

Town of Farmington

1000 County Road 8
Farmington, New York 14425

PLANNING BOARD
Wednesday, October 7, 2020 • 7:00 p.m.

MINUTES—APPROVED

The following minutes are written as a summary of the main points that were made and are the official and permanent record of the actions taken by the Town of Farmington Planning Board. Remarks delivered during discussions are summarized and are not intended to be verbatim transcriptions. An audio recording of the meeting is made in accordance with the Planning Board adopted Rules of Procedure. The audio recording is retained for 12 months.

In response to the conditions in New York State that were created by the Coronavirus (COVID-19) pandemic and the directives issued by the New York State Governor, the Ontario County Administrator and the Town of Farmington Supervisor, the Planning Board meeting this evening was held in accordance with New York State Governor Andrew M. Cuomo's Executive Order No. 202.1: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency, dated March 12, 2020, and extended by Executive Order 202.48 through November 3, 2020:

Suspension of law allowing the attendance of meetings telephonically or other similar service:

Article 7 of the Public Officers Law, to the extent necessary to permit an public body to meet and take such actions authorized by the law without permitting in public in-person access to meetings and authorizing such meetings to be held remotely by conference call or similar service, provided that the public has the ability to view or listen to such proceeding and that such meetings are recorded and later transcribed.

The meeting was conducted at the Farmington Town Hall and via telephone/video conference audio format for those not wishing to attend in person. During the meeting, the agenda and each draft resolution was posted upon the video screen for the public, the applicants and the board members who were participating in the meeting via telephone/video format.

The Public Notice of the format of the meeting, the agenda, the draft resolutions, the dial-in telephone number and the conference call identification number were posted upon the Town website and upon the Town Hall entrance doors on October 2, 2020.

This meeting was conducted according to the Rules of Procedure approved by the Planning Board on January 15, 2020, with the following revisions per the above reference to the Governor's Executive Order:

- All applications will be introduced by the Planning Board Chairperson.
- The Planning Board Chairperson will ask for comments from the Town staff.
- The Planning Board Chairperson will ask for comments from the Planning Board.
- The applicant(s) will provide responses where needed at the direction of the Planning Board Chairperson.
- The Planning Board members will vote upon the application(s).
- Public comments will be received by the Planning Board Chairperson only during the Public Comment agenda item.
- The meeting will be recorded and later fully transcribed by the Clerk of the Board.

Board Members Present: Douglas Viets, *Acting Chairperson*
 Adrian Bellis
 Timothy DeLucia
 Shauncy Maloy

**Board Member Present
 via Remote Participation:** Edward Hemminger

Staff Present:
 Lance S. Brabant, CPESC, Town of Farmington Engineer, MRB Group D.P.C.
 Ronald L. Brand, Town of Farmington Director of Development and Planning
 Dan Delpriore, Town of Farmington Code Enforcement Officer
 Don Giroux, Town of Farmington Highway and Parks Superintendent
 John Weidenborner, Town of Farmington Zoning Officer

Applicants Present:
 Arianda Cheremeteff, Bergmann Architects, Engineers & Planners, 280 East Broad Street,
 Suite 200, Rochester, N.Y. 14604
 Daniel Compitello, Solar Project Developer, Delaware River Solar, 130 North Winton Road,
 #415, Rochester, N.Y. 14610
 David Matt, Project Engineer, Schultz Associates Engineers and Land Surveyors PC,
 129 S. Union Street, Spencerport, N.Y. 14559
 Kimberly R. Nason, Esq., Phillips Lytle LLP, One Canalside, 125 Main Street,
 Buffalo, N.Y. 14203-2887

David Plante, Bergmann Architects, Engineers & Planners, 280 East Broad Street , Suite 200,
Rochester, N.Y. 14604
Roger and Carol Smith, 4790 Fox Road, Palmyra, N.Y. 14522

Others Present:

James Falanga, 395 Ellsworth Road, Palmyra, N.Y. 14522
Daniel D. Lietz, 5496 Holtz Road, Farmington, N.Y. 14425 (left before the meeting started)

Others Present via Telephone Conference:

Bridget O’Toole, Esq., Partner, The Zoghlin Group PLLC, 300 State Street, Suite 502,
Rochester, N.Y. 14614
Other(s) [unidentified]

1. MEETING OPENING

The meeting was called to order at 7:00 by Acting Chairperson Douglas Viets.

Mr. Viets said the meeting would be conducted according to the Rules of Procedure approved by the Planning Board on January 15, 2020.

Mr. Hemminger’s attendance via remote video conference from 335 Hersden Lane, Arnold, Maryland 21012, was noted as being in compliance with the “Town Boards and Committees Remote Participation in Public Meetings Policy and Procedures” adopted by the Farmington Town Board on September 8, 2020 (Town Board Resolution #326 of 2020).

This meeting was held in person at the Farmington Town Hall. The safety measures were implemented in accordance with the Governor’s relevant Executive Orders regarding the COVID-19 pandemic. Board members, Town staff and residents who were in attendance at the Town Hall remained at separated distances of at least six feet and used facemasks at distances of less than six feet. A sign-in sheet was not used to avoid contact with pens, pencils and papers. Temperature checks were conducted by Town staff at the entrance to the Town Hall. Hand sanitizers were available throughout the building. Guidelines and safety measures were posted on the meeting room door and in the lobby of the Town Hall. Separate entrance and exit locations were used. Public access was restricted to the lobby, the main meeting room and the public restrooms.

3. APPROVAL OF MINUTES OF SEPTEMBER 16, 2020

■ A motion was made by MR. BELLIS, seconded by MR. MALOY, that the minutes of the September 16, 2020, meeting be approved.

Motion carried by voice vote.

4. LEGAL NOTICE

The following Legal Notice was published in the Canandaigua *Daily Messenger* newspaper on Wednesday, September 30, 2020:

LEGAL NOTICE

NOTICE IS HEREBY GIVEN THAT the Planning Board of the Town of Farmington will conduct a Public Hearing on the 7th day of October 2020 commencing at 7:00 p.m., in the Farmington Town Hall Main Meeting Room, 1000 County Road 8, Farmington, N.Y. 14425 for the purpose of considering the application of:

PB #0903-20: GLN FARMINGTON REALTY, LLC, 1020 LEHIGH STATION ROAD, HENRIETTA, N.Y. 14467: Preliminary Site Plan Approval of Phase 1A to erect approximately 32,750 square feet of General Business space on the parcel identified as Tax Map 29.00-1-18.100. The property is located along the south side of New York State Route 96 west of New York State Route 332 and east of Mertensia Road in Farmington, N.Y. 14425 and is zoned GB General Business and MTOD Major Thoroughfare Overlay District.

ALL PARTIES IN INTEREST and citizens will be given an opportunity to be heard in respect to such application. Persons may appear in person or by agent.

Ed Hemminger, Chairman, Planning Board

5. PUBLIC HEARING: CONTINUED SPECIAL USE PERMIT

PB #1004-18 Continued Preliminary Site Plan Application

Name: Delaware River Solar LLC, 140 East 45th Street, Suite 32-B1, New York, N.Y. 10017

Location: 466 Yellow Mills Road

Zoning District: A-80 Agricultural District

Request: Preliminary Site Plan approval to erect a 7-megawatt Photovoltaic (PV) System containing a total of 21,000 solar panels to be located upon three parcels of land with 7,000 solar panels each, using approximately 35 acres of land to be located upon three subdivided lots from Tax Map #010.00-01-37.100

See Appendix 1 following these minutes for the chronology of actions regarding this application.

Mr. Viets reconvened the Public Hearing on the above referenced Preliminary Site Plan application (PB #1004-18).

This application was presented by Daniel Compitello (Solar Project Developer, Delaware River Solar), David Matt (Project Engineer, Schultz Associates) and Arianda Chere-meteff (Bergmann Architects, Engineers & Planners).

David Plante (Bergmann), Kimberly R. Nason, Esq. (Phillips Lytle law firm), and Roger and Carol Smith (the property owners) also attended.

Mr. Compitello said that an update was provided to the Project Review Committee on October 2, 2020, and that he hoped that the board would close the Public Hearing on the Preliminary Site Plan application this evening and approve the Preliminary Site Plan.

Mr. Viets asked about revisions to the Preliminary Site Plan that may have been made since the previous presentation.

Mr. Matt said that the most recent revisions address the engineering comments that were submitted by MRB Group on October 5, 2020 (*see Delaware River Solar Correspondence Abstract #186*). These address site plan and general comments, the Decommissioning Plan, the Operations and Maintenance Plan, and landscaping. Mr. Matt said that details on the temporary construction access also have been added to the Preliminary Site Plan.

Mr. Brand said that he has completed his review of the Preliminary Site Plan and that he will submit his written comments to the applicant and to the Planning Board tomorrow (Thursday, October 8, 2020). He said that most of his comments are technical in nature and that he brought out the importance of cross referencing the data that on one of the drawings is missing but yet is shown on another drawing in the set of drawings. He said that the drawings will be in use for approximately 30-plus years and that cross-referenced material must be consistent.

Mr. Brand said that there is reference in the Bergmann Sampling and Analysis Plan (SAP) regarding the storage of solar panels on the site. This topic was discussed at the Town Project Review Committee meeting on October 2, 2020. He said that he noticed several storage location notes on the various drawings submitted as a packet for the Preliminary Site Plan and that he would like elaboration from the applicant on this topic this evening.

Mr. Compitello said that solar panels that are damaged or that may require replacement [for other reasons] may be swapped out from time to time to assure that the solar system is working to maximum efficiency. He said that typically the storage area would be just off the access road near the parking spaces [pointing to an area on the drawing that was

displayed on the video screen in the northern portion of the site] or inside the solar farm near [each of the three] inverters.

Mr. Compitello said that used or damaged panels are typically replaced the same day, that the used panels would be stored inside the security fence, and that they would remain on the property only for a few days at the most and then be taken off the site to one of the company's warehouses.

Mr. Brabant asked about the location of the storage area on the site. Mr. Compitello reviewed the location on the Preliminary Site Plan that was displayed on the video monitors in the meeting room.

Mr. Brabant asked for clarification if the area would be used for the storage of solar panels during construction, for the storage of used panels that will be removed, or for both. Mr. Compitello said that the panels would be stored along the access road. The Construction Material Staging Area off the access road was described. Mr. Compitello said that this location would probably be around the inverter pad [there are a total of three inverter pads shown on the drawing] which would provide easy access from the access road. He said that this would be the logical place for storage. Mr. Compitello said that they will make a detailed note on the Final Site Plan drawings for this.

Mr. Brabant requested that any and all storage areas (temporary construction storage and used solar panel storage during operations) are to be labeled to eliminate confusion of where the storage areas will be located and when they will be used.

Mr. Hemminger requested that this go one step further. He asked how the storage of solar panels would be handled, i.e., just placed on the ground, or covered by tarps, for example. He asked what type of storage is being talked about and that this is the first that he has heard of this type of storage on the site.

Mr. Delpriore said that Mr. Compitello's comments were not consistent with what is depicted on the Preliminary Site Plan drawing. Mr. Compitello said that these are the construction storage areas.

Mr. Matt said that the plan notes describe the laydown and storage areas. He said that the temporary [storage area] would be removed following construction.

Mr. Delpriore said that storage areas are referred to in several locations on the site plan drawings. He said that he expressed concern at the Project Review Committee meeting discussion on how the storage will be handled and how the storage areas would be landscaped. He said that the Town does not wish to have a junk area, that the Town wants it taken care of, and that Mr. Brand's points and the discussion this evening are providing a number of questions which must be answered on the Preliminary Site Plan application before the board considers moving forward.

Mr. Viets said that the board requests the specifics of the storage of solar panels on the site, i.e., will the panels be stored in boxes, how many during construction, will the panels be on pallets, etc.

Mr. Compitello said that he was confused if the board was asking about storage during or after construction.

Mr. Viets said that there is expected to be storage during construction but that now the board is hearing about panels that may be laying around after construction.

Mr. Compitello said that there will be no permanent storage on the site. He said that permanent storage [of solar panels] is provided at the company's warehouses off the site.

Mr. Delpriore asked about the storage of materials and if they would be carried in and carried off after construction. Mr. Compitello said that there would never be a period where things would be stored on the site.

Mr. Delpriore asked about materials that may be brought to the site as replacements. Mr. Compitello said that [replacement materials] could be on the site for a few days and would be kept in the designated area. Mr. Delpriore said that the Town wishes to avoid a situation where the panels may sit for a week or two, and the mess that people would have to look at.

Mr. Delpriore said that it will be up to you [Delaware River Solar] to identify how much material will be on the site. He said that he is sure that the board will want to know these details and what type of material would be stored on the site.

Mr. Compitello said that this is the first that they [Delaware River Solar] are hearing about this [storage of panels on the site].

Mr. Brabant said that it has never been displayed that there would be a permanent storage area. Mr. Compitello said that the plan shows that there will be a temporary storage area [during construction]. Mr. Brabant said that the best thing is to clarify exactly what you [Delaware River Solar] want during the life of the project.

Mr. Matt said that a note can be added to the site plan that will describe the details and location of the temporary storage area, and what the intent is. He said that the storage area could be located at the first turnaround where trucks could off-load the materials.

Mr. Brabant said that Mr. Matt should consider the effect of a storage area upon the calculations of impervious surfaces. He said that the stormwater calculations may have to be tweaked. He also requested that the square footage of the storage area be provided and that adequate screening be considered.

Mr. Matt said that the first turnaround area is approximately 1,500 feet to 2,000 feet [south of Fox Road] inside the fence and behind the [proposed] vegetative buffer.

Mr. Bellis asked about the replacement of solar panels. Mr. Compitello said that most of the time a panel can be changed in an hour or two. He also said that everything would be behind the vegetative screening.

Mr. Bellis said that the discussion [on this topic] may be a miscommunication or miswording [on the Preliminary Site Plan]. He said that a panel or two coming in and out is different from replacing hundreds of panels. Mr. Compitello said that there is always a need for storage.

Mr. Bellis said that the board would not want used or damaged panels sitting [on the site] for too long.

Mr. Hemminger requested that the applicant make sure that there will be identified storage areas for each of the three proposed LLC corporations [that will comprise the solar farm]. He said that he is aware that right now all three LLC corporations will be owned by the same company, but eventually that may not be the case. He said that if one or more of the LLC corporations were to be sold to another company, Delaware River Solar should be sure now that there will be a storage area on each lot, and should include this information on the site plan drawings.

Mr. Brand said that hopefully these questions will be answered during the continued Public Hearing at the next meeting.

Mr. Delpriore said that Mr. Brand's written comments on the Preliminary Site Plan will be submitted tomorrow and that they will have to be addressed on revised Preliminary Site Plan drawings.

Mr. Giroux said that the site's access driveway off Fox Road is now shown as 12 feet wide and that it expands to 20 feet on the site. He said that he would prefer to see a 20-foot-wide apron right to the edge of the roadway pavement. He also expressed concern about the drainage culvert and the depth of the drainage ditch that is shown on the drawing along the Town road right of way.

Mr. Brabant referred to his MRB Group engineering comment letter of October 5, 2020, in which he provided a list of suggested species (evergreens) and planting heights as recommended by landscape architects who have reviewed similar [solar] projects in this area. (*See again* Delaware River Solar Correspondence Abstract #186). Mr. Brabant said that the recommended species for wet and dry areas of the property have been suggested for ease of maintenance, longevity and most likely to survive in this climate.

Mr. Brabant's engineering comment letter also includes planting notes. He suggested a minimum of 15 feet spacing off center and staggered rows for the growth and health of the selected species.

Mr. Viets asked about damage to the plantings by deer. Mr. Brabant said that at least one of the suggested species is resistant to deer and that there are other species identified that may be considered.

Mr. Maloy asked if cattle would eat the branches of the selected species. Mr. Smith said that cattle would not be a problem at all with the trees.

Mr. Compitello said that the selection of species and the height of the trees will be important. He said that trees that cast shadows upon the solar panels must be avoided. He said that the landscape plan that has been submitted to the Town is typical for a solar farm to meet the height restrictions of trees. He said that a tree would have to be topped if it grows too high.

Mr. Matt said that the applicant's landscape plan includes trees that grow to heights of approximately 40 feet to 50 feet around the boundaries of the property and arbor vitae or other species that can be more controlled. He said that two or three of each variety can be mixed and matched, and that he will double check the offsets to which Mr. Brabant referred.

Mr. Viets said that the board will further review the plans to assure that adequate screening is provided from the solar panels. He said that the board must make sure that the trees will not be chopped down by the deer and that the applicant does an adequate job of screening.

Mr. Compitello asked about the procedure for Preliminary Site Plan approval and if the comments discussed this evening could be addressed on the Final Site Plan.

Mr. Viets said that the board would like to see more information on the Preliminary Site Plan prior to moving on to the Final Site Plan. He said that the issue of storage, Mr. Brand's technical comments, and Mr. Brabant's recommendations must be resolved before the board will consider the Preliminary Site Plan and move ahead to the Final Site Plan.

Mr. Viets said that the board would like to see a revised Preliminary Site Plan application.

Mr. Compitello said that he appreciates the board's patience but that they have been here [discussing this application] for two-and-a-half years and that they would like to continue the rest of the review in due time. He said that he does not know of any other company that would have gone this far for this long, and that this evening is the 54th meeting which he has attended. He said that he is happy to address these concerns [the issues raised this evening] and that he hopes that by the next meeting the board can act upon the Preliminary Site Plan application.

Mr. Viets said that the ball is in Mr. Compitello's court and that it will depend upon how fast he [Mr. Compitello] can provide the additional requested information and clarifications.

Mr. Delpriore said that the Town staff will need time to review the new material when it is submitted. He said that when applications are turned around quickly it seems that more questions are raised. He said that he preferred that the applicant would take more time to provide all of the requested information.

Mr. Brabant said that the likely due date for receipt of the additional material, in order to be placed upon the next Planning Board meeting (October 21, 2020) would be this Friday (October 9, 2020) due to the Columbus Day holiday on October 12, 2020. He also recommended that the applicant take the time to provide complete information and to allow time for the Town staff to review the material.

Mr. Bellis said that everything should be addressed at the Preliminary Site Plan stage and that all the i's should be dotted and all the t's should be crossed prior to consideration of the Final Site Plan.

Mr. Compitello said that he was just looking for a concrete plan to which everyone can adhere.

Mr. Delpriore recommended that he provide the material as quickly as possible for the Town staff to have time to review the revisions and prepare responses. He said that he would like to get the revised Preliminary Site Plan materials to the board before the last minute.

Mr. Delpriore recommended that the Preliminary Site Plan application be continued to the Planning Board meeting on November 4, 2020. Mr. Viets said that this seems reasonable to him.

Mr. Viets then asked if anyone in attendance or online wished to speak for or against this application, or to ask questions.

Mr. Falanga (395 Ellsworth Road) asked if the Public Hearing [on the Preliminary Site Plan] will be continued. Mr. Brand said that a draft resolution had been prepared for the board's consideration this evening to close the Public Hearing, but that tonight's discussion has shown that there are additional issues to be addressed. He concurred with Mr. Delpriore's recommendation that the Public Hearing on the Preliminary Site Plan be continued to November 4, 2020.

Mr. Falanga said that he was pleased to hear that the Public Hearing will be continued. He said that the board is aware of the feelings of his group (the Concerned Citizens of Farmington) regarding this application. He said that he attended the Project Review Committee meeting on October 2, 2020, and that what Dan [Mr. Compitello] said tonight is different from Friday [regarding the storage of solar panels on the site], and that he [Mr.

Falanga] could see where the confusion is coming from. Mr. Falanga then read from his notes from the Project Review Committee meeting regarding Mr. Compitello's comments and said that he [Mr. Falanga] is glad that this issue will be addressed.

