

RESOLUTION OF THE CITY COUNCIL

No. 123

Approved MARCH 13, 2008

IT IS HEREBY RESOLVED, That His Honor, the Mayor, is authorized to grant a permanent, perpetual exclusive air rights easement over Federal Street in the City of Providence to Talon Realty Limited Partnership ("Talon"). Said easement shall be granted specifically upon the following provisions:

1. Said easement shall be utilized only for the construction and maintenance of a proposed Condominium and appurtenances in the air above Federal Street, as depicted on that drawing entitled "Proposed Air Rights" prepared by Garofalo & Associates, Inc., dated August 3, 2006 ("Plan") on and adjacent to AP 25, Lot 7, AP 26, Lot 59. The Federal Street easement is approximately four thousand seven hundred forty-eight square feet, plus or minus, as indicated on a cross-hatched area (A-B-C-D-A) on the accompanying map, entitled "Prov., RI, DPW-Engineering Office, Street line Section Plan No. 064803 dated May 16, 2007.

2. Said easement shall be deemed to run with the land and shall operate against any successors in title and the easement or a memorandum of same shall be recorded by Talon in the Office of Land Records for the City of Providence.

3. As consideration for the Easement, Talon shall tender the sum of \$178,050.00 in legal tender of the United States of America.

4. Talon shall execute an indemnification and hold-harmless agreement with the City of Providence. Said agreement shall be approved by the Department of Law of the City of Providence.

5. Talon or the condominium association, as the case may be, shall maintain the structural integrity of the condominium and agrees to maintain Federal Street from defects resulting from Talon's failure to so maintain the structural integrity. The City shall remain responsible for all other maintenance of Federal Street.

6. Talon or the condominium association shall supply the City of Providence with an insurance policy naming said City of Providence, its agents, officers, servants and employees as additional-named insureds in a sum not less than five hundred thousand dollars (\$500,000.00) which policy shall be approved by the Department of Law of the City of Providence.

7. Talon agrees to honor the easement plan on record, per "Prov., RI, DPW-Engineering Office, Street line Section Plan No.064803 or relocate one or more existing utilities as Talon may deem necessary and Petitioner shall assume all costs of relocation. To the extent that any utility may run thru the building or Talon's property, Talon shall grant an easement in favor of said utility permitting it to retain its facilities together with the right to inspect, maintain, operate and replace the same.

8. Petitioner shall comply with the recommendations of the City Plan Commission, if any.

9. Petitioner shall be bound by the ruling of the Zoning Board. If the zoning board denies the zoning relief requested by petitioner (which, at petitioner's option, shall include granting less relief than requested) or petitioner withdraws its request for zoning relief, the City shall return to petitioner the compensation paid for the abandonment within 30 days of a written request therefore by petitioner and the abandonment shall become a nullity.

10. The Petitioners shall comply with all conditions contained herein (other than No. 4-9, which may not be generated within the sixty day period, but shall be complied with prior to the start of construction over Federal Street), including recording this Resolution, not later than sixty (60) days from its approval. Upon failure to so comply for any reason, the within resolution shall automatically become a nullity.

11. Such other reasonable terms and conditions as may be reflected in the record and minutes of the City Council Committee on Public Works and/or as may be deemed appropriate by the Mayor or the Department of Law prior to the recording of this resolution.

IN CITY COUNCIL
MAR 6 2008
READ AND PASSED

PRES.

CLERK

APPROVED

3/13/08
MAYOR

**CITY OF PROVIDENCE
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

PETITION TO THE CITY COUNCIL

TO THE HONORABLE CITY COUNCIL OF THE CITY OF PROVIDENCE:

The undersigned respectfully petitions your honorable body:

WHEREAS, Talon Realty Limited Partnership ("Owner") is the owner of that certain real property known as Plat 26, Lot 7 (the "Property");

WHEREAS, the Owner proposes to construct a residential condominium on the Property together with a portion of that certain property known as Plat 26, Lot 59 and Plat 25, Lot 7 (the "Proposed Condominium");

NOW THEREFORE, the Owner respectfully requests that the City grant to Owner a permanent, perpetual right, privilege and "air rights" easement to allow the Owner to locate a portion of the Proposed Condominium in the air space above Federal Street beginning 14 feet above the current grade of that portion of Federal Street as depicted on that drawing entitled "Proposed Air Rights to be Granted to A.P. 26, Lot 59 & A.P. 25, Lot 7" prepared by Garofalo & Associates, Inc., dated August 3, 2006, (the "Plan"), a copy of said Plan being attached hereto as Exhibit A and made a part of this Petition and consists of a footprint of approximately 4,748 square feet as more particularly described on Exhibit B attached hereto; and

Further, Federal Street will remain open to vehicular traffic and continue to be a public highway.

