

**WAREHAM PLANNING BOARD  
MINUTES – November 28, 2022**

- I. **ROLL CALL:** The meeting was presented in the Town Hall and zoom as a hybrid meeting.

**Present:** Chairperson, Michael King, Mr. Corbitt, Mr. Schulz, Mr. Baptiste, Ms. Gleason, and Associate member, Sherry Quirk

**Absent:**

Planning Director, Ken Buckland was present.

Mr. Rowley was also in attendance.

II. **PRELIMINARY BUSINESS:**

1. **Approval of Meeting Minutes: 11/14/2022**

Mr. Schulz made a few comments to ask the minute taker to add a bit more detail to the minutes. A discussion followed. Mr. Corbitt said it would be very difficult for a person to transcribe word-for-word what people say, and that minutes should be summarized.

Mr. Buckland explained that all that is truly needed for minutes is a summary of the meeting. He stated that in a court proceeding that summarizing the minutes is the best as you

Mr. Schulz stated the record needs to be clear. Mr. Corbitt said that it's minutes and not transcription. Not word by word, but a bit more detail so that if anything should go to court it's in the minutes.

Ms. Gleason made a motion not to approve the November 14, 2022, minutes and they will forward them back to the minute taker for review and with bullet points to revise and approve at a later meeting. Mr. Schulz seconded the motion. The motion passed unanimously. (6-0-0)

2. **150 Tihonet Road – New Leaf [Borrego] Extension of time SPR/Special Permit**

Mr. King stated he thought there was an issue of this application being properly posted in the Wareham Weekly and asked Mr. Buckland if they could even discuss this case this evening. Mr. Buckland stated that it was properly posted on the Town website. He said the extension of time for a Special Permit is a different process and didn't have to be posted in the Wareham Weekly.

Mr. Schulz asked if they could take public comment and take information. Mr. Buckland stated yes they could and it would be up to the chairperson to hear public comment.

Dean Smith and Jerry Connell were present as the applicants. Attorney Greg Sampson was also present. Mr. Connell stated the property is held under a project company that was a subsidiary of Borrego. Mr.

Connell said they gave information about the decommissioning plan and other information that the board was seeking. He said they submitted the documents as well as a letter on November 17, 2022.

He said they included the order of conditions from the Conservation Commission as well as DPU information from Eversource.

Mr. Schulz stated that the board members did not receive the submission paperwork.

Attorney Sampson reviewed the letter that was submitted. He reviewed the section under the law that reflected the 'good cause' as to approve the application. He provided information on the solar panels. He stated they provided an order of conditions that were given by the Conservation Commission and that the plans that were approved with the order of conditions, was the same dated plans that were approved by the Planning Board. He stated they provided more information on the group study by Eversource and the timing, including the timeline of when it was initiated and the reason why it was held up. He said there has been some progress on that study and information has been sent out to participants and it is in the response stages. He said the last part is the decommissioning plan and confirmed that all the factors in the decommissioning plan were taken into consideration. He said they suggest the timeline of the decommission plan to be updated when they pull the building permit, when they go to operation, and then every five years thereafter.

Mr. King said he didn't see the revised decommissioning plan.

Attorney Sampson said they did not revise it at this point because they thought it would be best to wait until they pull the building permit.

Mr. King said he would disagree, and he would like to know up front what the decommissioning plan is going to be. He said he has some concerns about the recycling, the ability to recycle and what's going to happen to product that can't be recycled. He said he read a paper that was written by an Attorney about the goings on that is happening in Charlton, MA. He said the decommissioning plan is a hot button topic and he would like to see that plan prior to approval.

Attorney Sampson stated they did have a decommissioning plan when they were approved two years ago.

Mr. King said he is concerned about what will happen in twenty years from now when it's left for the Town to worry about.

Ms. Quirk asked about the Plymouth Group Study and asked if there was a sense of how/where that is going.

Mr. Connell stated they have gotten to this stage with the Plymouth Group where there are preliminary results have been issued. Preliminary results are favorable to making the projects. In terms of cost allocation, there are no final methods that have been decided on. He said there are comments from the A.G.'s office in the study. He said the outlooks of the projects are favorable.

Ms. Quirk asked about the timing of the hearings. She asked when they would be expecting to get an interconnection with Eversource.

Mr. Connell said they are looking at the June/July time of next year.

Mr. Schulz asked about the decommissioning plan if there were battery disposal cost mentioned in the plan specifically.

Mr. Connell said yes it had been. He said they confirmed the decommissioning of the battery was in that amount.

Mr. Schulz asked for the copy of the current decommissioning plan. Mr. Buckland confirmed they may have it already.

