

PLANNING & ZBA MEETING

TUESDAY, SEPTEMBER 15, 2020

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

PLANNING: KATHY COLE, KATHY MANNIX, BRIAN THORN, RANDY KOZLOWSKI, CLARA MULLIGAN (VIA PHONE, CHRISTOPHER STERNER

ABSENT: TOM MCGOVERN

OTHERS: CEO BRIAN GLISE, MRB ENGINEER LANCE BRABANT, TOWN ATTORNEY JAMES CAMPBELL

VISITORS: JOYCE BLOWERS, JOHN HETTRICK, KATHY HETTRICK, PETER BURKE, BRIAN HARPER, MATT MCCABE, LAURA MCCABE, ART HERNANDEZ, CHRISTINE WHITE, STEVE HERNANDEZ, CHARLIE LEONARD, JERRY VALENTINE, JUDY FALZOI (VIA PHONE)

CLERK: KIM MCDOWELL

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PLANNING & ZBA BOARD MOTION TO OPEN THE MEETING WAS MADE BY CINDY, SECONDED BY BRIAN.

KATHLEEN COLE -AYE  
TOM MCGOVERN- ABSENT  
RANDY KOZLOWSKI - AYE  
KATHLEEN MANNIX - AYE  
CLARA MULLIGAN - AYE  
BRIAN THORN - AYE  
CHRISTOPHER STERNER - AYE

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

CARRIED 11-0.

Kathy Cole welcomed our new Planning Board member Christopher Sterner to everyone.

PLANNING & ZBA BOARD MOTION TO APPROVE THE MINUTES FROM THE JOINT MEETING ON AUGUST 17, 2020 AS SUBMITTED WAS MADE BY BOB; SECONDED BY JEFF MULLIGAN.

KATHLEEN COLE -AYE

TOM MCGOVERN- ABSENT  
RANDY KOZLOWSKI - AYE  
KATHLEEN MANNIX - AYE  
CLARA MULLIGAN - AYE  
BRIAN THORN - AYE  
CHRISTOPHER STERNER - ABSTAIN

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

CARRIED 10-0.

DG NY SOLAR CS, LLC c/o RICHLAND RESOURCES, LLC/AVON-EAST AVON  
RD/TAX PARCEL#34.-1-15.21 - SOLAR FARM - SPECIAL USE PERMIT &  
SITE PLAN APPLCIATION

Jim Campbell stated that tonight's agenda is DG NY Solar application on Pole Bridge Road and to clarify that the public hearing was closed at the last joint meeting and the Planning Board went through the SEQR process. For tonight, this meeting is about Board discussion and the next steps for this application. It is not a public hearing and will not be open to public comment; it is for discussions on the site plan and special use permit portion of this application. Jim would like the record to reflect that he just had a meeting with the Zoning Board of Appeals Board members, which was a closed meeting, they requested to meet with him for legal advice regarding this application and is permissible for a board to seek legal advice from council and have it be a closed meeting.

Jim also stated that the Zoning Board of Appeals is not prepared to move forward in making a determination on the special use permit because they are still working through the code requirements pertaining to this request. There are a number of criteria in the code and the ZBA is in the process of working through those parts.

Jeff Mulligan stated that Jim Campbell is correct regarding the Zoning Board of Appeals position tonight. We are concerned about making the right decision based on all the criteria. We feel we are not quite ready at this time. Jeff is referring to the Special Use Permit requirements under Section 130-35 B.

Jim Campbell also stated that the Zoning Board of Appeals will do a follow up meeting at what was its regularly scheduled September meeting on September 28<sup>th</sup> at 7:00PM and has since been cancelled. Jim suggested that the ZBA Board make a motion to have a meeting on that date and have Kim notify the public of the meeting; it will not be a public hearing just a meeting open to the public.

MOTION: FOR THE ZBA BOARD TO HOLD A MEETING ON MONDAY, SEPTEMBER 28, 2020 AT 7:00PM WAS MADE BY CINDY, SECONDED BY BOB.

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

CARRIED 5-0.

Cindy Kellen suggested it be another joint meeting and Jim Campbell agreed if the Planning Board members are available. Kathy Cole asked the Board members present and everyone will be available except Kathy Mannix.

Lance stated since the ZBA is not prepared to make a decision tonight on the Special Use Permit application that there really isn't anything more to do tonight unless the Planning Board wants to discuss the updated site plan that was submitted today.

