

**WAREHAM PLANNING BOARD**  
**MINUTES OF THE MEETING**  
**Multi-Service Center**  
**54 Marion Road, Wareham, MA 02571**  
**Monday, August 8, 2022**

The following record pertains a meeting held by the Wareham Planning Board at 6:00PM local time. A video recording of this meeting is available for viewing. The record for the proceedings includes the videotape of the meeting, the resolutions passed, and any document presented during the course of the meeting.

**I. CALL TO ORDER**

Chair King opened the meeting and proceeded to call the roll.

PRESENT MEMBERS: Michael King  
Carl Schulz  
Jane Gleason  
Mike Baptiste  
Sherry Quirk, Associate Member  
Sam Corbitt

ALSO PRESENT: Charles Rowley, Consulting Engineer  
Monique Baldwin, Assistant Town Planner  
Kenneth Buckland, Director of Planning and Community Development

ABSENT: -

**II. PRELIMINARY BUSINESS**

**1. #18-22. - ANR Applicant: Kenneth & Valerie Fabuel; Map 11, Lot A**

Bill Madden, GAF Engineering

The Planning Board moved to endorse the plan following confirmation that minor revisions were made.

**MOTION** – Move to endorse #18-22 ANR, Kenneth & Valerie Fabuel; Map 11, Lot A.

MEMBER	MOTION	SECOND	VOTE
M. King (Chair)			AYE
J. Gleason		X	AYE
C. Schulz			AYE
S. Corbitt			AYE
S. Quirk			-

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M. Baptiste

X

AYE

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S. Quirk was ineligible to vote.  
Seconded and passed without dissent. 5-0-0

### III. PUBLIC HEARINGS

#### 1. **Amendment to Article 6: Density & Dimensional Zoning By-Law - Public Hearing Sponsor: Planning Board**

J. Gleason discussed her communications with the Zoning Board of Appeals. M. King moved the public hearing further down the agenda to accommodate the absence of the Zoning Board of Appeals representatives.

### IV. CONTINUED PUBLIC HEARINGS

#### 1. **#12-22. - 91 & 101 Fearing Hill Road - Site Plan Review Applicant: Wareham MA 3, LLC; proposing ground-mounted Solar Energy Generation Facility — Map 91 & 71, Lot(s) 1000 & 1007**

Joe Shanahan, Project Developer, Con Edison Clean Energy Businesses  
Rich Tabaczynski , Atlantic Design Engineers, Inc.

J. Shanahan noted he had met with members of the Conservation Commission, who were pleased with the applicant's report. He stated the commission would not be making a recommendation until C. Rowley submitted additional comments.

C. Rowley noted had not yet completed a comprehensive review of the most recent plans, but it appeared that many of his comments had been addressed.<sup>1</sup> He expressed some confusion regarding sedimentation calculations, noting that the applicant's methods in determining the size of sedimentation in each of the draining areas was unusual. He requested further information. He further noted that monitoring wells and a reporting program needed to be included.

J. Shanahan stated that not all submitted documents had been addressed publicly. He then provided a comprehensive overview of the project.

1. On May 17, 2021, the applicant submitted plans to the planning board and Conservation Commission. To accommodate comments made by N. Price and C. Rowley, the project was reduced to 20.17 acres—a 24% reduction.<sup>2</sup>
2. On July 21, 2021, members of the Planning Board, Planning Department, and Atlantic Design conducted a site visit to assess visual impact. The Planning Board requested a

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<sup>1</sup> C. Rowley 26<sup>th</sup> letter not found.

<sup>2</sup> Site Plan (2021, May 25).

redesign of the access drive and line of sight diagrams. The access drive was adjusted to enter the property at an angle.

