

The Planning Board for the Town of Derry held a public meeting on Wednesday, March 15, 2023, at 7:00 p.m. The meeting was broadcast from the Derry Municipal Center, 14 Manning Street, Third Floor meeting room.

Members present: John O'Connor, Chairman, Jim MacEachern, Vice Chairman; David Nelson, Secretary; Randy Chase, Town Administrative Representative; Dave Granese, Andy Myers, Mark Connors, Members; Chris Feinauer, Richard Malaby, Alternates

Absent: Joe Tremper, John Morrison, Brian Chirichiello

*Denotes virtual attendance.

Also present: George Sioras, Planning Director; Elizabeth Robidoux*, Planning and Economic Development Assistant; Mark L'Heureux, Engineering Coordinator; Mike Fowler, Director of Public Works

Mr. O'Connor opened the meeting at 7:00 p.m. The meeting began with a salute to the flag. Mr. O'Connor thanked Mr. MacEachern and Mr. Granese for their service to the Planning Board and wished them well as Town Councilors. He then introduced the staff and Board members.

Mr. Malaby was seated for Mr. Tremper.

Escrow

None.

Minutes

The Board reviewed the minutes of the March 01, 2023, meeting.

Motion by MacEachern, seconded by Granese to approve the minutes of the March 01, 2023, meeting as amended.

Chase, Granese, MacEachern, Connors, Malaby, Nelson, and O'Connor voted in favor, Myers abstained, and the motion passed.

Correspondence

Mr. Nelson reported the Board is in receipt of the latest edition of *Town and City*.

Other Business

Schedule a public hearing to discuss proposed amendments to the Town of Derry Zoning Ordinance, Article XIX, Independent Adult Community Overlay District.

Motion by MacEachern, seconded by Granese to schedule a public hearing to discuss amendments to the Town of Derry Zoning Ordinance, Article XIX, Independent Adult Community Overlay District for April 05, 2023.

Chase, Granese, MacEachern, Myers, Connors, Malaby, Nelson, and O'Connor voted in favor, and the motion passed.

Architectural Design Review, PID 30051, 16 Manning Street, Unit 103, Poppy's Apothecary, new sign in the Traditional Business Overlay District.

Mr. Sioras advised staff recommends approval of the proposed sign. In the Traditional Business Overlay District, it is required the Planning Board review sign proposals prior to the sign permit being issued.

Motion by MacEachern, seconded by Granese to accept the proposed sign for PID 30051, 16 Manning Street, Unit 103, for Poppy's Apothecary as presented. Discussion followed.

Mr. Connors asked what was sold in an "apothecary". It was noted a traditional apothecary used to be like a drug store. Mrs. Robidoux stated this particular store will sell things like crystals and is more of a New Age shop. Mr. Myers asked if the sign could vary in size and color, or does it have to fit what was there previously. Mr. Sioras stated the applicant picked the colors; the sign for this unit was limited spatially.

Chase, Granese, MacEachern, Myers, Connors, Malaby, Nelson, and O'Connor voted in favor, and the motion passed.

Town of Derry, PID 02020, 38-53 Transfer Lane, Pursuant to RSA 674:54, Governmental Use of Land, Review of proposed solar installations on public land

Mr. O'Connor advised during his time as a State Representative, he co-signed and co-sponsored many bills relating to solar energy and net metering. He has also sat on the Net Zero Task Force Committee. Even though this discussion is non-binding, he would step down from the discussion if the other Board members felt he should recuse himself. The Board members did not feel Mr. O'Connor needed to step down.

Mr. Sioras provided the following verbal staff report. The Planning office received several phone calls from abutters. Mr. Fowler will introduce the team involved in the project who will be joining the meeting virtually this evening.

Mike Fowler, Director of Public Works, advised the project is proposed for the old landfill located off Kendall Pond Road. This is a municipal facility with a capped landfill, a cell tower, the transfer station, the Wastewater plant, vehicle maintenance and other facilities. The project has been pondered for a good amount of time by the Net Zero Task Force and the former Energy Committee. Jeff Moulton, current Chair of the Net Zero Committee, is present to answer any questions. Tom Cardon, also of the Net Zero Task Committee, was also present. Mr. Fowler explained the Net Zero Committee has worked very hard on this project. Caity Hines* and Ralph Meima* of Encore Renewable Energy are attending virtually, as well as Eddie Galvin* of Sanborn Head, the subcontractor for the site plan. The Town treated this meeting as if it were for a site plan public hearing, and notified abutters to the project.

