

IN BOARD OF SUDBURY SELECTMEN
EXECUTIVE SESSION
THURSDAY, APRIL 4, 2019
FLYNN BUILDING – SILVA ROOM

Present: Chairman Robert C. Haarde, Vice-Chairman Daniel E. Carty, Selectman Leonard A. Simon, Selectman Patricia A. Brown, Selectman Janie Dretler, and Town Manager Melissa Murphy-Rodrigues.

The statutory requirement as to notice having been complied with, the meeting was convened at 3:00 p.m.

Executive Session

It was on motion unanimously

VOTED: To immediately enter Executive Session to consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body (Camp Sewataro) pursuant to General Laws chapter 30A, 21(a)(3).

Vice-Chairman Carty opened the meeting and Chairman Haarde arrived several minutes later.

Town Manager Rodrigues reported that she submitted the Sewataro Offer to Purchase on Friday, March 29th and she and Chairman Haarde met with the Sewataro representatives on Monday, April 1st. The Sewataro broker affirmed that the Town's offer was not the highest bid, and the owner is somewhat nervous about the Town Meeting vote regarding the purchase.

Town Manager Rodrigues stated that the Sewataro broker briefly shared the associated financial information but did not provide a copy of the same. Town Manager Rodrigues shared those findings with the Board:

- Yearly Sewataro revenue of \$3 million.
- Yearly Sewataro staff payroll expense of \$1.1 million.
- Yearly Sewataro maintenance expense of \$259,000.
- Yearly Sewataro transportation expense of \$221,000.
- Other yearly Sewataro expenses totaled \$168,000.

The staff payroll includes the director, two assistant directors, staff enrollment person, camp nurse and camp coordinator.

Town Manager Rodrigues stated that the owner of Sewataro did not want the Sewataro name used if the Town would plan to lease and was concerned about who would be running the camp. Another restriction presented by the owner was field lighting. The owner expressed reluctance about getting rid of existing tenants on the property and appears that the owners want additional restrictions and possibly more money.

Selectman Dretler stated that the level of restrictions made her uncomfortable. Selectman Simon felt the same nervousness about the restrictions and distributed his "Liberty Ledge/Sewataro" document to Board members.

Town Manager Rodrigues suggested entering into a Purchase and Sale Agreement now and wait until Fall Town Meeting for a vote, which may help to satisfy the owner since he agreed to operate the camp for this upcoming summer session.

Selectman Dretler inquired about the option of transferring the Sewataro brand to another Town-owned land, such as Broadacres. Selectman Brown mentioned a similar issue at the Wayside Inn and agreed that the Town might be interested in using the Sewataro brand somewhere else in Town.

Town Manager Rodrigues mentioned the option of having the owner be a part of the RFP. Selectman Simon stated that the owner proposed selling the property now with different RFPs for the business and the camp and now present restrictions on both. He was unclear about the owner's wish to retain parts of the property and believed that this could lead to future litigation. Town Manager Rodrigues responded that the Purchase and Sale Agreement (P&S) would have to be very thorough and defined. Selectman Simon stated that such counsel preparation and study would be very costly for the Town.

Selectman Simon reiterated that Sudbury was not in the business of buying and running businesses and the owner is creating obstacles regarding a viable sale and referenced the "Liberty Ledge/Sewataro" document. Selectman Brown mentioned that the "Liberty Ledge/Sewataro" document would be included in the minutes of this meeting.

Selectman Simon asserted that the Board has a responsibility to the Town and would need further information regarding the specifics of what the Sewataro owner is specifically offering.

Town Manager Rodrigues distributed a new financial chart as requested by the Board at the last meeting.

Vice-Chairman Carty stated that the current situation is frustrating because the owner/s are well aware of the workings of the Town and the question is whether or not they really want to sell in consideration of the outlined restrictions, including eliminating the possibility of lighting, cell towers, and solar implementation. He questioned if the owner would put the other bidders through the same restricting process.

Selectman Dretler asserted that the restrictions minimize the value of the Offer to Purchase and asked for clarification of applicable zoning regulations.

Chairman Haarde mentioned that litigation could only take place if the Town did not agree to the owner's restrictions. Selectman Simon exemplified Peter's Way litigation and did not want the risk of litigation. Selectman Brown stated that the prime reason for litigation at Peter's Way involved bad legal advice and this situation and P&S would require more specialized and expert legal recommendation.

