

**Mexico Zoning Board of Appeals
Minutes of the Regular Meeting
Held March 21, 2022 at McAuslan Hall
Commencing at 7:00 P.M.**

Present: Ned Waterbury, Chairman
Marcia DeLong, Counselor
Marty Trey, Counselor
Dan Yawman, Counselor
Ron Marsden, Code Enforcement Officer
Graham Seiter, Town Attorney
Nancy Weber, Planning Board Chairwoman
Allison Trudell, Planning Board Member
Gary Toth, Planning Board Member
Nancy Vlahos, RIC Representative
Kevin Bliss, RIC Representative
Ivo Tomchev, RIC Engineer (audio)

Absent:
And 0 in the audience.

Chairman Waterbury called the meeting to order with the Pledge of Allegiance at 7:00pm.

A motion was made by Waterbury and seconded by Yawman to approve the minutes of the regular ZBA February 21, 2022 meeting. The motion was adopted by a vote of 4 ayes: Waterbury, DeLong, and Yawman, and 0 nays.

A motion was made by Waterbury and seconded by Yawman to approve the minutes of the special ZBA workshop meeting of March 8, 2022. The motion was adopted by a vote of 3 ayes: Waterbury, DeLong, Yawman; one abstain: Trey.

Old Business

RIC Solar

Chairman Waterbury shared information from Bliss regarding location of inverters and noise information as it relates to the inverters. Bliss distributed maps of the site with the location of inverters denoted. Bliss distributed a summary of the noise information. Waterbury gave the board time to review the information.

Waterbury asked the board to consider the variance primer previously distributed to walk through the five criteria for a variance. Yawman said he compared the town code to the primer and they are similar but not exact. Yawman said the language differs and wants to be sure the local law is used as a guide as well as the primer. Waterbury briefly summarized the project and area variance request.

Item 1: Waterbury read the first criteria for a variance. DeLong said it does change the neighborhood but a solar farm is an approved use for that area. DeLong said our local law does support solar farms in a smaller size capacity. DeLong says that the law was written in 2017 and

a lot has changed since then. DeLong said the town could consider reviewing their law; no neighbors voiced opinions at public hearings; it's an allowed use; this particular lot has not produced crops in several years; the majority of the lot is only prime farmland if it is drained; the wooded portion is on the backside. DeLong read a statement noting her thoughts for discussion points. DeLong said she feels the situation is unique enough that a precedence will not be set if the plan is approved. DeLong said connectivity for this station will max out the substation. DeLong said the location of the lot makes it ideal for a solar farm. DeLong said the only substation in the town of Mexico is the one on co rt 58. DeLong said one large solar farm will make it unlikely that the grid can support another solar farm in the town of Mexico. DeLong said the community buying into solar credits cannot be considered a benefit specific to the approval of the project because it is not contingent upon Mexico having a solar farm. DeLong said it will benefit the community in the way of a PILOT and a forever wild deed restricted area assessment on the rest of the property. DeLong does not want to see an easement.

Yawman said the variance of lot coverage would normally be about 10 acres and RIC is asking for more than double that amount. Yawman read in no case should it exceed 14 acres and RIC is requesting over that maximum amount. Yawman asked the board what the minimum variance would be. Yawman said approving a maximum of 14 acres would give RIC more acreage but also respect the local law's legislative intent. Yawman read the rationale of the local law intention. Yawman said the lot coverage maximum was to preserve the character of the town.

DeLong said if the connectivity is correct, it's an opportunity to have only one lot impacted while preserving the atmosphere and other farmland. Waterbury asked if DeLong knew if there was a cap on megawatts on community solar at 2 megawatts. DeLong said that 5 megawatts was not a consideration at the time when reviewing multiple other local laws. DeLong said they followed guidance from the state on megawatts at the time.

Waterbury said the economic realities of solar command a 5-megawatt level. DeLong asked if the board has information on the connectivity cost. DeLong said fees and technology have changed since 2017.

