

Planning Board 2024-08-13

Meeting minutes-Approved

Attendees: Dr. Paul Ziarnowski, Dr. Jim Liegl, David Stringfellow, Jay Jackson, Gary Stisser, Jessica Yuhas, Town Liaison Jennifer Lucachik, Town Planning Board Consultant Sarah DesJardins

Absent: Arlene Weiss, Elizabeth Schutt, Attorney Ryan McCann

1. CALL MEETING TO ORDER

Meeting called to order by 730pm

2. APPROVAL OF MINUTES

Tabled May 2024 minutes

3. OLD BUSINESS:

- a. none

4. NEW BUSINESS

- a. Delaware River Solar – Requesting Planning Board review of a proposal to construct a large-scale solar project at 7832 Feddick Rd, Hamburg.
- b. Donald E. Hornberger Jr. – Requesting Preliminary Plat Approval of a 2-lot minor subdivision to be located at 7219 Heinrich Road, Hamburg
- c. Michael Jerome – Requesting Preliminary Plat Approval of a 3-lot subdivision to be located at North side of Liebler Rd.
- d. Jon Cary – Requesting Preliminary Plat Approval of a 3-lot subdivision to be located on Boston State Rd – SBL#242.00-1-28.

Delaware River Solar project

Mr. Ziarnowski spoke to the audience to advise that the Board has not seen this project for 2 years and 2 months ago. Don't know where the process stands right now. This is not a question/answer session but listening to what they have to say. There is a sequence and we are not at the point to scrutinize. Spoke to Rob before the meeting and got some good feedback. One of the issues before was the 500ft setback for the residence and will talk more about that and the variances that will be involved. Things are fluid and up in the air right now. There is a lot that needs to happen before anything is written in stone. Hang tight and let us get on with the meeting.

Delaware River Solar members talking to the Board: Robert Pidanick of Nussbaumer & Clarke with Terry Boyle, council attorney Chuck Malcolm from Hodson Russ and Chief Executor Officer of Delaware River Solar Rich Winter. Between the four of us, we hope to answer some of the questions you have in connection with the project. Our office is located at 3556 Lakeshore Rd and we are here on behalf of the applicant Delaware River Solar. At this point, we just want to tell you the sequence of steps that we are looking to do in connection with the project. First step is the State Environmental Quality Review and that's where we are tonight to talk about that and what has been done in connection with the project since we were last here, two years as indicated. The second step in the process is that we will need some variances with respect to setbacks on this property and that will be the second step in the process. I believe there is going to be a public hearing at every single one of these steps so the public will have an opportunity to have input into this project. The last step in the process will be when we pursue site plan approval. There will be a lot of opportunity to come back and speak with this Board and hopefully bring the residence to some level of comfort with the project where

they have expressed concerns about. We think it is better than a windmill. The property is at 7832 Feddick Rd, owned by Kenneth Nowak and a portion of the site will be leased for the facility. The total area (at this point, Rob was turning the map towards the Board Members). (recording: 3:50)

Mr. Ziarnowski: When he is done showing us, we will turn it around. This is a horrible room to do this in.

Mr. Pidanic: We will put this out for the residence to take a look because I know they cannot see it now. (recording: 4:10 – Mr. Pidanic referencing the map to the board) It is 73 acres and 17 acres of that project site will be leased by Delaware River Solar and that's less than a quarter of the site to be used for the solar field. The existing zoning is Residential Agricultural. I mentioned that we will need a setback variance; there is a 500ft setback variance and also will need a Special Use permit, ultimately, that will need to be approved by the Town Board because this is in an agricultural zone and this is not an agricultural use. We introduced a concept plan to this Board back in September 2022 and filed a long form, Environmental Assessment form. The EAF was sent out for a coordinated review by the Town, all the agencies responded, primarily the big one was DEC had listed a whole host of issues that we have gone through and addressed. DEC concurred that the Town of Boston should be the Lead Agency and act on their own behalf and make their own SEQR determination in connection with the project. We do have wetlands on the project site, very minor. DRS retained Earth Dimensions Incorporated, one of the most respected wetland consultants in the area. They have done a wetlands delineation out there and have identified two wetlands on the site. (recording: 5:53- Rob referenced the map to the Board).

Mr. Ziarnowski: Would not have known the difference.

Mr. Pidanic: With the panels down there, you may not recognize the difference, but they have identified two wetlands consisting of .16acre, they are on the West side of the property. They are not anywhere near the project limits so they will not be impacted by this. There are no State wetlands or any other Federal wetlands on the site according to Earth Dimensions. We do have (Mr. Pidanic walked away – recording: 6:30) ... They are going to have to drive equipment over that and there is a kind of a culvert that wouldn't be able to support a truck that they need to bring equipment into the site. We will have to install a new culvert there. The existing crossing is failing and will need to replace it; looking at a box culvert to replace that. Traffic, other than the initial construction, there isn't really any traffic associated with this, minor maintenance of comings and goings. We did have an issue identify the project was in an archeologically sensitive area. Many sites in Western New York that are along creeks end up being an archeological sensitive area. It is necessary that we have to complete a Stage 1A,1B Archeological study and that study is currently underway. I am not sure of the results. Will check with Terry. Site Drainage, we have to meet all the requirements for the State Department of Environmental Conservation (recording: 7:52-hard to hear) ...proper storm drainage on the site. Minimum impact from the fields. They're put in the ground. There is very minimal impact from the panels themselves. They look like they are spread around a lot. Again, minimal impact from those. But we are required to do a, with any construction, storm water SWPPP, storm water pollution prevention plan and erosion and sediment erosion control, of course, for the construction. The grading will be minimal (recording: 8:28-hard to hear additional comment)for the panels. We don't need any sanitary sewers, water lines for the project. There is no need for those utilities. Lighting for the site, there isn't going to be any lighting that would be a disturbance to any of the neighbors. There is no need to do any lighting in there. There will be an 8-foot security fence around the site. We have depicted that on here (referenced the map). I believe all of this information has been submitted previously so hopefully the Board has had an opportunity to look at it. DRS is proposing tree clearing on 1.8 acres on the West end of the project for the solar arrays and DRS will be providing buffering around the site (recording: 9:37-unable to hear further comment) ...

