

Meeting of the Mobile Home Rent Control Board held on August 11, 2022 beginning at 6:00 pm in Hearing Rooms 1 and/or 2, Ludlow Town Hall.

Members present: Antonio Goncalves, Mary Evangelista, Joseph Young

Also present: Attorney Rose Crowley

Mr. Goncalves asked everyone to silence their phones and to sign the attendance sheet

Mr. Goncalves called the meeting to order at 6:09 p.m.

First Order of Business: Pledge of Allegiance.

Mr. Goncalves: Thank you all for coming. This hearing is being convened by the Ludlow Mobile Home Rent Control Board to consider Hillside Valley, LLC's request for a rent increase from \$287.97 to \$399 a month per unit at the Hillside Valley Mobile Home Park here in Ludlow. In consideration of the owner's request for a rent increase, the board will make a determination based on the evidence presented at this hearing whether the increase requested, a lesser increase or no increase is warranted to assure fair net operating income to the owner. Fair net operating income is defined in Chapter 240 of the Acts of 1983 that established this board and in our Town Bylaws at Chapter 12, Section 2. Fair net operating income is that income which will yield the return after all reasonable operating expenses on the fair market value of the property equal to the debt service rate for residential or commercial property generally available from institutional first mortgage lenders. This board, on the basis of evidence presented to us at this hearing may adopt a different rate of return if such a different rate of return is deemed by the board to be more appropriate than the circumstances of the case before it. Fair market value of property is defined as the current assessed valuation of the property or any other valuation the board feels more appropriate to the situation. Again, the board's determination will be based on evidence presented at this hearing. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. In conducting this hearing, it is our duty to conduct a fair hearing to ensure that the rights of all parties, the owner and the residents are protected. This hearing is being conducted pursuant to the requirements of Mass General Law 30A and the adjudicatory rules. Towards that end, as Chair of the board, I ask that all present conduct themselves with decorum, that individuals speak only one at a time and only speak when recognized by the Chair and directed to the microphone; and we don't have a microphone, maybe you want to stand up and speak loudly. This meeting is being recorded. It's very important that each speaker be heard clearly, and their identity recognized. So before speaking, please identify yourself for the record each and every time and let us know your interest in this matter. The order proceeding will be as follows. As it is the owner's notice of claim, he will present his evidence first. Board members may ask questions of the owner at this time. Residents of the park may ask the owner questions after the owner has finished his presentation. Once this is done, residents will have an opportunity to present their evidence. Again, the board members may ask questions at any time. The owner may ask questions after the residents have completed their presentation. Once all the evidence is in, the hearing will be closed, and the board will deliberate to make its determination based on evidence presented. Any questions so far? Great, now some housekeeping. Mr.

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Lennon can you confirm that the residential list that you provided with the certificate of service for the notice of claim provides the correct mailing address for each of the residents.

Mr. Lennon: Yes.

Resident: Could I speak on that? This is the list you are referring to here.

Mr. Goncalves: That's the list.

Resident: That's the list; well, there are 10 other homes on here that weren't put on here and here they are on the top.

Mr. Goncalves: That'll be when we get to your presentation or the ability of the residents then you can let me know. Can I see that, please? Can you identify your name?

Resident: John Kelley, 229 Miller Street, A8. These are the homes here. Now he's collecting rent on 3 of them. The others, he will be collecting rent within 6 months I'm sure.

Mr. Goncalves: Mr. Lennon, do you want to look at this?

Mr. Lennon: Yes.

Mr. Goncalves: Are these units occupied?

Mr. Kelley: Three of them are.

Mr. Goncalves: Three are occupied and the other ones aren't.

Mr. Kelley: There are a couple that can't be occupied because they can't get power and then there's a couple that Tom owns. He's in the middle of rehabbing and I'm sure will be done soon.

Attorney Kraus: Well, the ones that Tom owns are his so that's not.

Mr. Lennon: Can I make a mark on this? I own this one. I own this one and this one. Your son owns this one; that's in the middle of a rehab. I own this one. I own this one. I just sold this one. This one just recently got sold. Somebody else that had that was rehabbing it owns that one. He was notified the last meeting and it just got sold and is in transition. This one in the middle, B9, where's B9, they just literally moved in.

Mr. Goncalves: Was it after this service?

Mr. Lennon: Yes.

Mr. Kelley: They moved in 2 months ago.

