

TOWN OF ELIOT, MAINE

PLANNING BOARD AGENDA

TYPE OF MEETING: IN PERSON WITH REMOTE OPTION
PLACE: TOWN HALL/ZOOM

DATE: Tuesday, November 9th, 2021
TIME: 6:00 PM (Executive Session)
7:00 P.M. (Regular Meeting)

PLEASE NOTE: IT IS THE POLICY OF THE PLANNING BOARD THAT THE APPLICANT OR AN AGENT OF THE APPLICANT MUST BE PRESENT IN ORDER FOR REVIEW OF THE APPLICATION TO TAKE PLACE.

- 1) **ANTICIPATED EXECUTIVE SESSION (6:00PM)**
 - a) Vote to enter Executive Session per 1 M.R.S.A. §405 for the following:
 1. Consultation between the Planning Board and legal counsel concerning the legal rights and duties of the Board related to contemplated litigation [1 M.R.S.A. §405 6(E)]
- 2) **START OF REGULAR MEETING (7:00PM) AND ROLL CALL**
 - a) Quorum, Alternate Members, Conflicts of Interest
- 3) **PLEDGE OF ALLEGIANCE**
- 4) **MOMENT OF SILENCE**
- 5) **10-MINUTE PUBLIC INPUT SESSION**
- 6) **REVIEW AND APPROVE MINUTES**
 - a) October 12, 2021 – if available
 - b) October 19, 2021 – if available
- 7) **NOTICE OF DECISION**
 - a) P/O 708 River Road (Map 50, Lot 29) – if available
 - b) 0 Odiome Lane (Map 83, Lot 2) – if available
- 8) **PUBLIC HEARING**
 - a) 505 Harold L Dow Highway (Map 53/Lot 7), PID # 053-007-000, PB21-27: Site Plan Review and Change of Use – Adult Use and Medical Marijuana Manufacturing Facility
 - b) 0 Odiome Lane (Map 83/Lot 2), PID # 083-002-000, PB21-16: Site Plan Review and Change of Use – Public Utility Facility (Ground-Mounted Solar Array) – Request for Reconsideration
- 9) **OLD BUSINESS**
- 10) **NEW BUSINESS**
 - a) Making Motions
 - b) Consideration of Planning Board By-Laws Amendments – Member Attendance and Participation
 - c) Update on Electrical Capacity in Eliot
 - d) Election Update – Ordinance Amendments
- 11) **CORRESPONDENCE**
- 12) **SET AGENDA AND DATE FOR NEXT MEETING**
 - a) Updated Meeting Schedule and Submission Deadlines
 - b) Next scheduled meeting: November 16th, 2021
- 13) **ADJOURN**

NOTE: Residents/interested parties may join via Zoom or in-person at the Town Hall. 1333 State Road Eliot, ME 03903

To view a live remote meeting: (Instructions can also be found on the Planning Board webpage)

- a) Go to www.eliotme.org
- b) Click on "Meeting Videos" – Located in the second column, on the left-hand side of the screen.
- c) Click on the meeting under "Live Events" – The broadcasting of the meeting will start at 7:00 (Please note: streaming a remote meeting can be delayed up to a minute)

Instructions to join remote meeting:

- a) To participate please call into meeting 5 minutes in advance of meeting start time. Please note that Zoom does state that for some carriers this can be a toll call. You can verify by contacting your carrier.
- b) Please call **1-646-558-8656**
 1. When prompted enter meeting number: **850 7033 5581 #**
 2. When prompted to enter Attendee ID **press #**
 3. When prompted enter meeting password: **968274 #**
- c) Members of the Public calling in, will be first automatically be placed in a virtual waiting room until admitted by one of the members of the Planning Board. Members of the public will be unmuted one at a time to allow for input. Please remember to state your name and address for the record.
- d) Press *9 to raise your virtual hand to speak


Carmela Braun – Chairman

1 **ITEM 1 - ROLL CALL**

2
3 Present: Carmela Braun – Chair, Jeff Leathe – Vice Chair, Lissa Crichton – Secretary,
4 and Jim Latter.

5
6 Also Present: Jeff Brubaker, Town Planner; Kearsten Metz, Land Use Administrative
7 Assistant.

8
9 Absent: Melissa Magdziasz.

10
11 Voting members: Carmela Braun, Jeff Leathe, Jim Latter, and Lissa Crichton.

12
13 **ITEM 2 – PLEDGE OF ALLEGIANCE**

14
15 **ITEM 3 – MOMENT OF SILENCE**

16
17 **ITEM 4 – 10-MINUTE PUBLIC INPUT SESSION**

18
19 There was no public input.

20
21 **ITEM 5 – REVIEW AND APPROVE MINUTES**

22
23 Ms. Braun moved, second by Ms. Horner, to approve the minutes of September 21, 2021,
24 as amended.

25 **VOTE**

26 **4-0**

27 **Motion approved**

28
29 **ITEM 6 – NOTICE OF DECISION**

30
31 There were no Notices of Decision reviewed tonight.

32
33 **ITEM 7 – PUBLIC HEARING**

34
35 **A. 0 Odiorne Lane (Map 83/Lot 2), PB21-16: Site Plan Review and Change of Use**
36 **– Public Utility Facility (Ground-Mounted Solar Array) –**

37
38 **Received: May 4, 2021**

39 **1st Heard: June 22, 2021 (sketch site plan review)**

40 **2nd Hearing: August 3, 2021 (sketch plan review continued)**

41 **3rd Hearing: August 24, 2021 (continued sketch plan review)**

42 **4th Hearing: September 21, 2021(Site Plan review)**

43 **5th Hearing: October 5, 2021 (memo response to PB comments review)**

44 **Public Hearing: October 12, 2021**

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

46 **Disapproval: October 12, 2021 (Application denied)**

47
48 Mr. (Ken) Wood, P.E. (Attar Engineering), Mr. (Michael) Sudak, E.I.T. (Attar
49 Engineering) and Mr. (Andrew) Kellar (NH Solar Garden) were present for this
50 application.
51

52 Before opening the Public Hearing, Ms. Braun explained that this is an opportunity for
53 the public to ask questions of the applicants. When I open the Public Hearing, the
54 applicant will give a presentation. I will then first take comments from the abutters and
55 then from non-abutters. I ask that you keep your comments brief so as to allow everyone
56 to speak. After which, the applicant will respond to your concerns. Then we will go to the
57 people on remote in the same fashion.
58

59 **7:07 PM Public Hearing opened.**
60

61 Mr. Sudak said, if it pleases the PB just because it is the first of its kind to come to Eliot,
62 I think it would be appropriate to have Debra Berthiaume, who is here with us tonight
63 and is the manager of the estate, give a brief overview of her experience with the parcel
64 and how that incorporates into where we are today.
65

66 Ms. Braun said that I will allow it.
67

68 Ms. Berthiaume, Goodwin Road, said that I am appointed by the State as Representative
69 of the Estate of Lillian H. Crowell. I have been before various Eliot boards numerous
70 times in the ten years that I've been trying to resolve my mother's estate. She passed
71 away ten years ago, having been a resident of Eliot for 57 years and serving the Town in
72 many and varied ways. The particular parcel of land we are referring to my parents
73 acquired in 1960. During that time, as time passes, many things have happened and
74 changed. As I said, my parents purchased the land in 1960. We harvested apples from an
75 ancient apple orchard, we hayed the fields, my father farmed the land. But as time passes,
76 things happen. When they acquired the property, their hope was that the seven of us
77 would, in fact someday, build houses and live on the family land. In fact, in 1970, I did
78 just that. I built a house with my first husband. That was all prior to zoning coming into
79 Town. But at the same time that I built the house, the owners of the property at that time
80 (Reynolds) made a request that we change the route of the road so to take it away from
81 the ancient house that was built in 1775, circa. The deeded age of the road, we have a
82 deed as early as 1835. This is an ancient road. But we moved a portion of it to afford
83 privacy to that house and my father built the new section at his own cost. It is a 20-foot
84 ROW because that is what was acceptable in 1970. Within the next ten years, the
85 property changed hands again. The new owners (Weeks Family) turned around and
86 decided it would be a good idea to put another house on the land right beside the new
87 section of road that we had built to avoid houses. But it was their land and they could do
88 what they wanted. My sister Kristin bought the property from my parents in 1980 and I
89 moved down to 423 Goodwin Road, where I live now, so my parents could build a
90 retirement home, also on Odiorne Lane. As time passes and continued changes happened,
91 Mother eventually passed in 2011 and I was tasked to settle the estate. I then began the
92 process. My first visit to the PB was in 2013 trying to devise a way to sell this piece of

93 land. About 2013 was also the time that the Meyers acquired the Weeks' property. It was
94 approved that we could subdivide the lot. We could list with real estate agents and we
95 could sell house lots. It's approximately 60 acres and it was going to be divided into two
96 lots, so they were large. It was listed and we began to have problems and disagreements
97 with the Meyers. I'm not saying that in all the years prior to that there hadn't been times
98 we had disagreements with the neighbors because things happen and we've always been
99 able to resolve issues in a neighborly fashion. But once we listed the real estate, we did
100 start having trouble with the Meyers. They harassed the real estate agents. They harassed
101 the prospective buyers. They even called the police at least once and I had to retain a
102 lawyer; that that was the first time that had ever happened. Ultimately, the buyers backed
103 out. We could not sell the land. We did decide to log the land and we did have the wood
104 harvested because we needed to generate some income to be able to continue to pay the
105 property taxes and legal fees. Others have expressed interest in the property but not
106 actually where we got to the point of...well, there was one developer that I had a P&S
107 with but he ultimately backed out because of the prospect of prolonged litigation and
108 problems with Town zoning, and such. He did not need the headache. When the solar
109 farm contacted me, I thought that this was something that is for the good of the
110 community. The solar farm helps with green power. They will have minimal traffic on
111 the road once they are finally established. They will help to maintain the road. Right now,
112 it's all done by neighbors. Because of the age of the road there is no community
113 association. Everybody just pitches in and does what they can. Whoever has to go to
114 work first, plows the road first. Anyway, I felt that this reflected my parents' values that
115 they would have lowest impact and the highest good; that it follows the philosophy that
116 they raised us with. We want to do nothing that would be against the Town zoning
117 ordinances. We simply want to be able to sell the estate because time does pass and we
118 can't hold onto it. Whether we like it or not, time passes. Out of due respect to Michele
119 Meyer, I know that when she is in Augusta, she does all she can. She's a strong advocate
120 for the environment and climate protection. I'm very curious why it is that, when we
121 want to bring solar power and contribute, again, for the environment and climate
122 protection, that we are getting issues. I don't understand it and I'm very curious as to why
123 that is happening. So, this is what has brought us to, today. That's my position.

124
125 Ms. Braun thanked her for her comments.

126
127 Mr. Sudak shared the screen and gave an overview of the project. This is a 69.6-acre
128 parcel in the Rural District at the end of Odiorne Lane and Bartlett Lane at the northwest
129 end of Eliot. There are brief sections of the Stream Protection Overlay for the York River
130 and the Resource Protection Overlay for the wading waterbird habitat in the southeast
131 portion of the parcel. What we are proposing to do is develop a large array of ground-
132 mounted, single-axle tracker panels as opposed to the fixed-tilt version that always faces
133 the southern sky. These panels would follow from east to west as the sun moves
134 throughout the day. Rows will be oriented north to south and the overall development is
135 approximately just over 16 acres; that that's the array proper, the perimeter fencing, the
136 shade management area, the gravel access drive, everything that we touch. The
137 remainder, about 80% of the parcel, will be dedicated to conservation. We've had talks
138 with the Town over the vehicle for that. They've mentioned The Great Thicket. They've

139 mentioned the Town's conservation, as well. We are absolutely open to talks with that.
140 No formal dedication has been made only because we want to have a fixed limits of
141 clearing prior to dedicating. It will be serviced by an access gravel, 16-foot-wide, drive
142 and about 350 feet in length, with a hammerhead turn-around at the end for emergency
143 access extending from the end of Odiorne Lane. For stormwater management, the site
144 generally pitches from west to east. We had a site walk at the beginning of September;
145 that most of the PB and the ECC (Eliot Conservation Commission) got to see that. The
146 stormwater management is a series of vegetated swales, level spreaders, and forested
147 buffers, or meadow buffers, depending where you are on the site. We are subject to a
148 couple different State permits – a Stormwater Management Law Permit for quality and
149 quantity of run-off and a National Resource Protection Act Permit-by-Rule (NRPA) for
150 an offsite significant vernal pool (SVP) on the Meyers' property just to make sure we're
151 preserving the 75% critical terrestrial habitat, as required. Also, a NRPA for wetlands.
152 Showing another screen, he said that we've had some productive conversations the past
153 couple of weeks to the past month with the ECC, with the PB, with the State regarding
154 the importance of the wetlands in this area, the importance of preserving those corridors
155 to the significant resource protection areas that are outside of our development or
156 adjacent to our development. 'This' (plan shown on the screen) is our offering to attempt
157 to mitigate a concern that has been raised by all of those bodies I listed. This
158 development on the screen proposes zero wetland impact. I know it's been the biggest
159 talking point, so far, and we're hopeful that this is a sign that...all the times I've been
160 before you and said we're going to iterate with information...I/m getting educated,
161 you're getting educated, and this is our olive branch. That concludes my segment; that I
162 would like Andrew Kellar (NH Solar Garden) to briefly touch on his whole world on the
163 technical side of it.

164
165 Ms. (Michele) Meyer asked for a point of order. This is a public hearing. At what point
166 does the public have an opportunity to speak.

167
168 Ms. Braun said when the applicants are finished making their presentation.

169
170 Ms. Meyer said that, with all due respect Madam Chair, the applicant has had ample time
171 to make their presentation to this PB, months.

172
173 Ms. Braun clarified that they are making their presentation to the public at this time.

174
175 A member of the public said that I would like to hear what Mr. Kellar has to say.

176
177 Ms. Braun said to Ms. Meyer that that is the way it is operated. Mr. Kellar has the
178 opportunity to present and you will have the opportunity to speak when we open it up to
179 the public. She invited Mr. Kellar to speak.

180
181 Mr. Kellar said that I appreciate that. To the PB, to the public, this is what I would
182 consider a year's worth of hard work that I think everyone in this room has provided an
183 effort towards. I don't think anyone is really left out in that conversation and, for us,
184 speaking for the whole team, to get to this point and really see how we did in this work. I

185 would just like to take the opportunity to thank the PB for the time because, again, we
186 respect that this is a new type of use of the land in this community. It's a really important
187 one and I think we have all heard that. I appreciate Ms. Berthiaume's perspective, a
188 history I didn't know until this evening. The PB has heard a lot about our background and
189 what we've done. Respectfully, I'd like to turn my attention to the rest of the community
190 and share a little bit of background about NH Solar Garden and my background. Then I
191 would like to read a couple of things into the record that I have. The Planner will bring up
192 a website later that we've put together, a page dedicated to this project. You're going to
193 see pictures. You're going to see information about the industry. One of the biggest
194 concerns we have is misinformation in this business. We spend a lot of time educating
195 people and we want to make sure that everyone in the room, everyone who has a voice in
196 this conversation, understands what this industry is all about. What the concerns are
197 about the industry. What some of our plans are around conservation and strategies that
198 Mr. Sudak touched on this evening. We're actually very excited about the opportunity for
199 this Great Thicket Conservation Refuge, which I think will be a great fit. It's never been
200 done before, to kind of comb these types of things together. So, I am not a true Mainer. I
201 can't say I was born in Maine but I started living here when I was six months old. So,
202 southern Maine is an important community to me. I raised my children, adopted children,
203 on the Seacoast and, earlier in my life, I graduated from Berwick Academy, so, this
204 region of the Seacoast is very important to me. It was important for me to be able to give
205 back and leave some type of legacy to this community. Part of that was started back in
206 2007/2008 when I started a company called Simply Green Biodiesel & Biofuels, which
207 delivered a lot of green heating oil to people in this community. We started the Green
208 Alliance, which is also a green-minded organization to help people learn about
209 everything green and was able to bring that company out into the public with Sarah
210 Brown, who is a local of Kittery. After my tenure there, I actually got the opportunity to
211 go to UNH, spend some time there, and work at their clean-tech incubator to help
212 fourteen other clean-tech companies in this community to help figure out how to bring
213 new technologies to this community. I was also fortunate to spend some time down at
214 MIT as a Fellow and we got to spend some time learning how different communities
215 could evolve their focus around climate change and climate resiliency and how economic
216 development, and how those things kind of cross over. So, I spent about a year and a half
217 there. Then we started NH Solar Garden about eight years ago. It was our way to give
218 back to you. NH to start, and we watched carefully to see what was going to happen in
219 Maine because we were really excited about bringing more community solar projects
220 back to Maine, and it took some time to get there. We're here, now, and for us to be able
221 to be a part of this community, we're just extremely excited, honestly, to be here tonight.
222 And I want to focus on that, on all the positive things that we've done. All the
223 transparency that we've provided to the public, to the PB, to the abutters. The
224 conversations we've had on the site with the abutters, with the PB. So, with that, I just
225 want to read a couple of things into the record. I think it's important for all of us to
226 understand where we are as a country right now. The President just proclaimed that
227 September would be the National Clean Energy Action Month and, for the sake of time
228 and the respect for the PB, I'm going to skip reading some of these things because we
229 have all the details on the website but I just wanted to bring to the PB's attention, at the
230 federal level, that there's an importance for doing our part with climate change and

231 making sure that we can do our part as a community. Secondly, and rather fitting in my
232 opinion, is that the week of September 20 to 24, when this application was deemed
233 complete, the Governor deemed that as the Clean Energy Week; that there is also a nice
234 proclamation that you will see up on the website for the importance at that level. Another
235 component that's really important is that I looked back at the Eliot Comprehensive Plan
236 and there was a survey done. It was dated, 10 years ago, and a lot of things have changed
237 since then, but 68% of the Eliot community stated that "using tax dollars for electrical
238 energy derived from other renewable energy sources was very important" to them. That
239 was a really important detail and I was intrigued by it as I did some more research. I
240 know there's a little bit of uncomfortableness in the room but I'm still going to point out
241 that Ms. Meyer has done a great job in supporting some of these legislations. In 2020,
242 she's voted 100% for solar and renewable energy so I commend her. And when I first
243 found that she was an abutter, an organic farmer, and her husband was a beekeeper, and
244 all the things that nicely tie into our development, I felt it would be a great fit. You know,
245 why wouldn't we do it here. Mr. Sudak touched on that so I won't go into any detail. But
246 this idea of the Great Thicket National Wild Refuge is just such a unique and special way
247 to do something different. Instead of just putting in a solar farm and saying we're doing
248 it, let's conserve the rest of the land and it's going to be based on the new design that Mr.
249 Sudak shared with you. It's about 85% of the property that could be conserved in this
250 structure, and it has been identified as a distinguished area, so it's almost at the pre-
251 approval that this is the right place where it could add value to the habitat. He asked Mr.
252 Brubaker to bring up the website so that everybody could view it. The web address is
253 <https://nhsolargarden.com/eliotcommunitysolar>. There is going to be information on how
254 to contact us, information I touched on tonight, details about our conservation plan, links
255 for deeper information about Great Thicket, value and benefits to the Eliot community,
256 climate information, links to the DEP website, photos of some our projects and poles on
257 Goodwin and Beech Roads, supporting information, frequently asked questions, an
258 abutter timeline representing the levels of communication and transparency we provided
259 to the abutters and PB and doing our best to be a good neighbor and do our best to find a
260 good use of land for this property. With that, I am going to end my comments and look
261 forward to some discussion with the public.

262
263 Ms. Braun said that we now come to comments by abutters. The Chair recognizes Jay
264 Meyer. You are not going to speak Mr. Meyer.

265
266 Mr. Meyer said yes; that I'm going to let Ms. Meyer speak first.

267
268 Ms. Meyer, 58 Odiorne Lane, read from a prepared letter:

269
270 *"Thank you, Madam Chair, and members of the Eliot Planning Board. I am Michele Meyer of 58*
271 *Odiorne Lane in Eliot. My husband Jay and I own 38 acres under conservation easement and*
272 *abutting the property upon which a commercial solar installation is proposed.*

273
274 *I am grateful for the opportunity to address you this evening. We as Eliot citizens have listened*
275 *to several months of this developers' presentation and the public hearing process provides the*
276 *first time this board hears from those you are privileged to serve: the people of Eliot. As you*
277 *may know I, like you, serve our community as a member of the Maine House of Representatives.*
278 *It is always with the best interest of the people who have entrusted me with that honor- the*

279 citizens of Eliot- that I consider those difficult issues that come before me. I am certain that your
280 public service is grounded in the same allegiance to the town we have chosen as home and to its
281 residents, who are our neighbors and fellow community members.

282
283 In 2019 the Maine Legislature enacted solar energy legislation that resulted in significant
284 growth in the development of utility-scale solar projects. Replacing fossil fuels with clean,
285 alternative renewable energy sources is a desirable objective for the state and the outcome of
286 Eliot's 2017 referendum on the ground mounted solar array now operational on our capped
287 landfill clearly demonstrated our town's strong support for solar and willingness to do our part
288 to fight against climate change. The question before us with this project is **not** whether we
289 support utility scale solar installations and the clean energy they produce- Eliot clearly
290 does.

291
292 The question is where in Eliot do we site them. The question is what are we as a community
293 willing to sacrifice in the name of an expansive commercial solar installation. Is it essential we
294 develop forested parcels of land here, in this case land wholly within a National Wildlife Refuge,
295 proposing (until, of course, just a few minutes ago when a new set of plans was presented) the
296 functional destruction of 2 acres of fragile wetlands and the habitat they provide to wildlife,
297 including threatened and endangered species? Must we make that choice? Is this
298 board willing to make that choice on behalf of the 6700 residents of this town?

299
300 Eliot, like a majority of municipalities in our state, finds itself without guidance from an
301 established ordinance on commercial ground mounted solar installations. The site in question
302 is located in the Rural District where our code is designed to guide residential development into
303 a more dispersed less condensed pattern. The proposed use is a large concentrated
304 commercial structure. Approval of such a change of use, particularly in light of the
305 environmental impact, requires far more input from the residents of Eliot, discussion and
306 debate well outside of this public hearing.

307
308 A decision of this magnitude requires we give the legislature and the Governors Climate
309 Council time to complete the work currently underway as a result of LD 936, legislation
310 that became law in July and that will produce guidance to assist towns like ours grappling with
311 the siting of these large scale commercial solar projects and will provide expertise and
312 direction to planning boards in establishing the ordinances we presently lack.

313
314 Sound decisions regarding ground mounted, utility scale solar installations will require
315 guardrails and guidance when confronted with the multiple applications that are to come
316 before this board and the aggressive tactics of developers racing to obtain approval before
317 state regulations and municipal ordinances are put in place and may become obstacles.

318
319 A decision of this magnitude requires this Board have every bit of accurate, comprehensive
320 information it requires, including information as to exactly who it is you are dealing with and
321 whether you have a fully formed understanding of what you may be poised to approve and
322 who you may be inviting into our town to develop 70 acres wholly within a National Wildlife
323 Refuge.

324
325 This board has been asked to digest a great deal of information pertaining to this project.
326 Regrettably, some of the more critical information was simply not presented accurately, fully,
327 and in several cases not at all, by the applicant.

