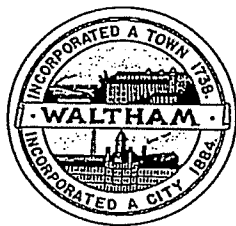


DOCUMENTS DISTRIBUTED IN EXECUTIVE SESSION

City of Waltham



**Special Meeting
of the Waltham City Council**

Monday, September 10, 2018 at 6:30 PM

**City Hall
610 Main Street
City Council Chamber - 2nd Floor**

Agenda

Under the provisions of Section 2-5 of the City Charter, I hereby call a Special Meeting of the City Council.

The purpose of the meeting is to hold an executive session to discuss ongoing litigation and litigation strategy with respect to the property at 554 Lexington Street, 75R Lincoln Street and 111R Lincoln Street, Waltham, known collectively as 554 Lexington Street, Waltham, and to consider the approval and disclosure of the minutes of executive sessions held on May 28, June 4, June 11, June 18 and June 25 of 2018.

No other matters will be discussed.

Diane P. LeBlanc
Council President

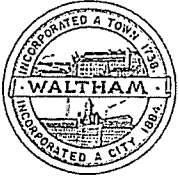
Mayor

From: Mayor
Sent: Monday, August 20, 2018 12:38 PM
To: Waddick, Robert; drewechelson@walthampublicschools.org
Cc: Cervone, John
Subject: Stigmatine Litigation
Attachments: doc03527320180820114102.pdf

Dear City Clerk and Clerk of the Waltham School Committee,
Attached is a communication from me with attachments. Please provide a copy to your respective members, City Council and School Committee.

Thank you.

Mayor McCarthy



City of Waltham

Jeannette A. McCarthy
Mayor

CONFIDENTIAL

CONFIDENTIAL LITIGATION MATTER

TO: The Waltham City Council, Waltham School Committee and
City Solicitor John Cervone
FROM: Jeannette A. McCarthy *JAM*
RE: Stigmatine Litigation
DATE: August 20, 2018

Please be advised that the Law Department has filed an action for Declaratory Judgment relating to the claims and actions of the Stigmatines' attorneys, on behalf of its client, the Trustees of Stigmatine Fathers, Inc.

Enclosed please find a copy of the letter the Stigmatines' attorneys filed with the Massachusetts School Building Authority and two communications from City Solicitor Cervone.

JAM/tbm
encl.

LAW OFFICES OF PETER E. FLYNN, P.C.

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Saugus, Massachusetts 01906
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Email: Flynn.law@verizon.net
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Peter E. Flynn

Jason R. Scopa
Thomas F. Walsh
Daniel J. Keating*
*Of Counsel

July 18, 2018

Deborah B. Goldberg, Chair
Massachusetts School Building Authority
40 Broad Street
Boston, MA 02109

cc: James A. MacDonald, Chief Executive Director, MSBA
Jack McCarthy, Executive Director, MSBA
Kenneth Wissman, Chief Financial Advisor, MSBA
Matt Connolly, Director of Project Controls, MSBA
Dr. Drew Echelson, Ed.D., Superintendent of Schools, Waltham

Re: Waltham, Massachusetts - Proposed Project - High School

Dear Ms. Goldberg:

Please be advised that I along with Adam Paton from the Law Offices of Zimble and Bretter, Boston, MA formally represent The Trustees of the Stigmatine Fathers, Inc., a Massachusetts religious corporation [hereinafter, "the Stigmatines"] with regard to the City of Waltham's proposed eminent domain taking of property owned by the Stigmatines located on and off 554 Lexington Street, Waltham, MA.

The purpose of this correspondence is to inform the Massachusetts School Building Authority [MSBA] that our client intends to challenge the validity of the aforementioned purported eminent domain taking which was voted and approved on June 25, 2018 by the Waltham City Council and approved by the Mayor. This legal challenge will be filed in Middlesex County Superior Court within the next 10 days. To be clear, this is a challenge of the underlying validity of the taking and is separate and distinct from a G.L. c. 79 lawsuit contesting the amount of compensation. We will likely be seeking injunctive relief.

Whereas the validity of the taking is now going to be challenged, the City of Waltham does not have full ownership, control and use of the site, which means that any issuance or execution of a project funding bond agreement would be in violation of MSBA protocol and state law. Our client

objects to MSBA participation in funding a project at this location. Also, since the Stigmatines are vigorously pursuing all of its legal rights in these suits, MSBA could be a named party in same.

Our client will be litigating the issue of ownership and control of the site. We will be requesting that the Superior Court nullify and vacate the Order of Taking which has been or will be recorded by the City. Under the various provisions of Massachusetts G.L. c. 79 and 79A, we are specifically seeking a return of the land to the Stigmatines.

Even if the Stigmatines were in the future seeking damages, the recording of the taking at the Middlesex Registry of Deeds does not prohibit in any way the challenge to the validity of condemnation proceedings. It also does not prevent equitable relief, including title being restored to the Stigmatines. See, Radway v. Selectmen of Dennis, 266 Mass. 329, 165 N.E. 410 (1929). Barnes v. Peck, 283 Mass. 618, 187 N.E. 176 (1933). Therefore, our client is now moving forward to enjoin the condemnation proceedings by establishing that the taking vote was invalid since it did not conform to statute, was unconstitutional, and was made in bad faith.

With regard to additional background information, there have been threats from various City Officials over the last several years. In fact, the debate over where to locate a new high school has been ongoing for more than two years. It is important to emphasize that the Stigmatine fathers have been located in this locus for over almost 100 years. It has historically provided a year-round schedule of religious retreats and marriage preparation courses, sanctuary for elderly and disabled Priests and has a number of facilities including significant religious monuments and shrines and a gift shop. It was not and is not a site that the Stigmatines intended to sell or relocate from. However, as a highly desirable site for multi-purpose development the Stigmatines would at all times have the right to sell the property and relocate. In 2016, the Stigmatines engaged professional Real Estate Consultants and Brokers to help them determine the market value of their property and whether there was interest from developers. It appears that when City Officials learned that the Stigmatines had undertaken that process, it threatened to take the property by eminent domain, believing that the property was going to be marketed. This was not true, but has been at the heart of the battle over whether to take the property by eminent domain for more than two years. The Stigmatines have been put under a "Pall of Uncertainty" and under no conditions could they replicate the historical roots of this sanctuary property. This property involves over 46 acres with multiple improvements and truly represents the Stigmatine's public and private identity. It is a place where the Stigmatines have provided a meaningful and even life-changing ministry for thousands upon thousands of men, women, and children through their retreats and other spiritual programs offered at the Espousal retreat house. Providing a home for retired Priests who are no longer capable of continuing in the ministry has been a hallmark of their existence. Any relocation or taking will cause irreparable harm for this esteemed religious order.

Not only is the City in violation of Mass.G.L. c. 79 but just as importantly, it is in complete violation of the Massachusetts Relocation Requirements and Commonwealth of Massachusetts regulations under G.L. c. 79A. Relocation benefits are a necessary prerequisite to a taking under 79A § 2 which specifies that no acquisition, rehabilitation, demolition, or other improvements which shall involve the displacement of occupants of dwelling units or business units shall be made unless and until the relocation bureau has qualified a relocation advisory agency to give relocation assistance to the occupants to be displaced. The City of Waltham did not adhere to this very first step requirement and further, under 79A, the displacing agency shall have a relocation plan at least 45 days before the anticipated date of property acquisition. Whether a project is deemed large or small the Relocation Bureau will review relocation plans by the City

which in this situation is non-existent. This property is a massive site, in excess of 46 acres with multiple buildings and improvements of historic and religious significance.

A significant and fatal flaw to the validity of this taking is that the City did not have a timely appraisal on the night of the vote by the City Council. The only purported document as a basis of valuing the subject property came from an appraisal that was undertaken more than two years before the vote by the City in June of 2018. This clearly does not meet the standards required under Chapter 79 for an appraisal on the day that the appropriation was made and voted upon.