Town Manager Rodrigues mentioned that if the owner would agree to a prospective P&S and move the vote to fall Town Meeting, they could continue to run the camp this summer and would continue to pay taxes until the official closing on the property.

Selectman Dretler asked about the area of land that the owner wanted to retain. Town Manager Rodrigues indicated that the land in question was probably on the outskirts of the property.

Vice-Chairman Carty commented that further offering would likely not be resolved by Monday, April 8th. Selectman Simon stated that the business value of the camp must be discovered before a P&S signing and this situation severely restricts the Town. Chairman Haarde stated that many such transfers in Town have been purchased with restrictions and lighting and cell tower proposals would not have likely been approved.

Town Manager Rodrigues reviewed the counter offer with the Board as presented in the Sam Cole – McCall/Almy document.

Chairman Haarde stated that he did not have issue with the restriction of approximately 50% of the Sewataro property nor with the exclusion of lights, solar and cell towers and retain the offered sale price.

Vice-Chairman Carty stated that he had no problem with running two Town camps concurrently. Town Manager Rodrigues added that the Camp must be ADA-compliant.

Chairman Haarde stated that the owner must provide three years of audited records if requested.

Selectman Brown recommended not increasing the original offered price of \$11 million, and Vice-Chairman Carty agreed. Selectman Simon recommend lowering the offered price due to the restrictions. Selectman Dretler also recommended the reduction of the offered price if owner maintained the restrictions. Chairman Haarde reiterated that the listed restrictions did lower the value of the property and printed the following table on the board:

\$1.462 million	=	Net Positive Revenue
\$1.014 million	=	Year One Bond Note Payment
\$ 448,000.00	=	Money for the Town

Town Manager Rodrigues stated that she believed that residents want increased open land. Selectman Simon stated that implications suggest that our hands are being tied for the future. Selectman Brown mentioned that Mr. Cole's wording was ambiguous.

Town Manager Rodrigues recommended that the Board not consider demolishing anything on the property, which was the responsibility of the owner before selling the property. Selectman Brown reiterated the importance of the owner removing tenants before the sale of such property.

A discussion regarding Camp assets took place. Town Manager Rodrigues suggested that the owner could be a part of the RFP if the Town agreed with the assets aspect. She further recommended that the Town be provided an inventory listing prior to Town Meeting.

After discussion regarding amending language of the counter-offer, Town Manager Rodrigues drew up the counter responses to include:

- **Economics** section inclusion: "The Town feels that its initial offer to purchase is fair, and is not inclined to increase the purchase price." and also added "The Town requests three years of audited financial statements sufficiently in advance of execution of the purchase and sale agreement in order to have those reviewed by a consultant."
- **Camp Sewataro Assets** section inclusion: "The Town rejects the seller's counter offer to license the Town the name and intellectual property, and rejects restrictions on the use of the name and intellectual property." Board also agreed to add in this section – "The Town requires this list prior to the Town Meeting in which action will be taken."
- **Future Use of the Property** section inclusion: "The Town rejects these restrictions on future use of the property."

- **Other Items:** section inclusion: “The Town will require that all encroachments be removed at the seller’s expense and that the property be delivered free of encroachments and encumbrances.” The Board also agreed to add in this section – “The Town agrees to a mutually agreeable closing date.”
- **Timing:** This section was added by the Board and read: “We are concerned about the timing of this process. The Town has only one month until Town Meeting and two months until the election. The Town respectfully requests that these conversations continue with an eye toward negotiating a final agreement to bring before and October Town Meeting and election. We could have a contingent purchase and sale agreement signed well in advance of October Town Meeting and likely before summer camp begins this year. If this timing was agreeable, we could close after the 2021 camp season, allowing the family to run Camp Sewataro for one more year. We think this timeline benefits everyone, allowing the family to benefit from another year of camp revenue and giving the Town the time it needs to sufficiently and accurately educate the public on the merits of the acquisition. We want this acquisition to be a great success, and we think this will help us move toward that goal.”

Selectman Brown motioned to accept the counter offer document as amended and authorized Town Manager Rodrigues to sign the counter offer document. Vice-Chair Carty seconded the motion.

It was on motion two no, and three in favor.