Any questions regarding this Petition may be addressed to the undersigned.

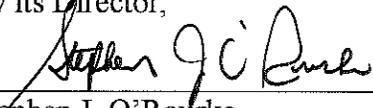
Petitioner,
Talon Realty Limited Partnership,
By its attorney,



ANTHONY J. BUCCI, JR., Esq.
155 South Main Street, Suite 405
Providence, Rhode Island 02903
Tel: 401-831-4200
Fax: 401-831-7056
Email: abucci@buccilaw.com

The Housing Authority of the City of
Providence, Rhode Island

By its Director,



Stephen J. O'Rourke

HOUSING

PROVIDENCE

**PROPOSED DEED DESCRIPTION
FOR
FEDERAL STREET AIR RIGHTS EASEMENT**

That certain tract or parcel of land with all buildings and improvements thereon situated on the northerly side of Federal Street in the City of Providence, County of Providence, State of Rhode Island is herein bounded and described;

Beginning at the most southeasterly corner of the herein described parcel said point being located at the intersection of the southerly street line of Federal Street with the easterly street line of Bradford Street;

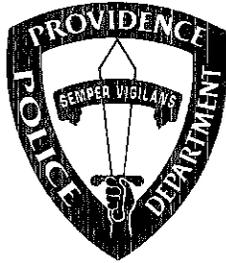
Thence proceeding north $24^{\circ}20'05''$ east a distance of forty nine and $85/100$ (49.85') feet to a point said point being located at the intersection of the easterly street line of Bradford Street with the northerly street line of Federal Street;

Thence proceeding south $65^{\circ}56'55''$ east along the northerly street line of said Federal Street a distance of ninety five and $00/100$ (95.00') feet to a point, bounded northerly by assessor's plat 26 lot 59;

Thence proceeding south $24^{\circ}00'05''$ west a distance of forty nine and $94/100$ (49.94') feet to a point;

Thence proceeding north $65^{\circ}53'40''$ west a distance of ninety five and $29/100$ (95.29') feet to the point and place of beginning;

Meaning and intending to describe a portion of Federal Street as shown as area A-B-C-D-A on the attached plan.



Department of Public Safety, Police Department
"Building Pride in Providence"