Lance stated MRB Group issued a comment letter on August 14<sup>th</sup> to the applicant. In that letter, they commented on items related to SWPPP, site plan, Operation and Maintenance Plan, and Decommissioning Plan.

MRB is asking for the Operation and Maintenance Plan to include references to where the reports would be generated, whom they would be generated by, and whom they would be delivered to. These reports are based on the fact that an Operations & Maintenance Plan governs the site once it is in commission and they begin to monitor it. If approved this states how the site will be maintained, pertaining to landscaping be removed and replaced, and vegetation being mowed and maintained. Ultimately, we would like every report regardless of what it pertains to, to be forwarded to the Town. That way if there are any changes to the site, if approved, the Town will have the ability to look at that to make sure it is still compliant with the Special Use Permit.

The Decommission Plan is a step by step procedure if the site had to be decommissioned as to how that process would proceed. MRB Group asked for the schedule to include an estimated timeframe of how long it would take for each step. Lance has seen from other applications and information from the State, it typically takes 5-8 months to be implemented and for that process to begin. Lance would also like the applicant to include language regarding the installation and removal of erosion and sediment controls. The Special Use Permit requires that the decommissioning plan include an agreement and sign off with the applicant, owner, and all leases; stating they must adhere to this plan. MRB Group asked that the decommissioning estimate be revised to include SWPPP and Erosion control elements to include the installation and removal of. They are also asking that the decommissioning bond run the full length of the project (30 years) plus an additional 18 months.

Lance stated they have to get a Highway Work Permit from NYS DOT for the site access road and that needs to be provided to the Town; if there are any changes made they would need to report that to the Town as well.

Lance stated the applicant is complaint with NYS DEC regarding SWPPP. They are showing the mitigation for this site will provide less run off at the current discharge points and at a lower frequency. The proposed landscaping could possible enhance and help with the run off issue as well. The applicant will need to have a completed, signed storm water maintenance agreement and it must be filed with the Town.

MRB Group did receive a response with revised information from the applicant yesterday, September 14, 2020. The applicant is open to some suggestions and some they are asking not to be required or to be modified based on certain criteria they feel is appropriate. Some of the recommendations MRB Group is suggesting are not necessarily in the Town of Avon Solar Law but Lance has seen these in other Towns and he feels they are needed to further protect the Town of Avon.

The applicant also submitted a revised landscaping plan which Kim put up on the monitors for everyone to see.

Kathy Mannix asked if the Planning Board members can ask some questions regarding this application; which they can.

Kathy Mannix asked what if some of the panels break, do they have to remove the broken panels; they can't store them or leave them on the site. Lance stated that is correct, the Operations and Maintenance Plan identifies this situation and they must be removed and replaced in a certain time period. Kathy also asked what if the farmer sold the land, what would happen. Lance isn't exactly sure of the answer but there is a lease agreement for that land, he believes they will need to follow everything set in place.

Brian Harper, the applicant, walked everyone through the site plan that was provided along with Lance. Brian Harper stated where the trees will be on site, the species of the trees they will use, how many there will be, and how they will be staggered.

Lance added that along the driveway area coming into the site there is some existing vegetation along the property line and the applicant plans on leaving that intact.

Kathy Cole asked if the applicant used a certified arborist to determine the species of trees you are proposing and Brian stated they did. Kathy would like Brian to provide us with something in writing that states that. Brian also stated that the landscaper's contract will include a 2 year warranty on the trees planted to replace any that may die or don't grow. Lance stated that any tree that dies during the life of the project will be the applicant's responsibility to replace.

Kathy Cole also asked the trees along the west side why they stopped where they did and she would like to see some trees planted across the property to block the view of the panels from the North. Brian will see if they can do that and why they stopped the tree line where they did on the plans.

Randy Kozlowski asked if there are any plans for safety precautions at the entrance of the access road due to the concerns of the resident that lives right there. Lance asked Brian Harper if they have proposed to do anything additional at that spot and Brian said they are not. Lance stated that signs stating this is a construction site are required and they may have some fencing along the property line to buffer the active site from the resident. Cindy Kellen asked if it could be along the property line of the entire site since they are a lot of young kids that live there and Lance said it could be a requirement if the Board chooses. Kathy Cole stated the Planning Board would like to see that on the site plans.

Lance asked Clara if she had any questions and she said she has been able to hear everything fine and doesn't have anything more to add.

Judy Falzoi joined the meeting via JoinMe and she had a question regarding the Danger signs that are seen on the poles at the school solar array. She said that her question has not been answered in any of the previous meetings. Lance let Judy know that this is not a public hearing and that your question has been documented and we will get her an answer.

