

IN BOARD OF SUDBURY SELECTMEN
WEDNESDAY, SEPTEMBER 10, 2014
EXECUTIVE SESSION (7:00 PM – 7:25 PM)

Present: Chairman Charles C. Woodard, Selectman Robert C. Haarde, Selectman Leonard A. Simon, Vice-Chairman Patricia A. Brown and Town Manager Maureen G. Valente.

The statutory requirements as to notice having been complied with, Chairman Woodard convened the meeting, seconded by Selectman O'Brien, at 7:00 p.m. in the Silva Room, Flynn Building, 278 Old Sudbury Road.

Land Negotiations - Johnson Farm

The Board was previously in receipt of copies of two memoranda from Town Manager Maureen Valente dated August 14, 2014 and September 5, 2014 and accompanying appraisal, invoices and other relevant information. In addition, copies of a letter from The Sudbury Valley Trustees' Executive Director Lisa Vernegaard dated September 8, 2014, were distributed tonight.

Jody Kablack discussed a meeting she and Debbie Dineen had with Bob Moss in August. Ms. Kablack stated the Town has received all cost accounting items from Mr. Moss, which have been distributed the Board. The Town is also in receipt of the property appraisal by Jon Avery, which indicates a market price of \$3.4 million for the hypothetical approved 68 unit plan. The firm price offered by Mr. Moss is \$3.7 million. He is willing to offset the price by selling 2 ANR lots along the frontage. Whatever he receives for the lots would reduce the price. The Town has received an appraisal of the value of 2 ANR lots, which total \$680,000. He would do the surveying and application. His cost accounting suggests his total costs to date are over \$4 million. Mr. Moss believes this would still be a very successful development if he proceeds. Ms. Kablack went over the appraisal briefly, which estimates a \$50,000 per unit cost. Mr. Moss' offer equates to \$1.6 for the land, plus approximately \$2.1 million for permitting costs. Ms. Kablack reported that over \$800,000 of the costs are from the litigation and appeal of the permits.

Ms. Kablack reported that SVT has had one meeting with neighbors requesting private fundraising for a portion of the purchase price. The neighbors have also submitted a letter to the Selectmen suggesting that they may need additional time for fundraising, however Ms. Kablack is not sure that an extension beyond the May 2015 Town Meeting will be granted.

Ms. Kablack next discussed CPA funding availability. The debt service capacity is limited, but could fund up to \$3 million presently. This would leave no capacity until FY19. CPC should not count on additional state match payments, though another \$500,000 is anticipated in FY15. Next year it may not occur and therefore cannot be budgeted.

Chairman Woodard stated that the market value is less than the appraisal because it is a hypothetical. There is no certainty that all approvals will be received. A deduction of costs necessary to complete project approvals should be calculated into the price. Mr. Moss has stated it will cost him \$500,000 to complete the litigation. He noted that Mr. Moss paid \$1.5 million for the land. That suggests the value of the hypothetical approvals is \$1.9 million. Assuming a 2/3 likelihood of success and deducting the \$500,000 legal cost to achieve success, a modified appraisal might be \$2.3 million.

Chairman Woodard next asked Board members if they wanted to proceed with purchasing the property? Were they comfortable with the price? How should it be funded? He noted that if all CPA funds were used, it would deplete any opportunities that arise which are unknown today.

Selectman Haarde stated that he believes it is likely the 68 unit plan will be fully approved, and that if the property is not purchased by the Town, it will likely be developed. The neighbors have litigated to delay the

project, but it likely won't stop it. He thinks a development would be built, and therefore the costs for permitting are appropriate to be included in price.

Ms. Dineen indicated that rental rates are rising. Rents in the development were originally estimated at \$1700/month, and have risen to \$2100/month according to Mr. Moss. Even though Mr. Moss may be busy with other projects right now, he will likely wait and develop this property later. Selectman Brown asked what the time frame for development is. Ms. Dineen indicated that the DEP appeal process should be concluded in October. Ms. Kablack estimated that the Land Court appeal could take up to 18 months for a decision. Then neighbors could further appeal.

Ms. Kablack noted that Mr. Moss' legal costs during trial and appeal are as large as \$55,000/month. He has offered the property to the Town at this time, as the DEP appeal seems to have been settled, and before the Land Court appeals gears up again. He has asked for a commitment from the Selectmen before the Sept. 24th DEP hearing so that he does not have to prepare for that hearing.

Ms. Dineen indicated that the DEP Wetlands Division has approved the revised plan and the settlement agreement. An Adjudicatory Appeal Hearing is currently open with the DEP Office of Appeals and Dispute Resolution. This hearing has been continued until it is determined if the Town of Sudbury will purchase the property.

Chairman Woodard polled the board to see if they were willing to commit to moving forward, but to negotiate the price. All members indicated they are willing to negotiate with developer.

