

IN BOARD OF SUDBURY SELECTMEN
TUESDAY, JUNE 17, 2014
EXECUTIVE SESSION

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 G. Valente

The statutory requirements as to notice having been complied with, the meeting was convened at 8:03 a.m. in the Silva Conference Room, Flynn Building, 278 Old Sudbury Road.

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

Chairman Woodard called the meeting to order at 8:03 a.m.

Mr. Woodard entertained a motion to go into Executive Session to discuss strategy with respect to land negotiations if an open meeting may have a detrimental effect on the bargaining position of the public body, and that the Board would return to regular session at the conclusion of the Executive Session. Mr. O'Brien seconded the motion and a roll call vote to go into Executive Session commenced – Charles Woodard – aye; Patricia Brown - aye; Robert Haarde - aye; Larry O'Brien - aye; and Len Simon- aye. The Board entered into Executive Session at 8:05 a.m.

Ms. Valente referenced a memo prepared by Ms. Kablack, Ms. Dineen and Town Counsel Paul Kenny dated June 2, 2014. Ms. Kablack provided a summary of the memo. She explained that Ms. Dineen and Town Counsel Paul Kenny had been dealing with the developer of Johnson Farm during the DEP process in late 2013 and in early 2014. In late April of 2014 Mr. Moss discussed the possibility of selling the land to the Town of Sudbury, and requested a meeting with Ms. Dineen and then-Selectman John Drobinski. On May 8, 2014 Mr. Moss met with Ms. Dineen and Mr. Drobinski and made a verbal offer to sell the land for \$3.7 million. Mr. Moss has since purchased the property and is therefore free to negotiate any future sale.

Ms. Kablack noted other considerations stated by Mr. Moss - the price is not negotiable; he is willing to give the Town his engineered plans and any receipts to justify the price. Essentially the costs are broken down in \$1.85 million for the property and \$1.85 million in engineering and legal fees.

Potential funding sources may be CPA funds, debt exemption and private fund raising. While Mr. Moss is eager make progress he indicated a willingness to wait until May of 2015 for Sudbury's Town Meeting, but he would prefer it if there were a special town meeting in the fall. He requested a non-refundable deposit if the project has to wait until the 2015 Annual Town Meeting. Ms. Kablack opined that the abutters do not know about the offer. Ms. Dineen did ask about selling below the asking price but Mr. Moss said that he is not willing to lower the price. There is not another meeting scheduled yet to further the conversation with Mr. Moss. As a next step the Board of Selectmen would have to determine whether or not they are interested in pursuing the offer.

Ms. Valente asked the Board for direction. She said that an Executive Session was necessary so that the parcel being discussed is not publically identified at this point until the Selectmen feel comfortable with their direction. Ms. Valente reminded those present that there may be two Special Town Meetings scheduled for the Fall. One would be for the Nixon School project, and one may be necessary if additional funds are needed for the Police Station. Therefore, a Special Town Meeting would not have to be created especially for Johnson Farm.

Mr. O'Brien asked about the value of the property. Ms. Kablack said that the offer is to purchase the entire property, which includes the single family house lot. Mr. O'Brien noted that CPA funds cannot be higher than the appraised value. Ms. Kablack noted that an appraisal will need to be prepared, and it will take into consideration the value of the land as approved in the Comprehensive Permit.

Mr. O'Brien said that on the one hand the land has preservation value with the significant adjacent conservation land and the proximity to the Town's water supply wells. But he is also considerate of the Town's obligations to get to 10% affordable housing. He asked if the Selectmen want to aggressively pursue a solution, and opined that this parcel can provide significant progress. As of yet he was undecided on which way to go. He added that developing one parcel is not going to enable the Town to reach its 10% obligation, but combined with two or three parcels it could.

Ms. Brown said that she was not sure that Johnson Farm is the parcel where the Town solves the 40B problem, but without knowing what we can do at other parcels she could not yet make that statement. She wanted an appraisal before making any decision. For the record Chairman Woodard confirmed that the Town would not be buying the land to then put a 40B on it, but if the Town did not proceed with purchasing the property, would be letting the existing comprehensive permit proceed.

Mr. Haarde asked about the total number of acres. Ms. Kablack said that the site was comprised of thirty-five +/- acres. Mr. Haarde asked whether the Town had paid this rate per acre before. Ms. Kablack said that the Town has paid similar costs previously, however noted that the better comparison would be the amount paid per buildable lot. Ms. Kablack can provide a comparison sheet of recently preserved parcels. Mr. Haarde wondered whether the Town could ever develop the land in a non-obtrusive way that could get abutter support. Ms. Dineen said that would depend on what the development looks like. She predicted that abutters on all sides might not want to look at a 40B. She said that there is not an area where no one is affected. Ms. Kablack suggested that perhaps the Town consider buying a portion of the development through a buy-down to reduce the overall number of unit, but she also cautioned against the Town buying the land and developing it.

