



# TOWN OF NEW MILFORD

Office of the Zoning Commission  
10 Main Street  
New Milford, Connecticut 06776  
(860) 355-6095 • zoning@newmilford.org  
www.newmilford.org

## ZONING COMMISSION REGULAR MEETING MINUTES July 25, 2017

**Present:** William Taylor, Chairman, *seated and voting*  
Sharon Ward, Vice Chairwoman, *seated and voting*  
James Volinski, Secretary, *seated and voting*  
Charles Bogie, Member, *seated and voting*  
Rob DiMichele, Alternate, *seated and voting*  
Laura Regan, Zoning Enforcement Officer, *not seated or voting*

**Absent:** Thomas O'Brien, Member  
Richard Saitta, Alternate

### 1) CALL TO ORDER AND PLEDGE OF ALLEGIANCE:

Chairman Taylor called the July 25, 2017 Regular Meeting to order at 7:01pm and led the room in The Pledge of Allegiance and a moment of silence. Mr. Taylor seated Mr. DiMichele for Mr. O'Brien.

### 2) PUBLIC PARTICIPATION:

Mr. Taylor opened the floor to any public participation, there was no public comment.

### 3) PUBLIC HEARINGS:

- a. **Sinan M. Abdallah, Special Permit and Site Plan Applications under Section 025-080(1), and Chapters 120, 175, and 180 to allow a total of 3 residential dwelling units, 2 in the single family dwelling and 1 in the detached accessory building, and associated parking, on property located at 109 Housatonic Avenue, Map 35.1, Lot 44 in the R-20 Zone. Request to waive lighting plan, traffic study, and soil erosion and sediment control plan. Close by July 25, 2017 or receive extension**

Ms. Regan stated that at the last meeting the Commission requested an opinion from their Attorney, Randy DiBella on several issues. The first being compliance with the Floodplain Regulations; the second being whether the additional dwelling unit will render the garage and main house, which are currently nonconforming due to encroachment into minimum yard setbacks, more nonconforming; and third whether the conversion of the existing dwelling section the applicant is applying under also applies to accessory buildings. Ms. Regan stated that they had received a written opinion from Attorney DiBella today, dated July 25, 2017. Ms. Regan provided a copy to the applicant. Mr. Taylor stated that the Commission members did not have a chance to read the letter, so Mr. Volinski read a portion into the record, and Mr. Taylor read the remaining portions into the record, as follows:

Dear Chairman Taylor and Commissioners: This will follow my discussions with ZEO Regan and your request that I review the material issues relating to the Special Permit and Site Plan applications submitted for 109 Housatonic Avenue.

The property consists of .976 Acre and is situated in an R-20 zone. The front building contains 2 residences and the rear building is a 1.5 story garage/barn. The buildings encroach into the minimum yard setbacks. The house was built in 1893 and the garage/barn in 1955. Both qualify as historic within the meaning of the regulations and both pre-date zoning.

The specific questions posed by the Commission are: 1. May the Commission permit conversion of the garage/barn into dwelling units consistent with the authorization of New Milford Zoning Regulation (Regulations) Section 025-080? 2. May the Commission enjoin conditions on its approval such that it may excuse compliance with the Floodplain Management Regulations imposed by Chapter 120 of the Regulations? 3. In that the main house and the garage/barn both encroach into the setbacks, will additional dwelling units constitute expansion of the non-conformity or render the property more non-conforming? I will respond to the questions, seriatim.

**The Garage/Barn Conversion:**

**Yes.** The conversion is permitted. Here, the Commission should consider the historical nature of the buildings and the purpose and intent of Regulation Section 025-080. The Chapter is enacted to promote dwellings: “Conversion of existing dwellings...shall strengthen the base of the community...” Regulation Section 025-080. This is consistent with the intent of the Regulations as a whole and the fact that an existing dwelling conversion (the house), while it is a separate structure from the garage/barn, is part and parcel of the application and proposal.

A review of the Regulations as a whole illustrates that the applicability of this section permitting conversion, when viewed globally as part of the project, and in view of the comprehensive plan as found within the Regulations, illustrates that conversion of the garage/barn to a dwelling is permitted.

Moreover, given the fact that this question is presented in the context of an application pending before the Commission, and bearing in mind that the language of Regulation Chapter 180 connotes discretion rather than mandate, it is the Commission’s call as to conformity. This position is buttressed by the established precept that the Zoning Commission has the sole authority to determine whether a proposed building and use is in conformity with the Regulations. *Conn. Gen Stats. 8-3(g) (1)*.

**Floodplain Management:**

**No.** I am told that the required 100 year event base flood elevation is 216 feet. The staff report states that the basement floor of the house is 206.3, the garage/barn is 205.6, and the refuge area, being the proposed apartment over the garage, is 214 feet, also below the required minimum.

In considering an application the Commission determines whether the Regulation in issue is mandatory or discretionary. *Allied Plywood v. PZC of South Windsor* 2 Conn. App. 506, 512 (1984). Here, Regulations Chapter 120 provides the operative guidance for the Commission on this question.

