

Final

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**BOARD OF SELECTMEN AND SEWER COMMISSIONERS' MEETING
February 15, 2011**

TOWN CLERK, ACTON

Acton Public Safety Building, Operations Center, First Floor

EXECUTIVE SESSION AT 6:00 TO 7:00

REGULAR MEETING BEGINS AT 7:00 P.M.

Present: Ms. Rosenzweig Morton, Mr. Gowing, Ms. Friedrichs, Ms. Harting-Barrat, Ms. Adachi, Town Manager and Christine Joyce. The meeting was televised during the Regular Session

Ms. Rosenzweig Morton announced the opening of the meeting of the Board of Selectmen at 6:00 and said she would entertain a motion to enter into Executive Session to discuss strategy with respect to litigation and to allow Attorneys Pickering-Cook and Kreiger to be in Executive Session. Mr. Gowing – Moved to go into Executive Session. Ms. Adachi – second

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

- a. In the executive session, the selectmen will discuss the Walker Realty, Next Generation Day Care Center
- b. an open meeting may have a detrimental effect on the litigation position of the Town or the Board.

Roll call taken by the Clerk, all Ayes

Chair: At the conclusion of the Executive Session, the Board will reconvene in open session for their 7:00 meeting.

CITIZENS' CONCERNS

CHAIRPERSON'S UPDATE

None

OPERATIONAL MINUTE

None

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PUBLIC HEARINGS & APPOINTMENTS

WALKER REALTY TRUST, LLC, NEXT GENERATION DAYCARE FACILITY

Mr. Kreiger described the background of this case. He explained what the Town could do and could not do.

The Town can regulate the build-out based on current criteria in the zoning bylaw. There is no Floor Area Ratio limitation for houses in that residential area.

The Building Department denied the building permit for several reasons. The Board of Appeals held meetings and overturned the denial of some of the violations.

Ms. Pickering Cook presented drawings and modifications that are being proposed. The drawings show a one-story building, with the façade more broken up than in the original plan. There would be 262 children in both designs.

Ms. Friedrichs asked about the status of our legal budget and snow and Ice budget. Ms. Friedrichs asked about the Dover decision outcome in other communities.

Mike Faraquar urged that the Board not settle.

Ms. Guiser of Acton Animal Hospital said that her property is a private residence and a business. Could the Town require a traffic light?

Joan Gardner asked about the traffic study and the current condition of the area.

Charlie Kadlec talked about the legal background and legal issues relating to FAR. He said there will be traffic tie-ups and if something happens we will say we should have not accepted the settlement. He asked that the Board not accept the settlement.

Karen Ecka asked what was the size of the building with regard to the Dover decision. She was not troubled by the legal expenses and felt the Town needed to go to trial.

Mike Coppolino, 14 Isaac Davis ,asked about the setbacks and whether the proposed design would be in compliance. He asked about the future if Next Generation left town. Attorney Kreiger said the building would lose its protection and become non-conforming.

Peter Ashton asked why the Board would deliberate if they deny it. Peter said it would be a bad settlement and would prefer that the Town pay to litigate. He said that the revise plan does not resolve the issues directed to the Board of Appeals in a memorandum from the Board. He cited traffic issues and zoning violations.

He said that he reviewed the BOA file and noted staff raised concerns. He further discussed the Board of Selectmen's concern in their comments to BOA. He suggested a demolition bond in case the building is abandoned. He does not see the benefit of settling at this time. He wants the Board to oppose the settlement.

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Sid Levin is opposed to settlement and feels the Board should vote how they feel. He is opposed because of traffic and greed. This project does not belong there and there should be no left turns.

Mike Farquar has been a client of Next Generation. He suggested NGDC cares nothing about the children or the Town.

Mr. Horizwich, 7 Jefferson, said that most people in Acton do not want Next Generation here. He suggested we take the land by eminent domain.

Paul Hoff sees that they presented a new plan that only took the height down and increased the foot print. He urged the Board to litigate.

Ann Sussman spoke about the plan and how the building would be located on the lot and noted that most of the time there will not be sunlight for the children.

Ms. Rosenzweig Morton discussed the process. The Board will take the public comments into account and deliberate. She cautioned the Board members to take care with their remarks and not put any future litigation in jeopardy.

Ms. Adachi said she could appreciate the concerns voiced by audience members, but also could appreciate the risk of continued litigation. She said she needed more time to think.

