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NORTON PLANNING BOARD MEETING  
DRAFT MINUTES OF April 16, 2019

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The Planning Board Meeting of April 16, 2019 was called to order in the Norton Middle School Auditorium at 7:15 p.m. by Mr. Joseph Fernandes, Chair. Members present were Mr. Timothy Griffin, Ms. Julie Oakley, Mr. Stephen Jurczyk, Mr. Frank Durant, Mr. Oren Sigal and Mr. Steven Hornsby. Town Counsel, Amy Kwesell was also present.

**Bills and Warrants**

**Motion to Approve made by Mr. Sigal, Second by Mr. Hornsby. All in favor. Motion Passes.**

**Approval of Minutes**

March 26, April 2 & 9

**Motion to approve with edits made by Mr. Jurczyk, Second by Mr. Hornsby. Mr. Griffin abstains from voting on the April 9<sup>th</sup> minutes as he was absent. All in favor. Motion passes.**

**Internal Business**

**Motion to reappoint Steve Hornsby as the SRPEDD representative for the Board made by Mrs. Oakley, Second by Mr. Jurczyk. All in Favor. Motion passes.**

**Review of Finding and Conditions and Execution of Decision**

**SP 482-: Fairland Farm Solar- NextSun Energy LLC.**

The Director and the Planning Board review the Draft Decision, attached hereto.

**Motion to approve draft decision, with revisions made by Mr. Jurczyk, Second by Mrs. Oakley. All in favor. Motion Passes.**

**Special Town Meeting- Solar Amendment Discussion**

Director and Board discuss the proposed changes. Board would like to see "E" kept in the Amendment. Mr. Cogliano & Attorney speak about amending the petition to Keep "E".

Item 3: "Maintain current text and put the following where appropriate".

Report Attached.

**Motion was made by Mr. Sigal to adjourn. Second by Mr. Durant. Meeting adjourns at 9:45pm. Motion VOTED Unanimously.**

Minutes prepared and submitted by Nicole Salvo, Department of Planning and Economic Development  
Administrative Assistant.

Minutes Approved on: 6/18/19

Signature Paul DiTusepp



**NORTON PLANNING BOARD**  
70 East Main Street  
Norton, Massachusetts 02766-2320  
Office: 508-285-0279 Fax: 508-285-0277

April 17, 2019

Re: Revised Recommendation to Planning Board Report to Special Town Meeting

Dear Board of Selectmen,

On April 9, 2019, the Planning Board held a public hearing on the petitioned Article to amend the Town of Norton Zoning Bylaws relative to "Large-Scale, Ground-Mounted Solar Photovoltaic Installations." The Petitioners presented their petitioned Article and explained their rationale for it. In summary, if approved, the petitioned Article would rescind the action taken at the January 14, 2019 Special Town Meeting. The net effect of such a rescission would be the elimination of "As-of-Right-Siting" from the definitions section of the Bylaw and restore the Special Permit requirement for Large-Scale, Ground-Mounted Solar Photovoltaic Installations within the Residential 80 and Residential 60 Zoning Districts. Additionally, the petitioned Article would remove language in the Town of Norton Zoning Bylaw which was also added at the January 14, 2019 Special Town Meeting allowing for Large-Scale, Ground-Mounted Solar Photovoltaic Installations in existing cranberry bogs.

After the presentation, the Planning Board discussed the proposed Article with the petitioners, and after closing the hearing, the Board voted 5 to 0 to recommend the passage of the petitioned Article at tonight's Special Town Meeting. However, it was noted that, as written, the Article would also eliminate the language adopted at the January 14, 2019 Special Town Meeting relative to accessory "Smaller-scale solar installations." Consequently, the Board again met with the petitioners at its meeting of April 16, 2019 and mutually agreed upon a minor language change which would maintain the existing language in the Town of Norton Zoning Bylaw relative to "Smaller-scale solar installations." Consequently, the Planning Board voted unanimously to modify its original recommendation of support to incorporate the language modification which would maintain the existing Bylaw language relative to "Smaller-scale solar installations."

