

**Town of Leicester Planning Board
Meeting Minutes
October 16, 2018**

MEMBERS PRESENT: Jason Grimshaw, Chair; Debra Friedman, Vice-Chair; Sharon Nist, Andrew Kularski, Alaa Abusalah and Robyn Zwicker

MEMBERS ABSENT: N/A

IN ATTENDANCE: Michelle Buck, Town Planner, and Wanda Merced, Department Assistant.

MEETING TIME: 7:00 PM

AGENDA:

1. 7:00PM **Discussion, Solar Decommissioning Bond**
Mulberry Street Solar Farm/SP2018-03 (Applicant: Syncarpha Solar, LLC)
2. 7:05PM **ANR Plan**
101 Huntoon Memorial Highway/SPR2018-03 (Applicant: 101 Huntoon LLC)
3. 7:15PM **Public Hearing, Major Site Plan Review Application, continued**
515 Henshaw Street Solar Farm/SPR2018-01 (Applicant: Borrego Solar)
[Note: The applicant is expected to request a continuance]
4. 7:20PM **Discussion, Site Plan Review Application, continued**
101 Huntoon Memorial Highway/SPR2018-03 (Applicant: 101 Huntoon LLC)
5. 7:30PM **Discussion, Preliminary Subdivision Plan**
Boutilier Road/SUB2018-03. (Applicant: ZPT Energy Solutions II)
6. 8:00PM **ANR Plan**
710 Main Street (Applicant: Paul Doray)
7. 8:15PM **Approval of Minutes:**
8/21/2018
8. 8:30PM **Town Planner Report/General Discussion:**
 - A. Zoning Amendments for 10/30/2018 Town Meeting
 - o Earth Fill Bylaw
 - o Town Meeting Report
 - B. Miscellaneous Project Updates
 - C. Board Member Committee Updates

Jason Grimshaw called meeting to order at 7:00PM

Discussion, Solar Decommissioning Bond

Mulberry Street Solar Farm/SP2018-03 (Applicant: Syncarpha Solar, LLC)

The Applicant was not present. Ms. Buck has been back and forth with the applicant on this issue. As noted in her memo there was wide discrepancy between what the applicant originally proposed and what is typically required. The Applicant is now requesting that the Board set the bond amount at the amount reflecting 2.5% inflation over 20 years which is \$257,262.78. Ms. Friedman asked to round the amount down to \$257,262.00. Ms. Buck is satisfied with that lower number and stated that it's obviously much higher than what was originally proposed, which was \$36,000.00.

MOTION: Mr. Grimshaw moved to set the decommissioning bond for Mulberry Street Solar Farm at \$257,262.00.

SECOND: Ms. Nist. Discussion: None.

VOTE: All in favor

ANR Plan, Chapel Street (Applicant: C-TEC Solar, LLC)

Ms. Buck asked if everyone received the opinion from the Town Counsel and passed out a copy of the email to the Board. Ms. Buck received an ANR plan for Chapel Street with minor lot line revisions. The applicant acknowledged that the purpose of this plan is for a zoning freeze from the solar moratorium that is on the town warrant for an October 30th vote. Ms. Buck sent some questions regarding this to Town Counsel. Town Counsel's opinion is that the Planning Board is entitled to deny endorsement for failure to follow proper filing procedures because they submitted the plans to the Town Planner but did not follow up with written notice to the Town Clerk. One issue to resolve is even if the Board did sign the plan, would they be eligible for the freeze. Town Counsel felt that if the Planning Board felt strongly that they don't want this project eligible for the freeze then they shouldn't sign it. Ms. Friedman thinks that either way the Board is setting precedence and has to be very careful in what is done. Ms. Buck agreed.

Attorney Todd Rodman of Seder & Chandler in Worcester spoke. He stated that he was not involved in the filing stage but that he did a little research. He said the state Zoning Act and Leicester's Rules and Regulations all specify that you file with a plan and notify the Town Clerk but argued that it doesn't discuss the timing. He went on to say that the purpose of the notice and filing is to provide an official date with the Town Clerk to cut off appeals periods and things of that nature. He found one case with someone who didn't file with the Town Clerk but filed it with the Board. The Board didn't take action for 21 days and then that person came in and notified the board that they failed to take action and felt entitled to a constructive endorsement. The courts found that wasn't the case because they failed to file with the Town Clerk and so they were not entitled to a constructive endorsement. Atty. Rodman acknowledged not filing with the Town Clerk but thinks the plan on its own is entitled to endorsement. He suggested that if the Board would endorse the plan, he would walk a notice in with a copy to the application to the Town Clerk tomorrow to functionally serve the same purpose, giving the Clerk notice. He felt that by posting the agenda the public had been notified and no harm had been done.

