

MEMBERS PRESENT: PLANNING: KATHY COLE, CLARA MULLIGAN, BRIAN THORN, THOMAS MCGOVERN, KATHY MANNIX, CHRISTOPHER STERNER

TOWN: DAVID LEFEBER, JIMMY HARRINGTON, MALACHY COYNE, PAUL DROZDZIEL

ZBA: JEFF MULLIGAN, JEFF PASSARELL, BOB WESTFALL, DIANE ATTEA, CINDY KELLEN

ABSENT: TOM MAIRS

OTHERS: BRIAN GLISE (CEO, AVON), LANCE BRABANT (MRB ENGINEER), JIM CAMPBELL (TOWN ATTORNEY)

VISITORS: MATTHEW ELDRED (HSE), SCOTT HARTER, GARY TODD HYDE, JANET WARD, GARY T. WHEAT, KEVIN OVERTON (HB), JOYCE BLOWERS, RONALD BLOWERS, LAURA MCCABE, PAT RIO, DAVID PECK, EDMUND MARTIN, CHRIS BILL, DOM BENNETT, RAGID ODZAKOURE, MICHAEL J. FURIA, JASON ARMBREWSTER, NICK WALSH, BRYAN BAYER, GLENN THORNTON

CLERK: KIM MCDOWELL

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DAVID LEFEBER, TOWN SUPERVISOR, CALLED THE MEETING TO ORDER AT 7:00PM AND LEAD EVERYONE IN THE PLEDGE OF ALLIGANCE.

ZBA & PLANNING MOTION TO APPROVE THE MINUTES FROM THE NOVEMBER 22, 2021, MEETING SUBMITTED WAS MADE BY BOB; SECONDED BY TOM MCGOVERN.

JEFF MULLIGAN - AYE  
CINDY KELLEN- AYE  
BOB WESTFALL- AYE  
DIANE ATTEA - AYE  
JEFF PASSARELL - AYE

KATHLEEN COLE -AYE  
THOMAS MCGOVERN - AYE  
VACANT -  
KATHLEEN MANNIX - AYE  
CLARA MULLIGAN - AYE  
BRIAN THORN - AYE  
CHRISTOPHER STERNER - AYE

CARRIED 11-0.

ZBA MOTION TO APPROVE THE MINUTES FROM THE FEBRUARY 16, 2022 MEETING SUBMITTED WAS MADE BY CINDY; SECONDED BY JEFF PASSARELL.

JEFF MULLIGAN - ABSTAIN  
CINDY KELLEN - AYE  
BOB WESTFALL- AYE  
DIANE ATTEA - AYE  
JEFF PASSARELL - AYE

CARRIED 4-0.

AVON CSG 1 LLC ACTING AGENT FOR STARKEY DRIVE HOLDINGS LLC & PHILIP SILVAROLE/5530 WOLCOTT DRIVE/TAX PARCEL #44.-1-36.4 - SOLAR FARM-PUBLIC HEARING

Nick Walsh, Dimension Renewable Energy, and Bryan Bayer, C&S Companies, were present to discuss this application.

Mr. Walsh stated Dimension Renewable Energy is a solar developer and owner of solar distributed generated assets, they have about 400 MW under development around the Country. This project is 4.25MW DC project on a 27-acre parcel north of Agar Road and west of Starkey Drive. At this point all studies have been completed and there is an agreement with National Grid in place. This is a PDD zoned parcel, and we are looking to keep the process moving forward tonight.

Mr. Bayer's company has done the civil and environmental work on this project, wetlands lineation on site, submitted joint application for permits to the Army Corps of Engineers and the NYS DEC, SWPPP, and coordinate project with the State Historic Preservation Office which determined the project has no impact. We have completed our due diligence consistent with the Town's code and requirements.

Kathy Cole asked if he could discuss the buffer planned for the house on Lakeville Road that was brought up a few meetings ago. Mr. Bayer did a view shed analysis and submitted it. Kathy Cole asked if they feel they could address it properly since the house sits high and the field is lower than the house. Mr. Bayer feels they are doing everything to minimize the visual impacts from that house.

Clara Mulligan asked what tree species they are planning on planting; she is requesting they are native to the area. Clara stated she does have a list of trees that are native if they want it. Mr. Bayer stated they try and get native trees for the area, and they need to make sure they don't get too tall since shading would affect the panels output. Clara also is requesting mixed species and they will do the best they can to do that.

Malachy Coyne asked if there is recourse if the planted trees die; Mr. Bayer stated in the Operations and Maintenance plan there is a condition if that event happens. Malachy also asked if it was bonded, and it will be.

Lance Brabant stated that whatever this Board approves regarding landscaping will be referenced in the operations and maintenance plan and the applicant will need to follow those plans.

James Harrington stated at the Town Board meeting the applicant said the trees would be a minimum of 6 feet tall at planting and will these shrubs be available when you are ready to plant them. Mr. Bayer stated they do try to get a minimum of 6 feet to start and they are outsourcing them to make sure they are available when needed for the project.

James Campbell suggested a motion to open the public hearing take place now.

ZBA & PLANNING MOTION TO OPEN THE PUBLIC HEARING WAS MADE BY KATHY COLE; SECONDED BY DIANE ATTEA.

JEFF MULLIGAN - AYE  
CINDY KELLEN- AYE  
BOB WESTFALL- AYE  
DIANE ATTEA - AYE  
JEFF PASSARELL - AYE

KATHLEEN COLE -AYE  
THOMAS MCGOVERN - AYE  
VACANT -  
KATHLEEN MANNIX - AYE  
CLARA MULLIGAN - AYE  
BRIAN THORN - AYE  
CHRISTOPHER STERNER - AYE

CARRIED 11-0.

Clara Mulligan asked if the emergency plan has been approved and Lance Brabant stated it has.

Jeff Mulligan asked if there were any comments from the public and please state your name and address before speaking.

Mrs. Joyce Blowers, 5378 Lake Road, Avon, NY, she asked when you put the trees in at 6 feet, how many years do the neighbors have to wait till maturity and screen what they are intended to. Mr. Bayer feels they will provide benefit right upon planting.

Kathy Cole asked if there were any other comments and there were none at this time.

Kathy Cole asked if we should close the public hearing since there are no additional comments and James Campbell stated we should leave it open for any additional comments.

Kathy Cole asked if we should proceed with the resolutions and Lance Brabant agreed.

Lance Brabant has drafted several resolutions for the Board's consideration. Lance stated we haven't received any objections for the Planning Board to be lead agency on this application and that can be declared tonight.

TOWN OF AVON PLANNING BOARD RESOLUTION  
AVON CSG 1 LLC SOLAR PROJECT  
STARKEY DRIVE, AVON, NY  
TAX MAP ID: 44.-1-36.12 & 44.-1-36.4  
SPECIAL USE PERMIT & PRELIMINARY/FINAL SITE PLAN REVIEW

SEQR - DESIGNATING LEAD AGENCY

WHEREAS, the Town of Avon Planning Board (hereinafter referred to as Planning Board), is considering Special Use Permit Approval & Site Plan allow for the development of the Avon CSG 1 LLC Solar Project (Project), a proposed 4.37-megawatt (MW) alternating current (AC) solar photovoltaic (PV) project located within the Town of Avon. The proposed Project will be located on ± 27-acres site as described in the Site Plans dated October 2020, last revised February 18, 2022 (the current application) and all other relevant information submitted and discussed at the February 21, 2022 Joint Planning Board and ZBA Meeting; and

WHEREAS, the Planning Board has determined the proposed action referenced above to be a Type 1 Action under Part 617 of the State Environmental Quality Review (SEQR) Regulations; and

WHEREAS, the Planning Board has on Monday, October 25, 2021 declared its intent to be designated the Lead Agency for the proposed Action under the provisions of the State Environmental Quality Review (SEQR) Regulations; and

WHEREAS, the Planning Board has provided written notices to this effect to the involved and interested agencies; and

WHEREAS, the Planning Board has not received any written objections from the involved agencies to the Board's being designated as the lead agency under the SEQR Regulations; and

WHEREAS, the Planning Board has previously determined that it is the most appropriate agency to ensure the coordination of this Action and for making the determination of significance thereon under the SEQR Regulations.

NOW, THEREFORE BE IT RESOLVED that the Planning Board does hereby designate itself as the lead agency for the Action identified above herein;

The above resolution was offered by Thomas McGovern and seconded by Brian Thorn at a meeting of the Planning Board held on Monday, February 21, 2022. Following discussion thereon, the following roll call vote was taken and recorded:

Kathleen Cole - AYE  
Vacant -  
Kathy Mannix - AYE  
Christopher Sterner - AYE  
Clara Mulligan - AYE  
Brian Thorn - AYE  
Thomas McGovern - AYE

I, Kim McDowell, Clerk of the Board, do hereby attest to the accuracy of the above resolution being acted upon and recorded in the minutes of the Town of Avon Planning Board for the February 21, 2022 meeting.

Kim McDowell, L.S.  
Kim McDowell, Clerk of the Board

Lance Brabant stated now the Board needs to go through the EAF Part II and answer the questions. Lance has provided the draft to all the Board members, and he read each of the 18 sections to all those present. Questions #1, #3, #8, #13, #15 were all answered yes but the sub-questions were answered with no or small impact may occur; questions #2, #4, #5, #6, #7, #9, #10, #11, #12, #14, #16, #17, #18 were all answered no so no sub-questions needed to be asked.

