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CONSERVANCY

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Karen Mauney-Brodek, *President*

January 29, 2024

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Boston Parks and Recreation Commission
1010 Massachusetts Avenue, 3rd Floor
Boston, MA 02118

Re: Reconstruction and Privatization of White Stadium and Development of Adjacent Grounds located in Franklin Park (the "Project")

Dear Honorable Commissioners:

The undersigned submits the following comments on the (the "Proposal") by Boston Unity Soccer Partners, LLC ("BUSP" or the "Proponent") in connection with the Project, which includes the proposed expansion of the White Stadium complex through the construction of new, expanded grandstands, new enclosed areas within the grandstands, additional freestanding structures separate from the Stadium and related facilities, infrastructure and landscape elements, and new, private uses such as professional sports team management, retail sales, restaurants and alcohol service. For several reasons, this Project should not be before the Commission.

Private Appropriation of Public, Community Property

In 1883, the City acquired the land on which the Stadium sits for use "as a public park". In 1947, the City conveyed that land to the "City of Boston -George Robert White Fund" (the "Trust") "in its capacity as a public charitable trustee" for use as a "public charitable purpose", namely "works of public utility and beauty, for the use and enjoyment of the inhabitants of the City of Boston". (See attached 1947 Documents and Article Fourteenth of the Will of George Robert White.) Under Massachusetts law, these transactions established a charitable trust of which the public - and notably the local community - are the beneficiaries.

The Proposal, by devoting a substantial part of the reconstructed Stadium and adjoining land to the private uses listed above, would

violate the terms of the Trust, disregard the contractual relationship created under Massachusetts law by the City's acceptance of Trust property and ignore the City's obligations to devote the Stadium to use by the local community and the public at large.

No Article 97/ Public Lands Preservation Act Compliance and No MEPA Review

As an initial matter, we urge the Commission not to act on the Proposal before the Commission because the Project is not ripe for Commission consideration.

White Stadium and its surrounding grounds are a critical part of Franklin Park and have been used for public park and public recreation purposes for nearly 150 years in the case of Franklin Park and for nearly 75 years in the case of White Stadium and its grounds. Indeed the Request for Proposals (the "RFP") which resulted in the conditional selection of BUSP was stated to be made by the Public Facilities Department on behalf of the City of Boston and the Boston Public Schools, given the long school and public athletics use of the site.

It is beyond question that White Stadium and its surrounding grounds enjoy the protection of Amendment Article 97 of the Massachusetts Constitution and the Public Lands Preservation Act.

As held by the Supreme Judicial Court in 2017 in Smith v. City of Westfield, 478 Mass. 49, longstanding public use of public land for athletic and recreational purposes triggers Article 97 protection. The Westfield case involved 60 years of land use for two little league baseball fields and for a playground, and the City had sought and obtained funding for such improvements. Here, the Playstead was designed from the beginning for public recreation and, in the 1940s, White Stadium was built using George Robert White Fund monies. The City of Boston Parks Department, the Boston Public Schools and the Emerald Necklace Conservancy have expended maintenance funds for the upkeep and support of these facilities and their grounds. In Westfield, the SJC confirmed longstanding use is sufficient to impress Article 97 protections upon land, and the SJC specifically cited the Boston Common and the Public Garden, finding it unthinkable to change those resources to other public purposes (let alone to private,

for-profit purposes, as proposed here) without the full panoply of Article 97 process and protection.

The RFP is explicit that compliance with Article 97 is the obligation of any selectee under the RFP process. The selectee is BUSP. No Article 97 process has been initiated by BUSP. No Massachusetts Environmental Policy Act (MEPA) process in preparation for an Article 97 process (or other likely MEPA triggers) has been initiated by BUSP. The required Article 97 alternatives analysis (meaning alternative locations in the metro area for BUSP to locate and use a professional soccer stadium) has not yet occurred. Public review and comment under both Article 97 and MEPA have not yet occurred. Given the location of White Stadium in a Designated Geographic Area that includes Environmental Justice Populations, BUSP would need to comply with applicable advance notification provisions and engage with affected communities as part of an Article 97 process and before it could even file an Environmental Notification Form (ENF) with MEPA. The failure of BUSP to engage in either the required MEPA or Article 97 processes, in this location within and adjacent to Environmental Justice Communities, is little short of breathtaking. The Project at this stage is noncompliant and simply not ripe for review.

