

## SUDBURY BOARD OF SELECTMEN

TUESDAY JULY 21, 2020

(Meeting can be viewed at [www.sudburytv.org](http://www.sudburytv.org))

Present: Chairman Daniel E. Carty, Vice-Chairman Patricia A. Brown, Selectman Janie Dretler, Selectman Jennifer Roberts, Selectman William Schineller, Town Manager Henry L. Hayes, Jr., Finance Director Dennis Keohane

The statutory requirements as to notice having been complied with, the meeting was convened at 7:00 p.m., via ZOOM telecommunication mode.

Chairman Carty called the meeting to order after being in executive session and resuming in open session. He also performed a roll call and made announcement about this meeting being recorded.

### **Roll Call and Opening Remarks by Chairman**

Roll Call:

Carty-aye, Brown-aye, Dretler-aye, Roberts-aye, Schineller-aye, Hayes-aye

Chair Carty announced:

- Property and Personal Taxes are due August 3
- Town Manager Office Hours resume on July 30 via ZOOM
- BOS (Board of Selectmen) Office Hours resume on July 29 via ZOOM
- BFRT (Bruce Freeman Rail Trail) Public Hearing available for viewing on Town Website and comments can be submitted on or before July 30
- BOS Summer Newsletter articles due by July 27<sup>th</sup>
- School Committee announced that the School Department will receive \$225 per student in State COVID-19 aid.
- School Committee meeting will be discussing Sudbury schools opening plans
- Sudbury schools awaiting guidance regarding student bus program
- Several LSRHS students are initiating the Coupons for COVID Program where students sell goods and services with proceeds going to The Pine Street Inn

### **Reports from Town Manager**

Town Manager Hayes outlined:

- ADA compliance regarding Town website
- New DPW Transfer Station Sticker more electronic-based
- DPW Fuel Island work has commenced
- Police Department assisting with the Maynard Deputy Chief hiring process
- Suggested continued vigilance regarding identity theft
- He met with ICON regarding the Fairbank design presentation points
- He visited the Haynes Meadow House and toured the Loring Parsonage
- He toured all 5 Sudbury elementary schools with Superintendent Crozier
- COVID-19 cases on the increase (including Sudbury) and record numbers are seen in various areas and associated MA hospitalizations have increased
- Advocated for continued vigilance, wearing of masks and distancing to prevent COVID-19

### **Reports from Selectmen**

Vice-Chair Brown stated that the Hop Brook Protection Agency is treating three Town ponds for Water Chestnuts. There will be another round of treatments within the next several weeks.

Vice-Chair Brown attended the recent MMA (MA Municipal Association) training session on the MA Open Meeting Law and Public Records. Vice-Chair Brown commented that she changed her article choice for the Summer BOS Newsletter to: "What has changed in Sudbury in the last Six Years."

Selectman Roberts stated that the 41-minute BFRT 25% Design Public Hearing was worth viewing on SudburyTV.

Selectman Roberts thanked everyone involved in the plans for the opening of Sudbury schools.

Selectman Dretler stated that she attended the MMA training session last week. She is considering participating in another continuing education session this week.

Selectman Dretler stated that she enrolled in the content update enhancement program on the Town webpage by the IT Department. She noted that the enhancement program is working well and will soon be available to the public.

Selectman Dretler stated that the detour around Concord Road will continue as the culvert repair gets closer to completion. She stressed that the temporary inconvenience was worth the effort.

Selectman Dretler echoed the recommendation of Town Manager Hayes regarding the importance of continued social distancing and wearing of face masks.

Selectman Schineller stressed that this is a critical time for school decisions regarding school reopening.

Selectman Schineller confirmed that the daily Town updates are working well, and he is receiving his updates in a timely fashion.

### **Citizen's Comments on items not on agenda**

There were no citizen's comments

**Vote to request, pursuant to the provisions of G.L. c.59, s. 21C, that the Secretary of the Commonwealth include on the ballot for the November biennial state election for use in the Town of Sudbury the following debt exclusion questions: QUESTION 1 – Shall the town of Sudbury be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay for the bond issued in order to acquire, establish, and construct, a multi-use rail trail and bicycle path on the parcel of land shown on a Railroad Map on file with the Town Clerk, and any and all incidental and related costs associated therewith?**

Present: Lee Smith, KP Law, Town Counsel

Chair Carty stressed that this item is extremely time-sensitive and is being taken as the first order of business. The agenda item is related to the CSX rail bed, which is currently under BOS negotiation.

Town Manager Hayes detailed that the ballot question is specifically related to Article 17, CSX Corridor. He detailed that additional ballot language options were submitted to the Board, and stressed that the goal was to finalize the language to be used.

Chair Carty maintained that the potential purchase of the CSX parcel reflects the purchase of land and not necessarily for the purposes of the rail trail construction.

Chair Carty displayed three versions of the ballot question—the original, a second “potential” version drafted by Attorney Smith, and a third, broader version also drafted by Attorney Smith.

The Board reviewed the language drafted by Mr. Smith. Vice-Chair Brown forwarded to the Board by e-mail the language discussed by the Board at the last meeting. Rather than amending a ballot question at that meeting, she had requested that Town Counsel do the rewording. She had sent the language to be removed as displayed at that meeting to both the Town Clerk and the Town Manager.

Attorney Smith confirmed that he drafted both versions; the second version reflected the language as discussed by the Select Board previously; the third version attempted to be broader and capture other purposes for the trail, specifically removing construction.

Chair Carty recommended adding the word “potential” to the language proposed by Lee Smith on July 20.

Selectman Dretler confirmed that the amount of the acquisition would be detailed in the Article for Town Meeting. Attorney Smith clarified that the amount could be in the motion instead.

Chair Carty stated that he wanted the language “construct a multi-use rail trail and bicycle path on the parcel” eliminated because it suggested that the ballot question was requesting funding for construction.

Selectman Dretler recommended keeping the language in the ballot because it makes it clear to residents why the town is asking them to acquire the parcel of land. The current language doesn’t pigeonhole anyone into anything. Selectman Roberts commented that the ballot question should mention a future rail trail, in order to be consistent with the article. Selectman Schineller stated that the purpose was to acquire the parcel, and to be specific about what the parcel is. Vice-Chair Brown agreed that the purpose of the ballot question was to purchase the parcel. . She stated the warrant article should be brought into conformance with the ballot question to avoid having Town Meeting and the voters decide on different questions.

