

**BOARD OF APPEALS  
REGULAR MEETING MINUTES  
WEDNESDAY  
OCTOBER 11, 2017**

**Members Present:** Christopher Graham, Chairman  
Donna Lambert  
Peter Borden  
Roger Menard  
Constance Gee  
**Also present:** Ralph Souza, Building Commissioner  
**Absent:** Gerald Coutinho, Vice Chairman

Chairman Graham called the Zoning Board of Appeals meeting to order at 7:06 PM in the Westport Town Hall, 816 Main Road, Westport, MA with the reciting of the Pledge of Allegiance.

**Pledge of Allegiance**

**Chairman's Announcement** - Under MGL Chapter 30A, section 20(e) – Meeting being recorded.

**Andrew Burnes – RE: An application request for a variance to be allowed to run electric power overhead instead of underground as required in the Science and Technology Overlay District. The property is located at 291 State Road and shown on Assessor's Map 14, Lots 25C and 29.**

**Members Present:** Christopher Graham, Donna Lambert, Roger Menard, Peter Borden and Constance Gee  
**Members Absent:** Gerald Coutinho  
**Also Present:** Ralph Souza, Building Commissioner/Zoning Enforcement Officer  
Andrew Burnes, petitioner/President of The Livestock Institute of SNE  
Darin Mendes, Treasurer of TLI  
Russell V. Iuliano, Project Manager  
**Abutters Present:** None

Chairman Graham opened the hearing at 7:15 PM with the reading of the Public Hearing Notice and asked that if anyone wished to speak on this petition, to state their name and address for the record.

Mr. Burnes stated he is the President of The Livestock Institute. We have been working for over four years to build a state-of-the-art modern, small craft, slaughtering facility in the Science and Technology Overlay District (STOD). We have received our permits and construction is under way. It is an 11,000 sq.ft. facility, which we hope to have open in May/June, 2018. We are here today, to change from the required underground electric to an overhead system. We are building a state-of-the-art facility which has the highest animal welfare standards, highest food safety standards and traceability of product through the facility. When we looked at this type of facility over the last years, we saw stronger and stronger support for it. It has come to our attention that some of the requirements that are part of the STOD, are not appropriate for this type of facility, in particular the electric. The reasons have been detailed on the construction side and Mr. Iuliano will be reviewing them with the Board. Mr. Burnes stated for the long run and the best operation of this facility, for the next 30 years, it calls for providing the power overhead rather than underground.

Mr. Graham stated a variance is being requested for an overhead electrical system, rather the required underground system. Mr. Graham asked what is the hardship?

Mr. Burnes stated the hardship is several different categories. The long-run operation of this facility will be hampered if the service is underground vs overhead. There are a couple of different issues. One issue is the design of the road going into the facility, which is sort of a serpentine road that comes up to the top

of a hill. Mr. Burnes stated when we talked to the electric company about a plan, the consensus was this was not the best technology construction means for this application. We have a wetlands crossing, we are in soil conditions that has a very high water table and the shape of the site, where the building is, is to avoid the least amount of digging and the least amount of impact on the wetlands. The site has been designed as it was presented to the Planning Board and the Conservation Commission and as it is outlined in the presentation packet. The other issue is the long-range prospect for this facility. We have seen a significant demand, people are just itching to get to this facility because there is nothing quite like it in New England and we think the demand is going to be quite substantial. We want to be able to expand. If we install an underground service, we will be hampered in our expansion activities. Mr. Burnes stated those are two of the most significant hardships that we would face here but the combination of soils, the shape of the roadway and the fact that we will not be able to expand the facility easily with an underground application is really the main reasons for our application here tonight.

Mr. Menard stated it is noted in the application, that this is a rocky hard-pan, how deep is it?

Mr. Iuliano stated that hard-pan is an issue that permeates this entire site which is why the water table is so high. The hard-pan is preventing the water from running off and into the ground. Mr. Menard asked if this was severe enough that it would have to be blasted out? Mr. Iuliano stated no. We worked with the Conservation Commission to identify water mitigation plans, so there are swales as well as trenching. We have developed rain gardens in three or four spots, which will hold the water and allow it to collect and dissipate in the ground naturally. Mr. Menard stated if you were required to do an underground system, what is the impact of the rocky hard-pan on trying to dig a trench from Route 6 all the way to your building? Mr. Iuliano stated it probably affects 30% of the site and roadway; the other 70%, we have had to build up to get out of the wetlands. Mr. Burnes stated there is a tremendous amount of fill on this site, to build up and to get a domestic septic system for showers and bathrooms. Mr. Burnes stated the processed water goes into an onsite tank and then taken to the sewer plants either in New Bedford or Fall River. The soil conditions required a significant amount of fill onsite to get the proper engineering to deal with this hard-pan.