Please contact me with any questions.

Sincerely,

Paul DiGiuseppe  
Director of Planning and Economic Development

CC: Board of Selectmen  
Town Manager, Michael Yunits



## FINDINGS & DECISION

### NOTICE OF DECISION

### FAIRLAND FARM SOLAR

### SPECIAL PERMIT 482 and SITE PLAN APPROVAL

#### FINDINGS OF FACTS:

##### *General Findings*

1. The Project site consists of two parcels, Assessor's Map 6, Lots 6 and 11, totaling 259.86 acres located in the Residential 80 zoning district. The Applicant, NextSun Energy, LLC, 97 Main Street, Edwards, CO (the "Applicant"), proposes to construct a large-scale, ground-mounted solar photovoltaic installation that will generate 2 MW Alternate Current (AC) (8.7 MW Direct Current (DC)) on. The interconnection point is proposed at the end of Fairlee Lane and will cross a portion of the property at 21 Fairlee Lane (owned by the Applicant) which contains an existing solar facility. The solar arrays would cover approximately 60 acres of the cranberry bog.
2. The purpose of this site development project is to operate a large-scale, ground-mounted solar facility on an existing cranberry bog.
3. The Applicant is seeking to qualify for the Massachusetts Department of Energy Resources Solar Massachusetts Renewable Target (SMART) program which provides financial incentives to farmers for the development of new solar facilities that is compatible with ongoing agricultural activities.
4. A Special Permit application was submitted by the Applicant to the Norton Planning Board on December 31, 2018 for any building, structure or use in the floodplain. (Article 13, Section 4.C.)
5. A Special Permit application was submitted by the Applicant for a Large-Scale, Ground-Mounted Solar Photovoltaic Installation on December 31, 2018 pursuant to Article 22, Section 2.E (Bylaw published August 1, 2018).
6. On December 18, 2018, the Planning Board recommended bylaw amendments to the January 14, 2018 Special Town Meeting which included recommending the changing the requirement of 22.2.E to not require a special permit for large-scale, ground mounted solar photovoltaic installations on properties zoned Residential 60 and Residential 80. At the January 14, 2019 Special Town Meeting, the provision requiring a special permit for large-scale, ground mounted solar photovoltaic installations on properties zoned Residential 60 and Residential 80 was removed by a 2/3 vote of Town Meeting. On April 2, 2019, the applicant withdrew the Special Permit for a Large-Scale, Ground-Mounted Solar Photovoltaic Installation. The Planning Board approved this request on April 2, 2019.
7. A Site Plan application was submitted by the petitioner to the Norton Planning Board on December 31, 2018 (Article 15.3.E and Article 22.2.D)
8. As required by Massachusetts General Law, Chapter 40A, Section 9 and 11, a public hearing notice was properly advertised, "parties of interest" were notified and a public hearing was held within 65 days of the date of the filing of the application.

##### *Specific Findings*

1. The Planning Board opened the public hearing on the proposed solar project on January 22, 2019, and it was continued with testimony to February 5, 2019, February 28, 2019, March 12, 2019, March 26, 2019, and closed on April 2, 2019. The applicant was provided the opportunity to explain the plans to the Planning Board and members of the public in attendance. In addition, members of the public were provided the opportunity to present their concerns to the Planning Board.

