

IN BOARD OF SUDBURY SELECTMEN
EXECUTIVE SESSION
THURSDAY JANUARY 12, 2017
5:00 PM, FLYNN BUILDING - SILVA ROOM

Present: Chairman Susan N. Iuliano, Vice-Chairman Charles C. Woodard, Selectman Robert C. Haarde, Selectman Leonard A. Simon, Selectman Patricia A. Brown, Town Manager Melissa Murphy-Rodrigues, and Town Counsel Barbara Saint Andre.

Vote to immediately enter 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 (Village at Sudbury Station), pursuant to General Laws chapter 30A, §21(a)(3).

Chairman Iuliano opened the meeting at 5:00 PM. All members unanimously voted to enter Executive Session to discuss Sudbury Station.

Chairman Iuliano directed attention to Town Counsel Barbara Saint Andre. Currently filing appealing motions against housing, and last week filed oppositions. Decreasing the number to 30 was based on a number of local concerns with Peter's Way. Town Counsel asked for brief extension of time to Friday, and Attorney Henchey agreed. However, 30 units is out of question. He also mentioned they'd be willing to do mitigation. They were originally at 250 units, then 198, now 150. We'll give you some mitigations to sweeten the pot. Ms. Saint Andre feels obligated to bring this to the Board's attention. They moved a little bit but not much. This doesn't get the ball moving; there's no incentive for anything further.

Selectman Woodard asked Town Counsel if we don't settle what do you think are our prospects? Ms. Saint Andre replied that there's a 90% chance the AJC will rule in favor of the applicant. Pretty much would be 250 units with some conditions. The 10% argument is what we have going for us, and helps our chances. This gives the opportunity to weigh the local concerns more than affordable housing (we're more than 10%). The argument is that we're not avoiding our obligation.

Selectman Woodard shared that the Town encouraged Raytheon to bring affordable housing to the lot. Selectman Simon mentioned that we accepted Phase 2 of Coolidge to encourage affordable housing.

Town Counsel shared that it's still an uphill battle, but we at least have a shot. It makes a difference that we're at 10%. We need to get past these motions; we still have an uphill battle.

Selectman Woodard thought the traffic and safety issues were an acceptable basis for opposing or modifying these projects. Town Counsel Saint Andre's response was if you can show a real traffic safety issue. A traffic expert, Tom Houston, has been working at Peters Way. It's a difficult argument that Peters Way is so unsafe to use as an entrance/exit. He filed a preliminary affidavit re: sight line. When we look at the local concern, we have to give it a lot of weight. Don't be overly optimistic or pessimistic; this is an uphill battle. We really have to show it's a bad intersection. The appeals committee knows there are many bad intersections in eastern Massachusetts.

Selectman Haarde asked when is a decision made on the summary motions? Town Counsel replied that it could be a couple of months.

Selectman Haarde asked if can we take them up on the offer of 150 units if we're denied the 30 units? Town Counsel responded that Attorney Henchey said if the town was at 150, we'd negotiate to 190. What he's signaling is they're willing to come off 198 units.

Chairman Iuliano asked if it would make sense to go back with a low number to signal that we're willing to talk?

Selectman Haarde asked what's the success rate of appealing the HJC? Ms. Saint Andre responded not often -- just a handful of cases.

Chairman Iuliano said it seems premature to jump to 150. Could we respond later? She asked Town Counsel about the timing. If we're looking at appeals court, this could be a couple of years. The danger is we'll have 250 units with no mitigation (worst case scenario). Ms. Saint Andre responded that 150 units doesn't work for Attorney Henchey. If he loses on Peters Way, she doesn't see him getting 250 units.

Chairman Iuliano discussed the plan to file a motion for prejudgment before spending money on discovery. We had to submit a settlement offer. You drop the 40B and we'll consider something that's more than one house. This is to meet the requirement. The next stage will be more pre-judgement. She asked Town Counsel to elaborate. Ms. Saint Andre responded there are lots of legal issues, and might be something they can do in summary judgement.

