

TOWN COUNCIL MEETING MINUTES
EXECUTIVE SESSION
Weymouth Town Hall
Council Chambers
April 14, 2016, Thursday

Present: Michael Smart, Vice President
Robert Conlon, Councilor
Kenneth DiFazio, Councilor
Jane Hackett, Councilor
Edmund Harrington, Councilor
Rebecca Haugh, Councilor
Thomas J. Lacey, Councilor
Arthur Mathews, Councilor
Brian McDonald, Councilor
Michael Molisse, Councilor

Absent: Patrick O'Connor, President

Also Present: Robert Hedlund, Mayor
Ted Langill, Chief of Staff
Kathleen Deree, Town Clerk
Joseph Callanan, Town Solicitor
Richard Swanson, Town Auditor

Recording Secretary: Mary Barker

Vice President Smart reminded the members of the need to maintain confidentiality of the executive session until the issue has been resolved and the minutes voted.

Mayor Hedlund, Attorney Callanan and Ted Langill were invited to the table. The purpose of the meeting is to discuss the Spectra issue, frustrating and time consuming, especially for the District 1 Councilor. They have discussed strategy, and engaged Spectra in discussion whether to seek mitigation and what legal avenues might be open? An update was provided with the parameters of draft agreement. The overall package is potentially worth up to \$47M to the town. Two components are guaranteed and begin just after FERC issues order to proceed. Contribution to operating budget to offset costs is \$12M – (4 upfront, 4 in Sept 17 and 18). If they were to draw and move it over to operating side of budget and look to possibly apply \$9.5 million to capital needs in town. If drawdown \$1 million year beginning in 2017, it's worth additional interest. The third component is the tax classification of the station itself. Attorney Callanan can speak to it. via a chart with a 25 year scale of what the classification change would mean to the town in payments. \$47K per year, with admin change accomplished (administrative, not statutory); the first year change from \$47K to \$1.5 M – with a guarantee first in first year and declining in subsequent years to a baseline of \$373,000 after the 25 years. The estimated life of the plant is 30 years. It is significant. First year is guaranteed and they

are fairly confident they can get change done. Discussion is underway. Attorney Callanan reported they are working with outside counsel and the attorneys on the other side may quantify what the odds are for success.

At 7:45PM, Councilor Molisse left the meeting. Councilor Lacey asked if the total time is 23 years. Vice President Smart noted it is \$8 million plus the \$1.5 million for the first year.

Mayor Hedlund noted there aren't many other examples to contrast this with to see how it stacks up. Councilor Haugh is aware of one other one. The Calpine facility (Sithe) was not the best deal in terms of mitigation. They could look at the Greenbush mitigation-Plymouth/Old Colony project was done and Weymouth got nothing. The Weymouth metering station for the MWRA project provided a cash payment of \$350,000 with additional mitigation for the Landing accouterments and excess water usage. He also pointed to the Sanders Field, Jessup PA gas-fired plant and locally, and the casino projects in Charlestown/Sullivan Square, Everett. The magnitude of this is pretty significant. He noted to put into further context, they want input from the Town Council before making a decision. They must provide a response and the approach by Spectra indicates there won't be a deal without the Council being on board with no further opposition from the administration and Council. They would want the majority on board and not an action taken by the Council.

Vice President Smart reported that this is similar to the air base vote; he asked if any Councilor would be prohibited from speaking in opposition as an individual Councilor under their proposal. Attorney Callanan responded that they understand they can't ask the Councilors to give up speaking, and after the open meeting law violation issue, if the Council were to write a letter- any future communication on Council letterhead must be presented before the Town Council. Attorney Callanan reported the Mayor executes an agreement after seeking agreement from the Town Council and they provide public expression of support, by having some members join in the press release.

Councilor Mathews asked where they stand in terms of legal perspective; in the first discussion, they were told it had a 70% chance of failing in court. Has that changed? Attorney Callanan responded that in discussions with Calpine and Spectra for a compressor station located somewhere other than Weymouth, it became clear they don't want to talk about alternative locations. Mayor Hedland added and that includes alternative locations within Weymouth. They are only interested in discussing mitigation. In other FERC proceedings, they haven't seen a case where one has been rejected. Attorney Callanan noted that these cases are very hard to win; they have only seen instances where they managed to hold off long enough to delay construction schedules. No other town has attempted to intervene in a rate proceeding and they do not like that.

