

Minutes
Town of Waldoboro
Planning Board Meeting
January 20, 2021

Roll Call

The virtual Planning Board meeting was called to order by Chair Scott Simpson at 6:09 p.m. using Zoom. Other Planning Board members present were Jeffrey Erskine, Sara Hotchkiss, Johnny Kosnow and Vice-Chair Jim Russo. A quorum was present throughout. Planning and Development Director Max Johnstone and Code Enforcement Officer (CEO) Stan Waltz were present. Michael Atkinson, Katherine Garrard, Cole Peters, Andrew Vardakis, Rachel Clar, Ferd Convery, and Rayo Bhungara participated remotely representing Syncarpha Capital, the applicant for Waldoboro Solar I LLC. The Coffee Can LLC application was being represented by Don Conry, Liza Conry, and David Light.

Buddy Brown attended the Town Office. On Zoom, participants included Paige and Bruce Bossow, Tyler Lupien, George Fernald, Kristin Collins (representing Tyler Lupien and George Fernald), Briceson Henny, Theresa Blachet, Victoria Austin, and Katherine Gibson (representing Buddy Brown), George Friou, Jann Minzy

1. Adjustments to the Agenda - none
2. Citizen Comments unrelated to tonight's agenda – none

3. Minutes

The October 14, 2020 minutes were not voted on.

4. New Business: Site Plan: Waldoboro Solar I LLC Renewable Energy Structure (Solar Farm), 481 Controversy Lane (R16/55D) and 230 Stagecoach Road, Syncarpha Capital (R16/70)

Syncarpha Capital owns Waldoboro Solar I LLC. Syncarpha Capital is a private equity firm dedicated to developing, owning and operating commercial and utility-scale photovoltaic solar energy systems. It operates mainly in the northeastern United States, but has some installations in Arizona and the Carolinas. Syncarpha plans to develop a 4.95 MW solar farm on the combined lots on the right side of the designated stream flowing between Tobias Pond and Duckpuddle Pond.

Katherine Garrard discussed the general site plan location that includes using the fifty (50) foot right-of-way extending off Controversy Lane. Theresa Blachet asked what is being done on her property since the right-of-way goes through her parcel; Katherine stated that the fifty (50) foot-right-of-way was stated in the deeds as a guaranteed access and there would be new utility poles, as seen on the site plan, that would connect the solar farm to the existing Central Maine Power (CMP) utility poles at the intersection of Controversy Lane and Sunset Ridge. Katherine also noted that the Maine Department of Environmental Protection (DEP) Stormwater Permit-By-Rule application has recently been approved and was sent to the Town Office.

Johnny Kosnow asked if the Maine DEP considered the amount of trees being cut down and if the solar is properly off-setting the disturbance that will occur in the area; Cole Peters (who prepared the stormwater application) answered the question by stating there is no substantial earthwork change that would impact the topography. Scott Simpson followed-up by asking about the planned monitoring program post-construction; Cole responded that Syncarpha will be evaluating conditions during construction to finalize the long-term vegetation stabilization and if the culvert will suffice.

Jim Russo asked about the decommissioning plan found in the application. Jim asked who determines the method of payment (bond, letter of credit, etc); Michael Atkinson said that decision is based on the negotiations made between Syncarpha and the Town. Jim pointed out that the last solar farm in Waldoboro had a decommissioning plan between the solar developer and property owner because the land was being leased. Scott asked if Syncarpha is asking for approval of the decommissioning plan now or if it meant to be approved prior to the construction; Michael said it can be a condition that Syncarpha will provide an estimate

and have an agreement with the Town Office. Jim asked what the life expectancy is for the panels; Michael said the original contract with CMP is for twenty (20) years.

Johnny Kosnow asked how Syncarpha can make a profit, provide credits, and if they can give Waldoboro residents a preference; Michael Atkinson said CMP customers would give a 15% discount on bills for subscribers, and would like to work with the Town of Waldoboro to get local residents signed up before going elsewhere.

