



Planning Board – Town of Spencer

Minutes

Planning Board Meeting

Tuesday, March 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 7:05 pm

2. Adoption of Minutes: February 19, 2019

MOTION: Ms. Shiver motioned to approve the minutes from 2/19/2019

SECOND: Mr. Butensky

DISCUSSION: None

VOTE: 5-0

3. ANR:

Mr. Dell'Aquila stated that currently 50 East Charlton Road is an undeveloped 2.75 acre parcel located in the rural residential district at the southwest intersection of I Capen Road and East Charlton Road. The purpose of the plan is to create two legal lots (B-1 & B-2) that conform to current zoning standards. Additionally, lot B-1 would be 60,000 s.f. and would have a frontage 386.5 linear feet and lot B-2 would be 60,000 s.f. and would have a frontage 230.6 linear feet. Both lots would thus comply with the current lot dimensional standards and complies with Spencer's ANR Regulation Checklist. Mr. Ceppi asked is this had a previous ANR and Mr. Dell'Aquila answered yes there was an ANR split in 2013.

Leonard Jalbert, Jalbert Engineering was present for the meeting and said he has been working on this property for 6 years. The lot was 40 acres and owned by Mr. Chamberlin in 1947, they did the complete perimeter years ago, and subdivided the property.

Ms. Shiver added that the plan locus says Wilson Road but is should say GH Wilson Road.

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

SECOND: Mr. Ceppi

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 recapped that this application was continued at our previous meetings. The applicant is requesting a Minor Site Plan Review and the Planning Board was ready to approve but they were awaiting the decision from the Conservation Commission in regards to the easement. The Water Department has now signed off on the proposed easement language and the Conservation Commission also approved the project on February 28, 2019.

Paul Chisholm, 6 Settlement Way, Nashua, NH, and Jeremy Ahearn, Ahearn Equipment was present for the meeting. Mr. Chisholm explained that the plan is very similar to what they had seen before. The easement caused the delay and Mr. Chisholm reviewed the old water easement and the new location of the easement. Some additional improvements included the water main area is pull backed, some fill, and a drainage pipe. Mr. Viner asked if the old water easement was extinguished and Mr. Chisholm said yes. Ms. Shiver asked about an as built for Utilities and Facilities and Mr. Chisholm did not recall. Mr. Dell'Aquila said they most likely will require an as built at the completion of the project. Mr. Butensky asked if the easement was signed and notarized and Mr. Chisholm said yes. Ms. Shiver asked if they had a book and page number and Mr. Dell'Aquila showed her a copy of the recorded document.

Mr. Viner asked if Mr. Dell'Aquila had a draft decision and he did not have updated ones to share. Mr. Dell'Aquila stated there are standard conditions but asked if the Planning Board had any specific conditions. Mr. Viner asked if procedurally if the Planning Board approve the application contingent upon accepting the decision at the next meeting. Mr. Dell'Aquila stated that whatever the project, the Planning Board makes the decision and signs the signature page, Town Planner revises the decision with Planning Boards conditions and then sends out the decision. Mr. Dell'Aquila and clerk went to the ODIS office to make copies of a draft decision. Mr. Viner opened the meeting up to the public and there were no comments.

Ms. Shiver asked if they needed an amended permit from state highway and Mr. Ahearn said it would be based on the decision tonight. Mr. Ahearn stated that the driveway permit does expire. Ms. Shiver asked if the new easement, with the book and plan number, were referenced in the plan and Mr. Chisholm said yes. Mr. Viner asked if anyone knew what that water main was for and Mr. Chisholm said it goes to town and High School. Mr. Viner asked if Ahearn have public water and Mr. Chisholm said yes. Draft conditions were handed out to the Planning Board members to review. Mr. Dell'Aquila stated that some wording is from a previous minor site plan and will need to be changed. Mr. Viner made note to add the new plan date for 1/23/2019. Mr. Viner asked what the anticipated timeframe and if it will be within two years. Mr. Ahearn said he was hopeful to have this completed by Halloween. Mr. Butensky asked if there were additional conditions and Mr. Dell'Aquila said he was waiting for feedback from the board.

Ms. Shiver asked about asbuilts and complete drawings in PDF form within 30 days of completion and Mr. Dell'Aquila said condition number 13 & 14 covers any asbuilts and drawings requirements. The applicant said they were ok with the conditions. Mr. Viner asked if the public had any additional questions or comments and there were none.

