

NORTH BERWICK PLANNING BOARD

MINUTES OF PLANNING BOARD APRIL 27, 2023

Present: Chairman Jon Morse, Mark Cahoon, Anne Whitten, Justin Perry, David Ballard, Jack Oleary

Absent: Scott Carpenter

Also Present: Matt LeConte, Lee Jay Feldman (SMPDC), Jeffrey Lapointe, Tiffany Chase, Mark Rouillard, Cameron Ferrante, Sue Caler, Rebecca Reed, Mark Reed, Clarke Fenner, Jonathan Davis, Elizabeth Lapointe, Mark Patterson, Caitlyn Abbott, Owens McCullough, David Brauning, Maria Brauning, Stacy Chilicki, Patricia O'Connor, Michael O'Connor, Rodney Kelshaw

1. Call to Order:

Pledge of Allegiance

Chairman Morse called the meeting to order at 6:30 pm.

Chairman Morse moved Justin Perry up to full voting status.

2. Review Previous Minutes of March 9, 2023:

David Ballard motioned to approve the Minutes of March 9, 2023 as amended. Mark Cahoon seconded the motion. VOTE: 5-0-1

3. Current Business:

- 3.1 Public Meeting and continued review from March 9, 2023 Public Hearing:
ME I N. Berwick Valley LLC. c/o of Aspen Power Partners
Valley Road, Map 004 Lot 006-13
Request for a Conditional Use Permit to install a 1.999 MW AC Solar energy facility on the recently subdivided lot from the Oak woods Subdivision. The parcel is located in the Village B Zoning District.

Owens McCullough, Civil Engineer for Sebago Technics, is present on behalf of ME I N. Berwick Valley, LLC. He stated he was last before the Board on March 9, 2023 for a public hearing. He stated that basically the same people who were present at the last meeting are here with him again, i.e. Caitlyn Abbott, Tiffany Chase, Clarke Finner, both from Aspen Power. Cameron Ferrente and Mark Paterson, the land owner. He indicated that Rodney Kelshaw from

Fly Catcher, the wildlife biologist is also present. Since the last meeting, they have resubmitted a package back to the Planning Board dated April 20, 2023 and that package included additional information along with a response letter. Owens stated one of the more substantive questions that arose was a question of whether the project was considered an essential service or would be considered an industrial use. He stated the definition has relevance because one is allowed and one is not allowed. Owens indicated his understanding is that Matt LeConte has had conversations with legal counsel on this issue and the Town's attorney has agreed this is an essential service. Matt indicated that the conversation and determination regarding solar took place prior to the first community solar project that is on Coffin Lane which was two to three years.

Owens indicated one of the items that the Board had asked them to do was to reach out to IF&W and get current letters for this year which are included in the new packet. IF&W reiterated that there no endangered or threatened species that they found which would be impacted by this project. Owens also stated that the Applicant retained an independent biologist, Rod Kelshaw from Fly Catcher, who is present and can go over the letter and report that was submitted in the new packet.

Owens went through the submittal and indicated the appendix of attachments as follows:

1. Fire Truck Turn Exhibit – Owens stated that this was a request by Town Manager and Underwood brought it up as well. He stated they made more of a sweep in the road and turning point.

2. Fence, Glare, Fire Protection Reference copy from initial project submittal. Owens stated that the fencing is a knot wire fencing and not chain fencing and stated it was a much more agricultural fencing. He indicated they will put a knox box on the locked gate per discussion from the last meeting.

3. MSDS Report -Material Safety Data Sheet – ZNSHINESOLAR. Owens stated he reached out and received the MSDS sheets from the manufacturer which indicate there is no hazardous material risk to the environment. The report indicates that the potential health hazards Risk Categories: None ; Environmental Hazards: None; Health Hazards: None; Explosion Hazard: Tempered glass has a 1/10000 explosion risk. Anne Whitten asked what exactly that meant and Owens stated that there is an extremely low risk of explosion as it is tempered glass designed for heat. Anne inquired about a lightening strike. Clark Finner stated that he has never been asked that question but Owens stated these are very standard panels used in other solar arrays and he is not aware of any lightening strikes. Owens stated these are have to be grounded so again the risk is extremely risk.

4. DEP Approvals. Owens stated they have received the decommissioning plan and if the project was to be approved, there is a condition that a bond is filed with the DEP and that would also name the Town as a beneficiary of that bond amount.

5. Decommissioning Plan. Owens indicated they have included the actual Decommissioning Plan itself.

6. Environmental – Potential Wildlife Impact Assessment, Flycatcher. Owens stated that Flycatcher visited the site and Rod Kelshaw is present from Flycatcher to discuss that.

7. Exhibit 11-Resources Updated letters/correspondence from agencies: MDIFW, MNAP, MHPC. Owens stated that they have included all letters and reports from these entities.

