

## **SUTTON PLANNING BOARD**

### **Meeting Minutes**

**April 8, 2024**

Approved \_\_\_\_\_

\*Note- This meeting was held in person and remotely via Zoom in accordance with recently renewed legislation. The Chair read a notice regarding the hybrid meeting format. (see end of minutes)

Present in person: R. Largess Jr., W. Baker, M. Gagan, E. McCallum, Associate

Present remotely: None

Absent: S. Paul, W. Talcott

Staff: J. Hager, Community Development Director (via Zoom)

### **Public Hearing – Proposed Bylaw Changes**

W. Baker read the hearing notice as it appeared in The Chronicle. M. Gagan reviewed the ground rules for the bylaw hearing and noted the Board is required to provide a recommendation regarding the petitions. Regardless of the Board's recommendations, the articles will move forward to Town Meeting.

Attorney Joshua Lee Smith of Bowditch & Dewey was present representing Progeneration and the article sponsor. Tiffany Russell of Progeneration was also present remotely.

JL Smith explained they are proposing the creation of a Solar Photovoltaic Overlay District in two separate parcels one at 5R Leland Hill Road and one at 48R Peach Tree Drive. He noted large installations of over 250kW are not allowed in the underlying district, nor in any other district in Sutton other than the Industrial District. Their proposal would allow this use by Special Permit on the proposed parcels only. He acknowledged they are aware of past attempts that they feel are different from their proposed sites but more importantly they are proposing this use only be allowed by Special Permit not by right. This is an additional layer of permitting that provides the ability for more input and crafting by all involved and impacted. He also acknowledged they would need to mitigate stormwater and visual impacts, although he noted these installations are not noise generators.

T. Russell noted Progeneration has several solar projects going on in Massachusetts with the focus of lowering overall energy costs. She stated the company is based out of Texas with various satellite offices. She noted they also work in Canada and many other states. She stated the company wants to hear concerns and comments and work with the neighborhood and Town.

J. Hebert of 23 Singletary Avenue expressed concerns with the impact of the potential use on environmental resources and the overall character of the Town.

R. Nunnemacher of 24 Singletary Avenue asked if the proponent will propose a PILOT (Payment in Lieu of Taxes) or if it will be fully assessed through the Town. JL Smith said this hasn't been decided yet. Mr. Nunnemacher said he felt the scale of this use would make the land commercial. J. Hager stated the zoning would not change to commercial, the use would be allowed via overlay district which lays over the underlying district allowing only this additional use of solar installations over 250kW (about an acre). She added large scale solar is allowed anywhere in Sutton if it is roof mounted. She noted the applicant has been put in touch with owners of several large buildings where the removal of trees would not be necessary. R. Nunnemacher felt the nature of the property will be commercial and that all abutting property in Grafton, through which access must be obtained, is residential in nature. He said there is case law prohibiting access for a commercial use through a residential district.

Gale Graves of 111 Hartness Road expressed concerns noting this land is wet and access is questionable. Her bigger concern is the Town already voted no to this use and she wondered why they can come back. She noted many people are unhappy.

Owen Phipps of 37 Peach Tree Road implored the Board to vote against the proposal. He noted there is a new condo complex nearby in Grafton that has blasted and clear cut shaking homes in the area and disturbing wildlife significantly. He noted wildlife is being pushed into the neighborhood and expressed concerns with safety of the children. He added there is already large amounts of runoff in this area and expressed concerns with stormwater impacts. He noted the Town is attractive as it still has large open areas with assets like hiking trails and places to roam, and this type of development is contrary to this.

Patrick Purcell of 28 Peach Tree Drive noted the characteristics that attracted him to the Town. He questioned whether the project is even feasible. He maintained past voters regulated this use to only the Industrial District. He noted existing regulations apply to regulation of the use in Industrial not residential areas and the proposal makes the regulations more liberal by reducing the frontage requirement. He expressed concerns with safety coverage, the grade to get into the site, the fact that this is an out of Town company, and what the real gain in revenue is especial if it devalues abutting homes. Drainage is excessive already and there are major concerns with erosion. He asked if there will be energy storage on the property. T. Russell said there would likely be battery storage on the property. P. Purcell asked if the batteries will be lithium ion and if so he expressed major concerns with fire risk and a higher risk of failure. T. Russell noted they have not experienced a higher failure risk or any fire issues with their installations. He added there is no way to screen these panels with 6' fences when they are proposed at 9' high. He added that no one who signed the petition lives in the neighborhood.

M. Gagan clarified if Town Meeting were to pass this bylaw, the applicant would have to return to the Board in a public hearing where all of the detailed concerns expressed would have to be addressed or the project would not be approved. He noted this hearing is relative to the bylaw change as opposed to project specifics.

Jonathan Anderson of 168 Eight Lots Road noted he was part of the original group that wrote the bylaw and part of the reasoning of keeping installations out of residential districts, was that projects that were industrial in nature would be detrimental in a number of ways in these areas. Therefore, the Town reasonably regulated the use to commercial/industrial areas, keeping it away from valuable open space and farmlands. He stated passing the bylaw would be a drastic change that will create a precedent that will make future proposals harder to prohibit. He noted the Town spoke very loudly in the past that they do not want these installations dotted throughout the landscape.

