



Planning Board – Town of Spencer

Minutes

Planning Board Meeting
Tuesday, February 16, 2021 at 7:00 PM
McCourt Social Hall, 157 Main Street Spencer, MA 01562
Memorial Town Hall- **Remote Meeting**

Planning Board Members Present: Chair Jonathan Viner (remote), Vice Chair Jeff Butensky (remote), Robert Ceppi (remote), and Maria Reed (remote) Paul Gleason (remote)

Planning Board Members Absent: None

Staff Present in-person: Todd Miller, Town Planner (remote)

Staff Absent: Monica Santerre-Gervais, ODIS Senior Clerk

1. Mr. Viner opened the meeting at 7:07 pm and read aloud Covid-19 statement. *“This Meeting of the Planning Board is being conducted remotely consistent with Governor Baker’s Executive Order of March 12, 2020, pursuant to the current State of Emergency in the Commonwealth due to the outbreak of the COVID-19 Virus. In order to mitigate the transmission of the COVID-19 Virus, we have suspended public gatherings, and as such, the Governor’s Order suspends the requirement of the Open Meeting Law to have all meetings in a publicly accessible physical location. We are meeting remotely and broadcasting live on Spencer Cable Access to ensure public viewing access.”*

2. Approval of Minutes: 11/19/2020, 1/19/2021, and 2/02/2021

- **11/19/2020-** was revised due to a typo.

MOTION: Mr. Butensky motioned to approve the minutes of 11/19/2020

SECOND: Ms. Reed

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, and Mr. Viner all voted aye, and the motion was carried (vote 4-0 motion carried)

- **1/19/2021-** no question or concerns mentioned.

MOTION: Mr. Ceppi motioned to approve the minutes of 1/19/2021

SECOND: Mr. Butensky

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, Mr. Gleason, and Mr. Viner all voted aye, and the motion was carried (vote 5-0 motion carried)

- **2/02/2021-** no question or concerns mentioned.

MOTION: Mr. Butensky motioned to approve the minutes of 2/02/2021

SECOND: Ms. Reed

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, Mr. Gleason, and Mr. Viner all voted aye, and the motion was carried (vote 5-0 motion carried)

3. ANR- Mr. Viner wanted to discuss the Arista Development/ 13 Pleasant Street, 101 Main Street before the 8 High Street

MOTION: Mr. Ceppi motioned to swap the first two ANR's.

SECOND: Mr. Butensky

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, Mr. Gleason, and Mr. Viner all voted aye, and the motion was carried (vote 5-0 motion carried)

- **Arista Development/ 13 Pleasant Street, 101 Main Street-**

Phillip Stoddard, Attorney representing Arista Development, was present, as well as, Doug Benoit, Project Manager, and John Llyod, Surveyor, is on the call as well. Mr. Stoddard stated that the plan is to create two conforming lots out of an existing parcel. Mr. Butensky asked the specifics that the ANR does in referencing the lots on the map. Mr. Stoddard said it's an existing parcel and they are dividing it into two conforming lots, lot B 1 is where the Old Santander Bank, and lot A 1 is going to be consolidated on the next plan into a larger parcel. Mr. Butensky asked if this is just creating one and Mr. Stoddard said two lots. Mr. Benoit said it was creating two lots out of two existing parcels. Mr. Benoit said the bank building straddles the property line and there are two lots owned by that owner. Mr. Benoit said the CVS project is buying apportion of the Southern lot to divide that existing lot into the two lots that we need to create. Also, Mr. Benoit said they are creating one new lot that the bank will sit on. Mr. Butensky asked if lot B 1 would be part of the CVS project and Mr. Benoit said no. Mr. Stoddard said he met with the Town Planner and he said he was fine with what was submitted. Mr. Miller agreed and said he did not find any issues that were worth noting but mention they next ANR are designed to interlock with each other. Mr. Viner agreed and said that is why he wanted to switch the two agendas order.

