

Pittsford Planning Commission Meeting

October 28, 2021

Board Members Present: Mark Winslow, Rick Conway, Mark Pape, Mike Norris, Robb Spensely, Chuck Charbonneau, Donna Wilson

Others Present: Jeff Biasuzzi

Present on Zoom: George Yan – NextEra Energy, Adam Crary, Tracy Davis, L. Ancuta, Betsy Morgan, Baird Morgan, Michael Willard, Nancy Malinquist, Alicia Malay

1. Call to order

The meeting was called to order at 7:03PM by Mark Winslow – Chair.

2. Approval of Meeting Agenda

A motion was made by Robb Spensely and seconded by Mark Pape to approve the agenda. **The motion passed unanimously.**

3. Approval of Minutes

. September 30, 2021 – Planning Commission Meeting

A motion was made by Rick Conway and seconded by Mark Pape to approve the minutes of the September 30th meeting. **The motion passed unanimously.**

4. Public Comments

There were no public comments.

5. Adams Road Solar – George Yan, Adam Crary and Michael Willard – NextEra Energy, Nancy Malinquist – Downs, Rachlin and Martin

George Yan introduced the NextEra Team that included the legal counsel and environmental engineers. Mark Winslow stated this project has been discussed at length and there was some concern after discussing the project due to notification after the meeting that the property had been listed for sale on October 1st. The Planning Commission is confused and suggested revisiting this item. George Yan stated it was also a surprise to them as they executed a 20-year lease agreement with the current landowner. This agreement was recorded, and they paid option fees according to the contract. Suddenly the property owner decided not to honor the contract and placed the property for

sale, but this is not supposed to be happening according to the lease agreement. The new buyer will be able to inherit the lease agreement, which would be the best case. It was a surprise that the owner listed it without contacting NextEra, but they are hopeful that a new owner will be happy with the contract, or NextEra may purchase the land. Nancy Malinquist stated there are lease options that continue to run with the land that gives the company the right to build and run the solar project and if the property is sold, it is still subject to these agreements and options to operate the solar project and subject to payment regardless of who owns the property. The question is does the company have the right to follow the terms and the answer is yes, and the landowner can negotiate and sell the property to this company or to someone else, but it would be subject to the terms of the contract. Jeff Biasuzzi stated local zoning does apply to a parceling of land. Pittsford does not have formal subdivision, but they do have site plan review and the right of way would have to be approved by the Planning Commission for 50-foot for multiple owner use or 20-foot for single use. While zoning is exempt under Act 248, the parceling would be subject to zoning.

Mike Norris stated there is general concern with the original presentation, the site control was a lease option agreement and then once built, the lease would be executed with assignment language conditions in the event that the property is sold. The rights would be met and recorded with the deed. When that happens, the solar company would have control over x-number of acres and would be a stop gap measure to firm up there would be no further future expansion. There is a possibility the system owner might be purchasing the entire 117 acres that is far greater than the original project site, and the concern is there would not be site control for 17 acres but far greater acreage. This would provide the opportunity to expand the project, possibly in phases and that is a concern as initially it was presented that the company was only interested in 17 acres. Chuck Charbonneau also noted the Planning Commission asked to be informed of any changes that might take place and they had not heard much until tonight. If there are changes in the future, Mr. Charbonneau asked for the Planning Commission to be notified ahead of time. Rick Conway asked if they intended to purchase the entire parcel of land. Mr. Yan advised there is a lease agreement in place that is the priority and, in the end, if NextEra cannot reach an agreement to continue the lease, they will discuss the purchase of the 117 acres. The lease agreement was for the entire 117 acres and the solar array was to be 16 to 17 acres. They have the option to utilize the entire land that was stated in the lease agreement, and they will only pay for the land that will be used, which is 16 to 17 acres, but they have the option to use the entire amount. Mike Norris stated he missed the detail about the entire 117 acres during the initial presentation and asked if the option was with the understanding of where the 17-acre project will be due to what is underground and most ideal. At the point when the lease option is a lease will it be for the 17 acres or will the lease be for the full 117 acres. Mr. Yan stated the final acres that will be used will be determined and they will pay for that, but in the future if the project needs to be expanded, they have the option to pay more and expand the project. Mr. Norris stated this provides clarity on what the solar project could be. Nancy Malinquist stated the project must be sited and approved by the PUC and is specifically under the Standard Offer Project which is a maximum 2.2 megawatt. This project is 2.2 megawatt and is specifically sited and will be submitted to the PUC, Agency of Natural Resources, Agriculture Agency, and the Town. The project is subject to

