

Sutton Planning Board  
Minutes  
April 10, 2017

Approved \_\_\_\_\_

Present: S. Paul, W, Whittier, R. Largess, J. Anderson, M. Sanderson, W. Baker  
Staff: Jen Hager, Planning Director

General Business

Minutes:

Motion: To approve the minutes of 3/13/17, W. Whittier  
2<sup>nd</sup>: J. Anderson  
Vote: 5-0-0

Filings: None

Form A Plans: None

Planning Board Recommendation – 489 Central Turnpike Layout Alteration:

The Planning Director showed the Board a plan of approximately 14,000 s.f. being removed from the roadway right of way for Central Turnpike to become an undivided portion of 489 Central Turnpike, the proposed location of the Sutton Police Station. Central Turnpike was a County road and when the County was dissolved nearly all County roads became Town roads, including this one. By law, the alteration of the layout must be referred to the Planning Board and they either provide their recommendation or 45 days pass before the Selectmen can vote to officially layout the alteration. Wayne Whittier stated that the Planning Board should be aware of and/or a member of the Planning Board should be involved in public construction project design at an earlier stage. This would serve the community by being able to provide guidance on future permitting requirements and also so that if and when issues like this one come forward the Board can provide a fully informed response.

J. Hager noted the building committee is aware the project has to go through Site Plan Review. She added in this case the Town is the developer and it isn't at all unusual for the Planning Board not to have been approached in a Board meeting at this stage in the design process. Although Town Meeting will be asked in a few weeks to appropriate construction funding, this is just to ensure before final detailed and expensive engineering is conducted that the residents are on-board with the project. The building committee is meeting in posted open meetings. On a question from W. Whittier she responded, other than the Police Chief, she is not aware who is on the building committee.

Motion: To recommend the alteration of the Central Turnpike layout, J. Anderson  
2<sup>nd</sup>: M. Sanderson

M. Sanderson confirmed the alteration will not affect the actual paved roadway in any way and the very wide radius of the old right of way had no practicality.

Vote: 4-1-0, W Whittier opposed for the above stated reasons

(M Sanderson steps off as an abutter, W. Baker in as full member)

Endorse Plans – Rock & Recycling – 79 W/P Turnpike:

Motion: To endorse the Site Plan dated 2/2/17, W. Whittier  
2<sup>nd</sup>: R. Largess  
Vote: 5-0-0

(M Sanderson returns as full member, W. Baker returns to Associate status)

Correspondence/Other:

Forest Edge – Grafton Forestry: J. Hager stated Mr. Bruce is trying to remove the open space related to Forest Edge that is located in Grafton from its forestry designation in part to potentially develop a cell tower at this location. She stated she is in contact with Mr. Bruce and the Grafton Planner to determine if this land should even be held by Mr. Bruce or if it definitely needs to be held by a home owner's association, Town, or conservation minded non-profit. She will keep the Board apprised of the situation.

Tax Credits for Historic Preservation: The Planning Director noted this article is relevant as it provides a possible mechanism to encourage the restoration and re-use of historic structures in private residential ownership that is not allowed currently. She noted there are tax credits available for income producing properties, and grants for public properties, but otherwise she is not aware of assistance to help private residential properties be maintained.

Accessory Apartment Permit – 10 Crestview Lane: Donna Janes was present stating that she had been issued a Special Permit for an accessory apartment back in 2009. J. Hager confirmed nothing about the bylaw has changed that would effect this particular permit. She recorded the permit and had no idea it expired after two years until she recently went to the Building Department to begin the construction process and was told the permit had expired. It was noted the Building Department had no issue with allowing the use of the permit if the Planning Board was okay with allowing the same. As nothing about the regulations has changed that would effect this permit, the Board saw no public purpose in requiring Ms. Janes go through the process again.

Villas Landscaping near unit #63: J. Hager showed the plan for the landscaping island required by the Board adjacent to unit #63 at the Villas. The landscaping was required to help keep headlights out of this unit and also to break up the expanse of windows along this side of the building. The plan had been reviewed by Mr. Burns as well as Charlotte Newton on behalf of the Condo Trustees.