Haarde-aye, Carty-aye, Brown-aye, Simon-no, and Dretler-no.

Selectman Simon suggested that the counter offer document officially detail the Board’s vote. Town Manager Rodrigues stated that such delineation could be confusing for the owner. Chairman Haarde agreed that such voting inclusion within the counter offer could be misleading.

Selectman Simon commented that he wanted Town Counsel’s opinion about the need for a formal business appraisal before any further bids for Sewataro are submitted. He added that for the record, he is opposed to the proposed purchase and that any decision to approve this type of purchase “would be a dereliction of duty on the part of the members of the Board who support it.”

Vote to close Executive Session

At 5:00 p.m. Vice-Chairman Carty motioned and Selectman Simon seconded the motion.

It was on motion unanimously

VOTED: To close Executive Session.

Attest: _____
Melissa Murphy-Rodrigues
Town Manager-Clerk

MEMO

To: Board of Selectman, Town Manager

From: Len Simon

Re: Liberty Ledge/Sewataro

Date: April 4, 2019

This memo regards the potential purchase and sale of the Liberty Ledge / Camp Sewataro.

I have read Sam Cole's, McCall/Almy, letter of April 3, 2019, attached. My comments are below.

The Taylors have rejected the Town's offer to purchase the property dated, March 27, 2019.

It is apparent the Taylors now want to sell the Camp Sewataro business in addition to the land. This is not what was originally intended by the Taylors in the RFP, a fact acknowledged by Mr. Cole.

The demands set forth in Mr. Cole's letter are a hornet's nest for future legal problems and contention. These demands will set the table for protracted, expensive litigation with the Taylors. Even if some of the disputed areas could be agreed upon, which I doubt, the short time frame, 4 weeks before 2019 Town Meeting, does not allow sufficient time to let the Town's residents and Town Meeting attendees know clearly what they are buying.

The town's prior experience with a land swap ~~p~~ Peter's Way/Town Center, Sudbury Station demonstrates A) the critical need to have an air-tight document/agreement that cannot be a springboard for surprises in the future, and, B) informs the town what the transaction is and any future the potential consequences. Anything less would be municipal official malpractice on the part of the selectmen signing the legal instruments.

Because of my deep concern about legal liability for this transaction, notwithstanding the finances, I will request an opinion from Town Counsel about potential liability as a Selectmen if this transaction were to be consummated and future litigation ensue.

I would like to have town counsel's opinion regarding the need for a formal business appraisal before any further bids for the Liberty Ledge/Sewataro property are submitted.

The Taylors have asked the town to increase its offer and re-submit another bid, by April 5.

The town has already submitted a bid over \$11,000,000, more than the appraised amount of about \$10,000,000. If there was ever a justification for a bid in that amount, I don't believe, there is no justification for a higher bid now.

Under the terms now proposed by the Taylors: A) the Town would not get full and clear title, B) the Town would be restricted from disposing of the land in the future as it saw fit, and, C) the Taylors would retain some control over aspects of land use and disposition.

There would be a condition that the town commit to keeping 50% as open space, a condition which the Taylors would control. This would not be in the Town's best interest. In short, by this provision the Taylors could seek to preserve the immediate area surrounding their home, potentially at the expense of other owners or users.

The value of the land would be reduced due to the restrictions on future disposition of the land, use of the land, and business of running the camp.

The value of the land would be reduced if less than the 31 homes were built because the cost of infrastructure per unit would be higher.

I question whether the town would be getting a deed in fee simple, or something less, which would be less valuable. This consideration must be taken into account in any future offer to purchase and reflected in a reduced purchase price.

The Taylors' demands regarding retaining control, A) by re-licensing without prior permission which could be withheld at the Taylor's sole discretion, B) retention of open space requirements, C) restriction on camp operations, and, D) use of the land unduly and unfairly binds the towns options.

If the Town decides not to run a camp, it may not be able to use ½ the land for another purpose.

By retaining licensure rights to use the name Sewataro the Taylors are restricting the Town's rights.

The costs of maintaining the property are not know, since the cost increases for maintenance and insurance have not bene projected; it is not reasonable to assume a zero percent cost increase for those items for 20 years.

