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July 22, 2020

Planning Board
Town of Farmington
1000 County Road 8
Farmington, NY 14425

**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 Planning Board Members:

We represent a group of landowners and residents concerned about the impacts of solar development in the Town of Farmington in connection with the following applications by Delaware River Solar, LLC ("Developer" or "DRS") to construct a 7 MW solar facility at 466 Yellow Mills Road (the "Project"):

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

For the reasons set forth in this letter, we ask you to deny the Developer's application for a special use permit.

The Developer Failed to Establish That It Is Entitled to a Special Use Permit

The Planning Board must deny the Developer's application for a special use permit for a Solar Photovoltaic (PV) System because the applicant did not satisfy the requirements of Farmington Town Code 165-65.3 and Article VIII. The special permit requirements of Articles VI and VIII are explicitly incorporated into the Solar PV special permit requirements.¹ The Planning Board cannot make the findings required by Town Code 165-99(C)(5)(a), (b), (c), (d), (e), (g) and (h) and therefore must deny the Developer's request.

(a) The Project will not adversely affect the orderly development and character of the surrounding neighborhood.²

The Planning Board cannot make this finding because the proposed Project will have a substantial and undue adverse effect upon adjacent property, and the character of the neighborhood.

First, siting arrays near a roadway will dominate and interfere with the development and use of neighboring property as the arrays will be perceived an eyesore, discouraging more desirable future residential and agricultural development near the Project parcels.

Petitioners have presented evidence indicating that the Project may become an external obsolescence, driving down property values.³ The Planning Board reviewed data regarding solar projects in Sullivan County, which was improperly used to suggest that property values will not be impacted by the Project.⁴ However, the demographics and economics of Sullivan County and Ontario County are very different, making it unreasonable to rely on Sullivan County data to estimate how property values in Ontario County will be impacted by the Project. The Planning Board also reviewed alleged Tompkins County assessor data about solar projects which were much smaller in size (2MW), which was also improperly used to suggest that property values will not be impacted by the Project.⁵ However, a 2MW solar project is not comparable to an industrial scale 7MW solar facility, and potential impacts to property values in Farmington cannot be determined by reviewing projects that are not comparable in size.

¹ See Farmington Town Code 165-65.3(E)(1).

² Farmington Town Code 165-99(C)(5)(a).

³ Rowe Realty letter dated March 20, 2019.

⁴ Appendix E, Property Value Impact Study, §2.1 (p. 47 of 104)

⁵ *Id.*

The Planning Board also reviewed a study from North Carolina which indicated that the solar projects do not negatively impact property values.⁶ However, it does not make sense to compare the impacts of a project in upstate New York, to comparable projects in North Carolina, as property valuation and taxation differ radically between these two states.

Furthermore, the Project will significantly impact the character of the neighborhood because it will replace agriculturally zoned prime agricultural land with solar arrays, transforming rural parcels into industrial uses.

In fact, the Planning Board identified moderate impacts to the character of the neighborhood during its SEQRA review because the “proposed action is inconsistent with the predominant architectural scale and character”⁷ of the community and the “[p]roposed action is inconsistent with the character of the existing natural landscape.”⁸ However, the Planning Board determined that it could mitigate impacts to community character because the Project “involves a temporary use of farmland” and will also provide “income to an existing farm operation.”⁹

These mitigating factors do not eliminate the Project’s inconsistency with character of the neighborhood. The Project will likely be in operation for more than 30 years, so it cannot be classified as a “temporary use of farmland.” Further, the fact that the Project provides income to an existing farm operation, while a viable individual benefit, is not relevant to a review of the Project’s consistency with community character.

Therefore, the Project will adversely affect the orderly development and character of the surrounding neighborhood, and the special use permit should not be granted.

(b) The Project will not be a nuisance to neighboring land uses in terms of the production of obnoxious or objectionable noise, dust, glare, odor, refuse, fumes, vibrations, unsightliness, contamination, or other similar conditions.

Here, siting arrays near a roadway will dominate and interfere with the development and use of neighboring property as the arrays will be perceived an eyesore. As stated above in (a), siting arrays near a roadway will dominate and interfere with the development and use of neighboring property as the arrays will be perceived an eyesore, discouraging more desirable future residential and agricultural development near the Project parcels. The dense massing of the arrays will create glare visible to properties from the Project due to inadequate landscape buffers.

⁶ *Id.* at p.54 (Oakwood Solar Impact Study).

⁷ FEAFF Part 2, Question 18 (c).