MOTION: Mr. Ceppi motioned to approve the ANR as submitted

SECOND: Mr. Gleason

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, Mr. Gleason, and Mr. Viner all voted aye, and the motion was carried (5-0)

- **Arista Development/ 8 High Street, 95 & 101 Main Street**

Mr. Miller stated the ANR is straight forward and is the consolidation of 4 lots, designed to interlock with the previous ANR that was just approved, and existing structures are listed as "marked to be raised" and would recommend that this be a condition of approval. Mr. Stoddard concurred with Mr. Millers

synopses and said the ANR plan is to create one contiguous lot and the buildings being raised condition would be fine for the applicant. Mr. Viner mentioned that his concern that the plan has different lots with existing uses already on them so by joining all the lots the Planning Board is creating a larger, non-conformity, in terms of zoning. Mr. Viner said it is obvious that the plan is to demolish and remove the buildings and have one primary use as the new CVS building but has reservations and what if something falls through and the Planning Board cannot take away an ANR plan. Mr. Ceppi said he understood Mr. Viner's point, and the applicant would need to come back and undo what they created. Mr. Stoddard suggested the Planning Board holding the plan until closing and the buildings being raised. Mr. Ceppi asked if the buildings would be raised before the closing and Mr. Benoit said no after. There was much discussion on how to proceed with the ANR with the concerns discussed and the possibility of conditioning the ANR. Mr. Viner suggested continuing the plan for the Planning Board to get more guidance. Mr. Llyod said they are open to anything and has seen conditions on the plan and would be happy to do it. Mr. Ceppi asked what the difference was for holding the ANR until after they are raised or signing next month with conditions or hold off approving the ANR after the buildings are raised.

MOTION: Mr. Ceppi motioned to continue the ANR to March 16, 2021

SECOND: Mr. Butensky

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, Mr. Gleason, and Mr. Viner all voted aye, and the motion was carried (5-0)

- **George Watson, Clark Road**

Mr. Miller explained this ANR is a simple subdivision of parcel outside of a much larger contiguous parcel and no issues to note. Mr. Ceppi asked if it was two lots combining into one or taking one lot out of a bigger lot and Mr. Miller answered it is a decoupling of the noted parcel from the larger parcel. Mr. Ceppi asked about the zig and zag lines and Mr. Miller stated he believes it was to attach the wetlands to the back part of the parcel. Mr. Butensky asked what the chain link line was, and Mr. Ceppi said it is a stone wall. Mr. Miller said they are legacy stonewalls and cannot be removed. Mr. Miller made note that the scale of lot 33 that it may appear small, it is roughly 9 and 5 % acres, and is a large piece of property. Mr. Viner asked if there were any existing buildings on the property and Mr. Ceppi and Mr. Miller said no. Mr. Miller said there is a garage on the adjacent property owned by the same owner.

MOTION: Mr. Ceppi motioned to approve the ANR as submitted

SECOND: Mr. Gleason

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, Mr. Gleason, and Mr. Viner all voted aye, and the motion was carried (5-0)

4. Continued Public Hearing: Major Site Plan Review/Special Permit Applicant: Sunpin Solar Development, LLC; Owner: Peter and Carol Gaucher, Location: 22 Norcross Road; Spencer Assessor's Map R40-07. The applicant is requesting a Major Site Plan Review under Section 7.4 and Special Permit under Section 7.2 of the Spencer Zoning Bylaw Zoning to install a Solar PV Facility. The property is located within the Rural Residential zoning district.

Mr. Miller mentioned he did receive peer review comments and found the replies satisfactory.

Drew Vardakis, Wood Environmental and Infrastructure, and provided responses to third party comments, submitted changes in the plans regarding stormwater design and electrical. Mr. Vardakis and asked the Planning Board if they had any questions from their review. Mr. Miller stated that the new plan shows battery equipment storage and asked Mr. Vardakis to explain. Mr. Vardakis stated that was put in at the request of the applicant and is due to the recent requirements from the Massachusetts SMART Program and is something Sunpin Development has been discussing during the projects process. Sam Dionne, Sunpin Development, explained that the state has added requirements as part of an incentive laid out and to qualify that the requirement is that storage be included and paired with solar projects to move forward. Mr. Dionne stated that if the Planning Board needs more information, he would be happy get the data available. Mr. Viner asked if there was a revised plan set that was submitted and Mr. Vardakis said yes everything was submitted electronically and hard copies dropped off at the Town Hall. Mr. Miller was unsure if the new plans were received and suggested continuing until the plans can be reviewed. Mr. Viner asked if the peer reviewer received the new plan and if the applicant has received comments. Mr. Vardakis and Mr. Miller have not received comments from BSC Group. Mr. Ceppi does not feel comfortable without seeing the new plans and comments from third-party and Mr. Gleason agreed.