The Net Zero Task Force has been searching for sustainable energy for the town. The Town has no intended use for capped, former landfill. There are no intentions to utilize the land for recreation as there are too many concerns about the land settling. In 2018, the town installed a small scale solar field that produces 150,000 kilowatt hours (kWh) per year which saves the Town of Derry \$20,000 annually in electricity costs. They wanted a larger scale project. One thing that prohibited use of the landfill in the past was the net metering cap. The Legislature signed a bill in 2021 that increased the meter cap to 5 megawatts (MW) rather than the previous 1 MW. This made the project financially feasible for the Town. This project will be one of the larger municipal projects in the State. The Town went out to bid and reviewed many proposals and options. The Town Council looked at fixed rates and land leases and chose Encore Renewable Energy between 2021 and 2022. Since then, Encore has been working on the interconnection agreements. The goal is to supply DPW and 29 other buildings in town with energy at a fixed rate on the supply side of 6.8 cents per kWh. This is a third of what is currently paid to Eversource for the supply cost. This will be a substantial savings for the town and will provide sustainable energy.

Mr. Fowler stated tonight he will discuss where the project is to be situated on the former landfill. The goal tonight is to present the project to the Planning Board. The process is per RSA 674:54, Use of Governmental Land, which the town has used before for other municipal projects.

As one looks at the area from an aerial view, Route 93 North and South are situated to the west of the project. The parcel itself contains the Wastewater Treatment facility (WWTP), and the Transfer Station operations. Beaver Brook is located between the Transfer Station and the closed landfill area. There will be a need for some small wetland crossings. The intent is to install 6,900 fixed solar panels. The landfill lining cannot be punctured, so the panels will be placed on concrete ballasts. The panels will be interconnected/wired together, placed on pole lines, and fed to the WWTP and other buildings, and then connected off site to feed the grid. The town will pay 6.8 cents per kWh per the agreement.

There are some steep slopes as the land gets closer to I93, so it is not feasible to place the structures there. They will put the panels on the 12 acres of the old landfill in a fenced in area. The panels will run east to west and be south and southwest facing. Once discussion with the Planning Board is complete, they will move forward to obtain the necessary permits for the project. This is a 2.2 MW solar project. It will generate between 3.6 and 3.8 million kWh per

year. Not all of that will be used right away and the excess will go to the grid. Stormwater will sheet flow off the panels and infiltrate into the cap material or to the west into the existing stormwater treatment system. They will need to obtain a State Solid Waste Modification Permit, Alteration of Terrain permit, Wetland Crossing, and Shoreland Protection permits. The Town intends to file with NH DES shortly.

The history is as follows. The landfill was closed in 1986 and the system capped. The groundwater is monitored annually and the information forwarded to NH DES. The Town will be required to file a Type I-B or Type II Solid Waste Modification permit. With regard to drainage, rainwater will flow off the panels and head west. The existing stormwater infiltration system will be used. An infiltration basin will be added to the west. No adverse effects are anticipated, and the stormwater will follow the same flow as existing. The Alteration of Terrain permit will show the land slopes, runoff calculations, and the preliminary runoff increase which will be mitigated in an infiltration basin. Sanborn Head has reviewed the site for wildlife impacts and will address all of the State comments.

Wetland permits will be required. There will be limited tree cutting because of the proximity to Beaver Brook. The poles will not impact the wetland as they will be set outside of the wetland. Normandeau Associates will review the area to ensure there are no secondary impacts as a result of tree clearing, etc., to the wetland or any vernal pools (if there are any).

There is a gravel road located behind the Animal Control office which will be the access for this project for maintenance. Access will not be from Kendall Pond Road. There is a rubble pile on site from an old (2007) sewer expansion project on Rockingham Road. The rubble is old concrete roadbed. That will be removed to accommodate the laydown area.

The anticipated schedule is as follows. The NH DES pre-application meeting occurred on February 23, 2023. Following this meeting, the NH DES permit application will be prepared and submitted by June 01. A conservative estimate for the start of construction is second quarter of 2024, with operations beginning in quarter one of 2025. It is hoped the schedule can be expedited, but it is dependent upon receipt of the appropriate permits and the availability of equipment.