328
329 The applicant has had more knowledge than they have shared about the potential impact of
330 their development on a number of threatened and endangered species. Since letters to the
331 applicant in January and February from MIF&W, the applicant has been aware of the
332 likely presence of NE cottontail, rare turtle species and the Spicebush swallowtail butterfly,
333 knowledge they have not provided to this board nor have they sought additional information

334 *from the subject matter experts on those species listed in those letters 9 months ago. They*
335 *certainly have not had the surveys performed that might confirm these species. These surveys*
336 *are seasonal in nature, generally, and with regard to cottontail and turtles, they have missed their*
337 *2021 opportunities.*

338
339 *There has been discussion of a vernal pool over the course of your proceedings on this*
340 *application. Despite the applicants' knowledge of a significant vernal pool well within a 250*
341 *foot radius of their project, identified by their own wetlands scientist in April 2021 and documented*
342 *in a letter to Mr. Sudak from Joe Noel dated 6/14/21, they have repeatedly denied its existence,*
343 *location, and proximity to their project. My husband will speak more about this.*

344
345 *The Maine Historical Preservation Commission would like to speak with the applicant as this*
346 *parcel is of archeological and historic value. A letter to the applicant dated 1/28/21 from the*
347 *State's Senior Archeologist requested information and that request has gone unanswered.*
348 *Because the solar development may impact areas that are sensitive for archeological resources,*
349 *there is concern for the prehistoric sites that may occupy the terraces above the York River*
350 *tributary and wetlands present on the parcel.*

351
352 *The very cover letter to their application contains a glaring falsehood. Mr. Sudak states a*
353 *wetland delineation has been performed in 2021 by wetland scientist Joe Noel. Despite what*
354 *this letter of July 21 to Planner Brubaker may say, this board should have known no wetland*
355 *delineation has been conducted on this parcel since 2007. We have confirmed this directly with*
356 *Mr. Noel."*

357
358 *At this time, Mr. Wood said that he thought speakers were only allowed 3 minutes; that*
359 *the current speaker was well-over that 3 minutes.*

360
361 *Ms. Braun explained that we have decided not to time folks. I did ask folks to be brief,*
362 *however.*

363
364 *Ms. Meyer continued:*

365
366 *"I'm not sure how to explain this - is it willful ignorance? ambivalence? Duplicity? I have no idea*
367 *why the applicant would suppress or falsify information to this board. I have no idea why this*
368 *applicant would appear resistant to knowing more about the environmental harm their project*
369 *may cause. But when our town is dealing with a land use issue of this magnitude, within a*
370 *National wildlife refuge and the York River watershed, honesty, integrity, and attention to*
371 *detail are the very least we should expect.*

372
373 *The town of Eliot has historically placed a high value on the protection of our woodlands,*
374 *wetlands, marshes, and other open spaces. Eliot demonstrated a high level of interest in the*
375 *York River Wild and Scenic Study Committee, having strongly supported seeking this federal*
376 *designation in a 2018 referendum. Support for the stewardship of the York River watershed, of*
377 *which this parcel is a part, is testament to Eliot's values. Our 2009 Comprehensive Plan placed*
378 *the importance of maintaining the rural character of Eliot in just the first few lines*
379 *of its preamble and support for solar in the document would have referred to rooftop arrays as*
380 *few among us could have envisioned acres upon acres of solar panels and the wholesale*
381 *destruction of our precious forests and wetlands.*

382
383 *If left intact and unfragmented, this parcel slated for solar development clear-cut and wetland*
384 *destruction, plays its own role in climate change mitigation. Forests absorb carbon dioxide from*
385 *the atmosphere and store it in carbon pools, which include trees, root systems, undergrowth*
386 *and forest floor and soils. This parcel overlaps with future saltmarsh habitat with 1 meter of*
387 *sea level rise, and area prioritized at the state level for protection and conservation because of*

388 *its saltmarsh potential given the ecological value of this important and threatened habitat.*

389

390 *I wish to address you as an abutter, one of 3 families living on Odiorne Lane. Yes, this*
391 *development is in our backyard. But for all of the reasons I have enumerated, our opposition*
392 *and that of the other 2 families far exceeds the NIMBYism we may be accused of. As a National*
393 *Wildlife Refuge, this 70 acres on the York River is a treasure worth conserving. It's Eliot's*
394 *backyard. And once destroyed, it's gone forever.*

395

396 *Two of the 3 Odiorne Lane families are members of the sellers' family and share our deep*
397 *opposition to this utility scale solar development. This is a divisive issue for this family. But*
398 *there is a solution. I wish to make public this offer: Should the contract with the buyer, Mr. Hill*
399 *of SOW Solar terminate for any reason, including lack of the requisite permits, my husband and*
400 *I would move swiftly as a back-up buyer with no strings attached, matching the asking price,*
401 *and enabling this family to settle their parents' estate. We will work with US Fish and Wildlife*
402 *over the course of the 1-2 years it will take to sell the parcel in its entirety to them strictly for*
403 *conservation. It is our understanding from one of the daughters and a grandson this would*
404 *have been more in line with the wishes of Mr. and Mrs. Crowell, whose legacy this property is.*

405

406 *Should US F&W pay more than what we buy the parcel for from the seller, we*
407 *will split evenly anything over the 175K we pay for the land.*

408

409 *I would like speak to the application and the Board's determination of completeness. The PB*
410 *package contains a P&S between the current landowner and a buyer, SOW Solar, Inc. The P&S*
411 *is signed by Kevin Hill, reportedly the President of SOW Solar, Inc. There is a letter as well from*
412 *the applicant stating that he has a lease agreement with SOW. In the 9/21/21 packet the*
413 *applicant provided a "Planning Board Frequently Asked Questions" where he states again that*
414 *he has a lease with the current and future landowners. These lease documents and the terms*
415 *they contain would be part of the record to confirm that the applicant has a solid legal*
416 *standing to request this site development and change in use.*

417

418 *More scrutiny as to the complex nature of the corporation, 2 LLCs and the individuals seeking*
419 *approval might best serve the decision this Board makes regarding this application.*

420

421 *This board should be aware as well of some of the public information known about Mr. Keller's*
422 *business partner. The Purchase and Sale agreement is signed by a Mr. Kevin Hill President,*
423 *SOW Solar, Inc of MA, (There is a letter, as well, from the applicant stating that he has a lease*
424 *agreement with SOW.) In the 9/21/21 packet, the applicant provided a planning board frequently*
425 *asked questions where he states, again, that he has a lease with the current and future*
426 *landowner. These lease documents and the terms they contain should be part of the record to*
427 *confirm that the applicant has solid legal standing to request this site development and change in*
428 *use. More scrutiny as to the complex nature of the corporation, the two LLCs, and the individual*
429 *seeking approval might best serve the decision this board makes regarding this application. And*
430 *(finally, this Board should be aware of some of the public information known about Mr. Keller's*
431 *business partner. The Purchase & Sales agreement is signed by a Mr. Kevin Hill, President SOW*
432 *Solar, Inc. of MA,) who lists an address of Lobster Lane, in Wells ME. Mr. Hill has no*
433 *residence on Lobster Lane. What he has is small, unbuildable lot on the banks of wetland*
434 *within the Rachel Carson National Wildlife Refuge.*

435

436 *Mr. Hill is well known in the town of Wells, having purchased his property knowing it would not*
437 *meet Wells code to build and making repeated attempts for variances & zoning changes, to no*
438 *avail and finally suing the Town of Wells, and taking his case to the superior and then*
439 *Maine supreme court where the Wells BOA denial was upheld. These cases cost the taxpayers*
440 *of Wells. The public record is readily accessible to anyone who wishes to know more about Mr.*
441 *Keller's business partner, the havoc he has caused in a town not unlike Eliot, and the cost to the*
442 *Taxpayers there by a litigious man who will not take no for an answer.*

443
444 *I ask this Board to work with the Select Board I will be addressing shortly to place a moratorium*
445 *of at least 6 months on all ground mounted utility scale solar installations so that we as a*
446 *community can discuss a way forward in the consideration of this application and any others that*
447 *may come before you. This is how the town handled retail marijuana, by putting the brakes on*
448 *and asking the people of Eliot to weigh in on whether and where we might site retail marijuana*
449 *operations. That same discussion must be had on ground mounted utility scale solar in light of*
450 *the many, many glaring red flags in this application. I ask (for the sake of this community and*
451 *what is left of the natural resources we value) you at least table and at best deny this*
452 *application. “*

453
454 Ms. Braun thanked Ms. Meyer. The Chair recognized Pat Merrill and asked that he keep
455 his comments brief.

456
457 Mr. (Pat) Merrill, 77 Odiorne Lane, said that I have a number of objections to this. There
458 is a deer park right in the center of the array they want to put up. On the way down here
459 tonight, we had a few deer out on the lane. We do have moose on the property that travel
460 across from one swath to the other. The vernal pond, my ex-son-in-law put a duck house
461 up there – wood ducks mate down there every spring. Also in the spring, about the center
462 of where this array is going, there is a crow rookery every year that I’ve been there. You
463 can hardly hear up there for all the noise. I have had to move turtles out of the lane to get
464 up to our house. I would invite you all to come up and see the property. They say that
465 nobody will be able to see it but that’s a flat-out lie. I can see it now and there’s still
466 foliage on the trees. It’s going to be an eyesore. One of the problems with the zoning
467 board with building out there was emergency vehicles. You can’t get them out there and
468 how is this any different a matter. We can’t build a house but we can build this...there’s
469 no danger of fire. Somebody working down there getting hurt...it’s okay, now, but it
470 wasn’t a few years ago. That doesn’t make sense. Another thing is the ticks. What are
471 they going to do about tick mitigation, because it’s infested. As soon as the guys get in
472 there and start working, they are going to be complaining. Between my wife and I, we’ve
473 had Lyme’s Disease five times. That’s why we have the chickens. I don’t think they can
474 find that many chickens. I will have to say that Ms. Meyer and I agree on nothing but we
475 agree on this. Thank you.

476
477 Ms. Braun thanked Mr. Merrill. The Chair recognizes Kristen Merrill.

478
479 Ms. Merrill, 77 Odiorne Lane, said that most people know me by the name of Krickett.
480 I’ve lived on Odiorne Lane, from one end to the other, for most of my entire life. I’ve
481 seen many animals and many different plants on the endangered species list. And this
482 land is in, I can tell you, the area of aviary migration. Some of my concerns are how the
483 array would affect the area that the birds normally roost in the trees when there are no
484 trees. Another concern is that this is a farmland area part of Town and, as you all know,
485 the bees that sustain life, as we know it, by pollinating our farmland and how would the
486 array affect the bee pollination. They talk about mowing underneath to maintain the area
487 within the fence. What is planted under it, as far as whether it would be natural
488 wildflowers or whether it would be grass, as that would make a huge difference in the
489 pollination of the surrounding farms’ produce. But one of my greatest concerns is the
490 traffic from the wildlife being inhibited by a fenced-off block of area because, living

491 there for over half a century, I've seen them travel back and forth through this area, to the
492 wet area of headwaters of the York River to other areas and it makes me wonder about
493 the hunters that follow these deer and other wildlife. Now, will this be considered a no-
494 hunting area, impacting all the hunters in Town and the surrounding areas because of the
495 hazard of hunting around the solar array. That's a question I had, also. And what about
496 down the road when there are problems and the extent of the life expectancy of these
497 panels. What then. Will they leak. Where do they even come from, as far as where
498 manufactured. The community has a major problem finding people to work in simple
499 places like an ice cream shop or any business around. You can't go down the street
500 without sign after sign of "We're hiring". Where will they even find the people to
501 construct it and put this in place. Will this be of benefit to the community, this workforce,
502 and where would they find it. But my concern, again, is what is the life expectancy of
503 these panels. Will they eventually break down and pollute the soil with the chemicals
504 they're made with. Will they be exported and replaced with newer ones. The land that
505 was allocated for a preserve, will that be able to be sold off to someone else later, when
506 they want to make more profit, and not be a land preserve anymore or will it be a
507 permanent land preserve. She reiterated that, if it's all fenced off, the traffic for the wild
508 animals...that will inhibit them and not be beneficial to the community when you start
509 disrupting that. Not the least, but it's common knowledge that people who live under
510 massive power lines do have issues with increased cancer risks and it makes me wonder
511 about the health of the animals. How would something like this affect their health and
512 their well-being. For a community that was about the eleventh settled in the entire
513 country to not preserve its history, to me, is a travesty.

514
515 Ms. Braun thanked Ms. Merrill.

516
517 Mr. Kellar asked if I can respond to some of the questions.

518
519 Ms. Braun said that I have several others that want to speak; that when we're finished
520 with the public, we will have you respond. The Chair recognizes Jay Meyer.

521
522 Mr. Meyer, 58 Odiorne Lane, said that I would like to talk tonight about the vernal pool
523 as well as the lack of an adequate stormwater plan. He read from prepared documents:

524
525 *"I would like to discuss the lack of an adequate stormwater plan to address wetlands on the*
526 *Southwest and Southern side of the project where a new 300 foot gravel road and numerous*
527 *utility poles are to be constructed as well as 500 feet of chain-link fence and what appears to be*
528 *18 rows of ground mounted solar panels.*

529
530 *All of the described ground disturbance related to their project will cause an increase in*
531 *stormwater that will then flow onto my property.*

532
533 *I brought this initially to the attention of Planner Jeff Brubaker on August 19th, when he came up*
534 *to prepare for the initial site walk.*

535
536 *On September 20 during the site walk, most of the planning board, ECC Chair Kari Moore, and*
537 *the applicants toured this section of my property directly abutting their project and I pointed out*
538 *where my area of concern is located.*

539

540 *Let me explain: During a typical rainstorm there is significant run off that continues to flow*
541 *easterly into a small stream on my property and then into a large wetland and then into the York*
542 *River. I expressed concern about the increase in run off that would be expected based on the*
543 *plans for the solar array.*

544
545 *Mr. Sudak in my opinion seemed to dismiss my observations and concerns. He spoke about a*
546 *"knoll over there that would direct water to the Northeast..."*

547
548 *I engaged with wetland scientist Joe Noel after being sure that there was not a conflict of interest*
549 *with the applicant*

550
551 *Mr. Noel and I walked the site on Oct 5 and discussed the area of my concern and he reported*
552 *back to the applicant. Mr. Noel confirmed most of the onsite run off flows across the property line*
553 *into this area. His letter to Mr. Sudak is in your packet.*

554
555 *I wish to bring to this boards attention that I am unsure of Mr. Sudak's full understanding of both*
556 *the site's topography and hydrology and how this will impact my property.*

557
558 *The runoff from the massive solar project is highly likely to affect the quality of the large wetland*
559 *system to the east of their array onto my land. I have not heard much in the way of concern for*
560 *this matter and feel the stormwater management plan is lacking in a number of ways that should*
561 *be reviewed by a subject matter expert before accepted by this board as adequate."*

562
563 *Mr. Meyer continued by talking about the vernal pool, also read from a prepared*
564 *document:*

565
566 *"There has been quite a bit of discussion about vernal pools over the course of your work on this*
567 *application.*

568
569 *To refresh the boards memory: **A "Significant vernal pool habitat" includes the vernal pool***
570 ***itself and the area within a 250-foot radius of the spring or fall high water mark of the pool,***
571 ***which is considered critical terrestrial habitat.***

572
573 *I think it is more important the board have the correct timeline, so that you might better*
574 *understand my concerns about how the applicant has handled this and other issues.*

575
576 *The applicant hired Joe Noel.*

577
578 *On April 6th, Mr. Noel was making his way to the Crowell property through my property, looking*
579 *for a vernal pool on or near the project site. We briefly discussed the vernal pool on my property*
580 *as we engaged in a conversation about his work as a wetland scientist.*

581
582 *I directed Mr. Noel to the significant vernal pool on my property, because it is less than 100 feet*
583 *from the proposed solar site.*

584
585 *I explained to Mr. Noel that both the Eliot Conservation Commission and the GWRLT (Great*
586 *Works Regional Land Trust) have assessed the vernal pool previously.*

587
588 *The ECC and others who have this kind of knowledge have identified species unique to vernal*
589 *pools.*

590
591 *Mr. Noel examined the vernal pond on our property and wrote back to Mr. Sudak on **June 14,***
592 ***2021.***

593

- 594 • *His letter states there are **no vernal pools on the site of the proposed solar array***
595 ***project.***
596
597 • *He adds that there is a vernal pool of concern that is **"just offsite and adjacent to Odiorne***
598 ***Lane"***
599
600 • *Mr. Noel writes: **" Data was collected, egg mass counts, photos taken...the pool does***
601 ***have sufficient egg mass to meet the threshold for a Maine Dept of Environmental***
602 ***Protection significant vernal pool"***
603
604 • *More than 2 months later on August 24, this board questioned the applicant at length about*
605 *the proximity and plan for the vernal pool Mr. Noel had written them about. I have rewatched*
606 *that meeting and read through the minutes.*
607
608 • *On line 755 of the 8/24 minutes, Mr. Sudak insisted the vernal pool was and I quote:*
609 ***Hundreds and hundreds and hundreds of feet from the road into the solar installation.***
610 ***He said it was several magnitudes of order further way...it's very far removed***
611 ***He indicated it was so far to the south east it was not even shown on their map.***
612
613 • *Mr. Keller jumped in to deny they had even had a vernal pool study done and I quote,*
614 ***We have not had a vernal pool study done as that is not our property. We wouldn't***
615 ***have access to that, would we?"***
616
617 • *Now we all know they **did** have a study done, that they knew **where the pool was located,***
618 ***that it was significant.***
619
620 • *(Planning Board members) Ms. Crichton and Mr. Leathe continue to question the applicants*
621 *as to the location.*
622
623 • *Mr. Sudak tells Ms. Crichton **he does not know of the vernal pool to the left of Odiorne***
624 ***Lane just before the entrance to their project area, confusing the board members to***
625 ***the point Ms. Crichton questions whether she is looking at the site map upside down.***
626

627 *All of this was happening at the 8/24 meeting while the applicant was fully aware of the facts and*
628 *the location, information provided to them by their own scientist. I would urge you to consider the*
629 *way this applicant has handled this particular area of the natural resources knowing that there is*
630 *far more environmental damage that will occur on their site.*

631
632 *So that the board is clear, Mr. Noel has submitted his vernal pool assessment to the State of*
633 *Maine. He attests that his data meets the threshold for a significant vernal pool. I remain very*
634 *concerned about the construction planned and the travel of the extremely heavy construction*
635 *equipment within 10 feet of this VP."*
636

637 Mr. Meyer said that I really feel the PB should watch the tape of 8/24 regarding the
638 vernal pool. Thank you.

639
640 Ms. Braun thanked Mr. Meyer. The Chair recognizes Melissa Layman and asked her to
641 keep her comments brief.

642
643 Ms. Layman said that my husband, Craig, and I reside at 426 Goodwin Road in a 201-
644 year-old cape known as the Elijah Goodwin House. We are blessed to live on the same
645 road as the last two dairy farms in Eliot and Kittery. I spent most of my childhood on a
646 small farm in Iowa. As an adult. My dream was to live in an area with farms, forest,

647 plants and wildlife. We are proud to be members of a community where conservation of
648 critical natural resources is of high importance – preserving farmland, protecting wetland
649 and wildlife habitats, and cherry-pie-quality water resources. One of the reasons we
650 purchased our home was that our property had 333 feet of frontage on Odiorne Lane. It’s
651 a very lightly traveled dirt road. It was our understanding that the land at the end of
652 Odiorne was not developable. We strongly oppose the installation of a solar array on
653 Odiorne Lane. Our property values will decrease. It will have a detrimental impact to
654 local plants and animals by removing rare and endangered species habitats. It will
655 fragment wetland that are home to Blanding and Spotted Turtles. The endangered New
656 England Cottontail presently exists in Eliot. To survive, this rabbit requires 25 more acres
657 of thicket habitat, unfragmented land. Habitat fragmentation leaves Cottontails with
658 insufficient food and cover. I am an avid bird photographer and am extremely saddened
659 about the proposed loss of unfragmented forest - inland water fowl and wading bird
660 habitat. I have documented photos of juvenile bald eagles flying overhead, numerous
661 hawks, countless migratory birds, and native species we all know and love. From my
662 research, native and migrating birds sometimes mistake solar installations for bodies of
663 water and crash into them, known as the ‘lake effect’, devastating species inclined to
664 spend the night on a silica lake. More robust and environment-impacting anchoring
665 systems are required for the follow-the-sun solar panels and will even further degrade
666 migration from the York River, York Pond, and coastal waterways. I have lots of
667 questions. I still would really like to understand why this company chose to install a solar
668 array on prime farmland, wetland, a parcel that’s part of the York River Watershed, part
669 of the Great Thicket National Wildlife Refuge and soon to be designated as a National
670 Wild & Scenic River System. How long will the construction phase last. What type of
671 equipment will be traveling up and down the road continually on Odiorne – frequency,
672 time of day, night. How many trees will have to be removed from Odiorne Lane because
673 of a p_____ to the poles. I don’t want to see the same poles that are on Goodwin on
674 Odiorne. That’s my new back yard. That’s the only piece I have. I’d like an explanation
675 of energized solar panels and why it’s not safe for firefighters to go under them or fight
676 fires around them. How would fire equipment get to the site. How would they access
677 water. What would happen to the surrounding families. Is there an evacuation plan. What
678 happens to the farm animals. Do you have a decommission plan. Is it bonded. How long
679 do the panels last, the inverters. What happens if the panels break down over time and
680 chemicals like lead and tin and cadmium, silicon and copper leach into the soil and, then,
681 go into our drinking water. All of that runs right down to our well and into the York
682 River. I want to thank you for your time.

683
684 Ms. Braun thanked her for her comments. The Chair recognizes Joelle Crist.

685
686 Ms. Crist said that I live on Route 236 and asked if this is because I filled out that little
687 paper when I came in.

688
689 Ms. Braun said yes; that this was for all who wanted to speak.

690
691 Ms. Crist apologized, saying that I didn’t have anything planned to say. I misunderstood.
692

693 Ms. Braun said that that's alright. Since we have all the people in the room who have
694 wanted to speak, at this point I'm going to give Mr. Sudak an opportunity to respond to
695 some of the concerns.

696
697 Mr. Brubaker asked if I could just quickly recommend, before Mr. Sudak speaks, if there
698 is anyone in the room or the hallway who wishes to speak but hasn't.

699
700 Mr. Wood (Attar Engineering President) said that I would like to speak as part of the
701 design team. I think that the three people who are available to answer the questions are
702 myself, Michael Sudak, and Andrew Kellar.

703
704 Ms. Braun said that I think the Eliot Conservation Commission (ECC) wanted to speak,
705 as well. Is that correct.

706
707 Ms. (Kari) Moore said yes.

708
709 Ms. Braun invited Ms. Moore to speak.

710
711 Ms. Moore, Chair of the Eliot Conservation Commission, said that we have actively
712 engaged in this process, as the PB knows. I appreciate that Attar has responded to some
713 of our comments. We submitted letters for the public record and Mr. Sudak and his team
714 have come back and responded to some of our concerns. They came last week to brief the
715 Commission on what their plans were, what their conservation agenda is. At the end of
716 the meeting, I did inform Mr. Kellar and Mr. Sudak that we are still concerned with this
717 project. The bottom line is what's kind of been brought up tonight. Why this location.
718 Why disturb an unfragmented forested habitat. It is part of a large forest block that's
719 identified by the State with their Beginning with Habitat Program and this will be 20
720 acres within that. I understand the site is between...I'm hearing 54 from some people to
721 70 acres for the whole parcel. They are leaning towards putting some of that in
722 conservation but you're still having this fragmented block in the middle of this forested
723 habitat. This wetland plan that was presented tonight is the first we've seen that appears
724 to avoid wetland on the face because it looked to me...I couldn't see it too well...that the
725 panels may not be located within the wetlands but what does that mean for the shade
726 management area. What about access across the site. How will those wetlands be
727 impacted. So those would be questions if that is the plan going forward. I did want to
728 point out to the PB that the State has put out several guidance documents. The
729 Department of Agriculture, Conservation and Forestry (AC&F) and the Department of
730 Inland Fisheries & Wildlife (IF&W) have both put out guidance documents, which
731 basically...the heart and soul of these documents is to look at the site, look at the
732 landscape, what do you do with the landscape and consider things like avoiding rare and
733 endangered habitat, sensitive wildlife habitat, large unfragmented forested blocks, things
734 like that. I have not seen where that has happened with these folks and it's still is, again,
735 what's kind of the leading concern of the ECC at this point. Another concern, I know that
736 the State also put these documents out because they recognize that climate protection is
737 important, and moving these green initiatives forward is important. What they're saying
738 with these documents is that they are going to put this guidance out because we want to

739 understand what we're losing at the expense of these climate initiatives and is habitat loss
740 really worth it because, in the long run, we're going to have issues with climate...some of
741 these climate issues to habitat already. So, that's another thing that I think has to really be
742 considered and what has been done to minimize those impacts. Avoid and minimize and
743 I'm still not seeing that. This new plan for wetlands is based on an outdated wetland
744 delineation that was completed in 2007. Generally, the Army Corps (ACE) and the DEP
745 require updates every five years to wetland delineations. Also, to re-look at species for
746 threatened and endangered species to make sure those are updated. Ms. Meyer clearly
747 pointed out that the endangered species surveys that were recommended by IF&W back
748 in January were never completed. So, how can we know what the impacts are if the
749 surveys haven't been done. We don't know what's there and I think that is on the
750 applicant to prove what is there and what isn't there. Maybe it's not there. I don't know,
751 but there sure seems to be some pretty good habitat out there. In that regard, where's the
752 due diligence. Where's the due diligence in preserving landscape, one of the standards of
753 our Code. I'm not seeing that. I'm not seeing a minimization of tree-clearing and I think
754 there's a lot of misinformation in regard to pollinator habitat in this forested block. I still
755 just cannot get my arms around that. So, what I wanted to get on record is those things
756 and that the ECC still believes that this is an irretrievable loss of environmental
757 resources, significant natural resources within an area that's been identified for ecological
758 significance, State-wide, by our own State wildlife agency - the York River headwaters,
759 which there is all kinds of guidance, also, for development within that. And yes, it's not
760 in our Code that they have to follow the York River headwaters but I think we, as a Town
761 and also in our Comprehensive Plan, identify these areas as important from a Town
762 standpoint, as well. So, I think this is not a compatible use in this area and we still believe
763 that this time the developer has not taken that hard look at potential impacts in this area.
764 That's all I have for tonight.

765
766 Ms. Braun thanked Ms. Moore. She asked Mr. Wood if he would like to speak as part of
767 the public or part of the team.

768
769 Mr. Wood said as part of the team so I can wait my turn.

770
771 Mr. Brubaker said that I just wanted to let the people on Zoom know that they will have
772 the chance to comment as Mr. Kellar steps to the podium.

773
774 Mr. Kellar said that there were lots of questions and I tried to mark as many as I could
775 keep up with. I'm going to start with Ms. Merrill's questions. A couple that stood out
776 were how the bees would be affected by this project. And again, I don't want to keep
777 saying to go to the website for information but there's a lot of information provided so
778 that people can see it for themselves and read up on what we're doing. I did speak, I
779 believe, with your son Dr. Crowell; that he wanted to educate himself so he could share
780 some information with his Mother. We had a lengthy discussion and some emails that
781 went back and forth. The plan, especially once I heard that some of the older apple trees
782 that are producing fruit even well beyond their lifetime are nearby and being able to
783 incorporate that pollinator plant that we've talked about. It's still evolving and we're
784 learning new information each meeting we have. But there will be additional benefits to

785 the pollinating path around the panels that can only enhance or help that concern you
786 addressed. As far as decommissioning of panels and what happens to them over the life
787 of the time on the land, there's also a link on the site you can see, Ms. Merrill, that shows
788 what the current recycling plan is for solar panels. It's an evolving and new industry and
789 kind of opening up over the last few years but there is some really good information there
790 that will address all of your concerns you brought up about what happens and also. Ms.
791 Layman, your concerns about what happens to the materials inside them, what would
792 happen if a panel broke or a tree fell on it. What I will speak to is that these panels are
793 sealed. They don't want anything going in or going out. There is no liquid in them so, if
794 something were to start to not function, there would be an alert that would be sent to us to
795 know that we have to go the site to replace one of the pieces of equipment. There was
796 another question I heard from Ms. Merrill about land ownership and this conservation
797 plan that is put into place. I spent about an hour on the phone with the folks about the
798 programs so I could educate myself what it means for the landowner and short-term,
799 long-term for the abutters. One thing I heard loud and clear was that you could either
800 donate the land or you could sell the land. If you sell the land, they have to pay fair
801 market value just as if they were competing against any other person that was looking to
802 develop the land in any fashion, and they would own it. So, I don't think there's an
803 opportunity, that I understand, how you would re-sell the land if you sold it to the federal
804 government. Those are a couple I picked up from Ms. Merrill's comments. I think some
805 of the technical Mr. Sudak can take care of for some of Mr. Meyer's comments and
806 concerns. Ms. Layman talked about concerns with the foundation of the tracks.

