

**TOWN OF HAMILTON
BOARD OF SELECTMEN
APRIL 29, 2013**

The Board of Selectmen met at Hamilton Town Hall at 7:00 p.m. on Monday, April 29, 2013 with David Neill, Marc Johnson, Jennifer Scuteri, Jeff Hubbard and Scott Maddern present. Town Manager Michael Lombardo, Finance Director Deborah Nippes-Mena and Town Counsel Donna Brewer also present.

Call to order

Chair Marc Johnson called the meeting to order at 7:00 p.m.

Public Comment

Jack Hauck congratulated new Selectmen on their election to the Board. Discussion ensued about valuable documents that need to be preserved in Hamilton Historical Society. Board acknowledged recent passing of Virginia Hill, mother of State Representative Brad Hill.

Town Manager's Report

Town Manager Michael Lombardo noted that property tax bills were due on May 1st. He also mentioned that he had a good meeting with consultant CDM Smith and a presentation on landfill capping and anaerobic digester will be made at Board meeting on May 13.

Lombardo updated Selectmen about the recent DEP approval to abandon Patton well. Discussion ensued about Lombardo's plans to speak informally with Fire Department union this week to work out contract negotiation without arbitration. Jeff Hubbard noted that the Fire union contract negotiation had been going on for a long time. Lombardo said he would schedule a discussion on the matter in an upcoming Executive Session with the Board.

Also mentioned was work that Lombardo is undertaking along with Planning Board member Rick Mitchell regarding the Planning Director position to define the job description, analyze reporting structure and move forward to recruitment.

Board Code of Conduct – Review and Adopt

Discussion ensued about adapting content of Board Code of Conduct from Sudbury and Ipswich and that requests by Selectmen for work to be done by Town staff would be coordinated through Town manager. Discussion also addressed proper procedure for ending conversations during meetings and that Roberts Rules are used at some official meetings as a guide on parliamentary procedures. Johnson suggested the Board be ready to adopt the Board Code of Conduct at its meeting on May 13.

Pirie Property – ongoing consideration of exercising first right of refusal and whether to call a Special Town Meeting

Johnson explained three or four comments that were received by the Board last week regarding legal interpretations that Town Counsel Donna Brewer addressed. Brewer referred to opinions raised by the current seller and buyer of the Pirie property. She said the Town does not disagree with the intent of the buyer and seller regarding Chapter 61A and preserving agricultural land. She added that the disagreement between the Town and the seller/buyer is that the statute does not limit the use the Town can propose for the land based on its needs.

Brewer noted she had analyzed case law that corroborates this conclusion. This included SJC in 2003 Sudbury vs. Scott where there was no discussion of town and its right of first refusal regarding chapter land for sale. As well as Newburyport vs. Woodman that supports the Town's position with the Pirie property and there was no suggestion that the City of Newburyport limited the horticultural or agricultural use and there was extensive wetlands limiting site.

Additionally was Franklin vs. Wiley where a brief was submitted by the town before land court in 2003 and this case went to the SJC in 2005. Brewer explained that the SJC said in its final sentence it must be remembered that once the town acts properly it has a right that supersedes the rights of the seller and purchaser and which entitles the town ultimately to acquire for its purposes a large and valuable track of land. She said there is simply no limitation in what the Town can do if it wants to use the land for affordable housing or keep some for affordable housing and sell the remainder to a developer it can do so.

Brewer responded to a suggestion that perhaps conservation or open land trusts would support the argument for property buyer or seller saying she did not

know if that was true. She noted that currently a large land trust active in western Mass. has published a primer of Chapter 61A and it acknowledges that the Town is not limited on what it can do with the property if it buys it.

Brewer explained that the statute does not contain limitations on a non-profit the statute says the Town can exercise its right without limitation. She noted that Chapter 61A, adopted in 1973, has been amended many times and if the Legislature wanted to impose limitation on municipalities to exercise their right that has not been done. Jennifer Scuteri clarified that the seller's attorney had incorrectly called the Franklin case mentioned by Brewer as the Framingham case. In concurrence with Selectmen, Brewer said it is clear that the Town has the right to use the land for purposes other than open space.

In response to a concern from the seller's son, Scuteri said that from speaking with Wenham all of the Boulders units were sold in 2009 and they generate \$300,000 in property tax revenue annually reducing real estate expenses for Wenham property owners by as much as \$1,000 for the average household and there are no issues with traffic for the 27 units on 10 acres.

