



EAST LONGMEADOW PLANNING BOARD

Tuesday, September 29, 2020

6:00 PM Eastern Time (US and Canada)

Zoom Webinar

MINUTES

Chair Russell Denver open the meeting at 6:00 pm and called the roll.

Present: Russell Denver, Chair
George Kingston, Vice Chair
Tyde Richards
Jon Torcia
Pete Punderson

Staff Present: Bethany Yeo, Planning & Community Development Director

APPROVAL OF MINUTES

September 8, 2020

Motion to approve made by George Kingston; second by Pete Punderson and approved by roll call vote five (5)-zero (0).

September 14, 2020

Motion to approve made by George Kingston; second by Pete Punderson and approved by roll call vote five (5)-zero (0).

SITE PLAN WAIVER REQUESTS

1. **SPRW 2020-33: Quality Granite & Quartz, LLC**—Request for Site Plan Review Waiver for a business offering retail and installation of granite and quartz at 173A Shaker Road (Assessor's Parcel ID 18-11-0) in an existing structure on a .37 +/- acre site in the Industrial zoning district. Applicant: Brock LaFave, 4 Millbrook Drive, East Longmeadow, MA 01028.

Applicant Brock LaFave and business manager Shannon LaFave were present for discussion. Mr. LaFave stated the previous use of the space had been for a Smoke/Vape shop and shared his proposed hours of operation 12-6 pm or 11 am-6 pm. Ms. LaFave shared they anticipated employing five individuals for the business. Vice Chair George Kingston inquired where materials would be stored. Mr. LaFave stated some products would be on display outside. No further questions.

Motion to approve made by Board member Jon Torcia; second by Vice Chair George Kingston and approved by roll call vote five (5)-zero (0).

2. **SPRW 2020-34: Stay Golden**—Request for Site Plan Review Waiver for a spray-tanning studio at 37 Harkness Avenue (Assessor's Parcel ID 12-33-0) in an existing structure on a 2.07 +/- acre site in the business zoning district. Applicant: Erica Devlin, 508 Gardners Way, Enfield, CT 06082.

Applicant Erica Devlin was present for discussion. No questions heard from by Board.

Motion to approve made by Vice Chair George Kingston; second by Board member Jon Torcia and approved by roll call vote five (5)-zero (0).

3. **SPRW 2020-35: Self-Storage Facility Expansion**—Request for Site Plan Review Waiver for a proposed amendment to Site Plan for existing Self-Storage Facility at 0 Grove Avenue (Assessor's Parcel ID 15-32-E) on a 9.58 +/- acre site in the Industrial zoning district. Applicant: Baldwin Street, LLC, 46 Center Square, East Longmeadow, MA 01028.

Applicant representatives Sofia Bitzas and Rob Levesque were present for discussion. Ms. Bitzas provided a summary of the request. Chair Russell Denver inquired if any meeting attendees would like to comment on the proposed expansion. No comment was heard. Vice Chair George Kingston inquired if the parking would be changing due to the proposed addition. Ms. Bitzas stated the parking formula would not be changed. Vice Chair George Kingston stated the project had originally been approved in 2018 and requested an update on the status of the project to date. Ms. Bitzas stated the applicant anticipated starting construction soon although she did not have a specific date from the client. Rob Levesque stated he expected construction would begin by the spring of 2021.

Chair Russell Denver asked Rob Levesque to update the Board on the status of the landscaping plan for 305 Maple Street. Rob Levesque stated he had met with the ownership regarding the landscaping and would send the Board an update shortly.

Motion to approve made by Vice Chair George Kingston; second by Board Member Jon Torcia and approved by roll call vote five (5)-zero (0).

4. **SPRW 2020-36: Home Office** –Request for Site Plan Review Waiver for a home office for Platinum Graphics, an online graphic design business at 7 Auburn Street (Assessor’s Parcel ID 12B-51-9) in the Residence C zoning district. Applicant: Cori Wanat, 7 Auburn Street, East Longmeadow, MA 01028.

Applicant Cori Madison was present for discussion and explained her business purposes were entirely virtual. No further questions from the Board.

Motion to approve made by Vice Chair George Kingston; second by Board member Pete Punderson and approved by roll call vote five (5)-zero (0).

5. **SPRW 2020-37: Home Office** –Request for Site Plan Review Waiver for a home office for Spartan Sharpshooter an online coaching business at 175 Tanglewood Drive (Assessor’s Parcel ID 74-21-51) on a .70 +/- acre site in the Residence A zoning district. Applicant: Gary Gray, 175 Tanglewood Drive, East Longmeadow, MA 01028.

Applicant Gary Gray was present for discussion. Mr. Gray explained he is a basketball coach would has transitioned to a virtual coaching setting since Covid-19.

Motion to approve made by Vice Chair George Kingston; second by Board Member Pete Punderson and approved by roll call vote five (5)-zero (0).

NEW PUBLIC HEARINGS

6. **Case SITE 2020-5: Stateline Firearms** – Request by applicant for Site Plan Review for a retail sales business for the sale and repair of firearms and sale of ammunition at 225 Shaker Road (Assessor’s Parcel ID 18-5-0) on a .30 +/- acre site located in the Industrial zoning district.

Applicant: Jonathan Guinipero, 14 La Salle St, East Longmeadow, MA 01028.

Applicant Jonathan Guinipero was present for discussion. Clerk Tyde Richards read the legal notice into the record for the Site Plan approval request.

Planning Director Bethany Yeo read into the record comments from the East Longmeadow Police Department and Health Department that both stated they do not have any issues with the plan as proposed. Applicant Jonathan Guinipero presented the proposal to sell firearms, ammunition, accessories and provide firearm repair services. Mr. Guinipero clarified the location of the business will be within the rear of the existing building at 225 Shaker Road. Hours of operation will be Monday 9 am-5 pm and Tuesday-Sunday by appointment only. The Planning Board expressed no concerns regarding parking requirements. The security site plan was to remain confidential for safety reasons but it had been reviewed and approved by Police Chief Dalessio.

The public hearing was opened for public comment. No member of the public spoke in support or against the proposal. Hearing no further questions or comments in support or against the proposal, the public hearing was closed on a motion by Vice Chair George Kingston, with second by Board Member Jon Torcia and approved by roll call vote (5-0).

Motion made to close the public hearing made by Vice Chair George Kingston; second by Board member Jon Torcia and approved by roll call vote five (5)-zero (0).

Vice Chair George Kingston expressed concern of the proximity to the rail trail and inquired if additional security measures had been taken to prevent potential trespassing in the rear parking lot from the direction of the rail trail. Mr. Guinipero stated due to the abrupt grade change from the rear parking lot to the rail trail there had not been additional security measures taken but stated the area would be under a monitored surveillance system. No further questions were heard by the Board.