Mr. Schulz asked about the case in Charlton, MA in regards to the decommissioning cost being substantially underestimated. Should be calculated \$267,000 per megawatts. He asked what this project is, which is about 20-30 megawatts. He said that he believes they need to think about this a bit more. He said this amount is substantially greater than any of the projects they've been looking at. He said the additional issue is the cost of disposal.

Mr. Schulz stated the other issue is to add a line item in the decommission plan that talks about the cost for disposal. He also asked if other Towns are challenging their cost.

Mr. Connell said that they've had the same similarities in other towns that they've done here. He said it's hard to ask for a quote that may/may not be needed in thirty years from now. He said it needs to be a projection. He said they are also looking at the salvage value to what may be salvageable.

Mr. Schulz stated they are not taking into consideration salvage value; as the Town wouldn't be able to do that in thirty years.

Mr. Smith stated he would like to see the information that Mr. Schulz has and the methodology behind it. He said the highest he has seen is these here. He believes they were in the right range with other Towns in Massachusetts.

Mr. Schulz stated he's glad they are speaking about periodic reviews.

Mr. Connell said they have tried to accommodate the periodic reviews in what they have proposed. He said that was one of the reasons why they stated they would get the figure right before the building permit was being issues.

Mr. Schulz stated he had asked for the original conditions that the Planning Board gave them.

Ms. Gleason stated that she felt that in the decommissioning plan they are eventually going to become obsolete and no value, and they will have to figure out how to dispose them appropriately. She said she thinks that needs to be considered in the proposal.

Mr. King reiterated the study/reading from Charlton, MA and his concerns regarding what would happen in twenty-to-thirty years from now. He said there is no one recycling these effectively and he wants to be assured they do what's right for the Town.

Mr. King said he is making the assumption that everything that is being discussed also should apply to 27 Charge Pond Road.

Mr. Schulz stated they are waiting for an answer from the A.G. regarding their updated solar bylaw. He explained the process of the Town's citizens to update the solar bylaw based on their research and information.

Mr. King asked Mr. Rowley if he had comment, to which he did not.

Mr. King stated as this wasn't posted in the Wareham Weekly, and that they have given the applicant more information to come back with, he has decided to forego public comment.

Mr. King said that 25% of the decommissioning plan was held in cash and the remainder held in bond in the article from Charlton, MA. He said they could be possibly considering this as their benchmark.

Ms. Quirk stated she would like to know what their access to solar panels is when they return.

Mr. Schulz made a motion to continue 150 Tihonet Road and 27 Charge Pond Road to December 12, 2022, and was seconded by Ms. Gleason. The motion passed unanimously. (6-0-0)

### **3. 27 Charge Pond Road – New Leaf [Borrego] Extension of time SPR/Special Permit (see above)**

### **4. Discussion and Possible Vote: Bay Pointe – Windward Pines – Tripartite Release**

Mr. Buckland stated that one to two representatives from Windward Pines would like to sit down with Planning Board members to discuss this Tripartite Release.

Mr. King said he would like Mr. Rowley to be a part of that meeting.

Mr. Rowley stated he didn't fully understand the purpose of this meeting. He said the request has come before the board and they have his recommendation. He said he is not comfortable dealing with that situation and it should be dealt here with the Planning Board.

Mr. Schulz asked if they want to meet to discuss Phase two or if they want to go back to look at Phase 1 with the Tripartite extension. He said it would be uncomfortable not to have Mr. Rowley attend the meeting, as he has been historically reviewing it.

Mr. Buckland stated they would discuss anything the board wanted to discuss.

Mr. Rowley said that he will go to the meeting and listen but would not recommend doing anything outside of the Planning Board meeting. He said he doesn't understand the reason behind the meeting.

Mr. King said what is the hiccup that they can't approve what they are requesting.

Mr. Schulz said that he can't verify if the covenant for phase one was properly released. He said he hasn't seen anything for phase two as well, and where it was extended to.

Mr. King asked if they could set up a meeting bullet point by bullet point and answers by the following meeting. He said they've asked for a copy of the release for phase two and they still don't have it. He said if it is in the Planning office, it needs to be updated to the website.

Mr. Schulz stated they agreed on the number for phase two, but not necessarily didn't have the spreadsheet that they were all sharing.

Mr. Rowley said he will send the spreadsheet to the board members and that there is nothing that has changed.

Mr. Schulz stated that the updated spreadsheet needs to be part of the record.

Mr. Rowley said if they want him to attend the meeting he needs a list of what the Planning Board wants.

Mr. Rowley said he doesn't recommend releasing funds without the paperwork, the recorded document back into the Planning Board's hands.

Mr. King suggested a very informal meeting with Tim Fay, Mr. Rowley, Mr. Schulz, and Mr. Buckland.

