

January 16, 2019

Town of Farmington Planning Board
Town of Farmington Code Enforcement Officer
Town of Farmington Director of Development

Via Email Only

Dear Members of the Planning Board, Town Code Enforcement Officer and Town Director of Development:

I write on behalf of our client, Delaware River Solar (“DRS”), who has made application to the Town of Farmington to develop three community solar facilities that will generate, in the aggregate, approximately 7 MW of clean and “green” electricity to be distributed over the existing electrical grid (the “Project”).

As you are aware, the Town of Farmington has requested that a “Notice of Intent” (“NOI”) pursuant to the New York Agriculture and Markets Law (“AGM Law”) Section 305 be provided in order to continue to process the application of Delaware River Solar (“DRS”), and the Town is considering delaying its consideration of DRS’s application until receipt of the same. My understanding is that the Town is seeking said NOI due to potential funding from the NY State Energy Research and Development Agency (“NYSERDA”).

In sum, the relevant AGM Law provides that where a governmental agency intends to, among other things, advance public funds in support of non-farm construction within an agricultural district, the governmental agency must file a “notice of intent” at least “sixty-five days prior to such . . . advance of public funds” with the NY Commissioner of Agriculture and Markets and the County Agricultural and Farmland Protection Board.

As I understand it, while DRS certainly hopes to receive funding, DRS has not, in fact, applied for, been awarded nor received any funds from NYSERDA relating to the Project. Thus, there cannot be at this time any intent by NYSERDA¹ to fund the Project, and the AGM Law provision calling for the NOI has not been triggered. Even if it had been triggered, NYSERDA would be responsible for filing the NOI, not DRS, since DRS is not a governmental agency. Moreover, the law provides that 1) the NOI must be filed with the State and County, not the Town, and 2) that the NOI need only be filed 65 days prior to advance of funds.

We respectfully submit that the Town not delay the process and continue to hold open the public hearing on the basis of the AGM Law regarding NOIs since 1) DRS has not applied for, been awarded or received funding from NYSERDA at this time, 2) jurisdiction for consideration of the NOI is under the County and the State, not the Town, and 3) even if the NOI requirement had been triggered, the NOI isn’t required until 65 days prior to the advance of funds.

Thus, the Town has no rational basis to delay its land use reviews, including its SEQR review, since the NOI is not required under the current circumstances. Even if it were now required (which it is not), the information called for therein is either already available to the Town from the prior submissions, and/or the opinions/information called for therein may be directly sought from NYSERDA, the NY Commissioner of Agriculture and Markets and/or the County

¹ As a clarifying point, the AMG Law provides that it is the intent by NYSERDA to provide funding which triggers the NOI, not the intent of DRS to seek funding.

Agricultural and Farmland Protection Board as interested or involved agencies pursuant to the SEQR process. Indeed, said agencies should already have been included by the Town as part of the SEQR process and if they had any information relevant to the SEQR process, they will already have had the opportunity to submit it per the SEQR process.

Moreover, NYSERDA requires proof of land use approvals be obtained and submitted to NYSERDA in order to make application to NYSERDA for funding.² **Thus, DRS may not even *apply* to NYSERDA, much less be awarded or receive funding until it has received decisions on its land use applications before the Town.** As such, the “intent to advance public funds” required to trigger the NOI cannot possibly be achieved until *after* land use approvals are decided, since NYSERDA will not even *consider an application*, much less award or distribute funds until proof of land use approvals is submitted.

In conclusion, it is premature and the Town is without jurisdiction to require the NOI prior to taking action on SEQRA on DRS’s underlying applications to the Town. As such, DRS respectfully requests that the Town move forward with its consideration of DRS’s applications.

Truly Yours,

Boylan Code, LLP
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² See the NY-Sun Upstate and Long Island Program Manual, p. 17.