

# Town of Windham

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## MEMO

DATE: September 24, 2020

TO: Windham Planning Board  
FROM: Jennifer Curtis, Planner  
Cc: Amanda Lessard, Planning Director  
Silas Canavan, PE, Walsh Engineering Associates  
Development Review Team

RE: 20-23 WH02 Solar - Major Site Plan & Conditional Use, Sketch Plan Review  
Planning Board Meeting: September 28, 2020

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### Overview –

This application is for a new a 19.99-acre, 5MW solar project on a portion of the 60 acre undeveloped property with frontage on Swett Road. The site is currently undeveloped and wooded. A short gravel access drive with a turnaround off of Swett Road is proposed to serve the project. The project would tie-in to the utility line located on Swett Road.

Public Utility Facility is a conditional use in the Farm District. In accordance with Section 516.B the Planning Board shall serve as the Conditional Use review authority. The applicant should submit a written statement with the final plan application describing how the conditional use will meet the review criteria of Section 516.

A Development Review Team meeting was held on September 17, 2020. Comments from that meeting are incorporated into the memo below.

Tax Map: 6 Lot: 60 Zone: Farm (F)

### SITE PLAN REVIEW

#### Staff Comments:

1. Waivers: *The Planning Board cannot act on waivers or potential waiver requests at the Sketch review phase, however it is appropriate to discuss potential waiver requests to give the applicant guidance*

None

2. Complete Application: N/A for sketch plan

~~**MOTION:** The site plan application for project 20-23 WH02 Solar is found complete in regard to the submission requirements based on the application checklist, but the Planning Board retains the right to request more information where review criteria are not fully addressed.~~

3. Public Hearing: A public hearing has not been scheduled for this project. A public hearing is required for Conditional Use review by §516.G.

4. Site Walk: A site walk has not been scheduled for this project.

Findings of Fact and conclusions for the

**Windham Planning Board,**

~~The Site Plan application for 20-23 WH02 Solar on Tax Map: 6 Lot: 60 is to be (approved with conditions/denied) with the following findings of fact and conclusions.~~

FINDINGS OF FACT

**Utilization of the Site**

- The applicant submitted a 25-year real estate lease option agreement for the subject parcel, dated April 17, 2020, with the landowners, Laurence A and Kathryn A Clark.
- The proposed site location is undeveloped and currently mostly wooded.
- The site will be occupied by approximately 20 acres of ground mounted solar panels and an electrical equipment area near the proposed access road with turnaround, surrounded by a security fence that may be raised up slightly to allow small wildlife to travel underneath.
- The area under and around the solar panels will be returned to a vegetated meadow condition, mowed no more than twice per year.
- Drainage patterns will remain generally the same.
- Two streams, multiple wetlands, and three potential vernal pools were identified. The applicant is conservatively assuming the vernal pools are significant, and applying setbacks accordingly.
- A Maine DEP NRPA PBR for work adjacent to natural resource, and a Tier 1 NRPA Permit for wetland impacts must be submitted with the final application.
- The applicant states that the Army Corps considers the type of wetland impacts they are proposing to be exempt.
- The project is not located within an essential or significant habitat as mapped on the Beginning with Habitat website, and is not located over a significant sand and gravel aquifer as mapped by the Maine Geological Survey.

- It was discussed at the Development Review Team Meeting that there is likely to be ledge near the surface in the area of the project, and the applicant indicated they were planning to use an anchor system that would still work with ledge.

### **Vehicular and Pedestrian Traffic**

- The project site has frontage on Swett Road, a gravel surface public street, and would have a small gravel access drive with a turnaround.
- Sight distances for the entrance must be shown on the final plan.
- The application states that the project would generate only a few trips per month.
- A traffic impact study is not required as the project will not generate fifty (50) or more trips during the a.m. or p.m. peak hour.
- The project will need an entrance permit from the Department of Public Works. The Director of Public Works recommended a performance guarantee amount to cover the costs to repair any damages to Swett Road that occur due to construction.

### **Sewage Disposal and Groundwater Impacts**

- The development is not proposing a private subsurface wastewater disposal (septic) system.

