



Planning Board – Town of Spencer

Minutes

Planning Board Meeting

Tuesday, February 19, 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 and Monica Santerre-Gervais, ODIS Senior Clerk

Staff Absent: None

1. Mr. Viner opened the meeting at 7:04 pm

2. Adoption of Minutes: December 18, 2018

The only change to these minutes is the edit of Ms. Shiver being present instead of absent. No other changes.

MOTION: Ms. Shiver motioned to approve the minutes from 12/18/18

SECOND: Mr. Ceppi

DISCUSSION: None

VOTE: 5-0

Adoption of Minutes: January 15, 2019

Mr. Butensky noticed on page 5 there was a spelling error; instead of “toad” it should be “road.”

MOTION: Mr. Ceppi motioned to approve the minutes from 1/15/2019 with discussed changes

SECOND: Mr. Butensky

DISCUSSION: None

VOTE: 5-0

3. ANR: John Flint/ Taze Picard, 66 Bacon Hill Road/94 E. Charlton Road-Boundary Line Adjustment

Jason Dubois, DC Engineering, was present for the meeting. Mr. Dell'Aquila mentioned that the applicant came to the last meeting and the Planning Board did not feel the plan complied and asked Mr. Dubois to edit and return with the new plan. The purpose of the plan is to create a new 0.6429-acre (Lot#66A) out of land owned by Picard and transfer it to Flint to create one contiguous parcel; and also to create a new 0.6429-acre (#94A) out of land owned by Flint and transfer it to Picard, to

create one contiguous lot. Both lots are currently conforming for lot size in the RR zone, and both lots would remain the same size after the proposed action. Both lots are currently compliant in regards to frontage and setbacks, and would remain so after the proposed action.

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

SECOND: Mr. Butensky

DISCUSSION: None

VOTE: 5-0

ANR: Sugden Block

Jason Dubois, DC Engineering, was present for the meeting. Mr. Dell'Aquila explained that currently, there are two structures on the existing lot – The Sugden Block and the Sugden Library. As part of the Town's plan to sell the Sugden Block for redevelopment, the lot must be split to allow for the conveyance to occur. The Town is currently finalizing a Purchase & Sale Agreement and the new owners will rehabilitate the Sugden Block with commercial space on the first floor and apartments on the two floors above. Mr. Dubois discussed the difficulty in finding all the old plans and what had been recorded with the Registry of Deeds and handed out a new plan because there was an easement and had to add a curved corner to the plan.

Mr. Ceppi asked if the town still owns space between the library and Mr. Dell'Aquila answered yes but that may change at a later time. Mr. Viner asked if the building is selling or the Town is renting and Mr. Dell'Aquila said the Town is selling Sugden Block but it is debatable for Lake Street School. Ms. Shiver pointed out that in the first ANR and the newest ANR, between lot A to Finally Kelly's, there is a different line and wants to be sure that it's not owner unknown. Mr. Viner asked if easement B is for lot A for use of the driveway and vice versa and Mr. Dubois said yes. Mr. Dell'Aquila said there was debate on who would have full control over the driveway and it was decided that it would be split down the middle. Mr. Ceppi asked if there was a maintenance agreement like the common driveways bylaw and Mr. Dell'Aquila responded that would be handled with the agreement between the new owner and the Town and will be conveyed to Town Council. Ms. Shiver asked if the plan was bound to the new layout and Mr. Dubois said the old plan had the easement curved. Mr. Viner mentioned that the layout was never altered and in the areas with the new road alignment went outside the existing layout and took a permanent easement for transportation purposes.

MOTION: Mr. Ceppi motioned to endorse the plan as submitted

SECOND: Ms. Shiver

DISCUSSION: None

VOTE: 5-0

4. Continued Special Permit – Minor Site Plan Review- Applicant: Jeremy Ahearn (Ahearn Equipment, Inc.), Location: 460 Main Street; Spencer Assessor's Map R34-08. The applicant is requesting a minor site plan review under section 7.4 of the Spencer Zoning Bylaw for pavement improvements. The property is located in the Commercial Zoning district.

Mr. Dell'Aquila mentioned that this application has been continued since November of 2018 pending resolution with the Conservation Commission and the Water Department regarding an

easement running through the property. The Water Department has now signed off on the proposed easement language; however, this week's Conservation Commission meeting was cancelled and continued until February 27, 2019.

