



Town of Dover

Presentation on Article 20

Warrant Article 20 – MBTA Rail Trail Lease

- ✓ Authorize BOS to enter into Rail Trail Lease with MBTA
 - Substantially in the form on file with the Town Clerk
 - With such other or further terms and conditions as the Selectmen may determine
 - Along all or a portion of the Bay Colony railroad ROW
 - For a multi-use path for non-motorized transportation, open space and recreation

- ✓ Accept gifts or grants for this purpose.

BOS Vote

February 16, 2017: Board of Selectmen voted:

- ✓ Ask MBTA to approve Lease form negotiated by Town Counsel and MBTA's Consultant
 - *Form of draft Lease is posted on Town's Website*
 - *It will be filed in Town Clerk's Office after MBTA completes review*

- ✓ Instruct Town Counsel to advise BOS of any proposed changes
 - Changes requested before, and
 - Changes requested after Town Meeting

- ✓ Ask MBTA to arrive at a mutually acceptable Access License
 - For Town's to perform surveys, design, due diligence activities, etc.

Submission to MBTA Consultant

February 17, 2016 Town Counsel's office submitted to MBTA's Consultant:

- ✓ Clean and redlined drafts of Lease
- ✓ Updated Lease Exhibits currently available
- ✓ Request for Access License for due diligence period
- ✓ Request for MBTA approval of Lease as to form

MBTA's Consultant's Response

February 24, 2017 Conference Call with MBTA's Consultant

- ✓ Town's Goal: Put the negotiated form of lease to a vote of Town Meeting on May 1
- ✓ Consultant's response
 - Town requested reasonable changes
 - To MBTA standard form of Lease
 - Willing to expedite
- ✓ Consultant has discussed with senior real estate attorney
 - Willing to review Lease before Town Meeting
 - Not MBTA's usual order (Town process usually completed first)

MBTA's Consultant's Response (Continued)

- Environmental department will need to review AUL provision
- ✓ Consultant's prediction
 - Optimistic MBTA can get it done before Town Meeting
 - Will let us know of any issues
- ✓ We expect further “give-and-take” over the next few months during due diligence and as we undergo final review
- ✓ MBTA can provide Access License for Due Diligence Period

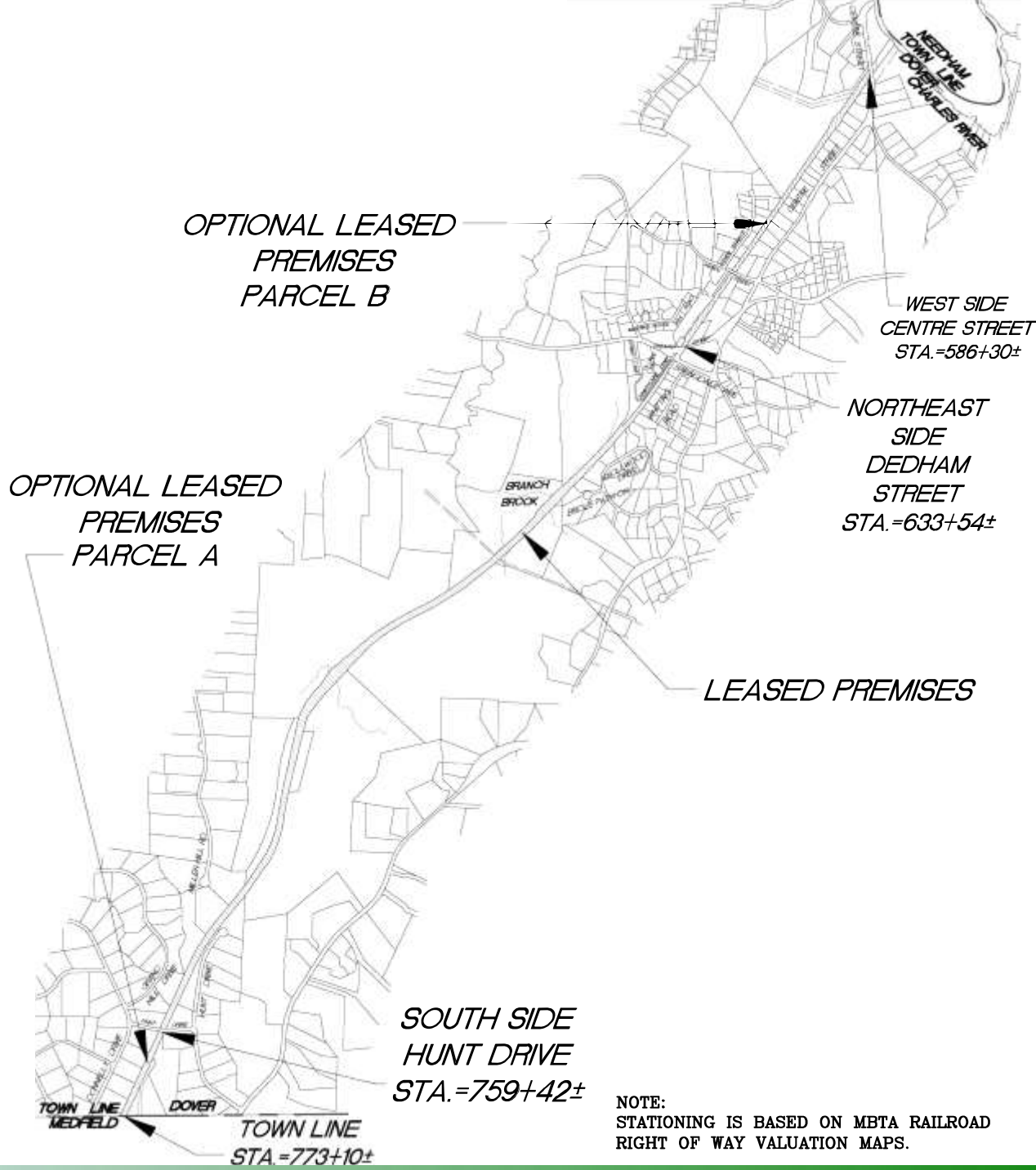
Overview of Some Principal Changes Requested

