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TOWN CLERK
ACTON

BOARD OF SELECTMEN AND SEWER COMMISSIONER'S MEETING

January 25, 2016

Francis Faulkner Room 204

Regular Meeting 7:00 PM

Present: Katie Green, Peter J. Berry, Janet K. Adachi, Franny Osman, Chingsung Chang, Town Manager
Steven Ledoux, and Katelyn Huffman, Recording Secretary
Chairman Green opened the meeting at 7:02 PM

Citizens' Concerns

None.

Chairman's Update and Operational Update:

Ms. Green: As a reminder, there will be a Special Town meeting next Tuesday, February 2nd starting at 7pm in the ABRHS auditorium. There is one warrant article dealing with the Minuteman Regional Vocational Technical High School Regional Agreement. There will be an informational session on the warrant article on Wednesday night, 1/27, at 7pm at the Public Safety Facility. The Cross Acton Transit ribbon cutting is set for Friday, 1/29 at 10:30am in Town Hall. There will also be a ribbon cutting ceremony for the new South Acton Commuter Rail Station on Saturday, 1/30 at 10 am at the train station, followed by coffee and snacks at the South Acton Congregational Church at 11. The Recreation Department is holding their Winter Carnival on Saturday, 2/6 from 4-7pm at NARA. There will be activities planned for both snow and no-snow conditions. The Acton Memorial Library is holding their book sale this weekend and the next two movies in their winter movie series are The Bad and the Beautiful on Wednesday, 1/27, and Day for Night on Wednesday, 2/3. Both movies start at 7pm in the library. Finally, there will be a special Board of Selectmen meeting next Monday night, 2/1 at 7pm in this room to take a vote on the FY17 budget.

Mr. Ledoux: Franny, Peter, Janet, and I attended the annual Massachusetts Municipal Association meeting. Governor spoke and indicated that the Governor's budget will have a 4.3% increase in unrestricted local aid. Also more Chapter 70 aid for local schools and funding for regional vocational education. Labor law update and capital planning update courses. Green Advisory Board met with consultant about electric aggregation to help save money for residents.

Public Hearings and Appointments

Site Plan Special Permit/Use Special Permit #11/20/2015 – 459, Nagog Pond Water Treatment Plant –

Ms. Green read the public hearing notice. Applicant would like to make improvements to the existing facility and site. Emails and correspondence from citizens. Ms. Green asked that public limit comments

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to two minutes, remain civil, and refrain from applause. Mr. Ledoux introduced Jeff Roelofs, an environmental attorney whom Town previously used in connection with Concord's proposals to purchase Knox Trail property, and who is here to answer questions and help support the Board.

Ms. Osman (assigned Selectman): Concord owns 80 acres in Littleton and Acton with water rights conferred in 1884 on Concord by MA legislature. Has a treatment plant at site and required by law to improve the treatment plant. Application is to improve treatment plant and parking around the plant. Would like to implement a solar array as an accessory to main purpose. Project is coming to the Board because it is a special permit and because it is more than 1500 square feet in size.

Alan Cathcart – Water sewer superintendent for the Town of Concord. Introduced Concord officials present. Chris Whalen (Town Manager) a few Selectmen, Public Works commissioners and director present. Melissa Simoncini, environmental and energy coordinator, Steve Olsen who is a consultant involved in the design of the facility, John Shea from McKay and Shea LLC for technical and legal advice. Have had two hearings previously before Acton Conservation Commission with abutters present. Drinking water supply is in near and long-term interest of all of Concord residents and some Acton residents. Aware that there will be construction impacts. Aware that there are water supply, wetlands, scheduling, wildlife impacts. Would like to provide clarification.

Mr. Cathcart provided a slide-presentation overview of the property and project. Nagog Pond is where there is a treatment facility and where the filtration plant will be added. Small watershed, only about a mile and a quarter in size. Pond is about 275 acres. Able to purchase and procure over 100 acres over the years to help protect water area. Very important to protect the water in the pond – top priority. Zone A – acute or critical area around supply. State has 400 foot offset to protect surface water. Although it is a regulatory buffer it does not mean no building can occur.

Project is not a new initiative for the Town of Concord, which has been there all along. Concord acquired filtration plant site in 1932 explicitly for filtration center. 1955: Palmers bought 180 acres. 1989: Surface water law. 2005: Development of Quail Ridge golf course left 170 acres untouched, with 100 acres used for golf course and a portion redeveloped for newly added housing. In 1996, Concord designed and constructed a treatment facility for ozone disinfection. Had to show that they could control water quality around the watershed. Regulations are getting more stringent. Number of parcels were taken but they are all considered one lot.

Mr. Olsen continued the slide presentation, explaining the design process. Project manager with Partners Group. Began in 2013 with a comprehensive watershed study. Did a year of piloting and looked at treatment options for Nagog Pond and technologies for design. Vision all about green technology and sustainability. Goals: reliability, resiliency, minimize footprint, natural lighting.