The Chair opened the hearing up to the public and there were no questions and comments.

James Martin, Counsel to the applicant, and would like to work with the Planning Board with the peer review and they were delivered on 2/8/2021. Mr. Martin would like to request that peer review be done by the next meeting so that the Planning Board may have sufficient time to review before the next meeting. Mr. Viner stated he does not want to rush the review and with this project the timeframe has had lack of relevance and this application has been before the Planning Board for almost three years. Mr. Ceppi stated that the plans were submitted on the 8th and was only a week ago and does not give the reviewer enough time.

MOTION: Mr. Ceppi motioned to continue to March 16, 2021 meeting

SECOND: Mr. Butensky

DISCUSSION: Mr. Vardakis accepted the continuance.

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, Mr. Gleason, and Mr. Viner all voted aye, and the motion was carried (5-0)

5. Continued Public Hearing: Major Site Plan Review/Special Permit – Applicant: Chris Nolan, BETA Group, Inc.; Owner: DG Northeast 2020 Holdings, LLC Location: North Brookfield Road; Spencer Assessor’s Map R39/14. The applicant is requesting a good cause extension to a Major Site Plan Review under Section 7.4 of the Spencer Zoning Bylaw to install a Solar PV Facility. The applicant is also requesting a good cause extension to a Special Permit under Section 7.2 of the Spencer Zoning Bylaw to install a Solar PV Facility. The property is located within the Rural Residential zoning district.

Mr. Miller said he spoke to Duane Amos, the Building Inspector/ Zoning Enforcement Officer, and he does not believe that this project has shown substantial use and there is complexity and having Attorney Eichmann discuss the project would be more appropriate.

Attorney, John Eichmann, said he does not have much to add but wanted to remind the Planning Board that the applicant is seeking the Board's approval to extend the lapse period on both their special permit and site plan approval for the reason of good cause that they did not exercise the permits in the time required. Mr. Eichmann stated the board does not need to determine the lapse in the permits tonight but if the applicant is showing good cause during the period to extend the elapsed period. Mr. Viner asked if there was a better sequence to address site plan versus special permit and Mr. Eichmann said it would not matter the sequence, but the special permit was granted first and went through a 6-year lapsed period. Mr. Miller discussed the lifespan of the project and the subsequent owners, it is an irregular project and sat for a long time, Mr. Amos has been in communication with the applicant and the applicant knows where he stands.

Tad Heuer, Foley Hoag LLP, explained a lot of what goes back for this project has to do with the previous Town Planner and the question before the board is not substantial use but the good cause to extend the permits. Mr. Heuer stated they believe they have produced enough evidence of substantial use and would be happy to go through those arguments that was submitted to the Planning Board with a letter and exhibits. Mr. Viner said they will approach the Special Permit first. Mr. Heuer discussed that the key document for the Special Permit that was granted in 2012, it has a lapsed date of May 2018 but that is because there were various extensions that were created by law with the permit extension act, and exhibit A would be the best document to review, which, is the email exchange between the previous owner from Sunpin and the previous Town Planner Paul Dell'Aquila. Mr. Heuer stated that on October 10th, 2018 the email shows a representative from Sunpin confirming validity of the permits and on October 16, 2018 Mr. Dell'Aquila replies and confirms that the actions that the applicant described constitutes work on the project vesting the special permit and solar use prior to its expiration and wrote the applicant did not need to obtain extensions. Mr. Heuer stated that this exhibit alone warrants good cause for the special permit. Mr. Viner asked when DG Holdings change the property ownership and Mr. Heuer said Spring of 2020. Mr. Viner asked about Sunpin and DG Holdings connection and Mr. Heuer said DG Holding is the legal successor of the project. Mr. Viner said Sunpin solar made the communication and could have been more diligent with the project. Mr. Heuer argued that Mr. Dell'Aquila told the applicant in writing it was still a valid permit. Mr. Viner stated that it was not the previous Town Planners capacity to weigh in on and it is not his decision, the Planning Board was not aware of the communication, and that was his opinion not the opinion of the Planning Board. Mr. Ceppi stated it is obvious the permit lapsed and Mr. Dell'Aquila made an error in judgment and the idea of getting an extension expired 2-3 years ago.

