



Town of Barnstable Planning Board



www.town.barnstable.ma.us/PlanningBoard

Board Members

Steven Costello – Chair Stephen Robichaud – Vice Chair Mary Barry - Clerk Robert Twiss Michael Mecenas Raymond Sexton Tim O’Neill

Mathew Levesque – Town Council Liaison

Planning & Development Dept. Staff Support

Elizabeth Jenkins, AICP, Director

Kaitlyn Maldonado, Assistant Director

James Kupfer, AICP, Senior Planner

Karen Herrand – Principal Assistant - karen.herrand@town.barnstable.ma.us

Town of Barnstable PLANNING BOARD Minutes February 14, 2022

Steven Costello – Chairman	Present
Stephen Robichaud – Vice Chairman	Present
Mary Barry – Clerk	Present
Robert Twiss	Present
Michael Mecenas	Present
Raymond Sexton	Present
Tim O’Neill	Present

Also in attendance via remote participation were Planning & Development Staff; Elizabeth Jenkins, Director, Kaitlyn Maldonado, Assistant Director, James Kupfer, Senior Planner, and Karen Herrand, Principal Assistant.

The Planning Board’s Public Hearing will be held at 7:00 p.m. by remote participation methods. Alternative public access to this meeting shall be provided in the following manner:

1. The meeting will be televised via Channel 18 and may be viewed via the Channel 18 website at <http://streaming85.townofbarnstable.us/CablecastPublicSite/>
2. Real-time access to the Planning Board meeting is available utilizing the Zoom link or telephone number and Meeting ID provided below. Public comment can be addressed to the Planning Board by utilizing the Zoom link or telephone number and Meeting ID provided below:

Link: <https://zoom.us/j/97875964088>

Phone: 888 475 4499 US Toll-free

Meeting ID: 978 7596 4088

3. Applicants, their representatives and individuals required or entitled to appear before the Planning Board may appear remotely and may participate through the link or telephone number provided above. Documentary exhibits and/or visual presentations should be submitted in advance of the meeting so that they may be displayed for remote public access viewing.

Application materials may be accessed by contacting Karen.herrand@town.barnstable.ma.us or calling 508-862-4064.

Call to Order

Introduction of Board Members and Staff Members

Attendance Roll Call

Tim O’Neill
Ray Sexton
Michael Mecnas
Mary Barry
Bob Twiss
Stephen Robichaud
Steven Costello

Notice of Recording This meeting is being recorded and broadcast on Channel 18 and in accordance with MGL Chapter 30A §20. The Chair must inquire whether anyone else is taping this meeting and to please make their presence known.

Public Comment

Chair Steven Costello asks if any public comment for anything not on tonight’s Agenda – None.

Approval Not Required:

Holian Family Realty Trust have submitted an Approval Not Required plan entitled: “Plan Showing Lot Division at 250 Windswept Way Barnstable (Oyster Harbors) MA” dated January 12, 2022, prepared and stamped by Richard R. L’Heureux of CapeSurv.
(Majority of Full Board)

Attorney Michael Ford in attendance, representing Janet Holian and Family Trust. He gives an explanation of the proposed division. Sunset Point – private way. Refers to his Memo, Exhibit A. The right to rise in the stipulation, ANR from 1968 at Sunset Point. Has frontage. Table on top of the plan, Exhibit B – lots meet area of 2 acre and meet frontage, parcel D does not meet the shape factor. Already non conforming. Bldg Commissioner indicated that if parcel B was created would trigger need for variance for parcel D from Zoning. There will be a slight change in the boundary line. Would like to ask for continuance to show this change. Feb. 28th would still be a timely meeting to get a revised plan in to the Board.

Chair Steven Costello entertains a motion to continue this matter to Feb. 28, 2022, at 7:00 p.m., moved by Ray Sexton, seconded by Tim O’Neill,

Roll Call Vote:

Steven Costello - aye
Ray Sexton - aye
Tim O’Neill - aye
Michel Mecnas - aye
Stephen Robichaud - aye
Mary Barry - aye
Bob Twiss - aye

Zoning Amendments:

Zoning Amendment TC Item No. 2022-034 - Proposal to amend the Town of Barnstable Zoning Ordinance by amending the code of the Town of Barnstable, Part I, General Ordinances, Chapter 240 Zoning by expanding the Ground-Mounted Solar Photovoltaic Overlay District to include the property located at 810 Wakeby Road, Marstons Mills (Assessors’ Map 013 Parcels 004, 005, 052) and by requiring a Special Permit for large-scale ground-mounted solar photovoltaic installations located within

any residential district located within the overlay district. – *continued from November 8, 2021, December 13, 2021, and January 10, 2022*
(Public Hearing) (Majority of members present and voting for recommendation to Town Council)

Jim Kupfer, Senior Planner gives an update. Reviews the history thus far. Two parts: An adjustment of the ordinance and the expansion of the zoning map. Refers to ordinance, Exhibit C – changes to.

