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Town of Norton Planning Board Meeting Minutes FEBRUARY 2, 2016

7:15 P.M. Call to Order/General Business

The February 2, 2016, meeting of the Norton Planning Board, was held in the first floor Selectmen's Conference Room, of the Norton Town Hall and was called to order at 7:15 P.M., by Joanne Haracz, Chairman. Members Present: Joanne Haracz, Chairman; Mr. David Miller, Vice-Chair; Mr. Edward Beatty, Mr. George Burgess; Mr. Pat Daly; Mr. Joseph Fernandes; and Ms. Cheryll-Ann Senior. Also present: Beth A. Wierling, Director of Planning & Economic Development, and Janet Sweeney, Recording Secretary. Ilana Quirk, Town Counsel, of Kopelman & Paige, was also in attendance.

A. Report of the Planning Board No report issued.

B. Planning Board Business and Policies

- Mr. Daly stated he cannot attend the Planning Board meeting of February 9, 2016, therefore, he will watch video of hearing. He noted the previous meeting was not on cable.

Ms. Wierling responded she would look into this.

- It was noted the next scheduled Planning Board meetings would be on February 9, 2016 and February 23, 2016. Mr. Fernandes said he would not be able to attend the February 23, 2016 meeting.

Mrs. Haracz said there would be no meeting on March 1, 2016; but meetings would be held March 8, 2016 and March 22, 2016. April meetings would be scheduled for April 5, 2016 and April 19, 2016.

Ms. Senior said she was not certain if she would be able to attend the April 19, 2016 meeting.

C. Approval of Minutes

MOTION was made by Mr. Daly to approve the Planning Board Minutes of Meeting, dated November 10, 2015, as written. Second by Mr. Burgess. Vote: Unanimous (7-0). MOTION CARRIES.

D. Bills and Warrants – No bills and warrants presented.

7:30 P.M. PUBLIC HEARING – *continued from January 26, 2016 First Hearing Date: September 29, 2015*

REMAND:

Adv.: Sept. 14, 2015 & Sept. 21, 2015

Wheaton College and Norton Solar I, LLC

Abut: Sept. 10, 2015

v. Norton Planning Board

650 Kw Solar farms – located off Clapp Street

Special Permit & Site Plan

Special Permit: Article XXI: Large-scale, Ground mounted, solar, Photovoltaic Installations

Documents presented to Planning Board:

1. *Draft Remand Permit Prepared by Town Counsel for Review and Consideration by the Planning Board Based Upon 01-26-16 Discussions – Applicant: Norton Solar I, LLC, Special Permit #448 and Site Plan Approval, Wheaton College/Clapp Street, Norton, MA – Assessor's Map: #23, Lots: #52, 53, 70*
2. *Appendix A – Property Value Guaranty Agreement (KLG Draft – 2014-12-22)*

The Public Hearing was opened.

Attorney Ilana Quirk indicated revised conditions were submitted with attorney's comments.

Mrs. Haracz explained at the last meeting a series of conditions were reviewed and Attorney Quirk have been revised.

FINDINGS AND DECISION

Procedural History

1. On July 17, 2015, Norton Solar I, LLC (Brett Chapman, Manager Sunfield Solar) ("Applicant") filed an application for a special permit and site plan approval with the Town Clerk, to allow for construction of two 650 Kilowatt (Kw) ground mounted solar facilities, on land owed by Wheaton College ("Owner") and located off Clapp Street ("Property"), under Norton Zoning Bylaw ("ZBL"), Article XV-Site Plan Approval and Article XXII-Large Scale, Ground Mounted, Solar Photovoltaic Installations. The Property is located in the R60 zoning district.
2. Pursuant to G.L. c.40A, Sections 9 and 11, a public hearing notice was published in the *Sun Chronicle* on Monday, July 21, 2014, and on Monday, July 28, 2014. A public hearing was opened on August 12, 2014, continued to September 2, 2014, October 7, 2014, October 21, 2014, November 18, 2014, December 2, 2014 and closed on December 16, 2014.
3. On January 28, 2015, the Planning Board voted 4 to 2 in favor of the project, and thus the application failed to achieve the required supermajority required under G.L.c.40A, Section 9 for approval.
4. On or about February 18, 2015, Wheaton College and Norton Solar I, LLC appealed the decision of the Planning Board in Bristol Superior Court (*Wheaton College and Norton Solar I, LLC v. Norton Planning Board*, Bristol Superior Court C.A. 1573CV00121).