August 28, 2007

To: Anna M. Stetson, Second Deputy City Clerk

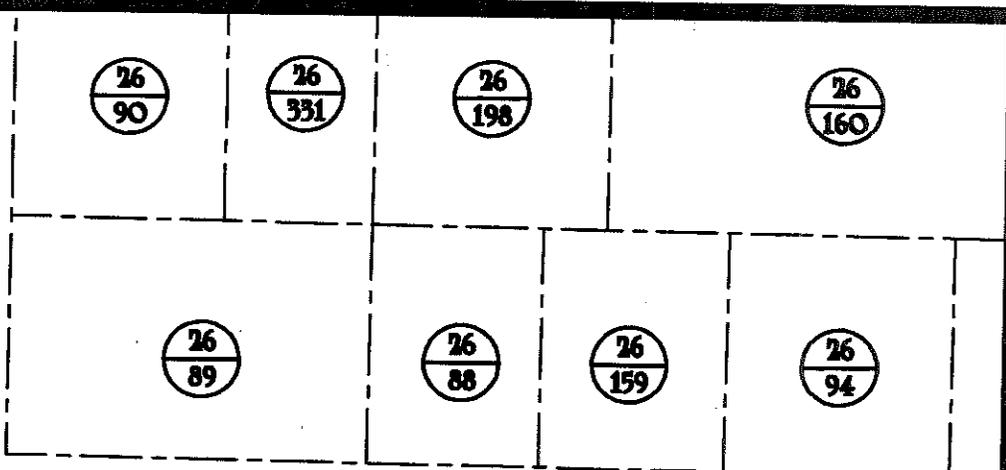
From: Capt. James T. Nolette

Subject: Petition from Anthony Bucci

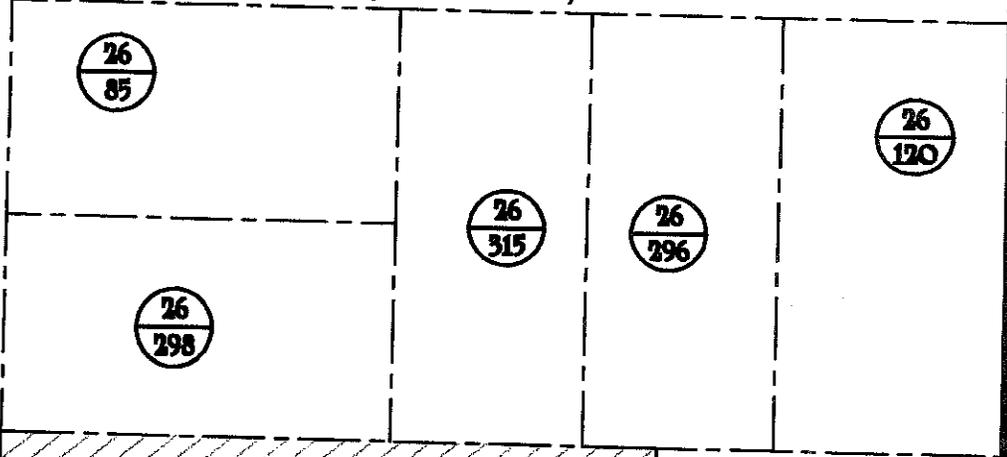
After looking at the petition and descriptions enclosed, the Police Department has no objections to proposed petition requesting a permanent perpetual right, privilege and air rights easement on Federal St.

Sincerely,

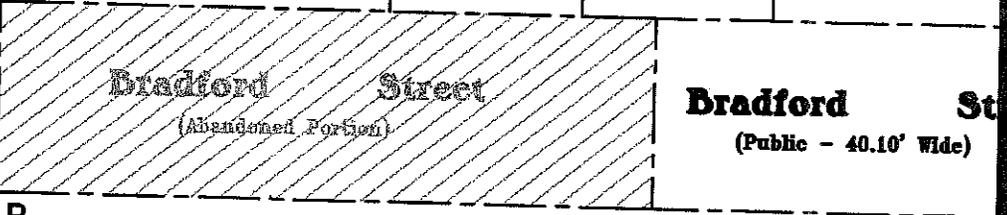
Capt. James T. Nolette



Newton Street
(Public - 20.06' Wide)



Federal Street
(Public - 60.00' Wide)

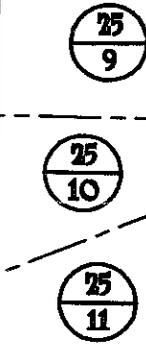


A N24°20'05"E



D S24°00'05"W

Barclay Street
(Abandoned)



NOTE: SHADED AREAS A-B-C-D-A PROPOSED AIR RIGHTS TO BE GRANTED TO A.P. 26, LOT 59 & A.P. 25, LOT 6.

JOB NO. 5779-00
DRAWN BY: M.J.C.
AUGUST 3, 2006

DWG NAME: 5779-AIR-RIGHTS.DWG
CHECKED BY: S.A.W.
SCALE: 1"=40'



GAROFALO

GAROFALO & ASSOCIATES, INC.
CIVIL & STRUCTURAL ENGINEERS/SURVEYORS
LAND PLANNERS/ENVIRONMENTAL SCIENTISTS
85 CORLISS STREET, P.O. BOX 6145 PROVIDENCE, RI 02940
401-273-8000

7-9-00 Federal Hill, Bradford St., Providence, RI
dwg\04-Survey\5779-AIR-RIGHTS.dwg, 8/4/2006 9:53:57 AM, GAI-STANDARD.pc3

**Member of R.I. & Mass Bars*
(401) 831-4200 Ext 17

February 28, 2008

HAND-DELIVERED

Adrienne G. Southgate, Esq.
Deputy City Solicitor
275 Westminster Street, Suite 200
Providence, RI 02903

