



TOWN OF TYNGSBOROUGH

Board of Selectmen

Town Offices | 25 Bryants Lane

Tyngsborough, MA 01879

Tel: (978) 649-2300 Ext. 100 | Fax: (978) 649-2320

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TOWN CLERK
TYNGSBOROUGH MA

SPECIAL PERMIT DECISION

Applicant: Citizens Tyngsborough Solar, LLC (amended to Tyngsborough Solar, LLC)

Property Location: 500 Dunstable Road, Tyngsborough, Massachusetts. Shown on Assessor's Map 14, Lots 13, 14, 14A, 15, and 16.

Project: The construction of a 2.43 megawatt Solar Photovoltaic Array.

Owner: Dunstable Road Land Properties, LLC.



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FINDINGS AND DECISION

A Special Permit is granted by the Town of Tyngsborough Board of Selectmen (Board) to Tyngsborough Solar, LLC, (incorrectly identified in the application as Citizens Tyngsborough Solar, LLC,) (the Applicant) for property located at 500 Dunstable Road and commonly known as the Charles George Landfill consisting of five (5) lots, (Assessors Map 14, Lots 13, 14, 14A, 15 and 16) (the Premises) to construct a *2.43 megawatt Solar Photovoltaic Array*, Section 1.16.0 of the Zoning Bylaws Public or Private Utility Facility, and listed in Section 2.11.30, Table of Permitted Uses.

The Findings and Decision for approval, with conditions, are set forth below.

I. BACKGROUND:

1. The Applicant applied for a Special Permit-Public or Private Utility Facility pursuant to 1.16.00 of the Bylaws.
2. The Plan is entitled Tyngsborough Solar Project, Permit Application Set, Not for Construction, Dunstable & Tyngsborough, Massachusetts, May 2015, Revised July 2015 and containing 12 Sheets. Developer: Tyngsborough Solar LLC, 88 Black Falcon Avenue, Suite 342, Boston, MA 02210. Submitted by Tighe & Bond, 55 Southampton Road, Westfield, MA 01085 (Plan).
3. The Board also received departmental comments and a peer review consulting engineering report in connection with the application review.



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4. The legal notice was published in the Lowell Sun on May 25 and June 1, 2015, posted with the Town Clerk, and sent to interested parties as specified by M.G.L. c. 40 A, § 11, as well as abutting Planning Boards.
5. Public hearings were held on the Special Permit Application before the Board on June 8 and 22 (continued only), July 13 and 27, and August 10, 2015.
6. At the public hearings, the Applicant and its engineers made presentations of the Project. Residents in attendance were permitted to speak for or against the Special Permit Application (the "Application"). Members of the Board were permitted to ask questions and comment on the Special Permit Application.

II. FINDINGS:

1. The Board finds that the Applicant has fully complied with the submittal requirements for the application for a Special Permit established under Sections 1.16.00 of the Bylaws.
2. The Plan and Application submittals are in compliance with Bylaws. The Plan satisfies all comments of Whitman & Bingham, Inc.
3. Under Section 1.16.14 of the Bylaws, the Board shall only issue a Special Permit where such relief:
 - a. Is in harmony with the purpose and intent of the Bylaws;

The Board so finds and finds that the Project was developed in compliance with all provisions and requirements of the Bylaws as a "private utility facility" allowed by Special



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Permit in the Residential (R-1) District pursuant to Section 2.11.30 (Table of Uses) of the Bylaws. The ground-mounted 2.43 megawatt Solar Photovoltaic Array is appropriately sited on a closed and capped landfill rather than an undeveloped, open space, in harmony with the purpose of the Bylaws to “conserve the value of land and buildings including the conservation of natural resources and the prevention of blight and pollution of the environment” pursuant to Section 1.10.20 of the Bylaws. The Project re-purposes the closed landfill parcel and intends to conserve natural resources and prevent pollution by providing the Town with a local, renewable source of energy. Furthermore, the Project adheres to the purpose of the Bylaws to “preserve the natural, scenic and aesthetic qualities of the community” by appropriately siting the solar array on an existing landfill.

