

## **Brimfield Planning Board Minutes**

**Date:** August 02, 2023

**Convened:** 7:00

**Members Present:** David Killian, Pam Marquis, Russell Smith, Uriah Smith

**Members Absent:** Noah Smith

**Public Attendees:** Cormack Seyfride, Attorney Jonathan Silverstein, Ralph Nichols, Eric Morse

The meeting was opened at 7:00 p.m.

**Call to order:** 7:00 p.m.

### **ANR/Site Plan Review:**

#### Altus Power Dish Wireless

The representative for Altus Power (Cormack Seyfride) distributed folders with the plans to the Planning Board members. He explained Altus Power purchased the Solar System in 2016 but it was built in 2013. He stated they must replace the inverter because they can't repair the one that is there because they can no longer get parts for the type that is currently there.

Pam Marquis asked about the stamp on the plans since they were from 2021. Mr. Seyfride stated they are leasing the land and the owner is having other work done on the site. The owner didn't want this project to start until the other work was done.

Pam Marquis asked if the replacement inverters would be higher than the original. Mr. Seyfride confirmed they would not and would be mounted on the current racking system. He pointed out in the plans where it showed how they would be placed. Dave Killian asked if any new panels would be added or if the new equipment would not be higher than anything currently there. Cormack Seyfride said there would be no new panels and no new equipment would be higher than what is there now.

Pam Marquis asked about the transformer and Cormack Seyfride explained they would be adding a new transformer to meet the same voltage as the rest of the system, and they need to extend the equipment pad as shown on page four and it will tie into the existing connection. Pam asked how high the new inverters would be. Mr. Seyfride stated they will be mounted on the side of the panels and will be approximately eye level.

Dave Killian asked if Mr. Worden owns the panels. Mr. Seyfride said that Altus Power owns the panels, but they lease the site from Andrew Worden. Dave Killian asked if anyone else had questions. Pam Marquis stated the plans should be updated to show a current stamp and signature. She asked the clerk to look for a copy of the original site plan approval. The clerk stated she would search for it.

Pam Marquis asked who TruGreen Capital is. Cormack Seyfride stated they were the original solar company but no longer are in the picture. Pam asked how long it would be until the other work being done on the property was completed and inspected. Mr. Seyfride said it should be any week, any month now. He went on

to say, when he spoke with Andrew Worden, they just had some insulation to finish and then it would be able to be inspected.

Dave Killian stated he abstained from the first site review hearing, so he had no problem if Pam Marquis brought up concerns she had. Cormack Seyfride confirmed he would bring the lease agreement and an update to the plans to the next meeting (August 02, 2023). The clerk confirmed she received a one-hundred-dollar check from Mr. Seyfridy. She said there was a second check as well. Dave Killian stated that this check would not be cashed yet. He stated this project may not have to go to a full-blown site review and if it did not, the check would be returned to Mr. Seyfride.

Dave Killian asked if anyone was in attendance from Dish Wireless. No one came forward.

## **Old Business**

### **Babe's Lawn Care**

Dave Killian asked Jonathan Silverstein if he would like to make a statement. Jonathan Silverstein introduced himself and stated he was representing Bonnie and Ralph Nichols who are the owners of the abutting property. He said he hoped the Planning Board members had a chance to see the Zoning Enforcement Request along with the materials that he submitted to the Building Commissioner, which included the aerial photographs. He said the last time he appeared before the Board he did not have the benefit of having the 2013 site plan that was later submitted to the board with one addition of the unlawful salt storage structure which is more than 500 feet back from the road and is in the agricultural/residential zone.

