



Commission Meeting of September 21, 2016 Southampton Town Hall

Present: Ms. Sarah Lansdale (Suffolk County),
Mr. Edward P. Romaine (Brookhaven), Mr. Sean M. Walter (Riverhead),
Mr. Martin E. Shea (Southampton)

Adopted Resolution

Compatible Growth Area Hardship Waiver Application of
PSEG West Bartlett Substation
Middle Island, Town of Brookhaven
Suffolk County Tax Map Number: 200-527-5-3

Carrie Meek Gallagher
Chairwoman

Steven Bellone
Member

Edward P. Romaine
Member

Jay H. Schneiderman
Member

Sean M. Walter
Member

I. The Project

Whereas, PSEG West Bartlett Substation (the “Applicant”) proposes to develop a new 13kV electric transmission substation and associated distribution upgrades on a 3.9 acre parcel owned by LIPA, identified as Suffolk County Tax Map Number 200-527-5-3 (the “Project”), located on the east side of West Bartlett Road, between Rose Lane and Smith Lane, in the hamlet of Middle Island, in the Compatible Growth Area of the Central Pine Barrens, in the Town of Brookhaven (the “Project Site”); and

Whereas, the Applicant proposes to connect the Project to an adjacent 69kV overhead transmission line on the north side of the Project Site; and

Whereas, the Project Site contains a cleared area of approximately 6% or 0.22 acres. The remaining 94% or 3.68 acres is presently wooded with natural pine barrens vegetation; and

Whereas, the Project Site is in the A Residence 5 Zoning District.

II. The Act and the Commission

Whereas, the New York State Legislature passed the Long Island Pine Barrens Protection Act (the “Act”) which was codified in Article 57 of the Environmental Conservation Law (ECL). The Act, among other things, created the Central Pine Barrens Joint Planning and Policy Commission (the “Commission”), to, among other things, oversee land use activities within the specially designated Central Pine Barrens Area; and

624 Old Riverhead Road
Westhampton Beach, NY
11978

Phone (631) 288-1079
Fax (631) 288-1367
www.pb.state.ny.us

Whereas, in furtherance of its mission and in compliance with the directives set forth in the Act, the Commission drafted the Central Pine Barrens Comprehensive Land Use Plan (the “CLUP”), which was officially adopted on June 28, 1995; and

Whereas, Section §57-0107 of the ECL defines development to be the “performance of any building activity, . . . , the making of any material change in use or intensity of use of any structure or land. Without limitation the following uses shall be taken for the purposes of this article to involve development . . . (b) a material increase in the intensity of use of land or environmental impacts as a result thereof; . . . (c) commencement of mining, excavation or material alteration of grade or vegetation on a parcel of land excluding environmental restoration activities;” and

Whereas, Section §57-0123 of the ECL provides that “no application for development within the Central Pine Barrens area shall be approved by any municipality, or county or agency thereof or the [C]ommission . . . unless such approval or grant conforms to the provisions” of the CLUP; and

Whereas, the Commission has reviewed and approved proposals similar to the Project. These include CGA Hardship Waivers for Riverhead Central School District Bus Depot CGA Hardship Waiver (2014), Longwood Public Library CGA Hardship Waivers (2005 and 2013), and Rocky Point School District Hardship Waiver (2007). The Commission granted a Core Preservation Area Compelling Public Need Hardship Waiver on the LIPA Riverhead Substation (2008); and

Whereas, the Project constitutes development as defined in the Act.

III. The Project Site, Current Project and Materials Submitted to the Commission

Whereas, the Project Site, formerly occupied by a Cablevision subsidiary, is partially cleared and developed with an equipment building, three equipment trailers, a shed, paved area, fencing, storm drainage, sanitary system; and

Whereas, the Applicant proposes to remove existing structures as per the “Schematic Site Plan” prepared by PS&S dated January 18, 2016; and

Whereas, GEI submitted a CGA hardship waiver application on July 8, 2016 and submitted additional information on July 19, 2016 and August 1, 2016 (the “Application”); and

Whereas, the Project does not conform to the Central Pine Barrens Comprehensive Land Use Plan (the “CLUP”) Standard 5.3.3.6.1 Vegetation Clearance Limits; and

Whereas, pursuant to the CLUP Standard and the Site’s Zoning District, 25% or 0.98 acres of the Project Site may be cleared; and

