

**Minutes of Meeting  
Zoning Board of Appeals  
Whately Town Offices  
Whately  
April 6, 2017**

Members Present: Roger Lipton, Debra Carney, Bob Smith  
Members Absent: Kristin Vevon, Fred Orloski (alternate)

Staff Present: Mary McCarthy, Secretary

Attending: Susan K. Gromaski and David Gromaski, East Longmeadow; Betty Orloski, River Rd.; Jane Grybko, Christian Ln.; Richard Korpiewski, State Rd.; Mike Bechta, Christian Ln.; Dan Denehy, Jr., Haydenville Rd.; Kristin Mayer, River Rd.; John Saunders, River Rd.; Marcy Nickerson and Tony Wonseski, SVE Associates, 49 Chestnut Plain Rd.; Kelley Pike and Tony Wonseski, SVA Associates, 439 West River Rd., Brattleboro; Julie Beauchemin, Chris Clark, and Justin Kasunizh, Nexamp, Inc.; 4 Liberty Sq., Boston; Alan Seewald, 71 King St., Northampton (attorney for Long Plain Solar, LLC); Tom Lesser, 39 Main St., Northampton (attorney for the Hutkoski brothers) Attorney Sharon Leland

Public Hearing, Long Plain Solar, LLC:

Special Permit application for a 2,595 kW Large Ground-Mounted Solar Facility to be developed by Nexamp, Inc. and constructed on premises located off Christian Lane (Map: 21, Parcel: 15) and owned by Scott Hutkoski and Wayne Hutkoski.

The meeting was not recorded.  
Roger opened the hearing at 6:43pm.

The secretary read the legal notice and the applicant agreed that it was accurate. Tony Wonseski, senior engineer with SVE Associates, on behalf of Nexamp, LLC, spoke at an easel holding an aerial photo view of the property involved, with plans of the proposed project overlaid. He explained that he had already met with the Conservation Commission and planned to follow up with them. He said a restoration plan had been written with the Conservation Commission, and described plantings of grass and a conservation mix of plants. Water runoff will be captured and treated, he said. He said a seven-foot-tall fence is required around the panel array, and that will be erected by driving fence sections into the ground with no use of concrete or barbed wire. He said plans include stripping topsoil and digging trenches, to lay electrical lines tied into the grid on Christian Lane. He described the lot as non-conforming, with only 7.4 or 7.5 feet of frontage. Page 2 of the application contains the Project Description.

Mr. Wonseski said research had found no documents referring to shared access, so they have secured an easement with Edward Farrick to provide maintenance and public safety access. Mr. Wonseski showed a diagram of how that would work, and described a 24-foot-wide, all weather access road of gravel over geotextile fabric. Referring to other pages of the plans, he stated that the panels are ten feet high at the back, and mentioned an arborvitae planting along the Grybko property line, explaining that the panels will be screened from the public right-of-way. When a board member asked whether the panels contain cadmium telluride, the answer was no.

Julie Beauchemin, of Nexamp, said half of the electricity generated by the facility will go to the anchor tenant, with the other half offered to Whately residents through net metering credits (typically 15% off each resident's bill).

Tony Wonseski also said the project would contain no buildings or signage, and that vehicular traffic would amount to that needed for maintenance four times a year: a pickup truck and a mower/weed whacker. Removal of snow from panels during winter is not necessary, he said. The question was raised of 18-wheeler truck traffic during construction, and how to avoid affecting the Grybko property. Mr. Wonseski said that problem could be solved by erecting a temporary fence to delineate the boundary. Asked about a fence to screen the construction process from the Grybko house, a board member was told that such a service was not typically provided.

Mr. Wonseski said that, as for previous such projects, a public safety meeting for fire fighters and police would be held to describe what to do in an emergency.

Chris Clark, of Nexamp, Inc., addressed the matter of the eventual decommissioning of the facility. He said Nexamp would provide a full, detailed report and set up an escrow account, consistent with other Nexamp projects, and that these would be submitted before construction. Life expectancy of the installation would be more than 40 years, he said.