Lance Brabant stated the next part is the EAF Part III and before signing this we need to do our SEQR Determination of Significance Resolution.

TOWN OF AVON PLANNING BOARD RESOLUTION  
AVON CSG 1 LLC SOLAR PROJECT  
STARKEY DRIVE, AVON, NY  
TAX MAP ID: 44.-1-36.12 & 44.-1-36.4  
SPECIAL USE PERMIT & PRELIMINARY/FINAL SITE PLAN REVIEW

SEQR - DETERMINATION OF SIGNIFICANCE

WHEREAS, the Town of Avon Planning Board (hereinafter referred to as Planning Board), is considering Special Use Permit Approval & Site Plan allow for the development of the Avon CSG 1 LLC Solar Project (Project), a proposed 4.37-megawatt (MW) alternating current (AC) solar photovoltaic (PV) project located within the Town of Avon. The proposed Project will be located on ± 27-acres site as described in the Site Plans dated October 2020, last revised February 18, 2022 (the current application) and all other relevant information submitted and discussed at the February 21, 2022 Joint Planning Board and ZBA Meeting; and

WHEREAS, the Planning Board has determined the above referenced Action to be a Type 1 Action pursuant to Part 617 of the State Environmental Quality Review (SEQR) regulations; and

WHEREAS, the Planning Board determined that said Action to be subject to a coordinated review and approval by other involved agencies under SEQR Regulations; and

WHEREAS, the Planning Board has been designated the lead agency, under the provisions of Part 617.6 (3) and (4) of article 8 of the State Environmental Conservation Law; and

WHEREAS, the Planning Board has given consideration to the comments provided by the involved agencies and interested agencies at tonight's meeting; and

WHEREAS, the Planning Board has completed its review of Parts 2 and 3 of the Full Environmental Assessment Form (EAF); and

WHEREAS, the Planning Board has given consideration to the criteria for determining significance as set forth in Section 617.7 (c) of the SEQR Regulations and the information contained in Parts 1, 2 and 3 of the Full EAF.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board does hereby accept the findings contained in Parts 2 and 3 of the Full EAF and directs the Planning Board Chairperson to sign and date the Full EAF Part 3.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board has reasonably concluded the following impacts are expected to result from the proposed Action, when compared against the criteria in Section 617.7 (c):

- (i) there will not be a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;
- (ii) there will not be large quantities of vegetation or fauna removed from the site or destroyed as the result of the proposed Action; there will not be substantial interference with the movement of any resident or migratory fish or wildlife species as the result of the proposed Action; there will not be a significant impact upon habitat areas on the site; there are no known threatened or endangered species of animal or plant, or the habitat of such species; or, are there any other significant adverse impacts to natural resources on the site;
- (iii) there are no known Critical Environmental Area(s) on the site which will be impaired as the result of the proposed Action;
- (iv) the overall density of the site is consistent with the Town's Comprehensive Plan land use recommendations;

- (v) the site is will not negatively impact an identified archaeological sensitive area;
- (vi) there will not be an increase in the use of either the quantity or type of energy resulting from the proposed Action;
- (vii) there will not be any hazard created to human health;
- (viii) there will not be a change in the use of active agricultural lands that receive an agricultural use tax exemption or that will ultimately result in the loss of ten acres of such productive farmland;
- (ix) there will not be a larger number of persons attracted to the site for more than a few days when compared to the number of persons who would come to the site absent the Action;
- (x) there will not be created a material demand for other Actions that would result in one of the above consequences;
- (xi) there will not be changes in two or more of the elements of the environment that when considered together result in a substantial adverse impact; and
- (xii) there are not two or more related Actions which would have a significant impact on the environment.

BE IT FURTHER RESOLVED, based upon the information and analysis above and the supporting documentation referenced above, the proposed Action **WILL NOT** result in any significant adverse environmental impacts.

BE IT FINALLY RESOLVED, that the Planning Board does hereby make a Determination of Non-Significance on the proposed development, and the Planning Board Chairman is hereby directed to sign the Full Environmental Assessment Form Part 3 and issue the Negative Declaration as evidence of the Planning Board's determination.

The above resolution was offered by Christopher Sterner and seconded by Thomas McGovern at a meeting of the Planning Board held on Monday, February 21, 2022. Following discussion thereon, the following roll call vote was taken and recorded:

Kathleen Cole - AYE  
 Vacant -  
 Kathy Mannix - AYE  
 Christopher Sterner - AYE  
 Clara Mulligan - AYE  
 Brian Thorn - AYE  
 Thomas McGovern - AYE

I, Kim McDowell, Clerk of the Board, do hereby attest to the accuracy of the above resolution being acted upon and recorded in the minutes of the Town of Avon Planning Board for the February 21, 2022 meeting.

Kim McDowell \_\_\_\_\_, L.S.  
 Kim McDowell, Clerk of the Board

Lance Brabant stated that Kathy Cole can now sign Part III of the EAF, he will post that on the NYS board and send it for our records. Lance stated SEQOR is now complete for this project.

Lance Brabant feels the next steps would be to continue this application to the next Board meeting on March 21, 2022 to evaluate for site plan approval.

Lance Brabant feels the Town Board can weigh in on the Special Use Permit for this application now or later.

David LeFeber feels we should do it now since we are here tonight.

Lance Brabant asked James Campbell if the Planning Board needs to close the public hearing or leave it open and James stated to leave it open.

James Campbell addressed the Town Board; the proposed site is currently zoned Planned Development District (PDD) our code doesn't permit as a permitted use large scale type 2 solar in any zone except for agricultural zoned properties. The Town Board can determine uses that are appropriate for PDD as stated in the code under section 130-18H. James had prepared a resolution that he sent out to the Board members before the meeting. The applicant is asking the Town Board to approve this use within the PDD as well as approval for deviations from our solar code regarding setbacks on front, side, and rear of the property.

James Campbell read the resolution to everyone present.

**TOWN BOARD  
TOWN OF AVON  
COUNTY OF LIVINGSTON**

### **RESOLUTION**

**At a special meeting of the Town Board of the  
Town of Avon, Livingston County, State of New York,  
held at the Avon Town Hall on February 21, 2022**

**WHEREAS, the Code of the Town of Avon (hereafter "Code") establishes the zoning classification of Planned Development District (hereafter "PDD") as set forth in §130-18 thereof; and**

**WHEREAS, the intent of the PDD is to permit the development of land for commercial and industrial purposes where tracts of land suitable in location, area and character for the uses and structures proposed are to be planned and developed on a unified basis; and**

**WHEREAS, the Town Board has the authority and responsibility under §130-18 to approve of all uses contemplated in a PDD; and**

**WHEREAS, after initial approval, construction and occupancy of a PDD, §130-18 H. provides that the Town Board shall approve any changes in use by way of a special permit; and**

**WHEREAS, Avon CSG 1, LLC (hereafter "Applicant") is the contract vendee of two parcels of property known as 5530 Starky Drive, Avon New York, also known as Tax Identifier Map Parcel Nos.: 44.-1-36.4 and 44.-1-36.12 (hereafter "Subject Property") both of which parcels are located in a Planned Development District (hereafter "PDD"); and**

**WHEREAS, pursuant to §130-18 H. of the Code, Applicant is seeking approval from the Town Board to use a portion of the Subject Property to construct and operate a 4.25 MWdc/3.625 MWac ground- mounted Solar Energy System; and**

**WHEREAS, it is the duty of the Town Board under §130-18 H. of the Code to determine if Solar Energy Systems are an appropriate use in the subject PDD, and if so, to issue a Special Permit for the same; and**

**WHEREAS, the Applicant is requesting that as part of the approval of the use and issuance of a Special Permit, that the following development parameters be made a part of such approval:**

- **That the Solar Energy System proposed by Applicant be allowed within the PDD (Solar Energy Systems are only allowed within the Agricultural District) in which the Subject Property is located**
- **Front setback to be 100' from Starky Drive (instead of 200' as required pursuant to the Town's Solar Energy System regulations**
- **Side and rear setbacks to be 50' from the side and rear boundaries of the parcels (instead of 100' as required pursuant to the Town's Solar Energy System regulations**

**WHEREAS, the Town Board acknowledges that the Town of Avon Planning Board, as lead agency, conducted an appropriate environmental review under 6 NYCRR 617 (New York State Environmental Quality Review Act) and at the conclusion of such review, issued a Negative Declaration regarding Applicant's proposed Solar Energy System, which is the subject of this Resolution; and**

**WHEREAS, the Town Board has determined that the SEQR review conducted by the Planning Board is sufficient and appropriate with regard to the proposed application and the same shall be relied upon by the Town Board in the place of the Town Board conducting its own SEQR review; and**

**WHEREAS, the Town Board wishes to memorialize and specify the parameters of its approval of Applicant's request for issuance of a Special Permit pursuant to §130-18 H. of the Code.**

