

IN BOARD OF SUDBURY SELECTMEN
EXECUTIVE SESSION
THURSDAY, APRIL 18, 2019
FLYNN BUILDING – SILVA ROOM

Present: Chairman Robert C. Haarde, Vice-Chairman Daniel E. Carty, Selectman Patricia A. Brown, and Town Counsel Jonathan Silverstein. Participation via conference phone: Town Manager Melissa Murphy-Rodrigues and Town Counsel Lee Smith.

Absent: Selectman Leonard A. Simon and Selectman Janie Dretler.

The statutory requirement as to notice having been complied with, the meeting was convened at 3:30 p.m. in the Flynn Building.

Executive Session

It was on motion unanimously

VOTED: To immediately enter Executive Session to consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body (Camp Sewataro) pursuant to General Laws chapter 30A, 21(a)(3).

Board members reviewed the “Letter of Intent – Liberty Ledge and Camp Sewataro, Sudbury, Massachusetts – April 18, 2019.” Members noted that the Land Restrictions were reduced and now included “i) night lighting (e.g. field Lighting) fixtures taller than 20 feet in height and ii) the construction of cellular towers or any like-kind towers on the Land.”

A discussion followed in regard to the CAMP ASSETS section. Attorney Silverstein noted that the seller is suggesting that charitable assets are being donated and business assets including trademark are part of the assets. He stated that the sellers are calling it charitable donation to assure a tax break being received, but that action has nothing to do with the Town. He added that this topic might come up at May Town Meeting.

Attorney Silverstein explained that the buyer has some personal tools and maintenance equipment that he wants to keep on the property until April 30, 2020.

Chairman Haarde inquired about the bobcat vehicle. Town Manager Rodrigues stated that all vehicles were the property of the owner and would not convey with the land.

Attorney Silverstein stated that he had concerns about the “INDEMNIFICATION FOR CAMP ASSETS” portion of the Letter of Intent and said that approval of this section could subject the Town to a potential litigation situation and the Town could not finance such an unknown element, which was far reaching and very broad in scope. A discussion regarding indemnification took place. At this time Attorney Silverstein made a phone call to recommend removing the “INDEMNIFICATION FOR CAMP ASSETS” section. Attorney Silverstein reported back to the Board that the “INDEMNIFICATION FOR CAMP ASSETS” had been eliminated by the buyer, as the Town requested.

Town Manager Rodrigues stated that with the signing of the “Letter of Intent” all provided information should be released to the public and included on the Sewataro section of the Town website.

Selectman Brown maintained that the sooner this information was made public, it would help residents understand what is being voted on at May Town Meeting.

Town Manager Rodrigues stated that a press release would go out immediately after the Board signed the "Letter of Intent." She added that there was not enough time for the Sewataro Town Forum, but the topic will be an agenda item on the April 30th BOS meeting.

The Board discussed the press release. Vice-Chairman Carty asked if the appraisal would be made available to the public at this time. Town Manager Rodrigues agreed that the appraisal would be made available to the public via the Town website immediately. She maintained that there was no need to have an additional appraisal performed.

The Board reviewed both submitted correspondence from Selectmen Dretler and Simon. Item #11 of Selectman Dretler's correspondence was discussed at length. Attorney Smith recommended that the private way be detailed in the Purchase and Sale Agreement.

Attorney Smith asked what would happen if a Town purchase is unsuccessful at May Town Meeting. Town Manager Rodrigues replied that the offer would then present to the next bidder.

Selectman Brown motioned, and Vice-Chairman Carty seconded the motion.

It was on motion unanimously

VOTED: That the "Letter of Intent" be amended by removal of the "INDEMNIFICATION FOR CAMP ASSETS" clause as agreed to by the seller and the Town of Sudbury and will be signed by Board members at this meeting.

Selectman Brown motioned that Town Manager release the amended Sewataro press release on April 18 or April 19, 2019.

It was on motion unanimously

VOTED: That Town Manager Rodrigues release the amended Sewataro press release on April 18 or April 19, 2019.

