

IN BOARD OF SUDBURY SELECTMEN
WEDNESDAY, MARCH 30, 2017
EXECUTIVE SESSION

Present: Chairman Susan N. Iuliano, Vice-Chairman Charles C. Woodard (participated remotely), Selectman Robert C. Haarde, Selectman Leonard A. Simon, Town Manager Melissa Murphy-Rodrigues, (Attorneys George Pucci and Jeff Bernstein from KP Law)

The statutory requirements as to notice having been complied with, the meeting was convened at 4:01 p.m. in the Silva Conference Room, Flynn Building, 278 Old Sudbury Road.

Chairman Iuliano read aloud the first item:

Open in regular session, and vote to immediately enter into Executive Session regarding strategy with respect to potential litigation if an open meeting may have a detrimental effect on the bargaining position of the public body and the chair so declares (Eversource), pursuant to General Laws chapter 30A, §21(a)(3).

Seconded by Selectman Haarde, all eye.

Chairman Iuliano said we need an update on where we stand on next steps with Eversource. At the end of this meeting, do we need to release environmental consultant report (Protect Sudbury)?

First let's discuss what we know about Hudson. Town Manager Rodrigues shared that Tom Moses, Hudson's Executive Assistant, called. Hudson met in open session to vote into negotiations with Eversource regarding the non-disclosure agreement. Chairman Iuliano shared that Hudson contacted Eversource first. Selectman Haarde said Hudson doesn't plan on entering into an agreement until after siting board review.

Attorney Pucci shared that it's to their advantage to go in with Hudson. Attorney Bernstein doesn't believe there's a second version of the petition.

Selectman Simon received an email from a Hudson BOS member asking how much does the Town of Sudbury prepare to spend on litigation for Eversource? There seems to be under-board communication going on – what's going on? Eversource anticipates an agreement with Sudbury and hopes to get there with Hudson. Community host agreements aren't done until filing with siting board. 100% of citing board decision has been the preferred route from utility. They've also gone with primary route even though it's been more expensive.

Mr. Bernstein said that's not entirely correct.

Chairman Iuliano said let's see where we stand. The major points of contention: language that's acceptable for options – underground, etc. to make sure there's no overhead. Other issues are mitigation and back and forth, vegetative management, ombudsman. What does that mean to the citing board?

Attorney Pucci shared that they have to list the overheads. They try to rule it out, but Eversource insists on keeping it in. Mr. Bernstein shared that they don't have to do what the citing board says, even though that's what Eversource says. Mr. Pucci shared that where they're coming from they want to leave overheads on the table to use as leverage. That's why he thinks they want to leave it in. Attorney Bernstein said they don't always make the most intelligent decisions.

Chairman Iuliano said there's a lot of back and forth with documents. As of yesterday they claimed they're ready to file Friday (3/31). They refuse to show us the petition. Mr. Bernstein said he doesn't think there's a separate petition with underground.

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Selectman Simon said this is two different petitions, and we're backed into a corner with the precise wording.

Attorney Bernstein said if you don't sign the agreement, it doesn't mean you can't finish negotiating re: host community agreement.

Selectman Haarde said they keep asking to expedite other approvals – ConCom, Zoning, etc. We do have leverage beyond the citing board. Selectman Simon thought at one point there were five parties supporting the underground route – DCR included.

Attorney Pucci said they threatened to file one of two petitions, however, they won't show us the second petition! Selectman Haarde said they tried to ban the overhead language out of the agreement; this is troubling.

Attorney Bernstein felt this agreement is better than a few weeks ago but still has significant issues. Are improvements sufficient?

Attorney Pucci summarized that that they won't take overhead off the table, they upped their mitigation figure to 500K – we wanted 800K minimum. They've improved the landscape plan and working with neighbors, feasible buffering/fencing, no herbicides and pesticides. This is a big thing. Then there was an ombudsman provision – someone who can have influence with them. Committed to 50K for ombudsman which will be prorated if construction goes beyond 18 months. They're looking for a tweaking to the agreement.

