

CITY OF PROVIDENCE
RHODE ISLAND



CITY COUNCIL

JOURNAL OF PROCEEDINGS

No. 22 City Council Special Meeting, Meeting, Tuesday, October 10, 1995, 5:00 o'clock P.M. (E.D.T.)

PRESIDING

COUNCIL PRESIDENT PRO TEMPORE

EVELYN V. FARGNOLI

ROLL CALL

IN CITY COUNCIL
NOV 2 1995

APPROVED:

Michael L. Ciment
CLERK

Present: Council President Pro Tempore Fargnoli, Councilmen Allen, Clarkin, Councilwoman DiRuzzo, Councilmen Igliozzi, Jackson, Mancini, Councilwoman Nolan, Councilman Rollins and Councilwoman Williams—10.

Absent: Council President Petrosinelli, Councilmen DeLuca, Glavin, Lombardi and Councilwoman Young—5.

INVOCATION

The Invocation is given by COUNCILMAN
KEVIN JACKSON.

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

COUNCILMAN KEVIN JACKSON leads
the members of the City Council and the
Assemblage in the Pledge of Allegiance to
the Flag of the United States of America.

CALL FOR SPECIAL MEETING COMMUNICATION FROM COUNCIL PRESIDENT PRO TEMPORE EVELYN V. FARGNOLI

October 5, 1995

Honorable Michael R. Clement
City Clerk
City Hall
Providence, Rhode Island 02903

In accordance with the provisions of Section
406 of the Providence Home Rule Charter of 1980,
I respectfully request that you call a Special
Meeting of the City Council on Tuesday, the 10th
Day of October, 1995 at 5:00 o'clock P.M.

Dear Mr. Clement:

The purpose of said meeting is for the City
Council to consider the following matters; viz:

An Ordinance establishing a Tax Stabilization Plan, as Amended.

An Ordinance consenting to the Rhode Island Economic Development Corporation Condemnation of certain City Property, acknowledging intent to dedicate certain property for public use and granting easements in certain City Property, as Amended.

Sincerely,

EVELYN V. FARGNOLI
Council President Pro Tempore

Received.

FROM THE CITY CLERK

The City Clerk reads the following Warrant with the City Sergeant's Return endorsed thereon, certifying that he did notify the Members of the City Council of the Special Meeting to be held Tuesday, October 10, 1995, at 5:00 o'clock P.M. (EDT) by personally delivering a copy of the Warrant on October 5, 1995.

October 5, 1995

TO RALPH GUGLIELMINO,
CITY SERGEANT:

Whereas, Council President Pro Tempore, Evelyn V. Fagnoli has, pursuant to Sections 406 of the Providence Home Rule Charter of 1980, requested the City Clerk, in writing, to call a Special Meeting of the City Council to be held on the 10th day of October A.D., 1995, at 5:00 o'clock P.M. (E.D.T.) for the purpose of Enacting the following:

An Ordinance establishing a Tax Stabilization Plan, as Amended.

An Ordinance consenting to the Rhode Island Economic Development Corporation Condemnation of certain City Property, acknowledging intent to dedicate certain property for public use

and granting easements in certain City Property, as Amended.

You are therefore, hereby commanded and required to summon each Member of the City Council to that Special Meeting, as Called.

Hereof, Fail not, and make true return of this Warrant, with your doings thereon.

Given under my hand and Official Seal of the City of Providence, State of Rhode Island, and Providence Plantations this 5th Day of October, A.D., 1995.

MICHAEL R. CLEMENT
City Clerk

I, Ralph Guglielmino, City Sergeant, do hereby certify that I have notified each Member of the City Council of the Special Meeting scheduled to be held on Tuesday, October 10, 1995, at 5:00 o'clock P.M. (E.D.T.) in the Chamber of the City Council, City Hall, Providence, in accordance with the subject warrant by delivering to each member, a copy thereof.

RALPH GUGLIELMINO
City Sergeant, October 5, 1995

Received.

ORDINANCES SECOND READING

The following Ordinances were in City Council October 5, 1995, Read and Passed, the First Time, as Amended, and are Returned for Passage, the Second Time, as Amended:

An Ordinance establishing a Tax Stabilization Plan, as Amended.