Robert Brown, 1 Michael Avenue, said he has been a resident in Derry for a long time and sat through many of the meetings related to the closure of the landfill. During those meetings, plans had been discussed with regard to how the residents would be buffered, with fencing and trees. What was discussed did not happen. The 20 foot fence is 7 feet tall, and there are very few trees. Per this plan, it appears the few trees that were planted will be removed. What is the town doing to benefit the abutters with this project?

Mr. Fowler explained the purpose of the meeting tonight is to explain the process. The Town wants to be sensitive to the neighborhood and he offered to meet individually with any neighbor who has a concern to discuss concerns and to discuss options. The fence for this project needs to be 6 feet tall. Would the abutters like to see a row of arborvitae? He needs to know what the community would like. Mr. Brown noted the plan currently does not show a plan for a buffer and believed the plan being discussed tonight was not well thought out. It looks like the focus

has been on how to maximize benefit for the Town, not the abutters. Mr. Fowler explained this is why he is offering to meet with the neighbors. The first part of the process is to look at the logistics and technical aspects of the project, which is where the process is currently.

Bill Lajoie*, 50L Kendall Pond Road, stated he was also representing Donna Frederick of 50R Kendall Pond Road. He would like to see the town save money, but the neighbors will be directly affected and they will be able to see the panels from their homes. They are able to see wildlife on the landfill now. The panels will be facing his property and he assumes there will be some glare effect and impacts to the view. The Town will make money on this, but he doubts the taxes will decrease. Property values will go down. What will the town do for the abutters? Mr. Fowler said he understood the concerns. He would offer again to meet with the abutters. It is possible to place stakes in the field in the location of the panels to get an idea of the visual impacts. This project is tax positive for the town and the savings realized for the operational costs will prevent increases that may cause layoffs of public employees. He will look utilizing trees for a buffer, and again, is happy to meet with the neighbors to discuss how they can be buffered from the project.

Jeff Moulton, Chairman, Net Zero Task Force, stated a glare analysis was completed and did not believe there would be any impacts. Caity Hines, Encore Renewable Energy, stated the manufacturer data sheet guarantees there will be no glare from the panels. In order to maximize the amount of energy produced from the panels, they would want to avoid glare as any reflected light would not be absorbed to be converted to electricity. The fencing proposed for the project is wildlife friendly and designed so the wildlife can get in and out of the area easily.

Mr. O'Connor asked, based on Encore's experience in New England, if they have found any impact on regional property values or the tax rate. Ms. Hines stated the tax for the parcel on which panels are located can go up, because structures are being added to the property. Sometimes there is a PILOT (payment in lieu of taxes) agreement. She has no information available this evening regarding the impact on surrounding property values.

Mr. Connors asked if the homes currently located across the street from the capped landfill were constructed prior to the landfill being located there, or after. Mr. Brown stated the homes on Michael Avenue and down Kendall Pond Road were constructed during the time of the active landfill. There had been multiple meetings regarding the landfill closure and the impact on the neighbors. He believes the Town has taken advantage of local regulations by putting in a shooting range on the property that operates for the police officers practicing for certification. This project proposes 6,900 panels. It is hard to believe they will not cause glare and that there has been no plan prepared for the neighbors. That is a key component that has not been completed and he believes this meeting to be out of order in the process.

Mr. Connors noted the land at the landfill goes up a steep hill in this area. There are no trees along the fence now. If trees are added, will they have any affect on the project? Will the trees be tall enough to act as a buffer for the neighbors, and if so, will they block the view? How tall would the trees have to be to adversely affect the solar project? Mr. Fowler stated engineering will have to look at two points. The first is can there be an adequate buffer created to screen the neighbors from the project, and second, it may be that some of the panels will need to move to a

different location to accommodate screening. Mr. Connors did not believe the trees proposed to be removed would affect the homes. The concern for him is for the homes directly across the street. The units themselves are not very tall. Ms. Hines stated in New England, panels need to be set at a certain distance/height to handle the snow load. The height between the panel base and the ground is about 3 feet to accommodate snow drifts, and the panels themselves are set between 8-12 feet. They are still in the early stages of design and were looking for feedback before proceeding further on the final rack design which would determine the final height.

