

RECEIVED

By City Clerk at 9:13 am, Oct 29, 2024

1. Amesbury Planning Board Meeting Minutes
2. In Person Meeting – August 12, 2024, at 7:05 PM
3. Chairman Pascal Rettig called the August 12, 2024, Planning Board meeting to order at 7:05 PM.
4. *To submit a public comment ahead of time email Becky Frey at freyr@amesburyma.gov. To speak live at the meeting fill out a public comment form and turn it into Becky Frey. There will be a public comment portion of each public hearing discussed tonight.*
5. *The Chairman notes that tonight's Planning Board meeting is being recorded by Amesbury Public Access Television; this legal step has been taken but does not act as the official record. The written meeting minutes by the Recording Secretary is the official record.*
6. Pascal Rettig initiated roll call –
7. Keith Ratner – YES
8. Joel Nice – YES
9. Lorri Krebs- YES
10. Michael Jewell – YES
11. Tracey Chalifour - YES
12. David Frick – YES
13. Pascal Rettig - YES
14. Also: Nipun Jain (Planning Director) and Becky Frey (Community Development Coordinator)
- 15. Minutes – 6-10-24**
16. Keith Ratner motioned to approve the minutes from the June 10, 2024, Planning Board Meeting as presented. Seconded by Michael Jewell.
17. Pascal Rettig initiated roll call vote –
18. Keith Ratner – YES
19. Joel Nice – YES
20. Lorri Krebs- YES
21. Michael Jewell – YES
22. Tracey Chalifour - YES
23. David Frick – YES
24. Pascal Rettig - YES
25. Motion passed 7-0
- 26. Minutes – 7-8-24**
27. Keith Ratner motioned to approve the minutes from the July 8, 2024, Planning Board Meeting as presented. Seconded by Tracey Chalifour.
28. Pascal Rettig initiated roll call vote –
29. Keith Ratner – YES

- 30. Joel Nice – YES
- 31. Lorri Krebs- YES
- 32. Michael Jewell – YES
- 33. Tracey Chalifour - YES
- 34. David Frick – YES
- 35. Pascal Rettig - YES
- 36. Motion passed 7-0

37. Sign – 43 Main St. – River Run Lending

- 38. Alysa Morse spoke to the application. There are three signs being presented. The first is a sign on the side of the building. It will say River Run Lending Center and it is 8.5 feet larger than the current sign on the side of the building. The circle sign will be blue and have RR in it. The clock tower will remain the same other than changing the sextants to RR. The sign material is different than today because the brass letters were screwed into the wall. In order to retain the integrity of the building, the aluminum signs will go over the brass letters that are there today. They will continue to maintain the park and Thornton Park sign.
- 39. Pascal Rettig questioned if this went to the Design Review Committee. Nipun Jain confirmed that they reviewed the application. They made a positive recommendation for the front and the rear sign. They did not recommend approval for the side sign. This business already has more signs than is allowed today. The proposed side sign is not in the same footprint to the existing sign's dimensions. The DRC would only recommend approval if the proposed side sign was similar dimensions to the existing side sign.
- 40. Pascal Rettig noted that the proposed sign is larger than what is allowed in the bylaws.
- 41. Alysa Morse commented that the branding company proposed all the signs. The signs are made and ready to be installed. They were unaware of the bylaws and application process. The signs were made with brass and aluminum, so they were rather expensive.
- 42. Tracey Chalifour questioned if it was a contiguous sign or separate signs. Alysa Morse responded that it was multiple pieces but would be one contiguous sign.
- 43. Joel Nice commented that it was a non-compliant sign, and larger than what is allowed. It would be a challenge to say yes to that sign.
- 44. Keith Ratner clarified that the front and back signs are the right size. It is just the back that is larger. Alysa Morse confirmed that was correct.
- 45. Nipun Jain commented that they could work with applicant more on the side sign and the Planning Board can approve the other proposed signs.
- 46. Alysa Morse commented that they could remake the side sign to fit that current side sign space identically. Nipun Jain confirmed that was a possibility. The Board could conditionally approve that, and staff review it and sign off.
- 47. Michael Jewell commented he liked the bigger sign.
- 48. David Frick agreed with Michael Jewell. He didn't have a problem with the sign as presented. Nipun Jain commented that it exceeds the maximum square footage, and the Board cannot waive that.
- 49. Michael Jewell motioned to approve the signs at 43 Main St. as submitted. Seconded by Tracey Chalifour.

50. Lorri Krebs commented that they could not approve it because of the size. Nipun Jain commented that the Planning Board could approve the number of signs, but not waive the size dimensions. It is not a discretionary permit and does not meet the zoning requirements. They would need a variance from the Zoning Board of Appeals.
51. Tracey Chalifour motioned to approve the front and rear signs as presented. Seconded by Michael Jewell.
52. Pascal Rettig initiated roll call vote –
53. Keith Ratner – YES
54. Joel Nice – YES
55. Lorri Krebs- YES
56. Michael Jewell – YES
57. Tracey Chalifour - YES
58. David Frick – YES
59. Pascal Rettig - YES
60. Motion passed 7-0

