

SPECIAL TOWN COUNCIL MINUTES
Town Hall Council Chambers
July 10, 2014

Present: Patrick O'Connor, President
Michael Smart, Vice President
Rebecca Haugh, Councilor
Arthur Mathews, Councilor
Ed Harrington, Councilor
Robert Conlon, Councilor
Kenneth DiFazio, Councilor
Jane Hackett, Councilor
Thomas J. Lacey, Councilor
Brian McDonald, Councilor

Absent: Michael Molisse, Councilor

Also Present: Mayor Sue Kay
Kathy Deree, Town Clerk
Anatoly Darov, Burns and Levinson Attorney
Matthew Feher, Burns and Levinson Attorney
Matthew Barry, Starwood /Vice President
Robin Daniels, Starwood/Director of Development

Recording Secretary: Jody H. Lehrer

PLEDGE OF ALLEGIANCE AND CALL TO ORDER

President O'Connor called the meeting to order at 7:30 PM, after the Pledge of Allegiance. Town Clerk Kathy Deree called the roll, with all members except for Councilor Molisse present.

MAYOR'S UPDATE ON LEGISLATION AND MEMORANDUM OF AGREEMENT

The Mayor reviewed the proposed legislation regarding Southfield that was offered by LNR South Shore LLC. The legislation was introduced to the town on November 2013. The town hired counsel (Burns & Levinson) to address the legislation. Many changes needed to be made to the first version of the legislation. In April of this year, the Mayor asked that the Council consider a proposal by South Shore Tri -Town Development Corporation (SSTTDC). It is good to be able to consider more than one option. There was a vote of no action because the proponent did not complete the measure. Therefore, only one option is now before the Council.

The Mayor stated that we owe it to our constituents to move the development of Southfield forward. She said we have worked hard to eliminate undue burden or risk that the changes may cause. Representative Mariano and Senator Hedlund have written letters to encourage moving legislation forward so they may consider it. The Mayor said she is convinced that the major risk factors have been removed from the legislation.

The Mayor confirmed that her office and Burns & Levinson spent many hours debating and negotiating with representatives from Starwood. She noted that Starwood negotiated in good faith.

The Mayor also said that it is time for legislators to examine what is being proposed in order to protect all three communities. The Mayor said the proposed legislation ensures that organized labor has a seat at the table with the new Board of Directors.

The Mayor noted that when faced with a decision of taking no action, keeping the status quo, or “sparking life” into a stagnant project, the Mayor chose the latter. The Mayor confirmed that additional revenue flow will come only after four or five years at which time the town will realize an increased tax base.

BURNS & LEVINSON POWERPOINT

Mr. Feher asked whether he should proceed on a slide-by-slide basis with an opportunity to ask questions, or present the entire presentation and then open it to comment. Chairman O’Connor stated that slide-by-slide was acceptable.

Mr. Feher noted that the presentation is not an endorsement of the legislation by the town or by Burns & Levinson, and noted that the town reserves the right to make any further amendments.

Mr. Feher said the presentation examines five areas including:

1. Southfield today and highlights of the Starwood proposal;
2. Weymouth’s reaction to the Starwood proposal and the review process;
3. Mitigation concerns and solutions pertaining to the concerns;
4. The Definitive Agreement; and
5. Next steps.

The PowerPoint is attached: only highlights are presented in these minutes below for each of the five topics covered in the presentation.

1. Southfield Today and Starwood Proposal Highlights:

Redevelopment is stalled today. For example: 1,000 residential units are called for under the reuse plan but only 630 have been permitted and only 300 have been constructed; infrastructure is not completed to support build out (e.g., the parkway has not been completed connecting Route 3 and Route 18); and the Town has not received new tax revenue to date.

Councilor DiFazio asked if Burns & Levinson had determined why the reuse plans had stalled and who was responsible. Mr. Darov said a determination was not made as to who was responsible. Mayor Kay said that the firm was not asked to delve that deeply into the history – the firm was directed to work on the legislative proposal.

Mr. Feher said that the Starwood proposal would address numerous issues such as: getting rid of the phased build out portion of the reuse plan; restructuring SSTTDC particularly the Board of Directors and advisory board roles; obligating the master developer to commercial development and infrastructure.

Councilor Conlon asked what Mr. Feher’s opinion was on getting rid of the phased build- out of the reuse plan. Mr. Feher said that originally the phases allowed for development in a timed manner but ultimately it was determined that the phasing, as it existed, was not a realistic development strategy.

Councilor Conlon noted that the reuse plan involved four or five years of study and asked whether any study of this was conducted. Mr. Darov said his firm did study the reuse plan and issues surrounding getting around the plan. Mr. Darov said that his firm considered the implications very thoroughly. Mr. Darov also noted that there are elements of the reuse plan incorporated into the Definitive Agreement.

