

TOWN OF LUNENBURG
Office of the Planning Board

Gregory Bittner, Chair
Matthew Allison, Vice Chair
Kenneth Chenis, Clerk
David Prokowiew, Member
Tanner Cole, Member



Tel: (978) 582-4147, ext 5
Fax: (978) 582-4353
960 Massachusetts Avenue
Lunenburg, MA 01462

Adam R. Burney
Land Use Director

Marjorie J. Boggio
Administrative Assistant

Minutes
Public Hearing
994 Northfield Road
September 10, 2018

Meeting Posted: Yes

Place: Town Hall, 17 Main Street, Lunenburg, MA

Time: 7:07 PM

Present: Gregory Bittner, Matthew Allison, Kenneth Chenis, David Prokowiew, Tanner Cole, Adam R. Burney

Also Present: Town Counsel Adam Costa

The Hearing was to hear and discuss an application for a Special Permit, Site Plan Approval, and Stormwater Management Permit under Chapter 250, Sections 4.13. (formerly 4.15.) and 8.4., and Chapter 204, Section 1 of the Code of Lunenburg, MA for construction of a 5.8 MW large-scale ground-mounted photovoltaic installation at 994 Northfield Road (Map 037, Parcel 0013) .

The Applicant, Settlers Solar, LLC, was represented by Attorney Michael D. Rosen, of Ruberto, Israel & Weiner, P.C., Ethan Gyles, PE, Development Manager, Nexamp; Alan Clapp, PE, Development Director, Nexamp, Daniel Wolfe, P. E. and Daniel Romero, Project Manager, David E. Ross Associates. Property Owner 994 Northfield Road, LLC, William Gustus was also in attendance.

A. Costa noted that as G. Bittner was not present at the last hearing, he had questions regarding the remand process, therefore; an executive session was held just prior to this Hearing.

A. Costa gave a brief overview of the status of the project, which the Board will continue to review this evening. Applications for both special permit and site plan approval were submitted to the Planning Office in August 2017. The Board held public hearings and in November 2017 voted to deny the special permit and site plan approval. The Applicant believed the permit to be constructively granted, stating the Board did not take timely action. The Applicant also filed a separate action appealing the Board's Decision and challenging both special permit and site plan approval. The Town filed suit challenging the Applicant's statement. There have been several discussions over the past nine (9) months in regard to the pending litigation. The Plan has been revised to address Board concerns. The court has remanded the special permit and site plan approval back to the Board.

Counsel for the Applicant, Attorney M. Rosen, noted that the tasks requested by the Board at the August 27th Hearing have been completed and submitted to A. Costa. 1) A plan showing the conservation restriction area and public foot path easement, 2) a document of the conservation access easement, 3) an edited Contingent Settlement Agreement (CSA) and, 4) a revised site plan, dated September 4, 2018. D. Wolfe noted the plan revisions; notes regarding use of herbicides/pesticides, landscaping, mowing operations (typically 2-4 times/season), storage of materials, access bar gate with Knox Box, and chain link gate with emergency access. The Easement Plan shows the conservation restriction area (39 +/- acres) to the north of the project. The access easement is detailed in the southeast corner of the property along with the footpath area up to the conservation restriction area.

G. Bittner opened the floor up to public comment.

Hans Wentrup, 418 New West Townsend Road- Asked how many acres were being clear cut and how many panels erected. M. Rosen responded there would be around 25 acres clear cut, less than the 34 originally presented. H. Wentrup asserted there was not enough buffer between the abutters and the panels. M. Rosen responded that the issue was addressed as a result of the mediation sessions. There is also a \$50,000 tree fund that will be put in place to address additional buffering concerns of abutters. H. Wentrup showed pictures of a 6 MW site to the Board and stressed to the Board it has the power to reject this application.

Yolanda Quick, 200 New West Townsend Road- Does not want to see the project from her property.

Wayne Jackson, 202 New West Townsend Road- Inquired if fire concerns had been addressed. A. Burney noted that the Fire Chief has indicated it would be treated similar to a brush fire; contain it in the field. The Fire Department already protects two solar farms located in Lunenburg. The panels would have 24/7 monitoring in place and are live until shut down by the Applicant's emergency response team. E. Gyles noted that training will be provided to the Fire Department.

Michele Mathieu, 914 Northfield Road- Concerned with the number of emergency vehicles that may be used to put out a fire.

W. Jackson, 202 New West Townsend Road- Will the water table be affected? A. Burney noted GEI's review letter stated that the Applicant meets the Commonwealth's regulations and that the rate of runoff will remain the same. W. Jackson went on to question how the tree fund would be utilized.

Ryan Stober, 275 Pleasant Street- He abuts a solar farm and in the time since it was built, approximately six years ago, trees that the solar company planted have died and the field has become overgrown.

Bob Quick, 200 New West Townsend Road- He is concerned with the effect the solar field will have on his property value. He also doesn't want to see it from his property.

Dennis Stewart, 252 New West Townsend Road- Asserted that once the land is clear cut, any runoff from the hill will wash down into his back yard. He also does not want to see the panels from his property.