3. On July 25, 2022, revised plans were submitted which included an increased buffer of 85 feet from 71 feet alongside the DeMello property.<sup>3</sup>
4. The applicant posted a \$15,000 cash bond with the town for unexpected visual impacts of the project. Additionally, a \$10,000 bond was posted with the town to replace vegetation that failed to establish or decline for the two-year period following project completion.
5. Following M. King's request, ground mounts replaced utility poles.
6. Following Planning Board request that the developer make no profits from clearing trees, a Massachusetts licensed forester completed an inventory. The timber value for the 20 acres to be cleared amounted to \$19,690, which the applicant committed to allowing the town to use the money.
7. The applicant and the Fire Department agreed on detection alarm and suppression systems to be used. Additionally emergency responder training would be provided.
8. Following the Planning Board's request for compliance with the Massachusetts Department of Environmental Protection Noise Policy, the developer engaged HMMH to conduct a noise study at the cost of \$17,000. Per HMMH recommendations, barrier walls were added to the plan to ensure compliance.
9. The developer submitted a report that no possible historic, cultural, or archaeological resources existed at the site. An additional report was submitted that no threatened or endangered species existed on the site. The developer subsequently entered a Turtle Protection Plan agreement with NHESP, At the cost of \$22,000.<sup>4</sup>
10. An updated decommissioning plan was submitted, including a \$232,000 posted bond to be reviewed every five years.<sup>5</sup>
11. In response to Planning Board concerns about the impacts of groundwater flows to fearing hill residents, the developer hired Horsley Witten to conduct a study at the cost of \$33,000.<sup>6</sup> A representative from Horsley Witten presented hydrology findings to the Planning Board.<sup>7</sup>
12. The developer further agreed to collaborate with municipal maintenance to pay for the clearing of the culvert and railroad bed for the life of the solar project.

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<sup>3</sup> Site Development Plans, Revised. (2022, July 26).

<sup>4</sup> Memo, Supplement to Final Mitigation Plan. (2022, June 27).; and Applicant Memo & Report to Planning Board Re: Archeological Cultural & Historic Resources. (2022, July 6).

<sup>5</sup> Atlantic Design Engineers, Inc., Solar Decommissioning Evaluation & Cost Estimate. (2022, June 9).

<sup>6</sup> Horsley Witten Group, Hydrogeologic and Hydrologic Study. (May 2022).; and Atlantic Design Engineers, Inc., Stormwater Addendum. (2022, July 18).

<sup>7</sup> Horsley Witten Group, Hydrogeologic and Hydrologic Investigation. (2022, July 7).

13. The developer committed to collaborating with Horsley Witten to develop a two-year monitoring program which would involve the inspection of wells every other week from the start of construction to completion, and after large storm events. The monitoring program would also include off site monitoring.

J. Shanahan noted that on November 9, 2021, the \$232,000 betterment was paid by the developer, as the site owner had refused to pay for a number of years.

S. Corbitt commented that he was ready to vote on the project but was concerned about communication with the Conservation Commission.

C. Schulz and J. Shanahan briefly discussed requirements ensuring the halting of construction and hiring of experts if any artifacts were found on the site. Per the ancient way on the site, J. Shanahan stated that the landowner would not enter an easement that would allow access to his lands, thus C. Schulz's suggestion of rerouting a trail along the side of the property's fence to maintain the spirit of the ancient way would not be possible.

C. Schulz stated that the monitoring program for the site should exist for the entirety of the project. J. Shanahan responded that the first two years would cost \$50,000 and believed that there was no need to extend the program. C. Schulz questioned if it would be possible to test the water in wells to satisfy concerns that no leaching was occurring. J. Shanahan responded that millions had already been spent to buy Jinko panels, but committed to look into the cost of testing.

S. Quirk then presented several questions to J. Shanahan. J. Shanahan responded to S. Quirk's concerns about endangered species by stating that the developers had already volunteered to undertake a Turtle Protection Plan for the red-bellied turtle.

S. Quirk asked for further clarification on the first responder training mentioned, to which J. Shanahan stated that the training primarily concerned the projects' batteries. The training would involve Con Edison's Health and Safety Director speaking to the Fire Department and instructing them not to enter the fenced area in the event of a fire within it.

S. Quirk requested further information regarding where water flows within the culvert go, to which J. Shanahan responded that the developer could not find the culvert's end and the best they could do was clean it out and maintain it. S. Quirk expressed concern about the impact downstream. R. Tabaczynski commented that the culvert drains from the north portion to the southern portion of the railroad bed, however, the survey completed did not extend onto private property.

S. Quirk requested clarification regarding the additional funding for landscaping, to which J. Shanahan responded it was limited to the buffer.

M. Baptiste noted that a soil evaluation was never done on the site and expressed his lack of confidence in the hydrology report. J. Shanahan questioned why a soil evaluation should be done. He expressed further frustration, stating that the town had interviewed and hired the firm and developed the scope of work for them. He believed that only C. Rowley and himself had the

technical expertise to comment on the study. M. Baptiste responded that the public hearing would not be closed until the soil evaluation was completed.