5. On July 28, 2015, as the composition of the Planning Board has changed and as the Applicant wished an opportunity to present new evidence, the Bristol Superior Court issued an order remanding the matter back to the Planning Board for a remand public hearing.
6. The Planning Board duly noticed and advertised the remand public hearing pursuant to the Order of Remand.
7. The Planning Board Members present for each session of the Remand Public Hearing: Joanne Haracz, David Miller, Edward Beatty, George F. Burgess, Joseph E. Fernandes, Patrick Daly, and Cheryll-Ann Senior.
8. The Remand Public Hearing opened on September 29, 2015 and continued on November 10, 2015, December 1, 2015, and January 26, 2016.

Findings:

a. General

1. On July 17, 2014, the Applicant filed the Application and plans with the Norton Town Clerk for a Special Permit and Site Plan Approval to construct two independent 650 Kilowatt ground mounted solar arrays on the Property, which is owned by Wheaton College, which is located off Clapp Street and located within the Residential 60 Zoning District.
2. The Property is shown on Assessor's Map 23 as lots 52, 53 and 70.
3. The two proposed solar arrays are identified as "A" and "B", with Array "A" proposed to occupy approximately 5.8 acres of Assessing Lots 52 and 53 and Array "B" proposed to occupy approximately 7.1 acres of Assessing Lot 70.
4. Special Permit and Site Plan Approval are required to site the project under Article XV-Site Plan Approval and Article XXII-Large Scale, Ground Mounted, Solar Photovoltaic Installations.
5. As required by G.L. c.40A, Sections 9 and 11, a public hearing notice was properly advertised, "parties in interest" were notified and a Remand Public Hearing was held pursuant to the Bristol Superior Court Order of Remand.

b. Special Permit Criteria

Under ZBL Section 10.10, "As a condition of granting a Permit or Special Permit, the granting authority shall find that the petitioned for exception" satisfies the following criteria:

- is socially and economically desirable,
- would satisfy an existing need,
- the advantages of the proposal outweigh by far any detrimental effects,
- that such effects on the neighborhood and environment shall not be significantly greater than could be expected from development if the Permit or Special Permit were denied,
- that the applicant has no reasonable alternative available to accomplish his purpose, and
- that specific conditions to minimize detrimental effects and protect the neighborhood have been imposed and, if necessary, secured by bond or otherwise.

c. Specific Findings

1. The Applicant proposes to construct two independent 650 Kilowatt (Kw) ground mounted solar arrays on the Property.
2. Under ZBL Article XXII-Large Scale, Ground Mounted, Solar Photovoltaic Installations, Section 22.2.4, a large-scale, ground-mounted, solar photovoltaic installation (minimum capacity of 250 Kw) requires Site Plan Approval from the Planning Board.
3. Under ZBL Article XXII, Section 22.2.5 a large-scale, ground-mounted, solar photovoltaic installation located within the Residential 60 zoning district requires a Special Permit from the Norton Planning Board.
4. Wheaton College and the Applicant propose to enter into an agreement (contract) over a fixed period of time (e.g. 20 years) whereby Wheaton College pays for power produced by the solar facility at a reduced rate thus producing savings for the College. Norton Solar, in turn, may receive benefits from tax incentives, construction incentives, net metering credits and renewable energy certificates. The Town of Norton would receive a monetary benefit based upon the tax value of the solar facility. The specific terms or benefits of the agreement between Wheaton College and Norton Solar were not provided.
5. The Planning Board opened the first public hearing on the proposed solar project on August 12, 2014. The Applicant was provided the opportunity to explain the project to the Planning Board and members of the public in attendance, in this case neighborhood residents, were provided the opportunity to present their concerns to the Planning Board.
6. The Applicant provided the Planning Board with an initial plan drawn by Vanasse Hangen Brustlin (VHB), Inc., dated July 10, 2014. This plan showed the layout of Arrays "A" and "B", along with information about the setbacks of the facilities from Clapp Street and information regarding the number of solar panels. Both systems have 2,268 panels and produce 657,720 watts of electricity. Functionally, both systems appear to be the same except for the location and layout of the solar panels. The plans were sent to Amory Engineers for review and a review letter dated August 6, 2014, was provided to the Board and the Applicant.
7. The July 10, 2014 plans showed the layout, grading and erosion control plan of Array "A" on page C-3.1. Under ZBL Section 21.3.2, within the R-60 Zoning District a minimum 75-foot front yard setback from the street right-of-way, in this case Clapp Street, is required. The closest point of the Array to Clapp Street is setback 75 feet; however, the 18-foot way gravel road which circumvents the array and would provide the Fire Department (as well as others) access and the chain link fence which encloses both the array and access road is approximately 20 feet from the street right of way. Two detention ponds are shown on the plan. The site would be graded to allow water to flow overland via grass swales to the ponds. The July 10, 2014 plan also showed an existing home owned by Wheaton College adjacent to the Array. The limits of tree clearing are shown on the plan. Other than the existing vegetation which will not be cleared, no buffer landscaping is shown. Existing vegetation would be removed within the area bounded by the chain link fence and except for the gravel road will be supplanted by grass.