Ms. Gee stated that, according to LTI's petition, expected rapid growth of the facility was the primary reason given for the desire for overhead electric delivery. She also noted that in the "Site Approval Plan" LTI submitted to the ZBA, it was stated that "the reason for above ground utilities was the cost of installing underground utilities and the cost of future additions to the site. Ms. Gee stated it appears that cost is a major factor in this as well. Mr. Burnes stated we are able to build the facility as it is today because of the perc but the concern that is expressed in this application is more towards the thinking of, is this the right way to build for the long-term viability of this facility, which we think has major benefits to not only Westport but the entire region. Mr. Burnes stated if you look at the statements of the professionals, that is when it became apparent to us that we should be looking for a variance. Mr. Burnes stated it is not the right way to build in this site and when we first spoke with the Planning Board, we were thinking that maybe we could have a special condition rather than a variance, that would allow us to put overhead power in. The Planning Board looked at it and supported it because they felt that the visual impact was not significant here. Mr. Burnes stated the site has very high trees so you won't see the overhead wires, that is why often underground is put in, for the visual impact. The Planning Board suggested this be looked at as a variance. Ms. Gee said LTI stated this facility is supposed to be a high-quality craft, small USDA slaughter facility, but LTI's first explanatory statement in its supporting materials talks but rapid future, significant growth and that, as stated by LTI, this anticipated expansion will mean that it will cause the facility to outgrow it's current electric service within it's first three years of operation if not sooner. Ms. Gee asked just how big of a facility is ultimately being planned? Mr. Graham stated this Board is looking at whether this should be an overhead or underground service. Ms. Gee stated she was curious if it was really necessary to go as they have stated. Mr. Graham stated he heard it was because they had to go through wetlands. Mr. Burnes stated we are talking about going from an 11,000 sq.ft. facility to a 13,000/14,000 sq.ft. facility. Mr. Burnes stated we don't own sufficient land to be larger than that today. Mr. Burnes stated we are bound in by property lines and wetlands. Mr.

Burnes stated we hope to grow to that level, but the plan is what it is; this is still a very small facility compared to 50,000 sq.ft. facilities.

Mr. Iuliano stated the limiting factor is refrigeration and freezing, which consumes 2/3's of the facility's power. If we wanted to expand, it would be for additional refrigeration, cooling and freezing capacity which would double our power requirements. We are constrained by the USDA grants at this point for what we can build and what we are permitted to build. The USDA has told us that if the demand exceeds our projections, they would be willing to support an expansion for refrigeration.

Mr. Graham asked if any other facilities in the STOD have overhead service. Mr. Souza stated they are one of the first ones going in. Mr. Burnes stated we spent a significant amount of time in the STOD but it is very limited because of wetland issues. We were very fortunate in being able to buy the house next door and combine it with a piece of the back land. Mr. Burnes stated the access is off of Route 6. Mr. Graham asked Mr. Souza if he felt it would be more detrimental going overhead rather than underground. Mr. Souza stated no.

Mr. Menard stated the applicant says he can build as the plans show right now, and that National Grid limits your bend radius, is this included? Mr. Iuliano stated if we scale down the power consumption, we can put a smaller pipe in and National Grid will be able to bend their conduit, which is limited to a 5 degree bend; we will need to put in four pole boxes to make the corners. We can do it but only if we reduce the size of the refrigeration so it consumes less power. Instead of it being a 1200 kilo-volt amp system, it will be an 800 kilo-volt amp service. Mr. Burnes stated we can operate under the 800 amp service. Mr. Iuliano stated we can operate but it will cause us to lose one of the coolers.

Mr. Menard asked if the applicant was planning on putting in lighting poles. Mr. Burnes asked if there was a requirement in the STOD for lighting poles. Mr. Iuliano stated he did not remember if there was a requirement but what was discussed was because the road is serpentine and for safe traversal, the road needs to be lit. National Grid has offered that if they put in the poles they would rent us downward facing lighting so it would illuminate the roadway but not contribute to the neighborhood light pollution, otherwise, we would be putting in smaller poles and would have to project the light at a less favorable angle. National Grid proposed this and it would allow for expansion when we were ready, with no disruption to the road, wetlands or the site. Mr. Menard stated for safety reasons, you would have lighted poles along the 600 ft. driveway. Mr. Iuliano stated yes.

Mr. Menard if this was approved, these are National Grid's comments and not necessarily in your plans. Mr. Burnes stated we talked to National Grid before we submitted the plans so we would know what we were facing. Mr. Iuliano stated as part of the submittal, National Grid did submit a plan showing what they were proposing and how it could be done. Mr. Graham asked if there is a stamped engineer plan? Mr. Iuliano stated no stamped plans were submitted but National Grid wanted to demonstrate that it would be possible to go overhead; but we will submit a set once this is approved.

