



# CITY OF CONCORD

## REPORT TO MAYOR AND CITY COUNCIL

FROM: Matthew R. Walsh, Director of Redevelopment, Downtown Services  
& Special Projects

DATE: April 1, 2021

SUBJECT: Former New Hampshire Employment Security Property

### **Recommendation:**

- 1) Accept this report;
- 2) Set the attached resolution authorizing the City Manager to enter into the attached Purchase and Sale Agreement with the John J. Flatley Company concerning the sale and redevelopment of the former New Hampshire Employment Security Property located at #32-34 South Main Street and #33 South State Street for public hearing on May 10, 2021; and,
- 3) Set the attached resolution appropriating the sum of \$372,500 to complete hazardous building materials abatement at the former New Hampshire Employment Security Property for public hearing on May 10, 2021. Said appropriation is comprised of \$172,500 in grants from the New Hampshire Department of Environmental Services Brownfields Program and \$200,000 from the City's Economic Development Reserve Fund.

### **Background:**

- 1) Overview: The former NH Employment Security property is located at 32-34 South Main Street and 33 South State Street. The 0.74+/- acre property features a 26,000SF building, constructed in 1927 and later expanded in 1958, as well as 73+/- on-site parking spaces. The property is located within the Sears Block Tax Increment Finance District (SBTIF). For decades, the property has been tax exempt due to governmental ownership.

On September 21, 2011, the State of New Hampshire notified the City of its plans to divest of the property as part of a plan to consolidate various Employment Security offices throughout central New Hampshire to the former Tobey Building located in the Hugh Gallen State Office Park on Fruit Street. The State's asking price was \$1.75 million per a July 2011 real estate appraisal. In accordance with RSA 4:40, the City was afforded a right of first refusal to acquire the property before it was listed on the open market.

Due to the property's highly visible location, as well as its strategic importance relative to the City's ongoing downtown economic development efforts, the City elected to invoke its right of first refusal to acquire property.

The City Council had initially hoped to avoid using City funds to acquire the property by partnering with a private developer, who, in turn, would acquire the site through a three party transaction involving the City, State, and the developer. As such, in early 2013 the City issued a Request for Proposals (RFP) for the purpose of selecting a developer for the property. Two developers submitted separate, multifaceted proposals for the property. However, neither of the proposals was viable.

Consequently, on October 31, 2014 the City acquired the property for the sum of \$1.575 million plus closing costs. Upon acquisition, the City promptly secured the property and decommissioned plumbing, heating, and mechanical systems within the building. The property's 73+/- space parking lot was opened to public as a metered lot.

In January 2015, the City issued a Request for Proposals (RFP) for the purpose of engaging a commercial real estate broker to market the property. In March 2015 the City engaged the NAI Norwood Group of Bedford, New Hampshire to market the site. To support marketing efforts, the City engaged a design team who prepared conceptual site plans and renderings depicting potential redevelopment options for the site.

Following the completion of development concepts and a comprehensive marketing package, the property was put on the market in August 2015 with an asking price of \$1.6 million.

On October 12, 2017, the City Council approved Resolution #9043, which authorized the City Manager to enter into a Purchase and Sales / Development Agreement with Dol-Soul Properties L.L.C. concerning the sale and redevelopment of the site. However, Dol-Soul's project proved to be economically infeasible, and the Purchase and Sales Agreement was terminated on August 16, 2019.

Following termination of the Dol-Soul Purchase and Sales Agreement, the City resumed marketing efforts for the property.

Since 2013, the City has received seventeen redevelopment proposals for the property from eight different developers.

### **Discussion:**

- 1) John J. Flatley Company Proposal: The John J. Flatley Company submitted a proposal to acquire the property November 4, 2020.

Headquartered in Canton, Massachusetts, the John J. Flatley Company is a privately held sole proprietorship specializing in real estate development. Founded in 1985, the company is led by John Flatley, a second generation real estate developer, and employs approximately 50 people. The company owns over 2,000,000SF of commercial / industrial property, as well as more than 1,500 apartments, primarily located in Massachusetts and New Hampshire.

