



# BELLINGHAM PLANNING BOARD

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## Meeting Minutes January 12, 2012

MEETING LOCATION: ARCAND MEETING ROOM – MUNICIPAL CENTER

### Present at the Meeting

Patricia M. Buckley (PMB), Chairman  
Glenn C. Wojcik (GCW), Vice Chairman  
Dave Brown (DB)  
Peter M. Morelli (PMM)  
Peter Pappas (PP), Secretary  
Roger Oakley (RO), Associate Member

### Other Officials:

Stacey J. Wetstein (SJW), Town Planner  
Jay Talerman (JT), Town Counsel  
Jean Keyes (JK), Planning Board Coordinator

PMB opened the meeting at 7:00 p.m.

**Highridge Estates II Definitive Subdivision Modification and Major Residential Special Permit off of Highridge Road, 1<sup>st</sup> Public Hearing; Decision Deadlines: 5/3/12 and 2/25/12.**

PMB called for a motion to waive the reading of the public notice.

GCW: Motion to waive the reading of the public notice.

PP: Second.

Vote: 5-0 approved (PMB, GCW, DB, PMM, PP)

### Discussion:

Bill Halsing introduced himself as the engineer from Land Planning Inc. who is here on behalf of the applicant and he asked for a continuance until the February 9, 2012 public meeting. Mr. Halsing stated that his client would like it sooner but agreed to February 9, 2012.

PMB asked the audience if there was anyone here for this topic and explained that there was a clerical error by the applicant. The abutters in Franklin were not notified so the Planning Board has to continue the public hearing. The Board cannot have any discussion. The discussion has to be at the public hearing on February 9, 2012 at 7:00 p.m. so that the Board has time to give formal notice to public. PMB explained to the public present that this was their formal public notice that this will be on the agenda for February 9, 2012 at 7:00 p.m.

GCW: Motion to continue the public hearing until February 9, 2012 at 7:00 p.m. for the Highridge Estates II Definitive Subdivision Modification and Major Residential Special Permit off of Highridge Road.

PMM: Second.

PMB asked for discussion.

RO and PP want the applicant to have all information available when he comes to the meeting on February 9, 2012.

Vote: 5-0 approved (PMB, GCW, DB, PMM, PP)

### **Informal Discussion - Farm Street Solar Project**

Present were Ed Whitaker, Principle at Second Generation Energy LLC. of Hopedale, MA and Joseph Hamilburg, Owner of the Norfolk Ice Arena, Norfolk, MA.

Mr. Whitaker stated that his interest today is for preliminary discussion of the proposed solar installation at 176 Farm Street, Bellingham. The property owner is the Stockton family and it is a 21.5 acre parcel zoned industrial. The property neighbors Route 495 and NStar's transmission line on north side and the Medway town line. He and Mr. Hamilburg have done a fair amount of work into the project with NStar interconnection and impact study, preliminary discussion with the Stockton family about leasing the property and have met with SJW regarding the solar by-right bylaw. They have completed a preliminary walk of the site regarding the wetlands that exist there and they feel it is an optimum site for a small solar farm. The total footprint would be a maximum of 3 acres.

Mr. Whitaker wants this to work well so he needs the correct site for it. Wetlands border the proposed location and there is a possibility that to optimize this project may have to encroach into wetland buffer zone. Mr. Whitaker is interested in permitting this according to the by-right bylaw but if they can't meet the bylaw as stated and they encroach into buffer zones, they need guidance. What path can they take? Do other conditions around building this prevent them from using the by-right bylaw?

PMB asked Mr. Whitaker how much will the project encroach on the wetland buffer zone. Mr. Whitaker stated that he doesn't know that yet and that he has to do a delineation and establish the shade lines. He has to use computer-aided design to make this work. There is a good chance, after walking the property that the project will encroach.

