

Waltham City Council
Executive Session
May 29, 2018

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City Council

Present: Councillors Darcy, Logan, McMenimen, Fowler, McLaughlin, Romard, Diane LeBlanc, Mackin, Harris, LaCava, Randy LeBlanc, Brasco, Stanley, Vidal

Absent: none

Non-council members present: Mayor Jeanette McCarthy, City Solicitor John Cervone, First Assistant Solicitor Patricia Azadi

Clerk: Joseph Vizard

The Executive session convened at 8:59 pm.

Mayor McCarthy passed out a communication dated May 29, 2018, regarding 0 Chesterbook Road. The Mayor reviewed the document. The Mayor said the Council had the option of transferring this land to the School Department. The Mayor indicated that there are some advocates that would oppose this transfer. Councillor Logan asked if the land was in the general inventory. The Mayor said it was and that it could be transferred to the School Department without a declaration of surplus. Councillor Logan asked the Mayor if she was looking for a vote. The Mayor said no, and that she would like to review this again next week. Councillor Harris asked if the purpose of transferring the land was to augment the High School site. The Mayor said yes. Councillor Harris asked questions about the location of the parcel. Councillor Stanley asked what votes would be needed. The Mayor said it would require approval of the draft order that is attached to the communication. Councillor Stanley asked how many votes would be required. The Mayor said that 10 votes were required. Councillors returned their copies of the communication to the Mayor.

Mayor McCarthy passed out a communication dated May 29, 2018 regarding 240 Beaver Street. Councillor Randy LeBlanc recused himself and exited the room. The Mayor summarized the options for the property, the City could buy the property, eminent domain is not an option because it is state property, and the city could execute a stand still agreement with the University of Massachusetts (Umass). The Mayor also discussed a 200 year ground lease. The Mayor said the Law Department would have to review issues with the Commonwealth's deed to the property. The Mayor said there are complications with the property that were identified in legal research conducted by the Girl Scouts. There is a Bill of Complaint that covers the property and this was recorded with the deed. The Mayor read the proposed standstill agreements. Councillor Logan said no matter what we use the land for the city should pursue this purchase. The Mayor agreed. Councillor Logan asked about

the contaminated portions of the land. The Mayor indicated that she does not recommend purchasing the contaminated portions of the land. Councillor Logan asked if there were legal issues with putting the High School on this site. First Assistant City Solicitor Patricia Azadi explained that the land was given by the estate of Cornelia Warren and if used for a purpose other than what was articulated it is to revert to the City as parkland. On this site the Trustees of the Cornelia Warren Estate filed a Bill of Complaint with the Massachusetts Supreme Judicial Court to clarify the uses. The property was transferred to the Massachusetts Agricultural College for the purposes under which the College operated. UMass took over the land, and has been using it in a manner consistent with the court decree. UMass has asserted that they could use the property for other educational uses other than agricultural use. Attorney Azadi explained the principle of constructive trust and how this impacts the potential use of the site. Councillor Logan asked if the City could argue using the property for educational purposes is consistent with the allowed use. Attorney Azadi said the intended use appears to be agricultural education not education broadly. Councillor Logan asked why UMass thinks the property could be used for other educational purposes. The Mayor said that UMass does not acknowledge that there is a defect in the title. The Mayor read information about the history of the property from her communication. The Mayor identified the sections of the Bill of Complaint that are restrictive. The Mayor read from an opinion that a lawyer wrote for the Girls Scouts in 1996 that was included in the Mayor's Communication. The Mayor said she believes UMass will work with the City. The Mayor expressed concern that the need to clarify the court decree will lead to a number of amicus briefs. The Mayor said there is a portion of the deed that references other purposes, but it is unclear if this was intentional. Attorney Cervone said the City could ask its bond counsel if bonds could be sold for this purchase given the questions regarding the deed. Attorney Cervone said that changing the Supreme Judicial Court decree could take years. The Mayor spoke about the land reverting to the City and complications with the will of Cornelia Warren. The Mayor and Attorney Azadi reviewed the reverter clause and said that the City gaining ownership of the property is key. Councillor Logan moved to authorize the Mayor to sign a stand still agreement with UMass. Councillors Brasco, Darcy, Fowler, Harris, LaCava, Logan, Mackin, McLaughlin, McMenimen, Romard, Stanley, Vidal, and President LeBlanc voted in favor (13). Councillor Randy LeBlanc was recused and did not vote (1). The motion was approved. Councillor Harris asked questions about what activities will take place while the agreement is in place, Councillor Harris asked what the City would have to do after the property is purchased. The Mayor said the title work talked about earlier would have to be completed. Councillor Harris asked if there could be other uses other than the High School if the High School were to go there. The Mayor said that there are only 23 usable acres and they would be only for the High School if it is the High School location. Councillor Mackin asked what bond counsel is. Attorney Cervone explained that bond counsel reviews matters to make sure the city bonds can be sold on Wall Street. Councillor Mackin asked the Mayor what the School Building Authority wants to see from the City. The Mayor said that on June 6, 2018 there would be a meeting and at this point it appears that the City's options are to build on the

current site or reapply later. The Mayor would like to have a standstill agreement in place before the meeting but that depends on a Umass Board of Trustees meeting approving the agreement. Councillor Mackin asked if there is an accessibility concern with this site. The Mayor said no and that it is fairly close to the current high school site. Councillor McLaughlin asked the Mayor when discussions with Umass began. The Mayor said she began talking to Senator Barrett about it in January. Councillor McLaughlin said that we need to move quickly and tighten things up. Councillor McMenimen reviewed the environmental issues in the area caused by the three oil tanks that were in the area. Councillor McMenimen spoke about the millions of dollars that Duffy Brother had to spend to clean up the area and said that in heavy rains the oil still comes up. Councillors returned documents to the Mayor.