MOTION: Mr. Butensky motioned to continue the site plan review for Ahern Equipment to the meeting March 19, 2019

SECOND: Mr. Ceppi

DISCUSSION: Mr. Dell'Aquila mentioned that it's not common practice to keep continuing but in this particular case it was not the applicant's choice to continue.

VOTE: 5-0

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.

Andrew Vardakis, AMEC, and William Behling, Sunpin Solar, were present for the public hearing. Mr. Dell'Aquila reviewed the last meeting and discussed the peer review from Lenard Engineering. The office received updated plans, updated slope drawings, submitted pictures for cross reference, added vegetative screening, updated the fire access roads, and updated the Stormwater calculations. Mr. Dell'Aquila noted that Lenard Engineering has all the new documents for review. The applicant will need driveway permit from Utilities and Facilities and an ANR will need to be submitted.

Mr. Vardakis reviewed the new plans that were submitted. The cover sheet of the plan was updated to show the fence boundaries, the ANRAD is being finalized with the Conservation Commission, and the biggest design change is the roadway. The two access roads are 20 feet wide with a max slope of 10% for fire truck access and then the roads turn into 15 feet wide with a max slope of 15% based on the town's requirements and comments from the fire chief. Additionally, the solar array shrunk from 7.5 MW to 6.9 MW because the arrays had to be rearranged. Mr. Vardakis said they responded to all the third party reviewers' comments and did there Stormwater model calculations and basins based off the comments. Provided color shading that shows the 15% slopes and avoided all slopes over 15%, and even though, there are blips of red the applicant has avoided any arrays being on slopes over 15%. In addition, Mr. Vardakis reviewed site photos on Norcross Road and Hines Bridge Road, there was much discussion about visuals and clearing distances, as well as, providing more vegetation screening.

Ms. Shiver commented on a photo where the tree line would be getting cut down for solar panels and expressed that she would like to preserve the view and the rural character of the neighborhood. Mr. Vardakis responded that if they kept the tree line it would affect the size of the solar array. Ms. Shiver asked if they would be using evergreen screening and Mr. Vardakis said he believed so but would need to confirm. Mr. Butensky commented to use deer resistant evergreens. Mr. Viner asked if there would be a berm and Mr. Vardakis said there were no berms planned. Mr. Viner expressed that berms don't die. Ms. Shiver commented that they only

have one shot for the visual mitigation and need to get it right. Mr. Dell'Aquila commented on a phone call he received from a forester about this site. Mr. Vardakis continued to go through the photo views. Mr. Viner asked if they had a proposed cut and fill totals and Mr. Vardakis said they propose to cut 6500 yards and fill 4600 yards. Mr. Ceppi said that 1900 yards left over would make a nice berm. Mr. Viner mentioned there is a bylaw reference about minimizing fill and the applicant may need a waiver to take off excess material from the site. Mr. Dell'Aquila read aloud the Solar Bylaw G. Design and Performance Standards section 15, *"No topsoil shall be removed from the land parcel under consideration for Solar Electric Generating Facilities. If earthworks operations are required, topsoil shall be stockpiled within the property bounds and protected against erosion until such time earthwork operations are completed and topsoil can be re-spread over parcel. Earthworks shall be planned to limit export of soil material (non-topsoil) to 1000 cubic yards per acre affected by installation a detailed earthworks estimate is a required submittal component proving this quantity is maintained."*

Mr. Vardakis wanted to discuss the conceptual line for the ANR they need to submit. Mr. Viner wanted to make sure that it conforms to lot requirements and Mr. Vardakis said it will. Mr. Viner wants to hear from the owner in regards to screening of their home because they may not be the homeowners through the life of the solar farm. Mr. Viner wanted to know about the frontage on the other parcel and adding the restriction of no construction on that lot. Mr. Vardakis said they can add wording to the lease and Mr. Viner said they can make it a condition. Mr. Viner asked about the proposed coverage of the array and Mr. Vardakis answered that the array fenced area is 26.4 acres and the lot is 87 acres.

Mr. Viner opened the meeting to the public at 7:58pm.