Furthermore, the requisite analysis of the public uses being lost or curtailed here has not occurred, and the concrete proposals to provide equal or greater public benefit for the lost and curtailed public uses have not been provided by BUSP. Unless and until BUSP first complies with its obligations under the conditional designation to conduct a full Article 97 process and MEPA process, the Commission should not consider or act on the Project. For BUSP to ask the Commission to approve a private project on public park and public recreation land without any Article 97 process at all is to put the cart before the horse.

Of great concern is BUSP's proposed start of demolition in the Spring of 2024, which suggests that BUSP may not intend to engage in an Article 97 process or a MEPA process at all. It is inconceivable that an Article 97 process or MEPA process could be conducted and completed in less than five months.

Much of the Proposal focuses on converting the Stadium and its grounds to private use (team offices, team locker rooms, team storage,

team catering and kitchens, and a retail store selling team merchandise), creating new private corporate suites and a private midfield corporate terrace level in the West Grandstand which would be off-limits to the public for unspecified (and perhaps substantial) amounts of time, and would exclude the un-ticketed public on game days totaling nearly 80% of Saturdays during the spring and fall athletic seasons. In Q&As, BUSP has declined to commit to not interfering on game days with use of the adjacent public basketball courts, tennis courts, cross-country course, softball field, soccer field, cricket pitch and picnic grove, extensive concerts and festival spaces, zoo events and usage. And it is a matter of public knowledge that two Boston Public High School football teams, comprised of Boston Public schoolchildren primarily from black and brown communities, will be excluded from using White Stadium for regular season games and practices. One Q&A goes so far as to say: "The City will work closely with organizations that host events in the stadium, on the playstead, and on cross country courses to ensure they do not conflict with Boston Unity games."

Please take note: this literally says that Boston Unity soccer games and Boston Unity use will have priority over cultural festivals and all other events in the Stadium, the Playstead and on cross country courses.

The loss of public use and public access to these precious public resources, in the heart of Environmental Justice Communities, would be devastating. The Commission should decline to consider this proposal prior to the completion of full and robust Article 97 and MEPA processes.

Not Ripe for Consideration by the Commission because of Project Segmentation

As odd as it may seem, the Proposal addresses only part of the Project. It completely ignores one-half of the Stadium. The Proponent would construct a new West Grandstand with extensive, new, indoor facilities, additional structures in the Grove and related facilities, and the City would construct a new East Grandstand with extensive, new, indoor facilities and a new field. Even disregarding - for now - the serious legal issues raised by this artificial segmentation (not just for Commission review but also under MEPA), it renders design review meaningless at this point.

Design review by its nature involves the integration of various elements into an integrated, harmonious whole, and would need to show how this Project as a whole would be constructed and function within this extremely important park and community. The West Grandstand must meet its eastern counterpart, a necessity recognized by the Proponent and the City in their January 11, 2024 Presentation, which advertises: "Two simultaneous construction projects with unified design". That unified design has not been submitted to the Commission. (Please see the "2023 Current Condition" and "Site Components" figures in the January 2, 2024 Preview for schematics featuring one-half of a stadium.) The Commission cannot possibly complete its review of the design of one-half of the expanded Stadium and the other elements of the Proposal without also reviewing the proposed design of the other half of the expanded Stadium, the field and other Project elements which the City would develop. Clearly the Commission should defer its review of the Proposal until the Project as a whole is before it.

Project Conflicts with Original Design Intent

The Commission should recognize the threat posed to the intended design and character of Franklin Park. The 1980 Landmarks Commission Study Report for Franklin Park (the "Study Report") adopts (in Section 10.0A.1) the following Approach governing the Commission's Specific Standards and Criteria applicable to the Project:

The intent of the designation is to maintain and to restore to the extent possible, the character of Franklin Park as established by Frederick Law Olmsted in his designs for the park. Thus, the major portion of the property, which was established as a "Country Park" for city residents, should retain its naturalistic, even rural qualities. The development of additional hard, urban recreational facilities is to be avoided and discontinuance of existing non-natural areas and restoration is encouraged. [emphasis added.] **Maintenance and replacement of existing trees, walls, bridges, gateways, terraces and other existing elements should be done in a manner consistent with the park's character. New elements, if any, should be designed to be as unobtrusive as possible.**

Olmsted articulated his specific vision for the area of the Playstead, known as the "Overlook", which served as the original area to support

park users . It was “built of boulders obtained in clearing the Playstead, which are to be mainly overgrown with vegetation befitting the form and material of the structure, adapted to harmonize it with the natural scenery and make it unobtrusive”.

