

BENNINGTON SELECT BOARD AND PLANNING COMMISSION JOINT MEETING

BENNINGTON FIRE FACILITY

130 RIVER STREET

BENNINGTON, VERMONT 05201

NOVEMBER 20, 2017

MINUTES

SELECT BOARD MEMBERS PRESENT: Thomas Jacobs-Chair; Donald Campbell-Vice Chair; Jim Carroll; Carson Thurber and Jeanne Conner.

SELECT BOARD MEMBERS ABSENT: Jeannie Jenkins and Chad Gordon.

PLANNING COMMISSION MEMBERS PRESENT: Charles Copp; Robert Ebert; Michael McDonough (at 6:41pm); Ken Swierad and Nick Lasoff.

PLANNING COMMISSION MEMBERS ABSENT: None.

ALSO PRESENT: Stuart Hurd-Town Manager; Dan Monks-Zoning Administrator and Assistant Town Manager; Brad Wilson-Ecos Energy, LLC; Peter Lawrence; Mary Morrissey; Rick Carroll; 1 citizen; CAT-TV and Nancy H. Lively-Secretary.

At 6:00 pm, Select Board Chair, Thomas Jacobs, called the meeting to order and recused himself from the meeting due to a conflict of interest. Select Board Vice-Chair Donald Campbell continued to conduct the meeting.

1. TAKE PUBLIC COMMENTS AND DISCUSSION ON SOLAR PROJECTS

A. BATTLE CREEK 1

B. CHELSEA

Jim Carroll moved and Ken Swierad seconded to waive the reading of, and include in the Minutes, the following letter:

“FOR PUBLIC COMMENTS TO THE COMBINED BENNINGTON SELECT BOARD AND PLANNING COMMISSION MEETING NOV 20, 2017

PLEASE PRESENT AT THE MEETING AND ENTER THIS WRITTEN COMMENT INTO THE MINUTES

RE: SOLAR PROJECTS BATTLE CREEK I AND REVISED CHELSEA SOLAR

As residents of Apple Hill in Bennington who have been involved with these two solar proposals from their beginnings, we have several comments we would like you to take into consideration since we can't attend the meeting.

1. The Battle Creek proposal has been sited in an appropriate zone and area of town, so it merits support. Our support relates only to the general siting. Because we haven't seen specific plans for screening and abiding by other town and state requirements, and because we have had difficult dealings with the developer related to other solar proposals, we urge the Planning Commission and the Select Board to be vigilant in making sure this project fully complies with those requirements, both in planning stages and after completion. We urge this due diligence in order to prevent this project from becoming an eyesore and

nuisance as other solar projects in town have, due to lax or no enforcement of these requirements, particularly related to glare and screening. We urge the PC and SB to make sure the project developers put these assurances in writing.

2. Unlike Battle Creek, which is an appropriate district of the Town Plan, the Chelsea Solar Project is not. We have been opposed to this project since it was first proposed and continue to be opposed even though the plan has been somewhat revised. The revisions don't adequately address wind and noise problems that would affect the neighbors because adequate testing wasn't done. We urge the PC and the SB to join us in opposition for that and for several additional reasons:

a. This solar project is located in the Rural Conservation District. Our Town Plan disallows industrial development in RCDs, as the Public Service Board agreed when it turned down this project in its earlier incarnation. The revision of the project does not change that fact.

b. This project is adjacent to a second solar project, Apple Hill, proposed by the same developer. The combined project exceeds 10 acres. Our Town plan in the 2016 Amendment related to solar siting says this: Mass and Scale: Except for solar facilities located in preferred areas, solar facilities larger than 10 acres, individually or cumulatively, cannot be adequately screened or mitigated to blend into the municipality's landscape and are, therefore, explicitly prohibited. Thus it forbids projects over 10 acres. Individually Chelsea Solar and Apple Hill each exceeds 10 acres. So the individual and the cumulative effect of 2 adjacent projects is disallowed.

The 2017 draft plan of the Solar Siting committee, which is awaiting SB approval, after a much too long delay, notes the location for these 2 projects is NOT a preferred site.

c. The developers of Chelsea and Apple Hill are trying to get the best of both worlds, depending on what they are filing for - sometimes they want these treated as two separate projects and sometimes not. This confusion works only to their benefit, not that of the town or the neighbors.

There are thus many reasons we object to the Chelsea and upcoming AppleHill Solar projects and we hope for support by the Planning Commission and Select Board.

Signed,

Lora Block	Libby Harris	Joe Schoenig	Dianna Leazer
Rick Carroll, member Bennington Solar Siting Comm			Robert Block
Bill Knight, President AppleHill Homeowners Assoc			Judy Knight
Kathy Hoisington	Edward Smith	Theresa Smith	Janet Neuschaefer
Peter Lawrence"			

The motion carried unanimously.

