

CONFIDENTIAL

**Executive Session
7:00 p.m. July 28, 2010
PSF, Chief's Conference Room**

Members Present: Lauren Rosenzweig, Michael Gowing, Terra Friedrichs, Pam Harting-Barrat, Janet Adachi. Town Manager Ledoux and Christine Joyce, minute taker. Doug Wilkins, Christine Griffin, Nina Pickering Cook and Steve Anderson

Ms. Rosenzweig Morton announced the opening of this meeting of the Board of Selectmen in open session at 7:00 and she would entertain a motion to enter into Executive session to discuss strategy with respect to litigation. Mr. Gowing – Moved to go into Executive Session. Ms. Adachi – second. Roll Call Taken by the Clerk, all Ayes

Ms. Rosenzweig Morton stated that before the roll call vote to enter Executive Session she stated:

- a. In the executive session, the selectmen will discuss the Town Counsel strategy as to each pending court case involving the town or one of its Boards. The Crossroads case, two 40B appeals (Marsh View and Richardson Crossing), a zoning enforcement case (Zhang), the MRB case, two cases involving condominium back taxes (one in Nagog Woods and the other in Parker Crossing), [REDACTED] and the David Condit Gun permit appeal
- b. In each case, an open meeting may have a detrimental effect on the litigation position of the Town or the Board.

Chair: would the clerk please call the Role All ayes

Chair: At the conclusion of the Executive Session, the Board will reconvene in open session solely to adjourn the meeting

Mr. Anderson went over the cases on the list and discussed the appropriate range of settlement and will come back to another Executive Session to report and plan strategy.

Marsh View 40B case – Appeal of ZBA under 40B at 93 Central Street. It has been sent to Housing Appeals Committee at the State Level. They are programmed to move the cases quickly through the system. The Town needs to meet the local housing standards. And there is precedence of towns having to help with regional housing standards. The lawyers have been talking back and forth. The town entered in the dispute, and that mediation did not cost the town

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any money. It was good to bring the parties to the table and share ideas. The developer proposed revised changes in the housing design, so that the buildings are facing the road, and other changes. Mediation was attended by Mr. Ledoux, Scott Mutch and Board of Appeals member Richard Fallon, they discussed the revised plans. They will need another public hearing on the revised plans. Board of Appeals has been on hold. The neighbors will still be able appeal after the next hearing.

Richardson Crossing – 40B case 113 Central Street four unit exact same as the proposed Marsh View with 4 houses and 1 affordable. ZBA approved the 113 Central and neighbors have appealed the Board of Appeals decision. This is a case between the developer and neighbors.

Jay Lane Case, Homeowner was renting out apartments. Large house on cul de sac and neighbors brought to the towns attention. The property had deed restrictions and septic for 5 bedrooms and they had 7 rooms used as bedrooms. The Town issued a zoning demand and they met with the homeowner and filed a consent decree as a court order would describe the enforcement actions she was asked make the remedies. We will be following up to be sure she complies and there will be a deed restriction. She can rent four rooms by right.

MRB Public Employee Retirement. They lost \$38 Million in bad investments and Cambridge Financial Management did not do a good job and also violated the PERC requirements. We are trying to get out of the plan. There is \$20 million still outstanding [[can you check on this? I think that the \$20 million was what they recovered when they sued CFM, not the "outstanding"]]]. In 2009 we have two cases breach of contract, fiduciary Duty and illegal Billerica property. The case is moving forward and we have not heard from the Judge on the motion to dismiss. Ms. Rosenzweig asked what we do forward. Mr. Wilkins said we wait to get the judgment to proceed.

Zeltser Case owes delinquent association fees and taxes. The association brings suit against the owner the town gets brought in and the town is owed significant money. We did get a judgment several years ago. We would seek to recover the balance and get paid the \$58K. We have a cross claim and the settlement needs to be negotiated. Ms. Zeltser will have to actively market it and the town gets its money off the top when it is sold.

There was a note that the ACHC and the AHA could be notified of these types of units when they get to auction, in case they would want to pursue them, for example under a "buydown" scenario. Ms Friedrichs noted that there are a lot of people that would appreciate these units, even if they aren't perfect. They just need a place to live and would be willing to pay the costs, if they aren't too much.

Madow Case is basically the same as Zeltser. Mr. Madow got an order to foreclose on the property. When they foreclose the Town would get what we are

owed off the top but the highest bid was \$25,000, not enough to satisfy the Association or the Town's Tax lien.

David Condit gun permit denial. The Chief had concerns because Mr. Condit had held a gun to someone's head sometime in the past. The person never filed a complaint with the Police. Mr. Condit is appealing the denial of permits. Chief felt that he had made the correct determination in this denial. No action required.

[REDACTED]

[REDACTED]

Crossroads Development, LLC. – Ms. Griffin gave a background of the issues stated on the chart. She outlined the documents for review. They have included items that we think we will have a strong case. Ms. Rosenzweig Morton disclosed that Bettianne Blatman, whose name appears in the documents, is her private attorney. Stephen Anderson said that Bettianne is an attorney for one property and isn't really related to this case, except through an indirect connection.

Ms. Griffin explained the regulatory agreement with the Town and it was built in 2003 and 2004. It appeared that they were under the profit limit based on the first round of documents. The Town became aware that the Inspector General's office was reviewing the project. The town approached Crossroad's to settle this case and made many attempts to settle this. Last summer the Attorney General completed and moved to sue them and two other parties. They determined the documents were not correct. During the past year the AG has become less and less involved. However, the cases are consolidated and will go forward.

The AG decreased involvement is troubling. We will have to pay witness fees and we need to know if they will support us going forward. They have moved to dismiss a number of claims which we believe are stronger claims of the long list of claims. We need to finish the discovery or settle. They have agreed to meet to talk about the global claims. We need to hire an accounting firm within the next month. A person will need to be hired review the building costs.

Ms. Griffin asked the board if we wanted to settle or move forward. We have paid \$250,000 to Anderson Krieger and \$10,000 in other costs so far. MIIA the town's insurance company will cover \$45,000. Ms. Griffin recommends we go to mediation. Ms. Griffin wants to schedule a mediation date and then meet with the Board again to find out the Board's position and what the Board wants. Mr. Anderson feels we need a Sub-delegation that will meet with the Attorney Generals Office to urge them to help Acton recover its costs and profits that were not allowed. Mr. Anderson and Mr. Wilkins want to work through the mediation. Mr. Anderson wants a trip to Attorney General's office by high level town leaders, town counsel and legislators. We want to know why they have backed out and buried us.

Ms. Rosenzweig Morton – Moved to enter into mediation with Crossroads Development. Roll Call taken, All Ayes

It was decided that the Chair and Ms. Adachi would represent the Board. Ms. Adachi because of her affiliation with ACHC and the law would attend the meeting and participate as part of the Sub Delegation.

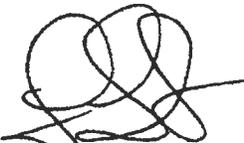
The Board wanted the committee to ask the AG not to negotiate away our money. We will ask for a meeting with first executive officer or chief of staff.

Mr. Wilkins said that he felt that chair or Mr. Ledoux make the call and enlist our political representative.

Mr. Anderson will choose mediator

Enter the public session to adjourn. Roll call taken, All Ayes.

Yua Imiel
~~Christine Joyce~~ Lisa Tomy
7/6/15



Clerk

Date