Mr. Heuer argued the good cause extension literature in the Zoning Bylaw and Mr. Ceppi said he is not talking about the good cause. Mr. Heuer understood the Planning Boards concern that it was not up to Mr. Dell'Aquila to make the determination but Sunpin went to him for guidance and Mr. Dell'Aquila held himself as the person with the authority. Mr. Heuer expressed that the communication between Sunpin and Mr. Dell'Aquila alone should be enough for a good cause extension because they were misled. Mr. Viner said what Mr. Dell'Aquila did and said were not binding upon the Planning Board, it can be taken into consideration, but Mr. Dell'Aquila's

action should not force any decision. Mr. Eichmann agreed with Mr. Viner and said the previous Town Planners decision does not bind the issue and the Planning Board needs to find if there was good excuse for the applicant not to have exercised the permit during the six-year period. Mr. Viner asked if they consider the period from 2018 to present and Mr. Eichmann said no that would be more relevant to the site plan approval. Mr. Viner stated the time frame is May 2012 to May 2018 and the email with the Town Planner occurred outside of that timeframe.

Mr. Heuer discussed the National Grid Interconnection delay that it falls into the timeframe in question and the primary reason why nothing was occurring between 2012 to early 2017 was due to economic slowdown. Mr. Heuer reviewed Exhibits B and C regarding the interconnection agreement and in May 2017 Sunpin's application to National Grid, the estimated install date on the application is April 2018, and the application was not approved by National Grid until April of 2018. Therefore, Mr. Heuer is stating that National Grid delayed the project a year because the developer will not install without the connection agreement. Mr. Ceppi said that Sunpin is familiar with the process and should have started the application process earlier and does not feel this is a good cause reason. Mr. Heuer continued to explain the SMART Program in June 2017, DOER announced that it was abruptly terminating the SREC II Program and launching a new program. Additionally, under the new program, the developer did not receive SMART incentives until February of 2019. Mr. Heuer said it was outside of the developers control that DOER terminating the SREC II Program and the delay with the new program approval. Mr. Viner asked what the permit application process to the SREC II program and did Sunpin apply at the same time they replied to the Interconnection Agreement and Mr. Heuer said he was not council to Sunpin at the time but assumed they did not meet the minimum requirements before the program closed. Mr. Viner discussed the applicant knowing the program was ending and a new program was being implemented and Mr. Ceppi intervened and stated the applicant should have come before the Planning Board and applied for an extension. Mr. Heuer argued that the applicant did not apply for an extension because they already thought they were vested in 2017 and Mr. Ceppi felt that was an error in judgment.

Mr. Heuer stated that the next three exhibits will apply to both the special permit and site plan review and the conditions in the special permit meet applicable industry standards for construction of solar arrays and an affidavit from Senior Project Engineer for DG Holdings parent company NextEra Energy Resources, which outlines some of the standards needed to comply. The affidavit states that the projects of this size and require large teams of qualified professionals and there are a limited number of contractors to work on a project this size. Mr. Viner asked if there was any evidence of the difficulty finding a contractor during the timeframe and Mr. Heuer said he does not believe he has anything from Sunpin but there was a huge backlog of projects. Mr. Ceppi does not believe it is that specialized with the right supervision and guidance and Mr. Heuer said he had a signed affidavit that would disagree. Mr. Viner asked if it was signed by a licensed Engineer and Mr. Heuer was unsure. Mr. Viner responded to the timeframes and professionals and Mr. Heuer mentioned that they would not do site clearing without having other contractors lined up. Mr. Viner asked if everyone is lined up now for this current project and Mr. Heuer answered they have a September deadline. Mr. Ceppi asked if the contractor was lined up and Mr. Heuer said he was unsure, but they are still trying to get a building permit. Mr. Ceppi asked if the land was cleared, and Mr. Heuer said not yet.

