

**EXTRA INFORMATION**

**Christine Joyce**

9/21/09  
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**From:** Paulina Knibbe [p.knibbe@comcast.net]  
**Sent:** Sunday, September 20, 2009 1:07 PM  
**To:** Manager Department  
**Subject:** [Fwd: Fincom Solar Panel Memo]

Could you please include the FinCom document as extra information for agenda item #10 (Green Communities Update).

Thank-you.

Paulina

----- Original Message -----

**Subject:** Fincom Solar Panel Memo  
**Resent-From:** <bos@acton-ma.gov>  
**Date:** Mon, 14 Sep 2009 14:29:34 -0400  
**From:** kabakoff, Herman <hkabakoff@cortroninc.com>  
**To:** Board of Selectman <bos@acton-ma.gov>  
**CC:** Steve Ledoux <sledoux@acton-ma.gov>, <abrsc@acton-ma.gov>, <smills@mail.ab.mec.edu>, <fincom@acton-ma.gov>, Karen Kucala <kkucala@acton-ma.gov>, John Murray <jmurray@acton-ma.gov>

Dear Board of Selectmen,

Attached is a memo discussing the Finance Committee's concerns regarding the proposed solar panel leases and installations. As we have discussed during the recent Fincom meetings this memo has been a work in process for some time. Every member of the Fincom contributed and it represents a unanimous consensus.

This email is being sent to communicate the Fincom's position only. All subsequent discussion should be conducted consistent with the Open Meeting Law.

Regards,

Herman Kabakoff  
Chairman  
Acton Finance Committee

September 11, 2009

## MEMORANDUM

**From:** Town of Acton Finance Committee

**To:** Town of Acton Board of Selectmen

**Subject:** Proposed Solar Panel Leases and Installations

**Background.** At a recent Special Town Meeting (STM) the citizens were asked to approve a warrant Article granting the Town consent to enter into leases as long as twenty five years for the purpose of installing solar panels on Town owned properties. The Board of Selectmen declined a request by the Town's Finance Committee to delay the presentation of the Article in order to allow time for proper vetting of the proposed installations, and late in the evening the Article was approved by the voters despite the unanimous opposition of the Finance Committee.

The Finance Committee's principal concern with the proposed Article was that no business plan had been presented for this twenty five year leasing program. Questions concerning the long term operational impacts of these installations, in addition to the financial concerns, were also not addressed in any but general terms.

In the absence of any financial or operational analysis, the Finance Committee was left with no choice but to raise a cautionary red flag by voting to not recommend the article; any other course of action by the Finance Committee would have been irresponsible.

It should be said that the Finance Committee supports efforts by the Town and interested groups such as the Green Advisory Board to advance the responsible use of energy resources and the protection of our environment.

At a subsequent meeting the Finance Committee agreed to prepare this intentionally brief memorandum summarizing what it believes to be the salient points upon which the Committee would have focused if this matter had been brought before it in a normal deliberative public hearing process prior to the STM. The listed concerns below are intended to be helpful to the Town leadership and administrators as they go about considering and negotiating the proposed solar panel leases.

The Committee's fundamental concerns came down to these:

**Business Case.** The proponents did not offer a business case showing what the financial opportunities and the downside risks might be. Consequently, it is not possible to determine what level of payback is to be expected from the solar panel installations. Since the actual amount the Town can save will be a net number after deducting all additional expense incurred in setting up and then living with the panels, there is no way to determine, from a financial point of view, if this is a pathway we should be pursuing.

Since we are recommending that the Town make use of qualified consultants for both legal and operational aspects of the solar panel program, the cost associated with such consulting support should be a factor in determining the Business Case. Before finalists have been identified and a long term arrangement has been determined, the Finance Committee should be involved in the selection process on a case by case basis.

**Term.** Twenty five years is a long time, and these contracts are being introduced in a market and technical context which are not static. During such a period it can be expected that the dynamics of the

energy markets will change, the technology of passive energy generation will improve, and our needs for our buildings will certainly change.

Twenty-five years assumes longevity for which the Town has no experience, especially when one considers that we cannot now predict that the Town would continue to use buildings as currently configured for that length of time. It therefore would be appropriate for the Town to have an escape clause built into the contract if our circumstances or those of the energy markets change enough to call for a reconsideration of the efficacy of the solar panel contracts.

**Advisory Support.** The Finance Committee feels strongly that our Town, including the school system, is more than competently managed by many dedicated and effective public servants. Our staff regularly achieves excellent results in a demanding environment. That said, it seems unfair of us to expect that our people can exercise the best available judgment in an area which is characterized by fast moving technologies, challenging engineering questions, and the long term implications of volatile energy markets.

We therefore would have earnestly recommended that the Town at an early stage retain third party consultants with all the requisite educational, professional, and experiential credentials necessary to provide guidance for our staff and our elected officials

We understand that good third party advice is expensive. There is a temptation for us to take more or less at face value what we are being told by prospective vendors/tenants about what is good for us and how much risk we are taking as we proceed. This temptation should be avoided, as self-interested advice could lead us to make significant errors of judgment. We should not seek to avoid the cost of expert assistance assuming that the vendor's representations can be assumed to be reliable. Even if staff had the time and expertise to develop a satisfactory analysis, Town Meeting is generally not persuaded by this approach as we saw with the Sewer Borrowing Article before the recent STM.

