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STATE OF NEW YORK SUPREME COURT ONTARIO COUNTY

JAMES FALANGA, NANCY FALANGA, DANIEL GEER, and JAMES REDMOND,

Petitioners,

vs. Index No. 126079-2019

TOWN OF FARMINGTON, TOWN OF FARMINGTON PLANNING BOARD, DELAWARE RIVER SOLAR, LLC, ROGER SMITH A/K/A RODGER SMITH, CAROL SMITH, ROCHESTER GAS AND ELECTRIC CORPORATION, JOHN DOES, AND ABC CORPORATIONS,

Respondents.

MEMORANDUM OF LAW

of the Town of Farmington
and the Town of Farmington Planning Board

in support of the Town's Answer
and in opposition to
Petitioners' Petition (Doc 376) and
Memorandum of Law in support thereof (Doc 389)

Dated: May 11, 2021

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Farmington Planning Board

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Respondents Town of Farmington and its Planning Board submit this Memorandum of Law to the Court along with the Town's Answer in support thereof, and in opposition to Petitioners' Petition (Doc 376) and their Memorandum of Law in support of their Petition (Doc 389).

Introduction

Despite Petitioners' objections and claims, the Town of Farmington's Planning Board provided all the procedural and substantive SEQRA consideration required for the challenged solar systems proposed by Delaware River Solar, LLC (DRS), and was careful to consider potential environmental risks for the proposed solar systems from the beginning, as is SEQRA's goal. After a year and a half of consideration with active public hearings, citizen involvement and comments (including frequent submissions from Petitioners and their counsel), other agency inputs, and various experts and counsel on all sides, the Planning Board reasonably, collectively and independently concluded that the proposed ground-mounted solar systems, even if large-scale and as originally proposed or as revised, would not have a significant adverse environmental impact on the Smiths' property where the solar systems were proposed to be located or on neighboring properties.

Preliminarily, the Court should be aware that there are two basic solar systems proposed by DRS for the Smiths' property at 466 Yellow Mills Road that have to be differentiated. DRS's original proposed solar system was a large-scale ground-mounted design that needed variances to

reduce required setbacks from 160 feet to 20 feet. SEQRA review of that original proposed design resulted in a Negative Declaration from the Planning Board on August 7, 2019. Doc 299. Shortly thereafter, the Town Zoning Board of Appeals denied the requested setback variances, which precluded Town approval of DRS's original design and effectively negated the Planning Board's August 7, 2019 Negative Declaration. DRS redesigned its proposed solar system to not require setback variances, which benefited from a new interpretation of the Town Code that only 40 foot setbacks were required for solar systems sited on property containing Class 1-4 soils as was the case here. TC § 165-65.3[F][1][b][1]. Consequently, DRS's revised solar system proposal only needed to incorporate 40 foot setbacks—not much different than the original design using 20 foot setbacks DRS hoped to obtain through variance approvals. As a result of the minor setback change, DRS rearranged some solar arrays to accommodate the slightly larger setbacks, and the resulting revised design was remarkably similar to the original design, but the revised footprint for the solar arrays was shifted slightly (45') southeast of the original design location on the Smiths' property to accommodate the revised arrangement of the solar arrays.

The Planning Board wasn't sure how to proceed given the close similarities of the original and revised solar system proposals, but ended up renewing its SEQRA review. *See Matter of HH Warner, LLC v. Rochester Genesee Regional Transportation Authority*, 87 AD3d 1388, 1390 [4th Dept 2011]. After a renewed SEQRA process for the revised solar system proposal, the Planning Board then reached the same conclusion as before that a negative declaration was warranted, and so issued another but new Negative Declaration for DRS's revised solar system proposal on December 18, 2019. Only DRS's revised solar system proposal

and the December 18, 2019 Negative Declaration are relevant for present purposes, except that the Planning Board's SEQRA review process for the original similar solar system remains relevant as informing the Planning Board's consideration of environmental issues also pertaining to DRS's revised solar system proposal, and all parties cite to information contained in the original SEQRA review record as relevant to the Planning Board's renewed SEQRA review of DRS's revised solar system proposal.

Furthermore, DRS's proposed large-scale ground-mounted solar system is a specially permitted use in the A-80 Agricultural District where the Smiths' property is located. TC § 165-65.3. Following the Planning Board's December 18, 2019 Negative Declaration, the Planning Board held an additional ten months of public hearings on the Smiths' application for a special use permit for DRS's revised solar system to be hosted on their property, which public process again received numerous comments on the issue. After consideration of the information received and comparison of DRS's revised solar system proposal with the requirements of the Town Code, the Planning Board found that the requirements had been met and on October 7, 2020 issued a Special Use Permit for DRS's revised solar system on the Smiths' farm with extensive conditions. At present, it should be noted the Special Use Permit is not effective, as there is still no required Decommissioning Plan approved, nor the required surety provided, so DRS is still unable to proceed with the permitting and construction process for its revised solar system.

Finally, DRS submitted an acceptable preliminary (and later final) site plan for its revised solar system, and, after an appropriate public process that ran parallel with the special use permit

process, DRS's Preliminary Site Plan was also approved by the Planning Board on November 4, 2020, as being in accordance with the Town Code.

The Town of Farmington made the policy decision in 2017 to permit large-scale ground-mounted solar farms on agricultural land, and charged the Planning Board with determining appropriate applications of that policy and accommodating the various competing interests involved under the governance of the Town Code and New York land law. The Planning Board has spent an inordinate amount of time investigating the facts and providing opportunities for differing perspectives to be heard in this matter, has considered the competing positions, and ultimately has come to an independent consensus that DRS's revised solar system will not have a significant adverse environmental impact, and that as finally proposed, permitted and conditioned, is an allowable special use of the Smiths' property under the Town Code and New York land law. The Planning Board's exercise of its authority and discretion in these matters reflect local governance of the disputed property issue, and the Town and its citizens also have a strong interest in seeing their own final determinations of disputed issues effectuated without undue delay.

A review of Petitioners' objections will conclude that the Planning Board did not fail to faithfully discharge its public duties in this matter—just that Petitioners would have weighed and resolved the issues differently due to their self-interests and objection to their neighbors' changed but permitted use of their property. Such is not a lawful basis for challenging the Planning Board's determinations in court, and provides no legitimate ground for judicial intervention or

modification of the Planning Board's decisions for which it alone has the responsibility. Consequently, the Town and its Planning Board request that the Court deny Petitioners' Article 78 challenges, dismiss their Petition with prejudice, and let the Town return to its business of managing the construction and operation of DRS's proposed solar system, as well as addressing the many other requests for Town land use approvals always in the works.

To assist the Court understand some of the issues better and get a sense apart from counsel characterizations of the proposed solar system, the Town provides two basic maps of DRS's revised solar system proposal in the Appendix: first, Figure #1 Map, a map of the Smiths' property at 466 Yellow Mills Road with the proposed solar system arrays overlaid in purple with some other features including final site plan landscaping in green; and second, Figure #2 Map, putting the Smiths' property and DRS's revised solar system proposal in context of some surrounding area of Farmington. A look at those maps before proceeding will greatly assist the Court's understanding of the issues to be resolved.

Lastly, references to "Doc" in this Memorandum relate to the NYSCEF designation for the document filed in this proceeding, and are often only examples from the very large Administrative Record. References to "Pet Mem" are to Petitioners' Memorandum of Law (Doc 389), and references to "Town Mem" are to this Memorandum of Law.

ARGUMENT

POINT I

As demonstrated in the Town's Answer, the Planning Board as lead agency under SEQRA identified the relevant environmental issues regarding DRS's proposed solar systems, took a "hard look" at the environmental risks, and reached a collective and independent decision that DRS's solar systems would not have a significant adverse environmental impact, and made a reasoned elaboration of the basis for issuing its Negative Declarations of Environmental Significance in compliance with SEQRA.

A. Standard of review of SEQRA determination.

Court review of the Planning Board's SEQRA determination is limited to whether the agency identified the relevant areas of environmental concern, took a "hard look" at them, and made a reasoned elaboration of the basis for its determination. *E.g., Matter of Chinese Staff and Workers' Assn. v. Burden*, 19 NY3d 922 [2012]; *Jackson v. New York State Urban Development Corp*., 67 NY2d 400, 417 [1986]. *See also, e.g., Van Dyk v. Town of Greenfield Planning Bd.*, 2021 NY Slip Op 62 [3d Dept 2021]; *Matter of Buckley v. Zoning Bd of Appeals of City of Geneva*, 189 AD3d 2080 [4th Dept 2020]; *Matter of Favre v. Planning Bd. of Town of Highlands*, 185 AD3d 681 [2d Dept 2020].

The State Environmental Quality Review Act (SEQRA) contains no provision regarding judicial review, which must be guided by standards applicable to administrative proceedings generally: "whether a determination was made in violation of lawful procedure, was affected by

an error of law or was arbitrary and capricious or an abuse of discretion" as stated in CPLR § 7803 [3]. *Jackson v. New York State Urban Development Corp*., 67 NY2d 400, 416 [1986]. Notably, the lead agency has the responsibility to comb through reports, analyses and other documents before making a determination; it is not for the reviewing court to duplicate those efforts. *Matter of Riverkeeper, Inc. v Planning Bd. of Town of Southeast*, 9 NY3d 219, 232 [2007]. It is not the role of the courts to weigh the desirability of any action or choose among alternatives, but only to assure that the agency itself has satisfied SEQRA, procedurally and substantively. *Jackson, supra; Riverkeeper, supra.*

Further, an agency's substantive obligations under SEQRA must be viewed in light of a "rule of reason," as not every conceivable environmental impact, mitigating measure or alternative must be identified and addressed before SEQRA's requirements are satisfied. *Jackson*, 67 NY2d at 417; *Matter of Save the Pine Bush, Inc. v Common Council of City of Albany*, 13 NY3d 297, 306-08 [2009]; *Matter of Brunner v. Town of Schodack Planning Board*, 178 AD3d 1181 [3d Dept 2019]; *Matter of Frontier Stone, LLC v. Town of Shelby*, 174 AD3d 1382, 1385 [4th Dept 2019] (town board had the discretion under SEQRA to select the environmental impacts most relevant to its determination and to overlook those of doubtful relevance). Moreover, a "rule of reason" is applicable not only to an agency's judgments about the environmental concerns it investigates, but to its decisions about which matters require investigation. *Matter of Save the Pine Bush, Inc. v. Common Council of the City of Albany*, 13 NY3d at 308.

It is neither arbitrary and capricious nor a violation of environmental laws for a lead agency to ignore speculative environmental consequences which might arise. *Matter of Chinese Staff & Workers' Assn. v. Burden*, 88 AD3d 425, 433 [1st Dept 2011], *aff'd* 19 NY3d 922 [2012]. The degree of detail with which each environmental factor must be discussed varies with the circumstances and nature of the proposal. *Jackson v. New York State Urban Development Corp*., 67 NY2d 400, 417 [1986]. And the lead agency has discretion to determine whether there was a need to explain why any particular aspect of the proposed action will not have a significant adverse impact on the environment. *Matter of Village of Ballston Spa v. City of Saratoga Springs*, 163 AD3d 1220, 1224 [3d Dept 2018].

Moreover, the Planning Board was not required to accept the opinion of any particular expert, and was free to rely on one expert's opinion rather than another's. *E.g., Matter of DeFeo v. Zoning Bd. of Appeals of Town of Bedford*, 137 AD3d 1123, 1127 [2d Dept 2016]; *Matter of Dugan v. Liggan*, 121 AD3d 1471 [3d Dept 2014]; *Matter of Thorne v. Village of Millbrook Planning Board*, 83 AD3d 723 [2d Dept 2011].

Finally, SEQRA has left agencies with considerable latitude in evaluating environmental effects and choosing among alternatives, so an agency is not required to reach a particular result on any issue, and courts are not permitted to second-guess the agency's choice, which can be annulled only if arbitrary, capricious or unsupported by substantial evidence. *E.g., Matter of Save the Pine Bush, Inc., supra; Jackson, supra.*

B. Planning Board identified the relevant environmental issues.

The Planning Board identified the relevant environmental issues involved with DRS's original and revised solar system proposals as required for a SEQRA review.

The Planning Board required DRS to complete Part 1 of the Department of Environmental Conservation's Full Environmental Assessment Form for both its original and revised solar system proposals. Docs 7, 316. That Form contains numerous questions addressing potential environmental concerns.

Furthermore, Petitioners submitted numerous letters and comments to the Planning Board regarding the various environmental risks from DRS's proposed solar systems that they perceived to be an issue. *E.g.*, Docs 126, 127, 129, 132, 137, 142, 145, 162, 180, 190, 204, 220, 225, 228, 232, 242, 257, 258, 259, and 261. Petitioners' counsel submitted numerous letters pointing out perceived environmental risks for the Planning Board to consider. *E.g.*, Docs 245, 265, 267, 272, 280, 288, 295, 328, 338.

The Planning Board completed Part 2 of the DEC Full Environmental Assessment Form for both DRS's original and revised solar system proposals. Docs 520 Ex E, 339. Part 2 of the FEAF contains DEC's extensive categories of possible environmental impacts to ensure consideration of the full range of environmental impacts that an agency action might have. By completing the FEAF Part 2, the Planning Board necessarily considered all the listed categories and sub-categories therein: impact on land; impact on geologic features; impacts on surface

water; impact on groundwater; impact on flooding; impacts on air; impact on plants and animals; impact on agricultural resources; impact on aesthetic resources; impact on historic and archeological resources; impact on open space and recreation; impact on critical environmental areas; impact on transportation; impact on energy; impact on noise, odor and light; impact on human health; consistency with community plans; and consistency with community character. *See id.*

Petitioners' Petition asserts the Planning Board failed to identify certain environmental risks, and misclassified others. Petition at 45; Pet Mem at 10, 16.

In fact, as discussed below in detail, the Planning Board addressed each of those asserted environmental issues in Part 2 of the DEC Full Environmental Assessment Form for both DRS's original and revised solar system proposals.

Petitioners do not and cannot state any environmental risk that the Planning Board did not receive information about or address in some fashion in the Administrative Record. Indeed, as discussed, Petitioners and their counsel were active in repeatedly bringing every environmental concern to the Planning Board's attention during the extended public process of the Board's SEQRA review. Town Mem at 18. Moreover, the Planning Board as lead agency is not required to identify and address every conceivable environmental risk and could properly discount Petitioners' speculative and conclusory concerns. Town Mem at 17.

Accordingly, the Planning Board did not fail to identify all relevant environmental issues involved with DRS's original and revised solar system proposals, and so the identification aspect of the Planning Board's duty under SEQRA was certainly met, contrary to Petitioners' claims.

C. Planning Board took the requisite "hard look" at the relevant environmental issues.

The requisite "hard look" required under SEQRA is not defined by SEQRA nor the judiciary except by example. As a guiding principle, the court's role in a "hard look" SEQRA review is to "ensure that, in light of the circumstances of the particular case, the agency has given due consideration to pertinent environmental factors." *Akpan v. Koch*, 75 NY2d 561, 571 [1990]. Due consideration does not require any particular kind of close oversight of an agency's decision-making process, as it is not the court's responsibility to "to comb through reports, analyses and other documents," it is not the court's role to evaluate *de novo* the data presented to the agency, and it is not the court's role to substitute its judgment as to the accuracy of the data presented. *Matter of Riverkeeper, Inc. v Planning Bd. of Town of Southeast*, 9 NY3d 219, 232 [2007]; *Akpan v. Koch*, 75 NY2d 561, 571 [1990]. *See also Matter of Town of Amsterdam v. Amsterdam Industrial Development Agency*, 95 AD3d 1539, 1543 [3d Dept 2012] (the "hard look" standard does not authorize the court to conduct a detailed *de novo* analysis of every environmental impact of a proposed project). *De novo* review would be misguided as the lead agency does not have to address every environmental issue, may ignore speculative claims, and may reach a conclusion different than the court would have on the issues and record. Town Mem at 17.

Thus, the requisite "hard look" of due consideration just requires that the Court ensure that the record indicates the agency took its lead agency responsibilities under SEQRA seriously and exercised due consideration of the relevant environmental factors. *See, e.g., Town of Mamakating v. Village of Bloomingburg,* 174 AD3d 1175 [3d Dept 2019] (the Village Board of Trustees took the requisite hard look at the relevant areas of concern based on a record disclosing that they reviewed and considered various information, including the recommendation, resolutions and SEQRA findings of the Village Planning Board, a report from the Village's engineer and information provided by applicant concerning water and sewage use and increased traffic); *Committee To Preserve Brighton Beach and Manhattan Beach, Inc. v. The Planning Commission Of The City Of New York,* 259 AD2d 26, 35 [1st Dept 1999] ("Because there is evidence in the record establishing a review of each of the relevant areas identified by petitioners, we must conclude that the relevant hard look was undertaken"); *Matter of Cathedral Church of St. John the Divine v. Dormitory Auth. of State of N.Y.,* 224 AD2d 95, 100 [3d Dept 1996], *lv. denied* 89 NY2d 802 [1996] (record documents demonstrate that each of the issues raised by petitioners regarding the proposed action was addressed by respondent and the record further reveals that respondent gave the SEQRA requirements more than mere superficial treatment prior to issuing the negative declaration).

Courts reviewing an agency's "hard look" under SEQRA typically check on a variety of factors to ensure due consideration. Was the SEQRA review process long enough to consider all the significant environmental impacts? Was the public given fair opportunity to hear about the proposed action, ask questions and provide their viewpoints? Were there multiple public

meetings on the SEQRA review process? Did the lead agency ask for comments and provide time to receive input from other agencies? Was information received about the relevant areas of environmental concern? Did the lead agency hear from experts about complicated issues that had the potential for significant environmental impacts? Were Parts 1, 2 and 3 of the DEC's Full Environmental Assessment Form for the proposed action completed? Did the SEQRA review process result in a thoughtful and reasonable conclusion given the nature of the proposed action, and did the agency provide a reasoned elaboration of its determination? *See, e.g.*, *Matter of Brunner v. Town of Schodack Planning Board*, 178 AD3d 1181 [3d Dept 2019]; *Matter of Rimler v. City of New York*, 172 AD3d 868 [2d Dept 2019]; *Matter of Town of Marilla v. Travis*, 151 AD3d 1588 [4th Dept 2017]; *Matter of Schaller v. Town of New Paltz Zoning Bd. of Appeals*, 108 AD3d 821 [3d Dept 2013]; *Matter of Shop-Rite Supermarkets, Inc. v. Planning Board of Town of Wawarsing*, 82 AD3d 1384 [3d Dept 2011], lv denied 17 NY3d 705 [2011].

In this case, the extensive Administrative Record developed over some eighteen months demonstrates that the Town of Farmington Planning Board took two "hard looks" at potential environmental impacts from DRS's proposed solar system, both as originally proposed and as slightly revised, and consistently, collectively and independently concluded that neither of DRS's proposed solar system proposals would have a significant adverse environmental impact, thus warranting separate Negative Declarations of Environmental Significance that were issued on August 7, 2019 and December 18, 2019. *See* Town Answer at 17-38. *See also, e.g.*, *Matter of Kaufmann's Carousel, Inc. v. City of Syracuse Industrial Development Agency*, 301 AD2d 292,

304 [4th Dept 2002], lv denied 99 NY2d 508 [2003] (extensive record reflects sufficient study of project's potential environmental impacts).

The Town's Answer contains a detailed summary of the Planning Board's SEQRA review process that warrants the Court's attention on this issue. Town Answer at 17-38. Those detailed citations to documents in the Administrative Return demonstrating the Planning Board's "hard look" in this matter are not repeated here to limit the length of this Memorandum of Law.

