

DATE: 4/4/2016

CITY OF WALTHAM - EXECUTIVE SESSION

8:15 PM

IN THE MATTER OF: LAND ACQUISITION MATTER - STIGMANTINE

It is moved by G. MARCHESE INVITE MAYOR - PGC AS CLERK
That this governmental body hold an executive session. RECONVENE IN OPEN SESSION

A Roll was called (See Attached Roll Call).

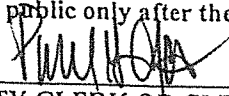
All votes taken in Executive Session must be recorded Roll Call Votes.

The Clerk of this Executive Session is designated as _____

A Quorum being present and a Majority having voted to go into Executive Session, the Chair states that:

1. This meeting convened in open session and
 - a. Notice and posting of the meeting was given, or
 - b. The meeting is an emergency meeting.
2. After the Executive Session the meeting
 - a. Will reconvene in open session
 - b. Will not reconvene.
3. The purpose or purposes of this Executive Session are:
 - A. To deliberate upon matters involving individuals where the individuals involved have been notified in writing of the meeting and have not requested an open meeting, and regarding:
 1. The reputation and character of the individual
 2. The physical condition and mental health of the individual
 3. The discipline or dismissal of a public officer, employee, staff member or individual
 4. A complaint or charge brought against a public officer, employee, staff member or individual.
 - B. To deliberate upon matters which, if done in open meeting could detrimentally affect the position of the City, and regarding:
 1. Collective bargaining
 2. Strategy with respect to Collective Bargaining
 3. Strategy with respect to litigation
 4. The purchase, exchange, lease or value of real property.
 - C. To deliberate matters regarding:
 1. The deployment of security personnel or devices, e.g., a sting operation
 2. Allegations of criminal misconduct.
 - D. To comply with the provisions of a General Law or special law or Federal Grant in Aid requirement, the specific law being _____
 - E. In the initial screening process, to review resumes and interview candidates for employment, if an open meeting would have a detrimental effect in obtaining qualified candidates.
 - F. To meet with a mediator regarding litigation or decision.
4. All of the foregoing is hereby made part of the official minutes of this body.

Records of an Executive Session are public only after the matter is resolved.


CITY CLERK OR CLERK OF EXECUTIVE SESSION

Committee of the Whole
Executive Session Minutes
Stigmatine Property
April 4, 2016

Executive session convened at 8:15pm. In attendance were Councillors Darcy, Fowler, Giordano, Logan, Marchese, McLaughlin, McMenimen, O'Brien, Romard, Rourke, Vidal, Vizard and LeBlanc presiding. Also invited were the Mayor and Paul Centofanti, as clerk of the executive session.

GM - I recommend the letter of intent.

Mayor - Six terms in the letter of agreement, the appraisal needs to be finished.

Mayor - I'm aware of the three potential buyers, not sure what council will do.

Mayor - Seeking authorization to sign the agreement to enter into terms/price for the property.

GM - Motion to give Mayor the authority to sign the agreement letter with the six terms with the Stigmatines.

DR - Why is it a complicated appraisal? Who are the other three buyers?

Mayor - Cannot say.

KM - Are there two ways to get in or out of property? If 40B no change in zoning. As is zoned as 'A2'. If maximize the use of the land would need a zone change and special permit - 46 acres.

Mayor - Will check on zoning.

KM - If can't stay as is, would like to see a similar use.

RL - If City acquired, would it be developed?

Mayor - Do not want to give away any strategy. One potential use would be for a new Waltham HS.

RL - Can we get MSBA reimbursement if we don't own property?

Mayor - Since we don't own it, MSBA is not considering the site. We want to keep our options all open.

On the motion of President Marchese, a roll call vote of 13 in favor and 2 absent (Brasco & Waddick) to give the Mayor authority to sign the agreement letter with the six terms with the Stigmatines.

On the motion of President Marchese, a roll call vote of 13 in favor and 2 absent (Brasco & Waddick) to adjourn executive session and reconvene open session - 8:35pm

Paul G. Centofanti, Clerk of the Executive Session

City of Waltham
 Committee of the Whole - OPEN SESSION

Date 4/4/2016

Maker MARCHESE 8:10 PM

Motion STIGMANTINE PROPERTY - GO INTO EXEC SESSION, PGC CLERK, INVITE MAYOR + RECONVENE IN OPEN SESSION

Roll Call Vote

	YES	NO	ABSENT	ABSTAIN
Councillor Brasco	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Councillor Darcy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councillor Fowler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councillor Giordano	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councillor Logan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
President Marchese	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councillor McLaughlin	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councillor McMenimen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councillor O'Brien	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councillor Romard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councillor Rourke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councillor Vidal	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councillor Vizard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councillor Waddick	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Vice President LeBlanc	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOTAL	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Ruling PASSES



City of Waltham

Jeannette A. McCarthy
Mayor

CITY OF WALTHAM
CITY CLERK'S OFFICE

RECORDED

2016 MAR 24 AM 11:00

March 24, 2016

TO: The City Council
RE: Stigmatine Fathers
3 Parcels, 46.063+/- Acres

CONFIDENTIAL

Dear Councillors:

Enclosed please find a communication from Atlantic Management on behalf of themselves and their client Stigmatine Fathers, Inc. A Letter of Intent Agreement is being drafted by their attorney to effectuate the enclosed letter.

