

ITEM 1 - ROLL CALL

Present: Carmela Braun – Chair, Jeff Leathe – Vice Chair, Lissa Crichton – Secretary, and Jim Latter.

Also Present: Jeff Brubaker, Town Planner.

Absent: Melissa Magdziasz.

Voting members: Carmela Braun, Jeff Leathe, Jim Latter, and Lissa Crichton.

NOTE: Ms. Braun said that we are asking everyone, regardless of vaccination status, to wear a mask due to the increase of cases and how rapidly the variant is traveling. We appreciate your cooperation and understanding.

NOTE: Ms. Braun said that one of the goals I had when I became Chair was to make sure that the residents of the Town were heard. So, even though it may not be a public hearing, I will often recognize a resident so that they can voice their concern. We may not be able to do anything about it because we are bound by the ordinances voted in by the residents but, by recognizing you, your issue is on the record and that is why I often times will do that.

ITEM 2 – PLEDGE OF ALLEGIANCE

ITEM 3 – MOMENT OF SILENCE

ITEM 4 – 10-MINUTE PUBLIC INPUT SESSION

Mr. (Jay) Meyer, Odiorne Lane, said that I would like to talk to the PB about having an agenda and a package available to the public as we come into this meeting. In going to the meetings over the years throughout the Town, there have always been two packages available, one for the press and one for the general public. I feel that that has probably been forgotten, probably due to COVID or new members but I think it's important that we have those agendas, a package for the press if the press chooses to show up, and for the public. Thank you.

ITEM 5 – REVIEW AND APPROVE MINUTES

Mr. Latter moved, second by Ms. Crichton, to approve the minutes of December 7, 2021, as amended.

VOTE

4-0

Motion approved

ITEM 6 – NOTICE OF DECISION

A. 505 Harold L. Dow Highway – PB20-21

Mr. Brubaker pointed out that a portion of Condition #4 of the motion made was missing and Ms. Lemire will add it into the Notice of Decision.

Mr. Brubaker said that I did have a conversation with the DEP just to kind of help foster movement forward and this DEP representative was very, in my opinion, open and supportive of the idea of the driveway cross-access. Hopefully, that's moving forward and we can get the permit in line before next November so that we can get that consolidated driveway. And I will keep tracking that.

Mr. Leathe said that I have one question for Mr. Sudak and/or Mr. Brubaker. I wasn't clear after the site walk that all of the trees in the front of the property were going to be taken down. I don't exactly recall what we talked about in terms of the Notice of Decision. I just bring that up as a question.

Mr. Brubaker said that I share your concern about the number of trees that have been taken down. I did follow up with the applicant, Sweet Dirt, directly with their construction manager. He did say that he felt that they had survey-located the trees and that that survey location was consistent with the buffer they showed on the plan. The idea would be to keep tracking that with them. Keep making sure that they are retaining and planting the buffer that they show in their site plan. If the consolidated driveway cross-access goes through, I believe we'll have a better-quality buffer that is a bigger buffer and nearer the Blanding's turtle area and Shoreland Zoning. It's definitely a concern that I share and will keep track, working with our CEO.

Ms. Braun moved, second by Mr. Leathe, that the Planning Board approve the Notice of Decision for PB20-21, Site Plan Review and Change of Use for Adult Use and Medical Marijuana Manufacturing and Co-Generation Facility, as amended.

VOTE

4-0

Motion approved

B. 441 River Road – PB21-33

Mr. Leathe moved, second by Mr. Latter, that the Planning Board approve the Notice of Decision for PB21-33, as written.

VOTE

4-0

Motion approved

ITEM 7 – PUBLIC HEARING

A. 0 Harold L. Dow Highway (Map 23/Lot 5), PB21-28: Site Plan Review and Change of Use – Commercial Warehouse with five (5) Contractor Incubator Pods.

Received: September 21, 2021

1st Heard: October 19, 2021 (sketch plan review)

2nd Hearing: November 16, 2021

3rd Hearing: December 7, 2021

Public Hearing: January 4, 2021

Site Walk: November 1, 2021

Approval: January 4, 2022

Mr. (Michael) Sudak, (E.I.T., Attar Engineering, Inc.) was present for this application.

7:15 PM Public Hearing opened.

Mr. Sudak asked Mr. Brubaker if he would show the plan set for the benefit of the attending public and those on Zoom.

Mr. Sudak said that this is a 3-acre parcel in the C/I Zone off of Route 236 and Quail Lane, which is the back entrance to The Villages on Great Brook. We are proposing to construct five 30'X50' contractor pods, all within one co-located 50'X150' metal building, with associated parking lot and, at the rear of the property, a material laydown area. The vehicle circulation, proposed travelway, all are designed similarly to the Eliot Business Park further on Route 236, so, widths and travel ways should all be consistent there. The project will be serviced by on-site private sewer. We have put in an HHE200 for that. The private on-site well will be located up front near the entrance so more than 100 feet away. Stormwater will be managed on-site by a detention basin to the north of the property right before the toe of the wetland. That concludes my overview. Since the last time we met, we have provided elevations and architectural renderings of what the building will look like, showing that we have adequate overhead bays. I updated a few general notes about some of the sediment and erosion controls, about the vegetative plantings up front and in the side yard, about what is allowed and prohibited from the material stockpile area in the rear, as well as the requirement for it to be fenced in. I provided an update on my correspondence with Fire Chief Muzeroll about the required rating of the interior wall between each respective unit, which is reflected in the plans. Then, just some minor comments on the dumpster, which is not required or proposed for this development and, if one is proposed in the future, that will require modification to an approved plan and will have to come before you again. Also, an update to the Photometric Plan for proposed lighting. I included in your packets out two State agency permits – a Stormwater PBR, which we filed on the 16th; that the time window has lapsed so that's approved; then a Tier I NRPA Permit for our wetland impacts. They have until the end of this week to provide comment on that. So, I will be forthcoming as I receive them. I can take any questions.

Mr. (Tim) Pickett, Harold. L. Dow Highway, said that I was wondering what the material laydown area is for.

Mr. Sudak said that, originally in an earlier iteration of the project, there was a proposed 6th unit that would be back there. We ended up pursuing a legal opinion through the Town and it was determined that we weren't allowed to put a structure back there because the abutting Villages at Great Brook Elderly Development was deemed to be a residential use, which moves our setback from 20 feet to 100 feet. So, there are no structures that are allowed back there. My client still wanted to use the space so what it's going to be is a 20-foot gravel road and a small, little material laydown area that's going to be for their metal building fabrication construction company, so steel beams, columns, sheet metal, that kind of stuff. There's been quite a bit of specificity in that the Town has generated some lengthy notes on what won't be allowed there – no hazardous material, no chemicals, no anything. It's going to be screened with picket fencing to shield it from the abutting properties.

Ms. (Kari) Moore, Conservation Commission (CC), said that you did a good job of avoiding the wetlands. But there is a large wetland complex and the CC just wants to know if there is any intention of clearing that vegetation and, if not, is there any way we can ensure that that's not encroached on in the future.

Mr. Sudak said that a quite considerable portion of the property is already cleared and just a grass field. There is a pretty large section of upland that shows the existing edge of the forested area. We certainly don't intend on impacting any of that outside of the small section of upland in the material laydown area. I believe that even all the area that we are impacting down where the parking lot is, is already cleared.

Ms. (Christine) Bennett, Moses Gerrish Farmer Road, said that, in looking at this plan for proposed development, in your consideration for changes to the code I would recommend looking at changing the lot coverage calculations to exclude wetlands from the parcel. The engineers did a great job of mostly avoiding wetlands but, really, the only developable land here is mostly being covered by development.

There were no other public comments.

7:28 PM Public Hearing closed.

Ms. Crichton asked if there is an alarm of some sort on the septic system. I know I have one on mine and thankful I have it. So, I didn't know that, if it overflowed, anyone could be notified.

Mr. Sudak said that I don't have the answer to that but I can look into that for you.