Recent Flatley development projects include: Gateway Hills / Terra Heights in Nashua NH, Gilbert's Crossing in Merrimack NH, as well as Elevation Apartments at Crown Colony located in Quincy MA.

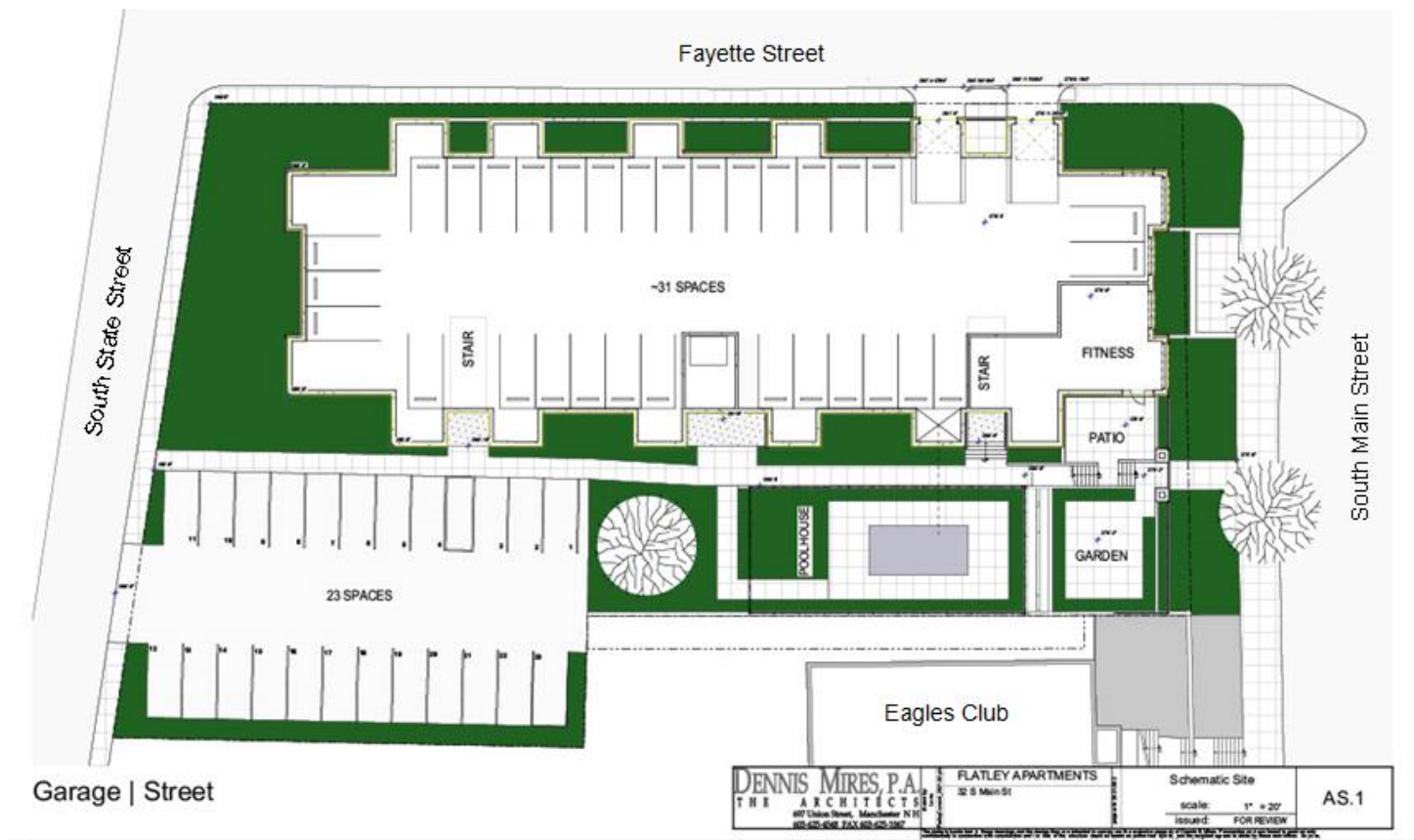
Locally, the John J. Flatley Company's holdings include the Concord Center located on Ferry Street, which they have owned since the 1990s.

