

# Planning Board Meeting Minutes – February 14, 2022

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A meeting of the Town of Yorktown Planning Board was held on **Monday, February 14, 2022 at 7:00 p.m.** via Zoom video conferencing.

Chairman Rich Fon called the meeting to order at 7:00 p.m. with the following Board members present:

- Aaron Bock
- Bill LaScala

Also present were:

- John Tegeder, Director of Planning
- Robyn Steinberg, Town Planner
- Nancy Calicchia, Secretary
- James W. Glatthaar, Esq.
- Dan Ciarcia, Town Engineer
- Councilman Ed Lachterman
- Councilman Sergio Esposito
- Councilwoman Luciana Haughwout

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## **Correspondence**

The Board reviewed all correspondence.

## **Motion to Approve Meeting Minutes of January 24, 2022**

Upon a motion by Bill LaScala and seconded by Aaron Bock, and with all those present voting “aye” the Board approved the meeting minutes of January 24, 2022 with a correction as noted by Mr. Bock.

## **Motion to Open Regular Session**

Upon a motion by Chairman Fon, and with all those present voting “aye”, the Board opened the Regular Session.

## **REGULAR SESSION**

### **Old Hill Farm Solar Farm**

Discussion: Public Hearing  
Location: 16.08-1-4 & 17; 571 East Main Street, Jefferson Valley  
Contact: Hillside Solar LLC  
Description: Proposed 3.75 MW ground mounted solar panels disturbing 15 acres on a 19.4 acre property in the R1-20 zone.

Comments:

**Upon a motion by Bill LaScala and seconded by Aaron Bock, and with all those present voting “aye”, the Board opened the Public Hearing.**

Kathryn Hoenig, property owner; and Ben Reisman of PowerFlex, were present. Ms. Hoenig stated that the proposal is to convert a family owned former dairy farm, also known as Hill Farm, into a community solar farm. A Public Informational Hearing was held on 12/6/2021. Since then they have been working on comments from the Planning Department, Town Engineer, Tree Commission (TCAC) and Conservation Board. She stated that there was discussion this past week with the Supervisor and several members of the public with respect to the high cost of utility rates. As they are struggling with high utility costs and limited alternatives to the closing of Indian Point, having a local distributive energy source in the community that home owners and businesses can take advantage of is very important. This proposal will provide approximately 630 homes with renewable energy at a reduced cost. The site has received full approval from Con Edison. They feel that this site is a good location for a community solar farm as it is basically abandoned agricultural land with secondary growth and invasive trees, shrubs and vines.

The site is bordered primarily by commercial and industrial properties with multi-family across East Main Street to the north and a single-family home to the west with limited sight lines into the property. Approximately 5 acres (25%) of

the 19.4-acre property will remain untouched, and none of the healthy trees along the borders of the property will be removed. There are two contiguous parcels to this property (along Route 6, and the Con Edison property for the power lines) that will also remain untouched and act as a further buffer to the properties located to the east and south of this proposal. They have focused on the importance of screening the project from the neighbors and people driving by. They are proposing to plant 265 new 7 to 12-ft evergreen trees to further screen the property with a 7-ft privacy fence. At full maturity, the trees should be between 60 to 80-ft in height. The solar arrays will be at least 50-ft from the property borders. The project setback is proposed to be 50-ft from the property line (30-ft from the property line to the 7-ft privacy fence and 20-ft from the privacy fence to the solar modules). Most of the tree plantings will take place outside of the privacy fence. Of the 285 proposed trees, 85 are proposed to be planted along East Main Street and will be interspersed with the existing trees that will be pruned to maintain their health and to provide sufficient light for the new trees. They are also proposing to plant 36 trees along the western border abutting a single-family residence. A pollinator friendly seed mix is proposed underneath the solar panels and throughout the fenced areas of this project that will be maintained and mowed periodically. Photos of a PowerFlex project in Half Moon, NY showing what a pollinator friendly seed mix will look like was shown to the Board. Along the eastern border of the property which is abutting the wetland they are raising the fence 6 inches from the ground to allow small animals through. The southern border of the property includes double row plantings of evergreen trees along the southeast corner of the site bordering Route 6 and Hill Blvd. All of the trees bordering Route 6 in the 189 to 113-ft buffer between Route 6 and the site will remain. This part of the property has a significant elevation gain of 11 to 60-ft which reduces visibility to the site. The northern border of the property along East Main Street is where they are concentrating much of the plantings to ensure that this area looks better than what is existing which includes repairing the existing stone wall, removal of dead trees and bushes and the plantings of 85 trees some of which will be planted at 12-ft in height at the entrance to further screen the property. A white farm style gate is proposed at the entrance with the privacy fence behind. Per the Town Engineer's comments, an updated SWPPP was submitted for review. The plan now includes level spreaders covering about 80% of the site to further mitigate any potential run-off from the panels. The level spreaders were placed in areas where the slope is greater than 10% for a total of 6,495 linear feet of level spreaders set at 50-ft intervals across the site. The wetland and 100-ft wetland buffer will not be disturbed. Construction for the site will be phased in stages to a maximum of 5 acres to limit disturbance and minimize the impacts. An overview of sight renderings for 5 different locations depicting existing conditions and what it would look like with plantings from year 1 was shown to the Board. In addition, at the Planning Department's request, sight sections were also prepared to gain a better understanding of what the viewshed would be from 6 different locations. The panels at their highest point are approximately 9-ft in height. Mr. Reismann reviewed the sight diagrams for each location showing a pedestrian and car view for each location. Ms. Hoenig added that this proposal would allow her family, who has owned this property for 180 years, to maintain their ownership as they will only be leasing the property. The lease will require them to take care of the property in terms of landscaping, tree maintenance and snow removal.

