

**Town of Leicester Planning Board  
Meeting Minutes**

MEMBERS PRESENT: Jason Grimshaw, Chair; Sharon Nist, Alaa AbuSalah, Debra Friedman, Andrew Kularski

ASSOCIATE MEMBER: Robyn Zwicker

MEMBERS ABSENT:

IN ATTENDANCE: Michelle Buck, Town Planner; Barbara Knox, Board Secretary

MEETING DATE: **April 4, 2017**

MEETING TIME: 7:00PM

AGENDA:

- 7:00PM      Public Hearing, continued:  
                 Special permit Application: commercial use at 1205 Main Street (Jin & Ya Company, LLC)
- 7:20PM      Discussion:  
                 LaFlash Boutilier Solar gate
- 7:30PM      Public Hearing:  
                 Zoning Bylaw Amendment: Solar Energy Systems
- 8:00PM      ANR Plans:  
                 1. Auburn Street limited frontage lot (Southwest Holdings)  
                 2. Stafford Street (Southwest Holdings)  
                 3. Rawson Street (Joe Lennerton)
- 8:15PM      Approval of Minutes  
                 • 3/7/2017
- 8:30PM      Town Planner Report/General Discussion:  
                 A. DLTA Grant (Housing Study)  
                 B. Complete Streets  
                 C. Draft Priority Habitat Map  
                 D. Miscellaneous Project Updates

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Mr. Grimshaw called the meeting to order at 7:00PM

**Public Hearing continued:**

Special Permit Application: Commercial use at 1205 Main Street (Jin & Ya Company, LLC)

The applicant requested a continuance to the next meeting in order to have time to prepare a better parking plan.

MOTION: Ms. Friedman moved to continue the public hearing on the Special Permit application for 1205 Main Street, Jin & Ya Company LLC to April 18, 2017 at 7:00PM

SECONDED: Ms. Nist – Discussion: None – VOTE: All in Favor

**ANR Plans**

Auburn Street Limited Frontage Lot (Southwest Holdings)

Rescheduled to future meeting

Stafford Street (Southwest Holdings)

This is a portion of the same parcel divided for a limited frontage lot before the Board a little while ago. They are now creating two long buildable lots that will be transfers. Lot A is being transferred to abutter Mike Materios. Ms. Buck noted the purpose of this transfer was to allow

additional land clearing for the solar farm. The second piece, Lot B, is the leach field for Staffordshire apartments. Staffordshire Apartments and the Plaza are being sold and they want to sell the related septic system with the sale of the apartments and plaza and Mr. Richards will retain the remaining land.

Ms. Friedman asked what happens if the septic system on Lot B fails, where would they put the other septic system. She felt there would not be enough space available for a backup. Ms. Buck said the applicant claimed there was enough room.

MOTION: Ms. Friedman moved to approve the ANR Plan for Southwest Holdings

SECONDED: Ms. Nist – Discussion: None – VOTE: All in Favor

#### Rawson Street (Joe Lennerton, III)

This is splitting a lot on Rawson Street to combine with Mr. Lennerton's property.

MOTION: Ms. Nist moved to approve the ANR on Rawson Street for Joe Lennerton, III

SECONDED: Ms. AbuSalah – Discussion: None – VOTE: All in Favor

#### **Approval of Minutes**

3/7/2017

MOTION: Ms. Friedman moved to approve the minutes of March 7, 2017

SECONDED: Ms. Nist – Discussion: None – VOTE: All in Favor

#### **Discussion**

##### LaFlash Boutilier Solar gate

In attendance: Nick Casello, 20 Boutilier Road (abutter) and Ernest Mello, ZPT Energy Solutions.

Ms. Buck reviewed the gate being part of this solar project that was requested by the Planning Board. The language in the decision stated that the gate should be installed as long as it doesn't interfere in the rights of others. One of the abutters, Mr. Nick Casello, objected to the location of the fence. Mr. Casello's attorney and the solar company's attorney have been working together to reach an agreement, because this was not the Town's burden to research rights of interest to a right-of-way. This is a private issue between the two parties and they basically reached an agreement for now, to not interfere with each other if the gate was not installed and nothing was blocking the roadway.

