

**Town of Wawayanda Planning Board
December 12, 2018 / 7:30 P.M.**

Members Present: **Barbara Parsons, Chairperson**

Ben Dombal

James Driscoll

Kenneth Kyle

Daniel Long

John Neiger

Members Absent:

Richard Onorati, II

Consultants Present:

William Bavoso, Attorney

David Bavoso, Attorney

Patrick Hines, MHE Principal

The December 12, 2018 Town of Wawayanda Planning Board Meeting was called to order at 7:30 P.M. by Chairperson Barbara Parsons with the Pledge to the Flag.

I. PUBLIC HEARING

Fehring Commercial Solar / SBL# 18-1-107, 108 & 109 / Lot Line Change and Special Use Permit/ JoGee Road / AR-Agricultural Residential Zone

The Certified Return Receipts were collected and recorded, the Public Hearing Notice was read as it appeared in the Times Herald Record.

Motion by Daniel Long, seconded by Kenneth Kyle to open the Public Hearing.

All voting members voted yes

MOTION- CARRIED

The Applicants representative Mr. Mel Farmer gave a brief overview. Mr. Farmer explained that this is a construction of a two-Mega Watt Solar Array. The landowner currently owns three-3 contiguous parcels of land on approximately 60 acres. They are also subdividing three lots into two lots. The main lot which will contain the solar array which is approximately 58 acres and the vacant two-acre lot will be on the side. The solar array will be installed on the down hill portion of the site behind the existing house and barn which meets the towns solar ordinances for property lines and set backs.

The following Town residents had the following comments:

Fred Kirby (Lives next door)

- Said he did not receive a notice (there was a certified receipt in the file showing that the applicant did send one out)
- Not against Solar, but you are clearing everything, feels it is counterproductive, destroying the woodlands and also, this is on a steep hill.
- You are clearing everything but wetlands, taking natural habitat away
- The State wants 50% decommissioning by a certain date.
- There is a habitat loss, using marginal land.
- How are you going to mitigate the trees?
- Which way is the array going to face?
- How much wooded area will you be clearing?

Richard Lyons (Lives directly across the street)

- I'm directly across from that barn, that mess, I'll be eating dinner looking at that mess.
- I'm the only one that is losing for her benefit
- I had to have ten acres to put in a dog kennel, she can just come in here and do whatever she wants.
- You can't tell me that in Wawayanda there isn't an open piece of land. You can build a million-dollar home and I have to look at that.

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- I can sit right there and watch the ducks fly in from my deck. I have hunted deer there for years.
- I'm 76 years old you better have some quick growing trees.
- That piece of property is 900 feet above my other piece of land, they wanted to put the telephone tower there because it is the highest.
- We were supposed to get a view tax.

James Gould (Lives across the street)

- 18 years ago, when I came here to this building, I was told I was in a Ridge Preservation Area. I came here to build my home and was told I couldn't take a tree down without their permission, I was told the house had to be a certain color. I can smell CPV, I look at cell towers and now I'm going to look at 15 acres of metal. I don't think so.
- My property values are way down.
- I was told I pay more property taxes because I have a view
- Property values are down because of all this stuff
- Mr. Gould asked if he was still in the Ridge Preservation Area and Patrick Hines, MHE Principal replied, yes, but those regulations no longer exist (on the color of the house, etc.) They had been amended in the zoning many years ago, 2006 or so. Mr. Gould said that was what he was told, and Mr. Hines said that was the case then. Mr. Gould said, so it just changes with the wind. Chairperson Parsons explained how the zoning amendments get changed and that everyone should pay attention to the issues that come up before the town at the town board meetings.
- This town has plenty of open land, why would you clear 15 acres of trees?
- My property values are already down because of stuff in this town

Fred Kirby:

- It's a matter of putting things in the right place.
- The advantage of Solar is, its not permanent, permanent. The land is still there and it could be used. You located things where it suits them, you don't go in an destroy what's there to put something else in.

- You're destroying wildlife habitat and you're not going to replace that farm.

Hillis Johnstons

- Where is that dirt going, in the stream? You not going to be able to hold all that dirt.
- Talked about berms and site lines, do you have any information on how this has to be done?

