

PLANNING & ZBA MEETING

MONDAY, SEPTEMBER 28, 2020

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

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

ABSENT: KATHY MANNIX, TOM MCGOVERN

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

VISITORS: JOYCE BLOWERS, BRIAN HARPER

CLERK: KIM MCDOWELL

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

KATHLEEN COLE -AYE
TOM MCGOVERN- ABSENT
RANDY KOZLOWSKI - AYE
KATHLEEN MANNIX - ABSENT
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 10-0.

PLANNING & ZBA BOARD MOTION TO APPROVE THE MINUTES FROM THE JOINT MEETING ON SEPTEMBER 15, 2020 AS SUBMITTED WAS MADE BY BOB; SECONDED BY DIANE.

KATHLEEN COLE -AYE
TOM MCGOVERN- ABSENT
RANDY KOZLOWSKI - AYE
KATHLEEN MANNIX - ABSENT
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 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

Jeff Mulligan stated that tonight the Planning Board will start with the site plan review.

Kathy Cole asked Lance to go over the responses from MRB Group's review of the site plan.

Lance stated we have reviewed the applicant's comments and contacted Mr. Harper to clarify what is still needed and if there are any objections to the information provided. Ultimately, the applicant has no real objection to provide the information requested to the Town.

MRB Group sent a letter dated September 25, 2020 clarifying the reports generated under the Operations and Maintenance plan needing to be submitted to the Town. This would supply the Town with documentation whenever they make a site visit. This record can then be checked to make sure the approved Special Use Permit and Site Plan are being followed correctly. The letter also covered the decommissioning plan items that were previously discussed and approved regarding erosion and sediment controls, SWPPP & Erosion Controls to include the installation and the removal of, and an agreement between all parties involved will adhere to the requirements of the decommissioning plan. It also addressed the landscaping plan regarding the requests made by the Boards for screening along the western property line being extended the full length of the access driveway with three rows where feasible and to include the maximum height of each proposed tree/species. MRB Group also received a recommendation letter from McCord Landscape Architecture dated September 25, 2020 as requested by the Board which describes both trees for wet and dry areas on the parcel.

Kathy Cole asked Brian Harper if he has any questions or concerns for the Board at this time. Brian stated he just received the letter from MRB Group tonight but it seems like everything in the letter is what he discussed with Lance previously. He doesn't have a comment on the vegetation that was just discussed at this time.

Brian Thorn asked if the map can be revised to show what they have discussed tonight with the trees along the western property line. Lance said you can ask the applicant to come back at another time or if the Board requires them to provide trees in those locations as stated it will be in the site plan approval resolution.

Kathy Cole asked Brian Harper if he was prepared to move forward with the Special Use Permit and Site Plan approvals tonight.

Brian Harper asked that during the site visit it showed that there is a vegetative buffer along the access driveway and he feels there is no need for three rows of vegetation to Route 5&20. He feels it will increase the cost of this project substantially. Jim Campbell asked what he feels the cost will increase by and Brian stated they currently have \$150,000 budgeted and with this it will double the cost.

Lance asked Brian if there is an alternative that he could propose for screening along the roadway or are you saying no screening at all. Brian stated he would not propose any screen along the roadway but would consider three rows around the solar panels. Jim Campbell asked what if you did less than three rows along the property line - maybe 2 rows or spaced out a little bit more.

There was lengthy discussion on the vegetation along the property line; the utility easement and right of way and where you could plant trees. There was also discussion on what would happen if the utility company or land owner came in and cleared the easement or existing vegetation.

Kathy Cole is concerned with the Bowser residence on the corner where there is no buffer or vegetation between their property and the site. She would like to see something along there.

Jim Campbell stated that the applicant is agreeing to surround the panels with trees and the question is where on the property would the Board like to see other buffering. Jeff Mulligan understands the cost aspect as well as if we plant something in the right of way and the utility company comes and removes it that doesn't help anyone.

Jim Campbell said maybe we determine where on the site we could plant two rows of trees and where one row of trees will suffice. Clara stated there is some places on the property with enough buffering that three rows of trees may not be needed but some houses didn't have any buffering at all. The Boards discussed exactly what the Town can impose on the land owner in regards to vegetation that already exists on the property.

Jeff Mulligan asked Brian Harper if he was in agreeance with three rows along the power lines and then a single row from there to Route 5 & 20 with 15 feet spacing. Clara wants to make sure there is varied species throughout the property.

There was also lengthy discussion on the height of trees at planting, the spacing of the trees, and the species of the trees.

Lance stated that the site plan before the Board doesn't show any landscaping along the property line to Routes 5&20. The Site Plan approval and Special Use Permit approval resolutions can have modifications that the applicant must adhere to and they will mirror each other.

