

**Planning Board  
Minutes of the Regular Meeting and Public Hearing  
October 19, 2020**

**Meeting held remotely via Zoom.**

**Members Present:** Judy Eiseman, Lexi Dewey, Leslie Laurie, Pete Wilson, Anne Stoddard (recording)

**Visitors present:** Julie Rypysc, Bill Pula, Tilman Lukas, Stacey McCullough, Charlie Thompson

**Meeting called to order at 7:00 pm.**

The minutes of the meeting of September 30, 2020 were approved.

**Announcements.**

An application pertaining to the Scenic Roads by-law has been received regarding the removal of shade trees at 8 Amherst Rd. There will be a public hearing jointly with the Highway Department on Saturday November 14 at the site at 10:00 AM. Judy, Pete, Leslie and Anne are planning to attend.

Anne reported on the Board of Health meeting on Oct. 6.

Judy reported on the Select Board meeting. They discussed speed taming on Amherst Road. They reported a total of three cases on COVID in Pelham.

The conservation Commission met on October 8 where they discussed the Meetinghouse Road situation.

A question has come up about a sub-division or shared driveway on land on Buffam Road. This is not a planning board issue.

The next Planning Board meeting will be November 16 at 7:00PM

The Planning Board meeting was adjourned at 7:29PM.

**The Public Hearing was opened at 7:30PM.**

Judy read the statement regarding virtual public meetings pursuant to the Governor's orders. This public hearing was advertised in the Daily Hampshire Gazette on October 2 and October 10.

Judy then introduced the replacement Solar By-law by describing the process and rationale for developing this by-law. It includes changes in knowledge and experience we have gained since the former by-law was approved in 2012. It was guided by five principals:

- To fairly regulate industrial use
- To maintain our green community
- To clarify that building and residential solar development remains permitted by right (Zoning board approval and building permits required as appropriate)
- To create five solar districts where large scale solar arrays may be sited, allowing a total of six large arrays in town
- To follow state guidelines and the current science.

Judy then reviewed the by-law and the zoning and other maps.

Bill Pula raised some concerns. He pointed out that commercial forestry would be prohibited on the protected 4X acres. He feels that forestry is compatible with protection and that the prohibition is overreach by the Planning Board. He feels that the Planning Board becomes the de-facto owner of the protected land. Judy pointed out that the management plan is for the life of the array only. Bill also objected to the prohibition against the use of herbicides.

Pete Wilson agreed that the by-law represents Planning Board overreach and the regulations are designed to de-promote solar development.

Stacy McCullough said that if land-owners want to install solar arrays on forest land they will be taking something away and therefore should give something back.

Judy said that the protection of 4X acres is mitigation for the effects on the parcel of forest land being developed.

Charlie Thompson said that it seems that the Planning Board is punishing the landowner by taking away their ability to make decisions about the management of their land and that the regulations are excessive.

Judy pointed out that the current by-law stipulates that the maximum size of an array could be only one acre. This one allows up to 15 acres. Judy agreed that solar development should be encouraged but the Town also needs to protect its wetlands and habitats.

Charlie Thompson then had some comments about specific sections:

C(3) Is it necessary to specify this level of detail? Could we just say that an approved plan must be submitted?

C(10) specifies that the driveway can't be longer than 1000 feet but section E says that the setback has to be at least 500 feet. This makes for limited driveway access.

F(3) the limitation on herbicides is too strict. Would prohibit use when there might be a valid need at some time. Perhaps we should say they are limited to a detailed pest-management plan.

G(3) Habitat Impacts section could eliminate the whole town. He feels this is a misuse of the CAPS system.

There was further discussion of the 4X requirement and the mitigation for the use of forested land for solar development. Lexie asked if the 4X requirement was the concern. Would less than 4X be OK? Those concerned said that any amount of land in which the use was restricted would be a problem.

The hearing was adjourned at 8:40PM.

