

MINUTES OF THE PLANNING BOARD MARCH 24, 2022 – TOWN OF KINGSBURY

MEMBERS PRESENT:

Robert Dingman, Chairman
Randy Getty
Karen LaRose
Les Macura
Todd Murphy - Alternate

MEMBERS ABSENT:

David Gauci (Excused)
Tim LaSarso (Excused)
Randy Weaver (Excused)

PLANNING & ZONING ADMINISTRATOR

Todd Humiston

TOWN ATTORNEY

Jeff Meyer, ESQ., Town Attorney

The meeting was called to order by Chairman Dingman at 7:00 P.M.

Roll call of all Members and Officials.

Chairman Dingman of entertained a Motion to Approve the Minutes of March 16, 2022.

ON A MOTION BY LES MACURA, seconded by Karen LaRose the minutes of the March 16, 2022, meeting were approved.

PRESENT:

Robert Dingman, Chairman
Randy Getty
Karen LaRose
Les Macura
Todd Murphy - Alternate

AYES: 5

NAYES: 0

ABSTAIN: 0

MOTION CARRIED

AES CLEAN ENERGY, contract vendee of Tax Map # 137.-1-7 commonly known as 638 Vaughn Road, (Strong Farm) Town of Kingsbury, located in RA-1A Residential Agriculture is seeking Revised Site Plan approval for the 5 MW AC photovoltaic solar energy facility at this location. Plans for proposal are available at Kingsbury Town Hall, 6 Michigan Street, Hudson Falls, New York during regular business hours.

Chairman Dingman stated for the record;

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As stated at the Meeting of March 9, 2022, we are here due to a stipulation in the settlement agreement between AES and the Town of Kingsbury which attempts settle the existing litigation between the parties and primarily to mitigate the potential impacts of the original Geer Road Solar Project.

Due to the nature of the litigation, the Planning Board was unwilling to reach any settlement agreement without providing the public with the opportunity to present their comments and provide the applicant will have the opportunity to respond. Peckham had the right to place a solar array on their property subject to the review and approval of Planning Board. The project was an approved use in this RA-IA Residential/ Agricultural zone. We are here, in large part, to provide the neighbors the opportunity to voice their concerns relative to potential impacts of the project and where feasible, to require Geer Road Solar to mitigate those concerns. We are demanding that all parties operate in good faith. Whether you like or dislike solar arrays, is not why we are here. It is a policy decision that is made by the Town Board.

Since the March 9th meeting, the applicant has responded to question from the Planning Board and the substantive public comments that were received.

On March 14, 2022, AES submitted comments detailing the public meetings that they held, and the notices that were provided. They also information relative to the makeup and the durability of the solar panels has been provided with third party spec sheets providing additional information; and responses to the comments concerning Vaughn Road. Information was also provided addressing the issues of property values and the potential health and safety effects of solar energy via third party reports.

On March 21, 2022, AES submitted additional information responsive to a potential entrance to the Strong Farm facility off Underwood Road; additional landscaping along Underwood Road; responses to the comments received from the Town Engineer relative to the wetland delineations and stormwater plans; as well as updated decommissioning costs.

On March 23, 2022, AES submitted another correspondence with UPS documentation of the delivery of written notice has been provided for the required distance for notification of the public hearing and a narrative of each of the meetings held from late spring of 2021 until the present was provided.

The Planning Board has reviewed these additional materials and would ask the AES to elaborate for the public on the additional materials submitted.

Chairman Dingman introduced Jessica Zupancic, who will be representing AES Clean Energy.

Ms. Zupancic thanked the Board for having them here and coordinating this meeting. She would like to start off by giving an overview, there are changes to the Site Plan that were made since the last meeting.

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One of the largest concerns at the last meeting was the location of the access road coming off Vaughn Road. After having a conversation with a neighbor on Vaughn Road and looking at other options they would like to the Board to consider alternate access route which would relocate the road to Underwood Road. The access road from solar array one would connect into the Underwood Road access.