Ms. Crichton said that I wanted to thank you for changing all of these notes that we discussed at the last meeting. You talk about, in the Winter Construction Notes (#4), the mulch netting. Is that netting made out of plastic.

Mr. Sudak said that it's usually a woven geo-textile. So, it can be one or the other. It can be an organic material or it cannot be organic.

Ms. Crichton asked if that is removed once you're done.

Mr. Sudak said yes. It's just for through the winter months. Given the time when this is prospectively going to be approved, I don't think that the notes would apply.

Ms. Crichton asked what an incubator building is.

Mr. Sudak said that it's just a contractor space. It's exactly like the one that is on Route 236 so it's going to be used for a variety of different trades, or I've seen gyms go into them. It's just going to be a contractor space that has a shower, has a bathroom, has power.

Mr. Brubaker said that, regarding uses, you had proposed 'warehouse' and 'professional office' in your application. There is no change to that, correct.

Mr. Sudak said no. I believe I spec'd 200 square feet for an office space and wanted to carry that through but, yes, the uses remain.

Ms. Crichton said that, under General Notes #11 "Signage for the proposed development..." For some reason, I thought you weren't going to have a sign.

Mr. Sudak said that there is going to be a sign, up front. It's a specific section of the ordinance that speaks to a sign that's going to be for multiple entities. The overall sign is a specific dimension requirement and, then each specific one is smaller.

Ms. Lemire said that that is just like what they have at Eliot Commons.

Mr. Sudak said that I don't think there is an intent to have it lighted.

Ms. Braun asked if this application needed anything else or is it ready for approval.

Mr. Leathe moved, second by Mr. Latter, that the Planning Board approve PB21-28 – Site Plan Review and Change of Use for a Commercial Warehouse with Contractor Incubator Pods at 0 Harold L. Dow Highway (Map 23/Lot 5). Among other findings of fact to be included in the Notice of Decision, the Planning Board specifically finds:

- 1. The proposed development will disturb more than one acre and is subject to Chapter 35 – Post-Construction Stormwater Management.**

2. **The applicant's post-construction stormwater management plan, including the use of level lip spreaders and a stormwater detention pond, meets the requirements of Chapter 35.**

The Planning Board has voted to impose the following conditions of approval:

1. **The property may be developed and used only in accordance with the plans, documents, material submitted, and representations of the applicant made to the Planning Board. All elements and features of the use as presented to the Planning Board are conditions of approval and no changes in any of those elements or features are permitted unless such changes are first submitted to and approved by the Eliot Planning Board. Copies of approved permits from Maine DEP, Army Corps of Engineers, if applicable, and State shall be provided to the CEO before construction on this project may begin.**
2. **The permit is approved on the basis of information provided by the applicant in the record regarding the ownership of the property and boundary location. The applicant has the burden of ensuring that they have the legal right to use the property and that they are measuring required setbacks from the legal boundary lines of the lot. The approval of this permit in no way relieves the applicant of this burden. Nor does this permit approval constitute a resolution in favor of the applicant of any issues regarding the property boundaries, ownership, or similar title issues. The permit holder would be well-advised to resolve any such title problems before expending money in reliance on this permit.**
3. **The applicant authorizes inspection of premises by the Code Enforcement Officer during the term of the permit for the purposes of permit compliance.**
4. **The applicant shall provide Maine Department of Environmental Protection (DEP) Tier I Wetland and Stormwater Permit-by-Rule (PBR) Permits prior to, or along with, their building permit application.**
5. **Prior to a Certificate of Occupancy being issued, the applicant shall enter into a Maintenance Agreement for Stormwater Management Facilities with the Town ("Maintenance Agreement"), based on Appendix 1 of Chapter 35 of the Town Code. Stormwater management facilities shall be developed and maintained in accordance with the applicant's Stormwater Management Plan, Stormwater Management BMP Operation and Maintenance Program, the Maintenance Agreement, and the DEP Stormwater PBR. If any requirements between these documents conflict, the stricter requirement shall control.**

VOTE

4-0

Motion approved

Ms. Braun said that the application stands approved and there is a 30-day period from which the PB decision can be appealed by an aggrieved person or parties – move forward but move forward cautiously.

ITEM 8 – OLD BUSINESS

A. 0 Odiorne Lane (Map 83/Lot 2), PB21-16: Site Plan Review and Change of Use – Public Utility Facility (Ground-mounted Solar Array).

Received: May 4, 2021

1st Heard: June 22, 2021 (sketch site plan review)

2nd Hearing: August 3, 2021 (sketch plan review continued)

3rd Hearing: August 24, 2021 (continued sketch plan review)

4th Hearing: September 21, 2021 (Site Plan review)

5th Hearing: October 5, 2021 (memo response to PB comments review)

Public Hearing: October 12, 2021

Site Walk: September 20, 2021 (August 23 cancelled due to weather)

Disapproval: October 12, 2021 (Application denied)

Reconsideration Action: November 9, 2021 (Request approved)

Supplemental Actions:

Received: December 8, 2021 (new site plan information)

1st Heard: December 14, 2021 (Continued Review)

2nd Heard: January 4, 2022 (Continued Review)

Public Hearing: _____, 2022

Mr. (Michael) Sudak, E.I.T. (Attar Engineering) and Mr. (Andrew) Kellar (NH Solar Garden) were present for this application.

Ms. Braun said that, before we begin, I want to remind everyone that this is not a public hearing. This is mainly an informational meeting for the PB to find out what has happened since our last meeting. She invited Mr. Sudak to give the PB an update.

Mr. Sudak said that I believe I mentioned at our last meeting that the wetland delineation was in progress, all the flags have been completed, and we were in the process of survey-locating them. That has been completed and incorporated into the plans, just a little bit too late to be incorporated into your packets. I would be happy to highlight the areas where it's changed, if you'd like me to. He pointed them out on the site plan, per the request of the PB. The only areas we have changed – 'this' island is now disconnected down into 'this' peninsula so one continuous wetland 'here' and 'this' horseshoe wetland has gotten slightly larger up into 'this' area. That is the only area that we've really had to slightly pivot. We're continuing to maintain zero wetland impacts with this project, so, the next time you see us that will probably really be the only perceptible change in the location of the array. Regarding the third-party review, Mr. Brubaker, Mr. Kellar, and I met this afternoon with Mr. Galbraith out on the site, had a nice little walk around the property, talked about a couple of his comments from the preliminary document that he submitted right around the time of the last meeting (in the packet), so I have some good direction moving forward. We talked about vehicular access, security, fencing. The big one for me would be updating you on my progress with the State. Two weekends ago, we got some snow, so I went out with Mr. Stearns (IF&W biologist) and did our New England Cottontail survey. Preliminary results from that were that we didn't find any

tracks, no droppings. We found a couple old spots where there was a little chomp like some sort of rabbit had been feeding; that Mr. Stearns has a couple other survey sites that occur bi-annually in the area for Snowshoe Hare and he was going to be cross-referencing those against some of the data that he took from my visit. He felt encouraged by the lack of sign that was out there. To be determined whether or not we need to have another survey; whether or not that would be the protocol that he wants to follow but I will keep the Town up-to-date as I hear from him. Regarding the other agency items, during my site walk today, now that the snow cover is gone, I took the last round of pictures to send to Derek Yorks (reptile biologist – Blanding's turtle), so, I'm keeping him up-to-date with all my information and, if he can't make a determination from the photos I sent him, then I will be meeting him on-site, probably next week. However, the last time I spoke with him he seemed pretty confident that he would be able to make a determination remotely. Again, I will keep you updated as I hear more. The final person I've been talking to is Kristin Puryear (botanist) regarding the rare plant species – sassafras, swamp white oak, and spice bush. I've been keeping her abreast of all the pictures I've been sending to Mr. Yorks because all three of those species are wetland species. That round of pictures went off to her today; that she feels she can make a determination remotely and, if she can't I'll meet her on-site. My Stormwater Management Law Permit is ongoing. I've had a few more meetings with the DEP Regional Director. She's pleased that we're removing all of our wetland impacts because that makes her life a lot easier, in addition to ours. Now that the wetland delineation has been updated, flags have been incorporated into my drawing, I'm just tweaking my stormwater management areas where I need to and will be getting that to her tomorrow. I couldn't quite finish it today.

