

Prudential Committee

Cotuit Fire District

4 September 2014

Present: Marge Wallace, Laurie Hadley, Fran Parks

Mike Daley. Mark Bodreau

Fran Parks it's a little after 5:00 so I'm going to open the special meeting of the Cotuit Prudential Committee. Cotuit Fire District Prudential Committee special meeting September 4th, Freedom Hall, Main Street, Cotuit. Is anyone recording? Amy Kates is recording. Prudential Committee meetings are conducted in compliance with the Massachusetts Open Meeting Law (Mass General Law, Chapter 38, Section 18 to 25).

For regular meetings of the Prudential Committee there should be a reasonable period of time for public comment prior to the committee commencing its discussions and deliberations. The public does not participate in committee discussions and/or deliberations. No person shall address the meeting of a public body without the permission of the Chair and all persons shall, at the request of the Chair, be silent. No person shall disrupt the proceedings of the meeting of a public body. If after a clear warning from the Chair a person continues to disrupt the proceedings the Chair may order the person to withdraw from the meeting, and if a person does not withdraw the Chair may authorize a constable or other officer to remove the person from the meeting (Mass General Law, Chapter 38, Section 20(f)).

The first order of business is to vote to rescind the scheduled district meeting for September 29th, 2014.

Laurie Hadley: So Moved

Fran: Is there a second?

Marge: Second.

Fran: All those in favor? It is Unanimous

Fran: The next item on the agenda is the denial by the department of Massachusetts and Environmental Protection of the Water District conservation restriction on the property and its effect on the district vote. It's my understanding from the treasurer that because of our enabling legislation we are unable to contribute any funds to the project because we can only provide fire, water services and the special legislation to give money to the library. Is that correct?

Female: I'm looking for a legal opinion that says it's a lawful purpose.

Female: Okay.

Mike: The bond council will require a statement qualifying that the district is in compliance with its enabling statutes. As long as somebody can certify that the district is in the conservation business and can make these types of purchases then we can proceed, but in order to borrow money or to pay cash we're going to have to make it a lawful transaction so as long as something certifies that that's part of our enabling then we're okay. When we were dealing with water, we're in the water business. No problem there, but to go out and procure for conservation purposes a right in real estate needs to be enabled in some way.

As long as ... I see our attorney is here so perhaps he can give that certification then we'll be good to go. We need to get green-lighted.

Mark: Generally the Cotuit Fire District has the ability to borrow money and to purchase land. That is tapered somewhat by Chapter 40, Section 41, when we are buying a property for water uses the DEP would need to approve it and generally for the disbursing of water. The DEP has determined that this particular parcel and I think Jackie Barton is here and can probably go into further detail, is located outside a Zone Two. It's too small for a well site and it's not something that they would approve.

The town attorney David Houghton, who we've been working on this, and I have spoken and we're going to try to find a way for the Cotuit Fire District with the Prudential Committee to hold this. It seems like it's splitting hairs and I would agree the Water Department is part of the Cotuit Fire District but if it's administered by the Prudential Committee there may be a way. It's still an open question that the [town of Barnstable 00:06:06] attorney is doing the research for the council. I believe it's coming up to vote in two weeks and so we'll be meeting next week on it, but for the property to be held by the water commissioners it does seem to be a problem.

Fran: You expect that we'll have an answer?

Mark: I would expect we'll have an answer. I have to take a look exactly at how it was voted at the annual meeting but if it was going to go directly and be enforced by the water department then we're going to have to re-vote that ...

.

Mark: For the water, and in that case it would have to be re-voted.

Fran: The next item on the agenda is the 30(b) process for the acquisition of properties, specifically 56 High Street. Just so you know, today I consulted Elaine Davis who is the wonderful person at the county who's helping us with all our procurements. She spoke to the attorney ... the Inspector-General's office to clarify the process of purchasing this property. Basically her name is Attorney Unger and she said that it's up to the governmental body to make the determination in writing as to why the property is unique. She said that you can ... that you need to indicate in writing why it meets your needs like no other property. It needs to be posted in the central register for 30 days prior to executing a binding agreement. The only thing that she would specify as unique is location. She said that if the reason that we want to purchase it is because it's a unique piece of property for possible expansion of the fire department that would be .

Mark: Yes.

Fran: I'm still unclear about the building on the property, if they ...

Mark: If I could and just too perhaps give an overview. In general when a district is looking to acquire property they would ... They put it out to bid. The exception to that and the exception to the public advertising would be if the property is unique. You need to go online to the central registry and fill out the address of the property, the reasons for the uniqueness and give an indication of all the people that have an interest in one way or another.