**NOW, THEREFORE, upon motion by James Harrington, seconded by David LeFeber, it is hereby**

**RESOLVED, the Town Board determines that the SEQR review conducted by the Planning Board is sufficient and appropriate with regard to the proposed application and the same is herein relied upon by the Town Board in the place of the Town Board conducting its own SEQR review; and**

**BE IT FURTHER RESOLVED, that the Town Board of the Town of Avon, pursuant to §130-18 H. of the Code, hereby approves of Applicant's request to construct and operate a 4.25 MWdc/3.625 MWac ground-mounted Solar Energy System on the Subject Property (to the limited degree specifically stated herein) and authorizes a Special Permit to be issued to Applicant by the Code Department to the following extent and upon the following conditions:**

1. **Any construction and operation of the proposed Solar Energy System shall be fully compliant with the requirements and regulations as set forth in Article XV of the Code of the Town of Avon, excepting that the Town Board does hereby approve of the following deviations from that which would otherwise be required by Article XV, sections 130-80 E. and 130-80 E. (2)(b):**
  - **That the Solar Energy System proposed by Applicant be allowed on the Subject Property within the PDD (Solar Energy Systems are only allowed within the Agricultural District)**
  - **That the front setback be 100' from Starky Drive (instead of 200' as required pursuant to §130-80 E.(2)(b) of the Town's Solar Energy System regulations**



- That the side and rear setbacks be 50' from the side and rear boundaries of the Subject Property (instead of 100' as required pursuant to the Town's Solar Energy System regulations
2. Should Applicant or his successors and/or assigns wish to utilize any portion of the Subject Property or the improvements thereon for a use other than what is provided for above, or in any way inconsistent with the provisions made herein, Applicant or its successors and/or assigns shall be required to make application for approval and issuance of a Special Permit from the Town Board, which such approval and Special Permit may be granted or denied at the sole discretion of the Town Board, and the Town Board shall have the right to refer any such application to the Planning Board for its comments prior to making a determination on the special permit request;
  3. As a condition of the limited approvals granted herein, Applicant, its successors and/or assigns shall append, affix and maintain a copy of this Resolution to the abstract of titles relating to the Subject Property, also known as 5530 Starky Drive, Avon New York, and being Tax Identifier Map Parcel Nos.: 44.-1-36.4 and 44.-1-36.12;
  4. Any failure of Applicant or its successors and/or assigns to comply with the provisions of the Special Permit approved hereby shall subject the violator to enforcement proceedings set forth under Article XI of Chapter 130 of the Code and/or revocation of such special permit by the Town Board; and

**BE IT FURTHER RESOLVED**, that in reaching the above determinations, the Town Board makes the following findings pursuant to §130-18 H. of the Code:

- The request is in harmony with the general purpose and intent of the regulations set forth in §130-18 H. of the Code, taking into account the location and size of use, the nature and intensity of the operations involved and the adequacy of public facilities needed to serve the project; and
- The granting of the special permit applied for will not, under the circumstances of the particular case, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or be detrimental or injurious to the property and improvements in the vicinity or to the general welfare of the Town; and

**BE IT FURTHER RESOLVED**, that the above approval of a Special Permit and use applies only to that portion of the Subject Property containing the proposed 4.25 MWdc/3.625 MWac ground- mounted Solar Energy System and appurtenant improvements and infrastructure serving such Solar Energy System as contemplated by the plans and drawings for the same in existence as of the date of approval of this Resolution and that any future construction of additional improvements that in any way expand the approved use will require separate and additional action by the Town Board at its sole discretion, as well as approval of a Site Plan amendment from the Town of Avon Planning Board and Special Use Permit amendment from the Town of Avon Zoning Board of Appeals as applicable; and

**BE IT FURTHER RESOLVED**, that the granting of this approval for issuance of a Special Permit pursuant to §130-18 H. of the Code is contingent and conditioned upon Applicant receiving approval of a Site Plan by the Town of Avon Planning Board and approval of issuance of a Special Use Permit by the Town of Avon Zoning Board of Appeals to construct the subject 4.25 MCac/3.625 MWac ground-mounted Solar Energy System.

Should Applicant be denied approval of the Site Plan or Special Use Permit, or should applicant fail to advance its applications to the Avon Planning Board and Zoning Board of Appeals within twelve (12) months of this resolution, this resolution and the Special Permit authorized hereby shall automatically terminate, become void and be of no effect at law.

BE IT FURTHER RESOLVED, that the granting of this approval for issuance of a Special Permit pursuant to §130-18 H. of the Code is contingent and conditioned upon Applicant (or an entity created for that purpose) taking title to the Subject Property.

BE IT FURTHER RESOLVED, that a copy of this Resolution be formally made a part of the files maintained by the Town of Avon relating to the Planned Development District in which the Subject Property is located.

Dated: February 21, 2022

Vote of the Board:	David LeFeber	<u>AYE</u>
	Thomas Mairs	<u>ABSENT</u>
	Malachy Coyne	<u>AYE</u>
	Paul Drozdziel	<u>AYE</u>
	James Harrington	<u>AYE</u>

BY ORDER OF THE TOWN BOARD  
OF THE TOWN OF Avon

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Sharon Knight, CMC/RMC  
Town Clerk

David LeFeber asked James Campbell when the Special Use Permit is considered by the ZBA, in March the Planning Board will review the site plan but when will ZBA review this. James Campbell stated they will most likely do it in March along with the Planning Board. David stated the public hearing is still open and James confirmed it is.

David LeFeber asked if the Town Board has fulfilled it's obligations for this application and James Campbell stated yes.

Lance Brabant asked if the Town Board is okay with the Planning Board to continue with this application to the March 21, 2022 meeting. Lance wrote the resolution as if the public hearing would be closed tonight and Kathy Cole asked him to change the resolution to reflect the continuation of the public hearing to March meeting.

TOWN OF AVON PLANNING BOARD RESOLUTION  
AVON CSG 1 LLC SOLAR PROJECT  
STARKEY DRIVE, AVON, NY  
TAX MAP ID: 44.-1-36.12 & 44.-1-36.4  
SPECIAL USE PERMIT & PRELIMINARY/FINAL SITE PLAN REVIEW

CONTINUATION RESOLUTION

WHEREAS, the Town of Avon Planning Board (hereinafter referred to as Planning Board), has received an application for Special Use Permit Approval & Site Plan Approval to allow for the development of the Avon CSG 1 LLC Solar Project (Project), a proposed 4.37-megawatt (MW) alternating current (AC) solar photovoltaic (PV) project located on ± 27-acres site within the Town of Avon as described in the Site Plans dated October 2020 and all other relevant information submitted and discussed on November 22, 2021 (the current application); and

WHEREAS, the Planning Board and Zoning Board of Appeals has requested additional information be provided prior to the next scheduled board meeting; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Board does hereby move to continue the Public Hearing and the applications to their March 21, 2022 Joint Board Meeting.

The above resolution was offered by Christopher Sterner and seconded by Brian Thorn at a meeting of the Planning Board held on Monday, February 21, 2022. Following discussion thereon, the following roll call vote was taken and recorded:

Kathleen Cole - AYE  
Vacant -  
Kathy Mannix - AYE  
Christopher Sterner - AYE  
Clara Mulligan - AYE  
Brian Thorn - AYE  
Thomas McGovern - AYE

I, Kim McDowell, Clerk of the Board, do hereby attest to the accuracy of the above resolution being acted upon and recorded in the minutes of the Town of Avon Planning Board for the February 21, 2022 meeting.

Kim McDowell, L.S.  
Kim McDowell, Clerk of the Board

James Campbell stated that the Planning & ZBA Boards continued review of this application will be based on our code except for the three deviations that have been approved by the Town Board.

Clara Mulligan asked about the community benefits agreement that is in our code and how it applies to this application/project. James Campbell stated that is financial aspects and this application has done the PILOT agreement which gives money to all the taxing jurisdictions. We have not had a community benefits agreement yet.

Jeff Mulligan asked about the bonding on the decommissioning agreement, and it states that we require 150% of decommissioning costs, is there a reappraisal of that number. James Campbell stated that we start with 150% and then it gets increased and reevaluated every 5 years. Jeff asked who is responsible for doing that and James stated it is up to the Town and the owner of the project at that time.

Lance Brabant stated all the regulations are written into the approvals of the special use permit and decommissioning plan and decommissioning agreement. James Harrington asked that in the solar law, decommissioning agreement states it escalates 10% every 5 years. James Campbell stated he didn't think that was in the solar law currently, we did change the amount needed from 110% to 150%. Lance Brabant stated that Avon has the highest number in all the communities that he has worked with.

Clara Mulligan asked if the Town would have a master calendar to revisit this in five years for all solar applications and Kim doesn't at this time but will be setting one up. Lance Brabant stated it is burdensome to put that all on the Town and it is the responsibility of the applicant as well.

Tom McGovern feels the buffering is addressed really well in this application, but he feels in certain situations he could see the Town wanting more buffering.

Kathy Cole stated this application is continued to the March 21, 2022 meeting.

David LeFerber asked if the Town Board is needed for any other application tonight and they are not.

MOTION TO CLOSE THE TOWN PORTION OF THE MEETING WAS MADE BY JAMES HARRINGTON; SECONDED BY DAVID LEFEBER.

