



Planning Board – Town of Spencer

Minutes

Planning Board Meeting

Tuesday, July 16, 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, Shirley Shiver and Maria Reed

Planning Board Members Absent: Robert Ceppi

Staff Present: Paul Dell'Aquila, Town Planner

Staff Absent: Monica Santerre-Gervais, ODIS Senior Clerk

1. Mr. Viner opened the meeting at 7:06 pm

2.) Minutes:

- **May 21, 2019**

MOTION: Ms. Shiver motioned to table the minutes until all Planning Board members are present

SECOND: Ms. Reed

DISCUSSION: None

VOTE: 4-0

- **June 18, 2019**

MOTION: Ms. Shiver motioned to accept the minutes as written

SECOND: Ms. Reed

DISCUSSION: None

VOTE: 3-0

3.) Planning Board Members reorganization

MOTION: Ms. Shiver motioned to table the agenda items until all Planning Board members are present

SECOND: Mr. Butensky

DISCUSSION: None

VOTE: 4-0

4.) ANR's

- **East Charlton Road: Applicant Nelson Ezen/ Owner: Elizabeth Maki, Boundary Line**

Mr. Dell'Aquila reviewed the purpose of the plan is to adjust the boundary line of the existing 31,604 square foot (0.725 acres) parcel to incorporate a 6,645 square foot strip of land ("Parcel A") recently acquired from the owners of Parcel R04-3 ("0 East Charlton Road") which surrounds the Maki property, into a single 38,249 square foot lot. Mr. Dell'Aquila noted that the Board of Selectmen exercised a waiver of first refusal option on Parcel A on May 20, 2019, as the 0 East Charlton Road is under Chapter 61 designation for forestry. Additionally, Mr. Dell'Aquila stated that the current parcel is considered legal non-conforming with regards to lot size, and will remain legal non-conforming after the proposed action the non-conformity is not being increased.

Nelson Ezen, 152 Main Street, representative of Elizabeth Maki, stated that the land is not purchased because the plan has not been approved yet. The previous plan submittal did not have Assessors Map & Parcel numbers shown, per Spencer's ANR Plan Regulations Checklist and the applicant revised the plan accordingly.

MOTION: Ms. Shiver motioned to endorse the plan as submitted

SECOND: Mr. Butensky

DISCUSSION: None

VOTE: 4-0

5. Continued Major Site Plan Review/ Special Permit: 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 Farm. The property is located within the Rural Residential zoning district.

Mr. Dell'Aquila reviewed with the members that at the last two meetings, the applicant asked for, and was granted, continuances. Mr. Dell'Aquila had a conference call with Drew Vardakis from wood/AMEC and Jaimie Boyd from Sunpin to get an update and is unable to get into the details at this time, but there are some extenuating circumstances that have arisen with the property owners. Therefore, pending additional news and clarification, it is Mr. Dell'Aquila's opinion that the continuance is warranted.

Also, Mr. Dell'Aquila noted that he explained to Mr. Vardakis & Ms. Boyd that they would be responsible to pay for renewed public advertising and abutter notification, as well as another round of peer review, whenever they send revisions. Mr. Butensky asked if they would be continuing to August or a later time and Mr. Dell'Aquila said the applicant wants to stay on the August agenda. Mr. Viner asked about the applicants response to re-advertising and Mr. Dell'Aquila said they did not push back on the subject. Mr. Viner suggested reviewing absences for this meeting and if there was an issue they would need to withdrawal and resubmit.

Mr. Viner opened the hearing to the public:

Tatyana McAuley, 28 McCormick Road, stated that the owner met with Solar Bylaw committee because and there is a discrepancy with the owner and the developers and hoped they could help. Ms. McAuley said the owner told her that without their knowledge the developer was putting the solar farm where the owner did not want it and wants the Town to help the land owner. Mr. Dell'Aquila said if that is the case than that is a matter between the owner and the developer and it's not something they get involved in.

Matt Defosse, 7 Paul's Drive, wants to follow up on the comment made by Ms. McCauley in that the owner, Mr. Gaucher, told him the developer cleared land where they didn't want.

Ms. Shiver wants the applicant to re-advertise and re-notify the abutters.

