

PLANNING BOARD
148 Peck Street
Rehoboth, MA 02769
(508) 252-6891 Telephone
(508) 252-6842 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

**Meeting Minutes
March 17, 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 7:05p.m.

Form B

1. Barney Avenue Development – Perryville Road – 21-01B

Mr. Rob Davis of InSite Engineering was present.

Mr. Davis presented plans.

Mr. Cooper asked if the board had any questions?

Mr. Costa asked if the frontage of lots 14 & 15 were checked?

Mr. Davis stated he would check them and correct them if necessary.

Mr. Moitozo stated also lot 16. Asked about the center line radius of the proposed roadway?

Mr. Davis stated minimum of 150'.

Mr. Moitozo stated he didn't see an off set or buffer zone for the west branch of the Palmer River.

Mr. Davis stated he looked at that. Stated that there is a flood zone that comes up close to Perryville Road, but does not cross the road.

Mr. Moitozo stated he was speaking in regards to the 200' riverfront. The water is about 10' off the pavement there. Regarding the interim well head protection zone, that encompasses a good portion of lots 1 & 25, possibly the next 2 lots.

Mr. Davis stated the well is shown on the plan. It's right behind the club house. We will make sure we are compliant for septic systems.

The board and Mr. Davis discussed the plans further

Public Hearing

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

Mr. Cooper stated that the main discussion tonight would be around screening.

Mr. Steve Gioiosa of Sitec Engineering was present.

Mr. Gioiosa spoke in regards to the proposed screening.

The board discussed the proposed screening.

Mr. Cooper asked if there were any further questions from the board, there were none. Asked if there were any questions from the audience?

March 17, 2021

Page 1 of 4

Ms. Stacy Haskell of 101 Pond Street was present.
Ms. Haskell asked what was the height of the plantings?
Mr. Gioiosa explained the planting table.
Ms. Haskell raised her concerns that the planting would not block the fence or the solar arrays from her view.
Mr. Gioiosa replied to her concerns.
Ms. Haskell stated that she felt this would be against the bylaw. Spoke in regards to the proposed sight lines.
The board discussed this further.
Ms. Haskell spoke in regards to the planting not being 20' in height until 10 years from the time they are planted.
Mr. Cooper stated that the board will consider everything that was said. The board is working to come up with something that is agreeable.
Ms. Marisa Hood of 116 Bay State Road was present.
Ms. Hood discussed her perspective on this project and compared it to the solar project on Summer Street. She hopes that this project will not follow what has happened on Summer Street. Cautioned the board that this proposed project needs to be monitored.
The board discussed this further and discussed the solar project on Summer Street.
Ms. Susan Goulart of 33 French Street was present.
Ms. Goulart also spoke in regards to the solar project on Summer Street.
Mr. Cooper stated that the Summer Street solar project was the reason that the town voted to change the solar bylaws. Spoke in regards to the current standing of that project.
Ms. Goulart voiced her concern if this proposed project's applicant goes bankrupt.
Mr. Cooper explained the process for which the applicant must have a landscape and decommissioning bond in place.
The board discussed this further.
Mr. Alan St. Louis of 105 Pond Street was present.
Mr. St. Louis stated his concern with being able to see the solar arrays from his second floor. He suggested that the project be moved back.
Mr. Cooper stated that per the solar bylaw they can place the solar arrays where they are proposed. Explained that this isn't something that is an arbitrary decision by the board. It is dictated by the words written; we can't change them.
Mr. Bertozzi read the article in the bylaw on screening. Then spoke in regards to the potential meaning of that.
Mr. Bertozzi and Mr. St. Louis discussed this further.
The board then discussed this further.
Mr. Gioiosa explained why the solar arrays were placed where they are proposed.
Mr. Cooper stated that the board is somewhat limited in what they can ask for. If it is an environmental reason it falls under the jurisdiction of the Conservation Commission not the Planning Board.
The board and Mr. St. Louis continued to discuss moving the project further back.
Mr. Mark Haskell of 101 Pond Street was present.
Mr. Haskell stated his position that the screening will be non-complaint with the bylaw because the solar arrays will be visible for the first 10 years.
The board and Mr. Haskell discussed this further.
Mr. Cooper asked if there were anymore questions that could be answered for Mr. Haskell?
Mr. Haskell wanted his point made clear that for the first 10 years of its existence and it is against the bylaw. The community around the project can sue the Planning Board for violating the town bylaw.
Mr. Cooper stated that it is any town person's right to sue.
Mr. Ennis stated that non-compliance is open to interpretation.
Mr. Haskell stated that he wanted to clarify that this project would be non-compliant from day 1.

