



Planning Board – Town of Spencer

Minutes

Planning Board Meeting

Tuesday, April 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, Robert Ceppi, Shirley Shiver and Maria Reed

Planning Board Members Absent: None

Staff Present: Paul Dell'Aquila, Town Planner

Staff Absent: Monica Santerre-Gervais, ODIS Senior Clerk

1. Mr. Viner opened the meeting at 7:20 pm

2. Adoption of Minutes: March 19, 2019 and March 19, 2019 special meeting

- **March 19, 2019 special meeting**

MOTION: Ms. Shiver motioned to approve the minutes from 3/19/2019 special meeting that took place at 6:00 pm

SECOND: Mr. Ceppi

DISCUSSION: None

VOTE: 5-0

- **March 19, 2019 regular scheduled meeting**

MOTION: Mr. Butensky motioned to approve the minutes from 3/19/2019 that took place at 7:00 pm

SECOND: Ms. Shiver

DISCUSSION: Mr. Viner asked if Amy Yanover requested the peer review and Mr. Dell'Aquila said the ODIS clerk emailed the document to the abutter.

VOTE: 5-0

3. 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. Viner opened the continued hearing.

Mr. Dell'Aquila explained that Sunpin Solar has submitted another continuance request because after the feedback from third party and the Planning Board feedback they are redesigning the

project so the southwestern array will be pushed back. Mr. Dell'Aquila felt they may add more to the Northern array and even though there is a delay in the project it looks like they are trying to improve the visual impact for the town. The applicant will come to the May meeting and all the new submittals will require peer review. Mr. Viner stated that the landowner feedback that could have changed the applicants mind.

Mr. Viner opened the hearing to the public at 7:26pm.

Matt Defosse, 7 Paul's Drive, considering the applicant is revising the plans should the board consider the applicant to refile and get new permits. Mr. Viner said it's the same application and Mr. Dell'Aquila commented that it's a revision to their submission and the applicant will pay for additional third party review. Mr. Viner sated they were good questions and how to asked about procedure and several Planning Board members commented that the applicant is still in the design phase. Mr. Defosse said down the road he would like to know at what point it constitutes a new application. Ms. Shiver stated that the applicant is responsive and Mr. Ceppi stated nothing has been approved yet. Mr. Viner stated that Ms. Shiver missed one meeting and Mr. Dell'Aquila stated the ODIS Clerk made an account of who has been absent for the meetings and Ms. Shiver missed one meeting, listened to the minutes, and is eligible to vote. Mr. Viner stated with Mr. Butensky missing the June meeting and the prolonged continuance they might run into quorum issues. Mr. Dell'Aquila stated they can let the applicant understand but with the plans potentially coming in May than we can continue this meeting and monitor the attendance.

MOTION: Mr. Ceppi motioned to continue the meeting to May 21, 2019

SECOND: Ms. Shiver

DISCUSSION: None

VOTE: 5-0

4. 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. Viner opened the continued hearing.

Mr. Dell'Aquila commented at the last meeting they met with James Laney, the Planning Board asked Mr. Dell'Aquila to work with Utilities & Facilities to update the punch list for paving/reconstructing Holmes St. to the Town of Spencer's standards for ultimate acceptance at a future Town Meeting. Utilities and Facilities Superintendent, Bill Krukowski, and Highway Foreman, Eben Butler, provided him with a revised punch list yesterday, which was forwarded to Lenard Engineering for review. Once the punch list has been peer reviewed, those will become the standards that Mr. Laney and his contractors will have to adhere to. Lenard Engineering expressed that the new punch list items were similar to last punch list they last reviewed. Mr. Dell'Aquila stated the new list is more robust then the list from 2016. The process is that Mr. Laney needs to review and confirm the punch list, Mr. Laney wanted to start the construction mid-April, but Mr. Winslow is building a new home and needs to open the road for the gas line.