Stephanie ?? 18 Mumford Road stated her family chose Sutton for the rural atmosphere and community feel. She noted that she works in the environmental field, so she knows projects sited properly can be beneficial and those sited poorly can be a long term detriment. She felt the proposed project is not property sited. In this case, while impacts can be prevented the full impacts of mature forest removal, etc. can never truly be fully mitigated. She encouraged the applicant to use the large roofs that are available to the avoid all the potential negative impacts.

Andrea Morganelli of 48 Peach Tree Drive added she recently had her first bobcat citing at her front door. She provided a petition signed by 222 local people in opposition to the proposed change noting a number of negative environmental impacts. The Board asked for a copy for the record.

Matt Cronin 34 Peach Tree Drive asked if when a petition is filed if the petitioner normally comes to speak to the Board on behalf of what they have submitted. He asked why one person can bring the use back for consideration and not even show up to speak. J. Hager stated in accordance with the Town's charter, any registered voter with the signatures of at least 10 registered voters, can propose a bylaw change at any time. Even though the last three proposals for this use on different properties were voted down, this does not prohibit filing for the use to be allowed on these properties. She added in accordance with M.G.L., if the Board recommends a change and it is voted down, it can be brought back immediately. If the Board does not recommend a change it cannot come back for a vote for two years unless it is changed substantially. She noted each Town may have different standards for how many signatures are required to petition a bylaw change, but Sutton's Charter enacted by Sutton voters, only requires 10. She noted sometimes the petitioner speaks at the public hearing, but if there's a company involved they often do the presentation. At Town Meeting the actual sponsor must make the motion and no one but registered voters are allowed to speak unless at least ten voters say they can. At the Planning Board hearing anyone may speak. M. Gagan stated, and J Hager confirmed, a petitioner is not required to speak at the public hearing. J. Hager reviewed the petition and bylaw formulation and voting process. M. Cronin said he would like to hear from anyone other than those with a financial interest, and noted if the Board doesn't hear from the sponsors that speaks volumes. He stressed he is opposed.

Brian Stevenson 664 Central Turnpike asked if the change is just for these properties. J. Hager stated an overlay district would be created that would only contain 48R Peach Tree Drive and 5R Leland Hill Road. J. Hager stated if anyone wanted to add another property Town Meeting voters would have to vote to add that parcel to the district. T. Russell acknowledged due to wetlands the majority of 48R Peach Tree could not be developed. B. Stevenson asked for confirmation that the re-zoning is for the entire property not just what's shown now on preliminary layouts. J. Hager stated that Mr. Stevenson is correct, anything conceptually shown is not cast in stone until it's actually filed with the Board after Town Meeting. In response to a question about expansion J. Hager stated they have to stay within the property limits.

Shane Katz of 41 Peach Tree Drive stated he is against the project and said he felt the proponent's representatives wouldn't want to live next to this installation. He noted with the height of the hill the installation can't be screened. He asked what benefits the project brings to the Town. W. Baker and M. Gagan noted the specific benefits and impacts are weighed and impacts mitigated by the Board if Town Meeting approves the use and the project is filed with the Board. He expressed additional concerns with the hum created by installations and potential blasting damage.

Sherry Morin of 26 Orchard Street, South Grafton grew up on the top of Leland Hill and noted this hill is super steep and asked the Board not to support the project due to stormwater runoff and flooding.

Neal Lipsitz of 36 Peach Tree Drive expressed he is adamantly against the proposal noting these are not appropriate sites and that he felt mitigation is not possible. He added he is a solar proponent and has it on his home, but these sites are not appropriate.

Nate Ouellette of 52 Peach Tree stated he has a detention basin on his property which was damp and is now a full-fledged pond which has gotten worse with climate change and the neighboring condo project. He also noted he would not want to see the project from his home.

Preston Hill of 32 Peach Tree Drive asked if this is approved is it in perpetuity, say they do a great job and everyone loves it can they sell it? J. Hager stated they can absolutely sell it to anyone else.

She noted the bylaw requires bonding for decommissioning should a company walk away, so the Town can clear the property and stabilize the site.

Brian Sora of 32 Johnson Road said he was curious why they asked for 48R Peach Tree to be included. T. Russell stated they hadn't come out for the site walk before they had to get the petition filed. She noted now that she had done the site walk they realize the majority of this site cannot and should not be developed. This is part of the reason the two separate petitions were filed. He asked if they've used anything other than lithium ion. She is not fully familiar, but is happy to provide the battery storage info for any of their existing projects and post these with the Town. He noted these property owners didn't have this use next to them when they bought their home and the Board shouldn't support adding it now. He thanked the Board for their service.

Joe Lacasse 35 Peach Tree Drive noted he is a P.E. and asked if the proponent is familiar with the local wetland bylaw. T. Russell stated she is, and this is why they currently feel most of 48R Peach Tree will not be able to be used. He stated it appears 48R looks like it can't be built at all, so wants to know why it's even proposed. T. Russell restated the answer she gave to Mr. Sora. He asked if T. Russell will share an updated site plan considering the wetland regulations, she said she would.

