

NORTH BERWICK PLANNING BOARD

MINUTES OF PLANNING BOARD JANUARY 28, 2021

Present: Chairman Geoffrey Aleva, Jon Morse, Mark Cahoon, David Ballard, Anne Whitten

Absent: Scott Strynar

Also Present: Lee Jay Feldman from SMPDC, Gil Paquette, Greg Lucini, Sean Murphy, Mark O'Brien, Jean Friend, Lulu (?)

1. Call To Order:

Chairman Geoffrey Aleva called the meeting to order at 6:33 pm.

2. Review Previous Minutes:

Jon Morse motioned to approve the minutes of January 14, 2021 as written. Anne Whitten seconded the motion. VOTE: 5-0

Chairman Aleva moved Mark Cahoon up to full voting status.

3. Current Business:

3.1 Continued Review

Gold Mark LLC & ISM Solar Quarry, LLC

486 High Street (Map 004 Lots 89 & 92)

Continued Review: The applicant is proposing an approximately 7-megawatt (MW) DC, photovoltaic solar energy generation facility to be sited at 486 High Street. The Project is anticipated to occupy approximately 46 acres of this land, and will include ground mounted photovoltaic panels, access roads, small electrical equipment pads, and fencing. The property is identified as Lot 89 & Lot 92 on the Town of North Berwick Assessor's Map 4.

Chairman Aleva asked Lee Jay Feldman if he had any comments regarding the project. Mr. Feldman stated that since the last meeting, Underwood Engineering have gone over the plans. Valerie Giguere, the Engineer, sent over her comments to Mr. Feldman and to the Town. Mr. Feldman stated that Ms. Giguere focused a lot of her attention on Sheet XS-W. This is the plan profile showing the wetland area on the site. Ms. Giguere states that there is

some grading and clearing within 25 feet of the edge of the wetland. It appears that the areas of proposed solar panels are graded so that runoff is directed away from the wetland and the profiles show this as well. The existing grade drains towards the wetland. Mr. Feldman stated that it is the setback requirements for the wetland between the 2 uses of the gravel extraction and the solar field. Ms. Giguere is wondering if both requirements can be accommodated by the engineer providing a required construction sequencing plan for the work. The fields cannot be constructed until the gravel extraction is completed.

Ms. Giguere listed the following for the Town to consider:

1. Requesting the engineer include a proposed construction sequencing plan on the drawings.
2. Require the contractor to maintain established required gravel extraction setbacks, buffers, and protections for the wetland until the gravel extraction portion of the project is completed outside of those boundaries.
3. Upon completion of the gravel extraction areas outside of the wetland setback, the Town can consider allowing the proposed final conditions proposed for the solar field as long as:
The Contractor maintains erosion control measures, etc. at wetlands edge, completes clearing and grading, revegetates and stabilizes all the disturbed areas around the wetland prior to construction of solar panels in this area.

Ms. Giguere also states that some sort of construction sequencing allows for maintaining setbacks during the operations (gravel extraction) that require it, and then allows for the proposed final conditions proposed for the solar project.

Mr. Feldman stated that SMPDC has added a few things as well. Regarding Sheet XS-W, Mr. Feldman said the following:

I concur with the assessment made by Valerie regarding the regrading of the area around the wetland. If this Board wants to preserve this wetland feature than it seems to me the grading in this area needs to be revised again because the plan would suggest that the wetland will be choked off from natural drainage over time. See sheet XS-W for the proposed grades.

Mr. Feldman stated that the comment seems a little abrasive by saying it will be choked off, however, if you look at the grading on the profile, there is a large area that seems to be graded in a way that water from stormwater runoff will no longer be fed to that wetland area from the site.

Mr. Feldman stated that he had a few additional comments regarding the project. They are:

On the sheet noted as Route 4 Plan & Profile, the applicant is showing both an “APPROVED MINING EXCAVATION” Grade as well as a “PROPOSED GRADE FOR SOLAR PROJECT”. The proposed grade for the solar project is far different than the excavation project. If the Excavation operation is continuing until completion which grade will ultimately exist in this area? Is the Excavation operation going to end up limiting its work to adhere to the final grade proposed by the solar project? I believe this needs clarification as part of this review.

Mr. Feldman stated that there is quite a bit of difference shown and we need to know exactly where that final grade is going to be.