61. Pascal Rettig commented that the Board's options for the side sign are to approve it as submitted despite the non-conformity, send the sign back to the Design Review Committee for further discussion, or approve a sign that matches the dimensions of the existing on the side of the building.
62. David Frick commented that this was an unusual case because most of the sign rules are written for the front of buildings. To me, the size of the sign is not too large in comparison to the size of that building.
63. Keith Ratner noted that the Planning Board does not have the purview to approve a larger sign.
64. Keith Ratner motioned to approve a sign that matches the current dimensions of the current sign on the side of the building. Seconded by David Frick.
65. Pascal Rettig initiated roll call vote –
66. Keith Ratner – YES
67. Joel Nice – YES
68. Lorri Krebs- YES
69. Michael Jewell – YES
70. Tracey Chalifour - YES
71. David Frick – YES
72. Pascal Rettig - YES
73. Motion passed 7-0

74. Sign – 39 Main St. – Bubble Bar

75. Maria Tilkens commented that the hanging sign says cocktails. The business is under two addresses. The window signs are hand painted, and they used historical colors. The signs have elevated the look of the downtown area, and they ask that the committee approve the signs.

76. Nipun Jain confirmed that the signs were reviewed by DRC and sent a positive recommendation to accept the signs as submitted.
77. Pascal Rettig questioned if they met the dimensional requirements. Nipun Jain confirmed they did.
78. Joel Nice motioned to approve the sign application for Bubble Bar at 39 Main St. Seconded by Michael Jewell.
79. Pascal Rettig initiated roll call vote –
80. Keith Ratner – YES
81. Joel Nice – YES
82. Lorri Krebs- YES
83. Michael Jewell – YES
84. Tracey Chalifour - YES
85. David Frick – YES
86. Pascal Rettig - YES
87. Motion passed 7-0

88. City Council Referral – Bill 2024-097

89. Nipun Jain commented that DPW recommended that the developer provide this easement to the City. The developer has submitted it to the City. Staff has reviewed it and sent back a positive recommendation to accept the easement as presented.
90. Keith Ratner motioned to send Bill 2024-097 back to City Council with positive recommendation. Seconded by Joel Nice.
91. Pascal Rettig initiated roll call vote –
92. Keith Ratner – YES
93. Joel Nice – YES
94. Lorri Krebs- YES
95. Michael Jewell – YES
96. Tracey Chalifour - YES
97. David Frick – YES
98. Pascal Rettig - YES
99. Motion passed 7-0

100. Continued Public Hearings – 2 Merrimac St.

101. Michael Sanchez represented the applicant and noted that he would take the Board through what has changed since they were last before the Board. They have added 2 additional parking spaces in front of the existing structure which brings the total to 99 parking spaces. They reconfigured the retaining wall along and added a granite curb and fencing along Merrimac St. They finalized the entry design and integrated comments from other the other committees. The landscape plan has been finalized and submitted. They are working through the outstanding peer review comments. They will be submitting a finalized submission with those comments incorporated. The tunnel between the buildings is wider than previously shown.
102. Pascal Rettig questioned if there were any significant comments left in the peer review response.

103. Nipun Jain responded that there were some engineering related issues but no major discussion at the Board level. The applicant has indicated they had already started to work on making revisions in the supporting documentation. DRC has wrapped up their review of the drawings and they will have a list of things to incorporate into a final submission. The applicant was at TRC last week, and they did not raise any new comments.
104. Tracey Chalifour commented at the TRC meeting as well and because the memo had just made it to the TRC the City Engineer had not had a chance to review everything yet. Mike Sanchez noted that they would work with DPW if anything needed to be addressed. They need to coordinate on where the final raised sidewalk will end up. That can be a condition of approval.
105. Tracey Chalifour commented that there were 2 items in the Stantec memo response that were still outstanding and significant. Mike Sanchez responded that they were confident they could resolve the Stantec comments. Tracey Chalifour commented that one of the comments recommended they submit revised drawings to the Planning Board for review. Mike Sanchez responded that they addressed the significant peer review comments. The remaining issues are updates to documents and are administrative. These updates will be completed.
106. Nipun Jain commented that some of the comments are common language Stantec has in their memos. They have reviewed the engineering. Some aspects of the project need to be vetted by city staff and the planning office. The crosswalk is one example. Stantec does not have a say on location and standard. They are not missing any critical pieces of information at this time.
107. Tracey Chalifour commented that page 20 of the memo recommends final issuance of the Chapter 91 license. Mike Sanchez responded they have to get the local permits before they can get the amendment to the Chapter 91 license.
108. Tracey Chalifour commented that she would be in favor of more parking spaces because there is still potential for on street parking issues in that area. It would behoove them to have as much parking as possible.
109. Keith Ratner noted that he has no comments.
110. Michael Jewell noted that he has no comments.
111. Joel Nice requested more explanation on the design of the elements and archways and how it fits into Amesbury. Dan Ricciarelli responded that they looked at a bunch of shingle style options. They wanted the building to feel light and have a floating detail. They added arches and brackets to make it feel lighter and rotated the stair to make a curve.
112. Joel Nice questioned what the materials of the archway would be. Dan Ricciarelli responded that it would be wood painted white. There will be uplighting.
113. Lorri Krebs commented that the project looked great.
114. David Frick agreed with Lorri Krebs. The project has come a long way and looks nice.
115. Nipun Jain commented that the City Engineer will follow up with the application team to get the information she is looking for. DRC has finished the review and have come up with a list about finish materials and details. The major elements have been determined. The application team will provide a revised set of documents. Currently, they have concluded deliberation on the architectural aspects of the proposed project. They will continue to review the landscape. The Conservation Commission is still reviewing the project.

