



**Town of Becket  
Zoning Board of Appeals  
557 Main Street  
Becket, Massachusetts 01223  
Phone (413) 623-8934 Ext. 20**

## **Meeting Minutes for December 5, 2017**

**Board Members Present:** Victoria Bleier, Karen Karlberg, Alvin Blake and Joy Lennartz

**Board Members Absent:** Jeffrey Wilkinson and George Roberts

**Administrative Assistant:** Jessica Perotti

**Public Present:** Ofer Zaarur

### **Call to Order**

Victoria Bleier, Chairman, calls the meeting to order at 7:04 PM. Ms. Bleier reads the rules of the meeting. Ms. Bleier introduces herself and asks the other Board members to introduce themselves.

### **Review of Meeting Minutes of November 7, 2017**

Ms. Bleier asks if everyone has had a chance to review the minutes of the last meeting that were sent out for review by Jessica Perotti. Karen Karlberg first brings up the meeting minutes for March 7, 2017. Mallory Larcom, who took the minutes of that meeting, has resigned and is no longer working for the Town of Becket. Ms. Karlberg says that because of this, she doesn't think anymore will be done in regards to getting those minutes finished and suggests that they accept them in the status that they are in currently. Ms. Bleier first wants to address the minutes of the November meeting and asks if anyone has any concerns about those minutes. Alvin Blake makes a **motion** to approve the minutes of the November 7, 2017 meeting. Joy Lennartz **seconds the motion**. No further discussion. All in favor. **Motion passes**. Ms. Bleier asks for a motion in regards to the March 7, 2017 meeting minutes. Ms. Karlberg makes a **motion** to accept the March 7, 2017 minutes with the stipulation that due to circumstances beyond the Board's control, the minutes are as good as they will be. Ms. Lennartz **seconds the motion**. No further discussion. All in favor. **Motion passes**.

### **Old Business: Board to review application submissions regarding a Large-Scale Ground-Mounted Solar Photovoltaic Installation on Jacob's Ladder Road- Map 204, Lot 34, to determine if application is complete.**

Ms. Bleier asks if everyone has had a chance to look over the submissions that were sent out. Ms. Karlberg says she still needs to review because she is seeing them now for the first time. While the Board reviews the submitted paperwork, Mr. Blake brings up the point that what was suggested in the original application is much different than what is being presented at tonight's meeting. Ms. Bleier says that after her review, she feels as though there are missing pieces to the application but wants to hear feedback from the rest of the Board before discussing her review of the application. The Building Inspector, William Girard, submitted a letter regarding his thoughts on the application; basically, he felt as if the project could be done by right. Ms.



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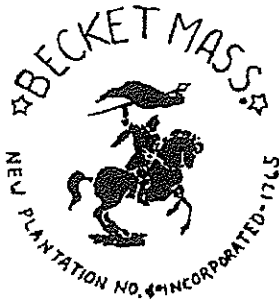
Bleier says that after reading Mr. Girard's letter and while reviewing the bylaws pertaining to the application, that if the array is under 250kW that a Site Plan Review is not necessary. Ms. Bleier questions the Board as to what their understandings are of the bylaws. Ms. Karlberg says that this would still be a commercial operation. Mr. Blake argues that that doesn't have anything to do with it. Mr. Blake says that the Building Inspector made the decision to have the applicant come before the ZBA because there is only one (1) bylaw that pertains to solar projects and that is the Large-Scale Ground-Mounted Solar Photovoltaic Installations (LSGMSPI) Bylaw; within this bylaw, it is unclear as to what guidelines should be followed because the size of the project he would like to undertake is below what is referenced in the bylaw. Ms. Bleier says that it is her understanding, from Mr. Girard's letter, that he believes the project should be allowed by right. The Board discusses the letter from the Building Inspector and dissects what they believe he thinks should happen with the application. Without the Board in total agreement, Ms. Bleier wraps up the discussion by saying they don't necessarily have to agree with what he says. Ms. Karlberg says they should take into account the abutters of the property as well as other factors that do impact people in town and that's why it does become a zoning issue. While Ms. Bleier agrees, she doesn't feel as though the Board has the authority to do that under the LSGMSPI Bylaw. Ms. Bleier asks for confirmation that she heard someone say a small scale solar bylaw is being worked on soon. Mr. Blake, who is also a member of the Planning Board, says that it is possible that one may be drafted. Ms. Lennartz says this is a perfect example of why one is needed. Ms. Bleier agrees but says without a bylaw that pertains to small scale, their hands are somewhat tied. Ms. Bleier repeats that she doesn't feel as though the Board has the authority under the current bylaws. Ms. Bleier says she is open to hear what the Board thinks about the matter but doesn't want the Board to make a decision that is outside of their jurisdiction. Mr. Blake says he thinks the Board is only obligated to do a Site Plan Review. Ms. Bleier asks him how he came to this decision. Mr. Blake answers under the LSGMSPI Bylaw. Mr. Blake questions the size of the current proposed array against the original application which had a much higher wattage. Mr. Blake wants to know if the applicant would need to come before the Board again should the array go to the higher wattage proposed on the first application. Ms. Bleier feels that is a very good question and doesn't think that this type of operation should be piecemealed. Ms. Karlberg agrees and says that it isn't effective to piecemeal a project like this. Mr. Blake says he doesn't see a map detailing where the array would be placed on the property. Ms. Bleier agrees and is unclear if they should be holding the applicant to all the standards in Section 6.6 of the Becket Zoning Bylaws. Ms. Bleier points out that the bylaw regulation is very clear to distinguish that the wattage must be 250kW or larger. Mr. Blake points out that the newly submitted application clearly specifies that the wattage will be under that; he is unclear what the applicant may need to do should he



