

## MEMORANDUM

TO: Don P. Johnson, Town Manager

FROM: Stephen D. Anderson, Town Counsel

RE: Acton/ACHC: Proposed Development of Affordable Housing on Town-Owned Tax Title Land at 28 Willow Street and 214 Central Street

DATE: July 16, 2005

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The Town is the owner by tax taking of the real property at 28 Willow Street and 214 Central Street, Acton, Massachusetts (the "Site") by tax title takings in Land Court Case Nos. 112320 T.L. and 112319 T.L. (Judgments dated May 4, 1998). After the Town addressed environmental problems associated with the Site, the Acton Community Housing Corporation ("ACHC")<sup>1</sup> has developed a proposal to reuse the Site for a new affordable housing project. ACHC has asked the Board of Selectmen to vote to grant control of the Site to ACHC, contingent on ACHC putting the development out to bid and transferring Site ownership to the selected developer after ACHC has obtained necessary permits for the development.

As custodian of the Town's tax title properties, the Town Treasurer has inquired as to the appropriate procedure for disposition of this tax title property. This memorandum addresses that procedure and recommends an appropriate course of action so that the proposed project can continue to proceed forward at this time.

### Options for Disposing of Tax Title Property

In a new case just decided on June 29, 2005, entitled *Board of Selectmen of Hanson v. Lindsay*, 444 Mass. 502 (2005), the SJC described the three methods for disposing of tax title property (emphasis added):

Pursuant to G. L. c. 60, § 77B, "the selectmen of any town which holds property acquired by foreclosure of tax titles or acquired under [G. L. c. 60, § 80,]<sup>2</sup> may

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<sup>1</sup> ACHC is "a non-profit housing corporation ... subject to the supervision of the board of selectmen of the Town of Acton." (See Chapter 143 of the Acts of 1996, § 1).

<sup>2</sup> Section 80 provides that,

If no person bids at such a sale [under Chapter 60, Section 79 regarding a sale at tax auction without foreclosure] or if no bid deemed adequate by the treasurer is made thereat and if the sale has been adjourned one or more times, the treasurer shall then and there make public declaration of the fact, and if no bid or no bid deemed adequate as aforesaid is then made he shall give public notice that he purchases for the town by which the tax is assessed; or if the person to whom the land is sold does not within ten days pay to the treasurer the sum bid by him the sale shall be void and the town shall be deemed to be the purchaser of the land. If the town becomes the purchaser hereunder, the treasurer shall execute to it a deed which shall set forth the fact that no bid or no bid deemed adequate as aforesaid was made at the sale or that the purchaser failed to pay the amount bid, as the

appoint a custodian who shall have the care, custody, management and control of all property heretofore or hereafter so acquired by said . . . town. . . . The custodian, acting on behalf of the . . . town, may, notwithstanding any provision of law, ordinance or by-law inconsistent herewith, **sell at public auction** any such property" after providing proper notice of the sale. . . . General Laws c. 60, § 77B, further states that "[t]his section shall not be construed to prevent a . . . town from **disposing of such property under [G. L. c. 40, § 3], or in any other manner authorized by law.**"

The three methods are thus:

- (1) the tax auction process,
- (2) the c. 40, § 3, process, and
- (3) any other manner authorized by law.

Whichever way the Town chooses to go, several miscellaneous requirements apply to a sale of tax title property, the most significant of which from a monetary standpoint is that the Town must receive a payment in lieu of taxes from the buyer, calculated in accordance with G.L. c. 44, § 63A.<sup>3</sup>

#### The Tax Auction Process:

The tax auction process does not readily lend itself to ACHC's goal of and methodology for developing affordable housing on the town-owned tax title land at 28 Willow Street and 214 Central Street. Accordingly, the auction option will not be considered further in this memorandum.

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case may be. Such deed shall not be valid unless recorded within sixty days after the sale under this section; and the title of the town to land conveyed thereby shall be absolute upon the recording of said deed in the proper registry of deeds within such sixty days.

<sup>3</sup> Other requirements are, for example:

- The buyer must provide the Town a signed statement that the buyer has not been convicted of arson and is not delinquent in the payment of real estate taxes in the town in which the property is being sold. G.L. c. 60, § 77B.
- The Town must also obtain a disclosure of beneficial interest statement from the buyer as required under G.L. c. 7, § 40J.
- The sale is not exempt from the Title 5 inspection requirements of 310 CMR 15.301(f), as applicable.