This particular property does have some older buildings, and not quite a lot of value to them from what I understand, but the uniqueness of the property is that it is right next door to the Fire Department and that it is readily available for parking which certainly you can add it the costs of a survey, the costs of any signage work that needed to be and then your landscape work for that purpose,

and then ultimately you can indicate that a future use of the property would be expansion of the Fire Department building, the fire station so to speak. That's the procedure.

Would you want to talk about the purchase itself and where we are on that?

Fran: Let's see ... All right, here. Why don't you just read that? That was the information...

Mark: Would you like me to read?

Fran: No, just start with half-way down. It explains that we have to include the agreed-on purchase price when we file it with the registry.

Mark: The location of the property and all interested parties. The property itself is located at 56 High Street.

Fran: Correct.

Mark: It is owned by Paul Grover.

Fran: Correct.

Mark: My understanding is that there is no broker that is going to be receiving any fee on it and that the property has been negotiated obviously subject to this process we're talking about and then ...

Fran: Right.

Mark: A public meeting to determine whether or not the citizens want to actually purchase at the price ...

Fran: Correct.

Mark: Of the property. My understanding is that the purchase price is 299,000 and my intention is to follow up with Attorney Michael Ford's office to enter into a non-binding agreement; in other words, an agreement subject to the district complying with all of its requirements in order to get on the central registry ...

Fran: Right.

Mark: Set a special meeting and then have the voters vote to purchase the property. That's pretty much it.

Mike: Doesn't the requirement for the advertising have to take place before the agreement is executed?

Mark: It does not. What it says is that you cannot enter into a binding agreement...

Mike: Okay, so ... It would not be binding agreement. Then you would convert it to an existing agreement then you would go to the district meeting to act on that agreement.

Mark: That is correct.

.

Mark: It would be a little bit like a mortgage contingency in a purchase

Mike: Right, so you'll have two agreements? You'll say we're going to do this if we get through all the hurdles?

Mark: Yes.

Mike: Then when the hurdles are completed then you will execute an agreement that you would take in hand to the district meeting.

Male: Yes.

Male: Your advertising would have to be completed and your conversion to a binding agreement completed prior to the date of your meeting. The other thing I've got is the restriction that the 30(b) manual speaks to the same process for restrictions so if we're going to be doing it at the same meeting one article to purchase real estate and a warrant article to purchase a restriction then we're going to have to advertise or follow the procedure, and if the restriction is going to be on a unique property then you're going to have to do two. Two articles, two disclosures, two central registers, and two non-bindings and then conceivably a binding, because you can't enter into an agreement until you have cleared the hurdle of the 30(b) determination that it qualifies as unique.

I think whatever you're going to do, if you're going to have a two-article warrant both involving real estate transactions, you're going to do two 30(b)-compliant actions as well.

Marge: Even if the law of properties is contingent on first of all interest in getting all of the funds for it before...

Mark: I'm not 100 percent sure if that is correct. It certainly is plausible we'll have to do that...

Mark: Okay. A lot of this is still in the study stage because the DEP came out and said, "No you can't do it this way," so we are going to have to go back to the drawing board.

Fran: Now my only other concern is the building that's going to be existing there. Clearly if we do this as a unique property and it's going to be a parking lot we can't use the building. We need to essentially, at least for some period of time, mothball it and just shut it down.

Mike: It's either that or build into the original appropriation cost of raising the building so you can ... Your article can be comprehensive. You can acquire the real estate. You can have the incidental cost, even the cost of debt issuance can be built in, legal costs ... The last article I believe was 235,000. It was only a 225 conveyance fee and I think there was 10,000 in that gross appropriation for incidentals. If your intent is to purchase a property and basically raise any buildings on it then you can bundle that all in the same article and you would just appropriate everything, do the conveyance, whatever you need to do up to the conveyance, do the conveyance and then do the raising. It's from a town meeting attendee or a district meeting attendee's perspective, a full enchilada is better than a piece because if your intent is to really do it right then you should just bundle everything into it and do one transaction at the district meeting and then get above the series of individual transactions so it would occur in there. Asking the public to buy a property that we're going to raise the building but we're going to do that at some other time. We're going to take on the liability of a vacant building or an abandoned building, you're better off to just put the raising cost into the article at the same article and then just take care of that with the one vote.

Fran: If we are buying this for a parking lot that has an existing building on it is there no way we can at some point either rehab that building or construct a building for a district office?