2. Weymouth’s Reaction to Starwood Proposal and Town Review Process

The original Starwood proposed legislation shifted too much risk to the town. Examples of this include:

- The town would be responsible for tax collection and municipal service delivery as of July 1, 2014 but tied to a “yet to be seen” state determination regarding what it will do or not do with respect to the parkway.
- Financial burdens were shifted from SSTCDC to the Town.

- The Advisory Board would have to approve every day- to- day function;
- Local impacts were largely un-mitigated.

The town, through Burns & Levinson, developed a counter proposal. The development of the proposal came after many meetings with numerous parties. The firm met with the Mayor, department heads, and with council members.

On April 18, the town submitted a counter proposal. Highlights of the counter proposal included:

- Revised timing for tax collection and municipal services;
- A requirement that contingencies be satisfied *before* (not after) that time;
- A requirement that additional Mayoral appointments to the board be permitted (including a labor appointment); and
- A requirement that the town be held harmless for capital improvement and infrastructure costs especially water and wastewater costs.

On May 1st, the town submitted a mark up of the legislative proposal including April 18 counter proposal language. Since that time the legislation has been revised many times between the parties.

On May 19th, the town submitted an initial term sheet of what is now called a Definitive Agreement.

Throughout the town review process covering the Starwood proposed legislation, there were many meetings. Meetings included – but were not limited to - two “marathon” legislation negotiation sessions (May 2 and June 13) with the Mayor, Council President, and Starwood Team.

At the end of June, final negotiations were completed regarding all three components (proposed legislation, Definitive Agreement, and non binding letter of intent).

3. Mitigation – Concerns and Solutions

Mr. Feher addressed seven categories of concerns (and their solutions) regarding the proposed legislation, noting that concerns stemmed from meetings with the Mayor, Town Council, and department heads.

a) Effective date of the act and transition

An example of a concern was that the timing of tax collection and service delivery was unworkable on July 1, 2014; the proposed solution is to move the effective date forward to January 1, 2015;

b) SSTTDC governance and structure

An example of a concern is that day- to- day management and employments decisions must be approved by both the SSTTDC Board of Directors and the Advisory Board; the proposed solution is to require only BOD approval;

Councilor Lacey asked about board restructuring taking place immediately. Mr. Feher said that restructuring of the board takes place as soon as 30 days or as many as 60 days from the effective date of the act.

Mr. Darov noted that there is no relationship to restructuring of the board and contingencies.

c) Reuse and master plans

An example of a concern is that the reuse and master plans were eliminated; the proposed solution is to eliminate the plans only of contingencies. These must be satisfied except that phasing and affordability requirements that are removed immediately;

d) *Zoning control*

An example of a concern is that it was unclear whether the town will gain control of zoning over the NAS redevelopment area within its territory; the proposed solution is to ensure that Home Rule control of zoning authority vests immediately upon passage of the new act without regard to contingencies;

e) *Infrastructure financing*

An example of a concern is that there is a lack of control over SSTTDC debt; the proposed solution is to require town approval for future SSTTDC debt;

Councilor Conlon asked with respect to water in the Definitive Agreement where the water will come from (MWRA, Weymouth).

Mr. Darov said that both options are in play. No decision has yet been made and the topic wasn't the focus of the negotiations.

Mr. Conlon asked about how the water infrastructure can be financed.

Mr. Darov said the method of financing is up to Starwood.

Mr. Feher noted that Starwood has authority to finance debt up to \$175 million. He said that the firm tried to obtain as many details as possible but Starwood was reluctant to provide details on the types of procurement method or financing. However, the Definitive Agreement does obligate Starwood to finance, operate, and own the infrastructure.

Mayor Kay said we should keep in mind that it is part of the claw back contingency.

Councilor DiFazio asked if there was anything in the Definitive Agreement which authorizes Starwood to assess either directly or indirectly any fees to Weymouth or Southfield residents.

Mr. Feher said that there is no such authorization.

Mayor Kay noted that in fact there is in the term sheet a provision regarding water and wastewater infrastructure and financing that says that the town shall not be responsible for such things as design, construction, operation, or maintenance unless the Town consents.

f) *Tax collection*

An example of a concern is that the town must collect taxes prior to satisfaction of contingencies; the proposed solution is to require tax collection after satisfaction of contingencies and without uncertainty of DOR approval; and

g) *Municipal service delivery*

An example of a concern is to require service delivery prior to satisfaction of contingencies; the proposed solution is to ensure that service delivery is required only after satisfaction of contingencies.

Councilor Hackett asked for clarification that services that are already under contract to be provided, will continue to be provided, and that the services being discussed are new services.

Mr. Feher said that this is true and that the start date would be July 1, 2015. He said that the current agreement will govern until such time.

Councilor Hackett asked whether current services being provided are police, fire, and school services to Southfield. Mayor Kay confirmed this.

