

Selectboard

Meeting Minutes

March 27, 2019

Town Offices

Open Session

6:00 pm

The open session of the Selectboard of the Town of Whately was called to order on March 27, 2019 at 6:07 p.m. by Selectboard Chair, Jonathan Edwards. Also, present were Selectboard members Fredrick Orloski and Joyce Palmer-Fortune, Town Administrator Brian Domina and Administrative Assistant Amy Schrader.

Review and vote on meeting minutes of March 13, 2019

A motion was made and seconded to amend the meeting minutes of March 13, 2019 on page 3, end of paragraph 2 to include a question asked by Fred Orloski - "If the third full time police officer worked the 2 weekend days and 2 or 3 weekdays to eliminate the need for part time officers on the weekend days how would that effect your total personnel budget?" The Board will review and vote on the amended meeting minutes at the next Selectboard meeting scheduled for April 10, 2019.

Comments from the public

No public comment

Public Hearings

(6:05 pm) Long Plain Solar, LLC appeal from denial of a driveway permit for a parcel of land identified as Whately Assessor's Map 21, Parcel 15 (Off Christian Lane) – Present before the Selectboard were Attorney Alan Seewald (representing Long Plain Solar, LLC.) Chris Clark (Senior Vice President - Nexamp), and Julie Beauchemin (Business Development Manager - Nexamp).

Attorney Seewald presented the Board with a photograph of the driveway in question and told the Board that the driveway in question is an existing driveway and that it has been serving that farm field for a very long time. He stated that the driveway is perfectly adequate for the access that his client needs. According to Attorney Seewald, Long Plain Solar, LLC. will not be building a driveway, reconstructing, or doing anything to the driveway, except for laying down a little gravel where there is a shallow depression in the driveway. Attorney Seewald argued that the applicable regulations are for a driveway opening permit and that there is no permit required to simply change a use on an existing driveway. Attorney Seewald stated that his reading of these regulations is that no driveway permit is required for this existing driveway. Attorney Seewald also informed the Board that Long Plain Solar, LLC's use of this driveway after construction will be very infrequent. There will be minimal maintenance, mowing, and no one will be going to the site on a daily basis once construction is completed. Attorney Seewald requested that the Board find that no permit should be required in this instance and if there is a permit required, that the Board issues a variance/waiver from the 20-foot requirement contained in Section 6.

Jonathan (Selectboard Chair) questioned if the Grybko's had been notified and how they feel about it? Attorney Seewald stated that he had a conversation with the Grybko's attorney and that they are not here tonight. Fred Orloski (Selectboard) stated that it's not their property. Jonathan (Selectboard Chair) stated that he understands that, but it's still within 20 feet of their property line. Attorney Seewald stated that the Grybko's and Long Plain Solar, LLC. have fully resolved the issues between them in a comprehensive written agreement. Brian (Town Administrator) informed the Board that the Town provided written notice to both direct abutters (Grybko and Farrick) regarding the public hearing tonight.

Fred Orloski (Selectboard) questioned whether the proposed utility poles are going to be located in the middle of the driveway. Julie Beauchemin (Nexamp) stated that the utilities poles will be running along the existing driveway in the grass area.

Joyce Palmer-Fortune (Selectboard) questioned when would the driveway regulation apply if it didn't apply to an existing driveway? Joyce expressed concern that the Town may be opening itself up to anyone that has a trail on the side of their property.

Keith Bardwell (Highway Superintendent) stated that there are many locations with existing access for farm properties from the road. When someone comes forward looking for a building permit to develop the land differently, he interprets this to be a change of use and requests that the person apply for a permit. In regards to this situation, Keith stated that he didn't believe that he had the authority under the regulations to issue a permit with the access driveway being within 20 feet of a property line.

Joyce Palmer-Fortune (Selectboard) questioned if any farmer can start putting access to his land from the road without a driveway permit? Keith Bardwell (Highway Superintendent) stated that there are many places where farm tractors, over the years, have been accessing fields from the road. Keith expressed concern that on Nexamp's plans, it shows work being proposed right up to the edge of the road, by materials being placed there.