Because the Town of Sudbury is not in the business of buying and running businesses, in order to determine a fair purchase price for the camp business, because it is a closely held corporation:

- Sewataro's business records must be produced and made available for inspection in their entirety,
- The camps business records must be evaluated by a qualified appraiser, familiar with that industry, and,
- The results of the business appraisal must be presented and explained to the Board of Selectmen and Town Manager. Anything less would be negligence by the Board.

I would like to have it on record that not only am I opposed to the purchase of the land and camp, but that in my view any decision to approve these purchases would be a dereliction of duty on the part of the members of the Board of Selectmen who support it.

Based on current restrictions on disclosure Town Meeting will not be presented with full and fair disclosure of the facts attending the purchase of land and camp, forming the same basis as the Town's argument and legal action to rescind the land swap/transfer of the transaction known as Peter's Way/town center/Sudbury Station/ which was approved at Town Meeting about 7 years ago. In short, full disclosure of all potential consequences must be made to Town Meeting if the sale of land and business proceeds.



April 3, 2019

Ms. Melissa Murphy-Rodrigues, Esq.
Town Manager, Town of Sudbury
278 Old Sudbury Road
Sudbury, MA 01776
Via email: RodriguesM@sudbury.ma.us

Dear Melissa,


Thank you for your proposal to purchase Liberty Ledge / Camp Sewataro dated March 27, 2019. We appreciate the resources the Town has expended to date in this pursuit and for your continued willingness to explore a transaction with the Taylor family.

As we have discussed, there are certain items included in the initial proposal which we would ask that the Town revisit. Recognizing that we are under a tight timeline, we would kindly request that the Town submit any revised proposal to us by Friday, April 5th at 5:00PM, and we would further request that the revised proposal specifically address the following items:

ECONOMICS: Please give additional consideration to the purchase price in your revised offer. We expect that the purchase price will reflect not only the value of the land but also the meaningful value of the personal property and intellectual property that will be conveyed as part of the transaction. As you are aware, neither the personal nor intellectual property were a part of the original RFP, however we recognize that those additional items would be of significant value to the Town. Therefore, the Taylors are committed to including in the conveyance all of the elements necessary for the successful running of Camp Sewataro, a business that currently generates net income in excess of \$1.0 million per year.

If the Town is selected as the ultimate buyer, we will provide the Town leadership with all of the detailed financial documentation necessary to verify the valuation of the camp business. That sensitive financial information may be selectively used by the Town to support its Town Meeting campaign.

CAMP SEWATARO ASSETS: The Taylors are prepared to license to the Town, in perpetuity, the name and intellectual property of Camp Sewataro, including but not limited to internet domain names, trademarks, service marks, trade names, logos, corporate names, client mailing lists and registrations, copyrights, applications for registration thereof, and other similar protections (the "Camp Intellectual Property"). The Camp Intellectual Property license would be subject to the following conditions, which would need to be further defined:

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- The Town may not sell, license, lease, assign or otherwise transfer any of the Camp Intellectual Property without the Taylor's prior written consent which may be withheld at the Taylor's sole discretion.
- The Camp Intellectual Property is only to be used in connection with the running of a children's summer day camp on the property located at 1 Liberty Ledge Road, Sudbury, not for any other purpose.

All of the personal property associated with the operation of the camp will be further defined and conveyed to the Town at closing.

FUTURE USE OF THE PROPERTY: The Taylor family is concerned about the future use of the property and would ask that the Town consider imposing the following restrictions:

- Commitment to preserve 50% of the total acreage as open space. The Taylors are open to a discussion with the Town as to the definition of open space but that definition might include both active and passive recreation areas along with the water features on the property.
- Prohibition of i) construction of cellular towers and ii) excessive lighting (e.g. playing field lights)
- Agreement that any future development of the property will be an allowed use as defined by the then Town zoning bylaw

OTHER ITEMS:


- As shown on the site plan provided in the supplemental materials to the RFP, there is currently an open-air structure that encroaches on the land of Mark Taylor. We expect that the buyer will be responsible for the demolition of this structure along with the associated cost for the removal of the encroachment.
- The Taylors will deliver the property free and clear of tenants however we ask that the parties work to identify a mutually beneficial closing date that allows for a sufficient notice period to the current tenants

We look forward to your response. Should you have any questions regarding the request above, please do not hesitate to call.

Best Regards,



Sam Cole

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