

## MINUTES OF THE ZONING BOARD OF APPEALS – JANUARY 26, 2023 – THE TOWN OF KINGSBURY

### MEMBERS PRESENT:

William Whipple, Chairman

Michelle Richardson

Brian Heasley

### MEMBERS ABSENT:

James Ross, Scott Winchell, Katherine Henley

### OTHERS PRESENT:

Todd Humiston, Enforcement Officer

Jeff Meyer, ESQ., Town Attorney

The meeting was called to order by Chairman Whipple at 7:00 PM.

Roll call of members.

Chairman Whipple entertained a Motion to Approve the Minutes of the August 25, 2022 Meeting.

ON A MOTION BY Brian Heasley, seconded by Michelle Richardson, the minutes of the August 2022 meeting were adopted, as presented.

AYES: 3, NAYES: 0, ABSTAIN: 0, MOTION CARRIED

**Kruger Energy (USA) Inc.**, owner of Tax Map 147.-1-24, commonly known as 249 County Route 41, located in Zoning District RF5A Residential Forest, is seeking a Zoning Variance for a 30-acre-maximum ground mount 5 MW community solar project. Plans for proposal are available at Kingsbury Town Hall, 6 Michigan Street, Hudson Falls NY during regular business hours.

Michael Frenette, Director of Community Solar, stated that Kruger Energy is seeking a variance of Kingsbury By- Law IN-75 to allow approximately 25 acres of solar arrays to be constructed on 249 County Route 41. He stated that these solar panels would be mostly hidden from view and hay production would still be in place around the perimeter on the property. He noted that this property consists of wetlands, soils, slopes, and forms that are not desirable for continued income-based agricultural use. He also noted that subscribed residents would be able to receive up to a 10% discount on their energy bills.

He stated that their target market is acreage between twenty and thirty acres, noting that a perfect, flat pasture would be able hold a 5 MW field within 20 acres. He also noted that letters were sent to residences within proximity to this site, which also has close proximity to the substation and allows for the required setbacks. He also stated that Kruger Energy is covering the cost retrofitting the grid.

Mr. Frenette also stated that Kruger Energy plans to negotiate a PILOT with Washington County in compliance with the existing PILOT By-Laws that are in place with the town. He noted that land assessment will be increased with a solar farm and should be considered a staple form of income for the town throughout the fifteen year PILOT and value would be negotiated thereafter with the local municipality.

He noted that he has been in the solar business since 2011 and has not yet experienced the end lifespan of a solar farm. He stated that there are plans to have solar recycling facilities available in New York and noted that useable outdated panels can be shipped overseas for further use.

## MINUTES OF THE ZONING BOARD OF APPEALS – JANUARY 26, 2023 – THE TOWN OF KINGSBURY

Mr. Chris Koenig, CT Male engineer representing Kruger Energy, stated that they are at the preliminary zoning stage where delineation reveals levels of agricultural constraint due to wetlands, streams, and slopes. He noted that interconnection would be along the County Highway with access along Jakway.

Counsel for Kruger Energy, Mr. Doug Warden of Schneider and Schneider, stated that Town Law 267B governs the burdens before the Zoning Board of Appeals, explaining that is where the landowners suffer unnecessary hardship in the event that the variance is not granted.

Mr. Warden noted that a variety of materials and supporting statements have been submitted to show entitlement to a use variance under these standards. He also noted that the New York Public Utility Standard recognizes that certain services are essential to the modern American way of life, such as public utility services, where relaxed standards are in place.

### Chairman Whipple opened up the Public Hearing for comments at 7:20 pm.

Jane Havens expressed concerns over solar panel production using chemicals and plastics and with the panels being unrecyclable after their lifespan. She read aloud research that stated the maximum energy potential mentioned in solar project presentations verses actual energy production in live solar fields vary, noting that solar energy can be only 15% effective of the potential advertised. She quoted the International Renewable Energy Agency projecting up to 78 million tons of solar panels will have reached the end of their lifespan by 2050 with the US having no solar recycling mandate.