Susan Gromaski and Jason Farrick asked how their property would be affected and Tony Wonseski told them it would not be affected by the access road.

In answer to a question from the audience about "the 200 feet of frontage needed for a building permit", Attorney Lesser, representing the Hutkoski brothers who own the subject property, submitted a memo from Lesser, Newman, Aleo & Nasser. Mr. Lesser explained that the Massachusetts Appeals Court had ruled that frontage didn't apply, and that Whately's own bylaw doesn't mention frontage. He said the purpose of requiring frontage is to avoid crowding at the edge of the road, which there won't be in this case, and to avoid interfering with access of public health and safety vehicles, which in this case is taken care of by the easement. Audience member James Pasiecznik objected to the dismissal of frontage requirements as an argument against the project. Asked why he opposed the project, Mr. Pasiecznik said he was afraid of opening up the whole town to a

3.

situation in which people built whatever they wanted. As a farmer himself, he said, he hates to see farmland being turned into electrical plants. Board member Bob Smith explained that in the board's experience, it is very difficult to stop a solar project using arguments involving setbacks, frontage, etc.

Richard Tillberg asked what kind of agricultural land is in the project's zone. The ensuing discussion disclosed that the whole parcel measures 18.2 acres and is probably prime land, sparking questions about how many acres of prime agricultural land are in Whately; consultation of a map on the wall revealed that 5% is protected.

Asked about a "hum" associated with the facility, Tony Wonseski noted that the acoustical report says there will be no noise at night.

Abutter Jane Grybko read from a statement she had written to express her opposition to the project, and submitted the document to the board. She mentioned her concern that the hearing notices sent to abutters use the words, "off Christian Lane" with the map and parcel number, and that the neighbors could not easily recognize that this description included views from their own backyards. Board Chair Roger Lipton explained that the notice used the only information available, since there is no address number for the property.

Bob Clogston said he is afraid that anyone with farmland who wants to will be able to cover it with solar panels – even if it is great agricultural land, and everyone else will have to look at it. Roger Lipton explained that according to the bylaw adopted by the town, solar plants can't be located in Agricultural/Residential Zone 1 but they can be located in A/R 2. He stressed that the zoning board didn't write the bylaw but must abide by it, and that townspeople can only try to change it for the future, if they want to.

Marcy Nickerson, of Nickerson Realty, read from bylaw Section 171-31A, which deals with compatibility with surroundings. She said the project would adversely affect the neighborhood and the town, and that there are other places where such a facility could be built. She said she didn't want to open a door to more such operations, citing concerns about lowered property values. Roger Lipton asked whether Ms. Nickerson had experienced not being able to sell a house because of a solar project and if so, by how much the sale had been affected. She replied that she hadn't had that experience, but that she thought such a project might drop the value of a house by 25%. She noted when located in areas such as near the highway department, or at Sanderson's farm, such projects are less onerous because they are hidden, adding that the project along the roadside in Sunderland, near the school, is "horrific".

Ms. Nickerson noted that it is bad to cover good land with solar panels but that neighbors can't tell farmers how to make money; Bob Smith commented that the board can't, either. Bob explained that landowners can do things with their land **if** they meet the criteria that the town voted for. Board member Debra Carney explained the Whately bylaw and the state law. Chris Clark, of Nexamp, noted that Hatfield's bylaw states that such projects can only be built on commercial land, and Whately's bylaw doesn't. John Saunders said

4.

that if the townspeople can change the bylaw for the future, they need to consider how many solar plants they want.

Attorney Alan Seewald, representing Nexamp, Inc., referred to bylaw Sections 171-31F and 171-15B, and submitted excerpts, stating that:

- a) the project met all the requirements listed
- f) others will be affected, but the use is not incompatible
- g) plans call for minimizing visually degrading elements (see “property findings” in the document)

He noted that the bylaw requires ZBA findings on these particular items.