Kyle Kessler – 197 JoGee Road

- Spoke to a Fehring representative and discussed the existing buffer
- Spoke about the solar project he has seen and how some are terrible and some are nice and hoping this will be a nice one.
- Asked about the front-line setback and how far away from my house will it be.
- Any pictures of the work you have done in the past?
- How long will construction take?

Barbara Fisher

- Taking down all these trees and it changes the flow of the water; and when it's raining really hard water runs downhill and you are going to flood me out. Flooding Fred's property and possibly mine

Michael Peters – 187 JoGee Road

- For the record, I'm not in favor of this at all.
- I'm sure Mr. Gould and Mr. Lyons view is going to be disturbed, I'm sure they purchased these properties back 15-20 years ago
- Asked about the box, can you move it away from the neighbors? Can't you move it down? Just move it away from the neighbors.

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- There is no vegetation this time of year, good time to do a site visit.
- What is the reflection of all of this, people looking at it from their porches, etc.?

Mrs. Peters – 187 JoGee Road

- What are all the impacts once they don't own it anymore?
- Property values?
- Site Visual lines?
- Want to go on record like everyone else, I have a lot of concerns and want to go on record that I'm not in favor of this project at all.
- What are the impacts once they don't own it anymore?
- Discussing the posting of bonds
- Property values?

Motion by James Driscoll, seconded by Ben Dombal to close the Public Hearing

All voting members voted yes

MOTION - CARRIED

MHE Engineering Comments were discussed as follows:

The following comments are outstanding from the 14 November meeting:

1. Federal Wetlands Delineation is identified as being submitted. Copies of all outside agency submissions should be forwarded to the Planning Board.
2. NYSDEC comments dated 28 November 2018 must be addressed. A notice of incomplete application has been submitted by DEC.
3. Highway Superintendents comments regarding the location of the access road are required.
4. The Applicants were previously requested to address potential habitat for threatened species the Indiana Bat and potential impacts to the Northern Long Eared Bat.

5. Submission has been made to Orange County Planning Department. Orange County Planning comments are outstanding.
6. The Landscaping Plans should be submitted to Bob Hansen's office for review.
7. Jurisdictional Fire Department's comments should be received.
8. The Office of Park's Recreation and Historic Preservation has submitted a no impact letter regarding the project.
9. Status of a pilot agreement discussions with the Town of Wawayanda should be identified.
10. Details of the equipment building and pads must be placed on the plans. The equipment pad identifies See Detail A, however Detail A is not shown on the plan sheets.

The following are comments on the Stormwater Pollution Prevention Plan (SWPPP):

1. A level spreader is depicted on the southwesterly most portion of the site. The purpose of this level spreader should be evaluated. No concentrated flow is discharged at this location.
2. Two sediment basins are identified on the plans. The sediment basins have 10-12 feet of elevation depicted within them. Extensive grading would be required for construction of a sediment basin at this location. Use of the sediment basins and how flow will be tributary to the sediment basins should be further evaluated.
3. The detail for the silt fence should be revised to depict the double row of silt fence identified. Spacing between the silt fence should be specified as well as installation details for the double row specified on the plans.
4. Appropriate notes should be added to the erosion and sediment control plans as mentioned in the SWPPP regarding repeated driving over and limits of disturbance during construction. The amount of grading on the solar fields should be depicted as existing topography shows swales and changes in grade which may affect alignment of the solar arrays as depicted.
5. Section 3 of the SWPPP identifies that timber matting will be utilized to avoid

6. disturbance to wetland areas. If disturbance to wetland areas are proposed details of the timber matting should be identified and impacted wetland areas should be identified on the plans.

II. INFORMAL

Huckleberry Energy / SBL# 4-1-50.2 / Dolsontown Road / MC-1 Mixed Commercial Zone

Ross Winglovitz gave a brief overview of the proposed application. Mr. Winglovitz explained that this is an energy storage development company, they specialize in storing energy, this is managed by Plus Power for a commercial zoned 6.1-acre parcel for battery storage development purposes. The propose improvements include an access road to approximately 35 battery storage containers with associated equipment and a transformer substation. The proposed site will be accessed through a single entrance to be located on Dolsontown Road. This will be monitored 27/7.