Respectfully submitted,  
Anne Stoddard

Attachment: Draft Solar By-law

## **PROPOSED REPLACEMENT SOLAR BYLAW**

Version 10/7/2020

### ARTICLE \_\_\_\_\_

To see if the Town will vote to strike ARTICLE V, Section § 125-18.2, Solar electric installations, of the Town of Pelham Zoning Bylaw, and replace it with a new ARTICLE V, § 125-18.2. Solar Electric Installations, as shown in the text available at the October 24, 2020 Special Town Meeting, or take any other action related thereto.

### **§ 125-18.2 SOLAR ELECTRIC INSTALLATIONS [ADDED 10/24/2020 STM ]**

- A. Purpose. The purpose of this bylaw is to appropriately regulate the creation of Ground-Mounted Solar Electric Installations: (a) by providing standards for the approval, placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, protection and preservation of Town infrastructure (including roads), public nuisance, existing residential property and property value, impacts upon environmental, scenic, and historic resources; (b) by providing adequate financial assurance for the construction and eventual decommissioning of such installations; and (c) by protecting large contiguous blocks of forest back-land based upon the understanding that large unfragmented tracts provide many ecological benefits including improved water and air quality, sequestration of carbon, reduced movement of invasive species, provision of wildlife habitat and the support for greater biodiversity while providing many recreational opportunities for town residents.
- B. Applicability
  - (1) This Section § 125-18.2 applies to Large- Scale and Small-Scale Ground-Mounted Solar Electric Installations, as noted. Small-Scale Ground-Mounted Solar Electric Installations which are accessory to an existing residential or non-residential use, which generate electricity principally (no less than 50% of generated power) used by such residential or non-residential use, are permitted as of right, do not need to comply with this section, but require a Site Plan Review from the Zoning Board of Appeals, as well as a building permit, and must comply with all other applicable provisions of the Town of Pelham Zoning Bylaw and non-zoning bylaws and regulations. Building-mounted solar electric installations are permitted by right following issuance of a building permit. Large-Scale Ground Mounted Solar Electric Installations are permitted only within Solar Districts.

- (2) This Section § 125-18.2 also pertains to physical modifications that materially alter the type, configuration, or size of Ground-Mounted Solar Electric Installations or related equipment.
- (3) This Section § 125-18.2 shall not apply to a Ground-Mounted Solar Electric Installation for which a zoning permit was issued and was still in effect as of the first publication of notice of the September 21, 2020 Planning Board public hearing, but the record owner of the land shall have the right to waive this exemption, in which case the Section § 125-18.2 shall apply.
- (4) Upon written request by the applicant, the Planning Board may waive or reduce any special permit requirement of this Section § 125-18.2 by the same majority vote required for the permit itself upon written findings included in the permit of:
  - (a) special circumstances of the site, its surroundings, or the proposal that negate the need for imposition of the requirement, or the objectives of this section may be met in alternative manner; and
  - (b) that such a waiver or reduction will not derogate from the public purposes and intent of this zoning bylaw.
  - (c) In the case of a special permit, such requests must be made by the applicant no later than the close of the public hearing. An affirmative or negative vote under this paragraph shall not be construed as an approval or disapproval of the permit sought.

#### C. General Requirements

- (1) Compliance with Laws, Bylaws, and Regulations:  
The construction and operation of all Ground-Mounted Solar Electric Installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part thereof shall be constructed in accordance with the Massachusetts State Building Code.
- (2) Mitigation for Loss of Carbon Sequestration and Forest Habitat:  
If forestland is proposed to be converted to a Ground-Mounted Solar Installation the plans shall designate thereon an area of unprotected (meaning, not subject to MGL c. 184, §§ 31-33 or other binding restrictions upon development at time of application) land on the same lot and of a size equal to four times (4X) the total area of such installation. Such designated

land shall remain in substantially its natural condition without alteration, including a prohibition of commercial forestry/tree cutting not related to the maintenance of the installation, until such time as the installation is decommissioned; except in response to a natural occurrence, invasive species or disease that impacts the trees and requires cutting to preserve the health of the forest. The Special Permit may be conditioned to effectuate and make enforceable this requirement.