Mr. Corbitt made a motion that Mr. Buckland set up a meeting with Mr. Fay for possible discussion and vote with Baypoint, Windward Pines until the meeting of December 12, 2022 and at this meeting would have the information ironed out to possible release the funds for phase two. The motion was seconded by Ms. Quirk and passed unanimously. (6-0-0)

Mr. King asked Mr. Buckland to set up the meeting for a Friday within the next week or so.

### **III. PUBLIC HEARINGS**

### **IV. CONTINUED PUBLIC HEARINGS:**

#### **1. 3-22 Jason St Martin- Site Plan Review – 5 Doty Street Map 103, Lot 1027 – proposing a Parking Lot**

On behalf of Eversource, via Zoom, Emily Williamson, was present.

Mr. Buckland asked the Chairperson to have people who speak spell their names.

Mr. Schulz stated they were confirming the plans that were dated correctly and then they were also waiting for the Order of Conditions from the Conservation Commission.

Mr. King said that the plans he had on hand was dated December 23, 2021.

Mr. Schulz stated they wanted to confirm they as well as Conservation Commission is reviewing the same plans.

Ms. Williamson shared her screen and showed the date of the plans and confirmed they are looking at the same plans

Ms. Williamson stated she sent in that information on November 17, 2022.

The board discussed the inconsistencies on the plans to be corrected for the final plan. Mr. King said they cannot approve the plans without a corrected set. Mr. Buckland stated they can approve with that condition.

Mr. Rowley said that another condition would be that they would have to maintain the grass in that area being sure not to let it grow past 4' without cutting. He explained they need to write up the Special Permit anyway as well as the 20 day appeal process.

Ms. Williamson reiterated the road label needs to be corrected and the vote will be taken tonight and then they will submit new plans.

Mr. King opened it up for public comment, to which there was none.

Mr. Schulz made a motion to close the public hearing 3-22, 5 Doty Street proposing a parking lot and was seconded by Ms. Gleason. The motion passed unanimously. (5-0-0).

Mr. Schulz made a motion to approve 3-22, 5 Doty Street, proposing a parking lot with the condition of revised plans that show Rt. 28 and an added condition of maintaining the grass and there will be no repaired vehicles on this lot, and that will be all written in the Special Permit. The motion was seconded by Mr. Corbitt and passed unanimously. (5-0-0).

Ms. Williamson asked if they had to wait for the 20 day appeal for construction. Mr. King stated he would suggest to err on the side of caution and wait for that twenty day appeal to go by.

**2. 12-22 Wareham, MA 3, LLC – 91 & 101 Fearing Hill Road – Site Plan Review – Map 91 & 71, Lot(s) 1000 & 1007 – proposing Ground-mounted Solar Energy Generation Facility**

Mr. Shanahan was present on behalf of the applicant. He stated on November 16, 2022 the conservation Commission denied the applicant. He said they will be filing an appeal in Supreme Court as well as with DEP. He asked that this board keep the public hearing open until that time.

Mr. King said he has no problem keeping the hearing open until the time that is resolved.

Mr. Shanahan asked for a continuance for 90 days to 120 days. Mr. King suggested February 20, 2023.

Mr. Buckland said he doubts the court case would be resolved but that DEP may reverse it.

Mr. Shanahan stated that it would have to be overturned in both jurisdictions.

Mr. Schulz stated that this has been going on for quite some time. He said the information they have to review is enormous and that if they keep it open for another 90-120 days he can't imagine what else is coming through.

Mr. King said they had no other choice as they have to stand on the sidelines.

Mr. Schulz stated that they could close the public hearing and deny the application; he said it's not a suggestion, it's just for discussion purposes only.

Mr. Shanahan explained what their basis of appeal is and that is because the town hired a hydrologist and they worked with Mr. Rowley for six months to work with them. He said Conservation Commission continued the application. He said that the conservation agent filed his notice of denial before receiving the information. He said it would be unfair for this board not to allow the continuances.

Mr. Schulz said he understood and apologized for making the statement. He said he said it for discussion only. He said he didn't mean to be facetious.

Mr. Corbitt said he thinks the suggestion that Mr. Shanahan is reasonable.

Mr. Schulz said he wanted to withdraw his comment.

Ms. Gleason agreed that Mr. Shanahan makes a good point and they need to stand back and wait for the state to review the appeal.

Mr. Schulz reviewed the document that Mr. Buckland provided to them to review the application. He suggested everyone take good review of the documents that have been submitted on the record and organize it.

Mr. Buckland said the documents are categorized for organization.

Mr. Schulz said he will work with Mr. Buckland to gather the information together and organizing them together. Ms. Gleason suggested organizing the documents by party to make it a little easier.

Mr. Buckland reviewed how the documents can be organized.

Mr. Corbitt made a motion to accept the applicant's request to keep the hearing open and continue the case to March 6, 2023 and was seconded by Ms. Quirk. The motion passed unanimously.

