

IN BOARD OF SUDBURY SELECTMEN
WEDNESDAY, NOVEMBER 30, 2016

Present: Chairman Susan N. Iuliano, Vice-Chairman Charles C. Woodard, Selectman Leonard A. Simon, Selectman Robert C. Haarde, Selectman Patricia A. Brown, Town Manager Melissa Rodrigues and Special Town Counsel George Pucci from KP Law (arrives later at 5:04 pm).

The statutory requirements as to notice having been complied with, the meeting was called to order at 4:05 PM in the Flynn Building Silva Room, 278 Old Sudbury Road.

Chair Iuliano called the open session to order, it was voted unanimously by all Board members.

VOTE to enter into the Town record and congratulate Emma Arrighini and Caroline Davis, of Troop 72475; and Abbey Sykes, Georgia Neale, and Francoise Hultin, of Troop 77717, to be recognized at an Award Ceremony on Tuesday, Dec. 6, for having achieved the high honor of the Girl Scout Gold Award. Also vote to authorize the chair to sign the congratulatory letters on behalf of the Board.

Voted unanimously, all aye

EXECUTIVE SESSION

VOTE to enter into 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 (Wayside Inn property), pursuant to General Laws chapter 30A, §21(a)(6).

Seconded by Selectmen Len Simon – voted unanimously, all eye

Chair Iuliano asked Selectman Woodard about where we are and what we need to decide. Selectman Woodard responded that we have appraisal and soil testing. Latest draft of Conservation Restriction (CR) is in the back of the appendices (red text). Not done yet is the estimates of acres; Wayside Inn thinks 449, our appraisal is 105.3. The number in CR is 106.3 from the Assessors database. There's a 300-acre difference. The title is good. The next steps are to talk about price and release appraisal to Wayside Inn and Sudbury Valley Trustees (SVT), then meet with SVT to make sure they're ok with appraisal. Talk to them about fundraising. Then we have a sense of price and funding sources. Then sit down with Wayside Inn to talk about price and final changes to CR. Right of First Refusal (ROFR) isn't in this document.

Town Manager Rodrigues said we reviewed this with the State, however, someone else is covering so response is slower than usual.

Selectman Woodard sent questions to Town Counsel Barbara Saint Andre and appraiser. Any thoughts on how to proceed?

Chair Iuliano said Town Counsel Saint Andre's response is that we don't need to release to the public. Selectman Woodard shared that partial appraisal by Landvest was \$5M. They didn't include the land under the Inn. This was an abbreviated appraisal. Total of 6.3M, our appraisal is 5.580M.

Selectman Simon asked did trustees appraisal deduct the value of the land after the restriction?

Selectman Woodard responded yes. They didn't have the final CR. Our appraiser valued at 7.2M before the restriction.

Selectman Woodard asked what's the next steps? Chair Iuliano asked can we share with SVT?

Town Manager Rodrigues responded that this is a tool to negotiate. Option is to ask prospectus to do executive summary if we don't share the entire appraisal.

Selectman Haarde questioned - \$400K for 5-acre house lot? Town Manager Rodrigues responded the prospectus wants to protect the land sites.

Selectman Haarde asked what are the deal breakers? Selectman Woodard responded, lots of redlines – not deal breakers. Just need to clarify and know exactly what we want.

Town Manager Rodrigues stated that Wayside Inn's concern is regarding use policy- how they spend the money. This is incorporated in the CR.

Chair Iuliano said the usage agreement needs to be incorporated into the CR. We need to make change. However, Selectman Woodard said this has already been settled. It can't be changed – Selectmen control the funds. It needs to comply with historic district, preservation, etc.

Selectman Simon asked if we could first get a clean document with some tweaking and then talk about price?

Selectman Woodard said we need to hear back from them on these revisions. We can send them the appraisal (trustees and SVT trustees), see if all are comfortable with them. This is the price in mind.

Selectman Brown shared that CPC discussed this – want to spend unspecified \$ for unspecified restriction, unspecified fundraising. Can we have more detail? Have numbers this year \$391,958 which is a state match. She has numbers from Dennis Keohane – revenue \$870K for new projects this year. This project needs to be vetted. Hearings are Dec. 21 and Jan. 4. Could we consider this for Fall Town Meeting? We could have the Wayside Inn come in and do presentation. Is this something we're going to drive for May or Oct or 2019?