Mrs. Havens also noted that the loss of farmland stems the loss of local revenue created from the maintenance of such land.

Tim Havens and Lorraine Forcier separately stated that PILOTs for solar projects do not make sustaining jobs and creates a loss of taxes for the town.

Cynthia Roberts, Lorraine Forcier and Lisa Catalfamo separately stated that Kingsbury is in the middle of a comprehensive town plan process and expressed concern over premature entitlements with risk of establishing a precedent.

Chairman Whipple responded by stating his opinion of only the property owner being entitled to seek this project on his land by going through these appropriate steps.

Andy Jameson, owner of the property and currently residing in Minnesota, stated that this property has been in his family for 150 years and noted that only 50% of the land is viable for hay production, generating very little income. He noted that the solar farm would keep the acreage intact and generate enough income for it to remain in the family. He believes the taxes for the solar farm would produce a net gain and noted that visibility would be minimal due to the landscape and with no noise pollution.

Dave Fleury expressed concern over the toxic materials in the solar panels seeping into the water system should they fail. Also, the creation of micro-climates and its impact the local ecosystem. He cited the summary of Kingsbury's public outreach findings, noting that support for solar farms were not mentioned.

Todd Monahan, owner of SunKiss Ballooning, researched that solar farms are 36 degrees Fahrenheit warmer than the ambient temperature normally and a balloon would have to fly at least one-thousand feet over a solar farm for safety measures. He expressed concern over the impediment of Washington County hot air ballooning activities and picturesque farmland views should solar farms increase in numbers. He noted the possibility of losing community revenue from local and tourist ballooning and festivals.

Kyle Getty expressed concern over losing generational farmland that is being used to feed animals, which provides food and considers that to be an essential public service as well.

## MINUTES OF THE ZONING BOARD OF APPEALS – JANUARY 26, 2023 – THE TOWN OF KINGSBURY

Craig Couture read two determining factors of variance requisites being: proof that the land is not viable for the state of zoning at it's located in, and the variance cannot change the neighborhood or complexion of that zoning area.

Todd Humiston stated the town of Kingsbury has approximately five substations. He noted that significant upgrades to the Burgoyne Avenue substation will be required, and the Fort Ann substation is due for an upgrade in 2024 and the Mohegan substation is due for an upgrade in 2025. He stated that the entire industrial zone is located near the Fort Ann substation.

Jeff Meyers, Esq., counsel for the Town of Kingsbury, stated that the County Planning Board has thirty days to review and issue its recommendation pursuant to their regulations for this use variance and a determination has not been received at this time.

Michelle Richardson asked Mr. Meyers if public utility has the authority under eminent domain to take property.

Mr. Meyers stated that it's not binding for Kingsbury at a local level as it has not reached a high enough court yet and it would be a case-by-case determination considering no federal regulations have been set in place.

Chairman Whipple suggested the Kingsbury Planning Board to be the Lead Agent for this project where the Type I action SEQRA review can be determined.

Brian Heasley made a motion to table the public hearing until further determination and Michelle Richardson seconded. All voted in favor by voice vote. The public hearing was tabled at 8:34 pm.

AYES: 3, NAYES: 0, ABSTAIN: 0, MOTION CARRIED

Michelle Richardson made a motion to move this matter to the Planning Board to consider Lead Agency and Brian Heasley seconded. All voted in favor by voice vote.

AYES: 3, NAYES: 0, ABSTAIN: 0, MOTION CARRIED

Todd Humiston stated that the Planning Board meeting for further discussion will be held on February 15<sup>th</sup> at 7:00 pm at the Kingsbury Town Hall.

Brian Heasley made a motion to adjourn the January Kingsbury Zoning Board of Appeals meeting and Michelle Richardson seconded. All vote in favor by voice vote. The meeting was adjourned at 8:40 pm.

Alie Weaver, Secretary  
Town of Kingsbury Zoning Board of Appeals

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