After duly considering the case submittal documents before them and applicable sections of the Zoning Bylaw, Chair Denver asked for a motion to approve the request for site plan approval for Request by applicant for Site Plan Review for a retail sales business for the sale and repair of firearms and sale of ammunition at 225 Shaker Road (Assessor's Parcel ID 18-5-0) on a .30 +/- acre site located in the Industrial zoning district.

Motion to approve the Site Plan Review made by Vice Chair George Kingston; second by Board member Jon Torcia and approved by roll call vote five (5)-zero (0).

Motion to take agenda Other Business out of order made by Vice Chair George Kingston; second by Board member Peter Punderson and approved by roll call vote five (5)-zero (0).

OTHER BUSINESS

- Irrevocable Letter of Credit for bond reduction Case SD-D 2019

04: Modification of Definitive Subdivision Plans for Bella Vista Estates Phase II. Applicant: Bella Vista Holdings Realty Trust, Brian S. Fitzgerald, Trustee, 46 Center Square, East Longmeadow, MA 01028.

Brian Fitzgerald was present for discussion. **Motion to approve the Irrevocable Letter of Credit for bond reduction of \$162,628.00 to a new amount of \$206,072.00 made by Board member Pete Punderson; second by Board member Jon Torcia and approved by roll call vote five (5)-zero (0).**

PUBLIC HEARING

7. **[Remand] case SITE 2019-11: Ground Mounted Solar Facility** – Request by applicant for the installation of a 4 Megawatt ground mounted solar facility at Rear Pease Road (Assessor's Parcel ID 33-1-0) located on a 21.26 +/- acre site in the Residence AA zoning district. Applicant: Steve Broyer, PLH, LLC, 222 South 9th Street, Ste. 1600, Minneapolis, MN 55402.

DENIED by roll call vote three (3)-one (1). Pete Punderson abstained.

Russell Denver – NAY

Jonathan Torcia –YES

Tyde Richards –NAY

Peter Punderson –ABSTAINED

George Kingston –NAY

See attached for full transcript provided by Sandra A. Deschaine, stenographer.

- Director's Report

Planning Director Yeo provided a status update on the Shared Streets and Spaces grant project at Maple Court and the Master Plan and inquired if the Board would like to cancel the following meeting on October 6th. The Planning Board opined to cancel the October 6th meeting with the first meeting in October scheduled for October 20, 2020.

ADJOURN Motion to adjourn made by Vice Chair George Kingston; second by Board member Pete PUnderson and approved by roll call vote five (5)-zero (0) at 7:33 PM.

Respectfully submitted.

Bethany Yeo,
Planning & Community Development Director

COMMONWEALTH OF MASSACHUSETTS

IN RE: TOWN OF EAST LONGMEADOW PLANNING
BOARD HEARING

SEPTEMBER 20, 2020

TAKEN VIA ZOOM

BOARD MEMBERS:

Russell Denver, Chair

George Kingston

Peter Punderson

Jonathan Torcia

Bethany Yeo

Tyde Richards

Also Present: Michael Pill, Esquire

Steve Broyer

James Martin

Thomas Melone



1 P R O C E E D I N G S

2 MR. DENVER: So I'm going to
3 open the September 29th, 2020, meeting of
4 the East Longmeadow Planning Board. And
5 when I do that, I need to ask, according to
6 Mass General Law, if there's anyone who
7 might be recording this meeting, and if
8 there is, would you please raise your hand
9 so that we can see?

10 Seeing none, we can move to our
11 order of business, and the first order is
12 the call of the roll, so those members in
13 attendance are Peter Punderson, George
14 Kingston, Tyde Richards, Jon Torcia, myself,
15 Russell Denver, the Director of Planning and
16 Community Development Bethany Yeo.
17 (The Planning Board approved prior minutes

18 of the Planning Board.)

19 MR. DENVER: Mr. Clerk, could
20 would you please read Item 7?

21 MR. RICHARDS: Remand: Case
22 Site 2019-11: Ground Mounted Solar Facility
23 - Request by applicant for the installation
24 of a 4-megawatt ground mounted solar

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1 facility at the rear of Peaves Road
2 (Assessor's parcel ID 33-1-0) located on
3 21.26 plus or minus acre site in a
4 residential [sic] AA zoning district. The
5 applicant is Steve Broyer, PLH, LLC, 222
6 South 9th Street, Suite 1600, Minneapolis,
7 Minnesota.

8 MR. DENVER: So it says the
9 applicant is Steve Broyer, so if he wishes
10 to come into the meeting, would you please
11 raise your hand so the you can be brought

12 into the meeting. I would also like Michael
13 Pill brought into the meeting, please.

14 Before we start a public hearing
15 on this item, I would request that Attorney
16 Michael Pill, who represents the Town,
17 please give us kind of a recap of how this
18 issue is now back in front of the Planning
19 Board for the Town of East Longmeadow.

20 MR. PILL: Thank, Mr. Chair.

21 The 2-to-2 vote, the last time
22 this was before the Board, resulted in an
23 appeal to the Land Court by PLH, LLC. The
24 Land Court has now remanded that to the



1 Planning Board. What prompted the remand
2 was that the Court wanted a statement of
3 reasons for the two members who voted no.

4 After hearing from PLH, and from
5 myself, the Court opened it up somewhat more

6 broadly, and in a -- I think less than a
7 minute, I can read the essence of -- okay?

8 MR. DENVER: Please do.

9 MR. PILL: This is from the
10 Court, and this is basically the Court's
11 direction to us.

12 "Having taken under
13 consideration the party's divergent
14 viewpoints on these questions, the Court
15 concludes that justice and equity require
16 that the Board not only have the opportunity
17 on remand to provide an explanation of its
18 the prior negative vote, but also the
19 ability to revisit, and, if necessary, to
20 alter the decision previously reached on
21 Plaintiff's application for site plan
22 review. This includes the prospect of
23 reaching a different result, such as an
24 approval of the application with or without



1 conditions, if the members of the Board so
2 vote and decide.

3 "It is therefore necessary for
4 the Board to conduct a fully noticed public
5 hearing, at which the Board may hear new
6 information about the project and act on the
7 application in any lawful way it sees fit,
8 including to deny, approve, or approve with
9 conditions and issue a new written decision
10 explaining and memorializing their action."

11 And I have submitted, and I
12 think it has been distributed by Bethany, my
13 suggestions for an amendment to the Board's
14 decision and a supporting legal memorandum.

15 MR. DENVER: Thank you. We'll
16 get to that in due time. Thank you.

17 So before I accept a motion to
18 open the public hearing, are there any
19 questions from the Board for Attorney Pill?