the 2.2 megawatt for the utilities in Vermont to purchase and use and the project cannot be bigger. Ms. Malinquist noted the PUC has limitations and they would view another project as looking at getting around the 2.2-megawatt project. This project will be at this site and any other project would have to get approved by the PUC. Rick Conway confirmed they have a recorded lease option and he asked how many acres are indicated in the lease option. Mr. Yan reiterated the lease option indicates 117 acres. Mark Pape stated if NextEra purchases the property, it is hoped the trail would stay open as a sign of good will towards the Town. Mr. Yan stated if they purchase it, they will keep the recreation trail open. Robb Spensely asked what the acreage was for the parcel that is for sale and Mr. Yan advised the owner has placed the entire 117 acres for sale. Mr. Spensely asked where the seller stands with the lease option. Mr. Yan stated the landowner listed the property but did not inform NextEra that she was planning to list the property and a potential buyer would not be aware of the lease agreement. Mr. Yan stated they will inform the buyer, or it will come up in the title search. Donna Wilson stated they will have to disclose that fact and asked what they will do with the house if NextEra purchases the land. Mr. Yan was not sure what would be done with the house, but the initial target is to build the solar project. Mr. Spensely asked if this project is to be expanded beyond 17 acres and a new project proposed, would they need to reapproach the Town. Mr. Yan stated there is no intention to expand it as it is usually difficult to get more capacity in the grid and assumes there is no room for another sizable project. Mr. Spensely asked if a letter is issued, does NextEra have to reapproach the Planning Commission to expand. Mr. Yan stated to clarify, if they decide to expand, it would only be for power efficiency improvement to supply the same capacity and is the only time that they foresee but it would not be to double the size and there is only one interconnection. Mr. Yan noted there are three types of solar panels and depending on the technology they use the same size panels but it is not known when they may have to expand the efficiency. Jeff Biasuzzi advised he was contacted by an interested party that had viewed the property doing due diligence of a possible offer and they were not aware of the solar lease, and it is the responsibility of the property owner. It was asked if another party buys the land with the house, would they be able to apply for another 2.2-megawatt project. Mike Norris stated the potential expansion if they want to do another project or any other solar Phase 2 or 3, they will have to go back to the PUC and the Planning Commission. In terms of improvement of technology, the panels could be larger and there would be more racking required. If another person bought the acreage, they could put another 2.2-megawatt system there if approved by the PUC.

Mr. Winslow noted he is uncomfortable with the situation as it is not what was reviewed during the last meeting. There was discussion of the lease option agreement and asked if they have an executed lease option agreement with the current landowner and Mr. Yan advised that it is executed and in affect. Mr. Norris asked how the landowner can sell the property when having a lease option agreement, as this is binding, unless NextEra allows the landowner to walk away. Mr. Yan stated usually the lease agreement with a company is binding and the landowner cannot get out of the deal. NextEra has the right to terminate if the CPG does not approve it, but the landowner cannot cancel the deal. The only reason they see the landowner changing her mind is that she is seeing a \$500,000 revenue for selling, but she is not considering what she has executed and what NextEra has invested, which is \$200,000. Mr. Winslow asked the Board's pleasure concerning the letter of

agreement. Mr. Spensely stated if there is a problem with the lease option contract it may allow the landowner out of the lease, but he has not reviewed the contract, and a buyer would discover this in a title search. Chuck Charbonneau advised he needs more time to research and figure out why things changed suddenly. Mr. Winslow stated the Planning Commission needs to decide to support the project or not. Rick Conway suggested retaining counsel on this subject before making a decision.