- ✓ Business Terms
 - Leased Premises
 - Term
 - Rail Removal
 - Premises at Termination

- ✓ Limitations/Mitigation of Liability Provisions
 - Third Parties
 - Limitations of Liability
 - Termination Rights for Abandonment or Injunction
 - Environmental

Leased Premises

- ✓ Lease Exhibit Prepared by Beals & Thomas ~ next slide
- ✓ Tailored to Dover's preference to lease only a portion of the ROW
 - Leased Premises
 - 2.38_{\pm} miles (Hunt Drive to Dedham Street)
 - Optional Leased Premises
 - 0.26_{\pm} miles (from Medfield town line to Hunt Drive)
 - 0.89_{\pm} miles (from Dedham Street to Centre Street)
- ✓ Excludes altogether section from Centre Street to Charles River/Needham Town Line



*OPTIONAL LEASED
PREMISES
PARCEL B*

*OPTIONAL LEASED
PREMISES
PARCEL A*

*WEST SIDE
CENTRE STREET
STA.=586+30±*

*NORTHEAST
SIDE
DEDHAM
STREET
STA.=633+54±*

LEASED PREMISES

*SOUTH SIDE
HUNT DRIVE
STA.=759+42±*

*TOWN LINE
MEDFIELD DOVER
TOWN LINE
STA.=773+10±*

NOTE:
STATIONING IS BASED ON MBTA RAILROAD
RIGHT OF WAY VALUATION MAPS.

Leased Term

✓ Term

- Tailored to Dover's preference
- Divides the usual 99-year Term into four periods of:
 - 25, 25, 25, and 24 years
 - With the extensions at the Town's option

Town Changes – Business –Rail Removal

- ✓ If the MBTA chooses to remove the rail, must do so by a date certain
- ✓ If not, the Town can remove the rail and use any revenue toward the rail trail
- ✓ The Town is responsible for removal and disposal of other rail infrastructure (e.g. railroad ties)
- ✓ MBTA would execute any necessary bills of lading, manifests, or other forms required from the landowner reasonably necessary for such disposal.

Premises at Termination

Open issue: Town proposes that:

- ✓ On the expiration or termination of the Lease
- ✓ The Town has no obligation to remove or reimburse the MBTA
- ✓ For costs of removal of any of the Town-installed improvements.

Liability– Third Parties

- ✓ Limits/Excludes Town's risks as to third parties with rights in the ROW:
 - Third party Transferees under § 6.1(d)
 - Third party lessees, licensees or easement holders under § 9.1
 - Third parties holding utility and/or communication rights under § 9.2"

- ✓ MBTA must minimize potential impact to Town's use from MBTA's reserved rights

- ✓ If an existing lease or license would prevent the creation of a Contiguous Corridor the Town can terminate the Lease as to all or a portion of the Premises.