Following initial discussions, due diligence, and negotiations, the City and the John J. Flatley Company entered into a non-binding exclusive Letter of Intent (LOI) on January 8, 2021. The LOI provided an exclusive negotiating period for the purposes of preparing a formal Purchase and Sale Agreement. The LOI expires on April 12, 2021, unless otherwise extended by the parties.

- 2) Flatley Company's Proposed Project: The John J. Flatley Company desires to acquire the property for the purposes of developing a new, 80,000SF+/- building featuring approximately 64 market rate apartments. The project would be supported by 54 on-site parking spaces (31 inside the basement of the new building and 23 in a surface parking lot). A preliminary conceptual site plan and renderings for the proposed building are attached to this report, as well as depicted below.

The exterior of the building will consist of combination of brick masonry and fiber cement panels. Final architectural details, including colors and materials, shall be determined by the Developer and the Planning Board per the customary Architectural Design Review process.

### Proposed Site Plan



**Proposed Building Elevations (South Main Street View)**



- 3) Purchase and Sales Agreement: The proposed purchase and sales agreement for this transaction is attached. Key provisions of the agreement are as follows:
- a) Purchase Price: \$350,000; cash at closing. The City shall pay a 6% brokers fee (\$21,000) on this transaction to the NAI Norwood Group.
  - b) Deposit: \$35,000; fully refundable if the Buyer withdraws due to the results of its due diligence, or is otherwise unable to secure development permits for its project. The Buyer must complete its due diligence and development permitting by September 30, 2021.
  - c) Schedule:
    - i) May 10, 2021: City Council public hearing and vote.
    - ii) September 30, 2021: End of Developer’s Due Diligence and Permitting Period.
    - iii) October 29, 2021: Closing.
    - iv) April 2022: Start construction of Developer’s Project (including demolition of existing building).
    - v) June 2023: Developer’s Project is completed.
  - d) Closing Date and Contingencies: Closing is scheduled for October 29, 2021; however, this date may be extended in the event of force majeure or excusable delays as outlined within the attached Purchase and Sales Agreement. Closing is expressly subject to:

- i) Buyer's title and environmental due diligence with results acceptable to the Buyer.
  - ii) Buyer securing all final, unappealable Zoning Board of Adjustment (if needed) and Planning Board permits and approvals for its development; and,
  - iii) Buyer providing evidence of financing commitment for the project.
- e) Deed Restrictions / Covenants: As part of the conveyance, the Buyer has agreed to the following special deed restrictions and covenants for the property:
- i) In the event any portion of the property is conveyed to a tax exempt entity, the full amount of municipal, school, county, and state property taxes shall be paid as if the property remained in the ownership taxable entity. The provision shall run with the land in perpetuity.
  - ii) All residential units developed at the property shall be "market rate" in perpetuity.
  - iii) In the event the Buyer fails to demolish the building or construction foundations for the Buyer's project within one year of Closing, the Buyer, upon the City's request, shall convey the property back to the City for \$350,000 (which is the purchase price paid the John J. Flatley Company).
- f) Parking: The Buyer is solely responsible for providing parking for the Buyer's project. The property is located within the City's Central Business Performance (CBP) Zoning District and, therefore, there is no on-site parking requirement for the Buyer's Project. Notwithstanding this provision, the Buyer plans to construct 54+/- on-site parking spaces at its expense to support its project. An ample supply of public parking is readily available nearby to supplement the on-site parking to be constructed by the Buyer.
- g) Development Permitting Fees: The Buyer shall be responsible for paying all normal and customary development permitting fees for its project. These include, but are not limited to, Planning Board application fees, building permit fees, transportation and recreation impact fees, Engineering Division inspection fees, as well as utility connection fees. Preliminarily, these fees are projected to be approximately \$333,000, combined.
- h) John J. Flatley Company's (Buyer's) Responsibilities: Per the terms of the proposed Purchase and Sales Agreement, the Buyer shall be responsible for the following:
- i) Pre-Closing Obligations: Prior to Closing, the Buyer shall be responsible for completing its due diligence and securing the aforementioned development permits and approvals for its project, as applicable.
  - ii) Post-Closing Obligations: As part of its project, the Buyer shall be responsible for:
    - (1) Demolishing the former NH Employment Security Building at the Buyer's sole expense;
    - (2) Relocating all utilities encumbering the property, which support the Eagles Club located at #36 South Main Street, at the Buyer's sole expense. Said utilities were installed by the City on an interim basis as part of relocation efforts undertaken during the Complete Streets Project (CIP #460) during 2015-2017; and,
    - (3) Proceeding with construction of the Buyer's proposed apartment building.

