

WAREHAM PLANNING BOARD
MINUTES OF THE MEETING
Multi-Service Center
54 Marion Road, Wareham, MA 02571
Monday, December 11, 2023

WAREHAM TOWN CLERK
2024 MAR 26 PM 12:44

The following record pertains to 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, Chair
 Carl Schulz
 Jane Gleason
 Mike Baptiste
 Sherry Quirk, Associate Member
 Sam Corbitt

ALSO PRESENT: Kenneth Buckland, Director of Planning and Community
 Development
 Jonathan Dickinson, Assistant Town Planner

ABSENT: -

II. PRELIMINARY BUSINESS

1. #7-20 Borrego Solar Systems, Inc. – 27 Charge Pond Road – New Leaf [Borrego] Extension of time SPR/Special Permit

See below.

2. #9-20 Borrego Solar Systems, Inc. - 150 Tihonet Road – New Leaf [Borrego] Extension of time SPR/Special Permit

The applicant had requested a continuance until January 8th, 2024. S. Quirk mentioned that she had spoken with the Planning Board's hired expert, who had requested applicants to submit a report on the relevant fire safety standards and regulations, along with their plans for compliance. M. King confirmed their agreement.¹

MOTION – Move to accept the request for continuances for #7-20 and #9-20.

¹ #7-20, Project Folder.; and #9-20, Project Folder.

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

Seconded and passed without dissent. 6-0-0

3. For Discussion and Possible Vote – Tihonet Pond South Subdivision - Release of Performance Bond (\$106,376.20)

Michael McVeigh, Counsel, A.D. Makepeace Co.
Philip Cordeiro, P.E., Allen & Major Associates, Inc.

M. McVeigh mentioned that he had submitted an as-built report to the Planning Board the previous week and sought their recommendation regarding the release of the bond. P. Cordeiro acknowledged that it was a low-impact subdivision and found the submitted information to be sufficient. C. Schulz raised concerns about the absence of inspection reports from previous decades, noting a lack of historical records. This led to a brief discussion about whether to waive the requirements for historic inspection reports. S. Quirk inquired about the potential precedents set by such a waiver and asked if similar requirements had been enforced on other projects. C. Schulz clarified that the discussion was specifically about waiving requirements for very old projects.²

MOTION – Move to waive the requirement for the foreman regarding inspection reports for the project on Tihonet Pond, Northern Crane Landing due to the extreme age and duration of the project.

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

Seconded and passed with dissent. 5-1-0

M. Baptiste dissented, noting that he did not approve of certain applicants being treated differently than others.

² Crane Landing Subdivision, Project Folder.; and Release of Performance Bond for Crane Landing Subdivision. (2023, Dec 7).

MOTION – Move to release the bond in the amount of \$106,300.

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

Seconded and passed with dissent. 5-1-0

4. For Discussion and Possible Vote – 69 Great Neck Road – Review and Determine Status

David Andrade, Contractor
Philip Cordeiro, P.E., Allen & Major Associates, Inc.

M. King initiated the discussion by highlighting the prolonged dormancy of the site, followed by a recent surge in activity. He raised concerns about necessary inspections before pavement placement. He emphasized the need for an engineer, willing to take responsibility either by attaching their name to an as-built or informing the town. There are specific requirements for the town engineer to submit engineering reports at defined junctures, which required prompt notification from the applicant.³

Documentation confirmed inspections conducted by Charlie Rowley up to December 22, 2022, but these were documented as notes.⁴ Notably, there were no formal inspection reports available. This absence sparked a discussion where it was underscored that a Form N necessitated past inspection reports. D. Andrade asserted that C. Rowley had indeed inspected every aspect of the project, expressing confusion over the absence of reported inspection reports. M. King expressed frustration at the dearth of documentation. C. Schulz queried whether the inspection reports would bear the project engineer's counter signature, to which K. Buckland responded that it wasn't always necessary.

Historically, the process of completing Form N involved the verbal testimony of the engineer, which would then be included in the meeting minutes.

M. King directed a query to P. Cordeiro regarding any involvement with the project, receiving a negative response. Drawing conclusions, M. King surmised that the drainage issue at the entrance, unaddressed since C. Rowley's retirement, likely went uninspected. The basis was the mention that drainage had remained incomplete at the entrance. However, D. Andrade disagreed, expressing uncertainty about C. Rowley's reference. P. Cordeiro added insight, highlighting limitations of an engineer-certified as-built, particularly regarding specifics such as pavement thickness, sidewalk, and gravel basin details. If these were done without inspection, the as-built might lack such critical details. It was suggested that the Planning Board needed to ascertain if

³ #38-21, Project Folder.