As an overview, the Planning Board's SEQRA review for DRS's original solar system proposal consisted of eight public hearings over about a year; requested and received comments from state, county and town organizations; received questions from Town residents and heard numerous comments both for and against DRS's solar system proposal; heard from Petitioners and their counsel numerous times; received reports from Town, DRS and Petitioners' engineers; received opinions on various legal issues from counsel for the Town, DRS and Petitioners; received reports from experts on soils, wetlands, traffic, photo simulations, and geotechnical issues such as bedrock and water table levels; and requested additional information from DRS on various issues and received it. *See* Town Answer at 17-27. The Administrative Record for such SEQRA review consists of voluminous documents, many of which contain numerous pages and detailed information, so that a printout of the entire Return could fill a couple of large boxes. *See* Docs 88, 89-352, 359, 413-528.

When DRS had to revise its solar system proposal to eliminate the need for setback variances denied by the ZBA on August 26, 2019, the Planning Board renewed its SEQRA review to address DRS's minor design changes. Town Answer at 27-38. The Planning Board incorporated its previous investigation and analysis and education therefrom, which informed the Planning Board's consideration of DRS's revised solar system proposal. The Planning Board held an additional six public meetings to address issues relating to DRS's revised solar system proposal that did not require setback variances and was shifted slightly (45') southeast. DRS provided new site plans and landscaping plan showing the revised design's rearrangement of some solar arrays and slight footprint shift southeast. Docs 318-21. The new revised plans were sent out to the involved agencies for comment, though only Ontario County Planning Board and NYSERDA responded to the revised design and did not have any new comments. Docs 520 Ex G, 324, 327. DRS was required to prepare a revised Part 1 of the FEAF. Doc 316. The geotechnical report was updated, concluding no significant change was involved in the slight shift southeast. Doc 331. The photo simulations were also updated to depict the new design, without any noticeable change. Docs 325, 326; *cf.* Docs 191, 195. The Planning Board heard additional comments from various persons, including some Petitioners and their counsel. *E.g.*, Docs 330, 338, 342. Petitioners again offered the opinions of their counsel and engineer on various issues, which prompted rebuttals from engineers for DRS and the Town. Docs 328, 329, 331, 334. An updated Stormwater Pollution Prevention Plan was submitted to the Planning Board for consideration. Doc 313.

The Planning Board completed a new Part 2 of the Full Environmental Assessment Form for DRS's revised solar system proposal. Doc 339. Part 2 of the FEAF contains DEC's extensive categories of possible environmental impacts to ensure consideration of the full range of environmental impacts that an agency action might have. By completing the FEAF Part 2, the Planning Board necessarily considered all the listed categories and sub-categories therein: impact on land; impact on geologic features; impacts on surface water; impact on groundwater; impact on flooding; impacts on air; impact on plants and animals; impact on agricultural resources; impact on aesthetic resources; impact on historic and archeological resources; impact on open space and recreation; impact on critical environmental areas; impact on transportation; impact on energy; impact on noise, odor and light; impact on human health; consistency with community plans; and consistency with community character. *See id.* To complete the FEAF Part 2, the Planning Board had to, and did, differentiate between no or small impacts to such categories of environmental impacts, or moderate to large impacts that may occur which are attributable to DRS's proposed solar system. *Id.*

The Planning Board found DRS's revised solar system proposal may have a moderate to large impact on agricultural resources, aesthetic resources, community plans and community character. Doc 339. The Planning Board addressed such impacts in its FEAF Part 3 with Supplemental Evaluation, its Resolution of December 18, 2019, and its Resolution of May 5, 2021. Docs 340, 341, 342, 520 ¶¶ 18, 19-27. Agricultural resources were impacted because some 43 acres of the Smiths' farm containing Class 1-4 soils were to be used to host DRS's proposed solar system, but the soils would not be significantly impacted because the solar arrays

were ground-mounted and would remain above the soils except for the supporting posts, the soils would lie fallow during solar system operation, the solar panels were 3' x 2' with gaps around their edges for drainage so the natural course of water and vegetation would remain the same, and the site would be restored to its current condition upon decommissioning. *E.g.*, Doc 275 at 12; Doc 520 ¶¶ 21, 22. The impact on aesthetic resources would be insignificant since the Smiths' pastureland is not an aesthetic resource, and public visibility would be minimal due to substantial setbacks, modest height of the solar system equipment, and landscape screening. Doc 520 ¶ 25. Town Mem at 68-70, *infra.* The newly permitted solar system would be inconsistent with community plans because its components differ from current surrounding land use patterns since DRS's solar system is the first such major solar system approved for the Town of Farmington. But such inconsistency was found insignificant because the Town specifically approved such use of the Smiths' property with the enactment of Local Law No. 6 of 2017, which legislative change also effectively revised the Town's Comprehensive Plan and community character for the agricultural area. Docs 342 at 19-20, 520 ¶ 25, 49. *See Matter of Edwards v. Zoning Board of Appeals of Town of Amherst*, 163 AD3d 1511, 1512 [4th Dept 2018] (it is well settled that the inclusion of a permitted use in a zoning code is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood). Moreover, the setbacks and screening will minimize any visibility of the solar system located within 135 acres of private property that might be viewed as inconsistent with community plans and character until additional solar systems are added to the community mix. *See* Figure #2 Map, Appendix.

The Planning Board's extensive and extended two-stage SEQRA review resulted in a wealth of information submitted to the Board, with hundreds of documents for the lead agency to evaluate. Docs 88, 89-352, 359, 413-528. *See Matter of Kaufmann's Carousel, Inc. v. City of Syracuse Industrial Development Agency*, 301 AD2d 292, 304 [4th Dept 2002], lv denied 99 NY2d 508 [2003] (extensive record reflects sufficient study of project's potential environmental impacts). *See also, e.g., Matter of Ellsworth v. Town of Malta*, 16 AD3d 948, 950 [3d Dept 2005] (wealth of documentation contained in the record sufficiently demonstrates SEQRA compliance).

The Planning Board's SEQRA review met all the requirements for an appropriate "hard look" at the relevant environmental issues: a lengthy SEQRA process was had; citizens had multiple and fair opportunities to ask questions and provide comments at public hearings, including Petitioners and their counsel numerous times; other agencies were requested for comment and provided some; experts opined on technical environmental issues; and Parts 1, 2 and 3 of the DEC's Full Environmental Assessment Form were considered and completed (twice). *See, e.g.,* Town Mem at 23-25. Consequently, the Administrative Return demonstrates that the Planning Board took an extensive "hard look" at the possible environmental impact of DRS's proposed solar system, and so SEQRA's substantive mandate was fulfilled in full. *See, e.g., Matter of Buckley v. Zoning Board of Appeals of City of Geneva*, 189 AD3d 2080, 2082 [4th Dept 2020] (when the lead agency finds that there will be no adverse environmental impacts or that such impacts will be insignificant, it can issue a negative declaration and it is not the court's role to second-guess the agency's determination).

D. Planning Board made a reasoned elaboration of the basis for its Negative Declaration.

After identifying the environmental issues, sorting through all the information provided, and concluding that another Negative Declaration of Environmental Significance was warranted for DRS's revised solar system proposal, the Planning Board made the requisite and reasoned elaboration of the basis for its determination in three places.

The Planning Board completed a new Part 3 of the DEC's Full Environmental Assessment Form, which is specifically designed to produce a reasoned elaboration of the basis for an agency SEQRA determination. Doc 340. The Planning Board's elaboration could not be contained in the space provided on the two-page Part 3 Form itself, and so a two-page Supplemental Evaluation was completed as well. Doc 341. *See also* Doc 342 at 9-14. The Planning Board also more fully explained its reasoning in the December 18, 2019 SEQR Resolution, containing four single-spaced pages addressing the Board's findings supporting its Negative Declaration for DRS's revised solar system proposal. Doc 342 at 19-22. Again, a recitation of the Planning Board's lengthy elaboration of the basis for its new Neg Dec determination will not be undertaken here to reduce the length of this Memorandum of Law. *See* Doc 342 at 15-22.

Finally, the Planning Board clarified some findings and its elaboration of the basis for its new Neg Dec for DRS's revised solar system proposal in a Resolution dated May 5, 2021, included in the Administrative Return for this proceeding. Doc 520 ¶¶ 19-27. Such Resolution

is part of the administrative record for the Planning Board on this matter and is properly considered as part of this Court's review. *See, e.g.*, *Herman v. Fossella*, 53 NY2d 730 [1981] (board findings provided in agency's answer served to substantiate its decision as having a rational basis); *Matter of Village of Ballston Spa v. City of Saratoga Springs*, 163 AD3d 1220, 1225 [3d Dept 2018] (City could supplement its SEQRA elaboration with subsequent supplemental resolution); *Matter of Prospect Park East Network v. New York State Homes & Community Renewal*, 125 AD3d 435, 436 [1st Dept 2015] (agency properly submitted a supplemental affidavit to explain the analysis set forth in the EAF in response to the challenges raised by petitioners in the proceeding, citing *Matter of Chinese Staff & Workers' Assn. v Burden*, 88 AD3d 425, 433 [1st Dept 2011], *affd* 19 NY3d 922 [2012]; *Ohrenstein v. Zoning Board of Appeals of Town of Canaan*, 39 AD3d 1041, 1043 [3d Dept 2007] ("in addition to the record, we may also look to the administrative agency's formal return in the CPLR article 78 proceeding to ensure that the necessary record support for its decision exists"); *215 East 72nd Street Corporation v. Klein*, 58 AD2d 751 Dept 1977], appeal dismissed 42 NY2d 1012, lv denied 43 NY2d 644, cert den 436 US 905 [1978] (court may and should rely on agency findings contained in the return to the petition).

Any of the three written elaborations of the basis for the Planning Board's new December 18, 2019 Negative Declaration for DRS's revised solar system proposal—Part 3 of the FEAF with Supplemental Evaluation, Resolution of December 18, 2019, or Resolution of May 5, 2021 —are sufficient to meet the statutory requirement for "a reasoned elaboration" of the Planning Board's determination of non-significance, and together they cap and conclude the Planning

Board's procedural responsibilities for this matter under SEQRA. Town Mem at 15. *See also Coursen v. Planning Bd. of Town of Pompey*, 37 AD3d 1159 [4th Dept 2007] (the minutes of the board meeting in this case establish that the board considered the factors set forth in Parts 2 and 3 of the short environmental assessment form and provided its answers, and therefore the board provided a reasoned elaboration sufficient to comply with SEQRA).

Thus, the Planning Board complied with SEQRA's procedural and substantive requirements in this matter, and so there is no basis for challenging the Planning Board's Negative Declarations concerning DRS's proposed solar system, whether as originally proposed or revised.

POINT II

The Planning Board's approval of the Special Use Permit and Preliminary Site Plan complied with the Town Code.

Court review of a special use permit or site plan approval consists of a two-part inquiry. Did the Planning Board comply with the Town Code requirements for such approvals; and were the Planning Board determinations affected by an error of law, arbitrary or capricious, or lacked a rational basis? *E.g.*, *Matter of Biggs v Eden Renewables, LLC*, 188 AD3d 1544 [3d Dept 2020]; *Citizens Accord, Inc. v. Town Board of Town of Rochester*, 192 AD2d 985 [3d Dept 1993].

As will be discussed, the Planning Board properly ensured compliance with Town Code requirements for a special use permit and site plan standards applicable to DRS's revised solar system proposal. Furthermore, the Planning Board's approvals of the special use permit and preliminary site plan for DRS's revised solar system proposal were entirely rational and sensible, supported by substantial evidence, and were not arbitrary or capricious, nor affected by an error of law.

A. Planning Board consideration of Special Use Permit for the Smiths and DRS was proper.

The Farmington Town Code contains various provisions for the special use permit approval needed for DRS's proposed solar system.

The Town Code contains general provisions relating to special use permits. TC § 165-99[C]. The Court will note that the Farmington Town Code allows the Planning Board to only consider information from the applicant and the Ontario County Planning Board when determining whether the Town Code general provisions for a special use permit have been met. TC § 165-99[C][4], [5].

The Planning Board found that DRS's revised solar system proposal will provide adequate and safe site access and utility service; will be compatible with and enhance as much as possible the existing natural features of the site and surrounding area; will fit in an adequate and appropriate manner to and in general be compatible with the existing land use and zoning

patterns in the immediate area; will comply as much as possible with the applicable site design criteria and other zoning district requirements, and will provide adequate year-round site fire protection services. Doc 520 ¶ 65. *See* TC § 165-99[C][4]. As the Planning Board found, DRS's submissions address all these issues, and the Ontario County Planning Board had no contrary comments. Doc 324.

Furthermore, the Planning Board found that DRS's revised solar system proposal would not adversely affect the neighborhood, would not be a nuisance, would not create hazards, would not cause undue harm to the environment, would not be incompatible with building development, would not adversely impact significant historic and/or cultural resource sites, would not create disjointed vehicular circulation paths or create vehicular/pedestrian conflicts, and would not provide inadequate landscaping, etc. Doc 520 ¶ 65. *See* TC § 165-99[C][5]. Again, DRS's submissions address all these issues, and the Ontario County Planning Board had no contrary comments. Doc 324.

The Town Code also contains specific provisions for special use permits for large-scale ground-mounted solar systems situated on farmland containing Class 1-4 soils as does the Smiths' property at 466 Yellow Mills Road. TC § 165-65.3 [F][1][b][3]. The Town Code contains numerous provisions relating to special use permits for large-scale ground-mounted solar systems located on areas with Class 1-4 soils, and all such provisions relevant to DRS's revised solar system proposal, such as the requirement for an environmental monitor and restrictions on construction activities, are contained in the conditions for the Special Use Permit

approved by the Planning Board on October 7, 2020. *See id. Cf.* Doc 500. Other Town Code provisions met by DRS's approved solar system include a forty foot setback requirement, fence restriction of eight feet, and solar system height restriction of twelve feet. TC § 165-65.3 [F][1][b][3]. And there are numerous provisions relating to decommissioning and surety requirements, all of which have been addressed in the Planning Board's October 7, 2020 Resolution approving a special use permit for DRS's proposed solar system based on required and extensive conditions. TC § 165-65.3 [H]. *Cf.* Doc 500. As Petitioners do not dispute this aspect of the Planning Board's Special Use Permit determination, a detailed comparison is unnecessary as the Planning Board's Resolution sets forth each Town Code requirement and presents its findings therewith, with imposed conditions collected at the conclusion of the Resolution approving a Special Use Permit for the Smiths' property and DRS. Doc 499 at 29-79.

Thus, the Planning Board's consideration of the Smiths' and DRS's request for a special use permit was extensive, thorough and thoughtful, taking place over ten months with six additional public hearings. Town Answer at 39-40. The Planning Board reached the reasonable and rational conclusion that the Town Code standard had been met for a special use permit and so acted: "Should the applicant, based on the findings of the Board, meet all of the criteria or requirements listed, either because of the basic nature and design of the project or the inclusion of appropriate mitigating measures, then the request for special use permit approval shall be granted." TC § 165-99 [C][6]. And to ensure continued compliance with Town Code provisions for the new kind of proposed solar system, the Planning Board imposed extensive conditions. Doc 500.

It is evident from the extensive work put into consideration of the Special Use Permit in this case that the Planning Board's approval of a special use permit for the Smiths and DRS must be upheld. *See Residents Involved in Community Action (RICA) v. Town/Village of Lowville Planning Board*, 61 AD3d 1422 [4th Dept 2009] (the record supports the board's determination that applicant demonstrated that the proposed mining operation is in conformance with the standards imposed by the Town Code of the Town of Lowville with respect to special use permits, and we thus conclude that the application was properly granted); *Citizens Accord, Inc. v. Town Board of Town of Rochester*, 192 AD2d 985 [3d Dept 1993] (as long as a special use permit determination has a rational basis and is neither arbitrary nor capricious, it will be upheld). The Planning Board's special use permit approval in this case was supported by very substantial evidence in a very large administrative record, and was not affected by an error of law, was not arbitrary or capricious, nor lacked a rational basis. Consequently, the Planning Board's special use permit approval in this case should not be disturbed.

B. Planning Board consideration of DRS's Preliminary Site Plan was proper.

The Farmington Town Code contains various provisions for the preliminary site plan approval needed for DRS's proposed solar system.

The Town Code contains general provisions relating to all preliminary site plans. TC § 165-100. The Town Code also contains a checklist for preliminary site plans. TC § 165-100[C][1]. And the Town Code contains specific provisions for preliminary site plans for large-scale

ground-mounted solar systems, which overlap with Town Code requirements for special use permit approval, already discussed. TC § 165-65.3[F][1][b][3]. *See* Town Mem at 31-33.

Preliminary site plan requirements in Farmington are typical, such as requiring identification of the boundaries of the property, plotted to scale, and dimensions of the site and total acreage. TC § 165-100[C][1][d]. DRS's preliminary site plans contain such information. Doc 473. A few additional examples illustrate the adequacy of DRS's preliminary site plans as the Planning Board found. An adequate preliminary site plan should depict buffer areas, vegetative cover and stands of trees, as DRS's preliminary site plan documents do. TC § 165-100[C][1][t]; Doc 473. An acceptable preliminary site plan should have an accompanying landscaping plan and schedule, as DRS has provided. TC § 165-100[C][1][w]; Doc 473. An adequate preliminary site plan should depict buffer areas, vegetative cover and stands of trees, as DRS's preliminary site plan documents do. TC § 165-100[C][1][t]; Doc 473. And an adequate preliminary site plan should depict, as a few final examples, current watercourses, outdoor fencing, access points and road, and energy distribution facilities on site—and DRS's preliminary site plan documents provide such information. TC § 165-100[C][1][w], [m], [t], [f], [j], [r]; Doc 473.

Apart from the numerous details involved in a preliminary site plan, the Farmington Town Code also requires the Planning Board to refer the plan to the County Planning Board for advisory review and a report in accordance with § 239-m of the General Municipal Law. TC § 165-100[E]. The Planning Board has done so. Docs 38, 65, 96, 111, 324.

Consequently, the Town Planning Board may approve an application for preliminary site plan approval when, based on the information presented to the Board, it has determined that the project will adequately and appropriately address the considerations and criteria for an acceptable preliminary site plan as contained in the Town Code. TC § 165-100[F][2].

The Planning Board's Resolution of November 4, 2020 indicated review of DRS's latest revised preliminary site plan documents and consideration of their adequacy, and found that DRS's latest revised preliminary site plan complied with Town Code requirements and was acceptable and approvable with the inclusion of some conditions, and so approved DRS's preliminary site plan subject to those conditions. Doc 506 at 12-15. *See also* Doc 520 ¶ 65.

Thus, as shown, the Planning Board's consideration of the requested special use permit and site plans occurred in an extended public process in which interested persons had ample opportunity to participate, and substantial evidence was provided ensuring compliance with the requirements of the Town Code. The Planning Board then reached rational determinations approving the Special Use Permit and Preliminary Site Plan with conditions as compliant with the Town Code, and were not arbitrary or capricious, nor affected by an error of law. Therefore, Petitioners' challenges to these Planning Board determinations are meritless and their Petition should be dismissed with prejudice.

POINT III

The Town's objections in point of law should be granted.

A. Petitioners lack standing to bring their Petition.

Petitioners lack standing to bring their Article 78 Petition. The Town incorporates by this reference its prior Motion to Dismiss for Lack of Standing and accompanying Memorandum of Law and Reply Memorandum of Law filed with this Court, and raises those standing issues here against the individual Petitioners the same as if fully set forth. Docs 391, 392, 393 and 396. Answer, Part III ¶ 1. In addition, the Town's renewed challenge to Petitioners' standing in this Answer imposes on Petitioners an evidentiary burden to establish their standing with sufficient sworn and probative facts, not merely to state a claim, which burden is not met with Petitioners' Petition, particularly as it lacks a verification by a person with personal knowledge of the Petition's facts and claims.