Mr. Falanga said that likes Mr. Hemminger's comment about storage areas on the three separate solar entities on the property. Mr. Falanga also said that he and Mr. Redmond are taking benchmark water samples on their respective properties now to determine any future possible impact on groundwater from damaged panels.

Mr. Falanga also asked about the proposed deer fence that is to surround the solar panels. He said that no one knows what a deer fence is, and that the deer current roam freely. Mr. Falanga said again that he was glad that the Public Hearing [on the Preliminary Site Plan] will continue.

Mr. Falanga said that the two-and-a-half years that have gone by [with this application] mean nothing to him. He said that this will be 30 years for him and that everyone of his group who signed the solar moratorium are pro-solar. He said that the intent of the Town's solar law was to help individual farmers for individual solar projects. He said that the [Town] Board voted on something that they did not understand. Mr. Falanga said that this application is about industrial commercial solar that will reduce property values and that it will not be in the character of the neighborhood.

Ms. O'Toole (the attorney for the Concerned Citizens of Farmington group) delivered the following statement into the record of the meeting:

Members of the Board,

My name is Bridget O'Toole. I am an attorney with The Zoghlin Group PLLC here on behalf of the Concerned Citizens of Farmington. We are asking this Board to table all applications pertaining to the Delaware River Solar's proposed facility at 466 Yellow Mills Road while the Town considers updates to its current solar law. As you know, the Town Board adopted a moratorium on solar collection systems and farms on September 8, 2020.

Application of moratoria to pending applications is a valid use of the Town's police power. Further, adoption of a moratorium in response to litigation which calls into questions portions of a zoning code is not "bad faith" on the part of the Town. *See, Home Depot USA, Inc. v. Vil. Of Rockville Centre*, 295 A.D.2d 426 (2d Dep't 2002); *Ronsvalle v. Totman*, 303 A.D.2d 897 (3d Dep't 2003); *Hyslip v. Sloan*, 124 A.D.2d 1060 (4th Dep't. 1986).

While the moratorium may not apply to the current project, this Board still has the power to table these applications while it seeks clarity due to inconsistencies with the solar law, as it exists today. It is undisputed that

there are problems with the law that was adopted: this project should not move forward until those problems are addressed and rectified. Further, the findings required by the Planning Board to grant DRS's applications cannot be made for the reasons set forth in my previous letters to this board, the conversation that just took place concerning the storage issue, as well as the Town Board's findings in adopting the moratorium.

Accordingly, we ask this Board to table DRS's applications until the solar law is amended or deny DRS's applications as inconsistent with the current code, as written.

To the extent that this application is being continued, this is an incomplete plan and the public hearing must be held open until the temporary storage area with landscaping is shown to allow time for comments. Side elevations must be required in order to judge screening adequacy: the information before the Board is inadequate given the varied topography of the site.

—Bridget O'Toole, Esq.
Partner, The Zoghlin Group PLLC, Rochester, N.Y.

Mr. Viets then asked if anyone else in the meeting room or participating on the audio/video conference call wished to speak for or against this application, or ask questions.

There were no further comments or questions from those in the meeting room or on the audio/video conference call.

Mr. Viets then asked for comments from the board.

Mr. Maloy asked if grazing sheep were still part of the plan. He said that grazing sheep were mentioned when the application was first presented to the board (*see* Planning Board minutes, November 7, 2018, pp. 7–8; Planning Board minutes, December 5, 2018, p. 7; and Planning Board minutes, February 19, 2020, p. 13).

Mr. Maloy said that he did not see information about the sheep barn [which is mentioned on a note on one of the Preliminary Site Plan drawings] and in the project's Stormwater Pollution Prevention Plan (SWPPP). He said that it should be included in the SWPPP. Mr. Compitello said that some items on the Preliminary Site Plan are considered for different projects and that it is too early to say right now [that there will be grazing sheep on this project]. He said that he cannot plan for sheep until they have actual approval [of the application] from the Town, but that they do intend to do it [having grazing sheep] eventually. Mr. Compitello said that no sheep barn would be required. He said that the sheep would be housed centrally and brought onto the site.

Mr. Maloy said that the note on the drawing refers to a proposed sheep barn. He said that a sheep barn must be accounted for in the SWPPP if it is to be located on the property.

Mr. Brabant said that right now sheep are not called for maintaining the site. He said that the grazing of sheep would have to be identified in the Operations and Maintenance Plan and accounted for in the SWPPP if the applicant were to propose having sheep on the property. He said that all information associated with grazing sheep would have to be included on the Preliminary Site Plan. Mr. Brabant said that notes regarding grazing sheep should be removed from the Preliminary Site Plan if there are no plans at this time to have them [grazing sheep], and that an Amended Preliminary Site Plan application should be submitted at the time that the applicant may decide to have sheep on the land.

Mr. Compitello said that he discussed sheep [at previous meetings]. Mr. Brabant said that he did not recall seeing grazing sheep as a mechanism for maintaining the site [on the Preliminary Site Plan drawings as presented]. Mr. Compitello said that he would look into it.

Mr. Maloy asked about the details of the temporary access road. He said that he has not yet seen these details and that he assumes that they will be coming.

Mr. Maloy discussed the geotechnical report and the removal of 30 inches of topsoil [for the temporary access road]. He said that that if 18 inches of topsoil or less is removed and replaced with stone, the stone would become mashed into the ground during the wet seasons of the year. Mr. Maloy said that the removal of the road [stone base] would then become more difficult if additional stone were to be brought in and placed on top of the first layer. He suggested the use of a fabric material that could be pulled up and removed when the temporary access road is no longer be needed.

Mr. Maloy asked for clarification on the use of barbed wire for the site's security fence. He said that there are still general plan notes on the drawing about barbed wire. Mr. Compitello said that no barbed wire would be used on the site. Mr. Matt said that the note on the plans [regarding barbed wire] is directly from the Town Code. He said that these references will be removed because no barbed wire will be used on this project. Mr. Maloy agreed that the note on barbed wire should be removed if there is no intention for its use.

Mr. Maloy asked about the drainage drip lines of the solar panels. He referred to a plan note on the drawing that indicates a drip line every three feet. He asked if the drainage would flow off the panels at each end [of a 12-foot-long row] or every three feet. Mr. Compitello said that there will be some spaces in between the arrays from which drainage would fall off. Mr. Maloy asked that the plans be clarified on this. He said that there is a plan note on the drawing that indicates that there will be a drip edge every three feet. He said that this would affect erosion under the drip edge. Mr. Matt said that the area under the solar arrays would be vegetated and that the vegetation would protect the soil from drip-edge erosion.

Mr. Maloy expressed concern about maintaining the vegetation under the solar panels that will be located upon the sloped areas of the property. He expressed concern about water quality and the sheet flow of stormwater on slopes that are greater than five per-

cent. Mr. Maloy asked the applicant to consider stone check dams that would be placed parallel with the contours [of the land]. He said that the applicant must address the sheet flow of stormwater on slopes which exceed five percent.

Mr. Maloy discussed the hydro CAD evaluation regarding stormwater runoff. He referred to a reference in the New York State Stormwater Management Design Manual regarding the treatment of agricultural land in the pre-development condition. He also said that the SWPPP may have to be revised to reflect post-construction considerations.

Mr. Maloy asked about the filter strips. Mr. Matt said that the filter strips would all be in the same meadow.

Mr. Bellis said that his major issue is the screening of the solar panels from public view. He expressed concern that the proposed trees may not grow quickly enough in the short term to provide a meaningful buffer.

Mr. Compitello said that point-of-reference renderings of the site were presented to the board about a year ago [*see* Correspondence Abstract #110, photo simulations received July 2, 2019]. He said that these renderings depict the vegetation and the view [of the solar panels] from all sides. Mr. Compitello said that the landscape screening will be installed as originally proposed or they could add a different mix [of species]. He said that they will take a look at it [the landscape plan] but that they cannot have a shady buffer right next to the solar panels.

Mr. Hemminger said that he heard in the discussion this evening some veiled—and some not so veiled—comments that the Planning Board is not doing what needs to be done because this [application] is taking so long. He said that he understands that this application has been under review for more than two years, that a number of the board members and Town staff have served the Town for more than 20 years, and that from his experience the board members and the Town staff are handling this project as all other projects are handled—to address issues as they come up. He said that this is not a group of backwoods country people making decisions. Mr. Hemminger said that this is a very professional Town staff and Planning Board, and that he takes exception to the implication that they are not doing their job. He said that he personally believes that this application is being handled in a proper manner that protects the citizens of Farmington. He said that he takes this very personal.

Mr. Hemminger said that the board will be able to make a good decision [on this application] once the rest of the information [as requested this evening] has been provided.

Mr. Viets said that screening remains to be an issue. He asked if arbor vitae could be planted behind the fence and staggered to avoid deer damage, and to avoid having to replace damaged panels all the time. He requested that the plans may require an adjustment as needed. Mr. Viets also said that the board's concern is to have adequate screening around the facility and that the solar panels will function properly.

Mr. Maloy said that details on restoration and erosion control that are in the SWPPP are often overlooked by some contractors. He recommended that these details also be placed on the Preliminary Site Plan set for the environmental monitor and others to more easily find the details on erosion control and related issues.

Mr. Brand said that a draft resolution had been prepared for the board's consideration this evening to close the Public Hearing on the Preliminary Site Plan application. However, in response to the discussion this evening, he recommended that the Public Hearing on this application be continued to November 4, 2020.

Mr. Compitello said that he meant no disrespect [in his comments about the two-and-a-year length of time of this application]. He said that he did not wish to give that impression, and that he just wanted to make sure that there is a complete and concise plan [for the consideration of the application].

There were no further comments or questions on this application this evening.

■ A motion was made by MR. BELLIS, seconded by MR. HEMMINGER, that the reading of the following resolution be waived and that the resolution be approved as submitted by the Town staff:

**TOWN OF FARMINGTON PLANNING BOARD RESOLUTION
DELAWARE RIVER SOLAR PROJECT, PRELIMINARY SITE PLAN
CONTINUING THE PUBLIC HEARING
PB#1004-18**

APPLICANT: Delaware River Solar LLC, on behalf of the property owners Roger and Carol Smith, 466 Yellow Mills Road, Palmyra, N.Y. 14522

ACTION: Preliminary Site Plan approval for the development of a 7 megawatt PV Solar System containing a total of 21,000 solar panels to be located upon three parcels of land with 7,000 solar panels each, using approximately 35 acres of land, to be located upon three subdivided lots from Tax Map #010.00-01-37.100

WHEREAS, the Planning Board (hereinafter referred to as Board) on September 16, 2020, took action scheduling the continuation of a Public Hearing upon the above referenced Action to Wednesday, October 7, 2020; and

WHEREAS, the Board has at tonight's meeting reconvened and conducted said Public Hearing and has received testimony upon the above Action.

NOW, THEREFORE, BE IT RESOLVED that the Board does hereby move to continue the Public Hearing on PB #1004-18—Delaware River Solar LLC Preliminary Site Plan to Wednesday, November 4, 2020, at 7:00 p.m.; and

BE IT FURTHER RESOLVED that the applicant must submit the requested additional information and revised drawings as discussed at the Public Hearing on October 7, 2020, no later than 12:00 p.m., Wednesday, October 21, 2020, in order to be considered by the Planning Board at the continued Public Hearing on November 4, 2020.

BE IT FINALLY RESOLVED that the Clerk of the Board is to provide copies of this resolution to: Roger and Carol Smith, 4790 Fox Road, Palmyra, N.Y. 14522; Peter Dolgos, Delaware River Solar LLC, 140 East 45th Street, Suite 32-B1, New York, N.Y. 10017; David Matt, Schultz Associates, P.C., P.O. Box 89 Spencerport, N.Y. 14559; the Town Highway and Parks Superintendent; the Town Water and Sewer Superintendent; the Town Director of Planning and Development; the Town Code Enforcement Officer; and the Town Engineering Firm, MRB Group, D.P.C., Attn: Lance S. Brabant, CPESC, Director of Planning Services.

Adrian Bellis	Aye
Timothy DeLucia	Aye
Edward Hemminger	Aye
Shauncy Maloy	Aye
Douglas Viets	Aye

Motion carried.

6. CONTINUED SPECIAL USE PERMIT

PB #1006-18 Continued Special Use Permit Application

Name: Delaware River Solar LLC, 140 East 45th Street, Suite 32-B1, New York, N.Y. 10017

Location: 466 Yellow Mills Road

Zoning District: A-80 Agricultural District

Request: Special Use Permit approval to operate a 7-megawatt Photovoltaic (PV) System on approximately 35 acres of land, proposed to be located upon three subdivided lots from Tax Map #010.00-01-37.100

See Appendix 1 following these minutes for the chronology of actions regarding this application.

The Public Hearing on the Special Use Permit was closed on August 5, 2020.

Mr. Viets reconvened the discussion on the above referenced Special Use Permit application (PB #1006-18).

This application was presented by Daniel Compitello (Solar Project Developer, Delaware River Solar), David Matt (Project Engineer, Schultz Associates) and Arianda Chermetteff (Bergmann Architects, Engineers & Planners).

David Plante (Bergmann), Kimberly R. Nason, Esq. (Phillips Lytle law firm), and Roger and Carol Smith (the property owners) also attended.

Mr. Brand said that the Town staff submitted a draft Special Use Permit approval resolution for board consideration and public review on April 3, 2020 (*see* Correspondence Abstract #156).

He said that the Town staff today completed the coordination with the Ontario County Soil and Water Conservation District and the Town's Special Legal Counsel on amendments to Condition #7 that had originally proposed a soil sampling every three years.

Mr. Brand said that the applicant provided a counter amendment to Condition #7 (*see* Correspondence Abstract #182A) that calls for a Sampling and Analysis Plan (SAP) (*see* Correspondence Abstract #182B) to establish baseline soil conditions and soil testing every five years and at decommissioning.

Mr. Brand said that the parties reached consensus that baseline soil conditions will be established and that soil samples will be taken at nine-year intervals and at decommissioning.

Mr. Brand said that this consensus sets forth the parameters for testing. He said that the time interval between soil tests may be amended if future results indicate that there are no soil issues.

Mr. Brand also said that the amendments to Condition #7 include that the New York State Department of Environmental Conservation (DEC) will be consulted if the results of soil testing in the future indicate that soil mitigation measures are required or if the Special Use Permit should be revoked. Mr. Brand said that the involvement of the DEC will remove the burden from the Planning Board having to retain experts at the Town's expense to prove the need for future soil mitigation and there will still be an already established State DEC procedure to provide the necessary protection for adherence by the applicant to the conditions of the Special Use Permit.

Mr. Brand said that references to Condition #7 in Condition #25 and in Condition #45 in the draft Special Use Permit resolution were adjusted for consistency.

He said that the Planning Board's Special Legal Counsel has advised that the board may act upon the Special Use Permit this evening, followed by a separate Planning Board action to approve a Decommissioning Plan and related documents at future meetings.

From the audience, Mr. Falanga asked if the approval of the Special Use Permit will be conditioned upon the approval of the site plan. Mr. Brand said yes, that there have always been numerous references to this in the resolution.

Mr. Delpriore said that the applicant requested a two-week interval for the review of the proposed amendments to Condition #7. He said that this time period enabled the Town staff to have discussions with the Ontario County Soil and Water Conservation District and the Town's Special Legal Counsel. Mr. Delpriore said that Mr. Brand did a great job dealing with the recommendations from these sourcers and that Condition #7 and the Special Use Permit draft resolution are ready for consideration by the Planning Board.

Mr. Delpriore said that the applicant has previously agreed, in the record two weeks ago, to all of the other conditions of approval contained in the draft resolution.

Mr. Bellis said that the amendments to Condition #7 provide a good way to track the condition of the soils.

Mr. DeLucia said that he understands the amendments to Condition #7.

Mr. Hemminger said that the amended condition is a good solution that protects the citizens and the Town, given the Town Code that we have. He said that it is exactly what we need.

Mr. Viets said that the amended condition is a good compromise and that it is proper to have the DEC responsible for enforcement.

Mr. Brand said that at this point it would be proper to ask if the applicant has any questions.

Mr. Compitello introduced Ms. Cheremeteff (Bergmann Architects, Engineers & Planners) who described the soil testing procedure. She said that testing results will be analyzed and compared against a very strict and stringent level.

Mr. Viets then requested that Mr. Brand read aloud amended Condition #7.

Mr. Brand then read aloud the amended Condition #7, as follows:

7. To ensure that each solar farm is properly monitored to enable full restoration of the lot to its agricultural production potential at the same prime soils classifications and condition presently existing (a fundamental principle and condition on which this Special Use Permit approval is being granted), a detailed Sampling and Analysis Plan ("SAP") shall be submitted for approval by the Planning Board. The SAP will characterize and document the surface soil quality before construction, during operations and upon decommissioning of the solar panels as necessary to return

lots #1, #2, and #3 of the Roger and Carol Smith Subdivision to Class 1-4 soils pastureland once the solar farms have been decommissioned. At the time of construction, and before a Certificate of Compliance is issued by the Code Enforcement Officer, Applicants or System Operator for its lot shall take baseline soil samples in accordance with the sampling procedures detailed in the SAP, which procedures are consistent with Cornell University's soil testing guidelines for measuring contaminant levels in a particular area regarding collection, labeling and packaging of representative soils beneath and around solar panels and solar system equipment according to soil sampling locations specified on the final site plan approved for its lot. Thereafter, Applicants or System Operator shall take samples every 9 years for the duration of the solar farm operations in accordance with the sampling procedures detailed in the SAP. If no "significant" (defined below) deviations are found at the eighteen-year sampling event, Applicants or System Operators may request an amendment from the Planning Board to discontinue the nine-year sampling events until after the solar array has been decommissioned. Upon completion of the Project and once the solar array has been decommissioned, Applicants or System Operator shall take one (1) final round of samples in accordance with the procedures detailed in the SAP. In the event that there is a "significant" (defined below) deviation, individual samples will be taken at the location(s) where the significant deviations are found in accordance with the sampling procedures detailed in the SAP. In addition to submission of the baseline soil sampling as detailed in the SAP, the results of the testing detailed in the SAP will be included with every three-year report required by Condition No. 25.

Because Applicants, Delaware River Solar, LLC and System Operators have represented in their submissions to the Planning Board that the proposed solar farms will employ safe practices for the land, soils and environment and that no significant leaching or contaminants will occur from construction or operation of their solar farms in this Action, there should be no "significant" change to the land or soils on Lots #1, #2, and #3 of the Roger and Carol Smith Subdivision as a result of, and during the term of, the solar farms, and a Special Use Permit is being granted in reliance on that information and expectation. For purposes of this soil sampling program, a "significant" deviation shall consist of (a) a change of fifteen percent or more for evaluations of (i) soil pH; (ii) percent organic material; (iii) cation exchange capacity; (iv) Phosphorus/Phosphate; (v) Potassium/Potash; and (vi) Nitrogen (collectively the "Agricultural Parameters"); or (b) exceeding maximum permitted limits for (i) TAL metals, (ii) Volatile Organic Com-

pounds, and (iii) Semi-Volatile Organic Compounds (collectively the “Environmental Parameters”) under then-current regulations establishing standards for soil contaminants and/or pollutants promulgated by the New York State Department of Conservation, or successor agency in 6 NYCRR § 375, Subpart 375-6, Table 375-6.8(a) for Unrestricted Use Soil Cleanup Objectives. Upon the Town’s receipt of a report of a monitored item deviating significantly from its benchmark, Applicants or System Operators shall submit to the Planning Board a scientific summary explaining the reasons for the deviation(s). It is noted that deviations from the baseline sampling event do not necessarily indicate negative impacts from the solar panels, as the soils will regain nutrients from being fallow rather than being farmed annually. If necessary, after receipt of the scientific study, the Planning Board may refer significant deviations of the Environmental Parameters to the New York State Department of Conservation (“NYSDEC”) as necessary. Applicants or System Operators are required to comply with all applicable NYSDEC remedial and reporting requirements. *See* 6 NYCRR Parts 375 and 597.

