



# Town of Barnstable Planning Board



[www.town.barnstable.ma.us/PlanningBoard](http://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](mailto:karen.herrand@town.barnstable.ma.us)

## Town of Barnstable PLANNING BOARD Minutes March 28, 2022

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

*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/97152590063>

Phone: 888 475 4499 US Toll-free

Meeting ID: 971 5259 0063

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](mailto:Karen.herrand@town.barnstable.ma.us) or calling 508-862-4064.

**Call to Order** Introduction of Board Members and Staff Members

**Attendance Roll Call**

**Stephen Robichaud**

**Mary Barry**

**Bob Twiss**

**Michael Mecnas**

**Ray Sexton**

**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 – General Public Comment - None**

**Zoning Amendments:**

**Zoning Amendment TC item No. 2022-134** – Proposal to Amend Chapter 240 Zoning Article XIV, Citizens Petition to Establish a Temporary Moratorium on Large Scale Ground Mounted Solar Photovoltaic Systems - The purpose of this public hearing is to take comment on a citizens petition proposal to add a new section §240-129.2 establishing a temporary moratorium on Large Scale Ground Mounted Solar Photovoltaic Systems, as defined, for a period of eleven and one half months. This amendment is a petition made by ten certified registered voters of the Town and was referred to the Planning Board for a public hearing by Town Council Item No. 2022-134. (Public Hearing) (Majority of members present and voting for recommendation to Town Council)

**Acting Chair/Vice Chair Stephen Robichaud entertains a motion to open the public hearing, moved by Mary Barry, seconded by Michael Mecnas,**

**Roll Call vote**

**Mary Barry - aye**

**Bob Twiss - aye**

**Michael Mecnas – aye**

**Ray Sexton - aye**

**Stephen Robichaud - aye**

Anne Salas in attendance. Reads from her email as sent today, Exhibit A. Attorney General article, if finds in violation, unreasonably restriction but passes the rest of the zoning amendment, in residential zone. This would mean that batteries could be placed in residential zones. Urge to vote in favor until this bill to pass and become law. Allows municipalities to reasonably regulate solar/and installations to not be put in residential zones, and not endanger our water systems.

Ray Sexton directs to Anne Salas, municipalities or towns would be empowered or declined to approve large photovoltaic arrays – would be an adjustment to the existing law, is this what states?

Anne Salas reads into record: *“No zoning ordinance or by-law shall prohibit or unreasonably regulate the installation of solar energy systems or the building of structures that facilitate the collection of solar energy for residential purposes except where necessary to protect the public health, safety or welfare. Commercial, governmental, and non-residential solar energy structures and systems may be reasonably regulated for purposes of (i) protecting public health, safety and welfare; (ii) preserving forested lands, agricultural lands, or wetlands; or (iii) ensuring compatibility with municipal zoning.”*

Nancy Minegrove, Marstons Mills, reiterate concerns and a lot to learn about this, particular large commercial scale projects. Urge to vote to pass moratorium.

Ray Sexton – what do Town Attorney’s have to say.

Jim Kupfer refers to letter/memorandum from Town Attorney, Exhibit B. Requirements to uphold a moratorium. In review of petition article and certain time, beyond 11 month time frame. Doesn’t quite define what the action would be/task to finalize the moratorium or study test. Will keep our eye on legislation. Reasonable time and study action. Town attorney has recommended not recommending this to Town Council.

Ray Sexton, based on case law, the moratorium may be struck down in court. Concerned that bar set a little low.

Anne Salas – refers to item B from Petition moratorium - no building permit for any large scale - in size of more than 150 percent. Any property not to exceed 35 kilowatts. That doesn’t take away from any homeowner/business/municipal bldg. Has had attorney review this petition as well. Only duration is 11.5 months.

Jim Kupfer replies, 11.5 months after, or until sufficient deliberation by the Town. Definition – while another community may have a definition, significantly different. 35 kilowatts does bring it to a residential scale.

Anne Salas, thinks we need some time without the pressure of a lawsuit to write our zoning by laws. Shows a copy of a map and points out where her home is located. Cancer study, found 70 percent greater risk of leukemia with children living within 160 ft. of power lines. Electromagnetic – shouldn’t be in residential zones. This moratorium is to buy us time to work on a zoning amendment that protects people and natural resources. Once passed a residential zone to be a solar overlay district that opens the doors for others.

Vice Chair Stephen Robichaud wants all to remember that no project will go forth without a special permit process being involved.

Mary Barry doesn’t like to have a lot of special permits. Would like zoning done before review of special permits. Will support a moratorium that has the right language to support it.