Be it ordained by the City of Providence:

Whereas, Providence Place Group ("PPG") and the Rhode Island Economic Development Corporation, formerly the Rhode Island Port Authority and Economic Development Corporation ("Corporation") entered into an Amended and Restated Development Agreement dated August 22, 1994, as amended in November, 1994, and as further amended on December 23, 1994 (the "1994 Agreement"), relating to the development and construction of the Providence Place super regional shopping center (the "Shopping Mall") and a parking garage to be constructed beneath and adjacent to the Shopping Mall (the "Garage"); and

Whereas, The Corporation has requested, and PPG is considering, a restructuring of the transaction as previously contemplated by the 1994 Agreement, pursuant to which (a) the Corporation will acquire and own the fee to certain air rights over the land as described on Exhibit I attached hereto and shown on a survey entitled "Plan of Land in Providence, Rhode Island Surveyed for Providence Place, surveyed and drawn by Marrier Surveying Inc. Scale 1"=40' May, 1990, revised May, 1995 (the "Survey") on and in the Shopping Mall and the Garage are to be built (such fee interest and air rights are hereinafter referred to as the "Site"); (b) the Corporation will ground lease the Site to PPG (the "Ground Lease"), and PPG will construct thereon the Shopping Mall, the Garage, and certain appurtenances thereto, including without limitation the aerial pedestrian bridge connecting the

Shopping Mall to the Convention Center Complex (the Shopping Mall and other improvements are collectively called the "Project"); (c) PPG will retain title to the Project in its own name or that of a nominee; and (d) PPG will enter into a lease with the State of Rhode Island ("State") with respect to parking spaces for 2,500 high occupancy vehicles in the Garage (the "Parking Garage Lease"); the Corporation and PPG are currently finalizing the terms of such restructuring and if such negotiations are successful, they will enter into an agreement memorializing the same and replacing the 1994 Agreement (the "1995 Agreement"), and the General Assembly has been asked to enact legislations (the "Legislation") approving and authorizing certain aspects of the Project, including authority for the Corporation and the City to enter into the Tax Treaty Agreement (as hereinafter defined) with PPG; and

Whereas, The City, the Corporation and PPG wish to enter into a tax treaty agreement with respect to the Project substantially in the form attached hereto as Exhibit II (the "Tax Treaty Agreement"); and

Whereas, Upon taking effect of this Ordinance authorizing the Tax Treaty Agreement, it shall be deemed to supersede the City Council's authorization pursuant to Ordinance No. 612, Chapter 1994-32, enacted September 23, 1994, of a similar agreement with the Corporation and PPG with respect to the Shopping Mall; and

Whereas, The City has made and hereby reaffirms the following findings with respect to the Tax Treaty Agreement:

(a) The Tax Treaty Agreement is in the public interest; and

(b) The Legislation as proposed provides that the City, the Corporation, and PPG may make an agreement with respect to all real and personal property taxes or payments in lieu of real and personal property taxes from the Project; and

(c) The payments made pursuant to the Tax Treaty Agreement are in an aggregate amount which would enable the City to stabilize the amount of taxes that would be paid on account of property used for retail and commercial purposes and located in the City and are in the public interest.

Now, therefore, be it ordained by the City Council of the City of Providence, Rhode Island, as follows:

Section 1. That the findings set forth in the preceeding *Whereas* Clauses are hereby made and confirmed.

Section 2. That the execution, delivery and performance by the City of a Tax Treaty Agreement with the Corporation and PPG for a stated term of thirty (30) years, or such lesser term as shall be effected by the terms of the Tax Treaty Agreement in a form substantially similar to Exhibit II attached hereto, is hereby authorized and approved.

Section 3. If this Ordinance or any part of this Ordinance conflicts or is inconsistent with any then existing Ordinance, including, but not limited to, Ordinance 21-129, the provisions of this Ordinance shall govern.

Section 4. This Ordinance shall take effect only upon the occurrence of the following events (1) the passage by the Rhode Island General Assembly of the Legislation substantially in the form attached hereto as Exhibit III, and any other legislative amendments necessary to carry out the terms of the 1995 Agreement; (2) the execution and delivery of the 1995 Agreement substantially in the form reviewed by the City Solicitor on the date hereof and the other documents referred to therein by the parties thereto and their taking

effect; and (3) the execution and delivery of the Ground Lease and the Parking Garage Lease, which document shall include as an exhibit a form of Parking Garage Management Agreement to take effect upon the exercise by the State and the City of their respective options to purchase the Garage; and upon taking effect, this Ordinance shall supersede the aforementioned Ordinance No. 612, Chapter 1994-32.