Councilor Hackett asked if payment from Tr- Town for FY 14 services were provided in FY 14. Mayor Kay said that this was the case.

4. Definitive Agreement

Mr. Feher reviewed key terms of the Definitive Agreement. Such terms include, but are not limited to, the following: dedicated commercial zone development obligations; amenity plan extrapolated from the current reuse plan; and water and wastewater infrastructure design, construction, financing, ownership and operation/maintenance obligations.

Councilor Conlon asked about the five-year infrastructure warranty assigned to the town, questioning if there is a provision that says we must accept all the roads.

Mr. Darov said that there is no obligation that the town must accept the roads.

Mr. Feher clarified that Councilor Conlon was talking about the enabling act.

Mr. Darov said that the concern was that the provision could be interpreted as requiring the town to accept infrastructure that did not meet its requirements. He said that this was mitigated to make it clear that only if the infrastructure meets local requirements would it be accepted.

Mr. Feher then read from the provision in the enabling act, establishing that the street acceptance take place if the street acceptance procedures were followed.

Mr. Feher noted that the Definitive Agreement is imperative to the new act and therefore the Definitive Agreement must be signed before enactment of Starwood's proposal. The proposal cannot advance beyond third reading in the legislature until the Mayor signs the agreement. He said that the town and Starwood must keep the bill in third reading until the parties execute the agreement.

Mayor Kay said she appreciates that Mr. Feher recommended this.

Councilor DiFazio noted that the state legislature is capable of making changes to the proposed legislation.

Mr. Feher confirmed that this is true and noted that the state already has concerns about ridding the claw back. He said there may be other concerns as the legislature vets the bill. He said that for this reason the town reserves the right to make further changes and modifications in order to mitigate risks raised by any amendments.

Mayor Kay said she has been in touch with the Undersecretary of ANF, DOR, and Representative Mariano, and expressed these concerns to them, and wants the town to have another chance to make changes if necessary so that the legislation could come back to the town.

Councilor Mathews asked about the Definitive Agreement and looked for mitigation payments and wanted to see if there was also language included about host community payments.

Mayor Kay said she took the host community agreement clause out so that it would be separate from mitigation payments. She said the host community agreement is included in a separate agreement.

Councilor Mathews suggested language be added that the mitigation agreement will not impact the host community agreement. Mayor Kay said that certainly this could be added in.

Mr. Feher noted that this could be added to the Definitive Agreement and said that the mitigation payments are in addition to host community payments

Councilor Harrington asked whether Starwood owns the delivery of water and the infrastructure, and questioned if Starwood sets the rates, and if ratepayers would be required to pay whatever rates are set by Starwood. Mayor Kay responded in the affirmative. Starwood would be the water company.

Mr. Feher said that the rates would be subject to state administrative agency review like that of the Department of Public Utilities.

Mayor Kay said the fees have to be aligned with what the costs are and has nothing to do with the town of Weymouth.

Councilor Harrington asked how we can prevent the rates from being usurious.

Mr. Feher said that rates will be subject to competitive forces. Rates for water and wastewater are not going to be the profit center for the development. He said that capital costs for facilities will be paid for by connection fees which are paid by developers and rates will be related to O&M and capital reserves. Starwood will be incentivized to set rates as competitive as possible.

Councilor Harrington said that during the early stages of development there will be incentive to keep rates low but wanted to know what will happen in twenty years when Starwood is fully built out.

Councilor O'Connor said that there is significant state oversight of public utilities. He cited Aquarian Water.

Mayor Kay added that oversight also exists with respect to rate setting.

Councilor Harrington said despite state oversight people at Southfield are paying incredibly high rates-he would like more protection than state oversight.

Mayor Kay said that fees are predicated on costs. She said that when you have few ratepayers you have no absorption ability, as there would be if you have many ratepayers like in Quincy or Weymouth. She noted that there is oversight, however, regarding what can be charged.

Councilor Conlon asked about the Definitive Agreement and whether it is still being developed.

Mr. Feher said that parties have negotiated a term sheet. He noted that the Definitive Agreement would be based on the term sheet as its underlying foundation.

Mayor Kay said that the letter of intent must be signed quickly. Without this letter of intent the parties would not be bound to continue negotiations. She said the terms negotiated are what you see, noting that this is a protection for the town.

Councilor Conlon said he would like to add to the Definitive Agreement.

Mayor Kay said that the agreement would have to go back to negotiation.

Councilor DiFazio asked for clarification that at this point the letter of intent has not been executed.

Mayor Kay answered that this was the case.

Councilor DiFazio said he thought that once the letter of intent is executed there are 20 days in which to negotiate the Definitive Agreement.

Mr. Feher said there is no timing constraint except that the Definitive Agreement must be executed before the legislation is enacted.