As a final additional condition for this soil sampling monitoring process, in the event this soil sampling monitoring process detailed herein and in the SAP is invalidated by a court, the Special Use Permit which was approved upon this key soil sampling condition for such lot shall become void, and continued operation of the solar farm on such lot shall be unauthorized unless and until a new special use permit is subsequently obtained for the lot under the law and Town Code as they then stand. As set forth more fully elsewhere, the solar farm equipment for an unauthorized solar farm is subject to removal by the Town under the Town Code, this Special Use Permit authorization and Decommissioning Plan, if not undertaken by Applicants or System Operator upon the Town’s demand.

Following the reading, Mr. Brand said that this is a sound condition based upon all the information that has been received from various sources.

Mr. Viets asked Mr. Compitello if he has read the amended Condition #7 and if he agrees with the amendments and the revisions to Condition #25 and to Condition #45 that have references to Condition #7. Mr. Compitello said that he has read the amendments and that he agrees with them.

There were no further comments or questions on this application this evening.

■ A motion was made by MR. MALOY, seconded by MR. BELLIS, that the reading of the Special Use Permit resolution be waived and that the resolution be approved as amended.

(See the text of the complete resolution following the minutes, pp. 29–80.)

Adrian Bellis	Aye
Timothy DeLucia	Aye
Edward Hemminger	Aye
Shauncy Maloy	Aye
Douglas Viets	Aye

Motion carried.

6. NEW PUBLIC HEARING: PRELIMINARY SITE PLAN

PB #0903-20 Preliminary Site Plan Application

Name: GLN Farmington Realty LLC, 1020 Lehigh Station Road, Henrietta, N.Y. 14467

Location: South side of State Route 96, west of State Route 332, and east of Mertensia Road

Zoning District: GB General Business and Major Thoroughfare Overlay District (MTOD)

Request: Preliminary Site Plan approval of Phase 1A to erect approximately 32,750 square feet of General Business space on the parcel identified as Tax Map 29.00-1-18.100. The property is zoned GB General Business and Major Thoroughfare Overlay District (MTOD)

This application was reviewed by the Project Review Committee on April 5, 2019; February 7, 2020; May 1, 2020; June 5, 2020; July 2, 2020; August 7, 2020; September 4, 2020; and October 2, 2020.

The applicant presented concept plans to the Planning Board on May 1, 2019; and on March 4, 2020.

The applicant submitted a partial site clearing application and site clearing Letter of Credit on July 15, 2020. No action was taken by the Planning Board at that meeting.

The Planning Board recommended the establishment of a Letter of Credit for partial site clearing in the amount of \$23,287.50 on August 7, 2020. The Town Board accepted this

recommendation and directed that a Letter of Credit in the amount specified be filed with the Town Clerk’s Office. As of this date, no Letter of Credit has been filed.

On September 2, 2020, the Planning Board declared its intent to be designated Lead Agency for the State Environmental Quality Review (SEQR) determination and established the 30-day public review and comment review which ended at 12:00 p.m. on Friday, October 2, 2020.

Mr. Brand said that the Planning Board received no objections from any of the Involved Agencies to its intent to be designated Lead Agency for making the SEQR determination.

Mr. Delpriore said that a letter was received today (October 7, 2020) from Ryan T. Destro, P.E. (the applicant’s design engineer) of BME Associates requesting that tonight’s Public Hearing be continued to October 21, 2020. In the letter, Mr. Destro wrote that the applicant has received interest from multiple prospective tenants and intends to modify the Preliminary Phase 1A application to reflect an updated layout based upon tenant interest.

Mr. Brand said that a draft resolution has been prepared for the board’s consideration this evening to designate the Planning Board as the Lead Agency for making the SEQR determination and to continue the Public Hearing to October 21, 2020.

Mr. Viets asked if anyone in attendance wished to speak for or against this application, or to ask question. There were no comments or questions on this application this evening.

■ A motion was made by MR. MALOY, seconded by MR. DELUCIA, that the reading of the following resolution be waived and that the resolution be approved as submitted by the Town staff:

**TOWN OF FARMINGTON PLANNING BOARD RESOLUTION
GLN FARMINGTON REALTY PROJECT (LEFROIS DEVELOPMENT PROJECT)
DESIGNATING LEAD AGENCY AND CONTINUING PUBLIC HEARING**

PB #0903-20 Preliminary Overall Site Plan Application

APPLICANT: GLN Farmington Realty LLC, c/o LeFrois Builders and Developers, 1020 Lehigh Station Road, Henrietta, N.Y. 14467

ACTION: Preliminary Overall Site Plan approval to develop a 27.18 acre site, located along the south side of New York State Route 96, west of New York State Route 332 and north of Mercier Boulevard with a total of three (3) General Business Buildings having a total of 32,750 square feet; and four (4) Office/Flex Space Buildings having a total of 150,000 square feet; and related site improvements. This development (Action) involves the Planning Board’s designation of SEQR Lead Agency; and continuing the public hearing.

WHEREAS, the Town of Farmington Planning Board (hereinafter referred to as Board) has received the above referenced Action for Overall Preliminary Site Plan; and

WHEREAS, said Action is submitted in accordance with the provisions contained in Chapter 165 of the Town Code; and

WHEREAS, the Board has given notice of its declared intent to be designated Lead Agency, has conducted a coordinated review with Involved and Interested Agencies and has provided for a public review and comment period which was completed on Friday, October 2, 2020; and

WHEREAS, the Board has been informed by the Town Director of Planning and Development that there were no objections received from any Involved Agency to the Board being designated as the Lead Agency for completing the environmental record and for making a determination of significance upon said Action; and

WHEREAS, the applicant’s engineers, BME Associates, in a letter dated October 7, 2020, requested their application be tabled and placed on the next available meeting agenda.

NOW, THEREFORE, BE IT RESOLVED that the Board does hereby designate itself as the Lead Agency for making the determination of significance upon this Action.

BE IT FURTHER RESOLVED, that the Board agrees to continue this Public Hearing to the October 21, 2020 meeting.

BE IT FURTHER RESOLVED, that the Board directs copies of this resolution be sent to all the identified Involved Agencies for their information and files.

BE IT FINALLY RESOLVED, that copies of this resolution be sent to: the Applicant John LeFrois, GLN Farmington Realty LLC; 1029 Lehigh Station Road, Henrietta, N.Y. 14467-9369; the Applicant’s Engineers, BME Associates, Attn: Peter Vars; the Town Highway and Parks Superintendent; the Town Acting Water and Sewer Superintendent; the Town Construction Inspector; the Town Code Enforcement Officer; the Town Director of Planning and Development; and the Town’s Engineers, MRB Group, D.P.C.

Adrian Bellis	Aye
Timothy DeLucia	Aye
Edward Hemminger	Aye
Shauncy Maloy	Aye
Douglas Viets	Aye

Motion carried.

7. **PLANNING BOARD ACTION ITEMS**

A. **Hathaway's Corners Phase 1 Letter of Credit Release #2:**

Mr. Bellis said that he did not receive a copy of the Letter of Credit/Surety Final Release Form signed by the Town department heads.

Mr. Delpriore confirmed that all Town department heads have signed off on the Final Release of this Letter of Credit. He said that it may have been an office oversight that the form was not sent via email. Mr. Delpriore said that the form and the related engineering documentation on this Letter of Credit release will be sent tomorrow (October 8, 2020).

There were no further comments or questions on this Letter of Credit release.

■ A motion was made by MR. BELLIS, seconded by MR. MALOY, that the reading of the following resolution be waived and that the resolution be approved as submitted by the Town staff:

**TOWN OF FARMINGTON PLANNING BOARD RESOLUTION
LETTER OF CREDIT RELEASE #2 (FINAL), OFF-SITE SANITARY SEWER
IMPROVEMENTS
HATHAWAY'S CORNERS PROJECT**

**PB #0202-19 Final Site Plan, Phase 1A
PB #0204-19 Final Site Plan, Phase 1B**

WHEREAS, the Town of Farmington Planning Board (hereinafter referred to as Planning Board) has received a request dated September 22, 2020, from Lance S. Brabant, CPESC, MRB Group, D.P.C., the Town Engineer, to approve the final release of funds from the established Letter of Credit for the off-site sanitary sewer improvements that have been completed as part of Phase 1 of the above referenced project; and

WHEREAS, the Planning Board has also received and reviewed the signed Letter of Credit Final Release Form (G-1.1) and the completed Town Surety Release Form (G-2.0); and

WHEREAS, under the provisions of Chapter 144, Section 32. F. of the Farmington Town Code, the Planning Board is to render recommendations to the Town Board whether or not to honor the requested establishment of the Letter of Credit.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board, after having reviewed the file on this project and the recommendations from the Town Construction Inspector and the Town Engineers, does hereby recommend that the

Town Board take formal action to approve the request for a final release of funds from the established Letter of Credit in the total amount of \$30,598.26 subject to the following condition. The Letter of Credit release is not to be authorized until a two-year maintenance bond has been approved by the Town Board and a copy of the bond is filed in the Office of the Farmington Town Clerk.

BE IT FURTHER RESOLVED that copies of this resolution are to be provided to: Peter Ingalsbe, Town Supervisor; Marcy Daniels, Confidential Secretary to the Town Supervisor; Michelle Finley, Town Clerk; the Applicant; the Applicant’s Engineers, BME Associates; Don Giroux, Town Highway and Parks Superintendent; Robing MacDonald, Acting Town Water and Sewer Superintendent; Matthew Heilmann, Town Construction Inspector; Dan Delpriore, Town Code Enforcement Officer; Ronald Brand, Town Director of Planning and Development; and Lance S. Brabant, CPESC, MRB Group, D.P.C., the Town Engineers.

Adrian Bellis	Aye
Timothy DeLucia	Aye
Edward Hemminger	Aye
Shauncy Maloy	Aye
Douglas Viets	Aye

Motion carried.

8. OPEN DISCUSSION

Director of Development and Planning:

Mr. Brand discussed the following topics:

- An inquiry from a fourth developer about the installation of a solar farm in the Town has been received. He said that the applicant asked about the current moratorium on solar applications and if some of the application documents could be submitted now. Mr. Brand said that the told the applicant that the Town will not entertain any application materials at this time and that the applicant should wait until the moratorium has ended and new solar regulations are adopted by the Town Board. Mr. Brand said that this solar installation may be proposed in the southeast portion of the Town near Herendeen Road and the New York State Thruway.
- The Town continues to work with the owner of the Farmington Market Center (Tops Supermarket plaza) regarding details on the further development of the site and his pending Incentive Rezoning application.
- Robert Laviano, the developer of the proposed Farmington Pointe Incentive Zoning Project on the west side of State Route 332, near of Carmen’s Way, will re-

turn to the Planning Board on October 21, 2020, to restart the project. Mr. Laviano first proposed the project at the Project Review Committee meeting on March 2, 2018. The Planning Board received the first presentation on December 4, 2019. Mr. Brand said that Mr. Laviano was waiting for the completion of a traffic impact study and for the completion of the Town of Farmington Sanitary Sewer Capacity Study, both of which are now finished. Mr. Brand said that the results of both studies have been incorporated into the revised design plans that will be presented to the Planning Board at the next meeting. Following that presentation, a report and recommendation will be prepared and submitted to the Town Board for its consideration.

- Mr. Brand said that the Farmington Volunteer Fire Association also has submitted a letter of intent to the Town that the Association is interested in a parcel within the Farmington Pointe site for construction of a third fire station. Mr. Brand said that the Town is pleased that the land for this fire station will be donated by Mr. Laviano as an amenity to be offered to the Town as part of his Incentive Zoning application for the development of this project. Mr. Brand also said that Mr. Laviano had previously donated land (the former railroad bed and train station) to the Town for construction of the Auburn Trail project.

Code Enforcement Officer:

Mr. Delpriore said that the construction at Beaver Creek Park is moving along well. He said that a status meeting on this project will be held tomorrow (October 8, 2020).

Highway and Parks Superintendent:

Mr. Giroux also said that the work at Beaver Creek Park is coming along well and that the Town Highway Department crews have been preparing the trucks with snowplow rigging for the upcoming winter season.

Mr. Giroux also reported that the binder paving course has been installed on Canandaigua–Farmington Town Line Road from Estate Drive to Ackerman Way. Another section of the road will be opened shortly, weather permitting.

Board Members' Comments:

Mr. Bellis asked about the piles of topsoil that have been placed on a vacant area of the Hickory Rise Subdivision/Incentive Zoning Site, located along the south side of Collett Road, east of Hook Road. Mr. Delpriore said that the topsoil is coming from the excavation of the basements of new homes in Section 4 of the subdivision. He said that the developer has one more basement to dig, and then all the basement excavations will have been completed. Mr. Delpriore said that some of the topsoil will then be returned to the

homesites for final site grading. The remaining topsoil on this currently-vacant site will be graded and stabilized, He said that the developer is now on a weekly Stormwater Pollution Prevention Plan (SWPPP) inspection schedule and that he will return to a monthly inspection schedule following the stabilization of the site. Mr. Delpriore said that no stabilization is required as long as the developer is actively moving topsoil.

Mr. Hemminger again said that he is proud of the work of the Town staff and the members of the Planning Board, that he appreciates the work that everyone puts in, and that he took offense at some of what was said at the meeting this evening [regarding the staff's and the board's work on applications]. Mr. Hemminger said that this is evidence that everyone is doing the right thing on all of the applications and projects.

9. PUBLIC COMMENTS

None.

10. TRAINING OPPORTUNITIES

■ American Planning Association:

<https://www.youtube.com/user/PlanningWebcast/videos>

■ New York Association of Towns Virtual Training:

Tuesday, October 20, 2020

10:00 a.m. to 11:00 a.m.

Roles and Responsibilities of the Town Board and Highway Superintendent

Free to Association of Towns members. Registration required, www.nytowns.org.

■ NYS Department of State Local Government Training Calendar posted here:

<https://www.dos.ny.gov/lg/pdf/LGTrainingSchedule.pdf>

Wednesday, October 21, 2020, from 2:00 p.m. to 4:00 p.m.

Affordable Housing NYS DOS/Southern Tier West

Registration Link:

<https://meetny.webex.com/meetny/k2/j.php?MTID=t7c3348217f3e45c95f92947589181fec>

Thursday, October 29, 2020, from 3:00 p.m. to 4:40 p.m.

Floodplain Regulations for Local Review Boards, NYSDOS/Black River

Watershed Conference

Registration link:

https://us02web.zoom.us/webinar/register/WN_gs1eENq4RHylTR1_X4b_Mw

Wednesday, November 4, 2020, from 2:00 p.m. to 4:00 p.m.

Sign Regulation NYS DOS/Southern Tier West

Registration link will be posted here when available.
<https://www.dos.ny.gov/lg/pdf/LGTrainingSchedule.pdf>

Thursday, November 12, 2020, Time TBA
Floodplain Regulations for Local Review Boards, NYSDOS/Dutchess County
Registration link will be posted here when available.
<https://www.dos.ny.gov/lg/pdf/LGTrainingSchedule.pdf>

■ **General Code e-Code**

Daily drop-in lunchtime training Q&A sessions plus webinars in several categories.
Information:
<https://www.generalcode.com/training/>

■ **Future Training Opportunities Online:**

Ontario County Planning Department website now lists upcoming training:
<https://www.co.ontario.ny.us/192/Training>

11. ADJOURNMENT

■ A motion was made by MR. DELUCIA, seconded by MALOY, that the meeting be adjourned.

Motion carried by voice vote.

The meeting was adjourned at 8:50 p.m.

The next regular meeting of the Planning Board will be held on Wednesday, October 21, 2020, at 7:00 p.m., at the Farmington Town Hall, 1000 County Road 8, Farmington, N.Y. 14425.

Following the meeting, the clerk locked the front doors to the Town Hall..

Respectfully submitted,

John M. Robortella, Clerk of the Board L.S.

**TOWN OF FARMINGTON PLANNING BOARD RESOLUTION
DELAWARE RIVER SOLAR SPECIAL USE PERMIT
CONDITIONS OF APPROVAL**

PB#1006-18

APPLICANT: Delaware River Solar, LLC, on behalf of the property owners Roger and Carol Smith, 466 Yellow Mills Road, Palmyra, N.Y. 14522

ACTION: Special Use Permit Approval with Conditions for the development of three separate Solar Energy Systems of 2.338 Megawatts alternating current, totaling together approximately a 7 Megawatt ac Solar Farm to be constructed in three parts upon approximately 45.105 acres of land (on Lots #1, #2 and #3 of the Roger and Carol Smith Subdivision) and having a property address cited above herein.

WHEREAS, the Planning Board (hereinafter referred to as Board) has held many public hearings upon the proposed Special Use Permit application referenced above (hereinafter referred to as Action); and

WHEREAS, the Board has closed the Public Hearing associated with the proposed Special Use Permit application at its August 5, 2020, Board meeting; and

WHEREAS, the Board has carefully considered the information and comments received upon the proposed Special Use Permit application, as well as the Town Code and applicable law; and

WHEREAS, the Board as the established Lead Agency has completed its environmental risk review under SEQRA and has made a determination of non-significance upon the Action, dated December 18, 2019.

NOW, THEREFORE, BE IT RESOLVED that the Board finds that property owners Roger and Carol Smith (the Smiths, or Applicants) have applied for a special use permit in this Action for part of their property located at 466 Yellow Mills Road, Palmyra, New York, through their agent Delaware River Solar, LLC, which entity has contracted with them to utilize part of their aforesaid property for the construction, on-going operations and maintenance, and decommissioning of three large-scale ground-mounted solar PV system “solar farms” to be located on Lots #1, #2 and #3 as shown on the Filed Final Subdivision Plat for Roger and Carol Smith Lands Located at 466 Yellow Mills Road, Palmyra, New York, to be operated and owned initially by three independent entities currently owned by Delaware River Solar, LLC: (a) NY Farmington I, LLC; (b) NY Farmington II, LLC; and (c) NY Farmington III, LLC. Such entities operating and/or owning solar farms on their respective aforesaid lots are referred to in this Resolution as System Operators, and included in such term are their current owner Delaware River Solar, LLC or successor owners until such owners cede all control over their affiliates’ actions operating their solar farm, apart from passive ownership. “Solar farm” in this Resolution refers to the proposed large-scale ground-mounted solar PV systems in this Action sited on any of Lots #1, #2 and/or #3 as shown on the Filed Final Subdivision Plat for Roger and Carol Smith Lands Located

at 466 Yellow Mills Road, Palmyra, New York, and as further identified on the Final Site Plan for the Delaware River Solar LLC Solar Farm Project located on Lots #1, #2 and #3 of the Roger and Carol Smith Lands Located at 466 Yellow Mills Road, Palmyra, New York (sometimes “Lots #1, #2 and #3 of the Roger and Carol Smith Subdivision”), together with their respective system parts and operations, whether or not such lots, parts or operations are separately mentioned.

BE IT FURTHER RESOLVED that the Board does hereby make the following findings of fact upon the requested Action, using the regulations from the Town Code, §165-65.3 Solar Photovoltaic (PV) Systems [Added 9-26-2017 by L.L. No. 6-2017], to organize and coordinate the Board’s findings with the associated statutory guidance.

A. Purpose.

It is the purpose of this section of the Town Code to encourage and promote the safe, effective and efficient use of installed solar photovoltaic (PV) systems that reduce on-site consumption of utility-supplied energy while protecting the health, safety and welfare of adjacent and surrounding land uses and properties.

The Planning Board finds that, based upon its review of the documents and drawings on file with the Town for the Action, the proposed Large Scale Ground-Mounted Photovoltaic (PV) Solar Systems being proposed on three (3) subdivided parcels of the Smiths’ Property in this Action meet the above-stated Purpose of the Town’s Zoning Law to permit such solar systems as proposed by the Applicants to provide new and additional electricity services that efficiently meet present needs and anticipated future needs of Town residents while protecting the health, safety and welfare of adjacent and surrounding land uses and properties.

