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Minneapolis, MN 55402
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October 27, 2020

Melanie A. Bachman
Acting Executive Director
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

Re: Petition No. 1323 – Development & Management Plan Modification

Dear Melanie:

I'm writing to request that the Connecticut Siting Council ("CSC") consider a Development and Management Plan Modification for Petition No. 1323. On November 8, 2018 the CSC approved the Development and Management ("D&M") Plan submitted for the project. The submitted materials illustrate an access roadway ending at the Connecticut state line. Windham Solar LLC ("Windham") would like the CSC to consider a D&M Plan modification for the extension of the access roadway into Massachusetts.

The property owner of the approved facility associated with petition No. 1323, PLH, LLC, has been working with the town of East Longmeadow, MA on permitting a 4MW solar project directly north of the approved Connecticut projects on an additional 21 acres in Massachusetts. The Massachusetts parcel is landlocked and has no roadway frontage in the town. The parcel has been and will continue to be accessed from the State of Connecticut, for solar, or ultimately any use. As PLH, LLC navigates the East Longmeadow, MA entitlement process, one of the requirements from their planning and community development department was obtaining a roadway frontage variance, given the isolation of the parcel. PLH, LLC has obtained approval from the East Longmeadow Zoning Board of Appeals for this variance [Exhibit A – Recorded Notice of Decision]. The variance approval decision was made with 5 conditions, of which condition 2 is presented below:

2. That the Site Plans approved by the Connecticut Siting Council for the CT phase of the

development be revised to show the extension of the solar array service road into the East Longmeadow Parcel. Revised plans shall be provided to the Planning and Community Development department files;

Windham Solar has created a revised site plan [Exhibit B – Bilton Site Plan W ELM Access]. This is the site plan which was ultimately referenced in the original petition #1323 decision. The revision shows a roadway extension to Massachusetts (clouded in red).

Please consider this request so the PLH, LLC can continue to develop green energy in the neighboring state of Massachusetts.

Thank you,

A handwritten signature in black ink, appearing to read "Steven J. Broyer", is written over a horizontal line.

Steven J. Broyer

EXHIBIT A



**Town of East Longmeadow
Department of Planning and Community Development**

60 Center Square
East Longmeadow, Massachusetts 01028
Constance M. Brawders, Director
constance.brawders@eastlongmeadowma.gov
(413) 525-5400 - ext. 1700

For Registry Use

TOWN CLERK RECEIVED
AM 10:26
EAST LONGMEADOW

**NOTICE OF DECISION-Variance
Town of East Longmeadow Zoning Board of Appeals**

Case: ZV 2020-01		
Request: Variance		
Address: 0 Rear Pease Road		
Zoning District: Residence AA		
Recorded Owner: PLH LLC (d/b/a ECOS Energy), c/o Bradford Stewart and Steve Broyer		
Owner's Address: 222 South 9 th Street, Ste. 1600, Minneapolis, MN 55402		
Owner's Agent: James F. Martin, Esq.		
Agent's Address: Robinson Donovan, 1500 Main Street, Ste. 1600 P.O. Box 15609, Springfield, MA 01115-5609		
Application Submittal Date	Public Hearing Date	Decision Date
February 14, 2020	March 9, 2020	March 9, 2020
Assessor's Parcel ID	Deed Book/Page Number	Certificate Number
33-1-0	21133/547 and 22432 /160	-----
First Legal Notice	Second Legal Notice	
February 21, 2020	February 28, 2020	

Action:

Variance for relief from **East Longmeadow Zoning By-law Table 3-1: East Longmeadow Schedule of Use Regulations, 3.2 Dimensional and Density Regulations**, to reduce the minimum frontage requirement from 175 feet to zero feet located at 0 Rear Pease Road (Assessor's Parcel ID 33-1-0) in the Residence AA zoning district, **GRANTED, WITH CONDITIONS** on a motion by Zoning Board of Appeals member, Charles Gray, and second by member Brian Hill. The vote carried four (4) to one (1) with members Brian Hill, Charles Gray, Francis Dean, and Mark Beglane voting in the affirmative, and member Daniel Plotkin voting nay, on the application filed by the petitioner.