Selectman Simon said this is this a two-step process. Can we accept the executive summary in principle, then we can move to specifics of agreement? Chairman Iuliano said that if we agree in principle to the executive summary, can we get to see the petition? Selectman Simon thought maybe Eversource doesn't want to do this since they afraid it might leak back to Hudson.

Attorney Pucci was wondering if the BOS wants to make an announcement – voted to have counsel explore host community agreement for underground. There are concerns if we have agreement next week. Then maybe tell the Town and Protect Sudbury that you're on your own. Legal issue is the open meeting law issue. If a party were to get angry that BOS is negotiating with Eversource, it could be quite a problem.

Chairman Iuliano asked are we trying to negotiate something before the petition? On May 1 we're going to ask the Town for more funds for litigation. Protect Sudbury wants to be sure we're not talking to Eversource without them.

Attorney Bernstein said if Eversource files this petition with executive summary on Monday, this will be a problem. He suggests the BOS have an open meeting to present the agreement.

Attorney Pucci shared that BOS engaged counsel to come up with agreement on underground ROW. Attorney Bernstein suggested then present at public meeting that this is the best agreement we could get. Town Manager Rodrigues said we're exploring options to get overhead off the table. Selectman Simon agreed with Attorney Pucci's suggestion; it's in the best interest of the Town. This allows Eversource to achieve what they wish.

Attorney Bernstein said Eversource thinks this agreement will be signed before any public disclosure. They may withhold it because they don't want Hudson to see it. We have to insist to see the petition. If we don't enter into agreement you can litigate.

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Selectman Haarde said that when we heard rumblings that overhead was off the table, is it the same time that Eversource negotiated the underground agreement? Senator Barrett announced that overhead is off the table.

Selectman Simon asked if Eversource doesn't advocate for underground, who would? Attorney Pucci responded that they're not advocating against the overhead. There's little chance of them going in to advocate for underground.

Chairman Iuliano said we need to decide what we want to do. Do we enter into this before the petition? Attorney Pucci responded that if you decide to do that, we must insist that we'll make an announcement that we're exploring this. Attorney Bernstein's response was if they do everything we want, then yes. He asked about a confidentiality agreement. Chairman Iuliano said we can say we're continuing negotiations but they can go ahead and file.

Selectman Simon asked if Eversource has ever shown a petition to a community before going to the citing board?

Attorney Pucci mentioned that as part of an announcement, this project is subject to real estate and personal property tax. Think of that piece of it when they're only giving us \$500K. Selectman Haarde said he doesn't trust them. What about the community host agreement? He thinks it would be a mistake to sign it before seeing the petition.

Selectman Simon said we don't want backsliding from what we already achieved. It's better than the first version. He summarized this executive summary is okay, but needs tweaking. The draft host community agreement seems to have met 80-90% of our objectives. If we don't get 100% will we refuse to sign? What's going to happen at the citing board?

Chairman Iuliano proposed that we agree in principle, however, we have to see the petition, then decide if we're going forward and make a public announcement. Town Manager Rodrigues said if this is a public announcement, we'll O'Neill and Associates back here. There's a lot of spinning we'll have to do. Chairman Iuliano shared that Protect Sudbury wants to be involved in the decision. We didn't agree to this, but that's what they (Protect Sudbury) want.

Selectman Simon asked what will Eversource say if we can't sign before seeing the petition? Attorney Bernstein responded you'll get a different answer depending on who answers. His guess is they'll complain but will come back to the Town with something.

Selectman Woodard felt that the Board is belaboring the point that we won't sign anything without seeing the petition. We need time with the petition. If limited people review it, and there's a leak, this is a problem. Both attorneys agreed that we need logistical control.

Chairman Iuliano shared that we need to review this in executive session, and then in open session.

Attorney Pucci asked can we propose the public process? Chairman Iuliano responded that we need to see the petition! Attorney Bernstein shared that the environmental person needs to review the petition.