Mr. Viner asked if Mr. Laney reached out to Mr. Dell'Aquila about being absent tonight and Mr. Dell'Aquila said no. Mr. Butensky stated that Mr. Laney had six days to review the new punch

list. Mr. Butensky asked what the next steps are and Mr. Dell'Aquila is waiting for the review from Lenard engineering and then forward to Utilities and Facilities and Mr. Laney. Ms. Shiver asked if Lenard Engineering has the punch list and Mr. Dell'Aquila said yes. Ms. Shiver asked how much came over from the 2016 list to the new list. Ms. Shiver said she didn't remember core samples on the 2016 punch list. Ms. Shiver interprets the core sampling in questioning if the road is failing and Mr. Dell'Aquila did not agree but agreed it may be something new that we have seen. Ms. Shiver is concerned that there is more work than required and they don't have a bond. Ms. Shiver said the 2016 punch list had a limited amount of items and Mr. Viner stated he agreed with the new punch list from Mr. Krukowski. Furthermore, Mr. Viner stated he will not be recommending putting the road on the Town meeting until all the items have been addressed on the new punch list. Mr. Ceppi said it didn't matter if the list has more items than the 2016 list these are the items that need to be completed to accept the road. Ms. Shiver stated the concern is where it becomes to cost prohibitive and there isn't a bond.

Mr. Viner opened the hearing to the public.

John Winslow, 27 Holmes Street, stated that National Grid is scheduled to come this week for the gas line. Ms. Shiver asked when they close on the house and Mr. Winslow said there isn't a date yet but maybe 7-8 weeks.

Dick Kirk, 22 Holmes Street, stated that the development started in 2005 and then in 2007 all work ceased and the road has sat like that since then and he is concerned. Mr. Kirk said that there is so much work that needs to be done and Mr. Laney has had several extensions. Also, on record Mr. Laney has mentioned walking away from the project and the town being stuck with the project and he is a tax payer and is very unhappy about that. Mr. Kirk said he used to live at the end but then the road got extended and now the new road extends 30-40 percent into his property and no longer has a finished road in front of his house and is concerned that the road will stay that way and wants to know what he can contribute to make the road to move the process along. Another concern, his home is at the lowest point on Holmes Street and wasn't like that before and when the road was built they graded towards his house and wants to know if that was the plan because now he gets water from both direction in his property. The water is missing the storm drains because of the grade, running into his driveway, flower beds, shed, and the wetlands and it's not supposed to be. Mr. Butensky said stated the recent storm must have brought in a lot of water. Mr. Viner said its worth reviewing the profile of the road and Mr. Dell'Aquila said they have the plans and what would we do with the plan. Mr. Ceppi said the catch basins aren't working and Mr. Butensky commented that the road will get higher when it gets finished. Mr. Viner said if the lower point has shifted than they should review the design plans. Mr. Ceppi said third party should review the design plans. Mr. Kirk said during the construction of the solar farm said there was a lot of water runoff because the solar farm was not built to plan, by 30% from Graves Engineering estimate, more water than was supposed to come down into Holmes Street and his property. Mr. Kirk added that you can review the plans but it needs to be compared to what was built.

Mr. Dell'Aquila said that he will note Mr. Kirks' concerns and share that with Lenard Engineering and Utilities and Facilities to make sure his concerns get addressed. Mr. Ceppi commented that if it's an issue within the solar farm then those people should take care of it. Mr. Kirk said the issues with the Solar Farm have been largely corrected but the slope of Holmes

Street Extension is adding a lot of water to his property. Mr. Viner asked if the plans can be forward to the Planning Board via email. Mr. Dell'Aquila said if he has them electronically than he will. Mr. Kirk asked why there wasn't a bond when they usually require a bond. Mr. Dell'Aquila said the bond expired and Mr. Kirk asked how to rectify a bond expiring since there are a lot of project ongoing in town and doesn't want other bonds to lapse and raise the tax rate. Mr. Dell'Aquila answered he wasn't sure about the tax rate and Mr. Kirk said someone has to pay for it if there is no bond. Mr. Dell'Aquila said it was stated at a previous meeting but the Planning Board had the same concerns that either the contractor does the work or go get a bond and do the work and the Planning Board had him do the work. Mr. Kirk asked how the bond expired and Mr. Dell'Aquila said I don't know. Mr. Viner stated it expired at the end 2016 and Mr. Dell'Aquila said at the end of 2017 but there was no notification sent that the bond was expiring. Mr. Kirk asked if a bond is like an insurance policy and Mr. Dell'Aquila stated it can be in several different formats. Mr. Dell'Aquila said there were other projects that the bonds lapsed or were forgiven and there is still work that needs to be done.