20 So hearing none.

21 So do I have a motion to open
22 the public hearing on this matter?

23 MR. KINGSTON: So moved. George

24 MR. DENVER: Do I have a second?



1 MR. PUNDERSON: Second.

2 MR. DENVER: So motion made and
3 seconded to open this public hearing on this
4 issue.

5 So by roll call, Mr. Punderson?

6 MR. PUNDERSON: I.

7 MR. DENVER: Mr. Kingston?

8 MR. KINGSTON: I.

9 MR. DENVER: Mr. Richards?

10 MR. RICHARDS: Yes.

11 MR. DENVER: And Mr. Torchia?

12 MR. TORCIA: I.

13 MR. DENVER: And I am a yes as
14 well.

15 So the public hearing is open,
16 and I believe, Mr. Broyer, as the applicant,
17 do you wish to start off?

18 MR. BROYER: I can. Can

19 everybody hear me?

20 MR. DENVER: Yes, we can hear
21 you.

22 MR. BROYER: Wonderful.
23 Technology is working.

24 I know that Jim Martin is also



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1 to be joining us. Ultimately, Mr. Pill, you
2 know, explained why the Court remand has us
3 all sitting here again, and I'd like to
4 ultimately just hand it off to Mr. Martin.

5 Do you see him in attendance?

6 MR. DENVER: I see him in the
7 attendance, yep.

8 MR. BROYER: Okay.

9 MR. MARTIN: How is that working
10 here?

11 MR. DENVER: Well, we can hear
12 you. We can't see you.

13 MR. MARTIN: Let's see. Okay.
14 I started my video. Here we go. All right.
15 MR. DENVER: I bet Jeff Roberts
16 is helping you.
17 MR. MARTIN: Without a doubt.
18 He would be -- he would help me with how to
19 turn the machine on and off.
20 MR. DENVER: All right.
21 Mr. Martin, the floor is yours.
22 MR. MARTIN: Thank you. Good
23 evening. As Steve said, Tom Melone is also
24 attending this meeting tonight virtually.



1 He is the principal of the applicant. The
2 matter has a long, and from our perspective,
3 sorted history of going through the approval
4 process of site design view.

5 Most of the members know and,
6 perhaps, could remind the public, this

7 started out as a request for a zone change
8 for the property in an effort to build the
9 solar array of that and receive a fatal
10 recommendation from the Board or the
11 committee of this City Council. My client
12 then pursued a challenge to the East
13 Longmeadow zoning bylaws and the restrictive
14 nature of it.

15 The Land Court, granted, Judge
16 Piper, a summary judgment in favor of our
17 clients and gave the Town a couple of
18 choices. And this was before Mr. Pill's
19 involvement. One was to undertake a revamp
20 of the solar zoning bylaw or to send it back
21 to the Planning Board to revisit in light of
22 the motion for summary judgment.

23 We then spent many, many months
24 before you on multiple occasions addressing

1 all of the concerns that were raised by the
2 plans for this solar array. Each time we
3 did our best to address them, revise plans
4 and present them to you. We went to the
5 conservation commission and we received
6 their blessing on this matter, and each time
7 we would ask the Board, you know, was there
8 any other concern?

9 Keeping in mind, that despite
10 Mr. Pill's most recent memorandum, that the
11 law is pretty well settled that the Planning
12 Board and site design review. This is not a
13 job that the Planning Board has any
14 authority other than to be discretionary
15 with any restrictions but it is not necessi-
16 -- it is very unusual or rare for a Planning
17 Board to turn down a site design review.
18 And Judge Piper noted that recently in his
19 court.

20 So on good faith, my client
21 spent lots of times and money presenting
22 this project to you over multiple, multiple
23 months, resulting in the penultimate meeting
24 in which Mr. Pill showed up, made a pitch



1 about -- that you did not have the authority
2 to proceed with the project because of a
3 zoning issue on frontage.

4 We reminded you that, in an open
5 an public hearing, your prior counsel had
6 said that the issue of frontage had been
7 satisfied, and we relied on that and that is
8 in the public record. But, nonetheless, we
9 scrambled and got before the Zoning Board
10 and got a waiver and a variance from the
11 Town on that and returned in time to make a
12 last meeting.

13 At that meeting there were only
14 four members. All of the conditions had
15 been satisfied that had been raised by the
16 Board. The Board acknowledged that. Some
17 waivers had been granted some had not, and
18 then a motion was made to approve the site
19 design review with the contingency that the

20 requirements of the Zoning Board of Appeals
21 be satisfied.

22 After -- Mr. Torcia asked what
23 would happen if it was a 2-to-2 vote, since
24 there are only two members and was informed



1 that it would fail, the parties then voted,
2 and it ended up in a 2-to-2 tie. And that's
3 all the Planning Board did that night.

4 I think it's a very strong
5 argument you made and ultimately will be
6 made, that the time has lapsed for the Board
7 to approve project, because they did not
8 turn it down. They did not vote whether or
9 not to approve it. They voted on a motion
10 with some requirements that compliance with
11 the Zoning Board of Appeals be met. Had
12 they then taken a second vote to whether or
13 not to approve it as is and turned it down,

14 it would be have right, perhaps, for -- to
15 say that they had properly and timely ruled
16 on it.

17 But the first argument we make
18 is that the decision is -- that the site
19 plan is approved. You did not rule in a
20 timely fashion. The time has long since
21 passed. Nevertheless, in order to protect
22 our rights, we went back to the Land Court
23 and -- we went back to the Land Court after
24 we received the decision.

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1 Now, all of you know that the
2 decision that was issued by the Town
3 contained lots of findings and lots of
4 conclusions. Not one word of those were
5 (inaudible) or stated on the record at the
6 hearing.

7 So, A, the Planning Board, with

8 all due respect, did not, apparently,
9 appreciate or understand what the
10 significance of the review was by the
11 Planning Board on a site design review.

12 And, secondly, did not
13 appreciate the timelines within which they
14 had to make that decision.

15 And, thirdly, they did not make
16 any findings to support their reason for
17 turning this down.

18 The land court completely got
19 it. Judge Piper, you know, made his ruling;
20 and, once again, he's given the Town another
21 bite of the apple to do the proper legal
22 thing.

23 Now, you know, Mr. Pill's got a
24 shorthand here, and he scrambles and now



1 tries to persuade you with a memo that

2 Mr. Melone has addressed, saying, well, you
3 really can get into zoning on a site design
4 review and issue lots of information. I
5 mean, I can spend a long time talking about
6 that with you, but it's not necessary. The
7 record is open.

