

**Town of Lenox  
Zoning Board of Appeals  
Meeting Minutes  
Wednesday January 24th 2024  
Town Hall Land Use Room/ Zoom  
7:00 PM**

**Members Present:** Robert Fuster Jr- Chair, Al Harper, John Simons, Arthur Oliver

**Members Virtual:** Shawn Leary Considine, Kim Duval

**Others Present:** Ellen Roche, Jim Roche, Rodney Galton, James Martin

**Others Virtual:** Joel Bard, Clarence Fanto

**Staff:** Neena Martino

Meeting called to order by RF at 7:00 pm

**1. Approval of Minutes –December 6, 2023**

Motion to approve 12/6 minutes moved by AH, seconded by JS. All were in favor.

**2. 383 Housatonic Street - Site Plan Review under Section 8.12 Large-Scale Ground Mounted Solar Voltaic Installations**

James Martin spoke on behalf of the petitioner. He spoke of the two issues brought up at the last meeting on December 6<sup>th</sup>- the sound study and the potential groundwater contamination. A sound study was performed by Cross Spectrum Acoustics and a report was submitted on January 18<sup>th</sup>. The study established that all noise levels in every category will be within acceptable ranges, per MA DEP standards. For the groundwater issue, the applicants engineer was asked to provide an affidavit saying there are no hazardous materials in the panels that would leach into the groundwater; this affidavit was provided on January 23<sup>rd</sup>. RF elaborated for the record that the board did consult their own experts in terms of the groundwater and it was recommended to them to have the engineer provide the affidavit, as that would be sufficient for the concerns. Because the affidavit was not notarized, RF asked RG on the record to swear to the contents of the affidavit under the pains and penalty of perjury, which he did.

JM stated that it is their position that they have provided the plans and specifications that are required under the town's bylaws and have addressed the many issues that were raised at previous meetings and therefore, the site plan should be approved by the board.

RF read a letter submitted to the ZBA by the Conservation Commission detailing where they currently stand with the applicant. They still have some delineation that needs to be confirmed by the town's wetland scientist and have not approved their application at this time.

AH requested that the petitioner provide the board with the mylar site plan for them to sign, as required by the 3.5 of the zoning bylaw. He also mentioned the issue of financial surety in the event that they abandon the facility and it falls on the responsibility of the town; he stated that he will ask for a special condition on this matter. AH brought up the review provided by Gwen Miller last fall and suggested that the board go through and vote on all the special conditions she suggested.

RF turned the floor over to the public. Jim Roche questioned the validity of the affidavit, as he felt it was a conflict of interest. RF explained that the town consulted their own expert and the advice given was to have the engineer issue an affidavit, as there was no logical way for a study to be conducted at this point in time. He asked JR if he had any information that would make what we received from Rodney Galton inaccurate; JR did not.

Motion made to close the public hearing moved by AH, seconded by KD. All were in favor.

The board discussed the matter. They discussed how the state legislature is promoting these types of solar arrays throughout Massachusetts as a way to control carbon emissions, and we need to think globally and act locally. The board agreed that they had done their due diligence to address all the concerns that were raised and that the arrays will ultimately benefit the town.

Motion to approve the petition moved by AH and seconded by KD. Roll call vote- AH aye, JS aye, KD aye, SLC aye, RF aye.

The board imposed a number of special conditions:

1. The petitioner is to speak with the neighbors regarding some kind of screening between the properties. Roll call vote- KD aye, SLC aye, AH aye, JS aye, RF aye.
2. All plans and maps shall be prepared, stamped and signed by a professional engineer/professional land surveyor licensed to practice in the state of Massachusetts. Roll call vote- AH aye, JS aye, KD aye, SLC aye, RF aye.
3. The property owner and operator are prohibited from accessing their property via town property for any and all site work, installation, maintenance or operation over time. Roll call vote- AH aye, JS aye, SLC aye, KD aye, RF aye.
4. The petitioner should provide an updated site plan demonstrating where the utility connections will be underground versus overhead once the final electrical design is complete. Roll call vote- AH aye, JS aye, SLC aye, KD aye, RF aye.
5. The petitioner must demonstrate that they have provided all necessary information to the fire chief and must provide an emergency response plan, reviewed and approved by the chief prior to receiving a building permit. Roll call vote- AH aye, JS aye, SLC aye, KD aye, RF aye.
6. Any and all modifications of the site plan as approved by the ZBA and recorded in the Registry of Deeds must be reviewed and approved by the ZBA and the Inspections department before field work. Roll call vote- JS aye, AH aye, SLC aye, KD aye, RF aye.
7. The petitioner must provide either an escrow account or a bond determined by the Selectboard and submit a fully inclusive estimate of the cost associated with removal and landscape remediation as needed, prepared by a qualified independent engineer. Roll call vote- AH aye, JS aye, SLC aye, KD aye, RF aye.

SLC made a motion to modify condition one to require that the petitioner discuss suitable screening with the neighbors within 6 months of the installation of the array and to add this information to its modified site plan. She also proposed that the petitioner be required to come back to the ZBA for approval of the new screening. Whether or not the screen is suitable will be determined by the ZBA, not the abutters. Roll call vote to modify condition #1- AH aye, JS aye, SLC aye, KD aye, RF aye.

Motion made to close the hearing moved by AH, seconded by JS. All were favor.

Adjourned at 8:26 pm.