

TOWN OF BROOKFIELD
SELECTMEN'S MINUTES
TOWN HALL, SELECTMEN'S OFFICE

MINUTES OF JULY 7, 2010
EXECUTIVE SESSION

At approximately 10:15 AM Mr. Heller opened the executive session in the Middlesex Room of the offices of Town Counsel Kopelman and Paige, 101 Arch Street, Boston, MA, convened under M.G.L. Chapter 39, Section 23B, exemption #2 to discuss strategy with respect to litigation if an open meeting would have a detrimental effect on the government's litigating position.

Patricia Cantor, Town Counsel liaison to Brookfield for Kopelman and Paige introduced her colleagues (Jeff Honig, tax title and litigation), Katie Klein (Real Estate), and Jeff Ugino (tax title work). Pat then reviewed the long history of the Lakeside Campground litigation, which began prior to the terms of any of the current Board of Selectmen. The litigation has been divided into two parts: (1) Superior Court actions to close the campground permanently, which was accomplished, and to obtain summary judgments against the property owners delinquent in the payment of taxes, and (2) actions in land court to foreclose on properties for the non-payment of taxes.

Jeff Honig reviewed the actions in Superior Court against Thomas Babb, Verilyn O'Connell, Peter O'Connell, and Cynthia Chapman and steps to be taken including the following:

Verilyn O'Connell: Jeff Honig will acknowledge receipt of the recent offer from Verilyn O'Connell's attorneys and ask them to make a concrete proposal for final settlement of the outstanding litigation. Their proposal might include a request for some downward adjustment in the \$87,568.17 summary judgment from which the current assessed valuation of the property would be deducted, creating a net sum to be collected by the Town from the estate of Verilyn O'Connell, presumably after the sale of her house. Katie Klein reported that the house in Clinton owned by Verilyn O'Connell was taken out of a family trust and a homestead exemption attached to it effective March 12, 2010 shortly before the Superior Court granted the Town of Brookfield summary judgment. The house is owned free and clear by Verilyn O'Connell. The Selectmen will obtain the current assessed valuation of Verilyn O'Connell's Lakeside Campground property and forward it to Jeff Honig. Jeff Honig recommended that in the event that Verilyn O'Connell agrees to the settlement, the Town should require Verilyn O'Connell to sign a note – a mortgage, in effect – that would be payable by her estate at the time of her death. The mortgage would be interest free. This proposal will serve as a model to be offered to other property owners, where applicable.

Cynthia Chapman: Jeff Honig reported that attorneys for Ms. Chapman had taken contradictory positions, first asserting that Ms. Chapman had never accepted the deed to the property and in the next breath offering to deed the property to the Town in full satisfaction of back taxes. The attorney threatened to go into bankruptcy and then to file a Homestead exemption, but there has been no further follow-up in the last month. Jeff Honig will make the same proposal to Ms. Chapman as the town is making to Verilyn O'Connell. The Selectmen will check to make sure the Town Tax Collector has received no information about the filing of a bankruptcy petition.

Estate of Peter O'Connell: The settlement of this piece of property is complicated by the existence of an \$18,000 federal tax lien on the property. Jeff Uginio believes the Town's claim precedes the federal claim, but will check the law on this. He will notify the IRS of the tax title actions taken on behalf of the Town and ask the IRS to release its lien. The Town needs to decide within the next three weeks whether to file for a Summary Judgment in the Superior Court case against the estate of Peter O'Connell, a judgment likely to exceed \$90,000. Since Verilyn Mitchell is acting as executrix for the Peter O'Connell estate and also acting on behalf of Verilyn O'Connell, if she accepts the settlement for Verilyn, she might also accept the same settlement for Peter O'Connell. In that case she would sign a note allowing the Town to collect the remaining unpaid taxes after the assessed value of the property is deducted from approximately \$90,000 (unpaid taxes, interest, and fees) from the assets of the Peter O'Connell estate, should there be any (unlikely). This would make the filing of a request for summary judgment moot. Katie Klein will check on the progress of the estate probate to see if there are any surprises in the inventory of assets.

Lakeside Trust: the Town has been granted a default judgment in the amount of \$16,583.72 for non-payment of taxes. The Selectmen will check with Brookfield Assessors to see if the Lakeside Trust as an entity owns any property independently which could and should be attached to satisfy the judgment.

Drena McKeown, Lisa Wadden, and Mary Roy: The Selectmen will work with the Tax Collector and Treasurer to ensure that these properties are put into tax title and recorded at the registry of deeds.

Thomas Babb: Jeff Honig is convinced that the Clerk of the Land Court will soon remove the "Suggestion of Bankruptcy" filing that has prevented the Superior Court from entering a Default Judgment amounting to \$200,000 or more against Thomas Babb for non-payment of taxes. When this is granted, Jeff recommends that the Town attempt to locate Mr. Babb through informal channels, but if that fails, to hire a private investigator through Kopelman and Paige to locate Mr. Babb and to conduct a search of assets in Massachusetts the Town can attach. Jeff Honig would then propose the same settlement terms as offered to Verilyn O'Connell. Pat Cantor will gather information about private investigators and costs.

Land Court Proceedings:

The Land Court cannot grant title to the Town against Babb and other Lakeside Campground landowners until they receive formal notice that the Lazarz mortgage has been discharged (it has been paid off) and until the Town can provide convincing evidence that it has attempted to locate and notify Trustees of the Lakeside of tax title proceedings. Jeff Ugino will take all the usual measures to try to identify the location of the Trustees, which, taken together with efforts of the Town and perhaps a private investigator, if necessary, should enable the Land Court to grant title to the Town.

At that point, the Town would own the majority interest in the condominium and would be able to dissolve the condominium form of ownership and negotiate as necessary with Lisa Wadden or others to acquire title to remaining parcels of land. The Town would then decide whether to auction off the land, issue an RFP to sell the land, or develop the property for its own uses. Assuming the property is worth more than \$500,000 - \$600,000, the Town would have recouped legal fees, taxes, interest and demand fees.

Auction of Town Rights to Foreclosure: Mr. Honig mentioned to the Selectmen an additional option. For any property the town has in tax title and has registered with the Registry of Deeds, but has not yet foreclosed on, the Town could decide to auction off the rights to foreclose on the property to individuals willing to accept the risk. The Town would set a minimum bid equal to the total amount of back taxes, demand fees, and interest owed to the Town. The winner of the auction would then begin paying the property taxes on the parcel, acquire all the rights of the Town to collect the back taxes plus interest at 16% through legal action or to acquire the title to the property by paying legal costs to foreclose on it. The advantage to the Town is that it does not have to pay legal costs up front and gets paid the back taxes, interest, and fees immediately. The disadvantage is that the Town would give up its right to obtain title to the property and then to sell it for more than it is owed.

In summing up, the Board of Selectmen agreed that the Kopelman and Paige team should proceed on all the fronts discussed in the meeting. They acknowledged the time and money estimates outlined in a memo prepared by Kopelman and Paige and attached to these minutes, but hoped that the time and cost estimates would run to the lower side (\$20,000) rather than a higher estimate (\$50,000?) if any of the actions were to be contested. Pat Cantor continued to be optimistic that the process and costs were 80% complete.

ADJOURNMENT:

At 12:50 PM, Mr. O’Connell moved to return to open session. Mr. Allen seconded; so voted with Mr. Allen voting Aye, Mr. Heller voting Aye and Mr. O’Connell voting Aye.

Respectfully submitted,

Peter S. O’Connell, Clerk

Date approved by Board: _____

Date Released: December 11, 2010