Whereas, approximately 6% or 0.22 acres of the Project Site is presently cleared, and the Applicant proposes to clear an additional 47% or 1.83 acres of the Project Site resulting in a total clearing limit of 53% or 2.07 acres of the Project Site, which exceeds the 25% limit of clearing permitted by the CLUP by 28%; and

Whereas, a Site Plan, dated July 11, 2016 and titled “Percent (%) Site Clearing” and prepared by GEI, shows approximate areas of coverage including the substation footprint (17%), the managed right-of-way (22%), a landscape buffer (5%), a stormwater management area (9%), and area to remain “undisturbed and wooded;” therefore, a total of 53% will be permanently cleared and managed and 47% will be retained as existing woodland habitat. The Applicant proposes to reseed, plant, or revegetate 35% of the Site after construction of the Project; and

Whereas, a layout of the Project is illustrated in the Site Plan prepared by PSEG LI dated July 29, 2016; and

Whereas, the Applicant reported that it did not observe listed rare, threatened or endangered animal and plant species on the Project Site.

IV. Public Process

Whereas, on August 17, 2016, the Commission held a public hearing on the Project at which the Commission reviewed the Staff Report and Exhibits prepared for the hearing. The Commission heard testimony and received exhibits from the Applicant and heard testimony from the public. Subsequently, a transcript of the hearing was distributed to the Commission; and

Whereas, during the public hearing, the Commission requested additional information from the Applicant; and

Whereas, the public hearing was closed and a 10-day written comment period was held open; and

Whereas, on August 26, 2016, the Applicant submitted additional information to the Commission to address concerns raised during the hearing including the amount paid for the property, an investigation and evaluation of alternative sites, a right-of-way management plan, an elevation plan, a narrative on the proposed limits of clearing and managed areas, a copy of the letter sent to adjacent homeowners that provided notification of the Project, and the requirements for the 50 foot wide managed right-of-way.

V. The Study Area

Whereas, the Staff Report defined a Study Area consisting of all of the property within a one-half mile radius of the Project Site; and

Whereas, the Study Area contains approximately 600 acres and more than 50% is developed with residential land uses, primarily in the western half of the study area since the eastern portion is in the Core Preservation Area where development is limited. The remaining area contains publicly owned and undeveloped open space. Conservation Easements are recorded on 28 parcels totaling 24 acres in the Core Preservation Area portion of the Study Area. Other developed, non-residential land uses in the Study Area include an active Town park and a public golf course.

VI. Other Required Approvals

Whereas, the Project is an Unlisted Action pursuant to the State Environmental Quality Review Act (SEQRA); and

Whereas, the Applicant requested the Commission be Lead Agency for the Project; and

Whereas, the Commission adopted a resolution to seek Lead Agency on July 20, 2016; and

Whereas, at the Applicant's request, the Commission performed an uncoordinated review of the Project, notwithstanding the July 20th resolution.

VII. Potential Adverse Environmental Impacts

Whereas, the Commission did not identify significant adverse environmental impacts as a result of the Project; and

Whereas, no significant adverse impacts on groundwater or surface waters were identified as the Project will not generate wastewater or other discharges, will not

utilize fertilizer-dependent vegetation in site landscaping and revegetation and is not located adjacent to any wetlands; and

Whereas, no significant adverse impacts on historic and cultural resources is expected as the State Historic Preservation Office did not identify any significant cultural resources as being present on the Project Site and the Project Site does not contain nor is it adjacent to any historic sites or structures; and

Whereas, the Project will not result in any potential adverse impacts on transportation because the Project will generate any high volume traffic nor significantly alter the present pattern of movement of people or goods; and

Whereas, the Project will not generate significant air emissions and therefore will not result in any significant adverse impacts on air resources; and

Whereas, no significant adverse impacts on land are expected as the Project does not involve construction on land where the depth to water table is less than three feet. No grubbing of soil will occur in the 50 foot wide right-of-way. No erosion is expected from vegetation removal as a natural drainage swale will be constructed in lieu of a hard structure drainage basin or retaining wall for stormwater protection. The Project is not located in a Coastal Erosion Hazard Area; and

Whereas, no significant adverse impacts to endangered or threatened species of animals and plants are anticipated as none were identified on the project site; and