MOTION: Mr. Butensky motioned to continue the public hearing until August 20, 2019

SECOND: Ms. Shiver

DISCUSSION: Ms. Shiver stated the continuance should be contingent on the applicant bearing the cost to re-advertise and new notification for abutters.

VOTE: 4-0

6. 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). This subdivision plan was originally approved by the Planning Board on December 6, 2005

Mr. Dell'Aquila stated that the Board continued the hearing on this matter in May, wanting to see inspection records over the life of the project, and also to get additional clarity on the timetable for Mr. Laney's paving. Since then, we have located various inspection records from Conservation and Third Party Reviewers which have been previously uploaded to Dropbox for the Planning Board members review. Additionally, Mr. Dell'Aquila had sent two emails to Mr. Laney asking for updates and urging coordination with U & F on the required road standards. I cc'd both Bill Krukowski and Eben Butler from U & F, but none of us has received a reply as of this writing. Additionally, Mr. Dell'Aquila reached out to Town Counsel about the implications of the Board rescinding the approval and re-imposing a surety bond, however but at a previous meeting the circular discussion was that Mr. Laney finishes the road due to the shortage of funds. Mr. Dell'Aquila commented on rescinding the subdivision and could acquire one small parcel but then the town would be responsible for the road.

Ms. Shiver asked if Mr. Dell'Aquila had been at the site and what has been done and Mr. Dell'Aquila stated late last year guardrails were installed and recently they installed a light post but they were waiting for light connection. Mr. Dell'Aquila mentioned that the work being done at 27 Holmes Street has been completed. Mr. Viner asked if rescinding the subdivision makes the road a private road and Ms. Shiver said it is a private road now. Mr. Viner asked why the Town of Spencer would have any responsibility for the road and Mr. Dell'Aquila said it had to do with the neighbors and Utilities and Facilities. Ms. Shiver feels the Planning Board should not rescind the subdivision so the burden remains with Mr. Laney to fix the road and Mr. Viner thinks they should rescind and it should still be Mr. Laney's responsibility. Mr. Dell'Aquila said that Mr. Laney would responsible for the road and Ms. Shiver wants to make sure he maintains the road. Mr. Dell'Aquila added that Mr. Laney is responsible for the maintenance and feels that since the last couple months he doesn't have much faith in upkeep from Mr. Laney. Mr. Butensky feels there is no good answer and after a couple meetings still cannot find a reasonable solution. Ms. Shiver suggested sending a letter requesting a bond for the road. Mr. Dell'Aquila thinks that a new peer review would be needed for the remaining bond amounts. Mr. Viner said the original bond was for \$36,000.00 and Mr. Dell'Aquila stated he only bonded for half. Ms. Shiver said that the pressure needs to be put on Mr. Laney and he needs to supply the bond because he has not been responsible and adhered to the boards requests.

Ms. Shiver asked how many feet of road are left and Mr. Dell'Aquila said around 650 feet. Ms. Shiver asked if it would be appropriate to ask the new legal counsel to produce the letter to Mr. Laney to request the performance bond. Mr. Viner asked Mr. Dell'Aquila if he had heard from Mr. Laney since May 21, 2019 and Mr. Dell'Aquila said he spoke to him in early June and since then only voicemails. Mr. Viner asked if he had put money in the peer review and Mr. Dell'Aquila said there was still some money in the peer review account so he had not been asked to provide additional money. Mr. Dell'Aquila suggested getting a new peer review for the bond amount before requesting the bond from Mr. Laney. There was much discussion in regards to the next steps if Mr. Laney does not produce a bond and further advice would need to come from Town Council. Mr. Viner is concerned that this would be the third continuance and he doesn't feel like the situation is getting resolved. Mr. Viner stated the road needs to be done per the towns regulations and should not fall on the taxpayers as a burden.

Questions for Town Council:

1. If we go ahead and determine the bond and request Mr. Laney produce the bond and doesn't than what?
2. If there can be legal action be taken such as fines and sanction Mr. Laney?
3. Can the Town of Spencer place a tax lien on any properties owned by Mr. Laney to fund the road?

