



**THE TOWN OF PEMBROKE
PLANNING BOARD**

1145 Main Rd., Pembroke, NY 14036

Minutes for the regular meeting held on September 25, 2019

ATTENDANCE:

- Jim Uebelhoer — Chairman
- Michael Bakos
- Cheyanne Seelau
- Thomas Marshall
- Philip Conti
- Greg Kuras
- Diane Denton — Secretary
- Thomas Schneider - Zoning Officer

PUBLIC PRESENT: Yes

MEETING called to order at 7:00pm.
“Pledge of Allegiance” led by Mr. Uebelhoer.

The chairman announced, for the public present, that the American Legion application for re-zoning on Indian Falls had been tabled until further notice.

MOTION TO APPROVE the Minutes from August 28, 2019 made by Mr. Kuras. Second to motion was made by Ms. Seelau.

Voice Vote: ALL AYES—MOTION CARRIED.

Public Hearing (left open from 8/28/29)

Special Use Permits, Site Plans Reviews, Associated Land Separation

Borrego Solar Systems

241 Knapp Rd., Town of Pembroke
Tax Map#s 14.-1-4.11 & 14.-1-1.113

Zoning District: Agricultural/Residential (AG/R)

Required referral to County

- Mr. Uebelhoer mentioned that there was a sign-up sheet for members of the public who wished to speak, each person allowed two minutes.
- Haylee Ferington from Genesee/Finger Lakes Regional Planning Council was present to help answer any questions.
- Adam Fishel of Marathon Engineering is the Civil Engineer for the project. He explained the changes to the Site Plans made since the Planning Board’s August meeting, in response to the public’s verbal and written comments and concerns:
 - The areas the East Site and West Site perimeter fences enclose would not exceed twenty acres each, similar to what Genesee County is doing with Borrego projects.

- Visual buffering was moved back from 25-30 feet to 150 feet from property lines, putting the tree line pretty much in line with the existing tree & brush.
- The originally proposed green slats have been taken out, only vegetation used to provide desired screening. Mr. Fishel noted that there were new visuals without and with new mitigation from various vantage points.
- Regarding concerns that the proposed trees plantings proposed would be relatively slow growing: in front of those, on the South and east side of East Site, there will be plantings of fast growing 7 ft. tall deciduous shrubs, like forsythia and viburnums, with more visual appeal.
- On the West Site there will be additional screening to existing tree line and to fill in a gap at the southeast corner.
- Answering the concern of the safety of the panels in terms of environmental health risks: as stated in the MSDS there are no environmental or health hazards associated with the panels. A more general study submitted documents showing long-term effects on health and safety as negligible.
- Regarding concerns of the EMF (Electric Magnetic Field) around the panels: it would be highest around the inverters and drop at the edge of the perimeter fence to no more than is given off from fluorescent lights and 50 ft. away from the panels to normal background levels.
- Addressing the concern over noise: for the nearest properties it would be like leaves or corn rustling on a windy day.
- In terms of snow drifts, it would be no different if the land was cleared for agricultural use.
- Emilie Flanagan and Steve Long of Borrego were present to answer further questions and concerns from the public.
 - Joe Halleck read the five points the ZBA must consider in an application for an area variance as stated in Zoning Law. Zoning Officer Tom Schneider stated that a Special Use Permit for a Solar Farm was a specific use on a non-arterial highway in AG/R. The Borrego Solar project met the requirements with the footprint for the panels and transformers being under 10 acres for each of the projects. Mr. Schneider also noted that variances were not required for these applications.
 - Jamie Stone, who lives at the corner of the East Site, wondered if they were leaving the trees currently at that corner and was told nothing would be cleared outside of the fence. She also wondered about replacement of trees and shrubs. Mr. Fishel said there was a one-year warranty on anything planted for the project and anything diseased or dying would be replaced within a year by the landscape contractor.
 - Brad Laud was concerned about home value loss. He was told the issue would be addressed by Ms. Flanagan later in the meeting. He was also concerned that a dead tree and shrub could potentially not be replaced for almost a year. Mr. Uebelhoer noted that was the contract Borrego had with the landscapers and that even a dead tree or shrub would still provide some cover.
 - Jamie Meier wondered where Borrego Solar's headquarters were located (Latham, NY), and, also, how the Town of Pembroke would benefit from the solar panels. He also wondered how the property owners would be reimbursed for a drop in their property values. Ms. Flanagan said there were a lot of benefits to local homeowners which she could go through later as well as addressing the home valuation issue. Mr. Meier was concerned about the existing farmland. Mr. Schneider and Ms. Flanagan told him that none of it was going to be disturbed and current farming activity would continue.