It is not the "public purpose" aspect of the taking that the Stigmatines challenge but, rather, the City's use of the taking process for the purpose of stopping a legal real estate development. The duplicity of City officials for at least two years prior to the taking was obvious. Our client's new complaint will specify the City Officials and departments that knowingly deprived our client of its Constitutional rights. Several City Councilors, the Mayor and other city officials will be deposed, and it is expected that they will be forced to admit that they knew the taking was made under the guise of the school project and that the primary intent of the taking was to eliminate a residential apartment complex or any other development by the owner.

The MSBA is advised that a taking - while appearing proper on its face - may nevertheless be invalid if it is undertaken in bad faith. "Bad faith is not limited to an action taken solely to benefit a private interest. It includes the use of the power of eminent domain solely for a reason that is not proper, even though the stated public purpose or purposes of the taking are plainly valid ones." See, Pheasant Ridge Associates Limited Partnership v. Town of Burlington, 399 Mass. 771, 506 NE 2d 1152 (1987), the landmark validity challenge matter in Massachusetts where it was held that the taking of land simply to block market, low or moderate income housing in a community was in bad faith and therefore invalid.

In the Stigmatine matter, the taking was made under the guise of the new high school, being the purported public purpose but, again, the primary purpose was to block development. In the context of the validity challenge, The Stigmatines will produce public officials and private citizens that may be expected to testify as to their specific knowledge of the City's actions while staging a scenario for an eminent domain taking after first satisfying the MSBA's initial requirements for eligibility. The process can only be described as sinister. When a Superior Court jury and/or judge are presented with these facts, and learn that a number of other sites were considered and The Stigmatines site was pushed as the choice in order to block an otherwise lawful development, they will almost certainly determine that bad faith was involved. In fact, audio tapes exist clearly establishing that it was the Mayor's intent and design to box in and block any attempt by the Stigmatines to develop their property. The shroud and pall of uncertainty placed on the property by earlier declarations is stark. Even recently, the Mayor declared the Stigmatine land has been in the City's open space plan since 1994. Prudently informed buyers knowing that the City was targeting this property for 25 years for eminent domain would have significant concerns about purchasing it for development of any kind. All of this comes at the expense and detriment to the Stigmatine Fathers. Should that be the finding, the property owner would prevail on the challenge to the validity and the title will revert back to The Stigmatines. See, Mugar v. Massachusetts Bay Transportation Authority, 28 Mass. App. Ct. 443, 552 NE 2d 121 (1990).

Further, the facts provided herein are only the tip of the iceberg involving the City of Waltham's bad faith and disregard of the process constitutionally required in an eminent domain procedure.

This is a municipality that is requesting a multi-million dollar plus bond from MSBA. Certainly, the city has an obligation to act responsibly with those funds. The City's actions should give pause and concern on all levels. We are confident that the Superior Court of Middlesex County will grant relief in the form of restoring record title to the Stigmatines.

In determining whether the condemnation may be permitted, "the trial judge's role is more than ministerial. The trial judge must determine that the condemnor is properly exercising its delegated authority before a taking can be sustained." Nichols on Eminent Domain, Vol. 7 §2.11. Prior to validating the taking, the court must determine whether the taking authority has demonstrated that the taking is for a valid public purpose and in good faith. Usually, the taking authority will prove same through the testimony of public officials. Nichols on Eminent Domain, Vol. 7 §2.11. As mentioned above, we confident that the court, upon hearing the expected testimony by various Waltham officials, will find the taking invalid and grant relief in the form of restoring record title to The Stigmatines.

The current cost projections for the school project will be based upon certain estimated dates of job completion and construction costs for the structure. All such estimates will now be substantially affected by the considerable delay of the litigation discussed herein - even if the city ultimately prevails in our client's validity challenge and the expected appeals.

Obviously, should the MSBA grant a bond to the City of Waltham while a Superior Court challenge to the validity of the taking exists, it would be at great peril to the MSBA, which would unfortunately be in violation of all applicable standards and regulations. On behalf of our client, I will furnish the MSBA with a "courtesy copy" of the Superior Court complaint.

Very truly yours,

Peter E. Flynn, Esq.

Peter E. Flynn, Esq.

Adam B. Paton, Esq.

Adam Paton, Esq



City of Waltham
MASSACHUSETTS

EXH 8

LAW DEPARTMENT

City Solicitor
JOHN B. CERVONE

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

VIA EMAIL & FAX

July 18, 2018

Attorney Peter Flynn
78 Essex Street
Saugus, MA 01906
FAX: 781-233-3977
Flynn.Law@verizon.net

Attorney Adam Paton
Zimble & Brettler, LLP
21 Custom House – 2nd Floor
Boston, MA 02110
FAX: 617-723-9811
apaton@zimbret.com

RE: City Acquisition of Real Estate of Stigmatine Fathers, Inc. known and numbered 554 Lexington Street, 75R Lincoln Street, 111R Lincoln Street Waltham, MA.

Gentlemen:

Given Attorney Flynn's only recent involvement in the above it's appropriate to very briefly outline some salient facts he is likely unaware of, and then follow up a specific aspect of our final meeting status:

1. At least since the advent of the statute known as the "Community Preservation Act", and its enunciated public purposes, the City of Waltham had included in its Master Plan the acquisition of the above property. Consistent with such planning in this single family residence district, the City previously acquired contiguous to the Stigmatine's sites, 2 other parcels that had not yet been developed into single family housing (e.g. the parcel known as Sanderson Heights, approximately 26 acres adjoining the Stigmatine property to the west, and another smaller parcel contiguous to the northwest).
2. Based on communications with then Stigmatine Director in Residence (who had been asking the Mayor for assistance in various matters) the City had previously understood that the Stigmatine's property would be first offered to the City if the Stigmatines were ever considering marketing any of it for sale. Contrary to this understanding in January 2016 the Mayor was surprised to hear that the Stigmatine's had been in negotiations with developers and proceeding to an agreement to sell at least a majority of it. After the Mayor learned this she contacted the Stigmatines and then she was contacted by Atlantic Development & Management Company (Atlantic), who confirmed that they were representing the Stigmatine's in marketing this property. In January 2016 correspondence Atlantic

reconfirmed the above and said they would share an appraisal(s) with the City and agreed to enter into negotiations with the City to sell this property. In the many communications back and forth during these negotiations it was stated that because of the advanced age of the buildings on site and lack of regular renovations and repairs, and those current costs – and given the Stigmatine’s inability/“reduced” financial ability to pay for these plus their dwindling number of priests it was necessary to sell the property. (In fact Atlantic mentioned that because of the few remaining priests, most elderly and/or retired, they would be planning on acquiring a much smaller off site residence facility for them with such sale proceeds). (N.B. Given the advanced age of these buildings and period of construction many if not most would contain asbestos and lead paint and thus exceptionally high “remediation” cost components under M.G.L. 21E and the germane DEP regulations – such costs would be unavoidable whether the structures were either renovated/repaired and demolished. Given our experience with these such costs they are probably in the “seven figures”. If oil tank or line leaks have not been similarly replaced and maintained these could implicate even higher Chapter 21E remediation costs – and, as the City’s similar experience at a school demonstrated, potentially dwarfing the asbestos and lead paint remediation costs). Atlantic allowed the City/High School designers limited access onto the site for their preliminary new high school design study in 2016. But after Reimer & Braunstein were dismissed and Atlantic’s involvement eventually presumably reduced the Stigmatine’s would no longer agree to site access for school feasibility study and similar exploration. In a related area despite city requests we received no documentation or other definitive information about buildings, conditions, residency, etc.