Mr. Gowing spoke about the school administration's concerns about public safety.

Ms. Harting-Barrat received no phone calls from citizens on this issue and said it is a very difficult decision. The Town could lose and end up with the original plan. She would like to hear from the other Board members.

Ms. Friedrichs thinks we should litigate, because of all of the reasons that have been stated by the speakers. And she wanted to explore the idea of a taking. She could not find one good to reason to settle.

Ms. Adachi said she was not ready to decide.

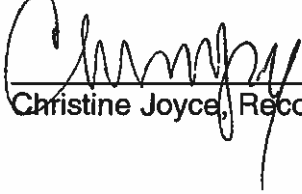
Ms. Rosenzweig Morton said she has reviewed this carefully. The Board discussed the option of delaying the decision until it could meet and have further discussion in an Executive Session.

Ms. Harting-Barrat- Moved we continue this hearing and to enable the board to discuss this in Executive Session at 6:00 p.m. on February 28th at the Town Hall

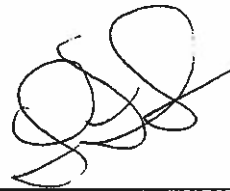
Ms. Rosenzweig Morton - Move to continue this meeting to 6:00 p.m. on February 28, 2011 in Executive Session. The Board will take public comments until that time and will go into the regular meeting to discuss and deliberate. We will accept materials at the Board of Selectmen's e-mail shell. Ms. Friedrichs – second. UNANIMOUS VOTE

Ms. Harting-Barrat – Moved to adjourn. Roll call taken, all Ayes

Final



Christine Joyce, Recording Secretary



Clerk

Date

4/4/11

BOARD OF SELECTMEN & SEWER COMMISSIONERS'
MEETING AGENDA
FEBRUARY 15, 2011

EXECUTIVE SESSION 6:00 p.m. TO 7:00 p.m.

REGULAR SESSION AT 7:00 PM

**PUBLIC SAFETY FACILITY, 371 MAIN STREET IN THE EMERGENCY
OPERATION CENTER, FIRST FLOOR**

**6:00 p.m. – Executive Session to discuss strategy with regard
to litigation, Middlesex Retirement Board**

I. CITIZENS' CONCERNS

II. PUBLIC HEARINGS AND APPOINTMENTS

1. 7:00 CHAIRMAN'S UPDATE

The Chair will briefly update the Board

2. 7:05 OPERATIONAL MINUTE

The Town Manager will provide a brief report

**3. 7:10 WALKER REALTY, LLC TO DISCUSS SETTLEMENT, NEXT
GENERATION CHILD CARE FACILITY**

Enclosed please find materials in the subject regard and additional
materials at:

<http://doc.acton-ma.gov/dsweb/view/collection-4126>

III. SELECTMEN'S BUSINESS

IV. CONSENT AGENDA

V. EXECUTIVE SESSION

There will be a need, and has been scheduled for 6:00 P.m.

ADDITIONAL INFORMATION

Enclosed please find additional correspondence that is strictly informational and requires
no Board action.

FUTURE AGENDAS

To facilitate scheduling for interested parties, the following items are scheduled for discussion on future agendas. This is not a complete list

FEBRUARY 28

Special Permit, Dogstar Activity Center, 310-b, School Street

Warrant Article Proponents: Commission on Disability, Senior Tax relief, Citizen Article, Charles Kadlec, Citizen Article, David Stone

Common Victualler, Di Capri Pizzeria, 576 Massachusetts Avenue

MINUTES PENDING VOTES

January 10 & 24 February 14

PENDING COMMITTEE APPOINTMENTS

David Keene – Green Advisory Committee – sent to VCC 9/28 (out with Selectmen Liaison JA)

Brad Friedman – Green Advisory committee Sent to VCC (out with Selectmen Liaison JA)

Remo Politano – Several Committees will come back to VCC with decision 11/8/10

Steven P. Leo – Recreation Commission sent to VCC 11/19/10

Michael A. Luongo - Board of Appeals, Board of Health, Application sent to VCC

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<input type="checkbox"/>		020 Walker Realty Trust LLC, Next Generation Child Care Facility	admin	02/11/11	93 KB	
<input type="checkbox"/>		020 Settlement Documents	admin	02/09/11	9	
<input type="checkbox"/>		030 Other Litigation Documents	admin	02/09/11	4	

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