

Town Center Committee meeting February 18, 2014

Committee members present were Judy Hoag, Mitch Feldmesser, Jay Swift, Howard Knickerbocker, Alan Vint, Maureen Sullivan, Judy Artioli, Victor Artioli, and Dale Hoag

The meeting came to order at 1:00.

The committee participated in a teleconference with Ron Berenson, the attorney representing the town for tax title collections, Larry Smith of the PVPC, Caprice Shaw, Ben Fish, Kevin Daust, Section Chief (Springfield DEP office) Luke Rogers, counsel for the DEP, and Mark Collins from the DEP's Boston office.

Ron Berenson provided a recap of the status of the foreclosure process on the two properties. He reported the Tax Title foreclosure proceedings are ready to go for the final judgment.

Members of the Town Center Committee made brief remarks on the value of the parcels to the community and reported that the committee had not yet established any vision or goals for the site.

Responding to a question about the condition of the buildings, Alan Vint reported on a recent inspection of the site by some of the committee members along with the town's Building Commissioner. Mr. Vint said that he was not optimistic about the future use and value of the former general store structure and that the other building is in "rough condition" and it would require grant money to make it useable for the town. He also said that the assessors had recently visited the buildings and have down graded the value of the buildings.

Mr. Smith, who is working with the Planning Board on the creation of a Village Center district, said that the parcel is key to the redevelopment of the town village center district.

Ms. Shaw reported on work her office had been involved in the site contamination review and "risk reduction" i.e. removal of some of the contaminating materials and the monitoring of wells. She said that there has been detection of contaminants in private wells, but those levels are well below the state allowable levels. A low level of contaminants has also been found in the wells of the Senior Center and of the church. She added that the soils underneath the former general store building were not tested and the kerosene tank is still in place. The soils around the kerosene tank had been removed. She recommended that a license site inspector (LSP) be retained by the town as a first step to "closing out" the site. She also reported that the residential property had not been tested nor remediated.

Ron Berenson laid out two options for the town. Keep the property and negotiate with the commonwealth regarding cleanup costs or flip the property.

Luke Rogers said that MGL Chapter 21e, the main statute that governs brownfield site cleanup, has a built in cleanup liability issue exemption for communities only when a town diligently attempts to divest itself of the property. He suggested that if the town intends to keep the property, then the town must complete the clean up.

Mr. Berenson suggested that the properties could be dealt with separately.

As to the amount of the liens, Mr. Rogers said that \$50,000 had been expended on the clean up while mandatory interest, at 12%, has been accruing. He estimated that the interest amounts to \$50,000 to \$70,000. \$154,000 in federal funds has also been spent. As the state has a duty to collect as much as feasible on these liens it is also in its interest to see that the property get into "new hands".

A discussion on a realistic value of the properties ensued. Mr. Rogers said that perhaps an argument could be made that the properties are underwater, that the poor condition of the buildings and the cost of additional contaminant removal make them economically unviable. The state may agree that it is not feasible to collect on the liens, or if there is a clean up plan the state may forgive the lien. However, he also suggested that given the state had already done much of the cleanup the value of a cleaned property might be more than the liens.

The point that the state wants to get a reasonable value for the clean up was reiterated and that there are many ways to structure a settlement.

Mr. Berenson pointed out that the foreclosure is satisfied in full and said that it was arguable that the state lien is equal to the town lien, and that the liens of the state may be void with the closure of the foreclosure.

Questions were posed as to the cost of the remaining clean up and whether or not there is funding available for the town to hire an LSP.

Ms. Shaw reported that there is not any money available at the moment. However she suspects that not much money is needed to close out the site and recommended that the town should hire an LSP to give them an estimate on cost for its closing out.

Ms. Shaw explained that the town needs a Response Action Outcome, that is a report that will "close out" the site, showing that the level of contamination is low or at low risk. An LSP can give the town a cost estimate for an RAO.

Mr. Smith said his office has a limited amount of funds to help the town put together an RFP for the LSP.

Mr. Daust suggested that funding might be available from the Mass Development Fund at sometime in the future. The Mass Development Fund is not a recapitalized fund, but it is expected to be so in July. Applications can be submitted at any time.

A list of LSPs is available from DEP. It was said that a cost estimate from an LSP would help in the auctioning of the property(s).

Mr. Knickerbocker mentioned that both buildings would require other types of remediation (lead, asbestos). And asked for assistance for those cleanups.

Mr. Berenson warned that any remediation done by the town would give the appearance of ownership.

Mr. Rogers disagreed with Mr. Berenson on that point saying that as long as the town were to do any of that type of work as a means of getting the property ready for sale the State would not consider it an act of ownership.

Mr. Berenson reminded everyone that auctions are without warranty and any lead or asbestos contamination not discovered before the auction would be the responsibility of the final buyer.

Mr. Daust said that if the town were to remove any lead or asbestos readying the property for sale, the state would view the work simply as improving the property for sale rather than considering the town as an operator of the property.

Mr. Rogers was asked to define the time period the town had to "diligently divest" itself of the property. He said that the State presumes that a community should divest itself of a property in 1 to 3 years and that after 3 years the burden of proof rests on the town. The town should document its efforts to divest itself of the property.

The DEP is neutral on the selling or retaining of the properties. Its goal is to see a final cleanup and reuse of the site.

Ms. Shaw said that it would be a shock to find additional sources of contamination. She reported that 775 tons of soils have already been removed from the site, all test numbers should continue to go down. She does not think it will take much to close out the site.

The conference call was ended and the committee scheduled its next meeting for Thursday Feb. 20, at 5:00pm.

The meeting adjourned at 2:24.

Respectfully Submitted,

Maureen Sullivan