Mr. Viner opened the hearing to the public:

Dick Kirk, 22 Holmes Street, stated that he has lived at this property since 1982 and has witnessed the whole project. The initial road work development extended into a portion of the towns road on Holmes Street and a third of his frontage is not finished road and degrading, there is a manhole cover that is exposed, and he is very concerned about if the Mr. Laney doesn't finish the road. Also, the storm drain grate is elevated 3 inches above the road and water is going around it and into his property. Mr. Kirk noted that the home being built on 27 Holmes Street and said he was not present when that lot got released from covenant and curious what agreement took place in order for the Planning Board to release the covenants. Mr. Dell'Aquila said he believed that the lot(s) were released in 2016 and Ms. Shiver said she did not remember but they could look into it. Mr. Kirk said now there is no leverage for the Town of Spencer because the lot was sold. Ms. Shiver said she believes that the bond expired and Mr. Laney did not renew his bond and that is the issue. Mr. Kirk is concerned about his home and the road that isn't being repaired. Mr. Viner said the Town of Spencer will need to fix the public area and Mr. Dell'Aquila said to call Utilities and Facilities in regards to the manhole. Ms. Shiver asked if Conservation should be contacted for the runoff and Mr. Kirk said he sent numerous photos and videos to Margaret Washburn. The Planning Board members discussed that Mr. Laney may be in violation of his orders of conditions and Mr. Dell'Aquila said he would need to look into that. Mr. Kirk asked if he should contact the highway department to fix the third of his frontage and Mr. Dell'Aquila stated that any road complaints should go to the Highway Department/ Utilities and Facilities.

Mr. Butensky asked if the meeting was going to be closed or continued. Mr. Kirk thinks there is a lot at the far end of the cul-de-sac that has two access roads still owned by Mr. Laney. Mr. Viner feels the lots might have been reconfigured or sold.

MOTION: Ms. Shiver motioned to continue the meeting to August 20th, 2019 and resend the Utilities and Facilities punch list to peer review and request new estimate for bond, ask town council to reach out to Mr. Laney to collect the bond, and legal guidance and opinions from town council for the Planning Boards questions

SECOND: Mr. Butensky

DISCUSSION: Mr. Viner clarified Ms. Shiver's motion

VOTE: 4-0

Planning Board took a brief recess

7. Public Hearing: Special Permit- Chickering Road; Spencer Assessor's Map R15 – 4 & 4-2. The applicant is requesting a Special Permit for a rear lot subdivision/ Common Driveway under Sections 7.2 and 5.3.10 of the Spencer Zoning Bylaw. The property is located within the Rural Residential zoning district

Mr. Dell'Aquila explained that the applicant previously received a Special Permit for a Rear Lot Subdivision/Common Driveway for this same property on August 19, 2014. That Certificate of Decision was subsequently recorded at the Registry of Deeds in Book 52784, Page 282 on September 11, 2014. An extension was granted on June 21, 2016 and recorded in Book 56081, Page 297. That extension expired on August 18, 2018.

Donald O'Neil, lawyer on behalf of Laurel Point LLC, was present to discuss the application. Mr. O'Neil submitted pictures that show the land and the reason for the lapse in time is that the land was supposed to be water front property but had no water. Mr. O'Neil said the approval before included a deed restriction, they recorded a common driveway with maintenance agreement, the property in the rear has 13.06 acres and 30 feet of frontage with the acreage being 4 times the area required, the lot is greater than 100 feet, the front lot has 200 feet of frontage and 3.39 acres and twice the minimum lot size for that zone. The driveway has a maximum grade of 3.5% under the minimum, the minimum grade is exceeded by 1 %, and the length of the driveway is 624 feet. The intersect angle is 23 degrees 47 minutes. The applicant is prepared to go forward with the build and everything is the same as the previous application.

