

Planning Matters Subcommittee
Monday, May 6, 2019
1:00 P.M.
East Longmeadow Public Library
Library Conference Room

Minutes

Subcommittee Chair Anderson opened the meeting of the Town Council Planning Matters Subcommittee at 1:07 PM and called the roll.

Present: Chair Donald Anderson, Town Council; Vice chair Michael Kane, Town Council; Thomas O'Connor, Town Council; Ralph Page, Sub Committee Member; Marilyn Richards, Sub Committee Member

Also Present: Constance Brawders, Director of Community Development & Planning
Bethany Yeo, Administrative Assistant, Community Development & Planning

Attorney Jim Martin, Robinson Donovan, P.C. (1500 Main Street, Springfield, MA 01115)
Counsel for Ecos Energy, LLC (222 South 9th Street, STE. 1600, Minneapolis, MN 55402.

Chris Little, Project Manager and Director of Development at Ecos Energy, LLC. (222 South 9th Street, STE. 1600, Minneapolis, MN 55402.

Chair Anderson informed the members of the subcommittee that the reason for the meeting was to listen to the petition for rezoning at 0 Pease Road (Assessor's Parcel 33-1-0) as proposed by the land owner, PLH LLC, and Ecos Energy. Chair Anderson invited the Atty. Martin to address the subcommittee. Atty. Martin summarized the history of the petition for zoning change from Residence AA to Industrial. The purpose of the zone change is to enable the petitioner to build, construct and operate a four (4) megawatt solar array on the property. [Ground mounted photovoltaic arrays are not allowed by right in a residential zoning district; however, the use is allowed in the Industrial Garden Park and Industrial zoning districts.] The parcel known as Rear, or Zero, Pease Road is land locked and has no frontage or access in East Longmeadow.

The petitioner also owns adjacent property to the south in Somers, CT. Atty. Martin informed the subcommittee the Town of Somers has approved an application for a permit for installation of a seven (7) megawatt solar array. Approving a zoning change would allow the land owner to access and develop both parcels for the purpose of constructing a ground mounted solar array. Atty. Martin noted the parcel does not border residential properties. However, Atty. Martin stressed there are some residential properties to the east of the site.

Furthermore, Atty. Martin opined that the zone change must be designated Industrial zoning district, reminding the subcommittee that under the zoning bylaw of East Longmeadow, the Industrial zoning district does not require frontage along a roadside.

Atty. Martin stated the array will not be visible from any street or public way in East Longmeadow; the property had been deforested by the previous land owner; Eversource Energy owns adjacent land parcels which serve their power line easements; and there is an existing easement located in the north segment of the parcel under review.

At the initiation of discussion between subcommittee members and petitioner, Chair Anderson noted for the record that committee members Ralph Page and Marilyn Richards contacted the State Ethics Commission of the Office of the State Attorney General and filed paperwork with the Town Council to disclose any potential conflict of interest. Atty. Martin, at a previous Town Council meeting, voiced his concern regarding a potential conflict stemming from comments made by each at the Planning Board public hearing.

Ms. Richards clarified for the record that she had attended the Planning Board hearing on her own accord as a resident and former planning board member. At that time, she had spoken on her own behalf as a resident to express concerns about the petition for zone change, not the project proposal for the construction of a solar array.

Atty. Martin continued his argument for the zone change stating that the zoning bylaw itself states the mission statement for East Longmeadow is to promote the development of alternative energy sources in the town. It is the belief of the petitioner that by restricting solar energy to the Industrial zone and Industrial Garden Park, the Town is not able to fulfill or meet this mission.

Atty. Martin shared that he had previously submitted data and documentation concerning Deer Park Industrial property on which a solar project could not be developed based on deed restrictions on the otherwise available land.

Atty. Martin stated that his client is a very strong proponent of climate change as a real and important issue that communities need to address. Atty. Martin noted that while East Longmeadow has one solar array off of Denslow Road there are no other projects of this size in East Longmeadow. This project could offset the electrical expense and generate enough energy to supply 1,200 homes in East Longmeadow.