Item 2: Yawman said our law allows for large-scale solar farms without a variance. DeLong said a smaller farm is not necessarily better. DeLong said another lot can be used to meet the local law stipulations but it may impact the town more and would not necessarily preserve farmland or benefit the community and/or environment. DeLong said the parcel is not fully being impacted by solar panels. DeLong said the project does not meet the dimensional requirements but the variance is sizable. DeLong said having one larger farm would reduce the impact. DeLong said one large farm on this lot could have less of an impact than two smaller farms on different lots. DeLong said concerns can be mitigated.

Trey said if the farm isn't built to match the capacity of 5 mw of the substation, the door remains open for another project. Trey said subdividing this lot may achieve the same goal. DeLong said the PILOT program and taxes may be impacted negatively to the town's benefit. Toth said the standard policy is per megawatt. The fees associated with it may make it cost prohibitive. Trey said the project can be done within the confines of the law by dividing the lot. DeLong said that could result in eliminating some of the benefits, including the forever wild portion of this project. DeLong said each lot would have their own site plan with their own

access roads. Waterbury said it's a creative solution. Toth said Richland has two projects with the same developer and are building adjoining parcels on opposite sides of the road 3.5 megawatts each, costs are double. Toth said subdividing the property could require that everything is doubled, which could make the project cost prohibitive, siting two connectivity fees.

Yawman referenced LL 2017 505.9 and read a quote. Yawman said prime farmland is not the same as farmland; prime farmland is a soil classification. Yawman directed the board to the map of the soils. Yawman asked if we have avoided prime farmland. Yawman said AVB does not have solar panels and would not be disturbed. Yawman said RAB is the main section where panels go but it needs to be drained to be considered prime farmland. Yawman said the WIB sections (5 total) are prime farmland. Yawman said one section of WIB is under potential solar panels. DeLong said if the panels are moved to non-prime farmland, then trees would need to be removed. Trey asked about the percentage of prime farmland in the town in use. DeLong said protecting the farmland is a goal but that it is not always possible. Trey asked if it is a feasibility question to strip vegetation to avoid prime farmland. Yawman said using a smaller amount of panels could avoid that farmland. DeLong said there are other ways they could accomplish their goal that would be more costly for RIC. DeLong asked Weber if she knew how much prime farmland exists in the town of Mexico. Weber could not give an official answer but said that there is considerably more than most expect; approximately 40% based on variety of crops and yield. Yawman said there are excellent farms on non-prime farmland soil and there are houses located on prime farmland. DeLong said her interpretation of the discussions are that many farms have land not sufficient for growing or grazing but would be useful as space for solar farms.

Item 3: Waterbury, Yawman, DeLong all agreed that the variance is substantial. DeLong read a statement of her notes. DeLong said that the deviation would allow less of an impact as opposed to two separate solar farms and that conditions will be placed to mitigate concerns.

Item 4: Adverse Impact- Yawman said the noise impact assessment noted the sound level at the property lines- 46-49 decibels, permissible is 45-50 decibels. Yawman wondered if a sound barrier should be requested. DeLong said ambient sound is 45db. DeLong said she visited the substation to listen to the equipment and she couldn't hear anything. Yawman said ambient sound plus 5 decibels is the permissible measurement. DeLong said a condition could be placed that sound barriers are just part of the project. Bliss said he has seen insulation screens around the inverters (1-2' foam) surrounding inverters. Bliss said it can be an expensive correction but is usually not an up-front requirement. DeLong said our local law does stipulate complaints need to be rectified. Trey said they have to rectify if they are out of compliance and it would need to be monitored. Yawman asked if it's appropriate to name a maximum decibel allowed at the property line. DeLong said wind and air temperatures can affect noise levels so a reasonable increase in sound is difficult to determine. Yawman said if the max is 50, it would be a problem that would need to be addressed. DeLong likes the number because it's subjective. Yawman said it should be checked on regularly with the maintenance schedule. Yawman said a yearly inspection by the code enforcement officer would be ideal. Yawman said ambient noise plus five would be 45-50 decibels and could be checked with a meter. DeLong said that measurement tool would be helpful for CEO to have. Trey added the training should be provided as well.

