

SUDBURY SELECT BOARD
MONDAY, SEPTEMBER 25, 2017
EXECUTIVE SESSION
SILVA CONFERENCE ROOM, FLYNN BUILDING
9:30 AM -10:42 AM

Present: Chair Robert C. Haarde, Vice-Chair Leonard A. Simon, Selectman Patricia A. Brown, Selectman Daniel E. Carty, Selectman Susan N. Iuliano, Town Counsel Jonathan Silverstein and Town Manager Melissa Murphy-Rodrigues

The meeting opened in Regular Session. There was a call into Executive Session by Chair Robert Haarde. The motion was seconded. All Board members agreed to go into Executive Session to discuss the strategy with respect to potential litigation involving Ti-Sales and Sudbury Station.

Mr. Silverstein opened the meeting saying he wanted to bring everyone up to speed. He had been receiving many emails and has been reviewing them. Town Counsel is presently looking for a town staff employee to appear and testify regarding Peter's Way. The developers and trust are dealing with the right to easement. The abutter's counsel (Dan Hill) is trying to get the right to use this road. The Town needs to designate someone to appear and testify at the deposition.

Mr. Haarde said the Town has used the land primarily as a cemetery. The road would be used for people using the cemetery, visitors, and processions. The Board is trying to help the plaintiff. The plaintiff is trying to prove they own the road. The developer wants to prove they have the right to use the land for access to its development units.

Mr. Simon wanted to know if the abutters own Peter's Way. Mr. Silverstein said he is trying to deal with the title issue. Mr. Carty asked what was the town's historic use of the town land. Mr. Silverstein said the Town needed a witness to testify the access to the trust property. Ms. Iuliano wanted to know if there was extensive use of this land by the town.

Mr. Silverstein said Peter's Way was established in the early 1990s. There are 2-3 lots showing the abutter's use. The plaintiff claims the town assumed ownership of the subdivision lot. Mr. Silverstein said there was some right by the town to gain access into the property.

Prescriptive easement is the flip side if you use a road long enough, and if you're using it for a purpose. If you trespass, you develop the legal right to do so. The town isn't making a claim of prescriptive easement. Mr. Simon said the abutters have given the town the right to use the road. The land owner said the town could use the road. Ms. Iuliano said the Board and the Town always thought the town owned the dirt road. However, the abutters allowed the town to use the road without official use of the land. Mr. Silverstein recommended the 36-deposition notice and to find DPW staff or a town employee who has the most knowledge of who has used this road by the town.

No new date for a deposition has been set. All documents were received last week. If the records don't help, Town Counsel would work with the Town Manager on finding a town employee who could testify. The Board wants to respect the ownership of the land. The town never tried to turn it into a public way.

Mr. Silverstein said there is a motion filed to dismiss on. The timeframe should be the date of the hearing. There is a motion pending. The plaintiff, and the developer, filed a summary of decision. The ZBA recommends from

150 units to 130 units. A motion was filed to the Housing Authority Commission (HAC). None of the motions have been acted upon. All are waiting for some action from the HAC.

Mr. Silverstein mentioned that Mr. Henchy had talked with him in passing about this case. Mr. Henchy wanted to know if there could be a land swap with the Melone property and the land in question, Peter's Way. Mr. Simon asked if this swap would be a swap of equal acreage of property. Town Counsel said if the swap idea was attractive to the Board, then it needed to be looked into further. Mr. Haarde said the land swap idea was an interesting concept. There could possibly be some land contamination and other issues with the Melone property that maybe the town did not want to deal with. The 250 units the developer wants is a lot of units. This was something to think about.

Town Counsel said the message to Mr. Henchy could be the land swap is a new concept to the Board. We don't want to close a discussion or close the door on this idea at this time. The Town Manager said the town could negotiate for fewer units. Town Counsel said it would be possible to have some residential, and commercial use with the land on the Melone property.

Mr. Silverstein advised the Board to think about the process and their response to Mr. Henchy. He said the Board had two options:

1. The land swap is an interesting concept, but not now.
2. The Town could be interested, but Mr. Henchy would need to give the Town a conceptual proposal for the land before any decision to go forward with this swap idea was made.

The Town Manager advised it was best for the Board to absorb all this before having further discussion on a land swap with the Melone property. Mr. Simon said there would need to be a Town Meeting approval for this. The Board needed to think about this and come up with an outline of what steps the Board needed to take to start this process.

In conclusion, the Town Manager and Town Counsel would continue to work on finding a witness for Ti-Sales. This would be a staff member or DPW employee who would testify for the deposition.

Discussion on Intermunicipal Agreement between the Towns of Wayland and Sudbury for Septage Disposal Facility Disposition

The meeting opened in Regular Session. There was a call into Executive Session by Chair Robert Haarde. The motion was seconded. The Board members agreed to go into Executive Session for the second item on the agenda.

The Town Manager said she had been talking with the Town of Wayland about the septage disposal facility disposition. She was afraid the situation went back to 1997, where the Town of Sudbury was responsible for demolition costs. Wayland wanted two agreements. If Wayland went ahead with this, Sudbury would lose any power and would be responsible for the demolition close. Wayland wanted to present this issue at their Fall Town Meeting. Ms. Rodrigues thought it best for Wayland to push off until the spring Town Meetings. Wayland wants to maintain their leverage. The Wayland Town Manager was retiring in the next few months. Once he left, all history would be lost. Ms. Rodrigues also mentioned that Wayland was not using any Town Counsel. The Town of Sudbury was using Petrini as its Town Counsel.

Ms. Rodrigues was also concerned about what Sudbury's liabilities would be when Wayland closed with the developer on this property. Selectman Brown mentioned the demolition cost was \$300,000. The clean-up cost was unknown.

Ms. Rodrigues had asked Wayland for another meeting. As of now, the Agreement is until 2040. If Wayland doesn't close in 2019, they need to pay Sudbury legacy costs. Mr. Haarde asked if Sudbury could delay the development? Ms. Rodrigues said since Sudbury was an abutter on this, the town only has abutter rights.

In conclusion, Ms. Rodrigues said she needed the Board's permission to keep pushing on this issue. She didn't think she needed anyone from the town or the Board to attend the next Wayland meeting with her.

A vote was taken to close the Executive Session. All Board members voted yes. There being no further business, the meeting adjourned at 10:42 am.

Attest: _____
Melissa Murphy- Rodrigues
Town Manager - Clerk