

**Town of Elba
Special Meeting
April 1, 2021**

Supervisor Hynes called the meeting to order at 4:00 p.m.; followed by the Pledge to the Flag.

Those in attendance included:

Supervisor Hynes
Councilman Augello
Councilman Chamberlain
Councilman Coughlin
Councilwoman Marshall

Others Present:

Town Clerk Werth
Chuck Hoover, Planning and Wind/Solar Committee Chair
John Babcock, Zoning Board Chairman
Kathy Babcock, Resident
Dwight Kanyuck, Knauff Shaw – via Zoom – exited meeting at 5:10 p.m.

SPEAKERS

Mr. Kanyuck reviewed the changes to the Solar Law. Comments, suggestions and clarifying details were provided from Genesee County Planning Board, LaBella and Hecate.

1. Section 413(F)(1) – Genesee County Planning suggested clarifying that the zoning districts for Tier 3 that these are allowed be explicitly stated. This has been corrected.
2. Table 1 – To be consistent with County Planning’s suggested revisions to Section 413(F)(1), Table 1 was updated to clarify that Tier 3 system were not allowed in Residential Districts.
3. Table 1 and 2: There is no Commercial Zoning District (a relic from the prior version of the law).
4. Decommissioning Plan and Abandonment Provisions: Incorporated are some of LaBella’s suggestions raised in its review of the ForeFront Power solar project application. The plan disposal method be included in the decommissioning plan. The Town had added much more specific rules than what was in the decommissioning plan. The Town’s expectations were provided and this will also define the amount of financial assurance a bond or letter of credit that the Town will have at its disposal if we get stuck with decommissioning the facility. The life of these projects are approximately 30 years or so. These are suggestions that LaBella suggested in reviewing the ForeFront application. County Planning also had a concern regarding impacts of compaction for access roads to the facility and the ability to restore the land into agricultural use after the life of the project. Negotiations took place between the Town Planning Board, County Planning and the applicant in developing an alternative in providing extra provisions for de-compacting soil beneath access roads. This will help in restoring the land to its agricultural productivity. Provisions were also added to require photos at the time the plan is submitted to document the predevelopment conditions so they know what restoration should look like in 30 years. These rounded up comments on the prior application to include into the law.
5. Section 413(F)(4)(h) – Regarding Tree-cutting – Hecate noted that “shrubland” was not defined and that a 0.1 acre tree clearing limit was arbitrary given that Tier 3 projects can range from 0.1 acre to

125 acres. The section has been revised to state that cutting of trees greater than 6” in diameter at the base of the trunk be minimized. This allows the Planning Board to assess as they review an application to ensure that the impact of tree removal is being met. This is consistent with what NYSERDA requires.

6. Sections 413(F)(4)(j)(i)(1), (2), and (4) – Regarding property line and residence setbacks – Hecate noted as worded the setback requirements to residences and property lines also applied to participating properties (though the next subsection states that these setbacks do not apply to participating properties). To remove any doubt, these subsections have been updated to provide that the setback requirements apply only to non-participating properties.
7. Section 413(F)(4)(I(ii)(1) – Regarding lot coverage requirements – Hecate requested clarification that only the portions of the solar energy system that touch the ground are included in the lot cover calculation. This calculation is intended to be related to impervious surfaces. While the current language appears quite clear (and is used by NYSERDA in the model law), I don’t see an issue with adding a clarifying statement.
8. Section 413(F)(4)(o)(ii)(3) – Regarding screening and landscaping – Hecate requested that, in addition to native plants, adding naturalized/non-invasive species to allowable vegetation for screening. Hecate noted some native plants are highly susceptible to deer browsing, which would hinder screening effectiveness. This suggestion has been added.
9. Appendix 1 – Related to lot size requirements – Hecate requested that clarifying that minimum lot size requirements for projects (generally 5 acres) proposed to be constructed on more than one participating property may be satisfied by aggregating the lot sizes of all participating properties. I would suggest adopting a portion of this suggestion by requiring that the parcels may be aggregated if they are on contiguous participating parcels. This would allow a substandard parcel (i.e. 3 acres) to be aggregated together with adjacent participating parcels for the purpose of lot size requirements. This would appear to be a reasonable revision since it would allow for a more efficient application of setbacks and prevent a situation where the substandard parcel is otherwise surrounded by the solar project and the landowner is prevented from participating in the project. This suggestion has been added as modified.

Mr. Hoover added that this allows them to reduce the total acreage from 3,500 acres down to 2,800 acres. It reduces the footprint by 1,700 acres. This way everything is linked up better offering less impact to adjacent and non-participating parcels.

10. Hecate requested that the setbacks from public roads (Section 413(F)(4)(j)(i)(3) be made 100-ft from the centerlines of the road instead of 100-ft from the right-of-way as proposed (note the public road setback in the current law is 30 feet).