Yawman said the site plan was approved with a 7' fence. Yawman said that LL5 of 2017 says perimeter should be 8.5' tall. DeLong said she prefers an 8.5' fence as opposed to 6' fence with barbed wire addition to the top. DeLong read section 301, article 3 of the energy law (p.6) as it relates to complaints. Trey said a sound standard needs to be established, for example 50 decibels.

Item 5: Self-Created- DeLong and Yawman agree that it is self-created because a smaller facility could be built on the property. DeLong said she recalled RIC mentioned they could pursue a smaller project. DeLong reiterated that smaller is not necessarily better. Waterbury said the local law was created before the state began to pursue solar energy. Waterbury said very few solar connections points exist and that, to fill the state goals, each spot should be maximized. Waterbury said the solar world has changed dramatically in five years. DeLong said she used the primer as a guide for a "self-created" determination. DeLong said self-creation does not preclude the granting of the variance. Waterbury read aloud the primer on item 5.

Waterbury asked the board if they would like to vote. Yawman asked the board if they would be granting the minimum necessary. DeLong framed the impact as less when the project is on one piece of property. DeLong said it may not be in the best interest of the community to reduce the project size. Waterbury said the revenue the PILOT provides is an improvement over the current tax income for the town, which offsets the lot coverage part of the project. Waterbury said he feels the board is accurately documenting their conversations leading to a conclusion.

Seiter said the motion for the area variance could be granted under the condition that the wooded area remain on the town tax roll. Waterbury said conversation about the PILOT and buy-in to solar credits led him to question if residents of Mexico can have a window of time to be first in line for credits. Bliss said a 6-month period might be the timeframe where locals have time to sign up. Bliss said he is unsure if RIC has control over that window. RIC might be able to send an expert to explain the program and assist with signing up. Waterbury asked if NYCERTA has a rule where all people are allowed, not just residents. Waterbury expressed that he wants the host community to be able to sign up. Bliss said most people are not aware of the program so local advertising would enable citizens to find the information and sign up.

Seiter stepped out at 8:42.

Trey asked to discuss the special permit conditions.

Seiter returned at 8:45.

Yawman asked if it made sense to make conditions on the special use permit and approve it with the current site plan without first approving the area variance for lot coverage. Seiter said the site plan was approved by the PB with conditions. DeLong asked if the area variance should be done first. Seiter said it makes sense to address the area variance first.

Yawman said the minimum variance is less than what's been requested. Yawman suggested approving 14 total acres in order to respect town law and provide as many acres as possible to RIC. Yawman said 14 acres makes it easier to avoid the section of prime farmland. Waterbury asked if there is a legitimate need for additional information that the board does not have. Waterbury said the board has one more month to make a determination. Trey said he would like to know RIC's position on a 14-acre project. Bliss said a break would be helpful for RIC to address concerns mentioned tonight. Trey asked them to consider a maximum of 14 acres.

A motion was made by Trey and seconded by Waterbury to recess for 15 minutes. The motion was adopted by a unanimous vote.

The board entered a recess at 8:55pm.

The board came out of recess at 9:13.

Bliss said Tomchev is able to chime in. Bliss thanked the board for their comments in terms of wanting to honor their code. Bliss said the NYCERTA incentives to companies like RIC are less than half as much, combined with the increased cost of interconnectivity, forced the threshold to 5 megawatts now. Bliss said that two megawatts is technically still an option but the state recognizes that businesses will lose money with smaller projects. Bliss said this site commands a 5-megawatt size. Bliss said that 14 acres makes the project non-viable. Bliss said their minimum practicable size matches their request. Bliss said that this site doesn't feasibly allow them to reduce the size of the area variance request. Bliss said they prefer to not go into the forest and clear trees because shade would cause more trees needing to be cleared than the prime farmland area is covered. Bliss said "in no case, larger than 14 acres" is a narrow interpretation because it can be done if the variance is granted. Bliss said multiple smaller solar sites could operate without the additional stipulations the boards are considering. Bliss said smaller sites don't inherently present any better outcomes for the town than one larger farm.

Waterbury recalled the area variance request before the board.