Mr. Viner mentioned the other bulleted items in the letter are the beyond the timeframe beyond the May 2018 period and Mr. Heuer said that was correct. Mr. Heuer discussed the cluster study and the Planning Board had asked for additional information and the cluster study was out of their control with no indication of when it was going to come to an end. Mr. Heuer said this fell under the 2018-2020 period, and National Grid chose them for the cluster study, in September 2019 the Department of Public Utilities opened an investigation about serious concerns of management decisions at National Grid for the creation of the cluster study because it was so unexpected and severe to developers and delay of connections. Mr. Viner discussed his work experience with National Grid.

Lastly, Mr. Heuer discussed the PILOT negotiation, Exhibit L, an email from Sunpin to the Town Assessor in early 2019, the PILOT was not finalized until April of 2020, the Town and the developer did not collaborate as quickly as they could in drafting the PILOT but did not come together until after the deadline.

The Chair opened the hearing to the public:

Matt Defosse, 7 Paul's Drive, and read aloud a narrative that states the applicant provided several excuses outside of the projects control to support their request for extension. Mr. DeFosse pointed out that the site plan approval was approved February 20, 2018, and the applicant stated they were ready to start construction in April 2018 (referred to memo dated January 21, 2021, page 3), and said the applicant made a deliberate choice to delay construction for 10 months until they knew they were eligible for the Massachusetts Solar Incentive Program and the granting of the SMART program was not listed as a condition. Mr. Defosse continued and stated that in May of 2019 (15 Months after site plan approval), the applicant postponed the construction another 6 months due to the National Grid cluster study and the cluster study did not require developers to stop solar projects and it was their decision. Also, Mr. Defosse explains the applicant waited until after the cluster study to see if the solar project was profitable, which, the profitability of a solar project is outside the purview of the Planning Board and is not a good cause for the extensions. Additionally, Mr. Defosse discussed the Stormwater Pollution Prevention Plan and stormwater permit were never submitted and approved for this project and were a substantial condition during peer review. Lastly, Mr. Defosse notes that the applicant waited until July of 2020 to request an extension to the site plan that had already expired five months earlier, therefore, the applicant had more than enough time to construct since February 2018 and their excuses are financially driven. Mr. Defosse ended in saying that when the site plan lapsed in February 2020, the special permit should automatically expire as well and recommend the Planning Board to deny both extensions.

Gary Woodbury, 219 Charlton Road, said he agrees with Mr. Defosse and the Planning Board should recognize that.

Mr. Defosse said he is not an attorney and poor decisions should not affect the town and expiration is expiration.

Mr. Butensky agrees to vote and move on from this application and ask what the Planning Board is voting on and Mr. Viner answered a good cause extension for the special permit and site plan review. Mr. Butensky not comfortable making the motion but could vote on someone else's.

MOTION: Mr. Ceppi motioned to close the public hearing

SECOND: Mr. Butensky

DISCUSSION: Mr. Gleason not eligible to vote

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, and Mr. Viner all voted aye, and the motion was carried (4-0)

Mr. Ceppi asked if it is two separate hearing or one. Mr. Viner said to act on two different motions and said he personally feels that it falls short of being granted an extension, that all the items noted could present some delay they were not outside the realm of delays, nothing extenuating for this project, and feels an extension would be an accommodation that the Planning Board is not justified in making. Mr. Ceppi stated Sunpin dropped the ball and did not ask for extensions and feels the extension is too late and there is no good cause.

MOTION: Mr. Ceppi motioned to deny the Special Permit Extension for North Brookfield Road Solar

SECOND: Mr. Viner

DISCUSSION: Mr. Gleason not eligible to vote. Mr. Butensky asked if it is 2-2 than site plan not denied, and the applicant can move forward, and Mr. Viner said a 2-2 is not a passing vote. Mr. Viner asked Mr. Eichmann for guidance and said it is a majority vote and a 2-2 the motion would fail and then another motion could be made.