Mr. Kanyuck stated that he, Mr. Hoover and County Planning do not care for the use of the center line as a reference point because roads vary in width and they believe the right-of-way line on the road should be used. The issue of importance for the Town is “how far back from the road will the solar project be”? We should define the setback as the fence line that surrounds the solar project. The landscape screening can be within the setback buffer area. This is already in the law.

Hecate suggested as an alternative to reduce the public road setback distance from 100 ft to 70 ft from the right-of-way (which was the practical impact of using the centerline as the reference point) and that the 70 foot setback was still double that provided in the regulations for 94-C projects. It is also more than double in the current solar law. Hecate commented that the additional 30 feet would provide for a more efficiently spaced solar project because it avoids shading impacts (leading to more

energy generation and revenue). Other project developers have noted that such a strip of land would become unusable by the property owner as it is not wide enough for economic farming. The Solar Committee arrived at the 100 foot setback to provide some additional (from 30 feet) setback for residential property owners across the road from the project and to make the projects further set back to drivers (note the projects screening would still be present in the setback area).

Mr. Kanyuck and Mr. Hoover recommend that the Board discuss the setback requirements. Mr. Kanyuck stated a potential alternative would be to have one setback for state highways (e.g. 100 feet), but a lesser setback for County and Town roads (e.g. 70 feet).

Mr. Hoover added that Hecate had only asked for clarifications up to this point but he believes this topic is one they would take to a hearing to ORPTS, giving the State the final say on this. The State could require the Town use 94-C's recommendation of 50 feet setback from the center line which is very close.

Mr. Babcock stated the State highway is different than rural roads. He stated we are looking at a zoning issue with that as it is 100 feet from the center of the road or 70 feet from the edge of the road. Mr. Hoover added that 30 feet from the edge of the right of way is the existing law for all of our Town and County roads. The question is do we take a chance of them taking this to a hearing and being stuck with the State's decision.

Councilman Augello stated there is value in compromising with this to avoid a hearing.

Mrs. Babcock stated there are a lot of health concerns that are not being considered for the residents.

Councilwoman Marshall asked what defines the edge of the right of way. Mr. Kanyuck stated it is the right of way that is listed on the tax maps as the formal line. The County's GIS website shows these lines.

Mr. Hoover stated the landscaping will be is on the outside of the fence line. There will be no landscaping inside the fence lines. Berms will be used in some areas as part of the screening plan. Using green screening on the fence line has been suggested as well.

Councilman Augello asked who is responsible for mowing, Mr. Hoover said the applicant would be responsible and they will give a maintenance plan based on Town law. Our ZEO/CEO will review that from time to time to ensure follow through.

Mr. Hoover encouraged Mr. and Mrs. Babcock to visit the Cider Farm website every Wednesday at 1:00 p.m. to ask any questions to the developers.

Mrs. Babcock stated this will not be lucrative in 30 years. Mr. Babcock asked if they are using eminent domain. Mr. Kanyuck stated that solar developers do not have eminent domain authority as they are not considered public utilities under the current law.

Mr. Hoover stated if the land owner did not want to rent to them than it is not on the plan. Hecate has made the agreements with quite a few people.

Mrs. Babcock was under the impression that the land that was being used for solar panels was land that is not viable for farming. It is bothers her that valuable farmland is being given up. Mr. Hoover stated that was an incorrect assumption.

Mr. Hoover stated that the Town has tightened up the solar law and decommissioning has more teeth in it. Setbacks and landscape/screening requirements have increased, there are more expectations on the applicant on the information they are required to provide when applying.

Mr. Hoover discussed the decommissioning on the access roads was a result of the ForeFront project on Norton Road coming off the road and directly across the field. County Planning did not think that could be returned to agricultural use so it was changed to a depth of 18 inches of gravel on the access road. If the landowner chooses to keep it than that is their choice.

Discussion ensued regarding setbacks, landscaping and developers complying with local law.

Councilwoman Marshall stated that 30 feet is too close. Mr. Kanyuck agreed, Hecate suggesting 70 feet. Using the 70 feet is about double the state requirement.

Mr. Babcock inquired on the specifications on side and rear setbacks from a property. Mr. Kanyuck stated Hecate agreed with our law on these requirements and the State has regulations. It states 250 feet from the house and 100 feet from property line and 50 feet from an adjacent non-residential property.

Mr. Hoover proposed 70 feet from the edge of the right of way of Town and County roads and 100 feet from the edge of the right away for State roads.

Councilwoman Marshall made a **MOTION**, second by Councilman Coughlin to 100 feet from edge of right of way on State roads and 70 feet from edge of right of way on Town and County roads.