3. The City engaged an appraiser and he proceeded with his analysis (N.B. the appraiser was not allowed to proceed via consultant or otherwise to “test” for the above Chapter 21E “costs/exposure” and so did not speculate as to any amounts costs/subtractions from any gross value to arrive to a “net” value. But he is sure, as outlined in the Avalon Bay contingent offer, that Bob LaPorte would agree such costs, like subdivision engineering, utilities and road construction costs need to be “netted out” from any gross lot value). The City’s appraiser had these Stigmatine/Atlantic’s development materials “peer” reviewed “which revealed a few erroneous assumptions etc., and reduced the hypothetical single family subdivision from 99 to 96 lots, then “factored” the site development costs (except not including any of the above Chapter 21E costs) and was proceeding to his appraised value and the City asked for the Stigmatine’s appraisal as previously promised by Atlantic January 24, 2016 but were told it was not yet available.
4. Atlantic had asked the City to consider a different zoning/use than the existing single family zone and they ultimately presented a developer’s preliminary engineering and July 2015 plan, a botanist’s report ostensibly obviating wetlands jurisdiction, and a 3 page Avalon Bay offer to purchase expressly contingent and conditional on obtaining all permits necessary to construct an apartment complex(es) in this single family zoned district. for 450 units (“...\$53,333 per approved apartment unit subject to the conditions and assumptions outlined below...” “...assures utilities and infrastructure is sufficient capacity to service

(450 units)... " Agreement terminated if Avalon Bay is not... "satisfied" ...for any reason and in its sole discretion...") N.B. Other explicit conditions include no hazardous waste or other contamination and giving Avalon Bay explicit permission to conduct all site testing including for Chapter 21E, geotechnical (i.e. all the ledge on the property) environmental etc.

5. The City and its appraiser (Bowler) were asked to consider as an alternative valuation this conditional offer from Avalon Bay, notwithstanding that no such apartment complex had ever been located in a single family zone nor had Waltham, even in locations zoned to allow apartments/multifamily, ever granted more than 350 units. (N.B. This constitutes foundation factors demonstrating "speculation" allowing the court as "gatekeeper" to deny admissibility for plaintiff's failure to carry its burden to prove "reasonable likelihood" such permits would occur).
6. In the interests of good faith, indulgence to the Stigmatine's, proceeding quickly for the new high school, etc., in which the Mayor was proceeding, she proceeded as Atlantic/Stigmatine's requested and was willing to add Bowler's \$15 million appraisal and to go as high as \$18 Million subject to appropriation, (which occurred). Pursuant to the mandates of the Standstill Agreement we then negotiated terms of agreement and were proceeding to drafts of Purchase & Sales Agreement. We then had tentative agreement for a Purchase & Sale Agreement and Reimer & Braunstein and Atlantic presented drafts of Purchase & Sale on which we were proceeding. However, in summer 2016 when despite the terms of the "Standstill Agreement" we did not receive a signed Purchase & Sale, we were told it would be on the way. After weeks passed we learned Reimer & Braunstein were dismissed.
7. Notwithstanding several extensions to the Standstill Agreement there was little substantive progress made. The City continued to offer solutions without success. There were eventually a couple of meetings requested with Stigmatine principals to attempt to resolve the impasse, which included showing them potential alternative places of residence at the former Fernald School, which had been recently occupied by the Commonwealth of Massachusetts for handicapped and elderly residents – which did need cleaning and minimal renovation which the City offered to do; and which also included a separate on site Chapel also needing some repairs the City was willing to provide.
8. Rather than catalogue more of the above I'll proceed to what now appears to be the salient issue to the Stigmatine's: price. The Stigmatine's authorized attorney, Adam Paton, Esq., on behalf of and with Father White and Father Baldassari receiving copies, explicitly identified in writing to the City Council the value of their property at \$24,500,000 ostensibly per their appraisal (based on the above conditional Avalon Bay offer); this \$24,500,000 was also reiterated by Attorney Paton, with Father White present (i.e. party admission) at public hearing before the City Council.
9. In the interest of time I'll segue to our final meeting, where you proposed a new demand of \$39 Million Dollars – still without ever giving us an appraisal (let alone any based on extant Massachusetts Chapter 79 law or accepted appraisal principles).

10. Notwithstanding the above outlined speculative "apartment complex" basis of the above \$24,000,000, and then \$25,400,000 claimed value, at our final meeting the City Council President was immediately ready to offer \$25,400,000 based on her "prediction" the city council would approve that additional appropriation. When you demanded I tell you whether I would recommend it I indicated that if it were a "clean" deal without delay and given the other exigencies (e.g. MSBA) militating for a very rapid "closing", etc., I would recommend that \$25,400,000. You then demanded that the Mayor also agree and authorize that; and I told you that consistent with my above outlined "recommendation", based on my brief conversation with her while she was away/out of state she did agree, and I also told you that after 2 p.m. I could probably get a message to have the Mayor call me by phone.
11. When I asked whether that would close the deal you then did not agree and would not explicitly state what you would agree to. In brief you complained that unless your "dance partner" were in the room you refused to consider our offer, or state your/any counter. Given how the initial meetings had proceeded the city negotiating team was, to put it euphemistically, surprised at this stone wall. When I continued to reiterate our understanding that given the Stigmatine's continued refusal to produce an appraisal and given your only articulation(s) that all your figures were based on "unpermitted/apartment complex" zoning in this single family zone and the City never having permitted that before, and even in apartment zones never allowed more than 350 units, after our "team" offered Attorney Paton's and Father White's "apartment zone based" \$25,400,000 demand, we couldn't proceed higher. I candidly reiterated that the Mayor would not initiate a new funding request to purchase this at \$39,000,000 million or anything in the 30 millions.
12. But I reiterated my request for your response to the \$25,400,000 and basically after again hearing your "dance partner" comment objection, and when I emphasized that in the interest of expediency we were now willing to increase approximately 40% higher from the pro tanto, your only response was to again reference your opinion that since your "dance partner" was not there you didn't consider it authorized but you would consider dropping from 39 to 37 million (i.e. less than 10%).
13. To obviate any questions regarding the above I enclose the Mayor's written confirmation of the above \$25,400,000. This offer will remain open until 3 p.m. tomorrow, July 19, 2018 after which time if not accepted it will be considered rejected by you and withdrawn by the City. Please signify any acceptance in writing on this letter to myself and/or Attorney Azadi as counsel by such time. N.B. Also this is without prejudice to any and all other abilities, rights, claims, counterclaims or other actions the City may/does have.
14. Rather than cataloging all the facts/actions demonstrating the City's good faith throughout this long process I will allude to only the most recent one. During a customary zoning review by the City Council, among other items the City was amending its zoning map within the City's Conservation Recreation Zone – already contiguous to the Stigmatine's site – to include the Stigmatine's property. Attorney Paton and Father White objected to that, so in a sign of good faith the City withdrew

your site from such inclusion (but proceeding with other amendments not specific to your site). I firmly believe the record of overall communications demonstrates that ordinary people would concur in the overall good faith of the City during this process. Do you think an objective outside observer reviewing the record(s) would find the obverse?

City by its attorney

John B. Cervone, Esq.

I had been told by someone involved in an analogous case with Attorney Flynn, that he would threaten a civil rights lawsuit to challenge the c. 79 taking's validity and would cite the *Pheasant Ridge* case as rationalization. Again, in interests of good faith and full disclosure and hopefully obviating useless, "costly" lawsuits, I reemphasize my prior statement and as I stated in the final meeting even the SJC stated Pheasant Ridge was "a case most unusual and not likely soon to be replicated".... The SJC in *Pheasant Ridge* emphasized in its explication the only reason it denied the Town's appeal was because, the town did not even deny on the summary judgment record or even produce any evidence in rebuttal of the allegations of bad faith. Based on the Town's essentially admitting bad faith, *Pheasant Ridge* is the only modern Supreme Judicial Court case that allowed a challenge to the validity of the taking. In particular, the *Pheasant Ridge* court even mentioned that if before the Town's taking, (ostensibly for parks and recreation purposes) and the Plaintiff filing of its Chapter 40B application, if the Town had previously considered the subject property (or something in that vicinity) for taking for park and recreation or other municipal purposes, that would have been evidence nullifying the record of any "bad faith" Taking (at 399 Mass 778). However, in *Pheasant Ridge*, months before the Town's "Taking" plaintiff had previously filed their formal Chapter 40B application and proceeded through public hearings and subsequent filings on that Chapter 40B. Also there was no record of prior town discussion of potential uses for the site, nor did the Town. If it had done so the SJC indicated its assessment of the Taking's validity would be different. Clearly, Community Preservation Act, the City's acquisition of contiguous open space parcels and the City of Waltham's above outlined Master Plan and proposed siting of its new high school eliminates any "bad faith" evidence. After *Pheasant Ridge*, the SJC reemphasized the extremely limited potential for "bad faith" claims to attempt to challenge c. 79 validity. For example, even where landowners explicitly alleged that the eminent domain taking was intended to benefit private entities and thus in bad faith their lawsuit was dismissed on summary judgment in *Benev v. Prof Order of Elks v. Lawrence* 403 Mass 531, 537 NE2d 1233 (1988). The SJC found that even though part of this Taking would benefit a private entity, Emerson College, who was buying a portion of the land taken – the other two (2) components of the Taking were part of an overall urban renewal plan by the state and City of Lawrence, thus establishing a public purpose(s) ("...any benefits to a redeveloper are incidental to the main purpose, elimination of a substandard, decadent or blighted open area...city expressed considerable interest in the area before Emerson College's plans to relocate...")

