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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.

May 13, 2017

Waltham City Council  
Committee of the Whole  
c/o City Clerk  
City of Waltham  
610 Main Street  
City Hall 2<sup>nd</sup> Floor  
Waltham, MA 02452

RE: Proposed Taking of the Stigmatine Property

Dear Councilors:

Attached are my prior letters to the City on this matter, which I believe must be reviewed by the Councilors before this matter is taken up at the Committee of the Whole meeting on May 15, 2017.

The Stigmatines urge the Council to reject the taking order. The City's treatment of the Stigmatines in this matter has been unbecoming a city government. This correspondence shows the City failed to live up to its agreements and that it put undue pressure on the Stigmatines, including the threat from the Mayor, continuing over several months, to evict the Stigmatines from their property unless they agreed to a sale to the City. I brought this to the Council's attention by my letter (copy attached) dated November 10, 2016 and requested to be heard at the November 14, 2016 Committee of the Whole meeting. I was informed that the Committee meeting was not a public hearing and I was not allowed to speak. I also contacted the Chair of the Committee of the Whole in November, 2016 requesting to be heard, but was told the Council does not deal directly with parties in confidential matters of real estate.

The Stigmatines again request an opportunity to address the Council before a vote is taken on the taking order.

I plan on attending the Committee Meeting on Monday May 15, 2017 along with Father Robert White, the Provincial Superior (President) of the Trustees of the Stigmatine Fathers, Inc., the owner of the property. If there is a mechanism to allow us to be heard we would appreciate the opportunity. Thank you.

Very truly yours,

  
Adam B. Paton

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KENNETH H. ZIMBLE, P.C.

September 16, 2016

VIA EMAIL: [pazadi@city.waltham.ma.us](mailto:pazadi@city.waltham.ma.us)  
Patricia A. Azadi, Assistant City Solicitor  
City of Waltham Law Department  
119 School Street  
Waltham, Massachusetts 02451

Re: Stigmatine property - 554 Lexington Street, Waltham, MA

Dear Attorney Azadi:

I am counsel to the Trustees of the Stigmatine Fathers, Inc. (the "Stigmatines"), the owners of 554 Lexington Street, Waltham, MA (the "Stigmatine Property"). I am writing to you to express my disappointment that the City has failed to honor its agreement under the Memorandum of Agreement dated May 11, 2016 (as extended on June 29, 2016) entered into with the Stigmatines, (the "Memorandum") to deliver a copy of the appraisal of the Stigmatine Property. I am also writing concerning the tenor of the ongoing discussions that have been taking place between the City and the Stigmatines' real estate brokers, Atlantic Management Corporation ("Atlantic"), concerning the City's intent to acquire the Stigmatine Property.

As you are aware, the Memorandum was entered into in order for the City and the Stigmatines to explore whether a "friendly" purchase and sale agreement for the Stigmatine Property could be negotiated. In the Memorandum, paragraph 2(C), the Stigmatines agreed to "cooperate reasonably with the City, at the City's sole expense, regarding the City's desire to engage in customary due diligence matters, such as appraisal, title examination, surveys, building and property inspections, and the like, including by [sic] not limited to those under M.G.L. c. 21E; provided the City promptly furnishes copies of all such due diligence materials." The Stigmatines have cooperated extensively with the City throughout the Standstill Period, even going as far as making our engineers and Atlantic personnel available to the Appraiser and advancing several thousand dollars to pay for engineering costs, wetlands assessment, and a subdivision plan, all to support the timely conclusion to the needed appraisal. The Stigmatines made these expenditures under a verbal agreement between Atlantic and the Mayor that the City would reimburse the Stigmatines for one-half of these costs, and with the expectation the City would, as it had agreed to do in the Memorandum, share the appraisal upon receipt. The appraisal has been in the City's hands since at least August 29, 2016, and despite the Stigmatines' repeated requests for a copy, the Mayor has refused, stating that she is not authorized to share it with the Stigmatines. This is an unfortunate and unjustified development that has the Stigmatines questioning whether they should continue to engage in any discussions with the City concerning the Stigmatine Property. In light of the clear language of paragraph 2(C) of the Memorandum, I renew the request for a copy of the appraisal.

