

**Call to Order:**

The Planning Board Meeting was called to order at 7:02PM on May 10, 2022 via Cisco Webex online video conferencing platform. Present were Vice Chair Rocky Leavitt; Members Neil Magenheim, Ann Knowles, and associate Morgan von PELLE Pecelli. Also present were Jacki Byerley, Planner and Lisa Schwarz, Assistant Director of Planning.

**PUBLIC HEARING:****Fleming Avenue – Bond Taking:**

Mr. Leavitt opened the public hearing on Fleming Avenue to discuss whether the developer, Fleming Avenue Andover, LLC should be declared to be in default of its obligation to complete the subdivision work as required by the Planning Board in its decision, dated September 12, 2017, and whether the Town should seize the funds held for the purpose of completing the project. Ms. Byerley provided a progress update since Planning Board approval and stated that the Planning Division had been contacted within the past year by residents asking when the street would be completed. Doug Ahern, resident at 62 Argilla Road, developer for this project, attended the meeting and informed the Board that he is ready to finish the road if allowed. Ms. Byerley responded that he had been notified several weeks ago and could have started the work; however, Mr. Ahern stated that he did not want to begin without confirmation from the Board that the bond would not be taken.

Mr. Leavitt expressed his surprise by the list of work to be completed and that the bond had been extended through July 9, 2022, already having been extended once before. He also expressed concern that some or all the work would not be completed and the bank had not extended the term. Mr. Ahern responded that he has a good relationship with the bank and is willing to obtain a letter from Lowell Five Bank confirming the extension. Ms. Knowles commented that she would like to see the work is underway in addition to the extension of the bond.

Mr. Ahern stated that he has communicated with the residents, and he believes that they are supportive of him completing work. He provided a completion timeline of three weeks for most of the work in response to a question by Mr. Leavitt.

Ms. Byerley advised that the Conservation Commission had issued an order of conditions and requested additional funding from the developer. Mr. Ahern responded that he was waiting to contact Ann Marton of LEC Environmental Consultants, Inc, the Commission's peer reviewer, until he obtained direction from the Planning Board at the present meeting.

Mr. Leavitt inquired on the remaining work and whether the Department of Public Works (DPW) was receptive to completing it. Per Ms. Byerley, DPW would prefer that the developer completes the work. If the Town assumed responsibility for the street, she added that work would not begin until the following year as funding would need to be authorized at Town Meeting.

Mr. Leavitt proceeded to open the public hearing to comments and questions from the community. Sundar Selvaraj, resident at 38 Fleming Avenue, stated that he would prefer that Mr. Ahern complete the work and requested a more definitive timeline for the project from start to completion. Mr. Ahern responded within three weeks, but the timing would be dependent on the availability of materials. He added that he would speak with his contractor and report back to the Planning Division by the end of this week or early the following week.

Aishwarya Hegde, resident at 28 Fleming Avenue, inquired on whether the project would be delayed by unfinished business with the Conservation Commission. Per Mr. Ahern, he does not believe that to be the case, but he added that he does need to meet with Ms. Marton.

Ms. Byerley read aloud an email that was received during the meeting from Christos Kalavantis, resident at 31 Fleming Avenue, stating that Mr. Ahern had not spoken to “any of us” for over a year and he does not have any positive comments to offer. He requested that Mr. Ahern commit to his timeline presented at the meeting.

Mr. Magenheim inquired on what would happen should the timeline impact the appropriate time for trees to be planted. Ms. Knowles responded that typically the bond would be reduced based on the work that has been completed and funds would be set aside for planting in the Fall. Ms. Byerley requested that Mr. Ahern provide this information during a construction update.

On a motion by Mr. Magenheim, seconded by Ms. Knowles, the Planning Board unanimously voted to continue the public hearing to May 24, 2022 at 7:00PM. **Vote: (4-0)**

**CONTINUED PUBLIC HEARINGS:**

**300 Minuteman Road – Special Permit for a Major Non-Residential Project (SP21-06) and Special Permit for a Change in Parking Space Requirements (SP21-07):**

The applicant requested to continue the public hearings without discussion to the Planning Board meeting on June 14, 2022.