i) City's (Seller's) Responsibilities:

- i) Zoning Amendments / Concord Next Form Based Code: In order to avoid potential complications for the project, the City shall refrain from noticing any potential zoning amendments that may affect the property until after September 1, 2021. This provision includes the Concord Next Form Based Code project, which remains a work in progress. City Administration does not believe this provision will have a significant material impact on the anticipated schedule for enacting the proposed Form Based Code project.
- ii) Hazardous Building Materials Abatement: Prior to Closing, the City shall be responsible for completing Hazardous Building Materials (HBM) abatement associated with the existing 26,000SF former NH Employment Security building.

A 2014 Hazardous Building Materials Survey commissioned by the City prior to acquiring the property determined that the building contains approximately 41,500SF of asbestos contaminated materials, as well as 317+/- florescent light ballasts potentially containing hazardous materials. These materials require removal and disposal prior to demolition.

The estimated total cost of the HBM abatement is \$385,000.

On August 31, 2020, City Administration applied for a \$172,500 Brownfields Cleanup Grant from the New Hampshire Department of Environmental Services (NHDES). This was a competitive application process, as only \$300,000 was available for the entire State.

On December 31, 2020, the NHDES informed the City that its application was awarded.

Accounting for the \$172,500 NHDES grant, as well as \$12,500+/- remaining in CIP #578 for acquisition and weatherization of this property, City Administration is seeking an appropriation of \$200,000 in matching funds from the City's Economic Reserve Fund (EDR) to support this effort.

The former NH Employment Security property is located within the Sears Block Tax Increment Finance District (SBTIF). Therefore, appropriations supported by the SBTIF could be used to finance HBM abatement. However, City Administration recommends using the EDR for the following reasons.

First, the appropriation process for the EDR is more efficient as compared to TIF supported appropriations. Recognizing time is of the essence with the Buyer's aggressive schedule, the EDR appropriation process is more expedient.

Secondly, the Covid-19 Pandemic has had a negative impact on commercial properties. This circumstance may temporarily reduce assessed values for some commercial properties within the SBTIF, and thus the SBTIF District's ability to support additional debt service in the near term. Therefore, City Administration is reluctant to increase debt levels for the SBTIF at the present time.

Third, use of the Economic Development Reserve Fund will have no direct impact on taxpayers. Moreover, presuming the proposed sale to the John J. Flatley Company proceeds to Closing, proceeds from the \$350,000 sale price would be used to reimburse the EDR Fund's \$200,000 investment in hazardous building materials abatement.

For these reasons, City Administration prefers use of the EDR fund to provide matching funds to complete the hazardous building materials abatement.

- 4) Net City Investment: Accounting for revenues and expenditures associated with the John J. Flatley Company proposal, the City's projected net investment in the acquisition and redevelopment of the former NH Employment Security Property is approximately \$1.6 million. Please see the table below for more information.

**City's Estimated Net Investment in CIP #578 Former NH Employment Security Redevelopment Project with  
John J. Flatley Company Redevelopment Project  
April 1, 2021**

**REDEVELOPMENT PROPOSAL DETAILS**

Proposal Date	November 4, 2020
Purchase & Sales Agreement Date	May 10, 2021
Building Square Footage	80,000
Quantity of Residential Units	64
Commercial Square Footage	0
Quantity of On-Site Parking Spaces Provided by Developer	54
Quantity of Off-Site Parking to be Provided by City per P&S Agreement	0
Projected Assessed Value	\$8,000,000 - \$10,240,000
Projected Assessed Value per Residential Unit	\$125,000 - \$160,000
Projected Property Taxes Year 1 (2020 Tax Rate \$26.76, Rounded)	\$215,000 - \$275,000