MOTION: Ms. Shiver motioned to close the public hearing

SECOND: Mr. Ceppi

DISCUSSION: None

VOTE: 5-0

MOTION: Mr. Ceppi motioned to approve the minor site plan review for Ahearn Equipment

SECOND: Ms. Shiver

DISCUSSION: None

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.

Mr. Dell'Aquila stated that the applicant has requested a continuation for this meeting in order to revise the plan using the peer review feedback and updating the visual mitigation. Additionally, Mr. Dell'Aquila provided the Planning Board members site photos in their packets. Mr. Viner said that it appears from a Stormwater standpoint that the applicant has a ways to go. Mr. Butensky stated that the site walk was helpful and would like to see more. Ms. Shiver would like ATV's for site walks.

Mr. Viner opened the meeting to the public:

Amy Yanover, 30 Norcross Road, asked if she could get a copy of the peer review and she will contact the ODIS office to receive a copy the next day.

MOTION: Mr. Butensky motioned to continue the meeting to April 16, 2019

SECOND: Ms. Shiver

DISCUSSION: None

VOTE: 5-0

6. Dustin Doray Trucking- Surety Performance Bond Review-

Dustin Doray, Doray Trucking, was present for the meeting.

Mr. Dell'Aquila explained that Doray Trucking received approval to build a garage at 17 West Main Street for his trucking business. In the Certificate of Decision under condition #14 of that approval, Mr. Doray is required to present surety to the Planning Board for review prior to construction. Mr. Doray has presented a Bond from Western Surety in the amount of \$70,180, which was the amount established by peer review and embedded into the Certificate of Decision. Mr. Doray attended a preconstruction meeting with Town Staff on March 6, and is hoping to begin construction in early April, weather permitting.

Mr. Doray stated that the insurance company they call it a surety bond and will apply to the Stormwater bond as required. Mr. Dell'Aquila stated that Mr. Doray has been diligent on making

sure the format and nomenclature correct. Mr. Viner asked if the surety was just to cover the Stormwater aspect of the job and Mr. Dell'Aquila said yes. Mr. Doray stated that the bond will be good for a year and if he needs additional time then he would renew the bond.

MOTION: Ms. Shiver motioned to accept the surety bond as submitted

SECOND: Mr. Ceppi

DISCUSSION: None

VOTE: 5-0

7. GH Wilson Solar Farm-Surety/ Decommissioning Bond Review-

Ernie Mello, ZPT Energy LLC, was present for the meeting.

Mr. Dell'Aquila reviewed that at the last meeting Mr. Mello handed out decommissioning plans and there was some board discussion on what forms or formats will be acceptable related to wording in the bylaw. Mr. Dell'Aquila received Town council feedback and his comment was that it does appear that the Planning Board can request the specific format of the surety for decommissioning and that an escrow fund is an appropriate instrument. However, Mr. Dell'Aquila further noted that the bonds currently in place for ZPT's Woodchuck and Paxton Road Solar Farms were previously vetted by Town Counsel and approved by the Planning Board and would suggest that similar bond formats for the GH Wilson would also be acceptable.

Mr. Mello said he has been at the past couple meetings and the decommissioning estimate has been peer reviewed by Graves and they changed the language on when the Town of Spencer can use the bond, the estimate was increased, and the hourly rate was changed to prevailing wage. Mr. Mello further stated that they are submitting a bond and this type of bond has been submitted in the past for previous projects. Mr. Mello said they have included a cover letter for the bond for GH Wilson Solar array and the principle on the bond commits to renew the bond or post cash or binding letter.

Ms. Shiver explained that in her opinion and working with businesses that change hands, that it is a greater risk for the Town of Spencer, and it is the board's priority to protect the town and her consideration will be for cash. Mr. Ceppi seconded the opinion. Ms. Shiver mentioned that she continues to go to workshops and it will be her opinion for all solar projects. Furthermore, she knows that the investment and money is there; and cash is the protection the Town of Spencer needs because if bonds expire they don't have to chase anyone. Mr. Mello stated that he doesn't understand the difference between bonds and cash. Ms. Shiver said cash is easier to access. Mr. Mello stated that the investors own the site for 25 years and the town will have the commitment. Ms. Shiver said the project could change hands and there is no guarantee it won't because it's the cost of doing business.