In Ballatine v. Falmouth 363 Mass 760, 298 NE2d 695 (1973) The Town of Falmouth took land to provide off street parking facilities for the Woods Hole Martha's Vineyard and Nantucket Steamship Authority. That taking was challenged alleging that there was no public purpose to obtain that off Street parking for the Steamship Authority. Notwithstanding that allegation and their allegation of bad faith the Court dismissed the lawsuit because off street parking is legally included within the meaning of public purpose, even though it owned and was immediately administered by a private entity.

In Chelmsford v. Diabise 370 Mass 90-95, 345 NE2d 373 (1976) the SJC approved the town's eminent domain Chapter 79 Taking despite the allegations of bad faith as alleged (i.e. due to prior Chapter 40B application filed by landowners) since there was a public purpose for Taking that property. The SJC also mentioned that the town had previously considered this property for acquisition for conservation purposes.

Also, the Mass Appeals Court cited these same above SJC principles from Benev & Prof Order of Elks in HTA Lid. Partnership v. Mass Turnpike Authority 51 Mass App CT 449, 747 NE2d 707 (2001) where the landowner alleged that the Taking was only a fraudulent use to provide an adjoining private developer road access. The Appeals court warned the landowner that it needed to produce factual evidence of such fraud in order to avoid dismissal at the early summary judgment stage – i.e. prove “that the sole, or dominant, motive for the Taking was no public benefit but only to confer a benefit upon the private owners of the 9/90 development” (at 713).

Thus as reemphasized by the above “record” of facts and the above controlling SJC (and Appeals Court) precedent, it would be a regretful foray into bad faith to attempt to gain bargaining leverage by putatively challenging the validity of the taking to delay the school funding and construction process.



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

July 24, 2018

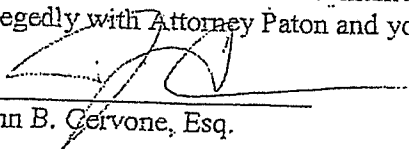
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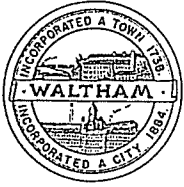
Peter,

This will only quickly follow up one piece of our conversation yesterday. Again because you are only recently involved (I think you said less than a month) I can understand how you cannot have all the underlying facts and circumstances beginning since the January 2016 letter from your client's agents, Atlantic Development Mgt., broading negotiations to sell the Stigmatines property, along with their then Attorneys Reimer & Braustein, representations and agreements relating to the "deal/agreements" to sell about six (6) months later.

As you discussed I enclose the Order of Taking recorded yesterday. As you are aware the jurisdictional prerequisites are not yet applicable to activate your clients Chapter 79 rights. However this informally notifies you that consistent with the above the city is not presently moving to "displace" your clients with the meaning of those statutes and regulations. We will be following up this with a formal notice and Chapter 79A details shortly.

As outlined above and my 7/18/18 letter to you and Attorney Paton since the Stigmatine's refused to consider "relocation" in any form and only would consider remaining on site they would not provide any of the information necessary to formulate any relocation plan(s) should their demand change. Even in our recent meetings/discussion that has remained consistent (however a very recent news report, allegedly with Attorney Paton and yourself, seems to contradict that).


John B. Cervone, Esq.



I

City of Waltham

CITY OF WALTHAM
CITY CLERK'S OFFICE

Jeannette A. McCarthy
Mayor

2018 JUL 30 A 10:23

RECORDED

August 2, 2018

TO: The City Council
RE: Stigmatine Update

Dear Councillors:

Enclosed please find:

1. July 18, 2018 letter from Mayor to the Trustees of Stigmatine Fathers, Inc.
2. Communications from Solicitor John Cervone.

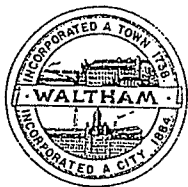
Sincerely,

Jeannette A. McCarthy

JAM/tbm

encl.

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



City of Waltham

Jeannette A. McCarthy
Mayor

July 18, 2018

The Trustees of Stigmatine Fathers, Inc.
554 Lexington Street
Waltham, MA 02452

RE: 554 Lexington Street, 75R Lincoln Street, 111R Lincoln Street, Waltham, MA

Dear Stigmatine Fathers:

Enclosed is my offer to purchase the above properties for \$25.4 million dollars, the amount communicated directly to the Waltham City Council by your attorney. This offer is subject to appropriation by the Waltham City Council.

Also enclosed are other communications from City Solicitor John B. Cervone, which are incorporated herein by reference.

Time being of the essence for the school children and taxpayers of Waltham, this offer automatically expires at 2:00 p.m. on Thursday, July 19, 2018.

This offer and communications are without prejudice to any and all other abilities, rights, claims, counterclaims, or other actions, the City, its agents, officials and/or employees may have in this or related matters.

Sincerely yours,

Jeannette A. McCarthy
JAM/tbm

encl.

cc: John B. Cervone, Esq.

SOLICITOR JOHN CERVONE'S
COMMUNICATIONS

Mayor

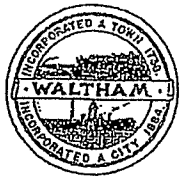
Sty

From: Rowland, Karen
Sent: Wednesday, July 11, 2018 3:07 PM
To: flynnlaw@verizon.net
Cc: Mayor; dianeblancatlarge@yahoo.com; pbrasco@brascofuneralhome.com; apaton@zimbret.com; Azadi, Pat; Cervone, John
Subject: Stigmatine Property
Attachments: SKMBT_60118071115080.pdf

Please see the attached letter from Attorney John Cervone.

Thank you.

Karen Rowland
City of Waltham Law Department
119 School Street
Waltham, MA 024451
(781)-314-3330
krowland@city.waltham.ma.us



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

FAXED TO: 781-233-3977

EMAILED TO: flynnlaw@verizon.net

July 11, 2018

Attorney Peter Flynn
78 Essex Street
Saugus, MA 01906

**RE: City Acquisitions of Stigmatine Property known as
554 Lexington Street, Waltham, MA**

Dear Attorney Flynn,

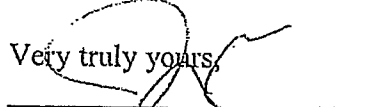
I read your 7/10/18 at 3:17 p.m. email (copy re-enclosed). Addressing your initial query, Attorney Paton's 7/3/2018 email established the next meeting at 3:30 p.m. on July 12, 2018 at the Stigmatine's property (see attached). As discussed with Attorney Paton we will presume such date and time unless explicit revisions are arranged.


Over the course of the preceding months we had provided significant data and information to Attorney Paton and his predecessor counsel, but we had not received reciprocal substantive data, except proposed Purchase & Sale Agreement from predecessor counsel.

Finally, as Attorney Paton is aware since our office is counsel to the City and all its officials, boards and commissions please direct all your further communications through our office, and not directly to our clients (as your initial email did).

Thank you for your cooperation, and looking forward to presumed substantive dialogue toward resolution.