An audience member asked whether, when the application and plans were submitted on March 13, the large binder and the plans were included. He was told that they were.

James Pasiecznik asked whether the property is under Chapter 61A now. Attorney Lesser replied that it is not.

An audience member asked how many solar panel farms are in Whately now; the consensus was two. He said the people of the town must learn and discuss the solar plant topic for the future. He said that, when he bought his house he purchased the *view* with his house. He questioned whether this planned use is truly compatible with the existing uses and concluded no, because the uses he values are residential and agricultural. He noted that a fence doesn’t correct problem visuals, and suggested that a berm – a natural element with plantings on top – would look more like the original surrounding terrain. Roger explained that items like screenings are handled by the Planning Board during site plan review.

Fred Orloski, newly arrived to the hearing, asked whether any potential benefits – like tax revenues – had been discussed yet. Chris Clark, of Nexamp, noted that his company is working with the town on a pilot program, a 20-year agreement with the town which will go before town meeting. A “payment in lieu of taxes” arrangement would be involved. Instead of being assessed annually, his company prefers a known tax liability; so do the towns involved, he said, since their tax revenues are smoothed out over the years.

Beth Korpiewski asked what benefit there would be to the town to continue after 20 years. Subject to negotiation based on the value of the property, the town won’t have leverage after year 21, but they’ll still have 20 more years of use. Fred Orloski said that the town can always tell the company to pull out the panels, if that is what’s written into the original 20-year easement.

A neighbor who lives across the street from Jane Grybko, at 214 Christian Lane, said he’s concerned about noise, whether the pole and wires will run through Ms. Grybko’s yard, how much equipment will run on heavily-traveled Christian Lane, whether there will be sufficient drainage during heavy rains, whether construction will contaminate neighborhood wells, and whether animals will be upset by the noise. Roger asked

whether animals are addressed in the report, and Tony Wonseski replied no, the report only addresses the requirements, such as the all-weather access road. Regarding water, Mr. Wonseski said the design will reduce flow and sedimentation runoff. He noted that the fence is required to be seven feet high, but that there is a six-inch high space under the fence to permit small animals to pass. Regarding the poles, he said that where the lines come up from the ground – five or six of them – they will be on Mr. Farrick's land, according to the easement negotiated with him. Several others asked questions that they were told were not for the Zoning Board to decide, but were for the Planning Board to decide during Site Plan Review.

Roger read aloud a letter sent in favor of the project, dated April 5, 2017 and signed by Mary Lou Defillipo, and also from a letter from the Farm Service Agency regarding a mortgage on the land in question. Attorney Lesser stated he expects the loans will be paid off before they become a problem for the project.

A question from the audience concerned the cost of decommissioning the facility. Will \$19,000, in 20 years, be enough to do a complete decommission and restoration? Chris Clark, of Nexamp, mentioned that \$10,000/mW (or \$7500/mW, if that is what the printed information says) are figures based on what has been agreed to on other area projects after consulting three to five salvage contractors and showing them what is onsite (including steel components which can be sold). Roger explained that the Planning Board will consider this matter at site plan review, and will approve the amount to cover decommissioning.

Another question and answer established that the Hutkoski brothers will lease their land for the solar project. In response to a question about solar panels' resistance to tornadoes and microbursts, a Nexamp spokesperson described galvanized steel legs and screws, citing projects in Monson, Palmer, and Hatfield as projects he's worked on which have lost trees in storms but have never lost a solar panel.

Roger stated that the board will visit the property in question to get a sense of the views, asking that 7-foot stakes be driven into the ground at the corners to show what the fence would look like. The property viewing is scheduled for Saturday, April 15, 2017 at 10:00 a.m. Roger explained that the public is welcome to attend the viewing, but that it would not be a public hearing session. Further discussion, he said, will take place at the next actual ZBA hearing session for the project, scheduled for May 2, 2017 at 6:40 p.m. (a Tuesday, since a board member was unavailable to meet on the first Thursday of May).