Chairman Fon asked the public if there were any comments. Public comments as follows:

- Dan Strauss, resident - Email dated 2/14/2022 with respect to solar applications in general. Chairman Fon read the email into the record per the request of Mr. Strauss.
- Sarah Wilson, resident - Ms. Wilson stated that as an environmentalist in Yorktown, she understands the balance in wanting to bring in renewable energy and also preserve trees. As the solar was being drafted they were trying to put a hierarchy in place that would ideally prefer already cleared land as the first choice, and then look at farmlands, brown fields, etc. with wooded parcels as the last option. She feels that this being a former farm does lend itself well to a solar farm use. While it is a treed property, it is not as wooded to the extent of the Putnam Valley property where you are looking at almost 2,000 trees to be removed as opposed to about 500 trees for this proposal. She feels that this is less of an impact to the neighborhood and to the environment by putting a passive use such as solar panels rather than building clustered housing which was proposed on this property in the past. It seems to have been done in a thoughtful manner and she is supportive of this proposal.
- Susan Siegel, resident - Ms. Siegel stated that this project will have absolutely no impact on anyone's electric bill in Yorktown and noted that if she wanted to reduce her electric bill, she could sign up for any number of community solar projects. They don't have to be in Westchester County. She believes that the Town government participates in community solar projects in upstate New York. She is asking for clarification of this misunderstanding for the public. When the Town of Yorktown approves a solar farm project, it has nothing to do with the reduced electrical

rates or availability of electricity. There are benefits to the solar farms but they will not reduce the individual rates for Yorktown residents.

- Patricia Sheey, neighboring resident, 615 E. Main Street - Ms. Sheey stated that she is concerned about the run-off and spoke to the Town Engineer about this. The run-off seems to be coming toward her property and is worried that she is in the 20% that is not covered with the level spreaders and would like this to be addressed. Since she lives next door, she would like to see what their line of sight will be. She is aware that there will be a double row of trees planted in addition to the existing trees but 50-ft is quite close to where they live and their doorway faces the rock wall. She is concerned about the noise from the system and the construction schedule. She also feels that the privacy fence is not attractive and looks more like an industrial type fence and questioned if it could be replaced with a residential type fence. She noted that they are in support of solar energy but they have to live there and are concerned about their property value so they want to ensure that it is an attractive site. She noted that the trees and fence were not maintained and is glad to hear that it will now be maintained and thought that a bond could be in place to ensure this.
- Bill Beck, Club Fit, 600 Bank Road - Mr. Beck stated that he has reviewed this project closely with Ms. Hoenig and supports this application. He thinks it's a great use for the property. His only concern is that they share an area where they are proposing to remove trees and replant new trees where they have a tennis bubble that stands during the Winter season. In the current drawing the proposed trees will grow to be about 40 to 60-ft. He doesn't want tall trees around the bubble as it could be hazardous if they should fall down. He would prefer something lower to the ground such as shrubs or something that doesn't grow higher than 6 to 10-ft as it would provide better coverage for the tennis use in the Summer. The other concern is at the back of their building there is a big hill that goes up from them to the farm property and noted that there are trees slated for removal that he didn't have a chance to look at. As long as the trees that are in danger of falling down the hill into their pool deck are removed they are ok with it.
- Paul Moskowitz, resident – Mr. Moskowitz stated that he is a subscriber to the Arcadia community solar farm. He noted that if anyone wants to subscribe to community solar they can do so on the Sustainable Westchester website which allows you to receive a discount in the cost of electricity and support solar energy. In terms of this particular development using solar there is a fundamental question he has which is do they really want to open up all of their residential areas to what is in effect an industrial project. These developments are not strictly commercial in the sense of the word, it is industrial manufacturing in which case they manufacture electricity. He feels that if we allow this to continue we will see Yorktown's residential areas hollowed out like swiss cheese for solar installation. This may have some unintended consequences. If it is more profitable to take your land which has not been developed and install solar farms, then we will see diminishing areas of residential properties. He read a research paper where they measured temperatures next to a solar farm. The solar panels in the summer time operate at about 165 degrees Fahrenheit which is about the same temperature as a cup of coffee from McDonald's. The result is that there are increases in temperature and they don't know how this will work out in the case of Yorktown or nearby residences and sees it as an interesting experiment. He thinks it is not wise to allow our residential areas to be defacto rezones for industrial developments.