Mr. Brown noted the landfill is at multiple elevations and goes from 20 feet high to ground level near Michael Avenue. The homes sit higher on the road than the landfill, so trees will not be taller than the existing fence. That needs to be considered when discussing a buffer. Mr. O'Connor noted the Planning Board has no purview over the actual plan, but can provide recommendations to DPW. Mr. Brown stated the Planning Board needed to consider the facts that were being presented to it and he felt relevant facts were missing from the plan.

Mr. Nelson asked if legally, the Board had jurisdiction over this matter. RSA 674:54, II, defines municipal developments, and goes on to state under Subparagraph II-a, that "any use, construction, or development of land occurring on governmentally owned or occupied land, but which is not a governmental use as defined in paragraph I, shall be fully subject to local land use regulations." In order to be a governmental use under paragraph I, there needs to be a clear public purpose. He asked Mr. Sioras if staff determined a solar electrical facility a traditional or statutory governmental use. Mr. Sioras said it is not a governmental use. The proposal is here before the Board as an informational meeting. The Board has 30 days to determine if more information is required and under subparagraph II-a can comment on the proposal, or require more information. Encore is leasing the property from the Town and complying with governmental regulations.

Mr. Nelson stated if this is not a traditional governmental use, then subparagraph II-a applies, and this project is subject to local regulations. Mr. Sioras said the Board has reviewed and commented on other Town projects such as school additions, cell towers, and the sign at the Opera House and Library. The law has changed over the years. The Planning Board should decide if it is satisfied with the 30 day comment period, or should there be a public hearing. Mr. Nelson felt it was important for the Board to make the determination; he also did not want to slow the project down. If this is statutorily not a governmental use, then the project needs to go through the normal review process. It does not mean the Board has to request a public hearing, but he did not want to open the Town to an appeal. Mr. O'Connor noted he and Mr. Nelson, with the Planning staff, would be meeting with legal counsel to discuss zoning amendments; perhaps this question could be raised during the discussion. Mr. Connors asked if the Town was not leasing the land to Encore, and the Town was purchasing the panels, would it require site plan review. Mr. Nelson felt the question was, "Is a utility a traditional governmental use?" Mr. Fowler commented Town Council did not look at the Planning Board process when it was making decisions about whether to move forward with the project. The Council looked at the economics. Mr. Nelson felt it was a good idea to get a legal opinion early in the process so that the Board is on the right track.

Mr. Sioras stated staff did discuss this. The legislature wrote the statute so that feedback could be obtained on governmental projects within 30 days for the engineers so they can address concerns on the plan.

Mr. Nelson asked, given the lifetime of a solar array, how confident is Mr. Fowler that the landfill cap won't need to be replaced during the time the solar panels are on the landfill. Mr. Fowler said the cap has approximately a 75 year lifespan. This is a 25 year agreement with a 5 year extension option. Given solar panel technological advances, these particular panels may be 'old' within 10 years. The cap itself is made up of 18" of material. There have been very few instances where the Town had to do some maintenance of the cap, but the panels can be moved if necessary to accommodate any maintenance. He confirmed the cap membrane is impermeable. The landfill was capped in 1986 and 1997; the Town continues to maintain and monitor it. Replacement of the cap is not in the CIP at this time.

Mr. Connors asked how the landfill will be mowed and maintained with that number of panels on it. Mr. Fowler said the Town has factored in the possibility it may need to purchase zero turn mowers to get around the panels.

Mr. O'Connor asked if there were any endangered species in the area. Mr. Fowler stated DES submissions require a wildlife survey; he does not believe any were noted. Eddie Galvin of Sanborn Head stated Normandeau Associates did a Natural Resources Survey of the property. He did not believe any endangered species were found. For the AoT permit process, NH Fish and Game will review and comment. It was confirmed the Conservation Commission has not been approached as of yet for this project as it is in preliminary stages at this point. They will be contacted.

Mr. Connors asked if anything could be planted on the abutters side of the road to help mitigate the views. Mr. Fowler said it was possible to look at options.