SUPERVISOR, DAVID LEFEBER - AYE  
COUNCILMAN, TOM MAIRS - ABSENT  
COUNCILMAN, PAUL DROZDZIEL - AYE  
COUNCILMAN, MALACHY COYNE - AYE  
COUNCILMAN, JAMES HARRINGTON - AYE

CARRIED 4-0

DG NY SOLAR CS IV, LLC, ACTING AGENT FOR GARY & EILEEN WHEAT/5406 LAKE ROAD/TAX PARCEL #44.-1-26.1 - SOLAR FARM - SITE PLAN & SPECIAL USE PERMIT APPLICATION

Janet Ward and Kevin Overton were present for this application. Ms. Ward gave an overview of the project to all present for the public hearing as follows:

Town of Avon Planning Board and Zoning Board of Appeal Joint meeting (Joint Meeting/Board)  
DG Lake Road, LLC Lake Road Solar facility to be located at 5460 Lake Road, Avon, NY, Parcel 44.-1-26.1

Public Hearing for Special Use Permit and Site Plan Application for a 5.0MWAC ground mount solar facility.

History of application as of 2/21/22

1. Application was submitted to Town of Avon 10/08/2021.
2. MRB Group serving as the Town of Avon Engineer deemed the application complete on 11/10/2021.
3. The project was included on Joint meeting Agenda for October 2021 and November 2021.
4. Town of Avon declared lead agency for SEQRA during the November 2021 joint Planning and ZBA meeting.
5. An update revising the applicant name to DG Lake Road, LLC was submitted to Town of Avon 12/21/2021.

6. Joint meeting for January and Public hearing cancelled due to weather. Rescheduled for 2/21/22.
7. Livingston County Planning Board meeting 2/10/22 - County recommended to deny application due to safety and prime farmland concerns.

#### Applicant information

NextEra Energy Resources, LLC  
NEER is part of a Fortune 200 company.

NextEra Energy Resources and its subsidiaries have approximately 5,000 employees (As of December 31, 2019.)

NextEra Energy Resources' portfolio consists of ownership interests in PV and solar thermal facilities with a total net generating capacity of 2,684 MW in 26 states (as of Dec. 31, 2019)

NextEra Energy Resources also provides operating and maintenance services for most of the projects in its fleet.

NY projects have Operations staff located in NY.

#### Community benefits of the project

TAX BENEFITS - NextEra Energy Resources' operating solar power systems benefit the local economy by generating annual property tax revenues that benefit the state and local governments, as well as area schools. In addition, the project's capital expenditure during construction and the jobs created generate sales tax revenue and positive economic activity for the community.

Town of Avon solar Ordinance requires the Applicant enter into a PILOT and Community Host Benefit Agreement that will provide significant additional tax revenue to the Town of Avon. The project will provide a diversified income source to the landowner through a long-term lease agreement. This will provide an income source that is not weather dependent as in agricultural use.

This income will assist the landowner in retaining the land for future use. The landowner will provide separate comment.

The project helps meet the NY State Climate Leadership and Community Protection Act Energy Goals.

Signed into law July 2019  
Some of the energy goals

#### New York's Nation-Leading Climate Targets

- 100% Zero-emission Electricity by 2040
- 70% Renewable Energy by 2030
- 6,000 MW of Solar by 2025

Project will provide Community benefit by

1. Increased tax revenues to the taxing entities
2. Diversified income to the property owner
3. Distributed generation - interconnected to the National Grid distribution system
4. Increased spending to the local community during development and construction - hotels, restaurants, local business services firms, local engineering, construction, material suppliers

Construction tracking to be completed by 2023.

Application review and response

Application submitted 10/08/21.

Engineer review comments received 1/6/22

Comments received from Livingston County Planning 1/10/22

Town of Avon Attorney - draft agreements 1/12/2022 - still need road use agreement

DG Lake Road Response comments submitted 1/27/22

Livingston County Emergency Management approval 2/7/22

Livingston County Planning Board meeting 2/10/22

East Avon Fire Department approval 2/11/22 - 1 revision requested

Livingston County Emergency Medical Services approval 2/17/22

Updated drawing addressing East Avon Fire Department request submitted 2/17/22

MRB Comment letter for review of DG submission on 1/27/22 - received 2/18/22

Status of response

Draft Agreements still under DG Legal review

MRB Comment letter dated 2/18/22 under DG review

Safety approvals requested by Livingston County Planning - received as of 2/17/22

Prime farmland response

Town of Avon Solar Ordinance RESOLUTION #151 ADOPT LOCAL LAW 3-2021 adopted 8/17/2021

Solar development on agricultural land was reviewed and discussed in the process of drafting and adopting this ordinance.

Note: This project is design in accordance with this ordinance and is not requesting any variances.

- (1) (d) Lot/Parcel Coverage. Type 2 Solar Energy Systems shall not exceed 25 acres of coverage on parcels that are 40 acres or more in size. On parcels that are less than 40 acres in size, Type 2 Solar Energy Systems coverage shall not exceed 60% of the total parcel size. It is the intent of this restriction to protect the valuable resource and benefits of Prime Farmland and Farmland of Statewide Importance and it is the express intention of the Town of Avon that no variance or hardship request be granted to permit increased coverage by Type 2 Solar Energy Systems on Prime Farmland and/or Farmland of Statewide Importance by any board or commission or other agency having legal authority to consider and grant such a variance or hardship request. The coverage area shall be determined by the area covered by the perimeter of the Solar Energy System at minimum tilt and shall not include required fencing or access roads.

Parcel size = 35.94 acres (under 40 acres so therefore by ordinance 60% coverage is allowed)

35.94 acres x 60% = 21.564 acres

Coverage area as described above and on Page C-001 bulk table titles Civil Site Basis and Quantity estimates = Panels and Equipment Area = 8.49 acres See Structure Coverage by design calculation in table.

#### Requests to Town

Continue meeting to March joint meeting

DG response to MRB comment letter dated 2/18/22 will be provided prior to March meeting

DG response to Agreements will be provided prior to March Joint meeting

Request draft road use agreement

Request list of parties SEQR was sent to, copy of SEQR package sent and copies of all responses to SEQR

#### Janet Ward

Lead Project Manager Development

Distributed Generation

NextEra Energy Resources, LLC

700 Universe Blvd. A1A/JB

Juno Beach, FL 33408

914-256-7644 Office

845-821-5320 Mobile

Brian Thorn noted in his review of this application that there is a comment about battery storage and the Town code doesn't support this. Ms. Ward stated the application for special use doesn't include battery storage and the site plan he is referencing just has not be updated to show no battery storage.

James Campbell asked if there are going to be any additional slabs on site for future battery storage and Ms. Ward said there will be none. Ms. Ward also stated that if they do decide to add battery storage, she is aware they will need to come back in for amendments.

Tom McGovern asked if there are triggers in place if they come back for battery storage. James Campbell stated battery storage is not a permitted use in the Town of Avon as of right now.

Lance Brabant asked how the wetland area would be accessed and the operations and maintenance manual should include that, and they are under all the thresholds for mitigation.

Ms. Ward stated they still must review and make comments on the most recent MRB Group letter that was received on Friday, February 18, 2022. The Town of Avon's code states the decommissioning estimate be 150% and reevaluated every 5 years, this application puts the decommissioning for whole life of the project (150% plus 2% for every 5 years) which is 25 years with two 5-year extensions. Lance Brabant feels that needs to be fully reviewed with everyone before approval is granted.

James Campbell will investigate this in more detail and discuss with the applicant.

Lance Brabant stated that EMS and East Avon Fire Department have given some comments and approval for this application. Lance feels they need to provide a hard surface road for any emergencies that may occur.

ZBA & PLANNING MOTION TO OPEN THE PUBLIC HEARING WAS MADE BY BOB WESTFALL; SECONDED BY TOM MCGOVERN.

JEFF MULLIGAN - AYE  
CINDY KELLEN- AYE  
BOB WESTFALL- AYE  
DIANE ATTEA - AYE  
JEFF PASSARELL - AYE

KATHLEEN COLE -AYE  
THOMAS MCGOVERN - AYE  
VACANT -  
KATHLEEN MANNIX - AYE  
CLARA MULLIGAN - AYE  
BRIAN THORN - AYE  
CHRISTOPHER STERNER - AYE

CARRIED 11-0.

Brian Thorn asked for any public comments.

