



## Planning Board – Town of Spencer

### Minutes

#### Planning Board Special Meeting

**Tuesday, August 25, 2020 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 (in-person), Vice Chair Jeff Butensky (remote), Robert Ceppi (in-person), Shirley Shiver (remote), and Maria Reed was late (8:30 pm-remote)

Planning Board Members Absent: None

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

Staff Absent: None

**\* The 8/18/2020 Planning Board meeting was recessed and the agenda from 8/18/2020 started where the meeting left off\*\*\***

**1. Mr. Viner opened the meeting at 7:05 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.”*

#### **9. Discussion: 20/32 McCormick Road Solar PV Facilities-**

Mr. Dell'Aquila mentioned that the pole location is being reassessed.

Mr. Viner wanted to continue to review the letter that was submitted by Attorney Damien Berthiaume. Damien Berthiaume, Attorney representing the applicant, had the Planning Board members review page 4 and Mr. Dell'Aquila stated the wrong language was used because he did not approve anything. Mr. Berthiaume stated his letter was clear and he stands by it and asked what the chair disagreed with or what his issues were. Mr. Viner discussed his concerns with the Conservation Agent and third-party peer reviewer recommending culvert changes. Jeff Walsh, Graves Engineering, said the language in the letter is not 100% accurate but close. Mr. Walsh explained the high ground water and possible future issues, therefore the contractor contacted him and suggested the remediation, after some deliberation both parties agreed on forwarded to George Russell, Conservation Agent. Mr. Walsh said Mr. Russell explained that it was in good practice and met conditions for minor repairs, but Mr. Walsh did not approve the changes. Mr. Viner said he felt he did a fair job addressing the concerns. Mr. Berthiaume discussed his meeting with Conservation on July 8, 2020, minor changes were approved, and currently the

chair is having a semantic debate and Mr. Viner said he felt Mr. Berthiaume's letter was misleading.

Ms. Shiver felt that it met the customary practices of the Planning Board for a positive diminutive affect and the Town Planner provided a professional decision, the Building Inspector has the authority during construction to act on issues. Ms. Shiver continued to try and understand the chairs confusion and her support for the Town Planner using the 1% rule and her belief the Planning Board would have approved the change and that the applicant is accumulating fees. Mr. Viner stated they are going over the process for future procedures. Mr. Ceppi felt that several solar farms in town have had issues and felt the design is faulty and the stormwater should not go over an access road due to concerns of wash outs and potentials for freezing. Mr. Dell'Aquila agreed that the points are valid, but the Planning Board is not the stormwater authority. Mr. Ceppi agrees that the changes should have gone before the Planning Board and Mr. Dell'Aquila said they are being reviewed through the Conservation Commission. Mr. Viner said fair points have been made on both sides but still believes the Planning Board should approve changes to the plan and documentation should have been provided to the board. Mr. Dell'Aquila said a condition could be added going forward. Mr. Butensky agrees with the future policy going forward but agrees with Ms. Shiver too. Ms. Shiver stated that the chair is acting as a solar inspector and shared concerns with possible litigations.

Mr. Viner continued to review Mr. Berthiaume's letter and said the issue with the public notice was due to the Office of Developmental Services. Mr. Berthiaume stated his client has a right to know the chairs issues and asked if the chairs concerns were discussed with the Town Planner. Mr. Dell'Aquila stated that Mr. Viner had shared with him issues with erosion control, phasing, culverts, and the Planning Board jurisdiction over utility right of way. Mr. Berthiaume continued to mention his client followed the appropriate procedure and asking the applicant to come back multiple times is inappropriate. There was a brief discussion on Mr. Viner's choice to put the discussion on the agenda due to open meeting law and discussing concerns with other Planning Board members. Mr. Viner discussed what he found to be changes and concerns on the site the culvert change, drainage features, riprap installed across access road without culvert, etc. Mr. Berthiaume stated the all the minor changes fall into the same category and were acknowledged and completed. Mr. Viner discussed with Mr. Walsh the access road design and matching the existing topography. Mr. Walsh discussed the plans and cross slopes. Mr. Viner brought up pictures he took at the site to discuss and Mr. Walsh discussed the pre and post development plans to the Planning Board. Ms. Shiver stated that the discussion was getting to technical and to leave it up to the Conservation Commission to deliberate.