Audience comments and questions

Paige Bossow

Paige claims she was not given a proper notice regarding this application and that she is an abutter. Paige read Section 9.2.4 (Creation of a Private Residential Street/Road) regarding the creation of a Road Maintenance Agreement and asked why the Town does not enforce this item. Paige suggested the Town make the road a public road, and that the quote she has received to fix the road is higher than the estimate Buddy Brown has gathered. Paige wanted to state that she is not opposed to the project, but she wants the private road to be taken into consideration. Lastly, Paige wanted the construction traffic to be considered since she is unaware where the traffic will be parked, and she argues that Controversy Lane is too small for the construction vehicles to be shared with residential citizens.

Max Johnstone responded that the establishment of the Road Maintenance Standard was in February 2009, which was nearly four (4) years after the last major subdivision for the area was approved. Max said the Town likely did not enforce the Road Maintenance Standard because it was a grandfathered road. For the abutter notices, Max said that he sent the abutter letters two (2) weeks ago to those defined as abutters under the Waldoboro Land Use Ordinance, but he did drop off a separate set of letters the following week at the post office to all residents in the neighborhood; Paige argued she is an abutter despite not being defined as one since the proposal includes maintenance of the road. Johnny Kosnow asked who is liable for the road maintenance if there is an accident; Paige said there have been accidents, but she does not know who is liable; Max said the road not being municipally owned means the Town is not responsible. Scott asked if residents contribute to maintenance; Paige said some residents spend thousands on maintenance while others don't. Scott asked if there was an attempt to form an association; Paige said she was not aware. Michael Atkinson stated that it was Syncarpha's understanding that Buddy Brown would be fixing the road to the Major Private Street standards before construction, and to put together a Road Maintenance Agreement using the process outlined through the Maine State Statute.

Paige asked how the Road Maintenance Agreement will be enforced; Max said the specific details of what is in a Road Maintenance Agreement must be agreed upon by the neighborhood when adopted. Katherine Gibson (Buddy Brown's attorney) stated that there is language in the Road Maintenance Agreement that a tax lien will be placed on the properties of any violators. Paige asked who pays for the lien; Katherine said the neighborhood does, but they would add the cost of enforcing the lien onto the violator.

Paige said the Planning Board should not consider the proposal because only four (4) of twenty-four (24) residents who live in the area are in attendance; Max said that he puts a disclaimer in the letters he sends out to residents stating that neighbors are encouraged to reach out to everyone because it is not guaranteed a notice will get to everyone. Max also pointed out that he noticed a yellow document on the Controversy Lane community mailbox that was informing residents of the application and date of the meeting. While the document was not officially sent by the Town of Waldoboro, it was still a visible document that a neighbor likely placed to inform the neighborhood of the application.

Paige asked if all Planning Board members are in attendance; Max said Barbara Boardman is the only voting member not in attendance.

Kristin Collins

Kristin is representing George Fernald and Tyler Lupien. Kristin argued that despite the maintenance agreement being made after the fact, the Town should have ensured that the road is up to standards. Kristin hopes the Planning Board does ensure that an Road Association is formed and the road is properly brought up to Major Private Street Standards. Kristin also suggested that a public access trail is guaranteed to a natural location often used by the residents. Kristin stated she spoke with Syncarpha's attorney (Ferd Convery) and Buddy Brown's attorney (Katherine Gibson), and they agreed.

Scott Simpson was unsure if the Planning Board can force a Road Association to be formed considering it is a private process that requires having existing property owners agree to form into this group; Kristin believes that a majority of the neighborhood will take the opportunity to form the Road Association, and the statutory process for this process only requires half of the neighborhood to adopt the proposed agreement.

Theresa Blachet

Theresa said that she and her husband created a tax group that would collect funds for maintenance. When Wayne Brown (the developer and original owner of the subdivision) passed away, the account was closed. Theresa said that the neighborhood does have the potential to organize together and the residents have put their money in for snowplows and potholes in front of homes. Theresa also said that she and her family have also snowshoed on the property under consideration and hopes to still do so.