Mr. Ziarnowski: Can I stop you for one second and ask if you are using just a percentage of that property, what is the issue with the 500 feet setback? RESPONSE from Terrance Boyle: 500 feet, we can maintain that 500 feet setback on the West property line, not a problem and the East side we can get the 500 feet but the North and South property lines we cannot make that requirement because it is residential, so we are asking for the variance for the North and South property lines there.

Mr. Ziarnowski: North and South. Where is the residence on the North side? RESPONSE from Mr. Boyle – pointing to the map – those are residential properties – RA.

Mr. Ziarnowski: Are there residence on the North side? RESPONSE from Mr. Boyle – referencing the map and landowners, not into the mic – recording: 10:45).

Mr. Ziarnowski: Ok – on the South property? RESPONSE from Mr. Boyle – referencing the map and landowners – not into the mic – recording: 10:56).

Mr. Ziarnowski: (recording 11:19) – Terry, how much room do you have on the South side? Sorry, the West side? RESPONSE from Terry: 500 feet set back there.

Mr. Ziarnowski: You have 500, do you have more than 500? RESPONSE from Terry: Correct. (referenced map) Basically, I would probably say like 600 feet from back there, on the West property. Obviously, from Feddick Rd back here (referenced map to Board) we don't come into our arrays til about right back in here (referenced map), way far back with the 500-foot setbacks, like a 1000 feet off on that side, from that direction. (recording: 12:00 – cannot hear who is speaking in the background to Terry). I probably should, for the next meeting, I'll make a bigger map that has the entire thing across there, to see it better. But being that it is a big site that comes acrossed here, I had to split it like that. You can kind of see right here the rest of the piece right there, it is over 1000 feet back from there to that setback which we can maintain there. But it is the North and South that we have an issue. There are no houses up here and no houses down here to impact as far as closeness there.

Mr. Pidanic: Just in connection with the SEQR, we talked about the wetland study and all of these studies have been submitted in support of DRS pursuing a negative declination, pursuant to SEQR. For the residences, meaning that, that means that there will not be a significant adverse environmental impact as a result of developing the project. The project is very minor impact, whether you like solar fields or not, a visual analysis study was submitted, a glare study, a glare in connection to the panels, a noise study had been submitted, I talked about the wetland delineation, talked about traffic, I don't know the status of the archeological study. Is that not done yet? RESPONSE from Terry: The archeological study is being performed this week and should be done by tomorrow. I believe that is what I had heard. That they are already on site doing that and should be concluding that by tomorrow which means it is usually a couple of weeks before they give us a report on that. We will know where that stands onto that point. To elaborate on what Rob said about the glare study, I know in your packets, you had the print out of those and the cut sheets about the glare for the panels themselves and they determine from what they do use there would not be a glare problem due being that the distance that these people would be seeing this, some of the folks that do live by this place, you would not have a glare problem off of those panels considering with that. The noise study for the invertor themselves which is right about this area here (referenced map), there is a similar project in your packet that uses a basic basis to say how much decibels and like that, I think 67 they said, if you were right on top of that the decibel would be like a dishwasher that was running is what you would hear. If you were right next to that and if you were further away it gets lessor and lessor. But once you get passed, residence up in this area (reference map), you would never hear those, up that far away. It is just too far so you would never hear those invertors down there.

Mr. Ziarnowski: Are these movable panels? RESPONSE: They are trackers.

Mr. Ziarnowski: direction of? South, obviously? RESPONSE: East and West they go. Sun comes up in the East, follows it, goes in the West.

Mr. Ziarnowski: Got it. RESPONSE: Much more efficient, better energy efficiency so that's what they do those for. As far as the slope of the land, minimum grading, if any. It is very gentle, with using a field like this to put these on. Less movement of materials, soils that are being put back eventually for farming, they don't want to disturb them. All soils will be onsite, stored onsite, erosion control purposes, they'll seam them, so they don't get pushed around or eroded. Once this goes back into decommissioning, they would just put

those soils back down where they came from, basically, to be restored. RESPONSE from Mr. Ziarnowski: ok – Thank you.

Mr. Pidanic: I think we have covered everything that we wanted to cover. I think Chuck may want to add to that and I am sure Mr. Winters is going to want to get a little pitch in here. We can't leave him out, he is the CEO.

Mr. Chuck Malcolm with Hodson Rush. My part would just be procedural as far as what we would be asking for tonight. As Rob mentioned, there is a process that we are following and how there are different approvals that we are going to need. We have been at this for a bit of time and I think we have tried to follow the direction of the town and the Town Board and how we have approached this. One of the things that the Town Board did in the course of this review was that they hired a special counsel, Knauff Shaw, they got Dwight Canyak on board, and he is advising the town on the review. He has a lot of experience on these types of projects. I have been in contact with him trying to provide the town with the information it needs to make a good decision on this project. The town has also hired Clarke Patterson Lee as a consultant to kind of review the materials, review what we submit, vet those things and where they find they we need, the town needs more information, they ask us for it and our consultants respond to that. That is the process that we follow thus far to get back in front of you. During that period of time, I think there was a lot of work behind the scenes where the town has vetted consultants, attorneys, to get the right people. Once they were on board, reviewed the materials we had previously submitted, after going through that, kind of gave us detailed comment letters saying this is the additional material we want, this is what we think you need to supplement your application with. We did that and the direction we got from the town special counsel, which we believe to be from the Town Board, was that we want you to go back in front of the Planning Board and present the application again with an eye toward getting comments from the Planning Board to give back to the Town Board on the SEQR determination. Because ultimately, the Town Board is the lead agency here and is going to make that SEQR determination. And we, which has already been stated, have to go in front of the Zoning Board of Appeals on the variance applications, those are necessary for our project and we need to kind of take that step before we can come back on the site plan application. But the way SEQR works is, we can't go to the ZBA and have them make a decision on our variances until SEQR is completed. What we would ask this board to do is make a recommendation, provide any comments this board has with respect to SEQR back to the Town Board so that then we can go back to the Town Board, or actually, go to the Town Board, I don't think we have officially been there yet, and ask the Town Board to render a determination of significance under SEQR. Once the Town Board does that, issues what we believe to be appropriate here a negative declaration, that will put us in a position to submit our application to the Zoning Board of Appeals. Then we will be in front of that body making our case on why we believe these variances are appropriate. Some of the questions we will have to answer in front of that board is why these variances are necessary, why there are no other alternatives, why there is a public necessity here for a public utility. Those are the things we are going to be presenting to the Zoning Board of Appeals and once the Zoning Board of Appeals renders that determination, we will be back on the site plan and special use permit. Procedurally, before we can get to the ZBA, we have to get the SEQR process moving and what the Town Board has asked us through special counsel and the engineer to do, is come back to the Planning Board, re-present the project, get the SEQR comments to the Town Board so that they can make a determination. So, this is what we would ask this board to do tonight.