Lance reiterated that as of right now the Boards would like to see the continuation of the three rows of trees to where the easement ends and then from there one row of trees going all the way to Routes 5&20 with 15 feet spacing between trees.

Brian Harper asked if the Boards were expecting trees in the Wetland area; and they are based on what the landscaping firm's recommended species for that area. Brian suggested three rows to easement, two rows after easement, and one row along the rest of the property line with 15 feet spacing.

Kathy Cole agreed to the trees near the Bowser residence and Randy agreed with all the landscaping just proposed.

Lance stated now that we have a confirmed plan for the number of trees on the property we need to confirm what species and the off set for the trees. Lance referred to the letter supplied to the Boards and they agreed to have a mixed/cluster of species, 7-8 feet at planting, and no farther than 15 feet off center.

Clara wanted to clarify that east to west will still remain; and yes they will as on the site plan.

Brian Harper was questioned what trees they can use based on both their recommendations and the one that Lance provided. Jeff Mulligan stated that some of the trees they recommended are not even on option for this parcel. Kathy Cole stated based on Clara's knowledge of tree species, the Boards are going on the recommendation from McCord Landscape Architecture provided for the trees that need to be planted. Brian Glise also contacted the NYS DEC about the trees they would suggest and they are in line with the McCord Landscape Architecture recommendations.

Jeff Mulligan asked if we can move forward and Lance stated if the Planning Board is ready to move forward they can and then it would go to the ZBA Board for Special Use Permit approval.

The Planning Board members stated they are all ready to move forward. Lance did draft a resolution for the Planning Board's consideration but he hasn't finished the one condition that was just discussed.

Lance read the Site Plan Approval Resolution to all present.

TOWN OF AVON PLANNING BOARD RESOLUTION
NEXTERA ENERGY RESOURCES AVON SOLAR
EAST AVON ROAD & POLE BRIDGE ROAD, AVON, NY
SPECIAL USE PERMIT & SITE PLAN REVIEW

SITE PLAN APPROVAL RESOLUTION

WHEREAS, the Town of Avon Planning Board (hereinafter referred to as Planning Board), is considering Site Plan Approval allow for the development of the Avon Solar Project (Project), a proposed 5-megawatt (MW) alternating current (AC) solar photovoltaic (PV) project located within the Town of Avon. The proposed Project will be located on 33.8 acres of the approximately 118-acre parcel as described in the Site Plans dated June 19, 2020, submitted to the Town on July 28, 2020, and all other relevant information submitted as of September 28, 2020 (the current application); and

WHEREAS, this application was required to be forwarded to Livingston County Planning Board for review and was discussed at the January 9, 2020 meeting where a recommendation of approval was provided; and

WHEREAS, the Town of Avon Planning Board has classified the above referenced Action to be a Type I 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 Town of Avon Planning Board on Monday, August 17, 2020; and

WHEREAS, on January 7, 2020, February 4, 2020, March 3, 2020, June 7, 2020, and on August 17, 2020, in compliance with NYS Town Law, the Planning Board & Zoning Board held Joint public hearings on the current application and completed a formal review of the application; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Board does hereby approves the requested Site Plan with the following conditions:

1. The Applicant shall obtain a Building Permit within six (6) months of such approvals or the approvals shall automatically terminate and be deemed null and void. Additionally, the Applicant shall complete construction of an approved (Site Plan and Special Use Permit) Type 2 Solar Energy System within twelve (12) months of obtaining such approvals or the approvals shall automatically terminate and be deemed null and void and be of no force an effect at law.