At the end of the meeting, Tony Wonseski gave the secretary two copies of the plans that had been shown during the meeting, explaining that these plans were slightly different from the ones that had been originally submitted with the application. The new plans, viewed and discussed tonight, had been updated to reflect a change to the all-weather access road necessitated by Jane Grybko's decision not to participate in the easement for the access. The original easement plan assumed that Ms. Grybko's property would be part of the agreement. Since Mr. Farrick is the only participant, the width of the road was

reduced. On the updated plan, the original date of 06-MAR-17 still appears at the lower right corner of the cover page, but further to the left, in smaller type, is the date 06-April-17. Even further left, there is a triangle which encloses the letter B, and the words, "Revised per shared access agreement". Mr. Wonseski can supply additional copies of the updated plan for distribution to other boards and commissions.

The meeting adjourned at 8:15 p.m., and Roger took the binder version of the application home with him for review.

*Documents Reviewed (kept in the ZBA files)*

1. A bound, multi-tabbed book, received and stamped by the Town Clerk on March 13, 2017, containing the Special Permit Application (as well as the Site Plan Review Application), titled

Long Plain Solar Array  
Whately, MA  
March 10, 2017

Applicant: Long Plain Solar, LLC, Boston MA

Solar Developer: Nexamp, Inc., Boston, MA

Prepared by: SVE Associates  
Engineering, Planning, Landscape Architecture, Surveying  
Brattleboro, VT

2. A plan of land titled,  
SPECIAL PERMIT AND  
SITE PLAN REVIEW FOR:  
LONG PLAIN SOLAR ARRAY  
WHATELY, MA

Stamped and signed by Anthony Wonseski, Jr., of SVE Associates, the plan has been updated to reflect a change to the all-weather access road necessitated by Jane Grybko's decision not to participate in the easement for the access.. On the updated plan, the original date of 06-MAR-17 still appears at the lower right corner of the cover page, but further to the left, in smaller type, is the date 06-April-17. Even further left, there is a triangle which encloses the letter B, and the words, "Revised per shared access agreement"

3. A 5-page document whose cover page identifies it as an electronically recorded document of the Franklin County Registry of Deeds, with the stamped notation of Bk: 07014 Pg: 115.

7.

The second page, Bk: 07014 Pg: 116, is noted at the top left:

Record and return to:

Long Plain Solar, LLC

4 Liberty Square, 3<sup>rd</sup> Floor

Boston, MA 02109

The text that begins on that page is headed, "EASEMENT".

4. A 4-page memo, dated April 6, 2017 on page 4, from the law firm of Lesser, Newman, Aleo & Nasser, LLP, and headed, "Memorandum concerning the relationship between frontage and the solar energy exception in G. L. c. 40A, §3".
5. A 2-page letter headed,  
JANE GRIBKO'S STATEMENT  
4/6/17 Hearing on Long Plain Solar LLC's Special Permit Application
6. A 4-page document submitted by Attorney Alan Seewald and headed,  
IN RE: APPLICATION OF LONG PLAIN SOLAR, LLC  
FOR A SPECIAL PERMIT FOR A PROPOSED SOLAR ARRAY  
  
PROPOSED FINDINGS OF THE WHATELY ZONING BOARD OF APPEALS  
PURSUANT TO §171-31(F) AND §171-15(B) OF THE WHATELY ZONING  
BYLAW
7. A letter dated April 5, 2017 and signed by Mary Lou Defillipo, expressing support for the solar project
8. A letter dated 04/03/2017 and signed by Eric A. Bodzinski, a Farm Loan Specialist of the USDA Farm Service Agency, explaining the details of mortgages held on the subject property by that agency.

Mary C. McCarthy  
Secretary  
Zoning Board of Appeals  
Town of Whately, Mass