8 The record -- we have -- the
9 minutes of the Town is complete. We want to
10 make sure that this record reflects the fact
11 that everything that we submitted to this
12 Planning Board, right up until their final
13 vote, is still in the record and is before
14 you and should be acted upon on a site
15 design review.

16 The Board does not have the
17 authority to sort of comport the law to say
18 that we, as a Planning Board, can take into
19 consideration whether or not this is
20 properly zoned. The Planning Board was
21 aware of the Court's ruling at the current
22 ruling is that the restrictions of zoning in
23 the East Longmeadow town bylaw are illegal.

24 The Planning Board was aware of



1 the fact that that -- just two nights before
2 or one night before this matter had been
3 before the Town's Zoning Board of Appeals,
4 and that Zoning Board of Appeals granted a
5 variance on the issue, the only issue that
6 the Board had raised or had raised at the
7 Court with regard to zoning. The plan is
8 full and complete.

9 Instead, this town, it's a
10 public record, it's been published, has
11 spent over \$150,000 of the taxpayer money at
12 a time when every municipality in town, city
13 has challenged to deny or delay or obstruct
14 this project, the location that, even with
15 GPS, would be hard for any citizen in East
16 Longmeadow to find.

17 We are asking this Board to
18 comply with the Court's order, that to state
19 their reasons on the record for the two
20 individuals who voted against the motion

21 with conditions. We're asking the Board to
22 address the fact that they've taken no
23 further vote on this matter since that
24 2-to-2; and, number 3, we're asking these --

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1 the Board to acknowledge that no reasons
2 were given at the hearing for that vote, and
3 that the record that has been submitted by
4 Mr. Pill, is Mr. Pill's legal theories and
5 not any findings or facts or conclusions of
6 the Board.

7 So that's my opening statement,
8 Mr. Chairman.

9 MR. DENVER: Thank you. Does
10 anyone else wish to address this Board?
11 Please raise your hand so you can be called
12 into the meeting.

13 MR. MARTIN: If I may,
14 Mr. Chairman, we do have some questions,

15 after we hear from the members, pursuant to
16 the Court order, as to reasons why the
17 members who voted negatively voted the way
18 they did; and, frankly, we'd like to hear
19 from the members who voted in favor of the
20 motion as well.

21 MR. DENVER: Mr. Martin, we will
22 do what the Court has asked us to do.

23 MR. MARTIN: Thank you very
24 much.

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1 MR. DENVER: And thank you for
2 all of your assertions.

3 I see a Thomas -- a Tom Melone.
4 Would you like to address this Board?

5 MR. MELONE: Yes. Thank you,
6 Mr. Chairman.

7 MR. DENVER: Sure.

8 MR. MELONE: I just want to add

9 one thing to Attorney Martin's presentation,
10 and that is we also request that the Board
11 reconsider its determination, like the Court
12 has implied it should do, and take a revote
13 and then give its reasons for whatever the
14 vote is.

15 MR. DENVER: And as I've just
16 indicated, and Mr. Martin, we know our
17 obligations are by the Court, and we will
18 fulfill those obligations.

19 MR. MELONE: Thank you.

20 MR. DENVER: So, Mr. Melone, you
21 sent an email to the members of the Planning
22 Board over the weekend. Do you wish to read
23 that into the record?

24 MR. MELONE: I assume that it



1 would be part of the record, since I emailed
2 it to the Planning Board, but I'm happy to

3 read it if that's the --

4 MR. DENVER: I think the
5 residents of the Town would like to hear
6 it.

7 MR. MELONE: Okay. Hold on a
8 second.

9 MR. MARTIN: Just to be clear,
10 Mr. Chairman, are we talking about the
11 August 21st memo or the one --

12 MR. MELONE: No, this is
13 September 26th.

14 MR. DENVER: September 26th,
15 2020, at 5:01 p.m.

16 MR. MARTIN: Thank you.

17 MR. MELONE: That's right.

18 Okay. I'd be happy to read the email.

19 "Good afternoon ELM Planning
20 Board members.

21 "I look forward to joining you
22 for Tuesday's remand hearing on site plan
23 review for the 4-megawatt solar project that
24 no one in East Longmeadow will ever will be



1 able to see. I request that this email be
2 added to the public record as a public
3 comment from a landowner in ELM and as a tax
4 taxpayer in ELM, i.e. PLH, LLC.

5 "As I'm sure Attorney Pill
6 advised you, site plan approval is
7 nondiscretionary, which means a denial is
8 not permitted under Massachusetts law,
9 except in the rarest of circumstances which
10 are not applicable here. In the attached
11 memorandum I sent yesterday to the
12 Massachusetts Department of Energy
13 Resources, DOER, Attorney Pill states on
14 page 2, 'Michael Pill, Esquire, believes and
15 has acknowledged to the Land Court that the
16 East Longmeadow site plain review process
17 set forth in East Longmeadow Zoning Bylaw
18 Section 7.40, 'Site Plan Review' is
19 nondiscretionary.'"

20 That should be the guiding
21 principal for Tuesday.

22 Then Attorney Pill goes on to
23 describe what may be a new legal strategy:
24 "a Planning Board -- quote, "A Planning



1 Board can also make a threshold
2 determination concerning whether or not a
3 particular use is or is not allowed by
4 right. If the Planning Board determines the
5 use is not allowed by right, then the Board
6 can deny site plan approval on that ground."

7 "The Land Court already made the
8 determination that the solar use on PLH's
9 property is permitted as of right, and
10 struck down the bylaws' prohibition. "The,"
11 quote, 'determination,' close quote, "that
12 Attorney Pill describes cannot be made by
13 the Planning Board at Tuesday's hearing,
14 thus, the question has been determined by a
15 valid and in effect order of the Land Court.

16 "The legal strategy Attorney
17 Pill has described to DOER would be a direct
18 assault on the Land Court and its ruling.
19 Of course, the Town is free to exercise its
20 rights to appeal the Land Court's decision,
21 but the new strategy described in the DOER
22 memo would simply be an outright refusal to
23 obey a valid order of the Land Court.
24 Attorney Pill, town counsel, or counsel of



1 your choosing could advise you on the
2 possibility, if any, of a contempt citation
3 and/or the possible consequences of such
4 action.

5 "The Town has already spent
6 \$124,648 in legal fees to Bulkley
7 Richardson, fighting a solar project that no
8 one in the Town can see. By now, I assume
9 that the total legal fees paid by the Town

10 have exceeded \$150,000. And now it appears
11 that you may be advised to place yourselves
12 in the position of being subject to personal
13 consequences for refusing to obey a court
14 order. These are developments that should
15 be of interest to all residents and
16 landowners in ELM.