Ms. Hoenig stated that she will contact Ms. Sheey to work through her concerns. With respect to the noise, the inverters are located at the end of the rows of the solar panels and when you are standing 3 ½ ft away from them they make about as much noise as a refrigerator which is about 65 decibels. There will be no noise impacts 50-ft away from an inverter making 65 decibels. She noted that there is a 50-ft buffer to the property line and it is 95-ft from the corner of the Sheey's actual house to the solar panels. The construction timeline is estimated to be 6 to 7 months and will be phased out. The privacy fence is a chain link fence with green slats that is required by the code to be 7-ft in height for protection. She is not sure if a different type of fence can be installed but will look into it. With respect to the run-off question, she was informed by her engineers that the Sheey property has a 2-ft elevation from their property and the water would actually run from the Sheey property onto their property. She doesn't think that this project will incur any erosion issues for the Sheey property. During the construction phase, they will follow all required proper erosion control measures. She noted that with respect to Mr. Moskowitz's comments, it is important to state that this property is currently surrounded on three sides by industrial and commercial uses. The only residential property is the Sheey property and Coach N Four across the street. She does not view this as a residential area when most of the borders are industrial and commercial operations. Although it is zoned R1-20, this property has a long history of being up for discussion for many different types of uses given that the uses around it are quite varied.

Chairman Fon asked if there were any comments. Mr. Bock stated that he would like to be sensitive to Mr. Beck's comments with respect to modifying the landscape plan and requested for the applicant to look into this. Chairman Fon asked Ms. Hoenig about the streetscape and increasing the tree size. Ms. Hoenig responded that most of the trees are in the 7 to 8-ft range when planted. However, at the entrance they decided to add some 12-ft trees to improve the screening.

Diane Dreier, Co-Chairperson of the Conservation Board stated the Conservation Board agreed that this proposal could probably happen at this site but requested that their memos be reviewed.

Mr. Ciarcia stated that he reviewed the stormwater and his main concern was addressed with the addition of the level spreaders to ensure compliance with the DEC letter. He noted that he spoke with the neighboring residential owner and there may be an opportunity to extend one of the level spreaders and will discuss this with the applicant after further review of the SWPPP. Mr. Tegeder stated that they will be looking at the sight line sections with respect to the screening in more detail.

Chairman Fon asked when the farming operations were ceased at the site. Ms. Hoenig responded that she thought it was around 1987 when her grandfather passed away. The applicant was advised to work with the Planning Department.

**Upon a motion by Bill LaScala and seconded by Aaron Bock, and with all those present voting "aye", the Board closed the Public Hearing with a 10-day written comment period.**

#### **Well Fargo Lighting Plan – Yorktown Heights**

Discussion: Decision Statement  
Location: 37-14-2-59; 1937 Commerce Street, Yorktown Heights  
Contact: Natalie Sell, Bureau Veritas  
Description: Proposed lighting upgrade for existing site.

#### Comments:

Natalie Sell was present. Ms. Sell stated that they are proposing a lighting upgrade for the existing site to bring all their light levels around the ATMs during hours of darkness into compliance with state laws. The existing 16-ft pole closer to Commerce Street is proposed to be replaced with a new pole that will be 20-ft in height. An additional pole is also proposed closer to the adjacent property. They met with the ABACA and received their comment memo dated 1/6/2022 stating that they had no objections to the proposed fixtures. The lighting plan was reviewed with the Board.

Ms. Steinberg stated that this site was reviewed previously by the Board. The Planning Department worked with the applicant to try and lower the lighting levels while complying with the state law. She informed the Board that the new poles should be 16-ft in height to comply with the Town law. Ms. Sell stated that she will need to discuss this with their lighting designer to ensure that it won't be an issue. Chairman Fon advised the applicant to report back to the Board.

#### **Nantucket Sound Sons**

Discussion: Decision Statement – #FSWPPP-T-064-21 Permit  
Location: 37.18-2-86; 385 Kear Street  
Contact: Site Design Consultants  
Description: Submitted Stormwater and Tree Permit for site plan approved by Planning Board Resolution #21-14 dated August 9, 2021.

