

December 6, 2012

**BOARD OF SELECTMEN  
MINUTES  
DECEMBER 6, 2012**

Present: Thomas Creamer, Chairman  
Priscilla Gimas  
Mary Blanchard  
Mary Dowling  
Mary Redetzke  
Shaun Suhoski, Town Administrator

The Chairman called the meeting to order at 6:00 p.m. following the Pledge of Allegiance.

**Solar Moratorium Bylaw**

S. Suhoski reviewed Town Counsel's December 6, 2012 opinion. He then reviewed the Stormwater Management and Planning Board rules dated March 22, 2011.

T. Creamer stated that he had done an extensive amount of review and research since meeting previously with residents regarding the proposed solar PV installations in residential neighborhoods and was now convinced based up that review, as well as the State's own literature cited in publications by DEP and DOE that the siting of solar PV installations in residential neighborhoods was a threat to the health and welfare to the community.

T. Creamer said that the Board had asked the Town Administrator to obtain some legal guidance. S. Suhoski provided the Board with an overview and read the legal opinion into the record. He noted that the citizen petition does not change the development restrictions. He said that the Board's petition as drafted by the Town Planner allowed solar as a use but would have proposed stricter setbacks and other development restrictions to protect natural resources. He noted that a moratorium can still be imposed. T. Creamer added that the moratorium would have to be approved by the legislative branch.

The Board reviewed each point included in the December 6, 2012 letter from Attorney Joel Bard of Kopelman and Paige: The Town's Authority to Implement a Temporary Moratorium on Solar Development; Permissible Scope of a Solar Moratorium; Emergency Orders Regulating Impacts on the Natural Environment; Board of Health Regulation of Solar Installations; Conservation Commission Regulation of Solar Installations; Other Regulatory Authority; Rate of Development Bylaw for Solar Installations.

T. Creamer thanked S. Suhoski for the information he had provided to the Board. He noted that Carol Goodwin had received a letter from the Dept. of Energy and Environmental Affairs dated December 6, 2012, in which the state indicated that it is a

local issue to be solved by the Town; however, they discourage the Town from putting it in heavily forested areas and encourage putting it on developed or disturbed land. They also said that there should be appropriate controls. T. Creamer read the letter from EOEa dated December 6, 2012 into the record.

T. Creamer spoke to two letters in position by all Board members that he had drafted for review, consideration and support by the Board for distribution to Representative Todd Smola, Senator Stephen Brewer and Governor Deval Patrick, the second being for conveyance to the Planning Board. He then made the following motion:

**MOTION:** That the Board of Selectmen adopt, authorize, sign and support by way of necessary action letters submitted by the Chairman on December 6, 2012 addressed to Governor Deval Patrick, Senator Stephen Brewer and Representative Todd Smola requesting action with respect to the filing of Special Legislation that would place an immediate Moratorium on all non-municipal solar photovoltaic proposals within our community, until such time as the proper review, draft, consideration, and approval of bylaws, by way of Town Meeting (June 2013) that address the concerns and challenges manifesting from the installation of solar photovoltaic systems in residential districts, as well as the opportunities available in more conducive zoning districts, by T. Creamer.

**2<sup>nd</sup>:** P. Gimás

Ed Goodwin said that he had read the letters, and said that the state needs to understand the problem it is creating.

M. Dowling said that if the Town can't have a retroactive moratorium, she questioned whether it would be legal to have special legislation, which achieves the same thing. T. Creamer said that the purpose is to make the state aware that this is a community that sees severe contradictions between what they say as opposed to what they are telling us we need to do.

**Vote:** Four in favor; M. Blanchard opposed.

**MOTION:** That the Board of Selectmen adopt, authorize, sign and support by way of necessary action the letter submitted by the Chairman on December 6, 2012 addressed to the Sturbridge Planning Board outlining our concerns and contention that the denial of approval for this project is well within their scope of authority based upon the information provided therein, by T. Creamer.

**2<sup>nd</sup>:** P. Gimás

**Vote:** Two in favor; M. Redetzke, M. Blanchard and M. Dowling opposed.

**MOTION:** Selectman Creamer: Move that the Board of Selectmen to authorize Town Counsel to take immediate action to review legal options including possible stays of proposed non-municipal solar photovoltaic installations in forested residential districts in the Town of Sturbridge as said proposals/installations present a clear and present danger to the health, safety, and welfare of current and future residents in the Town of Sturbridge as well as the contributing to the destruction/degradation of the ecosystems and environment associated with same while diminishing their ability to provide natural tools for the management of greenhouse gases, global warming, and water management.

2nd: P. Gimas,

Vote: 5-0 Motion Carries

**MOTION:** That the Board place and support the following Article on the Special Town Meeting warrant of January 7, 2013: "To see if the Town will vote to authorize the Board of Selectmen to declare an immediate Moratorium on all proposed and future non-municipal solar photovoltaic installations until the Town of Sturbridge has had the opportunity to review, draft, consider and approve by way of Town Meeting (June 2013) bylaws that address the concerns and challenges manifesting from the installation of solar photovoltaic systems in forested residential districts, forested commercial/industrial districts and to explore the opportunities and potential available in more conducive zoning districts and/or locations (e.g. overlay) within specific districts; or take any action in relation thereto," by P. Gimas.

