

Town House

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**TOWN OF HAMPDEN
MASSACHUSETTS****Planning Board**

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Phillip Schneider, Chair
Judge Robert Howarth
John Matthews
Edward Loiko
Richard R. Green

Approved 6/13/18

**HAMPDEN PLANNING BOARD
PUBLIC HEARING MINUTES – CASE 2018-D – 220 Mill Road
Wednesday, May 30, 2018 - CONTINUANCE
Town House**

This Special Public Hearing was scheduled to continue the Public Hearing originally held on April 25, 2017 on the application of Park Avenue Solar Solutions of 102 Greenwich Avenue, Greenwich, CT, for a Special Permit under Section 7.16 of the Hampden Zoning Bylaws for a ground-mounted solar photovoltaic (PV) facility (+/- 1,500 kW-DC) at 220 Mill Road. Mr. Schneider reopened the Public Hearing at 6:05 PM and announced the hearing was being recorded. The presentation will be timed so the public can have equal time.

Members Present: Phillip Schneider, Robert Howarth, John Matthews, Edward Loiko and Richard Green.

Introduction of Board Members: Phillip Schneider introduced the Planning Board Members.

Statement of Authority: Phillip Schneider read the Statement of Authority.

Legal Notice: Phillip Schneider read the Legal Notice.

Reports from Other Agencies: Previously stated on April 25, 2018

Applicant's Presentation/Board Questions: Kirt Mayland of Park Avenue Solar Solutions presented the original plans with poles and new proposed plan pad mounted plan. He is a land attorney licensed in Connecticut and New York. Mr. Mayland provided a revised site plan due to discontent with the placement and need of the poles (three owned by Park Avenue, and three owned by the utility). The system is dictated by the utility. They have had discussions with the neighbor to the west (Eversource). Their revenues are higher than Park Avenue by 40-50%. They are also a utility so they have different pro-rates in terms of their investment structure and they are bigger. Mr. Mayland indicated they went through a review to make a similar change to their plan that Eversource made to theirs. This has never been done as far as he knows in Massachusetts. He asked National Grid how much it would cost to go pad mounted and they indicated about \$220,400 for underground (E-Mail dated 5/3/18). On the Park Avenue Solar side, the cost increase would be about \$80,000 plus extra design cost and equipment totaling \$95,000. Park Avenue is looking at over \$300,000 in costs. The National Grid side is not subject to the investment tax credit, so that is cash out of pocket. The tax credit is the big driver on these projects. He stated they can do it underground, but they could not do it at the original size it would make the project completely unprofitable. It would drive then below the threshold for single digit required meter return. They looked at various options and many conversations with DEP to get close to the riverfront area, however, they said unless you can prove this can't go in any other place in town, they would recommend to the Conservation Commission it not be allowed. DEP has a new policy and you cannot go within 200 ft. of the riverfront. They can't go south due to a deeded easement which cannot be violated. Looked at going west, however, you have an existing solar plant there. That puts them in the west side setback which is 100 ft. In the revised design, they go up to 15 ft. setback to get to where they need to be. Still not where they need to be in the financial model. The only other option is the front yard setback. They need to leave room for the vegetative buffer which they did. The front yard setback went from 75 ft. to 25 ft. They left the proposed shrubs along Mill Road. So, the size would be 2.43 kW-DC as opposed to the original design which was 1.5 kW-DC. The numbers are still a

little low on the return side, but this is certainly better and feasible if that is the alternative with respects received from the public. There was a disagreement with regards to the parcel. This is actually a 28-acre parcel. So, the 1.5- to 3-megawatt DC that's allowed on parcel over 25, they are fine with that. They met all the open space and all other requirements. The only difference we ask to go less on the west and front side setbacks. That would allow the elimination of the poles and go pad mounted. Those are the two options presented to the Board.

John Matthews asked if you were to go underground, it adds approximately \$310,000 to the cost of the project. Kirt Mayland agreed. John stated if you went overhead, they could comply with the bylaws, but there would be poles. Mr. Mayland said for a 1.5 kW-DC it would be \$138,00 for interconnection costs and the increase they would add on is \$300,000---so over \$400,000 in costs which is a lot for a 2.4 kW-DC.