SJW stated that the by-right solar Bylaw does not restrict them from going to Conservation Commission (Con Com). The intent of the by-right bylaw was to make it really simple for a developer to come in and get a permit if they comply with the bylaw. If the applicant goes to the Con Com, they need to comply with the Con Com bylaw as well as the Planning Board bylaw. If the applicant complies with the bylaws they can get permit. However, there are a few other issues with this site that haven't been mentioned yet.

PMM asked about encroaching into the wetlands buffer zones and stated that it would be a Con Com issue. The Board reiterated that the applicant should approach Con Com at same time as Planning Board both can come to a conclusion at same time. PMB stated that Con Com likes to finish their evaluation before the Planning Board evaluation.

Mr. Whitaker stated that he and Mr. Hamilburg want to do their due diligence and bring issues to the Planning Board and to Con Com and to work with them. Mr. Whitaker described the parcel as a 21.5 acre lot with 3 acres in Medway and that they would not be using even 20 acres for the project. PMM asked about the electrical connection to electrical transmission lines. Mr. Whitaker stated that the project would be tying into distribution circuit at 13,800 volts on Farm Street in Bellingham and not a transmission line. The second concern is the residence on the property which makes it multi-use.

SJW stated that the site currently is a pre-existing, non-conforming use because it is a residence, in which people are currently living, in an industrial zone. The applicant can abandon the residential use, which the property owner does not want to do, or can allow the resident to reside on the property if the residence houses personnel to maintain the property and system. SJW talked to Town Counsel's partner Lisa Mead who help draft the bylaw and the resident and applicant must come to an agreement if they want to keep it as a residence that the residence would house on-site personnel and it would have to go with the house (be deeded) should the resident want to sell in the future. If the project is reviewed by the Planning Board, the Board would have to consider transfer of ownership issues for the future.

GCW asked if the applicant is leasing the land from the current resident/owner. Mr. Hamilburg replied that he and Mr. Whitaker have only discussed it with the current resident/owner but have not done anything else in this regard as they wanted to discuss it with the Planning Board first. GCW asked if there were any state grants involved with this project. There may be limitations concerning obtaining funding from the state. Mr. Whitaker stated that will not be receiving a state grant but the project is partially funded by a federal grant program to get a 30% tax credit. The applicant has taken steps to qualify for this grant, has met the qualifications last year and can build this year and still qualify for the tax credit. The solar project must be interconnected by 2016.

SJW was concerned about a bigger issue that there are several existing businesses on the property already. DB stated that there are several businesses: auto repair and auto sales, and firewood sales. SJW reminded Mr. Whitaker and Mr. Hamilburg that she had previously told them in their meeting in the Planning Board office that they had to research this issue. This is multiple non-conforming uses of the property. Assuming the applicant is not going into Medway, assuming that the applicant get the agreement with the current owner/resident to be on-site personnel, then the biggest issue is the multiple non-conforming uses on the property that has to meet the zoning 2570 – more than one principal business on the property has to have the functional equivalent of what's required for each use. What is required for solar is 20 acres and SJW is unsure what is required for the other businesses. So the applicant has to either abandon the other businesses and build the solar project or get a variance from the zoning board. But SJW does not see how this is a hardship. If they get the variance, then the solar project is no longer a by-right project and it could be denied by the Planning Board at that point. To be a by-right project they have to meet all the requirements of the by-right bylaw. If a variance is required, then they did not meet the by-right requirements and therefore do not qualify for by-right and at that point, when they come before the Planning Board, they could be denied. JT points out that the zoning board is stingy with granting variances.

Mr. Whitaker stated that he understood that the 20-acre requirement was what was required for the by-right. SJW reiterated that the solar project bylaw states that it has to be 20 acres and there is no option to waive that requirement.

PP questioned how many acres are in Bellingham and how many acres are required for the other businesses and could the applicant consolidate all businesses in one area to meet the 20 acre minimum. SJW stated that it would be tight as industrial zoning requires 60,000 square feet not 40,000 square feet.