- b. Will not be detrimental or injurious to the neighborhood in which it is to take place;

The Board so finds and finds that the Project is consistent with the current industrial context of the surrounding uses. The Project will minimize obstruction of scenic views from publicly accessible locations as the ground-mounted Solar Photovoltaic Array panels will be sited in a central location on the Project parcel and substantial setbacks will be maintained. Wooded areas adjacent to the Project were represented to be maintained as no vegetation clearing is proposed.

- c. Is appropriate for the site in question; and,

The Board so finds and finds that the Project site is an ideal location as it will repurpose a closed landfill rather than develop an open space. The solar array installation will be setback from public ways in accordance with the Bylaws. No buildings are proposed as part of this Project. The site is well-suited for the Project as the surrounding uses



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predominantly consist of industrial buildings, wooded areas, and by Route 3 with Flint Pond to the east of Route 3.

- d. Complies with all applicable requirements of the Bylaws.

The Board so finds and finds that the Project was developed in compliance with all provisions and requirements of the By-Laws as a “private utility facility” allowed by Special Permit in the Residential (R-1) District pursuant to Section 2.11.30 (Table of Uses) of the Bylaws.

III. SPECIAL PERMIT CONDITIONS:

In view of the above, the Board determines that the Premises is a proper parcel to be developed under Sections 1.16.0 and 2.11.30 of the Bylaws in that the parcel meets all requisite criteria; and the Board grants a Special Permit for the construction of a Solar Photovoltaic Array, in accordance with the below terms and conditions:

1. All back taxes, including current real estate taxes not outlined in the June 18, 2015 letter submitted by Emma Kosciak, Manager of Solar Development, Citizens Enterprises Corporation shall be paid to the Town prior to the issuance of a Building or Electrical Permit and in accordance with the approval of the Division of Local Services, Department of Revenue, dated July 30, 2015.
2. Applicant has offered to pay the costs associated with the Town’s consultant, George Sansoucy, LLC, up to a maximum of \$10,000.00. Pursuant to M.G.L. c. 44, § 53A, the Applicant shall deposit \$10,000 with the Town Treasurer prior to the issuance of a building permit. Any remaining funds not used shall be returned to the Applicant.



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3. The Applicant shall submit annually an emergency contact list to the Tyngsborough Town Administrator's Office that identifies phone numbers and emails of Applicant's representatives that need to be contacted in case of an emergency. The list should identify personnel that are available at all times (days, nights, weekends, and holidays).
4. During the installation/construction phase, the Applicant shall submit ~~submission of~~ monthly construction reports to the Town Administrator.
5. The Town shall receive a copy of any required submissions, such as annual reports, licenses, or other documents/plans that the Applicant is required to submit to the Massachusetts Department of Environmental Protection (MassDEP), U.S. Environmental Protection Agency (US EPA), Town of Dunstable, or the Department of Energy Resources.
6. The Board is informed by the Applicant that the Applicant shall provide surety for removal of the equipment and restoration of the site upon end of the useful lifespan of the Solar Photovoltaic Array with the U.S. EPA and/or MassDEP as required in the amount determined by the US EPA and/or DEP, with the Town as named insured. If there is no surety required by the U.S. EPA and/or MassDEP, then the Applicant shall have a surety that names the Town in an amount that is determined by the Board.
7. An as-built plan shall be submitted, and a final inspection shall be performed by the Board's representative prior to the start of operation of the utility.
8. No construction activity associated with the proposed use shall be allowed until approval has been issued by the MassDEP and the US EPA related to post-closure use of the landfill. Final copies of all non-local permits, including but not limited to the MassDEP Approval, and NPDES Construction General Permit shall be provided to the Town Administrator.