Selectman Haarde asked can we see the petition next week? Attorney Pucci responded yes, we can ask. Selectman Simon said that we don't want to cut off our nose to spite our face! We might not get everything we want. There's a difference between what they're NOT going to do if the executive summary reflects the community host agreement.

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Selectman Woodard asked will Selectman Haarde vote against the agreement unless overhead is totally off the table? Selectman Haarde responded that they wouldn't advocate against the overhead. Counsel as advised us that we can sign it later.

Chairman Iuliano reminded the Board that all we're discussing now is that we need to see the petition.

Attorney Pucci suggested that the Board could take a vote to have an agreement in principle. We still need to see the petition. One downside is the language is squishy. Selectman Haarde said we've been asking for the petition for months and we haven't seen it.

Selectman Woodard said he agrees for the agreement in principle that the executive summary is a fair representation of petition.

Selectman Simon mentioned that Selectman Woodard is off the board as of April 12. We're dealing with a 3-person board.

Chairman Iuliano asked can we say things are close and we're moving forward? We're generally supportive and need to verify it by seeing the petition. Attorney Bernstein said there's a benefit of NOT taking a vote today, and Attorney Pucci would get a sense of where they're at.

Attorney Bernstein asked if they put language against the overhead, you'll be more comfortable. Another reason you need the petition is re: substation work. Town Manager Rodrigues shared that just today they said there'll be a 100-ft pole at substation.

Chairman Iuliano asked the Board do we agree that we'll have Attorney Pucci ask for the petition.

Selectman Simon felt we'd be better off if we could make a public statement on this on what we want to accomplish before the petition is filed. Chairman Iuliano said that makes sense but that's not where we are now. Mr. Simon asked if we should ask Eversource if we can go public with the executive summary.

Attorney Pucci suggested that everything looks positive. Once we get petition the public perception issue is to make announcement, counsel is engaging to work out an agreement. Just need to acknowledge to Eversource that's what we might do. This is important because they have to stop getting us trying to tie it up in a couple of days. We need time and for the public process as well. The confidentiality agreement is still in place.

Chairman Iuliano asked if we can address other questions – working with Protect Sudbury on the environmental aspect. There are two reports, and Attorney Pucci is considering releasing both reports. Can we share with Richard Kanoff (sp) without it being a risk? It becomes public document. Attorney Pucci said we can't defeat the project on environmental issues. Protect Sudbury has to put up or shut up at some point. Selectman Simon felt this may show we don't have a strong environmental position. Protect Sudbury doesn't want anything in ROW, only under the streets.

Chairman Iuliano asked Attorney Bernstein is there any problem with releasing it? Is it harmful to our position as a town if it becomes public? Selectman Simon feels it raises more questions and entangle us. Mr. Bernstein asked if the report is complete or a draft.

Chairman Iuliano made a motion which was seconded by Selectman Haarde.

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Move to authorize counsel to release the environmental reports to counsel for Protect Sudbury
Vote: Simon no, rest eye. Passed 3-1.

Chairman Iuliano also mentioned working with Protect Sudbury. Attorney Pucci recommended getting a title exam. They want town to pay for it. Is this worth doing? Town Manager Rodrigues said we agreed to do up to \$5K but it's now asking for an additional \$10K. Chairman Iuliano asked Attorney Pucci is this worth doing? His response was yes, but it's a long shot. Selectman Woodard asked why would we spend additional money or should it be later? Selectman Simon asked has protect Sudbury contributed to this effort or our cost? Attorney Pucci responded no, and Mr. Simon said it seems they want to ride on our backs.

Chairman Iuliano said this may be premature, and we don't have to press forward. She asked Attorney Pucci if this can be moved out to a later date. Does it make sense to wait on this? The response was yes.

A motion to adjourn was made and seconded.

There being no further business, the meeting adjourned at 5:44 p.m.

Attest: _____
Melissa Murphy-Rodrigues
Town Manager-Clerk