Very truly yours,


John B. Cervone


Patricia A. Azadi *by JR*

CC: Mayor Jeannette A. McCarthy
Councill President Diane LeBlanc
Councillor Paul Brasco
Attorney Adam Paton

ZIMBLE & BRETTLER, LLP

ATTORNEYS AT LAW
21 CUSTOM HOUSE STREET
BOSTON, MA, 02110
TELEPHONE: (617) 723-2222 • FACSIMILE: (617) 723-9811
www.zimbret.com

ALFRED D. ELLIS, P.C.
I. AARON COHEN
ADAM B. PATON
CHARLES R. CAPACE

BENJAMIN J. BRETTLER
(1928-1999)
(of Counsel)
KENNETH H. ZIMBLE, P.C.

July 3, 2018

FOR SETTLEMENT PURPOSES ONLY

Via Email

John B. Cervone, City Solicitor
Patricia A. Azadi, Assistant City Solicitor
City of Waltham

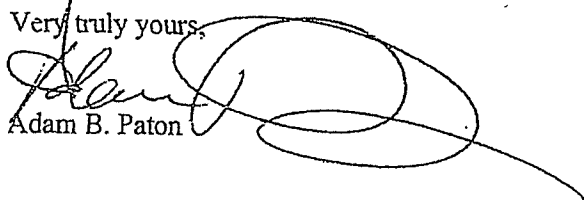
RE: Stigmatine Property/Meeting Schedule

Dear Attorneys Cervone and Azadi:

The Stigmatines are cancelling the meeting with the City scheduled for Monday, July 9, at 2:00 p.m. at the Stigmatine property.

The Stigmatines have engaged Peter E. Flynn, Esq., an eminent domain attorney, to help us work through this process. Attorney Flynn will be present at the meeting with the City on Thursday July 12th, presently scheduled for 3:30 p.m. at the Stigmatine property. At that time, the Stigmatines intend to discuss parameters for settlement. With that goal in mind, we would like the Mayor to attend this meeting on the 12th. We are willing to meet at any time of day on the 12th in order to accommodate the Mayor's schedule. Please let me know what time is convenient for the City negotiating team.

Very truly yours,


Adam B. Paton

cc: Fr. Robert S. White, C.S.S.,
Provincial Superior

Peter E. Flynn, Esq.

Cervone, John

From: Peter Flynn <Flynn.Law@verizon.net>
Sent: Tuesday, July 10, 2018 3:17 PM
To: 'mayor@city.waltham.ma.us.'; Cervone, John; Azadi, Pat; LeBlanc, Diane; Pbrasco@brascofuneralhome.com
Subject: Stigmatine Site - Scheduled Meeting Thursday, July 12
Attachments: NEREJ MALDEN POLICE DEPARTMENT ARTICLE.pdf

Mayor McCarthy, City Solicitor, Staff, and attending City Councilors,

I have been informed that there is a likely meeting concerning the acquisition of the Stigmatine property sometime on Thursday, July 12. I have been formally retained by The Stigmatine Fathers and will be joining Attorney Adam Paton at this meeting, time of day to be confirmed. To facilitate the discussions, I will be bringing some data and information pertaining to the property. The City of course is under no obligation to provide data or information of any kind unless they believe it might be helpful. I have attached an article from the New England Real Estate Journal because some of the themes and the process from that case could be very helpful to everyone involved. The article is a short read and the emphasis for what is going on in Waltham is on the process of how that case was resolved.

P.E.F.

Peter E. Flynn, Esq.
Law Office of Peter E. Flynn, P.C.
78 Essex Street
Saugus, MA 01906
781-233-2284
(Fax: 781-233-3977)
www.flynnlawoffice.com



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

VIA EMAIL & FAX

July 18, 2018

Attorney Peter Flynn
78 Essex Street
Saugus, MA 01906
FAX: 781-233-3977
Flynn.Law@verizon.net

Attorney Adam Paton
Zimble & Brettler, LLP
21 Custom House - 2nd Floor
Boston, MA 02110
FAX: 617-723-9811
apaton@zimbret.com

RE: City Acquisition of Real Estate of Stigmatine Fathers, Inc. known and numbered 554 Lexington Street, 75R Lincoln Street, 111R Lincoln Street Waltham, MA.

Gentlemen:

Given Attorney Flynn's only recent involvement in the above it's appropriate to very briefly outline some salient facts he is likely unaware of, and then follow up a specific aspect of our final meeting status:

1. At least since the advent of the statute known as the "Community Preservation Act", and its enunciated public purposes, the City of Waltham had included in its Master Plan the acquisition of the above property. Consistent with such planning in this single family residence district, the City previously acquired contiguous to the Stigmatine's sites, 2 other parcels that had not yet been developed into single family housing (e.g. the parcel known as Sanderson Heights, approximately 26 acres adjoining the Stigmatine property to the west, and another smaller parcel contiguous to the northwest).
2. Based on communications with then Stigmatine Director in Residence (who had been asking the Mayor for assistance in various matters) the City had previously understood that the Stigmatine's property would be first offered to the City if the Stigmatines were ever considering marketing any of it for sale. Contrary to this understanding in January 2016 the Mayor was surprised to hear that the Stigmatine's had been in negotiations with developers and proceeding to an agreement to sell at least a majority of it. After the Mayor learned this she contacted the Stigmatines and then she was contacted by Atlantic Development & Management Company (Atlantic), who confirmed that they were representing the Stigmatine's in marketing this property. In January 2016 correspondence Atlantic

reconfirmed the above and said they would share an appraisal(s) with the City and agreed to enter into negotiations with the City to sell this property. In the many communications back and forth during these negotiations it was stated that because of the advanced age of the buildings on site and lack of regular renovations and repairs, and those current costs – and given the Stigmatine’s inability/“reduced” financial ability to pay for these plus their dwindling number of priests it was necessary to sell the property. (In fact Atlantic mentioned that because of the few remaining priests, most elderly and/or retired, they would be planning on acquiring a much smaller off site residence facility for them with such sale proceeds). (N.B. Given the advanced age of these buildings and period of construction many if not most would contain asbestos and lead paint and thus exceptionally high “remediation” cost components under M.G.L. 21E and the germane DEP regulations – such costs would be unavoidable whether the structures were either renovated/repared and demolished. Given our experience with these such costs they are probably in the “seven figures”. If oil tank or line leaks have not been similarly replaced and maintained these could implicate even higher Chapter 21E remediation costs – and, as the City’s similar experience at a school demonstrated, potentially dwarfing the asbestos and lead paint remediation costs). Atlantic allowed the City/High School designers limited access onto the site for their preliminary new high school design study in 2016. But after Reimer & Braunstein were dismissed and Atlantic’s involvement eventually presumably reduced the Stigmatine’s would no longer agree to site access for school feasibility study and similar exploration. In a related area despite city requests we received no documentation or other definitive information about buildings, conditions, residency, etc.

3. The City engaged an appraiser and he proceeded with his analysis (N.B. the appraiser was not allowed to proceed via consultant or otherwise to “test” for the above Chapter 21E “costs/exposure” and so did not speculate as to any amounts costs/subtractions from any gross value to arrive to a “net” value. But he is sure, as outlined in the Avalon Bay contingent offer, that Bob LaPorte would agree such costs, like subdivision engineering, utilities and road construction costs need to be “netted out” from any gross lot value). The City’s appraiser had these Stigmatine/Atlantic’s development materials “peer” reviewed “which revealed a few erroneous assumptions etc., and reduced the hypothetical single family subdivision from 99 to 96 lots, then “factored” the site development costs (except not including any of the above Chapter 21E costs) and was proceeding to his appraised value and the City asked for the Stigmatine’s appraisal as previously promised by Atlantic January 24, 2016 but were told it was not yet available.
4. Atlantic had asked the City to consider a different zoning/use than the existing single family zone and they ultimately presented a developer’s preliminary engineering and July 2015 plan, a botanist’s report ostensibly obviating wetlands jurisdiction, and a 3 page Avalon Bay offer to purchase expressly contingent and conditional on obtaining all permits necessary to construct an apartment complex(es) in this single family zoned district. for 450 units (“...\$53,333 per approved apartment unit subject to the conditions and assumptions outlined below...” “...assures utilities and infrastructure is sufficient capacity to service

(450 units)... " Agreement terminated if Avalon Bay is not ... "satisfied" ... for any reason and in its sole discretion...") N.B. Other explicit conditions include no hazardous waste or other contamination and giving Avalon Bay explicit permission to conduct all site testing including for Chapter 21E, geotechnical (i.e. all the ledge on the property) environmental etc.

