



**MUNICIPAL COUNCIL AGENDA
CHESTER R. MARTIN MUNICIPAL COUNCIL CHAMBERS
141 OAK STREET, TAUNTON, MA 02780**

~
NOVEMBER 27, 2012 - 7:00 PM

**INVOCATION
ROLL CALL
RECORDS**

HEARING: *Continued Hearing:* Board of Assessors FY2013 Classification Hearing

HEARING: *Continued Hearing:* On the petition submitted by Jon Connell, Field Engineering Co., Inc., 4 Court Street, Suite 104, Taunton on behalf of his client, Taunton Development Corporation 40 Summer Street, Taunton and others to accept Revolutionary Drive as a public way in the City of Taunton.

- Com. from City Engineer – Submitting a positive recommendation
- Com. from Chairman, Taunton Planning Board – Submitting a positive recommendation
- Com. from DPW Commissioner – Requesting information

HEARING: On the petition submitted by Attorney David Gay, Gay & Gay PC, 73 Washington St., Taunton on behalf of his clients Peter Thomas, 116 Winter Street, Taunton and JLJ, LLC, 122 Winter Street, Taunton to change from Urban Residential District to Highway Business District for the following properties:

116 Winter St., Property ID 48-48, 122 Winter St. Property ID 56-1, Winter St., Property ID 48-49, Longmeadow Rd., Property ID 56-2

- Com. from Chairman, Taunton Planning Board – Submitting a positive recommendation with attachments
- Taxes Due

2012 NOV 21 10:31 AM
RECEIVED
CITY CLERK'S OFFICE

HEARING:

On the petition submitted by Attorney David Gay, Gay & Gay PC, 73 Washington St., Taunton on behalf of his client, Arthur Gareau, Water Solutions Group, 35 Mozzone Blvd., Taunton to allow:

A 59' x 33' wastewater storage tank expansion to the existing wastewater treatment facility at 35 Mozzone Boulevard located in the Industrial District.

- Com. from Chairman, Taunton Planning Board – Submitting a positive recommendation with attachments
- Tax status paid in full

COMMUNICATIONS FROM THE MAYOR

- **Presentation of the FY2013 Supplemental Budget**

APPOINTMENTS

COMMUNICATIONS FROM CITY OFFICERS

- Pg. 1 Com. from Executive Director of Retirement – Submitting the latest actuarial valuation of the City of Taunton Contributory Retirement System **(SEPARATE PACKET)**
- Pg. 2 Com. from City Solicitor – Submitting roads and infrastructure maintenance agreements for the Hope VI Project **(SEPARATE PACKETS)**
- Pg. 3 Com. from City Solicitor – Submitting the extension of the Parker Golf Course Maintenance and Management Contract **(SEPARATE PACKET)**
- Pg. 4 Com. from Executive Director of Retirement – Notifying of a meeting
- Pg. 5 Com. from Conservation Agent – Responding on Corner of Bliss Street and Kilmer Avenue
- Pg. 6 Com. from Assistant City Solicitor – Municipal Charges Liens
- Pg. 7-8 Com. from Sealer of Weights and Measures, DPW – Requesting an increase in sealing fees
- Pg. 9-11 Com. from City Solicitor – Accounting of settlement funds from City Hall fire loss
- Pg. 12-35 Com. from City Solicitor – Notice of lawsuit

PETITIONS

Class II Licenses

1. Top Quality Auto Sales, Inc. located at 397 Winthrop Street, Taunton
2. Winthrop Street Motors, Inc. located at 347 Winthrop Street, Taunton
3. Tucan Auto Sales Corporation located at 295 Broadway, Taunton
4. Amorim Auto Sales, Inc. located at 265 Longmeadow Road, Taunton
5. Taunton Service Center, Inc. –dba- Taunton Service Center Auto Sales located at 48 Broadway

Billiard Table License

Petition submitted by Peter Hebert, 30 Avalon Drive, Taunton requesting a **NEW** Billiard Table License for Baha Bros. Pub & Restaurant Inc. –DBA- Sandbar Grill located at 64 Weir Street, Taunton. **(2 Tables)**

Temporary Fixed Vendor License

Petition submitted by Patricia Barrett, 390 Broadway, Raynham requesting a **RENEWAL** of her Temporary Fixed Vendor's License for Arthur's Flower Shop located at 16 Washington St., Taunton to sell flowers.

COMMITTEE REPORTS

UNFINISHED BUSINESS

ORDERS, ORDINANCES AND RESOLUTIONS

Resolution

- Resolution submitted by Bristol County Savings Bank, 35 Broadway, Taunton designating public depository and authorizing withdrawal of Municipal Public Moneys for the City of Taunton, Barnum School, 25 Barnum St., Taunton.

NEW BUSINESS

Respectfully submitted,



Rose Marie Blackwell
City Clerk

HEARING



CITY of TAUNTON
DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION

15 Summer Street
Taunton, Massachusetts 02780-3430
Phone: 508-821-1027, Fax: 508-821-1336

Mark B. Slusarz, P.E.
City Engineer



MEMORANDUM

TO: Mayor Thomas C. Hoye, Municipal Council
FROM: Mark Slusarz, P.E., City Engineer *MS*
CC: Kevin Scanlon, City Planner
DATE: September 10, 2012
RE: Street Acceptance, Revolutionary Drive

The Engineering Department has visited the site and reviewed the Acceptance Plan for the above referenced location. We find that all work has been performed in conformance to the design, and all materials meet the City of Taunton's requirements. I recommend acceptance of Revolutionary a Drive as Public Way.

HEARING



TAUNTON PLANNING BOARD

**City Hall
15 Summer Street
Taunton, Massachusetts 02780**

Phone 508-821-1051
Fax 508-821-1665

Denise J. Paiva, Secretary

October 9, 2012

Honorable Thomas Hoye and
Members of the Municipal Council
City Hall, 15 Summer Street
Taunton, MA 02780

c/o Rose Marie Blackwell, City Clerk

RE: Revolutionary Drive – Phase 1

Dear Mayor Hoye and Members of the Municipal Council:

Please be advised that at the regularly scheduled meeting held on July 21, 2011 the Taunton Planning Board voted to find the subdivision complete and send a positive recommendation to the Municipal Council to accept Revolutionary Drive as a public way in the City of Taunton.

Very truly yours,

Daniel P. Dermody, Chairman
TAUNTON PLANNING BOARD

DPD/djp

HEARING

City Clerk's Office

From: Fred Cornaglia <dpwcomm@tmlp.net>
Sent: Tuesday, October 09, 2012 5:08 PM
To: cityclerk@tmlp.net
Cc: 'Tony Abreau'; 'Cathal O'Brien'
Subject: Revolutionary Drive Acceptance as a Public Way

Hi Rosie,

Please note that the DPW must have the following before we can recommend the above referenced matter:

- All as-built drawings must be submitted for review and approval in regards to all DPW infrastructure = water, sewer, drainage, roadway, etc.
- All inspection reports for the above listed items must also be submitted for review and approval
- All permits and documentation for the utilities and associated infrastructure must also be on file, including the extension and expansion of each utility
- Time must be given for DPW Team review prior to the meeting on the 16th, so that we can give a simple sign off prior to, if appropriate

Please reply with any questions.

Thanks,

Fred and the DPW Team.

WINTER STREET HEARING



Denise J. Paiva, Secretary

TAUNTON PLANNING BOARD

City Hall

15 Summer Street

Taunton, Massachusetts 02780

Phone 508-821-1051

Fax 508-821-1665

October 5, 2012

Honorable Mayor Thomas Hoye and
Members of the Municipal Council
City Hall, 15 Summer Street
Taunton, MA 02780

C/O Rosemarie Blackwell, City Clerk

RE: ZONING CHANGE – WINTER STREET

Dear Mayor Hoye and Members of the Municipal Council:

Please be advised that on October 4, 2012 the Taunton Planning Board held their public hearing on the proposed zoning change to rezone properties on Winter Street from Urban Residential District to Highway Business District submitted by Peter Thomas & JLJ LLC. The properties are as follows:

116 Winter St – Property I.D. 48-48
122 Winter St – Property I.D. 56-1
Winter St – Property I.D. 48-49
Longmeadow Rd – Property I.D. 56-2

The Taunton Planning voted unanimously to send the Municipal Council a positive recommendation to change above mentioned properties from Urban Residential District to Highway Business District. Attached are the Department comments for your viewing.