⁸ FEAFF Part 2, Question 18 (e) and (f) , p. 10, and NYSCEF Doc. # 339, FEAFF Part 2, Question 18 (e) and (f), p. 10.

⁹ December 18, 2019 Meeting Minutes, Neg Dec Resolution, ¶ iv. (p.19-20).

The project purports to add evergreen trees and arborvitae to provide a visual buffer between the project area homes. A review of the landscaping plan demonstrates that most of the 6 ft. evergreen trees will be planted to augment existing visual buffers. However, it appears that a significant portion of the project will still be visible from Fox Road as few trees are being planted in front of the wetland area. Additionally, the Project will be visible along Yellow Mills Road as it is unlikely that the proposed 4ft. arborvitae¹⁰ will be tall enough to provide a visual screen for the road and area homes.¹¹

Therefore, the Project will be a nuisance to neighboring land uses, and the special use permit should not be granted.

(c) The Project will not create hazards or dangers to the general public or to persons in the vicinity of the project from fire, explosion, electricity, radiation, crowds, traffic congestion, parking of automobiles or other similar conditions.

The Planning Board cannot make this finding because the location of the proposed Project raises serious safety issues as the Project is located in close proximity to a well-traversed intersection.

The current configuration of the site plan with its densely massed solar arrays, inadequate landscape buffers, and glare-laden Solar PV panels has the potential to cause further traffic accidents along the well-traversed Yellow Mills Road/Fox Road intersection.¹² This intersection has an accident rate that is 10 times the state average.¹³

Petitioners, through letters and comments to the Planning Board, have raised a number of safety issues regarding the Yellow Mills Road/Fox Road intersection. For example, accidents at the Yellow Mills Road/Fox Road intersection have yielded at least one fatality.¹⁴ Drivers regularly run the stop sign located at the Yellow Mills Road/Fox Road intersection.¹⁵

Petitioners also stated that the Yellow Mills Road/Fox Mills Road intersection will become more dangerous at morning and evening rush hour during the Project's construction period.¹⁶ Moreover, the Project's site plan locates the main access road in close proximity to a crest in Fox Road, and reduced visibility could become a major safety impact.¹⁷

¹⁰ Most varieties of arborvitae are classified as slow or moderate growing, growing at a rate of less than 12 inches to 24 inches per year. Even assuming as 24 inch per year growth rate, it would take at least four years for the trees to provide any screening of the project. See,

<https://www.arborday.org/trees/treeguide/TreeDetail.cfm?itemID=776>.

¹¹ DRS Landscaping Plan, Sheet L-1, January 29, 2020.

¹² November 19, 2019 Letter from Petitioners' Counsel to Planning Board, P. 14-15.

¹³ SRF Associates Traffic Analysis, p. 2.

¹⁴ November 20, 2018 Letter from James Redmond to Planning Board.

¹⁵ *Id.*

¹⁶ November 19, 2019 Letter from Petitioners' Counsel to Planning Board, P. 14-15.

¹⁷ *Id.* at 14.

Finally, the Planning Board failed to evaluate how a Project of the size and scale proposed could be developed without significant and continuous vehicle traffic during the approximately three months the Project is being built.¹⁸ Impacts to the traffic flows resulting from vehicles moving topsoil and solar facility equipment has not been studied.¹⁹ The Town's May 31, 2019 Traffic Engineering Analysis from SRF Associates did not evaluate traffic impacts during the construction period.²⁰

Therefore, the Planning Board cannot find that the Project will not create hazards or dangers to the general public or to persons in the vicinity of the project from traffic, and the special use permit should not be granted.

(d) The Project will not cause undue harm to or destroy existing sensitive natural features on the site or in the surrounding area or cause adverse environmental impacts, such as significant erosion and/or sedimentation, slope destruction, flooding or ponding of water or degradation of water quality.

The Planning Board cannot make this finding because the proposed Project will result in a loss of 30 acres of prime farmland.²¹ The Town of Farmington's Farmland Protection Plan identifies the parcel as prime farmland.²² The Ontario County Agricultural Enhancement Board, moreover, has stated that "the proposed project will result in a loss of 30 acres of prime farmland on a parcel that is identified in the Ontario County Agricultural Enhancement Plan-2018 as priority land for protection" and further expressed concerns about siting solar PV systems in zoning districts where agriculture is the predominant land use and is a priority for protection.²³ These concerns were echoed by the Town Conservation Board.²⁴

In fact, the Planning Board identified moderate impacts to agricultural resources during its SEQRA review. The Planning Board relied on several measures approved by New York State Department of Agriculture and Markets to mitigate potentially significant environmental impacts to agricultural land. However, the number and type of mitigation measures currently required coupled with the possibility that future yet-to-be defined mitigation measures will be needed indicates that the project will cause harm to agricultural land.

