

NORTH BERWICK PLANNING BOARD

MINUTES OF PLANNING BOARD JULY 13, 2023

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

Absent: Scott Carpenter

Also Present: Matt LeConte, Lee Jay Feldman, Jeff Lapointe, Rebecca Reed, Mark Reed, Brandon Jeralds, Tiffiny Chase, Clarke Fenner, Caitlyn Abbott, Michael O'Connor, Patricia O'Connor

1. Call to Order:

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

Chairman Jon Morse moved Justin Perry up to full voting status for this meeting.

2. Review Previous Minutes: April 27, 2023 and June 22, 2023

Anne Whitten motioned to approve the Minutes of April 27, 2023 as written. David Ballard seconded the motion. VOTE: 6-0

The Minutes of June 22, 2023 were just provided to the Board members and they will review and vote to approve at the next meeting.

3. Current Business:

3.1 Public Meeting

Alan Jeralds

145 Linscott Road, Map 002 Lot 42-1

Request for a Conditional Use Permit to create and build a new 15' x 15' family cemetery in the rear portion of the property. The parcel is located in the Residential I Zoning District.

Note: the abutters notice has been sent July 6, 2023.

Alan Jeralds stated that behind the house, on the very back corner of the lot, there is a 15 x 15-foot area that is flat and portioned off for a graveyard for his father. Alan stated his father was not able to make it tonight because he was not feeling well but that is where he would like to be buried. He stated the proposed area is about 10 feet from the actual property line but it could be moved if needed. Matt believes it needs to be 25 feet from property lines and 25 feet from

structures. Matt stated that cemetery guidelines are governed by the State. Alan indicated that they did receive approval from the State of Maine. Alan indicated there will be a metal fence around the area. Matt stated that once he moves the area to meet the 25 feet, he will come out to look at it. Alan indicated that he will measure it and he will have the fence up and ready to go.

Anne Whitten motioned that the Conditional Use permit be approved for Alan Jeralds at 145 Linscott Road, Map 002 Lot 42-1 to create and build a 15 x 15 family cemetery in the rear portion of the property with conditions that the cemetery be marked 25 feet from all property lines and that the Code Enforcement Officer determined that has been done. Mark Cahoon seconded the motion. VOTE: 5-0

- 3.2 Public Meeting and continued review from the April 27, 2023
Public Hearing: ME I N. Berwick Valley LLC.
c/o 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

Caitlyn Abbott who is the civil engineer from Sebago Technics indicated she was appearing for N. Berwick Valley LLC c/o Aspen Solar Partners and stated that Tiffany Chase and Clarke Fenner were also present. She indicated they have now had three meetings in front of the Planning Board and wanted to go through the updates since the last meeting. She thanked the Board for their time and the site walk. They were able to use the iPad gps to get a sense of the location and the wetland area. She felt the site walk was helpful. She gave an overview of the 1.999 MW AC Solar energy located off Valley Road and Oak Woods Subdivision. They did receive comments from Underwood Engineers which they responded to as well as comments and concerns from the Board and abutters.

Caitlyn stated that she wanted to provide updates from the last meeting. First, in regards to driveway improvements, the Town Manager and Underwood had asked that they expand the gravel driveway to 20 feet surface around the corner of the bend in the road, which they have now done. They updated the detail to remove the 3-foot shoulders and now all gravel is 20 feet. She also stated there was discussion about a requirement for a 6-foot fence per the ordinance, so she did speak with Matt about that requirement and it was determined that is not a requirement so they are sticking with the 8-foot fence height. Caitlyn indicated that regarding the decommissioning costs, the costs are guided by the solar market and they included the costs in the package which have been approved by the D.E.P. She stated there were questions about fire protection and that they normally do not show a perimeter driveway around the entire array. For fire protection access, they have a driveway there that goes to the shutdown. She stated between the array and the fence, there is an area that is stumped and grubbed so there could be access by an ATV or off-road vehicle. Caitlyn indicated that regarding state permitting, and since they have the approval for the decommissioning plan and the completion of the NRPA tier-2 application submitted, has been responded to by the Army Corps who indicated they do not have jurisdiction as the wetland fill has been removed. It is in the D.E.P.'s hands to review due the

time lapsing for their statutory review period. The application has been retracted and resubmitted so they could start their review period over and that was done today and will hopefully hear back on that soon.