Mark: Yeah you can. I think what you're hearing from this Mr. Daley is that you can be as specific as you want. You could vote funds to secure the buildings and whatever that needs to be, including changing the locks, and then determining what to do with those structures later. I don't know what the integrity of those structures is but if there is something there and you might want to reserve that for a later point you could do that as well.

Fran: Excuse me ... We have to raise it. We'd have to go in front of the Historic Commission because it's more than 75 years old. I don't think that they're going to ... It's not a significant structure. I also thought that the age of the wood in that building is significant and that's probably something that we could sell and make some money on because it's antique wood. People buy barns and tear them down for the wood so I don't know. What do you think about?

Marge: I have a question for Mark.

Mark: Sure.

Marge: If we are saying that the uniqueness of the property is its proximity to the fire station and we're basically buying it for land, in the interim can we use it as Laurie suggested, as a district office?

Mike: Can you use it as a district office? Potentially, but then you get into a little of the blurred area of ...

Fran: Right.

Mike: If you ... If there is other district office space potentially available around you might better be doing an RFP ...

Fran: Right.

Mark: Of throwing a proposal out there. My understanding is that the uniqueness is not really attached to a potential use for offices. It's for the immediate use of parking and then subsequently for either expansion of the building or for whatever contiguous land uses you may have in association with the fire station.

Ron Mycock: Hi. Ron Mycock, the president chairman of the Board of Fire Commissions. I think the board ... Our board should be a ... This started off and it has metamorphosed into more of a monoline purchase. I'm just sitting here from my own viewpoint. I have two other members and two other strong members so we need ... I don't think it's a good idea to purchase this thing to tear this stuff down. I don't think it's a great idea. We could use that barn anyway.

If this is becoming directed as going to be ... I had mentioned to Fran our enabling act seems to speak specifically to each piece of property being controlled by each board such as Freedom Hall is controlled by the Prudential. Water control is all theirs and the fire control is theirs, so I get the difficulties here. I think what we as a group are looking to do is have as broad a possible use of it as we can get, but as to suggesting that you tear that barn down right now I wouldn't. We can use the space right now, I guarantee it. We can put a two or three thousand-dollar concrete floor in there and immediately we'd be full.

I'm just trying to ... The things I'm hearing here are we getting ... There's a lot of input going ... We seem to be headed in a different direction than we had initially thought we were going, and I don't quite ... I certainly haven't read any of this or have the expertise of Mr. Daly and Mr. Boudreaux but a piece acquired by the Fire Department. I know their enabling act may be different but they ended up with district offices in a Fire Department building. How was that one have been done?

Heck, a lot has changed and we're ... I feel as if we're also under some time pressure simply because we have a willing seller who understands he's dealing with the municipality but we can't hold him out there for six months or so. That's not fair. I think those are my comments. I hope I am clear as to what at least I think, and I think my board should also know that we may be getting something that although we are well aware of what's going on I think individually we haven't sat down and discussed ...

Laurie: Tom and I have not discussed anything

Ron: I'm comfortable with that. You barely talk to him but those are my thoughts at least.

Mark: If I could add. I appreciate those comments. I don't think we're ... I think everyone's still on the same page. What we're trying to state is that this is a unique property and the reasons why we're not going out to an RFP is because of

the uniqueness, the proximity, the Fire Station borders et cetera, to the extent that there are other uses. You might put in a concrete floor for storage immediately we probably ought to build that in as a secondary reason for this.

It just would make sense if you ... If we were to buy it and three weeks later you're pouring a concrete floor, the voters might say, "What was unique? How come you couldn't go and put out a storage bid for other people to bid on?" If that's what is intended then I wasn't aware of that then I think we add that in.

Ron: I just thought that out.

Mark: I don't think it would take away from the uniqueness.

Ron: I sit here and COMM has done this. They did the same thing within their fire department. I recognize that we're dealing with the mechanics of municipal law here and who knows about that stuff, but at least from my ... Speaking for myself, I'd like to see the district go with a broader use of it. It's clearly unique. I don't have a problem seeing that. Maybe others do but it's beside us. Our enabling act separates the three of us but it would seem that it would be reasonable for us to all be in one location. I guess that's where I'd be urging legal and our treasurer to try and assist us to go. I think that's more on my comment, I think.

Fran: I wasn't thinking of tearing down the barn also, just the main building, because I'm not sure that the cost of making that a habitable building because basically it flunked its home inspection ... Then if we want an office we could attach it to the fire station and I think that would be perfectly legal. It wouldn't be underhanded. I'm just concerned about ...