Ms. Buck mentioned that there are a couple of issues with Town Counsel's correspondence and with her own review using the book called *Land Use and Planning Law*. Both indicate based on case law "Notice must be filed with the Town Clerk simultaneously or, at least, very promptly after submission to the Board". Town Counsel referenced *Korkuch v. Planning Board of Eastham* and said "if notice is not filed with the Town Clerk, the plan is not entitled to an endorsement by the Board or a certification from the Town Clerk". Ms. Buck said it is ultimately up to the Board.

Brad Parsons with All-Points Technology Corporation said he did the filing on behalf of C-TEC Solar, LLC and said this is not his first time going through this process. He said his client would be willing to hear concerns that the Board may have with relation to things that they've been through in the past. Attorney Rodman said that even if the Board is willing to endorse this, they would still need Site Plan Review and a special permit, further stating that this just allows the process with the Town and does not mean a sign off with the Town.

Ms. Nist asked for clarification on the zoning freeze. Ms. Buck said if they qualify for the exemption, they get a three year freeze for use only. Ms. Abusalah asked that if by not signing, if it means it is just delayed until May 2019 and Ms. Buck confirmed that was correct. Ms. Nist asked Ms. Buck to clarify that if by signing it means they'd be exempt from other use changes and Ms. Buck confirmed that it possible could. Ms. Buck went on to say that there are other

amendments related to vehicle uses but the amendments are more permissive and the Applicant wouldn't care about the freeze from the other things on the warrant [besides solar] because we are allowing more vehicle-related uses.

Mr. Kularski asked if by endorsing this, it would be grandfathered under the current rules for solar bylaw. Ms. Buck said yes unless the Town Counsel says they failed the notice issue. Mr. Kularski asked if by waiting another six months if they would have to follow new rules and Ms. Buck confirmed that as correct. Mr. Parsons stated that the way he read the grandfathering clause is that under the ANR statute you don't have all the same protections as you would under a preliminary subdivision plan. Ms. Buck confirmed that information and stated that with the preliminary subdivision plan they are exempt from everything [ANR plans only exempt for *use*].

Ms. Friedman said she has concerns about the area and the sensitivity as far as clear-cutting it and drainage. She stated that it is one of those types of locations that they have had concerns about to begin with. She wants to make sure that our bylaw is strong enough to be able to address some of these issues that we may not be having in this town but other towns may be having. That particular location could cause an awful lot of problems for the surrounding area. Mr. Parsons said he is proposing to his client that they will have to have infiltration basins around the site.

Ms. Friedman felt that the Board didn't have enough teeth in the town's solar bylaw to address some of the issues that this particular site will create.

MOTION: Mr. Grimshaw moved to not endorse the ANR plan for Chapel Street.

SECOND: Ms. Nist. Discussion: None.

VOTE: All in favor

Public Hearing, Major Site Plan Review Application, continued

515 Henshaw Street Solar Farm/SPR2018-01 (Applicant: Borrego Solar)

Ms. Buck asked for a motion to continue to December 4, 2018 at 7:15pm. The applicant has voluntarily agreed to re-advertise and re-notice the hearing because it has been continued since last March.

MOTION: Ms. Friedman moved to continue the public hearing for 515 Henshaw Street Solar Farm to December 4, 2018 at 7:15pm.

SECOND: Ms. Nist. Discussion: None.

VOTE: All in favor

Discussion, Site Plan Review Application, continued

101 Huntoon Memorial Highway/SPR2018-03 (Applicant: 101 Huntoon, LLC)

Ms. Buck received an email discussing the resubmittal from Quinn Engineering saying he was satisfied with the stormwater management requirements. The only thing Kevin Quinn is requesting is a copy of the full size plans because the last submittal only included plans sized 11 x 17. Full size plans to be submitted with the new revision.

Ms. Buck discussed the DRAFT decision included in the meeting packet. She stated that she still needs to update the *Procedural History* section to make sure that she has all of the most recent submittals. Under *Project-Specific Conditions*, Mr. Buck is looking to add the following

language: “Applicant shall submit two full size copies of the final complete set of plans within 14 days of this decision.”

MOTION: Ms. Friedman moved to approve the site plan review for 101 Huntoon Memorial Highway.