A copy of this decision was filed with the Town Clerk of the East Longmeadow on April 1, 2020. Any person aggrieved by this decision for Appeal has twenty (20) days to appeal the decision in accordance with the procedures set forth in §17 of Chapter 40A of the General Laws of Massachusetts.

Expiration date for appeal period 4/21/2020

This is to certify that no notice of appeal was received on the twenty (20) days that have elapsed since the filing of this decision with this office.

Mark J. Beglane /cs
Mark J. Beglane, Chair
Town of East Longmeadow Zoning Board of Appeals

Jeanne R. Quaglietti
Jeanne R. Quaglietti, East Longmeadow Town Clerk

Date 4/21/2020

1. Petition Summary:

The petitioner sought a Variance from East Longmeadow Zoning By-law Table 3-1: East Longmeadow Schedule of Use Regulations, 3.2 Dimensional and Density Regulations, to reduce the Minimum Frontage Requirement *from* 175 feet *to* zero feet located at 0 Rear Pease Road (Assessor's Parcel ID 33-1-0) in the Residence AA zoning district through Applicant's Agent, Atty. James F. Martin of Robinson Donovan, PC, 1500 Main Street, Ste. 1600, P.O. Box 15609, Springfield, MA 01115-5609.

2. Plans and Materials Reviewed by the Zoning Board of Appeals**Plans considered as part of the application submittal:**

- The submittal was shown on plans for East Longmeadow Solar in Hampden County, MA dated 01/15/2020, rev thru 01/15/2020, located at Rear Pease Road (Parcel 33-1-0) in East Longmeadow, MA 01028, prepared for Ecos Energy, 222 South 9th Street, Ste. 1600, Minneapolis, MA 55402 by Westwood Professional Services, Inc., 12701 Whitewater Drive, Ste. 300, Minnetonka, MN 55343 consisting of six (6) sheets:
 - Existing Conditions Plan C.200
 - Overall Site Plan C.100
 - Civil Site Plan C.300
 - Civil Site Plan – 2 C.301
 - Civil Site Plan – 3 C.302
 - Civil Site Plan – 4 C.303
 - Civil Site Plan – 5 C.304 and
- ALTA/ACSM Land Title Survey for Rear Pease Road in East Longmeadow, MA, dated 09/10/2019, prepared for Ecos Energy, 222 South 9th Street, Ste. 1600, Minneapolis, MN by Martinez Couch & Associates (MCA), 1084 Cromwell Avenue, Ste. A-2, Rocky Hill, CT 06067.

Other Documents and supporting materials:

- ZBA Application for Variance;
- Letter from PLH LLC Manager Thomas Melone and Sr. Project Engineer Steve Broyer dated February 12, 2020 authorizing James F. Martin, Esq to act as agent;
- Assessor's Map;
- Review comment submitted by Town of East Longmeadow Building Commissioner Kevin Duquette dated 02/18/2020;
- Tax Collector Affidavit signed by the office of the Town of East Longmeadow Tax Collector 02/13/2020;
- Certified Abutters List signed by the Town of East Longmeadow Assessor's Office 02/14/2020;
- Hampden County Registry of Deeds Book 21133, Page 547 and Book 22432, Page 160;
- Opinion from Atty. Michael Pill, Green Miles Lipton, LLP, 77 Pleasnat Street, P.O. Box 210, Northampton, MA 01061-0210 dated March 4, 2020
- Opinion from Atty. Michael Pill, Green Miles Lipton, LLP, 77 Pleasnat Street, P.O. Box 210, Northampton, MA 01061-0210 dated February 2, 2020

Entered into the Record on March 9, 2020:

Exhibit 1: Petition No. 1323 – Connecticut Siting Council approval of Windham Solar LLC Development and Management Plan for the construction, maintenance, and operation of three 2.0 Megawatt AC and two 1.0 Megawatt AC solar photovoltaic electric generating facilities on an approximate 43 acre parcel located at 134 Bilton Road in Somers, CT (November 9, 2018).