17 "You may also wish to take note
18 of Massachusetts General Law Chapter 258,
19 Section 9, which says, quote, "'No such
20 employee or official, other than a person
21 holding office under the constitution acting
22 within the scope of his official duties or
23 employment, shall be indemnified under this
24 section for violation of any such civil



1 rights if he acted in a grossly neglect,
2 wilful, or malicious manner.

3 "As a landowner and taxpayer in

4 East Longmeadow, PLH hopes that the Town
5 will reconsider what seems like maybe a plan
6 to refuse to adhere to a valid, unstayed
7 order of the Land Court while embarking on a
8 new legal fee spending spree that may be
9 hundreds of thousands of more dollars
10 fighting a solar project that no one in the
11 Town will ever see.

12 "Sincerely, Tom Melone."

13 MR. DENVER: Thank you.

14 Is there anyone else in the
15 audience that wishes to be heard on this
16 matter can be brought into the Zoom meeting?

17 I guess we don't hear any.

18 So for the petitioners, so I am
19 asking you, at this time, if there is any
20 other issues you would like to raise on
21 this, because once the hearing is closed,
22 there will not be an opportunity for you to
23 address this Board further, unless there is
24 a question submitted to the chairman -- or



1 through the chairman, and I deem it
2 necessary to call you back in to answer the
3 question.

4 So I give you another
5 opportunity to express your opinions, so
6 forth and so on, on this matter before I
7 take a motion to close the public hearing.

8 MR. MARTIN: How do I -- can you
9 hear me?

10 MR. DENVER: I can hear you.

11 MR. MARTIN: Can we have
12 confirmation that the entire record from the
13 first session that was presented to the
14 Board is now made part of this record
15 tonight?

16 MR. DENVER: It's public record.

17 MR. MARTIN: Well, this is a
18 hearing. We are asking that all the
19 information that was submitted at the first
20 matter be made -- put into the record in
21 this hearing.

22 MR. DENVER: I don't see any

23 reason why not. I might ask Attorney Pill
24 if there might be a reason to not allow



23

1 this.

2 MR. PILL: No reason.

3 MR. DENVER: Okay. There you
4 go, Mr. Martin. There's the Town's
5 answer.

6 MR. MARTIN: Thank you.

7 MR. DENVER: So, Mr. Broyer,
8 Mr. Martin, Mr. Melone, final say?

9 MR. MELONE: I just want to
10 clarify that the record will include the
11 recorded decision of the Zoning Board that
12 issued the variance. The written decision
13 was actually issued after the first vote.

14 MR. DENVER: Mr. Pill?

15 MR. PILL: I'm sorry. I didn't
16 quite hear what Mr. Melone said. If you

17 could repeat it. You're asking me to
18 respond to what he just said?

19 MR. DENVER: I am.

20 Mr. Melone, could you please
21 restate that please?

22 MR. MELONE: I want to make sure
23 that what gets into the record also includes
24 the actual written decision, which includes

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1 the variance, since that was not written --
2 or in written form at the time of last
3 vote.

4 MR. DENVER: So you mean the
5 decision of the Zoning Board?

6 MR. MELONE: Correct.

7 MR. DENVER: It's public record.
8 You can certainly admit it. That's fine.

9 MR. PILL: I agree, you know, we
10 can certainly consider, as Mr. Melone has

11 requested, that the decision of the Zoning
12 Board to grant a variance filed with the
13 Town Clerk is considered part of record of
14 this proceeding.

15 MR. MELONE: Thank you.

16 MR. DENVER: So hearing no other
17 people willing to address the Planning Board
18 on this issue, do I have a motion to close
19 the public hearing on this matter?

20 MR. KINGSTON: So moved.

21 George.

22 MR. DENVER: We have a motion
23 made. Do I have a second?

24 MR. TORCIA: I'll second that.

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1 Jon.

2 MR. DENVER: So motion made and
3 seconded to close the public hearing on this
4 item.

5 So by roll call,

6 Mr. Punderson.

7 MR. PUNDERSON: I.

8 MR. DENVER: Mr. Kingston?

9 MR. KINGSTON: I.

10 MR. DENVER: Mr. Richards?

11 MR. RICHARDS: Yes.

12 MR. DENVER: Mr. Torcia?

13 MR. TORCIA: I.

14 MR. DENVER: And I am a yes.

15 So before -- well, it's back to
16 the Board. I will ask Mr. Pill to speak on
17 some of what he has just heard from the
18 petitioners, but there are a couple of
19 things that I think need to be said.

20 So in the initial complaints
21 filed by PLH, there were assertions that
22 Town of East Longmeadow, Town Council,
23 Planning Board, et cetera, essentially were
24 turning their head to things like solar



1 power, climate change and the sort.

2 I want to assure the residents
3 of the Town of East Longmeadow that no such
4 thing has ever occurred in front of the Town
5 Council, the meetings that I've viewed, or
6 the Planning Board. On the contrary, a
7 previous Planning Board spent -- went to
8 great length and developed a solar bylaw
9 that was presented to town meeting and was
10 approved at town meeting a number of years
11 ago.

12 Since that time, we have a -- we
13 have permitted two solar array/farms. One
14 which is already in operation over by the
15 Longmeadow athletic fields across from Twin
16 Hills Country club. And during one of the
17 initial hearings with PLH, at the same
18 meeting, we approved a solar array at Carda
19 Munday.

20 So to make the assertion that
21 the Town has turned its head about solar
22 power and the impacts of climate change is
23 totally, totally false, and I just felt that

24 it was necessary for the residents to be



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1 heard.

2 The second thing I wish to
3 address is the assertion from Mr. Melone in
4 the memo that he sent the Planning Board
5 over the weekend. He's indicated that the
6 Town -- I'm going to quote -- "The Town has
7 already spent \$127,648 in legal fees to
8 Bulkley Richardson fighting a solar project
9 that no one in town can see."

10 So I went a step further. I got
11 a hold of the town manager, Mary McNally,
12 and I asked whether that was true. Mary
13 McNally informed me that there was a Freedom
14 of Information Act request forwarded to the
15 Town, and information sent back to
16 Mr. Melone. It included legal fee to
17 Bulkley Richardson from 2017, 2018, 2019,

18 prior to the petitioner coming to the
19 Planning Board.

20 It is the estimate of the town
21 manager that the total dollars afforded
22 Bulkley Richardson for their legal services
23 related to the solar is \$19,454. I felt
24 that was important that the residents of the

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1 Town know that as well.

2 In his -- Mr. Melone's
3 statement, he alludes to, and I want to make
4 sure I read this, "It now appears you may be
5 advised to place yourselves in the position
6 of being subject to personal consequences
7 for refusing to obey a court order."

8 To me, that sounds like a
9 threat. It sounds like he is trying to
10 intimidate members of this Board to vote in
11 his favor.