Unlike the text of Chapters 25 and 180, which authorize the exercise of discretion, Chapter 120 relating to Floodplain Management is mandatory. The language of Section 120-050 states, in mandatory tenor, that “**No plan** for construction or substantial improvement of any structure [in a floodplain] **shall** be approved” unless certain, designated conditions are met. Regulations Section 120-050 subpart 4 states that “*new construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above the base flood elevation.*”

There is no discretion in the reading of the applicable Regulations. It is my opinion that while conditions may be imposed under the first part of the Regulation, subpart 4 is not subject to mitigation by conditions and there is no discretion within the language. Thus the answer to question 2 is that it does not appear on the information that I have that conditions alone will excuse compliance with the applicable Floodplain Management Regulations of Chapter 120. The only avenue available would be a variance from the ZBA should it find a hardship.

**Expansion of non-conformity:**

**No.** The current use of the property (irrespective of the encroachment of the structures) is permitted. The proposed use is also permitted by the Regulations. It is my understanding that there is no proposal to expand the footprint, increase any dimension or cantilever an extension of either structure nor does the applicant propose to increase the volume vertically. The sole issue pertaining to this question is whether because of the encroachment the change in uses from one permitted use to another permitted use creates a

greater non-conformity. It is established law that non-conformities must not be expanded by permit nor should a Commission authorize greater non-conformity. *Adolphson vs. ZBA*, 205 Conn. 703, 710 (1998). *Hyatt vs. ZBA*, 163 Conn. 379, 383-4 (1972).

In this case, the right to keep the structures as they are situated remains intact because they predated zoning. *Conn. Gen. Stats.* 8-2. The plan before the Commission calls for the buildings to remain in their current configuration. The new proposal does not render the buildings more non-conforming because the use is permitted in the zone.

I hope this is of assistance. Very truly yours, D. Randall DiBella, Zoning Commission Attorney.

Mr. Taylor stated that while they do have discretion in two of the three areas, they do not have discretion when it comes to the floodplain regulations. Mr. Taylor stated that the charter of the Zoning Commission is the health and safety of the residents of the Town of New Milford which overrides everything that they do, adding that this situation is potentially dangerous. Mr. Taylor stated that this application has a floodplain problem, and cannot meet the regulations based on the opinion of Attorney DiBella.

Mr. Abdallah stated that the basement apartment of the main dwelling has been used before, and as a daycare and was approved. Ms. Regan replied that the floodplain regulations are different for residential uses. Mr. Abdallah asked if that meant that this property is not eligible to be converted, asking if he has other options. Ms. Regan stated that according to Attorney DiBella the applicant would need to seek a variance from the ZBA and they would have to find a hardship and grant a variance from that requirement. Ms. Regan also asked Mr. Abdallah if he had consulted with the building official as suggested at the last meeting, adding that from a building code perspective it is her understanding that the apartment in the basement may not be eligible for residential occupancy. Mr. Abdallah stated that he had spoken to the building official and was told that it was below the floodplain and referred him to an engineer.

Mr. Abdallah asked what he needs to do at this point. Mr. Taylor responded that they cannot tell him what to do, but offered a few suggestions, adding that the Commission's hands are tied on the floodplain issue. Mr. Taylor stated that Mr. Abdallah could consult with an attorney, modify his site plan, withdraw his application, or apply for a variance from the ZBA for the floodplain regulations. Mr. Taylor suggested that at this time Mr. Abdallah request an extension so that he could consider his options. Mr. Taylor asked the other members of the Commission if they had anything to add, to which Ms. Ward stated that she agreed these were the only options. Mr. Abdallah signed a 35 day extension.

Mr. Taylor opened the floor to any public participation, there was no public comment.

*Mr. Taylor moved to accept a 35 day extension for Sinan M. Abdallah, Special Permit and Site Plan Applications under Section 025-080(1), and Chapters 120, 175, and 180 to allow a total of 3 residential dwelling units, 2 in the single family dwelling and 1 in the detached accessory building, and associated parking, on property located at 109 Housatonic Avenue, Map 35.1, Lot 44 in the R-20 Zone. The motion was seconded by Mr. Bogie and carried unanimously.*

- b. **Public Informational Hearing:** Candlewood Solar, LLC, Petition for a Declaratory Ruling filed with the CT Siting Council under CGS Chapter 277a, for the construction and operation of a 20 megawatt AC solar photovoltaic electric generating facility on a 163 acre parcel located at 197 Candlewood Mountain Road, Map 26, Lot 67.1 and associated electrical interconnection to Eversource Energy's Rocky River Substation on Kent Road.

Mr. Volinski read the legal notice and Mr. Regan made note that the Commission members had copies of the application filed with the Siting Council.

Joel Lindsay, PE, Director Solar PV Project Development, Ameresco, Framingham, MA was present on behalf of Candlewood Solar, LLC. Mr. Lindsay stated that he was the project lead for Candlewood Solar and had been working with various folks in town over the last several months. Mr. Lindsay stated that on June 28, 2017 they submitted their petition to the Siting Council. Mr. Lindsay reviewed the Project Overview presentation handout, which he stated was pretty much identical to what he presented at the Planning Commission Meeting last week and updated from what was presented at the Town Council Meetings earlier this year when presenting the pilot project.

Mr. Lindsay stated that this project, Candlewood Solar, was submitted in response to the Tri-State Clean Energy RFP, which came out in late 2015. They were notified as being one of the awardees in 2016, at which time they were working with New Milford Clean Energy, LLC, who they are partnered with as the land owners and will be leasing from.

