

Town of Newbury, MA

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Board of Selectmen's Meeting Minutes 4-9-13

BOARD OF SELECTMEN'S MEETING APRIL 9, 2013

Vice Chair Michael Bulgaris opened the meeting at 7 p.m. with the pladge of allegiance to our flag. In attendance were Selectmen Bulgaris, Bear, Mountain and Walker. Selectman Story was absent.

John O'Connell, Storm Water Management Team member, reported on their work as mandated by DEP. He noted that in the beginning in 2003, Doug Packer took care of the reporting and public education. 2008-2010 the next phase was taken under advisement until permit could be put in place. There is still no draft permit in place. NH is all set and our (Mass) permit is supposed to duplicate that of NH. The expense will be large. Our townspeople (Yvonne Buswell, Marlene Schroeder, Steve Fram and many other volunteers) have been a great help with this project. Future work is level funded which should be okay for the next two years. A storm water fair is scheduled for April 29th from 9-12 at the Fish & Wildlife facility and is aimed at educating the children. There will be exhibits, displays, models of estuaries, boat camp critters, the Coast Guard Auxiliary, Merrimack River Watershed and many others. This is a joint venture with Newburyport and Rowley and all are invited to attend. The storm water program consists of public education, public involvement, testing (dry and wet conditions), siltation, long range situations such as maintenance of detention ponds, changes to our subdivision regulations to bring us in sync with the storm water regulations, street sweeping, catch basin cleaning and improvements to our infrastructure. John was thanked for his report by the Board.

Martha Taylor introduced Geordie Vining, Project Manager from the office of Planning and Development in Newburyport, to speak on Phase II of the preliminary plan for the Clipper City Rail Trail and proposed Parker Street parking. Vining presented a proposal to create six parking spots parallel to the westbound side of Parker Street with a four foot paved buffer. He provided information on sight lines for the proposed location as well as stopping sight distances calculated using Mass DOT design guidelines. Photos taken from the perspective of a westbound motorist were also shown and an e-mail was submitted from Chief Reilly stating he had reviewed the plan and the site and was satisfied that the sight lines were appropriate for the proposed parking. The Selectmen raised traffic safety questions and noted they would rather see off-street parking within the rail trail or in a neighboring spot in Newburyport. **Selectman Walker moved to table the matter to the next meeting to allow the board time to do a site visit and review the information presented, seconded by Selectman Bulgaris and voted unanimously.**

At 7:30 p.m. the continuation of the special permit hearing on the proposed solar array off Scotland Road was opened by Vice Chair Bulgaris. Sitting for the hearing were Selectman Bulgaris, Bear, Mountain and Walker. Bulgaris advised that pursuant to G.L. Chapter 39 §23D he had examined all of the evidence received by the Board on March 27, 2013 from which he was absent. In attendance for the applicant were Mr. & Mrs. Pikul, Rich Kleiman and Jim Ross of Sage Stone and Attorney John Clavins. Clavins noted that at the last meeting concerns were expressed about the scope of the state statute governing solar projects. Kleiman stated the statute says local zoning cannot prohibit solar projects except to protect health, safety and welfare of the community. However, like site plan review, you may issue reasonable conditions. In this case the project is well designed and may be difficult to prohibit on these issues. The setbacks, screening, separation of the solar arrays, and keeping haying possible are all positive aspects of the project. Kleiman noted he was only aware of one denial (a Koppelman & Page case) which stood because the developer walked away. We have spent a great deal of time and energy on this project and will appeal. The courts will look at only the facts of the case. Walker asked again what the tax benefits will be to the town. Kleiman stated they had provided a summary of benefits to the town but these are projections as it is still in the process. These are separate issues from this hearing. We have given this info to the Town Administrator and a draft agreement is in the works with the town. Counsel Kremer requested and was granted a ten minute recess at 7:40 p.m. to confer with Bulgaris. At 7:50 p.m. the hearing resumed. Bulgaris noted that Walker's inquiry is complex. Kremer advised that PILOTS are not longer used. Tax agreements are calculated per DOR guidelines. We have asked for hard costs (costs to build) to make a schedule. You may discuss under the special permit process Chapter 97-3.C(1)(a) the criteria of community benefit, property use, best use, etc. Walker stated while not to make the process onerous, I asked at the last meeting where is our ability to negotiate. Kleiman answered there is a positive tax benefit. The assessment process is to work with the Assessors per DOR guidelines using an income and cost approach. We will then enter into a tax agreement with the town. We will work within this process with town officials and there will be positive revenue as well as other benefits such as no traffic, no other town services needed such as plowing and no drain on public services such as schools. Under the draft agreement this estimate is at \$600K over the life of the project plus permit fees. The process is with the Assessors. Walker commented that depreciation of equipment will affect the assessment and he asked when this agreement will be clarified. Kleiman noted that it may take several months of work with the Assessors and DOR. Mountain questioned the landscaping plan and the use of ink berry as