Mr. Ziarnowski: Chuck, as I was talking to Rob before the meeting here, this board has been pretty much left in the dark for the last year and half, two years. I know there are behind the scenes negotiations going on. I haven't seen half of it, haven't seen any of it, I don't think. I don't know if Sarah has seen much of it either. So, all of the documentations you say you have gotten, we basically got now in our packets. We have not had the time or the consultation with the town to even sit down and say where are we, what is going on with it. You are not going to get a motion tonight; I can tell you that. Hopefully next month we will have met with the town and have everything together and we can go ahead, and we can do a motion to recommend SEQR one way or the other. It's not happening tonight. The second thing is, I have a question for...

Mr. Malcolm: Can I briefly on that point? So, we are very disappointed in that. The board has to do what it has to do. I hope that the board can appreciate that's through no fault of ours. It was our understanding that the town had hired a consultant and an engineer that would be the voice of the town, facilitate the coordination amongst the various boards and we were asked specifically to make this presentation to this board and the fact that this board was not kept in the loop on this project through the consultants is unfortunate. We were directed through the point of contact to work with the special council and the engineer.

Mr. Ziarnowski: I am glad that you came tonight. There is no question that this has been very beneficial to all of us on the board here. Now we have a basis to go back and nitpick on the information you gave us. Like is said, I got some correspondence and went, who is this guy? That was how bad it was, even up to today.

Mr. Malcolm: Who is 'this guy' meaning?

Mr. Ziarnowski: I am not saying. We are out in the dark a little bit and in fairness to the residence here, we have a code, I love the residence in this town the best and we are looking out for the best for them in this project. There are a couple of things I still have an itch about. One thing is, why this site? If you have to ask for variances, why this site? Because of low hanging fruit, it was for sale. There is no particular reason it can't be moved to somewhere else in the town. Why this site? RESPONSE: I can invite Rich up to talk about what we look on project siting. There are a lot of factors that go into that. Some are willing landowners, that's one, some are where the capacity is on the grid. Every site that is zoned for a solar facility is not suitable for solar panels. You have to have a place to connect where there's capacity on the grid. There is that. There is environmental considerations, are the slopes appropriate for the construction, are there wetlands, are there endangered species. There is a whole host of siting factors that you look at as to where it is appropriate. In one community, there may be only a handful of appropriate sites, parcel size, maybe one. Then you have to have a landowner that is willing because we don't have the power of eminent domain like the old monopolistic utilities used to have where they owned the generating assets where they could just say, you know what-we are going to take this property because we are going to build a generating facility. There is a lot of things that goes into siting a project and the choices get boiled down as you plug those factors in to the analysis. It is not as if the whole town is open to options to site a project.

Mr. Ziarnowski: But there is still a size 10 foot trying to fit into a size 8 shoe and that's where the homeowners take a hit.

Mr. Malcolm: I would suggest respectfully that a 500-foot setback from a residential property line is a very very significant setback that in many cases is not necessary. So, when you are looking to protecting residential properties from different uses, a 500-foot setback from a structure that's 15 to 20 feet high from a property line is pretty significant, particularly when you also have screening and other mitigated measures.

Mr. Ziarnowski: That's open for opinion and I am not going to split you guys. Second thing I got is, I have to ask you this, to what benefit is this to all these people sitting out here? RESPONSE: That question came up the last time it was here and I would answer that a couple of ways. Do you ask that question of any other applicant that comes before your board and wants to use his/her property to do something that is lawfully permitted in the town? RESPONSE from Mr. Ziarnowski: Absolutely. We put down two Dollar Generals in the last two years because it was not a benefit to the residence. ~~We are not saying~~ Who's making money on this? Who's helping the residence? RESPONSE: The landowner will. RESPONSE from Mr. Ziarnowski: How? That one landowner as opposed to all the other people.

Mr. Malcolm: That one landowner will. What's wrong with a business coming in and wanting to make money? This is still America.

Mr. Ziarnowski: There is nothing wrong with the business.

Mr. Malcolm: Are we as a company not allowed to make money? RESPONSE from Mr. Ziarnowski: You are but within the code, within the code.

Mr. Malcolm: We are allowed to apply for variances, right.

Mr. Ziarnowski: If you don't get your variances, do you go away? RESPONSE: We are going to apply for our variances. RESPONSE from Mr. Ziarnowski: If you don't get your variances, do you go away? RESPONSE: I am not at liberty to answer that question because I am not the client, I am the lawyer.

Mr. Ziarnowski: The client is right here so we will talk to him. RESPONSE: I would say the answer is probably no but let the client answer the question. But if you are asking what the benefit is to the community, I would say number one, you have a resident landowner that wants to use his property in a manner that is permitted by the code. RESPONSE from Mr. Ziarnowski: No no no, it is not permitted by the code for this project.

Mr. Malcolm: Let's start with the fact that it is permitted use. RESPONSE from Mr. Ziarnowski: With the project that fits the code. MR. MALCOLM: Yes, but everyone is entitled to apply for variances. MR. ZIARNOWSKI: Sure are. MR. MALCOLM: It is a permitted use, right? MR. ZIARNOWSKI: It is a permitted use if it fits in the contents of the code. MR. MALCOLM: There is nothing wrong with the landowner to use his land to make money. There is nothing wrong with a business coming and leasing that land to make money. There are also tax benefits through pilot agreements that's not a land use concern. MR. ZIARNOWSKI: There are tax benefits to? MR. MALCOLM: There are tax benefits through the pilot agreements, ok. First of all, let me just start out by saying that I am answering this question but this is not a land use concern. This board has jurisdiction over land use issues; this is not a land use issue. I am answering your question but this is not a land use issue, not a land use issue. MR. ZIARNOWSKI: It is a code issue. MR. MALCOLM: It's not a land use issue. MR. ZIARNOWSKI: It's a code issue. MR. MALCOLM: No, it's not. MR. ZIARNOWSKI: It's not? MR. MALCOLM: Whether or not there's going to be economic benefits or monetary benefits or who benefits or whether the residents benefit financially is not a land use issue; not a zoning issue. MR. ZIARNOWSKI: Let me ask you this, is anyone familiar with the Town of Eden....MR. MALCOLM: I am going to answer your question. MR. ZIARNOWSKI: OK, this is an abject to your speal here. In the Town of Eden, we heard that brochures were being passed out to say that, come and support this project because you are going to get reduced electrical bills. Does anyone know about this? Anyone in the audience that got that? (unable to hear if any response was given)

MR. MALCOLM: Well, that is part of these projects. It is part of these projects. Yes, residence of the community can be subscribers to these projects and get reductions of their electrical bill.