Patricia A. Azadi, Assistant City Solicitor  
September 16, 2016  
Page – 2 –

On August 4, 2016, Atlantic met with the Mayor and you to develop a non-binding list of “bullet points” for a letter of intent (“Bullet Points”). In developing the Bullet Points, the Mayor backed off her earlier promise to share with the Stigmatines the cost of the professional fees incurred by the Stigmatines in connection with the appraisal. As reflected in the Bullet Points, the Mayor agreed to “recommend” that the costs be shared, but that the “City can only share them as a credit on the acquisition price, and with a Purchase and Sale Agreement.” This was a departure from what the Mayor had previously agreed to with Atlantic, and was contrary to the Stigmatines’ expectation and understanding when they agreed to advance the funds. This is yet a further example where the Stigmatines feel that the City has not been proceeding in good faith.

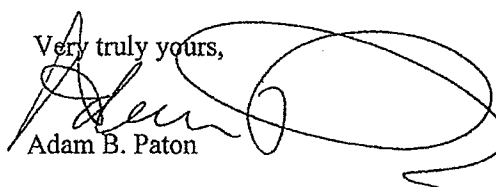
Over the last number of months, the Mayor has continually expressed the City’s position as an ultimatum. She states that while the City is hopeful that we can work out a friendly taking, failing such an agreement; the City is prepared to take the Stigmatine Property by eminent domain in an adversarial process. The Mayor has further stated that the only way the City is able to accommodate the Stigmatines’ desire to continue their ministry and housing of retired priests at the Stigmatine Property for a period of time, is for the Stigmatines to agree to a friendly taking. The Mayor has threatened that if forced to resort to the adversarial process, the Stigmatines will need to vacate the property almost immediately.

The Stigmatines have been communicating the Mayor’s statements to leadership in Rome, who must consent to any sale of the Property. The Stigmatines’ Superior General has written to the Mayor, advising that the Stigmatines are not looking to sell the entire property and proposing a bifurcation of the property to allow the Stigmatine functions to continue. To our knowledge, the Mayor has not responded to this letter. In an effort to help the Superior General understand the City’s position; that it is prepared to take the Stigmatines Property by eminent domain, the Stigmatines requested from the Mayor a letter setting forth the City’s position that could be shared with leadership in Rome. The Mayor has refused to sign any letter, calling into question whether the position previously articulated by the Mayor is, in fact, the City’s position regarding the acquisition of the Stigmatine Property.

The Stigmatines were more recently advised, on September 13, 2016, that the Mayor had been given authorization by the City Council at a September 12 Executive Session to proceed on behalf of the City with a friendly taking in accordance with the August 4<sup>th</sup> non-binding Bullet Points, and execute a Purchase & Sales Agreement by September 26<sup>th</sup>, subject only to title and environmental. The general terms were expressed as \$18 million purchase price; 5 year lease back (No rent); and contribution to professional fees capped at \$10,100.00.

The Stigmatines request that you identify exactly what the City Council authorized, and that the City present any bona fide Offer for the Property in writing. But more fundamentally, the Stigmatines cannot even begin to consider an Offer for the Property without a copy of the appraisal. As I mentioned earlier, there is no interest on the Stigmatines part to hold any further discussions with the City until the appraisal is delivered.

Very truly yours,

  
Adam B. Paton

**Subject:** Stigmatine Property

**Date:** Friday, October 21, 2016 at 2:56:03 PM Eastern Daylight Time

**From:** Adam Paton

**To:** Azadi, Pat

Hello Pat,

As discussed, please find attached the Letter from the Superior General in Rome dated August 22, 2016, mis-addressed to Lauren Cannon, but later sent to Mayor McCarthy. This letter set's out the Stigmatine's objection to selling the entire property.