SECOND: Ms. Abusalah. Discussion: Contingent upon receiving full size plans and additional language to be added under *Project-Specific Conditions*.

VOTE: All in favor

Discussion, Preliminary Subdivision Plan

Boutilier Road/SUB2018-03. (Applicant: ZPT Energy Solutions II)

Mr. Friedman read the notice into the record. Chris Anderson of Hannigan Engineering, Inc. stated that they currently have a large solar farm that they just recently finished construction. As part of this project, they are proposing construction of a new 177 ft. subdivision roadway to be used as a non-residential development and drainage will be dealt with. They are requesting several waivers and Mr. Anderson reviewed each request with the board.

Ms. Buck stated that this is a little bit complicated. She said the main reason they filed this subdivision plan is to be eligible for a zoning freeze from the upcoming solar moratorium. She felt that this project is less of a concern because we have been working with the applicant. Ms. Buck understands that they do not actually intend to build the cul-de-sac. It is Mr. Anderson’s understanding that they have to build it to be considered a subdivision. Ms. Buck reiterated that she does not believe they have to construct the cul-de-sac and has no objection to the submittal of this subdivision plan, but said that we do have to review it as if they are going to build it. She said that the Board does not have to legally approve this plan when someone is requesting any waivers and can deny and say it fails to comply with subdivision regulations.

The Board reviewed the DRAFT decision. Ms. Buck suggested that the decision require the applicant to identify proposed uses on the Definitive Plan, and to upgrade Boutilier Road from Henshaw Street to the point of access to the proposed cul-de-sac, equivalent to the improvements shown on the previously-approved Boutilier Estates Subdivision Plan approved by the Planning Board on September 7, 2010.

Mr. Anderson stated that he will review the waiver regarding the 30 ft. curb radius with the highway department and fire department to make sure they are able to provide the required turning maneuvers. He asked if the Board would vote on the waivers contingent upon the review of the 30 ft. curb radius. Ms. Buck suggested adding language to limit development to only a solar farm and a contractor’s yard but her only concern is someone proposing something larger. [After discussion, this limitation wasn’t included in the decision.]

The other issue Ms. Buck discussed is the portion of land on Boutilier Road used to access the subdivision is a rescinded subdivision that we failed the pavement on and they didn’t finish the stormwater work. Ms. Friedman reiterated that the Board is wary. Ms. Buck said she doesn’t feel this needs to be built in order to be eligible for the freeze and went on to say that the conditions they are talking about are to protect the Board if the solar farm fails and something else goes in there. She said that the problem is the precedence that it sets if the Board allows the equivalent of ANR endorsement off of that. Ms. Friedman felt that if this is not going to be built,

then what do they need a waiver for, it does not matter. Ms. Buck stated that the Board can act on this with no waivers and some conditions.

MOTION: Mr. Friedman moved to approve the preliminary subdivision with no waivers except for the pipe [to allow HDPE pipe] and with the conditions that Ms. Buck discussed.

SECOND: Ms. Nist. Discussion: None.

VOTE: All in favor

ANR Plan

710 Main Street (Applicant: Paul Doray)

Ms. Buck stated that this is a straightforward ANR plan. They are just splitting one large commercial property into two parcels, both of which comply with area and frontage requirements in the Business district. Ms. Friedman asked if this is Vic Taylor's property and Ms. Buck confirmed that it is. Ms. Buck said that they want to create a separate lot for the residential structure, so they can sell it separately. The remainder of the parcel would be for future commercial development.

MOTION: Mr. Friedman moved to approve the ANR plan for 710 Main Street.

SECOND: Ms. Nist. Discussion: None.

VOTE: All in favor

Approval of Minutes:

Ms. Nist asked for changes to be made on big page 33, second paragraph from the bottom, to say "to purchase less than six chickens would be illegal."

MOTION: Mr. Kularski moved to approve the minutes of August 21, 2018 with the correction discussed.

SECOND: Ms. Nist. Discussion: None.

VOTE: 4 in favor, 1 abstention (Ms. Abusalah abstained because she missed the meeting on August 21, 2018.)

Town Planner Report/General Discussion:

Zoning Amendments

Fill Bylaw

The Select Board voted to put it on the warrant on 10/15/18. Ms. Buck made some revisions to the bylaw to make it consistent with our local regulations and zoning. Language was reworded to make things clearer. The hearing notice went in the paper today and will be in the paper again next Tuesday. The warrant was also posted by the Select Board and that is on the web. Ms. Buck said that at the required public hearing on October 30th, the Board will be essentially doing a sort of an up or down vote after hearing comment from the public.

