



Town of Simsbury

933 HOPMEADOW STREET

P.O. BOX 495

SIMSBURY, CONNECTICUT 06070

Thomas F. Cooke - Director of Administrative Services

BOARD OF SELECTMEN MEETING AGENDA SUBMISSION FORM

1. **Title of submission:** Installation of Solar Array at the International Skating Center
2. **Date of submission:** April 17, 2013
3. **Date of Board Meeting:** April 22, 2013

4. **Individual or Entity making the submission:**

Thomas F. Cooke – Director of Administrative Services
Robert M. DeCrescenzo, Esq. – Town Counsel

5. **Action requested of the Board of Selectmen (Acceptance of gift, creation of reserve, approval of contract, information only, etc. Be as specific as possible with respect to the desired action of the Board.):**

The Individual or Entity making the submission requests that the Board of Selectmen:

Authorize the First Selectman to execute the Consent to Solar Power & Services Agreement permitting C-TEC and the International Skating Center to proceed with the installation of a 324 KW solar electric power generation system on the roof of the International Skating Center

6. **Individual(s) responsible for submission (Please include complete contact information. The identified individual(s) should be prepared to present information to the Board of Selectmen at the Board Meeting.):**

Thomas F. Cooke – Director of Administrative Services – (860) 658-3230
Robert M. DeCrescenzo, Esq. – Town Counsel - (860) 548-2600

7. **Summary of Submission** (Include in your summary (i) relevant dates and timelines; (ii) parties involved; (iii) a description of financial terms and conditions specifically identifying the financial exposure/commitment of the Town of Simsbury; (iv) whether or not contracts, licenses and other legal documents have been reviewed by the Town's counsel; and (v) other information that will inform the Board of Selectmen's consideration of your submission. Include any additional information in an attached memorandum.):

At its regular meeting on April 8, 2013 the Board of Selectmen authorized Town Counsel to explore what legal steps would be required to permit installation by CTEC PAA ISC, LLC ("C-TEC") of a solar array on the top of the building currently leased by the International Skating Center ("ISCC"), including the possible amendment of the Town of Simsbury's lease agreement with ISCC. (See attached April 9, 2013 letter from Thomas Cooke to Michael Toro). Town Counsel subsequently conferred with C-TEC and C-TEC's legal counsel. Based on Town Counsel's discussions with C-TEC and his review of the lease agreement, amendment of the lease will not be required to permit installation of the solar array provided:

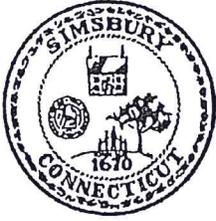
1. ISCC's agreement with C-TEC (the "ISCC/C-TEC Agreement") is amended to provide that removal of the solar array can be required by the Town of Simsbury if the Town's lease with ISCC expires before the ISCC/C-TEC Agreement expires;
2. The ISCC/C-TEC Agreement is modified to require that all electricity generated by the array be consumed on the premises to support the permitted recreational uses identified in the ground lease;
3. The ISCC/C-TEC Agreement is modified to prohibit any mortgage to be placed on the premises as a result of installation of the solar array;
4. As indicated in No. 1 above, ISCC must be willing to commit either to extended rent payments to cover the full period of the ISCC/C-TEC Agreement or, in the alternative, cancelling the ISCC/C-TEC Agreement at the request of the Town; and
5. The Town of Simsbury receives adequate assurances that the Town will be completely protected from any costs or damage to the building in connection with the construction, maintenance, operation or removal of the solar array.

These terms are set forth in the attached Consent to Solar Power & Services Agreement drafted by Town Counsel. The rationale for the provisions of the Consent is more fully set forth in the attached letter from Town Counsel to First Selectman Mary A. Glassman.

8. **Description of documents included with submission** (All documents must be in final form and signed by the appropriate party.):

The following documents are included with this submission and attached hereto:

- April 9, 2013 letter from Thomas Cooke to Michael Toro
- April 17, 2013 letter from Town Counsel to Mary A. Glassman
- Consent to Solar Power & Services Agreement



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P.O. BOX 495

SIMSBURY, CONNECTICUT 06070

Thomas F. Cooke - Director of Administrative Services

VIA REGULAR MAIL AND E-MAIL

April 9, 2013

Michael Toro
Partner
C-TEC PPA ISC, LLC
28 Pinnacle Mountain Road
Simsbury, CT 06070

Re: Installation of Solar Array at The International Skating Center

Dear Mickey:

Thank you for your submission to the Board of Selectmen concerning the potential installation of a solar array at the Skating Center and for your participation at last night's Board of Selectmen meeting. As you know, Simsbury's Town Counsel has rendered an opinion that the Town's lease with the Skating Center may need to be amended to permit the solar panel project to move forward, and it has authorized Town Counsel to work with you to prepare a final submission to the Board of Selectmen at its next meeting on April 22, 2013. It is my understanding that Town Counsel will be meeting with you and representatives of C-TEC on Wednesday to determine what changes, if any, will actually need to be made to the lease.