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Here for Site Plan Special Permit, application for use special permit. Requests for waivers for traffic and outdoor lighting plan. Met previously with Design Review Board. Section 3.4.7 of zoning bylaw allows water treatment plant as principal use; Section 3.8.4.10 allows solar array as accessory use.

In order to maximize underground structures and align them under the treatment plant, it requires the treatment plant to be five feet closer to the wetland boundary. Building rotated slightly to conform with Conservation Commission 100' setback. Does not line up exactly but still allows use of pre-existing underground structures.

Two story building. Ozone contactor, liquid oxygen system, generator for power. Flow goes to the building, pumped left to right. Filters, chemical storage, dewatering system. Second floor has a control room, laboratory, restrooms, conference/meeting room, electrical rooms.

Concrete blocks proposed originally for exterior, but now metal panels to save money. Concrete more durable, metal more maintenance.

Solar array evaluation began in 2013. Sub -consultant Epsilon Associates looked at alternative sites and sites for wind energy. Want to minimize disturbances. Want something that gets to power grid easily. Proposing to put solar array near building so easier to power. Site considerations: screening, glare, noise and traffic (before and after construction).

Steven Strong explained proposed solar array. Will produce around 27-28% of total annual requirements of electricity. There will be no surplus power. All energy and then some will be used on site. Solar array will produce around 390,000 kWh AC while treatment center will use 1,372,000 kWh AC annually, so 982 kWh deficit. Did a glare study and found that there will be some glare that will go away just like the sun as it rises and sets.

Mr. Olsen continued explanation of plant design. Water will move to plant via intake pipe. Existing pipe has reached the limit of its useful life, is corroded and needs to be replaced. Working on permitting for the replacement of this pipe. Need numerous other permits, including from MA Department of Environmental Protection and US Army Corps of Engineers. Filed under MEPA for project and waiver for environmental impact and have filed for Army Corps of Engineers permit, and Acton Conservation Commission permit. Did some overlap permitting to make sure everything is covered. See presentation for more information. Provided brief overview of Notice of Intent filing with Conservation, and dam-related issues.

Have tried to address issues. Construction impacts – trying to maximize what has been cleared and developed. Duration of construction will be about 24 months and will come in phases. Traffic due to deliveries during construction and personnel. Phases of people that will come and go. Noise will follow

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construction sequencing. Environmental controls: silt sock, turbidity curtains set up. Site security will be shared by general contractor and Town of Concord.

Provided overview of other issues: operations and maintenance proposed security, exterior lighting.

Mr. Cathcart said there would be an enormous public benefit to customers in Concord and Acton (along 2A in Acton), with filtration providing reliable supply of clean drinking water 24/7 with minimal upsets and disturbances to customers. Able to plan for catastrophic events, assure greater resiliency. Will have stored amounts of water and will be able to have water if there is a drought. Consistent with FEMA planning. For Service to Acton: 14-20 million gallons of water per year. Fire protection along Route 2A. Mutual aid and emergency water supply with 2 water system interconnections. Surface water supply, as opposed to groundwater, so available as fallback. Acton Water District has approached Concord Water District about possible collaboration for up to 500K gallons.

Mr. Olsen said an archeological study had been done of a quarry pit. Concord would have someone look into that area to be sure there are no potential artifacts overlooked.

Mr. Cathcart referred to MA Constitution Article 97, said Counsel and technical support would provide guidance. .

Ms. Adachi noted substantial feedback from abutters, Conservation Commission proceeding, history of development of land.. Principal concern is with proposed solar array: how much power the panels will generate, there will still be a deficit, is there currently power at the site, where is it coming from, and what would the cost be from going from the grid to the panels, and could it be possible to put the solar panels on the new building instead.

Mr. Strong said current power comes from Eversource. If Concord were to move forward without solar then over one million dollars of electric cost would occur. About 50,000 dollars in savings would occur from solar array. Somewhere in the neighborhood of 250,000 a year if solely reliant on Eversource. If you add solar array then 180,000-190,000 per year cost at today rates. Looking to make sure the roof is solar friendly. Would like to look at adding panels to the roof of the proposed building in the future. Decided not to move forward until later on because building construction would follow after solar panels. Ms. Adachi confirmed that Concord still would rely on Eversource for some energy and reiterated her concern that the solar panels will be butting right against people's houses.

Mr. Berry asked about the proposed dewatering. Dewatering would be temporary for about 4 months. Have you applied for Acton Water District for their permitting? No. Received AWD comments about project? No. Draw water from Concord wells? Yes.

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Mr. Berry asked about lead pipes. Mr. Cathcart responded that system is 100 years old so there are remnants. Conditioned water, so it is not corrosive. The presence of lead is not the be-all, end-all. Have a program regarding testing of the water that monitors levels of lead and water make-up.

