

PLANNING, ZBA & TOWN MEETING

MONDAY, NOVEMBER 20, 2023

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

ZBA: JEFF MULLIGAN, BOB WESTFALL, DIANE ATTEA, CINDY KELLEN, KITTY BRESSINGTON

ABSENT: KATHY MANNIX (PLANNING)

OTHERS: BRIAN GLISE (CEO, AVON), MATTHEW SOUSA (MRB GROUP), JAMES CAMPBELL (TOWN ATTORNEY)

VISITORS: JIM CARGNONI, SYDNEY SHIVERS, JANET WARD, KEVIN OVERTON, ROBERT DEMILIO, CHARLIE SHAW

CLERK: KIM MCDOWELL

Jeff Mulligan called the meeting to order.

The Planning and ZBA Board members, as well as Brian Glise, Matthew Sousa, Jim Campbell, and Kim McDowell introduced themselves to those present.

Jeff Mulligan reviewed the emergency exits for all present.

Jeff Mulligan welcomed the newest ZBA Board member to everyone, Kitty Bressington.

MOTION TO OPEN THE MEETING WAS MADE BY BOB WESTFALL; SECONDED BY DIANE ATTEA.

KATHLEEN COLE -AYE
THOMAS MCGOVERN - AYE
COLLIN HAYES - 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
KITTY BRESSINGTON -AYE

CARRIED 11-0.

ZBA & PLANNING MOTION TO APPROVE THE MINUTES FROM SEPTEMBER 18, 2023, MEETING SUBMITTED WAS MADE BY CHRISTOPHER STERNER; SECONDED BY CLARA MULLIGAN.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
KITTY BRESSINGTON - ABSTAIN

KATHLEEN COLE -AYE
THOMAS MCGOVERN - AYE
COLLIN HAYES - AYE
KATHLEEN MANNIX - ABSENT
CLARA MULLIGAN - AYE
BRIAN THORN - AYE
CHRISTOPHER STERNER - AYE

CARRIED 10-0.

ZBA MOTION TO APPROVE THE MINUTES FROM OCTOBER 16, 2023 MEETING SUBMITTED WAS MADE BY CINDY KELLEN; SECONDED BY KITTY BRESSINGTON.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
KITTY BRESSINGTON - AYE

CARRIED 5-0

CARGNONI, JAMES/2284 DUTCH HOLLOW ROAD/TAX MAP#45.-1-76/ZBA - SPECIAL USE PERMIT FOR HOME CHIROPRACTICE OFFICE - PUBLIC HEARING

Mr. Cargnoni was present and gave a brief overview of his application, nothing changed since the October meeting.

MOTION TO OPEN THE PUBLIC HEARING MADE BY CINDY KELLEN; SECONDED BY BOB WESTFALL.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
KITTY BRESSINGTON - AYE

CARRIED 5-0.

Jeff Mulligan asked if there were any comments from the public and there were none.

MOTION TO CLOSE THE PUBLIC HEARING MADE BY DIANE ATTEA; SECONDED BY CINDY KELLEN.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
KITTY BRESSINGTON - AYE

CARRIED 5-0.

Jeff Mulligan stated first we must approve the SEQR Type II resolution.

TOWN OF AVON ZONING BOARD OF APPEALS RESOLUTION
JAMES CARGNONI - HOME CHIROPRACTOR OFFICE
2284 DUTCH HOLLOW ROAD
AGRICULTURAL
SUP APPLICATION

SEQR RESOLUTION - TYPE II ACTION

WHEREAS, the Town of Avon Zoning Board of Appeals, (hereinafter referred to as Zoning Board) has received a Special Use Permit Application to allow for the operation of a home chiropractor business at 2284 Dutch Hollow Road as detailed on the Special Use Permit Application and all other relevant information submitted and discussed at the November 20, 2023, Joint Board Meeting; and

NOW, THEREFORE, BE IT RESOLVED THAT, the Zoning Board does hereby classify the above referenced Action to be a Type II Action under Section 617.5 (c) of the State Environmental Quality Review (SEQR) Regulations; and

BE IT FURTHER RESOLVED THAT, Type II Actions are not subject to further review under Part 617 of the SEQR Regulations; and

BE IT FINALLY RESOLVED THAT, the Zoning Board in making this classification has satisfied the procedural requirements under SEQR and directs this Resolution to be placed in the file on this Action.