J. Gleason stated that the hydrology report did not include impacts to groundwater and runoff during construction and requested that a representative from Horsley Witten return to discuss the issue. J. Shanahan responded with frustration that the applicant would be paying for N. Price to return.

J. Gleason expressed concern regarding the south side of the project, stating that the plan provides for only 20 feet between the tree line and the panels. The shadow cast by the trees would impact the performance of the panels. J. Shanahan responded that the tree lines shown on the plan would not change. He acknowledged that the first two rows of panels from the tree line would not be providing optimal production at the highest point of the day, but the overall project would be functioning below optimal production.

J. Gleason noted the seed mix on submitted documents was labeled as a four-foot mix and the panels would sit two to three feet above the ground. She expressed further concern about the grassy area potentially drying out. J. Shanahan responded that additional cutting and landscaping would be needed. M. King questioned if the developer was adopting the best practice standards for pollinator friendly solar plantings. J. Shanahan committed to providing information on the mix.<sup>8</sup>

C. Rowley then provided comments, noting the hydrology study did not discuss the impacts on the surface of the ground. The groundwater conditions before and after construction would not be the same given the removal of the trees and their stumps. He noted that the planning board had not evaluated the impact of construction on the soil profile and the subsequent impact on permeability; soil scientists would evaluate the project differently from Horsley Witten. He also expressed concerns regarding erosion on the site and impacts on neighboring properties. C. Rowley further supported the implementation of a monitoring program. He stressed the need for evaluating long term effects for people with wells, and suggested monitoring once a month for the lifetime of the project, with additional monitoring occurring from April to June where the area was the wettest and groundwater changed rapidly.

M. King opened up to public comment, asking for only new material.

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Annie Hayes, 52 Farmer's Lane Resident

A. Hayes noted that the project had exclusively focused on stormwater, it's not adequately considered the reduction of nutrients in well water.<sup>9</sup>

Kathleen Pappalardo, President Wareham Land trust, Fearing Hill Rd. Resident

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<sup>8</sup> Solar Array Seeding Mix Schedule Protocol. (2022, June 22).; and Atlantic Design Engineers, Inc., Grass Coverage Figure. (2022, June 14).

<sup>9</sup> See: A. Hayes Resident Comments, Water Budget; and Hydrogeology Spacing; and Rhode Island Standards. (2022, August 8).

K. Pappalardo stated that box turtles currently resided within the property and are labeled a Massachusetts Species of Special Concern. She further noted that the red-bellied turtle had been documented within West Wareham. Additionally, she questioned if the panels on the property would be visible from the abutting conservation property.<sup>10</sup>

Eric Lintala, 15 Squirrel Island Rd. Resident

E. Lintala implored the Planning Board to communicate with the Conservation Commission, noting that the Commission had serious concerns. He stressed that J. Shanahan's job was to see the project approved, and the hydrology report provided no certainties. E. Lintala further noted that he had taken pictures on his property of the red bellied turtle.<sup>11</sup>

Nancy McHale, Fearing Hill Road Resident

N. McHale noted that in other projects where trees cast shade onto panels, developers had topped the trees in the buffer. She requested information on whether this was a possibility. She expressed further concern regarding the fire response, questioning how damage would be assessed, how contamination of water would be evaluated, and what restitution to residents would be made for contamination of water sources. N. McHale requested further information regarding stormwater basins and if they could potentially impact the wetlands.

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C. Rowley responded that the reference basins were not infiltration basins, rather a receiving area for runoff. They would act as detention basins allowing water to run out in a given period of time.

J. Shanahan requested that the Conservation Commission and the Planning Board communicate regarding the return of N. Price.

**MOTION** – Move to continue the public hearing to regularly scheduled Planning Board meeting of September 12, 2022.

MEMBER	MOTION	SECOND	VOTE
M. King (Chair)			AYE
J. Gleason			AYE
C. Schulz			AYE
S. Corbitt	X		AYE
S. Quirk			AYE
M. Baptiste		X	AYE

Seconded and passed without dissent. 6-0-0

**MOTION** – Move to take a short break.

MEMBER	MOTION	SECOND	VOTE
M. King (Chair)			AYE

<sup>10</sup> See: K. Pappalardo, Resident Comment. (2022, August 1).

<sup>11</sup> See: E. Lintala Resident Comments, Mass.Gov/Rare Species Viewer. (2022, August, 24).; and Letter to Chairman. (2022, August 24).; and Turtle Image. (2022, August 8).