12 And I want to go back to the
13 money one more time. "I am thrilled," as --
14 in quote, "Mr. Melone, as a landowner and
15 taxpayer in East Longmeadow, you're somewhat
16 concerned about the spending associated with
17 this project. There is something you can
18 do, Mr. Melone, to end the legal fees
19 spending on this project. You can
20 discontinue your lawsuit. Very simple, very
21 easy. You can put an end to the legal
22 spending just like that."

23 I would now like to ask Mr. Pill
24 to please step in and inform the Planning



1 Board of, I guess, your thoughts on what you
2 just heard during the public hearing.

3 MR. PILL: Thank you.

4 Mr. Chair.

5 As a result of Mr. Melone's

6 email that he read into the record, as of
7 the receipt of that email, I am working pro
8 bono, meaning unpaid, on behalf of the Town
9 and the Planning Board. I will complete
10 defending the Town in Mr. Melone's Superior
11 Court lawsuit against the Department of
12 Energy Resources, where he also named the
13 down as a defendant.

14 If necessary, I will pursue all
15 meritorious appeals on that case. I will
16 continue to defend the Town and will take
17 all meritorious appeals in his first lawsuit
18 against the Town of East Longmeadow. If he
19 chooses -- you know, depending on how the
20 Board votes tonight, if he pursues further
21 litigation against the Planning Board, I
22 will continue to defend that, both at the
23 trial court level and through all
24 meritorious appeals, and I will do that on a

1 pro bono basis.

2 So that is my initial response
3 to Mr. Melone's email.

4 My second response is -- and I
5 have to take a deep breath here because an
6 attorney has an ethical obligation, but I'm
7 not going to get into that, okay.

8 Let me simply say that the
9 decision of the Land Court to which
10 Mr. Melone is referring, is what's called an
11 interlocutory decision. Meaning it is a
12 provisional decision during the course of a
13 lawsuit. We have -- I have filed, on behalf
14 of the Town, a motion asking the Court to
15 reconsider that, on which the Court has not
16 yet ruled. Mr. Melone, on behalf of PLH,
17 has filed an opposition to that motion.
18 Okay.

19 If the Town does not obtain
20 reconsideration, I would recommend to the
21 Town that that decision go up on appeal. If
22 the Land Court rules against the Town and
23 not only on the reconsideration but
24 eventually enters a final judgment against



1 the Town, and if the Town authorizes me,
2 again, pro bono, unpaid, volunteer, to take
3 that up on appeal, and if all meritorious
4 appeals are exhausted, at that point, and
5 only at that point, does what Mr. Melone
6 wrote about contempt come into play. Under
7 no circumstances whatsoever can somebody
8 seek to hold anyone in contempt because of
9 the Land Court decision referred to in
10 Mr. Melone's email.

11 And I think that in a nutshell
12 should address it. If there's other
13 questions or concerns by the Board, I'm
14 happy to address them.

15 MR. DENVER: So, Mr. Pill, so
16 the Land Court has instructed the Planning
17 Board to hold another public hearing, and we
18 have done so. We have taken testimony from

19 the petitioners. There was no one else
20 available who wished to speak on this topic.
21 It is my understanding, and please correct
22 me if I'm wrong, but the judge has asked us
23 to revote this issue, and I believe for each
24 member to state the reason why they would



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1 vote one way or the other.

2 So at our last meeting, there
3 were two members who voted in the
4 affirmative, Mr. Kingston and Mr. Torchia.
5 There were two members who voted to oppose
6 the site plan approval, Mr. Richards and
7 myself.

8 So there is -- you have also
9 stated another legal alternative that the
10 Board can consider, which I believe
11 references that this matter is -- that a
12 site plan is just not permitted -- or the

13 solar farm is just not permitted as a matter
14 of right in a residential zone. Is that
15 correct?

16 MR. PILL: That is correct. And
17 in the proposed revision to the Planning
18 Board decision, I cite two Land Court cases,
19 one of which was affirmed on appeal by the
20 Massachusetts Appeals Court in an
21 unpublished decision, but it was affirmed.
22 And in both of those Land Court cases, which
23 I quote at some length, the Land Court made
24 it very clear that certainly if a use is



1 allowed by right, then at that point the
2 site plan review becomes nondiscretionary.
3 But the Court also made it clear that the
4 Planning Board can make a threshold
5 determination as to whether or not a use is
6 allowed by right. That was in the proposed

7 revisions to a suggested decision.

8 Then, in a 30-plus page
9 memorandum that I also provided, and my
10 understanding is that was passed out to
11 everyone, including the opponents, I set
12 forth the legal arguments why I believe it
13 is not allowed as a matter of right. And I
14 can go into detail if not, but I hope that
15 addresses your question.

16 MR. DENVER: Thank you. So I
17 take it to the Board. Does the Board have
18 any questions of anyone regarding this
19 matter?

20 MR. PUNDERSON: At this time, I
21 would like to talk to Attorney Pill. How
22 are you? Pete Punderson here.

23 I haven't been a part of this --
24 I wasn't here at the beginning of this

1 matter, and I'm going to consider myself not
2 part of the proceedings. And also, I would
3 seek relief from any court case that may
4 come against me for whatever reason. I
5 haven't been able to vote on this matter.
6 I'm not going to vote on this matter. I
7 don't have enough knowledge of the previous
8 meetings. And I'd like to make that -- you
9 know, put that in the public record, and
10 just let you know that's how I stand.

11 MR. DENVER: Thank you.

12 Mr. Kingston, Mr. Richards, Mr. Torcia, any
13 questions, any concerns?

14 So hearing none.

15 So I'll start with Mr. Kingston.

16 So we'll do a roll call --

17 MR. KINGSTON: We don't have a
18 motion yet, do we?

19 MR. DENVER: Thank you very
20 much. So do I have a motion to -- one way
21 or the other?

22 MR. KINGSTON: To approve.

23 MR. DENVER: To approve. Do I
24 have a motion to approve the site plan?



1 MR. KINGSTON: So moved.

2 MR. DENVER: Do I have a second?

3 MR. TORCIA: I will second that.

4 MR. DENVER: So motion made and
5 seconded. Any discussion?

6 MR. RICHARDS: Yes, I have a
7 discussion. You asked earlier for the
8 reasoning why we voted the way we did back
9 in March, and I believe it was the night
10 before that the applicant met with the
11 Zoning Board of Appeals and received a
12 variance with contingencies. I don't
13 believe I really wanted to vote that night
14 because of the contingencies, but the -- I
15 believe the vote that was before the Board
16 was to approve the site plan contingent upon
17 the two contingencies being met.