SJW informed the Board that the total site 21 acres: 18 in Bellingham and 3 in Medway. To meet the solar bylaw requirement the applicant would have to get a variance or multiple variances from the zoning board for the multiple businesses or would have to abandon all other businesses. PP restated this point.

PMB stated that if the applicant wants to proceed with this project the he has to go to zoning to clarify. SJW told the applicant that he must find out more about the businesses on the site and the multiple buildings on this site and the purpose of each. It is already not conforming to industrial zoning regulations and SJW reiterated that she talked about this definitively with the applicant during previous discussions held in the Planning Board office.

Mr. Hamilburg stated that he only knew about the firewood business and it makes sense for him and Mr. Whitaker to talk to the resident. SJW stated again that from the aerial photos abandoned vehicles can be clearly seen and that may need to be cleaned up to avoid additional issues.

RO and GCW restated that the applicant would have to work with the owner/resident and that under the lease, the owner would have to be an employee and the house must be used as working center as part of the solar farm.

Mr. Whitaker replied that it was unfortunate that there are complications. He cited an example of a solar installation in western Massachusetts. The resident clear-cut land in a residential area and installed the project, but there was controversy surrounding this project. He stated that the current location in Bellingham is a good place for this solar installation.

PMB agreed that this is a good project for this site but that it is not a by-right project. The applicant must go to zoning board and the Con Com and then come back to the Planning Board. GCW agrees that his first impression of project was that it was a good project, may have been by-right when first read proposal. But there is no mention of the additional issues in the write-up that he has. GCW also agrees that there are a lot of issues that must be clarified before can come back before the planning board.

Mr. Hamilburg stated that this is why he and Mr. Whitaker wanted to come to the Planning Board first so they could to get the Board's advice and learn how to proceed

PMB wishes the Mr. Whitaker and Mr. Mr. Hamilburg best of luck. They should to talk to zoning and come back to the Planning Board.

#### **Informal Discussion - Update on TMC Building Design Changes**

Matthew Clark: Stated that the original design was proposed a while back, but the bank will not fund the original plan due to market obsolescence. They have downscaled rooflines and took out some items. It is the same footprint that is one level and the color shown in the pictures submitted is pretty close to picture.

SJW stated that she wanted the Planning Board to see changes before the building was built so there were no questions after the fact.

Mr. Clark hopes to start building after winter.

PMB agreed with SJW that it was good to have the Board review the changes but no formal modification is needed. She thinks it is fine and wishes Mr. Clark the best of luck and thanks him for coming in. There is nothing further needed.

#### **Discussion about the Jolicoeur building which is the old Schaffer nursery building.**

JT informed the Board that he had internal meetings and also met with the proponent. SJW flagged the issue of the fact that the proponent built 1500 square foot structure without going through Planning Board review. The proponent had questioned how he could avoid a development plan review by the Board. Under Planning Board's bylaws if he connects the new building to the existing building he doesn't have to go through a development plan review because there is a 2,500 square foot allowance for additions. If he doesn't, then he has to go through the entire process with the Board. JT does not know what the proponent has done to date.

PMB asked what Planning Board can do at this point where the proponent has already built the building. What if the Board does not like the look of the building?

JT stated that the Planning Board can force the proponent to come in. It is at his own peril and the Board, under non-discretionary plan review, can impose modification, enhance parking, drainage etc. The second issue is uses of the building. The proponent is still not sure what he wants to do and expressed this when they had met for discussion. Under zoning bylaw 2570 the proponent has some ability to do multiple uses, but some ideas that the proponent suggested did not fit within that zone. This is a separate issue from the development plan review.

PMB questioned if the proponent has an occupancy permit and JT stated he was not sure if he has a permit. It was troubling that the Board was not consulted and that the Board is catching these issues after the fact. PMB also stated that this not fair that this happens and it is unfortunate.