MHE Engineering comments were discussed as follows:

1. The project proposes a battery energy storage facility on a parcel of property located in the MC Zone. The project will store energy during off peak hours and distribute that energy into the electrical grid during peak hours. It is requested that the Applicant obtain an interpretation from the Zoning Board of Appeals regarding the compliance of the proposed project with the warehouse storage and distribution portion of the MC Zone. In the alternative the use may be considered an industrial use in the zone based on the ZBA's review of the definition.
2. The site contains areas depicted as wetlands. Status and jurisdiction over these wetlands should be identified.
3. A Stormwater Management Facilities located within the identified wetland areas. It is recommended the applicant remove any construction from the wetlands.
4. Future submissions should contain a Full Environmental Assessment Form to assist the Board in determining potential impacts.

5. The Applicant's representative are requested to advise the Board as to the process equipment needs and hazards associated with the facilities the facility. It is noted that internal access roads are not currently proposed which may be required based on review by the Building Department and/or jurisdictional emergency services.
6. Future plans should address screening and visual impacts of the project.
7. Project will need to be submitted to Orange County Planning due to proximity of the City of Middletown line.
8. The height of any proposed structures should be identified on the plan.
9. The Applicant's should identify if the project is seeking any pilots or other form of taxation relief. Such that those agencies can be included in the SEQRA Land Agency Notice.
10. The capacity of the facility and further details including types of batteries, hours of operation, noise or air discharge, lighting, glare or other items associated with industrial activities should be identified.

A discussion took place with regards to this proposal fitting a particular use in the zone. The board discussed sending the applicant to the Zoning Board of Appeals for an Interpretation to see if this proposed use fits "storage & distribution", or "essential services".

Motion by Daniel Long, seconded by Kenneth Kyle to refer this matter to the Zoning Board of Appeals for an Interpretation of the Use; does this use fit storage and distribution or essential services as defined by the zoning code.

All voting members voted yes

MOTION-CARRIED

III. REGULAR BUSINESS

Masons Store / SBL# 3-1-15 / Co. Rt. 50 / Amended Site Plan /
SR- Suburban Residential Zone

Mr. James Ullrich of Alpine Environment the applicant's consultant

approached the board.

Chairperson Parsons asked for a motion to continue the Public Hearing.

Motion by James Driscoll, seconded by Daniel Long to continue the public hearing.

All voting members voted yes.

MOTION-CARRIED

Mr. Ullrich went over the changes made to the plans per the Public Hearing comments and talked about the lighting and landscaping.

Chairperson Parsons read the bulleted points from a letter by Krissy Pahucki.

Chairperson Parsons questioned what was still being presented to the board and why we still have two parking spaces in the front of the store when we still don't have approval from the County, the parking lot being turned, the landscaping issues and a discussion ensued with Mr. Ullrich about coming together on some of these issues. She felt that we have been discussing this for over a year and a half now and with no real outcome, and she found it very frustrating. Mr. Ullrich stated his stance on the issues and felt that the design of the project meets the code, the town requirements, and that this is not designed by the neighbors. Chairperson Parsons said that she felt that they were not even trying and asked once again to at least try to look at these issues. We have a responsibility to the Town, the Applicant and the Neighbors and we are trying to come to a solution for everybody. I just think you can try to work with the neighbors a little bit better. Mr. Ullrich said that he thought they were.

Mrs. Krissy Pahucki had the following comments:

- We have been asking for a year and a half about turning the parking
- Why can't the parking be moved? Its closer to my house than the restaurant.
- The lighting is still an issue.

Mr. Jack Cassel had the following comments:

- Years ago, I asked the DEC what the deer like for food and they told me Arborvitae, maybe not a good plant for there.

- After the public hearing a lot of comments were made that we want to shut down Masons' Store. That is not true. For me it is a safety issue with the parking spaces in the front of the store, the deliveries. It is just safety. The Turi's are good people, good people and no one want to shut them down.