Ron: One other question just because of my background. If we tear the building down and then we go to build something do we run into an average citizen sideline setback requirements and things of that nature that could impose restrictions on us?

Mark: I believe you would ... I don't think you could build within the sideline setbacks of our zoning district if that's what you mean.

Ron: That is what I mean. Whereas, and it's just another thought, is it ... That's something that's pre-existing non-conforming use. You should tear it down and it's gone. That might not be a bad thing but that's just something that we ... I

think the committee that's looked at this piece ought to look and see how much we could expand.

Mark: As long as the building, I'm sorry, the property has a principal structure on it, it would maintain its independence as a pre-existing, non-conforming use, and the lot lines would not be merged. I think at some point you probably would want to merge the lot lines when you expand the fire station, but that's for the planning committee down the line.

Ron: It might just be me being overly cautious, again, from a professional background, but as a district it's a whole different ball game so just a thought.

Fran: I think if you're a municipal organization some of those zoning laws don't apply.

Mark: Your uses definitely wouldn't apply. Anything that would deal with safety would apply and I would think that setbacks would also apply.

Female: Okay. All right.

Mike: In of response to the fire commission chairman, 30(b) ... You don't have to avoid an RFP. The cleanest and easiest way to do anything on the 30(b) is to do an RFP. We may add time to your process but it makes what we're trying to do a lot less complicated. You may get no responses, or in fact obviously the seller that is interested in selling to you would be ... It would be prudent of him to respond to your RFP, but if you go out and you do an RFP and you get no responses or you get one response we're good to go. Then it's not as much of a question as to is it qualified as an exempt property?

You will use ... don't seem ... You're kind of schizo here. You don't know what you want. Do you want a parking lot in a piece of land that allows you to build 20 years out? Do you want a building that's functioning in a year? You have to determine what it is you're looking for and what you need and that's what your RFP is driven by.

If you're just looking to inventory real property for the purpose of expansion of the district facility on High Street then that's what you go and look for. If it comes with the building and you want to use that building for the near term we can write an article that you are out procuring real property with a facility on it and you can add to the amount of appropriation whatever you need to ready that so that you can make a [turnkey 00:28:47] for a Plan A and then five to 10

years into the future the district can go and opt on Plan B, tear it down, flatten, expand...

The issue that the chairman raised about who occupies and who controls the building is taken of in the motion that the district meeting will make so it will be under the auspices or the jurisdiction of the Pru-Comm. It will be under the auspices of the Fire Commission as it would seem logical that the district would want to put that property in the hands of the fire commissioners.

West Barnstable's building is under the jurisdiction of the Prudential Committee. We don't have a fire commission so we don't have that problem. We occupy administratively and Fire so the occupancy hasn't got anything to do. It's got to do with the budgets voted at the annual district meeting. We're currently occupying, with administrative staff, the fire facility in Cotuit. We're not breaking any laws or doing anything unlawful so who you put in will be determined by the motion. Who's going to actually execute the agreement and buy the property and oversee it?

The district's going to insure it through an insurance budget. That's one of the schizo things this district has there's insurance sprinkled across budgets when it could all be in one place so that it's easier to manage the insurance program on the risk management side of the house. The bottom line is who it is? Is it going to be in the motion?

What you're shopping for ... If you go out and do an RFP and you get one response and it happens to be that particular property owner, then you're good to go. It's always easier to do it the longer way in government than the shorter way because when I was scrambling to back ourselves into a shoe with a foot that might be a little too big or too square, it would be a lot easier if you just went out and sought to find what you're looking for and see what's out there.

If you're looking for two things, you're looking for office space for administrative purposes and you're looking for a future fire facility expansion, then maybe you're looking for two pieces and you get two responses when you deal with that. The sooner you decide what it is you're specifically looking for and you go through the procurement process, the better off we'll be. I think that it may be seen as a slick way to avoid issuing an RFP but it adds complications. It makes it less enabled to do what you want to do, which is be flexible. Don't discount the RFP approach.

As it is you still got to advertise for 30 days that you're going the back-door route while you use those 30 days to go the front-door route. I don't usually encourage back-door approaches. The front door is the right way to go through and it's less convoluted, it raises less concerns and voters tend to have a more confident feeling as they're being asked to take votes when they are really knowledgeable about what's going on and what the intents are. You need a two-thirds vote to buy real estate and you need a two-thirds vote to sell real estate so you've got to get the bulk of the room on board, and the less unanswered questions that are dropped onto the floor of that meeting the easier the vote will come and the more successful the proponents of the article will be.