Attorney Smith suggested adding the words “any and/or all”.

Selectman Dretler said the language as written makes it very clear to residents why the Town was asking them to acquire the land. She stated the language is broad and suggested adding water resource protection.

Selectman Dretler stated that the ballot question and the article should indicate the same thing. Selectman Roberts commented that the ballot question should mention a future rail trail, in order to be consistent with the article. Vice-Chair Brown stated that she understood the purpose of the ballot question at this point in time was to purchase the parcel, and that the warrant article should have consistent wording. She wanted to be sure that Town Meeting and the voters were voting on the same thing.

Chair Carty recommended adding the word “potential—for the potential purpose of acquiring” as well as “and or,” in consideration that options for use be kept open.

Selectman Dretler said the Board did not agree as a whole to remove language from the CSX ballot question at the July 14, 2020 meeting. Ms. Dretler said she didn't think Ms. Brown was being ambiguous but that not all members agreed with her.

Attorney Smith added that in the version he proposed included references to QBS 3.40 and the reference to QBS 4.63 to 4.80 as well as the updated date of July 20, 2020 for the map.

Selectman Schineller requested that "water resource protection/water supply purposes" be included in the language.

Selectman Schineller motioned to vote to request, pursuant to the provisions of G.L. c.59, s. 21C, that the Secretary of the Commonwealth include on the ballot for the November biennial state election for use in the Town of Sudbury the following debt exclusion questions: QUESTION 1 - Shall the town of Sudbury be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay for the bond issued in order to acquire the fee or lesser interest in the parcel of land shown as Mile Post QBS3.40 to QBS4.80 on a Railroad Map dated 4/21/2015 prepared by CSX Transportation, Inc., and shown as CSX corridor, a plan dated July 20, 2020, prepared by the Town of Sudbury Engineering Department, copies of which are on file with the Town Clerk, consisting of 11.26 acres of land, more or less, including any and all incidental and related costs associated therewith. Vice-Chair Brown seconded the motion.

Selectman Roberts stated that simplicity is not the goal, but rather putting forth a question that allows the voters to understand the purpose of the purchase.

Resident Len Simon, 40 Meadowbrook Circle, agreed with Selectman Roberts and maintained that when CSX offered to sell the parcel they expressed it would be for a recreational trail, and the State reimbursement grants (\$100,000 to \$160,000) would be dependent on the CSX parcel being acquired. The grant was specifically to be used as expansion of the Bruce Freeman Rail Trail and if the town did not use the grant for the acquisition, the grant would be forfeited and CSX may not sell the land if it were determined not be used for rail trail purpose. He added that voters would want to know what the land would be used for and removing language would jeopardize support from the residents.

Resident Charlie Russo, 30 Juniper Road, encouraged the Board to retain all of the language with respect to clarity and ease.

Selectman Dretler affirmed that the ballot language should be written so not to jeopardize the acquisition and that it was important to give the voters as much information in clear a way as we possibly can. She stated prior ballot questions included reasons for acquisition. She stated that she wasn't clear what the worry was for other board members and that what the board members were doing made her uncomfortable. Ms. Dretler stated this wasn't the right thing to do.

Selectman Roberts strongly recommended keeping the ballot question as written.

It was on motion 3-2, two against and three in favor; Brown-aye, Schineller-aye, Roberts-no, Dretler-no, Carty-aye.

VOTED: Pursuant to the provisions of G.L. c.59, s. 21C, that the Secretary of the Commonwealth include on the ballot for the November biennial state election for use in the Town of Sudbury the following debt exclusion questions: QUESTION 1 - Shall the town of Sudbury be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay for the bond issued in order to

acquire the fee or lesser interest in the parcel of land shown as Mile Post QBS3.40 to QBS4.80 on a Railroad Map dated 4/21/2015 prepared by CSX Transportation, Inc., and shown as CSX corridor, a plan dated July 20, 2020, prepared by the Town of Sudbury Engineering Department, copies of which are on file with the Town Clerk, consisting of 11.26 acres of land, more or less, including any and all incidental and related costs associated therewith.

**Review Town Meeting articles (budget articles #2-16), possibly take positions on articles, and assign motions and presentations**

Town Manager Hayes reviewed the budget articles and expenditures with adjustments included. He noted that the budget reflected a conservative estimate regarding State aid, and explained that the State had not provided such numbers to date. Town Manager Hayes confirmed that the Town had no unpaid bills at this time.

Selectman Schineller commented about Article 16 – Post-Employment Health Insurance Trust Funding, suggesting that the contribution be pared down at this time. Town Manager Hayes suggested that the Board review the remainder of the document before considering any change to the \$211,867.00 payment recommended in the article.

Within the Capital Expenditure section, Town Manager Hayes explained that he retained the Document Scanner Article in consideration that any Town building which stores archival documents could incur damage and such records could potentially be destroyed.

Selectman Dretler queried about the stabilization fund amount. Mr. Keohane responded that the existing fund was just under \$4.9 million; the goal is 5% of the prior year budget.

Ms. Dretler asked about the cumulative amount of monies spent on Eversource litigation. Mr. Keohane indicated that the figure was approximately \$1 million and stated that he would provide the exact figure for the Board. Selectman Dretler suggested that the Eversource litigation cumulative total be updated and included on the Town website.

Town Manager Hayes referred to the earlier query regarding OPEB contribution. He detailed that the Health Claims Trust Fund is no longer used, thus, \$211,867.08 was transferred to close that account and to transfer into the OPEB Trust as it reflects related cost.

Mr. Keohane commented that an additional appropriation of \$468,382 would meet the Town's goal of contributing a total of \$680,249 to OPEB. Mr. Keohane confirmed that the unappropriated \$211,867 would remain in the free-cash account. Chair Carty indicated his support.

Vice-Chair Brown stated that the Board did receive the Finance Committee (FinCom) budget recommendations on July 13<sup>th</sup> which was less than one page in length and suggested deferring as many expenditures as possible and re-analyzing all Town money articles, making sure that public health is fully funded. FinCom suggested identifying ways to minimize resident tax increases, maintain full employment where possible, maintain a strong free-cash position and identify short-term and long-term COVID-19 impacts, as State aid and health insurance rate increase.

