

IN BOARD OF SUDBURY SELECTMEN  
EXECUTIVE SESSION  
MONDAY, JULY 30, 2018

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

The statutory requirements as to notice having been complied with, the meeting was convened at 10:00 a.m. in the Flynn Building, Silva Room, 278 Old Sudbury Road.

**Executive Session**

It was on motion unanimously

VOTED: Vote to enter into Executive Session to discuss strategy with respect to litigation if an open meeting may have a detrimental effect on the litigating position of the public body and the chair so declares (Village at Sudbury Station), pursuant to General Laws chapter 30A, §21(a)(6).

Town Manager Rodrigues stated that it was necessary to have Executive Session regarding the litigation status of Sudbury Station, and that confidentiality regarding this matter was still in effect, and she cautioned that all present not violate that status.

Town Counsel Silverstein stated that he would present the Housing Appeals Committee (HAC) appeal status, and how it pertained to Sudbury Station. The Town has appeared at Housing Appeals several times, and the Town has the burden of making a case for conditions that outweigh the need for public housing. Town Counsel Silverstein explained that pre-trial testimony was filed at the end of June, and a response is due tomorrow. He said that a one to two-week extension was granted due to vacations.

Town Counsel Silverstein stated that the Town has hired the following experts: Real Estate Appraiser/specialist John Bowman, Civil and Transportation Engineering specialist Tom Houston, and Planning Specialist Judy Barrett. Mr. Bowman has experience working with municipal projects, and Mr. Houston will provide traffic-related testimony and will be working with an architecture firm. Town Counsel Silverstein conveyed that Ms. Barrett informed the Town that she felt that she could not present a viable argument, and did not see drainage or architectural issues. Town Counsel Silverstein stated there have been many recent meetings, including a four-hour meeting with the neighbors last Friday.

Town Counsel Silverstein shared possible strategy components with the Board including there would be a ZBA review for projects over 64 bedrooms, and that the development of town houses and garden style units would trigger a commercial code with economic ramifications regarding setbacks. The Engineer indicated the Sudbury Station construction price is deflated as well as the site development cost. Town Counsel Silverstein mentioned that testimony focusing on local concerns is due at the end of August, and some of those topics include drainage, traffic, and other engineering considerations.

Town Counsel Silverstein stated that the best argument may be one that stresses the traffic issue, and that might be a long shot based on previous history of HAC determinations. He would support the argument of affordable housing being attained by the Town at 10%, and would argue that the Town should be granted safe harbor because the developer did not have the right to acquire Peter's Way by the prescribed deadline.

Vice-Chairman Carty stressed that there is a regional housing need in this area, and not just a Sudbury housing need. Town Counsel Silverstein detailed that Ms. Barrett would be helpful with the housing strategy aspect.

Selectman Brown asked what the official definition of "region" might be. Town Counsel Silverstein stated that the term has never been given an official definition, and the closest definition might be the affordable housing percentage according to Town inventory. Selectman Brown asked if Ms. Barrett is consulting the Town regarding

this aspect. Town Counsel Silverstein affirmed that Ms. Barrett is a consultant for the Town, and that a big aspect of her focus is planning vs. regional need. Town Manager Rodrigues stated that Ms. Barrett is a well-respected planner.

Town Counsel Silverstein said that he would follow-up with the Board regarding Ms. Barrett's opinion. Chairman Haarde commented that thus far Ms. Barrett believes that it is a long shot.

Selectman Simon asserted that the developers of Sudbury Station said that the Town of Sudbury was hostile to affordable housing. Town Counsel Silverstein agreed that the developers did indicate that, however, Selectman Simon said that premise is totally unfounded. Town Counsel Silverstein stated that the job of the Town is to fight that perception.

Selectman Simon asked how feasible a decrease in unit number for Sudbury Station might be. Town Counsel Silverstein replied that a decrease to 198 units might be the number for negotiation.

Selectman Dretler brought up the fact that the Gilmartin property is in foreclosure. Town Counsel Silverstein said that he would pull the records, and foreclosure is a long process. Selectman Dretler wondered why the Town could not look into the Gilmartin property further. Town Counsel Silverstein said he was not focusing on that given the fact ZBA had approved it, and it did not trigger any traffic safety issues. Town Counsel Silverstein stated that the P&S is in place, and the question is if the property will in fact go into foreclosure. Vice-Chairman Carty said that it probably will not be going into foreclosure. Town Counsel Silverstein added that the date of the application would probably not make for a strong argument.

Selectman Dretler asked why the Town did not make an offer to Mr. Claussen regarding this property. Town Manager Rodrigues responded and said that the Town did make offers. Town Counsel Silverstein stated that the developer is overpaying for the property and the Town has limited funds.

Selectman Simon asked Town Counsel Silverstein if there was any possibility that Sudbury could buy Sudbury Station. Town Counsel Silverstein responded that he had spoken to Attorney Henchy about that possibility, and Attorney Henchy dismissed the suggestion.