### Other Manner Authorized by Law

Special Home Rule legislation or other procedures authorized by law could provide a specific method for the disposition of tax title property. In the absence of such law or legislation, however, this option will not be considered further in this memorandum.<sup>4</sup>

### The c. 40, § 3 Process

In the *Hanson* case, the SJC described the land disposition process under c. 40, § 3, as follows (emphasis added; other emphasis deleted):

Pursuant to G. L. c. 40, § 3, "[a] town may hold real estate for the public use of the inhabitants and **may convey the same by a deed of its selectmen thereto duly authorized, or by a deed of a committee or agent thereto duly authorized . . .** and may make such orders as it may deem necessary or expedient for the disposal or use of its corporate property" (emphasis added). General Laws c. 40, § 3, further provides that "[a]ll real estate . . . of the town, not by law or by vote of the town placed in the charge of any particular board, officer or department, shall be under the control of the selectmen, except as is otherwise provided in this section or [G. L. c. 40, § 9, pertaining to building space for veterans' organizations and armories]."

The reference in Section 3 to "duly authorized" means that the Board of Selectmen, the committee or the agent must have received the requisite vote of Town Meeting to dispose of the property in question (*id.*, emphasis added):

**It is the inhabitants of a town, acting at a town meeting, who have the power to encumber and dispose of real estate,** with certain limited exceptions, pertaining to leases, that are not material in this case.

In general, Town Meeting exercises its powers over the disposition of Town-owned property by following the procedures of G.L. c. 40, § 15A (requiring a two-thirds vote to transfer property held for a specific purpose)<sup>5</sup> and G.L. c. 40, § 15 (requiring a two-thirds

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<sup>4</sup> Special legislation established ACHC. See Chapter 143 of the Acts of 1996. ACHC can acquire and dispose of real property (c. 143, § 2, referencing G.L. c. 156B, § 9(e and f)), particularly with the approval of the Board of Selectmen (c. 143, § 2(d)). Thus, ACHC has the power "with the approval of the board of selectmen, to acquire or lease, by purchase or otherwise, and to own, hold and use on such terms and conditions and in such a manner as it may deem property and to exchange, grant options on, sell, transfer, convey, assign, lease, pledge, mortgage, encumber, grant liens on and security interests in or to otherwise dispose of, on such terms and conditions as it may deem proper, real, personal or mixed real and personal property or any interest, easement or rights therein and any assets or revenues of the board of directors, as may be necessary or appropriate to carry out its purposes." (c. 143, § 2(d)). However, nothing in c. 143 expressly authorizes the Selectmen to transfer tax title property to ACHC without first going through the procedures applicable to such tax title property. See below.

<sup>5</sup> Section 15A provides that:

vote to dispose of property).<sup>6</sup> Since the Site was not acquired in the first instance for a specific purpose and has not since been dedicated to a specific purpose, the procedures of G.L. c. 40, § 15, not § 15A, apply to its disposition:

1. First, the “officer of a ... town having charge of any land ... taken for such ... town, otherwise than by purchase, [must notify] the ... the selectmen that, in his opinion, such land, ... is no longer required for public purposes ....” In this case, the officer having custody of the land is the Town Treasurer as the custodian of tax title property. Attached as **Exhibit A** is a simple form of notification which could be used in the present case.
2. Second, the “town by a two thirds vote [must] authorize the conveyance of such land, ... and specify the minimum amount to be paid for such conveyance ...” Under Article 11 of the 2005 ATM Warrant, the Town voted “to authorize the Board of Selectmen to dispose of foreclosed properties acquired by the Town for nonpayment of taxes in accordance with the provisions of Massachusetts General Laws, or take any other

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Whenever a board or officer having charge of land, including land acquired for playground purposes pursuant to the provisions of section fourteen of chapter forty-five, but excluding land acquired for park purposes, constituting the whole or any part of an estate held by a city or town within its limits for a specific purpose shall determine that such land is no longer needed for such purpose, whether such land was acquired before or after the effective date of this section and whether acquired by eminent domain, purchase, gift, devise or otherwise, such board or officer shall forthwith give notice of such determination to the city council of the city or the board of selectmen of the town. At any time after the receipt of such notice, the city council of the city by a two thirds vote of all its members, in the case of a city having a city manager, with the approval of said city manager, and in the case of other cities, with the approval of the mayor, or the town by a two thirds vote at a regular or special town meeting, may transfer the care, custody, management and control of such land to the same or another board or officer of the city or town for another specific municipal purpose, any provision of general or special law to the contrary notwithstanding; provided, that no such transfer shall be valid if it is in violation of any term or condition of the title of the city or town to such land.