The Board further finds that the proposed solar farms contribute to the goals and objectives contained in the adopted New York State Renewable Energy Plan by providing cleaner and greener energy for all residents. The Board further finds that the extensive environmental record that has been created for this Action has demonstrated the lack of significant environmental harm and identified measures to be taken for the construction, on-going maintenance and decommissioning of the Action that protect the health, safety and welfare of adjacent and surrounding land uses and properties which are incorporated in this process as warranted.

B. Intent.

It is the intent of these regulations to:

- (1) Meet the goals of the Town of Farmington Comprehensive Plan (hereinafter referred to as the “Plan”) to: enhance agricultural viability and preserve productive agricultural land resources; and provide public utilities, facilities and services that efficiently meet present needs and anticipate future needs of residents in accordance with the goals and objectives of the Plan; and

The Board finds that the proposed Action involves the temporary use of viable agricultural soils located on the property of the landowners, Roger and Carol Smith. The Board further finds that the Applicants have demonstrated that because of the site's extensive areas of viable agricultural soils, and due to other factors such as wetlands and steep slopes to be avoided, there is no feasible alternative area(s) for siting the proposed solar farms on the Smiths' property. The Board further finds that the Smiths intend to continue grazing of their livestock on the remaining open portions of all four (4) lots at 466 Yellow Mills Road. The Board further finds that the Smiths have concluded that supplemental income has become important to sustain their ongoing agricultural operations and that leasing part of their land for solar farming provides such income. The Board further finds the purpose for the adopted "Town of Farmington Farmland Protection Plan" is . . . "to protect agricultural soils and promote viable farming operations in the Town of Farmington," and that such purpose can be realized through the continued mixed use of the Smiths' farmland for both agricultural pursuits, farming operations and the generation of clean solar energy. The Board further finds that unlike other permitted land use in the A-80 Agricultural District, such as the development of residential sites, this Action does not permanently and necessarily take viable agricultural soils out of production forever. The Board further finds that this Action does not disrupt site drainage patterns necessary to sustain the site's pasturelands.

The Board further finds that the temporary use of this site's viable agricultural soils has been mitigated by the Applicants to the extent practical and that as a condition for granting this Special Use Permit the Applicants and System Operators will provide and execute a decommissioning plan acceptable to the Town, which will describe when and how the site's soils will be reclaimed for continued productive agricultural operations, among other issues, and provide periodic soil sampling to identify any possible problems early. The Board further finds that adherence to the *Guidelines for Solar Energy Projects—Construction Mitigation for Agricultural Lands (Guidelines)* promulgated by the New York State Department of Agriculture and Markets, and promoted by the Ontario County Soil and Water Conservation District, as minimum supplemental standards for the construction, operation and decommissioning of the site, will enhance the continued agricultural viability of this farm operation and help preserve the long term productive agricultural land resources resulting from the soil and land reclamation at the end of the useful life of the Action. Accordingly, compliance with the State's *Guidelines*, as stated and as may be revised and adopted as provided herein, shall be a condition of the Special Use Permit as provided hereafter in the listed Condition No. 5.

- (2) Support green economy innovations; and

The Board finds that the Action complements the New York State’s Renewable Energy Plan Goals and Objectives by generating solar energy and contributing to a cleaner, greener energy future for all state residents. The Board further finds that the Action complements the Town’s adopted Public Utilities, Facilities and Services Goal, as contained in the 2011 Edition of the Town of Farmington Comprehensive Plan, by providing new and additional electricity services that efficiently meet present needs and anticipated future needs of Town residents.

- (3) Support New York State in meeting its renewable energy goals established by the 2015 New York State Energy Plan as implemented through the Reforming the Energy Vision Institute.

The Board finds that the Action’s proposed solar farms have been supported by a funding commitment from the New York State Energy Research and Development Agency (NYSERDA) and by established agreements with Rochester Gas & Electric Corporation to accept the energy to be generated by the proposed solar farms throughout their proposed thirty- (30-) year lifespans. The Board in making this finding signifies its support for New York State in meeting its renewable energy goals established in the above referenced Energy Plan.

C. Applicability.

- (1) This section applies to building-mounted, building-integrated and ground-mounted solar photovoltaic (PV) systems installed and constructed after the effective date of this section of the Code.

The Board finds that the proposed Action is subject to the provisions contained in Chapter 165 of the Town Code in that the proposed solar farms are to be installed and operated after the effective date of those Town regulations. Therefore, the Board concludes that it has the authority to issue a Special Use Permit with conditions contained herein for the above-described Action.

- (2) This section also applies to any upgrade, modification or structural change that alters the physical size, electric generation capacity, location or placement of an existing solar PV system.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- (3) Nonconforming solar PV systems. Nonconforming solar PV systems existing on the effective date of this section may be altered or expanded, provided such alteration or expansion does not increase the extent or degree of nonconformity.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- (4) Properties with approved site plan. Notwithstanding the requirements of § 165-100 of this chapter, entitled “Site development plans,” for any lot or parcel of land that has an approved site plan, the installation of a by-right solar PV system on the lot shall not be considered a change to the approved site plan. This provision shall not be interpreted to exempt lots with an approved site plan from other requirements of this section.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- (5) Prohibition. Solar PV systems attached to the side of a building are prohibited unless they are designed as a building-integrated system.

The Board finds that this section of the Town Code does not apply to the proposed Action.

D. Solar PV Systems Permitted by Right.

- (1) By-right solar PV systems. In order to encourage use of solar PV systems in the Town of Farmington, the following systems shall be permitted by right in any zoning district in the Town, provided the system is generating electricity only for the land use(s) located on the same lot as the system, and further provided that the system meets the standards for by-right systems identified in § 165-65.3D(2) below. By-right systems require a building permit.

- (a) Building-integrated solar PV systems. Building-integrated solar PV systems are permitted to face any rear, side and/or front yard area.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- (b) Building-mounted solar PV systems. Building-mounted solar PV systems are permitted to face any rear, side and/or front yard area.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- (2) Standards for by-right systems.
- (a) Accessory use. All building-mounted by-right solar PV systems shall be considered an accessory use.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- (b) By-right small-scale ground-mounted solar PV systems. Only small-scale ground-mounted solar PV systems, as defined herein, shall be considered as by-right systems. Such by-right systems shall be limited to a capacity of 25 kW and shall generate no more than 110% of the kWh's of electricity consumed over the previous twelve-month period by land use(s) existing on the lot or parcel of land where the system is located. In applying this standard, electricity consumption shall be determined by submission of utility bills showing electric usage over said twelve-month period.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- (c) By-right facilities shall comply with all applicable New York State building codes.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- (d) In no event shall lot coverage for a solar photovoltaic (PV) system exceed 50% of the lot area.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- (3) Building-mounted solar PV systems.

- (a) For a building-mounted PV system installed on a sloped roof:

The Board finds that these sections of the Town Code does not apply to the proposed Action.

- [1] The highest point of the system shall not exceed the highest point of the roof to which it is attached.

- [2] Solar panels shall be parallel to the roof surface or tilted with no more than an eighteen-inch gap between the module frame and the roof surface. This measurement shall not be taken from any parapet which might be considered part of a roof.

- (b) For a building-mounted system installed on a flat roof, the highest point of the system shall not extend more than five feet above the height of the roof.

The Board finds that these sections of the Town Code do not apply to the proposed Action.

E. Solar PV Systems requiring a Special Use Permit.

- (1) Solar PV systems requiring a special use permit. Except as provided in § 165-65.3D, Solar PV systems permitted by right, no other type of ground-mounted solar PV system shall be constructed or installed without first obtaining a special use permit and site plan approval from the Planning Board, pursuant to Articles VI and VIII of this chapter. In addition, all ground-mounted solar PV systems shall require a building permit. Solar PV systems requiring a special use permit and site plan approval shall include, but not be limited to:

The Board finds that this section of the Town Code does apply to the proposed Action.

- (a) Large-scale ground-mounted solar PV systems.

The Board finds that this section of the Town Code does apply to the proposed Action. The Board finds that the proposed Action is subject to the Board issuing a Special Use Permit with conditions and final site plan approval with conditions. Final Subdivision Plat Approval and documentation shall be filed in the Office of the Ontario County Clerk.

- (b) Building-mounted and building-integrated solar PV systems that have a system capacity greater than 25 kW or generate more than 110% of the kWh's of electricity consumed over the previous twelve-month period by land use(s) existing on the lot or parcel of land where the system is located. In applying this standard, electricity consumption shall be determined by submission of utility bills showing electric usage over said twelve-month period.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- (c) Solar PV systems, regardless of size, that generate and provide electricity, through a remote net metering agreement or other arrangement, to an off-site user or users located on a lot(s) or parcel(s) of land other than the lot or parcel of land on which the system is located.

The Board finds that this section of the Town Code does apply to the proposed Action. The Board further finds that the System Operators or their owner Delaware River Solar, LLC have entered into Interconnection Agreements with Rochester Gas & Electric for the purpose of distributing solar energy to off-site users. The Board finds that such Agreements shall remain in effect during the entire term of

the proposed solar farms. Any termination or abandonment of such Agreement shall be evidence of abandonment of that solar farm, and shall also authorize the Town to revoke the Special Use Permit for such lot after notice and hearing if requested, and so require Applicants to seek approval for a new special use permit if continuing operations of a solar farm on such lot is desired. This is to be a condition of approval for the requested Special Use Permit

- (d) Solar PV systems, regardless of size, mounted on carports or canopy structures covering parking facilities.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- (2) Classifications. Solar PV systems requiring a special use permit may be classified as either an accessory use or a principal use as set forth below.

The Board finds that this section of the Town Code does apply to the proposed Action. The Board further finds that the Large Scale Ground-Mounted Photovoltaic (PV) Systems to be constructed on the proposed three (3) parcels of land in the Action are hereby classified as principal uses. The establishment and regulation of the proposed Action as a principal use is to be a condition of this Special Use Permit.

- (a) Principal use. A solar PV system constructed on a lot or parcel of land and providing electricity to an off-site user or users through a remote net metering agreement or other arrangement shall be classified as a large-scale solar PV system and shall be considered a principal use. All ground-mounted solar PV systems that are classified as a principal use shall adhere to the area, yard and build requirements of the zoning district in which the system is located, unless modified herein by § 165-65.3F below.

The Board finds that this section of the Town Code does apply to the proposed Action. The Board finds that the Action is classified as a large-scale ground-mounted solar PV system and a principal use of the property site on which it is constructed. Establishment of the proposed Action as a principal use of the property on which it is constructed is to be a condition of this Special Use Permit.

- (b) Accessory use/accessory structure. A solar PV system shall be considered an accessory use/accessory structure when generating electricity for the sole consumption of a principal use or building(s) located on the same lot or parcel of land as the system.

The Board finds that this section of the Town Code does not apply to the proposed Action.

F. Standards for facilities requiring a special use permit. Solar PV systems requiring a Special Use Permit shall be subject to the following standards:

- (1) Large-scale ground-mounted solar PV systems and ground-mounted systems classified as a special use.

The Board finds that the proposed Action is classified as a Large-scale ground-mounted solar PV system for each of the three subject solar farm lots and subject to granting a Special Use Permit.

- (a) Setbacks. Large-scale ground-mounted solar PV systems are subject to the minimum yard and setback requirements for the zoning district in which the system is located. No part of a ground-mounted system shall extend into the required yards and/or setbacks due to a tracking system or short-term or seasonal adjustment in the location, position or orientation of solar-PV-related equipment or parts.

The Board finds that this section of the Town Code does apply to the proposed Action and that no variances are associated with the Action.

- (b) Setback to residential district. The location of large-scale ground-mounted solar collectors shall meet all applicable setbacks for accessory structures in the zoning district where the project is to be located, but not less than 25 feet from any public highway right-of-way, utility easement, and natural vegetation shall be preserved within this buffer zone and, where possible, augmented. The setbacks are intended to provide a visual buffer between the PV system and adjacent dwellings. Plantings within this area are to be at a height so as to provide, as much as practicable, a visual screen of the large-scale ground-mounted system from residential uses. The species type, location and planned height of such landscaping shall be subject to the approval of the Planning Board.

The Board finds that this section of the Town Code does apply to the proposed Action. The Board further finds that the final site plan shall comply with this standard. The Board also finds that this final site plan requirement will be a condition of this Special Use Permit.

- [1] Large-scale ground-mounted solar PV systems located in a residential district shall be set back an additional 120 feet from the minimum yard setback along all property lines that abut a lot or parcel of land located in the A-80 Agricultural District or other residential district, unless said property contains soils classified as “prime” or “unique” (Soils Groups 1 through 4) and the land is being actively farmed. In this instance, the minimum setback shall be 40 feet from the property line. This additional setback dimension shall also apply to the front yard setback when the lot or parcel of

land on the opposite side of the street is located in a residential district.

The Board finds that this section of the Town Code does apply to the proposed Action and that a condition of this Special Use Permit is that the associated setback from all property lines will be at least forty (40) feet. The Board further finds that this condition of approval shall also apply to the pending action upon the final site plan associated with this solar farm Project.

- [2] Large-scale ground-mounted solar PV systems located in commercial or industrial districts shall be set back an additional 110 feet from the minimum yard setback along all property lines that abut a lot located in the A-80 Agricultural District and the other residential districts or an Incentive Zone District. This additional setback dimension shall also apply to the front yard setback when the lot on the opposite side of the street is located in a residential or an incentive zone district.

The Board finds that this section of the Town Code does not apply to the proposed Action.

- [3] Large-scale ground-mounted solar PV systems located upon farmland located within the delineated Town of Farmington Active Farmland Map, Number 8, page 92 of the adopted Town of Farmington Farmland Protection Plan, shall be allowed on soils classified as Class 1 through 4 as documented upon the Soil Group Worksheets prepared by the Ontario County Soil and Water Conservation District and used by the Town Assessor in calculation of the agricultural use exemption values, a part of the New York State Department of Agriculture and Markets Agricultural Districts Law, once it can be determined, by the Planning Board, that there is no feasible alternative. The following standards are to be implemented by the Planning Board as part of site plan approval:

The Board finds that this section of the Town Code does apply to the proposed Action. The Board further finds this criteria has been complied with by the Applicant as there is no feasible alternative for the Smiths on their property based upon documentation submitted as part of the environmental record for the Action.

Among the facts presented to the Planning Board were that Delaware River Solar, LLC (DRS) had various criteria to be met in order to select a viable location where its desired solar farms could be constructed. The property had to consist of a contiguous site with relatively flat topography of adequate

size to host the solar farms; required proximity to the existing RG&E electrical grid suitable for connecting community solar farms; had to be available for use as a solar farm under a lease agreement with the current landowner; had to avoid environmentally sensitive areas such as water and deep forest; had to have a large setback area from public roads and neighbor residences to reduce visual impacts and permit effective screening; and had to have good highway access for construction, operation and maintenance activities.

Prior to reaching a lease agreement with the Smiths, DRS did seek prospective landowners within an approximate two-mile radius of the Smiths' property, and found either no interest from landowners or such land that was not suitable for solar system development.

The Smiths' property at 466 Yellow Mills Road met DRS's various criteria and was suitable to host the three 2.338 MV solar farms DRS intended to develop under the Town's new large-scale ground-mounted solar system authorization. The Smiths had suitable property and were willing to host the proposed solar farms on a portion of their main property in order to obtain significant income that would enable them to continue their agricultural and farming operations there, and so signed a lease with DRS.

Where on the Smiths' main property could the solar farms be best located involved juggling all the various requirements and preferences of the Town Code, solar farms developer, the landowners, and even consideration of neighbors. The Smiths' smaller adjacent property to the west (Tax Map No. 10.00-01-37.131), if relevant to this feasibility issue, was not suitable for the proposed solar farming as being relatively small at 21 acres (especially with setbacks factored in), was prone to seasonal flooding and lots of trees would have to be removed. That property contains soils classed from 1 to 9, as well as wetlands to be avoided and wooded areas which would interfere with racking and sunlight capture and would require removal; would be isolated from the rest of the solar arrays, and the Smiths still desire to use part of that property to graze cattle.

The Schultz Associates soils report identified various factors impacting the location of the proposed solar farms on the Smiths' property at 466 Yellow Mills Road. At the Smiths' main property, location of the solar farms was limited by required setbacks, avoiding wetlands, forest and steep slopes, and avoiding areas where trees on the property cast shadows that would obstruct sunlight capture by solar panels.

The soils report did locate three acres on the Smiths' main property that would not involve soils Classed 1–4, but Schultz Associates noted that other problems would then emerge for that elevated location, such as the inability to screen such panels from neighbors or drivers due to their substantial height above the roads, and the isolated location would require unnecessary disturbance of additional steep slope and erodible farmland during construction and decommissioning. The proposed solar farm designs did incorporate 1.6 acres of the lower class soils, but the remaining 1.4 acres are too isolated to feasibly include.

As all the foregoing facts indicate, the feasibility of locating the proposed solar farms elsewhere on the Smiths' property to avoid soils Classed 1–4 was considered, but the Planning Board finds there was no feasible alternative as required under this Town Code standard, and so the Planning Board is authorized to issue a special use permit for the construction and operation of the proposed solar farms on the Smiths' property even if solar arrays are to be mounted above, and equipment installed on, soils Classified 1–4.

- [a] Where large-scale ground-mounted solar PV systems are to be located on Class 1 through 4 soils, then the following shall apply to the construction, restoration and follow-up monitoring of solar energy projects impacting such lands. Depending upon the size of the project, the project sponsor is to hire an environmental monitor (EM) to oversee the construction, restoration and follow-up monitoring in agricultural fields. The EM is to be on site whenever construction or restoration work is occurring on the Class 1 through 4 soils and is to be coordinated with the Ontario County Soil and Water Conservation District and/or the New York State Department of Agriculture and Markets to develop an appropriate schedule for inspections to assure these lands are being protected to the greatest extent possible.

The Board finds that this section of the Town Code does apply to the proposed Action. The Board further finds that this standard is met as the Applicant is required to and has retained a qualified Environmental Monitor to oversee the construction, decommissioning, restoration and follow-up monitoring in the agricultural fields for the lots hosting solar farms under this Action. The Board further finds that the Applicants' present decommissioning plan dated June, 2020 (Version 5) provides

for coordination with the statutorily-cited agencies and provides for periodic inspections and reports to the Town. This is a condition of Special Use Permit approval and it will also be a condition of site plan approval by this Board.

- [b] Fencing and watering systems associated with rotational grazing systems and reduction in farmland viability due to the reduction in remaining productive farmland are to be assessed and mitigated to the greatest extent possible.

The Board finds that this section of the Town Code does apply to the proposed Action. The Board further finds that the Action meets this standard by providing for lane ways between the solar arrays that allow for rotational grazing systems to be provided. The Board further finds that the landowners have accepted these lane ways for their use during the life of the Action and will utilize them for livestock as long as livestock are being kept on the Applicants' farm. This is a condition of Special Use Permit approval; and it will also be a condition of site plan approval by this Board.

- [c] Structures for overhead collection lines are to be located upon the nonagricultural areas and along field edges where possible.

The Board finds that this section of the Town Code does apply to the proposed Action. This standard is met as the Applicant has demonstrated in documents on file that overhead collection lines will be located upon a minimal area of identified viable agricultural soils and along field edges to the extent practicable. This is a condition of Special Use Permit approval; and it will also be a condition of final site plan approval by this Board.

- [d] Access roads are to be located along the edge of agricultural fields, in areas next to hedgerows and field boundaries and in the nonagricultural portions of the site.

The Board finds that this section of the Town Code does apply to the proposed Action. The Board further finds this standard is met by the Applicant identifying on pending site plan drawings that there is to be one (1) access road to the three (3) solar farms that is to be located along the edge of agricultural fields and to the

extent practical in the nonagricultural portions of the site. This criteria is a condition of Special Use Permit approval; and that it will also be a condition of site plan approval by this Board.