While the Town had a burden of demonstrating that Petitioners lacked standing on its Motion to Dismiss (Doc 391), which resulted in this Court's denial of such relief to the Town at that preliminary juncture (Doc 405), the situation has changed now upon the Town's Answer challenging Petitioners' standing again on the merits. The burden of proof now shifts over to Petitioners to demonstrate their entitlement to standing with admissible evidence. *Matter of Save the Pine Bush, Inc. v. Common Council of the City of Albany*, 13 NY3d 297, 306 [2009]; *Society of the Plastic Industry, Inc. v County of Suffolk*, 77 NY2d 761, 769 [1991].

Petitioners again fail to adduce admissible evidence with a person with knowledge of the facts and claims necessary to meet the elements of standing to challenge a SEQRA determination: (1) an injury in fact that is concrete and direct, and which is not speculative or remote; (2) the actual injury must be environmental; and (3) the actual injury must be different in some significant way from the experience of the public at large. Doc 393 at 13-14.

The standard is slightly different for standing to challenge a special use permit and preliminary site plan: actual injuries that fall within the zone of interest sought to be promoted or protected by the statute under which the Planning Board acted (the Town Code)—and that Petitioners will suffer a harm that is in some manner different than the harm the public may generally suffer. Doc 393 at 59.

Petitioners' lawyer verifying the Petition does not have personal knowledge of any individual Petitioners' claim of injury that differs from that of the general public, nor are there any affidavits or other admissible evidence properly before the Court establishing the standing of any Petitioner. Doc 396 at 10-19.

Furthermore, Petitioners cannot establish that they will suffer a harm that is in some manner different than the harm the public may generally suffer. Doc 393 at 59.

As the Court of Appeals has made clear, if petitioners' standing is challenged in a SEQRA proceeding and they fail to prove they are entitled to standing, their petition must fail. *Matter of Save the Pine Bush, Inc. v. Common Council of the City of Albany*, 13 NY3d 297, 306 [2009].

Here Petitioners have provided no admissible evidence they are entitled to standing to assert their Article 78 proceeding in this matter, despite the Town's objection to their asserted standing, and so their Petition must be dismissed. *Matter of Save the Pine Bush, Inc., supra.*

B. Petitioners may not recover attorney fees as a matter of law.

Petitioners seek attorney fees from the Town in this Article 78 proceeding. Doc 376 at 50 (Petition, WHEREFORE clause [g]).

The general rule in New York is that a litigating party is not entitled to recover attorney fees against another party in the absence of a contractual right, statutory right or court rule. *E.g.*, *Chapel v. Mitchell*, 84 NY2d 345 [1994]; *Clelland v. Lettro*, 15 AD3d 874 [4th Dept 2005].

Petitioners allege no contract, statute or court rule providing them a legitimate claim to attorney fees from the Town in this matter, and none is known.

Consequently, there is, was, and will be no legal basis for an award of attorney fees to Petitioners in this matter and so the claim is frivolous. *See* 22 NYCRR § 130-1.1.

Petitioners' claim for attorney fees must be dismissed on the law with prejudice, costs and appropriate sanctions.

C. The Administrative Record demonstrates that the Planning Board fulfilled its legal duties with respect to all its determinations in this matter.

As demonstrated in the Town's Answer, the Administrative Record shows that after an extended and extensive public process the Planning Board properly identified the relevant environmental risks, took the requisite hard look at them, and reached a considered, collective and independent determination that DRS's solar system proposals, both as originally submitted and as revised, would not have a significant adverse environmental impact, and so issued Negative Declarations on August 7, 2019, and December 18, 2019. Furthermore, those Negative Declarations were published as required in the NYS Department of Environmental Conservation's Environmental Notice Bulletin. Docs 300, 416. Finally, the Planning Board also provided a reasoned elaboration for its new December 18, 2019 Negative Declaration under SEQRA as set forth in Part 3 of the DEC's Full Environmental Assessment Form (Doc 340) (with Supplemental Evaluation (Doc 341)), the Planning Board's December 18, 2019 Resolution issuing the Negative Declaration (Doc 342), and the Planning Board's Resolution of May 5, 2021. Doc 520 ¶¶ 19-27. *See* Town Answer at 17-38.

Similarly, the Administrative Record shows that after a fair public process the Planning Board also reached rational determinations based on the supporting evidence that the special use

permit and site plans finally approved with conditions for DRS's revised solar system proposal complied with Town Code requirements, and further showed that the Board's determinations were not arbitrary or capricious, nor affected with an error of law. *See* Town Answer, Part II. *See also* Town Mem at 31-36.

Accordingly, the Administrative Record demonstrates that there is no basis on which to annul the dedicated and thoughtful work of the Planning Board in reviewing DRS's proposed solar systems in accordance with law. Rather, the voluminous Administrative Record demonstrates that Petitioners' Petition is meritless and must be dismissed. *See Matter of Town of Marilla v. Travis*, 151 AD3d 1588, 1591 [4th Dept 2017] ("a review of the extensive record demonstrates that the DEC complied with the procedural requirements of SEQRA in determining that the issuance of the Permit would have no significant adverse environmental impacts and in issuing the negative declaration"); *Matter of Kaufmann's Carousel, Inc. v. City of Syracuse Industrial Development Agency*, 301 AD2d 292, 304 [4th Dept 2002], lv denied 99 NY2d 508 [2003] (extensive record reflects sufficient study of project's potential environmental impacts). *See also, e.g., Matter of Ellsworth v. Town of Malta*, 16 AD3d 948, 950 [3d Dept 2005] (wealth of documentation contained in the record sufficiently demonstrates SEQRA compliance).

POINT IV

Petitioners' Causes of Action against the Planning Board actions are meritless and provide no lawful basis on which to annul any Planning Board action.

A. Petition's First Cause of Action is meritless as the Planning Board did not fail to properly identify the relevant areas of environmental concern.

1. The Planning Board properly found that claimed areas of concern were not significant.

The Petition's First Cause of Action asserts the "Planning Board failed to identify the Project's relevant areas of concern." Petition at 45. The Petition then alleges the ignored relevant areas of concern are as follows: "The Planning Board determined that the Project would not impact vegetation and fauna, transportation/traffic, historic resources, and geologic features adjacent to the Project Site." Petition ¶ 272.

The Planning Board did find, after considering the extensive Administrative Record on such issues, that such categories contained in Part 2 of the Full Environmental Assessment Form would not be impacted by DRS's revised solar system proposal. Docs 339, 340, 341, 342, 520 ¶¶ 19-27.

Petitioners argue that such categories should have been identified as relevant areas of environmental concerns, and so the Planning Board must have erred in failing to take a hard look at them as required. Pet Mem at 10.

In fact, the Planning Board had all of these claimed areas of environmental concern brought to its attention during the SEQRA process by Petitioners' active counsel. Docs 245, 265, 267, 272, 280, 288, 295, 328, 338. Accordingly, the Planning Board investigated these issues (and others), considered arguments and the available information regarding these potential environmental issues, but concluded such issues were not areas of environmental concern for DRS's proposed ground-mounted solar system and so did not identify them as relevant areas of concern on Part 2 of the FEAF. Doc 339. Even so, the Planning Board conducted a "hard look" at these asserted issues of concern, and discharged its duty under SEQRA. Docs 342 at 15-22; 520 ¶¶ 19-27. *See* Town Mem at 20-27, 17.

The fact that the Planning Board reached a conclusion that DRS's proposed solar system would not have a significant environmental impact on these asserted areas of concern does not mean that the areas of concern were not properly identified, nor considered. The Administrative Record contains documents addressing each of the asserted areas of concern, including multiple correspondence from Petitioners' counsel raising all of these issues. *E.g.*, Docs 245, 265, 267, 272, 280, 288, 295, 328, 338. *See* Town Answer at 17-38. *See also* Town Mem at 21, citing, *e.g.*, *Committee To Preserve Brighton Beach and Manhattan Beach, Inc. v. The Planning Commission Of The City Of New York*, 259 AD2d 26, 35 [1st Dept 1999] ("Because there is

evidence in the record establishing a review of each of the relevant areas identified by petitioners, we must conclude that the relevant hard look was undertaken").

That Petitioners wanted the Planning Board to reach a different determination on these issues provides no basis for the Court to negate the policy judgment about these categories reached by the Planning Board at the conclusion of a lengthy and extensive SEQRA review process in which Petitioners were extensively involved.

For example, Petitioners assert that flora and fauna will be adversely affected by DRS's proposed solar system. Pet Mem at 11. Petitioners recognize that the Project Site is plain pastureland that is not home to any threatened or endangered species. *Id.* Petitioners contend, though, that ordinary species that live or migrate in the area were not considered. *Id*. In fact, the nature of the proposed solar system negates such concerns because the solar system is ground-mounted and sets above the ground a few feet with 19 foot sections of open space between the solar arrays, and fencing will have gaps allowing small animals to traverse the area. Doc 275 at 24. Full vegetative cover remains underneath the solar arrays and seventy-five percent of the Project Site will remain as green space. Doc 520 ¶ 20. Thus, most animals and birds will continue to move about the area largely as before. *Id.* Deer are discouraged by the presence of bulls, and cattle will encounter fences to keep them away from the arrays and energy processing equipment, but a pathway through the solar arrays allows animal movement from the east side of the Smiths' farm and pastureland to the west side. Doc 275 at 24; Doc 520 ¶ 20. *See* Figure #1 Map, Appendix. Approaching migratory birds can navigate the green space

among the solar arrays as they get close and before landing. Doc 253 at 6. In sum, DRS's proposed solar system does not pose a significant problem for animals and the Planning Board validity determined fauna was not an area of environmental concern here.

Similarly, vegetation at the Project Site was also validly found not to be of significant concern. DRS's revised solar system proposal will disturb 2.6 acres of pastureland for the posts to hold up the solar arrays (1.1 acres), three concrete pads to hold inverter and transformer equipment (each 20' x 20'), some temporary construction storage (.4 acres) and an access road (3,015 sq ft). Docs 342 at 10-11, 503. Nearly half of the disturbed area (1.1 acres) will be for landscape planting to screen the solar arrays with evergreen trees. *Id.* Accordingly, over 40 of the 43 acres involved will not disturb the existing vegetation or soils on the pastureland site, 1.1 acres of that disturbance is to replace one kind of vegetation for a preferred kind for screening as Petitioners desire, and decommissioning will restore the land and vegetation to its current agricultural condition. Docs 316 at 3; 275 at 12. Again, the Planning Board could validly find as it did that vegetation at the Project Site was not an area of environmental concern.

Petitioners also contend that transportation and traffic should be identified as areas of concern warranting a hard look. Pet Mem at 12. In fact, the Planning Board took a hard look at the traffic issue and validly concluded it was not an area of environmental concern.

Petitioners overreach in order to argue their traffic claim, which is meritless. Petitioners assert that "glare-laden solar panels" combined with dense-massing and inadequate landscape

buffers will cause traffic accidents at the intersection of Fox Road and Yellow Mills Road. Pet Mem at 12. In fact, the solar panels will not be "glare-laden" or reflect any significant glare because of their design and anti-reflective coating used to capture all the sunlight they can, since reflected sunlight is lost energy. The only "glare" from these solar panels will be less than the glare level of a forest. Doc 117 at 9. *See also* Doc 325, 284; Doc 167 Appx D. Moreover, the solar arrays are set back hundreds of feet from Fox and Yellow Mills Roads and their intersection, and will be fixed tilt facing south—making it physically impossible for the solar panels to reflect any light toward either Fox Road, Yellow Mills Road or their intersection. Doc 275 at 21. And the solar arrays are of modest height at about nine feet above the ground and will have substantial landscape screening which will further reduce their presence in the area. Doc 520 ¶ 24.

Any accidents at the intersection of Fox and Yellow Mills Roads are the result of driver decisions, not a distant and temporary interest. *See, e.g.*, Doc 163 at 1 (J Redmond: "The intersection of Yellow Mills Road and Fox Road should not be dangerous, however we the people make it that way."). Drivers always have the continuing legal duty to pay attention to the road, traffic and traffic control devices despite in-vehicle or off-road attractions, and there is nothing attractive to see about bits of stationary solar arrays sited behind trees hundreds of feet away. And while the intersection already has a high accident rate apparently due to driver decisions to run the stop sign, the government agency charged with monitoring the stop sign control of the intersection has not seen fit to change the intersection's level of traffic control. Doc 276.

Petitioners acknowledge that the Project will generate little traffic once constructed; indeed, once constructed, the proposed solar system will generate less vehicular traffic than a single family home. Doc 253 at 5. Nevertheless, Petitioners cite their own counsel's correspondence to the Planning Board as proof that the Fox and Yellow Mills Road intersection will become more dangerous during rush hour during the construction period. Pet Mem at 12. Apart from counsel's speculation, as discussed, the hazardousness of the intersection is unrelated to the solar system's construction, and so is irrelevant during the construction phase as well. Even during the construction period, the number of laborers involved was estimated to total only 35, whose presence at the Smiths' property will be staggered due to construction scheduling of different times for different kinds of work required. Doc 100 at 28-29, 7. This modest number of laborers and their vehicles and delivery vehicles—even if all approaching the intersection in the same hour—is well under the NYSDOT standard of 100 vehicles per hour necessary to warrant a traffic study, and there is no evidence otherwise. Doc 276 at 3. Thus, no traffic study was warranted as the Town's traffic analysis concluded, and, contrary to Petitioners' claim, the construction phase will not be a significant factor in traffic safety for the proposed solar system and so did not warrant identification as an area of environmental concern as the Planning Board found.

Finally, Petitioners claim that the Project Site access road entrance at Fox Road is located in proximity to a crest on Fox Road, reducing visibility that could be a major safety impact. Pet Mem at 13. The Administrative Record contains information that in fact the proposed access road driveway has road visibility of approximately 690 feet looking to the west, and 1,004 feet

looking to the east—both distances well beyond safe sight distances for such turns into the access road. Doc 167. The Figure #1 Map in the Appendix contains a tiny image of a vehicle approaching the intersection of Fox and Yellow Mills Roads so the relative distances to the access road entrance (and solar arrays) can be considered and seen to be not a concern.

As discussed, then, the Planning Board could validly find that transportation and traffic issues are not an environmental area of concern. Doc 520 ¶ 24.

Petitioners additionally contend that historic resources should be identified as an area of concern warranting a hard look. Pet Mem at 13-14.

Petitioners argue the Planning Board failed to identify historic resources as an area of environmental concern when there are two historic cobblestone houses in the area. Pet Mem at 14. Petitioners reject the Planning Board's consideration of the State's Office of Parks, Recreation and Historic Preservation information that the proposed solar system would not have impacts on archeological or historic resources listed in or eligible for listing on the New York State and National Registers of Historic Places. *Id.*, citing Doc 107. Petitioners argue instead that the Planning Board should have heeded the Town Historian, who opined that the cobblestone houses were notable historic properties, even if not listed in any historic registry and the property owners have not taken steps to get those properties listed on the National Register. Pet Mem at 14-15. The Town Historian's information was presented to the Planning Board, but evidently the owners did not find their own cobblestone houses historically significant enough to register them

as the Town Historian suggested, and the Board also had information from the Town's Comprehensive Plan that those cobblestone houses were only categorized as scattered "Other Historic Buildings." Doc 520, Chapter 2 at 48 and 49. Finally, the cobblestone house at 4740 Fox Road is 1,529 feet from the nearest part of the solar system, and the cobblestone house at 595 Yellow Mills Road is 1,904 feet away. The Planning Board was entitled to evaluate the relative significance of the available information and historic value of the cobblestone houses, and could rationally conclude that any visual or aesthetic impacts of the proposed screened and setback solar system from such distances would not be an area of environmental concern or have a significant impact on area historic resources. Docs 342 at 20; 520 ¶ 24.

Petitioners argue the Planning Board failed to identify geologic resources as an area of environmental concern when there is a drumlin on the Smiths' property contiguous to the Project Site. Pet Mem at 15-16. The Planning Board was aware of the drumlin on the Smiths' property, which was reflected in topography of the site and its underground content in several submissions to the Board. Docs 178, 287, 201, 275 at 27. The drumlin is the rocky result of the last ice age, has survived every owner of the land to date, and will undoubtedly continue beyond the proposed solar system operation and decommissioning. The Smiths have essentially determined that the value of the drumlin as a natural resource on their property is best used for hay cropping, cattle grazing and solar farming. Doc 275 at 28. Moreover, the Planning Board determined that the nature of the ground-mounted solar system proposed for the site—sitting atop steel posts holding arrays of 3' x 2' solar panels with gaps along their edges to allow water to drain through to the permeable ground and vegetative cover below—will enable precipitation to fall, flow and be

absorbed largely the same as occurs at present at the Project Site, well away from wetlands and the stream and its narrow flood zone. Doc 520 ¶¶ 21, 22. Consequently, contrary to Petitioners' claim, stormwater with the proposed solar system installed will not erode the drumlin any more than such rainwater does at present. Finally, the drumlin is not an aesthetic resource that is a source of revenue to the Smiths or anyone else and is simply a small ridge that has no aesthetic character that is significant or could be negatively impacted. *See* Docs 339 at 2; 342 at 20 (v); 325 (Figure 2a); 201 Appx II at 2 ("upland ridge"); 275 at 28; Figure #1 Map, Appendix; *cf. Matter of Gallahan v. Planning Board of the City of Ithaca*, 307 AD2d 684, 685 [3d Dept 2003], lv denied 1 NY3d 501 [2003] (a view of an abandoned landfill can hardly be characterized as a type of scenic view warranting protection under SEQRA). Thus, the Planning Board was aware of the drumlin contiguous to the Project Site but could, and did, validly conclude that geologic resources of the area including the drumlin were not an area of environmental concern. Doc 339 at 2.

2. The Planning Board did not misclassify areas of concern.

Petitioners cannot successfully argue the Planning Board failed to take SEQRA's requisite "hard look" at potential environmental issues because of Petitioners' own active involvement pointing out all the environmental issues of concern with repeated submissions by their counsel. *E.g*, Docs 126, 127, 129, 132, 137, 142, 145, 162, 180, 190, 204, 220, 225, 228, 232, 242, 257, 258, 259, and 261; *see* Petitioners' counsel correspondence: Docs 245, 265, 267, 272, 280, 288, 295, and 328. A very large Administrative Record was developed in this matter as a result of responses to Petitioners' and others' questions and concerns. Docs 88, 89-352, 359, 413-528.

See Matter of Kaufmann's Carousel, Inc. v. City of Syracuse Industrial Development Agency, 301 AD2d 292, 304 [4th Dept 2002], lv denied 99 NY2d 508 [2003] (extensive record reflects sufficient study of project's potential environmental impacts). *See also Matter of Hohman v. Town of Poestenkill*, 179 AD3d 1172, 1175 [3d Dept 2020] (town found to have complied with its obligations under SEQRA when, among other things, town took into consideration comments by petitioners); *Matter of Brunner v. Town of Schodack Planning Board*, 178 AD3d 1181, 1184 [3d Dept 2019] (lead agency was found to have taken the requisite "hard look" in part because petitioners acknowledge that they participated in the public hearings and submitted written comments).

Accordingly, Petitioners take a different tact and claim the Planning Board misclassified various areas of concern—impacts to wetland and water resources, drainage and stormwater runoff, open space, and human and environmental health—which must mean the requisite "hard look" did not occur. Pet Mem at 16-25. Petitioners' claim is meritless as the Planning Board did not misclassify areas of concern and, as the large record demonstrates, took a repeated "hard look" at these issues as SEQRA intends.