Exhibit 2: Petition No. 1323 – Connecticut Siting Council ruling that the Windham Solar LLC petition for a three 2.0 Megawatt AC and two 1.0 Megawatt AC solar photovoltaic electric generating facilities on an approximate 43 acre parcel located at 134 Bilton Road in Somers, CT met air and water quality standards of the Department of Energy and Environmental Protection (January 22, 2018).

Exhibit 3: Town of Somers, CT Building Department Building Permit No. 19-0380 issued 08/01/2019 for the installation of ground mounted solar array on approximately 27.3 acres consisting of 9000 modules and 18 inverters.

Exhibit 4: email dated 11/22/2019 from East Longmeadow Fire Chief Paul Morrissette assuring the solar array project manager, Steve Broyer, that the Towns of Somers, CT and East Longmeadow, MA have agreed to a dual agency response to any incident at the site.

3. Discussion

Present for the hearing and discussion were ZBA members Chair Mark Beglane, Vice Chair Charles Gray, Clerk Brian Hill, Francis Dean, and Daniel Plotkin. Associate member James Channing was also in attendance. Planning and Community Development Director Constance Brawdars and Planning and Community Development Administrative Assistant Bethany Yeo attended the March 9, 2020 subject case review.

Chair Beglane opened the public hearing. Clerk Brian Hill read the legal notice into the record, verified the notice for the variance had been appropriately published in The Republican newspaper prior to the meeting date, and that abutters had been notified.

Speaking on behalf of the variance petitioner was applicant's attorney and agent, James Martin [Robinson Donovan, P.C., 1500 Main Street, Suite 1600, Springfield, MA 01115]. Atty. Martin described the complexity of this particular variance by providing the ZBA with an overview of the parcel ownership, geographic location of the site which abuts and adjoins a neighboring parcel in Connecticut, shape and current use of the parcel as farmland, and proposed use of the parcel for a ground mounted solar energy installation. Atty. Martin summarized the status of the site plan development proposal for a Ground Mounted Photovoltaic Installation, which had been initially submitted to Town Council under a petition for zoning change from Residence AA to Industrial District or Industrial Garden Park [where Ground Mounted Photovoltaic use is permitted by right], then referred to Planning Board, and subsequently returned to Town Council without a favorable recommendation by the Planning Board to rezone the parcel as Industrial.

After appeal to the Land Court, a summary judgement was issued [08/20/2019] in favor of PLH LLC with a recommendation by the court that the town go forward with site plan review [as solar was considered under summary judgement as an exemption under state statute]. The proposal for development now

stands before the Planning Board. A Request for Determination of Applicability was submitted to the Conservation Commission; the Commission issued a negative determination for wetlands [01/08/2020]. The matter was now before the ZBA to request relief from the 175 foot frontage required in the Residence AA zoning district, as access to this site was available via the contiguous Somers, CT parcel.

Atty. Martin respectfully rebutted legal opinion offered by recently appointed Town Attorney Michael Pill, summarizing that lack of frontage did not qualify for granting a zoning variance, as Atty. Martin stated that he and previous Town Attorney [Kevin Maynard] had a meeting of the minds regarding the access to the landlocked site [through the Connecticut parcel which met regulations for frontage at Bilton Road in Somers, CT]. In addition, Atty. Martin reminded the ZBA that Zoning was adopted by East Longmeadow in 1962 and furthermore, stated use of these parcels was as a preexisting non-conforming use since 1905.

Atty. Martin stated that a solar facility project had received approval and is being constructed on the adjoining parcel in Somers, CT.