This issue is before the Board tonight to find out how important the installation of a gate is. She asked how much the Board wanted to get in the middle of a property dispute between two parties. If the Board felt this was extremely important, she explained that more information would be needed on the rights to the road. Her feeling was that it wasn't worth the hassle. She explained the reason for the gate was to indicate that the status of the road was uncertain and not to develop beyond a certain point. However, there is house beyond the gate, on the left hand side, referred to as 500 Boutilier Road.

Ms. Friedman asked if 500 Boutilier Road was accessed from Stafford Street. Mr. Casello said that lot was accessed from Henshaw Street. The attorney for Mr. Casello said there was an old house on that lot still used as a residence and that gate would block access to that lot.

Ms. Friedman asked if the house was occupied and who owned the house. Mr. Casello said he owned the lot and the house was not occupied at this time.

Ms. Friedman asked where the lot was shown on the plan. Ms. Buck explained the lot wasn't shown on the gate plan, but was approximately 700 feet past the proposed gate location.

Ms. Friedman pointed out that during the review process on the solar project and the subdivision project, that house lot was never mentioned. Mr. Casello disagreed. He said the reason there was never an issue was that road was proposed to be built all the way through to Stafford Street.

Ms. Buck explained that in the written decision for the solar farm, the applicant was to leave the road as is. Ms. Friedman noted the applicant wanted to leave the road as is, which was the reason for the gate. Ms. Buck agreed. She said the applicant now wants to leave the road as is without the gate, so she advised the applicant to hold off putting in the gate.

Mr. Grimshaw asked for the Board's opinion.

Ms. Friedman said she didn't feel strongly about the gate, but is interested in having the road ripped up the road if the gate was not going to be put in. Ms. AbuSalah agreed.

Mr. Casello's attorney clarified that if the gate does not go in, there won't be anything done to the road and both parties are working on something regarding rights on that road. Ms. Friedman noted it was not a road. Mr. Casello asked who said it was not a road. He was not informed it wasn't a road.

Ms. Buck explained this was discussed at length and the Board made no determination on the status of the road for the purpose of this permit.

Mr. Casello said he wanted to know why that language was used that it wasn't a road, because that's not what was said. Ms. Buck said the status is undetermined, which is what it's always been and it is stated on the plan, status undetermined.

Ms. Buck asked if there was a timeline to when an agreement between the two parties could be reached. Mr. Casello's attorney said possibly three weeks.

Ms. Friedman said she was not willing to vote on anything until both parties have come to an agreement.

Ms. Buck advised that once the applicant and Mr. Casello reach an agreement, to contact the office to get on the next meeting agenda.

Mr. Ernest Mello said ZPT was okay either way and didn't have a strong feeling either way on the condition regarding the gate.

### **Town Planner Report/General Discussion:**

#### **DLTA Grant (Housing Study)**

The Town applied for a grant for a housing study and received a \$7,000 Technical Assistant Grant to do a study on housing in Leicester.

#### **Complete Streets**

The Complete Streets Policy was accepted by the State on March 16<sup>th</sup> and the Town now will move to step 2, which is the prioritization plan.

### Draft Priority Habitat Map

The State distributed to all Planning Boards a letter stating they were updating the State's National Heritage and Endangered Species Map. There is a draft map available for public comment from April 3, 2017 through June 3, 2017.

### **Public Hearing**

#### Zoning Bylaw Amendment: Solar Energy Systems

Mr. Grimshaw read the notice into the record and then opened the hearing to discussion.

Ms. Buck gave an overview on the proposed changes. Leicester has permitted 9 solar farms since the Town first adopted a solar bylaw and there has been increasing concern about insufficient setbacks and screening, particularly in the residential districts. Screening is already required in the commercial districts, but there weren't any existing standards in residential districts.

The first page of the handout summarizes the existing bylaw and the proposed changes.

- Under the existing bylaw, there are two broad categories of ground-mounted facilities: anything under 40,000 square feet and anything over 40,000 square feet, which means there were no regulations for ground-mounted under 40,000 square feet.
- Anything up to 40,000 square feet is allowed by right in every zoning district across the board and then facilities over 40,000 square feet was allowed by site plan review in Suburban Agriculture District and most of the commercial districts; a special permit is required in R1 and R2 and in the Neighborhood Business and Central Business districts they are prohibited.