On a motion by Mr. Magenheim, seconded by Ms. Knowles, the Planning Board unanimously voted to continue the public hearing to June 14, 2022 at 7:35PM. **Vote: (4-0)**

**CONTINUED PUBLIC HEARINGS:**

**3000 Minuteman Road – Special Permit for a Major Non-Residential Project (SP22-01) and Special Permit for a Reduction in Parking (SP22-02):**

The applicant requested to continue the public hearings without discussion to the Planning Board meeting on June 14, 2022.

On a motion by Mr. Magenheim, seconded by Ms. Knowles, the Planning Board unanimously voted to continue the public hearing to June 14, 2022 at 7:30PM. **Vote: (4-0)**

**CONTINUED PUBLIC MEETING:**

**25 Phillips Street – Phillips Academy – Site Plan Review (SPR22-01):**

The applicant requested to continue the public hearings without discussion to the Planning Board meeting on May 24, 2022.

On a motion by Mr. Magenheim, seconded by Ms. Knowles, the Planning Board unanimously voted to continue the public hearing to May 24, 2022 at 7:15PM. **Vote: (4-0)**

**DISCUSSION ITEMS:****Town Meeting Warrant Article 18 – Doherty Middle School Upgrades and Andover High School Design:**

Ms. Byerley stated that the abovementioned Town Meeting Warrant Article was added to the final Town Warrant and advised the Planning Board to take no position. She confirmed that the Board provides advisory referrals on Town Meeting Articles requesting funding of more than \$100,000, which applies to said Article, in response to a question by Mr. Leavitt.

On a motion by Mr. Magenheim, seconded by Ms. Knowles, the Planning Board unanimously voted to take no position on Town Meeting Warrant Article 18. **Vote: (4-0)**

**Master Plan Contract with Consultant:**

Ms. Schwarz informed the Planning Board that a kickoff meeting with Utile, the Master Plan Consultant, is scheduled for May 23<sup>rd</sup> from 10:30AM-12:00PM to be comprised of a tour of Andover followed by a meeting at the Town Offices to further discuss the project scope that Utile had presented to the Master Plan Steering Committee. She invited the Board members to join, if available, to meet with the Consultant.

**CONTINUED PUBLIC HEARINGS:****Sellers Farm Estates – Definitive Subdivision Plan Modification (PL22-3370) and Special Permit for Earth Movement Modification (SP22-08):**

The applicant requested to continue the public hearings without discussion to the Planning Board meeting on May 24, 2022. The applicant also requested an extension of time through August 31, 2022.

On a motion by Ms. Knowles, seconded by Mr. Magenheim, the Planning Board unanimously voted to grant the applicant an extension of time through August 31, 2022 and to continue the public hearings to the May 24, 2022 meeting at 8:00PM. **Vote: (4-0)**

**DISCUSSION ITEMS:****Other Planning Related Topics:**

Ms. Byerley provided an update on Town Meeting Warrant Article P31 – Funding to Repair Hacienda Way for Street Acceptance, a private article petitioned by Courtney Famiglietti, resident at 3 Hacienda Way. She stated that Ms. Famiglietti is working with the Town to revise said article and asked the Planning Board if they would be available to meet virtually the following week to vote. The Board agreed to meet on May 17, 2022 at 5:30PM.

Ms. Byerley informed the Planning Board that she would be absent for the July 12, 2022 and August 9, 2022 Planning Board meetings.

Mr. Leavitt requested an update on when the Planning Board would convene an Executive Session with Town Counsel to discuss the ongoing litigation with Yvon Cormier. Ms. Byerley responded that the Executive Session has been added to the May 24, 2022 Planning Board meeting agenda.