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Mr. Lennon: Okay B9. That was a house that just got brought in. It took about a year to get going on it. It's right next to door to John's.

Mr. Kelley: Now why is it the home's here?

Attorney Kraus: So, the question is effectiveness of the notice. I think that's what counsel is indicating.

Attorney Crowley: Yes.

Attorney Kraus: So, the houses that obviously Mr. Lennon owns are fair game. He's here. He's present. He's acting. The one that came in after the date of notices, so B9 is the only one that's in question possibly and they've just moved in. I think it's pretty fair to say that everybody in this property has gotten notice of this hearing, which you can see from the addendum.

Mr. Goncalves: So, this notice was May 23rd.

Mr. Lennon: That was 3 months ago.

Mr. Goncalves: Was this unit closed on after May 23rd?

Mr. Lennon: After yes.

Mr. Goncalves: After May 23rd.

Mr. Lennon. Yes and this one is a vacant, unoccupied. It's a condemned home that's up on the hill. I'm in the middle of rehabbing that one as well.

Attorney Crowley: So, there's no residents there?

Mr. Goncalves: No known owner?

Mr. Lennon: No resident there at all.

Mr. Kelley: He's ready to move in. It just needs power.

Mr. Lennon: That's not true John.

Attorney Kraus: It's okay. There's nobody there. This was after the date. I think we're entitled to go forward with the substance of the hearing.

Mr. Goncalves: Okay so B9 was?

Mr. Lennon: That was a home that was just brought in from New Hampshire and it's right next store to John.

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Mr. Goncalves: So, after notice was given?

Mr. Lennon: Yes and H2 is a vacant home that had a fire in it. It's been in the middle of getting rehabbed for the last year or so. There's no power to it. The house still is in the middle of rehabbing.

Attorney Kraus: So, it's not habitable.

Mr. Goncalves: Who own's H2?

Mr. Lennon: I gave that free to a guy to rehab it. Jack Tardy owns that one.

Mr. Goncalves: And when did that happen?

Mr. Lennon: I gave it to him as soon as I bought the park. He was in the middle of rehabbing it. I gave his son one as well, A6. I gave his son two of them.

Mr. Goncalves: I'm going to refer to the two attorneys in the room. If H2 is owned by somebody else, if this notice is defective, we're going through this for nothing.

Mr. Lennon: It's not even a valid house right now.

Mr. Goncalves: But somebody owns it.

Attorney Crowley: Is somebody paying rent there?

Mr. Lennon: No.

Attorney Kraus: It's not generating any income.

Mr. Lennon: It doesn't bring in any income at all. It doesn't bring in anything. They haven't paid me one penny on it. It's a vacant, unoccupied; its not even a habitable home.

Mr. Goncalves: So, the rent increase or whatever approved or decreased or not approved doesn't affect H2 at this point?

Mr. Lennon: No not at all.

Attorney Kraus: They wouldn't start their tenancy until well after this process is concluded.

Mr. Kelley: Can I speak on behalf of the H2. The home is ready. It just needs electric.

Mr. Lennon: That's not true John.

Mr. Kelley: Well, that's not what Jack tells me.

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Mr. Lennon: I can get him on the phone if you'd like.

Mr. Goncalves: Where is the certificate of notice in here?

Attorney Kraus: Counsel actually provided.

Mr. Goncalves: No, the definition of the certificate of notice. Who needs to be notified? Is it all owners? Is it only owners that are occupying?

Attorney Kraus: Any resident that is occupied.

Mr. Goncalves: Any resident or any owner?

Attorney Kraus: All the home sites. He doesn't have to give a notice to himself of course.

Mr. Goncalves: Right, I'm not worried about those.

Attorney Kraus: So, the only one in question is H2 and H2 is not an occupied home right now. You cannot have a tenancy. There is no occupancy permit that would be permissible because it doesn't have power. You can't live in it. I think Mr. Chairman we have a viable petition in front of the board. Counsel, I'll gladly talk to you outside if you want or you can confer privately with the Chairman of the board, but I think we are entitled to go forward.

Mr. Goncalves: Again, and I'm not sure who needs to be notified. Is it an occupant? Is it somebody that's affected by an increase?

Mr. Lennon: No trash is being picked up there. There's no water being used. It's not even occupied.

Attorney Kraus: Nobody could even live in the house. There's no occupancy permit.