It is clear that the Project would disregard Olmsted’s design intent and ignore the City’s own standards. The Project includes the following re-construction and expansion of existing structures and construction of new structures, access ways and other paved surfaces:

- the demolition of the existing West Grandstand, except the exterior clamshell wall, and the construction of a new 29,637 square foot West Grandstand extending well beyond the existing foot print on both ends with a massive roof canopy extending as much as 25 feet above the existing structure in some areas, and including, for private use: multiple professional athlete locker rooms; team office space; a professional athlete interview room; a press support media room; fourteen (14) corporate suites; a large “Tunnel Club Lounge”; a main kitchen; a catering kitchen; at least four (4) “Team Facilities” rooms; storage space; an additional administrative staff room; a press box; various utility and mechanical equipment rooms;
- while the Proposal omits detail as to the East Grandstand because of the Project segmentation described above, the demolition of the existing East Grandstand and the construction of a new Grandstand with two 15,000 square foot athletic facilities;
- the development of a 62,500 area in the “Grove” area south of the Stadium, including the construction of two buildings housing a beer garden, a bar, retail stores and storage space and supporting a scoreboard;
- the construction of additional mobile seating at the north and south ends of the Stadium;
- the construction lighting, banner pylons, fencing and an entry plaza; and
- the construction of new paved pathways with a surface area which appears to be many times that of the existing pathways.

To refer to the Project as the “renovation” of the existing Stadium seriously understates and distorts its scope and impacts. The Project is a

substantial, mixed-use development, much of which would exclusively benefit a professional sports team and its owners, investors and other stakeholders. The extent of this development within Franklin Park, designed by, in the City's own words, America's "preeminent landscape architect" as the "centerpiece" of the Boston Park System, would, even if ripe for consideration, warrant a methodical and through design review process.

However, as with the other Project permitting to date, the permitting process has been spectacularly hurried. Given the violation of the public, charitable Trust, the absence of Art. 97 and MEPA compliance and the serious issues posed by the Project scope and design, we urge the Commission to defer further review until these issues can be resolved.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. Mauney-Brodek', followed by a horizontal line.

Karen Mauney-Brodek
President

Cc:

Honorable Mayor Michelle Wu
Honorable City Councilor Tania Fernandes-Andersen
Honorable Representative Christopher J. Worrell
Honorable Senator Liz Miranda

6386 582

WHEREAS by an order passed In City Council of the City of Boston October 27, 1947 and passed again November 10, 1947 and approved by the Temporary Mayor of the City of Boston November 12, 1947 the Temporary Mayor of the City of Boston was authorized in the name and behalf of the City of Boston to transfer to the City of Boston - George Robert White Fund by an instrument in writing satisfactory in form to the Law Department of the City of Boston a parcel of land within Franklin Park containing approximately 609,840 square feet or 14 acres for the purpose of the establishment of a stadium on said land by the George Robert White Fund and upon the consideration of the payment to the City of Boston by said Fund of the sum of \$20,000, the fair cash value of said land. (A copy of said order is hereto attached and made a part of this instrument.)

NOW, THEREFORE, the City of Boston, a municipal corporation in the Commonwealth of Massachusetts, in consideration of the sum of twenty thousand dollars (\$20,000.) to it paid, the receipt whereof is hereby acknowledged, does hereby transfer to the City of Boston - George Robert White Fund, a municipal corporation in the Commonwealth of Massachusetts, in its capacity as a public charitable trustee and for the purpose of the establishment of a stadium on said land, a certain parcel of land within Franklin Park containing approximately 609,840 square feet or 14 acres as shown on a plan attached hereto and made a part of this instrument and marked "Plan Showing Land to be Transferred by City of Boston - Park Department to City of Boston - George Robert White Fund, City of Boston, Franklin Park, West Roxbury, October 16, 1947, Thomas F. McGovern, Chief Engineer, Street Laying-Out Department".

