

Town of Harpersfield Planning Board

Minutes: **April 26, 2023**

Present: D. Darling, W. Keller, F. Ciulla, A. Gallagher and D. King

Also present: L. Page, N. Brower, Robert McKertich (Coughlin and Gerhard, attorney), Robert Chiappisi (Delaware Engineering), Laurie and Russ Bedford, Susan Fortier, Joe and Chris Ferla, Ted Dziewit, Henrich Zahn, Thomas Kendall, Colleen Bisceglia, Sean Murphy, Carrie Sloan, Kristin Basile, Robin and Robert Jirn, Teddy Kopajds and Jacqui Murray (attorney Blue Wave) and two others for Blue Wave, who did not sign in.

D. Darling called the meeting to order at 7 p.m..

A. Gallagher will be a voting member in the absence of K. All.

Minutes of the March 29, 2023 meeting were approved as presented on a motion by F. Ciulla and second by D. King. Motion carried 5-0.

Ted Dziewit was present for the public hearing on his unlisted subdivision application off Middlebrook Hill Road. D. Darling read the public hearing notice published in the April 14, 2023 edition of the Daily Star and it was noted the notice incorrectly identified the subdivision as being off Wilcox Road. D. Darling noted the correction.

N. Brower presented the proposed subdivision to the Delaware County Planning Board in April and they voted to approve the subdivision.

No one from the public offered any comment.

The subdivision is located at 844-1166 Middlebrook Hill Road and is subdividing 25.34 acres from a much larger parcel located on the opposite side of the roadway. Exact address is unknown as nothing exists at that location yet. T. Dziewit turned in the mail receipts and paid \$30 of the \$60 application fee and has \$30 outstanding due to the fact he was working with older paperwork. The fee has increased since that time.

A motion was made by D. King, with a second by W. Keller to close the public hearing.

Members of the planning board reviewed the short environmental impact statement.

The review resulted in no significant adverse environmental impact.

On a motion by D. King, with a second by A. Gallagher, a negative declaration, that there are no significant adverse impacts be made. Motion carried 5-0.

On a motion was made by W. Keller, with a second by F. Ciulla, to approve the subdivision as presented. Motion carried 5-0.

D. Darling provided a brief update on Mountaintop Airfield LLC site plan application. The application is on hold due to the applicant not replenishing the escrow account established for the engineering consultant and attorney. A motion was made by W. Keller, with a second by F. Ciulla, to table the application until the attorney advises otherwise. Motion carried 5-0.

The continued hearing for the Bruce Hill solar projects was convened and Jacqui Murray was introduced as the attorney for Blue Wave Solar working on the projects and was present to help with questions.

Part I of the full Environmental Impact Statement forms was reviewed by the planning board last month with recommended changes. An updated version was sent electronically. Parts II and III were completed after last month's meeting with the planning board consultants, attorney and engineering. The Stormwater Pollution Prevention Plan (SWPPP) reviews have not yet been received, due to a snafu at the office and Delaware Engineering has not reviewed it yet.

W. Keller then explained that he would like to see a condition in the permit on the SWPPP regarding contour plowing and his concern over groundwater recharge underneath the panels. His concern is not about erosion.

After discussion with S. Murphy and C. Bisceglia, who said they could not agree to something that may cause them problems in meeting the state Department of Environmental Conservation (DEC) permit criteria. J. Murray was asked to draft a condition to include W. Keller's request.

R. Chiappisi of Delaware Engineering had a concern regarding the building permit and S. Murphy recommended the planning board hire an engineering consultant to review the ongoing permit.

A row of trees has been added for screening at the request of the landowner.

A motion was made by A. Gallagher, with a second by W. Keller, to close the public hearing on the site plan application for the Blue Wave Bruce Hill Road Solar. Motion carried 5-0.

A motion was made by A. Gallagher, with a second by W. Keller, to close the public hearing on the site plan application for Bruce Hill Road, Solar B. Motion carried 5-0.

J. Murray proposed a condition or language to consider the groundwater recharge in the SWPPP as recommended by W. Keller.

D. Darling then reviewed the changes made on Phase I of the full EAF from last month. For the EAF Part I, the following changes were made to the form submitted to the planning board in March, as follows:

C.2.c (Page 2P Acknowledged existence of Delaware County Agriculture and Farm Protection Plan although not a municipal plan.

C.4.c (Page 3) Added Stamford Joint Fire District

D.1.b (Page 3) Changed total acreage from 231 to 321 for consistency.

D.1.g (Page 4) Changed height to 18 feet – This was the height in the original SEQR and will allow for agricultural uses.

D.2.r (Page 8) Added tonnage and treatment for construction waste

E.1.a (Page 9) Checked Aquatic and Commercial. Added language related to nearby machine shop.