Attorney Crowley: The concern here

Mr. Goncalves: It's going to be one at a time. He has the right to prevent evidence and you'll have the right afterward to dispute anything that he says.

Mr. Kelley: Russ would have more on the F6. That's his neighbor.

Attorney Kraus: Mr. Chairman are we going to have conversations ex parte here?

Mr. Goncalves: If you need to speak you need to talk to me and ask me.

Resident: Your busy talking.

Mr. Goncalves: Then you'll have to wait, and then we can discuss things, but individual conversations in the room with board members aren't permitted.

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Attorney Kraus: Actually Mr. Chairman to be clear, just so that we're clear on the record, ex parte communications since the notice of filing are impermissible. As if somebody calls you, or calls you Joe or calls you Mary, it is impermissible to discuss it once the notice of claim has been filed.

Mr. Goncalves: Exactly.

Attorney Kraus: It has to be done in this room, in the open, in a public hearing.

Mr. Goncalves: And right now, for the camera.

Mr. Lennon: And F6 for the record, I've owned that since I bought the park June 3rd. I just recently sold it about 3 weeks ago to somebody.

Mr. Goncalves: So, it was after notice?

Mr. Lennon: Absolutely.

Mr. Goncalves: Okay.

Mr. Lennon: I just recently sold it. I've owned it the whole time that's why I wasn't going to send one to myself like the other ones.

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The board and Attorney Crowley spoke quietly about the proceedings.

Mr. Goncalves: And I'm going to tell everybody just so you're not wondering what we're whispering about. We're a little bit concerned for the purpose of maybe not having to go through this again or going through it for nothing or if there is a way that possibly if we find that there is a defect in this notice right now, if we can go ahead and have this hearing now, figure out what's going on with those other two and the obligation of the petitioner to those two. If in fact it's a requirement that those two be notified, we can get them a copy of the tape. We can reconvene this meeting which I think in general we probably wouldn't make a decision tonight until we know what's going on with that defect anyhow and then we get back together again. If those two people have the right to be notified and they have an opportunity to review the tape, they can come in, comment, ask questions of the board, the petitioner or we just kill it and then we come back in 2 weeks again.

Resident: That's what I think we should do. My name is David Maher.

Mr. Goncalves: Thank you. And I think our board has to make that determination. You folks don't think since we are already here we get it going and then deal with the defect if there is one. And my problem is, if there isn't one, then we're not doing the right thing by the petitioner either. So, I'm looking at everybody at this point.

Attorney Kraus: Mr. Chairman, through you to your board and counsel. If you want to have the gentlemen that owns H2 by phone, we can call him right now and he can participate by phone. That is actual real notice. If you want us to, we can get him on the phone right now.

Mr. Young: But if you do this by phone, you can't see his expressions. How he reacts. I'd like to have him present.

Attorney Kraus: With respect sir, through you Mr. Chairman. Actual physical presence is not required particularly in the days of now Covid and virtual meetings. If the gentlemen so identifies himself and he has an opportunity to effectively participate which is what counsel is concerned about, then a phone call is sufficient. He/she doesn't have to physically be in the room. Counsel and I do hearings, motions, depositions, trials virtually by phone and otherwise. If it's good enough for a court, it should be good enough for the board, Mr. Chairman.

Mr. Goncalves: To that effect, I know that in the Registry system where there's an appeal of any type today they're done by phone. You can't even go to court to take care of those things unless you're a second or third time.

Attorney Crowley: That's true.

Attorney Kraus: Correct, thank you Mr. Chairman.

Mr. Kelley: It's not only H2 in question now. B9 has been next to me. They've been in that home for a little over 2 months now; why they weren't notified.

Mr. Goncalves: And I asked the question and its duly noted and Mr. Lennon said that they purchased it after.

Mr. Kelley: They purchased it and brought it in last year. They had a problem with the town getting an electric because Mr. Lennon brought it in with no permits.

Mr. Lennon: I didn't bring it in at all.

Mr. Kelley: No, they brought it in, but you told them it was okay.

Mr. Goncalves: At this point, they are not residents yet.

Mr. Kelley: Yes, they are. They've been living in it for almost 3 months.

Mr. Goncalves: And the question to Mr. Lennon I believe was, was it before or after May 23rd?

Mr. Lennon: I don't know.

Mr. Goncalves: Because May 23rd is the date of notice and that's when everything has to be kosher, right.

