



Planning Board – Town of Spencer

Minutes

Planning Board Meeting

Tuesday, October 15, 2019 at 7:00 PM

McCourt Social Hall, 157 Main Street Spencer, MA 01562

Memorial Town Hall

Planning Board Members Present: Chair Jonathan Viner, Vice Chair Jeff Butensky, Robert Ceppi, Shirley Shiver, and Maria Reed

Planning Board Members Absent: None

Staff Present: Paul Dell'Aquila, Town Planner, Monica Santerre-Gervais, ODIS Senior Clerk

Staff Absent: None

1. Mr. Viner opened the meeting at 7:00 pm

2.) Minutes:

- **August 20, 2019**

MOTION: Ms. Shiver motioned to approve the minutes as submitted

SECOND: Mr. Butensky

DISCUSSION: None

VOTE: 5-0

- **September 17, 2019- Ms. Reed mentioned on page 7 of the minutes remove the word “this” at the end of the description in item 5. Also, on page 7 for the motion replace the word “withdrawal” with the word “withdraw.”**

MOTION: Mr. Ceppi motioned to approve the minutes with the discussed edits

SECOND: Ms. Reed

DISCUSSION: Ms. Shiver was absent for this meeting

VOTE: 4-0

Discussion: Mr. Viner asked the Planning Board members to discuss the ANR policy before proceeding with the ANR's. Mr. Viner pointed out that the ANR's that were originally submitted did not meet the ANR requirements. Ms. Shiver and Mr. Ceppi agreed that the applicant should have a chance to revise the plans before the meeting. Mr. Viner asked why the plans were stamped by the clerk if the plans were not correct because there is a section in the bylaw that states it will be reviewed by ODIS before it is stamped. Mr. Dell'Aquila quoted the subdivision regulations section 1. Approval Not Required (ANR) Plan, C. Approval Process: 2. *“Applications shall be submitted to the Office of Development & Inspectional Services. The application and plan will be reviewed by the Office, including by the Wetland/Soil Specialist, and when determined to be complete shall be taken to the Town Clerk for stamping for the purpose of commencing the official timeframe for action by the*

Planning Board. Applicants with incomplete applications will be notified by ODIS within 2 days of receipt of the application with incorrect or missing items, whereupon the process will be put on hold until a modified plan is submitted. The application will be listed on the next available agenda of the Board for consideration, in compliance with the deadline schedule established by the Board.” Mr. Dell’Aquila stated the process will be adhered to for this requirement moving forward.

3. ANR’s:

- **Paxton Road, Laureldale Family Trust/ Spencer Assessor’s Map: R45-7**

Mr. Dell’Aquila stated that the existing 169.76 acre parcel on the west side of Paxton Road is part of the former Andrews Farm and is currently undeveloped. The applicant is proposing to create a 1.76 acre parcel out of this land for purpose of a single family home building lot and the existing parcel is currently under Chapter 61A protection. Mr. Dell’Aquila said that both the ANR plans tonight are owned by Laureldale Family Trust and edits were made from the original plan submission. For both plans the remaining area needed to be specified, the new lot lines to be bolded, and the chapter 61 designation needed to be on the plan. Dale Davies, 170 Paxton Road, stated that the land is staying in the family and her mother is getting older and cannot stay alone. Ms. Davies explained that they are cutting a portion out of the land to build a house so that her sister can be closer to the mother. The farm will remain the farm. Mr. Ceppi asked about the barn on the lot and if it could be considered the primary use. Ms. Davies said she asked that question when she filled out the paperwork for the ANR’s and was told it would be fine.