Mr. Brubaker reviewed his powerpoint summary. Mr. Sudak talked about Mr. Galbraith's preliminary comments in your packet from the site walk. Just note that, after we walked the site, we walked near the vernal pool and there is correspondence in your packet about that. We also talked a little bit about potential areas of stormwater run-off so we're anxious to see the updated stormwater model. There are some documents regarding site control ownership, specifically an addendum to the Purchase & Sales Agreement. There is some correspondence between the applicant and Fish & Wildlife regarding conservation plans and you might want to speak to that. I do have correspondence between myself and legal counsel on definition of 'public utility' as applying to utility-scale solar array. I note that that correspondence took place before this application was submitted. Since this application has been submitted, our usual legal counsel has recused themselves (BernsteinShur) because of a conflict with this item. We now have Archipelago Law (Attorney Guay). I would be happy to answer any questions you have. Tonight's meeting is not for any overall action on the application but just receiving information from the applicant, seeking more information. The one action I think would be to take is to set up a public hearing for January 18th. I have some additional topics to cover. I think we've covered a lot of these. I think we may want to quickly discuss the performance guarantee regarding restoring Odiorne Lane after construction, if that should be needed. Also decommissioning. As discussed before, the applicant is subject to a decommissioning plan and financial assurance under State law, so that would be planning approved by the DEP and, as I understand it, the DEP would also hold the financial

assurance that would allow them to remove the panels if the owner at the time couldn't. With that, I will end my presentation.

Ms. Braun asked the applicant to speak to the conservation plan.

Mr. Kellar said that the emails in your packet are just some correspondence between us and the folks at the national refuge program that I think we've all learned that this site is actually eligible for. After the last meeting, I reached out to the woman I was talking to before and she has since gone to a different position and only handling the Mississippi area instead of the Northeast. She got us connected with the person who is taking over her role and she got back to us. You can see it in the email. It was my job just to make the connection between her and the future landowner, so that has taken place. I followed up again today to see if there was any additional correspondence before this meeting. But I did get them connected right before the holidays so there wasn't a lot of expectation of them getting moving. The intention is to still move forward with that outside the leased premise area, which puts about 55 acres of direct land that could be put into conservation, so we'll be continuing to follow up on that. I think we have all learned that it takes a couple years to go through. Right now, that seems to be the smartest plan to move forward with based on what we know about the habitat and the interest in that agency to support that program. We will keep the PB updated but that is our plan right now.

Ms. Crichton said that it states in your letter, Mr. Kellar, that "after speaking with Kevin Hill and SOW Solar, Inc., permission was granted for Andrew Kellar to act on their behalf to re-engage with the Fish & Wildlife Service...". Do we have anything from Mr. Hill stating this.

Mr. Kellar said that he gave me a verbal okay. I could get a consent letter from him.

Ms. Crichton said that that would be great. That's all we ask. The letter should cover the entire 69 acres. I'd like to see some sort of proposal or plan from the loggers on how they are going to enter. I know you have said that they will enter from the Bartlett property and I would like to see a letter from the Bartletts stating that that is the case. The plan or proposal for the loggers on how they plan to come in, plan to take out the trees, how many, where they are taking them. Because again, once the loggers come in, they are going to cut the trees down, yank out those stumps and, once you do that, you've ruined the wetland.

Mr. Sudak said that we are not ruining any wetland.

Ms. Crichton clarified that that is why I want the plan from the loggers. I want the area they are going to be, how much they're going to be taking out.

Mr. Sudak said that, on our site walk today Mr. Galbraith raised a similar question. We observed the skidder trail that was used for the selective cut in 2018/2019. That's what's going to be utilized again. I'll be happy to follow up on a letter indicating as such but it's more than standard practice to survey-locate our clearing limits and I've shown those on

the plan. We have offsets from our perimeter fencing for shade management. We'll be locating those so the clearing limits will be executed. That is what every logger and contractor in the area is bound to do. But yes, I can get you some specificity on that.

Ms. Crichton said okay. We're still waiting on the word for the vernal pool but I would just like to see how you are going to proceed through Odiorne Lane, through the vernal pool area in that 250-foot area.

Mr. Sudak said that you are going to have to be more specific with me.

Ms. Crichton asked how are you not going to sink. How are those trucks not going to sink into the ground when they come through with the panels.

Mr. Sudak said that there's an existing road there.

Ms. Crichton said that there's an existing road there but you all have been down there today. Wasn't it soft. Wasn't it muddy.

Mr. Sudak said no.

Mr. Meyer said that it was frozen today. Every day except for today, it's been a bog.

Ms. Crichton said that I'm just wondering. So, let's say it's not frozen. I know you want to go in in the wintertime months but we've only had a couple of really cold days.

Mr. Sudak said that, if I may...Mr. Brubaker, correct me if I'm wrong, but is this something that could be incorporated into a performance guarantee because this sounds like it's an assurance on preserving the existing state of Odiorne Lane. The section you're referencing is the low point adjacent to the vernal pool. Is that a reasonable extrapolation, on my part, to say that the language can be incorporated there.

Mr. Brubaker said that it seems reasonable that it could be incorporated there or in the Sedimentation & Erosion Control notes and Construction notes. I just note that this is that part of Odiorne Lane that is a conservation easement and any improvements, such as adding stones to stabilize that low area, would have to be consistent with any applicable provisions of that conservation easement. I don't know if the PB wanted to welcome more from Mr. Meyer, if he has something to say. That's my opinion on it.

Mr. Meyer said that I do have something to say if the PB would accept.

Ms. Braun said to go ahead.

Mr. Meyer said that it's just that they are cavalierly talking about my property. It's my road and how they want to talk about putting gravel, repair it, destroying the road and then repairing the road. It's not theirs to repair or destroy or vice versa. It's not a private

road. It's my property. They have the right to pass and re-pass. Not to destroy. Not to repair. That's what I have to say. Thank you.

Mr. Sudak said that I don't know what to say to that. He suggested that he and Mr. Brubaker could take a stab at some suitable language.

Mr. Brubaker said that you've already proposed at least partial access from the Bartlett property. Though I think the first step would be knowing some type of proportion for what traffic is proposed to access the property via Odiorne Lane. Or what types of vehicles or phases of construction would access from the Bartlett property and what phases would access from Odiorne Lane.

Mr. Sudak said sure. I can incorporate that into the logging letter Ms. Crichton has asked for.

Mr. Meyer asked if we could talk about load limits that the Town has in place for roads during the spring and how much weight is allowed on certain roads in this Town.

Ms. Braun said that we've not done that before.

Mr. Meyer said that I'm not an engineer, that Mr. Sudak probably knows the answer, but I can't imagine that the vehicles they are restricting in other portions of the Town...I would think that these vehicles that they would need to bring down here to pour concrete and with all the equipment that's going down here, has to weigh more than the vehicles that are being limited in the rest of the Town because they would be destroying the Town roads.

Mr. Sudak said that we are not pouring concrete. We have pre-cast pads for the inverter and the transformer.

Mr. Meyer said they are 15 feet long.

Mr. Sudak reiterated that we are not pouring concrete on-site.

Ms. Crichton said that the inverter concrete pads are 9.5'X15".

Mr. Sudak said the same class of vehicle that would be bringing panels onto the site, tables. I've made my statement into the record. We won't be pouring concrete on-site.

Ms. Crichton said that I'm confused as to the 10% coverage. You are covering 4.29 acres of the 30-acre parcel. So that, then, means there are 40 acres left and the 6.29 or 6.79, or whatever it would be leaves 2 acres available on the entire property if, for some reason, it doesn't go into conservation.

