



# TOWN OF NORTHBOROUGH Zoning Board of Appeals

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## DECISION

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**ZBA CASE NO. 13-02**

**PROPERTY LOCATION: 55 Bearfoot Road**

**PETITIONER and PROPERTY OWNER: Massachusetts Electric Company d/b/a National Grid**

**RECORDED WITH THE WORCESTER DISTRICT REGISTRY OF DEEDS: 16795 Pg: 212**

This document is the DECISION of the Northborough Zoning Board of Appeals on the petition of Massachusetts Electric Company, d/b/a National Grid, for a Special Permit, Groundwater Protection Overlay District to allow the storage and use of four above-ground diesel fuel tanks with secondary containments in Groundwater Protection Overlay District Areas 2 & 3, which is a change and extension of a pre-existing, non-conforming use on the property located at 55 Bearfoot Road, GIS Map 29 Parcel 46.

## APPLICATION

1. On February 5, 2013, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a Special Permit per Section 7-07-010D(3)(b)[1], Groundwater Protection Overlay District, of the Northborough Zoning Bylaw, to allow the storage and use of four above-ground diesel fuel tanks with secondary containment in Groundwater Protection Overlay District Areas 2 & 3, which is a change and extension of a pre-existing, non-conforming use on the property located at 55 Bearfoot Road.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on February 11, 2013 and February 18, 2013, and was mailed to abutters and other parties in interest on February 7, 2013.

## EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

1. Application for Hearing before the Zoning Board of Appeals including:
  - a. A cover letter to the Zoning Board of Appeals from Christopher J. Novak, Counsel, National Grid, dated February 5, 2013;
  - b. Exhibit A: A document entitled "Addendum to Town of Northborough Zoning Board of Appeals Zoning Relief Application, Statement in Support of Special Permit for Property at 55 Bearfoot Road, Northborough, Massachusetts;
  - c. Exhibit B: An 8.5-inch by 11-inch plan entitled "Plot Plan in Northborough, Massachusetts, prepared for National Grid by Hannigan Engineering, Inc., dated April 22, 2009, revised 11/12/12 and 11/27/12, signed and stamped by Larry R. Sabeau, Professional Land Surveyor, on 12/11/2012;
  - d. Exhibit C: Two 8.5-inch by 11-inch color photographs of the Outdoor Diesel Facilities;
  - e. Exhibit D: A letter to the Zoning Board of Appeals from Ransom Consulting, Inc., dated November 7, 2012, Re: Aboveground Oil Storage, signed by Nancy

- E. Marshall, P.E., Project Manager and Timothy J. Snay, Licensed Site Professional; a map entitled "Outdoor Oil Storage, dated November 2012, by Ransom Consulting, Inc.; a document entitled "Attachment A – Photo Log", with six color pictures; and a 4 -page document entitled "Attachment B – Generator AST Specifications" from Global Power Components;
- f. Exhibit E: A document from National Grid entitled "Substation Maintenance Procedure – Oil Handling", dated 02/23/2009;
  - g. Exhibit F: A document entitled "Spill Prevention, Control and Countermeasure Plan" from Massachusetts Electric Co. d/b/a National Grid, for Customer Service Center, 55 Bearfoot Road, Northborough, Massachusetts, dated March 2012;
  - h. Exhibit G: A Quitclaim Deed for Bearfoot Road, Northborough, recorded at the Worcester District Registry of Deeds on December 29, 1994, Book 16795, Page 212;
  - i. Exhibit F: A certified abutters list for parcels 300 feet from 55 Bearfoot Road, including a cover sheet signed by Mary E. Carey, for the Town of Northborough Board of Assessors, dated February 8, 2013; and
  - j. A set of 3 tables for the Customer Service Center, Northborough, MA site, dated March 2012 and identified as follows: Table 1: Summary of Oil-Filled Equipment and Spill Information; Table 2: Spill Cleanup Equipment; and Table 3: Sensitive Receptors;
  - k. A set of 3 color maps identified as follows: an 8.5" x 11" map entitled "Site Location Map, prepared by Ransom Consulting, Inc., Massachusetts Electric Company d/b/a National Grid, for the Customer Service Center, 55 Bearfoot Road, Northborough, Massachusetts, dated March 2012; an 8.5" x 11" map entitled MassDEP – Bureau of Waste Site Cleanup, for the Customer Service Center, 55 Bearfoot Road, Northborough, Massachusetts, dated March 2012; and an 11" x 17" map entitled "Site Plan" prepared by Ransom Consulting, Inc., for the Customer Service Center, 55 Bearfoot Road, Northborough, Massachusetts, dated March 2012.
  - l. Appendix A: Spill Containment and Control Structures, Spill Prevention, Control and Countermeasure Plan, National Grid Customer Service Center, 55 Bearfoot Road, Northborough, Massachusetts, by Ransom Consulting, Inc.;
  - m. Appendix B: Contingency Plan Flowchart, Spill Prevention, Control and Countermeasure Plan, National Grid Customer Service Center, 55 Bearfoot Road, Northborough, Massachusetts, by Ransom Consulting, Inc.; and
  - n. Appendix C: Inspection Forms, Spill Prevention, Control and Countermeasure Plan, National Grid Customer Service Center, 55 Bearfoot Road, Northborough, Massachusetts, by Ransom Consulting, Inc.
2. A 24" x 36" plan entitled "Plot Plan in Northborough, Massachusetts", Prepared for National Grid, 55 Bearfoot Road, Northborough, Massachusetts, by Hannigan Engineering, Inc., Civil Engineering, Inc., Dated April 22, 2009; and
  3. A letter to Richard Rand, Chairman, Zoning Board of Appeals, from Fred Litchfield, Town Engineer, on behalf of the Groundwater Advisory Committee, dated February 22, 2013, Re: 55 Bearfoot Road, Map 29, Parcel 46.