2. No signage associated with this project has been approved. Separate approval by the Planning Board is required for all signage.
3. The Town Engineer review letter dated September 25, 2020 is to be addressed prior to the site plans being signed by the Planning Board Chair.
4. Site Plan Approval is conditioned on the NextEra Energy Resources Operations & Maintenance Plan for the NextEra Energy Resource Avon Solar Project, dated July 2020 and as discussed with the Zoning Board and Planning Board and revised per the Town Engineers letter dated September 25, 2020.
5. Site Plan Approval is conditioned on the Decommissioning Plan for the NextEra Energy Resource Avon Solar Project dated July 2020 and as discussed with the Zoning Board and Planning Board and revised per the Town Engineers letter dated September 25, 2020.
6. Site Plan Approval is conditioned on the Stormwater Pollution Prevention Plan (SWPPP) for NextEra Energy Resource Avon Solar Project dated July 2020 and revised per the Town Engineers letter dated September 25, 2020. No permits shall be issued until the NYSDEC Acknowledgement letter has been received by the Town Building & Zoning Department.
7. Prior to obtaining a building permit, the Applicant must provide an irrevocable financial security bond (or other form of surety acceptable to the Town of Avon at its discretion) for the removal of the Type 2 Solar Energy System, with Avon as the designated assignee/beneficiary, in an amount to be approved by the Town Engineer based on their review of the Decommissioning Cost Estimate submitted by Tetra Tech EC, Inc.
8. The Decommissioning bond or surety shall provide for an annual increase in the amount of the surety to compensate for the cost of inflation or any other anticipated increase in costs of removal.
9. Each year after the NextEra Energy Resources Avon Solar has been constructed, and no later than ten (10) days prior to the anniversary date of the issuance of the building permit for such system, the then owner/permit holder for the system shall provide the Town of Avon Building & Zoning Department & Town Clerk with written confirmation that the required financial security bond (or other form of surety) is still operable and valid and that such surety has been properly increased to account for inflation or any other anticipated increase in costs of removal as provided for above.
10. After completion, the Applicant shall provide to the Town of Avon Building & Zoning Department a post- construction certificate from a Professional Engineer registered in New York State that the project complies with all applicable codes and industry practices and has been constructed and is operating according to the design plans.
11. Prior to issuance of a permit the applicant shall enter into a contract with the Town for payments in lieu of taxes pursuant to Real Property Tax Law §487 9. (a).
12. A Special Use Permit granted by the ZBA is required prior to signatures being affixed to the site plans.
13. The landscaping plan is to be revised to provide a Vegetative Buffering and tree plantings as follows:
 - a. The landscaping plan dated June 19, 2020 and submitted to the Town of Avon on September 22, 2020 prepared by Tetra Tech is to be revised to identify the proposed three (3) rows of trees along the western property line to be of species and clustered in accordance with the McCord Landscape Architecture letter dated September 25, 2020, and to be planted at a height of 7' to 8' tall and to have a spacing of 15' off center.

- b. The landscaping plan is also to be revised to depict an additional two rows of trees along the western property line extending from the northern extremity of the three (3) rows as previously referenced to the southerly terminus point of the utility easement (Overhead Line). The landscaping in this area is to be of species and clustered in accordance with the McCord Landscape Architecture letter dated September 25, 2020, planted at a height of 7' to 8' tall and set at 15' off center.
 - c. Additionally, a single row of trees along the western property line extending from the northerly terminus point of the utility easement as previously referenced, to the southerly right-of-way of NYS Route 5&20, is to be provided and to be of species and clustered in accordance with the McCord Landscape Architecture letter dated September 25, 2020, and these trees are to be planted at a height of 7' to 8' tall and set at a 15' off center.
 - d. Furthermore the landscaping plan is to be revised to depict three rows of trees to be of species and clustered in accordance with the McCord Landscape Architecture letter dated September 25, 2020, planted at a height of 7' to 8' tall and set at a 15' off center extending from the landscaping along the western property line, east to the western side of the proposed driveway (north side of solar panels).
 - e. Lastly, the landscaping plan is to be revised to depict two rows of trees of species and clustered in accordance with the McCord Landscape Architecture letter dated September 25, 2020, planted at a height of 7' to 8' tall and set at 15' off center, to be provided from the eastern side of the driveway to the eastern property line (north side of solar panels).
 - f. Applicant, its successors and/or assigns shall be required to maintain all tree plantings for the life of the Project. Applicant shall be required to post an irrevocable bond for a period of five (5) years from the date of commencement of construction of the Project. Said bond shall name the Town of Avon as the benefitted or protected party and shall be intended to ensure that the visual buffer tree plantings survive and accomplish the visual buffering of the project as intended by this conditioned approval. Failure of Applicant or its successors or assigns shall be grounds for revocation of the Special Use Permit.
14. All consultants' fees for review of application are to be reimbursed by the applicant to the Town prior to the issuance of permits.
15. The owner/operator is responsible for maintaining and replacement of all trees and landscaping as depicted on the approved site plans for the life of the project. All identified trees and landscaping in need of replacement are to be replaced by the following growing season.

The above resolution was offered by Kathy Cole and seconded by Brian Thorn at a meeting of the Planning Board held on Monday, September 28, 2020. Following discussion thereon, the following roll call vote was taken and recorded:

Kathleen Cole - AYE
Randy Kozlowski - AYE (via Phone In vote)
Kathy Mannix - ABSENT
Thomas McGovern - ABSENT
Clara Mulligan - AYE
Brian Thorn - AYE
Christopher Sterner - 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 August 17, 2020 meeting.

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

Brian Harper again questioned the trees in the wet land area. Kathy Cole stated the trees that were recommended by McCord are able to thrive in that area. Lance stated the Planning Board is not proposing additional landscaping south and the only wetland area is maybe 40 feet on the site plan.

