

# Draft Minutes

Middlesex Planning Commission

Wednesday, April 15, 2020

6:00 PM

Remote Meeting via Zoom videoconference & Phone

## Call to Order

The meeting was called to order at 6:04pm.

## Roll Call

### **Planning Commission Members**

Elias Gardner  
Theo Kennedy  
Sandy Levine  
Mitch Osiecki  
Dick Alderman – Absent

### **Guests**

Lauri Scharf, Middlesex Energy Coordinator  
Jim Gallagher, resident  
Vic Dwire, resident  
Michael Levine, resident  
Nils Behn, Aegis Renewable Energy  
Eric Phaneuf, Aegis Renewable Energy  
TJ Kingsbury, Kingsbury Construction  
Cindy Hill, attorney for Jim Gallagher  
Zach Maia, CVRPC

Note: Due to concerns about the spread of coronavirus, this meeting was conducted via Zoom videoconference and phone.

## Adjustments to Agenda

No adjustments to agenda.

## New Business

Representatives of Aegis Renewable Energy seeks a Letter of Support from the Planning Commission designating the property at 58 Center Road as a “preferred site” for a proposed 150 KW solar project.

Sandy asked applicants for a brief overview of the project and the purpose of the requested Letter of Support.

Nils Behn of Aegis Renewable Energy explained that they propose a ground-mounted 150 KW solar array on approximately one acre of Stephen Van Esen’s property at 58 Center Road. *{I note as an aside that it appears that Mr. Van Esen has yet to request an E911 address. 58 Center Road is in fact the address of Kingsbury Construction.}*

Nils added that in order to receive a Certificate of Public Good (CPG) from the Public Utility Commission, the applicants must receive a Letter of Support from both the Middlesex Select Board and the Planning Commission designating the proposed site as a “preferred site” for a solar project. Nils added that he believes the site chosen is an ideal candidate for a preferred site designation.

Eric Phaneuf added that the town has the authority to make this designation.

Elias Gardner asked if the Select Board has yet weighed in on this request. Aegis presented this project at last week’s Select Board meeting; Select Board deferred to the Planning Commission. Nils described this as a common practice.

Nils commented that, as proposed, the siting of the solar array will not fall entirely within property setback standards for the Mixed-Use District. They plan to apply for a waiver of setback standards.

Question was raised as to whether the square footage of the proposed array exceeds allowable square footage for a “structure” in this district.

Question was also raised as to whether setbacks would be met from the top of slope from a waterway. Eric responded that the proposed siting would be close to, but not within, the buffer zone from a waterway.

Nils commented that the proposed project site had been cleared of trees within the last couple of years. The owner had been considering construction of a dwelling, but plans have now changed.

Discussion of whether proposed project is in compliance with the recently adopted Town Plan. Town Plan does not yet include an Enhanced Energy Plan (EEP), but the plan as adopted does address preferred and prohibited sites for renewable energy projects.

Zach Maia of the CVRPC weighed in briefly with comments on site maps included in Town Plan.

Preferred sites include industrial, landfills, parking lots, brownfields, rooftops of existing or proposed buildings.

Nils (?) stated that proposed project is “close” to guidelines, as 50% of energy produced by this project will be sold to the Vermont Patients Alliance (VPA) medical marijuana facility next door. Comment was made by someone (unidentified) that this element is not applicable to current Town Plan.

Cindy Hill, attorney for Jim Gallagher, offered comments...

*(My phone dropped the call at this point – hoping others can fill in details here.)*

A final question was raised as to whether there are currently any other large-scale solar projects in Middlesex. *{According to draft EEP, largest is 15 KW.}*

At this point, the Zoom teleconference concluded. Those wishing to continue participation were asked to phone in.

Roll Call of participants continuing by phone:

**Planning Commission Members**

Elias Gardner  
Theo Kennedy  
Sandy Levine  
Mitch Osiecki

**Guests**

Lauri Scharf, Middlesex Energy Coordinator  
Jim Gallagher, resident  
Vic Dwire, resident?  
Michael Levine, resident?  
Nils Behn, Aegis Renewable Energy  
Eric Phaneuf, Aegis Renewable Energy  
TJ Kingsbury, Kingsbury Construction?  
Cindy Hill, attorney for Jim Gallagher  
Zach Maia, CVRPC

Question raised as to whether a decision will be rendered tonight. Response: possibly, if all questions raised are answered satisfactorily.