Councillor Randy LeBlanc re-entered the room.

554 Lexington Street

The Mayor passed out a document regarding 554 Lexington Street. The Mayor summarized the document and reviewed the risks that were outlined in the document. The Mayor reviewed the options for the city acquiring the land. The Mayor mentioned that the Archdiocese could decide to develop the land. The Mayor presented a March 2, 2018 communication from Attorney Adam Patton. The Mayor said that Father White is still the Provincial the Stigmatines. The Mayor presented a March 9, 2018 letter from Attorney Patton that indicates that the Stigmatines are reviewing an offer made by the City. The Mayor presented subsequent communications that indicated the Stigmatines were still reviewing the offer. Council President LeBlanc disclosed that Father White had called her to express that he was troubled with a zoning proposal regarding the site. President LeBlanc said that she told Father White she could not discuss the matter with him. Mayor McCarthy pointed out that the City is waiting to hear a response on offers and the only thing that the Stigmatines reached out on is the zoning proposals. The Mayor said that the Sigamtines have had a history of negotiating in bad faith. The Mayor reviewed events that happened in 2016 when the Stigamtines were working with a developer on a deal to sell the property. Councillor Logan said it looks like they are waiting to hear from Rome. The Mayor said that Father White as the President of Stigmatine Fathers and Brothers Inc. has the authority to sell the property. The Mayor thinks this is another example of the Stigmatines not negotiating in good faith. The Mayor said that when eminent domain authority was taken away the Stigmatines refused to negotiate with the City. The Mayor questioned why they would be worried about zoning and eminent domain if they were not selling the property. Councillor Logan asked the Mayor if offering the Stigmatines \$30 million for the property would close the deal. Mayor McCarthy said she was not sure because the City has not seen all of the assumptions in the Avalon Bay proposal. Councillor Harris asked questions about a feasibility study. The Mayor said the cleanest way to strike a deal on the Stigmatine property is an eminent domain taking. The Mayor pointed out that down zoning the land is very complicated. The Mayor said that the City is in a weakened position because the Mayor and the

Council are not on the same page. The Mayor reviewed the offer for \$18 million and said that Attorney Patton had mentioned a price of \$25.4 million. The Mayor said she submitted a funding request for this amount. Councillor Randy LeBlanc asked questions about the \$18 million offer. The Mayor said she felt 24 million was too high because of the contingencies involved. Councillor LaCava expressed concern about the City not taking action to acquire the property. Councillor Stanley said his recollection of the prior taking authority was that it was for a friendly sale. The Mayor disagreed with this. Councillor Stanley said he is willing to support a higher level of funding for the purchase of the land if it will result in a friendly sale. The Mayor felt that even with a higher offer that without eminent domain authority the City would not be successful in acquiring the land. The Mayor pointed out the offer at \$18 million would have allowed the priest to stay on the property for a period of time. Councillor Stanley said that he supports paying a higher price for the property but is concerned with taking private property by eminent domain. Councilor Fowler pointed out if the property is sold to a 40B developer the city may have a more difficult time taking the property. The Mayor said that the discussion should be about whether the property is needed for a school or not and that other potential uses should not be part of the consideration. Councillor Romard expressed concern about taking this land and questioned if it could be considered discriminatory. Councillor Mackin asked Attorney Cervone if there is a problem with discrimination related to taking the property. Attorney Cervone pointed out that the City has taken religious property before including land from the First Baptist Church. Councillor Mackin moved to suspend Rule 2 to continue beyond midnight. Roll Call: Voting in favor were Councillors Brasco, Darcy, Harris, LaCava, Randy LeBlanc, Logan, Mackin, McLaughlin, McMenimen, Stanley and President LeBlanc (11). Voting no were Councillor Fowler, Romard and Vidal (3). The motion passed. Councillor Brasco made a motion that the Law Department send a final offer to the Stigmatines of \$25.4 million and to request that the Stigmatines respond prior to June 4, 2018. Roll Call: Councillors Brasco, Darcy, Fowler, Harris, LaCava, Randy LeBlanc, Logan, Mackin, McLaughlin, McMenimen, Stanley, Vidal and President Diane LeBlanc voted in favor of the motion (13). Councillor Romard voted against the motion (1). The motion passed. Councillor Brasco moved to adjourn the Executive Session. Voting in favor were Councilors Brasco, Fowler, Harris, LaCava, Randy LeBlanc, Logan, Mackin, McLaughlin, McMenimen, Romard, Stanley, Vidal, and President LeBlanc (13). Councillor Darcy voted no (1). The Executive session was adjourned at 12:05 am.

Respectfully submitted,
Joseph W. Vizard, Assistant City Clerk