Mr. Feldman also had another comment. He stated that on Sheet CP-1 it is noted as “CONCEPT PLAN”. At what point is this plan set going to be a Final plan set for the board to act on?

Mr. Feldman stated the following recommendation:

At this point I would again recommend that this application be tabled to give the applicant an opportunity to review the comments from both review agents and provide the board with a final plan set for action which can include a series of conditions that the applicant would need to comply with as part of the approval.

Chairman Aleva stated that he had an email from one of the Board members, Scott Strynar who couldn't attend the meeting tonight. Chairman Aleva read the email into the minutes:

Planning Board Members,

I feel that this wetland should be preserved, and no grading or vegetation removal should take place within the setback limits of the wetland. If a handful of taller trees need to be removed or topped within the setback area to allow for better light on the panels, I would consider minimal removals/topping (without soil disturbance) with the Code Enforcement Officer's review/approval. I believe that the benefit of this wetland will be apparent many years in the future when the area is revegetated. I also feel that the natural drainage of the site that allows surface runoff to shed water towards this wetland should be maintained to whatever extent that is practical. For whatever reason, this wetland has survived over many years with soil extraction processes taking place on all side. I do consider this wetland has survived over many years with soil extraction processes taking place on all side. I do consider this wetland to be special and should be preserved at all costs. I am in favor of this project moving forward. I think that the use of this land for a solar panel project would be a benefit to the Town of North Berwick.

Chairman Aleve asked the applicant to come forward and discuss the project. Gil Paquette from VHB stepped forward. He is a consultant working with ISM on the project. He stated that they did receive the comments a couple of days ago, so they were able to have discussions about them and do some refinements to the drawings. They also did some refinements to the drawings based on what was discussed at the last meeting.

Mr. Paquette stated that there is a lot of focus about the wetland so he would like to address this first. He stated that it is a unique wetland, and he likes what Scott Strynar mentioned in his email about how it has survived with all of the mining going on around it. When he did some investigation on this wetland last fall, he did some elevation measurements to determine how deep the ground water was. He concluded that, the wetland itself is actually able to survive because its hydrology is maintained by groundwater and precipitation. Currently, it appears that the existing grade from mining flows to that area. Mr. Paquette stated that the whole wetland (donut) is bermed, so it is not receiving stormwater runoff now. He said that what happened is probably thousands of years ago there was a big ice block that sat there from the glaciers. The soils and things formed around it as the glaciers were melting and retreating. When the big ice block melted, it left this wetland. It is a depression that is deep enough to get hydrology from the ground water. He does not think that there will be an effect with changing the contours to make them different to what is currently out there now for the gravel pit.

Mr. Paquette stated that there will not be any stormwater sheet flow because they can't have that per the DEP. There is an opportunity with the way they have designed the plans to allow some water to enter that site that is consistent with Chapter 500 rules with the DEP. He stated that he is not an Engineer. He is actually a professional Wetland Scientist and wanted the Board to be aware of his accreditation, so he is knowledgeable about this issue.

Greg Lucini stated that there seems to be some misunderstanding about this wetland. It was noted in the reports that the concern that stormwater will not be draining into it and it will change the hydrology. He stated that there is currently no stormwater at all that drains into this. The wetland is a depression inside of a circle which is a berm and that is why they call it the donut. The water that is surrounding the donut can't make its way inside of the donut. The contours that are existing as shown on their plan, shows that it goes to the top, above and below the donut. That is the natural contour that is there, and it is their intention to keep that with the exception of right in front of the donut where they are proposing to do some cutting. They can allow water to drain into it which is not currently happening. The plan is to help recharge it. It is dry most of the year and by cutting the side of the berm they are able to allow a controlled amount of stormwater to enter. Also, by removing that part of the berm, it will allow small critters to have access to it. Mr. Lucini stated that this is why they feel that this project actually improves this situation. They are also going to fence that area and be

able to protect it. Mr. Lucini stated that there was also some concern about the mining operation continuing anywhere near the vicinity of the donut. He said that the mining is complete in this area.