Johnson described his conversation with Town manager in Lexington where that municipality has acquired two Chapter 61A properties that would be used for affordable housing, community playground and recreation fields.

Johnson explained objective was to get Board of Selectmen to agree about whether or not it wanted to put the decision to purchase the property to the citizens, where a warrant vote and Special Town Meeting vote would be required.

He presented community objective information relative to the Town's Master Plan and Housing Plan regarding the need for senior and community housing with a smaller footprint to use less land. Also, the Town has a need for more moderately priced and downsizing housing options. In addition, Hamilton has an interest in the revenue the housing at the Pirie property could generate to help mitigate tax rate and there is a clear demand and value for public access to trails and river.

Johnson summarized how the Selectmen had created the Pirie property working group that is assessing the options for the property. The group has conducted meeting with developers, brokers, land use boards, fire chief, Affordable Housing Trust, legal counsel, traffic engineers, DPW, Assessors and Town

manager to discuss infrastructure and adequacies. Work still to be done includes soil analysis, architectural review of the antique stables to ensure they are suitable and research on the housing market.

Analysis has been done on zoning. Johnson has met with planning personnel to investigate cluster housing and senior housing by-laws to ensure they could be applied to the site without any zoning changes.

Johnson summarized the site plan provided in the right of first refusal package that illustrates what would occur if the Town takes no action to purchase the Pirie property. This plan incorporates the existing house lot and adds five more lots under ANR construction and this plan has been approved by Planning Board. This would generate as much as \$175,000 in revenue more than the current scenario as a horse farm and it is not publicly accessible. Discussion ensues about how commitment of real property has to be in writing to be binding (i.e., trail access). This plan would only allow for equestrian access only and would not fulfill any of the Town's housing objectives.

Johnson described one developer's suggestion for the Pirie property for cottage style housing plan on 14 acres with 44 units breaking into 24 units on seven acres and an additional 20 unit sections on a second seven acres with the central core open and area by Miles River untouched. He noted that other developers could have different visions for the property including reuse of Pirie house. Another option allowed for cemetery expansion. Johnson summarized that 60 acres on the property would be untouched.

Johnson explained that annual net revenue for the Town of up to \$205,000 for the existing developers plan and up to \$450,000 for cluster/senior housing suggestion. Maddern added to this by noting what the net new revenue could be once the property is built out in fourth or fifth year on an annual basis: \$1 million for cottage housing versus \$475,000 if no action were taken.

Discussion ensued about the timing to complete the property sale and complete the construction and consideration of 4 to 5 year build out for cottage style housing versus no action scenario. Hubbard raised the issue of discrepancy between existing developer and proposed developers about the expected revenue. Discussion addressed how consistent assumptions such as number of school children expected should be used. Maddern said the working group has tried to do a fair interpretation of the available information including what was provided by existing developer. Johnson noted that this raises the point not to

include the two houses at the front of the property that are not included in the potential purchase.

Discussion addressed how the do nothing plan includes tax revenue for the entire property, if Town buys property only part of the land would be developed that would generate revenue with some potentially remaining in Chapter 61A status and expense for Hamilton to maintain access road on property. Brewer noted that a statutory process would have to be implemented to bring the road to a public way but there could be an easement to allow access to recreation fields. Johnson said cost of building the playing fields has not been assumed yet. Discussion was on if there would be a permanent easement to ensure public access and safer crossing to equestrian trails from Cutler Road to the property.

Also addressed were next steps if the Board agrees to move forward is to schedule formal public hearings on May 16, warrant hearing on May 24 and Special Town Meeting on June 11. Discussion included mention of Board liaisons meeting with Town boards and committees and community organizations to update them on progress of right of first refusal evaluation and to educate the public and raise awareness. Johnson noted that a mailer would be sent to citizens after the warrant hearing with an information package. A STM has to occur by June 20th at the latest.

Discussion ensued about people attending meetings on the matter and that outreach to community including perhaps a survey had not been done until today's Board vote could occur to move this forward. However, there has been outreach related to Master Plan where it was determined that there is citizen interest in more recreation fields in Town.

Discussion addressed Junction housing project, Chapter 40B application, where the Zoning Board of Appeals negotiated down the density and it was undercapitalized during the period when the market was weak. Also, that the project has not been completed and many of the units are being rented. Johnson said this type of project is not what would be proposed for the Pirie property. He added that discussion has occurred with developers of cottage and senior housing on the North Shore who expect the market to be improving substantially especially with a blend of senior and age-restricted housing. Also noted was that it costs \$2,500 to hold STM.

