

IN BOARD OF SUDBURY SELECTMEN
EXECUTIVE SESSION
TUESDAY, AUGUST 20, 2019

Present: Chairman Daniel E. Carty, Vice-Chairman Patricia A. Brown, Selectman Janie Dretler (via teleconference), Selectman Jennifer Roberts, Selectman William Schineller, Town Manager Melissa Rodrigues, Assistant Town Manager/HR Director Maryanne Bilodeau (via teleconference), Finance Director Dennis Keohane, Town Counsel Lee Smith, KP Law.

The statutory requirements as to notice having been complied with, the meeting was convened at 4:05 p.m. at the Flynn Building – Silva Conference Room. Chairman Carty called the meeting to order.

Convene in Open Session and Enter Executive Session

Chairman Carty moved to convene in open 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 (Camp Sewataro) pursuant to General Laws chapter 30A, §21(a)(6).

Selectman Brown seconded the motion.

It was voted unanimously on roll call:

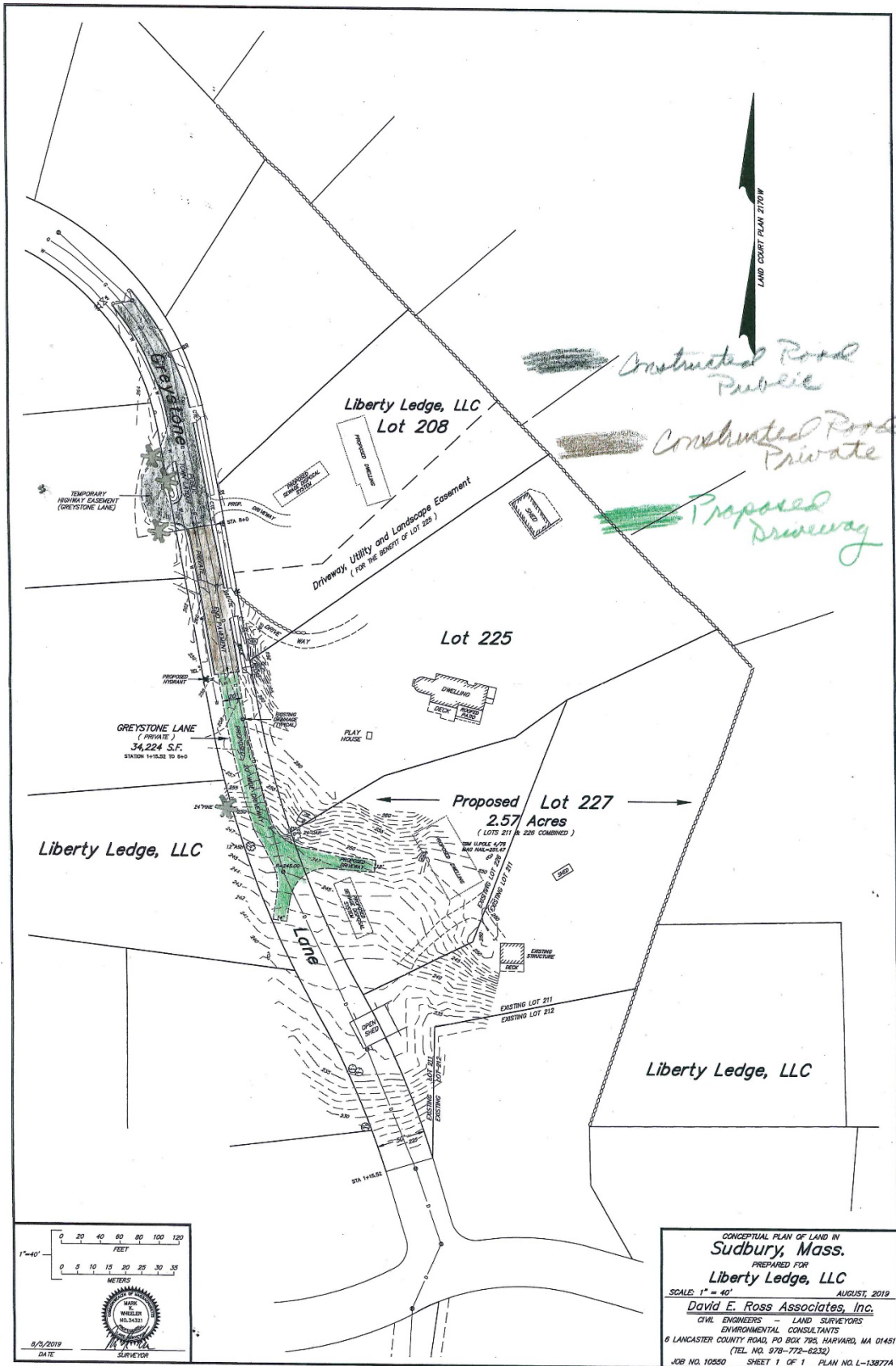
Daniel E. Carty – aye, Patricia A. Brown – aye, Janie Dretler (via conference telephone) – aye, Jennifer Roberts – aye, William Schineller – aye.

Camp Sewataro Purchase & Sale Agreement

Town Manager Rodrigues stated that Town Counsel Lee Smith has been working on the Purchase & Sale Agreement (P&S) with Mark Taylor and other Camp Sewataro representatives. He has been working to incorporate all items in the Letter of Intent into the P&S. The closing date is scheduled for October 17 and the property and all buildings are to be delivered vacant and in current “as is” condition.

Town Counsel Smith provided a recap of the P&S, highlighting aspects that may be considered outside of a typical P&S, as requested by the Board. He explained that the P&S goes into effect when it is signed and that there are three components to the sale: the property itself, which belongs to the Taylor Trust, the structures on the property and the intellectual property, which belongs to the Sewataro corporation.

