

IN BOARD OF SUDBURY SELECTMEN

EXECUTIVE SESSION

TUESDAY, JUNE 11, 2019

Present: Chairman Daniel E. Carty, Vice-Chairman Patricia A. Brown, Selectman Janie Dretler, Selectman Jennifer Roberts, Selectman William Schineller, Town Manager Melissa Rodrigues, Director of Planning and Community Development Adam Duchesneau, and Town Counsel Jonathan Silverstein, (via conference call).

The statutory requirement as to notice having been complied with, the meeting was convened at 6:00 p.m. at Town Hall – Lower Level.

**Executive Session**

It was on motion unanimously

VOTED: To open in Regular Session and immediately vote to enter into Executive Session to consider strategy with respect to litigation where an open meeting may have a detrimental effect on the town's litigating position and the chair so declares, pursuant to General Laws chapter 30A, §21(a)(exception 3) with respect to Stone Farm, 554 Boston Post Road.

Town Manager Rodrigues explained that the owner of Stone Farm originally filed a variance application in January, 2019 and withdrew the application. The owner then refiled a use variance application with ZBA on February 5, 2019 to allow for a self-storage facility and the granting of allowing more than one principal structure on a lot.

Town Manager Rodrigues detailed that an oversight by staff was made and the 100-day deadline to take action had passed. On May 29, 2019 the applicant/developer filed a "constructive approval" to move forward. Town Manager Rodrigues asked the Board to appeal the "constructive approval" filing and to appeal the ZBA decision via litigation. She explained that the Board of Selectmen would be joining a plaintiff entity composed of Board of Selectmen, Town Manager, Building Inspector and the Planning Board. She stated that ZBA was meeting to further consider the Stone Farm application, but the appeal must be filed by the Town against ZBA and the "constructive approval" status.

Attorney Silverstein mentioned that variances are rather difficult to defend and the Town does allow use variances with additional criteria, and questioned if the applicant really meets the variance criteria. Selectman Dretler asked if the Stone Farm use variance met standard or additional requirements. Attorney Silverstein responded that there is a good argument for both of those aspects. He spoke of bylaw ruling and the validity of true hardship at Stone Farm.

Attorney Silverstein stressed that the appeal argument would include the historic character of the area, the validity of commercial use on a residential property seeking to add another structure (commercial), and the zoning overlay aspect which allows for leverage even if a conditional approval is granted. He stated that the Town must be protected and approval of the original plan by default is not in the Town's best interest.

Chairman Carty queried if the Town wins the appeal, then what happens? Attorney Silverstein responded that the application goes back to ZBA for a new decision or the Court could decide that the proposed variance is overturned completely.

Chairman Carty stated that if the appeal is overturned, the Town must take this action and then the applicant would still have to meet the stringent bylaws as upheld by the Planning Board. Attorney Silverstein reiterated that no matter what the decision and conditioning of ZBA this evening, the appeal must be filed.

Vice-Chairman Brown questioned the timing process involved with the Town appeal and filing. Town Manager Rodrigues replied that she had authorized Attorney Silverstein to work on the appeal and submit the appeal no later than Monday. Mr. Duchesneau commented that the appeal had to be filed no later than 20 days after the “constructive approval” filing.

Selectman Roberts confirmed that the proposed litigation is just appealing the “constructive approval” aspect. Town Manager Rodrigues responded that the proposed appeal/litigation can appeal the “constructive approval” as well as ZBA conditioning.

Mr. Duchesneau questioned how he should direct ZBA at tonight’s ZBA Stone Farm public hearing. Town Manager Rodrigues suggested that Mr. Duchesneau leave the Board sentiment out, but mention the Town appeal. Mr. Duchesneau detailed that the Planning Board would be discussing this at the Planning Board’s Executive Session meeting tomorrow evening.

Town Manager Rodrigues emphasized that it is best to publically state that the Town is appealing. Chairman Carty asked if there was any downside to this appeal filing. Town Manager Rodrigues replied in the negative.

Selectman Schineller motioned that the Board of Selectmen approve the Town’s appeal of the “constructive approval” filing and ZBA decision regarding Stone Farm.

It was on motion unanimously

VOTED: To approve litigation appeal of the “constructive approval” filing and ZBA decision regarding Stone Farm.

At 7:10 p.m. Vice-Chairman Brown moved to adjourn Executive Session and to immediately resume in Open Session. Selectman Dretler seconded the motion.

It was on motion unanimously, Carty-aye, Brown-aye, Dretler-aye, Roberts-aye, and Schineller-aye.

VOTED: To close Executive Session and immediately resume in Open Session.