They asked the Secretary of Environmental Affairs to conduct a state level MEPA review. They are taking a very aggressive posture that caught their attention. Alonquin and Spectra are offering orders of magnitude that no other project has offered. Their litigation posture has improved because it got them to the table. There are some deadlines

pending next week. The deal would be before FERC is issued; after that environmental assessment, public comment period and then whether to issue the certificate. The town is still behind the eight ball, but it did get them to open their purses.

Councilor Mathews asked about the DEP and Conservation processes. He asked if DEP is going to sign off, whether the wetlands permit will hold them up and the public hearing for waterways permit. If it is stopped, it will be in federal court, not the regulatory process.

Councilor Haugh reviewed the math of the offer and asked if it is subject to 30B. Attorney Callanan reviewed the figures; he noted it assumes the tax rate will never go up and is a conservative estimate.

Councilor DiFazio noted that if the expectation is for them to move fast, why not go back to them requesting an additional \$5-10 million? Attorney Callanan responded that this is not the initial offer- originally it was \$6 million less. They don't have a done deal. Councilor DiFazio suggested taking more time and using the Town Council as a catalyst to get more.

Councilor Haugh noted the 25-year depreciation schedule and the project will more than double with the Access Northeast expansion. How can they negotiate when they know it's going to get bigger? Attorney Callanan responded that the offer only refers to Spectra; not Access Northeast. If that goes forward they will get the tax benefit of the full project. Councilor Haugh responded that it will double in size they will get only \$46 million. Attorney Callanan responded that it will depend on whether the tax policy changes.

Councilor Haugh noted that Calpine is making \$8 million on the sale of the parcel and questions why Weymouth isn't getting part of that since it isn't an agreeable decision. Attorney Callanan responded that they can ask. The agreement as proposed- the West portion to the west waterfront area- they have until 2019 to opt in to reserve the land for conservation. It's used as a construction area for the bridge replacement project and is unavailable until 2025, but then they can take a conservation restriction. It's the portion closer to Quincy.

There was a brief discussion regarding the use of the site for recreational space or including language that would allow them to fulfill that commitment elsewhere.

Councilor Lacey asked if there will something for them to review. Attorney Callanan responded that the current version is the third draft. Councilor Lacey noted that it needs to say it is not going to be opposed, but they want to review something- he would like to see details and is not clear on the tax piece. Did it include any conversation on tax law or payment in lieu of tax and skip the dynamic of the administrative change. Attorney Callanan responded that the latest draft is what is before them. The terms were reviewed again; payments and depreciation. Councilor Lacey noted he is worried about the significance of rushing to deal before the environmental assessment is complete. Attorney

Callanan responded that they do want a deal before that comes out and they want a letter from the Mayor supporting it before then. Does it make things easier? Yes, and it increases their chances. This is the most lucrative time for the mitigation package. If they wait, they are getting closer to the goal line and there will be less opportunity. Councilor Lacey noted that it's a strategic push by Spectra to get as much approved on the compressor station and the expansion while the Governor comes out with a new multifaceted energy plan and it's a race to see who gets to it first. If they mitigate and come to a deal, they get tight on project Northeast and limit the size of the compressor station and hold it for years while the rates for other options get vetted out. Attorney Callanan responded that the administration changed a week after the Attorney General intervened and it's a more hostile environment. The Baker administration is changing the regulations.

Councilor Lacey noted that given the size of the mitigation and risk assessment, there's maybe a 20% chance of it not being built. Access Northeast is not part of this and they can exclude it. Can limiting the size of the gas compressor limit the ability to expand off it? Attorney Callanan responded that it is part of Access Northeast and he supposed they could tie it in. Councilor Haugh noted that ANE is a much larger project. The best way to get these up and running is to implement them in small scale; Atlantic Bridge is extremely small, but with ANE it increases capacity. Atlantic Bridge is all for export. Niagara Falls pulled their project a week ago and it puts pressure on the pipeline in New York. Spectra uploaded a new map showing cumulative effect and it doubles the picture. Every time a turbine or compressor is added; so is noise. The ANE from Rhode Island to Massachusetts is all new pipeline. Councilor Callanan noted that they are already bound by this plan; with DPU proceedings and firm contracts to provide gas. They can't change the construction schedule and by the time it gets to Weymouth, they aren't interested in alternatives.