The new changes are structured by splitting the use into 3 categories instead of 2: small, medium, and large. These categories are regulated as summarized on the first page of the handout.

- The small-scale (up to 1000 square feet) would be serving a house. Most people to date have roof-mounted, but there has been some demand for small ground-mounted facilities.

The Town still wanted to have the small ground projects, in a residential zone, to be allowed by right anywhere, as well as by right in the Watershed Overlay.

- The medium scale, 1,000 to 40,000 square feet, would require a special permit in all residential districts and prohibited in Central Business and Neighborhood Business. Site Plan Review would be required in all of the commercial districts and by special permit in the Watershed Overlay.
- The large-scale, over 40,000, would require a special permit in Suburban Agriculture; prohibited in the all residential districts, Central Business and Neighborhood Business; special permit in the Business District, Residential-Industrial-Business; site plan review in the remaining Business Districts and special permit in the Watershed Overlay District.
- Projects over 250,000-square feet and/or requiring more than 2 acres of tree clearing, would require Major Site Plan Review.

There is new Dimensional Requirement language added related to height limits and setback requirements in residential districts, and in commercial districts where abutting a residential use.

There are 7 pages of changes made:

Page 1: Definitions were rewritten changing the wording from kilowatts to square feet.

Page 2: Under Applicability, here the wording is more explicit that roof and wall mounted solar systems were not subject to the Bylaw. The previous Bylaw had the information stated in a narrative form on which district these systems were allowed and how it was regulated. That got very confusing, so instead it will be shown in a Table with more detail and will explain how the different sizes are regulated by district. At the bottom of the page there will be specific special permit requirements added for ground-mounted solar.

Page 3: This is a separate section for the small-scale ground-mounted systems. All dimensional requirements that would normally apply in a district where it is placed would still apply, except the height limit would be 12 feet. The side setback would be the same as for Accessory Structures.

Further down on the page, shows the dimensional requirements rewritten for medium and large-scale solar facilities. These requirements will follow the requirements of the applicable zoning district, except as follows: A) minimum frontage shall be fifty feet; B) the height limit will not exceed fifteen feet (higher by special permit in commercial districts); and C) setbacks are specified in a Table instead of in a narrative form.

In the three residential districts, SA, R1 & R2, the setbacks will be 100 feet from the property line; the Business Districts and Industrial District, the setback from residential uses and residential boundaries will be 50 feet; and the remaining commercial districts, will be 50 feet from residential use and 100 feet from a residential district.

There are Footnotes added to help explain to the applicant that in BI-A, BR-1 and RIB, there are different frontage and area requirements to follow, depending on whether it's a residential use or a commercial use. The applicant will need to follow whatever is applicable for commercial and not residential. The second footnote gives a brief explanation on when the district boundary splits a parcel.

Page 4: Additional language was added under Accessory Structures stating, "Inverters shall be installed as far from abutting structures as feasible to mitigate potential noise impacts."

At the bottom of the page, a new section was added related to land clearing, natural resources and screening.

Land clearing will be limited to what is necessary for construction of the solar systems, to the maximum extent feasible. The preference is to use previously disturbed sites, with existing vegetation that can remain in required setback areas and that adequate erosion control shall be provided for all land clearing. The Town is trying to encourage these facilities to be located on previously disturbed sites and if it has to be in a place where there is the need for tree clearing, that stormwater is adequately addressed, etc.

Under Protection of Natural Resources, this section will restrict solar farms on lands subject to conservation, preservation, agricultural or watershed preservation restrictions and will prohibit from important wildlife habitat, as mapped out by the Natural Heritage and Endangered Species Program by the DEP.

Page 5: Screening/Buffering, this section specifies solar systems be screened year round from all adjoining properties in residential use in all zoning districts, depending on site specific conditions. If there is a site already densely wooded, less screening would be required.

At the bottom of the page, under Financial Surety, language was added so that the surety is required to be submitted prior to commencement of site work. More detail was added requiring the applicant to submit a detailed estimate of cost and to take into account inflation over time.

Page 6; this is an entirely new section on special permit criteria for ground mounted solar energy systems. There are general special permit criteria already in place for all applications, but this section will be specific to the use of ground mounted solar energy systems.

