Gardiner Town Planning Board
Meeting Minutes
MAY 15, 2018

Present: Chairman- Paul Colucci, Carol Richman, John Friedle, Mariela Roman (PB Clerk), Ray Sokolov, Marc Moran, Carol Richman, Michael McElhiney (ZBA), Joe Katz (ZBA),

Late arrivals not at roll call: David Sturman, David Gandin (ZBA)

Others Present:
- James Freiband - Principal Planner
- David Brennan – Planning Board Attorney
- Mark Millspaugh - Sterling Environmental

Meeting Called to Order: Start time- 7:03 pm Roll Call Taken

Chairman announced joint Meeting of ZBA and PB. ZBA will take application to upcoming meeting to make determination on variances before application can be processed with the planning board.

NEW BUSINESS

Cypress Creek Renewables/Burnt Meadows Solar LLC. SBL # 100-4-82

Anne Waling introduced Doug Warden (Snyder & Snyder -Attorney), Tracy Biergarten- Environmental Consultant.
Chairman announces a reminder that this is *not* a public hearing.
Anne Waling: Informational presentation about Cypress Creek delivered. 17 projects already started in New York. Currently 1 GW in production in the U. S. This project is a 2 MW project, enough for 300-500 homes. Consists of an access road, posts for panels, and the panels. Project fenced with 6-7 feet, plus screening. Project includes a small pad for transformer and invertor. This is not a lit facility. Soils used have a pollinator mix. Project size is 20 acres. Variances requested for special use. Ms. Waling explained variances requests: The land was acquired two years ago and there was no solar ordinance in the Town of Gardiner so applicant looked to New York state guidelines. The project does not consist of impervious surfaces. Ordinances got created after applicant brought project to the board. The applicant is currently in the cue and is using coverages and usage based on DEC recommendations.

Doug Warden, attorney (Snyder and Snyder) explains standards of public utilities. Solar is a public utility. Public policy states that public utility have less standards than other applicants because they are needs.
Chairman requests for this document.
D. Warden explain these are just his personal notes.
Ms. Waling reviewed three variances again using the visible site plan. Upon review applicant found some adjustments necessary to the site plans. These include increase in setback on the Stella Rd. side. Public member asks "*how much*".
Ms. Waling "I'll get to that." First variance code is 150 ft. setback on all sides to panels. First variances needed setbacks are on east and south side. 87 ft. are requested for rear panels (63 ft variance/42%), and 114 ft. requested for the side (36 ft./24 % variance). Second variance is lot size -requested on current size of 50.76 acres. This is a request to the current maximum lot size allowed of 20 acres. Because of wetland's centered placement, current subdivision does not allow access without encroaching on wetlands. It is better environmentally to not subdivide, thus 30.76 acre variance (153%) requested. This does not increase project size because this is a flag lot. Third variance request is for impervious coverage. The max coverage allowed is 10 %. Based on 50.76 acres lot, this would allow 5 acres. Applicant is requesting 19%, 9.64 acres or a 4.578 acres difference or 90% variance- double almost.
Chairman asks: *What is the area of your panels – in impervious?*

Ms. Waling consults with colleage but find no specifics but approximates 10 acres of panels.

NYS DEC does not consider the entire panel area to be impervious. The gravel hall road off the main street is .816 acre, almost 1 acre (gravel entrance from highway). We consider to be pervious hall road is .954. This is a large area because of what the fire department requires. It is too our rational for that. The grass surface (.879 acres) is not considered impervious. We think the access is very important for safety, among other things.

PB inquires if these numbers are on provided documentation.

Ms. Waling- "They should be provided in a table, but if not, I will provide so that you can see"

We are asking for 19 %

Chairman: It would be helpful if we were able to determine your solar panels impervious area. Just the solar panels.

Ms. Waling: *Usually its around 5 acres. I can get that information to you.*

Chairman: That would be helpful information for the ZBA.

Ms. Waling: We do not have an exact landscaping plan so that the boards can address landscaping and visual issues; how much green you want. Usually we would want a 25 foot buffer of greens and provides a good camouflage. We can do screening on the fence. We would look into coding of fence. We can do a lot for the overall appearance.

Ms. Waling introduces Tracy to explain site plan.

Tracy Darougar (TRC): States job of her firm is to evaluate environmental aspects: coordination with agencies as pertaining to endangered species, water impact, and codes.

Tracy: We did consider a road shift. Providing a 9 foot 2 vegetative buffer outside the fence. The existing vegetation to remain. It is important to talk about why the road looks like this from an environmental perspective. We chose to place the road at the smallest crossing of the wetlands. This is always the most preferred for state/federal agencies. Fish and wildlife has confirmed there is no environmental impact.

Ms. Waling: Concludes informative session.

PB: Inquires of various headquarters.

Ms. Waling: TFC?? Albany, Central Hudson, Cypress Creek is primarily in California, North Carolina. 30 People working in NYS.

Chairman introduces David Gandin to audience as ZBA Chairman who will be chairing through variance requests.