RO requested clarification of the fact that any building over 1000 square feet needs review if the use is different. If an addition is for the same use, then there is no problem but if it has a different use, then it needs site plan review. He stated that he thought the building was going to be used as an alignment shop. Questioned how many different types of uses can be established on this property. JT replied that he does not know what the proponent's intent was for the new building and that he has told multiple people different things.

SJW explained that if the building is a over 1000 square feet and the owner wants to build an addition to same building, then the owner is allowed to add an addition up to 2500 square feet and the presumption is that it is for similar use. The 2570 provision is for more than one principle use on a site. If the proponent builds an addition of 1500 square feet for different, he does not have to come before the Planning Board but he has to comply with 2570 and would have to go to the zoning board. JT agrees that the lot area is fine but the town has not resolved all the issues.

PP cited an example in Queche, VT of a developer building condos and not complying with height regulations. The town forced the developer to change it. PP emphasized that the Board does not

necessarily want the proponent to take the building down, but the Board has to be consistent. PMB agrees that the Board has to be consistent. PP stated that the Board has to follow the process that JT is undertaking to continue discussion with the proponent.

SJW questioned JT that if the proponent builds an attachment to make the new building an addition to the original building and it does not bump it over 2500 square feet will this comply? JT agreed and stated that the plans discussed with the proponent he could do this, but the proponent has not done it yet. SJW asked how long the proponent has to comply. JT responded that the proponent can take as much time as he wants to comply as long as he is not facing an enforcement request from the Building Department of a zoning enforcement. People are currently trying to work with him and give him a fair chance to remedy it. But he continues at his own peril. He received permits that he should not have received so the Town is trying to work with him.

DB asked if the new building needs a sprinkler system. JT stated that he would have to talk to the Fire Department and that it depended on the character of the addition. He is happy to provide some clarification.

PMB and RO thank JT for having the discussion.

### **Subdivision Rules and Regulations revisions, continued public hearing**

PMB addressed the public in attendance at the meeting and questioned why they were waiting for this discussion. The public thought the discussion would be applicable to Highridge II but PMB informed them that this discussion is for future subdivisions and is not applicable to Highridge II.

#### **Section 4: Design standards for roads.**

PMM stated that the Marinella project is a disaster in terms of the Low Impact Development swale construction. Trenches are full of water, piping clogged and needs cleaning, erosion etc. PMM also did not like the amount of room between the paved road and swale drop off. He continued that the Planning Board needs guidelines for this type of construction and design feature in the future. PP agreed and stated that he remembered discussion on the swale drop off.

SJW stated that now is the time to put design standards into the regulations by putting in the general framework for allowing Low Impact development and then creating a best practices manual for developers. PP questioned the point of a best practices manual if it is only recommendations and the developers do not need to comply and SJW replied that the Planning Board can give waivers now anyway.

PMM emphasized that if the Board is going to implement this, then it needs to be enforced and how best to do that.

Discussion continued onto dead-end streets and whether or not to keep the current language as "no more than 12 dwelling units" or to change to "no longer than 500". The Board decided to keep the current language.

SJW also stated that the cul-de-sac overall dimensions could be reduced to 80' and 100' without impacting fire truck turning. The Board agreed. The Board also suggested making the landscaped islands as an option, not a requirement in order to provide more flexibility in the designing of a cul-de-sac. The Board agreed to Don DiMartino's suggestion of changing the grade of roads from 12' to 8'.

The Planning Board also discussed using the storm water management/zoning peer reviewer of a project as the construction inspector so that the Board can be better informed of a project during the construction phase. SJW stated that she can research how other towns handle the construction review end of things.

PMM and RO are going to look at the slope section (Section 4259) and make recommendations to the Board.

Discussion will continue at the next Planning Board meeting on January 26, 2012.

