



Peru Zoning Board of Appeals ♦ Public Hearing

ZBA Meeting Minutes of August 29, 2018 at 6:37 P.M.

TOWN HALL | 3 EAST MAIN ROAD | PERU, MA 01235 ♦ COMMUNITY CENTER

Present: Terry Kellogg, Anthony Boyer, Mary Munch, John Munch, Bruce Cullett, Verne Leach, Kim Leach, Mike Frederick, Conservation Commission

Guest: Alex Fox, CVE of North America ♦ Meredith Savage, SWCA Senior Wetlands Scientist

Board Members Present: Sam Haupt, Chairman, Dave Strzepa, Bonny DiTomasso, Doug Haskins, Peter Shelsy

Recording status: Irene Morrison, Administrative Assistant to the BOS

Item I: Call to order & Open Meeting Law Statement

Chairman Haupt called the ZBA Public Meeting to order at 6:37 P.M., and read the Open Meeting Law Statement.

Item II: Introduction and Review of Statutory Requirements

Each member of the ZBA introduced themselves to the audience and guests of the ZBA Public Hearing. Chairman Haupt informed everyone that the Town of Peru does have a Zoning By-law, although it's old and needs to be updated.

Chairman Haupt reviewed the statutory requirements relating to the grant of a special permit with everyone present, and indicated that the Applicant is proceeding under Section 6.13, which allows a proposed use to be authorized by Special Permit as long as that use is in harmony with the general purpose and intent of the by-law, and not be offensive or detrimental to the neighborhood. He said **Section 12** of the by-law provides a mechanism for that. It outlines that the ZBA may hear and decide on applications for Special Permits upon which the ZBA is specifically authorized to act under the By-law and **Massachusetts General Laws 40A**, which is the zoning enabling statute, and allows for uses which are in general harmony with the general intent of the by-law subject to conditions, safeguards and limitations necessary for protection of the applicable neighborhood.

Chairman Haupt said that Special Permits shall only be allowed following a Public Hearing in accordance with **Chapter 40A**. There are recent amendments to **Chapter 40A**, specifically in **Section 3**, wherein it provides that municipalities may not prohibit solar development, nor unreasonably regulate it. However, the ZBA can impose conditions to protect public health and safety. In accordance with General Laws **Chapter 40A**. Chairman Haupt informed everyone that the notice of this Public Hearing was posted in all the necessary places, any abutters within 300 ft. were notified based on the certificate provided by the proponent that notice was sent pursuant to the certified list of abutters provided by the Assessor. Also, a legal advertisement was published in the Berkshire Eagle, not less than 14 days before the date of the hearing, which was August 13 and August 20, 2018. Copies of the notice were provided to the Planning Board and to every abutting city or town. The notice says that the ZBA is to consider the Special Permit Application of CVE of North America regarding property at 40 W Main Rd., which is a residential, agricultural district. The petition is seeking permission to construct and operate a large-scale solar energy facility on approximately 14.5 acres of land. At this time, Mr. Haupt introduced the developer.

Item III: Presentation by the Application

Alex Fox, CVE of North America gave a brief history of CVE and what their mission is. He said their goal is taking renewable energy technology and bringing the benefits of clean renewable energy to commercial, industrial, individual and municipal off-takers. He said that this is one of their first projects in Massachusetts. They have a portfolio of 7 projects that they're developing for installation under the Massachusetts Smart Program, which should be opening very shortly. He said the project is a fairly large ground mounted facility. The electricity will be fed into the electrical grid, but it will be available for residential or small off-takers to buy the electrical credits. There would be an additional discount to residents of the town if they want to buy credits or participate in the Community Solar Program. They design the project which maintains the standards and value of the community and the surrounding neighborhood.

