



TOWN OF WESTPORT
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PLANNING BOARD

PLANNING BOARD MEETING

January 26, 2021

Chairman Jim Whitin called the meeting to order at 6:00 p.m. with Vice-Chair Robert Daylor and members John Bullard, Manuel Soares, Mark L. Schmid, and Town Planner James Hartnett were in attendance.

Chair's Announcement – Under MGL Chapter 30A, section 20(f) – The meeting is being recorded. *Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, this meeting of the Westport Planning Board is being conducted via remote participation. No in-person attendance of members of the public will be permitted, but every effort will be made to ensure that the public can adequately access the proceedings as provided for in the Order. A reminder that persons who would like to listen to or view this meeting while in progress may do so by following the remote links:*

An audio recording of this meeting is posted on the town's website. (www.westport-ma.gov)

Call to order 6:00 p.m.

1. Administrative Items

a. Westport Route 88 Solar 1, LLC (18-011LID-S) Minor Plan amendments

Hartnett commented the Board approved this Large Scale Solar project in October of 2019, after the Board's approval they filed with the Conservation Commission. The applicant redesigned the three drainage pipe crossings on the existing access road to the site and one drainage pipe crossing on the drive between the two fields that will replace the existing substandard drainage pipes with open box culverts to meet the wetland replication protocol and stream crossing design standards. These are construction improvements that do not alter the solar design or conditions of the special permit approval.

Motion

Bullard moved to approve the minor plan modifications upgrading the four stream crossings for Route 88 Solar 1, LLC, as shown on the Sullivan Drive Improvement Plan and Wetland Crossing Improvement Plan with revision dates of August 11, 2020. Seconded by Daylor. Upon a roll call vote being taken, members Bullard, Daylor, Schmid, Soares, and Whitin voted aye and the motion carried 5-0.

b. Approval Not Required (ANR) Walker (21-001A) Request by the applicant for endorsement of a Plan of Land showing 2 Lots for land located at 43 Union Avenue, Map 28 Lot 46-50.

Bill Walker of 43 Union Avenue was present virtually.

Hartnett commented the applicant is proposing to divide the property into two lots to transfer parcel A (1,038 sf) to the abutting property at 29 Union Ave.

Motion

Bullard moved to approve endorsement of the plan entitled "Approval Not Required Plan 43 Union Avenue" prepared for William Walker because the plan complies with the provisions of MGL Ch. 41 Section 81P. Seconded by Daylor. Upon a roll call vote being taken, members Bullard, Daylor, Schmid, Soares, and Whitin voted aye and the motion carried 5-0.

c. **Watuppa Realty, LLC (19-010SPA)** – Request for temporary occupancy

Hartnett stated the Board approved the Site Plan in September of 2019 for a warehouse/storage building. He added the construction has been completed except for the finished site work. The underground drainage and septic system have been installed and the building is complete. Final grading and pavement will be done in the spring. The applicant is requesting a 6-month temporary occupancy for the storage and warehouse use only.

Motion

Bullard moved to permit the building inspector to issue a temporary occupancy for the building provided all site work is completed by July 30, 2021, and prior to the issuance of the permanent occupancy. Seconded by Daylor. Upon a roll call vote being taken, members Bullard, Daylor, Schmid, Soares, and Whitin voted aye and the motion carried 5-0.

d. **Approval Not Required (ANR) Roderick (21-002A)** Request by the applicant for endorsement of a Plan of Land showing 2 Lots for land located at 61 American Legion Highway, Map 61 Lot 1.

Sean Leach from Northeast Engineers & Consultants Inc. was present virtually representing the applicant. Leach mentioned the applicant is requesting to divide the property into two lots with Lot 8 having frontage along Route 177 and it meets the requirements for an ANR.

Daylor asked what the outcome of Lot 1 would be across the R.O.W. between 1A & 1C. Leach mentioned Lot 1 has been reconfigured into 3 lots, Lots 5, 6, 7, and parcel A; parcel A will be combined with Lot 1C.

Daylor questioned if Lot 7 would have frontage on the Right of Way. Leach confirmed Lot 7 would have frontage on the Right of Way and the Board approved that in July 2020.