I respectfully request authority to sign. I anticipate having the Letter of Intent by the Committee meeting.

I am available to answer any questions you may have regarding this matter.

Sincerely,

Jeannette A. McCarthy

JAM/ns

Enclosure

cc: John B. Cervone, Esq.
Patricia Azadi, Esq.
Atlantic Management



City of Waltham

MASSACHUSETTS

LAW DEPARTMENT

City Solicitor
JOHN B. CERVONE

Assistant City Solicitors
PATRICIA A. AZADI
BERNADETTE D. SEWELL
MICHELLE LEARNED
LUKE STANTON
FRANCIS P. CRAIG

March 23, 2016

Email and Hard Copy

Robert Buckley, Esq. (RBuckley@reimer.com)
7 New England Executive Park
Burlington, MA 01803

CONFIDENTIAL

Re: Stigmatine Father's Property – Lexington Street, Waltham, MA
Sale and Development "Standstill" Agreement

Dear Attorney Buckley:

This will just quickly initiate contact with you germane to the above. We recently received notice of your representation with your contact information from Mr. Capobianco. I presume you have substantively conferred with Messrs. Capobianco and Zink relating to this matter. I enclose a copy of Mr. Capobianco's March 17, 2016, letter addressing the above and note that I do not see that you were copied on it. This letter seems to summarize the issues well. (N.B. I believe one issue that also must be addressed is c. 21E testing. In order to obviate the delays such testing process produces, I suggest it is preferable to address and proceed with that ASAP – at least as far as the documents for Owner's Testing Authorization.)

I believe I understand that what is next envisioned by the parties is a form of "Letter of Intent" type agreement to effectuate the above. I presume you may want to initiate that draft after you have further discussions with your client.

Thank you and I look forward to proceeding in this mutually beneficial process.

Very truly yours,

John B. Cervone
JBC/mar
Enclosure



March 17, 2016

The Honorable Jeannette A. McCarthy
City of Waltham
610 Main Street
Waltham MA 02452

Re: Stigmatine Fathers, 3 Parcels, 46.063 ± Acres
R033 002 0019; R033 002 019A; R033 002 019B

Dear Mayor McCarthy:

Below find the framework our attorney - Robert C. Buckley, Esq., our client - the Reverend Robert S. White, CCS, President of The Trustees of the Stigmatine Fathers, Inc., and our office would propose your team to consider in response to your suggestion of possibly entering into a Purchase and Sales Agreement as we discussed earlier this week. This proposed "Standstill Period" Agreement (outlined below), we believe, would address both parties' pressing concerns, as well as provide a reasonable timeframe to work through those many issues facing the Stigmatines with Father White after the Easter season, should an acceptable selling number be agreed to by the parties.

The City of Waltham (the "City") enters into a Memorandum of Understanding with the representatives of the Stigmatines by and through their representatives (Atlantic) whereby the following would be agreed to:

- 1. Both parties would agree to essentially spend thirty (30) days (the "Standstill Period") to explore whether outstanding issues attendant to a so called "friendly" taking could be resolved. These issues would include price, title, environmental conditions, the transition of the Stigmatines from the site (e.g. leaseback) etc. This Agreement would not bind the owners to sell, nor the City to buy.*
- 2. During this Standstill Period the owners would agree not to entertain or accept offers for the property from third parties or otherwise market the property.*
- 3. The City, during this Standstill Period, would not take any preemptive action to adversely impact the value of the property such as a down zoning or a temporary taking. Recognizing that the City Council may act on their own the Mayor's office would be required to provide the representatives of the owner with prompt notice of any upcoming action and the owners' representatives would be permitted to take protective action, such as filing of a preliminary subdivision or other actions which they deem appropriate.*