2<sup>nd</sup>: T. Creamer

M. Dowling stated that she could not support a retroactive moratorium, but could support a moratorium on future projects. M. Blanchard and M. Redetzke agreed.

Vote: Two in favor; M. Redetzke, M. Dowling and M. Blanchard opposed.

**MOTION:** That the Board of Selectmen under the authority so stated in the Town of Sturbridge Zoning Bylaws Chapter 24, Administration, paragraph .02, which so states the following: This Bylaw shall be enforced by the Board of Selectmen or the Director of Inspections appointed by them. No building shall be built or altered, and no use of land or building shall be begun or changed without a permit having been issued by the Board of Selectmen. As such, the Board hereby issues the following executive order: NO permit shall be issued by the Director of Inspections for buildings to be built or altered, or any use of land or building for solar photovoltaic installations in forested residential neighborhoods, as the intended use codified in Chapter 24.03 are not in all respects in conformity

**with the provisions of our bylaws due to the clear and present danger to the health, safety, and welfare of our residents; and the resulting destruction degradation of the ecosystems and environment associated with same while diminishing their ability to provide natural tools for the management of greenhouse gases, global warming, and water management, by T. Creamer.**

**2<sup>nd</sup>: P. Gimas**

**Vote: Three in favor; M. Blanchard and M. Dowling opposed.**

**MOTION: That the Board of Selectmen direct the Town Administrator to develop modifications to the current Special Town Meeting warrant for all previously proposed and subsequent solar photovoltaic installations that would include, but not be limited to, the following:**

- All solar PV installations of 100KW or greater are subject to Site Plan Review**
- A minimum of 200 foot Front, Side, and Rear setbacks/buffers, consisting of trees, natural vegetation, natural features, landscaping, soil erosion controls, opaque fencing and/or other means deemed necessary by the Planning Board to protect the health, safety, and welfare of the community, environment, and associated eco-systems,**
- Deforestation by more than 15 percent of any site will disqualify any application**
- Surety of 150 percent**
- Engineering controls that require the cleaning, maintenance, and management of the site include only environmentally sensitive/safe applications, by T. Creamer.**

**2<sup>nd</sup>: P. Gimas**

T. Creamer tabled the motion temporarily for more discussion with the Board and residents.

Jay Mallon said that he was getting mixed reviews, and felt that there is a conflict of interest because there is a project by the municipality and that Town Administrator Shaun Suhoski may be advocating for residential solar because of his support for the Town's project. He said that what the residents want is protection for the residential area. T. Creamer said that he did not believe that the Town Administrator has a conflict of interest, as he is fulfilling his responsibility under the Town Charter and, "though I disagree with his position, I firmly believe he is doing what he believes is in the best interests of the community with respect to his recommendation."

S. Suhoski said that the municipal project will have no impact on his electric bill, it is to reduce the Town's electric costs to the taxpayers; it is not in a residential zone, so it is not affected by these petitions and is not in conflict. He said that his goal is to point out that there are processes in place, and there is no need for letters to the Planning Board telling them what they already statutorily do. He noted that the Board of Selectmen may

inquire as to the conduct of any Board, if they are not fulfilling their statutory responsibilities. He said that the Board of Selectmen is making policy votes.

Jennifer Olsen Pratt, 15 Apple Hill Road, said that there was no conflict, and if the state was not threatening to supersede our bylaws, we wouldn't be in this situation. She expressed the need to protect the Town.

T. Creamer said that despite the fact that he has confidence in the Planning Board, there is a past opinion from Town Counsel stating that solar may be allowed in residential areas, and there is a tendency to defer to legal advice. With that in mind he believed that the Board had an obligation under the Town Charter to voice its opinion consistent with our bylaws that do not allow solar pv in a residential area.

Bob Meunier, 73 Shepard Road, asked about the jurisdiction of the Board of Selectmen, the Planning Board and the Conservation Commission. He expressed the need to understand what the Town wants to do and how to protect its citizens.

Carol Goodwin noted that the Selectmen are the policy makers, and have that right and an opportunity to give advice to other boards. She said that there must be a connectivity between boards, and noted that the members of the Planning Board are appointed, not elected. She said that the Selectmen have the responsibility to set the vision for the community. She suggested initiating a moratorium, and that the solar project be kept out of the residential area; if not, there is nothing to prevent them from filing a comprehensive plan before Town Meeting, and we will have no control over it at that point. She noted that it had not been vetted properly by the state.

Peter Zeh, Old Farm Road, suggested having a moratorium for 18 months to give them time to do this right, and put a good set of bylaws in place.

