TOWN MANAGER'S REPORT
JUNE 17, 2011

Attached please find correspondence from the office of the Town Manager for your review. Thank you.

Charles J. Cristello
Town Manager

DECAS, MURRAY & DECAS ATTORNEYS AT LAW
132 NORTH MAIN STREET · MIDDLEBORO · MASSACHUSETTS 02346 · (508) 947-4433

GEORGE C. DECAS (RETIRED)
DANIEL F. MURRAY, ESQUIRE
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HAND DELIVER

June 16, 2011

Charles J. Cristello, Town Manager
Middleboro Town Hall
Nickerson Avenue
Middleboro, MA 02346

RE: So. Middleborough land exchange / White McGill Realty

Dear Charlie:

I enclose a draft complaint (without exhibits) which White McGill Realty's attorney proposes to file with the Land Court to remove the cloud on title of the land owned by the Town which is to be transferred by the Town to White McGill. The Town of Middleborough is a party plaintiff in the case. The object of the complaint is to eliminate any claim to the land held by the trust or its members with respect to the right of entry for condition broken (a/k/a reverter). You will recall that we have been unable to identify who the members of the Trust are.

White McGill Realty's original approach was to file a petition in the Probate Court to obtain suitable relief. After conferring with the Probate Court, counsel decided that the Probate Court was not a proper venue for the relief desired. They decided on a different approach which is the enclosed complaint in the Land Court.

Please review this with the Board and advise if the Board will authorize me to sign the complaint on behalf of the Town. The Board previously authorized me to sign the Probate Court petition on behalf of the Town. I recommend that the Board authorize me to sign the Land Court complaint on behalf of the Town and to participate in the case keeping in mind that White McGill's attorneys would have the primary responsibility for the case.

Counsel pointed out that the time for performance of the purchase and sale agreements expires August 19, 2011. It's clear that the proposed Land Court proceeding will not be concluded by August 19, 2011. Counsel suggested that the parties should execute a new extension of the time to perform the purchase/sales agreements.

Please ask the Board if it will agree to a further extension. I think realistically that an extension until mid-2012 is warranted.

Very truly yours,

Dan

Daniel F. Murray
Town Counsel

DFM/s
T-1331

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

CIVIL NO. _____

TOWN OF MIDDLEBOROUGH, AND WHITE MCGILL REALTY, LLC, Plaintiffs,	)
v.	)
SOUTH MIDDLEBORO PROTECTIVE ASSOCIATION, INC.,	)
MEMBERS OF THE SOUTH MIDDLEBORO PROTECTIVE ASSOCIATION AND SUCH PERSONS, IF ANY, UNASCERTAINED, NOT IN BEING, UNKNOWN, WITHIN OR WITHOUT THE COMMONWEALTH, OR WHO CANNOT BE SERVED WITH PROCESS, THEIR HEIRS OR LEGAL REPRESENTATIVES OR SUCH OTHER PERSONS AS SHALL BECOME THEIR HEIRS, DEVISEES OR APPOINTEES, and	)
ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS, Defendants	)

COMPLAINT

I. INTRODUCTION

This is a civil action under G.L. c. 240 §§6 to 10 to remove a cloud on title to real property (the "Premises") owned by the plaintiff, Town of Middleborough, by deed from the South Middleboro Protective Association, Inc. and the Trustees of the South Middleboro Protective Association, under which the defendant Members are the beneficiaries. The cloud is a right of entry for condition broken (power of termination) reserved in the deed to enter and revest title to the Premises if the Town fails to use the Premises for fire station purposes.

The Town and White McGill Realty, LLC have entered into Purchase and Sale Agreements, by which the Town will transfer a portion of the Premises to White McGill in exchange for the transfer by White McGill to the Town of a parcel abutting the portion of the Premises retained by the Town. White McGill will not use the property received from the Town for fire station purposes, which will trigger the right of entry. The South Middleboro Protective Association, Inc. has agreed to release its rights of entry with respect to the portion of the Premises to be conveyed to White McGill. The Trust, however, has been terminated, all of the Trustees have died, and no beneficiaries of the Trust (the defendant Members) have been identified or located. By this action, the plaintiffs seek to extinguish the interest, if any, that had been retained by the Trustees or defendant Members.

The Premises is the parcel outlined in red on the plan attached hereto as Exhibit "A," which is a copy of a plan entitled "Plan of Land Prepared for White McGill Realty, LLC by Silva Engineering Associates, PC dated April 14, 2010," recorded with the Plymouth County Registry of Deeds on July 23, 2010 as Plan No. 292, in Plan Book 55, Page 1140. The portion of the Premises proposed to be conveyed to White McGill is shown as Parcel B. The land along Wareham Street (Route 28) shown as Parcel A, currently owned by White McGill, is the parcel proposed to be conveyed to the Town of Middleborough.