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Attorney Kraus: Mr. Chairman, may I make a suggestion through you.

Mr. Goncalves: Yes.

Attorney Kraus: Do you want a 5-minute recess so we can get ahold of and does the board want to confer. We're here. This meeting has been in gestation for a long time. You've already addressed the merits of it. We redid it, redid it, redid it, and we're to have our information substantively heard. I think everyone has effective notice. If these people know about it, everyone in this room, then everyone in that park knows about it.

Mr. Goncalves: I think the knowing about it is one thing. The actual service being properly served is another and we need evidence that the service was properly served on everybody that qualified for service.

Attorney Kraus: I don't mean to be argumentative. I've been through these so many times that when people know about it, even if they didn't get notice, the court cares about whether they actually knew about it, whether they've actually gotten a piece of paper. I presume if I asked these people or you asked these people whether they talked to their neighbors today about whether this hearing was going forward, its location, its time, its date, I'm guessing although I can't be certain that they've all spoken with their neighbors about being here tonight. That's called actual notice.

Attorney Crowley: The concern here is that each resident of the park is entitled to actual notice of the notice of claim, to receive the notice of claim, the packet that all the people present here received. Now if someone in here could say that they shared a copy of their notice of claim with one of these individuals that's in question that would be considered actual notice.

Attorney Kraus: Let me ask, if you had posed this question to this gentlemen, I'm not sure what the answer is. This gentlemen who has been very vocal about this, his next door neighbor, whether in fact people in the park including his neighbor knew about tonight's hearing. I can't ask him Mr. Chairman it's through you.

Mr. Kelley: I can answer that. No, I haven't talked to Matt or his wife. They are both self-employed.

Mr. Goncalves: Who is Matt?

Mr. Kelley: He's the one that lives in B9. They are both self-employed and they are never home until late at night.

Mr. Goncalves: B9 is in limbo only because we're not sure if they became residents before or after the date of service was required. So that one could be a crashout anyhow.

Resident: They had already put a home there 6 months before that. Their home was there.

Mr. Goncalves: Are they paying rent?

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Resident: I don't know that.

Mr. Kelley: No, they didn't start paying rent until they moved in.

Mr. Lennon: I'm not really sure when it was.

Mr. Goncalves: I'm going to guess that within this regulation and the CMR that talks about when somebody's paying rent they're entitled to a notice.

Attorney Kraus: Can I ask Mr. Chairman for you and counsel and through the other members of the board. I heard you clearly state that you were not going to make a decision tonight and continue the hearing.

Mr. Goncalves: I can't vote. I'm one vote of three,

Attorney Kraus: I understand.

Mr. Goncalves: but from my standpoint I'm going to need clarification on the units in question as to how the law applies to them, doesn't apply to them and again I'm not sure that even if we were to give them a copy of the tape and give them an opportunity to review it that that's going to suffice, or it may be that everything is just fine, and they don't get notice for whatever reason.

Attorney Kraus: Can I make a suggestion and I didn't pass this by my client but here's the suggestion that we proceed tonight and then you set a near date for the continuation of this. We will double ensure that they get notice. In fact, Tom will send notice to himself on the units that he owns just to make sure the record is clear to allow us to go forward, actually give those people notice. The record will still be open. You're not going to close the record tonight. You're not going to close the hearing. So, they will have absolutely, whether they are entitled to it or not, another opportunity to be here. As long as the record is open, as long as the hearing is not closed, testimony can be taken.

Mr. Goncalves: Yeah and it can because this is a semi quasi-judicial hearing and as long as the hearing is open in this room whether it's tonight or a continuation of tonight we are able to discuss the matter and collect evidence from either person.

Resident: Either way there is still going to be a continuation?

Mr. Goncalves: Can you please tell us your name?

Resident: Gail Hutchinson.

Mr. Goncalves: And which unit do you live in?

Ms. Hutchinson: F9.

Mr. Goncalves: Thank you Gail. The idea is that I believe that I'm not inclined to vote on anything tonight without knowing if the notice of claim; I'm not sure at this point we're going to have this hearing still. I'm still debating that.

Attorney Kraus: Mr. Chairman, if I may through you. I've just conferred with my client. We are prepared to continue the hearing so that there is no technical issues for a short period of time, please, because as you know this has gone on forever. We'd also like to know if there is anything else. Now the hearing hasn't been opened yet that's my understand.