Mr. Lindsay noted that they began working with the Mayor and others to partly work out a tax agreement as well as get information out on the project and what they were planning. Mr. Lindsay explained that the project is a 20 megawatt AC fixed tilt solar photovoltaic PV installation, which will be fed into the grid. Mr. Lindsay stated that the project consists of approximately 75,000 solar panels, each being about 3 feet by 5 feet, which are mounted on tables and metal racks that are driven into the ground 4 to 6 feet. Mr. Lindsay stated that this system will be about 9 feet high at its greatest height with all of the panels sitting at an angle of 15 degrees facing directly south. The bottom of the tables will be about 2 to 3 feet above the ground. Mr. Lindsay stated that the parcel they intend to use is relatively flat so minimal grading will be required. Mr. Lindsay explained that the area under the panels will be grass, which will typically be mowed twice per growing season.

Mr. Lindsay explained that there will be minimal noise from a system like this as there are no moving parts and no lights. The invertors make a slight hum, but it is basically inaudible when you get 30-50 feet away from them. Mr. DiMichele asked how many invertors are proposed, to which Mr. Lindsay replied there will be 8. Mr. Lindsay described the panels as silicone and glass, adding there are no hazardous materials involved. Mr. Lindsay stated that there are transformers that are tied to the invertors that use food grade oil. The facility will be fenced with a 7 foot security fence.

Mr. Lindsay stated that at the end of the 20 year term of the agreement, adding that there is a possibility to extend that agreement with 2 five year extensions, the project will be decommissioned and taken down and will revert back to pasture, farm, or forestland. He said that the project will be situated in such a way and elevated with a significant tree buffer that it will not be significantly visible from Candlewood Lake or Candlewood Mountain Road. It is slightly visible from a few vantage points that they have submitted required simulations on, such as Candlelight Farms airport and farther to the west at a location on Fox Run.

Mr. Lindsay stated that the interconnection runs east from the site, down onto the First Light property along an existing access road where a 30 foot swath would have to be cleared. Then it will travel down an existing fiber optic line that has already been cleared, and then all the way down into the Rocky River Substation. Mr. Lindsay stated that part of the selection of this property was due to the site location being close to the Rocky River Substation and a critical transmission node.

Mr. Lindsay explained that construction access will be off of Candlewood Mountain Road and there is an existing gravel road leading up to the site, which will need some improvements. The construction will be around a 4-6 month process, but he said there will not be constant traffic. Most of the traffic will be related to the civil work, but once the system is being assembled, traffic will be minimal with just the assemblers on site with their trucks.

Mr. Lindsay stated that the interconnection run to the substation can be made with minimal visual impact as it runs along the First Light property and down behind and along the dam.

Mr. Lindsay then discussed the project benefits, including the annual energy generation of 34,000 Megawatt hours, which is stated to be enough energy to power over 2,400 homes in one year. Additional benefits noted were the offsetting CO<sub>2</sub> emissions, equal to the consumption of 2.5 million gallons of gasoline.

Mr. Lindsay said that approximately 65 acres of trees will have to be cleared for this project, and noted that they feel that the benefits outweigh some of the more negative impacts. He said that the local benefits include the local investment by the project, local jobs, hiring local contractors and laborers. Approximately \$2.7 million in tax payments will be made over 20 years, which was discussed at length at the Town Council meetings, and is a 500% increase for the parcel. Mr. Lindsay stated that it became a little bit more than a pilot plus because there were things added in, such as bonds the Town required to ensure adequate treatment for visual impacts, storm water and local infrastructure, in addition to a decommissioning bond.

Mr. Lindsay stated that there are a few more things about the pilot agreement that are relevant, such as the request that the applicant consent to a voluntary change of the zoning of the site parcel from its current multi-family zone to the R-80 zone. Ms. Regan clarified that the subject property is currently located in the Major Planned Residential Development District Number 1 (MPRDD#1). Mr. Lindsay stated that he simply wanted to mention that, but assumed it was not something that was on the agenda for this meeting. Mr. Taylor stated that was correct; there is no pending zone change application and added that a zone change is at the discretion of the Zoning Commission, not the Town Council.

On the other hand, Mr. Taylor wanted the audience and public to understand that the Zoning Commission's role in this process is only advisory. This application is under the jurisdiction of the Siting Council. Much like a cell tower application, he said, the Siting Council can say yes or no and override them in a heartbeat. Mr. Taylor explained that the hearing tonight is not for a decision by the Zoning Commission, it is advisory only. The Commission can and will write a letter at the outcome of this meeting based on the input received here on the pros and cons.

Mr. Lindsay continued with the presentation, outlining the significant environmental benefits in addition to the local benefits in terms of the tax revenues, adding that the project will not impose any burdens upon the Town in terms of services. Mr. Lindsay stated that once the system is operating, it operates trouble free, they monitor it remotely via web based capability, with someone visiting the site perhaps once or twice per year plus mowing 2 times per year.

Mr. Lindsay stated that the application materials contains a description of the project and the stated project benefits, which follows a format laid out by the Siting Council. For the environmental assessment, they engaged a consultant, AMEC Foster Wheeler, which put together the rather lengthy assessment. Mr. Lindsay stated that he had brought with him Rob Bukowski, PE from AMEC Foster Wheeler, to answer any questions that may be posed. Mr. Lindsay stated that this covers a lot of the environmental aspects of the project including wetlands, natural diversity, the visual assessment,

historic preservation, stormwater. HE noted that CTDEEP will be giving them a detailed review on stormwater, FAA review, and also more details on the tree clearing and how that shakes out. Mr. Lindsay said that some of the findings are that the project is going to be virtually invisible from most vantage points, only temporary intermittent noise during construction, for which they will certainly comply with mandated work hours of operation, adding there are zero emissions and zero water consumption. He noted that detailed stormwater modeling was performed to ensure that based on the changes being made to the site; they will not be adversely affecting drainage of the site or causing any issues with sedimentation and making sure erosion control is maintained. They have also completed a glare analysis on this project and Mr. Lindsay noted that they have built a number of projects at airports including Logan and Minneapolis.