II. THE PARTIES

1. The plaintiff, Town of Middleborough (the "Town"), is a duly organized and existing municipality located in the County of Plymouth, Massachusetts and maintains

administrative offices at Town Hall, 10 Nickerson Avenue, Middleborough, Massachusetts.

2. The plaintiff, White McGill Realty, LLC ("White McGill"), is a duly organized and existing Massachusetts limited liability company with a principal office at 16 West Mill Street, Medfield, Massachusetts.

3. The defendant, South Middleborough Protective Association, Inc. (the "Corporation"), is a Massachusetts non-profit corporation having a principal office at 16 Benson Street, Middleborough, Massachusetts. The Corporation was organized on or about April 14, 1976 and remains in existence to the present. (See, Articles of Organization, attached hereto as Exhibit "B;" 2010 Annual Report, attached hereto as Exhibit "C").

4. The defendant Members of the South Middleboro Protective Association ("Association Members") are the beneficiaries named in a Declaration of Trust established by Ralph W. Tripp, William L. Greely and Harold A. Williams on July 29, 1952 recorded on June 1, 1965 with the Plymouth Registry of Deeds at Book 3209, Page 440 (the "Trust"), a copy of which is attached hereto as Exhibit "D." Pursuant to ¶7 of the Trust, the Trust "shall, unless sooner terminated, continue for 20 years after the death of the survivor of the three Trustees named herein; and if terminated at that time, title to any real estate then held by the said Trustees shall vest in the then members of said association in equal shares as tenants in common." The Trust terminated on March 14, 1995 by reason of the death of William L. Greely, the survivor of the three named

Trustees, on March 14, 1975. (See, Appointment of Successor Trustee dated April 6, 1965, referencing the death of Trustee, Harold A. Williams, on April 29, 1964, recorded at said Deeds at Book 3209, Page 440 (copy attached hereto as Exhibit "E"); Appointment of Successor Trustee dated February 8, 1971, referencing the death of Ralph W. Tripp, on September 22, 1970, recorded at said Deeds at Book 3652, Page 432 (copy attached hereto as Exhibit "F"); and Appointment of Successor Trustee dated March 31, 1975, referencing the death of William J. Greely, on March 14, 1975, recorded at said Deeds at Book 4057, Page 474 (copy attached hereto as Exhibit "G").

5. The defendant, Attorney General of the Commonwealth of Massachusetts, having a mailing address of One Ashburton Place, Boston, Massachusetts 02108 -1518, is charged with the oversight of funds given or appropriated to public charities pursuant to G.L. c.12, §8, and may be an interested party hereto.

III. FACTS

Title to the Premises

6. On or about March 27, 1991, the Corporation and the then-serving Trustees of the South Middleboro Protective Association conveyed the Premises to the Town by deed recorded with Plymouth County Registry of Deeds at Book 10762, Page 260 (the "Deed"), a copy of which is attached hereto as Exhibit "H."[1]

[1] The Deed appears to have been the product of a settlement of a lawsuit commenced in 1976 by the Corporation against the Trust in which the Corporation alleged it was the successor entity to the Trust pursuant to paragraph 5

7. Upon conveyance of the Premises to the Town, the grantors Corporation and Trustees retained a future interest, namely a right of entry for condition broken (power of termination) in the Premises, by including the following provision:

> "If the Town of Middleborough fails to use the real estate for fire station purposes and such failure continues for a period of six months after written notice thereof from grantors to the Town of Middleborough (provided that if the Town of Middleborough proceeds with due diligence during such six-month period to reinstate such use and is unable to do so within such time, said six-month period shall be extended by the time reasonably necessary to reinstate such use) then the grantors at any time thereafter may enter upon the property in order to revest title whereupon the real estate conveyed herein shall revert to grantors."

8. Upon the termination of the Trust, on or about March 14, 1995, pursuant to paragraph 7 of the Trust, "title to any real estate then held by said Trustees shall vest in the then members of said association in equal shares as tenants in common."

9. To the extent that a right of entry for condition broken may be considered "title to real estate," such right may have vested in the defendant "members of said association" (beneficiaries of the Trust) as tenants in common.

10. To the extent that a right of entry for condition broken in not "title to real estate," such rights may have been transferred or distributed by operation of law to the defendant "members of said association" (beneficiaries of the Trust) upon termination of the Trust.

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of the Trust. See, Plymouth Probate Court Equity Case No. E-1189 Docket Sheet (copy attached as Exhibit "I-1," Complaint (Exhibit "I-2"), Answer (Exhibit "I-3"), Preliminary Injunction dated October 8, 1976 prohibiting

11. Despite diligent efforts of the plaintiffs, the defendant "members of said association" have not been identified or ascertained.

12. At all times material hereto, the Premises have been used for fire station purposes.

The Proposed Transaction

13. On or about May 26, 2009, the Town, at its 2009 Annual Town Meeting, voted to authorize the Town's Board of Selectmen to convey a portion of the Premises (Parcel B on Exhibit "A") to White McGill in exchange for a 1.3 acre parcel owned by White McGill (Parcel A on Exhibit "A"). A copy of the vote taken, titled Article 16 of the 2009 Annual Town Meeting of the Town of Middleborough, is attached hereto as Exhibit "J."

