

PLANNING BOARD
148 Peck Street
Rehoboth, MA 02769
(508) 252-6891 Telephone
(508) 252-5342 Facsimile



Christopher Cooper, Chairman
Robert Moitozo, Vice Chair
Edward Bertozzi
Tomas Ennis
William Costa Sr.
Jake Kramer
Tish Vadnais
Lynne Ferreira, Assoc. Mbr.
Daniel Roach, Town Planner

RECEIVED
22 JAN 21 AM 8:53
OFFICE OF THE TOWN CLERK
REHOBOTH, MA

**Meeting Minutes
February 3, 2021
Remote Meeting
7:00 PM**

Present: Christopher Cooper, Robert Moitozo, Edward Bertozzi, Tomas Ennis, Jake Kramer, Tish Vadnais, Lynne Ferreira, Associate Member, and Daniel Roach, Town Planner.

Absent:

Mr. Cooper began the meeting with the Pledge of allegiance at 7:02p.m.

Form A

1. Middlebrook Investments – Perryville Road – 21-02A

Mr. Rob Davis from InSite Engineering was present.

Mr. Davis presented plans.

Mr. Moitozo stated that he received an email that stated we had revised plans. What changed?

Mr. Davis stated he had left off 2 notes.

Mr. Ennis asked that lot 9 be placed on page 3 also.

Mr. Davis replied yes.

Ms. Ferreira stated that on sheet 3 there's an existing easement that the golf course had and now present owners have. Do you know what they are planning to do with the easement? Are they going to release the easement?

Mr. Davis stated that would come at a time when something was planned to be developed on that property. There are no plans at this time.

Mr. Bertozzi stated that on the retreat lot that the word "subdivision" be changed to "division".

Mr. Davis stated no problem.

Mr. Bertozzi asked if Mr. Davis could explain the relationship between the three parties on the application.

Mr. Davis explained.

Mr. Bertozzi asked is the deed of the entire golf course property?

Mr. Davis stated I believe so.

Mr. Bertozzi stated that from the deed it appeared that 102 Elm Street, LLC owns all the property?

Mr. Davis stated that is correct.

Mr. Bertozzi stated that if the property is subdivided into more than 24 lots there will have to be an analysis done by a special hydrologist.

Mr. Davis stated yes.

Mr. Cooper asked if there were any further questions or comments?

Mr. Moitozo asked about the easement on ANR lot 4, on sheet 2.

February 3, 2021

Page 1 of 6

Mr. Davis explained the reasons for the easement.

Mr. Cooper asked if there were any more questions? There were none.

Mr. Cooper asked if the board wanted to vote on the plan or wait to have the changes requested first?

Mr. Davis for clarification went through the changes requested.

Mr. Ennis made a motion to endorse the plan with the modifications requested by the board.

Mr. Kramer seconded the motion. Roll call vote; all replied aye. Motion passes.

The board spoke briefly to Mr. Davis in regards to the request made to the board to discuss the reconfiguring of a parcel of open space at the end of Wedge Way.

New Business

1. Eastwood Estates – Phase I – Roadway Acceptance & As-Built

Mr. Roach stated that the final inspection, for the final review, has been scheduled with Fuss & O'Neil.

Public Hearing

1. 90 Pond Street – Rehoboth Renewables – 19-01 Solar, 19-03 SPA, 19-04 GWSP

Mr. Cooper stated before we start, he would like to state a few things. Due to the fact that the Selectmen's meeting was cancelled on Monday, they are being broadcast live, we are not. While this meeting is available via zoom, it is not being broadcast live. We are not in danger of violating any open meeting law or public notice. Would the board agree that we don't close the Public Hearing today, in the sense that if someone can't watch this, for whatever reason, has the ability to do so before the next meeting. Does that seem reasonable?

The board agreed to not close the Public Hearing.

Mr. Cooper stated that at the last meeting Mr. Jay Talerman, Town Counsel, was present. He spoke in regards to the Dover Amendment. Prior to that the board has tried to make a very honest assessment of what our role is and what we can do in terms of interpreting the by-laws that stand. Tonight's conversation, he believed, is to discuss the new proposed screening that the applicant has suggested. He would like the comments to be specifically addressed to the things we are talking about tonight. We understand the concerns on both sides.

Mr. Gioiosa of Sitec Engineering was present.

Mr. Gioiosa presented revised plans.

Mr. Cooper asked if there were any questions from the board?

Mr. Bertozzi spoke in regards to some research he had done on disamenity, explained what it was, he had looked at various studies. It is very difficult to apply these studies to Rehoboth. He also did some research on spite fences, and felt this is not a spite fence. The applicant is putting up a fence in response to our demands. Felt that a 20' fence is a disamenity. The 20' fence is going to have a negative impact. We should try to find a reasonable condition that satisfies what we think our duty to our towns people and that will allow the developer to proceed. He would like to see an 8' fence, wooden, natural color, with tree plantings that in 10 years or so will reach 20'.