David Rodgers, 82 Highland Street- Inquired as to an exit plan. G. Bittner noted there is a decommissioning plan in place in the amount of \$105,000 with a 2.5% escalator. The fund will be held by the Town of Lunenburg and co-owned with NEXAMP. NEXAMP will be leasing the property from Mr. Gustus who will continue to own the property once the project is done. NEXAMP has a legal obligation to remove the property at the conclusion of the lease. The current lease is for twenty (20) years, with five (5) year options.

Julie Gaudet, 290 New West Townsend Road- Does not want to see panels from her property; there is not enough buffer and she is also concerned with runoff from the hill affecting the brook.

Chris Vailliere, 1048 Northfield Road- Via electronic mail sent to G. Bittner, stated that Mr. Gustus had made some concessions, but Mr. Vailliere still had concerns with the size of the project.

Y. Quick, 200 New West Townsend Road- Asked if the Board denied the application, would the Applicant appeal? M. Rosen responded "most likely".

A. Costa stressed to both the Board and the audience that the concept of remand is confusing. If a decision is appealed to the court, it can be litigated, discussions are held between the two parties, the parties believe they have achieved modifications that make it appropriate to bring it back to the Board, and then the court remands it back to the Board. Even though the Applicant has agreed to a remand, the Applicant still reserves the right to fight the original submittal.

G. Bittner also stressed to the audience that if the project is approved by the Board, once the Decision is filed with the Town Clerk, there is a 20-day appeal period.

H. Wentrup, 418 New West Townsend Road- Asked the Applicant if they were willing to reduce the size. G. Bittner noted that these discussions had been held with the Applicant, and it was G. Bittner's opinion that this is the Applicant's final offer. M. Rosen added that the current plan is the result of two revisions and they are moving forward with this plan. He went on to remark that the abutters didn't see the work that was done during the mediation sessions.

T. Cole requested clarification of a note on Plan Page C-302 stating, "*Area shall be planted with on-site transplanted tree species. General size shall be 4" caliper...*". Does this refer to transplanting trees currently on the site? Yes.

M. Allison noted that the stumps remaining will regrow within a couple of years.

A. Costa presented the Board with a red-lined document of findings discussed initially during mediation and summarized this evening. Paragraphs A.1. – A.6. are Supplemental Findings; B.1. – B.7., Specific Conditions taken from the Contingent Settlement Agreement (CSA) and modified; and C.1. – C.11., General Conditions.

Board members reviewed the document. K. Chenis was concerned that if the project becomes operational when only partially completed, the timeline for completion of new tree plantings would commence. He requested the document be amended to specify "completely operational".

A. Costa recommended that the Board keep the Hearing open to get feedback from the Applicant in response to the document. K. Chenis wanted a protection clause that would ensure long-term buffer maintenance. He also inquired if the Applicant was amenable to monthly mowing. E. Gyles was in agreement, aside from the pollinated area. M. Allison suggested mowing heights vary between two (2) and eight (8) feet for more natural buffering. There was discussion surrounding the time length of a tree warranty. The document specifies a one-year warranty; this is for new trees installed per the final plan and purchased from a nursery. The tree fund gives the Board designee the ability to work with the neighbors to place new plantings on abutters' properties, or, upon approval by Settlers Solar, on the Settlers Solar property. These trees are for where there is still visibility, despite the buffer. Settlers Solar will not be responsible for maintenance of trees requested by, and planted on an abutter's property.

M. Allison recommended the one-year warranty for trees per the final plan be extended for the length of the tree fund (three years). M. Rosen noted the Applicant was willing to continue the warranty with the caveat that it would not pertain to every tree; e.g., if three trees immediately side by side die off and the visual buffer is impacted, new trees would be planted; if random trees throughout the site die off and the buffer is not affected, those trees would not need to be replaced.

The Board and Applicant were comfortable with closing the Hearing. A. Costa reviewed with M. Rosen, this evening's document revisions.

- Frequency of mowing. Calendar, monthly, or contingent on grass height, or hybrid between the two? The Applicant will agree to whatever the Board requests as long as it is during mowing season and doesn't violate the Conservation Commission's Order of Conditions.
- Tree maintenance. Trees planted by Settlers Solar will be warranted for three (3) years from when the project becomes operational. When the tree fund expires, so does the tree warranty.
- Stumping at different heights. M. Allison suggested leaving hardwoods at one (1) foot, but the Applicant responded that if not at grade, they would create a problem for the workers.
- Additional specifics regarding use of the tree fund along the south and west boundaries. The Applicant requested if additional funds remain, that they be used for any concerns raised along Northfield Road. Board consensus was to leave language as is.

H. Wentrup, 18 New West Townsend Road- He was of the opinion that this project was already "rubber stamped". Even with all the abutter comments this evening, he didn't see the Board putting any pressure on the Applicant to increase the buffer.

M. Allison responded that through the process, buffer has been increased along with the tree fund.

G. Bitter asserted that this project will not get his "rubber stamp".

K. Chenis noted that as Northfield Road is a Scenic Road, no panels should be visible from the road. A. Costa noted that would be a difficult condition to enforce as one will not know if that condition has been violated until the project has been constructed.

Katey Adams, Williams Drive- Concerned with a precedent being set under the Scenic Road for tree/stone wall removal. A. Burney clarified that the Scenic Road Law covers the right-of-way.

K. Chenis made a Motion to close the Hearing, D. Prokowiec Seconded, all aye.

Hearing closed 9:57 PM

Documents used at meeting:
Red-lined Document
Site Plans