In any city or town which accepts the provisions of this paragraph, when land is being transferred for the purpose of constructing low and moderate income housing, the vote required of the city council or the town meeting shall be by a majority vote.

<sup>6</sup> Section 15 provides that,

If any officer of a city or town having charge of any land, easement or right taken for such city or town, otherwise than by purchase, notifies the city council or the selectmen that, in his opinion, such land, easement or right, or part thereof, is no longer required for public purposes, and if thereafter the city council or the inhabitants of the town by a two thirds vote authorize the conveyance of such land, or of part thereof, or the abandonment of such easement or right, or part thereof, and specify the minimum amount to be paid for such conveyance or abandonment, the mayor or the selectmen may, for such amount or a larger amount, and upon such other terms as the mayor or selectmen shall consider proper, convey said land, or part thereof, by deed, or declare said easement or right, or part thereof, to be abandoned. Such declaration, being recorded in the registry of deeds for the district where the land is situated, shall extinguish the easement or right, or part thereof.

action relative thereto.” It is unlikely however that a lender financing an affordable housing development on the property in question would be satisfied with this vote alone. Instead, the Town Meeting should be asked to vote a specific authorization to dispose of the property in question and the vote should specify “the minimum amount to be paid for such conveyance.”

3. Thereafter, “upon such other terms as the ... selectmen shall consider proper,” the Town may convey said land... by deed.”<sup>7</sup>

### **Advancement of the Proposed Project Pending Town Meeting Approval**

In the absence of the necessary Town Meeting vote, the Selectmen are not in a position to convey or transfer the property in question to ACHC at the Board meeting on July 18, 2005. However, that does not mean that ACHC’s proposed project must grind to a halt pending Town Meeting approval.

Rather, assuming the Town Treasurer makes the finding set forth in Exhibit A, the Selectmen can authorize ACHC and Town Counsel to undertake a variety of specific activities in furtherance of the proposed project. A suggested Motion to accomplish this is attached as **Exhibit B**.

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<sup>7</sup> The Uniform Procurement Act, G.L. c. 30B, § 16, does not apply to the disposition of tax title land through the public tax auction process, but it does apply to a disposition of tax title property under G.L. c. 40, §§ 3 and 15.

**EXHIBIT A**

**Notice of Determination Under M.G.L. c. 40, § 15**

Pursuant to M.G.L. c. 40, §15, in my capacity as the Town Treasurer of the Town of Acton, being the custodian in charge of the tax title land owned by the Town of Acton located at 28 Willow Street and 214 Central Street, Acton, Massachusetts by tax title takings in Land Court Case Nos. 112320 T.L. and 112319 T.L. (Judgments dated May 4, 1998) (the "Property"), I hereby notify the Board of Selectmen of the Town of Acton that the Property is no longer required for public purposes and that the Property may be conveyed, subject to approval by Town Meeting, pursuant to G.L. c. 40, §§ 3 and 15. In authorizing the conveyance of the Property, the town meeting can specify the minimum amount to be paid for such conveyance pursuant to G.L. c. 40, §15. Accordingly, I have attached to this notification a summary of (a) the taxes, interest and penalties outstanding with respect to the Property, (b) the assessment, containment and removal costs incurred by the Town with respect to the environmental condition of the Property, (c) the mandatory amount of the payment in lieu of taxes that would be required from a buyer of the property, calculated in accordance with G.L. c. 44, § 63A, as of the date of this notice, and (d) the attorney's fees and costs related to the Town's investigation of environmental contamination at the Site and the lawsuit to collect those costs.

