

Town of Harpersfield Planning Board

Minutes: **June 28, 2023**

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

Also present: L. Page, N. Brower, R. Chiappissi, R. McKertich, Laurie and Russ Bedford, Kelly Sullivan (Bergmann), Steven Weiner, Joe Ferla, Chris Ferla, Harry L. Browning, Len Marigliano, Steve Pushkul, John Toroni, Rich Winter, Mary Anokrasinski, John Miller, Hoaille Kentarouds and Teddy Kopanos

The minutes of the May 31, 2023 planning board meeting were approved as presented on a motion by W. Keller, with a second by F. Ciulla. Motion carried 4-0.

D. Darling reported that the attorney and consultant for NYSafety Track and Mountaintop Airport have asked for a public hearing to be scheduled for the July meeting to review a site plan.

A motion was made by D. King, with a second by F. Ciulla, to schedule a public hearing on a revised site plan proposal by NYSafety Track/ Mountaintop Airfield. Motion carried 4-0.

The public hearing for a proposed solar project off Weaver Road by Delaware River Solar continued with the applicant. K. Sullivan reported that the information on the decommissioning plan has been updated.

A color coded map has been presented delineating the areas of tree removal and areas where trees will remain. W. Keller asks for a maintenance plan to retain the height of the trees and when to go back and trim the trees. K. Sullivan said they would come four times per year to observe the condition of the trees and cover. W. Keller wants a preference to leave the trees as high as possible in the buffer and to keep them at the maximum height they can be without blocking sunlight from the solar panels and that there be regular maintenance. R. Winter said there would be maintenance inside the buffer three times per year, but not even annually outside the buffer. R. Winter said the plan can be updated. R. McKertich said it could be made a condition for approval.

Both the attorney and the consultant have reviewed the decommissioning plan. R. McKertich said the dismantling and removal of the materials is estimated to cost more than \$163,750 and will increase to more than \$335,100 after 30 years in an escrow account, or if it ceases operation for a certain length of time.

There were questions from the public as to how those figures are reached and what would have if the arrays were destroyed. There is a formula supplied by NYSERDA regarding decommissioning costs. As for any damage to the arrays, insurance would be used to rebuild.

W. Keller said his concern is that taxpayers not be responsible for any costs and referred to last month's discussion on having an annual escalator. M. Chiappissi explained it is done according to the NYSERDA guidelines. It is their recommendation for a review after 15 years and then every 5 years. M. McKertich said the project owner is responsible and the escalator is 2.5 percent annually. They pay the increase into the escrow account each year. He answered a question from the public that the

decommissioning plan requires the land to be returned to the condition it was prior to the facility being constructed.

R. Winter said the applicant must remove all the materials and restore the land and grade the area. He said they could not plant 50-year-old trees. In answer to a question from the public, he said any contamination at the site is the applicants responsibility to remove any contaminants. Materials are removed to a landfill according to NYSERDA guidelines.

A member of the public said the figures for the decommissioning seem low. Ania Miller said everything is being said without providing precise numbers and she reads terrible things about what these solar farms can cause. We want to make sure the landowners are protected. She said that's why the public is asking for laws to be put in regarding solar arrays.

D. Darling said the planning board is working to make sure this site is being developed the best way it can.

The question was again asked how can the planning board be certain who will be responsible if the company is no longer around.

D. Darling said they only have the information for this site.

S. Weiner said he attempts to attend as many town board meetings as he can. He said costs have risen and questioned if the \$300,000 over 30 years will cover the company walking away from the project.

N. Brower said it is based on the cost estimates of the cost of the goods today and there are steps to adjust those figures if things change through the review conditions. There are build in reviews to adjust the figures if needed.

S. Weiner said it will be difficult to play catchup if the figures are low and asked why the planning board couldn't require a larger number.

W. Keller explained the planning board is required to do it in a certain way. The NYSERDA estimates are driving the projects. We are re viewing the best we can and we can't make the law to change it.

D. Darling said that is a town board issue. The consultants and attorney have developed the best decommissioning plan and the planning board has to move forward.

