



Fenway Center and Yawkey Station

Lawsuit Adds to Funding Difficulty

by Scott Van Voorhis

A legal battle that could decide the fate of the \$450 million Fenway Center project is heating up, even as work begins on its show-case Yawkey rail station.

City Hall has filed a motion in state court to dismiss a lawsuit filed by Commonwealth REIT challenging the Boston Zoning Commission's decision to give Fenway Center a green light.

But the Newton real estate firm, which owns a parking lot through which a road to the new rail and transit hub near Fenway Park will be laid, is fighting back.

Commonwealth says it is preparing to file a wide-ranging response in Massachusetts Land Court, one it contends will address allegations that it is simply trying to tie up a potential competitor in legal red tape. The firm owns an office building next door to the long-planned Yawkey Station and the

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Turnpike air-rights site where the larger Fenway Center mixed-used development, of which the station is just one part, is slated to take shape next year.

"We feel Commonwealth has a strong case, and we don't want to get into trying the case in the media," said Timothy Bonang, vice president of investor relations for the real estate investment trust, previously known as HRPT.

While the bill for the new Yawkey Station is being picked up by the state, Commonwealth's lawsuit is complicating efforts to line up private financing to build out the rest of the 1.2-million-square-foot Fenway Center complex, which will span the Turnpike with a high-rise apartment tower, a large garage, retail shops and offices, according to the project's developer, John Rosenthal.

Rosenthal confirmed that a private investor backed out of the project over the summer. While he is now in talks with a number of interested investors, Rosenthal said he now faces the added challenge of getting them comfortable with a project subject to ongoing litigation.

As he lays plans to begin work next year on Fenway Center's \$160 million first

phase, Rosenthal said he needs to first nail down \$30 million to \$40 million in private equity.

That said, Rosenthal contends the case itself is "frivolous" and designed simply to scare off potential project backers and thwart a development that will provide unwelcome competition to Commonwealth's own Fenway office building.

"It's hard enough to get financing for new construction today," Rosenthal noted. "A suit hanging over us makes it more difficult, and (Commonwealth) knows that. That is their game plan."

But Bonang has argued the publicly traded real estate investment firm is simply trying to protect the interests of its investors and win compensation for any damage to the value of its real estate holdings, he said.

Yawkey Station plans call for two access roads to cut through the building's parking lot. That could seriously hinder the use of the building's loading dock, according to Bonang.

The firm could lose out on millions in future value tied to its 290,000-square-foot office building at 109 Brookline Avenue, a claim that Rosenthal and City Hall reject.

"(Rosenthal's) comments about inability to finance are more reflective of the current economic environment and the insufficient cash he has to put into the deal," Bonang said.