Chairman Aleva stated that the question about the mining is more toward the entrance to the area and not around the wetland. He stated that the 2 questions that the Board has are regarding the extent of the mining at the entrance and protecting the wetland with more of a buffer and have a better discussion about taller trees being removed and maintained around that area. Chairman Aleva said that it is a pretty unique situation but some of the Board members do want to see it protected a little better than what is currently shown on the plan. Mr. Lucini stated that the protection is going to be coming from the meadow that they are going to create. It will help to fill the ground water and provide habitat for far greater range of species than what currently live there.

Mr. Lucini stated that he is concerned that some of the Board members think that it is currently filled with stormwater, but it is not and that we will be mining next to it which they will not be doing. Chairman Aleva said that he doesn't have any concern with the mining next to it because the mining there is done. His biggest concern is the removal of trees and removal of the shade around the wetland and it is destroying the wetland. He would like to see more of a buffer pulled away. He said that they want to take down the tall trees which will provide more sunlight and be more detrimental to that area. He is looking at maintaining a larger buffer around that area with a better description of the topping of trees that may shield the existing panels.

Chairman Aleva stated that the grading is right up to the edge of the wetland and the panels are probably about 25 feet from the wetland edge. He is looking for more of a buffer on one side of the wetland. Mr. Lucini stated that the State of Maine doesn't consider a solar panel to create an impervious surface beyond the post that go into the ground. Water runs off of the panels and falls into the meadow which will be mowed once a year. That meadow becomes a great habitat, and it does create the buffer that Chairman Aleva is talking about. Chairman Aleva stated that all of the tree growth around the whole buffer is going to be manipulated. Mr. Lucini stated that they will be removing the tall trees or top them and then they can augment that with lower growing shrubs that can be beneficial to the habitat. They can discuss with the Board what would be best in that area and would provide for the native species.

Mr. Lucini asked if it would help if they would remove the row of panels that is the closest to the area to increase the distance between the edge of the wetland and the first row of panels. Chairman Aleva stated that it would, and they could just leave it as shrubs. Chairman Aleva stated that they would need to know what they will need in regard to the height of the trees

so that it will not shade the panels. Greg Lucini stated that the way they figure it out is that the formula calls for a 3 to 1 ratio. If they have a 25 foot elevation change with a combination of elevation and tree height, the closest panel they could have is 75 feet. It needs to be 3 times that distance to not have a shade impact. Mr. Lucini stated that the only ones that are a problem are the panels to the west and the north of the donut. Chairman Aleva asked what the tree length would need to be in these areas to see how much would need to be cut. Mr. Paquette stated that they would have to be 10 to 12 feet. Mr. Lucini stated that if they were 10 feet and if the donut stays as it is, they would need to keep the panel 30 feet and for every 1 foot of tree height, they would add another 3 feet of distance to the nearest panel. Chairman Aleva said that if they could adjust a row of panels on the west side and give them an idea of what the tree height needs to be in that area and what other vegetation that they would need there, it would address his concern.

Mr. Paquette stated that, the area surrounding the wetland has a mixture of white pine, pitch pine and red pine and some small birch and shrubs. He said that it is the big pine trees that would need to be removed. Chairman Aleva said that they should submit a picture of the area and show them which ones they need to cut to make it work. He just doesn't want to create a situation where they will overheat the wetland. Mr. Lucini stated that they can do that. They can be clear in their permit that they will be doing selective cutting only and if needed, thicken it up with some trees and shrubs that will be more beneficial for the habitat.

Mark Cahoon asked if they would be able to go in and mark the trees that they want to remove and stake out the area with the 25 foot buffer. He stated that they could do another site walk to look at it. He stated that he still wants to know when a vernal pool no longer becomes a vernal pool. Mr. Paquette stated that it is not a vernal pool. Chairman Aleva stated that he believed the DEP had it as a vernal pool and that this was provided by Mark. Mr. Paquette stated that the information actually states that it is not a vernal pool. Chairman Aleva stated that it said that it was not a significant vernal pool, but it was still a vernal pool. He stated that it is on the DEP website for locations of vernal pools. Mr. Paquette stated that he doesn't believe that it is. There is no standing water when they looked at it. Mr. Lucini stated that the Inland Fisheries and Wildlife came out to see if there were any turtles or snakes and they determined that it was not a vernal pool. He said that sometimes what the State does with their satellite maps is state that something could be a vernal pool.