MHE Engineering comments discussed as follows:

1. Plans which have been resubmitted are not consistent with comments copied to the Planning Board from the Orange County Department of Public Works.
2. A truck turning template should be provided on the plans identifying access to the proposed loading area.
3. Notes should be placed on the plans that the tenants for the third-floor apartment must utilize the existing framed garage. It is reputed that the tenants are currently parking on a gravel parking area recently constructed.
4. During the Public Hearing the neighbors requested a fence be provided along the common property line. This has not been addressed on the recent plan submission. The Applicant's representative is requested to address this issue with the Planning Board.
5. At the previous Public Hearing piles of stone were depicted deposited reputedly on neighboring properties. This should be addressed on the plans.
6. A note on the plans identified 26 parking spaces required while 37 are provided. The parking calculations identify 37 parking spaces required. Two of the provided parking spaces appear to be within the County right-of-way, inconsistent with County DPW review comments. The Applicant's representative is requested to re-evaluate available and required parking.
7. Landscaping Plans should be forwarded to the Town's Landscape Architect Consultant.

Motion by James Driscoll, seconded by Daniel Long to adjourn the Public Hearing until January 23, 2019.

All voting member voted yes

MOTION-CARRIED

Miedema Commercial Solar / SBL# 22-1-2.1 / S. Centerville Road/AR-Agricultural Residential Zone

Chairperson Parsons explained to the Board, that we received a letter from Maple Valley Farms, who borders the Miedema property. They did not get notified of the hearing as the property was recently sold and the notice went to the original owner. So, I'm going to allow her to speak.

Sara Waddons on Reiss Road approached the board and explained to them that this solar farm backs right up to my property, the property line is literally 200 ft. from my house. We bought the Sautter Horse Farm. Ms. Waddons spoke directly with the applicant's representative (Lindsey McEntire) who was at the meeting this evening and they discussed screening on the property line and she gave Ms. Waddons her a business card to contact her so they can go look at the issue.

MHE Engineering comments were discussed as follows:

1. Comments from the Town's Landscape Architect Consultant should be received on the plan.
2. A gate previously requested by the Planning Board has been added in the vicinity of the access drive.
3. A Stormwater Pollution Prevention Plan identifying no net increase in post development run off based on the use of pervious materials for the access road and modification of the site from areas which were previously forested to areas which will be grass/ or herbaceous vegetation. The transition from forested land to herbaceous cover reduces runoff from those portions of the site creating a net zero increase in runoff. Construction phase stormwater management and soil erosion sediment control have been incorporated into the SWPPP. This office will process the Municipal authorization upon receipt of application from the Applicant's representative.
4. County Planning advisory comments were received. The Applicant has provided responses to each of the County Planning comments.
5. Bonding for the decommissioning plan is required.
6. Site inspection fees and environmental fee must be submitted prior to stamping of the plans.
7. Status of Pilot Agreement with Town of Wawayanda should be discussed.

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A discussion on the Pilot and the board has authorized David Bavoso to prepare a resolution for the January 10th, 2019 meeting and Patrick Hines will prepare a Negative Declaration.

Dean & Barbara Ford / Solar Array / SBL# 25-1-16.21 / AB – Agricultural Business Zone / Co. Rt. 12

Mr. Mel Farmer from Stantec approached the board and the board wished to discuss the two Ford Solar projects together.

MHE Engineering comments were discussed as follows:

1. Response letter does not contain information regarding Item #16 & 17.
2. De-commissioning Plan utilizes a boiler plate sample from the NYSERDA website. This plan should be updated as appropriate and prepared a site-specific de-commissioning plan.
3. Plans should be submitted to the Town Landscape Architect Consultant to review the visual screening proposed. Currently a monoculture of a single species is proposed. It is unclear if these plants are deer resistant.
4. County DPW approval for the access road is required.
5. A Flood Plain Development Permit will be required, as majority of the project is located below base flood elevation. Applicant's representative is requested to discuss impacts of potentially flooding of the solar array.
6. Landscaping details should be provided on the plan.
7. The Applicants are requested to address how electrical distribution lines will cross the drainage ditch as not to be disturbed.

Motion by Daniel Long, seconded by James Driscoll to set a public hearing for January 23, 2019.