EXHIBITS TO ORDINANCE NO. _____

Exhibit I — Description of Site
Exhibit II — Tax Treaty Agreement
Exhibit III — Legislation

Read and Passed, the Second Time, as Amended, on motion of COUNCILWOMAN DiRUZZO, seconded by COUNCILWOMAN NOLAN, by the following Roll Call Vote:

Ayes: Council President Pro Tempore Fagnoli, Councilmen Allen, Clarkin, Councilwoman DiRuzzo, Councilmen Jackson, Mancini, Councilwoman Nolan, Councilman Rollins and Councilwomen Williams—9.

Noes: None.

Absent: Council President Petrosinelli, Councilmen DeLuca, Glavin, Iglizzo, Lombardi and Councilwoman Young—6.

The motion for Passage, the Second Time, as Amended, is Sustained.

An Ordinance consenting to the Rhode Island Economic Development Corporation Condemnation of certain City Property, acknowledging intent to dedicate certain property for public use and granting easements in certain City Property, as Amended.

Be it ordained by the City of Providence:

Whereas, Providence Place Group, a New York limited partnership ("PPG"), and The Rhode Island Economic Development Corporation, formerly known as the Rhode Island Port Authority and Economic Development Corporation ("Corporation") entered into an Amended and Restated Development Agreement dated August 22, 1994, as amended in November, 1994 and as further amended on December 23, 1994 (the "1994 Agreement") relating to the development and construction of the Providence Place super regional shopping center (the "Shopping Mall") and a parking garage to be constructed beneath and adjacent to the Shopping Mall (the "Garage"); and

Whereas, the Corporation has requested, and PPG is considering, a restructuring of the transaction as previously contemplated by the 1994 Agreement, pursuant to which (a) the Corporation will acquire and own the fee to or certain air rights over the land described on Exhibit I attached hereto and shown on a survey entitled "Plan of Land in Providence, Rhode Island Surveyed for Providence Place, surveyed and drawn by Marrier Surveying Inc. Scale 1"=40' May, 1990, Revised May, 1995 (the "Survey") in and on which the Shopping Mall and the Garage shall be built (such fee interest and air rights being hereinafter referred to as the "Site"); (b) the Corporation will ground lease the Site to PPG (the "Ground Lease") and PPG will construct the Shopping Mall, the Garage, and certain appurtenances thereto, including without limitation the aerial pedestrian bridge connecting the Shopping Mall to the Convention Center Complex (the Shopping Mall and other improvements are collectively referred to as the "Project"); (c) PPG will retain title to the Project in its own name of that of a nominee; and (d) PPG will enter into a lease with the State with respect to parking spaces for 2,500 high occupancy vehicles in the Garage (the "Parking Garage Lease"); the Corporation and PPG are currently finalizing the terms of such restructuring and if such negotiations are successful, they will enter into an agreement memorializing the same (the "1995 Agreement"), and the General Assembly will be

asked to enact legislation (the "Legislation") approving and authorizing certain aspects of the Project; and

Whereas, the City wishes to consent, in accordance with Rhode Island General Laws Section 42-64-9(a), to the condemnation by the Corporation of the "Condemned Property" (as hereinafter defined) to enable the construction, maintenance and operation of the Project and to agree upon just compensation therefor in accordance with Rhode Island General Laws Section 42-64-9(i); and

Whereas, the City also wishes (i) to grant certain easements and other rights to the Corporation and PPG with respect to certain property adjacent to or within the Site (the "Support Easements" and the "Construction Easements" as hereinafter defined); and (ii) to acknowledge that the Corporation intends to dedicate and/or transfer to the City certain property adjacent to the Site for public use as streets and sidewalks, as generally described herein (a "Public Way" or the "Public Ways"); and

Whereas, the City finds with respect to the consent to the condemnation of certain City property by the Corporation, the grant of the Support Easements and the Construction Easements, and the dedication and/or transfer to the City of certain property to be dedicated for public use:

