

# Town of Newbury, MA

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## Board of Selectmen's Meeting Minutes 9-23-14

BOARD OF SELECTMEN'S MEETING  
 SEPTEMBER 23, 2014

Chairman Walker opened the meeting at 7:00 p.m. with the pledge of allegiance to our flag. In attendance were Selectmen Walker, Bear, Bulgaris, Jespersen, Mountain, Counsel Lisa Mead and Town Administrator Tracy Blais.

Attorney Connie Guitierrez, representing the Boudreaus of Moody Street, filed a petition article with over 100 signatures for the STM to be held October 21, 2014. She gave a little background on a previous article that was addressed at the Annual Town Meeting in May and was tabled to allow negotiations between the Department of Fish and Wildlife and the Boudreaus. She also asked for an endorsement of the BOS for this petition article. The Selectmen will address this request at their joint meeting with Finance on October 14<sup>th</sup>. A lengthy discussion ensued on the two proposed articles. Atty. Mead stated she had no problem with both articles being on the STM warrant. The petition article must be on the warrant as presented but the Fish & Game article has caveats that could tie up the petition article. The questions of Chapter 97 land, appraisals, proposed payment, deed to the fields, etc. will all involve a significant process through the AG and DEP. Either way the issue must go before the State Legislature. Anne Gagnon, NE District Land Agent for Fish & Wildlife spoke on their article. Counsel and Fish & Wildlife will continue to iron out the particulars of their article until Oct. 7<sup>th</sup> when the warrant will be finalized and signed.

At 7:30 p.m. the continuation of the Borrego Solar Special Permit hearing for 8 Middle Road was called to order. A signed certification pursuant to G.L. chapter 39, section 23D from Selectman David Mountain was filed. Joe Harrison, Borrego's Project Manager, addressed the list of follow-up items provided by the Planning Board and Attorney Mead's notes from the August 26<sup>th</sup> hearing.

- Financial arrangement between Borrego and the Town – negotiations for a tax agreement having failed, Borrego (Borrego offered up to \$11.5K/MW and the Town asked for \$15K/MW) will have the town tax the project at the normal tax rate. Blais noted her preference was to have a tax agreement but with the quarterly tax assessment she would like to have language that Borrego would not apply for abatements. Harrison advised they were not willing to give up that right. A discussion amongst the Board ensued. Atty. Mead advised they could not make Borrego enter into a tax agreement. They have opted to pay full and fair value of the project and may ask for an abatement, if justified. This is their choice.
- Additional information on the Operations and Maintenance Plan provided in Appendix A – Borrego provided an example of an Operations and Maintenance Plan for a project of similar size. Contracts will be signed by the system owner and Borrego prior to issuance of a building permit which will be specific to this site (copy attached).
- Performance bond required – A 100% performance bond will be confirmed within 30 days following the issuance of the Special Permit. Borrego's preference is to not issue the security (decommissioning) bond of up to \$66K until prior to receiving a building permit which could be several months after receipt of the special permit. If not allowed in the solar bylaw, a variance from ZBA may be sought.
- Liability insurance – a certificate of Liability Insurance has been submitted to the town for review (copy attached).
- Open space and agricultural report required – this report has been submitted to the town and was taken from the original special application (copy attached).
- Screening of site from view of adjacent residential lots, streets and roadways – the locations of the three arrays provide existing natural screening from the view of adjacent residential lots, streets and roadways.
- Maintenance of access roadways including snow removal to ensure emergency access to the site at all times – access roads will be maintained but not cleared during the winter except as required by routine maintenance. After reviewing Chief Reilly and Chief Pearson's letters stating they had no concerns it was moved by Selectman Jespersen, seconded by Selectman Bulgaris and voted 4-1 to exempt Borrego from plowing
- Letter from the Fire Chief and Police Chief confirming they have reviewed the application and have no concerns regarding emergency access – during a meeting with Chief Pearson, the following requests were implemented: installation of Knox boxes at each of the four gates- added to the plans; Borrego to provide the department with a safety/educational workshop-will be provided prior to start of construction; rapid shut down mechanism-one will be provided at the site and the process will be discussed at the workshop. A letter confirming his review of the application and stating he has no concerns regarding emergency access is attached.

