



CITY OF CONCORD

New Hampshire's Main Street™

REPORT TO THE MAYOR AND CITY COUNCIL

FROM: Carlos P. Baía, Deputy City Manager-Development

DATE: March 22, 2017

SUBJECT: Report from the Deputy City Manager – Development, recommending that the City Manager be authorized to execute a Release of Restrictive Covenant, thereby releasing a Covenant, Restriction and Reservation known as Condition (a), as contained in a deed from the City of Concord to the County of Merrimack and recorded at the MCRD at Book 1284, Page 279

Recommendation

Accept this report authorizing the City Manager to execute a Release of Restrictive Covenant, thereby releasing a Covenant, Restriction and Reservation known as Condition (a), as contained in a deed from the City of Concord to the County of Merrimack and recorded at the MCRD at Book 1284, Page 279; said release being necessary for the development and construction of the new Merrimack County Superior Courthouse.

Background

In 1976, the City of Concord deeded a parcel of land to Merrimack County that today comprises a portion of the Merrimack County Superior Court property. In that conveyance, the City placed several deed restrictions summarized as follows:

- a) All buildings erected on the above conveyed property shall conform to all standards specified in the Municipal Code of Ordinances of the City of Concord;
- b) At least twenty-five (25%) of the area conveyed by this deed shall be maintained by the grantee as a public passive recreation area, and shall include but not be limited to walks, sitting areas, and landscaping;
- c) The grantee shall maintain within the public recreation area the original Doyen Park donor marker;
- d) The land conveyed will revert to the grantor if construction thereon of a Superior Court building for Merrimack County is not commenced within five (5) years from the date of this deed.

In 1989, the County requested that Council remove the deed restrictions. According to City Council meeting records from that time period, City Administration concluded that the

County had met Condition (d) when the addition was built for the Courthouse. The Council was undecided on the remaining restrictions and tabled the matter.

Condition (b) was ultimately released by the City Council in 1996 when the Courthouse needed to expand its parking lot (Resolution 6599 and MCRD Book 2021, Page 882, dated May 7, 1996, and recorded on May 9, 1996).

As to Condition (c), Ari Pollack, the attorney for the County's current Courthouse project, has confirmed that the County will retain the Doyen Park donor marker on the new campus.

Mr. Pollack has, however, asked that the City remove the final remaining condition, Condition (a).

The Courthouse project is deficient in its compliance with City zoning in a number of ways, including maximum lot coverage, parking aisle width, and driveway separation, but most significantly in terms of the required parking.

The Planning Board was generally supportive of the project, recommending enhancements to landscaping and circulation, and addressing a retaining wall and ADA ramps.

There is no feasible way for the project to meet the parking requirement in the City's Zoning Ordinance unless the County were to make a very sizable investment in a structured parking garage and/or acquire additional land which could add significant costs to the project. Were this to be required, the State would likely opt to build the courthouse on its Hazen Drive campus as originally envisioned. The preservation of the Courthouse on North Main Street was a priority of the City Council and as such, City staff is recommending that Council authorize the City Manager to release Condition (a) thereby allowing the project to move forward.