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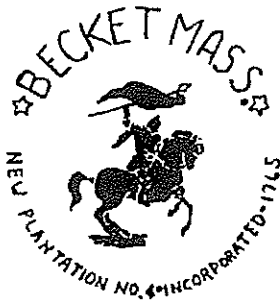
decide to expand to a higher wattage. Mr. Blake feels that with this wattage, he agrees with the Building Inspector to allow the solar array by right. Ms. Bleier is leaning towards the same decision because while MGL Chapter 40A does allow for towns to create their own bylaws for solar arrays with a broader authority, Becket created Section 6.6, LSGMSPI, which doesn't regulate arrays under 250kW. Ms. Bleier continues and talks about Section 9.4.4 of the Becket Zoning Bylaws, Site Plan Approval-Review Procedure, and feels that there is nothing in the bylaws that gets them to that section for a Site Plan Review. While Ms. Bleier feels that it should be regulated, she doesn't find anything in the bylaws that allows for them to regulate an array of this size. Ms. Karlberg talks about the abutters to the property; she feels as though they should be able to have some sort of input on their ideas about the project. Ofer Zaarur says the size of the array is the same as that for an individual. Ms. Karlberg argues that there is no site plan to review. Ms. Karlberg explains further to Mr. Zaarur that they need a town map showing where the array will be placed on the lot. Mr. Zaarur says it will be far enough away. Ms. Karlberg says there is no map which shows this. She clarifies that the Board would need to approve the location and without a map to show where it will be, they can't approve its location; it needs to be in writing. Ms. Bleier asks the Board if they think this should be continued until they can consult with legal counsel and do further research. Ms. Karlberg agrees that there are basic questions, regarding setback requirements, which still need to be answered. Ms. Karlberg brings up the fact that that section of Route 20 is also a scenic byway. Ms. Lennartz says that you need to be able to show a concern for the neighbors and if all setback requirements are being observed, there is nothing to contest. Mr. Blake agrees that if all setback requirements are met then he could put the array anywhere within the setback area. Ms. Bleier agrees that if the Board were to approve it, they would need more information but questions if they have the authority to approve it under the current bylaw. Ms. Bleier feels it is important to get further legal advice to find out where they get the authority from, if they have any. If they don't have the authority then that will be the end of it but if they do, that's when they will need to figure out what is needed further from the applicant. Ms. Bleier asks the Board how they feel about that. Ms. Lennartz agrees that further reference is needed to support their decision. The Board discusses what regulations they have to work with in regards to the application currently before them. Some members feel as though this small array should be allowed, by right, without needing a Site Plan Review. They also talk about various solar arrays that were installed in town that did not require a Site Plan Review as they were allowed by right; some were even larger than what is being proposed on the current application. Ms. Bleier repeats her concern as far as the project possibly being piecemealed together. Mr. Blake agrees but argues that is not what the applicant is applying for right now. Ms. Bleier agrees and asks the Board if they want to allow it by right or to continue the matter to get further