The above resolution was offered by Bob Westfall and seconded by Kitty Bressington at a meeting of the Zoning Board of Appeals held on Monday, November 20, 2023. Following discussion thereon, the following roll call vote was taken and recorded:

Jeff Mulligan - AYE
Cindy Kellen - AYE
Bob Westfall - AYE
Diane Attea - AYE
Kitty Bressington - 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 Zoning Board of Appeals for the November 20, 2023, meeting.

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

Jeff Mulligan read the following resolution to everyone present.

TOWN OF AVON ZONING BOARD OF APPEALS RESOLUTION
JAMES CARGNONI - HOME CHIROPRACTOR OFFICE
2284 DUTCH HOLLOW ROAD
AGRICULTURAL
SUP APPLICATION

SPECIAL USE PERMIT APPROVAL RESOLUTION

WHEREAS, the Town of Avon Zoning Board of Appeals, (hereinafter referred to as Zoning Board) has received a Special Use Permit Application to allow for the operation of a home chiropractor at 2284 Dutch Hollow Road as detailed on the Special Use Permit Application and all other relevant information submitted and discussed at the November 20, 2023, Joint Board Meeting; and

WHEREAS, the Zoning Board has classified the above referenced Action to be a Type II Action under the State Environmental Quality Review (SEQR) Regulations; and

WHEREAS, Type II Actions are not subject to further review under Part 617 of the SEQR Regulations; and

WHEREAS, the Planning Board has reviewed the application and determined that the sketch/concept plan as required by the Town of Avon Special Use Permit Application form is sufficient to make a determination; and

NOW, THEREFORE, BE IT RESOLVED, the Zoning Board hereby Approves without Conditions; Approves with the following Conditions; or Denies the application for the following reasons:

1. Before beginning operations, the subject property will be subject to an inspection by the Town Code Enforcement Officer to determine compliance with requirements and Town Code requirements and conditions of this approval.
2. Before beginning operations, the subject property will be subject to inspection by the Town Code Enforcement Officer to determine compliance with NYS Building and Fire Code requirements.

The above resolution was offered by Bob Westfall and seconded by Cindy Kellen at a meeting of the Zoning Board of Appeals held on Monday, November 20, 2023. Following discussion thereon, the following roll call vote was taken and recorded:

Jeff Mulligan - AYE
Cindy Kellen - AYE
Bob Westfall - AYE
Diane Attea - AYE
Kitty Bressington - 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 Zoning Board of Appeals for the November 20, 2023, meeting.

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

DG EMPIRE SUN, LLC/5234 AVON-EAST AVON ROAD/TAX MAP#34.1-15.21/PERMIT EXTENSION REQUEST

Sydney Shivers (Developer), Janet Ward (Developer), Bob DeMilio (Civil Engineer) was present to discuss this request.

MOTION TO OPEN PUBLIC HEARING MADE BY DIANE ATTEA; SECONDED BY KATHY COLE.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE

BOB WESTFALL- AYE
DIANE ATTEA - AYE
KITTY BRESSINGTON - AYE

KATHLEEN COLE -AYE
THOMAS MCGOVERN - AYE
COLLIN HAYES - AYE
KATHLEEN MANNIX - ABSENT
CLARA MULLIGAN - AYE
BRIAN THORN - AYE
CHRISTOPHER STERNER - AYE

CARRIED 11-0.

Ms. Shivers gave a brief overview of what has been submitted for an extension on the completion deadline for this project.

They submitted an amended application with all the documents that were requested at September's meeting.

Ms. Shivers stated they have replaced all the dead trees on October 23, 2023.

Ms. Shivers would like the deadline for the extension to be June 30, 2023, for all the vegetation and drainage issues to be corrected.

