

Planning Board Meeting Minutes – May 22, 2023

A meeting of the Town of Yorktown Planning Board was held on Monday, May 22, 2023, at 7:00 p.m. in the Town Hall Boardroom.

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

- Aaron Bock
- Rob Garrigan
- Bill LaScala
- Bob Phelan
- Bob Waterhouse, Alternate

Also present were:

- John Tegeder, Planning Director
- Robyn Steinberg, Town Planner
- James Glatthaar, Esq.
- Councilman Sergio Esposito, Town Board Liaison

Correspondence

The Board reviewed all correspondence.

Motion to Approve Meeting Minutes of May 3, 2023, and May 8, 2023

Upon a motion by Aaron Bock, and seconded by Rob Garrigan, and with all those present voting “aye”, the Board approved the meeting minutes of May 3, 2023, and May 8, 2023.

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

Staples Plaza Battery Energy Storage System Expansion

Discussion: Public Informational Hearing

Location: 36.06-2-76; 3333 Crompond Road

Contact: Mayflower Energy Engineering

Description: Proposed installation of 2 additional Tesla megapack units with a total energy capacity of 7,833 kWh, next to the existing system. Installation would remove 4 parking spaces.

Comment:

Upon a motion by Bill LaScala, and seconded by Aaron Bock, and with all those present voting “aye”, the Board opened the Public Informational Hearing. Maziar Dalaeli was present. Mr. Dalaeli stated that the proposal is for the installation of two additional Tesla megapack units as Phase II of the Battery Energy Storage System. The expansion of the system will help to reduce the stress on the grid during the summer peak times. He added that they followed the code with respect to the requirements.

Chairman Fon asked the Board and Counsel if there were any comments and there were none. Chairman Fon asked the public if there were any comments. Public comments as follows:

1. Jay Kopstein, resident – Mr. Kopstein questioned if the parking spaces to be occupied for the units are ever used and thought that if they weren’t it should not be an issue.
2. Robert Adamo, resident – Mr. Bock read an email submitted by Mr. Adamo dated 5/9/23. Mr. Adamo expressed his concern with respect to the broken picket fence that separates his backyard from the existing charging stations. He feels that it is insufficient to block the noise and lights from the vehicles. He noted that when the shopping plaza was renovated several years back he was told that the solid fencing used in the renovation would also be used behind his house and it was not. The new fencing is solid, dampens the noise and blocks the lights much better than what existed. He requested the Board to consider replacing the existing broken fence with the same solid fence.

Mr. Dalaeli responded that he has not seen the correspondence as yet but will inform the property manager of Mr. Adamo's concerns.

There were no other public comments. The applicant was advised to work with the Planning Department to schedule a public hearing.

Upon a motion by Aaron Bock, and seconded by Bill LaScala, and with all those present voting "aye", the Board closed the Public Informational Hearing.

Garden Lane Apartments

Discussion: Public Hearing

Location: 35.08-1-27; Old Crompond Road & Garden Lane

Contact: Dimovski Architecture, PLLC

Description: Proposed 20-unit apartment units with associated parking and site improvements pursuant to a 1990 rezone of 1.56 acres to the R-3 zone.

Comments:

Upon a motion by Bill LaScala and seconded by Rob Garrigan, and with all those present voting "aye", the Board opened the Public Hearing. Steve Dimovski, Architect; Dan Collins, P.E. of Hudson Engineering; and Dan Sherman, Landscape Architect, were present. The proposal is for a 20-unit two-story apartment building consisting of 8 two-bedroom units and 12 one-bedroom units with a partial basement that will be used for storage and maintenance equipment. The apartments will be for rent only. The site is located at Garden Lane and Old Crompond Road. 34 parking spaces are proposed where 30 are required. The main entrance to the building is on the north side. There is a paper street on one side of the property. Since they were last before the Board, they met with the ABACA and Conservation Board and have addressed their comments. He noted that they received a memo from the Recreation Commission just today.

Mr. Collins stated that since their last meeting, they widened a portion of the driveway access to about 26-ft per the fire code. As a result, the grade around the building was raised by about 2-ft and in doing so they were able to provide a third infiltration practice since they have the separation for groundwater that was not there before. To maintain the landscaped area, they are proposing a 6-ft wall immediately adjacent to the driveway. All three stormwater systems have been sized to store 100% of the 100 year-storm event. The remaining water that could not be contained to the systems will be brought into a focal system in the form of an engineered rain garden. With all three systems in place, they reduced the flows and volumes from the site by about 50%. They also verified the location of the 18-inch pipe to the property that they were able to tie into for overflow from the rain garden. They are in the process of working with the DEP but cannot move forward until they receive a Negative Declaration from the Planning Board.

Mr. Sherman reviewed the landscape plan. The plan consists of a mix of evergreens and deciduous plantings. The plan proposes 33 replacement trees.

Mr. Dimovski stated that it is their intent to abide by the Hoffman decision with respect to the unit count and are proposing 18 regular units and 2 affordable units.

Mr. Dimovski stated that there were some questions about open space and recreation space. In drawing SP-1, the upper right corner is where they allocated their parks and recreation space. The usable open space is located in the lower space and part of it is in the wetland buffer. He noted that the code allows this and cited Chapter 178-3. Item #8 notes providing open space and visual relief from intense development in a rapidly growing area. This space was allocated in their plan which provides relief from congestion. Item #11 notes providing recreational areas for hunting, fishing, boating, hiking, bird watching, photography, camping and other uses. He thinks they fall under this category for recreational space. He noted that there is no clear definition in the code and this is the closest to what their situation is and feels that they are providing the space that is required. He added that the recreation memo noted that the numbers are off but by code they have to reduce the wetland buffer area out of their calculation. He noted that there is no mention in the code about a building or this area. He did a google search about the definition of a recreation facility which came up as a place, amenity or piece of equipment to be provided for a particular purpose. Similar words such as provisions and space are used. He feels that it doesn't seem that the building is required for this use.

Mr. Dimovski stated that the neighbor's concerns were addressed by incorporating more plantings, a fence, and relocating the refuse container.