- (3) Mitigation for Loss of Forest Habitat within the Installation:  
If forestland is proposed to be converted to a Ground-Mounted Solar Electric Installation the plans shall show mitigation measures that create a wildflower meadow habitat within and immediately around the Solar Electric System and a successional forest habitat in the surrounding areas managed to prevent shading until such time as the installation is decommissioned. The wildflower meadow shall contain a wide variety of plants that bloom from early spring into late fall, that are planted in clumps rather than single plants to help pollinators find them, that are native plants adapted to local climate, soil and native pollinators. At least 50% of the array footprint and perimeter shall be planned to have these flowering plants. Mowing shall be limited to no more than once annually. Plans for pollinator-friendly vegetation establishment and maintenance at the solar PV facility shall be compiled and written by a professional biologist or ecologist with relevant experience and expertise in pollinator habitat creation, grassland habitat restoration, and/or knowledge of native New England plant communities. The Special Permit may be conditioned to effectuate and make enforceable this requirement.
- (4) Mitigation for Installation of Perimeter Fencing:  
Any perimeter fencing within winter sight of a public roadway, driveway, or dwelling existing at the time of the special permit application shall be entirely black in color. Fences shall be raised to an appropriate distance above the ground to facilitate the passage of small animals. The Special Permit may be conditioned to effectuate and make enforceable this requirement.
- (5) Mitigation for Disruption of Trail Networks:  
If existing trail networks, old Town roads, or woods or cart roads are disrupted by the location of the Ground-Mounted Solar Electric Installation, the plans shall show alternative alignments to be constructed by the applicant. The Special Permit may be conditioned to effectuate and make enforceable this requirement, although no rights of public access may be established hereunder.
- (6) Mitigation for Disruption of Historic Resources and Properties:

Historic resources and properties, such as cellar holes, farmsteads, stone corrals, marked graves, water wells, or pre-Columbian features, including those listed on the Massachusetts Register of Historic Places or as defined by the National Historic Preservation Act, shall be excluded from the areas proposed to be developed, including clearing for shade management. A written assessment of the project's effects on each identified historic resource or property and ways to avoid, minimize or mitigate any adverse effects shall be submitted as part of the Special Permit. A suitable buffer area shall be established on all sides of each historic resource. The Special Permit may be conditioned to effectuate and make enforceable this requirement.

- (7) All plans and maps shall be prepared, stamped and signed by a Professional Civil Engineer licensed to practice in the Commonwealth of Massachusetts.
- (8) Vehicular access for the purpose of construction shall be from paved (bituminous or chip-sealed) Town roads. Any proposed waiver to this section (8) under B. (4) above shall be transmitted to the Pelham Highway Department and Select Board with 35 days allowed for comment. No such waiver request shall be approved by the Planning Board without written concurrence from the Select Board.
- (9) Lots for Ground-Mounted Solar Electric Installations shall have the required frontage on a public way stated in Table 2A or 2B as the case may be and as frontage is defined in this zoning bylaw.
- (10) Access driveways for Ground-Mounted Solar Electric Installations shall be no longer than 1,000 feet to the beginning of the use.
- (11) In order to preserve the ecological integrity of Pelham's large blocks of undeveloped forestland as stated in § 125-18.2 A. herein, no more than the number indicated of Large-Scale Ground-Mounted Solar Electric Installation shall be permitted within the bounds of any set of public ways and/or Town borders as depicted on the 2020 Zoning Map of the Town of Pelham in the district entitled Large-Scale Ground Mounted Solar Electric Installation Districts, and incorporated into this zoning bylaw.

#### D. Required Documents

The project applicant shall provide the following documents in addition to or in coordination with those required under Article VII below.