Selectman Dretler commented that it would be helpful if FinCom received a copy of the S&P rating report included in tonight's packet. Town Manager Hayes affirmed that FinCom had been provided with the S&P rating document.

Town Manager Hayes presented the FY20 Free Cash balance (Estimated – 7/14/2020) and itemized each request with a total request amount of \$3,385,560; leaving a balance of \$940,053. Chair Carty commented that there was approximately \$4 million in the “rainy-day fund.”

Selectman Roberts inquired about the overlay surplus funds and the prospect of drawing from that funding if needed. Selectman Roberts asked Mr. Keohane to describe available reserve funds that could be used in the case of an emergency. Mr. Keohane itemized the General Stabilization Fund (\$4.9 million), the Melone Stabilization Fund (\$1 million), Free Cash (\$940,000), Capital Stabilization Fund (\$250,000), and the Overlay Surplus Fund (\$3 million). Selectman Dretler mentioned the Cares Act Grant (\$1.7 million) money for COVID-19 related expenses, and potentially some \$900,000 (\$225 per student) for COVID-19 related reimbursement.

#### *Finance/Budget*

#### **Article 2 - FY20 Budget Adjustments**

Selectman Dretler motioned and Vice-Chair Brown seconded the motion.

It was on motion, 5-0; Schineller-aye, Brown-aye, Roberts-aye, Dretler-aye, Carty-aye.

VOTED: To support Article 2 - FY20 Budget Adjustments.

#### **Article 3 – FY21 Budget - \$105,613,075.00**

Selectman Dretler motioned and Chair Carty seconded the motion.

It was on motion, 5-0; Dretler-aye, Schineller-aye, Brown-aye, Roberts-aye, Carty-aye.

VOTED: To support Article 3 – FY21 Budget - \$105,613,075.00.

#### **Article 4 – FY21 Capital Budget - \$722,076.00**

Selectman Dretler motioned and Vice-Chair Brown seconded the motion.

It was on motion, 5-0; Dretler-aye, Brown-aye, Roberts-aye, Schineller-aye, Carty-aye.

VOTED: To support Article 4 – FY21 Capital Budget - \$722,076.00.

#### **Article 5 – FY21 Transfer Station Enterprise Fund Budget - \$314,927.00**

Selectman Dretler motioned and Selectman Schineller seconded the motion.

It was on motion, 5-0; Dretler-aye, Roberts-aye, Brown-aye, Schineller-aye, Carty-aye.

VOTED: To support Article 5 – FY21 Transfer Station Enterprise Fund Budget - \$314,927.00.

**Article 6 – FY21 Pool Enterprise Fund Budget - \$464,249.00**

Selectman Dretler motioned and Vice-Chair Brown seconded the motion.

It was on motion, 5-0; Dretler-aye, Schineller-aye, Brown-aye, Roberts-aye, Carty-aye.

VOTED: To support Article 6 – FY21 Pool Enterprise Fund Budget - \$464,249.00.

**Article 7 – FY21 Recreation Field Maintenance Enterprise Fund Budget - \$254,704.00**

Selectman Dretler motioned and Chair Carty seconded the motion.

It was on motion, 5-0; Dretler-aye, Brown-aye, Schineller-aye, Roberts-aye, Carty-aye.

VOTED: To support Article 7 – FY21 Recreation Field Maintenance Enterprise Fund Budget - \$254,704.00.

**Article 11 – Stabilization Fund - \$40,496.00**

Selectman Dretler motioned to support Article 11 – Stabilization Fund - \$40,496.00. Vice-Chair Brown seconded the motion.

It was on motion, 5-0; Dretler-aye, Schineller-aye, Brown-aye, Roberts-aye, Carty-aye.

VOTED: To support Article 11 – Stabilization Fund - \$40,496.00.

**Article 13 – FY21 Revolving Fund Limits**

Selectman Dretler motioned and Chair Carty seconded the motion.

It was on motion, 5-0; Dretler-aye, Brown-aye, Schineller-aye, Roberts-aye, Carty-aye.

VOTED: To support Article 13 – FY21 Revolving Fund Limits.

**Article 14 – Capital Stabilization Fund - \$250,000.00**

Selectman Dretler motioned and Chair Carty seconded the motion.

It was on motion, 5-0; Dretler-aye, Brown-aye, Schineller-aye, Roberts-aye, Carty-aye.

VOTED: To support Article 14 – Capital Stabilization Fund - \$250,000.00.

**Article 15 – Fund Litigation Costs – Eversource - \$150,000.00**

Selectman Dretler motioned and Vice-Chair Brown seconded the motion.

It was on motion, 5-0; Dretler-aye, Schineller-aye, Roberts-aye, Brown-aye, Carty-aye.

VOTED: To support Article 15 – Fund Litigation Costs – Eversource - \$150,000.00.

**Article 16 – Post-Employment Health Insurance Trust Funding - \$211,867.00**

Selectman Dretler motioned and Chair Carty seconded the motion.

It was on motion, 5-0; Dretler-aye, Schineller-aye, Brown-aye, Roberts-aye, Carty-aye.

VOTED: To support Article 16 – Post-Employment Health Insurance Trust Funding - \$211,867.00.

Selectman Roberts recommended that the public read the informative S&P Report and the Town's AAA Bond rating. She commended Mr. Keohane and his department for their efforts in making the AAA Rating attainable. Selectman Dretler suggested adding the S&P Report to the Town website.

**Discussion and possible vote on the Fairbank Community Center**

Selectman Roberts, liaison for the Fairbank Community Center Forum, proposed that the Virtual Forum take place Wednesday, August 26<sup>th</sup> at 7:00 p.m.

Selectman Dretler suggested that August 27<sup>th</sup> be scheduled as the alternate date. Vice-Chair Brown stated that she would work on the planning of the Forum with Selectman Roberts.

Selectman Schineller asked if the format of the forum would be interactive with pro and con views. Vice-Chair Brown thought the format would include presentations by panelists and then be open to questions/comments. She noted that SudburyTV would need to ensure broadcasting of the forum and indicated that an interactive approach should be considered.

Chair Carty agreed that the Forum should be interactive with a Q&A approach.

