At a special meeting of the Exeter Planning Board on May 29, 2018, the proposed amended zone change amendment submitted by Green Development was discussed. Below is a visual representation of the proposed zone change.

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<tr>
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<th>RE-2</th>
<th>RU-3</th>
<th>RU-4</th>
<th>CR-5</th>
<th>B</th>
<th>LB</th>
<th>LI</th>
<th>OS/PL</th>
<th>GWOL</th>
<th>Planned District</th>
<th>PVOD</th>
</tr>
</thead>
<tbody>
<tr>
<td>69</td>
<td>N</td>
<td>N</td>
<td>Y*</td>
<td>S</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
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<td>S</td>
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*Utility scale solar photovoltaic facility will be considered a permitted use (Y) only in the following instances where the subject lot is greater than 27 acres and included in the following list specifically designated as Plat 24, Block 1, Lot 20; Plat 39, Block 2 Lot 4; Plat 52, Block 1, Lot 8; Plat 22, Block 3, Lot 3; Plat 52, Block 1, Lot 5; Plat 24, Block 2 Lot 3; Plat 35, Block 2 Lot 4; Plat 23, Block 1 Lot 5; Plat 36, Block 3, Lot 3; Plat 36, Block 2, Lot 2; Plat 11, Block 2 Lot 1; Plat 11, Block 1 Lot 2; Plat 52, Block 1 Lot 6; Plat 62, Block 1, Lot 5; Plat 51, Block 2, Lot 32. In all other instances in the RU-3 Zone the Utility scale solar photovoltaic facility will not be a permitted use (N as designated in the table) and in the RU-4 Zone, Utility scale solar photovoltaic facility will require a Special Use Permit (S as designated in the Table).

Additionally, in this proposal Green Development is making proposed changes to the Town’s existing solar ordinance.

**Overview**

The applicant presented their zone change and the rationale behind the proposed amendments. The applicant made the following points relevant to the Planning Board’s review:

- The applicant is seeking to develop ±65 MW of solar generation in Exeter. This would be accomplished through the development of numerous sites (now those sites have been identified in the zoning ordinance as described above) in town (herein after referred to as “the project”).

- These sites will need to be permitted, built and brought online simultaneously

- The applicant is making offers for tax incentives and the like in exchange for approval of the project.
• This newly amended proposal seeks to accomplish this by singling out fifteen (15) lots that will be provided a special exception to the zoning requirements. These lots will have no requirement for a SUP and all other parcels in the RU-3 zone, except those named by the applicant in this proposal, will be prohibited from utility scale solar.

The Planning Board has grave concerns with the mechanism (the zoning amendment before the Town) presented by Green Development to achieve their stated goal of producing 65 MW of solar power in Exeter. An attached map (Appendix A) shows the location of the fifteen (15) parcels selected by Green Development to receive the special exceptions they have drafted. Hand picking certain lots to receive a benefit that no other parcels receive could be considered spot zoning and the Planning Board is unable to support such a concept.

**Planning Board’s Role**

Section 1.5 of the Zoning Ordinance outlines the procedure for adoption and amendment of the Ordinance. The Planning Board has 45 days to issue a recommendation to the Town Council on the proposed amendment.

RIGL §45-24-52 identifies that the Planning Board cover 2 topics in its recommendation on a zoning amendment. Those are:

1. Include a statement of the general consistency of the proposal with the comprehensive plan of the town, including the goals and policy statement, the implementation program, and any other applicable elements of the comprehensive plan.

2. Include a demonstration of recognition and consideration of each of the applicable purposes of zoning.

The Town’s Section 1.5 requires the same as stated above with the addition of the following:

Among its findings and recommendations to the town council with respect to a proposal for adoption, amendment or repeal of a zoning ordinance or zoning map, the planning board shall determine if the proposal is consistent with the land use map in the Exeter comprehensive plan and:

1. In the event the proposal is determined to be inconsistent with the Exeter comprehensive plan, the planning board shall recommend to the council that a public hearing be held to consider reviewing the comprehensive plan prior to any consideration of the proposed zone change.

2. Include a written report on the potential effects of the proposal as determined from the issues addressed in the application.

The above is what is mandated by state and local law and regulations, and is the minimum of what must be in the Planning Board’s recommendation.
Consistency with the Comprehensive Plan

The Planning Board is concerned that their ability to determine consistency with the Comprehensive Plan is severely hindered by the fact that, although now the scope of this has been narrowed to fifteen (15) parcels, they are unable to truly determine consistency because this site specific zoning amendment has not presented the applications for each of the proposed projects before the Planning Board for master plan approvals as required by §45-23-61, as previously described in this report. The entire intent of §45-23-61 is to allow the town to determine consistency with zoning ordinance and the comprehensive plan for zoning ordinance amendments that are site specific and require planning board approval, as this proposed amendment does. Below the Planning Board is commenting on the general concept of providing a special exception to the zoning ordinance requirements for fifteen (15) selected lots and the proposed amendments to the solar ordinance that are now part of this proposal.