**Re: Talon Realty Limited Partnership/Vista Della Torre
Payment for Air Rights and Subterranean Easements**

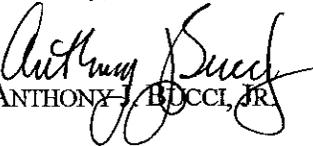
Dear Adrienne:

Enclosed are two checks made payable to the City of Providence for payment pursuant to the City Council's Public Works Committee's vote regarding the above referred to rights. The check in the amount of \$178,050 is for the Air Rights Easement and the check for \$469,030 is for the Subterranean Easement. Per our agreement you have agreed to hold these checks in escrow (i.e. not deposit them) until such time as the City Council votes to approve the granting of said easements. In the event the City Council votes against the granting of one or both easements you will return to me both uncashed checks. Additionally, should the City Council vote in favor of reducing the amount of the Subterranean Easement to correct the appraisal thereof that incorrectly valued the easement at 100% of the fee value, we ask that you not deposit that check, but give us 3 business days to provide you with a check in the amount determined by the City Council in exchange for the return of the check for the Subterranean Easement submitted herewith.

By copy of this letter to Anna Stetson, I request that this matter be placed on the Agenda for the next City Council meeting scheduled for March 6, 2006.

Thank you in advance for your anticipated cooperation. If you have any questions regarding this matter please call me.

Sincerely,


ANTHONY J. BUCCI, JR.

cc. Anna Stetson, City Clerk

Talon - Letter to Adrienne Southgate re Checks for Air Rights and Subterranean Easements.doc

TALON REALTY LIMITED PARTNERSHIP 04/07 1051
 544 AIRPORT ROAD
 WARWICK, RI 02886

Date 2/28/08 57-12/115
 69

PAY to the
 Order of CITY of Providence | \$ 178,050

One hundred seventy-eight thousand fifty $\frac{00}{100}$ Dollars

 **Citizens Bank**
 Rhode Island

For AIR RIGHTS EASEMENT Dandy Fluera MP

⑆0⑆⑆500⑆20⑆ ⑆8⑆⑆3858⑆ ⑆05⑆

COLONIAL CLASSIC
©Clarke American DECC

TALON REALTY LIMITED PARTNERSHIP 04/07 1050
 544 AIRPORT ROAD
 WARWICK, RI 02886

Date 2/28/08 57-12/115
 69

PAY to the
 Order of CITY of Providence | \$ 469,030

FOUR hundred SIXTY-nine thousand THIRTY $\frac{00}{100}$ Dollars

 **Citizens Bank**
 Rhode Island

For SUBTERRANEAN EASEMENT Dandy Fluera MP

⑆0⑆⑆500⑆20⑆ ⑆8⑆⑆3858⑆ ⑆050

COLONIAL CLASSIC
©Clarke American DECC



Department of Public Works
"Building Pride in Providence"

May 16, 2007

Honorable Leon F. Tejada
Chairman of the Public Works Committee
Providence City Council-City Hall
Providence, R.I. 02903

RE: Proposed Aerial Easement on Federal St. for Proposed Condominium

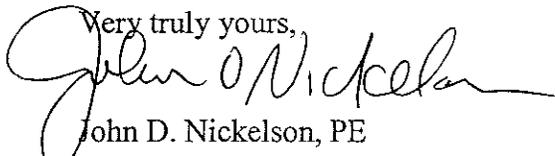
Dear Councilman Tejada:

This department has no objection to the proposed aerial easement over a portion of Federal St. in conjunction with the attached plan, entitled "Prov., R.I.-P.W. Dept- Engineering Office, Street Line Section, Plan No. 064803. Area of abandonment is designated as (A-B-C-D-A) on the accompanying plan.

Total square footage equals 4,271 square feet. (+)
See accompanying plan for plat and lot numbers.

If we can further assist you in this regard, please advise.

