MINUTES
May 17, 2022

7:03 p.m.
Sand Hill School Community Center, 16 Dewey Avenue, Sandwich, MA

**Present:** Jeffrey Picard, Chairperson; Jennifer Reisig, Vice-Chairperson; Robert King; Paul Coteus; Melissa Dugan; and Philip Rodriguez

**Absent:** Mark Callahan

**Also Present:** Leanne Drake, Town Planner; Ralph Vitacco, Director, Planning & Development; and Maureen McCabe, Sr. Administrative Assistant

**Absent:** Sam Jensen, Assistant Town Engineer

Mr. Picard opens the meeting with the reading of the Opening Statement and the Pledge of Allegiance.

**Introduction of New Board Members**

Mr. Picard welcomes newly elected Board members Melissa Dugan and Philip Rodriguez. Ms. Dugan and Mr. Rodriguez introduce themselves.

**Approval of Minutes**

Ms. Reisig motions to accept the minutes from the meeting held April 19, 2022, as written. Mr. King seconds. The vote is unanimous.

**Submission of New Plans**

There are no new plans submitted.

**Old Business**

There is no Old Business to discuss.

**New Business**

- **180 Cotuit Road – Special Permit Amendment – ASD Cotuit MA Solar LLC**

  Mr. Picard describes the Public Hearing process. He then reads the Public Hearing notice into the record. Ms. Reisig motions to open the Public Hearing. Mr. King seconds. The vote is unanimous. Mr. Picard reads the following comment memos into the record:
Email to Maureen McCabe from Sam Jensen, Assistant Town Engineer re: 180 Cotuit Road – Special Permit Amendment, dated May 12, 2022
Memo to Jeffrey R. Picard, Planning Board Chair from David J. DeConto, Director of Natural Resources re: 180 Cotuit Road – Special Permit Amendment, dated April 8, 2022
Email to Maureen McCabe from David Mason, Director of Public Health re: Request for Comment: 180 Cotuit Road – Special Permit Amendment, dated April 4, 2022
Email to Maureen McCabe from Brendan Brides, Building Commissioner re: Request for Comment: 180 Cotuit Road – Special Permit Amendment, dated April 2, 2022
Email to Maureen McCabe from Sean Miller re: Request for Comment: 180 Cotuit Road – Special Permit Amendment, dated April 4, 2022

Matthew Terry, Esq. introduces himself to the Board. He explains that construction management is asking to amend the Special Permit, which currently has construction hours at 8 a.m. to 5 p.m. so that construction hours are from 7 a.m. to 5 p.m. 7 a.m. to 8 a.m. hour will be for all non-nuisance activity on site such as pre-construction meetings for the day; construction proper will not begin until 8 a.m. Mr. Picard opens the matter to the Board. Mr. King asks what if neighbors complain that there still is noise and we have to go back to the 8 a.m. start. Attorney Terry explains that the applicant is always really sensitive to abutter concerns and have been throughout the process. If it turns out that what they are doing at the property between 7 a.m. to 8 a.m. is bothering neighbors they will be responsive to that. If the Board decides to grant an amendment to the Special Permit specific to non-nuisance activities the Building Commissioner could act or reach out to the applicant and adjustments will be made. Mr. Coteus asks Attorney Terry if “nuisance” includes “noise.” Attorney Terry responds by saying it is a certain degree of noise. The Department of Environmental Protection has regulations that sets out what is too loud. Attorney Terry expands on this point. If the noise is something that carries that might become an issue for the abutters. From speaking with the applicant this is not what they intend. It will probably be a few people working over the front of a truck planning for the day. Attorney Terry says they thought it better delineate ahead of time what the applicant’s intentions are. Mr. Picard talks about what are considered construction-related activities. He doesn’t believe the Board thought that “gathering” was included with construction. He asks if all of the individuals on site will be included in the planning meetings or is it a supervisor’s or foreman’s meeting. Attorney Terry says it is his understanding that it will include everyone who will be there throughout the day. Mr. Picard asks if this time period will include the staging of equipment that could create a nuisance. Attorney Terry says the 7 a.m. to 8 a.m. hour will be limited to activities on site that really can’t be heard from neighboring residents. Mr. Rodriguez asks if there is anywhere on site that is the furthest from any abutters that is best suited for the morning meetings. Attorney Terry explains the access point will be off of Cotuit Road and that is really where most of the staging will take place. Most of the abutters are ringed around the back of the property. Staging by the construction and permit driveway is probably the best spot. Mr. King adds that a buffer zone will remain which will help to minimize any noise. There are no further questions from the Board.