Mr. Butensky asked about the common driveway for 2R-1 and Mr. O'Neil said 2R-1 and 2R-2. Mr. Butensky asked where the borders are for 2R-2 and Mr. O'Neil said the acreage was too large and would not fit. Ms. Shiver said on the locus map she can't read the street names and Mr. O'Neil said the property is on Chickering. Ms. Shiver asked if GH Wilson was one of the Roads and Mr. Dell'Aquila said it was Wilson Ave. Mr. O'Neil stated that John Krol, who own Laurel Point LLC, lives on lot one. Mr. Butensky asked what the photos submitted are showing and Mr. O'Neil said it shows the water. Mr. Krol talked about the causeway and the small body of water, the pictures show a hay field that turned into a swamp, and then over the last year or so critters and turning into a lake again. Mr. Krol said there is no culvert that he is aware of. Additionally, Mr. Krol explained that when the land turned into a swamp they were very concerned about the investment in the property so they didn't build the rear lot subdivision.

Mr. O'Neil said he has another plan that shows the rear lots that he passed out to the Planning Board members. There was much discussion in regards to the property lines on the map and surrounding lots. Mr. Viner asked if the plans were recorded and Mr. O'Neil said yes. Mr. Viner asked for the book and page for the map that is recorded. Mr. Dell'Aquila said he did not believe the plan was part

of the 2014 application. Mr. Viner said if the plan was recorded than to him completes the special permit and vests a use in the permit. Mr. O'Neil said it depends on the approving authority because they did record the special permit and common driveway permit but did not get a building permit. Mr. Viner said that the common driveway permit lapsed. Ms. Shiver agreed on re-approval for the common driveway if it lapsed. Mr. O'Neil said the whole common driveway is shown. Mr. Viner stated that the common driveway regulations have since changed since this was approved and asked if it meets the standards now. Mr. Dell'Aquila stated in the original approval it just mentioned getting permits from Utilities and Facilities. Mr. Viner reviewed the common driveway bylaw regulations. Mr. Dell'Aquila stated that document has been recorded for the common driveway and would be concerned if the easement wasn't recorded.

Mr. Dell'Aquila provided a copy of the last approval with conditions and stated the Planning Board can add additional conditions. Mr. Viner asked if there are prospective buyers and Mr. O'Neil said it's a good time of year to sell. Mr. O'Neil commented that the shared driveway will only be shared for a short distance. Mr. Viner stated it would be reasonable to waive the turnouts for the driveway with the exception of one at the street and Mr. O'Neil said they would not be opposed to that. Mr. Viner would like to see the notes on the plan changed that the driveway meets all requirements to the Town of Spencer and another note adding conditioned upon a waiver with the exceptions. Ms. Shiver said she would motion to approve with the submission of the plans to be updated to the common driveway requirements. Mr. Dell'Aquila mentioned to the board to look at the third paragraph in the summary that the specifics are the same but to the current standards and other references that need to be cleared up. Mr. Dell'Aquila commented on previous conditions that do not to be carried over like the covenants because they have already been recorded. Mr. Viner said we can reference the recorded deed and page and findings should be made by the new plan and the recorded plan. Mr. Dell'Aquila suggested keeping condition 1 from the previous decision and the Planning Board members agreed, previous conditions 2 and 3 imbedded in the summary with proper document references, and previous condition 4 will be kept. Mr. Viner said a condition should read that plan B shall be revised to show conformance with the current common driveway bylaw, specifically, with the 12 feet of driveway, but no more than 15-feet wide, with 3-foot gravel shoulder on at least one side; a 20-foot by 25-foot passing area should be located at the intersection of Chickering Road and the driveway; and the notes should be changed to reflect changes and current code references. Mr. Viner added another condition that the Planning Board grants a waiver on the requirement to provide additional turnouts at 300-foot intervals due to the proposed configuration of the houses on the lots. The revised plans shall also be recorded at the Worcester County Registry of Deeds.

MOTION: Ms. Shiver motioned to approve the Special Permit with the revisions discussed for the findings and conditions.

SECOND: Mr. Butensky

DISCUSSION: None

VOTE: 4-0

8. Town Planner Report

- **CMRPC Annual membership update-** included in packet for reference
- **Bonds & Decommissioning Plan for ZPT - 103 N. Spencer Rd. (Aug. hearing)-**
Mr. Dell'Aquila said this Solar Farm got extended and ZPT is the current developer. ZPT is

looking to add battery storage, change the access driveway and shift the equipment pad. Mr. Dell'Aquila had a conversation with ZPT to see if the changes required amendment to the Site Plan and they have applied to be on next month's agenda.