Councilor Lacey suggested putting a poison pill in the agreement and if ANE goes through, add mitigation and protect the town. If they are circumventing, then they should be subject to X, Y and Z. Attorney Callanan responded that it hasn't been brought up; if they agree to this they can make an argument against ANE. Councilor Lacey responded that they'd be in the same boat in two years with ANE. Attorney Callanan noted that if it fails it will be because of economics; not citizen opposition. Councilor Haugh argued that five companies currently have bills in legislation and none is the pipeline. 91 representatives have come out against them and companies have pulled out after deals were made. Atlantic Bridge is a steppingstone to ANE and will have to incorporate it. It's controversial; too many moving parts and is beyond Massachusetts. Councilor Haugh suggested that average daily emissions are not being regulated correctly.

Councilor Hackett asked that they be allowed to see the draft before reacting. She is clear on most of it but not the 1.5 year and administrative change. Is it as opposed to paying it to the state? It's a new cost to them and the administrative change only ups it \$20million. They are getting twice the benefit of their cost. If they didn't pay, and there was no administrative change, would they still be paying it to the state? She noted that as term mitigation, the utilization of funds for operations and recurring revenue to

operations/capital make it a PILOT-- than minimizing the impacts of the project in more of a revenue stream and see no benefit and minimizing risk- that is not happening. Will they still be able to participate in the regulatory process to assure the risk is minimized? To her mindset, it's more a financial tax process that doesn't preclude them from participating in the regulatory process to minimize the risk.

Vice President Smart responded that any type of agreement does not preclude them from participating.

Councilor Haugh asked if under Open Meeting Law ruling they can still use Council stationery to correspond as individuals. If she comments as a Councilor versus comments as a private citizen. Vice President Smart responded that a letter with a town seal cannot be used. Councilor Haugh asked to avoid misunderstanding utilizing stationery. If commenting as individuals it's not a problem. Attorney Callanan responded that if an individual is using his/her capacity as a Councilor to speak then it has to go before Council. As a result of the Attorney General's interpretation of the ruling, once the Council or Councilor decides to act as a Council it has to be approved by the Town Council. Mayor Hedlund responded that doesn't agree with it but that is as it is described by the decision. Councilor Haugh asked if it is legal for the executive branch to tell the legislative branch what they cannot do. The Council is not part of the executive decision.

Councilor DiFazio noted there are five questions and they are requesting feedback. He asked that they make sure they know the position the Council is put in if they decide to accept the mitigation. It puts them and Councilor Haugh in a difficult position. He would like to see this in writing and it need to be succinct about what they are agreeing to. If their constituents learn of it, there will be questions. It needs to be solvent and with input from each Councilor. Mayor Hedlund asked what is the protocol to distributing copies of the draft. Vice President Smart responded that it is stamped "confidential," but once it's brought forward it would end up in the minutes. If they are discussing additional mitigation against ANE then he suggested they continue the Executive Session until after the ANE discussion is complete.

Councilor Mathews asked a point of information regarding public comments by Council to the press. Mayor Hedlund responded it is in regard to dropping the opposition through a vote. Councilor Mathews responded that a vote has to take place in open session. Mayor Hedlund responded that he is not asking for a vote but they are. He didn't agree to it and offered an alternative.

Attorney Callanan reviewed the slim chances of Weymouth prevailing against the project, including a federal lawsuit. Once the certificate is issued it preempts the wetlands protection certificate. Councilor Haugh noted it's looking for the Council to support before the Conservation Commission has voted. Attorney Callanan responded that they will still seek input from Conservation; the proceedings will continue.

Councilor Hackett noted that the regulatory process continues using the expertise at its' disposal; that doesn't change? Attorney Callanan responded that what this deal includes

is the construction management plan; that the project is safe and constructed properly. There would be orders of conditions frontloaded as part of the construction management. The best strategy once the certificate is granted is that it's a segmented project and although there are 12,000 compressors in the US, there are very few along the water and that could be the argument. They don't need to site a compressor on waterfront if it could have been sited elsewhere. Federal insistency review and coastal resources were developed with state policy- this is the second best argument but they would have to win a lawsuit to actually stop construction. Councilor DiFazio asked what legal and other costs might be for Weymouth to fight it. Attorney Callanan responded it would be \$75,000 next year. Councilor Mathews asked if they might be liable to pay legal fees for Spectra as well if they lose. They could, even though the argument wouldn't be considered frivolous.

