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Document Type: **DECISION ON MOTION - SUBMIT ORD / JGMT**

Receipt Number:

Plaintiff	Defendant
FALANGA, JAMES	FARMINGTON TOWN

Fees	
Total Fees Paid:	$0.00

Control #:	Unrecorded #2239380
Index #:	126079-2019

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Do Not Detach

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONTARIO
JAMES FALANGA, NANCY FALANGA,
DANIEL GEER, AND JAMES REDMOND,

Petitioners,

vs.

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.

Index No. 126079-2019

DECISION

HON. CRAIG J. DORAN, Presiding

Petitioners James Falanga, Nancy Falanga, Daniel Geer, and James Redmond commenced this CPLR article 78 proceeding by Notice of Petition filed on November 6, 2020[1]. Petitioners seek relief concerning the proposed construction of a solar energy farm by Respondent Delaware River Solar ("DRS") on property owned by Roger and Carol Smith at 466 Yellow Mills Road in the Town of Farmington, New York. Specifically, Petitioners seek a court order annulling and vacating two Respondent Town of Farmington Planning Board ("Planning Board") negative declarations of August 7, 2019 and December 18, 2019, under the State Environmental Quality Review Act ("SEQRA"), annulling and vacating a special use permit granted October 7, 2020, and site plan approval granted November 4, 2020. In addition, Petitioners seek preliminary and permanent injunctions prohibiting DRS from commencing any work at the project site as well as attorneys' fees.

[1] By Decision and Order dated June 16, 2020 the Hon. Charles Schiano, JSC dismissed the Second Amended Verified Complaint filed on February 5, 2020, without prejudice, on the ground that the matter was not ripe for determination as the subdivision plat, special use permit, and final site plan approval had not yet been approved by the Planning Board. Petitioners were permitted to re-file under the same index number.

On March 8, 2021, the Hon. Charles Schiano signed an Order granting Respondents' motion to dismiss the petition as to petitioner Concerned Citizens of Farmington only, and denied the remainder of the motion. Thereafter, Respondents the Planning Board and the Town of Farmington (the "Town") filed an Answer and Objections in Point of Law dated May 7, 2021 and the Respondents DRS and the Smiths filed an Answer dated May 21, 2021. This matter came before the Court on September 2, 2021 for oral argument.

The Falanga Petitioners own property at 395 Ellsworth Road, located directly across from the northern portion of the project. Petitioner Geer owns the property at 568 Yellow Mills Road. A portion of petitioner Geer's property is contiguous to the proposed project site. Petitioner Redmond owns the property at 4500 Fox Road. A portion of Petitioner Redmond's property is in close proximity to, and downgrade from, the project site.

The project, as currently proposed[2], consists of 21,000 solar panels to be developed by DRS on 43.1 acres at the southwest quadrant of the intersection of Fox Road and Yellow Mills Road (the northern portion of the parcel located at 466 Yellow Mills Road). The property is currently used for cattle farming. The solar equipment will cover 9.4 acres. There will be a 3,000 square foot stone access road installed from Fox Road to the entry gate of the facility and the facility will be surrounded by an eight-foot fence. The anticipated life of the project is 30 years.

On July 17, 2018, DRS submitted its site plan application, special permit application, and area variance application to the Town of Farmington. Revisions to these documents were submitted to the Town in August and September 2018. The submission of the applications by DRS triggered a review pursuant to the State Environmental Quality Review Act (6 NYCRR Part 617). An application for approval of a Type I action (site plan, etc.) is not complete until either a negative declaration is issued or a draft Environmental Impact Statement (EIS) is accepted (6 NYCRR 617.3[c]). Once an action is

[2] The Project as originally proposed was modified after DRS' application for a set-back variance was denied.

determined to be Type I (here it is undisputed that this is a Type I action), a Full Environmental Assessment Form (FEAF) must be completed to determine the significance of the action (6 NYCRR 617.6[a][2]). The applying entity, here DRS, must complete Part I and the lead agency (here the Town of Farmington Planning Board) completes Part 2 and Part 3 (6 NYCRR 617.6[a][2]). Thereafter, the lead agency determines the significance of a Type I action and an Environmental Impact Study (EIS) must be completed if the lead agency determines "that the action may include the potential for at least one significant adverse environmental impact" (6 NYCRR 617.7[a][1]). No EIS is required if the lead agency finds that there are "no adverse environmental impacts or that the identified adverse environmental impacts will not be significant" (6 NYCRR 617.7[a][2]). The criteria for determining significance are listed in 6 NYCRR 617.7(c).