screening. Kleiman advised that Curt Young recommended this as it is a common, native plant, suited to the site, does not encourage deer browsing and provided nesting coverage. He noted that the board may condition another plant – it is your choice. Bulgaris opened the hearing to the audience asking that only those who had not spoken or had something new to add speak. Marlene Schroeder, 1 Anchor Way, submitted a packet of information. She cited a definition of “public welfare” from Black’s Law Dictionary and also referenced a study done by Landscape Architecture. Photos of the “common pasture” showed very little change over the years. Schroeder tried to tie public welfare to economic, historic and stewardship considerations. She noted that the Common Pasture is identified as “distinctive” in studies, a category reserved for only four percent of landscapes statewide and Preservation Mass has identified it as “one of the state’s ten most endangered historic resources”. She noted this landscape protects the Little River headwaters, recharging the wetlands and mitigating flooding downstream. Working for fifty five years as an environmental advocate, she urged the Pikuls to reconsider their plans. Kleiman thanked Schroeder for her comments and noted that while he understood the fondness for the common pasture, it was not enough to negate a project that meets all the standards under zoning. This is privately owned land, the use is allowed by special permit, the view is not protected, the project will have an environmental and economically positive impact, the habitat value will continue, it is a benign use to provide supplemental income to the owners of the land and was approved by the Conservation Commission. This is farm land, not park land, he noted. Donna Pikul also argued that the project will save the land in the long run. This project is temporary (20 year lease), after which the land will be returned to its original state. She disagreed with Schroeder’s comments on the Little River noting open waters are already gushing downstream from the culvert on Hale Street and no one seems to have issues with this. This is private property and we are trying to do the best we can with it. J. Colby, 31 Low Street, commented he had done his homework on health, safety and welfare.

This is a new concept and the health effects are unknown. It is in close proximity to our farm. Safety – fire emergencies will have to wait for National Grid to disconnect. Welfare – visitors to our farm are due in part to the tranquility of the area. Public perception, if negative, may affect our future. Our breeding stock may be jeopardized and we would not survive this loss. This is a tough decision for all. Bulgaris moved to close the hearing but Walker still questioned what the tax benefit would be to the town.

Kremer advised that the applicants and town were working on a tax agreement. Bear commented that this is our bargaining chip. Kremer advised that the board should be looking at the criteria in the special permit process in Chapter 97-3.C(1)(a) and remember that conditions can be set. Mountain moved to close the public hearing to testimony which allows ninety days for a decision and resolve of unanswered questions. There was no second. Walker asked if DOR workshops were finished and Kremer answered they were still in flux as to this issue. This is a separate issue and not a simple formula. Rejection of a tax agreement at town meeting does not mean no taxes will be paid. It will become a straight tax assessment using the same formula as is used throughout town. A tax agreement just gives more certainty. **Mountain moved to close the public hearing to testimony and continue deliberations, seconded by Bear and opened to discussion.** The question of 61A designation was raised. While the Pikuls would like to keep it as part of their 61A parcel, DOR says solar panels are a commercial use and the area will come out of 61A at some point. This is still unresolved at this point. Kleiman noted that they were working with Kremer on the requirements but the 61A issue is the Pikuls not that of the solar project. Pikul said if it comes out of 61A we will pay the roll back taxes. Kremer advised that if this is taxed as commercial the town will also receive personal property taxes which will add to the town benefits.