The following was emailed to Kim prior to the meeting:

To ZBA and Planning Board members: I am sorry that I cannot be in attendance Monday evening as I am out of the state. Up until the Livingston County Planning Board meeting a week ago Thursday, I assumed the 21-acre Solar Project on our 36 acres was well on its way, and I wouldn't personally be needed anyway. The recent County Planning Board Meeting however, conducted via Zoom was a shock and a gut punch. I plead with all involved in the remainder of this process to not only review the County Planning Board minutes, but also listen to the recording of the meeting before rendering decision. It is unlike anything I had ever been a part of when I was in public office, or any other time. Listen in and I think you will understand what I mean. Janet Ward with NextEra and I virtually attended that County Planning Board two Thursdays ago via Zoom. The presentation by Mary Underhill was straight forward. After all, she had a major input on the current Solar Law that was recommended for approval. (See 5/13/21 meeting minutes excerpt below) The resulting discussion and comments were so minor and easily remedied (except for the singular statement "Shouldn't be on Prime Farmland") that I didn't feel a need to comment, and Janet Ward answered all the questions asked. There was never a hint at what would come next. When the comment period was ended, the Chairman asked if anyone wanted to make a motion. There was a very long silence followed shockingly by the Chairmen from Sparta himself making a motion to disapprove. Slowly but surely each member concurred. Janet then tried to speak but was told the comment period had ended and they were moving on. It may be instructive to have Attorney Campbell clarify again the approach the Town has taken to protection of "Prime Farmland", and how it was heavily studied by the Solar Committee. Their recommendation is reflected in the current Town Law, which again the developer is complying with to the letter. When I approached NYS to offer to sell our developments rights, I was told that our piece of ground was too small and insignificant to be considered. Over the last 18 years, we have watched the farmer that grows row crops on our property have to plant around more and more areas that developed into poorly draining patches of ground. Some areas he would re-tile and other areas he decided weren't worth it. Except for the pond, most of the wet areas listed on the developer's map as "Delineated Wetlands" are simply areas of poor draining soils.



This system of clean renewable energy farming, tucked away on our small piece of ground, is an ideal way for Avon to contribute toward being energy independent, and move away from fossil fuels, which are said to be ruining our planet. In addition, it offers the Town a way to preserve its character and protect it from more intensive development of a more permanent nature since the farm will be useful again, improved, after the soil has had time to rest, after the lease expires and the project is decommissioned with little to no permanent impact on the site. The outcome at the County level is very perplexing as it had previously approved the currently adopted solar law as referenced below, which sought to address the apparent objections to this project which fits squarely within the Solar Law. In closing I simply ask you to look at this project objectively exactly as it relates to the Town's current Solar Law that the Solar Committee spent so much time creating. I wish you all well and pray for a favorable outcome.

Gary & Eileen Wheat

5/13/21 Livingston County Planning Board Minutes: Zoning Referral #2021-029, Town of Avon, Zoning Text Amendment to Amend Article XV of Chapter 130 of the Code of the Town of Avon relating to Solar Energy Systems (Applicant: Avon Town Board) Ms. Underhill presented the staff report. A motion to recommend approval of Zoning Referral #2021-029 with staff advisory comments, and County Planning Board comments, was made by Ms. Roffe and seconded by Ms. Palmer. Mr. Graham opposed the motion. The motion carried. 16-1-0

Matthew Eldred, Attorney on behalf of Eileen and Gary Wheat, he is from a small town too, much smaller than Avon. NextEra and Gary Wheat are seeking approval for a special use permit to install a 5MW solar farm covering approximately 21 acres of Mr. Wheat's farm. This will provide clean energy to NY's power grid while simultaneously maintain the remaining acreage as desirable farmland. The Wheat's bought this parcel back in 2004 specifically to prevent it from going to a residential developer. It has not been easy for the Wheat's to make the mortgage payment or pay the taxes for the last 18 years. As the Wheat's have started to plan for retirement, their retirement planner stated they wouldn't be able to maintain the property going forward past 2024. This solar project, they feel will benefit everyone and save the land from developers. The Wheat's see this project as a temporary partnership with NextEra that would enable their family to get over the hump. It will also allow the soil to rest and once the solar farm is decommissioned the soil will be in better shape than it is now. They are requiring larger setbacks and more buffering for the neighbors and have worked hard to follow the Town's code. The County Planning Board has recently recommended disapproval of the project and Mr. Wheat feels this decision is undermining the Town's hard work on the solar law that is in place. The Town's comprehensive plan states it encourages renewable energy system in residential, commercial, and industrial areas and the current law chapter 130-78B states the Town of Avon accommodates the use of solar energy systems. The solar law of 2021 had it own restrictions on saving prime soil and this project abides by those restrictions. Mr. Wheat encourages you to look at the impact on agriculture in this instance rather than seeing what it is going to look like in the next 10, 15, 30 years. Not only would denial of this application cause the Wheat family to permanently lose their farm and Town taxpayers would miss out on the funds generated by the PILOT agreement and host community benefit agreement and ultimately a temporary change would become permanent.

Gary Wheat, Jr., 5410 Lake Road, Avon, he respectfully asks for your approval to install a solar array on my family's farm. The system will add a substantial amount of renewable energy to the local power grid and my family would continue to maintain the remaining acreage. My family bought the farm specifically so it wouldn't be bought by a land developer. We rent the ground for farming and use all that income to pay the taxes on the land. My parents are still unable to retire and this opportunity from NextEra came at the same time our financial planner gave us the bad news we would have to sell the farm for my folks to retire. We see this project as a life saving opportunity for us to keep the farm and finally allow my parents to retire. We also see it as a win for the Town of Avon which proports to be interested in adding renewable energy such as solar. We have worked hard to comply with the Town solar law and always strive to be good neighbors. We have increased the setbacks for our neighbors than what is required, and we requested green slating on fence as well as planting additional trees for screening. He doesn't want to see his parents struggle anymore or lose the farm, please approve this application so we can move forward.

Mike Furia, 6019 Gilbert Mills Road, he feels that solar farms are always seen, they are an eye sore, and he would like to see a berm across them high enough so you can't see anything from the road. He asked what the screening plans are and if it can be seen from the road. Ms. Ward showed him the site plan and where the berms and tree line would be, she stated they were a mix of evergreen trees and will be 6-8 feet at planting and staggered. He said that will not be sufficient.

Kathy Cole stated that this public hearing is strictly for comments, not for questions.

Gary Wheat Jr. stated that if you are just driving past and think it is an eye sore that is one thing but if this land must be sold to a developer you will be permanently looking at a building/structure.

Ms. Ward stated there is a visual analysis for this project and it does include views from neighboring properties with 5-year, 10-year views showing the tree growth.

Joyce Blowers, 5378 Lake Road, Avon, we live right next door to Gary, and she has a question about the site plan and what certain things were on the plans.

Brian Thorn stated this public hearing is comments only not questions.

Mrs. Blowers wants to understand the map and asked Ms. Ward where the 2 access roads are going to be and Ms. Ward showed her.

Mrs. Blowers' comments were that the water flows from Gary's Pond to their pond and then flows to the west and it is a constant flow. She is concerned that the runoff will not have leaching and damage the water. From her perspective, it doesn't matter what you plant to block the view you will still see the panels. She asked how tall the panels are, Ms. Ward stated they are maximum height of 15 feet, and they are non-movable panels facing south. From the Blower's property to the panels is 539 feet and in the code the setback is 400 feet from neighbors.

Mrs. Blowers also wants to know about decommissioning, is the disposal of the panels included and James Campbell stated it is. She also stated she pays in three ways for these solar projects, first, there is a huge subsidiary these solar companies are getting to be able to do this, solar energy is not efficient and secondly, is the lose of agricultural land for farming. Lastly, is the loss visually, we live in the country because we love to see the farm being worked and crops growing. Avon is an agricultural community and soon our whole farm community is going to be filled with solar panels and no one will be coming to visit us.

Mr. Ron Blowers, 5378 Lake Road, Avon, the comments about not knowing how it is going to play out with solar panels as they age, you can find both good/bad examples. We know an environmentalist who was for solar but then they saw panels were destroyed and shattering and quickly changed their minds about solar. Mr. Blowers wants to know how the glass will be picked up from any shattered panels. There is a farmer back there and the panels are made with lead and if that goes into the ground it will look differently. Mr. Blower showed a picture from his daughter's house of the solar farm on Routes 5 & 20, and he asked when it will be shielded, and the trees will never shield those panels. Mr. Blowers also lost everything mid-life, and he went back and worked to get to the point where he could retire at the age of 75, he knew how long he had to work to retire. He feels you need to look at other options instead of taking advantage of your neighbors; we are older and don't want to see panels. The applicants don't let you know how much noise there is when they are building these arrays, it is very loud and lots of vibrations.

Laura McCabe, 1975 Pole Bridge Road, Avon, that is the picture of my back yard, and I am against solar in places where there are houses. It is disappointing when they bend over backwards and take from the landowners and do nothing. I do not have one visual barrier, but I have tons of panels behind me. If they promise you stuff they will lie and don't follow through with anything, bottom line is you are looking for a quick buck. My kids can't wait to get out of here, my oldest is a Senior in college and he is never coming back. I am ashamed that I raised my kids in Avon.

Mike Furia, 6019 Gilbert Mills Road, the panels are 15 feet, and the trees are 6-8 feet, there is a gap, and that gap needs to be adjusted with a berm. Are there any seismic studies of vibrations that will affect basements?

Mr. Ron Blowers, 5378 Lake Road, Avon, our house is at an elevation, and we will have a view of the solar panels.

Brian Thorn asked if the public hearing should be closed, and James Campbell said it is up to the Board and asked if there were any more comments.

Laura McCabe, 1975 Pole Bridge Road, Avon, the Wheat's stated the only option for them to move forward is solar, is the only person who would buy the property going to put in a housing development? She stated land is at a premium right now and only people who are going to build houses are buying all the property in Avon and no farmers would be interested in it.

Lance Brabant stated if there are no additional comments than the Board has the option to continue the public hearing, or you can close it and take action on the SEQR.

Brian Thorn stated we would like to leave the public hearing.