Mr. Leavitt requested an update on recent construction on Red Spring Road and what the project entails. Ms. Byerley advised that the Town is reconfiguring the roadway to modify the curbing, providing more grass area for usable space. Ms. Schwarz added that this project is part of a larger transportation plan in conjunction with the Town Yard Redevelopment.

Mr. Leavitt requested an update on the Route 133 corridor study. Per Ms. Schwarz, the project had been pushed out to 2026-2027; however, Mr. Materazzo is working to move the plans forward to restore the original timeline of 2024-2025.

Ms. Knowles requested an update on the Old Town Hall parking lot improvements. Ms. Schwarz responded that bids were received in February and much higher than anticipated. Accordingly, the Town needed to determine work that could be completed in-house to save \$200,000, and unfortunately, some of the complex green infrastructure had to be removed from the plans. Ms. Schwarz added that work is estimated to begin in late Summer/early Fall with a goal for completion in the Summer of 2023, in response to a question by Mr. Leavitt.

#### **PUBLIC HEARING:**

##### **1320 South Street – Special Permit for Major Non-Residential Project (SP22-09):**

Mr. Leavitt opened the public hearing on the abovementioned special permit application submitted by Borrego Solar Systems, Inc. for the proposed installation of an energy storage facility. Erin Kendrick, Project Developer, Borrego Solar Systems, Inc.; Carli Shroyer and Brandon Smith, Civil Engineers, Borrego Solar Systems, Inc.; and several representatives from the Town of Tewksbury were in attendance for the presentation. Ms. Byerley provided a summary of discussions held earlier in the day at the Interdepartmental Review (IDR) meeting and a description of how energy storage works.

Ms. Kendrick provided a brief introduction to Borrego Solar Systems as well as an overview of the project. As part of the Massachusetts Clean Peak Program, the purpose of the project would be to “clean” (i.e., use/store clean energy during) the times of peak load which would result in increased grid reliability and resiliency. She added that the identified property on South Street is ideal due the existing high peak loads and solar generation, and she further discussed the battery storage system in more detail.

Ms. Shroyer proceeded to display the site plan onscreen and walked the Planning Board through the layout, including the location of the facility, access road off Moonlight Drive, barrier gate to restrict access from the public, and sound mitigation wall. She stated that the water tank design would be revised, and a fire hydrant would be placed off Moonlight Drive, in accordance with comments received from the Fire Department at the IDR meeting. She also discussed the proposed fire suppression agent, which is a gaseous clean agent, and advised that the project would remain outside all the buffers to protect conservation.

Mr. Leavitt inquired about the private residence located off South Street. Per Ms. Shroyer, this parcel would remain and shares the same ownership as #1320. Also, he asked if the applicant had been working closely with the Town of Tewksbury, as most abutters reside in that town. Ms. Shroyer responded affirmatively, adding that an informal meeting was held, and a subsequent update meeting would be forthcoming. Ms. Byerley added that abutters from both towns were formally notified. Finally, Mr. Leavitt inquired on whether the applicant had received a letter from AVIS that was submitted to the Planning Board on May 9, 2022. In response, Ms. Shroyer stated that a response is in the process of being drafted.

Ms. Knowles and Ms. von Prella Pecelli requested more information on drainage and fire safety, respectively. In response, Ms. Shroyer provided a comprehensive review of the infiltration, grading, and erosion plans, with Ms. Byerley adding that the Town has contracted with Horsley Witten Group for the stormwater peer review. Mr. Smith discussed the fire suppression process in depth and reported that no incidents have occurred with the manufacturer they are working with.

Ms. von Prelle Pecelli requested more information on the ownership and operation of the energy facility. Per Ms. Kendrick, the owners of the whole parcel, Eliates and Denise Mercedat, would lease the portion of the property where the facility resides to Borrego Solar Systems. She added that an owner and operator would be contracted to conduct 24/7 monitoring.