Mr. Brubaker said that this is the Rural District and they would be subject to a 10% lot coverage maximum, as we've talked about. The current development proposal is under

that. Any applicant is able to go right up to the maximum so any application that proposes under the maximum could hypothetically add additional structures that qualify for lot coverage, that count against the lot coverage standards unless there was some other factor that limited that, such as a conservation easement that permanently preserves the additional land.

Ms. Crichton said that, in other words, let's say that it doesn't go into The Great Thicket and they decide that they want to develop more on the rest of it, they would only have an acre and a half to be able to do that, correct.

Mr. Brubaker said that I would have to sit down with the numbers because their lot calculation is actually a little more conservative than it needs to be because it includes the surface covered by the driveway, which wouldn't count against lot coverage. If the lot is approximately 70 acres that would be 7 acres. If I'm ballparking correctly, that would be about 4, or so, acres covered by the panels, there would be an additional 3 acres underneath the lot coverage cap. Now, there's other constraints that would apply on different parts of the lot, such as Shoreland Zoning. But lot coverage, alone, would allow for some additional structures to be added in the future unless there was a mitigation factor, like a conservation easement. I note that Mr. Galbraith is here and I wanted to say thanks for his review, so far.

Mr. Galbraith said, regarding the utilities, the roadway, the access, when we were out at the site, we were talking about what the actual width of that access is and it is under the ownership of the roadway with an easement, so it really depends on that easement language. When we were talking about it, that would dictate what could happen to that roadway, or not. So, whether there was a height restriction for things in there, are they allowed to make sure it's passable by planks, or whatever. I don't know what the language says so that is something I wanted to look at. We also talked today about having fire review the access plans in there both once you're to the site and if they need to get inside the site, if there were to be an emergency of some kind. So, I think the fire review is going to be key on this. I think, with the day-to-day maintenance, the vehicles are usually pickup truck-size and it wasn't a daily thing, or anything like that, so not overly concerned, but the roadway out there is rutted so that needs to come up. One of the other things, unfortunately, the applicant and I didn't get to chat about on-site but was a subsequent conversation to follow up was that the actual lines going into the site being serviced by the generated power, if I recall correctly, those poles were going to remain, they were going to feed the lines back and forth off the existing lines. But, when we talked about the amount of power going through those, if the applicant could speak to that and perhaps, I had forgotten about it, there was also a pole sort of north of the vernal pool. There is an electrical line that crosses over the vernal pool, actually, and links into the house to the north, there. The pole leaned in a storm, recently, and CMP has corrected the lean, but they've anchored it to a 3" sapling so, is that going to be the way to go through with that, would CMP want to re-locate that; that those sorts of things came up. I apologize to the applicant because I just didn't have a chance to chat with him but that is just a note for us. We also talked about re-locating, on the plans, the actual transformers once you're into the site, as they have been placed on the hammerhead area and I just

want to make sure that the Chief looks again at that access and radius to get in there and what kind of equipment they would try to get down in there. So, I can have a conversation with Chief Muzeroll or, actually, I'm sure Mr. Brubaker will do that as will the applicant. Regarding site run-off, we did look at where some of the run-off from the site is currently going and there is some icing down there but how do you correct that. I think a more detailed conversation between the applicant and Mr. Brubaker, probably. We talked about where that water is ponding and why, off-site, and that is something that came up. So, some discussion about the poles, water flow, how do we protect the existing vernal pool I think that's about it for right now.

Ms. Crichton asked how the fence was going to be anchored.

Mr. Sudak said that it would be traditional pile-driving.

Ms. Crichton said that your fence goes around like 'this', asking how the deer would get out.

Mr. Kellar asked if you are concerned that they are going to jump in over the fence.

Ms. Crichton said that I don't know; they might try. How high is the fence again.

Mr. Kellar said seven feet.

Mr. Kellar said that, if they can't jump over it, they will move around it.

Mr. Brubaker suggested pulling up the plans to show the fence.

Ms. Braun asked if the two in the middle of the fence drawing is the gate access

Mr. Kellar said yes.

Ms. Crichton discussed her concern for deer jumping into the panels if they try to jump the fence.

Mr. Kellar said that we understand from other larger projects that the animals will move around the site. I have no experience with deer getting into any of our projects and getting stuck so I can't speak to that but it is a fair enough concern. I can tell you that the distance from the fence to the edge of the panels is 15 feet. Again, I don't know if a deer can jump 7 feet high and 15 feet deep in distance. But I haven't an experience that I can tell you about or share with you. Again, what I have heard from some of our larger projects, post-construction, is that the wildlife naturally flows around it. They're not necessarily going to jump over and get inside.

Ms. Crichton asked if he had ever had any lightning strikes.

Mr. Kellar said no. There was some confusion about a project I did a long time ago, whether it was a surge from the line coming into the system or there was a lightning strike that affected the inverter, and it was never specifically determined. But none of my projects that I'm aware of have directly taken a hit and that's why they are grounded throughout the system. That's why the fence is the size that it is, the distance it is from the panels. It all has to meet national electric code

Mr. Leathe said that, with this property, I wanted to talk about balancing climate change solutions and community integrity. In particular going back to Mr. Brubaker's staff memo, how this project meets §45-413 Preservation of Landscape, which talks about trying to maintain the landscape, preserve the landscape, that we have in the natural state in so far as we can. We know that this is an incredibly sensitive piece of property out there and there's been a number of issues and all have done a good job heading them off. But I think the reality, for me at least, comes back to the point that there's a 70-acre parcel and Mr. Kellar has a lease for 30 acres. Mr. Hill apparently continues to maintain 45 to 50 acres. How do we know that we can that, at least, we can have some comfort that the balance of that property, which Mr. Kellar does not own, could indeed be conserved in a way that it would be third-party managed – a land trust, the Town, the US Wildlife – and how do you go about that process. I think, Mr. Sudak, that one of the sticking points for me is, if we can't come to an agreement on that and it's left out in the open and may happen in a year or too, I don't know how I can go forward, as a member of the committee, to say we're preserving that landscape as the Town has asked us to do in Chapter 45. So, I would like to have a longer discussion, starting tonight, to put some meat on these bones of what is possible to conserve out there so we won't precariously affect any more of this property, if this were to be approved, and then this tract would be conserved and managed for generations to come.

Mr. Sudak said that I appreciate the concerns. I just want to remind the PB of a little bit of the history of the project. So, this parcel has been before the PB a couple different times and for the Board of Appeals a couple different times. And I will generalize that by saying that there really isn't a vehicle for much else to happen on the project the size of what's being proposed before you right now via the constraints of the access to the site for the ecological significance of a lot of the different parts of the site – the wetlands, the resource protection area, the conservation area. There's prime farmland up on the hill, the flood plains to the far west. We can certainly continue that discussion but I would think that everything that we've endeavored to show you would suggest that that's really the only thing that's on our minds. To have that be the end result of the property.

Mr. Kellar said that if your concern that the plan we're putting in front of the PB is going to stay; that it's not just lip service to you, now, and then after this we're out the door. I'm going to make a suggestion that I would bring back to the landowner to see if they would sign off in the form of an intent letter, or something, that they would state that what the plan is with the land outside of the lease premise area is: priority #1 – National Wildlife Refuge, which right now seems like the best use of that rest of the land, that we could spell out three options we could work towards. This first one seems to be the most beneficial for all parties. Maybe the second one could go to a conservation easement that

looks to purchase this type of land; that the third would be to donate it to the Town for conservation. As we all know, the first one takes the longest; that it's a process. We're dependent on the US Government to go through their process. The good news from discussions I've had with them is that the biggest challenge is titled-related issues with land to make sure that the land actually has a clean path so that the federal government can come in and acquire it. And it's the federal government and nothing moves fast. I would say that, if that is something you are comfortable with, Mr. Brubaker, maybe we could put those three items as part of the conditions. I would ask to come back with a form of agreement of consent by the landowner. If that meets your concerns and needs, then I don't see an issue. The discussions I've had with the landowner, there's no other intention or use for the land. As Mr. Sudak had said that, in the way we've learned about the land and what it has and doesn't have for development attributes, this is about it. We've shrunk, reduced our impacts as much as we can and, now, the rest is going into conservation and we have no issues with that. I have no issues with that as the applicant.