Lance Brabant stated we started and completed the coordinator review with other involved agencies and received no objection to the Planning Board being the lead agency, so the first resolution is the Planning Board to declare themselves lead agency and complete the environmental record for this application.

TOWN OF AVON PLANNING BOARD RESOLUTION  
DG LAKE ROAD SOLAR, LLC (NEXTERA ENERGY RESOURCES) REPRESENTING  
GARY & EILEEN WHEAT  
LARGE SCALE SOLAR - LAKE ROAD SOLAR PROJECT  
5410 LAKE ROAD  
TAX MAP ID: 44.-1-26.1  
SPECIAL USE PERMIT & PRELIMINARY/FINAL SITE PLAN REVIEW

SEQR - DESIGNATING LEAD AGENCY

WHEREAS, the Town of Avon Planning Board (hereinafter referred to as Planning Board), received an application for Special Use Permit Approval & Site Plan Approval to allow for the development of the DG Lake Road Solar, LLC proposed Lake Road 5 MW Solar Project (Project), to construct and operate a 5 megawatt (MW) alternating current (AC) (7 MW direct current [DC]) solar photovoltaic facility within an approximately 36-acre property parcel (parcel ID 44.-1-26.1) located south of Lake Road, north of Henty Road, and east of Pole Bridge Road, in the Town of Avon, Livingston County, New York as described in the Site Plans dated September 13, 2021, last January 18, 2022 (the current application) and all other relevant information submitted and discussed at the February 21, 2022 Joint Planning Board and ZBA Meeting; and

WHEREAS, the Planning Board has determined the proposed action referenced above to be a Type 1 Action under Part 617 of the State Environmental Quality Review (SEQR) Regulations; and

WHEREAS, the Planning Board has on Monday, November 22, 2021 declared its intent to be designated the Lead Agency for the proposed Action under the provisions of the State Environmental Quality Review (SEQR) Regulations; and

WHEREAS, the Planning Board has provided written notices to this effect to the involved and interested agencies; and

WHEREAS, the Planning Board has not received any written objections from the involved agencies to the Board's being designated as the lead agency under the SEQR Regulations; and

WHEREAS, the Planning Board has previously determined that it is the most appropriate agency to insure the coordination of this Action and for making the determination of significance thereon under the SEQR Regulations.

NOW, THEREFORE BE IT RESOLVED that the Planning Board does hereby designate itself as the lead agency for the Action identified above herein;

The above resolution was offered by Thomas McGovern and seconded by Clara Mulligan at a meeting of the Planning Board held on Monday, February 21, 2022. Following discussion thereon, the following roll call vote was taken and recorded:

Kathleen Cole - RECUSED  
Vacant -  
Kathy Mannix - AYE  
Christopher Sterner - AYE  
Clara Mulligan - AYE  
Brian Thorn - AYE  
Thomas McGovern - AYE

I, Kim McDowell, Clerk of the Board, do hereby attest to the accuracy of the above resolution being acted upon and recorded in the minutes of the Town of Avon Planning Board for the February 21, 2022 meeting.

Kim McDowell, L.S.  
Kim McDowell, Clerk of the Board

Lance Brabant stated now the Board needs to go through the EAF Part II and answer the questions. Lance has provided the draft to all the Board members, and he read each of the 18 sections to all present. Questions #1, #3, #7, #8, #13, #15 were all answered yes but the sub-questions were answered with no or small impact may occur; questions #2, #4, #5, #6, #9, #10, #11, #12, #14, #16, #17, #18 were all answered no so no sub-questions needed to be asked.

TOWN OF AVON PLANNING BOARD RESOLUTION  
DG LAKE ROAD SOLAR, LLC (NEXTERA ENERGY RESOURCES) REPRESENTING  
GARY & EILEEN WHEAT  
LARGE SCALE SOLAR - LAKE ROAD SOLAR PROJECT  
5410 LAKE ROAD  
TAX MAP ID: 44.-1-26.1  
SPECIAL USE PERMIT & PRELIMINARY/FINAL SITE PLAN REVIEW

SEQR - DETERMINATION OF SIGNIFICANCE

WHEREAS, the Town of Avon Planning Board (hereinafter referred to as Planning Board), received an application for Special Use Permit Approval & Site Plan Approval to allow for the development of the DG Lake Road Solar, LLC proposed Lake Road 5 MW Solar Project (Project), to construct and operate a 5 megawatt (MW) alternating current (AC) (7 MW direct current [DC]) solar photovoltaic facility within an approximately 36-acre property parcel (parcel ID 44.-1-26.1) located south of Lake Road, north of Henty Road, and east of Pole Bridge Road, in the Town of Avon, Livingston County, New York as described in the Site Plans dated September 13, 2021, last January 18, 2022 (the current application) and all other relevant information submitted and discussed at the February 21, 2022 Joint Planning Board and ZBA Meeting; and

WHEREAS, the Planning Board has determined the above referenced Action to be a Type 1 Action pursuant to Part 617 of the State Environmental Quality Review (SEQR) regulations; and

WHEREAS, the Planning Board determined that said Action to be subject to a coordinated review and approval by other involved agencies under SEQR Regulations; and

WHEREAS, the Planning Board has been designated the lead agency, under the provisions of Part 617.6 (3) and (4) of article 8 of the State Environmental Conservation Law; and

WHEREAS, the Planning Board has given consideration to the comments provided by the involved agencies and interested agencies at tonight's meeting; and

WHEREAS, the Planning Board has completed its review of Parts 2 and 3 of the Full Environmental Assessment Form (EAF); and

WHEREAS, the Planning Board has given consideration to the criteria for determining significance as set forth in Section 617.7 (c) of the SEQR Regulations and the information contained in Parts 1, 2 and 3 of the Full EAF.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board does hereby accept the findings contained in Parts 2 and 3 of the Full EAF and directs the Planning Board Chairperson to sign and date the Full EAF Part 3.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board has reasonably concluded the following impacts are expected to result from the proposed Action, when compared against the criteria in Section 617.7 (c):

- (i) there will not be a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;
- (ii) there will not be large quantities of vegetation or fauna removed from the site or destroyed as the result of the proposed Action; there will not be substantial interference with the movement of any resident or migratory fish or wildlife species as the result of the proposed Action; there will not be a significant impact upon habitat areas on the site; there are no known threatened or endangered species of animal or plant, or the habitat of such species; or, are there any other significant adverse impacts to natural resources on the site;
- (iii) there are no known Critical Environmental Area(s) on the site which will be impaired as the result of the proposed Action;
- (iv) the overall density of the site is consistent with the Town's Comprehensive Plan land use recommendations;
- (v) the site is will not negatively impact an identified archaeological sensitive area;
- (vi) there will not be an increase in the use of either the quantity or type of energy resulting from the proposed Action;
- (vii) there will not be any hazard created to human health;
- (viii) there will not be a change in the use of active agricultural lands that receive an agricultural use tax exemption or that will ultimately result in the loss of ten acres of such productive farmland;
- (ix) there will not be a larger number of persons attracted to the site for more than a few days when compared to the number of persons who would come to the site absent the Action;
- (x) there will not be created a material demand for other Actions that would result in one of the above consequences;
- (xi) there will not be changes in two or more of the elements of the environment that when considered together result in a substantial adverse impact; and

(xii) there are not two or more related Actions which would have a significant impact on the environment.

BE IT FURTHER RESOLVED, based upon the information and analysis above and the supporting documentation referenced above, the proposed Action WILL NOT result in any significant adverse environmental impacts.

BE IT FINALLY RESOLVED, that the Planning Board does hereby make a Determination of Non-Significance on the proposed development, and the Planning Board Chairman is hereby directed to sign the Full Environmental Assessment Form Part 3 and issue the Negative Declaration as evidence of the Planning Board's determination.

The above resolution was offered by Brian Thorn and seconded by Thomas McGovern at a meeting of the Planning Board held on Monday, February 21, 2022. Following discussion thereon, the following roll call vote was taken and recorded:

Kathleen Cole - RECUSED

Vacant -

Kathy Mannix - AYE

Christopher Sterner - AYE

Clara Mulligan - AYE

Brian Thorn - AYE

Thomas McGovern - AYE

I, Kim McDowell, Clerk of the Board, do hereby attest to the accuracy of the above resolution being acted upon and recorded in the minutes of the Town of Avon Planning Board for the February 21, 2022 meeting.

Kim McDowell, L.S.

Kim McDowell, Clerk of the Board

Tom McGovern feels the buffering is going to be very critical for the neighbors. Ms. Ward showed where all the buffering is going to be and there will be a small strip between the neighbors and solar panels that Mr. Wheat is keeping for farming.

Ms. Ward showed the site plan to everyone present and showed where the buffering will be and the strip that Mr. Wheat will keep for farming.

Mr. Loss, 5405 Lake Road, Avon, asked where the access road is and what visual consideration is given for his home across the street. Ms. Ward showed where vegetation is and there is nothing blocking the access road.

Kathy Cole asked Lance Brabant to look and see if there are any options for the neighbors across the street.

Mrs. Blowers asked what the setback was from the access road to her property. Ms. Ward showed where that is and doesn't know the answer to her question. Ms. Ward also stated that the setbacks to the Blowers property exceeds what is required in the solar law.

