

**Pittsford Planning Commission Meeting
March 23, 2023**

Board Members Present: Kevin Blow, Mark Pape, Chuck Charbonneau, Rick Conway, Robb Spensley, Donna Wilson, Derek Blow

Board Members via Zoom: Mike Norris

Others Present: Jeff Biasuzzi, Gary Kupferer, Sandy Conway, Dave Atherton, Alicia Malay, Pete Wilson, Mark Winslow

1. Meeting - Call to order

The meeting was called to order at 7:00PM by Kevin Blow – Chair.

2. Approval of Meeting Agenda

A motion was made by Chuck Charbonneau and seconded by Mark Pape to approve the agenda. **The motion passed unanimously.**

3. Approval of Minutes

. February 23, 2023 - Planning Commission Meeting and Hearing

A motion was made by Mark Pape and seconded by Donna Wilson to approve the minutes of the February 23, 2023 meeting and February 23, 2023 Planning Commission hearing. **The motion passed unanimously.**

4. Meet with Gary Kupferer Re: Bridge 108 appeal

Kevin Blow advised Gary Kupferer, the Town's attorney, was present to discuss a potential appeal of the bridge project. Mr. Kupferer advised there is a 30-day appeal period and the decision came out March 6th, with the appeal time ending April 5th. Mr. Kupferer noted Rick Conway's company had requested an amendment of the decision and noted the Conway Corporation has Jim Dumont representing their corporation and he had indicated they were going to file a notice of appeal. The Conway's have appealed this already and there needs to be a decision whether the Town will also appeal. Mr. Kupferer stated Act 250 appeals are not inexpensive with the Town potentially hiring him and experts depending upon what the issues are. The appeal would go before the environmental court and would be new testimony. Mr. Kupferer noted he advises towns to pick and choose their issues as they may not want to appeal all criteria. Mr. Kupferer has not heard from the Select Board whether they are going to appeal and he would need to know if the Town is going to take the appeal of the decision to the environmental court that would be a judge, but no jury, with the case being started anew with the evidence.

Mr. Blow questioned what would need to be done if the Planning Commission were to appeal the decision. Mr. Kupferer stated there is Act 250 criteria and the Town would need to determine what it will appeal and provide a statement of questions to the court, with evidence to be provided and likely the need to retain experts on the Town's behalf. A discovery schedule would be set for depositions and disclosure from experts. There will likely be mediation to try to settle prior to going to court. Mr. Kupferer thought this could be a one to two year process before going to trial. There would be status conferences, but the trial or hearing would probably be a couple of years out. Mr. Kupferer stated he would need to submit a notice of appeal prior to the deadline and develop a statement of questions. There would have to be a decision on what the issues are, as there are 10 criteria under Act 250 and he did not think that it would include all. Robb Spensley asked if Mr. Kupferer could provide his opinion based on the facts as to how much it would cost the Town. Mr. Kupferer noted the Conway corporation has hired a good attorney for their appeal. Mr. Kupferer noted he could do some analysis, but his bigger thought is what the Town's concerns are with the appeal, and is it worth spending the money on what those issues are.

