IN BOARD OF SUDBURY SELECTMEN

EXECUTIVE SESSION

WEDNESDAY, APRIL 13, 2016

Present: Chairman Susan Iuliano, Vice-Chairman Charles C. Woodward, Selectman Leonard A. Simon, Selectman Robert C. Haarde, Selectman Patricia A. Brown, Town Manager Melissa Murphy-Rodrigues, Special Town Counsel George Pucci, Director of Planning and Community Development Jody Kablack, Town Counsel Barbara Saint Andre

The statutory requirements as to notice having been complied with, the meeting was called to order at 4:01pm.

Eversource Transmission Line Project: MBTA Meeting Recap

The Massachusetts Bay Transportation Authority (MBTA) would receive $8 million from Eversource for an easement which would allow the construction of transmission lines along abandoned train tracks currently used for recreation as a rail trail in Sudbury. The MBTA is in need of this money and thus likely to support the Eversource project. At the meeting, the MBTA was presented with materials that would help them to understand the Town's concerns.

There are two requests for the MBTA if they do allow the easement:

1. If allowed, any power lines would go underground
2. If the power lines are underground, that no herbicides would be used during installation or for maintenance

The Board of Selectmen received differing information from Eversource. For example, Eversource told the Board that putting the power lines underground would "kill" the project. With the MBTA, they discussed it as a possibility.

At the meeting, MBTA Assistant General Manager of Real Estate and Asset Development Mark Boyle had said that it may make sense for everyone to sit in the same room at the same time. He had said that, following the meeting, he would talk to his group and circle back with the Town of Sudbury. He had also asked if Community Preservation Committee (CPC) funds could be used to defray the cost of installing the power lines underground.

Chairman Iuliano explained that if this project gets pushed off of the Right of Way (ROW), then the MBTA would not receive anything. Selectman Simon agreed and added that the CPC is not a likely source of funds, particularly as neighboring town Hudson did not use it.

Selectman Haarde pointed out that the easement costs $8 million and that constructing the project underground would cost $50 million. Town Counsel Pucci responded that Eversource would get a return on the $50 million investment. Chairman Iuliano asked what information Town Counsel may have that could help the Board of Selectmen navigate the best way to pursue the issue. Special Counsel Pucci

responded that if the MBTA were to take the overhead option off the table, then Eversource would not have a low-cost option, and they are required to bring two geographic options before the Siting Board. Chair Iuliano added that the Board was informed that Eversource would need to go before ISO again if the overhead option were removed, as an application cannot go before the Siting Board without an ISO approved option. She stated that the second option that Eversource comes up with could be anything.

Special Counsel Pucci asked if the MBTA is the easement holder on the rail trail. Selectman Simon responded that the ROW is owned by the MBTA, and that they have signed a 99-year lease with the Department of Conservation & Recreation (DCR). DCR would like to construct a rail trail from Waltham through Northampton to New York, and they have discussed the topic of underground. Town Manager Murphy-Rodrigues added that this is why it is only an easement.

Counsel Pucci suggested doing title work to figure out the full picture. Selectman Simon inquired about the criteria for the sitting board, stating that eliminating the least favorable outcome could permit strategic development of a more favorable outcome.

Counsel Pucci responded that this is part of a 40-project system for which Eversource needs to prove efficiency. Pucci continued that he and his team have identified environmental engineering firms that are willing to work on this and advocate against it, if needed. They have also found a real estate appraisal expert, but are looking for a more cost-effective analysis of how power lines would affect property values in the area. Pucci reiterated that the Town will need an environmental engineering firm to provide strong evidence of the negative environmental impact of the project as currently proposed.

Selectman Woodard asked whether the expert evidence should be shown to Eversource and MBTA before it is submitted to the Siting Board, inquiring whether this information could make them more amenable to granting at easement without an overhead option.

Town Counsel Pucci responded that the underground option may actually have more environmental impact than above ground and that it may be beneficial to work with the MBTA and Eversource separately.

Town Manager Murphy-Rodrigues stated that Tom O'Niell of Lobbying and Public Relations firm O'Neill and Associates would be handling the Sudbury Eversource Project work himself. Currently he is working on getting a meeting with Jay Ash who is on Siting board and is the MA Secretary of Housing. Counsel Pucci responds that it may be better not to pursue this route.

Chairman Iuliano asked whether the cheapest underground option would make the best legal case and Special Counsel Pucci affirmed that supporting the cheapest underground option would enhance the case.

Selectman Simon stated that DCR is a player and will also push the MBTA as they have made it clear that they do not want overhead power lines. Chairman Iuliano responded that DCR may be concerned that residents won't want the rail trail at all if there will be an 80-foot clear cutting of vegetation.

The Board of Selectman have requested meetings with DCR, and Counsel Pucci will investigate other approvals needed.