TOWN TREASURER

\_\_\_\_\_  
John Murray, III

DATE: \_\_\_\_\_

**Notice of Determination Under M.G.L. c. 40, § 15**

Pursuant to M.G.L. c. 40, §15, in my capacity as the Town Treasurer of the Town of Acton, being the custodian in charge of the tax title land owned by the Town of Acton located at 28 Willow Street and 214 Central Street, Acton, Massachusetts by tax title takings in Land Court Case Nos. 112320 T.L. and 112319 T.L. (Judgments dated May 4, 1998) (the "Property"), I hereby notify the Board of Selectmen of the Town of Acton that the Property is no longer required for public purposes and that the Property may be conveyed, subject to approval by Town Meeting, pursuant to G.L. c. 40, §§ 3 and 15. In authorizing the conveyance of the Property, the town meeting can specify the minimum amount to be paid for such conveyance pursuant to G.L. c. 40, §15. Accordingly, I have attached to this notification a summary of (a) the taxes, interest and penalties outstanding with respect to the Property, (b) the assessment, containment and removal costs incurred by the Town with respect to the environmental condition of the Property, (c) the mandatory amount of the payment in lieu of taxes that would be required from a buyer of the property, calculated in accordance with G.L. c. 44, § 63A, as of the date of this notice, and (d) the attorney's fees and costs related to the Town's investigation of environmental contamination at the Site and the lawsuit to collect those costs.

TOWN TREASURER

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John Murray, III

DATE: \_\_\_\_\_

**John Murray**

#6

**From:** Nancy Tavernier  
**Sent:** Sunday, July 17, 2005 8:06 AM  
**To:** Stephen Anderson  
**Cc:** Don Johnson; John Murray; Daniel C. Hill  
**Subject:** Re: Acton/ACHC: Disposition of Town-Owned Tax Title Land at 28 Willow Street and 214 Central Street

Dear Steve,

Thank you so much for your thorough review and clear ruling on the land disposition question. Affordable housing is always a roller coaster ride and this series of attachments was no exception. Halfway through the ruling, I was in tears of utter frustration, but you saved the best for last - The Motion! I am extremely gratified that you have seen the value of our proposal. I am confident the BOS will also. The timing you lay out is very realistic and, the fact of the matter is, an April Town Meeting vote would mesh nicely with our next CPA housing fund request to apply to this project, in addition to the \$150,000 we are holding.

So onward and upward and downward and upward and.....around the final curve to the end.

Nancy

At 10:02 PM 7/16/2005, Stephen D. Anderson wrote:

> <<Disposition-Tax-Title  
> -Property.doc>> <<ExhibitA-Determination.DOC>>  
> <<ExhibitB-Motion.DOC>>  
> <<Acton/ACHC: Tax Title Land at 28 Willow Street and 214 Central  
> Street>>

>Dear Don, John and Nancy:

> I have reviewed ACHC's proposal to the Board of Selectmen for  
> the disposition of the Town-owned Tax Title land at 28 Willow Street  
> and 214 Central Street. In light of a new SJC case just decided on  
> June 29, 2005, entitled Board of Selectmen of Hanson v. Lindsay, 444  
> Mass. 502 (2005), I've recommended a slightly different procedure for  
> advancing ACHC's proposed project from that set out in Nancy's memo to  
> the Board. If the Board of Selectmen supports the proposed project as  
> presented, I recommend that John sign the Notification attached as  
> Exhibit A and that the Board of Selectmen adopt the Motion attached as  
> Exhibit B. This will enable the project to advance significantly  
> pending the required Town Meeting vote(s) at the next Annual or Special Town Meeting.

> Please see my email of earlier today regarding the attachment  
> John needs to develop for Exhibit A.

> Please fill in the blank on paragraph 9 of Exhibit B before  
> the Selectmen meet to discuss this.

>\_\_\_\_\_  
>Stephen D. Anderson  
>ANDERSON & KREIGER LLP  
>43 Thorndike Street  
>Cambridge MA 02141-1764  
>Phone: 617-252-6575  
>Fax: 617-252-6899  
>e-mail: sanderson@andersonkreiger.com  
>www.andersonkreiger.com

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Extra Info  
# 6

7/18/05

Amount Due for 28 Willow and 214 Central St

<b><u>Category</u></b>	<b><u>Amount</u></b>	<b><u>Comment</u></b>
Taxes and Penalties	\$ 112,707.81	Thru April 30, 2006, No additional taxes since foreclosure
Legal Expenses	\$ 17,084.67	Thru July 18, 2005
HazMat Clean-up Cost	\$ 65,096.00	Thru July 18, 2005
Pilot per MGL C. 44 S 63A	\$ 7,659.84	Assumed Conveyed on April 30, 2006
Total	\$ 202,548.32	

## Tax Possessions

The mayor in cities and the selectmen in towns may appoint a custodian to manage property acquired through the foreclosure of tax titles. (60:77B) The treasurer is often appointed as the custodian, especially in smaller towns.