W. Baker read an email from James R. Waterman, Trustee Sutton Compton Nominee Trust in support of the re-zoning proposal noting his parcel is 27R Boundary Stone Road. He noted there is little water availability in this area to support allowed uses, so this type of development would be a beneficial use of the land.

Phillis Charpentier of 20 Irma Jones Road, President of Manchaug Pond Foundation, noted the damage caused and impact to habitat in the neighborhood and on Manchaug Pond by the 45 Oak Road solar project. The project is half the size and not even one solar panel is up yet. They have also been told that solar installs now require a dual use so are there more potential impacts? She recommended disapproval.

Andrea Mattei of 21 Golf Ridge Drive noted neither the legal owner nor the sponsor has come before the Board, just the company who will gain the most from the petition. She suggested perhaps the owner should talk to owners of industrial land that is already prepped for this type of use.

John Ford of 29 Peach Tree Drive stated there is no wall that could mitigate the visual aspects of the project. He noted the support of the owner of 27R Boundary Stone Road is an indication that this property will be next.

Tom Devine 29 Boundary Stone Road stated they received a letter asking if they were interested in selling their property when the over 55 development was proposed. He just wanted people to be aware of the potential for more changes. He stated he is opposed to the project.

JL Smith stated he is listening and understands the viewpoints expressed. He noted it seems the condo development and 45 Oak Street have impacted the neighbors which he is sorry to hear, but his client has every intention of not letting these types of impacts happen. He noted who and how many people will vet any project that moved forward and that he as certain this Board, Town staff, and peer reviewers would not let these types of issues happen. He noted a benefit of a project might actually be to mitigate exiting issues. He noted there are other types of uses that can be allowed under the current zoning that are higher traffic and higher impact that would not require a zone change. These potential impact should be compared to lesser solar install impacts.

He stated there are technologies that allow installations to limit land disturbance and be installed on steep slopes. He stated his client cannot commit a substantial amount of resources to detailed engineering before they even know if the zoning goes through. He noted it's entirely possible that 48R may not be approved for a number of reasons, but hopefully 5R can be approved. He noted roof mounted solar is a different financial model which may or may not work. His client is in communication with J Hager about potential roof top sites, but owners may or may not be open to these installations. What is before the Town is ground mounted systems. He stressed any installation would have to comply with local and State regulations including EPA noise standards or it will not be approved. He again stressed they are offering a discretionary review process to their proposed district giving the Town and the neighbors multiple avenues to shape any project that moves forward. T. Russell added they have a P&S on the property which why they are present as opposed to the current owner.

G. Graves asked about the access point. The plan is to access from Ferry Street in Grafton.

P. Purcell encourage the Board to look at other installs near wetlands noting companies are also afforded a lot of latitude as sola is encouraged in Massachusetts.

Motion: To not recommend this proposed change relative to 48R Peach Tree Drive bylaw change.

M. Gagan

2<sup>nd</sup>: E. McCallum

Vote: 4-0-0, R. Largess Jr. – aye, M. Gagan – aye, W. Baker- aye, E. McCallum – aye

Motion: To not recommend this proposed change relative to 5R Leland Hill Road bylaw change.

M. Gagan

2<sup>nd</sup>: E. McCallum

Vote: 4-0-0, R. Largess Jr. – aye, M. Gagan – aye, W. Baker- aye, E. McCallum – aye

Motion: To close the public hearing, W. Baker

2<sup>nd</sup>: E. McCallum

Vote: 4-0-0, R. Largess Jr. – aye, M. Gagan – aye, W. Baker- aye, E. McCallum – aye

### Action Items

- Form A Plans – None
- Additional Action Items - None

### Administrative Items

- Motion: To approve the minutes of 3/5/24, W. Baker  
2<sup>nd</sup>: M. Gagan  
Vote: 4-0-0, R. Largess Jr. – aye, M. Gagan – aye, W. Baker- aye, E. McCallum - aye
- Filings: The Board acknowledged the following filings for their meeting of April 22<sup>nd</sup>.
  - 24 Oakhurst Road – Site Plan and Special Permit for Use – contractors building/yard (7:00)
  - 52 Leland Hill Road – Special Permit for Detached Accessory Apartment (7:20)
  - 18 & 20 Fuller Road – Definitive Subdivision cul-de-sac with two house lots (7:40)
- Site Visit Reports: None
- Abutting Town Notices of Interest: None
- Correspondence: None
- Other Board Business: None

- Motion: To adjourn, W. Baker  
2<sup>nd</sup>: E. McCallum  
Vote: 4-0-0, R. Largess Jr. – aye, M. Gagan – aye, W. Baker- aye, E. McCallum – aye

Adjourned 9:20 PM

Covid Meeting Statement:

Pursuant to Governor Healy's March 29, 2023 Order extending the temporary provisions pertaining to the Open Meeting Law, this meeting of the Sutton Planning Board is in a hybrid format and is being recorded. The recording will be available on the Town's website and YouTube channel.