Mr. Leathe responded by saying that I certainly want to believe your intention but the longer I sit on this PB the more I realize that, unless things are codified, they don't necessarily happen post our decisions. It's unfortunate, but it's the way that it works. And so, my voice in all of this would be that, if the intentions are what I think they are; that is, to try to preserve the rest of that land the best you can, which I certainly applaud, would be some way to guarantee the Town that that indeed is going to happen versus finding out two years later that it's not going to happen.

Mr. Kellar said that I would like to consult with Mr. Brubaker and maybe the Town attorney can chime in on how we do that. In speaking from my perspective, I'm pretty confident that these three options make sense and would be something I could get the consent of the landowner on. So, it may be a type of waterfall effect that our first option is 'this' and, if that doesn't work out, we move to the next one; that the third kind of fallback is to donate it to the Town. So, it would be one of these items. Again, I would need some guidance on how to do that but I think, if that meets some of your concerns, then I don't see that as an item we can't overcome.

Mr. Leathe said that, assuming all of the above, I think the critical issue will be timing. I can't get comfortable that this is happening. Going back and looking at Chapter 45 in trying to decide if, indeed, we are doing what the ordinances of the Town voted on, wants to do, and will be a harder call.

Mr. Kellar said that, to that point, I was trying to bring back something a little more significant on the conservation. I was pushing emails out, pushing to see if I could get some type of a letter, or intent, or something from the federal government to show that there's not just an email or a conversation that you have to take my word that we had. They don't provide a letter of intent, if you saw that in the email correspondence. So, I'm not really sure how to answer the timing. I just think that maybe, and again there may be some policy or legal advice on this, but maybe there's a timeframe that one of these solutions has to come to fruition or show progress. The little education I got from the folks at the National Refuge was that the first year is a lot of the due diligence that the

federal government has to go through. Reviewing the deed, the chain and title. What we've all learned in this is that they already kind of know this is a good area that they would be interested in. You could call it a pre-approval. I don't think they're going to give us that term but that's how I would view it. So maybe there's just some realistic time that we can get some clarity on it, if we can get some information on it. Usually, it takes up to a year to get to this point. Then, the next six months to here, then six months to there, just as some guidance because, again, this is new for me, too. I've never done something like this so I don't know what to expect and I also don't know if something legislatively could change and then their funding is pulled. Now we have to go to Plan B. I just definitely don't know what I don't know. But, if that is something you would be happy with, I can see if I can get some more clarity on putting some parameters around the timeframes. It's not a blank check, not a blank timeframe, we'll have you come back in 100 years from now. But, if we don't get to 'this' point with Option A, which is our first option, then okay, now we're moving to the second option (conservation easement). I don't know what it takes to donate land to a town. I don't think it's a huge, long, drawn-out process. It's probably just deeding it over. That's probably the quickest but as we move through those final iterations, we know that that is the final backstop.

Mr. Leathe said that I appreciate what you're saying and I think it can work. But I also have a concern sometimes thinking that we get a lot of talk and we don't come to conclusions. So, if there was a way as a condition of approval, if this was to be approved, that we codify it some way that is satisfactory to the Town, satisfactory to you guys.

Mr. Kellar said that I don't see that as an issue. From my perspective, we'll get consent, the letter of support. I don't see that as being unreasonable to put it into the conditions and put some fair parameters around it. As you want to keep me held accountable, I don't want it to just have this really strict thing that we wouldn't have control over, or the landowner wouldn't have control over. If we can find some common ground, there; again, if there is any legal information we can get or the Town can provide.

Mr. Brubaker said that I can talk with our legal counsel. By the way, she was available tonight but I recommended that she defer. We'll need her, I think, in the coming weeks and we're only able to do a limited contract with her. I just wanted to let you know that she was available but I deferred her time to the future. So, I can follow up with her on some of those wording items.

Ms. Braun asked if it was possible to do all three options concurrently and whichever comes up first is where it would go. I don't know how it works.

Mr. Kellar said that I think some of the decision-making is time and cost, meaning the return on that time. Right now, the way that I understand the Refuge Program has to almost compete like there are many other developers looking to develop the land. They don't get it by handing them a dollar, they are required to buy out the development rights, effectively, as if you were going to develop something equivalent. So, for the landowner, my guess is that that may be more valuable. But, if it takes 2 or 3 years to get through, I don't know if Option #2, like a traditional conservation easement who might be paying

pennies on the dollar. It still might be an okay decision but they might be getting pennies on the dollar. Those are the financial decisions I can't make.

Ms. Braun said that I understand.

Mr. Kellar said that I think that, as long as we were to put some parameters on the time; that it's not an open book and you're in this role 10 years from now asking what happened – nothing. I think if we put some realistic timeframes within that we have to show material advancement towards one of the three solutions we all agree with. We could maybe do some of the research on all three; that we might have a discussion with a third-party like an easement organization. We could talk to the Town about what that process is, too, to deed that land over. Maybe do some survey work to kind of call out that property, different from the leased premises for the solar array. Some of those things showing some good faith updates to the Town. Again, I don't see any concerns about that as I follow through to kind of keep our word in what we say we'd like to do. So, if you're okay with that, I'd be happy to get some guidance from the Town attorney. Our attorney may have some ideas as she may have done this before. I've never done this type of structuring before so I'm talking in the spirit of trying to find a good solution here.

Ms. Braun said that, if Mr. Brubaker would check with Attorney Guay, I think that would be the best thing.

Mr. Brubaker agreed.

Mr. Latter said that I appreciate Mr. Leathe's concern for getting this codified. I think that when our predecessors looked at previous plans for this property and they said that nothing else can go there, nobody envisioned a commercial solar array back here. To say nothing else could go there is a very vague statement. I do have a question about the ROW. Is it our obligation to really understand any limitations or restrictions to go through a ROW, or easement; are there restrictions to that that we need to be aware of as we move forward on this application. I'm sure the right of passage allows them to drive a pick-up truck down there. Could they bring an enormous tractor crane down there. I make the absurd comparison to make a point. Do we need to know what those limitations may be to move forward with any conditions on a final approval.

Mr. Brubaker addressed load limitation. I don't see that as much a Town issue because Odiorne Lane is not a Town-maintained road. Goodwin Road is not a Town-maintained road. So, I think that any governmental restrictions on load would have to be worked out with DOT, with regard to Goodwin Road. That would be a private legal matter with regard to Odiorne Lane. I think, with the specific types of vehicles, that is primarily an issue that I think legal counsel should weigh in on with regard to the interpretation of pass and repass. I'm not sure how pass and repass relates to vehicle type. I also want to note what I thought was a really good discussion about conservation easements. With that, I think Mr. Galbraith may have more to weigh in on. My second point is that you guys are still planning to go to the Conservation Commission (CC) tomorrow. I know they have a lot of expertise on that and they can offer their ideas on, too.

Ms. Crichton asked if, out of those three options, is one to donate the land to the Town.

Mr. Kellar said yes; that that is the third option.

Ms. Crichton asked if Mr. Hill said that he wanted to donate to the Town.

Mr. Kellar asked if you are asking if another person could say that. That that could be said but that is one of the three options he is saying. As a landowner, it's his choice, not mine to figure that out. Are you asking me to say that is what you would like or would you like me to ask him what he would like. I'm not sure what your question is.

Ms. Crichton asked, if he's willing to donate the land, why can't he just send a letter off saying that he would like to donate the land to the Town of Eliot.

Mr. Kellar said that that's one of the options, absolutely. Yes, somebody could say that. That is the third option. The National Refuge, a third-party conservation easement, and then to just donate the land.