Mr. Berry said he previously was on Conservation Commission when Quail Ridge golf course was first approved. Many trees cut down for golf course and residential communities. Have to make certain findings for special permit. If project has detrimental or offensive use then there would be a concern but does not feel that the use is detrimental or offensive. What facts can you articulate to us that clear-cutting 2 acres of trees and putting up a solar array is not adverse to the environment? Mr. Cathcart responded: 1.3 acres or 2 acres out of 100 acres. Hoping the history is sufficient. Mr. Berry: Does this 1.3 acres of Solar array offset the environmental friendliness of the trees you have to cut down in terms of capturing carbon dioxide and oxygen? Mr. Stone responded that Solar Array will displace more carbon-based fuels than the 1.3 acres by a substantial amount. Mr. Berry: Could you put the solar array along the access road above it? Mr. Stone: It would not be practical, the road is narrow. Would like to add solar array to roof later and help reduce carbon.

Mr. Berry asked about stormwater runoff. Mr. Stone responded there will be no more runoff on the site. Mr. Olsen added that no significant impact of runoff due to the panels but there is an impact under the panels. Proposing grass underneath to prevent runoff and a buffer strip so there is no negative impact.

Mr. Stone referred to report showing benefit of reduced carbon impact and greenhouse gas footprint with using solar. Mr. Berry noted that comments about that study say that deforesting is not helpful. What has been explained regarding that study by you that that is not the case. It would be helpful to further view that material.

Ms. Osman asked whether Concord was eligible for a grant for using solar energy to power the water treatment plant and the effect of choosing a different site in Concord. Mr. Strong explained that project eligible for SREC credits. Traded and have a value. They are usually managed through a third-party developer. Not sure if putting solar array elsewhere would affect credits, but that was not a factor in decision to build in Acton. Mr. Strong confirmed that Concord has other projects in Concord.

Ms. Osman asked if the grass put under the solar panels had to be treated. Mr. Strong said low maintenance grass, only has to be mowed, no fertilizer. Ms. Osman asked what percentage of Concord's water comes from Nagog. Mr. Cathcart responded historically as much as 100%. In the 1950's pond and groundwater. 1996 when ozone facility went online, reduced volume and only used during the summer. In summer it can provide up to 50% of the supply on any given day. It fluctuates on any given day and is used sparingly. Do not want to violate and trip a consent order. 10 million dollar investment would need to happen if it came to that and it is a long-term plan to do so. Don't know how

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long groundwater sources will be viable: surface water is tried and true. Can be anywhere between 0% in winter and 50% in summer.

Ms. Osman noted that Acton had option of using Quabbin water. Mr. Cathcart noted a number of considerations: not just cost, but water quality is a challenge. Tying into a main line and other complications. Generally done as a last resort. Significantly reduces control.

Ms. Osman asked about the ability of the proposed plant to meet requirements without expanding so much, and expressed concern about the potential drawdown of millions of gallons from the pond. Mr. Cathcart said reservoir exists only with dam that provides water supply that is reliable. Intent of Nagog, Wachusett, Quabbin is to use for water supply and the reservoir level will fluctuate with use. Historically supplied over 2 million gallons a day for extended periods of time. Ms. Osman said under Zoning Bylaw, have to decide if detrimental or offensive to the neighborhood. Problematic. Has to be appropriate for site in question.

Mr. Chang said he understands that Concord can't tell us what the water consumption will look like in the future, but he was curious what the timeframe of the past 5 years or so would indicate about the average total water consumption from Nagog Pond as compared to the total water supply of Concord. Mr. Cathcart responded that the average goal is 1M gallons per day over course of year, and in the last few years limited withdrawal somewhere around ½ million to 7,000 gallons a day when in operation during the summer for two to three months. During the summer the system demand is somewhere in the order of 3 million gallons a day.

Mr. Chang asked how much power could you generate from solar panels on the roofing and what is the latent capacity? Mr. Strong: It would provide about 65 Kwh. Roughly one fifth additional to what's proposed on ground mount and would get a total of 1/3 total output.

Ms. Green asked whether with the tax-credit deadline extended, Concord considered doing the solar array on the roof. Mr. Stone: Timeline is because of the credits and agreement with Eversource. Do not want to miss deadline and incentive. Ms. Green: Is the power being supplied directly to the building or is it part of a net-metering agreement with Eversource? Mr. Stone said Concord still working out arrangements. Ms. Green noted that state law provides for use of land directly supporting your water plant. A solar array involving a net metering agreement is not as direct as a connection. Concord has other options for solar arrays to power its buildings, not just this one.

