



TOWN OF GARLAND
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PLANNING BOARD
Approved Minutes

Thursday, 3/16/2023 - Garland Town Office - 6:00pm

Call to Order and Quorum 6:00 PM

Ed Hummel, Kandie Cleaves, Robert Goings

Members of the Public in attendance: Sue Berryhill, Lynne Olsen

Approval of Minutes from 2/14/23 Meeting - Motion: Kandie Second: Robert Vote: 3/0/0

Approval of Public Hearing Minutes - Motion: Kandie Second: Robert
Vote: 3/0/0

Correspondence - Email between Nathan and Breana Gerson, MMA Staff Atty. regarding DRAFT Solar Ordinance language (attached at end of minutes ***). Discussed by GPB members in attendance. Ed will follow up on the exchange relevant to proposed changes to the draft Solar Array Ordinance.

Solar Array discussion:

Private Residential and Business Residential - Change to cover under a common language framework. EH to action.

Lynne Olsen - Difference between Funds in Escrow vs Insurance

Kandie - based on the MMA response, we would run the risk of being sued on the grounds it could be seen as unconstitutional taken at a cost to the Town.

Lynne Olsen referenced Palmyra ordinance as a possible additional reference, Ed Hummel will review the Palmyra ordinance.

Action: Ed Hummel will also review Bethel ordinance, Kandie Cleaves has sent it to Ed.

Motion: Ed Hummel to adjust Private Residential & Business Residential language - Motion: Ed Hummel Second: Robert Goings Vote: 3/0/0

Action: Ed Hummel to remove decommissioning language prior to legal review

Motion: Send a letter to the Town Attorney with email exchange between Nathan and MMA asking Attorney to assist in writing guidelines based on MMA legal input for the decommissioning of any non Public/Business Residential projects

Action: Request for above will be sent through the Town Office.

Motion: Kandie Cleaves Second: Robert Goings Vote: 3/0/0

Action: Ed Hummel to amend Article 6 to cover non-performance definitions and responses to same.

Old Business -

CEO request to Select Board on improving he intent to build procedures outlined by Phil Stevens

Action: None

Town Roads - None; Peter Devine not in attendance

Broadband initiative - None; PB Activity COMPLETE

Email list - None

Public Forum None

Adjournment - Motion: Robert Goings Second: Kandie Cleaves Vote: 3/0/0

Meeting Adjourned at 7:52

*****From:** elnthnpitts@aol.com <elnthnpitts@aol.com>

Sent: Thursday, March 2, 2023 10:40 AM

To: Legal Services Dept <legal@memun.org>

Subject: Garland - Legal Information Request - Proposed ordinance re solar farm development

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Breana,

Our planning board in Garland gave it our best effort to put together our solar farm ordinance and we had our public hearing last night. It was a very good meeting and we had a lot of input from the public which is always helpful. The biggest issue was in regards to the decommissioning of one of these projects at the end of it's life. I thank you for your thoughts previously on this topic regarding the escrow account for that purpose.

What came out in our meeting last night was this question: " In this era of rapidly rising inflation, and governments borrowing money and distributing it, especially for projects like solar construction, how can we be sure that there will indeed be enough money in that account, for that purpose, when the time comes?"

Several expressed concerns over just how the town could be sure that we did not get left holding the bag, if there is an inadequate amount of money to cover those costs. Tying it to the Consumer Price Index, for instance, works OK in a stable economy but ours now seems anything but that and the future is very much up in the air in my book.

I would appreciate your thoughts on this topic and any sources of information you could point us towards, to help us make sure we get this right and don't leave loose ends that could have consequences later.

Thanks
Nathan Pitts,
Garland, ME

And this was the response I got a few minutes ago:

Legal Services Dept (legal@memun.org)To:you Details

Dear Nathan,

I think it is important to note the distinction between the town holding funds on behalf of the developer and requiring that the developer obtain insurance, a bond, or line of credit as financial assurance (that the developer will have the means for cleaning up the property when the project is decommissioned). In general, I do not suggest that the town collect and hold funds on behalf of the developer. Instead, the town should require that

the developer cover the full cost of clean up and ask that the developer to prove that they will have the funds to do so during the approval process. In addition, if the developer is required to cover the full cost of the decommissioning and clean up under the ordinance, it may not be necessary to require the developer to set aside or obtain a bond for the full amount of the estimated cost. The town might decide that it is sufficient for the financial assurance to cover a substantial portion of the decommissioning or cleanup costs, depending on the type of assurance provided. Finally, I do not suggest that the town establish a set amount of financial assurance for all projects. The amount of insurance or the performance bond should be tailored to the size and nature of each project.

I strongly encourage the town to work with the town attorney to draft financial assurance requirements that fit the needs of the town and to ensure that the requirements are constitutional. If the town requires that a substantial amount of money be set aside by the developer for the life of the solar project (which would likely be multiple decades), as a court could find this to be an unconstitutional taking of private property.

For a sample provision addressing this issue, see the [Town of Bethel's Solar Array Ordinance](#), the relevant section is copied below:

144-6(C)(3): The decommissioning plan shall include financial assurance, naming the Town as beneficiary, to cover the costs associated with decommissioning the abandoned solar energy system through the life span of the facility. An independent and certified licensed professional engineer, selected by the Town, shall be retained to help establish the cost of decommissioning, without regard to salvage value, and itemize the estimated major expenses to restore the site to the requirements of the applicant/owner/operator's Town permit or Maine DEP approval, if applicable, or the requirements of the Maine DEP in effect at the time of decommissioning, whichever is more restrictive to the owner/operator.

I hope this is helpful.

Best,

Breana N. Gersen, Staff Attorney
Legal Services Department
Maine Municipal Association