Ordinance shown on screen, Exhibit C. 15 pg. document now. Overlay district, right now Ground Mounted Solar Overlay District (GMSPOD) is predominantly in another area. This established district gives solar by right – as of right. Can have battery storage with a special permit. Established that battery energy storage is prohibited as a primary use.

Ray Sexton asks for the difference between primary and non primary use? Would be a good idea to differentiate.

Jim Kupfer replies primary is dominant use, associated battery storage. The storm water section, requiring a storm water plan, sets ground work for special permit. Section P – PFAS expanded – applicant's shall not contain PFAS substances. We have expanded our area of study for this and our peers to get insight. Battery storage siting. How to handle on site. Not allowed in Zone 1. Within a structure/self containment. Each facility would sit in a self containment area/pad where it holds 110% of what is in the batteries and housed within a structure. Metal containers, perhaps an alarm system. This separates from any runoff from the site. Special Permit criteria. Site plan criteria. Site plan review first. Screening, long range maintenance. 100 ft. minimum, can discuss further. Screening properly. Would look at site specific and setbacks for. Expanded operation of maintenance. Meeting codes for all entities. Recycling properly. Bonding for surety.

Chair Steven Costello states that a lot of work has been done for this. The effort may be lost with the notion that this property, Wakeby road is not appropriate. Moving forward a significant ordinance is needed.

Stephen Robichaud comments that he has reviewed a lot of material and done the site walk. Mass General Law Chapter 48, Section 3, no zoning ordinance shall prohibit the installation or the buildings except where necessary public safety or welfare. He would like this to prohibit battery storage in all forms within a residential zone, this does not violate Chapter 48 Section 3. Believes Town is within its right - Town may regulate the systems to protect public health safety and welfare. Concerns with materials used in lithium ion batteries, houses abutting – zone 2, concerns about drinking water. Accident or emergency – material become air born, where it may settle. Would have same concerns for any battery storage in a residential area in the Town. He finds the site appropriate for a solar array would like the set back to 150 ft. for properties that abut residences. Add to screening definition: along the property line minimum 10 ft. in height. Screening to be staggered to avoid openings. Amend this section to read as such.

Chair Steven Costello, we have been provided a lot of documentation from abutters, helped to shape the ordinance. The state of technology and how we are going, how would this work without battery, some sort of functionality with solar. Don't know if eliminating this would make the whole ordinance invalid.

Ray Sexton comments that there are enormous solar fields elsewhere, that he's seen. These are clearly in non residential areas. Also, around the Cape arrays are also in industrial areas. Would be cautious about allowing battery storage in a residential area. Directs to Staff: how would Wakeby Road connect

to the grid? Footprint would have battery and solar arrays and connection to the grid, sub station/structure?

Jim Kupfer replies they have to have an inter connection plan for public utilities.

Attorney Ford – voting on enabling legislation at this point. Would have to get an inter connect from the utility in order to connect to the grid system. These discussions have already been done with Eversource and it is said that it would be approved.

Jim Kupfer, that are some of the accessory uses. Clarifies talking about the ordinance as a whole. The overlay zone and could add some clarifiers for residential.

Ray Sexton, is it most appropriate to have an ordinance that is applicable before consider the application. Can split two actions to consider the creation of the ordinance and then the application at hand.

Chair Steven Costello clarifies recommendation to Town Council – maybe make criteria separate.

Jim Kupfer, this would be a separate matter. This is brought forth by the Town and not a specific developer. This is to recommend or not to recommend back to Town Council who will vote on the matter.

Bob Twiss, important to bifurcate in order tonight and address first the proposed bylaw and then after get proposal as to modify the map. Whatever we decide with bylaw can figure out whether this is appropriate. In bylaw, Section 240, 40b, to solar arrays of 250 kilowatts or greater - Interested in learning what policy thinking to apply only to those of this kilowatts.

Jim Kupfer replies, this is standard minimum.

Elizabeth Jenkins clarifies she believes the 250 threshold was based off of bylaw model, Dept. of Energy resources, model bylaw for regulating ground mounted solar, large scale.

Bob Twiss so if someone wanted to come in and seek a permit for less than 250, what type of application would we have in place, would there be a requirement for special permit. What would be the procedure?

