

TOWN OF GAINES PLANNING BOARD MEETING  
CARLTON RECREATION HALL, 1853 OAK ORCHARD ROAD, ALBION, NY  
OCTOBER 5, 2021

Meeting Called to Order by Chairman Watt at 7:05 P. M.

Pledge to the Flag led by Justin Kirby

PRESENT: Christopher Watt, Chairman; Gerald Monagan; Brenda Radzinski; Justin Kirby; Carole Patterson

GUESTS IN ATTENDANCE: Doug Bower, Daniel Deibel, Charlene Stillwell, Clark Stritzel, Jared Perram from the Pescara Solar Project, Andrew Gordon representing AES, Terresa Bakner Attorney working with AES; Adam Wingard (Main Contact person for AES via Teleconference); Mark Purvett the contractor for AES via Teleconference; Mark Overall representing Buffalo Solar; Paul Schwenk representing Town of Carlton Board; Sherman Gittens, MRB Group and Dan Strong, Town of Gaines Codes Officer

#### APPROVAL OF MINUTES

Chairman Watt asked for a motion to approve the minutes of September 7, 2021; Motion moved by Carole Patterson and 2<sup>nd</sup> by Gerald Monagan.

Ayes 5; Nays 0

Motion Carried.

#### OLD BUSINESS:

##### STENDTS SOLAR PROJECT

Chairman Watt started the discussion by asking the representatives present for the STEDNTS project to introduce themselves. Andrew Gordon was present and representing AES, Terresa Bakner was present as the Attorney from Whiteman Osterman and Hanna LLP representing AES. Adam Wingard who is the main contact person for AES and Mark Purvett who is the contract for AES were both present via Teleconference.

The discussion started with Chairman Watt stating that the board had received the updated information from AES, they reviewed the information and found a few things were still missing.

The main items discussed included the access road, no notices sent to the public making them aware of the solar project; the removal of trees; and having AES put a bond down in order to start building.

The discussion started with Chairman Watt briefly letting AES know that a Letter of Credit (LOC) will be required for the construction phase of the project rather than a Bond. An itemized LOC will need to include the erosion and sediment control used for the project (including final stabilization of the site), construction of the Ponds and finalization of the Maintenance agreement, installation of the access road, landscaping/ tree buffers, and if any Town roads are proposed to be used during the construction phase/road repair (include pre- and post-construction inspection and imaging). Terresa asked the board why a LOC would be required rather than a Bond? Chairman Watt stated a LOC was easier to trace whereas a bond is not easy to trace once the funds start being used. Sherman also stated it is a settlement control document.

The next item Chairman Watt questioned about was the access road; his concern was how it is going to be possible to have it built without any soil borings done that the Planning Board had requested, inference with the wet lands and not knowing what is really going to be underneath; how will this work once the construction starts.

Chairman Watt stated that until 1 month ago, the board was not totally aware of the access road design. Owner has access on Rt. 279, but was not clarified; just assumed. It was also mentioned something different was used, leasing from another; federal wetlands going through, no lease agreement and is not definitive location where leasing. STENDTS will be responsible for upkeep on what property, it is not, definitive.

Adam Wingard then commented about the access road and stated the changes were made and presented to the board 10 Months ago, so this is not a new topic and nothing has been changed since that time. However, if need be Adam

stated they could update the language in the lease to make the information clearer and legit. He asked who he should talk to about using the correct language to correct this matter and Chairman Watt mentioned that Attorney Doug Heath would be the person to contact.

Chairman Watt felt that the main concern 1 month ago was the engineer did not have the information that was needed at the time to proceed. Test borings needed to be done and they needed to have the weight limit of the access; will it last for 30 years? This may not be possible.

Mark who is the contractor for AES commented about the situation regarding access road and the weight limit. He stated that they did a report with NRCS and the report stated the access will be stabilized by using line plus Niagara silt. The report done with NRCS is consistent with the environmentalist.

Watt stated that the Soil Grouping is not correct and not accurate enough to make sure the design will work.

Discussion continued between Chairman Watt and AES regarding this issue, trying to find a solution.

AES stated that their design for the access road would hold up to heavy construction trucks for the months of construction and after that there would only be 4x4 pickups occasionally and the road would be adequate for them. Mr. Watt stated that now the board understands why AES is referring to the access road as a haul road.

The next item discussed was in regards to the removal of the trees and other landscaping in and around the area of the project. It was mentioned by AES a removal survey was submitted to the board to review. It showed AES was only going to be removing trees inside of the fence line of the project. Chairman Watt stated the main concern was the removal of the trees outside of the fenced area.

Andrew Gordon stated they would just remove any branches or limbs outside of the fenced area that are leaning inside the fenced area. Chairman Watt then asked if they had an update as to how many trees are really going to be removed. After a brief pause while they looked up the information, AES stated they could possibly remove somewhere around 304 trees and shrubs.