### **Stormwater Management**

- Per Section 812.E, a stormwater plan needs to be submitted that meets the standards DEP Chapter 500 Stormwater Management.
- A Stormwater Permit required by Maine DEP must be submitted with the final plan submission.
- The proposed development is located within the Black Brook and Colley Wright Brook watersheds, neither of which are a watershed of a lake most at risk from new development as designated in Chapter 502: Direct Watersheds Of Lakes Most At Risk From New Development, And Urban Impaired Streams of the Maine Department of Environmental Protection, and therefore does not require independent review per 807.F.6.

### **Erosion Control**

- A soil erosion and sediment control plan must be submitted with the final plan set. This may take the form of a printed best management practices plan rather than on-the-ground designation of erosion control measures.

### **Utilities**

- §812.I requires that new utility facilities shall be screened from view to the extent feasible, and utility lines shall be placed underground.
- At the Development Review Team meeting the applicant stated that the project would tie-in to existing power lines on Swett Road.

- Equipment will be monitored remotely at all times. Emergency personal will have a plan for access.

### **Financial & Technical Capacity**

- Evidence of technical capacity must be provided as part of the Final Plan submission.
- As part of the next submission, the applicant must show an estimate the total project costs, and submit evidence of financial capacity to complete the project as proposed.

### **Impacts to Adjacent/Neighboring Properties**

- A landscaping plan must be submitted as part of the final plan set.
- The applicant is proposing an evergreen screening buffer along the western portion of the project.
- Any proposed site lighting must be shown on Final Plan, and details of fixtures must be included in the submission.
- No construction activities are permitted between 10pm and 6am.
- A security chain link fence is proposed around the perimeter of the solar equipment.
- During the Development Review Team Meeting it was noted that there may be neighbors in the newly constructed residential development to the south that would have concerns about visibility, and viewshed analysis to help determine the visual impacts to those neighbors would be helpful for final review.

### **Conformity with Local Plans and Ordinances**

#### **1. Land Use**

- The project meets the minimum lot size and frontage requirements of the F zoning district.
- The minimum front setback for non-residential use is a minimum landscaped buffer strip of 15'. The applicant is proposing an evergreen buffer.
- The proposed public utility facility use is conditional in the Farm District if it meets the standards Section 516.

#### **2. Comprehensive Plan**

- This project meets the goals and objectives of the 2017 Comprehensive Plan. The project is located in the rural area of the Future Land Use Plan.

#### **3. Others:**

- Conditional Use, Section 516. The project must comply with the review criteria. Conditional Use review criteria are listed following the Site Plan Review criteria.

### **CONCLUSIONS**

1. — The plan for development ~~reflects/does not reflect~~ the natural capacities of the site to support development.
2. — Buildings, lots, and support facilities ~~will/will not~~ be clustered in those portions of the site that have the most suitable conditions for development.
3. — Environmentally sensitive areas, including but not limited to, wetlands; steep slopes; flood plains; significant wildlife habitats, fisheries, and scenic areas; habitat for rare and endangered plants and animals; unique natural communities and natural areas; and, sand and gravel aquifers ~~will/will not~~ be maintained and protected to the maximum extent.
4. — The proposed site plan ~~has/does not have~~ sufficient water available for the reasonably foreseeable needs of the site plan.
5. — The proposed site plan ~~will/will not~~ cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.
6. — The proposed use and layout ~~will/will not~~ be of such a nature that it will make vehicular or pedestrian traffic no more hazardous than is normal for the area involved.
7. — The proposed site plan ~~will/will not~~ provide for adequate sewage waste disposal.
8. — The proposed site plan ~~conforms/does not conform~~ to a duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.
9. — The developer ~~has/does not have~~ adequate financial capacity to meet the standards of this section.
10. — The proposed site plan ~~will/will not~~ alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
11. — The proposed site plan ~~will/will not~~ provide for adequate storm water management.
12. — The proposed location and height of buildings or structure walls and fences, parking, loading and landscaping shall be such that it ~~will/will not~~ interfere or discourage the appropriate development in the use of land adjacent to the proposed site or unreasonable affect its value.
13. — On-site landscaping ~~does/does not~~ provide adequate protection to neighboring properties from detrimental features of the development that could be avoided by adequate