Mr. Viner stated that the projects have been approved and he asked if it is proper practice to stipulate something new than what they have taken in the past. Mr. Dell'Aquila said it's a good question and it concurs with Town Council that the Planning Board can choose the type of bond and his concern is when the applicant applied we had one set of standards and now at the last minute we may consider changing that. Additionally, Mr. Dell'Aquila said it was noteworthy to

change the standards to protect the town. Ms. Shiver stated that the Planning Board does not have standards and it's the surety that the Planning Board chooses. Mr. Dell'Aquila said with past projects the Planning Board has used bonds for other projects and now requesting something else. Ms. Shiver said just because the applicant has had approved site plans before the board cant link them and the board has the discretion. Mr. Dell'Aquila said that the type of surety was not discussed during the public hearing and maybe it should have been because presumptions were probably made because it wasn't specified. Mr. Viner stated he is in favor of cash escrow but has hesitation. Ms. Shiver stated the peer review is done with amount not type of surety.

Mr. Mello said the town has accepted bonds and still feel applicant has the right to decide what type of bond/escrow to submit and that cash takes from profit and more cost effective for bonding. Ms. Shiver replied that it is up to the Planning Board to protect the town and she can't care on how cash bond who affect the applicant. Mr. Mello asked why other applicants bonds aren't cash. Mr. Dell'Aquila stated they haven't asked for cash previously, agrees it's to protect the town, but make more standard conditions and shouldn't list other options if only accepting cash. Ms. Shiver said the other options listed gives the Planning Board the flexibility to determine what the best surety for the town is. Mr. Viner said there is precedence to what they have accepted in the past. Mr. Mello said the bond is being backed by a letter, backed by a commitment and Ms. Shiver said the letter is worthless because they know more with the risks associated with solar farms. Also, Ms. Shiver stated she understands that the applicant should have been notified before so they could plan for the cash bonds.

Mr. Ceppi asked if they could do cash on one project and bond on the other project. Mr. Viner said hypothetically if they do a bond versus cash than a bond could be higher than if they do cash. Mr. Mello stated the letter and the bond were accepted by Town Council. Mr. Dell'Aquila agreed that the format of the bond was already approved and submitted and it is an accepted format. Mr. Butensky said going forward with cash bonds is a great idea but he is not comfortable with requiring cash from this applicant. Mr. Ceppi said in the bylaw it gives the Planning Board three options and it gives them the flexibility to choose. Mr. Viner said the Certificate of Decision was already approved and if he was on the other side of the table he would understand what the applicant is saying. Mr. Ceppi felt it's the cost of doing business. Mr. Mello again stated that he did not believe his company was required to put up cash for the bond. There was much more discussion in regards to cash versus bonds and what the Planning Board want to accept.

Mr. Ceppi said they have to vote on what the applicant has submitted and it was asked how many votes needed and what happens if it's denied. Mr. Dell'Aquila said majority vote and if it is denied the applicant would have to come back with new submittal.

Not a public hearing, however, the chair opened the meeting.

Matt Defosse, 7 Paul's Drive, said that moving forward he agrees that is should be cash. Also, he thanked the board for talking pushing for cash.

Mr. Viner asked what the other option would be if the bond is denied. Ms. Shiver said that Town Council is okay with the bond and agrees that it is not okay to spring it on the applicant last meeting. Mr. Viner asked about adjustment after 5 years and Mr. Mello said the Graves letter is

2.5 percent increase in inflation, page five, middle paragraph, has language for bond renewal every five years. Mr. Dell'Aquila stated the applicant cannot get the building permits until bond is accepted and received. Ms. Shiver asked about the acoustic study and Mr. Dell'Aquila said in the conditions the Town Planner has the authority to approve them and they can discuss the matter later.

MOTION: Ms. Shiver motioned to accept the surety bond format and commitment letter of plan as submitted for GH Wilson Solar Farm

SECOND: Mr. Butensky

DISCUSSION: None

VOTE: 4-1 (Mr. Ceppi Opposed)

8. Main Street Solar Farm- Surety/ Decommissioning Bond Review

Ernest Mello, ZPT Energy LLC, was present for the meeting and handed out a similar cover letter and bond for Main Street solar compared to GH Wilson Solar. Mr. Mello said it's the same language, approved by the same peer reviewer, and the estimate was increased. Ms. Shiver asked if the standard condition if ownership changes and MR. Dell'Aquila said yes. Mr. Viner suggested changing the 5 year anniversary to cash. There was much discussion in regards to change in ownership and types of bonds. Mr. Viner read aloud the decommissioning condition and Mr. Mello asked if they could please approve the bond as submitted. Ms. Shiver agreed to change the bonds to cash after the five years.