Below are direct quotations of sections from the Comprehensive Plan (in italics) that are found to be generally inconsistent with the proposed zone change before the Town.

**Introduction**

*The Exeter Comprehensive Plan has been developed as our statement of what we want our town to be in the future. In its most simple terms, this Comprehensive Plan calls for retaining as much as possible of Exeter’s sense of place, which is the town’s most valuable asset.*

**Plan Summary**

2.1 Stewardship

*In this Comprehensive Plan, the Town of Exeter has accepted the role of stewardship for the wealth and resources, which lay within the boundaries of the Town, and the town’s rural character, which provide a quality of life different from what is experienced in the city or suburbs. Stewardship means providing management for the continued enjoyment and appreciation of the town’s resources for today’s residents and future generations.*

2.2 Vision

*The Comprehensive Plan provides the Town of Exeter with a vision that allows the community to continue to be a rural community with a unique identity and sense of place, retain its historic hamlets, scenic centers, agriculture and business, while simultaneously absorbing new growth and development in the future. To hold on to the values, quality of life and visual identity of the community, Exeter must manage growth and accommodate change pro-actively. This entails actively pursuing economic development opportunities that will enhance the natural and built assets of the town, build upon the rural resources that set Exeter apart, and use Exeter’s rural character to the town’s advantage.*
Comment: This language clearly identifies the overarching theme for the entire Comprehensive Plan; maintain rural Exeter and the unique place that is created by that rural sense of place. Weakening the zoning ordinance requirements to allow for an increased number of utility scale solar installations by right does not assist the town in protecting unique and rural character. Removing the requirement that these developments adhere to the lot coverage requirement is completely contradictory to this goal of the Plan. Lot coverage from setback to setback is not rural in nature and will actively affect the unique identity and sense of place the Plan is attempting to conserve.

Section 2.5.1 Economic Development (Under 2.5 Major Goals and Policies)

- Promote economic diversification that contributes to the tax base and creates jobs in areas that are accessible.

- Focus attention on small-scaled, clustered, architecturally sensitive, landscaped shopping areas consistent with the rural town character.

- Protect, promote and support the Town’s agricultural and recreational base.

Comment: This section clearly identifies the types of jobs and economic growth the town would like to see and encourage. Utility scale solar installations provide temporary jobs at best. Once the installation is up and running those jobs are gone. A majority of installations will occur by out of town and out of state companies. Weakening the zoning ordinance to allow more utility scale installations with less regulation will not create economic diversification or jobs for Exeter itself. Additionally, utility scale solar installations are not small-scaled, architecturally sensitive or consistent with rural town character by any stretch of the imagination. Several of the parcels that this amendment makes available for by right solar are agricultural lands that at least portions of would be put out of production.

Section 2.5.2 Land Use (Under 2.5 Major Goals and Policies)

- Focus on development that is consistent with the natural constraints of the land, without placing an undue burden on the residential taxpayer, and; ensures the development of planned rural village centers and industrial uses that are consistent with rural development, while contributing to positive tax base diversification.

- Strive to establish future residential development at a scale and density that is consistent with the character of western Exeter and relates to the constraints presented to such development in eastern Exeter.

Comment: Utility scale solar may very well provide taxes without placing an undue burden on the tax payers but that is not the only measure by which this should be considered.
Section 2.5.5 Natural and Cultural Resources (Under 2.5 Major Goals and Policies)

- Support initiatives that work to minimize development impacts to natural and cultural resources.

Comment: Weakening the requirements for utility scale solar to allow it by right in residential areas does not minimize development impacts on the natural and cultural resources of the town. At this point the impacts on the natural and cultural resources are unknown because there are no details about the projects themselves. Removing the requirement of lot coverage (as decided by the zoning board decision of the 5/14/15 Attached as Appendix B) for solar panels does the exact opposite of supporting initiatives to minimize development impacts to natural and cultural resources. The removal of the maximum lot coverage requirements in residential areas, allows for setback to setback clearing with solar panels installed on any given lot.

Section 4.1.1 Overall Goal Statement

The Town of Exeter shall remain essentially a low-density residential community, recognizing the community’s responsibility, as a steward, to maintain the unique rural identity of the town, its assets and resources.

The Town of Exeter shall try to manage current and future growth and development in a manner that does not adversely affect or detract from Exeter’s unique natural, environmental and economical resources, or the general character of the Town. These assets enhance the quality of life for town residents and are vitally important to the social, economic and environmental well being of the town.

