

**HARVARD ZONING BOARD OF APPEALS
MEETING MINUTES
JUNE 12, 2012
APPROVED: July 17, 2012**

Chairman Chris Tracey opened the meeting at 7:36pm in the Town Hall Meeting Room under Chapter 40A and the Code of the Town of Harvard Chapter 125

Members Present: Chris Tracey, Steve Moeser, Robert Capobianco, Theodore Maxant, Orville Dodson and Mike Lawton

Others Present: Liz Allard (LUB Admin), Mark Lanza, Worth Robbins, Steve Strong, Jim Elkind, Robin Carlaw, Bill Calderwood, Steve & Stella Matson, Erik de Briae, Ruth Silman and Rosanne Saalfeld

Continuation of an Administrative Appeal Hearing – Solar Design Associates, LLC, Woodchuck Hill Road (Map 23 Parcel 50). Opened at 8:00pm

Conflict of Interest Act Requirements

Liz Allard reminded the members of the Town Clerks request for members to complete the required online test under the Conflict of Interest Act that must be completed every two years.

Adjournment

Robert Capobianco made a motion to adjourn the meeting at 8:00pm. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Liz Allard, Clerk

Zoning Board of Appeals

Continuation of an Administrative Appeal Hearing Meeting Minutes

Solar Design Associates, LLC, Woodchuck Hill Road (Map 23 Parcel 50)

June 12, 2012

The hearing was opened at 8:00pm by Chairman Chris Tracey in the Town Hall Meeting Room under Chapter 40A and the Code of the Town of Harvard Chapter 125

Members Present: Chris Tracey, Steve Moeser, Robert Capobianco, Theodore Maxant, Orville Dodson and Mike Lawton

Others Present: Liz Allard (LUB Admin), Mark Lanza, Worth Robbins, Steve Strong, Jim Elkind, Robin Carlaw, Bill Calderwood, Steve & Stella Matson, Erik de Briae, Ruth Silman and Rosanne Saalfeld

This hearing was continued from May 23, 2012 for an Administrative Appeal filed on behalf of Solar Design Associates, LCC in regards to the denial of a building permit for the development of a solar farm within the agricultural-residential district on Woodchuck Hill Road (Map 23 Parcel 50), Harvard

Steve Moeser stated the Zoning Board of Appeals (ZBA) needs to decide whether to uphold the Building Commissioners decision or not. The rationale Mr. Moeser took, besides reviewing the Zoning Regulations, was a question of is the project commercial and/or an accessory use. If a photovoltaic solar facility is not an allowable use within the Protective Bylaw, then what is it? Mr. Moeser stated it is not up to the ZBA to find a use for solar under the existing Protective Bylaw. ZBA can not issue a use variance, as they too are not allowed under the existing Protective Bylaw. In regards to accessory use, the facility does not meet any of the thresholds as defined within the Protective Bylaw. Additionally, there is nothing in Zoning Regulations about what is done after the energy is netted out. Mr. Moeser stated he would uphold the Building Commissioners decision.

Chris Tracey stated the building Commissioner denied the application on grounds that the facility was a commercial use within the agricultural-residential district. Evidence had been presented by the applicant to disprove the reason for denial. Mr. Tracey stated the Zoning Act, Chapter 40A section 3, states "No zoning ordinance or bylaw shall prohibit or unreasonably regulated the installation of solar energy systems.....". Then there is the question of accessory use as defined within the Protective Bylaw, "An accessory use or structure is one clearly subordinate to, and customarily incidental to, and located on the same premises with the main use or structure to which is accessory". Mr. Tracey stated these are the three categories he feels needs to be addressed.

Robert Capobianco stated he agrees with the Building Commissioner as well as with Mr. Moeser. Mr. Capobianco feels at this point the matter of finding a reasonable solution to allow such a facility is a task of the Planning Board, who can work on a bylaw amendment and present it at the next annual town meeting. Mr. Capobianco stated he would be voting to uphold the Building Commissioners decision.

Mr. Tracey asked if any of the alternate members had any question to the process thus far or any comments in regards to the matter at hand. Theodore Maxant stated the community solar garden unfortunately does not fit nicely into any of the allowed uses within the commercial district. It fits however nicely into a homeowner association. Mr. Maxant would not agree that this is a commercial use.

Orville Dodson stated the commercial aspect is not the ZBA's issue, but the fact of the matter is the facility an accessory use; is the applicant fulfilling those requirements. Mr. Dodson thought not. Mr. Dodson added the letter submitted by the Planning Board was accurate and well thought out. Michael Lawton agreed with the comments made by Mr. Dodson.

Mr. Tracey stated he has been in both camps because he could see and feel both sides of the matter. Mr. Tracey stated he is not a comfortable with someone else from outside the community being a part of the limited liability corporation. Mr. Tracey stated it would have been nice to have the Building Commissioner present to have some knowledge of his basis for the denial. Mr. Tracey stated he too would uphold the Building Commissioners denial as well.

With no further comments from the members, Robert Capobianco made a motion to uphold the Building Commissioners decision in that the solar facility proposed by the Solar Design Associates, LLC is not an allowed commercial use, nor an accessory use under the existing Protective Bylaw. Steve Moeser seconded the motion. The vote was unanimously in favor of the motion.

Signed: _____
Liz Allard, Clerk