

TOWN OF FOXBOROUGH
BOARD OF SELECTMEN EXECUTIVE SESSION
MINUTES
March 13, 2012

Members Present: Larry Harrington, Chairman
James J. DeVellis, Vice Chairman
Mark Sullivan, Clerk
Lorraine Brue
Lynda Walsh

Others Present: Kevin Paicos, Town Manager
Randy Scollins, Finance Director
W&S Commissioners – William Euerle, Michael Stanton and Richard Pacella
Phil Henderson, Former W&S Commissioner Chairman
Roger Hill, DPW Director
Leo Potter, Former W&S Superintendent

The purpose of this joint Executive Session was to discuss Real Property and to review and release Executive Session Minutes and to exit Executive Session for the sole purpose of adjournment.

Bill Euerle requested that the minutes of this meeting taken for the BOS be accepted as the minutes for the W&S Commissioners.

Mike Stanton opened the discussion by reporting that advice from B.R.A. was to go out again with the bidding process for the billboards. The recommendation is to revise some of the language and to eliminate the minimum annual guarantee and that should result in more “robust” bidding. He suggested that instead of the 65/35 split, to go with a 55/45 split; that should open the bidding up to everybody.

Larry Harrington said he had agreed to and wanted to have the approval of two boards to continue discussions with the Kraft Group; with a dual responsibility. The billboard RFP went out to bid and there were no responses. He would like to get the approval of the two boards to have parallel conversations. Kevin Paicos pointed out there are two important things – 1) what is the legality of the present contract and 2) and the legality of a lawful privately negotiated contract. In his opinion this must be a 30B procurement as the Town is engaging in real property negotiations. Mike Stanton pointed out that once it became known they need to go through the proper 30B procurement process and those are the guidelines that W&S are moving forward with.

A lengthy discussion was held on how the Town got to be where it is on the issue of the billboards on Route 1, the income from advertising and that the agreement with the Kraft Group is about to expire. The question of whether this should go out to bid or be processed through 30B procurement was discussed at length. Randy Scollins said that as the Town Accountant, concerning the Agreement with the Patriots, he had contacted the Department of Revenue and explained the circumstances. He said he put all revenue into an escrow account. Phil Henderson pointed out that in 2007 the W&S signed under the advice and consent of the then Town Counsel and if the agreement was flawed, it was all “new territory” that fell under the Stadium Act. He said they were told that it had to be put out to bid. Lorraine Brue said she questioned the advice from counsel on 30B issues from the beginning.

Kevin Paicos briefly summarized the series of negotiations with the Patriots. The Patriots have come back with a list of terms. He believes it is the best deal the Town is going to get monetarily. He suggested that the Town take those terms, get approval from the Inspector General and put out an RFP reflecting those terms. He pointed out that all have to agree to issue an RFP. He said this is about two things – billboards and payment in lieu of services. He said negotiations were just not going anywhere. The Town went forward with an IFB to which there were no responses and that is where the Town is today. Kevin Paicos pointed out that he could not guarantee that negotiations would lead to something or

should the Water Commissioners issue an IFB and whether that would provide any real value for the town either. Kevin noted that by issuing an IFB there is no latitude and we may not get in value what we might get in negotiation. Jim DeVellis said he thinks this process is completely irreversible. He said why issue an IFB, why not buy the billboards; the Patriots get 50% and the Town owns the billboards. He asked why there is a need to put out an IFB. Mike Stanton indicated that the Office of Outdoor Advertising issued the permits to the Patriots. Kevin Paicos referred to a letter written by Attorney Cobery concerning this matter. He said he has asked several times for a copy of that letter.

The issue of taking the land by eminent domain was raised. Kevin Paicos noted that if a conscious decision was made to issue an IFB the Town would not have the ability to get a permit. He asked if there is any objection to taking the land by eminent domain. He noted that if the Patriots do not bid and they are successful in intimidating the competition, the Town may be left with no bids and no income. Phil Henderson feels the value of the billboards is exaggerated. Kevin Paicos asked the Board to consider issuing an IFB, removing the minimums (which were too high), send it out to see what the market will bare. He said the Patriots are not going to bid if there is no eminent domain on the Annual Town Meeting Warrant. Kevin Paicos said the purpose of taking the land by eminent domain is to provide, through the billboard revenue, a revenue stream to allow the Town to join the Regional Sewer District. He said if they decide to go forth with eminent domain procedure, it is the responsibility of the BOS sign off on the taking of the land. He noted that there is plenty of time to assess what the land is worth, to look at the income and the cost of the billboards. Bill Euerle noted that the Town has had to deal with this issue for years. The Patriots put up signs and eventually the Town received revenue and at least we have an idea of what the revenue from the signs ought to be. He said what choice does the Town have. He asked if an eminent domain article is on the Warrant, could that be "pulled" before Town Meeting or if it should pass it does not mean the Town would have to do anything. Kevin Paicos pointed out that if the Town is going to take the land, the fact remains that all bids are subject to the Town obtaining the permit. It was proposed that the Warrant Article be withdrawn. Larry Harrington pointed out that Kevin's negotiation style did not set well with the Patriots. He suggested picking two people to meet with Robert Kraft to say the Town wants to deal. Phil Henderson suggested Jim DeVellis, Town Counsel and somebody from the W&S to take a look at this and to think about leasing back the land. He said this agreement would be very different from the 1999 and a new set of people is what is needed. Kevin Paicos said they would have to establish realistic terms that would be acceptable to the BOS. He suggested doing an IFB and then deciding whether or not to go forward with eminent domain.

Executive Session Minutes – A brief discussion was held relative to the release of past Executive Session minutes related to the billboard issue. Kevin Paicos said Attorney Cobery had no objections to releasing the minutes. Kevin Paicos said there are only two parties whose interests can be harmed by the release of the minutes. The Patriots have all ready waived any objection. Kevin Paicos said he would go over the Executive Session minutes again and redact any wording that might in any way complicate negotiations and get back to the members of the Board before releasing the minutes.

Motion by Bill Euerle to adjourn the Water & Sewer Executive Session for the sole purpose of adjournment. Seconded by Mike Stanton.

Vote: 3-0-0

Bill Euerle	Yes
Mike Stanton	Yes
Richard Pacells	Yes

Motion by Mark Sullivan to exit Executive Session for the sole purpose of adjournment. Seconded by Lynda Walsh.

Vote: 5-0-0

Larry Harrington, Chairman	Yes
Jim DeVellis, Vice Chairman	Yes
Mark Sullivan, Clerk	Yes
Lorraine Brue	Yes
Lynda Walsh	Yes

Meeting adjourned at 11:30 p.m.

Mark Sullivan, Clerk