116. Joel Nice commented that overall, the project looks great, and he was all for less parking down there.
117. Pascal Rettig requested clarification on the parking breakdown. Mike Sanchez responded that the requirement is 117 spaces, and the proposed plan has 99 spaces. In the waiver request they are asking the Board to acknowledge the overlap of the two uses. They included the historical parking numbers which back up the request. They are also trying to be good neighbors and not negatively impact the abutters to 13 Merrimac St. They feel there is enough parking based on historical numbers and the size of the space. Pascal Rettig questioned if they would be able to add more parking if they found 99 spaces was not enough. Mike Sanchez responded that there was opportunity to add spaces at the sunset patio and in the pea stone area.
118. Pascal Rettig agreed with Joel Nice that less parking is better, however, it is good to know there would be opportunity to add more if there was an issue.
119. Joel Nice commented that adding more parking at 13 Merrimac St. would be a negative impact to the neighbors.
120. Tracey Chalifour commented that the parking at 13 Merrimac St. would only be for marina patrons and staff. Mike Sanchez confirmed that was correct based on how the zoning ordinance is written. The marina drives the parking challenge not the restaurant.
121. Tracey Chalifour questioned what the plan for the house at 13 Merrimac St. was. Mike Sanchez responded that in the future they would like to renovate it.
122. Keith Ratner agreed that less parking is better and was comfortable with the waiver. The applicant has made a good case.
123. Pascal Rettig opened public comment.
124. Sally Nutt of 335 Main St. commented that she had been told many times that the parking at 13 Merrimac St. would be for marina staff and patrons. Ms. Nutt suggested that they could use a sticker or tag for staff or boaters to hang in their car. There could be a sign at the entrance noting it was permitted parking. The marina will need to monitor the lot. There should also be a sign that reminds the public to please be aware that they are in a residential area and note that they should not smoke. The lot should not be used by overflow restaurant patrons. Ms. Nutt requested assurance that they were not planning a change of use for the house on 13 Merrimac St.
125. Mike Sanchez clarified that the 13 Merrimac St. lot is for marina patrons and employees only. They are committed to putting in signage for marina parking and adding a "respect your neighbors" signage. The existing 2 family structure will be renovated. There was a one-year notice provided to the current residents.
126. Nidhi Turner of 5 Merrimac St. commented that she is the closest abutter to that parking lot. Ms. Turner had lot of concerns about using gravel and the amount of noise it will generate. Ms. Turner questioned what the height of the hedges would be and if they would block headlights. Ms. Turner was concerned about people loitering in the parking lot. There should not be a lot of noises or smoking.
127. Mike Sanchez commented they can ensure to increase the hedge size. The development team can plan to meet with Ms. Turner to propose further enhancements. The gravel is a general industry term. They are proposing a dense grade gravel that packs. It allows for some storm water catching but should not be noisy. They are not planning to

perform snow removal in the winter. The overflow lot is for marina staff and patrons only. They will only plow the tenants' driveways in the winter, because the overflow lot will not be needed when the marina is closed.

128. Joe Finn of 412 Main St. commented that the applicant is asking for a waiver because they are 18 spaces short of the requirement in the bylaws. At a previous meeting there was talk about removing greenery to add 10-12 parking spaces. They have only added 2 spaces since then. They could gain an additional 10 spaces. If they want to be a good neighbor, then they should add more parking spaces. They say they can add more spaces if there's not enough, but that would be difficult to do. There is no legal recourse for that.
129. Tracey Chalifour commented that the lot at 13 Merrimac St. has 18 spaces. The staff for a 120-seat restaurant will require parking. The restaurant will be busy all seasons. The restaurant staff and patrons could take up all of the spots, so there won't be any parking left for marina patrons.
130. Mike Sanchez responded that some of those patrons will overlap with marina and restaurant use. Historical data shows that the marina lot does not fill up now. Tracey Chalifour questioned how many spaces could be added at the 13 Merrimac St. lot. Mike Sanchez responded they could add 6 spaces. They could also do some additional spaces at the sunset patio. Pascal Rettig clarified that the applicant was 18 spaces short of the required parking. Pascal Rettig questioned if Tracey Chalifour thought that the Amesbury Zoning Bylaw was dramatically underestimating the parking requirements for a restaurant. Tracey Chalifour responded that people don't travel 4 to a car anymore. This could be a free for all in that area with street parking.
131. Pascal Rettig clarified that Tracey Chalifour was not arguing that the marina use needed more parking spaces, but rather arguing that the restaurant bylaw is underestimating the correct amount. It is tough to argue and override the bylaws. People will walk there as well. The concern is about the parking impact is speculation. Tracey Chalifour responded that it is all speculation. Nobody knows what's going to happen.
132. Keith Ratner commented that it did not make sense to get rid of green space that provides a buffer to the neighborhood.
133. Mike Sanchez noted that the traffic study was based on a 200-seat restaurant and concluded there would be minimal to no impact.
134. Pascal Rettig commented that it seemed like they were at a spot where they have all the information they need. There are no significant design or engineering changes. They are at a point where they can make a motion.
135. David Frick motioned to ask staff to draft a decision for approval of this project at the September 9, 2024, Planning Board meeting. Second by Michael Jewell.
136. Pascal Rettig initiated roll call vote –
137. Keith Ratner – YES
138. Joel Nice – YES
139. Lorri Krebs- YES
140. Michael Jewell – YES
141. Tracey Chalifour - YES
142. David Frick – YES
143. Pascal Rettig - YES