807
808 Ms. Layman said that it is my understanding that you have to use a much stronger anchor
809 system because it is a follow-the-sun.

810
811 Mr. Kellar said that we're not going to be using that system anymore. So, part of the re-
812 design that you saw in the new layout today was to have the standard fixed-tilt systems
813 and the posts, themselves, would be pounded in just like a fence post.

814
815 Ms. Layman asked if you would be using any concrete.

816
817 Mr. Kellar said no. The other strategy that we would use, and we've shared this before.
818 You can pile-drive a post in or, in more cases than not in New England, we would usually
819 use what is called an earth screw.

820
821 Ms. Layman said like a helical pier.

822
823 Mr. Kellar said sure. If you hit any rocks, you don't have to deal with refusals and
824 digging out stuff and then pour concrete. So, there's a couple of different strategies on
825 how we would use these for the foundation. Regarding the decommissioning plan, the
826 State is putting in place, as of this month on the 18th, a State-wide decommissioning
827 process that we have to follow. There is a link on the website so you could take a look at
828 it; that it is a direct link to the State's site. It's brand new and we're just learning about it
829 right now, what the surety requirements are, but it's going to take some of that away from
830 the Town to try to figure out. It will put in place kind of a State process that we're going

831 to have to follow with any project. This is some of the evolution that's going on in our
832 State.

833
834 Ms. Layman asked if that was bonded.

835
836 Mr. Kellar said that there's a reference to different types of sureties. So, it could be
837 bonded, it could be a line of credit, it could be different types of financial sureties to
838 make sure that you can meet the decommissioning costs. There is some information in
839 our FAQs on the website; what is included in the decommissioning items today and then
840 how they put a cost on that today based on cost for labor. Ms. Merrill brought up her
841 concern about finding labor, as well. This industry, like everybody, is having difficulty
842 finding labor. This industry is growing rapidly and they are very good paying jobs, so, we
843 haven't seen a lot of that issue with labor. Decommissioning a system like this is a much
844 quicker process than building it from scratch and being a little bit more cautious and
845 careful. Regarding the ages of the inverters and panels, typically right now, the panels are
846 warranted out right now at 25 years, the inverters are between 10 to 15 years. With the
847 life of the program, typically we try to align those. There isn't a specific timeline at the
848 State level about the program of when it ends. If we have an agreement with the Town or
849 school to buy the power from the project, those are usually 20- to 25-year agreements.
850 Some of the concerns that you brought up, Ms. Layman, like fire, fighting some of these
851 fires, very few...communities are equipped to fight electrical fires. I've sat with some of
852 the different fire chiefs in the communities that we work with and their blatant attitude
853 was that, if there was a fire inside the fence line, their job is to protect the abutters so the
854 fire doesn't go out into the trees and affect your home.

855
856 Ms. Layman said that they would just let it burn.

857
858 Mr. Kellar said you would. You would protect everything around it and preserve, just like
859 if there was a manufacturing fire.

860
861 A member of the public asked how they would get there.

862
863 Mr. Kellar said that that is a question for the fire chief; that I'm not sure of the answer. I
864 sat with a fire chief on a project in NH that we are working on and he said that in his 15-
865 20 years he's been in the business he's had a lot more issues with big buildings, like
866 manufacturing buildings, burning down with a lot of concern with what's inside,
867 chemicals and things like that. His position was that it was his job to protect the solar
868 panels. If your house caught on fire and began to start a fire in the woods or, if it went the
869 other direction, their job would be to protect it. How do they protect your homes today, as
870 I haven't spoken to the Fire Chief to know.

871
872 Ms. Layman said that I would be very concerned with all the chemicals in the solar
873 panels just burning and going into the air. That's a big concern of mine.

874
875 Mr. Kellar said that most of the fires that we've seen in the industry, just so you
876 know...I'm not saying there isn't a fire that's affected a ground-mounted project but,

877 more than not, the projects we've read about, or heard about, in the industry are all
878 related to rooftop projects. There is a fire inside the building and then the panels catch on
879 fire from inside. Not as much from the panels on the outside. Ms. Moore brought up
880 some questions about the guidance documents. We really did appreciate that feedback.
881 That was new information so we took it upon ourselves to look at our project as it relates
882 to some of those guidance documents and we put up a chart that people can see on that
883 website, as well. You can see how we have addressed the things that the guidance called
884 out, as far as items, and then how our project aligned with those or things we were
885 considering to address some of those concerns that the siting document had.

886
887 Mr. Merrill said that this pile-driving is going to be going on within 200 yards of my
888 well. What happens if my well fails. Who's going to be responsible for that. I have a
889 drilled well (100 Feet).

890
891 Mr. Kellar said that we are not going 100 feet. We are only going about 4 feet.

892
893 Mr. Merrill said that you're going to be pounding the earth.

894
895 Mr. Kellar said no. It's going to screw in so there isn't going to be as much damage as
896 you would be concerned about. That's a fair concern but I've never heard of a well being
897 affected. If it was a dug well, I might be concerned, but if you are 100 feet into the
898 ground, the bedrock, we won't be touching the bedrock so we won't be affecting any of
899 that.

900
901 Mr. Sudak said that the majority of my comments will be to questions raised by Mr.
902 Meyer concerning the stormwater analysis for the site. Just as a broad spectrum, it's my
903 responsibility to the State to demonstrate that we have a reduction in peak run-off at all
904 analysis points leaving our property, including the small wetland that goes onto your
905 property and including the large wetland that goes into the inland wading water bird
906 habitat. You were with me for that site walk and took a look at the knoll that you
907 referenced. I just re-read through Joe Noel's email that he forwarded to you and it states
908 that the majority of the land within that wetland drains onto your property. It absolutely
909 does. A little bit of the upland upstream of that wetland is on our property. We intend on
910 that being an analysis point and having a peak reduction dedicating into that wetland.
911 Nothing visiting your site will be an increase. The presence of my permit that I gave to
912 the Town is proof of that and, at the end of this meeting, I believe we're going to be
913 decreeing that a third-party reviewing entity, to speak to the subject matter expert that
914 you referenced, will be assigned or tasked to be assigned to make sure that that analysis is
915 sound.

916
917 Mr. Meyer said that you don't agree with your scientist, Joe Noel.

918
919 Mr. Sudak said that I agree with the scientist. I believe you slightly misquoted his words.
920 I believe that what you said earlier was that a significant portion of our site drains
921 through that wetland. His email states that a significant portion of that wetland drains
922 through...

923
924 Mr. Meyer said your 350-foot road will drain down into that wetland that will then drain
925 down onto my property.

926
927 Mr. Sudak said yes.

928
929 Mr. Meyer said that there's no knoll that's going to catch that. That knoll is further east.

930
931 Mr. Sudak said yes. All of that road will be managed by a swale, a level spreader, and a
932 meadow buffer that is already in place that will be designed per Chapter 500 standards.

933
934 Ms. Crichton asked within 100 feet of the vernal pool.

935
936 Mr. Sudak said no, and also a completely different watershed. We can segue into vernal
937 pool, though. I'd like to set the record straight that we have never denied the presence of
938 that vernal pool. The specific meeting that Mr. Meyer referenced...I think Ms. Crichton
939 got me turned around with what part of the site you were talking about. I was under the
940 impression that the area we were speaking of during that meeting was the inland water
941 bird habitat, a portion of which does touch the southeast corner of our property and the
942 setback to which intrudes significantly into our property. The conclusion of that meeting,
943 at Mr. Brubaker's and Ms. Braun's insistence, was to revisit it and, since then, we
944 absolutely have the data sheets that have already been submitted to the State. We do not
945 deny that the masses there are consistent with a significant vernal pool. We've stated, for
946 the sake of prudence, that we are submitting a NRPA Permit-by-Rule for activities within
947 the 250-foot setback of that significant vernal pool. The only pursuit we are following up
948 on with IF&W as to whether or not that vernal pool is a natural modified vernal pool
949 (meaning the setback would still apply) or if it is an impounded vernal pool (which the
950 setback would not apply). I'm not going to call it a worst-case scenario but the strictest
951 mandate to come out of that would be the Permit-by-Rule that we are applying for. I
952 don't think I have anything else to add to that and asked if Mr. Wood wanted to add.

953
954 Mr. Meyer asked if we could look at the minutes of August 24th on line 862 where you
955 said, "I don't know the vernal pool you're referring to."

956
957 Mr. Sudak said yes.

958
959 Mr. Meyer said that the only vernal pool that I'm aware of from Mr. Noel is down in
960 'this' area. You just misstated yourself.

961
962 Mr. Wood said that I would like to address that, now, Madam Chair. Maybe I can answer
963 Mr. Meyer's questions. I am the President of Attar Engineers, having had this firm for 33
964 years, and I have never had my integrity, honesty, and attention to detail questioned
965 before but let's hash some of the things out. He asked Mr. Brubaker to bring up the
966 Beginning with Habitat screen up. While he is bringing that up, let's talk about the vernal
967 pool. The vernal pool is off-site. When we approach a project, and we have done 6,000 of
968 these in the past 33 years, we go by the rules and regulations, as you would, Ms. Meyer,

969 as a lawmaker. The rules and regulations of the State don't require an applicant to go off-
970 site to map vernal pools. Think of it, there's liability involved, you have no permission.
971 When the Meyers brought the vernal pool to the attention of our wetland scientist, Joe
972 Noel, we opted to let Mr. Noel evaluate it. It is a vernal pool of special significance
973 because it meets the egg mass count. Under the State's law, we wouldn't have to address
974 it at all. It's off-site. But we went over-and-above and calculated our disturb area – 25%
975 within 250 feet; that that is the protective radius. Again, it's an off-site vernal pool and it
976 hadn't been documented to the State until we allowed Mr. Noel to go and meet with the
977 Meyers and do that. It's not inattention to detail. There's no smoking gun. It's not an
978 honesty issue. Again, it's over-and-above the State's requirements to evaluate the vernal
979 pool. Let's talk about habitat because, obviously, everyone is concerned about habitat.
980 Most of the Town of Eliot is in potential Cottontail habitat. It's all the cross-hatched area
981 on that map. Most of Eliot is in potential New England Cottontail habitat. Everything
982 we've done on Route 236 is within the potential habitat - every development down
983 towards the river, along Route 236, easterly to Goodwin Road. What we do with every
984 project is that we work with IF&W to accommodate any habitat issues. That's not saying
985 that this is prime New England Cottontail habitat but we do allow for it. In this case,
986 we've worked with the developer and the fences are raised to allow for any habitat
987 passage. As far as turtles, I believe we calculated the Blanding turtles were cited a mile
988 away. So, there's no hidden agenda. There's no inattention to detail. There's no
989 dishonesty going on. It's the same habitat we've accommodated in most developments in
990 Eliot, South Berwick, York, Wells. We've been working with Debra Berthiaume since
991 2011 to find an acceptable use for this parcel. One that would make most of the heirs
992 happy. She has other siblings in the waiting room. One has flown here from North
993 Carolina. Another one has driven down from Portland. This is an allowed use for this
994 piece of property. It's acceptable. Ms. Meyer mentioned residential for the area. That's a
995 little ironic because, in 2013, we proposed to divide this 70-acre parcel into two lots. A
996 split. It didn't require PB review. We had the approval and the support of both the Police
997 Chief and the Fire Chief at that time. I can produce those letters, if you like. The abutters
998 were against even that type of development. They didn't want the estate settled. They
999 didn't want to just divide the lot. Didn't want any residential there. So, this is the third
1000 proposal I brought to Ms. Berthiaume. Ms. Meyer brought up Kevin Hills. He's
1001 obviously a villain from Wells. No, he's a longtime client of mine. I've known Mr. Hills
1002 for 10 years. We've done some development in Wells. He's a respectable developer. He
1003 does own a piece of property on 12 Lobster Lane that's being assessed as a buildable lot
1004 and that's why he questioned the Town. Yes, and a court action. Just as Sam Crowell's
1005 lot has been assessed as a buildable lot. Since 1960 the Crowell's have been paying taxes
1006 on it. It's right on their tax record. You can look it up. It's assessed at \$189,000. Think of
1007 all the taxes he has been paying since 1960, which is 10 years before zoning came into
1008 Eliot. How else have we accommodated. Ms. Meyer knows I have supported her in two
1009 elections. I believe she does a wonderful job. I know when I have a question for Ms.
1010 Meyer, I can text her and get an answer right back, and I think she's represented Eliot
1011 well. But we've accommodated the Meyers by the logging trucks not going by their
1012 house. They are going over John Bartlett's property. So, there will be no logging trucks
1013 going by their house. That was another wish they had. I did encourage Mr. Kellar to meet
1014 with the Meyers early on. He did. He thought those meetings were favorable. I thought

1015 they went favorable. It's nice to say my neighbors have a 70-acre track but I'm not going
1016 to let them settle that estate. We're going to use it as a forest conserve. It's going to be a
1017 public park at the cost of Sam Crowell, Debbie Berthiaume, and everybody else who are
1018 paying for it. We've talked about the wetlands. We've talked about the habitat. I've given
1019 you my thoughts on Kevin Hill. I've given you my thoughts on fire and safety. This is an
1020 allowed use for a 70-acre parcel. We're putting panels on 16 acres of it, about 21% of it.
1021 The rest of it remains unfragmented forest. We've addressed the habitat issues and, again,
1022 as with any development, we work with IF&W to accommodate the habitat issues.
1023 But, in our mind, that doesn't mean you can prevent the Crowells from developing their
1024 parcel in accordance with Eliot's zoning ordinance.
1025

1026 Ms. Layman asked what the plan is for the surveys for the New England Cottontail.
1027

1028 Mr. Wood said that when we have a final plan that we send to the DEP, we meet with
1029 IF&W. We either meet with Derik Yorks or Cory Stearns and then we develop it. There's
1030 no known cottontail habitat out there.
1031

1032 Ms. Layman asked why they haven't been done since starting back in January.
1033

1034 Mr. Wood said that it was because we go to them with a plan, usually after the public
1035 hearing. IF&W, like any State agency, is a little overtaxed, a little overwhelmed. So,
1036 when we have a plan that we have taken through the public hearing stage, we meet with
1037 IF&W and say here are the concerns you put in the letters, the same thing we did with the
1038 Mike Estes business park on Route 236 that was reviewed and approved by this Board.
1039 It's in the same type of habitat. We provided habitat corridors and buffers. Nothing that
1040 we haven't provided before. As I said, there's no dishonesty. There's no hidden agenda.
1041 There's no inattention to detail. We have been accommodating habitat on our projects for
1042 33 years.
1043

1044 Ms. Berthiaume said that they talked a lot about the rabbits. It's been my understanding
1045 that the optimum time for the rabbits to occupy the land is within 25 years of when the
1046 land was last hayed. My father stopped haying that land in 1975. The latter part of
1047 after...it was around, or shortly thereafter 2005, which was 30 years since that land had
1048 been hayed. I went and walked the land with representative from Fish & Wildlife and we
1049 looked to see if there was any evidence at that time of rabbits. We found none. I have
1050 been contacted the last few years for permission to walk the land and look or I could deny
1051 them access. I did not. They have had ample opportunity to walk the land without
1052 restriction and I've heard nothing from the State regarding this. And I do want to remind
1053 you this is private property my family has owned since 1960. We should have the right to
1054 sell the land in a lawful way.
1055

1056 Ms. Braun said that I appreciate your comments. I would like to say at this time that any
1057 issues you have with settling the estate is really not the concern of this Board and I would
1058 appreciate that you understand that.
1059

1060 Ms. Berthiaume said that I do.

1061
1062 Ms. Braun said that, now that we've heard from everybody in the room, we will go to the
1063 Zoom folks.

1064
1065 Dr. Josh Crowell thanked the PB for the opportunity to speak. I grew up on that property
1066 for roughly 20 years. I'm very familiar with it, plus I spent the weekend reviewing the
1067 topography, looking at maps, collecting information, and speaking with the company. I
1068 just wanted to address some of the concerns from my point of view. I'm an economic and
1069 environmental geologist. The comments about the raised fences and the way that they
1070 have broken it up from being one solid spot in their new design. Yes, it's breaking up the
1071 forest but for a lot of the animals, especially the endangered animals that are being listed
1072 – butterflies, turtles, and rabbits – it is not breaking up their delineated travel. The small
1073 animals will still be able to pass through and reach the wet areas without hinderance. It's
1074 really only the large animals, like deer and wolves, that will be blocked by those fences
1075 and, of course, people. The vernal pool, I grew up and walked past that every day for 20
1076 years. I'm very familiar with it. It is very distinctly uphill from the development area.
1077 Groundwater and surface water do not flow uphill. I reviewed the maps to make sure my
1078 memory was correct. And so, development where they are talking about will not drain
1079 into or affect water flow into the vernal pool. The traffic, of course, would be a concern;
1080 that that was voiced and addressed, as they said the large vehicles would be done in the
1081 base property, not up and down Odiorne Lane. Regarding traffic on Odiorne Lane, I'm
1082 told it is restricted to two days a year after construction. Whereas, we've actually had
1083 logging done on that land before. There were heavy vehicles years and years ago. I
1084 wanted to remind everybody that Eliot is incredibly historic. To be incredibly historic
1085 means Eliot was the first at a whole bunch of stuff. Among the first of the towns settled
1086 in the Country. First town settled in the State. We housed the first person to invent
1087 electric light, way before Edison lived in Eliot. Eliot had among the first electric houses
1088 in the world. Doing more things as a first, or near first, in making history is part of what
1089 Eliot is. We don't only have to have old history. We can make new history and renewable
1090 energy ensures that we have an environment to protect down the road. We need to go
1091 beyond the next ten years and make sure that there is still forest and environment and
1092 protect 50 and 100 years from now so that other people can look back and say, "Look
1093 what Eliot did." It's part of Eliot's history. Thank you.

1094
1095 Ms. Braun thanked him for his comments.

1096
1097 Mr. Brubaker said that, with anyone else speaking, if you are livestreaming the meeting
1098 in the background, if you could mute the livestream while you're speaking, as we've had
1099 issues with echoing before.

1100
1101 Ms. (Christine) Bennett, Moses Gerrish Farmer Road, said that I was asked by the
1102 abutters to take a look at this application and the proposal because of my background. I
1103 was on the PB 5 years from 2014 to 2020. I was also on the Energy Committee from
1104 2013 to 2019, which is now the Capital Improvement Committee. During my time on that
1105 Committee, I was involved in the scoping, cost-benefit analysis, siting and construction
1106 of the Town's Ground Mounted Solar Array at the Transfer Station. That is a 134 KW

1107 system that, when you marry that up with the previous system that's on the DPW Garage,
1108 the Town of Eliot owns 174 KW of solar array in our community. It is providing 90% of
1109 our municipal energy at this time. We've been urges to be a good global citizen to
1110 embrace solar and do the right thing to address the climate crisis. The Town has already
1111 committed to doing that and I'm very proud of that. The other piece of why I was asked
1112 to take a look at this project is that I have 14 years of experience in land conservation
1113 working for the Great Works Regional Land Trust (GWRLT), the Kittery Land Trust,
1114 and the Mount Agamenticus to the Sea Conservation Initiative, which includes US Fish
1115 & Wildlife. I've worked with them very closely. Any conversation about conservation
1116 really should be something that strikes very early in the project, not at the end of the
1117 project. Solar and conservation is not often done together. This parcel, and this area of
1118 our Town, has a high degree of natural resources that are desirable for conservation and
1119 they have been desired and worked on being conserved for over 20 years. The Mount
1120 Agamenticus to the Sea Conservation area is the largest intact coastal forest land south of
1121 Acadia and north of _____ Pine Barrens. That's the abundant natural world. In this part
1122 of our Town is the largest unfragmented piece of forest that we have left. I'm going to
1123 keep my remarks mostly related to my experience with the PB. I'll start first with this
1124 solar array. This is a large-scale distributed commercial energy facility and the State of
1125 Maine is a leader in New England in allowing and promoting this type of renewable
1126 energy but it's new. The first large-scale array went online in 2018. There are 488 towns
1127 and 310 registered solar companies at this time. There will be more tomorrow, I'm sure.
1128 Proposals are appearing throughout the State. We know our neighbors, South Berwick,
1129 have five on the books. We've been made aware that not only this proposal was coming
1130 that is before us, there is another one and it's larger. All of this reminds me of, when I
1131 was on the PB, when adult use and medical marijuana came before us. It was a leader
1132 because of where we are so close to the NH and MA borders. At that time, we had our
1133 first proposal, the Chair at the time quickly tabled the proposal, refused to hear it, and we
1134 sought a moratorium from the SB. It was granted. We started to talk about what we
1135 wanted and what we might ask of our citizens because our ordinances come from
1136 citizens. It took a year and a half and, Madam Chair, you will remember some of the very
1137 detailed deliberations we went through before we decided to start to create an ordinance
1138 to address marijuana. I will argue, and it's not hard to do, that our ordinance is not a fit
1139 to deal with this application. In fact, the applicant said in his first presentation to the PB "*As*
1140 *some of you may understand or have heard, Maine has become a bit of an exciting place*
1141 *for not only marijuana but also for solar development so there's been quite a rush of new*
1142 *solar projects coming into the State.*" (6/22/21 Minutes p. 21) I don't envy you guys.
1143 Your Planner has done a great job at highlighting this in his planning memos. When I
1144 started to look at this, I just went to the bare bones of if I were on the PB. You do to your
1145 definitions and to what is in code. The only piece that we have on record for solar energy
1146 systems, §45-462, was ratified by the citizens in 2008 in response to our Comprehensive
1147 Plan. That was envisioning solely residential rooftop systems and also small wind. I don't
1148 believe a commercial energy facility is consistent with the definition of our rural
1149 residential zone. Nor do I think it would be more consistent with the prohibited use that
1150 appears in §45-290, our Table of Land Uses. Just to remind you that our Rural District is
1151 §45-286 to provide low density, rural housing and "*to protect (this area) from suburban*
1152 *development pressures, agricultural and forest land capable of economic production, so*

1153 *as to safeguard this sector of the town's economic base and to avoid the irretrievable loss*
1154 *of land well-suited for food and fiber production; and to help maintain the essentially*
1155 *rural and the open character of the district.”* I do not think that what is proposed is
1156 consistent with that purpose of our Rural District. As Representative Meyer also stated,
1157 there is a recent statute – LD936 – that was passed and signed by the Governor, that is
1158 being identified for suggested changes to be taken up by the legislature in their next
1159 session. Specifically, it describes the method of limiting impacts by locating them “*on*
1160 *previously developed or impacted land, including areas (already) covered by impervious*
1161 *surfaces, reclaimed gravel pits, capped landfills or brownfield sites.”* I predict that when
1162 the legislature does come back together, there will be more guidance to direct towns to
1163 site these in those types of land uses. If I were in your shoes...now the horse is out of the
1164 barn, here. You are hearing this application. You are doing site plan review. I would
1165 make a motion to deny the request for this change of use at this time and seek a
1166 moratorium so that you have the opportunity to research ordinances in other towns. There
1167 are 16 towns that have installed these types of systems. They have well-fleshed out
1168 ordinances about what is a residential size, scale, and type. Is it large scale. Is it a utility
1169 scale. Where those can be. Should they be on prime farmland soils. There are ordinances
1170 that include a decommissioning plan, and the bonding. All of these questions that are
1171 coming out exist in other towns’ ordinances that would help you and you don’t have at
1172 this time. And you need to have the citizens weigh in on this. I have solar. I installed a
1173 residential solar system on my own home in 2016. In listening to these meetings and this
1174 hearing, people have become aware that there are really only two substations in the Town
1175 of Eliot and there is one that would service this proposal. I believe that at the last
1176 Conservation Commission meeting, the applicant indicated that there are about 10
1177 megawatts of capacity in that system right now and their proposal is 2 megawatts. There
1178 is already a 5-megawatt registered with the State. That’s why they’re saying not to worry,
1179 that there would only be 2 to 3 arrays in Town. That’s all you have to worry about. One
1180 of the things I think the PB needs to think about is that infrastructure that’s in our Town
1181 because we’ve become aware that it would be \$5 to \$10 million dollars to upgrade a
1182 substation. If you go forward with very little guidance and just go with a technical review
1183 to figure out that particular proposal, will you be crowding out the potential for future
1184 residential solar. What if the Town wants to upgrade the Town Hall and start to upgrade
1185 our own array if we allow three commercial installations to go in Town, and they’re
1186 probably going to come pretty darn quickly before all the rules coalesce at the State level
1187 for guidance. You run the risk of crowding out other uses. I would say get the ordinance
1188 in place like we did with marijuana before you go forward with these large-scale
1189 commercial arrays. I think with a moratorium or tabling of this proposal that would allow
1190 you to step back at the 10,000-foot view and have those conversations about where and
1191 how much and what. Consistency with the Comprehensive Plan is your next step if you
1192 don’t have the ordinance and I don’t actually think that this is consistent with our current,
1193 though dated, Comprehensive Plan. I won’t go much more into the Comprehensive Plan.
1194 I’m actually speaking from a powerpoint that I would be happy to share with you, if you
1195 like. I believe that Mr. Kellar had cited our Comprehensive Plan in the piece where we
1196 did a survey. Citizens did want to, asked about the importance of using tax dollars, they
1197 did prioritize using tax dollars for electrical energy derived only from renewable sources.
1198 And I have to say that, when we go back to the Comprehensive Plan, we can check that

1199 one off because we have dedicated tax dollars to getting at least 90% of the electrical
1200 energy for the municipal side of our Town from renewable resources. Representative
1201 Meyer also made a point about some specifics in your review and about application
1202 completeness. That was one of the things I noticed as I started reviewing the meetings;
1203 that Kevin Hill and SOW, Inc. have a legal contract with Debbie Berthiaume. So, in my
1204 mind, Mr. Hill has legal standing in our ordinance. Now, Mr. Kellar came in with a letter
1205 he wrote that says he has a relationship with Mr. Hill and I have two LLCs and I have a
1206 lease. I don't think the actual applicant, Mr. Kellar, has established standing without
1207 actually providing you a lease. Typically, when someone comes in renting a commercial
1208 building on Route 236, the PB asks to see the lease and the deed so you can check to see
1209 if there are any restrictions on it and then you can see what the leaseholder's standing is;
1210 what rights they have to propose something to you. This is something I am sure the
1211 applicant can provide easily. It's an I you need to dot and a T you need to cross. The
1212 applicant also started off by talking about all these benefits of the project for the citizens
1213 of Eliot and those are all now in the public record. I think you need to sit back and
1214 discuss the public benefits in the public record of this project. They talked about that they
1215 were going to upgrade the grid. Well, they are going to upgrade a number of feet of
1216 wiring and the transformer. The substation is not going to get touched. They suggested
1217 they might make a payment in lieu of taxes and I know that, at least for residential solar
1218 panels, those are exempt from property tax. These may be exempt from property tax, as
1219 well. I don't know but that is a question you should ask. There may not be any actual tax
1220 benefit for this change of land use from an undeveloped, rural, residential piece of
1221 property to a commercial adventure. It's just a possibility and why did they float a
1222 possibility of making a payment in lieu of taxes. And he talked about the opportunity for
1223 the schools to engage in science and math and sustainability with the solar array. That can
1224 already happen by tapping into the inverter data that we have, minute-by-minute, from
1225 our own arrays. And then there was the opportunity for the Town and the citizens to
1226 subscribe into this LLC to obtain their electricity at a lower rate and it would be
1227 renewable. That's all great but I think every one of us has gotten a million pieces of mail
1228 from different offers from other solar providers through the State. This array is not going
1229 to be limiting its subscribers to the citizens of the Town of Eliot. It will be offered to
1230 anyone serviced by CMP. So, I just wanted to put that forward but I think it's important
1231 to always discuss what the benefits of a project are along with the possible concerns.
1232 That's the last of my comments for this. I thank you for your service. I know how
1233 difficult it is. I hope you proceed with caution, if you proceed. But again, I would urge
1234 you to table this until you have the time to carefully craft the ordinance and get it ratified
1235 by the citizens before you move forward on such a new and large-scale project.