**CITY APPROPRIATIONS & PROPOSED INVESTMENTS**

CIP #578 Original Appropriation (Resolution #8777, #8778, & #9053; 2014 / 2017)	\$2,290,000
CIP #578 Rescinded Appropriations (Resolution #9271; February 2020)	(\$440,000)
CIP #460 Underground Utilities (Prorated for Lot Frontage on South Main Street)	\$253,300
Hazardous Building Materials Abatement (Net of Available Funds in CIP #578)	\$372,500
Building Demolition	\$0
Other City Financial Support (RSA 79-E Community Tax Relief Abatements, TIF Infrastructure Investments, Etc.)	\$0
<b><u>Total Appropriations &amp; Proposed Investments</u></b>	<b><u>\$2,475,800</u></b>

**PROJECTED CITY REVENUES**

Sale Price (Before 6% Broker's Fee)	(\$350,000)
Planning Board Fees	(\$10,000)
Impact Fees	(\$135,000)
Demolition Permit Fee	(\$2,500)
Building Permit Fee	(\$87,100)
City Engineering Division Construction Inspection Fees	(\$20,000)
Water / Sewer Connection Fees	(\$79,140)
NHDES Brownfields Grant (Hazardous Building Materials Abatement)	(\$172,500)
<b><u>Total Revenues</u></b>	<b><u>(\$856,240)</u></b>

<b><u>NET CITY INVESTMENT</u></b>	<b><u>\$1,619,560</u></b>
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- 5) Staff Recommendation: City Administration recommends that the City Council approved the attached proposed Purchase and Sales Agreement with the John J. Flatley Company for the following reasons:
- a) The John J. Flatley Company is a qualified, capable, reputable, and experienced real estate developer who is familiar with Concord, and has successfully completed other similar residential projects in Nashua NH, Merrimack NH, and Quincy MA.
  - b) The John J. Flatley Company's redevelopment plan for the former NH Employment Security property is generally consistent with goals and recommendations of the 1997 Downtown Master Plan, 2001 Concord 20/20 Vision Plan, 2005 Economic Development and Tax Base Expansion Plan, 2006 Opportunity Corridor Master Plan, as well as the 2008 City Master Plan.
  - c) The John J. Flatley Company's project will expand the supply of downtown housing, a critically important component of the City's economic development strategy to preserve and enhance the economic vitality and vibrancy of the downtown central business district.
  - d) The John J. Flatley Company's project is consistent with, and further builds upon, other recent development projects within the Sears Block Tax Increment Finance District including the Hotel Concord / Capital Commons Project, Love Your Neighbor Building, Endicott Hotel Redevelopment, Smile Building, Bank of New Hampshire Stage, as well as the Star Building and Kearsarge Block.
  - e) The John J. Flatley Company's proposed development is likely to be successful in the local real estate market.
  - f) The John J. Flatley Company's schedule is very aggressive. Barring any unforeseen circumstances, and they plan to move forward with the project expeditiously.
  - g) The John J. Flatley Company's project requires less City investment as compared to past development proposals for the property.
  - h) The project will yield significant short-term and long-term financial benefits for the City, as follows:
    - i) Sale Price: \$350,000
    - ii) Development Permitting Fees: \$333,000+/-, as follows:
      - (1) Planning Board Fees: \$10,000
      - (2) Impact Fees: \$135,000
      - (3) Demolition Permit Fee: \$2,500
      - (4) Building Permit Fee: \$87,100
      - (5) Engineering Inspection Fees: \$20,000
      - (6) Water / Sewer Connection Fees: \$79,140
    - iii) Assessed Value and Property Taxes:
      - (1) Projected Assessed Value: \$8,000,000 to \$10,240,000  
(\$125,000 / Unit to \$160,000 / Unit)
      - (2) Projected Property Taxes: \$215,000 - \$275,000 Annually  
(2020 Tax Rate of \$26.76 / \$1,000)
  - i) Upon completion of the project, property tax revenues associated therewith shall be captured by the SBTIF District and used to help repay existing debt and operating cost, in turn potentially expediting the release of SBTIF captured incremental assessed value (and associated property taxes associated therewith) to support the City's General Fund, as well as Concord School District, Merrimack County and State of New Hampshire.