When completing Part 2 of the EAF, the lead agency must determine whether the proposed action may affect the listed category (land, surface water, etc.). If the question is answered in the affirmative, then the lead agency must select "no, or small impact may occur" or "moderate to large impact may occur" for several detailed questions to pinpoint the type of impact. Therefore, for each category, the primary question is whether there is any impact, and the secondary questions determine the extent of the impact for each subcategory. Part 3 is completed by "considering both the magnitude and importance of each identified potential impact". Determining that a there will be a "moderate to large impact" in any one subcategory within Part 2 does not necessitate a finding of "significant adverse impact on the environment".

At the October 3, 2018 meeting of the Town of Farmington Planning Board, the Planning Board declared its intent to be lead agency for SEQR review. The Planning Board sought input from several involved agencies and a number of interested agencies. The first public hearing was held on November 7, 2018 and was continued at eight public hearings through August of 2019. At its May 15, 2019 meeting, the Planning Board completed Part 2 of the Full EAF. At the August 7, 2019 meeting, the Planning Board

issued a Negative Declaration which was published in the August 21, 2019 Environmental Notice Bulletin.

Thereafter, the Zoning Board of Appeals denied Respondent DRS' area variance application and DRS submitted a revised site plan to the Planning Board. A revised EAF Part 1 was submitted to the Planning Board on October 31, 2019. Public hearings were continued through December 2019. At the December 18, 2019 meeting, the Planning Board completed Parts 2 and 3 of the full EAF and voted to affirm its prior SEQRA determination/issue a negative declaration.

As part of the SEQR process, the Planning Board received comments from the New York State Department of Agriculture and Markets ("the proposed action would not have an unreasonably adverse effect on the continuing viability of farm enterprises within the district or State environmental plans, policies and objectives" April 12, 2019 letter; NYSCEF Doc 244); New York State Energy Research and Development Authority (April 9, 2019 letter of acceptable mitigation measures; NYSCEF Doc 70); New York State Office of Parks, Recreation and Historic Preservation ("project will have no impact on archaeological and/or historic resources listed in or eligible for the New York State and National Registers of Historic Places" Letter dated August 29, 2018; NYSCEF Doc 107); New York State Department of Environmental Conservation (statement of conditions for the project to be in compliance with various regulations, Letter dated February 28, 2019; NYSCEF Doc 234); Ontario County Planning Board (NYSCEF Doc 111 at 18-20); Ontario County Agricultural Enhancement Board ("The applicant should be required to determine if there are any surface or subsurface agricultural drainage systems that will be impacted by the proposed project. Damage or removal of such infrastructure can adversely impact the viability of the farmland remaining on the parcel and adjoining farmland which may be connected to the sites system" April 9, 2019 Letter; NYSCEF Doc 241); Town of Farmington Conservation Advisory Board ("The Farmington Agriculture Board discussed and with consideration of the Delaware River Solar application at a public meeting held on October 18, 2018 does not support the magnitude and impact that an installation of this size would have on neighboring open space and agricultural lands"; NYSCEF Doc

134); and Town of Farmington Historian ("The proposed action should be required to provide supplemental information that identified what, if any visual or aesthetic impacts, it may have upon the environmental setting, including any impacts upon these two historic structures." Letter dated October 29, 2018, NYSCEF Doc 152).