2. At the April 2, 2019 Planning Board meeting, the applicant refused the Planning Board's request for a continuance to April 9, 2019. As such, the Planning Board closed the public hearing on April 2, 2019.
3. The initial plans dated December 27, 2018, prepared by Beals and Thomas, Inc., shows the topographic plan, locus plan, site development plan, interconnection, and site details. Additionally, the applicant provided a project narrative which included existing and proposed conditions, explanations on compliance with site plan and special permit requirements; list of abutters; stormwater management information; information about the solar apparatus; and a floodplain certificate.
4. The initial public hearing was held on January 22, 2019 where the applicant presented the proposal. Numerous members of the public raised concerns including noise and visual impacts, impacts to property values, scale of the project, lack of outreach by the applicant, health concerns, damage to property during construction and changing character of the area. The Planning Board raised questions about:
  - Reflection of the panels due to their rotation
  - Vegetation/screening heights;
  - Impacts to mosquito breeding;
  - Number of cranberry bogs the Applicant has put solar panels on and how long have they operated;
  - Standards for harvesting the cranberries before, after and during construction;
  - Noise-panels, inverter, decibel sounds;
  - Abutters' home values;
  - Lighting;
  - Removal costs if failure occurs;
  - Hazardous materials in panels;
  - Flood zone;
  - Safety fencing;
  - Plans for snow/wind/falling trees; and
  - Timeline for the overall project.

The Board requested further information on the following:

- Agricultural productivity standards;
- Corrections on map of properties;
- Documentation about electromagnetic field;
- Noise specificity;
- Health issues associated with Electromagnetic Field;
- Screening options for abutters;
- Impacts associated with degradation of the panels; and
- Revised plans with larger setbacks.

5. At the February 5, 2019 public hearing, the applicant provided the following updates:
  - revised plans that showed relocating the inverter to the northwest portion of the property which would be approximately 1,700 feet from the nearest resident at 222 Bay Road. This was done to move the inverter as far from any residence as possible as to minimize noise impacts.
  - provided materials showing the estimated noise impacts would not be discernable at the nearby adjacent properties.
  - provided research about electromagnetic field (EMF) research from the Massachusetts Clean Energy Center showing case studies where EMF levels would be at background levels at the property line.
  - proposed moving the panel arrays 100 feet away from the Easton Town line to the north and added panels to the upland bog.
  - committed to conditions for Best Management Practices with harvesting the bogs as well as keeping an organic cranberry bog. The applicant also provided materials regarding the Agricultural Solar Tariff Generation Unit Under the Solar Massachusetts Renewable Target (SMART) Program.
  - provided information about the panels and warranty.



- provided a landscaping plan with the purpose of screening adjacent properties and included sight line graphics estimating the view of the bogs from adjacent properties.

Numerous members of the public again voiced their concerns about health and safety issues, visual and noise impacts, reduced property values, damage to property during construction, lack of outreach by the applicant, scale of the project and changing the character of the area.

The Planning Board raised the following questions:

- Information on hazardous materials relating to panels. The applicant stated their panels are Tier 1 solar modules which is a list maintained by Bloomberg New Energy Finance for quality and durability used in bank underwriting.
- Change in the number of panels. The applicant stated the number of panels was reduced from approximately 24,000 panels and was not certain about the revised number. The change caused a reduction from 8.9 MW to 8 MW. The Planning Board further inquired into the exact number of panels proposed.
- A Peer Review was requested to examine noise, EMF, and water impacts.
- Explanation as to panels not being shown on the bogs near Mulberry Brook. The applicant stated the sections are too low and would have too much of an impact. It is a free-flowing area with no man-made dikes.
- Clarification of screening at the north area.

6. At the February 28, 2019 Planning Board public hearing, the applicant provided the following updates:

- The panels were setback from Bay Road between 285 feet to 300 feet.
- Inverters were relocated approximately 1,700 feet from the closest residence.
- Reviewed the landscaping cross sections for properties located on Bay Road and Fairlee Lane.
- Showed the revised layout of the solar arrays.
- Applicant is willing to give a \$200,000 surety to 11 abutters to protect their property/home values in exchange for not appealing the decision.

The public continued to voice their concerns about the lack of outreach by the applicant, health and safety issues, visual and noise impacts, reduced property values, damage to property during construction, scale of the project and changing the character of the area. Counsel for the abutters raised the following concerns:

- Abutters were not notified of the bylaw amendment at the January 14, 2019 Special Town Meeting?
- with regard to the special permit requirements in Article 10, the advantages do not outweigh the detrimental impacts.
- Necessity of a peer review?
- Purchase price of the land should be re-negotiated to scale back the project size.
- Suggestion of requiring the \$200,000 a year PILOT into an escrow account for the abutters to be released to Town in a few years if values do not diminish.