Comment: This section most likely embodies why this proposal is inconsistent with the Plan in general more so than any other. This section requires that the Town manage growth in a manner that does not affect or detract from what makes Exeter a desirable place to live. No one is saying utility scale solar does not have its place in Exeter but weakening the regulations to allow it by right in residential areas on fifteen (15) selected parcels does not accomplish the above overall goal statement that the entire Comprehensive Plan was built on and around. Removal of the SUP takes away from the ability of abutters in residentially zoned areas to provide input on the installation of a utility in their neighborhood. Additionally, further weakening the standards in the existing solar ordinance, while the Planning Board works to strengthen the requirements, is not consistent with the Comprehensive Plan. The Planning Board has previously identified that they now feel that the existing ordinance is not consistent, this proposal weakens the standards further and moves further away from consistency with the Plan.
**Land Use Element**

**Section 5.2.6b Issues**

#3 – Reliance on outdated codes will result in the loss of open space and valuable prime farmlands, while promoting residential and commercial development that is inconsistent with the rural character of the town.

**Comment:** At the start of this solar discussion the town recognized the need for an ordinance to regulate how and where. We are learning as we go and realizing that the controls we have are lacking and more oversight is needed to appropriately protect the town while still allowing utility scale installations. We have moved away from no code, to what we now feel is lacking regulation, and the Planning Board has worked through eight (8) drafts of a solar ordinance rewrite. The proposed Planning Board ordinance is schedule for public hearing in July. It is contrary to the work of the Planning Board, and the will of a large number of residents that have expressed concern, to move in this proposed direction by weakening the requirement of where these installations can occur in town.

#7 – Increased pressure will be applied to large property owners to sell their land to potential developers due to the ever-increasing tax burden and the lack of any tax relief programs.

**Comment:** This is a statement in the Plan of an identified issue. Without proper regulation of utility scale installations this problem is exacerbated exponentially. Lax regulation will cause an increase the likelihood of utility scale solar installations in residentially zoned areas, where conflicts with neighboring properties are inherent. The removal of the SUP detracts from the abutter’s ability to comment on industrial development in residential areas.

#12 - Commercial and industrial development that is sensitive to the rural character of Exeter and sensitive to the natural environment can be positive for the community.

**Comment:** Utility scale installations have a place in Exeter. The Planning Board has determined, after much deliberation, that the appropriate location is in industrially zoned lands. Allowing them by right in residential areas is not sensitive to the rural character or natural environment and doing so would be difficult to classify as positive for the entire community. Placing utility scale solar installations in residential areas is counter to the stated goal above.

#15 - The Town has continued to explore ways to promote conservation of open space and natural resources, and to preserve its rural character. There is however, a danger that large-lot zoning and rural residential compounds may not be entirely effective in creating and preserving major community-wide open spaces, promoting a network of greenways and implementing key open space goals of the Plan.
Comment: The town adopted conservation design as a method to combat this issue. There is an argument that utility scale solar is better for the tax base than residential development. Although in the short term this may be true (solar’s life expectancy is 20-25 years, after that residential development is back on table. It should be noted that with conservation design the best scenic, environmental and natural parts of the property are protected first, then the housing is developed. If the site is open for utility scale solar, with no lot coverage requirements, that development approach does not apply. All developable land is fair game. Agricultural fields, forested land, naturally sensitive land. Once significantly altered by clearing and grading it is almost impossible to truly reclaim.

Section 5.2.7a Goals

To allow development that is consistent with the natural constraints of the land can be effectively supported by town services without placing an undue burden on the residential taxpayer, and to ensure the development of planned rural village centers and industrial uses that are consistent with rural development, while contributing to positive tax base diversification.

Comment: See previous comments

Section 5.2.7b Policies

#4 - Promote the development of environmentally appropriate light industrial uses along the I-95 corridor area where access is convenient and available, and environmental constraints are minimum.

Comment: Utility scale solar is industrial development. In its simplest terms it is the installation of a structure to capture electricity for profit by a company. It is a utility. The comprehensive plan calls for the development of the I-95 corridor area as the viable location for industrial development. Allowing it by right in residential zones is contradictory to this approach called for by the Plan.

#7 - Establish a number of environmental protection ordinances to protect the town's aquifer system, high water table areas, prime farmlands, historic resources, and prevent soil erosion associated with land removal or development, while preserving as many natural features as possible.

Comment: This proposal would weaken our current regulations that attempt to achieve the above policy.

Section 5.2.8 Future Land Use Plan

Industrial development in the future will be geared toward utilizing the I-95 corridor as an attraction to potential investors.

Comment: This proposal would weaken our current regulations that attempt to achieve the above policy.
Natural & Cultural Resources Element

Section 5.5.6b Fauna

Given the abundance of undeveloped land, Exeter provides extensive habitat for wildlife.

Comment: A statement of fact worthy of notation. Utility scale solar installations can consume a tremendous amount of land and natural resources if not properly regulated. The removal of the maximum allowable lot coverage requirement would only create non conformance with this statement of the Plan. Setback to setback lot coverage of a parcel would become available with the proposed change and could alter the ability of Exeter to continue to provide that habitat area.

Section 5.5.6b-1 Rare and Endangered Species

Rhode Island Natural Heritage Program data indicates the presence of extensive habitat areas for rare species.