Meredith Savage, SWCA Senior Wetlands Scientist reviewed some minor revisions to the plan after having a pre-meeting with Chairman Haupt on Friday to discuss the project. Chairman Haupt provided her with a list of what the ZBA would like to see (*Memorandum attached*). As a result of this list, and of Chairman Haupt's comments regarding certain errors related to the initial submission, some minor revisions to the plan have been made. The revisions addressed fixing the name of the road, sediment and erosion control measures, and emergency services. She said the site is wooded, and will need to be cleared. She went over the existing conditions plan, and said that they have proposed to put in an access road to prevent any impact on a resident's driveway, and any wetlands or other resources.

The solar project consists of the panel area, then 10 ft. maintenance corridors, followed by the perimeter fence. Maintenance corridors are grass or other low growing vegetation that is allowed to grow there. Around the solar project east, south and west side, there are shade management areas. Those are areas in which vegetation is allowed to grow only to a certain height. Outside of that area, they don't touch the vegetation at all. Once the land is cleared, it is re-seeded with a special erosion control, New England conservation mix that is a combination of grasses. Mowing will take place 2 times a year, and possibly even 3 if needed. They try to keep mowing to a minimum because the grass is in the forest growing in, and is a pollinator. Once the site has been cleared, they have an erosion control barrier that goes around the entire site, and in addition there is erosion control around the access road during construction. In any area where the project approaches wetland or resource areas, it gets a 2nd row of erosion control. (*See all related plans and specifications which are incorporated by reference*)

Ms. Savage said that she has talked with Hwy. Supt. Russell in regard to the plans and related curb-cut permit. He is comfortable with the conditions relating to the specifics of how he would like to see the entrance. He is asking for a change in the size of the culvert from 12 inches to 24 inches. There is a concave concrete drainage swale that goes along parallel to the road. He is asking that a cut be taken out of that, the culvert put in there, and that the flanges of the culvert be absolutely flush with the existing part of the swale. He also would like to add more footage of pavement to the entrance (apron), which still needs to be discussed and finalized. The proponent agreed to cooperate with all reasonable requests of Mr. Russell. Doing that will help keep the gravel and other debris off Rt. 143.

Ms. Savage indicated that the solar panels are mounted on racks that are pile driven into the surface to a depth of 6-8 ft. Once the site is logged and cleared of the vegetation, the equipment is pile driven in and then it is re-seeded. During that time, the erosion control stays up around the site the entire time. There is a perimeter fence 6 ½ feet high and is raised off the ground 6 inches high to allow the passage of small mammals. The access road will vary from 18 ft. to 12 ft. wide travel lane. It's built up crushed gravel. On the upslope side there will be a densely vegetated drainage swale that will be put in. Other than that, there will be no other grading going on. One of the concerns is dust control during construction, primarily near the entrance so it's not going on the highway. There is a 75 foot front set back which is met, and then on all other sides, the setback is 20 ft. The entire project is entirely out of all resource areas and the buffer zone of 100 ft. Mr. Haupt asked what the time frame would be to complete the

project. Meredith Savage responded, “roughly 3 months, depending on the permit and the opening of the Smart Program. It could even get started later this fall.” Mr. Fox said there are a certain number of months for the Interconnection Agreement to meet the requirements. Meredith Savage said as far as emergency services, if they need access to the site, at the perimeter fence, there will be a locked gate, which has a Knox box and a key. The turnaround can accommodate a large truck.

Mr. Haskins asked how far up from East Windsor Rd. is the access to the project. Ms. Savage said that the access road is about 400 ft. to the east of East Windsor Rd. She then explained how the energy goes from the site to the interconnect spot on Rt.143. At the edge of a panel near the fence line, there will be the 10 foot maintenance corridor within the fence. The fence runs outside, then you start the shade management area. The further back from the array, the higher the vegetation will be. The tallest trees get topped, or the stumps are left in the ground. Most of that vegetation is to heights of 10 ft. or lower remains. The north edge of the array is 300 feet to Rt. 143. From the west property line it is 500 feet to the nearest residence. It’s close to 1900 feet from the east property line to the closest house. In terms of visual effects, the shade management area is along the east, south, and west side. She said that the array will not be seen when traveling on Rt 143. The height of the panels will vary slightly, depending on the final angle of tilt. Typically they run from 7 ft. to 11 ft. in height. The contractor will coordinate with the local Police Department regarding traffic safety measures during construction. She said that the most truck traffic will be concentrated while bringing in the panels, the racks and other equipment.

