

TOWN OF FOXBOROUGH
BOARD OF SELECTMEN - EXECUTIVE SESSION
July 27, 2010

Those Present	Lynda Walsh, Chairman	Andy Gala, Town Manager
	Larry Harrington, Vice Chairman	Randy Scollins, Finance Director
	Jim DeVellis, Clerk	Attorney Paul DeRensis
	Lorraine Brue	Attorney Rod Hoffman
	Paul Mortenson	

Others Present: Phil Henderson, Chairman, Water & Sewer Commissioners

Meeting was brought to order at 6:00 p.m. by Lynda Walsh, Chairman.

Motion by Larry Harrington to go into Executive Session to discuss the purchase, exchange or lease of real property. Seconded by Jim DeVellis.

Vote: 5-0-0	Lynda Walsh, Chairman	Yes
	Larry Harrington, Vice Chair	Yes
	Jim DeVellis, Clerk	Yes
	Lorraine Brue	Yes
	Paul Mortenson	Yes

Phil Henderson explained that two members of the W&S Commissioners were not present. This is not a posted meeting for the Commission and it is not necessary to go into Executive Session. Bill Euerle and Mike Stanton were out of Town but had no issue with having Phil meet with the Board.

On July 2nd, Phil met with Rod Hoffman, Larry Harrington, Leo Potter and Bob Bell. The discussion related to items put together by Rod regarding 30B. The 30B issue keeps lingering regarding the MOU from 2007. Phil felt comfortable getting a clear direction from Town Counsel. They have been very consistent as far as what has been said about the issue but Phil feels there are still some lingering doubts and he felt it important to get something to look at, give feedback on or to discuss.

Rod explained that in researching Administrative & Finance records, he determined that there was a "glitch" in the process. This procurement was not exemptive. He outlined the way State procurement law is enforced and he pointed out a problematic procurement is a problem but once a contract begins to be performed, the procurement issue becomes moot. Larry Harrington summarized the issue as outlined by Town Counsel. He pointed out that Town Counsel is telling the Town that it is not necessary to put the current advertising contract out to bid at this time. Rod said it is with the understanding that no change is being made to the advertising piece, if that should happen there have been discussions about other aspects, other signs, etc. we would go at something different than what would require procurement. Attorney DeRensis spoke about substituting a paragraph that does not pertain to the advertising piece but has to do with the construction of a facility at Gillette Stadium. If the advertising piece was being replaced with something else, this issue would be in a different place. It was suggested to just modify the advertising piece. Attorney DeRensis pointed out that the advertising piece is not being changed.

Larry Harrington explained the present position of the Town with the Patriots should be to move forward to take out the "we'll build you a plant" and replace it with "we'll give you cash equal to what it would cost the Patriots to build the plant". It allows the Town to get value for value. The Patriots are not prepared at this point to fund the entire amount requested (\$30M) and rather than walk away, the Board needs to agree there is a principle that says the Patriots agreed to build a plant and associated costs. The Town does not want the plant and under the

terms of the contract, the Town has no rights and the Patriots have no obligations to do anything other than build a plant. Larry pointed out that in order to make sure that the Town gets value for that plant, the Town has to negotiate a paragraph change that states instead of the plant the Town would get cash.

Randy Scollins voiced the understanding that the way negotiations are going is that by not considering anything different with the advertising piece, since it is not being considered, there would not be any follow up with the procurement issues. This basically "hamstrings" the Town or the Board of Water & Sewer Commissioners from trying to do anything different. Attorney DeRensis said there is a logic to this because the obligations the Patriots have is to build a plant that was to be partially funded by advertising. Instead of taking that combined money "your money and our money" and building a plant, the Town is saying combining "your money and our money" and pay it to the Town. If the Town takes this position, taking away the source of funding to build the plant, that would undermine the whole process because it takes away from the Patriots a revenue source that the Town committed they would have to build the plant. The legal position is that as long as we do not disturb that, the case law is moot.

Paul Mortenson voiced concerns about legality of the advertising contract under 30B. He feels that the Town is spending cash because the Town is paying a fee to the Kraft Organization to find advertising; this is an ongoing relationship and one that has no termination date. The point was also made that the Town cannot go longer than a ten year contract.

A very long discussion related to whether this is a service contract, a technical violation that is moot, whether this contract is subject to the ten year contract duration, does it all go out to bid after seven years, what is the window that the Town has to make the final decision on the plant. Phil Henderson explained how this contract was developed, that it was not just one Board making a decision. He does not want to be negotiating with the Patriots with this issue lingering on. Jim DeVellis said that he wanted to know that it is not a "done deal" that the Town does not want the plant.

Paul Mortenson asked to for a written opinion that there would be no financial penalty and that there would be no criminal liability resulting from the 30B issue before moving forward on this. Larry Harrington asked if he would support agreeing that there is no 30B issue as written by Town Counsel and to move forward and negotiate on the Wastewater treatment plant. Paul Mortenson feels that the Town has reached the point of either continuing to negotiate on the plant and to continue sharing the income from the advertising or to give up the treatment plant and go for the entire revenue from the advertising. The remaining discussion was held regarding putting the advertising out to bid, the cost of the plant, estimates of future revenue from all the advertising vs. the revenue for the next 30 years to be realized by the Town from the Patriots in lieu of building the wastewater treatment plant. Randy Scollins said the key goal is to lock in the revenue stream from the Kraft Organization, hopefully at the \$400,000 level for 30 years; not making any changes in the advertising piece but could some negotiation be made to try to get some guaranteed minimums. Comments were made regarding putting the whole advertising piece out to bid. Lorraine Brue said she would like to see some proposal that would include some minimums and removal of the 5% commission on the current contract. Phil Henderson said he wants the Board to tell him how to move forward. Lynda Walsh said there should be another Executive Session for further discussion.

Motion by Paul Mortenson to exit Executive Session for the sole purpose moving into the regularly scheduled meeting.. Seconded by Lorraine Brue.

Vote: 5-0-0	Lynda Walsh, Chairman	Yes
	Larry Harrington, Vice Chair.	Yes
	Jim DeVellis, Clerk	Yes
	Lorraine Brue	Yes
	Paul Mortenson	Yes

Jim DeVellis, Clerk