**MOTION: Ms. Shiver made a motion to close the discussion and move on**

**SECONDED: Mr. Butensky**

**DISCUSSION: Mr. Ceppi wants to discuss more of the changes on site and Mr. Viner listed more items he discovered**

**Roll Call Vote- Ms. Shiver-aye, Mr. Butensky-aye, Mr. Ceppi-nay, Mr. Viner-nay (vote 2-2 motion not carried)**

Mr. Viner mentioned additional items that he feel are issues such as the road, drainage, array heights, clearance to the ground, stormwater design, and structural supports for the arrays . There was much discussion on the Planning Board relying on third party reviews because the board

members are not licensed engineers. Mr. Viner stated that the Town Planner selected Graves Engineering and Graves Engineering is the peer review for this project and the Conversation Commission uses them too and EcoTec is the environmental component of the design plan on behalf of the applicant. Mr. Viner raised his concerns that during the towns recent RFQ Graves Engineering noted they would team with Ecotec to provide services to the Town of Spencer and appears suspect. Furthermore, Mr. Viner suggested to secure another third-party review firm to review the work done to date and continue the inspection at this project. There was much discussion on what gets peer reviewed, and Mr. Viner was concerned that there isn't peer review on behalf of the Planning Board during construction. Mr. Dell'Aquila stated that the Planning Board is a regulatory board not an enforcement board and the building inspector would do the enforcing.

**MOTION: Mr. Ceppi motioned to hire a professional engineer to review the plans on behalf of the Planning Board to verify construction is the same as the approved plan.**

**SECOND: Mr. Viner**

**DISCUSSION: There was discussion on who would do the review and after comments are received what would come next. Mr. Dell'Aquila said the reviewer would review compliance of approved plan, go through site plan and conditions, and possible future actions. Mr. Viner said that the objective would not be to open another hearing but finding a solution for all parties involved because the Planning Board gets held responsible for these projects.**

**ROLL CALL VOTE: Mr. Butensky-nay, Ms. Shiver-nay, Ms. Reed-aye, Mr. Ceppi-aye, Mr. Viner-aye (vote 3-2 motion carried)**

Mr. Berthiaume said his understanding is that the building inspector has visited the site frequently and has not provided and comments raising concerns. Mr. Dell'Aquila said he will speak to the building inspector about the issues brought up at this meeting. Mr. Berthiaume felt appropriate methods not being followed and the conversation should have started with the Town Planner. Mr. Viner responded that he wanted to bring up the concerns to all the Planning Board members.

#### **10. RFQ Process-**

Mr. Dell'Aquila said the Town of Spencer had a RFQ for a third-party reviewer, they received ten responses and they had five interviews, and the reviewers were himself, George Russell, and Billy Krukowski. Mr. Ceppi commented they were left out of the process and Mr. Dell'Aquila said that the board can still weigh in. Mr. Viner said that each board should make final decision and pick two reviewers for flexibility. Mr. Butensky asked if the packets were submitted to the town and Mr. Dell'Aquila said yes. Mr. Viner asked when did a decision need to be made and Mr. Dell'Aquila said as soon as possible because currently the town does not have a contract with any company. Mr. Viner asked if the RFQ closes and Mr. Dell'Aquila said the date had passed to receive applications.

#### **11. Discussion 16 North Brookfield Solar-**

Mr. Viner mentioned that the Planning Board members received a packet from Matt Defosse regarding his concerns. Mr. Dell'Aquila mentioned to the chair to tread cautiously because the project is under review by Town Council and at the next meeting the developer is coming before

the Planning Board for an extension. However, Mr. Dell'Aquila said if the extension gets approved then the board could possibly revisit the low decommissioning bond during the process. Mr. Viner stated that the decommissioning bond was recently in front of the board and peer reviewed it was not an option to change the amount. Mr. Dell'Aquila said that during the extension hearing the Planning Board could point out other approved projects decommissioning amounts.

Matt Defosse, 7 Paul's Drive, asked about public comment. Mr. Viner answered that the project is in front of Town Council review and if there was anything specific, they might be able to discuss. Gary Woodbury, 19 Charlton Road, recommended not discussing anything because its under legal review. Mr. Defosse stated he brought up the same concerns at a Board of Selectmen meeting and was happy it was under review.

## **12. Town Planner Report-**

Tabled for later.

## **13. Discussion: Possible dates for Special Meeting & Zoning Bylaw Amendments**

Mr. Dell'Aquila provided the Planning Board with possible upcoming dates.

All the Planning Board members agreed to have a special meeting on October 1, 2020 for Zoning Bylaw amendments.

## **14. General Board Discussion/ Board Liaison Reports**

CMRPC will be having virtual meetings but other boards have not met due to Covid-19.