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

1. George Campolo, 3790 Old Crompond Road - Mr. Campolo stated that he appreciated that the applicant addressed their concerns. He requested for the lights to be downward facing and not tiltable. He also questioned if the traffic near Garden Lane could be addressed somehow.
2. Patrick Cumiskey, Recreation Commission - Mr. Cumiskey stated that his concern is that the applicant is proposing a passive area with plantings to satisfy their recreational requirements. He questioned using the wetland buffer as recreational space. He added that he interprets the code differently with respect to the 1,200SF area to be improved. From what he understands, the intent is to mitigate the impact to the planning resources. He feels that what is not being mitigated is the impact that these developments have on Yorktown's facilities. He feels that the main issue is the ambiguity in the code but noted that he will address this with the Town Board.
3. Susan Siegel, resident - Ms. Siegel thanked the Board for honoring the 1990 Hoffman decision with respect to the two affordable units. She also feels that the code is ambiguous with respect to the recreation fees. She questioned if a FAR been calculated for this development.
4. Khalil Ala Kasaji, 3800 Old Crompond Road - Mr. Kasaji questioned the access to the building. Is it from both sides or just Garden Lane? He also asked how the paper road will be used.

Mr. Dimovski responded that a traffic study was performed for the project early on. They are not using the town right-of-way. There are two access points to the facility which were shown on the plans.

There were no other public comments. The Board advised the applicant to work with the Planning Department.

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

Dell Avenue Solar Project

Discussion: Adjourned Public Hearing

Location: 70.05-1-2; Dell Avenue

Contact: Zarin & Steinmetz

Description: Proposed 3,625 kWac fixed tilt ground mount solar energy system with associated gravel access roads, fence, electrical equipment, stormwater management, and landscaping on approximately 14 acres of a 62.33-acre site.

Comments:

David Steinmetz, Esq.; Jody Cross, Esq.; Eric Alves de Sa and Rennie Friedman of Sol Systems, Brian Stoos of TRC Engineering; and Matt Matthews, property owner, were present. Mr. Steinmetz stated that Sol Systems is the contract vendee of the subject project in connection with a community solar array. They were last before the Board on 11/14/22 for the Public Hearing which was adjourned. They spent the last few months revising the site plan, working on the SWPPP, and focusing on the visual impact analysis. Sol Systems has been working with Con Edison with respect to the inter-connection to the public utility and grid. The site itself is a little over 62-acres and is zoned R1-60. The proposal is for the installation of two solar arrays at the site. The southern array is approximately 7-acres in size, and the northern array is approximately 2-acres in size. He feels that there are many benefits to the project and noted that the NYS agenda is anchored by a clean energy standard and is critical to the state's climate priorities. NYS has a goal of a 100% carbon free grid by the year 2040 and 70% renewable electricity by 2030. If they intend to hit those goals they need to figure out how to get renewables out there and how to commit to a solar concept. He learned that this aligns with Yorktown's commitment to long term sustainability and noted that there is data that the Town of Yorktown is a recipient and beneficiary of green energy more so than many other towns throughout the county. They are here to provide a solar array that ultimately allows the public to avail themselves of solar energy to find a way to reduce their electrical bills and at the same time improve and enrich environmental quality.

Mr. Steinmetz noted that they need to determine whether this project will have a significant environmental impact and reviewed the site's history with the Board. About 12 years ago, the former property owner rezoned the property to allow for an age-restricted multi-family residential development consisting of 68 townhomes that was formerly known as Croton Overlook. The project went through a full-blown environmental review process under SEQRA and it was concluded that there were no significant adverse environmental impacts associated with this residential development that was proposed to be located in almost the identical location of the proposed solar arrays. The owner at that time

passed away so they never actually received the final site plan approval. The property then moved on to the current owner, Matt Matthews. About two years ago, they came before the town to discuss the option of a solar array as an alternative to the residential development that was effectively approved since the owner was willing to go either way. They took votes from the Town and Planning Boards and as a result decided to pursue the solar option. For comparison purposes with respect to the environmental impacts - the residential development approved 19-acres of disturbance with 6-acres of impervious area and multiple vehicles coming and going during peak and non-peak hours; the solar array proposes a disturbance of 15-acres with less than an acre of disturbance with about 6 to 12 maintenance visits a year. They are proposing to remove 12-acres of trees for the solar array but the difference is that the solar project offsets carbon and greenhouse gas impacts to the equivalent of adding 2,000 acres of forest. A residential development would have an adverse impact on carbon. The housing project would need to plant 900-acres of trees to counterbalance the footprint. After all these years, they feel that the solar proposal is the right fit for this site. Additionally, they will be contributing about 130K to the tree bank fund. He added that Sol Systems tried to figure out how to minimize the tree removal at the outset of the project. In this case, they are taking some shading to allow for more of a tree canopy as well as increasing the tree buffer along Saw Mill River Road and additional plantings to mitigate visual impacts. He noted that when the Town was the Lead Agency for the residential development, they were required to perform a visual impact study of the 68 townhomes from various vantage points and the determination made in 2011 was that the high-tension power lines will have a "greater existing visual impact than any potential view of the Croton Overlook project roofline". As a comparison, the Croton Overlook residential rooflines were at 28-ft in height as opposed to the solar array with a 10-ft height. They feel that solar panels in their estimation are clearly less impactful than the residential development. However, they had a professional expert perform a greater visual impact analysis from additional vantage points throughout the town, in addition to their neighbors in New Castle at Random Farms, and the Hog Hill neighbor who has retained Counsel.

Mr. Stoos stated that they performed line-of-sight analyses from 16 locations that included the original 6 locations from the Croton Overlook project (labeled 1 thru 6), 5 Yorktown residences (labeled 7, 8 and 14 thru 16) and 5 Random Farms residences (labeled 9 thru 13). Based on their analysis, the project is either completely obstructed by existing topography or screened through many trees and are not discernable due to distance at several line-of-sight points. The remaining lines of sight show views fully screened through trees during leaf-off conditions. It is their belief that there will not be any views of the project during leaf-on conditions. Additional photo simulations were performed at four locations on the closest neighboring property (Hog Hill) as they share a large property boundary. The simulations performed lead to the conclusion that views of the project are non-existent or not significant.