Mr. Picard opens the matter up to the public for comment. The following people spoke:
Karen Serdy, 28 VanBuskirk Way

Ms. Serdy asks about the construction schedule, the project start date and the length of the project. Attorney Terry says construction will remain Monday – Friday. He is uncertain on the construction start date because they are still finalizing transaction documents with the Town of Sandwich. Construction probably won’t start until this fall. Construction is estimated to last six to nine months. Ms. Serdy asks about the height of the fence. Attorney Terry says it is eight feet. Ms. Serdy says the neighbors were given credits towards plantings. Their credits only cover four trees. Attorney Terry tells Ms. Serdy that AMP Solar will be willing to speak to you in this regard. Mr. King says that the applicant assured the Board that if there was a screening issue they would will address it. Ms. Serdy says it is good to know that if the noise is unbearable there is recourse. Mr. Picard advises Ms. Serdy that if they hear noise their first action is to call the Town so that it can immediately be addressed with the developer and they won’t have to wait for the Board to meet and address it. If the matter isn’t resolved it will be brought back to the Planning Board. Ms. Serdy thanks the Board.

Robert Serdy, 28 VanBuskirk Way

Mr. Serdy says that a timeline with milestones will be helpful. Attorney Terry says he will speak with the applicant. They already have the list of abutters. They will try to get some informational packets out. This will include direct contact information as well.

Donna Iannotti, 26 VanBuskirk Way

Ms. Iannotti is concerned about traffic delays on Cotuit Road and what is going to be done about it. Attorney Terry says he will ask the applicant. Mr. Vitacco advises Ms. Iannotti that if traffic is an issue to reach out to the Building Commissioner who is in charge of zoning compliance. Ms. Iannotti asks about the solar battery life. Attorney Terry says currently the useful life is 20 to 30 years; the lease being negotiated with the Town is for 40 years. Mr. King says that at the end of those 40 years it becomes conservation land. Ms. Reisig explains the solar array is permissible under the By-Law. It is located in a district that allows it so it meets the parameters that the Town had voted in to the By-Laws. The Board abided by that and tried to make it amenable to all of the abutters. The conversation continues.

Ron Hurley, 164 Cotuit Road

Mr. Hurley says he has no problem with the time starts. He asks for clarification on the location of the landscaped buffer zone. Mr. Hurley says he doesn’t care where the trees are but his goats will eat the trees if they are planted on his property. Mr. King says the applicant is not allowed on private property. Mr. Picard says the planting of trees on private property is a negotiation or discussion between the property owner and the developer of this site. Attorney Terry tells Mr. Hurley he will provide him with the developer’s contact information.
Robert Serdy, 28 VanBuskirk Way

Mr. Serdy refers to a mailing the abutters received saying that the plants are available to be planted on private property. Attorney Terry explains this is in discussion with the abutters. This is a private conversation between the abutters and AMP Solar which is separate and distinct from the screening plan AMP has for its own property.

There are no further comments from the public. Ms. Reisig motions to close the Public Hearing. Mr. King seconds. The vote is unanimous.

Deliberations

- 180 Cotuit Road – Special Permit Amendment – ASD Cotuit MA Solar LLC

The Board reviews and discusses the Special Permit Amendment for ASD Cotuit MA Solar LLC. Ms. Reisig motions to amend the permit. Mr. King seconds. The vote is unanimous. The Decision, Findings and Conditions are on file in the Planning & Development office.