Ms. Yuhas: Where does the energy go? Where is this energy going? RESPONSE MR. MALCOLM: It will go into the electrical grid. MS. YUHAS: Yes but is the Town of Boston going to benefit from this project. MR. MALCOLM: Residence of the Town of Boston can be subscribers to the project and they will get a credit on their bill if they subscribe to the project.

MS. YUHAS: Ok, how do they subscribe? What does that entail? MR. MALCOLM: Rich, you are going to have to help with the logistics of this particular program because I am not the expert on how the program works but they can subscribe to the project but let me finish answering the question. There are also different programs. The Town Board can negotiate host community agreements, they can negotiate pilot agreements. I've worked on numerous projects where communities will enter into agreements, community benefit agreements where there are different payments that some developers will enter into with the town that provide benefits over and above taxes that they will pay. That is something you won't get from a Dollar General or other uses that you will get from a solar developers. If you are asking how the residents' benefit, well, those are some examples. Lower electric bills is one, community benefit agreements is another. Now you may say, well, I still don't want to look at it even though the community might benefit as a whole. Well, those are policy judgements or value judgments that, really, are beyond the purview of land use, in my opinion. RESPONSE from MR. ZIARNOWSKI: Thank you for your opinion. MR. MALCOLM: And the law.

MR. ZIARNOWSKI: Let's go one step further. I don't if any of you here have subscribed to a speal coming from a power company from somewhere else where you can appropriate a certain amount of your energy coming

from wind, a certain amount of energy coming from solar and a certain amount of energy from hydro. Take a look and see your bill and see if you actually got a reduction because you subscribed.

MR. MALCOLM: Those are like when you subscribe to energy servicing companies where they are basically taking over the servicing of your bill. MR. ZIARNOWSKI: The supply is the same. MR. MALCOLM: That is a different type of program. This is a specific program where you actually do realize a discount on your bill. Rich is going to have to explain that because he understands that better than I do.

RICH WINTER: (recording: 31:07) I will start with community solar and then can back and give you a background of DRS, if you like. MR. ZIARNOWSKI: Yes.

MR. WINTER: This project is community solar, it's a special program the State rolled out in 2016, which is the same time we founded our company. Projects have to be 5 megawatts or less so they're not these large-scale projects. The way they work is, you build a project and people subscribe to it and they get a discount on their bill. That discount is a savings, a guaranteed savings. There is no, hey, one month it is higher and one month is lower like in Esco (this word may be incorrect) (recording 31:44) That's sort of given a bad reputation too.

MR. STISSER: So, if a million people sign up for it, they are going to get the same benefit as only 100 people sign up for it.

MR. WINTER: The way it works is, you sign up and you can sign up for up to 100% of the power you used in the previous 12 months. At any one facility, we can sign up people for 100% of the power they used in the previous 12 months, up to 110% of that facility's generation and people will get anywhere from 80 to 100% of their power at a discount. That's right, there is a limited amount of solar. If everyone tries to sign up, there is going to be a shortage. What we do, we guarantee the residents in a town that they get the first crack at signing up for their array. Currently, we have a company that is called Meadow. It's a wholly owned subsidiary of DRS; we have 25,000 subscribers across the State of New York and we always offer the town, both the town itself, so if the town has electric (streetlights, whatever), they can get the discount and so can the residents.

MR. ZIARNOWSKI: What's the discount? RESPONSE from MR. WINTER: It's 5%. MR. STISSER: Straight across the board? Could be more, could be less? RESPONSE: The way it works is, you get a dollar on your bill and you pay 95cents for it.

MR. ZIARNOWSKI: So, the residents then have to look at the cost benefit ratio, getting that return on their bill.

MR. WINTER: The benefits to the town alluded to most of them, we pay taxes, as of now, there is a new model that the state because there was so much confusion how to tax solar arrays, the state has put out a tax model. So, we are just assessed like other businesses, we don't ask for pilots unless the town requests it. But in general, pilots are unfair to the town. Pilots are usually a bad outcome for the town. (recording: 33:43) In general, right now, most people prefer that we just get assessed and that's what we are doing and that's what we would say in this case unless the town asked us for us to give a pilot or enter into a direct pilot with the town.

MR. ZIARNOWSKI: Do you ever make considerations on the adjacent people to this as far as utility bills. Could you cut them a break? If this goes through, and these people got their bristles up, have you ever said, ok, you, you, you and you get one hell of a deal? MR. WINTER: In the past, we have made accommodations for neighbors who have true view shed issues and we have made accommodations for neighbors who are truly impacted. I am not a believer that three houses down is going to have a negative property value impact from 17 acres in the middle of 73 for something that doesn't make any noise at night, (recording 34:44). But if somebody is next door and his house is elevated, we are going to put up screening, that's one thing.

MR. ZIARNOWSKI: They have to live long enough for that screening to take effect. MR. WINTER: That is what I was going to say, we have made accommodations in the past. I will say, when we have made accommodations, it's required that the neighbors to sit with us, in a room, and have like conversations. It's not an open forum. MR. ZIARNOWSKI: It's not an open forum, absolutely. MR. WINTER: We are the largest developer of solar of this type in the Western part of New York; we have almost 60% of the market share. We work with towns, we work with neighbors, we have been in business for 8 years, we have done more of these

than anybody. That's because we are open to discussion to try to make everybody somewhere between neutral and happy.

MR. ZIARNOWSKI: I guess my comment would be, if variances went through, you got your setback variances, the people who were on the North and the South are affected by that, the medicine would sure swallow a lot easier if you sat down with them. MR. WINTER: Absolutely. I have a stack of business cards that I plan to leave and I am happy to sit with anybody who wants to have a conversation.

