

December 18, 2018

Judith Whitney, Clerk
Public Utilities Commission
112 State Street
Montpelier, VT 05620-2701

Re: Solar Strategies, LLC – Petition for a Certificate of Public Good – Case No. 18-2015
3992 Rte. 121 Grafton (Village of Cambridgeport), Vermont
Response of the Town of Grafton Selectboard to Motion to Amend Pending Application

Dear Madam Clerk and all parties Listed on the Applicant’s Certificate of Service.

With this letter the Selectboard of the Town of Grafton responds to the Motion to Amend the Petition of Solar Strategies, LLC – for a Certificate of Public Good for a proposed 270 kW Net-metered Solar Array, 3992 Rte. 121 Grafton (Cambridgeport), Vermont.

Conclusion: Due to the numerous violations of Vermont regulations administered by ANR DEC Act 250, ANR DEC Stormwater/Flood, Division of Fires Safety, ANR and DMV (junk vehicle disposal), and local Flood Damage Prevention Regulations, all as described below, the Town of Grafton demands of the PUC and all relevant Agencies of the State of Vermont the issuance of a stop order on this application and project until all regulatory and statutory violations are addressed and cured and the structures and uses on the parcel are in complete compliance with state, federal and local regulations. These are the same issues raised in Grafton’s March 14, 2018 response to the 45-day Notice. During this past year the violations have metastasized. (See enclosed ANR Atlas Orthos for this site from 2003 when it was a functioning business, to 2016 which portray the growth of the debris field and storage of junk cars, vans, detritus and junk and the photos.)

Note that on March 14, 2018, at a Special meeting of the Town of Grafton Selectboard the Board determined that the proposed site for this solar project is, in the opinion of the Board, a “preferred site” as that is defined in “5.100 Rule Pertaining to Construction and Operation of Net-Metering Systems” Section 5.103 “Preferred Site” (7) clause 2. The Board was joined in this determination by the Grafton Planning Commission. Please note that in making the “preferred site” determination neither the Board nor the Commission took a position certifying or approving this proposed project’s compliance with any other provision of Vermont Law. The Board and Commission simply determined that the location itself merited such a finding under Net Metering Rule 5.103 “Preferred Site” (7) clause 2. The bases for each such determination were the criteria set forth on page 3 of this letter.

It is ironic that the applicant and landowner asked us, and we agreed, to host a site that ultimately enhances the environment, while the owner trashes the very site that is host to it. Grafton hopes the State does not wish to be a party to this trashing of Grafton.

Current permit (last amended 1995): As was stated in Grafton’s Response to the 45-Notice, the ANR Act 250 permit file number for this site is 2-W-0394 with several amendments, the last one being date 1995. When Grafton staff, having looked at the file online, went to the District 2 Office of ANR to view the file, the ANR staff, including the District Coordinator, stated the file could not be found. To our knowledge the file is still missing, as we have not been informed otherwise.

There is an online Act 250 2-W-0394 file, which does not contain all the exhibits referred to in the decision, thus the exact condition details, which can only be found in the missing exhibits, are not available for study. In addition, the Act 250 District 2 staff informed the Grafton staff that they did not know if any permits for the current uses exist, because there is no file in the office.

The use that is subject to permit 2-W-0394 as well as its successor uses that operated until approximately 2014 do not exist. Before the current uses moved into the building, the building sat vacant for a long time.

Going solely by the online ANR District 2 file, there are no permits for any of the uses currently operating on the site. It apparently exists as a “permit free” zone much like “duty free” zones in ports of entry.

Unpermitted uses: To the best of our knowledge ostensibly (that is, neither ANR nor we can find a permit) unpermitted uses include:

- The indoor storage of many motor vehicles. We are told those vehicles belong to the owner John McKay;
- A chemical processing/custom chemical mixing business in the same location in the building where the hazardous waste leaks occurred in the 1990s;
- A stone cutting artisan workshop, which spills its stored materials, C&D, stone pieces, tools and other junk outside, into the floodway and floodplain on the western side of the building (See photos and ANR maps);
- Outdoor storage in unlicensed, uninspected, unregistered 53 foot vans located partially in the floodplain, but mostly in the floodway (See Ortho maps from both FEMA NFIP and VT e911 and ANR Orthos, as well as photos attached to this letter);
- Junk cars, that is unregistered, unlicensed, uninspected cars, trucks and junk (See photos and ANR maps), which I am informed by ANR enforcement personnel, who are working a junk yard cleanup in Brattleboro, which junk yard belongs to the same property owner, John McKay, are probably being moved up to Cambridgeport from that illegal site to this site.
- Tires and trash and C&D etc. all in the parking lot the rear half of which is in the floodway. (See photos and ANR maps).

