

IN BOARD OF SUDBURY SELECTMEN  
JOINT MEETING WITH PLANNING BOARD  
EXECUTIVE SESSION  
MONDAY, AUGUST 26, 2019

Board of Selectmen present: Chairman Daniel E. Carty, Vice-Chairman Patricia Brown, Selectman Janie Dretler, Selectman Jennifer Roberts, Selectman William Schineller. Also present: Town Manager Melissa Rodrigues, Assistant Town Manager/HR Director Maryanne Bilodeau, Town Counsel Jonathan Silverstein, Planning and Community Development Director Adam Duchesneau, and Environmental Planner Beth Suedmeyer.

Planning Board present: Chairman Steve Garvin, John Hincks, Nancy Kilcoyne, Justin Finnicum, and Charles Karustis (by conference call).

The statutory requirement as to notice having been complied with, the meeting was convened at 12:30 p.m., in the Flynn Building, Silva Room, 278 Old Sudbury Road.

**Convene in open session and immediately vote to enter Executive Session to discuss strategy with respect to litigation (Town of Sudbury v. Stone and Stone v. Sudbury Zoning Board of Appeals), pursuant to General Laws chapter 30A, §21(a)(3).**

Chairman Carty moved to enter into executive session. Vice-Chairman Brown seconded the motion.

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

Planning Board Chairman Garvin moved to enter into executive session. Mr. Karustis seconded the motion.

It was on motion unanimously. Garvin-aye, Karustis-aye, Hincks-aye, Kilcoyne-aye and Finnicum-aye.

Attorney Silverstein summarized the current status of litigation between the Town of Sudbury v. Stone and Stone v. Sudbury Zoning Board of Appeals. He detailed that the constructive approval appeal is in the initial stages and the developer is prepared to move forward with a variance denial appeal.

Three possible outcomes were presented by Attorney Silverstein:

1. The Town could choose to continue with constructive approval appeal litigation, if successful with the case, could anticipate alternate use of the Stone Farm, such as housing.
2. The second option would presume that the Town is not successful in winning the constructive approval case, and the developer returns to the original site plan and does not have to incorporate any preservation measures.
3. The third option would involve resolution/counter offer via negotiation with the developer, and the project would go forward.

Mr. Schineller commented that if the variance were overturned, a development of two large residences would be likely.

Town Counsel Silverstein stated the Dover Amendment exempts certain uses from zoning control such as day care facilities, religious facilities, non-profit educational schools, charter schools, solar farms and the like.

Chairman Carty asked if medical facilities could be included under the Dover Amendment. Attorney Silverstein responded generally not, but a residential detox site might also be exempt.

Ms. Suedmeyer explained that extended agricultural use could be utilized such as greenhouses. Attorney Silverstein agreed that agricultural use would be covered.

Mr. Hincks asked about the chances of winning the litigation. Attorney Silverstein responded that there are good arguments and noted that the case was unique and spoke further about "use variance." He added that the Town would not want to rezone one property at a time. A zoning discussion took place.

Vice-Chairman Brown commented that precedent has been set with variances since 2011 with properties on Boston Post Road, Raymond Road, 631 Boston Post Road (American Legion Hall) and 415 Boston Post Road (former Police Station). She stressed the importance of avoiding arbitrary zoning and noted that the Planning Board determines the zoning plan which is best for the Town. Chairman Garvin noted that the Stone Farm developer has been compliant with Board requests; reducing FAR (Floor and Area Ratio), screening, aesthetics and preservation.

Ms. Roberts asked if a real estate expert could analyze the site rather than relying on the applicant's statements, only. Chairman Carty noted that Ms. Stone's situation is an emotional one, due to the fact that she cannot manage the property in question and it is her property.

Ms. Roberts commented that lighter commercial use might be preferred such as a café. Mr. Schineller remarked that the Town would retain the preservation aspect with the current proposal. Mr. Hincks stated that it would be preferable if the building were not a storage facility. Ms. Dretler commented that a smaller building would be much preferred.

Mr. Schineller asked if the Whole Foods building was larger than the proposed storage facility. Chairman Garvin responded not. Mr. Hincks added that the proposed building would be the 13<sup>th</sup> largest building in Town.

Mr. Karustis stated that he was initially opposed to the project, but as changes have been made with solar inclusion and considerable size reduction, he felt differently. He noted that much of the Meadow Walk development is still unoccupied and the Stone Farm developer seems to know his market. Associated taxes and revenue would be beneficial for the Town.

Chairman Carty would rather see the barn remain, but that represents a major risk assessment and the Town could then lose the tavern as well. Attorney Silverstein stated that a demolition delay permit and litigation could take about six months and then both buildings could likely be demolished.

Mr. Schineller stated that the permitting process will be ongoing and he did not think there was enough time to present new proposals.

Ms. Roberts mentioned that the property has been deteriorating for years.

Town Manager Rodrigues recognized that Chairman Carty was instrumental in negotiating the preservation of the Stone Tavern. Ms. Roberts stated that the related conversation should have been conducted earlier and the Town should have considered the site five years ago.

Ms. Dretler mentioned the utilization of 18-wheelers on the proposed construction site. Mr. Hincks stated that use of those trucks might be negotiated.

Ms. Dretler asked exactly what would be stored at the proposed facility. Mr. Hincks agreed that specifics about storage product detail should be listed, and added that storage is the #1 land development in the US today. Ms. Kilcoyne commented that the City of Marlborough might prohibit further storage development in that location.

