



*The Commonwealth of Massachusetts*  
*Office of the Inspector General*

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Town of Carver  
108 Main Street  
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During December 2007, the Office of the Inspector General received a complaint from a concerned citizen pertaining to the disposal of a certain piece of property by the Town of Carver (Town), Massachusetts in 2002. Specifically, the citizen alleged that the Town disposed of property located at 13 Birch Terrace, Carver, Massachusetts, without following M. G. L. c. 30B (Chapter 30B), the statute which governs municipal land transfers. Chapter 30B applies to the sale of real property by governmental bodies, including cities and towns. Chapter 30B establishes specific procedures that governmental bodies are mandated to follow regarding the acquisition and disposition of real property. Chapter 30B permits a Town to dispose of real property for a public purpose and for less than its value. However, the procedures outlined in Chapter 30B must still be followed. In the complaint, the citizen alleged that the Town totally ignored the clear requirements of Chapter 30B in the sale of the property in question. Based upon the citizen's report, the Office of the Inspector General initiated an investigation to determine the validity of the allegations.

### **General Background Regarding the Sale of 13 Birch Terrace by the Town of Carver**

The property, identified as 13 Birch Terrace, Carver, Massachusetts came into ownership and lawful possession of the Town in 2000. The previous owner owed the Town \$11,279.60 in back taxes on the property. The Town initiated foreclosure proceedings on the property and was declared the lawful owner by the Massachusetts, Land Court on May 12, 2000.

After the Town became the legal owner, Habitat for Humanity of Greater Plymouth (Habitat for Humanity) approached the Town Selectmen in an attempt to obtain the property.

During the Town Selectmen's meeting on March 27, 2001, Selectmen Robert Merritt indicated that Habitat for Humanity was interested in obtaining this property. Selectmen James Grimes made a motion to take title to the property and turn it over to Habitat for Humanity. This motion was seconded by Selectmen Bernadette Hemingway.

The Board of Selectmen transferred title to the property to Habitat for Humanity on March 19, 2002 for \$1.00. Selectmen Merritt along with the other members of the Board of Selectmen authorized this transfer to Habitat for Humanity. On June 11, 2002, Habitat for Humanity sold the property to private buyers for \$36,000.00. On September 10, 2004, this property was resold for \$99,000.00. On December 9, 2004, the Zoning Board of Appeals held a public hearing at Town Hall at which time the current owner presented testimony requesting a variance for the construction of a house on the property. The property was an undersized lot and the Town Board of Health had issued a deed restriction that a home at this location must be limited to 2 bedrooms due to Title V requirements. On January 13, 2005, the Zoning Board of Appeals voted unanimously to grant the variance with certain conditions. On March 15, 2005, the Town Building Department issued a building permit for construction of a single family 2 bedroom home on the property. On June 18, 2006, the property was sold again for \$288,000.00.

### **Interview of Robert Merritt, Former Selectmen, Town of Carver, Carver, MA**

Robert Merritt, former Selectmen, Town of Carver and former member of the Board of Directors for Habitat for Humanity was interviewed by investigators from the Office of the Inspector General. Merritt advised that he was a member of the Board of Selectmen when the Board donated the property located at 13 Birch Terrace to Habitat for Humanity. Merritt recalled that this property had been taken by the Town because of taxes that were owed on it.

Merritt stated that he created Habitat for Humanity of Greater Plymouth in 1997, and was a member of their Board of Directors. He advised that at the time the property was donated to Habitat for Humanity, he was an active member of Habitat for Humanity's Board of Directors and a Selectman for the Town of Carver. Merritt advised that he recommended to the site committee for Habitat for Humanity that they pursue an attempt to obtain the property from the Town. Merritt said he spoke with other Selectmen and obtained their support in donating the property to Habitat for Humanity. Merritt also stated that he was aware that Town Meeting would have to authorize the transfer of the deed to the property from the Town to Habitat for Humanity. He did not know if the Town Meeting authorized this deed transfer to Habitat for Humanity. He did not know if the Town advertised this property in the newspapers prior to transfer of the deed to Habitat for Humanity.