Selectman Simon suggested following Wayland's Eversource project carefully and Town Manager Murphy-Rodrigues added that, during their meeting, Mark Boyle had brought up the idea of allowing Eversource to pull up the rails and keep any proceeds from sale of the steel materials. She continued that while Wayland will have overhead lines for their Eversource project, they have existing overhead lines, so it will not represent a major change.

Chairman Iuliano suggested preparing for litigation in the event that negotiations do not come together. Counsel Pucci responded by asking whether his team is authorized to retain experts, adding that a Finance Committee transfer may be needed. To minimized costs, Counsel requested that experts provide their hourly rates, which are generally lower than a retainer. In addition, the concurrent timing of the MEPA and Siting Board filings will help in keeping the number of hours down.

Town Counsel Pucci outlined next steps which included recruiting experts to serve as witnesses, making a statement at a public hearing, the intervention process where information could be requested, expert witnesses providing testimony, the hearing of cross examination, and finally the decision. Counsel Saint Andre added that the process took less than a year for Medway – it is quicker than going to court, but there is still quite a bit to it.

Selectman Simon proposed the possibility of the Town, DCR, and Eversource coming together for a roundtable to discuss what is doable and to get on the same page. Counsel Pucci responded that this would be worth considering. He further stated that Protect Sudbury had reached out to him regarding the matter. He advised that it may be worth pursuing the possibility of partnering with them to cost share on experts, and requested permission to talk with them. Chairman Iuliano and Selectman Haarde responded positively to the suggestion.

Counsel Pucci asked whether the Town has a preference on the power lines going into the MBTA ROW or under existing, paved streets. Town Manager Murphy-Rodrigues responded that input from engineers would help make a decision between those options. Chairman Iuliano stated that they want to make the decision informed by cost as well as environmental impacts, and asked whether Eversource would need approval from Sudbury's Conservation Commission for the project. Counsel Pucci responded that Eversource will comply with state and local bylaws.

Chairman Iuliano noted that Cape Cod officials have been pushing back against an Eversource project that would endanger an aquifer, but the State has the ultimate control. Counsel Saint Andre responded that state agencies do get control over local lands if needed, but that Eversource is not a government agency. Town Counsel Pucci stated that there are two environmental firms in the running to consult on the Eversource project, and the sooner they can start the work, the better as environmental impacts of the project would emerge through their analysis.

Chairman Iuliano stated that there is a need to identify concerns and preferences. Town Counsel asked whether the Town has GIS mapping and Town Manager Murphy-Rodrigues affirmed.

She continues that the MEPA and Siting Board filings are likely to be simultaneous and the Town can comment after they are filed. The usual big players don't want to be in position to advocate against

Eversource and many have conflict of interest. However, the MEPA certificate can be appealed. In addition, the MBTA would not be concerned that Sudbury's property values may go down and that argument could backfire as we levy taxes on the poles, which would provide income for the Town.

The approximate estimated cost of the project being constructed overhead in the ROW is $50 million. Doing it underground in the ROW would be approximately $100 million. The same project underground in paved streets is closer to $150 million. Putting the project under Route 20 would mean more length, more impact and more cost, so it is not likely that Eversource will pursue it.

Special Counsel states that he will recruit the environmental engineering firm who can work quickly. He advises that working with MBTA to get the overhead option off the table would be the best way forward.

At 4:58pm, Special Counsel Pucci left the meeting.

Chairman Iuliano states that she will discuss Cape Cod's Eversource aquifer battle with Town Manager Rodrigues in more detail. She notes that there is a Chamber of Commerce meeting regarding Eversource on May 10 at the Wayside Inn. It will need to be posted as a public meeting as a quorum of Selectmen may be present, and it will need to be confirmed that the building is accessible.

EXECUTIVE SESSION

Chairman Iuliano opened in regular session and voted to immediately enter into Executive Session to discuss the Village at Sudbury Station pursuant to General Laws chapter 30A §21(a)(3).

Selectman Brown seconded the motion.

It was on motion and roll call unanimously.

VOTED: To immediately enter into 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) and not to return to executive session.

Chairman Iuliano opened the discussion with the question of whether or not the land swap on Peter's Way will be pursued and added that a group of residents came forward with a petition to request Special Counsel for Sudbury Station.

There is discussion regarding Special Counsel who would be best suited to represent the interests of the Town against the Sudbury Station project.

It is also stated that the Peter's Way land swap needs to be reviewed to determine whether it can be reversed and that residents need to be informed of the outcome.

Selectman Brown stated that there is a perception that the ZBA is not giving enough pushback to the lawyers for the Sudbury Station housing development. Counsel Saint Andre responded that this is not the case and that the ZBA chair and board members are not accepting everything Sudbury Station attorney

Bill Henchy is saying. She further states that she is familiar with this scenario and that additional counsel is not likely to yield a different result. In addition, she explained that Mr. Henchy is aggressive and highly litigious, and if the Town hires an additional lawyer, it will likely show up in Henchy's complaint.