Kleiman commented that they had demonstrated public benefit and taxes should not be an issue for whether or not to vote on the application. Walker suggested a time certain for deliberation of thirty days to bring us to the May 14th meeting. The possibility of an election upset on April 30th could hinder this decision or could cause the entire hearing process to begin again. **Mountain continued his motion to close the public hearing to testimony and continue deliberations and possible vote to the next meeting on April 23rd, seconded by Walker and voted unanimously.** Walker noted the onus is on Kleiman to provide us with all tax information possible.

A one-day liquor license was approved for Protection Fire Co. #2 for a function on April 13, 2013 from 6-10 p.m. on a motion by Bear, seconded by Walker and voted unanimously.

On the recommendation of Fire Chief Pearson, appointments were approved for the Board of Fire Engineers and Forest Warden/Deputy Forest Wardens for the period 5/1/13-4/30/14 as follows:

William Pearson – Board of Fire Engineers, Forest Warden
 Douglas Janvrin Jr. – Board of Fire Engineers, Deputy Forest Warden
 Wallace Ziehler – Board of Fire Engineers, Deputy Forest Warden
 Timothy Wareham – Board of Fire Engineers, Deputy Forest Warden
 Robert Dash – Board of Fire Engineers, Deputy Forest Warden
 Douglas Janvrin Sr. – Board of Fire Engineers, Deputy Forest Warden
 Nate Walker, Board of Fire Engineers, Deputy Forest Warden
 Justin Webb – Board of Fire Engineers, Deputy Forest Warden

The motion to appoint was made by Bear, seconded by Mountain and voted by Bear, Bulgaris and Mountain. Walker abstained as a family member was appointed.

Ginny Kremer of Blatman, Bobrowski and Mead, LLC was appointed as Town Counsel for a three year term on a motion by Mountain, seconded by Bear and voted unanimously.

The draft fee proposal for services was tabled to the meeting of April 23rd for Tracy's input.

A license renewal for the parking lot @ 11 Fordham Way for blue, the Inn on the Beach was approved **on a motion by Walker, seconded by Bear and voted unanimously.**

A request to include Newbury on the route for the 3rd Annual Coast to Cure bike ride to benefit Neurofibromatosis Northeast on Saturday, September 7th was **approved on a motion by Bear, seconded by Mountain and voted unanimously.** Notification of the event will be forwarded to Police and Fire to insure all necessary precautions can be instituted.

A general business/automotive license was renewed for Schneller BMW Performance @ 26 Middle Road **on a motion by Walker, seconded by Bear and voted unanimously.**

The minutes of the 3/27/13 meeting were accepted as presented on a motion by Bear, seconded by Walker and voted unanimously.

A request from the Byfield Days Committee to close the intersection of Lunt & Central to the intersection of Main and Central at 5:30 p.m. on Friday, June 7th through 6 p.m. Saturday, June 8th **was approved on a motion by Mountain, seconded by Walker and voted unanimously.**

At the request of Joanne Johnson a proclamation to honor Betty Gillette's 100th birthday will be issued **on a motion by Mountain, seconded by Walker and voted unanimously.** Blais will be asked if she can secure a template for the proclamation.

The meeting was adjourned at 9:15 p.m. on a motion by Mountain, seconded by Bear and voted unanimously.

Respectfully submitted,

Kathleen Sirois, Admin. Asst.