I also enclose the Mayor's emails below from September 15, 2016, where she expresses a different understanding of whether Rome had agreed to a sale of the entire property for an \$18m purchase price.

Sincerely,

Adam Paton

Adam B. Paton, Esq.  
Zimble & Brettler LLP  
21 Custom House Street  
Suite 210  
Boston, MA 02110  
(T) 617-723-2222  
(F) 617-723-9811  
(e) [apaton@zimbret.com](mailto:apaton@zimbret.com)

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**From:** Casey-Brenner, Colette [<mailto:ccbrenner@city.waltham.ma.us>]

**Sent:** Thursday, September 15, 2016 5:00 PM

**To:** Dave Capobianco; Mayor

**Cc:** Joe Zink

**Subject:** RE: CONFIDENTIAL

Dave,

I have no authority to give you the whole appraisal. I told you that last time. The 15 million represents what is allowed as of right. 18 is what we agreed to before the 15 million appraisal came in.

You represented that you had authority for the 18.

The City Council wanted to know if Rome agreed as they are getting contacted by individuals who indicate that Rome has not agreed. I indicated to them that as far as I am aware Rome has agreed.

>  
> From: Mayor [mailto:mayor@city.waltham.ma.us]  
> Sent: Thursday, September 15, 2016 9:05 AM  
> To: Dave Capobianco  
> Subject: CONFIDENTIAL

>  
> Dave,

> Attached please find the Memorandum of Agreement, the bullets for the Letter of Intent and the last page of the Appraisal. This is what I am authorized to give you.

> The request of the City is to prepare a Purchase & Sale Agreement for \$18 M with a 5-year leaseback. Please let me know if they agree to that.

>  
> Thank you.

>  
> Sincerely,  
> Jeannette A. McCarthy  
> Mayor

>  
> From: Casey-Brenner, Colette [mailto:ccbrenner@city.waltham.ma.us]  
> Sent: Thursday, September 15, 2016 5:00 PM  
> To: Dave Capobianco; Mayor  
> Cc: Joe Zink  
> Subject: RE: CONFIDENTIAL

> Dave,

> I have no authority to give you the whole appraisal. I told you that last time. The 15 million represents what is allowed as of right. 18 is what we agreed to before the 15 million appraisal came in.

> You represented that you had authority for the 18.

>  
> The City Council wanted to know if Rome agreed as they are getting contacted by individuals who indicate that Rome has not agreed. I indicated to them that as far as I am aware Rome has agreed.

>  
> Council agreed to go from 15 to 18m believing that Rome agreed to a purchase for that amount.

>  
> What has changed?

>  
> Sincerely,

>  
> Jeannette

>  
> From: Dave Capobianco [mailto:dcapobianco@atlanticmanagement.com]

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Non-binding bullets for letter of intent – **CONFIDENTIAL**

- Subject to Owner obtaining Rome's approval no later than August 23, 2016, and the Mayor obtaining the City Council's approval no later than September 26, 2016, the Mayor will recommend to the City Council to pay \$18 million if supported by appraisal, title and Phase I environmental study. The earliest date on which a closing could occur would be 21 days after the City Council's final approval of the signing of the bond order.
- Owner will have its engineer do his review of a potential subdivision plan and c. 40B based on the assumption that the botanist hired by the Owner is correct. The City reserves its rights regarding the opinion of the botanist.
- Owner wants a leaseback for 5-10 years for 3 buildings. The Mayor can only recommend a 5-year leaseback.
- The parties recommend that the costs of professional fees be shared, but the City can only share them as a credit on the acquisition price, and with a Purchase and Sale Agreement.
- The City is to have the right to use the entire site except for the 3 buildings currently being discussed as temporarily to be continued in use by the Stigmatine Fathers for housing and work (the Espousal Center, the Provincial Office (gift center), and the residence building.) The Owner is to see if it might be able to consolidate all of its needs into the Espousal Center. The City agrees that it will not interfere with the use of the 3 buildings by the Stigmatines.
- The Stigmatines acknowledge that they cannot interfere with the City's use of the remainder of the site and/or buildings.
- Because of the existence of prior filings showing possible streams on the site, the Mayor will not file for an RDA (Request for Determination of Applicability) without a Purchase and Sale Agreement. The contemplated sale of the property shall not be contingent on the determination of the wetlands issue.
- The Mayor will submit the botanist's opinion to the School Committee to have its professionals review as to the viability of the site for the high school and/or athletic fields.