Mr. Leathe said that there is the first option and, then, the Town could pursue turning it over to the Trust or US Wildlife.

Mr. Kellar said sure.

Mr. Leathe said that that would possibly save you the effort.

Mr. Kellar said possibly. Again, I don't want to speak for the landowner on what his financial choices are and that's for him to decide. At any rate, any those three are fair game.

Mr. Meyer said that I just wanted to comment on when I brought up the comparison. That was really just a comparison about vehicle weight, not that that was a Town road or a State road and what restrictions are currently on the road for gross vehicle weight. I was just using that as an example in that the Town has a good reason in the spring to restrict weight limits on their roads because of the damage that will cause to the Town roads. That was my point.

Mr. Brubaker said that my point was that I wasn't sure how the question of deeded access to this property informs the question of vehicle weight.

Mr. Latter said that I'm not sure, either. I just want to know what I have to make decisions on. If this is just a decision between Mr. Hill and you, then you guys have to figure it out. That is fine. I just need to know if I need to care about this.

Mr. Brubaker asked if Mr. Galbraith wanted to weigh in or just discuss with me this week and we can follow along at the next meeting.

Mr. Galbraith said that some of these issues, I think, can be addressed more at a staff, more than applicant, level and we could talk about the various options. So, I think the best thing is for Mr. Brubaker and I to get in touch tomorrow and then Mr. Brubaker could pass on the various issues we've discussed to the applicant. Then we could wrap some of those up so that you don't have to re-hash those things that may, or may not, work; that there are some moving parts.

Mr. Sudak thanked Mr. Galbraith for bringing that up. After whatever conversations you and Mr. Brubaker have, I know I have your preliminary comments memo, but whatever you two decide to add as an appendix to that; that as was said, there are a lot of moving parts and as soon as I can turn it around ahead of the meeting on the 18th, the more the PB is able to be informed for the next time we get together.

Mr. Galbraith agreed that Mr. Brubaker and I can discuss that; that I'm available as soon as tomorrow morning. I'm also trying to be cognizant of the cost I am incurring so we can discuss the most efficient way to do that. Certainly, he can pass on the information and get the correct information pushed forward.

Mr. Kellar confirmed that our next public hearing is slated for the 18th, that's our deadline. So, I think that means we have to have everything submitted to the PB by the 11th.

Mr. Sudak said it's usually a week ahead.

Ms. Braun said that, with all of the moving parts that are going on, I'd like to extend to another timeframe.

Mr. Kellar said that normally I would say yes. Unfortunately, we now have a deadline with CMP that we have to meet by the end of the month to make a very large deposit for that portion. I don't want to put more pressure but that's why we bring this up; that we need time to give Mr. Brubaker and Mr. Galbraith time to do what they need to do to get us the response so we have time to adjust and submit in the timeframe for the PB so we can have the meeting and find out where we go from there; that we'll have time to then have time to be able to take care of our requirements with CMP.

Ms. Braun said that my only concern is that it is only two weeks away and, with Mr. Galbraith's input and all this other discussion about a conservation commitment, etc., I just don't know if two weeks is ample time for all that information to come in and digest. That's why I was asking.

Mr. Kellar said yes and, again, if we didn't have this deadline with CMP, I would agree hand's down. I don't want to put undue pressure but we have pressure from this deadline with CMP and we wouldn't have a lot of room to move on. We had kind of made these decisions around the plans we thought we had to get Mr. Galbraith up and running to get us the information. Maybe it's back to Mr. Galbraith and Mr. Brubaker regarding what

we can get done between now and then so Mr. Sudak can have time to inject anything into the plan. I'm confident that I can get information on the consents from Mr. Hill. We have Attorney Rachin here and she can probably help me on some guidance or maybe Mr. Brubaker and the Town attorney can work on some ideas on that language. I think we can work together on that.

Mr. Galbraith agreed that there are some moving parts but I don't want to give the impression that they can't be handled. Usually, with some of these things, I will talk with Mr. Brubaker as soon as we can, we talk about the various issues, we hand those straight out to the client, phone calls, and this and that. There are some things that really have to happen and how you deal with them, some of which can be handled with conditions of approval. Other things may be a quick legal review. I've worked with the Town's attorney before and she's been great to work with. It's going to be what does this easement allow; that that's going to be the first thing as far as the access easement. It's probably going to be one of the bigger issues, I don't know; that I haven't read it so I think if we take a quick look at that it will give us some really quick insight with just the applicant, Mr. Brubaker, and I looking at it and, then legal maybe. But, it's not insurmountable to get for them to turn a lot of this around fairly quickly, I think.

Ms. Braun said that I appreciate your confidence, Mr. Galbraith.

Mr. Brubaker said that, following up on that, to me I think the big pieces that need to be addressed are Mr. Galbraith and I talking, our legal counsel and I talking about potential condition language, the information coming from IF&W, the more information that PB members have requested today. Mr. Galbraith's point about confirming the situation with the power poles down on Odiorne and replacement where it says about not changing anything versus adding wires, and so forth. Then, Fire Chief information and the letter from Mr. Hill that was referenced earlier. Like Mr. Galbraith said, I think some of those could be worked through relatively quickly.

Mr. Kellar said that it feels like a lot of the physical changes to the plan of what you've seen have come to a conclusion, now. I think this wetland information that we've now gathered and recertified, there's a very small, slight adjustment that we're going to make. Again, there will be no impacts to wetlands. I think from the plan perspective, I think we've done as much as we can to mitigate the issues we started with. I agree with Mr. Brubaker that some of this could be conditions or something we work really hard with Mr. Galbraith, Mr. Brubaker, Mr. Sudak, and myself to get all that information together as quick as possible so everyone has time. Again, I don't want to put undue pressure. It's just now I'm in a situation because we've been as gracious as we can in keeping extending it but, now, we have a deadline with CMP and they're not as generous.

Ms. Braun said that I appreciate your concern. I was just concerned that you gentlemen have a lot of work to do in a short period of time. The latest to turn thing in is the Thursday before the meeting so we have an opportunity to digest it.

Mr. Kellar said fair enough.

Mr. Brubaker recommended, just for formality's sake, a motion to have a public hearing.

Ms. Braun moved, second by Mr. Latter, that the Planning Board have a Public Hearing for PB21-16, 0 Odiorne Lane, Site Plan Review and Change of Use Public Utility Facility, Ground-mounter Solar Array on the 18th of January, 2022. Meeting time starts at 7PM.

VOTE

4-0

Motion approved

Mr. Galbraith said that I'm sending an email right now to Mr. Brubaker and the applicants.

B. Ordinance Amendments

1. Solar Energy Systems

Mr. Brubaker shared his screen and walked through changes to this amendment from the last discussion. This is still a work in progress. We're starting with the definitions in §1-2. One of the things I did was add a definition of a *Distributed generation resource* and mirrors the State law definition (35-A M.R.S.A. §3481(5)) of any type of renewable energy, a generating facility, basically. and I will get to why in a little bit. I felt it would be good to add a specific *lot coverage* definition that would apply to a solar array so we have clarity on how lot coverage is calculated for a solar array. I appreciate Ms. Bennett's comments about lot coverage. This would basically establish that lot coverage accounts for the air space that ground-mounted solar panels would cover above the ground and it would specify, even though it's pretty intuitive already, that roof-mounted solar arrays do not have an additional lot coverage over and above any portion that overhangs a roof above the ground because there is already a building there.

Ms. Crichton asked if that affected the 10%.

Mr. Brubaker said that it would be on any lot with solar panels, those panels that are spaced above the ground would contribute toward the 10% for the Rural District. It then says that for ground-mounted systems with tracking systems would have to account for the total air space covered by the panels that track back and forth with the sun. The applicant would have to provide that calculation. One of the big things we've been hearing, and heard from PB members last time, was to ditch our current definition of *public utility* so this draft does strike the *public utility* definition and, again, thanks to Ms. Bennett who provided some notes to me on this. It does the simplest thing, which is to reference the State law definition of *public utility* (35-A M.R.S.A. §102).