8. Local Historical. Owens indicated they have reached out to the local town historical society and there are no concerns as far as they are aware.

9. Site Photographs. Owens stated they have taken photographs from the limits of clearing looking away from the site and the intent is to show the Board what would be seen from the edge of their clearing looking away from the site.

10. Drone Imagery. Owens stated that the Board had asked them to complete a fly over to get a more recent photograph with a high-definition drone and there was snow on the ground when it was flown so that will be seen on these photographs.

Owens stated that they also provided an item-by-item review and response to all of the letters received.

Owens also indicated they have revised the plan a bit so there is no direct wetland impact, only indirect. Indirect impact meaning they cut the trees but they do not stump and grub in the wetlands so there is no filling or excavation. The Army Corp. made the determination that if there is no fill or excavating or not physical disturbing, they do not regulate that.

Anne Whitten asked Tiffany Chase about a statement in the previous minutes that their intent was to not use pesticides at the site and she would rather hear that they will not use pesticides at all. Tiffany stated that the reason she stated that was because the State of Maine demands that if invasive weeds appear, those have to be taken care of and that they will do everything they can to remove them without having to use any pesticides. She stated that legally if there is an invasive plant that they cannot remove, they are obligated to make sure they are taken care of.

Anne Whitten asked Clark Fenner about the project being monitored remotely and asked where “remotely” actually is. Clark Fenner stated that depends on who the actual owner is after this is done and indicated Aspen Power plans to own this long-term. Tiffany stated that they have not determined who the final operation and maintenance company is who will be handling this. They make that determination right before construction. Anne asked if it will be a local company or foreign. Tiffany stated it could be New York but is not positive. There will be teams who come in to check on it as needed if issues come up. Tiffany stated there will be local teams that will be deployed immediately if something comes up. Chairman Morse asked if remotely means that if the solar array is producing electricity or something is wrong from somewhere else and if that occurs, they have people close to this solar array who are going in to take care of the problem. Tiffany stated that was in fact the plan. She stated contractually they have to respond within a

certain amount of time and there is an emergency shut-off that can be deployed by the utility or emergency staff as well.

Cameron Ferrente stated an additional condition the Board could consider putting in would be that they provide that contact information on who the O&M person is, where they are located and that information also be provided to the Fire Chief so there are direct communications through all avenues. Tiffany stated they had no problem with that.

Anne Whitten asked about the number of inverters and wondered if they had an exact number and Tiffany stated there are 16 inverters.

Chairman Morse read the following Memo from Dwayne Morin, Town Manager to the Board as follows:

MEMO:

To: Planning Board

From: Dwayne Morin, Town Manager

Re: Aspen Solar

Date: April 27, 2023

Dear Planning Board members:

I have reviewed the comments from Sebago Technics regarding the memo that I sent to the Planning Board regarding this project and want to make statements regarding their submission.

Engineering: *Sebago Technics has addressed Underwood Engineer comments and I have sent them to Underwood to ensure that these comments are satisfactory. I anticipate Underwood comments in the coming weeks. I would request that no final decision be made until the comments are deemed satisfactory to Underwood.*

Entrance Road: *I am still concerned about the entrance drive not being a full 20 feet in width. The concern being that should the town need to have multiple emergency vehicles entering and exiting the site due to an emergency, the vehicles will be driving on shoulders to pass each other and this could lead to potential problems such as soft shoulders, especially in fall and spring months, which could cause an emergency vehicle to have difficulty or even worse get mired in the shoulder. I would request a full 20 foot entrance driveway for emergency access to the site. It would appear that the entrance design will allow for the fire trucks to safely access the site and turnaround. I have asked Underwood Engineers to confirm the engineering design.*

Wetland Impact: *The new design has significantly less impact on the wetlands. The composition of the panels do not include heavy metals. The Planning Board should review and add any conditions that they deem necessary.*

Conditions of Approval: *The amended plan has improvements made to address the recently adopted Zoning Ordinance standards. Planning Board should review those improvements and place any other conditions that they deem appropriate for this project. Note on design: I note that the plan calls for an 8 foot fence around the perimeter of the facility, however, the Maine Statute states that any fence over 6 feet is considered a spite fence and throughout the Town's Zoning Ordinance fences are limited to 6 feet in height. In order to achieve an eight foot height, a 6 foot fence can be placed on a berm to achieve the desired height.*