Mr. Kramer spoke in regards to what type of planting should be used and why. He would rather see the 8' fence with the landscaping, with a majority of White Spruce.

Ms. Vadnais expressed her dislike of the 20' fence. She felt it would have a negative impact on the neighborhood and its character. It will change the beauty of the area. I hear the concerns of the neighborhood and the town.

Mr. Cooper stated that he thought that in general that the board is not in favor of the 20' fence. We don't want a plastic screen in the middle of the woods.

Mr. Gioiosa explained the reasons they come up with the 20' fence. The applicant would like to come up

with an alternative. What Mr. Kramer suggested on trees is fine. As long as they have the ability to reach the 20' in height and maintain them at that height. The applicant would be concerned with them growing up higher than 20'.

There was discussion of tree cutting and which by-law it pertained to. It does pertain only to the Subdivision Rules and Regulation and not the Solar by-laws.

Mr. Bertozzi restated what the board had agreed on with regards to the screening. It would be an 8' fence with plantings that will grow up to 20' in height in some time.

Ms. Vadnais asked if it would be in writing who is going to maintain the trees and what happens if they die.

Mr. Cooper explained the landscape bond and that the applicant has a landscape architect. Explained how the landscape bond worked.

Mr. Chris Seal of 5 Marshall Way was present.

Mr. Seal asked if the board was saying that they have to follow the solar by law for the plantings to be maintained but not follow the by-law concerning the fence because of the Dover Amendment? He stated that he felt the board was saying that certain by-laws have to be followed and certain ones do not because of a state amendment. You're saying that a 20' fence is a disamenity but an 8' fence violates the by-law. Is that grounds for denial?

Mr. Bertozzi stated that he is not saying that an 8' fence violates the by-law.

The board and Mr. Seal discussed this further.

Mr. Seal wanted to know why the project can't be moved somewhere else in town. He stated that this can be ordered through the special permit.

Mr. Bertozzi stated that we don't control other locations.

Mr. Seal stated that he had read the Dover Amendment and that the town can place the project somewhere else.

Mr. Ennis stated that the applicant doesn't want to go to another place in town.

Mr. Seal stated that the board is not required by the Dover Amendment to put the project in this spot.

Mr. Bertozzi stated that the owner wants to use his property.

Mr. Seal didn't feel that the 8' fence was supported by the by-law.

Mr. Bertozzi asked where it said that in the by-law.

Mr. Seal stated that the by-law stated shall not be seen.

Mr. Bertozzi stated that the panels shall not be seen, not the fence.

Mr. Cooper stated that we are going to weight your comments and our lawyer's opinion. We appreciate your comments.

Mr. Seal stated that the Dover Amendment bares more consideration. There is case law that shows that town have won lawsuit against the solar companies.

Mr. Bertozzi read the part of the Dover Amendment regarding solar access. The question is if we are unreasonably regulating it.

Ms. Vadnais asked if we can look at this as derogating the neighborhood? Can't we turn it down for that reason?

Mr. Bertozzi stated that they own the property. They're not interested in selling it. They have certain rights as land owners.

The board discussed this further.

The board discussed a study done by URI regarding house values and solar farms.

Ms. Rachel Bauman-Echlin of 122 Pond Street was present.

Ms. Bauman -Echlin stated that she wanted to clarify something. There is a lot of reference being made to Town Counsel statements that were made last week. Town Counsel stated he made no recommendations to the board. It seemed to her that the board was defending a law suit that may or may not happen. She felt that there wasn't evidence either way. She felt that the neighbors and the town were not being heard and supported in their concerns with the project. She spoke in regards to case law that she provided the board regarding a case in Marion, MA.

Mr. Roach stated that the case law provided is not the current interpretation of the law. There is law that has set the president.

The board discussed the Marion case further and how it compared to our town by-laws.

The board discussed a case from Ware, MA and that it stated that it is appropriate for the town to require a special permit for a solar project. As long as it doesn't prohibit or unreasonably regulate the installation of the solar energy system.

Mr. Bertozzi spoke in regards to if this did go to court would the project be approved with no screening or less screening.

Mr. Ennis stated that they offered to put in a 20' screen, to screen it. This would help with a lawsuit because they did as requested. He agreed that a 20' fence would not be acceptable.

Ms. Bauman-Echlin stated that they had reached out to the Board of Selectmen and they referred this back to the Planning Board regarding funding for a study on real estate values decreasing because of the solar project in their neighborhood.

Mr. Cooper stated that that is what the Board of Selectmen decided.

Mr. Costa asked how many homes have direct view of the proposed site? How many homes have a 2nd floor view?

Mr. Gioiosa explained how they did the sight lines. He did not have exact number to answer the questions.