Mr. Leathe asked how that would impact the Town of Eliot in terms of language for *public utility* State versus what we've done.

Mr. Brubaker said that it would basically mean, with the land use State reference to *public utility facility*, if anyone came in that wanted to develop a *public utility*, which is site plan review in all zoning districts, they would then have to show that they meet the new State law definition of *public utility*. So, if it's a transmission line, that would clearly still fall in the *public utility* definition. We're not separating out larger-scale utility-scale solar arrays from the definition of *public utility*. You can look it up. It's pretty long and talks about gas utilities, electric utilities, and so forth. We could print the whole State definition in our ordinance if you wanted to.

Mr. Latter said that, if the State law updated, then we would have to update our ordinance, whereas if you just make the reference back to the State, then we wouldn't have to do that. Unless there was a reason, we wanted to define it as something different than the State defines it.

Mr. Brubaker said right. This is how Kittery defines *public utility*, too. It punts to the same State law. The definition for *Renewable capacity resource* is also based on State law, which means a source of electrical generation that basically relies on renewable resources like fuel cells, tidal power, geothermal and, if you scroll down to the bottom, they reference wind and solar power. This next one is not new. I struck the old definition of *solar energy system* currently in the Town code, which now only applies to residential rooftop solar. Those would now fall under small-scale solar. Again, this definition is not new but pretty much from the Audubon guidance. We talked about thresholds for size and those are certainly open for discussion but are based on what the Audubon guidance says. Small-scale solar is 15,000 square feet. Medium is between 15,000 square feet and two acres. Large-scale is equal to or greater than two acres. Basically, with large and most medium, I think you're going to see ground-mounted. You could see a roof-mounted medium-scale. If you look at the size of buildings, clearly individual buildings could be over an acre. Any one of the three Eliot Business Park buildings are about 1 ¼ acres each. If you get over two acres, that's pretty rare. That just to say that we would probably see, for medium- and large-scale, we would be looking at ground-mounted applications. The next, §33-175. Commercial and industrial establishments – Landscaping, is existing in our Town code so, anything with bold and underlined is what is added. This is basically vegetated buffering for commercial establishments and the only change here is adding a cross-reference to performance standards for solar arrays (§45-463).

Mr. Latter said that I have seen solar arrays go into parking lots where they actually make the frame of the solar array covered parking. What is that. Is that ground-mounted with having another use as covered parking or is that roof-mounted.

Mr. Brubaker said that I have seen that too and thought that was pretty cool. In Framingham, MA, where my wife is from, there is an REI store in town there with one.

Mr. Latter said that that might be the one I saw. I looked at a solar array in for a high school parking lot; that it never happened but it was similar in design features.

Mr. Brubaker said that that would be ground-mounted.

Ms. Braun asked, if they cover part of the parking lot what happens to the parking requirement for the building.

Mr. Brubaker said that, presumably, you'd still have the parking underneath. The one that Mr. Latter is taking about, you would have cars parked under the panels.

Ms. Braun said that it would then be more like a parking garage.

Mr. Latter said more like a cover.

Mr. Brubaker said that these (new §33-191) are the site review standards for medium- and large-scale solar energy systems. This is the information that applicants would need to provide in addition to all the other information that we typically require of them. This will all affect completeness so they would have to provide this information in order to be deemed complete. I think the decommissioning plan needs more input from you. With large-scale solar energy systems, they are already largely going to be required by the State to have that decommissioning plan and have that financial assurance they provide to the DEP. The State law requires that that run with the land so a new owner would have to abide by that. I'm not sure what we would do with medium-scale because there would probably be a lot of medium-scale that would fall under the three-acre threshold for the State's requirements of a decommissioning plan. I put a note to myself in here – check acreage - because I realized we need to be clear about what area we're talking about versus the State in terms of the number of panels or the total occupied area, including the rows between the panels.

“a) removal and/or decommissioning plan as follows:

- 1. Medium-scale solar array applications shall include a removal plan demonstrating compliance with §45-463.**
- 2. Large-scale solar energy system applications shall include the decommissioning plan required by, or a decommissioning plan otherwise consistent with, 35-A M.R.S.A. §§3491 – 3496.”**

Mr. Leathe said that two acres is quite a big facility so, maybe, just follow the State pattern.

Ms. Braun said can't we just follow the State guidelines or reference some of the State guidelines.

Mr. Brubaker said that that is kind of what we do here. If it's between two and three acres, we would not be required, by the State, to have a decommissioning plan but the way this wording is, currently, we would require that they still have a decommissioning plan that's consistent with the State.

Ms. Lemire said, just as a reminder, that we have a lot of fragile land in Eliot whereas that's not necessarily applicable to every town so, I think it's a good thing if we tailor it to Eliot to some degree.

Mr. Brubaker asked if it was good to require that for medium-scale, as well.

Ms. Braun said that I think so.

“b) Documentation of financial assurance as follows:

- 1. Medium-scale solar array applications shall provide a written statement to the Select Board...**
- 2. Large-scale solar energy system applications shall include documentation of the financial guarantee required by 35 M.R.S.A. §§3491-3496.”**

Mr. Brubaker asked what we want to do with medium-scale solar arrays. Do we want to hold a bond of financial assurance for those facilities.

Ms. Braun said that I would think so, in case the person walks away. We would be stuck with it and should have some kind of financial guarantee. I don't know how you would determine that. A percentage of the cost, I would imagine.

Mr. Brubaker said that Mr. Galbraith has worked with these where various communities are fine with the State doing it and other communities want to hold the financial assurance themselves. I could ask him to peer-review this, a later version of this, about more details about what the best financial guarantee would be.

Ms. Crichton discussed the process of dismantling and where and how far one would have to go to recycle the panels, etc.

Mr. Latter said that it would be the property owner that would have to deal with it, right.

Mr. Brubaker said yes. But this is a case where a property owner might go belly-up or, for whatever reason, refuse or fail to remove them. So, then the case is having that money up-front so the Town could take care of it.

Ms. Lemire said that someone could give a written statement and, five years later, that statement has no value at all. A person could empty their bank account, or something. That's not really tight.

Mr. Brubaker said that there are other ways to do this. There is precedent. The Town holds a reclamation bond with Pike Industries (couldn't hear).

Ms. Lemire suggested you could come up with a standard document that has built-in calculation models, percentages, or whatever.

Mr. Brubaker said yes; labor to remove them, where would you put them, transport costs, things like that.

The PB discussed that there should be some sort of financial assurance for both.

Mr. Brubaker said that my own opinion is that the large systems have to provide that financial instrument to the State so there's no reason for the Town to be redundant about that. I think we can trust the State with the large arrays. If the site became inoperable, the Town would have the ability to go in and say to the owner/operator it's time for you to, you who hold the financial guarantee, to remove these things. We have the document here of the financial guarantee.

Ms. Braun said that we need something similar for the medium ones. I know people don't like to talk about money but infrastructure costs.

Mr. Latter said that I think it makes sense on the ground-mounted. I'm just envisioning where you have a 40,000 square-foot roof mounted system. Is the Town really going to want to go in and decommission. I'm just wondering how that would work.

Mr. Brubaker said that roof-mounted adds some complexity, I think. I'm not sure we'd want to go there. My assumption is that, if you have a roof-mounted array that's abandoned, likely the building has been abandoned, and then the Town would have the ability, through normal channels, to go through a condemnation process.

Mr. Latter asked if the bonding for medium-scale solar arrays strictly for ground-mounted, and that's what I'm trying to understand.

Ms. Braun said that I would say both. I don't think we should distinguish between the two.

Mr. Brubaker said that I have ground-mounted and roof-mounted.

Mr. Latter said that that addresses the concern I was imagining

Ms. Braun clarified that it would be for both – ground and roof.

