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MEMORANDUM

**TO: Mayor Kyriacou and Members of the City Council
of the City of Beacon**

FROM: Keane & Beane, P.C.

RE: Melio Bettina Place

DATE: February 21, 2020

On Tuesday, February 18, 2020, the City Council considered adopting a resolution to sell a vacant parcel on Melio Bettina Place, known and designated as Parcel No. 5954-28-942947 (the “Property”), to Seven and One Developments, LLC for \$95,000. This memorandum provides clarification to address the questions and concerns raised by Mr. Jeremy Suckow, the property owner of 27 Melio Bettina Place. This memorandum was reviewed and approved by the Building Inspector, Dave Buckley.

The Property is located in the R1-5 Zoning District. It is 4,700 square feet (0.10 acres), with a lot width of 50 feet by a lot depth of 94 feet. This parcel is considered a legal nonconforming use as it was created before the City adopted the current dimensional requirements for the R1-5 Zoning District. In the R1-5 Zoning District, the minimum lot size is 5,000 square feet, with a lot width of 50 feet and a lot depth of 100 feet.

A nonconforming use is defined as a “use of a building or of land that does not conform to the regulations as to use in the district in which it is situated, which use existed and was lawful under this chapter [Chapter 223] at the time the use was established.” City Code § 223-63. The Property is nonconforming with respect to lot area, which does not conform to the minimum lot area required in the district in which it is situated but was lawful at the time the lot was established. The nonconforming use of the land may be continued pursuant to City Code § 223-10.B, provided that:

- (1) Such nonconforming use shall not be enlarged or increased, nor shall it be extended to occupy a greater area of land than occupied by such use at the time of the adoption of this chapter.
- (2) Such nonconforming use shall not be moved in whole or in part to any other portion of the lot or parcel of land occupied by such nonconforming use at the time of the adoption of this chapter.

- (3) If such nonconforming use of land, or any portion thereof, ceases for any reason whatsoever for a continuous period of more than six months, or is changed to a conforming use, any future use of such land shall be in conformity with all provisions of this chapter.
- (4) No nonconforming use of land shall be changed to another nonconforming use.

The lot area will not change in any way as a result of the construction of a single-family home on the lot. There are also other nonconforming lots located in the neighborhood, specifically along Verplank Avenue.

Section 223-12.I further provides:

A permit may be issued for the erection of a building on a lot for which a valid conveyance has been recorded or contract of sale has been signed and the conveyance recorded prior to the adoption of this chapter, **notwithstanding that the area or dimensions of such lot is less than that required for the district in which such lot lies**, provided that all yard setbacks and other requirements which are in effect at the time of the obtaining of the building permit are complied with and provided that the owner of such lot does not own other lots contiguous thereto. If this is the case, such other lots or so much thereof as might be necessary shall be combined with the first named lot to make a single conforming lot, or a lot that conforms to the fullest extent possible, whereupon a permit may be issued, but only for such combined lots.

Under this provision, it is clear that a new building may be constructed on a lot less than the minimum area, provided that construction of the building conforms with all applicable setback requirements and other dimensional requirements set forth in the City Code. Adjacent lots are only required to be merged if each lot is owned by the same individual or corporation and where merging such lots would minimize or eliminate an existing nonconformity.

The City issued a Request For Proposals (“RFP”) to obtain proposals from potential purchasers for the Property. Specifically, the purpose of the RFP was to receive proposals from a qualified company or individual to construct a new single-family home on the existing vacant parcel. The RFP referenced the existing dimensions of the Property and the minimum dimensions required for the R1-5 Zoning District, set forth in City Code § 223-17.C and which establishes setback requirements, minimum building height requirements, and maximum building coverage requirements. As previously discussed, the Property is a legal nonconforming parcel with respect to lot

area. This nonconformity does not prevent an individual from erecting a building on the lot.

The City received two proposals for the Property, one proposal from Seven and One Developments, LLC for \$95,000, and another proposal from Mr. Jeremy Suckow for \$40,000. The City has a fiduciary duty to its residents to sell the Property to the respondent who has demonstrated a good track record, sound financial backing and a commitment to implement a creative, high-quality project in a timely manner. The City must also consider the amount of each proposal.

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