Chief Michael Reilly has confirmed he has reviewed the application and has no concerns regarding emergency access (letter enclosed).

- Cost estimates for decommissioning the installations prepared by a professional cost estimator – a cost estimate has been prepared and stamped by Steve Long, a licensed P.E. working for a national solar company and qualified to prepare this estimate.

Included are additional background information, assumptions and calculations for arriving at the estimate. Also included are a line item for re-vegetation and a 2.5% annual inflation rate for 20 years.

- Security fencing – black vinyl-coated fencing a minimum of 8 feet high will be added to the plan set.
- Revised plans dated 8/6/14 showing grading should include screening and site lighting – the site will be screened by existing vegetation at this array location and a photo of the proposed lighting attached.
- Number of trees to be removed and identified on the plans with an outline of measures for mitigation – a survey performed by Doucet Survey of Newmarket, NJ (A Tree Clearing Plan, sheet C-2.4) has been added to the plan set indicating quantities of trees in the range of 6”-11”, 12”-23” and greater than 24”. Borrego is willing to contribute to the town’s tree fund based on these quantities.

A lengthy discussion ensued regarding the value of 800+ trees, remediation, latitude in the bylaw and discordant areas of the bylaw that are unclear and unfair. Mountain suggested that more homework was needed on this issue as there is a lot of latitude allowed, some mitigation may be appropriate but not 100% replacement. Jespersen noted that the bylaw says “may”, so should we be asking for replacement, no replacement or some flexibility. Atty. Mead recommended coming back to this issue after more research on the parameters of this section of the bylaw.

- Assurance that storm water run-off from the gravel access roads will have no impact on the town and state roads abutting the site – all access roads are existing. There will be no alterations of the existing access drives that intersect the town and state roads and no increase of run-off from the gravel roads.
- Quantitative information on vehicle trips to and from the site during and after construction with confirmation of adequate sight lines at the exits – a schedule of anticipated site traffic during construction was submitted. Site distance at exits was measured and pictures attached. It appears all exits are adequate for the posted speed limits.
- Evidence that MA DOT has approved using existing access to the site from Route 1 for construction and maintenance vehicles for the solar project – MA DOT has determined that a new access permit will not be needed. A copy of the email correspondence will be submitted.
- Show required parking under the bylaw – the required five parking spaces have been added to the revised plans, indicating a gravel surface. Spaces will be 9 feet wide and 18 feet long.
- Address Knox box locations – Knox boxes are indicated on the revised plans and shown on the gate detail. The boxes will be located on the gates at the entrance to each array.
- Provide a precise acoustical study relative to the closest receptor at the site – technical information regarding the sound produced by the inverter has been presented to the board, a copy attached. Harrison reported that there would be no noise at night and it is in a commercial area. We don’t anticipate any issues. Mead suggested taking an ambient measure prior to construction and then after installation so the board will have a standard to go by. Harrison noted they were willing to provide this according to the bylaw.

Chairman Walker opened the hearing to comments from the audience. Alicia Greco of 3 Courtney Drive questioned remediation of the trees as this area is adjacent to a contaminated site. She also asked about the fire code and comments from the Chief. Atty. Mead advised that the Chief had signed off and there were no issues. She asked if the de-commissioning estimates provided by S. Long was a conflict as he was employed by Borrego. Walker noted that according to the bylaw they must just be submitted by a professional engineer.

Chairman Walker advised that the next step would be due diligence and discussions to allow the town time to decide on the future of this installation. Counsel was directed to draft a decision along with Planner Martha Taylor which should include all discussion from tonight’s hearing. Counsel noted that the public hearing was not closed and a draft decision could be reviewed for consideration at the next meeting at which time all outstanding issues will be addressed. It was moved by Selectman Jespersen to direct Counsel to draft a decision for this special permit, seconded by Selectman Bear and voted 5-0. It was moved by Selectman Jespersen, seconded by Selectman Bear to continue this hearing to the meeting of October 7, 2014 at 7:30 p.m., voted 5-0. Joe Harrison of Borrego noted they would wait for feedback from Counsel regarding the tree issue.