Board Discussion

- Sandwich Green Update

Mr. Picard asks Mr. Vitacco to provide a history of the project. Mr. Vitacco explains that Forestdale Village was a multi-residential property but unfortunately the original developer went bankrupt and another developer took over. There have been several iterations to the property. In 2018 the developer at the time asked the Board to rescind the Comprehensive Permit for the original 40B and they have been trying to develop a new plan since then. There was an issue with significant back taxes, however, as of today that issue has been resolved. Attorney Fitch has been before this Board to reconfigure the lots to optimize development. Because of the back taxes and although the plan was recorded at the Barnstable County Registry of Deeds the Assessing Department couldn’t make much headway. Now that the tax issue has been resolved Mr. Vitacco says he will be meeting with the Town assessor to put into motion the ANR plans that have been presented over the past few years.

Attorney Fitch thanks the Board for their time and welcomes the new members. He then introduces himself. Attorney Fitch explains that Mr. Ruhan and Mr. Stinson were ordinary guys who had money to lend to the developer of this site. The plans didn’t work out and they had to foreclose and they are the accidental developers of the site at this point. The original plans were for 168 lots and the usual percentage of affordable units under Chapter 40B. The project was supported by the Selectmen, in fact they were co-applicants but it just didn’t work. There were a lot of errors; no one intended for this to happen. As Mr. Vitacco explained there has been a distraction. Attorney Fitch says when his clients took over the property there was a huge amount of back, unpaid taxes courtesy of the prior owner. Since 2017 back taxes were kept current. They had eaten into the backlog but hadn’t finished it and it became a distraction. They were going to developers and engineers to try to get some sort of development permits that would add value and then, of course, the taxes would be paid. Town officials didn’t particularly approve of that so there was the conflict. Now the taxes are current as of today. That is the result of having plans that are coming together for redevelopment of the site. The distraction is gone. Attorney
Fitch says they are hoping development plans will move ahead and they would like to work with the Planning Board.

Attorney Fitch explains they are very interested in clean energy, clean water, resiliency and housing. An application was made to Mass Housing Partnership for an Eligibility Letter under Chapter 40B. In that application they showed 240 apartment units with allocations between three-bedrooms, one-bedroom and two-bedroom and they showed the solar field and wastewater. He says that the state has been unable to put their arms around a solar field as part of a housing project. There is no problem understanding the connection with a wastewater treatment plant. There is no problem understanding the connection with a well to provide water for the apartments but there is a problem trying to figure out or wanting to produce energy. They gave up and now the property is divided into four separate sites. Attorney Fitch explains the division and size of the sites. The 21-acre lot is proposed for housing. The 24-acre lot is the proposal for the solar area. The two lots fronting on Route 130 are proposed for a mixed use of housing and some commercial use. A lengthy discussion ensues with Attorney Fitch and Board members regarding the layout of the project. Mr. Picard asks if they will be providing wastewater treatment for the development and where will it be located. Attorney Fitch says wastewater will be located toward the center of the site. Underneath the ground mounted solar array will be the leaching fields. He says the idea is to size the energy production with the demand that they are proposing to create. The idea is the Town of Sandwich has a By-law that allows for standalone ground mounted solar facilities. There will be an application for a permit for that. Ordinarily it will go to the Cape Cod Commission and then to the Planning Board. The housing can proceed on parallel but separate tracks. If it can all come together that will be the most desirable result. Regarding wastewater, the site has the capacity to discharge wastewater far beyond anything that will ever be generated on the site. Mr. Vitacco explains that wastewater treatment facility gets permitted through the Zoning Board of Appeals. Attorney Fitch says this project has been thought through and these things can overlap and work together. Board members and Attorney Fitch talk in depth about how the solar will be distributed. Mr. King recalls that the initial plan was for the commercial development to be on both sides of the street to the cul-de-sac. Attorney Fitch says that when Mr. Ruhan and Mr. Stinson had to take the property back they came before the Planning Board for a small five lot subdivision. That proved not to be the best solution; Attorney Fitch explains why. He says there is a handshake agreement with the Water District where they will provide easements so that the Water District can loop certain of its pipes by using the Ruhan and Stinson property. Mr. King asks about the distance between the proposed concrete dumpster pads and the lots on Jeannes Way. A discussion takes place as it relates to this matter. Attorney Fitch tells Mr. Coteus that this is a substantial project. Mr. Picard tells Attorney Fitch that the Board values the updates he provides. He goes on to say to Attorney Fitch that he is getting a sense of the kinds of questions the Board will ask when this formally comes forward. He reminds Board members that this project could look different when it is formally presented. Mr. Picard advises Attorney Fitch that the Board looks to see green buffers to help for screening and noise. Attorney Fitch says that clean water is part of their goal. Mr. Picard summarizes the project by stating that there will be solar ability to power the entire site but will probably go back into the grid and then come back - residents may get a credit; separate wastewater; and municipal water is available. Attorney Fitch tells Mr. Coteus that all the water will be treated onsite. Attorney Fitch tells Mr. Picard that he hopes to be back before the Board within 60 days; they are waiting for the engineers to produce the solar layout plans as a separate Special Permit project. The taxes have been paid and the lot has been created. The first stop is the Cape Cod Commission. The project will consist of.
apartments not condominiums; apartments are more in demand in this community. Attorney Fitch says the difference between an apartment and a condominium is ownership. The Protective Zoning By-Law has a By-law that talks about apartments and controls them but has never been used because you can’t build it. He goes on to say that they are going to try to add to the Town’s diversity. When it comes to affordable housing apartments are all considered affordable and they can go on the inventory of subsidized housing. A conversation follows regarding affordable housing and deed restrictions. Regarding Sandwich Green, Mr. King points out that there might be some contention amongst the abutters. Attorney Fitch tells Mr. King that his point is not lost on him. Attorney Fitch concludes by saying this project is a departure from what we’ve done traditionally. We have to put together the best project we can and then try to persuade the regulators that it’s the right thing to do.