John Pirie inquired about the SJC cases cited and related expense. Town counsel mentioned that if anyone in the audience was taping the meeting, an OML

requirement is to notify the chairman. She noted if the Board would like her opinion about cost then she could discuss that with Selectmen in open or executive session. She added that some of these cases skip the Appeals Court and go to the SJC. Brewer reiterated that there is no legal footing that the Town is limited in what it can do when exercising its right of first refusal. She noted that it is hard to predict legal costs that are typically higher than people think they should be. Brewer said when there is an issue of law as in this situation it tends to be less expensive to get court to answer a question.

Pirie read a quote from Code of Ethics Law relative to municipal employees and opined that Scuteri has a clear interest in the property and suggested she recuse herself from this matter due to conflict of interest. Johnson directed Pirie if he is interested to make a clear claim to the Board or Ethics Commission indicating what conflict of interest he perceives and it would be addressed by the Selectmen.

Peter Whitman, 292 Bridge Street, abutter to the property, said the proposed project the Town is considering for the Pirie property abrogates the open space aesthetic of the Town. He opined that Chapter 61A is a way for Town and homeowners to address open space process. Johnson responded that the working group had considered the impact on the open space but that aesthetic of no development in Town is expensive and there is a cost consequence for residents to run the community so they are trying to reach a balance.

Discussion ensued with Whitman about how existing agreement with developer would bring additional tax revenue to the Town in as little as 12 months while if Town manages the land the revenue increase might not be realized for 5 years. He said as a taxpayer he believes going with the current developer is less of a risk than the Town buying the land and it maintains the open space aesthetic. Also mentioned by Whitman was if there were going to be playing fields at the Pirie site with lights at night this was a sensitive area that should be addressed with Conservation Commission. Johnson referred to a proposal for two soccer fields on property that would fit between Sears catalog house and greenhouse and is not near Whitman's property or Kevin Bottomley's house, and there is no discussion of lights.

Scuteri referred to Master Plan created nine years ago with input from residents about future direction for Town and need to preserve agricultural nature of Hamilton especially with the large estates where Town does not have right of first refusal. She added that the plan describes resident interest in cluster

development with conserved open land versus subdividing land into large house lots. Johnson said Whitman's suggestion that the Town's consideration of village and senior housing would abrogate Hamilton would be addressed directly in the next few weeks as due diligence is done relative to right of first refusal with Pirie property. Whitman reiterated his suggestion that more critical analysis be done if the Town is considering foregoing existing agreement for the Pirie property when in 12 to 18 months there could be new property buyers paying taxes.

Discussion ensued with Scuteri suggesting that in year two of the Town's proposed scenario that revenue could surpass the existing developer's plan and Lombardo noted that parcels could be sold in blocks as part of phased construction. Johnson noted that Whitman was addressing stabilized tax revenue and that discussion will include financial risk element.

Discussion initiated by Hubbard was for an aerial view of existing buyer's development plan for six large houses on the site and Johnson said that view could be included if supplied for right of first refusal information packet.

Discussion ensued with Phillip Lake, 16 Gail Avenue, about development process with three to six year build out and \$75,000 annual cost for land acquisition for financing and bonding included in net revenue until buyback from developer is paid.

Town officials addressed if Town Meeting approves the Town purchase of the Pirie property the closing on the sale would occur in 90 days. Then there would be an invitation for models from developers, time for evaluation and chosen developer seeks special permit from Planning Board for senior or cluster housing relative to by-laws. Johnson noted that Town would entertain discussion on development that is aesthetically tuned and RFP will address density. Scuteri noted that as soon as the RFP is issued and a buyer is accepted the property goes back on the tax rolls for \$75,000 in property tax revenue annually.

Discussion addressed how multiple shared septic systems would be used for cottage housing and that Title 5 inspection had been done on the site revealing sandy soil. Johnson noted that Town would do soil analysis if Board votes to move ahead with action on right of first refusal. He responded to Lake about consideration of a Plan B, that there is a market value for the property and that real estate market is improving relative to evaluating the risk. He added that there has been strong feedback and interest in property from development community. Discussion continued with Lake about public hearing process and

Town Meeting being a check on the property purchase decision for Hamilton and his concern about a three or four year period that the property could not be on the tax rolls if it is under control of Town before developer purchases and develops property. Scuteri suggested that some Community Preservation Act funds could be used for a portion of the property. Johnson said discussion has occurred with CPC but it is not definite that these funds would be needed to purchase property or build affordable housing. It was noted that slides on the proposed cluster development design would be put on the Town's website.

