supersede such use for the space for private function use if an opportunity becomes available, with one week's notice to Creative Portland. The cost of such use shall not exceed reasonable hotel expenses such as security and custodial services, but shall not include rental charge for profit. This Agreement in this subsection shall be for 10 years.

(g) Outdoor Space Adjacent to Plaza. Any space exterior of the Gallery adjacent to the Plaza shall be considered public plaza space, and shall be either retained by the City or subject to a public access easement to be included in a deed restriction.

15. Miscellaneous. Time is of the essence of this Agreement. All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth at the beginning of this Agreement. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein. Except as set forth in Section 12 above, the rights of Buyer under this Agreement may not be assigned in whole or in part without written consent of Seller, which shall not be unreasonably withheld. This Agreement constitutes the entire agreement between Seller and Buyer and there are no other agreements, understandings, warranties or representations between Seller and Buyer. Seller's representations and warranties shall survive the closing. This Agreement will inure to the benefit of and bind the respective successors and assigns of Seller and Buyer. This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which together shall constitute one and the same instrument. As used in this Agreement, the singular number shall include the plural and the plural the singular. This Agreement shall be governed by and construed in accordance with the laws of Maine. If any provision of this Agreement is

determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the date first written above.

WITNESS:

CITY OF PORTLAND, Seller

By: _____

Mark H. Rees,
Its City Manager

WITNESS:

RB PORTLAND BUILDING LLC, Buyer

By: _____

Print Name:

Its:

O:\OFFICE\CONTRACT\P & S Agreements\Congress Square Plaza P&S.doc

Proposed addition and plaza areas