Ms. Shiver stated that the Planning Board is in deliberation right now on what types of bonds they will accept, especially for high risk projects like Solar Farms, and her feeling is they should only accept cash. There have been some developers that have walked away from their projects and the bonds have lapsed and she is unsure why Holmes Street bond lapsed. Furthermore, Ms. Shiver stated that when the economy was low a lot of developers walked away but the board has the authority to request certain bonds. Mr. Kirk stated it's the function of the Planning Board to protect the interest of the tax payers. Ms. Shiver stated that this is the only bond that has lapsed where the developer has not walked away. Mr. Kirk asked if the developer walks away is the town on the hook to finish the work that needs to be done and Ms. Shiver said yes but on certain subdivisions they remain private roads. Mr. Dell'Aquila said Deer Run the bond was forgiven Laureldale Woods, and Debbie/ Donna Drive. Mr. Kirk asked if it affects the house value when a road remain private and Mr. Viner said it is something they could look into.

Mr. Defosse asked how long the bonds last and Mr. Dell'Aquila said most bonds a renewed yearly. Mr. Defosse said that he is in favor of all cash bonds and if it's easy for developers to walk away they will and the town will suffer.

Mr. Kirk stated after reviewing the new punch list the drainage from the Solar Farm is causing stagnant water, which, is a breeding ground for mosquitos and concerns for West Nile and feels the Solar Farm developer should be responsible for that not Mr. Laney. Mr. Dell'Aquila agreed that it is ZPT's responsibility not Mr. Laney. Mr. Kirk who is responsible for the drainage ponds and Mr. Dell'Aquila said it varies. Mr. Viner asked if the Stormwater Bond was still retained for Solar on Holmes Street and Mr. Dell'Aquila said he believes it still is since there is monitoring going on. Mr. Viner said that in the conditions to the subdivision or the solar farm that it addressed that basin being the responsibility of the solar farm developer for the duration of the facility and a homeowners association needed to be established for residential use. Mr. Dell'Aquila asked why because the basins would be on ZPT. Mr. Viner said he believes the detention basin takes on from Sunset Lane and Holmes Street Extension too. Furthermore, he believes the disrepair of the subdivision roadway caused for the ineffectiveness of the detention basin. Ms. Shiver commented on the drainage calculation and that nothing is working and Mr. Dell'Aquila said it will be the responsibility of ZPT.

Mr. Ceppi said we are trying to get the developer to work with us and unfortunately it may seem slower so they can stay in a friendly manner to get the issue resolved. Mr. Viner said what is the alternative if the new amount of work is more than Mr. Laney can afford, he doesn't have a bond, and he walks away, what can the Planning Board do. Mr. Dell'Aquila said it was discussed before that the Planning Board has the authority to hold a public meeting and amend/rescind subdivision approval but Mr. Laney may walk away. Ms. Shiver asked who the new owners are for the Solar Farm and Mr. Dell'Aquila asked not to combine the two projects. Mr. Dell'Aquila stated the issue is the roadway and that falls under the subdivision and the developer is Mr. Laney. Mr. Kirk asked to forward the new punch list to Margaret Washburn and Mr. Dell'Aquila said that was already done. Mr. Viner said if Mr. Laney walks away the town doesn't have to finish the road and Mr. Dell'Aquila stated the town has not finished other roads where developers have walked away. Mr. Kirk asked if they would lower the catch basins to catch the water. Mr. Viner said when the subdivision is rescinded it becomes a private right-of-way and Ms. Shiver said it's a public way and there was much discussion in regards into what type of road it will be. There was much discussion on what land Mr. Laney owns and if the land was buildable. Mr. Viner said if they make the assumption that Mr. Laney walks away all they can do is rescind the subdivision and Mr. Dell'Aquila said they could ask if the bond could be reinstated. Mr. Viner was confused and felt the Town Planner asked him to reinstate the bond and Mr. Dell'Aquila stated at the last meeting Mr. Laney said he can't afford the bond and the road repair. Also, if the Planning Board is going to rescind then Mr. Dell'Aquila would like input from the Town Administrator and the Board of Selectmen.