Ms. Green noted how close the proposed array is to the neighbors and the amount of deforestation. How far away is the array from the closest house? Mr. Olsen: 45-50 feet with fencing and set back. Ms. Green: When you spoke about the resiliency of your system, in Acton we have a water restriction with signs that go up. Do you have that in Concord as well or no restrictions? Mr. Cathcart: Concord a

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leader in water conservation. Yes we have seasonal restrictions and conservation restrictions as well. Sustainability is the big picture, allows them to be more reliable. Ms. Green: Can you show me on the Site Plan Slide where the archaeological area is covered. Mr. Olsen: The walk-through is up the access road. Digging is at corner of access road. Ms. Green: There is an indication from the Historical Commission that due to increased size and increased land being disturbed, need for another archeological survey for the artifacts of the area. Mr. Olsen: Survey comprehensive. Area along access road has been disturbed. A walk- through of the whole area. Mass Historical Society was consulted.

Ms. Adachi asked if it were true that Concord has a policy against adding anymore Acton customers. Mr. Cathcart: Policy has been in place since 1971, is the conservation and resource-management challenge of expanding the system.. Along Route 2A rights have been maintained and there has been some fire-protection expansion. Concord could consider expanding supply to Acton. The statement of the current policy is accurate but the policy can be reviewed. Ms. Adachi expressed hope that Concord will continue to collaborate with the Acton Water District on water resource issue.

Ms. Adachi requested clarification about the location and elevations of proposed solar panels relative to the closest residences . Mr. Olsen: 40-45 feet to the fence line, 15-20 feet from fence to panels. 60 feet total. Mr. Cathcart: It goes uphill. Goes up about 5-10 feet. One part drops off a little bit. Ms. Adachi: So panels are a little bit uphill from the houses? Mr. Cathcart: Yes.

Barry Elkin, 57 Skyline Drive, Acton MA - Next to Quail Ridge. Here to speak out against solar panels. Not a "not in my backyard issue," live over a half mile away from them. During December 2nd hearing, Conservation Commission asked Concord why the solar panels couldn't be placed in Concord instead of Acton? Response was because they could not get the credits unless they were in an Eversource community. Can buy power from many other sources. Why do they have to use Acton?

Concord applying for Special Use Permit, Acton Zoning Bylaw talks about 2 kinds of solar arrays, residential/neighborhood and industrial. Ground-mounted array ordinarily cannot be larger than one acre in size. But Concord can get approval to build a solar array larger than 1 acre in size, as an accessory array. But Section 3.11.3. 3.8.3 only applies to village and business districts not residential districts like site of Concord treatment plant. Proposed solar array supposedly about 1.4 acres which may only be the photocell arrays themselves. The zoning bylaw gives specific rules as how surface area is measured including area in between panels. The parcel is almost 4 acres with proposed array much of that. MA General Laws Chapter 40A prohibits unreasonable regulation of solar installations but regulations permissible to protect public welfare. Section 7.9.6.2 of Concord Zoning Bylaw says clearing of natural vegetation should be limited to what is necessary. Feasibility study said towns may impose reasonable regulations. No basis in Acton Bylaws for allowing an accessory solar panel array greater than 1 acre in a residential zone. No protection from solar glare for adjacent 2-story homes. Landscaping required by zoning bylaw; if Concord is allowed to proceed it should replace and maintain

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trees. Cannot grant permit unless it is not detrimental or offensive to the community. Also has to be in harmony and within purpose and intent of the Acton bylaw. Has to comply with all applicable requirements with the Acton bylaw.

Carolyn Kiely, environmental attorney and resident of Quail Ridge - Concord has two town meetings scheduled: Special Town Meeting on February 4th to vote on a 20-year lease for the proposed solar array; and proposal for Annual Town Meeting on proposed \$ 16.5 million debt authorization for this project. Concord putting political pressure on this to get it approved. Ms. Kiely set forth several objections to the Concord project:

(1) Concord went to Zoning Board of Appeals for a variance for original ozone facility. But instead of pursuing amendments to variance, went straight to Selectmen, bypassing ZBA. . See MA General Laws Chapter 40A, Section 11.

(2) Permits and variances need to be filed with the Registry of Deeds in order to be valid. Unclear if that was done.

(3) Archaeologist reports. Very limited study, focusing on 2 areas: proposed disinfection facility site; and proposed access road. Rest of the area is not surveyed. One historic feature was identified on initial walk-through. It was only walked over not studied. Other areas did not get a detailed study and it is needed.

(4) MEPA (MA Environmental Policy Act) certificate required to confirm that plan appears to be compliant with environmental requirements. State was supposed to release decision Friday, then Concord requested extension and timeline changed. State leaning towards strict environmental scrutiny, might need Environmental Impact Statement. State's decision due February 12th. Acton should wait for State decision.