Selectman Brown motioned to release the Sewataro appraisal to the public.

It was on motion unanimously

VOTED: To release the Camp Sewataro appraisal to the public.

Close Executive Session

At 4:20 p.m. Selectman Brown motioned, and Selectman Carty seconded the motion.

It was on motion unanimously

VOTED: To close Executive Session.

Attest: _____
Melissa Murphy-Rodrigues
Town Manager-Clerk

From: Dretler, Janie
Sent: Wednesday, June 17, 2020 3:47 PM
To: Hayes, Henry <HayesH@sudbury.ma.us>
Subject: Fwd: Dretler - Comments for Thursday's Executive Session re Sewataro

Hi Henry,

I want to be certain that my email dated 4/16/2019 (below) will be attached to the 4/18/19 executive session meeting minutes. I don't believe my email needs to be included in tonight's packet but it should be attached thereafter. Also, I believe former Selectman Simon also wrote a letter and asked to have his correspondence attached to the minutes as well.

Thanks,

Janie

Begin forwarded message:

From: "Rodrigues, Melissa" <RodriguesM@sudbury.ma.us>
Date: April 17, 2019 at 3:32:34 PM EDT
To: "Dretler, Janie" <DretlerJ@sudbury.ma.us>
Cc: "Jonathan M. Silverstein" <jsilverstein@k-plaw.com>, "LSmith@k-plaw.com" <LSmith@k-plaw.com>
Subject: RE: Dretler - Comments for Thursday's Executive Session re Sewataro

Hi Janie,

I will ask that this be read into the record.

I will state however, that I do not think a subsequent appraisal is necessary. The Taylors have removed the open space/ recreation restriction requirement. The only two restrictions left are the field lights and the cell phone towers. The highest and best use contemplated by the appraisal and under zoning is residential use. The restrictions for field lighting and cell phone towers do not effect the highest and best use contemplated by the appraisal and used for the appraisal amounts.

Jonathan and Lee- what are your thoughts?

-----Original Message-----

From: Dretler, Janie
Sent: Tuesday, April 16, 2019 9:39 PM
To: Rodrigues, Melissa <RodriguesM@sudbury.ma.us>
Cc: Jonathan M. Silverstein <jsilverstein@k-plaw.com>; LSmith@k-plaw.com
Subject: Dretler - Comments for Thursday's Executive Session re Sewataro

Melissa,

I am disappointed that today's executive session was canceled due to the late arrival of the Chair and subsequent lack of a quorum. Please note that I made significant changes to my planned family vacation (during school vacation week) to participate in today's call at 1pm. I believe the last scheduled executive session also started more than 30 minutes late. The meeting has now been rescheduled to a time that I am not available - Thursday, April 18 at 3:30p – without any attempt to find a time that worked for all

members of the Board.

As I indicated, I am available for an executive session anytime on Tuesday, April 23. I can also attend in person. The proposed purchase of the Sewataro land is an important issue for the town of Sudbury and one in which all Selectmen should be able to participate. In the unlikely event that my plans change for Thursday, please provide a number that I can call into.

In preparation for today's executive session, I compiled my questions and concerns regarding the latest Sewataro/Liberty Ledge Broker's letter dated April 13, 2019 and have outlined them below. I would like this email to be read in its entirety at the April 18 meeting as well as included in the meeting record:

1) The Town should have a new appraisal due to the deed restrictions put forth by the Taylor family. Interestingly, no restrictions were outlined in the initial RFP other than a desire to operate the camp for the 2020 season. The additional (and significant) restrictions were presented only after the bid was rejected by the Seller on April 3, 2019. The restrictions were not made clear by the Seller or Broker prior to the February 20, 2019 appraisal for Highest and Best use (33 parcels / 31 homes / assumed subdivision approval) - \$10,370,000. In fact, the Seller's Goals and Objectives were stated to maximize the net value of the Property through a fee sale. To do anything less than a new appraisal based on the restrictions is cause for great concern. The lack of a new appraisal and any and all potential restrictions should be made clear to town residents as soon as possible and at Town Meeting prior to any presentation and vote.