Mr. Taylor asked if they had submitted the glare analysis and when did they expect a response from the FAA. Mr. Lindsay stated that it was submitted several weeks ago and they hoped to get a response soon, but noted that the FAA does not have a set timeframe that they have to follow. Mr. Bogie asked if they had looked at different flight paths into and out of the airport, due to the fact that many of the planes practice acrobatics. Mr. Lindsay stated that they had submitted different arrays and orientations to be taken into account, adding that they would defer to the FAA and if there is an issue, the FAA will let them know.

Mr. Lindsay demonstrated on the map that near the proposed array there is a sizeable wetland and noted that they have been working with DEEP regarding their requirements near wetlands. He also showed where there is a vernal pool up at the northern part of the parcel and that they have designed the array in such a way to stay at least 100 feet away from the vernal pool. He explained that there is a 750 foot “donut” around the vernal pool that DEEP restricts disturbance to 25% and they are below that number. Lindsay stated that they are not doing any activity in the wetland along the eastern side of the project, but noted there is a limited amount of work they will be doing in the smaller wetland along the interconnection route, where because of wire interference, they will be converting around 2,000 SF to shorter shrubs within the wetlands.

Mr. DiMichele asked why the number changed from 55 acres to 68 acres of tree clearing. Mr. Lindsay stated that he did not say 55, and that Mr. DiMichele must have misheard him, and the number is 68 acres. Mr. Lindsay stated that one of the requirements from the Town was that they wanted them to consult with a licensed forester, and they are also currently working with DEEP and SHPO to provide necessary site specific information. Mr. Lindsay stated that he wished to stop there and that was basically the overview of the project, but wanted to mention, that since the last meeting they had created a website: <http://www.ameresco.com/candlewood-solar-project> to provide information on the project.

Mr. Taylor asked Mr. Lindsay to go over the next steps relating to the Siting Council. Mr. Lindsay stated that on July 20, 2017, the Siting Council met on a number of projects and determined that they would have an evidentiary hearing for this project, which will be on September 26, 2017 in New Milford, adding that they typically do a site visit and evidentiary hearing on the same day. Mr. Lindsay stated that there is the opportunity for pre-filed testimony. He also noted that they will be working to provide supplemental information between now and the hearing date.

Mr. Taylor asked Mr. Lindsay if it would be agreeable to him if they scanned the presented project overview and posted it on the Zoning website, to which Mr. Lindsay agreed. Mr. Taylor asked Ms. Regan to contact the Siting Council about the rules and regulations regarding pre-prepared testimony for the evidentiary hearing, and also post those to the Zoning website, so that residents and tax payers have the opportunity to voice their opinions. Mr. Lindsay stated that the Siting Council is already

receiving comments. Mr. Taylor stated that having these links will ensure that the information gets out to the people and that the Siting Council gets input from the Town. Mr. Taylor asked if any Commission members had any further questions.

Mr. DiMichele asked about the glare and the south facing panels, inquiring if they had looked at the impact to the Danbury Airport as well. Mr. Lindsay stated that was too far away for consideration. Mr. DiMichele again asked about the acrobatics and what considerations have been made for this unique situation, to which Mr. Lindsay stated he had never been asked that before, but would defer to the FAA and whether they determine it to be an issue. Mr. DiMichele asked Mr. Lindsay to describe the power lines going down to the substation and their visibility along Route 7 and across the river. Mr. Bogie clarified that they would be tying into the transmission lines along the west side of Route 7. Mr. DiMichele asked what type of lines and poles would be used, to which Mr. Lindsay stated they would be 10 ft cross members with 2 conductors, standard height.

Ms. Regan stated that Mr. Lindsay had stated they would work within the mandated work hours for construction, asking what those are. Mr. Lindsay replied that whatever the town mandated hours are, they will work within those. Ms. Regan asked if there would be a designated staging area, asking about where the workers will be parking. Mr. Lindsay stated that it depends on where the array is, that they generally stage above it and work down to it, adding that they intend to work on a staging plan with the town to make sure there is minimal impact on neighbors. Ms. Regan asked about the stormwater management plan, that Mr. Lindsay stated they were working with DEEP on, adding that the plan states that disturbance and clearing would be limited to less than five acres at a time per watershed. She noted that no phasing plan was provided and asked how the 5 acre limit would be complied with given the aggressive 4-6 month construction period. Mr. Lindsay stated that he anticipated that this would have to be done as part of the Development and Management plan required by the Siting Council and DEEP.

Rob Bukowski, AMEC Foster Wheeler, stated that they submitted a preconstruction stormwater erosion and sedimentation control plan as well as a post construction plan, which is a permanent best management practices ensuring that you are not increasing run off. Mr. Bukowski stated that because of the size of the site, they are going to have to stage it, and there will be swales and sediment traps that will handle each area, with some of those swales being converted to water quality swales and level spreaders, which is a more low impact design approach, rather than trying to concentrate all the water from the site and channel it down to a basin. He explained that they are trying to keep it as close to possible to mimic the existing run off conditions. Ms. Regan stated that these sedimentation basins are not shown on any of the plans, asking if those could be provided. Mr. Bukowski stated that they are still working on the final designs and will submit those details when they apply for the coverage on the construction and general permit through DEEP. Ms. Regan stated that once those details are finalized they would like them submitted to the ZEO and Town Engineer to take a look at them.