144. Motion passed 7-0
145. Tracey Chalifour questioned if they would be voting on each condition individually or as one entity. Pascal Rettig responded that they had several options. They could close the public hearing tonight or continue the hearing to the next meeting. Generally, when a draft is prepared, they could make adjustments to specific conditions at the hearing with applicant present.
146. Tracey Chalifour motioned to continue the public hearing for 2 Merrimac St. and 13 Merrimac St. to the September 9, 2024, meeting. Seconded by Joel Nice.
147. Pascal Rettig initiated roll call vote –
148. Keith Ratner – NO
149. Joel Nice – YES
150. Lorri Krebs- NO
151. Michael Jewell – NO
152. Tracey Chalifour - YES
153. David Frick – YES
154. Pascal Rettig - YES
155. Motion passed 4-3
-
156. **Continued Public Hearings – 13 Merrimac St.**
157. This was addressed in the item above.
-
158. **Continued Public Hearings – 12 S Hunt Rd.**
159. David Frick recused himself from the application.
160. Josh Berman from Marcus Partners spoke on behalf of the applicant. The application is to add an athletic field on 12 S Hunt Rd. They have received the third Stantec peer review letter and are open to the remaining conditions. They filed all paperwork to be on the Conservation Commission on the September agenda to review the Enforcement Order. They did a site visit with the Conservation Agent today and they have a clear path to close that out.
161. Pascal Rettig commented that final letter all the outstanding questions addressed minus couple conditions.
162. Nipun Jain commented that there is one athletic field proposed and it is part of a larger site. The larger site was reviewed rigorously by the Board, and they did approve the minor modification for the earthwork permit. There is a strong foundation that exists with a broader umbrella of conditions under the approved site plan and earthwork permit. The Board is not reviewing this as an independent project for stormwater and grade. The Board can condition this approval subject to the existing approved site plan conditions and they can condition the Stantec memo comments as well. This approval would be subject to any other approvals.
163. Pascal Rettig called out the comments about the easement and the cleaning and inspection of the pipes. Josh Berman confirmed that the easement needs to be revised and are aware of the maintenance and cleaning.
164. Garrett Horsfall commented that the drainage at the top of the driveway will be routed to the new field system and overflow to the old one. They have reduced peak flow and

90% of the impervious surface from Munters is routed to the adjacent side of the site. Stantec has reviewed that.

165. Michael Jewell commented that BSC is still monitoring the site and Ecotech has been handling the Enforcement Order. Josh Berman confirmed the Order of Conditions required a 2-year growing period. They are still trying to determine if the replication area needed that level of monitoring too.
166. Joel Nice, Keith Ratner, and Lorri Krebs had no comment.
167. Tracey Chalifour commented that she had no comments because the latest information came in last minute, and she did not have a chance to review it.
168. Pascal Rettig questioned if Staff was comfortable with the applicant response and latest peer review memo. Nipun Jain responded that they were planning to alter a small section of the site. Stantec is satisfied with the stormwater plan other than the 2 conditions that were called out in the memo. Globally, they have also been reviewing the Munters project and have been further signed off from Stantec. Staff believes that the peer review has done the work to review and comment on the submission. There's a set of checks and balances. In Staff's opinion the Board can render an approval with conditions.
169. Pascal Rettig questioned what conditions should be included.
170. Nipun Jain recommended that they require that this site plan is subject to any and all conditions already included in the approved site plan and special permit except to the extent that it needs to be changed based on the plan the Board is approving tonight. There should be a letter from BSC that indicates they are satisfied with the stormwater system. Also, the conditions in the 8/12/24 Stantec memo must be satisfied. Those conditions will cover any engineering and non-engineering aspects, including as built and the completion of other improvements beyond just the limit of work for this field.
171. Keith Ratner motioned to approve the application for 12 S Hunt Rd. with the conditions outlined by Nipun Jain above. Seconded by Lorri Krebs.
172. Pascal Rettig initiated roll call vote –
173. Keith Ratner – YES
174. Joel Nice – YES
175. Lorri Krebs- YES
176. Michael Jewell – YES
177. Tracey Chalifour - YES
178. David Frick – Recused
179. Pascal Rettig - YES
180. Motion passed 6-0

181. Keith Ratner motioned to close the public hearing for 12 S Hunt Rd. Seconded by Tracey Chalifour.
182. Pascal Rettig initiated roll call vote –
183. Keith Ratner – YES
184. Joel Nice – YES
185. Lorri Krebs- YES
186. Michael Jewell – YES
187. Tracey Chalifour - YES

- 188. David Frick – Recused
- 189. Pascal Rettig - YES
- 190. Motion passed 6-0
- 191. David Frick rejoined the meeting.