Chairman Garvin indicated that the current proposal might be the best option for retaining some historic preservation at the site unless the Town was to consider purchasing the property. Vice-Chairman Brown stated that such a purchase by the Town would be prohibitively expensive. Ms. Roberts commented the Town might buy the property and then sell it to a developer they choose.

Ms. Dretler stated that she objected to the traffic associated with the current proposal and the fact that the proposed structure would block the open vista. Chairman Carty explained that he drove by the site and was able to catch only 22 seconds of a vista. Ms. Dretler asked the Planning Board if they would be willing to participate in a site visit of the property. Chairman Garvin responded affirmatively and noted that because the site is private property, Ms. Stone would have to give permission.

Mr. Hincks mentioned the possibility of conditioning access. Attorney Silverstein commented that Ann Stone would likely reserve the access for herself. Vice-Chairman Brown indicated that the Town did not have right of first refusal on an APR (Agricultural Preservation Restriction) property. A discussion took place.

Chairman Carty asked about the litigation timeline. Attorney Silverstein replied that the conference with the judge is scheduled for September 10 with five to six months for the discovery stage, including possible depositions, expert interviews, and related traffic studies. He affirmed that the trial would take place in approximately 14 to 16 months, with a final decision to be determined within an additional two-month period.

Attorney Silverstein explained that counsel for the developer relayed the fact that if there is additional delay, the developer might not move forward with the settlement offer. Ms. Bilodeau queried if the developer would be able to go forward with demolition permit. Attorney Silverstein responded in the affirmative.

Mr. Schineller commented the purpose of the joint meeting held was to vote on the litigation aspect and possible conditioning options, such as right of first refusal, adjusting size, etc. Attorney Silverstein reiterated that the decision was whether or not to drop an appeal that was granted by default.

At 1:30 p.m., Town Manager Rodrigues excused herself from the meeting.

Mr. Karustis noted the applicant likely does not want to proceed with litigation and this would be the time to negotiate possible options. Ms. Dretler maintained that the negotiation aspects should include: decreasing the building size, maintaining the vista, eliminating use of 18-wheeler trucks during construction, and getting an exact definition on what is being stored in the proposed structure.

Mr. Finnicum also suggested examining the project from a connectivity prospective, which would include historic preservation and bringing the building in scale with the Stone Tavern.

Ms. Kilcoyne suggested painting parts of the proposed structure a patina color to make the structure look older.

Vice-Chairman Brown reiterated the possible options:

- Cease the constructive approval litigation and negotiate for options.
- Continue with litigation which would likely negate preservation.
- If Town loses the case, applicant can resume with the original plan.

Chairman Garvin stated that the Town could leverage for a smaller building, but did not believe that would occur. Mr. Hincks agreed and stated that if the structure were reduced by 25%, the business might fail, which would not be a good situation for the Town. He noted that 18-wheeler construction trucks are already present in Town, but use of such trucks could be conditioned by a specific truck schedule.

Ms. Roberts asked if economic viability could be conditioned. A related discussion took place.

Ms. Kilcoyne stressed that she did not want oil from cars on the floor of the proposed structure. Chairman Garvin agreed that he wanted more information regarding what was planned in the storage shelter building and expressed that more leverage might be possible when considering the special permit.

Ms. Roberts queried if Sudbury residents would be able to afford the storage rates if storage was intended for high-end vehicles. Chairman Garvin stated that he would ask the developer.

Attorney Silverstein suggested that a member of the Board of Selectmen, Ms. Bilodeau and Mr. Finnicum (with his architectural prospective) could compose a negotiation team. He added that potential negotiation points would include: further information regarding exactly what items are being stored, restrictions on 18-wheelers and first right of refusal. Mr. Schineller stated that he would like to see useful use of the timber which is currently in the barn.

Chairman Carty stated that construction using 18-wheelers would have to be restricted and he would like to see vintage autos stored in the proposed facility because owners do not take the autos out of storage much. He affirmed that he did not want separate businesses in the storage structure. Mr. Hincks suggested permitted usage.

Mr. Finnicum commented about the ratio of exterior doors to interior doors.

Vice-Chairman Brown was concerned that what the Town might deem esthetically pleasing would be subjective.

Attorney Silverstein suggested that the Board authorize Town Counsel to enter into negotiations regarding the plan and appoint liaison figures Chairman Dan Carty and Director of Planning and Community Development Adam Duchesneau.

Ms. Roberts stated that she was not comfortable about proceeding with the storage proposal. Vice-Chairman Brown stated that the Board needed to proceed.

Chairman Garvin moved in the words of Attorney Silverstein. Mr. Hincks seconded the motion. The vote was unanimous 5-0. Garvin-aye, Karustis-aye, Hincks-aye, Kilcoyne-aye and Finnicum-aye.

Vice-Chairman Brown moved in the words of Attorney Silverstein. Mr. Schineller seconded the motion. It was on motion one no and four in favor. Carty-aye, Brown-aye, Dretler-aye, Schineller-aye and Roberts-no.

Ms. Roberts commented that in the future, the Town must examine the economics of the situation so that the Town can remain in control.

Chairman Brown moved to adjourn the Board of Selectmen meeting. Mr. Schineller seconded the motion.

Mr. Hincks moved to adjourn the Planning Board meeting. Ms. Kilcoyne seconded the motion.

There being no further business, the joint meeting adjourned at 2:05 p.m.