Wetlands and Water Resources

Petitioners claim that the Planning Board misclassified impacts to existing surface or ground water quality or quantity by focusing on mitigation measures. Pet Mem at 18. As the Planning Board has made clear, its discussion of mitigation measures does not create an issue of significance when the Board has already found the issue insignificant. Doc 520 ¶ 12. The

Planning Board did not find that mitigation measures rendered the potential impact small, but rather found that the proposed solar system will not have a significant adverse environmental impact on natural precipitation, water flow or absorption at the Project Site. Doc 520 ¶¶ 21, 22. The nature of the ground-mounted solar system is designed to allow precipitation to decelerate upon hitting a small solar panel, drip off an edge, and land within a couple feet of its natural course, and so, contrary to Petitioners' persistent erroneous claim, solar panels are not considered impervious surfaces. *See* Docs 415 at 37; 234; 520 ¶¶ 21, 22. Consequently, the proposed solar system, even if large-scale, will not have any significant effect on the underlying vegetation and its absorption ability, or on the ground below the solar arrays as water will continue to flow naturally and easily around the posts holding the arrays above-ground and so drain, percolate and be absorbed as usual, with the result that the aquifer, drumlin and wetlands in the area will continue to handle water as before. Doc 520 ¶¶ 21, 22. The Project Site does not impact any wetlands as it is at least 100 feet away from any wetlands and more than 300' from the stream and its narrow flood zone. *See* Figure #1 Map, Appendix.

Thus, the Planning Board's finding that these water issues are not moderate or large areas of concern are based on these facts, not mitigation measures. *See* Doc 520 ¶ 27, 33. Subsequent discussion of mitigation measures does not change the Planning Board's conclusion here that the geotechnical study's determination that neither bedrock nor water table were near the surface at the Project Site resolved the remaining factual issues so the Planning Board could find as it did that "there will not be a substantial adverse change in ... ground or surface water quality or quantity," nor a substantial increase in potential for erosion, flooding, or drainage problems. Doc

342 at 19. Mitigation consideration is a regular part of the Planning Board's practice under the Town's Comprehensive Plan, but such discussion does not render something significant the Planning Board has already found to be insignificant—though mitigation could still be desirable. Doc 520 ¶ 12. Furthermore, construction stormwater is recognized as a separate issue and will be addressed as for all large Town building projects through a required Stormwater Pollution Prevention Plan (SWPPP) using the most appropriate measures at the time of construction in accordance with Town and DEC requirements. Docs 342 at 11-12; 340; 520 ¶¶ 46, 26. *See also* Town Mem at 16, 17 (under a rule of reason, agency has discretion to decide which environmental issues to address as part of SEQRA review).

Nothing of significance will result for surface or groundwater from DRS's proposed solar system, and so the Planning Board properly concluded there would be only a small impact and so classified the water issues. Doc 339 at 2, 3. Petitioners attempt to persuade this Court to substitute the Ontario County Soil and Water Conservation District opinion that there was a possibility of concentrated stormwater flows due to impervious panel surfaces modifying flow patterns, and so the impact should be classified as moderate or large. Pet Mem at 19. In fact, the County agency actually states that "While solar panels do not change impervious coverage, they do have the potential to concentrate stormwater flows." Doc 111 at 20. Here the County agency is acknowledging that solar panels are not impervious, and do not change impervious coverage at a site, so Petitioners' repeated claim that solar panels are impervious surfaces is contradicted by their own asserted support. *See also* Doc 234 (DEC treats solar panels as pervious surfaces for stormwater management). The County's concern about the potential of solar panels to

concentrate stormwater flows should not be a problem for DRS's ground-mounted solar system. The proposed solar panel arrays incorporate drip edges with gapping that allows precipitation to strike, decelerate and drain off the small elevated solar panels in about the same place where the water would have landed in their absence. *E.g.,* Docs 415 at 37-38; 520 ¶¶ 21, 22. Moreover, the solar arrays are positioned in rows with substantial open green spacing between them—seventy-five percent of the Project Site remains green space open to precipitation. *See* Doc 503; Figure #1 Map, Appendix. And since the permeable ground and vegetative cover around and beneath the solar arrays at the Project Site will remain largely intact, rainfall will continue to move naturally and readily around the small post structures supporting the solar arrays and so flow and be absorbed in the natural course. *Id.* Consequently, the unconfined principal aquifer, wetlands and stream adjacent to the Project Site should remain in the same basic natural condition. Petitioners' continued misrepresentation of the pervious surfaces of solar panels undermines their argument: "The installation of impervious surfaces on the Project Site may negatively impact the underlying aquifer's groundwater recharge rate, reducing the ability of surface water to percolate through the soil." Pet Mem at 19. As discussed and acknowledged by the County and DEC, solar panels are not impervious like a paved parking lot and do not create the problems Petitioners wrongly attribute to solar arrays based on such misrepresentation.

Furthermore, Petitioners here are arguing that the Planning Board should not reach an independent conclusion about the significance of stormwater flows but should defer to the Ontario County agency's opinion, or the opinion of a couple of Town Conservation Board members. *See* Doc 134. As Petitioners argue repeatedly, the Planning Board may not defer to

other agencies but must make its own considered, collective and independent judgment of these environmental issues. Pet Mem at 44, citing *Martin v. Koppelman*, 124 AD2d 24, 27 [2d Dept 1987]. The Planning Board absolutely did so here to find only a small impact and area of concern for existing surface or ground water quality or quantity. Doc 339. Petitioners may not find fault with the Planning Board's independent judgment when it was exercised reasonably—even if differently than Petitioners or other agencies might have done. Only the Planning Board was lead agency for SEQRA purposes and had the authority to make these classifications of environmental risks. *See* 6 NYCRR §§ 617.2 [v]; 617.3 [b]; *Martin v. Koppelman, supra*.

Drainage and Stormwater Runoff

Petitioners claim that the Planning Board misclassified the Project's impacts to drainage and stormwater runoff as being small. Pet Mem at 19. As discussed, the Planning Board addressed the impacts of water on the Project Site independent of subsequent mitigation measure discussion and validly found only a small impact due to the nature of DRS's proposed ground-mounted solar system that will allow precipitation to continue largely as usual at the Project Site. Town Mem at 53-54.

Petitioners refer to the geotechnical study's recommendation that ponding should be prevented using site drainage. Pet Mem at 20, citing Doc 287. The Planning Board properly discounted recommendations unrelated to the drilling data regarding water table and bedrock levels for which the geotechnical report was requested. *See* Doc 290 at 14. The geotechnical study also contained recommendations for clearing and grubbing the solar array area, or re-

grading, for which broad-scale vegetative destruction was being specifically avoided with DRS's ground-mounted solar system proposal. Doc 287 at 5; *cf.* Docs 415 at 28; 299 at 18. Foundation Design's opinions were noted by the Planning Board, but even Foundation Design expressly acknowledged that its recommendations were not final and required site confirmation, as admittedly "geotechnical engineering is far less exact than other engineering disciplines" and "a geotechnical engineering report does not usually relate any environmental findings, conclusions, or recommendations." Doc 287 at 10. The Planning Board was well within its discretion to accept Foundation Design's drilling data about the water table and bedrock levels, but find Foundation Design's opinion about possible ponding inconsistent with an approach of allowing the natural course of water flow to continue at the Project Site and not relevant to assessing the risk of adverse environmental impact. Doc 520 ¶ 32. *See* Town Mem at 16-17. Petitioners also pick parts of the Stormwater Pollution Prevention Plan—no cut and fill and level access road—to argue that such "statement indicates that the earthwork needed to prep the Project Site may have potentially adverse environmental impacts to drainage." Pet Mem at 20. In fact, the cut and fill and level access road references are requirements of the Town Code for every large-scale solar system and provide no basis for Petitioners' claim about earthwork needed to prep the particular Project Site proposed here. TC § 165-65.3 [F][1][b][3][e], [h].

Again Petitioners argue from their false premise that "the Proposed Project may result in or require modification of existing drainage patterns because it will cover 43 acres of land with impervious surfaces." Pet Mem at 20. Petitioners' persistent exaggeration is error and reflects their meritless claim. The actual area of solar panels and three concrete pads for inverters and

transformers amounts to only 9.4 acres of the 43 acres for the Project Site, and the solar panels are not impervious surfaces for assessing environmental risks no matter how many times Petitioners repeat their erroneous claim. Town Mem at 53-54. Petitioners argue that the solar arrays "will increase ground moisture between solar panels," but how such a condition could occur is not evident, nor why it would be significant, and Petitioners' only supporting reference to the claim is simply the same statement made by Petitioners' counsel in a letter to the Planning Board. Doc 328. Of course counsel's opinion and argument are not facts, and must be sourced to some reliable information for the Planning Board to find it relevant, but nothing of the sort is evident here.

Petitioners finally address their erroneous claim that solar panels must be considered impervious surfaces presumably because they deflect water. Pet Mem at 20. Petitioners acknowledge that the NYS Department of Environmental Conservation does not classify solar panels as impervious surfaces. Pet Mem at 20-21. *See* Doc 234. Yet Petitioners would impose on the Planning Board the duty to reject the DEC approach because it applies to Stormwater Pollution Prevention Plan review. *Id.* Petitioners seem to have forgotten that the Ontario County Soil and Water Conservation District similarly treats solar panels as pervious in their comments on DRS's proposed solar system, apart from the SWPPP context. Doc 111 at 20. And the nature of DRS's proposed ground-mounted solar system with gaps around each solar panel and vegetation below effectively allows rain and stormwater to fall, flow and be absorbed in the usual natural course. Town Mem at 53-54. As is evident, the Planning Board did not simply defer to the DEC's approach as Petitioners claim, and the Board's reference to the DEC view

does not negate the Planning Board's broader consideration or indicate that only the DEC view was considered. Doc 520 ¶¶ 14-15.

Lastly, Petitioners find fault with the draft Stormwater Pollution Prevention Plan calculations. Pet Mem at 21-22. But the Planning Board also had opinions from DRS's engineer and the Town engineer that the SWPPP stormwater calculations were reasonable in this case, both because the solar panels may properly be treated as pervious surfaces and because the access road would be decompacted after construction and then exist as a limited use pervious access road. Docs 334, 331. The Planning Board as lead agency certainly has the ability to select between the opinions of conflicting experts. Town Mem at 17. Again, then, the Planning Board properly exercised its independent duty to assess the environmental risks and determine, contrary to Petitioners' contention, that the DEC approach, OCSWD approach and the nature of the proposed ground-mounted solar system indicated that there would be no significant adverse environmental impact from these issues and that the appropriate classification of the impacts on drainage and stormwater runoff is small. Doc 339.

Open Space

Petitioners claim that the Planning Board misclassified impacts to open space as small. Pet Mem at 22. Petitioners seize on the Planning Board's note that DRS's proposed solar system will have a short term impact upon the loss of open space, but not a long term impact since the land will be reclaimed for agricultural use at the conclusion of the solar system's operational life. Doc 339 at 7 (¶ 11 e). Petitioners argue that the solar system is not a short term endeavor "and

will sever and fragment critical pieces of farmland for at least a generation." Pet Mem at 23. Of course the Smiths have agreed to share their farmland with DRS's proposed solar system. The solar system is designed to allow travel of cattle and farm equipment through the solar system footprint to prevent fragmentation of the land and the Smiths' farming operation, the Smiths are voluntarily relinquishing the "critical pieces of farmland" because they can continue their scale of cattle grazing and hay cropping as is without the space dedicated to the solar arrays, pads and access road, and the generation being affected will benefit for a generation from the income associated with the new combined conventional and solar farming arrangement on the Smiths' lot as Local Law No. 6 of 2017 was enacted to enable. The Planning Board also recognized that the open space reduction only amounted to some 9.4 acres, or less than 1/10th of 1% of the open space in the Town's agricultural lands of 11,326.37 acres, and leaves 75% of the Project Site as green open space. Doc 520 ¶ 24. *See* Figure #2 Map, Appendix. *See also Casino Free Tyre v. Town Board of Town of Tyre*, 51 Misc. 3d 665, 674 [Sup Ct Seneca Co 2016] ("The 45 acres of agricultural land taken out of production were appropriately found not to be a significant adverse consequence given the Town's 8,270 acres of agricultural land."). Moreover, even such a small reduction to open space is not permanent, as would be a residential development that Petitioners apparently prefer, but is temporary and could be restored whenever the solar system was removed for whatever reason. Hence, the Planning Board could validly find as it did that the temporary reduction in open space from DRS's proposed solar system would have only a small impact that was not significant.

Human and Environmental Health

Petitioners claim that the Planning Board misclassified impacts to human and environmental health as small. Pet Mem at 23. Petitioners point to trace amounts of toxic chemicals used to manufacture some solar panels and argue the presence of such chemicals prevent solar panels from being totally safe. *Id*. Petitioners argue that toxic compounds contained within some solar panels may leach out into the environment if panels break or are not disposed of properly, and the issue could be potentially significant because the Project Site is situated on an aquifer and near wetlands connected with other wetlands. Pet Mem at 24. The Planning Board certainly recognized this potential risk of adverse environmental impact from DRS's proposed solar system and required DRS to address the safety issue. Town Answer at 21-22. DRS did so. *E.g.*, Docs 415; 275 at 9-10. DRS demonstrated that the solar panels to be chosen for installation would be approved as non-hazardous by the United States Environmental Protection Agency, and UL (Underwriter's Laboratories), and would meet standards imposed by the International Electrotechnical Commission to protect against hazardous chemicals leaching from broken or damaged panels. *E.g.*, Doc 100 at 14, citing standards to be met as IEC 61215 (terrestrial solar PV panels suitable for long-term operation in general open-air climates, including passing tests for humidity-freezing, thermal cycling, outdoor exposure and hail), IEC 61730 (solar PV panels safety against electrical shock, fire hazard, and mechanical and structural safety (wind and snow)); UL 1703 (solar PV panels must pass tests for fire, temperature cycling, accelerated aging, corrosive atmosphere, arcing, handle wind and snow loads, *et al*.). *See also* Doc 415 at 12.

Solar panels to be used at the Project Site are comprised of a solid matrix of materials which do not mix with water or air, have been tested multiple times to ensure they will not leach harmful compounds even if broken, and will withstand rain, hail, wind and snow. Doc 415 at 41. Thus, the Planning Board validly concluded that any impact to human and environmental health will be small. Doc 399 at 20; 520 ¶ 23. It should be noted that the Planning Board's Special Use Permit conditions require monitoring and prompt replacement of broken solar panels, that the Town be advised of replacement panels to ensure continued compliance with the approved standards, and that regular monitoring of soil conditions at the Project Site continue during solar system operation. Doc 500.

Petitioners further contend that the draft decommissioning plan does not fully address the environmental risks posed by removal and future disposal of the solar panels offsite. Pet Mem at 24. That early draft of a decommissioning plan available during the SEQRA process was not approved as is required before DRS may construct its proposed solar system, and so did not contain all the provisions the Planning Board will require before a suitable Decommissioning Plan is approved. Docs 5, 90; *cf.* Doc 507. *See* TC § 165-65.3[H][5][c]. Determining disposal issues offsite in thirty years or so for a much more mature industry then is not feasible at present and inherently involves speculation. Currently some manufacturers have return policies, some compounds appear salvageable, and there should be additional options and disposal expertise that will materialize as the solar system industry matures. Doc 415 at 40-43. Moreover, the solar panels to be used at DRS's proposed solar system will have passed multiple tests against leaching of harmful compounds. Town Answer at 22. The Planning Board notes that its

Decommissioning Plan will address the issue of disposal of solar panels offsite when approved, as will the Town when the time to decommission the solar system comes. Doc 500. *See also* Town Mem at 17, citing *Matter of Chinese Staff & Workers' Assn. v. Burden*, 88 AD3d 425, 433 [1st Dept 2011], *aff'd* 19 NY3d 922 [2012] (it is neither arbitrary and capricious nor a violation of environmental laws for a lead agency to ignore speculative environmental consequences which might arise). The Planning Board could and did validly find on this record that the issue of offsite disposal of solar panels for this Project would not have a moderate to large impact on environmental health as Petitioners claim. Doc 339.

3. The Planning Board properly addressed categories of moderate to large impacts.

Petitioners acknowledge the Planning Board identified moderate to large impacts to land, agricultural resources, community plans, and character, but did not require any additional analysis of the potential impacts and so failed to take a hard look at the Project's potentially significant environmental impacts. Pet Mem at 25. The impacts identified are plain as the pastureland involved and did not need additional analysis, so Petitioners' claims are meritless.

Impacts to Land

DRS's revised solar system proposal will disturb 2.6 acres of agricultural soils, an increase of 1.1 acres over the original design. Pet Mem at 26. Certainly some soil disturbance is a necessity for every building project, but the impact from DRS's proposed solar system will be

minimal. Here 1.1 acres will be disturbed by steel posts to hold the solar arrays, for some cable burying, three small concrete pads to hold electrical equipment and an access road. Doc 503. Another .4 acres will be used temporarily for construction work storage on site, and the remaining (and increased) 1.1 acres of soil disturbance are due to increased landscape plantings due to a Town preference for screening trees over the present vegetation. Docs 503; 342 at 10-11. Accordingly, over 40 of the 43 acres involved at the Project Site will not disturb the existing vegetation or soils on the pastureland site.

Petitioners complain that the Planning Board offered only mitigation to address the potential impact and should have undertaken an extensive analysis of the potential impacts from such disturbance, but the impacts are obvious, necessary and limited—and not significant. Petitioners only cite to the geotechnical study recommendation for earthwork preparation (clearing and grubbing the solar array area), which has been noted was not appropriate for DRS's solar system proposal, and other recommendations were generic as well. Pet Mem at 26. *See* Town Mem at 55-56.

Petitioners also claim fire safety was not adequately addressed. Pet Mem at 26. Petitioners assert without evidence that "The possibility of flashing of high voltage equipment in case of a fire requires special training, equipment, and chemicals." Pet Mem at 27. In fact, the information before the Planning Board indicates that fire safety for DRS's proposed solar system has been considered and is under control.

As has been discussed, solar panels to be used at the Project Site meet multiple safety tests including some specific for fire safety. Town Mem at 60-61. The modules themselves are electrically protected and above-grade wires are both shielded and secured in order to avoid exposure or accidental contact. Doc 100 at 10. Inverters, transformers, and solar panels will meet appropriate industry safety standards by multiple testing organizations. Doc 100 at 14-17. Special grounding conductors will be used to bond the metal surfaces of the solar facility equipment to the earth to ensure proper grounding and reduce the risk of electronic shock to near zero. Doc 100 at 17-18. The potential for hot spots in local soil with variable thermal resistivity values will be addressed in the Planning Board's review of DRS's site plan which contemplates the usual encasement of underground wiring in conduit that insulates wires from the surrounding soil. *See* Doc 503. Inverter and transformer equipment are equipped with protection against abnormal operating conditions, will have monitors for temperature to promptly detect any electrical fires, and an Operations and Maintenance contractor will be monitoring the entire site with CCTV and system alarms 24/365, can shut down the system rapidly, and can coordinate any necessary responses from the Manchester Volunteer Fire Department and law enforcement. Doc 100 at 18, 31, 41. *See* Doc 520 ¶ 10, Ex H. *See also* Doc 290 at 15 (any fault will be contained at the source of connection).

Moreover, the extended SEQRA review process over 18 months and 14 public meetings provided an extraordinarily extensive opportunity for Petitioners or other interested persons to provide information about fires at solar farms anywhere but no such information was ever provided. In contrast, the experience of the Town of Seneca, New York with five large-scale

solar systems is that there is minimal risk for large scale fires and that the Town of Seneca has not had a fire call on any of their solar systems since installation of the first one in 2015. Doc 520 Ex H. This kind of detailed consideration indicates that the Planning Board took a hard look at the issue of fire safety, and Petitioners' claim otherwise is not well taken. *See Matter of Brunner v. Town of Schodack Planning Board*, 178 AD3d 1181, 1183-84 [3d Dept 2019] (consultation with fire department officials).