Motion

Bullard moved to approve endorsement of the plan entitled “Approval Not Required Plan of Land in Westport, MA, A.P. 61 Lot 1, 61 American Legion Highway” prepared for Kelly & Jesse Roderick because the plan complies with the provisions of MGL Ch. 41 Section 81P. Seconded by Daylor. Upon a roll call vote being taken, members Bullard, Daylor, Schmid, Soares, and Whitin voted aye and the motion carried 5-0.

e. **Westport Stone & Sand (18-009SPA)** Request for 1-year extension.

John Schroeder of Energy Development Partners was present virtually representing the applicant. Schroeder informed the Board the reason for the delay is due to gaining approval for the interconnection from Eversource that was filed in June 2018. He added they are anticipating the group study to be completed between Eversource and ISO New England sometime in May 2021 and they will be allowed to obtain the interconnection service agreement to start construction.

Whitin asked if the plan would need to be revised since the approval was almost two years ago. Schroeder commented that they do not anticipate any changes to the plan.

Hartnett added they have been steadily working on their permitting without a time-lapse and they have filed for an extension for the Special Permit with the Building Inspector.

Motion

Bullard moved to grant a one (1) year extension for the Site Plan Approval of Frank Epps, Westport Stone & Sand Solar, LLC for property located at 536 Old County Road. Seconded by Daylor. Upon a roll call

vote being taken, members Bullard, Daylor, Schmid, Soares, and Whitin voted aye and the motion carried 5-0.

f. Non-Medical Marijuana – Revised Zoning By-Law Prohibition Review

Hartnett gave a brief overview of the revised Draft Article By-Law Prohibition review. Hartnett stated that if the prohibition article is approved, this article could be considered and would regulate the location of Medical Marijuana Establishments to the STOD and AEOD.

Diego Bernal of 9 Glen Road was present virtually. He was concerned about the confusion of all the articles at Town Meeting.

Attorney Brian Corey was present virtually. Attorney asked for clarification on Zoning Article 2A.

Sullivan was in favor of including the addition of Article four on the warrant.

Motion

Daylor moved to file the Amendment 2A Alternative that modifies section 9.9.3 to the Board of selectman for inclusion for the Annual Town meeting warrant.

Amendment

Daylor amended his previous motion relabeling Amendment 2A as Article 4. Seconded by Bullard. Upon a roll call vote being taken, members Bullard, Daylor, Schmid, Soares, and Whitin voted aye and the motion carried 5-0.

g. Planning Board Annual Report

Hartnett asked the Board members to review the draft Annual Report for any comments before submitting it to the Board of Selectman.

Daylor suggested including that the meetings have been virtual due to the Covid-19 pandemic along with sighting the Governor's prohibition on public hearings starting March 12, 2020. Daylor also questioned the number of hearings listed in the table.

h. Coastal Healing (20-007SP) – Endorse decision

Hartnett reviewed changes to the Conditions and asked the Board to review them prior to endorsing and finalizing. He also referenced a letter submitted from Attorney Corey dated 1-21-21 regarding the driveway location. Hartnett stated that the condition regarding the location of the driveway would give the Board a little flexibility if it could not be located at the far-east end of the property. According to Attorney Corey's letter, moving the telephone pole would be difficult. The Board agreed on the language of the condition but would still like to see the driveway located closer to the easterly property line.

Soares mentioned he was concerned about reconfiguring the drainage and rain garden design when the driveway is moved.

Motion

Bullard moved to endorse the decisions based on the waiver, finders, and conditions. Seconded by Daylor. Upon a roll call vote being taken, members Bullard, Daylor, Schmid, Soares, and Whitin voted aye and the motion carried 5-0.

6:15 p.m. Public Hearing

2. CVE North America Inc. (20-005SP)- Soule's Way (continued from September 8, 2020, November 4, 2020, December 15, 2020)

Request by the applicant to consider the Special Permit and Site Plan Approval Low Impact Development applications for **CVE North America, Inc.** for property owned by **John B. Hathaway Trust and The Westport Lot 24 Nominee Trust, Daniel C. Perry Trustee**, located south of Soules Way between Route 88 and Drift Road, Assessor's **Map 57, Lots 19 & 24**. Pursuant to Westport Zoning By-Laws Article 20 Low Impact Development and Article 24 Large Scale Solar Energy System, the applicant requests permission to construct a solar energy system, approximately 5.0 Megawatts, lot size 35 acres.

