

September 25, 2019

VIA EMAIL AND U.S. MAIL

Mr. Ron Brand
Town of Farmington Director of Planning & Development
RLB Planning Group
144 Eastland Avenue
Rochester, New York 14618
Email: rlbplans@gmail.com

**RE: Application of Delaware River Solar to construct a 7 MW solar facility at 466 Yellow Mills Road
SEQRA Determination of Significance
PB # 1003-18 Preliminary Four-Lot Subdivision Plat
PB # 1004-18 Preliminary Site Plan
PB # 1006-18 Special Use Permit**

Dear Mr. Brand:

On August 26, 2019, the Town of Farmington Zoning Board of Appeals (ZBA) denied the applications filed by Delaware River Solar, LLC (DRS) seeking area variances for the property located at 466 Yellow Mills Road. Specifically, the ZBA denied the request to reduce the internal setbacks between the proposed parcels to 20 feet.

Due to the denial of those variance requests, DRS has made minor changes to its proposed site plan in order to accommodate the 40 foot setback mandated by Section 165-65.3(F)(1)(b)(1) of the Town of Farmington Code while maintaining the proposed project size of 21,000 solar panels. The changes are minimal. Under the new site plan, the only substantive change is that the distance from the solar panels to Yellow Mills Road – at its closest – has been reduced from 412 feet to 367 feet. This change is minimal as the setback requirement to Yellow Mills Road is only 60 feet. The distance from the solar panels to Fox Road is unchanged. A copy of the amended site plan and a comparison chart of the changes to the site plan are enclosed for reference.

In an abundance of caution, the Town of Farmington has asked us to provide an opinion letter regarding whether these minor changes to the site plan require a second referral to the Ontario County Planning Board (OCPB) under N.Y. Gen. Mun. Law § 239-m. As shown below, it is our opinion that a second referral to the OCPB is not required.

Section 239-m of New York's General Municipal Law requires local municipalities to refer a "full statement" of certain proposed actions to the applicable county planning board. *See* N.Y. Gen. Mun. Law § 239-m(1)(a), (3)(a), and (3)(b). However, during zoning and planning review it is common for minor changes to be made to proposed actions. For that reason, New York courts have held that any such change will only require that the project be sent back for another review by the county planning board if the change renders the proposed action "substantially different" from what was originally presented. *See Residents Against Wal-Mart v. Planning Board of the Town of Greece*, 60 A.D.3d 1343, 1344-45 (4th Dept. 2009) (holding that the planning board was not required to make a second referral to county planning because "the record does not demonstrate a deficiency in the materials referred to [county planning] or a substantial difference between the materials forwarded to [county planning] and those that were before the Planning Board for final action on the application for site plan approval"); *Ferrari v. Town of Penfield*, 181 A.D.2d 149, 152-53 (4th Dept. 1992) (holding that while N.Y. Gen. Mun. Law § 239-m requires the submission of a "full statement" of the application, "a municipal agency should not be obligated to make multiple references on an application each time a revision is made" unless the revisions render the application "substantially different" from the original proposal).

Here, the changes to the site plan are minimal and do not render the project substantially different from what was originally proposed to the OCPB. The proposed use (community solar) has not changed. The proposed size of the solar array (21,000 panels) has not changed. The proposed location of the project (466 Yellow Mills Road) has not changed. The general location of the solar array has not changed. The environmental impact of the project has not changed. The only change is that the internal setbacks between the proposed parcel lines and the solar system have been revised to reflect the 40 feet required by code. The result is that the project boundary has moved 45 feet closer to Yellow Mills Road, while still maintaining a 367 feet setback when only 60 feet is required. It is respectfully submitted that this minor site plan change does not constitute a "substantial difference" from the original site plan. Please let us know if you have any questions about this opinion letter or the changes made to the site plan.

Sincerely,

s/ Terence L. Robinson Jr.

Terence L. Robinson Jr.

TLR/sms

Enclosure