(a) The City finds that the actions set forth herein are in the public interest and will promote the economic well being of the City;

(b) The City has the right to grant the Support Easements and Construction Easements and other rights granted herein in furtherance of the Project, and the grant thereof is in the public interest; and

(c) The City acknowledges that the Corporation intends to dedicate certain lands for Public Ways, that the Corporation shall improve the same to the specifications of the Department of Public Works, and that the appropriate municipal

bodies at that time shall review the same for acceptance as Public Ways; and

Now, therefore, be it ordained by the City Council of the City of Providence, Rhode Island, as follows:

Section 1. That the findings set forth in the preceding *Whereas* Clauses are hereby made and confirmed.

Section 2. Consent to Condemnation. That the City hereby gives its consent, as required pursuant to Rhode Island General Laws Section 42-64-9(a), to the condemnation by the Corporation of the following: (i) the fee in Parcels 7, 8, 9, II, 12 and 20 shown on the Survey; (ii) air rights commencing twenty-six (26) feet above Providence City Datum over the portion of the Woonasquatucket River which runs through the Site, being Parcels I3, I4, I5 and I6 shown on the Survey; and (iii), subject to such prior approval as may be required by appropriate Federal and State agencies, air rights commencing fourteen (14) feet three (3) inches or such higher height as may be required under Federal or State regulations above that portion of Park Street designated as Parcel 21 on the Survey, on, over or in which will be constructed portions of the Project as shown in the plans for the Project (the "CCC Plans") approved from time to time by the Capital Center Commission (the "CCC"); in addition, there may hereafter arise in the course of construction of the Project a need for the Corporation to acquire by condemnation additional insubstantial interests from the City in the Site as may be necessary or desirable for the construction of the Project in accordance with the CCC Plans, and the City's consent will be required at that time (the foregoing property interests are referred to hereinafter collectively as the "Condemned Property").

Section 3. Support Easements. That the City is hereby authorized to execute and deliver all documents necessary or desirable, as determined by the City, to grant and convey to the Corporation easements and rights (the "Support

Easements") sufficient to permit the erection, construction, installation, repair, replacement and maintenance of tiebacks and footings under Hayes Street and Francis Street required for construction and maintenance of the Project provided that after the Project is completed the Support Easement area shall be limited to the area occupied by such tie backs and foundations; in addition, the City is authorized to execute and deliver all documents necessary or desirable, as determined by the City, to grant other similar easements under streets or other City-owned property adjacent to the Site as may be required for the construction and maintenance of the Project, together with fill rights of ingress and egress on, in, across or under such land, provided that the erection, construction, installation, repair, replacement and maintenance of all such support structures (the "Support Structures") shall be done in compliance with all applicable building codes and other regulations and, following completion thereof the presence of such Support Structures shall not interfere in any substantial manner with the continued use of such parcels for the public purposes that existed prior to the presence of such Support Structures. Such Support Easements shall be for a term of thirty (30) years.

Section 4. Construction Easements. That the City is hereby further authorized to execute and deliver all documents necessary or desirable as determined by the City, to grant and convey to the State, the Corporation and/or PPG any and all easements of access, ingress and egress by foot and vehicle (a) under the air rights described in (ii) and (iii) of Section 2 above included within the Condemned Property and (b) in, under, across and over any other land owned by the City and adjacent to or within the Site (including without limitation the Public Ways, as hereinafter defined) for the purpose of construction, maintenance and repair of the Project (including without limitation installation and relocation of utilities and other similar appurtenances relating to the Project), the Public Ways and the other public improvements which PPG has agreed to construct adjacent to or within the Project (the "Construc-

tion Easements"), provided that any construction, maintenance and repair shall be done in compliance with all applicable building codes and other regulations and in a manner which minimizes to the extent reasonably possible during the conduct of such activities any interference with the existing public use of the City land burdened by such Construction Easements, and provided, further that the City shall not erect any structures under or adjacent to the Site which would unreasonably interfere in any substantial manner with the maintenance thereof, notwithstanding any non-use or limited use of the Construction Easements. The Construction Easements shall be granted for a period of three years provided that such Construction Easements shall be renewable by PPG at no additional cost if construction has not been completed at the end of the three year period for which Construction Easements were granted.