He suggested that he could review this and get something to the Planning Commission by mid-next week. He would like to know what the Town's concerns are other than the historical issue. Rick Conway stated the Conways' will be addressing issues that are outside the Town's concerns. Mr. Kupferer stated the Conways' issues are not the Town's concern, but there may be some overlap. Mr. Conway advised he has retained Trudell Engineering as experts on the traffic issue. When the Town went to the Act 250 hearing, Tom Hooker, one of the Select Board members, had an issue as a Fire Department member with the road reconfiguration due to safety. The Planning Commission sent a letter regarding their concerns and Mike Norris, a delegate for the Planning Commission, also testified. Mike Norris stated they sat in on a 5-hour Act 250 hearing and the Town's major concerns were traffic safety in making a more dangerous intersection, creating a longer uphill passing lane and removing the slip lane. There was a petition signed by 400 community members opposed to the change as the elimination of the slip lane has far-reaching safety issues. Turning left onto Route 7 from Route 3 would now have to go across 2 lanes, and the passing lane would start further into town. Also, there is the historic preservation issue with the island. Mr. Kupferer stated for traction with Act 250, there is a need for experts on the design. If there is a Town Plan issue, that could come from a non-expert from possibly the Planning Commission, and a person from Historic Preservation. Mr. Conway noted a traffic expert was recommended to them and they currently have an expert who has indicated they are also willing to work with the Town as well. Mr. Kupferer noted there could be sharing of costs with joint issues. Robb Spensley stated it would be important to determine where the overlap is. Mike Norris stated the deadline is prior to the next Planning Commission meeting and if the Commission wishes to appeal, he suggested the Commission come up with fundamental concerns to provide to the Select Board at which point the Commission and Select Board could file the same appeal. Mr. Norris suggested perhaps the Select Board could hold a special meeting prior to the deadline. Mr. Kupferer stated he would like to file no later than April 4th if it decided to appeal and agreed it is a stronger position if the Planning Commission and Select Board appeal. Mr. Kupferer suggested the decision should be made no later than next Friday. Mark Winslow questioned if an appeal was filed whether it could be withdrawn and Mr. Kupferer noted it could be. Mr. Kupferer stated there is going to be an appeal, as Mr. Conway's entity has already done that. Mr. Winslow asked what the cost would be to the Town. Mr. Kupferer's guesstimate was a minimum of \$25,000, but noted there could be sharing of costs with the Conways. He noted that a simple case would be \$25,000 to \$35,000. It was questioned whether it could be resolved in mediation and Mr. Kupferer advised that money cases are the easiest to resolve, but these types of cases are the toughest, particularly with the State involved. Mike Norris stated crossing two lanes without a stop light is unprecedented. Mr. Kupferer advised this would be starting over and experts are key. Rick Conway stated the Conways' position would request mediation and hopes that it can be done at mediation, as the Town needs the new bridge, but the issue is the road. The biggest problem is VTrans did the design in 2015 and then was changed. The Town put a lot of time into the Act 250 hearing and there was a big concern with the emergency vehicles. VTrans indicated there could be a pre-emptive warning system in place but was then decided it would not warrant it. Once the lights are gone, one would not know there is an intersection and is a big issue for the Town as it will affect the people driving the road every day. The Conways are concerned with the impacts of the highway due to their customers. Derek Blow stated some of the companies, like Omya with bigger trucks, have expressed concern with the change. Mr. Kupferer stated fact-witnesses, like truck drivers, would also be helpful. Donna Wilson stated the district commission also did not address the historic green. The day before the Act 250 hearing in October 2021, Historic Preservation ruled that it was not historic anymore, however, Historic Advisory issued a historic marker for the area. The Town had requested the speed limit to be lowered and this was also not addressed at the Act 250 hearing. Dave Atherton advised he spoke with Joe Flynn after the last Select Board meeting when the safety concerns were discussed and proposed the 25 mph be moved to the end of the village limits. A traffic study needs to be done, but there are efforts to try to remedy the safety issues. Mr. Atherton noted the intersection turn is 98 feet wide and trucks should not have a problem. Mr. Atherton also talked with the Fire department and he would like to get VTrans to attend a meeting to discuss the second lane. Mr. Atherton questioned if he could work on these items with the State without an appeal. Mr. Kupferer suggested a notice of appeal could be submitted and once the interested parties are determined and if all would agree, there could be a request to have a 3-month period to try to resolve the issues before going to environmental court. If there is any interest in appealing, it would need to be done prior to April 5th. Mr. Kupferer stated he could do some work and the Select Board could possibly have a meeting next week, with the Planning Commission in attendance, as a decision would need to be made at that meeting. Appeals can always be withdrawn and if the Town withdraws, it would go forward with the Conways' appeal. Chuck Charbonneau stated we have 400 community members

that signed the document and he thinks the appeal is something the Planning Commission has to try to do. If it is determined that litigation is not going to be won, the Planning Commission will be able to tell the community that it made an effort. Mr. Charbonneau noted when dealing with VTrans regarding the water, he did not think the representation was good, as Markowski's had to move the lines when the road work was done. Sometimes designs can go wrong, but as a Board it is important to represent the townspeople. Mark Winslow suggested the Planning Commission needs to take a position on it. Mr. Kupferer stated if both boards had party status, he would suggest the appellant be the Town of Pittsford, but legally with each board having party status. Alicia Malay stated if the Planning Commission presents at a special meeting, the Select Board could act on this.

A motion was made by Robb Spensley and seconded by Chuck Charbonneau to appeal the district commission's decision. **The motion passed with one abstention – Rick Conway.**

The Select Board will set up a special meeting for the Planning Commission. Alicia Malay will confirm a quorum of the Select Board for a meeting next week for the Planning Commission to discuss an appeal of the district commission's decision.

5. Public Comment

There was no discussion held.