A motion was made by Waterbury and seconded by Trey to approve the RIC energy area variance as submitted subject to approval of the special permit with conditions included thereof. The motion was adopted by a vote of 2 ayes: Waterbury and Trey, 1 nay: Yawman, and 1 abstain: DeLong. The motion was carried.

Waterbury said the planning board provided a list of 6 conditions:

- 1- Include a way to visually enhance the fence and the North and East sides of the fence to make it safer for passing snowmobiles. Trey asked if there is a regulation on the reflectivity of the material. Waterbury said the condition could be to comply with DOT or equivalent requirements for reflectivity. Waterbury said commercial reflective tape and/or slats. Bliss said orange and silver may have been suggested by RIC after the planning board meeting.
- 2- Plants installed for pollinators throughout the site. DeLong said she thought it meant the entire area inside the fence. Toth said throughout the site was all over the site, not just at the perimeter or between rows. Weber said they spoke specifically about covering area underneath the solar panels so that weed whacking wasn't necessary. Trey asked if it was feasible to expect pollinating plants to cover the area. Bliss said that seeds generally need to be planted on bare soil but clover could be distributed throughout but seed mixes are generally reserved for the perimeter area. Bliss said plants could be installed for pollinator species for full coverage within the fenced interior of the property. Bliss said clover and vetch can be the cover crop inside the fence boundary and then outside can be a certain percentage of the area as other pollinator species. Bliss said parking areas during construction could also be seeded with wildflowers and clover after construction concludes. Yawman said it's beneficial to disturb the least amount of land possible. Toth said their policy specifies planting to the extent practical and urges site

- coverage. Trey said we could stipulate that RIC work with the planning board on a pollinator plan. Seiter said to ask RIC to follow NYSERDA pollinator program policy. DeLong said the project needs to have a buffer between the project and neighbors. DeLong said there is 100 feet of green space between the fence and the property line. Bliss said the code was used to determine the fence setback. Yawman said 100 feet needs to exist between the edge of the property line and the project. Bliss said it does. Seiter suggested making the fence a condition of the permit being the edge of the project. DeLong said the trees can be located within the buffer area.
- 3- A Knox box to allow for local access by the fire department.
 - 4- RIC must create a designated off-road parking area for construction vehicles during construction
 - 5- The woods are to remain forever wild. DeLong said a deed-restriction that the woods/undeveloped would remain forever wild for the length of the project. Weber said the soil & water can manage the woods and their director is a forester who can come in and remove/manage the woods. Weber said they will do that even if it's forever wild as opposed to a deed restriction.
 - 6- Pesticides and herbicides use is restricted for the duration of the project

Waterbury said decommissioning discussions may be redundant. Waterbury read the section of the two-year monitoring and remediation component from NYSERDA publication. Waterbury said the wooded area should remain on the town tax roll.

Waterbury said the example of the 60-day window for residents to enroll is reasonable and wants them to be first in line. Trey said there isn't much control from RIC but that RIC is willing to help get the word out and offer to host a seminar to provide information to the residents. Waterbury asked RIC to consider doing their best to offer saving to locals first. Trey asked if RIC could send out mailers and hold a seminar on solar energy credit applications. Tomchev said they can commit to reach out through mailers as well as open house to invite people and share information and show them how to sign up. Tomchev said the application process is online and simple. Waterbury asked if there is a way for people to sign up without the internet. Trey suggested signing people up at the open house. Bliss said RIC just hired an educator. Tomchev is not aware of paper copies but could provide help for residents to sign up at the open house. An additional condition is to require RIC to commit to helping residents through proactive means including advertising, information mailed, and open house seminar to help people sign up online. Trey said the Town could partner with RIC to send them out.

DeLong asked if RIC will purchase the property if they will get the permits granted. Tomchev said they have an option to purchase if the permits are granted. DeLong said no batteries on site; non-reflective material for the panels; emergency shut-off; local law caveats need to be made aware to RIC including correcting complaints, no antennas, stray voltage corrected, abandonment, traffic routes during school bus activity time, etc. Trey said local law doesn't need to be added as conditions and it's reasonable to assume the applicant is aware of the law and will follow them. Yawman said the fence height needs to be 8.5' fence.