Lance Brabant stated that it is up to the Board to determine if the screening is acceptable and if you feel it needs to be more you can request that. Lance also suggested that the applicant bring the visual renderings to the next meeting.

Ms. Ward stated they already provided a visual analysis and Lance suggested they review them before the next meeting.

TOWN OF AVON PLANNING BOARD RESOLUTION  
DG LAKE ROAD SOLAR, LLC (NEXTERA ENERGY RESOURCES) REPRESENTING  
GARY & EILEEN WHEAT  
LARGE SCALE SOLAR - LAKE ROAD SOLAR PROJECT  
5410 LAKE ROAD  
TAX MAP ID: 44.-1-26.1  
SPECIAL USE PERMIT & PRELIMINARY/FINAL SITE PLAN REVIEW

CONTINUATION RESOLUTION

WHEREAS, the Town of Avon Planning Board (hereinafter referred to as Planning Board), received an application for Special Use Permit Approval & Site Plan Approval to allow for the development of the DG Lake Road Solar, LLC proposed Lake Road 5 MW Solar Project (Project), to construct and operate a 5 megawatt (MW) alternating current (AC) (7 MW direct current [DC]) solar photovoltaic facility within an approximately 36-acre property parcel (parcel ID 44.-1-26.1) located south of Lake Road, north of Henty Road, and east of Pole Bridge Road, in the Town of Avon, Livingston County, New York as described in the Site Plans dated September 13, 2021, last January 18, 2022 (the current application) and all other relevant information submitted and discussed at the February 21, 2022 Joint Planning Board and ZBA Meeting; and

WHEREAS, the Planning Board and Zoning Board of Appeals has requested additional information be provided prior to the next scheduled board meeting; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Board does hereby move to continue the Public Hearing and the applications to their March 21, 2022 Joint Board Meeting.

The above resolution was offered by Brian Thorn and seconded by Christopher Sterner at a meeting of the Planning Board held on Monday, February 21, 2022. Following discussion thereon, the following roll call vote was taken and recorded:

Kathleen Cole - *RECUSED*  
Vacant -  
Kathy Mannix - AYE  
Christopher Sterner - AYE  
Clara Mulligan - AYE  
Brian Thorn - AYE  
Thomas McGovern - AYE

I, Kim McDowell, Clerk of the Board, do hereby attest to the accuracy of the above resolution being acted upon and recorded in the minutes of the Town of Avon Planning Board for the February 21, 2022 meeting.

Kim McDowell, L.S.  
Kim McDowell, Clerk of the Board

Kathy Cole stated we will see you on March 21, 2022.



Piranha Milling & Paving Contractors LLC/5665 Tec Drive/  
Tax Parcel #35.-1-13.524-Site plan application - FLEX Buildings

Mr. Ed Martin is present for this application and stated this application came before the Board a few years back for Phase 1 and we also were here a few months ago to start Phase 2 of adding two additional flex buildings. The application was put on hold until we addressed the wastewater and received approval from the Village which we have gotten.

Mr. Spade also received approval from the Town Board for proposed uses in the buildings which are consistent with the existing flex building on property currently.

Mr. Martin has received the comment letter from MRB Group and will address those concerns but he is here tonight to get site plan approval.

James Campbell stated the Town Board approval was done at the last meeting and is like the uses approved for the first building. However, given the sensitivity of the sewer capacity of the Village, there were a few things that I took out of the equation such as the more industrial uses, food and chemical production.

Jeff Mulligan stated that Mortalis Brewery from across the street maybe interested in moving to one of these buildings and if that is the case there would be more wastewater?

James Campbell omitted those specific operations due to the higher wastewater but if they have a specific interest they can come back and ask the Town Board.

Lance Brabant stated that we started this review last summer and in the fall we did SEQR Determination, they received Town Board approval, and if the Board is willing to move forward with the site plan approval there is a resolution for your consideration.

TOWN OF AVON PLANNING BOARD RESOLUTION  
PIRANHA MILLING & PAVING CONTRACTORS LLC  
TEC DRIVE  
PIRANHA HOME OFFICE, PHASE 2  
FINAL SITE PLAN REVIEW

FINAL SITE PLAN APPROVAL RESOLUTION

WHEREAS, the Town of Avon Planning Board (hereinafter referred to as Planning Board), is also considering Site Plan approval for the construction Phase 2 which includes two (2) 72' x 250' (+/- 18,000 sq. ft.) flex space buildings and associated site improvements, as described in the Site Plans dated April 19, 2021 prepared by Land Tech Surveying & Planning P.L.L.C. and all other relevant information submitted as of February 21, 2022 (the current application); and

WHEREAS, the Planning Board has classified the above referenced Action to be an Unlisted Action under Section 617.5 (c) of the State Environmental Quality Review (SEQR) Regulations; and

WHEREAS, in compliance with NYS Town Law and the regulations of the State Environmental Quality Review Act (SEQRA), a determination of significance and a negative declaration was adopted by the Planning Board on November 22, 2021; and

WHEREAS, on February 10, 2022 the Town Board, pursuant to §130-18 H of the Code, contingent upon the applicant receiving site plan approval from the Planning Board, approved the issuance of a Special Permit; and NOW, THEREFORE, BE IT RESOLVED that the Planning Board does hereby approves the requested Site Plan with the following conditions:

1. Final Site Plan Approval with conditions specified above herein is valid for a period of 180 days from today. Once all conditions have been addressed, four (4) copies of the Final Site Plan set are to be provided to the Building & Zoning Department for signatures. Once all signatures are obtained, a PDF of the signed Final Site Plans are to be forwarded to the Building & Zoning Department and MRB for their files.
2. All comments regarding the Town Engineer's review, Town DPW Superintendent's review, and Livingston County Water & Sewer Authority's review of the site plans are to be addressed to their satisfaction prior to signatures being affixed to the Final Site Plans.
3. Final Site Plan approval is contingent upon the Statement of Operations dated February 4, 2022 and as discussed at the February 10, 2022 Town Board meeting and at the February 21, 2022 Planning Board Meeting.
4. The stormwater access easement language and map is to be provided to the Town Attorney for review and approval, and filed with the County Clerk and Town Clerk prior to issuance of a Building Permit.
5. The stormwater maintenance agreement on file with the Town of Avon is to be amended to include Phase 2 and the proposed stormwater improvements. The maintenance agreement is to be approved and filed with the Town prior to issuance of the Certificate of Occupancy.
6. All equipment, vehicle, and supplies associated with the uses for Phase 1 & Phase 2 and as outlined within the Statement of Operations approved at the February 4, 2022 Town Board meeting are to be stored on a hard surface area and within the storage areas as identified on the Final Site Plans and as discussed at the February 21, 2022 Planning Board meeting.
7. A Surety Estimate covering erosion and sediment control measures, grading and stabilization of the site, stormwater mitigation measures, and landscaping, is to be submitted for review and approval. The surety is to be posted with the Town prior to issuance of a permit.

The above resolution was offered by Brian Thorn and seconded by Thomas McGovern at a meeting of the Planning Board held on Monday, February 21, 2022. Following discussion thereon, the following roll call vote was taken and recorded:

Kathleen Cole - AYE  
Vacant -  
Kathy Mannix - AYE  
Christopher Sterner - AYE  
Clara Mulligan - AYE  
Brian Thorn - AYE  
Thomas McGovern - AYE

I, Kim McDowell, Clerk of the Board, do hereby attest to the accuracy of the above resolution being acted upon and recorded in the minutes of the Town of Avon Planning Board for the February 21, 2022 meeting.

Kim McDowell, L.S.  
Kim McDowell, Clerk of the Board

Hyde, Gary & Kimberly/5729 North Avon Road/Tax Parcel#  
25.-1-3.2 - ZBA - Variance for side setback pole barn

Mr. Gary Hyde was present to discuss his application. He needs a 17-foot side setback variance to put a pole barn on his property.

Jeff Mulligan is abstaining on this application because he is a neighboring property owner.

Kathy Cole asked if there was anything on the property now and there isn't. He needs the variance because of the raised bed septic that drains off the side.

Clara Mulligan asked what the pole barn would be used for, and Mr. Hyde stated storage.

Mr. Hyde has spoken to both his neighbors, and they do not have a problem with him doing this. Jeff Mulligan doesn't remember hearing from Mr. Hyde, and he is a neighbor, but he has no issue.

ZBA MOTION TO HOLD A PUBLIC HEARING AT THE MARCH 21, 2022 MEETING  
SUBMITTED WAS MADE BY CINDY; SECONDED BY JEFF PASSARELL.

JEFF MULLIGAN - ABSTAIN  
CINDY KELLEN - AYE  
BOB WESTFALL- AYE  
DIANE ATTEA - AYE  
JEFF PASSARELL - AYE

CARRIED 4-0.

Kim will be in contact with Mr. Hyde regarding the public hearing.

Furia, Michael/6019 North Avon Road/Tax Parcel#25.-1-6.112  
- ZBA -Variance for 2 primary structures on a single parcel  
and accessory building before a primary building on parcel

Mr. Armbrewster and Mr. Furia, Sr. were present to discuss this application. Mr. Armbrewster gave an overview of the project.