Impacts to Agricultural Resources

Petitioners recognize that the Planning Board identified moderate impacts to agricultural resources, but then argue improper mitigation was offered to remedy the Project's potentially significant environmental impacts. Pet Mem at 28. Petitioners misunderstand. DRS's proposed solar system, though large-scale and involving some 43 acres in total, will not disturb Class 1-4 soils in a way that "will make it hard or impossible to continue use of them for agriculture." *Id*. DRS's proposed solar system will in fact preserve those prime soils for future agricultural use, in stark contrast to other kinds of conversions to non-farm use such as residential development. *See* Doc 415 at 28. Petitioners continue to press a claimed "loss" of prime farmland due to DRS's proposed solar farm, but fail to acknowledge that the farmland is not "lost" but fallowed, that there will be no actual reduction in conventional agricultural use on the Smiths' property (hay cropping and cattle grazing), and further fail to adapt to the change made to the Town's A-80 Agricultural District by Local Law No. 6 of 2017, which specifically allowed large-scale solar farming on prime farmland with a special use permit. Pet Mem at 28. *Cf.* TC § 165-65.3; *see also* Town Mem at 71-72, *infra*. As has been discussed throughout the Town's response, the

nature and design of DRS's proposed ground-mounted solar system at the Project Site was validly found by the Planning Board in the exercise of its independent discretion to not have a significant adverse environmental impact, notwithstanding Petitioners' self-serving claims to the contrary.

Petitioners also argue that the Planning Board improperly relied on mitigation measures approved by the New York State Department of Agriculture and Markets, though without developing that argument here. Pet Mem at 28. *See* Town Mem at 87, *infra*. Certainly Planning Board discussion of mitigation measures does not reverse a finding of non-significance, and mention of an agency comment does not indicate such was the Planning Board's only concern or consideration. Doc 520 ¶¶ 12-15. And the nature of DRS's ground-mounted solar system that can be removed and the land restored to its current condition means that even its large scale presence will have no significant adverse environmental impact, apart from any mitigation measures to limit any impacts further. *See* Doc 520 ¶¶ 12, 27, 33.

Petitioners finally claim that the Planning Board did not adequately review the potential environmental impact of zinc-coated posts to be used for DRS's proposed solar system. Pet Mem at 29. Part of the basis of Petitioners' argument on the zinc issue is again their erroneous claim that "[t]he Project Site will be covered in impervious surfaces, which will limit the soil's ability to properly drain." Pet Mem at 29. In fact, the Project Site will not be covered in impervious surfaces, water will fall, flow and get absorbed in the usual natural course, and will

drain through the permeable soils and vegetative cover without issue, limiting water exposure to the solar array posts and alleviating Petitioners' concern. Town Mem at 53-54.

Steel posts to support the solar arrays will be galvanized with a zinc coating to better protect the steel from corroding over the term of the solar system. Doc 290 at 6. Petitioners acknowledge that the geotechnical study shows low soil corrosivity, and so will not corrode metal easily. Pet Mem at 29. *See* Doc 287. Information also before the Planning Board not referenced by Petitioners indicates that zinc is a naturally occurring element often found in the environment. Doc 290 at 7. Furthermore, the Planning Board received information about zinc from two engineers.

> Briefly, we do not believe that the galvanized piles proposed to be installed pose a threat to the environment; no mitigation measures should be required. The zinc coating is intended to bond to the steel to create a protective coat, therefore is not likely to interact with the groundwater once installed. The galvanizing process has been approved as a corrosion protection measure by the Federal Highway Administration for driven piles and culvert pipes along major waterways. The hot dipped zinc coating process also used for galvanized steel pipe for water supplies in residential homes. Zinc only poses an environmental issue when it accumulates in very high concentrations, usually associated with larger scale industrial or mining operations.

Doc 29 (Foundation Design, P.C., July 11, 2019)

> According to the USGS, zinc results in no ill health effect nor is it toxic to plants except in high levels. High levels of zinc are present in areas of zinc mining, industrial waste, metal plating, etc. We would not expect high levels of zinc released in the soils based on the application in which it's being used. In addition, based on conversations with the American Galv Association, zinc released from corrosion is not bio-available. This basically means the zinc cannot be further broken down to be consumed by organisms/plant life.

Doc 29 (Nick Allen, P. E., RBI Solar, July 9, 2019).

Finally, Petitioners' own engineer was concerned about the risk of corrosion of steel posts and damage to the racking systems, not harm to the environment from the presence of zinc. Doc 296 at 3. The Planning Board could rationally rely on these engineers for information about zinc for use here and not general studies unrelated to this environmental review. Town Mem at 17.

Thus, the Planning Board could rationally conclude that its investigation of zinc for use in this case was sufficient and so exercised its independent judgment and discretion to determine that zinc coatings would not have a significant adverse environmental impact in this case.

Impacts to Aesthetic Resources

The Planning Board identified moderate impacts to aesthetic resources based on visibility of the proposed solar system from publicly accessible vantage points on Fox Road and Yellow Mills Road seasonally and year round, but Petitioners again claim the Board offered improper mitigation. Pet Mem at 30. *See* Doc 339 at 6 ¶ 9.

Notably, Petitioners fail to identify any "aesthetic resource" at or around the Project Site as required to be relevant under DEC regulations, and neither the Town nor the Smiths characterize their property as an aesthetic resource that should be protected from DRS's proposed solar system. *See* 6 NYCRR § 617.7[c][1][v]. *See also* ECL 8-0105 [6] ("environment" includes objects of aesthetic significance). The Smiths' lot at 466 Yellow Mills Road is private property used for farming, there is no public or business function inviting public spectators, and the lot's only resource use by the Smiths is for conventional hay cropping and

cattle grazing—and soon solar farming. Petitioners make no argument that the aesthetics of the Smiths' private property are a source of support or revenue, and merely assert the "Project site consists of open pastureland with views of and visible to adjacent fields and residential properties." Pet Mem at 30. *Cf.* Figure #2 Map, Appendix. Not every claim of aesthetic value is legitimate or protected under SEQRA, and ordinary farmland amidst an agricultural district is not a resource of aesthetic significance deserving of special protection—and the Town has not previously so designated the Smiths' property. *See also Matter of Gallahan v. Planning Board of the City of Ithaca*, 307 AD2d 684, 685 [3d Dept 2003], lv denied 1 NY3d 501 [2003] (a view of an abandoned landfill can hardly be characterized as a type of scenic view warranting protection under SEQRA). Petitioners only argue the "existing viewshed" from an unspecified perspective is "inconsistent with the existing natural landscape," which condition, if relevant, necessarily exists for the first such large-scale solar system in Town. Pet Mem at 30. *See* Figure #2 Map, Appendix.

Petitioners recognize that the Planning Board required substantial screening (involving the additional disturbance of 1.1 acres), but complain "the proposed landscaping does not eliminate views of the Project." Pet Mem at 30. In fact, the Town Code does not require complete screening; only that which is practical—and screening only from residential uses. TC § 165-65.3 [F][1][b] ("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."). Moreover, Petitioners overlook the hundreds of feet of setback from Fox and Yellow Mills Roads, the modest height of the solar arrays, and the substantial landscape screening that will

obscure much of the solar system immediately and completely obscure it in five years. Town Mem at 45-46. Younger trees are preferable for transplanting because they survive winter better, and since the landscaping goal is a reliable and healthy tree screen, their shorter starting stature is warranted. *See* Doc 506 at 7, 10. Photo simulations of the proposed solar system with landscape screening do not show any significant attraction. Docs 325, 326. *See* Doc 268 at 12 (resident opined there is hardly any difference between the "before project" and "after project" renderings of the site). *See also* Figure #1 Map, Appendix. In sum, though parts of DRS's solar system may be visible at a distance to the public traveling on Fox Road or Yellow Mills Road for a bit, and to the Falangas and Mr. Geer if they go to the edge of their properties to peek at their neighbors' endeavor hundreds of feet away, the Planning Board could and did validly find that there would be no significant adverse environmental impact.

Petitioners continue to exaggerate the situation in an effort to fabricate an environmental disaster not present. According to Petitioners, DRS's "Project will cause a substantial change in land use [specifically permitted by Local Law No. 6 of 2017], will replace 30 acres of prime agricultural land [used for hay cropping and cattle grazing] with industrial solar arrays [9.4 acres with passageway for cattle and farm equipment and continued farming operations around the Project Site], and transform a rural parcel [zoned for large-scale solar farming with a special use permit] into an industrial one [that continues farming operations, and adds solar farming that does not involve any "industrial" characteristics such as noise, odor, dust, truck traffic, etc.]. Pet Mem at 30-31. *See* Figure #2 Map, Appendix. *See also Casino Free Tyre v. Town Board of Town of Tyre*, 51 Misc. 3d 665, 674 [Sup Ct Seneca Co 2016] ("The 45 acres of agricultural land

taken out of production were appropriately found not to be a significant adverse consequence given the Town's 8,270 acres of agricultural land."). As shown, Petitioners' claims are overblown and provide no basis to annul the Planning Board's considered, collective and independent judgment that DRS's proposed solar system will not have a significant adverse environmental impact.

Consistency with Community Plans

Petitioners recognize that the Planning Board identified moderate impacts to community plans because the proposed solar system's land use components may be different from and contrast with current surrounding land use patterns. Pet Mem at 32. Petitioners also acknowledge that the Project was a specially permitted use under Local Law No. 6 of 2017 and met the Town Code's density requirements. *Id*. Presumably Petitioners would acknowledge that DRS's proposed solar system would be the first large-scale ground-mounted solar system installed in the Town of Farmington and so its rows of solar arrays would necessarily be different and contrast with surrounding land use patterns that developed before such new technology existed and was permitted. Even so, Petitioners now argue that siting DRS's proposed solar system in the A-80 Agricultural District "directly contravenes the goal of the Town's Comprehensive Plan [last revised in 2011], which seeks to balance future development goals and natural resource protection." Pet Mem at 32. *See* Doc 520 Ex A.

Petitioners completely fail to recognize that the Town rebalanced its Comprehensive Plan development goals and natural resource protection in the A-80 Agricultural District where the

Smiths' farm is located with the enactment of Local Law No. 6 of 2017. TC § 165-65.3. Since large-scale solar farms are specifically and specially permitted in the A-80 Agricultural Zoning District by Town Code § 165-65.3, such enactment is essentially a legislative determination that such use is in harmony with the Town's Comprehensive Plan and will not adversely affect the neighborhood. *Matter of Edwards v. Zoning Board of Appeals of Town of Amherst*, 163 AD3d 1511, 1512 [4th Dept 2018]. Indeed, the 2017 Town Code section addressing solar voltaic systems specifically states it is the intent of its provisions to "Meet the goals of the Town of Farmington Comprehensive Plan" to provide public utility services that meet present and future needs of residents, "support green economy innovations," and support the State's renewable energy goals. TC § 165-65.3[B]. Consequently, contrary to Petitioners' claims, the new Local Law No. 6 of 2017 changed the Town's Comprehensive Plan and Future Land Use Plan so they now incorporate large-scale ground-mounted solar farms even in the Town's A-80 Agricultural District with a special use permit. Accordingly, DRS's proposed solar system is in fact consistent with Farmington's community plans even if different than current surrounding land use patterns. Petitioners' arguments based on the effectively superseded 2011 version of the Town's Comprehensive Plan and Future Land Use Plan are meritless, as is their claim that DRS's proposed solar system is too large since the Town Code does not contain a limit for large-scale solar farms and the Planning Board found DRS's revised solar system at its proposed size acceptable.

Petitioners further claim that DRS's proposed solar system is not appropriate to be sited "at the pastoral intersection of Yellow Mills Road and Rox Road," but there is nothing unique

about the intersection that is not essentially the same with every other similar stop-sign-controlled rural intersection in the A-80 Agricultural District—and so Petitioners' view would effectively deny large-scale solar systems in the Town's A-80 Agricultural District contrary to the 2017 Town law specifically allowing such use. Pet Mem at 33; *cf.* TC § 165-65.3. *See* Figure #2 Map, Appendix. Also, Petitioners exaggerate the importance of the drumlin that has existed since the last ice age and the effect on it of a ground-mounted solar system that will not discharge water or waste and will allow rain to fall and flow as naturally occurs now—which insignificant affect has already been addressed. Town Mem at 53-54. Lastly, Petitioners conclude that the Smiths' farm should remain just an active agricultural site without large-scale solar farming. Pet Mem at 33. Apart from the issue of neighbors attempting to dictate how the Smiths can manage their property in an area zoned for such use, the Smiths' property will remain an active agricultural site with continued hay cropping and cattle grazing the same as before, but with the addition of farming the sun as permitted under Local Law No. 6 of 2017.

Consistency with Community Character

Petitioners acknowledge that the Planning Board identified moderate impacts to community character due to the inconsistency of DRS's proposed solar system with the predominant architectural scale and character of the community and the existing natural landscape, but still object that more attention should be paid to this contrasting use. Pet Mem at 34. *See* Doc 339. Petitioners' argument is not well founded. *See* Figure #2 Map, Appendix.

To begin with, Petitioners fail to acknowledge that the community character of Farmington changed with enactment of Local Law No. 6 of 2017. Town Mem at 71-72, 74. While the current community character consists of predominantly agricultural use based on past land use practices employing conventional technologies, such character has been legislatively expanded to include large-scale ground-mounted solar systems like the one proposed by DRS for the Smiths' property. *Id.* Such large-scale solar farms are now consistent with the community character even if presently inconsistent with other agricultural uses of property in the A-80 Agricultural District or the character of the existing natural landscape that exists at present as a result of conventional agricultural use. *Id.* The Planning Board recognized that the proposed solar system could be viewed as inconsistent with the solely agricultural use and present natural landscape of the area, and thus the existing community character, but also recognized that the Town Code had changed to allow large-scale solar farms with a special use permit as part of a new community character. Docs 339 at 10; 342 at 19-20; 520 ¶ 49. The Planning Board found that DRS's proposed solar system had an acceptable density consistent with the Town's Comprehensive Plan, and that there were would be no significant adverse consequences from the change expressly permitted under the new Town Code. *See* Doc 342 at 19-20.

The Planning Board then discussed some mitigation issues but such discussion does not negate the Planning Board's finding that the proposed solar system was consistent with the new community character established by Local Law No. 6 of 2017. Docs 342 at 19-20; 520 ¶¶ 27, 33. Petitioners argue that DRS's proposed solar system cannot be considered a temporary use of farmland given its potentially long operational life, but the designation is appropriate. The solar

system can be removed at any time for a variety of reasons, with its removal enabling restoration of the site for conventional agricultural use again, unlike other non-farm uses such as residential development which permanently remove the Class 1-4 soils from future farming. Pet Mem at 34. Petitioners also argue that the income benefit to the Smiths from hosting DRS's proposed solar system is not relevant to a review of community character, but in fact Local Law No. 6 of 2017 specifically enabled the Smiths and other landowners in the A-80 Agricultural District to benefit from deals made with solar farm developers as part of a new community character and participation in the State's new Community Solar Program, for example. *See* TC § 165-65.3.

Petitioners claim the present agricultural use of the Smiths' property will be transformed into an "industrial use" with DRS's proposed solar system, but DRS's solar system does not involve common "industrial" negatives such as noise, odor, dust, or truck traffic, for example, and instead will be a quiet, modest-height, screened and isolated operation set back well away from roads and other properties. Pet Mem at 34. *But see* Figure #2 Map, Appendix; Docs 325, 284, 167 Appx D. Petitioners' attempt to falsify the solar system's features fails under analysis.

Petitioners assert that "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, which could discouraging [*sic*] more desirable future residential and agricultural development near the Project parcel." Pet Mem at 34. Petitioners overreach again and their argument is meritless.

First of all, DRS's solar arrays will be sited hundreds of feet back from any road. *See* Figure #1 Map, Appendix; Doc 503. Second, DRS's modest-height solar arrays (some nine feet tall) will not "dominate" anything as the photo simulations show. *See* Docs 325, 284, 167 Appx D. The solar arrays will sit hundreds of feet away from any road, will utilize anti-reflective technology and coatings, and will be tilted and facing south and so physically cannot reflect their low forest-level glare towards drivers. Docs 415 at 34-36, 275 at 21. Furthermore, Petitioners make no showing that DRS's proposed solar system will "interfere with the development and use of neighboring property" as claimed. Apparently it needs stating that nothing on the Smiths' property prevents neighbors from using or developing their own property, so this claim is nonsensical. Finally, Petitioners assert their subjective and self-serving opinion that solar arrays "will be perceived as an eyesore," apparently attempting to lump solar systems in with universally understood examples such as dumps, open pit mines or landfills. Pet Mem at 34. Contrary to Petitioners' claim, though, the proposed solar arrays are not an eyesore, are of modest height and hundreds of feet from any road or neighboring property, produce no noticeable glare, noise or dust, and will be largely screened initially and completely screened in five years. Town Mem at 46, 75; *see* Figure #1 Map, Figure #2 Map, Appendix. Although solar arrays are different and unfamiliar at first, they represent a future filled with quiet, cleaner and renewable local energy and so may come to be seen as a desirable addition to the Town's community character—even by Petitioners. *See* Doc 520 ¶ 25.

Regardless, Petitioners' revealed concern is that DRS's proposed solar system could discourage "more desirable future residential and agricultural development near the Project

parcel." Pet Mem at 34. That is, Petitioners want the area around their properties to be developed as a residential neighborhood, which would make area properties such as theirs more valuable when they sell out. *Id.* But of course future residential development would permanently change the land's use from pastoral agriculture to residential houses and driveways. Evidently, then, Petitioners' real interest is not preserving the pastoral prime farmlands of the A-80 Agricultural District around them but rather preserving their ability to sell their neighboring lands to developers of residential neighborhoods at the highest price possible.

Property values are Petitioners' key concern and so their final argument on community character involves reduced property values. Pet Mem at 35. Petitioners claim the Planning Board ignored the opinion of Rowe Realty that DRS's solar system on the Smiths' property "may become an external obsolescence, driving down property values." *Id. See* Doc 236. Contrary to Petitioners' position, the Rowe Realty letter dated March 20, 2019 is not evidence as claimed but rather opinion, as its conclusion is speculative, is admittedly based on assumptions, and lacks any empirical data to substantiate its conclusion that DRS's proposed solar system may drive down neighborhood property values. *See* Doc 236. *See also Matter of Brighton Residents Against Violence to Children, Inc. v. MW Properties, LLC*, 304 AD2d 53 [4th Dept 2003], *lv denied* 100 NY2d 514 [2003] (although petitioner refers to the "unsightly" nature of the berm and alleges that it lowers the property value of an adjacent plaza owned by certain members of petitioner corporation, petitioner offered no evidence to support that conclusory allegation); *PDH Properties, LLC v. Planning Bd of Town of Milton*, 298 AD2d 684, 687 [3d Dept 2002] ("While a nearby resident who is a realtor wrote a letter expressing concern about the impact on

the value of surrounding homes, the letter was totally conclusory with no reference to any substantiating empirical data.").

Moreover, the Rowe Realty opinion was assertedly based on experience that did not include sales in the vicinity of a solar farm, nor was there any explanation of why permitted large-scale solar farming is not already factored in pricing for property for sale in the A-80 Agricultural District since enactment of Local Law No. 6 of 2017. *See* Doc 236. Petitioners acknowledge that the Planning Board had other data showing that solar farms did not affect property values in other areas. Pet Mem at 35. *See*, *e.g.*, Docs 168 Appx E; 173 at 10; 275 at 30-31, Appx C. Petitioners argue the information was not comparable, but, apart from the issue of relevance and the absence of property values as a factor in the Town Code, the Planning Board as lead agency had the authority and discretion to choose among differing property value information and so could validly proceed as if property values would not be adversely affected as claimed. Town Mem at 16-17. *See* TC § 165-65.3.