Don't rule out not going through the RFP process just because you can, and that might solve a lot of the problems. Just get out there and find out what's there. Nothing says you have to accept any of them. What comes in, you may determine that it doesn't meet your needs then you still got to go your back-door route and deem that. You have solicited. You haven't gotten anything that meets your needs then you got this unique property for what you want to do. It seems like you've got to put more time into the planning and the acquisition than you do into the meeting strategy. Once you have a good plan and you know what you're doing the chips will fall in place.

Fran: Any comments?

Laurie: Mark, would you respond?

Mark: Sure, I'd be happy to. Mr. Daly makes a lot of good points. I think that probably the Fire and the Prudential ought to be speaking with the same voice. I do feel that this is a unique piece of property. Perhaps the purposes are a bit ill-defined so far but the property is also improved rather poorly compared with other properties and any expansion of the fire station in the other properties would likely result in a hugely greater expense because they are nice properties. They are nice homes and you probably would have no use for a home but you'd be paying for it and then you would be paying for raising it.

To the extent that you can come up with a clear reason for buying it and using it and figuring out who is going to be responsible for it I would favor doing it in this approach if you can. There are a lot of unanswered questions then perhaps the RFP would be better.

I'm the least familiar with this property but in looking at the town's assess values, the property jumps substantially from 13 to 14 in value, and it would look like they installed a rather large septic system. This also has a brand-new septic system that may benefit the district in the future because I don't know what kind of shape your septic system is in the building you're in ... the system you're using now.

Again the uniqueness has value in that what is there that isn't visible ... The buildings might not be valuable and it could be raised but that system that is functional could be a real asset to the district that could mitigate a problem with continuing use of the site even in the future. The fact that you have district water helps because your septic location isn't maxed out by well locations but that struck me as being the reason why they raised the assess values so much. It seems radical; it was \$100,000. That struck me as being a lot for a septic system but sometimes people don't complain when their values go up for assessing purposes because it helps them set a price.

That's something that you've got to keep in mind as well and it could be part of an RFP that could require that it be available for future septic purposes, which would make this property even more unique. Figure out what it is you want to buy and why you want to buy it and then we can probably get you where you need to be with 30(b).

Laurie: Would it make sense for the chairman of the fire commissioners and the chairman of the Prudential Committee to meet with you and/or Mr. Boudreaux to clarify some of these issues? I think we're in agreement. I don't know how the fire commissioners feel but I don't think we're too out of line. I think that it would make more sense for the four of you to get together and make ...

Mark: Sure.

Fran: Do you want ...

Ron: I'm happy to do that but I'm comfortable. I would want to have a meeting first with my board to make sure that was okay with them, and it would be a good option. We have not in the public session been able to ... or in any session really ... to sit and talk about this. We haven't had any conversations per se about this so I can do that quickly and we'll do it quickly. I would be happy to do that although I don't know if one of the other thoughts was about the boards having a meeting but I don't know, that might get a little lost. Yeah, okay.

Fran: When do you expect to hear about the land or do we want to make that just ... We leave that separate? BLT is a week?

Mark: Which land?

Fran: The Barnstable Land Trust.

Male: Probably within a week.

Fran: Do you want to set a date for the four of us to meet?

Mark: I think we do it today

Fran: What is your feeling on RFP versus...?

Marge: I think Mike has made some really good points. My bottom line feeling is this is a unique property. It's a once-in-a-lifetime chance to buy it. If we ever had to go out and expand the fire station it would probably be the other side of 28th. By the time you buy the land it will be way more than what we're paying for this. I think it's important that we keep the fire station as centrally located as possible, and they do need to expand. Once Cotuit Commons is finished clearly we're going to need more equipment and more firefighters. If there's a way to do an RFP that makes sense, that incorporates everything we need, that's fine. The only way to do it is a unique property.

Is there a time frame, Mark, if we buy it as a unique property? Is there a statute of limitations after which you could use it for a fire station? Plus currently the Water Department housed the Financial Department for a long time. Currently the Financial Department's in the current fire station so we have not really had unique properties all over, or unique uses.

Laurie: Of course there's no office space.

Fran: Oh, and the clerk ... Right, and the records are in cyberspace somewhere or whatever. I do think it's a good idea to consolidate the area where we're having everybody.

Laurie: It's easier for the citizens. It's easier for the town ... for the village departments.

Fran: Okay. Do we want to ... When can we meet?

Mark: I'm generally available. I'm not going anywhere for a while. Do you want to figure out when after the fire commissioners have their meeting? We can throw around some emails ...

Fran: Thank you everybody. If there's no further business I'll take a motion to adjourn.