Atty. Martin submitted Exhibits 1-4 into the record.

Atty. Martin addressed future ownership and operation of the facility. Atty. James Martin stated the current property owner is PLH LLC and explained that PLH LLC will convey a separate entity to operate the facility when the required permits are received and easement will be recorded for right to access the interior parcel.

In summary, Atty. Martin reminded the ZBA that the intent of the Zoning Bylaw was to promote the health, welfare, and safety of the community. Atty. Martin stated that PLH LLC strongly believes that solar energy promotes the health, welfare and safety of the community by removing fossil fuel generation. Atty. Martin stated the energy produced by the proposed ground mounted solar array would serve East Longmeadow's needs by tying the energy produced at the site to the grid owned by the electrical service provider [Eversource and National Grid].

Atty. Martin referred to the written findings for granting a variance provided with the application to the ZBA and opined that the project proposal satisfied the circumstances for relief under soil conditions, shape of parcel and topography, and that literal enforcement of the zoning by law would create a hardship to the land owner, as there is no access to the land locked parcel via East Longmeadow.

In response to Atty. Martin, Chair Mark Beglane opined that the frontage requirement may be satisfied as it adjoins and abuts land in Somers, CT. James Martin elaborated by stating that the two parcels in question are legally defined as two separate parcels due to the state and municipal boundaries. Chair Mark Beglane explained each parcel has its own deed because the deeds had to be recorded in their respective states/towns. If it were not for the MA/CT state line, the site could be under one deed for one parcel.

Chair Mark Beglane requested the petitioner enter into a written inter-municipal agreement for mutual assistance between the respective the communities' departments of public safety and that this documentation from CT and MA be provided for Planning and Community Development files.

Furthermore, Chair Beglane requested that approved Site Plans for the CT phase of the development be revised to show the extension of the solar array service road into the East Longmeadow parcel and that the service road be constructed to standards that will satisfy Public Safety and the East Longmeadow

Department of Public Works. Atty. James Martin stated the access road will incur minimal use with one truck per month to provide general landscaping and maintenance as needed.

Atty. James Martin reiterated email comments [Exhibit 4] from Fire Chief Morrisette. Atty. Martin will provide written comment from East Longmeadow Chief of Police, Jeffrey Dalessio, to the Department of Planning and Community Development for the file folder supporting mutual assistance for public safety.

Chair Mark Beglane inquired of the project site's proximity to any residence in Somers, CT and East Longmeadow, MA. Atty. James Martin stated the parcel is an estimated distance of 300-400 feet from the nearest residence. [Under the current Zoning Bylaw, 7.5.12 Buffer Strips, For all ground-mounted solar photovoltaic installations abutting a Residential District or a Residence, the fifty (50) foot setback for either side or rear yards shall consist of twenty-five (25) feet of a landscaped buffer. Said buffer is to consist of plantings a minimum of six (6) feet in height at planting and staggered so as to fill that twenty-five (25) foot buffer area and keep the arrays from view year round]. Atty. Martin stated existing trees will remain to buffer the parcel development from the residential structures as stipulated by the Zoning Bylaw. Atty. Martin explained there will be a fence surrounding the solar array itself and a screening buffer around the boundary of the parcel.

Board member Daniel Plotkin asked if it were under the purview of the Zoning Board of Appeals to grant a waiver of frontage; Chair Beglane confirmed that such a variance was under the authority of the ZBA. Mr. Plotkin then asked if granting this petition might set precedent. Chair Beglane opined that the purpose of the frontage requirement was to provide adequate access to the site and that access was met in this case via CT.

Vice Chair Charles Gray recognized the uniqueness of this case, noting his concern is accessibility by emergency service vehicles. Mr. Gray concurred with Chair Mark Beglane on the need for an inter-municipal agreement and forthcoming comments from Chief of Police Jeffrey Dalessio.