They submitted the original application, civil drawings, updated decommissioning and operations & maintenance plans, updated equipment specifications, updated project narrative with all revisions, they plan on starting constructions in April 2024, updated Short EAF form, updated SWPPP, updated decommissioning estimate and tree replacement bond, updated operations and maintenance plan including stormwater and inspections.

They have submitted the assignment from DG New York to DG Empire Sun, both companies are under NextEra, just an internal assignment.

Matthew Sousa stated he doesn't recall seeing the tree bond estimate and he will provide that approval letter for the Town; he recommends approval by the Town for the decommissioning estimates.

Clara Mulligan saw that there is battery energy storage on the site plan but the site plan resolution states that it is NOT approved then why is it still on there.

Jim Campbell looked at the maps that were originally submitted and it was shown on those as well and it wasn't approved at that time either.

Clara also was wondering why the mowing would be from 4-6 inches in height, it doesn't seem practical.

Janet Ward stated the pollinators inside the fence are low growing grass mix and outside are pollinators that will be mowed at least twice a year.

Tom McGovern shares the same concerns about battery energy storage and the applicant doesn't have any intention at this time for battery storage but if they did, they would have to come back for approval.

Kathy Cole asked if there were any comments from the public and there were none.

Brian Glise asked about the request to start construction early, but nothing happened; Ms. Shivers said they were waiting for approval before starting it.

Jim Campbell stated the reason for the large number of pages for this application is the correct process although it is cumbersome for all involved.

MOTION TO CLOSE PUBLIC HEARING MADE BY JEFF MULLIGAN; SECONDED BY THOMAS MCGOVERN.

JEFF MULLIGAN - AYE
CINDY KELLEN- AYE
BOB WESTFALL- AYE
DIANE ATTEA - AYE
KITTY BRESSINGTON - AYE

KATHLEEN COLE -AYE
THOMAS MCGOVERN - AYE
COLLIN HAYES - AYE
KATHLEEN MANNIX - ABSENT
CLARA MULLIGAN - AYE
BRIAN THORN - AYE
CHRISTOPHER STERNER - AYE

CARRIED 11-0.

Jim Campbell requested that the Boards go through the Short Environmental Assessment Form Part 2 before adopting the SEQR Resolution. Jim read the questions to the Board, and they answered no to all eleven questions.

MOTION TO ADOPT THE FINDING OF THE SHORT ENVIRONMENTAL ASSESSMENT FORM PART 2 AS STATED WAS MADE BY BRIAN THORN; SECONDED BY THOMAS MCGOVERN.

KATHLEEN COLE -AYE
THOMAS MCGOVERN - AYE
COLLIN HAYES - AYE
KATHLEEN MANNIX - ABSENT
CLARA MULLIGAN - AYE
BRIAN THORN - AYE
CHRISTOPHER STERNER - AYE

CARRIED 6-0.

Matt read the following resolution:

TOWN OF AVON PLANNING BOARD RESOLUTION
DG EMPIRE SUN, LLC.AVON SOLAR
5234 AVON-EAST AVON ROAD, AVON, NY
TAX MAP # 34.-1-15.21
REVIEW OF AMENDMENT TO THE SITE PLAN

SEQR RESOLUTION - UNLISTED ACTION

WHEREAS, the Town of Avon Planning Board ("Planning Board"), is considering an application for an amendment to a previously approved and issued Site Plan for the development of the DG Empire Sun, LLC Solar Project (Project), a proposed 5-megawatt alternating current solar photovoltaic project located on 41 acres of the approximately 118-acre parcel known as Tax Identifier Map Parcel No. 34.-1-15.21 ("Project") and as further described in the Site Plan Amendment Application dated September 29, 2023, submitted to the Town on October 24, 2023, and all other relevant information submitted as of November 20, 2023 (the current application); and

WHEREAS, the Planning Board has determined the above referenced application (hereinafter referred to as Action) to be an

Unlisted Action under Part 617 of the State Environmental Quality Review (SEQR) Regulations; and

WHEREAS, the Planning Board has determined that the proposed development is subject to a single agency review pursuant to Part 617.6(b) (4) of the SEQR Regulations; and

WHEREAS, the Planning Board determines that it is the most appropriate agency for making the determination of significance thereon under the SEQR Regulations; and