Very truly yours,


John D. Nickelson, PE
Director

cc: Ann Stetson-City Clerk
BB, AZ-DPW
A. Southgate, Esq.- Law Dept.
T. Deller- Planning
J. Gelati- Tax Assessors

CITY OF PROVIDENCE
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PETITION TO THE CITY COUNCIL

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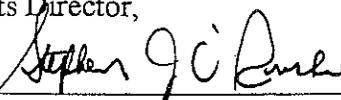
Petitioner,
Talon Realty Limited Partnership,
By its attorney,



ANTHONY J. BUSCI, JR., Esq.
155 South Main Street, Suite 405
Providence, Rhode Island 02903
Tel: 401-831-4200
Fax: 401-831-7056
Email: abucci@buccilaw.com

The Housing Authority of the City of
Providence, Rhode Island

By its Director,



Stephen J. O'Rourke

**PROPOSED DEED DESCRIPTION
FOR
FEDERAL STREET AIR RIGHTS EASEMENT**

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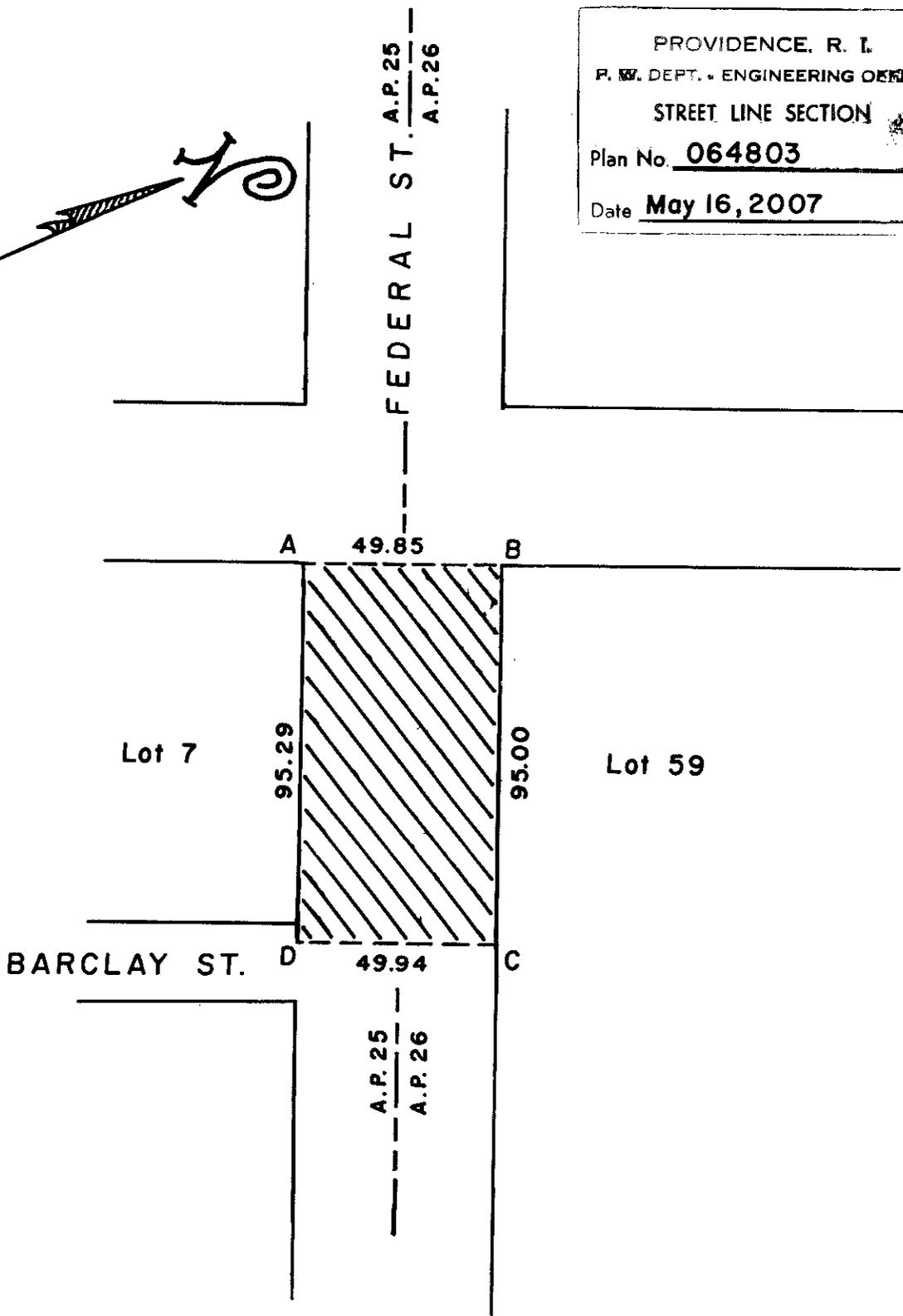
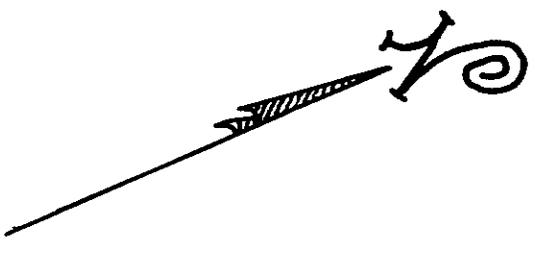
Thence proceeding south $65^{\circ}56'55''$ east along the northerly street line of said Federal Street a distance of ninety five and $00/100$ (95.00') feet to a point, bounded northerly by assessor's plat 26 lot 59;