Whereas, the managed 50 foot wide transmission line right-of-way (ROW) on the Project Site will initially be cut to a height of three inches and mowed on approximately a four year cycle and mowing height will be six to nine inches. The managed ROW will suppress the height of vegetation that could interfere with overhead electric transmission lines; and

Whereas, no significant adverse impacts to open space will occur because a split rail fence will be installed on the east side of the Project Site adjacent to the Town of Brookhaven open space to avoid disturbance and encroachment on open space; and

Whereas, no significant adverse visual impacts will occur because the Applicant will install evergreen plantings on the West Bartlett Road frontage for natural screening and the substation structures will be setback at least 45 feet from the road; and

Whereas, no adverse impacts are expected on community character and aesthetic resources since the Project Site presently contains a non-residential land use and structures.

VIII. Commission Review of the Act's Extraordinary Hardship Criteria and Applicant's Materials

Whereas, pursuant to the Act, to determine whether an applicant has demonstrated the existence of a hardship, the Commission shall consider, among other things, the criteria set forth in New York State Town Law §267-b and determine whether the Project is consistent with the purposes and provisions of the Act and whether the Project will result in a substantial impairment of the resources of the Central Pine Barrens area and consider the criteria in ECL §57-0123(3)(b); and.

Whereas, the Applicant alleges that it cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence. PSEG LI acquired the Project Site for \$350,000. The Application states, “The Project needs to be centrally located in the load pocket area in order to provide reliable electricity to the service area;” and

Whereas, the Applicant alleges the “Project is not standard development of a commercial or residential building. The Project is unique because it addresses an essential public need and will construct a utility substation to increase service reliability and capacity and meet projected load growth in the Middle Island Area. This will provide an essential health and safety public benefit by providing electrical service to residents, businesses, and service providers in the Brookhaven area;” and

Whereas, the Applicant alleges, “The Project would serve an essential public need because without the new substation and connection to the existing 69kV transmission line, the reliability and capacity of the electric distribution system for over 6,000 residents in the Town of Brookhaven would be compromised, which could jeopardize the health and safety of the public;” and

Whereas, the Applicant alleges it “considered numerous site selection alternatives. Ultimately the substation location needs to be located in the service area near an existing transmission line. Impacts to the existing community were a consideration in the layout and location of the substation equipment. Once construction is complete, landscaped vegetated screening along the perimeter fence will be installed to screen the substation from the surrounding community. In addition, the substation will not result in increased traffic or require sanitary or water supply because it will be an unmanned facility;” and

Whereas, the Applicant alleges, “The electricity demand in the Brookhaven area has increased substantially in recent years. This prompted the first proposed substation near the existing utility line on LIPA property located in the Pine Barrens Core area.

LIPA initiated a search for an alternative property in order to reduce the environmental concerns that would arise with construction of the substation within the Core area. The site selection process was lengthy and considered numerous alternatives and an exhaustive search for a suitable site;” and

Whereas, the Commission has considered all of the materials submitted in connection with the application including the transcript of the public hearing; and

Whereas, the Commission finds the Applicant has established the existence of a hardship because the Project is unique and does not apply to a substantial portion of the district or neighborhood because the size and scale of the Project supports the electricity need for over 6,000 residents, which reduces the proliferation and number of these types of facilities and the requested use variance will not alter the essential character of the neighborhood because of the Project Site’s existing condition and non-residential land use, and the Applicant reuses a site containing a non-residential land use in its existing location rather than constructing a new substation on an undeveloped site. It is on the border of a developed residential community and will not increase traffic in the neighborhood. The installation of natural screening on the West Bartlett Road frontage and setback of structures more than 45 feet from the road are expected to visually buffer the Project from the neighborhood; and

Whereas, the Commission finds the Applicant has established the existence of a hardship because the Applicant’s investigation of alternative sites and projects included the expansion of an existing substation in Coram, which was determined to only satisfy electricity needs for five years, and an alternative site that was considered is in the Core Preservation Area, but the Applicant avoided undertaking the Project in the Core Preservation Area due to environmental concerns. The Applicant reported that other available properties on the market investigated were constrained by grading issues, limited ingress and egress, elevations causing flooding, and distance from an existing transmission line; and