#### Comments:

Joseph Riina, P.E. of Site Design Consultants, was present. Mr. Riina stated that he is before Board for approval of the stormwater and tree permit now that they received DEP approval.

Chairman Fon asked the Board and Counsel if there were any comments. Mr. Tegeder asked the applicant if the tree mitigation with respect to the trail way will be followed as previously discussed. Mr. Riina responded that they will follow what was agreed upon. Mr. Ciarcia reviewed the permit conditions with the Board and the applicant and there were no issues.

**Upon a motion by Bill LaScala and seconded by Aaron Bock, and with all those present voting "aye", the Board approved the stormwater and tree permit for Nantucket Sound Sons, LLC.**

#### **Motion to Close Regular Session and Open Work Session**

Upon a motion by Bill LaScala, and seconded by Aaron Bock, and with all those present voting "aye", the Board closed the Regular Session and opened the Work Session.

## WORK SESSION

### Foothill Street Solar Farm

Discussion: Site Plan & Special Permit

Location: 15.07-1-5; 3849 Foothill Street

Contact: Con Edison Clean Energy Businesses, Inc.

Description: Proposed installation of a 1.875 MW ground mounted solar panel system and Tier 2 battery energy storage system along with associated access road, electric utility upgrades, and perimeter fencing.

#### Comments:

Joe Shanahan of Con Edison Clean Energy Businesses, Inc., was present. Chairman Fon stated that the Conservation Board members were present to discuss the application. Diane Dreier, Co-Chairperson of the Conservation Board stated their Board was asked by the Planning Board to address the environmental effects of this application and to review the environmental consultant report prepared by Barton & Loguidice (B&L). Their memos laid out concerns that there are still significant adverse environmental impacts that still have not been addressed by the applicant or the B&L report. Although it is clear that solar energy is an important energy source, the particular location of this project is not the best when other more suitable sites exist in the town for this development, several which have already been approved and discussed. They have repeatedly stressed that large scale solar applications should be sited in appropriate places as recommended by many publications, such as already disturbed sites, abandoned farm fields, rooftops and parking lots. This project will clear cut established forest areas to install a field of panels. Many sites can be developed if adequate mitigation is approved to minimize adverse environmental impacts. Yorktown's wetlands and tree ordinances are permissive in that they allow for development but it is up to the Planning Board to determine if the mitigation is adequate. The proposed mitigation plan meets some of the requirements but do not mitigate all the adverse impacts nor does it meet the needs of our suburban town. Solar fields do offset carbon in the atmosphere more than the forest but a forest provides more benefits than a solar field. Forests filter and recharge our drinking water, they clean the air, they stabilize the soil from erosion, they help to moderate the temperature and they provide habitats. Forests are greater than the sum of the parts, it is the soil, the leaf litter, the roots, their herbaceous layer, the understory and the canopy. The loss of each tree can be mitigated by planting or payment to the tree fund but the adverse impacts that result in the loss of the forest function is much greater. The documents submitted to them do not successfully mitigate for the loss of the trees and the forest function, instead the applicant claims that contributing to the tree fund is sufficient enough. Although the applicant showed them how a housing development would disturb this site, sound housing development would not eliminate the benefit of the forest but the clear cutting of a solar field will. Suburban developments provide a variety of landscapes while solar fields are limited. The environmental report prepared by B&L follows the SEQRA handbook. Each town must review the SEQRA documents in relation to the size and character of its town. One example is the statement in the report that no core forest is present at the site. The definition of a core forest implies a large parcel, suburban towns don't have large parcels and every forested area is precious. The Mohegan outlet crosses the property in a cool ravine with eastern hemlocks on the steep banks. Environmentalists have determined that cool forests can support unique species and large buffers are needed to protect them. The adverse effects to the stream have not been addressed by the applicant or the B&L report. What will the impact of the runoff from a grassy habitat have on the stream? Will a 100-ft buffer be adequate to shield the corridor from the heat violent effects of the solar installation. The B&L report assumes no other portion of the property will be developed, the Conservation Board is concerned about adverse effects to the Mohegan outlet if the 16 remaining acres to the southwest of the outlet are developed without a conservation easement. The B&L conclusions do not address the possibility of this development. The Town's Tree and Wetland preservation ordinance shows the town's commitment to preserving trees and forest for the valuable function that they perform. It is the Planning Board's responsibility to determine whether contribution to the tree fund would be equal to losing acres of forest habitat especially when there are other opportunities for this type of development in this town. The Planning Board needs to set an example and analyze the environmental loss beyond the ordinances for the benefit of the whole community and for the future. The Conservation Board is not in favor of this project. Ms. Dreier stated they will issue the memo in a formal document to the Board for the record.

