# TOWN OF WARE, PLANNING BOARD MEETING, MARCH 17, 2022 J. SOPER PRELIMINARY SUBDIVISION APPROVAL, GREENWICH PLAINS ROAD, WARE

### 1. Subdivision purpose: separate the farming/residence from solar parcel.

- Prospective purchasers seek to live in the residence, farm the land to be purchased.
  - o Longtime Ware town residents, have sought similar parcel;
  - To continue agricultural use see below, no application of 61A process for non-solar portion;
  - Need to subdivide the land to define the property they're buying.
- Mr. Soper seeks to retain the parcel with solar.
  - Would have preferred two parcels for entire property one for solar, one for the remainder — but driveway/house/roadway requirements demand otherwise.

# 2. Special Permit is completed, filed on land records at Registry; no changes sought or needed for Special Permit; SP does not expire, is for a "use of the land."

- All terms and conditions of SP to be complied with; no termination of SP unless conditions of SP violated.
- No 20-year expiration of SP SP is recorded at Registry of Deeds, affects title going forward; creates a form of encumbrance on title to the property.
- This is an application for subdivision its only relation to previously-approved Special Permit is, subdivision is necessary to define, identify, separate the parcel for the solar array. (See below.)

# 3. No 61A applicable for non-solar parcels: NO conversion of land to non-agricultural by purchasers of the residence/farmland.

- 61A Conversion only for parcel with solar.
  - Subdivision is necessary to identify boundaries of solar determines acreage for back tax payment, definition of parcel to be offered to town for right of first refusal, defines land to be worked on.
  - Town notice/option for that portion to be provided prior to construction/building permit for solar. Notice cannot be provided until the parcel is identified.
- Prospective purchasers seek to live in the residence, farm the land to be purchased.
  - Purchasers to execute affidavit: "the land is being purchased for agricultural, horticultural or agricultural and horticultural use, no conveyance tax" due to the town. (MGL ch 61A §12).
  - Affidavit to identify the amount in agriculture/acreage based on lines of the subdivision of the property.

# 4. Possible easement in favor of town for encroachment of Howard Road?

- Howard Road, a town road, encroaches onto Soper property, S.E. corner.
  - Howard Road ending at John Majocka property, curving onto Soper property beforehand.
  - Possible adverse possession in favor of town? (MGL ch 260); Prescriptive easement?
     How to quiet title?

# 5. Setback lines for residence: creating non-conforming structure?

- Seek variance from ZBA? Proceed to Definitive Subdivision approval while variance application is in process, require variance as a condition of subdivision approval?
- Per MGL ch 41 §81R ("Mass Subdivision Control Law") Planning Board has authority to waive strict compliance especially as to "frontage or access requirements" of parcels in a subdivision. PB may "waive[s] strict compliance with its rules and regulations, and with the frontage or access requirements ... where the ways are not otherwise deemed adequate, [to] approve a plan [with] conditions."

Section 81K: Designation of subdivision control law

Section 81K. Sections eighty-one K to eighty-one GG, inclusive, shall be designated and may be known as "the subdivision control law". This designation shall, when apt, include corresponding provisions of earlier laws.