S. Fortier asked about contamination downstream from the project and how to compensate for that.

R. McKertich provided an example. Laws exist to prevent contamination according to the state Department of Environmental Conservation and other regulatory agencies. It is like any other use where anything violates state law.

F. Ciulla said no one knows what is going to happen in the future. He suggested beginning the review of the numbers in five years rather than 15 years..

R. Winter said NYSERDA can't project 5 years out. It is not yet an operating facility. 15 years is reasonable and 5 years is too onerous. He offered a compromise at 10 years.

D. Darling said the planning board can make it a stipulation.

S. Fortier asked why he was making the compromise when we are making the decision.

C. Ferla said Delaware River Solar contends there will be little, if any impact, despite their application where they describe the condition of the site in part as "forested habitat". They offer nothing other than the lack of documentation of the presence of endangered species on the site to support this claim. Bats have been added to the list of species that can be potentially affected, along with the Monarch butterfly. The list changes and should be checked periodically, with the Northern long-eared bat now on the list. It was added to the list since last fall. See Endangered species attachment...

In the review process, not only are impacts on endangered species considered, but impacts on non-threatened and non-endangered species are of concern as well.

Every time I bring up habitat I am told Fish & Wildlife have no endangered species listed, but it impacts the common large area of habitat. There are pages and pages to answer regarding the impact on plants and animals, which she has submitted over the course of the public hearing. She refers to item number 7 in the environmental assessment form workbook where a proposed action may result in impacts on the predominant species using the site or impacts large areas of habitats that are not fragmented. See submission Question 7 Impact on Plants and Animals....(attached)

She again referred to the Wetland and Watercourse Protection Measure from the Department of State's website (attached)

She contends there will be substantial interference with the acres of trees to be removed, fencing placed and conversion of more than 10 acres of land to another land use. It will change the ecology and all of those things apply to this site. It is not an isolated stand of trees, but it is surrounded by wetlands and will impact the biodiversity.

Her statement is attached....CF 6/27/23

Also attached is Question 7 of the Full Environmental Assessment Form Workbook and Wetland and Watercourse protection measures.

This board has the authority to impose restrictions as long as there is sound reasoning behind it, she concluded.

M. Chiappisi said the questions in Part II of the EAF, provides for documents from the state DEC on how to score those impacts.

There was discussion about the endangered species listings and the fact the state DEC updates it and it should be checked from time to time. C. Ferla said the monarch butterfly has been reclassified and she believes the long eared bat has the potential to live there.

K. Sullivan said the Monarch Butterfly is not listed as endangered, they did change the plantings to a mixture to feed pollinators and butterflies. They also redid the types of trees, including species that already exist in the area, such as cherry and dogwood. She said they were taking directives from the public and attempting to mitigate their concerns.

Another gentleman asked if the electric lines are strong enough to carry the increased power being produced.

M. Chiappisi said there are no line upgrades scheduled.

W. Keller said these sites are selected due to the capacity of the lines to carry the electricity and D. Darling said there must be connectivity to the line for the planning board to consider the project.

The same gentlemen said the current line can take a 5 megawatt project and asked that if another plant goes in, it would require a new substation.

R. Winter answered that these projects are at the capacity of the current substation.

M. Chiappisi said NYSEG receives hundreds of requests, many of which are not approved. This project does have an interconnect agreement with NYSEG, which means they do have the capacity.

The gentleman then referred to the 2003 master plan where it refers to any business or commercial development must be consistent with the nature of the surrounding area. This project will be highly visible and is close to homes and is a huge commercial development.

W. Keller said he is partially responsible for the Comprehensive Plan and the planning board would like to update the existing plan. Stuff is going to happen that no one could think of and this is an attempt to address something that is going on - the line is here and this fits in with what we are doing. If we try something counter to that plan, the Department of State will be on it. It is not against or counter to the farms.

M. Chiappisi said he was asked to review and look at the town's Comprehensive Plan. Conventional zoning was not wanted at that time. It is an attempt to balance growth with property rights. It encourages alternative energy sources. The planning board is following the comp plan. If you want zoning, you have to pass a zoning code. It's not a bad think. The planning board can review.

