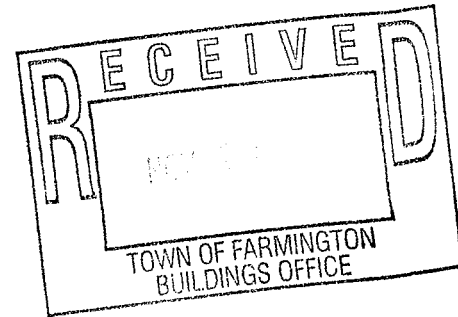


#37



November 20, 2018

Town of Farmington Planning Board
1000 County Road 8
Farmington, New York 14425

Dear Members of the Farmington Planning Board:

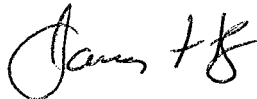
I appreciated the opportunity to appear before you at your last meeting on November 7, 2018. I strongly oppose the amendment of the Town Code by Local Law no. 6 of 2017. The amendment now permits Large Scale ground mounted solar PV systems in A-80 Agricultural Districts, a use that was not previously permitted. In my opinion, the amendment has produced the situation that we now confront. In an agricultural and rural area, we have a 40-acre power plant dumped in our midst with irreversible and detrimental consequences. These consequences will not only involve the diminution of the value of our land but the character and beauty of this area. The Town was warned of these negative consequences in a letter sent to Mr. Brand dated October 5, 2018 by the Ontario County Agricultural Enhancement Board. In essence, our duty to preserve farmland, as set forth in the Farmington Farmland Protection Plan of 2016, will be squandered. It is also my opinion that the amendment is in direct violation of the Farmington Farmland Protection Plan. Therefore, we are in the process of circulating a petition to present to the Town Board calling for a Moratorium on any application for the development of Large Scale ground-mounted solar PV systems and to rescind section 165-65.3.5 of the Town Code permitting Large Scale ground-mounted solar PV systems in A-80 Agricultural Districts.

There is a present issue, however, that the Planning Board must address immediately. I direct your attention to Town Code section 165-65.3.6, and specifically subsection [b] (3), wherein the law clearly states that when there is an application for a Large-scale ground-mounted solar PV system that is located upon farmland located within the Farmington Farmland Protection Plan, and the Delaware/Smith land is in that category, there is a condition precedent that must be satisfied. Prior to any approval the **Planning Board must first determine that there is no feasible alternative use of the land other than for Large-Scale ground-mounted Solar PV systems.** We have reviewed all public materials associated with the application and the record is devoid of any information from the landowner, or Delaware for that matter, indicating that there is no feasible alternative use for the Smith property other than a Large Scale Solar Power Plant. This does not mean what other feasible sites were investigated by Delaware. It means that the owner of the property must prove prior to any approval, or for that matter, as the law is written,

prior to any consideration of approval, that the owner has investigated all feasible potential uses other than its current use and the only feasible alternative use to the current cattle farming use is a 21,000 unit solar array power plant. Upon that evidence, the Board must then determine whether the owner has proven that a power plant is the only feasible use for the land. I submit that it is proof that cannot be established. Absent such evidence, and by the public record no such evidence exists, the Planning Board must reject the application. In any future application, no approval process should be undertaken until such time as the owner produces his financial records and documents the efforts to find feasible alternative uses.

The law is extremely clear, and there are, in my opinion, no legal arguments that there is not a condition precedent as outlined above. Accordingly, we ask the Board to reject the Delaware/Smith application for failure to meet the requirements of the Code. If the Board chooses to ignore the clear requirement of the pre-condition, we believe that the Board is acting outside of the scope of its legal authority and we will seek legal relief.

Sincerely,

A handwritten signature in black ink, appearing to read "James F. Foley". The signature is fluid and cursive, with the first name "James" being the most prominent part.

James F. Foley

cc: Farmington Town Board
Farmington Zoning Board of Appeals
Roger and Carol Smith
Jeff Graff, Esq.