5. The City and its appraiser (Bowler) were asked to consider as an alternative valuation this conditional offer from Avalon Bay, notwithstanding that no such apartment complex had ever been located in a single family zone nor had Waltham, even in locations zoned to allow apartments/multifamily, ever granted more than 350 units. (N.B. This constitutes foundation factors demonstrating "speculation" allowing the court as "gatekeeper" to deny admissibility for plaintiff's failure to carry its burden to prove "reasonable likelihood" such permits would occur).
6. In the interests of good faith, indulgence to the Stigmatine's, proceeding quickly for the new high school, etc., in which the Mayor was proceeding, she proceeded as Atlantic/Stigmatine's requested and was willing to add Bowler's \$15 million appraisal and to go as high as \$18 Million subject to appropriation, (which occurred). Pursuant to the mandates of the Standstill Agreement we then negotiated terms of agreement and were proceeding to drafts of Purchase & Sales Agreement. We then had tentative agreement for a Purchase & Sale Agreement and Reimer & Braunstein and Atlantic presented drafts of Purchase & Sale on which we were proceeding. However, in summer 2016 when despite the terms of the "Standstill Agreement" we did not receive a signed Purchase & Sale, we were told it would be on the way. After weeks passed we learned Reimer & Braunstein were dismissed.
7. Notwithstanding several extensions to the Standstill Agreement there was little substantive progress made. The City continued to offer solutions without success. There were eventually a couple of meetings requested with Stigmatine principals to attempt to resolve the impasse, which included showing them potential alternative places of residence at the former Fernald School, which had been recently occupied by the Commonwealth of Massachusetts for handicapped and elderly residents – which did need cleaning and minimal renovation which the City offered to do; and which also included a separate on site Chapel also needing some repairs the City was willing to provide.
8. Rather than catalogue more of the above I'll proceed to what now appears to be the salient issue to the Stigmatine's: price. The Stigmatine's authorized attorney, Adam Paton, Esq., on behalf of and with Father White and Father Baldassari receiving copies, explicitly identified in writing to the City Council the value of their property at \$24,500,000 ostensibly per their appraisal (based on the above conditional Avalon Bay offer); this \$24,500,000 was also reiterated by Attorney Paton, with Father White present (i.e. party admission) at public hearing before the City Council.
9. In the interest of time I'll segue to our final meeting, where you proposed a new demand of \$39 Million Dollars – still without ever giving us an appraisal (let alone any based on extant Massachusetts Chapter 79 law or accepted appraisal principles).

10. Notwithstanding the above outlined speculative "apartment complex" basis of the above \$24,000,000, and then \$25,400,000 claimed value, at our final meeting the City Council President was immediately ready to offer \$25,400,000 based on her "prediction" the city council would approve that additional appropriation. When you demanded I tell you whether I would recommend it I indicated that if it were a "clean" deal without delay and given the other exigencies (e.g. MSBA) militating for a very rapid "closing", etc., I would recommend that \$25,400,000. You then demanded that the Mayor also agree and authorize that; and I told you that consistent with my above outlined "recommendation", based on my brief conversation with her while she was away/out of state she did agree, and I also told you that after 2 p.m. I could probably get a message to have the Mayor call me by phone.
11. When I asked whether that would close the deal you then did not agree and would not explicitly state what you would agree to. In brief you complained that unless your "dance partner" were in the room you refused to consider our offer, or state your/any counter. Given how the initial meetings had proceeded the city negotiating team was, to put it euphemistically, surprised at this stone wall. When I continued to reiterate our understanding that given the Stigmatine's continued refusal to produce an appraisal and given your only articulation(s) that all your figures were based on "unpermitted/apartment complex" zoning in this single family zone and the City never having permitted that before, and even in apartment zones never allowed more than 350 units, after our "team" offered Attorney Paton's and Father White's "apartment zone based" \$25,400,000 demand, we couldn't proceed higher. I candidly reiterated that the Mayor would not initiate a new funding request to purchase this at \$39,000,000 million or anything in the 30 millions.
12. But I reiterated my request for your response to the \$25,400,000 and basically after again hearing your "dance partner" comment objection, and when I emphasized that in the interest of expediency we were now willing to increase approximately 40% higher from the pro tanto, your only response was to again reference your opinion that since your "dance partner" was not there you didn't consider it authorized but you would consider dropping from 39 to 37 million (i.e. less than 10%).
13. To obviate any questions regarding the above I enclose the Mayor's written confirmation of the above \$25,400,000. This offer will remain open until 3 p.m. tomorrow, July 19, 2018 after which time if not accepted it will be considered rejected by you and withdrawn by the City. Please signify any acceptance in writing on this letter to myself and/or Attorney Azadi as counsel by such time. N.B. Also this is without prejudice to any and all other abilities, rights, claims, counterclaims or other actions the City may/does have.
14. Rather than cataloging all the facts/actions demonstrating the City's good faith throughout this long process I will allude to only the most recent one. During a customary zoning review by the City Council, among other items the City was amending its zoning map within the City's Conservation Recreation Zone – already contiguous to the Stigmatine's site – to include the Stigmatine's property. Attorney Paton and Father White objected to that, so in a sign of good faith the City withdrew

your site from such inclusion (but proceeding with other amendments not specific to your site). I firmly believe the record of overall communications demonstrates that ordinary people would concur in the overall good faith of the City during this process. Do you think an objective outside observer reviewing the record(s) would find the obverse?

City by its attorney

John B. Cervone, Esq.

¹ I had been told by someone involved in an analogous case with Attorney Flynn, that he would threaten a civil rights lawsuit to challenge the c. 79 taking's validity and would cite the *Pheasant Ridge* case as rationalization. Again, in interests of good faith and full disclosure and hopefully obviating useless, "costly" lawsuits, I reemphasize my prior statement and as I stated in the final meeting even the SJC stated Pheasant Ridge was "a case most unusual and not likely soon to be replicated"....

The SJC in *Pheasant Ridge* emphasized in its explication the only reason it denied the Town's appeal was because, the town did not even deny on the summary judgment record or even produce any evidence in rebuttal of the allegations of bad faith. Based on the Town's essentially admitting bad faith, *Pheasant Ridge* is the only modern Supreme Judicial Court case that allowed a challenge to the validity of the taking. In particular, the *Pheasant Ridge* court even mentioned that if before the Town's taking, (ostensibly for parks and recreation purposes) and the Plaintiff filing of its Chapter 40B application, if the Town had previously considered the subject property (or something in that vicinity) for taking for park and recreation or other municipal purposes, that would have been evidence nullifying the record of any "bad faith" Taking (at 399 Mass 778). However, in *Pheasant Ridge*, months before the Town's "Taking" plaintiff had previously filed their formal Chapter 40B application and proceeded through public hearings and subsequent filings on that Chapter 40B. Also there was no record of prior town discussion of potential uses for the site, nor did the Town. If it had done so the SJC indicated its assessment of the Taking's validity would be different. Clearly, Community Preservation Act, the City's acquisition of contiguous open space parcels and the City of Waltham's above outlined Master Plan and proposed siting of its new high school eliminates any "bad faith" evidence.

After *Pheasant Ridge*, the SJC reemphasized the extremely limited potential for "bad faith" claims to attempt to challenge c. 79 validity. For example, even where landowners explicitly alleged that the eminent domain taking was intended to benefit private entities and thus in bad faith their lawsuit was dismissed on summary judgment in *Benev v. Prot Order of Elks v. Lawrence* 403 Mass 531, 537 NE2d 1233 (1988). The SJC found that even though part of this Taking would benefit a private entity, Emerson College, who was buying a portion of the land taken – the other two (2) components of the Taking were part of an overall urban renewal plan by the state and City of Lawrence, thus establishing a public purpose(s) ("...any benefits to a redeveloper are incidental to the main purpose, elimination of a substandard, decadent or blighted open area...city expressed considerable interest in the area before Emerson College's plans to relocate...")