8. Array "B" which is located easterly of "A" is similarly designed with an 18 foot wide gravel access road and fence surrounding the Array and with a detention basin also receiving overland water flow. A utility connection via overhead and underground wire is shown connecting Array "A" to Taunton Avenue.
9. The initial public hearing was scheduled for August 12, 2014. Prior to the public hearing the Applicant provided the Planning Board with a revised set of plans dated July 29, 2014. The July 29, 2014 plan showed a single row of Juniper trees six to seven feet in height to be planted along Clapp Street beginning just to the east of the entrance drive and extending some 160 feet in length. The Plan also showed fifteen Eastern Red Cedar trees seven to eight feet in height located west of the entrance to System "B" and some forty Yew shrubs planted easterly of the entrance to System "B". Otherwise, the plan(s) was essentially the same as the July 10, 2014 plans.
10. The public hearing, held on August 12, 2014, provided the Applicant and the Owner the opportunity to explain the proposed solar development project. Norton residents, primarily abutters to the project, were also provided an opportunity to comment and submit written material. The residents who attended the meeting expressed apprehension and were generally opposed to the project. Their opposition was based primarily upon their belief that the project, described by them as an industrial use in a residential area would decrease enjoyment of their homes, decrease the monetary value of their homes and be a potential danger to their children. They stated their belief that there would be no public benefit to the Town as a result of the project.
11. The Planning Board's primary concern was the visibility of the project to the neighbors. After extensive discussion the Planning Board requested the Applicant to amend the plan to provide a more robust landscape buffer which would screen the project from the neighbors.
12. The Applicant submitted revised plans dated August 21, 2014 which were reviewed by the Planning Board at a September 2, 2014 public hearing session. The August 21, 2015 plans show Array "A" moved back from Clapp Street from the required seventy-five feet to about 85 feet. An additional row of trees are shown west of the Clapp Street entrance to Array "A" along with a row of planting easterly of the entrance to Array "B" which are placed upon an earth berm some five feet in height and six feet in width at the top of the berm. This plan also showed changes to the electrical connection as it approaches Taunton Avenue by the addition of a short gravel access road (less than 100 feet in length) and new utility poles. Although the August 21, 2014 plans were an improvement on the previously submitted plans, neither the Planning Board nor the residents were satisfied that the Applicant had done everything possible and appropriate to screen the Arrays from being visible from the street or from the homes of nearby residents.
13. At the December 16, 2014, public hearing session, the Applicant submitted a final revised set of plans dated December 12, 2014. The December 12, 2015 plans showed a significant revision, although neither Array "A" nor "B" changed as to the number of arrays or the electrical output.
14. Array "A" was moved 155 feet back from Clapp Street. The Applicant stated to the Planning Board that the dwelling shown on the plans adjacent to Array "A" and owned by Wheaton College will be demolished and, consequently, the plan shows a double row of planting just

outside the chain link fence starting at the entrance off Clapp Street and continuing a substantial distance (400-500 feet) parallel to the fence. The revised plan (December 12, 2014) also shows new plantings for Array "B".

