

IN BOARD OF SUDBURY SELECTMEN

EXECUTIVE SESSION

FRIDAY, OCTOBER 11, 2019

Present: Chairman Daniel E. Carty, Vice-Chairman Patricia Brown, Selectman Janie Dretler, Selectman Jennifer Roberts, Selectman William Schineller, Interim Town Manager Maryanne Bilodeau, Building Inspector Andrew Lewis, Board of Health Director William Murphy, Conservation Commission Coordinator Lori Capone, Director of Planning and Development Adam Duchesneau, Attorney Lee Smith, Attorney Jonathan Silverstein and Attorney A. Alexander Weisheit.

The statutory requirements as to notice having been complied with, the meeting was convened at approximately 8:40 a.m. in the Flynn Building – Silva Room, 278 Old Sudbury Road.

Chairman Carty called the meeting to order.

Vote to enter executive session to discuss and take potential votes regarding the following pending and contemplated litigation matters, where discussion in an open meeting may have a detrimental effect on the litigating position of the Town, pursuant to General Laws chapter 30a, §21(a)(3): (1) Hollyer v. Conservation Commission; (2) Town v. Stone; (3) Potential Board of Health enforcement action; (4) Potential breach of contract claim; (5) Opioid Litigation.

Hollyer v. Conservation Commission

Present: Conservation Coordinator Lori Capone and Attorney A. Alexander Weisheit

Mr. Weisheit reviewed the lawsuit between the Hollyers (Mark and Robin) and the Sudbury Conservation Commission in response to the Commission's denial of three Certificates of Compliance for a project that was permitted in the early 2000s. He detailed that the outstanding matters reflected the completion of a conservation restriction (CR) and the maintenance of a spillway.

Ms. Capone stated that she was completing the conservation restriction and the report required to accompany the CR, adding the spillway issue was resolved by eliminating the need to maintain the spillway, given that it is encased in a beaver dam. She detailed the CR does provide for the management of the beaver dam, should the need arise. At this time the inclusion of a beaver deceiver was determined not to be of benefit.

Mr. Weisheit stated the Agreement included a \$3,000.00 payment to the Town from the Hollyers and when the Agreement is executed by all parties, the Conservation Commission will issue three Certificates of Compliance to the Hollyers at the next Conservation Commission meeting and Ms. Capone will provide documentation that any prior enforcement actions will be rescinded.

Selectman Roberts inquired about added flooding in consideration of global warming. Ms. Capone explained that the watershed upgradient of the beaver dam was negligible, and an abutting 16-acre wetland would be able to absorb the water should the beaver dam breach. A provision was added to the CR which allows for manipulation of the beaver dam should it be necessary.

Selectman Schineller motioned to execute the settlement agreement between the Hollyers and the Conservation Commission. Selectman Roberts seconded the motion.

It was on motion unanimously. Carty-aye, Brown-aye, Schineller-aye, Dretler-aye, Roberts-aye.

VOTED: To execute the settlement agreement between the Hollyers and the Conservation Commission as presented by Town Counsel.

Potential Board of Health Enforcement Action

Mr. Silverstein summarized the current condition at 24 Church Street, where an elderly Sudbury resident without next of kin passed away and the condition of the site is deemed a threat to public health. He recommended that an injunction notice be published in conjunction with an injunction order administered by the Town and filed in Superior Court.

Mr. Murphy noted that the residents' body appeared to have been in the home for several weeks in addition to dead animals and excessive garbage. He informed the Board that he had been approached by the Historical Society regarding historical artifacts in the house, possibly dating back to the Civil War.

Selectman Schineller asked if the house had historical significance. Mr. Murphy affirmed and detailed that the property must be cleaned, including insecticide treatment and then possibly sell the property.

Vice-Chair Brown asked if the house was secured. Mr. Lewis responded that the house was quasi-secured.

Interim Town Manager Bilodeau described the property status, noting tax deferment in the amount of \$130,000 owed to the Town.

Mr. Silverstein stated that an appointed receiver would act directly with the Court and court order to determine if the house should be demolished. Mr. Lewis acknowledged that the property was in the historic district and a specialty demolition company was prepared to commence work if needed.

Mr. Silverstein reiterated that the most immediate action needed to be taken was public notice and injunction for clean-up.

Selectman Roberts inquired about the timing of suggested injunction. Mr. Silverstein responded that once filed, injunction could take place within two days.

Mr. Murphy commented that there was no obvious damage to the exterior of the structure.

Selectman Schineller moved to approve publication notice and injunction per Mr. Silverstein. Selectman Roberts seconded the motion.

It was on motion unanimously. Carty-aye, Roberts-aye, Dretler-aye, Brown-aye, Schineller-aye.

VOTED: To enforce Board of Health enforcement action and approve publication notice and injunction order per Attorney Silverstein.