MOTION: Ms. Shiver motioned to approve the ANR for Paxton Road Parcel R45-7

SECOND: Mr. Butensky

DISCUSSION: Mr. Ceppi stated that he does not agree that the surveyor could not put the remaining lot size on the plan. Ms. Shiver agreed and said he could have used plus or minus with the remaining size. Mr. Dell’Aquila stated the plan is compliant but vague. Mr. Viner stated that an Assessor’s map with the parcel outline would have been acceptable. Ms. Shiver stated that if this was just a boundary line adjustment than they would have sufficient land and the importance of the remaining land is that they would have enough land. Mr. Ceppi said it is good practice to have the remaining acreage on the plan. Ms. Shiver pointed out that the remaining frontage was listed. Mr. Dell’Aquila said that any future lots will need the additional information. Mr. Viner added that he would like to see the Assessor’s map for both plan recorded with the plan and Mr. Dell’Aquila said ok.

VOTE: 4-1 (Mr. Ceppi opposed and did not sign the plan)

- **170 Paxton Road, Laureldale Family Trust/ Spencer Assessor’s Map: R45-10**

Mr. Dell’Aquila stated The existing 48.52 acre parcel on the east side of Paxton Road is part of the former Andrews Farm and is currently developed with a house and multiple farm buildings at the northern end of the property. The applicant is proposing to create two new lots – “A” & “B” out of the existing parcel. Parcel A is a 1.61 acre parcel incorporating the existing residence at 170 Paxton Rd. and an adjacent barn. Parcel B is a currently vacant 1.43 acre parcel that would be developed with a single family home. As with the ANR discussed above, the existing parcel is currently under Chapter 61A protection.

For both plans the remaining area needed to be specified, the new lot lines to be bolded, and the chapter 61 designation needed to be on the plan. Mr. Ceppi felt that parcel 6 on the newer plan was now non-conforming and Ms. Davies stated they did not change the size and it has been that way since 1920. Ms. Shiver said they are dividing parcel 7 to make lot 1. Mr. Ceppi said it was confusing because they bolded the lot and they are only supposed to bold the new lots not the old lots. Mr. Dell'Aquila said that there aren't any structures on the lots. Mr. Butensky pointed out that they did not list the remaining frontage but listed the remaining lot size. Mr. Ceppi stated that the frontage would have been easy to figure out.

MOTION: Ms. Shiver motioned to approve the ANR for Paxton Road Parcel R45-10

SECOND: Mr. Butensky

DISCUSSION: Mr. Viner added that he would like to see the Assessor's map for both plan recorded with the plan and Mr. Dell'Aquila said ok.

VOTE: 5-0

4. Amendment to Stormwater Permit/Major Site Plan Extension – Applicant: ZPT Energy Solutions II, LLC; Owner: Demeter Realty Trust C/O Brendan Gove. Location: 103 N. Spencer Road, Spencer Assessor's Map R49/1/1. The property is located within the Rural Residential zoning district. The applicant is applying for an amendment to the existing site plan, originally approved July 13th, 2010, under Spencer Zoning Bylaw Section 4.3.4 (Major Utility).

Mr. Dell'Aquila stated that the applicant is requesting an amendment to a Site Plan & Stormwater Permit for the proposed solar array at 103 North Spencer Road. The project was originally approved in 2010 before the adoption of our current solar bylaw. After a succession of owners and inactivity, the current owner applied for an extension to the previous site plan last year, which the Board granted, along with a storm water permit. After discussion at the last meeting, a number of outstanding issues were identified such as; Battery Setup (Literature describing operating hours), Chief Robert Parsons was on vacation and did not get a chance to review and respond to the new battery information and revised site plan by the time of the meeting, decommissioning recommendation from manufacturer was submitted, the applicant provided a battery decommissioning estimate of \$16,875 from Clean Energy Development, LLC, and Snowmobile trail/ Mr. Dell'Aquila to review previous applications with trail access (15ft of space between trees and fence). In addition to the 25-foot setback along the southern edge of the property, it appears that there is at least 15 feet between the existing tree line and the proposed fence line of the solar field. However, it is not clear on the plan whether or not snowmobiles could access the site from Rt. 31. Mr. Dell'Aquila did not note that snowmobile access was discussed as part of the proposed project behind 369 Main Street, however, no specific condition was imposed, nor were there any notations on the site plan.