S. Fortier said the bottom line is that it benefits the developer and that is why they are pushing so hard on this environmentally sensitive site.

A. Miller asks what the plan is for taking the vegetation down. There will be no chemicals used.

R. Winter said the vast majority of the area will be mowed. In other locations goats are used to keep vegetation down.

In answer to a statement that no elevation drawing were received, it is posted online.

A. Miller said another company wanted to build a solar project on the same area - what happened to that? M. Chiappisi said that plan was not a good plan with three times the number of panels. The process for approval was never completed.

D. Darling asked if there were any new questions from the public.

On a motion by W. Keller with a second by D King, the public hearing on the Weaver Road Solar Project was closed at 8:287 p.m.. Motion carried 4-0.

Members of the planning board then reviewed Part 2 of the SEQRA, with R. Chiappisi going through each item and adding comments at certain places in the Part 2 form. While M. Chiappisi has made his comments, anyone from the board may question or change those comments and it is their decision how

to answer the questions.

W. Keller said he wants a note or an appendix that highlights it is going to impact on the surface water, which will impact the groundwater and the wetlands. The Storm Water Pollution Prevention Program provides for guttering and changes to the footprint. M. Chiappissi cautioned that in identifying it as an impact, they must determine the duration of the impact. M. McKertich asked if it is a moderate to large impact or is it a regulatory change W. Keller is seeking, which would be a condition as it was on the previous projects.

W. Keller referred to 8 a as a four-foot square ditch filled with gravel that defeats the purpose, because it will hold that much more water and minimize the volume to be recharged rather than to have a level spreader. I want a condition that gravel is going to change the 1-4 and it defeats the purpose and it is not good for agriculture. We need to know what that soil is like.

M. Chiappissi said the duration is temporary and it is reversible.

W. Keller said it has a moderate impact to the trout stream it is feeding, to keep the gravel out of there.

K. Sullivan said the applicant has no choice but to install the level spreaders. It could be made a condition on the site plan application that the stockpiling of any soil from agricultural land be grouped by soil types 1-4.

W. Keller asked where the conditions will be made. It isn't noted anywhere and it needs to be recognized. It will be noted as a condition in the Site Plan Review.

W. Keller made a motion the project will result in no significant impact on the environment. With a negative declaration under the SEQRA for the Delaware River Solar Project of Weaver Road. The motion was seconded by F. Ciulla. Motion carried 4-0.

Planning board members reviewed the checklist for the site plan review. The Ag Data Statement was signed by the Delaware County Planning Board on Jan. 24, 2023 and went through the review of the county planning board.

M. McKertich reads through items 1-4 of the standards for approval under the town's Site Plan Law.

He then listed the conditions for approval.

The 10 conditions for approval include, the following.

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 NYS Department of Transportation.
 - c. Inter-service 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 in accordance with the Decommissioning Plan for review and approval by the Town of Harpersfield Code Enforcement Officer.
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 request a Knox box code application to the Stamford Fire Department, which serves the location of the facility.
7. The conditions and requirements of site plan approval shall be binding on the applicant, its successors and assigns.
8. Tree and vegetation removal in the tree cutting area shall be no more than necessary to allow sunlight to access the solar array and be no less than 12 feet in height.
9. The Decommissioning Plan shall be subject to review and the approval by town planning board, to account for inflation and increased costs five years after approval and every five years thereafter.
10. The applicant shall store onsite all soil if classified within soil group 1-4 for use upon decommissioning.

A motions was made by W. Keller, with a second by D. King, to approve the site plan for the Weaver Road Solar Project proposed b Delaware River Solar with the conditions noted in the official minutes of the town planning board's June 28,2023 meeting. Motion carried 4-0.

S. Fortier requested I return the petitions she submitted during the meeting and thanked "all" for destroying her life and she hopes the next project is built next to their house.

The meeting was adjourned at 10 p.m. on a motion by F. Ciulla and second by D King. Motion carried 4-0.

Respectfully submitted,

Liz Page
Recording secretary