Selectman Brown states that there is legal determination regarding the Peter's Way land swap that has not been shared, and asks if it is worth sharing. Chair Iuliano states that it may be best to hold off for now.

Selectman Brown states that Sudbury Station feels like Johnson Farm in that there is a lot of legal work to do, but ultimately the project was destroyed by the property acquisition. Planner Kablack asks if this could be valid eminent domain taking. Counsel Saint Andre cautions that eminent domain over 40B land can backfire, as was the case in Burlington, especially as Henchy has hinted that there are civil rights violations in this.

With regards to hiring outside counsel, Selectman Simon and Haarde agreed that residents want to see someone other than Counsel Saint Andre and KP Law representing the Town in this matter. Vice-Chairman Woodward responded that it may be unwise to make decisions based on a few people's requests. Selectman Simon asked if it is possible to interview attorneys for the role, and Chairman Iuliano responded that the role is too small to merit interviews. Possible candidates are discussed.

Town Planner Kablack shared that the ZBA members are seeking to follow laws with as much good advice as they can get, and that they should be brought in on the decision to retain additional counsel.

Chairman Iuliano moved to hire Jonathan Silverstein to represent the Board of Selectmen's position before the Zoning Board of Appeals on matters pertaining to Sudbury Station.

Vice-Chairman Woodward seconded the motion.

Selectmen Simon and Haarde noted that residents want outside counsel.

It was on motion and roll call.

VOTED: To hire Jonathan Silverstein to represent the Board of Selectmen's position before the Zoning Board of Appeals on matters pertaining to Sudbury Station.

Vice-chair Woodward: aye, Chairman Iuliano: aye, Selectman Simon: no, Selectman Haarde: no, Selectman Brown: aye.

Peter's Way

Selectman Brown asked for information regarding the Peter's Way land swap and Chairman Iuliano responded that the Board will review Counsel Saint Andre's opinion, consider it, decide how to proceed and then release it. There is no motion on releasing the opinion.

Town Manager Murphy-Rodrigues asks whether residents should be informed that an attorney has been hired to which Vice-Chairman Woodard responds yes. Selectman Brown asks what level of access will have to Mr. Silverstein to which Murphy-Rodrigues responded that, as with Town Counsel, residents

would not have access, adding that residents do not fall under the Town's insurance or have the same privileges

At the conclusion of the Sudbury Station discussion, Selectman Haarde recused himself for the Cell Tower discussion at 6pm.

Cell Tower

Counsel Saint Andre explained that a cell tower project in town has been appealed by neighbors. A settlement seeks $20,000 to cover a lawyer, fences, and trees. Cell Tower operator Varsity is asking the Town to pay half since the Town approved the site. Varsity also asked for the Town to possibly extend the lease.

It is noted that it would be good to get the cell tower up, and that the Police Department would like to place microwave on top of tower to enhance their communications. There would be no out of pocket cost, it would be deducted from the money that Varsity would owe the Town for rent and Police Department equipment installation. Varsity has paid $20,000 to the Town and it is still being held. Varsity is proposing to pay neighbors $20,000 and the Town excuse $10,000 of equipment cost.

Counsel Saint Andre suggested offering $5,000 to which Vice-chair Woodard agreed. It is noted that the ZBA will not have to amend the decision, but the lease itself may need to be amended if they are only paying $15,000 instead of $20,000.

Selectman Simon moved to permit Town Counsel to negotiate with the residents who have filed suit regarding the cell tower at DPW and/or Varsity wireless, and to make a payment of up to $6,000 to be adjusted by payments from Varsity wireless.

VOTED: Move to permit Town Counsel to negotiate with the residents who have filed suit regarding the cell tower at DPW and/or Varsity wireless, and to make a payment of up to $6,000 to be adjusted by payments from Varsity wireless.

It was on motion and roll call unanimously.

Chairman Iuliano: aye, Vice-chairman Woodard: aye, Selectman Brown: aye, Selectman Simon: aye, Selectman Haarde recused.

Town Manager Murphy-Rodrigues asked if the Town would offer to extend the lease instead of giving them the $5,000, Selectman Simon asks if the lease amount could be negotiated later, Murphy-Rodrigues responds yes.

Vice-chair Woodard noted that it could be worth more to Varsity to have a longer lease. Andre stated that rent goes up a certain amount each year. Various possible outcomes are discussed. Counsel Saint Andre suggests allowing Varsity to make an offer for what the 10-year extension would be worth to them.

Chairman Iuliano motions to adjourn.

Selectman Brown seconds this motion.

VOTED: To adjourn executive session.

It was on motion and roll call unanimously.

Chairman Iuliano: aye, Vice-chairman Woodard: aye, Selectman Brown: aye, Selectman Simon: aye, Selectman Haarde recused.

There being no further business, the meeting adjourned at 6:16pm.