- [e] There shall be no cut and fill so as to reduce the risk of creating drainage problems by locating access roads, which cross agricultural fields, along ridge tops and by following field contours to the greatest extent possible.

The Board finds that this section of the Town Code does apply to the proposed Action. The Board finds that this standard will be met as this criteria is hereby made a condition of Special Use Permit approval; and it will also will be a condition of the final site plan approval.

- [f] The width of access roads across or along agricultural fields is to be no wider than 20 feet so as to minimize the loss of agricultural lands and comply with the State of New York fire access code.

The Board finds that this section of the Town Code does apply to the proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also will be a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [g] All existing drainage and erosion control structures such as diversions, ditches, and tile lines or take appropriate measures to maintain the design and effectiveness of these structures. Repair any structure disturbed during construction to as close to original condition as possible, unless such structures are to be eliminated based upon a new site plan for the large scale project.

The Board finds that this section of the Town Code does apply to the proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also will be a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [h] The surface of solar farm access roads to be constructed through agricultural fields should be level with the adjacent field surface where possible.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also will be a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [i] Culverts and waterbars are to be installed to maintain natural drainage patterns.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also will be a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [j] All topsoil areas to be used for vehicle and equipment traffic, parking, and equipment laydown and storage areas are to be stripped.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also will be a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [k] All vehicle and equipment traffic and parking to the access road and/or designated work areas, such as laydown areas, are to be limited in size to the greatest extent practical.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also will be a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [l] No vehicles or equipment are to be allowed outside the work area without prior approval from the landowner and the EM.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds

that this criteria will be met as a condition of Special Use Permit approval; and it will also be a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [m] Where an open trench is required for cable installation, topsoil stripping from the entire work area may be necessary. As a result, additional work space may be required as part of site plan approval.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [n] All topsoil stripped from work areas (parking areas, electric cable trenches, along access roads) is to be stockpiled separate from other excavated materials (rock and/or subsoil).

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time. The Board finds that no topsoil shall be permitted to be removed from any solar farm site, whether during solar farm construction, operation or decommissioning.

- [o] A maximum of 50 feet of temporary workspace is to be provided along open-cut electric cable trenches for proper topsoil segregation. All topsoil will be stockpiled immediately adjacent to the area where stripped/removed and shall be used for restoration on that particular site. No topsoil shall be removed from the site. The site plan shall clearly designate topsoil stockpile areas in the field and on the construction drawings.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condi-

tion of site plan approval to be addressed as part of said application, at a future date and time.

- [p] Electric interconnect cables and transmission lines are to be buried in agricultural fields wherever practical.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [q] Interconnect cables and transmission lines installed above-ground shall be located outside agricultural field boundaries. When above-ground cables and transmission lines must cross agricultural fields, taller structures that provide longer spanning distances and locate poles on field edges to the greatest extent practicable.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [r] All buried electric cables in cropland, hayland and improved pasture shall have a minimum depth of 48 inches of cover. At no time is the depth of cover to be less than 24 inches below the soil surface.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [s] The Ontario County Soil and Water Conservation District is to be consulted concerning the type of intercept drain lines whenever buried electric cables alter the natural stratification of soil horizons and natural soil drainage patterns.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [t] In pasture areas, it is necessary to construct temporary or permanent fences around work areas to prevent livestock access, consistent with landowner agreements.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [u] Excess concrete used in the construction of the site is not to be buried or left on the surface in active agricultural areas. Concrete trucks will be washed outside of active agricultural areas.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [v] All permits necessary for disposal under local, state and/or federal laws and regulations must be obtained by the contractor, with the cooperation of the landowner when required.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [4] Restoration requirements. All agricultural areas temporarily disturbed by construction shall:

- [a] Be decompacted to a depth of 18 inches with a deep ripper or heavy-duty chisel plow. Soil compaction results should be no more than 250 pounds per square inch (PSI) as measured with a soil penetrometer. In areas where the topsoil was stripped, soil decompaction should be conducted prior to topsoil replacement. Following decompaction, remove all rocks four inches in size or greater from the surface of the subsoil prior to replacement of topsoil. Replace the topsoil to original depth and reestablish original contours where possible. Remove all rocks four inches and larger from the surface of the topsoil. Subsoil decompaction and topsoil replacement shall be avoided after October 1 of each year.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and that it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [b] Regrade all access roads to allow for farm equipment crossing and to restore original surface drainage patterns, or other drainage pattern incorporated into the approved site design by the Planning Board.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [c] Seed all restored agricultural areas with the seed mix specified by the landowner, in order to maintain consistency with the surrounding areas.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [d] All damaged subsurface or surface drainage structures are to be repaired to preconstruction conditions, unless said

structures are to be removed as part of the site plan approval. All surface or subsurface drainage problems resulting from construction of the solar energy project with the appropriate mitigation as determined by the EM, Soil and Water Conservation District and the landowner.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [e] Postpone any restoration practices until favorable (workable, relatively dry) topsoil/subsoil conditions exist. Restoration is not to be conducted while soils are in a wet or plastic state of consistency. Stockpiled topsoil should not be regraded and subsoil should not be decompacted until plasticity, as determined by the Atterberg field test, is adequately reduced. No project restoration activities are to occur in agricultural fields between the months of October and May unless favorable soil moisture conditions exist.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [f] Following site restoration, remove all construction debris from the site.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [g] Following site restoration, the project sponsor is to provide a monitoring and remediation period of no less than two years. General conditions to be monitored include topsoil thickness, relative content of rock and large stones, trench settling, crop production, drainage and repair of severed subsurface drain lines, fences, etc.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a Condition of this Special Use Permit Application, and any lesser monitoring period provided in the State’s *Guidelines for Solar Energy Projects—Construction Mitigation for Agricultural Lands* is not controlling nor sufficient. The Board further finds that this Town Code provision will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [h] Mitigate any topsoil deficiency and trench settling with imported topsoil that is consistent with the quality of topsoil on the affected site. All excess rocks and large stones are to be removed from the site.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a condition of Special Use Permit approval; and it will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [i] All aboveground solar array structures are to be removed and all areas previously used for agricultural production are to be restored and accepted by the landowner, the Soil and Water Conservation District and the State Department of Agriculture and Markets.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a Condition of this Special Use Permit Application; and will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [j] All concrete piers, footers, or other supports are to be removed to a depth of 48 inches below the soil surface. Underground electric lines are to be abandoned in place. Access roads in agricultural areas are to be removed, unless otherwise specified by the landowner.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a Condition of this

Special Use Permit Application; and will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [5] Utility connections. Utility lines and connections from a large-scale ground-mounted solar PV system shall be installed underground, unless otherwise determined by the Planning Board for reasons that may include poor soil conditions, topography of the site, and requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a Condition of this Special Use Permit Application; and will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [6] Fences. Notwithstanding the provisions found in § 165-61A of this chapter, fences not exceeding eight feet in height, including open-weave chain-link fences and solid fences, shall be permitted for the purpose of screening or enclosing a large-scale ground-mounted solar PV system, regardless of the district in which the system is located, provided said system is classified as a principal use. In instances where the provisions of § 165-61A would allow a fence greater than eight feet in height, the less restrictive provision shall apply.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a Condition of this Special Use Permit Application; and will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [7] Barbed wire. Notwithstanding provisions for barbed wire found in § 165-61A of this chapter, fences intended to enclose a large-scale ground-mounted solar PV system may contain barbed wire canted out.

Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a Condition of this Special Use Permit Application; and will also be met as a condition of site plan approval

to be addressed as part of said application, at a future date and time.

- [8] Height. Large-scale ground-mounted solar PV systems may not exceed 12 feet in height.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a Condition of this Special Use Permit Application; and will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time. The Board finds that weather monitoring equipment, even if used in conjunction with solar farms, is not subject to this height limitation for these solar systems and may extend to a height of fifteen feet in such case. Moreover, the Board further finds that this height restriction does not apply to overhead or above-ground electric transmission lines, equipment and poles needed to transport solar energy to the utility grid and connection facilities of the local electric utility, here RG&E.

- [9] Minimum lot size. Large-scale ground-mounted solar PV systems shall adhere to the minimum lot size requirements for the zoning district in which the system is located, except that for residential districts, the minimum lot size shall be one acre.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a Condition of this Special Use Permit Application; and will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [10] Lot coverage requirements. Large-scale ground-mounted solar PV systems shall adhere to the maximum lot coverage requirement for principal uses within the zoning district in which they are located. The lot coverage of a large-scale ground-mounted solar PV system shall be calculated based on the definition of "lot coverage" found in Article II, § 165-10, of this chapter.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a Condition of this Special Use Permit Application; and will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [11] Signs. Large-scale ground-mounted solar PV systems classified as a principal use shall adhere to the sign requirements for the zoning district in which they are located.

The Board finds that this section of the Town Code does apply to the Proposed Action. The Board further finds that this criteria will be met as a Condition of this Special Use Permit Application; and will also be met as a condition of site plan approval to be addressed as part of said application, at a future date and time.

- [12] Location in front yard. Notwithstanding the requirements regulating location of accessory structures found elsewhere in this chapter, large-scale ground-mounted solar PV systems classified as an accessory use shall be prohibited in a front yard, including location in any front yard of a corner lot.

The Board finds this section of the Town Code does not apply to the proposed Action.

G. Placement on nonconforming buildings. Notwithstanding the area, lot and bulk requirements of this chapter, building-mounted and building-integrated solar PV systems may be installed on nonconforming buildings as follows:

The Board finds this section of the Town Code does not apply to the proposed Action.

- (1) On the roof of a nonconforming building that exceeds the maximum height restriction, provided the building-mounted system does not extend above the peak or highest point of the roof to which it is mounted.
- (2) On a building that does not meet the minimum setback or yard requirements, provided there is no increase in the extent or degree of nonconformity with said requirement.
- (3) On a building that exceeds the maximum lot coverage requirements, provided there is no increase in the extent or degree of nonconformity with said requirement.

H. Abandonment and decommissioning.

The Board finds that this section of the Town Code does apply to the Proposed Action.

- (1) Applicability and purpose. This section governing abandonment and decommissioning shall apply to large-scale ground-mounted solar PV systems with a rated capacity of 25 kW or more, hereinafter referred to as “large-scale solar PV sys-

tems.” It is the purpose of this section to provide for the safety, health, protection and general welfare of persons and property in the Town of Farmington by requiring abandoned large-scale solar PV systems to be removed pursuant to a decommissioning plan. The anticipated useful life of such systems, as well as the volatility of the recently emerging solar industry where multiple solar companies have filed for bankruptcy, closed or been acquired creates an environment for systems to be abandoned, thereby creating a negative visual impact upon the Town. Abandoned large-scale systems may become unsafe by reason of their energy-producing capabilities and serve as an attractive nuisance.

The Board finds that the proposed Action, consisting of three solar farms on three lots of the Roger and Carol Smith Subdivision, involves large-scale ground-mounted solar PV systems subject to the Special Use Permit criteria contained in § 165-65.3 [H] of the Farmington Town Code. The Board further finds that the present draft Decommissioning Plan document, prepared by the Applicants and System Operators and dated June, 2020 (Version 5) acknowledges that the proposed Action is subject to the Special Use Permit criteria contained in § 165-65.3 [H] and agrees to comply, meeting the purpose of this section when the decommissioning plan is approved and executed containing such provision.

- (2) Abandonment. A large-scale solar PV system shall be deemed abandoned if the system fails to generate and transmit electricity at a rate of more than 10% of its rated capacity over a continuous period of one year. A commercial solar PV system also shall be deemed abandoned if, following site plan approval, initial construction of the system has commenced and is not completed within 18 months of issuance of the first building permit for the project.

The Board finds the Applicants’ and System Operators present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, the standard in the Town Code (§ 165-65.3 [H][2]) for determining some events when a commercial solar PV system is to be deemed abandoned. The Board further finds that there may be other additional events when such a solar system may be found or deemed abandoned as provided elsewhere in these findings, such as upon termination of Applicants’ or System Operators’ agreement with RG&E, and noncompliance with Town requirements for the special use permit, such as failure to provide adequate periodic reports when required, and failure to maintain a sufficient surety. All provisions for abandonment described in this Resolution shall be a condition of Special Use Permit approval, and included in the required approved decommissioning plan.

- (3) Extension of time. The time at which a commercial solar PV system shall be deemed abandoned may be extended by the Planning Board for one additional period of one year, provided the system owner presents to the Board a viable plan outlining the steps and schedules for placing the system in service or back in serv-

ice within the time period of the extension. An application for an extension of time shall be made to the Planning Board by the commercial solar PV system owner prior to abandonment as defined herein. Extenuating circumstances as to why the commercial solar PV system has not been operating or why construction has not been completed may be considered by the Board in determining whether to gain an extension.

The Board finds the Applicants' and System Operators' present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, the provision in the Town Code (§ 165-65.3 [H][3]) for the extension of time by the Planning Board for determining when a commercial solar PV system is to be deemed abandoned. This is a condition of approval for the Special Use Permit.

- (4) Removal required. A commercial solar PV system which has been abandoned shall be decommissioned and removed. The commercial solar PV system owner and/or owner of the land upon which the system is located shall be held responsible to physically remove all components of the system within one year of abandonment. Removal of the commercial solar PV system shall be in accordance with a decommissioning plan approved by the Planning Board.

The Board finds the Applicants' and System Operators' present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, the requirement in the Town Code (§ 165-65.3 [H][4]) for decommissioning, removal of solar system components, and determining responsibilities for when an abandoned commercial solar PV system is deemed abandoned, which shall be part of an approved decommissioning plan. This is a condition of approval for this Special Use Permit.

- (5) Decommissioning and removal.

The Board finds the Applicants' and System Operators' present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, the provision in the Town Code (§ 165-65.3 [H][2]) for when an abandoned commercial solar PV system is to be deemed abandoned. The Board further finds that the responsibilities for decommissioning and reclamation of the three (3) sites in the Action by the Applicants and System Operators for continued agricultural operations will be met by an approved decommissioning plan agreement and as a Condition of this Special Use Permit. The Board further finds that the Special Use Permit shall not be in effect until all agreements implementing decommissioning, removal of system components and restoration of the land aspects of the Town Code to the Action, and the conditions of the Special Use Permit, have been signed by all the Applicants, System Operator and the Town and a copy is on file with the Town Clerk.

- (a) Decommissioning and removal of a commercial solar PV system shall consist of:

The Board finds that this section of the Town Code does apply to the proposed Action.

- [1] Physical removal of all aboveground and below-ground equipment, structures and foundations, including but not limited to all solar arrays, buildings, security barriers, fences, electric transmission lines and components, roadways and other physical improvements to the site.

The Board finds the Applicants' and System Operators' present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, the requirement in the Town Code (§ 165-65.3 [H][5]) for removing all above-ground equipment, structures and foundations that are listed, which shall be part of an approved decommissioning plan. This is a condition of approval for the Special Use Permit.

- [2] Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations.

The Board finds the Applicants' and System Operators' present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, the requirement in the Town Code (§ 165-65.3 [H][5]) for disposal of all solid and hazardous waste associated with the Action under local, state and federal waste disposal regulations, which shall be part of an approved decommissioning plan. This is a condition of approval for this Special Use Permit.

- [3] Restoration of the ground surface and soil.

The Board finds the Applicants' and System Operators' present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, the requirement in the Town Code (§ 165-65.3 [H][5]) for restoration of the ground surface and soil to the extent feasible consistent with the other restoration provisions of the Town Code once a solar farm is decommissioned and removed, which shall be part of an approved decommissioning plan. This is a condition of approval for this Special Use Permit.

- [4] Stabilization and revegetation of the site with native seed mixes and/or plant species (excluding invasive species) to minimize erosion.

The Board finds the Applicants' and System Operators' present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, the requirement in the Town Code (§ 165-65.3 [H][5]) for stabilization and revegetation of the Large Scale Solar PV Site in a manner determined by the Town and Property Owner to minimize soil erosion, which shall be part of an approved decommissioning plan. This is a condition of approval for this Special Use Permit.

- (b) Upon petition to the Planning Board, the Board may permit the system owner to leave certain underground or aboveground improvements in place, provided the owner can show that such improvements are part of a plan to redevelop the site, are not detrimental to such redevelopment and do not adversely affect community character or the environment.

The Board finds the Applicants' and System Operators' present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, the provision in the Town Code (§ 165-65.3 [H][5]) that the Planning Board may permit the System Operator of a solar farm to leave certain improvements in place upon a further finding that the property owner can show that such improvements are part of a plan to redevelop the site. This is a condition of approval for this Special Use Permit.

- (c) Decommissioning plan. All applications for a commercial solar PV system shall be accompanied by a decommissioning plan to be implemented upon abandonment and/or in conjunction with removal of the system. The decommissioning plan shall address those items listed in § 165-65.3H(5)(a) above and include:

The Board finds the Applicants' and System Operators' present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, the requirement in the Town Code (§165-65.3 [H][5]) for an approved decommissioning plan to be implemented upon abandonment and/or in conjunction with removal of a solar farm. This Applicants' and System Operators' decommissioning plan for this Action must be approved by the Town as acceptable to manage foreseeable decommissioning issues before the Special Use Permit shall take effect. An

approved and executed decommissioning plan is a condition of approval for a special use permit for the Action.

- (6) Special use permit conditions. The following conditions shall apply to all special use permits issued for a large-scale ground-mounted solar PV system. No special use permit shall be issued unless the Planning Board finds that the conditions have been or will be met.

The Board finds that this section of the Town Code does apply to the proposed Action.

- (a) A licensed engineer's estimate of the anticipated operational life of the system.

The Board finds the Applicants' and System Operators' present draft decommissioning plan document dated June, 2020 (Version 5), acknowledges, and the Applicants and System Operators accept, the requirement in the Town Code (§ 165-65.3 [H][6]) for a licensed engineer to prepare an estimate of the anticipated operational life of each solar farm. The Board finds that this condition is met in that the Applicant has provided two documents from licensed engineers (August 2018 and January 2020) which provide estimates of the anticipated operational life of the systems. This is a condition of approval for this Special Use Permit.

- (b) Identification of the party responsible for decommissioning.

The Board finds this condition will be met as the Applicants' and System Operators' present draft decommissioning plan dated June, 2020 (Version 5), acknowledges and the Applicants and System Operators accept the requirement in the Town Code (§165-65.3 [H][6]) for identifying the responsible parties for decommissioning of the proposed solar farms, which shall be part of an approved decommissioning plan. The Board further finds that in addition to identifying the property owners, Roger and Carol Smith, as being the Applicants responsible for decommissioning the solar farms, System Operators NY Farmington I, LLC, NY Farmington II, LLC, and NY Farmington III, LLC will also be involved as operators and/or owners of the three proposed solar farms on Lots #1, #2, and #3 of the Roger and Carol Smith Subdivision, and have decommissioning responsibilities, as well as owners of affiliates which have not ceded control over a system operator of a solar farm, apart from passive investment. The Board finds that all those identified parties will have legal obligations for compliance with the decommissioning duties imposed by the Town Code, the approved decommissioning plan and agreement, and the conditions of their Special Use Permit for the three solar farms in-

volved in this Action. This is a condition of approval for this Special Use Permit.

- (c) Description of any agreement regarding decommissioning between the responsible party and the landowner.

The Board finds this condition will be met as the Applicants' and System Operators' present draft decommissioning plan on file with the Town dated June, 2020 (Version 5), is an agreement between the landowners and the System Operators involved for decommissioning the three solar farms at issue, and the lengthy document is available for inspection by interested persons, both at the Office of Town Clerk and on the Town's website. As determined previously, a fully approved and executed decommissioning plan and agreement is a condition of any Special Use Permit for Applicant's Action. Furthermore, as stated in the proposed Decommissioning Plan dated June, 2020 (Version 5), the Planning Board has been advised that the Applicants and DRS have entered into a lease agreement which contains conditions regarding the removal of solar facilities and restoration of the site, and such agreement has been requested but has not yet been received for review by the Planning Board.