Richard Green reiterated that the trade-off for underground is the setbacks on the west and front. Mr. Mayland stated 25 feet to the chain-link fence. Kirt stated they went through many variations and this made the most sense.

Mr. Witkop prefers the larger plan. Mr. Mayland stated it is in a limited industrial zone. Other uses are permissible by Special Permit. Manufacturing and other things could be proposed on that property.

John Matthews brought up the white, country-style fence. He stated the Board would not require that if that's the vote. A letter would be sent to Eversource because of the increase in size on this solar field, they would not be required on their solar field.

Audience Questions/Concerns: Donna Hatch of 130 Mill Road, asked about the parcel open space zoned residential and if someone could explain how the two go together. Mr. Mayland suggests there is nothing in the bylaw that would indicate that the open space requirement has to be the same zoning. Also, this property is one ownership.

Susan Alston of 236 Mill Road expressed her concern regarding the 25 ft. buffer zone indicating that it is very narrow. The arborvitae will be affected due to plowing. She doesn't feel 25 feet it enough. Also, she stated it would look odd with Eversource being 75 ft. setback and Park Avenue at 25 ft. She stated why should Park Avenue's profit be the Town's concern for the preservation of Open Space. etc. Phil read from the law stating the Board cannot unreasonable regulate solar. Mr. Mayland has not personally seen one go underground. They are happy to do it, and he questions the economics on how it could be so much more but there are manhole, underground conduits, and other things that justify the cost of it. Mr. Green stated they can make all the setbacks if they went with the poles.

As far as the vegetation, Mr. Mayland stated that if the salt kills the vegetation, they are responsible for their replacement to rectify the problem. They are responsible for maintaining the vegetation. On Somers Road, the vegetation is 35 feet from the road and the plantings are doing well. The Special Permit requires their maintaining the screen barrier. If not, the Zoning Enforcement Officer will notify them, and they have to fix it.

Mark Albano, an Attorney from Springfield representing Susan Alston and Thomas Millette, referenced Chapter 40A, which provides that the Town shall not prohibit or unreasonably regulate solar facilities, but he asked doesn't that provision allow a Town to reasonably regulate solar facilities? Phillip Schneider stated that is what the Board's vote will be as to whether this is reasonably or not. Attorney Albano stated a Town can reasonably regulate. Judge Howarth asked if the Board said no to this project, does he think it would hold up in Court. Attorney Albano stated it would hold up in housing court. He asked if the petitioner is allowed to build the proposed facility as depicted on the new plan (dated 5/30/18) to accommodate the underground installation, the Board would be in essence granting it a variance---would it not? John Matthews stated no-- by virtue of the Special Permit as they are the Special Permit Granting Authority. Atty. Albano stated he thinks it's the petition's position that by negating the side yard and the set back requirements, you are actually granting a variance from the zoning laws; and this is not an appropriate forum for that because no notice has been given to the abutters that this is a variance proceeding. Atty. Albano asked would the Board agree that the bylaw, as it is presently