15. The Applicant stated that the December 12, 2014 plans incorporated reasonable changes in response to the comments from the residents and the Planning Board and that as a condition of approval the Applicant would offer to indemnify certain residents for a loss in property value and provide electricity to such residents at reduced rates.
16. Residents, although appreciative of the changes, continued to express that the project is an industrial use and inappropriately located in a residential area and they remained opposed to the project.
17. The Planning Board, believing both the Applicant and residents were provided a full opportunity to be heard, closed the public hearing on December 16, 2014.
18. On January 20, 2015, at a regularly scheduled meeting, the Planning Board voted four in favor and two opposed (and one member not present) to grant Special Permit and Site Plan Approval relief subject to stated terms and conditions; but since the required super majority vote of five out of the seven was not achieved, the special permit relief requested was denied.
19. The two members who voted "no" stated they did not believe the project, given the proposed conditions, would have sufficiently mitigated the detrimental effects of the project on the neighborhood. Further, given the fact that public comment with the exception of Wheaton College was unanimously opposed to the project, the members voting "no" did not believe the project was either socially or economically desirable for residents of the neighborhood. Effectively, the members voting "no" did not believe the project was appropriate for the particular residential neighborhood in which it was to be sited and, therefore, did not meet the criteria required by the Norton Zoning Bylaw for grant of a Special Permit.
20. The Applicant appealed the Planning Board's decision and the Bristol County Superior Court ultimately issued an Order of Remand in the resulting litigation in *Wheaton College and Norton Solar I, LLC v. Norton Planning Board*, Bristol Superior Court C.A. 1573CV00121).
21. The Remand Public Hearing opened on September 29, 2015. The public hearing was continued to November 10, 2015, December 1, 2015, January 26, 2016 and February 2, 2016. The Planning Board incorporated all of the documents and materials from the first public hearing into the Remand Public Hearing record.
22. The Applicant provided drawings of sight lines (Plan Sheets C5.1-C5.5) showing that trees planted as provided in the approved plans will reasonably block views of the solar arrays from Clapp Street and from the first floor of adjacent homes. The Planning Board has relied on such drawings and stipulations by the Applicant in its consideration of this Special Permit and in its decision.
23. On November 3, 2015, BETA Group, Inc. submitted comments in its Landscape Screening and Safety Review to the Planning Board.
24. On November 19, 2015, VHB submitted responses to the BETA Group, Inc. review on behalf of the applicant.

25. On February 2, 2016, the Planning Board, believing that the Applicant and the public had been provided sufficient opportunity to be heard on this matter, closed the Remand Public Hearing and deliberated toward a decision.

Attorney Quirk noted there was a concept she added in which was not discussed; page 6, potential Condition 2, potentially appropriate. Applicant does not have an issue with what has been sent to them for review. There are two main issues on page 8 to amend bulleted requirement for \$3,000 in landscaping. Applicant asked about reimbursement to residents as developer does not want to go onto residents' properties. Deadline of one year is probably appropriate. Page 9, under number 16, additional language with storm water controls and is an appropriate amendment.

Attorney Quirk referenced page 7, number 3, Conformance: "and to be confirmed by them" could be added.

Attorney Quirk said one housekeeping issue on 1/26; a member of public, some potential info to be provided.

Mr. Fernandes noted a typo on page 6, #2, next to last sentence; it should say "within" ten business days; not "with".

Attorney Quirk noted this typo and thanked Mr. Fernandes.

Ms. Senior indicated she received an email today and she forwarded it to Ms. Wierling and wanted to include it into the public record.

Ms. Senior referenced page 5, #13, last sentence, last line, addresses super majority; should read "vote five out of the seven" (seven is missing).

Ms. Gretchen Stalters from audience, a Norton resident, wanted to show her approval to support and hoped Planning Board would support this also. She said she also sent a letter of support to the Board of Selectmen

Mrs. Haracz asked if anyone in audience had any comments or questions?

No one from audience responded to Mrs. Haracz's inquiry.

MOTION was made by Mr. Beatty to close the Public Hearing. Second by Mr. Fernandes. Vote: Unanimous (7-0). MOTION CARRIES.

Mrs. Haracz read the "Approval of Special Permit Requirements" to be socially, economically desirable, etc.

Mrs. Haracz said there were a number of findings she will review. Board can add some if needed.

Attorney Quirk said if the Board wished to adopt a condition that creates a provision where chipping/noise part to be considered for the owner of funeral home; and a dialog/a proper relationship should occur between the two parties. She said she did not hear from applicant of an unwillingness to assist. A notice to be given to funeral home; a dialog to take place where wood-chipping could cease 1 to 1 ½ hours to recognize a funeral. She said it is up to the parties to be reasonable to each other and work with each other.

Mrs. Haracz said this would be a fair condition to add, and the Board did not disagree.

Attorney Quirk asked address of funeral home.

Mrs. Haracz responded the address was 19 Clapp Street.

Mrs. Haracz said it appeared the central finding is whether the Board feels the proposed planting plans as revised throughout this entire discussion with the "Conditions" discussed last meeting will reasonably block the views.

Mrs. Senior asked about the use of "will" and not "should".