The custodian has authority to sell tax possession property at public auction. However, at least 14 days before a tax possession sale, the municipality must notify, by certified mail, the person who was the owner of record of the property prior to its acquisition by the community. The municipality must also post notice in two or more, public places at least 14 days prior to the sale. The notice must include a description of the property; the date, time and place of sale; and the terms and conditions of that sale. (60:77B)

The custodian may reject any and all bids at such sale if, in his or her opinion, none of the bids represent the market value of the property. The custodian may also adjourn the sale. Upon the consummation of a sale, the treasurer must execute and deliver all instruments necessary to transfer title after payment has been made.

### Pro Rata/Pro Forma Taxes

If property belonging to a municipality is sold, the board or officer executing the deed must receive a pro-rated payment in lieu of taxes before the deed can be delivered. (44:63A) The payment is calculated by multiplying the tax rate for the fiscal year of the sale by the sale price. For example, if a property were to sell for \$100,000.00 on December 15<sup>th</sup> and the tax rate were \$25.00, the in lieu of tax payment would be calculated as follows:

$$\text{Sale Price} \times \text{Tax Rate} \times \text{Days Remaining in FY} \div \text{Days in FY} = \text{Tax Due}$$

$$\$100,000.00 \times .025 \times 197 \div 365 = \$1,349.32$$

If the property is sold between January 2<sup>nd</sup> and June 30<sup>th</sup>, the municipality should receive an additional payment in lieu of taxes for the next succeeding fiscal year. This pro-forma tax is calculated by multiplying the sales price by the tax rate. The pro-rata/pro-forma taxes must be received before delivery of the deed. The deed should recite compliance with Ch. 44 §63A.

Extra Info 7/18/05

# 6

RE: moving forward tonight  
without exhibit A being completed**John Murray**

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**From:** Stephen Anderson  
**Sent:** Sunday, July 17, 2005 1:42 PM  
**To:** John Murray; Board of Selectmen  
**Cc:** Don Johnson; Daniel C. Hill; Nancy Tavernier  
**Subject:** RE: Tax Taking Land at Willow and Central

John:

The timing of your determination is not material. See *Harris v. Wayland*, 392 Mass. 237, 241, 466 N.E.2d 822 (1984) ("The fact that the school committee did not make its formal determination that it no longer needed the land before the town voted to authorize the sale has no practical significance. Formal determination can come after the vote as well as before, *Bouchard v. Haverhill*, 342 Mass. 1, 4, 171 N.E.2d 848 (1961), and in this case the school committee had indicated that it would release the land if the town authorized the sale."). If the Selectmen are so inclined, they can proceed with the Motion on Monday night while you pursue your due diligence as to whether the Property is required for other public purposes. As you correctly point out, in this circumstance, the second "Whereas" should be deleted from the Motion. I have attached a redraft of the Motion with this edit.

As to the level of due diligence needed, the SJC in *Board of Selectmen of Hanson v. Lindsay*, 444 Mass. 502 (2005), described the process followed by the tax custodian in that case before for disposing of the tax title property at auction:

The locus remained on the town's list of tax possessions. In 1998, the town's tax custodian circulated to the departments within town hall, including the commission, a list of the properties that she planned to auction, including the locus. The tax custodian, who had no knowledge of the 1971 vote, did not receive information from any department that the locus had been designated as conservation land and was to be retained for such use.

Your inquiry to Town department heads as to whether there is an alternate public purpose for these parcels is consistent with this approach.

PS: To enable the Selectmen fill in the blank in the attached Motion with an appropriate amount, you will still need to provide the Selectmen with a summary of (a) the taxes, interest and penalties outstanding with respect to the Property, (b) the assessment, containment and removal costs incurred by the Town with respect to the environmental condition of the Property, (c) the mandatory amount of the payment in lieu of taxes that would be required from a buyer of the property, calculated in accordance with G.L. c. 44, § 63A, as of the date of this notice, and (d) the attorney's fees and costs related to the Town's investigation of environmental contamination at the Site and the lawsuit to collect those costs.