Mr. DiMichele asked about the run off from the panels and where that would be directed. Mr. Bukowski replied that the water that runs off the panels will travel in to the gaps in the tables, and because they are not really changing the grading much, the racking system has about a 10 % maximum slope tolerance, so overall the run off pattern isn't really going to change. The water, he said, will flow in basically the same way it does currently.

Ms. Regan asked about the inverters and said the applicant has stated that they make minimal noise and that 30-50 feet away they are undetectable. She asked if any homes or abutting properties would be impacted, to which Mr. Lindsay replied no. Mr. DiMichele asked about the transformers and what

type of noise they make and how many there will be, to which Mr. Lindsay stated there will be 8 and there is a similar noise level and they are not on at night.

Ms. Regan asked about the statement that the racks are pounded 4-6 feet into the ground, noting that there is a significant amount of ledge and rock outcrop in the project area. She asked how the racks would be installed in ledge. Mr. Lindsay stated that they have the ability to screw in the posts using a diamond bit, which will go through the ledge.

Mr. DiMichele asked Mr. Lindsay to describe the fence, to which Mr. Lindsay replied that it will be a standard 7 ft chain link fence. Mr. DiMichele asked if the transformers are doubly fenced inside the site. Mr. Lindsay stated that they have never done that or been asked to do that. Mr. DiMichele stated that since this is a residential area, children may be curious and want to get into the site. Mr. Lindsay stated that generally the fencing is adequate and they have not had any issues.

Mr. DiMichele asked about snow removal, to which Mr. Lindsay stated that at the tilt angle and friction level, the snow comes off easily, but it is accounted for in the modeling and they generally anticipate lower levels of output for winter months.

Ms. Regan noted that the application states that they would be submitting an application to the local Inland Wetlands Commission. Mr. Lindsay stated that was not accurate, adding that they have talked to folks who didn't think they needed to submit and talked to DEEP who indicated that it is under their jurisdiction.

Mr. DiMichele asked if they would be installing lighting, to which Mr. Lindsay replied no. Mr. Taylor advised Mr. Lindsay that he would have a chance to speak again after public input if he would like. Mr. Taylor advised the audience as to the rules regarding public comment and opened the floor to public participation.

Lisa Ostrove, 175 Candlewood Mountain Road, stated that this enormous project is the largest proposed solar power plant in the state of CT. Ms. Ostrove stated that elected officials have ignored the fact that this proposed site on the sides and top of Candlewood Mountain is part of a 250 acre forest block. She stated that Steve Kleppin, Chairman of Farmland and Forestland Preservation, is also ignoring this fact and has provided a letter of support for this project to the Siting Council. Ms. Ostrove stated that there is very little information available about the upcoming evidentiary hearing, adding that she does not want Mr. Kleppin or Mr. Bielmeier, the Economic Development Supervisor speaking for her. Ms. Ostrove expressed her concerns regarding tree clearing and damage to the roads. She also asked what assurances are there that construction won't extend beyond the stated 4-6 months. She also pointed out that there is no economic relief or benefit to the community. Ms. Ostrove stated the maps are inaccurate and her plot is not correctly stated, nor are the wetlands and buffers.

Amanda Locke, 143 Candlewood Mountain Road, stated that she supports this project and feels it has been well designed to mitigate environmental impact, particularly with regards to wetlands and the vernal pool. Ms. Locke noted that she is a forester and that once the construction is complete, the site will be virtually silent and there will be no traffic or required services, unlike a development project would be. Ms. Locke added that decarbonizing the electric grid is important for the future, and in this case the tradeoff is worthwhile.

Jonathan Chesler, 143 Candlewood Mountain Road, stated that he has attended 3 meetings and feels that visibility will be minimal, there will be no noise after construction is complete, and glare will not be an issue as they are not designed to be reflective. Mr. Chesler clarified that the number of forest

acres to be cleared is 68 acres and the total area of panels will be 80 acres. Mr. Chesler stated that the ground will still be permeable to groundwater, which is better than the previously proposed residential development which would create more impermeable surfaces and traffic.

Thomas Vrba, 141 Candlewood Mountain Road, stated that this project will almost be in his backyard and he feels that it will be a beautiful project and has been well designed to minimize erosion, noise, and glare. The project will have some impact, but once it is done, it will be free and clear for 20 years and provide clean energy. Mr. Vrba stated that the trees will grow back and steps have been taken to protect the wetlands and vernal pool and feels that overall it is a net positive.

David Kellogg, 7 Lookout Ridge, expressed his concern whether the good outweighs the bad regarding this proposal, and feels that the loss associated with clear cutting and stumping this enormous area does not outweigh the stated gains.

James Kick, 3 Richconn Drive, stated that he was a licensed pilot and flew out of Candlelight for many years, and the comparison to larger airports is problematic. The smaller airports with smaller airplanes do not have radar altimeters or instrument landing systems. Sometimes coming into Candlelight Farms, because of the topography, things can become a little busy, with wind and other factors, so any added glare could be potentially dangerous. Mr. Kick stated that he insures many of the planes up there, and in his opinion, one wreck is too many.