Mr. Viner feels that with the absence of Mr. Laney it shows the road is less likely to be completed. Mr. Viner asked if the Planning Board should review the phase two of the subdivision and Mr. Dell'Aquila said that should be addressed at another meeting as a different agenda item. Mr. Butensky asked what the next steps are Mr. Dell'Aquila said he is waiting for the response from the third party then that will represent what the town wants to see to get the rad accepted and it looks like the Planning Board would like to research some different course of actions for Mr. Laney not finishing the road. Ms. Shiver asked what the point of this meeting was and Mr. Dell'Aquila responded we were to update Mr. Laney with the new list and then he was to correspond with his contractor. Ms. Shiver wants to see an actionable item and Mr. Laney showing up would be an actionable item or even cleaning out a catch basin. Mr. Dell'Aquila said he is working on getting the street light that is required of him in his conditions. Mr. Kirk said he installed the guardrails. Mr. Kirk asked what something meant on the peer review report and Mr. Viner answered him.

Mr. Defosse said when it comes to Stormwater calculations and when they do fail what should be done for consequences. Also, when the developer is selling off the projects they are not doing a quality job and the developer is able to continue doing work in town.

MOTION: Mr. Ceppi motioned to continue the public hearing for Sunset/Holmes Subdivision until May 21, 2019
SECOND: Ms. Shiver
DISCUSSION: None
VOTE: 5-0

5. Town Planner Report

- **Landfill Solar Decommissioning Bond-** Emily Byrne, Citizens Energy, was present to discuss any questions about the decommissioning bond. Mr. Dell'Aquila stated that a condition item that the applicant needed to submit a decommissioning bond in order to start construction, however, because it is not an agenda item no action will take place at this meeting. Mr. Viner asked if the surety amount had been reviewed and Mr. Dell'Aquila stated the amount was in condition 33 on the decision and had already been peer reviewed. Mr. Dell'Aquila said surety bond number B1003457 is the one that is the one to be reviewed. Mr. Viner would like a peer review on the bond to look at the surety amount before the next meeting. Mr. Ceppi asked if the amount was established by third party and Mr. Dell'Aquila said yes. Ms. Byrne said the surety amount was already established by third party during the permitting process. Mr. Dell'Aquila said there is language in the bond about deflation throughout the project.

Mr. Viner asked if this was the only project we listed in the conditions the bond amount and Mr. Dell'Aquila said it's not unusual and there were other projects that listed the bond amount. Mr. Viner said GH Solar did not have their decommissioning amount as a condition and Mr. Dell'Aquila answered that was not a condition for that project. Mr. Dell'Aquila asked the planning board members what the difference between an escrow bond and cash because it is a form of surety that has been approved in the past. There was much discussion in regards to the bond, the form of bond, renewal of bond, and what would happen if the bonding company went out of business.

Ms. Byrne said this is a different type of project that benefits the town. Also, they are providing additional surety because there will be salvage in the equipment. Mr. Viner still wants to see another third party review and Ms. Byrne wanted to know what Mr. Viner was looking for to be added and Mr. Viner discussed adding additional notes and what is in condition 33 should be reflected as a note on the bond. Mr. Ceppi wants to see a 1% increase per year. Mr. Viner said the actual decommissioning plan should reflect what the conditions say because it's what they are approving. Mr. Dell'Aquila said he will touch base with Lenard Engineering and will touch base with the applicant to add the wording from condition 33 in the last paragraph. Ms. Byrne said they are fully executed documents but if she needs to revise the document she will. The Planning Board members will review the edits at the May 21, 2019 meeting. Ms. Byrne asked if they can schedule the pre-construction meeting before the next meeting and Mr. Dell'Aquila said yes.