Merritt stated that when Habitat for Humanity received the deed to this property, he believed it was assessed at approximately \$30,000.00.

Merritt stated that it was his assumption that the property was subsequently sold by Habitat for Humanity because it was a poor piece of property to develop. Merritt had no knowledge regarding who may have purchased the property from Habitat for Humanity or how much was paid to Habitat for Humanity for the land.

### **Interview of Richard LaFond, Town Administrator, Town of Carver**

Richard LaFond, Town Administrator, Town of Carver, was interviewed by investigators from the Office of the Inspector General and advised that he has been Town Administrator since October 1, 1996. LaFond advised that the Town took possession of property located at 13 Birch Terrace, Carver, MA, during 2000. The Town took possession of this land because of an outstanding tax obligation in the amount of \$11,279.60. The property was small and had a dilapidated home located on it. LaFond stated that Habitat for Humanity approached the Town Board of Selectmen and asked if they would consider donating the property to Habitat for Humanity. LaFond stated that Habitat for Humanity intended to build an affordable home for a deserving family on the property. On March 27, 2001, the Board of Selectmen unanimously voted to donate the property to Habitat for Humanity for \$1.00. The deed for the property was transferred from the Town to Habitat for Humanity on March 19, 2002.

LaFond stated that it was his understanding that Habitat for Humanity would either apply to the Zoning Board of Appeals for a variance because the lot was undersized and build an affordable home, or would sell the property and use the proceeds for another affordable housing initiative. LaFond stated that the Town used this land donation to receive a credit towards the Town's affordable housing certification from the Massachusetts Department of Housing and Community Development (DHCD).

LaFond stated that he has researched this matter and determined that it was not presented to Town Meeting for approval before the deed to the property was transferred from the Town to Habitat for Humanity. In fact, the Town Meeting never authorized the transfer of the property to Habitat for Humanity. LaFond advised that he was probably not aware that the property donation should have first gone before the Carver Town Meeting for approval. LaFond stated that the Town did not advertise this parcel of land for sale as required by Chapter 30B. Further, LaFond stated that the Town did not follow the proposal process for putting the land up for sale and soliciting proposals which is likewise required by Chapter 30B. He stated that he was not as familiar with the rules and regulations of Chapter 30B as he should have been.

### **Interview of William Slater, Office Manager/ Affiliate Manager, Habitat for Humanity, Carver, MA**

William Slater, Office Manager/Affiliate Manager, Habitat for Humanity, Carver, Ma, was interviewed by investigators from the Office of the Inspector General. Slater advised that after Habitat for Humanity received the parcel of land at 13 Birch Terrace from the Town, they

determined there were too many problems with the construction of a new home on this lot. According to Habitat for Humanity's Site Selection Committee's report, to the Habitat for Humanity Board of Directors, dated July 19, 2001, the main problem was the house size (625 square feet). They also indicated to the Board of Directors that if Habitat for Humanity went forward with the construction of a home, they would have to do battle with the Town Building Commissioner and Zoning Board. The Site Selection Committee recommended to the Board of Directors that consideration should be given to reselling the property.

According to records from Habitat for Humanity, on March 23, 2003, Bob Beane, Cochairman, Site Selection Committee, Habitat for Humanity informed the Board of Directors that the Birch Terrace lot had been sold "as is" to a developer for \$36,000.00. The proceeds from the sale of this lot were used to payoff the balance of an outstanding \$80,000 loan Habitat for Humanity had with Rockland Trust Bank, dated October 6, 2000.