Ms. Knowles sought clarification on the Chapter 61A designation currently in place, which provides tax relief to owners of agricultural land. Mr. Smith responded that they plan to work with the Town and landowners to have the facility area portion of the parcel removed and the Town would have a Right of First Refusal. In response to further questioning, Ms. Byerley added that a portion of the parcel had been removed in 2017 and she is awaiting a clear delineation from the Assessors office.

Ms. von Prelle Pecelli requested additional information regarding the proposed sound barrier wall. According to Mr. Smith, the applicant worked closely with Epsilon Associates, Inc., a noise consultant, to design a wall for the purpose of mitigating noise caused primarily by running fans from the HVAC units and he further discussed the proposed placement of the wall in more detail. He concluded by stating that the intended goal is to meet MassDEP noise regulations.

Mr. Leavitt proceeded to open the public hearing to comments and questions from the community. Susan Stott, resident at 30 Pasho Street and representative for the Andover Village Improvement Society (AVIS), stated that AVIS owns 11 acres of the 20-acre parcel, and it was her understanding that the entire parcel was designated as Chapter 61A and the owner of the remaining 9 acres intended to use the land for farming. She informed the Planning Board that neighbors had filed a noise complaint with the Zoning Board of Appeals (ZBA) against the landscaping business operating across from the parcel. Ms. Stott also expressed concern with construction of the facility and possible resultant contaminants being dug up and deposited into the river and vernal pool. She further noted there are two turtles in the area that are of special concern.

Mr. Shroyer provided details on the construction timeline and mitigation efforts that would be made to avoid disruption to the neighbors. Regarding contaminants, she specified that EBI Consulting performed a Phase I Environmental Site Assessment and there was no evidence of such on the property and no further action was required. She added that a geotechnical study would be conducted prior to construction. Additionally, Ms. Shroyer confirmed that Natural Heritage had provided an endangered species list of moths and butterflies and a habitat study found no habitats for said species. She inquired about the turtles with Natural Heritage and is awaiting a response.

The Planning Board briefly discussed the length and terms of the lease, which they learned would be 20 years with an option for a 4- or 5-year extension. Ms. Kendrick indicated that should the property be sold, the new owner would take over the lease in response to a question by Mr. Leavitt. Ms. Stott asked if the Planning Board would provide oversight of this process to ensure that the owner is responsible. Mr. Leavitt responded that it would not be within the Board's purview to condition any approval of a new owner/operator after the project has been permitted.

On a motion by Ms. Knowles, seconded by Mr. Magenheim, the Planning Board unanimously voted to continue the public hearing to the June 14, 2022 meeting at 7:45PM. **Vote: (4-0)**

**Adjournment:**

On a motion by Mr. Magenheim, seconded by Ms. Knowles, the Planning Board unanimously voted to adjourn the meeting at 8:51PM. **Vote: (4-0)**

**Documents:**

**Fleming Avenue – Bond Taking**

- Punch List for Street Acceptance – 3.22.22
- Estimate to Finish the Roadway – 3.22.22
- Notice of Incomplete Construction – 3.24.22
- Email from Attorney Kathryn Morin RE: Legal Representation – 3.30.22
- 28 Fleming Avenue Resident Email – 5.10.22

**300 Minuteman Road**

- Continuance Request – 5.5.22

**3000 Minuteman Road**

- Continuance Request – 5.4.22

**25 Phillips Street – Phillips Academy**

- Continuance Request – 5.4.22

**Sellers Farm Estates**

- Continuance Request – 5.3.22
- Extension of Time – 5.4.22

**1320 South Street**

- Application with Narrative – 4.12.22
- Stormwater Report – 4.12.22
- Site Use Permit Set – 4.12.22
- Transmittal Letter – 4.12.22
- Memorandum from Jacki Byerley to the Planning Board RE: Project Summary – 5.4.22
- ZBA Decision #2247 – 5.4.22
- Letter from AVIS to the Planning Board – 5.9.22
- Memorandum from the Building Inspector to Jacki Byerley – 5.9.22

**Miscellaneous**

- Planning Board Agenda