Very truly yours,

Daniel P. Dermody, Chairman
TAUNTON PLANNING BOARD

DPD/djp

rec'd 10-1-12



WINTER STREET HEARING
City of Taunton, Massachusetts
DEPARTMENT OF
PLANNING AND CONSERVATION
15 Summer Street
Taunton, Massachusetts 02780

Kevin R Scanlon, Director/ Planner AICP
Michele Restino, Conservation Agent

Phone 508-821-1051, 508-821-1043
Phone 508-821-1095 Fax 508-821-1665
www.ci.taunton.ma.us

October 1, 2012

Dan Dermody, Chairperson
Members of the Planning Board
15 Summer Street, City Hall
Taunton, MA 02780

RE: Zoning Change- Winter Street

Dear Mr Dermody and Planning Board Members:

This letter is in regards to the requested zoning change request for properties in Winter Street from Urban Residential to Highway Business.

I recommend that the Board send a positive recommendation to the Municipal Council on this request.

If you have any additional questions, please contact me at 508-821-1051.

Sincerely,

Kevin R Scanlon,
Director AICP



WINTER STREET HEARING
City of Taunton, Massachusetts
DEPARTMENT OF
PLANNING AND CONSERVATION

15 Summer Street
Taunton, Massachusetts 02780

Kevin R Scanlon, Director/ Planner AICP
Michele Restino, Conservation Agent

Phone 508-821-1051, 508-821-1043
Phone 508-821-1095 Fax 508-821-1665
www.ci.taunton.ma.us

September 14, 2012

Dan Dermody, Chairperson
Members of the Planning Board
15 Summer Street, City Hall
Taunton, MA 02780

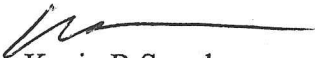
RE: Zoning map amendment

Dear Mr Dermody and Planning Board Members:

This letter is in regards to the requested zone change on Winter Street. I recommend that the request be granted.

If you have any additional questions, please contact me at 508-821-1051.

Sincerely,


Kevin R Scanlon,
Director AICP

rec'd.
9-14-12



WINTER STREET HEARING
City of Taunton

Board of Health
45 School Street
Massachusetts 02780-3212

BOARD MEMBERS
DR. BRUCE E. BODNER
DR. C. NASON BURDEN
DR. JOSEPH F. NATES

HEATHER L. GALLANT, MPH, RS, CHO
EXECUTIVE DIRECTOR

ADAM S. VICKSTROM
ASSISTANT EXECUTIVE DIRECTOR

September 25, 2012

TO: Planning Board

FROM: Adam S. Vickstrom
Assistant Executive Director
Board of Health

RE: Harvey Hills Estates, Release of Last Lot
35 Mozzone Blvd., Wastewater Treatment Plant
Winter Street / Longmeadow Road, Re-Zoning
Preliminary Subdivision, Myles Standish Industrial Park – Phase IV
Expansion

rec'd,
9-25-12-

The Board of Health has reviewed the following

- **Harvey Hills Estates, Release of Last Lot**
The Board of Health has no comments.
- **35 Mozzone Blvd., Wastewater Treatment Plant**
The Board of Health has no comments.
- **Winter Street / Longmeadow Road, Re-Zoning**
The Board of Health has no comments.
- **Preliminary Subdivision, Myles Standish Industrial Park – Phase IV Expansion**
The Board of Health has no comments.

WINTER STREET HEARING

rec'd.
9-13-12



City of Taunton, Massachusetts CONSERVATION COMMISSION

15 Summer Street
Annex Building
Taunton, Massachusetts 02780

Phone 508-821-1095 Fax 508-821-1665
www.ci.taunton.ma.us

Conservation Commissioners

Brian Marques, Chair
Steven Turner, Vice Chair
Debbie Botellio
Renwick Chapman, PE
Ernest Enos
Marla Isaac
Neil Kelly

September 13, 2012

Daniel Dermody, Chair
Members of Taunton Planning Board
15 Summer Street
Taunton, MA 02780

RE: Zoning Map Amendment – to re-zone property currently in the Urban Residential District to Highway Business District – submitted by Peter Thomas & JLJ LLC for 116 & 122 Winter St and property ID 48-49 and 56-2 (Longmeadow Rd)

Dear Mr. Dermody and Members of the Taunton Planning Board,

There are no conservation issues regarding this request.

Sincerely,


Michele Restino
Conservation Agent

35 MOZZONE BLVD HEARING



TAUNTON PLANNING BOARD

City Hall
15 Summer Street
Taunton, Massachusetts 02780

Denise J. Paiva, Secretary

Phone 508-821-1051

Fax 508-821-1665

October 5, 2012

Honorable Mayor Thomas Hoye and
Members of the Municipal Council
City Hall, 15 Summer Street
Taunton, MA 02780

C/O Rosemarie Blackwell, City Clerk

RE: SPECIAL PERMIT – 35 MOZZONE BLVD.

Dear Mayor Hoye and Members of the Municipal Council:

Please be advised that on October 4, 2012 the Taunton Planning Board reviewed the proposal for the proposed tank addition for 35 Mozzone Blvd. submitted by Water Solutions Group.

The Taunton Planning voted to forward a positive recommendation to the Municipal Council on the proposed tank addition along with department comments (see attached).

Very truly yours,

Daniel P. Dermody, Chairperson
TAUNTON PLANNING BOARD

DPD/djp



35 MOZZONE BLVD HEARING

City of Taunton, Massachusetts

**DEPARTMENT OF
PLANNING AND CONSERVATION**

*15 Summer Street
Taunton, Massachusetts 02780*

Sec'd
9-20-12

*Kevin R Scanlon, Director/ Planner AICP
Michele Restino, Conservation Agent*

*Phone 508-821-1051, 508-821-1043
Phone 508-821-1095 Fax 508-821-1665
www.ci.taunton.ma.us*

September 20, 2012

Dan Dermody, Chairperson
Members of the Planning Board
15 Summer Street, City Hall
Taunton, MA 02780

RE: Special Permit – 35 Mozzone Blvd

Dear Mr Dermody and Planning Board Members:

This letter is in regards to the Special permit for the proposed tank addition for 35 Mozzone Blvd. I concur with the City Engineer's comments with regards to this project. In addition, I have the following comments;

1. the proposed chain link fence as proposed cannot be higher than 6 feet since it encroaches on the setback
2. plus/minus notations on setbacks, acreage and dimensions is not permissible and shall be removed from the plan and these numbers firmly established.
3. A site plan review with the Planning Board is required if the project is approved.

If you have any additional questions, please contact me at 508-821-1051.

Sincerely,

Kevin R Scanlon,
Director AICP

35 MOZZONE BLVD HEARING

rec'd-
10-2-12



City of Taunton, Massachusetts

CONSERVATION COMMISSION

*15 Summer Street
Annex Building
Taunton, Massachusetts 02780*

Phone 508-821-1095 Fax 508-821-1665

www.ci.taunton.ma.us

Conservation Commissioners

*Brian Marques, Chair
Steven Turner, Vice Chair
Debbie Botellio
Renwick Chapman, PE
Ernest Enos
Marla Isaac
Neil Kelly*

October 2, 2012

Daniel Dermody, Chair
Members of Taunton Planning Board
15 Summer Street
Taunton, MA 02780

RE: Special Permit – 35 Mozzone Boulevard, Wastewater Treatment Plant

Dear Mr. Dermody and Members of the Taunton Planning Board,

There are no conservation issues regarding this request.

Sincerely,

Michele Restino
Conservation Agent



35 MOZZONE BLVD HEARING

City of Taunton

Board of Health

45 School Street
Massachusetts 02780-3212

BOARD MEMBERS
DR. BRUCE E. BODNER
DR. C. NASON BURDEN
DR. JOSEPH F. NATES

HEATHER L. GALLANT, MPH, RS, CHO
EXECUTIVE DIRECTOR

ADAM S. VICKSTROM
ASSISTANT EXECUTIVE DIRECTOR

September 25, 2012

rec'd.
9-25-12.