192. Joel Nice motioned to extend the meeting to 10:30 pm. Seconded by Michael Jewell.
Pascal Rettig initiated roll call vote –

- 193. Keith Ratner – YES
- 194. Joel Nice – YES
- 195. Lorri Krebs- YES
- 196. Michael Jewell – YES
- 197. Tracey Chalifour - YES
- 198. David Frick – Recused
- 199. Pascal Rettig - YES
- 200. Motion passed 6-0

201. **New Public Hearings – Bill 2024-096.**

202. Nipun Jain read the legal ad into the record.

203. Nipun Jain commented that the overall goal was to provide a legal mechanism for the review of solar projects and allow for public participation during a site plan review process. The changes proposing include changing existing performance standards and allow in water resource protection district. These performance standards would require buffers and stormwater management standards that would protect the resources. The Bill would change the boundaries of the district. This proposal is enhancing the performance standards in XI.S. and amending the water resource protection district. It would allow for solar facilities to be permitted subject to existing performance standards. There are minor changes to V and VI for waivers. The original REDD overlay was proposed for the industrial areas in town. Since then, it has been revised twice. It was extended over R80 and then again over office park zoning. Facilities like this look for large tracts of land and most are easily accessible from road network. The topography needs to be fairly flat and access to electrical infrastructure is needed. There are not a lot of areas that fit this left in the current overlay. This proposed amendment would allow for permitting in the water resource protection district. One site in particular is being sought by a private entity and that entity has indicated that the site meets most suitable criteria. The whole parcel is not included in the proposed overlay area. That restrict critical area from being used and help maintain buffers. The current ordinance includes performance standards. A proposal would need to be approved by the Planning Board and meet DEP storm water standards. They would need to minimize impact to wildlife corridors and there would be construction standards during and post project. The first change being made in the water resource protection district would allow solar energy facilities subject to site plan review. It would not be allowed in the upper boundary of the bank, and they would not be able to clear within 200 feet of the resource. Very limited activity would be allowed within 400 feet. If a project was filed, then

they would need to go above and beyond the existing storm water requirements and wildlife protection to protect the drinking water supply.

204. Nipun Jain outlined the public benefits to this Bill. The City would avoid a by right SEF and would allow for public input. There would be a review of engineering and environmental impacts. There would be a performance surety for decommissioning the site. The public process would regulate where it was located and how it impacted the area. The amendment would also include language for special permits if waivers were being sought. Without a regulatory framework, they would not be able to require performance surety bond for ongoing maintenance or decommissioning the facility. Those are critical aspects to keep in mind. The City does have representation from city legal counsel to answer any questions the Board members may have. The commonwealth wants to promote a reduction of greenhouse emissions. That's why state level regulations provide broad latitude on how and where the facilities are located. There are mechanisms in place for pilot agreement programs for tax benefits and revenue. They could be in the range of \$70-80,000 on a yearly basis. There is always a risk that these large tracts of lands would be further developed for a high-density project like a 40B. Right now, Amesbury has not met it's 10% requirement. It is very possible a developer could capitalize on that. That would be a bigger impact on services and infrastructure.
205. Pascal Rettig directed his question to legal counsel and questioned if they had a determination on if denying this would be viewed as prohibiting or unreasonably regulating zoning.
206. Alex Weisheit commented that overall case law interpreting 4A section 3 makes it very difficult to deny these types of projects except in instances where there is concern for public health or safety. The amendments proposed to the ordinance would allow the Board's discretion on making conditions in relation to this section of the WRPD. Those conditions could include performance standards and reasonable conditions aimed at promoting safe drinking water. Case law has shown that the ability to outright prohibit a project like this is very difficult to impossible.
207. Keith Ratner clarified that this would not be viewed as spot zoning because of public benefit, correct? Alex Weisheit confirmed that was correct.
208. Michael Jewell commented that based on what the Board just heard, they basically cannot reject this unless there is an impact to public health or safety.
209. Pascal Rettig clarified that the Planning Board will make a recommendation to City Council. They can send it back with a positive, negative or no recommendation. They can also include conditions on their positive recommendations that Council can choose to include or not. Council ultimately makes the decision. It is difficult to outright prohibit the installation of solar entities unless it threatens public health or safety.
210. Alex Weisheit commented that case law has not explicitly defined the criteria for what threatens public health and safety.
211. Joel Nice commented that he was concerned at first when he saw this bill. However, now seeing the constraints they need to consider the health of the site and community if this was brought in. One option could be to reject this and see what they would do. However, that would give the Planning Board control over how the project is permitted.

Then they could address certain concerns like how the site would be decommissioned, visual impact, and storm water management.