Residential Lot Sizes

Matt Schold discussed the zoning amendment related to lot sizes and stated the need for a larger footprint for ranch houses. He said it's impossible to stay within the current footprint and asked if we can amend the warrant now to reduce setbacks in the Suburban Agricultural (SA) District. Ms. Buck stated that the Board cannot open up the hearing because it's already been closed but she said that the Board could do a floor amendment. Mr. Kularski said he would support an

amendment of to allow 20 ft. side setbacks in the SA district but leave the front and rear setbacks the same.

MOTION: Ms. Friedman moved to support an amendment to the proposed zoning change to a 20 ft. side setback in the Suburban Agricultural (SA) district.

SECOND: Ms. Nist. Discussion: None.

VOTE: All in favor

Parker Street

Matt Schold stated that he has been in the loop with the bank and they have made it clear that they may pursue a lawsuit against the town. He's been trying to defuse the issue and doesn't want the town to get sued. He said he wants to do a cul-de-sac, four or five houses on the water and a couple houses across the street. He doesn't want it connecting through. Mr. Schold asked if the town can help participate in the road construction process. Ideally, he would like to have an 18 ft. road that matches what's coming in with no sidewalks and figure out a simple way to mitigate stormwater. Ms. Buck said it is her sense that the Board has willingness to avoid further litigation but she's not sure how far that goes. She stated that two things concern the Board are that it has to be paved and stormwater drainage needs to be installed. She further stated that the Board cannot commit to much without looking at it and there would be restrictions. Board members indicated a general willingness to compromise.

Town Meeting Report

Ms. Buck was unable to get a draft report to the Board this week, so she asked for input from Board members on each article (to include in the written report to Town Meeting).

- *Chickens*: Ms. Buck to emphasize that there was a subcommittee established to write the proposal and name all the people who were involved.
- *Solar Moratorium*: The Board needs more time to work on the bylaw. The Board is concerned about the effects of deforesting and drainage and they want to emphasize the environmental aspect.
- *Residential Dimensional Requirements*: The Board is trying to encourage more housing because now there is less of a need to restrict lot sizes.
- *Vehicle Related Uses*: Ms. Buck said she will emphasize that even though it is long, it will make the bylaw easier to understand.
- *Breweries, Wineries, Distilleries*: The Board is trying to encourage and promote economic development.

Miscellaneous

Ms. Buck said that Randy Davis removed items from the storage area.

Board Member Committee Updates

Capital Improvement Committee

Ms. Nist had a capital improvement meeting today and they approved no more than \$16,300.00 for an engine for the 2006 ambulance that will include a two year warranty.

Economic Development Committee

Ms. Abusalah said that the EDC 11/14 "Open for Business" event will need to be rescheduled. This may be pushed off until March. Ms. Abusalah invited Chris Clark, Vice President of the LBA to talk about launching a campaign for the holiday season.

MOTION: Ms. Friedman moved to adjourn.
SECOND: Ms. Nist.
VOTE: All in favor

The meeting adjourned at 9:07 PM.

Respectfully submitted:
Wanda Merced, Department Assistant

Documents included in meeting packet:

- Agenda
- Memo from Town Planner to the Planning Board dated 10/11/2018 regarding 10/16/2018 meeting
- Email from Peter Engle to Michelle Buck dated 10/11/18 regarding decommissioning bond amount
- Letter from Quinn Engineering to the Planning Board dated 8/1/17 regarding Decommissioning Surety
- Site Plan Approval & Stormwater Permit – Order of Conditions DRAFT for 101 Huntoon
- Planning Board Notice for Boutilier Preliminary
- Letter from Hannigan Engineering, Inc. to Michelle Buck dated 9/5/18 regarding Preliminary Subdivision Plan for Boutilier Road and supporting documents
- Letter from Quinn Engineering, Inc. to the Planning Board dated 9/26/18 regarding Preliminary Subdivision Plan for Boutilier Road
- Preliminary Subdivision Plan Review from James Hurley, Chief of Police, for Boutilier Road Subdivision
- Copy of the Subdivision Regulations regarding Industrial Subdivisions
- Certificate of Decision of a Preliminary Subdivision Plan DRAFT for Boutilier Road-ZPT
- Meeting Minutes dated 8/21/2018

Documents submitted at meeting:

- Email from Town Counsel to Michelle Buck dated 10/16/18