Matt Defosse, 7 Paul's Drive, asked Ms. Shiver to clarify which array photo she commented and it was photo number 2 on Norcross Road. Mr. Defosse asked about clearing the clearing 2/3 behind the tree line in photo 2 and asked if any slopes are over 15%. Mr. Vardakis said no slopes over 15% and commented on the wetlands concerns because they scaled down the solar farm to stay out of the wetlands. Mr. Defosse recommended putting in sidewalks on Norcross Road. Additionally, Mr. Defosse stated that the Planning Board should not grant any waivers that go against the solar bylaw.

Amy Yanover, 30 Norcross Road, asked if they are clearing the tree line and coming 50 feet before the tree line on photo 2 on Norcross Road and Mr. Vardakis said yes and the array road to street would be 300 feet, the access road to the street is just under the 300 feet. Ms. Yanover expressed the screening behind the owner's home should be required because the value of their home will affect her home value and the whole neighborhood.

Ms. Shiver mentioned maybe just requiring the applicant to do a 50 feet buffer around the array instead of selective screening, the visual mitigation should be met, and they need to try and maintain the rural character. Ms. Yanover expressed concerns about Stormwater and drainage and Mr. Viner stated that the Planning Board requires a Stormwater bond to prevent additional water issues. Mr. Ceppi mentioned contacting Utilities and Facilities with pre-existing water conditions and maybe the applicant can work with the town. A culvert was found on the plan

and Mr. Viner stated notifying Utilities and Facilities and by fixing that culvert it could help with the ongoing issues.

Mr. Dell'Aquila stated that Lenard Engineering has the current plan and it takes up to two weeks for their feedback. Also, Mr. Dell'Aquila asked the Planning Board what they want from the applicant at the next meeting in regards to the visual mitigation. Mr. Viner said he wants to see the type of screening, expressed merit in adding a berm, and the intent is that the site is properly screened because it is not yet. Ms. Shiver stated that maybe additional mitigation is too late. Mr. Ceppi said he believes in a berm and asked about trees. Mr. Behling stated that projects across the state are asking for that and they will make the necessary changes.

Mr. Defosse stated the trees should be deciduous evergreens, with a mix, and the applicant should take the season changes into consideration. Mr. Viner asked Mr. Dell'Aquila if the Stormwater authority can be Conservation Commission and Mr. Dell'Aquila stated that Margaret Washburn said no because it has to do with a statutory area.

MOTION: Ms. Shiver motioned to continue the meeting to March 19, 2019.

SECOND: Mr. Ceppi

DISCUSSION: None

VOTE: 5-0

6. Sunset/Holmes Status Meeting -

Ernest Mello, ZPT Energy, was present for the meeting.

Mr. Dell'Aquila mentioned that he sent invitations to both to Jim Laney and ZPT Energy to come to the meeting and received an email from Jim Laney on 2/18/2019 and is unable to come to the meeting because he had been away on vacation; however, he provided project updates for the subdivision/road. Ms. Shiver stated she only noticed that the trees are dying. Mr. Viner feels that the response from Mr. Laney is lacking. Ms. Shiver asked how the meeting affect ZPT and Mr. Viner answered they were an applicant on one of the application and Certificate of Decision on the subdivision. Mr. Dell'Aquila stated that ZPT are owners of the South lots and the discontinued a portion of the road for the solar farm. Mr. Dell'Aquila mentioned he met with Town Counsel and even though the bond lapsed, it is an active site and the Planning Board does have the authority to re-impose a new of additional bond/conditions. Additionally, Town Counsel does not agree to rescind the subdivision because then it would be on the Town of Spencer to finish the road. Ms. Shiver asked who had been clearing the road and Mr. Dell'Aquila said he was unsure. There was much discussion in regards to rescinding the project and what would happen if the Planning Board decided to. Mr. Viner stated that Mr. Laney has already made promises that have fallen through and wants to take more of an action.