- (d) A schedule showing the time frame over which decommissioning will occur and for completion of site restoration work.

The Board finds that this condition will be met as the Applicants' and System Operators' present draft decommissioning plan dated June, 2020 (Version 5), contains a schedule for decommissioning work to be carried out over some four months, and will provide a detailed schedule at the time decommissioning is proposed, which shall be part of an approved decommissioning plan. As determined previously, a fully approved and executed decommissioning agreement is a condition of any Special Use Permit for Applicant's Action, and will contain the requisite schedule.

- (e) A cost estimate prepared by a licensed professional engineer estimating the full cost of decommissioning and removal of the solar PV system.

The Board finds that this condition will be met as the Applicants' and System Operators' present draft decommissioning plan dated June, 2020 (Version 5), contains a requirement for, and a proposed cost estimate prepared by a licensed engineer, though in draft form, and this form will need to be reviewed and accepted by the Town's Engineer, Town Attorney and/or Town's Legal Counsel before the requisite surety amount is determined and provided, and before any pre-construction meeting may be scheduled by the Town Code Enforcement

Officer. This is a Condition of Special Use Permit Approval by the Board.

- (f) A financial plan to ensure that financial resources will be available to fully decommission the site.

The Board finds this condition will be met as the Applicants' and System Operators' present draft decommissioning plan dated June, 2020 (Version 5), does contain a financial plan to ensure funding for decommissioning the three solar farms of the Action, which shall be part of an approved decommissioning plan. As determined previously, a fully approved and executed decommissioning agreement is a condition of any Special Use Permit for Applicant's Action.

- (g) An acceptable form of surety is to be approved by the Planning Board and accepted by the Town Board and filed with the Town Clerk in an amount specified in the above-referenced financial plan. Said acceptable form of surety is to remain in effect for the above-referenced anticipated operational life of the system. In the event the anticipated operational life of the system is amended, then a revised acceptable form of surety is to be approved by the Planning Board, accepted by the Town Board and filed with the Town Clerk.

The Board finds this section of the Town Code does apply to the proposed Action. The Board further finds this standard will be met as provided in the Applicants' and System Operators' decommissioning plan, once the Town determines the desired form of surety and such plan is approved and executed by all parties. The Board further finds that an acceptable form of surety is to remain in effect to an agreed-to date that coincides with full reclamation of the site, restoration of the land and monitoring as provided herein. The Board establishes this requirement as a Condition of Approval of the Special Use Permit Application.

- (h) Financial surety. Prior to the issuance of a building permit and every three years thereafter, the commercial solar PV system owner and/or landowner shall file with the Town Clerk evidence of financial surety to provide for the full cost of decommissioning and removal of the solar PV system in the event the system is not removed by the system owner and/or landowner. Evidence of financial surety shall be in effect throughout the life of the system and shall be in the form of an irrevocable acceptable form of surety or other form of surety acceptable to the Planning Board and approved by the Town Board. The irrevocable acceptable form of surety shall include an auto-extension provision to be issued by an A-rated institution solely for the benefit of the Town. The Town shall be entitled to draw upon the acceptable form of surety in the event that the commercial

solar PV system owner and/or landowner is unable or unwilling to commence decommissioning activities within the time periods specified herein. No other parties, including the owner and/or landowner, shall have the ability to demand payment under the letter of credit. Upon completion of decommissioning, the owner and/or landowner may petition the Town Board to terminate the acceptable form of surety. In the event ownership of the system is transferred to another party, the new owner (transferee) shall file evidence of financial surety with the Town Board at the time of transfer, and every three years thereafter, as provided herein.

The Board finds this section of the Town Code does apply to the proposed Action. The Board further finds this condition will be met as provided in the Applicants' and System Operators' decommissioning plan, once the Town determines the desired form of surety and such plan is approved and executed by all parties. The Board further finds that an acceptable form of surety is to remain in effect to an agreed-to date that coincides with full reclamation of the site, restoration of the land and monitoring as provided herein. The Board establishes this requirement as a Condition of Approval of the Special Use Permit Application.

- (i) Amount. The amount of the surety shall be determined by the Town Engineer based upon a current estimate of decommissioning and removal costs as provided in the decommissioning plan and subsequent annual reports. The amount of the surety may be adjusted by the Town Board upon receipt of a favorable recommendation from the Planning Board of an annual report containing an updated cost estimate for decommissioning and removal. Any revised surety is to be filed with the Town Clerk's office.

The Board finds this section of the Town Code does apply to the proposed Action. The Board further finds this condition will be met by the Town Engineer providing, during the periodic reviews of the solar farms and conditions under the Special Use Permit and Town Code, a current estimate of decommissioning, removal and restoration costs as provided in the Applicants' and System Operators' decommissioning plan, once the Town determines the desired form of surety and such plan is approved and executed by all parties. The Board further finds that a condition of approval of the Special Use Permit Application shall be the Applicants' and System Operators' agreement that the amount of surety may be adjusted by the Town Board as appropriate during the periodic reviews of the ongoing operation and maintenance of the solar farms at issue.

- (j) Annual report. The commercial solar PV system owner shall, on a yearly basis from the certificate of compliance issued by the Code Enforcement

Officer, provide the Town Code Enforcement Officer a written report showing the rated capacity of the system and the amount of electricity that was generated by the system and transmitted to the grid over the most recent twelve-month period. The report shall also identify any change of ownership of the solar PV system and/or the land upon which the system is located and shall identify any change in the party responsible for decommissioning and removal of the system upon its abandonment. The actual report shall be submitted no later than 45 days after the end of the calendar year. Every third year, to coincide with the filing of evidence of financial surety, the annual report shall also include a recalculation of the estimated full cost of decommissioning and removal of the large-scale solar PV system. The Town Board may require an adjustment in the amount of the surety to reflect any changes in the estimated cost of decommissioning and removal. Failure to submit a report as required herein shall be considered a violation subject to the penalties in Article X of this chapter.

The Board finds this section of the Town Code does apply to the proposed Action. The Planning Board finds that this condition will be met by establishing this annual report requirement as a Condition of Approval of the Special Use Permit Application. The Board establishes this requirement as a Condition of Approval of the Special Use Permit Application.

- (k) Decommissioning and removal by Town. If the commercial solar PV system owner and/or landowner fails to decommission and remove an abandoned facility in accordance with the requirements of this section, the Town may enter upon the property to decommission and remove the system.

The Board finds this section of the Town Code does apply to the proposed Action. The Planning Board finds this condition will be met by establishing this requirement for permitted entry as a Condition of Approval of the Special Use Permit Application. The Board does, therefore, establish this requirement as a Condition of Approval of the Special Use Permit Application. The Board further acknowledges receipt of this commitment by the Property Owners, Roger Smith and Carol Smith, in their signed letter to the Town dated February 13, 2020. The Board further finds additional acknowledgement by the Smiths' legal counsel, Scott P. Falvey, Attorney at Law, which is contained in a letter from Mr. Falvey dated March 8, 2020, that his clients (the Smiths) accept the responsibility for ensuring the decommissioning of the three solar farms as set forth in the provisions of the Farmington Town Code Section 165-65.3. Similarly, the System Operators will be obligated to decommission their solar farms as provided in their decommissioning plan agreement approved by the Planning

Board, which agreement shall contain provisions authorizing the Town to enter upon property containing a solar farm to decommission the solar farm, remove and dispose of its component parts, and restore the property to its prior agricultural condition.

- (7) Determination of abandonment. Upon a determination by the Code Enforcement Officer that a commercial solar PV system has been abandoned, the Code Enforcement Officer shall notify the system owner, landowner and permittee by certified mail:

The Board finds this section of the Town Code does apply to the proposed Action. The Board further finds that a determination by the Code Enforcement Officer that a commercial solar PV system has been abandoned does require notification be provided by certified mail to the relevant Applicants and System Operators identified above herein.

- (a) In the case of a facility under construction, to complete construction and installation of the facility within 180 days; or
- (b) In the case of a fully constructed facility that is operating at a rate of less than 10% of its rated capacity, to restore operation of the facility to no less than 80% of rated capacity within 180 days, or the Town will deem the system abandoned and commence action to revoke the special use permit and require removal of the system.
- (8) Failure to perform notification. Being so classified, if either the system owner, landowner and/or permittee fails to perform as directed by the Code Enforcement Officer within the one-hundred-eighty-day period, the Code Enforcement Officer shall notify the system owner, landowner and permittee, by certified mail, that the solar PV system has been deemed abandoned and the Town intends to revoke the special use permit within 60 days of mailing said notice. The notice shall also state that the permittee may appeal the Code Enforcement Officer's determination to the Town Board and request a public hearing upon the matter.

The Board finds this section of the Town Code does apply to the proposed Action. The Board further finds that such a determination by the Code Enforcement Officer that a commercial solar PV system has been deemed abandoned entitles the Applicants and relevant System Operators to the notification contained in the Town Code in such case.

- (a) Said appeal and request for hearing must be made and received by the Town Board within 30 days of mailing notice. Failure by the permittee to submit an appeal and request for hearing within the thirty-day period will result in the special use permit being deemed revoked as stated herein.

The Board finds these sections of the Town Code do apply to the proposed Action. The Board further finds that the Applicants and System Operators understand and accept this provision of the Town Code, which establishes the respective rights in such matter for the Applicants, System Operators and Town.

- (b) In the event the permittee appeals the determination of the Code Enforcement Officer and requests a hearing, the Town Board shall schedule and conduct said hearing within 60 days of receiving the appeal and request. In the event a hearing is held, the Town Board shall determine whether the solar PV system has been abandoned, whether to continue the special use permit with conditions as may be appropriate to the facts and circumstances presented to the Board or whether to revoke the special use permit and order removal of the solar PV system.

The Board finds these sections of the Town Code do apply to the proposed Action. The Board further finds that the Applicants and System Operators understand and accept this provision of the Town Code, which establishes the respective rights in such matter for the Applicants, System Operators and Town.

- (c) Upon a determination by the Code Enforcement Officer or Town Board that a special use permit has been revoked, the decommissioning plan must be implemented and the system removed within one year of having been deemed abandoned or the Town Board may cause the removal at the owner's and/or landowner's expense. If the owner and/or landowner fails to fully implement the decommissioning plan within one year of abandonment, the Town Board may collect the required surety and use said funds to implement the decommissioning plan.

The Board finds these sections of the Town Code do apply to the proposed Action. The Board further finds that the Applicants and System Operators understand and accept this provision of the Town Code, which establishes the respective rights in such matter for the Applicants, System Operators and Town. As a condition of the Special Use Permit, both the surety and approved decommissioning plan shall provide the Town with these statutory rights.

- (d) Removal by Town and reimbursement of Town expenses. Any costs and expenses incurred by the Town in connection with any proceeding or work performed by the Town or its representatives to decommission and remove a commercial solar PV system, including legal costs and expenses, shall be reimbursed from the surety posted by the system owner or landowner as provided in § 165-65.3 herein. Any costs incurred by the Town for decommissioning and removal that are not paid for or covered by the required surety, including legal costs, shall be assessed against the property,

shall become a lien and tax upon said property, shall be added to and become part of the taxes to be levied and assessed thereon and shall be enforced and collected, with interest, by the same officer and in the same manner, by the same proceedings, at the same time and the same penalties as are provided by law for the collection and enforcement of real property taxes in the Town.

The Board finds these sections of the Town Code do apply to the proposed Action. The Board further finds that the Applicants and System Operators understand and accept this provision of the Town Code, and so both the surety and approved decommissioning plan shall provide the Town with these statutory rights. The Board does establish these requirements as part of an approved decommissioning plan and as a Condition of Approval of the Special Use Permit Application.

In addition, the Board finds that disputes between Applicants, System Operators and Town regarding any aspects of the solar farms at issue should be negotiated and resolved in a reasonable time in good faith, provided that the Town remains required to comply with and enforce the Town Code and Town agreements made in connection with the solar farms to protect and preserve Town interests in the land and community, which concerns are broader than just Applicants' and System Operators' interests. The Town Code provides for reimbursement of the Town's legal costs and expenses related to decommissioning and removal of the solar farm Project. Town Code § 165-65.3[H][8]. Accordingly, in the event of disputes regarding the continuing operation of the solar farms that could result in decommissioning, as well as disputes involving decommissioning, removal or related issues such as restoration of the site—if such a dispute results in court action by an Applicant or System Operator against the Town, or the Town determines after discussion with Applicant or System Operator to resort to court action against an Applicant and/or System Operator to resolve such a dispute, such Applicant and/or System Operator shall indemnify the Town against attorney fees and litigation expenses as provided in Condition No. 52 set forth below.

Also, the Board finds that many of the statutory requirements of the Town Code found to apply as conditions of the Special Use Permit for the solar farms herein are similarly found in the *Guidelines for Solar Energy Projects—Construction Mitigation for Agricultural Lands* (Guidelines) promulgated by the New York State Department of Agriculture and Markets (revision dated 4/19/2018). Rather than list each of the conditions found to apply by the Board to the Applicants' and System Operators solar farms, the Board instead references and incorporates such *Guidelines* hereunder, listed as Condition No. 5.

The Board notes that the *Guidelines* provided and considered in the SEQRA process for these solar farms was the revision dated April 19, 2018, but that the Department of Agriculture and Markets has since issued a new revision, dated October 18, 2019. The Board has reviewed that current 2019 version of the Ag & Markets' *Guidelines for Solar Energy Projects—Construction Mitigation for Agricultural Lands*, and finds its provisions provide a better minimum basis for protecting and preserving the continued agricultural viability of the Smiths' site after conclusion of the solar farms' operations, through soil sampling, for example, except, however, that the post-construction monitoring period of one growing season provided in the 2019 *Guidelines* is insufficient and in conflict with the Town Code's requirements for a two-year monitoring period, and such longer monitoring period is imposed in the associated Condition No. 5, below.

Finally, the Board finds that the conditions itemized and numbered below are warranted under the facts of the proposed solar farms and are expressly imposed as conditions on the Special Use Permit approved hereunder as a result of the Board's individual findings regarding certain aspects of the proposed solar farms, as well as a result of the Board's collective judgment considering Applicants' and System Operators' whole solar farm proposal overall and foreseeable associated issues and their preferred resolution over the potentially extensive term involved. The Board finds such extensive conditions are necessary and reasonable to balance the different property owner, developer and community interests involved, are required by or directly related to aspects of the Town Code, and are imposed hereunder to protect the Town's expected interests over the many years duration of the proposed solar farms and minimize the impact of the solar farms on the area and neighbors as well as can be done under the present law and circumstances.

BE IT FURTHER RESOLVED, then, that the Planning Board does hereby approve a Special Use Permit for each of Lots #1, #2 and/or #3 as shown on the Filed Final Subdivision Plat for Roger and Carol Smith Lands Located at 466 Yellow Mills Road, Palmyra, New York, to host a large-scale ground-mounted solar farm thereon as proposed in this Action, subject to the following conditions that shall apply to and govern each such lot individually and the solar farm associated therewith:

1. Each Special Use Permit approved under this Action is valid only upon all the conditions set forth herein if, and as long as, all such conditions are met by Applicants and System Operators on their associated lots as determined by the Town, and so long as their solar farms continue to exist on their lot and comply with the Town-approved final site plan for each respective lot, as may be amended with Town approval, and with these Special Use Permit conditions.

2. Each Special Use Permit applies to and is valid only for an individual lot of the Roger and Carol Smith Subdivision located at 466 Yellow Mills Road, Palmyra, New York, proposed to contain a solar farm (Lot #1, #2, or #3), and to the respective proposed solar farms as permitted on their approved final site plans and subject to the conditions of their Special Use Permit. This Resolution does not authorize any special use permit to be applicable to Lot #4 of the Roger and Carol Smith Subdivision located at 466 Yellow Mills Road, Palmyra, New York, or any part of that property other than Lots #1, #2, and #3 as provided herein. The Final Subdivision Plat, for Roger and Carol Smith, shall be promptly filed in the Office of the Ontario County Clerk. This Special Use Permit approval shall expire for any aforesaid lot for which a solar farm has been determined to be abandoned after notice and a hearing if requested, or a lot on which a solar farm has undergone decommissioning under the Town Code, Special Use Permit, or Decommissioning Plan.
3. No Special Use Permit for any of Lots #1, #2, or #3 of the Roger and Carol Smith Subdivision located at 466 Yellow Mills Road, Palmyra, New York, shall take effect unless and until (1) an approved Decommissioning Plan is agreed to and executed by each Applicant, System Operator and the Town for such lot and filed with the Town Clerk; (2) the required approved surety for such lot under this Special Use Permit authorization and the Decommissioning Plan and Agreement is in effect with evidence of such surety's existence and validity on file with the Town Clerk; and (3) a final site plan has been approved by the Board for the proposed solar farm for such lot.
4. The Special Use Permit for Lots #1, #2, or #3 of the Roger and Carol Smith Subdivision shall remain valid for so long as the lot is used to produce solar energy in conformance with the terms and conditions of the Town Code, this Special Use Permit authorization and the final site plan approved for such lots.
5. As a condition of this Special Use Permit approval, Applicants and System Operators shall construct, operate, and decommission the proposed solar farms, and restore the respective lots to their present agricultural condition, in accordance with all the *Guidelines for Solar Energy Projects—Construction Mitigation for Agricultural Lands (Guidelines)* promulgated by the New York State Department of Agriculture and Markets (revision dated October 18, 2019) to supplement the conditions of the Special Use Permit specified herein by the Planning Board, which specified provisions have priority over the referenced and incorporated *Guidelines* in the event of a conflict. The Board notes that the 2019 Guidelines contain post-construction monitoring for only one growing season, and such insufficient period is rejected and adjusted in this Action to the Town Code requirement of two years from the restoration instead. The referenced *Guidelines* (as adjusted by the Town) shall constitute supplemental directives of the Planning Board and provide a minimum standard of conduct for the subject matter addressed for the duration of the solar farms' existence, in conjunction with the other conditions established by the Planning Board and the Town Code. Should the State revise the referenced *Guidelines* over the terms of the solar farms, such new and updated guidelines shall control under this paragraph, to the extent matters remain executory; provided, however, that any State revisions to the *Guidelines* that reduce or diminish the standards established in the State's

October 18, 2019 version of the *Guidelines* (as adjusted by the Town) need not be accepted as applicable to these solar farms in the Town's discretion. In the event the State revises its *Guidelines*, the Town may, either on its own initiative or at the request of Applicants or System Operators, evaluate such revisions and provide Applicants and System Operators with written notice of any revised conditions in the *Guidelines* now applicable to their solar farms, and such Town-approved conditions contained in the revised *Guidelines* shall thereafter control these solar farms as revised incorporated *Guidelines* under this paragraph.