Harold Reader, ZPD, explained that this was his 3rd time meeting with the Planning Board and discussed in more details the information Mr. Dell'Aquila had reviewed. The changes to the plan included moving the fence back 25 feet from setback, moved fence line in South to allow snow mobile access, PLS stamp on the plan, added the detail for 6" gap under fence, provided the panel and racking detail and the panels won't exceed 8 feet, provided documentation on the operating hours from National Grid, provided confirmation of decommissioning estimate from contractor, and provided sound emission from the battery storage unit. Mr. Reader said that the

additional material and revisions address the Planning Boards concerns and the array will comply with all of the current solar bylaw requirements except for the 50% land coverage. Mr. Reader stated it will have a safer access road, added basin for runoff, decommissioning bond, acoustic analysis, and the plan is better than what was originally approved.

Mr. Viner asked about the HVAC unit containments acoustical study being at 70 decibels at 5 feet. Mr. Viner added that even though the operating hours are listed as 5:00 am- 7:00 pm the HVAC unit could possibly run all the time to maintain the temperature. Mr. Reader said the system will regulate itself but will kick off at night and could provide acoustic analysis for that. Mr. Viner stated that 70 decibels in an open field will make noise and Mr. Viner suggested a noise jacket and Mr. Reader said he could look into it. Mr. Viner said they need a structure to mask all this. Mr. Reader said if the acoustic analysis comes back they will mitigate the issues. Ms. Shiver asked if there were decibel limits in the Spencer Bylaws and Mr. Reader said yes the ambient limit is 10 decibels. Ms. Shiver asked if they will be installing with the same manufacturer and Mr. Reader said yes. Mr. Viner feels it would be worth revising the acoustic procedure to address sound issues created by the HVAC unit, there should be a pre and post analysis, but unsure of how to assess properly. Mr. Dell'Aquila responded that the applicant's acoustical analysis states that readings will be taken at five locations of nearest residences and submitted and asked if Mr. Viner wants to see more and Mr. Viner said no. Mr. Viner asked if the readings would be taken a different time periods and Mr. Dell'Aquila said yes. Mr. Viner asked the length of the tests and Mr. Dell'Aquila answered 20-30 minutes. Mr. Viner felt that the length of the tests was too short because the unit could shut off for 20 minutes. Mr. Reader stated that the procedure was similar to previous projects that were approved. Mr. Viner said he understood that acoustic studies have been approved in the past but the battery storage is new and Mr. Ceppi agreed.

Ms. Shiver asked if the application is considered an amendment from the original submittal. Mr. Dell'Aquila said yes because if it is considered as a new application than the applicant cannot build under the new solar bylaws, however, the original approved project did not require decommissioning bond, Stormwater bond, the new basin for drainage and the acoustic analysis. Mr. Ceppi asked if the solar array was the same size and Mr. Reader said yes. Mr. Ceppi stated that some of the changes presented are better than the original submittal and in his opinion the Planning Board needs to review what's best for the town Mr. Ceppi said they need to review the pros and cons and make the conditions accordingly because if they deny the application before them then the applicant can build what was previously approved and Mr. Reader agreed. Mr. Ceppi stated that the biggest issue is the battery storage. Ms. Shiver stated there is a risk even with the acoustical study. Mr. Reader replied that the battery storage would be in a self-contained storage unit. Mr. Viner asked if two HVAC units sit on outside and Mr. Reader said yes. Mr. Ceppi said it's basically a box and Mr. Viner said like a conex box. Mr. Ceppi asked about the fire protection and if the unit was self-contained. Mr. Reader replied that it is a clean agent NOVAC 1230 and read aloud guidance on fire control. There was much discussion about heavy water being used on the unit but not opening the container. Mr. Reader said the Fire Department would let it burn. Mr. Ceppi said there isn't any water onsite to cool the outside of the container. Mr. Viner said possibly a water main and Mr. Ceppi said a tanker truck can flood it. Mr. Ceppi asked if the Fire Fighters gear is sufficient because shock may be an issue and he would like more response from the Fire Chief for safety.