Bob Twiss, the Board has spent a lot of time looking at this. Trying to improve and update and put in protections for. Provisions have been put in. Notice for hazardous substances. Set backs have been increased and prohibits the use of batteries. These issues have been raised repeatedly through the various hearings. The proposed moratorium does not ask for amended ordinance, only on special permits or modifications of the zoning map/overlay. If there were an 11.5 month moratorium what would happen in that time? Or if adopt, we would be in same position 11.5 months from now. Civil suits does not involve the Planning Board, this is not our role. Doesn’t see any reason to impose a moratorium.

Vice Chair Stephen Robichaud agrees we have done a lot of work with this.

Michael Mecnas agrees – have spent a lot of time and done their own research. Appreciates the concerns of the abutters.

Ray Sexton, his concern is the specific site. Think we have the ordinance right. What would 11.5 months do and what have we missed.

Anne Salas replies, the moratorium does refer to restriction on overlay district, no ground mounted may be adopted for 11.5 months after the approval of said moratorium. Concerns with industrial scale solar

plants within a residential zone. Still creating massive amounts of electricity, near well head protection. When panels taken apart they break and toxic chemicals will go into the ground. Where are we going to put these in 20 years? What will be done with them, this will be a massive problem. This moratorium does address – residential zone overlay districts should not be.

Vice Chair Stephen Robichaud, agrees Staff and Board have spent a lot of time. He feels they have it right. Solar has been in use for three decades. Thinks Board has addressed well.

Anne Salas thanks the Board for all the work done. This is so very serious and to protect in the special permitting process.

**Vice Chair Stephen Robichaud entertains a motion to close the public hearing, moved by Mary Barry, seconded by Michael Mecnas,**

**Roll Call Vote:**

**Mary Barry - aye**

**Bob Twiss - aye**

**Michael Mecnas - aye**

**Ray Sexton - aye**

**Stephen Robichaud - aye**

**Vice Chair Stephen Robichaud entertains a motion, moved by Ray Sexton that the Planning Board not recommend the Petition as written to be adopted, accepted or enacted for Town Council Item No. 2022-134, seconded by Bob Twiss,**

**Roll Call Vote:**

**Mary Barry - aye**

**Bob Twiss - aye**

**Michael Mecnas - aye**

**Ray Sexton - aye**

**Stephen Robichaud - aye**

Anne Salas would like a copy of the memorandum from Legal Dept in order to address.

Jim Kupfer replies – this is posted on the website.

**Regulatory Agreements:**

Regulatory Agreement RA – 001 - Flagship Estates Hyannis LLC

To determine if the proposed amendment to eliminate the construction of Building E and install a parking lot in its place, and reduce the overall number of units from 29 to 24, thereby reducing the corresponding number of affordable units required by the Town's Inclusionary Affordable Housing Ordinance, Chapter 9 of the Barnstable Code, from 3 to 2 affordable units qualifies as a minor amendment or a substantial amendment in accordance with §168-5D. (Majority of members present and voting) Jim Kupfer, this is where we need Board's review if think a minor or major modification. Application - would like to continue to April 11<sup>th</sup>, 2022.

Paula Schnepf in attendance, asks if considered a minor amendment, then won't go to Town Council, but if major yes, would have to go ?

Jim Kupfer, yes, if major would have public comment and a public meeting, then to Town Council and to Town Manager.

**Staff Updates**

Local Comprehensive Plan - Elizabeth Jenkins - no additional updates at this time.

**Matters Not Reasonably Anticipated by the Chair**

**Correspondence**

Chapter 91 Notice – 18 Sail-A-Way – Curley – Dock

**Approval of Minutes**

March 14, 2022, draft minutes

**Vice Chair Stephen Robichaud entertains a motion to approve the draft minutes of March 14, 2022, moved by Mary Barry, seconded by Ray Sexton,**

**Roll Call Vote:**

**Mary Barry - aye**

**Bob Twiss - aye**

**Michael Mecenas - aye**

**Ray Sexton - aye**

**Stephen Robichaud - aye**

**Future Meetings:** April 11<sup>th</sup> and April 25, 2022, @ 7:00 p.m.

**Adjournment**

**Vice Chair Stephen Robichaud entertains a motion to adjourn, moved by Bob Twiss, seconded by Mary Barry,**

**Roll Call Vote:**

**Mary Barry - aye**

**Bob Twiss - aye**

**Michael Mecenas - aye**

**Ray Sexton - aye**

**Stephen Robichaud - aye**

The meeting adjourned at 7:55 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 – Zoning Amendment TC item No. 2022-134 – Proposal to Amend Chapter 240 Zoning Article XIV, Citizens Petition to Establish a Temporary Moratorium on Large Scale Ground Mounted Solar Photovoltaic.. – email from Anne Salas, March 28, 2022**

**Exhibit B – Zoning Amendment TC item No. 2022-134 - Memorandum from Town Attorney-**

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