

From: Leonard Simon [mailto:lensimon@comcast.net]

Sent: Monday, August 04, 2014 10:05 AM

To: Board of Selectmen

Subject: BFRT

Fellow Selectmen,

Attached please find a memo I have asked to be included in the packets for our August 19, 2014, meeting.

Len

MEMO

TO: Board of Selectmen, Maureen Valente
FROM: Len Simon
DATE: August 4, 2014
RE: Bruce Freeman Rail Trail

At the conclusion of the BOS meeting on July 22, 2014, I was concerned about the way the discussion on the Bruce Freeman Rail Trail unfolded and concluded. Something just did not seem right to me. After thinking about it, the reasons became clear.

On July 22, the Planning and Community Development office brought three issues before the Board. First, the scope of the work to be done in the 25% design plan. Second, whether to appoint an advisory committee. Third, whether to do an RFP or award the 25% design plan directly to GPI.

Looking back at Article 32 at 2014 Town Meeting, it reads:

To see if the Town will vote to appropriate an amount not to exceed \$150,000 in Community Preservation Act Funds from FY15 Revenue, as recommended by the Community Preservation Committee, for the purpose of preparing the 25% design plan for the full 4.4 mile Bruce Freeman Rail Trail in Sudbury to MA DOT standards, and to redirect remaining funds in the amount of \$27,684.56 from Article 24 of the 2007 Annual Town Meeting (BFRT Base Map) and \$25,000 from Article 27 of the 2009 Annual Town Meeting (BFRT Concept Plan) to be used for this purpose, or to act on anything relative thereto. All appropriations will be allocated to the Recreation Category and funded from FY15 Revenue or unrestricted reserves.

The vote at Town Meeting in support of this article was overwhelming.

A cursory reading of this article also shows the Bruce Freeman Rail Trail has received financial support and has been viewed favorably by Town Meeting for seven years, since 2007.

SCOPE OF WORK

By expanding the scope of the normal 25% design plan, as stated by Ms. Kablack and Mr. Kupfer, to include items other than the standard items required by MA DOT in the 25% design plan, the Planning and Community Development Office has gone beyond the permissible use of funds and scope of work voted in Article 32. This expansion of scope of work has two consequences. First, funds were not allocated at Town Meeting for anything beyond the 25% design study requirements. Second, the expanded scope of work will exceed the plain clear language and intent of Article 32, which was to do only the 25% design plan. An expansion of scope of work will require additional time and will further delay the BFRT project, neither of which was anticipated in Article 32.

In addition, by expanding the scope of the engineering work beyond the 25% design plan, which normally takes 24 months, the town will fall further behind in obtaining construction funding because such funding is contingent upon completion of the 25% design plan.

At least equally important, MA DOT has a protocol for its rail trail design studies, and Sudbury should follow those protocols, even if the town thinks it should do things in a different order, or that by doing so it may save time later. In other words, we do not have the option of doing various parts of the design studies in any order we wish, or combining parts of one design plan with another, without prior approval. To do so could place the project in jeopardy.

The town, acting through its staff and the various boards and committees, and particularly the Board of Selectmen because it was the Board that requested funding from the Community Preservation Committee and it was the Board that presented Article 32 at Town Meeting, is obliged to implement the clear language and intent of Article 32 as the will of the town.

Conservation Commission issues that may come up after the 25% design study is complete will be addressed in the order anticipated by MA DOT protocol, that is, after the 25% design plan is complete.

ADVISORY COMMITTEE

Regarding an advisory committee, the Planning and Development Department made clear in its July 17 memo, it does not feel an advisory committee is necessary at this point. “Due to the additional time demands of upholding the public meeting law, it is our strong recommendation that the Selectmen oversee and advise on this project directly.”

By now, 3 months after approval of Article 32, the Planning and Community Development office should have the Bruce Freeman Rail Trail project moving forward through its own efforts. As discussed at the Board meeting last night, an advisory committee is a topic that can be revisited down the road if it becomes necessary.

RFP VS RFQ WITH GPI

The Planning and Community Development office correctly pointed out the 25% design plan for the BFRT does NOT need to go through the RFP process, as this is an exempt activity to be performed by professional engineers.

Mr. Kupfer reported his office had done its due diligence and GPI received “glowing recommendations” from Acton and Concord about GPI’s work. In addition, the July 17 memo noted, “GPI is a known entity to MA DOT and is familiar with the state and federal funding of this project.” At our April 2014 meeting with MA DOT in Worcester, their officials spoke highly of the work done by GPI on the BFRT in Acton and Concord, the two towns to our north that are soon to begin construction. There was also discussion about delays and waste of resources if the engineering work is not done correctly and has to be re-done. The July 17 memo from Ms. Kablack noted there could be a delay of “at least three months” if an RFP were done.

With all of these facts known to Planning and Community Development, it is obvious that GPI is, by far, the best choice to do the 25% design plan. This is particularly relevant if Sudbury is to have the northernmost half-mile connect with Concord in two years, as MA DOT said could be done at our April meeting, if Sudbury approved funding for the 25% design plan at our May 2014 Town Meeting.

For these reasons, Planning and Community Development has the authority to award the 25% design plan contract to GPI, and it should do so without further delay.

CONCLUSIONS

The Planning and Community Development office and the Town Manager have an obligation to carry out the votes of Town Meeting in a prompt and reasonably efficient manner. The present course is not consistent with those obligations.

Keeping the Selectmen informed of progress on the BFRT should be done through a liaison from the Board and/or periodic reports. If the Board of Selectmen is needed to make specific decisions along the way, it can do so.

For these reasons, I believe the correct and preferred approach is to engage GPI immediately, work with GPI to develop the scope of work, and have GPI begin work on the 25% design plan.

The Planning and Community Development Director can update the BOS as warranted and the BOS consider an advisory committee in the future, if the need arises.