Aegis reps were asked to provide a brief overview of finances of the project. Nils explained that the rates a solar project can charge are determined by a number of factors. A big one is designation as a preferred site. The proposed project qualifies as Class 2, if it's on a preferred site; otherwise it's a Class 4 project. Currently, there's a 22% difference in rates between Class 2 and Class 4. Project is not financially viable as Class 4.

Nils added that the State is reducing, or stepping-down, discounts over time. Even as a Class 2 project, finances for the project will be less favorable in a year than they are now.

Theo asked Jim Gallagher to clarify what he meant by claim of deception during earlier testimony. *(During dropped call, I assume.)*

Jim responded that he feels people are manipulating the system to get around Act 250 oversight. For example, he doesn't believe Mr. Van Esen ever intended to construct a dwelling on this site when he cleared trees.

Theo responded that while he understood and appreciated Jim's viewpoint, Planning Commission is in no position to judge motivation of landowners.

Mitch circled back to earlier discussion of setbacks and explained that the Vermont League of Cities and Towns (VLCT) has offered the guidance to towns that under current legislation, municipalities do not have the authority to apply local zoning regulations (including setback restrictions) to any net-metered renewable energy projects. It is the position of the VLCT that only the PUC, through its issuance of a CPG, can regulate any aspect of a renewable energy project. Mitch read the statement of guidance; will append to these minutes.

Nils stated that they would appreciate a Letter of Support from the Select Board and Planning Commission, and would be willing to work with the town to ensure that there are no concerns about setbacks of the proposed project.

Elias asked for confirmation that the project proposes an array of ground-anchored posts, with no impervious ground covering (e.g., pavement or the like). Confirmed.

Timeline for letter of support? Ideally, before next week's Select Board meeting. Nils stated that there is significant engineering work to do yet. The deadline to submit an application to the PUC is June 30.

Sandy asks whether there are significant forest blocks in this area. TJ Kingsbury responds that he believes the significant forest blocks in Middlesex are primarily in the Worcester Mountain Range, north and west of this site. As discussion continues, Nils said he would try to research this question and see if he can identify high priority forest blocks.

*{Phone dropped call again, near this point? But called back quickly, and may not have missed much.}*

Theo commented that he was concerned about whether issuing a letter of support for this project would bind the PC respond similarly to any other project proposed later.

Zach Maia commented that his research seemed to suggest that this site does encompass what the State describes as a highest priority forest connectivity block. Elias independently found same result.

Unidentified (Nils or Eric): A letter of support does not take a position on issues of concern to the Agency of Natural Resources before the PUC. Appropriate agencies will weigh in on these issues at the PUC hearing.

Sandy commented that the Mixed-Use District does allow for renewable energy projects, which is also Supported by the current Town Plan. Commented further that we should be guided by the Town Plan, which does anticipate that solar projects will be sited in town.

Theo commented that he doesn't wish to hold up the project unnecessarily.

Nils underscored importance of town support for the project to move forward. Since adoption of current rules, Aegis has not built a project that failed to be designated on a preferred site.

Nils also offered that this site will not be fenced in; therefore he doesn't believe it will hinder movement of wildlife.

Mitch commented that he doesn't oppose the project moving forward and receiving further review.

Elias moved that the Planning Commission write a letter of support designating proposed site a preferred site, Theo seconded. **Motion carried, 4-0-0.**

Sandy reads draft letter of support (will be appended to these minutes.) All PC members present affirm no objections to language.

*{Dropped call again near here. Called back quickly and may not have missed anything.}*

## **Old Business**

### *Enhanced Energy Plan*

Final call for comments on draft of EEP. Members asked to please weigh in with any edits within the next week. Theo will update the draft ahead on next meeting.