Mr. Monks gave some history on the two solar projects:

BATTLE CREEK I - The 45-day notice for Battle Creek I was in February 2017 which notifies everyone that the applicant intends to file with the Public Utilities Commission (PUC). The Planning Commission felt that it complied with the Town Plan but they didn't have sufficient evidence of complying with the screening ordinance, though they had no real objections. The Select Board heard the applicant's proposal and decided

that they wouldn't make any comments until the full application had been submitted. This project has been moving along and it would be appropriate for the Planning Commission and Select Board to make their comments within the next week or two.

CHELSEA - The original application went to the Supreme Court and the applicant did not appeal that decision. The applicant has a new petition for a revised site plan not yet submitted to the PUC and the 45-day notice is over on November 26, 2017. The Select Board has seen this plan but the Planning Commission has not. The current Town Plan with the solar siting amendment does apply, however, the proposed solar siting amendment new Energy Section does not apply to the PUC review.

Brad Wilson, from Ecos Energy, LLC, did the following presentation on the two solar projects as follows:

BATTLE CREEK I -

- The Battle Creek I Solar Project is a ground-mounted, commercial-scale facility (2.2 MW).
- It has a 25-year Power Purchase Contract through the SPEED Program and is proposed on a 41-acre parcel on North Bennington Road and Rice Lane behind Home Depot and Carbone dealerships.
- Ecos Energy is seeking a Certificate of Public Good from the Vermont Public Utilities Commission.
- The 45-Day Notice was on January 30, 2017, the petition was filed on July 25, 2017 and was marked complete on October 11, 2017.
- Previously, on April 7, 2016, there were 45-day notices for 3 projects. After review by the Planning Commission, Select Board and two neighborhood meetings, those 45-day notices were withdrawn on June 3, 2016.
- A revised plan - the current project - was presented to the Planning Commission on June 6, 2016. This brought the project down from the original 5 MW to the present 2.2 MW project.
- Tonight's presentation is the final site design of Battle Creek I.
- The request is also made for the Select Board to make their formal assessment and consideration of a setback waiver.
- The State of Vermont requires a 50' setback from solar projects, however, the setback can be reduced if the host municipality and adjoining landowners agree to it.
- Within the Industrial zone, a 10' setback is acceptable which would allow the solar panels to be spread out more. Ecos Energy is asking the Select Board to consider the 10' setback.
- The property has split zoning - part is zoned Rural Residential and part is zoned Industrial.
- The solar arrays will be entirely on the Industrial portion of the property which is the preferred area and the result of multiple iterations.
- The project is in compliance with the Town Plan and Standards with no undue adverse impacts to State criteria.
- There is a 50' set back on the eastern boundary and an interconnection corridor on Rice Lane that will go under the wetlands with horizontal drilling. The Agency of Natural Resources has indicated that this has the least impact on the wetlands. A photo of the interconnection on Rice Lane was shared.
- Natural screening, as well as, some additional landscaping will satisfy the requirements of the town's solar screening ordinance and maintain visual qualities.
- There were two letters included with the presentation - one was the actual letter to the Vermont Public Service Board stating the Select Board's approval of the Paper Mill Village Solar project on October 13, 2016, and the other was a sample letter if the Board should approve the 10' setback.

- All of the history related to this project can be found at www.battlecreek1.com .
- The Planning Commission has signed off on the project, the Select Board has not.

QUESTIONS -

- Mr. Lasoff noted that the photos were taken from the base of the monument and wondered how different the view would be from the overlook edge? Mr. Wilson answered that it would be the same visibility that there is now of Home Depot and the car dealerships.
- Mr. Campbell stated that there is anecdotal evidence that this is a well-used wild life area with animals moving from the Taconic's in Pownal to the West Mountain in Shaftsbury, and asked if the perimeter fence could be removed and backing panels put on the solar panels, themselves? Mr. Wilson responded that their current plan, because of the National Electric Code, is to use 7'-8' chain link fence and the Agency of Natural Resources has requested that the chain link fence be replaced with a fixed knot game fence which will allow for small animal movement. Mr. Wilson is not familiar with the protective backing panels that Mr. Campbell has referred to and thought that they may have been allowed with previous National Electric Code rules. However, he will bring the question back to his team and Mr. Campbell will research it with the State, as well.
- Mr. Thurber mentioned the chain link fence by Johnson Control and that another one may be invasive, and Mr. Wilson stated that there is much of the property that will not be fenced in.
- Ms. Lasoff added that the cranberry bush is doing very poorly and recommended that the use of it for screening be replaced. Mr. Wilson concurred.
- Ms. Conner asked why the Planning Commission approved the 10' setback, and Mr. Ebert answered that it was reasonable because the railroad tracks were there.
- Peter Lawrence stated that the Publyk House and Harwood Hill Motel have spent a lot to ensure their views and the Town needs to be sure that there is adequate screening so there's not a negative impact on that. Other than that, Mr. Lawrence supports the project. Mr. Campbell asked if there could be a 50' buffer on the east side of the tracks and Mr. Wilson will ask his team.
- Mr. Wilson stated that there will be a site visit for the PUC on December 4, 2017, meeting at 3:00pm in the Home Depot parking lot. Board members that wish to do so will go to the Publyk House on their own to see the view.

