



# PLANNING BOARD MEETING MINUTES

Thursday June 4, 2020

Burgess Meeting Room, Berwick Town Hall & Zoom Virtual

6:30 p.m.

## Call to Order

## Pledge of Allegiance

## Introduction of Board Members

*Dave Andreesen; David Ross-Lyons; Michael LaRue; Nichole Fecteau*

*Regular Member Absent: Frank Underwood; Sean Winston*

*Alternate Member Absent:*

*Staff Members Present: James Bellissimo, Planner; Jenifer McCabe, Code Enforcement Officer*

## Public Comment

## Approval of Minutes

### 1. May 21, 2020

David Ross-Lyons and Michael LaRue pointed out typos.

**Motion:** Nichole Fecteau

**Second:** David Ross-Lyons

**VOTED – 2-0-2 in favor**

**Motion Not Passed**

In favor: Dave Andreesen; David Ross-Lyons

Opposed: None

Abstain: Nichole Fecteau; Michael LaRue

## Public Hearing

- Site Plan Review. Adult Use Marijuana Cultivation Facility. 11 Pond Road (R70-16) RC/I Zone. CAF Realty of Maine.

Jerry and Alyson Graybill said they oppose the project for the following reasons:

- There are legal issues with the project, including issue with the road easement and sewer easement.
  - Ms. Graybill brought up the definition of frontage. Ms. Graybill asked if the gravel driveway will serve as legal access to the lot.
  - Ms. Graybill said the marijuana will produce potentially hazardous waste.
  - The Graybills requested that the Planning Board not act on the application until the easement issues are rectified.
- Concerned with private well and South Berwick water supply.
- Concern with odor.
- Overall impact to the neighborhood.
- Ms. Graybill said they would like to see the facilities clearly designated if there was a fire that there is a distinction from the existing apartments on 11 Pond Road.
- Because of concern of runoff and contamination, the Graybills were wondering if the DEP has been contacted.
  - Chapter 700 states that no hazardous waste can be within 300' of a wellhead.
- Crime. Ms. Graybill said the Credit Union ATM close by was broken into and the 4' fence with barbed wire is not sufficient.

Ben Gauthier of 2 Pond Road asked what value the production facility would bring to the Town. Mr. Gauthier encouraged the Planning Board to consider the health and welfare of the neighborhood. Mr. Gauthier expressed concern with the Mr. Ayer's approach to dealing with the septic easement. Mr. Gauthier said the circumstances of the process have not been fair nor equitable.

Paul Amatucci of 12 Perry Way said his property has a view to the proposed building. Mr. Amatucci said there are too many outstanding issues for the Board to move forward.

Mr. Amatucci asked if it is permissible to build a road over an easement without the permission of the easement holder. Mr. Amatucci said every single facility in the country gives off odor and carbon filtration is not enough, what is needed is reverse pressure environments. Mr. Amatucci said this is an issue particularly because of the neighborhood with small children and DEP needs to weigh in because of the wetlands associated with the property. Mr. Amatucci said property values will be adversely impacted and the neighborhood would lose equity in their homes.

Heidi Leveille, co-owner of 13 Pond Road, said she opposes the project for the reasons said by her neighbors. Ms. Leveille said she has hired an attorney to investigate the

legality of the issues with the easement and if the applicant has the right to build a road over the pipe and that the attorney objects to the meeting behind held due to FOAA.

Alyson Graybill requested a peer review be done of the proposal for the 1,000-foot setback from Kind Farms, the 250' wetland buffer and concerns with the drinking water. Ms. Graybill asked that the hearing be continued and kept open. Ms. Graybill asked that all documents be made public.

- Site Plan Amendment. Commercial Storage. 387 School Street (R54-4) R2 Zone. PK Storage, LLC.

*The Public Hearing was closed.*

### **Old Business**

- Site Plan Review. Adult Use Marijuana Cultivation Facility. 11 Pond Road (R70-16) RC/I Zone. CAF Realty of Maine.

Dave Andreesen spoke to the concern of FOAA. Mr. Andreesen reference an order by Governor Janet Mills that the types of meeting the Town are operating in are allowed by the State of Maine. James Bellissimo said he agreed with Mr. Andreesen.

Mr. Bellissimo said there are a lot of issues to sort through. One of the issues with the septic easement is more of a civil issue. Mr. Bellissimo addressed the following issues.

- Legal Access – The legal access for the project comes from Pond Road. Frontage refers to a dimensional requirement, which comes from Pond Road.
- Property Values – Mr. Bellissimo said there is no way to distinguish the impact on property values a marijuana building would have compared to any other proposed use.

Mr. Bellissimo said performance standard #16 in the Findings of Fact which deals with the project having an adverse effect on scenic or natural beauty would be a Planning Board determination. Performance standard #1 deals with conforming to the Town's Comprehensive Plan.

- Odor Control – Carbon filtration and reverse pressure environments are the gold standard.
- 1,000-foot setback – A stamped survey was provided for the setback from the School and the engineer used a setback from the lot line from Kind Farms, which is a conservative measure, the ordinance prescribes setbacks from building to building.
- Wellhead Protection – This is an issue that will researched for the next meeting.

- Fencing – The proposed fence could be looked at to increase in height to increase the security of the project, efforts should also go into the aesthetics to fit into the neighborhood.
- Driving over the septic pipe – Mr. Bellissimo said this could be a good issue to consult with a third-party engineer to ensure the road and access to the pipe is built in a way that protects the neighbor.
- Basin within the 250' wetland buffer
- Public Safety – The Berwick Fire Chief has submitted a memo to the Board.