Reference for prior subdivision approval noted above: Judgment approving the subdivision plan in accordance with the parties' Stipulation Amending Decision and filed with the Court as to the Plaintiffs' appeal from the Decision of the Sudbury Planning Board dated November 23, 1987, entitled "Definitive Subdivision Decision - Liberty Hill Estates." <http://masscases.com/cases/land/1988/1988-125-832-DECISION%20&%20ORDER.html>

2) The Taylors were well aware that the Town had identified October 2019 as the timeline for a Town Meeting as indicated by the BOS (voted and approved) goals for 2019 and the letter to Sam Cole dated April 4, 2019:

"Timing: We are concerned about the timing of this process. The Town has only one month until town meeting and two months until the election. The Town respectfully requests that these conversations continue with an eye toward negotiating a final agreement to bring before an October Town Meeting and election. We could have a contingent purchase and sale agreement signed well in advance of October Town Meeting and likely before summer camp begins this year. If this timing was agreeable we could close after the 2021 camp season, allowing the family to run Camp Sewataro for one more year. We think this timeline benefits everyone, allowing the family to benefit from another year of camp revenue and giving the town the time it needs to sufficiently and accurately educate the public on the merits of the acquisition. We want this acquisition to be a great success, and we think this will help us move toward that goal."

3) Municipal use doesn't appear to be consistent with the Taylor's vision for the property. It is noticeably absent from Sam Cole's letter dated April 13, 2019 - paragraph 2, "There is no doubt that the family has a deep and emotional connection to the property and that the vision articulated by the Town to use the property for "open space, recreation, preservation..." is consistent with the family's desired further use of the land."

The Vision statement of the Town's letter dated March 27, 2019 specifically states, "The Town of Sudbury is interested in purchasing this property for open space, recreation, preservation and other municipal purposes."

4) The Town's initial (and only) bid of \$11,269,700 included the land, the camp business (all intellectual property, etc) and personal property. This bid was rejected by the Taylors. On April 3, 2019, the broker requested a revised bid by 5pm on April 5, 2019 stating the new purchase price should include not only the value of the land but also the personal property and intellectual property. The Town rejected the new restrictions and also stood firm on its offer price. The Town also requested but still has not received three years of audited financials and an inventory of personal property.

5) Per the April 9, 2019 email from the Town Manager, after a meeting on April 8 between Town Manager Rodrigues, Chair Haarde, Sam Cole - broker for seller, Mark Taylor and Mr. Dowie, it was stated that "they don't want to sell the camp name or business, but would be willing to help with camp transition. Would include personal property, but not name." Also, the seller would like to restrict 50% of the land and restrict lighting and cell towers.

Now, per the April 13 letter, the owner may donate (so called charitable contribution) the business to the town. Again, the town has not received the requested three years of audited financials or an inventory of personal property. This is not a gift of cash, this is a gift of a complicated business that has not been fully vetted, appraised or fully evaluated by the town or a consultant. We do not fully understand the liabilities of taking on a 60 year old camp business that has seen its insurance rise significantly. Twelve years ago, Mark Taylor stated to NPR Marketplace that the camp's insurance had tripled in the past 10 years, even though they hadn't filed a claim in 48 years. Mark Taylor: "We had riflery - that had to be taken out. And there was a ropes course that was taken down...They didn't demand we take it down, but pressure was applied to have us remove it."

<https://www.wbur.org/news/2007/07/13/not-your-parents-summer-camp>

6) The Taylors still want to deed restrict the property. We must have a new appraisal as the original appraisal was for HIGHEST AND BEST USE - not deed restricted property.

7) The requested land restrictions include no night lighting (i.e., field lighting) greater than 20' and no cell towers or any like-kind towers on the Property. It is not clear to me that the Sellers are willing to forgo a deed restriction that would further restrict the use of the property. The language remains vague, "The Taylors would be supportive of a deed restriction to ensure the future use of the Property is consistent with the Town's current vision."

