

Board of Selectmen Executive Session Minutes of October 23, 2012

Mr. Pickard made a motion to enter into executive session regarding labor related litigation relative to Tonini and Doherty and for the purposes of buying and/or selling real estate where pre mature disclosure could adversely affect the outcome of negotiations and to return to open session at the conclusion of the Executive session. The motion was seconded by Ms. Zuern and agreed to via a roll call vote called by the Chairman.

Ms. Zuern – Yes Mr. Pickard – Yes Mr. Bladwin – Yes Mr. Ford – Yes

Mr. Meier – excused.

Chief Woodside, Chief Greene, Town Counsel Robert Troy and Counsel assigned to the Town in regards to the Doherty Matter, Mr. Gareth Notis were present at the Executive Session.

Mr. Troy addressed the Board regarding the Tonini settlement previously agreed to by the BOS for the sum of \$12,000.00 This agreement was to include a “Global Settlement” absolving the Town from any and all future claims the Ms. Tonini may believe she may have. Mr. Troy was informed by Counsel for Ms. Tonini that she would not sign a Global settlement. She will agree to sign off on the 111F portion of the claim for the \$12,000 amount. After discussion with Chief Woodside, who had spoken with Mr. Jack Collins of the MPCA both suggested that the Selectmen consider settlement. Mr. Woodside and Mr. Troy recommend that the BOS authorize the settlement.

Mr. Ford made a motion to accept Attorney Troy’s and Chief Woodside’s recommendation to settle on the 111F related issues. Mr. Baldwin Seconded the motion and the Chair proceeded to conduct a roll call vote of the Board. Ms. Zuern – Yes Mr. Pickard – Yes Mr. Bladwin – Yes Mr. Ford – Yes Mr. Meier – excused.

Attorney Troy briefly reviewed recent emails and letters to the editor by Mr. Don Hayward from a legal perspective and what, if any response the Selectmen should have given that the topic of the emails, etc were related to ongoing litigation.

Mr. Troy formally introduced Attorney Gareth Notis, the Attorney representing the Town and Mr. Guerino in the Matter of Doherty V. Guerino in U.S. Federal District Court. Mr. Notis is also representing the Town in the Almeder case at the MCAD.

Mr. Notis informed the BOS that the Trial was in the very early stages and tasks such as Discovery had not yet commenced. – He explained that once the Civil Service Commission had overturned the Town’s termination of Doherty and imposed a suspension, Judge O’Toole, the justice assigned to the Federal case suggested a “global settlement negotiation” regarding all three pending cases be commenced (DLR, Federal and Civil Service appeal). If a settlement is not able to be reached Mr. Notis will enter a request for Summary Judgment.

Under the case as filed, Mr Doherty must prove wrong doing by the town that has resulted in a violation of his civil rights under law v. the Town's rights to protect its citizens and work force and all other town rights. Mr. Notis provided a more thorough explanation of the matters of law that are incorporated into the body of the case both from his assumption of how the Doherty side of the case will proceed and what the Town's legal position will be should the case move forward. He strongly noted that the Insurance Company is not going to be prepared to settle for some "stupid" amount of money and will probably move forward to summary judgment and/or trial should the settlement demand be out of line. "The Town/Tom risk little moving forward with summary judgment." Should summary judgment not be granted the Town/Tom have an excellent case moving to trial. Mr. Notis went on to discuss various financial scenarios that could be discussed at trial and during the global settlement discussions.

Mr. Ford queried the affirmative decision by PERAC and the County Retirement Board regarding Mr. Doherty's disability retirement on Psychiatric and mental health disability grounds.

Mr. Pickard brought up the case involving a Hamilton Police Officer that recently settled for about 1.5 million dollars.

Bob Troy stated that if, during settlement discussions, a gap does exist between what the Insurance company is willing to offer and what the Doherty side is seeking the town may want to consider municipal financing for the gap. The Selectmen discussed this and considered a 30 – 40 K number ok to settle.

Mr. Notis stated that the Town/insurance company must consider Doherty's position in the case – he has nothing to lose since he is working on the BASE and has his disability retirement.

The Board was cautioned that this case must remain under the strictness of confidence. Any outside discussion of the case could place the town's position in jeopardy.

Discussion occurred that perhaps a Global settlement is in the best interest of the Town provided the numbers are reasonable. Mr. Notis and Mr Troy stated that there is legitimate town interest to really consider this "EVEN THOUGH THE TOWN DID EVERYTHING RIGHT IN THIS CASE".

Respectfully submitted,

Thomas Guerino – Town Administrator