Chairman introduces Dave Brenan as legal representative to the town in the matter.

Chairman request Dave Brenan to recommend lead agency designation.

Dave Brenan: All play a role to some capacity. ZBA for variances, PB for site plan, and Town Board for special use permit, and other interested agencies. This is a discussion to be had at a local level on a project such as this. DEC or state agency unlikely to request to take the lead. Town Board unlikely since the type of application. TB might like to see the PB or ZBA to take the lead. The process and the sequence are at question. There is no one set legal answer, rather a practical driver.

Dave Gandin (ZBA Chair): Has the process been explained?

This process can sound foreign in its language. 3 variances need to continue with the process. The ZBA will consider those dually with SEQRA as a requirement in NYS as to what environmental review there will be. These will be dual tract. If variances are not granted by ZBA, it will not get to a SEQRA determination. The 3 variances must be granted first.

Chairman: Satisfied with explanations. Next Thursday, at ZBA meeting.

Joe Katz: Request these *current*/visible maps before next Thursday night.

Ms. Waling: Yes. Agreed.

Gandin: Reviews

Friedle: Inquires about impervious numbers

Ms. Waling: Confirms she will provide that information.

Katz: Ask comment if applicant is a public utility at all.

Dave Brennan: Public utilities, such as these, fall under variance standard- whether or not on the facts, even under relaxed standard, the ZBA will have to look at. You are not looking at a normal 5 part variance test in our code book.

C. Richman: Inquires if this is due to the fact that the public can do this on their own.
Ms. Waling: Except for the cost. We provide the electricity at or below market value.
D. Brennan: For purses of provided electricity to homes, the standards do apply. According to this particular site, review is necessary to know if it needs to be reduced.
Gandin: It is not *that* clear-the issue. Brings up the issue of need as a public utility. Believes this project is an advocacy but not a representation of the law.
Applicant Legal Rep: Question has been looked at by courts, particularly of wind. Names examples: *West Beekmantown v. ZBA.*, and *Windpower Ethics Group v. ZBA Cape Vincent.*
ZBA: Do you have experience with such appeals?
Applicant Legal: Yes.
Chairman. This sounds like the crux of the argument.
C. Richman: Inquires about the beginning of lease date.
Ms. Waling: Explain Que request.
ZBA: Inquires about money process. It doesn't sound transparent. We need to figure out if it's cost effective.
Ms. Waling: We would provide that in a redacted form. But asks to consider $500 Million invested in U. S. alone shows well funded.
PB: Inquires about interconnection point.
Ms. Waling: On property itself. 5 pole array to be installed.
C. Richman: Inquires about the finite amount and public necessity
Ms. Waling: 2 megawatt capacity
PB Chairman: upon public inquiry, reminds public that this is not a public meeting. As this applicant continues in the process there will be a minimum of 3 public meetings.
MB Majestic (Town Supervisor): Inquires of 3rd phase approval.
Ms. Waling: yes
PB Chairman: Introduces PB and ZBA Clerk and office hours (1-4 pm Tuesdays, Wednesdays, except for meeting days at which available 5 pm onward. Also available upon appointment).
Dave Brennan reviews lead agency: "*Preliminary discussion of large scale projects and maybe better suited historically to conduct the SEQRA review. But that was a smaller discussion but its for the board members to discuss among themselves if they agree or disagree. I do agree there is something to that but I don't pre suppose that the ZBA can't do it if they'd rather do it and then start and do SEQR and look at the variances and keep the PB out of the mix until that hurdle is over. Or you can do a dual track -excuse me- dual agency -for SEQR, and the ZBA look at the variances. Obviously the ZBA can't act to approve, fund or undertake until a SEQR determination is completed whether its an environmental statement process or negative declaration. I would say on the flip side of that I do believe there is authority that if you are going to deny it, you don't need an environmental assessment just to deny the variances. Maybe you would have to have a discussion. But I don't think you need a Neg Dec to deny an application. And that would be something for the ZBA. And if so, we can discuss.*"
Chairman Colucci states his desire to see the application advance. Does not want to volley the application.
Dave Brennan: We need to notice the public of a ZBA meeting if one is happening next week. We need to confirm if it's a 5 or 10 notice. Probably best to skip next week ZBA meeting.
Applicant Attorney/Counselor: Planning board is probably the best agency to be doing the SEQR review and be lead agency
David Gandin: The SEQR process involves hiring a lot of experts for review.
PB Chairman: Request applicant to deposit more Escrow.
David Brennan questions Applicant Counselor about SEQR process experience.
Applicant counselor states he has no dueling experience in the variance applications being denied after SEQR determination. He does takes side of ZBA beginning the application as the most efficient way to approach. Lead agency looks at SEQRA and makes a determination after those decisions.
Chairman: I am ready for attorney to advise us on sending out notices.
David Brennan: If both agencies agree to whom is lead agency, as early in the process as possible, lead agency needs to undertake SEQR. If the planning board assumes lead agency, notices need to go out and distributed. You can start with a NEG declaration or a finding statement, the various boards issue

approvals and at that point go to Zoning Board for variances.
John Friedle: In the past, the variances are done before, or at the same time.
David Brennan: In either case, it has to go to SEQR first. It may have been that Zoning Board in the past did their own determination, past variances, and then went to PB and took care of SEQR as well.
Chairman: Asks for any additional comments or question.
Chairman motions to vote:

- John Friedle Motions to declare Town of Gardiner as Lead Agency for the Cypress Creek Renewables, LLC/Burnt Meadows Solar. Seconded by Ray Sokolov.
- Marc Moran designated as voting member for 5/15/2018 due to three members short. All votes in favor. Motion carried.