Michael Miltenberg, Tanguay Road, Kent, stated that he has attended meetings in Hartford regarding this subject. He does not feel that clear cutting 68 acres of trees adheres to an environmental concept, and submitted a report to the Commission regarding “energy sprawl” for the record. Mr. Miltenberg stated that he has personal experience with solar and believes solar is the way of the future, but feels that this location, a forest on the top of a mountain, is the wrong place for this. He said this is the largest town in the state and this is not the best place to put this facility. Mr. Miltenberg stated that people want to live here and fly planes here because of its natural beauty, and there are many more suitable locations for this site, such as rooftops, landfills and cleared fields or the former brass mill site.

Nancy Saggese, 195 Candlewood Mountain Road, stated that there have been 30 meetings regarding this project, with this being only the second where the public was involved, adding that the story has changed dramatically. Ms. Saggese stated that there have been many changes and inconsistencies and transparency has been the biggest issue, with a rush to procure support from town agencies. She is confused that the Farmland and Forestland Preservation Commission is supporting this, among others such as the Planning Commission, and it does not sit right with her and does not make sense. Ms. Saggese feels that this seems like a done deal without people even visiting the site or considering the consequences. Ms. Saggese feels that the jobs created will be very minimal and this project does nothing for the community. Ms. Saggese stated that when the Town Council voted for the pilot, they were not voting to approve the project and doubts whether they knew they were not going to get another vote. Ms. Saggese felt that the Mayor writing a letter stating there was broad support from the Town was misleading as there is very little information being presented to the public. Ms. Saggese feels the destruction of farmland and wildlife will be devastating as she lives just 75 yards from this site, and is concerned about the damage to the roads and noise associated with clear cutting.

Carl Dunham, 195 Candlewood Mountain Road, stated that he used to own the property and sold it in 2005 for a specific purpose of an active adult community and it would not interfere with the use of Candlewood Mountain Road. A new road would be constructed intentionally for that use and accomplish a new tax base. The zone was established and required a site plan, which was done but was denied, at which time Mr. Dunham took an appeal, and that lawsuit was settled based on two

things, one being the erroneous decision by the Zoning Commission that the road had to be an 8% road and the other issue was the condition requiring a site plan to be filed which was met. After that, it was understood that the Zoning Commission would not undertake to change the zone. Mr. Dunham stated that he was under contract to buy back the property but was unable to submit an intended use fast enough, whereas the developer was able to procure more time to submit their intended use and was able to secure the land. Mr. Dunham stated that the Town Council was pushed by the Mayor to adopt the pilot, adding that the Mayor intends to change the zone when that is not allowable under the settlement agreement. Mr. Dunham stated that he attended a workshop in January regarding these types of projects and the subsequent problems relating to energy sprawl, and provided the related legislative history. Mr. Dunham submitted a map, which he feels demonstrates just how close this site is to wetlands and Candlewood Lake, and how enormous the project really is. Mr. Dunham also believes the runoff and erosion would be much more substantial than the applicant claims. Mr. Dunham submitted petitions that he has assembled. Mr. Dunham also noted that the pilots that utilize the airport do not have the same instruments and experience as those at big airports, so the FAA should consider this. Mr. Dunham submitted several documents for the record and stated he was appalled that the Mayor sent a letter that was misleading and not supported by all the members of the Town Council.

Mark McCloskey, 170 Candlewood Mountain Road, stated that he was against this project and in favor of the forest, adding that the topography is not so great for this type of project and should be kept in its beautiful state. Mr. McCloskey made note of a project in Bethel, a much smaller scale project, which will benefit the town and is set on the site of a former landfill. Mr. McCloskey felt that this project could be scaled down and put in a better place that did not damage the forest and the environment.

Eli Noam, Kent Road, stated that he is a business school professor and economist, and was previously a public service commissioner in New York, dealing with energy and alternative energy, and balancing that with consideration for the environment and public safety, which brought about many fights with the Siting Council. Mr. Noam states that many times these projects are presented as green and benefiting the environment, much like this proposal, which he feels is a horrendous industrial project which will clear cut more than 68 acres in a pristine area and for any other stated purpose would be laughed out of town. Mr. Noam stated that they are attempting to end run around local authority without respect to the local community, and will drive down the property values of the surrounding area, and the notion that this will be invisible is stupid. Mr. Noam stated that this will create a safety hazard at the airport which will be dangerous. Mr. Noam stated that this industrial project is a pig with green lipstick that cannot be made more attractive.

Peter D'Addeo, developer New Milford Clean Power, stated that he has been a member of this community for 20 years, adding that he highly respects Carl Dunham, who sold this land 12 years ago for \$14 million, who did great for himself, and could have bought it back if he wanted. Mr. D'Addeo stated that the property is 309 acres and they are only proposing to cut 20%, to create a project that will generate a lot of money for the town and require no services. Mr. D'Addeo stated that there has been no rush, that they have been at this for 2 years, and it was discussed with previous administrations as well. Mr. D'Addeo stated that he knows there is a concern about cutting trees, adding that in order to have the airport there, trees had to be cut. Mr. D'Addeo stated that many engineers from the FAA to those calculating stormwater management will confirm that this project is safe and a well thought out project. Mr. D'Addeo stated that many people like the idea of solar; however they just don't want it in their backyards. Mr. D'Addeo stated that this location was selected because of the proximity to the Rocky River substation and they feel that they have modified their proposal to address the concerns posed by all of the various town agencies and feel that they have a valuable partner in Ameresco as they are one of the top developers in the nation.