Liability– Limitation of Liability

The Town's edits incorporate limitations on liability:

- ✓ Under the Tort Claims Act (G.L. c. 258),
- ✓ Under the Recreational Use Statute (G.L. c. 21, § 17C),
and
- ✓ As to personal liability of Parties.

Liability – Abandonment or Injunction

- ✓ **Open issue**: Town proposes that Town would have the option to terminate this Lease at any time during the Term upon ninety (90) days written notice to the MBTA:
 - If ICC, STB or a court determines that all or any portion of the ROW in Dover has been abandoned, or
 - If the Town's use of the Premises is enjoined

- ✓ During due diligence period, Town plans to follow up on:
 - Title search re MBTA's 1973 Deed and 1975 Order of Taking (of fee simple interest)
 - Request to STB re any applicable abandonment proceeding

Liability – Overview of Environmental Liability Exposure

- ✓ See Town Counsel's office 2016 Memorandum for background

- ✓ No Lease = No Exposure

- ✓ Signed Lease = Some (Unquantifiable) Exposure, Mitigated by
 - Negotiated Lease terms
 - Statutory defenses incorporated by reference
 - Environmental insurance
 - DEP Best Management Practices

Beals & Thomas 2016 Environmental Considerations

- ✓ Review of historic documents: No battery vaults along proposed path and two switches near Springdale

- ✓ Recommend limited testing program for:
 - Arsenic
 - Lead
 - Polycyclic Aromatic Hydrocarbons (PAH)

- ✓ If contaminants they are already in the soil ~ not a result of rail trail construction

- ✓ Under DEP BMP, prescribed approach for typical rail trail contaminants is **containment**

Liability –Environmental

- ✓ Town's changes clarify that any remediation obligation is subject to and without waiver of
- ✓ Town's defenses to liability under Chapter 21E, e.g.:
 - Rail-trail exception to the definition of owner or operator,
 - Eligible tenant exception to the definition of owner or operator
 - Defenses to liability afforded by Section 5 of Chapter 21E, and
- ✓ Environmental insurance protections afforded by G.L. c. 23A, § 3I.

Open issue: Town proposes to have ability to use an Activity and Use Limitation (AUL) (if necessary)

Environmental Insurance - Quotes

- ✓ Statutory Requirements
 - Coverage limits of at least \$3,000,000 per incident
 - Deductible of at most \$50,000 per incident
 - Term of at least 5 years
- ✓ Four Quotes:
 - Policy Form, Endorsements and Exclusions vary
 - Premiums range from \$21K-39K for basic policy
 - Plus 4% on Mass Surplus Lines Tax
 - Increased premium if leasing/constructing in stages

Environmental Insurance – Coverage

✓ Coverage

1. BI and PD coverage – yes

2. Clean-up

a. New release – on and off site – yes

b. Pre-Existing –

i. On-site – no to very limited

ii. Off site – (qualified yes)

✓ BRAC Subsidy – no longer available

✓ Bind Policy when Lease is executed

○ Possibly bind earlier with longer term to cover License for due diligence

○ Quotes may change with lapse of time

Due Diligence and Funding

- ✓ Town will not execute Lease until
 - It completes its due diligence and
 - Private funds are donated to Town to cover costs
- ✓ Due Diligence
 - Town will pursue Access License with MBTA for due diligence
- ✓ Town Counsel's office is drafting a proposed MOU with FDG
 - Outlines funding arrangement
 - Phases funding to match activities

What does a “YES” Vote mean and is it binding?

- ✓ A **yes** vote at Town meeting means:
 - The Town is authorizing the BOS to continue to negotiate and perform due diligence and upon completion of negotiations and due diligence
 - Should the BOS in its executive role determine that the lease is acceptable to the Town and the project has been adequately funded ~ the lease will be executed
 - Any lease terms negotiated will have some risk to the Town, similar to EVERY contract we enter into ~ risk assessment

What happens if Town Meeting votes “NO”?

- ✓ The BOS will discontinue to negotiate with the MBTA and stop all due diligence activity
- ✓ Since the Town does not have an exclusive right to construct the rail trail any third party can negotiate directly with the MBTA
- ✓ The MBTA has entered into leases with non-profit organizations to construct trails
- ✓ If such a lease were negotiated the Town involvement would be minimal ~ limited matters such as wetland regulations, public safety, building code and the like

Questions and Comments

- ✓ Please be respectful of points of view contrary to your own
- ✓ Do not REPEAT a question or concern that has already been raised
- ✓ Do not interrupt

Thank you all for attending

