

Executive Session

Waltham City Council

June 4, 2018

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At 7:24 pm the stenographer left the Council Chamber and City Solicitor John Cervone and First Assistant Solicitor Patricia Azadi entered the Council Chamber.

Councillor Fowler asked if there was any information to report on any of the properties. The property at 0 Chesterbrook Road could be transferred to the School Department. The Mayor said that the Waltham Land Trust feels that it was purchased for open space. Fowler asked questions about the land's ownership.

Councillor Randy LeBlanc exited the room.

Attorney Azadi reviewed the history of 240 Beaver Street, including the use for the Massachusetts Agricultural College and issues with the Cedar Hill Trustees regarding the granting of the land. Attorney Azadi explained that problems in the deed lead to uncertainty about what the land can be used for. The Mayor said the bond counsel has informed the City that the uncertainty regarding this site would cause problems for the City selling tax exempt bonds. President LeBlanc asked if the standstill agreement had been signed. The Mayor reported that this had not occurred yet.

Attorney Azadi said that the response from the Stigmatines was that they are not interested in selling the property. Councillor McMEnimen questioned whether the Stigmatines' Attorney had presented the offer to them. Attorney Azadi said that he was under a professional obligation to do so. Councillor McMEnimen asked if under State Law Father White could sell the property. Councillor Mackin asked a question about eminent domain. The Mayor reviewed communications and requests for eminent domain. The Mayor said that both parties were negotiating. That the City shared its appraisal but that the Stigmatines held back the engineering information for their appraisal and would not provide their appraisal. Councillor LaCava asked why the Stigmatines responded to the last offer so quickly when they were taking their time with the other offers. Councillor Randy LeBlanc asked if the Stigmatines could claim damages. Attorney Cervone explained that litigation over damages usually occurs in an eminent domain case. Councillor Harris asked about prior transactions with the Stigmatines and if Father White had been the person to sign off. Attorney Cervone said that Father White is listed as the President of Stigmatine Fathers and Brothers Inc. and has the authority to sign on behalf of the corporation. Councillor Fowler asked if a 40B development were proposed on the site if an eminent domain taking would be more difficult. Attorney Azadi said that other potential uses should not be part of your consideration. It should be whether or not this land is needed for the High School or any other purpose. Councillor McMEnimen asked questions about the appraisals. Councillor McMEnimen asked

if the City provided the Stigmatines with its appraisal. Attorney Azadi answered yes. Councillor McMEnimen asked if the Stigmatines provided their appraisal to the city. Attorney Azadi answered no. Mayor McCarthy said there was a side letter with the City's appraisal. The Mayor reviewed the history of the appraisals. Attorney Cervone said that early in the process the City and Stigmatines were very close to having a deal in place for the city to purchase the property. Councillor McMEnimen pointed out that a government transaction like this can be more complicated than a private transaction. Councilor McMEnimen said she could foresee a bad ending to a lot of things here. There was discussion of documents going back years and what will happen during the discovery phase of a lawsuit. Attorneys Cervone and Azadi reviewed the discovery process and indicated that individuals could be deposed. Councillor McLaughlin asked what potential litigation would be about. Attorney Cervone said that the only thing to litigate should be the price or damages. Councillor Brasco asked why the stenographer had left the room. The Mayor said he left because they City Attorneys did not want to break attorney client privilege. Councillor Brasco asked if we could offer a portion of land for the Stigmatines to live on. The Mayor said the City has made many offers and the more offers the City makes the more it is bargaining against itself. The Mayor reviewed different plans to offer the Stigmatines a place to live including offering portions of the Fernald site and a Lollipop plan of the Stigmaitne site. Councillor Logan asked questions about First Amendment issues with taking the land. Attorney Cervone said they could attempt that but did not see it as a successful argument. Attorney Azadi said that since the Stigmatines could purchase other land their expression of religion was not being taken away. Councillor Logan asked if there was case law on this.

At 8:43 The Stenographer returned to the room.

Respectfully submitted,

Joseph W. Vizard

Assistant City Clerk