Ms. Shiver asked about the applicant playing something at the meeting that would match the sound decibels and Mr. Reader said he understood the need for the acoustical study. Mr. Viner asked how close the battery storage unit will be to the property line and Mr. Reader said it's at least 50 feet with the 25 foot buffer and on the plan it says 56 feet. Mr. Reader stated that during the initial meeting with the Fire Chief he was aware of the fire suppression management and he had no major concerns during their meeting.

Mr. Viner stated that this original plan received a special permit for the use by the Zoning Board of Appeals (ZBA) and a site plan approval from the Planning Board, therefore, MR. Viner feels that the ZBA should have a say in this application. Mr. Dell'Aquila stated that the ZBA approved the use for the permit and the Planning Board is reviewing an amendment to the site plan. Mr. Reader stated the Planning Board can add conditions that they need final approval from the Building Inspector and the Fire Chief. Mr. Viner said he believed that the ZBA had a condition on the width for the snow mobile access and remembered reading that at the last meeting. Mr. Dell'Aquila said he will research the special permits to see if that was a condition but reminded Mr. Viner that the ZBA approved the use and the Planning Board is responsible for the site plan and Stormwater. Mr. Viner believes that the ZBA needs to weigh in on if the battery storage changes the use they approved because he feels that the battery storage changes the use and had it been originally submitted the ZBA may have denied it. Mr. Dell'Aquila said Town Council can weigh in on the matter. There was discussion on when the Planning Board because the authority for the use of the solar projects. Ms. Shiver agreed with Mr. Viner and believes the ZBA should have a role in the decision and if legal council agrees than the applicant will have to go before the ZBA.

Mr. Viner opened the hearing to the public:

Jim Sadusky, 104 North Spencer Road, stated that he feels it is a poor location for the battery storage. Jim Sadusky asked where the water will go to if the system needs to be suppressed because there is only one storm drain and will ultimately end up on his property. Also, Jim Sadusky feels that the original plan isn't making enough money for the company and that is why they are amending the site plan.

Matt Defosse, 7 Paul's Drive, stated that he urges the Planning Board to look at the plan submitted in 2010 and compare it to the new plan because it's obvious that it is a new plan and thinks it would be a horror show if the Planning Board allows this amendment and would set a negative impact for the town.

Gary Sadusky, 102 North Spencer Road, agrees with Mr. Defosse that the plan submitted for this application is a new plan and feels the battery storage unit will be too noisy and the Planning Board should not consider approving the amendment.

Tanya McCauley, 28 McCormick Road, asked if the batteries were burned how will they be disposed and Mr. Reader answered that the batteries can be recycled and they are considered universal waste. Ms. McCauley asked if there was a decommissioning bond for the batteries and Mr. Reader answered \$17,000 for the batteries and \$55,611 for the solar project. Ms. McCauley

stated that she has been doing research and the amount is too low. Mr. Viner stated that it would be \$117,000 for everything and Mr. Ceppi felt that \$17,000 was sufficient because they can just drive the box away. Mr. Viner asked what the batteries shelf life was and Mr. Reader stated they have a 20-25 year battery life.

