



CITY OF GARDINER BOARD OF APPEALS

**Meeting Minutes
December 14 and 17, 2020
6:00 PM
Via Zoom**

In accordance with An Act To Implement Provisions Necessary to the Health, Welfare and Safety of the Citizens of Maine in Response to the COVID-19 Public Health Emergency, as enacted to read: Sec. G-1 1 MRSA §403-A Public proceedings through remote access during declaration of state of emergency due to COVID-19

Call Meeting to Order: Chair Edward ‘Ted’ Potter called the meeting to order at 6:05 pm Chair Edward ‘Ted’ Potter called the meeting to order at 6:05 pm and determined that there is a quorum.

Roll Call- Board members- Chair Ted Potter. Rusty Greenleaf, Guy Ferris, Glen Glazier, Kevin Sullivan, Louis Sigel. City Staff-Mayor Pat Hart, Christine Landes- City Manager Tracey Desjardins-Economic Development Director, Kris McNeill- Code Enforcement Officer, City Solicitor-Jon Pottle. Others present: Shawn Dolley, Pam Mitchel, Debby Willis, Adam Lemire, Dennis Wheelock, Jack Decker, Della Sutherburg, Adam Belmore, Robin Moore, Brooke Barnes, Gil Raviv, John Flagg, Steve McGee, Finn Teach, and Connie Beckim. There were participants on the Zoom meeting that were only listed as numbers, with no name identification. They were iPhone, 80703222, 148 641, and 7544999

Administrative appeal- Public Hearing

A group of abutting neighbors have filed an Administrative Appeal against the Con Edison Solar Project that was approved by Gardiner’s Planning Board on October 13, 2020. The Solar Project is proposed to be built at 226 Highland Ave which is within the Rural and High Density Residential (HDR) Zoning Districts. This lot is located at city Tax Map 025, Lot 012. The project itself will take up approximately 19 of the 40 acre lot, which has primarily been used for farm land. Gardiner’s Planning Board approved this application with 2 conditions at the meeting on 10/13/2020. Chair Potter asked if there was any conflict of Bias or does anyone have a conflict of interest? Board members answered no. Chair Potter then asked if any board member has had any communication with any of the appellants, or applicants Con Edison and Stantec. All board members answer no. The application(s) for the appeal were received in the appropriate time frame. Chair Potter asked if the appellants have standing, yes they do. It is also determined that the Appeals board has jurisdiction to hear this appeal as well.

Chair Potter opens the hearing at 6:15pm. The meeting will start with Planning Board Chair Debby Willis giving an overview of the application by Con Edison that was approved on 10/13/2020. Debby Willis tells the Board of Appeals that this application came before the Planning Board in October. The Board reviewed the application for completeness, and checked to make sure that the project followed the ordinance. The LUO allows Solar Production Facilities in Rural areas. There is a provision, under footnote P15 that states that a solar development can go in HDR if the parcel is also in Rural, and has 5 acres or more. This lot filled ConEd’s need for their project. The Planning Board looks at Chapter 6, and reviews the standards to make sure that this development met all provisions. They also reviewed General performance standards, section 8, to make sure all those areas are covered. The application covered exterior lighting, noise, exterior material storage, buffering, and the decommissioning plan. The Planning Board, through their review, decided that this proposal met all applicable standards of this ordinance- 6.5.1.2 with 2 conditions. The conditions for this approval

included that the applicant needed to obtain the DEP-NRPA and that ConEd would work with appellants to come up with a suitable buffering plan.

There has been numerous comments from residents in the surrounding area about what this project will do to property values. Chair Willis has expressed that Planning Board votes on proposals pertaining to the LUO, which does not address property values. The Board did address buffering, and also conditioned the approval of the application on it.