In Ballatine v. Falmouth 363 Mass 760, 298 NE2d 695 (1973) The Town of Falmouth took land to provide off street parking facilities for the Woods Hole Martha's Vineyard and Nantucket Steamship Authority, That taking was challenged alleging that there was no public purpose to obtain that off Street parking for the Steamship Authority. Notwithstanding that allegation and their allegation of bad faith the Court dismissed the lawsuit because off street parking is legally included within the meaning of public purpose, even though it owned and was immediately administered by a private entity.

In Chelmsford v. Diabiase 370 Mass 90-95, 345 NE2d 373 (1976) the SJC approved the town's eminent domain Chapter 79 Taking despite the allegations of bad faith as alleged (i.e. due to prior Chapter 40B application filed by landowners) since there was a public purpose for Taking that property. The SJC also mentioned that the town had previously considered this property for acquisition for conservation purposes.

Also, the Mass Appeals Court cited these same above SJC principles from Benev & Prot Order of Elks in HTA Ltd. Partnership v. Mass Turnpike Authority 51 Mass App CT 449, 747 NE2d 707 (2001) where the landowner alleged that the Taking was only a fraudulent use to provide an adjoining private developer road access. The Appeals court warned the landowner that it needed to produce factual evidence of such fraud in order to avoid dismissal at the early summary judgment stage – i.e. prove “that the sole, or dominant, motive for the Taking was no public benefit but only to confer a benefit upon the private owners of the 9/90 development” (at 713).

Thus as reemphasized by the above “record” of facts and the above controlling SJC (and Appeals Court) precedent, it would be a regretful foray into bad faith to attempt to gain bargaining leverage by putatively challenging the validity of the taking to delay the school funding and construction process.

Cervone, John

From: Cervone, John
Sent: Tuesday, July 24, 2018 4:04 PM
To: 'Peter Flynn'
Subject: RE: Order of Taking
Attachments: SKMBT_60118072315460.pdf

RE: City Acquisition of 554 Lexington St., Waltham Real Estate of Trustees of Stigmatine Fathers, Inc.

Peter,

This will only quickly follow up one piece of our conversation yesterday. Again because you are only recently involved (I think you said less than a month) I can understand how you cannot have all the underlying facts and circumstances beginning since the January 2016 letter from your client's agents, Atlantic Development & Mgt., who were previously negotiating with Avalon Bay, then broaching negotiations to sell the Stigmatine's property to the City, along with their then Attorneys Reimer & Braustein, leading to their representations and agreements relating to the "deal/agreements" to sell to the City about six (6) months later (as outlined in my 7/18/18 letter to you incorporated herein).

As discussed I enclose the Order of Taking recorded yesterday. As you are aware the jurisdictional prerequisites are not yet applicable to activate your client's potential Chapter 79A rights. However this informally reconfirms to you that consistent with the above the city is not presently moving to "displace" your clients with the meaning of those statutes and regulations. We will be following up this with a formal notice and Chapter 79A details shortly.

As outlined above and my 7/18/18 letter to you and Attorney Paton since the Stigmatine's refused to consider "relocation" in any form and only would consider remaining on site they would not provide any of the information necessary to formulate any relocation plan(s) should their demand change. Even in our recent meetings/discussion that has remained consistent (however a very recent news report, allegedly with Attorney Paton and yourself, seems to contradict that). Again, notwithstanding the above, a formal c.79A Notice with pertinent contacts will be sent very soon, and addressing your apparent new contradiction, as best we can given your client's refusal to provide us the pertinent required information. Unless notified to the contrary in writing we will presume that you and/or Atty. Paton are authorized to, & prefer to, receive such Notice on behalf of your client- and we shall so proceed in that fashion

From: Peter Flynn [mailto:Flynn.Law@verizon.net]
Sent: Tuesday, July 24, 2018 10:29 AM
To: Cervone, John <jcervone@city.waltham.ma.us>
Subject: Order of Taking

John:

In our conversation yesterday, July 23, 2018, you indicated that you recorded the Order of Taking prior to our conversation and I requested a scan of that document. Nothing has arrived here and we were hoping to see a copy of the actual document you recorded on behalf of the City. Interesting discussions on other matters. Can you fax or scan over a copy of the recorded document because I reported to the Stigmatines that a recording took place.

P.E.F.

Peter E. Flynn, Esq.
Law Office of Peter E. Flynn, P.C.
78 Essex Street
Saugus, MA 01906
781-233-2284
(Fax: 781-233-3977)
www.flvnnlawoffice.com



CITY OF WALTHAM
IN THE CITY COUNCIL

610 Main Street

Waltham Massachusetts 02452

MDSX. SO. DIST. DEEDS

DOCUMENT 01792929

DATE 7/23/2018

TIME 12:02 PM

Order #34152

A TRUE COPY ATTEST

Joseph W. Vizard

ASSISTANT CITY CLERK

Ordered:

That the following described property, including all buildings and trees thereon, be and hereby is taken by right of eminent domain, in fee, for the purpose of educational use, open space, or combination thereof. This taking is made under the provisions of Chapter 79 of the Massachusetts General Laws and by every other power hereto enabling.

Said property consists of three formerly separate parcels of land, formerly known and numbered as 554 Lexington Street, 75R Lincoln Street and 111R Lincoln Street, Waltham and now known collectively as 554 Lexington Street. The entire property now known as 554 Lexington Street contains 46.062 acres, more or less and is more fully described as follows:

Southeasterly by Lexington Street forty and 11/100 (40.11) feet;
Southerly by land now or formerly of Ralph R. Dow et al one hundred sixty-six and 55/100 (166.55) feet;
Southeasterly by lands of sundry adjoining owners as shown on the plan hereinafter mentioned three hundred nine and 23/100 (309.23) feet;
Northerly by land now or formerly of Albina S. Butterfield one hundred seventy-three and 62/100 (173.62) feet;
Southeasterly by said Lexington Street two hundred thirty-nine and 89/100 (239.89) feet;
Southwesterly by land now or formerly of John J. DellaCamera et al five hundred, twenty-three and 94/100 (523.94) feet;
Easterly by said John J. DellaCamera et al land and by land now or formerly of William B. Childs et al two hundred fourteen and 14/100 (214.14) feet;
Southerly by lands of sundry adjoining owners as shown on said plan four hundred thirty-six and 86/100 (436.86) feet;
Northwesterly one hundred ten and 98/100 (110.98) feet, and
Southerly one hundred forty-one and 77/100 (141.77) feet by land now or formerly of Harold C. Wilson et al, Trustees;
Southeasterly by said Harold C. Wilson et al, Trustees land and by land now or formerly of William J. Garland et al two hundred eighteen and 19/100 (218.19) feet;
Southwesterly forty-four and 88/100 (44.88) feet, and
Easterly ninety-seven and 27/100 (97.27) feet by said William J. Garland et al land;
Southwesterly by lands now or formerly of James E. Sacco et al and of Harry E. O'Donnell et al two hundred seventy and 90/100 (270.90) feet;

JUL 19 2018

Southerly by lands now or formerly of Arthur O. Duquette et al and of Byron Terfonides et al three hundred thirty-nine and 23/100 (339.23) feet;
Northwesterly by land now or formerly of Salvatore A. Vinciullo et al one hundred seventy (170) feet;
Northeasterly two hundred thirty-four and 96/100 (234.96) feet, and
Northwesterly eleven hundred twenty-four and 56/100 (1124.56) feet by land now or formerly of Frederick R. Viles et al;
Northeasterly by part of the end of Trimount Avenue, by land now or formerly of the City of Waltham, by the end of Sachem Street, and by land now or formerly of Stratvern Homes Inc. three hundred fifty-five and 04/100 (355.04) feet;
Northwesterly by said Stratvern Homes Inc. land two hundred forty-seven and 37/100 (247.37) feet;
Northerly by lands of sundry adjoining owners as shown on said plan eight hundred sixty-four and 43/100 (864.43) feet;
Northeasterly by land now or formerly of Meli Realty Trust Co, ninety and 19/100 (90.19) feet;
Easterly by lands of sundry adjoining owners as shown on said plan twelve hundred forty-one and 03/100 (1241.03) feet; and
Northerly by lands now or formerly of James J. Cannon et al and of Angela F. Cinnotta two hundred fifty-seven and 33/100 (257.33) feet.