Caitlyn indicated that regarding buffers, there were some concerns, particularly to the north of the site. They have provided additional buffering for four properties and they have increased the tree limit by 25 feet and there is a total of a 450-foot buffer around. Anne Whitten asked how deep it was and Caitlyn indicated it is 25 feet in that area for direct view line. She took the shad management area that was 100 feet and reduce it to 75 feet. Anne Whitten asked how far away the property line of the houses are from this project. Caitlyn stated the smallest would be 35 feet from the property line, not the houses. Anne Whitten asked about the drone photograph and was hoping to receive a clearer photograph. Caitlyn indicated that they do not have another photograph but believed that the Board participating in the site walk was sufficient. There is a tier-2 application which has been updated and that contains an arial view in there.

Caitlyn stated they are in front of the Board tonight seeking final approval and ask that the NRPA Tier-2 application be a condition of approval at this time.

Chairman Morse stated there were some concerns about the animal biologist who was sent out for endangered species during the period where there was snow on the ground and was not sure about the summer species. Caitlyn stated the report indicated tracks that were seen on site.

David Ballard inquired about the Fire Department being able to get to the back of the property if there was a fire with a fire engine. Matt stated he had asked for written comments from the Fire Department by July 12th, but have not received anything yet. Matt indicated that the road around the entire property would in theory be a nice idea but it is typically not realistic to build a gravel road. He stated the biggest concern he has heard about is where the actual invertors are and the Fire Department can easily get there in this project. David Ballard asked if all of the invertors are located in one area or are they scattered throughout. Caitlyn stated they are not disbursed and are located on the invertor pad. Matt indicated the Chief has the information and will reach back out for any concerns.

Lee Jay Feldman indicated he has provided a draft of his findings of facts and notice of decision with a number of proposed conditions of approval and believes they will cover everything that has been discussed and read into the record the eight proposed conditions of approval as follows:

- 1. A pre-construction meeting with the town Code Enforcement Officer be held prior to the start of site work to discuss project requirements and how the project construction will be managed.*
- 2. Plan approval is conditioned upon compliance by the applicant with the plans and specifications that have been received by the planning board in conjunction with the development proposal as well as any oral statements made by the applicant in the course*

of the deliberations

3. Redesign the Gate at the access to be 20 feet assuring the Emergency vehicles will have adequate access.

4. Provide the town with a surety equal to the cost of construction and planting of all native non-invasive ground cover which is drought resistant and non-fertilizer dependent. This bond shall also cover the placement of all new vegetative buffers surrounding the facility as noted in the findings above and shall be renewed on a yearly basis for the life of the facility. If ownership changes during the life of this facility, the Surety shall be updated to reflect the most recent owner of the facility. The town shall also be named as the recipient of said surety should it need to call the surety in. The applicant shall also provide the town the town with a decommissioning bond which is equal to the amount to be submitted to the Maine DEP as required under state law. If the company bonding the facility chooses to not to automatically renew the Surety, the Town shall be given 150-day advanced notification of non-renewal.

5. The applicant shall not start any site work until all plans have been revised for the town and the surety has been reviewed and approved by the town and put in place to be held by the town for their records.

6. Maintenance of the vegetation adjacent to the Boundary fencing shall occur twice during the growing season.

7. The applicant shall provide the town a list of contact names associated with the O&M team once it has been established so that an open line of communications with those folks that will be on the ground at the facility when needed.

8. The Operator of the facility shall meet with appropriate town staff including the Fire Chief prior to the facility being operational to go over all aspects of the facility should town emergency services be needed at the facility.