The site plan resolution has been approved and now the next step is for the ZBA approval of the Special Use Permit.

Jeff Mulligan stated that Jim Campbell has supplied the Board with the Findings and Decision, Special Use Permit Resolution. Each Board member read a portion of the Findings and Decision sheets.

FINDINGS AND DECISION
Town of Avon Zoning Board of Appeals
September 28, 2020

Matter of the application for Special Use Permit of DG New York CS, LLC

Site Address: South of NYS Rts. 5 & 20 (East Avon Road) , east of Pole Bridge Road, Town of Avon, Livingston County, New York
Tax Id. #: 34.-1-15.21

BACKGROUND SUMMARY

1. Applicant History and Overview

DG New York CS, LLC (hereafter “Owner” or “Applicant”) is proposing to construct a solar energy system with an expected nameplate capacity of approximately 5.0 Megawatts AC (hereafter “Project”) on approximately 34 acres (out of approximately 120 +/- acres in total area) of an existing parcel identified as ___ East Avon Road, Town of Avon, Livingston County, New York and also being identified as Tax Identified Map Parcel No.: 34.-1-15.21 (hereafter “Subject Property”). The Subject Property upon which the Project is to be constructed is vacant agricultural land owned by Richland Resources, LLC, which has leased a portion of the Subject Property to Owner for purposes of constructing and operating the Project.

According to the Applicant and materials submitted to the Town, no trees will be cleared for the project. The facility will have over 10,000 solar panels of single- axis tracking design, mounted using driven post foundations or similar mounting mechanisms. The solar panels will be a maximum of approximately 10 to 12 feet in height. Concrete pad- mounted transformers/ inverters will be installed. The DC power will be routed through two 3- MW inverters to convert it to AC power. Some shallow trenching for underground utility cables will be performed. The facility will be interconnected to the electrical grid via an existing on- site 34. 5 kV overhead electrical line. A new approximately 163- foot- long overhead electrical line and approximately five new utility poles will be installed for the interconnection. A new fence will be installed around the solar facility for security. A 20- foot- wide gravel access road will be constructed from East Avon Road, extend along a western portion of the property parcel, and extend into the solar facility to result in approximately 4,800 feet of access road to maintain the solar facility. Existing trees in the southwestern portion of the property parcel will be retained and provide a partial natural visual buffer in that area. The owner intends to continue agricultural activities in the portion of the property north of the project area.

2. Procedural Summary

DG New York CS, LLC has made application for approval of a Special Use Permit to construct and operate the Project as required by Article XV §130-80 E. (1) of the Zoning Ordinance of the Town of Avon (hereafter “Zoning Code”). The Applicant made a contemporaneous Site Plan application to the Town of Avon Planning Board.

The Subject Property is zoned Agricultural District (A), in which Type 2 Solar Energy Systems (as defined in §130-79 of the Zoning Code) are permitted uses, subject to Site Plan Approval and Special Use Permit.

The application requirements for Special Use Permits relating to Type 2 Solar Energy Systems are set forth in §130-80 E. (1). Special Use Permit Approval Standards for Type 2 Solar Energy Systems are found in §130-80 E. (2). In addition, §130-35 of the Zoning Code contains the general requirements and approval standards for granting of Special Use Permits.

From a procedural standpoint, upon receiving completed applications for a Special Use Permit and Site Plan approval from the Applicant, the Town of Avon Building and Zoning Department, on behalf of the ZBA, referred the matter to the Livingston County Planning Board pursuant to New York State General Municipal Law section 239 l and m.

On January 9, 2020, the Livingston County Planning Board issued a written statement that they had reviewed the referral and voted affirmatively to recommend “Approval” with various advisory comments. The written advisory comments have been made a part of the file of the Zoning Board of Appeals and such advisory comments therein have been taken into consideration as part of the deliberation process undertaken by the Zoning Board of Appeals and in part contribute to the basis for its decisions regarding these matters.

The Town of Avon Zoning Board of Appeals met at a properly scheduled and noticed meeting on January 7, 2020, along with the Town of Avon Planning Board to hold a joint public hearing for purposes of obtaining public comment on the requested Special Use Permit (and Site Plan from the Planning Board). Said public hearing resulted in approximately 50 residents appearing, many of whom spoke in opposition to the application for a Special Use Permit. Because of a number of issues that were raised during the public comment period of the public hearing, the ZBA (and Planning Board) elected to hold open the public hearing. The public hearing was continued on February 4, 2020, March 3, 2020, July 7, 2020 and August 17, 2020. In each of those instances, the Board allowed public comment regarding the application for a Special Use Permit. Additionally, several written comments were received during the review process and during the time when the public hearing was held open, which such comments have been reviewed by the ZBA and have been considered as part of the review process leading up to this resolution.