Chair Mark Beglane stated he preferred an easement to a deed restriction, as deed restrictions may expire after 30 years. Atty. Martin responded that an easement can be created permanently to run with the land, rather than the property owner. Atty. Martin stated his client is not opposed to deed restriction or easement; whatever the Town of East Longmeadow wanted as an agreement to access the land will be provided to East Longmeadow by the applicant/owner.

Board member Daniel Plotkin inquired [of Atty. Martin] if PLH LLC was aware of the limitations of the parcel due to the zoning bylaw, including its access limitations as a landlocked parcel, prior to purchasing it for the solar facility project. Atty. James Martin stated his client was aware that the parcel was zoned Residence AA prior to purchasing it. Board member Daniel Plotkin inquired if PLH LLC was aware that there was no frontage on the lot as well. Atty. James Martin stated his client believed the frontage on Bilton Road in Somers, CT was sufficient frontage for the project based on the applicant's interpretation of case law, East Longmeadow's Zoning by-law, and the Massachusetts statute.

Associate Member James Channing asked Atty. Martin to clarify where jurisdiction of the site ended, as there is no interstate compact on this lot. Atty. Martin stated East Longmeadow's jurisdiction stopped at the state line. However, a statement could be made that frontage was satisfied by the CT parcel.

Clerk Brian Hill inquired if future land development of abutting parcels could be impacted. Atty. Martin opined a developer would be aware of the solar facility's location follow the zoning bylaw to provide an adequate landscape buffer between the uses.

The public hearing was opened for comment. No one spoke in favor of the proposal. Speaking in opposition:

Town Councilor Marilyn Richards [342 Pinehurst Circle] spoke in opposition of the project, point being that PLH LLC had imposed their own hardship by purchasing land that was not zoned for their intended use of the land. She noted the petition for zone change was not recommended for approval by the Town Council Subcommittee on Zoning.

Chair Mark Beglane responded that the frontage was not being waived for frontage on the lot; the variance was being considered so access to the lot might be granted through the Connecticut frontage which frontage meets the length requirements for East Longmeadow, Massachusetts Zoning Bylaw for the proposed use.

Mrs. Richards also expressed her concern with removal of the landscape buffer, which were waived by the Planning Board, until such time there was a change of use from the photovoltaic installation.

Board member Daniel Plotkin opined the Zoning Board of Appeals must look at the case as a matter of law. Mr. Plotkin alluded to individual property rights.

Associate Board member James Channing offered case law whereby a state line can create a hardship. If you own the two parcels, the fact that the parcels of contiguous land straddle a state line, this is the hardship that the ZBA must take into consideration.

Town Councilor Ralph Page [137 Pease Road] spoke in opposition of the project. His point emphasized that granting the variance would waive the required frontage from 175 feet to zero in utilizing the frontage in Somers, CT.

Mr. Page also questioned [because there were two separate deeds] if the frontage requirement could be conveyed [to the East Longmeadow parcel] if the Somers, CT parcel met Connecticut's zoning requirements. Mr. Page informed the ZBA that the parcel under discussion had been considered by the Town of East Longmeadow under right of first refusal, but because of the land locked status, the right was not exercised.

Chair Mark Beglane maintained that the parcel is being considered as one with the adjacent Somers, CT parcel but explained that if the proposed use of ground mounted solar voltaic installation were abandoned, the Variance would be moot, or extinguished.

Marilyn Richards reminded the Board that there had been decisions in Land Court for similar cases that were directly contradictory to the judgement. Chair Mark Beglane cautioned the ZBA on the financial expense to the Town of East Longmeadow for appeal to the Land Court's decision.

Planning Board member, Jonathan Torcia [79 Thompkins Avenue] commented that the Planning Board had made every effort to conduct a fair and timely hearing for the petitioner's pending Site Plan Review.

John Pearson [311 Pease Road] asked for clarification on what was meant by waiving a buffer.