Mr. Campbell noted that this was a good project and the Select Board will discuss this further when all members are in attendance.

CHELSEA -

- Because of where the Chelsea Solar Project was procedurally, it was the recommendation of Rob Woolmington for the Town to continue to oppose the project. This was the original site plan and not the revised site plan.
- And, along with that recommendation, the Town recommended that Ecos Energy withdraw from the Vermont Supreme Court case, withdraw the original petition and start over with the Chelsea project.
- The Chelsea revised site plan project was re-started and the 45-day notice was filed on October 13, 2017, making the end of that period November 26, 2017.
- The goal tonight is to answer questions, note comments and recommendations to ensure that all concerns are addressed within the petition.

- It is encouraged, but not required, that all formal comments/recommendations be in writing.
- The parcel is 23.7 acres on Rural Conservation land right off of the Route 7 interchange.
- The diagonal driveway alignment as suggested by the Select Board has been done.
- The 50' setback requirement is part of the revised site plan and a waiver of that is not being sought.
- Because of the 50' setback, an additional row of solar panels has been added to the array.
- If vegetation is left in the 50' buffer, the solar array will be in the shade most of the time.
- All of the history related to Chelsea can be found at www.chelseasolar.com once the petition has been filed.

QUESTIONS -

- Mr. Copp asked the size of the project, and Mr. Wilson answered that it is a 2MW project.
- Mr. Lasoff asked what the effect of the grading would have on the hydrology in that area and adjacent areas, and Mr. Wilson stated that there will be a fully developed storm water and erosion control plan prepared by a State of Vermont Certified Civil Engineer in the petition.
- Ms. Conner asked the size of the two projects. Apple Hill project is 7.3 acres and the Chelsea project is 8.6 acres, a total of 15.9 acres. Mr. Wilson noted that Ecos Energy will address the Town Plan's "larger than 10 acres, individually or cumulatively, cannot be adequately screened or mitigated to blend into the municipality's landscape and are, therefore, explicitly prohibited" issue in the petition.
- Mr. Monks stated that the PUC has to "give due consideration to the Town Plan but that doesn't mean that they have to take it into account or follow every word of it".
- Ms. Conner asked if the noise analysis has been done yet, and Mr. Wilson said that the re-analysis of noise had not been done yet. To clarify, this is the road noise from Route 7 that has always been there which would be minimally effected by the removal of some trees. This is not a project related issue but we will include it in our petition with all other documentation.
- Mr. McDonough requested that Mr. Wilson explain the boundaries between Apple Hill and Chelsea, and he did.
- Mr. McDonough further requested an explanation of the unscreened easterly boundaries of Chelsea on the adjacent property owners, and Mr. Wilson cited the several mitigating factors, i.e., the several hundred feet of distance, the 10' mesh screening fence, the black solar modules, and vegetation for the only home that would be able to see the project.
- Mr. Campbell is "uncomfortable" concerning the visual effect from both sides of the buffer areas - from the residents and from the highway - giving the look of "ridgeline development, though it is not". Mr. Wilson will discuss these concerns with his team.
- Mr. McDonough added that there may be a compromise by exchanging what is potentially excessive buffering on the west side for additional buffering on the east side.
- Ms. Morrissey asked if the buffering plans were different now than the ones presented earlier this year, and Mr. Wilson answered no. Ms. Morrissey noted that, during the 5-7 years when the trees are maturing, they do not create a buffer when they're 4'-5' tall.

At 7:38pm, Robert Ebert moved and Charles Copp seconded for the Planning Commission to meet in Deliberative Session on November 27, 2017 at 5:00pm at the Bennington Fire Facility to continue the solar project discussion from tonight's meeting. The motion carried unanimously.

At 7:39pm, Carson Thurber moved and Jeanne Conner seconded for the Select Board to continue discussion on Battle Creek I solar project at their regularly scheduled meeting on November 27, 2017 at 6:00pm at the Bennington Fire Facility. The motion carried unanimously.

At 7:40pm, the Bennington Select Board and Planning Commission Joint Public Hearing was adjourned.

Respectfully submitted,

Nancy H. Lively
Secretary