- (1) A Site Plan additionally showing:

- (a) Locations of wetlands and Priority Habitat Areas as determined by the Pelham Conservation Commission and Natural Heritage & Endangered Species Program (NHESP).
  - (b) Locations of local or National Historic Districts.
  - (c) Locations of all known, mapped or suspected Native American archaeological sites or sites of Native American ceremonial activity. Identification of such sites shall be based on responses, if any, to written inquiries with a requirement to respond within 35 days, to the following parties: all federally or state recognized Tribal Historic Preservation Officers with any cultural or land affiliation to the Pelham area; the Massachusetts State Historical Preservation Officer; tribes or associations of tribes not recognized by the federal or state government with any cultural or land affiliation to the Pelham area; and the Pelham Historical Commission. Such inquiries shall serve as a notice to the aforesaid parties and shall contain a plan of the project, specific identification of the location of the project, and a statement that permitting for the project is forthcoming. Accompanying the site plan shall be a report documenting such inquiries, the responses from the parties, a description of the location and characteristics, including photographs, of any Native American sites and the outcomes of any additional inquiries made based on information obtained from or recommendations made by the aforesaid parties. A failure of parties to respond within 35 days shall allow the applicant to submit the site plans.
  - (d) The project proponent must submit a full report of all materials to be used, including but not limited to the use of cleaning products, paints or coatings, hydro-seeding, fertilizers, and soil additives. When available, Material Safety Data Sheets will be provided.
- (2) Blueprints: Blueprints or drawings of the installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts, showing:
- (a) The proposed layout of the system and any potential shading from nearby structures.
  - (b) One- or three-line electrical diagram detailing the Ground-Mounted Solar Electric Installation, associated components, and electrical interconnection methods, with all Massachusetts and National Electrical Code compliant disconnects and overcurrent devices.

- (3) General Documentation: The following information shall also be provided:
  - (a) A list of any listed hazardous or known carcinogenic materials proposed to be located on the site in excess of household quantities and a plan to prevent their release to the environment as appropriate.
  - (b) Name, address, and contact information for proposed system installer.
  - (c) The name, contact information and signature of any agents representing the project applicant.
- (4) Site Control: The project applicant shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed Ground-Mounted Solar Electric Installation.
- (5) Operation and Maintenance Plan: The project applicant shall submit a plan for the operation and maintenance of the Ground-Mounted Solar Electric Installation, which shall include measures for maintaining safe access to the installation, stormwater management (consistent with DEP's and, where appropriate, Pelham's stormwater regulations and vegetation controls), as well as general procedures for operational maintenance of the installation.
- (6) Financial Surety: Applicants for Ground-Mounted Solar Electric Installations shall provide a form of surety, either through an escrow account, bond or otherwise, accessible to the Town of Pelham to cover the cost of removal in the event the Town must remove the installation and remediate the site to its natural preexisting condition, in an amount and form determined to be reasonable by the SPGA, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein. The project applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.
- (7) Utility Notification: No Ground-Mounted Solar Electric Installation shall be constructed, nor building permit issued until evidence has been provided to the Planning Board that the utility company that operates the electrical grid where the installation is to be located has approved the solar electric installation owner or operator's intent to install an interconnected customer-owned generator and that the utility has approved connection of the proposed generator into their power grid. Off-grid systems shall be exempt



from this requirement.

(8) Proof of Liability Insurance

E. Dimensional Requirements

(1) Minimum setbacks for all Large-Scale Ground-Mounted Solar Electric Installations shall be:

- Front street setback: 500 feet
- Property line setback: 100 feet

(2) Minimum setbacks for all Small-Scale Ground-Mounted Solar Electric Installations shall be:

- Front street setback: 100 feet
- Property line setback: 50 feet

(3) Required setback areas shall not be counted toward a facility's total acreage.

F. Design and Performance Standards

(1) Lighting: Large- and Small-Scale Ground-Mounted Solar Electric Installations shall have no permanently-affixed exterior lighting.

(2) Signage :

(a) Sufficient signage shall be provided to identify the owner of the facility and provide a 24-hour emergency contact phone number.