Whereas, the Commission finds the Applicant has established the existence of a hardship and that the Project is designed to be compact, efficient and orderly development in the CGA, consistent with the purposes and provisions of the Act. The Project minimizes clearing, and the Project will retain 47% of the Project Site’s natural vegetation in woodlands that will preserve the character of the Site and buffer the Project from West Bartlett Road and adjacent residential and open space properties. The managed right-of-way and reseeded or planted areas after construction contain 35% of the Site, and the total vegetated area after construction will comprise 83% or 3.2 acres of the Project Site. The Applicant will obtain any and all applicable permits to conform to other Standards of the CLUP; and

Whereas, the Commission finds the Applicant has established the existence of a hardship because the hardship has not been self-created because the electricity demands in the Middle Island area and lack of redundancy and energy transmission facilities is due to electricity demand, partially from infill development that has increased substantially in

recent years, and development projected to occur in the Town of Brookhaven. Furthermore, the Project aims to support existing and future electricity demand by supplying reliable service and reducing risks of customer outages in the load pocket area including Coram, Gordon Heights, Middle Island and Yaphank. The Project is required to be in proximity to and have connectivity capabilities to an existing transmission line, to which the Project Site is immediately adjacent on its northern border. The Study Area is at or nearly at build out in terms of residential or other development and this, coupled with the preservation of open space, has significantly limited the Applicant's access to undeveloped, privately owned, or unprotected properties on which to develop a new substation facility of this size and scale; and

IX. Mitigation

Whereas, the Applicant proposes to reseed or install trees and shrubs on 35% of the Project Site after construction of the Project; and

Whereas, after construction of the Project, the total vegetated area of the Site, including the managed right-of-way, will be 83%.

X. Commission Determinations

Resolved, that the above recitals are incorporated herein and made a part hereof; and be it further

Resolved, that pursuant to SEQRA, a Negative Declaration is adopted for the Project as the Commission has determined that the Project will not result in any significant adverse environmental impacts; and be it further

Resolved, the Project minimizes impacts on the resources of the CGA by retaining 47% of the site's existing natural vegetation and mitigates the Project by reseeding or revegetating 35% of the Site; be it further

Resolved, the Project will conform to all other Standards of the CLUP; and be it further

Resolved, the Commission hereby determines that the Applicant has demonstrated it meets and satisfies the criteria for a CGA Hardship pursuant to the Act because the Project is unique and is designed in a compact and efficient pattern on a Project Site that was previously disturbed and developed with a non-residential land use. The Project will not alter the essential character of the neighborhood and does not apply to a substantial portion of the neighborhood; and be it further

Resolved, the Commission hereby determines that Applicant has demonstrated it meets and satisfies the criteria for a CGA Hardship pursuant to the Act, that the alleged hardship has not been self-created because the Project is proposed to satisfy existing and

projected electricity demand, reduce interruptions, and create redundancy in the transmission system; and be it further

Resolved, that the Application is approved in accordance with the Site Plan prepared by GEI dated July 11, 2016 and the layout illustrated in the Site Plan prepared by PSEG LI dated July 29, 2016, subject to the following specific conditions:

1. The Applicant shall obtain additional permits and approvals, as required by other agencies.
2. The Applicant shall delineate and stake clearing limits on the Project Site prior to disturbance and construction activity on the Project Site and shall keep the stakes installed until after the Project is complete. The Applicant shall notify the Commission office of staking within 48 hours of its completion.
3. The Applicant shall install a split rail fence along the east side of the Project Site, adjacent to the easterly property boundary, prior to commencement of any other physical activity on the Project Site. The Applicant shall notify the Commission office of fencing installation within 48 hours of its completion.
4. The Applicant shall install native tree and shrub species, as per the Application, on the western boundary to screen the Project from West Bartlett Road. The Applicant shall notify the Commission office of planting installation within 48 hours of its completion.

Resolved, this decision applies only to the instant Project and is subject to change if any element of the Project is modified; and be it further

Resolved, this approval shall expire five (5) years from the date of adoption by the Commission, and be it further

Resolved, a copy of this resolution shall be recorded in the Office of the Suffolk County Clerk.

**PSEG LI West Bartlett Substation Compatible Growth Area Hardship Waiver
Middle Island, Town of Brookhaven, SCTM # 200-527-5-3**

Record of Motion:

Motion by: Mr. Romaine

Seconded by: Mr. Shea

In Favor: 4

Opposed: 0

Abstention: 0