In response to Duke Seaver, Essex Street, discussion addressed two-thirds vote at Town Meeting required for the Town to purchase property and that ballot question on matter would be done if debt exclusion was considered. Finance Director Deborah Nippes-Mena explained that the intent is that majority of debt would not be owned by Town because the property would be sold to a developer and Bond Anticipation Note with interest of 1.5% would be used for time the Town owns the Pirie property. Also, that Free Cash would be used to pay interest on the BANs. Nippes-Mena said the Town does not plan to bond any of the property unless some is used by CPC for open space or recreation.

Brewer explained that the Town would only have to conduct a Special Town Meeting if Town officials determine at a public hearing that the Selectmen want to act on the Town's right of first refusal.

Johnson entertained a motion to go forward with the process under Chapter 61A to determine whether the Board is going to vote to exercise the right of first refusal and if so go to a Town Meeting to appropriate the money to close on that right. Neill moved to the next step toward placing this before the Board continuing on the process and preparing for a potential Special Town Meeting and public hearing. Maddern seconded the motion.

Hubbard mentioned that he is reflecting his constituency and opined that the integrity of the land is best protected by the plan from the existing buyer for the Pirie property. He reiterated his concern that 120 days is bad timing to make this decision, that there is a lack of community appetite for spending money and potential increase in property taxes as well as for the risk of such an investment for the Town. Hubbard added that there could potentially be the same situation with the Pirie property as the Town currently has with the Patton property. Also, that the current purchase proposal for the Pirie property could help offset some of the additional cost for the Town to operate the ECO without any other community on board paying for dispatch services.

Scuteri spoke to Master Plan language outlining need for village housing and shared septic system in Hamilton. She suggested Town's involvement in consideration of senior and cluster housing with recreation fields at the site was proper. Scuteri addressed the price being right for the property but noted the need to hear from other developers and did not want the Town to miss its opportunity for Hamilton to move forward and raise revenue that could reduce the property taxes.

Neill was in favor of placing the prospect of Hamilton purchasing the Pirie property in front of voters to see if there is a two-thirds vote to move forward or not. He noted that the Town's taxes are too high and Hamilton needs more places to live. He expressed interest in getting more information on the proposal. VOTE: 4-1-0 with Hubbard opposed.

Johnson mentioned that the next working group meeting is on Thursday morning, May 2 at 8:00 a.m. at the public safety building. He reiterated that a public hearing will be held on May 16 at Winthrop Elementary School at 7 p.m.

Chairman/Selectmen reports

Scuteri updated Board about a person interested in Patton property as a bed and breakfast destination who recently visited the site with Scuteri and Planning Board Chair Peter Clark. This individual owns a farm in West Newbury and wants to buy a B&B, noted the integrity of the stables at the site and was interested in the homestead.

Also, now that the Patton well has been abandoned, the Town can move forward with creating Ipswich River access from the Patton property. Discussion ensued about need for access along wood road and conversation with Essex County Greenbelt Association and that Lombardo would speak to ECGA's David Santomenna.

Scuteri added that Clark is meeting with person from Kittery about report on B&B potential at Patton property. She also updated Board about tours for Council on Aging and veterans at the Patton site on May 25 and if an audio tour could be created potentially with Joanne Patton. Scuteri said the important military artifacts would be located in a sealed off area in the homestead.

Scuteri noted that she is working with Mrs. Patton (in addition to efforts undertaken by Veteran Agent Terry Hart) to assist returning veterans educating them about the benefits available to them as they transition to civilian life.

New Business

None.

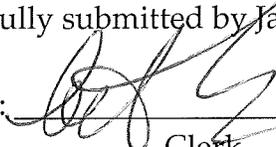
Executive Session

Johnson entertained a motion at 9:16 p.m. for the Board to go into Executive Session pursuant to M.G.L. c. 39, Section 23B(3) for the purpose of discussing strategy with respect to collective bargaining agreement with the Hamilton Police Benevolent Association as an open meeting may have a detrimental effect to the Town's negotiating position – not to return to regular session.

Neill recused himself since his son is a police officer. He left the meeting at 9:16 p.m. Scuteri so moved. Maddern seconded the motion. VOTE: 4-0. Roll call vote: Scuteri, yes, Maddern, yes, Johnson, yes, Hubbard, yes.

Respectfully submitted by Jane Dooley, Minutes Secretary

ATTEST:


Clerk