8) The Seller has indicated a closing date not later than October 1, 2019. However, they are suggesting the Seller would still have access to and be able to store personal items on the property until April 30, 2020.

9) Please confirm the Property will be clear of any and all tenants by closing.

10) Again, I am requesting a revised appraisal to address the new terms and restrictions. The original appraisal was for the HIGHEST AND BEST USE which was a subdivision with 33 parcels / 31 homes along with those terms outlined on page 8 and 9 of the February 20, 2019 appraisal. The appraisal did not account for ANY restrictions to the land. Nor did the appraisal or any assessment evaluate costs

associated with making the property ADA compliant - there are more than two dozen buildings/small structures, four outdoor heated shallow pools, two outdoor ponds, etc.

11) I would also like to understand how Mr. Taylor will access his four parcels at the end of Greystone Lane. I believe it is currently a paper street.

12) All Town Boards and Committees should have an opportunity to state their opinions regarding the purchase of Liberty Ledge/Sewataro prior to May Town Meeting including but not limited to Park and Recreation, Conservation Commission, Community Preservation Committee, Sudbury Housing Trust, Planning Board, Board of Appeal and Finance Committee.

Notably, Park & Recreation recently voted 4-1 against the acquisition of this land for active recreation. The Land Acquisition Review Committee representative and Conservation Commissioners "did not feel a conservation restriction was appropriate as a method to preserve the Camp. The owner wishes to continue to operate as a camp. The property is already developed with a number of houses, outbuildings, roadways, etc. Although it might be a nice property to preserve for active recreation, use of the CPA Open Space funds would not be supported as the land is not predominately in a natural state." Refer to December 4, 2017 Conservation Committee minutes: https://s3-us-west-2.amazonaws.com/cdn.sudbury.ma.us/wp-content/uploads/sites/273/2017/12/ConservationCommission_2017_Dec_04_minutes.pdf?version=8ae28e7715b8c3cddfedeef381f46331

13) The BOS did not vote a member to negotiate with the Seller and it has come to my attention that numerous conversations and emails have occurred about the sale of this land as well as negotiations related to the purchase. The Chair has stated numerous times at meetings and in an email to residents dated March 23, 2019 that the land will "pay us back", "revenue potential for our town is considerable", "millions in revenue which Sewataro could generate for Sudbury", "Sewataro can also pay for itself". I respectfully request documentation to back up these statements.

I am very disappointed to not be able to participate in Thursday's meeting. It appears that very little effort was made to include the full Board. Thank you, however, for reading this email in its entirety at Thursday's executive session meeting as well as including it in the meeting record.

Best regards,

Janie Dretler

Letter of Intent
Liberty Ledge and Camp Sewataro, Sudbury, Massachusetts
April 18, 2019

The purpose of this letter is to indicate the basis upon which Liberty Ledge, LLC (“Liberty Ledge”), is prepared to sell a parcel of land containing approximately 44.3 acres together with the improvements thereon, located in Sudbury, Massachusetts and Camp Sewataro, Inc. (“Sewataro”) is prepared to transfer certain business assets to the Town of Sudbury (the “Town”).

This letter is a Letter of Intent only. It is not legally binding on either party, notwithstanding anything to the contrary elsewhere in this letter. It is, however, an indication of good faith intent between the parties to be detailed in a future contractual agreement if the parties so agree.

SELLER: **Liberty Ledge:** Liberty Ledge, LLC, a Massachusetts limited liability company

Sewataro: Camp Sewataro, Inc., a Massachusetts corporation

BUYER: The Town of Sudbury, Massachusetts acting through its Board of Selectmen

LAND: A parcel of land containing 33 tax parcels bounded by Greystone Lane, Haynes Road, and Julian’s Way, consisting of approximately 44.3 acres of land with improvements, in Sudbury, Massachusetts subject to the rights of others