All of the boundaries of said property are located as shown on a plan drawn by "Hayden, Harding & Buchanan, Inc. - Surveyors," dated August 25, 1965, as modified and approved by the Land Court and filed in the Land Registration Office.

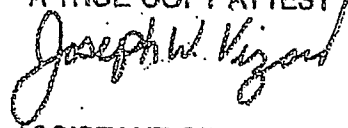
So much of the registered land as is included within the Way shown on said plan is subject to a right of way as set forth in a grant made by Albina S. Butterfield to Mildred Clark, dated May 5, 1924, duly recorded in Book 4728, Page 398.

The registered land is subject to a drain easement as set forth in a grant made by Wilson R. Slaunwhite et ux to The Trustees of the Stigmatine Fathers, Inc., dated December 5, 1956, duly recorded in Book 8867, Pages 446 and 447.

The owner of said property is The Trustees of the Stigmatine Fathers, Inc. of Waltham, MA. Said entity is hereby awarded the sum of EIGHTEEN MILLION DOLLARS AND NO CENTS (\$18,000,000.00) for damages by reason of said taking.

Read and adopted: June 26, 2018

Approved:

A TRUE COPY ATTEST

ASSISTANT CITY CLERK

JUL 19 2018

Order # 34152

By the City Council

554 Lexington Street

Read and Adopted:

[Signature]
6/26/18

Acting President

Approved: 6/26/2018

[Signature]
Mayor Jeannette A. McCarthy

CC:

A TRUE COPY ATTEST
Joseph W. Vizard
ASSISTANT CITY CLERK

JUL 19 2018

Motion for approval Stanley

Waltham City Council
Roll Call

Item: Taking order 554 Lexington Street

Date: 6/25/2016

Yea Nay Abstained Absent

City Council

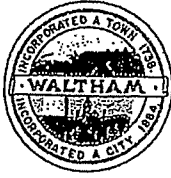
Paul J. Brasco	✓			
George A. Darcy III	✓			
William H. Fowler	✓			
Cathyann Harris	✓			
Joseph P. LaCava	✓			
Randall J. LeBlanc	✓			
Robert G. Logan		✓		
Kristine A. Mackin	✓			
John J. McLaughlin	✓			
Kathleen B. McMenimen	✓			
Daniel P. Romard		✓		
Thomas M. Stanley	✓			
Carlos A. Vidal		✓		
Diane P. LeBlanc President		✓		

Totals (14)

10 4

A TRUE COPY ATTEST
Joseph W. Kizor
ASSISTANT CITY CLERK

JUL 19 2016



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

CERTIFIED MAIL RETURN RECEIPT:

July 26, 2018

Reverend Robert S. White, CCS, President
Trustees of the Stigmatine Fathers, Inc.
c/o

Attorney Peter Flynn
78 Essex Street
Saugus, MA 01906

Attorney Adam Paton
Zimble & Brettler, LLP
21 Custom House – 2nd Floor
Boston, MA 02110

**RE: General Information Notice for Potential Displacement of occupants
of 554 Lexington Street, Waltham, MA**

As briefly outlined in my 7/18/18 letter to you (attached) at least since the time of the January 2016 follow up letter relating to purchase negotiations with the city from the Stigmatines, through their authorized agent Atlantic Development Mgt., the Stigmatines had requested to temporarily stay of the site after city acquisition. (Although they had discussed using some of their sale proceeds to build a much smaller off site residence for their few resident priests). Consequently the so-called "Standstill Agreement", and subsequent Purchase & Sale Agreement draft forms negotiated with their then Attorneys, Reimer & Braunstein, included provisions to allow the admittedly few Stigmatine priests in residence to temporarily remain on site. During the subsequent extensions of the Standstill Agreement this aspect of the purchase negotiations remained consistent; and these also remained consistent requests by the Stigmatines after the City Council's June 25, 2018 vote authorizing the taking and renewed negotiations with the Stigmatines.

However even though there are yet no Chapter 79A jurisdictional thresholds occurring to activate Chapter 79A application (e.g. no city project commencing on the site, no notice or actual attempt to displace the Stigmatines), we have seen statements by the Stigmatines in the media putatively claiming violations of their rights to Relocation Assistance/Chapter 79A, ostensibly contradicting their prior request and the negotiations to allow them to temporarily remain on site. But if they now wish to be relocated and provided such assistance and relocation benefits, please confirm such change

in position and we will address them (either directly with your or our Relocation Assistant Consultant.

- This is not a notice to vacate the premises.

Please be advised that the City of Waltham (the City) recorded the Order of Taking to acquire the property owned by the Trustees of the Stigmatine Fathers, Inc., (the Stigmatines) at 554 Lexington Street, Waltham, MA 02453, on Monday, July 23, 2018. The recording information is as follows: Middlesex South Registry of Deeds, Land Reg. Document #01792929. The taken property consists of a parcel formerly known as 554 Lexington Street, R111 Lincoln Street and R75 Lincoln Street and now collectively known as 554 Lexington Street. As you were already aware and know from our recent discussions, the Order of Taking was previously voted on by the City Council, and said Order identifies the purposes for the taking as educational uses, use (including the new Waltham High School) or for open space purposes or a combination of the two uses (individually and collectively, the Project).

The purpose of this notice is to re-inform you that the Stigmatines will not be immediately displaced by the taking, but will be displaced at some point in the future when the Project moves forward at the property. This notice also serves to inform you of your rights as a displaced owner under a federal law known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended, (the URA) and Massachusetts General Laws, chapter 79A. You may be eligible for relocation assistance and payments under the URA and M.G.L. chapter 79A when the proposed Project moves forward and if you are displaced as a result of the Project.

- This is not a notice of relocation eligibility.

If you are determined to be eligible for relocation assistance in the future, you may be eligible for:

- 1) Relocation advisory services including help to find you a replacement location;
- 2) At least 120 days advance written notice of the date you will be required to move as identified by applicable law;
- 3) Payment for your moving and reestablishment expenses.

You also have the right to appeal the City's determination, if you feel that your application for assistance was not properly considered.

(NOTE: Pursuant to Public Law 105-117, aliens not lawfully present in the United States are not eligible for relocation assistance, unless such ineligibility would result in exceptional hardship to a qualifying spouse, parent, or child. All persons seeking relocation assistance will be

required to certify that they are a United States citizen or national, or an alien lawfully present in the United States.)

Please be advised that you should meet all obligations you currently have with respect to the property (e.g., payment of utilities) unless and until otherwise advised by the City. Failure to do so may be cause for eviction. Please also be aware that a fee for your use and occupancy of the premises will be charged and we will advise you of said fee as soon as it is determined. If you choose to move, or if you are evicted prior to receiving a formal notice of relocation eligibility, you will not be eligible to receive relocation assistance. It is important for you to contact us before making any moving plans.

Please provide the City (the Waltham Law Department) with a list of and all information regarding current tenants/users and residents at the property by August 7, 2018.

Again, this is not a notice to vacate the premises and does not establish your eligibility for relocation payments or assistance at this time. If you are determined to be displaced and are required to vacate the premises in the future, you will be informed in writing. In the event the Project does not proceed, or if you are determined not to be displaced, you will also be notified in writing.

If you have any questions regarding relocation assistance please contact:

John B. Cervone, City Solicitor
Patricia A. Azadi, First Assistant City Solicitor
City of Waltham Law Department
119 School Street
Waltham, MA 02451
781-314-3330
781-314-3341 (fax)

City of Waltham,
by