Part I ADMINISTRATION OF THE GOVERNMENT

Title VII CITIES, TOWNS AND DISTRICTS

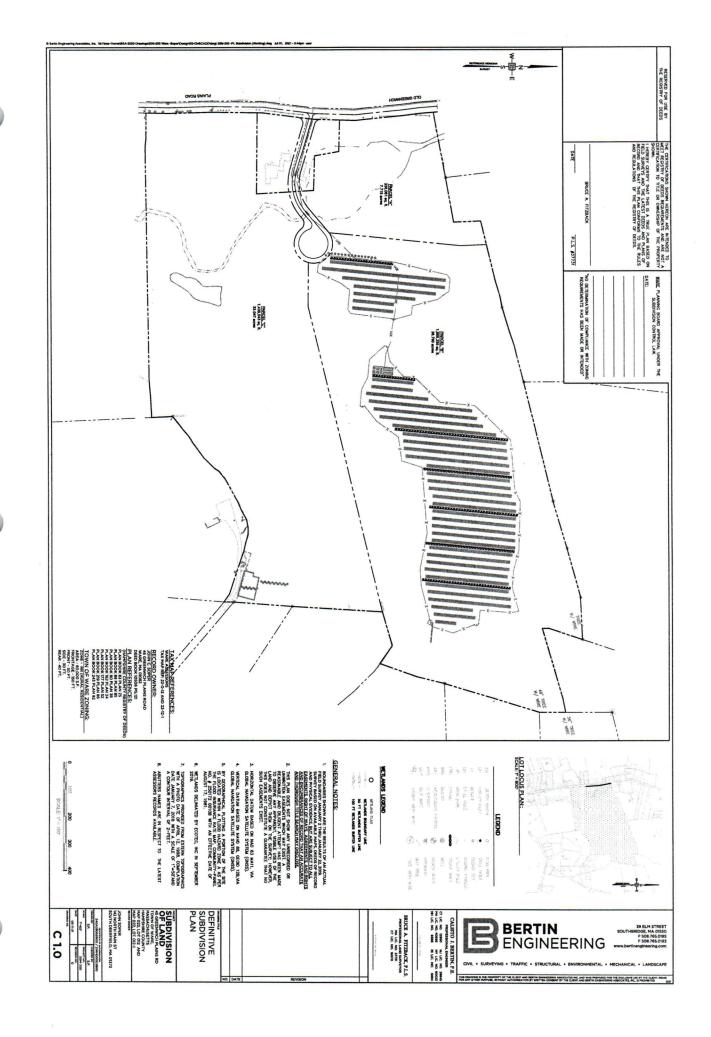
Chapter 41 OFFICERS AND EMPLOYEES OF CITIES, TOWNS AND

**DISTRICTS** 

Section 81R WAIVER OF STRICT COMPLIANCE WITH RULES AND

REGULATIONS

Section 81R. A planning board may in any particular case, where such action is in the public interest and not inconsistent with the intent and purpose of the subdivision control law, waive strict compliance with its rules and regulations, and with the frontage or access requirements specified in said law, and may, where the ways are not otherwise deemed adequate, approve a plan on conditions limiting the lots upon which buildings may be erected and the number of buildings that may be erected on particular lots and the length of time for which particular buildings may be maintained without further consent by the planning board to the access provided. The planning board shall endorse such conditions on the plan to which they relate, or set them forth in a separate instrument attached thereto to which reference is made on such plan and which shall for the purpose of the subdivision control law be deemed to be a part of the plan.





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March 17, 2022

Ware Town Hall Planning and Community Development 157 Main Street Ware, Massachusetts 01082

Attn: F

Rob Watchilla, Director

Re:

Town Review Response for Definitive Subdivision and Solar Array

Off Charlton Road, Ware, MA BEI Project No. 18M-219

Dear Members of the Planning Board:

On behalf of John Soper, Fieldstone Commons (applicant), Bertin Engineering, Inc. (BEI) has prepared this Town Review Response for Preliminary Subdivision and Solar Array off 45 Greenwich Plains Rd, Tax Map 22, Lots 12 & 12-1.

BEI is submitting two (2) hard copies and an electronic copy of this Town Review Response. We look forward to presenting this project to the Planning Board at the next public hearing. If you have any questions regarding this application or would like to set up a site walk, please do not hesitate to contact us at our office.

Respectfully submitted,

Bertin Engineering, Inc.