- **Downtown design open house-** Tuesday April 23, 2019
- **Citizens Petition-** Mr. Dell'Aquila there is going to be a Citizen's Petition and asked Mr. Viner if he wanted to elaborate to change the Planning Board into an elected board and could affect the procedures that the Planning Board wants to put in place and Mr. Viner said he will comment on it after.
- **Procedures for the Planning Board-** Mr. Dell'Aquila handed out the revised rules and procedures for the Planning Board and the members went through page by page. Mr. Ceppi said that he expires in June of 2019 if it's a three year term. Mr. Dell'Aquila said they should

be a five year term and Mr. Ceppi asked when he gets re-sworn in June it will be a five year term and Mr. Dell'Aquila said the Town Clerk suggested leaving the term as it is or make it five year terms. Mr. Dell'Aquila commented that the Clerk's office has been assuming a three year term but the bylaw says five year terms. Mr. Ceppi said that if the bylaw says five years than everyone's terms should have two years added to them. Ms. Shiver said she remembered five year terms. There was much discussion in regards to the Clerk's Office research of past terms and the Planning Board terms and how to proceed going forward. Mr. Ceppi suggested four year term. Mr. Viner commented that Ms. Reed and Mr. Butensky are in there first term and Mr. Butensky said he should be five years. Also, Mr. Butensky said going backwards seems like a waste of time. Mr. Dell'Aquila said 2023 would be the latest term and still have one person that wouldn't be accounted for. Mr. Viner commented that the order should be Mr. Ceppi, himself, Ms. Reed, Mr. Butensky, and Ms. Shiver for expirations on a year basis. Mr. Butensky said the Town Clerk's input is important and ask them and discuss later. Ms. Shiver asked if action needs to be taken and Mr. Dell'Aquila said he took input from last meeting and added to the document and then asked the members to review and submit comments and feedback by the next meeting.

6. Board Liaison Reports

- **Economic Development Committee-** Ms. Shiver commented on the EDC having the Spencer Street Party this summer, outreach strategy to spruce up Main Street with lamp posts and flower pots, Celebration Committee with events at the Spencer fairgrounds, downtown design presentations on April 23, supporting current businesses in the downtown area and future bylaws that would foster economic development. Mr. Butensky wanted Ms. Shiver to repeat what committee this was for and she said that it was for the Economic Development Committee. Mr. Viner asked how often the Committee met and Mr. Dell'Aquila said they are monthly. Mr. Butensky said he was involved in the flower pots for Main Street because he is a part time Bemis Nursery employee.
- **Solar Bylaw Committee-** Mr. Viner said they are poking along and they are hashing out some of the thoughts on how they want to split up the use table and have large scale ground mount panels, roof mounted solar by right, ground mounted residential and add a minor plan review, and carport/canopy solar installation use would be by right. Furthermore, Mr. Viner said they are hoping to have some items by right and others with enough open ended regulations where the bylaw won't be outdated in the next year. Mr. Dell'Aquila said that the carport solar was a good idea. Mr. Viner stated that by putting it in the bylaw it will encourage those facilities like Price Chopper or Big Y where the visual impact won't be a concern. Mr. Dell'Aquila stated that his wife works for a company that has a solar canopy over there parking lot and the abutments take a beating through the course of the year. Mr. Viner explained some scenarios he had seen.