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9. The Plan and reports by Tighe and Bond, Inc. and Whitman and Bingham, Inc., are attached to and made a part of this Decision. The Applicant shall comply with each response in the letter from Tighe and Bond to the Board dated July 13, 2015, paragraphs 1 to, and including, 9.
10. Any deviation from the Plan, Application, and Special Permit may be approved, 1) if inconsequential, by the Town Administrator, 2) if non-substantial, by the Board at a noticed meeting, or 3) if determined by the Board to be substantial, by the Board after a noticed public hearing pursuant to M.G.L. c. 40A.
11. To the extent practicable, the wooded areas of the Premises adjacent to the Solar Photovoltaic Array panels shall be maintained and vegetation shall not be removed.
12. Other than the proposed ground-mounted Solar Photovoltaic Array panels (and their necessary appurtenant electrical cables, or equipment) no structure or building will be placed on the Premises.
13. This Special Permit Decision shall not take effect until recorded with the Middlesex North Registry of Deeds within thirty (30) days of the filing of this Decision with the Town Clerk. A copy of this Decision shall bear the certification of the Town Clerk that twenty (20) days have elapsed after the Decision has been filed in the Office of the Town Clerk and no appeal has been filed, or if filed, such appeal has been dismissed or otherwise resolved.
14. Any final plans shall satisfy all comments of Whitman & Bingham, Inc., and Tighe and Bond's response dated July 13, 2015.



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15. All drainage features serving the Project shall satisfy the requirements of the Town's Stormwater Protection Bylaws and/or Guidelines administered by the Conservation Commission. Any runoff caused by the Project that undermines the integrity of the landfill cap shall be immediately reported, in writing, to the U.S. EPA, the MassDEP, and the Town and shall be immediately addressed and corrected by the Applicant. The integrity of the landfill cap is the Town's first priority, and any deterioration will constitute a breach of this Decision.
16. This Decision is contingent on the approval of the Project by the MassDEP and the U.S. EPA. If a financial security or funding mitigation if the landfill cap is breached or compromised, is not required, then the Applicant shall provide such security to the Town to the satisfaction of the Board.
17. The Town's representative shall have the right to enter upon the Premises to ensure continued compliance with the terms and conditions of the Special Permit Decision.
18. If any, outdoor lighting shall comply with the Bylaws Section 3.15.00 notwithstanding whether the Premises are not zoned B-1, B-2, B-3, or 1-1.
19. Failure to comply with all the above conditions shall be deemed cause to revoke or modify this Decision.

IV. APPEALS:

Appeals of this Decision, if any, shall be made pursuant to M.G.L. c. 40A, § 17, and shall be filed within twenty (20) days after the date of filing of this Decision with the Town Clerk.



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The following members of the Board voted on August 10, 2015 to approve the Applicant's request for the Special Permit:

Board of Selectmen

Richard Reault, Chair

Robert Jackson, Clerk

Steven Nocco

William Gramer, Vice Chair

Corliss Lambert



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TO BE FILED WITH THE TOWN CLERK

Then personally appeared Richard Reault, Chairman, Tyngsborough Board of Selectmen of the Town of Tyngsborough, Massachusetts, and acknowledged the foregoing instrument to be the free act and deed of said Board of Selectmen before me to be recorded with the Town Clerk.

Joanne Shifres Notary Public
March 3 2017 Commission Expires

 **JOANNE SHIFRES**
Notary Public
Commonwealth of Massachusetts
My Commission Expires
3/3/17

TOWN CLERK

I hereby certify no appeal has been received within twenty (20) days of the filing of this notice in my office, or that if an appeal has been filed, that it has been dismissed or denied.

Town Clerk

_____, 2015



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APPLICANT RECORD DECISION

Having received certification from the Town Clerk, the Applicant is responsible to record this Decision, as required for the special permit, with the Middlesex North Registry of Deeds and indexed under the name of the owner of record. Fee for recording shall be the Applicant's responsibility.

NOTICE TO BUILDING DEPARTMENT

No permits shall be issued until the Decision is recorded, received and entered with the Middlesex North Registry of Deeds and the Applicant has complied with Section III, paragraphs 1 and 2 this Decision.