Motion: To approve the landscaping island adjacent to unit #63 as shown, R. Largess

2<sup>nd</sup>: W. Whittier

Vote: 5-0-0

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

R. Largess read the hearing notice as it appeared in The Chronicle.

Registered (Medical) Marijuana Dispensaries (RMDs): J. Hager, Planning Director explained that RMDs cannot be prohibited, they can only be reasonably regulated, including deciding where they should be located. If not specifically regulated they can go anywhere where similar uses would otherwise be allowed which in Sutton would likely include the Business, Industrial and Office Light Industrial Districts and perhaps the Village Districts as well. The current location is proposed as an 120+/- acre portion of the Office Light Industrial District know and South Sutton Commerce Park.

Pat Morris of 11 Johnson Road asked why only this area was included and questioned how much was actually useable with a church in the middle of the area and restriction on the RMD use within a certain distance of a church? J. Hager stated Sutton has very little highly visible land available for business development. RMD uses do not need, and in many cases do not want highly visible locations. Therefore using the limited area of Business District along Route 146 was ruled out. Much of the Industrial District is already occupied and/or has frontage on Route 146 so this District was ruled out.

Initially the entire Office Light Industrial District both in Northeast Sutton and in South Sutton was included, however this area was reduced after learning about the ties between where you allow RMD and where you may have to allow recreational marijuana establishments.

With respect to a church being in the middle of the Park, even with a required 500' separation from lot lines, this still leaves three lots at the beginning of the Park and the completely vacant 37 acre+ lot at the North end of the Park as potential RMD sites, one of which has already drawn RMD interest. With respect to having reduced the area proposed for RMD use. The legislation on recreational marijuana is not very well written and contains a significant amount of guidelines that could have multiple meanings. One of these guideline appears to mandate that you must allow recreational marijuana establishments wherever you allow RMDs. The problem with this is that the only regulations on the books for recreational marijuana is a vague framework for the governing body, the Cannabis Control Commission (CCC), and extremely broad general regulations. The details of how recreational marijuana will be permitted and regulated will only be known when the CCC issues their draft regulations next year. Therefore, it is not advisable or responsible to potentially allow a use that currently has little or no regulation in an 800+ acre portion of Town by default without truly understanding exactly what this use is and how it will be controlled.

Donna Libby of 312 Boston Road noted if the bylaw is based on Westborough are there any statistics related to Westborough? J. Hager stated as far as she knows there is not currently an RMD facility in Westborough.

Dave Libby of 312 Boston Road asked what will happen to the RMD sites once recreational uses are allowed? Registered RMDs will get priority to apply for recreational licensing, however J. Hager noted questions about the ties to RMDs and the effect of recreational marijuana business licensing persist. Discussion then morphed to that of recreational marijuana and the proposed moratorium.

Recreational Marijuana Moratorium: J. Hager elaborated on earlier comments stating the CCC will not have draft regulations until March of 2018. By the time the draft regulations come out, there will not be enough time to draft local regulations before articles are due in for the May 2018 Town Meeting. Therefore this moratorium is proposed as a way of "pushing the pause button" to not allow applications for recreational marijuana establishments within Sutton until 10/31/18. This will give the Town time to at least see draft regulations from the State, to have some public discourse, and formulate local regulations before articles must be submitted for Fall Town Meeting. The moratorium does not create a permanent prohibition on recreational marijuana establishments, although the law allows the Selectmen to put a ballot question on a local election asking residents if they want to prohibit any or all types of recreational marijuana establishments locally within Town limits. This article has been placed on the May 23<sup>rd</sup> ballot, but any questions related to this can only be addressed to the Selectmen.

Yvette Picard of 14 Darling Lane asked if residents have a choice of more than one place to put RMDs? J. Hager stated that no, right now the Planning Board is only proposing this one location, but may suggest adding more once more is known about recreational marijuana regulation and how it is linked to where we allow medical marijuana.

Carla Stem of 190 Central Turnpike asked if there is water and sewer available at the proposed location. There is water and sewer available.

Motion: To recommend that Town Meeting approve the bylaw change regulating medical marijuana establishments, J. Anderson  
 2<sup>nd</sup>: R. Largess  
 Vote: 5-0-0

Motion: To recommend that Town Meeting approve the bylaw placing a moratorium on recreation marijuana establishments until 10/31/18, R. Largess  
 2<sup>nd</sup>: W. Whittier  
 Vote: 5-0-0

Village Center Overlay District (VCOD): The Planning Director stated this bylaw has been formulated by a group of diverse residents over nearly a year. After a local resident approached the Board with a complicated petition, that they did not feel they could approve at the time, to allow her flower shop to move into the Polly's Antiques structure last fall, they committed to forming a working group to produce a bylaw that would allow uses like this in Sutton Center and possibly other village centers like West Sutton. The main purpose of the bylaw is to allow some additional tightly controlled uses that will hopefully encourage investment in existing historic structures while preserving the appearance and layout of the village center.