As the Court of Appeals has stated, "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' (CPLR 7803[3]; *see, Matter of City of Schenectady v Flacke*, 100 AD2d 349, 353, *lv. denied* 63 NY2d 603, *Matter of Environmental Defense Fund v Flacke*, 96 AD2d 862). In a statutory scheme whose purpose is that the agency decision-makers focus attention on environmental concerns, it is not the role of the courts to weigh the desirability of any action or choose among alternatives, but to assure that the agency itself has satisfied SEQRA, procedurally and substantively" (*Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400, 416). "The record must show that [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" (H.O.M.E.S. v New York State Urban Dev. Corp., 69 AD2d 222, 232 [4th Dept 1979]).

In their Petition, the Petitioners state the following causes of action:

1. The Planning Board failed to identify the Project's relevant areas of concern.
2. The Planning Board failed to take a hard look at the Project's potentially significant environmental impacts.
3. The Planning Board's decision to issue a negative declaration was arbitrary and capricious and not supported by substantial evidence on the record.
4. The Planning Board improperly issued a conditional negative declaration for a Type I action.
5. The Planning Board improperly delegated its responsibilities under SEQRA.
6. The Planning Board failed to rescind the Negative Declaration.
7. The Planning Board improperly simultaneously affirmed and amended its Negative Declaration.
8. The Planning Board's decision to grant a Special Use Permit was arbitrary and capricious.
9. Other arbitrary and capricious actions.

Before addressing the merits of the Petition, the Planning Board raised three Objections in Points of Law. The first, that the Petitioners lack standing as stated in the Motion to Dismiss filed on December 7, 202, is appropriate to address as a preliminary matter. In a Decision dated March 5, 2020, Justice Charles A. Schiano determined that the Falanga petitioners were within the zone of interest protected by SEQRA and therefore had standing to seek judicial review. That Decision remains the law of the case, and the Court sees no basis to disturb that holding.

1. **Did the Planning Board fail to identify the Project's relevant areas of concern?**

The Petitioners contend that the Negative Declaration must be set aside because "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."

It is clear from a review of Part 2 of the FEAF completed on December 18, 2019 that this is a project that will have some environmental impact. However, the determination by the Planning Board that there are some environmental categories that could be affected by the project, does not necessitate, or suggest that the project will impact all categories. The Planning Board's determination that there would be no impact to Geological Features (EAF Part 2, Question 2), Plants and Animals (EAF Part 2, Question 7), Historic and Archeological Resources (EAF Part 2, Question 10), Transportation (EAF Part 2, Question 13) is supported by the record.

The record is replete with statements from both private engineering firms and government agencies regarding the effects of the project on all 18 categories of impact listed in Part 2 of the EAF. A review of the documents submitted to the Planning Board both in support of and in opposition to the Project, as well as a review of the minutes of the many meetings held by the Planning Board, indicate that the Planning Board did identify all the relevant areas of environmental concern.

Petitioners' first cause of action is dismissed as the Planning Board did not act arbitrarily or capriciously in determining the categories of environmental concern.

2. Did the Planning Board fail to take a hard look at the Project's potentially significant environmental impacts?

The Planning Board identified ten (out of 18) categories where the Project could have a potential impact (Land; Surface Water; Groundwater; Agricultural Resources; Aesthetic Resources; Open Space and Recreation; Noise, Odor, and Light; Human Health; Community Plans; and Community Character). Within each of those categories, the Planning Board indicated whether the "subcategories" may have "No, or small impact" or "Moderate to large impact". The Planning Board found moderate to large impact for Agricultural Resources, Impact on Aesthetic Resources, Consistency with Community Plans, and Consistency with Community Character. Following the procedural requirements of SEQR, the Planning Board completed Part 3 of the EAF and concluded that "the proposed Action will not have any significant adverse impact(s) upon the environmental setting in the Town of Farmington." In making that finding, the Planning Board eliminated the need for an Environmental Impact Statement (EIS).