The Appeals Board is ready to start bringing in appellants, one by one. Each appellant had 10 minutes to state their case, and 5 minutes for rebuttal. Mr. Belmore is the first applicant that is up to speak. He states that he would prefer to wait to hear testimony before he brings up his concerns. Mr. and Mrs. Crosby, are abutting property owners, and their main concern is the buffering issue. Many abutters will have a clear view of this project, unless there is a full screening plan. The Crosby's are also concerned about potential traffic hazards at the entrance to the project. The entrance is right across the street from the high school and they are worried about students and teachers with construction traffic that this project will bring. The Crosby's ask that these concerns be taken under more serious consideration. The next appellants are Mr. and Mrs. John Decker. Mr. Decker states that he and his wife would like to thank the Appeals Board and City Council for their work. He and his wife find it mind boggling that the City of Gardiner is willing to sacrifice property values, and they feel that abutting property owners should get tax rebates. He goes on to say that this is all for one individual, Steve McGee, who in his opinion, gets whatever he wants. Mr. Decker states this project will destroy his property values, and no discount on electricity will make up for it. John Flagg is next. He states that this project needs more study, before installing this for 20+ years. This project will have a negative effect on wildlife, and the property values of the appellants around it. In 20+ years someone will have to decommission this project and try to put this land back to its original state which will be impossible, with over 15,000 posts in the ground. Mr. Flagg states that he has researched solar projects, and despite the company's claims, there are hazardous materials in solar panels. He states that wildlife will be displaced with this project. The animals that live in this field, depend on this property, for food, and their homes. Mr. Flagg lives across the street from this project, and he is very concerned about erosion. The way that Solar panels are built, they are flat, and water will run right off and there will be trenching as the result of stormwater. The Solar company states that this is clean energy. All of the energy coming from this project will be going on the grid, where all energy is, no matter where it comes from. Mr. Flagg states that the needs of the abutters need to have more validity. The Solar company does not care about Gardiner, or the abutters. They care about the field, and how much money this property can make them. If this project doesn't pass, they will move on to the next town. Mr. Gil Raviv is next who questions Appeal procedure, and why each appeal could not be heard on its own. He and his wife have filed separate appeals, but he will be speaking during her time, and he has time from others. He would like the board to know that he feels this meeting would be best heard in person, not by zoom. Mr. Raviv states that he and his neighbors are appealing the installation of a power plant. The LUO requires that projects meet the character of the neighborhood. A power plant does not fit in the character of this neighborhood. He states that they are appealing the solar plant, which will be a power plant, next to their homes. A power plant is not in the character of the neighborhood. This project will destroy a part of their lives. The developer states that there are no side effects from a solar project, but Mr. Raviv has researched, and there are. Property values should be considered. There will be adverse visual effects. There will be effects on the land, the animals that live on the land, and the temp in the area, will rise. Studies show that areas that have solar arrays, become a heat island. Panels collect sunlight, which will raise the temp in the area around the array. Planning board should reject this application, there is not enough info. Mr. Raviv goes on to say that this application is full of incomplete info and drafts. This project also violates deed restriction, and a ROW that has been in place for over 25 years. He states that this project started when the City passed the LUO changes in regards to solar. Mr. Raviv states that this project smells fishy, underhanded, and full of secret ways, which will only benefit a few, and cause many to suffer. Mr. Raviv states that he wants respect from the city. There has been a significant lack of communication from the representatives for this project. He goes on to say that notice should have been sent to neighboring properties, not published in the paper. The city could have reached out to abutters when this project came into City Hall, 15 months ago. Mr. Raviv feels that this project has improper setbacks with 25' being used, not the required 30'. There will be an estimated 6000 vehicle trips on this driveway during construction. This project will violate a ROW agreement. This woman, (Della Sutherburg) has been maintaining this driveway for over 25 years. The owner only used it for use to get to his pasture, with the occasional tractor coming through. This field was a cow pasture for years. This project is an industrial use. This project violates deed restrictions, no structures are allowed to be on this land unless they are residential. The deed states that there should be no industrial uses on this land. There are 20+ homes that will be affected by this, negatively. This is Arthur's meadow. There are several suspected graves on this property, arrowheads have been suspected to be in the ground, and there is reportedly an old foundation on the property. This land has been rumored to be the inspiration for an EA Robinson poem. The plan lacks any realistic restoration efforts, and will leave

over 6000 posts in the ground. There are five federal tribes in the state, and only one is referred to in this application, and there is no documentation to support their approval, just a letter. Mr. Raviv feels that all of the tribes should be notified. He goes on to state that the noise from this project will be ridiculous, with over 7 months of construction noise. This level/length of noise is too long to deal with in this part of HDR. Mr. Raviv's next comment was 'how can the developer say that there is no need for fire extinguishers, or water. They state that there is no fire danger. Mr. Raviv states that he disagrees as there have been hundreds of fires relating to solar panels. Some fires have started because a bird landed in the wrong place. A 'Bird' destroyed over 1100 acres. Is the Gardiner fire dept. equipped to put out a power plant fire? Mr. Raviv goes on to say that he does not agree with the developer asking for a waiver from full screening. He feels that due to the nature of this project, full screening is necessary and should be required.