Ms. Zupancic stated at the last meeting Mr. Joe Derway, 116 Underwood Road, stated he would be ok with the rerouting of the access road coming off from Underwood Road. She spoke with him again this week letting him know they were planning to present an alternant access. Mr. Derway expressed concern with the landscaping frontage of the Strong parcel and most specifically in front of his house along Underwood Road. He is fine with the proposed landscaping; however, he would like to see additional landscaping in one of his front corners of his property to help with his view from his front porch. Ms. Zupancic stated they will work with him on this and add additional landscaping.

Ms. Zupancic stated the last thing to discuss is the decommissioning. The Board thought the decommissioning estimate was a little too low and also included the salvage value. Therefor we removed the salvage value as the Board expressed it is not their typical standard operating procedure to include it. A 10 percent contingency has been included as part of the decommissioning estimate, similar to the original adjacent Geer Road Solar project decommissioning estimate.

Chairman Dingman questioned if there would be a problem with the Underwood entrance and the wetlands.

Ms. Zupancic stated no that would not be a problem because they were able to completely move the access road away from the wetlands.

Chairman Dingman stated the public hearing is still open.

Mike Cleveland, 189 Geer Road stated he has concerns with the berm being 4 foot high.

Ms. Zupancic stated they will be planting trees on top of the berm with a minimum of 8 to 10 feet tall. It will not be just a 4 foot berm, there will be tress planted as well. If they die off, they will be replaced.

Anne Tougas, 180 Geer Road questioned what kind of tress on the berm.

Ms. Zupancic stated the trees will be evergreen and maple trees.

Joe Potvin, 591 Vaughn Road questioned the toxics in the solar panels.

Chairman Dingman stated that was addressed in the March 4, 2022, meeting. The Board does have a third party report on this matter.

Ms. Zupancic explained this process again.

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Jane Meneely, 155 Geer Road, questioned if the panels were made in China and what toxins are in the panels and what happens if they break.

Ms. Zupancic stated because of the way the panels are made they are totally sealed. If one should break, they have a remote monitoring system and will be alerted to immediately. A technician will be contacted to go to the site and do a visual inspection.

Lorraine Forcier questioned why the different panels are being used.

Ms. Zupancic stated the panels being used are what is available.

Sharon Kay, 243 Geer Road questioned the time frame for the installation of the panels, and will there be any noise during construction?

Ms. Zupancic stated for each project they anticipate 6 to 8 months. The most noise you will hear is when they are installing the piles for the racking system. They will be using a pile driver. For a project, this size they can usually drive the piles within 2–3 weeks. Yes, you will have noise. The heaviest time of traffic will be when they are delivering the materials on site. With a project this size the delivery time should be approximately 2 weeks. Mr. Derway asked to have more signage during this time.

Lorraine Forcier had concerns with how the delivery will be working concerning the truck traffic because of the access road on solar array 1. This will be in the area of her driveway, a neighbor's driveway, and the entrance to the array.

Ms. Zupancic stated there are approximately 6-8 loads for the panels and racking, 2 loads for the inverters.

Jane Meneely questioned if there is any paperwork stating if the panels break the toxics do not harm people or habitat because she feel this is extremely dangerous.

Ms. Zupancic stated there is a third party report that was submitted with the application for the public's information.

Mr. Humiston stated the third party report is available on the Town of Kingsbury website under Planning and Zoning.

Greg Couture, 282 Geer Road, questioned the safety and inspection sheets of the panels.

Chairman Dingman stated this is also on the website.

Lynn Potvin, 591 Vaughn Road questioned what this project will do to her taxes.

Chairman Dingman stated that is a question for the Town Assessor.

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Attorney Benjamin Brotelho, Braymer Law, representing Lorraine Forcier questioned if this is approved for stipulation a settlement will a building permit be required?

Attorney Meyer stated New State does not require building permits for solar arrays to his understanding.

Mr. Humiston stated if it is not attached to a building, Department of Building and Codes does not have oversight, per New York State Law

Chairman Dingman closed the public hearing at 8:05 pm.