The Project will also be located on top of an aquifer and will potentially impact the aquifer and environmentally sensitive, regulated wetland areas on and off site. The Project, by design, is densely-massed and is located in close proximity to two federally regulated and two state regulated wetlands, which are hydrologically connected to off-site wetlands and streams.²⁵ Pre- and post-construction activities associated with earthwork, installation of the

¹⁸ *Id.*

¹⁹ November 19, 2019 Letter from Petitioners' Counsel to Planning Board, P. 15.

²⁰ SRF Associates Traffic Analysis, P. 3.

²¹ Agricultural Enhancement Board letters dated October 2, 2018 and April 9, 2019.

²² October 2, 2018 Ontario County Agricultural Enhancement Board meeting minutes, p. 2.

²³ Ontario Agricultural Enhancement Board letter dated April 9, 2019.

²⁴ Town Conservation Board meeting minutes dated October 22, 2018, p. 2.

²⁵ *Id.* at 8.

solar photovoltaic (“pv”) systems (including arrays and associated infrastructure), and project maintenance may increase stormwater flows and sedimentation on the Project Site, impacting the quality of nearby waterbodies on and off the Project Site.²⁶

Concentrated stormwater flows resulting from densely massed impervious solar array surfaces will impact stormwater flow in and around the Project Site.²⁷ The calculated volume of stormwater runoff leaving a project site will vary based soil types, moisture conditions and impervious surfaces.²⁸ Impervious surfaces have higher CN values than soils and vegetation, which are more naturally absorptive.²⁹ The Developer’s calculations appear to downplay the impact of the solar pv panels, as these are impervious surfaces which will affect the flow of stormwater in and around the Project Site.³⁰ The Developer has not yet submitted an updated stormwater pollution prevention plan (SWPPP) addressing these issues so it is impossible to determine how the project will impact stormwater flows in and around the Project Site.

The Proposed Project may result in or require modification of existing drainage patterns because it will cover 43 acres of land with impervious surfaces.³¹ The Developer’s geotechnical study recommends that site drainage is required to prevent ponding from occurring on the site.³² The draft Stormwater Pollution Prevention Plan (SWPPP) also states that “[t]here shall be no cut and fill so as to reduce the risk of creating drainage problems by locating access roads along contours to the greatest extent possible. The surface of the access road shall be level with the adjacent field surface.”³³ This statement indicates that the earthwork needed to prep the Project Site may have potentially adverse environmental impacts to drainage.

This is significant because Paragraph 4 of the preliminary subdivision plat resolution indicates that the entire site does not lie within a delineated Zone C Area of Minimal Flooding.³⁴ Proposed Lot #1 identifies an Un-numbered A Zone, a designated Area of Special Flood Hazard.³⁵ This issue was identified during the Planning Board’s preliminary subdivision plat review, and it does not appear that the potential flood hazards were reviewed as a potentially significant environmental impact during the Planning Board’s SEQRA review.

Furthermore, the new area covered by Developer’s revised site plans which extend the solar arrays to the south and east was not reviewed as part of Foundation Design’s initial geotechnical study. This study noted shallow perched water conditions at 7 borings, and 3 of these borings (P-8, P-15, and P-22) are located in close proximity to areas where the project has

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Stormwater Pollution Prevention Plan, § 2.16.

³¹ November 19, 2019 Letter from Petitioners’ Counsel to Planning Board P. 10.

³² Foundation Design Geotechnical Report, P. 8.

³³ Draft Stormwater Pollution Prevention Plan at § 5.1 (8).

³⁴ Preliminary Subdivision Plat Resolution, dated February 19, 2020, p. 2. Flood Plain Permit Application, dated March 4, 2020.

³⁵ *Id.*

been expanded. The Project site's soils are dense, rocky, and moisture sensitive, and it is unclear what soil conditions exist in the new project area without performing further testing.

Finally, the Project will drive thousands of steel pilings coated with zinc into the ground. While the Developer's geotechnical report indicates that the soil corrosivity is low, it is unclear soil conditions (including PH) may change over time as a result of the proposed Project.³⁶ The Project Site will be covered in impervious surfaces, which will limit the soil's ability to properly drain.