Mr. Stoos reviewed line-of-sight profiles as follows:

- Line-of-sight #1 - Kitchawan Preserves north of the project. The top half shows recent aerial photography with the project location, major landmarks, transmission lines, Croton reservoir and the North County railway. It also shows distance markers between the line-of-sight location and the project. The bottom half shows a profile view showing elevations, distance and line-of-sight of a person standing at the preserve. He noted the greater than 300-ft of screening from the trees, the distance to the project which is greater than half a mile and the existing transmission poles and lines. Mr. Steinmetz reminded the Board that the transmission poles and lines were concluded to be more visually impactful than the residential development of 68 homes in the same location.

- Line-of-sight #9 - Random Farm (New Castle), Residence 1. This is the nearest residence and is approximately 900-ft from the tree clearing boundary and 1,000-ft from the nearest panels. The sight line from this residence goes through 800-ft of trees. All of the Random farm residences go through at least 600-ft of trees and the others are further from the project. Mr. Steinmetz stated that they have been actively engaged with a representative on behalf of Random Farms and noted that they are respectful of their New Castle neighbors.

- Line-of-sight #15 - Hog Hill residence. This is the nearest neighboring property. Three line-of-sight analyses were performed for this residence and all have their views blocked by the rise in elevation about 350-ft from the house. The pool house is 200-ft closer to the project than the house but the views are still blocked by the rise in elevation. At the top of the hill approximately 350-ft from the residence the views are still screened by 370-ft of trees. The line-of-sight is toward the southern array but those toward the northern array still show that the view from the residence and the yard are blocked by the hill.

Mr. Steinmetz stated that they are extremely mindful of this particular neighbor and noted that it is a 33-acre estate. He informed the Board that when they were going through the rezoning process for this site, his client at that time owned those 33-acres and he believes there were three different golf holes on that property. He notes this to give them a sense as to what is cleared on that property. He informed the Board that the common property boundary is 2,300 linear feet and noted that this is significant in terms of how they analyze their solar code. They did the analysis and they believe that in the triangular area at the point closest to their property is the area of primary impact and where the analysis had to be conducted and that area is about 125-ft. They believe in a leaf-on condition there is no visual impact and with a leaf-off condition, there are minimal, if any, visual impacts. They do not believe that there is an adverse impact and they do not believe it triggers the solar code. He added that the industry standard experienced by Sol Systems throughout the region in the country is that a 50-ft distance is deemed screened and they feel they did a good job of avoiding any impact. A photo simulation of the neighboring property and the array was shown. The green area on the right side is their neighbor's primary area of open enjoyment and the brown area is wooded. They feel that the distance from the neighbors cleared area to the array is considerable. Nobody is saying that this neighbor should not be able to venture out and enjoy the neighboring property. The question is at what point is a visual impact an impact that the town code deems requirement for mitigation. They believe that there are extremely limited views from VP1, VP8 and VP9 and are all in that 125-ft of the triangle. The zoning code requires that large-scale solar facilities must be fully screened from adjacent residential properties but it doesn't state what fully screened means. The neighbor maintains that fully screened means invisible. He feels that this not what the code says, the code states "large-scale solar energy systems shall be fully screened from adjacent residential properties, streets or roads on which it fronts or is visible from, and any other views which the Planning Board determines is necessary". He submits to the Board that there are three critical items to the visual analysis. The first is the phrase "fully screened" if something is visible and the concept of necessity is relevant in the Board's analysis. Discussion followed with respect to the initial solar law and he cited a residence in Fox Den Estates in 2020/21 where a resident could see a solar array in her neighbor's yard. The law was then changed at that time. The solar law was written about visibility not just fully screened. If they adopt the fully screened concept then they will have to go along the 2300 linear foot boundary to see what might be visible. The reason he brought up the Croton Overlook project is that he feels that it is completely unreasonable to analyze this. Land development requires that they conduct themselves in a reasonable, pragmatic, thoughtful and neighborly way. For the last several months, they have tried to present options such as screening on the neighbor's property that would be more beneficial than putting something at the property line but this was rejected. Their visual impact assessment is complete and they do not think they have an adverse impact nor do they think that they violate the town code based upon necessity, visibility and full screening. He feels that full screening does not mean invisible despite what they are told.

Mr. Stoos stated that 9 viewpoints were identified by the neighbor's team. Photo simulations were prepared for review. The yellow and red lines show high visibility flagging which represent the project. The flaggings were hung in November. The teal line represents the existing 7-ft tall mesh fence on the neighbor's property along the boundary that obstructs passage between the two properties. The photos were taken from the neighbor's property to assess what could be seen through the trees at that time. It is TRC's professional opinion that the project is compliant with the town code and no unscreened views are expected from anywhere on the property. From the vast majority of the property, the arrays will not be discernable. Although the project will be visible from some discreet locations, the views are fully screened by natural buffers. Various viewpoints were discussed as follows:

-Viewpoint 7 – 485-ft from the arrays and 120-ft to the mesh fence line. The cone of visibility is the dotted line and the project cannot be seen from this location.

-Viewpoint 5 – Variable distances from the project but not closer than 800-ft at the nearest location and 240-ft from the mesh fence. At this viewpoint, the tree cover was too dense and the site was too far away to accurately depict a photo simulation.

-Viewpoint 8 – This viewpoint is two photo simulations with one facing the southern array and the other facing the northern array.

Mr. Garrigan recalled that there was a reference to a dog walking path and questioned if the photos were taken from that path or random points in the forest. Mr. Stoos responded that they were taken from locations chosen by the applicant. Mr. Alves de Sa showed the walking path to the Board and noted that it is on the neighbor's property. Mr. Garrigan asked if any of the photos were taken from the property line. Mr. Steinberg responded that they weren't asked to do so.