Jim Kupfer, it would not apply to this if it is below 250, smaller arrays, it would go through the Bldg. Commissioner.

Bob Twiss, his concern is hazardous materials, residential or non residential. PFAS substances. Hurricane and natural disasters could cause these to be released. Proposal does a good job to address this. Site plan section states any hazardous substance, fairly broad definition. Have to certify re PFAS. Special permits through combination of site plan and special permit process, probably the most to protect. Commends staff for addressing all those concerns. Containment and decommissioning. May not be completely ready to go, but not sure if prohibit battery storage as of yet.

Mary Barry, has concerns regarding the battery and lithium when residential side. In favor of not having battery storage for solar systems in a determined residential area. Would like 200 or 250 ft. setback from residential lot line. Likes the staggering and the screening. Likes the idea of separating in two, ordinance and then come back and look at mapping for solar.

Tim O'Neill, has concerns – limits the ability of the board as a permit granting authority for input on a project. Battery storage in residential zone. Don't know enough about it and how it relates to the solar array operation, can you have it without the battery? A lot of guidance in here regarding the containment of battery storage. Maybe have more flexibility.

Michael Mecnas, has concerns hazardous materials and public safety. Staff has done a good job. He is satisfied with what is in place now.

Chair Steven Costello seems all in agreement that batteries are the main issue. Conflicted that the ordinance may not do what we want it to do/promote solar energy. Can we get something to appropriate funds to get an expert to explain what the battery usage implications are? Approach this way possibly.

Elizabeth Jenkins, this is technical issue. It is the Town that is putting this forward. This is to enable legislation. More additional research, sounds like needed. Staff has researched as much as our technicality as Planners can do.

Chair Steven Costello possibly do more research, where does Town stand from legal standpoint, in absence of an ordinance, and implications.

Elizabeth Jenkins states that no one from the Legal Dept. here presently.

Attorney Ford, he is not litigation council in Land Court pending the case against the Town which asserts Chapter 40A, Section 3 as being too restrictive. The filing of this case has been negotiations for his clients and Town Attorney's office. This is the genesis for the drafting of the bylaw. Came from the Town as a result of the allegations that the Town is facing. An effort to resolve the litigation. Substantial portion of the site is still authorized for junkyard use. Important to get guidance from Legal Dept., with map amendment, and the purpose which filed to begin with. To bifurcate – strongly urge to seek some advice from Town Attorney's Office. This was filed to address a lawsuit, re Chapter 40A, Section 3 violate. This is going farther away from original intent.

Stephen Robichaud separating the two, looking at this as a discussion standpoint, keep same Town Council item, but get ordinance right and then discuss if 810 Wakeby Rd. fits into that.

Chair Steven Costello asks for any public comment - anything new/information.

C. McDonough and C. Jones in attendance. The existing site was not legal to and for the use that it had in the past/previously. Appreciates the Board's input.

Ray Sexton, would like to ask Town Council, is it appropriate to get the bylaw right Town wide and then deal with the specifics, maybe separate, would like someone who has the expertise.

Chair Steven Costello – understands the battery or no battery, map, get Town Council input.

Elizabeth Jenkins can start conversations for this.

Attorney Ford asks for clarification what Board is asking.

Chair Steven Costello replies, asking for Town Council to provide funds and resources for expertise and knowledge information, and how relates to the process, which will allow us to provide an ordinance we would feel comfortable and the map to include 810 Wakeby Rd. or not. Battery impacts.

Attorney Ford asks how long will this take, Land Court judge/parties have stated they are working on an ordinance that will settle the case. Timing is critical if there is an opportunity to do this. Should consult with the Town Attorney's office.

Chair Steven Costello replies someone with the knowledge base. Need to identify a professional that has knowledge, should be able to do fairly quickly.

Attorney Ford suggests maybe some technical assistance with Cape Cod Commission.

Chair Steven Costello entertains a motion to continue, moved by Bob Twiss to continue to Feb. 28, 2022, at 7:p.m., seconded by Mary Barry,

Roll Call Vote:

Bob Twiss - aye

Mary Barry - aye

Tim O'Neill – aye

Ray Sexton - aye

Stephen Robichaud - aye

Michael Mecnas - aye

Steven Costello - aye

Zoning Amendment TC Item No. 2022-073 - Proposal is to amend Chapter 240 Zoning, Article III, Section 34 Floodplain District by repealing and replacing the existing zoning ordinance in order to comply with National Flood Insurance Program (NFIP) requirements in accordance with the State's Model Floodplain Bylaw. The purpose of the proposed zoning amendment includes but is not limited to defining the purpose of the Floodplain District, establishing the Building Commissioner as the official Floodplain Administrator for the Town and incorporation of definitions. (Public Hearing) (Majority of members present and voting for recommendation to Town Council)