Comment: A statement of fact worthy of notation. Utility scale solar installations can consume a tremendous amount of land and natural resources if not properly regulated. Installations often require complete tree removal for the area, topsoil removal, and sometimes gravel or rock extractions. This is devastating to the habitat and natural resources on the site. Removing the requirement for lot coverage to apply to these installations greatly reduces Exeter’s ability to continue to provide that habitat area.

Section 5.5.7a Findings

#7 - The majority of undeveloped land in Exeter is comprised of mixed hardwood/softwood forests with dominant hardwoods.

Comment: An important fact to note considering the amount of forest land that would become open to utility scale installations by right. Protection of forest lands are a very common theme throughout the Plan as significantly contributing to what makes Exeter unique and worthy of protection. Habitat and tree loss will be greatly exacerbated if the lot coverage requirement is removed from the solar ordinance. Entire parcels will be allowed to be cleared to make room for panel installation.

#8 - As new residential subdivisions continue to be built, land will become increasingly scarce and expensive. This will result in loss of open space and rural character. If development continues to occur predominantly in the form of conventional subdivisions or frontage lots on existing roads, the perception of the Town as a rural community will gradually shift to that of a suburban community. Even cluster developments do not protect a significant portion of the development site as open space. Rural residential compounds, while preserving at least fifty percent of a development site as open space, are limited to large estate...
lots at very low densities. The design of future residential subdivisions will have a profound impact on the visual appearance of the Town as well as upon its open space patterns and environmental quality.

Comment: The same phenomenon is true with the installation of utility scale solar operations in residential areas.

Section 5.5.7b Issues

# 2 - Prime Farmland and Farmland of Statewide Importance pose fewer site constraints and can be subject to greater pressures for conversion to residential development.

Comment: The same is true for the development of utility scale installations. Weakening the regulations to make them available by right would exacerbate this issue. The removal of the lot coverage requirement would allow for complete lot coverage by solar panels on operating farmland. The Planning Board supports the notion of being able to supplement farm income, but not replace a farm with a solar facility, which would become allowed with the removal of the maximum allowable lot coverage.

#5 - Loss of forested areas (to development) results in a reduction to the Town’s green space, wildlife habitats, and passive recreation areas.

Comment: The same is true for the development of utility scale installations. Weakening the regulations to make them available by right would exacerbate this issue.

Section 5.5.7d Policies

#5 - Require innovative land use techniques to avoid or minimize development impacts to natural resources, such as requirements to reduce impervious surfaces while retaining more natural vegetation.

Comment: Weakening the use table as proposed is the opposite of using innovative land techniques to accomplish the goals and policies of the Plan. The proposed changes to the solar ordinance provide less ability to the Planning Board to ensure that development impacts are minimized.

#6 - Amend the Land Development and Subdivision Regulations and Zoning Ordinance to provide for Conservation Development techniques. The Planning Board should be given the authority to make conservation development mandatory where necessary to preserve open space and important natural and cultural site features.

Comment: The Town did accomplish this goal and implemented conservation design. That provides flexibility in residential subdivision design to preserve and protect the most natural and environmentally sensitive parts of the site. This does not apply to utility scale solar installations. Property that would have gone through this process for housing development will not be subject to protecting
sensitive and unique features. The solar may provide temporary relief from the tax issue of residential housing but it may also destroy those site features that could have been protected. The housing development is only delayed by the solar installation. Once it has reached its useful life residential housing is back on the table and those unique site features are permanently gone.

Section 5.5.7f-2 Policies (under Open Space Preservation)

#2 - The Town should continue to use the Farm, Forest, and Open Space Act. Establish incentives to encourage the continued use of prime farmland for agricultural purposes.

Comment: By weakening the use table and allowing for by right utility scale solar development in residential areas, the Town will undoubtedly lose some participation in the Farm, Forest and Open Space program through the loss of forested land, prime farmland and agricultural land. Additionally, these parcels lost will now have the incentive to clear from setback to setback with the removal of the lot coverage requirement.

Section 5.5.8a Introduction (Under 5.5.8 Future Natural Resources Plan)

Results of the town wide survey concluded that people/families have chosen to reside in Exeter because of the town’s rural character and unspoiled natural setting. The Natural Resources Plan is intended to establish a set of policies and regulations to insure that those amenities are adequately protected and properly managed.

Comment: Weakening the use table to allow by right utility scale solar installations in residential areas is not consistent with the above. Utility scale solar installations do not contribute to rural character and unspoiled natural settings. It does not assist in adequately protecting and properly managing those amenities. The removal of the lot coverage requirement will not aid the town in preserving rural character and unspoiled natural setting. It will allow the clearing of more land than is allowed in the current ordinance on a per lot basis.

Section 5.5.8g Regulations Concerning Prime Farmland Conversion

Institute regulations that encourage the continued use of prime farmland for the preservation of open space, natural habitats and agricultural purposes.