The Town of Avon Planning Board conducted a coordinated review of the proposed project pursuant to the State Environmental Quality Review Act (SEQR) 6 NYCRR 617. The ZBA participated in the SEQR review as an involved agency as part of the coordinated review. The Planning Board, after reviewing all materials submitted with regard to the SEQR process, completed Parts 2 and 3 of the Full Environmental Assessment Form. Based on its findings, the Planning Board made a determination of non-significance and issued a Negative Declaration. The ZBA has considered all materials related to the SEQR review conducted by the Planning Board (in coordination with the ZBA), including its findings and determination of non-significance. Those findings and the determination of non-significance have been taken into consideration as part of the deliberation process undertaken by the ZBA and in part contribute to the basis for its decisions regarding the subject application.

Following the closing the public hearing, the ZBA considered the comments received by the public during the extensive public hearing period (as well as written comments received) and discussed various issues raised in the public hearing as well as by members of the ZBA, Planning Board and Livingston County Planning Board. After due deliberation, the Town of Avon Zoning Board of Appeals makes the following findings:

GENERAL FINDINGS

- 1. The proposed use as sought by the Applicant to construct and operate a Type 2 Solar Energy System on the subject property is a permitted use with a Special Use Permit in the Agricultural District (A) zoning classification pursuant to §130-80 E. of the Zoning Code;**
- 2. Special Use Permits are governed generally by §130-35 of the Zoning Code and Special Use Permits for Type 2 Solar Energy Systems are further governed by §130-80 E. (1) and 130-80 E. (2);**
- 3. The Applicant has properly submitted its application pursuant to section 130-45 B. of the Zoning Code, seeking approval from the ZBA of a Special Use Permit under section 130-80 E B. (4) (e) of the Zoning Code permitting it to construct and operate a Type 2 Solar Energy System Subject Property;**
- 4. The Town of Avon Code Department has properly submitted the application requesting the Special Use Permit to the Livingston County Planning Board pursuant to the requirements of General Municipal Law section 239 l & m;**
- 5. On January 9, 2020, the Livingston County Planning Board issued a written statement that they had reviewed the referral and voted affirmatively to recommend “Approval” with various advisory comments:**
 - a. The Town should carefully review the submitted Agricultural Data Statement in accordance with the NYS Agriculture & Markets Law Section 303- a(2). The board reviewing the application" shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within such agricultural district."**
 - b. The NYS Department of Agriculture & Markets has issued " Guidelines for Agricultural Mitigation for Solar Energy Projects." The NYSERDA has issued " Conditional Use Permits and Site Plan Regulations to Allow Large- Scale Solar Installations While Protecting Farmland." The Town should consult these resources to determine if there are additional conditions/ standards to be considered in order to protect the Town' s agricultural resources. The Applicant should also ensure that the impact to prime farmland are reduced to the greatest extent practicable.**
 - c. The NYS Department of Agriculture and Markets has issued a letter regarding the project recognizing that the subject property is within the County Agricultural District program, and that the solar facility project is to be located primarily on Prime Agricultural Farmland. The NYSDAM suggests that the project be reconfigured on- site or moved to an alternative site in order to protect existing agricultural resources, and encourages the Town to consider impacts to prime farmland as part of the SEQR process.**
 - d. If not done already, the Town should complete the SEQR process before final action is taken.**
 - e. The County Planning Board expressed concern on flooding in the area of the proposed. In addition, the Applicant should ensure that an erosion control plan is submitted to the Town per the Town Solar Law, and that the NYSDEC Stormwater Pollution Prevention Plan(SWPPP) meets the satisfaction of the Town Engineer, with an emphasis on reducing flooding on the property and in that area to reduce any potential impact to the Village of Avon.**