TO: Planning Board

FROM: Adam S. Vickstrom
Assistant Executive Director
Board of Health

RE: Harvey Hills Estates, Release of Last Lot
35 Mozzone Blvd., Wastewater Treatment Plant
Winter Street / Longmeadow Road, Re-Zoning
Preliminary Subdivision, Myles Standish Industrial Park – Phase IV
Expansion

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- **Winter Street / Longmeadow Road, Re-Zoning**
The Board of Health has no comments.
- **Preliminary Subdivision, Myles Standish Industrial Park – Phase IV Expansion**
The Board of Health has no comments.



CITY OF TAUNTON
Contributory Retirement System
Address: 40 Dean St., Unit 3
Taunton, Massachusetts 02780
Tel (508) 821-1052 Fax (508) 821-1063
www.tauntonretirement.com

**BOARD OF
RETIREMENT**

Chairperson:

Ann Marie Hebert, City Auditor

Elected member: Richard T. Avila

Elected member: Peter H. Corr

Mayoral appointee: Gill E. Enos

Board appointee: A. Joan Ventura

STAFF

Executive

Director:

Paul J. Slivinski

Assistant

Director:

Kathy A. Maki

November 16, 2012

Hon. Thomas C. Hoye Jr., Mayor
Ryan Colton, Council President and
Members of the Taunton Municipal Council
141 Oak St., Maxham School
Taunton, MA. 02780

Dear Mayor Hoye and Councilors:

Enclosed *for your information* is the latest actuarial valuation of the City of Taunton Contributory Retirement System as of January 1, 2012. The valuation was performed by Buck Consultants and updates the retirement system's pension liabilities, funded status, and funding schedule.

Respectfully yours,

Paul J. Slivinski, CPP
Executive Director

Encl.



City of Taunton
LAW DEPARTMENT

141 Oak Street
Taunton, Massachusetts 02780
Phone (508) 821-1036 Facsimile (508) 821-1064



Thomas C. Hoye, Jr.
MAYOR

Jason D. Buffington
CITY SOLICITOR

Daniel F. de Abreu
ASST. CITY SOLICITOR

November 20, 2012

Honorable Mayor Thomas C. Hoye, Jr.
Members of the Taunton Municipal Council
141 Oak Street
Taunton MA 02780

RE: Roads and Infrastructure Maintenance Agreements – Hope VI Project

Dear Mayor Hoye and Members of the Municipal Council:

Enclosed herewith are two Roads and Infrastructure Maintenance Agreements in conjunction with the Hope VI project. Please note that there is one agreement for the Parcel 6A portion of the project and one agreement for the Fairfax portion of the project.

Please know that I hereby approve of the form of these contracts and I present them to you for your consideration and approval. Thank you, as always, for allowing me to be of service to you and the citizens of Taunton.

Very truly yours,

Jason D. Buffington, Esq.
City Solicitor



City of Taunton
LAW DEPARTMENT

141 Oak Street
Taunton, Massachusetts 02780
Phone (508) 821-1036 Facsimile (508) 821-1064



3

Thomas C. Hoye, Jr.
MAYOR

Jason D. Buffington
CITY SOLICITOR

Daniel F. de Abreu
ASST. CITY SOLICITOR

November 19, 2012

Honorable Mayor Thomas C. Hoye, Jr.
Members of the Taunton Municipal Council
141 Oak Street
Taunton MA 02780

RE: Extension of Parker Golf Course Maintenance and Management Contract

Dear Mayor Hoye and Members of the Municipal Council:

Pursuant to a request from the members of the Golf Course Commission, this office drafted an extension of the existing contract with LEA Golf, Inc., for a period of one year. This contract, a copy of which is attached, merely extends the terms of the existing contract through December 31, 2013. I respectfully request your review and approval of the same.

I have informed all interested parties that a RFP will be conducted for the time period beginning January 1, 2014. Thank you for allowing me to be of service to you and the citizens of Taunton.

Very truly yours,

Jason D. Buffington, Esq.
City Solicitor

cc: Thomas Bernier, Chairman, Golf Course Commission



CITY OF TAUNTON
Contributory Retirement System

40 Dean Street, Unit #3
Taunton, MA. 02780
(508) 821-1052 Fax (508) 821-1063
www.tauntonretirement.com

4

**BOARD OF
RETIREMENT**

Chairperson:

Ann Marie Hebert, City Auditor

Elected member: Richard T. Avila

Elected member: Peter H. Corr

Mayoral appointee: Gill E. Enos

Board appointee: A. Joan Ventura

STAFF

Executive

Director:

Paul J. Slivinski

Assistant

Director:

Kathy A. Maki

November 19, 2012

Hon. Thomas C. Hoye, Jr., Mayor
Members of the Taunton Municipal Council
141 Oak St., Temporary City Hall
Taunton, MA. 02780

Dear Mayor Hoye and Councilors:

At a meeting of the Taunton Retirement Board on November 16, 2012, it was voted to post a meeting to be held at 8:00 a.m. on December 21, 2012 for the purpose of reviewing a cost-of-living adjustment for retirees and survivors of the system.

This letter serves as official notice pursuant to G.L. c. 32, s. 103(i) that the board provide the city with a 30-day notice.

Respectfully yours,

Paul J. Slivinski, CPP
Executive Director

RECEIVED
CITY CLERK'S OFFICE
2012 NOV 19 P 12:57



City of Taunton, Massachusetts
**CONSERVATION
COMMISSION**

*15 Summer Street
Annex Building
Taunton, Massachusetts 02780*

*Phone 508-821-1095 Fax 508-821-1665
www.ci.taunton.ma.us*

Conservation Commissioners

- Brian Marques, Chair*
- Steven Turner, Vice Chair*
- Debbie Botellio*
- Renwick Chapman, PE*
- Ernest Enos*
- Marla Isaac*
- Neil Kelly*

November 19, 2012

Honorable Thomas Hoye, Mayor
Members of the Municipal Council
15 Summer Street
Taunton, MA 02780

RE: Corner of Bliss Street and Kilmer Avenue (#63 Bliss Street)

Dear Mayor Hoye and Members of the Municipal Council,

This property is adjacent to Cobb Brook, and is not a swale. The brook was cleaned out and the banks reinforced with riprap over a weed barrier after the storms and flooding of 2010. The area cannot be reached by a flail mower but can be reached using hand tools.

I have had conversations with both DPW and Bristol County Mosquito Control. On Friday, November 16th, DPW cleaned out the invasive phragmites growing along the bank. Mosquito Control said that they will put it on their Fall maintenance schedule.

Cobb Brook is a perennial stream and therefore under the protection of the Wetlands Protection Act and Rivers Protection Act. We are limited to what can be done, and will only be able to do work that will keep the channel open and free of debris within the limitations set forth by the above Acts.

Thank you for bringing this issue up. Please let me know if there are further issues regarding this or other wetlands matters.

Respectfully,

Michele Restino
Conservation Agent



City of Taunton

LAW DEPARTMENT

141 Oak Street

Taunton, Massachusetts 02780

Phone (508) 821-1036 Facsimile (508) 821-1064



Thomas C. Hoye, Jr.
MAYOR

Jason D. Buffington
CITY SOLICITOR

Daniel F. de Abreu
ASST. CITY SOLICITOR

November 20, 2012

Ryan Colton, Council President
Members of the Municipal Council
141 Oak Street
Taunton, MA 02780

RE: Municipal Charges Liens

Dear President Colton and Members of the Municipal Council:

As you may be aware, Massachusetts General Laws chapter 58 section 40 provides that a city may impose a municipal charges lien for any charge or fee that has not been paid by the due date, providing that a separate vote is taken for each type of charge or fee. It has not been ascertained whether or not a vote has been taken for fees and charges relating to police details.

Would you please consider making the following motion:

1. that a lien, to include any lien previously recorded, may be imposed on real property located within the City of Taunton for any local charge or fee related to police details that has not been paid by the due date, pursuant to Massachusetts General Laws Chapter 40 section 58.

Thank you for your consideration of this matter. Please call me with any questions or concerns.