Chairman Fon stated that during their site visit, they walked the path and noted that they could see the flags from the property line. Mr. Alves de Sa informed the Board that the 9 viewpoints were collaboratively selected between both parties. There are a couple points that are close to the property line but those were not requested for photo simulations as they are not frequently visited. Mr. Garrigan asked if the 7-ft mesh fence was an actual fence for privacy or delineation. Chairman Fon stated that the applicant's attorney informed them that the neighbor was trying to shield the development from their property.

Chairman Fon noted that during their site visit they were able to visibly see what would be the development at one point and thinks the way the code is written is the question as they have an objection with the neighboring property. It seems that there was discussion for screening that was turned down. Mr. Steinberg stated that options were presented such as installing some form of vegetation in the wooded area between the dog walking path and the mesh fence, but they were rejected. He added that they could attempt to install a 20' to 24' high fence at the property boundary which would fully screen the view of the array but does not believe that this was the town's intent when the code was written in 2021. He feels that they need to make a pragmatic, reasonable and rational analysis as to how best to deal with this situation. The code was written for the Fox Den resident (half acre residential to residential) not for a 2,300 linear foot common property boundary with 62-acres of property on one side and 33-acres on the other side. He added that his client does not want to be a bad neighbor and would like to fulfill the state's mandate with a green sustainable project. The property is well hidden with natural vegetation but they happen to have a neighbor with 33-acres of property that walks their dog to the edge of the property and has a view.

Mr. Bock if there were any changes made to the current submission. Mr. Alves de Sa responded that the primary changes to the site plan included refinement of the stormwater management features, and relocation of the inter-connection to Dell Avenue, and extending the access road to the interconnection point. He added that the northern array has grown slightly by about 20% or so from the previous version but noted that the proposal is still smaller than what was originally proposed as they eliminated a third solar array further to the south. The visual impact assessment shows that the project is fully screened through the trees from the neighboring property except for the corner of less than one acre out of the 33-acre property. He noted that one of their main principles is to limit tree clearing as much as possible. Mr. LaScala asked if the objection was the view at the property line of the 33-acre residential area while walking their dog. Mr. Steinmetz stated that this is his understanding and is one of the reasons why he brought up the cleared and wooded areas previously.

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

1. Cliff Davis, Esq. (representing Riverside Trust, adjacent residential property) - Mr. Davis clarified that his client's property is 34-acres and not 33-acres as described during the presentation. He stated that the elephant in the room is the statute and noted that it was written by the Town Board with input from this Board. He added that even if it was written as a result of the Fox Den Estates resident, this Board does not have the right, power, capacity or jurisdiction to apply it in a different way. He submitted a 28-page detailed letter to the Board on how they would engage on statutory construction. The question is how does the Board interpret the statute before them. He noted that the code notes the words "fully" which by definition means totally, and screened which is defined in the code as berming. The code states that the adjacent residential property has to be screened, not just specific areas within the property. Normally when they engage in statutory construction, they don't look at the legislative history they instead look at the words and these words have a plain meaning. This Board is bound by this and they cannot usurp the Town Board. He reviewed the legislative history with the Board. He stated that the applicant is not proposing any mitigation and not one tree or bush is proposed to be installed. He noted that even during their site visit, Chairman Fon and Ms. Steinberg noted that the array could be seen. The applicant is now increasing the northern array from 48,000SF to 60,000SF. He noted that 48,000SF is the size of a football field. He noted that during the Town Board meeting of October 2021, the Planning Director made clear that in a residential zone screening is required by the statute and that only in a commercial zone does the statute provide for discretion or subjectivity. He quoted from the meeting minutes "Supervisor Slater and Chairman Fon discussed situations where screening is not attainable and how the Planning Board handles that type of application. Mr. Tegeder stated that screening is a requirement but in commercial areas there is subjectivity in the Planning Board's deliberation." If they were an adjacent commercial property then the Board could have subjectivity but from an adjacent residential property it has to be fully screened. The applicant is urging this Board to adopt that the views from adjacent residential properties shall be minimized to the extent reasonably practicable but that is not what the code states. He reviewed more of the legislative history to understand how the statute came into place. He noted that the Planning Director

explained to the Town Board on 6/18/2019 that full screening means that the neighbor cannot see the facility. Mr. Davis asked what kind of screening is available and noted that the applicant hasn't shown any mitigation and maintains that the existing wooded area takes care of this. He also noted that fencing and landscaping is required for the facility. He stated that the solar arrays can be seen and their own visual impact analysis shows this.

Chairman Fon stated that the Board is familiar with the code. He noted that he walked the site and they were able to see the arrays so they need to review the code to see how it applies to the application.

Mr. Davis noted that the dog walking path referred to earlier is actually a path that his client walks and hikes on as a passive recreational use to enjoy the woods and his property. Chairman Fon asked what his client's property was zoned. Mr. Davis responded that it was zoned R1-60 and noted that since they are both residential properties the expectation was that something residential would be built. Chairman Fon asked what could be done on his client's property. Mr. Davis responded that his client could engage in a subdivision and noted that there is only a 10-ft setback. He noted that Mr. Steinmetz stated that they could build a 24-ft high fence but they would then need a variance since only a 6 to 6 ½ high fence is allowed. Discussion followed with respect a potential subdivision. Mr. Davis noted that their visual impact expert submitted their report for the Board's review. Mr. Garrigan asked if the only option for screening was berming per the code. Mr. Tegeder responded that it could be fencing, berming and vegetation. Mr. Davis stated that nothing has been presented by the applicant. Mr. Glatthaar noted they could use a fence. Mr. Davis didn't think that the Board would contemplate a 24-ft high fence and added that this would be worse than the views of the solar panel. Mr. Garrigan agreed and noted that this is where the use of the terms reasonable becomes a part of their conversation. Mr. Davis noted that there is a section in the code that talks about priorities and noted that the Conservation Board criticized this application. He added that his submission provides more details.