Councilor DiFazio noted that if an agreement were reached, they would have to delineate how the money will be used. In addition to operating capital, a good portion should go to North Weymouth where the largest impact is. Mayor Hedlund agreed that would be the goal; capital projects for North Weymouth were part of the discussion with Spectra. It would also free up Chapter 90 funding for other areas of the town. He would want to see the North Weymouth residents benefit. It may be able, as a result, to allow them to address public safety issues down the road. Councilor Hackett reviewed the Host Community Agreements and how they can be spent and 002 accounts without coming before Council, and the creation of the Special Purpose Stabilization Fund. Mayor Hedlund responded that they can similarly set up a stabilization account to receive and expend funds. Attorney Callanan replied that they reviewed the Greenbush mitigation and didn't take the same approach with the restrictions. They suggest if they accept money from Spectra they take it and come before Council to address how it will be spent and that was intentional. This is not referred to as a TIF or PILOT- this is a community benefit package. Councilor Hackett agreed; it is not mitigating the impact with this. MWRA needed that level of itemization to get to the approval process.

Councilor Haugh agreed with what Councilor DiFazio outlined. She would like to see it laid out. 17% is going to capital improvement and a small percentage is going to North Weymouth. Mayor Hedlund responded that they are trying to move in a direction with the budget that addresses cracked infrastructure and this gives the opportunity for that. Councilor Haugh asked for details. Will some of it go to bonding? Mayor Hedlund responded that depending on costs he would want to see some if not all used without impacting bonding capacity for other projects. It's an opportunity to catch up on things that have been unaddressed.

Councilor Lacey noted they can prolong the benefit over 14 years. If they upfront the first few years, they can come up with a plan. Councilor DiFazio noted he would need to be able to tell constituents... Mayor Hedlund responded that they are not happy if they have to concede; it's a lousy decision to have to make.

Councilor DiFazio asked what their chances are to get more if they continue to oppose. Attorney Callanan suggested in his opinion, they will get less if they continue to fight.

Councilor DiFazio suggested one more iteration-- to attempt to get more money. Attorney Callanan noted that section ten of the draft is their version. Councilor Lacey suggested making it clean; once the deal is done, then work to get the tax changed. Attorney Callanan responded that as long as it is not a payment in lieu of taxes. Councilor Haugh asked what constitutes Council approval- is it 3 Councilors? Will they do a press release? Mayor Hedlund responded regarding the provisions – a vote of Council, or an alternative would be a sense or the majority of the Council supports this; they would not need a vote. Attorney Callanan cautioned that the Council cannot act. If the Mayor signs an agreement it becomes public any condemnation by Council could negate the agreement. Councilor Lacey asked if he can oppose it as an individual. Attorney Callanan responded yes. Vice President Smart noted that if they are not voting it would have to be a consensus.

Councilor Conlon suggested hiring an environmental specialist to conduct a study; they don't have enough information to make an informed decision. Vice President Smart responded that if FERC approves, all the requests are pointless. Attorney Callanan responded that by the time they get an expert to produce an EIR, Spectra will have walked away. A response is required before May 2nd.

He also reviewed principles of federal preemptor for Councilor Haugh who questioned the permit schedule. The focus is on the language of the agreement, the role of the Council and whether to go after more money. The Mayor is meeting again with Spectra on 4/29. Councilor Mathews asked him to relay that they haven't read and reviewed the document yet. He suggested scheduling with Diane Hachey for a continuation of the Executive Session that complies with Open Meeting Law. There is only one Town Council meeting scheduled before May 2, 2016.

Councilor DiFazio suggested what he is uncomfortable with the agreement and would like to meet again to address his areas of concern. Councilor Hackett suggested increase the money amount or take the Council out of the agreement. Ted Langill responded that there is no deal without Council support. Councilor Mathews noted that if the tax classification is not changed they get far less. Only the first year is guaranteed, he would want to gamble on more money.