## **Factual Analysis and Applicable Massachusetts Law**

Prior to disposing of real property, a governmental body, including cities and towns, must declare the property available for disposition and specify any reuse restrictions that should apply to said property.<sup>1</sup> Because M.G.L. c.40, §4 requires town meeting approval prior to entering into a contract, this Office interprets Chapter 30B, §16 to require, in a town with a town meeting form of government, an affirmative town meeting vote to declare the property available for disposition and to determine whether any reuse restrictions should apply to said property.<sup>2</sup>

Whether or not a proposal process is required to dispose of real property depends on the value of the property, and therefore, prior to the disposition of the property, the governmental body must determine the value through procedures customarily approved by the appraising profession as valid.<sup>3</sup> If the value of the property exceeds \$25,000, the governmental body must solicit proposals,<sup>4</sup> and the Town must advertise the opportunity.<sup>5</sup> Where a governmental body disposes of property for less than its value, the governmental body must publish the notice in the *Central Register*, published by the Secretary of State. The notice shall state the difference between the value of the property and the price received, stating the reason for the disposition and listing all persons having a beneficial interest in the property.<sup>6</sup> Finally, no contract to lease or sell property is valid until the buyer or lessee has filed a disclosure of beneficial interests to the Division of

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<sup>1</sup> M.G.L. c. 30B, §16(a).

<sup>2</sup>M.G.L. c.40, §4 requires a vote of town meeting, of the town council where there is no town meeting, the city council in a city and approval of the mayor, or the city council in a plan D or Plan E city with approval of the city manager. It is this Office's opinion that the required vote for purposes of M.G.L. c.30B, §16 is the vote that is required under M.G.L. c.40, §4.

<sup>3</sup> M.G.L. c.30B, §16(b).

<sup>4</sup> M.G.L. c.30B, §16(c).

<sup>5</sup> M.G.L. c.30B, §16(d).

<sup>6</sup> M.G.L. c.30B, §16(g).

Capital Asset Management.<sup>7</sup>

The disposition of the property by the Town to Habitat for Humanity was in direct violation of Chapter 30B. There was never a Town Meeting vote to authorize Town disposal of the property for \$1.00. While the Selectman voted to dispose of the property, the Town's people, at Town Meeting, did not approve the sale of the property. Further, the Town failed to declare any reuse restrictions when disposing of the property. While not required, reuse restrictions could have mandated that Habitat for Humanity, or any subsequent owner, build an affordable unit on the property and that the property revert back to the Town if the requirement for building an affordable unit was not met. Without such a reuse restriction, Habitat for Humanity was able to realize a profit on the sale of the parcel and satisfy obligations to pay outstanding debt. Further, there is no evidence that the Town sought to actively discern the value of the property as required under Chapter 30B, §16(b); however, the assessed value of the property was \$42,000. Because the assessed value of the property at the time of sale exceeded \$25,000, the Town was required to conduct an advertised proposal process. The Town failed to do so. Lastly, the Town did not provide notice in the Central Register that it had disposed of a valuable parcel for \$1.00.

Mirroring Chapter 30B, M.G.L. c. 60 § 77B also sets specific guidelines regarding the sale of land taken by a tax foreclosure. These guidelines include the option of appointing a custodian to manage the property acquired by the Town. Further, the statute permits the custodian to sell the acquired property at a public auction after giving notice of intent to sell to the previous owner. The Town did not appoint a custodian to manage and control the property. Instead, it appears that the Town allowed the property to come under the de facto control of Selectman Merritt. Merritt brought the potential availability of the property to the attention of Habitat for Humanity, and then approached the Board of Selectmen and lobbied them concerning its sale. While the appointment of a custodian was not mandatory, such an appointment would have demonstrated that the Town was acting in good faith pursuant to Chapter 60.

From this Office's prospective, it is unclear whether the Town followed Chapter 60 by giving notice to the prior owner of record regarding the sale. This office has asked the Town to clarify this matter but to date has not received the requested response. The Town clearly failed to hold an auction in order to sell the property. This violation of Chapter 60 is more troubling than the failure to appoint a custodian because it spreads the shadow of impropriety to the sale price, not just the manner of how the property was sold.