212. Keith Ratner summarized the scenarios. This could happen regardless of what the Board decides. It would make sense to put something in place to have controls of a project. This site could also be developed in other ways and there has been discussion of other development in that area too. This would provide some level of protection at this time.
213. Tracey Chalifour echoed Joel Nice's comments.
214. David Frick commented that he agreed this should not happen without some guardrails around it.
215. Pascal Rettig opened public comment.
216. Edward Silva commented that he had great concerns about habitat loss. This would be a treeless hill full of solar panels. Mass Audubon is working on legislation to protect wildlife and promote solar.
217. Barbara Hammil of 2 Lake Attitash Rd. questioned how they would know if the guardrails would work. Look at what happened in Plainville, MA. People's homes got washed out. Madison Energy Investments built the solar farm and is sympathetic to the concerns but are also pointing out that the Planning Board approved it. That was a design failure. It's not a guarantee that the guardrails will work. How do we ensure that we protect the water supply from storm water runoff. That will generate bacteria and ruin the water supply.
218. Earl Doliber of 26 Oak Circle commented that he has lived here 14 years and half that time the lake was a mess. No one could not go into it because of bacteria. It is finally, back to normal. They should fight this.
219. Jon Monteith of 47 Birchmeadow rd. commented that they should get more clarity on what the alternatives are before moving forward.
220. Veronica Wolfe of Merrimac, Ma is a member of the Lake Attitash Association. Ms. Wolfe commented that she was not against solar energy, but they have a lot of skin in the game in protecting Lake Attitash. The lake used to have closures due to harmful algae blooms. It was not safe for swimming or boating. Amesbury, Merrimac, EPA, DEP and LAA have all invested so much in Lake Attitash over the years. There is a robust and ongoing water quality monitoring program on the lake. They cannot accept more phosphorus into the lake. Most of the phosphorus comes in from the Back River. They will need to be very conscious of this.
221. Marilyn Ostalkiliewicz of 6 Shore Rd. Merrimac, MA submitted a written comment. Ms. Ostalkiliewicz was concerned about mercury in the solar panels and how the panels would be constructed and stored to prevent harmful elements from leeching into the ground. Solar energy producers say that panels are 80% recyclable, but what about the other 20%?
222. Charles Wright of 55 Birchmeadow Rd. commented that his family has lived on Lake Attitash for 42 years. They live on largest the natural space still there. This proposed site is on a hill and will destroy natural landscape and habitat. Mr. Wright invited the Board to come to his property to show them what the impact would be. This site should not be developed.
223. Denise Guida of 57 West Shore Rd. Merrimac, MA is a lake resident. Ms. Guida commented that they were a firm believer in solar power, but this was a bad location to put

it in. What will happen when the solar farm is decommissioned in 20 years? Who will oversee that? How do they restore the site back to mature trees? That is not clear.

224. Rachel Matos of 45 Lake Attitash Road submitted written comment. Ms. Matos wrote that she did not want the land sold to Syncarpha to clear cut for solar. There should not be a zoning change to allow this. This is a risk to the watershed and putting in solar does not outweigh the benefit of clear cutting 30 acres.
225. Peter Krenitsky of 78 Lake Attitash Rd. commented that he's lived on Lake Attitash for 7 years. Putting a solar array on S Hunt Rd. was perfect. There is no redeeming beauty to a solar array. Parcel 45-4 is the wrong location for a solar array. The property is perfectly wedged between Meadowbrook, Lake Attitash and Back River. The Board should visit the property. This is the wrong location.
226. Barry Fogel was the representing counsel for the Lake Attitash Association. Mr. Fogel clarified that the State law says no city or town can prohibit or unreasonably regulate solar. Amesbury has a district and facilities have already been built. They are not obligated to rezone. Amesbury is not prohibiting and or unreasonably regulating the zoning if they choose not to extend the overlay district. Some of the amendments provide too much leeway and very broad guidelines. The wildlife habitat mitigation plan is also concerning. The conceptual overlay has a lot of solar panels. The topography is not ideal. There are a lot of hills. They are fixed arrays that do not rotate. It is unclear how many trees would need to be cut or the what the direct impacts to wetlands would mean. The battery storage is a concern as well. The Lake Attitash Association has significant concerns about whether the City even has to rezone for this.
227. Jeff Tucker of 44 Birchmeadow Road commented that last year they submitted a letter with all of their concerns and almost none of them have been addressed. The Vynorius trustees own a significant portion north and west of this location. They have chosen to lease this area to Syncarpha and wedge it between all three properties. Mr. Tucker noted that there may be limited ability to stop it. However, in addition to all issues brought forth people are not paying attention to the fact that there's additional land owned by the Vynorius's that they could use. There is an existing road from Bear Hill Rd. to Kimball Rd. They don't need to go through Birchmeadow Rd.
228. Sandra Charland of 48 Lake Attitash Rd. commented that she was new to the area and had fallen in love with it. The presentation given last week noted there would be over 17,000 panels on this location. Some panels contain what is considered hazardous waste and some not. If they are subject to damage or shatter onto the ground, then that waste enters the ground water or be blown around. Over time it can accumulate. Often, projects like these are sold to other companies and it may not be decommissioned correctly. If it is a big company, then it would be a drop in the bucket for them to abandon.
229. Adrienne Lennon of 15 Belmont St. commented that she had been thinking about the mitigation section of this ordinance and noticed that while it does call for forestry management there is no discussion about how or where trees would be replaced. The EEA conference had solar fields as a hot topic this year. The entire 495 beltway is being pressed with greenfield development. It is expensive and there are no incentives. The solar incentive program is due to be updated this year. Unfortunately, this is ahead of that update. A lot of useful and beneficial information will come out of that. In that meeting

they were also talking about how forests are currently our best climate solution. Mature trees are better at carbon impact than moving to any renewable type of energy. They should require a tree survey. Trees above a certain size need to go in mitigation. It may not be on that site but in a different site. They can establish a tree mitigation fund. Ms. Lennon has been on both sides of the solar field development project and has heard all of the arguments. The topography of this site makes it hard for storm water management. Some communities stipulate additional flood storage capacity based on the grade of the site.

