

TRUSTEES OF FORBES LIBRARY
Special Meeting of June 23, 2016

Present: Mr. Carrier, Ms. Hess, Mr. Morin, Ms. Moulding, Ms. Reall, Ms. Sheirer, Mr. Twarog, Ms. Wight. **Also Present:** Attorney Eric Lucentini.

The meeting was called to order at 3:07 PM in the Watson Room.

Legal Matter (Executive Session)

At 3:07 PM, Ms. Hess moved that the Trustees go into executive session to discuss strategy with respect to litigation since discussion in open meeting may have a detrimental effect on the litigating position of the Trustees. Ms. Wight seconded the motion, which was passed unanimously, with Ms. Hess, Ms. Reall, Mr. Twarog, and Ms. Wight all voting in favor. The Trustees invited Mr. Morin, Ms. Moulding, and Ms. Sheirer to remain as guests at the executive session. Ms. Downing, Ms. Hess, Mr. Morin, Ms. Moulding, Ms. Reall, Ms. Sheirer, Mr. Twarog, and Ms. Wight were present during the executive session. Mr. Carrier arrived at 3:40 PM.

Attorney Eric Lucentini discussed recent developments in the legal dispute between the Trustees and the city. The city has answered the Trustees complaint and filed counter claims. Attorney Lucentini said that the city has backed off from its most forceful claims that Forbes is part of the city government. The original memo from City Solicitor Alan Seewald cited concerns with open meeting and public records laws, but the focus has shifted to control of library spending and the relationship between the Trustees and city government. Attorney Lucentini said that Judge Forbes intentionally set up the library to be independent of city government in his will, and he has done research that is helpful to the library's position. Jones Library in Amherst has had similar governance issues, which were resolved with a Memorandum of Understanding.

Attorney Lucentini suggested that Mr. Carrier reach out to Mayor Narkewicz to see if he would be amenable to discussing a settlement of the dispute. He said that the judge in the case would ask if the parties have tried to work out their differences, and it is in everyone's best interest to do so. Since the city has already backed off from its most forceful claims, they may be willing to discuss a mutually acceptable resolution. Attorney Lucentini said that there might be areas of common ground that both parties can agree to including questions of accountability of public funds and adherence to public meeting laws. If the city and Trustees are able to reach an agreement, it may be appropriate to ask the court to put their imprint on it. At the same time, the Trustees should continue to maintain a solid position on litigation and seek a ruling from the court should the city insist on provisions that are not agreeable to the Trustees. Ms. Reall said that she was concerned about the city's position that Forbes must use prevailing wages in projects paid for with private funds.

Mr. Carrier joined the meeting at 3:40 PM.

Attorney Lucentini said that the opinions sought by City Solicitor Seewald from three separate state agencies are not binding decisions, but can be used in litigation. Ultimately, Probate Court that will make the final determination. If the parties can agree to a stipulation of facts, the judge can issue a summary judgment based on applying the law to the agreed upon

facts. If the facts are not agreed upon, there will be a trial, which would involve more discovery, take more time, and cost more money for both parties.

Attorney Lucentini said that an informal meeting between Mr. Carrier and the mayor is a first step to see if they are willing to talk. Then a more formal meeting can be arranged where Attorney Lucentini and City Solicitor Seewald will be involved to work out the details of an agreement. Bringing in a mediator is also an option. If the city is open to discussion, Attorney Lucentini will help the Trustees draft a list of points for an agreement.

Attorney Lucentini said that Forbes will submit its reply to the counter claim by Friday, July 1. The Probate & Family Court will issue a scheduling order, which will include a table of dates for discovery, a stipulation of facts, and a trial.

Mr. Twarog asked about the discovery process and Attorney Lucentini said it was hard to tell how difficult it would be. The library's documents are public, and have been made available to the city. Attorney Lucentini said he has been researching 10-15 similar libraries across the state, and while they share certain traits, each has unique circumstances, and is governed a little differently.

Ms. Hess made a motion to authorize Mr. Carrier to have an informal discussion with Mayor Narkewicz to determine if he is open to discussing a settlement to the dispute. Ms. Reall seconded the motion, which was passed unanimously.

Ms. Hess made a motion to authorize Mr. Carrier along with senior library staff as appropriate, and in consultation with library counsel, to engage in settlement discussion with the other parties to the pending litigation. Ms. Wight seconded the motion, which was passed unanimously.

Mr. Morin said that the library's auditor, Mr. Rob Morton, requested contact information for Attorney Lucentini, and he will supply it.

At 4:32 PM, Ms. Reall moved that the executive session be ended and the regular meeting reconvened. Ms. Hess seconded the motion, which was passed unanimously, with Mr. Carrier, Ms. Hess, Mr. Twarog, Ms. Reall and Ms. Wight all voting in favor.

At 4:32 PM, Ms. Hess moved that the meeting be adjourned. Ms. Wight seconded the motion, which was passed unanimously. The meeting was adjourned at 4:32 PM.