

IN BOARD OF SUDBURY SELECTMEN

EXECUTIVE SESSION

TUESDAY, SEPTEMBER 22, 2020

VIRTUAL MEETING

Present: Chairman Janie Dretler, Vice-Chairman Jennifer Roberts, Selectman Daniel E. Carty, Selectman Charles Russo, Town Manager Henry L. Hayes, Jr., Assistant Town Manager/HR Director Maryanne Bilodeau, Planning and Community Development Director Adam Duchesneau, Environmental Planner Beth Suedmeyer, Attorney Lee Smith, KP Law

Absent: Selectman William Schineller

The statutory requirements as to notice having been complied with, the open session meeting was convened at approximately 6:42 p.m. via Zoom telecommunication.

Chairman Dretler called the meeting to order, with confirmed attendance of the following named only: Carty-aye, Brown-aye, Dretler-aye, Roberts-aye, Hayes-aye, Bilodeau-aye, Duchesneau-aye, Suedmeyer-aye, Smith-aye

Executive Session

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.

Mr. Smith noted that CSX is not granting full requested due diligence in consideration of testing for various contaminants. He suggested that the Board consider potential liability and cost associated with possible clean-up of contaminants. Ms. Suedmeyer stated that she was looking into the matter and noted that this represented the third iteration by CSX, who is only allowing testing for arsenic, lead, and ph contaminants at this time. She stressed that provision for the testing of PCBs and additional elements is not being granted by CSX.

Mr. Smith stated that the LSP will conduct Phase I testing.

Selectman Carty affirmed that the Town should be able to conduct as much soil testing as possible, especially in consideration of the Sudbury Water District. He indicated that he was not comfortable about CSX denying complete soil testing.

Selectman Russo inquired about the added due diligence expense. Ms. Suedmeyer responded that the scope of work was \$48,000 for recommended testing by the LSP. She stressed that the grant received would allow for due diligence and acquisition.

Selectman Russo noted that if the deal falls through, any contaminants would still remain. He indicated that more testing is preferable.

Vice-Chair Roberts indicated that she thought that there might be some contaminants typical of a former rail corridor, and agreed with Selectman Carty that the Town should test as much as possible. She understood that there likely might be additional associated grants, such as Brownfield Grants.

Vice-Chair Roberts asked Ms. Suedmeyer if there might be particular substances in the water. Ms. Suedmeyer responded that the Sudbury Water District Commission did not indicate such elements present in their testing. She added that the Town would be testing ground water for specific elements.

Vice-Chair Roberts questioned if this part of the CSX rail corridor would likely have a high rate of contaminants. Ms. Suedmeyer indicated not, and not necessarily a recordable level. She noted that in 2008, there were no reportable petroleum levels.

Mr. Smith stated that CSX indicates that they are denying extensive testing because PCB presence is generally not associated with electric trains. Ms. Suedmeyer confirmed that MA DEP requires the test results of 14 elements aids in determining how such containments would be disposed of (on-site or off-site).

Chair Dretler questioned why CSX was pushing back at this time. Mr. Smith responded that CSX maintains that this is their policy and they do not want to consider adjacencies (possible contaminants on adjoining properties).

Selectman Carty stated that PCBs could take years to resurface after we took ownership of the property, and felt that CSX was trying to hide something.

Vice-Chair Roberts indicated that the Town should not ignore this and cannot ignore the implications, but must move forward and learn as much as possible.

Mr. Smith mentioned that without testing, everything is speculative; adding that the Town would be assuming total liability if the CSX purchase was made today.

Selectman Russo maintained that Town property abuts the CSX corridor and testing could take place up to that property line as soon as possible.

Mr. Smith confirmed that he and Ms. Suedmeyer are recommending that soil testing begin as soon as possible, as the window for such due diligence expires on November 22.

Vice-Chair Roberts opined in consideration of worse case testing results, would the State provide financial help. Mr. Smith responded that there are some funding possibilities.

Vice-Chair Roberts asked if contaminants were found in Concord. Ms. Suedmeyer replied that some contaminants were found, but not a significant amount and the State owed the property.

Chair Dretler commented that the Sudbury Water District Commission had been testing for many years and it would be best that the Town take ownership of the CSX portion and continue with such testing. She noted that it was not unusual for CSX representatives to be delayed with their responses to requests made in this negotiation.

Selectman Russo suggested that the Town wait for response from CSX and start the testing process. He stated that he would like the LSP to present before the Board to further explain the situation.

Mr. Smith confirmed that the LSP could come to a future Board meeting.

Selectman Carty noted that the testing results could be extensive, and if that were the case, he would say no to final execution of the purchase.

Selectman Russo said he would be prepared to walk away from the deal if necessary, but would prefer to proceed with caution and maintain an open mind.

Chair Dretler affirmed that everyone cares about the water in Sudbury and wants that source to be protected.

Vice-Chair Roberts agreed that continuing to act with due diligence would be the right thing to do, and to remain open about possible grant funding.

Selectman Russo stated that Selectman Schineller had request an emergency meeting unrelated to CSX. Chair Dretler commented that there would likely be a Board meeting on Friday, September 25.

Mr. Smith confirmed that he would contact the LSP tomorrow to arrange testing as soon as the first week in October. Ms. Suedmeyer stated that she would talk to the LSP regarding testing on Town property. Vice-Chair Roberts asked if grants would cover testing on Town-owned property. Ms. Suedmeyer affirmed that she would inquire about that aspect.

Town Manager Hayes recommended that the Board consider the overall value of the CSX property in consideration of possible contamination before the actual closing. Vice-Chair Roberts opined that such consideration could imply negotiating the purchase price.

Vote to close executive session

Chair Dretler motioned to close executive session. Selectman Carty seconded the motion.

It was on motion, 4-0; Carty-aye, Russo-aye, Roberts-aye, Dretler-aye

VOTED: To close executive session

There being no further business, executive session was adjourned at approximately 7:51 p.m.