Ferd Convery

Ferd said that Syncarpha agrees to many items that are being addressed to correct past errors. Ferd said that Buddy Brown will need to start the Road Association and Maintenance meetings. Ferd requested that a work plan is agreed between Buddy and the Town of Waldoboro regarding the road repairs. Ferd stated that Buddy agreed to fix the private roads that are discussed at the meeting.

Tyler Lupien

Tyler wants the Town to follow through with the establishment of a Road Maintenance Agreement. Tyler asked for the estimates for fixing the road and if they are public documents; Buddy Brown read the statements that he received from John York Enterprises in Newcastle to fix the roads (*Note: The statement reads that it will cost \$7,864 to remove potholes on Controversy Lane and to have water runoff, and \$10,140 to fix the remaining roads*); Tyler said he disagrees with the estimates that Buddy presented. Tyler asked how the large trucks will turn around; Ferd Convery said Syncarpha is unaware with how large the trucks will be, but they turn around at the site. Tyler said that the entrance needs to be kept in mind since that includes the mailbox, the location kids wait for the school bus to pick them up, and it is the only entrance for emergency vehicles to access homes. Jim Russo said the other solar site had plenty of room on their project site once they crossed stream on site that required a bridge. Jim proposed Syncarpha provide a logistics plan; Ferd said Syncarpha can submit the logistics plan with the building permit.

Buddy Brown

Buddy wanted to emphasize that he has receipts to prove that he has also invested in the upkeep of the road. Johnny Kosnow asked what Buddy's relation is to this application; Buddy said he owns the property.

George Fernald

George submitted a written statement that Max Johnstone read. The statement requested the Planning Board require an engineering and safety study be done for the proposed construction for the solar site prior to approval. George requested this study to see how the construction could potentially impact the regular traffic hours for the residential subdivision. Scott Simpson believed the logistics plan that Ferd Convery agreed to will address that issue; Jim Russo agreed and said that the input from neighbors for when certain amenities are on site (mail, school bus, people leaving for work), then the logistics plan can be more thorough; Kristin Collins likes the logistics plan, but believes the Planning Board should approve the logistics plan instead of the Code Enforcement Officer. Ferd pointed out that the building contractor will be responsible for the logistics plan when they are hired. Scott and Jim believed that the logistics plan falls under the same category as the road repair and maintenance agreement as items that require enforcement that fall under the scope of Stan Waltz (Code Enforcement Officer).

George said the original subdivision has been illegally enlarged and thus should make the Town responsible for enforcing the Road Maintenance Agreement Standards; Max Johnstone said that those lots never came to the Planning Board for approval, and would be difficult to have enforcement done when it is not brought to the Town's attention. Max also mentioned that the application presented tonight may not be part of the subdivision, but it is requiring a Road Maintenance Agreement and Buddy Brown to fix the road to meet Major Private Street Standards.

Additional comments from the Planning Board

Scott Simpson asked about the public easement regarding the snowmobile trail and neighborhood access; Michael Atkinson said that he was told by Buddy Brown that access was never initially permitted to the snowmobile trail nor the neighbors, but they are open to providing access and have spoken with Tony Lash about re-routing the existing snowmobile trail; Ferd Convery added that Syncarpha is open to providing access throughout the site that is not within the fenced area. Kristin Collins said she wants the Planning Board to specify the existing trail and have it located on the map; Ferd said that Syncarpha will allow access but won't mark a trail since that would require time to coordinate with neighbors to create a specified trail. Scott stated that the Planning Board requiring the trail would be beyond their scope. Buddy Brown said the land he is selling has never been opened to others for pedestrian trail access, and has only allowed the snowmobile trail to cross because it was created before Wayne Brown (Buddy's father) bought the property; Tyler said that Buddy gave him permission to access the property. Tyler said that the river that has Tobias Pond feed into Duckpuddle Pond is special and should be preserved. Tyler asked if the Planning Board has visited the site; Scott said no; Tyler suggested the Planning Board visit the site.