2. Jay Kopstein, resident – Mr. Kopstein stated that his comment was not particular to this project. He noted that the Board will be setting a precedent for future applications with respect to the term fully screened.
3. Brian Rosenblatt, Random Farm resident – Mr. Rosenblatt stated that he is not necessarily opposed to solar development at the site but is opposed to developers coming into a residential neighborhood with an industrial use and not taking the proper steps to be good neighbors. He sent several letters to the Board in which he noted that the town code is clear in that a large-scale solar development needs to be fully screened from adjacent properties. He is concerned that this property will not be fully screened and the views from his property, including the kitchen, dining room and deck will be detrimentally affected by this project. In his correspondence, he requested that a visual impact assessment be conducted in leaf-off conditions for this property. His request has been ignored and he added that other than the meeting notice, no one has been engaged on his behalf. He feels that the developer hasn't conducted a true visual impact assessment from his property or other properties in Random Farms. The only adjacent residential property for which a true visual impact was done using visual photo simulations was for Riverside Trust. The developer has focused their energy on this property and have effectively ignored his property which he feels is not fair and equitable. He added that the developers visual impact assessment concluded that there are no significant unscreened views from his property. He feels that significant is a subjective term whereas fully screened is an objective standard. The Board knows what the law states which is that large-scale residential solar must be fully screened from adjacent residential properties. As a result, he has two requests. The first is that the Board require a true visual impact assessment on his property using photo simulations during late December in leaf-off conditions. He noted that in the summer it would not be seen, but in December he is concerned and invited the Board to his property. Second, if the assessment indicates that there will be any unscreened views and is consistent with the law, he would then ask the Board to require the developer to fully screen the project from his property ideally using mature evergreen trees as a condition precedent to granting project approval.
4. Susan Siegel, resident – Ms. Siegel stated that what was heard this evening highlights the basic issue with the solar law. Instead of a special permit, the law should be site specific as this application shows that properties are different. She feels that the Town Board should consider this as well as the priorities issue. She noted that the reference made to Fox Den Estates with respect to the changes in the solar law dealt with small scale solar panels and had nothing to do with large scale solar farms. She noted that they live in a suburban community where they see houses and feels that there is a difference between residential and solar views. She feels that leaf-off conditions should be prepared for all the locations and suggested conducting a balloon test if more analyses were to be performed. With respect to the issue of the necessity for renewable energy and state goals, she noted that Governor Hochel also discussed housing necessity. She noted that the neighboring property could subdivide their property and end up with homes in the wooded area closer to the array and thinks this should be looked at.

5. George Janes of George M. Janes & Associates, 250 E. 87th Street, New York – Mr. Janes stated that he submitted a letter this morning and focused on one issue. His concern is that the application is inconsistent with the current site plan. The northern array has now increased in size by about 25% and the southern array increased about 2%. The two plans were overlaid to show the difference. They feel that the northern array is a significant increase and is the part that is visible and noted that the visuals confirm this. He suggested that the Board request a new application that is consistent before they act. He added that at that time, they may wish to consider asking the applicant to remove the northern array as an alternative.
6. Gary Jacobs, Random Farm resident - Mr. Jacobs stated that he has never been contacted with respect to his property. He noted that he was in touch with their managing agent who informed him that they also have not been contacted so he is not sure when the active engagement took place.
7. Dan Strauss, resident – Mr. Strauss stated that he was before the Town Board with respect to the tree law. If he is not mistaken, the Planning Board approved two solar projects within the last year (Jefferson Valley and Shrub oak) where 500 trees were eliminated for one, and 1,100 for the other. He is not a fan of large-scale solar farms within residential areas. He feels that it seems that it has become a debate between solar and residential development. From his recollection on both of the approved projects, the Board asked for full screening as this was a major concern. He thinks this is not an individual project that will never happen again. This is a solar proposal in a residential neighborhood and they asked for full screening and feels that is what they should have.

Chairman Fon asked Counsel if a new application was required. Mr. Glatthaar responded that not necessarily and would depend upon how big and significant the change was. He noted that this is the same fundamental use with a slightly different footprint so a new application is not required. Mr. Tegeder agreed and noted that most of their applications evolve and are sometimes larger or smaller and feels that this is in keeping with their practice.

Discussion followed with respect to the law and commercial and residential properties. Mr. Glatthaar noted that both properties for this application are residential. Mr. Bock stated that the application before them is for a special use permit and it is his understanding that the Town Board set forth the standards to be met by the applicant in order for it to be approved and would like an interpretation from Counsel at some point. He noted that the language states that large-scale solar energy systems shall be fully screened of adjacent residential properties. He added, however, that there may be a weakness in the law that may need to be addressed in the future. Mr. Garrigan asked if it suggested to the satisfaction of whom. Mr. Bock responded that the language doesn't talk about that. Mr. Glatthaar stated that the law packs in quite a bit of information and noted some items. He thought that to say that the Board has no flexibility is not the way he reads the law and noted that there are some things that will be difficult to define. Screening has a different meaning for all the parties involved. He noted that there is a statement that notes screening and buffering may be accomplished using architectural features, earth berms, landscaping and "other" screening methods. He noted that the "other" screening methods doesn't rule out existing vegetation in his mind. Discussion followed with setting precedents, etc. Mr. Glatthaar noted that this is a unique situation that will have to be looked at. Mr. Garrigan noted that the other challenge is the subjective nature of the visual impacts and noted that what is an impact to one may be different to another and thought this is where they would need to come to a reasonable approach. The Board discussed the potential for a subdivision on the adjacent neighboring property and how it would affect their review.

Mr. Steinmetz noted that Mr. Davis stated that he said something that is not in the law. He noted that the words visibility and necessary are in there. The law states that large-scale solar energy systems shall be fully screened from adjacent residential properties, streets, roads on which it fronts or is visible from. He noted, however, it doesn't say where on the property. In his view, the last part is interesting as it states or any other views which the Planning Board determines is necessary. In his opinion, there is some degree of interpretation with respect to the law. He feels that the law is not clear. The Board needs to determine what is visible and how it is visible. They are prepared to work with the Board and the neighbor. With respect to the Random Farms residents, he noted that a lawyer named Michael Caruso has been in touch with their office who maintains that he represents the Random Farm homes in the zone that received the notices. He added that notices were sent to the list of recipients provided by the town and noted that they will supply any information requested. A visual assessment analysis was conducted for those 5 Random Farm neighbors. He noted that even though this is the Town of New Castle, the Planning Department ensured they were not ignored. With respect to a potential subdivision, if this is approved by a special permit one would assume that this would be taken into account by the Planning Board if and when they were approached to subdivide the property. He feels that this would not be a reason to reject the application. He reviewed the history of the application once again. He added that he did not have the chance

to review Mr. Davis' submission as it came in late today but will do so and prepare a response. Mr. Garrigan asked if there were a map for the Random Hill vantage points. Mr. Steinmetz responded that that it is in the materials that were submitted. Mr. Garrigan was curious as to the discussion between the two parties with respect to the type of screening and how to possibly satisfy their concerns. Mr. Steinberg responded that they have attempted to conduct extensive and neighborly communications with their Counsel and consultants with respect to screening but will take a closer look at this