Mr. Defosse asked if the decommissioning bond was reviewed by a third party and Mr. Viner said yes. Mr. Defosse felt the amount was too low and asked if the third party reviewer had the Town in their best interests. Furthermore, Mr. Defosse asked if the amount is too low wanted to know who pays the balance. Mr. Ceppi stated that the decommissioning bond will come before the Planning Board every 5 years to make sure it is current. Mr. Defosse stated that he feels it is premature to approve the battery storage without additional money for the decommissioning bond because the towns' people should not have to pay if the amount is insufficient. Mr. Dell'Aquila stated that the land owners are responsible for the project and the bond will be reviewed every 5 years. Mr. Ceppi replied that the bond is based on prevailing wage rates and it would be in the applicant's best interest to do it themselves to save money. Mr. Viner noted that a PLS stamp needs to be on more than one page of the plan and should be on every page that has property lines. Mr. Reader said the PLS stamp is on the second page but can have the stamp put on all the pages.

Mr. Dell'Aquila noted what items needed to be addressed for the next meeting:

1. Clarification from Town Council
2. Clerical items in Lenard Engineering report
3. Fire Chief review with comments
4. Snowmobile trail/ Mr. Dell'Aquila to review previous applications with trail access
5. PLS stamp
6. Regulations on sound and additional Acoustic Analysis
7. Potential Sound Mitigation
8. Emergency Response Concerns

Ms. Shiver stated that she is confused on where this is going and asked if the Planning Board was moving forward to approve or deny. Mr. Viner stated they are evaluating on whether it is an amendment to the site plan or a new submittal. Ms. Shiver stated they heard quite a lot of public feedback regarding that.

George Kiritsy, 294 W Boylston St, West Boylston, MA, stated that he is ZPD's Attorney and the plan before them is an amendment to the original approval. Mr. Kiritsy stated that the amendment is better than the original plan but if this does not get approved the applicant will build the original plan. Furthermore, Mr. Kiritsy agreed that batteries can be concerning but the plan is better than the original submission and agrees with the Town Planner that the use has already been approved. Mr. Kiritsy added that most of the issues can be conditioned and the applicant has already stated they will mitigate the sound and the fire suppression has specific guidelines.

Mr. Defosse stated he did not agree with Mr. Kiritsy and that the plan is much different than the original submission. Mr. Defosse suggested that the reason why the applicant wants the battery

storage is for more money and there are too many unknown on the batteries and the Planning Board should wait for the Solar Bylaw Committee and Board of Selectmen to propose the updates to the solar bylaw. Mr. Ceppi said he votes it's an amendment and it would be beneficial to the town. There was much discussion about the pros and cons with the applicant's new submittal versus the approved plan.

Mike Dow, 97 North Spencer Road, what is the neighborhood supposed to do if the sound is too loud call the Board of Health? Will the applicant have a chance to measure the sound in all types of weather? Mr. Dow said the applicant would need to put up a 3-sided wall to block the sound and wants the issues taken care of now and not later. Mr. Viner asked if the unit would need to be heated since it runs year round and Mr. Reader said the batteries produce heat so they would only need the HVAC to cool down. Mr. Dow asked what would happen if the power went out and the HVAC units lost power? How long until the units overheat? Mr. Reader said the units are self-monitoring and the time would be minimal because a technician would be alerted. Mr. Ceppi asked if the units shut down at a certain temperature and Mr. Reader said he was unsure. Mr. Butensky asked how far the technicians were from the site and Mr. Reader said the technicians are 24 hour service and will notify emergency officials within the hour. Mr. Ceppi asked if there were 2 HVAC units or 1 and if the power was hooked up to the panels and Mr. Reader stated that it is not currently configured that the power comes from the panels. Mr. Viner said power should go both ways with a smart meter.

Mr. Dow stated that there is hay there now and wanted to know if they will poison or allow it to grow and Mr. Reader stated the grass will be allowed to grow and it will be maintained. Mr. Viner asked if they will be using a new seed mix and Mr. Reader answered what is there now will stay. Ms. Shiver stated there is a pollinator mix and Mr. Dell'Aquila said the Conservation Commission has a list.