E.1.c (Page 10) Checked yes to public recreation and added language related to snowmobile trail being relocated.

E.2.q (Page 12) Checked yes to hunting and added language

For the EAF Part 2 (Appendix 2) and Part 3 (Appendix 3), the applications provided drafts of these documents to Delaware Engineering and Coughlin & Gerhart. Their comments have been incorporated into the revised documents. We will bring hard copies of these documents for each board member to the next meeting for review and comment.

J. Murray will add a condition or language at part 1a of the SWPPP.

Planning Board members then reviewed Parts 2 and 3 of the EAF. D. Darling noted the applicant had checked the boxes, but the planning board will ensure the checks are in the correct boxes.

A motion was made by D. King, with a second by W. Keller to make a declaration there are no adverse environmental impacts on the Bruce Hill Road Solar project. Motion carried 5-0

A motion was made by D.King, with a second by W. Keller to make a declaration there are not adverse environmental impacts on the Bruce Hill Road Solar B project. Motion carried 5-0.

There was discussion about the decommissioning plan and when it should be periodically reviewed to ensure the costs are covered "down the road".

There are a total of seven conditions for each of the projects which D. Darling read into the record, as follows:

BWC Bassett Brook LLC Bruce Hill Road Solar

1. As part of the Building Permit application, the Applicant will provide the following documentation:
 - a. The SWPPP be prepared with an effort to employ stormwater management devices allowed by the New York State Department of Environmental Conservation stormwater design manual that promote groundwater recharge and do not increase discharge into the trout stream, which SWPPP shall be reviewed by the town's designated engineer and approved by the NYS DEC.
 - b. Driveway/access permit from the town highway department.
 - c. Interservice agreement with New York State Electric and Gas Corporation.
2. Prior to the start of construction, the applicant will submit financial assurance, in the form of a performance bond, surety bond, irrevocable letter of credit or other form of financial assurance in the amount of \$158,725, for review and approval by the Town of Harpersfield Code Enforcement Officer. In this submission, the applicant will commit to updating the financial assurance at 15 years after approval of the plan and no less frequently than every five years thereafter.
3. During construction and operation, the applicant will adhere to their submitted Operations and Maintenance Plan. If this document needs to be revised, the applicant will seek approval from the Code Enforcement Officer.
4. The applicant will install Knox boxes at the entrance to allow for access by emergency services.
5. The applicant shall continue to replenish the escrow account held by the Town to cover the cost of

review by the town designated engineer of materials required as a condition of and as part of the Building Permit for the Project until building permit issuance.

6. Prior to commercial operation of the solar facility, the applicant shall provide access and training for access and Knox box codes to the fire and EMS agencies that serve the location of the facility.

7. The conditions and requirements of site plan approval shall be binding on the applicant, its successors and assigns.

BWC Bassett Brook LLC Bruce Hill Road Solar B

1. As part of the Building Permit application, the Applicant will provide the following documentation:

a. The SWPPP be prepared with an effort to employ stormwater management devices allowed by the New York State Department of Environmental Conservation stormwater design manual that promote groundwater recharge and do not increase discharge into the trout stream, which SWPPP shall be reviewed by the town's designated engineer and approved by the NYS DEC.

b. Driveway/access permit from the town highway department.

c. Interservice agreement with New York State Electric and Gas Corporation.

2. Prior to the start of construction, the applicant will submit financial assurance, in the form of a performance bond, surety bond, irrevocable letter of credit or other form of financial assurance in the amount of \$ 96,175 for review and approval by the Town of Harpersfield Code Enforcement Officer. In this submission, the applicant will commit to updating the financial assurance at 15 years after approval of the plan and no less frequently than every five years thereafter.

3. During construction and operation, the applicant will adhere to their submitted Operations and Maintenance Plan. If this document needs to be revised, the applicant will seek approval from the Code Enforcement Officer.

4. The applicant will install Knox boxes at the entrance to allow for access by emergency services.

5. The applicant shall continue to replenish the escrow account held by the Town to cover the cost of review by the town designated engineer of materials required as a condition of and as part of the Building Permit for the Project until building permit issuance.

6. Prior to commercial operation of the solar facility, the applicant shall provide access and training for access and Knox box codes to the fire and EMS agencies that serve the location of the facility.

7. The conditions and requirements of site plan approval shall be binding on the applicant, its successors and assigns.

A motion was made by A. Gallagher, with a second by D. King, to approve the site plan application for the BWC Bassett Brook Bruce Hill Road Solar project with the seven conditions noted. Motion carried 5-0

A motion was made by A. Gallagher, with a second by D. King, to approve the site plan application for the Bruce Hill Road Solar B project with the seven conditions noted. Motion carried 5-0.