He went on to say he submitted a marked up a copy of the plan indicating the current condition of the site is nowhere close to what was shown on the site plan that was approved by the Planning Board in 2013. He said there is no valid site plan approval in place, there should be no business operating on the property. He stated the site plan the Board had reviewed bears no resemblance to the plan they approved. He said the buffer forest land was cleared and they buried solid waste, that was found on the property by the Department of Environmental Protection recently. He indicated that the Building Commissioner issued an enforcement order recently upon his request. He said he and the abutting property owners did not think it went far enough and said that it was not being complied with. He stated that the property owner was required to come to the Planning Board meeting. He stated that a new attorney for the property owner (Babe's Lawn Care) claimed he did not have notice of the requirement for Babe to come to the meeting. Attorney Silverstein said he knew because he just saw an email to Pat Plasse (the planning Board clerk) from the new attorney for Babe's Lawn Care stating they didn't know Babe was to come to the meeting. He said that he knew they were on the agenda because the clerk emailed him that Mr. Killian had told Mr. Babe Predella to attend the meeting.

Mr. Silverstein went on to say that it's been months and months and delays at every turn and it's a complete disregard of the Planning Boards orders and the Town bylaws. He said that his clients can't enjoy their summer and they are being tortured by purposeful lengthening of back up alarms and running diesel engines within feet of their residences. He stated the original plan showed the business was supposed to be on the far west side of the property behind the garage. He said he understood the Planning Board is not an enforcement board and understands that the Zoning Enforcement Officer would strongly consider a request by this Board. He asked the Planning Board to ask the Building Commissioner/Zoning Officer to shut the business down until they come to the Board with a new plan application, get it approved by the board and to comply with the conditions, because otherwise nothing would happen.

David Killian said his conversation with the Building Inspector, he said the same thing. He said the Building Inspector stated this meeting was the deadline to bring a new site plan. He said they did receive an email from Babe's Lawn Care stating they did not have a plan yet.

Eric Morse came forward and stated he was an engineer and owns an engineering and construction company. He has been hired by Babe's Lawn Care. Babe Predella received a letter from DEP (Department of Environmental Protection), and he had Eric Morse review it. Mr. Morse created a remediation plan for DEP, and they approved it. He said he has removed debris and hauled it to the plant to be sorted legally. He stated there is no hazardous waste. They took out 2600 cubic yards of material from the site.

He went on to say they have the ongoing Zoning issues, and they were less important as they had the order from DEP. He said Babe Predella misspoke at the first meeting he attended because he said he had an engineer developing plans, but he only had a professional land surveyor creating an existing condition plan. He said that Joseph Levesque (engineer) has completed an existing conditions plan. He said that in the meantime he overlaid the original plans on to the original site plan, so they know what is outside the plan.

Pam Marquis said the vehicles must be where they were shown in the original plan. Eric asked exactly what the Planning Board is looking for. Dave Killian stated that they should show the Board the differences between current conditions and the original plan. Dave said that if Mr. Predella didn't show up at this meeting with a site plan. Eric Morse explained the steps that they are doing at this time. Dave Killian stated that a plan should be brought to the Board before they can move forward. Eric stated that they received a letter from the Building Inspector which told them to pull the business back into the area of the original plan. Pam Marquis and Dave Killian said to bring a plan for the pull back and the remediation information, if that is what they want to do. David Killian stated if they wanted relief from the 500-foot business zone, they need to go to the Zoning Board. Dave asked when they would be able to submit the plan. Eric stated he should have a plan ready for August.

Dave told Eric Morse that he would like to have the DEP clean-up represented in the plan that will be submitted.

Dave asked if Mr. Silverstein had anything to add. Mr. Silverstein stated that it was in April and the Board was clear there needed to be a plan created by an engineer. He stated the Zoning Laws are important. He said the clerk had sent emails reminding Babe Predella to come to a meeting. He went on to say, how can they go back to the original plan since they cut down hundreds of trees and paved areas that were not on the original plan. Dave Killian stated that remediation should be in the new site plan.

Mr. Silverstein said the bylaws are crystal clear about what is required for a site plan application and it's clear without a valid approved site plan, there should not be a business there. He went on to read the Building Commissioner's order saying, "you did not attend the meeting in June 2023 and are ordered to attend the meeting in July and to give an update on the subject and to follow the orders of the Planning Board." Mr. Silverstein asked the Board to request the Building Inspector issues a full cease and desist until they attend the meeting with a full site plan review.