Cindy Davis, 15 Park Lane West, stated that she felt it was very contradictory to state that the destruction and clear cutting of the trees was somehow promoting cleaner energy, adding that the devastation of trees and rainforests around the world and the loss of oxygen are very serious.

Peter Eng, 3 Lakeview Road, stated that he had a few years of service with the Planning Commission and has never heard of a “pilot” agreement in his life. Mr. Eng stated that the thing that bothers him most is that in addition to the 68 plus acres for the panels, in his experience with power lines, there will need to be cleared a 75-100 foot swath for those power lines, which he feels was not accurately stated.

Michael Miltenberg, Kent, wished to address the comment Mr. D’Addeo made regarding “build it, just not in my backyard”, adding that he felt that this was putting words into the mouths of some of the speakers and was not representative of how he and everyone else opposed feels. Mr. Miltenberg stated that he is in favor of alternative energy sources, just not in this location which will have to be clear cut and did feel it was rushed and felt the Mayor’s letter was not representative of the people’s wishes. Mr. Miltenberg stated that there was also a minor mention of disturbing and replacing wetlands which he felt was concerning.

Joan Kick, 3 Richconn Drive, stated that she has a grave concern about cutting down all of these trees and the impact it could have on air quality, which at times is very poor. Mrs. Kick stated that there is very little benefit to the town and felt this was the wrong place to do this.

Carl Dunham, 195 Candlewood Mountain Road, submitted to the Commission the legislative history which he had previously thought he had submitted, as well as the bill/law which he says states that this type of project should not be built on forestland or farmland. Mr. Dunham stated that it bothers him that they stated they are not going to go before the Wetlands Commission even though they are building right up to and disturbing portions of the wetlands adding that he and everyone else has to meet strict standards. Mr. Dunham stated that this project does not meet the POCD or zoning standards, adding that the stated buffer they mentioned is on the neighboring land, which is not the way it works; the buffer should be on the subject property. Mr. Dunham stated the last thing he wanted to mention was the road that goes from Route 7/Rocky River Road, which goes up to the site, an existing town road that they had planned to improve, adding there is no reason they cannot upgrade that access road for the logging and stumping of the property if it is approved.

Joel Lindsay, Ameresco, addressed the Commission, adding that this is a good process for people to voice their concerns and discuss impact. Mr. Lindsay stated that the previously mentioned Bethel project is their project as well, and that they do lots of different size projects on different types of sites. Mr. Lindsay stated that there are always disagreements about where to put these sites, however the benefits here are significant. Mr. Lindsay stated that there were many questions and concerns voiced regarding the cutting of trees and the wetlands, and referred the Commission to the thoroughly detailed reports that were submitted, encouraging everyone to read it. Mr. Lindsay stated that they are working to comply as best they can with the Siting Council regulations.

Mr. DiMichele asked Mr. Lindsay what are the specific benefits to this site. Mr. Lindsay stated that this site is reasonably close to an important transmission node. Mr. Bogie added that this is why the Panda Power Plant wanted to concentrate on this area too, because of the proximity to Rocky River Substation, and this is why this type of interest is concentrated in this area. Mr. Lindsay stated that this site will not be a visible project. Mr. DiMichele stated that it seems the benefits are more monetary than environmental. Mr. Lindsay stated that this project and the energy that it generates will offset the equivalent of a significant amount of fossil fuel generated energy, and in fact equivalent to the CO<sub>2</sub> sequestering of 22,000 acres of trees, which they feel is a significant environmental benefit. Mr.

DiMichele asked if they had considered other sites in New Milford, to which Mr. Lindsay replied that this land has no farmland that will be impacted, and no, there was no other site that they looked at that was as suitable as this one. Mr. Lindsay stated that the petition, the environmental assessment, and the facts have all been submitted for everyone to review and now the Siting Council will be evaluating them.

Mr. Taylor thanked everyone for their participation in the informational hearing. Mr. Taylor made note of a letter received from a Russ Posthauer, PE, of Candlewood Lake Road, who raised some concerns and is against this project.

*Mr. Volinski moved to close the Public Informational Hearing for Candlewood Solar, LLC, Petition for a Declaratory Ruling filed with the CT Siting Council under CGS Chapter 277a, for the construction and operation of a 20 megawatt AC solar photovoltaic electric generating facility on a 163 acre parcel located at 197 Candlewood Mountain Road, Map 26, Lot 67.1 and associated electrical interconnection to Eversource Energy's Rocky River Substation on Kent Road. The motion was seconded by Mr. Taylor and carried unanimously.*

#### **4) NEW BUSINESS:**

- a. Jessica Sampias, Site Plan Application under Chapters 65 and 175 to allow an auto repair use on property located at 467 Danbury Road, Map 7, Lot 17 in the I zone. *Request to waive engineered site plan, stormwater management plan, lighting plan, landscaping plan, traffic study, and soil erosion and sediment control plan. Decision by July 25, 2017 or receive extension*

*Mr. Taylor moved to accept the letter of withdrawal for Jessica Sampias, Site Plan Application under Chapters 65 and 175 to allow an auto repair use on property located at 467 Danbury Road, Map 7, Lot 17 in the I zone. The motion was seconded by Mr. Volinski and carried unanimously.*