Pages 6 & 7, these two pages basically fix and cross-reference to other sections. These pages make mention amending the use tables within the BR1, RIB and NB District because those three districts were not mentioned within the dimensional table.

Ms. Buck concluded the overview noting several issues that needed to be discussed. She explained needing to do a line-by-line read through of the Bylaw because of being a complicated set of amendments, having several cross references between sections. There wasn't opportunity to do that before this hearing, so the intent was to continue the hearing in order to complete that additional level of review.

There were two additional items that didn't make the draft but needed to be discussed.

- 1) Adding the issue of roof mounted solar. Ms. Buck suggested adding a specific exemption regarding the height limit in the Bylaw, to make sure solar was included in the list of roof-mounted structures that were exempt from height.
- 2) Watershed Overlay special permit requirement. Ms. Buck noted needing to review this section further, because it may also need to be amended.

Another big issue was the forestry/tree clearing. At the last meeting, the Board decided to handle this by making anything that requires more than 2 acres of clearing, require Major Site Plan Review. Ms. Buck researched what other Towns did by posting an inquiry on the Planner's website. A few responses were received. Shutesbury and Shrewsbury require a 4 to 1 ratio, which means if someone clears 1 acre, they have to leave 4 acres of undisturbed land.

The Town of Leominster limits tree clearing to 50% of the total lot area. The Town of Great Barrington states land clearing to be minimal.

The Town of Shirley limits solar farms, regardless of the amount of tree clearing, to 5 acres maximum. The Towns of Sharon and Fairhaven prohibit tree clearing.

Mr. Kularski noted when this was last discussed, he understood 2 acres would need some type of review and depending on the location, would determine how to address drainage concerns.

Ms. Buck agreed and sked the Board for comment.

Ms. Friedman felt the way it was currently written, didn't make it too restrictive. Ms. Buck agreed it wasn't too restrictive, but asked if the Board wanted to make it more restrictive.

Mr. Kularski felt the Bylaw was fair the way it was currently written for the landowner. All agreed.

Ms. Buck noted the last issue for discussion was, when the Town adopts the solar bylaw, it would apply to all developments unless they had a special permit or building permit prior to the first legal ad, for the zoning change was placed in the paper. There are three projects in Town currently, who did not meet that deadline (one project missed it by two days). She noted the Board can amend the language in the draft Bylaw, to provide more generous grandfathering than the State allows. She had discussed this with Town Counsel for opinion and Counsel agreed the Board could do that.

The office received a letter from the company SunConnect, the solar developers for the Mulberry Street Solar Farm, asking the Board to add certain language to the Bylaw that provides more generous grandfathering than the State allows.

One option to the proposed grandfathering language would read, "The amendment to Section 5.14, adopted May 2, 2017, shall not apply to any solar energy system that received Site Plan Approval from the Planning Board before March 21, 2017, except any such project that failed to lawfully commence work in one year of the date of Site Plan Review."

Ms. Buck further explained that when trying to determine lawful commencement of work on a project can get complicated. She suggested a second option where the language would tie commencement of work to a building permit.

A second option to consider would read, "The amendment to Section 5.14, adopted May 2, 2017, shall not apply to any solar energy system that received Site Plan Approval from the Planning Board before March 21, 2017, except any such project fails to obtain a building permit within one year from the date of site plan approval and commence construction of solar arrays, authorized under the building permit within 6 months of issuance of the building permit."

She assumed it was never the Board's intent for this Bylaw to apply retro-actively to any of the projects already permitted. In terms of the three permitted projects, the one that would need to be altered the most if not grandfathered would be the Mulberry Street Solar Project.

Ms. Friedman asked what type of alterations would that project need. Ms. Buck said they were closer than 100 feet from the property line and there were more trees being cleared than typical.

Even though the Board would like to see these improvements to the Bylaw, the applicants had gone through the permitting process in good faith and in fact, two just received renewals of their permits. She felt grandfathering the projects would be the right thing to do.

After some discussion, all agreed with Option 2.

A representative from the Mulberry Street Solar Company stated their support to an amendment that would provide grandfathering.