(b) Signage at the perimeter warning pedestrians is allowable.

(c) Ground-Mounted Solar Electric Installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of such installation.

(3) Control of Vegetation: Herbicides or pesticides may not be used to control vegetation or animals at a Ground-Mounted Solar Electric Installation.

(4) Visual Impacts:

(a) Ground-Mounted Solar Electric Installation shall be designed to minimize visual impacts including preserving natural vegetation to the

maximum extent possible, blending in equipment with the surroundings, and adding vegetative buffers to provide an effective visual barrier from adjacent roads and driveways, and to screen abutting residential dwellings.

- (b) When possible, a diversity of plant species shall be used, with a preference for species native to New England.
  - (c) Use of exotic plants, as identified by the most recent copy of the "Massachusetts Prohibited Plant List" maintained by the Massachusetts Department of Agricultural Resources, is prohibited.
  - (d) If deemed necessary by the Planning Board, the depth of the vegetative screen shall be 30 feet and will be composed of native trees and shrubs staggered for height and density that shall be properly maintained.
  - (e) The owner/operator shall not remove any naturally occurring vegetation such as trees and shrubs unless it adversely affects the performance and operation of the solar installation.
  - (f) Landscaping shall be maintained and replaced as necessary by the owner/operator of the Ground-Mounted Solar Electric Installation.
- (5) Utility Connections: Electrical transformers, wires, or other utility interconnections shall be constructed as required by the utility provider and may be above ground if necessary; provided, however, that every reasonable effort shall be made to place all utility connections underground, depending on appropriate soil conditions and topography of the site and any requirements of the utility provider.
  - (6) All electric power generated at a Ground-Mounted Solar Electric Installation shall be from Solar Energy.
  - (7) Access Driveways shall be constructed to minimize finished width, grading, removal of stone walls or roadside trees, incompatible appearance from the roadway, and impacts to environmental or historic resources.

#### G. Safety and Environmental Standards

- (1) Emergency Services
  - (a) Ground-Mounted Solar Electric Installations owner or operator shall provide a copy of the project summary, electrical schematic, and site

plan to the Pelham Fire Chief.

- (b) The owner or operator shall cooperate with local emergency services to develop a written emergency response plan that is provided to Pelham police and fire departments
- (c) All means of shutting down the solar electric installation shall be clearly marked.
- (d) The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation. Contact information shall be provided annually to the Town Administrator and Planning Board include name, email and phone number for the designated person.

(2) Land Clearing, Soil Erosion and Land Impacts

- (a) The facility shall be designed to minimize impacts to open agricultural land and fields, even if not in production. Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the Ground-Mounted Solar Electric Installation. Grading that substantially disturbs the existing soil profile and structure is prohibited; sites shall be selected where construction may be accomplished without such earth work.
- (b) Prior to any site disturbance and construction, the limits of the work shown on the approved site plan shall be surveyed and clearly marked by a Professional Land Surveyor. Upon completion of the survey, the Professional Land Surveyor shall verify to the Planning Board, in writing, that the limit of work, as shown on the approved site plans, has been established on site.
- (c) The design shall minimize the use of concrete and other impervious materials to the maximum extent possible. Ground-Mounted Solar Electric Installation shall be installed on water permeable surfaces.
- (d) Locating Ground-Mounted Solar Electric Installations, including access driveways and any associated drainage infrastructure on original, pre development grades in excess of 10% is prohibited.

(3) Habitat Impacts: Ground-Mounted Solar Electric Installations shall not be located on: permanently protected land subject to conservation, preservation, agricultural preservation, and watershed preservation restrictions

under MGL. c. 184, §§ 31-33; Priority Habitat and Bio Map 2 Critical Natural Landscape and BioMap 2 Core Habitat mapped by the Natural Heritage and Endangered Species Program (NHESP); or Habitat of Potential Regional or Statewide Importance. Further, the data available from the Conservation Assessment and Prioritization System (CAPS) at the University of Massachusetts shall be referenced for use in determining the impact of development on ecological values and integrity using Ecological Integrity Maps (IEI Maps) developed in conjunction with DEP along with other available scientific data relative to the site.