MOTION: Ms. Shiver motioned to continue the hearing until November 19, 2019

SECOND: Ms. Reed

DISCUSSION: None

VOTE: 5-0

***** Short Recess*****

5. Continued Public Hearing – Amendment to an approved definitive subdivision plan – Sunset Holmes, Applicant/Owner: James Laney/ 123 KIDS, LLC, Location: Sunset and Holmes Street off of Greenville Road, Spencer (Assessors Map U06-117-1, U06-117-2 & U06-152).

James Laney, 123 Kids was present for the meeting.

Mr. Dell'Aquila mentioned per the Planning Board's direction, and with Town Counsel's input, a letter was sent for bond reinstatement to Mr. Laney via both certified and regular mail. In the past week, prior to sending the letter, Mr. Laney left me a voicemail saying that he has retained Precision Paving Company, who would be able to do grinding and a base coat on the segment of Holmes Street by the end of October, and then do a top coat in the spring. Mr. Dell'Aquila spoke with Eben Butler at Utilities and Facilities, who said he had discussed several options with Mr. Laney, but that it wasn't resolved on how much should be milled. Further, Mr. Butler expressed a

concern about leaving raised structures through the winter. After discussing this with Mr. Laney he said that indeed he could “force” the paver to also do the top coat right after the grinding & base coat, but that given the unpredictability of temperatures as we go through the month, the top coat might not set properly and thus have to be redone anyway. Mr. Laney said he could also have any raised structure “mounded” so that they do not protrude any more than they do currently.

Mr. Laney stated that Mr. Butler spoke to Precision Paving and they have come to an agreement and topcoat will be in the spring. Mr. Viner asked how much of a base and Mr. Laney said 2. Mr. Viner asked how much for the top and Mr. Laney said 1 ½ inch. Mr. Viner asked if it will be reclaimed or just milling and Mr. Laney said milled. Mr. Ceppi asked if they will be re-using what is there and Mr. Laney responded they will be removing and replacing. Mr. Viner said that reclamation breaks up the asphalt and goes 6”-12” and milling is when they grind the top and don’t touch the base below.

Mr. Viner asked about Lenard Engineering’s proposed estimates to complete the road and Mr. Laney said he has not had a chance to review but Mr. Butler has been there and telling the paving company what to do. Mr. Ceppi asked if there was a contract with the paving company that they can review and Mr. Laney said not yet. Mr. Viner brought up the bond options and recommendations for the road from Lenard Engineering and felt that milling of the road falls short of that. Mr. Laney said that Mr. Butler has been present to represent the town and has been telling the paving company what needs to be done. Mr. Dell’Aquila said that Mr. Butler is aware of what needs to be done and wants the road accepted, plus the Highway Department will report to the Planning Board, and third party will review. Mr. Laney said manholes are being fixed too. Mr. Viner asked about what is stated in the Subdivision Regulations for the road acceptance. Mr. Butensky asked if the topcoat is for the spring because of the winter and Mr. Laney said the paving company does not like to do a topcoat this time of year because the weather is too unpredictable. Mr. Viner said they will be taking off what is there now and putting down new and mounding around the manholes so the plows won’t hit them. Mr. Dell’Aquila read aloud the roadway construction standards in the subdivision regulations section 3.5.B.F.6 *“The completed gravel foundation shall be covered for the full width of the roadway with a 2.5 inch base course and a 1.5 inch top course of “Type I” bituminous concrete. Wherever necessary, a “Cape Cod” berm will be installed.”* Mr. Viner stated there are elements to the road base that need to be addressed. Mr. Laney said there are some settling spots but the road is not in that bad of condition compared to other roads in town.