Steven J. Pikul

Steven J. Pikul Senior Project Manager

> Cc: John Soper Richard T. Roznoy

# **BERTIN** ENGINEERING

# **Anna Szmyd Marques:**

- 1. What are the intentions for proposed Lot 1? It would not be a buildable lot and I therefore question the purpose and right on its creation. (See Attorney's Notes)
- 2. Lot 3 has preexisting structure which would be made nonconforming. It would need to seek approval/variance from the ZBA. (See Attorney's Notes)

### John Prenosil:

- 1. Although this is a preliminary plan, wetland resource boundaries should be illustrated on the plan as their location is pertinent to the proposed development. (See Attached Sheet)
- 2. More specifically, I suggest the applicant thoroughly review the General Performance Standards for work within Riverfront Area as outlined at 310 CMR 10.58 (4) and Scope of Alternatives at 310 CMR 10.58 (2). (Noted)

### **Conservation Notes:**

- 1. Since DEP File Number 317-0454 has a Superseding Order of Conditions issued by DEP, will the applicant need to submit to DEP for the subdivision approval? (No... Review with DEP.)
- 2. Was the proposed roadway approved under the DEP File No. 317-454, being in the exact same location & size? (Yes)
- According to the Assessor's, one of the existing parcels is classified as "Chapter land", at what point during the approval process will the landowner be filing the proper paperwork and following the protocol for removing the parcel from Chapter title? (See Attorney's Notes)

### Editorial Content Comments: (See Corrections on attached sheets)

### Sheet C 1.0

- 1. The "drawing list table" indicates C 2.0 is a "Definitive" Plan should be corrected to: "Preliminary"
- The parcel id's indicated in the property information box title states "Tax Map 27, Lots 12 & 12-1" - should be corrected to: "Tax Map 22-0-12, 45 Greenwich Plains Road & Tax Map 22-12-1, Howard Road"
- 3. In the side title block, under "Proposed Subdivision", the tax map references should be corrected as stated above.
- 4. In the side title block, under Revision no. should be updated and reflective of the 1st revision.

# BERTIN ENGINEERING

### Sheet C 2.0

- 1. Would suggest including a reference plan (maybe not part of the set but maybe of the "Definitive Plans") to reference the proposed lot lines to the proposed solar array layout, to verify if the array layout conforms to setback requirements of the new parcel lines.
- 2. The name of the road is incorrect should be corrected by removing the word "Old"
- 3. The existing house (#45 Greenwich Plains Rd) appears to be in the proposed set back lines including the septic and garage being on proposed Lot 1 and within the proposed roadway. This would create the house at 45 Greenwich Plains Road a non-conforming structure. Should consider updating proposed lot lines.
- Will the applicant be creating an easement for the house owned by John S. Majocka, ET UX at the end of Howard Road? (See Attorney's Notes)
- 5. The signature block note should be revised by removing the word "Not". The proposed lots are under the approval of the Subdivision Control Law.
- 6. The record owner's address is not the same as referenced on sheet C 1.0.
- 7. Under the "General Notes" section, reference No 1. has a spelling error of "Greenwitch" should be corrected to: Greenwich Plains Road.
- 8. Under the same General Note, No 1, the note references a lot size of 80.56 acres. The purpose of the plan should be clarified. Such as "Combining the lots 12 & 12-1 to then create 3 parcels and roadway."
- 9. The tax map referenced in the title block should be revised to include both parcel id's, not just the lot #s.
- 10. The PLS number should be updated under the Surveyor's signature
- 11. The cover letter provided from Bertin Engineering should be addressed to the Planning Board, not the Conservation Commission.
- 12. The revision number in the title block should be updated to reflect the revision list Revision #1
- 13. What is the proposed roadway name?
- 14. What is the total area of the roadway? When adding Lot 1, 2, 3 & roadway areas, does it equal the 80.56 acres as stated in General Notes No 1?

# PRELIMINARY SUBDIVISION PLAN FIELDSTONE COMMONS

TAX MAP 22, LOTS 12 & 12-1 45 GREENWICH PLAINS RD TOWN OF WARE HAMPSHIRE COUNTY, MASSACHUSETTS



PROFESSIONAL EMBREER
3T LIC NO. 12550 NJ LIC NO. 2
44 LIC NO. 40595 NY LIC NO. 64 LIC NO. 9368 RI LIC NO. 1

ENCINEERING BEBLING



PRELIMINARY SUBDIVISION PLAN

OHN C. SOPER 2 NORTH MAIN STREET C 1.0

COVER SHEET