The Planning Board raised the following questions:

- Location of the vegetative screening on the subject property or abutters? The applicant responded that some of the screening will be on the subject property, one on an abutters property and the majority will be on the access road which is owned by Polillio Sand and Gravel Company which has an easement with the currently landowner of the subject site, Fairland Farms, LLC.
- Asks the applicant to identify the 100-year flood plain.

- Asks if the screenings are being planned with the abutters to determine where it will go on their properties. The applicant did not answer affirmatively.
- Is the applicant maintaining the screening? The applicant responded that they will be responsible for maintaining the screening.
- Are the homes to scale on the section drawings such that it shows the screening from sight lines on the first floor. The applicant responded the drawings are drawn from the first floor.
- Questions if a few other addresses are screened enough or should be considered to be screened.
- What are the number of panels? The applicant responds they reduced the number of panels from 24,050 to 23,625 which will produce 8.7 MW.

7. At the March 12, 2019 Planning Board public hearing, the applicant provided no project updates and notifies the Planning Board they are here to answer any community or Board questions. The Applicant is hopeful the Board plans to close the public hearing soon and reviews what they believe the Board should be focusing on as far as permitting requirements.

The public continued to voice their concerns about the lack of outreach by the applicant, health and safety issues, visual and noise impacts, reduced property values, damage to property during construction, scale of the project and changing the character of the area. Counsel for the abutters raised the following questions:

- Has the amendment been posted properly?
- Questions if the board can formally vote prior to the Attorney General Approving the bylaw.

The Planning Board raised the following questions and comments:

- Is this in a Water Resource Protection District?
- Is there sound data for megahertz as it seems to be a better reading for sound impacts to children?
- Have they considered using string inverters?
- Have they spoken with any more abutters since the last meeting?
  - Concerns as to why more abutters have not been contacted.
  - Provide a list of abutters who have been contacted.
- How wide is the easement for maintenance?
- Would like a better and more accurate depiction of the screening and what plants are being used.
- Concerns with the height of screening and the height of sightlines used
- Baseline testing for sound, water and electromagnetic field (EMF) have been requested and would like to see some more information and consideration be given.
- Want to see a comparable project in size, location and other similar factors so the Board can compare the projects.

8. At the March 26, 2019 Planning Board public hearing, the Applicant gives the board a Letter of Intent for a Purchase and Landscaping Agreement between NextSun and Pollilio Sand and Gravel Corp, regarding purchasing land (Map #6 Lot #64) to be used for screening. This land is the parcel with an approved easement for the access road adjacent to Bay Road. The Applicant also reviewed submittals for noise and updates that more abutters have been reached out to for group or private meetings.

The public continued to voice their concerns about the lack of outreach by the applicant, health and safety issues, visual and noise impacts, reduced property values, damage to property during construction, scale of the project and changing the character of the area. Counsel for the abutters raised the following questions and comments:

- Conservation Commission has moved this item to April 8, 2019
- Confirms more abutters have been reached out to, and this Sunday is a group meeting.
- Speaks about NextSun attorney's letter including the need for a special permit.



- Does NextSun plan to use the 222 Bay Road easement to maintain the panels?
- Would like questions, which the Planning Board asked of the Applicant, to be fully answered, as they feel they have not been yet.

The Planning Board raised the following questions and comments:

- Can the Applicant point out the full extent of the Pollilio land that is referenced in the purchase agreement?
- Describe megahertz information to help with noise concerns.
- Can inverters be soundproofed?
- What was the purpose for continuing the item with the Conservation Commission?
- When does the Applicant estimate the plantings used for screening will reach mature height?
- Provide megahertz information directly from the manufacturer of the equipment.
- How many abutters in total, were notified of the project with mailings?
- Since the submittal, how many abutters has the Applicant officially contacted?