All land owners with the National Historic Districts, consisting of approximately 200 people, were directly invited to participate, although any interested parties could take part. Attendance ranged from 12-30. All decisions were made by majority rule. Major features of the bylaw are as follows:

- Allows a variety of additional office, retail and restaurant uses.
- Limits structures to 6,000 s.f.
- Closely controls design and requires architectural styles and elements consistent with the historic time period of the village.
- Allows future public parking lots to be counted toward parking needs.
- Also requires new permitted uses in the underlying R-1 district to conform to the VCOD bylaw if they are located in the overlay district.
- Right now the overlay only consists of four parcels, but more may be added at Town Meeting in this or other areas where voters feel it is appropriate.

Donna Libby of 312 Boston Road noted although she was a member of the working group, both she and her husband are not in favor of any changes in the village center. She had concerns about parking. J. Hager stated that while an earlier version of the proposed bylaw had fuzzier provisions for parking, the current proposal requires the same parking standards as in current zoning, with the ability for waivers where an applicant demonstrates a waiver is appropriate. R. Largess added parking is a serious concern in Sutton Center and should be addressed. J. Hager agreed and noted this is a policy decision and concerns and requests should be made to the Town Administrator and Board of Selectmen.

D. Libby asked why this isn't spot zoning, the Planning Director stated that rulings by the attorney General's Office, who approves bylaw changes, have consistently not challenged overlay district zoning of any size as spot zoning as these are areas that overlay existing static zoning districts with a specific stated planning purpose. The AG's position over the past 10+ years has been to defer to the will of Town Meeting in matters of adding and adjusting zoning and overlay districts, although they may caution the community in their approval documents that there may be room for a legal challenge. In response to a question about signage J. Hager noted the bylaw uses the current sign regulations with a size restriction of 30 s.f. for business signs, no internal illumination and not higher than 15'.

J. Anderson recalled that part of the purpose of the overlay was to try to save historic structures. He asked if Demolition delay provision was considered? J. Hager stated that she made the decision not to include this provision mainly because past attempts at passing this bylaw have not been well received.

Ultimately private structures cannot be maintained against an owners will, and as a new regulation she wanted this bylaw to have a chance to be adopted without the risk of being voted down because of potentially controversial provisions like demolition delay. While original attempts at provisions to encourage historic preservation via less permitting were eliminated by Counsel as contrary to case law, the Planning Department continues to pursue other potential means of historic preservation, like tax credits for renovations to historic private property.

Motion: To recommend that Town Meeting approve the bylaw change establishing the Village Center Overlay District, R. Largess  
 2<sup>nd</sup>: J. Anderson  
 Vote: 5-0-0

Allow 26,000 +gvw vehicle sales in Industrial District:

(M. Sanderson steps off the Board due to conflict as an abutter to a business that will directly benefit from the following proposed change. W. Baker steps in as a full member)

Dan Cowher, owner of Environmental Equipment LLC of 11 John Road was present to explain he is requesting the Board's support of a proposed bylaw change that will allow the sale of vehicles in excess of 26,000 lb. gross vehicle weight (gvw). He stated he likely will not sell any full vehicles but that he cannot even get a plate that will allow him to demo or deliver a fully outfitted vehicle without a Class 1 or Class 2 license. He can only get this license if he has the ability to sell new or used vehicles. Pat Morris of 11 Johnson Road said he has no issue with the proposal but suggested it should be by Special Permit as opposed to by right as a special permit is a stronger, safer regulation more consistent with permit requirements of similar uses.

W. Whittier asked if Mr. Cowher intended to mount on single axle vehicles? He said likely not. In response to a question on whether curb weight was a more appropriate weight standard than gross vehicle weight, Mr. Whittier stated all vehicles are tagged with a gvw rating so this should be utilized.

J. Anderson asked to point out where this use would be allowed and what its potential effects on residents might be. J. Hager noted the two area that are currently Industrial (I) zoned. As with any zone that backs up to a residential area, there is a potential for impact, in this case residences exist adjacent to the Industrial District on Dudley Road, although much of this I property is currently developed.