All voting members voted yes

MOTION-CARRIED

Review continued forward on Dean & Steven Ford / Solar Array / SBL# 27-1-11 / AB – Agricultural Business Zone / Co. Rt. 12

MHE Engineering comments were discussed on this project as follows:

1. The Applicants have submitted a Long Form EAF for the project utilizing the DEC's web-based form. Several species either threatened or endangered are

identified on the form. The Applicant's representative is requested to evaluate each of the species and provide the appropriate analysis as to potential impacts and mitigation proposed.

2. The EAF identifies the project is within an area potentially containing historic/archeological sites. Information pertaining to this should be evaluated and a report submitted to the Planning Board and Office of Parks, Recreation, Historic Preservation.
3. A de-commissioning plan has been provided with a total cost of \$60,200.00 with a cost for inflation over 20 years of \$98,900.00. It is requested that the Applicant provide the back-up information for the estimate. The Applicant had provided the cost estimate verbatim from the NYSERDA Power Authority. This is a generic example which should be modified by the Applicant's for a site specific based on actual site-specific construction related activities, rather than utilizing the example in the NYSERDA document.
4. County referral and County DPW approval for access drive is required.
5. Landscaping plans should be submitted to the Town's Landscape Architect Consultant for review.
6. Various reports are identified in the re-submission as to be provided. The Planning Board looks forward to receiving the environmental reports regarding cultural resources and threatened and endangered species. The Planning Board should be copied on all correspondence and reports to outside agencies.
7. The Response Plan identifies that no impact to drainage ditches will occur, however solar arrays appear to cross several drainage districts on the site. Temporary sediment basins are identified as being installed within these drainage ditches.
8. We question the use of temporary swales on the site. These swales may cause sediment and erosion control issues rather than reduce the impacts based on the amount of disturbance.
9. A flood Plain Development Permit will be required for work within the regulated flood plain below the base flood elevation. Issues regarding flooding of the arrays and any hazards associated with this should be discussed.
10. David Bavoso's comments regarding the ability to obtain a Building Permit when access is only available via easement should be addressed.

Motion by Kenneth Kyle, seconded by Daniel Long to set a Public Hearing for January 23, 2019.

All voting members voted yes

MOTION-CARRIED

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Sheeley's Car Wash / Referral Motion to ZBA

When the applicant was on the September 26 2018 agenda, we never made the formal motion to refer the applicant, so that is why this is on for tonight.

MHE Engineering comments discussed as follows:

1. Applicant is requesting referral to the ZBA. Our 26 September 2018 comments could be incorporated into the referral to the ZBA. Further review of the project will be undertaken if ZBA interpretation allows the project to return.

Motion by Daniel Long, seconded by Kenneth Kyle for the board to refer Sheeley's Car Wash to the ZBA for an Area Variance for a second entrance from Dolsontown Road.

All voting members voted yes

MOTION - CARRIED

MIDDLETOWN NISSAN / Referral Motion to ZBA

This is the same as Sheeley's, we talked about sending the applicant to the ZBA but never made the formal motion.

Motion by Daniel Long, seconded by Kenneth Kyle for the board to refer the applicant to the Zoning Board of Appeals for and Area variance for the buffer and for an Interpretation/Variance for a reuse of building at the setback line.

All voting members voted yes

MOTION-CARRIED

IV. OTHER BUSINESS

Ridgebury Farms Extension Request

Motion by James Driscoll, seconded by Ben Dombal for a six-(6) month extension request, to expire in June 2019.

All voting members voted yes

MOTION-CARRIED

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Approval of Minutes for August 8 and August 22, 2018

Motion by Daniel Long, seconded by Kenneth Kyle to approve the minutes from August 8 and August 22, 2018 as submitted.

All voting members voted yes

MOTION – CARRIED

Motion by Daniel Long, seconded by John Neiger to adjourn the meeting of December 12, 2018.

All voting members voted yes

MOTION – CARRIED

The December 12, 2018 Town of Wawayanda Planning Board meeting was adjourned at 9:14 P.M.

Respectfully Submitted,

Patricia Battiato
Secretary to Planning