He went on to say he was leaving on a vacation tomorrow and said that the attorney for Babe's Lawn Care stated he couldn't attend because he was going on vacation. He said he was leaving at 3:30 a.m. tomorrow yet he was in attendance.

Mr. Silverstein asked if he could give his card to Eric Morse so that the property owner be directed to provide copies to him, so it is more streamlined. Mr. Morse stated he would be happy to do it if his employer allows it. Eric Morse reiterated that there has been a lot of work to resolve the issues and they want to make the Nichols happy as well as Mr. Predella. He said it wasn't clear to him what the town was enforcing because he had just received the letter that morning. He asked if any other enforcement letters were sent or other communications. Pat Plasse (the Planning Board Clerk) stated she sent the application for the site plan approval to Babe and several emails telling him he was on the agenda for several meetings.

Mr. Silverstein stated that the notion that the burden is on the Planning Board to tell Babe's Lawn Care what needs to happen since they ignored the need for site plan approval, to comply with the approval conditions and requirements of the Zoning Bylaw is not right. He said they need a full-blown site plan approval and said there was a plan, a vote, and a decision and that has lapsed. He said for the benefit of the engineer, it should be a new site plan approval from scratch, and there should be an overlay on the original plan so they can see what needs remediation. He said to be clear, the Building Commissioner said that they don't just need to stay out of the agricultural/residential zone, he said everything must go back to the 2013 plan including where the trucks are. They are still running next to Mr. Nichols' house. He thinks at this point they will be chasing compliance and they may say "the truck only has to be here for an hour" and said they have had months to submit an application and a plan. He said he's not surprised that the engineer hasn't had time to plan since he was just hired a month ago.

David Killian stated the 2013 plan had expired and must be brought forward to a new plan. He told the engineer that there must be a new site review plan to be brought before the Planning Board including the removal of the debris and remediation.

Eric Morse asked if he could get a letter indicating what is required to be in the new plan. Mr. Silverstein asked the Board to vote to engage in peer review and to indicate how much money the applicant should submit. Dave Killian stated the Board needs to send out a letter to get quotes from engineers for the peer review, so they don't have a dollar amount for that. He said once the Board receives a plan and sends it out for a bid for peer review. Mr. Silverstein thanked the Board.

David Killian said it was appropriate for the Planning Board to send a letter to the Zoning Officer telling him the Board doesn't have a Site Review Plan and recommend there is a cease-and-desist order on the property because there is no plan and no order of conditions or any paperwork to act on.

**MOTION:** Dave made a motion to send a letter to advise the Zoning Officer to enforce a cease-and-desist order on the property of Babe's Lawn Care.

**SECOND:** Pam Marquis

**VOTE:** All

Eric Morse stated they have a remediation plan that was approved by the DEP, and they have 30 days to clean up the area. He said it was not on a plan it was on a GIS plan. He said he can present this to the Board and Dave asked that when he does, it should come in with a site plan attached. He said they are working on the plan.

Dave Killian asked if anyone else had any questions. No one had any.

Pat Plasse, the clerk for the Planning Board, asked the Board to sign the signature page for the registry of deeds. This is required to ensure they have authorized signatures on file.

The Planning Board members reviewed the incoming mail from surrounding towns.

The Clerk brought a mylar copy of the plan from Jewel Real estate for 153 Haynes Hill Road to be signed. It was from April 2023. He didn't have the mylar copy at the meeting for signature and finally dropped it off for the signature. He submitted a check and submitted the application for Approval not Approved. It was presented at the April 5, 2023, meeting and approved and a letter of refusal was sent to the Select Board and Assessor. The Board members signed the mylar copy with the current date.

**Review 06/07/2023 minutes**

The Planning Board members tables the minutes until the next meeting on August 02, 2023

**MOTION:** David Killian made a motion to adjourn the meeting.

**SECOND:** Pam Marquis

**VOTE:** All

**The meeting adjourned at 8:16 pm.**

**Next Meeting: August 02, 2023, at 7:00 p.m.**

Respectfully submitted by Patricia A. Plasse

Approved: \_\_\_\_\_

Chair David Killian