

IN BOARD OF SUDBURY SELECTMEN
WEDNESDAY, JUNE 29, 2016

Present: Chairman Susan N. Iuliano, Vice-Chairman Charles C. Woodard, Selectman Leonard A. Simon, Selectman Robert C. Haarde, Selectman Patricia A. Brown, Town Manager Melissa Rodrigues and Special Town Counsel Jonathan Silverstein.

The statutory requirements as to notice having been complied with, the meeting was called to order at 10:08 AM in the Flynn Building Silva Room.

Village at Sudbury Station Road/Driveway Crossing Letter to Massachusetts Department of Transportation

Item 4 on the agenda was taken out of order. Selectman Simon distributed a document entitled "Moving the Access/Egress Road to Exit at Ti Sales."

Counsel Silverstein explained that there was a request for the Board of Selectmen to sign a letter to be sent to Mass DOT stating that the Board supports an alternative access into the Sudbury Station development that would utilize part of the Bruce Freeman Rail Trail rail bed. The benefits of this alternative access would be that it would create less of an offset from the existing intersection as well as the access route through abutting business Ti Sales. It would also dramatically reduce the distance of the access road to the proposed development. In addition, this would have the potential to greatly reduce or entirely eliminate the sight lines into the development along the access route.

The Board asked why the letter needed to be submitted, the pros and cons of submitting it, who made the request for the letter and whether it could be signed at a later time. They also reviewed the plan to visually understand what the changes would entail.

Counsel Silverstein explained that the reason for the letter is that MassDOT owns the rail bed and will not permit the crossing unless they receive a letter of support from the Town. He clarified that this would be a letter of support and not approval. He also said that the letter could be worded to indicate that the Board opposes the project but agrees that this option would be worthwhile if it were to proceed. Additionally, it could be stated that the Board supports this option only if the ZBA decides that it is an improvement.

Some Board members felt that this could possibly make approval of the application more likely and that it would not be prudent to send such a letter. It was further felt that, while the use of the rail bed may make vehicular traffic safer for the development it would introduce danger to pedestrians where none currently exists. Others wanted more information on the source of the request for the letter, an assessment of whether the rail option would in fact be safer (including feedback from Planning, Police and DPW departments), as well as the ZBA's need for the letter.

As there was no deadline for the letter request, it was concluded that the matter would be discussed at the July 12 Board of Selectmen meeting or sooner, if possible.

Village at Sudbury Station Earth Removal Letter to Massachusetts Department of Transportation

Counsel Silverstein explained that the Sudbury Station application currently includes the construction of a retaining wall adjacent to the rail trail. ZBA has expressed safety, drainage and aesthetic concerns regarding the wall. They feel elimination of the wall from the application would be an improvement to the

project, but removal of the wall would necessitate grading in its place. The grading would not interfere with the rail trail, but it would affect the layout of the rail bed. This letter would state that the Board supports replacing the proposed retaining wall with grading.

Selectman Brown asked how this letter interacts with the letter previously discussed, and Counsel Silverstein stated that, while both matters could be addressed in a single letter, they are separate issues and that the proposed retaining wall and access addressed in the previous letter do not physically intersect.

Selectman Simon inquired about the height of the wall and Counsel Silverstein responded that the applicant claims it will be 10 feet at its highest point but that community advocates believe it could be as high as 20 feet. In his experience, large retaining walls cause concerns regarding hydrostatic buildup, failure of the wall and other issues.

Selectman Simon stated that, as the with other letter, it seems that signing this letter would make Sudbury Station a more approvable project. Vice-Chairman Woodard responded that claiming that the project is unacceptable due to a solution the Board prevented from allowing doesn't seem like a sustainable argument for appeal.

Selectman Brown inquired whether declining to send the letter would open the Town to liability if the retaining wall was built and later failed.

Counsel Silverstein responded that a town is immune from tort liability for anything having to do with issuance or non-issuance of a permit, and that the property owner, builder and possibly designer would be liable for the failure of the wall. In response to an inquiry regarding the source of the request, Counsel Silverstein explained that members of the ZBA have requested both of these changes from the applicant and the applicant informed them that they would be willing to consider the changes if letters of support from the Board of Selectmen required by MassDOT are produced.