**Presentation and possible vote on Annual Town Meeting petition articles: #51 - Acquire 1/4 mile of CSX Corridor, and #52 - Expedite Completion of Bruce Freeman Rail Trail (BFRT)**

Present: Petitioner Len Simon, 40 Meadowbrook Circle

Mr. Simon asked if the Board had taken a position on Article 17 – CSX Corridor. Chair Carty responded not. Mr. Simon asked Chair Carty if he would recuse himself from voting on articles 51 and 52 and agenda item 14. Chair Carty asked why Mr. Simon would request his recusal. Mr. Simon responded that the Chair had a bias towards him as a resident. Chair Carty responded that he would not recuse himself from those items.

Before presenting Article 51, the petition to acquire the 1/4th mile extension of the CSX Corridor, Mr. Simon read: "For the recusal, I was not surprised by Mr. Simon's letter, and much like I deal with him on a regular basis, I dismissed his comment as one based on anger and hate." Mr. Simon stated that Chair Carty might again dismiss his comments regarding the petition presentation, and stressed that he was not angry with Chair Carty, nor did he hate him. Mr. Simon commented that he felt Chair Carty had a bias against him, which is why he requested the recusal.

Mr. Simon maintained that the purchase of the 1/4 mile portion of the corridor now would enable the \$160,000 grant to be used by end of 2020. He maintained that ending the trail at Rte. 20 would allow for parking,



accessibility to retail establishments as well as easy access to other main roadways. Mr. Simon indicated that CSX wants to sell the corridor as a rail trail and the Town has received Conservation and Recreation grants totaling \$160,000. He indicated that at the end of 2020, the corridor may be deemed abandoned and become fragmented and no longer conducive to providing a right-of-way.

Mr. Simon indicated that CSX wanted the entire corridor used for recreational purposes. Mr. Simon opined that the cost to the Town of the ¼ mile would be about \$154,000, based on the appraised value of the entire corridor performed in 2016.

Mr. Simon stated that the method for paying for the purchase would be free-cash initially, followed by reimbursement from MA DCR (Department of Conservation and Recreation) totaling \$160,000. He noted that to be eligible for the grants, Sudbury must contribute 20% of the grant amount in services or cash, approximately \$32,000. Mr. Simon stressed that this would present a great opportunity for the Town.

Selectman Schineller asked why the ¼ mile carried such importance. Mr. Simon responded that the BFRT would otherwise end at Station Road, which does not have adequate parking or access, and MA DOT (Department of Transportation) prefers not to end a rail trail without a cross street, which would be Rte. 20, similar to the terminus in Concord. Mr. Simon stated that the Town could acquire the vacant gas station to use for parking.

Selectman Schineller inquired about a preferred bicycle route to access Rte. 20 from Station Road. Mr. Simon responded that a cyclist would have to go to Union Avenue and that would require riding or walking on the street, which could be dangerous.

Vice-Chair Brown offered to provide links which document the difficulties associated with the Station Road terminus site.

Chair Carty inquired about the purchase price requested in the article. Mr. Simon responded that the price would remain at \$300,000 and would try to reduce that price and have it adjusted by date of voting.

Chair Carty asked if Mr. Simon had conversations with CSX representatives. Mr. Simon responded that he had conversations with CSX representatives when he was on the Board and while assisting the project manager when preparing the Conservation and Recreation grant for \$100,000, which was granted. Chair Carty summarized that Mr. Simon had not spoken to CSX representatives in several years.

Selectman Roberts commented that in regard to related Selectmen executive sessions currently taking place, the consideration of the Board is to purchase the corridor up to the Framingham line (1.4 miles). Mr. Simon commented that if the Town were to vote for Article 17, the entire CSX corridor (1.4) miles, then the article to purchase the quarter mile would be moot and would be eliminated.

The Board took no position on Article 51 at this time.

Selectman Dretler commented that because the Board is discussing CSX in executive session, it would be somewhat awkward to take a position on Article 51 at this time. Mr. Simon stated that he understood and felt that taking no formal action at this time was fair, adding that at some time before Town Meeting, the Town will know the disposition of Article 17.

Mr. Simon presented Article 52 – Expedite Completion of BFRT. He presented a brief history of the BFRT, which would provide access to trails from six other neighboring towns, who are already enjoying their own prospective trails.

Selectman Schineller inquired about the language and intent of Article 52. Mr. Simon responded that there was no financial request associated with the Article, and asserted that the intent of Town staff and Town committees/boards is to move the BFRT project forward in consideration that Sudbury can meet the project deadline and receive State and Federal funding. Mr. Simon confirmed that the residents have continually voted for the BFRT at Town Meeting and the Select Board has included the BFRT as a Board of Selectmen Goal since 2013.

Mr. Simon detailed that there have been BFRT Town committees, Town Forums, abutter meetings, meetings with design contractors, wildlife and environmental studies completed, and careful evaluation by the Sudbury Conservation Commission.

Mr. Simon referred to the abutting BFRT in Concord, which was awarded Public Works Project of the Year 2020. He quoted the 7/6/20 e-mail of Peter Sutton, Bicycle and Pedestrian Program Coordinator – MA Department of Transportation, Office of Transportation Planning, which states: "...trail usage has increased exponentially during the past few months, and safety features on trails are being reevaluated in light of many more bicyclists and pedestrians than previously."

Mr. Simon stressed that the Sudbury section of the BFRT will be an amenity that all residents will enjoy; young, old, disabled, and will be emergency-vehicle accessible. Mr. Simon emphasized the charge again – that the completion of BFRT design be completed so that the project can go out to bid in 2022, with construction to begin in 2023.

Selectman Schineller confirmed that staff and fellow Board members are diligently working on this project.

Mr. Schineller mentioned that after recent MassDOT 25% Design hearing and Town Conservation Commission meetings, there appeared to be questions regarding the cost of the design (a \$3 million incremental cost) and if Mr. Simon recommend that possible expense. Mr. Simon claimed that Mr. Schineller made a misstatement with declaring a \$3 million increase in the cost of the design and that project manager Beth Suedmeyer, indicated that the design cost had not changed, and there was sufficient funding to complete the design through the 100% design phase.

Mr. Schineller stated that MassDOT indicated that the State would pay \$3 million less if the boardwalk was not a consideration. He reiterated that if the State decided not to fund that \$3 million, would the petitioner still endorse the expediency charge. Mr. Simon responded that the boardwalk design was a separate State issue and would not be passed along to Sudbury residents. Mr. Simon suggested that the Town secure clarity from MassDOT in this regard.