The final decommissioning plans were received electronically on Wednesday.

The public hearing for the Weaver Road Solar project was opened, with K. Sullivan present along with Mr. Winter and one other, who did not sign in on the sign in sheet.

They discussed the contour plowing with W. Keller. They have proposed a diversion channel but the design plan is not yet complete. They will send it when it is fully designed.

Some distances were added from the tree line and will be added to the plan.

The snowmobile trail will also be considered, along with pre and post construction fire training.

They are still working on the landscaping plan and neighbors are reviewing.

W. Keller said the viewscape is one of the concerns and the area is enclosed by spruce trees. Even with the tree cutting, he said he was surprised he could not see any houses. He could see the Reeves house on Fisher Road and believes there is a small area where the panels can be seen.

C. Ferla shows the view from Fisher Road and she said they never received the photos they had requested from various vantage points. She submitted the photos.

S. Fortier is concerned about increased water draining onto her property. D. King explained to S. Fortier that the diversion ditch would alleviate the water problems she has at her home.

Carrie Sloan then took the floor to address several issues, such as landscaping, etc.\

- The landscaping plan should include seeding, shrubs, fence details (e.g. fixed-knot woven wire or other wildlife-friendly fencing), berms or other landscaping features in addition to the 66 proposed trees. Additionally, a long-term landscape maintenance plan should be provided that outlines regular maintenance activities, including mowing, tree trimming, replacement of dead vegetation, and any other methods such as grazing (I do not otherwise see this information in the Operation and Maintenance piece of the Project Summary).

In our last meeting, Delaware River Solar Engineer Kelly Sullivan suggested that we all take a look at the Landscaping Plan and bring to today's meeting our related recommendations. I have looked at the Landscaping Plan and contextual documents, and propose the following which is consistent with what surrounding towns are requiring in order to ensure forw

- Trees to be included in screening shall be tolerant to the given soil conditions and native and non-invasive species of evergreen, at a minimum of 8' tall and 3" in diameter at breast height. The Landscaping Plan proposes that most trees will not be 8' tall and does not reference diameters; more than half of the trees proposed like well-drained soil and do not thrive in wet sites (not ideal given that they'll be planted at the edge of a wetland); and more than 1/3 of the trees proposed are deciduous and so will be bare during a significant part of the year.
- The landscaping plan needs to ensure maximum buffering and screening of the panels that are visible from Route 23 and neighboring residences. The Project Summary says that if necessary, vegetation will be planted around the Project Site to minimize visual effects; what has been proposed is not sufficient. The solar facility should create a buffer that has an offset, double row of densely growing evergreens with the addition of some smaller trees and shrubs in front to create more of a naturalized hedgerow habitat. The purpose of the double row is to provide additional screening early while the trees are still small. (The landscaping plan shows only a limited number of trees in a single row to be planted

between the panels and neighboring houses, and none to be planted between the panels and Hwy 23; additionally, it will take years for that row of trees to provide any screening).

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- Setbacks should adhere to the following (based on the scale bar in the landscaping plan, it would appear that setbacks should be increased):
- >100ft between structures/equipment and any wetlands, ponds, and streams
- >200ft between structures/equipment and the parcel boundary line with any non-participating property, public road or public area.
- >500ft between structures/equipment and the exterior of any occupied residence located on a non-participating property.

Goal #4 of our Comprehensive Plan says that commercial growth must be compatible with the environment and negative impacts of new development on existing residences and other important natural features should be eliminated or mitigated. Honoring these buffers - as required in nearby towns – to protect wetlands and neighboring residences will strengthen your statement (provided in your March 23rd letter to Mr. Darling) of evidence of compatibility with the Town of Harpersfield Comprehensive Plan.

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- Solar panels should not be placed on slopes of 15% or greater (the available plans indicate areas with slopes >15%). This is a recommendation for solar farms generally, and in our Comprehensive Plan (Goal 6a, part C) it specifically discourages development on very steep slopes (defined as >15%) to minimize erosion and excessive runoff, and protect unique terrain and scenic resources.

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- Removing trees should be avoided. The EAF states that the project site covers 29 acres and that trees will be removed for 20 acres: 12ac cleared + 8ac trimmed. In our Comprehensive Plan, it is noted that it is extremely important to preserve large trees at new commercial sites. Avoiding tree removal will strengthen your statement (provided in your March 23rd letter to Mr. Darling) of evidence of compatibility with our Comprehensive Plan.

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- Should some tree removal be unavoidable, clear cutting of trees more than 6” in diameter at breast height in a single contiguous area exceeding 20,000 square feet should not be allowed. It is not clear from the project documents what species/size trees are being removed. In the site plan (#19) it says that, "the landscaping plan should show existing natural features ... such as single trees eight or more inches in diameter located within any area where clearing will occur." This was marked "N/A", but this does apply and should be included.