(5) Feasibility study – prepared July 17, 2013. By Epsilon Associates, concluding that Article 97 of MA Constitution applies to solar array installation because alteration of land requires evaluation of impact on natural resources. Under Article 97, no change in use of public lands without 2/3 vote of town, and vote of state legislature. Part of Concord's solar report recommended that solar panels go on top of Concord's well fields. But Concord Department of Public Works objected.

(6) Concord has had a policy that no more hookups to Acton. Concord has other water treatment facilities, why not upgrade the ones in Concord? Building will be 530% increase in size. 1700 square feet to 9000 square feet. 275% increase lot. Buildings and solar arrays complete and total change in use.

Robert Sekuler, 17 Parkland Lane – Lives far enough away that won't ever see them.

(1) Fact that land once was undeveloped does not give license to further diminish site. Would like to see conditions that minimize proposed clear-cutting.

(2) Water treatment okay but not new process. Originally was ozone-treatment. New treatment could be done downstream or in another area.

(3) Stormwater could create channels into the land from runoff that would go into Nagog Brook which is an environmental issue.

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(4) If project goes forward, need to limit the times during the day that deliveries could be made to the plant since they have to go through Acorn Park. Rules with permit about noise should be implemented because distance of 50-60 feet of nearest houses. Need contact person for noise complaints.

(5) Project is large compared to modest existing building. This would be very intrusive on the environment and the neighborhood. Clear-cutting will affect wildlife and habitat.

(6) Galling that Concord's Special Town Meeting warrant article seeking permission to negotiate with solar panel provider for a 20-year lease arrangement for project designed to enhance Concord's sustainability at a cost to Acton.

Lynn Kibblehouse, 166 Skyline – Third home, in blue. Purchased November 6th, 2015 without being aware of project. Have not received a formal letter about project. Encourage Board not to approve for this project.

James Engell, 14 Breezy Point Road – Thought there was a commonality of attorneys. Ms. Osman explained that both towns have hired special Town Counsels for this matter. He hopes that various bodies in town will not prejudge what might be actions of other bodies in Town governments. Has easement on property that goes down to dam. Estimate of 10 trips a day for this project is not realistic given past experience with other projects. Breezy Point resident for 23 years. In 2004 Alan Cathcart wrote a letter to neighborhood saying residents were co-stewards of vital natural resources and requesting their awareness and help in protecting Nagog Pond. Have done that for 23 years. Have notified Concord about encroachments on dam area: campers, swimmers, ice skaters, rafters, kayakers, fishing, gasoline. Picked up mounds of litter. Protected stone from bulldozers. Proposed plan would block residents from access to area of which they have been stewards and to neighboring Acton conservation land. Don't want to prevent upgrading a water facility if necessary. Want Concord to recognize that it ought to give neighbors the right to access land of which they are co-stewards. Where security is concerned, let humans, not fences, protect land. He has solar panels on his roof, nothing against them. But Concord wants the panels for net-metering and not to connect directly to the new plant.

Matt Onken, 2 Hazelnut Street (Acorn Park) – Echo concerns of other residents. Increased traffic and wear and tear on Acorn Park neighborhood. Have four daughters who play outside. Do not want to worry about hazardous chemicals shipped through neighborhoods. 30-plus children that live along chemical truck path. Not viable street for trucks. 18 feet wide. Many people park on the street. Typical minivan about 6.5 feet wide. Parking on curb takes up about 7.5 feet. Leaves about 10.5 feet of egress for a truck to get through. In winter it becomes about a one-way street, very narrow and dangerous. Big trucks won't fit down it. "Let Concord treat Concord water in Concord".

Noor Roomi, 170 Skyline – New resident, house backs up to panels. Concerned about the amount of glare and how long it will last and possible eye damage

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John Richards, 72 Skyline Drive – 18 years previously at 18 Hazelnut street. Wonders if waiver needed for outdoor lighting, how about panel glare? How tall are the actual solar panels when in place? If they are between 16 and 20 feet high, it is equivalent to about the height of a movie screen.

Alissa Weiss, 6 Breezy Point Road – Concerned about fencing and cutoff of wildlife corridor. Would like a wildlife impact study done if possible. Concerned that access through the dam and Pond area will go away.

Bernard Dennis, 42 Greenside Lane - Acton Conservation Commission kicked issue down road to Selectmen. Have not heard if this is inconsistent with the Acton bylaws. Numerous alternatives available to Concord within Concord. Why doesn't Concord use another parcel for a water treatment plant? What about the supposed need for a zoning variance? Is there merit to this?

Sharon Pugatch, 35 Greenside Lane – Lived here for 2.5 years. Won't see panels but has walked land. Lived in Bedford on conservation land previously. Bedford protected conservation land. Have any of the Selectmen visited the site to get an appreciation of the destruction that will take place based on this building going from the small footprint to the 275% larger and the solar panels and the fences? Conservation Commissioners did not do their due diligence.