Selectman Schineller commended Town staff for their efforts with this project, as well as the diligence of the Board.

Chair Carty commented about the language of Article 52 in that he found the wording interesting – this is a Citizen Petition that directs Town Manager and Staff but Town Manager and Staff answer to the Board of Selectmen and not the citizens. He opined that it would be more appropriate for a Citizen Petition to direct Boards and Committees rather than Town Manager and Staff. The Board did not take position on Article 52.

**Discussion and possible vote on Brimstone Lane Article #39**

Present: Lori Capone, Conservation Commission (ConCom) Coordinator, Joshua Fox, Attorney for owner of 8 Brimstone Lane

Mr. Fox displayed the updated plan rendering and announced that the owner was granting additional acreage to the Town for the purpose of an increased buffer for the walking trail. He detailed that the property granted to the Town increased in width from 20 feet to 40 feet.

Selectman Dretler expressed her appreciation to the owner.

Selectman Schineller credited ConCom and member Charlie Russo for exploring the buffer aspect.

ConCom member Charlie Russo, thanked Ms. Capone and Mr. Fox for their efforts.

**Article 39 – Exchange of Real Property – Brimstone Lane Parcels**

Selectman Schineller motioned and Chair Carty seconded the motion.

It was on motion 5-0; Dretler-aye, Schineller-aye, Brown-aye, Roberts-aye, Carty-aye.

VOTED: To support Article 39 - Exchange of Real Property – Brimstone Lane Parcels.

**Discussion and vote on Town Meeting articles for consideration as Consent Calendar items: CPC articles #42-50, Article #11 - Stabilization Fund, and Article #16 Post-Employment Health Insurance Trust Funding**

Town Manager Hayes confirmed that CPC (Conservation Preservation Commission) Articles 42 through 50 be moved to the Consent Calendar. He suggested that Article 11 - Stabilization Fund and Article 16 - Post-Employment Health Insurance Trust Funding, also be included on the Consent Calendar.

Vice-Chair Brown, liaison to the CPC, stated that the next CPC meeting would be held on August 1.

Selectman Schineller recommended putting the mentioned articles on the Consent Calendar in consideration of streamlining the outdoor Annual Town Meeting. He noted that any article included in the Consent Calendar could be taken off the Consent Calendar at Town Meeting.

Vice-Chair Brown confirmed that she would ensure that the CPC was aware that the CPC articles are included on the Consent Calendar, in light of preparations for Town Meeting. Town Manager Hayes maintained that CPC Chair, Sherrill Cline was made aware of the CPC Articles being put on the Consent Calendar.

Selectman Schineller motioned and Chair Carty seconded the motion.

It was on motion 5-0; Schineller-aye, Brown-aye, Dretler-aye, Roberts-aye, Carty-aye.

VOTED: CPC Articles #42-50 and Article #11 - Stabilization Fund, and Article #16 Post-Employment Health Insurance Trust Funding, be considered as Consent Calendar items.

**Review Open Meeting Law complaint of resident Len Simon dated 7/13/20 and discuss proposed response**

Present: Resident Len Simon, 40 Meadowbrook Circle

Town Manager Hayes announced that he and the BOS received an Open Meeting Law Violation complaint from resident Len Simon dated 7/13/20. He detailed that once such a complaint is received, it must be reviewed in open meeting and a response must be submitted to Massachusetts Attorney General's Division of Open Government, which regulates the State Open Meeting Law.

Selectman Schineller asked if Chair Carty had to recuse himself from this discussion. Town Manager Hayes indicated not, adding that Town Counsel made no mention of such recusal.

Town Manager Hayes noted that the complaint asserted that the violation was intentional and that violation of Sudbury Board of Selectmen Policies and Procedures was intentional and such complaints were against Dan Carty, Board of Selectmen Chair.

Town Manager Hayes summarized the complaint document submitted by Mr. Simon, which indicated that at the BOS ZOOM meeting on June 22, 2020 Chair Carty violated MA Open Meeting Law and the Board of Selectmen's Policies and Procedures. Town Manager Hayes detailed from Mr. Simon's complaint letter that Chair Carty was controlling the ability of Board members (Selectmen Dretler and Roberts) to speak and to be heard, as he (Chair Carty) was controlling the Board member's microphones.

Town Manager Hayes stated that the State issued guidelines in relation to holding meetings during COVID-19 State of Emergency as modified by the Governor's Executive Order, and read aloud:

- At the start of the meeting, the chair must announce the name of the member or members who are participating remotely; such information must also be recorded in the meeting minutes.
- All votes must be taken by roll call.
- Members of the public body must be clearly audible to each other and to members of the public at all times.

Town Manager Hayes read aloud the guidelines within the Board of Selectmen Policies and Procedures:

- An organizational meeting shall be held at the first meeting following Town Meeting.
  - A. Elect Chairman. The Chairman will approve the agenda for and conduct the Selectmen's meeting; coordinate the affairs of the Board with due concern that all members' views are heard and considered; and act as liaison to the Town Manager and the major departments under the Board of Selectmen.

Town Manager Hayes read the complaint letter conclusions which emphasized that "the Board of Selectmen should address Mr. Carty's Open Meeting Law violations as noted above to insure they do not happen again. The Select Board should also address Mr. Carty's violation of the Sudbury Board of Selectmen Policies and Procedures to insure it does not happen again."

Town Manager Hayes presented the response letter drafted by Town Counsel Brian W. Riley to Carrie Benedon, Esq. – Director, Division of Open Government, Office of the Attorney General.

Vice-Chair Brown expressed shock regarding the Open Meeting Law violation document, adding that in 2014 and 2015 then Selectmen Simon, had Open Meeting Law complaints against him. She quoted the Open Meeting Law which gives the Chair the authority to control a public meeting and determines who can speak at such meeting. She commented that Selectmen Policies and Procedures have no enforcement.

Vice-Chair Brown expressed her displeasure regarding being mentioned in Mr. Simon's letter and stressed that she was not consulted regarding what she felt about the COA meeting she attended. She added that there were similar references to others in the letter and she wondered if their impressions were accurately described as well.

