

IN BOARD OF SUDBURY SELECTMEN  
EXECUTIVE SESSION  
TUESDAY, SEPTEMBER 12, 2017

Present: Vice-Chairman Leonard A. Simon, Selectman Pat Brown, Selectman Daniel Carty, Town Manager Melissa Rodrigues and, via teleconference, Town Counsel Barbara Saint Andre.

The statutory requirements as to notice having been complied with, the meeting was called to order at 7:01 p.m. in the Grange Hall Meeting Room.

Vice-Chairman Simon moved to enter into Regular Session and move immediately into 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 I so declare (*Lieberman v. ZBA*), pursuant to General Laws chapter 30A, §21(a)(3).

Selectman Brown seconded the motion.

It was voted unanimously on roll call:

Patricia Brown – aye, Daniel Carty – aye, Leonard A. Simon – aye.

**Lieberman v. ZBA**

Vice Chair Simon explained that this is an update on the amendments to the lease agreement and asked Counsel Saint Andre to provide an update.

Counsel Saint Andre stated that the Town has been in negotiations with the plaintiffs and Varsity Wireless to settle the case. As part of that, with respect to the lease for cell phone tower land at the DPW, Varsity Wireless asked for certain concessions, including being granted an extension due to the appeal of the special permit and variance granted to Varsity Wireless by the ZBA. Varsity will pay the neighbors a sum of money to settle the case. Varsity has asked the Town to reduce one of the payments that Varsity has to make to the Town as well as delaying the timing of payments. The difference between the latest version of lease amendments that the Board has seen and the version before them tonight is that the new version will allow until March 31, 2018 for the first rent payment and that the amendment is not effective until the case is dismissed.

Town Manager Rodrigues asked whether varsity wireless has found a new tenant.

Counsel Saint Andre responded that we do not know.

Vice Chair Simon asked to clarify the date for the agreement.

Counsel Saint Andre explained that Varsity Wireless must start paying the Town on March 31, 2018, whether or not they have a tenant. This is approximately 10 months after the May 2017 agreement.

Town Manager Rodrigues explained that tonight the Board is being asked to approve the updated agreement which will allow Town Counsel to move forward in negotiations. Tonight's approval will be announced in Open Session and the signing of the lease will be approved at that time date.

Selectman Brown verified that on March 31, 2018 Varsity Wireless will start paying the Town, whether or not they have a tenant. If they fail to make the payment, the lease will be terminated.

Vice Chair Simon stated that a motion is needed to approve Amendment 1 to the lease agreement.

Town Counsel Saint Andre offered wording the motion as: Move to approve the proposed Amendment No. 1 to Lease Agreement (Land) as presented, as part of the settlement of the case of Lieberman vs. ZBA of Sudbury and Varsity Wireless Investors, LLC; with the Amendment effective only upon final denial with prejudice of the appeal, and to authorize the Town Manager to execute the Amendment.

Vice Chair Simon adopted the motion: Move to approve the proposed Amendment No. 1 to Lease Agreement (Land) as presented, as part of the settlement of the case of Lieberman vs. ZBA of Sudbury and Varsity Wireless Investors, LLC; with the Amendment effective only upon final dismissal with prejudice of the appeal, and to authorize the Town Manager to execute the Amendment.

Selectmen Brown seconded the motion.

It was voted unanimously on roll call:

Patricia Brown – aye, Daniel Carty – aye, Leonard A. Simon – aye.

### **Adjournment**

Selectman Simon moved to close Executive Session at Grange Hall and resume Executive Session at Lower Town Hall after close of open session.

Selectman Carty seconded the motion.

It was voted unanimously on roll call:

Patricia Brown – aye, Leonard A. Simon – aye, Daniel Carty – aye.

There being no further business, the meeting adjourned at 7:12 pm.

Attest: \_\_\_\_\_  
Melissa Murphy-Rodrigues  
Town Manager-Clerk