Sincerely,

Daniel F. de Abreu
Assistant City Solicitor



DEPARTMENT OF PUBLIC WORKS
Division of Weights and Measures

DAVID F. ENOS, JR.
Sealer of Weights and Measures

To: Council President Ryan Colton and Municipal Council

From: David Enos, Sealer of Weights and Measures

Subject: Sealing Fees

Date: November 21, 2012

I am requesting an increase to the Department of Weights and Measure's Fee Schedule (Ordinance Section 2-153.1). The last increase to fees occurred in 2001. Since that time the average fee schedule of other municipalities have increase. Our fee schedule was in the medium range, but has moved toward the lower end of the scale. The fees increase I have purposed will maintain the city's fee schedule in the medium range. The increase will also reflect the increase in cost in training and equipment need to maintain equality in the market place.

I have enclosed a copy of our current fee schedule along with purpose increases. I will be available to answer any questions at your earliest convenience. I would like to have the increase effective January 1, 2013. Thank you for your time on this matter.

Respectfully submitted,

David F. Enos, Jr.

Sealer of Weights and Measures

CRAIG C. SHERMAN OPERATIONS CENTER

90 Ingell Street
Taunton, Massachusetts 02780 - 3507
Telephone : (508) 821 - 1443
Fax : (508) 821 - 1437



	Current Fee	Purpose increase
Scale with capacity over 10,000 lbs.	\$100.00	\$150.00
Scale with capacity 5,000 to 10,000 lbs.	\$65.00	\$100.00
Scale with capacity 1,000 to 4,999 lbs.	\$50.00	\$75.00
Scale with capacity 100 to 999 lbs.	\$35.00	\$50.00
Scale with capacity 10 to 99 lbs.	\$20.00	\$30.00
Scale with capacity under 10lbs.	\$15.00	\$20.00
Avoirdupois (each)	\$2.00	\$5.00
Metric (each)	\$2.00	\$5.00
Apothecary (each)	\$2.00	\$5.00
Troy (each)	\$2.00	\$5.00
One gallon or less	\$10.00	\$15.00
Vehicle tanks	\$40.00	\$50.00
Gas Meters	\$15.00	\$25.00
Vehicle tank Meters	\$40.00	\$60.00
Bulk Storage	\$50.00	\$75.00
Reverse Vending Machine	\$10.00	\$15.00
Taxi Meters	\$10.00	\$30.00
Odometer	\$8.00	\$30.00
Fabric Measuring	\$10.00	\$15.00
Wire/Rope/Cordage	\$10.00	\$15.00
Yard Sticks	\$5.00	\$15.00
1 to 3 scanners	\$75.00	\$100.00
4 to 11 scanners	\$150.00	\$200.00
Twelve or more scanners	\$250.00	\$300.00



City of Taunton

LAW DEPARTMENT

141 Oak Street

Taunton, Massachusetts 02780

Phone (508) 821-1036 Facsimile (508) 821-1064



Thomas C. Hoye, Jr.
MAYOR

Jason D. Buffington
CITY SOLICITOR

Daniel F. de Abreu
ASST. CITY SOLICITOR

November 21, 2012

Honorable Mayor Thomas C. Hoye, Jr.
Members of the Taunton Municipal Council
141 Oak Street
Taunton MA 02780

RE: Accounting of Settlement Funds from City Hall Fire Loss

Dear Mayor Hoye and Members of the Municipal Council:

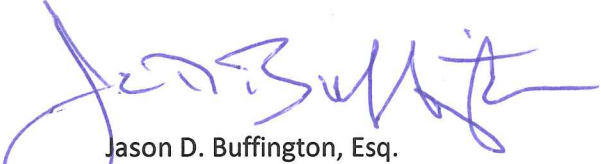
You have asked this office to prepare an accounting of the funds from the insurance proceeds of the settlement resulting from the City Hall fire. Recent media reports have erroneously suggested that the City once had \$4.8M in insurance settlement funds in its coffers but now has only \$1.4M remaining. This is not accurate.

In 2011, the City and the insurance company settled the claim for \$4,818,345.45. This figure comprised of three distinct elements: (1) money paid directly by the insurance company to others, which totaled \$1,027,629.75, (2) money that the City could receive in the future from the insurance company upon the rebuilding of City Hall, which totaled \$1,587,905.41, and (3) money that was paid directly to the City, which totaled \$2,202,810.29.

Please refer to the attached spreadsheet for a more precise itemization. As you can see, from the \$2,202,810.29 that was paid directly to the City by the insurance company, \$1,458,619.62 remains. Of the \$744,190.67 that has been spent from these funds, \$487,768.20 (or 65.5%) was used towards the public adjuster's fee and the recently-approved feasibility study.

I wish to thank Risk Manager Sue Barber for her assistance with this endeavor. If you should have any further questions, please do not hesitate to contact us.

Very truly yours,



Jason D. Buffington, Esq.
City Solicitor

//

Money Received from Insurance Company	Money Paid Directly by Insurance Company to Others	Money Not Received at all but is part of \$4,818,345.45 Settlement Figure
\$100,000.00 Advance on 11/18/2010 \$100,000.00 Advance on 3/4/2011 \$2,002,810.29 Final checks on 7/27/2011 \$2,202,810.29 Total received	ARS Services \$524,992.06 B&D Construction \$360,782.81 Patriot Relocation Serv. \$80,644.00 Brian Andrade Electric \$26,483.74 Kaestle Boos Assoc. \$19,400.00 Other \$15,327.14	\$100,000.00 Deductible \$1,000,000.00 Code Upgrades \$487,905.41 Depreciation \$1,587,905.41
-96,913.20 Public Adjuster's fee -390,855.00 Feasibility Study -24,098.00 Storage space rental -6,774.25 Electrical - 15 Summer St. -15,013.70 WH Riley Oil - 15 Summer St. -921.41 Water - 15 Summer St. -17,760.00 Asbestos removal - Maxham -28,017.39 Electrical upgrade - Maxham -8,999.31 Air Conditioning - Maxham -8,200.00 Parking lot upgrade - Maxham -2,402.62 Ramp Council Chamb. - Maxham -9,544.99 Furniture/equipment -14,750.00 Kaestle Boos Assoc. -91,250.50 Replenish of payments made from Risk Mgr. account -28,690.30 Other	\$1,027,629.75	
\$1,458,619.62 Funds Remaining		

(Through October 31, 2012)



City of Taunton

LAW DEPARTMENT

141 Oak Street

Taunton, Massachusetts 02780

Phone (508) 821-1036 Facsimile (508) 821-1064



Thomas C. Hoye, Jr.
MAYOR

Jason D. Buffington
CITY SOLICITOR

Daniel F. de Abreu
ASST. CITY SOLICITOR

November 21, 2012

Honorable Mayor Thomas C. Hoye, Jr.
Members of the Taunton Municipal Council
141 Oak Street
Taunton MA 02780

RE: City of Taunton v. Axis Insurance Co. et al
Bristol County Superior Court, Docket No. BRCV2012-00884

Dear Mayor Hoye and Members of the Municipal Council:

Please be advised that the City of Taunton has initiated a lawsuit in the Bristol County Superior Court against Axis Insurance Company, Farrell Backlund Insurance Agency, LLC, and Russell Martorana. This lawsuit, which arises out of the City Hall fire in August 2010, seeks \$6,000,000 in damages. A copy of the suit papers are enclosed herewith.

In 2011, the administration then in office settled the claim with the City's then-insurance company, Axis Insurance. The total amount of the settlement was \$4,818,345.45. Included in this amount is \$1,587,905.41 in code upgrade expenses, recoverable depreciation, and reimbursement of the \$100,000 deductible that Axis agreed the City would be entitled to if it met Axis' arbitrary and unreasonable two-year deadline.

The City has not actually received this amount and Axis has refused to pay the same to the City. Thus, the City seeks damages against Axis in the amount of \$1,587,905.41. The remainder of the damages sought in this case is against the City's former insurance advisers.

One of the most frustrating aspects of the City Hall fire was that the City was woefully underinsured at the time the fire occurred. Bringing a building of City Hall's age and architecture up to code following a loss of this magnitude is expected to cost in excess of \$5,000,000 in code upgrade expenses alone. At the time of the loss, the City's insurance

policy with Axis, procured through Farrell Backlund, had a \$1,000,000 limit for code upgrade coverage.

