

Great Barrington Zoning Board of Appeals

Minutes of Feb. 8, 2017, Meeting

The meeting opened at 7:30 p.m. at the Great Barrington Town Hall. Attending were Chairman Ron Majdalany, Vice-Chairman Carolyn Ivory, Michael Wise, Kathy Kotleski and alternates John Katz and Don Hagberg.

The chairman opened the public hearing for **Kearsarge Energy LP (No. 864-16)** of Watertown, an appeal of the Building Inspector's zoning interpretation that a commercial ground-mounted solar photovoltaic array is not by right use in an R-4 Zoning District. The specific property is a 20-acre parcel on West Plain Road owned by West Plain Road Farm Nominee Trust (Arthur J. and Robert Coons, trustees). The recording secretary read the hearing notice and said copies had been mailed to abutters of record, was advertised in The Berkshire Record's Jan. 6 and 13, 2017, issues and was posted at Town Hall as required. Attorney Peter Puciloski appeared for Kearsarge, attorney Dennis Downing for the Coons trust.

Mr. Puciloski said the commonwealth supports solar energy and wants few restrictions other than necessary to protect the health, safety and welfare of inhabitants. He said the building inspector interpreted the applicant's plan as an industrial use, but that is up to town meeting. The Planning Board has a new solar bylaw drafted for presentation at this May's annual meeting. He said Town Counsel David Doneski cites case law, but misses an important point. Because the town zoning bylaw says that the absence of reference in the bylaw to a use (in this case, commercial array), it is not allowed. But state law says the opposite; so essentially the use is allowed. It meets with the 2013 Master Plan. Mr. Wise agreed there is no case law directly on point, but said he struggles with the idea that the bylaw could inadvertently allow a project of any scale by right. Mr. Puciloski said the applicant agreed the proposal should still be subject to site plan review.

Mr. Katz said Mr. Doneski and the Building Inspector overlook the "is hereby prohibited" wording in the bylaw, and nowhere in the bylaw are solar arrays mentioned. He said the proposed new bylaw should remedy the lack. But this applicant faces a May 8 deadline for completion of the project. Ed Abrahams of Pleasant Street said if the ZBA accepts the appeal, it would open any piece of land to solar arrays. Town Planner Chris Rembold and Jonathan Hankin of the Planning Board said the proposed bylaw has been advertised; it needs to go through a Planning Board public hearing before the annual town meeting in May.

Amparo Vollert of Abbey Hill Drive said the ZBA should consider the impact on land values if solar fields can be installed anywhere in residential zones. Julie Anidjar of Sumner Street said the town needs to be strategic in dealing with energy companies. Approval of the appeal could establish precedent. Jonathan Hankin of West Plain Road said it is important to preserve farmland and the benefit of a solar array vs. residential development is the array has a lifespan then it's gone, and the land is still there. Cary Beckwith of Benton Avenue said farms should be conserved by farming. This area has a large tourism industry and solar fields change the landscape.

Mr. Wise moved to close the public hearing at 7:55 p.m., Ms. Kotleski seconded and the vote was unanimous. Ms. Ivory asked the applicant to put up a map showing the

West Plain Road property. Mr. Rembold suggested the board needed to determine if commercial solar arrays are prohibited in all zones now, and if that means they are automatically exempted; or if they are reasonably regulated in the present bylaw; and is Building Inspector's interpretation reasonable.

Mr. Wise said the Building Inspector reasonably interpreted the bylaw to mean commercial solar arrays should be in appropriate places, so his construction is sound and consistent. He said he believes the solar plan is excellent and he favors it. But he said the board is not issuing a special permit, it is making a determination of law. Mr. Hagberg asked how the proposed bylaw would be different. Mr. Rembold and others said three categories would be created to allow or not allow the arrays. Dr. Majdalany said the board had asked for an opinion from town counsel and should respect it. He said he favors the panels, but the matter before the ZBA is the zoning bylaw. Mr. Katz said he believes Mr. Doneski is wrong. Mr. Wise said he believes he is correct in treating commercial solar arrays as light manufacturing. Mr. Katz said there likely insufficient time for any other appellant to appear before this year's town meeting, so this wouldn't be a precedent.

The board received an opinion of town counsel; a favorable recommendation from the Planning Board; a "no opinion" from the Board of Selectmen; a note that about 16.5 acres of the 20-acre parcel is appropriate for construction from the Conservation Commission; favorable letters from Robert Cohen and from Peter and Margaret Barrett, a favorable telephone message from Lila Berle; and a copy of *Briggs v ZBA of Marion* from Ira Kaplan; and a copy of his brief from Mr. Puciloski. Board members received copies of these prior to the hearing. Mr. Puciloski gave the board letters of support for Kearsarge Energy from Grafton Water District and Cistercian Nuns.

The chairman appointed Mr. Katz to sit on this decision, Mr. Hagbert on the Berkshire Aviation hearing.