Thence proceeding south $24^{\circ}00'05''$ west a distance of forty nine and $94/100$ (49.94') feet to a point;

Thence proceeding north $65^{\circ}53'40''$ west a distance of ninety five and $29/100$ (95.29') feet to the point and place of beginning;

Meaning and intending to describe a portion of Federal Street as shown as area A-B-C-D-A on the attached plan.

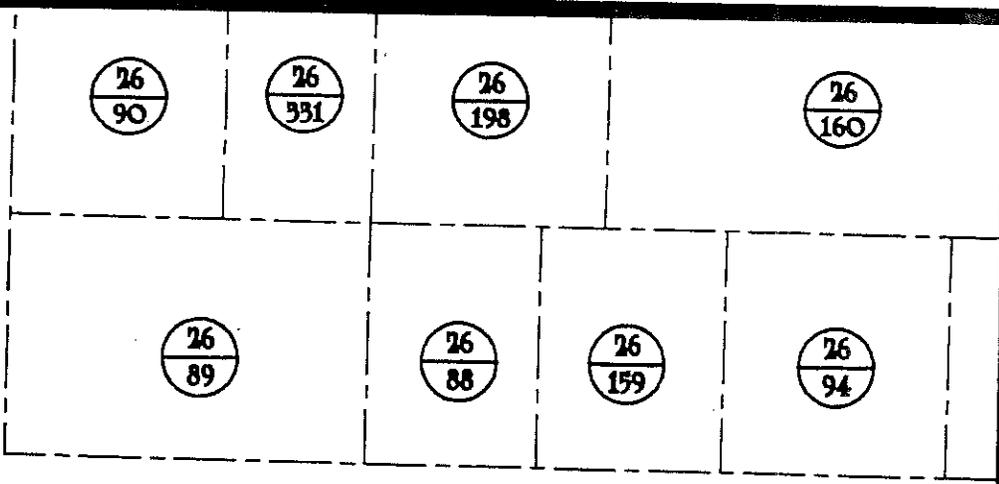
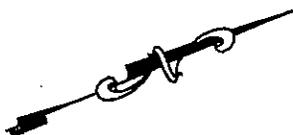
PROVIDENCE, R. I.
 P. W. DEPT. - ENGINEERING OFFICE
 STREET LINE SECTION
 Plan No. 064803
 Date May 16, 2007



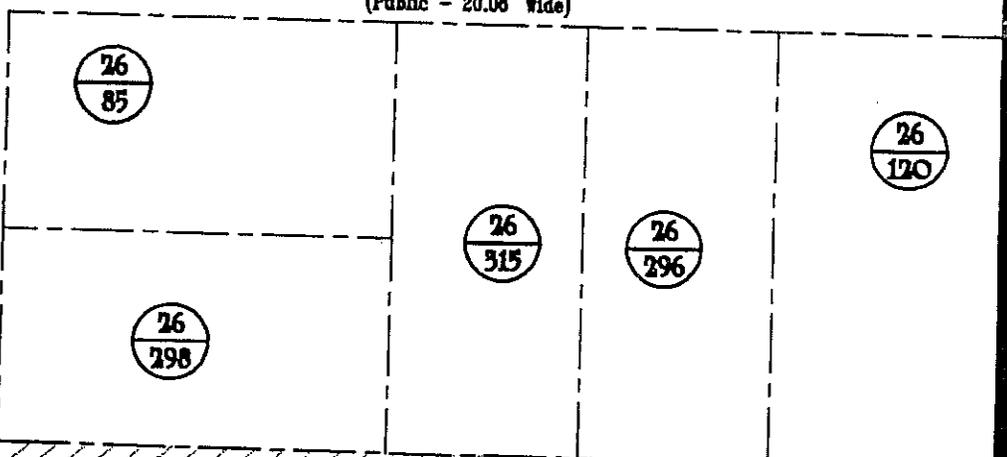
NOTES: Cross-hatched area (A-B-C-D-A) indicates proposed aerial easement.
 Total sq. footage = 4,271 ±

