

**TOWN OF LUNENBURG**  
**Office of the Planning Board**

Gregory Bittner, Chair  
Matthew Allison, Vice Chair  
Kenneth Chenis, Clerk  
David Prokowiew, Mbr.  
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Minutes  
Executive Session  
March 19, 2018

Meeting Posted: Yes  
Place: Town Hall, 17 Main Street, Lunenburg, MA  
Time: 6:30 PM

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

**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 and to reconvene in Regular Session after exiting 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 noted a pre-mediation settlement meeting was held on March 9, 2018. There will be an upcoming mediation meeting March 23, 2018. The mediator on the 23<sup>rd</sup> will be Art Kreiger, a practicing land use/zoning municipal attorney.

Atty Costa updated the Board on the discussion that took place at the March 9<sup>th</sup> meeting. Attendees at the March 9<sup>th</sup> meeting were opposing counsels Michael Rosen and Rob Bowen, representatives of the solar company, G. Bittner, D. Prokowiew, and Town Counsel Adam Costa.

Board concerns were discussed at the March 9<sup>th</sup> meeting. Highlighted were public safety, lack of an emergency response plan, and insufficient bonding for decommissioning. Of primary concern was screening and buffering with the Board declaring that the project is too big for the site.

There was discussion of increasing setbacks from the neighbors, but if some of the panels were relocated, it would be to the top of the grade. This would make the panels more visible to some of the abutters. There was discussion on reducing the project size, but the applicant was not interested. There was conversation regarding aesthetic concerns of the abutters. The applicants were amenable to a community solar option and opening it up for Lunenburg residents 60 days prior to general public availability. There are programs within SMART (Solar Massachusetts Renewable Target) for which a solar development can qualify.

Atty Costa reminded the Board that two lawsuits are pending; 1) the applicants' appeal of the Board's denial of the site plan approval and special permit and, 2) the Town's lawsuit of the applicants claiming constructive approval opining that the Board failed to act on the application within the time required. If no decision is reached during tonight's Executive Session or the mediation meeting on March 23<sup>rd</sup>, litigation will continue. If a Board consensus is reached this evening, or through mediation, and the applicants present something that would appease the Planning Board, counsels would then request from land court a remand to the Planning Board. The Planning Board would then hold a new public hearing, complying with the public hearing process. It would be expected that the Board would review the changes that have been proposed, vote to approve the project, render a decision, and then a new appeal period would be initiated. Abutters would still have the opportunity to challenge the decision during the appeal period.

There was discussion on screening and buffering. D. Prokowiew noted that as the conversation progressed, it became specifically about the budget from the applicants' counsel, e.g., the Town being given a specific dollar amount for plantings. Both G. Bittner and D. Prokowiew advocated sticking to the two-hundred (200') foot natural buffer required by the bylaw; the applicants' counter-offer was for an additional ten (10') feet above the one-hundred (100') feet and then fill in the spaces with plantings. The applicants were asked to employ a professional landscape architect. If the applicants felt they could not increase the buffer, Atty Costa proposed they add to it. The applicants suggested arborvitae; that will not be tall enough. The talk then continued to planting plans for each individual property, giving the abutters the option to change the planting. This would be in addition to a planting plan on the applicants' property. Atty Costa noted that since the March 9<sup>th</sup> meeting, the applicants have engaged a horticultural expert.

M. Allison suggested placing a set number of plantings per foot/feet along the common lot line. That would give each abutter an equal percentage. M. Jeffreys did not feel that shrubs would be sufficient. He believed abutters wanted a row of trees fronted by shrubbery. Atty Costa noted that part of the discussion was for a NEXAMP representative and the Board's mediation representatives (G. Bittner and D. Prokowiew) going to each abutter and requesting to view from a second floor window to see what plantings would be necessary. M. Jeffreys felt fifty (50') feet of trees and natural vegetation from where the brook ends would be sufficient.

A third party safety evaluation review has been requested of the applicants.

Atty Costa made the Board aware that if no agreement is reached this evening that he can relay to Attorney Rosen, the mediation meeting will take place on March 23<sup>rd</sup>. Atty Costa emphasized that G. Bittner and D. Prokowiew need to be comfortable with the Board's position if they go into mediation. If there is no mediation settlement, it then goes back to litigation. K. Chenis felt that mediation would be in the Board's favor.

M. Jeffreys stated that major points for him are the buffer strip and the amount of the decommissioning bond. He wants fifty (50') feet of tree buffer away from the brook (a total of approximately one hundred seventy [170'] feet from the wetlands), and a decommissioning bond of \$180,000. Atty Costa stated that the agreed figure was for \$105,000. His understanding is the Board wants an increase in the buffer on the west side, a planting plan originally on the applicants' property, but to be negotiated with the neighbors, and an increase in the surety to \$180,000. He is of the opinion that deal will not be made; therefore, he needs to know the minimum the Board is willing to accept for buffering, plantings, and surety.

M. Allison wants increased buffering for the abutters. K. Chenis wants to get as much as possible as opposed to not getting anything. A. Burney proposed that the rear property line of the abutters on New West Townsend Road or that the adjacent property line of Settlers Solar have tree plantings.

M. Jeffreys was amenable to a surety of \$105,000, or even \$90,000.

Mediation will proceed on March 23, 2018.

**K. Chenis made a motion to come out of Executive Session and go into Regular Session, Seconded by M. Allison, all aye.**

Adjourned Executive Session 8:35 PM.