Selectman Schineller indicated that he felt something like a bystander and considered that the only Open Meeting Bylaw offense was the failure to introduce each of the Board members present at the meeting. He doubted that the offense was intentional. Selectman Schineller noted that such failure to mention members in attendance should not happen again.

Town Manager Hayes affirmed that although meetings were now conducted via electronic mode, the mandate of identifying all members in attendance was a requirement.

Selectman Roberts stated that she found this situation to be challenging, adding that she did not ask for the Open Meeting Violation, but confirmed that the action was difficult to experience as a member of the Board. She stressed that the incident described was not in good form and was inconsistent with prior meetings where a member of the public made comments and members of the Board were able to respond to those comments.

Selectman Roberts indicated that she felt disrespected when told not to speak, and appreciated later in the meeting that Chair Carty apologized and stated that members should be able to speak.

At this time, Selectman Roberts mentioned that she was torn regarding how to proceed and was not sure that she should vote on this matter because she was involved in the interaction.

Vice-Chair Brown stated that one violation of the Open Meeting Law is choosing not to respond. She stressed that Board members must respond because all members were present.

Selectman Dretler stated that she did not appreciate the insinuation that anyone would put up a resident to assist in an Open Meeting Law violation complaint. She stated there is guidance due to the COVID-19 situation that all members of the public body must be heard, which presents a conflict with the Open Meeting Law as written.

Selectman Dretler commented that she was shocked that her mic was muted, which would not have happened in an in-person meeting. She asked what could be done to remedy the situation so that everyone feels like they have a voice.

Selectman Dretler confirmed that the Board agreed that members would review the June 22<sup>nd</sup> meeting on SudburyTV and discuss it, which was reflected in the draft minutes. She stressed that no opportunity was provided for such discussion at the June 22<sup>nd</sup> meeting. She went on to say that when the topic arose with public comments at that meeting, she and Selectman Roberts were not allowed to respond to public comment.

Selectman Dretler added that 90 minutes later she and Selectman Roberts were given the opportunity to respond. However, being able to make those comments during the public comment period would have been far more beneficial/impactful. She indicated that the situation could have been avoided and going forward, each member should be treated equally. She wanted to understand how this could be a better situation for everyone.

Selectman Dretler asked if Chair Carty thought that things could have been handled differently.

Chair Carty responded that the complaint summarized that he did not formally recognize everyone at the beginning of the meeting, which he should have, and assured that would not happen again going forward. He commented that he has not used the gavel when conducting any BOS meetings, but in an in-person meeting (non-ZOOM) he asserted that he could have called the meeting to order. He questioned if it was appropriate to discuss public comment on a topic that was not on the agenda, which could perhaps make all members guilty of Open Meeting Law violation. He indicated that he had repeatedly provided significant “leeway” when he did not have to, and felt that often he is not recognized as the Chairman of the Board. He stressed that respect is a two-way street.

Vice-Chair Brown stated that she did not indicate that someone put up a citizen to submit a complaint, but rather noted that her name was used without consulting her about her thoughts before documenting them, and stated that perhaps that also happened to other people. She mentioned that in a traditional, in-person meeting, the chair has the gavel, but can invoke law enforcement to physically remove the person who will not be still. She noted that the Open Meeting Law can get pretty serious regarding the conducting of meeting business and emphasized that the chair is responsible for the orderly conduct at the meeting.

Selectman Roberts mentioned that Chair Carty conducts the meetings with authority and did not agree that he was disrespected as Chair of the Board.

Chair Carty maintained that Town Counsel indicated that the only violation of the Open Meeting Law was the fact that he did not recognize members at the beginning of the meeting with a formal roll call.

Selectman Dretler stated that her feeling is that there is a conflict with the Open Meeting Law. She further maintained that, in her opinion, prohibiting someone from being heard by muting a microphone is a violation.

Mr. Simon commented that Vice-Chair Brown’s comment about an incident in 2014 is not within the scope of what should be discussed at this meeting. Mr. Simon indicated that the letter drafted by Town Counsel Riley indicated that there was no offense in terms of the Board of Selectmen Policies and Procedures, and therefore such action could continue.

Mr. Simon stated that the response letter from Town Counsel Riley did not address the silencing of BOS members as being against Board policies and procedures, which is against the spirit of the policies and procedures. He added that the response letter to be sent to the Attorney General’s Office did not address the complaints to his satisfaction, and noted that when he receives the letter from the Town, he will continue with appeals to the Attorney General’s Office.

Chair Carty confirmed that the Open Meeting violation can be solved by adding a “roll call” agenda item. He stated that he did not feel good about muting anyone and apologized to Selectman Dretler and Selectman Roberts for that. He stressed that he does try to encourage conversation which is why the meetings last so long and hoped that this incident would not be repeated.

Selectman Schineller moved and Vice-Chair Brown seconded the motion.

It was on motion three for, one against and one abstain, 3-1-1; Brown-aye, Schineller-aye, Carty-aye, Dretler-no and Roberts-abstain.

VOTED: To approve the letter drafted by Town Counsel in response to the Open Meeting Law violation complaint.

Selectman Dretler said she did not agree with Town Counsel response and indicated that muting a member was a violation of the Open Meeting Law. She acknowledged that she took Chair Carty's comments to heart and hoped that things might improve. She stressed that respectful conversations were beneficial to the Board and the community. Selectman Dretler indicated that the letter should reflect the vote of the Board.

Selectman Schineller stated that if Selectman Dretler felt violated by the muting, he would not want such action to occur again. Selectman Dretler thanked Mr. Schineller and stated that it felt like a hand was covering her mouth and that she had no intention of being disruptive and acknowledged that other Board members did respond to citizen's comments at previous BOS meetings.

#### **Discussion on Board liaison to Park & Recreation Commission**

Selectman Schineller explained that the Park & Recreation Commission voted to request replacing him as BOS liaison. He stated that he would welcome a Board member replacing him as the liaison, noting that he did perform the tasks outlined within the liaison function; attending numerous meetings, providing the Selectmen with updates and speaking on the Commission's behalf.

Selectman Schineller provided the Board with the current topics that the Park & Recreation Commission was currently involved with. Selectmen Roberts and Dretler volunteered to act as joint-liaisons for the Park & Recreation Commission.

Selectman Dretler noted that the change in liaison for the Commission would not be difficult in consideration that the Board would soon be reorganizing the liaison assignments.