Ryan Young of CVE North America Inc., Cristina Tapia, Nicholas Clini, Chris King, and Attorney Dan Perry were present virtually.

Young gave a brief environmental review and mentioned the new state regulations for battery storage. He has been in contact with Lt. Brisk regarding the fire code and location and Lt. Brisk agrees with the location.

Whitin asked where the battery storage would be located. Young mentioned the eight battery hubs will be located on the eastern portion of the road for easier maintenance and access.

Hartnett suggested adding a berm with a leaching trench to the easterly side of the southerly field to alleviate the run-off. He also added the size of the array has been reduced and the plans have been modified to comply with Zoning By-laws.

Hartnett mentioned Lt. Brisk asked for direction from the State Fire Inspector to see if the battery storage systems meet the code requirements for Massachusetts. Hartnett recommended a condition be added stating that permits would be required from the fire department for the battery storage systems.

Schmid asked how they were going to off-set the visual impact from Route 88. Young responded the first panel is 450' from Route 88 and they could plant evergreen trees and a pollinator mix in the cleared areas.

R. Michael Sullivan asked what the sound level of the transformers was and will there be a fire suppression system required around the battery hubs. Young would agree to add a condition to add a sound buffer around the transformers should it become a nuisance to the neighbors.

Cindy Scheller was present virtually. Ms. Scheller voiced her concern about the impact the project will have on Pierce's Brook and the natural spring.

Christopher Bednarz of 8 Fox Lane was present virtually. Bednarz asked what time will the inverters run and if the 100-foot setback will stay as forest or be clear cut. Young mentioned the inverters run between peak hours and later in the day. Young added the 100' setback will remain as forest land.

Daylor recommended adding four additional conditions to include a safety analysis for the battery storage systems including fire suppressants, additional screening near the basin with evergreen trees, the addition of an infiltration trench along the southerly field, and sound monitoring at the property lines.

Whitin would like to add that all stone walls be preserved if practicable.

Schmid would like the screening to be a natural habitat and add some of the same plant species to that area.

Hartnett read the Sample Waivers, Findings, and Conditions into the record.

Sample Waivers

- a. 24.3.8 (Section 9.6.3 H) Minimum Setbacks from Street Lines (250') (This would be for the drainage pond only abutting Route 88, appears reasonable)
- b. 24.3.8 (Section 9.6.3 H) Clearing and Trimming within the required 100' Setback (This would be for the 50' strip on the south side of the solar field abutting the existing solar field, appears reasonable)
- c. 24.3.9.g (Section 9.6.3.I.7) Request a waiver for the submission of a photometric plan and the requirement of site lighting. (Lighting is not proposed for the project. Recommend Waiver Approval)
- d. 24.3.9 m (Section 9.6.3 I 13) Plan showing provision for the water
(Request a waiver for the submission of plans showing provisions for water. A water system is not proposed for the project. Recommend Waiver Approval)

Sample Findings

1. The project as presented meets the requirements of section 9.6 of the Town's Zoning By-Laws for Large Scale Solar Energy Systems.
2. The project as presented meets standards for placement, design, construction, operation and minimizes impacts on environmental, scenic, natural, and historic resources.
3. The project protects adjoining premises by providing adequate screening and buffers between the property lines and the solar arrays.
4. The project provides screening and buffers to protect scenic vistas and viewsheds from residential uses, public streets, and waterways as described in 9.6.3.K.4.

Sample Conditions:

1. Prior to issuance of a building permit the applicant shall submit the following to the building inspector:
 - i. An emergency response plan showing all means of shutting down the solar installation.
 - ii. Name and contact information of the person answerable to inquiries throughout the life of the installation.
 - iii. Proof of liability insurance throughout the life of the system.
2. The Fire Chief shall review and approve the emergency response plan and site access plan prior to the issuance of a building permit. Site access shall be maintained to a level acceptable to the Fire Chief as provided in the emergency response plan. The petitioner and/or any subsequent owner are responsible for the cost of access road maintenance. All-access codes and keys shall be provided to the Fire Chief.
3. The applicant shall install a Key Lock Box on the entrance gate to provide emergency access for the Westport Fire Department. The entrance gate shall be a minimum of 20' wide.
4. A non-illuminated sign not exceeding four square feet in area shall be installed on the entrance gate identifying the owner and/or operator of the solar installation and a 24-hour emergency contact telephone number.
5. The address shall be posted at the beginning of the driveway at Soules Way as required by the Westport Fire Department.
6. All material modifications as determined by the Building Inspector for the Large Scale Solar Energy System made after the issuance of the required building permit shall require approval by the Planning Board.
7. All construction activity shall occur between the hours of 7 a.m. and 5 p.m. on Monday through Saturday only. Construction activity includes staging, deliveries, equipment warm-up, or other supporting construction activities.
8. If the owner and/or operator changes, notice shall be given to the Building Inspector, Fire Department, and Planning Board with the contact information of the new owner/operator within one month of the change in ownership and/or operations.

