



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

YARMOUTH TOWN CLERK
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FILED WITH TOWN CLERK: August 26, 2013

PETITION NO: #4463 (and related Petitions #4464 & #4465)

HEARING DATE: August 8, 2013

PETITIONER: Broadway Electrical Co., Inc.

PROPERTY: 400 Higgins Crowell Road, West Yarmouth
Map & Lot#: 0064.36;
Zoning District: R-40 & Aquifer Protection District
Book & Page: 1105/361

MEMBERS PRESENT AND VOTING: Steven DeYoung, Chairman, Sean Igoe, Debra Martin, Bryant Palmer and Robert Howard.

Notice of the hearing has been given by sending notice thereof to the Petitioner and all those owners of property as required by law, and to the public by posting notice of the hearing and publishing in *The Register*, the hearing opened and held on the date stated above.

The Petitioner is Broadway Electrical Co., Inc. of 295 Freeport Street, Boston, MA. The Petitioner is seeking a Special Permit from Zoning By-law §202.5 Use Regulation Table P10. The relief sought is in connection with a proposed 1,499.3 KW ground mounted solar generating facility to be located at 400 Higgins Crowell Road, the site of the Mattacheese Middle School.

Initial consideration of the Petition commenced on the regularly scheduled meeting date of July 25, 2013. Several persons appeared and spoke in favor of the Petition. The presentation was primarily offered by Mr. Dennis Daru, Jr., Mr. Dan Griffin, Ms. Liz Argo and Ms. Sandra Cashen. Ms. Lindsey Henderson, a neighbor to the property, also spoke in favor of the Petition. Kerry Fitzpatrick, whose parents are abutters at 10 Timber Lane, West Yarmouth, spoke in opposition to the Petition.

There was substantial dialogue during the initial meeting with the Board generally raising questions and concerns regarding the project and its scope. After a brief recess in the proceedings, the Petitioner's representatives requested a continuance to the next regularly scheduled meeting with the expectation they would be able to address the Board's concerns. With regard to this request, a Motion was made by Mr. Palmer seconded by Mr. Howard to which the Board voted unanimously in favor. The companion Petitions #4464 relating to the Marguerite E. Small School and #4465 relating to the Dennis-Yarmouth Regional High School were included in the request and continuance.

The next regularly scheduled meeting on August 8, 2013 the Petitioner's representatives did an admirable job of providing materials which were sought by the Board and/or responsive to the Board's prior concerns. The meeting proceeded generally on all three Petitions, #4463, #4464 and #4465 as the relief sought was the same for each Petition, the major difference being the location relating to each Petition.

The Petitioners representatives who primarily spoke at the July 25, 2013 meeting were present. In addition, Mr. Jeffrey Wootan of Broadway Electric was present and provided a well-thought out and eloquent presentation relating to all three Petitions, generally. In addition, Carol Woodbury, the Dennis-Yarmouth School Superintendent spoke favorably of the Petition as had the Petitioner's representatives, she spoke with a well considered review of the virtues of the proposals inclusive of the cost savings of electricity, the educational value of the project for district children, the "green energy" component of the projects and the \$0.00 cost of the project to the district.

Received at this hearing were several exhibits and as follows:

- Exhibit 1 – memorandum from Karen Greene, Director of Community Development, letter dated 8/2/13
- Exhibit 2 - correspondence dated 8/6/13 from Robert J. Palmeri, Chair of the Yarmouth Energy Committee
- Exhibit 3 - a 74 page project overview dated 8/8/13 entitled Photovoltaic Installations Proposed for D-Y School District and Town of Yarmouth
- Exhibit 4 - a ring-bound presentation brochure from the Petitioner entitled PV Systems for Dennis & Yarmouth
- Exhibit 5 - interoffice Memorandum dated 8/17/13 from William G. Hinchey, Town Administrator
- Exhibit 6 - correspondence dated 8/8/13 from Steve Gavin, Vice-Chair of the Yarmouth Energy Committee

Also speaking favorably on the Petitions were each school's principal, Mr. Palmeri and Mr. Gavin (Energy Committee) and several others all of which spoke of the projects benefits to the community.

Board member, Robert Howard, expressed his gratitude for the fine presentation and documents provided by the Petitioner at this hearing.

Board Chair, Steven DeYoung, noted that, through Karen Greene, he had his attention drawn to M.G.L. c40A §3 and its provisions limiting review of Petitions relating to solar projects as needing to address criteria relating to health, safety and welfare only. The Chair spoke of his view that this was a clear legislative intent to encourage the generation of electricity through solar projects such as offered by the Petitions collectively.

Vice-Chair, Mr. Igoe, spoke against the Petition after public comment and during Board deliberations. He expressed a myriad of concerns inclusive of concerns for the safety and welfare of children particularly due to the proximity of the projects to the schools. He noted that the arrays at the Marguerite E. Small School would be approximately 30-40 feet from classrooms and too close to the playground. At the Mattacheese School site he was concerned about the arrays running approximately 1200 feet along Higgins Crowell road across from a residential district and at the main entryway of people coming into Yarmouth from Route 6. All of which he was concerned with would have a detrimental effect on property values. At the D-Y High School proposed location the arrays would be very close to a toddler playground as well as classrooms and would be clearly visible from the streetscape and affect property values of the surrounding residential areas. As to all of the schools, he felt that the arrays would be an attractive nuisance and thus a potential danger to the community. He felt strongly that the health, safety and welfare of the community would be adversely impacted by the project and was joined in his concerns by Ms. Martin. Mr. Howard had earlier made several good

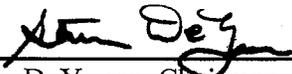
suggestions to include if the relief sought was granted but, during deliberations, joined in the concerns of Mr. Igoe and Ms. Martin.

Mr. DeYoung expressed his support of the Petitions, particularly in light of M.G.L. c40A §3. Mr. Palmer generally felt that, with certain conditions, he might be in favor of the Petitions. Before any further deliberations occurred, Mr. Igoe made a Motion to approve Petition #4463 and no Board member objected. The Motion was seconded by Mr. Palmer. On this Motion, the Board vote was as follows:

DeYoung	- In favor
Martin	- Opposed
Igoe	- Opposed
Howard	- Opposed
Palmer	- Abstained

Therefore, the Petition and relief sought was denied.

No permit shall issue until 20 days from the filing of this decision with the Town Clerk. This decision must be recorded at the Registry of Deeds and a copy forwarded to the Board of Appeals. Appeals from this decision shall be made pursuant to MGL c40A section 17 and must be filed within 20 days after filing of this notice/decision with the Town Clerk. Unless otherwise provided herein, the Special Permit shall lapse if a substantial use thereof has not begun within 24 months. (See bylaw, MGL c40A §9)



Steven DeYoung, Chairman