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Stephen D. Anderson  
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7/18/2005

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-----Original Message-----

**From:** John Murray [mailto:jmurray@acton-ma.gov]  
**Sent:** Sunday, July 17, 2005 4:27 AM  
**To:** Board of Selectmen  
**Cc:** Stephen D. Anderson  
**Subject:** FW: Tax Taking Land at Willow and Central  
**Importance:** High

Dear Board Members,

As you have seen in prior correspondence, Town Counsel is asking the Town Treasurer to sign a document stating that the parcels at 214 Central St. and at 28 Willow St. are "***no longer required for public purposes and that the Property may be conveyed***". I first became aware of this new requirement (the Determination) yesterday. While I have sent the e-mail below to staff this morning, I do not believe I have completed a process that would allow me to sign such affidavit by Monday night.

These parcels were taken in 1998 and ***no*** staff person or Town Committee, except ACHC, has approached me for use of these parcels in the 7 plus years since the tax taking. However, I am concerned with the due diligence of my process, since I have never inquired of any Town department or committee, if they had a public purpose for these parcels until 3:46 AM on the Sunday prior to the Monday where I am to make such a declaration. I do not see any issue in signing such a declaration for the Board's August meeting, if the inquiry process so determines.

By copy of this e-mail to Town Counsel, I am asking him if my failure to sign the Determination affects his proposed motion document (Exhibit B to his e-mail), except for the obvious deletion of the second Whereas.

John

-----Original Message-----

**From:** John Murray  
**Sent:** Sunday, July 17, 2005 3:46 AM  
**To:** All Department Heads  
**Cc:** Board of Selectmen  
**Subject:** Tax Taking Land at Willow and Central  
**Importance:** High

ACHC is asking for the the parcels at 214 Central St. and 28 Willow St. at Monday night's Selectmen's Meeting. Town Counsel is asking me to stipulate in the attached document as follows:

***"I hereby notify the Board of Selectmen of the Town of Acton that the Property is no longer required for public purposes and that the Property may be conveyed"***

***Therefore, please notify me in writing prior to the Selectmen's meeting if your department has a public purpose for these parcels.***

7/18/2005

Extra Info 7/18/05  
#6

Sat.'s message

**John Murray**

**From:** Stephen Anderson  
**Sent:** Saturday, July 16, 2005 11:28 AM  
**To:** Don Johnson; John Murray  
**Subject:** Acton/ACHC: Tax Title Land at 28 Willow Street and 214 Central Street



actonnichols.pdf (27 KB)    ExhibitA-Determinat  
ion.DOC (23...

<<actonnichols.pdf>>    <<ExhibitA-Determination.DOC>>

John:

I'm working on an answer to your question as to the disposition of Town-owned tax title property. In doing so, I have determined that the invoice listing as to the Acton/Nichols matter provided the other day (attached) understated the amount of attorneys fees and costs associated with the Tax Title Land at 28 Willow Street and 214 Central Street. This was probably due to a change in our software in or about 2001. Based on your affidavit dated July 19, 2001 which Jeff drafted in the lawsuit, as of that time, the Town had incurred \$13,298.96 in attorney's fees and costs related to the Town's investigation of environmental contamination at the Site and the lawsuit to collect those costs. Since the Nichols printout below begins with the bill for services in October 2001, adding together the \$13,298.96 figure and the \$3,785.71 figure gives you a much closer approximation of the actual attorneys fees and cost on the Nichols matter.

I'm also giving you a heads up on the direction I am going in the memo because it will involve some work on your part to prepare for Monday night. I have attached a "Notice of Determination Under M.G.L. c. 40, § 15" which you would need to make in order for the property to be disposed of by the process under G.L. c. 40, §§ 3 and 15. You will need to attach to this notification a summary of (a) the taxes, interest and penalties outstanding with respect to the Property, (b) the assessment, containment and removal costs incurred by the Town with respect to the environmental condition of the Property, (c) the mandatory amount of the payment in lieu of taxes that would be required from a buyer of the property, calculated in accordance with G.L. c. 44, § 63A, as of the date of this notice, and (d) the attorney's fees and costs related to the Town's investigation of environmental contamination at the Site and the lawsuit to collect those costs.

I should have the full analysis to you this evening or tomorrow by email.