Linda Rhen, 168 Skyline Drive – Closest to the solar panels. Purchased November 24, 2015. Wished she had known this would be happening before purchase. Would 8- foot fence obscure the panels? Going to be a lot of glare. Concerned about the amount of glare. Does it throw off heat? Houses have vinyl siding. Clear-cutting will ruin the beauty of the land. Will this be two years of cutting, grinding, installing? Would there be someone to go to about the noise and complain. What is going to grow there? Who will care for the trees and shrubs and water them? Why hasn't a variance been sought? Concerned about home investment.

Jim Cutler, 171 Skyline – Surprised at lack of gain to Concord from solar panels. Would like Selectmen to do pain-gain evaluation. Subjectively, this is truly detrimental to the neighborhood.

Bill Klauer, Acton Historical Commission – got involved in December. Little notice, lack of time to study proposal. Want environmental and archaeological survey to be done especially for the area that has not been studied. Acorn Park Drive narrow road. What kind of chemicals are going through the neighborhood, if there is a problem can residents get out of there, what happens if there is a reaction, what do the chemicals react with?

Ed Root, 40 Greenside - Why wouldn't the Concord Water Department be considered as acting as a business? Charter is providing water, not electricity. Main reason for proposal is to get tax credits and

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net metering. Net metering will allow to sell excess solar power back to grid at retail price of 19 cents per kWh AC. Concord said they will draw down less water eventually which would result in more solar energy excess to be sold back to grid. Applicant should be considered partly as a business corporation, a private utility. Should pay personal property tax to Acton for each solar panel. Why rush this through with all the questions and unsolved issues?

Ainslie Brennan, 14 Breezy Point – Bought land at first on the other side of Acton, but then bought at Breezy Point due to conservation land. 12 families of Breezy Point have had right of access to get to conservation land. Historical use over 20 years, prescriptive easement. Loss of access will affect property values.

Marty Petraitis, 1 Hazelnut Street - Here during construction of Acorn Park in 1995, then Quail Ridge Country Club. Walk daily. Same issues: clear-cutting, traffic. Have access to the conservation land. concern about impact of clear-cutting on wildlife.

Ms. Green asked for answer to resident's question about height of solar panels. Mr. Olsen: Seven feet above existing grade.

Ms. Green recommends continuing the hearing to February 22, 2016 at 8:30PM Ms. Osman moved, Mr. Berry seconded, All Ayes.

Site Plan Special Permit #09/11/2015 – 457, Ryan Development, 110 Grill –

Ms. Green read the hearing notice at 8:03PM. Board took up discussion at 10:33 PM, after conclusion of 7:10 PM hearing on Nagog Pond Water Treatment Plant.

Attorney Kevin Erickson and Attorney Mark Johnson, Katie Enwright, Robert Walker present for applicant.

Mr. Erickson summarized the application, and reviewed the outstanding issues. December 11, 2015 application for site plan special permit at 252-256 Main Street property, the Kmart/former McDonalds parcel. Wants to put upscale 110 Grill Restaurant. Have been two public hearings, this is the third. Asks that the Board vote on this tonight. Applicant has received various comments: Revised engineering memorandum, Planning staff memorandum from January 4th, email from Sidewalk Committee. Has addressed numerous issues. Will agree to proposed privilege fee for sewer service, to cover additional outdoor seating; Sidewalk committee requested landscape strip, but applicant has agreed to widen sidewalks from 6 to 10 feet at Planning staff request, so not proposing landscape strip for that reason. Other revisions have been made in response to Planning staff memorandum, including amendment of building design to meet the 40 -ft setback requirement. Corrected pedestrian plaza so it is not in Town

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right of way. Revised plans to provide 10- foot buffer for parking cells. Replaced flat-roof component with slope roof as bylaw requires. No prohibition against sign in the pedestrian area. Sign is for pedestrian traffic as well as vehicular. Two outstanding issues: whether pedestrian plaza meets zoning bylaw requirements; and whether previously non-conforming access drives needs to be closed. Applicant thinks revised plan meets bylaw requirements, disagrees with Planning staff.

Mark Johnson did slide presentation on 2 outstanding issues, and expressed concern about recurring delays in Town's consideration of project. Zoning bylaw requires that only 60% of the lot face the street. Applicant asserts that "lot" under the bylaw can mean the lease area. Prior Planning staff in decision on another project agreed that the lease area was considered the lot area for the purpose of this section of the bylaw. Applicant's proposal:

- 1) Proposed building would occupy over 69% of lease-area frontage; would occupy 22% of total property frontage, but together with proposed pedestrian plaza (which would occupy 87% of lease- area frontage), the total property frontage would be 57%. Definition of "lot" and what it means in certain circumstances is what is in question.
- 2) No dispute that the northerly access drive is preexisting and nonconforming. Staff would like to have that closed but applicant does not possess the ability to close it. Provided letter to owner of property (included in slide presentation).