MR. STISSER: Would you build the project if the setbacks are not granted? MR. WINTER: It is a little bit of a tricky question. I think we feel...MR. STISSER: I understand what you feel; I am just asking you straight up; would you still build if you still had the 500 foot setbacks North and South? MR. WINTER: I would have to go back..I don't know if the project pencils if I don't get the variances. It is an economic decision, is my answer.

MR. ZIARNOWSKI: There is no way you can giggle it, twist it, turn it, push it? MR. WINTER: Sitting over here, I am hearing what you are saying and I am going to take another look at it. I know what you are saying.

MR. ZIARNOWSKI: Redistribute the panels. MR. WINTER: We will talk about that, but my guess is that we have spent a fair amount of time on this. Believe me, the last thing we want to do is to go and get a variance.

MR. ZIARNOWSKI: The last thing we want to do is give you a variance. MR. WINTER: I understand. Now we are in an agreement on something.

MR. ZIARNOWSKI: Thank you gentlemen. If you don't mind for a few minutes just taking it outside and showing these people. Listen everybody, please be courteous or they will just shut you down and leave. Guys, if they give you a hard time, just leave. Thanks.

MS. YUHAS: I have some questions and thank you for your time. Will the panels use battery storage? MR.

WINTER: No. I would just add, my suggestion would be to put that into the permit – storage cannot be added. Then you don't have to worry about that in the future. MS. YUHAS: Thank you.

MS. YUHAS: How much heat do the panels emit, do you know? MR. WINTER: They emit some heat in the area, just like a parking lot would emit heat when it absorbs the sun on a hot day. If you want the exact math on it, I can get that for you. MS. YUHAS: Yes, I would love that. MR. WINTER: We can provide that.

MS. YUHAS: Thank you. I have been looking for a lot into agrivoltaics and I know these types of things cannot happen unless they are implemented from the ground up when it comes to putting these projects together.

Have you ever done anything like that before? Is that something that you would entertain? Or is it something you don't see as a successful venture? MR. WINTER: What we have done that has been a successful is that we do have sheep. MS. YUHAS: Yes, I have heard about that. MR. WINTER: We do have sheep. MS. YUHAS:

Where do you have sheep? In WNY? MR. WINTER: All the sheep are right now being used in Solven County which is pretty much south from here. The use of sheep is general tied to the need for someone to watch them. So, if there is someone local that wants to watch the sheep, we will pay for the sheep, do all that.

MS. YUHAS: We are a farming town and pride ourselves on those things. MR. WINTER: I will tell you, I've got 100 arrays but only have raised hands for about 20. Most of them are in farming communities. Sheep is something that everyone wants to see, both the owners and the communities. MS. YUHAS: If it is feasible or not. MR. WINTER: Often the homeowner, the landowner, is doing the mowing and then they have the option to use sheep instead. Generally, they are picking the mowing. MS. YUHAS: Ok.

MS. YUHAS: Can you tell me what the cost is to recycle? I know there are a lot of plants out West, and I know these recycling plants are kind of moving their way over to the East coast. But right now, what's your budget for something like that? MR. WINTER: Are you talking about decommissioning? MS. YUHAS: Yes.

MR. WINTER: Right now there is a decommissioning estimate that's done by a third party. We will provide that, obviously. NYSEDA also has a model but I will tell you what's happening now in projects that are decommissioning, the steel is being recycled but most of the panels are being resold. Even after 30 years of use, the panels are still producing 80% of power. While maybe in the U.S., 80% is better with incentives to replace it, or put them somewhere else in most of the world, a panel free or at a very low price, that is producing 80% of its capacity, is something that they want.

MS. YUHAS: Can you tell me where these panels are made? MR. WINTER: Up until this year, the vast majority remain in Asia, three years they were made in China and then we put tariffs on China, so the Chinese started

building them in Vietnam, Malaysia and Thailand, so then we put tariffs on that. This year, approximately half of our projects, were built with panels made in the U.S. I would say all projects starting next year, additional incentives under the IRA Bill for what's call U.S. content, 100% of the steel has to be from the U.S., this year, 40%, next year 45%, the number goes up over time, has to be from the U.S. Panels are now being made here in the U.S. I would be very surprised if the panels were not U.S. MS. YUHAS: Thank you.

MS. YUHAS: I work as a licensed public adjuster, and I deal with fires. Do you have a fire plan and the reason I ask that is because I know electrical fires are near about impossible to put out most of the time. MR. WINTER: This would be a traditional electrical fire so it would be similar approach. We do have a plan. Part of what we do, and again I would suggest you put this in the permit, is fire training. We do train all the local fire departments as part of our permit, generally. MS. YUHAS: For all of your projects, you have a fire plan in place? MR. WINTER: Fire plan in place, there is an access box, there is usually two entrances and we work with the local fire department.

MS. YUHAS: I know you folks said 1.88 acres of tree clearing would happen. Do you know how many trees will be cut down for the project? MR. WINTER: On the 1.88 acres, I do not. MS. YUHAS: Is that a number we could find out? MR. WINTER: Sure. We can do a tree survey.

MR. ZIARNOWSKI: Doesn't the DEC get involved if it is more than 1 acre? MR. WINTER: I don't think so. Not in wetlands. There are restrictions regarding to the bats, which we will adhere to. In terms of clearing trees, no.

MS. YUHAS: I think we all would really like to know where the energy is going to go. MR. WINTER: We produce electrons, the energy, and the whole grid is electrons so all that is happening is that when we send power to the grid, we are just displacing power that is coming from somewhere else. Somewhere, whether it's the hydro coming from Canada or nuclear plant or the base load that is fossil fuel, wherever it is coming from, less of it is going to go to that substation because we now injecting into the grid. The electrons are not going to make their way to NYC which I throw out there because I hear it a lot, that we are using farmland here to power the people in Manhattan, it doesn't work like that. The way it works is, the electrons are sent into the grid, they are tracked on how much power we are sending to the grid so we know how many credits we can get to apply to people's bills. All that is happening is less power is coming over the transmission lines because there is local power.

MR. JACKSON: What I haven't seen in any of this, even with the first one, where are you connecting to the grid? Where is that connection? MR. WINTER: (recording 44:12) Think it is on Feddick Rd. There are three phased on Feddick Rd which is part of the answer to your question. Right out of the box, we can only connect to three phased. Right away we are stuck, when we look for capacity, we have to look for three phased. There is three phased on Feddick.