⁴ See: Rowley Peer Review. (2021, Dec 6).; #38-21, Combined Response to Comments. (2022, Feb 3).

this information was necessary as part of the Form A inspection requirement, with options like dynamic testing or invasive measures like cross-section hole drilling being considered, albeit with varying costs.

D. Andrade clarified that while the project wasn't completed, there was an urgency to initiate building permits. C. Schulz noted the necessity for a schedule of values, which P. Cordeiro would review. P. Cordeiro further emphasized the need to align the schedule of values with the project engineer's assessment of completed work.

M. Baptiste brought attention to a precedent set long ago and expressed frustration over the Planning Board's historical acceptance of claims without adequate documentation. This sparked a discussion concerning the equitable and consistent enforcement of inspection guidelines.

C. Rowley clarified his earlier statement, mentioning that when he referred to the incomplete drainage, it pertained to a drainage basin near the foot of Great Neck Road where ties had not been completed. Moving ahead, D. Andrade highlighted that presently, only the binder was in the ground. He recommended immediate core sampling and proposed inspecting the water main in collaboration with the water department. D. Andrade emphasized the importance of acquiring this information, asserting it could be obtained to the satisfaction of the Planning Board with minimal effort from the applicant. Additionally, he highlighted his practice of including descriptions of completed work in the bills submitted to the Planning Office. He assured that a final inspection report, detailing completion dates, had been provided to the Planning Board.

Suggesting a course of action, M. King proposed a meeting between P. Cordeiro and D. Andrade to craft a punch list similar to the one formulated for the Bay Pointe project.

III. CONTINUED PUBLIC HEARINGS

1. #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

The applicant requested a continuance to January 22, 2024. The Planning Board believed this to be related to ongoing litigation with the Conservation Commission. A brief discussion ensued between the Planning Board in regard to scheduling.⁵

MOTION – Move to accept the continuance request for #12-22 to January 22, 2024.

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

Seconded and passed without dissent. 6-0-0

⁵ #12-22, Request to Continue. (2023, Dec 7).

It was agreed that the discussion could be moved to the meeting after January 22, 2024.

2. #18-23 Christi, LLC– Preliminary Subdivision Plan – 1-13 North Carver Road Request to continue to January 8, 2024

The applicant requested a continuance for #18-23 to January 8th, 2024. A brief discussion ensued in regard to scheduling, and it was agreed to continue until February 12th, 2024.⁶

MOTION – Move to accept the continuance request, with the understanding the meeting be moved to February 12th, 2024.

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

Seconded and passed without dissent. 5-0-1

3. #19-23 370 County Road, LLC – Preliminary Subdivision Plan – 370 County Road

The applicant requested a continuance, with no date provided. Given the same engineer would appear before the Planning Board as for project #18-23, the continuance request was approved for February 12th, 2024 as well.⁷

MOTION – Move to accept the continuance request for #19-23 until February 12th, 2024.

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

Seconded and passed without dissent. 5-0-1

It was noted that the date previously requested was booked to capacity.

4. #15-23 Sarajon Realty, LLC. – Special Permit for Cluster Development, Form C & Site Plan Review – Hidden Trails, Off County Rd.

⁶ #18-23, Request to Continue. (2023, Dec 6)

⁷ Request to Continue not found, See: #19-23, Project Folder.

The applicant requested a continuance.⁸

MOTION – Move to accept the continuance request for #15-23, with the understanding the January 8th, 2024 meeting is filled to capacity, and the discussion will be moved to the February 12th, 2024 meeting.

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

Seconded and passed without dissent. 5-0-1

IV. AJOURNMENT

MOTION – Move to adjourn.

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

The meeting was adjourned at approximately 7:02 PM local time.

⁸ See: #15-23, Request to Continue. (2023, Dec 7).