Comment: Weakening the use table to allow by right utility scale solar installations in residential areas is not consistent with the above. Utility scale solar installations do not contribute to rural character and unspoiled natural settings. It does not assist in adequately protecting and properly managing those amenities. Removal of the lot coverage requirement will result in the replacement of active operating farms with solar installations. This is not a preservation tool that allows farmers to continue farming, it is an entirely different use that could replace the farm use.
Section 5.5.8m Agricultural Preservation

In addition to recommendations 5.5.7g and 5.5.7k, the Town should investigate additional means and methods for preserving agricultural land. These could include establishment of an Agricultural Land Trust and a mechanism for the transfer of development rights.

Comment: Several sections of the Plan call for the preservation and protection of agricultural lands. Allowing total lot coverage with solar panels on these lands will surely increase the loss of active farmland, which is completely contradictory to the above premise. The Planning Board supports limited solar installations on operating farms as a source of additional revenue to ensure the farm continues to operate. This should be allowed by SUP in certain areas with certain provisions. The removal of the lot coverage requirement will cause the loss of prime farmland in operation as farms convert from farm activity to the entire lot being dedicated to solar leases.

Open Space Element

Section 5.7.4.2 Open Space Preservation

c) Exeter will make efforts to preserve the best farmlands in the state for active agricultural use.

d) Exeter will make efforts to protect and manage its forest resources to meet the demands of recreation, water supply, wildlife habitat, and high quality environment.

Comment: Weakening the use table to allow by right utility scale solar development in residential area in Exeter, that fit the above descriptions, is the opposite of the Town making efforts to preserve, protect and manage these critical lands. Removing the lot coverage requirement from the ordinance will seriously affect the Town’s ability to “make efforts to protect and manage its forest resources”. Management of forest resources does not suggest clear cutting from setback to setback to cover the area in solar panels.

Section 5.7.5.2 Open Space Preservation

h) Use the Town’s Zoning Ordinance and Subdivision Regulations to effectively preserve and enhance historical and cultural locale by incorporating scenic, conservation and aesthetic controls. Adopt a procedure for identifying important cultural and environmental site features as part of the development review process for subdivisions and land development projects.

f) The Town should work closely with the State to preserve and protect prime farmlands.
Comment: Weakening the use table to allow by right utility scale solar development in residential areas is the opposite of the Town making efforts to preserve, protect and manage these critical lands.

After careful review and consideration of the Town’s Comprehensive Plan, the Planning Board has concluded that these proposed zoning amendment, to both the use tables and the solar ordinance, do not comply with the goals, policies and themes for future development contained within the Plan.

**Consistency with the Zoning Ordinance**

Section 1.5 calls upon the Planning Board to make a statement concerning the applicable purposes of zoning and how the proposed amendment affects those stated purposes. Section 1.1 of the Zoning Ordinance outlines the statement of general purpose and then a list of fourteen (14) specific purposes. Those that are listed below were found to be inconsistent with this proposal (please see Section 1.1 for an entire list).

*Sec 1.1. Statement of purpose.*

*The zoning regulations set forth in this ordinance have been made in accordance with the town’s comprehensive plan for the purpose of promoting the public health, safety, morals, general welfare and the conservation of the natural resources of the Town of Exeter. They are designed to lessen congestion in the streets; to provide adequate light and air; to secure safety from fire, panic and other dangers; to prevent overcrowding of land; to avoid undue concentration of population; and to facilitate the parks and other public requirements. They are made with reasonable consideration, among other things, of the character of each district and its peculiar suitability for particular uses, and with a view to conserving the value of the buildings and encouraging the most appropriate use of land throughout the town, and to preserve and enhance the beauty of the community and the character of the neighborhoods.*

This statement of general purpose identifies that the zoning ordinance functions to implement the “conservation of the natural resources”. Additionally, the statement identifies the need to “encourage the most appropriate uses of land throughout the town, and preserve and enhance the beauty of the community and character of the neighborhoods”. The Planning Board feels that the proposed changes to the zoning ordinance do not work to accomplish these goals. Allowing by right solar in residential areas for specific lots, while weakening the requirements of the solar ordinance does not assist the town in furthering these goals.

*Further, the zoning regulations are developed and maintained for the following purposes:*

3. Provide for orderly growth and development which recognizes:

A. The goals and patterns of land use contained in the Exeter Comprehensive Plan adopted pursuant to Chapter 45-22.2 of the General Laws of Rhode Island;
B. The natural characteristics of the land, including its suitability for use, based on soil characteristics, topography and susceptibility to surface [water] or groundwater pollution;

C. The values and dynamic nature of freshwater ponds, the shoreline, and freshwater and coastal wetlands

D. The values of unique or valuable natural resources and features;

E. The availability and capacity of existing and planned public and/or private services and facilities;

F. The need to shape and balance rural development;

G. The use of innovative development regulations and techniques;

5. Provide for the protection of the natural, historic, cultural, and scenic character of the Town of Exeter or areas therein.