- f. **The Town of Avon Comprehensive Plan' s Policy Framework for preserving the Rural Environment& Small- Town Character emphasizes the need to minimalize adverse impacts of development on agricultural land and on prime soils.**
 - g. **If not done already, the Town should ensure that proposed fencing, and buffering meets the Towns Code requirements and to the Town Engineer's satisfaction.**
 - h. **The Applicant should ensure that any potential glare presents no adverse impact to neighboring properties. The addition of buffer plantings along the westward boundary may mitigate this issue.**
 - i. **If not done already, the Applicant should provide the Town with full details on all proposed signage to ensure that it meets the requirements of Town Code.**
6. **The Town of Avon Planning Board conducted a coordinated review of the proposed project pursuant to the State Environmental Quality Review Act (SEQR) 6 NYCRR 617. The ZBA participated in the SEQR review as an involved agency as part of the coordinated review. The Planning Board, after reviewing all materials submitted with regard to the SEQR process, completed Parts 2 and 3 of the Full Environmental Assessment Form. Based on its findings, the Planning Board made a determination of non-significance and issued a Negative Declaration;**
7. **The ZBA concludes that it is not necessary, nor would it be appropriate to conduct an independent review of the proposed application pursuant to SEQR. The ZBA acknowledges that the Town of Avon Planning Board undertook an appropriate review under 6 NYCRR 617 and took the requisite “hard look” at the proposed action relative to the issuance of Site Plan Approval and a Special Use Permit for the Subject Property and is accordingly satisfied with such review;**
8. **In reaching the above findings, the ZBA has considered the following documents as well as other relevant information:**
- a. **Special Use Permit and Site Plan application materials received from the Applicant, including various maps and site plans showing the area surrounding the Subject Property;**
 - b. **Various site plan maps and drawings related to the proposed location of infrastructure related to the Project, including proposed access roadway, fencing, buffering landscape, existing vegetative buffering and proposed solar energy system equipment;**
 - c. **Various technical documents and drawings related to the type of infrastructure proposed and manner of installation of such infrastructure;**
 - d. **The submitted Agricultural Data Statement provided by Applicant;**
 - e. **The NYS Department of Agriculture& Markets " Guidelines for Agricultural Mitigation for Solar Energy Projects."**
 - e. **Storm Water Pollution Prevention Plan prepared June 2020 (preliminary) and in final form July 2020;**
 - f. **Town of Avon Zoning Ordinance §130-45;**
 - g. **Town of Avon Zoning Ordinance §130-35;**
 - h. **Town of Avon Zoning Ordinance §130-78 - §130-84;**

- i. Technical submission review documents and review of all application materials by the ZBA's consulting engineering firm, MRB Group;
 - j. Landscaping and planting recommendations relative to visual buffering from McCord Landscape Architects, PLLC, dated September 25, 2020;
 - k. Numerous written correspondence from neighboring property owners and other community members; and
 - l. Numerous comments as made in the Public Hearing held January 7, 2020, February 4, 2020, March 3, 2020, July 7, 2020 and August 17, 2020.
11. The proposed use of the subject property for a Type 2 Solar Energy System does not constitute a use pursuant to Town Code section 130-27 A. (2) that is "...noxious or offensive by reason of refuse, matter, dust, odor, smoke, gas, fumes, noise, vibration, unreasonable use of lights or nighttime operation."

FINDINGS FOR THE SPECIAL USE PERMIT UNDER SECTION 130-35

- 1. The proposed use of the subject property pursuant to the application is to permit the Applicant to use the subject property to construct and operate a Type 2 Solar Energy System with an expected nameplate capacity of approximately 5.0 Megawatts AC on approximately 34 acres;
- 2. The above stated proposed use is determined to be a permitted use within the Agricultural District (A) with the issuance of a Special Use Permit pursuant to §130-80 E. and §130-35 of the Zoning Code;
- 3. The Zoning Board of Appeals in making its findings has taken into consideration the existing conditions of the proposed site and the surrounding area;
- 4. The Zoning Board of Appeals in making its findings has taken into consideration the public health, safety and welfare, the comfort and convenience of the public in general and of the residents in the immediate area in particular;
- 5. Pursuant to 130-35 B. (1) of the Avon Zoning Code, the Zoning Board of Appeals finds that:
 - a. With the conditions imposed by this determination, especially the visual buffering created by the required plantings, the proposed use will not have an adverse effect on the orderly development and character of the neighborhood or upon the development and conduct of other lawful uses in the vicinity. It is noted that most of the residences in the vicinity are closer to the road and substantial rear yards. While there is potential for the Project to result in a visual impact deemed undesirable by some or all of the neighbors, such impact will be mitigated by multiple rows of required plantings that will create a visual buffer year round. It is also determined that the proposed Project will not create any meaningful noise or odor.
 - b. With the conditions imposed by this determination, the proposed use will be in harmony with the existing and probable future development of the vicinity in which the premises are situated. While large scale solar energy systems are not agricultural in appearance, the required plantings will mitigate any non-harmonious effect. The proposed Project is significantly more passive than typical agricultural use which may be otherwise associated with the Subject Property. The proposed use will have grass lands around the panels, which will positively impact drainage in the vicinity.