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information. Mr. Blake inquires as to what information will be gathered. Ms. Bleier says they would seek direction from town counsel to find out if they should have authority over a solar array of this size given the current bylaws. Ms. Bleier clarifies that she doesn't believe that it is in the bylaws but would like to seek confirmation of this from town counsel. Ms. Lennartz doesn't think it makes sense because you could take anything and say it's not specifically addressed and put it under "this or that" bylaw because there is nothing else. Ms. Karlberg says that while it doesn't make sense, that does seem to happen. The Board talks more about seeking legal counsel. Ms. Karlberg makes a **motion** to continue until January using the time to contact town counsel and get guidance and clarification on the issues: in absence of a specific bylaw and what the guidelines would be. Ms. Bleier suggests to ask instead: given the facts of this case, if the Board does have authority, how should it be reviewed? Ms. Bleier questions if the application should be reviewed under the LSGMSPI guidelines or something else. Ms. Lennartz doesn't think it would be fair to the applicant to hold him to a standard that isn't a part of the application. Ms. Lennartz says the LSGMSPI Bylaw is very specific. Ms. Lennartz questions what would have happened to the application if the town didn't have the bylaw they put it under. Ms. Bleier thinks that it may have been allowed by right just like if you wanted to, for example, put up a bunch of bird houses. Mr. Blake addresses the fact that both the Building Inspector and Town Administrator think that a Site Plan Review should be done and if the Board were to do this, they would need a map showing where the array would be exactly on the property. Ms. Karlberg thinks they should get back to the motion she made. Ms. Bleier asks Ms. Karlberg to restate her motion. Ms. Karlberg repeats her **motion** to seek town counsel as to what the Board's authority, if any, to review an application for a solar array under 250kW and what it should be reviewed against. Ms. Karlberg would like to also like to find out what they should do when a project like this is piecemealed. Mr. Blake doesn't agree and doesn't think they can because it isn't on the current application. Ms. Bleier doesn't think it would be a bad idea to get the information regarding projects that are piecemealed but agrees that the information wouldn't be used in regards to the application currently before the Board. Ms. Lennartz clarifies how town council will help: they will come back and say the Board has authority and include what bylaws should govern the application or they will say the Board does not have the authority and the case will be closed. Ms. Bleier lets Mr. Zaarur know that if the Board is found to have authority under a certain bylaw, that the Board would then be able to tell him what would be required for the application. Ms. Bleier says they have been distracted from the motion again and asks Ms. Karlberg to repeat it. Ms. Karlberg repeats her **motion** to continue to January and seek town counsel to provide guidance on the authority, if any, that the Board has and what guidelines to review it against and also if they should consider the piecemeal aspect now or to disregard it. Ms. Bleier asks for a second to the motion. There



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is **no second to the motion**. Ms. Bleier asks if any of the other Board members would like to make a motion. There was no response from the Board. Ms. Bleier repeats that she doesn't think the Board has the authority. Ms. Lennartz wants to know what anyone could say that the Board failed to do in regards to the application. Ms. Bleier doesn't know of anything in the bylaws that would not allow the solar array to be installed and asks the Board if anyone is aware of something in the bylaws that might. Ms. Karlberg says they need to find something outside of solar bylaws that would impact an abutter. Ms. Karlberg goes through the bylaws. Ms. Bleier asks Mr. Blake what he suggests should be done. Mr. Blake says he thinks the Board should schedule a site visit and also seek legal counsel before the next meeting. Ms. Bleier thinks that would be a good idea and if information is discovered that wouldn't allow for the site visit then they don't need to do anything. Ms. Lennartz also agrees that this is a good idea, that way, everything will have been addressed. Ms. Lennartz says they are back to the motion that Ms. Karlberg made. Ms. Karlberg reads from the Becket Bylaws, Section 3.2.1- paragraph one (1), Accessory scientific uses. The Board reviews the bylaw. Ms. Bleier doesn't know if it would apply because the bylaw refers to scientific research or development. Ms. Karlberg argues that it is a science; it may be a stretch but so is putting it under the LSGMSPI Bylaw. Ms. Bleier says that under that section, it would need to be approved by the Planning Board. Mr. Zaarur argues that the array should either be regulated under the current town bylaw for solar or be allowed by right and wants to know if there is a third option he should know about. Ms. Bleier says that he is correct but the Board is concerned about it being a by right operation because even if it were 249 kW, which she says she knows isn't being presented, but it would still be a really big solar project. Ms. Bleier is concerned that this is something they need to figure out for this project as well as future projects under 250kW. The Board goes over Table A: Table Use of Regulations, in Section 3.0 of the Becket Zoning Bylaws to determine what needs to have a Site Plan Review. They determine there is nothing in the table that references solar fields for a Site Plan Review. Ms. Bleier doesn't feel comfortable doing a Site Plan Review or to hold the applicant to the conditions listed in Section 6.6, LSGMSPI. Ms. Bleier gives the Board the options they have: they can do nothing and let the application go back to the Building Inspector or put it to the Planning Board under Section 3.2.1 paragraph 1- Permitted Accessory Uses, Accessory scientific uses. Mr. Blake doesn't feel its grounds for the Planning Board. Ms. Bleier does agree that it is a stretch but it fits in the language. Ms. Karlberg adds that it would give the application a chance to come before the public and the abutters would also be notified. Ms. Bleier notes that the Planning Board will be taking over on solar projects in the future. Ms. Karlberg makes a **motion** to send a letter to the Building Inspector to notify him that the Board has decided that under Section 3.2.1, paragraph 1, Accessory scientific uses, the ZBA would like to turn the application over to the Planning Board to make a decision on the