Chairman Woodard asked if there were limitations on how much the property could be purchased for, considering the use of CPA funds.

Ms. Kablack noted that the appraisal received by the Town supports the acquisition using CPA funds.

Chairman Woodard noted that there is limited time to continue discussion, but that the Board would return to Executive Session at the end of the regular meeting this evening.

A motion was made, seconded and voted to exit the Executive Session at 7:25 p.m. and return at the end of the regular session this evening.

EXECUTIVE SESSION (10:58 P.M – 11:45 P.M.)
Lower Town Hall, 322 Concord Road

Present: Chairman Charles C. Woodard, Vice-Chairman Patricia A. Brown, Selectman Lawrence W. O'Brien, Selectman Robert C. Haarde, Selectman Leonard A. Simon, Town Manager Maureen G. Valente

Land Negotiations – Johnson Farm

Chairman Woodard stated another Executive Session meeting may be needed prior to September 23, 2014 to discuss options for negotiating a lower price.

Town Manager Valente stated she has asked Town Counsel Paul Kenny for clarification as to what the Board can discuss in public sessions and what should be addressed in Executive Sessions.

The consensus of the Board was that it wishes to enter into negotiations with Mr. Moss for Johnson Farm. Chairman Woodard stated Mr. Moss has set a hard price at \$3.7 million.

Selectman Simon stated Mr. Moss is looking to recoup monies spent on a work product which is of no value to the Town. Thus, he believes a lower price should be negotiated. Selectman Simon believes if Mr. Moss' plans were marketable at full value he could sell his position, but he knows there are obstacles, which is why he is looking to the Town.

Chairman Woodard state the Board should present its lower offer by the end of next week, which allows time for counter offers.

Selectman Haarde asked how long the Board has to settle on a price. Town Manager Valente stated she believes Mr. Moss would be flexible, if he has a firm commitment from the Board.

Selectman Haarde also asked what happens if the acquisition is not passed at Town Meeting. Chairman Woodard stated this is a risk the seller takes.

It was noted Mr. Moss has requested a \$100,000 non-refundable deposit to go to Town Meeting in May 2015.

Selectman O'Brien stated it is good the Sudbury Valley Trustees (SVT) is interested in being involved to possibly help acquire private funding. He and Chairman Woodard asked if the Board is willing to pay \$3.7 million, if Mr. Moss refuses a lower offer. Vice-Chairman Brown and Selectman Haarde responded affirmatively.

Selectman Haarde stated the opportunity cost of the property being developed is of value for the Town purchasing the property.

Selectman Simon stated he is uncertain of his position because although he does not want the property developed, he believes the asking price of \$3.7 million is artificial.

Selectman O'Brien stated that, assuming the two front lots can be sold by Mr. Moss for \$700,000, the price would be reduced to \$3 million. He further stated he has concerns as to how this would be funded because Community Preservation Act (CPA) funds are limited at this time, and this purchase price could potentially shut down the Town's CPA program for the next five years. Selectman O'Brien stated he supports purchasing the property, but not with CPA funds.

Chairman Woodard stated he believes the purchase price is too high. He is willing to have the Town pursue purchasing it, but he does not like the value placed on it by the seller. He further stated the ultimate decision should be made by the taxpayers as a debt exclusion.

Selectman Simon stated the public will ultimately answer whether the property is worth \$3 million. He also stated he does not support depleting CPA funds.

Selectman Haarde believes the acquisition would be comparable to other parcels which have been protected by the Town, noting the Town sometimes has to pay more to protect land from Chapter 40B development.

Selectman O'Brien suggested a strategy could be to offer to Mr. Moss putting the issue on a Special Town Meeting in January and as a debt exclusion question on a ballot, and telling him he should pursue selling the two front lots in the interim. In addition, SVT could be asked to raise funds in the interim.

Selectman Simon suggested getting the Community Preservation Committee's (CPC) input as to whether the proposal would be considered. Vice-Chairman Brown suggested the CPC could possibly be asked to consider a proposal for only partial funding.

The consensus of the Board was to instruct Director of Planning and Community Development to convey a positive message to Mr. Moss of the Board's interest in negotiating the acquisition of Johnson Farm for \$2.5 million and that he should proceed with trying to sell the two front lots. The consensus of the Board was also to prepare Mr. Moss for a May 2015 Annual Town Meeting vote, and then to use a January meeting date as a later incentive for a lower price.

Selectman Simon suggested asking another Chapter 40B developer for their opinion on Mr. Moss's offer and rationale.

Town Manager Valente and Town staff will draft a communication to be sent and relayed to Mr. Moss reflecting tonight's discussion and email it to the Board tomorrow for review.

There being no further business, the meeting adjourned at 11:45 p.m.

Attest: _____
Maureen G. Valente
Town Manager-Clerk