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, and Mr. Viner all voted aye, and the motion was carried (4-0)

MOTION: Mr. Ceppi motioned to deny the Site Plan Review Extension for North Brookfield Road Solar

SECOND: Mr. Viner

DISCUSSION: Mr. Gleason not eligible to vote

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, and Mr. Viner all voted aye, and the motion was carried (4-0)

6. Continued Public Hearing: Major Site Plan Review/ Special Permit/ Subdivision - Applicant: Spencer Solar LLC; Owner: Ash Spencer Realty LLC, Location: Ash Street; Spencer Assessor's Map R27-01. The applicant is requesting a Major Site Plan Review under Section 7.4 and Special Permit under Section 7.2 of the Spencer Zoning Bylaw Zoning to install a Solar PV Facility. The applicant is also seeking a Subdivision approval as part of this project. The property is located within the Rural Residential zoning district.

Mr. Miller stated that George Russell, Conservation Agent, reached out to BSC because as the plan sits now there is a heavy presence of wetlands interwoven throughout. Mr. Miller stated that due to the winter cover BSC cannot make accurate determinations on the wetlands line and the site that would likely be built on and due to this it will take some time to get that data. Mr. Miller said there are still

some concerns about frontage and setbacks, and it would not be wise to make determinations on this application. Mr. Viner asked if there were new submittals.

Jeremy Chapman stated he did not believe they are talking about the correct project and should be Ash Spencer Realty and what Mr. Miller was discussing is for the next agenda item and Mr. Miller apologized and said that was correct. Mr. Miller said the Ash Street does have some concerns and there are wetlands in the Northern part of the site, panel's locations seem far enough away, but would like an exact measurement to the wetlands buffer zone.

Steven Pikul, Bertin Engineering, said he wanted to follow up about the third-party review with BSC Group and they followed up with Gillian Davies at BSC Group and she said she was not aware of a review for this application. Additionally, Mr. Pikul followed up with Mr. Miller and he said that he would discuss with Mr. Russell and following through with LEI to make up some time. Mr. Pikul said this application already started to be reviewed by LEI and was handed to Mr. Dell'Aquila to pass onto the new Town Planner but did not happen. Mr. Viner stated in the instance of efficiency he would support continuing the third-party review for this project. Mr. Viner asked if this was being held up with the Conservation Commission and Mr. Miller said there was a whole issue with the minor versus major wetlands decision and stormwater decision, however, no further movement since. Mr. Viner said these needs be to be sorted out and why they are still in this point, but peer review should have progressed and LEI to finish the peer review to eliminate efficiencies to BSC Group. Mr. Pikul said before Mr. Dell'Aquila there was a vote before the Planning Board to approve the subdivision plan for Ash Street and that was sent to peer review and that was the next step was comments from LEI. Mr. Pikul would like the Chair to see that LEI does the review and provide comments. Mr. Viner said the intent was to move forward with BSC Group, but the transition period should not have invalidated existing projects and the transition should not have been transitioned in that manner.

MOTION: Mr. Ceppi motioned to proceed with LEI to finish peer review of this project at least the subdivision aspect.

SECOND: Mr. Butensky

DISCUSSION: None

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, Mr. Gleason, and Mr. Viner all voted aye, and the motion was carried (5-0)

TJ Recupero, for the applicant, asked for clarification that the Town of Spencer should have a scope of services with LEI and the limitations of the motion that was approved is just for subdivision approval and would like investigation into what the scope of services was originally intended to cover initially. Mr. Recupero said they did review on zoning and subdivision issues and not sure if there would be a shift and would like to move forward. Mr. Pikul said they did receive peer review comments from LEI regarding zoning, subdivision, and stormwater questions, however, the design changed.

The Chair opened the hearing up to the public:

Edward Rivard, 131 Ash Street, asked about separating the approvals for the subdivision from the overall project and the concern was raised over a year ago regarding the private road. The private road is a right-of-way for his property and if the subdivision is approved having a maintenance agreement for the road. Mr. Pikul said Mr. Recupero can comment on that and there is language in the deed that talks about a common drive, once the language becomes part of the deed it becomes perpetual and

would refer to Mr. Recupero for a better explanation. Mr. Recupero worked on some crossways through common drives and does not remember where it stands. Mr. Rivard explained that the drafted agreement was drafted specifically with a solo company and the concern is if the subdivision is a standalone receives approval, but the solar portion does not how is that accounted for and access to his property. Mr. Recupero said the Planning Board cannot impose any condition of the approval for a right of land but will need to revisit the agreements and update between meetings for clarity. Mr. Pikul said Mr. Rivard brings up a good point and will get him the answer, Mr. Rivard built on applicants' property, so they will make sure he gets the answer needed.