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- The design, construction, operation, and maintenance of the solar system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks. I understand a glare test is supposed to have been conducted by today's meeting, and should confirm that this is the case.

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- Studies show that “photovoltaic system failures have the potential to supply a significant amount of uncontrolled energy to the racking, building structure, or ground, often resulting in fires” (Envista Forensics), and all areas of the proposed project should be readily accessible for fire, emergency services and police protection. While we have established in prior meetings that the suggestion is to not intervene and let the fire burn, the risk of fire spreading to neighboring residences should be recognized and addressed. In the plans, the emergency access and turnarounds are placed through the middle of the panels. In the March 23 Bergmann letter to Mr. Darling, it states that “preliminary discussion with the Fire Chief had this road location approved”; does this mean the Fire Chief does not think there should

be emergency access between the panels and the neighboring residences?

Not specifically related to the Landscaping Plan, but of equal concern are critical components such as public liability insurance; water testing (pre-construction and regularly thereafter) and remedy for nearby landowners if necessary; underground utility lines; maintenance expectations and timelines for broken/collapsing panels and/or sinking posts; project access upon request for local Code Enforcement Officers and Building Inspectors; consequences for failing to maintain the agreed-upon terms or for taking action against the established terms (e.g. clear cutting trees against the policy); etc.

And finally, for the Planning Board, our Comprehensive Plan says that “In order to keep current with conditions in our community, this Comprehensive Plan should be reviewed every five years.” Given that the plan is now 20 years old, and current conditions in our community have changed since that time, it seems that an update is past due.

Planning Board members praised her for an excellent presentation which W. Keller indicated is exactly the sort of input that is needed.

C. Ferla then commented that the studies and articles she has submitted to the planning board and that the town attorney Kevin Young told them this board has the authority to make restrictions, regarding set backs, etc., if you are inclined to protect wetlands, forests and wildlife. She submitted the town board minutes from January 10, 2017.

She wanted to correct a statement made Councilman Patrick Funk at last month’s meeting regarding the Monarch Butterflies. She said they use the trees. There is the eagle’s nest within 600 feet of the project. The construction phase is extremely loud and can be heard from ½ to 1 mile. He was wrong, trees next to the wetlands shouldn’t be cut down. (She submitted a USDA article regarding the Monarch Butterfly Conservation Strategy, The Science Imperative for Defending Small Streams and Wetlands; Importance of small wetlands for the persistence of local populations of wetland-associated animals; Effects of Timber Harvest on Amphibian Populations; Limitations of Regulated Buffer Zones for the Conservation of Marbled Salamanders; Recommended Buffers Based on Proposed Activity and Site Conditions)

She contends the orientation of the panels and the depth to bedrock questions have never been answered.

The calculation for solar facilities stormwater runoff findings are different than for other projects. The fragipan is very shallow, with the orientation of the panels, there is a 40 percent increase in the runoff. They have to calculate for solar and do it at an ideal site. (See submission: Where does the water go?)

S. Fortier referred to pile driving and her fear the vibrations will do damage to the structure of her home.

K. Sullivan said she has looked for a vibration study, driving the panels and there is no data on it. There have never been any problems in the 50-plus projects with much different soils than here, with lower depth to bedrock.

She also said there is only one steep shelf in the project area, which is 1 percent of the site and there is no advantage to avoiding it. 90 percent of the panels are on slopes of less than 10 percent.

C. Sloan said there is a limit of capacity with a finite number of solar farms that can exist in one area. The substation limits the capacity and the projects proposed will use up that capacity. There will be no other developers unless they expand the capacity – which does not happen in the solar world.

K. Sullivan said she attempted to research the Delhi project, but found no public information available.

A. Gallagher made a motion, with a second by W. Keller, to adjourn the public hearing on the Weaver Road solar project until next month. Motion carried 5-0.

Laurie and Russell Bedford were present with maps, proposing a subdivision and then a boundary line adjustment to re-contour the divisions of the farm and aligning the parcels. The property sits on both sides of County Rt. 29 near the hamlet of North Harpersfield.

A motion was made by F. Ciulla, with a second by W. Keller, to classify it as a minor unlisted subdivision. Motion carried 5-0.

A motion was made by W. Keller, with a second by F. Ciulla to hold a public hearing on the subdivision next month. Motion carried 5-0.

A motion was made by D. King, with a second by W. Keller, to present the subdivision to the county planning board. Motion carried 5-0

A motion was made by D. King, with a second by A. Gallagher, to adjourn at 11:28 p.m. Motion carried 5-0.

Respectfully submitted,

Liz Page
Recording secretary