1236
1237 Ms. Braun thanked her for her comments. She asked if Mr. Sudak wanted to respond.

1238
1239 Mr. Sudak deferred to Mr. Kellar for this.

1240
1241 Mr. Kellar thanked Ms. Bennett for all her comments. They were definitely well-
1242 researched in some ways but there are some mistakes in some of your comments. I just
1243 want the PB to understand. Her comment about a 5-megawatt project ahead of us, I think,
1244 on the substation was incorrect. We are that 5-megawatt project, which I shared with the

1245 PB at our last meeting and on the website that we put up. That was the size of the system
1246 before the State put this change of legislation that they are referring to – LD936. And
1247 there's just one other project that may come in. Right now, it's listed as a larger 3-
1248 megawatt project but they submitted after our application; so, you couldn't be
1249 grandfathered based on the way the rules are written. You have one project that is in front
1250 of you now. There is another application for a second project that is submitted to CMP
1251 but they haven't started their study, yet. We have to sign our final paperwork, which was
1252 just received recently; that they had to do the re-study on the smaller system size. So, that
1253 was misinformation, Ms. Bennett, and I wanted to make sure that you are aware. As it
1254 relates to the substation, all of my comments that I brought to the PB are still true and
1255 accurate. If you go to a certain size number of megawatts, you will trigger a substation
1256 upgrade and that is between \$6 and \$10 million dollars. No question about that. The
1257 inconsistency in that statement, though, is that this doesn't affect the Town's ability, as
1258 Ms. Bennett has pointed out, already 90% of the Town's needs have been covered so
1259 you're only at 10% more. So, 10% more of 170 KW is only 17 KW more of solar. So, the
1260 way that utilities look at those type of residential applications is, I don't want to say it's
1261 not important, it is, but when you get into the line impacts and how you as Mrs. Smith
1262 wants to put solar on Main Street who wants to put solar on her roof, you aren't going to
1263 affect that. If the Town wants to put in a ½ a megawatt project and the lines are maxed
1264 out, yes, that might trigger that substation upgrade. But it doesn't have an impact on some
1265 of the residential and smaller applications, or the Town usages. I want to make that clear.
1266 Back to the new law, the point of the LD936 was to put a halt on those large-scale
1267 projects. There was a lot of projects that were coming into the State of Maine. The
1268 legislators had to make a decision between the ratepayers and the developers, and they
1269 chose the ratepayers. We didn't like it but, it is what it is, and we can understand why
1270 they made that decision. So, the information around that is that it allowed if you made
1271 your project below a certain size, it was...I can't really interpret it exactly what the
1272 legislators wanted to do...but it was a way for the industry to slow things down and not
1273 have this such large impact that was becoming a concern across the State. We're aware of
1274 it. We've adjusted our system size. We went through the CMP re-study. We've done
1275 everything according to the letter of the law. I just wanted to be clear on some of those
1276 details because it felt like some of the information that was shared, Ms. Bennett, was a
1277 little bit misleading as to the impacts of our project and what is going on at the substation
1278 level and how that could affect future projects in the community. I just wanted to make
1279 sure the PB was clear, and there is supporting data that we provided. I think that was the
1280 only thing I really wanted to bring up.

1281
1282 Ms. Bennett said that I was just talking in hypotheticals, you know. You had mentioned
1283 that there was another proposal. It's the hypothetical that this PB needs to plan for, that
1284 you won't be the only solar proposal that will come before this PB so they need to
1285 consider that.

1286
1287 Mr. Kellar said that, actually on that point, that's misleading as well because part of this
1288 LB936 was to limit and put a pause until the legislators could come back together to
1289 understand what the future program might look like. I don't know how much experience
1290 you have in other markets with solar. It sounds like you have some good solar experience

1291 but, from a developer perspective, if you look at other states around us, when you go into
1292 a phase, or it's called a version 2.0 program, first off, the incentives do not go up. The
1293 timeline it takes to get the next project rolled out, sometimes takes years, and the solar
1294 industry will move to different markets where there is an opportunity to get these projects
1295 built in different communities. I think it's very misleading what you're sharing that
1296 there's going to be this gold rush of more projects coming into your Town when, for a \$6
1297 to \$10 million dollar upgrade cost to be supported by a project, you would have to
1298 probably have like a 20-megawatt solar project, which would encompass about 100 acres
1299 of land. What I've shared with the PB and on our website is that, currently, based on the
1300 physical aspects of land around Eliot (we reviewed all the parcels of land) there are only
1301 6 parcels that I could come up with that I would, just purely at the high level, say that
1302 those are good solar sites and none of those were 100 acres.

1303
1304 At this time, there was some cross talk and Ms. Braun brought the meeting back to order.
1305

1306 Ms. Kellar reiterated that all I was saying is that your information was misleading
1307 because the facts that you are stating are not necessarily true. And I felt it was important
1308 for the PB to understand some of these physical issues. What I feel was misleading is that
1309 you could have this gold rush of a solar project on every single piece of land but there
1310 aren't that many. We've evaluated, we've researched, we know the substation can be
1311 impacted by. So, I think that's important for you all to know that that's a concern and we
1312 addressed it, we looked at it. This isn't going to be 100 solar farms in every corner of
1313 your Town. Thank you.

1314
1315 Ms. Braun said that, if Ms. Bennett wished to respond, she may.
1316

1317 Ms. Bennett said thank you, Madam Chair. I really appreciate that. I don't want to argue
1318 specifics about the solar industry. More than anything else, I just wanted to caution this
1319 Board and remind you that you do not have to approve everything that comes before you.
1320 The climate crisis is real. Our community has already made a commitment to address it.
1321 But just because this property is an easy fit for this applicant does not mean it's the right
1322 place and the right fit for a land use. I really do think you should give some thought and
1323 take the time to create an ordinance that could be proactive instead of being reactive.
1324 Thanks.

1325
1326 Ms. Braun asked if there was anybody who wished to speak that has not spoken.
1327

1328 Ms. Metz said that there was no one left.
1329

1330 Ms. Braun asked if Mr. Wood wished to speak.
1331

1332 Mr. Wood said that, in closing, when we looked at this project, I believe Eliot's
1333 ordinance was the same as Berwick's ordinance, and we have another solar project in
1334 Berwick that is being found complete. It's moving ahead just like this so I don't think
1335 we're asking the PB to do anything that's cutting edge or is in contrast to our ordinance
1336 when the Town of Berwick is doing the same thing. And the ordinances read the same. I

1337 want to thank you for your time. Thank you for listening to both sides, holding a public
1338 hearing, and evaluating everything you've heard. Thank you.

1339
1340 Ms. Braun thanked Mr. Wood.

1341
1342 Mr. Meyer said that he had a quick question for Mr. Wood. You brought up the Town of
1343 Berwick. Could we also talk about what's going on in the Town of South Berwick where
1344 they recently put a moratorium on this.

1345
1346 Mr. Wood said that we could. I don't believe that's a topic for this meeting and we're not
1347 doing a project in the Town of South Berwick.

1348
1349 Ms. Braun said to Mr. Meyer that it's not really the purview of this PB on what goes on
1350 in other towns.

1351
1352 Mr. Meyer said exactly but Mr. Wood brought up Berwick.

1353
1354 Ms. Braun said that we didn't discuss it and it's not a topic for this meeting.

1355
1356 Mr. Meyer apologized.

1357
1358 Ms. Braun said that I am going to close the public hearing.

1359
1360 **9:18 PM Public Hearing closed and a five-minute recess was called.**

1361
1362 **9:23 PM The Chair called the meeting back to order.**

1363
1364 Ms. Braun asked if Mr. Sudak had any updates in terms of the DEP progress.

1365
1366 Mr. Sudak said yes. We are in continued conversations with the State. I've had my rehash
1367 with **Alison Seroy**, now that we are into the next leg of the process. We've reached out to
1368 the species experts from MDIF&W. I think Mr. Kellar mentioned Cory Stearns for the
1369 New England Cottontail. Actually, for the record, I forgot to bring that up earlier. The
1370 window for a survey shouldn't be deemed necessary is for snowfall for New England
1371 Cottontails. That's the optimal time to determine if they are in the area. So, it's two
1372 separate surveys, both immediately following a fresh snowfall and I believe I brought that
1373 up at the last PB meeting. I reached out to Derik Yorks, who is the reptile expert. So, just
1374 continuing those conversations and, I think as Mr. Wood alluded to, making any
1375 modifications we need to accommodate the habitat of those animals. As I demonstrated
1376 early on tonight, this is a work in progress. We know we're going to have to iterate. We
1377 appreciate all the comments here. We're going to iterate some more from all that
1378 feedback. I don't have anything else to add, really.

1379
1380 Ms. Braun asked if Mr. Brubaker had anything to add based on what we heard tonight.

1381

1382 Mr. Brubaker said that there were several. I do want to continue to recommend that third-
1383 party review and that would entail the continuance of the item. I think we're already
1384 headed towards not making a decision tonight.

1385
1386 Ms. Braun asked if he had a template for that motion.

1387
1388 Mr. Brubaker said that I think I did in my memo on the 5th and I can bring that up or read
1389 from it.

1390
1391 Ms. Braun said to Mr. Sudak that what we're going to do, as we discussed before, is have
1392 an independent third party come in to evaluate.

1393
1394 Mr. Sudak said yes.

1395
1396 Ms. Braun said that the Chair will accept a motion.

1397
1398 Mr. Brubaker read the motion template from his October 5 memo.

1399
1400 Mr. Sudak suggested an amendment. Ms. Moore (ECC) suggested that having a biologist
1401 on board, as well, would be appropriate for what we're proposing to do with this
1402 development. Also, to make sure it is on the record, to make sure that the entity chosen is
1403 a subject matter expert not only in stormwater analysis but in solar development.

1404
1405 Ms. Braun asked if we are talking about two separate consultants, one being a biologist,
1406 or the team consisting of a biologist.

1407
1408 Mr. Sudak said that that was a great question. If you can find one that is all under one hat.

1409
1410 Ms. Braun said that it may not be option A, it might be option B.

1411
1412 Mr. Brubaker said that there is nothing in our code that states it has to be one firm. What
1413 you often see is one firm with a sub-consultant.

1414
1415 Ms. Moore said that I think, in light of this potential change in their site layout, it should
1416 be a little broader for that wetland scientist or biologist because we don't know what's
1417 going to happen now – how that new plan is going to fragment that habitat.

1418
1419 Mr. Brubaker agreed with that change and would recommend that the biologist review
1420 the new plan impacts. The biologist could review the current plans as well as the
1421 alternative proposal.

1422
1423 Ms. Crichton asked, if we go ahead and make this motion, and we're not really sure how
1424 we want to go with this – if we want to table or deny or...does that interfere with that. Is
1425 that too soon.

1426

1427 Ms. Braun said that we have until December 5th to make the decision because the clock is
1428 ticking. That was what we decided on; that we would hold the Public Hearing, let the
1429 clock tick, give them a chance to hear from the DEP for us to gather more information,
1430 and then make our decision.

1431
1432 Mr. Brubaker said that there is nothing in §33-128, that specifies this technical
1433 consultant, that would prevent the PB from making a decision. It is just more for
1434 informing the decision.

1435
1436 Mr. Latter asked if that would include the decision to table this, if that is something we
1437 choose to do.

1438
1439 Ms. Crichton said that that was what I was asking.

1440
1441 Mr. Brubaker said let's talk about tabling. Procedurally, what I interpret the suggestion to
1442 table would mean would be a suggestion to disapprove or deny a permit. The PB either
1443 has to approve, approve with conditions (which we almost always do), or deny. There is
1444 no indefinite tabling motion set forth in our code. So, I interpret the suggestion tonight to
1445 table to mean a suggestion for the permit to be denied while the Town can then proceed
1446 with either a moratorium and/or the crafting of more detailed ordinances addressing these
1447 types of facilities. That's not to recommend any one thing or the other but just to clarify
1448 what tabling is. That's not to say that it can't be continued; that we are familiar with the
1449 continuance provisions.

1450
1451 **Ms. Braun moved, second by Mr. Latter, that the Planning Board hire a technical**
1452 **consultant to serve as a third-party reviewer of the application. The scope to cover:**
1453 **1. Review of proposed stormwater features and HydroCAD modeling results of**
1454 **both the old and the new project;**
1455 **2. Qualitative review of the potential impacts of the forested to wet-meadow**
1456 **wetland conversion in relation to the preservation of landscape standard §45-**
1457 **413, including habitat and forest corridors;**
1458 **3. Qualitative review of significant vernal pool impacts in relation to the**
1459 **preservation of landscape standard §45-413 and DEP regulations (see §45-7**
1460 **regarding compliance with other regulations). Applicant has already**
1461 **addressed the 75% habitat protection standard and another standard states**
1462 **“maintain or restore forest corridors connecting wetlands and significant**
1463 **vernal pools.”;**
1464 **4. Have a biologist on board to review both the old and the new project and**
1465 **advise to all impacts.**

1466
1467 DISCUSSION:

1468
1469 Ms. Crichton said that I am confused how we get to a moratorium so that we can
1470 welcome the Town in to this vote. I guess I'm confused as to when we say we'd like to
1471 have a moratorium. When is that point.

1472

1473 Ms. Braun said that I would say that that would come at the end of the application, Mr.
1474 Brubaker.

1475
1476 Mr. Brubaker said that I talked with our attorney about what moratoriums mean. He said
1477 that there is clear precedent for establishing moratoriums for Maine communities. There
1478 is a specific enabling statute in State statutes that describes and limits the types of
1479 moratoria that can be in place. As long as communities stay within that statute, their
1480 moratoria are on more legally-solid ground. Moratoria have to be adopted by a vote of the
1481 Town, in this case, so it can't be the SB starting the moratorium. If the voters pass a
1482 moratorium and that time is usually 180 days, the SB then, by itself, vote to extend that
1483 another 180 days. But the moratorium has to be established by the voters. And there has
1484 to be a necessity behind a moratorium and one of those necessities could be something
1485 like: The Town doesn't have very specific land use regulations. We need time to craft
1486 that, as has been brought up for the marijuana a few years ago. So, that's that. However,
1487 this particular application is still active and so I want to make sure that there is still focus
1488 on reviewing this particular application.

1489
1490 Ms. Braun asked if that answered Ms. Crichton's question.

1491
1492 Ms. Crichton said, so, later.

1493
1494 Ms. Braun said that this application is active so we do have to continue with it.

1495
1496 Mr. Brubaker said that communities have enacted moratoria that apply to pending
1497 proceedings of development applications. But the timing question, should the Town want
1498 to go with a moratorium, is when is the next Town election. The next Town election to
1499 get on the ballot is June unless the Town were to hold a Special Election.

1500
1501 DISCUSSION ENDED

1502
1503 **VOTE:**

1504
1505 **Ms. Braun – Yes**
1506 **Mr. Leathe – No**
1507 **Ms. Crichton – No**
1508 **Mr. Latter - No**

1509
1510 **Motion fails**

1511
1512 Ms. Braun said that the motion does not pass. What is the next step.

1513
1514 Mr. Brubaker said that you can still continue with the review, even without the benefit of
1515 a technical consultant. My recommendation - you've heard a lot from the people who
1516 made public comments, from abutters and others; that there was a lot of information to
1517 digest. You've heard from the applicant, their response, you saw an alternative proposal
1518 from the applicant. You heard Ms. Moore talk about the ECC review. So, I would say

1519 that it would still be prudent, from my perspective, to have a motion to continue the item
1520 so that there's more time to review the information. There's more time to review the
1521 alternative proposal and to think about public comments that were made.

1522
1523 Ms. Braun asked where the continuance would fit in terms of time, with the clock ticking
1524 towards December.

1525
1526 Mr. Brubaker said that we should skip the October 19th meeting. Logistically, it's too
1527 quick. We would request there not be a meeting on November 2nd because that would be
1528 election night. So, the next meeting would be November 9th and my recommendation
1529 would be to continue it to November 9th.

1530
1531 Ms. Braun said that that still leaves us with a whole bunch of information that we haven't
1532 utilized about having the technical.

1533
1534 Mr. Brubaker said that we will do our best. One of the tough things about this is that we
1535 don't have the benefit of as lot of DEP information. Maybe there could be some more
1536 information forthcoming from the DEP.

1537
1538 Ms. Braun asked if the DEP could give the applicant a brief summary of their progress
1539 to-date.

1540
1541 Mr. Sudak said that I can't speak to that.

1542
1543 Mr. Wood said that the usually don't, Madam Chair.

1544
1545 Ms. Braun said that we need a motion to continue.

1546
1547 Mr. Brubaker said that it's up to the PB but that would be my recommendation.

1548
1549 Ms. Crichton said that I don't know what that means, just to continue on with what we're
1550 doing now.

1551
1552 Ms. Braun said, without the technical assistance, yes. We can't get the information from
1553 the DEP because of their time constraints and staffing concerns. We have to get it from
1554 somewhere and they are amenable to a technical consultant.

1555
1556 Mr. Wood said that you may be able to get some information from the DEP. Usually,
1557 they don't give an opinion but I'm sure that if the Planner called up the project reviewer,
1558 she would tell Mr. Brubaker where the DEP stood. They don't usually give you a written
1559 summary of their progress but I'm sure they'd have a conversation.

1560
1561 Ms. Crichton said that you have been re-graded as far as Tiers go, Mr. Sudak, with the
1562 DEP. What Tier are you now.

1563

1564 Mr. Sudak said that in the alternative that we proposed tonight, after listening to Town
1565 and ECC concerns, we would be un-tiered. Our wetland impact is zero. We would still be
1566 working with the NRPA for our Permit-by-Rule for the vernal pool that we've discussed.
1567 But, as far as a full NRPA Permit for wetland impacts, we no longer have any in that
1568 iteration.

1569
1570 Ms. Crichton asked if the DEP knows that.

1571
1572 Mr. Sudak said no. It was worked on over the weekend after comments from the ECC
1573 meeting last week and the PB meeting from last week.

1574
1575 Mr. Wood said that our usual process is to submit to the DEP after we have public
1576 comments because we realize that the plan is going to change. So, after we have public
1577 comments, we usually revise the plan and that's the plan that we file for either
1578 stormwater or NRPA, which are the wetland impacts, with the State.

1579
1580 Ms. Crichton asked if, on your new plan, that includes the stream you omitted from the
1581 original plans.

1582
1583 Mr. Sudak clarified the water course to the York River.

1584
1585 Ms. Crichton said yes.

1586
1587 Mr. Sudak said that it includes staying out of it, as we have proposed, yes.

1588
1589 Ms. Crichton asked if it was on the plan now.

1590
1591 Mr. Sudak said yes.

1592
1593 Ms. Braun asked what the PB members wanted to do. Let's talk about it.

1594
1595 Mr. Leathe said that I will go on the record and would even make a motion that we deny
1596 the application. Regarding the rationale, I think that both sides did a tremendous job
1597 presenting information throughout the whole process. Going back several years, when the
1598 whole marijuana discussion came up, I keep hearing echoes of that in my brain. We
1599 didn't really know a whole lot about marijuana and retail and medicinal and all the
1600 various laws and rules and impacts and odor, and on and on and on. When I think about
1601 how the PB, when Denny Lentz was Chair in those days, how the PB reacted to that, they
1602 just sort of put the brakes on and they said that we don't have ordinances, as Mr. Wood
1603 mentioned. You have 6,000+ projects should follow the rules and we've had rules to
1604 follow. We don't have the rules to follow in relationship to commercial solar array
1605 installations. We don't have the rules to follow at the level of environmental impact and
1606 natural resource protection and conservation that would be indicated in our
1607 Comprehensive Plan and the rules around our Rural District. So, my sense is that we have
1608 precedent here, as a PB, to step back to make sure that the ordinances are in place that we
1609 need. This is not the only commercial solar array application that's going to happen in

1610 this area, by any means. Our sister town, whether you want to talk about it or not, has put
1611 a moratorium in place for a similar rationale. The reality here is that I am bound, as a PB
1612 member, to rules that we have and I don't think I can make a decision on rules that we
1613 don't have. I feel like we need to take the time and do this right and I think the
1614 Townspeople need to be part of this.

1615
1616 Ms. Braun said that I agree. Our ordinances don't give us enough information to have any
1617 guidance.

1618
1619 **Mr. Leathe moved, second by Ms. Crichton, that the Planning Board deny the**
1620 **application.**

1621
1622 DISCUSSION

1623
1624 Mr. Brubaker said that I would just recommend that any motion to deny, and perhaps this
1625 reflects what you just said, but in a motion to deny you should enumerate the reasons for
1626 that. You premised your motion with reasons but it wasn't clear that your motion, itself,
1627 had those reasons. I would want that to be crystal clear.

1628
1629 DISCUSSION ENDED AND AMENDED MOTION MADE

1630
1631 **Mr. Leathe moved, second by Ms. Crichton, that the Planning Board deny this**
1632 **application based on the fact that we need to have the Town participate in this**
1633 **discussion and that we need to review internally what other towns are doing to put**
1634 **ordinances in place that would allow us to effectively manage, monitor, research,**
1635 **understand, and approve these types of installations in the future.**

1636
1637 **VOTE:**

1638
1639 **Ms. Braun – Yes**
1640 **Mr. Leathe – Yes**
1641 **Ms. Crichton – Yes**
1642 **Mr. Latter - Yes**

1643
1644 **Motion approved and application**
1645 **denied.**

1646
1647 NOTE: Mr. Latter was concerned if these reasons are valid and would hold up for refusal
1648 of the motion. The Planner said that that was tough to answer on the spot. Any motion
1649 should be based on tangible evidence. It should be reasonable, logical, and related to the
1650 codes.

1651
1652 Mr. Wood asked if that is based on the fact that it's not an allowed use. I've never seen
1653 this before. The application was found complete and we had the Public Hearing. So, does
1654 it not meet the ordinance or the ordinance doesn't define the project.

