

Town of Bristol  
Zoning Board of Appeals  
Minutes March 21, 2017

**Present:** Marty Snyder, Steve Smiley, John Krebbeks, and Sandra Riker

Excused: Jen Sanford, Donna Beretta

**Others Present:** Edward Kenyon, Attorney, Shaun Logue, MRB Engineer and see attached sign in sheet

**Voting Alternate:** A motion was made by Marty Snyder to have Sandra Riker use her privilege of being able to vote as an alternate this evening because the Board is short 2 members. A second was made by John Krebbeks and all Board members present approved.

**Abundant Solar Power Special Use Permit and Site Plan Application for proposed Community Solar Project on Buckelew Road:** It is noted that this meeting is a continuation of the public hearing opened by the ZBA on February 21<sup>st</sup>, and Mr. Snyder asked to have someone from LaBella provide an update from that meeting. Bob Steehler, Project Manager/Civil Engineer from LaBella Associates addressed a letter sent on March 3, 2017 to Edward Kenyon; Attorney addressing the criteria required under the Bristol Zoning Regulations definition of a public utility and why he felt Abundant Solar Power, Inc. could meet the definition requirements. The definition reads: “94. Public Utility: a regulated private enterprise with a franchise for providing public service.” Excerpts from the letter are as follows:

1. Regulated – Abundant Solar Power Inc. is in the business of developing, constructing, owning and operating Community Solar projects (CDG) to meet the New York State Public Service Commission’s regulatory requirement of New York’s Clean Energy Standard (CES). The CES requires that 50 percent of New York’s electricity come from renewable energy sources such as solar and wind by 2030. By focusing on low carbon energy sources, the CES will bring investment, economic development, and jobs to New York State. In addition, as a solar electricity generator we also subject to the same grid connection and safety and environmental regulations applicable to NYS electricity utilities.
2. Private Enterprise – Abundant Solar Power Inc. is a privately owned enterprise with two principles, Mr. Henry Jung and Dr. Richard Lu.
3. Franchise – Abundant Solar Power Inc. has already secured 8 solar energy sites in NYS and plans to establish a franchise of many small solar farms (2 MW each per PSC requirement) to provide green electricity to the community members/CDG subscribers reside in the same utility load zone. Abundant Solar also has more than 200 solar array sites in operation or under development/construction per Ontario, Canada’s Green Energy Act in Ontario.
4. Provides a Public Service – The proposed solar energy project will provide green energy service on a voluntary basis to residential, commercial and institutional subscribers up to 200 customers the local community.

In reply to comments from MRB he said they have added landscaping to block the arrays that are located at the front of the site.

Mr. Snyder said he does agree that Abundant Solar Power, Inc. is regulated by the PSC of the state of New York, or the fact they are indeed a private enterprise. However, he does feel that the type of franchise referred to in point 3 refers to multiple ownerships and not to granting as a privilege by a government organization. He went on to quote from the Merriman Webster Dictionary the following: “*2a* : a special privilege granted to an individual or group; *especially* : the

right to be and exercise the powers of a corporation *b* : a constitutional or statutory right or privilege; *especially* : the right to vote *c (1)* : the right or license granted to an individual or group to market a company's goods or services in a particular territory; *also* : a business granted such a right or license *just opened a new fast-food franchise down the street*". It is his belief when the term franchise was used in the definition provided in the Bristol zoning regulations it referred to a special privilege granted to an individual or group by a governing body to provide a public service to the local community.

Dr. Lu mentioned the findings of the Ontario County Planning Board dated February 8, 2017: "per a discussion with Jessica Bacher from Pace Law, it is her opinion that the absence of a more detailed definition of utility within the Town Code means that Abundant Solar is held to the Town's definition of "public utility", not the State's.

Mr. Kenyon said there is no definition of franchise in either NYS Town Law, or NY State Law therefore the definition in the Bristol Local Law will be used. He went on to say that the type of franchise suggested in the Bristol regulations refers to the franchise approved for the Rochester Gas & Electric or NYSEG to provide electricity to the town similar to Frontier Communications providing phone service to the community. Is it possible for Abundant to piggy back off the RGE franchise providing electricity for the town? Dr. Lu said no RGE have the franchise regarding the lines the electricity travels through and Abundant would use RG&E's lines to provide electricity to the people being provided with electricity from them.

Mr. Snyder said he had communication with Paul Agresta, General Counsel to the PSC which reads as follows: "A "public utility" is a private business, often a monopoly, which provides services so essential to the public interest as to enjoy certain privileges such as eminent domain and be subject to such governmental regulation as fixing of rates, and standards of service. Characteristics of the public utility include (1) the essential nature of the services offered which must be taken into account when regulations seek to limit expansion of facilities which provide the services, (2) operation under a franchise, subject to some measure of public regulation, and (3) logistic problems, such as the fact that the product of the utility must be piped, wired, or otherwise served to each user, the supply must be maintained at a constant level to meet minute-by-minute need, and the user has no alternative source and the supplier commonly has no alternative means of delivery."

The comment was made that the public hearing was still open and the Chair asked if anyone attending the meeting would like an opportunity to express a comment other than what was already noted from the February 21<sup>st</sup> meeting. Keith Maynard questioned why we don't have a moratorium in place similar to the town of Farmington so the Boards would have a chance to gather more information regarding solar farms. Mr. Kenyon replied that the town of Manchester also has a moratorium in place however the town of Bristol did not have a moratorium in place at the time Abundant Solar Power put in their Special Use Permit application so it must be addressed by the Boards.