Chairman addresses applicant to request draft letter of notice, replenish funds currently running low, all digital files including any changes. These documents are due by the first of the month.
Chairman addresses the hands raised in the audience that this is not a public hearing. Emails are welcome but project concerns will be addressed at any public hearing until all questions are answered.

OLD BUSINESS

HEARTWOOD Continue SEQR Discussion
Route 44/55 SBL# 93.4-1-42.100 & 93.4-1-41.120

Review of 28-page proposed negative declaration document on file with changes by David Brenan for Planning Board to consider.

- Marc Moran designated by Chairman as alternate member due to absent member for the Heartwood application for 5/15/2018.

Adjustments made by board regarding various language specifics.
The negative declaration was adopted with amendments and dated 5/15/2018. D. Brenan to revise document and review with Paul and Applicant's attorney to ensure changes are accurate. Brenan will prepare final document for Chairman to sign. Brennan will handle filing/distribution/publication (ENB) requirements. Final document with signatures and filing letters, etc. to be provided to PB clerk for addition to website.

Next steps are to update plans/submission for site plan and special permit to reflect Neg Dec. Materials to be submitted by applicant by June 1 to make agenda for June meeting.

JACQUELINE ESTATES SBL# 100.002-2-18.2

Memo from Town planner, James Freiband read by Mr. Freiband dated 5/10/18.
Maps signed and designated to appropriate parties:1 copy to the town clerk, 1 copy returned to applicant, 1 copy to building inspector, 1 copy to planning board department.
Chairman reviews current monetary status with applicant.
Nothing to be filed with the county.
The Board authorized the stamping and signing of
the subject final plat plans, sheets C, EC-1 and P subject to owner's signature and fees paid. If the Attorney has completed his review, it was recommended that the Board, by resolution, authorize the filing of the subject documents to be cited on each subsequent Phase plat.

- Motion made by John Friedle to authorize the overall plat of Jacqueline Estates subdivision. Motion seconded by Ray Sokolov. All members in favor. None apposed. Motion carried.

SHAFT ROAD, LLC SBL # SBL# 93.3-1-21.1

Reviewed Conservation Easement Documents on file dated April 25 by Mr. Moriello. Modifications made

- Chairman authorizes Marc Moran to act as a member of the planning board for the application of Shaft Road, LLC. in place of absent members.
- Board member Ray Sokolov motions to recommend the conservation easement language settled on today be referred to the Town Board for approval and execution as provided in chapter 1-65 of the town code. Seconded by Marc Moran. 4 votes for. 1 vote opposed. Carol Richman opposed on the reason that "There shouldn't be forestry or agriculture on the conservation easement". Motion passed.

INFORMATIONAL

Lands of Richard & George Mejestic and Carol Majestic Lohrman.
Informational for minor lot line division of SBL # 93.4-3-10.117.
A sketch plan was reviewed and the Town Planner noted that the lots are in the HM and HR zones and that there was extensive DEC wetlands. The applicant needed to show that there was sufficient building area to accommodate residences and septic fields.
Chairman inquired about need of a road extension. None is required.
Applicant to submit formal application for lot line, subdivision, and short form environmental at a future date based upon sketch plan discussion at meeting.

Hudson Mobile Home Park-68 Yankee Folly Rd- SBL #85.4-3-3.141
Proposal of 34 additional Mobile Housing Units. Applicant intends to "learn the potential for further development. Not technical, rather zoning."
A report by the Town Planner was reviewed (on file) based on the current number of units he noted.
Mr. Freiband- planner, explained that under zoning code 220-20B, applicant is currently at maximum unit capacity and thus does not allow additional density/units. No further action required at this time.

BYLAWS

Discussion of upcoming bylaws to be established for the Town of Gardiner. Parameters of bylaws to be established by David Brennan after review.

PLANNING BOARD REPORT CORRESPONDENCE

No correspondence for review.

MINUTES

April 2018 minutes to be reviewed by Planning Board at June Planning Board meeting.

ADJOURNMENT

- Ray Sokolov motions to adjourn meeting.
- John Friedle seconded.
- Motion passed.

Submitted,

Mariela Roman

Mariela Roman
Planning Board Clerk

Approved: 8/21/2018
Filed: 3/12/2019

Approved by - Jewell Feeney
Deputy Town Gardener