Town Manager Rodrigues said that she would request that Planning Consultant Michelle Ciccolo prepare draft wording for the letters that could be discussed at the July 12th Board of Selectmen meeting.

Village at Sudbury Station Recommendations

Chairman Iuliano stated that this agenda item is an opportunity for the Board to provide any additional input to Counsel Silverstein regarding issues surrounding Sudbury Station that they wish to convey to the ZBA. A letter dated June 17, 2016 which outlines concerns about project design, traffic, drainage and earth removal/deforestation and alternative site access was provided to the Board in advance of the meeting.

Selectman Simon asked whether the project would have an impact on wetlands and whether grading proposed in the MassDOT would affect deforestation.

Counsel Silverstein responded that grading would likely affect deforestation and that no wetlands have been identified on the site of the project, though some have been identified further downstream. In response to a question regarding the Board of Selectmen's best strategy in preventing the proposed development, he replied that the greatest areas of concern, which could form the basis for a potential appeal, are detailed in the June 17 letter. He asked the Board whether they would prefer to advocate for

outright denial of the application or approval with conditions for a less impactful project that would necessitate lowering the number of units.

Chairman Iuliano stated that the decision rested with the ZBA. Selectman Simon stated that he believed that outward denial is the best option. He also asked if a study of potential artifacts or anything of historical value buried in land was conducted.

Counsel Silverstein replied that Public Archeology Laboratory (PAL) conducted the review, which is available on the Town website. PAL was prevented from entering upon the land to conduct the study by the applicant. In summary, the study found that there would not be an impact from the project on the Historic Center and that there would be minimal impact on the cemetery. Additionally, a portion of the access road would go through the Historic District, but no buildings would be sited there.

Selectman Brown agreed that members of the ZBA have put in significant time and energy reviewing the application and that the decision rests with them. She wished to emphasize that the ZBA has received information with deliberate delays, making it very difficult to do their work. She offered the Board's support to the ZBA, whether it be through the hiring of a hydrologist or in any other way needed.

In response to a question from Chairman Iuliano regarding closing arguments, Counsel Silverstein explained that if there are any new questions or information that the Board of Selectmen wishes to bring before the ZBA, he can issue another letter prior to the final hearing. He will also make a closing statement on behalf of the Board of Selectmen at the last hearing on the application.

Selectman Woodard stated that an independent hydrologist needs to be hired as soon as possible – in advance of the hearing's closing.

It was agreed that the Town Manager will notify Special Counsel if funds are available to hire a hydrologist.

Chairman Iuliano moved to return to executive session.

Selectman Simon seconded the motion.

It was on motion and roll call unanimously.

VOTED: To return to executive session to discuss strategy with respect to potential litigation because an open meeting may have a detrimental effect on the litigating position of our public body concerning the Village and Sudbury Station, pursuant to General Laws chapter 30A, §21(a)(3).

Selectman Leonard A. Simon: aye, Vice-Chairman Charles C. Woodard: aye, Selectman Patricia A. Brown: aye, Selectman Robert C. Haarde and Chairman Susan N. Iuliano: aye.

The meeting adjourned at 10:53 AM.

Attest: _____
Melissa Murphy-Rodrigues
Town Manager-Clerk

Documents & Exhibits

1. Open in regular session, and vote to immediately enter into Executive Session to discuss strategy with respect to potential litigation if an open meeting may have a detrimental effect on the litigating position of the public body and the chair so declares (Village at Sudbury Station), pursuant to General Laws chapter 30A, §21(a)(3).
2. Vote to end Executive Session and return to Open Session.
3. Discussion and possible vote concerning the Board of Selectmen's recommendations on matters before the ZBA relative to the Sudbury Station comprehensive permit application.

Attachments:

- 3.a SUDB-ltr to ZBA re CPA_001
- 3.b PCD_6.20.16 Memo

4. Discussion and possible vote concerning a letter to the Massachusetts Department of Transportation supporting the Sudbury Station applicant's request to allow a road or driveway crossing over the proposed Bruce Freeman Rail Trail rail bed.

Attachments:

- 4.a June29_LenSimonHandout

5. Discussion and possible vote concerning a letter to the Massachusetts Department of Transportation concerning earth removal, filling, or grading that may impact the proposed Bruce Freeman Rail Trail rail bed or other property owned by the MassDOT.