IN WITNESS WHEREOF the City of Boston has caused its corporate seal to be hereto affixed and these presents to be signed in its

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name and behalf by John B. Hynes, Temporary Mayor of the City of Boston this *fourteenth* day of *November* 1947.

City of Boston

By *[Signature]*
Temporary Mayor.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Boston, Mass.

November 14, 1947.

Then personally appeared the above-named John B. Hynes, Temporary Mayor of the City of Boston, and acknowledged the foregoing instrument to be the free act and deed of the City of Boston.

Before me,

[Signature]
Notary Public
[Signature]
Justice of the Peace
My commission expires: *Dec. 24, 1947*

Approved as to form:

[Signature]
Corporation Counsel,
City of Boston.

6386 584

CITY OF BOSTON
IN CITY COUNCIL

RECEIVED

NOV 13 1947

REFER TO To

WHEREAS the City of Boston owns in fee Franklin Park, a public park in the West Roxbury District of the City of Boston, containing an area of approximately 23,000,000 square feet or 528 acres; and

WHEREAS the City of Boston - George Robert White Fund has selected within Franklin Park an area of approximately 14 acres as a site for the establishment of a stadium by the George Robert White Fund and has requested that the said parcel of land be transferred by the City of Boston to the City of Boston - George Robert White Fund, and has offered to the City of Boston the sum of \$20,000 as the fair cash value of said land; and

WHEREAS the Board of Park Commissioners of the City of Boston recommends that the request and offer of the City of Boston - George Robert White Fund be accepted and that the selected parcel of land be transferred by the City of Boston to the City of Boston - George Robert White Fund for the sum of \$20,000., the fair cash value of said land; now, therefore, it is hereby

ORDERED: That His Honor the Temporary Mayor of the City of Boston be and he hereby is authorized in the name and behalf of the City of Boston to transfer to the City of Boston - George Robert White Fund by an instrument in writing satisfactory in form to the Law Department of the City of Boston a parcel of land within Franklin Park containing approximately 609,840 square feet or 14 acres for the purpose of the establishment of a stadium on said land by the George Robert White Fund and upon the consideration of the payment to the City of Boston by said Fund of the sum of \$20,000., the fair cash value of said land. The parcel of land to be transferred is shown on a plan marked "Plan Showing Land To be Transferred by City of Boston - Park Department to City of Boston - George Robert White Fund" "City of Boston, Franklin Park, West Roxbury, October 16, 1947, Thomas F. McGovern, Chief Engineer, Street Laying-Out Department".

In City Council October 27, 1947. Read once and passed -
yeas nineteen, nays none.

In City Council November 10, 1947. Read a second time and
again passed - yeas fifteen, nays none.

Approved by the Temporary Mayor November 12, 1947.

Attest:

M. J. Malloy

Nov. 24, 1947. At 2 o'clock & 51 mins. P.M. Rec'd. Ent'd. & Exam'd. *Dept. City Clerk*

Article Fourteenth of the Will of George Robert White

Records of the City of Boston
ADMINISTRATION LIBRARY
15 Beacon Street

ARTICLE FOURTEENTH

WILL OF
GEORGE ROBERT WHITE

Article Fourteenth of the Will of George Robert White

ARTICLE FOURTEENTH: Whereas my sister Mary E. Sullivan has died, and I have otherwise provided for my sister Harriet J. Bradbury, I do now carry out by immediate gift my public charitable purpose which in previous wills I [7] had provided for in remainder, and I do now give all the rest and residue of my property of every nature to the City of Boston, the same to be held as a permanent charitable trust fund to be known as the George Robert White Fund, and the net income only to be used for creating works of public utility and beauty, for the use and enjoyment of the inhabitants of the City of Boston. It is my intention that no part of said income, however, shall be used for a religious, political, educational or any purpose which it shall be the duty of the City in the ordinary course of events to provide.