There were no other public comments. Chairman Fon asked Counsel about time constraints. Mr. Glatthaar responded that if the hearing is still open there are no time constraints. He suggested to leave the hearing open to allow the applicant to submit whatever they feel is necessary and added that the attorney for the Hog Hill residence can do the same. He noted that ultimately the Planning Board, with his guidance, will need to decide as to whether or not this project meets the requirements of the Zoning Ordinance.

Upon a motion by Aaron Bock , and seconded by Rob Garrigan, and with all those present voting “aye”, the Board held the adjourned Public Hearing open.

Motion to Close Regular Session and Open Work Session

Upon a motion by Bill LaScala, and seconded by Rob Garrigan, and with all those present voting “aye”, the Board closed the Regular Session and opened the Work Session.

WORK SESSION

Burger King

Discussion: Approved Site Plan

Location: 37.18-2-57; 385 Downing Drive

Contact: Michael Grace, Esq.

Description: Approved second ordering line for drive-thru and restriping of parking adjacent to the new drive-thru lane.

Comments:

Michael Grace, Esq., and Peg Caniff, franchisee owner, were present. Mr. Grace stated that this project was previously approved by the Planning Board (*Resolution #23-05*). Since that time, there was a question raised with respect to the location of the above ground tanks. He noted that the tanks have existed in this location for 18 years and are requesting special consideration by the Planning Board to allow them to remain as is. The concern was the distance of the tanks from the electrical box. The less problematic issue is the setback from the property line which is the state right-of-way which includes trees, berm, fence and sidewalk. From a traveler's right-of-way, the tanks are probably more than 50-ft. He added that the applicant is proposing to renovate the existing restaurant. He added that he spoke with the Building Inspector and there was no issue with leaving the tanks in their existing location.

Chairman Fon thought that this was approved already. Mr. Tegeder responded that it was approved and was moving to get the site plan signed. He informed the Board that the issue was raised during a pre-construction meeting at the site. The Building Inspector noted that the tanks were too close to the property line. He was not aware of the electrical box. The distance between each was discussed. Chairman Fon asked if what was shown is different from what was originally approved. Mr. Tegeder responded that from the approved plan it is moved out of the grassy area but is still not compliant with the 25-ft setback from Route 118 and is why he brought it back to the Planning Board. The tanks as located are not compliant with the 25-ft setback nor were they compliant with the approved plan set. He noted that he has not received any correspondence from the Building Inspector confirming that the tanks can remain in the existing location. Discussion followed with respect to the electrical box, setbacks, code requirements, and pre-existing conditions. Chairman Fon asked about the crosswalk. Mr. Tegeder noted that there was a section of the crosswalk that should be removed. The crosswalk from Downing Drive directly toward the front of the store past the drive-thru lanes is the one that is needed. The Board stated that they would like a memo from the Building Inspector confirming that the propane tanks may remain in their existing location.

EIB Development Solar Farm

Discussion: Pre-Preliminary Discussion Site Plan, Subdivision & Special Use Permit

Location: 6.18-1-37; 76 Route 6, Jefferson Valley

Contact: Badey & Watson

Description: Proposed two-lot subdivision and solar farm on an 18.1-acre parcel in the I-1 zone. This property is the same as the former Zat Construction aka Tonndorff subdivision and site plan application.

Comments:

Margaret McManus, P.E. was present. The proposal is for a two-lot subdivision for a solar power generation system and facility on a vacant commercial property located at 76 Route 6 in Jefferson Valley on an 18-acre parcel. The contract vendee, EIB Development, will utilize lot 1 for the solar facility and the property owner will retain lot 2. The application will seek subdivision and site plan approval for lot 1. There is an existing wetland on site and they have reached out to the NYSDEC as a permit will be required to cross the wetland and construct an access road to the solar facility. Once subdivided, lot 1 will be a total of 11-acres of which 6-acres are to be disturbed for the solar array.

Chairman Fon asked the Board and Counsel if there were any comments. Mr. Waterhouse questioned if the site was sewer. Ms. McManus responded that it was. Mr. Tegeder stated that there is an adjacent property that is zoned residential so the visual impacts will need to be addressed. He noted the slopes and added that screening is quite different when slopes are involved. Mr. Bock asked if the property was forested and Ms. McManus responded that it was. The applicant was advised to work with the Planning and Engineering Departments.

MJM Land Development

Discussion: Major Subdivision

Location: 17.18-2-2; 3232 Gomer Street

Contact: Site Design Consultants

Description: Proposed flexibility alternative for 13-lot single family subdivision on 12 acres in the R1-20 zone.

Comments:

Joseph Riina, P.E. was present. Mr. Riina stated that a flexibility alternative for the 13-lot subdivision was provided for review by the Board per their previous discussions. He added that this is the plan that they would like to move forward with to the Town Board for flexibility the standards.

Chairman Fon asked the Board and Counsel if there were any issues. Mr. Bock asked about the narrow road access. Mr. Riina replied that Mr. Glatthaar thought it wouldn't be an issue. Mr. Glatthaar responded that it wouldn't be an issue and that the Planning Board has the right to waive the 50-ft right-of-way requirement. Mr. Tegeder questioned if the road configuration near Cordial Road could be tweaked to avoid the buffer. Mr. Riina responded that they looked at this but they would then lose one lot. The Board requested to see that alternative during their review. The Board had no issues with the proposed plan and requested that the Planning Department submit a memo to the Town Board.