Mr. Fernandes said given this is a Finding as opposed to a Condition, it is not a directive to screen; it is a Finding it does screen. Ordinarily "will" and "should" are generally permissive in nature, where this is just a Finding.

Attorney Quirk said "shall" usually is used as a condition.

MOTION was made by Mr. Fernandes to approve 19 Conditions as presented with the clarification that #16 will read that the approved plans "will reasonably block views of the solar arrays from Clapp Street and from the first floor of adjacent homes". Second by Mr. Beatty. Vote: Unanimous (7-0). MOTION CARRIES.

Mrs. Haracz said the Board has gone through all of their Conditions and is open to anything else Planning Board wishes to add.

Attorney Quirk noted there were two things Applicant had asked for, page 8, change language to 3 years of paragraph relating to arrays with a deadline of 12 or 18 months after arrays are put in, so they know what they look like three years when active.

Mrs. Haracz said she believed three years made sense and would be consistent.

Attorney Quirk said stormwater control shall be mitigated for tree removal.

Mrs. Haracz said in terms of Findings, it needs to be looked at if project is socially, economically desirable; a tax revenue to Town, abutters having a lower electrical rate, advantage of project, applicant has provided for screen and really no traffic.

Mr. Fernandes stated traffic would be minimal.

Mrs. Haracz asked Counsel if a vote was needed?

Attorney Quirk responded a bullet vote would be needed if the Board wished to do so.

Attorney Quirk advised them to take what was said, clean energy, minimal traffic, as discussed above and where amended.

MOTION was made by Mr. Fernandes to grant, with the Conditions specified previously, the Application by the Applicant for Special Permit and Site Plan Approval and determine the Application would satisfy the requirements of ZBL Section 10.10 and ZBL Section 18 because:

- The Project would be socially and economically desirable because of the provision of 1300 kwh of clean energy along with associated environmental benefits, provision of added tax dollars to the Town as opposed to the tax-exempt status of the property should it be developed for educational purposes, will not add any additional traffic to an otherwise quiet

street as opposed to the traffic which would be generated under any other development option.

- The project would satisfy another an existing need for alternative energy production; the advantages of the Project do outweigh by far any detrimental effects and that such effects on the neighborhood and environment shall not be significantly greater than could be expected from development if the special permit were denied; the Applicant has no reasonable alternative available to accomplish the purpose of the project; and the specific conditions imposed hereunder would minimize the detrimental effects and protect the neighborhood and secured by bond or otherwise; the Project does satisfy the criteria of ZBL Section 18 of Site Plan approval. Second by Mr. Beatty.

Not in Favor of Motion: Mr. Daly and Mr. Burgess.

In Favor of Motion: Ms. Senior, Mr. Fernandes, Mr. Miller, Mr. Beatty, and Mrs. Haracz.

VOTE: (5-2). MOTION CARRIES.

MOTION was made by Mr. Fernandes to allow Chairman to sign Order of Conditions and Decision. Second by Mr. Miller. Vote: Unanimous (7-0). MOTION CARRIES.

Attorney Quirk asked if the Board would like her to finalize documents and forward to Ms. Wierling.

Mrs. Haracz responded, yes.

ADJOURNMENT

MOTION was made by Mr. Fernandes to Adjourn at 8:10 P.M. Second by Mr. Miller. Vote: Unanimous (7-0). MOTION CARRIES.

Respectfully Submitted by:

Janet Sweeney

Planning Board – Recording Secretary

Minutes Approved by Committee on:

(Date)

Signature:

Chairman:_____

street as opposed to the traffic which would be generated under any other development option.

- The project would satisfy another an existing need for alternative energy production; the advantages of the Project do outweigh by far any detrimental effects and that such effects on the neighborhood and environment shall not be significantly greater than could be expected from development if the special permit were denied; the Applicant has no reasonable alternative available to accomplish the purpose of the project; and the specific conditions imposed hereunder would minimize the detrimental effects and protect the neighborhood and secured by bond or otherwise; the Project does satisfy the criteria of ZBL Section 18 of Site Plan approval. Second by Mr. Beatty.

Not in Favor of Motion: Mr. Daly and Mr. Burgess.

In Favor of Motion: Ms. Senior, Mr. Fernandes, Mr. Miller, Mr. Beatty, and Mrs. Haracz.

VOTE: (5-2). MOTION CARRIES.

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Respectfully Submitted by:

Janet Sweeney

Planning Board – Recording Secretary

Minutes Approved by Committee on:

6/7/14
(Date)

Signature:

Joanne Haracz

Chairman: Joanne Haracz