Ms. Lambert stated the applicant is before us for a variance this evening and from what has been presented (wetlands, soils, topography), the applicant meets the criteria for a variance.

A discussion ensued regarding how this plan was developed. Ms. Gee asked if the Board would be setting a precedent by approving this application. Mr. Graham stated no, every application is heard on its own merit and every site is different. Mr. Graham called for any other input. None was received.

#### **7:42PM**

**Motion** made by Ms. Lambert to close the hearing. Second by Mr. Menard. **The Board voted unanimously in favor.**

#### **Discussion by the Board**

Ms. Lambert stated based on the presentation, the applicant does meet the criteria for a variance. Ms. Lambert stated she did understand Ms. Gee's concern of setting a precedent but the Board can't base it's decision on what may happen or could happen in the future. Ms. Lambert stated this will not set a precedent because each case is taken individually.

Mr. Menard stated the other factor is in order to make the driveway safe, lighting poles are going to have to be installed. There is no difference between lighting poles and electric poles, they are poles. The reason for the underground in the first place was to not interfere with the aesthetics of the neighborhood. Mr. Menard stated he has looked at the pictures, it is a wooded area and it will not be an obvious eyesore.

Mr. Borden stated in the report, it would take an electrician five to ten times longer to repair underground wiring, they would lose all their food; it would be a huge lose.

**Voting on the Petition:** Graham, Lambert, Menard, Borden, Gee

**Motion** made by Mr. Menard to approve the variance with the condition that the poles installed by National Grid will have downward facing lighting creating a safe environment without any disturbance to the neighborhood. Second by Mr. Borden. The Board voted unanimously in favor.  
The hearing is concluded at 7:44PM.

**BWC Connecticut River, LLC c/o BlueWave Solar – RE: An application request to modify the language of the Special Permit issued on March 29, 2017 to allow continued agricultural use outside of the proposed solar array on the subject parcels. The property is located at 0 Adirondack Lane and shown on Assessor's Map 1, Parcels 13 & 14.**

Members Present: Christopher Graham, Donna Lambert, Roger Menard, Peter Borden and Constance Gee

Members Absent: Gerald Coutinho

Also Present: Ralph Souza, Building Commissioner/Zoning Enforcement Officer  
Richard R. Riccio, III, PE – Field Engineering - representing applicant  
Giovanna Olsen – BlueWave Solar  
Jerome Sampson - applicant

Abutters Present: None.

Chairman Graham opened the hearing at 7:44 PM with the reading of the Public Hearing Notice and asked that if anyone wished to speak on this petition, to state their name and address for the record.

Mr. Riccio stated this is a solar array that was permitted back in the spring of this year (March 29, 2017), and is located off of Adirondack Lane. Mr. Riccio stated that part of the conditions of the original Special Permit from the ZBA limited the potential for using the areas outside of the array for continued agricultural use by the landowner. Mr. Riccio stated we have had subsequent discussions with the ZBA and based on those discussions, his client went back to the Planning Board for a modification of the Site Plan; more specifically to clarify that the areas outside of the solar array could be used as continued agriculture. In addition, the Planning Board did issue a letter clarifying their position that the site itself consisted of the areas within the fence, which is important in regards to the restrictions of pesticides and chemical use within the Overlay Protection District.

Mr. Riccio stated the Planning Board approved under a “Modification to the Site Plan” the following:

1. Modified the notation on the areas outside of the array to be maintained as scrub/shrub habitat or continued active agricultural use by the landowner.
2. Modified the notation on the staging area to the south of the array to indicate that area would be loamed and seeded with wildflower mix or be used as continued active agricultural use by the landowner following construction.

Mr. Riccio stated in addition to the above plan modifications, his client would also request that the Zoning Board of Appeals modify the language of the Special Permit in Finding #6 to prohibit the use of pesticides, fertilizers, or chemicals only within the limits of the array and not on the entire parcel. Mr. Riccio stated his client would like to request that this prohibition apply to the array until such time that the array is decommissioned in accordance with Ch. 24.3.16 of the Westport Zoning Bylaw, and that the language in Finding #10 be revised to prohibit the storage of chemicals or fuels or fuel-powered equipment within the limits of the array until the array is decommissioned. Mr. Riccio stated, his client would also respectfully request that the Zoning Board of Appeals include an additional Finding that “once the array is decommissioned in accordance with Chapter 24.3.16 of the Westport Zoning Bylaws, the pre-existing allowed agricultural use shall be restored over the entirety of the project site”.

Mr. Riccio stated we feel that these modifications will adequately protect the landowner's continued use of agriculture on the property now and in the future while also allowing the proposed solar array to move forward in an environmentally responsible fashion.