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application. Ms. Bleier says she is concerned about the definition of "Accessory building or structure" as defined in Section 10 of the Becket Zoning Bylaw: *Any building or structure whose use is subordinate or incidental to the use of another building or structure on the same lot.* Mr. Blake points out that that is not what this application is. Ms. Lennartz adds that the array would not be an accessory to anything on the lot. Ms. Karlberg argues that there would also be a substation on the lot and the array would be an accessory to that. The Board has conversations with the applicant regarding how the energy would go to the main energy company, Eversource, resulting with the idea that the array would be considered an accessory to the conversion box. The applicant looks for clarification as to what rules the Planning Board would be following for his application. Ms. Bleier explains that because the solar bylaw only talks about panels that are 250kW or more, they thought the application would be better reviewed, by the Planning Board, under Section 3.2.1, paragraph one (1), Accessory scientific uses. Ms. Lennartz suggests writing a letter to the Planning Board to pass the application to the Planning Board under Section 3.2.1, paragraph one (1) for review. The Board discusses whether the letter should go to the Building Inspector or the Planning Board. They decide to send the letter to the Planning Board with a copy going to the Building Inspector. The Board asks Ms. Perotti to draft a letter to the Planning Board to pass the application to them. Ms. Bleier asks Mr. Blake if he thinks it would be a productive transition. Mr. Blake reports that they will be meeting next week and is not sure if it's too late to put this item on the agenda. Ms. Perotti, as Clerk for the Planning Board, says it is not too late but it will need to be cleared by the Chairman, Robert Ronzio. Mr. Blake says they will be discussing the solar bylaw. Ms. Bleier asks the Board for a motion. Ms. Karlberg makes a **motion** to write a letter to the Planning Board and to copy the Building Inspector and the Town Administrator on it, siting that in the absence of any regulations for the Zoning Board to make a decision, they are suggesting that the Planning Board review this application under Section 3.2.1, Permitted Accessory Uses, paragraph one (1), Accessory scientific uses, to see if they can make a decision on the application. Ms. Lennartz **seconds the motion**. No further discussion. All in favor. **Motion passes**. Mr. Zaarur thanks the Board for their time and leaves the meeting.

### **New Business:**

#### **Board to Discuss Drafting a Policy Regarding Submitted Applications**

Ms. Karlberg says the Board has tried this in the past but it doesn't work very well. The Board discusses checklists that are included on the website that seem to be ignored by applicants. Ms. Perotti says she will get the checklists and bring to the next meeting to verify the checklists are complete. The Board talks about possibly having conference calls to discuss questionable



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applications to determine where the application should go. Ms. Bleier said it should be on a case by case basis.

### **Budget**

There has been no activity in the budget since August.

### **Review Correspondence**

Ms. Perotti informs the Board that the Community Calendars are out but the invoice was misplaced. Ms. Perotti let the Board know that she has already reached out for a copy of the invoice and expects to have it soon. Ms. Karlberg makes a **motion** to authorize Ms. Perotti to pay the invoice when it arrives. Ms. Lennartz **seconds the motion**. No further discussion. All in favor. **Motion passes**. There is also a letter from the Town Administrator regarding handing in budget proposals for the next fiscal year. Ms. Bleier says she will gather information and take care of that.

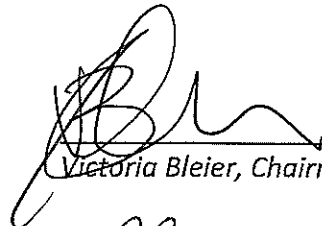
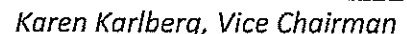
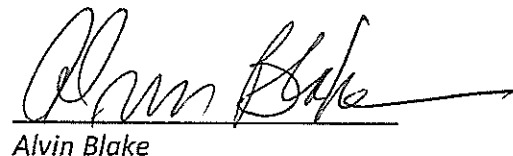
### **Any Other Business to Come Before the Board**

There is none.

### **Adjournment**

Ms. Karlberg makes a **motion** to adjourn. Ms. Lennartz **seconds the motion**. All in favor. **Motion passes**. Meeting is adjourned at 8:29 PM.

### **Meeting Minutes Reviewed and Approved on February 6, 2018 by:**

  
\_\_\_\_\_  
Victoria Bleier, Chairman  
\_\_\_\_\_  
Karen Karlberg, Vice Chairman  
\_\_\_\_\_  
Alvin Blake  
\_\_\_\_\_  
Joy Lennartz