MR. LIEGL: That is currently zoned residential, correct? RESPONSE: Residential / Agricultural. RA.

MR. LIEGL: ok. If I heard it correctly, all the properties around that have no home on them. MR.

ZIARNOWSKI: Not true. MR. LIEGL: Did I hear that wrong? RESPONSE: I don't think that is correct.

MR. LIEGL: Is that all vacant land around it? MR. ZIARNOWSKI / MR. STISSER: No. Teelak.

*response in background-hard to hear – recording 45:04

TERRY BOYLE: It's the South property where there are two parcels – referenced map to the board.

There are three on the South end that have the visuals – three houses.

MR. ZIARNOWSKI: Anything on the North side? MR. BOYLE: No, nothing North. There are all tree buffers on that side so they do not have a view shed there. (recording 46:05-talking more of locations on the map)

MR. LIEGL: I did not have an opportunity to see the piece, what is the vegetation on that piece of property? Is it trees? MR. BOYLE: It's trees. They are like 30ft trees there that are pretty tall trees (recording 46:28-referencing the map where there are trees and houses) MR. LIEGL: On the Site? MR. BOYLE: Oh, those right here, those are farm fields except for here, where we got the 1.88 forest that we are going to take some of the trees here. That will be cleared. It is all existing farm fields that we are using. Its easy, gentle sloping which is ideal for putting solar panels. Less impact, less movement of soils and that kind of stuff. So it is an ideal place to put these panels; very flat and flowing. It slopes down so it is a very gentle drainage pattern there; not

going to have a lot of erosion; its already a farm field. Once they put the panels there, you are going to have grass and sod there, stuff like that. If they choose to put sheep in there to graze in there to help contain the grasses, its perfect. You don't have a lot of slope for erosion. Its perfect spot for those; its flat.

MR. LIEGL: Is there a, or are we going to be provided, a map with grid lines on it? Terrain elevation?

MR. BOYLE: Oh, contour. We are not changing the contour here. We are not going to disturb the contours. That is the whole purpose of this site because it is such an easy grade to follow; less impact as far as grading. (recording 48:10-more discussion about grading and hills but not for this site and references the map)

MR. JACKSON: In other words, we should be able to use the geological survey contour map to see what it looks like.

MR. LIEGL: My concern are the residents around the area. I personally wouldn't want to be looking at it and if it's elevated according to the contour lines, am I going to be looking at it up here, am I going to be on my second-floor bedroom looking at it down here? MR. BOYLE: So, this pretty much slopes down; everything slopes down this way, this direction. This is the high end at Feddick Rd, everything slopes down this way. The contour on these maps, we have surveyed the entire site, have very accurate contours on here.

MR. LIEGL: So, everything does down so the vacant land, they would be looking up if someone decides to build a home there? MR. BOYLE: Yes, it slopes up, looking up. MR. LIEGL: I am trying to get a picture.

MR. BOYLE: The contours on the maps are there and tells the grades (further discussion with the map – recording 49:46) Trenches will be put into control run off from the panels. Less than 5% slope. Erosion – you are not going to see it there. MR. LIEGL: Thank you.

MR. JACKSON: The observation that Dollar General that Mr. Ziarnowski had mentioned, was essentially prevented based on its appearance relative to our comprehensive plan, there is a certain character in the area where they wanted build. The building did not match the character of the area. That was the reason why, as far as I understand, the Dollar General was where it reached a point what we have to do is too expensive; we are not going to do it. You obviously heard the biggest deal for residents, it seems, is – what's it going to look like? I think the observation here was made. Whoever is going to be living next to it, are they still going to be alive by the time the visual barriers are going to be complete. That really seems to be the biggest concern; what's this thing going to look like?

MR. MALCOLM: I don't want to comment specifically on the Dollar General application just because I haven't investigated that application, I don't understand what happened there, don't know what zone it was in, don't know what they did. I will leave that one alone. Here's what I will say about the community character aspect and this project. Setting aside the variance issue, which I know we are going to have a disagreement on whether or not this is a permitted use in the zone. Solar is a permitted use in the area we want to go. That represents a legislative determination by the Town Board that this use is appropriate for this area. Whether you like it or not, that's what the legislative body determined for the community. When something is a permitted use in the zone, it means it is consistent with the comprehensive plan, period. Now, there was a case from the Court of Appeals called Northshore Steakhouse and basically the steakhouse wanted a special use permit and residents said we don't like the parking, we don't like the hours, we don't like the noise, we don't like this, we don't like that, we don't want to look at it, all sorts of complaints about this steakhouse. I forget if it was the Planning Board or if it was the Zoning Board that had the powers to issue special use permits, denied the application. The applicant sued. Ultimately, they won and the State's highest court said, look, this is a situation where you cant just deny an application for a special use permit because you don't like the type of use it is. You can't deny a special use permit based on the inherent characteristics of the use itself.

MS. DESJARDINS: Did the steakhouse require a variances? MR. MALCOM: In that case, I don't know whether it did or not. This board is not making a decision on variances and neither is the Town Board. That is an analysis that the ZBA will do. The question that this gentleman is asking is how is this fitting in with our community character and that is what I am answering. The question there is, the fact that I don't want to look at a solar panel and I don't think solar panels fit in with farmland, the Town Board has answered that question. Solar is absolutely part of the community character there based on the fact that it is a permitted use. That represents a legislative determination that it's in harmony with the community.

MR. ZIARNOWSKI: There is no doubt; you are 100% correct. We get this all the time. We have a subdivision going in and the people adjacent of the subdivision were screaming bloody murder because a subdivision was going in. The question was, number one you didn't own it and number two what was your subdivision and how did that look before you moved there. So, it is the same thing. I don't know what you are paying for this property and it is none of my business but if I was the landowners, because we hear this all the time, we should have bought it. Well, maybe you should have bought it. Maybe you all collectively get money together and you buy the property and do something else with it. I don't have a solution for it. I'm not against solar and don't get me wrong, I think solar is a project and yes there is a code for solar in our town and that code was made because of solar projects are coming in, no question, there is no problem with that. The problem is the variances; we talked about this. If you can do your magic and make people happy and do some setbacks on the variances that we don't have to go through a constitutional crisis, this young man saying – Hey, we'll beat it anyway – and we are saying, we don't want to give you a variance. I don't like either solution.