Ms. Stacy Haskell of 101 Pond Street was present.

Ms. Haskell stated that she was sure that the board was in agreement that there will be no 20' fence. She stated that she would be able to see the panels from her second floor with only an 8' fence. She asked if there was a fire road proposed in front of the proposed fence and plantings?

Mr. Gioiosa explained what was requested by the Fire Chief.

Ms. Haskell asked if Mr. Gioiosa could confirm that there would be a cleared area in front of the fence?

Mr. Gioiosa stated there would be a cleared area next to the fence.

Ms. Haskell stated that the cleared area would only be 130' from her front door. She stated she felt that the turtles had more of a protection than she would. Who is protecting her in all of this? She stated that the project can be moved back. She contacted Natural Heritage and Endangered Species. There was nothing stated that the project couldn't be moved back. It should be a condition that the project be moved back.

Mr. Gioiosa explained how they had worked with Natural Heritage and Endangered Species to protect the turtles and what was approved. That there is also a Riverfront protection area and other regulations in the back part of the property and that is why the project can not be moved back. The project has been designed with all regulations in mind. They do not have the ability to move the project back.

Ms. Haskell asked the Planning Board to make it a condition that the project be moved back. She felt that this is in the best welfare of the neighborhood. Asked if a sound study had been done?

Mr. Ennis stated that there would be no sound.

Ms. Haskell disagreed. She had been in contact with a company that said it does make noise. Also, that the Board of Selectmen, regarding the assessment of their real estates values, stated that the request had to come from the Planning Board.

Mr. Seal stated he had a question for Mr. Gioiosa. Asked why with all the regulations why did he pick this site? There are other places in town.

Mr. Cooper explained that it wasn't Mr. Gioiosa who picked the site. It was the Boy Scouts that wanted to lease the land to a solar company. Mr. Gioiosa was hired as an engineer. He didn't decide where to put the project.

Mr. Seal asked if it was the Boy Scouts that idea to put the solar farm on the land?

Mr. Cooper stated correct.

Mr. Mark Carden from the Boy Scouts was present.

Mr. Carden stated they are a private land owner. We are looking to lease the land to a solar company. It's within their rights to do so. They were not interested in selling the land. They want to retain ownership of it.

Mr. Seal asked if they had looked into anyone else leasing the land?

Mr. Cooper explained that they own the land and have a right to develop it. Stated to Mr. Gioiosa that from what he had heard from the board that next meeting they would be looking to hear if the suggestions made by Mr. Kramer would be agreeable to the applicant. He thought that the board and the neighbors were in agreement that a 20' fence isn't in keeping with the character of the neighborhood.

Mr. Gioiosa they would take a look at coming up with an option that finds a middle ground. It sounded like an 8' fence and plantings is what was agreed upon. He felt that that would be part of the bonding process to ensure the neighborhood that the 8' fence and the planting would be maintained for the life of the project.

Ms. Haskell asked what the budget was for the plantings once they die? Asked who was going to replace them?

Mr. Cooper explained how the bonding process worked and how the budget was established.

Ms. Haskell asked when she sees dead trees who does she call?

Mr. Kramer explained that the applicant and the landscape architect had to follow the American Landscape Association's guidelines for maintaining and installing the plantings. The trees that may die will be replaced under the bond.

Ms. Haskell asked who does she call?

Mr. Kramer stated she could call him.

Mr. Bertozzi stated that the landscape architect should work with Mr. Kramer so she knows what he has in mind for the plantings.

Mr. Gioiosa stated absolutely.

Mr. Kramer stated that as long as the board is agreeable to that.

Mr. Cooper stated that it was ok.

New Business

2. Planner Update

Mr. Roach stated there was no update.

3. Substation – Reynolds Ave. – Progress Report

Mr. Roach gave a brief update.

4. 2020 Annual Report – Vote to Accept

Mr. Costa made a motion to approve the 2020 Annual Report with edits.

Mr. Kramer seconded the motion. Roll call vote; all replied aye. Motion passes.

Meeting Minutes

1. October 21, 2020

2. November 4, 2020

3. November 18, 2020

4. December 2, 2020

Mr. Ennis made a motion to approve the above-named meeting minutes with edits.

Mr. Kramer seconded the motion. Roll call vote: Cooper – aye, Moitozo-aye, Bertozzi-aye, Ennis – aye, Costa – all but 12/2/2020, Kramer-aye, Vadnais-aye, Ferreira-aye. Motion passes.

Adjournment

Mr. Costa made a motion to adjourn at 9:00 pm

Mr. Kramer seconded the motion. Roll call vote; all replied aye. Motion passes.

Respectfully Submitted

A handwritten signature in black ink, appearing to read 'Chris Cooper', written over a horizontal line.

Christopher Cooper, Chairman
