



PEMBROKE PLANNING BOARD MINUTES

MONDAY, SEPTEMBER 16, 2019

BOARD MEMBERS PRESENT: Rebecca Coletta (Chairman), Andrew Wandell (Vice-Chairman), Thomas Irving (Clerk), Daniel Taylor, James Noone, and John Scholl.

BOARD MEMBERS ABSENT: Daniel Smith, Jr.

OTHERS PRESENT: Matthew Heins (Planning Board Assistant), James Lampke, Charles Kovacic, Kenneth McCormick, Peter Palmieri, Amy Kwesell, Kevin Welch, Darren Grady, Steven Dimaio, Carol Mont, Darren MacDonald, Daniel O'Brien, Brian Murphy, Russell Field, John Danehey, Susan Spratt, Kimberly Kroha, Kathleen Field, Shaun Kelly, and others.

Chairman Rebecca Coletta opened the meeting by reading the Chairman's statement.

ENTERING EXECUTIVE SESSION

Ms. Coletta explained that the board would go into executive session pursuant to G.L. c. 30A, Section 21(a) purpose number 3: "To discuss strategy with respect to...litigation if an open meeting may have a detrimental effect on the...litigating position of the public body and the chair so declares."

Specifically, the Board would discuss and take appropriate action with respect to the matter of Town of Pembroke Planning Board, et al. v. Town of Pembroke Board of Zoning and Building Law Appeals, et al., Plymouth County Superior Court Case No. 1983CV00239 regarding Pembroke Center Street, LLC, and the property located at 204 Center Street in Pembroke. Further, as the Chair, she so declared that having such a discussion in open session would have a detrimental effect on the Planning Board's litigating position.

Mr. Taylor made a motion to go into executive session, and Mr. Wandell seconded the motion.

The board voted by roll call on whether to enter executive session:

Rebecca Coletta: yes

Andrew Wandell: yes

Thomas Irving: yes

Daniel Taylor: yes

James Noone: yes

John Scholl: yes

The motion passed.

Ms. Coletta announced that the board would return to open session at the conclusion of executive session.

All people who were present left the room, except for the Planning Board members, Mr. Heins, and Attorney James Lampke. All recording devices were turned off.

The board entered executive session.

The minutes of executive session are a separate document.

PUBLIC HEARING FOR PROPOSED SITE PLAN #SP4-19 VALLEY STREET SOLAR PROJECT

The board returned to open session.

Ms. Coletta re-opened the public hearing (continued from June 24, 2019, and August 12, 2019), for proposed Site Plan #SP4-19 Valley Street Solar Project, on the application of Valley Road Solar, LLC, 200 Marcy Street, Suite 102, Portsmouth, NH 03801, requesting Site Plan Approval under the Zoning Bylaws of the Town of Pembroke Section V.7. (Site Plan Approval) and Section V.12. (Solar Photovoltaic Installations). The applicant proposes to construct a large-scale ground-mounted solar facility of 26.15 acres, with the solar panels to cover 17.72 acres, which would generate 6.14 megawatts of direct current electricity. The property is located in the Residence District A zone, at 221 Valley Street, Pembroke, MA 02359, as shown on Assessors' Map F4, Lot 2. A copy of the application is available in the Office of the Planning Board.

Ms. Coletta explained that the applicant had requested to withdraw the site plan application without prejudice. Mr. Taylor made a motion that the board accept the applicant's request to withdraw the site plan application without prejudice. Mr. Noone seconded the motion, and the board voted unanimously in favor.

Mr. Wandell made a motion to close the public hearing, Mr. Taylor seconded the motion, and the board voted unanimously in favor.

VOTE ON DECISION GRANTING SITE PLAN APPROVAL FOR SITE PLAN #SP5-19 HERRING BROOK SOLAR PROJECT, AND DISCUSSION ABOUT FINANCIAL SURETY FOR DECOMMISSIONING

The board members considered Site Plan #SP5-19 Herring Brook Solar Project, to which the board had previously voted to grant site plan approval. A draft of the site plan approval decision was distributed by Mr. Heins. Charles Kovacic, representing the developer, was present. Peter Palmieri, the board's peer review engineer for the project, was also present.