Subsequent to the fire, code upgrade coverage was increased from \$1,000,000 to \$10,000,000. This resulted in a premium increase of less than \$5,000 on an annual basis.

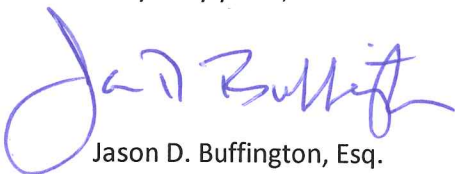
Farrell Backlund had been the insurance broker for the City's insurance contracts for numerous years prior to the fire. In this lawsuit, the City alleges that it relied on the advice and counsel it received from them to meet its complex insurance needs. The City further alleges that Farrell Backlund failed to properly advise the City as to the appropriate coverage amounts and that the City suffered significant financial loss as a result thereof.

In this lawsuit, the City will be represented by the Law Offices of William T. Kennedy, P.C., which is based in Quincy. Attorney Kennedy and his team are well qualified and experienced in the field of insurance litigation and I am confident that the City will be well-served by this firm.

I am mindful of the fact that the City is initiating litigation against a local business. Please know that this was not a decision that was made lightly. It was instead a decision that was made after careful thought and consideration and after significant consultation with the City's own expert in the field of insurance.

At the end of the day, we had to make a determination as to what was in the best business interests of the City of Taunton. I am confident that we have done the right thing for the citizens and taxpayers of Taunton.

Very truly yours,



Jason D. Buffington, Esq.
City Solicitor

Enclosure

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 2012 CV 00884

CITY OF TAUNTON,
Plaintiff

v.

AXIS INSURANCE COMPANY,
FARRELL BACKLUND
INSURANCE AGENCY, LLC, and
RUSSELL MARTORANA
Defendants

AMENDED COMPLAINT

Parties

1. The Plaintiff, City of Taunton, Massachusetts (“City of Taunton” or “City”), is a municipal Corporation, being one of the 351 cities and towns of Massachusetts, having its principal place of business at Temporary City Hall, 141 Oak St., Taunton, Bristol County, Commonwealth Of Massachusetts.

2. The Defendant, AXIS Insurance Company (“AXIS” or “AXIS Insurance”), is a foreign insurance company, domiciled in the State of Illinois, with a principal office located at 11680 Great Oaks Way, Suite 500, Alpharetta, Georgia.

3. At all relevant times, and in all cases since January 1, 2010, AXIS has been, and continues to be, a foreign insurance company licensed and/or approved to transact the business of insurance in the Commonwealth of Massachusetts by the Massachusetts Division of Insurance.

4. The Defendant, Farrell Backlund Insurance Agency, LLC (hereinafter “Farrell Backlund”) is an insurance agency with a principal place of business at 128 Dean St., in Taunton, County of Bristol, Commonwealth of Massachusetts.

5. The Defendant Russell Martorana is the President of Farrell Backlund Insurance Agency, LLC. Mr. Martorana was, at all relevant times, the primary point of contact between the Plaintiff City of Taunton and Farrell Backlund.

6. At all times material hereto, Farrell Backlund was a lawful insurance agent for the Defendant, AXIS Insurance Company, with actual and/or apparent authority to bind insurance coverage on behalf of Defendant, AXIS Insurance Company.

General Allegations

7. The Plaintiff repeats, restates and realleges paragraphs 1 through 6 above as if the same was fully repeated and restated herein.

8. The Plaintiff City of Taunton presented, at all times relevant, a wide and complex range of risks requiring insurance, including but not limited to risks deriving from its automotive fleet, its airport, its numerous municipal buildings, its employees, and its independent contractors.

9. These varied and comprehensive risks required a wide range of insurance policies including, but not limited to, property insurance, general liability insurance, premises liability, workers compensation insurance, and municipal liability insurance.

10. The Plaintiff City of Taunton, for at least 10 years prior to August 17, 2010, placed its entire insurance portfolio with the Defendant Farrell Backlund.

11. For the periods relevant to this Complaint, the Plaintiff City of Taunton paid to the Defendant Farrell Backlund an annual premium in an approximate amount which exceeded \$600,000.00.

12. The Defendant Farrell Backlund provides insurance advice to its customers.

13. The Defendant Farrell Backlund provides insurance expertise to its customers.

14. The Defendant Farrell Backlund provides its customers with guidance and advice in terms of selecting the appropriate amount and type of insurance coverage.

15. The clients/customers of the Defendant Farrell Backlund rely upon the advice and expertise of Farrell Backlund in terms of selecting the appropriate insurance policies and the appropriate coverage amounts.

16. The Defendant Russell Martorana provides insurance advice to his customers.

17. The Defendant Russell Martorana provides insurance expertise to his customers.

18. The Defendant Russell Martorana provides his customers with guidance and advice in terms of selecting the appropriate amount and type of insurance coverage.

19. The clients/customers of the Defendant Russell Martorana rely upon the advice and expertise of Russell Martorana in terms of selecting the appropriate insurance policies and the appropriate coverage amounts.

20. The Defendant Farrell Backlund has been providing insurance expertise and advice to the Plaintiff City of Taunton for at least 10 years prior to August 17, 2010.

21. For at least 10 years prior to August 17, 2010, the Plaintiff City of Taunton has relied upon the insurance advice and counsel provided by the Defendant Farrell Backlund

in choosing insurance coverage, and the amounts of insurance coverage, to insure against risk of loss.

22. The Defendant Russell Martorana has been providing insurance expertise and advice to the Plaintiff City of Taunton for at least 10 years prior to August 17, 2010.

23. For at least 10 years prior to August 17, 2010, the Plaintiff City of Taunton has relied upon the insurance advice and counsel provided by the Defendant Russell Martorana in choosing insurance coverage, and the amounts of insurance coverage, to insure against risk of loss.

24. On each occasion alleged herein upon which the Defendant Farrell Backlund was providing advice or guidance to the Plaintiff City of Taunton, the Defendant Farrell Backlund was either acting through Russell Martorana directly, or was acting pursuant to his direction.

25. The Defendant Farrell Backlund has provided a comprehensive range of insurance policies to the Plaintiff City of Taunton.

26. The Defendant Farrell Backlund was in frequent contact with various employees and/or officials of the Plaintiff City of Taunton in regard to insurance needs and insurance issues.

27. The Defendant Farrell Backlund provided advice and expertise to the Plaintiff City of Taunton with the expectation that the City of Taunton would rely upon their advice and expertise.

28. There was a contract of insurance in place between the City of Taunton and AXIS, Policy No. 2000976-02, for the policy period beginning on July 1, 2010 and ending

on July 1, 2011, by which Taunton City Hall, 15 Summer Street, Taunton Massachusetts was insured against the peril of fire, among other risks (hereinafter "Subject Policy").

29. The City of Taunton consulted with the Defendant Farrell Backlund prior to placing the Subject policy.

30. The Defendant Farrell Backlund advised the City of Taunton relative to the coverages and amounts selected under the Subject Policy.

31. The Plaintiff City of Taunton relied upon the advice and expertise of the Defendant Farrell Backlund in the selection of the Subject Policy, and in the determination of the necessary amounts of coverage within the Subject Policy.

32. On or about August 17, 2010, a fire occurred at Taunton City Hall, 15 Summer St., Taunton, MA. The fire caused substantial damage to the building.

33. As a direct and proximate result of the August 17, 2010 fire, the City of Taunton sustained significant damage to its buildings and property and otherwise sustained significant monetary loss and other damages.

34. Pursuant to the terms of the Subject Policy, the City of Taunton submitted a claim to AXIS Insurance.

35. Although some of the claimed items were paid, a substantial portion of the claim remains unpaid, due to the refusal of AXIS Insurance to provide payments due and owing. Among other provisions, the outstanding payments include payments for recoverable depreciation, code upgrade expenses, and reimbursement of the \$100,000 policy deductible.

36. The City of Taunton, as a public employer, is bound by the public bidding and construction laws in the selection of a designer and, ultimately, a General Contractor, charged with the rebuilding of the City Hall. It is conservatively estimated that the process of ascertaining the work necessary to restore City Hall, putting the project out for bid, reviewing the qualified bids, selecting a qualified bidder, permitting the work, and then performing the actual work, would take in excess of 3 to 4 years. As well, the City Hall is located in an historical district, and any significant work must be approved by the Massachusetts Historical Commission, including advance approval for the design plans.