**3. 19-22 Dos Amigos Realty, LLC – Lots 1010-A3 & 1010-D on Map 74 – Two Lot Subdivision**

Ms. Quirk made a motion to accept the continuance from the applicant for January 23, 2023. Mr. Schulz stated that he hasn't received the final Fire Department letter; Mr. King said he received and will forward to board members. Mr. Baptiste seconded the motion and was passed unanimously. (5-1-0).

**V. OTHER- TOPICS NOT REASONABLY ANTICIPATED 48 HOURS IN ADVANCE OF THE HEARING**

Mr. King asked if they have received any response from the area businesses that they have asked to respond to the maintenance and/or other issues with the property. (Toby Road, Chipotle, Starbucks and Walmart)

Mr. Buckland stated that Tobey Road has responded. He said that they have not received any other responses.

Mr. Corbitt said that the Selectboard is behind them, and so far has held up the renewal for Starbucks. He said that Chipotle hasn't come in as of yet to renew their permit, but there is no pending meeting and it will be held.

Mr. Schulz stated that they had agreed to come back to us by December 3<sup>rd</sup> to address the board's concern and they have yet to do that. He said they could shut them down immediately.

Mr. King said he understands the Town of Wareham wants to be good businessmen however he feels that these outfits are 'thumbing their noses at us'. He said they have to draw the line in the sand somewhere. He said he would rather go toe to toe with the corporation versus an independently owned business.

Mr. Schulz stated he agrees however he feels that Starbucks won't give a hoot but the people that work there won't get paid. Mr. King agreed but didn't know what other choice they had.

Mr. Corbitt said there are thousands of jobs in town right now. He said he is done and they've been saying they are going to come back since January and have had no response.

Mr. King said there is no reason why they can't send a letter asking for anything.

Mr. Buckland said that Millworks did not get the certificate of occupancy from the building commissioner.



They spoke about three businesses in that complex that have not responded to any correspondence. Mr. Buckland said they gave them until December 3, 2022 to respond or they will be fined. Mr. Buckland said they can have the building commissioner issue fines.

Mr. Rowley said he noticed there was work going on at that complex as he notices a back hoe there this evening.

Mr. Corbitt said he is frustrated at their lack of responding to the demand letters from the board.

Mr. Schulz said he thinks that all the members should go there and review on December 3<sup>rd</sup>.

Mr. Corbitt said that after the 3<sup>rd</sup> of December, for Starbucks and Dunkin Donuts needs to be addressed right away.

Mr. King said that around the third they can review what is going on down there and if active work being done, they can check on it.

He said he would like the Planning Office to confirm with the Zoning Enforcer to address if they are running the business without a certificate of occupancy.

Mr. Corbitt made a motion to request the Planning Office to go out and review Master Millworks to see if they are occupying the space without a certificate of occupancy. The motion was seconded by Ms. Gleason and passed unanimously.

In other business, Ms. Quirk said that they can review what other Town's are doing in regard to decommissioning plans. She agreed to take that role on.

Mr. Schulz said he would like to recommend putting on the agenda forming a sub-committee to look at alternative energy and look at improvements to the by-law. He said they still owe a priority list to Mr. Buckland as to what by-laws they want to take action on improving. He said they need to figure out the priorities. Mr. Schulz stated he didn't want them to lose sight of the bylaws.

Mr. Buckland said they need to think about what Town Meeting wants to take on. He said if he thinks they think there is too much to do then they can try and they can try and do a more complete revision of the zoning by-laws.

Mr. Schulz stated they need to keep Mr. Buckland's list open for discussion at future meetings. Mr. King suggested either a workshop meeting or putting time aside to review at meetings. The board members agreed to a workshop meeting on December 19, 2022.

Mr. Schulz stated he'd also like to keep on the forefront of operational solar projects and perhaps return to them to review their decommissioning plans. He says he doesn't even know that if there is a caveat for a review.

Mr. Buckland stated that the review is on only about the last four to five years of operational solar.

Ms. Gleason asked if they have received an answer regarding if it's a prevailing wage cost that if the Town has to decommission the panels, that will need to be a prevailing wage cost.

Mr. Buckland will get the board a list for review.

Mr. Rowley referred to the prevailing wage thing saying that they will probably not get an answer from the labor department. He said they could probably go on the site and get an idea of what the rates are. He said they aren't losing anything if they set a number now, as long as they put the clause in their agreements.

Mr. Corbitt made a motion to adjourn and was seconded by Mr. Baptiste. The motion passed unanimously.

**VI. BOARD MEMBER COMMENTS:**

**I. UPCOMING PLANNING BOARD SCHEDULE:**

**II. ADJOURNMENT:**

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

*[Signature]* as clerk

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

WAREHAM TOWN CLERK  
2022 DEC 20 PM 4:24