The board discussed the form and the amount of the required financial surety to cover the decommissioning cost of the project. Ms. Coletta explained that two substantially different estimates had been received from the applicant for the cost of decommissioning, one for about \$21,000 and the other for about \$91,000. The board had previously seen the estimate for about \$21,000, and had voted to set the amount at \$25,000. She explained that town counsel had advised that \$25,000 was much lower than usual for a project of this scale, and also that town counsel had advised that the board could hold another vote to change the amount.

Mr. Kovacic stated that the estimate of \$91,000 was submitted in error with the original application, and that the estimate of \$21,000 (submitted slightly later) was more accurate. The board members,

Mr. Kovacic and Mr. Palmieri talked about the two estimates, their contrasting assumptions, and why they differed so greatly. Other aspects of the project were also discussed.

Ms. Coletta noted that the public hearing for proposed Site Plan #SP2-19 at 171 Mattakeesett Street was scheduled to begin, and asked the board to continue it. Mr. Wandell made a motion to continue the public hearing for proposed Site Plan #SP2-19 at 171 Mattakeesett Street to 8:05 pm, Mr. Taylor seconded the motion, and the board voted unanimously in favor.

The possibility of using bonds or tax liens toward the financial surety, or to ensure that the decommissioning is done, was discussed.

Mr. Wandell made a motion to amend the conditions of approval to reflect that \$50,000 in surety be required for decommissioning, and Mr. Irving seconded the motion. Mr. Taylor, Ms. Coletta, Mr. Wandell, Mr. Irving and Mr. Noone voted in favor, Mr. Scholl abstained, and the motion passed.

The board members, Mr. Kovacic and Mr. Palmieri talked about whether the utility connections (for electricity) should be underground, as per the requirement, and how many utility poles will be needed above ground. This was a possible condition of approval in the site plan approval decision.

Mr. Wandell made a motion to continue the public hearing for proposed Site Plan #SP2-19 at 171 Mattakeesett Street to 8:15 pm, Mr. Taylor seconded the motion, and the board voted unanimously in favor.

The board members agreed they were ready to vote on the decision granting site plan approval, including the conditions.

Mr. Wandell made a motion to approve the conditions as written and reviewed by counsel and the board, with the following revisions: in condition #2, the amount in the escrow account be fifty thousand dollars (\$50,000); and in condition #26, regarding underground utilities, the line be added "except as noted on site plans" after the word "underground." Mr. Noone seconded the motion. Mr. Wandell, Mr. Noone, Ms. Coletta, Mr. Scholl and Mr. Irving voted in favor, Mr. Taylor abstained, and the motion passed.

Mr. Wandell made a motion that the board grant the following waivers that are requested on the first sheet of the drawings entitled "Site Development Plans for Herring Brook Solar Project" by Atlantic Design Engineers, dated May 31, 2019, and revised August 12, 2019, and accepted by the Board on August 12, 2019. The Board grants the following waivers, as voted and approved by this Board:

- a. Section 4.7: Landscape Plan
- b. Section 4.10: Building Elevations
- c. Section 4.21: Photometric Plan
- d. Section 4.22: Traffic Impact Study

Mr. Noone seconded the motion.

Mr. Noone asked about the project's landscaping. The board members and Mr. Heins discussed the possibility of additional future landscaping around the solar array.

The motion being on the table, Ms. Coletta, Mr. Wandell, Mr. Noone, Mr. Scholl and Mr. Irving voted in favor, Mr. Taylor abstained, and the motion passed.

REVIEW OF ROUTINE ADMINISTRATIVE MATTERS

Mr. Wandell made a motion to approve the minutes of Monday, August 26, 2019, as presented. Mr. Scholl seconded the motion, and the board voted unanimously in favor.