Discussion ensued among the Board with questions addressed by the Applicant.

Mr. Getty stated he has one comment for the people that have water quality concerns, the best thing you can do is get water samples tested now so that you have a track record to prove you don't have contaminated water at this point and have it tested annually. This way you will know when your contamination starts. You may have contaminated water now and not know it.

The Board then reviewed the proposed Resolution.

**PLANNING BOARD OF THE TOWN OF KINGSBURY
COUNTY OF WASHINGTON, STATE OF NEW YORK**

Adopted March 24, 2022

**Introduced by LES MACURA
who moved its adoption.**

Seconded by RANDY GETTY

**RESOLUTION APPROVING THE STIPULATION OF SETTLEMENT RELATIVE TO
AES DE DEVCO NC, LLC, GEER RD SOLAR 1 LLC, GEER RD SOLAR 2 LLC, and
GEER RD SOLAR 3 LLC V. PLANNING BOARD OF THE TOWN OF KINGSBURY,
ET. AL. BEARING WASHINGTON COUNTY SUPREME COURT
INDEX NO. EC2021-37218**

WHEREAS, AES DE DEVCO NC, LLC ("AES"), and GEER RD SOLAR 1 LLC, GEER RD SOLAR 2 LLC, and GEER RD SOLAR 3 LLC (collectively, the "Petitioner", commenced actions against the Planning Board of the Town of Kingsbury and Todd Humiston, Individually, and in his Official Capacity as the Code Enforcement Officer of the Town of Kingsbury, pursuant to Articles 78 and 30 of the NY CPLR and 42 USC § 1983; and

WHEREAS, pursuant to Article IX of the Zoning Local Law of the Town of Kingsbury contained in Chapter 280 of the Code of the Town of Kingsbury (hereafter the "Zoning Local Law"), the Planning Board is authorized and empowered to review and approve, approve with modifications, or disapprove site plans prepared in accordance with the Zoning Local Law; and,

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WHEREAS, Peckham Materials Corp. (hereafter the "Applicant"), by application dated and submitted on August 15, 2019, by Geer Rd Solar 1 LLC; Geer Rd Solar 2 LLC; Geer Rd Solar 3 LLC; and Geer Rd Solar 4 LLC (hereafter the "Original Project Companies"), made and submitted on August 15, 2019, applied to the Planning Board for Site Plan Approval relative to construction of four (4) separate, five (5) megawatt alternating current ("MWac") solar arrays *i.e.*, an array of commercial grade solar panels capable of generating a collective 20 MW of clean, renewable energy, (hereafter the "Site Plan Review Application"); and

WHEREAS, at the April 15, 2020, public meeting and hearing, the Project Companies agreed to amend the Site Plan Review Applications to reduce the overall scale of the project from four (4) parcels to three (3) (*i.e.*, one of the 5.0 MW solar arrays and one of the operators, Geer Rd Solar 4 LLC, had been eliminated). The Project Companies (Geer Rd Solar 1 LLC; Geer Rd Solar 2 LLC, and Geer Rd Solar 3 LLC) also outlined various additional changes to the project landscaping, vegetation, and screening plan intended to mitigate the Planning Board's previously expressed aesthetic and screening concerns; and

WHEREAS, between August 2019 and April 2020, the Project Companies submitted to the Planning Board numerous plans, revisions, engineering comments and requested records including but not limited to the following: site plans, layout landscaping, slope analysis, driveway profile, grading drainage plans, erosion and sediment control plans, a stormwater pollution prevention plan ("SWPPP") for the individual lots, decommissioning plans, engineer's estimates of costs, numerous engineering comments and reports, and otherwise responded to the Planning Board's comments raised during the review process; and,

WHEREAS, on June 17, 2020, the Planning Board adopted and, on June 18, 2020, filed, its "Resolution Approving Site Plan Application of Geer Rd Solar 1 LLC, Geer Rd Solar 2 LLC, and Geer Rd Solar 3 LLC,"; and