MR. MALCOLM: I didn't say that.

MR. ZIARNOWSKI: It came out as 'it's the law' as you turn your back on me and snarled under your voice, it's the law.

MR. MALCOLM: That was in response to what was this board's jurisdiction with respect to community benefits.

MR. ZIARNOWSKI: No, no, that was response to the variance but anyway, don't want an argument. I don't like arguing with attorneys.

MR WINTER: I heard you and I am going to work on it. I will just say that I don't think a lot of people can see this. When you say the community doesn't want to look at, this is not something that is going to be, um, it is not in the middle of town. It is behind somebody's house in a field.

MR. ZIARNOWSKI: You're here. MR. WINTER: I appreciate. MR. ZIARNOWSKI: I appreciate it and do as much as you can do to keep people happy in lieu if you have to get a variance. I will tell you what, you get a variance, you are going to blow our solar code out of the water if you don't get a variance and decide to build it anyway then why do we even have a solar code.

MS. YUHAS: I think we are really looking forward to seeing your pollution prevention plan, and everything else like your environmental impact statements and what not. I think we would really like to see that as soon as possible if you have it ready soon.

MR. ZIARNOWSKI: You (board) are going to get a whole bunch of stuff. There was a data drop of all our documentations so go through the documentations, next month when we see you guys.

MS. LUCACHIK: The variance potential you're looking at, there isn't away to move the array so you don't have to have that? MR. WINTER: I am going to take a look at that. MS. LUCACHIK: I figured you already did.

MR. WINTER: That is what I said earlier. I feel like I would be surprised the guys hadn't drilled down on that but I am going to take another look. MR. ZIARNOWSKI: Appreciate that. Thank you very much.

MR. WINTERS: It may not be me but someone from Delaware River will be here. I know you said see you next month. MR. ZIARNOWSKI: That young guy, he thought we beat him up last time, dark haired kid. RESPONSE: Dan.

MR. ZIARNOWSKI: Thanks you guys for coming. (talking to the audience) Please be nice to them out there. The jury is still out on all of this stuff. (to DRS) If they get snarky with you, just leave. Appreciate it.

Donald E. Hornberger Jr. - Requesting Preliminary Plat Approval of a 2-lot minor subdivision to be located at 7219 Heinrich Road, Hamburg.

MR. ZIARNOWSKI: Mr. Hornberger or representative, anyone here? Tell us what you want to do; introduce yourself on the mic. Donald Hornberger Sr. and Donald Hornberger Jr.

MR. HORNBERGER SR: Talked to the Building Inspector and he said that I had enough property that I could divide it three times. Keep my house and two other parcels well, I only want to get the one for him.

MR. ZIARNOWSKI: The 3.19 acres, correct? MR. HORNBERGER SR: Right. He said we had to have 75 feet of frontage which is what we are going to give him and the 3 acres. MR. ZIARNOWSKI: 75 feet on the dot.

MR. HORNBERGER SR: We could go a foot or two more but my water service comes across right there. That's why we stopped.

MR. ZIARNOWSKI: Man, we were thinking that you were cutting it close.

MR. HORNBERGER SR: My water service comes across the road there and I want to keep that with my house because I am not always going to be there or he won't someday either.

MR. ZIARNOWSKI: Sarah, you didn't see any problems with it; pretty straight forward.

MS. DESJARDINS: No problems with it. Need to schedule a public hearing.

MR. ZIARNOWSKI: Schedule a public hearing so what that means is that letters go out to your neighbors. If there is a problem, if they think there will be a drainage problem or some other kind of problem or whatever, if you like your neighbors, hopefully. That is what is going to happen. We do have some questions.

MR. HORNBERGER JR: My Dad on one side and my brother-in-law and sister on the other side.

MR. ZIARNOWSKI: Three generations? RESPONSE: Yes.

MR. LIEGL: I just have a couple of questions; just need clarification, probably. On the Environmental Assessment Form, it says: Question #9 - Does the proposed action meet or exceed the state energy code requirements. You had checked 'yes'. If it does exceed the requirements, describe the design features and technologies and that's all blank. MS. DESJARDINS: That's on me. I helped them with the form and I checked 'yes' instead of 'no'. MR. LIEGL: That should have been a 'no'? MS. DESJARDINS: correct.

MR. ZIARNOWSKI: ok – Sarah – First mistake in her life right there! MR. JACKSON: First time for everything.

MR. LIEGL: Ok – then maybe I should direct the next question to you, Sarah. On question #12 – Does the project site contain or is it substantially continuous, etc., you checked 'no' and then the next site, you checked 'yes' to the NY State Historic Preservation office archeological site inventory. Is there something?

MS. DESJARDINS: Is there a creek on the property or near it? MR. HORNBERGER JR: There is a drainage ditch.

MR. HORNBERGER SR: It used to be our cow pastures years ago. MR. ZIARNOWSKI: Do you have arrowheads? Eagles? MR. HORNBERGER SR: Nothing.

MS. DESJARDINS: The way we will this out is, we do it online with the DEC and the DEC fills in what they know to be true so this is the result of the DEC saying that there is probably a ditch on the property. I am looking at Pat Jerome's and his is the same way. If you have any waterway through the property, it is going to say 'archeological'

MR. HORNBERGER JR: We are not going to disturb the ditch that is going to be on the one property line that divides my Dad's parcel, South. There is a ditch that runs through the back portion. We are not going to disturb the ditches.

MR. ZIARNOWSKI: Sarah, does Murf, like when he issues a building permit, does he look at SHIPA?

MS. DESJARDINS: Yes.

MR. ZIARNOWSKI: As far as the subdivision goes it shouldn't make a difference, for us. MS. DESJARDINS: Yes.

MR. SPRINGFELLOW: Subdividing doesn't do any of those things.

MR. ZIARNOWSKI: You are not disturbing anything, yet. If you had archeological specimens on there and you went to build, hopefully they will catch it.

MR. HORNBERGER JR: It is a corn field right now.

MR. ZIARNOWSKI: Anybody else? What you have to do is, we will do is the secretary will schedule you a public hearing and what's going to happen next month is that you come in, if you don't have anybody yelling and screaming at ya, we say ok, get on your way. It's pretty straight forward. Just to make sure that your lot sizes are ok and that the town knows what you are doing.

MR. HORNBERGER SR: I think you have a survey. MR. ZIARNOWSKI: Yes, we got it. Sorry we make you do that but it is how the town works.