Lauri asks about the duration of the EEP. Zach confirms that, like Town Plan, EEP is good for eight years. Both Town Plan and EEP can be amended while they're current, but both will need to be readopted before they expire.

We should review language that discusses implementation. We should anticipate that some new technology will emerge and other technology will become obsolete. Both the Town Plan and the EEP will change over time.

### *Municipal Planning Grant*

Chris Sargent of Dubois & King has provided a draft of contract for services. All members are fine with language. Mitch will have contract signed by Peter Hood, then forward to Chris Sargent.

Mitch also commented that because we declined the optional 3-D model element of the D&K proposal, the contract comes in slightly under our grant allocation. Chris passed along advice that we should still try to spend the entirety of our grant allocation. A quirk of how these programs work is that if a municipality fails to spend its entire grant in one cycle, we can be flagged and receive less than our full request in subsequent grant cycles.

Vic Dwire asked how D&K came to be chosen. He stated that he's worked with D&K on projects before and has sometimes been less than satisfied with results. Response was that PC put out a request for proposals. We received two submissions; interviewed both consultants. Both consultants made good pitches; solid proposals from both. PC members contacted references for both consultants and received favorable comments about both. Ultimately, D&K had some strengths that played to some elements of the project we envision. PC appreciates the feedback, however, and we'll keep that in mind and stay on top of this – will monitor progress as necessary.

## **Correspondence**

Letter advising of change of ownership of a cell tower in town. No action needed.

### **Approval of Minutes**

Mitch moved to approve minutes of meetings of March 18 & 25; Elias seconded. **Motion carried, 4-0-0.**

(Dropped call once again)

**Next Meeting** Wednesday, May 20 at 6:00.

### **Adjournment**

Meeting adjourned at 7:30 pm.

Addenda:

Guidance from Susan Senning, staff attorney with the VLCT:

#### **Does a municipality have the authority to regulate solar projects?**

The town's authority over the installation of solar panels depends entirely on whether the solar panels will be net-metered (connected to the power grid). If so – then only the State has control over their regulation and the town may not impose its local zoning process on that installation. 24 VSA § 4413(b) states that “[a] bylaw under this chapter shall not regulate public utility power generating plants and transmission facilities regulated under 30 VSA § 248.” This statute has been interpreted by the legislature, the state (Dept. of Public Service, Public Utilities Commission), and the VLCT as applying to all net-metered facilities (as “generating plants”). As such, municipalities have no authority to regulate anything tied to the grid – even with regards to setbacks.

This means that the developer or property owner is not required to submit a permit application to the town. The state law automatically waives the requirement for a local permit. There has been much discussion over the years in the State Legislature, among professional planners, etc. that it is not appropriate to just exempt these types of installations from local zoning. However, the law currently does just that. Note that these installations ARE regulated by the state – through the Public Utility Commission (the “PUC,” which was formerly known as the “PSB”). Lower-capacity facilities typically only have to register with the PUC; larger ones must apply for a Certificate of Public Good. In the first instance, the town will not receive notice of the application; in the second, the town (Selectboard and Planning Commission) receive notice and can submit comments on the proposal.

You may want to reach out to staff at your regional planning commission who can likely give you more information about these subjects and can fill you in on more of the context and history. You can also reach out to the VT Planners Association – <https://vermontplanners.org>

Draft Language for Letter of Support:

[salutation],

We refer to the application for a Certificate of Public Good (the "Application") filed by Emancipation Energy LLC, in respect of the 150 kW-AC solar electricity generation project (the "Project") proposed to be sited on the property owned by Stephen Van Esen at 58 Center Road in Middlesex, Vermont (the "Location"). The Location falls within our jurisdiction and we have reviewed the proposed project in detail, including visual renderings, project layouts and designs. Having made our review, we wish to support the Project and declare our desire to have the Location designated as a "Preferred Site" under Section 5.103 of your Rule 5.100.

We note that we take no position on the Project's compliance with any requirement of Rule 5.100 or of other applicable provisions of Vermont law. This letter is solely for the purpose of providing support for the Project under Section 5.103.

Sincerely,

[signatory]