In regards to #4, Caitlyn stated the performance bond covers the cost of construction and also covers the cost of vegetation and ground coverage buffers and asked if this indicates that there needs to be a separate construction bond and a separate plant bond. Lee Jay indicated that is correct. Caitlyn asked once it is established, would they still have to keep paying that bond. Lee Jay stated he felt the bond should be in place for the life of the project and then the decommissioning bond kicks once the decommissioning occurs. Lee Jay stated there will be two bonds. Lee Jay indicated once it is established, it is renewed and there will be a renewal cost that goes along with that. Tiffany stated that the decommissioning bond has the name of the Town listed. The bond information that it is provided to the State names the Town. Lee Jay stated there will be one other bond that is the construction bond in case something happens to their company while they are constructing the project and it is so the Town can button up the site if the solar company left. The construction bond would be released after construction was done except for

the vegetation part of it. Tiffany stated they have done several decommissioning bonds but have never had a Town ask for a construction bond also. Lee Jay stated he felt it was common for this area. Lee Jay stated he could rewrite that condition to make it more clear for everyone.

Mark Cahoon stated he had done some research regarding essential services and spoke to Mr. William Daw from CMP who could not understand the characterization of a 1.99 mg solar project for essential services. Mark stated he felt that Village B should not be utilized for this. He also stated that Federal OSHA law listed solar arrays as being industrial and industrial is not allowed in Village B. He stated he has been arguing this point since the time this project was first proposed. Chairman Morse indicated that the Town's attorney has come back and stated it was not deemed industrial. Tiffany stated William Daw worked on Level 2 solar and this project is a Level 4. Mark stated he would rather see solar farms go into gravel pits or landfills. Lee Jay Feldman reiterated that North Berwick's attorney has weighed in on this subject and has deemed this an essential service. Anne Whitten stated she has to stand with the attorney's words regarding this whether she likes it or not. Lee Jay Feldman stated that the Town could add some language to their zoning ordinance regarding the placement of solar arrays for future solar projects.

Anne Whitten inquired about the buffers wondered if they were sufficient. Chairman Morse stated that may be hard to answer because they do not really know how many trees are going to be cut for this. Caitlyn stated they would cut to the tree line which is indicated on the plan. She stated they would be cutting 100 feet from the closest solar array to maximize the sun. They would need a 100-foot shade management. Anne feels the buffer should be 100 feet all the way around from the surrounding property lines. Chairman Morse asked how tall the units are from the ground to maximum height. Tiffany and Clarke stated they are 9 feet.

Justin Perry asked about requiring the planting of some type of greens along the cleared edge that could also act as a buffer to cut down on site lines. Caitlyn felt keeping the additional 25-foot buffer would be better than putting in plantings and that is why they increased it in that spot where there were buffering concerns by 25 feet. Lee Jay thought the only way to really tighten that buffer up would be on site during construction but that may be difficult. Justin stated he would like to see additional buffering along the property lines of at least 75 to 100 feet. Mark Cahoon stated he would like to see a service road all the way around the property. Caitlyn stated doing that would make for a lot more disturbance. Lee Jay stated that other projects he has worked on has not required service roads all the way around the perimeter. He stated sometime they see a way to get into the middle of the solar array. Tiffany stated there will be ATV's that are going to be able to access the area. Justin feels a 100-foot buffer should be maintained around the property and there would be no cutting. Caitlyn stated that would make it so the panels would not get any sun. Matt asked if perhaps another site walk could be done, with the surveyor's ability to show the distance, sections of woods, etc. to actually see exactly 100 feet. Anne stated she does not have the ability to participate in a site walk. There was some discussion about using an ATV as well.

Anne stated her main complaint is that there are a couple houses with absolutely no buffer at all and would be happy to see a 75- or 100-foot buffer. Justin feels they need to establish a no cut buffer perimeter relating to noise, sight and respect for the neighbors. Caitlyn