Mr. Shanahan updated the Board from the previous meeting. During that meeting, Mr. Glatthaar raised a question with the appropriateness of their request for an offset of the payment into the Tree Bank fund to which they have conceded. They submitted a memo to the Board dated 2/1/2022 revising their mitigation plan to fully comply with the requirements

of Section 270 without any offset requests. That section provides that in lieu of replacing a lost protected tree and disturbance of a protected woodland, the payment shall be \$100.00 for every protected tree removed and \$300.00 for every 5,000SF of protected woodland disturbed. The revised mitigation plan calls for a total payment into the Tree Bank fund of \$207,356 as is calculated by the terms of the Code. They are proposing 1,658 trees to be removed at \$100.00 each for a total of \$165,800. Additionally, they are disturbing 15.9 acres of the 34.23 acres site at \$300.00 for every 5,000SF for a total of \$41,556. As a result of the revised mitigation the TCAC issued a memo dated 2/3/2022 stating that all of their concerns have been addressed and have no objection to the project moving forward.

Mr. Shanahan stated that he appeared before the Conservation Board on 2/2/2022 and noted that the Board expressed a number of points. One of the main points expressed this evening and during their meeting was that they were concerned about the possibility of the development of the remaining 19 acres. He noted that he told the Board at their meeting that if the solar project were to move forward, Mr. Lockwood will enter into a conservation restriction committing that the 19 acres will not be developed for the life of the solar project which is a 25 year lease with two 5 year extensions. Mr. Shanahan thinks that it is unfair that this was brought up this evening when the issue has already been addressed during that meeting and with a memo two days later committing to the conservation restriction. He feels that this is a matter of anti-development and not a matter of conservation. They have a 34 plus acre site that the Lockwoods have owned for over 200 years and are also proposing to put a conservation restriction on the remaining 19 acres. He stated that it seems that they do not want the site to be developed at all and noted that with all due respect, this is not their role. Additionally, he noted that they are not proposing to clear cut the site. He clarified that the site is a total of 34 acres of which they are proposing to develop less than 16 acres which is less than 50% of the site and noted again that they have also proposed a conservation restriction to preserve the remaining 19 acres.

He stated that during the last 3 weeks, they submitted a complete package responding to the Planning Department's Battery Energy Storage System questions per their memo of 1/21/2022. Additionally, per the Planning Department's request, they provided line of sight diagrams from various view points which demonstrate that the project has no unobstructed lines of sight. He noted that the Public Informational Hearing was closed in 4/12/2021 over ten months ago and that the Pubic Hearing was closed on 12/10/2021 over a month ago. This project has been reviewed and approved by the Town appointed outside environmental consultant, Barton & Loguidice, who the Conservation Board has chosen to argue without any presentation of the qualifications to do so. This project has been reviewed and approved by the Town Engineer, reviewed and approved by the Fire Commission, and reviewed and approved by the TCAC. At this point, he is not aware of any outstanding issues with the Planning Department. He respectfully requested that the Planning Board direct the Planning Department to proceed with the preparation of the Decision Statement and Negative Declaration to be considered for the next Board meeting.

Chairman Fon stated that they are not anti-development and noted that all applications are unique. It is the Board's charge to ensure that whatever is developed is done to the best extent possible while adhering to the code. They also weigh heavily on the environmental concerns and impacts of each project and noted that this is a sensitive piece of property.

Mr. Bock stated that he raised a number of concerns two weeks ago and was hopeful that the Conservation Board would also shed some light on these issues and that the applicant would consider them. He does not believe that the issues he and the Conservation Board raised have yet been addressed. He reviewed the history of the case with the Board. In April of 2019, they discussed the tree removal and mitigation plan and suggestions were made that there could be on-site mitigation on the other half of the property and also off-site mitigation. They discussed the same issue again in November 2020 when the applicant talked about the mitigation. The consistent theme is that the mitigation is always limited to the statutory requirements and nothing further. The Board in November 2020 agreed that that merely paying money into a Tree Bank fund was insufficient to mitigate the loss of the function of a forest but the applicant did not respond to that other than to remove components of the original mitigation plan and limit the application to just the payment of money. No other mitigation was considered even though it was originally proposed. The issue came up again at the Public Informational Hearing and again during the summer of 2021. The issue of forest function, in his mind, has not been satisfactorily addressed and the impacts of that loss is an open question for this application. He noted that is has nothing to do with the expertise of B&L. This is a question that was not proposed to them and they didn't consider it except to talk about the core forest. He asked Counsel about the decision procedure with respect to the 62 days after the close of

the Public Hearing and if it would be an ultimate decision or just a decision for the SEQRA process. Mr. Glatthaar responded that once a Public Hearing is closed, they have 62 days in which to render a decision by statute unless the applicant chooses to extend it.