MOTION: Mr. Butensky continue the public hearing March 16, 2021

SECOND: Mr. Ceppi

DISCUSSION: Mr. Gleason not eligible to vote

ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, and Mr. Viner all voted aye, and the motion was carried (4-0)

7. Continued Definitive Subdivision Plan: Applicant: Colin Derhammer; Owner: Spencer Solar II LLC c/o Melink Solar Development, Location: Charlton Road (Bacon Hill Road); Spencer Assessor's Map R08-10. The applicant is requesting a definitive subdivision approval under Article 2.3 (Definitive Subdivision Plans) of the Spencer Subdivision Regulations. The property is located within the Rural Residential zoning district.

Mr. Miller stated that George Russell, Conservation Agent, reached out to BSC because as the plan sits now there is a heavy presence of wetlands interwoven throughout. Mr. Miller stated that due to the winter cover BSC cannot make accurate determinations on the wetlands line and the site that would likely be built on and due to this it will take some time to get that data. Mr. Miller said there are still some concerns about frontage and setbacks, and it would not be wise to make determinations on this application.

Steven Pikul, Bertin Engineering, peer review questions have been submitted and would like to answer the questions and put them in front of the Planning Board. Mr. Viner asked if this is another application where they are waiting on BSC Group and Mr. Miller said yes. Mr. Miller said he spoke with Mr. Russell and has his agents report that will be brought up on February 24, 2021 at the Conservation Meeting and it states that they cannot accurately determine the wetlands line on the portions of the site due to the winter conditions. Mr. Viner said there is no reason why other items cannot be reviewed by BSC Group. Mr. Viner stated the definitive subdivision plan is in front of the Planning Board and it would be appropriate that this needs to be reviewed. Mr. Pikul would encourage BSC Group to review and share the interest and look forward to responding to any comments BSC asks. Mr. Ceppi said nothing has changed from the last meeting regarding the plan and the peer review had plans for over a month and wanted to know if any comments have been submitted for the subdivision portion. Mr. Ceppi asked when comments from BSC were received and Mr. Recupero thought early November 2020 and Mr. Ceppi said if the plans have not changed than no further review is needed. Mr. Recupero stated they responded to the peer review and they are waiting for a response back from BSC. Mr. Ceppi asked when they provided the comments to them and Mr. Recupero said last month. Mr. Pikul mentioned that BSC has a lot of work and they want to work with them to get a positive result.

MOTION: Mr. Ceppi motioned to continue the hearing until March 16, 2021

SECOND: Ms. Reed

**DISCUSSION: No substantial discussion so Mr. Viner did not need to open to the public.
Mr. Gleason not eligible to vote**

**ROLL CALL VOTE: Mr. Butensky, Ms. Reed, Mr. Ceppi, and Mr. Viner all voted aye,
and the motion was carried (4-0)**

Mr. Viner mentioned Mr. Butensky taking over but the members agreed to adjourn.

8. Town Planner Report-

Solar Bylaw work grasps on projects, not much movement.

MOTION: Mr. Ceppi motioned to adjourn the meeting at 10:29 pm

SECOND: Mr. Butensky

VOTE: 5-0

Submitted by Monica Santerre-Gervais, ODIS Clerk

Approved by the Planning Board on: 3/17/2021

List of Documents used on February 16, 2021.

Items sent to Planning Board prior to Meeting by email:

- Agenda
- ANR Application and Plan Arista Development/ 8 High Street, 95 & 101 Main Street
- ANR Application and Plan Arista Development/ 13 Pleasant Street, 101 Main Street
- ANR Application and Plan George Watson, Clark Road
- Minutes 11/19/2020, 1/19/2021, and 2/02/2021
- Updated Electrical, Decommissioning, O&M, Peer Review, and SWPPP for 22 Norcross Road Solar Farm

Items submitted/ brought to the Meeting:

None.