6. As a condition of this Special Use Permit approval, a final site plan for each proposed solar farm must be first approved by the Planning Board before a Special Use Permit can be effective for such lot. The Special Use Permit comes into effect only upon the Applicants and System Operators obtaining final site plan approval from the Board for construction of a solar farm on lots #1, #2, and/or #3 of the Roger and Carol Smith Subdivision and the Code Enforcement Officer's issuance of a Certificate of Compliance with final site plan approval for each such lot involved. Moreover, as a condition of this Special Use Permit approval, for the entire duration of its construction and operational existence each solar farm shall remain in full compliance with the applicable final site plan approved by the Board and these Special Use Permit conditions, and shall be maintained in a safe and fully operable state.
7. To ensure that each solar farm is properly monitored to enable full restoration of the lot to its agricultural production potential at the same prime soils classifications and condition presently existing (a fundamental principle and condition on which this Special Use Permit approval is being granted), a detailed Sampling and Analysis Plan ("SAP") shall be submitted for approval by the Planning Board. The SAP will characterize and document the surface soil quality before construction, during operations and upon decommissioning of the solar panels as necessary to return lots #1, #2, and #3 of the Roger and Carol Smith Subdivision to Class 1-4 soils pastureland once the solar farms have been decommissioned. At the time of construction, and before a Certificate of Compliance is issued by the Code Enforcement Officer, Applicants or System Operator for its lot shall take baseline soil samples in accordance with the sampling procedures detailed in the SAP, which procedures are consistent with Cornell University's soil testing guidelines for measuring contaminant levels in a particular area regarding collection, labeling and packaging of representative soils beneath and around solar panels and solar system equipment according to soil sampling locations specified on the final site plan approved for its lot. Thereafter, Applicants or System Operator shall take samples every 9 years for the duration of the solar farm operations in accordance with the sampling procedures detailed in the SAP. If no "significant" (defined below) deviations are found at the eighteen-year sampling event, Applicants or System Operators may request an amendment from the Planning Board to discontinue the nine-year sampling events until after the solar array has been decommissioned. Upon completion of the Project and once the solar array has been decommissioned, Applicants or System Operator shall take one (1) final round of samples in accordance with the procedures detailed in the SAP. In the event that there is a "significant" (defined below) deviation, individual samples will be taken at the location(s) where the significant deviations are found

in accordance with the sampling procedures detailed in the SAP. In addition to submission of the baseline soil sampling as detailed in the SAP, the results of the testing detailed in the SAP will be included with every three-year report required by Condition No. 25.

Because Applicants, Delaware River Solar, LLC and System Operators have represented in their submissions to the Planning Board that the proposed solar farms will employ safe practices for the land, soils and environment and that no significant leaching or contaminants will occur from construction or operation of their solar farms in this Action, there should be no “significant” change to the land or soils on Lots #1, #2, and #3 of the Roger and Carol Smith Subdivision as a result of, and during the term of, the solar farms, and a Special Use Permit is being granted in reliance on that information and expectation. For purposes of this soil sampling program, a “significant” deviation shall consist of (a) a change of fifteen percent or more for evaluations of (i) soil pH; (ii) percent organic material; (iii) cation exchange capacity; (iv) Phosphorus/Phosphate; (v) Potassium/Potash; and (vi) Nitrogen (collectively the “Agricultural Parameters”); or (b) exceeding maximum permitted limits for (i) TAL metals, (ii) Volatile Organic Compounds, and (iii) Semi-Volatile Organic Compounds (collectively the “Environmental Parameters”) under then-current regulations establishing standards for soil contaminants and/or pollutants promulgated by the New York State Department of Conservation, or successor agency in 6 NYCRR § 375, Subpart 375-6, Table 375-6.8(a) for Unrestricted Use Soil Cleanup Objectives. Upon the Town’s receipt of a report of a monitored item deviating significantly from its benchmark, Applicants or System Operators shall submit to the Planning Board a scientific summary explaining the reasons for the deviation(s). It is noted that deviations from the baseline sampling event do not necessarily indicate negative impacts from the solar panels, as the soils will regain nutrients from being fallow rather than being farmed annually. If necessary, after receipt of the scientific study, the Planning Board may refer significant deviations of the Environmental Parameters to the New York State Department of Conservation (“NYSDEC”) as necessary. Applicants or System Operators are required to comply with all applicable NYSDEC remedial and reporting requirements. *See* 6 NYCRR Parts 375 and 597.

As a final additional condition for this soil sampling monitoring process, in the event this soil sampling monitoring process detailed herein and in the SAP is invalidated by a court, the Special Use Permit which was approved upon this key soil sampling condition for such lot shall become void, and continued operation of the solar farm on such lot shall be unauthorized unless and until a new special use permit is subsequently obtained for the lot under the law and Town Code as they then stand. As set forth more fully elsewhere, the solar farm equipment for an unauthorized solar farm is subject to removal by the Town under the Town Code, this Special Use Permit authorization and Decommissioning Plan, if not undertaken by Applicants or System Operator upon the Town’s demand.

8. As a condition of this Special Use Permit approval, a final site plan for each of lots #1, #2, and #3 of the Roger and Carol Smith Subdivision containing the proposed solar farms must contain the applicable conditions established in this Special Use Permit. Nothing in this Special Use Permit process shall limit or constrain the Planning Board’s rights and

discretion to require additional conditions in the final site plan for any of the three lots involved in for the proposed solar farms up until the time of final approval.

9. As a condition of this Special Use Permit approval, the proposed solar farms are to be in compliance with all applicable setbacks in effect at the time of approval. Also, no topsoil located on Lots #1, #2, or #3 of the Roger and Carol Smith Subdivision at 466 Yellow Mills Road shall be removed from the property during construction, operation or decommissioning of a solar farm located on such a lot.
10. As a condition of this Special Use Permit approval, a detailed site lighting plan and illumination fixtures shall be included as part of an approved final site plan for the proposed solar farms.
11. As a condition of this Special Use Permit approval, a detailed landscaping plan with plantings acceptable to the property owners and Planning Board with a planting schedule shall be included as part of an approved final site plan. Also, Applicants or System Operators shall install the approved landscaping for the proposed solar farm to the extent feasible with the season prior to the Code Enforcement Officer's issuance of a Certificate of Compliance with final site plan, to provide a visual screen of the solar farm, and Applicants or System Operators shall maintain such approved landscaping for the duration of the solar farm operation. In the event landscape plantings cannot be completed due to seasonal limitations when the solar farm is ready to commence operations, the Code Enforcement Officer is authorized to issue a Conditional Certificate of Compliance for a period up to May 31st of the following calendar year to allow solar farm operation during such period until the landscape plantings required in the final site plan may be completed at the next earliest planting season.
12. Applicants have designated certain lane ways between the solar arrays in the proposed solar farms that allow for rotational grazing systems, and as a condition of this Special Use Permit approval, such lane ways shall be included in the final site plan for each lot and maintained for the duration of the solar farm operation, so long as the landowners are operating their cattle farm.
13. Applicants have designated one (1) access road to the three (3) solar farms on lots #1, #2, and #3 of the Roger and Carol Smith Subdivision that is to be located along the edge of agricultural fields and to the extent practical in nonagricultural portions of the site, and is not wider than twenty (20) feet across along its length. As a condition of this Special Use Permit approval, such access road shall be included in the final site plan for each lot and maintained in such width and location for the duration of the solar farm operation.
14. As a condition of this Special Use Permit approval, fencing permitted or required in the final site plan for each proposed solar farm shall not exceed eight feet in height, though such fencing may contain barbed wire canted out.
15. As a condition of this Special Use Permit approval, solar farm system equipment may not exceed twelve feet in height, measured from the surface of the ground upon which the

- system equipment is located. Excluded from this condition are weather station equipment up to fifteen feet in height, even if used in conjunction with or for the benefit of the solar farm, as well as above-ground electrical wires, poles or equipment attached to poles needed for interconnection to above-ground utility distribution equipment maintained by the local electric utility providing interconnection of its network to the solar farm.
16. As a condition of this Special Use Permit approval, each solar farm shall adhere to the minimum lot size requirements for the zoning district in which the system is located.
 17. As a condition of this Special Use Permit approval, each solar farm shall adhere to the maximum lot coverage requirement for principal uses within the zoning district in which it is located.
 18. As a condition of this Special Use Permit approval, each solar farm shall adhere to the sign requirements for the zoning district in which it is located.
 19. As a condition of this Special Use Permit approval, and prior to the commencement of any construction or operation of a proposed solar farm on lots #1, #2, or #3 of the Roger and Carol Smith Subdivision, Applicants and/or System Operators shall provide to the Town a financial plan in an approved Decommissioning Plan containing an irrevocable surety in sufficient amount and acceptable form by a reliable source entity on which the Town alone may draw to cover Town expenses incurred in decommissioning the solar farm and restore the property in the event that the Applicants and/or System Operators are unable or unwilling to do so within the time required. Applicants and/or System Operators shall remain responsible to reimburse the Town for expenses incurred in connection with their lots and solar farms in this Action in the event actual decommissioning and restoration costs and related expenses including Town engineering and legal fees exceed the surety available.
 20. As a condition of this Special Use Permit approval, and prior to the commencement of any construction or operation of a solar farm, and before the Special Use Permit is valid, the surety approved in the financial plan and Decommissioning Plan shall be provided in fact for each proposed solar farm and a record evidencing such fact shall be filed with the Town Clerk. Such surety shall be maintained by Applicants and/or System Operators and shall continue to be kept valid for the entire existence and duration of the solar farm operation, expected to last for thirty years, together with the time involved in any extensions, decommissioning the solar farm, restoration work to reclaim the underlying land for agricultural use again, and post-decommission monitoring, unless the property owners obtain appropriate approval from the Planning Board to use their property for a different permitted use (and then to restore the property to condition for that next approved use).
 21. As a condition of this Special Use Permit approval, Applicants and/or System Operators shall direct the surety source to provide the Town with all the same notices regarding the surety for its benefit that the surety source provides to Applicants and/or System Operators, and at the same time.

22. As a condition of this Special Use Permit approval, Applicants and/or System Operators must employ a qualified environmental monitor (EM) to oversee the construction of each solar farm, as well as restoration and follow-up monitoring in agricultural fields. The EM is to be on site whenever construction or restoration work is occurring on a solar farm and must coordinate an appropriate schedule for inspections with the Ontario County Soil and Water Conservation District and/or the New York State Department of Agriculture and Markets to protect the affected lands to the greatest extent possible.
23. As a condition of this Special Use Permit approval, after the construction of a proposed solar farm, and prior to the issuance of a Certificate of Compliance from the Code Enforcement Officer, the Applicants or System Operators shall provide the Town a post-construction certification from a professional engineer registered in New York State which attests to the solar farm's compliance with all applicable codes, safe industry practices, and the list of solar system materials and equipment that Applicants and/or System Operators identified to the Town when obtaining final site plan approval to be used in construction of the solar farm; and further, attests that the solar farm has been constructed according to the design standards approved by the Town in the final site plan.
24. As a condition of this Special Use Permit approval, a solar farm shall be deemed abandoned if, following site plan approval, initial construction of the solar system has commenced and is not completed within eighteen months of issuance of the first building permit for the project. In such case, the provisions for abandonment under the Special Use Permit, Decommissioning Plan and Town Code shall take effect.
25. As a condition of this Special Use Permit approval, every three (3) years from the date of issuance of the Certificate of Compliance by the Code Enforcement Officer with the final site plan for each solar farm, and up to the final reclamation of the land, there shall be provided to the Code Enforcement Officer by the System Operator for each solar farm a written report on the status and condition of their solar farm over the past three year term. Such report shall provide adequate information on the current status of the solar farm's operations, condition and safety. Such report shall include at least the following information: status of the surety; the solar farm's rated capacity for generating electricity and the solar electricity generated during the past term, broken down annually, and with references to all restrictions on the production of solar energy imposed by identified factors beyond the control of the System Operator; the identification and status of all System Operator contracts with RG&E or other utilities relating to the production and distribution of solar energy; current condition and operation of the solar system equipment; any indications of, or experiences with, fire in the past period at the solar farm; copies of notices received by Applicants or System Operators by reason of the solar farm from other local, county, state or federal agencies; identification of the manufacturer and model of all solar panels installed and stored at the solar farm during the period sufficient for the Town to be able to determine all materials involved in the production of each solar panel, and the number of each such models on site at the solar farm and their location; results of the most recent soil sampling required under Condition No. 7 of this Special Use Permit Resolution; number and dates of replacements of solar panels and/or supports

or significant equipment and reason therefore; required plantings replaced or needing replacement and the plan for such replacement if incomplete; indications of significant erosion or deterioration of equipment or components at the site; changes to the land use associated with the solar farm lot, such as agricultural production (kind, level and location) and grazing livestock (kind and number); and changes in ownership, operations, management or significant contractual relationships involving the solar farm occurring during the period; plus such additional information as may be reasonably requested by the Town Code Enforcement Officer in order to discharge his or her duties under the Town Code, Special Use Permit conditions and the Decommissioning Plan. The Town Code Enforcement Officer shall review such written report for compliance with applicable requirements, and is entitled to request and obtain from the System Operator or Applicants clarifying information or additional information needed to discharge his or her duties regarding the solar farms conditionally permitted use under this authorization. Failure to submit an adequate report as required herein shall be considered a violation subject to the penalties in Article X of Chapter 165 of the Town Code.

26. As a condition of this Special Use Permit approval, the surety requirement herein shall be re-evaluated every three years in compliance with the Town Code and approved Decommissioning Plan for continued sufficiency in light of changing cost factors and circumstances for decommissioning of the solar farm and restoration of the property. Potential rising cost factors warranting increase of the surety could include, for some examples, inflation, and increased expected costs for associated engineering expertise, compliance with new regulatory requirements, labor, equipment and seeding supplies. The presumptive amount of the surety applicable to each solar farm shall be determined by the Town Engineer based upon a current estimate of decommissioning, removal and restoration costs as provided in the Decommissioning Plan with the benefit of information contained in the latest reports by Applicants and/or System Operators as detailed in Conditions No. 25 and 34. The amount of the surety may be adjusted by the Town Board upon receipt of such a recommendation from the Planning Board based upon an updated cost estimate from the Town Engineer for anticipated expenses to be incurred for decommissioning the solar farm, restoration of the property and follow-up monitoring as provided in the decommissioning plan. Upon modification action by the Town Board, the surety requirement for the solar farm shall be so revised for the next three-year period as directed by the Town Board, and Applicants and/or System Operators must provide a suitable and sufficient surety in the revised amount within the time required by the Town Board in order to continue to operate under this Special Use Permit. Record evidence of any revised surety is to be filed with the Town Clerk. Such surety, however revised, shall not constitute the total financial responsibility of Applicants and/or System Operators to the Town, and Applicants and/or System Operators remain responsible to compensate the Town for its reimbursable expenses incurred in response to issues involving their lots and solar farms in this Action in the event actual reimbursable expenses, including Town engineering and legal fees, exceed the surety available.
27. As a condition of this Special Use Permit approval, should the required surety lapse or become inadequate for any reason, and sufficient surety not re-established to the Town's satisfaction within the time period designated by the Town after written notice of such re-

- establishment requirement of sufficient surety provided to Applicants and the System Operator for such solar farm, then the Special Use Permit may be revoked for such solar farm lot after notice and hearing if requested. Furthermore, failure to provide a form of surety acceptable to the Town within the Town's designated time period shall constitute abandonment of the solar farm and enable the Town to take action under appropriate abandonment provisions of the Decommissioning Plan, the Special Use Permit and Town Code.
28. As a condition of this Special Use Permit approval, any damaged or malfunctioning solar panel(s) or arrays or other equipment shall be removed from the property within thirty (30) days of discovery by, or written notice of such condition provided to, the System Operator of the solar farm. Such solar panels, arrays or equipment may be replaced without requiring an amended site plan application or Special Use Permit, but records identifying such changes shall be kept by the System Operator and made available to the Code Enforcement Officer upon request, and reported to the Town as part of the reports required in Conditions No. 25 and 34.
 29. As a condition of this Special Use Permit approval, all taxes owed for the site property of the solar farm shall be current and no taxes left unpaid, nor shall the site property become subject to a tax lien foreclosure proceeding during the entire term of this Special Use Permit.
 30. As a condition of this Special Use Permit approval, each solar farm shall continue to generate and transmit electricity at a rate of more than 10% of its rated capacity over a continuous period of one year. A failure to conform to those standards for a period of over one (1) year may be found to constitute evidence of abandonment, unless such reduced energy generation was limited by RG&E, New York State, or any other energy regulatory body that is beyond the control of the solar farm, or necessary for the operations of the solar farm, and the burden of establishing such reduction by factors beyond the solar farm's control to avoid a finding of abandonment shall be on the Applicants and/or System Operator. In addition, such energy generation curtailment must be noted in each report provided to the Town pursuant to Conditions No. 25 and 34.
 31. As a condition of this Special Use Permit approval, any diseased, damaged or failing plantings required for the solar farm discovered by the Applicants, System Operator or Code Enforcement Officer shall be replaced, in kind, within two months of discovery if found during the planting season between May 1 and November 1 of such year, otherwise not later than May 31st of the following year.
 32. As a condition of this Special Use Permit approval, and for its duration, Applicants and/or System Operators remain responsible to promptly reimburse the Town for the periodic costs associated with the services provided by the Town's Engineering Firm for tasks involved with assisting the Town to supervise their large-scale ground-mounted solar farm, including: (i) the review associated with determining expected decommissioning costs every three years as part of the three-year evaluation of the sufficiency of the surety; (ii) evaluating soil sampling results of monitored items provided with third-

- year reports or final reports by System Operators; (iii) review of plans and permits associated with decommissioning or abandonment of a solar farm; (iv) assisting the Town with review and approval of the project Notice of Termination once construction of a solar farm is completed; and (v) other tasks requested by the Town to address issues raised by construction, operation, monitoring and/or decommissioning of the solar farm, such as site inspections or attendance at Town meetings.
33. As a condition of this Special Use Permit approval, any termination or abandonment of the Distributed Generation Interconnection Agreement regarding electricity provision and payment from the solar farms between Applicants and/or System Operators and RG&E may be found to constitute abandonment of the solar farm and authorize the Planning Board to revoke the Special Use Permit after notice and hearing if requested.
34. As a condition of this Special Use Permit approval, Applicants and/or System Operators shall provide the Town with an annual report regarding their solar farm operations beginning a year after the Certificate of Compliance with the final site plan issued by the Code Enforcement Officer. Such annual report shall be in writing and show the rated capacity of the solar system and the amount of electricity that was generated by the system and transmitted to RG&E and the electric grid over the most recent twelve-month period, along with references to all restrictions on the production of solar energy imposed by identified factors beyond the control of the System Operator. The annual report shall identify changes to solar panels used and the reasons therefore, and provide the number, location and kind (by manufacturer and model) of replacement solar panels. The annual report shall identify plantings needing replacement and the plan for their replacement. The annual report shall also identify any change of ownership or operator of the solar farm and/or the ownership of the lot upon which the solar farm is located, and shall identify any change in the party responsible for decommissioning and removal of the solar farm. Furthermore, every third year, to coincide with the filing of evidence of financial surety and requisite soil sampling, the annual report shall be subsumed within the three-year report provided for in Condition No. 25. Failure to submit an adequate report as required herein shall be considered a violation subject to the penalties in Article X of Chapter 165 of the Town Code and may be considered evidence of abandonment.
35. As a condition of this Special Use Permit approval, significant physical changes made to the lot or significant equipment modifications made to the solar farm that differ from the final site plan without prior Town approval is unauthorized and shall authorize the Town to revoke the Special Use Permit after notice and hearing if requested; provided, however, that significant equipment modifications shall not include replacement of damaged, nonfunctioning or underperforming solar panels, arrays or other equipment if notice thereof is included in the annual report for that period required by Condition No. 34. Any physical changes made to, or proposed to, the solar farm after final site plan approval that disturb .1 acre or more, or changes to equipment (other than ordinary maintenance or replacement of damaged, nonfunctioning, or underperforming solar panels, equipment, components or structures that does not disturb any soils on the site), shall require submission of an application to the Planning Board for an amended Special Use Permit and shall also be subject to an amended final site plan.