Chair Steven Costello entertains a motion to open the public hearing, moved by Mary Barry, seconded by Bob Twiss,

Roll Call Vote:

Stephen Robichaud - aye

Bob Twiss – aye

Mary Barry - aye

Michael Mecnas - aye

Ray Sexton - aye

Tim O'Neill - aye

Steven Costello - aye

Kate Maldonado has a presentation for the Board: Exhibit D – National Flood (NFIP). Town of Barnstable became a part. FEMA administers the program. Local regulations needed. State established a bylaw. Rules and regulations for floodplain ordinance. Repeal and replace. 20 provisions. Bldg. Commissioner will be the official Administrator. Only text to definitions. No mapping.

Chair Steven Costello asks for any public comment - None.

Chair Steven Costello entertains a motion to close the public hearing, seconded by Ray Sexton,

Roll Call Vote:

Steven Costello - aye

Stephen Robichaud - aye

Mary Barry - aye

Bob Twiss - aye
Michael Mecnas - aye
Ray Sexton - aye
Tim O'Neill - aye

Chair Steven Costello entertains a motion, moved by Mary Barry to recommend Zoning Amendment TC Item No 2022-073 as presented to Town Council, seconded by Stephen Robichaud,

Roll Call Vote:

Steven Costello - aye
Stephen Robichaud - aye
Mary Barry - aye
Bob Twiss - aye
Michael Mecnas - aye
Ray Sexton - aye
Tim O'Neill - aye

Staff Updates

Local Comprehensive Plan – (LCP)

Elizabeth Jenkins gives an update, in process of seeking applicants. Community outreach. Land use, growth, preservation 10 to 28 year period of time. Town Manager has made a final memorandum establishing the application process. Open now. Can find on Planning & Development website and the home page of the Town's website as well. Engaged in outreach campaign. This week flyers will go out as well. Some radio interviews have been done also. Promoting the LCP much as possible. This will be a standard update on each Planning Board Agenda. Can get updates to your email as well. Application deadline is now March 1, 2022.

Chair Steven Costello asks if any social media presence?

Elizabeth Jenkins replies, yes Channel 18 and marketing material. Finalized a video to go on Town website as well. Trying to get the word out.

Mary Barry, how many people?

Elizabeth Jenkins between 9 to 17 members, from each of the 7 villages and Boards, Commissions.

Ray Sexton how does someone apply?

Elizabeth Jenkins, on the website, can download and are fillable forms. Email back to Barnstable, email/instructions are listed. LCP information. Also translated in Spanish and portuguese.

Matters Not Reasonably Anticipated by the Chair

Correspondence

Chapter 91 Notice – 140 Bay Rd., Barnstable – pier, ramp and float - Morris
DEP Notice – 15 Piney Point Dr., Centerville – Dock - Henry

Approval of Minutes

January 10, 2022, draft minutes

Chair Steven Costello entertains a motion to approve the draft minutes of January 10, 2022, moved by Tim O'Neill, seconded by Mary Barry,

Roll Call Vote:

Steven Costello - aye
Stephen Robichaud - aye
Mary Barry - aye
Bob Twiss - aye
Michael Mecnas – aye
Ray Sexton - aye
Tim O'Neill - aye

Future Meetings: February 28th and March 14th, 2022, @ 7:00 p.m.

Adjournment

Chair Steven Costello entertains a motion to adjourn, moved by Mary Barry, seconded by Stephen Robichaud,

Roll Call Vote:

Steven Costello - aye
Stephen Robichaud - aye
Mary Barry - aye
Bob Twiss - aye
Michael Mecnas - aye
Ray Sexton - aye
Tim O'Neill - aye

The meeting adjourned at 8:44 p.m.

Respectfully Submitted
Karen Herrand, Principal Assistant, Planning & Development

Further detail may be obtained by viewing the video via Channel 18 on demand at
<http://www.town.barnstable.ma.us>

List of Exhibit Documents

- Exhibit A** - ANR - Holian Family Realty Trust 250 Windswept Way – Memorandum by Attorney Ford
- Exhibit B** – ANR - Holian Family Realty Trust 250 Windswept Way – Plan (original submitted)
- Exhibit C** – Zoning Amendment TC Item No. 2022-034 – draft ordinance
- Exhibit D** - Zoning Amendment TC Item No. 2022-073 – Presentation by Kate Maldonado