"[W]here 'an agency has followed the procedures required by SEQRA, a court's review of the substance of the agency's determination is limited' (*Matter of Eadie v Town Bd. of Town of N. Greenbush*, 7 NY3d 306, 318 [2006]). 'It is well established that, in reviewing the substantive issues raised in a SEQRA proceeding, [a] court will not substitute its judgment for that of the agency if the agency reached its determination in some reasonable fashion' (*Matter of Town of Marilla v Travis*, 151 AD3d 1588, 1591 [4th Dept 2017] [internal quotation marks omitted])" (*Pilot Travel Centers, LLC v Town Bd. of Town of Bath*, 163 AD3d 1409, 1411-12 [4th Dept 2018]).

"While the judicial review must be genuine, 'the agency's substantive obligations under SEQRA must be viewed in light of a rule of reason' and the degree of detail with which each environmental factor must be discussed will necessarily vary and depend on the nature of the action under consideration [citation omitted]" (*Matter of Gernatt Asphalt Products, Inc. v Town of Sardinia*, 87 NY2d 668, 688 [1996], *see also Mobil Oil Corp. v City of Syracuse Indus. Dev. Agency*, 224 AD2d 15, 22 [4th Dept 1996]).

"[I]t is well established that ' "the lead agency need not consider every conceivable [environmental] impact' " [citations omitted]" (*Matter of Wooster v Queen City Landing, LLC*, 150 AD3d 1689, 1692 [4th Dept 2017]). The failure of the Planning Board to mention every area of environmental impact in the negative declaration is not an indication that the Planning Board failed to take a "hard look" at those areas of environmental concern.

Petitioners' second cause of action is dismissed as the record supports the finding that the Planning Board took a hard look at all areas of environmental concern.

3. Was the Planning Board's decision to issue a negative declaration arbitrary and capricious and not supported by substantial evidence on the record?

"In Type I actions there is a relatively low threshold for requiring an EIS and one should be prepared when there is a potentially significant adverse effect on the environment [citations omitted]" (*Miller v City of Lockport*, 210 AD2d 955, 956 [4th Dept 1994]). However, "designation as a type I action does not, per se, necessitate the filing of an environmental impact statement . . . , nor was one required here" (*Matter of Mombaccus Excavating, Inc. v Town of Rochester, NY,* 89 AD3d 1209, 1211 [2011], *lv denied* 18 NY3d 808 [2012]).

"The court's role is not to second-guess the agency's determination [citations omitted]" (*Brunner v Town of Schodack Planning Bd.*, 178 AD3d 1181, 1183 [3d Dept 2019]; *see also Buckley v Zoning Bd. of Appeals of City of Geneva*, 189 AD3d 2080 [4th Dept 2020]). "The arbitrary or capricious test chiefly 'relates to whether a particular action should have been taken or is justified *** and whether the administrative action is without foundation in fact.' Arbitrary action is without sound basis in reason and is generally taken without regard to the facts [citation omitted]" (*Pell v Board of Educ.*, 34 NY2d 222, 231 [1974]).

The Petitioners disagree with the conclusion reached by the Planning Board, that the "project will result in no significant adverse impacts on the environment, and, therefore, an environmental impact

statement need not be prepared" (EAF, Part 3 signed December 18, 2019). However, the conclusion reached by the Planning Board is amply supported by the record and has a strong foundation in fact. Petitioners' third cause of action is dismissed.

4. Did the Planning Board improperly issue a conditional negative declaration for a Type I action?

A Conditioned Negative Declaration is defined as "a negative declaration issued by a lead agency for an Unlisted action, involving an applicant, in which the action as initially proposed may result in one or more significant adverse environmental impacts; however, mitigation measures identified and required by the lead agency, pursuant to the procedures in section 617.7(d) of this Part, will modify the proposed action so that no significant adverse environmental impacts will result" (6 NYCRR 617.2[h]). As noted in the definition, a conditioned negative declaration can only be issued in an Unlisted Action, and is unavailable for Type I actions, such as the one here.

"The Court of Appeals set forth a two-step inquiry for determining whether a conditioned negative declaration has been impermissibly issued in the context of a Type I action: (1) 'whether the project, as initially proposed, might result in the identification of one or more "significant adverse environmental effects"'; and (2) whether the proposed mitigating measures incorporated into the Environmental Assessment Form 'were "identified and required by the lead agency" as a condition precedent to the issuance of the negative declaration.'" (*Citizens Against Retail Sprawl ex rel. Ciancio v Giza*, 280 AD2d 234, 239 [4th Dept 2001], quoting *Matter of Merson v McNally,* 90 NY2d 742, 753 [1977]).