Mr. LaScala feels that the applicant is being asked to go beyond the statute and if the proposal complies with the code, it should be treated like every other application. On another note, he questioned what the Tree Bank fund monies will be used for. Mr. Tegeder responded that the Town Board has the right to spend the money for items in the Tree Code such as mitigation, tree planting, forest management plans and associated issues.

Chairman Fon asked Mr. Tegeder if he had any thoughts about the issues raised by Mr. Bock. Mr. Tegeder stated that Mr. Bock talked about the offered mitigation and felt that there has not been enough of it in terms of plantings on the other piece of the property, invasive removals, etc. Mr. Tegeder noted that you could find a path to add that type of mitigation on that part of the property or another property to reduce the payment into the fund. Mr. Bock also spoke about the function of the forest. Mr. Tegeder stated that in general, he hasn't heard much about the function of a forest. He heard it talked about but never heard about any scientific evaluation of the function of a forest as you might see when they are looking at the functional values of wetlands. They do soak up rainwater and noted that the stormwater code requires that run-off pre and post-construction is not changed and this is in itself a mitigation measure that must be made when developing vacant land. When trees are removed, the stormwater run-off is changed but the stormwater measures are done in a manner that doesn't change how the run-off behaves on the site. With respect to the habitat, it will change. When he participated in the bio-diversity study for the Town, much of the discussion was about fragmentation. When looking at a subdivision, it may be that there are varied landscapes and habitats in it, but it fragments a natural habitat that you would find existing on particular forested sites. In this case, rather than have a subdivision you will have a property that Mr. Shanahan has indicated less than 50% will be removed, which leaves more than 50% of that same type of habitat available to maintain any wildlife habitat and corridor that may exist there. He believes just as they have seen with the other solar applications that the fencing will allow for small animals to go under the fence and utilize the same piece of property although it will now be a meadow. In general, and not specific to this project, as far as woodland functions he doesn't know that they have seen any science or functional evaluation of what that might include. Some of the things they have talked about are already, in many instances, being dealt with in other parts of the town code or in particular development applications when you have areas of the same site that are being maintained in a natural state. Another option is to re-engage B&L to address some of these questions.

Ms. Dreier stated that they should engage B&L on the issues raised and the function of the forest. She informed the Board that the Advisory Committee on Open Space (ACOS) in 2006 and 2022 rated this parcel high due to the open space, biodiversity, wetlands and physical feature. It was one of 4 recommended to be purchased by the Town for preservation and thought that could be another option to consider.

Chairman Fon asked about the time remaining from the close of the Public Hearing and the path going forward. Mr. Tegeder stated that the 62 days can be amended by agreement with the applicant and Mr. Glatthaar agreed. Chairman Fon asked if the environmental consultant could be engaged to respond to the questions raised by Mr. Bock and the Conservation Board. Mr. Tegeder responded that he will get in touch with them. Mr. Bock stated that his main concern is that these issues were not addressed. If they get an extra 30 days from the applicant to finish the review it would take some pressure off of them and also complete the record. Mr. Glatthaar agreed that this would be the best solution and thinks it would be in everyone's interest including the applicant to address these issues.

Mr. Shanahan stated that with respect to Ms. Dreier's comment on open space, the Town has never made an effort to purchase this property. He stated, with all due respect, he didn't think the Planning Board process should be used to keep this land as open space and felt this was unfair to the Lockwoods. He stated that at the previous meeting, a strong point was made that this project was not being treated differently than any other project. He contested this then and pointed out that what is going on this evening is further evidence that they are being treated differently. The Town hired an outside environmental consultant to review this project and the consultant found the project to be satisfactory. He knows that there are people that hoped that the environmental report would kill this project but it didn't and now they are going to look at other items and questioned how many different times are they going to go back. Will it be until they get the answer they want so they don't have to vote to approve this project. Mr. Bock noted that he referred to the record on this case and this issue has been brought up many times but never addressed. Mr. Shanahan responded that the Tree

Ordinance was put into effect to address the matter that he is raising. The Tree Ordinance quantifies what you do on the basis of the number of trees removed and protected woodlands disturbed and addresses the matter of the loss of trees. He feels that this is unprecedented. He stated that he understands Counsel's position and will return to the Board after discussion with his corporation. Mr. Bock stated that they were told by their Counsel that the Tree Ordinance does not limit the scope of their review.

### **Kitchawan Farm Solar Farm**

Discussion: Site Plan & Special Permit

Location: 70.06-1-2 & 3; 716 Kitchawan Road

Contact: Ecology Kitchawan Community Solar Farm, LLC

Description: Proposed 2 MW ground mounted large-scale solar energy system.