Chairman Watt was then concerned about the area that was going to have trees removed, as he stated that at one point AES stated they were only going to remove trees from a certain area, now they are showing the entire property having trees removed. AES then stated they have access to remove whatever they need to as they have site ability to the entire parcel (29 acres). Chairman Watt spoke up and asked how it was possible they had ability to the entire property as it was mentioned prior to tonight's meeting they only had access to a certain part of the land (24 acres). AES stated they have a lease agreement to access the entire property (lot coverage), so they are able to remove whatever they need to in order for the solar panels to do what they need to do and it is what the landowner agreed to.

Landscaping was the next item discussed and the main concern was regarding the fact AES was going to remove some trees and then replace with newer trees; looking to use Pine and Cedar trees. Chairman Watt feels if Cedar trees are used it will attract the wildlife such as deer who will destroy them and it will then defeat the purpose of screening. Adam Winguard stated he would be happy to change from cedar to maple and that would not be a problem. Chairman Watt replied that maple only have leaves 5 months per year. Chairman Watt then questioned AES about keeping some of the trees for screening rather than removing and replacing. Mark who is the contractor for AES stated they may not have to remove all of the trees mentioned in the report. Once they get started on the project they may discover they don't need to remove everything that is mentioned in the report and they may not know until they get started. Chairman Watt was concerned as to why they would not know this before they started, this did not seem logical.

Chairman Watt then questioned AES regarding the contact of the surrounding neighbors and how they were notified about the project. He knows AES sent letters out, but from the information he was sent, it shows most of the addresses were wrong and the information was not gathered from a legit resource. Chairman Watt also mentioned that the application did not clarify the surrounding land was being used for hunting purposes, again a neighbor who hunts was not notified and AES did not get the information needed. These were a few of the items that are a concern to the board and may need to be updated. Chairman Watt also had some concern regarding the storm water and the plans for what will be done during project were vague. Sherman Gittens from MRB Group commented he had received the information and the DEC requirement are being followed, but no other information was available at this time and more information would need to be submitted.

The discussion then moved on regarding the hours of operation. Chairman Watt was not sure why AES stated construction would be running Monday through Sunday from 7 AM to 7PM and holidays from 7 AM to 7 PM. The hours for the weekend and holidays are not good as a lot of people are off on the weekends and like to sleep in or want to be able to enjoy time with family and friends without hearing the noise of the construction going on. Chairman Watt is hoping this is something that can be updated to accommodate these issues. AES stated they would be willing to work with the board on this situation and come up with a better plan.

Discussion then moved onto the situation regarding the ponds and how much dirt was going to be removed and where it was going to be placed. Mark for AES commented on this situation and explained to the board about their plans for the removal and placement of the dirt. He stated that 2,690 cubic yards of dirt and soil would be removed in order to create one of the ponds and 50 to 60 cubic yards would be removed for the second pond. They were going to then use most of the dirt and soil that is being removed for the access road. The access road would have 8 inches of crushed stone added and most of the soil over top of the crushed stone in order to create enough support for emergency and other heavy vehicles. In the end the most of the soil will be used for the access road and will not have to be removed to other areas of the land and the access road will be compacted and become ground level. Sherman Gittens from MRB group then questioned AES in regards to this situation and wanted to clarify that the dirt and soil removal was going to be staying the property. Terresa the attorney for AES stated that yes it was going to stay on the property and that was included in the site plan and is shown clearly. She asked the board if they were interested in seeing this information as it showed the grading of the soil for the access road, the board was interested and they will received a copy to review.

At this point Chairman Watt called for short recess.

After the recess, the board gathered back together and Chairman Watt made a few comments stating that this discussion was vague and more discussion would take place at next month's meeting (November 3<sup>rd</sup> at 7pm at the Carlton Rec Hall). At that point the board will review all that was discussed at tonight's meeting and decide how to move forward at that point. No further action will be taken at this time.

#### UDERITZ SOLAR PROJECT

No representatives for this project was present. No action taken at this time.

#### PESCARA Solar Project:

Jared Perram was present as the representative for this project and he started the discussion by reviewing with the board what had happened at September's meeting and then was looking for an update as to where things are at as of right now.

Chairman Watt stated he had not heard from Attorney Doug Heath as he has been tied up in other matters at this time.

Discussion continued with the regards to the merge of the 2 lands and protecting the landowner, allowing him to unmerge if need be. Special merger agreement was discussed as this was the way to protect him and it was going to be up to the Town of Carlton to approve this permit.

Chairman Watt also discussed the easement of the right of way regarding the cell company. This can't go forward until the actual information is in possession of the board and the solar company.

At this point Jarred asked the board if there was any way they would be able to send this project to the County Planning Board.

Chairman Watt felt that there were still a few items that needed to be cleared up and reconfigured before sending to the County Planning Board. He wanted to wait until after the Town of Carlton had their meeting and then find out what their plans were for the project. Jarred questioned if there was any way to configure with both Town of Carlton and Town of Gaines after the Town of Carlton met to finalized things, so they could then go to the County Planning Board.