CITY OF PROVIDENCE, R. I.
 Public Works Dept. - Engineering Office
 showing proposed aerial easement
over Federal St.
 Drawn by A. Zisiades Checked by _____
 Scale 1" = 40' Date 5-16-2007
 Correct _____ Associate's Engr.
 Approved William C. Farnham
 CHIEF ENGINEER

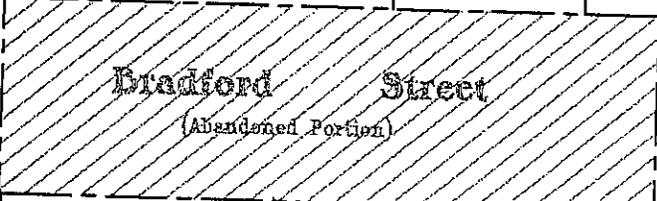
Lot numbers taken from A.P. 25 & 26.



Newton Street
(Public - 20.06' Wide)

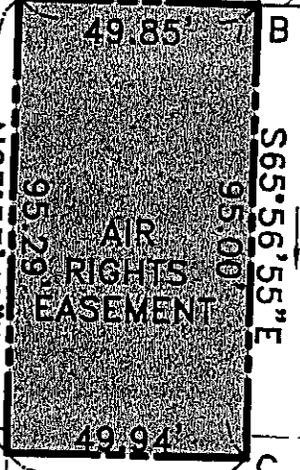


Federal Street
(Public - 50.00' Wide)



Bradford Street
(Public - 40.10' Wide)

A N24°20'05"E



Barclay Street
(Abandoned)

D S24°00'05"W C



NOTE: SHADED AREAS A-B-C-D-A PROPOSED AIR RIGHTS TO BE GRANTED TO A.P. 26, LOT 59 & A.P. 25, LOT 7.

JOB NO. 5779-00
DRAWN BY: M.J.C.
AUGUST 3, 2006

DWG NAME: 5779-AIR-RIGHTS.DWG
CHECKED BY: S.A.W.
SCALE: 1"=40'



GAROFALO
GAROFALO & ASSOCIATES, INC.
CIVIL & STRUCTURAL ENGINEERS, SURVEYORS
LAND PLANNERS/ENVIRONMENTAL SCIENTISTS
85 CORLISS STREET, P.O. BOX 6143, PROVIDENCE, RI 02940
401-273-8000

C:\9-00 Federal Hill, Bradford St., Providence, RI\04-Survey\5779-AIR-RIGHTS.dwg, 5779-AIR RIGHTS, 8/4/2006 9:53:57 AM, GAI-STANDARD.pc3



Department of Planning and Development

DAVID N. CICILLINE
Mayor

January 24, 2008

Honorable Leon F. Tejada, Chair
Committee on Public Works
City Hall
Providence, RI 02903

Attn: Anna Stetson, City Clerk

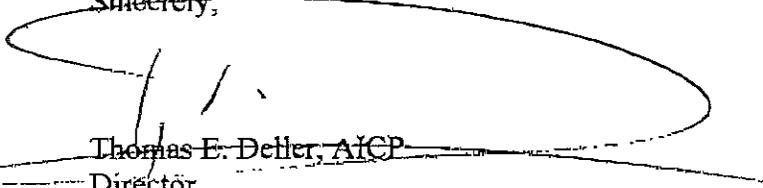
**Re: CPC Referrals 3282: Petition Requesting an Air-Rights Easement over
Federal Street**

Dear Councilman Tejada:

The City Plan Commission at its regular meeting on Tuesday, December 18, 2007 reviewed and evaluated the request of the Committee on Public Works for the Commission's recommendation on the petition for the above-captioned easement and made no recommendation. As a result the Department has reviewed the request in light of plan commission regulations and city plans.