Date: August 4, 2016

**Subject:** RE: Stigmatine Property

**Date:** Tuesday, October 25, 2016 at 12:51:37 PM Eastern Daylight Time

**From:** Azadi, Pat

**To:** Adam Paton

Hi Adam,

I can confirm that the Mayor has given the Stigmatines until this Friday, October 28, 2016 to respond with an agreement to sell the entire property on the terms and conditions of the bullet point list or she will move forward with a taking of the entire property. If the City takes the property, the Stigmatines cannot remain beyond the statutory requirements unless otherwise agreed to by the parties.

Sincerely,

Pat Azadi

**From:** Adam Paton [mailto:apaton@zimbret.com]

**Sent:** Friday, October 21, 2016 5:57 PM

**To:** Azadi, Pat

**Subject:** Re: Stigmatine Property

Hello Pat,

My client would like me to confirm with you what we discussed earlier today. The Mayor has given the Stigmatines 1 week from today, until 10/28/16, to respond with an agreement to sell the entire property on the terms and conditions of the bullet point list or she will move forward with a taking of the entire property. If the City takes the property, the Stigmatines cannot remain beyond the statutory requirements.

Please confirm or correct my understanding so that I may properly advise my client. Thank you.

Adam Paton

Adam B. Paton, Esq.  
Zimble & Brettler LLP  
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**From:** "pazadi@city.waltham.ma.us" <pazadi@city.waltham.ma.us>

**Date:** Friday, October 21, 2016 at 9:46 AM

**To:** Adam Paton <[apaton@zimbret.com](mailto:apaton@zimbret.com)>

**Subject:** FW: Stigmatine Property

Hi Adam,

ZIMBLE & BRETTLER, LLP  
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BENJAMIN J. BRETTLER  
(1928-1999)

(of Counsel)  
KENNETH H. ZIMBLE, P.C.

October 28, 2016

VIA EMAIL: [pazadi@city.waltham.ma.us](mailto:pazadi@city.waltham.ma.us)  
Patricia A. Azadi, Assistant City Solicitor  
City of Waltham Law Department  
119 School Street  
Waltham, Massachusetts 02451

Re: Stigmatine property - 554 Lexington Street, Waltham, MA

Dear Pat:

The Stigmatines have discussed the City's position with the Superior General, its leadership in Rome. The primary focus of these discussions have centered around how we arrived in the predicament we find ourselves in: Accept a friendly sale and be able to stay on the property for 5 years or have the property taken from us and be required to leave at once. The Stigmatines are just not able or ready to instantly wind down their use of the property. That was never their intention, and the prospect of having to relocate elderly priests and shut down their ministry is causing a lot of anxiety. Legally, maybe the City can force that to happen, but as a practical matter, it will take longer for arrangements to be made to transition personnel and functions to other locations.

The Stigmatines are dismayed that this whole affair has become like a runaway train. They explored interest in selling their property knowing it would likely take months, if not a year or more, to put a deal together. When the City emerged with its interest in the property, we worked with the City to develop the "non-binding bullet-point memo". The Stigmatines shared those terms with Rome and Rome responded to the Mayor that it did not want to sell the entire property. Notwithstanding this communication, the Mayor moved forward, apparently informing the City Council on September 12 that the Stigmatines had agreed to these terms. Now, these terms are being presented to the Stigmatines as an ultimatum. Again, I ask, how did we get here?