Lack of Permits for any current uses on site:

- The online, digital Act 250, District 2 file (2-W-0394) does not show permits for current users of the property.
 - ANR staff indicated that without the original paper file they were uncertain whether or not there were Project Worksheets for the current uses, and, if so, whether or not such Worksheets stated that either nor new Act 250 permit or no amended Act 250 permit was necessary for those current uses. Act 250 District 2 Staff, oddly, informed Grafton staff that “If you find out who is operating there and what they are doing and tell us, we will look into it.” We did, and told them. No one from ANR, District 2 or otherwise, has done any investigation or enforcement that we are aware of.
 - This Grafton response to this motion for amendment, as did its response to the 45-day Notice in this matter, once again addresses the readily apparent violations of the ANR Act 250 permit that does exist for the use of the parcel (2-W-0394), in particular the violations readily apparent outside of the building, where there was to simply NO STORAGE. We once again request that District 2 enforce the conditions of the original and only permit for this site, and require these violations be corrected before the proposed solar project, or any other State project, requiring State approval, is approved for this parcel.
 - The Town of Grafton requests, in addition to the removal of all violations of federal, state and municipal regulations from the site, that one of the conditions of any approval of the solar project be that the status of the current uses must be clarified and the status of the use normalized/legalized if permits are required and were not obtained.
- According to the State Division of Fire Safety here is no known permit for any current uses at this site.
 - A VT State Division of Fire Safety inspection report from 2009 on a use called “Cheap Tubes” states that at the time of inspection there was no sprinkler system for the building. A final inspection report from 2014 shows that the premises of “Cheap Tubes” and only those premises had a functioning sprinkler system. See DFS inspection reports attached.
- SFHA - At this site there are no state or local permits allowing storage or activity in the floodway or the floodplain.

- All of the unpermitted uses and storage and dumping of junk and trash in the SFHA are without any permit whatsoever.
- The original permit from District 2 Act 250 (2-W-0394) refers to a flood permit from the Town of Grafton. That permit does not allow for any activity or storage outside the confined of the structure, except for transient use of the parking area and access for parking and movement of goods to and from the site. There is no other permit for the uses on the site. All of the storage of junk cars, 53' vans, junk trailers, detritus from the stone works, C&D, and just junk, which can be seen even on applicants' own Exhibit ("..the most recent revised site plan designated as GD-8). Just below cutline A, a 53' van is depicted permanently parked in the floodway. The ANR Orthos from 2003 to 2016 accompanying this response shows the junk and detritus increasing as the years advance, the photos accompanying this letter show more and if you visit the site you will see even more. The original permit, which is the only permit, did not allow for any of this, and there are no known amendments per Act 250 records and responses to town inquiries, and no permits for SFHA uses from Grafton.
- SFHA for this application
 - This project is under VT ANR DEC jurisdiction for flood permits 24 VSA 4413(b). In preparing this response, Grafton emailed the Springfield Regional Floodplain Manager. The Regional Floodplain Manager was surprised by our inquiry about staging in the floodway, and informed us there is a flood permit for the proposed project in which the applicant is specifically denied any use of the floodway for staging during construction. If that is the case, this would be in direct violation of the State DEC permit concerning the SFHA. The Regional Floodplain Manager had no knowledge of a request to modify the flood permit.

Preferred site determination by the Town of Grafton. The Selectboard tried to and did look at the site only, not the proposal, for determining if the site was (is) a preferred site for any solar array. For the Selectboard and Planning Commission discussion and decision the Town created and used the following criteria for determining the status of this site:

- Proximity to 3 phase power – this means a solar facility does not need to have a line upgrade
- Located near the end of utility distribution lines – this helps support the electric grid (SB/PC found - not at the end but does support the grid).
- Aesthetic considerations – making sure viewsheds are not impacted by the appearance of renewable energy facilities.
- Existing roads – important to have existing good access without requiring a developer to upgrade roads.
- Minimal impact of agriculture and agricultural soils
- No obstruction of wildlife and habitat corridors.
- South facing slopes with low quality agricultural soils. These areas have high solar value, but otherwise low value as working landscapes. (SB/PC found not applicable to this flat land site)
- Siting solar on agricultural soils only if compatible with continued agricultural operations. (SB found not so sited)

The site, except as noted, met the criteria used. In separate motions the Selectboard and Planning Commission separately determined the site to be a preferred site. This list of criteria is provided here in this response to demonstrate that neither the site being free from regulatory violations nor the specifics of the proposal were part of the preferred site criteria.

To give the Selectboard and Commission information on which to base their responses for the 45-day letter, the applicant, Rex James, then at that same meeting, after the determinations had been made re preferred status, presented his project details for the benefit of the Board, Commission and the community present. Included in his oral details were:

- The cleaning up of the site from unsightly brush;
- The planting of trees to screen the front of the array and the maintenance of the trees and screening, as he also promised Joan Welsh (abutter).
- The maintenance of the screening trees along the easterly boundary of the array.
- The special planting of wildflowers in the array field.
- Cleaning up and screening/fencing the outside storage area for Paul Thomas' stone works storage on the western side of the building.
- Complying with all requirements of ANR with regard to the floodplain and floodway.
- Applicant also said he would see to it that the owner got rid of all the junk cars, and that that had been required in the documents he received from ANR John Broker-Campbell.

- It was also asked that the 53 foot vans be removed and he stated he would work with the owner on that. He did most clearly state the site would all be cleaned up.

We understand he has no permit yet, so performance of promises might be delayed, but while we wait and the years go by the trash and detritus and junk grows.

As to the proposed amendment itself, neither an application for permit nor motion for amendment of application should be allowed to proceed to hearing until the proposed site is free of violations of federal, state and local regulations. In addition the Town of Grafton opposes the amendment item c) “revised staging area” proposed in the floodway at all, and if it is to be allowed it must be with a permit obtained through conditional use hearing, and a decision that sets forth strict conditions to leave the area as it was found. The Town agrees with items b) and e), both of which Grafton discussed in its response to the 45 day Notice, and has no objection to a), d) and f) of the Motion to Amend.

Regards,

Joe Polio, Chair
Grafton Selectboard.

Copies: See attached list.