MOTION: Mr. Butensky motioned to accept the surety bond format and commitment letter of plan as submitted for (behind 369) Main Street Solar Farm

SECOND: Ms. Reed

DISCUSSION: None

VOTE: 4-1 (Mr. Ceppi Opposed)

9. 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

Jim Laney, 123 Kids, LLC, was present for the meeting. Mr. Dell'Aquila refreshed the boards concerns at the last meeting to try and tie up loose ends regarding the Sunset/Holmes Subdivision. Both Jim Laney (123 Kids) and ZPT were invited to the last meeting to discuss outstanding issues. Ernie Mello from ZPT did attend, however Mr. Laney was unable to attend due to previously-scheduled travel. Per discussion with the board, Mr. Dell'Aquila reached out to Utilities and Facilities about updating the punch list from several years ago, which would then be subject to peer review to then settle on a proper total for the Bond but did not get a response yet. Mr. Laney has received price estimates from paving companies and will be ready to begin work in the spring. Also, the required barriers are in place and he is waiting on instructions from the electric company to install the streetlight at Holmes St. & the access driveway to the array.

Mr. Laney discussed that he has an estimate from Albert Asphalt and working with Highway to complete the street and looking to start April 15, 2019. Additionally, he will raise the manholes and fix the berms. Mr. Viner asked if procedurally if Mr. Laney comes back to the Planning Board to accept the road. Mr. Dell'Aquila said that Mr. Laney will not come back to Planning Board but will be reviewed by third party, and then needs to get voted at town meeting. Mr. Viner stated that the road requires more than just paving. Mr. Laney said that Eben Butler, Highway Department, will give a list to Albert Asphalt and any issues that need to be fixed will get fixed. Mr. Ceppi asked if Albert Asphalt and Highway is working together. Mr. Viner commented on the road needing more than a top coat and wants to review Quinn Engineering's previous punch list. Mr. Dell'Aquila said the new Highway Supervisor, Billy Krukowski, has Steven Tyler's notes. Mr. Viner wants third party to review site again. Mr. Laney stated that engineers cost money and the Highway Department has final say on the acceptance of the road. Mr. Viner asked who has been paying for plowing. Mr. Laney stated that he has plowed and has a company clean the manholes. Mr. Dell'Aquila said they can still have a third party review. Ms. Shiver said that it should not be up to Utilities and Facilities to do the punch list and the road because it takes away from the town's resources. Mr. Viner asked what the timeline for completion is and Mr. Laney said with asbuilts he would like to be ready for the next years May town meeting. Mr. Dell'Aquila said there is a fall town meeting too and Mr. Laney was unaware of the second town meeting. Ms. Shiver asked if the Asphalt company contract was with Mr. Laney and he said yes.

Ms. Shiver stated that the Planning Board needs to decide on getting new surety or just getting the road done, receive copy of contract with the Asphalt Company and Mr. Laney said tomorrow get ahold of Mr. Butler and look to start on April 15, 2019. Ms. Shiver wants verification of contract and a schedule. Mr. Dell'Aquila said it can be a condition of a copy of the contract with a timeline and if completion not done that the Planning Board can make a firmer action. Ms. Shiver agreed with the punch list peer reviewed.

Mr. Viner opened the public hearing up to the public:

John Winslow, 27 Holmes Street, explained that he is building a new house and he is planning on tapping into the gas line for the new house and the earliest they can do that is April 15, 2019. Additionally, his neighbor at 24 Holmes Street might be tapping into the gas also. Mr. Winslow did not want to see the new road get damaged by large trucks. Mr. Laney asked if he had water and sewer connected into the house and Mr. Winslow said not yet. Ms. Shiver stated there is a five year moratorium in regards to breaking up new roads. Also, Ms. Shiver would like the date of Mr. Winslow's gas connection entered into Mr. Laney's timeline. Mr. Laney will get ahold of the new house on 24 Holmes Street to see if they will be connecting too. Mr. Viner asked about the bond or just the copy of contract and timeline. Mr. Laney stated that there will be a crimp in the timeline with the future gas connection at the new home and third party review. Mr. Viner asked about peer review and Mr. Laney wanted to know if Quinn Engineering back involved but Mr. Butler has been very cooperative and helpful with what needs to get done. Mr. Dell'Aquila said they can start with the existing list, review with Lenard Engineering, and is thinking the review should be under \$1,000.00, and review with Highway. Mr. Viner stated that it is not up to the Highway Department to create and review checklist and Mr. Dell'Aquila said that the

Highway Department has final sign off on the road acceptance. Mr. Viner wanted to know what Lenard would review and Mr. Dell'Aquila said Utilities and Facilities will review the past punch list and then once condensed it can be reviewed by Lenard Engineering. Mr. Viner said we are going to pay a third party reviewer to use the old punch list and assess what will bring it up to town standards to be accepted as a road and Mr. Dell'Aquila said yes.