- Request for Comment: #22-12: 3 Grace Lane - Special Permit - Battles

Mr. Vitacco provides an overview. The Board reviews and discusses this request from the Board of Appeals. They decide not to forward a comment to the Board of Appeals.

Other Matters Not Reasonably Anticipated

- Mr. Vitacco circulates the Board’s “May 2022 Signature Sheet” and explains its significance. The document will be filed with the Barnstable County Registry of Deeds so they have a record of signatures on file. Ms. Drake adds that it will also be filed with Land Court. The third copy is for the Planning Department’s files. Board members sign the document in triplicate.

Adjournment

Ms. Reisig motions to adjourn. Mr. King seconds. The vote is unanimous. The meeting adjourns at 8:40 p.m.

Respectfully submitted,

Maureen McCabe

Supporting Documents:

1. April 19, 2022 Draft Minutes (6 pages)
2. 180 Cotuit Road Public Hearing Notice (1 page)
3. 180 Cotuit Road Special Permit Amendment application (2 pages)
4. Email to Maureen McCabe from Sam Jensen, Assistant Town Engineer re: 180 Cotuit Road – Special Permit Amendment, dated May 12, 2022 (1 page)
5. Memo to Jeffrey R. Picard, Planning Board Chair from David J. DeConto, Director of Natural Resources re: 180 Cotuit Road – Special Permit Amendment, dated April 8, 2022 (1 page)
6. Email to Maureen McCabe from David Mason, Director of Public Health re: Request for Comment: 180 Cotuit Road – Special Permit Amendment, dated April 4, 2022 (1 page)
7. Email to Maureen McCabe from Brendan Brides, Building Commissioner re: Request for Comment: 180 Cotuit Road – Special Permit Amendment, dated April 2, 2022 (1 page)
8. Email to Maureen McCabe from Sean Miller re: Request for Comment: 180 Cotuit Road – Special Permit Amendment, dated April 4, 2022 (1 page)
9. 3 Grace Lane Special Permit application (14 pages)
10. Sandwich Green Site Development Plan stamped “Draft for Review” prepared by Catalyze-Acre SPV, LLC, dated August 30, 2021 (1 page)
11. Sandwich Green plan shown and discussed with Board members by Jonathan Fitch, Esq. (plan not provided to the Board)
12. Flyer referred to by Mr. Serdy (copy not provided to the Board)
13. November 2021 Town of Sandwich Protective Zoning By-Law (94 pages)
14. Planning Board May 2022 Signature Sheet (1 page)