Mr. Ceppi asked if ZPT owned or leased the land and Mr. Mello answered that ZPT bought some parcels and did an ANR to reconfigure the parcels for the solar farm. Additionally, Mr. Mello said what he understands is that there is an agreement between ZPT and Mr. Laney but they are not responsible for their part until Mr. Laney does his part first. Ms. Shiver commented that Mr. Laney needs to be present to discuss the project. Mr. Viner stated, hypothetically, that if we

rescind the subdivision than any houses being built cannot get their occupancy permit and it was confirmed by the Building Inspector that information is incorrect and Mr. Dell'Aquila said no because the Planning Board released the lots. Mr. Viner said that the house is no longer on a street and Mr. Dell'Aquila answered that it was on a way already in existence at a certain time and Ms. Shiver said there were other houses already on the street. Mr. Ceppi stated if it's rescinded there should be no access to those lots and Mr. Dell'Aquila answered that is incorrect for the same reason. Mr. Ceppi asked how we make Mr. Laney get us a new bond and Mr. Dell'Aquila said for the Board to ask. Mr. Viner mentioned he thought that Mr. Dell'Aquila already did that and the answer was no because that action comes from the Board and would need to be re-advertised. Mr. Ceppi would like to get a bond figure amount in place before the meeting and Mr. Dell'Aquila said that the previous bond was inadequate for the remainder of the work. There was much discussion in regards to the previous amount of the bond and the amount to complete the road. Mr. Viner wants to get a new punch list and have that be peer reviewed for the new bond. Ms. Shiver asked the length of the road to be completed and Mr. Dell'Aquila answered roughly 600 feet. Ms. Shiver asked if anyone checked on the guardrail that Mr. Laney claims is complete and what is the total punch list. Mr. Dell'Aquila said the old punch list doesn't matter because the road needs to be brought up to the current standards anyway ahead of adoption.

Ms. Shiver asked if there was a bill for snow plowing from the town and Mr. Dell'Aquila said he will confirm but has not heard there was. Mr. Viner said that Quinn Engineering worked with Mr. Laney and then Lenard Engineering did the peer review on Quinn's Engineering application and then they agreed on the bond number.

MOTION: Mr. Ceppi motioned to hold a public hearing for the Certificate of Decision of Sunset/Holmes Subdivision

SECOND: Ms. Shiver

DISCUSSION: ZPT Energy does not need to attend

VOTE: 5-0

7. Town Planner Report

- **Main Street Solar/ GH Wilson Solar-** Received the decommissioning bonds for the two solar farms. Ernest Mello, ZPT Energy, was present to answer any questions. Mr. Viner asked about the language that Guy Winters mentioned at a meeting that allowed the town to use the decommissioning bond as a construction bond if the applicant walked away. Mr. Dell'Aquila said that a construction bond would be used to complete the construction of the solar farm and is unsure if that's the intent. Mr. Viner wants to see that ZPT addresses his concerns that were previously discussed at a meeting in regards to the decommissioning bond, at which time, Mr. Mello handed out a revised decommissioning bond and explained that on page 5 under Use Of Decommissioning Assurance it reads "*In the event that ZPT fails to undertake decommissioning activities within one hundred and fifty (150) days of discontinued operations, the Town of Spencer shall have the right to undertake decommissioning activities and make a claim against the decommissioning assurance.*" Additionally, Mr. Mello read aloud, "*the date of discontinued operations (i) the date of discontinued operations designed by ZPT in its notice to the Town of Spencer*

or (ii) in absence of such notice, the last day of continuous period of six (6) months in which the Facility has not operated and where such inactivity is not the result of causality, equipment problem, permitting matter, financial matter, or other issue that the owner/operator is in good faith attempting to remedy or (iii) once construction has commenced, the last day of continuous period of six (6) months in which construction has seized without restarting.” Mr. Mello commented that the bonds for both projects doubled in the amount, the prevailing wage rate was added as requested, and added 2.5 years of inflation. Mr. Viner asked what the next step would be for the decommissioning bond and Mr. Dell’Aquila said he recommends peer review and if the board needs to vote on anything then a public meeting needs to be scheduled. Mr. Viner expressed that he would like Town Council to review the decommissioning bonds. Mr. Ceppi would like clarification on continuous period of six month construction and Mr. Dell’Aquila said regular monitoring is required during the construction of the site and can verify construction. Mr. Mello asked if these are the first decommissioning bonds before and if they had been reviewed by Town Council and Ms. Shiver stated the other decommissioning bonds did not go to Town Council for review. Mr. Mello expressed that he feels that there projects were be subjected to higher scrutiny. Ms. Shiver said it falls under the construction bond they discussed before and Mr. Viner said the new projects fall under the new solar bylaw. Mr. Dell’Aquila said timing will not be affected and Town Council fees won’t go towards the applicant. There was much discussion on how the Planning Board will accept surety, a couple members wanted to accept cash, and Mr. Dell’Aquila read aloud the current bylaw and suggested that the Board tread carefully on what they require from the applicant. The bond discussion was tabled to another time. Mr. Mello mentioned he had the acoustical study for one of the projects that he handed in to review at a later time.