As this extended discussion shows, the Planning Board could and did validly exercise its independent judgment as lead agency to conclude that DRS's proposed solar system is consistent with the new community character for the Town of Farmington, and so find further that the proposed solar system, whether as originally proposed or revised, would not have a significant adverse environmental impact in this case.

Accordingly, as is evident from the foregoing discussion, the Petition's First Cause of Action for improper identification of the environmental issues of concern is meritless and must be denied.

B. Petition's Second Cause of Action is meritless as the Planning Board did take the requisite "hard look" at the potential environmental issues.

The Petition's Second Cause of Action alleges the Planning Board failed to take a hard look at the Project's potentially significant environmental impacts. Petition ¶ 275. The Petition asserts a laundry list of claimed potentially significant adverse impacts that were not thoroughly reviewed: "impacts to land, agricultural resources, aesthetic resources, open space, consistency with community plans and character, drainage, wetlands and water resources, vegetation and fauna, transportation and traffic, historic resources, geological resources, and environmental and human health." Petition ¶ 276.

As discussed in detail in the previous Point of the Planning Board's proper identification and classification of relevant environmental areas of concern, the Planning Board investigated and considered all the relevant environmental issues Petitioners raise and the information provided about them and so took the requisite "hard look" at Petitioners' claims as has been discussed—both originally and for the revised solar system proposal in the renewed SEQRA review. *See* Town Mem at 62 (impacts to land); Town Mem at 65 (agricultural resources); Town Mem at 68 (aesthetic resources); Town Mem at 58 (open space); Town Mem at 71 (consistency

with community plans); Town Mem at 73 (consistency with community character); Town Mem at 51 (drainage, wetlands and water resources); Town Mem at 44-45 (vegetation and fauna); Town Mem at 46-48 (transportation and traffic); Town Mem at 48-49 (historic resources); Town Mem at 49-50 (geological resources); and Town Mem at 60 (environmental and human health). Those referenced discussions will not be repeated here. *See also* Town Mem at 21-23.

Furthermore, the very large Administrative Record compiled over a year and a half in fourteen public meetings over two SEQRA reviews for essentially the same proposed solar system also demonstrates that the Planning Board took an extraordinarily "hard look" at the potential environmental issues involved with DRS's large-scale ground-mounted solar system proposal. *See* Answer at 17-38. *See also Matter of Kaufmann's Carousel, Inc. v. City of Syracuse Industrial Development Agency,* 301 AD2d 292, 304 [4th Dept 2002], lv denied 99 NY2d 508 [2003] (extensive record reflects sufficient study of project's potential environmental impacts). Petitioners and their counsel's active participation in the SEQRA review process and multiple submissions on environmental issues and the Planning Board's legal responsibilities relating thereto ensured that the Planning Board took the required "hard look" at DRS's proposed solar systems. Town Mem at 50. *See also Matter of Hohman v. Town of Poestenkill*, 179 AD3d 1172, 1175 [3d Dept 2020] (town found to have complied with its obligations under SEQRA when, among other things, town took into consideration comments by petitioners); *Matter of Brunner v. Town of Schodack Planning Board*, 178 AD3d 1181, 1184 [3d Dept 2019] (lead agency was found to have taken the requisite "hard look" in part because petitioners acknowledge that they participated in the public hearings and submitted written comments).

As was addressed earlier, the Planning Board's SEQRA reviews met all the requirements for a "hard look" at the relevant environmental issues: a lengthy SEQRA process was had; citizens had multiple and fair opportunities to ask questions and provide comments at public hearings, including Petitioners and their counsel numerous times; other agencies were requested for comment and provided some; experts opined on technical environmental issues; and Parts 1, 2 and 3 of the DEC's Full Environmental Assessment Form were considered and completed (twice). *See* Town Mem at 22-25.

Consequently, the Court can and should conclude that the Planning Board took a very "hard look" at the possible environmental impact of DRS's proposed solar system, and so SEQRA's mandate was fulfilled for this aspect of review and the Petition's claim to the contrary is meritless.

C. Petition's Third Cause of Action is meritless as the Administrative Record is full of information substantiating the Planning Board's determinations.

To begin with, part of Petitioners' Third Cause of Action must be dismissed as a matter of law as they assert an incorrect standard as the basis for their claim—that the Planning Board's decision to issue a Negative Declaration was not supported by substantial evidence on the record. Petition ¶ 279.

The requirement of substantial evidence only applies to a determination made after a judicial or quasi-judicial hearing. *Matter of League For The Handicapped, Inc. v. Springville Griffith Inst. Cent. School District*, 66 AD3d 1398, 1399 [4th Dept 2009].

The Planning Board's determination being challenged was not made upon a quasi-judicial hearing but only upon public hearings as appropriate for this kind of policy decision by a town agency. *See Matter of League For The Handicapped, Inc.*, *supra* (contrary to petitioner's contention, there is no substantial evidence issue to be determined in this proceeding to challenge a SEQRA neg dec determination inasmuch as there was no hearing held at which evidence was taken pursuant to direction by law).

Alternatively, the record demonstrates the Planning Board's Negative Declaration was supported by substantial evidence in a very large Administrative Return and so was rational. *See* Docs 88, 89-352, 359, 413-518, 520-28.

The Petition also claims that the Planning Board's decision to issue a Negative Declaration was arbitrary and capricious, again reciting Petitioners' laundry list of environmental impacts supposedly ignored. Petition ¶ 279. Contrary to Petitioners' claim, the large Administrative Record and the prior discussion of all the environmental issues shows that the Planning Board considered all of the asserted areas of concern and reached a rational determination with regard to each such category. Again, the fact that the Planning Board did not find that DRS's proposed solar system would have a significant adverse impact on those

environmental concerns as Petitioners desired does not mean that the Planning Board's consideration was inadequate or arbitrary or capricious as Petitioners assume and argue.

Petitioners' Third Cause of Action is meritless and this claim must be dismissed.

D. Petition's Fourth Cause of Action is meritless as the Planning Board did not issue a conditioned negative declaration.

Petitioners' Fourth Cause of Action must be dismissed as a matter of law as the Planning Board's December 18, 2019 Negative Declaration was not a conditioned negative declaration as claimed. Petition ¶¶ 283-85. Petitioners claim: "The Neg Dec herein is based on mitigation measures to land, agricultural land, stormwater, and traffic, and, as such, is the substantive equivalent of a CND." Pet Mem at 3.

Petitioners mischaracterize the Planning Board's findings that DRS's proposed ground-mounted solar system will not have a significant adverse environmental impact. Docs 342 at 22; 520 ¶¶ 19-27.

As discussed throughout the Town's Answer and this Memorandum of Law in support, the Planning Board considered numerous environmental issues and found that the nature of DRS's proposed ground-mounted solar system design and its location avoided adverse environmental impacts that could be significant. *See* Doc 520 ¶¶ 19-27. Once such a finding is

made, the inquiry for an impermissible conditioned negative declaration concludes. *See Matter of Merson v. McNally*, 90 NY2d 742, 753 [1997]. Therefore, contrary to Petitioners' claim, the Planning Board did not find that DRS's proposed solar system would not have significant adverse environmental impacts based on mitigation measures. Rather, the Planning Board specifically found that "DRS's revised solar system proposal sited on part of the Smiths' property away from wetlands would not have a significant adverse environmental impact, and that mitigation measures discussed reduced any impact even further…." Doc 520 ¶ 27. *Accord*, Doc 342. *See* Town Mem at 29. Thus the Planning Board's findings that DRS's proposed solar systems would not have a significant adverse environmental impact were not dependent on mitigation measures. Although the Planning Board did mention some mitigation measures as part of its practice of reducing any impacts as much as possible, such discussion does not reverse or negate the Board's first findings that any adverse environmental impact from the proposed solar system would not be significant. Docs 342 at 22; 520 ¶¶ 12, 27, 33.

Thus, contrary to Petitioners' claim, the Planning Board did not condition its December 18, 2019 Negative Declaration on mitigation measures, and so this claim must be dismissed. *See Matter of Merson v. McNally*, 90 NY2d 742, 753 [1997].

Petitioners devote much of their Memorandum of Law to reprise their prior arguments in an effort to show the Planning Board conditioned its Negative Declaration on mitigation measures imposed and to be imposed. Pet Mem at 38-42. As these issues have already been

addressed in detail, and shown to be unfounded, the Town merely notes Petitioners' subject matter claims and provides the place where the Town's Memorandum of Law responds.

Petitioners reiterate their claims regarding land, wetland and water resources (Pet Mem at 38; *cf.* Town Mem at 62-65, 51-54), and agricultural resources in this context. Pet Mem at 41; *cf.* Town Mem at 65-68. Petitioners again misconstrue the Planning Board's August 7, 2019 discussion of the geotechnical study finding that neither bedrock nor the water table lie near the surface of the Project Site so those potential issues were resolved without environmental concern, with the study's generic recommendations of lesser consideration. Pet Mem at 38; *cf.* Town Mem at 55-56. Instead, Petitioners grasp at the Planning Board comment that appropriate mitigation measures were identified, but as addressed before such discussion does not convert a finding of non-significance to a finding of significance, and does not demonstrate that the Planning Board conditioned its Negative Declaration on such minor matters. Doc 520 ¶¶ 12-15, 27. Petitioners' additional claims regarding drainage were addressed and shown to be misplaced as a result of the nature of the proposed ground-mounted solar system that will allow precipitation to drain naturally as it does at present. Pet Mem at 39; *cf.* Town Mem at 53-54. Petitioners' opinion that the slight shift of the revised solar system's footprint forty-five feet southeast changed Project Site conditions was rebutted by the engineering firm that conducted the bedrock and water table study and the Planning Board was well within its discretion to accept the engineering firm's view on that point. Pet Mem at 40; *cf.* Doc 331. *See* Town Mem at 17.

Petitioners claim that the Planning Board improperly relied on a Stormwater Pollution Prevention Plan (SWPPP) and issuance of a Stormwater Discharge Elimination System Permit (SPDES) by the NYS Department of Environmental Conservation to mitigate construction stormwater, which cannot be done without a final site plan not then approved. Pet Mem at 40-41. The Planning Board recognized the difference between stormwater during solar system operation and construction stormwater, and found that rain during solar system operation (post-construction stormwater) would be handled at the Project Site in the natural normal course due to the nature and design of the solar system letting rain fall through the solar arrays to the vegetated and permeable ground beneath and not adding any water itself, and so reasonably concluded that there would be no significant adverse environmental impact on such stormwater or drainage from the proposed solar system. Town Mem at 53-54; Doc 520 ¶¶ 46, 26, 21, 22, 27. Moreover, the Planning Board determined that rain during construction would be addressed with familiar procedures and regulations used for all major building projects in the Town (SWPPP and SPDES). Docs 342 at 11-12; 520 ¶ 26, 46. Thus, the Planning Board's December 18, 2019 Negative Declaration found that ordinary stormwater during solar system operation will flow and be absorbed naturally and so would not have a significant adverse environmental impact, and any stormwater occurring during the temporary period of construction would be handled with a SWPPP and SPDES as do other big building projects in Town with which the Town has substantial experience and so is not a significant environmental issue. *See Matter of Brunner v. Town of Schodack Planning Board*, 178 AD3d 1181, 1183 [3d Dept 2019] (planning board could properly defer stormwater issues to future SWPPP).

Lastly, the Planning Board determined that the Project would have no significant impacts to agricultural resources, but Petitioners claim that the Planning Board supposedly conditioned its Negative Declaration on mitigation measures imposed by the New York State Department of Agriculture and Markets. Pet Mem at 41-42. Again, Planning Board mention of NYSDAM's mitigation measures does not negate the Board's finding that DRS's revised solar system proposal would not have a significant adverse environmental impact on agricultural resources. Doc 520 ¶¶ 12, 27, 48. Moreover, NYSDAM's mitigation measures are minor—continued cattle grazing, thirty foot pathway through solar arrays, and re-merging the subdivided parcels upon decommissioning—and do not address core environmental concerns about the proposed solar system and were already incorporated in DRS's solar system proposal. *See, e.g.*, Docs 503; 342 at 16; 507 at 15; 275 at 15. *See also Friends of Port Chester Parks v. Logan*, 305 AD2d 676 [2d Dept 2003] (lead agency's express conditioning of negative declaration for proposed action on approval from NYS Thruway Authority regarding traffic issues did not violate SEQRA).

Petitioners' last claim about future mitigation measures believed needed is also misplaced when the Planning Board has already found that the nature, design and location of the proposed solar system means that DRS's revised solar system will not have a significant adverse environmental impact. *See Residents Against Wal-Mart ex rel. Rice v. Planning Bd. of Town of Greece*, 60 AD3d 1343, 1345 [4th Dept 2009], *lv. denied*, 12 NY3d 715 [2009] (petitioner's contention that the planning board erred in issuing a conditional negative declaration in this Type I SEQRA action is without merit as the record establishes that the conditions were not imposed in an attempt to avoid a determination that the project has a significant adverse environmental

impact, but addressed aesthetic aspects of the project). Mitigation measures discussed by the Planning Board in this context merely seek to reduce insignificant environmental impacts even further—and cannot serve to resurrect an insignificant impact into a significant one. Doc 520 ¶¶ 12, 27.

Finally, and alternatively, the Board's December 18, 2019 Negative Declaration was not an *impermissible* conditioned negative declaration. *See Matter of Merson v. McNally*, 90 NY2d 742, 752-54 [1997]. As has been repeatedly discussed, DRS's proposed solar systems involve minimal risk to the environment and the Planning Board as lead agency under SEQRA has found adverse environmental impact from the proposed project to be insignificant. Docs 342; 520 ¶¶ 19-27. Revisions to DRS's proposed solar system and mitigation measures were part of the give-and-take of the application process and were addressed in an open public process consisting of fourteen public meetings, and involved other agencies, the sharing of DRS information with the public, and the provision of multiple opportunities to ask questions and present resident concerns, to which DRS was entitled to, and did, respond with various revisions to its proposal. Town Answer at 17-38. As a result of the extensive public process resulting in an acceptable solar system proposal that will not have a significant adverse environmental impact, the Planning Board's December 18, 2019 Negative Declaration is not an impermissible conditioned negative declaration that must be annulled, contrary to Petitioners' claim. *Matter of Merson, supra.*

E. Petition's Fifth Cause of Action is meritless as the Planning Board did not delegate its lead agency responsibilities.

Petitioners' Fifth Cause of Action asserts that the Planning Board improperly delegated its responsibilities under SEQRA for impacts to agricultural land and stormwater/drainage impacts to state agencies. Petition ¶¶ 287-88. Pet Mem at 43-45. Petitioners contend that the Planning Board's failure to comply with SEQRA's procedural requirement for lead agency determination of environmental issues requires annulment of the Board's Negative Declaration. Pet Mem at 45. As will become evident, the Planning Board did not delegate its authority or responsibilities to either the New York State Department of Agriculture and Markets (NYSDAM) or the Department of Environmental Conservation.

Petitioners begin their procedural argument by claiming that the Planning Board improperly delegated its authority to the Department of Environmental Conservation by failing "to independently review the Project's potential impacts to ground water and drainage." Pet Mem at 44. Petitioners' support for their claim only amounts to the Planning Board's mention of DEC practice in the Administrative Record to the effect that solar panels are not considered impervious surfaces for addressing ground water conditions. Pet Mem at 44. *See* Doc 234. As has been discussed, mere mention of another agency's comment or practice does not mean the Planning Board simply deferred to such matter. Doc 520 ¶¶ 13-15. Other agency viewpoints can constitute beneficial advice and SEQRA specifically involves other agencies for just such purpose when evaluating environmental impacts. *See* 6 NYCRR 617.3[d]; *Coca-Cola Bottling Co. of New York, Inc. v. Board of Estimate of City of New York*, 72 NY2d 674, 682 [1988].

Indeed, nothing in SEQRA bars an agency from relying upon information or advice received from other agencies or consultants, provided that the reliance was reasonable under the circumstances. *See Matter of League For The Handicapped, Inc. v. Springville Griffith Inst. Cent. School District*, 66 AD3d 1398, 1399 [4th Dept 2009]. So even if the Planning Board had relied solely on DEC's position on solar panels as not impervious surfaces, such reliance would still not have provided a sufficient basis to hold that the Planning Board improperly delegated its lead agency responsibility. *Matter of League For The Handicapped, Inc., supra.*

Moreover, the Planning Board did not simply defer to the DEC position but had other information also supporting the DEC's position as reason to rely on it and adopt it as its own. As has been discussed, the Ontario County Soil and Water District also considers solar panels to be pervious surfaces. Town Mem at 53. And, of course, the Planning Board investigated the issue and found that the nature and design of DRS's ground-mounted solar system uses solar arrays with drip edging around each of the solar panels allowing precipitation to fall past and drain onto the vegetative cover and permeable ground beneath as it does at present. Town Mem at 54. The Planning Board considered these factors, along with the DEC perspective, and reached an independent and collective conclusion in accordance with the Board's lead agency duties that solar panels are not impervious surfaces and DRS's proposed solar systems let water fall, flow and be absorbed largely the same as occurs at the Project Site presently. Doc 520 ¶¶ 21, 22, 45. The Planning Board is not obligated to specify every aspect of an issue it considered, but to the extent Petitioners were confused, the Planning Board clarified the issue. Doc 520 ¶¶ 45, 13. *See* Town Mem at 17, citing *Matter of Village of Ballston Spa v. City of Saratoga Springs*, 163

AD3d 1220, 1224 [3d Dept 2018] (the lead agency has discretion to determine whether there was a need to explain why any particular aspect of the proposed action will not have a significant adverse impact on the environment). It was appropriate for the Planning Board to recognize the State Department of Environmental Conservation, and inappropriate for Petitioners to assume that the Planning Board simply abandoned its authority and responsibility as lead agency on this matter when the Board had invested so much time and attention in ensuring a complete SEQRA review of DRS's proposed solar systems. *See, e.g., Akpan v. Koch,* 75 NY2d 561, 574-75 [1990] (while city agencies were undeniably involved in the SEQRA review process, the record supported the trial court's finding that the board merely relied upon the expertise of these agencies, but retained and exercised its role as the lead agency assessing the environmental impact of the proposed action).

Similarly off base is Petitioners' claim that the Planning Board conditioned its Negative Declaration on stormwater impacts being mitigated by a Stormwater Pollution Prevention Plan approved by the Department of Environmental Conservation. Pet Mem at 45. As has been addressed, the Planning Board considered stormwater during construction and during solar system operation as separate issues and did not defer consideration of the operational solar system's potential impact on stormwater at the Project Site to some other agency as part of the Board's SEQRA review. Rather, the Planning Board addressed stormwater issues during the solar system operational phase itself. Town Mem at 53, 58; Doc 520 ¶ 46. Construction stormwater issues depend upon the final site plan not available at the time of the SEQRA

reviews, and so were properly deferred to the SWPPP process the Town employs for every major building project. *Id.*

Also meritless is Petitioners' claim that the Planning Board did not independently address impacts to agricultural lands but improperly deferred to the State's Department of Agriculture and Markets (NYSDAM). Pet Mem at 45; Petition ¶ 251. Petitioners acknowledge that NYSDAM responded to the Planning Board's request for comments on DRS's proposed solar system, but then contend that the Board simply deferred to NYSDAM's conclusion that the project would not have an unreasonably adverse effect on the continuing viability for farm enterprises. Pet Mem at 45; *see* Doc 244. The Planning Board did discuss the NYSDAM response, but Petitioners err in concluding that the State agency's response was the only information the Planning Board considered with regard to agricultural land. As has been discussed, the nature and design of DRS's proposed ground-mounted solar farms will only minimally affect the ground beneath the solar arrays, water and vegetation will largely continue unaffected, and the Class 1-4 soils will remain fallow during the solar system's operation and until decommissioning when they will be restored to their current condition. Town Mem at 54, 25-26, 65. Moreover, the Smiths will continue to crop hay and graze cattle at the same scale as present even with the addition of solar farming amidst their property at 466 Yellow Mills Road. Doc 520 ¶ 25.