stated that in some areas, that would completely shade the array so they would not produce any solar power. Caitlyn indicated that if they were to have a 75-foot mature buffer, that would require moving the array area and the only other place for it would be in the wetland area which they were trying to avoid. She stated there could be an option for a fence for the two properties that could potentially see the area. She indicated they could have a green screen on the fence rather than a no cut 100-foot buffer. David Ballard stated that if most of the Board is looking for a buffer, then there needs to be an adjustment to the plan to see what works for them, in all fairness. David Ballard indicated that regarding a fence, that would require a large fence. Caitlyn stated they could put a green screen on an 8-foot fence in the north area where there is a buffering concern and stated she could provide a spec sheet for the Board to review. Tiffany stated they did recently use a green screen on a fence for a project in Berwick and that seemed to work. Caitlyn did indicate she would be proposing a wooden fence which would create a more natural look with a green screen. David felt the fence would more of eyesore and he would rather see trees. Caitlyn asked if the goal was to not have any view of the solar field at all. Justin stated the goal is to show respect for neighbors and keep a buffer that is thoughtful and respectful. He feels it seems counterproductive to let cutting go to the property line and then have a 25-foot buffer added back in and it would seem a lot natural and cleaner looking to simply say no cutting to 75 feet of the property line. Tiffany stated they are locked in at the size of the array because they already had to have their interconnection. In order to make this work, they will have to re-engineer and drop it down, but will have to still pay for the interconnection at that same size. She feels they would have to lose some panels as well. Caitlyn indicated that part of the NRPA Tier-2 included a function and values assessment that was done by a wetland scientist. That goes into much detail about the value that wetland still has after this property has been logged and logging roads installed throughout the property. She asked that going closer to or in it, along with approval from DEP, would that be considered. Anne and Mark stated they would not agree to that. Mark stated the wetlands need to stay the way they are. Anne personally feels they need to come back with a different plan with the 75-foot setbacks. Caitlyn read a portion of the report as follows: *"Localized areas of wetlands to be cleared do not provide habitat for most wetland dependent habitat such as beaver, mink, muskrat, otter and water fowl"*.

Chairman Morse stated they will need to come back with another plan with a 75-foot buffer, leaving everything else alone. Clarke Fenner asked if they came back with a plan to top the existing trees without cutting or chopping, would that be acceptable. Chairman Morse stated they were simply looking for something to hide the array, not the sun. Anne had a concern about cutting the top of the trees which potentially could kill the trees. David stated he would not be opposed to that because they would not be adding anything and it would not cut into their sun. David did not feel a staggered approach to cutting the tops would be good. Lee Jay stated that the key to that would be a third-party inspector being on site to oversee the cutting and clearing and the boundary be clearly flagged. That would have to be built into the condition. Matt asked if it would make sense to have a true vegetative buffer plan to provide something more solid versus the interpretation of a third party. Caitlyn stated the 75-foot buffer would drastically change things from their end and would rather see the topping of tree plan if possible and would appreciate that being part of the consideration. Chairman Morse personally feels they could keep the buffer the same as they have it except for the northeast and northwest corner section.

David Ballard motioned to table this issue pending buffer revisions and modifications and amendments to the current plan per the recent discussions. Anne Whitten seconded the motion. VOTE: 4-18

4. Other Business:

Matt stated that regarding the Mick Subdivision, they did not receive the requested revision until after the deadline, so his suggestion is to attempt the site walk on the 27th prior to the meeting.

Justin Perry motioned to schedule the Mick Subdivision site walk for July 27th at 5:15 p.m. David Ballard seconded the motion. VOTE: 5-0

Reminders: Next Planning Board Meeting – July 27, 2023 - 6:30 P.M.

5. Adjournment:

David Ballard motioned to adjourn the meeting at 8:40 p.m. Anne Whitten seconded the motion. VOTE: 5-0

Matthew LeConte
Planning Coordinator

Respectively submitted,
Jennifer Berard, Stenographer

Chairman Jon Morse

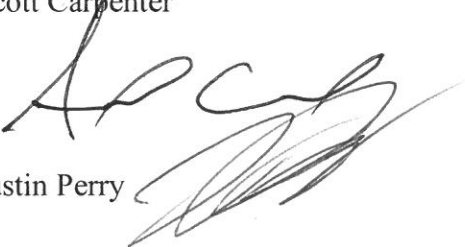
A handwritten signature in black ink, appearing to be 'Jon Morse', with a stylized, looped initial 'J' and a horizontal line extending to the right.

Anne Whitten

David Ballard

Mark Cahoon 

Scott Carpenter



Justin Perry

Jack Olea 