A group discussion ensued regarding continuance of litigation in regard to HAC considering a ZBA reconsideration. Selectman Simon offered that such litigation might take a couple of years to resolve. Town Counsel Silverstein agreed with the suggested timeframe. Selectman Brown asked Town Counsel Silverstein to put that into a dollar amount. Town Counsel offered that litigation fees would be under \$500,000, but would likely fall between \$150,000 to \$200,000 given the cost of experts. He had reached out to Attorney Henchy asking about the developer reimbursement if the litigation aspect was to stop. Town Counsel relayed that Attorney Henchy offered that if there was an award, his client would put funds in escrow to reimburse the Town's litigation costs.

Town Counsel Silverstein confirmed that the RFP offer was one million dollars, plus the Sudbury Station land swap, with the recognition that any award was subject to negotiation with the Town. He confirmed that an additional \$100,000 would be allocated for well-testing, with anticipated mitigation funding to the Town of approximately one million dollars, and might consider additional mitigation funding.

Selectman Simon queried if the mentioned negotiation phase could be presented upon possible award. Town Counsel Silverstein thought not, and suggested that such negotiation might be addressed around the time of development. Town Counsel detailed that the developers proposed that Sudbury Station would have 250 units on nine acres, which is denser than the proposed development at Quarry North, having 20 acres with 330 units. Town Counsel maintained that when considering that comparison he did not believe the developers would reduce the number of units to 250. Town Manager Rodrigues stated this aspect could be an area of negotiation.

Selectman Brown agreed that such negotiation must be part of the development process. Vice-Chairman Carty stated that the Board was not discussing the 250 unit piece today. Selectman Simon was concerned that this proposal would go to Town Meeting in October without the benefit of all possible aspects.

Selectman Dretler mentioned three easements on the Sudbury Station land. Town Manager Rodrigues replied that negotiations could possibly address the three easements. Town Counsel Silverstein noted a separate parcel on the Andrews property, and the approval stated that the land could not be subdivided. Town Manager Rodrigues stated that the APR could be altered. Town Counsel explained the abutter easement/merger process, and commented that the argument is the Town holds the APR for another five years or so, and there is the question of 30-year status. He detailed that Land Court decided it had to be recorded. The Town could argue that the APR goes on, or that the Town owns the land, so eliminates the APR or the Town could wait it out.

Town Counsel Silverstein referred to the map, and presented some of options with the easements. He added that Peter's Way went straight back with some 30 acres of land. Town Counsel made the point that if the Town retained part of the Andrews site, then the Town could be more definitive about what was desired there. He added that the land generally was not being farmed, with the exception of a very small section.

Chairman Haarde responded that there is a slim chance of winning, and if the developers are willing to go forward with Melone, the Town could award them a bid pending negotiation on the development agreement. Selectman Dretler was concerned about moving too fast, and she wanted to feel more comfortable about the process.

Town Manager Rodrigues reminded the Board of the 120-day timeframe and the October 15 Town Meeting, and that there would be no award until after Town Meeting.

Town Counsel Silverstein mentioned that perhaps there might be a chance that a negotiated agreement could take place before October Town Meeting. Selectman Brown stated that such negotiation could not take place in open session. Town Counsel Silverstein stated there are many ways to bring the rest of the Board up to speed on this matter.

Chairman Haarde agreed that a deliberation process was needed before the October 15th Town Meeting. He added that Melone could be taken off the table at any time.

Town Counsel Silverstein stated that if the Town waits for the HAC decision and an award has not been made, that may result in less negotiating room, and the developer could go forward with Melone now instead of Sudbury Station.

Vice-Chairman Carty suggested waiting, and have the topic presented at spring Town Meeting. Town Manager Rodrigues commented that the special Town Meeting reflected good faith.

Selectman Dretler inquired about an appraisal for Melone. Vice-Chairman Carty felt that the public needed to be educated, and more time was needed to do that. Selectman Dretler stated that performance of an appraisal would present a trust aspect for the developer. Selectman Simon added that good faith might be a reason to see what happens with the Housing Authority determination, and perhaps that could enable an extension. Town Manger Rodrigues thought that such an extension might not be possible, as the RFP process could not be altered. Chairman Haarde agreed the Town does not have the leverage power in this case.

Town Counsel Silverstein stated that in his many discussions with Attorney Henchy, the developers indicated they would perceive extensions as delays in granting the award for Melone, and they did not want that.

Chairman Haarde asserted that if the Town does not approve of the award for Melone, then the Board has done all that it can. Town Counsel Silverstein stated that he would be shocked if the Town won the Sudbury Station litigation case.

Town Manager Rodrigues stated that she would go forward with the scheduling of an appraisal for Melone. Vice-Chairman Carty maintained that the appraisal would go a long way as a good faith measure.

Selectman Brown asked for record of other HAC decisions. Town Manager Rodrigues said that she would gather those decisions.

It was on motion unanimously

VOTED: To close Executive Session and not resume in open session, until 1:00 p.m. for the proposers' interview session.

There being no further business, the meeting adjourned at 12:08 p.m.

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

Melissa Murphy-Rodrigues  
Town Manager-Clerk