Ms. Flanagan also assured Mr. Meier that there could be no future expansion of the solar farm because the infrastructure with the utility was at capacity. Mr. Meier had a question about the wires, whether they were above or underground. Ms. Flanagan explained there would be a couple of poles much like telephone poles and that none would be added along the road to the substation.

- Ms. Flanagan noted that there would be a Community Solar PILOT, allowing residents/users in the area to sign up and get a minimum of 10% off their utility bills.
- Mike Henley had a question about the buffering distance from the property line and thought the change was a welcome improvement. Mr. Henley also wondered how a commercial solar farm was allowed in AG/R. Mr. Schneider explained that in 2018 when Genesee County told the Town to address solar farms, the Town Board approved a Zoning change to specifically include them in AG/R. Notification was put in the paper at the time. Mr. Henley then wondered which way the solar panels were facing and was told southwest.
- Erik Polkowski, who is on the Akron School Board, asked if the PILOT (payment in lieu of taxes) was going to be negotiated prior to the Planning Board voting on the project? Ms. Flanagan said the PILOT was usually negotiated after approval.
- Douglas Van Buren still had a concern about the snow, which normally drifts badly on Remsen Rd. Mr. Fishel felt that the buffering proposed would improve the situation. Mr. Van Buren also wondered about the noise study. Mr. Fishel explained that it wasn't a study done specifically for the Knapp Rd. project, but from other similar Borrego projects it concluded there would be no noise along the perimeter near residents. Ms. Flanagan said that any noise would be way back and stationary, unlike a model plane or other noisemakers that are in motion.
- Jamie Stone was still concerned about the loss of value to her home and wondered if she would be reimbursed if she ever sold it and lost money. Mr. Uebelhoer said that there was no crystal ball in real estate.
- Haylee Ferington from Genesee/Finger Lakes Regional Planning Council spoke about the 2030 initiative for renewable energy in NYS.
 - Ms. Ferington offered that it was fortunate that the company for this solar project, Borrego Solar, was located in NYS and that the company and its board were willing to listen and act on the concerns of residents. Often companies that come in are from other parts of the country or even international. Another benefit was that it would create jobs in the state and put dollars into the state and local community. The job growth in renewable energy is almost double what it the national average for job growth generally.
 - She addressed the issue of properties devaluing as hypothetical. She said there were studies that showed property values do not decrease. She offered market data to whomever would like to see it.
 - Ms. Ferington noted that solar panels were one of the least invasive forms of renewable energy technologies.
 - She noted that in terms of the environmental impact on migratory birds and other species, many New York agencies have reviewed this. All those studies were presented to the Town with the applications. Ms. Flanagan from Borrego added that, due to the process in New York, solar projects are regulated by the Natural Heritage Society, the Department of Conservation of New York, the New York Corp of Engineers, the Historical Society of New York, and a lot more agencies that have looked at this project specifically and deemed there would be no impact on migratory birds and endangered

species, and that the proposed project is in compliance. All the reports of these agencies are submitted to the board through the SEQR process.

- Ms. Flanagan noted that most of Borrego's projects are in Genesee County and she would be happy to provide a list of what is under construction and completed, so public could view them during construction and post construction.
- Mr. Schneider noted that many projects of other companies are very near residences and do not include fencing or any kind of buffering. Ms. Flanagan added that Borrego's strategy is to place these solar farms in fields, incorporating the concerns of the public into the site plans.
- There was a question about growing trees on bedrock. Ms. Flanagan answered that they use a landscape architect who specifically knows what grows in the area, in term of the soil and weather conditions, etc.
- Mr. Long of Borrego addressed resident Jamie Stone's concern over how the panels would be drilled into bedrock, noting that screws, about 20 ft. apart, are drilled directly into the ground 6-8 feet deep. Ms. Stone was also assured that the drilling into the ground wouldn't affect her well.
- If approved, construction probably wouldn't begin until spring. Borrego is a developer, construction and engineering company, and sell the project to larger investors who must adhere to the site plan and any stipulations approved by the Planning Board. Don Dylag wanted to know who oversees all the contracts to do with the project, to make sure the promises made to the public are fulfilled. Mr. Long noted that any changes to what was approved would have to go back to the Planning Board for review. Board Member Philip Conti noted that stipulations/restrictions could be put on any approval.
- Ms. Flanagan said that all agreements, including stipulations/restrictions, are recorded at the County level and anyone can FOIL and pull the records. She was also willing to put everything on a flash drive for the public to download. Mr. Schneider added that everything Borrego has presented is kept on record/file in the Town offices.
- Mr. Schneider noted that the project is being sold, not the property. The Miles retain ownership.
- There was concern expressed over what happens if there is a malfunction in the system. Mr. Long said that a message was sent to Borrego to be analyzed, the system shut down remotely, if necessary. It was assured that the panels Borrego uses do not put off any toxins if on fire.
- The engineer to oversee the construction of project and routinely inspect would be hired at the Town discretion and paid for by Borrego.
- Board member Mr. Conti brought up the number of telephone poles in view of quite a few of the houses. He wondered if the wires could go underground. Ms. Flanagan said the utility dictates the design. Mr. Long said they could see if the utility would be willing to allow more pad mounts so there could be less poles.
- Mr. Long noted, in response to the concerns about glare, that the window of glare was very small and only if looked at directly, that it wouldn't hit anyone's whole house.

