

TOWN OF LUNENBURG
Office of the Planning Board

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Matthew Allison, Vice Chair
Kenneth Chenis, Clerk
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Minutes
Executive Session
March 26, 2018

Meeting Posted: Yes
Place: Town Hall, 17 Main Street, Lunenburg, MA
Time: 9:25 PM

Present: Gregory Bittner, Matthew Allison, Kenneth Chenis, David Prokowiew, Michael-Ray Jeffreys, Adam R. Burney

Also Present: Attorney Adam Costa participated remotely under 940 CMR: Office of the Attorney General, 29.00: Open Meetings, Section 29.10: Remote Participation (5) (e) Geographic Distance

Board Chair requested a Motion to enter Executive Session pursuant to G.L. c. 30A, § 21, to discuss strategy with respect to litigation, namely Town of Lunenburg v. Settlers Solar, et al., Worcester Superior Court Docket No. 1785CV01959-D, and Settlers Solar, LLC, et al. v. Town of Lunenburg, et al., Land Court Docket No. 17 MISC 000690 (HPS), where an open meeting may have a detrimental effect on the litigating position of the Town. Kenneth Chenis Made the Motion to enter Executive Session, Seconded by Matthew Allison, Roll Call Vote, M. Jeffreys, aye, D. Prokowiew, aye, K. Chenis, aye, M. Allison, aye, G. Bittner, aye.

Atty Costa held a pre-mediation conference call with opposing Counsel Atty Michael Rosen and the mediator Art Kreiger on March 22nd, prior to the mediation meeting scheduled for March 23, 2018. It was decided at that conference call for the Planning Board to post an executive session for this date in the event a pre-settlement agreement was reached on March 23rd and the Board could possibly come to consensus this evening.

A Contingent Settlement Agreement (CSA) and accompanying plans were available to the Board members. These items summarized the point reached as a result of the March 23rd meeting. At that meeting, Atty Costa raised the concerns of the Board from its March 19, 2018 Executive Session; concessions were made on both sides. He went on to note that what was achieved was beneficial to some, but not all, of the abutters. He explained that if litigation occurs, whatever concessions gained during mediation are off the table. If the Board loses litigation, they essentially get the project that they denied.

G. Bittner (GB) noted that the mediator asked he and D. Prokowiew (DP) what they felt would be needed to achieve a yes vote from the Board. Jamie Toale was also present as the Select Board's representative. Both GB and DP received the impression from J. Toale that they were being unreasonable regarding lack of concessions to three abutters and probably causing this to go to litigation. GB believed the plan before the Board this evening was the best the Board could do in order to avoid litigation. DP asserted that Settlers Solar made few concessions. Both GB

and DP opined that if Settlers Solar had been more transparent, what was reached during the mediation meeting could easily have been achieved through the public hearing process.

DP inquired of Atty Costa if the Board is obligated to vote for this CSA. Atty Costa explained that GB and DP "signed" onto this settlement agreement. Hopefully tonight there can be a Board agreement in support of this CSA. DP clarified his question, inquiring if he, individually, was required to vote in agreement. Atty Costa emphasized that DP had voluntarily signed the CSA, stating that he supported it. DP stated that he is having second thoughts; one of the reasons as a result of J. Toale's comment. He felt he had to come up with an agreement someone else wanted, not what the Board wanted. Atty Costa noted that the mediator asked both GB and DP before signing if they were agreeing to support this resolution before the Planning Board. The mediator also asked J. Toale if he felt the Board of Selectmen would support this resolution and J. Toale responded affirmatively. Atty Costa had a different perception than GB and DP regarding J. Toale's previous comment. He felt that J. Toale was suggesting if the Board litigates and loses, none of those concessions are on the table any longer. They need to weigh the considerations of three abutters v. a larger number of abutters with the current concessions.

M. Jeffreys felt it was not enough. He stressed that he had made concessions at the March 19th Executive Session. The fault detection system offered in the CSA is the same that was offered at the Public Hearing. He stated that he would agree to \$105,000 for the decommissioning bond as long as they stayed with fifty (50') feet of existing trees, which Settlers Solar did not do. M. Allison feels that the Board is being taken advantage of, but if this goes to litigation the Board will not get the support it needs and Settlers Solar will build whatever they want. Atty Costa re-emphasized that he is representing the Board's interests and has not been told to "stand down" by the Board of Selectmen. He went on to remind the Board that they will lose what is on the table today if they do not agree to these terms. K. Chenis noted they need to decide if they have a super-majority to approve this tonight. If not, they should not go forward. The Board was in agreement that if this new plan had been before them initially, they would not have approved it.

GB noted that Settlers Solar conveyed to he and DP that the Board should encourage the abutters not to appeal.

There was not a super-majority vote for the CSA.

Atty Costa inquired if Atty Rosen asks what is needed to reach a settlement; the Board wants an additional fifty (50') feet of natural trees on all sides.

K. Chenis made a motion to come out of Executive Session and go into Regular Session, seconded by M. Allison, roll call vote- M. Jeffreys, aye; D. Prokowiew, aye; M. Allison, aye; K. Chenis, aye; G. Bittner, aye.

Adjourned Executive Session 10:20 PM