Mr. Lucini stated that they have talked about this issue every time they have come to a meeting. They would like to have some clear direction from the Board so they can finalize everything. He likes the idea of the Board coming out to the site. They will make sure that everything is marked for whenever they decide to come. They will mark the trees that they plan to remove or top off at a certain height. Mr. Lucini stated that he wants to clarify what they want. He said that they will remove one row of panels, move the fence line further towards the existing panels to allow a larger buffer and flag the trees to show which ones

they will cut and which ones they will top. He said that they mark the site as soon as possible so it will be ready for whenever the Board decides to do the site walk. He would like to be able to come back at the next meeting and finalize everything for the project.

Lee Jay Feldman stated that he has been involved in numerous solar projects in Southern Maine. One of the things that other towns have done is condition the applicant to have a 3rd party inspector on site during the cutting so that there is no misunderstanding as to what trees are going to go and which will stay. Mr. Lucini stated that they would be fine with that.

Jon Morse said that he is fine with the pictures of the buffer and the marking of the trees. However, he feels that there needs to be an extensive set of pictures so they will have it documented. Chairman Aleva asked the applicant how soon they could have the site marked out. Mr. Paquette said that he could have it done by Monday. Mr. Lucini stated that he will also provide a very clear memo that defines exactly what the wetland is. Anne Whitten stated that, on the DEP website, it says that the only person that can say if a vernal pool is significant or not is a Wetland Ecology or Wildlife Ecology person or a determination from the DEP. Chairman Aleva stated that a Wetland Scientist can do it as well. Mr. Feldman stated that there is a very narrow window of when they would have to out there to see the site. Mr. Paquette said, that when they started the project, one of his staff members went out to look at it. This person is a certified Wetland Scientist in New Hampshire and a professional Wetland Scientist. Maine does not have a licensing program. This person is the one that did the wetland survey on the site and documented that there was no standing water and was not a vernal pool. Mr. Paquette said that he is also a Wetland Scientist and a Wildlife Biologist, so he believes that he has the credentials that Anne Whitten mentioned. Ms. Whitten stated that she will call the DEP herself and see what they say about the site.

Jon Morse stated that the buffer for the mining operation was approved. He asked the applicant if they were going to be encroaching on the buffer that was approved for the mining. Chairman Aleva stated that when they do the project, the mining operation will be closed so that buffer will not apply any more.

Lee Jay Feldman stated that respectful of the DEP's buffers and permitting buffers, the Planning Board can establish a condition of approval whatever size buffer they choose to do. They are not limited to a 25 foot buffer. If they want to see a 75 or 100 foot buffer, they can do that. Jon Morse asked how far the edge of the wetland was to the first array. Mr. Paquette stated that they are going to remove the first row of arrays that is currently on the plan so it will be about 50 feet away.

The Board decided to do a site walk at 3:00 on 2/4/21.

Chairman Aleva stated that the next issue to review is regarding the mining in the entry way. He said that they have it indicated as mined but, on the plan, and profile it is not shown as mined. Greg Lucini stated that the majority of it has been mined. The part that is still being mined and should be done in the next 3 months or so. Chairman Aleva stated that the Rte 4 sheet should show that with respect to how that plays into what the final grades are going to be. Right now, on the sheet, it still shows that it is vegetated and has trees, and they have final contours that represent that. However, it won't be the case once the excavation is done. Lee Jay Feldman stated that the solar grade will not be the final grade, but the excavation grade will be the final grade in that area. Mr. Lucini said that the owner took the grade down to what he could by permit. He stated that they are not changing that grade. Mr. Feldman stated that the plan should be changed to not insinuate that they are going to have a proposed grade for the solar project because the proposed grade is actually the excavating grade. Chairman Aleva stated that they just need to show what the final grade will be in that area once it is part of the solar array.

Jon Morse motioned to table the Gold Mark LLC & ISM Solar Quarry, LLC (Map 004 Lots 89 & 92) until the next meeting on February 11, 2021. Mark Cahoon seconded the motion.
VOTE: 5-0

4. Other Business:

4.1 Hannaford Supermarket – Request to amend their conditional use permit to install a temporary office trailer to be used as an employee breakroom to provide proper social distancing during COVID-19 pandemic. Trailer to be placed as presented on site plan provided. Request for a 6-month temporary placement with the ability to extend temporary location based on pandemic circumstances.