#### Discussion opened to public.

Mr. Gregg Buteau, 2 Merrick Street, Cherry Valley said the Bylaw now states anything over 40,000 square feet would require a special permit and the amendment, as written, anything over 1,000 square feet would require a special permit. He felt that was a very significant difference.

Ms. Buck disagreed and explained anything over 1,000 square feet requires a special permit only in the residential districts and Watershed Overlay.

Mr. Buteau said at the Selectmen's meeting and during their review of the amendment, he felt the Selectmen were lead to believe a special permit only applied to those projects over 40,000 square feet. Generally speaking, in the old bylaw, where it says promote solar development, he was asking the Board to consider having the small and medium combined and not subjected to a special permit, which requires a 4/5 vote, notification to abutters and all the other requirements to a special permit. In his opinion, that special permit which goes from 1,000 to 40,000 in a residential district was excessive. He strongly suggested the Board reconsider this as written, because by requiring this special permit in the medium range will hinder or discourage solar development in this Town.

Mr. Buteau continued. On page 3 of 7, discusses minimum frontage being 50 feet. He asked the Board to consider minimum frontage of 40 feet, because of the many pork chop lots in Town having only 40 feet of frontage and 40 feet is generally a street width for a road in the Town of Leicester.

With respect to the setback requirements, he understood the need to have that balance between the solar developer and abutters. He asked, given the Board will be requiring screening, if they would consider 50 feet in all areas.

On page 6 of 7, under Special Permit Criteria for Ground-Mounted Solar Energy Systems, C, reads, "In the case of a residential district location, the visual impact of the installation on its immediate abutters and the nearby neighborhood has been effectively neutralized through appropriate design, landscaping, fences, berms, etc." Mr. Buteau felt that gets into being a very subjective area and had concern with special permit requirements. A group of abutters can show up at a meeting and state the view of the project was not acceptably neutralized.

In the residential district, having 1000 square feet, he didn't see why the meeting could not be continued for further review, to have a small scale system in the same department that requires no special permit. He had no problem with solar developments having the requirement for screening, but felt the requirement for a special permit was a harsh requirement.

Ms. Buck noted she couldn't comment on what was presented at the Selectmen's meeting, but that they received the same handout and summary sheet provided to the Planning Board. She explained a special permit was only being required in the residential districts and solar farms were a commercial use. The Town does not allow any commercial use in residential districts.

Mr. Buteau said in the residential areas there could be a lot of pork chop lots that people would want to use.

Ms. Buck said those residents could apply for a special permit. The Board is continuing to allow this use, by right ( no special permit) of any size in all of the commercial districts. It's only in the residential districts the Board wanted to have that extra level of review.

Mr. Buteau felt for someone who owns a pork chop lot, the amendment was harsh.

Ms. Buck noted it wouldn't necessarily be denied, it would go under review.

Mr. Buteau felt the extra hoops they would need to go through, a special permit was a very hard process.

Ms. Friedman asked if Mr. Buteau felt that requiring a special permit for a commercial use in residential use would be harsh, rather than to protect the residents in a residential area.

Mr. Buteau said he was trying to strike a balance. He felt residents should be protected and agreed with the suggested increase in the setback requirements. However, any solar development anywhere should be required to provide that screening effect.

Ms. Friedman said in a residential area, the protection for the residents is a special permit.

Mr. Buteau said that was the division on being excessive, because he considered a special permit requirement very harsh and going all the way down to 1000 square feet, which is 30 x 30, makes it tough. He felt the balance approach was a property owner has the right to use his land and the Bylaw would provide screening requirements.

Ms. Friedman said she looked at this from the residents' point of view. The resident should be, at the very least, notified a solar facility was going in. This is a commercial use in a residential zone and the residents should be notified so they can come to the hearing and have their say.

Mr. Buteau felt it comes down to interpretation.

Ms. Buck explained the State's new Bylaw divided solar projects into three categories and allowing up to 40,000 with nothing but a building permit is problematic.

Mr. Kularski said when addressing pork chop lots in the Suburban Agriculture zone, the normal requirement was 200 foot frontage and the Board lowered that down to 50 feet.

Mr. Buteau said he was suggesting lowering it to the road width of 40 feet, which was standard width in the Town of Leicester.

Ms. Buck explained 40 feet was the required right-of-way for a road and the minimum frontage, even with a limited frontage lot, is 50 feet. The State exemption related to frontage is also 50 feet.