WHEREAS, the Planning Board has given consideration to the criteria for determining significance as set forth in Section 617.7(c) (1) of the SEQR Regulations and the information contained in the Short Environmental Assessment Form Part 1; and

WHEREAS, the Planning Board has completed Part 2 and Part 3 of the Short Environmental Assessment Form; and

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

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) there are no known important historical, archeological, architectural, or aesthetic resources on the site, or will the proposed action impair the existing community or neighborhood character;
- (vi) there will not be a major change 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 substantial change in the use, or intensity of use, of land including open space or recreational resources, or in its capacity to support existing uses;
- (ix) there will not be a large number of persons attracted to the site for more than a few days when compared to the number of persons who would come to such a place 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 upon the environment.

BE IT FURTHER RESOLVED that based upon the information and analysis above and the supporting documentation, the Planning Board determines that the proposed action WILL NOT result in any significant adverse environmental impacts.

BE IT FURTHER RESOLVED that the Planning Board directs the Chairperson to sign and date Part 3 of the Short Environmental Assessment Form and to identify on the Form that the proposed Action will not result in any significant adverse impacts.

BE IT FINALLY RESOLVED that the Planning Board directs that copies of this determination be filed as provided for under the SEQOR Regulations.

The above resolution was offered by Kathy Cole and seconded by Collin Hayes at a meeting of the Planning Board held on Monday, November 20, 2023. Following discussion thereon, the following roll call vote was taken and recorded:

Kathleen Cole - AYE
Collin Hayes - AYE
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 November 20, 2023, meeting.

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

Jeff Mulligan and James Campbell read the Amended Special Use Permit Approval Resolution to all present.

TOWN OF AVON ZONING BOARD OF APPEALS RESOLUTION
DG EMPIRE SUN LLC, AVON SOLAR
5234 AVON-EAST AVON ROAD, AVON, NY
TAX MAP # 34.-1-15.21
REVIEW OF AMENDMENT TO SPECIAL USE PERMIT

AMENDED SPECIAL USE PERMIT APPROVAL RESOLUTION

WHEREAS, Town of Avon Zoning Board of Appeals ("Zoning Board"), is considering an application for an amendment to a previously approved and issued Special Use Permit for the development of the DG Empire Sun, LLC ("Applicant") Solar Project, a 5-megawatt alternating current solar photovoltaic project located on 41 acres of the approximately 118-acre parcel known as Tax Identifier Map Parcel No. 34.-1-15.21 ("Project") and as further described in the Special Use Permit Amendment Application dated, October 19, 2023, submitted to the Town on October 24, 2023, and all other relevant information submitted as of November 20, 2023; and

WHEREAS, it is the intent of the Applicant to seek modification to the previously issued Special Use Permit that was approved by the Zoning Board on September 28, 2020 ("Original SUP"), in order to include various additional site improvements related to stormwater drainage; and

WHEREAS, prior to approval of the Original SUP, the application for the same was submitted to the Livingston County Planning Board for review pursuant to NYS General Municipal Law §239m and was discussed at its January 9, 2020 meeting where a recommendation of approval was issued; 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 and Zoning Board held Joint public hearings on the original Site Plan and Original SUP applications and following the public hearings, completed a formal review of the original applications; and

WHEREAS, the Town of Avon Planning Board previously classified the original request for Site Plan approval and approval of the Original SUP as a Type I Action under Section 617.5 (c) of the State Environmental Quality Review Act ("SEQR") regulations and said Planning Board conducted a coordinated review, which included the Zoning Board; and

WHEREAS, in compliance with NYS Town Law and the regulations of SEQR, a determination of significance was made and a negative declaration was issued by the Town of Avon Planning Board on Monday, August 17, 2020. Such determination was acknowledged by the Zoning Board, which participated in the coordinated review and which concurred with the determination and issuance of a negative declaration; and

WHEREAS, with regard to the current application seeking to amend the Original SUP, the Zoning Board, with guidance from its attorney and consulting engineer, has determined that the proposed amendments are not such that would require re-referral to the Livingston County Planning Board pursuant to NYS General Municipal Law §239m, as they are not deemed to be substantial in the context of the entire project for which approval has been previously granted; and