14. On or about April 1, 2009, the Corporation voted that any exchange of the land between the Town and White McGill "to discharge the reverter clause on Parcel B would be contingent on granting reverter clause on Parcel A and the reverter clause to remain in force on Fire Station property." A true and accurate copy of the minutes of the meeting of the Corporation dated April 1, 2009 is attached hereto as Exhibit "K."

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the Town from accepting a gift of real estate from the defendant Trustees (Exhibit "I-4"), and Stipulation of Dismissal dated June 8, 1990, filed September 4, 1990 (Exhibit "I-5").

15. The Town is willing to subject said Parcel A to be received from White McGill to a condition subsequent, similar to that set forth in the 1991 Deed to the Town.

16. On or about May 3, 2010, the Town and White McGill entered into two Purchase and Sale Agreements for the exchange of Parcel A and Parcel B. A copy of the Purchase and Sale Agreement for Parcel A (White McGill to the Town) is attached hereto as Exhibit "L." A copy of the Purchase and Sale Agreement for Parcel B (the Town to White McGill) is attached hereto as Exhibit "M." The closing dates set forth in the Purchase and Sale Agreements have been extended by agreement to August 19, 2011. See, copy of Extension of Time for Performance dated February 28, 2011 attached hereto as Exhibit "N."

17. White McGill does not intend to use Parcel B for fire station purposes.

18. White McGill is ready, willing and able to consummate the transaction evidenced by the Purchase and Sale Agreements, provided that the Town can convey Parcel B free and clear of any rights held, or which may be held, by the defendants Corporation and Association Members.

WHEREFORE, the plaintiffs request that this Honorable Court:

1. order notice to the defendants pursuant to G.L. c. 240 §7;

2. declare and establish that the plaintiff, Town of Middleborough, owns the Premises described in the deed dated November 15, 1991 and recorded with Plymouth County Registry of Deeds at Book 10762, Page 260 free and clear of any claims, rights, or interests of the Members of the South Middleboro

Protective Association, named beneficiaries in the Declaration of Trust dated July 29, 1952, recorded at Plymouth County Registry of Deeds at Book 3209, Page 440; and

3. for such other and further relief as this Honorable Court may deem appropriate and just.

Respectfully submitted,

White McGill Realty, LLC
By its attorneys,

Date: _____

_____
Raymond S. Ewer, Esquire
Board of Bar Overseers #157020
email: ewer@tennant-ewer.com

Joanne Craig, Esquire
Board of Bar Overseers #554537
email: craig@tennant-ewer.com

Tennant & Ewer, P.C.
29 Crafts Street, Suite 500
Newton, Massachusetts 02460
(617) 964-1300; fax: (617)964-1307

Town of Middleborough,
By its attorney,

Date: _____

_____
Daniel F. Murray, Esquire
Board of Bar Overseers #_____
Decas, Murray and Decas
132 Main Street
Middleborough, MA 02346
(508) 947-4433; fax: (508) 947-7147
email: Decasmurraydecas@yahoo.com

MIDDLEBOROUGH POLICE DEPARTMENT

99 NORTH MAIN STREET
MIDDLEBOROUGH, MA 02346
(508) 947-1212
Fax (508) 947-1009

Bruce D. Gates
Chief of Police

June 1, 2011

Charles Cristello
Town Manager
Town of Middleborough

RE: Surplus Property

This is a request to declare 28, 12"metal and 6 particle board lockers as surplus.

The metal lockers were used and given to the Police Dept. from the School Dept. in 1973 when the new High School was built. The particle board lockers were used and donated from Otis Air Force Base in the mid 1980's.

Because of there age and deteriorating condition they are being replaced and should be declared surplus junk.

Respectfully Submitted,

Bruce D. Gates,
Chief of Police

Incorporated 1669
335 Years of Progress

CRANBERRY CAPITAL
OF THE WORLD

Town of Middleborough

Massachusetts

Town Manager

508-947-0928
FAX 508-946-2320

June 7, 2011

Greg Taylor
444 Wareham Street
Middleborough, MA 02346

Dear Mr. Taylor:

It is my pleasure to offer you the position of Sanitation Department Refuse Collector/Operator effective Tuesday, July 5, 2011, pending a pre-employment physical and CDL drug and alcohol screening.

Your hourly pay will be $18.3799 for 40 hours (Grade 7, Step 1). This position is a DPW Union position and all benefits under the Agreement will apply.

Congratulations!

Very truly yours,

Charles J. Cristello
Town Manager

CJC/ajf
cc: Board of Selectmen
Treasurer/Collector
Town Clerk
Andrew Bagas, DPW Director
David Blanton, DPW Union Steward