1655

1656 Ms. Braun said that the ordinance did not give us enough definition, as to what the
1657 project is. We are not experts in this field and we don't have any performance standards
1658 and/or ordinances to go by. So, based upon that, we felt it would be necessary for denial.
1659 We have denied the application. It can be appealed within a 30-day period
1660

1661 **ITEM 8 – OLD BUSINESS**

1662
1663 There was no old business discussed.
1664

1665 **ITEM 9 – NEW BUSINESS**

1666
1667 Mr. Brubaker said that there was a place holder for Open Administrative Discussion but
1668 it is getting late.
1669

1670 **ITEM 10 – CORRESPONDENCE**

1671
1672 There was no correspondence.
1673

1674 **ITEM 11 – SET AGENDA AND DATE FOR NEXT MEETING**

1675
1676 The next regular Planning Board Meeting is scheduled for October 19, 2021 at 7PM.
1677

1678 **ITEM 13 – ADJOURN**

1679
1680 The meeting was adjourned by the Chair at 9:52 PM.
1681
1682
1683
1684

1685 _____
1686 **Lissa Crichton, Secretary**
1687 **Date approved:** _____

1688
1689 **Respectfully submitted,**

1690
1691 **Ellen Lemire, Recording Secretary**
1692
1693
1694
1695
1696
1697

TOWN OF ELIOT, MAINE

PLANNING BOARD NOTICE OF DECISION

CASE #: PB21-16 - SITE PLAN REVIEW	MAP/LOT: 83/2	DATE OF DECISION: 10-12-2021
APPLICATION/CHANGE OF USE – PUBLIC	0 ODIORNE LANE	
UTILITY FACILITY GROUND-MOUNTED SOLAR		
ARRAY		

10/30/2021

DRAFT

Crowell, Lillian H. HRS or DEV
c/o Debra Berthiaume
432 Goodwin Road
Eliot, ME 03903

NH Solar Garden
ATTN: Andrew Kellar
43 Holmes Court
Portsmouth, NH 03801

Attar Engineering, Inc.
ATTN: Michael Sudak, E.I.T.
1284 State Road
Eliot, ME 03903

To: Debra Berthiaume
Andrew Kellar
Michael Sudak

This letter is to inform you that the Planning Board has acted on your **application for site plan review and change of use to Public Utility Facility (Ground-mounted Solar Array)** as follows:

APPLICATION DOCUMENTS AND SUPPORTING MATERIAL SUBMITTED:

Submitted for June 22, 2021:

1. Site Plan Review application (sketch) to prepare for site plan review and change of use, received May 4, 2021:
 - a) Cover letter from Michael Sudak, E.I.T., of Attar Engineering, Inc.
 - b) Engineer of Record: Michael Sudak, E.I.T., Attar Engineering, Inc.
 - c) Photos showing an example of the proposed project.
 - d) Letter of Authorization from Andrew Kellar to allow Ken Wood, P.E. and Michael Sudak, E.I.T. of Attar Engineering to act as his agents for this project, dated May 4, 2021.
 - e) Sheet 1 - Sketch Plan, drawn by Attar Engineering, Inc., dated May 3, 2021.
 - f) Abutters List Report, dated May 4, 2021.
 - g) USGS Location Map dated May 3, 2021.
 - h) Mortgage Deed, Book 11419, Page 560, registered at the York County Registry of Deeds, August 23, 1960.
2. Memo from Jeff Brubaker, Town Planner, dated June 16, 2021.
3. Location map showing district overlays, dated June 16, 2021.
4. Agreement for Purchase & Sale between SOW Solar, Inc. and Deborah Berthiaume, Personal Representative of the Estate of Lillian H. Crowell, dated May 13, 2021.

5. Letter from Andrew Kellar stating that NH Solar Garden is the developer of record that owns the project-level LLC – Odiome Lane Solar, LLC - 100%, and has a land lease with Kevin Hill, dated June 15, 2021.
6. Review Letter 1 from the Town Planner to Michael Sudak, dated May 25, 2021.
7. Project narrative response from Michael Sudak to Review Letter 1, dated May 27, 2021.
8. Follow-up comments from the Town Planner to Michael Sudak, dated June 1, 2021.

Submitted for August 3, 2021:

1. Site Plan Application documents, dated July 21, 2021:
 - a) Cover letter from Michael Sudak, E.I.T., Attar Engineering, Inc.
 - b) Application for Site Plan Review.
 - c) Site Plan Review Submissions Checklist.
 - d) Letter of Authorization from Andrew Kellar to allow Ken Wood, P.E. and Michael Sudak, E.I.T. of Attar Engineering to act as his agents for this project, dated May 4, 2021.
 - e) Warranty Deed, Book 1419, Page 560, registered at the York County Registry of Deeds, dated August 23, 1960.
 - f) Agreement for Purchase & Sale between SOW Solar, Inc. and Deborah Berthiaume, Personal Representative of the Estate of Lillian H. Crowell, dated May 13, 2021.
 - g) USGS Location Map.
 - h) Abutters List Report.
2. Site Plan Sheets Set, revised August 3, 2021:
 - a) Sheet 1 of 3 – Standard Boundary Survey, drawn by Easterly Surveying, Inc., dated April 18, 2008.
 - b) Sheet 2 of 3 – Standard Boundary Survey, drawn by Easterly Surveying, Inc., dated April 18, 2008.
 - c) Sheet 3 of 3 – Standard Boundary Survey, drawn by Easterly Surveying, Inc., dated April 18, 2008.
 - d) Sheet 1 of 6 – Overall Site Plan, drawn by Attar Engineering, Inc., dated July 7, 2021.
 - e) Sheet 2 of 6 – Grading and Utilities Plan, drawn by Attar Engineering, Inc., dated July 7, 2021.
 - f) Sheet 3 of 6 – Erosion & Sedimentation Control Plan, drawn by Attar Engineering, Inc., dated July 7, 2021.
 - g) Sheet 4 of 6 – Solar Development Details, drawn by Attar Engineering, Inc., dated July 7, 2021.
 - h) Sheet 5 of 6 – Stormwater: Existing Conditions, drawn by Attar Engineering, Inc., dated July 7, 2021.
 - i) Sheet 6 of 6 – Stormwater: Developed Conditions, drawn by Attar Engineering, Inc., dated July 7, 2021.
3. Letter from Joseph Noel, Certified Soil Scientist, re: vernal pool survey and wetland delineation, dated June 14, 2021.
4. FAA Notice Criteria Tool results.
5. Stormwater modeling results (HydroCAD), dated July 21, 2021.
6. Stormwater Management Plan, dated July 21, 2021.
7. Operation and Maintenance Program for Stormwater BMPs, dated July 21, 2021.
8. Memo from Jeff Brubaker, Town Planner, dated July 29, 2021.

Submitted for August 24, 2021:

1. Memo from Jeff Brubaker, Town Planner, dated August 18, 2021.
2. Site Walk Notice to the Town of Eliot, dated August 12, 2021
3. Response letter to ECC comment letter from Mr. Sudak, dated August 24, 2021.
4. 500-foot Abutters List Report, dated August 10, 2021.
5. Copies of Sheets 1-3, Boundary Surveys.

Submitted for September 21, 2021:

1. Memo from Jeff Brubaker, Town Planner, dated September 15, 2021.
2. Notice of Site Walk, published in The Weekly Sentinel, dated September 10, 2021.
3. Site Walk Notice to the Town of Eliot, dated September 10, 2021.
4. 500-foot Abutters List Report.
5. Letter from Mr. Sudak to Town Planner, re: Completeness Revisions, dated September 15, 2021.

6. USGS Map showing off-site vernal pool location, dated September 14, 2021.
7. Email correspondence between Mr. Sudak and Mr. Noel, dated September 7, 2021.
8. RBI Solar Fixed Tilt Pull Testing Procedure Document.
9. Planning Board Frequently Asked Questions document, 2021, from NH Solar Garden.
10. EPA Greenhouse Gas Equivalencies Calculator document, dated March 2021.
11. Revised Sheet 2 - Grading & Utilities Plan (New Notes #16 - #19).

Submitted for October 5, 2021:

1. Supplemental Memo from Jeff Brubaker, Town Planner, regarding Review Considerations, dated October 1, 2021.
2. Memo from Mr. Sudak regarding Approval Workshop #1, Site Plan Review, dated September 29, 2021.

Submitted for October 12, 2021:

1. Memo from Jeff Brubaker, Town Planner, dated October 6, 2021.
2. Public Hearing Notice to the Town of Eliot, dated October 1, 2021.
3. Public Hearing Notice, published in The Weekly Sentinel on October 1, 2021.
4. 500-foot Abutters List Report, dated October 5, 2021.
5. Test Pit Data from Michael Cuomo, Soil Scientist, dated October 1, 2021.
6. Revised Sheet 2 – Grading & Utilities Plan.
7. Eliot Planning Board Memo from NH Solar Garden, Solar Ordinance & Moratorium Analysis.
8. Following documents submitted by Mr. and Mrs. Meyer, abutters of 0 Odiorne Lane:
 - Maine State Vernal Pool Assessment Form, dated October 1, 2021.
 - Letter from Maine Inland Fisheries & Wildlife (IF&W) to Mr. Sudak regarding Endangered, Threatened Species, and Habitat Determination, dated January 21, 2021.
 - General Resource Guidance & Recommendations document from Maine Inland Fisheries & Wildlife to Mr. Sudak, updated March 5, 2020.
 - Letter (preliminary overview) from Maine Inland Fisheries & Wildlife to Mr. Sudak responding to Mr. Sudak's inquiry re: information regarding known locations of endangered species and protected habitats, dated February 22, 2021.
 - Maine Department of Agriculture, Conservation, & Forestry Technical Guidance for Utility-scale Solar Installation & Development on Agricultural, Forested & Natural Lands, updated January 8, 2021.
 - Copy of L.D. 936 to Amend State Laws Relating to Net Energy Billing and the Procurement of Distributed Generation (Committee Amendment), passed into law July 1, 2021.
 - Copy of South Berwick Ordinance Establishing an Emergency Moratorium on Commercial Solar Energy Facilities.

FINDINGS OF FACT:

1. The owner of the property is: Estate of Lillian H. Crowell (c/o Debra Berthiaume, Personal Representative) (mailing address: 423 Goodwin Road, Eliot, Maine 03903).
2. The applicants are: NH Solar Garden, LLC and Odiorne Lane Solar, LLC (Andrew Kellar, Owner) (mailing address: 43 Holmes Street, Portsmouth, NH 03801).
3. Engineer of Record: Michael Sudak, E.I.T. (Attar Engineering, Inc.) (mailing address: 1284 State Road, Eliot, Maine 03903).
4. The property is located at 0 Odiorne Lane, Eliot, ME and is 69.62 acres.
5. Warranty Deed, Book 1419, P 560, registered at York County Registry of Deeds, dated August 23, 1960.
6. Purchase & Sales Agreement between SOW Solar, Inc. (Kevin Hill, President) and Deborah Berthiaume, Personal Representative of the Estate of Lillian H. Crowell, dated May 13, 2021.
7. Letter from Andrew Kellar, (owner/developer, NH Solar Garden Solar, LLC) stating Odiorne Lane Solar, LLC (Andrew Kellar, owner/applicant) has a land lease with SOW Solar, LLC (Kevin Hill, prospective buyer), dated June 15, 2021.
8. Property can be identified as Assessor's Map 83/ Lot 2 and is located in the Rural Zoning District and Shoreland Overlay – Resource Protection, Stream Protection, Protected Resource: Freshwater Wetland >10 acres.

9. The applicant proposes to construct a large array of ground-mounted solar panels (19+/- acres/5 megawatts, original; 16.08 acres/2 megawatts, current). Array shall be serviced by a gravel access drive and overhead electric utility corridor.
10. Copies of the application and supporting materials were provided to the Code Enforcement, Public Works, Town Manager, Police and Fire Departments. There were no comments submitted.
11. The Planning Board reviewed the application at the following regular meetings:
 - June 22, 2021. (Sketch Plan Review).
 - August 3, 2021 (Site Plan Review).
 - August 24, 2021. (Continued Site Plan Review).
 - September 21, 2021. (Continued Site Plan Review/Application Completeness).
 - October 5, 2021 (Site Plan Review Considerations).
 - October 12, 2021 (Public Hearing).
12. The following application fee(s) have been paid by the applicant, in accordance with §1-25:
 - Site Plan Review Application Fee: \$3,750 (8/3/21).
 - Public Hearing Fee: \$175 (paid 8/3/21).
13. A site walk was scheduled August 23, 2021 but cancelled due to weather. Rescheduled site walk was held September 20, 2021. In attendance were four members of the Planning Board, Ms. Moore and Ms. Castellan from the Eliot Conservation Commission, abutters Mr. & Mrs. Meyer, Jeff Brubaker (Town Planner), Shelly Bishop (Code Enforcement Officer), Brent Martin (Eliot Assessor), Mr. Sudak (engineer), and the Kellars (applicant).
14. In accordance with §§33-129 & 33-130, a public hearing was advertised in The Weekly Sentinel on October 1, 2021 and held on October 12, 2021. Town of Eliot was noticed on October 1, 2021 of the Public Hearing to be held on October 12, 2021. **Public comments/concerns:** Why company chose this site location that is a commercial structure in the Rural District that is also part of the York River Watershed, the Great Thicket National Wildlife Refuge, and has pending designation as a National Wild & Scenic River System. Need for much more input from Eliot residents. No commercial solar ordinances in place. Desire to wait for completion of guidance being developed at the State level. Desire for moratorium for development of ordinances. Impact to sighted deer, moose, wolves, wood ducks, crow rookery, turtles, eagles, hawks, aviary migration. Impact to off-site vernal pool. Impact to potential archeological/historic value. Fragmentation of large forested wetland. Visual eyesore. Emergency vehicle access. Impact on bee pollination. Wildlife traffic corridors negatively impacted. Negative impact to historic hunting practices. Life expectancy of solar panels. Hazardous materials in panels that may leak and impact surface/ground water. Permanency of land conservation. Health impact to wildlife. Possible inadequacy of stormwater plan. Appearance of less than full disclosure of information. Birds mistaking panels for water bodies. Construction impact to neighbors/Odiome Lane. Is there a decommissioning plan and is it bonded. Need better understanding of new plan presented. Loss of climate protection. Lack of updated environmental surveys. Appearance of lack of due diligence in preserving landscape, minimizing of tree-clearing, and protecting pollinator habitat. Impact of potential fires within perimeter fence. Belief of irretrievable loss of environmental resources and incompatible use in this area. Active conservation of this area for 20+ years. Already have a large-scale municipal solar array in place. Potential impact from inadequate infrastructure on future growth. Applicant and engineers of record responded to concerns.
15. **Waiver request action:** The Planning Board waived the following waiver request: §33-127(12) High Intensity Soils Report on September 21, 2021. There is no septic, no water, no large-scale impervious proposed for this development. Based on §45-415 Soil Suitability for Construction, applicant will satisfy test pits/pull tests and engineer will sign off that project is constructable, with a report being issued to the Planning Department prior to start of construction.
16. After lengthy discussion re: starting the timetable for final determination, the application was found complete on September 21, 2021.
17. Proposed use is "Public Utility Facility", which is SPR (site plan review) in all zoning districts per §45-290.
18. **Original proposal (with subsequent revisions/additions):**
 - (6/22/2021) is to cover approximately 19 acres to include the fixed-tilt array (approximately 40 rows) of solar panels on 9 acres, itself, the gravel access drive, overhead electric utility corridor, perimeter fencing, and necessary clearing for exposure and maintenance.

- (8/3/2021) panel design revision from fixed tilt to panels on trackers to follow the sun; capacity is reduced to 2.0 megawatts (MW), based on State legislative changes; overall development will occupy 15.1 acres; solar array, itself, will be on 9 acres.
 - (8/24/2021) Pull Testing Procedure from RBI Solar submitted re: determining how solar table pole supports would be effectively installed for varied soil conditions/depths.
 - (9/21/2021) Acreage update: total development area – 16.08 acres; area inside perimeter fencing: 7.31 acres; area covered by panels – 3.19 acres; shade management area – 4.63 acres. Written commitment submitted to utilize the Bartlett’s land for access for vehicles performing logging activities related to proposed development. Vernal Pool Plan submitted showing the 250-foot critical terrestrial setback and includes a vernal pool calculation (see Note #14, Sheet 2).
 - (10/12/2021) Applicant presented a major site plan revision that avoids all wetlands and briefly viewed by the Planning Board. This design goes back to fixed tilt panels system.
19. **Affidavit of Ownership (standing):** In a letter dated June 15, 2021, the applicant (Andrew Kellar, NH Solar Garden, LLC) stated that Odiorne Lane, LLC (applicant/owner, Andrew Kellar) has a land lease with SOW Solar, LLC (Kevin Hill, sole owner) to develop the proposed solar array project on this parcel. SOW Solar, LLC has a Purchase & Sales Agreement with Debra Berthiaume, Personal Representative for the Estate of Lillian H. Crowell, contingent on obtaining all local and State permits and approvals.
20. **Lot Coverage (§45-405):** Overall lot area – 69.61 acres/Lot Coverage – 4.80% where 10% is the maximum allowed in the Rural District. Lot coverage when removing western claimed area from plan reference 1 – 57.09 acres/Lot coverage – 5.85% where 10% maximum is allowed in the Rural District.
- Overall project area: Development Area (access drive, solar panels, utility corridors, and perimeter fencing) is 9.5 Acres. Occupied Area (additional clearing for shade management, stormwater management areas, overhead electric extension) is 15.1 Acres.
21. **DEP permits:** This proposal is subject to Natural Resources Protection Act (NRPA) Permit for Freshwater Wetland Impact, Tier 1; Stormwater Management Law, Individual Stormwater Permit. Both are currently under review. A separate NRPA Permit – (off-site) significant vernal pool impact was filed, based on Wetland Scientist Joseph Noel’s survey of the off-site area in question.
22. **Stormwater management:** Proposed level spreaders sized and designed in accordance with the State of Maine’s Volume 111 “Best Management Practices Technical Design Manual”, Chapter 8.3 (Sheet 2 of 6). In addition, Erosion Control Mix Berms will be used to filter runoff containing sediment (NTS) (Sheet 3 of 6) as well as swales. Stormwater Management Plan models existing/developed runoff, generally showing a decrease in peak stormwater flow relative to existing conditions, which would result in no anticipated adverse effects on abutters or existing downstream systems due to water quality. Level lip spreaders outlet to existing on-site forested buffers eventually discharge the stored and treated stormwater to the on-site wetland. The prevalence of the entirety of the site is to drain from west to east.
23. **Vernal pool:** Wetland Scientist Joseph Noel found there is no significant vernal pool on the proposed site or any “State-listed rare, endangered or threatened species that would use vernal pools”. There is a significant vernal pool just off-site and adjacent to Odiorne Lane on the Meyer’s parcel. This has been documented by Joseph Noel in a letter (April/2021) where he also confirmed that “his original wetland delineation from 2007 should remain current.” Applicant has filed a NRPA Permit-by-Rule for Activities that take place in, on, or over a significant vernal pool habitat. The off-site vernal pool drains to the Sturgeon Creek Watershed not the York River Watershed where the development is proposed.
24. **Grading/construction of site:** No significant land grading or soil disturbance (excluding driven support poles) will occur. Work to be completed when ground conditions support equipment without damage (extensive rutting or soil disturbance) to existing ground surface.
- Proposed shade management areas to be logged but not stumped or grubbed. Egress and access for logging vehicles will be via the Bartlett’s property to avoid damage to Odiorne Lane and turning radii issues. There is a proposed agreement with Mr. John Bartlett and Mr. David Bartlett for this purpose.
 - Solar Array construction will include monopole driven or augured supports (earth screws).
 - Cut and fill for other site features limited to between 0 and 2 feet.
 - Aisles between panels will be 12 feet.
 - Aisle encircling array will be 15 feet wide with grass for maintenance vehicle access.

- Perimeter fence will be six (6) feet tall, with a 6-inch opening at ground level to enable animal passage.
 - All areas within perimeter fence shall be logged, stumped, grubbed, and reseeded with native mixture of low-growing grasses and wildflowers.
 - All areas within perimeter fencing are navigable on its existing slopes.
 - Perimeter surrounded by shade management area of variable width (as much as 100 feet), which will be logged but not stumped or grubbed.
 - Access to site is through a 16-foot gravel access drive from Odiorne Lane.
 - Vehicles used to place monopoles will be small, one-person track systems, using a skid steer.
 - Pull tests for placement of monopoles are done by racking engineers to be able to stamp/certify what is being proposed will be structurally sound.
 - Panels and other equipment will be scheduled to come in in one to two days. Applicant will coordinate with abutters as to timing.
25. **Electric Utility Infrastructure:** Available capacity is critical. Upgrades associated with this development will occur in circuitry and on existing poles, per CMP requirements, unless CMP finds it necessary to replace them. Replacement poles would be the same as has been replaced recently on Goodwin Road. There will be no work on the substation.
26. **Habitat:** Fencing is pulled up six (6) inches from the ground to allow small animal movement freely underneath. This type of fencing will meet the national electric code. Pollinator plantings of native low-growing grasses/wildflowers will be utilized around the solar array/shade management areas. State-endangered or-threatened species identified by IF&W in their January 21, 2021 letter “that have been documented in the vicinity and the project site may contain suitable habitat” for them, including Blanding’s turtles, spotted turtles, and New England Cottontails.
27. **Environmental Resources:** The parcel includes, generally from west to east ends, shoreland zoning, freshwater wetlands >10 acres, other mapped wetlands and some swampland, major watercourses, slope areas greater than 2 acres, and a FEMA flood plain.
28. **Conservation easement:** The applicant’s intent is to dedicate a conservation easement of the undeveloped area, the size and location of which is based on the project area that “results from comments received from the State or from the Public Hearing.”, which may impact positioning of array and areas of clearing.
29. **Eliot Conservation Commission:** Memos from ECC Chair Kari Moore discussed the Commission’s concerns for forest fragmentation, potentially significant wildlife habitat impacts (ex: wading bird & waterfowl habitat), potential use of non-native plants, and a significant vernal pool (off-site) along Odiorne Lane. It is a large wildlife corridor within the York River watershed, near the York River, itself, and the York River is being pursued to be designated as a Partnership Wild & Scenic River, including its tributaries.
30. **Preservation of Landscape (§45-413):** “The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree removal”. The purpose statement/general goal of Chapter 45 – Zoning (45-2) is to “conserve natural resources”. The current approved Comprehensive Plan Critical Natural Resources Policy #1, Strategy #2 encourages the use of “Beginning with Habitat” data for consideration during the Planning Board review process.
31. **Performance Guarantee (§33-132):** Written statement from applicant regarding the restoration of Odiorne Lane surface to its pre-construction state. The applicant is agreeable.
32. **Third-party consultation (§33-128):** “During review of an application, the planning board may make the determination to hire technical consultant(s) if the scope is beyond the capability of town staff to verify or review any aspect of an applicant’s application. Such technical consultant fees shall be paid by the applicant”. Applicant is agreeable. Planner recommended due to a deficit of DEP review information. Motion was made and seconded to hire a technical consulting assistant and was denied October 12, 2021.
33. **Maintenance:** Required vegetation management in the shade management areas will be mechanical, with a traditional lawnmower brought in on a trailer attached to a truck. Annually, an electrician goes out to check on equipment. All snow maintenance will be mechanical (snowblower) and no chemicals will be used for snow management.
34. **History of Board of Appeals/Code Enforcement reviews/denials:** Denials from the CEO and BOA re: back lot/road length for this property. 4/6/2015 CEO denial as it does not meet the dimensional street frontage requirement. BOA denied the applicant’s appeal of the CEO decision in June 2015. 6/20/2013 Decision by BOA to deny a variance appeal to allow for a reduction in the required right-of-way width and an increase in the length of a dead-end road. 12/20/1996

BOA variance denial in the width of the access road to a back lot or lots on Odiorne Lane. As a legally non-conforming lot of record, the lot has potential developability based on §45-194.

35. Applicant has provided a FAA Notice Criteria Tool results document regarding Federal Aviation Administrative review.
36. All CMP permit requirements have been met and approved to move toward construction once all other permitting is in place.
37. Applicant has added the stream channel identified on the USGS Map. It is a tributary to the York River.
38. The development area avoids shoreland zoning and special flood hazard areas.
39. Proposed gravel access drive off the end of Odiorne Lane is approximately 380 feet, within Town Code limitation of 500 feet.
40. Continuous Remote Security monitoring will be in place and is covered under the Asset Management Procedure.
41. There will be no lighting at the site.
42. There is no well or septic with this proposal.
43. The applicant developed a website for Eliot residents that describes the different aspects of this particular development, with links to various State websites that describe limitations and requirements at the State level.

CONCLUSIONS:

1. There are no ordinances in place for commercial solar arrays that would allow the level of technical review criteria the Planning Board requires.
2. There are no rules to follow at the level of environmental impact and natural resource protection and conservation that would be indicated in our Comprehensive Plan and rules and purposes of the Town of Eliot's Rural District.
3. There is a need to review and put in place ordinances that would allow the Planning Board to effectively manage, monitor, research, understand, and approve these types of installations in the future.

DECISION:

Based on the above facts and conclusions, on **October 12, 2021**, the Planning Board voted to **deny** your **application for site plan review and change of use to Public Utility Facility (Ground-mounted Solar Array)**.

APPEALS:

This decision can be appealed to the Board of Appeals within 30 days after **October 12, 2021** by an aggrieved person or party as defined in Sec. 1-2 and Sec. 45-50(b) of the Eliot Zoning Ordinance. Computation of time shall be in accordance with general provisions of the Town of Eliot Municipal Code of Ordinances, section 1-2.

Sincerely,

Carmela Braun, Chair

This letter reviewed and approved by the Planning Board on _____, 2021.