MOTION: Mr. Ceppi motioned to continue the public hearing for Sunset/Holmes Subdivision until April 16, 2019

SECOND: Mr. Butensky

DISCUSSION: Planning Board member would like to see the peer review before the next meeting and Mr. Dell'Aquila stated he would work on it.

VOTE: 5-0

10. Town Planner Report

- **GH Wilson Acoustical Analysis-** Mr. Dell'Aquila commented that in the conditions the Town Planner is the reviewing authority and said that this is the first acoustic study the Planning Board has received and seems acceptable. Currently, there was only one submission for GH Wilson and has heard that some projects have been put on hold with National Grid hookup and some may not happen at all. Mr. Viner was not happy with the hours of 9 to 5 and Mr. Dell'Aquila stated that those were operational hours and they can revisit the hours. Mr. Viner wants to compare daytime noise before and after. Mr. Viner asked about potential battery storage and Mr. Dell'Aquila said it's a possibility but they need to come back and get approval to install new equipment. There was discussion in the battery storage making noise and revisit the noise study. Mr. Dell'Aquila said that going forward is battery storage pads will be proposed in the future than a noise night study needs to be conducted.
- **Zoning Changes-** Need to submit zoning changes before the Town Meeting on May 02, 2019 and the special meeting needs to take place April 11 through 24th. With adopting green communities the Town will be available for multiple grants. Looking to add green communities and the way to qualify is 1) add uses to the table to allow renewable energy manufacturing and 2) renewable energy by right on certain land, no special permits, and the best spots for this is the Landfill and the Spencer Sewer Department, or Anaerobic Digester. There was some discussion on the Anaerobic Digester that was being put in on Northwest Road. Looking to add microbrewery/taproom as a permitted use. Also, revise temporary uses for emergency trailers to say "disaster" instead of "holocaust." The special meeting will take place on April 16, 2019 at 6:00 pm.

MOTION: Mr. Butensky motioned to hold a Special Meeting on April 16, 2019 at 6:00pm for potential zoning changes

SECOND: Ms. Shiver

DISCUSSION: None

VOTE: 5-0

- **Fall Town Meeting-** Additional zoning changes for fall town meeting will be gravel pits, sign bylaw needs to be revised, senior residential over 55 overlay district, and Route 9 Commercial Corridor overlay.

11. Board Liaison Reports

Mr. Viner wanted to add this to the agenda because there are members who are liaisons for other committees and they can provide updates. Mr. Viner commented that he is on the Solar Bylaw Committee and they will be looking to do some bylaw changes. The committee is re-writing the bylaw and will submit to the Board of Selectmen and wanted to hear the Planning Boards recommendations. Ms. Shiver said the process is once the committee is complete, then it will go to the Board of Selectmen, and if changes are warranted than the select board will submit it to the Planning Board in preparations for the fall town meeting.

Ms. Shiver is on the Economic Development Committee and they are generating Economic Development with the Town, Mr. Dell'Aquila is on the EDC and they are working on vacant building registry, CDBG funds, design guidelines, and Spencer Street Party in August 2019.

12. New Business/Adjournment

- Paul Defosse, 7 Paul's Drive, stated he was happy with the Planning Board and there bond concerns. Also, he said he recommended that in regards to the noise study and to go with the worst case scenario.

MOTION: Mr. Viner motioned to adjourn the meeting at 9:46pm

SECOND: Ms. Shiver

DISCUSSION: None

VOTE: 5-0

Submitted by: Monica Santerre-Gervais ODIS Clerk

Approved by the Planning Board on: 4/16/2019

List of Documents used on March 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 3/14/2019
- ANR- application and plan for I Capen Road
- Ahearn Equipment- Grant of water easement
- 22 Norcross Road Solar Farm- Peer Review and Continuation form
- Doray Trucking- Surety Bon
- GH Wilson Solar Farm- Decommissioning Bond and Acoustical Analysis
- Main Street Solar Farm- Decommissioning Bond
- Minutes: 2/19/2019

Items submitted at the Meeting:

- Draft Certificate of Decision for Ahearn Equipment

- Green Communities Designation & grant program with guidance
- Zoning Changes memo dated 3/18/2019