Keith Bardwell (Highway Superintendent) stated that another thing that needs to be looked at is the existing condition of concrete, as shown in the picture, is cracked pretty bad. I don't know what will become of that. It's my responsibility, as the Highway Department Superintendent, to try and make sure that the edge of the Town road is not damaged, which is the reasons why the driveway regulations exist.

Jonathan Edwards (Selectboard) questioned whether the driveway regulations are triggered by a change of use? Brian Domina (Town Administrator) stated that the regulations are not clear and that the Board might want to consider this for future amendments to these regulations.

Jonathan Edwards (Selectboard) stated that he has never been opposed to any solar project, but he has a hard time believing that this project won't need to reconstruct the driveway especially

with the need to make improvements by the road and the installation of two new telephone poles right next to the driveway.

Attorney Seewald stated that it depends on what you see as reconstruction of a driveway. In his opinion, throwing down some gravel is not considered reconstruction of a driveway. Attorney Seewald stated that there will be no digging and no excavating and that it's simply putting down some gravel where there is already gravel. Attorney Seewald argued that the fact is that you have regulations that are very specific on when a permit is needed and a change of use and construction of a building on an existing driveway is not one of them.

Jonathan Edwards (Selectboard) questioned whether they are not going to widen it by an inch? Attorney Seewald stated we're not going to widen it by an inch. It's an existing driveway that is going to be used for access.

Jonathan Edwards (Selectboard) questioned what happens if there is reconstruction, after the fact? Attorney Seewald stated that would be a violation of the driveway regulations. Jonathan Edwards (Selectboard) stated that he understands that, but it would also be after the solar is installed. Attorney Seewald stated that is true of any driveway in the town. Attorney Seewald stated again his position that the regulations do not apply for a change of use or reconstruction of a building. Attorney Seewald stated that if there is to be a driveway reconstructed then Nexamp will have to go to the Highway Superintendent and apply for a driveway permit.

Chris Clark (Nexamp) stated that if that were to occur, Nexamp would be happy restore the driveway to its previous condition, after the fact, but Nexamp is not expecting reconstruction to be necessary.

Jonathan Edwards (Selectboard) expressed concern that if the driveway is suddenly reconstructed with gravel or whatever is put down, that it's going to create an eyesore that changes that area. Jonathan expressed his opinion that the work recently completed on Christian Lane, has done anything but preserve the rural character of the town so he is concerned about this project.

Attorney Seewald stated this is a driveway that has been used for years and it's going to be continued to be used. We are talking about hypothetical things, that could happen and you're suggesting that my client in the dark of night would suddenly reconstruct a driveway without contacting the Highway Superintendent.

Keith Bardwell (Highway Superintendent) stated that his biggest concern is that the work that gets done doesn't damage the existing apron.

Attorney Seewald stated that there is no reconstruction to the driveway, they're not building curbs or opening it up to the Town way. If the intention is that, anytime, someone puts gravel down on their driveway they need to get a permit from the Highway Superintendent, then that's news to him. That is not reconstruction that is repair. If damage is done to the Town way, there is a responsible party to pay for damages to the Town way. If something happens and Nexamp needs to reconstruct the driveway, it will come to the Highway Superintendent for a permit to

reconstruct. There will be minor repairs to upgrade it, so that trucks can get in and out during construction. After that, there won't be much need to access to the site.

Joyce Palmer-Fortune (Selectboard) summarized the Board's options to decide its an existing driveway and the regulations are not applicable, to decide the regulations apply and grant a waiver or to decide the regulations apply and deny the appeal.

Jonathan Edwards (Selectboard) expressed concern over the precedent that might be set if the Board grants a waiver. Joyce Palmer-Fortune (Selectboard) stated that it's within the Board's power to do that and that after reading town counsel's opinion on the matter she is thinking it is an existing driveway and the regulations do not apply. Fred Orloski (Selectboard) stated that he was thinking the same way.