Motion: To recommend Town Meeting approve the addition of sale of vehicles over 26,000 lb. gvw as a special permit in the Industrial District, J. Anderson  
 2<sup>nd</sup>: W. Whittier  
 Vote: 5-0-0

(M. Sanderson returns to the Board and W. Baker returns to Associate member status)

Re-zone 6.59 acres from Rural Residential (R-1) to Business Highway (B-2) on Central Turnpike at Route 146 South entrance ramp: William Wence of 154 Dodge Hill Road spoke on behalf of the land owners Lee Wence and Lynn O'Neill.

He stated the owners feel this parcel located adjacent to Route 146 and its ramp system is more appropriately utilized for a business use rather than residential. He noted once required setbacks are applied only .29 acres of the land is available for development. This small amount of land cannot support a fast food restaurant, convenience store, or similar high traffic use, but could support a small business use, like an office for a CPA which they have actually been approached about. It was noted the Zoning Board of Appeals could grant variances to allow smaller setbacks than those shown.

Carla Stem of 190 Central Turnpike asked if the use could be restricted to only a use like a CPA? It was noted if the parcel is re-zoned to B-2, any use allowed in this district can go in if the permitting requirements are met. She asked if the zoning must be changed in order to sell the property? Mr. Wence stated the zoning does not have to be changed, but there has been no residential interest.

Robert Nunnemacher of 24 Singletary Avenue, an Assessor and Professional Registered Land Surveyor noted the description currently includes parcel north of Central Turnpike and should not be approved with this parcel included. This is a matter he feels can be easily rectified.

James Levins of 197 Central Turnpike noted that individuals who signed the petition do not live near the property. He was concerned the petitioner didn't consult those who would be most affected. S. Paul noted that any registered voter can sign a petition and there is no requirement to consult or even notify those who are abutters.

Matthew Denittis of 11 Silver Ledge Drive made various comments noting that of the 23 people who signed the petition not on lives close by, the useable area appears to be less than stated at about .21 acres, and he asked what type of business could actually go here, could a medical marijuana establishment go here? J. Hager stated if the RMD bylaw article passes such an establishment cannot go at this location. If the article fails then it is possible.

S. Paul noted the useable area is so small it's almost undesirable, but to keep in mind this is a rezoning article NOT and article to build a CPA office at this site. If passed, anything allowed in the B-2 District via the Table of use in the Zoning Bylaw could be allowed.

Mr. Wence stressed discussion about how little land is available for expansion of Sutton's tax base, and underscored that residential use will add more cost to the Town while a business use will bring in revenue. He added the use is consistent with the zoning in the area adding that even Mrs. Stem's lot is partially in the business district.

Brandon O'Neill, son of the owner, of 160 Dodge Hill Road noted this lot is adjacent to the highway. He stated it's good to see recent development and for residents to have services they need nearby. This rezoning would provide another opportunity to bring needed services closer to residents.

Mr. Denittis asked if Mr. Wence will directly benefit from this proposal? Mr. Wence said he will not. The Chairman interjected that there is no rule against a sponsor of an article benefitting from a proposed change. Sponsoring and signing a petition only means you feel a particular issue should be brought to the Town Meeting floor to be decided by the voters. Mr. Denittis submitted a petition signed by numerous parties opposed to the re-zoning.

In response to Mr. Wence's comment that Mrs. Stem's parcel is partially business zoned, she noted out of respect for her neighbors who bought their homes in a residential area, she would never change her home to business. The people in this area do not want this change. Mr. Wence noted he lives only 1 mile away on Central Turnpike.

He stated Wikipedia noted Central Turnpike is one of the oldest commerce corridors in the U.S. and all he's trying to do is use this parcel for commerce which is the best benefit for the Town.

Mr. O'Neill added the lot directly adjacent to the Highway on the other side of this intersection was changed to Business to allow for Tony's Pizza relocation and other business uses, similar to what is being requested here.

J. Anderson asked if the owners intentionally re-zone it to Business and then find there is no interest and want to put a house on it will they have a hardship case? J. Hager stated with respect to both the Zoning Board of Appeals and the Assessors she doubted any relief would be granted as use variances are illegal and this would be considered a self-imposed hardship.

It was noted a MassDOT indirect access permit will likely be necessary for a new driveway so close to the ramp system which will include a traffic evaluation.