Furthermore, Atty. Martin argued that according to East Longmeadow's bylaw, the primary purpose for zoning changes is to promote the public's welfare. Atty. Martin opined the current zoning handcuffs the applicant from promoting the public's welfare and the zone change is prudent, necessary and in the town's best interest, and [in referring to the handout map provided to the subcommittee showing the site location] it is a clean green project having minimal impact on the town's infrastructure, school system, wildlife corridor, public service, and public safety needs.

Atty. Martin elaborated on the permanency of the zone change after the life of the project lapses and reminded the subcommittee to consider the present.

He suggested placing deed restrictions requiring the land revert to residence zoning.

Atty. Martin concluded his comments in support of a solar array project stating that the zone change must be granted in order for the project to be developed under Massachusetts Smart [Solar Massachusetts Renewable Target] incentives program. An application for this incentives program, however, has been currently denied, as the applicant does not have land use entitlements in place.

The Chair opened the discussion for comment from the Committee. Discussion ensued.

Mr. Kane asked Mr. Little if the project in Somers would move forward if the zoning petition were not granted by East Longmeadow, to which Mr. Little replied the project in Somers would proceed in phases.

It was noted that the parcel could be accessed via Pease Road in East Longmeadow via a parcel owned by Eversource Energy.

Ms. Richards elaborated on the evolution of the Town of East Longmeadow Ground-Mounted Photovoltaic Installations bylaw.

It was noted that when the farm property was conveyed in 2016 that the Town did not exercise its right of first refusal.

It was also noted that the buyer was aware of the zoning district and by right development rights under zoning, running with the land.

Atty. Martin opined that Ground Mounted Solar Voltaic Arrays are not considered industrial projects and citing such projects near rail infrastructure was now moot as East Longmeadow is no longer serviced by a rail line in the Industrial Garden Park and Industrial zoning districts. A solar array generates electricity which is transferred and put into the grid; a solar array does not manufacture electricity.

Mr. Page asked for clarification on the current zoning map and the zoning petition designation, should the petition be granted. Atty. Martin assured the subcommittee that clarification would be made.

Mr. Page asked for reassurance that should a rezoning be recommended, the zoning could be reverted automatically. Atty. Martin again proposed placing a deed restriction to run with the land, by adding *in finitum* to the deed.

Chair Anderson expressed doubt regarding *in finitum* deed restrictions. It was determined that the topic would require further discussion, should the zone change be moved for recommendation for approval.

Mr. O'Connor stated that he is not in favor of a zone change for this property. He has no preference for what is placed on the property; however, while he is not opposed to a solar

farm, he is not in favor of a zone change from Residential to Industrial for any reason at this time. He expressed concern that the Master Plan, currently in process, is not complete and that this change could be contrary to the direction that a new Master Plan could take.

Chair Anderson asked if the Town would be the recipient of a PILOT (payment in lieu of taxes). The applicant responded they had not negotiated with the Town in regard to the tax revenue generated by such a proposal.

The example of the Town of Ware, MA solar voltaic proposal was considered as an example.

It was determined that the Commonwealth of MA would be the beneficiary of the SMART program proposal for the solar array and that energy generated in East Longmeadow would not benefit the bordering residents of CT.

Chair Anderson wanted reassurance the decommissioning would be bonded sufficiently for present and future value. Atty. Martin assured the members projected costs would be calculated by experts in the field.

Chair Anderson asked hypothetically if he were to design a 2020 Master Plan, is it good planning to put the most permissive zone at the location of the parcel proposed for this change?

He also opined the time may be now to craft a bylaw to introduce "Green Zoning", as it was earlier stated that the applicant's only option was to rezone the parcel?

Ms. Richards, Chair Anderson, and Mr. O'Connor discussed the absence of buffer zones at the location of the parcel in question, to protect the abutting residence zoning districts from visual encroachment of the proposed solar array. Historically, buffer zones abutted residential zones to protect these zones from other and more permissive zones.

Chair Anderson asked Atty. Martin to address the perceived perception of Spot Zoning at this site. Atty. Martin responded that this is a change of zoning petition for the public benefit.

The Committee recalled the recent change at the Fields of Chestnut on Chestnut Street from Industrial Garden District to Planned Adult Residential District.