These factors are inherent in DRS's solar system proposals and are so dominant they do not need to be repeatedly mentioned by the Planning Board as Petitioners would unreasonably

require. NYSDAM's response was noteworthy because different, and warranted the courtesy of acknowledging its response and position. But the Administrative Record is clear that the Planning Board did not simply defer to NYSDAM and diligently discharged its lead agency authority and responsibility to conduct public hearings, prepare Parts 2 and 3 of DEC Full Environmental Assessment Forms, and reach an independent and collective judgment that the impacts to agricultural lands from DRS's proposed solar systems would not be significant. *E.g.*, Docs 342, 339, 340. *See* Doc 520 ¶¶ 15, 45. *See also, e.g., Matter of Wooster v. Queen City Landing, LLC*, 150 AD3d 1689, 1691 [4th Dept 2017]; *Matter of League For The Handicapped, Inc. v. Springville Griffith Inst. Cent. School District*, 66 AD3d 1398, 1399 [4th Dept 2009]; *Matter of Halperin v. City of New Rochelle*, 24 AD3d 768 [2d Dept 2005].

Consequently, contrary to Petitioners' claim, the Planning Board did not improperly delegate its lead agency authority to either NYSDAM or the DEC, and made its own independent determinations of the environmental issues involved in compliance with SEQRA procedure and its lead agency responsibilities. *See* Doc 520 ¶¶ 13-15, 45.

F. Petition's Sixth Cause of Action is meritless as the superseded August 7, 2019 Neg Dec did not have to be rescinded under SEQRA regulations.

Petitioners' Sixth Cause of Action asserts that the Planning Board failed to rescind its Negative Declaration. Petition ¶¶ 291-92; Pet Mem at 46. Petitioners cite part of the SEQRA regulations to argue that "a lead agency must rescind a Neg Dec when substantial changes are proposed for a project, new information is discovered or changed circumstances affect a project," citing 6 NYCRR 617.7(f). Petition ¶ 291. *See also* Pet Mem at 46.

In fact, the cited regulation only requires rescission of a negative declaration when *substantive*: (i) changes are proposed for the project; or (ii) new information is discovered; or (iii) changes in circumstances related to the project arise; that were not previously considered *and the lead agency determines that a significant adverse environmental impact may result*. 6 NYCRR 617.7[f] (emphasis added).

Thus, the DEC regulation only requires rescission of a negative declaration when *substantive* changes are proposed, when *substantive* new information is discovered, or when *substantive* changes in circumstances related to the Project arise—*and the lead agency determines that a significant adverse environmental impact may result*. 6 NYCRR 617.7[f].

In this case, the Planning Board validly found that DRS's revised solar system proposal (with some minor rearrangement of solar arrays that shifted the solar system footprint some 45'

southeast of the original proposal) was not materially different than DRS's original solar system proposed, and so did *not* contain substantive changes, or substantive new information or substantive changes circumstances—and would *not* result in a significant adverse environmental impact. Doc 342. *See* Doc 520 ¶¶ 19-27.

Consequently, the Planning Board had no duty under the cited regulation to rescind its August 7, 2019 Negative Declaration, as Petitioners wrongly argue based on a misinterpretation of the DEC regulation. That first Negative Declaration was effectively abandoned anyway once the Zoning Board of Appeals denied DRS's requested setback variances for its original solar system proposal and that original proposal design could not be approved under the Town Code with the unallowed 20' setbacks it utilized. Town Mem at 10-11.

Thus, Petitioners' claim that the Planning Board failed to comply with proper SEQRA procedure by rescinding its August 7, 2019 Neg Dec is meritless and must be dismissed.

G. Petition's Seventh Cause of Action is meritless as semantics do not affect the Planning Board's substantive determination.

Petitioners' Seventh Cause of Action asserts that the Planning Board improperly simultaneously affirmed and amended its August 7, 2019 Negative Declaration. Petition ¶¶ 295-97. *See also* Pet Mem at 47-48. The Petition further asserts that the Planning Board's December 18, 2019 Negative Declaration did not comply with the requirements of 6 NYCRR 617.7 [e][2], which requires an amended negative declaration contain reference to the original negative

declaration and discuss the reasons supporting the amended determination. Petition ¶ 296. Both claims are meritless.

Petitioners raise a minor issue about some semantic confusion in the Planning Board's paperwork that has no substantive effect. The Court will note that the only relevant Negative Declaration is the one issued by the Planning Board for DRS's revised solar system proposal on December 18, 2019. Town Mem at 10-11. The Planning Board's August 7, 2019 Negative Declaration issued for DRS's original solar system proposed with 20' setbacks that required area variances was made obsolete when DRS abandoned its original solar system design for lack of setback variances and proposed a revised design that did not require setback variances. *See* Docs 317-21.

The Planning Board's SEQRA Resolution of December 18, 2019 indicated the Board was affirming its prior August 7, 2019 Negative Declaration result, while Part 3 of the Planning Board's Full Environmental Assessment Form notes that DRS revised its proposed solar system since the August 7, 2019 Neg Dec was issued, and that a renewed SEQRA review was undertaken though resulting in another Negative Declaration for the revised solar system, so some amendment of the record was in order. Docs 342 at 22; 340. How to describe the substantive process and new result for the unfamiliar situation and which is unclear in the DEC regulations resulted in some semantic confusion but no substantive defect as the Planning Board has clarified. *See* Doc 520 ¶¶ 34, 39-41. *See also Matter of Frigault v Town of Richfield*

Planning Bd., 128 AD3d 1232, 1234 n 2 [3d Dept 2015], *lv denied* 26 NY3d 911 [2015] (board's imprecise language did not affect its substantive result).

Regardless of the terminology used to describe the process, the Planning Board renewed its SEQRA review after DRS revised its solar system proposal slightly. The Planning Board's renewed SEQRA review consisted of consideration of the revised design, sending the revised design to involved agencies, requiring DRS to complete a new Part 1 FEAF, conducting multiple new public meetings on the revised solar system proposal, receiving new public comment from residents such as some Petitioners and their counsel, considering differences between the two solar system proposals and considering whether there were new environmental impacts, completing new Parts 2 and 3 of the FEAF, determining that there were no material changes in the two designs for SEQRA purposes, and again determining that DRS's solar system proposal, even as revised, would not have a significant adverse environmental impact. Consequently, the Planning Board issued another but new Negative Declaration on December 18, 2019. *See* Docs 342; 520 ¶ 40.

Whether the Planning Board's new December 18, 2019 Negative Declaration is described as an affirmance, or amendment, or some other term, the substance of the matter is that the Planning Board renewed its SEQRA review of DRS's revised solar system and on an amended record again concluded a Negative Declaration for the revised proposal was warranted, as had the original proposal. Petitioners understood this result earlier. *See* Doc 353 (Petitioners' Second Amended Petition ¶ 109: "At its December 18, 2019 Planning Board meeting, the

Planning Board completed Parts 2 and 3 of the Full Environmental Assessment Form, *and the board voted to amend its public record and affirm its prior SEQRA determination*.") (emphasis added). *See also Matter of Frigault v Town of Richfield Planning Bd.*, 128 AD3d 1232, 1234 n 2 [3d Dept 2015], *lv denied* 26 NY3d 911 [2015] (board's imprecise language did not affect its substantive result); *Town of Victory v. Flacke*, 101 AD2d 1016 [4th Dept 1984] (agency's failure to submit a long environmental form as required under SEQRA had no substantive effect and did not require reversal of the agency determination since a proper examination of environmental impacts was conducted). No meaningful error resulted from the inconsistent terminology, and there is no basis here for invalidating the Planning Board's additional SEQRA work for DRS's revised solar system proposal. *Frigault, supra; Town of Victory, supra.*

As the Planning Board issued a new Negative Declaration for DRS's revised solar system proposal on December 18, 2019, the Board did not in fact amend the August 7, 2019 Neg Dec, which had been effectively superseded by the Zoning Board of Appeals' decision not to grant DRS the setback variances needed for its original design. *See* Doc 299. Thus the Planning Board's new Negative Declaration dated December 18, 2019 did not have to refer to the old superseded Neg Dec of August 7, 2019, as would an amended neg dec under DEC regulations, and the Board's new Negative Declaration was published as required for new negative declarations in the NYS Department of Environmental Conservation's Environmental Notice Bulletin. Docs 416; 520 ¶ 42. Hence Petitioners argument on this issue is misplaced and the Planning Board's new Negative Declaration dated December 18, 2019, complies with DEC regulations and does not violate SEQRA procedures as claimed. Pet Mem at 47.

H. Petition's Eighth Cause of Action is meritless as the DRS's revised solar system proposal met the Town Code requirements for a special use permit.

Petitioners' Eighth Cause of Action asserts that the Planning Board's decision to grant a special use permit was arbitrary and capricious. Petition ¶¶ 299-301. *See also* Pet Mem at 48-60.

To the contrary, the Planning Board's extensive process for considering the application of the Smiths and DRS for a special use permit in this matter is summarized in the Town's Answer, which demonstrates that Petitioners' claim of arbitrary decision-making in this case is meritless. Town Answer at 38-43.

Petitioners contend that the Planning Board failed to make the findings required by Town Code § 165-99[C][5] before granting the special use permit for DRS's revised solar system in this case. Pet Mem at 48. Section 165-99[C][5] provisions are general requirements for all special use permits, and are part of the specific requirements for special use permit applications for large-scale ground-mounted solar systems. TC § 165-65.3[E][1].

The Planning Board made numerous findings regarding the specific requirements for DRS's large-scale ground-mounted solar system, which largely overlap the general provisions of Section 165-99[C][5]. Doc 499. The Planning Board's specific findings and approval of a

special use permit with extensive conditions for DRS's revised solar system proposal implicitly found the general provisions of Section 165-99[C][5] had also been met. *See* Docs 499, 500.

Petitioners evidently insist that Planning Board findings directly address the general provisions of Section 165-99[C][5] in order to validate the Planning Board's substantial work addressing the requested special use permit for DRS's proposed solar system and establishing appropriate conditions for a new kind of specially permitted use of the A-80 Agricultural District in which the Smiths' property is located. But any perceived inadequacies in formal findings and conclusions do not invalidate the Planning Board's determination since it can be adequately ascertained from a review of the record and Administrative Return that the decision had a rational basis in conformance with the Town Code. *E.g., Duchmann v. Town of Hamburg,* 90 AD3d 1642 [4th Dept 2011] (lack of agency findings did not prevent court from reviewing record to ascertain agency decision had a rational basis); *Ohrenstein v. Zoning Board of Appeals of Town of Canaan*, 39 AD3d 1041, 1043 [3d Dept 2007] ("In addition to the record, we may also look to the administrative agency's formal return in the CPLR article 78 proceeding to ensure that the necessary record support for its decision exists").

The Planning Board has directly addressed Petitioners' issue and has made its implicit findings explicit to resolve this issue. Accordingly, the Planning Board has addressed the general provisions for special use permits in the Smiths' case and found that that DRS's proposed solar system would not adversely affect the neighborhood, would not be a nuisance, would not create hazards, would not cause undue harm to the environment, would not be incompatible with

building development, would not adversely impact significant historic and/or cultural resource sites, would not create disjointed vehicular circulation paths or create vehicular/pedestrian conflicts, and would not provide inadequate landscaping, etc. Doc 520 ¶ 65. In addition, DRS's proposed solar system with its design, limited height, setbacks, and landscaping was found to be compatible with and enhance as much as possible the existing natural features of the site and surrounding area; will fit in an adequate and appropriate manner to and in general be compatible with the existing land use and zoning patterns in the immediate area; will comply as much as possible with the applicable site design criteria and other zoning district requirements, and will provide adequate and safe year-round site access, fire protection services, and utility service. Doc 520 ¶ 65. These explicit findings negate Petitioners' argument that such findings were not made. *See also* Town Mem at 29, citing, *e.g.*, *Herman v. Fossella*, 53 NY2d 730 [1981] (board findings provided in agency's answer served to substantiate its decision as having a rational basis); *Ohrenstein v. Zoning Board of Appeals of Town of Canaan*, 39 AD3d 1041, 1043 [3d Dept 2007]. *See also Duchmann v. Town of Hamburg*, 90 AD3d 1642 [4th Dept 2011] (lack of agency findings did not prevent court from reviewing record to ascertain agency decision had a rational basis).

Petitioners go on to argue the individual provisions contained in Section 165-99[C][5]. Pet Mem at 49-60. Many of Petitioners' claims here are duplicative of prior claims already addressed and so the Town will respond succinctly.

Contrary to Petitioners' claim, the Project will not adversely affect the orderly development and character of the surrounding neighborhood. Pet Mem at 49-51. DRS's solar arrays will be set back hundreds of feet from any road, and will not "dominate" development and use of neighboring property—and Petitioners demonstrate no way in which the Smiths' use of their property for solar farming will prevent or restrict neighbors from using their own property as they desire. Petitioners' claim of "eyesore" is meritless as has been addressed, as is their unproven claim of lower property values, not a factor under the Town Code. *See* TC § 165-99[C][5]. *See also* Town Mem at 76-78. Furthermore, Petitioners' "evidence" of the Rowe Realty opinion is not a proper factor for the Planning Board to consider on this issue because only "information submitted and testimony given by the applicant at the hearing and referral comments received from the Ontario County Planning Department" are pertinent to the Planning Board's consideration of a special use permit. TC § 165-99[C][5]. In addition, the neighborhood character now permits large-scale solar farming, and so DRS's proposed solar system is not inconsistent with the character of the neighborhood since 2017. *See* Local Law No. 6 of 2017 (TC § 165-65.3); Town Mem at 71-72. And of course the Town Board moratorium on new large-scale solar systems does not affect the Planning Board's independent work under the Town Code as it stands now for the Smiths and DRS. Thus, as the Planning Board found, the Project will not adversely affect the orderly development and character of the surrounding neighborhood. *See* Doc 520 ¶ 64.

Contrary to Petitioners' claim, the Project will not be a nuisance to neighboring land uses. Pet Mem at 52. Petitioners again assert that the solar arrays will "dominate" use of neighboring

property when no such restriction can be shown, that the solar arrays are an "eyesore," and glare will be a nuisance. *Id.; cf.* Town Mem at 75-76. Petitioners' glare claim has been addressed and shown to be meritless as modern solar panel technology reduces glare to that of a forest—virtually none. *Id.*; Doc 117 at 9. Petitioners' nuisance argument amounts to a claim that the solar arrays are an eyesore and any view of them from neighboring properties is therefore a nuisance. Pet Mem at 52. As discussed, however, the solar arrays are not an eyesore, are of modest height and hundreds of feet from any road or neighboring property, produce no noticeable glare, noise or dust, and will be largely screened initially and completely screened in five years. Town Mem at 75-76; *see* Figure #1 Map, Figure #2 Map, Appendix. The Planning Board notes that the Town Code does not require complete screening, only that which is practical and affects neighboring dwellings. TC § 165-65.3[F][1][b] ("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."); *cf.* Figure #1 Map, Appendix. Thus Petitioners' premise that complete screening is required to avoid a nuisance is unfounded and provides no basis for concluding the proposed solar system will be a nuisance to neighboring land uses as claimed.

Contrary to Petitioners' claim, the Project will not create hazards or dangers to the general public or to persons in the vicinity of the Project. Pet Mem at 53-54. Again Petitioners claim glare that will cause traffic accidents at the intersection of Fox Road and Yellow Mills Road. Pet Mem at 53. Petitioners are wrong. The solar arrays will be hundreds of feet from those roads, and even if not screened do not produce more glare than a forest, and furthermore

are fixed tilt facing south and so are physically incapable of shining sunlight at drivers on Fox Road or Yellow Mills Road. Docs 117 at 9; 275 at 21; 520 ¶ 24. *See* Town Mem at 75-76. Traffic accidents at the intersection are only a function of driver decisions. Town Mem at 46-48. Construction traffic will not be significant as some 35 workers will only be involved for a few months, whose presence at the Smiths' property will be staggered due to construction scheduling of different times for different kinds of work required, and delivery trucks will be even less of a factor and well below the rate required to even warrant a traffic study. Town Mem at 47. And the access road entrance off Fox Road provides more than sufficient site line safety since it has road visibility of approximately 690 feet looking to the west, and 1,004 feet looking to the east—both distances well beyond safe sight distances for such turns into the access road. Doc 167; *see* Figure #1 Map, Appendix.

Contrary to Petitioners' claim, the Project will not cause undue harm or destroy existing sensitive natural features on the site or in the surrounding area or cause adverse environmental impacts. Pet Mem at 54-57. Petitioners start off their argument on the wrong foot by claiming the Project will result in the "loss of 30 acres of prime farmland." Pet Mem at 54. In fact, no farmland will be "lost" by DRS's proposed solar system, just fallowed, and the Smiths' present agricultural use of their property will continue at the same scale of hay cropping and cattle grazing. Docs 275 at 12; 520 ¶ 25. *See* Town Mem at 65. The Planning Board was aware of the perspectives of the Ontario County Agricultural Enhancement Board and the couple members of the Town Conservation Board cited by Petitioners, but exercised its independent judgment to conclude that such concerns did not warrant a finding of harm in this case under the Town Code.

Doc 520 ¶ 15, 45. The Class 1-4 soils beneath the solar arrays will remain largely undisturbed and fallow during the solar system's operation, and the Project Site farmland will be restored to its current condition upon decommissioning of the solar system. Petitioners' claims of harm are just unproven speculation and provide no basis for the Planning Board to make any finding that DRS's revised solar system proposal is not entitled to a special use permit under the Town Code.

Petitioners' claim of NYSDAM mitigation measures has been previously addressed and is not significant. Pet Mem at 55; *cf.* Town Mem at 87-88. Petitioners raise the issue of the aquifer on the Project Site, and assert that pre- and post-construction activities associated with unspecified earthwork, installation of the solar arrays, and project maintenance may increase stormwater flows and sedimentation on the Project Site. Pet Mem at 55. As discussed, construction work will be controlled by Town and DEC regulations to prevent such issues, and the Town is familiar with the protections required and will ensure their use. Town Mem at 53, 86. Docs 275 at 8; 520 ¶¶ 26, 46. Also as discussed, the nature of DRS's ground-mounted solar system with gaps around each solar panel suspended over vegetation below effectively allows rain and stormwater to fall, flow and be absorbed in the usual natural course at the Project Site, well away from wetlands and the stream and its narrow flood zone. Doc 520 ¶¶ 21, 22; Figure #1 Map, Appendix. *See* Town Mem at 53-54.

Concentrated stormwater flows from impervious solar arrays are a Petitioner construct based on a mischaracterization of solar panels, as the record shows solar panels are not impervious surfaces as discussed and rain will fall, flow and be absorbed in the permeable

ground and vegetative cover beneath the ground-mounted solar arrays as currently exists. Town Mem at 53-54. Petitioners' criticism of stormwater runoff calculations was rebuffed by DRS engineers and the Town engineer. Docs 329, 331, 334. Petitioners raise the questionable geotechnical study recommendations again regarding potential ponding, already addressed, and the draft SWPPP providing for no cut and fill and level access road surface, which are Town Code requirements and do not indicate required earthwork to prepare the Project Site that might have potential adverse environmental impacts to drainage. Pet Mem at 56. Town Mem at 55-56; TC § 165-65.3[F][1][b][3][e], [h]. *See also* Doc 520 ¶ 32. In fact, DRS has designed its proposed solar system specifically to avoid earthwork and disturbance of the current vegetative cover as much as possible. Doc 415 at 28.