On 10/31 there was a meeting between the neighbors and the applicant. There was a verbal contract made that day, in front of over 17 people that they would fix the errors, and would come back with a different plan. Mr. Raviv reports that they have heard nothing, no correspondence, no compromise, they were led to believe that they would amend the application. At this meeting they were tricked into thinking the developer would work with them, and they were treated with silence instead. The decommissioning plan and bond, is not complete, and full of loose information. Is this project truly the best interest for the city, is there any real benefit? This project impacts many of the city's residents, not just a few. The transformers are toward the abutting neighbors, why is it not further out towards the woods and routing the access road through residential property, is absurd.

Della Sutherburg, lives on West Hill Rd and her driveway is the ROW to the property. She feels that the abutters were not notified correctly, the plan is not complete, and should have never been approved by the Planning Board. Con Ed stated that there are no health concerns. Her research came up with solar panels contain lead and other toxins that can leak to the ground. Mrs. Sutherburg has a legal deed for the driveway to this property, and she has been solely responsible for the upkeep of the driveway. She is concerned what the machinery needed to complete this project will do to the driveway. The decommissioning bond is wrong, and the math doesn't add up. She feels there will not be enough funding to take this project apart when it is time. Most communities are asking for bonds to ensure that the money is there. Has the City of Gardiner? ConEd says that they will not have to do any drilling. Ms. Sutherburg states that the area is full of ledge. This project benefits one person and one out of state company. The land will never be usable again. Several people stated that it was a waste of time to appeal and someone mentioned retaliation. She feels that this appeal had to happen, so the citizens could be heard.

Chair Potter suggests that we move on to let ConEd speak. Eben Baker, Brooke Barnes, Scott Anderson, Jeff Lord and Mark Chrisos are all here representing ConEd or Stantec. Scott Anderson- Attorney for ConEd, states that this application was not taken lightly and the area was fully explored. They looked at wetland maps, archeological, IFW, etc. Stantec staff dug in with great success to assure that this project would be placed on the right property. They looked at traffic, noise, lighting, etc. All of this information was pulled together in a 350+ page application. They reached out to everyone they had to for notification. Planning Board held a public hearing, which included a tremendous amount of comment, and a decision document/ finding of fact was drafted and issued.

Mr. Chrisos states that the impacts from solar are relatively minor. During construction there will be best practices to control dust erosion. This is a project that is relatively low impact. That is why the Planning Board had enough information, to approve the application. ConEd does not expect any erosion, excessive noise or traffic. In regards to buffering and the request to waive a section- there is a tremendous amount of trees, on one side of the project that will not need any extra buffering. After the community meeting on 10/31/2020, they had agreed to reach out to property owners to work on a plan that would work better for them. They have not contacted anyone yet, after receiving word that there was an appeal in the works.

This is a permitted use in this district according to the LUO. Con Edison feels they have put together a good project for the City of Gardiner and the State of Maine. The Planning board reviewed a complete application. He asks that they

uphold the application so they can move forward. Mr. Chrisos explains that his company looked at several sites in the Gardiner area before deciding on this parcel. Guy Ferriss asks if they considered Libby Hill Business Park. "Why wouldn't they consider a pre zoned area for such a project?" Kris McNeill states the industrial park is not necessarily pre-approved, and has to go through the same process as any other Planning Board application.

The Board decided to continue this meeting as it is late. Jon Pottle states it would be best to meet within the next week. Chair Potter asks the Board to stay the meeting, and a continuance will be scheduled. The Board agrees that we will continue to December 17th at 6pm. Rusty Greenleaf moved to continue stay this meeting until 12/17/2020. Glenn Glazier seconded the motion. No further discussion. Guy Ferris- yes, Rusty Greenleaf- yes, Kevin Sullivan- yes, Glenn Glazier- yes, Chair Ted Potter- yes. Louis Sigel, left the meeting earlier and did not provide a vote.

Thursday, December 17, 2020, continuation of appeal meeting.

The board reconvened to discuss this appeal on December 15, 2020

Chair Potter called the meeting to order at 6pm and determined that there was a quorum. Roll Call- Board of Appeals members- Chair Edward 'Ted' Potter, Glenn Glazier, Rusty Greenleaf, Kevin Sullivan, Guy Ferris.

Applicants- Scott Anderson, Eben Baker, Brook Barnes, Mark Chrisos, Jeff Lord.

Debby Willis- Chair for the Planning Board, Jon Pottle- City Solicitor, Tracey Desjardins- Economic Development Director, Kris McNeill- Code Enforcement Officer. Christine Landes- City Manager, Pat Hart- City of Gardiner Mayor,

Appellants- Adam Belval, Arleen Belval, David Jamison, Della Sutherburg, Gil Raviv, Jack Decker, John Flagg, Tom Crosby, Connie Beckim, Justin, Young, Dennis Wheelock, Falmouth AFG, Gil Raviv, Jack Decker, Pam Mitchel, Charles Bloom, Louis Sigel, Adam Belmore, Sam Lipman.

