

TRUSTEES OF FORBES LIBRARY
Executive Session of September 15, 2016

Present: Mr. Carrier, Ms. Downing, Ms. Hess, Mr. Morin, Ms. Moulding, Ms. Reall, Ms. Sheirer, Ms. Wight.

Legal Matter

At 5:55 PM, Ms. Reall moved that the Trustees go into executive session to discuss a legal matter because discussion in open session would be detrimental to their litigating position. Ms. Hess seconded the motion, which was passed unanimously, with Mr. Carrier, Ms. Hess, Ms. Reall, and Ms. Wight all voting in favor. The Trustees invited Ms. Downing, Ms. Moulding, Mr. Morin, and Ms. Sheirer to remain as guests at the executive session. Mr. Carrier, Ms. Downing, Ms. Hess, Mr. Morin, Ms. Moulding, Ms. Reall, Ms. Sheirer, and Ms. Wight were present during the executive session. No votes were taken during the executive session.

Mr. Carrier reviewed events since the last meeting. Ms. Moulding sent a follow-up email to David Pomerantz after he met with the Trustees about the selection of the architect for the window replacement and HVAC project confirming what had transpired at the meeting. Her email read:

"Dear David, The Forbes Board of Trustees approved the choice of Jones Whitsett as the architects for the Forbes Library Window and HVAC project on Friday August 19. Thank you for the meeting Thursday. You were very helpful in explaining the process and letting us know what to expect as the project moves on. Thank you also for assuring us that the Library Trustees will always be involved in the process and have approval for RFPs, bidding, and architect and contractor selection for this and future projects."

On Monday, September 12, City Solicitor sent the following email to Eric and Sandra Lucentini, the attorneys for the Trustees:

"Eric/Sandra - I have pasted below an email from Janet Moulding to David Pomerantz, Director of Central Services, relative to the window and HVAC projects at Forbes Library. In the email, Ms. Moulding expresses the mistaken impression that 'the Library Trustees will always be involved in the process and have approval for RFPs, bidding, and architect and contractor selection for this and future projects.' It is the City's position that pursuant to Judge Forbes' will, St. 1881, c. 232, and the vote of special town meeting held on May 31, 1881, the obligation to repair the library falls to the City, not to the Trustees, and the City does not intend to subject the repair process to the approval of the Trustees for RFPs, bidding and contractor selection. We will continue to keep the Library director and his or her designee apprised of developments as the process moves along and the Trustees are free to express the view on repair issues (as they apparently have done with the vote purportedly to approve the City's choice of Jones Whitsett Architects), but the ultimate decision-making is vested in the City."

Mr. Carrier said he thought this email from Alan Seewald removes whatever doubt any of the Trustees might have had about the wisdom of their decision to bring the city to court to clarify the nature of the library's relationship to the city. It also lays to rest the mayor's claim that if Attorney Seewald had only been allowed to come before the Trustees and

explain the city's point of view, this unfortunate situation could all have been avoided. The tone and content of this email are shocking, demeaning, and insulting. It demonstrates that right from the beginning, the intent of City Solicitor Seewald's memorandum dated January 28, 2016 was to usurp the legal powers of the Board of Trustees.

Mr. Carrier reported on the Case Management Conference held on September 9 before Judge Linda Fidnick. Present were Attorney Seewald, Eric and Sandra Lucentini, Mr. Carrier, and Eric Carriker for the Attorney General. Attorney Carriker made a clear statement to the judge, on the record, that based on his review of the pleadings, his office shares the Trustees' view of the matter. He stated directly to Attorney Seewald that the case law is not in the City's favor. Judge Fidnick appeared to be taking a fair and balanced approach to the dispute and repeatedly encouraged the parties to try to resolve their management differences. The litigation deadlines expected to be embodied in a forthcoming order from the Court include: discovery completed by November 28, 2016; summary judgment motions to be filed by February 28, 2017; pre-trial conference by May 31, 2017; and trial by July 2017.

Mr. Carrier, Ms. Moulding, and Ms. Downing met with Attorneys Eric and Sandra Lucentini to prepare the Trustees' response to the proposal from the city. They agreed upon changes in the counter proposal and hope to send it by next week to Attorney Seewald. The Trustees' proposal attempts to meet the legitimate concerns and expectations of the city while protecting the library's interests. Given the tone of the communication from Attorney Seewald, the Trustees are not optimistic their counter proposal will be accepted.

At 6:30 PM, Ms. Hess moved that the executive session be ended and the regular meeting reconvened. Ms. Reall seconded the motion, which was passed unanimously, with Mr. Carrier, Ms. Hess, Ms. Reall, and Ms. Wight all voting in favor.