Mr. Wandell made a motion to extend the deadline for completion for Site Plan #SP2-06 entitled Pembroke Recreation Mattakeesett Ballfields until October 14, 2020. Mr. Taylor seconded the motion, and the board voted unanimously in favor.

Ms. Coletta explained that there won't be a fall town meeting, so any zoning changes would need to wait until spring town meeting.

The board directed Mr. Heins to remind the developer of Subdivision #1701 Bristol Estates to request an extension of the deadline for completion.

Ms. Coletta explained that the developer of Subdivision #1802 Lisa's Lane (f.k.a. Libby's Lane) needed to build a postal box near the entrance to the subdivision, and had asked if the board had any preference or requirement as to its appearance, size or location. The board members agreed that this is outside the board's purview.

PUBLIC HEARING FOR PROPOSED SITE PLAN #SP2-19 AT 171 MATTAKEESETT STREET

Ms. Coletta re-opened the public hearing (continued from February 25, 2019, March 18, 2019, April 8, 2019, May 20, 2019, June 17, 2019, July 22, 2019, and August 26, 2019) for proposed Site Plan #SP2-19 at 171 Mattakeesett Street, to construct three new 7,000-square-foot buildings of warehouse, storage and/or industrial use, and to construct new parking areas, behind two existing buildings. The property is located in Business District A and the Water Resource and Groundwater Protection Overlay District.

The board's peer review engineer for the project, Peter Palmieri of Merrill Engineers and Land Surveyors, was present. Darren Grady, the project's engineer, was present, as was Kevin Welch, the project's developer who currently leases the property. Amy Kwesell, an attorney with KP Law (town counsel), was also present. In addition, Kenneth McCormick, the town's Deputy Fire Chief, was present for most of the public hearing.

Mr. Heins explained that the building inspector, George Verry, had decided that the zoning bylaws' prohibition on floor drains in the Water Resource and Groundwater Protection Overlay District does not apply to tight tanks or other scenarios where potentially hazardous fluids can be held safely and do not drain into the earth. The board discussed this and agreed that it would be acceptable for the project to use tight tanks.

Ms. Coletta noted that automobile graveyards and junkyards are not allowed in the Water Resource and Groundwater Protection Overlay District, and that in her view other types of vehicle storage would also fall within that description. She stated that this Site Plan at 171 Mattakeesett Street should reduce the quantity of vehicles being stored on the property, and Mr. Welch agreed.

Mr. Palmieri discussed the issue of using gravel in certain areas of the site plan, and how this affects coverage calculations. He recommended that boat storage always be on paved surfaces, and that unpaved areas generally be grass rather than gravel. A conversation ensued about pervious versus impervious surfaces, the benefits and drawbacks of gravel, the requirements for fire access, etc.

Darren MacDonald, an abutter to the project, mentioned his concerns about the plantings and landscaping behind the two buildings nearest to his property, and the color of the building facades that would face his property. Further discussion followed.

Steven Dimaio, an abutter to the project, asked about the drainage basin behind the two buildings near his property, and about the vegetation. A discussion took place about the basin, the vegetation, the possibility of constructing a berm, and the tight tanks.

Mr. Wandell made a motion to continue the public hearing for Site Plan #SP2-19 at 171 Mattakeesett Street to September 30, 2019, at 8:00 pm.

There was a discussion between the board members and Mr. Grady about the remaining changes to be made to the site plan.

The motion being on the table, the board voted unanimously in favor.

DISCUSSION ABOUT POSSIBLE BOAT REPAIR BUSINESS AT 520 WASHINGTON STREET

Daniel O'Brien came before the board to describe his intention to relocate his boat repair business to 520 Washington Street. He explained that his business would only occupy a portion of the existing building and site at this property, and that he would store up to 30 boats outside. Mr. O'Brien described his business in more detail, and the history of the site was discussed.

A conversation took place about the zoning bylaw changes passed at town meeting, and about how the current zoning bylaws would apply to this proposed use, which lies in the Residential-Commercial District. Ms. Kwesell helped clarify some issues. The possibility of obtaining a special permit for the alteration or continuance of a preexisting nonconforming use from the Zoning Board of Appeals was discussed. The role of the building inspector was described. Mr. O'Brien emphasized that his operation would be small and unlikely to bother the neighbors.