J. Gleason		X	AYE
C. Schulz	X		AYE
S. Corbitt			AYE
S. Quirk			AYE
M. Baptiste			AYE

Seconded and passed without dissent. 6-0-0

**MOTION** – Move to reopen the Planning Board meeting of August 8, 2022, at 7:50PM local time.

MEMBER	MOTION	SECOND	VOTE
M. King (Chair)			AYE
J. Gleason			AYE
C. Schulz	X		AYE
S. Corbitt		X	AYE
S. Quirk			AYE
M. Baptiste			AYE

Seconded and passed without dissent. 6-0-0

## V. OTHER BUSINESS

### 1. Upcoming Amendments to Zoning By-Laws: Overview

Nazih Elkallassi, Chairman  
 Richard Semple, Member  
 Troy Larson, Associate Member

M. King summarized that the Planning Board had revised the layout and language of Article 6, “Density and Dimensional Regulations.” Members of the Zoning Board of Appeals were present to address their concerns.<sup>12</sup>

N. Elkallassi requested a correction of information in Section 623, “Commercial Districts.” M. King agreed to address the issue. A discussion ensued between the representatives, the Planning Board, and B. Madden regarding changes in language, specifically pertaining to the number of square feet required for additional units.

The Zoning Board of Appeals expressed concern over R130 setbacks. J. Gleason and N. Elkallassi discussed the issue, and it was clarified that the new by-law format was clearer and addressed concerns adequately.

N. Elkallassi requested a change in language from “setback” requirement to “zoning” requirement regarding small lots in Section 1381.3, “Non-Conforming Lots.” M. King stressed the need for additional communication between boards to ensure no further misuse of Zoning By-laws. K.

<sup>12</sup> Zoning By-Laws. (2022, April 12).

Buckland noted it would be acceptable to have a shared document between all boards documenting areas of concern.

N. Elkallassi additionally requested the Planning Board consider increasing the F.A.R. from 30% to 50% in Section 628, "Dimensional Standards for Existing Small Lots." J. Gleason acknowledged the issue, but that it required further consideration.

B. Madden question where other residential uses were defined. A discussion ensued during which J. Gleason suggested changes in language.

**MOTION** – Move to continue public hearing on amendments to Article 6, "Density and Dimensional Regulations," to the regularly scheduled Planning Board meeting of September 12, 2022, with the intention of ending it.

MEMBER	MOTION	SECOND	VOTE
M. King (Chair)			AYE
J. Gleason			AYE
C. Schulz		X	AYE
S. Corbitt	X		AYE
S. Quirk			AYE
M. Baptiste			AYE

Seconded and passed without dissent. 6-0-0

**MOTION** – Move to publish public hearing notice for updates to Article 13, "Zoning Protection," for the regularly scheduled Planning Board meeting of September 12, 2022.

MEMBER	MOTION	SECOND	VOTE
M. King (Chair)			AYE
J. Gleason			AYE
C. Schulz	X		AYE
S. Corbitt		X	AYE
S. Quirk			AYE
M. Baptiste			AYE

Seconded and passed without dissent. 6-0-0

## 2. Wareham Retail Management – Action Plan Discussion

M. Baldwin stated that contact had been made on July 20, 2022, but had heard nothing since. The Planning Board discussed requiring Wareham Retail Management to submit plans with a timeline by the end of the week.

## 3. Item Unknown

Bill Madden, GAF Engineering

M. King stated he was frustrated with unplanned items appearing before the board, emphasizing all items must be included on the agenda in order to be addressed at a meeting. B. Madden stated



his presence was exclusively for formally submitting the application for review before the Planning Board at a scheduled meeting. M. King acknowledged the submission.

#### 4. AJOURNMENT

**MOTION** – Move to adjourn.

MEMBER	MOTION	SECOND	VOTE
M. King (Chair)			AYE
J. Gleason			AYE
C. Schulz	X		AYE
S. Corbitt			AYE
S. Quirk			AYE
M. Baptiste		X	AYE

Seconded and passed without dissent. 6-0-0

The meeting was adjourned at approximately 8:44PM local time.

Approved by Planning Board Clerk: \_\_\_\_\_



Date submitted to Town Clerk: \_\_\_\_\_

WAREHAM TOWN CLERK  
2023 MAY 18 PM1:59