230. Tracey Chalifour motioned to extend the Planning Board Meeting to 11 pm. Seconded by Joel Nice.
231. Pascal Rettig initiated roll call vote –
232. Keith Ratner – YES
233. Joel Nice – YES
234. Lorri Krebs- NO
235. Michael Jewell – YES
236. Tracey Chalifour - YES
237. David Frick – YES
238. Pascal Rettig - YES
239. Motion passed 6-1-0
240. Jeff Roelofs represented Syncarpha and commented that they currently have rights with the landowner to attempt to permit this. The zoning amendment process is something we came to the City about and suggested amendments vs. trying the by right approach. Once the amendment is in place they are expecting a robust comprehensive review of the proposal. The storm water management will be huge. The proposed zoning amendment itself requires a 400-foot setback. During the permitting process they are expecting the Board to comprehensively review the visual impacts, accessways, and wildlife corridors. Residents have valid concerns, and they anticipate addressing all the concerns.
241. Pascal Rettig questioned if City Council rejected the proposed zoning amendment, given the City already has the overlay, would that constitute an unreasonable regulation or prohibition on installation of solar energy systems.
242. Alex Weisheit responded that it likely would not constitute a violation for City Council to not approve the amendment. However, if not approved there would still be a risk that they would pursue by right installation and apply for a building permit. At that point the property would not be in the solar district and the applicant could take the position that they are not in any oversight of the solar overlay.
243. Pascal Rettig questioned if there were examples of existing case law where that has happened. Alex Weisheit confirmed that was correct. The court has held that the only way to prohibit this is if there's a threat to public health or safety. So, if there are not any provisions to allow any oversight then court would interpret use as of right.
244. Pascal Rettig questioned if there were other parcels that have been zoned for solar and specific parcels and litigants that were not. Alex Weisheit responded that only 3% of the municipality is zoned for solar and the court found that insufficient. Nipun Jain clarified that case law found the municipality did not pass the reasonable test. Alex Weisheit confirmed that was correct.

245. Pascal Rettig questioned what percent of Amesbury is covered by the solar overlay. Alex Weisheit responded that he did not know.
246. Pascal Rettig questioned if the 3% case was the only case law. Alex Weisheit responded that most cases were less than 10% and that's true for most municipalities in the state.
247. Nipun Jain commented they cannot zone for solar where they can't actually put solar and count it toward the percentage. The previous 40B that was proposed here would have been much more intense and had a larger impact. The City lost the appeal. The state determined the City's decision was restrictive. The yard sticks that people think should apply don't apply always in state court.
248. Tracey Chalifour questioned if this would violate something in the clean water act.
249. Pascal Rettig commented that the project would have to follow Mass DEP regulations. Alex Weisheit commented that he was not sure the clean water act would apply. The Wetland Protection Act would require an OOC from the Conservation Commission. There is no exemption for solar under the WPA.
250. Lorri Krebs commented that Syncarpha came before the Board with a presentation for a proposed project here, and the Board did not support it at that time. This feels like they are trying to change the zoning for this.
251. Jeff Roelofs clarified that they did come before the Planning Board a year ago. It was characterized as a preapplication but even at that time, they were contemplating working with the City to make zoning amendments. The intent was to provide the public with the information and let people react to it.
252. David Frick commented that the attorney from the Lake Attitash Association had good points about the language in the proposed amendment. There is some vague language that can be tightened up. It would be better to mitigate work in the 200–400-foot zone.
253. Nipun Jain commented that in general they are not going to be within 100 feet of the resources.
254. Barry Fogel commented that Amesbury has about 12 square miles of land and the overlay is more than 3% of that. Welfare is a pretty broad term and includes a lot of comfort and convenience and visual impacts.
255. Michael Jewell commented that this was kind of a damned if we do and damned if we don't situation. If they reject the zoning, then the developer could still pursue a building permit and the Board would have less control over it. If the City passes the zoning, then the development would go ahead, and the Board would have control of the review. Michael Jewell noted that the Board should do a site visit before they vote on this. Michael Jewell noted that his gut was to vote against this, but it could potentially do a disservice to the residents.
256. Ketih Ratner clarified that the Planning Board was making a recommendation not a final decision.
257. Joel Nice motioned to send a negative recommendation for Bill 2024-096 to City Council as submitted. Seconded by Lorri Krebs.
258. Tracey Chalifour commented that this was on the City Council's agenda for September as a public hearing. Nipun Jain commented that even though the Council has a hearing scheduled, there have been instances in the past where the Planning Board needs more

time. The hearing could be continued if the Board wants to discuss the Bill further. They do not need to conclude the deliberation tonight.