CAMP ASSETS: The certain personal property of Sewataro, including (i) tangible personal property associated with the operation of the camp operated by Sewataro, an inventory of which will be delivered to the Town prior to Town meeting, but expressly excluding the Excluded Personal Property, and (ii) intangible personal property of Sewataro, including all right title and interest in and to Sewataro’s business names, and intellectual property, including but not limited to internet domain names, trademarks, service marks, trade names, logos, corporate names, client lists and registrations, copyrights (registered or unregistered), applications for registration thereof, and other similar protections

SALE PRICE FOR LAND: \$11,269,700, payable all cash on the Closing Date for the Land, subject to the contingencies included herein

CONTINGENCIES:

- A) Approval from the May Town Meeting, which is scheduled to begin on May 6, 2019.
- B) Passage of a Proposition 2½ debt exclusion referendum in accordance with Massachusetts General Laws Chapter 59 Section 21C at the Town election scheduled for June 4, 2019

If the Contingencies have not been satisfied by June 17, 2019, either party may terminate this Letter of Intent by notice to the other provided no later than June 17, 2019.

VISION FOR PROPERTY: Recognizing that the Town's vision for the Land is still evolving, it is the current intent of the Town to use the Land for open space, recreation, preservation, and other municipal purposes. The Seller will work collaboratively with the Town in order to present this vision to the residents of Sudbury at town meeting and elsewhere. The Seller would be supportive of a deed restriction to ensure the future use of the Land is consistent with the Town's current vision.

LAND RESTRICTIONS: Prior to the Closing Date, the Buyer and Seller will mutually agree to a deed restriction which expressly prohibits i) night lighting (e.g. field lighting) fixtures taller than 20 feet in height and ii) the construction of cellular towers or any like-kind towers on the Land

PURCHASE & SALE AGREEMENT: As soon as reasonably practicable, the Buyer and Seller shall cooperate in good faith to sign a mutually satisfactory Purchase and Sale Agreement. This letter of intent shall terminate if a Purchase and Sale Agreement is not executed by June 17, 2019 at 5:00 p.m., which date may be extended by agreement of the parties.

CLOSING CONDITIONS: The Buyer's obligation to close is also conditioned upon the following:

- A) Satisfaction of the Contingencies no later than July 1, 2019
- B) The Land possessing clear and marketable title
- C) A satisfactory environmental condition of the Land
- D) Land delivered free and clear of tenants

The Purchase and Sale Agreement shall provide for a forty-five day due diligence period for Buyer to complete its review of title and its review of the environmental condition of the Land. If the Buyer is not satisfied with its due diligence, Buyer shall have the right to terminate the transaction by notice delivered by the end of the due diligence period.

CLOSING DATE: The Closing shall take place on October 1, 2019 (the "Closing Date"), or as otherwise agreed by the parties.

CHARITABLE DONATION: As of the Closing Date, Sewataro intends to donate the Camp Assets, free of any encumbrances, to the Town. The parties will work cooperatively prior to the Closing Date to determine the structure of the charitable gift (either as a transfer of the Camp Assets or as a transfer of all of the shares in Sewataro) and to appropriately recognize the charitable gift. The parties acknowledge that the Town will not be responsible for determining the value of the charitable gift.

OTHER ITEMS: I) Mark Taylor will be given until April 30, 2020 to relocate his personal property (including landscaping supplies, tools and maintenance equipment) from the Property. An inventory of this "Excluded Personal Property" will be provided prior to Town Meeting and shall be excluded from the personal property of Sewataro to be donated to the Town.

2) The Seller will demolish the shed that encroaches on the abutting property prior to the Closing Date.

CONFIDENTIALITY:

The Buyer and Seller previously entered into that certain Nondisclosure/Confidentiality Agreement (the “Confidentiality Agreement”). Buyer shall provide Seller with a list of confidential materials that Buyer would like to have released from the restrictions in the Confidentiality Agreement no later than five business days from the date hereof, and Seller and Buyer shall negotiate in good faith to reach agreement on the list of documents that may be released from the restrictions. The parties agree that this Letter of Intent and the terms thereof shall not be subject to the Confidentiality Agreement once the Letter of Intent is executed by the parties hereto.