Item IV: Questions and Comments from Interested Parties

ZBA Chairman Haupt shared that he had contacted the Berkshire Regional Planning Commission (BRPC) and provided them with copies of the specifications and plans. They reviewed the GIS data of the applicant for accuracy and had no issues. The Board did receive one set of written comments from Susan Masino, resident of 27 Lakeview Rd in Peru. Mr. Haupt noted some of the comments aren’t specifically relevant to the jurisdiction of the ZBA. Mr. Haupt summarized her comments and questions, including, essentially, Ms. Masino indicates that she supports the project. and wants the project to be the best it can be for the community and the town. The relevant comments or questions are that she understands that Peru doesn’t have a solar By-law and asked if that was a prerequisite of approving the farm. Mr. Haupt stated it’s not. She suggests that there are some steps that we need to take as a Community to become a Green Community. She identifies the Peru Wetlands as having a 200 foot wetland buffer. ZBA Chairman Haupt said he doesn’t necessarily agree with that, and that’s outside the ZBA’s jurisdiction. In terms of environmental concerns, he said that measures would be considered for the project, and the ZBA is sensitive to that, but there are a number of other permits that are involved that would deal with the protection of natural resources including the Conservation Commission’s review making either a negative determination of applicability or imposing conditions that they feel are warranted. There is a curb cut permit that was the purpose of coordinating the proponent with the Highway Superintendent. He’s most familiar with the steps that should be taken to protect public safety on Rt. 143 and the integrity of the road, and monitor storm water controls to meet Tropical Storm Irene standards. Chairman Haupt said “we’re probably going to have more of those events given climate change, which is a scientific fact.” Susan Masino also asked about invasive species. Ms. Savage noted they are using a New England Pollinator seed mix. She asked about decommissioning or abandonment and Mr. Haupt noted there was additional information in the new memorandum, but our preference would be to add a condition of a surety. That’s also something the landowner should consider. Alex Fox said that they would provide a decommissioning plan. We would propose a financial surety. Their preference is a letter of credit from the company. Chairman Haupt said, “renewable energy companies come and go and merge or are acquired at such a rapid pace. We’d be more comfortable with a surety.” Ms. Masino raised the financial concerns of taxation, interest to the Town of Peru which Mr. Haupt noted would be worked out with the Assessors and BOS and most of these projects are taxed in the form of a Pilot Agreement. It’s not real estate, but personal property.

Ms. Savage, in answer to the question about the solar By-law, stated that what they did at the request of the Board was to use the Massachusetts Model Solar By-Law. Many of the towns that we had the experience working with based their solar by-law off the same by-law. The project is outside of natural heritage priority, habitat or best estimated or priority habitat. The project is entirely within an outstanding resource letter to Hinsdale. Because no state action was required on the site, we're not impacting any resource outside the resource areas. With regard to The Wetland Protection Act, there are no point source discharges of storm water into resource area, and as a result no state action was required.

Con Com getting ready to issue their order of conditions (if any), and they also had a positive determination of wetland boundaries, then they accepted our delineation. Mr. Frederick added we will be issuing a determination. Regarding the 200 ft. wetland buffer, Chairman Haupt has recused himself from further commenting on the town wetlands By-law.

With regard to public safety after the project was commissioned, Ms. Savage noted in an emergency, the first step is to disconnect the site. There are other steps listed in the Memorandum that address public safety.

