

IN BOARD OF SUDBURY SELECTMEN

EXECUTIVE SESSION

TUESDAY MARCH 24, 2020

Present: Chairman Daniel E. Carty, Vice-Chairman Patricia Brown, Selectman Janie Dretler, Selectman Jennifer Roberts, Selectman William Schineller, Interim Town Manager Maryanne Bilodeau, Environmental Planner Beth Suedmeyer, Director of Planning and Community Development Adam Duchesneau, Town Counsel Lee Smith and Town Manager-Elect Henry L. Hayes, Jr.

The statutory requirements as to notice having been complied with, the meeting was convened at approximately 6:00 p.m. via ZOOM telecommunication mode.

Chairman Carty called the meeting to order.

It was on motion unanimously

VOTED: 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, pursuant to General Laws chapter 30A, §21(a)(exception 6) with respect to the CSX rail corridor.

Attorney Smith detailed various aspects of the CSX Purchase & Sales Agreement (P&S):

- Conduct an official survey of the property to determine the exact CSX acreage.
- Eliminate the deposit clause.
- Amend the date of offer acceptance from 30 days to 10 days.
- In consideration of due diligence, change allowed inspection time from 60 days to 90 days after the signing of the P&S.
- Consider signing the P&S after the completion of an appraisal.
- Adding a provision for Town Election, if needed.
- Mentioned grantee and grantor language.
- Inclusion of Sudbury Water District considerations
- Examination of CSX fencing references.
- Modification of Section 6.4, detailing that Town should remove rails, ties...etc.
- Altering of the closing date based on surface Transportation Board ruling, to imply that in the event that the Seller agrees to extend the closing date beyond December 1, 2020, the purchase price would increase by 5%.
- Request copies of all fiber optics easements/utilities on the premise, such as Boston Gas Company, Sudbury Water District, Verizon, etc.
- Inclusion of default language.

Ms. Suedmeyer noted that given the COVID-19 crisis, the stated CSX performance extension ending on December 31, 2020 could possibly be extended.

Vice-Chair Brown inquired about the previous CSX survey and management plan done by the Town. Ms. Suedmeyer affirmed that such survey was filed with a title report. She noted that as a result of the

2008 CSX contamination settlement, there was no soil remediation action, but now (as part of the assessment) soil testing will take place.

Vice-Chair Brown questioned if the Sudbury Water District would agree with “capping” over the previously contaminated area. Ms. Suedmeyer mentioned that the Sudbury Water District is currently meeting in executive session to discuss this aspect and that discussion will be shared with the Board tomorrow.

Vice-Chair Brown confirmed that she would research the Nobscot Walkway aspect and the fencing issue as well.

Selectman Schineller questioned the depth of the title search. Vice-Chair Brown stated that the Town could ask for additional tests and inspections. Ms. Suedmeyer added the LSP recommended in depth inspections with extensive tests/sampling with involvement of the Water District. Attorney Smith commented that results of such inspections might encourage additional DEP consideration which would lead to substantial negotiations.

Chair Carty asked for Board comments regarding the P&S.

Selectman Dretler asked how the existing easements might impact a paved and capped trail. Attorney Smith responded that he would ask CSX about that aspect.

Selectman Roberts asked if a response date within ten days might be too soon. Attorney Smith responded the date of signing could be changed, if needed. Selectman Roberts also questioned the abandonment aspect of the railroad.

Selectman Roberts asked if the upcoming appraisal would reflect a fair market value. Attorney Smith answered the market value could be less than fair market value and reflect the cost of improvements as well.

Selectman Schineller indicated that he preferred that the state purchase this portion of the BFRT as it had done with other areas of the trail. He noted that the Town might never in fact have full control, in consideration that the rail line could be reactivated. Selectman Roberts indicated that such reversion would be very unlikely.

Ms. Suedmeyer indicated her surprise that an agreement between the Sudbury Water District and CSX in consideration of Zone 1 protection was not created. She suggested that Attorney Smith might consult with the Sudbury Water District attorney to further explore that aspect.

Selectman Schineller noted because CSX is now willing to sell the area in sections, a lower purchase price, counter-offer might be considered. Selectman Roberts stated that CSX does not want to offer further time extensions, therefore would probably not accept a lessor offer.

Chair Carty stated Sudbury was being asked to assume the entire cost amount of purchase, which other participating towns along the BFRT, where not required to do. He referred to the unused, state held funds, which were never refunded to the Town.

Chair Carty asked Attorney Smith to define the “vicinity” language. Attorney Smith responded that he would do so.

A discussion regarding insurance aspects took place.

Chair Carty suggested that the next step for the Board would be to schedule another related Executive Session on March 31. The Board agreed.

Selectman Schineller motioned to delegate to the MA Department of Transportation (MassDOT), the Town of Sudbury’s current right to negotiate with CSX for the acquisition of CSX corridor under Notice of Interim Trail Use. There was no second to that motion.

Executive Session was adjourned at approximately 7:30 p.m.