The control and management of said Fund and the disbursement of the income shall be in the hands of a board of five trustees to consist of the Mayor, who shall be its chairman, the President of the City Council, the City Auditor, the President of the Chamber of Commerce and the President of the Bar Association of the City of Boston. If by the reason of the abolition of any one or more of these offices or the declination or resignation of any one or more of the persons holding them for the time being a vacancy or vacancies shall occur, I direct that such vacancies shall be filled by the remaining members of the board, by the election of the persons whose respective positions and duties shall in the opinion of the board most nearly correspond therewith. As this is a public charitable gift to the City of Boston, it is my

Article Fourteenth of the Will of George Robert White

intention that the [8] City shall at all times be officially represented by a majority of the board of trustees charged with its management.

The business of the Fund shall be transacted through the regular departments of the City, viz. the Treasurer, Auditor, Corporation Counsel, etc., and a suitable office or offices for the use of the trustees shall be provided for them by the City in the City Hall or elsewhere, in which shall be kept all books and records of every nature relating to the management of the Fund, properly indexed and readily accessible during business hours for the reasonable inspection of citizens, so that all who so desire may have full knowledge of the conduct of the business of the Fund. I direct that said income shall not be anticipated or pledged beyond the amount actually in hand, but it may be accumulated for any purpose within the scope of the gift, and successive accumulations may be applied to the same object. Any work or works established from the Fund may be improved, extended, enlarged or added to from time to time, but the current expense of their care and maintenance shall be borne by the City. I also direct that no part of said income shall be mingled with other funds or applied in joint undertakings; but that each work established under this gift shall be separate and distinct, and shall always bear in a conspicuous place a suitable inscription identifying [9] it as erected or established from said George Robert White Fund. If for any reason the principal of said Fund shall at any time become impaired, the income shall be allowed to accumulate until such impairment shall have been made good.

Inasmuch as I believe an enlightened public opinion to be the most effective safeguard for the preservation and maintenance of

Article Fourteenth of the Will of George Robert White

such a charitable fund and the best guide to its effective use, I direct that at least once a year the trustees shall cause to be published in most if not all of the daily newspapers of general circulation in Boston a full and comprehensive report, duly audited, and signed and sworn to by at least three of their number, setting forth the receipts, disbursements and investments of the Fund and a copy of this fourteenth article of my will establishing it.

In order to diminish the chance of hasty or unconsidered action in the expenditure of income, I believe that no substantial expenditure should be made for any purpose until it shall have been under consideration by the trustees for at least three months.

As it is probable that said Fund will consist in greater part of real estate centrally situated in the City of Boston which is reasonably sure to increase in value, I urgently recommend that such real estate be not sold for a period of at least one hundred (100) years, that leases of the same [10] shall be subject to revaluations as a basis of rentals every ten (10) years and where necessary shall provide for rebuilding by the lessees, that the real estate shall not be mortgaged, and the buildings thereon shall be kept fully insured.

If any clause or provision of the foregoing charitable gift should be found to be invalid in law, it shall not invalidate the gift as a whole but shall so far as possible be construed as an expression of my general intent.

While I think that Boston has now few, if any, superiors in beauty and in the many privileges it affords to its citizens, yet I believe it has greater possibilities for the future, and there are several public blessings among those afforded by other cities,—

Article Fourteenth of the Will of George Robert White

such as a zoological garden and handsome buildings therefor, an aquarium, a forum of substantial proportions for public gatherings, etc.—which we do not possess. It is with such things as these in mind that I have established the foregoing trust fund.

I can conceive that pressure might be brought to bear to use the income of this Fund for small and comparatively unimportant needs, which might be equally deserving and technically within the general scope of the Trust as heretofore expressed. A use of it for such purposes to any substantial extent would be contrary to my intention, which is that its income, accumulated if need be for a time long enough to make it sufficient, should [11] be used only for important civic improvements.

I suggest that printed copies, in convenient pamphlet form of this the fourteenth article of my will be kept at the office of the trustees of the Fund for free distribution to citizens of Boston.

I request that the trustees named in this article shall annually designate one of their number who shall visit and inspect my lot in Forest Hills Cemetery in the months of April and September of each year, and report to the board any neglect or failure to comply with the provisions of the contract of perpetual care, as well as Article First of this my will, in regard to the care of said lot, and it shall be the duty of said trustees to see that such neglect or lack of care be remedied without delay.

Article Fourteenth of the Will of George Robert White