Mr. Bertozzi stated we are not agreeing to that.
The board and Mr. Haskell discussed this further.
Mr. David Rollins of 57 Wilmarthbridge Road was present.
Mr. Rollins asked if a variance was required for this project to go forward?
Mr. Cooper stated that there's no variance required.
Mr. Rollins asked about an environmental impact study and if one was done.
Mr. Gioiosa explained what has been done.
Mr. Rollins asked if there was any consideration given to migratory animals in the area. He was concerned that they would be pushed into the neighborhood. He also spoke in regards to his concern of property values.
Mr. Cooper addressed his concerns.
Mr. Gioiosa explained what occurred between the applicant and Natural Heritage.
Professor Corey Lang from University of Rhode Island was present.
Professor Lang gave a presentation on his study.
The board discussed this with Professor Lang and asked questions.
The following people were present and asked questions:
An abutter
Mr. Derek Teixeira of 3 Marshal Way.
Mr. Alan Seewald – the applicants attorney.
Ms. Stacy Haskell of 101 Pond Street.
Mr. Paulo Baptista of 119 Pond Street.

Ms. Carol Entin of 105 Martin Street was present
Ms. Entin spoke in regards to screening and the movement of animals. Asked questions regarding landscape management.
Mr. Gioiosa answered her questions.
Ms. Entin asked about the barrier.
Mr. Gioiosa explained that it is a temporary construction barrier. Also discussed the turtle plan.
Ms. Rachel Bauman Echlin of 122 Pond Street Was present.
Ms. Bauman Echlin read a statement, on behalf of the neighborhood, into the record (see attached).
The Board and Ms. Bauman Echlin discussed the statement.
Ms. Vadnais made a motion to continue the public hearing until further opinions could be provided.
Mr. Bertozzi seconded the motion.
Discussion ensued.

***There was a 5-minute recess. ***

Mr. Gioiosa stated that the applicant is agreeable to a two-week continuance.
The Board discussed what would be spoken about at the next meeting.
Ms. Haskell stated that there were other things asked for but not addressed. Such as a noise study and questions from the water commission.
The board discussed this further.
Ms. Haskell spoke in regards to the Fire Department and if there were a fire on the site.
Mr. Roach explained that Chief Barassi has signed off on the project.
Mr. Cooper explained that the information provided by Fuss & O'Neil, the towns engineer, is public record.
The board discussed what Fuss & O'Neil's review entailed.
Ms. Bauman Echlin clarified that the neighborhood has not retained a lawyer, they have consulted with one.

Old Business

1. Substation – Reynolds Ave. – Progress Report

March 17, 2021

Page 3 of 4

Mr. Roach gave an update.
The board discussed further.

2. Eastwood Estates – Phase I – Roadway Acceptance and As-Built
Mr. Roach gave an update.

3. Release of Bond – 297 Winthrop Street
Mr. Roach explained why there is a request for a bond release.

Adjournment

Mr. Moitozo made a motion to adjourn at 10:54 pm
Ms. Costa seconded the motion. Roll call vote; all replied aye. Motion passes.

Respectfully Submitted



Christopher Cooper, Chairman

William Costa Sr.

March 17th, 2021

Rehoboth Town Planning Board

Dear Mr. Chairman, Mr. Vice Chairman, Members of the Board,

Thank you again for all the work that you do on the committee. We understand that you volunteer your time and expertise, and despite any differences that we may have you are doing your best to make decisions with the information that you have available and that you do this work with a love of Rehoboth and a commitment to the community.

With that being said, I am speaking on behalf of the neighborhood tonight after a community meeting was held on Monday, 3/15 for those who were able to join. Because there are so many concerns from a variety of sources, we wanted to show that we are speaking with one voice in our continued appeal to the Planning Board to deny the Rehoboth Renewable Special Permit Application as it currently stands.

Part of the travesty of an issue of this significance being discussed and decided upon in the time of the current Pandemic, is that the normal open public discourse has been circumvented. Yes – we are all here on zoom, but there are many in the neighborhood who may not be computer literate, who have not been able to participate in this dialogue in the same way that they would be able to if we were having in-person meetings. And even through this venue, when we speak, you do not see our faces. You see names on a screen, but without being able to make our appeals in person, you may not understand the gravity of our experience and the consensus that there is in the community against this project. And so, in an effort to bring voice to those who have not necessarily been able to speak, I am speaking for all of the members of the community right now when I make the following points, to show you that there is, in fact, consensus in the neighborhood against this project, rather than the grumblings of a few malcontents.

We, in the community, believe that the permit application as it stands, violates several existing bylaws of the Town of Rehoboth.

Firstly, we have established, and the Board agrees, that this project is in violation of Article 4.10.3.9.5, which requires the installation to not be visible from adjacent properties and the surrounding neighborhood. It is universally understood that the panels as currently planned will be seen from many adjacent and surrounding houses.

The neighborhood believes that when the Board asked the applicant to reassess the screening, the applicant acted in bad faith in presenting a solution, i.e. a 20 foot screen, that they knew would not be acceptable to either the board or the community, thereby trying to force the board's hand in accepting the applicant's preferred option, despite the fact that that option violates at least one bylaw right off the bat.

And in a previous meeting, members of the Board noted exactly that: they are concerned that if they don't accept this "lesser of two evils" option, in the event of litigation down the road they may not be able to enforce additional requirements.