Selectman Woodard can't see why we can't get this done for Town Meeting May 2016. Need to do final negotiations with Wayside Inn.

Selectman Brown said we need to know what's being done for fundraising. CPC needs to know what's in the CR. What we have is more of a concept than a project. There's a significant feeling that CPC is a good thing to do.

Selectman Woodard said this is an optimistic timetable – send to SVT tomorrow, next week to Wayside Inn, and meetings within the next couple of weeks. Selectman Brown suggested contacting Meaghan Donohue, Planning Director, for public hearing notices.

It was on motion unanimously

Chair Iuliano made the motion, seconded by Len Simon.

VOTE to release appraisal to SVT and Wayside Inn trustees, subject that it's kept confidential.

Discussion continued on this item.

Selectman Brown asked are we tracking the money we put in or only the endowment? Selectman Woodard responded the fund is specific on what it can be spent on. They'll have their own fundraising. Town Manager Rodrigues said it's held in escrow.

Selectman Woodard asked Selectman Brown – Can the CPC fund the purchase of something that's more than the appraised price? Ms. Brown believes we cannot pay more than appraised price – but will ask.

Selectman Haarde said their appraisal was \$5.1M not including land under the Inn, a rough estimate. Can we offer the appraised value? What would be rational to lowball this? Difficulty in fundraising? What if CPC can't come up with the \$?

Selectman Brown asked are the voters going to take an override? To what extent is the community price-sensitive? It seems reasonable to ask for less. Selectman Woodard shared that the community is sensitive to a lot of contributors - Debt exclusions, fundraising, etc. The appraised value is \$580M.

Chair Iuliano asked Selectman Woodard to meet with SVT and then we'll schedule a BOS meeting later. Selectman Woodard will arrange meeting with SVT and also meet with Trustees as soon as possible.

(3) Continue 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 (Eversource), pursuant to General Laws chapter 30A, §21(a)(3).

Seconded by Selectman Simon – all voted eye

Attorney George Pucci joined the meeting at 5:00 pm.

Chair Iuliano asked for an update from Atty Pucci on his litigation research, as well as our plans for meeting with Eversource.

Atty Pucci asked, was Eversource compelled to do the overhead right of way prior to the citing board? The answer is no – they're not required to do this. We have more research now but we're held up until the filing occurs. Then we can do written discovery and request for documents. Important to get into their citing criteria, cost analysis, etc. Our expert Paul Churnik was unable to do much due to confidentiality issues. Litigating before the citing board is an adjudicatory proceeding. Guidelines are not bound by rules of evidence. Done by prefiled testimony – each side prepares testimony. The right to appeal the Board's decision is not like a 30A appeal – just petition to supreme judicial court. This is a limited right to appellate review; not good news.

Next thing is to set up a meeting with Eversource; we did that, and they know it's confidential with regard to Protect Sudbury. We need to come up with a win-win situation regarding the filing. Eversource was enthusiastic about meeting with us.

In terms of meeting on Friday, Atty Pucci thought purpose was to get this out of the right of way or under Route 20, or street option with focus on Route 20. The Route 20 option is not consistent with Protect Sudbury. Selectman Haarde asked why this isn't the preferred route? He was under the impression that WAS what protect Sudbury wanted. They picked the "Green Hill option" this takes them off ¼ mile off Route 20.

Chair Iuliano shared that they (Protect Sudbury) submitted 6 alternatives. Their preferred were along the other utility corridor – like Route 20 option. They understand the legal challenges. Some recognized that the cheaper options have a better shot in litigation. Eversource picked the only one that was similar in cost.

Atty Pucci shared that Eversource presented to them that was their (Protect Sudbury) preferred option. They didn't clarify that. That was a mistake on their part (Protect Sudbury) they should have made it clear it's not the preferred option. Atty Pucci continued. His recommendation is that we should see if Eversource would remove the overhead option. Chair Iuliano and Selectman Haarde said we already showed our cards on this. Chair Iuliano said we're also looking for restrictions that Eversource would do for underground ROW (pesticides, etc.). The goal isn't just to get rid of the overhead.