Kathy Cole stated that since Lance hasn't had a chance to respond yet to the applicant letter received today, she also has some concerns with some of the responses from the applicant. Kathy asked Lance if he will have a chance to review those responses and be able to comment on them before the meeting on September 28<sup>th</sup>. Lance stated he will certainly be able to do that since there is no new information submitted.

Kathy Cole asked if any other Board member had any questions. Lance asked if anyone had questions regarding the heights of the trees they are proposing.

Jeff Mulligan asked how tall with the trees get and Brian stated they get 15 plus feet at maturity. Jeff Mulligan and Cindy Kellen both feel something taller needs to be planted. Lance stated that on the landscaping plan Brian needs to supply us with the quantity, size, spacing and maturity height. Cindy stated she feels the starting height at planting should be 10-12 feet, she feels 5 feet at planting isn't enough coverage. Clara stated that the cedar trees are slow growing trees. Jeff Mulligan feels there needs to be a tree that grows faster and will be taller. Jeff Mulligan stated a spruce tree grows fast.

The Board discussed some trees that they felt were suitable for the area. Lance stated that when the applicant submits which trees they are proposing, if the Board feels that is not advantageous for the area, they can require a different landscaper's opinion or recommendations.

Cindy Kellen suggested there be more rows of trees to help block the view. Jeff Mulligan stated it probably isn't the density more as the width. Lance suggested that the applicant clarify that on the plans.

Lance reinstated what the Board is asking of the applicant for the next meeting:

A letter from the Landscape Architect who designed the landscaping plan is to be submitted to the board describing why the species proposed were selected for this site. Also should different species be considered?

The following items are to be shown on the revised Landscaping Plans: Identify the maximum height (range) of the proposed trees, the plans are to identify the minimum planting height of the proposed trees to be 10' to 12' tall, additional landscaping is to be provided along the northern buffer area to further screen the site from NYS Rte. 5 & 20 and from the neighboring properties, the proposed western buffer landscaped area is to extend the entire length along the property line to NYS Rte. 5 & 20 R.O.W. to further screen the solar and the access road from the neighboring properties, an additional row of trees (for a total of 3 rows) is to be placed along the western property line.

The Grading & Erosion Control Plans are to be revised to identify that temporary orange construction fencing is to be placed along to the western property line. This is to extend the full length of the site to identify this area as a construction zone and for public safety during construction.

Please address this comment received from the one of the residents: *why are DANGER signs posted on the electric poles carrying current from the Avon Public School small solar project? I do not see DANGER posted on other poles with high wires. As I recall, the Howlett site plan includes five new electric poles situated between homes connecting the wires from the solar facility with other electric wires already there. Does this add DANGER in the residential zone and between privately owned property/Is there a safety problem that requires a warning? What is the voltage coming off the solar facility? How "hot" is the DC current to the inverters and then the outgoing AC current?*

Lance asked the Board if they are comfortable with the landscaping along the access driveway to make sure he has the most up-to-date concerns of the Boards. Randy asked if the applicant is responsible to maintain the landscaping on the parcel and Lance stated yes it will be stated in the Operations and Maintenance Plan. There was discussion on where the trees

should actually go along the property lines and the buffer it will offer the residents.

Clara Mulligan asked if the Board members would be allowed to go walk along the property to see exactly what it looks like. Jim Campbell stated a site visit is not unusual to request. Brian Harper stated he would be willing to do a site visit and he will contact Kim with a date and time for the Board members to visit if they are available. Jim Campbell stated that if there is a quorum at the site it constitutes a meeting, they can walk together but there should be no discussion.

Lance requested that Brian Harper respond to the requests from the Board discussion tonight before the next meeting. Jim Campbell stated it would be better to have it in advance so Kim can send it out to the Board members for review prior to the meeting. Brian stated he will have those responses to the Town by Monday, September 21, 2020.

ZBA & PLANNING BOARD MOTION TO CLOSE THE MEETING WAS MADE BY RANDY KOZLOWSKI, SECONDED BY BRIAN THORN.

KATHLEEN COLE -AYE  
TOM MCGOVERN- ABSENT  
RANDY KOZLOWSKI - AYE  
KATHLEEN MANNIX - AYE  
CLARA MULLIGAN - AYE  
BRIAN THORN - AYE  
CHRISTOPHER STERNER - AYE

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

CARRIED 11-0.

MEETING CLOSED.