Mr. Jack Daige, 5 Sacks Drive, asked if the new buffer requirements would go into effect on the three solar fields looking to be grandfathered, or are they grandfathered to clear-cut. Ms. Buck said they would be grandfathered.

Mr. Daige asked if there was any consideration given for a buffer zone. Ms. Buck said the project on Route 9 already had buffering and screening, because that requirement was already in effect for commercial uses in commercial districts.

Mr. Daige said the project on Mulberry Street will be clear-cut to the residential property line. Ms. Buck said during that review process, the Board did require that some vegetation remain, but couldn't recall the width or the details to that. If the Bylaw was amended as discussed tonight, they would not have to conform to the new Bylaw.

Ms. Daige asked if a vote could be taken to amend that. He felt solar was a good neighbor, but at the same time, his concern was clear-cutting right to the property line, without a buffer. If this was just a field, screening would be fine, but this particular project was on a huge slope. His concern was having erosion issues if they clear-cut to the property line. If the trees were left with a 100 foot buffer would be acceptable. The new Bylaw states 100 foot from the structure and if the developer was clear-cutting, does that determine how close they can cut the trees. For example, if the structure was 100 feet from the property line, would the trees get cut back to 25 feet.

Ms. Buck said if there is a residential use on an abutting lot, the solar developer has to have 100 feet on their property.

Mr. Daige said his concern was with the Mulberry Street project clear-cutting and asked the Board to have consideration. He has a piece of property there that goes right to the back of this property line and right up to the wood line where it states clear-cut.

Ms. Buck said she wasn't comfortable trying to retroactively enforce buffering. However, there is landscaping proposed behind the houses and it looks as though the arrays may be more than 100-feet back.

Mr. Daige said in that area, if they left those trees as a buffer it would be a lot more neighbor friendly. He was not opposed as a neighbor, but there were enough of trees there where they can leave a buffer.

Mr. Grimshaw agreed having some difficulty trying to retroactively enforce buffering on an already approved plan. He asked if there were any further questions or comments, hearing none, asked for a motion to continue.

MOTION: Ms. Friedman moved to continue the public hearing on the Zoning Bylaw Amendments: Solar Energy Systems to April 18<sup>th</sup> at 7:30PM.

SECONDED: Ms. Nist – Discussion: None – VOTE: All in Favor

### **Town Planner Report/General Discussion Cont:**

#### Miscellaneous Project Updates

##### *Central Mass Crane*

Some neighbors have concerns about the site lighting. Ms. Buck requested Quinn Engineering go out to the site and evaluate the lighting and it fell below the normal standards for light spillover off site. There was some concern that some of the lights were not on when Kevin Quinn evaluated the site, so he planned to go back to the site. Mr. Jack Daige explained the building lights were fine; there was a small fuel line right next to the building where there is a 300-400 watt spot light that shines straight down. The lights are on motion timers approximately on for 10-minutes.

##### *Eastern Pearl*

In December 2016, the special permit for this project expired for failure to commence work. Yesterday, the owner of the property came in for a building permit and submitted plans showing 67 seats with no parking plan. The Planning Board decision stated that the parking plan had to be submitted prior to or with the building permit application. Ms. Buck explained to the owner that his special permit had expired and he needed to resubmit before moving forward.

MOTION: Ms. Nist moved to adjourn

SECONDED: Ms. AbuSalah – Discussion: None – VOTE: All in Favor

Meeting adjourned at 8:45PM

Respectfully submitted:

*Barbara Knox*

Barbara Knox

**Documents included in meeting packet:**

- Agenda
- Memo to the Board from Michelle Buck regarding the April 4, 2017 Planning Board Meeting
- Public Hearing Notice regarding proposed Zoning Bylaw Amendemnts
- Copy of Solar Energy System Zoning Amendments 3/20/2017 Draft
- Several copies of parking plan and site plan for 1205 Main Street
- Draft copy of Special Permit Order of Conditions for 1205 Main Street
- Planning Board Minutes of March 7, 2017

**Documents submitted at meeting:**

- Copy of Town Map showing Solar Farm Locations in Leicester
- Copy of Site Plan showing Boutilier Road