CC: Steve Robinson, Public Works Director
Elliott Moya, Police Chief
Jay Muzeroll, Fire Chief
Brent Martin, Tax Assessor
Shelly Bishop, Code Enforcement Officer

PB21-25: 505 Harold L. Dow Hwy. (Map 53/Lot 7): Site Plan Review and Change of Use – Adult Use and Medical Marijuana Manufacturing Facility – Public Hearing



TOWN OF ELIOT MAINE

PLANNING OFFICE
1333 State Road
Eliot ME, 03903

To: Planning Board
From: Jeff Brubaker, AICP, Town Planner
Cc: Brian Nielsen, EIT, Attar Engineering
Kearsten Metz, Land Use Administrative Assistant
Date: November 3, 2021 (report date)
November 9, 2021 (meeting date)
Re: PB21-25: 505 Harold L. Dow Hwy. (Map 53/Lot 7): Site Plan Review and Change of Use – Adult Use and Medical Marijuana Manufacturing Facility – **Public Hearing**

Application Details/Checklist Documentation	
✓ Address:	505 Harold L. Dow Highway
✓ Map/Lot:	53/7
✓ PB Case#:	21-25
✓ Zoning District:	Commercial/Industrial (C/I) District
✓ Shoreland Zoning:	Limited Commercial
✓ Owner Name:	NEK Assets, LLC / PW ME Canre SD LLC
✓ Applicant Name:	NEK Assets, LLC
✓ Proposed Project:	Adult Use and Medical Marijuana Manufacturing Facility and Cogeneration Plant
✓ Application Received by Staff:	July 20, 2021
✓ Application Fee Paid and Date:	\$600 (Site Plan Review – \$400; Change of Use – \$25; Public Hearing – \$175) September 30, 2021
Application Sent to Staff Reviewers:	Conservation Commission reviewing on November 3
✓ Application Heard by PB	September 7, 2021; October 5, 2021; October 19, 2021; November 9, 2021 (scheduled)
✓ Found Complete by PB	October 19, 2021
✓ Site Walk	September 27, 2021
✓ Site Walk Publication	September 10, 2021 (Weekly Sentinel)
Public Hearing	November 9, 2021 (scheduled)
✓ Public Hearing Publication	October 29, 2021 (Weekly Sentinel)
✓ Reason for PB Review:	Site Plan Review, Change of Use, Marijuana (SPR use)

PB21-25: 505 Harold L. Dow Hwy. (Map 53/Lot 7): Site Plan Review and Change of Use – Adult Use and Medical Marijuana Manufacturing Facility – Public Hearing

Overview (10/5 update)

NEK Assets, LLC (agent: Attar Engineering) is seeking Site Plan Review and a Change of Use for a 9,900 sf Adult Use and Medical Marijuana Manufacturing Facility to be located at 505 Harold L. Dow Highway (Map 53, Lot 7). The property is 3.58 ac. in area. It is currently mostly wooded with the exception of the site of a defunct auto repair building near Route 236, which has been recently demolished, and a semicircular driveway. The proposal also includes an 840 sf natural gas cogeneration plant producing power and heat.

Application contents (10/19 update)

- Cover letter dated 7/20/21
- Site Plan Review application
- Property deed
- Location map
- Sensitive use map
- Abutters list
- Floor plans and details (some confidential)
- Construction schedule
- Written security plan
- Odor control plan
- High intensity soil survey
- Site plan set including site plan, existing conditions plan, grading & utilities plan, high intensity soil survey, erosion & sedimentation control plan, site details, and a standard boundary survey
- Cover letter dated 9/21/21
- Site Plan Review application received 9/22/21
- State OMP Adult Use Establishment Applicant Notary Form
- State OMP license fee payment notice
- Organizational hierarchy and chart of property ownership/leasing
- Site plan set, revision date 9/20/21
- Agent authorization letter, NEK Assets LLC to Attar Engineering
- OMP Conditional License AMF826, Adult Use Marijuana Products Manufacturing Facility, issued to Northeast Kind Holdings, LLC (100% owner), expires 9/20/22
- Post-construction stormwater management plan and stormwater study
- Alternative driveway sketch (10/14/21)
- Shoreland zoning application for alteration of the driveway within the Limited Commercial district (10/14/21)

Zoning

Commercial-Industrial; Limited Commercial (shoreland) in a small corner of the property

Type of review needed (11/9 update)

Public Hearing

Uses

Adult use marijuana and medical marijuana products manufacturing facility (SPR uses in

PB21-25: 505 Harold L. Dow Hwy. (Map 53/Lot 7): Site Plan Review and Change of Use – Adult Use and Medical Marijuana Manufacturing Facility – Public Hearing

the C/I district). There is no clear reference in the land use table for a private cogeneration power plant.

Previous Planning Board actions

The most recent review for this site was sketch plan review on November 17, 2020, for a similar proposal. That proposal did indicate future phases with a cultivation element and the now-proposed cogeneration plant. During this review, the Board asked questions about natural resources on the property, marijuana performance standards, and other topics. The Conservation Commission had also provided review comments.

State conditional license

Included in packet: Adult Use Marijuana Products Manufacturing Facility, issued to Northeast Kind Holdings, LLC (100% owner), expires 9/20/22

Separation (buffering) requirement (500 ft. from sensitive uses) [33-190(5)]

Although a sensitive use map is provided, the current proposal is not subject to the sensitive use buffering requirement because it does not propose an adult use marijuana retail store, medical marijuana caregiver retail store, or medical marijuana dispensary. The exception is the “universal” 500-ft. marijuana establishment buffering for public and private schools, but the proposed facility meets that standard.

Parking spaces

The site plan parking calculation (note 6) shows that 15 spaces are required and 17 are provided, including 1 ADA van-accessible space with access aisle.

Driveway

Two driveway cuts onto Route 236 exist today, and two (improved) are shown on the site plan. I previously recommended that only one consolidated driveway be provided to reduce driveway cuts and Route 236 access points in the area. See 45-406 – Traffic, which reads, in part: “The proposed development shall provide for safe access to and from public and private roads. Safe access shall be assured by providing an adequate number and location of access points, with respect to sight distances, intersections, schools, and other traffic generators.” There is one auxiliary driveway for the Town Transfer Station across Route 236. General good practice for an arterial road like Route 236 is to reduce driveway cuts to what is needed and reduce offset, opposite-side driveways.

On the Site Walk, the Planning Board members and I asked the applicant about the driveway configuration and alternative options. The applicant made a case for retaining the proposed two-driveway configuration, noting the limited traffic generation, while I spoke to the idea of one consolidated driveway. Another alternative was then discussed –

PB21-25: 505 Harold L. Dow Hwy. (Map 53/Lot 7): Site Plan Review and Change of Use – Adult Use and Medical Marijuana Manufacturing Facility – Public Hearing

keeping the two driveways but having one be entrance only and one be exit only. The Planning Board may wish to confer with the applicant about this at the meeting.

Another item discussed at the Site Walk was the possibility and location of cross-access with 495 HL Dow.

10/19 update: The applicant has submitted an alternative driveway sketch showing one consolidated driveway for the site, aligned with the Transfer Station auxiliary driveway. The driveway is located outside of shoreland zoning and leads to the slight relocation of the bioretention cell. Cross-access is also shown to 495 HL Dow Hwy. I believe this is a configuration that better meets Town performance standards and access management best practices for highways such as Route 236, as well as being further away from the shoreland zoning and potential turtle area identified in the applicant’s discussions with Inland Fisheries & Wildlife. Cross-access further helps to reduce trips loading onto Route 236. However, the applicant has expressed that this alternative entails an amendment to their DEP stormwater permit, the timing of review and approval of such amendment being uncertain. To address this “sequencing” issue, the applicant and I have discussed a “Phase 1/Phase 2” approach where, should the project be approved, an approval condition would allow the development to be built with the Phase 1 (one-way-in, one-way-out) configuration, but that the Phase 2 (single driveway with cross-access) configuration would be built subject to DEP amending the stormwater permit. This would of course also be subject to DOT driveway permit review.

Stormwater

The proposal would create 1.3 new acres of impervious surface. A stormwater management facility (wet pond) is proposed on the north half of the property, and a bioretention cell would be located close to Route 236. During the Site Walk, the Planning Board asked about where snow would be stored within the parking lot, including keeping snow piles away from site wetlands and the stormwater feature, and this was noted by the applicant.

The project is subject to a DEP stormwater permit. The stormwater management study (received 9/29) concludes, in part:

“The analysis indicates a decrease in peak flow at all three Analysis Points for the 2, 10, 25 and 50-year storm events...Constructing a stormwater quality wetpond and bioretention cell will result in no adverse effects due to peak runoff quantity from the proposed development. No adverse effects are anticipated on any downstream properties or drainage structures for the analyzed storm events.”

11/9 update: The Town received notice that the applicant received their stormwater permit from DEP on October 28.

PB21-25: 505 Harold L. Dow Hwy. (Map 53/Lot 7): Site Plan Review and Change of Use – Adult Use and Medical Marijuana Manufacturing Facility – Public Hearing

Wetlands and habitat (*10/5 update*)

Wetlands exist at the back of the property, and the previous review identified the potential for New England Cottontail habitat. (Attar Engineering has since reported that field surveys done this past winter found no evidence of Cottontails.) The site plan generally avoids these wetlands; however, the development would alter 590 sf of delineated wetland, which is located toward the center of the parcel.

11/9 update: The applicant has had discussions with IF&W about the presence of Blanding’s turtles in the vicinity of the site. The state’s recent Blanding’s turtle underpass and fencing along Route 236 is near the site. Attar reported no presence of Blanding’s turtle or Cottontail habitat on-site. IF&W suggested a turtle exclusion fence (7/12/21 email from Derek Yorks) in the northwest corner of the property. The “phase 2” consolidated driveway would be further away from the turtle area and outside of shoreland zoning, compared to the “phase 1” two-driveway plan.

Property owner and business entity charts

Note in your packet, in response to questions raised at the previous review, a hierarchy of entities related to the development, as well as a schematic chart showing owners/lessees of the contiguous 483, 495, and 505 HL Dow properties.

Other notes

- See separate documents and site plan notes for odor control and security measures. Some security information is confidential at the request of the applicant.
- Note that this is a review involving two contiguous nonconforming lots of record. See 45-194, which requires that such lots “shall be considered to be a single parcel for the purposes of this chapter, and no portion of such parcel shall be built upon which does not meet dimensional requirements of this chapter”. This may affect certain review considerations.
- The state’s Adult Use Marijuana Program Rule has certain stipulations for co-locating manufacturing of adult use and medical marijuana, generally pertaining to keeping production and storage of each separate, separate tracking systems, correct packaging and labeling, floor plan requirements, etc. The Planning Board may wish to confirm that these state requirements have been or are being addressed, because it could indirectly pertain to local review.
 - *11/9 update:* On October 14, the applicant submitted a “Plan for Co-Location of Adult Use and Medical Marijuana Manufacturing (No Extraction)”, which was in your October 19 packet.
- *11/9 update:* A lighting plan was submitted on October 14 and included in your October 19 packet. The plan shows no glare at property lines (0.0 footcandles of illuminance). It also shows how the marijuana manufacturing facility has exterior lighting per the 33-190 performance standards for security.
- *11/9 update:* The Conservation Commission is reviewing the project on Nov. 3.

PB21-25: 505 Harold L. Dow Hwy. (Map 53/Lot 7): Site Plan Review and Change of Use – Adult Use and Medical Marijuana Manufacturing Facility – Public Hearing

Motion templates

Approval with shoreland zoning findings (in addition to other findings of fact to be included in the NOD) and conditions

To approve PB21-25 – Site Plan Review and Change of Use for a Marijuana Establishment and Medical Marijuana Establishment (Adult Use and Medical Marijuana Manufacturing Facility) at 505 Harold L. Dow Highway.

Accounting for the below findings and approval condition, for the proposed modifications within the shoreland zone, the Planning Board makes the following shoreland zoning findings of fact:

1. All applicable sections of the Shoreland Zoning Ordinance (Chapter 44) and Shoreland Zoning Permit Application have been or will be met.
2. Based on the information presented by the applicant and in accordance with Sec. 44-44, the Planning Board finds that the proposed use:
 - a. Will maintain safe and healthful conditions;
 - b. Will not result in water pollution, erosion, or sedimentation to surface waters;
 - c. Will adequately provide for the disposal of all wastewater;
 - d. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird, or other wildlife habitat;
 - e. Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
 - f. Will protect archaeological and historic resources as designated in the comprehensive plan;
 - g. Will avoid problems associated with floodplain development and use;
 - h. Is in conformance with the provisions of section 44-35, land use standards.

The Planning Board finds that the construction of a single, consolidated driveway for the site, to replace the two existing driveway entrances, and a cross-access driveway between 505 Harold L. Dow Highway and 495 Harold L. Dow Highway, in accordance with the applicant’s “Driveway Sketch” plan dated October 14, 2021 (hereinafter called the “Consolidated Driveway with Cross-Access”) better meets Town performance standards, including 45-406 and the intent of 37-69(d), and access management best practices for highways such as Route 236. It is further away from the shoreland zoning and potential turtle area identified in the applicant’s discussions with Inland Fisheries & Wildlife. Both aforementioned lots have the same owner. Cross-access helps to reduce trips loading onto Route 236. MaineDOT’s “Highway Driveway and Entrance Rules”, under Section 2.2, state that “Whenever possible, property owners will seek opportunities for shared driveways onto Mobility Arterials”. A single driveway being aligned across from the Town Transfer Station’s auxiliary driveway will reduce awkward movements compared to two driveways being slightly offset from it.

PB21-25: 505 Harold L. Dow Hwy. (Map 53/Lot 7): Site Plan Review and Change of Use – Adult Use and Medical Marijuana Manufacturing Facility – Public Hearing

The following are conditions of approval:

1. [Standard conditions]
2. The applicant shall make collaborative good faith efforts to seek the required approvals to allow the construction of the Consolidated Driveway with Cross-Access, to replace the two existing driveway entrances, including but not necessarily limited to an amendment of their Stormwater Management Law permit and a driveway permit from MaineDOT. The Consolidated Driveway with Cross-Access shall meet all applicable Town performance standards. Minor modifications, relative to the October 14, 2021 “Driveway Sketch”, may be made if required by agency reviews, as long as they do not reduce compliance with Town performance standards or substantially change the layout or overall function of the driveway or cross-access. Within 45 days of Planning Board approval and prior to submitting a building permit application, the applicant shall submit an amendment request to DEP and seek MaineDOT’s review regarding the Consolidated Driveway with Cross-Access. However, this condition should not be interpreted as preventing a building permit or certificate of occupancy from being issued for development of the site with the dual (one-way exit, one-way entrance) driveway (as proposed on the applicant’s site plan dated September 30, 2021) while the Consolidated Driveway with Cross-Access is under review. If the required approvals are obtained for the Consolidated Driveway with Cross-Access by November 8, 2022, the applicant shall construct it. If they are not obtained by November 8, 2022, the applicant may choose to continue pursuing approval and development of the Consolidated Driveway with Cross-Access or continue operating the site with the aforementioned one-way exit, one-way entrance configuration.
3. [Other conditions as desired]

Disapproval

Motion to disapprove PB21-25 for the following reasons:

[e.g. does not meet the following site plan review or zoning standards]

1. _____
2. _____
3. _____

Continuance

Motion to continue PB21-25 to the November 16, 2021, meeting.

Section 33-131 timelines

- 75 days from application completeness: January 2
 - Previous scheduled meeting: December 21
- 30 days from public hearing: December 9
 - Hold new PH if continued past this date

* * *

Respectfully submitted, Jeff Brubaker, AICP, Town Planner



TOWN OF ELIOT MAINE

PLANNING OFFICE

1333 State Road

Eliot ME, 03903

PUBLIC HEARING NOTICE

AUTHORITY: Eliot, Maine Planning Board
PLACE: Town Hall (1333 State Rd.) with Remote Option
DATE OF HEARING: November 9th, 2021
TIME: 7:00PM

Notice is hereby given that the Planning Board of the Town of Eliot, Maine will hold a public hearing on Tuesday, November 9th, 2021 at 7:00 PM for the following application(s):

- **505 Harold L Dow Highway (Map 53/Lot 7), PID # 053-007-000, PB21-27:** Site Plan Review and Change of Use – Adult Use and Medical Marijuana Manufacturing Facility
 - Applicant: NEK Assets, LLC
 - Property Owner: PW ME Canre SD LLC

Interested persons may be heard and written communication received regarding this application at this hearing. The application is on file and available for review in the Planning Office at Eliot Town Hall, 1333 State Road, Eliot, ME 03903. The meeting agenda and information on how join the remote Zoom meeting will be posted on the web page at eliotmaine.org/planning-board. Town Hall is accessible for persons with disabilities.



~ Classifieds & News ~

Playing the Mask Game!

By Jim Fabiano

Since there is a good possibility this next cold season will have many of us wearing masks we may as well enjoy it. Have you ever looked at people when they are wearing masks. Of course, don't let anyone see you doing this because it will make them uncomfortable and could precipitate a visit from a manager or the spouse of the person you are looking at. I find this interesting because everyone seems to change how they evolve through the stores. No one seems to be as open as they were when masks were a thing people from Asia wore. There are no more accumulations of people talking together simply

to catch up on each other's lives. Even children seem to be more isolated in their own thoughts instead of actions that has their parents chase after them or at least telling them not to drink the cleaning fluids.

Lately, I like to play mask games. Don't look this up because they only exist in my mind as a means of staying sane even though I've never been accused of being so. One of my games has to do with looking at people's eyes wondering if they are smiling, frowning, licking their lips, or simply not allowing any expression to emit from their faces. Squinted eyes usually define a smile while a drooping of the corners of the eyes means

people are saddened by some fact that could include the price of items or simply the knowledge they have to wear a mask. Now if their eyes squint and their eyebrows crunch together while you are making your observations it would be a good time to reverse direction and head to the pet food aisle even though you don't have a pet.

Another game I like to play is making faces behind my mask. I try and control my eyes and my forehead attempting not to give away my game. This is especially fun when you are waiting in line at a delicatessen or especially at a town hall or motor vehicle department. There are many different faces you can make behind your mask. My favorite is opening my mouth in order to make the largest smile I can make. This makes my eyes grow large making me seem as though I am suffering from some sort of medical condition. I sometimes

squint as I widen my mouth that makes me look as though I belong in some sort of a horror film. Most people try to ignore this but really can't even though they take this time to see if they tied their shoes.

I once tried to stick my tongue out that gave the impression I was sneaking something to eat like a hot dog or a rather large piece of candy. I even once placed a piece of a potato chip bag sticking out from the bottom of my mask. When I noticed people sneaking a peak at what I was doing I just started chewing in order to watch their eyes question just what I was eating. Once I even tried to stick my tongue out. This was a mistake because no-one wanted to be near a person with a wet mask. Sneezing and coughing is also not recommended for the game because it usually vacates the area where you are standing. This is a good way to go to the head of the line but there will be few people who want to wait on you.

We might as well get used to the reality of wearing masks when we go out into what was once thought to be the safety of our neighborhoods. Since the reality of wearing a mask in order to protect ourselves and the people around us will basically happen we might as well enjoy it.

Jim Fabiano is a retired teacher and writer living in York, and can be reached at james.fabiano60@gmail.com.

Students Receive Recognition

Assumption University, Worcester, MA

Named to Field Hockey Team: Sydney Bouchard, Cape Neddick. Named to Greyhounds football team: Cullen McCarty, York.

The Citadel, Charleston, SC

Named to Dean's List: Heidi Fortin, Ogunquit.

Georgia College, Milledgeville, GA

Graduated: Wesley Raines, York.

James Madison University, Harrisonburg, VA

Enrolled for fall 2021 semester: Emma Simonds, York.

Lasell University, Newton, MA

Majoring in fashion merchandising and management: Adrianna Marchi, Kittery.

Saint Anselm College, Manchester, NH

Inducted into National College Athlete Honor Society: Perrin Conant, Kennebunk.

Seton Hall University, South Orange, NJ

Named to Dean's List: Anna Humphrey, Kennebunk.

Southern New Hampshire University, Manchester, NH

Named to Dean's List: Alex Fontaine, Eliot; Crystal Favreau, Kittery; Ross McLellan, Kittery. Named to President's List: Renee Dodge, Berwick; Ryan Curtin, Kittery; Caitlyn Decker, York Harbor; William Angarella, York; Amber Fecteau, Berwick; Rachael Smith, North Berwick; Anna Micucci, York; Elizabeth Mcgranaghan, Berwick; Anna Trafton, Wells; Kathryn Szad, Kittery; Ryan Menter, Lebonon; Mack Chandler, Berwick; Andrew Maranhas, York; Elizabeth St. Pierre, South Berwick; Joshua Lacroix, Berwick; Haley Roy, Berwick.

LEGAL / PUBLIC NOTICES

Town of Eliot PUBLIC HEARING NOTICE

AUTHORITY: Eliot, Maine Planning Board
PLACE: Town Hall (1333 State Rd.) with Remote Option
DATE OF HEARING: November 9, 2021
TIME: 7:00PM

Notice is hereby given that the Planning Board of the Town of Eliot, Maine will hold a public hearing on Tuesday, November 9th, 2021 at 7:00 PM for the following application(s):

505 Harold L Dow Highway (Map 53/Lot 7), PID # 053-007-000, PB21-27: Site Plan Review and Change of Use – Adult Use and Medical Marijuana Manufacturing Facility. Applicant: NEK Assets, LLC. Property Owner: PW ME Canre SD LLC.

Interested persons may be heard and written communication received regarding this application at this hearing. The application is on file and available for review in the Planning Office at Eliot Town Hall, 1333 State Road, Eliot, ME 03903. The meeting agenda and information on how join the remote Zoom meeting will be posted on the web page at eliotmaine.org/planning-board. Town Hall is accessible for persons with disabilities.

PUBLIC HEARING

To: Marianne Goodine or Michele Stivaletta-Noble, resident of the Town of Wells, County of York, and State of Maine; GREETINGS:

In the name of the State of Maine, you are hereby required to notify and warn the voters of the Town of Wells that the Board of Selectmen of said town will meet at the Municipal Building, 208 Sanford Road, Wells on the 2nd day of November 2021 at 6:00 p.m. in the evening.

The Board will conduct a public hearing to Access the Emergency Facility Repair Fund up to \$14,400.00 for the purchase of three underground propane tanks.

Given under our hands this 19th day of October 2021.

SELECT BOARD OF THE TOWN OF WELLS

PUBLIC HEARING

To: Marianne Goodine or Michele Stivaletta-Noble, resident of the Town of Wells, County of York, and State of Maine; GREETINGS:

In the name of the State of Maine, you are hereby required to notify and warn the Inhabitants of the Town of Wells that the Board of Selectmen of said Town will meet at the Municipal Building, 208 Sanford Road, Wells on the 2nd day of November 2021 at 6:00 p.m. in the evening.

The Board of Selectmen will conduct a public hearing to consider an Ordinance entitled "An Ordinance to Abolish the Human Resources Department Pursuant to Section 2.06(5) of the Town Charter and to Amend Provisions of Chapter 49 (Personnel Policies) of the Town Accordingly."

A copy of the proposed Ordinance is available at the Town Clerk's office and on the Town's website.

Given under my hand this 22nd day of October 2021 pursuant to the Board of Selectmen's affirmative vote at its October 19, 2021 public meeting to schedule a public hearing on the above-referenced Ordinance.

Sean P.J. Roche, Chair
WELLS BOARD OF SELECTMEN

RENTALS AVAILABLE

1 BEDROOM APARTMENT for rent September - May 31 in Wells. \$925/month. Fully furnished, all utilities included, free WiFi, and 1 covered parking spot. Absolutely no smokers or pets. Call 207-216-3807

WINTER ON WELLS BEACH Furnished 1 BR, 1 BA, 3rd floor APT for rent Oct. 1, 2021 - May 31, 2022. No smoking. No pets. \$1400/mo. includes all utilities. One person only. 207-351-6797

WINTER ON WELLS BEACH Furnished 2 BR, 1 BA for rent Oct. 1, 2021 - May 31, 2022. No smoking. No pets. \$1600/mo. includes all utilities. 207-351-6797

SHARE ENTIRE HOUSE IN WELLS. Enjoy your own bedroom, \$250 per week, all expenses paid from rent. Call 207-251-1018

KITTERY POINT HOUSE FOR RENT: Small, year-round, 1 bedroom, well-maintained, waterfront house in Kittery Point. \$1200/mo. No pets, no smoking. 207-439-9521

SUITE WITH HARBOR VIEWS IN KITTERY POINT Private entrance and deck, kitchenette, on site parking. Dec. 1st '21 - April 30 '22. No smoking, no pets please. \$1400 includes utilities & WiFi. For 1 person. 603-498-5974.

CENTURY 21
Barbara Patterson 207.384.4008
96 Portland St. South Berwick, ME
www.century21barbarapatterson.com

BERWICK
Studio/Efficiency Apartment
No Accessible WiFi
\$800 / Month
No Pets

RENTALS AVAILABLE

Your home is your castle.
Maine Castle REALTY
1-877-646-8664
Colonial Sq. Plaza, 952 Post Rd, Wells

Winter Rentals Available

Kennebunk: Furnished, upscale, 1 BR. Walk downtown. 2-Car parking. Gas cooking. Very NICE! \$1650 plus electric, first, last & security.

Kennebunkport: Private, country, furnished studio w/ steam shower & jetted tub, off-street parking, \$1200 with onsite laundry, utilities & wi-fi included. Pet friendly. First, last & security required.

Wells: Coastal, condo efficiency with beach vibe, 2 queen beds, kitchen, DR, onsite laundry, indoor pool, clubhouse lounge & meeting room. Grassy common area set back from the road, quiet & convenient. Daily, weekends, or monthly. \$159/night to \$2000/mo.

Wells: Ocean view, 7-room residence with coastal theme, 4 BRs, 3 BAs, LED fireplace, wi-fi, laundry, fully furnished, super-insulated & efficient heat. Rent weekends, weekly, or monthly. Great for group holiday gatherings & getaways. \$300/night. Off-season rate through March 31. Located in the heart of Wells Beach near I-95 access for easy commutes.