Petitioners raise an issue of flooding since the Smiths' property is not entirely in an area of minimal flooding. Pet Mem at 56. DRS's revised solar system proposal identified the Un-numbered A Zone as adjacent to a small stream winding along the western side of the Smiths' property, more than 300' from the Project Site. Docs 320, 321; *see* Figure #1 Map, Appendix. Contrary to Petitioners' claim, this minor flood zone issue was before the Planning Board as part of its renewed SEQRA review of DRS's revised solar system proposal, but posed no adverse environmental impact as none of the three solar systems involved were located on the Lot 4 containing the flood zone and were a substantial distance away. Docs 342 at 19; 320, 321; 520 ¶ 47. *See* Figure #1 Map, Appendix.

Petitioners contend the geotechnical study did not adequately address DRS's revised solar system proposal that relocated the footprint some 45' southeast from the original site studied. Pet Mem at 56. As discussed, Foundation Design reviewed that issue and concluded that its original conclusion still applied to the slightly revised footprint shifted a little southeast, since the spacings involved in the original study would cover the new shift in location. Doc 331.

Petitioners again assert the risk of zinc and impervious surfaces that allegedly limit proper drainage. Pet Mem at 57. As has been discussed, solar panel surfaces are not considered impervious since water drains off the panels within a couple feet of where the water would have landed anyway and so drains naturally, and zinc is bonded to the steel support posts in a galvanizing process and so does not interact with water, is not harmful except at high levels found only in industry and so is used in multiple municipal settings, and even if corroded will not be bio-available. Town Mem at 67-68. Consequently, the Planning Board validly found that DRS's revised solar system proposal will not cause harm as Petitioners claim. Doc 342; *see* Doc 520 ¶¶ 13-14, 23.

Contrary to Petitioners' claim, the Project is compatible with the Town of Farmington Comprehensive Plan. Pet Mem at 57-58. Petitioners assert that the Smiths' parcel should remain an active agricultural site, and it will be, as the Smiths will continue to hay crop and graze cattle at the same scale as is being done at present. Doc 520 ¶ 25. In addition, use of the Smiths' property will expand to include solar farming—a new kind of use of an active agricultural site specifically permitted by Local Law No. 6 of 2017 and thus the Town's

Comprehensive and Farmland Protection Plans. TC § 165-65.3. Ontario County's Agricultural Enhancement Plan perspective was based on the Town's Farmland Protection Plan which had not yet incorporated the legislative change. *See* Doc 17. And Petitioners again argue the Project is out of character with the surrounding neighborhood—which is zoned to permit DRS's proposed solar system and so has been legislatively determined by the Town to be compatible with the neighborhood and not in conflict with it. *Matter of Edwards v. Zoning Board of Appeals of Town of Amherst*, 163 AD3d 1511, 1512 [4th Dept 2018]. Petitioners' claim is meritless.

Contrary to Petitioners' claim, the Project will not create vehicular/pedestrian conflicts. Pet Mem at 58. No disjointed vehicular circulation paths are identified as there are none. *Id.* Petitioners ignore the fact that driver decisions control vehicular conflicts and here the screened and modest-height solar system is hundreds of feet away from Fox Road and Yellow Mills Road and their intersection. *See* Figure #1 Map, Appendix. Petitioners again claim glare will affect the intersection of Fox and Yellow Mills Road but there will be no noticeable glare and the solar arrays are positioned facing south and cannot physically direct sunlight to drivers at the intersection or roads. Town Mem at 76. Like all their other arguments, Petitioners have no concrete claim here, just speculation that provides no basis for denial of a special use permit under the Town Code as the Planning Board determined.

Contrary to Petitioners' claim, the Project does provide adequate landscaping, screening and buffering. Pet Mem at 58. DRS's revised solar system will be set back hundreds of feet from either Fox Road or Yellow Mills Road, are of a modest height of about nine feet, and will

be screened with evergreen trees of various species. Docs 318, 503. *See* Figure #1 Map, Appendix. While the trees will be young to start to enable them to survive the winter, the Town Code does not require complete screening, only that which is practical. Town Mem at 69-70. *See* Doc 506 at 7, 10. Similarly, elevation differences are adequately addressed by the large setbacks involved and mature landscape screening. *See* Docs 325, 503. Petitioners' reference to a nearby home is unclear but is not the home of a Petitioner, the owner does not raise such objection in this litigation, and such home will be screened from the solar arrays. *See* Figure #1 Map, Appendix. And Petitioners' nonsensical claim of solar array domination over development and use of neighboring property has been shown to be meritless. Town Mem at 75-76. Consequently, the Planning Board validly found that the proposed landscape plan was practical and sufficient under the Town Code for a special use permit even if not perfect or complete to start. Doc 500.

Contrary to Petitioners' final claim, the Planning Board validly found that no feasible alternative existed to the particular siting proposed for DRS's solar system on the Smiths' property and so a special use permit could be issued for the Smiths' property to host a large-scale ground-mounted solar system on the Class 1-4 soils. Pet Mem at 59-60; *cf.* Doc 499. *See* Doc 520 ¶¶ 51-64.

The Town Code provides that "Large-scale ground-mounted solar PV systems located upon farmland located within the delineated Town of Farmington Active Farmland Map [such as the Smiths' property] ... shall be allowed on soils classified as Class 1 through 4 ... once it can be

determined, by the Planning Board, that there is no feasible alternative." TC § 165-65.3 [F][1][b][3].

In this case, the Farmington Town Code expressly designates the Planning Board as the sole interpreter of the meaning of "no feasible alternative" for this provision. TC § 165-65.3 [F][1][b][3]. Because the meaning of "no feasible alternative" under the Town Code is arguable, the Planning Board requested a legal opinion from the Town Attorney about the meaning of the requirement and received the following response: "reading this section as a whole, it is my opinion that the determination the Planning Board must make is whether there 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." Doc 213. *See also* Doc 520 ¶ 52.

The Planning Board resolved the ambiguity, as it was specifically charged with doing under the Town Code, by accepting the Town Attorney's construction of the phrase "no feasible alternative" to mean determining whether there is a feasible alternative location site on the Smiths' property proposed to contain the requested solar system, and not some different lot, or use, or reduced scale. Docs 499; 520 ¶¶ 52-54. The Planning Board's construction of the provision that it was expressly charged with applying in a case of local land use within the scope of its expertise warrants judicial deference. *See, e.g.*, *Matter of Town of Marilla v. Travis,* 151 AD3d 1588, 1590 [4th Dept 2017] (agency's interpretation of its regulation is entitled to

deference inasmuch as it involves knowledge and understanding of underlying operational practices or entails an evaluation of factual data and inferences to be drawn therefrom).

Petitioners complain that "[n]othing in the Town Code indicates that the term 'feasible alternative' specifically refers to the review of the location of the project as sited on a particular parcel." Pet Mem at 60. Petitioners find the Planning Board's interpretation too restricting, and contend the Planning Board should have considered a reduced project size as a feasible alternative. *Id.* The Planning Board addressed this issue and concluded that a solar farm could always be reduced in size as a "feasible" alternative until the project was too small to accomplish its purpose. Doc 520 ¶ 54. Similarly, there is always an alternate feasible use of farm land than solar farming. *Id.* at ¶ 52. The Planning Board recognized that Petitioners' construction of the "no feasible alternative" provision could effectively and improperly nullify the provision and its intent to allow large-scale ground-mounted solar systems in the A-80 Agricultural District so that Town property owners could make as good a deal with solar farm developers as their property and the special use permitting process allowed. Doc 520 ¶ 54. Accordingly, the Planning Board rejected Petitioners' self-serving construction of the Town Code provision and instead determined that the Board did have authority under the Town Code to issue a special use permit for a solar system sited on Class 1-4 soils since the proposed location of DRS's proposed solar system on the Smiths' property could not feasibly be situated elsewhere on the Smiths' lot to avoid Class 1-4 soils. Docs 499; 520 ¶¶ 52-64.

Petitioners do not dispute that the Smiths, DRS and the Town looked at alternative locations on the Smiths' lot at 466 Yellow Mills Road to site the proposed solar system but did not find a suitable or feasible alternative location. *See* Figure #1 Map, Appendix. *See also* Doc 520 ¶¶ 56-64. Petitioners only argue the proposed solar system could have feasibly been reduced in size—a construction of the Town Code specifically rejected by the Planning Board charged with determining whether a feasible alternative existed. Doc 520 ¶ 54. The Administrative Record shows the issue of no-feasible-alternative was addressed multiple times and considered in depth with the benefit of counsel before the Planning Board finally settled the issue for this matter. *E.g.*, Docs 89, 100, 183, 203, 213.

So with the Planning Board's determination of the meaning of the key Town Code provision, and a diligent factual inquiry concluding that the Smiths' property had no feasible alternative location to site the proposed solar system, the Planning Board was empowered under the Town Code to issue a special use permit for DRS's proposed solar system at the Project Site on the Smiths' property. And when the remaining Town Code special use permit requirements were fulfilled for the Smiths' property and DRS's proposed solar system, the Planning Board properly proceeded to issue a special use permit with conditions on October 7, 2020 in accordance with the Town Code. Doc 499. *See* TC § 165-99 [C][6] ("Should the applicant, based on the findings of the Board, meet all of the criteria or requirements listed, either because of the basic nature and design of the project or the inclusion of appropriate mitigating measures, then the request for special use permit approval shall be granted."). *See also Matter of Edwards v. Zoning Board of Appeals of Town of Amherst*, 163 AD3d 1511, 1512 [4th Dept 2018] (where

the zoning ordinance authorizes a use permit subject to administrative approval, the applicant need only show that the use is contemplated by the ordinance and that it complies with the conditions imposed to minimize anticipated impact on the surrounding area, and then the planning board is required to grant a special use permit unless it has reasonable grounds for denying the application).

Petitioners' claims on these matters are meritless and should be dismissed.

I. Petition's Ninth Cause of Action for unstated miscellaneous matters is meritless.

Petitioners' Ninth Cause of Action does not state any particular claim, but simply amounts to an open-ended, vague and speculative argument that there may be some violation found in the Planning Board's procedure or practice that warrants annulment of its determinations in this matter. Petition ¶¶ 304-305.

Such a meaningless cause of action is too vague to provide any reasonable notice of objectionable conduct, precludes any intelligent response with facts or law, and wastes the Court's time. Petitioners' Ninth Cause of Action must be dismissed outright as a matter of law.

CONCLUSION

For the reasons discussed, the Planning Board's determinations in this matter must be upheld and Petitioners' Petition denied and dismissed on the merits with prejudice.

The Planning Board complied with SEQRA's procedural and substantive requirements by validly and independently exercising its lead agency authority and responsibility to identify and take a hard look at the relevant areas of environmental concern, and then, after considering an extensive Administrative Record including Petitioners' claims and comments, concluded that the revised solar system proposal would not have a significant adverse environmental impact, and so issued a Negative Declaration of Environmental Significance on December 18, 2019, which was published in the DEC Environmental Notice Bulletin.

Furthermore, the Planning Board's approvals of the special use permit and site plan of DRS's solar system on the Smiths' property were based on the extensive record before the Planning Board demonstrating compliance with the Town Code, and so were rational, and were not arbitrary or capricious nor affected by error of law.

Indeed, the Planning Board's actions with regard to these numerous issues were diligent, well-considered and represented good governance of the controversial and local land use matters.

WHEREFORE, Petitioners' Petition challenging the Planning Board determinations in this proceeding must be denied on the law and on the merits, and their Petition and all claims dismissed, with prejudice, and costs, together with such other, further and different relief as to the Court seems just and proper.

Dated: May 11, 2021
Rochester, New York

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ATTORNEY CERTIFICATION

Counsel for Respondents Town of Farmington and its Planning Board hereby certifies that the word count for the foregoing Memorandum of Law as provided by Rule 202.8-b of the Uniform Rules for New York State Trial Courts and as calculated by LibreOffice is 28,428. Such word count does not exceed the limit imposed by the Court in this proceeding under Order entered May 3, 2021 at NYSCEF Document No. 411.

Dated: May 11, 2021

By: ___s/Sheldon W. Boyce, Jr. Esq.___

APPENDIX

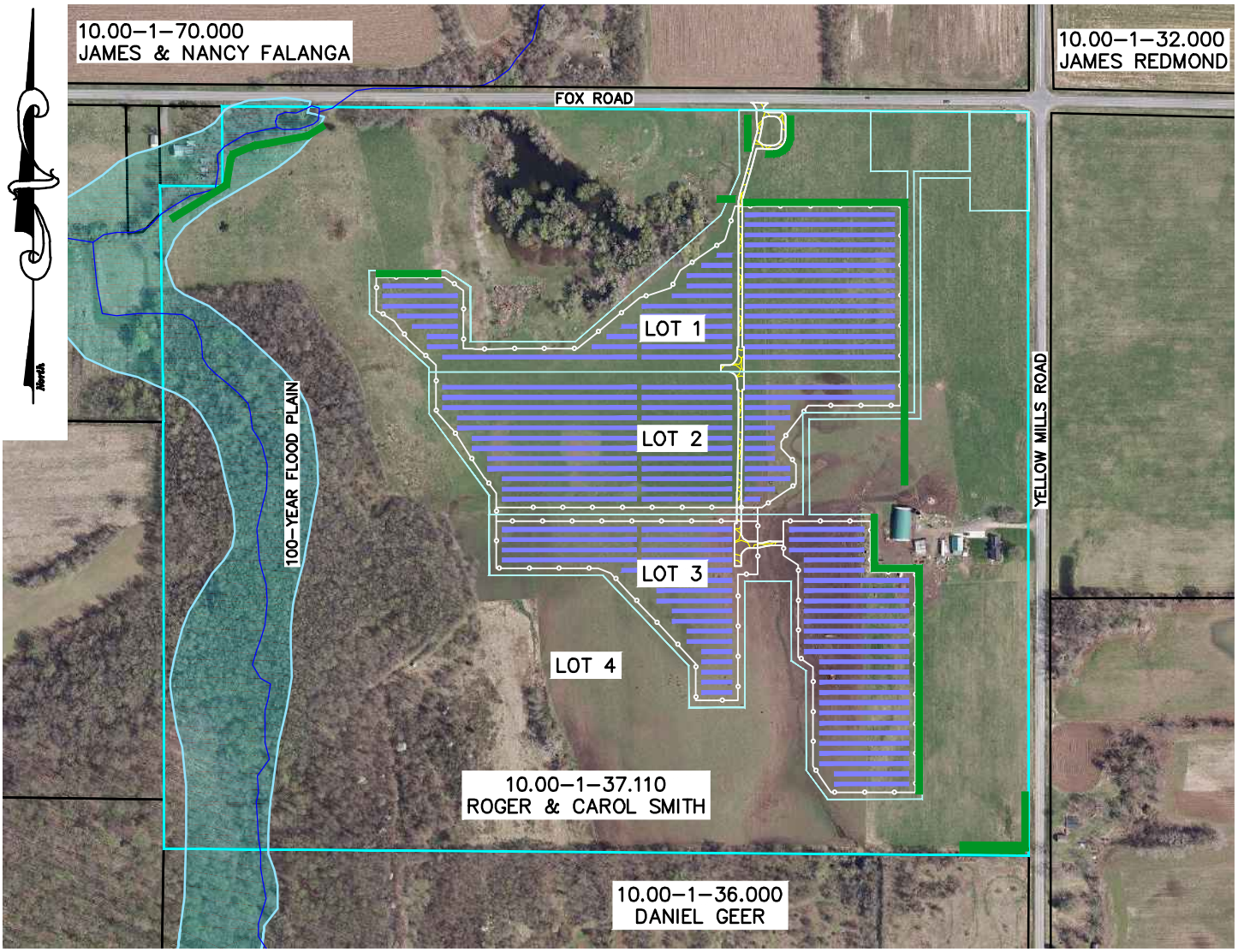

FIGURE #1 OF SMITHS' PROPERTY
1" = 500' (approximate)

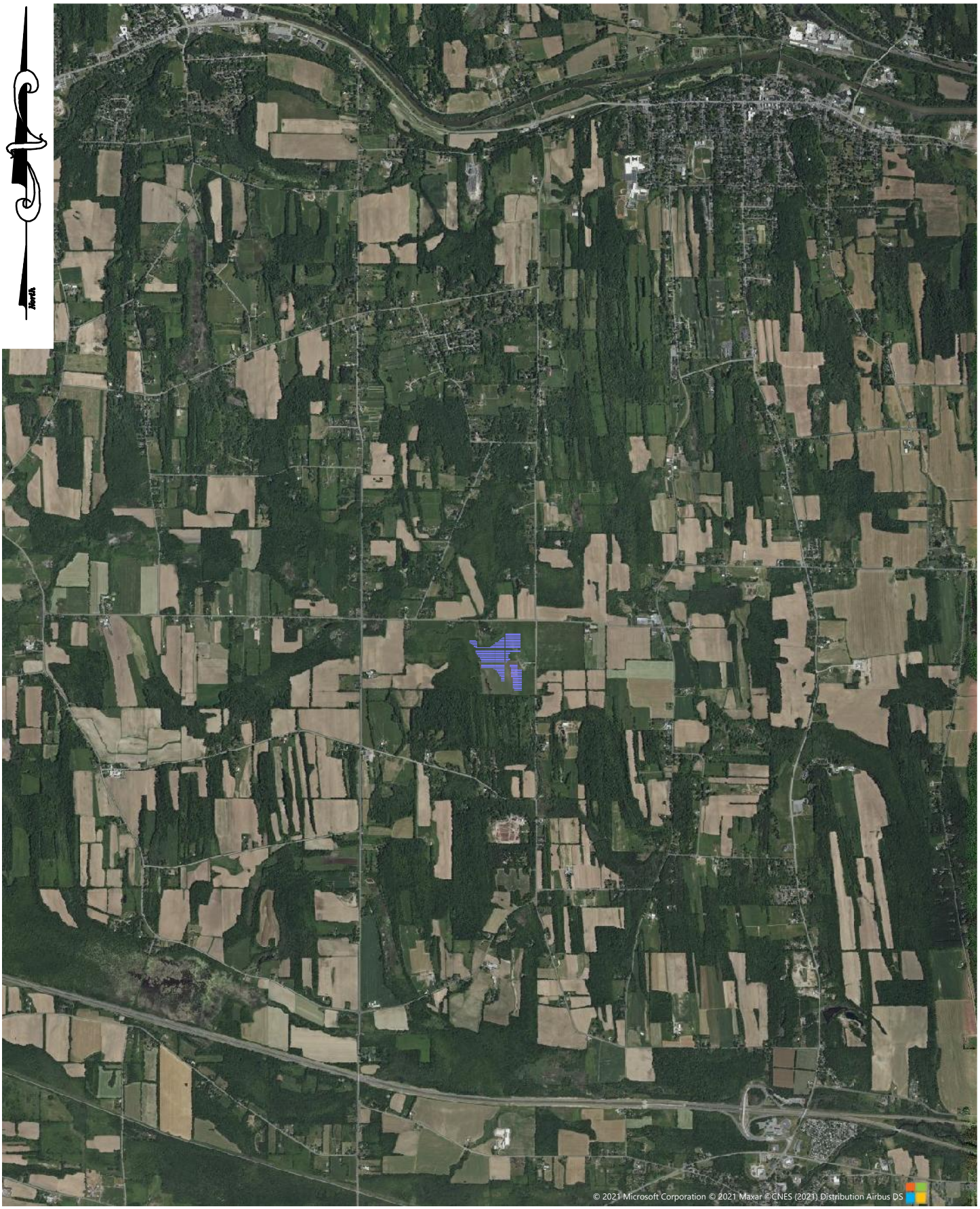

FIGURE #2 – Neighborhood of Intersection of Fox and Yellow Mills Roads
1" = 4,000' (approximate)