A motion was made and seconded that the existing access to the property is an existing driveway and as such the regulations do not apply and that any damage/concerns of the Highway Superintendent will be promptly addressed by Nexamp in a timely manner. All in Favor.

The Board had a brief discussion with Nexamp about its Christian Lane project and several of the Board members expressed concern about the large number of vehicles still parked on the site, the lack of vegetation under the panels, the condition of the vegetative screening and the placement of utility poles and pole mounted equipment immediately adjacent to a neighbor's house. Chris Clark (Nexamp) stated that he will take back the concerns the Board expressed to the construction team

(6:30 pm) Eversource petition for pole and wire locations on Poplar Hill Road - Karla Cacho (Eversource Representative) presented to the Board the petition to install a new utility pole on Poplar Hill Road as shown on the plan to provide electrical service to a newly constructed house (6 Poplar Hill Road). The new pole is proposed to be installed to the left of an existing one and it's going to be less than 100 feet away from that pole. Another reason for the placement of the pole is to avoid the clustering of poles in front of one house.

The Board discussed with Karla the location of existing poles and questioned whether the pole could be located to have less impact on neighbors and a bit more impact on the property that it is going to be served. Karla discussed the technical reasons and the cost savings reasons as to why the pole placement was selected. Karla told the Board that if the Board doesn't approve of the location she will go back to the site and suggest an alternative location, but this will create delay for the homeowner receiving electricity and possibly raise the cost to the homeowner.

Paul Newlin (abutter) expressed concern about the location of the pole and the impact that it will have on the aesthetics of the neighborhood. Paul suggested that the poles be installed closer together to minimize the visual footprint.

Karla (Eversource) explained the technical reasons for the spacing of the poles and suggested that reconfiguring the poles and the existing electrical service would be timely and more expensive for the homeowner.

Pete Mahar (house #6) stated that he is the owner of house at number 6 and that he doesn't really care where the poles goes. He stated that he already paid Eversource in full, over 4 months ago and he still can't live in the newly constructed house. He is hoping for a quick resolution of this matter.

Karla (Eversource) stated that the extra cost to reconfigure the system will likely be charged to house # 6, but these costs would not be known until the work is redesigned.

Jonathan Edwards (Selectboard) questioned why wasn't this conversation taking place three months ago? Karla (Eversource) stated this is the second petition for this job and this is a Verizon set area.

Jonathan Edwards (Selectboard) questioned why wasn't Verizon in here three months ago? Keith Bardwell (Highway Superintendent) stated they were and they were ill-prepared and you asked them to come back. Then in the meantime, Eversource got involved and said "we can fix it by doing this".

Karla (Eversource) stated she met with Keith Bardwell (Highway Superintendent) after the Verizon petition and agreed to change the pole location and in doing so, Verizon said it's not going to set it because it's too far from its lines. So Eversource agreed to set the pole. This started the petition process all over again.

Joyce expressed displeasure over how the pole petition process has been handled thus far and how Eversource is handling hook-up requests for solar projects. Karla promised to pass along Joyce's concerns about the solar hook-ups to the appropriate account executives.

The Board voted at 7:00 pm to temporarily adjourn its meeting and to reconvene immediately upon the conclusion of the Special Town Meeting. All in Favor.

The Selectboard reconvened its meeting at 7:04 pm.

Paul Newlin (abutter) stated that he doesn't want house # 6 to wait 3 months and that he wouldn't mind if the pole was moved 50 feet to the south. Paul didn't think that would need much more engineering from the proposed location.

Karla (Eversource) stated that she would have to go out to Poplar Hill Road to look at alternative locations and depending on the location there may need to be tree trimming or Verizon may have to get involved again.

It was suggested by the Board that Karla, Keith Bardwell (Highway Superintendent), Paul Newlin, and any other interested abutters meet on Friday March 29th, 2019 at 9:00 a.m. to agree on a new location. All involved agreed to the meeting.