Mr. Viner asked about the box culvert and Mr. Laney said it will be repaired. Mr. Viner asked about the berm and Mr. Laney said it will be fixed and that Mr. Butler is on his game. Ms. Shiver asked about surety and Mr. Laney said he is speaking with the bank. Ms. Shiver asked about the amount and Mr. Laney said \$118,000. Mr. Dell’Aquila said that Lenard Engineering had two scenarios 1 was more robust at \$255,000 and one was lesser at \$171,000. Mr. Dell’Aquila suggested whatever the contract states for the paving job should be the surety plus 10% and Mr. Viner disagreed because it’s not prevailing wage. Mr. Dell’Aquila said hopefully in the end the issue is moot and the road is repaired and accepted. Mr. Viner said that the \$118,000 would cover the spring topcoat and Mr. Dell’Aquila said that number was previously bonded for surety. Mr. Laney said he will forward to Mr. Dell’Aquila anything he receives from the bank and Mr. Dell’Aquila stated he will then forward everything to the Planning Board members. Ms. Shiver asked what actions the Planning Board needs to do. Mr. Viner stated he wants a copy of the scope of work. Mr. Dell’Aquila asked if they would want to continue the meeting to next month and does Mr. Laney need to re-appear? Also, recommends that Mr. Laney provides updates and Mr. Viner wants to be notified when the work would take place.

Mr. Viner opened the hearing up to the public and there were no comments.

MOTION: Ms. Shiver motioned to continue the public hearing until 11/19/2019 and for Mr. Laney to provide update and additional information as discussed to the Planning Board

SECOND: Mr. Butensky

DISCUSSION: Mr. Dell'Aquila will share any new information with the board as it becomes available

VOTE: 5-0

6) 20 McCormick Road- Solar Decommissioning Bond

Mr. Dell'Aquila stated that the applicant has submitted for the Planning Board's review and approval for a surety bond in the amount of \$248,988.82, per the conditions of approval dated November 20, 2018. Town Counsel, Jonathan Eichmann, reviewed the bond and had the following comments:

- This looks pretty good but I am curious about paragraph 3 providing for cancellation of the bond "prior to the renewal date". I don't see provisions for renewal or a "renewal date" in the bond. If this is boilerplate it should be removed.
- Otherwise, a certificate of authority and vote should be provided by the surety for its signatory.

Additionally, FYI, the Town has also received the following feedback from KP Law about bond formats, generally:

"(B)oth a bond and a cash surety provide protection for the Town. However, where a cash surety is immediately available generally subject only to the Town's discretion, a bond is subject to review by the surety company. Depending upon the form of the bond, the Town may need to go through certain prescribed steps before being able to receive the benefit of the bond. The bond does have an advantage in that the surety company will place pressure on the company to comply with its obligations, since the surety company does not want to pay out on the bond. In addition, the company does not want to obtain a poor bond rating, which may impact future projects. Further, under the bond the surety company would be able to obtain a completion contractor to complete the work without proceeding with a procurement process, whereas the Town in making use of a cash surety would need to comply with the applicable procurement laws.

In the end, the decision is a business determination for the Town. While a cash surety does appear at first glance to provide benefits, the Town would need to manage the use of that cash and oversee the completion of project, being the repair or removal of the solar installation. A surety company would have that obligation, but the Town would need to follow the bond requirements."

Mr. Ceppi asked what the size difference is between the previous solar farm and 20 McCormick and Mr. Dell'Aquila said it was 5 times larger. Mr. Viner asked how they came up with the number and Mr. Dell'Aquila said it was peer reviewed and this decommissioning estimate was approved. Mr. Butensky asked that there were a couple of projects in the process that we didn't make the bond cash and wanted to know if this was one of those projects and Ms. Shiver said yes. Mr. Viner asked if they are deciding on the form of surety or if the bond is ok. Mr. Viner asked if the response from KP Law was sent to the applicant and Mr. Dell'Aquila said yes, however, Mr. Schwartz commented that he has not seen the response from KP Law.