WHEREAS, on March 10, 2021, Respondent Todd Humiston, citing Section 280-57(E) of the Town Code, issued a Notice of Annulment purporting to withdraw, annul and set aside the site plan approval granted by the Planning Board and purporting to enjoin any ground disturbance or actions taken in furtherance of the Approved Plans and/or the June 17, 2020, Planning Board resolution, but did not revoke the Town's grant of Minor Subdivision Approval (hereafter the "Notice of Annulment"); and

WHEREAS, on April 8, 2021, Petitioners commenced the above-captioned combined action and special proceeding in NYS Supreme Court, Washington County, challenging and seeking reversal of the CEO's Notice of Annulment on a variety of grounds; and

WHEREAS, on May 12, 2021, Respondents filed a pre-answer motion to dismiss the combined action and special proceeding as allegedly unripe and on a variety of other grounds; and

WHEREAS, by correspondence dated May 8, 2021, the Project Companies appealed the March 10, 2021, Notice of Annulment to the Town of Kingsbury Zoning Board of Appeals; and

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WHEREAS, on May 28, 2021, Petitioners filed their opposition to Respondents' motion to dismiss; and

WHEREAS, since May 28, 2021, AES, the Project Companies, and the Town have worked cooperatively towards the resolution of their differences, which includes, but is not limited to, the making of certain adjustments and revisions to the Approved Plans in order to further avoid or minimize any adverse impacts on the community, including by examining the potential to move the solar array generally known as "Geer Road 3" from the location in the Approved Plans to a nearby parcel (the "Strong Parcel") also owned by Peckham Materials Corp. while retaining the balance of the Project in the approved locations (*i.e.*, Geer Rd 1 and Geer Rd 2); and

WHEREAS, the Planning Board has convened a public hearing on the Revised Plans. At the public hearing dated March 9, 2022, and continued on March 24, 2022, the Planning Board publicly reviewed the Revised Plans, questioned the Applicant, and performed a review analogous to their typical site plan review to the satisfaction of the Planning Board; and

WHEREAS, at the public hearings, the public was afforded the opportunity to comment on the Revised Plans, and the Applicant addressed those concerns to the satisfaction of the Planning Board. The Parties have considered such public comments in good faith; and

WHEREAS, it is in the interests of all parties to resolve the inherently complex issues in this proceeding at this time and in this manner and thereby avoid significant costs and delay that would otherwise be incurred with continued, protracted litigation; and

WHEREAS, in order to settle the proceeding the parties have reached an agreement based upon the terms contained in the Stipulation of Settlement, a copy of which is attached hereto and made a part hereof; and

WHEREAS, it is the desire of the Planning Board of the Town of Kingsbury to authorize to accept the Stipulation of Settlement relative to this matter upon the terms contained therein and conditioned upon the following:

- Final Engineering sign-off by the Town of Kingsbury Planning Board's designated engineer;
- Access to the Strong Parcel shall be via Underwood Road as shown on the revised plans, with the Vaughn Road entrance being maintained by the property owner for emergency access only;
- Construction of the solar arrays shall be limited to between the hours of 8:00 AM to 6:00 PM and all deliveries of supplies and materials shall be limited to between the hours of 10:00 AM and 4:00 PM.

NOW THEREFORE BE IT:

RESOLVED, the Planning Board of the Town of Kingsbury, upon due deliberation, finds that it is in the best interests of the residents of the Town of Kingsbury to approve and enter into the terms of settlement as detailed herein above subject to final review and approval of the specific language contained in the stipulation by counsel and final engineering signoff of the

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Revised Plans in accordance with this resolution and the authority contained herein; and be it further

RESOLVED, that Robert A. Dingman, as Chairman, is hereby authorized to execute any and all documents pertaining to the settlement of the litigation, in accordance with the terms included herein.

BE IT FURTHER RESOLVED, that this resolution shall take effect immediately.

Adopted this 24th day of March 2022.

ON A MOTION BY LES MACURA, seconded by Randy Getty all in favor, the meeting was adjourned at 8:10 p.m.

Michelle Radliff
Secretary