Steve

Stephen D. Anderson  
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**John Murray**

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**From:** Stephen Anderson  
**Sent:** Sunday, July 17, 2005 2:06 PM  
**To:** John Murray  
**Cc:** Daniel C. Hill  
**Subject:** RE: Acton/ACHC: Disposition of Town-Owned Tax Title Land at 28 Willow Street and 214 Central Street

Hi John:

I am operating on the assumption that the conveyance of the property by the selectmen, duly authorized, to ACHC is exempt from the RFP provisions of the Uniform Procurement Act by virtue of c. 30B, s. 1(b)(7) (exempting "an agreement between agencies, boards, commissions, authorities, departments or public instrumentalities of one city or town") and/or c. 30B, s. 16(i) ("Acquisitions or dispositions of real property or any interest therein pursuant to this section between governmental bodies and the federal government, the commonwealth or any of its political subdivisions or another state or political subdivision thereof shall be subject to subsections (a), (b) and (g)"). This of course assumes that ACHC is, for this purpose, an agency, commission, or public instrumentality of the Town and/or a political subdivision (see my previous memo analyzing the ACHC legislation and its hybrid status). Since ACHC operates under the supervision of the Selectmen (see Chapter 143 of the Acts of 1996, § 1) and since the approval of the Board of Selectmen is required for ACHC to acquire, own, hold, and dispose of real property (see c. 143, § 2(d)), I'm comfortable with this assumption at this time. By copy of this email, I am asking for Dan to check for any analagous situations where courts have held the RFP requirements of the UPA not to apply to a conveyance from a Town to an entity such as ACHC.

When ACHC disposes of the property to a developer, the RFP requirements of Section 16 may or may not apply. That depends on whether the value of the Property "determined in accordance with paragraph (b) ... exceed[s] twenty-five thousand dollars in value." That's why the Motion includes items 6 and 7. Dan has assisted other towns in disposing of property restricted for affordable housing where the restrictions reduced the value below \$25,000 and the RFP requirements did not apply. That's why I phrased the Motion the way I did.

As for whether the Town and the ACHC be joint petitioners to the State and Board of Appeals, I want to review the draft applications with that question in mind. At a minimum the Town will sign as the Owner of the Property. Possibly, the applications will be joint. I will know better when I see the drafts.

Steve

-----Original Message-----

From: John Murray [mailto:jmurray@acton-ma.gov]  
Sent: Sunday, July 17, 2005 12:57 PM  
To: Stephen D. Anderson  
Subject: RE: Acton/ACHC: Disposition of Town-Owned Tax Title Land at 28 Willow Street and 214 Central Street

Steve,

If I understand the meaning of footnote 7 of the Disposition document -- ACHC obtains the parcels in question by answering a RFP from the Town. Is that correct because the motion appears to be a direct conveyance to ACHC. Also should the Town and the ACHC be joint petitioners to the State and Board of Appeals?

John

-----Original Message-----

From: Stephen Anderson  
Sent: Saturday, July 16, 2005 10:03 PM  
To: Don Johnson; John Murray  
Cc: Nancy Tavernier; Daniel C. Hill  
Subject: Acton/ACHC: Disposition of Town-Owned Tax Title Land at 28 Willow Street and 214 Central Street

<<Disposition-Tax-Title -Property.doc>> <<ExhibitA-Determination.DOC>>  
<<ExhibitB-Motion.DOC>> <<Acton/ACHC: Tax Title Land at 28 Willow Street and 214 Central Street>>

Dear Don, John and Nancy:

I have reviewed ACHC's proposal to the Board of Selectmen for the disposition of the Town-owned Tax Title land at 28 Willow Street and 214 Central Street. In light of a new SJC case just decided on June 29, 2005, entitled Board of Selectmen of Hanson v. Lindsay, 444 Mass. 502 (2005), I've recommended a slightly different procedure for advancing ACHC's proposed project from that set out in Nancy's memo to the Board. If the Board of Selectmen supports the proposed project as presented, I recommend that John sign the Notification attached as Exhibit A and that the Board of Selectmen adopt the Motion attached as Exhibit B. This will enable the project to advance significantly pending the required Town Meeting vote(s) at the next Annual or Special Town Meeting.

Please see my email of earlier today regarding the attachment John needs to develop for Exhibit A.

Please fill in the blank on paragraph 9 of Exhibit B before the Selectmen meet to discuss this.

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