Our situation is not unique. We believe that there are other communities in eastern Massachusetts which will also be pursuing the opportunities for solar energy generation, and their circumstances will not be radically different from ours. Therefore it makes sense to seek a collective solution among our neighboring towns which would enable us to share the cost of advisory support for both up front evaluation and for downstream advice and counsel.

**Feasibility.** Our advisors should be able to provide us counsel as to which proposed vendors/tenants have the best technology, have the most solid capital base, and have the strongest track record with other customers in similar circumstances. These advisors should prepare our RFQ/RFP documents, help us make selections, and then work with us to evaluate each vendor's proposal.

**Engineering.** As individual sites around town, whether on open land or on rooftops, are proposed, the consulting engineers should be able to help determine which sites are likely to be the most effective, which have the least in the way of operational problems, and which are likely to have the least impact on their surroundings. The consulting engineers will need to evaluate thoroughly each proposed site or building individually. The cost of these evaluations can be expected to be between \$2000 and \$10,000 each depending on the circumstances, and we have over a half a dozen potentially suitable buildings on the Town side alone.

**Long Term Maintenance.** Roof membranes themselves have useful lives, and in most cases those remaining years of usefulness are likely to be less than the length of these proposed new leases. This means that at some point during the life of the lease, the roof on which the panels rest will have to be replaced. We should not expect to be able to tear off and replace an existing roof while preserving an active solar array. Depending on the size of the array, removing and reinstalling it could be quite

expensive. This would no doubt be an expense of the Town, not the vendor/tenant. Consequently these expenses should be estimated up front and built into the business model much like depreciation with appropriate set asides.

**Short Term Maintenance.** On an ongoing basis these roofs are platforms which are frequently used for the installation of heating, ventilating, and air conditioning equipment, electrical conduits, gas pipes, and sanitary sewer vents. Over the life of these leases the roofs and the equipment located on them will require regular maintenance, replacement, and repair. At various points in the next twenty five years we may wish to add wholly new rooftop installations in order to support activities inside the building. The potential for a conflict between these requirements and the lessee's solar panel installation is obvious.

We should expect that the exact constraints imposed on our maintenance staff by the presence of new energy installations are worked out in advance. For example, questions about how to get vehicles and lifting machinery up close to the installations, how to remove installation components inexpensively and efficiently, and how to perform routine tasks such as painting, patching, and minor repairs should all be worked out between the consulting engineers and town staff. Once those determinations have been made, they should become bedrock requirements of any relationship with the vendor/tenant.

**Legal.** With all due respect to our present counsel, it should be recognized that the law in this area is not fully matured. There are major law firms, such as Wilmer Hale, which are not only involved in this area, but are exercising leadership and helping the Commonwealth to develop new instruments and avoid pitfalls in the area of power contracting, especially involving third party passive generation installations. Accordingly we would expect that the Town would also look to engage supplemental legal services with firms having specific and meaningful experience in this area.

#### **Vendor/Tenant Selection Considerations.**

Finally there are questions as to whom we chose as our business partners. The leasehold arrangement involving the physical installation of substantial amounts of equipment in what is a tender environment creates a need for an active partnership between the solar panel owner/installer/tenant and the building owner. Over the years we will be carrying most of the long term financial risk of things not working according to plan.

It is essential therefore that the company with which we will partner be one of substantial heft and with the ability to field the necessary talent when things go awry. If we were dealing with the local electric utility company, we would know that we were dealing with a large, well capitalized company with hundreds or thousands of employees engaged in a closely regulated industry. If we are going to accept something less than that in our capacity as a municipality, we should do so only with all the due consideration for our role as fiduciaries, not entrepreneurs.

#### **Summary.**

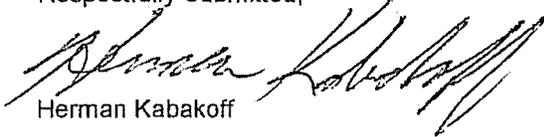
Going forward, we strongly recommend that any lease proposal related to this program be presented and vetted through the Finance Committee and, further, that the Finance Committee deliver to the Town Manager and the Board of Selectmen, its opinion with respect to any transaction under the program.

The Finance Committee and Town leadership must together identify the means to protect the Town's long term interests (assets) by assuring ourselves that the financial gain perceived as positive today does not become a long term preoccupation and burden.

The Finance Committee is duty bound to make itself available to assist the Town leadership in making its final decision, and while the Committee fully recognizes that the ultimate responsibility and authority

to enter into any such leases resides with the Board of Selectmen and the Town Manager, we all together share the view that the responsibility of the Town is to provide services requested by our citizens in a cost effective manner while preserving the town's assets and accommodating the citizens' values to the fullest extent possible. It is at this intersection of responsibility and accommodation that the Finance Committee finds itself as we make these recommendations.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Herman Kabakoff", written in a cursive style.

Herman Kabakoff

Chairman Acton Finance Committee