R. Largess stated he was wary of recommending this article based on Mr. Nunnemacher's comment that the description includes land that should not be included. Lynn O'Neill of 145 Dodge Hill Road was concerned with Mr. Nunnemacher's comment and what it meant. Mr. Nunnemacher explained whoever wrote the description just included an extra part of a parcel north of Central Turnpike that should have been left out. He said it should be no big deal to fix this in an amended motion at Town Meeting.

Motion: To not recommend Town Meeting approve this article because the description is incorrect and includes land that should not be included, R. Largess

2<sup>nd</sup>: W. Whittier

P. Morris, also a member of the Finance Committee asked for clarification on the Board's action.

S. Paul stated if the motion is amended at Town Meeting he will be supportive of adding more land that can provide tax base and services.

Vote: 3-2-0, S. Paul and J. Anderson were opposed as they felt the article should be supported noting the land description is an easy fix.

Create a Solar Photovoltaic Overlay District: J. Hager stated Towns may not prohibit solar uses. Sutton residents voted to allow solar installations everywhere, however, only systems under 250kW, or about 1 acre with today's technology, can be proposed in residential areas. Systems over 250kW, aka large ground mounted solar photovoltaic systems are only allowed in commercial and industrial districts. The petitioner is proposing the creation of a solar photovoltaic overlay district, similar to the Village Center Overlay District (VCOD) that would allow this additional use in residential areas per the description and map they propose. She noted as she did not see the article until after it was filed, it needs various adjustment to sections numbers and language that can be made while still preserving the intent of the petition.

Attorney Henry Lane was present on behalf of his client the Vandenaeker family that hope to benefit from this proposed change by leasing a portion of land to National Grid who will construct approximately 1 MW, or 5-7 acres of solar panels with a battery storage system on their land located just over the Sutton/Northbridge Town line near purgatory Road.

Zak Farkes of Boreggo Solar, the company that will permit and build the system for National Grid, noted this site will have little impact. It is adjacent to Route 146 north and bounded on the West by a gas pipeline and includes a high tension power line easement. The location has more industrial characteristics than residential ones.

Dave Gopfert of 17 Wunschel Drive asked why they needed 185 acres and noted his land is included and he doesn't want it included. Attorney Lane stated the initial article was drafted in haste and in order to avoid a spot zoning challenge the petitioner included over 185 acres. They are open to both wording adjustments and to reducing the area of the overlay.

On a question about why a 750' buffer was left from Smith Road and not from Wunschel Drive, Attorney Lane restated they did a quick calculation of how deep the district would need to be to accommodate their site plus setbacks and then they just proposed a parallel line to Route 146 that deep, again he stated they are happy to adjust the area.

J. Anderson expressed concern with the precedent of allow large systems in residential areas when residents had previously decided that these systems aren't appropriate there. He stated if the applicant wants to do this he would be more comfortable with them pursuing a re-zoning to business or industrial where the use is allowed. Attorney Lane noted an overlay was seen to have less impact as it only allows uses that are specifically selected, in this case ONLY large solar, not all the other uses allowed in the industrial or business districts. He stressed this site is unique and ideal creating no negative impacts.

Pat Morris of 11 Johnson Road asked if this would be visible from Route 146. Z. Farkes stated it would not be visible as they would not clear anything west of the pipeline.

R. Nunnemacher asked what percentage of the project would be in Northbridge. Z. Farkes stated only the access would be in Northbridge all structures would be in Sutton. Mr. Nunnemacher felt the overlay should be restricted to the project parcel.

R. Largess noted the Board has approved several projects and some have not been built. He asked if National Grid is fully committed to this project. Mr. Farkes stated they are definitely on board they sought out Boreggo and the Vandernaekers and will be the project owner and operator, they are not just buying power from the system.

J. Anderson again expressed his concerns with precedent and acting hastily of behalf of the interests of one party without fully understanding the ramification of the overlay.

With regard to a question on the benefits to the Town, it was noted a payment in Lieu of Tax agreement is usually negotiated and there is usually little or no impact on adjacent properties if properly screened.

Motion: To not recommend the article, but only because the areas is too large, R. Largess  
2<sup>nd</sup>: W. Whittier  
The majority of the Board felt the overlay should be reduced to as close as possible to the project parcel.  
Vote: 5-0-0

Motion: To close the public hearing, W. Whittier  
2<sup>nd</sup>: J. Anderson  
Vote: 5-0-0

Motion: To adjourn, W. Whittier  
2<sup>nd</sup>: M. Sanderson  
Vote: 5-0-0

10 PM