Discussion ensued regarding the request. Ms. Gee stated that in paragraph 1, it states the purpose of this minor modification is to address language in the approval which severely limited the potential of the landowner to maintain portions of the land outside of the solar array as an active agriculture. Ms. Gee asked why was that done in the first place? Mr. Riccio stated the original plan considered the areas outside of the fence as a buffer zone to the array, the buffer was considered by the Board as part of the project. Mr. Riccio stated that his client did go back to the Planning Board to clarify that area outside of the fence (shaded in light green) was not being specifically used as a buffer zone but that the area could be continued use as agricultural. Mr. Graham stated the original reason was that they did not want to have tall trees outside the fence area inhibiting the array. Mr. Menard stated a buffer zone was created to mitigate that.

Discussion ensued.

Ms. Lambert stated the application that is before us is to clear up the language of the Special Permit that was issued. They have been to the Planning Board and the Planning Board has approved the modification of the plan.

Mr. Menard stated we are clarifying because the original application stated “including the buffer zone”. Mr. Menard stated the ZBA's hands were tied because the Planning Board decided that this included the buffer zone. Ms. Lambert stated it was more for protecting it from trees causing shading on the array and it was determined at that point, that it was not to include farming and it could not in fact be conducted in the buffer zone. Mr. Graham stated he believed that potato plants would be shorted than shrubs.

Mr. Menard stated the applicant has updated his plan to reflect that agricultural use will be allowed in the area outside of the array. Mr. Graham clarified that the conditions shall only apply to the area inside the leased area.

Mr. Graham then read a letter received from the Planning Board, dated July 25, 2017 expressing approval of this modification. Discussion ensued the language of the original Special Permit.

Mr. Graham called for any further input. None was received.

### **8:05PM**

**Motion** made by Ms. Lambert to close the hearing. Second by Mr. Menard. The Board voted unanimously in favor.

### **Discussion by the Board**

Ms. Lambert stated that Mr. Menard makes a good point, it should revert back to agricultural use and we want to make sure it goes back to agricultural land.

Mr. Menard stated there are two aspects to this. One, the applicant wants to change the conditions that the ZBA put on the fertilizer, etc. on the buffer zone and that the conditions will only be relative to the inside of the fence which is the part the applicant now leases. The Planning Board has agreed to the change in plans; there is no more buffer zone. Mr. Menard stated we put the conditions on the buffer zone because it was part of the plan, now the buffer zone is no longer part of the plan and therefore it is not within this Board's purview to decide on what is outside of the fenced in area. Two, deals with the decommissioning. Mr. Menard stated we can't decommission what is not commissioned. Mr. Menard reviewed each of the requested modifications. Mr. Menard stated all that is requested is reasonable and consistent with the elimination of the original buffer zone. There was discussion about the need to include the allowance for the land to be returned to its original agricultural use after the solar array is decommissioned. Mr. Menard stated that the original decision did provide for the property to be returned to its original state, however this does not necessarily mean that it could be used for farming. Adding the statement that once decommissioned, the property would be reverted to its original state, and would also revert to its original use (farming), would clarify the decommissioning process.

**Voting on the Petition:** Graham, Lambert, Menard, Borden, Gee

**Motion** made by Mr. Menard to approve the requested modifications to the original ZBA decision dated March 29, 2017, as follows:

1. Modify the language in Finding #6, to prohibit the use of pesticides, fertilizers, or chemicals only within the limits of the array and not on the entire parcel. This prohibition will apply to the array until such time that the array is decommissioned in accordance with Ch 24.3.16 of the Westport Zoning By-Law; and
  2. Modify the language in Finding #10, to prohibit the storage of chemicals or fuels or fuel-powered equipment within the limits of the array until the array is decommissioned; and
  3. To include an additional finding, that once the array is decommissioned in accordance with Chapter 24.3.16 of the Westport Zoning By-Laws, the pre-existing allowed agricultural use shall be restored over the entirety of the project site; and
- all in accordance with the stamped, engineered plan dated July 18, 2017.

Second by Ms. Lambert. The Board voted unanimously in favor.

The hearing is concluded at 8:12PM.

**Action Items** – None.

**Correspondence** – None.

**Approval of Minutes** – None.

**Topics not reasonably anticipated forty-eight (48) hours in advance of the meeting** – None.

**Other business** – None.

**8:12PM**

**Motion** made by Ms. Lambert to adjourn the Zoning Board of Appeals Meeting. Second by Mr. Menard. The Board voted unanimously in favor.

**Adjournment.**

Respectfully submitted,  
Diane Pelland, Principle Clerk  
to the Zoning Board of Appeals

**APPROVED:** Christopher Graham, Chairman