But what we say to that is no: the Board is the Town Body with the authority to require the applicant to either come up with an alternate screening option, or require them to change the configuration of the solar array in such a way that will make it not visible to the surrounding community, as also indicated in Article 4.10.3.9.5.

Section 4.10.3.8.1 Indicates a minimum of 50 foot setback, not a minimum. Why not require the applicant to further set back this installation? When raised previously, the applicant noted that if that was the case, their project would not be fiscally viable.

With all due respect, that is not the Planning Board's problem, nor should it be the problem of the community at large. Requiring the applicant to conform to the Town By-laws is NOT placing an undue burden on the applicant; it is requiring them to follow the municipal laws that the rest of us have to follow on a daily basis. So any argument down the road that the applicant could theoretically try to make that approval was unreasonably withheld would have no basis in reality or legal standing, because the Planning Board would only be enforcing the actual town bylaws as they stand, which is by my and my community's account, a reasonable requirement. If the applicant can come up with a solution that meets all bylaw requirements, and is acceptable to the community, approval would not be withheld. It is that simple.

Secondly, this application violates Article 4.10.4.5, which states that

"No special permit shall be granted for a use which is, in the opinion of the Special Permit Granting Authority, injurious, noxious, offensive, detrimental or inappropriate to adjacent properties or to the neighborhood or for a use which does not substantially serve public health, safety, convenience, welfare or property values in the neighborhood."

This principle is restated in article 8.2, General Requirements for Special Permit, which notes:

"Special permits may be issued only for uses, which are in harmony with the general purpose and intent of the zoning by-law, and shall be subject to the provisions set forth therein. No special permit shall be granted for a use, which is not otherwise permitted in the zoning district in which the use is proposed. No special permit shall be granted hereunder for a use which is, in the opinion of the ZBA, injurious, noxious, offensive, detrimental or inappropriate to adjacent properties or to the neighborhood or for a use which does not substantially serve public health, safety, convenience, welfare and property values in the neighborhood."

We have established that there will be Property Value Impacts. We have established that the community at large finds this installation to be "injurious, noxious, offensive, detrimental, and inappropriate to adjacent properties." So this application could be rejected on this basis alone.

The By-laws relating to solar arrays were previously modified after issues arose with other solar installations in town, their unsightliness, and the community disapproval. And yet if this application is approved, despite the fact that these by-laws were created to prevent exactly the situation that we find ourselves in, the by-laws will be rendered effectively meaningless. What precedent does that set for other bylaws in the town?

Article 8.2 of the zoning bylaws goes on to read,

*"Furthermore, no special permit shall be granted hereunder for a use, which derogates from the intent and purposes of this zoning by-law because: (amended 5/1/95) a) it appears that the intent of the performance standards or other requirements of this by-law cannot be or are unlikely to be met, or b) traffic generated or patterns of access and egress would cause congestion, hazard or substantial change in established neighborhood character, or c) **the current or permitted use of adjacent property, as defined in the zoning bylaw would be adversely affected by the nature of the proposed use, or (amended 5/1/95) d) nuisance or hazard would be created.**"*

Based on this Article, approval of this application is definitively in violation of Article 8.2. based merely on the fact that it derogates from the intent and purpose of the law itself.

There are a myriad of other concerns that still have not been put to rest around this development.

It has not been established that the applicant's plan as proposed will not have a direct effect on the groundwater because of the topographical changes to the property, and therefore how our wells and aquifers are going to be affected. The applicant plans to deforest this land, using heavy machinery, and poisonous herbicides, potentially creating new drainage patterns going directly into the Pond, into the Palmer River, into the Aquifer, into our wells, and into our homes.

It has not been established that the applicant's plan as proposed will not have direct effects on the light and noise that is experienced in the neighborhood.

But most importantly, it has not been established that there is any legal obligation on the part of the Board to approve this application, as has otherwise been previously suggested.

This neighborhood is comprised of modest, working families who between 40-hour weeks, juggling school schedules, childcare, job losses due to Covid, the pandemic at large, have tried to pool their resources in order to hire legal counsel and professional consultants to assist in making their case.

If there is real concern about following the letter of the law, Section 4.10.4.3 notes, that the Planning board can require:

"at the applicant's cost, professional and technical consultants, including legal counsel, to assist the authority with its review of the application, in accordance with the requirements of section 53G of chapter 44 of the Massachusetts General Laws."

Why is this not something for the Board to require? The Town to Hire an independent land-use lawyer and require reimbursement from the applicant for a just, impartial, review and assistance in navigating these waters? Because none of this to date feels impartial to the community.\

It is a sad day in Rehoboth that relative to this issue, when it feels like justice is being decided by the depth of the applicant's pockets.

In sum, the community feels that the Planning Board needs to assert their authority as arbiters of the Town Bylaws and as representatives of the constituents in their community at large. The only ethical, and legal action in this case, in the view of the People, is to deny the application for Special Permit.

Thank you.