- **Board Terms & Procedures updates** – Discussed memo from Stan Weinberg for his interpretation of terms and his determination concluded 5 year terms. Ms. Shiver said 5 year terms were acceptable and Mr. Butensky agreed. Mr. Viner didn't agree with Mr. Weinberg's findings for 5 year terms. Ms. Shiver said to table the discussion in order to include Mr. Ceppi who is absent.
- **New Application for Ground Mounted Residential Solar for next meeting**

9. Board Liaison-

- **Solar Committee-** the Solar Committee will be submitting solar bylaw revisions and committee to produce documentation to the Board of Selectmen meeting on August 12, 2019 (potentially). Mr. Dell'Aquila will have potential dates for the bylaw amendment and when the warrant closes for fall Town Meeting.

10. New Business-

- **103 N. Spencer Road Amendment discussion** –

Harold Reader, ZPT Energy Solutions, would like to discuss changes to an approved site plan for 103 North Spencer Road and the decommissioning Bond for GH Wilson Road. Mr. Reader said that at 103 North Spencer Road that would like to make the changes to the site plan to include a battery storage system and that would change the location of the equipment and the gravel access road. Mr. Reader brought plans to show the existing and new proposed plan. Mr. Reader said there is currently a gravel parking area and there is not an access road. Mr. Reader discussed that they would like to move the location of the equipment to the back of the lot and provide an access road. Still planting trees and putting up the fence for screening. Ms. Shiver said she has an issue because there are residential houses close to the line. Mr. Reader replied that there is a farm and a couple residential properties and they will move the equipment away from the closest point to residential. Ms. Shiver would like to know the proximity to residential neighbors. Mr. Reader said the closest building is 550 feet and the other two are 700 feet. Mr. Viner asked about the topography and Mr. Reader said it is fairly level. Mr. Viner said there is a slight grade. Mr. Dell'Aquila said this is not a hearing and the applicant will be at the next meeting and Mr. Reader is only here for guidance.

Mr. Reader said the Building Permit was issued in August 2018 and there was a pre-construction meeting. During the meeting the two comments that came up was having turnabouts from the Fire Chief and the distance on fence and panels. Ms. Shiver said the plan came before them in the last year for Stormwater and Mr. Dell'Aquila said that was correct. Mr. Butensky asked for the address of the project and Mr. Reader said 103 North Spencer Road. Ms. Shiver said that she believes that when the permit was approved in 2010 there were some abutters that would be receiving free electricity and Mr. Dell'Aquila doesn't think this is that project. Mr. Reader asked the Planning Board if there were any issues or changes they felt need to be done. Ms. Shiver asked if the battery storage would be operational and Mr. Reader answered it would be on a concrete pad and it would be operational. Mr. Reader said it does not run 24/7 and National Grid determines when they can discharge back into the

grid. Ms. Shiver asked the decibel rating for the noise and Mr. Reader showed them the battery storage and its 40x8, the HVA systems make the noise, the sound plus transformer is 80 decibels when you're next to it, and at 500 feet down to 50 decibels. Mr. Viner asked what type of batteries they were and Mr. Reader answered lithium ion and are enclosed in the storage unit. Ms. Shiver asked how toxic the batteries were and Mr. Reader said his understanding is its not hazardous; will have SWPPP and O&M plan.