WAREHAM PLANNING BOARD
MINUTES OF THE MEETING
Multi-Service Center
54 Marion Road, Wareham, MA 02571
Monday, December 18, 2023

The following record pertains to 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, Chair
Carl Schulz
Jane Gleason
Mike Baptiste
Sherry Quirk, Associate Member
Sam Corbitt

ALSO PRESENT: Kenneth Buckland, Director of Planning and Community
Development

ABSENT: -

II. PRELIMINARY BUSINESS

1. For Discussion and Vote – # 11-23 Wareham PV1, LLC. - 0 Route 25 – Decision

The discussion from the Planning Board pertained to the decision to deny the construction of a large, ground-mounted photovoltaic solar energy generating facility at 0 Route 25.¹

S. Quirk requested K. Buckland to summarize Town Counsel's input regarding the decision. K. Buckland highlighted that the Planning Board's decision criteria should center on the 75-foot buffer as a fundamental factor. This buffer was crucial in considering the project's impact on the neighborhood and overall development. Additionally, the project's value concerning environmental aspects and its scale relative to other town projects were identified as considerations. K. Buckland referred to a document exploring decommissioning and battery storage, comparing various solar projects across the town. He highlighted that these projects, despite being small, remained cost-effective.

¹ #11-23, Project Folder.; and #33-21 Project Folder.

S. Quirk raised inquiries about available records indicating the applicant's economic stance. K. Buckland referred to a submission by Long Road Engineering on November 6, 2023, detailing the project's long-term economic feasibility.² M. King noted the absence of specific dollar amounts in the document, indicating thresholds for positive, marginal, and negative economic viability at different megawatt levels. S. Quirk expressed reservations about considering this as conclusive evidence of economic feasibility.

There was discussion about potential significant costs in the interconnection process for newer projects compared to earlier ones. S. Quirk suggested that while earlier projects might have borne existing or anticipated costs, newer studies might impose higher interconnection costs with uncertain additional incentives.

J. Gleason highlighted inefficiencies in the project's layout and infrastructure due to its non-compact shape. C. Schulz agreed, noting conditions favoring the variance that the applicant did not pursue.³

C. Schulz clarified that financial considerations were not a factor in the Planning Board's decision, referenced as 593.16. S. Quirk summarized that upon refiling, the elimination of batteries and understanding setbacks led the applicant to claim the project was no longer economically viable. Consequently, the Planning Board could not approve the desired project.⁴

The site, encompassing 22.4 acres, comprises half forested upland and half cleared land. K. Buckland outlined the Project Narrative, detailing the proposed large-scale ground-mounted solar energy facility within the R-130 Zoning District, allowable with Site Plan Approval as a Special Permit under Article 15 and Section 590 of the Wareham Zoning By-Laws.⁵

The decision encompassed various facets such as vegetation plans, lighting, inclusion in Mass Wildlife's Natural Heritage & Endangered Species Program, absence from mapping Areas of Critical Concern, PFAS concerns, noise, and stormwater management, particularly expounded upon by hydrogeologist Scott Horsley's testimony.

During deliberations, C. Schulz questioned the relevance of S. Horsley's testimony, citing its focus on battery pollutants. S. Quirk recalled S. Horsley emphasizing the need for further hydrogeological study regarding water flow directions and aquifer impacts, but the Board took no further action to address this. Discussion ensued, differentiating water flows toward and away from wetland protection zones, referencing EPA guidance for a 400-foot radius around wellhead protection zones. The Board then deliberated on resident concerns regarding potential adverse impacts on the aquifer.

² #11-23, Applicant Letter to Wareham Planning Board. (2023, Nov 6).

³ For more on interconnection, see: Eversource, Distribution Group Studies. (2023).; and Department of Public Utilities (n.d.). Provisional System Planning Program Guide. Mass.gov.; and NSTAR Electric Company d/b/a Eversource Energy, D.P.U. 22-52. (2022, April 29).

⁴ #11-23, Decision. (2023, Dec 21).

⁵ Wareham, MA, Zoning By-Laws. Sec. 590, Solar Energy Generation Facilities.

M. King assessed that panels alone posed an insignificant risk to aquifer contamination. J. Gleason emphasized decommissioning and panel disposal. C. Schulz highlighted the revised plan's commitment to panel recycling, questioning the Board's purview beyond this phase. K. Buckland clarified that the section outlined factual water flows.

S. Quirk emphasized the Board's need to determine their requirements and narrow down the decision's scope. Further clarification was sought by J. Gleason, C. Schulz, and K. Buckland.