Ms. Adachi thinks, based on the bylaw definition of "lot," that the frontage should be based on full lot. One of the problems is that the lot is enormous, and challenging to build in front of Kmart structure. Would like to see something replace McDonalds building. The problem with adding the pedestrian plaza near the street to help satisfy frontage requirement than it is an awkward location that may not serve the purpose of a pedestrian plaza. Mr. Erickson: Bylaw should be read as plain language, definition is getting too technical. Ms. Adachi asked Kristin Guichard, Assistant Town Planner, if there is anything else that the applicant can do to conform with the frontage requirement without the awkward plaza? Ms. Guichard said the aim is to require them to come into compliance with today's zoning bylaw because that is why it exists. The first Planning staff memorandum mentioned that Board could look at 50% instead of 60% for frontage requirement, provided that the Board also found that the alternative design features were consistent with the purposes of the special zoning requirements for Kelley's Corner.

Mr. Chang asked if Planning's perspective was that the pedestrian plaza is too far away distance-wise from the edge of the existing building, and if the building was extended to be within a certain distance of the pedestrian plaza it would comply with the frontage requirement. Ms. Guichard responded that the applicant could extend the building horizontally so it covers more frontage or bring the pedestrian plaza closer to the building to comply. Mr. Chang asked if the applicant was counting the access drive in the frontage calculation. Mr. Erickson: No. Mr. Chang asked why, if the applicant's calculation includes

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pedestrian plaza and building without access and it gets up to 57%, does the applicant need additional building to bring it into compliance with the bylaw?

Ms. Green asked if the issue was the interpretation of what the pedestrian plaza provision meant by on the "side" of the building. Mr. Chang asked if a pedestrian plaza met the requirement for "additional building." Ms. Green: If it does then they would be at 57% lot coverage. Mr. Chang: Which is above the 50% necessary we need to improve it, correct? Ms. Guichard: If the Board finds the structure complies with the bylaw 5.6.1

Mr. Erickson said the applicant was willing to meet up to 60% if need be. Ms. Adachi noted that pedestrian plaza "on" the side and "to" the side are two different things.

Mr. Berry said that the lot is the entire lot not just the leased area and the pedestrian plaza would not comply with the bylaw and the whole design does not conceptually comply with the bylaw. Disagree with both points. Mr. Erickson: Mr. Berry, what does on the side mean to you? Mr. Berry: Adjacent to the building. Mr. Erickson: Which is not possible. The access cannot be closed.

Ms. Osman said she wants to make things work, want to see a restaurant go there. Disagree with "on the side" definition. The island is unwelcoming. Maybe a discussion with Kmart and the restaurant owners. Concerned with fake windows. Would like them to provide real light. Sidewalk berm, where would it go? Does that come out of the 10 feet? Mr. Erickson: No landscaping strip, but the berm will be there. Ms. Guichard: A berm is like a vertical curb. Ms. Osman: Would prefer to see a landscaped space to protect pedestrians.

Mr. Chang asked about the distance between the building and the edge of the pedestrian plaza and how much of that distance is taken up by the preexisting nonconforming access point. Ms. Enwright: about 55 feet. Mr. Chang agreed that "on the side" leaves some space and distance that the pedestrian walkway can be separated from the building. As written the definition of "lot" includes the entire lot, but he also believe the applicant has been doing a good job complying and making adjustments. Would like to approve this without the pedestrian plaza. Would like to use the 2013 interpretation of the bylaw but believe that is wrong. As is, believes the plan complies with the bylaw.

Ms. Green said she agreed that Board would make a decision tonight but disagree with definition of "lot." Don't think that the pedestrian plaza is "on the side" or that it meets the spirit of the bylaw.

Bill Mullin, 9 Wilson Lane - Trying to improve commercial base in Acton. Selectmen need to make a decision for the greater good instead of getting into the weeds. If I were on that side I'd vote in favor of this. The parkway isn't the best but it is a solution. Help taxes, Kelley's Corner, and get some traffic in there.

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Robert Walker , Walker Realty LLC and property owner - concur with Bill Mullin. Understands Ms. Osman's comments. Staff has made sure every point in the bylaw is complied with. Agree that not all of it is something they agree with but they are trying to comply with the bylaw. Feel like unfair to the applicant. Much time and energy has been put into this. Believe in patience and there could be a catalyst to the change for the opening. Going to invest 3.5 million dollars and give to the Town and help the Town and invest in the Town.

Mr. Berry: Moved to close the hearing. Ms. Osman seconded, All Ayes (5-0).

Ms. Osman recommends the decision for the permit. Town Counsel Nina Pickering-Cook advised that the decision required a super-majority , or 4 votes.