Future development in the vicinity is likely to be a mix of agricultural and residential uses, neither of which will be negatively impacted by the Project with conditions imposed to require significant visual screening;

- c. With the conditions of use imposed by this determination, the proposed use will not be a nuisance in law or in fact and the use will not be unreasonably noxious, offensive or injurious by reason of production of or emission of dust, smoke, refuse, poisonous substances, odors, fumes, noise, radiation, vibration, unsightliness or similar conditions, or will contaminate waters. Any visual impact will be properly mitigated by the imposition of conditions that require significant visual screening in the form of landscape plantings;
- d. With the conditions of use imposed by this determination, including proper security fencing, the proposed use will not create hazards or dangers to the public or to persons in the vicinity from fire, explosion, electricity, radiation, traffic congestion, crowds, parking or automobiles or other causes. It should be noted that electrical transmission lines currently exist in near proximity to the Subject Property and the surrounding neighboring residences;
- e. With proper conditions, restrictions and safeguards as set forth herein, the property values in the vicinity of the proposed use and the health, safety, morals, peace and general welfare of the community and the public can be adequately protected. The ZBA has found no credible evidence that development similar to the proposed Project will negatively impact property values. However, proposed visual mitigation measures are intended to safeguard nearby property values. Use of non-glare panels will also minimize any visual impact. The proposed Project is engineered and designed to have no negative impact on drainage and may result in a small positive impact or improvement to drainage in the immediate area and drainage is one of the most significant challenges to the immediate neighborhood. The ZBA has found no credible evidence that development similar to the proposed Project will be detrimental to the health, safety, morals, peace and general welfare of the community;
- f. The proposed use of the Subject Property for a Type 2 Solar Energy System is consistent with the zoning classification and appurtenant permitted uses of such classification and is in general conformance with the Comprehensive Plan and any other applicable community plans. Specifically, the Town's Comprehensive Plan supports renewable energy under the section entitled "Sustainable Growth and Development" on page 50, "Objective D – encourage the use of green infrastructure and development practices with future investment" and on page 53, #4 – "Encourage renewable energy systems for residential, commercial and industrial uses where appropriate;" and
- g. The proposed use meets the criteria for review in the Town's site plan regulations.

FINDINGS FOR SPECIFIC REVIEW STANDARDS FOR ISSUANCE OF SPECIAL USE PERMIT FOR TYPE 2 SOLAR ENERGY SYSTEMS UNDER SECTION 130-80 E. (2)

- 1. Pursuant to §130-80 E. (2) of the Avon Town Code, the Zoning Board of Appeals finds that:
 - a. The proposed Project will comply with the height limitations imposed within an Agricultural District;

- b. The proposed Project will meet or exceed all set backs established by §130-80 E. (2) (a);
- c. The Subject Property on which the Project is to be located is more than 25 acres in size;
- d. The Type 2 Solar Energy System does not cover more than 25 acres of the Subject Property, which is in excess of 40 acres in total area;
- e. Applicant is proposing to fence the Type 2 Solar Energy System and put up warning signs to prevent unauthorized access. Additionally, Applicant is proposing enhanced screening of the Project, as the Type 2 Solar Energy System is adjacent to numerous residences;
- f. Only one Type 2 Solar Energy System is being proposed for the Subject Property. That portion of the property that is not being developed as part of the Project will continue to be farmed;
- g. The Subject Property has not been recently subdivided or changed in order to circumvent the limitations imposed by §130-80 E. (2);
- h. The Applicant is proposing to maintain native vegetation to the extent practicable pursuant to a vegetation management plan by providing native perennial vegetation and foraging habitat beneficial to game birds, songbirds and pollinators;
- i. The Project will be accessible for all emergency service vehicles and personnel

Based upon a thorough review of all information submitted by the Applicant, information and input from the Town of Avon Planning Board, information and input from the Livingston County Planning Board, as well as all information and comment made by the public at the Public Hearing and on other occasions, and after due deliberation by the Town of Avon Zoning Board of Appeals, I hereby make a motion to adopt the above Findings. Do I have a second?

Motion made by Jeff Mulligan, seconded by Jeff Passarell

All in favor? All opposed?

Ayes 4 Nays 1

APPROVAL OF SPECIAL USE PERMIT WITH CONDITIONS

Based upon the foregoing adopted Findings of the Town of Avon Zoning Board of Appeals, I make a motion to approve the Special Use Permit request of Applicant pursuant to sections 130-35 and 130-80 E. (2) of the Town of Avon Zoning Code, subject to the following conditions:

1. **Vegetative Buffering:** Applicant shall provide tree plantings as follows:
 - a. The landscaping plan dated June 19, 2020 and submitted to the Town of Avon on September 22, 2020 prepared by Tetra Tech is to be revised to identify the proposed three (3) rows of trees along the western property line to be of species and clustered in accordance with the McCord Landscape Architecture letter dated September 25, 2020, and to be planted at a height of 7' to 8' tall and to have a spacing of 15' off center.
 - b. The landscaping plan is also to be revised to depict an additional two rows of trees along the western property line extending from the northern extremity of the three (3) rows as previously referenced to the southerly terminus point of the utility easement (Overhead Line). The landscaping in this area is to be of species and clustered in accordance with the McCord Landscape Architecture letter dated September 25, 2020, planted at a height of 7' to 8' tall and set at 15' off center.