Chairman Watt felt that there was not going to be any time in between before sending over to the County Planning Board, so it was going to have to wait until November's meeting before a final decision was made. He also stated a special Planning Board meeting would have to happen and with legal notice. There are not enough days for this to happen before the County Planning Board meeting.

Sherman Gittens from MRB stepped in and let the board know that Paul Schwenk from the Town of Carlton was at tonight's meeting; was not sure if he was willing to speak on the board's behalf. Paul was not quite certain he wanted to be put on the spot, was just there to listen and get information to take back to the Town of Carlton meeting.

Sherman Gittens from MRB Group commented that the Town of Carlton is planning on merging the 2 properties. A letter of intent would need to be submitted. Paul from the Town of Carlton Board that that letter was taken care of, but would double check during their meeting and get things figured out and finalized for the Town of Gaines Board to review.

After multiple discussion between the board and Jarred, Jarred then asked the board to please clarify what would be needed to finalize this in order to be able to be sent to the County Planning Board. Chairman Watt stated that they need to review what the Town of Carlton comes up with after their meeting and then review it all to make sure everything is there in order to be able to then send to the County Planning Board. This would not be able to happen until November's meeting. Jarred asked the Board if there was any way to gets things finalized so that they could move on this for October's County Planning Board Meeting. Chairman Watt stated that they could possibly try to do a quick special meeting the following week to make the vote, however it was mentioned they would have to advertise this meeting and there was not going to be enough time to do this. So at this point things are going to have to wait until November's meeting before moving forward.

At this time, no further action would be taken and more discussion would take place next month.

#### NEW BUSINESS:

Presentation from Buffalo Solar E2I Ventors on 400 KW Project on Beam property across from Intergrow Tomato Green Houses.

Mark Overall was present at tonight's meeting representing the landowner of the property they are looking to build.

Chairman Chris Watt started the discussion in regards to the application and how it was sent to the board 2 different ways and wanted to get clarification as to the reasoning for this. You sent one in to us last month, which you never showed. Then something different tonight, still not complete.

Mark told the board that after meeting with Dan Strong, he was told the application was needed to be a preliminary review instead of doing a basic review; needing to be submission rather than de-submission. So the application was changed and resubmitted to the board due to this conversation. Mark then stated he reviewed the law and thought this one should be supplemented and if need be will work with the board to bring things up to date.

Dan Strong stepped in and stated it was required to do a de-submission and needed to include CEASAR. Sherman Gittens from MRB Group mentioned Feasibility which included CEASAR and how it is set by the law.

A moratorium was set by the Town of Gaines Town Board, not allowing the acceptance of solar project applications for 6 months.

Discussion continued with Dan Strong stating to Mark this meeting was only going to be a pre-application meeting and not at this point the board would decide whether to approve or not. The only cause of concern regarding the situation was the conversation with Chairman Watt stating that the application was missing a few items and the fee for the engineer and attorney would need to be paid.

Mark stated he was at the Town of Gaines office, but was not able to make any payment as the Town Clerk would not accept any money until advised by the Towns Codes Officer.

Mr. Watt said he had heard Mark wanted to pay; was rather insistent, almost demanding. Mark was told by the Town Clerk that she did not know the amount he should be charged, that this was totally up to the code enforcement officer, and he would have to hell her, until then she could not take any payment.

Mark then proceeded to let the board know he also was at the Town of Gaines office to hand in a building permit and a signed site plan review, but again was told it was only going to be a preliminary review. This needs to be reviewed first before moving forward and again the moratorium is in place and this application may be tabled and no more discussion would take place. So the application is not accepted at this time. Any other questions, contact may be done through the Town of Gaines Attorney Doug Heath, no further action would be taken at this time.

At the end of the discussion Mark wanted to make note and have on record that no demands were made at the time he was at the Town of Gaines office while talking with the Town Clerk. At that point the discussion ended and this application will be considered as not being acknowledged or exist.

Before adjourning the meeting Dan Strong wanted to share with the board a couple of applications that will be added to the agenda for November's meeting.

The first application that will be discussed is from Ken Haylett looking to subdivide land to make a Farm labor housing on the property. It will be located on Kenyonville Road, South of Ridge Road and North of Eagle Harbor Knowsville Road.

The other application is from Brian Ettinger on Brown Road. Looking to convert a section of the household for a bakery, where he will plan to sell baked goods.

One other item; November's meeting will have to be moved to Wednesday November 3<sup>rd</sup> instead of the 2<sup>nd</sup> as Election Day is being held on the 2<sup>nd</sup> of November and the office will be closed for voting. It will also be held at the Carlton Rec Hall again due to more space available for more people to attend. A legal notice will be created to make the public aware of this change.

No further business at this time

#### ADJOURNMENT

Motion to adjourn at 9:45 P. M. by Justin Kirby, 2<sup>nd</sup> by Brenda Radzinski.

Ayes 5; Nays 0

Respectfully submitted,  
Sarah Bradshaw  
Secretary