Mr. Katz moved that the Board find that the interpretation of the Building Inspector, that a solar array is not permitted as of right in the R-4 District, is incorrect, and that the Board instruct the Building Inspector that, with respect to the Zoning Bylaw, he is obliged to issue a building permit to Kearsarge Energy in accordance with the building permit application filed by Kearsarge Energy on or about Dec. 19, 2016. Ms. Ivory seconded. In a roll call vote, Ms. Ivory, Ms. Kotleski and Mr. Katz favored the motion, Mr. Wise and Dr. Majdalany were against. As four votes are needed to overturn an action of the building inspector, the motion failed. Ms. Kotleski said she would write the decision, with Mr. Katz assisting.

The chairman at 8:20 p.m. opened the public hearing for **Berkshire Aviation Enterprises (No. 867-16)**, 70 North Plain Road. The secretary gave the hearing notice. Attorney Lori Robbins, representing the applicant, said the airport seeks a special permit to construct a deck on the rear of the existing airport office building and create a disabled access to the building. She said this is the same request that the ZBA approved in 2013 but for reasons was not acted on. She said the airport has been in this location since at least 1931, and the town adopted its first zoning bylaw in 1932. She said the office according to assessors' records was built in 1950. She said the building has only a 25-foot setback from the highway. She said the deck would be 742 square feet. It will reorient entry to the office to the rear. She said the change will not drain public utilities and will be better for traffic flow and safety and parking.

Dr. Majdalany advised the audience that this hearing does not deal with hangars or other airport matters — that's a special permit before the Board of Selectmen — and the ZBA wants to hear only about the deck and handicapped access. Holly Hamer of Seekonk Cross Road said it is good to make the building accessible but she is concerned about strains on the septic system from added social activities there. Joe Krummel of Seekonk Cross Road said the applicant has failed to provide a list of hazardous materials stored at the site. He said a traffic study is warranted. Jonathan Shapiro of Egremont Plain Road, said he lives across the street from the airport. He said the deck will hold maybe 50 people, the same ones who now sit in chairs on the lawn. He said the airport has a new septic system that is quite large. Marcia Stammell of said the deck will draw more people and a traffic study is needed. Cheryl Lein said a lot has changed at the airport and questioned whether it should receive a SP from the Selectboard.

The board received letters from Ms. Hamer, Mr. Krummel, Ms. Stammell and Ms. Lein and Collins Lein, also Michael Peretti of Seekonk Cross Road, all opposing the special permit. The Board of Selectmen forwarded a favorable recommendation, as did the Board of Health and Planning Board.

The ZBA on a motion by Mr. Wise, seconded by Mr. Hagberg, closed the public hearing at 8:35 p.m. The chairman confirmed Mr. Hagberg would sit on the hearing. All members agreed the airport was a legal pre-existing, nonconforming property. The chairman went through all the criteria spelled out in the bylaw and all members were in agreement as to their being met. Mr. Wise moved to approve the special permit, Ms. Ivory seconded and all members voted in the affirmative. Ms. Ivory said she would write the decision, with Mr. Wise assisting.

The board on a motion by Ms. Ivory, seconded by Mr. Hagberg, **approved the minutes** of the Oct. 20, 2016, meeting.


Tim Geller of Community Development Corp. appeared on the matter of affordable housing at **100 Bridge St.**, to ask that the board determine several changes are insubstantial. He said the four-story buildings will become three-story. The buildings will become squattier, thus the size of the parcel will be extended 23 feet to the north. CDC has a remediation plan approved by the DEP — all work will be done on the site at once. There are no new requests for variances. The new building configurations will mean one 3-bedroom unit will become a 2-bedroom. There will now be 67 parking spaces. Open space will increase slightly. Answering a question from Mr. Hagberg, he said the space will be grassed and suitable for small gardens and recreation. He told Ms. Ivory the buffer has changed but is no less than 40 feet. J.B. Broder from the audience suggested the buildings should be on Bentley Avenue. Mr. Rembold pointed out this is not a public hearing that is not an issue before the board. Mr. Wise moved that the board find the changes insubstantial, Ms. Ivory seconded, and they and Mr. Hagberg and Dr. Majdalany voted in favor. Mr. Katz and Ms. Kotleski did not participate in the vote.

Construct Inc. Property Manager Julie Wolfe appeared before the board regarding the affordable housing project at **318 State Road**, as indicated in the approved Comprehensive Permit granted last year. She and Mr. Rembold said financing has been secure and Construct is about to seek a building permit. Ms. Wolfe said there are no changes from the plans previously submitted. Mr. Rembold said the building inspector will review the plans. Ms. Wolfe asked if Construct should seek a driveway permit for

314 State Road now, and board members suggested she do so. Board members had no questions.

The meeting adjourned at 9:10 p.m.

Respectfully submitted,


Bernard A. Drew

Recording Secretary