Ms. Shiver asked what the increase in the decommissioning plan would be because it's new and wants to make sure the town is covered. Mr. Dell'Aquila will send the new plans to be peer reviewed. Mr. Reader said it's the same that was on the GH Wilson Solar Farm and Ms. Shiver stated they were only pads and Mr. Dell'Aquila said this is the first they have seen and Ms. Shiver said the pads were on the plan for future use but they don't how large they were. Mr. Dell'Aquila said in other communities are considered pertinent to electrical equipment but the Town of Spencer has not seen them before. Mr. Viner asked if there were DEP regulations for the batteries and Mr. Reader said no and the limits of disturbance would not be changing. Ms. Viner asked if the batteries need to be a certain distance away from solar array and Mr. Reader said the pads are 5 feet from each other and 8 feet within the pad and 10-15 feet from the panels. Ms. Shiver asked if there are Stormwater comments on the plan and Mr. Reader said no but it's on the SWPPP plan. Ms. Shiver mentioned it because of the abutter that requested the pipe be change and it impacted his property and requested more screening. Mr. Viner asked what the revised output rating was and Mr. Reader answered it will remain 2 megawatt array. Ms. Shiver asked for a landscape plan and Mr. Reader said at the next meeting can bring tree plantings. Mr. Viner said he will have a hard time voting in favor of an amendment that doesn't bring the project up to the current bylaw and recommended going with what was approved or changing the project to fit the new bylaw standards. Mr. Reader said the certificate of decision was permitted in 2010 and they though moving the location of the equipment away from the main road and would give the town easier access. Ms. Shiver stated that Mr. Viner makes a good point about coverage on the lot and not meeting that requirement. Mr. Dell'Aquila let Mr. Reader know that when this was originally approved there wasn't a solar bylaw and then in 2016 a solar bylaw was instated and specific standards wouldn't be concurrent today. Mr. Dell'Aquila stated that it would depend on third party review on whether this would trigger a new application because of too many changes.

Mr. Dell'Aquila asked the Planning Board members their thoughts on if the battery storage stayed in the current location of the equipment and what additional approvals would they need. Mr. Butensky asked the alternative to site plan review and Mr. Dell'Aquila said the changes may not be minor and might need to redesign to current standards it wouldn't work for them. Ms. Shiver stated it would still need to come before them because it affects surety. There was much discussion in regards to the original permit and access to the site.

- **17 GH Wilson Road Decommissioning Bond-**

Mr. Reader explained asked about the letter of the decommissioning bond that circulated and would like signatures and Mr. Dell'Aquila stated a letter was not circulated. Mr. Viner asked who approved the decommissioning bond and Mr. Dell'Aquila stated the Planning Board did and signatures needed to happen. Mr. Reader said they have a plan but they need a fully executed copy to start. Mr. Dell'Aquila said they haven't had to sign this form before and other applicants have been able to get there bonds and Ms. Shiver does not feel comfortable signing the form on behalf of the Spencer Planning Board. Mr. Viner said the document he has in front of him says decommissioning plan for

103 North Spencer Road. Mr. Reader said that he has the form that says GH Wilson. Ms. Shiver asked if this is new and Mr. Reader said he understands the bond is between the town and the solar owner and the decommissioning amount was approved and isn't changing. Ms. Shiver would like to see the new Town Council review the documentation and give them guidance because she is not comfortable signing the document. Mr. Viner said he feels this needs to be executed by the bond company and whoever is financially responsible on the towns behalf and the Planning Board may not be authorized to sign this document. Mr. Dell'Aquila thinks that the Town Administrator and Accounting have reviewed and signed this in the past and will get further clarity.

MOTION: Ms. Shiver motioned to adjourn the meeting 9:39pm

SECOND: Mr. Butensky

DISCUSSION: None

VOTE: 4-0

Submitted by: Monica Santerre-Gervais ODIS Clerk

Approved by the Planning Board on: 8/20/2019

List of Documents used on July 16, 2019

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

- Agenda
- Memo emailed from Paul Dell'Aquila to Planning Board
- ANR- application and plan for East Charlton Road: Applicant Nelson Ezen/ Owner: Elizabeth Maki, Boundary Line
- 22 Norcross Road Solar Farm- Continuation form
- Sunset/Holmes Subdivision- All possible important information regarding project and road from Planning, Conservation, and peer reviews
- Special Permit- Chickering Road - Application, narrative, and plan
- Minutes: May 21, 2019 and June 18, 2019
- 103 North Spencer Road solar Farm revised plans and Stormwater/Decommissioning bond
- Memo from Attorney Stan Weinberg dated 6/19/19 in regards to terms for the Planning Board and excel formatted term scenarios
- CMRPC Annual membership update

Items submitted at the Meeting:

- Chickering Road Supplemental pictures and plans
- 103 North Spencer Road approved plan from 2010