Comments:

Julia Magliozzo was present. Ms. Magliozzo stated that it has been more than 62 days since their Public Hearing was closed on 11/8/2021. Mr. Tegeder requested for the applicant to submit a letter to the Board for a response. Mr. Bock noted that the application is still being reviewed with the Board and assumes that their continued participation is tantamount to a consent to adjourning the deadline. Ms. Magliozzo stated that they would not want this application adjourned indefinitely and will submit a formal letter to the Board. Ms. Magliozzo stated that since they were last before the Board, they submitted a number of updated drawings. The site plan has been revised to include utility poles closer to Kitchawan Road as requested by Con Edison. Additionally, they were advised by the DOT that they could not have an access road off of Kitchawan Road so they have now connected the access road to the existing driveway. The spacing between the solar arrays and the surrounding fence have increased slightly. An updated landscape plan was also provided which was developed in response to comments received from the Planning Department on the sight sections. As requested by the Planning Department, they provided sight sections for 3 different locations from Kitchawan Road to provide viewsheds for a car driving by or pedestrian standing at the site. They also provided viewsheds for both the nearest neighbors on the west side of the property. Based on their conversations with the Planning Department, the conclusion was that the solar panels are sufficiently blocked from view from Kitchawan Road. However, in the previous landscape plan it was decided that they did not have enough screening on the west side along the solar arrays. As a result, they moved the proposed plantings to the west side of the access road and have also added plantings that will reach the desired heights. Along that access road, they are proposing a mix of white pine and green giant arbovitae that will be planted at heights between 10 and 14-ft. The expected growth by year 5 for the entire row of trees should be between 22 and 29-ft. A stormwater memo was submitted on 2/1/2022. She spoke to the Town Engineer regarding that memo and he is requesting a more in depth SWPPP for review. They received the TCAC memo dated 2/11/2022 and noted that there were a few comments that she believes were already addressed. The TCAC stated that they did not provide a mitigation plan and she noted that they did provide a mitigation in their memo dated 11/8/2021. The mitigation includes planting trees for the landscape plan as well as making a payment of \$16,800 into the Tree Bank fund which is \$100.00 per each tree removed. The TCAC stated that they did not provide a tree removal plan. The majority of the tree removal is taking place in the area south of the solar arrays. The reason they have not provided a tree removal plan is because there are so many trees proposed to be removed and showing them on a plan is not feasible. She noted that all the trees have been tagged on site so if someone were to take the tree inventory list and walk the site, they would be able to identify all of those trees. She feels that it is clearest way to demonstrate the trees to be removed. The TCAC also stated that they did not provide a mitigation ratio for the dbh of the proposed plantings. She stated that for their plan, they are not proposing a one to one replacement of any trees or mitigation ratio which is why they are offering to pay into the Tree Bank fund for the tree removal. She noted that the TCAC may have missed that they are offering to provide the payment into the Tree Bank fund. The TCAC also had an issue with the green giant arbovitae that provides screening along the west side stating that it would create a monoculture. She noted that they anticipated that this would be an issue but feel that these trees will provide the best screening. They are in the process of completing the MS4 application. Ms. Magliozzo stated that adoption of the Negative Declaration is required in order to move this project forward with DEP and noted that there is a strict deadline in place imposed by New York State.

Chairman Fon asked if there were any comments. Mr. Bock asked the applicant if a response has been prepared for the TCAC as this would be significant in terms of the Negative Declaration. Ms. Magliozzo responded that she just received the memo but will do so. Mr. Ciarcia stated that procedurally they need to have a complete SWPPP for review and



approval to enable the Board to adopt the Negative Declaration that is required for the DEP. He noted that it appears to be under the threshold for DEP approval in terms of disturbance but will need to be reviewed.

Diane Dreier, Co-Chairperson of the Conservation Board pointed out that this is the type of site that their Board would appreciate installing a solar farm as opposed to a forested area.

Mr. LaScala asked Counsel about the procedure for when the 62 day decision period passes after the close of a Public Hearing. Mr. Glatthaar responded that the law provides that the application is deemed approved if it is not acted upon within 62 days of the close of a Public Hearing. However, there are a lot of extraneous issues that would prevent the applicant from going forward such as the lack of a SWPPP approval by the DEP and the adoption of a Negative Declaration that is required from the Planning Board. Since there are environmental impacts, he does not think that the applicant would be able to proceed with their project as yet.

Chairman Fon advised the applicant to work on finalizing the details.

### **Town Board Referral - Request for Town to Abandon Portion of a Mapped Street**

Contact: Michael Grace, Esq.

Description: Proposed request for the Town to abandon the unbuilt right-of-way of Summit Street south of Montross Road.