6. Old Business

Rick Conway reported he attended the RRPC meeting regarding the proposed Furnace Road solar project. Mr. Conway noted the first correspondence the Planning Commission received was a notice of hearing received on February 23rd for a scheduling conversation that took place the week prior to receipt of the notice. The Commission also received a scheduling conference order that indicated the site is 474 Furnace Road, Pittsfield. On the service list, they have the adjacent landowners, Alicia Malay, Planning Commission and Devon Neary of the RRPC. The letter from the PUC notified that a public hearing will be held on April 11th via Go-To-Meeting teleconference and the service list includes Mark Winslow, Alicia Malay and Devon Neary. Alicia Malay noted she received the first letter after the fact, but no other letters. Kevin Blow has the complete package of the solar project. Mike Norris had reviewed the documents and did not see anything particularly special about it. Mr. Norris noted the Town does not have language regarding solar sites in its zoning and has no say on projects. The projects can ask for a letter of support, but it is not a requirement to get a CPG. To get a CPG it has to meet all State's requirements and if there are no regional or town ordinances that stipulate any citing conditions, there can be no appeal. As far as the State is concerned, if the Town does not have compliance, the State will give them the Certificate of Public Good as long as they meet their requirements and the project only has to copy the Town with the 45-day notice. Jeff Biasuzzi advised that once the 45-day notice is received, interested party status can be requested, but if the Town does not request it specifically, the Town will not receive any other notices. Mr. Norris stated there is an increasing number of towns that have put in solar ordinances to make it a conditional application process and not exclusively by right. He noted the State has a checklist for solar. Mr. Norris suggested the Planning Commission have a longer conversation to determine if there should be a change in zoning. Robb Spensley noted this is something that is worth a continued discussion. Rick Conway stated the RRPC had something on this solar project. Donna Wilson noted the big issue was that it is on agricultural land. Mike Norris stated after 2017, the Department of Agriculture has the authority to come in and veto a project. There is precedence for the Department of Agriculture to disallow a project. Before 2017, it was not an item on the State check list for Act 248 approval. Mr. Norris noted the Department of Agriculture will not come and review until a project submits an Act 248 permit. Mr. Norris stated there are detailed maps concerning prime agriculture. Jeff Biasuzzi stated there is a review fee for the Department of Agriculture. Mr. Norris stated if there is language as to whether it is on agriculture soils, it is possible the Department of Agriculture may not have done a review of this site yet. Mr. Norris noted other State agencies will come out and review a project, but the Department of Agriculture will not review a project until after the application is submitted and a completed application is done after the 45-day notice.

Jeff Biasuzzi stated at the last meeting, he had laid out information on Act 250 and what the advantages of having subdivision regulations would be. He suggested possibly putting it on the next agenda. The Planning Commission could discuss whether to be recognized as a 10-acre town and then begin drafting subdivision regulations. Rick Conway stated he reviewed the information and noted that the information is 15 years old and some things have changed. He advised Act 250 is primarily for commercial but noted it would be advantageous for Pittsford to have subdivision regulations and have more local control. Mr. Biasuzzi noted when a state-wide study was done, the average cost for a start-up company was \$68,000 in Act 250 fees. He stated a lot of businesses will not come to Vermont because of the Act 250 process. In going to a 10-acre town, if one wanted to start a small business on up to 9.9 acres, Act 250 should not be a concern. People could be interested in smaller scale commercial development. Chuck Charbonneau noted Act 250 permitting is bad, but stormwater permits are far more expensive now. Mr. Charbonneau asked if going to a 10-acre town would there still be a need for a stormwater permit. Robb Spensley advised stormwater permits are something that is out of the control of local regulations. Mr. Conway suggested going to the Select Board to discuss whether they want to go with subdivision regulations. There would no longer be a zoning board but would be a development review board (DRB). It was noted that currently Mr. Conway is a Planning Commission and Zoning Board member. Mr. Biasuzzi advised primarily what would change is the Planning Commission is tasked with writing the rules and are advisory to other panels. The DRB is like the zoning board in interpreting the rules and providing variances. Mr. Conway suggested it would be good as there are a lot of small properties that used to be businesses and it would give them more breathing room, but the Select Board's opinion would be needed. Robb Spensley thanked Mr. Biasuzzi for providing this information to the Planning Commission.

A motion was made by Robb Spensley and seconded by Derek Blow to authorize Rick Conway, on behalf of the Planning Commission, to consult with the Select Board in becoming a 10-acre town and changing the zoning board to a development review board. **The motion passed with one no vote – Mike Norris.**

7. New Business

There was no new business discussed.

8. Next Meeting

April 27, 2023, at the Pittsford Town Office

9. Adjournment

A motion was made by Chuck Charbonneau and seconded by Donna Wilson to adjourn the meeting at 8:45PM. **The motion passed unanimously.**

Respectfully submitted,

Charlene Bryant
Recording Secretary

Approved by,

The Pittsford Planning Commission