Mr. Feher also said that legislation could be enacted after July 31, 2014. He noted it only takes an objection by one legislator to kill the bill in informal session. The legislature has to meet every 48 hours after July 1st.

Councilor DiFazio asked why there are all these deadlines in place for the last four months.

Mayor Kay said that she understood the frustration regarding deadlines and said that she disregarded the deadlines and took the time needed to protect the town regarding risks of the project.

The question was asked, referring to the July 31 deadline when the legislature goes into recess for the session, about the financing component whether there would be a roll call vote and asked whether the legislature would pass the legislation during informal session.

Mr. Feher said he thought, regarding the second question, that the legislature was unlikely to pass the legislation during an informal session. He said realistically July 31st at midnight was what he was looking at.

President O'Connor asked whether the water rate would be set by Starwood or by SSTTDC Board of Directors.

Mayor Kay said that her understanding was that this would likely depend on whose water this was and asked wouldn't Starwood's water system be privately owned like Hingham's.

Mr. Feher said he thought the wastewater system would be privately owned, but that the three options for water under consideration were two options by MWRA –through North Weymouth hook up or Braintree through Holbrook, and the third one was Weymouth water.

Mr. Darov said his recollection is that Starwood sets rates but that the firm would check on this issue.

Councilor Conlon asked for definition of the letter of intent.

Mr. Feher said the letter of intent is to enter into a Definitive Agreement.

Mr. Feher said that currently there is a term sheet to the Definitive Agreement that contains all the operative terms of the Definitive Agreement. As soon as it is signed and the legislation is filed, the parties will continue to negotiate the full Definitive Agreement which contains other terms and conditions.

Mr. Conlon said since we are currently negotiating, we we could put other items in the Definitive Agreement.

Mr. Feher said nothing has been signed yet.

Mr. Conlon inquired whether Starwood should sign the Definitive Agreement before any taking action is taken at the State House. He said we should get the most benefits for Weymouth residents.

Mayor Kay said that what the letter of intent binds the town to is the Definitive Agreement.

Councilor DiFazio asked whether the Mayor believes we have been given proper legal advice regarding becoming a party with Starwood.

Mayor Kay said that the law firm has indeed provided adequate legal advice.

Councilor Lacey noted that Burns and Levinson has done fine work and thanked the firm noting that they have successfully identified issues that might not otherwise have been identified- including claw back protection issues, bonding, and more. He said that the proposed legislation fixes problems including a deal that had split revenue inappropriately among three communities. He said the proposal is not perfect but it will jump start development, and that he is very pleased with what he hears.

5. Next Steps

Next steps, include but are not limited to, filing of legislation and the execution of the Definitive Agreement.

President O'Connor opened the meeting to Councilors for comments.

Councilor Smart acknowledged the hard work of the Council. He thanked the Mayor for her hard work. He noted it is nine years to the day since we adopted the zoning bylaws. He said this proposal offers the town the best opportunity for success and offers residents of Southfield Town Council representation and pride.

Councilor McDonald thanked Mayor Kay for her work and the Council for its work. He said that we fixed something that was flawed. He noted that the residents of Southfield were "dangling in the wind" and tonight they can look forward to a positive future.

Councilor Hackett thanked Mayor Kay. She said the proposal shows tremendous potential for all three communities including recurring revenue, additional economic development, and ensuring Southfield neighbors with representation. She thanked the attorneys as well for a great job done.

Councilor Conlon said that this has been a long process made up of hundreds of hours. He said that we have no control over the project and that Starwood has complete control. He said this is not going to work and we will not have commercial development and so, will not have that base.

Councilor Harrington thanked the Council and the Mayor. He said we have done as best as we can. He commented on the revenues the town will receive from the commercial development. He said that we desperately need these funds, and that the town should take a proactive stance in ensuring this project's success.

Councilor Haugh thanked everyone including Mayor Kay and the Council. She said she is excited about what this will do for the town, and she hopes we will all work with Starwood as partners as we move forward.

Councilor Mathews thanked Mayor Kay and the attorneys. He said we are in a better position today than we were back in April. He said that there are some things in the legislation he likes and other things he does not. He said some concerns have been addressed and others may be worked out.

President O'Connor said signing the letter of intent is a big day for Weymouth and for Southfield. He thanked his colleagues, Mayor Kay, department heads, and Abington and Rockland. He said this is the single most important decision the Council has made, noting that the residents of Southfield and the residents of Weymouth are one and the same. He urged that we embrace our new neighbors.

ADJOURNMENT

At 9:18 PM, there being no further business, Vice President Smart made a MOTION to adjourn the meeting and Councilor Hackett seconded the motion. UNANIMOUSLY VOTED.

Respectfully submitted by Jody H. Lehrer, Recording Secretary

Approved by Patrick O'Connor, Council President

Voted unanimously on 15 September 2014