WHEREAS, with regard to the current application seeking to amend the Original SUP, the Zoning Board has determined that the requested modifications to the Original SUP constitute an Unlisted Action under SEQR and that a joint review, with the Planning Board, of the Short Environmental Assessment form submitted by Applicant is appropriate and sufficient to comply with the mandates of SEQR; and

WHEREAS, the Zoning Board and Planning Board have jointly participated in the review of the Short Environmental Assessment Form and have made findings regarding the inquiries therein, and based upon those findings, have made a determination of significance and issued a negative declaration, thereby concluding the SEQR review

NOW, THEREFORE, BE IT RESOLVED that the Zoning Board does hereby approves the requested Special Use Permit with the following conditions:

1. Unless an extension is granted by the Planning and Zoning Board of Appeals, the Applicant shall complete construction of a Type 2 Solar Energy System project, (per Article XV and per Section 130-80 G (2) (q) in the 2021 regulations of the Avon Town Code, including all drainage improvements that have given rise to this amendment request, by not later than June 30, 2024 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. All comments made in the Town Engineer review letters are to be addressed prior to the issuance of a Certificate of Completion for the site and the project becoming operational.
4. Approval of the amended Special Use Permit is conditioned on the Operations and Maintenance Plan for Project, dated October 2023 and as reviewed and discussed by the Zoning Board and Planning Board on November 20, 2023.
5. Approval of the amended Special Use Permit is conditioned on the Decommissioning Plan for the Project dated October 6, 2023 and as reviewed and discussed by the Zoning Board and Planning Board on November 20, 2023.
6. Prior to the issuance of a Certificate of Completion for the site and the project becoming operational, Applicant shall enter into a Decommissioning Agreement for the Project, in a form acceptable to the Town Board of the Town of Avon.
7. Approval of the amended Special Use Permit is conditioned on the Stormwater Pollution Prevention Plan (SWPPP) for the Project, originally dated October 2020 and revised September 2023. No building permits for any new work required by the amendment to the Site Plan and Original SUP shall be issued until the NYSDEC Acknowledgement letter has been received by the Town Building & Zoning Department.
8. Prior to the issuance of a Certificate of Completion for the site and the Project becoming operational, 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 revised Decommissioning Cost Estimate submitted by Tetra Tech EC, Inc.
9. 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.
10. Each year after the Project 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 & Code 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.
11. After completion, the Applicant shall provide to the Town of Avon Building & Code Department a post- construction certificate from a Professional Engineer registered in New York

State that the project fully complies with Article XV of the 2021 regulations of the Avon Town Code, all applicable codes and industry practices and has been constructed and is operating according to the design plans.

12. Prior to issuance of a building permit, Applicant shall enter into a contract with the Town for payments in lieu of taxes pursuant to Real Property Tax Law §487 9.(a). [Already completed as part of the approval of the Original SUP].
13. An amended Site Plan approval granted by the Planning Board is required prior to the issuance of a Certificate of Completion for the site and the Project becoming operational.
14. Prior to the issuance of a Certificate of Completion for the site and the Project becoming operational the Applicant, its successors and/or assigns shall be required to maintain all tree plantings for the life of the Project. The Applicant shall be required to post an irrevocable bond for the replacement of trees that shall be valid for a period of five (5) years after the date of this approval amending the Original SUP. 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 as amended hereby.
15. All consultants' fees for review and assisting the Zoning Board with the review of Special Use Permit amendment application are to be reimbursed by the Applicant to the Town prior to the issuance of a Certificate of Completion for the site and the Project becoming operational.
16. The Applicant, or successor permit holder, owner or operator is responsible, during the entire life of the Project, for the maintenance and replacement of all trees and landscaping as depicted on the approved amended Site Plan. All identified trees and landscaping in need of replacement are to be replaced by the following growing season.
17. Battery Storage and associated site improvements are NOT approved for this project and will require separate approval from the Town if requested.
18. The Applicant, or successor permit holder, owner or operator is responsible, during the entire life of the Project, for the maintenance, repair or replacement of all stormwater drainage improvements that are set forth in the amended Site Plan approved by the Planning Board on even date herewith.