- ~~CONFIDENTIAL~~
4. *During this Standstill Period the parties would agree to work cooperatively in good faith to try to resolve outstanding issues, including but not limited to, assisting the City appraiser in order to complete the City authorized appraisal; Parties acknowledge and agree to share the final appraisal.*
 5. *During the Standstill Period, the parties would work in good faith to produce a satisfactory purchase and sale/friendly taking agreement to be executed in the event that the parties agree during this Standstill Period on a transfer of the property.*
 6. *In the event that the parties are cooperatively working towards resolution of outstanding issues but such issues cannot be resolved during this Standstill Period, the parties agree that upon the request of either party, the term of the Standstill Period would be extended for an additional period of up to thirty (30) days to permit resolution of remaining issues. Again, this agreement to extend would be conditioned upon the good faith actions of both parties as well as no precipitous action being undertaken by the City that would adversely impact the value of the property during the initial Standstill Period.*

The foregoing represents an initial framework for an agreement to allow for the continued cooperative discussions between the City and the representatives of the landowner. Of course, other issues may arise that would be addressed in this agreement as the parties continue their discussions.

Please advise if this suggested approach is acceptable to you and your team and I will authorize our attorney to contact the City Solicitor/Counsel in order to paper this for execution.

Thank you for your continued cooperation and assistance in this matter.

Atlantic Management Corporation

By: _____

David A. Capobranco
Chief Operating Officer

DAC/lam

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement") is entered into this 11th day of April, 2016 ("Effective Date"), by and between the City of Waltham, a municipal corporation and political subdivision of the Commonwealth of Massachusetts, by and through the Office of the Mayor ("City") and the Trustees of the Stigmatine Fathers, Inc., a Massachusetts corporation formed under Chapter 180 of the Massachusetts General Laws ("Stigmatines") whose mailing address is 554 Lexington Street, Waltham, Massachusetts 02453.

RECITALS

- A. The Stigmatines are the owner of certain land located in the City of Waltham known and numbered as 554 Lexington Street, 75 R Lincoln Street and 111R Lincoln Street (Assessors references: R033 002 019, R033 002 019A, R033 002 019B) ("Stigmatine Land");
- B. The Stigmatines are considering the sale of the Stigmatine Land or a portion thereof, which sale may include the lease-back of a portion of the Stigmatine Land by the Stigmatines, among other terms and conditions;
- C. The City has expressed interest in acquiring the Stigmatine Land for certain municipal purposes; and
- D. The City and the Stigmatines are entering into this Agreement in order to explore whether a mutually acceptable purchase and sale agreement between the parties regarding the Stigmatine Land can be negotiated.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

- 1. The period commencing on the day following the Effective Date and expiring at 5:00 P.M. on the day that is thirty (30) days thereafter shall be referred to herein as the "Standstill Period."
- 2. During the Standstill Period:
 - A. The Stigmatines shall not entertain or accept offers, or otherwise market, the Stigmatine Land.
 - B. The City shall not take any action to adversely impact the value of the Stigmatine Land, such as rezoning or eminent domain takings ("Adverse Action"). In the event the City is now contemplating, or during the Standstill Period contemplates taking an Adverse Action, the City, through the Office of the Mayor shall promptly notify the Stigmatines thereof, at which time this Agreement shall immediately become null and void and without recourse to the parties, and the Stigmatines may take such actions as the Stigmatines may elect. In the event the

JAM

Stigmatines learn that an Adverse Action has been taken, without receipt of notice from the Office of the Mayor, this Agreement shall immediately become null and void and without recourse to the parties, and the Stigmatines may take such actions as the Stigmatines may elect regarding the Stigmatine Land.

- C. The Stigmatines will cooperate reasonably with the City, at the City's sole expense, regarding the City's desire to engage in customary due diligence matters, such as appraisal, title examination, surveys, building and property inspections, and the like, including by not limited to those under M.G.L. c. 21E; provided the City promptly furnishes copies of all such due diligence materials produced for it, or by it, to the Stigmatines.
 - D. The parties shall pursue good-faith negotiations with the intent of entering into a mutually satisfactory agreement regarding the transfer of the Stigmatine Land to the City; provided that if such agreement cannot be concluded during the Standstill Period, upon the request of either party the Standstill Period shall be extended for an additional thirty (30) days, during which extended period all the terms and conditions of this Agreement shall be in full force and effect.
3. This Agreement may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

[signature page follows]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as a sealed instrument under the laws of the Commonwealth of Massachusetts and delivered as of the date first written above.

CITY OF WALTHAM

TRUSTEES OF THE STIGMATINE FATHERS, INC.

By: Jeannette C. McCarthy, Mayor
Name: Honorable Jeannette McCarthy
Title: Mayor
5/11/16

By: Robert S. White, CCS
Name: Reverend Robert S. White, CCS
Title: President
05-13-2016

Approved as to Form:

Patricia A. Gadi
John B. Cervone, Esquire
Asst. City Solicitor