Atty Pucci said their incentive would be looking at how their citing their project. If they leave the town no other option, you might need to join Protect Sudbury and litigate. Here's where we're at:
The public relations aspect – need to think long and hard about who may have influence in Town administration – Secretary of Environmental Affairs, DEP, and the Governor is supposed to be municipal-friendly. Maybe this can be addressed with O'Neill and Associates.

Town Manager Rodrigues shared the O'Neill and Associates contract ended on 11/15. We're paying \$12.5/monthly. This could be extended.

Atty Pucci said trying this case will be having everything on the table. He hasn't seen a case where a project has been challenged similar to this that hasn't prevailed.

The information on electromagnetic health affects is evolving. The lines are in close proximity to homes. We need an expert witness on this going forward.

Then there's the water issue. Vegetation management farmers alleged they got cancer by being exposed to a certain chemical. If there is exposure to the public water supply, there is a viable argument. Horsley Witten has gotten a head start; Scott Horsley is a compelling witness on this.

Property values – put this to Protect Sudbury. Let them get a real estate appraisal expert witness to talk about this.

Atty Pucci continued. Other side issues are overburdening easement rights in this area. This is inconsistent use. We don't have standing on this (MBTA claim) we can't litigate this.

Lots of unanswered questions re: reviewing title. Does 40B developer have control over ownership?
Title Examiner Mike Marsh said notorious titles are railway ROW issues. Easement vs. ownership rights. He raised issue of property owners, people that live on the ROW and look at their title. Many places aren't clear. Protect Sudbury needs to talk to their people re: titles. It's not clear on ROW. Why aren't individual property owners looking at this?

Another item re: MBTA acquired deed on abandoned railroad. MBTA did takings on unknown owners. If a legitimate title search is done, you come back with legitimate owners. Owners unknown is always incorrect – get approval from Mass DOR – rubberstamp it. This is something that Protect Sudbury might get involved with. There were unknown takings done in Sudbury in the 1970's, and this potentially could cause trouble. Selectman Haarde said the landowners could go after MBTA for this taking. This would be a separate case from the citing board. Atty Pucci said that typically you won't get decision in a year (evidentiary hearing).

Atty Pucci shared another issue is article 97. If land was taken or acquired for public purposes (Conservation), there's nothing to pursue until the filing. We need to firm up with Conservation Coordinator Deb Dineen exactly where the parcels are located. This is a major issue.

Another issue is application of herbicides. You can't do anything dealing with utility. Set up with existing rights of way. This is a troubling issue. Last thing is Public Use Doctrine which says that public lands devoted to one public use cannot be diverted to another public use. They can't do this without legislation. We need to review this doctrine to see if it applies to an entity like the MBTA. Diversion of use – can we make a viable argument for this. This is called a “nuclear option.” If you exhaust all options with Eversource, you could file a separate declaratory action, as long as court saw it was a good-faith argument made. Think about this if want to get aggressive with Eversource, even if facing a possible dismissal. We have an uphill battle.

This is a legitimate fight. Atty Pucci's recommendation is that if we could get the overhead option eliminated, we could take it from there.

Selectman Simon shared that he received an email from Fred Lucy, Hudson Selectman. That Board met with Eversource and requested not to submit the MBTA overhead route. Sudbury and Hudson before the citing board should take the same posture with Eversource. This would enhance the citing board's decision. We need to be on the same page. If not, it would be more difficult.

Chair Iuliano said if we reached any agreement on Friday, it would be an MOU filed with the citing board. This is filed after the petition. Atty Pucci said they could put it off as part of their filing. They want everything as soon as possible for citing board; easier for them to defend.

Selectman Woodard said if the Eversource submission to the citing board includes an overhead option, they could submit an additional file re: underground option (if agreed to a MOU). We need to line up with Hudson, and could we combine as a group to litigate? This overhead is so egregious to Sudbury the BOS would have no objection to tying up funds in legal fees.

Town Manager Rodrigues agreed to keep the Board apprised of the results of Friday's meeting.

It was on motion unanimously

VOTE: to end Executive Session and not return to Open Session.

There being no further business, the meeting adjourned at 6:29 PM.