Specifically, Petitioners points to the language in the Negative Declaration that the Stormwater Pollution Prevention Plan (SWPPP) review was not finalized and would not be until after site plan review. Respondent DRS characterizes the "condition" in a slightly different manner, stating that no construction *would* occur without full compliance with the SWPPP, rather than no construction *could* occur without compliance with the SWPPP (Town of Farmington Planning Board Answer, Page 36). This

Court finds that the statements of the Planning Board when issuing the negative declaration are a mere statement of the procedural approval process. In essence, the Planning Board restated the obvious, that the Stormwater Pollution Prevention Plan must be complied with; so stating does not create a conditioned negative declaration out of a negative declaration.

In addition, Petitioners contend that the eleven recommendations included in the July 9, 2019 geotechnical evaluation (NYSCEF Doc 287) that are referenced in the negative declaration transform those recommendations into mandatory mitigation measures. However, such is not the case. As stated in the Town of Farmington Planning Board Resolution dated May 5, 2021, those were recommendations of geo-technical evaluator, but the finding that there was no significant adverse environmental impact was not conditioned upon following those recommendations (NYSCEF Doc 520, ¶ 32).

"While there can be little doubt that the proposed project, as reviewed by respondent, included various measures [], this is not tantamount to respondent imposing such mitigation measures and conditions [] before it would issue the negative declaration [citation omitted]. * * * Rather, they were part and parcel of the project plans being reviewed by respondent - plans which had been revised and modified to address problems raised throughout the City's CEQR review" (*Matter of Cathedral Church of St. John the Divine v Dormitory Auth. of State of N.Y.*, 224 AD2d 95, 102-103 [3d Dept 1996]).

The Planning Board did not improperly issue a conditioned negative declaration.

5. Did the Planning Board improperly delegate its responsibilities under SEQRA?

Petitioners contend that the Planning Board delegated its responsibility to independently review impacts to agricultural land and stormwater/drainage impacts to various state agencies. Specifically, the Petitioners contend that the Planning Board failed to independently review the project's potential impacts to water and drainage and to agricultural resources.

The record of the proceedings before the Planning Board includes statements from both the NYS Department of Environmental Conservation (NYSCEF Doc 234) and the NYS Department of Agriculture and Markets (NYSCEF Doc 244). However, the fact that the Planning Board incorporated statements

from State agencies into its findings does not indicate that it delegated its authority. "The lead agency under SEQRA is likely to be nonexpert in environmental matters, and will often need to draw on others. The statute and regulations not only provide for this, but strongly encourage it" (*Matter of Coca-Cola Bottling Co. of New York, Inc. v Bd. of Estimate of City of New York*, 72 NY2d 674, 682 [1988]). "A lead agency [] may rely upon the advice it receives from others, including consultants, if reliance is reasonable [citation omitted]" (*Matter of Stewart Park and Reserve Coalition v New York State Dept. of Transp.*, 157 AD2d 1, 7 [3d Dept 1990], *affd,* 77 NY2d 970 [1991]).

The Planning Board did not improperly delegate its responsibilities.

6. Did the Planning Board fail to rescind the Negative Declaration?

The provisions governing recission of a negative declaration are found in 6 NYCRR 617.7(f)(1) which provides,

> At any time prior to its decision to undertake, fund or approve an action, a lead agency must rescind 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.

Here, petitioners contend that the changes that were made to the site plan, following the ZBA's denial of the area variances were substantive and required the negative declaration to be rescinded. Although the Planning Board did not rescind the negative declaration, they did re-open the process and review the SEQRA decision, subsequently affirming it.