36. As a condition of this Special Use Permit approval, a solar farm shall be deemed abandoned if the system fails to generate and transmit electricity at a rate of more than ten percent (10%) of its rated capacity over a continuous period of one year, unless such energy generation was limited by RG&E, New York State, or any other energy regulatory body beyond the control of the System Operator or solar farm. Such energy generation curtailment can occur beyond the control of the solar farm and shall be noted in each report provided to the Town, as outlined in Conditions No. 25 and 34. However, the time at which the solar farm shall be deemed abandoned may be extended by the Planning Board for up to one year, provided the Applicants and/or System Operators present to the Board a viable plan outlining the steps and schedules for placing the solar farm in service or back in service within the time period of the extension. An application for an extension of time shall be made to the Planning Board by Applicants and/or System Operators prior to any abandonment. Extenuating circumstances as to why the solar farm has not been operating or why construction has not been completed may be considered by the Board in determining whether to grant an extension.
37. As a condition of this Special Use Permit approval, a solar farm which has been abandoned or found abandoned by the Town shall be decommissioned and removed from the lot on which it is located. Applicants and System Operators shall be held responsible to physically remove all components of the solar farm within one year of abandonment or in accordance with the requirements of the approved decommissioning plan, if an earlier period is so agreed and approved. Removal of the solar farm system and equipment shall be in accordance with a Decommissioning Plan approved by the Planning Board and as required by the Town Code and the Special Use Permit.
38. As a condition of this Special Use Permit approval, Applicants and System Operators shall prepare a decommissioning plan (“Decommissioning Plan”) for the solar farm which is acceptable to the Town and binds each Applicant and System Operator individually to remove their solar farm from its lot location at their expense and restore the land to its prior agricultural or other approved condition in a timely fashion also at their expense in accordance with the Town Code, these Special Use Permit conditions, and other lawful requirements. Such Decommissioning Plan shall include a decommissioning funds agreement satisfactory to the Town and executed by System Operator, and shall comply with the conditions of this Special Use Permit and the Town Code in addition to addressing other foreseeable issues involved when the solar farm operation comes to a managed conclusion or the solar farm is abandoned. The Special Use Permit for a lot shall not become effective until each Applicant and System Operator agree to a Town-approved Decommissioning Plan for such lot.
39. As a condition of this Special Use Permit approval, the Decommissioning Plan shall be implemented by Applicant, System Operators and/or the Town when the solar farm on a lot in this Action ceases operation at the end of its useful life, or is abandoned in whole or part earlier, and associated physical structures are to be removed as decommissioning and restoration of the property.

40. As a condition of this Special Use Permit approval, and as a required part of an approved Decommissioning Plan, Applicants and/or System Operators shall provide the Town Engineer with an engineering estimate of the anticipated operational life of the solar farm, a schedule showing the expected time frame over which decommissioning will occur and for completion of site restoration work, and a detailed estimate of the full cost of decommissioning the solar farm and restoring the associated lot to its prior agricultural condition; and Town approval of said Decommissioning Plan shall not be made unless the Town Engineer reviews and accepts those estimates as reasonable and acceptable under the foreseeable circumstances.
41. As a condition of this Special Use Permit approval, and as a required part of an approved Decommissioning Plan, Applicants and/or System Operators shall provide the Town with a copy of any agreement between property owners and System Operators regarding decommissioning of a solar farm other than the Decommissioning Plan to which the Town is a party.
42. As a condition of this Special Use Permit approval, the Environmental Monitor employed by Applicants and/or System Operators regarding the solar farm shall be available upon demand from the Code Enforcement Officer for any issue involved with the Decommissioning Plan or the decommissioning or restoration processes. Furthermore, any change in Environmental Monitor and/or its contact information during the life of the solar farms shall be promptly provided to the Code Enforcement Officer.
43. As a condition of this Special Use Permit approval, upon conclusion of a solar farm operation, or upon the revocation or termination of the Special Use Permit for such solar farm, all aboveground solar array equipment and structures are to be removed from such lot reasonably and promptly by Applicants and/or System Operators as provided herein, and all lot areas usable for agricultural production prior to the solar farm construction and operation are to be restored by Applicants and/or System Operators to benchmark soil conditions, subject to minor deviations as are acceptable by the landowners, the Planning Board, the Ontario County Soil and Water Conservation District and the State Department of Agriculture and Markets.
44. As a condition of this Special Use Permit approval, decommissioning of a solar farm consists of physical removal of all above-ground and below-ground equipment, solar panels, support structures and foundations, including but not limited to all solar arrays, inverters, transformers, machines, buildings, security barriers, fences, electric transmission lines and components, roadways and other physical improvements to the site, except that buried electrical lines and conduit, or footings or foundations more than four feet deep, may be left in the ground as provided by the Town Code and *Guidelines* to minimize disturbance of the soils, and such removal may be further limited to some extent if specified in these conditions. For example, upon petition to the Planning Board, the Board may permit Applicants and System Operators to leave certain underground or above-ground improvements in place such as some or all of the planted landscape buffer, provided the owner can show that such improvements are part of a reasonable plan to use the improve-

- ments or redevelop the site, are not detrimental to such redevelopment or restoration and do not adversely affect community character or the environment.
45. As a condition of this Special Use Permit approval, decommissioning of a solar farm also consists of final soil sampling as provided in the SAP (Sampling and Analysis Plan) referenced in Condition No. 7, and restoration of the ground surface and soil of the associated lot to the benchmark soil conditions determined by the SAP in Condition No. 7, subject to minor deviations as are acceptable by the landowners, the Planning Board, the Ontario County Soil and Water Conservation District and the State Department of Agriculture and Markets.
 46. As a condition of this Special Use Permit approval, decommissioning of a solar farm also consists of stabilization and revegetation of the associated lot with native seed mixes and/or plant species (excluding invasive species) preferred by the property owners to minimize erosion.
 47. As a condition of this Special Use Permit approval, decommissioning of a solar farm also consists of disposal of all solid and hazardous waste and contaminants from the lot in accordance with local, state and federal waste disposal regulations.
 48. As a condition of this Special Use Permit approval, Applicants and/or System Operator must provide monitoring and remediation of the solar farm site(s) for a period of no less than two years after site restoration. General conditions to be monitored include topsoil thickness, relative content of rack and large stones, trench settling, crop production, vegetative cover, drainage and repair of severed subsurface drain lines, fences, etc. Applicants and/or System Operators remain responsible to remediate problems with the property attributable to the construction, operation, or decommissioning of a solar farm arising during the monitoring and remediation period. Applicants and/or System Operator may petition the Planning Board to reduce their surety upon decommissioning, as well as terminate their surety at the conclusion of this two-year monitoring period, which surety reduction or termination may be approved by the Town Board upon such recommendation by the Planning Board after consideration of the conditions of the property at such time and the Town's expected expenses relating to anticipation of any further remediation.
 49. As a condition of this Special Use Permit approval, if Applicants and/or System Operator fail to decommission and remove an abandoned solar farm in accordance with the requirements of this Special Use Permit, Decommissioning Plan or the Town Code, the Town is authorized to enter upon the lot associated with such abandoned solar farm with all necessary or advantageous equipment and labor (either by itself and staff or through arrangements with others authorized or appropriate such as the local utility provider or competent contractors) to carry out the decommissioning itself and remove the solar farm components and waste and restore the property to roughly its agricultural condition prior to the construction and operation of the abandoned solar farm. In such case, the Town may not be held responsible for damage to any equipment or land, nor has any obligation to protect, preserve or salvage any equipment or assets on the lot belonging to Applicants

and/or System Operator. The failure of Applicants and/or System Operator to timely decommission a solar farm themselves as required shall be deemed a forfeiture of their ownership interests and rights in the solar farm equipment and materials on site, entitling the Town to scrap or dispose of all such equipment and materials as the Town deems fit or convenient; provided, however, that taking such limited and temporary control of the lot and its contents to decommission the solar farm shall not impose any duties or responsibilities upon the Town due to its presence on the property or its control of solar farm components and waste to complete decommissioning as implied agent for Applicants and/or System Operator; and Applicants and/or System Operator remain responsible to indemnify the Town for all its expenses incurred in having to carry out the decommissioning and restoration work that was the responsibility of Applicants and System Operator.

50. As a condition of this Special Use Permit approval, a reasonable determination by the Code Enforcement Officer that a solar farm has been abandoned subjects Applicants and/or System Operator to the procedures for abandonment provided by the Town Code in Section 165-65.3 [H], the Decommissioning Plan, and these Special Use Permit conditions.
51. All Applicants and System Operator have the responsibility to keep the Town provided with current addresses for receipt of Town notices. Accordingly, as a condition of this Special Use Permit approval, Town provision of written or electronic notice to Applicants and/or System Operator according to the current addresses on record with the Town at the time for Applicants and/or System Operator shall constitute sufficient notice of Town action to the Applicant and/or System Operator involved at such time regardless of whether the Applicant or System Operator actually receives such notice at such address, receives such notice late, or receives such notice at all.
52. As a condition of this Special Use Permit approval, in the event an Applicant and/or System Operator resorts to court action against the Town, its agencies, or Code Enforcement Officer or other Town personnel engaged in official duties to resolve a dispute involving continuance of operations of a solar farm (which could result in decommissioning) or decommissioning-related issues, which action prompts the Town to incur legal expenses for attorney fees and associated filing fees and other litigation expenses in order to respond in court so as to protect its rights and interests, such Applicant and/or System Operator commencing court action shall be responsible to indemnify the Town for its legal fees and expenses incurred in responding to the litigation commenced by Applicant and/or System Operator, including appeals and claims about Applicant's and/or System Operator's indemnification of the Town's legal fees and expenses. In the event the Town commences court action against an Applicant and/or System Operator to protect or enforce the Town's rights or responsibilities under the Town Code, these Special Use Permit conditions or a Town contract, regarding a solar farm's continuance of operations or decommissioning-related issues, and substantially prevails in an order, judgment or settlement, such Applicant and/or System Operator shall be responsible to indemnify the Town for its legal fees and expenses incurred in such litigation, including appeals and claims about Applicant's and/or System Operator's indemnification of the

- Town's legal fees and expenses. An Applicant and/or System Operator required to indemnify the Town for legal fees and litigation expenses shall pay such obligation in full within thirty days of written notice of the indemnification amount sought by the Town. The failure of an Applicant and/or System Operator to pay such indemnification amount on time shall entitle the Town to recover such amount from the surety provided to the Town by Applicant and/or System Operator in connection with the solar farm. Alternatively, in addition to any other remedies available to the Town under law or equity, any indemnification amount not paid or covered by Applicant's and/or System Operator's surety shall be assessed against the associated lot and Applicant's property at 466 Yellow Mills Road, shall become a lien and tax upon said property, shall be added to and become part of the taxes to be levied and assessed thereon and shall be enforced and collected, with interest, by the same officer and in the same manner, by the same proceedings, at the same time and with the same penalties as are provided by law for the collection and enforcement of real property taxes in the Town.
53. As a condition of this Special Use Permit approval, upon request by the Code Enforcement Officer and within 48 hours thereof the System Operator shall provide a person authorized to accompany the Code Enforcement Officer and/or Town staff, Town Engineer or Town consultant or contractor to enter the solar farm consistent with law in order to conduct official duties, monitor the solar farm site for continuing compliance with the final site plan, Special Use Permit and Town Code, and/or conduct operations under such authorities or Decommissioning Plan or Agreement, or take emergency or urgent actions to remediate problems existing or beginning at the solar farm or on its lot.
54. In the event any condition specified herein is violated or not met as required, in addition to any other actions the Board or Town may be authorized to take in such circumstances, the Board is authorized to revoke the Special Use Permit granted hereunder after notice of the proposed action to Applicants and System Operator and a hearing if requested consistent with the Town Code. If the Special Use Permit is revoked for noncompliance with a condition, the Town may require cessation of the solar farm operation for noncompliance with law, and in the absence of a new special use permit grant under the law and Town Code then existing, further find the unpermitted solar farm abandoned, and invoke associated requirements and rights, along with other actions that may be warranted, consistent with the Town Code, Special Use Permit and Decommissioning Plan and Agreement.
55. As a condition of this Special Use Permit approval, Tax Map Numbers that are to be assigned to Lots #1, #2 and #3 as shown on the Filed Final Subdivision Plat for Roger and Carol Smith Lands Located at 466 Yellow Mills Road, Palmyra, New York, are to be shown on the Final Site Plan drawing for such lots prior to signature by the Planning Board Chairperson. In addition, a copy of the liber and page for the Final Subdivision Plat for Roger and Carol Smith Lands Located at 466 Yellow Mills Road, Palmyra, New York, is to be filed in the Town Development Office.

BE IT FURTHER RESOLVED that the Clerk of the Board is hereby directed to provide by U.S. Mailing, a certified copy of this resolution to the Involved and Interested Agencies and to the Town Clerk.

BE IT FINALLY RESOLVED that the Clerk of the Board is to provide copies of this resolution to: Roger and Carol Smith, 4790 Fox Road, Palmyra, N.Y. 14522; Peter Dolgos, Delaware River Solar, LLC, 140 East 45th Street, Suite 32-B1, New York, N.Y. 10017; David Matt, Schultz Associates, P.C., P.O. Box 89 Spencerport, N.Y. 14559; the Town Highway and Parks Superintendent; the Town Water and Sewer Superintendent; the Town Director of Planning and Development; the Town Code Enforcement Officer; and the Town Engineering Firm, MRB Group, D.P.C., Attn: Lance S. Brabant, CPESC, Director of Planning Services.

The above resolution was offered by MR. MALOY and seconded by MR. BELLIS at a meeting of the Planning Board held on Wednesday, October 7, 2020. Following discussion thereon, the following roll call vote was taken and recorded:

Adrian Bellis	Aye
Timothy DeLucia	Aye
Edward Hemminger	Aye
Shauncy Maloy	Aye
Douglas Viets	Aye

Motion carried.

I, John M. Robortella, Clerk of the Board, do hereby attest to the accuracy of the above Resolution being acted upon and recorded in the minutes of the Farmington Planning Board for the Wednesday, October 7, 2020, meeting.

John M. Robortella, Clerk of the Board L.S.

Appendix 1 Delaware River Solar Applications

PB #1003-18	Preliminary Four-Lot Subdivision Plat
PB #1004-18	Preliminary Site Plan
PB #1006-18	Special Use Permit
ZB #0902-18	Area Variance Application
ZB #0903-18	Area Variance Application
ZB #0904-18	Area Variance Application
ZB #0905-18	Area Variance Application

These applications were reviewed by the Project Review Committee on:

August 3, 2018
 September 7, 2018
 September 6, 2019
 November 1, 2019
 February 7, 2020
 March 6, 2020
 July 2, 2020
 August 7, 2020
 September 4, 2020
 October 2, 2020

The Zoning Board of Appeals (ZBA) classified this project as a Type I Action under the State Environmental Quality Review (SEQR) Regulations and established the 30-day SEQR public review and comment period from September 28, 2018, to October 29, 2018.

September 24, 2018:

The ZBA opened Public Hearings on four Area Variance applications.

The ZBA Public Hearings were reconvened on:

November 26, 2018
 December 17, 2018
 January 28, 2019
 April 22, 2019
 May 20, 2019
 June 24, 2019
 July 22, 2019
 August 26, 2019, at which meeting the four Area Variance applications were denied.

October 3, 2018:

The Planning Board declared its intent to be designated Lead Agency under SEQR for making the determination of significance upon these applications.

The SEQR Involved and Interested Agencies that were identified by the Planning Board and that participated in the 30-day public review and comment period are:

Involved Agency: New York State Energy Research and Development Authority
 Involved Agency: New York State Department of Environmental Conservation
 Involved Agency: U.S. Army Corps of Engineers
 Involved Agency: New York State Office of Parks, Recreation and Historic Preservation
 Involved Agency: Town of Farmington Planning Board
 Involved Agency: Town of Farmington Zoning Board of Appeals
 Involved Agency: Town of Farmington Highway and Parks Department
 Interested Agency: Ontario County Agricultural Enhancement Board
 Interested Agency: New York State Department of Agriculture and Markets
 Interested Agency: Town of Farmington Agricultural Advisory Committee
 Interested Agency: Town of Farmington Conservation Advisory Board
 Interested Agency: Town of Farmington Town Clerk
 Interested Agency: Town of Farmington Historian

November 7, 2018:

The Planning Board opened Public Hearings on:

PB #1003-18 Preliminary Four-Lot Subdivision
 PB #1006-18 Special Use Permit
 PB #1004-18 Preliminary Site Plan

The Public Hearings were reconvened on:

December 5, 2018
 January 16, 2019
 April 17, 2019
 May 15, 2019
 June 5, 2019
 July 17, 2019
 August 7, 2019
 September 4, 2019
 October 16, 2019
 November 20, 2019
 December 4, 2019
 December 18, 2019
 January 15, 2020
 February 19, 2020
 March 4, 2020 (Public Hearing on Preliminary Subdivision Plat closed)
 March 18, 2020 (meeting cancelled due to Covid-19 pandemic)
 April 15, 2020 (administrative action to continue the Public Hearings to an unspecified date)
 June 3, 2020 (administrative action to continue the Public Hearings to July 1, 2020)
 June 17, 2020 (administrative action to continue the Public Hearings to August 5, 2020)

August 5, 2020

- Preliminary Site Plan continued to September 16, 2020
- Special Use Permit Public Hearing closed

September 2, 2020 (Special Use Permit and Preliminary Site Plan)

September 16, 2020 (Special Use Permit and Preliminary Site Plan)

August 7, 2019:

The Planning Board accepted the Complete Part 2 of the Full Environmental Assessment Form and the Complete Part 3 of the Full Environmental Assessment Form.

August 7, 2019:

The Planning Board approved the State Environmental Quality Review (SEQR) Determination of Significance (Negative Declaration).

September 6, 2019:

An Article 78 Proceeding was filed in Supreme Court (State of New York, Ontario County) by petitioners/plaintiffs Concerned Citizens of Farmington (James and Nancy Falanga, James Dennie, James Redmond, James and Ann Foley, Eric and Edith Chapman, Petrina Case and Daniel Geer vs. Town of Farmington (New York State Unified Court System Index #126079-2019).

October 31, 2019:

Delaware River Solar provided site plan revisions that were made because of the denial of the Area Variances by the Zoning Board of Appeals (*see* Farmington Planning Board minutes, November 20, 2019).

November 1, 2019:

Delaware River Solar provided second revised subdivision and site plan drawings, and the draft Stormwater Pollution Prevention Plan (SWPPP).

November 6, 2019:

The Planning Board accepted the revised State Environmental Quality Review (SEQR) Full Environmental Assessment Form Part 1 (as corrected at the meeting) and referred the second revised materials to the SEQR Involved Agencies and to the Ontario County Planning Board.

November 12, 2019:

The Ontario County Planning Board reviewed the second revised materials (Referral #226-2019) and retained referral #226-2019 as Class 1 (*see* Farmington Planning Board minutes, November 20, 2019).

December 18, 2019:

The Planning Board accepted the Complete Part 2 of the Full Environmental Assessment Form and the Complete Part 3 of the Full Environmental Assessment for the revised applications. The Planning Board approved the State Environmental Quality Review (SEQR) Determination of Significance (Negative Declaration) for the revised applications on December 18, 2019.

March 4, 2020:

The Planning Board closed the Public Hearing on the Subdivision Plat application and approved the Preliminary Subdivision Plat (PB #1003-18).

March 18, 2020:

The Planning Board meeting was cancelled in compliance with the New York State Governor's Executive Order on public gatherings during the Covid-19 pandemic.

April 3, 2020:

The Town staff submitted a Special Use Permit draft approval resolution to the Planning Board for consideration.

June 16, 2020:

The Article 78 Proceeding in Supreme Court (State of New York, Ontario County) was dismissed without prejudice (New York State Unified Court System Index #126079-2019).

July 15, 2020:

The Planning Board acknowledged receipt of the applicant's responses to the Special Use Permit draft approval resolution of May 6, 2020.

September 2, 2020:

The Planning Board acknowledged receipt of the revised draft approval Special Use Permit approval resolution submitted by the Town's Special Legal Counsel.

September 2, 2020:

The Planning Board approved the first 90-day extension of Preliminary Four-Lot Subdivision Plat approval (PB #1003-18) to expire on Monday, November 30, 2020.

September 16, 2020:

The Site Plan and the Special Use Permit applications were continued to October 7, 2020.