

**Town of Blue Hill
Board of Appeals**

Notice of Decision and Findings of Fact and Conclusions of Law

**Appeal and Cross-appeal from Planning Board Commercial Site Plan Approval
Appeal Hearing June 29, 2023**

Appellants: John Bates, Christopher Brumfield, Daniel Cooke, George Crampton, Mary Galassanos, Karen Frangoulis, Frangoulis Revocable Trust, Rachel Randall, and Jason Young.

Cross-Appellant: SolAmerica Energy, LLC

Subject Property: Tax Map 33, Lot 19A

Appeal Description: Appeal of March 8, 2023 Planning Board decision pursuant to the Town’s Commercial Site Plan Review Ordinance.

Procedural History

On June 29, 2023, the Town of Blue Hill Board of Appeals (“the Board”) met to hear both the appeal and cross-appeal, as described above. The Board had a quorum and present to hear the appeals were Board Chair Randall Curtis and Board Members James Church, David Dillon, and Stephen Rappaport. The Appellants (“the Abutters”) were represented by Kristin Collins, Esq. The Cross-Appellant (“SolAmerica”) was represented by Stephen Wagner, Esq. The Town Planning Board was represented by Agnieszka Dixon, Esq. The Board was represented by Keith Richard, Esq. and Michael Skolnick, Esq.

This appeal concerns SolAmerica’s application to develop property located at Tax Map 33, Lot 19A. The project was reviewed by the Town Planning Board pursuant to the Commercial Site Plan Review Ordinance (“CSPRO”). SolAmerica submitted an application on February 8, 2022. Following a denial of the application, and a previous appeal to this Board, the Planning Board voted to approve the application on October 19, 2022. A motion to reconsider was filed by abutters on November 18, 2022. The motion was granted by the Planning Board on December 14, 2022, which re-opened the application and public hearing.

The Planning Board issued and adopted a final written decision approving the application with conditions on March 8, 2023. The Abutters filed an appeal on April 7, 2023. SolAmerica filed a cross appeal on May 19, 2023. By agreement of the parties, the appeals were consolidated for hearing on June 29, 2023.

Standard of Review

This Board considers appeals from Planning Board decisions after a public hearing in an appellate capacity. The standard of review governing this Board’s appellate review “is

whether the decision of the [Planning Board] was arbitrary or capricious, based on error of law, or based on findings of fact not supported by substantial evidence in the record.” Town of Blue Hill, Board of Appeals Ord. § IV.H(3) (“BOA Ord.”).

§ IV.H. Appeal Procedure. Unless otherwise expressly provided by ordinance, the following appeal procedure shall apply when the Town of Blue Hill has, by ordinance, specified (i) the precise subject matter that may be appealed to the board and (ii) the official or officials whose action or nonaction may be appealed to the board:

1. Any person aggrieved by a decision of a Town official may appeal such decision to the board within 30 days of the decision by filing an appeal at the office of the municipal clerk.

Id. § IV.H(1).

In appellate review, the Board “may not permit the introduction of new or additional testamentary or documentary evidence” that was not before the original decisionmaker. *Id.* § IV.H(3).

Findings of Fact

1. The decision at issue in both the appeal and cross-appeal is the Planning Board’s final decision of March 8, 2023.
2. The Abutters filed their appeal on April 7, 2023.
3. SolAmerica’s cross-appeal was filed on May 19, 2023.
4. On June 23, 2023, the Abutters submitted a response to SolAmerica’s cross-appeal.
5. SolAmerica submitted a response to Abutters’ June 23, 2023 submission on June 27, 2023.
6. Within their response, the Abutters conceded that in light of the Town Meeting vote on April 8, 2023 to amend the CSPRO, their appeal became moot. (Collins Letter dated June 23, 2023 at 2.)

Conclusions

1. Given the Abutter’s concession and findings of fact number 6 above, the Board dismisses the Abutter’s appeal without prejudice as moot.

2. SolAmerica’s cross-appeal was filed more than thirty days after the decision.

3. The cross-appeal is therefore untimely pursuant to section IV.H(1) of the BOA ordinance.

4. The Board lacks jurisdiction to determine whether the Planning Board properly granted Abutters’ motion for reconsideration on December 14, 2022, because that decision is not a “decision to grant or deny a permit” under the CSPRO. CSPRO § 5(G).

5. The Board dismisses SolAmerica’s cross-appeal as untimely pursuant to BOA Ord. § IV.H(1) and for lack of jurisdiction under CSPRO § 5(G).

6. The foregoing completely disposes of all pending appeals from the Planning Board’s decision of March 8.

7. The Board therefore declines to reach other issues raised by the parties. *See* BOA Ord. § IV.H(3).

Vote: Vote of 5 in favor; 0 against; 0 abstaining.

Dated: _____

Blue Hill Board of Appeals

By:

Notice Regarding Appeal Rights

Appeals from this Board’s decisions may be taken to the Maine Superior Court pursuant to 30-A M.R.S. § 2691(3). BOA Ord. § IV.K.