The above resolution was offered by Jeff Mulligan and seconded by Kitty Bressington at a meeting of the Zoning Board of Appeals held on Monday, November 20, 2023. Following discussion thereon, the following roll call vote was taken and recorded:

Jeff Mulligan -AYE
Cindy Kellen - AYE
Bob Westfall - AYE
Diane Attea - AYE
Kitty Bressington - 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 November 20, 2023 meeting.

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

Janet Ward stated they already have DEC approval (#7) and a PILOT (#12) along with the PE stamped plans (#11) and that is correct.

Collin Hayes questioned the referral to the County Planning Board and that has already been done during the original application.

Brian Glise questioned where they will be mowing, and they have supplied a letter to Bruce Howlett and will send over the Town as well.

TOWN OF AVON PLANNING BOARD RESOLUTION
DG EMPIRE SUN LLC, AVON SOLAR
5234 AVON-EAST AVON ROAD, AVON, NY
TAX MAP # 34.-1-15.21
REVIEW OF AMENDMENT TO SITE PLAN

AMENDED SITE PLAN APPROVAL RESOLUTION

WHEREAS, the Town of Avon Planning Board ("Planning Board"), is considering an application for an amendment to a previously approved and issued Site Plan for the development of the DG Empire Sun, LLC Solar Project (Project), a proposed 5-megawatt alternating current solar photovoltaic project located on 41 acres of the approximately 118-acre parcel known as Tax Identifier Map Parcel No. 34.-1-15.21 ("Project") and as further described in the Site Plan Amendment Application dated September 29, 2023, submitted to the Town on October 24, 2023, and all other relevant information submitted as of November 20, 2023 (the current application); and

WHEREAS, it is the intent of the Applicant to seek modification to the previously submitted Site Plan that was approved by the Planning Board on September 28, 2020 ("Original Site Plan"), in order to include various additional site improvements related to stormwater drainage; and

WHEREAS, prior to the approval of the Original Site Plan the application for the same was submitted to the Livingston County Planning Board for review pursuant to NYS General Municipal Law §239m and was discussed at the January 9, 2020 meeting where a recommendation of approval was issued; 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 and Zoning Board held Joint public hearings on the original Site Plan and Original SUP applications and following the public hearings, completed a formal review of the original applications; and

WHEREAS, the Town of Avon Planning Board previously classified the original request for Site Plan approval as a Type I Action under Section 617.5 (c) of the State Environmental Quality Review Act ("SEQR") regulations; and

WHEREAS, in compliance with SEQR, a determination of significance was made and a negative declaration was issued 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

WHEREAS, with regard to the current application seeking to amend the Original Site Plan, the Planning Board, with guidance from its attorney and consulting engineer, has determined that the proposed amendments are not such that would require re-referral to the Livingston County Planning Board pursuant to NYS General Municipal Law §239m, as they are not deemed to be substantial in the context of the entire project for which approval has been previously granted; and

WHEREAS, with regard to the current application seeking to amend the Original Site Plan, the Planning Board has determined that the requested modifications to the Original SUP constitute an Unlisted Action under SEQR and that a joint review, with the Planning Board, of the Short Environmental Assessment form submitted by Applicant is appropriate and sufficient to comply with the mandates of SEQR; and

WHEREAS, the Zoning Board and Planning Board have jointly participated in the review of the Short Environmental Assessment Form and have made findings regarding the inquiries therein, and based upon those findings, have made a determination of significance and issued a negative declaration, thereby concluding the SEQR review

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

1. Unless an extension is granted by the Planning and Zoning Board of Appeals, the Applicant shall complete construction of a Type 2 Solar Energy System project, per Article XV and per Section 130-80 G (2) (q) in the 2021 regulations of the Avon