Under Article 15: "Site Plan Review," review criteria, multiple considerations were evaluated. Reference was made to the spring town meeting's April 2024 Bylaws for the Planning Board's assessment. The decision documented the history of the Article 15 By-law, referencing the April 2022 version.⁶ The Planning Board concluded that the Project proposal failed to comply with Bylaw standards, leading to the denial of the proposed project. The summarized reasons are as follows:

"Compliance under Article 15 Site Plan Review Bylaw

- (a) Convenience and safety of vehicular and pedestrian movement within the Site and in relation to adjacent areas.*
- (b) Adequacy of facilities for handling and disposal of refuse and other production by-products.*
- (c) Protection of environmental features on the Site and in adjacent areas.*
- (d) Promotion of appropriate arrangement of structures within the Site and in relation to existing structures within the district and the neighborhood.*
- (e) Coordination with and improvement of systems of vehicular and pedestrian access, drainage, water supply, sewage disposal, lighting, landscaping, wetlands, water courses, buildings and other features that support the neighborhood."*⁷

The proposed project posed a potential significant impact on area water resources, particularly the Plymouth Carver Sole Source Aquifer, Wareham's drinking water source. The requirement for a 75-foot buffer was crucial, yet the applicant asserted the Project could not function within that constraint.⁸

Despite seeking relief, the Planning Board lacked the authority to grant such relief under State and local laws. Relief options existed through a Variance from the Zoning Board of Appeals under Article 14 of the Wareham Zoning Bylaws and M.G.L. c.40a Section.10, which the applicant had not pursued. As the project could not accommodate the 75-foot buffer, and relief was not sought through available processes, the Planning Board denied the proposed large-scale solar energy generating facility for non-conformity with applicable By-laws.⁹

J. Gleason commented that she felt the Planning Board did not discuss the potential for changed hydrology based on clear-cutting of the larger areas of the site, and if it would impact the site. K.

⁶ Wareham, MA, Zoning By-Laws. (2022, April 12).

⁷ #11-23, Decision. (2023, Dec 21).

⁸ See: #11-23, Applicant Letter to Planning Board, Re: 75 Setback. (2023, Oct 5).

⁹ M.G.L. c. 40A, § 10, Variances.

Buckland noted that it was calculated in the stormwater report, but the Planning Board did not discuss that in detail.¹⁰

K. Buckland proceeded with the review of the draft decision document, specifically addressing compliance under Section 590 concerning Solar Energy Generation Facilities. As the project was not appropriately sited and the applicant stated non-compliance with zoning criteria, it raised concerns about endangering the public health, safety, and welfare of the Town.

Following this, Board members shared their perspectives on the draft decision and K. Buckland's comments. C. Schulz remarked that he did not perceive an impact on groundwater. M. King raised the question of whether it was appropriate for the Board to vote on this point within the decision.

S. Quirk emphasized that the responsibility lay with the applicant to address potential impacts upon their return, insisting that substantial mitigation measures should accompany any reappearance. While M. King and S. Corbitt acknowledged its relevance, they did not view it as the primary reason.

S. Quirk reaffirmed that the buffer was the primary concern, while S. Corbitt expressed his substantial worry regarding groundwater impacts. C. Schulz highlighted the need for consistency, noting that solar projects nationwide were not being denied based on groundwater pollution concerns. S. Quirk stressed the importance of avoiding strained findings, asserting that all conclusions within the decision were evidence-based and credible. M. Baptiste echoed the importance of safeguarding the aquifer.

S. Quirk clarified the Board's stance, indicating that should the applicant return, mitigation of risks would be a requisite.

The Planning Board then voted.

MOTION – Move to deny the solar project located at 0 Route 25, Case #11-23, based on the decision constructed and voted on by the Planning Board on December 18th, 2023.

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

Seconded and passed without dissent. 5-0-1

S. Quirk participated in the vote, as previously allowed by the Planning Board and Town Counsel, with acknowledgement that her vote was not eligible for inclusion.

¹⁰ See: #11-23, Stormwater Management Report. (2023, Oct 6).; and #11-23, Compiled Stormwater Management Report. (2023, July 26).

III. AJOURNMENTWAREHAM TOWN CLERK
2024 MAR 26 PM12:44**MOTION** – Move to adjourn.

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

The meeting was adjourned at approximately 7:14 PM local time.

Handwritten: Gleason as clerk 3/25/2024

