

APPROVED - previously sealed, partially unsealed
MINUTES OF THE MILFORD BOARD OF SELECTMEN MEETING

August 19, 2019

PRESENT:	Gary Daniels, Chairman	Mark Bender, Town Administrator
	Paul Dargie, Vice Chairman	Tina Philbrick, Recording Secretary
	Mike Putnam, Member -	Tyler Berry, Videographer
	Laura Dudziak, Member	
	Chris Labonte, Member	

1. (RSA 91-A:3, II(e)) Legal- Solar Lease – Administrator Bender gave highlights from the original document.

Section 1A, they agreed to pay a \$5,000 legal stipend to the town.

Section 1B, they agreed to a \$2,000 payment in case the lease ran into an additional year.

Section 1F, provides all engineering, technical study, surveys, etc., be provided to the town at no cost if they don't build the solar project.

Items 3A & 4A, language that provides 50% of the annual rent or \$59,810 during the construction period.

Item 7C, The security bond for decommissioning has to be in place as of the commercial operations date.

Items 32B, the indemnity clauses were changed with approval from Primex and Attorney Drescher.

Selectman Labonte asked for clarification of the commercial operations date. Administrator Bender said it's when they go live. Selectman Labonte would rather it be in place during construction. Administrator Bender said they didn't have to be that specific about it, 7C has language stating that the tenant will be responsible for any and all damages during the term of the lease. Selectman Labonte replied, what if they go bankrupt and don't have money to remove things. Administrator Bender said there is additional language for the mortgagee to see to this if someone else continues with it.

Attorney Drescher said they approached them with a COLA multiplier but they said it wasn't in the letter of intent. Large commercial leases of this duration are usually tied in with the cost of living index. He's not comfortable with the length of the lease. Chris Drescher said they can't make any money if they don't have at least a 30 year lease, it's quite common.

Attorney Drescher asked if they would be having a public hearing on this, but also said there doesn't need to be a public hearing on this because the passed warrant article authorizes the BOS to sign the terms and conditions that you find are acceptable.

Attorney Drescher brought several things he disliked and liked, providing examples. He also said he and two other attorneys this reviewed this multiple times. He thinks it's where everyone is now comfortable with it. Some of the indemnification language bothers him, but it's what the bank wants. Selectman Labonte asked if the indemnification language is leaving us open. Attorney Drescher said he can't tell them that it isn't. Before you hold the public meeting he will take it to the other attorney to make sure we are fully covered. Selectman Labonte isn't comfortable if Attorney Drescher isn't comfortable. There were other questions about insurance but Attorney Drescher needs to look into it more. If we can't buy this insurance from Primex, we will have to find it somewhere else. He has concerns about the landlord, (town) maintaining insurance for the tenant.

Administrator Bender asked if Attorney Drescher was talking about the environmental indemnity. We are the owner, we have to have that exposure. Attorney Drescher no, and he didn't have a problem with the environmental indemnity language. He is concerned with 32B. His example is if someone electrocutes themselves and sues everyone including us, we will have to defend the lawsuit that the tenant has and we don't know if the tenant is responsible. Administrator Bender said we have indemnity by the Town in the lease. He doesn't think the electrocution of a subcontractor's employee is the town's problem. Attorney Drescher will get more clarification on this.

Administrator Bender said he remembers the conversation differently. He referenced the bottom of page 23, the landlord shall maintain contractual liability coverage, and it was Attorney Ricker language. Because Attorney Ricker provided that language, he took it as, he was providing the coverage. The other part subject to NH 507-b was the Town Administrators insert. He will check with Attorney Ricker.

Selectmen Labonte asked when does the PILOT gets negotiated. Attorney Drescher said you can use the PILOT but you don't have to. They are not exempt from taxes. Selectman Labonte asked the Board if they were going to go with a PILOT or property taxes, he referenced number 19 on page 18.

APPROVED MINUTES OF BOARD OF SELECTMEN MEETING – 08/19/19

Attorney Drescher said that leases that deal with rights to use town land have to contain the words that make the lessee responsible for the taxes that would be imposed. There is a statute that changes that for these types of leases but it doesn't require you to give them a PILOT. They would have to apply for it and give us a proposal and if they don't agree to it, the deal would be off. Selectman Labonte clarified that they would get taxed on the value of the land plus the structures that they put on the land if it were real taxes. Attorney Drescher said the structures would constitute taxable real estate, but it may not be the same in the solar world. Administrator Bender said he would be careful with that because it's different when you are dealing with renewable power.

Administrator Bender said he's asked them to give him their first pass on the PILOT so we can start looking at it. Selectman Labonte said if they come to the table only wanting to pay \$10,000 on the PILOT, he's out. Administrator Bender told Selectman Labonte not to jump ahead because we don't know what they are doing. He's going to encourage the Board to look at the whole deal, the lease and the PILOT, the deal goes together. Attorney Drescher recommends involving the town Assessor in that area. Administrator Bender said she will be involved. Selectman Labonte said that Dominic gave the value of what he's putting on the land. Selectman Dargie said he spoke about \$20,000,000, but that's a total investment of everything; you don't use that number in the value of the structures.