This parcel was purchased by Michael Furia, Jr. to enjoy the land and his Father would like to live with him while maintaining his independence. They would like to have a smaller footprint disturbance on the land and have two structures with a shared septic, one would be Michael Jr.'s residence and the other would be a pole barn with a second story residence for Michael Sr.

Mr. Armbrewster stated they are here tonight to determine what their options are, they would like to be able to do this without having to subdivide three acres off this parcel for the second residence.

Kathy Cole asked James Campbell for any thoughts, James stated our code doesn't allow for two residential structures on the same property. James stated the trend is moving in this direction, it is currently allowed in certain circumstances in agricultural community.

Bob Westfall asked if there was an existing house on the parcel now, and it is vacant land. Bob also asked how many acres and there are 60 acres.

James Campbell stated that if it is subdivided and you have a shared driveway and septic and then sold, that can be problematic especially it is not dealt with right from the beginning.

Jeff Mulligan asked if we could state they can't separate these parcels if we approve this application, and James Campbell stated you could do it in the form of a deed restriction benefiting the Town of Avon.

Mr. Armbrewster stated the health department wouldn't approve a shared septic system without a deed restriction.

Jeff Mulligan feels it makes more sense to have a deed restriction than going through the other process.

James Campbell stated that is a better option to have a deed restriction and the landowners need to realize that in the future that may limit their ability to market the property.

Mr. Armbrewster has been in discussions with the health department about the shared septic, but they need an approved site plan before he can move forward. He also stated the driveway will be wide enough for dual access and it has already been put in.

Jeff Mulligan asked how far off the road is this and Mr. Armbrewster stated the main house is 150 feet off the road and the accessory structure is 260 feet off the road and there is a lot of road frontage.

Clara Mulligan asked if the accessory building has an apartment in it and it will.

James Campbell asked if he is planning to build the accessory building before the primary residence and that is correct.

There was discussion on exactly what variances would be needed and it was determined they would need the variance to build the accessory structure before building the primary structure.

There was also discussion that once the variance is granted, the variance is good for one year and would that be enough time to complete both dwellings. It was determined that the variance is good for one year and they would need to get a permit for the second structure before that expires and then that permit is good for one year.

ZBA MOTION TO HOLD A PUBLIC HEARING AT THE MARCH 21, 2022 MEETING SUBMITTED WAS MADE BY CINDY; SECONDED BY JEFF PASSARELL.

JEFF MULLIGAN - AYE  
CINDY KELLEN - AYE  
BOB WESTFALL- AYE  
DIANE ATTEA - AYE  
JEFF PASSARELL - AYE

CARRIED 5-0.

White Horse Enterprises LLC, acting agent for 1558 West  
Henrietta LLC/1558 West Henrietta Road/Tax Parcel  
#35.-1-8.3 - discussion on possible uses on property

Mr. Chris Bill and Mr. Scott Harter were present for this application. Mr. Harter stated they came to a meeting last year to discuss the property at 1558 West Henrietta Road. Mr. Bill would like to occupy the property and use it differently than the previous owners did, and this would require a special use permit.

Mr. Harter presented to the Board a drone overview of how the property would look with the use intended by Mr. Bill. The parking is mostly intended for display (8x18) and for other uses such as employees, handicap, and customer parking (9x18), which will allow 18-20 display vehicles and 6 other parking spots.

Mr. Bill is trying to use the site in a reasonable way and not to add on to it as this point. There has not been a formal application submitted, they are here for discussion purposes only and to ask for any comments from the Board.

Kathy Cole asked if this is an extension of the other property and will there be a sign, Mr. Bill stated he would like to put a sign where the old sign is located on the property.

Diane Attea asked if this parcel is for sales only or will he be doing any type of service, and he stated it is just for sales. They are currently using the two bays to wash cars and he would like to continue to do that.

Cindy Kellen asked how many cars total was he planning to have on the lot and Mr. Bill stated he would like 20 cars which Jeff Mulligan stated in the previous meeting he attended. Cindy Kellen stated the picture you are showing has 26 cars and you are talking 20 for sales and how many employees do you have, Mr. Bill stated 3 total employees plus customers.

Bob Westfall asked if the picture showed exactly how the cars would be positioned and Mr. Bill stated they may make a few spots wider.

Brian Thorn asked if they were going to keep the buffer between the lot and the road and they are and will add some trees as well.

Mr. Bill discussed the current lighting on the property and how they don't plan on changing that and it doesn't spill into the road. The owner of the drive-in expressed concerns about the outside lighting and Mr. Bill told him they would turn them off at night. He would like to seal coat the driveway and put in some trees but other than that it will stay the same.

Lance Brabant stated the sign will be a separate permit through the code office.

Mr. Harter asked what the Board would like as far as landscaping is concerned and they said keeping the green buffer.

Brian Glise asked how big the lot is and Mr. Harter stated it is 2.5 acres. Brian also asked what size the building is, and it is 1600 square feet, which is code compliant.

Kathy Cole asked if Lance Brabant has any issues and he stated Brian Glise is going through the Special Use criteria to make sure we aren't missing anything.

Lance Brabant's only question is if there are any other site improvements being planned and Mr. Bill stated just a sign and seal the driveway. Lance asked about the lighting, and it is currently compliant with our code.

Lance Brabant suggested they show the current lighting on the site plan, parking spaces are shown correctly and label them as display, employee, and customer parking spaces, and if there is going to be a dumpster, please show it.

Jeff Mulligan stated the total number of cars on the parcel is 20, this includes display, employee, customer and in limbo as well.

Lance Brabant also asked for a statement of operations to be submitted.

Kathy Cole asked them to submit a formal application for the April 18, 2022 meeting and they will be the first on the agenda.

Avon Storage LLC/1558 & 1566 West Henrietta Road/Tax  
Parcel#35.-1-8.3 & 35.-1-8.112 - discussion on addition of 4  
units and lot line adjustment

Mr. Glenn Thornton was present for this application and presented the site plan. This application is for two parcels, the one that was just discussed and 1556 West Henrietta Road which is the self-storage facility.

The back part of the parcel that White Horse was discussing will be joined with the parcel at 1566 West Henrietta Road, which would take it from 5 acres to 6.5 acres. They would like to expand the self-storage building by adding 4 more units in the back. Since they would disturb more than one acre, they will need to get a DEC permit. They also would like to put in an area for 86 RV and boat storage. Along the drive-in area there will be some trees and a small berm and they will increase the size of the pond. They are not proposing any lighting in the new area and doesn't believe it will impact the drive-in.

Jeff Mulligan asked if it was going to be paved and Mr. Thornton stated it will be stone.

Brian Glise asked if there would be indoor vehicle storage and there are some bays that are wide enough for possible indoor storage.

Lance Brabant asked if the area would have any fencing and they do have the entire site including the pond fenced in.

Kathy Cole asked if there is room for emergency vehicles to go through and there is.

Kathy Cole asked again the number of outdoor vehicle storage spots they are requesting and there are 86 spaces on these plans. Kathy is not in favor of the outdoor storage.

Clara Mulligan stated we have always disapproved outdoor storage.

Kathy Cole asked Brian Glise if there was anything in the code regarding outdoor storage. Brian Glise stated there is something in the code he is not exactly sure what it is.

Mr. Thornton stated you would be able to see the outdoor storage and the fence will be a 6-foot chain link type.

Mr. Thornton stated the parcels are zoned combined general business/light industrial.

Mr. Thornton stated he is sensing the visibility of the outdoor storage is frowned upon and asked if it would help if some self-storage buildings on the outside containing the outdoor storage within the buildings would be acceptable.

Jeff Mulligan doesn't feel there is enough room to put the buildings on the outside.

Mr. Thornton stated there is a big demand for boat/RV storage and that is why they would like to incorporate it into this plan.

Cindy Kellen stated in the back of the lot is open storage buildings currently, and Mr. Thornton stated that is correct.

Clara Mulligan stated this is not keeping with the comprehensive plan for East Avon.

James Campbell stated he was looking at the code and anything allowed in general business and light industrial is permitted plus anything that is similar to those uses can be allowed with a special use permit.

Mr. Thornton is trying to come up with some ideas where outdoor storage will be acceptable.

Kathy Cole asked if he could move the four additional buildings to where they proposed the RV/boat storage is and move the RV/boat storage to the back, and Mr. Thornton stated that could work for the applicant.

Kathy Cole would like to see a different site plan with the suggestions of the Board tonight and Mr. Thornton will do that.

They will come back to the March 21, 2022 meeting.

James Campbell suggested that the March meeting start at 6:00PM and everyone agreed to that time.

ZBA & PLANNING MOTION TO CLOSE THE MEETING WAS MADE BY BOB; SECONDED BY TOM MCGOVERN.

JEFF MULLIGAN - AYE  
CINDY KELLEN- AYE  
BOB WESTFALL- AYE  
DIANE ATTEA - AYE  
JEFF PASSARELL - AYE

KATHLEEN COLE -AYE  
THOMAS MCGOVERN - AYE  
VACANT -  
KATHLEEN MANNIX - AYE  
CLARA MULLIGAN - AYE  
BRIAN THORN - AYE  
CHRISTOPHER STERNER - AYE

CARRIED 11-0.  
MEETING CLOSED.