**INDEMNIFICATION FOR
CAMP ASSETS:**

To the extent permitted by law, Buyer shall indemnify, defend and hold harmless Seller and its members, shareholders, employees, directors, agents and officers, from and against any damages, liabilities, losses, taxes, fines, penalties, costs and expenses (including without limitation reasonable fees and expenses of counsel) of any kind or nature whatsoever (whether or not arising out of third party claims and including all amounts paid in investigation, defense and settlement of the foregoing) which may be sustained or suffered by any of them related to, arising out of or based upon the operation of the camp or the ownership of the Camp Assets on and after the Closing Date.

THIS LETTER IS INTENDED TO BE A NON-BINDING STATEMENT OF THE TERMS OF A PROPOSED TRANSACTION AND WILL NOT CREATE ANY RIGHT OR LIABILITIES FOR AGAINST EITHER PARTY. THE TERMS HEREOF ARE SUBJECT TO THE EXECUTION OF A MUTUALLY AGREEABLE PURCHASE AND SALE AGREEMENT.

LIBERTY LEDGE, LLC and CAMP SEWATARO, Inc.

By its Real Estate Advisor

McCall & Almy, Inc.

By:  _____
Samuel Cole

Date: April 18, 2019

Accepted this _____ day of April, 2019.

TOWN OF SUDBURY

By: _____

Name:

Its: _____

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TO: BOARD OF SELECTMEN
FROM: LEN SIMON
RE: SEWATARO
DATE: APRIL 17, 2019

Melissa, please read this memo into the record and have a hard copy marked by the scribe and made part of the record for the executive session.

1. This is still a five-person board. Neither the chair, nor any one member, has the authority to speak on behalf of the board, unless specifically authorized. No member has been authorized to speak on behalf of the board.
2. Mr. Haarde has spoken, and been quoted by the Taylors and Mr. Cole as though he speaks not only for the board, but for the entire town, and has done so outside the scope of his authority.
3. The Taylors and Mr. Cole should be informed that Mr. Haarde does not have authorization to speak for the board of selectmen or the town.
4. Comments made by Mr. Haarde have been adopted and quoted by Mr. Cole and Mr. Taylor. I am referring to comments such as 'vision', town leadership', restrictions on the future use of the property, commitments to preserve 50% of the total acreage as open space, 'prohibitions, agreement that any future development' 'the vision articulated by the town to use the property for open space, recreation, preservation'. None of these statements were authorized.
5. Mr. Cole's April 13, 2019 statement, "There is no doubt that the family has a deep and emotional connection to the property..." combined with his other statements about 'vision for the property', land restrictions, charitable donation, use of the property, and intellectual property are all clouds on the rights of the town to use the property as it sees fit, or to dispose of some or all of the property in the future, if it deems that to be in the best interests of the town.
6. The term 'vision' is ambiguous and subject to wide interpretation; a latent dispute waiting to be triggered in one, two, or ten years. There is no doubt the Taylors want to keep the property in its current condition, and any

future attempt by the town to change 'the vision' could be the match that ignites a legal dispute.

7. The term 'vision' should not be in any legally binding document for Sewataro.
8. There are worrisome parallels between the Peter's Way/town center/town cemetery land swap and the Sewataro transaction that put the town at risk for being sued for breach of contract regarding the use of the land if it does not, in some way, comport with the seller's understanding, and his "deep and emotional connection to the property'.
9. A new appraisal is necessary because of the discrepancy between the value of the land for its highest and best use, single family homes, and its use as open space and recreation. The town should not be paying the highest price for a sub-optimal use, and it should know the value of the property for the use it currently intends.
10. The Town Manager's letter of April 4 indicates the conversation should be continued to allow time to negotiate a final agreement that could be brought to the town at the October town meeting.
11. On April 9 the board unanimously agreed there was not sufficient time to schedule and hold a town forum on this large capital project and inform residents of the essentials of the proposal prior to town meeting on May 6 so they could make an informed decision.