- c. Additionally, a single row of trees along the western property line extending from the northerly terminus point of the utility easement as previously referenced, to the southerly right-of-way of NYS Route 5&20, is to be provided and to be of species and clustered in accordance with the McCord Landscape Architecture letter dated September 25, 2020, and these trees are to be planted at a height of 7' to 8' tall and set at a 15' off center.
 - d. Furthermore the landscaping plan is to be revised to depict three rows of trees to be of species and clustered in accordance with the McCord Landscape Architecture letter dated September 25, 2020, planted at a height of 7' to 8' tall and set at a 15' off center extending from the landscaping along the western property line, east to the western side of the proposed driveway (north side of solar panels).
 - e. Lastly, the landscaping plan is to be revised to depict two rows of trees of species and clustered in accordance with the McCord Landscape Architecture letter dated September 25, 2020, planted at a height of 7' to 8' tall and set at 15' off center, to be provided from the eastern side of the driveway to the eastern property line (north side of solar panels).
 - f. Applicant, its successors and/or assigns shall be required to maintain all tree plantings for the life of the Project. Applicant shall be required to post an irrevocable bond for a period of five (5) years from the date of commencement of construction of the Project. Said bond shall name the Town of Avon as the benefitted or protected party and shall be intended to ensure that the visual buffer tree plantings survive and accomplish the visual buffering of the project as intended by this conditioned approval. Failure of Applicant or its successors or assigns shall be grounds for revocation of the Special Use Permit.
2. During construction of the Project, safety fence shall be installed the site access road to the west side of the access drive along the easterly line of lands now or formerly of Justin T. Boswer;
 3. Prior to any permits for any portion of the Project being issued, Applicant shall enter into a Payment In Lieu of Tax agreement with the Town of Avon, in a form acceptable to the Town Board of the Town of Avon;
 4. Prior to any permits for any portion of the Project being issued, Applicant shall enter into an Agreement/Plan for Decommissioning of the Project, in a form acceptable to the Town Board of the Town of Avon;
 5. Approval of this Special Use Permit shall be subject to and contingent upon issuance of Site Plan approval by the Town of Avon Planning Board; and

Motion made by Jeff Passarell, seconded by Cindy Kellen

All in favor? All opposed?

Ayes 4 Nays 1

Jim Campbell reiterated that the site plan approval conditions will be inserted in this document once Lance sends it over to Jim.

Kim will send to applicant the final versions of the Site Plan and Special Use Permit resolutions once she receives them from Lance and Jim Campbell.

Jeff Mulligan asked if there was any other business to discuss tonight.

Kim stated Mr. Stevenson who is proposing a campground on Lakeville Road has gotten approval from Livingston County Planning Board and he would like to come in and discuss his application with the Planning Board. The Town Planning Board needs to make a recommendation to the Avon Town Board in order for Mr. Stevenson to get approval from the Avon Town Board. Kathy Cole asked and all other members agreed for him to come to the next scheduled meeting on November 3, 2020. Kim will contact Mr. Stevenson and let him know the next meeting date.

Brian Harper asked if both Jeff Mulligan and Kathy Cole sign Confirmation of Local Land Use Approval Planning and Zoning Form that NYSEDA requires from the applicant. Jim Campbell added some verbiage to the form and Kathy and Jeff both signed it. Mr. Harper will scan and send a copy to Kim tomorrow.

Diane asked Jim Campbell about the status of where we are with the Oak Openings mine expansion. Jim stated they currently have a request for changing hours, truck traffic and expanding the mining area with the NYS DEC. The Town did send in a letter for their consideration on the matter and it is currently still in process with NYS DEC. Jim Campbell also stated the Town Board is receptive to making a change to the code with regards to mining in Avon. He suggested that some Board members go to a Town Board meeting and request them to start discussion on making that change.

Both Board members have appreciated having joint meetings to get everyone's opinion and suggestions to applications. Jeff Mulligan suggested to having quarterly joint meetings. Kim will incorporate them into next year's meeting dates.

ZBA & PLANNING BOARD MOTION TO CLOSE THE MEETING WAS MADE BY BOB,
SECONDED BY CINDY.

KATHLEEN COLE -AYE
TOM MCGOVERN- ABSENT
RANDY KOZLOWSKI - AYE
KATHLEEN MANNIX - ABSENT
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 10-0.
MEETING CLOSED.