6. Provide for the preservation of agricultural production, forest (silviculture), aquaculture, timber resources and open space.

10. Promote a high level of quality in design in the development of private and public facilities.

11. Promote implementation of the comprehensive plan of the Town of Exeter adopted pursuant to G.L. 1956, § 45-22.2.

The Planning Board finds that the proposed zoning ordinance amendment does not recognize the values of unique or valuable natural resources, does not assist the town in shaping and balancing rural development, detracts from the town’s ability to protect the natural, historic, cultural and especially the scenic character of the town. Additionally, undermining the existing zoning ordinance by weakening the ability to protect the town and residents does not promote the use of innovative development regulations and techniques. Removing the lot coverage requirements and eliminating the zoning board review process will not assist the town in providing for the preservation of agricultural production, forest, aquaculture, timber resources or open space. Removing a part of the review process does not help the town ensure high level of quality in design in the development of private facilities. Finally, enacting ordinance changes that move away from conformity with the comprehensive plan cannot possibly help the town promote implementation of that plan.
**Proposed Solar Ordinance Amendments**

Specifically concerning is the applicant’s proposal in Section 11.1.A.7 to exempt solar panel areas from lot coverage calculations. The Zoning Board has established, through the review and decision (Attached as Appendix B) of two previous applications that are now built and operating, that the panels themselves contribute to the lot coverage calculation. This change is in direct conflict with the determination already made by the zoning board. It is also contradictory to the Planning Board’s current draft ordinance which counts the entire area occupied as counting towards lot coverage. In the Planning Board’s opinion, lot coverage’s purpose is not solely related to stormwater management. Lot coverage is associated with the amount of a parcel that is cleared for development, where habitat and natural resources are lost, in addition to the aesthetic quality of the developed lot and its ability to continue to contribute positively to the surrounding ecosystem. It should be considered because the lack of any maximum allowable lot coverage requirements for solar installations will mean that entire lots can be cleared and developed from setback line to setback line, a development benefit that is not offered to any other type of development in town. These proposed changes would allow clear cutting and covering of an entire parcel. No other type development is allowed that right, and lot coverage is used to proportionately develop the site while maintaining habitat and natural resources to the extent practicable.

The Planning Board has worked extremely hard, through the course of eight (8) draft amendments, to update the standards contained in the town’s solar ordinance to ensure the town and the residents are adequately protected from any adverse impacts. This proposed zoning ordinance did not take any of those amendments into consideration and selected those that the applicant saw as a potential benefit to themselves or equivocally neutral in their application process. It is the strong opinion of the Planning Board that this ordinance only benefits the applicant and not the town as currently proposed. The Planning Board has been working towards making the solar ordinance more consistent with the goals and policies of the Comprehensive Plan. This proposal moves that ordinance in the opposite direction, away from Plan consistency, by further weakening the requirements. For these reasons the Planning Board finds that this proposed amendment to the solar ordinance is not consistent with the Comprehensive Plan.

**Poor Planning Practice**

Special Use Permits can be a valuable tool to allow for certain types of development in zoning districts where they should not be allowed by right, but where they should be allowed under limited appropriate circumstances. Utility scale solar installations are a perfect example of an appropriate application for a special use permit.

It is the Planning Board’s position, after a tremendous amount of research and knowledge gained, that utility scale solar does not belong in residential zones. This position is supported by a petition of residents with 230+ signatures stating that they do not support utility scale solar in residential districts. The Planning Board has worked long and hard to revise the existing solar ordinance to reflect the current concerns with renewable energy installations statewide and also the local sentiment expressed concerning these types of projects. The Planning Board is advocating for a more comprehensive ordinance and this proposal significantly weakens the existing ordinance by removing the SUP requirement. SUP’s are a vital tool to ensure that the neighbors are provided a voice in the process.
Elimination of the SUP would equate to an elimination of that public neighborhood voice. The Planning Board does not support the removal of that public process.

Special use permits provide an opportunity for a case by case basis for site and project conditions that do not exist under other circumstances. The only benefit to removing the current special use permit requirement is as a benefit to the developer. There is a cost and time associated with obtaining a special use permit. The benefit to the town and the community is notification to the neighborhood, opportunity for public comment, ability for expert testimony, opportunity for the placement of conditions on the application, ability to mitigate negative impacts on the neighborhood, town and environment.

Removing the requirement of a special use permit for utility scale solar installations is poor planning practice in the opinion of the Planning Board. It is quite an appropriate tool for this application and should remain in place.

The Planning Board is searching for the logic in this proposal. The only answer they can conclude is that the removal of the SUP benefits the developer by removing public process, additional application time and additional application costs. What is lost is the ability for conditions by the zoning board to protect the town and neighbors in additional to the ability for neighbors to be notified and weigh in on the application. There does not seem to be any value in the removal of the SUP for the community.