A motion was made and seconded to continue the pole hearing to Tuesday April 2, 2019 at 5:30 p.m. at the Whately Town Offices at 4 Sandy Lane, Whately, MA. All in Favor.

Scheduled Appointments

(6:45 pm) Paul Newlin & Pete Westover to discuss recreational trail networks – Paul Newlin and Pete Westover discussed the town's Open Space and Recreation Plan (2006 & 2011) in particular a recommendation that the Town appoint a committee to work on establishing recreational trails for non-motorized use. Paul and Pete suggested that the Board appoint a working group, which could include Pete and Paul. The Board suggested recruiting members from the Recreation Committee and the Community Preservation Committee. Pete informed the Board that there is grant money available for trail construction and planning. Pete stated that multi-town projects can draw a lot of attention and funding. A motion was made and seconded to appoint a trails working group, beginning with the nomination of Paul Newlin and Pete Westover. All in Favor.

(7:05 pm) Karen Gaston (Diamond Shine) –proposed retail marijuana establishment to be located at 13 State Road, Whately, MA - Karen Gaston (Diamond Shine) held a preliminary discussion regarding her proposed retail marijuana establishment to be located at 13 State Road. Karen informed the Board that they had their community outreach meeting at the proposed location and held a follow-up meeting. Karen discussed her mission statement along with her proposed business plan. The Board questioned Karen's business plan with specific attention to traffic issues, customer volume, parking lot capacity, overflow parking hazards, and public safety concerns. Extensive discussion occurred on these topics. Jonathan stated that the safety issue would need to be written into the Host Community Agreement.

Jonathan Edwards (Selectboard Chair) opened this discussion for public comment with the understanding that the Board is not approving anything tonight.

Rich Korpiewski (abutter) and Robert Fill (abutter) expressed concerns regarding many portions of Karen's proposed business plan, including but not limited to traffic volume, traffic control, public safety concerns, customer volume, and basic infrastructure of the property.

Jonathan Edwards (Selectboard) stated that Joyce and Brian have typically been the designated two people to draft the Host Community Agreement. Jonathan requested that the draft agreement include language to address concerns that the Board heard during the meeting. Jonathan suggested that this document be made public for people to provide feedback on at a public meeting.

Joyce Palmer-Fortune (Selectboard) stated that she doesn't see a problem with releasing a draft to the public and that she wants to be careful to avoid overstepping into the jurisdiction of the

ZBA. Joyce and Brian agreed to look into what public safety concerns can be addressed in the Host Community Agreement.

Joyce and Brian agreed to set a target date for a draft agreement to be discussed at the Selectboard meeting on April 24th.

(7:30 pm) John Dewey (Mustang Renewable Power Ventures) – a proposed marijuana cultivation establishment to be located at 262 State Road, Whately, MA – Attorney Richard Evans and John Dewey (Principal of Mustang Renewable Power Ventures) were present before the Board. John Dewey informed the Board that he submitted an application to the Planning Board for site plan review for a marijuana cultivation facility to be located at Full Bloom Market Garden LLC on the corner of State Road and Christian Lane. Mustang is interested in purchasing the facility and converting the use over to a marijuana cultivation facility.

Mustang Renewable Power Ventures is a company that is experienced in greenhouse development and renewable energy projects. It is looking to be the landlord of the facility and are in discussions with prospective tenants. Once a tenant is identified, the tenant would have to go through the special permit application process with the ZBA and the state licensing process.

John has been in contact with the Town Administrator and has requested a telephone call with town counsel to discuss questions about the zoning bylaws.

John discussed potential changes to interior and exterior of the building. During the harvest season, there will be around 20-25 employees at the site. There will be an odor control system which is a misting fog system. State regulations allow up to 100,000 square feet under growing canopy and that is the anticipated size of the facility when fully operational.

The Board had a lengthy discussion about energy usage, traffic flow, and the prospective tenants.