Town Counsel, in response to the abutters' attorney's question regarding the effective date of the by-law amendment, states it is her opinion that the effective date is the date voted on at Town Meeting. The effective date of a bylaw change is at publication "except for zoning amendments." If other permits are required, Building Commissioner decides and informs the applicant. The Applicant can withdraw the Special Permit as it is currently considered mute, as it seems right now. Conditions based on approval have to be made based solely on findings and testimony given during public hearings, nothing can be submitted once the hearing is closed. Findings for each will go specifically to either the Site Plan or Special Permit. The Planning Board asks would the petition article affect this project, if it is voted on before any change to the by-law is made? Town Counsel states it would not. The Building Commissioner would have to decide if building permits can be approved.

9. At the April 2, 2019 Planning Board public hearing, the Applicant provided an update to the screening plan as well as stated the meeting with abutters scheduled for Sunday did not happen as the abutter was concerned about the abutters recording the meeting.

The public continued to voice their concerns about the lack of outreach by the applicant, health and safety issues, visual and noise impacts, reduced property values, damage to property during construction, scale of the project and changing the character of the area. Counsel for the abutters raised the following questions and comments:

- Gives the abutters take on why the meeting did not occur the Sunday before.
- Questions Mr. Fernandes about his proposal about discernable sound to another project and why that was not asked of here?
- Asked for a condition aligning with SMART program and ASTGU
- Asks if NextSun is planning to use easement to install and maintain panels
- Does not feel easement should be for such uses other than harvesting the cranberries

The Planning Board raised the following questions and comments:

- Member's note that they take information from other projects and consider them in each project, whether the questions are asked or not.
- Would the applicant do a baseline study?
- Are the abutters on Well Water?
- What happens with the status of the Special Permit?

After the Planning Board made a motion to continue the item to April 9, 2019, the applicant requested the Planning Board close the public hearing and withdrawal without prejudice the Special Permit for a large-scale, ground-mounted solar photovoltaic installation under Article XXII. The Planning Board then made the following motions:

Motion to withdraw Special Permit for Article XXII without prejudice made by Mr. Griffin, Second by Mr. Jurczyk. All in favor. Motion Passes.

Motion to close the public hearing for the Special Permit and Site Plan made by Mr. Hornsby and seconded by Mr. Griffin. All in favor. Motion Passes.

Motion to Disapprove the Site Plan as presented made by Mr. Griffin, Second by Mrs. Oakley. (Vote 7-0). Motion Passes. The Site Plan was not granted.

Motion to Deny Special Permit for Floodplain District made by Mr. Jurczyk, Seconded by Mr. Durant (Vote 4-3)

	YES	NO	ABSTAIN	NOT PRESENT
Joe Fernandes, Chairman		X		
Stephen J. Jurczyk, Vice Chairman	X			
Steven Hornsby, Clerk		X		
Frank N. Durant	X			
Julie Oakley	X			
Oren Sigal	X			
Timothy Griffin		X		

Motion Fails

Motion to Approve Special Permit for Floodplain District made by Mr. Griffin, Seconded by Mr. Hornsby (Vote 3-4)

	YES	NO	ABSTAIN	NOT PRESENT
Joe Fernandes, Chairman	X			
Stephen J. Jurczyk, Vice Chairman		X		
Steven Hornsby, Clerk	X			
Frank N. Durant		X		
Julie Oakley		X		
Oren Sigal		X		
Timothy Griffin	X			

Motion Fails. The Special Permit was not granted.

