

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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Minutes
Executive Session
September 10, 2018

Meeting Posted: Yes
Place: Town Hall, 17 Main Street, Lunenburg, MA
Time: 6:36 PM

Present: Gregory Bittner, Matthew Allison, Kenneth Chenis, David Prokowiew, Tanner Cole, Adam R. Burney
Also Present: Town Counsel Adam Costa

Due to circumstances that could not reasonably be foreseen, 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. K. Chenis made the Motion to enter Executive Session, Seconded by D. Prokowiew, roll call vote, T. Cole, aye; D. Prokowiew, aye; K. Chenis, aye; M. Allison, aye; G. Bittner, aye.

A. Costa expressed his concern to enter into Executive Session at the request of the Board Chair, as the Public Hearing is ongoing; but the lawsuit is still pending, even though the matter has been remanded to the Board. Conducting a public hearing through the remand allows a public opportunity to evaluate the project, and the Board to discuss potential approval and conditions. Potential approval and conditions cannot be discussed in Executive Session. The purpose of this Executive Session is to ensure the Board understands the context in which the remand arose. Some Board members were concerned as to the amount of flexibility allowed in conditioning the project. A. Costa went through the events, from the denial to this ultimately being remanded back to the Board. The remand anticipates that progress has been made over the past eight to ten (8-10) months and that the Board is comfortable with the project now meeting the bylaw criteria. An applicant expects that when a Board signs onto a remand, the end result will be approval with reasonable conditions. If the Board denies the project a second time, the Applicant will re-litigate the old application from a year ago. A red-lined Contingent Settlement Agreement has been prepared between both Counsels and will be presented during the Public Hearing.

A super-majority vote is needed to approve this project.

D. Prokowiew had concerns with staying within the timeline. As this was remanded by the court, A. Costa is of the opinion that a timeline may not apply. A court order supersedes the bylaw. A remand usually results in a one-night hearing.

K. Chenis inquired if the Applicant refuses to comply with a stated condition, does that reflect against the Board or the Applicant? A. Costa explained that the Applicant has two options; 1) if dissatisfied with the conditions, the Applicant can defend its original decision, or; 2) if generally satisfied with the decision, but then the Board adds in some conditions it doesn't agree with, the Applicant can accept the decision, then appeal the decision and challenge specific conditions.

If the Board votes to approve the project, A. Costa will update the public on the process, to include the filing of the decision with the Town Clerk and the 20-day appeal period.

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 7:07 PM.