The decision of the Board of Selectmen and the Town Administrator to ignore and circumvent the existing laws of the Commonwealth regarding the transfer of this property clearly contravenes the will of the Legislature and the interests of the Town's citizens whom they are sworn to serve.

## **Conclusions and Recommendations**

The property located at 13 Birch Terrace, Carver, Massachusetts was originally obtained by the

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<sup>7</sup> M.G.L. c.7, §40J.

Town in 2000 through a foreclosure process initiated because of a failure by the owner to pay the Town over \$11,000 dollars in overdue taxes. Surely, the foreclosure process cost the Town certain legal fees and other incidental costs. Moreover, the overdue taxes were never recovered or made up for in the subsequent sale of the property. It appears that any sale of this property by the Town, at a minimum, should have included recouping the amount of back taxes owed and the cost of fees associated with its acquisition by the Town.

At the time the property was transferred from the Town to Habitat for Humanity, its assessed value was \$42,000 dollars. This property, though undersized and in need of a zoning variance, was later sold by private parties in 2004 for \$99,000 dollars. Subsequently, after a zoning change, a house was built on the lot and it was resold again for \$288,000. All of this serves to demonstrate that the property was a valuable asset to the Town. Before parting with a valuable real property asset, the citizens of the Town legally had the right to decide whether selling this asset for \$1.00 was in their best interest. The failure of the Town Administrator and the Board of Selectmen to follow the law in this regard amounts to a serious breach of the public trust.

Likewise, the failure of the Town Administrator and the Board of Selectmen to follow the clear requirements of Chapter 30B as established by the legislative body of the Commonwealth further exacerbates this breach of public trust. The sale of a valuable Town asset without following the legally required bidding process cannot be excused because the responsible parties thought they were acting in a charitable manner. The conduct of these individuals is even more objectionable because Chapter 30B, §16(g) permits a municipality to dispose of real property at less than full market value to accomplish a public purpose. It is clear that the conduct of Town officials in this matter was contrary to the best interests of the citizens of the Town and contrary to the express will of the Legislature.

Finally, this Office takes note of the fact that when the property in question was transferred to Habitat for Humanity by the Town, Robert Merritt was simultaneously serving as a member of the Town's Board of Selectmen and a member of Habitat for Humanity's Board of Directors. It is not within the purview of this Office to investigate alleged violations of the ethics laws of the Commonwealth. The Legislature has given that responsibility to the State Ethics Commission.

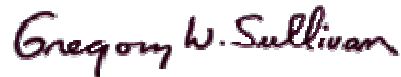
In order to obviate this kind of situation from occurring again, this Office makes the following recommendations:

1. That, at a minimum, the Town Administrator and members of the Board of Selectman should consider attending the various trainings for public officials that are available throughout the commonwealth. The Ethics Commission provides training to public officials on the conflict of interest laws, and this office, through its *Massachusetts Certified Public Purchasing Official program*, has a variety of seminars on public procurement.
2. That the Town Administrator and members of the Board of Selectman download and review the Inspector General's procurement manual, entitled *Municipal, County, District, and Local Authority Procurement of Supplies, Services and Real Property*, which sets out the legal requirements of M.G.L. c.30B, including those for the acquisition and

disposition of real property. The manual can be downloaded at <http://www.mass.gov/ig/publ/30bmanl.pdf> or purchased from the State Book Store.

3. That the Town ensure that a disclosure of beneficial interests in 13 Birch Terrace be immediately filed with the Division of Capital Asset Management. The form can be found in Appendix B of the Inspector General's procurement manual, entitled *Municipal, County, District, and Local Authority Procurement of Supplies, Services and Real Property*, a link to which has been provided above.

Sincerely,

A handwritten signature in dark ink that reads "Gregory W. Sullivan". The signature is written in a cursive, slightly slanted style.

Gregory W. Sullivan  
Inspector General

Cc Francis J. Casey, Selectman  
James Grimes, Selectman  
Richard Ward, Selectman  
Michael J. O'Donnell, Jr., Selectman  
Richard J. LaFond, Town Administrator