**Spot Zoning**

It is the Planning Board’s opinion that this proposal may amount to spot zoning. The Planning Board raises this issue for consideration by the Town Council as they proceed on this application. The Board understands that not all spot zoning is bad on its face and that it must be looked at under the provisions of the community’s Comprehensive Plan. The Planning Board has provided several definitions of spot zoning below for consideration, understanding that additional legal research is needed on a more local level before a determination can be made conclusively.


> Spot zoning is the application of zoning to a specific parcel or parcels of land within a larger zoned area when the rezoning is usually at odds with a city's master plan and current zoning restrictions. Spot zoning may be ruled invalid as an "arbitrary, capricious and unreasonable treatment" of a limited parcel of land by a local zoning ordinance. **While zoning regulates the land use in whole districts, spot zoning makes unjustified exceptions for a parcel or parcels within a district.** *(emphasis added)*


> The “classic” definition of spot zoning is “the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners.”

> **Spot zoning is, in fact, often thought of as the very antithesis of plan zoning. When considering spot zoning, courts will generally determine whether the zoning relates to the compatibility of the zoning of surrounding uses. Other**
factors may include; the characteristics of the land, the size of the parcel, and the degree of the “public benefit.” Perhaps the most important criteria in determining spot zoning is the extent to which the disputed zoning is consistent with the municipality’s comprehensive plan. (emphasis added)

From Michigan State University Extension:
(www.msue.anr.msu.edu/news/how_to_spot_a_spot_zoning)

One illegal form of rezoning is spot zoning. This practice gets its name from the appearance of small spots of different zoning districts on a zoning map that otherwise has large contiguous areas in the same zoning district around the spots. To be considered a spot zone, the property, in most cases, must meet the following four criteria:

- The area is small compared to districts surrounding the parcel in question.
- The new district allows land uses inconsistent with those allowed in the vicinity.
- The spot zone would confer a special benefit on the individual property owner not commonly enjoyed by the owners of similar property.
- The existence of the spot zone conflicts with the policies in the text of the master plan and the future land use map (emphasis added)

It is the opinion of the Planning Board that potentially adopting spot zoning could open the town up to a liability. An aggrieved party could sue the town and the zoning amendment could be considered illegal and invalid. At the time of the drafting of this advisory, the applicant has not discussed or provided any valid benefit to the community with the adoption of their proposed zoning amendment. The Planning Board is concerned that this proposal provides a special benefit to a select few, that others do not enjoy. This proposal is contrary to the goals and policies of the Town’s Comprehensive Plan and therefore the Board has raised the issue of spot zoning for the Town Council’s consideration. The removal of the SUP on certain parcels circumvents the public process required for all other similar applications that were not handpicked by this proposed amendment. This essentially provides a special exception for a few at the cost of removing a part of the public process that provides public input and educated decision making.

Proposed “Project”

This presentation was made to the Planning Board as a “project” for 65 MW in Exeter. Previously the Planning Board raised the issue that there was no specific included as to where these sites where exactly and what the proposed installations would entail. The applicant has remedied part of that issue by selecting fifteen (15) sites specifically and listing them in the zoning ordinance as properties that are available for a special exception. We still have no knowledge of what the installations will entail on the specific sites as that information has not been provided.
Fifteen (15) parcels have been identified by the applicant (please see attached Appendix A). The other questions posed by the Planning Board in the first advisory opinion still remain unanswered and unsecured by contract. What exactly is the PILOT program being offered to the Town for tax dollars? What exactly is the scholarship fund proposed? How are we ensuring that the jobs really are being filled by Exeter residents as we have been told? The Planning Board recognizes that these are questions to be discussed with and by the Town Council and are raising the issue for consideration. The Planning Board believes that the proposed zoning amendments should be considered under the premise of what is in the town’s best interest, not how much money the applicant will be providing.

Additionally, the Planning Board questions the viability of the fiscal impact presented by Green Development as part of their initial presentations to the town. In those presentations Green Development made assumptions about the number of house lots that would be developed in place of their proposed projects and how much of a financial obligation those homes would create for the town. The numbers presented by Green Development are not in line with the numbers the Planning Board is accustomed to seeing related to fiscal impacts of residential housing and the Board would strongly suggest that the Town Council seek outside professional advice on those fiscal impacts presented before moving forward to ensure that their decision is based on factual information.

**Precedence of Approvals**

Precedence of approvals is a required order of business when an application or project requires approvals from more than one body of the municipal government. The required procedures are outlined in RIGL §45-23-61 as shown below:

§ 45-23-61. Procedure – Precedence of approvals between planning board and other local permitting authorities.

(a) Zoning board.

(1) Where an applicant requires both a variance from the local zoning ordinance and planning board approval, and the application is not undergoing unified development review pursuant to § 45-23-50.1 and the local zoning ordinance, the applicant shall first obtain an advisory recommendation from the planning board, as well as conditional planning board approval for the first approval stage for the proposed project, which may be simultaneous, then obtain conditional zoning board relief, and then return to the planning board for subsequent required approval(s).