Chair Anderson raised concerns about the challenges facing the validity of the Town's current by law for ground mounted photovoltaic installations.

It was acknowledged by subcommittee members that as the 1976 Master Plan is being revised, it may be premature to move the zoning petition change forward at this time.

Mr. Kane asked if the existing site conditions had been surveyed. Mr. Little responded they had been on site and had knowledge of existing conditions.

Ms. Richards and the Chair expressed concern over the operation and maintenance plan and emergency service access to the site, if the site was inaccessible via East Longmeadow, as referenced in the Town's Ground-Mounted Photovoltaic Installations Bylaw, Section 7.5.15.1, Emergency Services. Mr. Little and Atty. Martin assured the subcommittee that access could be arranged with Eversource Energy with an easement by necessity. Atty. Martin also reported on the results of the pre permitting meeting with the public safety departments, whereby arrangements could be made with the neighboring community of Somers, CT. Chair Anderson asked about easement agreements for access; to date, no agreements have been made.

Planning and Community Development Director asked how goods were moved from the former farming site to the market place if there was no access to East Longmeadow roads. Atty. Martin responded that commodities were transported through the Somers access point along the western land boundary to the adjoining Connecticut parcel.

The Director also asked how much of the power was being sold to the grid, and if any power was dedicated to the Town of East Longmeadow. Atty. Martin responded that as East Longmeadow does not have any private generation of electricity, all power would be sold to the grid. National Grid would purchase 100% of the generated electricity.

Ms. Brawders asked when the sunset clause on this Smart incentives program is. Mr. Little replied it is not date determined; rather the determination was based on capacity. Currently National Grid and Eversource are at capacity and this proposal for solar array being discussed was ineligible for this round of incentives.

Mr. Page concluded that should the petition for rezoning be granted, the Town would have a land zoned Industrial, but no ground mounted solar array project application forthcoming.

Mr. Little expressed his impassioned support for renewable energy and asked the subcommittee to consider the reasonable proposal for a solar array at this site, which is located next to a correctional institution, power lines with appurtenant easements, in proximity to an industrial garden park.

Atty. Martin remarked that by having the zoning in place, the applicant could be ready when and if the Smart program initiatives were implemented the next round.

Mr. Page asked if there was an awareness of specific solar zones having been created in MA.

Mr. Little and Atty. Martin were unaware of such zones and deferred to the Planning and Community Director. Ms. Brawders opined that one way of addressing the concerns and resolving the matters expressed at this meeting would be to create a solar overlay zone. The underlying zoning (Res AA) would remain in place. If the solar array proposal should not be developed, or its purpose reaches its end of life, then, with proper deed restriction, the site could revert to the underlying zoning district of Res AA.

Mr. Little clarified that there are two ways to interconnect to the power grid. Connection may be made directly into the high voltage 69 kV power lines which travel great distances or through a medium voltage distribution system which serves residences. Ecos Energy would be building a transformer on site. Mr. Little described this as a box like structure, having dimensions of approximately 6 feet in height by 6 feet in width, with a series of poles, and re-closer (circuit breaker) that senses voltage fluctuation, and meter with disconnect switch.

Hearing no further comments or questions, the Chair asked for a recommendation from the subcommittee members from the Town Council to approve a zone change to Industrial from Res AA for 0 Pease Road (Assessor's Parcel 33-1-0); Motion made by Thomas O'Connor; second by Michael Kane.

Further discussion summarized the reasons for not recommending the zone change by this subcommittee:

- The Industrial zone is the least restrictive zone, being the most permissive of allowing use.
- The site of the proposed Industrial zone will not be accessible through the town of East Longmeadow, as it is a landlocked parcel.
- The proposed Industrial zone is currently zoned Residential AA and is abuts other Res AA zoned parcels.
- The petitioner has other options, such as a Green by law or introduction of an overlay district, which could be explored.

Thomas O'Connor verbally lent his support with reasons stated by the Chair. There being no further discussion, the subcommittee recorded the following vote:

Vote:

Donald Anderson	NAY
Michael Kane	NAY
Thomas O'Connor	NAY

Meeting adjourned at 2:58 PM.