#### CONDITIONS OF APPROVAL

1. Approval is dependent upon, and limited to, the proposals and plans contained in the application dated September 8, 2020, as amended \_\_\_\_\_, and supporting documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Planning Board, and any variation from such plans, proposals and supporting documents and representations are subject to review and approval by the Planning Board or the Town Planner in accordance with Section 814.G. of the Land Use Ordinance.
2. **Abandonment or Decommissioning**

Removal Requirements: At such time that the ground-mounted solar energy system described in this approval has reached the end of its useful life or has been abandoned consistent with the Abandonment description within this condition of approval, it shall be removed. The owner or operator shall physically remove the installation no more than 150

days after the date of discontinued operations. The owner or operator shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- (a) Physical removal of all solar energy systems, structures, equipment, security barriers and transmission lines from the site.
- (b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- (c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Site Plan Review Authority may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

**Abandonment:** Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the large-scale groundmounted solar energy system shall be considered abandoned when it fails to operate for more than one year without the written consent of the Site Plan Review Authority. If the owner or operator of the solar energy system fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town retains the right, after the receipt of an appropriate court order, to enter and remove an abandoned, hazardous, or decommissioned large-scale ground-mounted solar energy system. As a condition of Site Plan approval, the applicant and landowner shall agree to allow entry to remove an abandoned or decommissioned installation.

**Surety:** The applicant will provide financial assurance for the decommissioning costs in the form of a performance bond, surety bond, 'evergreen' letter of credit, or other means acceptable to the Town, for the total cost of decommissioning. The applicant will have the financial assurance mechanism in place prior to construction and will re-evaluate the decommissioning cost and financial assurance at the end of years, five, ten, and fifteen. Every five years after the start of construction, updated proof of acceptable financial assurance must be submitted to the Town for review.

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## CONDITIONAL USE REVIEW

### FINDINGS OF FACT

#### **Property Value**

- The use will not impact the value of surrounding properties. Staff recommends a performance guarantee in the amount of the cost of decommissioning the facility in the event the facility is ever abandoned and the Town would need to remove the equipment.

#### **Wildlife Habitat**

- See Site Plan Review

**Botanical Species**

- See Site Plan Review

**Potable Water**

- See Site Plan Review

**Sewage Disposal**

- See Site Plan Review

**Traffic**

- See Site Plan Review

**Public Safety**

- See Site Plan Review

**Vibration**

- The applicant should provide documentation if blasting or hammering is proposed to construct the proposed facility or if the use will produce recurrently generated vibrations.

**Noise**

- See Site Plan Review

**Off-Street Parking and Loading**

- See Site Plan Review

**Odors**

- See Site Plan Review

**Air Pollution**

- See Site Plan Review

**Water Pollution**

- See Site Plan Review

**Erosion and Sediment Control**

- See Site Plan Review

**Hazardous Material**

- See Site Plan Review

**Zoning District and Performance Standards**

- See Site Plan Review

**Solid Waste Management**

- See Site Plan Review

## CONCLUSIONS

1. ~~The proposed use **will not** depreciate the economic value of surrounding properties.~~
2. ~~The proposed use **will not** damage significant wildlife habitat or spawning grounds identified by the Maine Department of Inland Fisheries and Wildlife or by the Town of Windham's Comprehensive Plan.~~
3. ~~The proposed use **will not** damage rare or endangered botanical species as identified by the Maine Department of Conservation or by the Town of Windham's Comprehensive Plan.~~
4. ~~The proposed use **has** access to potable water and **will not** burden either a groundwater aquifer or public water system.~~
5. ~~The proposed use **has** adequate capacity to dispose of sewage waste.~~
6. ~~The proposed use **has** adequate sight distance as established by current Maine DOT Highway Entrance and Driveway Rules.~~
7. ~~The proposed use **will not** overburden police, fire and rescue services, as determined by response time, accessibility to the site of the proposed use, and numbers and types of emergency personnel and equipment presently serving the community.~~