Ms. Valente asked how many units could be sustained in the front area of the lot. Ms. Kablack noted the Town's previous proposal was for six to eight attached units, however the abutters to the front of the property may object to anything built at the front.

Ms. Dineen noted that six to eight units would not make much of a dent in reaching the 40B percentage so this would be sort of a trade-off. Mr. Haarde said that twenty to thirty units would make it more worthwhile.

Mr. Haarde wondered whether the Town could buy the property and sell it to another developer. Ms. Dineen said that Mr. Moss would prefer to keep the property and develop it himself and collect the rental fees to recoup any money that he has put into the property.

Mr. Haarde then asked how much financial support the Town could expect to obtain from SVT, the Sudbury Foundation or even Mass Audubon. Ms. Dineen did not think that SVT could provide much. They may be able to assist with appraisals, up front investigations, and fundraising, but funds would probably be in the \$100,000 amount. She felt that Mass Audubon does not have money for land acquisition, and the site is not near any of their properties so might not have an interest. She is not sure where the Sudbury Foundation would stand. Mr. O'Brien inquired about applying for a LAND grant as the Town did on Pantry Brook Farm. Ms. Kablack added that the timing is not conducive to that as the deadline is soon and the closing schedule is dictated by the State and may not fit with Mr. Moss' time table.

Ms. Kablack said that perhaps SVT can try to fundraise but Sudbury has not typically seen large donors for land. Mr. Haarde added that the Sudbury Foundation's primary gifts are for educational and youth initiatives. Ms. Kablack noted that the Sudbury Foundation has given funds for the Nobscot purchase. Mr. O'Brien suggested that the Sudbury Foundation may be more inclined to give if more groups are involved rather than being the sole donor.

Ms. Dineen said that the land could be developed into two or three conventional house lots. Ms. Kablack said that two lots can be divided off in an ANR process and would sell for approximately \$350,000 per lot. So the Town could recoup some of the cost of purchase with that simple option.

Mr. Haarde asked if SVT could do this but Ms. Kablack felt that it should happen in conjunction with the sale, as Bob Moss has the resources available.

Ms. Dineen said that another alternative which could yield a higher return is to have a two to three lot subdivision plan in the front and a large estate lot in the rear. A conservation restriction could be in the back which might be more palatable for abutters.

Mr. Simon asked why Mr. Moss wants to sell now. Ms. Dineen said that Mr. Moss has indicated he has other large projects in the pipeline (finishing a project in Southborough and starting a 300 unit project on the Hudson/Marlborough line) so he would rather focus on those developments than be tied up in court for years in Sudbury. Mr. Simon said that he saw reasons to go ahead and also some drawbacks. One benefit is to avoid a new housing development in the southern part of town at Landham Road. He said that people in South Sudbury have said that they've borne the brunt of too much development, so purchasing is one way to avoid having more new development. Mr. Simon asked how much is wetland and upland. Ms. Dineen said that approximately eighteen acres are wetland (50%). Mr. Simon said that he would like to reduce the price by building on some amount on land but not through 40B. He asked whether the proposal by Mr. Moss would require fill. Ms. Dineen said that fill would be required in the riverfront area.

Ms. Dineen said that fill may not necessarily be needed for an estate lot. The most fill is primarily for the driveway and not the lot. There is an existing cart path that could be used for driveways so all of that fill would no longer be needed.

Mr. Simon said that he would not want to see the land sold to another developer and a different development scheme permitted. He was concerned about whether the engineering studies would be of much value to the Town since we would likely not use them in any significant capacity. He noted that it would be desirable to preserve the land, however it may not be possible to preserve every parcel that is proposed for development. He said that the Town has been careful with its resources and its bonding ability and needs to continue in this vein. He also does not see the benefit of developing this parcel if the Town decides to purchase it.

Ms. Dineen noted that the more development planned on the property the less likely it is that other environmental organizations would fund its preservation.

Ms. Kablack noted that any change in the development scheme, either by Mr. Moss, a different developer or the Town, will involve the risk of additional appeal and litigation and reduce the value of the property.

Mr. Woodard asked where the land ranked on the Open Space Plan. Ms. Dineen said that it ranks mid-way and it is one of the larger pieces of land available now since we have successfully preserved several

in the last few years. She reminded the Board that Johnson Farm was always identified as a property that could have some development opportunities in the front portion.

