

Exh. # 149

(12/12/11)



EXECUTIVE SESSION

11/20/08

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At 9:33 p.m. Executive Session began with the following attendees: Traverso, O'Flynn, Sheppard, Arsenault, Hopping, and Ross, Superintendent Korb, Finance Director J. Cuff, and Attorneys Sheehan and Allen. Mr. Loeb excused himself for the Executive Session discussion at 9 p.m.

Health Insurance for Employees

Mrs. Kilcoyne, Board of Selectmen member, presented corrected information following meetings with PEC (Public Employees Committee) who are looking to 75/25% split premium payments and for retirees, Medicare Part B at 50%. The proposal now is a 65/35% split. Without the "sweeteners", it appears the GIC insurance proposal won't be accepted by the employees/retirees.

Mrs. Arsenault and Mr. Korb both felt that MIAA (current carrier) would be offering some interesting information. The School Committee, in consensus, made no counteroffer to the proposal on the table.

Litigation

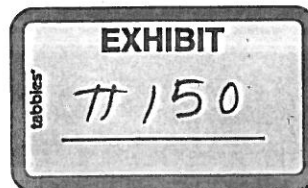
Mr. Loeb, Chair, and the working group met last Tuesday for fact-finding and due diligence. The non-negotiable price to purchase the property is \$26.5 million. The discussion of value prepared for the Feoffees is that \$26.5 million is 30% better than what an appraiser can do. The limitations to seasonal use of the property appear legally to be unenforceable.

Attorney Sheehan reported that he had told the working group that the parties cannot reach a rental agreement. There was disparity argumentation over lease figures, over the escrow amount's eventual placement, and then over residents 55 years and over being allowed to live year round, an amount that would grow as residents age—an impossible demand. Mr. Sheehan reminded the Board of the day-long meeting with tenants and their counsel and the feeling that sale of the property would break the log jam. There will no longer be any control over numbers of year-round residents with the sale of the property because of the waste water system installation.

The third option (leasing and selling being numbers 1 and 2), a court decision, means that tenants no longer have any rights and Feoffees must buy the houses. Tenants are relying on the history, Feoffees covering expenses and giving the rest to the Town. After 1998 when the Feoffees announced that they were going to fair-market value, a new renter couldn't argue that, but at a trial this will be argued a long time with a probable appeal (2 - 3 years minimum with no money to the schools).

Mr. Hopping asked and Mr. Sheehan replied that the tenants have the authority to buy for \$26.5 million and if a homeowner can't afford to buy the property, he/she will become a tenant of the Association that buys the property.

Mr. Traverso argued that the \$26.5 million which produces a 5% return (\$1,300,000 per year) is much lower than the value Mr. Sheehan claims. Mr. Sheehan replied that the bottom line is between rent (\$9,700 yields \$750,000 to the schools each year) or sale (\$1 million round number to the schools).



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Mr. Sheehan said he hopes that Mr. Allen and he have made it clear why it is best to sell at this time. Once voted, the attorneys then get a Purchase and Sales (P&S) agreement and they go to the Attorney General. There is little doubt that a compelling case can be made by beneficiary and Trustees for deviation from the original terms of the Trust. The Attorney General will study the primary intent of the gift giver, who has long since passed away, and, if he approves the process, the attorneys go to Probate Court in Salem. The time frame is 3 - 6 months. There are two hurdles: (1) tenants want to take a look at the waste water system; and (2) getting an appointment with the Attorney General.

The process involves only the Trustees and the beneficiary (schools), not the Town. Mr. Korb asked Mr. Sheehan if there would be another endowment or trust. He would like to see 80% of the potential 5% annual return on the \$20 million net (or \$1 million annually) go to the schools while 20% would remain to compound with the original \$20 million investment for growth every year. Mr. Korb also asked what kind of guarantees and assurances could be written so that there would be true control by the beneficiary and not by the Town. The attorneys felt that the creation of a 9-member board, the majority of whom are publicly elected, will make it much more likely to be in the category of control by the public and more likely, as a public entity, to be exempt from income taxes. The attorneys would argue in the complaint for deviation that it would not be appropriate for tax purposes. Mr. Sheehan commented that the new entity should be accomplished before the P&S agreement.

Dr. O'Flynn moved, seconded by Mr. Sheppard, to go forward with the sale of Little Neck property authorized by the Feoffees to the tenants at the price of \$26.5 million.

Mrs. Ross asked if money went with the sale, and Mr. Sheehan said the \$750,000 in escrow does not go with the sale, that there is no sinking fund, and they cannot pay their bills. She asked the time frame and the financing and was told that it is a cash sale which would probably take place within about 30 days. There was a clear understanding that the parties negotiating had full authority and the ability and commitment to pay \$26.5 million for the land.

Mr. Sheppard asked how much the Feoffees are drawing off each year. Mr. Sheehan replied between \$50,000 and \$100,000 each year for management. After the sale, there would be no need for remuneration, and the biggest question for the 9 newly appointed trustees would be to choose the investor.

Mr. Allen commented that, while the details could be complicated, he is optimistic about the Attorney General's decision. The Probate Court will tend to approve if all parties are in agreement and the attorneys can make a strong argument. He felt it is important to downplay the IRS number. Because of the public nature, there may be a potential issue with the bidding law. Mrs. Arsenault and Mr. Loeb questioned whether the tenants are aware of potential issues and will stay with the price. Mr. Sheehan said the uniform procurement act has certainly been discussed and will come up with the Attorney General. Even with the bid process, who would want to buy it? While members discussed the need to maintain confidentiality until there is a signed P&S agreement, Mr. Hopping was concerned about the Town at large and making sure that procedures are appropriate. He said he can't support the sale tonight until he works out some of the ramifications of keeping the Town unaware of proceedings.

Mrs. Ross wondered, if the tenants walk, would it put the beneficiaries in a better light for raised rents and said she couldn't support the sale at this point.

Mr. Loeb moved to table, and Dr. O'Flynn said he would not withdraw his motion to sell. Again, there was discussion of when to go public. Mr. Hopping moved the question.

ROLL CALL VOTE ON MOTION: IN FAVOR - Traverso, O'Flynn, Loeb, Arsenaault
OPPOSED - Hopping, Ross
ABSTAINING - Sheppard.

Mr. Hopping moved, seconded by Mrs. Ross, to adjourn Executive Session at 11:10 p.m.
Roll Call vote in favor: Traverso, O'Flynn, Sheppard, Arsenault, Hopping, Loeb, Ross.