The petitioners contend that the Planning Board simultaneously affirmed and amended its negative declaration. The provisions governing amendment of a negative declaration are the same as those to rescind a negative declaration. If a negative declaration is amended, the lead agency must publish the amended negative declaration (6 NYCRR 617.7[e][2]). Respondents' argument is that a new negative declaration was issued, rather than an amendment of the original negative declaration. In Part 3 of the FEAF, the Planning Board stated, "based upon the information contained in Part 2 of the FEAF [the

Planning Board] finds that there is adequate documentation for the Planning Board to amend its original determination of non-significance, made on August 7, 2019." A review of Part 3 indicates that the finding of non-significance has not been amended, but the facts upon which it was based (the dimensions of the project) were amended.

Petitioners' sixth cause of action is dismissed as Respondents did not amend the negative declaration, and contrary to petitioners' argument, they issued a new negative declaration.

7. Did the Planning Board improperly simultaneously affirm and amend its Negative Declaration?

As noted above, the Planning Board initially issued a negative declaration on August 7, 2019. Thereafter, following a revision to the site plan, a revised EAF Part 1 was submitted to the Planning Board and on December 18, 2019 the Planning Board voted to affirm its prior SEQRA determination. Petitioners contend that Respondent violated the December 18, 2019 decision of the Planning Board was an impermissible amendment to the negative declaration. Respondents contend that the Planning Board issued "another but new Negative Declaration" and that it was appropriately published in the New York State Department of Environmental Conservation Environmental Notice Bulletin on January 22, 2020.

Part 3 of the Full Environmental Assessment Form completed on December 18, 2019, states in part, "The Planning Board, on December 18, 2019 completed Part 2 of the FEAF and based upon the information contained in this Part 2 of the FEAF finds that there is adequate documentation for the Planning Board to amend its' original Determination of Non-Significance made on August 7, 2019." The Planning Board then concluded that "[t]his project will result in no significant adverse impacts on the environment, and, therefore, an environmental impact statement need not be prepared. Accordingly, this negative declaration is issued." The question of whether the Planning Board issued a new negative declaration or amended its prior negative declaration is relevant to the issue of the publication of the declaration. If the Negative Declaration is amended, "The lead agency must prepare, file and publish the amended negative declaration in accordance with section 617.12 of this Part. The amended negative

declaration must contain reference to the original negative declaration and discuss the reasons supporting the amended determination" (6 NYCRR 617.7[e][2]). If the December 18, 2019 Negative Declaration was a new negative declaration rather than an amended declaration then the Planning board need only comply with 6 NYCRR 617.12 with no requirement that reference to the original negative declaration be made.

In fact, the Negative Declaration issued on December 18, 2019 was not an amendment of the Negative Declaration issued on August 7, 2019. Despite the use of the word "amend" within Part 3, the Planning Board issued a new Negative Declaration based upon DRS' amended site plan. The amended documents were fully considered by the Planning Board and resulted in a new Negative Declaration.

The Planning Board fully complied with the requirements of 6 NYCRR 617.12 when the December 18, 2019 Negative Declaration was issued. Respondents were not required to comply with 6 NYCRR 617.7(e)(2) because an amended Negative Declaration was not issued.

8. Was the Planning Board's decision to grant a Special Use Permit arbitrary and capricious?

The Petitioner contend that the Planning Board failed to make the findings required by Town Code § 165-99(C)(5)(a-h) [excepting (f)] in its October 7, 2020 decision to grant DRS a special use permit with conditions.

"Approval by the Town Planning Board of any special use permit shall be contingent on a finding by the Board that the proposed project or development will not, as applicable:

> (a) Adversely affect the orderly development and character of the surrounding neighborhood or the community.
> (b) Become a nuisance to neighboring land uses as the result of the production of obnoxious or objectionable noise, dust, glare, odor, refuse, fumes, vibrations, unsightliness, contamination, or other similar conditions.
> (c) Create hazards or dangers to the general public or to persons in the vicinity of the project from fire, explosion, electricity, radiation, crowds, traffic congestion, parking of automobiles or other similar conditions.
> (d) Cause undue harm to or destroy existing sensitive natural features on the site or in the surrounding area or cause adverse environmental impacts, such as significant erosion and/or sedimentation, slope destruction, flooding or ponding of water or degradation of water quality.
> (e) Be incompatible with the type, extent and direction of building development and/or the creation of access roads or ingress/egress points for the site and surrounding areas, as proposed in the latest edition of the adopted Town of Farmington Comprehensive Plan or