Selectman Labonte clarified in the lease that town has the right to enter into a PILOT. If a PILOT can't come to an agreement, they would be responsible for actual taxes. This will drive them to make a deal.

Selectman Labonte also discussed the maintenance of Perry Road and asked what maintenance would the Solar Company be held to on the Class VI portion of Perry Road. Attorney Drescher said they didn't get into that in this lease, there may need to be a clause about their share to maintain the road. Selectman Labonte would like more detail than what is in the Gravel Operations contract and how it will be split.

Administrator Bender said once the Solar Farm is built, what is their on-going usage of that road. Selectman Labonte said that's completely irrelevant, they have access to it 24 hours a day. Attorney Drescher said they have to get approval from the town, one being a 674:41 request to the Board for use of the Class VI road because they are asking for a permit to build something on a Class VI road. That may be why we didn't put that in the lease. That's a process that is already covered by their need to get the permit.

Selectman Labonte said North East didn't get approval from the Board of Selectmen. Administrator Bender said the Board approved the contract and we are now getting off subject. Selectman Labonte said he wants it to be fair. Administrator Bender said when it's permitted, it should go before the Planning Board and their use of the road should be detailed while they are building the solar farm and then for on-going use because on-going use is going to be much different.

Attorney Drescher asked what that property was zoned for. Administrator Bender said commercial/industrial. Attorney Drescher said they don't need a variance but they have to go to a site plan review and go before the Board for approval. It doesn't have to be in the lease.

Administrator Bender said the difference is, solar is building something, the gravel operation isn't, so they didn't need a permit. Selectman Labonte said he doesn't want the solar operation to be the mess that was with the gravel operation. Attorney Drescher said they should come in for a 674:41 waiver then the Planning Board can chime in on it.

Administrator Bender said they can try to go back to solar about the language. He thinks they are going to make a distinction on road maintenance during construction and road maintenance during operation because they won't be using the road much. Attorney Drescher agreed because the solar farm isn't going to have visitors. Selectman Labonte said he leaves for work in the morning and comes home at night, it isn't exorbitantly used. Administrator Bender repeated that they will make a distinction on road maintenance during construction and road maintenance during operation. They already know that they have to plow the road if they need to come in to maintain their equipment.

Selectman Dargie said 674:41 talks about building buildings, this doesn't qualify. Selectman Putnam asked at what point does Selectman Labonte have to recuse himself from making any decisions on this deal because he has property on Perry Road. Attorney Drescher said he didn't see a conflict; he will have to look into it more. Selectman Labonte said he's 1,000 feet away, he isn't an abutter.

APPROVED MINUTES OF BOARD OF SELECTMEN MEETING – 08/19/19

Administrator Bender said the solar people have so much invested in this, they are not going to have a problem with road maintenance while it's a Class VI road during construction. If we try to drag this out that they are going to maintain the road for 25 years day in and day out and they are going to do snow removal, it's not going to happen. Selectman Labonte disagrees. He feels that during construction they should bear the brunt of it and after there should be split maintenance out there.

Administrator Bender asked Selectman Labonte what percentage should the solar group maintain Perry Road. Selectman Labonte said he doesn't care if a third party maintains it, but he will pay his share. Administrator Bender said they both live on a Class VI road and anyone can use it at any time. If someone tears it up it's his problem. He doesn't have to like it but I don't complain to the town about it. For his road, if there were a logging operation on it, he would expect it to be taken care of the same way that Selectman Labonte's is taken care of. The maintenance of Perry road has been good. Administrator Bender said Granite Apollo won't know how much they will need to use the road during post construction and he thinks it should be nominal.

Attorney Drescher said the language for the road doesn't need to go into the lease, but it should go into the permit. All we ask anyone on a Class VI road is to maintain the road so that it is suitable for emergency vehicles all year round, it doesn't have to be specific. Selectman Labonte said he would like more detail on the maintenance of the road. Attorney Drescher said the statute doesn't have language that lets you impose specification on construction. Selectman Labonte asked who's liable if an emergency vehicle can't get to my house. Attorney Drescher said they only have to do the best that they can, if they can't get there, you are on your own. There should be a joint maintenance agreement. The Selectmen have the ability to add that language for maintenance. When you speak to them about the language and permit, Selectman Labonte should not be involved. Administrator Bender said he doesn't think they will have a problem with some language.

Administrator Bender said they will try to have Granite Apollo and Olivewood in at the next Board meeting to talk about the lease. He would like them to present the general terms of the lease in public. Selectman Dargie asked if they would be presenting the whole plan including the other properties. Administrator Bender said that is what he would like them to do. The bulk of the solar would be on Lordens property.

Chairman Daniels asked if that presentation count as a public hearing. Attorney Drescher said you have your authorization to do this per town meeting, he suggests a public hearing. Administrator Bender said they need to talk to Attorney Ricker about insurance and we need to do something for the maintenance.

Selectman Labonte asked if Lorden's land needed a variance because it's residential. Attorney Drescher said yes.

Gary Daniels, Chairman

Laura Dudziak, Member

Paul Dargie, Vice Chairman

Chris Labonte, Member

Mike Putnam, Member

PERMANENTLY UNSEALED BY Board of Selectmen 3/9/2020; 5-0