Atty. James Martin explained the perimeter landscape buffer installation had been waived for the proposed use of the ground mounted solar array because the natural buffer will remain intact. The trees will not be clear cut to the edge of the property line. Mr. Pearson was shown a copy of the site plan and Atty. James Martin offered to provide any information on the project to Mr. Pearson.

Hearing no further comment, the hearing was closed.

Motion to close made by Board member Daniel Plotkin; second by Clerk Brian Hill and approved by a vote of five (5) - zero (0).

4. Findings

The Chair explained that a variance may be granted only if the Board finds that owing to circumstances relating to the soil conditions, shape or topography of land or structures, and especially affecting such land or structures but not generally affecting the zoning district in which they are located, a literal enforcement of the provisions of the By law would involve substantial hardship, financial or otherwise, to the Petitioner and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the By law.

A Variance is permission to depart from the literal enforcement of the Zoning By law with respect to setback, side yard, frontage and lot size, but not involving use or structures.

After reviewing plans as represented and materials provided for consideration the evening of the meeting, the ZBA found:

That the hardship indicated for granting the variance petition is one, being the shape of the land parcel, which is crossed by a state line. The state line creates a landlocked area, and if not for the border line separating Somers, CT and East Longmeadow, MA, the parcel would otherwise have adequate frontage from the Somers, CT portion of the land which meets the East Longmeadow length of frontage required under the Zoning Bylaw for East Longmeadow for the proposed use.

Furthermore, the Board of Appeals found that the Variance may be granted subject to the following conditions:

1. That the petitioner enter into a written inter-municipal agreement for mutual assistance between the respective the communities' departments of public safety and that this documentation from CT and MA be provided for Planning and Community Development department files;
2. That the Site Plans approved by the Connecticut Siting Council for the CT phase of the development be revised to show the extension of the solar array service road into the East Longmeadow parcel. Revised plans shall be provided to the Planning and Community Development department files;
3. That the service road be constructed to standards that will satisfy East Longmeadow's Departments of Public Safety and the East Longmeadow Department of Public Works. A letter from these respective departments shall be provided to the Planning and Community Development department files;
4. That a memo be provided for the Planning and Community Development department files from the East Longmeadow Chief of Police stating project site conditions have been met, as they pertain to the Police Department;

5. That the DRAFT copy of the deed restriction or easement be provided for review and approval be provided to ZBA Chair Mark Beglane by the applicant. Final documents are to be provided for the Planning and Community Development department files.

5. Decision

Based on review of the submitted petition, the Zoning Board of Appeals **Approved** the petition for **Variance**, with above listed **conditions**, under **Town of East Longmeadow Zoning By-laws, § VII-Administration and Enforcement, 7.0 Zoning Board of Appeals, 7.03 Variances** on a parcel located at 0 Pease Road.

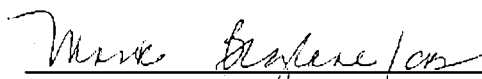
On a motion by Zoning Board of Appeals Vice Chair Charles Gray, and second by Zoning Board of Appeals Clerk Brian Hill, the vote carried four (4) to one (1) with members Charles Gray, Francis Dean, Brian Hill, Mark Beglane voting in the affirmative, and Daniel Plotkin opposed to approve the application for Variance by the petitioner.

As per MGL Chapter 40A, §10, if the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse; provided, however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period.

No variance, or any extension, modification or renewal thereof, can take effect until a copy of the decision bearing the certification of the municipal clerk is recorded in the registry of deeds or is recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or applicant.

A copy of this decision was filed with the Town Clerk of the East Longmeadow on April 1, 2020. Any person aggrieved by this decision for Appeal has twenty (20) days to appeal the decision in accordance with the procedures set forth in §17 of Chapter 40A of the General Laws of Massachusetts.

4-1-2020
Date



Mark J. Beglane, Chair
Town of East Longmeadow Zoning Board of Appeals

