

IN BOARD OF SUDBURY SELECTMEN  
TUESDAY, JUNE 17, 2014

Present: Chairman Charles C. Woodard, Selectman Lawrence W. O'Brien, Selectman Robert C. Haarde, Selectman Leonard A. Simon, Vice-Chairman Patricia A. Brown and Town Manager Maureen Valente

Staff Present: Director of Planning and Community Development Jody Kablack; Assistant Town Manager Maryanne Bilodeau; Assistant Planner Jim Kupfer; Conservation Coordinator Debbie Dineen; Elizabeth Rust, Housing Consultant

The statutory requirements as to notice having been complied with, the meeting was convened at 9:15 a.m. in the Silva Conference Room, Flynn Building, 278 Old Sudbury Road.

Chairman Woodard called the regular meeting to order at 9:15 a.m.

**Conservation Restriction, 54 Moore Road**

Ms. Dineen requested the approval of the Board of Selectmen for a conservation restriction at 54 Moore Road. Ms. Dineen distributed a plan showing 54 Moore Rd. There are two parcels involved, one with a house and the other with no structure. The owner is looking to grant the Town a conservation restriction in perpetuity. Ms. Dineen stated that with this restriction, it would create a small conservation corridor and retain the ability to maintain the trout fishery. Town Counsel has reviewed the restriction.

Mr. O'Brien asked if there will be public access to pond on the parcel. Mrs. Dineen responded that there is no public access.

Mr. Simon asked if Ms. Dineen sees any down side to approving the restriction. Ms. Dineen stated that she does not see any negative outcomes.

Mr. O'Brien made a motion to approve the conservation restriction as referenced on the plan. The motion was seconded by Mr. Simon. The vote was unanimous.

**Regional Housing services Office Inter-Municipal Agreement**

Ms. Kablack requested a vote by the Board of Selectmen to sign an Inter-Municipal Agreement for the FY15 Regional Housing Services Office

Ms. Kablack provided an overview of final Inter-Municipal Agreement (IMA). Each Town's legal counsel has reviewed the document. Each appropriate Town Board of Selectmen will be reviewing the document this week. The main change to the agreement is that the office will now rotate to a different member town every three years. Concord will house the office for FY15-17. Acton will likely house the office in the next three-year agreement. The IMA is among six member towns to monitor and provide technical assistance. The office is staffed by three part-time housing planners. Concord issued a RFP for staff and are reviewing applications now. The total budget is \$166,800 for all communities. Town Managers of the region review the budget once a year and an advisory committee meets quarterly. Lincoln recently dropped out and Acton joined.

Housing Consultant Elizabeth Rust gave an overview of the program. She stated that most services are to individual Towns, directed by Planning Departments, and are not normally regional. The RHSO mostly provides monitoring of affordable units and is not an advocacy group. They also administer the HOME federal funds. Specifically for Sudbury, they provide Housing Trust support, oversight of The Coolidge project, HOME, and technical services. The RHSO has become a sustainable model.

Mr. O'Brien asked if the RHSO was performing duties that CHAPA used to perform.

Ms. Rust responded by stating that CHAPA provided affordable unit oversight. The RHSO covers as much and more. IMA illustrates responsibility of lead community. Ms. Rust also provided a more detailed historic budget for review. Budget is based on estimated hours. Hours vary by need and funds are rolled over to the following year if the Town has not expended its allocation.

Ms. Brown asked about the contingency amount shown. Ms. Rust stated that when the RHSO originally established the program they were not sure how staffing would work and towns all agreed to add contingency. The amount was never billed or needed, and is removed from the FY15 budget.

Mr. Simon stated that if moving every three years becomes dysfunctional, then the RHSO should revisit the issue but if it is not then he has no issue. He also stated that he received advanced notice from Staff about this topic during office hours and was appreciative of that.

Mr. Woodard asked if Exhibit B should be for one year. Ms. Rust stated that he was correct, as the budget changes every year.

Mr. Woodard asked if Town Counsel had any questions. Ms. Kablack stated that each had minor questions but nothing substantial and that the IMA was drafted mostly by Sudbury.

A motion was made by Mr. O'Brien to approve the signing of the IMA and was seconded by Mr. Simon. The vote was unanimous.

#### **Sudbury Housing Trust Home Preservation Program Update**

Ms. Rust provided an update on the Home Preservation program. The program's goal is to buy down one unit per year and make the unit affordable in perpetuity. The program currently has a commitment on its 7th home. The home was on the market for \$385,000. It was on market for three days. Timeliness is very important. This item is just for information, no vote needed.

Mr. Woodard asked for more information about the restrictions.