> in the Route 96/Route 332 Corridor Development Plan, as adopted and amended by the Farmington Town Board.
> (f) Destroy or adversely impact significant historic and/or cultural resource sites.
> (g) Create disjointed vehicular, bicycle, or pedestrian circulation paths or conflicts.
> (h) Provide inadequate landscaping, screening or buffering between adjacent uses which are determined by the Planning Board to be incompatible with the proposed project."

After the Planning Board issued the Negative Declaration on December 18, 2019, it held an additional six public hearings regarding the application for a special use permit. NYSCEF Document 500 is the Resolution containing DRS' Special Use Permit Conditions of Approval. The Planning Board went through a series of lengthy findings, including that project meets the purpose of the Town's Zoning Law while protecting the health, safety and welfare of surrounding properties; that the project contributes to the goals and objectives contained in the adopted New York State Renewable Energy Plan; that there is no feasible alternative for siting the farm; that the project will not necessarily result in the permanent loss of farmland; and that DRS is required to retain an Environmental Monitor. The Planning Board's findings, rather than reciting the pro forma language of Town Code § 165-99(C)(5)(a-h), recite in detail the findings required for compliance with Town Code § 165-65.3(E) (Solar PV Systems requiring a Special Use Permit). The Town Code provides an exhaustive list of standards that must be met before a Solar PV System can be granted a Special Use Permit (Town of Farmington Town Code § 165.65.3[F]). The Planning Board, in the Resolution dated October 7, 2020, thoroughly reviewed all criteria for the issuance of a Special Use Permit for a Solar PV System.

The failure of the Planning Board to recite, verbatim, Town Code § 165-99(C)(5)(a-h) does not alter the fact that the Planning Board thoroughly reviewed the requirements that are specific to a large-scale ground-mounted solar system. Approval of the Special Use Permit upon review of the criteria set forth in Town Code § 165-65.3 constitutes inherent approval of the Special Use Permit upon review of the criteria set forth in Town Code § 165-99(C).

9. Did the Planning Board otherwise act arbitrarily or capriciously?

Neither the Petition nor the accompanying memorandum of law submitted by the petitioners specifies any additional arbitrary or capricious acts on the part of the Planning Board. This Court's review of the entire record likewise does not reveal any actions taken by the Planning Board that are arbitrary or capricious.

As noted above, the Respondent Planning Board raised three Objections in Points of Law. The first, with regard to standing was addressed at the outset of this Decision. The second is for attorney's fees. Even if the Petitioners had prevailed on their Petition, "[a] prevailing party is not entitled to have his attorney's fees paid by the loser unless such an award is authorized by agreement between the parties, statute, or court rule (*see Chapel v Mitchell*, 84 NY2d 345, 349; *Hooper Assoc. v AGS Computers*, 74 NY2d 487, 491)" (*Clelland v Lettro*, 15 AD3d 874, 875 [4th Dept 2005]). Petitioners have pointed to no agreement or statute that would entitled them to attorney's fees. In any event, Petitioner have not prevailed on their Petition and the Petitioners' claim for attorney fees is dismissed.

Finally, the Planning Board raises an Objection in Point of Law contending that the Administrative Record demonstrates that the Planning Board fulfilled its legal duties with respect to all its determinations in this matter. As stated herein, this Court finds that the Planning Board procedurally and substantively followed the requirements of SEQRA with regard to the issuance of the Negative Declaration and to the Town Code with regard to the issuance of the Special Use Permit.

Based upon the foregoing, the Petition, including the request for injunctive relief, is hereby dismissed. Respondent Planning Board to submit an order accordingly.

DATED: October 18, 2021
Canandaigua, New York.

Hon. Craig J. Doran
Supreme Court Justice