## **HEARING**

Christopher J. Novak, Counsel for the Applicant, Massachusetts Electric Company d/b/a National Grid, presented the Application at a duly noticed public hearing of the Board on February 26, 2013 in Conference Room B of the Northborough Town Offices, 63 Main Street, Northborough, MA 01532. Voting members Richard Rand, Mark Rutan, Fran Bakstran and Dick Kane, and alternate members Robert Berger and Jeffrey Cayer, were present throughout the proceedings.

Chairman Rand appointed Jeffrey Cayer as a voting member for this public hearing.

Representatives from National Grid also present at the meeting were Robert Russell, Manager, Community & Customer Management; Nancy Marshall, Project Manager; Peter Harley, Environmental Manager; and Kris Thebado, Facilities Manager.

Mr. Novak explained National Grid has made improvements to its existing Customer Service and Operations Center located at 55 Bearfoot Road and is seeking a Special Permit to allow the storage and use of two 1500-gallon, one 3000-gallon, and one 6000-gallon above-ground ultra-low sulfur diesel fuel tanks with secondary containment located within Groundwater Protection Overlay District Areas 2 and 3.

Mr. Novak stated the storage and use of fuel tanks, both above-ground and underground, is a pre-existing, nonconforming use which has occurred since Raytheon stored approximately 27,000 gallons of diesel fuel in two underground storage tanks on the site in 1979. The underground tanks were removed in 1992. In 1994, Massachusetts Electric Company purchased the property from the Raytheon Company and has owned the property since then. Mr. Novak explained above-ground tanks were installed in 1996 and 2000 by National Grid and the company believes it was an honest oversight that an application for a special permit was not filed with the ZBA at those times because the use was thought to be accessory in nature.

No one present spoke in opposition to the project and the board received no letters in opposition to the project.

The hearing was closed on February 26, 2013.

## **FINDINGS OF FACT**

1. The subject property is located in the Industrial District and Groundwater Protection Overlay District Areas 2 and 3.
2. The Applicant is seeking a Special Permit to allow the pre-existing non-conforming use of fuel storage in four above-ground storage tanks, collectively referred to as the "Outdoor Diesel Facilities", within Groundwater Protection Overlay District Areas 2 and 3, which are described as follows:
  - a. Two emergency generators, each containing a 1500-gallon, above-ground ultra-low sulfur diesel fuel storage tank with secondary containment;
  - b. One emergency generator containing a 3000-gallon, above-ground ultra-low sulfur diesel fuel storage tank with secondary containment; and
  - c. One 6000-gallon, above-ground ultra-low sulfur diesel fuel storage tank with secondary containment.
3. The use of underground and above-ground fuel storage tanks on the subject property existed prior to Massachusetts Electric Company's acquisition of the site in November 1994, when they purchased it from the Raytheon Company. The Raytheon Company had installed underground fuel tanks on the site in 1979. Therefore, a Special Permit is required per Section 7-07-010D(3)(1)(b), Groundwater Protection Overlay District, Use Regulations, of the Northborough Zoning Bylaw, to

allow the change and extension of the pre-existing, non-conforming use of the above-ground fuel storage tanks, "Outdoor Diesel Facilities", on the subject property.