This is important because rainwater and water condensation can corrode galvanized steel pilings.³⁷ Additionally, zinc can be dispersed into the environment from corroded galvanized steel pilings.³⁸ Increased zinc concentrations can negatively impact environmental health including terrestrial and aquatic plants and animals.³⁹

Therefore, the Project will cause undue harm to or destroy existing sensitive natural features on the site or in the surrounding area or cause adverse environmental impacts, such as significant erosion and/or sedimentation, slope destruction, flooding or ponding of water or degradation of water quality. The special use permit should not be granted.

(e) The Project will not be incompatible with the type, extent and direction of building development and/or the creation of access roads or ingress/egress points for the site and surrounding areas, as proposed in the Town of Farmington Master Plan or in the Route 96/Route 332 Corridor Development Plan, as adopted and amended by the Town of Farmington.

The Planning Board cannot make this finding because the agricultural character of the Project site will be transformed by the addition of the densely packed, ground-mounted solar arrays, resulting in an industrial use sited in a pastoral agricultural neighborhood. This action will directly contravene the findings of the Ontario County Agricultural Enhancement Plan-2018 which designates the Project's land as a priority for protection.⁴⁰ Additionally, the Project is out of character with the surrounding agricultural residential neighborhood and will become an external obsolescence, driving down property values.⁴¹ While it the policy of the Town to encourage industrial growth and economic development, the Comprehensive Plan's Future Land Use Plan (#10) makes it clear that this parcel should remain an active agricultural site.

³⁶ NYSCEF Doc. #328, November 19, 2019 Letter from Petitioner' Counsel to Planning Board, p. 15.

³⁷ Contributions of Heavy Metals from Material Exposures to Stormwater," Pitt, R. and Ogburn, O. University of Alabama (2013), Pg 3, available at http://rpitt.eng.ua.edu/Publications/Stormwater_Characteristics_Pollutant_Sources_and_Land_Development_Characteristics/.

³⁸ *Id.* at p. 4.

³⁹ Zinc Hazards to Fish, Wildlife, and Invertebrates: A Synoptic Review" Eisler, Ronald. U.S. Fish and Wildlife Contaminant Hazard Reviews, Report 26. Biological Report 10. April 1993. P. 6-7. Available at https://www.pwrc.usgs.gov/eisler/CHR_26_Zinc.pdf.

⁴⁰ Agricultural Enhancement Board letters dated October 2, 2018 and April 9, 2019.

⁴¹ Rowe Realty letter dated March 20, 2019.

Therefore, the Project will be incompatible with the type, extent and direction of building development. The special use permit should not be granted.

(g) The Project will not create disjointed vehicular circulation paths or create vehicular/pedestrian conflicts.

As stated above in (c), the Planning Board cannot make this finding because the proposed Project would be located near a well-traversed intersection with inadequate landscape buffers. Additionally, glare from the Project's densely massed solar panels will distract drivers and create safety issues for drivers and pedestrians. Therefore, the project will create disjointed vehicular circulation paths and create vehicular/pedestrian conflicts. As such, the special use permit should not be granted.

(h) The Project will provide adequate landscaping, screening or buffering between adjacent uses which are incompatible with the proposed project.

As stated above in (b), the Planning Board cannot make this finding because the proposed project in its current form has inadequate buffers. Siting the arrays close to a roadway will dominate and interfere with the development and use of neighboring property as the solar arrays will be perceived as an eyesore. Therefore, the Project will not provide adequate landscaping, screening or buffering between adjacent uses which are incompatible with the propose project. As such, the special use permit should not be granted.

The Special Use Permit should not be granted because the criteria above have not been met

Town Code explicitly states that "[s]hould the applicant, based on the findings of the Board, **fail to meet any one of the criteria or requirements listed above** or those listed in Article VI, either because of the basic nature and design of the project or the lack of appropriate mitigating measures, **then the request for approval of a special use permit shall be denied.**" § 165-99 (C) (6).

Based on a review of the Town Code's special use permit criteria, it is clear that Delaware River Solar's Special Use Permit Application should be denied because the Project fails to mitigate negative impacts to neighborhood character, visual impacts to surrounding properties, environmental impacts to prime agricultural soils, water resources, and wetlands, and safety concerns resulting from the project's configuration and location near a well-traversed intersection.