37. Additionally, the City of Taunton, relying upon the advice of the Defendant Farrell Backlund, did not have insurance coverage adequate to meet the expenses related to bringing Taunton City Hall, over 100 years old at the time of the fire, to a condition by which it would be compliant with the current Massachusetts State Building Code and/or other applicable law or regulation governing rebuilding property and/or building code or ordinance.

38. It is estimated, conservatively, that the insurance policy selected by the Defendant Farrell Backlund, and provided to the City by the Defendant Farrell Backlund, left the city in the position of having to self pay at least \$5,000,000 in expenses related to code or ordinance upgrade coverage and other necessary expense to rebuild Taunton City Hall.

39. The Defendant AXIS Insurance was aware, throughout the period of time during which the claim was submitted, that the City would have to self finance at least \$5,000,000 in expenses related to code or ordinance upgrade coverage and other necessary

expense. In order to obtain such financing, the City would have to likely propose a Proposition 2½ override and/or debt exclusion in order to secure the necessary funding.

40. The process of identifying the necessary code or ordinance upgrade items, and then quantifying the expenses necessary to effectuate the code or ordinance upgrades, and other necessary expense proposing and passing a Proposition 2½ override and/or debt exclusion, and then applying the funding to the rebuilding, would likely take at least four years total.

41. Although AXIS Insurance was aware of the 3 to 4 year time frame which is imposed upon the City of Taunton, it refused to provide additional time so that the project could be undertaken in proper and lawful fashion.

42. The City requested, and AXIS Insurance refused, an extension of time to submit certain supplemental claims as it was impossible and/or impracticable for the City to repair or replace the damaged property within the unfair, unreasonable and arbitrary time period allotted and conditions imposed by AXIS Insurance.

43. As a direct and proximate result of the refusal of AXIS Insurance to extend additional time for the City to submit recoverable depreciation, code or ordinance upgrade expenses and reimbursement of the \$100,000 policy deductible, the City has sustained significant monetary damages.

44. As a direct and proximate result of the failure of the Defendant Farrell Backlund to competently advise the City of Taunton as to coverage amounts necessary for a complete rebuilding of the Taunton City Hall, the City has sustained significant monetary damages.

21,

COUNT I.

BREACH OF CONTRACT VS. AXIS INSURANCE COMPANY

45. The Plaintiff repeats, restates and realleges paragraphs 1 through 44 above as if the same was fully repeated and restated herein.

46. There existed a contract express or implied between the Plaintiff and Defendant AXIS Insurance Company to insure Taunton City Hall ("Subject Property") against the peril of fire and other common perils including the fire of August 17, 2010 ("Subject Loss").

47. The Defendant AXIS Insurance was required to pay the Plaintiff the amount of the damage for the building loss, as well as any expenses necessary to bring the subject property into compliance with current State Building Code and/or other applicable law or regulation governing rebuilding property and/or building code or ordinance.

48. The Defendant AXIS Insurance has wrongfully and in bad faith breached the express or implied agreement to pay and in effect denied the Plaintiff's claim without conducting a reasonable investigation.

49. The refusal of said Defendant AXIS Insurance to extend additional time for the consideration of the claim for the Subject Loss is a breach of the Subject Policy both express and implied as well as a breach of the implied duty of good faith and fair dealing which is a part of every insurance contract.

50. As a result of the Defendant AXIS Insurance's breach of contract and breach of the terms of the Subject Policy, the Plaintiff has sustained pecuniary and financial loss, including but not limited to, loss of the building, loss of the Subject Property, loss of use

22,

and/or loss of rents, and consequential loss, all of which are foreseeable damages as a result of the Defendant AXIS Insurance's breach of contract and obligation to the Plaintiff. The Plaintiff has also incurred attorney's fees and other costs in seeking payment and coverage under the described Subject Policy.

COUNT II.

BREACH OF THE OBLIGATION OF GOOD FAITH AND FAIR DEALING
vs. AXIS INSURANCE

51. The Plaintiff repeats, restates and realleges paragraphs 1 through 50 above as if the same was fully repeated and restated herein.

52. Under the contract and agreement, express or implied, that existed between the Plaintiff and the Defendant AXIS Insurance, there was an obligation, as well as one imposed by law, of good faith and fair dealing to be exercised in the dealings between the parties.

53. The Defendant AXIS Insurance at all times material hereto violated the covenant and/or obligation of good faith and fair dealing by its conduct with the Plaintiff with regard to the Subject Loss and/or claims handling relating thereto, causing or resulting in damage and injury to the Plaintiff.

54. The Defendant AXIS Insurance's misconduct has been knowing and willful.

55. As a direct and proximate result of the Defendant AXIS Insurance's wrongful conduct, including its breach of the obligation of good faith and fair dealing, the Plaintiff has sustained pecuniary and financial loss, including but not limited to the loss of the building, loss of use and/or loss of rents or income and other consequential loss. The

Plaintiff has also incurred attorney's fees and other costs in seeking payment of coverage under the described Subject Policy.

COUNT III.

VIOLATION OF MASSACHUSETTS G.L. c. 93A VS. AXIS INSURANCE COMPANY

56. The Plaintiff repeats, restates and realleges paragraphs 1 through 55 above as if the same was fully repeated and restated herein.

57. At all times relevant hereto, the Defendant, AXIS Insurance, engaged in the business of insurance as defined in M.G.L. c. 176D and provided insurance coverage to the Plaintiff for the Subject Property, Taunton City Hall.

58. The Defendant AXIS Insurance has misrepresented the benefits, advantages, conditions, or terms of its insurance policy. The Defendant AXIS Insurance issued its policy to a municipality which would cover the replacement cost of a building, including code upgrade coverage related expenses, in the event of a covered loss. However, the Defendant AXIS Insurance was aware, at the time the policy was issued, that a significant portion of the code upgrade coverage related expenses would be impossible to obtain within the two years allowed, as the policyholder City of Taunton must comply with several provisions of state law, and the process of complying with the several provisions of state law would take longer than the two years provided. Massachusetts G.L. c. 176D §3(a); G.L. c. 176D §9.

59. The Defendant AXIS Insurance has refused to pay the Plaintiff's code upgrade coverage claim without conducting a reasonable investigation based upon all available

information, as it has unfairly ignored and/or disregarded the unavoidable time constraints imposed upon the Plaintiff, and has unfairly refused to make any accommodation for such time restraints. G.L. c. 176D §9(d).

60. The Defendant AXIS Insurance has failed to effectuate a prompt, fair and equitable settlements of claims in which liability has become reasonably clear. G.L. c. 176D §9(f).

61. The Defendant AXIS Insurance has further committed other non-enumerated violations of Massachusetts c. 93A and Massachusetts c. 176D, and as further described above. All such violations constitute unfair and deceptive conduct.

62. By the above cited conduct, the Defendant AXIS Insurance has employed improper and wrongful conduct and has failed to effect a prompt, fair and equitable settlement of the Plaintiff's claim and knowingly and willfully violated M.G.L. c. 176D, which is by statute a *per se* violation of M.G.L. c. 93A.

63. The Defendant AXIS Insurance knowingly and/or willfully violated the terms and provisions of M.G.L. c. 176D, and c. 93A, §§ 2 and/or 11.

64. As a direct result of the foregoing violations of M.G.L. c. 176D, c. 93A, §§ 2 and/or 11, the Plaintiff sustained pecuniary and financial loss, including but not limited to the loss of the building, loss of use and/or loss of rents or income, other consequential loss, statutory interest and attorney's fees and costs.

COUNT IV.

BREACH OF CONTRACT VS. FARRELL BACKLUND
INSURANCE AGENCY, LLC

65. The Plaintiff repeats, restates and realleges paragraphs 1 through 64 above as if the same was fully repeated and restated herein.

66. There existed a contract express or implied between the Plaintiff and Defendant Farrell Backlund to provide informed and competent advice relative to the procuring of insurance policies, and to provide informed and competent advice as to the proper coverage amounts and insurance policy types for the various policy parts and coverages.