#### **5) OLD BUSINESS:**

None

#### **6) ACCEPT FOR PUBLIC HEARING:**

- a. Charles Raymond, Special Permit and Site Plan Applications under Chapters 25, 175, and 180 to allow a parking expansion and associated driveway and drainage improvements to an existing daycare facility on property located at 11A Aspetuck Avenue, Map 35.2, Lot 123 in the R-8 Zone. **Suggested Public Hearing Date: September 12, 2017**

*Mr. Taylor moved to accept for public hearing Agenda Item 6a on the date suggested. The motion was seconded by Mr. Volinski and carried unanimously.*

#### **7) BUSINESS MEETING:**

- a. Discussion and possible decisions on the evening's agenda

Agenda Item 3b: Public Informational Hearing: Candlewood Solar, LLC, Petition for a Declaratory Ruling filed with the CT Siting Council under CGS Chapter 277a, for the construction and operation of a 20 megawatt AC solar photovoltaic electric generating facility on a 163 acre parcel

located at 197 Candlewood Mountain Road, Map 26, Lot 67.1 and associated electrical interconnection to Eversource Energy's Rocky River Substation on Kent Road.

Mr. Taylor stated that what he heard tonight, keeping in mind a tally of for and against, was 13 against the project and 4 in favor, one of those in favor being the property owner, which constitutes about a 4 to 1 ratio. Mr. Taylor stated that the minutes would be available to review, but clearly the majority of the citizens who came out tonight were not in favor of this project. Mr. Taylor stated that they have no jurisdiction to approve or cannot deny applications filed with the Siting Council. The best that they can do and what they plan to do is write a letter summarizing the comments, concerns, and public input received. Mr. Taylor asked Ms. Regan to draft a letter, which he will then make some revisions to and submit it to the other Commission members for their comments and input.

Mr. Taylor asked each Commission member for their thoughts. Mr. Bogie stated his biggest concern is and has always been the FAA and the acrobatics at the airport, which he witnesses on a daily basis. Mr. Volinski stated that his biggest concern was the clear cutting of the trees, with Mr. Taylor adding that per local Zoning rules, any tree larger than 8" in diameter requires zoning approval on any project, citing other projects which they have limited due to requests to clear cut properties. Ms. Ward stated that her concerns are the tremendous loss of farmland, the clear cutting of trees, adding that cutting 68 acres is a lot whether you can see it or not. Ms. Ward also agreed that the FAA concerns are valid and the airport is critical to our community. Ms. Ward stated that this proposal is not consistent with the Plan of Conservation and Development which is one of their primary guidelines, adding that she is opposed to it. Mr. DiMichele stated that he also thought of the previous applications, which they limited tree clearing, adding that his other concern is with regard to the potential zone change for the site. Mr. Taylor clarified that it was in the pilot to seek a zone change, adding that the only legislative body in this town that can change a zone is the Zoning Commission, and that nothing has been proposed and they were not a signatory to the pilot agreement. Mr. Taylor added that zone changes are not granted lightly and they have approved very few over the years. Mr. DiMichele added that his concerns were the runoff, clear cutting, airport glare, the 100 foot wide path to accommodate the poles down to the substation, and how close it is to the wetlands. Mr. Taylor added his concerns regarding the road damage, agreeing that the town road to the site could easily be converted to a service road, at a cost to the developer, which is not his issue. Mr. Taylor added that any other applicant would be made to do this, or in the worst case, they would be bonded to repair the road to the condition it was found in. Mr. Taylor stated that his preference would be that they construct the access road on their own, like they would require of any other applicant, to put a temporary cut in to complete the site work. Mr. Taylor stated another concern is the buffer, adding that the zoning regulations require buffers to be on the land of the development, and never on the land of the abutting property owners. Mr. Taylor stated that the buffer regulations should be maintained in this case and perhaps even enhanced. Ms. Regan added that the Zoning Regulations require developments on properties over 5 acres to have a 100 foot buffer if it abuts a residentially zoned property.

Mr. Taylor stated that the Commission would draft together a letter including each of their testimony for the Siting Council Presentation and public hearing. Mr. Taylor asked Ms. Regan to add the Ameresco presentation to the website, to publish the minutes of this meeting in their normal location as well as to the website along with a recording of this meeting and the previous meeting to create a central location with all of the information pertaining to this project in one location so that the public is made aware of all of the details. Mr. Taylor stated that the letter that the Commission will draft to the Siting Council will also be published in this central location. Mr. Taylor stated that a link to the previously mentioned Ameresco website specific to this project would also be included.

- b. Discussion and possible decision on the following closed public hearings  
None

**8) ACCEPTANCE OF MINUTES:**

- a. July 11, 2017 Regular Meeting Minutes

*Mr. Taylor moved to accept the July 11, 2017 Regular Meeting Minutes as filed. The motion was seconded by Mr. Volinski and carried unanimously.*

**9) BILLS AND COMMUNICATIONS:**

- a. Bill: Cramer & Anderson, dated 7/1/17, regarding misc. professional services, \$296.00

*Mr. Taylor moved to pay Agenda Item 9a to Cramer & Anderson in the amount listed. The motion was seconded by Mr. Volinski and carried unanimously.*

**10) ANY BUSINESS PROPER TO COME BEFORE THE COMMISSION:**

**11) ADJOURNMENT:**

*Mr. Volinski moved to adjourn the meeting at 9:31pm. The motion was seconded by Mr. Taylor and carried unanimously.*

Respectfully Submitted,



Amy Farrell  
Recording Secretary