9. Prior to the commencement of work, the approved plan shall be submitted to the Board's Consultant Engineer. The Applicant shall be responsible for reasonable costs associated with construction observation/inspection services during the construction phase.
10. The site shall be developed in accordance with the erosion control plans.
11. Prior to the issuance of the building permits the applicant shall provide a copy of the SWPPP and a copy of the Notice of Intent to be filed with NPDES General Permit for Discharges from Construction Activities to the Planning Board.
12. Prior to tree clearing, all areas to be cleared shall be field surveyed in accordance with the approved plans, clearly marked and reviewed by the Town's Consultant Engineer.
13. Topsoil shall not be removed from the site and shall be reused to prevent erosion and support pollinator-friendly habitat vegetation. Additional suitable organic material may be used where needed.
14. If rocks are encountered and need to be removed, they shall be trucked off-site and not crushed on site. Rocks shall not be left on-site outside the fenced solar field.
15. Prior to connecting any of the solar panels to the grid, the applicant shall establish vegetative growth in all disturbed areas sufficient to prevent sediment transfer and soil erosion. If vegetative growth is not possible due to the time of year, the applicant may propose other methods to control sediment transfer and soil erosion to the Planning Board for approval.
16. Prior to the issuance of the occupancy permit, the Planning Board or their designee shall conduct a field inspection of the perimeter to identify areas that may need additional plantings for screening. The owner shall install plantings as directed by the Planning Board.
17. Vegetation control relating to the solar project shall be mechanical only and no pesticides or other chemical products shall be used.
18. Plans shall be stamped and signed by a registered land surveyor.
19. Once the project is complete, there will be no outside storage of equipment, hazardous materials, or excess solar panels within the fenced-in solar sites.
20. The solar panels shall be located on one continuous parcel to be held in single ownership with a minimum of 50' of lot frontage on Soules Way. A plan suitable for recording and endorsed by the Planning Board shall be recorded at the Registry of Deeds prior to the issuance of building permits, showing the revised lot with frontage on Soules Way.
21. Upon completion of tree clearing and stump removal, the applicant shall provide an as-built topographical survey of the site to ensure the approved drainage calculations remain relevant for the project after the earth disturbance. The Board may require drainage calculations based on the as-built plans. The applicant shall be required to make adjustments to conform to the approved plans or may consider changes to the drainage design to reflect as-built conditions.
22. As-built plans shall be submitted and approved by the building inspector and the planning board prior to the issuance of an occupancy permit.
23. A decommissioning plan shall be submitted to the Planning Board and Building Inspector prior to the issuance of a building permit.
24. Prior to the issuance of a building permit the applicant shall obtain the necessary permits from the fire department for on-site storage and battery systems.
25. The applicant shall be responsible for maintaining Soules Way during construction, prior to the issuance of an occupancy permit, the Town's consultant engineer shall inspect the condition of Soules Way, and any damages attributed to the solar project shall be repaired by the applicant.
26. The plan set shall be updated showing a drainage trench/swale along the easterly line of the southerly field.

Motion

Bullard moved to close the public hearings for CVE North America, Inc. Seconded by Daylor. Upon a roll call vote being taken, members Bullard, Daylor, Schmid, Soares, and Whitin voted aye and the motion carried 5-0.