Ms. Coletta summarized the options open to Mr. O'Brien, and how he might proceed. Further discussion took place.

DISCUSSION ABOUT CONSTRUCTION ISSUES WITH SITE PLAN #SP2-17 AT 260-280 OAK STREET, AND DECISION TO DENY REQUEST FOR TEMPORARY CERTIFICATE OF OCCUPANCY

The board commenced a discussion of issues with Site Plan #SP2-17 at 260-280 Oak Street, currently near the end of construction, especially about deviations from the original design, the advisability of issuing a certificate of occupancy, and problems with the final built condition of the project. This project consists of two new buildings, along with an access drive, parking areas and landscaping.

Brian Murphy, the developer of the project, was present, as was his attorney Kimberly Kroha and the project engineer Susan Spratt. Shaun Kelly, a traffic engineer with Vanasse Associates contracting with Mr. Murphy, was present. Mr. Palmieri, the board's peer review engineer for the project, was also present. Russell Field and Kathleen Field, affiliated with the abutting properties of 240 and 258 Oak Street, were present as well, along with their attorney John F. Danehey. Amy Kwesell, an attorney with KP Law (town counsel), was present too.

Mr. Kelly briefly summarized the proposed alteration to the design of the traffic intersection where the access drive meets Oak Street and connects to an existing parking area. The developer's failure to remove an existing utility pole had created traffic circulation problems at this point.

Ms. Coletta described some of the board's concerns about the project, and especially about the alterations made during construction without the board's permission or even notification. Ms. Kwesell spoke briefly.

Ms. Kroha and Ms. Coletta discussed the project and the site plan review process. Mr. Murphy briefly described the project. Ms. Coletta asked if one of the two buildings is already being occupied, as appears to be the case from the outside, in spite of not having an occupancy permit. Mr. Murphy denied this, and replied that "fit-up" is currently happening in the buildings.

Ms. Coletta stressed the importance of developers requesting permission for changes that are made to a site plan during the construction process, as is required. Ms. Kroha noted that some further alterations had been done to make the site more closely conform with the original, approved design.

The advisability of issuing a temporary certificate of occupancy was discussed. The developer's failure to build a dumpster pad was talked about. A conversation took place about the gas traps, drain inlets and/or catch basins along Oak Street, and the problem of water flooding on that street.

Ms. Coletta opined that the submission of a new site plan application, and a new public hearing, might be necessary. Ms. Kwesell noted that given the many alterations made during construction, it would be beneficial to all concerned to have a new site plan. Ms. Kroha and Ms. Coletta talked about various aspects of the situation.

Mr. Palmieri described some problems with the proposed alteration to the design of the traffic intersection (i.e., where the access drive meets Oak Street and connects to an existing parking area). Mr. Palmieri and Mr. Kelly talked about the intersection.

Ms. Coletta, Mr. Wandell and Ms. Kwesell conferred about how to proceed, and agreed to decide on the request for a temporary certificate of occupancy.

Mr. Wandell made a motion that the board deny the request for a temporary certificate of occupancy, Mr. Noone seconded the motion, and the board voted unanimously in favor.

Mr. Danehey stated that he agreed with the board's position, and that he believes the changes are substantial and so there should be an amendment, revision or modification of the site plan.

Ms. Coletta recommended that a new site plan be submitted to the board, and most of the board members agreed. Further discussion followed.

Mr. Wandell made a motion to adjourn the meeting, and Mr. Noone seconded the motion.

The board clarified, in reply to Mr. Palmieri's question, that if the parking is changed on the adjacent site, then a new site plan application would need to be submitted for that property as well.

A brief discussion took place about the final version of the town's Open Space and Recreation Plan, and about the dates of upcoming board meetings.

The motion to adjourn being on the table, the board voted unanimously in favor

Respectfully submitted,

Matthew Heins, Planning Board Assistant