Additional Issues Warranting Denial of Special Use Permit

DRS Failed to Demonstrate that No Feasible Alternative Exists

The Farmington Town Code contains stringent standards to site a solar farm on certain types of soils. The Planning Board cannot approve a special permit for a solar farm on soils classified as Class 1 through 4 unless it determines that there is no feasible alternative.⁴²

Here, the record before the Planning Board does not contain any documentation that would support such a finding.⁴³ Consequently, the applicant failed to demonstrate that no feasible alternative exists to siting the Project and the special permit application must be denied.

The code states that “Large-scale ground-mounted solar PV systems located upon farmland located with 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 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.” § 165-65.3 (F)(1)(b)(3).

In his letter to the Planning Board chair dated January 15, 2019, the Town Attorney stated that the “feasible alternative” language in § 165-65.3 (F)(1)(b)(3) should be interpreted as follows:

[R]eading this section as a whole, it is my opinion that the determination the Planning Board must make is whether is a feasible alternative location on the property (or as it applies to this application, properties) in question to situating the proposed large-scale ground-mounted solar PV system on soils classified as Class 1 through Class 4. It is my further opinion that, if the Planning Board determined that the property or properties in question did afford a feasible alternative to situating the system on such soils, that it would not be allowed to approve such project unless it were reconfigured onto higher soils or lands not within the Active Farmland Map.

Nothing in the code indicates that the term “feasible alternative” specifically refers to the review of the location of the project as sited on a particular parcel. This interpretation is far too limiting as an alternatives analysis can and often includes a review of different project sites and the particulars of how the project could be sited on different project sites.

It appears that DRS considered two parcels, and selected the parcel whose soil conditions were more suitable for the project. DRS claims that it fulfilled the requirements of Farmington Code, § 165-65.3 (F)(1)(b)(3) because it submitted a soils worksheet analysis which allegedly demonstrated that an alternate site layout would not be a feasible alternative to the

⁴² Farmington Town Code 165-65.3(F)(1)(b)(3).

⁴³ In fact, the Comprehensive Plan emphasizes that in order to achieve the goal of minimizing adverse environmental impacts resulting from development higher priority should be given to “identifying and weighing alternatives than to examining measures to mitigate any adverse negative impacts.” P. 3-10.

project as proposed. However, the soils analysis worksheet did not take into consideration any reduction in the size of the project, which could have been explored by the Developer as a feasible alternative to its preferred site plan.

Therefore, DRS failed to demonstrate that no feasible alternative exists.

The Decommissioning Plan Does Not Adequately Address The Environmental And Financial Risks Posed By Decommissioning The Project Site

Moreover, developer's decommissioning plan does not fully address the environmental risks posed by removal and disposal of the solar panels and solar system infrastructure.⁵⁷ The developer's decommissioning plan admits that "a variety of excess materials and wastes..." will be generated.⁴⁴ These wastes include a wide range of materials such as solar panels, metal components, geotextile fabric, concrete inverter/transformer foundations, cables and wiring, and fencing.⁴⁵

Improper disposal of solar PV panels may result in toxic metals leaching out into the environment.⁵⁹ Solar PV panels are becoming harder and more costly to recycle as panel technology becomes more advanced.⁵⁸ The developer's decommissioning plan acknowledges this, stating that "[i]t is anticipated there will be more recycling options available for solar modules" at the time the facility is decommissioned.⁴⁶ However, it is unclear when the facility will be decommissioned. The decommissioning plan offers no plan to address the environmental risks posed by removal and disposal of the solar panels and solar system infrastructure other than to state that best management practices will be used and that local, state and federal waste disposal regulations will be followed.⁴⁷

Moreover, DRS created project specific entities for each of the three Solar Facilities, which are NY Farmington I, LLC, NY Farmington II, LLC and NY Farmington III, LLC, respectively. Each Project will be responsible for decommissioning of the respective Solar Facility, and each will post a bond, cash deposit or Letter of Credit with the Town. If any of the entities go bankrupt, adequate financial resources may not be available to fully decommission the site.

Therefore, the Decommissioning Plan does not adequately address the environmental and financial risks posed by decommissioning the Project Site.

Conclusion:

For the foregoing reasons, we request that the Planning Board deny the Developer's Application for a Special Use Permit.

⁴⁴ Decommissioning Plan, dated February 13, 2020, p. 12.

⁴⁵ *Id.* at 17.

⁴⁶ *Id.* at 12.

⁴⁷ *Id.*

Thank you reviewing this letter. If you have any questions, please do not hesitate to contact me.

Regards,

A handwritten signature in blue ink, appearing to read 'Bridget O'Toole', with a long horizontal line extending to the right.

Bridget O'Toole

cc: Jim Foley, Esq.
Jim Falanga