Town Counsel shared that in land court there are no juries; things can get backed up. Chairman Iuliano asked where does that leave us? Can we get more information? Ms. Saint Andre said the abutter lawsuit already filed motion to dismiss. Attorney Henchy is already showing some 'nervousness.' He speaks disparagingly about the Town of Sudbury, which is out of place.

Selectman Simon said it's important to show the town's good faith effort. Chairman Iuliano agreed not to respond to do anything with this offer.

Selectman Simon shared that when the Planning Board approved one house lot, the statement landowner would come back for modifications. This didn't happen. Ms. Saint Andre said it's still one building lot. If modification is needed they go to ZBA, however nothing happened. In Attorney Pinto's case, he represents the BOS. The neighbors could petition the Planning Board. Ms. Saint Andre said we looked at the title to make sure no mortgages, and it came back all clear so no mortgage on the title. Secondly, someone has to rescind the Planning Board vote.

It was on motion unanimously

VOTED: To give permission to Attorney Dan Pinto (from Pierce Atwood) to speak to the Planning Board about this vote.

Town Counsel Barbara Saint Andre left the meeting at 5:45 PM.

Selectman Brown recused herself and left the meeting at 5:48 PM due to the upcoming Eversource discussion.

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).

Chairman Iuliano shared that the last meeting with Eversource was that the MBTA couldn't confirm the overhead. O'Neill confirmed that the overhead was off the table. She asked is this the end of the overhead? If the siting board picks the overhead, then we go back with negotiations. It's not necessarily off the table.

Town Manager Rodrigues shared that over the last few months the MTBA has changed – not with overhead. Selectman Woodard asked if it will be clear to the siting board they don't have the lease?

Town Manager Rodrigues said the way it's written is that they have money for underground. It would be in the license that they prefer the underground but if siting board preferred overhead, they'll negotiate. O'Neill said if

it's filed with an option lease there's an option for overhead in the future. It's important for Town to make this clear to the public and the siting board.

Chairman Iuliano said we agreed to the 25th so we have more time. What would the issues be in the new agreement? They didn't send draft until yesterday – was supposed to meet yesterday.

Selectman Woodard felt the money we spent on O'Neill is worth it.

Selectman Simon thought it would be helpful to have something in writing from the MBTA re: overhead. Two powerful agencies are the citing board and the MBTA.

Town Manager Rodrigues shared that if the license says underground, then they may go back to citing board for overhead.

Chairman Iuliano talked about wetland, wildlife impact, water sources, testing, use of herbicides. They'll work with us on water supply. Plantings, grass, road, will be done.

Selectman Woodard asked if we made a proposal with the Town to do vegetative management? Town Manager responded this is not possible with staff. Would this be on private property? We don't want an agreement with DCR. Also talked about reaching tax assessment agreement. Payment for counsel for citing board process. Asked for our cooperation for permit substations, wetland permits. They need to fix Stock Farm Road.

Chairman Iuliano also talked about specific landscape design, construction, work hours of day. Also have agreement on when they can shut things off, offsite storage, etc. Big issues are herbicides, vegetation.

Town Manager Rodrigues shared that Attorney Jeff Bernstein is reviewing the draft. Selectman Simon asked if the draft can be shared? Town Manager responded yes, but it's a first draft from them.

Selectman Woodard asked if overhead is off the table, what's the incentive to negotiate? Town Manager Rodrigues said there's a lot in getting us to agree for permitting. We would work hard to get the Town on board, but we can't force anyone. Chairman Iuliano said that on the surface they seemed receptive.

Chairman Haarde shared that they fully accept to do a community agreement - substation.

Town Manager Rodrigues shared that in Medway, they got a foam truck which is very expensive (\$1.2M; mitigation money for public safety).

Selectman Simon asked if our "want" list can be expanded.

Chairman Iuliano said we get what we can from MBTA – the longer it goes the better. They're going to have to resolve with MBTA.

Selectman Haarde shared that negotiation hasn't started – this is a first draft, and should be shared with BOS. Can we ask for a new Fire Truck as part of negotiations? The earliest this gets filed with citing board is February 2017.

Selectman Woodard made a motion to adjourn, and it was on motion unanimously

There being no further business, the meeting adjourned at 6:11 PM.