(2) Where an applicant requires both a special-use permit under the local zoning ordinance and planning board approval, and the application is not undergoing unified development review pursuant to § 45-23-50.1 and the local zoning ordinance, the applicant shall first obtain an advisory recommendation from the planning board, as well as conditional planning board approval for the first approval stage for the proposed project, which may be simultaneous, then obtain a conditional special-use permit.
from the zoning board, and then return to the planning board for subsequent required approval(s).

(b) City or town council. Where an applicant requires both planning board approval and council approval for a zoning ordinance or zoning map change, the applicant shall first obtain an advisory recommendation on the zoning change from the planning board, as well as conditional planning board approval for the first approval stage for the proposed project, which may be simultaneous, then obtain a conditional zoning change from the council, and then return to the planning board for subsequent required approval(s). (emphasis added)

Section (b) above clearly states that when an applicant requires both planning board approval and council approval for a zoning ordinance change, the applicant shall first obtain an advisory recommendation on the zoning change from the planning board, as well as conditional planning board approval for the first approval stage for the proposed project. All of the proposed solar installations will require review and decision through the Major Land Development process, therefore each of the fifteen (15) parcels identified that will be developed as a utility scale solar installation through this amended zoning process, should be required to follow the precedence of approvals outlined in §45-23-61(b).

The intent behind this provision is to provide the town with a proper understanding of the project proposed by way of the first stage of review before the planning board prior to approving the associated zoning amendment. Towns should not be put in the position of having to vote on a zoning amendment, which is directly tied to the development of specific projects, without first fully understanding the scope of the proposed project. The law requires the applicant first present the project(s) to the planning board for a conditional approval before (or simultaneous with) the town approving the zoning amendment. Without this process being followed, the town is potentially approving a zoning amendment that makes projects allowed by right without any knowledge of the details or consequences of those projects.

The applicant has selected fifteen (15) residential lots for utility scale solar development as presented in their zoning amendment. Now that the actual lots have been identified, as opposed to the previous approach, which included 11,000 + acres of land affected by the zoning amendment, the applicant has clearly selected specific sites for development that will require planning board approval (through the major land development process) in order to be developed. This would effectively trigger §45-23-61. It is the opinion of the Planning Board that it may be a violation of state law to allow the zoning amendment to be approved without first requiring conditional master plan approval for each of the fifteen (15) potential projects.

**Summary**

For the reasons listed above, we the Planning Board, finds unanimously (4-0) that the proposed zoning amendment to the zoning ordinance use tables and the solar ordinance, submitted by Green Development, LLC, to be INCONSISTENT with the Comprehensive Plan of the Town of Exeter. We also find the proposed zoning amendments are INCONSISTENT with the Zoning Ordinance for the reasons stated in this advisory opinion.
According to Section 1.5 of the Zoning Ordinance “in the event the proposal is determined to be inconsistent with the Exeter comprehensive plan, the planning board shall recommend to the council that a public hearing be held to consider reviewing the comprehensive plan prior to any consideration of the proposed zone change.”

The Planning Board is recommending to the Town Council that a public hearing be held to consider reviewing the comprehensive plan prior to any consideration of the proposed zone change. Due to the considerable amount of inconsistency with the proposed amendment and the current Comprehensive Plan, the Planning Board feels that it would be appropriate for a public hearing to be held to discuss the magnitude of the amendments that would be required to the existing Comprehensive Plan to make it consistent with the proposed amendment if the Town Council is considering adopting the proposed amendment. The Planning Board feels that the premise and theme of the Comprehensive Plan would need to be altered in order for the proposed amendment to be found to be consistent and the zoning ordinance suggests this should be done by way of a discussion at a public hearing prior to consideration of the amendment itself.

The Planning Board has serious concerns with the removal of the SUP as part of the public process as that engages neighborhood participation. They believe that for utility scale solar, it is imperative to involve the neighbors in this process as much as possible to ensure their voices are heard and their concerns mitigated to the maximum extent practicable.

The Board also feels strongly that they have raised two (2) potentially serious legal concerns with the approach taken here and it is in the best interest of the town to thoroughly investigate those issues before moving forward with considering adoption of these ordinance amendments.

In closing, the Planning Board would like to express their support for renewable energy through the appropriate and thoughtful placement of solar facilities in town. The Board has worked very hard, and learned a tremendous amount in the process, on revisions to the existing solar ordinance. They feel strongly that the draft they have submitted for public hearing scheduled in July addresses the concerns of residents and still allows for reasonable solar facilities in Exeter that are sited and designed with the Town’s best interests in mind. Unfortunately, the proposed zoning amendments before the town undermine existing standards for review and water down the existing solar ordinance to further diminish its consistency with the Comprehensive Plan. The Planning Board thanks you in advance for your consideration.

NOTE: Voting members: Susan Littlefield
Robert Vierra
William Hass
Chris Palmer

Recused Members: Michael DiFrancesco
Frank DiGregorio
Donna Pari