Selectman Roberts commented that in these difficult times, it is necessary that the Selectmen maintain appropriate decorum and self-control when addressing difficult topics.

Resident Len Simon commented that he had never seen a Selectmen liaison being requested to step down, and submitted a document regarding this replacement from Selectman Schineller to the Park & Recreation Commission. Mr. Simon recommended that the document be included in the Town's public record and be included as recorded material for this meeting.

Chair Carty acknowledged Mr. Simon's request. Selectman Dretler stated that the document is public record.

Chair Carty motioned to change Board of Selectmen Park & Recreation commission liaison from Selectman William Schineller to Selectmen Janie Dretler and Jennifer Roberts. Selectmen Dretler seconded the motion.

It was on motion, 5-0: Schineller-aye, Dretler-aye, Roberts-aye, Brown-aye, Carty-aye

VOTED: To change Board of Selectmen Park & Recreation commission liaison from Selectman William Schineller to Selectmen Janie Dretler and Jennifer Roberts.

Selectmen Schineller added that the trigger for the Park & Recreation Commission requesting the change in liaison concerned information that he included on social media which he considered to be factual. Mr. Schineller

apologized for any miscommunication. Selectman Dretler commented that the described issue became much larger than the social media posting.

**Review regular session minutes of 6/9/20, 6/17/20**

Selectman Dretler commented that two conversations within the 6/17/20 minutes were not included and she asked Town Manager Hayes for redraft of that minute set. The Board agreed to postpone the vote.

Selectman Dretler motioned to approve the 6/9/20 minutes, as amended. Chair Carty seconded the motion.

It was on motion 5-0; aye- Dretler-aye, Brown-aye, Roberts-aye, Schineller-aye, Carty-aye

VOTED: To approve the 6/9/20 minutes, as amended.

**Citizen's Comments**

There were no Citizen's Comments

**Upcoming Agenda Items**

Chair Carty noted that the following agenda items from the 7/21/20 meeting were tabled for inclusion at the 7/28/20 meeting:

- #11 – Discussion on town Manager 90-day check-in, goals and 6-month evaluation
- #10 – Discussion on Board's Social Media Policy
- #13 – Discussion and possible vote on Key Performance Indicators (KPI) as requested by Selectman Schineller
- Review and possible approval of 6/17/20 minutes

*Other items to be included on next agenda:*

- Public Hearing about Fall Town Meeting
- Interview of PBC (Permanent Building Commission) candidate
- Interview with Historic District Commission candidate
- Joint statement with BOS and Sudbury School committees regarding school reopening and continued vigilance
- Response letter regarding the BFRT Design Public Hearing
- Executive Session regarding Eversource

**Consent Calendar**

**Vote to accept the resignation of Connie Steward from the Council on Aging and send a letter of thanks for her service to the Town**

Chair Carty recommended that the vote on agenda #21 be postponed. He suggested that he and Vice-Chair Brown initiate a meeting with the Chair, Vice-Chair and Senior Center Director, Deb Galloway.



Selectman Dretler commented that the resignation outlined in agenda item #21 was controversial. Chair Carty opined that he was concerned about the resignation of four female COA members in a span of two years.

**Vote to approve withdrawal of Town Meeting article #2 (FY20 Budget Adjustments) and article #9 (FY19 Unpaid Bills)**

Selectman Dretler moved in the words of the motion to approve withdrawal of Town Meeting article #2 (FY20 Budget Adjustments) and article #9 (FY19 Unpaid Bills). Vice-Chair Brown seconded the motion.

It was on motion 5-0; Dretler-aye, Brown-aye, Roberts-aye, Schineller-aye, Brown-aye, Carty-aye.

VOTED: To approve withdrawal of Town Meeting article #2 (FY20 Budget Adjustments) and article #9 (FY19 Unpaid Bills).

**As the Licensing Authority for the Town of Sudbury, vote to renew a billiards table license for the American Legion Sudbury Post #191, Inc.**

Selectman Dretler moved in the words of the motion and Vice-Chair Brown seconded the motion.

It was on motion 5-0; Dretler-aye, Brown-aye, Roberts-aye, Schineller-aye, Brown-aye, Carty-aye.

VOTED: As the Licensing Authority for the Town of Sudbury, vote to renew a billiards table license for the American Legion Sudbury Post #191, Inc., Phillip M. McKenzie, Manager, 676 Boston Post Road, through May 1, 2021. Current license expired on May 1, 2020.

**Vote to appoint Election Officers for a one-year term, commencing August 15, 2020 and ending August 14, 2021, as recommended by the Democratic and Republican Town Committee Chairs and the Town Clerk.**

Selectman Dretler motioned and Vice-Chair Brown seconded the motion.

It was on motion 4-1 four in favor, one abstain; Brown-aye, Dretler-aye, Roberts-aye, Schineller-aye, Carty-abstain.

VOTED: To appoint Election Officers for a one-year term, commencing August 15, 2020 and ending August 14, 2021, as recommended by the Democratic and Republican Town Committee Chairs and the Town Clerk.

**Vote whether to approve the annual Selectmen's re-appointments of those listed (all of which are subject to acceptance), to acknowledge the resignations of those who choose not to be re-appointed, and to send a letter of appreciation to the resigning volunteers for their service to the community.**

Selectman Dretler mentioned the appointment of PBC (Permanent Building Committee) candidate and Selectman Schineller's confirmed assignment as 9/11 Memorial Garden Committee liaison, which had never been updated on the Town website.

Selectman Roberts reiterated the appointment process associated with Town committee/board appointments. Town Manager Hayes recommended that the PBC appointment be pulled in order to complete the related candidate appointment process.

Vice-Chair Brown commented that there were two members of the Agricultural Commission not seeking re-appointment and she had no awareness of any interested applicants. She opined about the continuance of the Agricultural Commission.

At approximately 10:59 p.m, Selectman Schineller briefly excused himself from the meeting.

Selectman Dretler moved to vote to approve the annual Selectmen's re-appointments of those listed (all of which are subject to acceptance), to acknowledge the resignations of those who choose not be re-appointed, and to send a letter of appreciation to the resigning volunteers for their service to the community; with exception of an appointment of a PBC member, and to change the name of the September 11 Memorial Garden Committee liaison to reflect Selectman William Schineller. Chair Carty seconded the motion.