T. Creamer amended his original motion to read as follows:

**MOTION: That the Board of Selectmen support modifications to the current Special Town Meeting Warrant for solar photovoltaic installations that would include but not be limited to all projects previously proposed or otherwise and requires the following:**

- **All solar PV installations of 100KW or greater are subject to Site Plan Review**
- **A minimum of 200 foot Front, Side, and Rear setbacks/buffers, consisting of trees, natural vegetation, natural features, landscaping, opaque fencing and/or other means deemed necessary by the Planning Board to protect the health, safety, and welfare of the community, environment, and associated eco-systems,**
- **Deforestation by more than 15 percent of any site will disqualify any application**
- **Surety of 150 percent**

- **Engineering controls that require the cleaning, maintenance, and management of the site include only environmentally sensitive/safe applications, by T. Creamer.**

**2<sup>nd</sup>: P. Gimas**

**Vote: Four in favor; M. Blanchard abstained.**

T. Creamer said that he is offering this motion as more of a concept so that Counsel would have something to work with in terms of developing something for additional consideration by the Board and voters at Town Meeting.

Ed Wozniak, 103 Shepard Road, said that the Shepard Road project is a large project, and suggested that there be a 500 foot buffer for a large project like that in a residential zone. He requested the Board's help in protecting residents in the Shepard Road area.

Carol Goodwin, speaking on behalf of her son Ted, suggested that the wires be buried at the site, and noted that it was in the original bylaw.

T. Creamer said that if the Board adopts this bylaw and if it were to get passed at Town Meeting, there will be 200 foot setbacks and no more than 15% deforestation, which would scale this project down to a point that 200 foot buffers will be more than sufficient. He noted that it has not been finalized; it is conceptual, and the Board can revisit it.

M. Dowling suggested seeking guidance from Town Counsel concerning the possibility of having one bylaw for current projects and one bylaw for future projects. She further indicated prospective projects should not be in a residential zone. She asked that if the Town can't have a retroactive moratorium, would it be legal to have specific legislation?

M. Dowling suggested directing Town Counsel that the Town needs a bylaw that is binding and thorough for existing projects, and for prospective projects it should be kept out of residential zones.

T. Creamer said that for right now this motion is conceptual and that at a minimum we want these controls but need guidance and input from Counsel. The motion in effect directs the Town Administrator to include these under any protections that will be afforded to those projects that may currently be approved under the state's zoning, and at the same time he will seek advice from Town Counsel as to whether or not we need a new set of parameters or a new article with which to address engineering controls for the others; right now we have a conceptual agreement at a minimum this is residential in terms of engineering controls and we that don't accept any other projects in residential areas.

**Vote: Four in favor; M. Blanchard abstained.**

T. Creamer then asked the Board if they would be willing to support a motion previously offered by Selectman Gimas with respect to a moratorium that was defeated, with a verbiage modification and asked Selectman Gimas to offer the motion:

**MOTION:** Move that the Board of Selectmen place and support the following article on the Special Town Meeting of Jan 7, 2013; To see if the Town will vote to authorize the Board of Selectmen to declare an immediate MORATORIUM on all non-municipal solar photovoltaic installations until the Town of Sturbridge has had the opportunity to review, draft, consider, and approve by way of Town Meeting (June, 2014), bylaws that address the concerns and challenges manifesting from the installation of solar photovoltaic systems in forested residential districts, forested commercial/industrial districts and to explore the opportunities and potential available in more conducive zoning districts and/or locations (e.g. overlay) within specific districts, or take any action in relation thereto," by P. Gimas

**2<sup>nd</sup>:** T. Creamer

**Vote:** All in favor.

**MOTION:** That the Town seek a second opinion forthright with respect to all of the issues presented to Kopelman and Paige as restated in their December 6, 2012 memorandum and that Counsel be chosen by the Town Administrator with the limitation of background specializing in land use and solar projects: by M. Dowling.

**2<sup>nd</sup>:** T. Creamer

**Vote:** All in favor.

Mike Riel, 105 Shepard Road, said that a solar farm is unacceptable, as five abutters will see it from their yards. He stressed the importance of keeping it out of residential areas. T. Creamer said that if project cannot be stopped by way of potential legal action, these engineering controls in the new bylaw will become critical when site plan review is conducted. He said that if the Planning Board decides to approve it, the critical component will be residents showing up and making sure that those 200 foot buffers are trees. M. Redetzke said that she did not think that the state has the right to tell residents what will go into their back yards or what they have to look at.

**MOTION:** To convene in executive session under MGL Chapter 30A, §18-25, Paragraph #3: To discuss strategy with respect to collective bargaining or litigation; not to reconvene in open session, by M. Blanchard.

**2<sup>nd</sup>:** P. Gimas

**Roll call vote:** P. Gimas in favor; T. Creamer in favor; M. Redetzke in favor; M. Dowling in favor; M. Blanchard in favor.

The Board convened in executive session at 8:43 p.m.

Respectfully submitted,

Judy Knowles

December 6, 2012

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BOS Clerk

Date