Call 1-877-646-8664 ext 3 for reservations!

Wanted: Your listing - We have cash buyers. Call for a free market consult!

STORAGE RENTALS

AFFORDABLE STORAGE
Rentals \$50 & Up
No Sign Up Fee
Call 207-641-8404

RENTAL WANTED

SEACOAST RENTAL
Single man looking for a 2 bedroom winter rental with no stairs. Payment is no problem. Please call 1-603-502-1823.

ACCOUNTING

LAURA S. LEBER, CPA
Accounting, bookkeeping, payroll & tax preparation services. Reasonable rates.
Call 207-384-5932 or e-mail: laura.leber.cpa@gmail.com

RAYMOND C. SNELL, CPA
SOUTH BERWICK
Income Tax Prep-Individual Business-Corp-NonProfit
C 781-956-2713 H 207-384-5425
Kakemo1@myfairpoint.net

BONDGARDEN
255 DEPOT RD
ELIOT, ME 03903

CPN REALTY LLC
2028 STATE RD
ELIOT, ME 03903

FLOWER COMPANY PROPERTIES
C/O NORTHEAST KIND ASSETS LLC
987 HAROLD L DOW HWY
ELIOT, ME 03903

LAC REALTY LLC
31 CLARK RD
ELIOT, ME 03903

MARITIMES & NORTHEAST PIP
C/O DUFF & PHELPS LLC
PO BOX 2629
ADDISON, TX 75001

PW ME CANRE SD LLC
C/O POWER REIT
301 WINDING RD
OLD BETHPAGE, NY 11804

TOWN OF ELIOT
TRANSFER STATION
1333 STATE RD
ELIOT, ME 03903

XNG MAINE LLC
300 BRICKSTONE SQUARE STE
1005
ANDOVER, MA 01810

PB21-16: 0 Odiorne Lane (Map 83/Lot 2): Site Plan Review and Change of Use – Public Utility Facility (Ground-Mounted Solar Array) – Request for Reconsideration



TOWN OF ELIOT MAINE

PLANNING OFFICE

1333 State Road

Eliot ME, 03903

To: Planning Board
From: Jeff Brubaker, AICP, Town Planner
Cc: Michael J. Sudak, EIT, Attar Engineering, Applicant’s Representative
Michael J. Sullivan, Town Manager
Kearsten Metz, Land Use Administrative Assistant
Sandra L. Guay, Archipelago Law, LLP, Town’s Legal Counsel
Date: November 2, 2021 (report date)
November 9, 2021 (meeting date)
Re: PB21-16: 0 Odiorne Lane (Map 83/Lot 2): Site Plan Review and Change of Use – Public Utility Facility (Ground-Mounted Solar Array) – **Request for Reconsideration**

Background

On October 22, 2021, legal counsel representing Odiorne Lane Solar, LLC, sent a letter to the Planning Board requesting reconsideration of the Planning Board’s October 12 disapproval/denial of the 0 Odiorne Lane Site Plan Review application (hereinafter “Reconsideration Request”). On Tuesday, October 26, the applicant (collectively Odiorne Lane Solar, LLC; NH Solar Garden, and SOW Solar, Inc.; agent: Attar Engineering) submitted an “amended Sketch Plan and associated plans and attachments” for the project (hereinafter “October 26 plans”), indicating in the cover letter that “we have not filled out a new application as we view this revision as simply a continuation of the existing application, of which we believe the Board is legally bound to continue its review, pursuant to the arguments made in our request for reconsideration”. These documents are in your packet.

The Town’s legal counsel, Bernstein Shur, has a conflict of interest in this case, and they have recused themselves from advising the Town on this matter. After the Reconsideration Request was received, the Town hired Archipelago Law, LLP, to provide counsel. Archipelago has reviewed background materials and the Reconsideration Request and is available to advise the Town/Planning Board.

Purpose of this agenda item

This meeting’s agenda item and public hearing are intended to respond to the Reconsideration Request at the next scheduled meeting after the request was submitted. Notice for the public hearing was made per 33-130, with publication of a public hearing notice in the *Portsmouth Herald* on Saturday, October 30, postings in town offices, and certified mail to abutters within 500 ft. dropped off at the post office on November 1. The Maine Municipal Association’s guidance for planning boards recommends that a board “should schedule a separate hearing on the merits with notice to all parties if reconsideration does not occur at the same meeting when the original decision was made.”¹

First and foremost, the Planning Board should conduct the public hearing. The hearing should be narrowly focused on the appropriateness of reconsideration, not on the overall merits of the

¹ Maine Municipal Association. (2017). *Manual for Local Planning Boards: A Legal Perspective* (Feb. 2017 revised edition), p. 29

PB21-16: 0 Odiorne Lane (Map 83/Lot 2): Site Plan Review and Change of Use – Public Utility Facility (Ground-Mounted Solar Array) – Request for Reconsideration

application. The Board should hear from the applicant as well as any members of the public wishing to offer input on reconsideration.

The Planning Board may or may not wish to reconsider its October 12 decision. Paragraph 2-104(l) of the Town Code governs the procedure for motions to reconsider in Town board proceedings. It states:

If not otherwise dictated by law or ordinance, a motion to reconsider a prior action of the board must be made by a member who had voted in the majority on that action. The second to that motion may be by any member who participated in the original voting. A vote to reconsider must be timely and thus must be taken up no later than the end of the next regularly scheduled meeting and completed, if reconsidered, by the end of the following regular meeting. If a vote to reconsider is passed the board may, at its pleasure, take additional testimony during their deliberation. Motions to reconsider and reconsideration may take place at special meetings if such occur within the above time interval.

Any of the four members who voted to deny the application may make a motion to reconsider. The motion then operates like any other motion, needing a second (in this case by any member who participated in the original voting) and a majority vote to pass. A motion made at this (Nov. 9) meeting would be timely because it would occur at the next regularly scheduled meeting after the request was made and the next regularly scheduled meeting allowing enough advance time to properly notice the public hearing on the reconsideration in accordance with 33-130.

If a motion to reconsider is not made or seconded, or is voted down, the denial stands. The applicant then has the ability to “again initiate development review or appeal”, per 33-131(b). If a motion to reconsider is approved, the Planning Board can then continue its review of the application. The October 26 plans would serve as the current, most up-to-date submittal to review. The Planning Board can then decide to make a new motion on the overall application or continue its review to a future meeting, though the “time clock” would stay the same; a decision would need to be made by December 5, which is 75 days from the completeness determination, unless an extension is agreed to by the Board and the applicant. The latest Tuesday before that date is November 30.

* * *

Respectfully submitted,

Jeff Brubaker, AICP
Town Planner



TOWN OF ELIOT MAINE

PLANNING OFFICE

1333 State Road

Eliot ME, 03903

PUBLIC HEARING NOTICE

AUTHORITY: Eliot, Maine Planning Board
PLACE: Town Hall (1333 State Rd.) with Remote Option
DATE OF HEARING: November 9th, 2021
TIME: 7:00PM

Notice is hereby given that the Planning Board of the Town of Eliot, Maine will hold a public hearing on Tuesday, November 9th, 2021 at 7:00 PM for the following application(s):

- **0 Odiorne Lane (Map 83/Lot 2), PID # 083-002-000, PB21-16: Site Plan Review and Change of Use – Public Utility Facility (Ground-Mounted Solar Array) – Anticipated Public Hearing on Request for Reconsideration**
 - Applicant: NH Solar Garden and Odiorne Lane Solar LLC
 - Property Owner: Lillian H. Crowell c/o Debbie Berthiaume

Interested persons may be heard and written communication received regarding this application at this hearing. The application is on file and available for review in the Planning Office at Eliot Town Hall, 1333 State Road, Eliot, ME 03903. The meeting agenda and information on how join the remote Zoom meeting will be posted on the web page at eliotmaine.org/planning-board. Town Hall is accessible for persons with disabilities.

Seacoast Classified Ads .COM

Classified Marketplace of Portsmouth Herald, Foster's Daily Democrat, Hampton Union, and Exeter News-Letter

3 easy ways to place your ad

- Online: SeacoastClassifiedAds.com
- Call: 1-888-736-4062
- Email: classads@seacoastonline.com

<p>Legals</p> <p>THE STATE OF NEW HAMPSHIRE JUDICIAL BRANCH NH CIRCUIT COURT 7th Circuit - Family Division - Rochester 76 N. Main Street Rochester NH 03867 Telephone: 1-855-212-1234 TTY/TDD Relay: (800) 735-2964 http://www.courts.state.nh.us</p> <p>CITATION BY PUBLICATION — TERMINATION OF PARENTAL RIGHTS</p> <p>TO: MICHAEL LEIGHTON LKA: 259 MERRYMEETING RD. NEW DURHAM, NH 03855 formerly of and now parts unknown FOR TELEPHONIC HEARING: DIAL: 1-866-951-1151 Conference Room #: 355-7882 Case Number: 619-2021-TR-00049 619-2020-JV-00164; 619-2021-TR-00048</p> <p>Preliminary Hearing A petition to terminate parental rights over your minor child(ren) has been filed in this Court. You are hereby cited to appear at a Court to show cause why the same should not be granted. Date: December 09, 2021 Time: 8:30 AM Time Allotted: 30 Minutes Courtroom 2-7th Circuit - Family Division-Rochester Rochester, NH 03867</p> <p>A written appearance must be filed with this Court on or before the date of the hearing, or the respondent may personally appear on the date of hearing or be defaulted.</p> <p>CAUTION You should respond immediately to this notice to prepare for trial and because important hearings will take place prior to trial. If you fail to appear personally or in writing, you will waive your right to a hearing and your parental rights may be terminated at the above hearing.</p> <p>IMPORTANT RIGHTS OF PARENTS THIS PETITION IS TO DETERMINE WHETHER OR NOT YOUR PARENTAL RIGHTS OVER YOUR CHILD(REN) SHALL BE TERMINATED. TERMINATION OF THE PARENT/CHILD RELATIONSHIP MEANS THE TERMINATION SHALL DIVEST YOU OF ALL LEGAL RIGHTS, PRIVILEGES, DUTIES AND OBLIGATIONS, INCLUDING BUT NOT LIMITED TO THE LOSS OF ALL RIGHTS TO CUSTODY, VISITATION AND COMMUNICATION WITH YOUR CHILD(REN). IF TERMINATION IS GRANTED, YOU WILL RECEIVE NO NOTICE OF FUTURE LEGAL PROCEEDINGS CONCERNING YOUR CHILD(REN). You are hereby notified that you have a right to be represented by an attorney. You also have the right to oppose the proceedings, to attend the hearing and to present evidence. If you desire an attorney, you may notify this Court within ten (10) days of receiving this notice and upon a finding of indigency, the Court will appoint an attorney without cost to you. If you enter an appearance, notice of any future hearings regarding this child(ren) will be by first class mail to you, your attorney and all other interested parties not less than ten (10) days prior to any scheduled hearing. Additional information may be obtained from the Family Division Court identified in the heading of this Order of Notice. If you will need an interpreter or other accommodations for this hearing, please contact the court immediately. Please be advised (and/or advise clients, witnesses, and others) that it is a Class B felony to carry a firearm or other deadly weapon as defined in RSA 625:11, V in a courtroom or area used by a court. BY ORDER OF THE COURT /s/ Cheryl-Ann Andrews, Clerk of Court October 20, 2021 C. Michael Leighton; Caleb Plaisted; Heather Tacconi Cremen, ESQ; Heath H. Norris, ESQ; Amy L. Driscoll, ESQ</p>	<p>Legals</p> <p>THE STATE OF NEW HAMPSHIRE JUDICIAL BRANCH NH CIRCUIT COURT 7th Circuit - Family Division - Rochester 76 N. Main Street Rochester NH 03867 Telephone: 1-855-212-1234 TTY/TDD Relay: (800) 735-2964 http://www.courts.state.nh.us</p> <p>CITATION BY PUBLICATION — TERMINATION OF PARENTAL RIGHTS</p> <p>TO: TAFFIE PLAISTED LKA: 259 MERRYMEETING RD. NEW DURHAM, NH 03855 formerly of and now parts unknown FOR TELEPHONIC HEARING: DIAL: 1-866-951-1151 Conference Room #: 355-7882 Case Number: 619-2021-TR-00048 619-2020-JV-00164; 619-2021-TR-00049</p> <p>Preliminary Hearing A petition to terminate parental rights over your minor child(ren) has been filed in this Court. You are hereby cited to appear at a Court to show cause why the same should not be granted. Date: December 09, 2021 Time: 8:30 AM Time Allotted: 30 Minutes Courtroom 2-7th Circuit - Family Division-Rochester Rochester, NH 03867</p> <p>A written appearance must be filed with this Court on or before the date of the hearing, or the respondent may personally appear on the date of hearing or be defaulted.</p> <p>CAUTION You should respond immediately to this notice to prepare for trial and because important hearings will take place prior to trial. If you fail to appear personally or in writing, you will waive your right to a hearing and your parental rights may be terminated at the above hearing.</p> <p>IMPORTANT RIGHTS OF PARENTS THIS PETITION IS TO DETERMINE WHETHER OR NOT YOUR PARENTAL RIGHTS OVER YOUR CHILD(REN) SHALL BE TERMINATED. TERMINATION OF THE PARENT/CHILD RELATIONSHIP MEANS THE TERMINATION SHALL DIVEST YOU OF ALL LEGAL RIGHTS, PRIVILEGES, DUTIES AND OBLIGATIONS, INCLUDING BUT NOT LIMITED TO THE LOSS OF ALL RIGHTS TO CUSTODY, VISITATION AND COMMUNICATION WITH YOUR CHILD(REN). IF TERMINATION IS GRANTED, YOU WILL RECEIVE NO NOTICE OF FUTURE LEGAL PROCEEDINGS CONCERNING YOUR CHILD(REN). You are hereby notified that you have a right to be represented by an attorney. You also have the right to oppose the proceedings, to attend the hearing and to present evidence. If you desire an attorney, you may notify this Court within ten (10) days of receiving this notice and upon a finding of indigency, the Court will appoint an attorney without cost to you. If you enter an appearance, notice of any future hearings regarding this child(ren) will be by first class mail to you, your attorney and all other interested parties not less than ten (10) days prior to any scheduled hearing. Additional information may be obtained from the Family Division Court identified in the heading of this Order of Notice. If you will need an interpreter or other accommodations for this hearing, please contact the court immediately. Please be advised (and/or advise clients, witnesses, and others) that it is a Class B felony to carry a firearm or other deadly weapon as defined in RSA 625:11, V in a courtroom or area used by a court. BY ORDER OF THE COURT /s/ Cheryl-Ann Andrews, Clerk of Court October 20, 2021 C. Michael Leighton; Caleb Plaisted; Heather Tacconi Cremen, ESQ; Heath H. Norris, ESQ; Amy L. Driscoll, ESQ</p>	<p>Legals</p> <p>Need to place a legal notice? Email your request to: SeacoastLegals@gannett.com Please include: notice text, publication name and date to publish along with your contact info.</p> <p>Legal Notice TOWN OF RYE, NEW HAMPSHIRE SELECT BOARD PUBLIC HEARING</p> <p>The Rye Select Board will hold a Public Hearing in accordance with RSA 21:35-B on Monday, November 8, 2021, 6:30 p.m. at Rye Town Hall, 10 Central Road, Rye. The purpose of the hearing is to consider acceptance of one hundred twenty-eight thousand four hundred thirty-nine dollars and seventy-three cents (\$128,439.73) for return of surplus from Health Trust for FY2021.</p> <p>Rye Select Board October 30, 2021</p> <p>LEGAL NOTICE PUBLIC HEARING NOTICE</p> <p>AUTHORITY: Eliot, Maine Planning Board PLACE: Town Hall (1333 State Rd.) with Remote Option DATE OF HEARING: November 9th, 2021 TIME: 7:00PM</p> <p>Notice is hereby given that the Planning Board of the Town of Eliot, Maine will hold a public hearing on the following application(s):</p> <ul style="list-style-type: none"> o Odiorne Lane (Map 63/Lot 2), PID # 083-002-000, PB21-16: Site Plan Review and Change of Use - Public Utility Facility (Ground-Mounted Solar Array) - Anticipated Public Hearing on Request for Reconsideration o Applicant: NH Solar Garden and Odiorne Lane Solar LLC o Property Owner: Lillian H. Crowell c/o Debbie Barthmaue <p>Interested persons may be heard and written communication received regarding this application at this hearing. The application is on file and available for review in the Planning Office at Eliot Town Hall, 1333 State Road, Eliot, ME 03903. The meeting agenda and information on how to join the remote Zoom meeting will be posted on the web page at eliotmaine.org/planning-board. Town Hall is accessible for persons with disabilities. October 30, 2021</p> <p>Boat & Marine</p> <p>WINTERIZING SPECIALS! Seacoast area boat and motor service, our location or yours. Consignment boats & yachts needed. All makes and models. Call 978-358-8312.</p>	<p>Autos for Sale</p> <p>2012 Blue Chevy Impala runs great, well maintained, 99K miles \$6,500.00 Contact Julie @ 603.834.4095 Location Portsmouth.</p> <p>2014 RED CHEVY SPARK 4-door hatchback, 4-speed standard shift, 43 mpg per gallon, one owner 28,000 original miles, 6 months left on GM warranty, \$9,000. Call 603-822-9602 (no text please).</p> <p>Auto Services</p> <p>MERCEDES-BENZ MASTER CERTIFIED Is your tech stumped? Paying for guesswork? WE HAVE 30 YEARS EXPERIENCE WORKING WITH MERCEDES-BENZ GET IT FIXED RIGHT, THE FIRST TIME! ROUTE 1 N. HAMPTON CALL BLAUE 603-585-5085</p> <p>Items for Sale</p> <p>Blanket Chest - 39" Lx21" Wx21" H. Hand crafted. Footed, on wheels. Handles. Tote painted cover. \$45 603-742-0545</p> <p>Bridal Gown - Michaeleangelo Size 14 short (altered bodice). V neck, pearl bodice long sleeves / Petal-colored silk. \$ 200 603-742-0545</p> <p>Craftman 16" Scroll Saw, Used 3 times. \$40 firm. 603-742-0545</p> <p>Shaltee 180 known as "Meal-In-A-Bar" have you heard of it? Find out more at www.shaltee.com/more-nutrition. Click on Healthy Weight! Tab.</p> <p>Tonka Trucks from the 70's: 7 Tonka trucks = 5 construction, 1 ambulance and one fire/ambulance truck. \$200 for all- 603-742-0545</p> <p>Trunk from the 1920's. Black. Handles intact. 27x30x10, 20"D. Removable section. \$75 603-742-0545</p> <p>Writing desk, drop front 22" writing surface, 46"H, 30"W, 18"D. Black and maple. \$75 603-742-0545</p>
---	--	---	---

2021 BEST OF THE BEST
Celebration

**★ 2021 ★
BEST OF THE SEACOAST**
The Original Community Choice Awards
seacoastonline.com • fosters.com

FEATURING CELEBRITY GUESTS
Jillian Michaels | Alfonso Ribeiro | Amy Robach | Carla Hall
AND MANY MORE..

SPONSORED BY HARVARD PILGRIM

Premieres November 9th at 6pm only on yourchoiceawards.com/seacoast

BARTLETT JOHN H
BARTLETT CHERYL L
218 BRIXHAM RD
ELIOT, ME 03903

MEYER, MICHELE/JAMES REV
MICHELE/JAMES MEYER TRUST
58 ODIORNE LN
ELIOT, ME 03903

BARTLETT, DAVID A
PO BOX 235
ELIOT, ME 03903

MYERS, TAMBER L
86 BARTLETT LN
ELIOT, ME 03903

BLANCHETTE, BEAU A
BOSSE, MICHELLE A
66 BARTLETT LN
ELIOT, ME 03903

PEASE, DONALD W
38 DAVID DR
YORK, ME 03909

CROWELL, LILLIAN H HRS OR
C/O DEBORAH M BERTHIAUME
432 GOODWIN RD
ELIOT, ME 03903

ROSSO, GEORGE A
ROSSO, DONNA L
56 GUYS WAY
ELIOT, ME 03903

DAVIS, REBECCA L
28 BAINBRIDGE LN
ELIOT, ME 03903

STAPLES, BRUCE REVOCABLE
BRUCE WARREN STAPLES TRUS
23 STAPLES CROSSING
ELIOT, ME 03903

HOFFING, MAX COHEN
80 GUYS WAY
ELIOT, ME 03903

STAPLES, BRUCE REVOCABLE
BRUCE WARREN STAPLES TRUS
23 STAPLES CROSSING
ELIOT, ME 03903

LEATHE, MARTHA H REVOCABL
MARTHA H LEATHE TRUSTEE
16 BRIXHAM RD
ELIOT, ME 03903

STAPLES, BRUCE W REVOCABL
BRUCE WARREN STAPLES TRUS
23 STAPLES CROSSING
ELIOT, ME 03903

LONG, DENNIS
76 BARTLETT LN
ELIOT, ME 03903

SWANICK BUILDERS LLC
16 THOMPSON LN
ELIOT, ME 03903

LONG, MARION A LIVING TRU
MARION A LONG TRUSTEE
C/O EDWARD JONES TRUST CO
PO BOX 31549
ST LOUIS, MO 63131

WATERMAN, KEVIN M
WATERMAN, TRACI L
72 GUYS WAY
ELIOT, ME 03903

MERRILL, KRISTEN L KRICKE
CROWELL, LILLIAN H
77 ODIORNE LN
ELIOT, ME 03903

October 22, 2021

Carmela Braun, Chair
Town of Eliot Planning Board
1333 State Road
Eliot, ME 03903

**RE: October 12, 2021 Denial of Odiorne Lane Solar, LLC's
Application for Site Plan Approval**

Dear Chairwoman Braun and Fellow Planning Board Members:

I have just been retained by Odiorne Lane Solar, LLC (“Odiorne”) in conjunction with the Planning Board’s denial of its application for site plan review on October 12, 2021. The purpose of this letter is to request reconsideration of said denial, pursuant to Article IV, section 2-104 of the Town of Eliot’s Code of Ordinances (the “Town Code”).

Our hope in filing this reconsideration request is to avert the need to appeal and litigate serious procedural errors that were made by the Board in denying Odiorne’s application. These errors resulted in a clear violation of my client’s due process rights under Maine law. The concerns expressed by Planning Board Member James Latter about whether the reasons articulated for denial would pass legal muster were very well placed. They do not.

As will be discussed below, the Board erred in two critical ways: (1) by failing to honor its duty to review and act on a pending application despite there being no moratorium in place that would allow the Board to avoid this duty; and (2) by failing to make any findings, as required by law, on the governing review criteria under the Town Code.

As Madam Chair pointed out at the October 12, 2021 meeting, once an application is deemed complete and the public hearing has been set, the Planning Board *must* undertake an analysis of the review criteria specified under the Town Code. Chairwoman Bruan repeatedly noted that the Board was required to act on said review criteria by December 5, 2021, which assessment was entirely accurate. The Planning Board’s duty in this regard is clearly articulated under section 33-131 of the Town Code,

Within 30 days of the public hearing but not more than 75 days of its acceptance of a completed application and site plan, the planning board shall approve, modify and approve, or disapprove the site plan. The planning board shall specify in writing its reasons for such modification or disapproval.

Maine law is unequivocal that the requirement under section 33-131 of the Town Code for the Planning Board to “specify its reasons for...disapproval” means that any denial must be

based on a failure to meet the review criteria specified in the ordinances and/or statutes that the board is tasked to review. Any other basis for denial would be unlawful.¹ Not only must the reasons for denial be based on a failure to meet governing review criteria, the Board must also specifically explain *why* the applicant has failed to meet them.² In deciding the deny Odiorne's application based on its belief that the Town's existing ordinance is insufficient with respect to solar projects, the Board failed in its duty to enumerate reasons why the applicant met or failed to meet the governing performance criteria (here, under both the Town Code's site plan review and generally applicable land use performance standards).

In deciding to approve, approve with conditions, or deny Odiorne's application, the *only* relevant and lawful criteria for this Board's consideration is whether it meets the applicable review criteria under the Town Code, **as it is currently written**. It is absolutely unlawful to refuse to review a pending application given concern that an existing ordinance is somehow flawed. The Planning Board simply does not have the legal authority or discretion to refuse to consider a pending application based on its opinion that the ordinances currently in place are deficient. The Town Planner attempted to remind the Board of its duties in this regard stating that it had an active application before it, the implication being that absent a validly enacted moratorium, the Board must review that application consistent with existing review criteria.

The practical reasons for this becomes immediately apparent. Reasonable minds can differ about whether governing ordinance are strict enough, too strict, good policy, bad policy, etc. However, when a board member commits to serving on a municipal board, it is not within their purview to refuse to apply the Town's ordinances even if they believe them to be lacking in some way. Rather, it is the board member's duty to apply the ordinances to the application before them **as those ordinances are written**, and not how they might wish them to be.

It was discussed at the October 12, 2021 public hearing that a moratorium might be advisable to address concerns about perceived deficits in the Town's existing ordinances to

¹It is well-established in Maine that municipal boards are "creatures of statute and have 'only such powers as [are] conferred by statute expressly or by necessary implication.'" *Pike Indus., Inc. v. City of Westbrook*, 2012 ME 78, ¶ 17, 45 A.3d 707 (quoting *City of South Portland v. State*, 476 A.2d 690, 693 (Me.1984)) (emphasis added). "In the zoning context, a municipality's 'authority to make a zoning determination must be expressly granted by statute or ordinance.'" *Pike Indus.*, 2012 ME 78, ¶ 17, 45 A.3d 707 (quoting *Oeste v. Town of Camden*, 534 A.2d 683, 684 (Me.1987)).

