

TOWN OF LUNENBURG
Office of the Planning Board

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Matthew Allison, Vice Chair
Kenneth Chenis, Clerk
David Prokowiew, Mbr.
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Adam R. Burney
Land Use Director

Marjorie J. Boggio
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Minutes
Executive Session
July 9, 2018

Meeting Posted: Yes
Place: Town Hall, 17 Main Street, Lunenburg, MA
Time: 6:35 PM

Present: Gregory Bittner, Matthew Allison, Kenneth Chenis, David Prokowiew, Tanner Cole, Adam R. Burney
Also Present: Town Counsel 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, to enter back into Regular Session. Kenneth Chenis Made the Motion to enter Executive Session, Seconded by Matthew Allison, Roll Call Vote, T. Cole, aye, D. Prokowiew, aye, K. Chenis, aye, M. Allison, aye, G. Bittner, aye.

A. Costa updated the Board on actions taken since the June 25, 2018 Executive Session with his relaying of the Board's settlement offer to opposing counsel, Attorney Michael Rosen. The Board's offer was to agree to remand with the following terms.

1. The project would be developed in accordance with the plans that showed both the red and pink revisions.
2. The plaintiff would adhere to all terms of the contingent settlement agreement.
3. The plaintiff would agree to an increase in the tree fund from \$10,000 to the amount of \$50,000.

M. Rosen agreed to the increase of \$40,000 with the caveat that Settlers Solar would participate in the tree planning and that any funds remaining would be returned to Settlers Solar. A. Costa responded that this was being done in accordance with the contingent settlement agreement and that the Board would spend the funds at its discretion through a single point of contact identified by the Board. A. Costa noted that the Board also wanted to be able to use some of the tree funds to hire a landscape architect/professional; M. Rosen requested the professional fee be capped at \$5,000.

A. Costa noted to the Board, that in previous conversations with the Board, there was discussion that any unspent tree funds would go into the Town's general fund. He is of the opinion that the majority of the funds will be spent.

M. Rosen wanted a time limit of thirty-six (36) months from completion of construction placed on spending of the tree funds.

T. Cole asserted that if you clear cut 34 acres, the \$50,000 will easily be spent replanting; but, if there are any funds remaining, they should go to the Town.

G. Bittner stressed that abutters need to be able to offer their input to the landscape architect regarding plantings on their individual properties. The Board needs to determine a single point of contact, e.g., Land Use Director, Board member, landscape architect. That point of contact will talk to the abutters regarding plantings and then pass the information on to Settlers Solar. Following conversations with the abutters and landscape architect, a tree plan will be created for Board review.

M. Allison inquired what would be considered construction completion. A. Burney anticipates that will be when the project is turned on; A. Costa will verify with M. Rosen.

D. Prokowiew made a Motion authorizing Town Counsel's submittal of their proposal with a \$5,000 limit on the landscape architect and that any funds remaining from the \$50,000 after 36 months from construction completion will be returned to the applicant, Seconded by M. Allison, roll call vote, T. Cole, aye, D. Prokowiew, aye, K. Chenis, aye, M. Allison, aye, G. Bittner, aye.

The Board of Selectmen will have to vote on the remand, and if that vote passes, then the applicant will have to file a new application which will follow the public hearing process. The court does not relinquish jurisdiction until the Board approves the project and the 20-day appeal period has been concluded. At that time it will be dismissed in the court.

A. Burney inquired if there could be a peer review for new changes to the project. A. Costa advised that as soon as the new application is submitted, it be sent out for peer review. A. Burney also noted that the applicant will still need to file for a stormwater special permit prior to construction.

K. Chenis made a Motion to close Executive Session and return to Regular Session, Seconded by D. Prokowiew, roll call vote, T. Cole, aye, D. Prokowiew, aye, K. Chenis, aye, M. Allison, aye, G. Bittner, aye.

Adjourned Executive Session 7:16 PM.