18 My concern with the
19 contingencies is that there's -- I'm looking

20 at the minutes here from the Zoning Board of
21 Appeals meeting that night, which I believe
22 was March 9th, and it says in here several
23 times that there is a -- to be a written
24 intermunicipal agreement that's going to be



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1 made between the municipalities and put into
2 the Planning Board file. I didn't want to
3 vote because I didn't know what was going to
4 be in that municipal agreement and was there
5 anything in that agreement that may have an
6 affect on the site plan.

7 And in not knowing, you know,
8 how that letter was going to come about and
9 what was going to be in that letter and how
10 that was going to affect the site plan, I
11 really did not feel comfortable approving it
12 with those contingencies because I didn't
13 know what the outcome of those contingencies

14 were going to be. So that was my vote.

15 Now, has there been an
16 intermunicipal agreement made since then?
17 And if so, does it have any affect on the
18 site plan that's before us?

19 MR. DENVER: Mr. Pill, to the
20 best of your knowledge, has there been an
21 intermunicipal agreement signed.

22 MR. PILL: Not that I know of,
23 no.

24 MR. DENVER: And I'm not aware

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1 of any that has been signed as well.

2 MR. RICHARDS: And is it true,
3 then, that the variance is not in effect and
4 will not be in effect until there is a
5 municipal agreement that has been signed
6 between the two municipalities?

7 MR. DENVER: Attorney Pill.

8 MR. PILL: I think it's fair to
9 say that when a Board decision is made
10 conditional, that the Board -- yes, it
11 cannot go into effect until the condition is
12 satisfied.

13 MR. RICHARDS: So once we can
14 see what the municipal agreement says, and
15 that's a requirement of the applicant,
16 because no matter what the Planning Board
17 does, the applicant can't go forward until
18 that agreement has been signed anyways, I'm
19 still of the mind of I'd like to see that
20 agreement, make sure there's nothing in it
21 that has any effect on the site plan
22 whatsoever; and, if that's the case, than
23 that contingency has been resolved and it
24 makes it a cleaner vote, I think, for the

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2 MR. DENVER: Mr. Kingston, do
3 you want to express your reason one way or
4 the other on how you would vote?

5 MR. KINGSTON: Well, first of
6 all, I'd like to comment on the comment that
7 was made several times in the email that was
8 sent to us, that no one will ever see this
9 solar farm. The applicant does not control
10 the land around the solar farm, and as we
11 have seen in numerous cases in this town,
12 developers have a tendency to move into open
13 land, and there's no guarantee that in the
14 future the land around that area will, in
15 fact, not be developed. And so to assert
16 that no one will ever see this, I think is
17 in error.

18 I'd also like to say that I've
19 heard a lot about the question of whether or
20 not the zoning bylaw is valid since the last
21 time we addressed this. And as a member of
22 the Pioneer Valley Planning Commission and
23 the executive committee of that commission,
24 I've had the opportunity to discuss this



1 issue with representatives from a number of
2 other towns who have essentially the same
3 bylaw that we do. And none of them have
4 been challenged about whether or not that
5 bylaw is valid. And so we're not unique
6 here in trying to restrict solar farms in
7 residential zones.

8 So relying on Attorney Pill's
9 statements that this is an interlocutory
10 agreement -- interlocutory ruling and that
11 appeals are possible to reconsider a
12 decision that was made possibly in error, my
13 feeling is that I would go back and rely on
14 our bylaw, because I do think that our bylaw
15 is valid as written.

16 MR. DENVER: Thank you.

17 Mr. Torcia, do you wish to
18 express how you would be voting and the
19 reasons why?

20 MR. TORCIA: Yes. So, well as

21 for the vote back in March, I felt that it
22 was -- I was comfortable with the site
23 design. I think it's important to note, as
24 the Board probably already knows, we're not

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1 discussing, we're not anti a certain
2 industry or trade or whatnot. We are just
3 looking at a site plan independent of what
4 is actually on it and looking at whether it
5 meets the certain standards and thresholds
6 that the Town has laid out and that the
7 state has laid out.

8 I'll just echo, Russ, I think --
9 Mr. Chair, you did a good job kind of going
10 through the points there to indicate -- I
11 mean, I'm very much aware -- when I heard
12 that we were against climate change or, you
13 know, not aware of the problems of climate
14 change, I was incensed by that, and to

15 suggest that we would, you know, just
16 willy-nilly spend the taxpayer dollars is
17 also, I think, quite an egregious accusation
18 to make at us.

19 But I was, at the time in March
20 and still now, comfortable with how the
21 land -- how the site was laid out and the
22 design of the site. That is why I had voted
23 in the affirmative. But there was,
24 obviously, still, at that time, as I noted,

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1 this question, this frontage question that
2 was still up for debate and obviously sort
3 of the colleagues on this Board disagreed
4 with our affirmative stance.

5 MR. DENVER: Thank you. So I
6 will give my reasons.

7 So my reasons voting negatively
8 back in March, in the initial hearing, was I

9 felt that Mr. Richards had made a very valid
10 point, that the -- they wished to see
11 whether the conditions could have been met
12 before this Board should have taken a
13 position. The conditions placed on the
14 variance were very valid and very
15 responsible by our Zoning Board. They took
16 great thought in that.

17 The one that struck me was the
18 same one that struck Mr. Richards, is the
19 requirement to receive an intermunicipal
20 agreement signed by the Town. It is my
21 understanding, and I could be wrong, but
22 that would need to be negotiated by the town
23 manager and approved by the Town Council.
24 So they may have other things in the



1 intermunicipal agreement that could
2 potentially have an impact on this project

3 and the site plan and; therefore, the
4 variance was not in place; and, therefore,
5 the conditions to vote on the site plan, as
6 presented, were not appropriate.

7 And I want to bring the Board
8 back. You'll recall that, I believe
9 Mr. Richards made a motion to potentially
10 continue this until conditions were met.
11 Mr. Martin was emphatic, in fact, very
12 emphatic that a vote be taken that evening.
13 And so we gave Mr. Martin what he requested,
14 a vote that evening.

15 So I believe that the conditions
16 on there, not having been met as of now, are
17 a valid reason to -- I will vote no on this.
18 I also believe that the legal argument that
19 Attorney Pill has put forward, that if we
20 believe that this is just not allowed, it's
21 a matter of right in a residential zone,
22 that we can vote against the site plan.

23 Logic would hold that the
24 Planning Board approved a solar bylaw. They



1 presented it to the voters at town meeting.
2 town meeting voters approved the bylaw. The
3 Attorney General approved the bylaw as to
4 form. We are here fulfilling the wishes and
5 the desires of the Town -- the residents of
6 the Town of East Longmeadow.