Mike Sievert of MJS Engineering introduced himself as the engineer of the project. Mr. Sievert said the site has been redesigned due to the 250' wetland buffer. Mr. Sievert said you can drive over septic pipes and roads can go over easements and there is no language that says otherwise. Mr. Sievert said a sleeve will be installed and that if there were issues it could be taken care of without tearing up the road.

Mr. Sievert said a clear designation for the building could be easily done and a Knox Box would be available for the gate. Mr. Sievert said the easement is incorrectly recorded and the septic infrastructure is outside of the easement and applicant is willing to record the easement change. Mr. Sievert said because of the size of the project and treatment that it did not appear to need DEP approval and that the water issue is 200 gallons per day.

Nichole Fecteau said she has been taken aback hearing that the public thinks the applicant has any advantage. Ms. Fecteau said the public has participated in the project more than just about any other project she has been part of.

Ms. Fecteau read a provision in the Comprehensive Plan projects shall not have a town wide adverse impact and in her interpretation, based on the feedback it would have a town wide negative impact.

Michael LaRue said the odor from the horse farm could cover the smell from the marijuana facility. Mr. LaRue said the water issues would be addressed because the water is being captured and stored.

Dave Andreesen said as of now he is not in favor of the application because it could adversely affect the health, safety and welfare of the Town however he does want to give the applicant due process and see what the third-party review comes up with.

- Site Plan Review. Solar Array (Essential Services & Construction over 3,000 ft<sup>2</sup>). 193 Route 236 (R66 6-A) R3 Zone. Berwick Solar, LLC.

Mr. Bellissimo said since the last meeting, the applicants have submitted a new decommissioning plan and with the conditions of approval, that takes care of the issues raised about ensuring the array is taken care of after the farm has reached the end of its

lifecycle. The applicants submitted a new landscaping plan and narrative and the landscaping plan shows the plantings offset with different types of plantings. The solar panel certifications were submitted showing the materials were not hazardous.

Zac Gordon summarized the changes to date and that he felt the project met the State goals of energy production.

Nichole Fecteau read a couple provision in the Berwick Comprehensive Plan that she said she believes have been met by the applicant. Frank Underwood asked via e-mail have the frontage issues off of Route 236 been resolved. Mr. Underwood suggested two conditions including one about access off of Route 236 and that the applicant pay the Tree Growth penalty before receiving a permit.

Zac Gordon said the lot line of 6A will be moved into lot 6. Mr. Bodwell said the entire solar farm will be on lot 6.

**Motion:** Nichole Fecteau motioned to approve the Findings of Fact.

**Second:** David Ross-Lyons

**VOTED – 4-0 in favor**

**Motion Passed**

In favor: Dave Andreesen; Nichole Fecteau; Michael LaRue; David Ross-Lyons

Opposed: None

Abstain: None

**Motion:** Nichole Fecteau motioned to approve the Conditions of Approval as amended.

**Second:** Michael LaRue

**VOTED – 4-0 in favor**

**Motion Passed**

In favor: Dave Andreesen; Nichole Fecteau; Michael LaRue; David Ross-Lyons

Opposed: None

Abstain: None

**Motion:** Nichole Fecteau motioned to approve the application.

**Second:** David Ross-Lyons

**VOTED – 4-0 in favor**

**Motion Passed**

In favor: Dave Andreesen; Nichole Fecteau; Michael LaRue; David Ross-Lyons

Opposed: None

Abstain: None

- Site Plan Amendment. Commercial Storage. 387 School Street (R54-4) R2 Zone. PK Storage, LLC.

James Bellissimo said a site walk was held and that it was fairly straight forward. The back part of the lot is mostly grass area and the previous use was a saw mill years ago. The one question from the previous meeting regarding the wetland and the DEP wrote a letter to the Town stating the wetland is not impacted by the project and the ruling from the previous approval still applies.

Neil Rapoza said one of the remaining issues is to address the lighting in the front of the buildings and that will be done as soon as possible.

**Motion:** Nichole Fecteau motioned to approve the Findings of Fact.

**Second:** David Ross-Lyons

**VOTED – 4-0 in favor  
Motion Passed**

In favor: Dave Andreesen; Nichole Fecteau; Michael LaRue; David Ross-Lyons

Opposed: None

Abstain: None

**Motion:** Nichole Fecteau motioned to approve the application.

**Second:** Michael LaRue

**VOTED – 4-0 in favor  
Motion Passed**

In favor: Dave Andreesen; Nichole Fecteau; Michael LaRue; David Ross-Lyons

Opposed: None

Abstain: None

### **Findings of Fact Review**

- Wright Homesteading

### **Public Comment**

### **Informational Items**

Heidi Leveille pointed out how tough the Land Use Ordinance is to understand and that the room is full of folks with Master's Degrees and still it is difficult to understand. Ms. Leveille asked that the Ordinance be simplified for the general public.

**Adjournment**

**Motion:** David Ross-Lyons motioned to adjourn.

**Second:** Nichole Fecteau

**VOTED – 4-0 in favor**

**Motion Passed**

In favor: Dave Andreesen; Nichole Fecteau; Michael LaRue; David Ross-Lyons

Opposed: None

Abstain: None

Minutes prepared by Berwick Planner James Bellissimo, for consideration at the next Berwick Planning Board meeting.

Signed as Approved by the Board:

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