Rome is no longer dismissing out of hand a sale of the entire property to the City, but it needs more time and information to give this proper consideration and evaluation. To this end, Rome is requesting that the Mayor slow this process down so that the Stigmatines can:

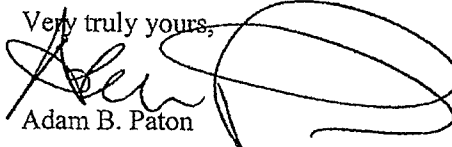
1. Conduct their own appraisal;
2. Have sufficient time to adequately relocate the retired Priests; and
3. If possible, find a way to continue the ministry of the Retreat House on site.



Patricia A. Azadi, Assistant City Solicitor  
October 28, 2016  
Page - 2 -

The Superior General is able to come to Waltham toward the end of November, early December, and would be in a position to address this further then.

Please let me know the City's response.

Very truly yours,  
  
Adam B. Paton

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

November 10, 2016

VIA EMAIL  
City of Waltham City Clerk  
610 Main Street  
City Hall Second Floor  
Waltham, MA 02452

Re: Stigmatine property - 554 Lexington Street, Waltham, MA

Dear Members of the City Council:

I am legal counsel to the Trustees of the Stigmatine Fathers, Inc. (the "Stigmatines"), owners of the real property located at 554 Lexington Street, Waltham, MA.

The Mayor has advised the Stigmatines that at the City Council Meeting scheduled for November 14, 2016 she intends to initiate the process for funding an eminent domain taking of the Stigmatine Property.

On behalf of the Stigmatines I am writing to urge you not to act on that request. The Stigmatines do not want to be forced by the City to close their ministry and move their personnel, some of whom are elderly and frail, and who are being cared for on the Stigmatine Property. The Mayor's threats to take the property is causing tremendous upset and anxiety among the Stigmatine membership, and the Stigmatines are determined to stop this aggressive action by the City, utilizing all tools at their disposal, including, but not limited to bringing a claim under the Religious Land Use and Institutionalized Persons Act ("RLUIPA") 42 U.S.C. S 2000cc et. Seq, which proscribes zoning and landmarking laws that substantially burden religious exercise without a compelling government interest for doing so.

The Stigmatines are dismayed that this whole affair has become like a runaway train. They explored interest in selling all or a portion of their property, knowing it would likely take months, if not a year or more, to put a deal together. When the City emerged with its interest in the entire property, we worked with the City to develop a "non-binding bullet-point memo" that could be sent to leadership in Rome for consideration. The Stigmatines shared that memo with Rome and Rome responded to the Mayor that it did not accept those terms. Notwithstanding this response to the Mayor, the Stigmatines were informed that the Mayor moved forward and informed the City Council on September 12, 2016 that the Stigmatines had agreed to the terms of

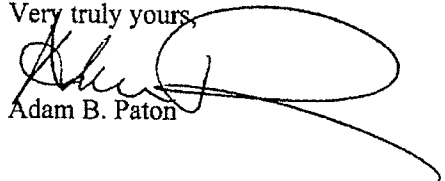
this non-binding memo. If this occurred, an inaccurate representation was made to the City Council. Now, the Mayor has threatened a taking by eminent domain unless the Stigmatines accept, immediately, the terms of the non-binding memo.

The Stigmatines understand the City wishes to acquire the entire Stigmatine Property and the Stigmatines would like to structure such a sale to the City and an orderly transition of their ministry and personnel from the property. But, the Stigmatines need more time and information in order to give this matter proper consideration and evaluation. The Stigmatines are requesting that this process be slowed down so that the Stigmatines can:

1. Conduct their own appraisal;
2. Have sufficient time to adequately relocate the retired Priests; and
3. If possible, find a way to continue the ministry of the Retreat House on site.

If this matter is to be heard at the Council meeting on November 14, 2016, I would like the opportunity to address the Council.

Very truly yours,

  
Adam B. Paton

cc: Fr. Robert S. White, Provincial Superior  
Patricia A. Azadi, Assistant City Solicitor

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