It was on motion 4-1, four in favor and one abstain; Brown-aye, Dretler-aye, Roberts-aye, Carty-aye, Schineller-abstain.

Selectman Schineller explained that he abstained due to the fact that he did not hear the full motion and was on break.

VOTED: To approve the annual Selectmen's re-appointments of those listed (all of which are subject to acceptance), to acknowledge the resignations of those who choose not be re-appointed, and to send a letter of appreciation to the resigning volunteers for their service to the community; with exception of an appointment of a PBC member, and to change the name of the September 11 Memorial Garden Committee to reflect Selectman William Schineller.

**Vote to adjourn meeting**

Vice-Chair Brown moved and Selectman Dretler seconded the motion.

It was on motion 5-0; Brown-aye, Dretler-aye, Schineller-aye, Roberts-aye, Carty-aye.

VOTED: To adjourn the meeting

There being no further business, the open meeting adjourned at 11:12 p.m.

Attest: \_\_\_\_\_

Henry L. Hayes, Jr.

Town Manager-Clerk

## **Documents & Exhibits – 7/21/20**

1. Open in regular session and immediately vote to 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, pursuant to General Laws chapter 30A, §21(a)(exception 6) with respect to the Sudbury portion of the CSX rail corridor.

### **Attachments:**

- 1.a CSX Appraisal ES Memo 2020 May 12
- 1.b 2020 CSX Acquisition Timeline Revised BOS May 2020
- 1.c CSX Sudbury Rail Corridor Colliers Appraisal 20200506

2. Also to review executive session meeting minutes, pursuant to G.L. c. 30A, § 21(a)(7) “[t]o comply with, or act under the authority of, any general or special law or federal grant-in-aid requirements” (“Purpose 7”), citing to the Open Meeting Law, G.L. c. 30A, §§ 22(f), (g).

### **Attachments:**

- 2.a BOS Executive Session 6-11-19\_for\_review
- 2.b BOS Executive Session 6-18-19\_for\_review
- 2.c Sudbury\_BOS\_TMContractSubCom\_02042020\_minutes\_final

4. Review Town Meeting articles (budget articles #2-16), possibly take positions on articles, and assign motions and presentations.

### **Attachments:**

- 4.a Copy of Articles list ATM 2020 DJK Adjustments 7-14-2020 (002)
- 4.b Budget docs combined
- 4.c Warrant Articles for 5-26 BOS meeting

6. Presentation and possible vote on Annual Town Meeting petition articles: #51 - Acquire 1/4 mile of CSX Corridor, and #52 - Expedite Completion of Bruce Freeman Rail Trail (BFRT). Petitioner Leonard Simon to present.

### **Attachments:**

- 6.a Art 51 CSX\_Simon
- 6.b Art 52 BFRT\_Simon

7. Vote to request, pursuant to the provisions of G.L. c.59, s. 21C, that the Secretary of the Commonwealth include on the ballot for the November biennial state election for use in the Town of Sudbury the following debt exclusion questions: QUESTION 1 - Shall the town of Sudbury be allowed to exempt from the provisions of proposition two and one-half, so-called, the amounts required to pay for the bond issued in order to acquire, establish, and construct, a multi-use rail trail and bicycle path on the parcel of land shown on a Railroad Map on file with the Town Clerk, and any and all incidental and related costs associated therewith?

### **Attachments:**

- 7.a Klein\_memo
- 7.b 2018\_Ballot\_Questions\_Nov\_6\_state\_election
- 7.c Town of Sudbury Information to Voters\_Ballot Questions

8. Discussion and possible vote on Brimstone Lane Article #39

### **Attachments:**

- 8.a Original\_article Art 39 Brimstone Lane

- 8.b Update\_Art 39 Brimstone Lane
- 8.c 137\_Brimstone Land Plan Additional Land

**9.** Discussion and vote on Town Meeting articles for consideration as Consent Calendar items: CPC articles #42-50, Article #11 - Stabilization Fund, and Article #16 Post-Employment Health Insurance Trust Funding.

**10.** Discussion on Board's Social Media Policy

**Attachments:**

- 10.a draft social media policy

**12.** Discussion on Board liaison to Park & Recreation Commission

**Attachments:**

- 12.a LIAISON LIST 2019-20

**13.** Discussion and possible vote on Key Performance Indicators (KPI) as requested by Selectman Schineller.

**Attachments:**

- 13.a Project Status and KPIs

**14.** Review Open Meeting Law complaint of resident Len Simon dated 7/13/20 and discuss proposed response.

**Attachments:**

- 14.a Open Meeting Law Complaint Form\_re Dan Carty from Len Simon
- 14.b OML\_email
- 14.c KP-#726046-v1-SUDB\_response\_to\_Simon\_OML\_complaint

**15.** Review regular session minutes of 6/9/20, 6/17/20 and possibly vote to approve minutes.

**Attachments:**

- 15.a BOS\_draft1\_6.09.20\_min\_for\_review
- 15.b BOS\_draft1\_6.17.20\_min\_for\_review

**17.** Upcoming Agenda Items

**Attachments:**

- 17.a POTENTIAL UPCOMING AGENDA ITEMS\_7\_21\_20

**19.** As the Licensing Authority for the Town of Sudbury, vote to renew a billiards table license for the American Legion Sudbury Post #191, Inc., Phillip M. McKenzie, Manager, 676 Boston Post Road, through May 1, 2021. Current license expired on May 1, 2020.

**Attachments:**

- 19.a Pool Table Lic Renewal App 2020\_BOS

**20.** Vote whether to approve the annual Selectmen's re-appointments of those listed (all of which are subject to acceptance), to acknowledge the resignations of those who choose not to be re-appointed, and to send a letter of appreciation to the resigning volunteers for their service to the community.

**Attachments:**

- 20.a Annual Board Committee Reappointments 2020\_v3

**21.** Vote to appoint Election Officers for a one-year term, commencing August 15, 2020 and ending August 14, 2021, as recommended by the Democratic and Republican Town Committee Chairs and the Town Clerk.

**Attachments:**

- 21.a Democrat EW 2019-2020-updated
- 21.b Republican EW 2019-2020-updated

**22.** Vote to accept the resignation of Connie Steward from the Council on Aging and send a letter of thanks for her service to the Town.

**Attachments:**

- 1.1.a Steward\_resign\_COA