(4) Wetlands

- (a) The applicant will prepare MA DEP WPA Form 4a. Abbreviated Notice of Resource Area Delineation (ANRAD) that includes a wetland evaluation and map of the site. The ANRAD shall also be submitted to the Conservation Commission.
- (b) In order to provide an adequate intervening land area for the infiltration of stormwater runoff from a Solar Electric Installation, ground alterations, such as stump removal, excavation, filling, and grading, or the installation of drainage facilities or solar panels, are prohibited within 100 feet of any wetlands or hydrologic features subject to the jurisdiction of the Pelham Conservation Commission.
- (c) The Planning Board may impose conditions to contain and control stormwater runoff that might negatively impact identified wetlands or other hydrologic features even if the proposed work area is outside the jurisdiction of the Conservation Commission, including the local wetlands bylaw.

H. Monitoring, Maintenance and Reporting

(1) Solar Electric Installation Conditions :

- (a) The Ground-Mounted Solar Electric Installation owner or operator shall maintain the facility in good condition.
- (b) Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures.
- (c) Site access shall be maintained to a level acceptable to the Pelham Fire Chief and Emergency Management Director.

- (d) The owner or operator shall be responsible for the cost of maintaining the Ground-Mounted Solar Electric Installation and any access driveways.

(2) Annual Reporting:

- (a) The owner or operator of a Ground-Mounted Solar Electric Installation shall submit an annual report demonstrating and certifying compliance with the Operation and Maintenance Plan, the requirements of this Section § 125-18.2 and the approved special permit, including but not limited to continued management and maintenance of vegetation, compliance with the approved plans and any special permit conditions, continuation of liability insurance, and adequacy of road access.
- (b) The annual report shall also provide information on the maintenance completed during the course of the year and the amount of electricity generated by the facility.
- (c) The report shall be submitted to the Select Board, Planning Board, Fire Chief, Emergency Management Director, Building Commissioner, Board of Health and Conservation Commission (if a wetlands permit was issued) no later than 45 days after the end of the calendar year.

I. Abandonment or Decommissioning

(1) Removal Requirements:

- (a) Any Ground-Mounted Solar Electric Installation which has reached the end of its useful life, has been abandoned, or taken off line shall be removed.
- (b) The owner or operator shall physically remove the installation no later than 150 days after the date of discontinued operations.
- (c) The owner or operator shall notify the Special Permit Granting Authority by certified mail, of the proposed date of discontinued operations and plans for removal.

(2) Decommissioning shall consist of:

- (a) Physical removal of all components of the Ground-Mounted Solar Electric Installation, including but not limited to structures, foundations,

equipment, security barriers, and on-site above-ground transmission lines. Associated off-site utility interconnections shall also be removed if no longer needed.

- (b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
  - (c) Restoration of the site to its natural preexisting condition, including stabilization or re-vegetation of the site as necessary to minimize erosion. The SPGA may allow the owner or operator to leave landscaping or designated below-grade foundations and electric lines in order to minimize erosion and disruption to vegetation.
- (3) Decommissioning by the Town: If the owner or operator of a Ground-Mounted Solar Electric Installation fails to remove such installation in accordance with the requirements of this Section § 125-18.2 within 150 days of discontinued operations or abandonment, the Town, upon receiving a court order, may enter the property and physically remove the installation at the owner's expense, drawing from the escrow account or upon the bond or other financial surety provided by the applicant.
- J. Lapse of Approval: Any special permit shall automatically lapse if the Large-or Small-Scale Ground-Mounted Solar Electric Installation is not installed and functioning within two (2) years of the grant of the special permit or if the installation shall be considered abandoned.
- K. Enforcement: A violation of this Bylaw shall be subject to the enforcement provisions of the Town of Pelham Zoning Bylaw, Article VII.