Town Code, including all drainage improvements that have given rise to this amendment request, by not later than June 30, 2024 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. All comments made in the Town Engineer review letters are to be addressed prior to the issuance of a Certificate of Completion for the site and the project becoming operational.
4. Approval of the amended Site Plan is conditioned on the Operations and Maintenance Plan for the Project, dated October 2023 and as reviewed and discussed by the Zoning Board and Planning Board on November 20, 2023.
5. Approval of the amended Site Plan is conditioned on the Decommissioning Plan for the Project dated October 6, 2023, and as reviewed and discussed by the Zoning Board and Planning Board on November 20, 2023.
6. Prior to the issuance of a Certificate of Completion for the site and the project becoming operational, the Applicant shall enter into a Decommissioning Agreement of the Project, in a form acceptable to the Town Board of the Town of Avon.
7. Approval of the amended Site Plan is conditioned on the Stormwater Pollution Prevention Plan (SWPPP) for the Project originally dated October 2020 and revised September 2023. No building permits for any new work required by the amendment to the Site plan shall be issued until the NYSDEC Acknowledgement letter has been received by the Town Building & Zoning Department.
8. Prior to the issuance of a Certificate of Completion for the site and the project becoming operational, 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 revised Decommissioning Cost Estimate submitted by Tetra Tech EC, Inc.
9. 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.
10. Each year after the Project 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 & Code 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.

11. After completion, the Applicant shall provide to the Town of Avon Building & Code Department a post-construction certificate from a Professional Engineer registered in New York State that the Project fully complies with Article XV of the 2021 regulations of the Avon Town Code, all applicable codes and industry practices and has been constructed and is operating according to the design plans.
12. Prior to issuance of a building permit, Applicant shall enter into a contract with the Town for payments in lieu of taxes pursuant to Real Property Tax Law §487 9.(a). [Already completed as part of the approval of the Original Site Plan].
13. An amended Special Use Permit granted by the ZBA is required prior to the issuance of a Certificate of Completion for the site and the project becoming operational.
14. Prior to the issuance of a Certificate of Completion for the site and the Project becoming operational the Applicant, its successors and/or assigns shall be required to maintain all tree plantings for the life of the Project. The Applicant shall be required to post an irrevocable bond for the replacement of trees that shall be valid for a period of five (5) years after the date of this approval amending the Original Site Plan. 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 Site Plan approval amended hereby.
15. All consultants' fees for review and assisting the Planning Board with the review of the Site Plan amendment application are to be reimbursed by the Applicant to the Town prior to the issuance of a Certificate of Completion for the site and the Project becoming operational.
16. The Applicant, or successor permit holder, owner or operator is responsible, during the entire life of the Project, for maintenance and replacement of all trees and landscaping as depicted on the approved amended Site Plan. All identified trees and landscaping in need of replacement are to be replaced by the following growing season.
17. Battery Storage and associated site improvements are NOT approved for this project and will require separate approval from the Town if requested.
18. The Applicant, or successor permit holder, owner or operator is responsible, during the entire life of the Project, for the maintenance, repair or replacement of all stormwater drainage improvements that are set forth in the amended Site Plan approved hereby.

The above resolution was offered by Thomas McGovern and seconded by Brian Thorn at a meeting of the Planning Board held on Monday, November 20, 2023. Following discussion thereon, the following roll call vote was taken and recorded:

Kathleen Cole - AYE
Collin Hayes - AYE
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 November 20, 2023 meeting.

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

Kathy Cole asked if there was any information for the Board from Brian.

Brian stated the code updating is still being worked on and if anyone has any comments to let him know.

Jeff Mulligan asked about accessory structures regarding the size and use as an in-law apartment attached or detached.

Jim Campbell stated the Town Board is planning on doing a comprehensive plan update and that should start soon. The revised solar law has been updated and will be presented to the Town Board at the November 30th meeting. Kim will send out the revised law to all Board members to read over.

MOTION TO CLOSE THE MEETING WAS MADE BY JEFF MULLIGAN; SECONDED BY CHRISTOPHER STERNER.

KATHLEEN COLE - AYE
THOMAS MCGOVERN - AYE
COLLIN HAYES - 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

KITTY BRESSINGTON -AYE

CARRIED 11-0.

MEETING CLOSED.