**Parking bylaw discussion update**

SJW asked JT about what the Planning Board could put into a regulation. JT stated that he likes the changes and it shows progress and thought. His concerns are:

1. Judgment calls "at discretion of the Planning Board" should be instead a special permit to remove any gray areas of language.
2. Shared parking – great idea. If mixed use businesses do not match up then he suggests that it be a special permit.
3. Flexibility for the Board as parking standards change. JT would like hard and fast bylaws. By-right uses should be for simple uses that would remain relatively unchanged. For complex issues, the Board can do this by regulation and this allows the Board to change as the standards change, but there has to be a balance. Multi-use could be subject to regulations and allow the Board to change with the times. Shared-parking could be special permit. Simple uses such as a standalone office could be very basic.

JT stated that the Board could put everything in regulations but he is not wed to it. If the Board is happy with the bylaw and the work done, go with it. If the Board will allow waivers or reduction then use special permit. He just doesn't like language "at the discretion of the Planning Board" and finds it too uncertain. SJW stated that the waiver wasn't a special permit before. PMB agrees with JT and that the Board is trying to make it easier.

JT thought that the town meeting would be ok with the regulations and special permit process as it provides certainty and there are not a lot of preconditions. It would also address concerns of large shopping districts with large areas of parking and the public has remedies. PMB agrees with JT. The bylaw is really close to completion and aiming for the Spring for completion.

SJW and JT have to keep working on the Allowed Reduction Section 3332 and making the multi-use, shared-use as a special permit can maybe put under flexible parking options. Thinks this will work. It is a huge benefit to developers to get reduction in parking based on shared use. He will continue to work with SJW on this.

SJW wants to schedule a joint meeting with the Planning Board and Board of Selectmen (BOS) to present this to see if this is acceptable before it goes on the warrant for the town meeting and get their input and PMB and rest of the Board agrees.

All Board members agree it is a good idea and will attend BOS meeting on February 6, 2012 to discuss. SJW will work on having a final draft to discuss with the Board at the Planning Board meeting on January 26, 2012.

Concerning the SWAP parking bylaw, SJW wasn't happy with response from MAPC. However, they informed SJW that the MAPC has money to help implement bylaw. SJW informed them that it is already written so it won't help with that. But the MAPC will review the Board's bylaw and will come to BOS meeting to help present.

JT informed the Board that Shores at Silver Lake III did appeal but they want to discuss.

SJW informed the Board that the Pine Hollow discussion will be at the next meeting on January 26, 2012.

**General Business:**

GCW: Motion to sign the 12/22/2011 Meeting Minutes.

PP: Second.

Vote: 5-0 approved (PMB, GCW, DB, PMM, PP)

GCW: Motion to sign the vouchers.

PP: Second.

Vote: 5-0 approved (PMB, GCW, DB, PMM, PP)

GCW: Motion to close the public hearing.

PMM: Second.

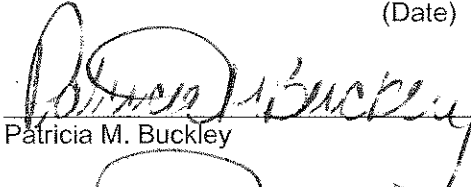
Vote: 5-0 approved (PMB, GCW, DB, PMM, PP)

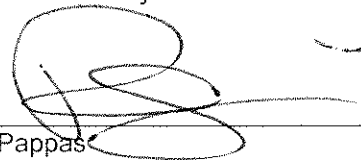
GCW: Motion to adjourn.

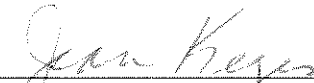
PP: Second.

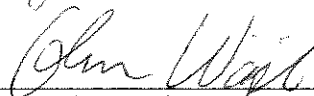
Vote: 5-0 approved (PMB, GCW, DB, PMM, PP)


Minutes Accepted on: 1-26-12  
(Date)

  
Patricia M. Buckley

  
Peter Pappas

  
(Prepared by: Jean Keyes)

  
Glenn C. Wojcik

  
Dave Brown

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Peter M. Morelli