Scott Simpson went through potential conditions that he believed should be placed on Syncarpha's application for approval. The potential conditions are: 1. Getting an estimated cost of decommissioning and creating an agreement with the Town regarding the payment for decommissioning. 2. Create a Road Association for maintenance. 3. Have the road built up to code and approved by the Code Enforcement Officer and Town Planner. 4. In good faith, re-route the snowmobile trail and pedestrian access to the river. 5. Present the logistics plan to enforce traffic safety. Scott added that all conditions should be met prior to issuing a building permit. Max Johnstone offered to send out notices to neighbors (anyone who will be in the Road Association) as these documents become publicly available; Scott asked that Max also inform the Planning Board members when these items are available. Ferd Convery and Michael Atkinson had no issues with the listed conditions. Max said that the condition regarding the road to be fixed to the standards in the Ordinance should specifically state it will satisfy the standards of the "Major Private Street".

Sara Hotchkiss said she was uncomfortable to approve with the number of conditions that were listed and asked if Syncarpha could address these items by the next meeting; Scott Simpson said all the conditions that are being set would require coming back to the Planning Board for approval; Jim Russo said many of the conditions take months to do and all are items that would be required to be completed prior to receiving a building permit. Ferd Convery pointed out that Syncarpha is on a tight timeline and cannot spend too much time with the municipal process. Sara asked if the Planning Board feels the neighbors are protected; Max said he is going to provide public notices to neighbors as these documents come forward and the conditions still grant the neighbors the ability to make suggestions before the building permit is issued. Kristin Collins believes that the Planning Board should reconvene to approve the conditions on a later date instead of passing them off to a different official because the Planning Board guarantees the public comment input; Sara said she likes the suggestion.

Sara Hotchkiss asked if the logistics plan condition is allowed to have it approved by the Code Enforcement Officer, Town Planner, and a member of the Planning Board; Max said Stan Waltz was fine with a member sitting in on his decision. Kristin Collins cited Section 3.6.1.11 of the Land Use Ordinance to claim the Planning Board should review and approve the logistics plan. The final decision was to approve the application tonight with the conditions, but the Planning Board would review the logistics plan when it is available in the future with the Code Enforcement Officer and Town Planner.

Vote: On motion by Russo/Kosnow, Planning Board members voted 4-1 to approve Waldoboro Solar I, LLC to establish a Renewable Energy Structure for commercial use (Solar Farm) at the combined lots of 230 Stagecoach Road (R16/55D) and 481 Controversy Lane (R16/70) with six (6) conditions:

1. Provide an estimated cost of decommissioning and come to an agreement with the Town on a bond or letter of credit or escrow to cover the decommissioning costs.
2. Initiate the statutory creation of a road association for road maintenance with the neighbors.

3. To submit an agreement with owner (current property owner as of January 20, 2021) regarding repairing the roads to meet the Town requirements for a Major Private Street and to complete the work prior to approval by the Code Enforcement Officer and Town Planner.
4. To work in good faith to re-route the snowmobile trail and to provide access for the neighbors to the river as pedestrians.
5. To submit a logistics plan for construction to be approved by the Town prior to receiving a building permit. This will require approval by the CEO, Town Planner, and Planning Board.
6. All previously listed conditions are to be completed prior to the issue of a building permit

All Planning Board members signified their votes by raising their hands when asked whether they approve or opposed the proposal. Max Johnstone vocally confirmed Scott Simpson, Jim Russo, Sara Hotchkiss, and Jeffrey Erskine approved the application with the listed conditions.

Johnny Kosnow was the only Planning Board member in attendance to oppose the application. Johnny stated he believes there were too many items that he believes were left unanswered. Johnny said he would not state them at the moment, but he is voting his conscious.