Mr. Goncalves: The hearing has not been opened; no, it has I called the meeting to order prior to the pledge of allegiance, yes.

Attorney Kraus: The hearing is open. So procedurally what would happen is a motion would be made to continue the hearing say for 2 weeks and we will do the following. We will send a notice to ourselves. We are not going to send the people because they have notice of it already; we don't have to send notice to the 70 something people.

Mr. Goncalves: They've got the continuation. They can watch the tape or whatever it is, sure.

Attorney Kraus: That's right. These people have been noticed, right and its their obligation to follow what happens after tonight. We're not under an obligation to.

Mr. Goncalves: The rest of your question I'm going to confer with my counsel.

Attorney Kraus: Do you want to take a recess for a few minutes, Mr. Chairman ~~instead?~~

Mr. Goncalves: No, I think we're okay.

The board conferred quietly with Attorney Crowley.

Attorney Crowley: Notice by hand would be effective immediately and we would need a certificate of service on that, and you would want to make sure that you serve not only the notice of claim, but also there are two other documents in the file now, the notice of this hearing as well as the certificate of service. So, you just want to make sure you give them all the paperwork so they know what's going on and then if we continue this hearing we would want to continue it to a specific date, place and time.

Resident: For everybody in this room to come again?

Attorney Kraus: Mr. Chairman, through you to counsel. If you give us the list of those you want, we'll have a constable; we will do constable service so that there is no.

Mr. Goncalves: It's not our place to give you a list. It's your obligation to give us confirmation you've served every eligible person in the park.

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Attorney Kraus: Absolutely. We've already served this. What I'm going to do is have a constable do the list of those. So, let's go over it again publicly so I know just to make sure.

Attorney Crowley: Mr. Kraus I would only state that as the chairman has said it is not the obligation of this board to ensure service. It is the applicant in the first instance and that every resident who wishes to present, to file something with this board has the same obligation to serve every other resident as well as the owner if they want to file something with this board.

Attorney Kraus: As everyone in this room knows, this news of this rent increase is not new. In fact, there was a petition circulated and signed by most people. Everyone knows what Mr. Lennon has done in the park. We understand our obligations. We don't want any technical glitches. We've already redone it because of your concerns that were raised in your letter. So, what we will do if we can because this is by way of, he wasn't sworn in, by way of information not testimony of.

Attorney Crowley: I'm counsel to the board and.

The board conferred quietly at the table.

Attorney Kraus: So, what we will do if the gentlemen and if anyone else, and I would ask you to invite comment, but the list that I understand, if I may approach, F3, F61, F10, G10, A6, B13; sir is that your writing, B13, B9, D7, D8, H2. So, we will send ten. Of those ten, eight are owned by this gentlemen.

Mr. Goncalves: And again, it's your responsibility

Attorney Kraus: I understand, and we'll comply.

Mr. Goncalves: to make sure that if there's others that aren't on that list that we don't go through this again next time.

Attorney Kraus: No, we don't want to do that Mr. Chairman and I'll suggest to you by your own bylaws, if you look at Chapter 12. So according to this, we will under Section 2, all papers filed with the board should be accompanied, signed by a statement under the pains and penalties of perjury that service has been made. We will supplement our statement under the pains and penalties of perjury based upon constable service and will do it ASAP that those ten, including those to Mr. Lennon and his company have been provided at last and usual. We don't have to make actual notice just last and usual address and we will supplement our certificate of service.

Mr. Goncalves: Again, it's not my place, but I caution you that 13-day service is necessary if we continue this for 2 weeks.

Attorney Kraus: Well to tell you the truth I'm not sure where 13 days comes in because it's not in the formal rules of adjudication which is what's guiding this.

Mr. Goncalves: Is it in the CMR?

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Attorney Crowley: In the formal rules of adjudication, notice by U.S. mail requires as soon as it is deposited requires 3 days and then reasonable notice is considered to be 10.

Attorney Kraus: Right, but if we do constable service then its effective immediately.

Attorney Crowley: In hand.

Mr. Goncalves: So, 10 days by constable service, no less than 10 days by constable.

Attorney Crowley: Right, reasonable.

Attorney Kraus: Is it possible to come back, Mr. Chairman, through you to your members and counsel.

Mr. Goncalves: I would need a motion from one of my board members to continue the hearing until; could you actually make the motion Joe, please? Just say you move to continue the hearing until August 25th at 6:00 p.m.