Public Present: Yes

Motion to Close the Public Hearing @ 8:16pm made by Mr. Uebelhoer and seconded by Mr. Bakos

Voice Vote: ALL AYES-MOTION CARRIED

On **MOTION** made by Mr. Uebelhoer and seconded by Mr. Kuras to make a **negative Declaration on the SEQR Long Form.**

ROLL CALL VOTE: Mr. Bakos-Aye; Ms. Seelau-Aye; Mr. Marshall-Aye; Mr. Uebelhoer-Aye; Mr. Knupfer-Aye; Mr. Conti-Nay; Mr. Kuras-Nay
Five (5) AYES; Two (2) NAYS—**MOTION CARRIED**

Discussion:

- Regarding Land Separation application: to create one solar parcel and one agricultural parcel, the agricultural land at front of West site will be separated to be merged with East Site.
- The Town Engineer, Clark Patterson, will inspect to ensure projects are completed as proposed.

On **MOTION** made by Mr. Uebelhoer and seconded by Mr. Marshall **to approve the Special Use Permits & Site Plans for the East and West Project Sites, and associated Land Separation with the following stipulations:**

- **The town hires an engineer to ensure the projects are built as presented in the construction documents and Site Plan as approved by the Planning Board.**
- **Decommissioning Bond as presented will be posted before Certificate of Compliance is issued.**
- **A documented reasonable attempt is made to reduce the number of telephone poles, putting wires underground as much as possible.**
- **Going forward, any sale of project would ensure that all the agreements will be transferred to the new owners.**

ROLL CALL VOTE: Ms. Seelau-Aye; Mr. Marshall-Aye; Mr. Uebelhoer-Aye; Mr. Knupfer-Aye; Mr. Conti-Aye; Mr. Kuras-Nay; Mr. Bakos-Aye;
Six (6) AYES; One (1) NAY—**MOTION CARRIED**

Maryanne Wiater expressed concern over the American Legion application being tabled once again. Mr. Schneider and Mr. Uebelhoer explained it was a last-minute decision by the American Legion to withdraw from tonight’s meeting to reword the application.

Informational
Special Use Permit and Site Plan Review
Mistral Wind LLC

- Steve Thompson, CEO of Optimum Renewables, and his business partner, Esther, were present. They are both engineers by trade. Optimum has developed several projects in Iowa and WNY.

- The proposed project is for a 20 MGW project of six turbines: five turbines in the Town of Darien, one turbine in the Town of Pembroke in the area of Brown and Ellinwood Roads near the township line.
- The turbines would be 492-495 feet tall.
- Target start of production would be April 2021, Turbines operational in October 2021.
- The Town of Darien is the lead agency for this project.
- Mr. Schneider mentioned that this was just a preliminary discussion to introduce the project to the board, agreements still under review between the Town of Pembroke and the Town of Darien.

Old Business:

Ms. Seelau commented that the house on Main St. and Cleveland is starting to look much better, most of the garbage outside cleaned up.

New Business:

The board discussed the notification of the public in a case like the last-minute withdrawal of the American Legion issue from the agenda.

A MOTION to adjourn the meeting was made by Mr. Bakos and seconded by Mr. Knupfer.

Voice Vote:

ALL AYES—MOTION CARRIED.

Meeting Closed at 9:27pm.

Respectfully Submitted,

Diane Denton, Secretary

Jim Uebelhoer, Chairman

These minutes were approved by the Town of Pembroke Planning Board October 30, 2019