Town Board Referral - Sign Application for Gulf Station fka Hilltop Hanover Station

Location: 15.12-2-8; 1530 East Main Street, Shrub Oak

Contact: Mohegan Auto

Description: Proposed LED price sign facing Route 6, freestanding sign on East Main Street, and pump signage.

Comments:

No representative was present. Mr. Tegeder informed the Board that the application was referred by the Town Board for review as the applicant is trying to complete this portion of the project with their new branding upgrade. He noted that the existing pole sign on Route 6 is 21-ft high to the top of the sign which is 5-ft in excess of the code requirement. Mr. Garrigan questioned if the Planning Department's comments from 2019 to the Building Department were addressed. Mr. Tegeder responded that the stone monument is complete but should say "Welcome to Shrub Oak". Some of the other items have been addressed but he will conduct a site visit for verification. Chairman Fon thought that a reinspection of the site would make sense to ensure compliance and requested that the Planning Department advise them of the date should any of the Board members want to participate.

Underhill Farm

Discussion: Proposed Project

Location: 48.06-1-30; 370 Underhill Avenue

Contact: Tim Miller Associates, Site Design Consultants, Colliers Engineering

Description: Proposed mixed use development of 148 residential units, 11,000 SF commercial space, and recreational amenities proposed on a 13.78-acre parcel in the R1-40 with Planned Design District Overlay Zone authorization from the Town Board. Original main structure to remain and be reused.

Comments:

Mark Blanchard, Esq., Joseph Riina, P.E.; Steve Marino, Wetlands Scientist of Tim Miller Associates; Dr. Phil Grealy, Traffic Consultant of Maser Consulting; Earl Goven, Landscape Architect of Blades and Goven; Paul Guillaro and Michael Guillaro, property owners; and Scott Levine of Transpo Group (Town Traffic Consultant); were present. Mr. Blanchard stated they are here this evening to discuss the environmental, traffic and landscape components of the project.

Environmental

Mr. Marino stated that the final EAF was submitted for review in advance of the Public Hearing. He received an additional memo from Barton & Loguidice (B&L) dated 5/18/23 commenting on some items discussed during his last presentation. B&L noted a few inconsistencies in the plan that they would like rectified. It was pointed out that from a functional standpoint the pond should be considered as part of wetland A, which they will do. They commented that wetland A is subject to the Army Corp of Engineer authorization and noted that this is pointed out in the EAF. He noted that B&L's recommendation is to approve the landscaping plans and tree mitigation proposal with the recommendations and conformances noted in their memo. A response memo will be prepared addressing their comments.

Traffic

Dr. Phil Grealy updated the Board with respect to the intersection traffic improvements which include turning lanes and pedestrian upgrades to bring them in compliance with current ADA requirements. As discussed during previous meetings they identified initial improvements to offset the traffic that would be generated by this project. In looking at the main intersection, their project represents less than 5% of the traffic but since there were major issues due to a lack of turning lanes and accident history they advanced the plans to provide those improvements. They received correspondence from the NYSDOT dated 5/1/23 to which they have responded. The NYSDOT indicated that they would like them to ensure that as part of the design any equipment installed would be positioned so that future improvements can be maintained. The existing pedestrian crossing needs to be brought up to compliance so they are providing pedestrian movements on all four corners of the intersection. All those improvements are being advanced by the applicant. There was an initial commitment of 175K and another 450K commitment for the design plan. The whole intersection is estimated to be about 1.2M. The intersection improvement will not only accommodate this traffic but will also address the existing shortfall and future developments. He added that the NYSDOT is positive in terms of getting the improvements done but has no money to put towards it so the applicant has been working with the Town. In terms of the site and access improvements relative to the Route 118 frontage, the NYSDOT confirmed that this is classified "without access" that includes pedestrian access and is why the pedestrian crossings are at the corner of Route 118 and Underhill.

Chairman Fon informed Dr. Grealy of correspondence received with respect to the application. He noted that there was a resident from Beaver Ridge with respect to access through the development and wheelchairs. Dr. Grealy responded that the access connection has been in the plan from the beginning for the convenience of that development and is not a heavy traffic access. As indicated in their traffic study, less than 20 vehicles will be using this access during peak hours. In terms of the condition of that access and the road itself, it is designed to accommodate low volume traffic and traffic calming measures proposed for the connection. He noted that with the improvements to Route 118 and Underhill there is no reason to go there except for cross access. There is no time saving benefit after they make their improvements. Chairman Fon noted that the Board and the town have been consistent with internal connections.

Mr. Bock asked about the recently adopted Town Board resolution and how it relates to the proposed project. Dr. Grealy responded that the whole purpose is to complete the entire intersection improvement. The applicant will pay the money but is not responsible for the entire intersection improvement costs. The tax abatement will offset the

difference of monies put out by the applicant until the applicant has been fully reimbursed that will be for the commercial portion only. Mr. Bock asked if the resolution was limited to just the tax abatement. Councilman Esposito noted that there is a reference to a 225K recreation donation that has nothing to do with the tax abatement. Mr. Blanchard stated that this is noted as a whereas clause in the resolution. Mr. Blanchard stated that the resolution will now allow them to go to the Westchester County IDA and explained the abatement schedule process. The abatement will reimburse the portion of money fronted by the developer to finish the full buildout of the intersection over a period of time. Mr. Bock questioned if the resolution was contingent upon anything. Mr. Blanchard responded that the Westchester County IDA requires that the Town Board show their support for the concept of the abatement. The operative schedule language of when that abatement will legally take place comes from the IDA. The Town Board offered its initial support but the actual legal mechanisms to trigger that abatement have not been set. Mr. Glatthaar informed the Board that the whole resolution is contingent upon site plan approval by the Planning Board. The applicant took a risk and is willing to invest time and money in the abatement process which will never be recovered if the project is not approved. Mr. Tegeder stated that he feels it is helpful for their Board to know that the Town Board has made a commitment for the completion of this intersection rather than having a condition in the resolution. Mr. Bock responded that this was a question during the review process and now understands how it all fits together by showing that there is an intention to move forward if the project is approved. Mr. Bock asked how the recreation portion will affect their decision. Mr. Tegeder responded that the Board's determination is necessary and is yet to happen.