- **Meeting Reminder-** a list generated by the clerk was given to the Planning Board members to remind them the orders of operations during a public meeting.
- **Plan Requirements-** Mr. Dell’Aquila handed out the plan requirements for an ANR that was requested at the previous meeting
- **CMRPC Conference-** Mr. Dell’Aquila handed out the Citizen Planner Training Collaborative 2019 Conference Schedule. Ms. Shiver said it would be beneficial to the Planning Board and she has been to them in the past and they do a great job.
- **Solar Farm Committee-** Mr. Dell’Aquila mentioned there is a Solar Farm Committee meeting taking place on 2/21/2019 and everyone is invited to attend to voice their opinions.

8. New Business/Adjournment

- **Planning Board Policies-** Mr. Viner wanted to discuss the policy for the agenda and that the Chair should set the agenda. Ms. Shiver stated that the agenda has always been generated by the town’s staff. Mr. Butensky asked how the agenda is generated now and Mr. Dell’Aquila stated that the staff generates the agenda based off of applications in an inherited format. Mr. Butensky commented that it should be a joint effort between the Town Planner and the chair to generate the agenda with the ultimate decision of the Town Planner. Mr. Viner stated in “Roberts Law” the chair sets the agenda. Mr. Dell’Aquila stated that no chair o/n any board sets the agenda and Mr. Viner stated that

the Board of Selectmen Chair does and Mr. Dell'Aquila said that is not true. Ms. Shiver believes that when a town doesn't have the insufficient staff then the chair would generate the agenda. Mr. Butensky anyone has the right to put what they want on an agenda and Mr. Dell'Aquila said that is not the procedure but stated with proper communication beforehand it could be. Mr. Dell'Aquila stated that if any member on the board has items they want to put on the agenda they should be forwarded to him. Mr. Viner discussed a recent submission of edits to the Agenda he submitted to the clerk and the items were removed from the agenda. Mr. Dell'Aquila answered that he was not contacted directly about adding additional items on the agenda and it has not been part of our practice to add additional items; additionally we need to stamp the agenda the Tuesday before the meeting at noon, and Mr. Dell'Aquila added the line "new business" to cover Mr. Viner's additional items and for upcoming meetings. In addition, Mr. Dell'Aquila said that it has always been the town's staff that set the agenda and wanted to discuss the issues further with the Planning Board before any policies were changed. Mr. Viner wants to change the policy and he wants to set the agenda. Ms. Shiver suggested a workshop for the Planning Board members. The discussion was tabled and a special meeting for policies and procedures will take place on March 19, 2019 at 6:00pm before the regular meeting at 7:00pm. Mr. Dell'Aquila will send examples and documentation to the Planning Board members before the meeting.

MOTION: Mr. Ceppi motioned to adjourn the meeting at 9:45pm

SECOND: Mr. Butensky

DISCUSSION: None

VOTE: 5-0

Submitted by: Monica Santerre-Gervais ODIS Clerk

Approved by the Planning Board on: 3/19/2019

List of Documents used on February 19, 2019

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

- Agenda
- Memo emailed from Paul Dell'Aquila to Planning Board dated 2/14/2019
- ANR- Bacon Hill/ E. Charlton Road application/ Resubmission of plan
- ANR- Sugden Block Application and plan
- Continuation email from Ahern Equipment and Grant of Water Easement
- Updated site plans for 20 Norcross Road Solar Farm, peer response, slope analysis, and Stormwater Report
- Minutes: 12/18/2018 and 1/15/2019
- Email from Jim Laney dated 2/18/19
- Worcester Registry of Deeds Plan Regulations

Items submitted at the Meeting:

- Meeting reminders
- Citizen Planner Training Collaborative/ 2019 Conference Schedule