Town Administrator Tracy Blais advised the Special Town Meeting would be held Tuesday, October 21, 2014 at 7 p.m. at NES.

The warrant for this meeting must be posted by October 7<sup>th</sup>. A meeting is scheduled for Tuesday, Sept. 30<sup>th</sup> to sign the warrant. On October 14<sup>th</sup> there will be a joint meeting of the Selectmen, Finance Committee and Capital Planning Committee to review the warrant and vote on recommendations of each article. The position of Shellfish Constable has been advertised and interviews are being conducted. The issue of green crabs in our estuaries will one job for the new constable, she noted. The Eastern Essex District Department of Veteran’s Services has hired a new Veteran’s Director. U.S. Army Field Artillery Captain Ryan P. Lennon has accepted the position effective October 6<sup>th</sup>. They have requested a representative of the Board of Selectmen

be appointed. Chuck Bear was appointed to this position on a motion by Selectman Walker, seconded by Selectman Mountain and voted 4-0 with Bear abstaining. Blais announced that Larkin Road has been closed to vehicular traffic. It is currently open to bicycles and pedestrians but that is subject to change. The condition of the culvert will be monitored and Georgetown officials have been notified. An invitation has been received to attend a celebration by NES's GROWS Committee (Growing Real Opportunities for Wonderment in the Schoolyard). This event will be held on Sept. 29<sup>th</sup> at 7 p.m. in the NES auditorium.

Hazardous waste collection day will be November 15<sup>th</sup> from 9-12 a.m. at NES. Blais acknowledged the anonymous donation of two defibrillators – one for Town Hall with training to be provided and the second for the Emergency Command Post or for use in the Argo.

On the recommendation of the ZBA, Elaine Baker of Byfield was appointed as an “alternate” member of the ZBA on a motion by Selectman Bear, seconded by Selectman Bulgaris and voted unanimously. Ms. Baker was present for the appointment.

A request from the Geiger Crisis Center to hang a banner on the back stop to advertise their “Walk Against Domestic Violence” was approved on a motion Selectman Bear, seconded by Selectman Jespersen and voted unanimously. Kelly Majewski, Events Manager was present to represent the Crisis Center.

A letter of request from Steve Murphy to sell Christmas trees at the Woodman Farm Stand on Route 1 was read and discussed.

The request was referred to Counsel as to authority and to the Police Department for traffic control and sight line recommendations. The matter was tabled until reviewed by Counsel on a motion by Selectman Jespersen, seconded by Selectman Bear and voted unanimously.

A one-day liquor license was approved for Historic NE/SPLF for a Triton Education Foundation fund raiser on September 27<sup>th</sup> from 12-4 p.m. on a motion Selectman Jespersen, seconded by Selectman Bear and voted unanimously.

A one-day liquor license was approved for Historic NE/SPLF for a wedding reception on Oct. 12<sup>th</sup> from 4:30 to 10:30 p.m. on a motion by Selectman Bear, seconded by Selectman Bulgaris and voted unanimously.

A request for a “special permit” for a change of use (section 97-3C(1)(a) of the zoning bylaws from Joy McFarland, 37 Newbury Neck Road, was tabled until a completed application is filed. A hearing date will be set at that time.

The minutes of the Sept. 9<sup>th</sup> meeting were approved as presented on a motion by Selectman Bear, seconded by Selectman Jespersen and voted by Bear, Jespersen and Walker. Bulgaris and Mountain abstained from the vote and they were not present at the meeting.

Communications from the Eastern Essex Dist. Dept. of Veteran's Services and the Division of Marine Fisheries were read and filed.

Warrants were signed for TA Blais.

The meeting was adjourned at 9:45 p.m. on a motion by Selectman Bear, seconded by Selectman Bulgaris and voted unanimously.

Respectfully submitted,  
Kathleen Sirois, Admin. Asst.