



# Town of Dover

Presentation on Article 19

**MBTA Rail Trail Lease**

Town Meeting

May 1, 2017

## Why are we voting on this issue again?

- ✓ Article 18 at Town Meeting a year ago authorized the Board of Selectmen (“BOS”) to negotiate with the MBTA to lease the land known as the Bay Colony railroad line or right of way in the Town of Dover (“Dover Greenway”)
- ✓ And to return to Town Meeting with the terms of the lease ~ for authorization to enter into the lease
- ✓ Since last Town Meeting the BOS have been working diligently with counsel on the terms, the timeline and the process for negotiating the lease

## Status of the Lease with the MBTA

- ✓ As of this evening the BOS does not have a final lease
- ✓ However since we began our negotiations with the standard MBTA lease, we will provide a comparison between the standard lease versus the changes we have requested
- ✓ This analysis provides a comparison of the terms ranging from least favorable to the Town to most favorable to the Town
- ✓ And demonstrates that many of the changes we have requested are “nice to have” versus “need to have” items

# Summary Comparison of Key Lease Terms

	<b>Dover</b>	<b>MBTA</b>
Premises ☆	2.38m from Hunt Drive to Springdale with options	From Medfield line to Needham
Term in years	25, 25, 25 and 24	99
Rail salvage \$	\$ ~ to Town if we remove	\$ ~ to MBTA if they remove
Premises at Term	As is	Restore to grade & remove improvements
Indemnity exceptions	Excludes 3 <sup>rd</sup> parties	No exclusion

☆ Options: .26m (Medfield Line) and .89m Dedham to Center

## Summary Comparison of Key Lease Terms (con't)

	Dover	MBTA
Abandonment	Request MBTA provide notice of potential issues	No reference
Limitation of liability	Town requests limitations under the Tort Claim Act and the Recreation Use Statute	No limitations

- ✓ The Town **WILL NOT** pursue a lease if the MBTA insists on a lease for the entire rail bed *from the Charles River to Medfield*

## Liability Management – Environmental

- ✓ Based upon the work performed by the Town's consultants in connection with the feasibility study ~ contaminants should be limited to those found as a result of rail bed management
- ✓ Under DEP Best Management Practices (BMP), prescribed approach for typical rail trail remediation of contaminants is **containment**
- ✓ **Cost of remediation = \$ to construct a trail**
- ✓ Environmental insurance protections afforded by G.L. c. 23A, § 3I.
- ✓ Environmental insurance excludes “pre-existing contaminants” from rail road operations such as: PCPs, PAHs, arsenic etc.

# 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 :

- Great American A+
- Ironshore A
- Beazley A
- Zurich A+

## ✓ Terms:

- 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

# Clarification of Certain Assertions Made

## Assertion:

*Beals & Thomas Report stated **NO ACCESS** permitted from any point other than designated points*

## Clarification:

- BMPs suggest limiting exposure to soils pre and post construction by using one of the following measures, among others:
  - Install signs to redirect people;
  - Place barriers to control use; or
  - Eliminate contact with soils of concern using capping materials
- Construction of the rail trail will act as the barrier ~ the trail manager will monitor for erosion and supplement as needed
- Intersections will be designed to allow for access to other trails thereby reducing erosion

## Assertion:

*Town's consultant for Springdale stated that property values go down 7% with public access*

## Clarification:

Town's consultant comments were specific to 46 Springdale

- Address newly created public access
- Based upon best estimate of the impact to such an easement on 46 Springdale
- The estimate of a reduction in value of approximately \$100,000 with public access trail regardless of the size of the parcel ~ not a % to be extrapolated and not an opinion regarding another parcel or the impact of a rail trail

## Assertion:

*Cost of Town's Emergency Management will increase*

## Clarification:

- Neither the Chief of Police, Head of Highway and Fire expect a rail trail to impact the size of their departments or the cost for them to deliver the current level of service

## Due Diligence and Funding

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

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

- ✓ A **yes** vote at Town meeting means:
  - The Town is authorizing the BOS to execute the lease so long as the following conditions are met:
    - Lease premises are: Hunt Drive to Springdale
    - Town Counsel confirms that the final lease is not substantively different from the draft leases discussed at Town Meeting
    - The BOS with Counsel negotiate a MOU with FDG for construction of the Greenway as well as on-going maintenance
    - Funds are raised by FDG to finance the project

## 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
- ✓ A lease negotiate with a non-Dover party limits the Town’s involvement ~ limited local jurisdiction on such matters as: wetland regulations and public safety