Motion

Bullard moved to approve the Site Plan Approval Low Impact Development applications for **CVE North America, Inc.** for property owned by **John B. Hathaway Trust and The Westport Lot 24 Nominee Trust, Daniel C. Perry Trustee**, located south of Soules Way between Route 88 and Drift Road, Assessor's **Map 57, Lots 19 & 24**. Pursuant to Westport Zoning By-Laws Article 20 (Section 9.6) Site Plan and Low Impact Development subject to conditions, as the plan presented reasonably meets the intent and purpose of the LID By-law by reducing the adverse impacts of soil erosion, sedimentation, and stormwater runoff. Seconded by Daylor. Upon a roll call vote being taken, members Bullard, Daylor, Soares, and Whitin voted aye. Schmid voted nay. The motion carried 4-1.

Motion

Bullard moved to approve the Special Permit application for **CVE North America, Inc.** for property owned by **John B. Hathaway Trust and The Westport Lot 24 Nominee Trust, Daniel C. Perry Trustee**, located south of Soules Way between Route 88 and Drift Road, Assessor's **Map 57, Lots 19 & 24**. Pursuant to Westport Zoning By-Laws Article 24 (Section 9.6) Large Scale Solar Energy System, subject to waivers findings and conditions. Seconded by Daylor. Upon a roll call vote being taken, members Bullard, Daylor, Soares, and Whitin voted aye. Schmid voted nay. The motion carried 4-1.

7:00 p.m. Public Hearing

3. Borrego – 0 Division Road (20-004SP-LID-S) (continued from July 14, 2020, August 11, 2020, September 22, 2020, November 4, 2020, December 15, 2020)

Request by the applicant to consider the Special Permit and Site Plan Approval Low Impact Development applications for **Borrego Solar Systems, Inc.** for property owned by **John Ciccotelli and Marie T. Ciccotelli**, and located on the west side of **Division Road between 355 and 403 Division Road**, Assessor's **Map 46, Lot 8, 9C**. Pursuant to Westport Zoning By-Laws Article 20 Low Impact Development and Article 24 Large Scale Solar Energy System, the applicant requests permission to construct a solar energy system, approximately 2.1 Megawatts.

Hartnett informed the Board the applicant requested a continuance.

Motion

Daylor motioned to continue the hearing to March 9, 2021, at 6:15 pm. Seconded by Bullard. Upon a roll call vote being taken, members Bullard, Daylor, Schmid, Soares, and Whitin voted aye and the motion carried 5-0.

4. Planners Report

Hartnett mentioned he had a conference call with Andrew Goldberg and Curt Westphal on Friday. He mentioned they previously worked with Kleinfelder and would like to assist the Town in applying for another MVP grant because water quality issues are also being considered for MVP Grant funding.

Hartnett mentioned he had a conference call with the Woods Hole Group and MassDEP regarding permitting for the East Beach Corridor. My take on the meeting was that MassDEP would work with the community to get through the permitting process, work within the existing road R.O.W. would be considered a limited project and there is some flexibility as to what could be done. Any work outside of the R.O.W. would be somewhat restricted, any nourishment projects would require like material to be installed, large rocks or structures would not be looked favorably upon.

Hartnett stated that he had spoken with one of the property owners of Private Acres regarding the surety and completion of the subdivision. The property owner was going to discuss the options with the neighbors and get back to the Planning Board.

Hartnett updated the Board on the Route 177 roundabout and Route 6 safety improvements. Senator Rodrigues had secured funding for both projects and Mass Highway had approved the project request for the roundabout. These projects will still have to go through the design and review process with MassHighway. Hartnett will check with the senator's office on the status of the funding.

5. Correspondence

- a. **Plaza 549 (20-001SP)** – S.W. Cole review letter dated 12-9-20 – Noted.
- b. Dartmouth Planning Board Public Hearing notice – This hearing is for a retail marijuana establishment to be located on Faunce Corner Road. - Noted.
- c. **Coastal Healing, LLC (20-007SP)** – Attorney Corey's response letter 1-21-21. Noted.

6. Minutes

January 19, 2021

Motion

Bullard moved to approve the January 19, 2021 minutes as written. Seconded by Daylor. Upon a roll call vote being taken, members Bullard, Daylor, Schmid, Soares, and Whitin voted aye and the motion carried 5-0.

7. Invoices

None

Adjournment

The members unanimously adjourned at 8:50 p.m.

Respectfully submitted,

James Hartnett, Town Planner
Nadine Castro, Assistant Town Planner II