Section 5. Just Compensation for Consent. The payment by PPG to the City of the amount of Two Hundred Fifty Thousand (\$250,000) Dollars, which shall be paid no later than June 30, 1996, without recourse and shall not be held in escrow or in trust, and the construction by PPG of other public improvements in or appurtenant to the Project, including without limitation the extension of the so-called River Walk, the aerial pedestrian bridge to the Convention Center complex, the resurfacing and widening those portions of Hayes and Park Streets that abut the Site, the resurfacing of that portion of Kinsley Avenue that lies within said Parcel 20 and the construction of a railing along the Francis Street bridge, are hereby deemed to constitute just compensation to the City within the meaning of Rhode Island General Laws Section 42-64-9(i) for the taking of the Condemned Property and the grant of the Support Easements and the Construction Easements.

Section 6. Dedication. That the City acknowledges that the Corporation intends to dedicate and/or transfer to the City for use as a public way of the following parcels of land (the "Public Ways") the exact dimensions of which

shall be established in the CCC Plans: (i) a strip of land running between Park and Francis Streets along Hayes Street; (ii) a wedge-shaped parcel of land located at the corner of Francis Street and Memorial Boulevard adjacent to the Site of such size so that the property line of the Site at such corner after the dedication will satisfy the set back requirements of the CCC regulations; (iii) a strip of land running along Francis Street from Hayes Street to Memorial Boulevard; and (iv) strips of land running along Park Street from Hayes Street to Kinsley Avenue and (v) a strip of land within Parcel 20 shown on the Survey sufficient to connect Park Street and Kinsley Avenue, subject to a reservation by the Corporation of the air rights fourteen (14) feet or such greater height as may be required by Federal or State regulation above such strip. Exact legal descriptions of the Public Ways will be prepared by PPG and submitted to the City at the time PPG submits its final plans to the Building Inspector for a building permit. The improvements to such Public Ways will be made in accordance with all City codes and regulations and, upon completion, the appropriate municipal bodies shall review the same for acceptance as Public Ways. Any required relocation of utilities shall be done at the expense of PPG.

Section 7. Indemnification and Insurance. The City's adoption of this Ordinance and any actions taken in furtherance thereof shall be explicitly included within the indemnification provided in Section 7 of the Tax Treaty Agreement.

Section 8. Authorization to Execute. The Mayor of the City is hereby authorized and directed to execute, deliver and file with the Land Evidence Records of the City and any other City or State agency and/or any court or other authority all documents necessary or appropriate to give effect to the consent and agreement hereby given with respect to the Condemned Property, the Support Easements, the Construction Easements, and the Public Ways.

Section 9. If this Ordinance or any part of this

Ordinance conflicts or is inconsistent with any then existing Ordinance, the provisions of this Ordinance shall govern.

Section 10. This Ordinance shall take effect only upon the occurrence of the following events: (1) the passage by the Rhode Island General Assembly of the Legislation, and any other legislative amendments necessary to carry out the terms of the 1995 Agreement in substantially the form attached hereto; (2) the execution and delivery of the 1995 Agreement and the other documents referred to therein by the parties thereto and their taking effect; and (3) the execution and delivery of the Ground Lease and the Parking Garage Lease.

Read and Passed, the Second Time, as Amended, on motion of COUNCILWOMAN

DIRUZZO, seconded by COUNCILMAN CLARKIN, by the following Roll Call Vote:

Ayes: Council President Pro Tempore Fagnoli, Councilmen Allen, Clarkin, Councilwoman DiRuzzo, Councilmen Igliazzi, Jackson, Mancini, Councilwoman Nolan, Councilman Rollins and Councilwoman Williams—10.

Noes: None.

Absent: Council President Petrosinelli, Councilmen DeLuca, Glavin, Lombardi and Councilwoman Young—5.

The motion for Passage, the Second Time, as Amended, is Sustained.

ADJOURNMENT

There being no further business, on motion of COUNCILMAN IGLIOZZI, seconded by COUNCILMAN ROLLINS, the City Council adjourns at 5:30 o'clock P.M. (E.D.T.).

Michael R. Clement

City Clerk



October 10]

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18: 1995/10/10