Chairman Aleva stated that he thought that this could have been handled by the Code Enforcement Officer since it is a temporary structure, but Dwayne wanted it to come to the Board for review and discussion.

Jon Morse asked where it was going to be located. Chairman Aleva pulled up the plan to show them. He said that it will be on the side of the building on the other side of the entrance. The same side as where the CLYNK returnable is located but right by the building. Lee Jay Feldman stated that he spoke with Dwayne about this. He thought since it was COVID related, it was too bad that he didn't have some sort of authority to be able to do this or let CEO handle it. Dwayne did say that he spoke to the Town Attorney about the issue and she felt that the best thing to do was to bring it before the Board. Mr. Feldman stated that he feels that if the Board approves it for 6 months, they can give Dwayne or the CEO the authority to extend it for another 6 months, so the Board doesn't need to review it again.

Anne Whitten said she doesn't think they can do that because you can only have a temporary trailer in the Town of North Berwick for 6 months.

Chairman Aleva showed the plans on the computer. He stated that they must have a door on that side of the building for the employees to come out. He said that customers will not really see it because it will be on the side of the building that is far from the entrance and more towards the back of the building. Mr. Feldman stated that he believes there is some sort of door on that side because this is initially where the pharmacy was going to be in the original plan. David Ballard asked if the stairs was going to be facing the building or not. Chairman Aleva said that he wasn't sure, but he is assuming that the stairs will be in between the building and the structure. Mr. Ballard asked if there was going to be any power to it. Chairman Aleva said that there would be.

Jon Morse motioned to approve the temporary breakroom trailer to be put at the site of the Hannaford Supermarket in North Berwick for 6 months with the possibility for an additional 6 months approved by CEO. David Ballard seconded the motion.

Anne Whitten stated that she will vote against it because she wants to review the Ordinance. She does not believe that they can have it for more than 6 months.

Chairman Aleva stated that he is okay with it as long as it is stipulated that it is a temporary structure, and it will no longer be there after the need for the social distancing is over.

VOTE: 4-1

5. Adjournment:

Mark Cahoon motioned to adjourn the meeting at 7:52 pm. Jon Morse seconded the motion.

VOTE: 5-0

Roger Frechette,
Planning Coordinator

Respectively submitted,
Susan Niehoff, Stenographer

Chairman Geoffrey Aleva

Approved at February 11, 2021 ZOOM meeting

Jon Morse

Anne Whitten

Approved at February 11, 2021 ZOOM meeting

David Ballard

Approved at February 11, 2021 ZOOM meeting

Scott Strynar

Approved at February 11, 2021 ZOOM meeting

Mark Cahoon

Approved at February 11, 2021 ZOOM meeting

Planning Board
A G E N D A
Public Hearing/ Public Meeting

VIA Zoom Meeting # 837 0978 3758

January 28, 2021

6:30 PM

1. Call to Order:
2. Review Previous Minutes
3. Current Business:
 - 3.1 Continued Review
Gold Mark LLC & ISM Solar Quarry,
LLC 486 High Street
(Map 004 Lots 89 & 92)
Continued Review: The Applicant is proposing an approximately 7-megawatt (MW) DC, photovoltaic solar energy generation facility to be sited at 486 High Street. The Project is anticipated to occupy approximately 46 acres of this land, and will include ground mounted photovoltaic panels, access roads, small electrical equipment pads, and fencing. The property is identified as Lot 89 & Lot 92 on the Town of North Berwick Assessor's Map 4.
4. Other Business
 - 4.1 Hannaford Supermarket - Request to amend their conditional use permit to install a temporary office trailer to be used as an employee breakroom to provide proper social distancing during covid-19 pandemic. Trailer to be placed as presented on site plan provided. Request for a 6 month temporary placement with the ability to extend temporary location based on pandemic circumstances.

5. Adjournment

Due to the current COVID-19 pandemic, the Planning Board is requesting all concerns and comments be placed in writing and either sent by email to the Code Enforcement Officer's email address: rfrchette@townofnorthberwick.org or by US mail:

Planning Board
P.O. Box 422
North Berwick, ME 03906

All written comments, concerns or comments will be read into the record by the Planning Board Chair during the meeting.