

Waltham City Council
Minutes of Executive Session
October 15, 2019

President Brasco called the Executive Session to order at 9:40 p.m.

Present: Councillors Darcy, Fowler, Harris, LaCava, LeBlanc, Diane, LeBlanc, Randall, Logan, Mackin, McLaughlin, Nabulime, Romard, Stanley, Vidal and Brasco.
Councillor McMenimen recused herself in open session.

Also present: Assistant City Solicitor, Michelle Learned and City Clerk, Robert Waddick.

Assistant City Solicitor Michelle Learned summarized the status of the litigation with Colbea Enterprises, LLC (Land Court Case 18MISC000526) regarding City Council Order #32418, denying the Special Permit, and the Judge's particular concerns regarding how the Council counted parking spaces in its decision. Attorney Learned indicated that she was recommending that the Council agree to a remand of the case in which case the Council could deliberate further and put more teeth in its decision if the ultimate decision was to deny the Special Permit. Attorney Learned explained how Colbea Enterprises, LLC (the "Applicant") proposed to resolve the Council's concerns as expressed in the Council's decision denying the Special Permit, particularly those stated in the paragraphs numbered 7, 8, 9, 10, 11, 12, 13, 14, 17, 21, 22, 23, 24, 25, 26, 27 and 28.

Councillor McLaughlin expressed concern about the size of the building in question to which Attorney Learned stated that a Zoning Board of Appeals ("ZBA") decision permits the size of the building. Councillor Logan pointed out that the size of the convenience area is under the purview of the City Council.

Councillors Randy LeBlanc and Diane LeBlanc questioned Attorney Learned. Councillor Diane LeBlanc pointed out that the Council decision set forth 29 reasons for denial and asked whether the Applicant's case was stronger than the City's. Attorney Learned responded that she is trying to avoid a Land Court Decision against the City and is recommending an agreed-to remand of the case, with conditions, among them that the lawsuit is dismissed within seven (7) days after the public hearing of the remanded matter.

Councillor Fowler questioned Attorney Learned regarding what positions of the Council would be defensible upon remand. Councillor Nabulime completed the questioning of Attorney Learned and President Brasco recognized Councillor McLaughlin for the second time.

Councillor McLaughlin moved approval of the action recommended by Attorney Learned, to wit: *That the City Council consider the Applicant's petition/proposed amendments conditioned upon a remand and the dismissal by the Applicant of Land Court Case No. 18 MISC 000526 on the following conditions: The City Council authorizes its legal counsel to seek, together with the Applicant via its legal counsel, a Land Court Order remanding the special permit matter to the City Council with a new public hearing to be noticed and held in the usual manner, as long as*

the Applicant also withdraws with prejudice Land Court Case No. 18 MISC 000526 within 7 days after the first day of the new public hearing on the ordered remanded special permit matter. These conditions shall be included in the joint request to the Land Court for the agreed-to-remand on the aforesaid terms. The Applicant has revised its plans and has agreed to address/resolve several of the denial grounds enumerated in the City Council's denial decision of September 24, 2018, in accordance with the conditions discussed in executive session.

Should the Applicant not agree to said agreed-to remand as so conditioned, the City Council votes that its legal counsel continue its defense of the City Council's Denial Decision of September 24, 2018.

Roll Call: Voting in favor Councillors Darcy, Fowler, Harris, LaCava, LeBlanc, Diane, LeBlanc, Randall, Logan, Mackin, McLaughlin, Nabulime, Romard, Stanley, Vidal and Brasco. Opposed: None. Recused: McMenimen.

Councillor McLaughlin moved to adjourn the Executive Session. Roll Call: Voting in favor Councillors Darcy, Fowler, Harris, LaCava, LeBlanc, Diane, LeBlanc, Randall, Logan, Mackin, McLaughlin, Nabulime, Romard, Stanley, Vidal and Brasco. Opposed: None. Recused: McMenimen.

President Brasco declared the Executive Session adjourned at 10:43 p.m. and the Council returned to open session.

Respectfully submitted,
Robert J. Waddick,
City Clerk
October 20, 2019

Minutes Approved: December 23, 2019

Minutes Released: MAR 18 2022