Ms. Rust explained that the unit will have a deed restriction pursuant to MGL c. 184, s. 31-32 that makes it affordable through DHCD in their LIP program in perpetuity. The restriction is for the property and not the owner.

#### **Entertainment License, Subway of Sudbury**

The applicant for a new Entertainment License, Subway of Sudbury, wishes to play the radio from 7 a.m. to 10 p.m. A motion was made by Mr. O'Brien and seconded by Mr. Simon to approve the new entertainment license, date to expire December 31, 2014. The vote was unanimous.

#### **IRS Audit Update**

Ms. Valente provided a preliminary report on the IRS audit on payroll taxes and worker classification. IRS has been moving through towns doing similar audits. The issue is how the IRS defines an employee versus a contracted service and deals with the treatment of employee uniforms, vehicle allowance, etc. The Town has a different interpretation than the IRS on this regulation. Ms. Valente stated the Town may want to engage a tax attorney. Ms. Valente gave an example of services that are contracted out on a regional basis that the Town does not define as an employee. The Town has one independent contractor to remove dead animals from the roadway. He responds once Town Police request his service and he

completes this services for several towns as a contractor. However the IRS would deem this individual as an employee. The Town has two opportunities to appeal and it is an expensive process after the fact to appeal. Currently the IRS is not assessing interest or penalties for the employees the Town deems contractual services. Mrs. Valente stated that there are funds in the benefit budget to address this issue and is very concerned about providing these services in the future.

Mr. O'Brien asked if other communities are having these issues. Ms. Valente stated that yes, the IRS has stated to her that other towns have had the same issues but would not provide specific towns.

Mr. O'Brien stated that very specific contractors would be a great concern from several towns and asked if the Town should speak with the Massachusetts Municipal Association to raise the issue to the State level.

Ms. Brown stated that this is a serious issue for IRS in the private sector for some to avoid paying social security taxes. Ms. Brown recommended that the Town get a tax attorney—somebody who deals with the IRS on an ongoing basis, who is familiar with the internal IRS complaint resolution procedures.

Ms. Valente was not clear how many employees, and whether if the regulation was to remain the Town would have to change policies on how to offer certain services. The schools also have a lot of specialists.

Mr. Simon stated that the IRS places the burden on tax payers to prove and it is impossible for the town to keep up with the law and interpretation. The issue of an independent contractor versus an employee is who controls how a person does their job. The Town could prove that a person is shared by multiple groups, and how work is designated, and obtain affidavits from contractors. The right to contract is an independent judgment by a Town and contractor. Mr. Simon would also prefer an employment attorney rather than a tax attorney.

Ms. Brown disagreed with the recommendation for an employment attorney, stating that we should engage someone who is familiar with the IRS, who understands the internal IRS complaint review process, and who understands how to cite the IRS manual, code, and tax court precedent in presenting our situation as arguments that are persuasive to IRS representatives.

Ms. Valente stated that she will have to work with HR and may need advice from both attorneys.

Mr. Simon offered to write out a memo outlining his thoughts on the matter.

### **Featherland Park Gift**

The Board of Selectmen are reviewing the Lincoln Sudbury Youth Baseball Agreement and did not vote on the matter.

Ms. Valente stated a few changes from the previous draft, item 7 and Schedule C.

Mr. Woodard asked if specific user groups would be mentioned on C and if the Town is to support this agreement as a gift.

Mr. Simon also asked if this is a contract or an acceptance of a gift. He stated that this is more of a contract. Acceptance of a gift normally does not have conditions. Mr. Simon stated the agreement should acknowledge user groups on a separate document, like a signature page, and should include all minutes as part of this agreement so that those looking back would know how this agreement came about.

Mr. Haarde stated that if they are to request a user agreement for the fields that the Rail Trail project should require signatures from abutters.

Selectman Woodard stated that it is different and agrees that the Town should have something in writing that the users for the field submit a letter of understanding.

Board members continued the discussion as to how formal a vote is needed from each user group. It was decided that a formal vote and signature from the representative of each user group should be submitted. It is LSYB's responsibility to make sure all votes are received.

Mr. Woodard stated he had a few minor typos, and a question on a date. Mr. O'Brien stated they should receive clarification from the Parks and Recreation Director on the schedule. Ms. Valente stated she will make the edits and send an agreement letter for users to sign.

There were no additional comments from other Board members for changes.

Mr. O'Brien made a motion to adjourn. The motion was seconded by Ms. Brown. The meeting adjourned 10:34 a.m.

Attest: \_\_\_\_\_  
Maureen G. Valente  
Town Manager-Clerk