Richard Fill and Richard Korpiewski expressed concerns regarding the increased energy usage and the environmental impact that a facility of this size might have. They also expressed concern about the increase in traffic from the proposed facility. No action was taken at this time.

Old Business

Clean Water Trust Loan Documents – The Board signed loan closing documents for the temporary borrowing related to the Manganese Filtration project. A motion was made and seconded for the Board to sign the documents.

New Business

Vote of Intent to Layout Poplar Hill Road Extension – Brian informed the Board that this is a request to begin the process to layout an extension to Poplar Hill Road as depicted on the attached Poplar Hill Road Street Acceptance Plan. The request is being made by Peter Crisci and Smith College. Joyce made a motion that the Selectboard vote its intention to layout a portion of Poplar Hill Road as a Town way, as shown on plan titled “Street Acceptance Plan of Land located

in Whately, Massachusetts" dated March 26, 2019 and prepared by the Berkshire Design Group, Inc. and that the Selectboard forward the plan to the Planning Board for its comments and recommendations pursuant to General Law Chapter 24 section 81G and 81I. Motion was seconded. All in favor.

Short-term rental general bylaw and impact fee – Brian informed the Board that this a request from the Board of Health. This request should be considered in conjunction with new zoning bylaws that are being proposed for adoption. The Board decided to table this topic until the next meeting.

Town Administrator Updates

Brian informed the Board that he found out a little more information regarding the Complete Streets qualified vs. non-qualified engineer issue. If the Town is not using Chapter 90 funds or any state funding then the Town does not need to have the engineer pre-qualified by MassDOT. Brian informed the Board that if the Town uses a different funding source that would enable the Town to save money and hire Sara Campbell; however, the Town doesn't have any money appropriated for this. The Board had a brief discussion regarding the potential monetary savings and asked that this item be added to the next town meeting warrant.

Brian informed the Board that after meeting with the Insurance Advisory Committee and the Public Employee Committee, the town is half way through the required mitigation procedures. The Town needs to share 25% of the savings created by the plan changes. Brian informed the Board that the savings would be shared between 32 subscribers. The Public Employee Committee will be asked to sign an agreement with the Selectboard before the end of April.

The Zoning Board of Appeals hearing for the Town Hall appeal is scheduled for April 4, 2019 at 6:40 p.m. at the Town Offices 4 Sandy Lane Whately, MA.

Brian informed the Board that the Water Merger Project could benefit from having a discussion with the Selectboard, Finance Committee, and the Water Commissioners to try and finalize the details. And the Board also needs to decide whether to hold an informational meeting on April 8th. Jonathan suggested that instead of the informational meeting, the meeting with the Finance Committee, Selectboard, Water Commissioners, and the Water District could be held on April 8th. The Board had a brief discussion and decided to schedule a joint meeting immediately following the Finance Committee meeting on April 2nd at 6:30 p.m. and to invite the Finance Committee, Water District representatives and the Water Commissioners.

Brian recommended that since Frontier Regional is voting on their capital improvement plan on April 4th that the Board delay signing the warrant until April 17th to allow the Finance Committee one more meeting to review the request that comes from Frontier.

Items not anticipated within forty-eight (48) hours of the meeting - none

Adjourn – Fred made a motion to adjourn – 9:13 pm. Motion was seconded. All in Favor.

Next Meeting Dates: April 10, 2019 and April 17, 2019

Respectfully submitted,

Brian Domina, Town Administrator

Document List

Letter from Attorney Alan Seewald dated March 11, 2019

Whately's Highway Department Regulations for Driveway Opening Permit dated May 14, 1991

Nexamp Shared Access Easement Plan

Special Permit and Site Plan review for: Long Plain Solar Array Whately, MA.

(maps C-100, C-101, C-102, C-103, C-104, C-105, C-106)

Eversource Petition for Pole and Wire Locations dated March 6, 2019

Letter from Smith College dated March 25, 2019

Street Acceptance Plan of Land

Diamond Shine's Business plan