A motion was made by Mike Norris and seconded by Donna Wilson to not act on the letter of agreement until further review. **The motion passed unanimously.**

6. Update on Route 7 – Route 3 Act 250 Meeting of 10/27/21

Mark Winslow requested a summary of the Act 250 meeting. Mike Norris stated the site survey portion of the meeting started around 9AM. There were 25 people in attendance in addition to the State. VTrans brought the Assistant Attorney General for the DOT. Members of the Town and VTrans spent 1.5 hours looking at the physical site. The Act 250 Review Board members were late arriving from Bennington. The counsel for DOT ran the meeting and had her consultants give testimony on the Act 250 permit. She had them review the criteria, not necessarily inviting comment. The Act 250 Review Board directors interjected during the discussion and recognized the public's and Planning Commission's concern. The Review Board members became more attentive to the Town's concerns regarding the project and during Mr. Conway's discussion with VTrans. VTrans has a lot of expert testimony but when pressed for the hard data that would verify the intersection would be made safer, they were not able to confirm they had hard data and on more than one occasion, their response was a lot of accidents at the intersection are possibly not recorded. They were not objective statements, the attorney was overreaching, and the Act 250 members took steps to allow others to participate. Mr. Norris noted this is a unique intersection based on elevation and with their design they claim it will be more normal, but when asked where there is an intersection that exist like this one where there will be three lanes, it was noted this will be the first of its kind. The Act 250 members stated there is going to be a period where they will collect and accept evidence for consideration, and they may be reaching out to Mr. Conway and Mr. Norris for additional information. Mr. Winslow stated Mark Pape and Mike Norris went above and beyond and did a great job of representing the Planning Commission. Mr. Pape noted people can still submit letters to Kim Lutchko and it would be important for all to send letters regarding the project. It is important to keep pushing as VTrans has the final authority, but it would be good to write or email Kim Lutchko. Rick Conway stated he has a petition of 357 signatures. Donna Wilson stated the traffic study was a private company that talked about areas in Illinois and she asked how this intersection can be generalized. Scenarios were provided about trucks that will need to turn up Route 3. Mr. Conway, in speaking as a private citizen, thanked everyone who participated in this meeting and for the support they have received on this subject. The tone of the Commissioners and the way he was treated was top notch. Ms. Wilson stated the information showed where the DOT has had a lot of inconsistencies. Mr. Conway stated the inconsistency of going from one plan to another and the lack of public outreach showed they did not do their job. In 2015 the Town thought it was getting a

bridge and a new road and he trusts the Commission to act in their best interest on behalf of the community.

7. Solar Check List

This item was tabled to the next meeting.

8. Other New Business

Mark Winslow reported he will be putting together the Planning Commission report for the Town's Annual Report. He had information on a virtual/in-person meeting with Efficiency Vermont for any members who wish to attend. Mr. Winslow completed the Planning Commission's budget for the Town and noted there were no big differences. He also has applications for the Furnace Brook Solar project and one for the Pico View project. There was notification received from Sudbury on changes to their UDO, which is a required notification.

9. Old Business

Rick Conway reported Donna Wilson and he are still working on the historical marker. They will have one more meeting and will bring this item back to the Planning Commission for review at the next meeting.

Donna Wilson stated at the last meeting, Chuck Charbonneau had mentioned the tax implications for property owners with solar projects. At the Regional Planning Commission, there was discussion on this subject, and she was advised the first 50kW of a solar project is not taxable and there is a formula for getting other deductions. The projects only pay the municipal tax, but not the education tax so the Town is not receiving a lot of tax dollars for these projects. Mike Norris also noted it is fixed for 25 years and the landowner who leases the land can be subject to a change of use for the land and if it is taken out of current use or Ag-designated land, their property bill would increase with the reclassification. Mr. Winslow stated the value of the land could change, but not the value of the solar site as the solar and the land would be taxed as separate line items and it can change the nature or use of the land, usually to a higher amount.

10. Schedule Date/Agenda for Next Meeting

November 18, 2021 @ 7:00PM – Planning Commission Special Meeting (In Person and Zoom)

10. Adjournment

A motion was made by Robb Spensely and seconded by Rick Conway to adjourn the meeting at 8:11PM. **The motion passed unanimously.**

Respectfully submitted,

Charlene Bryant
Recording Secretary

Approved by,

The Pittsford Planning Commission