Scott Levine, Transpo Group (Town Traffic Consultant)

Mr. Levine stated there have been a few tweaks to the site plan which he thinks are moving in a positive direction. He stated that the NYSDOT commented that the intersection will need to be improved prior to the full operation of the Underhill Farm project. He noted that "full" is a lot of work so there needs to be a decision over exactly what the threshold is before anything can happen on the site.

He looked carefully at the parking and shared parking on site with respect to the condo and apartment buildings. He noted that there are two ways you can calculate the parking demand for a multi-family development which is either the number of dwelling units or the number of bedrooms of the units proposed. The dwelling unit calculation ends up with a demand of 131 parking spaces (1.31 spaces per dwelling units). The bedroom calculation ends up with exactly 150 parking spaces which works out exactly for what is proposed (1.5 spaces). The ratios come from a set of standards based on national studies (ITA) that have been developed over decades on sites similar to this.

He noted that the loading area was addressed. Another item discussed was the shared parking between the office use and the restaurant use. He reviewed the Town Code and it is exactly the two types of uses mentioned and feels that this is reasonable from his perspective.

There was discussion about the possibility of cut-through traffic on Glenrock Street. His data source reveals approximately 100 vehicles (north and south) on Glenrock today and noted that this is important information as it tells them it is not currently being used heavily as a cut-through. He understands the resident concerns and noted that there are competitive travel times but the fact that it doesn't seem to be happening today is good news. Nevertheless, he thinks that the Board may want to consider some type of traffic calming measure on Glen Rock such as a speed bump. Chairman Fon asked Mr. Levine if he had the chance to review recent correspondence. Mr. Levin stated that he had not but will do so.

Landscape Plan

Mr. Goven showed the landscape plan with plant details to the Board. The plan proposes a mix of native and non-invasive species. They recently removed the vinca minor as it was flagged as a potential invasive species. Green giant arborvitae, which are not necessarily native, are proposed for screening purposes. The major areas of screening are along Glen Rock which includes multi-layered plantings between Glen Rock and the townhomes. The tiered terrace walls will also be planted. The treatment extends along Underhill to the extent of the pond and stormwater basin. Due to some plan changes, more trees are proposed to remain. He added that they are currently looking at the pedestrian access at the corner of Underhill and Route 118 which will be discussed further during an onsite meeting with the Planning Department this week.

Chairman Fon asked if the treatment in front of the mansion is in keeping with the historical nature. Mr. Govern responded that there is very little planting currently around that area and some at the corner and believes it was an effort to provide screening for the roadway which includes traditional plantings of Norway spruce and evergreens.

The idea was to maintain as many existing trees as possible and then supplement with plantings typical to that era but native to New York. Chairman Fon stated that the apartment building was pulled back and a retaining wall was added for the tunnels and questioned if there would be any treatment to soften the view in between. Mr. Govern responded that he will look into this to provide more of a buffer and added that currently there are two or three evergreen trees. Mr. Tegeder noted that it would make sense to review this and thought that a few of those trees may be compromised. Mr. Marino informed the Board that due to some plan changes, a number of trees are to remain. Chairman Fon asked about the old entrance with the existing gate. Mr. Govern responded that the intent is to try and create a classic estate feel with some sweeping curved walls and steps to the plaza in order to create homage to the original building and not so much the new. Mr. Waterhouse questioned if there were plans for perimeter lighting on the footpath around the pond. Mr. Guillaro responded that originally, they were proposing bollards but have since eliminated this to promote dawn to dusk walkers only.

Closing

Mr. Blanchard stated that they will attend the next meeting if necessary. He informed the Board that he received the correspondence that was forwarded to them and noted that the applicant is working on their responses.

Mr. Phelan requested Mr. Blanchard to prepare a response with respect to the issue of the tax abatement being lost revenue to the town. He noted that he doesn't see it this way but would like to hear his response to the idea of funding the full traffic improvements today as opposed to down the road by perhaps someone else and whether the payback through an abatement is lost revenue or not. Mr. Blanchard responded that he would report back to the Board.

Mr. Blanchard noted that the Public Hearing is scheduled for June 8th and they would expect to return to the Board on June 12th to address any items. After the close of the hearing, they hope to return to the Board for contemplation of a negative declaration. Mr. Bock stated that the Board will need to review and discuss the EAF to ensure they have all their information after the close of the hearing and prior to the next steps. Mr. Glatthaar agreed and noted that the consultants should be present for this discussion if possible to answer any remaining questions. Chairman Fon asked Mr. Glatthaar for his interpretation of the recreational fee. Mr. Bock asked for his interpretation of the Overlay law guidelines.

Town Board Referral - Two Amendments to the Town Code Regarding Fences

Description: It is proposed to remove the exemption from obtaining a building permit for fences and increase the side yard maximum height from 4.5 feet to 6.5 feet.

Comments:

The Board discussed their concerns with respect to adding another permit layer, fees, and setbacks for possible site distance issues. The Board requested that the Planning Department submit a memo to the Town Board per their discussion.

Zoning Board Referral - 670 East Main Street

Location: 16.08-1-34; 670 East Main Street, Jefferson Valley

Description: Proposed to remove existing single-family house and detached garage and construct 4 two-story, three-bedroom townhouses and 12 parking spaces.

Comments:

No representative was present. Mr. Tegeder informed the Board that the application was referred back to the Planning Board for their comments. The Board had no planning objections as this item was already reviewed and requested the Planning Department to submit a memo to the ZBA with their previous memo attached.

Open Discussion

Discussion followed with respect to possibly imposing a time limit for public commentary during the Underhill Farm public hearing as there were some concerns about repetition, length of time, substantiative information, etc. The Board seemed to come to a consensus that ground rules would be set prior to the hearing in order to promote reasonable and respectful public commentary.

Meeting Closed

Upon a motion by Bill LaScala, and seconded by Aaron Bock, and with all those present voting "aye", the Board closed the meeting at 11:13PM.