Vice President Smart noted they are working with the administration to get the tax class changed; and questions if they can get something before this is done. Councilor Hackett noted they need to read the document and react to it. There are too many different directions and they can't come to a consensus until they do. Vice President Smart noted that the meeting would have to come out to adjourn and then schedule another Executive Session.

Benchmarks for the agreement were discussed. They meet \$20 million and 1/3 of the budget, but Vice President Smart noted they also handcuff the Council. Councilor Haugh responded that had said she would not be happy with any deal- she said they should start at \$20 million, but she said, *I never said I would agree with \$20M- I said I don't think I could ever agree to this- I want this on the record.*

Councilor Mathews noted that ultimately the Mayor signs an executive agreement that town council has never been a part of; that's a significant change from the last meeting. The council can make a recommendation, but the mayor makes the deals.

Vice President Smart reported that they just received the draft tonight and have only deliberated it three hours; they need an opportunity to study and understand it. He suggested they go back to Spectra and relay that. They will not come to a consensus tonight and the Council President is absent. He also does not like the Town Council mention in the tenth paragraph. Councilor DiFazio asked if they are disappointed not being able to report out on a decision to Spectra tomorrow. The Mayor responded no. Attorney Callanan responded that they are running out of time. Councilor DiFazio asked when they would need a decision. Mayor Hedlund responded that in the interest of time, there are specific recommendations with regard to section 10. Councilor Lacey responded that he does not want to vote. Mayor Hedlund responded that he isn't proposing they do.

Councilor Harrington asked how they can make that assertion without a vote and how would that be binding. Attorney Callanan responded that it be by a majority of the board suggesting to the Mayor that he should sign it. Councilor Harrington asked if it would be a question of each individual. Attorney Callanan responded that it would not be a roll call but a recommendation for suggestion. Mayor Hedlund responded that they know what they want, but are trying to come up with an alternative. Councilor DiFazio responded that he doesn't have a problem voting it. It will eventually come out. Councilor Lacey responded that they have never voted to approve a collective bargaining agreement and now have a company wanting them to take a stand. The tricky part is they are holding the Council to not speak out against it. Councilor Hackett asked if that is legal or allowed; it brings the Council into the executive function. Attorney Callanan responded that they are asking them to consult; that they can be assured that what the Mayor signs will not be terminated by the action of the Council; if the Mayor signs a deal and the Council continues its opposition. Councilor DiFazio asked how it will play out. Vice President Smart noted it is better to negotiate than risk losing everything. Mayor Hedlund responded that they are here to vet it. They will either have a compressor station with a mitigation package or a compressor station and no mitigation. Vice President Smart responded that it is not that much different than Southfield. Mayor Hedlund responded that the alternatives, getting mitigation money and having a higher comfort level explaining why things aren't getting done because money was left at the table. Does he like to have to capitulate? No; he likened it to the Greenbush debate with Councilor McDonald- he has the same frustrations with the process.

Councilor Mathews asked if a list of items has been identified. Mayor Hedlund responded that it could be provided, but to be candid, the focus is North Weymouth. Looking ahead, if part of this pays to replace the fire station, then it frees up money for other things. It's earmarked specifically to take the pressure off.

Councilor Conlon stated that what Spectra doesn't want is Councilor Haugh walking into one of their meetings armed with her information. They are afraid of her and want to

isolate her by taking the control away from the Council. Councilor Haugh responded that for clarification that she will continue to oppose it and speak out.

A Motion was made by Councilor Mathews to Exit from Executive Session for the Purpose of Adjournment, was seconded by Councilor Lacey. A Roll Call vote was taken:

Robert Conlon, Councilor - Yes
Kenneth DiFazio, Councilor - Yes
Jane Hackett, Councilor - Yes
Edmund Harrington, Councilor - Yes
Rebecca Haugh, Councilor - Yes
Thomas J. Lacey, Councilor - Yes
Arthur Mathews, Councilor - Yes
Brian McDonald, Councilor - Yes
Michael Smart, Vice President – Yes

UNANIMOUSLY VOTED, 9/0

Respectfully submitted by Mary Barker as Recording Secretary
Voted unanimously on 16 November 2020

Approved by Town Council President Arthur Mathews