Town v. Stone

Mr. Silverstein stated that the Planning Board and Chairman Carty agreed to dismiss litigation regarding the Town v. Stone and the Planning Board approved the site plan as presented. Mr. Duchesneau acknowledged that the Planning Board voted unanimously in support of the revised site plan.

Selectman Dretler inquired about access to the back of the lot. Mr. Duchesneau stated that conditioning was included with the decision and prior to issuance of requested easement, the applicant shall provide easement language to be included.

Mr. Silverstein noted that the Historical Commission demolition delay could be enforced for up to 24 months. The applicant appeared to be unaware of the fact that there is a petition to place the property in a newly proposed historic district. Mr. Silverstein explained that such a petition required 250 resident signatures and required a Special Town Meeting take place within 45 days, and there was not much that the Board could do about it.

Chair Carty commented that no action by the Board was required today.

Selectman Roberts asserted that many residents were not aware of the related decisions that were made in executive session meetings.

Selectman Dretler asked if it might be possible to establish a Stone Farm Town webpage regarding appeals, current status, etc. Mr. Silverstein noted that matters involved with the associated lawsuit was public.

Mr. Duchesneau stated that the Planning Board voted 4-0 (one member absent) to withdraw such litigation.

Selectman Schineller commented that he did not know if the applicant was ready to withdraw the lawsuit, and was in favor of a Stone Farm Town webpage as suggested by Selectman Dretler.

Opioid Litigation

Mr. Silverstein provided background information regarding the nationwide lawsuit against opioid drug companies and Sudbury's membership in that lawsuit along with some other 120-130 Massachusetts communities. He added that Sudbury filed its own Multi-District Litigation (MDL) with a national consortium representing the Town.

Selectman Schineller asked if KP Law is representing other communities as well as Sudbury. Mr. Silverstein affirmed, adding that ultimately defendants would seek global settlement, and asked the Board if they wanted to remain in the negotiating class. If the Town wanted to opt out of the negotiating class, they would have to do so by November 22, 2019.

Selectman Schineller motioned that Sudbury not to opt out of membership in the negotiating class action. Chair Carty seconded the motion.

It was on motion unanimously. Carty-aye, Brown-aye, Dretler-aye, Roberts-aye, Schineller-aye.

Mr. Silverstein noted any settlement must be approved by 75%.

Selectman Dretler left the meeting at approximately 9:50 a.m.

Frost Farm

Interim Town Manager Bilodeau stated that Finance Director Dennis Keohane received approval to fund the demolition of Frost Farm per a Finance Committee vote.

Chair Carty mentioned that FinCom asked why BOS did not pursue the former tenant who damaged the house and did not obtain appropriate building permits. Mr. Silverstein commented that any effort to sue the former

tenant might be futile in consideration that the former tenant has no asset worth, and the fact that the Town waited years before presenting such consideration. Many of the Town officials involved with this matter are no longer with the Town.

Interim Town Manager Bilodeau noted that there was more renovation-related work than was originally thought, with concessions made and the Town did not consistently follow-up. Selectman Schineller emphasized that much work was performed without permits.

Chair Carty commented that FinCom indicated that this issue reflected a “backroom buddy deal.”

Vice-Chair Brown detailed the extensions and amendments years before.

Selectman Schineller suggested that the Board enact a policy that this type of situation would never happen again. Chair Carty stated that he wanted to send a message to FinCom that discussions with legal counsel were in progress. The Board expressed agreement to provide a related statement and not proceed with litigation.

Selectman Schineller withdrew the motion and asked that the Board officially vote on the matter when Selectman Dretler was present.

Mr. Silverstein suggested that an executive joint session with FinCom take place to address and vote on the discussed matter.

Also, 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).

Minutes for review: 3/17/16, 4/26/16, 5/4/16, 5/17/16, 10/5/16, 12/13/16, 12/20/16, 6/7/17 and 9/25/17.

Vice-Chair Brown presented several corrections/amendments to Executive Session minutes dated March 17, 2016 and October 5, 2016. The changes made within the March 17, 2016 minutes included:

Wayside Inn Property Discussion – paragraph 4

“Mr. Woodward received a call from Mark Kablack.” Here Vice-Chair Brown added: “a member of the Wayside Inn Board.”

Amendments within the October 5, 2016 minutes included:

CH30B – Frost Property Rehab – page 2 – first paragraph CH140 be replaced with CH149.

Inclusion of Official voting language – “aye” to replace “eye.”

Chair Carty motioned to approve the minutes of 3/17/16 and 10/5/16, as amended by Vice-Chair Brown. Selectman Schineller seconded the motion.

It was on motion unanimously. Carty-aye, Brown-aye, Schineller-aye, Roberts-aye.

Chair Carty motioned to approve the minutes of 4/26/16, 5/4/16, 5/17/16, 12/13/16, 12/20/16, 6/7/17 and 9/25/17. Selectman Schineller seconded the motion.

It was on motion unanimously. Carty-aye, Brown-aye, Schineller-aye, Roberts-aye.

There being no further business, Executive Session was adjourned at 12:07 p.m.