MR. HORNBERGER SR: You guys called out a ~~house~~ number, would that be his house number?

MR. ZIARNOWSKI: Yes, I think they must have given you a number on that. Let me check. 7219 Heinrich?

MR. HORNBERGER SR: That's me. MR. ZIARNOWSKI: That's you, ok, when it's split, you will get a separate SBL number.

MS. DESJARDINS: I take back my mistake back. Nussbaumber did that form for you. I didn't do this one. I did Jerome's and the other one. I didn't do this one. MR. ZIARNOWSKI: See, she is still perfect!

MR. HORNBERGER SR: We will get something in the mail on what day we need to come back? MS.

DESJARDINS: It is the 2nd Tuesday in September. MR. ZIARNOWSKI: 2nd Tuesday of September, same time,

730p. MR. HORNBERGER JR: Different panel up here? MR. ZIARNOWSKI/MS. DESJARDINS: No. Same people.

MR. JACKSON: Same group, public – all the people that don't want you splitting up this land are going to come in here and ask you questions.

MR. ZIARNOWSKI: Don't get startled if this whole place is full. It's not all for you. It's probably going to be for the solar project. MR. HORNBERGER JR: I can understand where they are coming from. Does that guy have one next to his home? 2ND Tuesday. Thank you.

MR. ZIARNOWSKI: You should get something. BOARD CLERK: I will send you a follow up letter with the date. (neighbors are not sent a letter)

Michael Jerome – Requesting Preliminary Plat Approval of a 3-lot subdivision to be located at North side of Liebler Rd.

Pat Jerome spoke to the board. PAT JEROME: Property is owned by Michael Jerome

MR. ZIARNOWSKI: Ok, you are going to split off three parcels? MS. JEROME: Yes.

MR. ZIARNOWSKI: It has been vacant all this time? MS. JEROME: Yes.

MR. ZIARNOWSKI: The road on your survey wasn't marked? Who did this, Gentzel? MS. DESJARDINS: It is kind of hard to read. MR. STISSER: It's on Liebler, right? MS. DESJARDINS: Yes.

MR. ZIARNOWSKI: It is on Liebler going up the hill just a little way on the North side. Before you get to the power line. Is it before or after the powerline? MS. JEROME: After. Up the hill. MR. ZIARNOWSKI: The steep part; where it gets real steep. Ok. Looks pretty straight forward. You have the right amount of frontage for the lots. Any questions from the Board?

MR. LIEGL: I hate to say it but it is the same question on this form too; on the assessment. #12.

MS. DESJARDINS: It must be what the DEC is filling in. They have a creek that's in the back of the property that they are not going to build anywhere near. MS. JEROME: No one build anywhere near that and I did call and took care of it, I think, right? MR. ZIARNOWSKI: Again, if there is, they will pick it up depending on the location of any building that they will do on the property. MS. JEROME: It is in the back, way back.

MR. ZIARNOWSKI: There is an original Native American settlement right at the base of Liebler. One of the original ones on the Town of Boston so there is probably stuff up there. Your good. Same speal. You live next door? MS. JEROME: Two down. There is a house between the properties. MR. ZIARNOWSKI: Jennifer, make sure she gets a mailing. Same thing. 2nd Tuesday in September. Thank you for coming in.

Jon Cary – Requesting Preliminary Plat Approval of a 3-lot subdivision to be located on Boston State Rd – SBL#242.00-1-28.

JON CARY – Executor of Mother's estate, we're settling the estate. This is my sister, Liz Phelps and her husband Tim and they want to build a home so one of the parcels is a one acre lot for them.

MR. ZIARNOWSKI: Coming off Holiday? JON CARY: Off of Holiday, Yes. I am here to support them. I will let them speak.

MR. ZIARNOWSKI: Thank you very much. The one question I have, is the home property was not part of this parcel that you're splitting, right? That was separate SBL? JON CARY: That's still separate. Kind of funny cuz there is a 'U' shape off Boston State Rd. MR. ZIARNOWSKI: Yes. None of my business but is that just going to stay with the house, basically? JON CARY: We are setting up so in the future their son is going to take over the house, they were hoping down the road he can take over that piece of property. MR. ZIARNOWSKI: Got

it. JON CARY: Short term, I am the guy who is going to have it. MR. ZIANOWSKI: Nice. Who is living in the house now? MS. PHELPS: My son. MR. ZIARNOWSKI: He is going to keep it? JON CARY: Yes.

ELIZABETH CARY PHELPS AND TIM PHELPS.

MR. ZIARNOWSKI: Welcome to Boston; not from Boston? RESPONSE: (recording: 1:10:29 – unable to hear. Did not speak into mic)

MR. ZIARNOWSKI: Absolutely beautiful house and sorry to hear about your Mom. I live on Back Creek and I used to see your Dad running all the time on Back Creek and walking and really shocked when he passed. He was a good guy. Nice family. Sorry you have to go through this but again, we don't make the laws and codes. It is to make sure you have a legitimate lot and looked legitimate to us and I don't see anything in there.

MR. LIEGL: Question #12 - I have never seen it checked so often.

MR. ZIARNOWSKI: UB was out there with their archeological team doing a study in that field for the barracks.

JON CARY: My father was a part of that. MR. ZIARNOWSKI: That was pretty cool. Did the find anything?

JON CARY: No idea. MR. ZIARNOWSKI: That whole parcel was a Native American settlement way back when, documented. That's probably why they do that. Again, if there is anything to disturb I would hope they would pick it up on when you build. 2nd Tuesday of the month, September 10th.

JON CARY: Do I need to be here for that? MR. ZIARNOWSKI: One person does. JON CARY: I'm from Boston. I flew in just for this meeting. MR. ZIARNOWSKI: Boston to Boston. TIM PHELPS: The letter he got said he had to come. MR. ZIARNOWSKI: Should have called somebody. Slam dunk unless someone really complains, and I don't see anybody complaining. (recording: 1:10:00-talking in the background from applicant-as they are leaving the meeting)

Planning Consultant/Ms. DesJardins – nothing

Town Attorney/Ryan McCann – nothing

Town Board Liaison/Ms. Lucachik – nothing

Board Clerk – nothing

6. Motion made to adjourn

Motion made to adjourn the meeting at 8:45pm by Mr. Stringfellow

2nd by Mr. Stisser

Closed