The meeting started with an extensive discussion about the buffering screening options. Some of the appellants are very upset about the landscape/buffer design that has been offered by Con Edison. Appellants would like to see more canopy trees, something that offers height to hide the project. Appellants feel that the screening offered is too sparse. The planting plan looks to be set up to have a tree approximately every 16', which is what the ordinance requires.

Louis Sigel asks about the ROW issue, and if this is a violation of a deed. Ms. Sutherburg is the one that has to maintain it, despite the fact that Steve McGee owns it. Scott Anderson states that they have access to the property through the land in the ROW. Chair Potter is concerned about the property that is part of the ROW. During the construction phase there will be heavy equipment going over this ROW. If there are damages made to the road, by this equipment, who will be responsible to repair it? Attorney Anderson states that anyone who uses the ROW will be responsible, and any damage will be paid for by ConEd.

Guy Ferriss would like to discuss how the panels will be removed during the decommissioning. He feels that cutting off of the posts and leaving up to six feet of steel in the ground is questionable. How is this an environmentally sound way to decommission this project? That is not fair to the next owner, who might want to use it for farming, and can't because the area is full of posts. Wouldn't it make sense to clean the area properly, rather than just cosmetically? ConEd replies with DEP only requires that they remove 2 ft. under the surface, so this removal plan goes above and beyond the requirements. Glen Glazier states that ConEd reports that they will leave the ground as they found it. This land will be full of steel posts, which is not the condition that it is in now. This land will never be able to go back to its natural state without some kind of extensive work. The draft of the decommissioning contract was approved by Planning Board. There are no specific requirements that planning board needs to follow for the decommission bond.

The question before the Board of Appeals is did the Planning Board get it right, approving this project? Several appellants feel that the plans for this project are incomplete, and that the Planning Board did not do their due diligence. There are specific parts of this project that are not complete. ConEd attorney, Scott Anderson, states they have a complete plan approved by the planning board.

Chair Potter asked for motion to close the public hearing at 9:00pm. Kevin Sullivan moves to close the public hearing. Rusty Greenleaf seconds the motion. . Roll call vote, Guy Ferris- yes, Rusty Greenleaf- yes, Glenn Glazier- yes, Kevin Sullivan- yes, Chair Ted Potter- yes- All in favor close the public hearing at 9pm

The Board moved into deliberations. There have been 16 appeals that have been consolidated for this review. There are several different reasons why appellants took this action. The Board can grant the appeal, deny it completely, or grant in part. All agree that there needs to be some common ground in the buffer plan. Kevin Sullivan has looked up the statute for the Board of Appeals. It states that the Board may not deny an appeal, based on new evidence. They are only to consider the information that was presented at the Planning Board. Con Edison, can only do what the Code allows.

Several board members are sympathetic to the appellants that they were not heard by the Planning Board, but this board, Appeals Board is tasked with voting on evidence that came about from the Planning Board meeting. Mr. Sullivan states that he cannot find where the Planning Board did anything wrong and that they followed the ordinance. As much as he would like to weigh this application on new evidence that has been presented, he cannot. Chair Potter agrees that he too sympathizes with the appellants, but these issues needed to be presented at the Planning Board meeting.

Chair Potter asks Board members if they have made a decision and are they ready to offer a motion. Rusty Greenleaf makes a motion to deny the appeal. Guy Ferris seconds the motion. Kevin Sullivan feels that the board needs to work on the language of the motion before issuing a decision.

Kevin Sullivan makes a motion that this Board denies all of the appeals, on all of the issues based on discussions. Rusty Greenleaf seconds the motion. . Roll call vote, Guy Ferris- yes, Rusty Greenleaf- yes, Glenn Glazier- yes, Kevin Sullivan- yes, Chair Ted Potter- yes- All in favor to deny this appeal application.

This board will need to reconvene in the next 7 days after the City Solicitor has drafted a decision. The board discussed a date that would work to deliver the notice of decision. A date is set for 12/23/2020 at 6pm.

Adjourn Chair Potter asks for a motion to adjourn. Guy Ferris makes a motion to close this meeting at 10:35pm, Kevin Sullivan makes the second. No further discussion. Roll call vote: Glen Glazier- yes, Kevin Sullivan- yes, Guy Ferriss- yes, Rusty Greenleaf- yes, Ted Potter- yes. All in favor to adjourn.