7. New Business/Adjournment

- **Citizen's Petition-** Mr. Viner stated that he submitted a Citizen's Petition for the Town Meeting and because he wants to see the Planning Board is an elected board in

order to redefine the Town Planner and the Clerk giving the Planning Board authority over them; as well as, cementing the five years and one individual term per year. Mr. Viner said he did not bring it up before because he didn't want to make it a Planning Board issue and he wants the blame to be his own. Mr. Ceppi asked if he means elected at town meetings and Mr. Viner said yes. Mr. Butensky said he was on another board where he had to be elected and he said it was kind of fun and said he doesn't feel it would be more difficult to continue to be on the Planning Board. Mr. Viner said his thought process is that he was not doing this because he doesn't like anyone. Mr. Butensky asked if the petition was already handed in for the Town Meeting and Mr. Viner said yes and Ms. Shiver stated any citizen can submit a petition. Mr. Viner said he did it as a private citizen and Mr. Butensky asked if the petition can be sent to him and Mr. Dell'Aquila said that it was on the warrant if anyone wanted to review it. Mr. Ceppi asked Mr. Dell'Aquila how many other Planning Boards are elected and Mr. Dell'Aquila answered that he does not have numbers but elected are usually with larger communities. Additionally, Mr. Dell'Aquila said locally Leicester, MA Planning Board is elected. Mr. Ceppi asked if it was Planning Board and Zoning Board of Appeals and Mr. Dell'Aquila did not know. Mr. Viner stated Leicester, Charlton, East Brookfield have elected boards. Ms. Shiver asked what the benefit would be between elected and appointed and Mr. Viner said that appointed there can be an argument made that the board is subject to others authority, and it's been said to him and mentioned at Solar Bylaw Committee meetings by public, that there is an appearance with particularly McCormick Solar farm and it was done because the Select Board wanted it done and Ms. Shiver said that was not true. Mr. Viner said it was just an appearance and decisions aren't made dependently by the Planning Board and if we didn't make a decision in concurrence with what they are told then right now the members can be removed or replaced. Mr. Butensky said that is the difference that appointed members can be removed or replaced and elected they would need to be impeached. Ms. Shiver understands and said since being on the Planning Board that has never happened. Ms. Shiver said it is a huge ethics violation to have collusion between boards. Mr. Butensky felt that when the boards are elected it would bring more people to the ballot box and see the Planning Board and would make the community more aware. Mr. Dell'Aquila said he does not have people beating down the door to serve as board members and if something was on the ballot than maybe more people would show interest. Mr. Dell'Aquila said he does not live in Spencer so he cannot comment or weigh in on the matter. Also, Mr. Viner said it would be more accountability so if people don't like the way we are doing things now others can run to be elected. Furthermore, Mr. Viner stated it had been voiced to him about the appearance of the board; Ms. Shiver wanted to know if these comments were from the Solar Bylaw Committee and Mr. Viner said no. Mr. Viner said that the McCormick Solar Farm/Select Board comments were by citizens that came to the Solar Bylaw Committee meetings and some comments were posted on Facebook. Mr. Ceppi asked what the language was for the elected term length and Mr. Viner said 3-5 years. Mr. Viner said the perception is that the Planning Board is entrenched in that there are individuals in the community that if the positions were elected they would throw there hat in the ring and not bother showing up and that there is only an opening when there

is an open seat. Ms. Shiver said there is an open seat now and Mr. Dell'Aquila commented there are actually two seats available for two alternates.

MOTION: Mr. Butensky motioned to adjourn the meeting at 9:22pm

SECOND: Ms. Shiver

DISCUSSION: None

VOTE: 5-0

Submitted by: Monica Santerre-Gervais ODIS Clerk

Approved by the Planning Board on: 5/21/2019

List of Documents used on April 16, 2019

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

- Agenda
- Memo emailed from Paul Dell'Aquila to Planning Board dated 4/10/2019
- 22 Norcross Road Solar Farm- Continuation form
- Landfill solar- Decommissioning Bond
- Draft Rules and Procedures of the Planning Board
- Minutes: 3/19/2019 special meeting & 3/19/2019 regular meeting

Items submitted at the Meeting:

- Planning Board members terms from the Clerk's Office
- Updated punch list for Sunset/Holmes road repair generated by Utilities and Facilities