Mr. Haupt asked if there were any further comments or questions from the floor. Terry Kellogg requested more information on the Smart Program. He said that he has solar on his house, with the voltage near 126V. He said that once CVE comes on, they're going to be pushing that voltage up too. He wanted to know if that would affect others in the area. Alex Fox briefly explained schematics, but Chairman Haupt suggested that Mr. Kellogg address that with the utility. Ms. Savage said in response to a concern from the Board regarding storm water that the model was run on 20 and 100-year peak flow events. That's basically looking at overland flow during storm events. Based on modeling results, the proposed condition flows projected for the site to be equal to or less than existing conditions for the stated storm events. Mowing will occur 2 times or as needed.

ZBA Chairman Haupt then requested a motion to close the public hearing portion of the meeting. Mr. Haskins so moved with second from Ms. DiTomasso. All in agreement with no further discussion. **VOTE 5-0**

Item V: **Deliberation by the Board**

Mr. Haupt indicated that he proposed having a vote this evening, then if the vote was favorable, he would draft a decision incorporating the best pieces of this information including any necessary conditions agreed to by the Board for everybody's review. He asked that Ms. Savage send tonight's submittals to him electronically.

Mr. Haskins stated, "They say that the erosion and the access road will be repaired and stabilized. What about the panel area? What about erosion in the panel areas? It does not specifically say." Some of the panels are very large, and there's water run off that can be erosion between panels, which leads to more erosion elsewhere." Chairman Haupt said the memorandum of today says, Storm Water and Erosion Control will be maintained for life of the project land lease. Prior to traffic on the site he expects the developer to agree to any reasonable conditions proposed by the Board. Ms. Savage said also, erosion is addressed specifically regarding the drip line version in Sections 3.3 & 3.4. Alex Fox said with the species of plantings that they've talked about, the idea is to let them grow up so that when the water comes off the drip line and hits the grass mix that's grown up, it prevents erosion typically what they've done in the past is in the intervening time period when it's establishing itself, they can put down cloth. If we didn't include that, we could put in a condition.

Mr. Stzepa asked about the surety. Mr. Haupt suggested that the conditions will include that they're going to provide a bond in a form and in an amount as approved by town Counsel. Mr. Haskins asked about mowing.

Mowing will occur 2 times a year. The Board thinks it should say 2 times a year or as needed. Mr. Fox noted there's a decommissioning clause attached to the Memorandum which was acknowledged; however, the Board reiterated that a bond will be requested

Mr. Haupt asked all present if they have heard anything that concerns them, or does anyone not believe that the project is the interest of the Community or is a detriment to the Community or that there's a threat of Public Health, Safety or Welfare? There were no responses.

Mr. Haupt said, "based on the fact that this is a good project for the town, there are benefits all around. I don't see that there are any negative impacts to the neighbors. I think we did enough things around the table to identify any additional conditions and safeguards that are necessary to make this a good project. We can't guarantee it's going to be a success, but I think it deserves support."

Bonny DiTomasso motioned to approve the project with the aforementioned conditions, specifically the surety bond considered by Town Counsel, and other items or concerns addressed during the presentation of the project. ZBA Member, Doug Haskins seconded. All in agreement with no further discussion. **VOTE 5-0**

Chairman Haupt said, "The Application for Special Permit for CVE for property located at 43 West Main Rd., is approved subject to our drafting a decision with a limited number of conditions and incorporating by reference the Plans, Specifications and Memorandum submitted today by the Petitioner for the project."

Item VI: **Adjournment**

Mr. Haskins moved to adjourn the Peru ZBA Public Hearing at 7:55 P.M. on 8/29/18. Bonny DiTomasso seconded. All in agreement. **VOTE 5-0**

Articles used:

Meeting Agenda of 8/29/18
Sign in sheet of 8/29/18
SWCA Memorandum of 8/29/18
Solar Permit Application Drawings
Solar Permit Application Documents

Respectfully submitted,
Irene J. Morrison
Administrative Assistant