67. The Defendant Farrell Backlund breached the contract by failing to advise the Plaintiff of the necessity of securing insurance coverage by which the insurer would pay amounts necessary to bring fire damaged properties, such as the Subject Property, into compliance with current Massachusetts State Building Code and/or other applicable law or regulation governing rebuilding property and/or building code or ordinance (hereinafter "code upgrade coverage").

68. The Plaintiff has, since the Subject Loss, learned that it could have secured \$10,000,000 in code upgrade coverage for less than a \$5,000 premium on an annual basis.

69. Had the Defendant Farrell Backlund advised the Plaintiff that the necessary coverage could have been obtained for less than a \$5,000 premium on an annual basis, the Plaintiff would have opted to secure that coverage, as the annual premium payable by the

Plaintiff City and paid to or for the benefit of the Defendant Farrell Backlund stood in excess of approximately \$600,000 a year for all periods relevant.

70. The deprivation of necessary insurance coverage sustained by Plaintiff was directly caused by the breach of the express and/or implied warranty and/or contract by Defendant, Farrell Backlund, its agents, servants and/or employees acting within the course and scope of their employment as follows:

- i. failing to properly advise representatives of the Plaintiff City as to the interpretation and application of code upgrade coverage so an informed decision regarding such coverage could be made by the Plaintiff City for adequate insurance protection for a loss such as the subject loss;
- ii. failing to properly advise representatives of the City of Taunton as to the necessity of securing code upgrade coverage in an amount adequate to restore aged buildings for a loss such as the subject loss;
- iii. failing to properly and/or adequately train and supervise its agents and employees to ensure that they were adequately prepared to provide advice relative to the securing of insurance policies and the determination of the amount of necessary insurance coverages;
- iv. failing to apply the degree of skill that would customarily be brought to the provision of advice and expertise relative to the securing of insurance policies and the determination of the amount of necessary insurance coverages that would be exercised by competent and skilled professionals in the industry;
- v. failing to perform their work in a workmanlike manner;
- vi. failing and/or omitting to do and perform those things necessary in order to avoid an unreasonable risk of uninsured loss to Plaintiff;
- vii. failing to take actions and precautions that would have prevented what should have been a fully covered loss from being an uninsured loss as described above; and
- viii. otherwise failing to use due care under the circumstances.

71. As a direct and proximate result of the foregoing breach of contract, the Plaintiff City of Taunton sustained pecuniary and financial loss, including but not limited to the loss of the building, loss of use and/or loss of rents or income and other consequential loss.

COUNT V.

BREACH OF DUTY – NEGLIGENCE VS. FARRELL BACKLUND
INSURANCE AGENCY, LLC

72. The Plaintiff repeats, restates and realleges paragraphs 1 through 71 above as if the same was fully repeated and restated herein.

73. The deprivation of insurance coverage and monetary loss sustained by Plaintiff was directly and proximately caused by the negligence, gross negligence, carelessness, and/or negligent omissions of Defendant, Farrell Backlund, its agents, servants and/or employees acting within the course and scope of their employment as follows:

- i. failing to properly advise representatives of the Plaintiff City as to the interpretation and application of code upgrade coverage so an informed decision regarding such coverage could be made by the Plaintiff City for adequate insurance protection for a loss such as the subject loss;
- ii. failing to properly advise representatives of the City of Taunton as to the necessity of securing code upgrade coverage in an amount adequate to restore aged buildings;
- iii. failing to properly and/or adequately train and supervise its agents and employees to ensure that they were adequately prepared to provide advice relative to the securing of insurance policies and the determination of the amount of necessary insurance coverages;

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- iv. failing to apply the degree of skill that would customarily be brought to the provision of advice and expertise relative to the securing of insurance policies and the determination of the amount of necessary insurance coverages that would be exercised by competent and skilled professionals in the industry;
- v. failing to perform their work in a workmanlike manner;
- vi. failing and/or omitting to do and perform those things necessary in order to avoid an unreasonable risk of uninsured loss to Plaintiff;
- vii. failing to take actions and precautions that would have prevented what should have been a fully covered loss from being an uninsured loss as described above; and
- viii. otherwise failing to use due care under the circumstances.

74. As a direct and proximate result of the foregoing negligence, gross negligence, carelessness, and/or negligent omissions, Plaintiff City of Taunton sustained pecuniary and financial loss, including but not limited to the loss of the building, loss of use and/or loss of rents or income and other consequential loss.

COUNT VI.

VIOLATION OF MASSACHUSETTS G.L. c. 93A VS. FARRELL BACKLUND
INSURANCE AGENCY, LLC

75. The Plaintiff repeats, restates and realleges paragraphs 1 through 74 above as if the same was fully repeated and restated herein.

76. At all times relevant hereto, the Defendant, Farrell Backlund was engaged in trade or commerce within the Commonwealth of Massachusetts.

77. By holding itself out as an authority on insurance matters, and by accepting commissions and other payments from the Plaintiff for providing expertise and advice on

insurance matters, but by failing to possess the requisite skill and degree of care that would be possessed by an insurance agent with knowledge of the applicable provisions of the standard Massachusetts and available insurance policies, the Defendant Farrell Backlund was engaging in an unfair and deceptive act and practice.

78. By providing to the Plaintiff City of Taunton an insurance policy on a 100 year old building which would not provide the City with the coverage necessary to bring the building, after the fire, up to the current state and municipal standards, the Defendant Farrell Backlund fell so far below the applicable standard of care that its conduct could only be characterized as extreme and egregious, and a violation of G.L. c. 93A.

79. The Defendant Farrell Backlund knowingly and/or willfully violated the terms and provisions of M.G.L. c. 93A, §§ 2 and/or 11.

80. As a direct result of the foregoing violations of M.G.L. c.93A, §§ 2 and/or 11, the Plaintiff sustained pecuniary and financial loss, including but not limited to the loss of the building, loss of use and/or loss of rents or income, other consequential loss, statutory interest and attorney's fees and costs.

COUNT VII.

BREACH OF CONTRACT VS. RUSSELL MARTORANA

81. The Plaintiff repeats, restates and realleges paragraphs 1 through 80 above as if the same was fully repeated and restated herein.

82. There existed a contract express or implied between the Plaintiff and Defendant Russell Martorana to provide informed and competent advice relative to the

procuring of insurance policies, and to provide informed and competent advice as to the proper coverage amounts and insurance policy types for the various policy parts and coverages.

83. The Defendant Russell Martorana breached the contract by failing to advise the Plaintiff of the necessity of securing insurance coverage by which the insurer would pay amounts necessary to bring fire damaged properties, such as the Subject Property, into compliance with current Massachusetts State Building Code and/or other applicable law or regulation governing rebuilding property and/or building code or ordinance (hereinafter "code upgrade coverage").

84. The Plaintiff has, since the Subject Loss, learned that it could have secured \$10,000,000 in code upgrade coverage for less than a \$5,000 premium on an annual basis.

85. Had the Defendant Russell Martorana advised the Plaintiff that the necessary coverage could have been obtained for less than a \$5,000 premium on an annual basis, the Plaintiff would have opted to secure that coverage, as the annual premium payable by the Plaintiff City and paid to or for the benefit of the Defendant Russell Martorana stood in excess of approximately \$600,000 a year for all periods relevant.

86. The deprivation of necessary insurance coverage sustained by Plaintiff was directly caused by the breach of the express and/or implied warranty and/or contract by Defendant, Russell Martorana, his agents, servants and/or employees acting within the course and scope of their employment as follows:

- ix. failing to properly advise representatives of the Plaintiff City as to the interpretation and application of code upgrade coverage so an informed decision regarding such coverage could be made by the

Plaintiff City for adequate insurance protection for a loss such as the subject loss;

- x. failing to properly advise representatives of the City of Taunton as to the necessity of securing code upgrade coverage in an amount adequate to restore aged buildings for a loss such as the subject loss;
- xi. failing to properly and/or adequately train and supervise his agents and employees to ensure that they were adequately prepared to provide advice relative to the securing of insurance policies and the determination of the amount of necessary insurance coverages;
- xii. failing to apply the degree of skill that would customarily be brought to the provision of advice and expertise relative to the securing of insurance policies and the determination of the amount of necessary insurance coverages that would be exercised by competent and skilled professionals in the industry;
- xiii. failing to perform his work in a workmanlike manner;
- xiv. failing and/or omitting to do and perform those things necessary in order to avoid an unreasonable risk of uninsured loss to Plaintiff;
- xv. failing to take actions and precautions that would have prevented what should have been a fully covered loss from being an uninsured loss as described above; and
- xvi. otherwise failing to use due care under the circumstances.