Mr. Young: I move to continue it until the 25th at 6:00 p.m.

Mr. Goncalves: So, moved.

Ms. Evangelista: Second.

Mr. Goncalves: Motion has been made and seconded. All in favor. Vote 3-0.

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Attorney Kraus: Mr. Chairman just so that we're clear so we don't go through this dance again and thank you very much for your time tonight and counsel's time. We are going to send the notice of petition. We are going to send the notice of tonight's hearing. We are going to include in our communication that the matter has been continued to Thursday, August 25th at the Ludlow Town Hall at 6:00 p.m.

Mr. Goncalves: Correct.

Attorney Kraus: And we will include a new certificate of service based upon the constable's service.

Mr. Goncalves: And whatever packet is normal, customary to be sent out, right.

Attorney Kraus: The only documents in the record if I understand it.

Mr. Goncalves: It will be in this room again folks.

Attorney Kraus: We are just going to say the Ludlow Town Hall.

Mr. Goncalves: No, do hearing room 1 and 2, first floor.

Attorney Kraus: So again, as I understand the record, it's the notice of claim we filed. It will have the notice of tonight's hearing. I saw that counsel had sent me a certificate of service relating to this hearing. I'll include that as well, anything and everything, and I will send it to counsel if she wants to say yea or nay, but we will comply with the board's request, Mr. Chairman.

Mr. Goncalves: Very good. Are there any questions or comments? Does everybody understand what's happening? We are going to continue the hearing. We've left it open. We're going to continue for 2 weeks from tonight, back here at 6:00 o'clock. Any defects in notice or any other defects that they feel may appear to have happened, it's their obligation to correct it, come back here and again present to us the paperwork and at that point we've got to make a determination whether that service has been correctly put in and served on every owner or everybody eligible to receive a notice and then we'll continue with the balance of it. There was a question from counsel regarding if we can go over the rest of it; no because we're not going to do any part of the hearing tonight and we're going to continue the hearing and we'll take whatever evidence at the next hearing.

Attorney Kraus: Thank you Mr. Chairman. One last issue because as you well know and counsel will tell you there's a process by way evidence gets submitted into record, any written documents. So, what I'd like to do before I leave is if there's anything else in the record that has been submitted I'd like to have a copy of it before I go if that is possible.

Mr. Goncalves: There's a notice that has been put on the table.

Resident: I gave them a copy.

Mr. Goncalves: Okay, so Marilyn. You're Marilyn?

Ms. Valenti: Yes.

Mr. Goncalves: Give me your last name Marilyn.

Ms. Valenti: Valenti.

Mr. Goncalves: And you're at 229 Miller, F2.

Ms. Valenti: Yes.

Mr. Goncalves: Are you submitting this into the board as evidence?

Ms. Valenti: Yes.

Mr. Goncalves: You are, okay. I'm going to mark this Exhibit 1.

Attorney Kraus: Well Mr. Chairman, I, yeah.

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Attorney Crowley: Mr. Chairman because we do not, we haven't.

Mr. Goncalves: We are not taking evidence, correct.

Attorney Crowley: Exactly.

Ms. Valenti: So, I wait until the next time.

Attorney Kraus: Yes please.

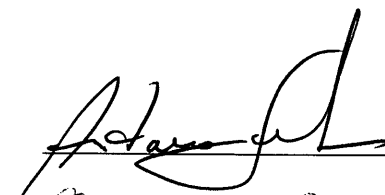
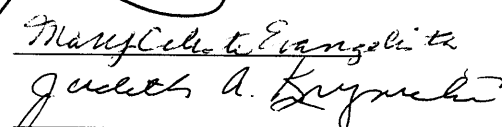
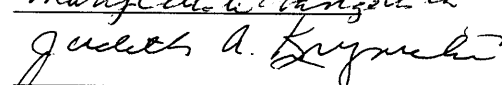
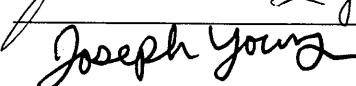
Mr. Goncalves: So, we are not going to take any of these exhibits in either. We are just killing this right now.

Attorney Crowley: Right.

Mr. Goncalves: Alright any questions, comments? Someone make a motion to adjourn, motion to adjourn at 6:42?

Mr. Young: Second.

Mr. Goncalves: All in favor. 3-0.


Chairman



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