

IN BOARD OF SUDBURY SELECTMEN
TUESDAY, MARCH 7, 2017
EXECUTIVE SESSION (9:33 P.M – 9:55 P.M.)

Present: Chairman Susan N. Iuliano, Vice-Chairman Charles C. Woodard (participated remotely), Selectman Robert C. Haarde, Selectman Leonard A. Simon, Selectman Patricia A. Brown and Town Manager Melissa Rodrigues

Frost Farm - Update

Chairman Susan N. Iuliano stated this Session is to provide the Board with an update on the Frost Farm Agreement negotiations. She noted copies of the Board's Executive Session Draft Meeting Minutes from October 5, 2016 and October 26, 2016 were distributed tonight. The Board was previously in receipt of copies of a confidential memorandum from Town Manager Rodrigues dated March 6, 2017 and accompanying Exhibits #1, 2, 3, 4, 5, 6 and 7. Chairman Iuliano reviewed the Board had authorized the Town Manager and her to offer Mr. Braun a 12-month agreement and the Town's Counsel and Mr. Braun's Counsel have communicated back and forth with counter proposals. Chairman Iuliano stated Mr. Braun's attorney has most recently offered a 15-month proposal, noting much of its rationale was based on valuation. She stated the Town's rental figure of \$2,200 per month for 15 months totals \$33,000, and it was noted the Town cannot exceed \$35,000 according to the State's procurement laws.

Town Manager Rodrigues summarized the last contract offer the Town sent to Mr. Braun (Exhibit #6) and the most recent response from Mr. Braun's attorney (Exhibit #7). She noted Mr. Braun has been paying for his insurance coverage.

Selectman Brown asked what would happen at the end of the 15 months. Town Manager Rodrigues and Chairman Iuliano stated Mr. Braun would be gone from the property. Town Manager Rodrigues clarified the agreement would be for 15 months from the termination date of the current contract.

Chairman Iuliano stated the Town's Counsel has built into the proposed offer sufficient protections to cover the Town's interests. She also stated she believes the Town is close to presenting its last best offer.

Vice-Chairman Woodard stated the current contract expires in October 2017, and a 15-month agreement would take it to January 31, 2019. In the spirit of fairness, Vice-Chairman Woodard stated he would support a 15-month proposal believing the Town owes Mr. Braun a fair situation, since he likely had other expectations.

Selectman Simon stated he views the difference of two or three months as not a make or break situation. He also noted the history and location of the property is so unique, it is hard to find a suitable comparison.

Selectman Brown estimated a monthly payment of \$1,900 a month for 17 months would be approximately \$32,000. However, Town Manager Rodrigues and Chairman Iuliano noted the Town would need to change its entire valuation argument.

Vice-Chairman Woodard asked if the property is in better or worse condition than it was at the time of the original Request for Proposal. Town Manager Rodrigues stated the Building Inspector has opined that some areas have improved and others have not.

Selectman Haarde expressed his concern that the Town might not have as strong a case if it is perceived as reducing the rental price in order to skirt the procurement laws. He also stated he believes the Town has been fair by giving Mr. Braun a year's notice. Selectman Haarde also noted the Town expected to receive a completed project at the end of ten years, which it is not going to get.

Chairman Iuliano stated Town's Counsel seems comfortable with leaving the monthly rental amount at \$2,200.

Selectman Brown stated the property is unique and it is difficult to find something comparable. She stated she would be comfortable defending the \$2,200 monthly rental rate and she believes the Board should keep it as is.

Vice-Chairman Woodard noted \$2,200 is noted in the original RFP. He stated his preference would be to give Mr. Braun as much time as the Town can legally.

Chairman Iuliano and Town Manager Rodrigues provided a brief summary of the key points of the proposed March 3, 2017 (Exhibit 6) offer by the Town, noting it is at the sole discretion of the Board, it is for a 15-month term offer, and requires indemnification language, insurance, and confirms language regarding the Town having a key, holdover rent and court/attorney fees and additional language noting the Board can extend any agreement and waiver language was reinserted. She stated Attorney Beeler responded on March 6, 2017 (Exhibit 7), requesting a 17-month term and language allowing Mr. Braun to use the property for residential use and other purposes conforming with zoning, and revising the holdover rent from \$2200 a month to \$1900 plus attorney fees, and termination notice of 60 days with 60 days to cure breach.

It was on motion and on roll call unanimously

VOTED: To authorize Chairman Iuliano and Town Manager Rodrigues to continue to negotiate the use and occupancy agreement with a 15-month term regarding Frost Farm and to try to bring the negotiations to a close, Selectman Patricia A. Brown, aye, Selectman Robert C. Haarde, aye, Selectman Leonard Simon, aye, Vice-Chairman Charles C. Woodard, aye, and Chairman Susan Iuliano, aye.

It was noted that, if Mr. Braun agrees to the Town's contract terms, the Agreement would be voted in Executive Session and then discussed in an open session meeting.

It was further on motion unanimously

VOTED: To adjourn the Executive Session to discuss strategy with respect to potential litigation if an open meeting may have a detrimental effect on the litigating position of the public body and the Chair so declares (Frost Farm) pursuant to General Laws Chapter 30A, Section 21 (a) (3), Selectman Patricia A. Brown, aye, Selectman Robert C. Haarde, aye, Selectman Leonard Simon, aye, Vice-Chairman Charles C. Woodard, aye, and Chairman Susan Iuliano, aye.

There being no further business, the meeting adjourned at 9:55 p.m.

Attest: _____
Melissa Murphy-Rodrigues
Town Manager-Clerk