Performance Guarantees: *I again stress that the Planning Board should establish 2 performance guarantees to be held by the Town of North Berwick. Aspen has stated that they will place a decommissioning bond in place per the Plan approved by the MDEP, however the Town of North Berwick should require 2 performance guarantees to be held by the Town of North Berwick as the project exists in our community and to protect the taxpayers of our town. 1) a performance guarantee to provide adequate funds to cover the total cost of decommissioning. Every five (5) years after the start of construction, updated proof of the cost of decommissioning shall be submitted to the Town. If the amount of the current performance guarantee is inadequate to cover the total cost of decommissioning, the applicant shall provide a new performance guarantee to the Town in an amount which is adequate to cover the total cost of decommissioning; and 2) a performance guarantee to provide adequate funds to cover the total cost of the planting of native, non-invasive groundcover, which is low-maintenance, drought resistant, and non-fertilizer dependent, under and between rows of solar panels to prevent soil erosion as well as the cost of any soil testing review required by the Planning Board as a condition of approval. The performance guarantee should at a minimum automatically renew annually and should the financial institution decide not to automatically renew, the town be given a 150 day notice of non-renewal. (This has been standard language in all North Berwick performance guarantees.)*

If I can be of further assistance to the Planning Board, please feel free to contact me.

Owens stated in regards to the 20-foot road, the gravel width on the road is 20 feet. They had a 16-foot road with gravel shoulders but are going to put loam in because the site is not accessed that often. He indicated most of the vehicles after construction would need that and they are trying to reduce the amount of non-vegetated surface. He stated it would be surface underneath by having a gravel sub-base. If Underwood or the Town Manager prefers, they will just bring the gravel up to the surface and it will be a full 20-feet. He stated they are fine either way.

Regarding the wetland impact, since there is no direct wetland impact there is probably nothing that needs to be done as far as conditions of approval. In the past, the DEP did not

require a permit because they did not consider any impact on the wetland. Since the layout has been re-designed and there is no direct impact into wetlands, they should be fine with the conditions but the Board should be aware of it.

Regarding the conditions of approval and the fence issue, Cameron Ferrente stated that under Maine law, if a fence is over 6 feet tall, it is considered a spite fence but it is only a spite fence if it is maliciously placed on the property.

It was stated that under Title 17, Section 2801, the exact wording of the law is as follows: *“Spite fences. Any fence or other structure in the nature of a fence, unnecessarily exceeding 6 feet in height, maliciously kept and maintained for the purpose of annoying the owners or occupants of adjoining property, shall be deemed a private nuisance”*.

Tiffany stated that they are also concerned that if they were to place it on a berm, it would increase storm water and increase site disturbance area. Anne Whitten stated that if it is in the ordinance that they are only allowed a 6-foot fence, that would be what they are allowed. David Ballard stated he believes that it does state in the Town’s ordinance that only a 6-foot fence would be allowed. Tiffany felt that they would be violating the electrical code regarding required height. Owens stated it is an agricultural fence. Matt LeConte would suggest making comment and supplying that code because it is required. Cameron Ferrente stated that if the Board is insisting on a 6-foot fence, their argument would be that federal and state code requirements supersede the local ordinances. Anne Whitten asked that the NEC code be provided. David Ballard indicated that nothing can be found in the Town’s ordinance that limit the fence to 6 feet and the term “minimum of 6 feet” is found in many cases.

Owens stated that as far as the performance guarantee goes, it reads pretty much out of the DEP rules say for the decommissioning bond and they have already initiated that process as it is required by the state statute and the Town would be named as additional bond holder.

Tiffany stated that the ground coverage is required as part of the package and is required. She stated it is a final component of the project. Owens stated that the applicant does file a storm water permit by rule with the DEP and that permit requires revegetation of all sites.

Lee Jay suggested that the condition of approval on that would be that the applicant name the Town as the recipients of the decommissioning bond that has to be submitted to the DEP under state law and a second one would be like a construction bond where they would have to guarantee of their seeding and construction of site and he could work on the language for that.

Tiffany referenced Dwayne’s memo regarding performance guarantees *“...as well as the cost of any soil testing review required by the Planning Board as a condition of approval”* and wanted to know why soil testing review would be required if it is stated that there are no hazardous materials. Anne Whitten stated that the Board could not answer that as they just received the memo today and they may have questions for the Town Manager also.

Mark Cahoon asked Rod Kelshaw from Flycatcher, LLC how long he spent at the site. Rod stated he was out there for a day. Mark Cahoon asked him what exactly he saw in the area. Rob stated he did not really see much as it was in March and not later in the year. He stated he discusses that in detail in his report. He stated he saw deer tracks, potential bobcat tracks that were melted out, bird species and they are all referenced in his report. Mark asked if he saw any bald eagles while he was on the site and Rod stated he did not.

Mark Cahoon referenced the federal and state laws statement which Cameron Ferrente made earlier. Cam stated that generally a town ordinance cannot supersede a requirement of state and federal law.