#### Comments:

Michael Grace, Esq. was present. Mr. Grace stated that the applicant is requesting for the Town to abandon a piece of property on Summit Street that was never taken over for a public right-of-way. The mapped roadbed for Summit Street which was part of the Depot Plaza Subdivision was filed in the 1930s. The abutting property owners have title to the mid-point of that paper road until such time as the Town accepts offer of dedication for road purposes. The applicant is seeking to make improvements to his property that would incorporate that portion of the property. Since an investment will be made by the applicant, the abutting property owners would like to assume that roadbed into their properties. The terminus of Summit Street ends up against a backyard property that fronts on California Road and he does not think that the Town would have a desire to maintain this option for a town road that would serve no additional homes. By deed, a title search shows that the town does not own anything, the only right the town has over that portion of the roadway is that it has the right to accept an offer of dedication. They are requesting for the Town to relinquish this option.

Chairman Fon asked if there were any comments. Mr. Tegeder noted that the map shows that the roadbed backs up against residential backyards on California Road. The road spurs that were originally planned to facilitate connection to other parts of future developments no longer have an opportunity for this connection. He doesn't feel that the Town has any legitimate reason to save this right-of-way in terms of having the ability to connect roads for future growth. With respect to the process, the Planning Board has the authority to lay out and abandon roads, and authority under town law to amend any map that has been filed already in the County that is partially developed or fully developed. Mr. Grace stated that for their purposes, the simplest option would be for the town give a quit claim deed over to the abutting property owners of their right to accept an offer of dedication. He noted that the Highway Superintendent expressed that he does not have an interest in this piece of property. Mr. Glatthaar noted that the Town Board has to adopt a resolution amending the Town's official map to eliminate this road. Mr. Tegeder stated that before this happens, the Planning Board needs to remove the possibility in terms of the planning documents that have been filed with the County and need to discuss how to affect this. Mr. Glatthaar stated that the Town Board needs to adopt a resolution revoking any implied offer of dedication which would be enough to clear the title. Mr. Tegeder stated that the Town Board can't do this without the Planning Board making a statement that those rights-of-ways are no longer needed for the orderly development of the town and Mr. Glatthaar agreed. Mr. Grace stated for these types of old subdivisions where they are mapped, there actually has to be Town Board action to accept the offer of dedication. They just need to relinquish that right. Mr. Bock stated that if the Town Board's ability to do this is derivative of the Planning Board's function, then the Planning Board should prepare a resolution abandoning these strips. The Board agreed and had no planning objections. Chairman Fon asked the Planning Department to draft a resolution with Counsel and the applicant.

**Zoning Board Referral - Lowe's Pad A – Proposed Trader Joe's Signage**

Location: 26.18-1-17; 3240 Crompond Road (Lowe's Shopping Center)

Contact: Signs Ink

Description: Requested variances for two signs that are 63.38 SF each, where proposed signs do not front on Crompond Road.

Comments:

No representative was present. The Board reviewed the application with respect to the signage. Mr. Tegeder also informed the Board that the awning fronting Route 202 is partially installed and given the importance of that façade, they have made notice that it needs to be done correctly as it is visually and aesthetically important. The Board agreed that the awning should be fully installed. The Board had no planning objections to the variance requests for the proposed signage and requested that a note be included in the memo with respect to the awning as discussed.

**Zoning Board Referral - Taco Bell Crompond Road – Proposed Signage**

Location: 36.05-1-16; 3605 Crompond Road

Contact: Signs Ink

Description: Requested variance for a 47.7 SF sign where 40 SF is allowed, a variance for 34.7 SF where proposed sign does not front on Crompond Road (east elevation), and a variance for a 8.5 SF sign where the proposed sign does not front on Crompond Road (south elevation). The freestanding sign is included in the package, however no variance is required.

Comments:

No representative was present. The Board reviewed the application. Mr. Tegeder stated that the only issue with the application is the proposed freestanding single pole sign. He noted that they have been discouraging single pole signs for many years and moving toward monument signs which are lower in height or double pole signs as they look better. On Route 202, the freestanding signs have often gone to the 16-ft maximum height. Discussion followed. The Board had no planning objections to the variance request for the proposed signage and agreed to include a note in the memo with respect to the freestanding pole sign as discussed.

**Town Board Referral - Proposed Amendments to Solar Law**

Description: Proposed amendments to Section 300-81.4 Solar power generation systems and facilities.

Comments:

Mr. Tegeder informed the Board as to the proposed amendments for the Solar Law which includes extending the setback from 50-ft to 100-ft, changing the minimum lot size for small ground-mounted systems, and making decommissioning bonds mandatory. He noted that he thinks the current proposals under review should not be subject to these amendments. Discussion followed. The Board had no planning objections to the amendments as proposed and agreed that language should be included to waive projects currently under review.

**Motion to Close Meeting**

Upon a motion by Bill LaScala and seconded by Aaron Bock, and with all those present voting "aye", the Board closed the meeting at 9:26 p.m.