As you work towards a final proposal, please keep in mind that the Town's engineering and building staff has recommended that the Board's approval be conditioned upon:

- Obtaining the necessary structural and electrical permits from the Simsbury building department;
- Provision of a certificate of insurance from the installation contractor and solar facility operating naming the Town as an insured; and
- A letter confirming that any existing roof warranties will not be affected by the proposed installation.

Thank you for your continuing cooperation with this process – we look forward to bringing it to conclusion on the 22nd.

Regards,

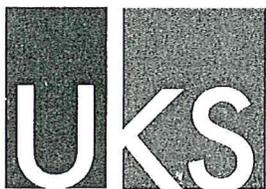
Thomas F. Cooke

cc: Mary A. Glassman – First Selectman
Robert M. DeCrescenzo, Esq. – Town Counsel
Richard L. Sawitzke – Town Engineer

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April 17, 2013

Mary A. Glassman
First Selectman
Town of Simsbury
933 Hopmeadow Street
Simsbury, CT 06070

Re: Proposal to Install a Solar Array
At The International Skating Center

Dear Mary:

You have asked me to review the proposal by the ISCC, LLC ("Lessee") to install a 324 KW solar electric power generation system on the roof of the International Skating Center. The installation of the roof top system will be undertaken by CTEC PAA ISC, LLC ("C-TEC") according to the terms of a 20 year agreement between ISCC and C-TEC entitled "Solar Power and Services Agreement" ("the Agreement"). This is a follow-up to my April 5, 2013 letter on the same subject.

The proposed installation consists of a 324KW solar power generation array on the roof of the International Skating Center. C-TEC has been awarded a 15 year contract from CL&P and has received a signed contract from ISCC to lease the area of the roof for the installation of the array for a twenty year term, subject to Town approval as the Ground Lessor.

After a review of the proposed C-TEC Agreement and discussion with C-TEC representatives, C-TEC has agreed to amend its Agreement with ISCC to address each of the issues identified in my April 5, 2013 letter to eliminate the need to amend the Ground Lease. As a result of the amendments to the Agreement, our recommendation is to consider the C-TEC project proposal and take action on the attached Consent to Solar Power & Services Agreement.

A number of issues addressed in my April 5, 2013 letter have been resolved. First, the term of the Agreement will need to conform to the term of the Ground Lease. ISCC operates the skating center as Lessee under the terms of a Ground Lease with the Town as Lessor dated April 18, 1994 and amended February 24, 2006 and December 11, 2007. The initial term of the Ground Lease is 25 years, which means it expires April 17, 2019 unless extended. The Amended Ground Lease includes four (4) ten year extensions for a total possible term of 65 years. If extended for all four ten-year terms, the Lease will expire April 17, 2059. The term of the C-TEC contract is 20 years. Therefore, if the Lessee does not extend the original term, the Town could take possession of the Premises in 2019 with 14 years remaining on the C-TEC contract. The Agreement will be amended to accommodate the contingency that the Lessee fails to extend the initial term beyond 2019.

Updike, Kelly & Spellacy, P.C.

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Mary A. Glassman
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Second, the Agreement requires a sublease of a portion of the roof of the Premises for the Installation. The Ground Lease specifically limits subleases of the Premises to activities that directly support the recreational use of the property. The use clause's concept of "associated support activities" refers to support of facility patrons' recreational pursuits, not unrelated revenue to the Lessee from the sale of electricity. The Agreement will require that all electricity generated by the Array be consumed on the Premises to support the permitted recreational uses identified in the Ground Lease.

Third, the Ground Lease is very specific regarding the prohibition against financial encumbrances on the Premises. C-TEC has agreed to amend the Agreement to prohibit any mortgage to be placed on the Premises as a result of the installation. The means of financing the solar panel project will involve C-TEC not only retaining title to the fixtures to be installed on the building, but will entail granting a security interest to an as yet unidentified bank or other financing source. Any such security interest will be limited to a consensual lien against the C-TEC owned fixtures and not extend to a lien in any form against the Premises.

Fourth, the Lease generally prohibits encumbrances not expressly allowed. Article X provides for assignment and subletting with the Town's consent, "not to be unreasonably withheld or delayed." The term of the Agreement extends 14 years beyond the initial term of the Ground Lease. The Lessee is willing to obligate itself to pay rent for the period covered by the C-TEC arrangement by committing to an extended term, or in the alternative, canceling the Agreement if the Town requests.

Lastly, the Town will receive adequate assurances that the installation of the equipment will not damage the improvements, make their maintenance, including roof repair and replacement materially more difficult and to be sure there is a source of payment for the eventual removal and decommissioning of the solar panels. C-TEC has agreed to provide such assurances and the Consent requires that ISCC indemnify the Town against costs related to such damage.

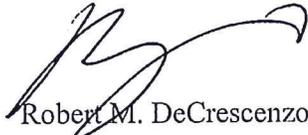


Mary A. Glassman
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I recommend that the Board of Selectmen consider and act on the attached Consent to Solar Power & Services Agreement for the installer to proceed with the Installation to support the recreational use of the Premises.

I trust this responds to your inquiry. Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Robert M. DeCrescenzo, Esq.
Town Attorney

RMDe/psm