Mark Cahoon addressed Tiffany stating that they are only putting this solar array in and Tiffany stated that Aspen is going to own it as they are long term owners of the property. Mark confirmed that they are leasing the property from Patco/Mark Patterson. Tiffany stated again that Aspen will be the long-term owners and they will hire a maintenance company to mow, etc. They are waiting until Planning Board approval to select a company and enter into a contract. It is one of the last things they do. David Ballard asked what other emergency response they would deem necessary other than solar producing. Tiffany gave an example of a car accident and needing to shut down to stop feeding out to the lines for the safety of the emergency crew coming. David asked if there were any visual aides that would allow them to see the site or is it strictly computer based. Tiffany stated there were no cameras being proposed.

Chairman Morse asked who the go-to point person would be on this project if it does get approved. Tiffany stated she will be a point of contact but there will be a lead O&M person who would be taking over, whose name is Dwayne. She stated there will be a list of people and numbers who will always be available.

Anne Whitten referenced the ISO New England approval and asked if that was provided. Owens stated it was and it was in the original application.

Anne Whitten asked if they had a letter from CMP stating they will take the electricity. Tiffany stated they have a signed agreement with them and they would have subscribers and would provide CMP the list but they do have a current agreement with them. Tiffany stated they have the following agreements (Interconnection Agreement, Net Energy Billing Agreement and ISO I-39).

Anne Whitten stated that she felt the drone photos are not clear and would prefer an actual photo be provided. Owens stated there are arrays are on the photo and those can be taken off if necessary. It is a gray scale photo and not a color photo. Anne asked if they could get a new photo. Tiffany stated it was quite expensive to employ a drone out there and asked if they were required to have them go out again. Chairman Morse stated at the time, there was snow on the ground, but now the Board can actually visit the site themselves and do an actual site walk. Owens stated they would look into the drone photos and get back to the Board.

Mark Cahoon indicated that if the project does go through, they will be required to do a large amount of buffering due to the houses shown in the photos. Mark also mentioned the noise

ordinance after taking the trees out and the firing range that is close by. Cameron Ferrente addressed the noise stating that the noise ordinance is only applicable to the noise generated on site/property, not buffering to protect noise coming from someone else's property. He stated that the property owner of the firing range would be responsible for a buffer. Mark Cahoon stated he disagreed as they were removing 18 acres of trees and therefore would have the noise increased. Cameron stated that the ordinance specifically references noise generated from the property so if the noise is not being generated from this property, they are not responsible for mitigating it. Anne Whitten stated that the Planning Board has a right to put any condition they deem necessary. Cameron agreed as long as they are consistent with performance standards. Chairman Morse indicated they would not be putting conditions over and above what the Board would ordinarily place.

David Ballard asked if there was only fence all the way around. Tiffany stated there is one fence. Tiffany stated per state guidelines, they are only allowed to mow twice per year. David referenced the state guidelines regarding an inspection as well.

David asked if the number of solar panels changed due to the configuration. Owens stated they still keep the same number but they just moved it around.

Regarding buffers, Owens stated that is dependent on the area, and it varies across the site. As far as buffers around the wetlands, Owens stated that they made sure that the arrays themselves do not overlap on the wetlands and the DEP and Army Corps do not consider the posts an impact to the wetlands.

Matt stated there has no been no comments received back from Underwood and will be reviewed at the next meeting. Lee Jay stated a date needs to be set for the site walk and the comments and letters from the public need to be reviewed for the next meeting. Lee Jay stated this will give him time to start formulating findings of facts and potential conditions to be considered. They also need to wait for Underwoods comments as well. Anne stated she will need to speak with Dwayne about a couple things.

David Ballard asked in lieu of the recent solar vote, was there anything that would make this package conflicting with the new ordinance. Matt stated the new ordinance cannot be taken into consideration as this was presented before that.

Anne Whitten mentioned buffers and Lee Jay wants to do some research as far as other solar array conditions.

Anne Whitten motioned that a site walk be scheduled for May 11, 2023 at 5:15 p.m. Justin Perry seconded the motion. VOTE: 5-0-1

Anne Whitten motioned that they deem the application complete. David Ballard seconded the motion. VOTE: 5-0-1

4. Other Business:

5. Adjournment:

Mark Cahoon motioned to adjourn the meeting at 8:16 p.m. Anne Whitten seconded the motion. VOTE: 5-0

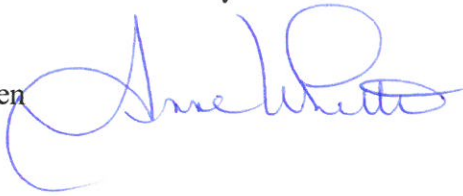
Matthew LeConte
Planning Coordinator

Respectively submitted,
Jennifer Berard, Stenographer

Chairman Jon Morse



Anne Whitten



David Ballard



Mark Cahoon



Justin Perry



Scott Carpenter

Jack Olea