Section 2: Land Description – the total acreage for the property is 44.3 Acres. Four (4) house lots are excluded from the property and that Greystone Lane is now included. Of the four house lots, Mark Taylor resides on one and another one is likely to be developed. As for Greystone Lane, Mark Taylor will apply to the Planning Board for a modification of the existing subdivision. He will request a waiver on the southerly portion of Greystone Lane to build a driveway. The proposed driveway is shown in green on a plan distributed to the Board (see attached).



Per the P&S, the current Board of Selectmen must agree not to oppose this request. Mark Taylor will be responsible for building and maintaining the driveway, including snow removal.

Selectman Dretler asked whether a letter of support is being requested from the Board for the modification.

Counsel Smith responded that a letter of support is not being requested at this time, only the Board's cooperation.

Selectman Roberts asked whether the possible issued regarding the drop off/pick up area had been addressed.

Counsel Smith responded that it has not been addressed.

Selectman Roberts stated that there is no reason to believe it will present an issue.

Counsel Smith continued with the P&S recap. Section 3: Buildings, Structures, Improvements and Fixtures – the sale includes all buildings and structures except the shed near Greystone Lane, which will be removed in its entirety by the closing date. Exhibit D1 of the P&S lists items which are excluded from the sale, such as trucks and vehicles. Exhibit D2 will be an updated inventory of all camp equipment which will be included in the sale. The Exhibit will be updated when a current inventory is completed. As camp has concluded for the year, this should be occurring soon.

Mark Taylor will have until April 30, 2020 to remove these other items. This date should not interfere with operation of the new camp management.

Section 4: Gift of Camp – this section gifts corporate shares of Camp Sewataro to the Town. There will be a donation agreement from each of the shareholders. The website, domain name, camper list and intellectual property will be included.

Selectman Brown asked whether the Town will be liable for lawsuits that may arise pertaining to Sewataro.

Counsel Smith explained that the date of the claim (not the date that it is filed but the date when it occurred) would determine the liable party. Sudbury is held harmless for damages occurring prior to closing.

Section 8: Time for Performance; Delivery of Deed – the new closing date has been set for October 17. This allows the Town time to secure the funding.

Section 9: Possession and Condition of Premises – the property will be delivered in the same condition as it is currently and free of occupants.

Section 16: Adjustments – the Town is tax exempt and there will be no refund for costs after closing.

Town Manager Rodrigues explained that the total amount borrowed is approximately \$11,300,000 and the closing costs are estimated at \$20,000 - \$30,000.

Section 24: Buyer's Due Diligence – prior to closing, there will be a period for the Town to conduct due diligence. The Town intends to conduct a Title Investigation as well as an Environmental Inspection.

Selectman Roberts asked whether it is permissible for the Board to walk the property.

Town Manager Rodrigues affirmed that it is possible during the due diligence period with 24-hour advance notice to the owner.

Section 26: As Is Condition – The property will be delivered in “as is condition” but it is up to the Board to decide whether the current condition is sufficient.

Town Manager Rodrigues explained that the DPW, Building and Fire departments have inspected all buildings except the residences on the property. Access was previously restricted due to the residences being occupied. The residences will be inspected during the due diligence period.

Counsel Smith explained that one example of the property being presented in insufficient condition would be if the presence of underground fuel storage tanks was discovered on the property. A Response Action Outcome Submittal from Eversource indicating the absence of such storage will be provided to the Town after closing.

He further explained that warranties and representations made by the seller survive 9 months after closing.

Selectman Schineller asked whether the Profit & Loss statement provided by the seller would fall under representations and warranties, and asked whether the sale could be reversed if the statement was found to be inaccurate and the business has in fact been losing money.

Counsel Smith explained that the Profit & Loss statement is non-binding. It is one component of the due diligence analysis.

Town Manager Rodrigues emphasized that the Town is purchasing the land rather than the business, which is being gifted. She further explained that the Profit & Loss statement is consistent with tax returns reviewed by the Town.

Counsel Smith stated that there could be a possibility of a fraud claim if a misrepresentation is made by the seller.

He went on to review some of the Exhibits which accompany the P&S.

Exhibit C: Reservation of Rights – agreed upon outcome regarding the driveway on Greystone Lane. The Town reserves the rights of access.

Exhibit G: Indemnity Agreement – has a 6-year survival date after closing.

Exhibit H: License Agreement – provides camper data to the Town which can be used by the Town or a camp operator. The website will be provided after closing.

Exhibit I: Deed Restriction – there will be no night lighting, field lighting taller than 20 feet or cell towers installed on the property. This will be in perpetuity.

Chairman Carty conducted a straw poll asking if any Board members would not be voting in favor of the P&S.

Selectman Dretler stated that she intends to vote against the P&S. She appreciates the work done by the Town in preparing the P&S, however, for the same reasons that Ms. Dretler has been opposed to the acquisition, she continues to oppose it.

Town Manager Rodrigues stated that it would be preferable to either vote for or against the P&S rather than attempt to modify it at this time.

There was discussion as to whether the items on the agenda should be taken out of order so that the P&S vote may take place first. It was noted that camp operators have been waiting for the open meeting to begin so that they can learn the outcome of the Sewataro Camp Management RFP.

Close Executive Session and Resume Open Session

Selectman Schineller moved to adjourn the meeting. Selectman Brown seconded the motion.

It was voted unanimously on roll call:

Daniel E. Carty – aye, Patricia A. Brown – aye, Janie Dretler (via conference telephone) – aye, Jennifer Roberts – aye, William Schineller – aye.

VOTED: To close Executive Session and resume Open Session.

The meeting resumed in Open Session at 4:47 p.m.

Attest:_____

Melissa Murphy-Rodrigues
Town Manager-Clerk