4. The two-story brick building on the site, known as the Customer Service and Operations Center, contains office space and an employee cafeteria, and is an allowed use in the Industrial District.
5. The Outdoor Diesel Facilities are integral to the operation of the Customer Service and Operations Center, as they provide the fuel required to operate emergency generators that provide electricity and heat necessary for all operations within the Customer Service and Operations Center.
6. The Outdoor Diesel Facilities are filled approximately once per year, under normal circumstances.
7. To prevent contamination of groundwater, the Outdoor Diesel Facilities are located on separate concrete pads and are fabricated with a double-wall construction as a secondary containment measure, which provides exceptional protection from leaks and spills, and prevents any leaks and spills from migrating into the ground and groundwater.
8. The Outdoor Diesel Facilities are constructed, operated and maintained to prevent and minimize the possibility of a release. Prevention measures include protocols for oil handling operations, training, inspections and preventative maintenance. Protocols for oil handling operations are applicable whenever oil is handled during certain maintenance activities or when installing or removing equipment from the property.
9. The double-walled 6,000 gallon diesel tank has monitoring systems that trigger an alarm should there be a leak from the inner tank wall.
10. It is the policy of National Grid to promptly correct visible discharges of oil from equipment and to promptly remove any accumulation of oil in containment areas.
11. National Grid will utilize the Oil Spill Contingency Plan, described in the Spill Prevention, Control and Countermeasure Plan for the Customer Service and Operations Center, in the event of a release from the Outdoor Diesel Facilities into the environment.
12. There is no history of any spills from the Outdoor Diesel Facilities requiring reporting since 1996.
13. In a letter to Richard Rand, Chairman, Zoning Board of Appeals, from Fred Litchfield, Town Engineer, on behalf of the Groundwater Advisory Committee, dated February 22, 2013, Re: 55 Bearfoot Road, Map 29, Parcel 46, the Groundwater Advisory Committee voted unanimously to support approval of the Special Permit.
14. The Outdoor Diesel Facilities are an extension of the pre-existing, non-conforming use of fuel storage tanks installed on the property in 1979. The subject property is in the Industrial District, and is screened by vegetated buffers from Solomon Pond and adjacent residential areas along Colburn Street and Pond View Way. Land uses within the vicinity of the property primarily consist of commercial and/or industrial uses. The site is the ideal location for such facilities because its unique topography improves the safety and security of the contents of the Outdoor Diesel Facilities by providing a level area to ensure their most stable construction and by providing natural containment and limiting the spill radius in the event any contents of the Outdoor Diesel Facilities are released. Therefore, the site is an appropriate location for such use.
15. The accessory use of fuel storage tanks has existed on the site continuously since 1979 and the Outdoor Diesel Facilities continue this pre-existing, non-conforming use with slight modification. The use as developed will not be more detrimental than the pre-existing non-conforming use, and will not adversely affect the neighborhood or the water supply.
16. The Outdoor Diesel Facilities are located within a chain-linked fenced area on the property and are a substantial distance from Bearfoot Road. They will have no impact on traffic along Bearfoot Road as they only require 1 vehicle trip per year, when they are filled. The Outdoor Diesel Facilities do

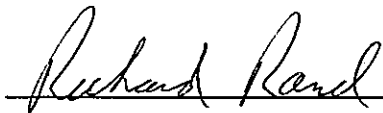
not present visual impacts, as the largest tank is only 8 feet high by 16.7 feet long and is located approximately 300 feet away from the nearest abutting residential property. In addition, except in emergency situations, the Outdoor Diesel Facilities are only operated for twenty minutes once a week for testing. Therefore, there will be no nuisance or serious hazard to vehicles or pedestrians from the use of the Outdoor Diesel Facilities.

17. The use of the Outdoor Diesel Facilities will conform to any special requirements of the special permit granting authority as stated in its written decision.

#### **DECISION**

1. On February 26, 2013, after due consideration of the Application, the Board voted unanimously to **GRANT a SPECIAL PERMIT** per Section 7-07-010D(3)(b)[1], Groundwater Protection Overlay District to allow the change and extension of the pre-existing, non-conforming use of above-ground fuel storage tanks, not to exceed 15,000 gallons, in Groundwater Protection Overlay District Areas 2 and 3, on the property located at 55 Bearfoot Road, GIS Map 29 Parcel 46.
2. On February 26, 2013, after due consideration of the Application, the Board voted unanimously to **GRANT a SPECIAL PERMIT** per Section 7-08-020A, Non-Conforming Uses and Structures, to allow the change and extension of the pre-existing, non-conforming use of above-ground fuel storage tanks, not to exceed 15,000 gallons, as the change in use shall not be substantially more detrimental than the existing, non-conforming use, on the property located at 55 Bearfoot Road, GIS Map 29 Parcel 46.
3. Appeals, if any, from this decision shall be made pursuant to Massachusetts General Laws, Ch. 40A, Sec. 17 and shall be filed within twenty (20) days after the date of filing of this decision in the office of the Town Clerk.
4. The **SPECIAL PERMITS** shall not take effect until a copy of the decision bearing the certificate of the Town Clerk is recorded with the Worcester District Registry of Deeds in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 11 and 15 stating 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 such appeal has been filed it has been dismissed or denied."

#### **TOWN OF NORTHBOROUGH, MASSACHUSETTS ZONING BOARD OF APPEALS**

A handwritten signature in cursive script, reading "Richard Rand", is written over a horizontal line.

**RICHARD RAND, CHAIRMAN**