Mr. Brubaker said that we were just talking about that there might be some complications with the Town being responsible for roof-top panels. It's a separate process from the usual condemnation process. If solar panels are sitting on the roof and they are deteriorating, presumably, there could be a code enforcement type of thing rather than...

Ms. Braun said that I would think that would have health and safety implications if things are deteriorating.

Mr. Brubaker said that the State law has a 'dangerous building' definition so, whether it's the CEO or a Maine court or the Fire Chief, all of those entities could condemn the building through the usual condemnation process.

Ms. Lemire said that we have a solar array on a roof at the Highway Department and I'm sure we have documentation on how that would be decommissioned. The Garage has panels on the roof and then the ground-mounted is at the Transfer Station. I'm just thinking it might be a model for what you are trying to put in here.

Mr. Brubaker said that I can ask Public Works or CIP Committee members who might have been involved in that. I just want to make sure that, if solar panels on top of a building were inoperable or in disrepair, what is the most efficient path. Would it be through bonding or through the Town condemnation process. They are basically part of the structure.

Ms. Braun said that if you can check that out, it would be great.

Mr. Brubaker continued with information applicants have to provide regarding the environment. There's a lot of environmental information – wetlands, habitat – kind of reflecting something the CC has said. Wetland delineation should be completed within the last five years. Vernal pool assessments for determinations. Documentation of State endangered, threatened, or special concern species. Deer wintering areas or travel corridors. Proposed for large systems, only, would be an environmental assessment and alternative analysis.

Ms. Braun asked why he is distinguishing between medium and large.

Mr. Brubaker said that that was kind of a question for the PB. Do we want medium-scale facilities exempt from any of these requirements.

Ms. Braun said no, I don't. I think they should be for both medium- and large-scale facilities. Home roof-mounted is different.

The PB agreed.

Mr. Brubaker said that everything is the same for medium and large. I would argue that I think, probably, environmental assessment and alternatives analysis could be an extra step for large-scale.

Ms. Braun said that I would agree with that. But, the rest of them should apply to both.

Mr. Brubaker said that the next – Operations and Maintenance Plan – is just straight up. With emergency services, that is just making sure that they are coordinating with the Fire Chief on an emergency response plan and providing contact information. The next is the Land Use Tables. Just to reiterate, medium- and large-scale systems would be prohibited in the Shoreland Zoning. I think that would be consistent with the Shoreland guidance and State law. I think the only one I can see potentially allowed for medium-scale would be the General Development Shoreland District, which we have so little of in the community. It would basically be two to three properties that have this and that's the Kittery Point Yacht Yard and the Boat Club in South Eliot (Great Cove). The General Development District is the loosest Shoreland Zoning District in terms of standards.

Mr. Meyer asked if they could scroll back to the fire and safety aspect. Whether you might require a fire suppression pond, as they have at the ARC area. As we know, we've had problems. Sweet Dirt burned down because there was no water. I was just wondering if that is something you may want to discuss and think about. A fire suppression pond on-site and I don't think that needs to be on a medium-scale but potentially for a large-scale.

Ms. Braun said that that would be something to look at.

Mr. Brubaker said that that would be for sites that don't have fire hydrant access.

Ms. Lemire said that there have been several discussions over the years on how to remedy that particular problem. When Jack Murphy's house burned, it just went. They had no way to control it.

Mr. Meyer said that they only had one truck with water in it. And we've seen it happen at ARC a couple of times.

Mr. Latter asked if a solar array is particularly flammable.

Mr. Brubaker said that electrical fires, maybe. Presumably, technology has evolved so that there are controls on that aspect.

Mr. Latter appreciated the point about the pond but is there some kind of fire suppression for sites that have difficult access. There might be a better way to do it than that.

Ms. (Christine) Bennett said that I wanted to speak to this one piece about submitting your electrical plan and the emergency shut-offs, etc. When I installed solar on my house, I submitted all those materials to the Town and I do have an emergency shut-off. This was designed by the company I bought the array from. I think those sorts of safety features and information should also be collected from small-scale installations, as well. The emergency shut-off piece and electrical schematic are important in case the fire department has to come and combat a fire on my building. They want to be able to turn off the array so that they don't risk electrocution. So, I think that's a requirement that should also pertain to small-scale, as well.

Mr. Brubaker said that that's a good point. I think that's probably already covered because we do have a pretty boiler-plate section in our Town code that says solar energy systems shall abide by all electrical codes. No matter what the size of the system, they do need to abide by the NEC or any other applicable electrical or life safety code.

Mr. Latter said that the electrical code should have a provision that provides for that emergency shut-off valve.

Ms. Bennett said that I think it's important for the Town to receive those documents that outlines the disconnect safety feature to be able to put it in the property files. If I sell my property and forget, or don't transmit that sort of information to the new owner, I think it's important that the Town file include those sorts of materials for all sized solar arrays.

Mr. Brubaker said that I agree. That should be part of the electrical permitting documentation. Next is the non-Shoreland Zoning Land Use Table. Medium-scale systems are showing as site plan review uses in all zoning districts. Large-scale systems are shown as site plan review in all zoning districts except the Village District, where they would be prohibited. Small-scale systems would remain as CEO permitted. A new §45-463 – Medium- and large-scale solar energy systems are dimensional standards. With buffering and screening, we would be looking at a 50-foot-deep buffer. With large-scale, it would be 100 feet deep. These would be required for parts of the lot that abut an existing residential use or that abuts a street or a town way. This would visually screen a solar array from residential uses. You can use this to either preserve existing vegetation or planting more and an opening would be allowed along a street or town way or highway only for the purpose of access to the site. With fencing, this follows up on the Audubon guidance. They need to follow electrical code. They need to have 5 inches for a pass-through for small terrestrial animals. Regarding the gate-lock fence, this adds

paragraph (b) Fencing (3), which includes gate design features that allow passage of larger wildlife.

Mr. Leathe said that the Audubon piece talked about, and I brought it up at the last meeting, where they talk about a type of fence that there is actually a section where a person or deer could get out and I thought, from a human relation perspective, it might be a good idea to think about that. It would be a horrible thing to have someone get over the fence somehow and trapped out in the woods for a few months.

Mr. Brubaker said that he put a note in the draft about that. He discussed Land clearing and limitations to that.

Mr. Leathe asked if there was any limitation to grading.

Mr. Brubaker said that we do have a general standard (preservation of landscaping), basically saying to grade as little as possible. What I'd rather do is update that for all types of uses rather than making a specific grading standard for solar arrays. I agree with your point that we do want to make sure that these, and other types of developments, are minimizing grading. Wetland alteration shall be avoided or minimized to the extent practicable. It does say that, if an applicant hasn't provided a NRPA, the PB may make it a condition of approval – provided prior to getting a building permit. Sensitive wildlife habitat shall be avoided to the extent practicable, use of native pollinators, minimize mowing, and herbicide/pesticide use prohibited. Overhead utilities shall be avoided. Sign identifying emergency contact information, Knox Box, and vehicle turn-around areas for fire safety. Then decommissioning and removal, with the idea that record keeping is needed to assure that all decommissioning language is synced and consistent regarding both medium- and large-scale needing to follow either State law or local ordinance.

2. Erosion and Sedimentation Control

This was not discussed, as they are waiting for additional information.

ITEM 9 – NEW BUSINESS

There was no new business.

ITEM 10 – CORRESPONDENCE

Town Planner's Update

There was no correspondence.

ITEM 11 – SET AGENDA AND DATE FOR NEXT MEETING

Public Hearing – 0 Odiorne Lane

The next regular Planning Board Meeting is scheduled for January 18, 2022 at 7PM.

ITEM 13 – ADJOURN


Mr. Leathe moved, second by Ms. Crichton, that the Planning Board adjourn.

VOTE

4-0

Motion passes

The meeting adjourned at 9:20 PM.



Lissa Crichton, Secretary
Date approved: 3/7/22

Respectfully submitted,

Ellen Lemire, Recording Secretary