James Schwartz, Independence Solar/ Land Owner, explained they are prepared to revisit the bond amount every five years, there is a requirement for them to keep the bond and if the bank cancels then they will submit with a new bond. Mr. Ceppi asked if they can't get a new bond does the Planning Board shut down the solar array and Mr. Schwartz said yes. Mr. Viner said that they have the ability to fine them \$300.00 per day and they can contact the liaison from National Grid. Mr. Viner asked about an irrevocable bond and what would prevent a new bond with an additional amount and Mr. Schwartz answered they would lose their premium. Mr. Viner stated that he needed a response to Town Councils comment and Mr. Schwartz said he has not seen it. Mr. Viner stated its number 16 and would need clarification. Mr. Viner asked if approval could wait until next month and Mr. Schwartz said it is holding them up getting a building permit and starting construction. Mr. Dell'Aquila said he can forward to Town Council and Planning Board can vote conditionally to approve.

MOTION: Ms. Shiver motioned to seek legal approval with item 3 and 16, approval subject to legal council approval, and Town Planner to sign

SECOND: Mr. Butensky

DISCUSSION: Mr. Dell'Aquila will share updated copies

VOTE: 5-0

7.) Town Planner Report

- **Planning Board policies and procedures-** Mr. Butensky asked about the clarity on the term limits and Mr. Dell'Aquila stated that the Town Administrator act of 1995 didn't specify terms and lengths, the current Town Administrator, Tom Gregory, is ok if the Planning Board members want 3 or 5 year terms. Mr. Dell'Aquila pointed out that if the terms are approved that the correct meeting date will be added to the rules and procedures.

MOTION: Ms. Shiver motioned to accept the rules and procedures for the Planning Board with discussed edits

SECOND: Ms. Reed

DISCUSSION: None

VOTE: 5-0

- **22 Norcross Road-** Mr. Dell'Aquila handed out the signature page for the Certificate of Decision for the approval to 22 Norcross Solar to withdraw without prejudice and the members signed the decision. Mr. Dell'Aquila said that a new application was sent in and they will come before the Planning Board at the November meeting.

- **Upcoming Project-** Ash Street Solar farm/ Subdivision will come before the Planning Board at the November meeting.
- **Fall 2019 Workshops-** Mr. Dell'Aquila handed out upcoming workshops that the Planning Board may be interested in attending and stated they would be reimbursed if they choose to go.

8.) Board Liaison-

- **Solar Committee-** the Solar Bylaw Committee and the Board of Selectmen will have a workshop in December. Mr. Butensky asked if the Planning Board was waiting to discuss after the workshop and Mr. Dell'Aquila said he was tasked to go through the packet and give the Town Administrator recommendations/comments. The Planning Board will review after the workshop but may review before then.
- **Open Space-** Mr. Butensky said he missed the first meeting and the next meeting is October 30, 2019 at 6:30 pm.
- **Economic Development-** Ms. Shiver said that the last meeting was September 28, 2019 and spoke about the grants the Town of Spencer was receiving. Briefly discussed the types of grants, the Spencer Street pARTy, and the potential for Main Street development.

9.) New Business- CMRPC meeting regarding Solar on November 14, 2019

MOTION: Mr. Viner motioned to adjourn the meeting at 10:08 pm

SECOND: Mr. Ceppi

DISCUSSION: None

VOTE: 5-0

Submitted by: Monica Santerre-Gervais ODIS Clerk

Approved by the Planning Board on: 11/19/2019

List of Documents used on October 15, 2019

Items sent to Planning Board prior to Meeting by email/ print outs:

- Agenda
- Memo emailed from Paul Dell'Aquila to Planning Board
- (2) ANR applications and plan for 170 Paxton Road/ Paxton Road, Laureldale Family Trust
- Minutes: August 20, 2019 and September 17, 2019
- Site Plan Amendment-103 North Spencer Road solar Farm, updated plans, Peer Review, battery operating hours, and updated battery decommissioning total
- 20 McCormick Solar Farm Decommissioning Bond
- Spencer ESS Safety Guidance Package
- Certificate of Decision for 22 Norcross Road

Items submitted at the Meeting:

- None