configured, allows for solar energy systems only as accessory uses? The Board disagreed with this statement. He asked isn't it true that the bylaw, hence Section 7.16 provides that "Solar Energy Systems are permitted as an accessory use to the principal use." His question would be what is the principal use on this project that the solar field is accessory to? John Matthews stated it is for the residence of Mr. Witkup—accessory to his residence. Mr. Albano stated if there are poles, would that not violate Section 1.6 of the ordinance. Phillip Schneider stated the Board does not regulate the height of utility poles. We regulate the height of the solar poles. Atty. Albano asked isn't the solar energy system defined in the bylaws in Section 2.118 as "Any solar collector or other solar energy device, including appurtenances, mounted on a building or on the ground, the primary purpose of which is to provide for the collection, storage, conversion and distribution of solar energy for space heating or cooling, water heating or generation of electricity. Wouldn't the pole be an appurtenance to the solar collector or solar energy device. John Matthews and the Board stated no. Susan Alston's neighbor, who has a solar system and they have a step pole over 12 feet. The power that comes into that home also goes out from the solar system. It is not an appurtenance. Atty. Albano stated the petitioner sought and obtained a variance. John Matthews stated that was for the height—he didn't get a variance for the pole. The Board doesn't view the poles as part of the solar system. Richard Green stated that the only poles at this stage of the game if you went with the pad system are the ones for the interconnection, and that is regulated by the utilities as part of the national electric code. It has nothing to do with the collection of the sunlight, it only has to do with how it gets to "the grid;" And that's a telephone pole. If you want to go with that line of argument, we can regulate the height of all the telephone poles down Main Street; and we don't. We regulate the poles that bring it to the grid. This was covered at the last hearing. Ed Loiko asked what Atty. Albano's goal. He stated it is to create a record. If this petition is granted, there will be litigation and the issue will be whether the Board committed an error of law or abused its discretion and whether there is a reasonably, factual basis for its findings. Ed Loiko stated Mr. Witkop wants the larger facility, the land is zoned limited industrial and there is going to be solar there.

Donna Hatch brought up the East Longmeadow Bylaws limiting solar arrays to two zones. Phil mentioned his conversation with Town Council and has for her recommendation. She said if the installer brought the town to court and this was not reasonably regulated, then it would be challenged and the owner of the property would prevail. Donna Hatch compared our Table of Use for Solar to East Longmeadow, and she is just wondering how they were able to get their bylaws changed and we are in the same state. Richard Green stated the Board is looking for guidance from Town Council regarding solar moratoriums, but we have to deal with the bylaw we have in place now. He also indicated the residents can present changes to the bylaws.

Peter Simmons also asked about a moratorium and hold off on the vote on this case. Phillip Schneider stated we work with what we have in place now. Kirt Mayland stated if we were going to be litigating this later, he should establish a few things. There are a couple problems with a moratorium now 1) that would be considered in bad faith because it would be so late to stop this project and, in the bylaws, this has to be decided in 60 days so a moratorium would have to be voted in 3 days. 2) The height requirement is for the panels. 3) The bylaws are very clear in that it allows a metered system and the surplus goes back out to the grid. That is how the entire net metering system in Massachusetts works. This is not a variance, it is a Special Permit. This was a negotiated compromise to please neighbors which can happen at the Special Permit phase. He also wanted to state this is a Limited Industrial and highly likely that a court would look at prohibiting this in such a way by saying you have to go underground and do it here so you can't afford it and you have to go underground and therefore we are prohibiting you. Industrial zoned property is favored in the state.

John Matthews stated the Board took into account what Susan Alston wanted and tried to do what she wanted. Mr. Millette said to the Board that the bylaws were not good, etc. The Board took it upon themselves to accomplish what she wanted. The applicant has worked very hard to try and accommodate the no poles that you wanted. Now your council states we don't have the forum to do this. John cannot believe as residents of this community we cannot get along and accommodate everybody. Mr. Witkup is trying to make a future for his family, and he has land he wants to gain some monetary consideration and we are picking it apart.

Susan Alston rebutted and said this is not personal. She has 40-50 people in town behind her that we are being inundated with solar.

Edward Loiko made a motion to close the discussion as equal time has been given to both sides. Richard Green seconded the motion. All in favor so approved (5-0).

Decision: Richard Green made a motion to approve the solar field at the premises known as 220 Mill Road using the drawing and data shown on the May 30, 2018 plans as submitted by the petitioner. John Matthews seconded the motion. All in favor so approved (5-0).

Richard Green made a motion to close the Public Hearing at 7:58 PM John Matthews seconded the motion. All in favor so approved (5-0).

cc: Assessor's Office
Building Dept
Conservation Commission
Highway Dept.
Moderator
Selectmen
Zoning Board of Appeals
Office Files

Submitted by: Joanne Fiore, Adm. Assistant