(After the vote, all audience members excluding Stan Waltz, Bruce Bossow, Tyler Lupien, and the applicants for the Fast Food Restaurant chose to leave the meeting)

5. New Business: Site Plan: The Coffee Can LLC for a Fast Food Restaurant (Drive-thru coffee) at 1350 Atlantic Highway (U12/5)

Don and Liza Conry presented the application. The location would be south of the Tucker Chevrolet. The land would be leased by the lot owner (Carl Erickson Jr.). David Light stated that the shipping container would be a brand new 8 x 20 square foot area that will be modified to house the business.

Johnny Kosnow asked if the applicants considered the traffic impact of the immediate area; David Light said the driveway will have a unique shape to have order take place on one side of the container and utilize the lot area to create a horseshoe-like pathway before cars pickup their orders on the other side. David said the Maine Department of Transportation (MDOT) has reviewed the application and has no issues with it. Johnny then asked if the applicant is allowed to be in close proximity to a direct competitor (Dunkin Donuts); Scott Simpson said that is not an item the Planning Board is responsible for reviewing.

Jim Russo asked if MDOT has been notified about the egress and cuts to Route 1; Don Conry said Carl Erickson Jr guaranteed that the access points were on site before MDOT permits were required. Don added that they have spoken with Susan Merriman from the MDOT about this application and she said the applicants did not have to do anything relating to the access. Max Johnstone said that he spoke to the applicants in early January asking for something in writing from Susan Merriman stating they did not need a formal entrance permit; Don and Liza said they are working on that; Max suggested that the Planning Board only approve with the condition that the applicants receive something in writing from MDOT regarding the entrance.

Sara Hotchkiss asked the use is allowed considering the language in Section 10.23.2.1.1 of the Land Use Ordinance states that shipping containers are “limited to the temporary storage of goods, products or materials that are manufactured or assembled on the site or used in manufacturing assembly on the site.” Max Johnstone read the Ordinance section and stated that the Land Use Committee had a meeting that discussed this topic and concluded that modified shipping containers would be exempt from this category; Sara said the Ordinance does not reflect the exemption. Scott Simpson, Jim Russo, and Johnny Kosnow believe that the modification of the shipping container no longer makes the building susceptible to the standards of a shipping container; Stan Waltz (CEO) stated that he agrees with Scott and Jim’s assessment. Sara was cautious about potentially stretching the definitions and suggested having the Board of Appeals interpret the meaning; Max pointed out that the Section in question is titled “Shipping Containers, Mobile Homes and Buses as Outdoor Storage”, and the applicable use would not fall under this Section because it is no longer used for storage. Jim asked if both side of the container plan to remove their doors; Don Conry said yes.

Audience comments and questions

Stan Waltz

Stan said that the application does not fall under Section 10.23.2.1.1 because the applicants are buying the container brand new and converting it into the structure instead of using it for storage.

Bruce Bossow

Bruce said that the Village Grill in Damariscotta uses a modified shipping container for their restaurant. Bruce said he is in favor of the application presented and hopes the Planning Board approves it.

Vote: On motion by Russo/Erskine, Planning Board members voted 4-0-1 to approve The Coffee Can, LLC to establish a Fast Food Restaurant (Drive-thru coffee) at 1350 Atlantic Highway (U12/5) on the condition that a written document is obtained by Maine Department of Transportation regarding the Route 1 access.

All Planning Board members signified their votes by raising their hands when asked whether they approve or opposed the proposal. Max Johnstone vocally confirmed Scott Simpson, Jim Russo, Johnny Kosnow, and Jeffrey Erskine approved the application with the listed conditions.

Sara Hotchkiss was the only Planning Board member in attendance to abstain the application.

6. Next Regular Planning Board Meeting: Wednesday, February 10, 6:00 p.m.

Adjournment: The meeting was adjourned at 9:05 p.m.

Respectfully submitted,

Maxwell Johnstone

Action Items

Johnstone

Speak with both applicants (Syncarpha and The Coffee Can) about amending their site plans to include the conditional language. When the site plans are updated, Max will be responsible for collecting signatures from Planning Board members.

As documents are made available, notify members of the Planning Board and potential Controversy Lane Road Association about conditional items from the Syncarpha application.