## **15. Board Reorganization**

**Chair-** Mr. Ceppi nominated Mr. Viner for chair but there was no second.

**MOTION:** Ms. Reed nominated Ms. Shiver as chair

**SECOND:** Mr. Butensky

**DISCUSSION:** None

**ROLL CALL VOTE:** Mr. Butensky-aye, Ms. Shiver-aye, Ms. Reed-aye, Mr. Ceppi-nay, and Mr. Viner-nay (3-2 vote motion carried)

**Vice Chair-** Mr. Ceppi nominate Mr. Viner but Mr. Viner says he does not want to be vice chair.

**MOTION:** Mr. Ceppi nominates Mr. Butensky for vice chair

**SECOND:** Ms. Reed

**DISCUSSION:** None

**ROLL CALL VOTE:** Mr. Butensky-aye, Ms. Shiver-aye, Ms. Reed-aye, Mr. Ceppi-aye, and Mr. Viner-aye (5-0 vote motion carried)

## **CMRPC Delegate:**

**MOTION:** Mr. Ceppi nominates himself as CMRPC delegate

**SECOND:** Mr. Viner

**DISCUSSION: None**

**ROLL CALL VOTE: Mr. Butensky-aye, Ms. Shiver-aye, Ms. Reed-aye, Mr. Ceppi-aye, and Mr. Viner-aye (5-0 vote motion carried)**

**Open Space member:**

**MOTION: Mr. Viner nominate Mr. Butensky for open space member**

**SECOND: Mr. Ceppi**

**DISCUSSION: Mr. Dell'Aquila gave a brief update**

**ROLL CALL VOTE: Mr. Butensky-aye, Ms. Shiver-aye, Ms. Reed-aye, Mr. Ceppi-aye, and Mr. Viner-aye (5-0 vote motion carried)**

**Economic Development member:**

**MOTION: Mr. Viner nominates Ms. Shiver as Economic Development member**

**SECOND: Mr. Ceppi**

**DISCUSSION: None**

**ROLL CALL VOTE: Mr. Butensky-aye, Ms. Shiver-aye, Ms. Reed-aye, Mr. Ceppi-aye, and Mr. Viner-aye (5-0 vote motion carried)**

**Capital Improvement Committee Member:**

**MOTION: Mr. Viner nominates Ms. Shiver for Capital Improvement**

**SECOND: Mr. Ceppi**

**DISCUSSION: None**

**ROLL CALL VOTE: Mr. Butensky-aye, Ms. Shiver-aye, Ms. Reed-aye, Mr. Ceppi-aye, and Mr. Viner-aye (5-0 vote motion carried)**

**Building Property Reuse:**

**MOTION: Mr. Ceppi nominates himself as Building Property reuse member**

**SECOND: Mr. Viner**

**DISCUSSION: None**

**ROLL CALL VOTE: Mr. Butensky-aye, Ms. Shiver-aye, Ms. Reed-aye, Mr. Ceppi-aye, and Mr. Viner-aye (5-0 vote motion carried)**

**16. New Business/ Adjournment**

**MOTION: Mr. Ceppi motions to adjourn the recessed meeting from 8/18/2020 at 9:53 pm**

**SECOND: Mr. Butensky**

**DISCUSSION: Short recess taken between meetings**

**ROLL CALL VOTE: Mr. Butensky-aye, Ms. Shiver-aye, Ms. Reed-aye, Mr. Ceppi-aye, and Mr. Viner-aye (5-0 vote motion carried)**

**Submitted by Monica Santerre-Gervais ODIS Clerk**

**Approved by the Planning Board on: 10/20/2020**

**List of Documents used on August 25, 2020 for August 18, 2020 meeting**

**Items sent to Planning Board prior to Meeting by email:**

- Agenda
- Town Planner memo
- Minutes for Special Meeting on June 18, 2020 and July 21, 2020
- Graves Site visit reports for 20 & 32 McCormick Road
- Certificate of Decision for 36 Cranberry Meadow Road Solar
- Graves Site visit reports for 103 No. Spencer Road Solar
- Graves Site visit reports for 17 GH Wilson Road
- Ash Street Solar updated slope and drainage reports
- Road Acceptance memo
- Letter from Berthiaume and Berthiaume regarding 20 and 32 McCormick from July 2020 and August 2020
- Rules and Procedures of the Planning Board
- Packet from Matt Defosse regarding North Brookfield Solar Farm

**Items submitted/ brought to the Meeting:**

- Drainage calculations for Ash Street Solar / Subdivision
- New submitted Plan for Ash Street Solar dated 8/18/2020