259. Pascal Rettig commented that he would prefer to not send back a negative recommendation until the Board has had more deliberation.
260. Joel Nice commented that he was concerned if they send a positive recommendation with conditions, then they are conceding to the project. The conditions are important. They would need to continue the discussion of that.
261. Pascal Rettig commented that City Council needs to wait for the Board's determination. Nipun Jain confirmed that was correct. It is important to consider that the Planning Board is one of the permit granting authorities for something like this and is best equipped to deal with land use issues. City Council does not deal with land use permits so they do not have that level of experience in the issues that this Board routinely deals with. This an opportunity for the Board to provide valuable input in their recommendations. It would behoove the Board to explore those issues to see if there is a path to move forward and if not, then why.
262. Pascal Rettig agreed that even if they were going to negatively recommend, they should provide reasons.
263. Michael Jewell agreed further discussion is warranted.
264. David Frick commented that it would be worth revising the amendment to tighten up the language and give it more teeth.
265. Joel Nice withdrew his motion. Lorri Krebs withdrew her second.
266. Keith Ratner motioned to continue Bill 2024-096 to the September 9, 2024, Planning Board Meeting. Seconded by Michael Jewell.
267. Pascal Rettig initiated roll call vote –
268. Keith Ratner – YES
269. Joel Nice – YES
270. Lorri Krebs- YES
271. Michael Jewell – YES
272. Tracey Chalifour - YES
273. David Frick – YES
274. Pascal Rettig - YES
275. Motion passed 7-0

276. Joel Nice motioned to extend the meeting to 11:15 pm. Seconded by Tracey Chalifour.
277. Pascal Rettig initiated roll call vote –
278. Keith Ratner – YES
279. Joel Nice – YES
280. Lorri Krebs- YES
281. Michael Jewell – YES
282. Tracey Chalifour - YES
283. David Frick – YES
284. Pascal Rettig - YES
285. Motion passed 7-0

286. New Public Hearings – Bill 2024-098.

287. Nipun Jain read the legal notice into the record.

288. Nipun Jain commented that the purpose of the Bill is to establish a new multifamily overlay district that would comply with the MBTA Communities Act. As discussed in prior informational sessions the area is on Elm St. They will discuss this more at the next Planning Board Meeting.

289. Keith Ratner motioned to the September 9, 2024, Planning Board Meeting. Seconded Joel Nice.

290. Pascal Rettig initiated roll call vote –

291. Keith Ratner – YES

292. Joel Nice – YES

293. Lorri Krebs- YES

294. Michael Jewell – YES

295. Tracey Chalifour - YES

296. David Frick – YES

297. Pascal Rettig - YES

298. Motion passed 7-0

299. New Public Hearings – Bill 2024-099.

300. Nipun Jain read the legal notice into the record.

301. Nipun Jain commented that this zoning amendment includes language that would limit the retail licenses for marijuana facilities. Information from legal counsel that was provided to Councilor Stanganelli will be provided at the next meeting.

302. Keith Ratner motioned to continue Bill 2024-099 to the September 9, 2024, Planning Board Meeting. Seconded by Joel Nice.

303. Pascal Rettig initiated roll call vote –

304. Keith Ratner – YES

305. Joel Nice – YES

306. Lorri Krebs- YES

307. Michael Jewell – YES

308. Tracey Chalifour - YES

309. David Frick – YES

310. Pascal Rettig - YES

311. Motion passed 7-0

312. Administrative – MVPC Commissioner Appointment

313. This was tabled to a future meeting.

314. Administrative – 19 Evans Place – Bond Release

315. This was tabled to a future meeting.

316. Administrative – 2-13 Merrimac St. Chapter 91 Notification Form

317. Nipun Jain commented that per State Statute, the applicant is making an application for Chapter 91 and is required to get signatures that indicate the Planning Board has knowledge

of the filing. Signing the notice does not mean they cannot provide comments. As long as the Board is acknowledging that, then Staff can sign on the Board's behalf.

318. Michael Jewell motioned to authorize Staff to sign the Chapter 91 filing acknowledgment. Seconded by Joel Nice.

319. Pascal Rettig initiated roll call vote –

320. Keith Ratner – YES

321. Joel Nice – YES

322. Lorri Krebs- YES

323. Michael Jewell – YES

324. Tracey Chalifour - NO

325. David Frick – YES

326. Pascal Rettig - YES

327. Motion passed 6-1-0

328. **Administrative – Master Plan 2030 – Status Update**

329. This was tabled to a future meeting.

330. **Administrative – Meeting Scheduling**

331. This was tabled to a future meeting.

332. **Administrative – Contracts, Bills, and Invoices**

333. Pascal Rettig reviewed the invoices and they were as follows:

1. A Stantec invoice for 2-13 Merrimac St. for \$2,887.50.

334. Keith Ratner motioned to approve the payment of the invoice listed above. Seconded by Joel Nice.

335. Pascal Rettig initiated roll call vote –

336. Keith Ratner – YES

337. Joel Nice – YES

338. Lorri Krebs- YES

339. Michael Jewell – YES

340. Tracey Chalifour - YES

341. David Frick – YES

342. Pascal Rettig - YES

343. Motion passed 7-0

344. Adjournment

345. Tracey Chalifour motioned to adjourn the meeting at 11:17 pm. Seconded by Joel Nice.

346. Pascal Rettig initiated roll call vote –

347. Keith Ratner – YES

348. Joel Nice – YES

349. Lorri Krebs- YES

350. Michael Jewell – YES

351. Tracey Chalifour - YES

352. David Frick – YES

- 353. Pascal Rettig – YES
- 354. Motion passed 5-0