#### BASIS FOR PLANNING BOARD DECISION

##### SITE PLAN CRITERIA

Section 15.6 of the Norton Zoning Bylaw states "in evaluating and rendering a decision on a proposed development plan which required Site Plan approval and/or a Special Permit the Planning Board shall consider the degree to which the proposed development achieves the following objectives and may require conditions or modifications to the proposed Site Plan to ensure the objectives are fulfilled:

1. The Planning Board reviewed the adequacy of impacts to the natural environment.
2. The Planning Board reviewed the adequacy of traffic and pedestrian circulation as well as parking.
3. The Planning Board reviewed the adequacy of design to enhance the natural and aesthetic qualities of the Town, conserve the value of land and buildings, and protect and preserve the historic and cultural heritage of the Town.
4. The Planning Board reviewed the adequacy of landscaping and existing vegetation."



### SPECIAL PERMIT CRITERIA

Article 13, Section 4.C states "no permit shall be issued to fill or excavate in the floodway or to build a new structure or to substantially improve an existing structure in the floodway." Further, "in Zones A and AE, the proposed use shall not increase the water surface elevation of the 100-year flood more than zero inch at any point."

### RECORD OF VOTE:

At a regularly scheduled meeting of the Norton Planning Board held on April 16, 2019 the Norton Planning Board voted on the Special Permit and Site Plan applications for Fairland Farm Solar as follows:

### SPECIAL PERMIT

The following members of the Norton Planning Board, upon motion duly made and seconded, **voted (0-0-0) to DENY**, a Special Permit for construction of a large-scale, ground mounted solar facility, subject to **Section 13.4.C** because:

- (a) The Project **would not** be socially and economically desirable;
- (b) The project **would not** satisfy an existing need;
- (c) The advantages of the Project **do not** 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;
- (d) The Applicant **has** reasonable alternatives available to accomplish the purpose of the project; and
- (e) The specific conditions imposed hereunder **would not** minimize the detrimental effects and protect the neighborhood.
- (f) The proposed buildings, structure or uses will result in fill or excavation in the floodway or to build a new structure or to substantially improve an existing structure in the floodway."
- (g) In Zones A and AE, the proposed use does increase the water surface elevation of the 100-year flood more than zero inch at any point.

	YES	NO	ABSTAIN	NOT PRESENT
Joe Fernandes, Chairman				
Stephen J. Jurczyk, Vice Chairman				
Steven Hornsby, Clerk				
Frank N. Durant				
Julie Oakley				
Oren Sigal				
Timothy Griffin				

### SITE PLAN

The following members of the Norton Planning Board, upon motion duly made and seconded, voted (0-0-0) to **DENY** as required under Article XV – Site Plan Approval, Section 15.3.2 Applicability – Non-residential use 2,500 s.f. or more of floor space or ten or more parking spaces, the Site Plan titled "Fairland Farm Solar 210 Bay Road-Norton, Massachusetts-Bristol County" dated December 27, 2018 and Revised Through March 28, 2019 and prepared by Beals and Thomas, Inc. The Planning Board determined that without a peer review and plan revisions as requested, the proposed development is not in harmony with the existing neighborhood character and does not protect against adverse impacts to adjoining landowners.

**Commented [AEK1]:** It was my understanding that the PLBD voted to issue a denial decision for Site Plan?  
If so – I recommend adding:  
The Planning Board determined that without a peer review and plan revisions as requested, the proposed development is not in harmony with the existing neighborhood character and does not protect against adverse impacts to adjoining landowners.

	YES	NO	ABSTAIN	NOT PRESENT
Joe Fernandes, Chairman				
Stephen J. Jurczyk, Vice Chairman				
Steven Hornsby, Clerk				
Frank N. Durant				
Julie Oakley				
Oren Sigal				
Timothy Griffin				

Any appeal of a Special Permit granted by the Planning Board shall be made pursuant to Chapter 40A, Section 17 and shall be filed within twenty (20) days after the date of filing of such decision in the office of the town clerk.

\_\_\_\_\_  
Steven Hornsby, Clerk  
Norton Planning Board

\_\_\_\_\_  
Date

This is to certify that twenty (20) days have elapsed since filing the above decision with this office and no appeal has been filed or an appeal has been filed and denied in this case:

\_\_\_\_\_  
Town Clerk (Seal)

\_\_\_\_\_  
Date