Mr. Haarde felt that given the abutters concerns about congestion in the area plus the other recently developed parcels in the area, that Johnson Farm should move up in priority for open space protection.

Ms. Brown said that she didn't understand how Mr. Moss's problem would be addressed through a buy-down in the density of the comprehensive permit development, nor was she certain that Mr. Moss would agree to this. Her concern is that the Town would spend money and not own the land and Mr. Moss would be in litigation forever. Ms. Kablack noted that Mr. Moss has gone through the trial process already and the court is waiting to see what happens at DEP.

Ms. Kablack said that the appraiser will base an appraisal on the approved comprehensive permit so the value of the land will be higher than the 2007 appraisal. She also noted that there is bonding capacity in the Town's CPA reserves for the total amount of the offer. Ms. Valente noted that there are a number of projects that will be proposed in the next few years for recreation, Town Hall and others, and that it is important that sufficient CPA money is available for those projects as well. Ms. Kablack noted that if the Johnson Farm parcel is purchased and bonded using CPA funds, it would be the year 2020 before there would be \$3 million in additional bonding capacity.

Mr. Simon said that Mr. Moss's figure of \$3.7 million likely shows him not having any loss. The land itself is \$1.85 million and the reimbursement for legal and engineering is valuable for Moss but not for Sudbury. He feels that the Town should begin a negotiation with Mr. Moss. He wanted to see reasons why less than \$3.7 million is not an option for Mr. Moss.

Mr. O'Brien asked whether Mr. Moss might have verbal approval for sale of the land to another developer. Ms. Kablack said it is doubtful since there is litigation pending.

Ms. Brown said that she sees the options as buy or not buy. She said that staff has recommended that the Town not develop the land into a large development, and she supports staff's expertise in that area. She said that creating 2-3 lots may be acceptable to reduce the cost, and buying-down the density is not her favorite plan but she suggested that it was worth taking a look at that option.

Mr. Haarde was inclined to buy the land since the Selectmen and staff had discussed a lot of options. He suggested negotiating the price, and felt that it would be possible to lower the price by a few hundred thousand. The Town can discuss development options once we own the property.

Mr. Simon also was inclined to buy or acquire, however he said that if the Town is going to spend the money he would like to see a tangible benefit such as substantial progress towards our 40B goal, or total preservation – not a 'less bad' option. He also felt that the \$3.7 million price was negotiable.

Mr. O'Brien asked if there was a timeline for making a decision on the purchase. Ms. Dineen said that Mr. Moss wants to know what the Town's feeling is soon. Right now Mr. Moss is continuing with litigation and the DEP hearing scheduled for July.

Mr. O'Brien cautioned that if the land is purchased for any scenario other than 100% preservation there may be the potential for a challenge to the plans. In particular, there may be issues raised about the Town building on the front of the parcel. He again mentioned that Mr. Moss' current proposal is a step toward reaching the Town's affordable housing goal.

Mr. Woodard noted that it was the Board's general sense that staff should pursue obtaining an appraisal. Mr. O'Brien also wanted to see Mr. Moss' receipts.

Ms. Dineen said again that the end of July is when DEP's hearing would occur. She thought that by September an answer from the adjudicatory law judge would be rendered. At that time Mr. Moss would have to decide whether to apply for a modification with the ZBA. That would be his deadline. He needs an early indication of what the Town is thinking so that he can determine whether to continue with the ZBA modification process. Ms. Kablack said that the abutters will continue to have appeal rights to court after the DEP decision, as well as with the ZBA modification.

Mr. Simon requested two items, one would be a talking points document, or arguments to present to Mr. Moss as to why the \$3.7 million price is high for the Town, and the other would be a timeline of events and deadlines the Town would be facing.

Ms. Kablack also noted that funds are needed for the appraisal, and the most likely source is from CPA admin funds. She said that the CPC could convene in an executive session. The costs might be about \$6,000. She also noted that SVT may have funds too, however the CPA would be more likely.

Ms. Valente asked whether the Board wanted to remain in executive session on this issue.

The Board agreed that it should not go public with this plan but staff could proceed with obtaining an appraisal. Mr. Moss should be asked for his receipts. It would be appropriate to let Mr. Moss know that the Board of Selectmen have met and are considering the offer. Limited development scenarios for funding could be determined. A meeting with the Board of Selectmen will be scheduled when the appraisal is completed. Most likely that would be about a month from now. Town Counsel will be asked about the appraisal so that the Board can have something in writing to consider. This issue is still a confidential matter as it would be premature to go public and risk having Mr. Moss withdraw his offer.

The Executive Session was adjourned at 9:15 a.m.

Attest: _____
Maureen G. Valente
Town Manager-Clerk