Ayes: Augello, Chamberlain, Coughlin, Hynes, Marshall
APPROVED by unanimous vote (5-0)

Councilman Augello asked if the Town is still protected with the money set aside for the decommissioning plan in case Hecate goes out of business or files bankruptcy. Mr. Kanyuck confirmed that that was correct and the Town would be the sole beneficiary of that insurance and it would be set aside for Town use. There is a contingency built into that amount and a review period to ensure the estimate stays current. Mr. Hoover stated it is currently at 125% of the estimated decommissioning cost and a 2% annual accrual that is reviewed every five years by the developer and approved by the Town engineer. This is done at the cost of the developer.

Mrs. Babcock shared her concerns on what this will do to our State, Town and farmland. She does not believe this green energy is proven. Supervisor Hynes reiterated that the State is moving forward with this. Mr. Hoover shared that none of our local boards are pro or con with solar, but the State has dictated this is going to happen and the best we can do is to get a law with teeth in it, work with developers to do the best for the community, the tax payers and the environment. Mr. Kanyuck shared the State has their goals for solar and renewable energy and the Town of Elba is right in middle of the highway for the electrical grid with the high voltage transmission lines running through Town and this makes it attractive to the State as it reduces the cost. We can influence how it is done so that the impacts to the Town and neighboring residents are minimized and that the benefits available because of the project with host agreements and such are done in a way that protects the values of the Town and residents.

At the next meeting we will reopen the Public Hearing for Local Law No. 1 and then vote on it at the meeting. Mr. Kanyuck will send the edits and SEQRA documents and pass them onto the Board.

RESOLUTION NO. 20-2021

**RESOLUTION DESIGNATING THE TOWN OF PLANNING BOARD
AS SEQRA LEAD AGENCY FOR REVIEW OF BW SOLAR PROJECT**

UPON MOTION OF COUNCILMAN COUGHLIN, SECONDED BY COUNCILMAN AUGELLO, IT IS UNANIMOUSLY RESOLVED THAT:

WHEREAS, the Town has been presented an application (“Application”) by BW Solar to construct and operate a five megawatt solar energy facility in the Town (the “Project”), which will require the approval of a special use permit and a site plan by the Town Planning Board; and

WHEREAS, the Town Code Enforcement Officer has reviewed Application and determined that no variances from the Town of Elba Zoning Law (“Zoning Law”) are required for the Project; and

WHEREAS, Section 811(B) of the Zoning Law designates the Zoning Board of Appeals as having lead agency status for the purpose of the State Environmental Quality Review Act (“SEQRA”) review of the Application; and

WHEREAS, Section 808(B)(2) provides the Planning Board with the sole authority to review and approve special use permits, therefore, pursuant to the NYSDEC SEQRA regulations at 6 NYCRR Part 617, the Planning Board is the sole Town review board with the authority to act as SEQRA lead agency since neither the Town Board nor the Zoning Board of Appeals has no jurisdiction to hear the Application; and

WHEREAS, to reconcile the SEQRA regulations and the Zoning Law, and because the SEQRA regulations are controlling, it is necessary for the Town Board to designate the Planning Board as the lead agency for the SEQRA review of the Application.

NOW, THEREFORE, IT IS RESOLVED that the Planning Board is hereby designated as the Town review board with the authority to act as SEQRA lead agency for the SEQRA review of the Application.

DATE: April 1, 2021

Ayes: Augello, Chamberlain, Coughlin, Hynes, Marshall
APPROVED by unanimous vote (5-0)

RESOLUTION NO. 21-2021

Councilman Chamberlain offered the following:

TOWN OF ELBA FEE SCHEDULE
BUILDING PERMIT APPLICATION FEES AMENDMENT

WHEREAS, the Code and Zoning Enforcement Officer has prepared an updated Fee Schedule, Building Permit Application Fees to remove the Solar Energy System (Roof Panels) Fee from the Building Permit Application and include a Solar Energy Systems (residential and commercial) in the Zoning Permit Application Fees at \$150.00 Plus \$4.00 per KW;

WHEREAS, the amended Town of Elba Fee Schedule, Building Permit Application Fees reflects this

addition.

NOW, THEREFORE, BE IT RESOLVED, the Elba Town Board hereby adopts the amended Fee Schedule, Building Permit Application Fee, effective immediately.

Second by: Supervisor Hynes

Ayes: Augello, Chamberlain, Coughlin, Hynes, Marshall

APPROVED by unanimous vote (5-0)

Supervisor Hynes made a **MOTION**, second by Councilman Chamberlain to allow review of the BW solar project by CPL.

Councilwoman Marshall asked if CPL had provided us with their fees, Supervisor Hynes stated the fees were provided in their original proposal in January.

Ayes: Augello, Chamberlain, Coughlin, Hynes, Marshall

APPROVED by unanimous vote (5-0)

ADJOURNMENT

MOTION was offered from Councilwoman Marshall second by Councilman Coughlin to adjourn the meeting at 5:15 p.m.

Ayes: Augello, Chamberlain, Coughlin, Hynes, Marshall

MOTION CARRIED by unanimous vote (5-0)

Respectfully Submitted,

Trisha Werth
Town Clerk