² See *City of Old Town v. Expera Old Town, LLC*, 2021 ME 23, ¶ 22, 249 A.3d 141 (holding that an administrative tribunal's findings "must be adequate to indicate the basis for the decision and to allow meaningful judicial review"); *Carroll v. Town of Rockport*, 2003 ME 135, ¶ 30, 837 A.2d 148 ("when an administrative board or agency fails to make sufficient and clear findings of fact and such findings are necessary for judicial review, we will remand the matter to the agency or board to make the findings"); *Christian Fellowship & Renewal Ctr. v. Town of Limington*, 2001 ME 16, ¶ 12, 769 A.2d 834 ("when the findings of fact of an administrative agency are insufficient to allow review of the agency's decision, the reviewing court should remand the case to the agency for further findings"); *Harrington v. Inhabitants of Town of Kennebunk*, 459 A.2d 557, 561 (Me. 1983) ("the remedy for an agency's failure to act on all matters properly before it or to make sufficient and clear findings of fact is a remand to the agency for findings that permit 'meaningful judicial review'").

October 22, 2021

Page 3

address large-scale solar projects. It is critical to note, however, that *there is no moratorium in place*, or even in development at this point. It was conceded at the public hearing by even those in favor of a moratorium, that Maine statute enumerates very specific enactment criteria for moratoria. See 30-A M.R.S. section 4356. Moratoria can only be enacted by the town meeting body. The next town meeting at which a moratorium could be voted on is not until June 2022. Even if a special town meeting were called to consider a moratorium, the inescapable fact remains -- none currently exists. Therefore, this Board was duty bound to consider Odiorne's application under the Town's existing ordinances. The Planning Board's refusal to consider a pending application on the basis that a hypothetical moratorium might be enacted at some unknown time in the future was clearly unlawful and constitutes a serious violation of my client's rights. The Planning Board cannot stymie a project because a moratorium could possibly be enacted many months in the future. Not only is that unlawful, it violates basic principles of fairness.

Based on the foregoing, I urge the Board consult with the Town Attorney regarding the legal issues raised above. We are hopeful that after said consultation, the Planning Board will reconsider its denial and, consistent with its duties under the Town Code and Maine law, proceed with its substantive review of the project that was already well underway at the time of the October 12, 2021 denial.

Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to be 'L. Rachin', with a long horizontal flourish extending to the right.

Leah B. Rachin



ATTAR

ENGINEERING, INC

CIVIL STRUCTURAL MARINE

Mr. Jeffery Brubaker, AICP, Town Planner
Town of Eliot, Maine
1333 State Road
Eliot, Maine 03903

October 26th, 2021
Project No. C223-21

**RE: Amended Sketch Plan Application
Odiorne Lane Solar, LLC. (Tax Map 83, Lot 02)
Odiorne Lane, Eliot, Maine**

Dear Mr. Brubaker:

On behalf of S.O.W. Solar, Inc., NH Solar Garden, and Odiorne Lane Solar, LLC., I have enclosed an amended Sketch Plan and associated plans and attachments for the above-referenced project.

The attached amended plan addresses many of the concerns raised previously by Planning Board staff, the Eliot Conservation Commission, abutters, and members of the public. The amended development shall create a disturbance of approximately 11.5 acres, which includes the array itself, the gravel access drive, overhead electric utility corridor, perimeter fencing, stormwater management, and necessary clearing for shade management. The amended development also includes zero proposed wetland impacts and minimization of the shade management areas to address the Town Planner's concerns regarding §45-413 "Preservation of Landscape".

As the Town is aware, the applicant has requested that the Planning Board reconsider its denial of Odiorne Lane Solar, LLC.'s application based on a number of significant procedural irregularities. It is the applicant's understanding that these issues are currently being reviewed by legal counsel for the Board. Since the Board's determination on these issues will impact its review of this amended plan, we respectfully request that the Board stay its review of the enclosed amended plan while the applicant's reconsideration request is pending. You will note that we have not filled out a new application as we view this revision as simply a continuation of the existing application, of which we believe the Board is legally bound to continue its review, pursuant to the arguments made in our request for reconsideration.

We look forward to discussing this project with the Town and Planning Board. Please contact me for any additional information or clarifications required.

Sincerely;

Michael J. Sudak, E.I.T.
Staff Engineer

cc: NHSolarGarden.com, Odiorne Lane Solar, LLC.
C223-21 Cover Sketch Amend 26Oct2021

**Andrew Kellar
43 Holmes Court
Portsmouth, NH 03801**

Jeffery Brubaker
Town Planner
Town of Eliot
1333 State Road
Eliot, ME 03903

May 4, 2021

Dear Mr. Brubaker,

Please be informed that Kenneth Wood, P.E. and Michael Sudak, E.I.T. of Attar Engineering, Inc. will be acting as my agents for the applications and permitting of my project on Odiorne Lane in Eliot, Maine.

Please contact me if I can provide any additional information.

Sincerely;

A handwritten signature in black ink, appearing to read 'Andrew Kellar', with a long horizontal flourish extending to the right.

Andrew Kellar

cc: Kenneth Wood, P.E. Attar Engineering, Inc.



Abutters List Report

Eliot, ME
May 04, 2021

Subject Property:

Parcel Number: 083-002-000
CAMA Number: 083-002-000
Property Address: ODIORNE LN

Mailing Address: CROWELL, LILLIAN H HRS OR DEVS C/O
DEBBIE BERTHIAUME
432 GOODWIN RD
ELIOT, ME 03903

Abutters:

Parcel Number: 074-014-000
CAMA Number: 074-014-000
Property Address:

Mailing Address: CROWELL, LILLIAN H HRS OR DEVS C/O
DEBORAH M BERTHIAUME PR
432 GOODWIN RD
ELIOT, ME 03903

Parcel Number: 075-004-000
CAMA Number: 075-004-000
Property Address: 34 ODIORNE LN

Mailing Address: MEYER, MICHELE/JAMES REVOCABLE
TRUST MICHELE/JAMES MEYER
TRUSTEES
58 ODIORNE LN
ELIOT, ME 03903

Parcel Number: 081-006-000
CAMA Number: 081-006-000
Property Address: BRIXHAM RD

Mailing Address: STAPLES, BRUCE W REVOCABLE
TRUST BRUCE WARREN STAPLES
TRUSTEE
23 STAPLES CROSSING
ELIOT, ME 03903

Parcel Number: 082-001-000
CAMA Number: 082-001-000
Property Address:

Mailing Address: STAPLES, BRUCE REVOCABLE TRUST
BRUCE WARREN STAPLES TRUSTEE
23 STAPLES CROSSING
ELIOT, ME 03903

Parcel Number: 082-004-000
CAMA Number: 082-004-000
Property Address: 76 BARTLETT LN

Mailing Address: LONG, DENNIS
76 BARTLETT LN
ELIOT, ME 03903

Parcel Number: 082-005-000
CAMA Number: 082-005-000
Property Address: 86 BARTLETT LN

Mailing Address: MYERS, TAMBER L
86 BARTLETT LN
ELIOT, ME 03903

Parcel Number: 083-001-000
CAMA Number: 083-001-000
Property Address: 77 ODIORNE LN

Mailing Address: MERRILL, KRISTEN L KRICKET
CROWELL, LILLIAN H
77 ODIORNE LN
ELIOT, ME 03903

Parcel Number: 083-003-000
CAMA Number: 083-003-000
Property Address:

Mailing Address: PEASE, DONALD W
38 DAVID DR
YORK, ME 03909

Parcel Number: 090-010-000
CAMA Number: 090-010-000
Property Address: 55 BARTLETT LN

Mailing Address: BARTLETT, DAVID A
PO BOX 235
ELIOT, ME 03903



www.cai-tech.com

Data shown on this report is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this report.



Abutters List Report

Eliot, ME
May 04, 2021

Parcel Number: 091-002-000
CAMA Number: 091-002-000
Property Address: GUYS WAY

Mailing Address: DAVIS, REBECCA L
28 BAINBRIDGE LN
ELIOT, ME 03903

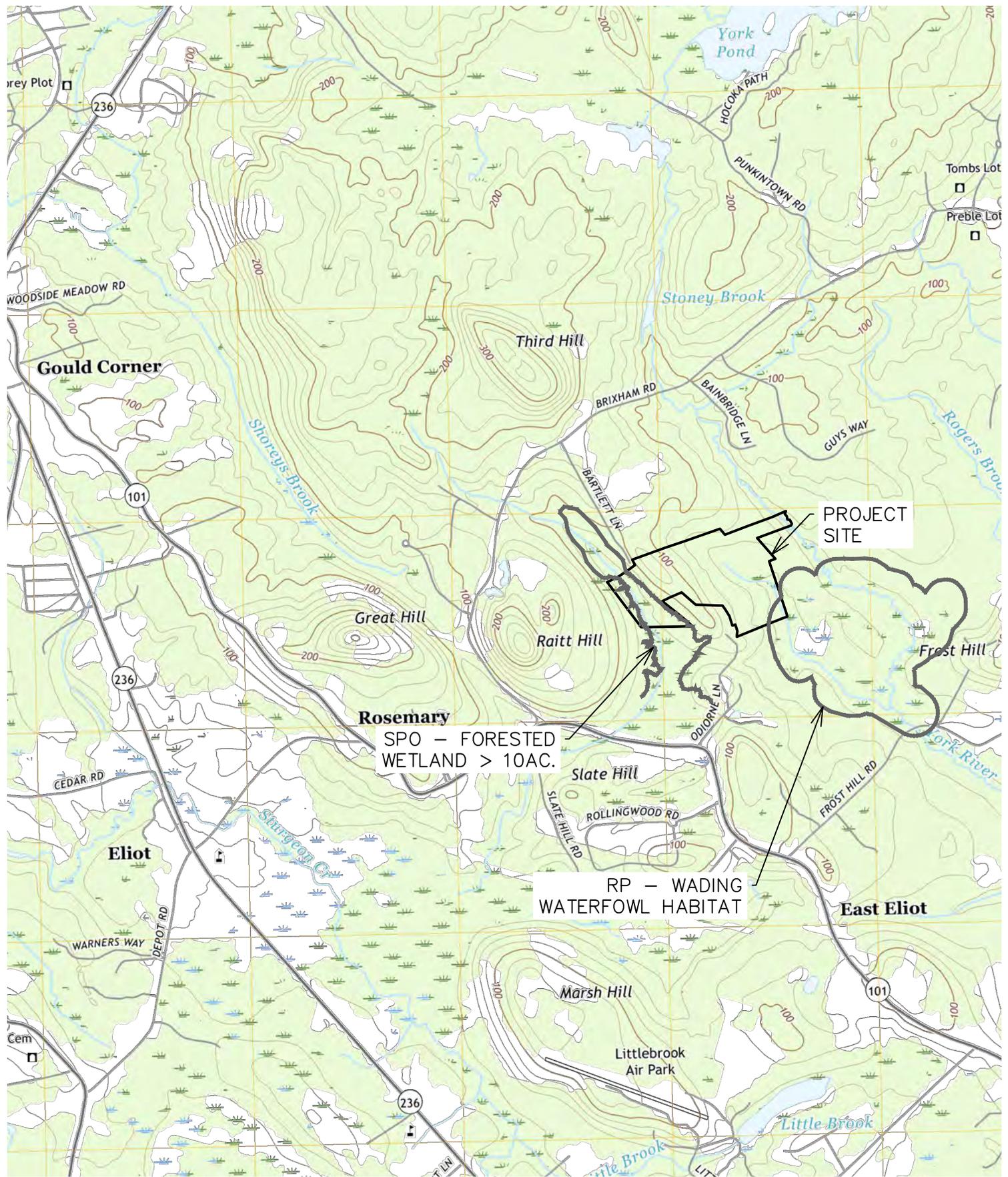


www.cai-tech.com

Data shown on this report is provided for planning and informational purposes only. The municipality and CAI Technologies are not responsible for any use for other purposes or misuse or misrepresentation of this report.

5/4/2021

Page 2 of 2



ATTAR ENGINEERING, INC.
 CIVIL ♦ STRUCTURAL ♦ MARINE ♦ SURVEYING
 1284 STATE ROAD - ELIOT, MAINE 03903
 PHONE: (207)439-6023 FAX: (207)439-2128

SCALE: 1" = 2,000'	APPROVED BY:	DRAWN BY: MJS
DATE: 10/26/21		REVISION DATE: - : -
JOB NO: C223-21	FILE: ODIORNE SOLAR BASE.DWG	SHEET: 1

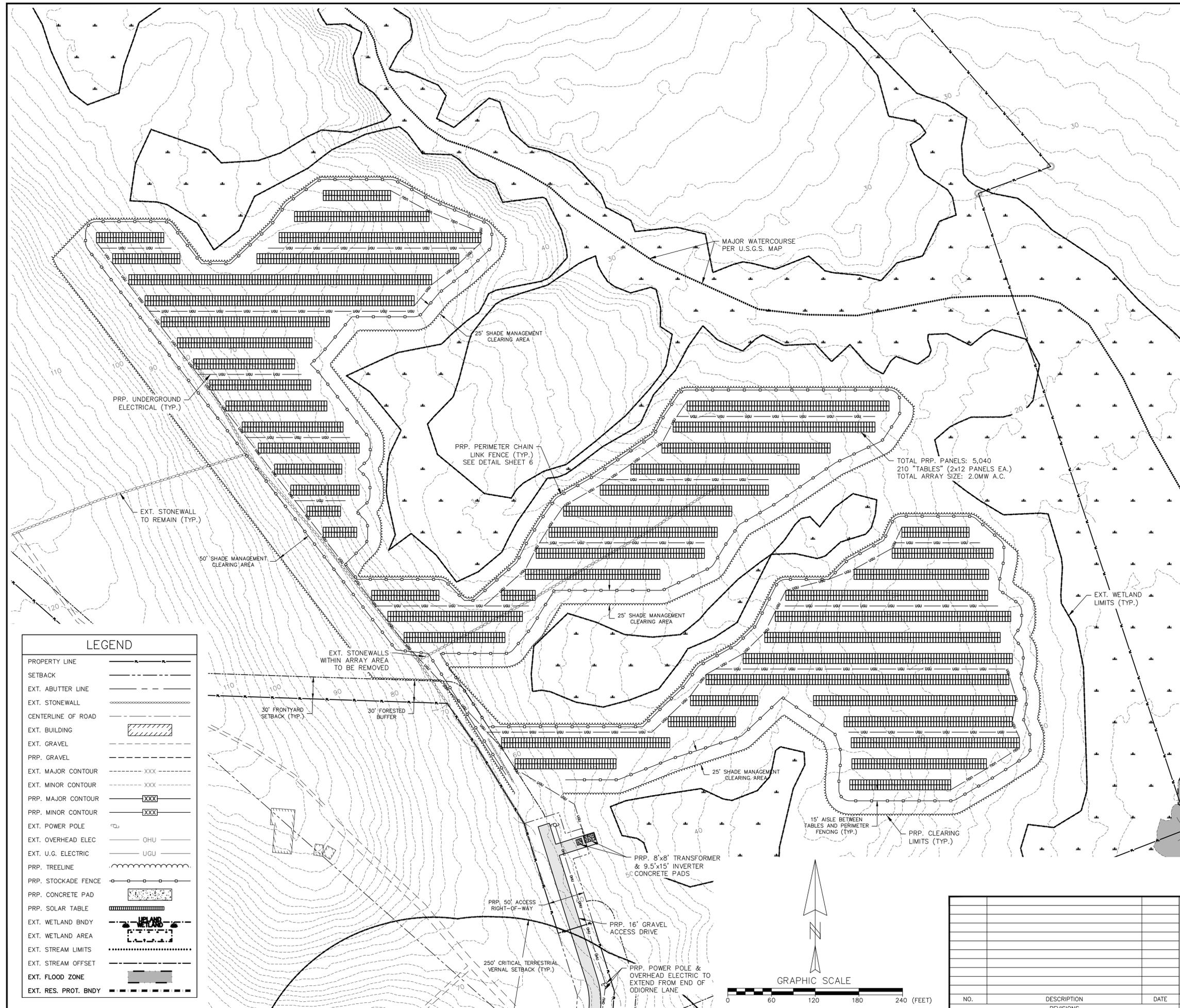
LOCATION: ODIORNE LANE SOLAR, LLC.
 ODIORNE LANE, ELIOT, MAINE
 TAX MAP 83, LOT 02

INFORMATION: USGS LOCATION MAP
 7.5-MINUTE SERIES
 DOVER EAST QUADRANGLE

NH SOLAR GARDEN
 43 HOLMES COURT
 PORTSMOUTH, NH 03801

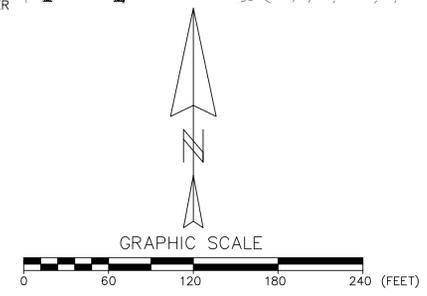
GENERAL NOTES

- 8.) LOT COVERAGE CALCULATION:
- OVERALL LOT AREA = 3,032,438 SQ. FT. (69.61 AC.)
 AREA PER SOLAR TABLE = 634.36 SQ. FT.
 TOTAL TABLE IMPACT = 210 PROPOSED, [210 x 634.36] => 133,216 SQ. FT.
 GRAVEL ACCESS DRIVE = 3,240 SQ. FT.
 [133,216 + 3,240] = 136,456 SQ. FT. (3.13 AC.)
- LOT COVERAGE = [136,456 SQ. FT. / 3,032,438 SQ. FT.]
 = 4.50% < 10% => OK
- LOT COVERAGE CALCULATION WHEN REMOVING WESTERN CLAIMED AREA FROM PLAN REFERENCE 1:
- OVERALL LOT AREA = 2,486,734 SQ. FT. (57.09 AC.)
 LOT COVERAGE = [136,456 SQ. FT. / 2,486,734 SQ. FT.]
 = 5.48% < 10% => OK
- 9.) SOLAR ARRAY CONSTRUCTION TO INCLUDE MONOPOLE DRIVEN OR AUGURED SUPPORTS. NO LAND GRADING OR SOIL DISTURBANCE (EXCLUDING DRIVEN SUPPORT POLES) TO OCCUR. WORK TO BE COMPLETED WHEN GROUND CONDITIONS SUPPORT EQUIPMENT WITHOUT DAMAGE (EXTENSIVE RUTTING OR SOIL DISTURBANCE) TO EXISTING GROUND SURFACE.
- 10.) THE PROPOSED SHADE MANAGEMENT AREAS ARE TO BE LOGGED BUT NOT STUMPED OR GRUBBED.
- 11.) THIS DEVELOPMENT IS SUBJECT TO THE FOLLOWING MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION PERMITS:
- LAND RESOURCES – STORMWATER MANAGEMENT LAW, INDIVIDUAL STORMWATER PERMIT
- NATURAL RESOURCES PROTECTION ACT (NRPA) PERMIT-BY-RULE (PBR), ACTIVITIES ADJACENT TO SIGNIFICANT VERNAL POOL
- 12.) ALL PROPOSED LEVEL SPREADERS WERE SIZED AND DESIGNED IN ACCORDANCE WITH THE STATE OF MAINE'S VOLUME III "BEST MANAGEMENT PRACTICES TECHNICAL DESIGN MANUAL", CHAPTER 8.3.
- 13.) OVERALL PROJECT AREA:
 DEVELOPMENT AREA (ACCESS DRIVE, SOLAR PANELS, UTILITY CORRIDORS AND PERIMETER FENCING) = 367,088 SQ. FT. (8.43 AC.)
 OCCUPIED AREA (ADDITIONAL CLEARING FOR SHADE MANAGEMENT, STORMWATER MANAGEMENT AREAS, OVERHEAD ELECTRIC EXTENSION) = 503,308 SQ. FT. (11.55 AC.)
- 14.) VERNAL POOL – CRITICAL TERRESTRIAL HABITAT CALCULATION:
- OVERALL HABITAT AREA ON-SITE = 20,580 SQ. FT.
 TOTAL AREA IMPACTED = 3,442 SQ. FT.
 [3,442 / 20,580] = 16.7% < 25% => OK
- 15.) A SELECTIVE CUT WAS PERFORMED ON THE SUBJECT PARCEL IN THE WINTER OF 2018/2019 IN THE NORTHWEST PORTION OF THE PROPERTY, WITH LOGGING ACCESS AND TREE REMOVAL BEING GRANTED THROUGH THE PROPERTIES OF JOHN. H. BARTLETT (TM 90, LOTS 7 & 9) AND DAVID A. BARTLETT (TM 90, LOT 10). LOGGING ACTIVITY FOR THE PROPOSED DEVELOPMENT SHALL HAVE ITS ACCESS AND EGRESS GRANTED IN THE SAME MANNER, WITH A LOGGING ROUTE TO BE DEPICTED AFTER A SITE VISIT DETERMINES THE LEAST IMPACT TO THE SURROUNDING UNDISTURBED AREAS.
- 16.) ALL VEGETATION MAINTENANCE WITHIN BOTH THE SOLAR ARRAY AND THE SHADE MANAGEMENT AREAS SHALL BE COMPLETELY MECHANICAL IN NATURE. CHEMICAL MAINTENANCE IS PROHIBITED.
- 17.) ALL SNOW MAINTENANCE FOR THE ENTIRE DEVELOPMENT SHALL BE COMPLETELY MECHANICAL IN NATURE. THE USE OF CHEMICAL AGENTS FOR SNOW MAINTENANCE IS PROHIBITED.



LEGEND

PROPERTY LINE	---
SETBACK	---
EXT. ABUTTER LINE	---
EXT. STONEWALL	---
CENTERLINE OF ROAD	---
EXT. BUILDING	▨
EXT. GRAVEL	▨
PRP. GRAVEL	---
EXT. MAJOR CONTOUR	---XXX---
EXT. MINOR CONTOUR	---XXX---
PRP. MAJOR CONTOUR	---XXX---
PRP. MINOR CONTOUR	---XXX---
EXT. POWER POLE	○
EXT. OVERHEAD ELEC	OHU
EXT. U.G. ELECTRIC	UGU
PRP. TREELINE	~
PRP. STOCKADE FENCE	○-○-○-○
PRP. CONCRETE PAD	▨
PRP. SOLAR TABLE	▨
EXT. WETLAND BNDY	WETLAND
EXT. WETLAND AREA	WETLAND
EXT. STREAM LIMITS	---
EXT. STREAM OFFSET	---
EXT. FLOOD ZONE	▨
EXT. RES. PROT. BNDY	---



NO.	DESCRIPTION	DATE



TAX MAP 83, LOT 02

AMENDED GRADING & UTILITIES PLAN
 ODIORNE SOLAR ARRAY DEVELOPMENT
 ODIORNE LANE, ELIOT, MAINE

FOR:
 ODIORNE LANE SOLAR, LLC.
 NHSOLARGARDEN.COM, LLC.
 43 HOLMES COURT, PORTSMOUTH NH 03801

ATTAR ENGINEERING, INC.
 CIVIL ♦ STRUCTURAL ♦ MARINE
 1284 STATE ROAD - ELIOT, MAINE 03903
 PHONE: (207)439-6023 FAX: (207)439-2128

SCALE: 1" = 60'
 DATE: 10/26/21

APPROVED BY: _____
 DRAWN BY: MJS
 REVISION DATE: - - -
 JOB NO: C223-21 FILE: ODIORNE SOLAR BASE.DWG SHEET: 2



1333 State Road Eliot, ME 03903 - Phone (207) 439-1817 - Fax (207) 439-1415

Planning Board Submission Deadlines

Please find below the submission deadlines for November 2021 through March 2022. Application materials for Planning Board review are due in the Planning Office according to the schedule below. At this time, the Planning Board will be implementing a two-hour optional meeting cutoff time. If the next available meeting looks like it could exceed two hours, some applications may be placed on the agenda in an “as time allows” status or postponed to a future meeting. As there could be a queue of applications waiting to be heard, submitting applications by the deadlines below does not guarantee that they will be agendized for the associated meeting.

The Planning Board’s meeting agendas will be available approximately a week before the meeting. (The Planning Board meets on the first and third Tuesdays of the month, and generally reserves the first meeting of each month for administrative duties.) Applications and other public records submitted to the Planning Board may be viewed by any member of the public, by visiting the Planning Office during normal business hours. You may also visit our website at www.eliotmaine.org for meeting information and applicable forms.

Questions about a Planning Board application? We are here to help answer questions about the Planning Board process and ordinance requirements.

Kearsten Metz, Land Use Administrative Assistant: landuse@eliotme.org

Meeting Date	Last Day to Submit Materials	Agenda Packet Date	Type of Meeting
November 9, 2021	October 12, 2021	November 2, 2021	Admin/App Review
November 16, 2021	October 19, 2021	November 9, 2021	Application Review
December 7, 2021	November 9, 2021	November 30, 2021	Administrative
December 21, 2021	November 23, 2021	December 14, 2021	Application Review
January 4, 2022			No meeting
January 11, 2022	December 14, 2021	January 4, 2022	Administrative
January 18, 2022	December 21, 2021	January 11, 2022	Application Review
February 1, 2022	January 4, 2022	January 25, 2022	Administrative
February 15, 2022	January 18, 2022	February 8, 2022	Application Review
March 1, 2022	February 1, 2022	February 22, 2022	Administrative
March 15, 2022	February 15, 2022	March 8, 2022	*Ordinance PH
March 22, 2022	February 22, 2022	March 15, 2022	Application Review

***Mar. 15:** Last meeting for public hearing/recommendations for June ordinance amendments