Air rights easements are not addressed in any of the city's plans or in any regulations of the Plan Commission. The city has a tradition of allowing development over public rights of ways. At the present, the Convention Center and Rhode Island Hospital are built in the air rights over the city streets. In the past, Union Station was over the former Francis Street. The architectural history of the city has many buildings projecting bays and other structural features into the public right of way. Because of this architectural tradition, the Department supports the granting of this easement.

Sincerely,



Thomas E. Deiter, AICP
Director

cc: Anthony Bucci



Providence City Plan Commission

DAVID N. CICILLINE
Mayor

December 19, 2007

Honorable Leon F. Tejada, Chair
Committee on Public Works
City Hall
Providence, RI 02903

Attn: Anna Stetson, City Clerk

**Re: CPC Referrals 3282: Petition Requesting an Air-Rights Easement over
Federal Street, and 3292: Petition Requesting a Subterranean Easement under
Bradford Street**

Dear Councilman Tejada:

The City Plan Commission at its regular meeting on Tuesday, December 18, 2007 reviewed and evaluated the request of the Committee on Public Works for the Commission's recommendation on the petitions for the above-captioned easements.

The Commission voted unanimously to recommend that the Council approve the subterranean easement under Bradford Street. With regard to the air-rights easement over Federal Street, the Commission made no recommendation.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. Azar".

Robert E. Azar, AICP
Administrative Officer

cc: Anthony Bucci

ANDOLFO APPRAISAL ASSOCIATES, INC.

REAL ESTATE APPRAISERS AND CONSULTANTS
THE BUSH BUILDING
216 WEYBOSSET STREET • PROVIDENCE • RHODE ISLAND 02903
(401) 273-8989 • FAX (401) 273-2510

May 5, 2007

Mr. John J. Gelati
Tax Assessor
City of Providence
25 Dorrance Street
Providence, Rhode Island 02903

Re: Proposed Air Rights - Federal Street

Dear Mr. Gelati:

Pursuant to your request, we have personally inspected the real estate located on Federal Street, otherwise designated as Assessor's Plat 25, Lot 7 and Plat 26, Lot 59 of the City of Providence. The purpose of our inspection was to determine the fair market value of the air rights above a portion of Federal Street as it intersects with Broadway. The subject area is located in the Federal Hill neighborhood overlooking the downtown commercial district and Interstate Route 95.

Specifically, the proposed air rights run along a portion of Federal Street, approximately 95.28 feet in length, and contains 4,748 square feet as depicted on the map provided by Garofalo Associates. The City's Department of Public works has no objection to this request; however, they will require a Class 1 survey for recording purposes. The zoning in the area is C-2 Commercial as is the area's highest and best use.

We have taken into account a number of factors in arriving at a fair market value for the requested air rights easement. The petitioner will gain partial use of a public right-of-way, and the air rights in and above Federal Street will further enhance the commercial viability of their proposed residential

Mr. John J. Gelati

Page 2

May 7, 2007

condominium project. Also, the petitioner/developer will be required to maintain all public areas of Federal Street at its own expense.

Based on an analysis of comparable sales as contained within the office files of Andolfo Appraisal Associates, Inc., a value of \$75.00 per square foot is hereby estimated for the area. However, this value is reduced by 50% due to fact that the City is not giving up its full fee in the property, i.e., the street and the sidewalk area will remain open to the public and will be maintained by the developer.

Therefore, 4,748 square feet x \$75.00 per square foot = \$356,100 x .50 = \$178,050.

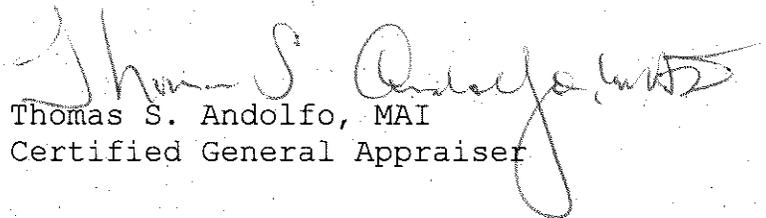
Respectfully submitted,

ANDOLFO APPRAISAL ASSOCIATES, INC.



William G. Floriani

Certified Residential Appraiser



Thomas S. Andolfo, MAI

Certified General Appraiser

WGF:TSA/fad