Mr. Chang: In favor of the plan. Mr. Berry: A no-vote, do not believe complies with the bylaw. Ms. Green: No-vote, do not believe complies with the bylaw. Ms. Adachi: Believes problem is lease agreement, yes-vote.

Mr. Chang moved that we approve the site plan special permit, with the condition that if the access drive is ever closed that the pedestrian plaza be extended to cover that area, Ms. Adachi seconded. Vote: Ayes 3, Nays 2. Vote fails.

Selectmen's Business

Acton Leadership Group Update – Mr. Ledoux: Copy of latest spreadsheet. Net positive position of \$501,000 based on utilizing almost 2.7 million dollars in reserves. If we have a \$501,000 net positive should we lower use of free cash or use it to reduce tax levy? Ms. Green added that ALG plan shows \$200,000 of school E&D, and taxing to full capacity which includes about 985,000 from previous years. Ms. Green: Are people more inclined to put that money in to lowering use of reserves and or lowering use of tax levy. Board agreed generally that the net positive should apply toward reducing taxes.

Vote of Priority, CPA Project Applications – Ms. Green: Move CPA Project Application Discussion to February 1st in which it will be voted on for rank.

Selectmen to Take Position on Special Town Meeting Article –Ms. Adachi moved to recommend Minuteman warrant article, Mr. Chang seconded, All Ayes (5-0).

Discussion of Morrison Farmhouse

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Mr. Ledoux reported that the Morrison Farm Committee voted to recommend not moving forward with the proposed sale and instead to proceed with demolition/deconstruction. Do not want private ownership that might impose on plans for Morrison Farm.

Mary Ann Ashton , Morrison Farm Committee – Committee was disturbed by prospect of sell the house and taking away important frontage and interfering with plans for the parcel, to open it up to the public.

Bill Klauer, Historical Commission - As an advisory board to the Selectmen, the Historical Commission should be approached about this. This is the first that the Commission heard of it. Mr. Klauer confirmed that the house is historic.

Anne Forbes, 25 Martin Street – the emphasis on ownership seems besides the point. If the Town and its staff has come up with a way to keep the farmstead as it is, I think it is extremely commendable, especially when the Morrison Farm Committee wants to demolish it. Why would the Town want to demolish it? The farmstead is the last depression-era in tact farmstead in town. Should save it.

Dean Charter, 81 Charter Road – Agree with Morrison Farm Committee that selling frontage of parcel is a bad idea. Contradicts land preservation the Town has done. The house itself has cost a lot of money and he reluctantly agrees that it should be demolished but the land should not be sold.

Ms. Osman agreed on the need to consult with the Historical Commission. Feel like preservation of the building would cost too much for the Town. Habitat option would be best option to keep and preserve the house but Morrison Farm Committee expressed a lot of concern and if it is sold to a family we eliminate ability to access the land. Lease option would be more money to the town. Taking it down seems like best option.

Ms. Adachi said the house will need to be rebuilt if it is ever going to be useful. Need more input from Historical Commission.

Mr. Berry agreed that more boards should meet regarding this.

Ms. Osman would like to know if the house can be moved. Mr. Ledoux thinks there will be a meeting about it involving Planning.

Mr. Chang thinks the matter should be left until next Town Meeting. Getting rid of the property seems to be the most viable option.

Ms. Adachi asked about Habitat for Humanity's schedule. Mr. Ledoux said the Town would have to put out request for proposal. Habitat Regional Director likes the project but not sure about timetable. Ms. Adachi was concerned about wasting money Town already has put into it.

Bill Mullin – The house has always been a problem. Issue is selling the land that is the front door of the property.

Ms. Green said the Board will continue discussion regarding Morrison Farm. Will vote with a clear path forward.

Ms. Ashton – Want to clarify that no one has looked at what to do with the house. Have been told not to do anything. If something is to be done with the house, would like to include Morrison Farm Committee in the conversation. Would like to have a vote on not selling the land tonight. Ms. Green said the Board will need more time before deciding what happens.

Bill Mullin - It's unfair to other boards that could be involved in this to not have information ahead of time. If the Town is proposing to sell something it should be in the agenda. Ms. Green said the topic would be on a future agenda and more committees would be involved.

Selectmen's Reports:

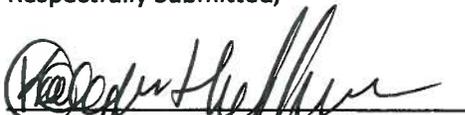
Selectmen Reports are included in the agenda packet on DocuShare. There were no questions.

Consent Agenda

Ms. Adachi moved to approve consent agenda items, Ms. Osman seconded, All Ayes (5-0)

Mr. Chang moved to adjourn, Ms. Osman seconded, all Ayes (5-0)

Respectfully Submitted,



Katelyn Huffman, Recording Secretary



Janet K. Adachi, Clerk