87. As a direct and proximate result of the foregoing breach of contract, the Plaintiff City of Taunton sustained pecuniary and financial loss, including but not limited to the loss of the building, loss of use and/or loss of rents or income and other consequential loss.

COUNT VIII.

BREACH OF DUTY – NEGLIGENCE VS. RUSSELL MARTORANA

88. The Plaintiff repeats, restates and realleges paragraphs 1 through 87 above as if the same was fully repeated and restated herein.

89. The deprivation of insurance coverage and monetary loss sustained by Plaintiff was directly and proximately caused by the negligence, gross negligence, carelessness, and/or negligent omissions of Defendant, Russell Martorana, his agents, servants and/or employees acting within the course and scope of their employment as follows:

- ix. failing to properly advise representatives of the Plaintiff City as to the interpretation and application of code upgrade coverage so an informed decision regarding such coverage could be made by the Plaintiff City for adequate insurance protection for a loss such as the subject loss;
- x. failing to properly advise representatives of the City of Taunton as to the necessity of securing code upgrade coverage in an amount adequate to restore aged buildings;
- xi. failing to properly and/or adequately train and supervise agents and employees to ensure that they were adequately prepared to provide advice relative to the securing of insurance policies and the determination of the amount of necessary insurance coverages;
- xii. failing to apply the degree of skill that would customarily be brought to the provision of advice and expertise relative to the securing of insurance policies and the determination of the amount of necessary insurance coverages that would be exercised by competent and skilled professionals in the industry;
- xiii. failing to perform his work in a workmanlike manner;
- xiv. failing and/or omitting to do and perform those things necessary in order to avoid an unreasonable risk of uninsured loss to Plaintiff;

- xv. failing to take actions and precautions that would have prevented what should have been a fully covered loss from being an uninsured loss as described above; and
- xvi. otherwise failing to use due care under the circumstances.

90. As a direct and proximate result of the foregoing negligence, gross negligence, carelessness, and/or negligent omissions, Plaintiff City of Taunton sustained pecuniary and financial loss, including but not limited to the loss of the building, loss of use and/or loss of rents or income and other consequential loss.

JURY DEMAND

The Plaintiff City of Taunton demands a trial by jury on all issues so triable.

Respectfully submitted,
 For the Plaintiff,
 City of Taunton,
 By its Attorney,

LAW OFFICES OF
 WILLIAM T. KENNEDY, P.C.
 Attorneys at Law



William T. Kennedy

BBO #268420

wtk@wtkpc.com

Joseph T. Desmond

BBO #648556

jtd@wtkpc.com

21 McGrath Highway, Suite 404

Quincy, MA 02169-5311

(617) 773-7100

Dated: 11-16-12

#12-9-6C

City of taunton/amended complaint

CIVIL ACTION COVER SHEET	TRIAL COURT OF MASSACHUSETTS SUPERIOR COURT DEPARTMENT		DOCKET NO. 2012 CV 00884
	COUNTY OF	BRISTOL	
PLAINTIFF(S) City of Taunton		DEFENDANT(S) 1. AXIS Insurance Co.; 2. Farrell Backlund Insurance Agency, LLC; 3. Russell Martorana	

Type Plaintiff's Attorney name, Address, City/State/Zip
Phone Number and BBO#

Type Defendant's Attorney Name, Address, City/State/Zip
Phone Number (If Known)

William T. Kennedy, Law Offices of William T. Kennedy,
21 McGrath Hwy., Suite #404
Quincy, MA 02169
(617)773-7100
BBO #268420

CODE NO.	TYPE OF ACTION AND TRACK DESIGNATION (See reverse side) TYPE OF ACTION (specify) TRACK	IS THIS A JURY CASE?
A01	Services Labor and Materials - Fast Track	<input checked="" type="radio"/> Yes <input type="radio"/> No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS
(Attach additional sheets as necessary)

A. Documented medical expenses to date:	
1. Total hospital expenses	\$ _____
2. Total doctor expenses	\$ _____
3. Total chiropractic expenses	\$ _____
4. Total physical therapy expenses	\$ _____
5. Total other expenses (describe)	\$ _____
	Subtotal \$ _____
B. Documented lost wages and compensation to date	\$ _____
C. Documented property damages to date	\$ _____
D. Reasonably anticipated future medical expenses	\$ _____
E. Reasonably anticipated lost wages and compensation to date	\$ _____
F. Other documented items of damages (describe)	\$ _____
G. Brief description of plaintiff's injury, including nature and extent of injury (describe)	\$ _____
	Total \$ _____

CONTRACT CLAIMS
(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

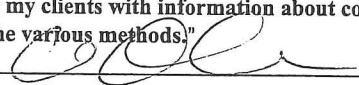
Please see Exhibit "A" attached hereto for a brief explanation as to the basis of the claims herein.

\$6,000,000.00

TOTAL \$

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

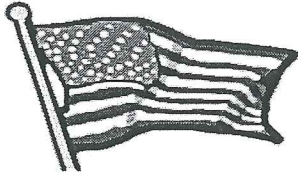
Signature of Attorney of Record  Date: Nov 16, 2012

A.O.S.C. 3-2007

Exhibit A.

All claims asserted are based on a fire which occurred on August 17, 2010 at Taunton City Hall. Defendant AXIS Insurance Company failed to provide all of the benefits due and payable under the insurance contract. The Defendant Farrell Backlund Insurance Agency, LLC and Russell Martorana failed to provide competent advice in terms of the selection of an insurance policy and the selection of coverage amounts.

Plaintiff City of Taunton asserts by its Complaint breach of contract and negligence claims against AXIS Insurance Company, Farrell Backlund Insurance Agency, LLC and Russell Martorana. Plaintiff also asserts claims under G.L. c. 93A against AXIS Insurance Company and Farrell Backlund Insurance Agency, LLC.



NOVEMBER 27, 2012

HONORABLE THOMAS C. HOYE, JR., MAYOR
COUNCIL PRESIDENT RYAN C. COLTON
AND MEMBERS OF THE MUNICIPAL COUNCIL

PLEASE NOTE:

THE FOLLOWING COMMITTEE MEETINGS HAVE BEEN SCHEDULED FOR TUESDAY, NOVEMBER 27, 2012 AT 5:30 P.M. AT THE TEMPORARY CITY HALL AT MAXHAM SCHOOL, 141 OAK STREET, TAUNTON, MA. 02780, IN THE CHESTER R. MARTIN MUNICIPAL COUNCIL CHAMBERS

5:30 PM.

THE COMMITTEE ON FINANCE & SALARIES

1. MEET TO REVIEW THE WEEKLY VOUCHERS & PAYROLLS FOR CITY DEPARTMENTS
2. MEET TO REVIEW REQUESTS FOR FUNDING
3. MEET TO REVIEW MATTERS IN FILE

PLEASE NOTE:

A "MEETING" OF THE ENTIRE MUNICIPAL COUNCIL, AS SAID TERM IS DEFINED IN MASS. GEN. L. C. 30A, §18 MAY OCCUR CONCURRENTLY WITH THIS COMMITTEE MEETING

THE COMMITTEE ON POLICE AND LICENSE

1. MEET TO INTERVIEW POLICE CANDIDATE
2. MEET IN EXECUTIVE SESSION TO DISCUSS GRIEVANCE
3. MEET TO REVIEW MATTERS IN FILE

PLEASE NOTE:

A "MEETING" OF THE ENTIRE MUNICIPAL COUNCIL, AS SAID TERM IS DEFINED IN MASS. GEN. L. C. 30A, §18 MAY OCCUR CONCURRENTLY WITH THIS COMMITTEE MEETING

RESPECTFULLY,

COLLEEN M. ELLIS
CLERK OF COUNCIL COMMITTEES

RECEIVED
NOV 21 2012
MAYOR'S OFFICE