7 They said, we're fine having
8 solar, but we want it in specific districts.
9 We do not want it in a residential zone.

10 I am more than comfortable with
11 Attorney Pill's recommendation and advice to
12 the Planning Board.

13 So before I ask for a vote, is
14 there anyone else that wishes -- any Board
15 member who wishes to add anything to this?

16 So just before I do, so
17 Mr. Martin, I see your hand is up. As I
18 indicated before, no one from the Planning
19 Board has asked a question through the chair
20 to you. I had indicated that you had an
21 opportunity to express all of your opinions

22 during the public hearing. I have not heard
23 a question from a member to you, so I will
24 not be having you address the Board through

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1 Zoom on this request -- on this issue.

2 So we have a motion to approve
3 the site plan for this project. A yes vote
4 is -- it approves the site plan. A no vote
5 does not approve the site plan.

6 Mr. Pill, do you want to add
7 anything before we vote?

8 MR. PILL: Not at this time, Mr.
9 Chair.

10 Thank you.

11 MR. RICHARDS: Mr. Chairman,
12 I have a question.

13 MR. DENVER: Yes.

14 MR. RICHARDS: Is it still
15 possible to get these two contingencies

16 resolved and then have the site plan vote?

17 MR. DENVER: Well, Mr. Richards,
18 I believe -- there are four contingencies, I
19 believe.

20 But, Mr. Pill, your opinion on
21 that?

22 MR. PILL: After the portion in
23 the remand order that I read, the Land Court
24 said that the Court's August 20, 2020, order

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1 remand is hereby amended to -- that had an
2 early date -- deadline to prior -- that that
3 board open, hold, and conclude a new public
4 hearing, after full and proper notice, no
5 later than October 1st, 2020, during which
6 it shall conduct a new vote on the
7 Plaintiff's application for site plan
8 review; that any Board member voting to not
9 approved the application state on the record

10 their reasons for so voting, and that no
11 lighter than October 15th, the Board file
12 with the East Longmeadow Town Clerk a new
13 decision stating the reasons for any vote
14 not to approve the application or to approve
15 it with conditions. And then by October
16 22nd, the parties have to file a written
17 status report giving the Board's decision.

18 So I would have to say, given
19 the Land Court's deadlines, I think it's
20 incumbent on the Board to go ahead and vote
21 so that a decision can be prepared and filed
22 with the Town Clerk, and we can then report
23 to the Land Court.

24 MR. RICHARDS: So my question



1 is, is there, and I don't believe there is,
2 is there a municipal agreement, and if so,
3 do we know what it says regarding anything

4 related to the site plan?

5 MR. PILL: Not to my knowledge,
6 no, but I defer to anyone else on the Board
7 who may know.

8 MR. DENVER: Jonathan.

9 MR. TORCIA: I'm not sure, but
10 from one of the previous meetings, I thought
11 that there was mention of an
12 intermunicipality agreement between Enfield
13 and East Longmeadow -- or Somers, I should
14 say, excuse me, as regards to when we were
15 discussing the threat of potential fire
16 hazard or something, of whether we would
17 have trucks coming down from East Longmeadow
18 or whether they'd coming from Somers.

19 So I thought -- maybe it was
20 just a discussion. I'm not sure if there's
21 anything written in.

22 MR. DENVER: Go ahead, George.

23 MR. KINGSTON: If I might
24 clarify, there is a mutual aid agreement --



1 a general mutual aid had agreement between
2 the towns. So that if we have a fire and we
3 can't handle it ourselves, Enfield -- or
4 Somers can send trucks up and help us out.
5 But that was not what was asked for by the
6 Zoning Board of Appeals. That was more
7 specific.

8 And I would be very surprised if
9 any such agreement was signed off on by the
10 Town Council without it having been reviewed
11 by town attorney first; and, therefore, if
12 town attorney is unaware of it, I am fairly
13 confident that nothing has happened.

14 MR. DENVER: So I would just
15 like to be very complete on this question.
16 So I would like to request Mr. Martin to
17 rejoin our meeting, and for the limited
18 purpose, Mr. Martin, of answering a question
19 whether there is an intermunicipal agreement
20 between the Town and Somers that you are
21 aware of?

22 MR. MARTIN: I'm back now?

23 MR. DENVER: Hello. Yeah, we
24 can hear you and see you.



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1 MR. MARTIN: The intermunicipal
2 agreement was to be coordinated and written
3 between the towns. The applicant was -- and
4 Mr. Torchia was at the ZBA meeting. That
5 was not the obligation of the applicant. So
6 if there is no agreement, it is because the
7 Town has not pursued that. To be candid,
8 I'm unaware that the Town went forward with
9 that. But that was not an obligation, or a
10 duty, or responsibility of applicant. And,
11 in fact, if you look into the reports that
12 are in the record now, the fire department
13 addressed that when they went through and
14 approved the plans and said that they would
15 work with Somers on a dual response or
16 intermunicipal response to the fire. That's

17 to the best of my knowledge.

18 MR. DENVER: Thank you,
19 Mr. Martin. Okay. So Mr. Martin can be --
20 thank you.

21 So everyone has had their say.
22 Everyone has given reasons why they may vote
23 one way or the other. So I will ask for a
24 roll call vote. As I indicated before, a

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1 yes vote is you're in favor of the site
2 plan. A no vote is you're not in favor, and
3 you're denying the site plan.

4 So, Mr. Kingston --

5 MR. KINGSTON: Nay.

6 MR. RICHARDS: I'm sorry to
7 interrupt. Would you please repeat this?
8 Is this being made once again contingent
9 upon those two -- not two, but those
10 contingencies being resolved.

11 MR. KINGSTON: No, the motion
12 did not include that.

13 MR. DENVER: The motion did not
14 include that.

15 So, Mr. Kingston?

16 MR. KINGSTON: Nay, for the
17 reasons stated.

18 MR. DENVER: Mr. Richards?

19 MR. RICHARDS: No.

20 MR. DENVER: With the reasons
21 stated?

22 MR. RICHARDS: With the reasons
23 stated.

24 MR. DENVER: Mr. Torchia?

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1 MR. TORCIA: I.

2 MR. DENVER: With the reasons

3 stated? Jonathan, with the reasons you

4 stated?

5 MR. TORCIA: Yes.

6 MR. DENVER: And I am a no, with
7 the reasons stated.

8 This item fails. Okay. Thank
9 you all.

10 (Hearing concluded.)

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1 COMMONWEALTH OF MASSACHUSETTS

2 SUFFOLK, SS

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4 I, Sandra A. Deschaine, Registered
5 Professional Reporter, Certified Shorthand
6 Reporter and Notary Public, hereby certify
7 that the foregoing is a true and accurate
8 transcript of my stenographic notes to the
9 best of my knowledge and ability.

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Sandra A. Deschaine

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