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CARVER

Solar fight may end up in court

By [Katheleen Conti](#) | GLOBE STAFF JULY 07, 2013

A two-year battle over a halted commercial [solar project](#) in Carver could end up in court, potentially leading to the first judicial interpretation of a state law that bars communities from unreasonably denying solar projects.

The matter is now before the town's Zoning Board of Appeals, which could decide as early as Thursday whether the town acted appropriately when it revoked a building permit issued to developer Borrego Solar Systems.

In April, the town issued a cease-and-desist order against the company's project near a residential neighborhood on Great Meadow Drive, saying it did not comply with solar zoning regulations that the town adopted after the project had been given the green light.

Borrego representatives filed the appeal a week after that order, contending that the one-megawatt project should be allowed to go forward because it had been approved before adoption of the new bylaw, which regulates where large commercial solar projects should be located.

The appeals board's meeting, which begins at 7 p.m. Thursday, is the first since its members visited the project's five-acre site last month. Whether the appeal is approved or denied, some town officials are certain the issue is destined for a court appeal.

"I know it will," Jack Hunter, the town planner, said of the matter ending up in court.

“At the time when the Planning Board [approved] their site plan review, it was the Planning Board’s opinion that [the project] was allowed by right because we had no [solar] bylaw. Now we have a bylaw, and the owner of the project is claiming he is grandfathered.”

State law says that no local bylaw or ordinance “shall prohibit or unreasonably regulate” large photovoltaic installations, unless the project threatens public health, safety, or welfare. Solar projects are allowed as-of-right, or without the need for a special permit.

If Borrego’s appeal is approved, neighbors said they are ready to continue their fight against the project, said Eric Tobolski, a Leland Way resident who led the way for the town to approve a solar bylaw last year.

“We have options,” Tobolski said. Thursday “is really our last opportunity where we can really speak our piece on this. When it goes to court, we expect it’ll be the lawyers speaking. I’d be surprised if it doesn’t” end up in court.

Representatives at California-based Borrego declined to discuss the appeal or potential future litigation, but issued a statement saying company officials “are working with the town to address concerns and are confident that we will be able to work through any issues that arise. We have every intention of being a good neighbor and a long term taxpayer for years to come.”

Shepherd S. Johnson Jr., the New Bedford attorney representing Borrego in the Carver matter, did not return calls for comment.

Opposition to the project came from residents of the Great Meadow Drive and Purchase Street neighborhood soon after it was introduced in 2011. The neighbors argued that the solar panels would be too close to their homes, posing potential health risks, and that land owner Rock Meadow Development Corp. promised homeowners that the site would eventually be used as a cranberry bog.

In response, the developer agreed to scale back the installation from 3.1 megawatts on seven acres, to one megawatt on five acres along Great Meadow Drive. With no bylaw

regulating solar projects, the Planning Board approved a site plan review for the project in December 2011. The town adopted a solar bylaw one year later.

Earlier this year, crews working for Borrego began removing trees from the vacant lot to get brackets in place for the solar panels. This prompted residents, including Tobolski and his fiancée, Michele Cohen, to petition the Board of Selectmen to intervene.

A legal opinion was sought from town counsel, which indicated the project did not comply with the town's solar bylaw. In April, the town issued a cease-and-desist order, revoking Borrego's building permit.

“Rocky Meadow, and I'm assuming Borrego, kind of tried to put this in without thinking they'd get resident resistance,” Cohen said. “We feel like that was a small victory until the Zoning Board of Appeals could make their decision. We're hoping they see how close it is to residents' homes, and they'll see why we're concerned. It's about 50 feet within the property line of one resident. There are three houses that are direct abutters on Great Meadow Drive.”

Tobolski said he expects about 50 residents to present their concerns to the appeals board Thursday, covering such issues as siting, health, and property values.

“All of us are just against the fact they're putting something commercial, an industrial project, within a residential area that wasn't zoned for it,” he said. “I hope that the Zoning Board of Appeals do what's right and uphold the building inspector's decision to pull the permits.”

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