Mr. MacEachern stated he hears the concerns from the residents and the Board members. He shares some of the same concerns as Mr. Nelson. This is a good project, but feels it needs a bit more prudent review and the normal Planning Board thought process. He suggested a discussion take place with legal counsel to answer the question about governmental use, and if this should be considered for site plan review. Mr. Fowler should reach out to the citizens so their questions can be answered in advance, so that they know what this project will look like. For example, if the stakes are put out in the field, they should be marked at the various heights so neighbors have a good idea as to what they will be able to see and what the actual impact will be. He suggests working with Planning staff. He believed it was important for the government to act like a business when it came to projects. This is a great project and this has been a very informative presentation, but he feels this needs to move forward like any other project. If screening is feasible, there should be screening for the neighbors. Mr. Fowler stated Sanborn Head performed a survey of the property, but a full site plan has not been developed. Mr. MacEachern felt it might not be possible to screen the panels on the larger hill, but the town should do what it can to protect the neighbors. He suggested the Net Zero Task Force work with Planning to see what can be done.

Mr. Connors asked if the panels did not go there, what else could be done given there is a cap on the landfill. If there is no glare, he admitted the solar panels might not be beautiful to look at, but this is also not an active landfill any longer. Mr. Fowler stated the Town would not want to put a condominium complex or any type of housing on that land. About 18 years ago, there had been some discussion about building an athletic field there – by leveling the land and then capping it, but there were too many concerns about the land settling, so that idea did not move forward. Mr. Connors felt the proposed project was a very low impact use, but understood the concerns of the abutters.

Mr. Brown suggested the Board members look at the State requirements to close a landfill. Nothing is supposed to be built on them for 50 years. He questioned the integrity of the membrane over the landfill. That area is not designed for heavy traffic. Has any study been conducted to see what the impact of moving heavy construction equipment over the membrane will be? Mr. Fowler noted Encore has a lot of experience in placing the solar arrays on landfills, and Encore also has all of the structural details relating to the Town's landfill. Ms. Hines stated Encore focuses on the installation of solar arrays on brownfields and closed landfills. During the construction process, they don't drive heavy equipment onto the landfill area; they use skid steers. They will follow the stormwater regulations and will meet the strict requirements. They will continue to review the landfill closure as built documentation prior to construction. Mr. Galvin commented on the permitting portion of the project. Permitting is through the Solid Waste Bureau. They will need to supply a construction quality assurance plan with the permit which outlines the equipment and process they will use to ensure there is no damage to the cap. The equipment they plan to use does not exceed the specified psi for ground pressure. They have and will continue to take that all into consideration.

Mr. O'Connor commented Mr. Fowler responded via email and answered questions raised by two of the abutters. Mr. Sioras stated Mr. Fowler has received input from the Board this evening. Staff can continue to discuss the project internally and he will reach out to the attorney. Mr. O'Connor encouraged members of the public and the Planning Board members to forward any other questions to the Planning staff. He thanked Mr. Fowler for the presentation.

Chairman and Planning Director Updates

Planning Director

None.

Planning Board Chairman

Mr. O'Connor advised with election of Mr. MacEachern and Mr. Granese to Town Council, there will be two member positions open on the Board. He encouraged the alternates to apply as the Council will be making appointments to Boards and Committees next week. Mr. Connors confirmed any member of the public can apply as well.

Public Hearing**To review a proposal for trimming of trees on English Range and Stark Roads by Eversource**

Mr. O'Connor advised a request has been received from Eversource to postpone this public hearing as Eversource staff members are still clearing obstructions from the storm that went through the area yesterday.

Motion by MacEachern, seconded by Granese to table the above noted public hearing to April 19, 2023.

Chase, Granese, MacEachern, Myers, Connors, Malaby, Nelson, and O'Connor voted in favor, and the motion passed.

Board Member Comments

Mr. MacEachern thanked the current and past Planning Board members; he has enjoyed serving on the Board with them. He believed his first year on the Board was in 1994. This will be the last time he sits on the Board. There are many good people on this Board and it has been an honor and pleasure to be a member.

Mr. Granese also thanked the Board members. He was appointed as an alternate six months after he moved to Town. This is a very important Board and he has learned a lot. The Board has a good group of people and he knows based on all they have worked on, that the Board is in good hands for the future.

Motion by MacEachern, seconded by Granese to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:25 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____