Seiter asked what the plan is for insurance on the property. Tomchev said insurance goes with the project. Seiter asked if the town is a covered entity as additionally insured. DeLong said section 504.1 of the local law explains insurance obligations. DeLong read the

section of the local law. Seiter said the town will check with their insurance carrier to let RIC know their recommendation of coverage.

Toth asked if there is specific training for the fire department or code enforcement officer or anyone who may need to enter the site in an emergency. DeLong said we address the emergency shut-off and then snow removal of the site. Waterbury said a condition could be that we require RIC to design and conduct safety training for local responders and code enforcement officer. Trey suggested training materials or program so that fire departments can train themselves. Bliss said that is what they do with batteries but the fire chief is up to date on electrical fires. Bliss suggested consulting the fire chief to see what they need. Seiter suggested that RIC agree to coordinate to follow up with fire department chief to discuss yearly update for emergencies at the site. Trey said all first responders and CEO should be included.

DeLong said section 502.20 is emergency shut down and safety with standards for large scale energy systems and includes an emergency responder plan. Trey said additional follow-up is needed. Seiter said communications regarding insurance can occur after the permit is issued. DeLong said insurance needs to be finalized before a building permit can be issued.

A motion was made by Waterbury and seconded by Trey to approve the special permit with conditions expressed tonight or on the record from previous meetings. The motion was approved by a vote of 3 ayes: Waterbury, Trey, Yawman, and one abstain: DeLong. The motion was carried.

Conditions discussed were:

1. Commercial reflective tape or slats in the fencing at the North and East sides of the lot to make the fence safer for passing snowmobilers.
2. Pollinators plants installed throughout the project site for maximum ground coverage as per the NYSERDA pollinator program.
3. A Knox box to allow for local emergency access by the fire department.
4. RIC must create a designated off-road parking area for construction vehicles during construction.
5. The woods are to remain forever wild for the duration of the project.
6. Pesticides, herbicides, toxic chemical use is restricted for the duration of the project.
7. RIC will purchase the property.
8. The additional acreage, not part of the fenced solar area, will remain on the tax rolls, forever wild, and the property will not be transferred to a tax exempt 501-c3 organization.
9. There will be no on-site batteries as part of the solar farm.
10. Perimeter fencing will be 8.5 feet high and be at the edge of the solar project.
11. Maintenance includes at least two mowings per year and two inspections per year.
12. Residential energy customers who are residents of the Town of Mexico will be offered an exclusive, first-in-line, 10% community solar enrollment window.
13. RIC will address and correct any complaints within 60 days of notification.
14. There will be no antennas on site at construction completion.
15. Upon decommissioning, RIC will strictly comply with page 136 of the NYSERDA document entitled Using Special Use Permits and Site Regulations, specifically

Restoration Requirements, Two-Year Monitoring and Remediation, and Decommissioning.

16. Compliance with the Town of Mexico insurance requirements as discussed in March 21, 2022 ZBA minutes.
17. RIC will comply with all matters on record in minutes of Town of Mexico Planning Board and Zoning Board of Appeals meetings and workshops and covers the full application term from start to finish.
18. RIC will comply with Local Law 5 of 2003 regulating land use in the Town of Mexico.
19. RIC will comply with Local Law 2 of 2017 regulating energy systems in the Town of Mexico.

Other Business

Waterbury said the next Planning Board meeting will discuss the sawmill ordinance at the town hall at 5:00pm, Monday April 4th and urged the ZBA members to attend. Trey asked for a revised draft of the ordinance. Seiter said he will send out a revised draft.

Waterbury announced DeLong's retirement from the ZBA and thanked her on behalf of the community and the board. DeLong expressed gratitude for the experience and the people with whom she has worked over the years.

A motion was made by Waterbury and seconded by Yawman to adjourn at 10:34pm. The motion as adopted by a vote of four ayes: Waterbury, DeLong, Trey, and Yawman.

Respectfully submitted,

Nicole Wild
Town Clerk