MaryAnn Maynard questioned if a moratorium might still be an option and Kenyon replied not at this time. She mentioned her concern for the unknown of property values affected by the solar farm installation. She also noted she is not in favor of the Town trying to find loopholes in an attempt to accept this application.

Amy Force expressed a concern regarding the wetlands disturbance caused by the solar installation. Mr. Steehler replied the Army Corp of Engineers has already been consulted and Abundant Solar would respect their determination.

Joe DiBona expressed a concern for the visual impact of the solar farm and cited the mission statement of the Town of Bristol in its Comprehensive Plan: "**Bristol** - the town whose mission is to preserve and encourage a clean, naturally beautiful, rural environment with carefully planned growth and increased recreational opportunities, while promoting the preservation of agricultural lands." He does not feel this application is appropriate for the town.

When asked if the Board had any further comment Steve Smiley replied no. The public hearing was closed.

Mr. Kenyon summarized the following as to how the ZBA would determine if the Abundant Solar Power application for a Special Use Permit:

- Under Article 10 of the zoning regulations there are no accessory uses allowed but are subject to a special use permit that falls under Article 10 C 3,#10
- The Board needs to determine if the application fills the definition of Article 3 Section II #94 definition of a **“Public Utility. A regulated private enterprise with a franchise for providing public service.**
- A vote will need to be taken will the application meet all 4 points addressed under the above definition.

A motion was made by Marty Snyder that he does not believe Abundant Solar Power, Inc. fits the definition of a public utility as written in the Bristol Zoning Regulations Article 3 Section II #94 “ Public Utility: A regulated private enterprise with a franchise for providing public service. “ Abundant Solar Power, Inc. does not have a franchise provided by a governing body granting them the privilege to provide a public service in the Town of Bristol. A second was made by John Krebbeks. All Board members present agreed.

A second motion was made by Marty Snyder that Abundant Solar Power, Inc. special use permit application cannot be approved by the Zoning Board of Appeals because the use does not fit within the enumeration of the code. A second was made by Steve Smiley. All Board members present agreed.

Another avenue that Abundant Solar Power, Inc. could pursue is that of a Use Variance. They are very difficult to get as it must meet the following criteria:

1. The applicant cannot realize a reasonable financial return on the property in question
2. The alleged hardship relating to the property is unique.
3. The granting of a use variance will not alter the essential character of the zoning district or neighborhood.
4. The alleged hardship has been self-created.

Home Occupation:

The Planning Board met on March 6<sup>th</sup> and reviewed the home occupation definition: **“Home Occupation. Any activity carried out for gain by a resident, conducted as an accessory use in the resident’s dwelling unit, which is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. A home occupation shall be conducted entirely within the principal dwelling unit and/or in a properly permitted, approved, and fully enclosed accessory building. The accessory structure may not exceed 750 square feet and must be of similar construction, architecture, and materials to the main dwelling unit.”** They in turn asked the Town Board for direction would they like to see it expanded or made tighter. The Town Board said on March 13<sup>th</sup> they would like a better understanding of size limitation and asked the PB to look at other towns regulations. The Secretary will be providing the PB at their next meeting the information you have in front of you tonight: a copy of the draft minutes from the Town Board meeting and regulations from: South Bristol, East Bloomfield, Canandaigua, and the town of Manchester.

Some of the regulations are tighter but others are more lenient. The Town Board did express a 750 square feet of the accessory building is too limiting but thought there should be some limitation so the accessory use does not overtake the principle use of the property. It was suggested this evening that if the size limit stay at 750 square foot an applicant could come in for an area variance requesting additional square footage with a limitation on the size allowed. Mr. Kenyon suggested that it could be written as a special use permit that 750 square feet can be approved by the Code Officer and up to 1500 square feet would require an area variance and anything above that would require a second area variance from the ZBA. The definition of home occupation limits the size of the accessory structure only and to the construction type having to be similar to the existing home. It would be friendly if the square footage restriction did not apply to the size of the building but to the square footage being utilized inside the accessory structure. Does the Town Board want the community to have more freedom to conduct a home occupation and what limitation would be put in place through the zoning regulations? The other question is what the Town Board sees as a viable home occupation. What the ZBA and PB needs from the Town Board is a clearer definition of what the Town Board is looking to encourage?

Other Business- It was mentioned the poor quality of internet connection in the Town and how that is a limiting factor for home occupations. Shaun Logue of MRB said he could provide the Secretary with regard to how the Town of Wellsville addressed that problem and would forward the same to her.

The secretary said she had been foiled by Ms. Morgante's attorney to provide the "packet materials" supplied to the Planning Board at the March 6<sup>th</sup> meeting. Mr. Kenyon said she should send the information her attorney requested.

CEO report was reviewed.

The Board thanked both Mr. Kenyon and Mr. Logue for attending the meeting this evening.

A motion was made by Steve Smiley to adjourn the meeting.

Respectfully submitted,

*Sandra Riker*

Secretary to the Town of Bristol  
Planning and Zoning Board of Appeals

These minutes were approved at the April 11, 2017 ZBA meeting with a motion by John Krebbeks and a second by Donna Beretta. The Board voted as follows: Marty Snyder aye, Donna Beretta aye, John Krebbeks aye, Sandra Riker as alternate aye, and Jennifer Sanford abstained.