

**TOWN OF PERTH PLANNING BOARD
OCTOBER 23, 2023
6:00 P.M.
PERTH TOWN HALL**

MEETING NOTES

PRESENT:

**RON CETNAR, CHAIRMAN
NICHOLE SURENTO, VICE CHAIRWOMAN
DIANE CONRAD
TREA VOR GILDAY
TRACY GUTOWSKI
KALEB WALKER (ALTERNATE)**

**MARK CONCILLA, CODE ENFORCEMENT OFFICER
AARON ENFIELD, FULTON COUNTY SENIOR PLANNER
PETE WATROBSKI, CHIEF, PERTH VOLUNTEER FIRE DEPARTMENT**

OTHER:

**TRAVIS MITCHELL, ENVIRONMENTAL DESIGN PARTNERSHIP
MARK MURPHY
FRANK MCCLENEGHEN, ACTIVE SOLAR
PAUL KRUGER, ACTIVE SOLAR
JASON DELL, LANSING ENGINEERING
NATHAN MINGOLELLI, SCALE MICROGRID
JUSTIN NIEVES SCALE MICROGRID**

I. CALL MEETING TO ORDER:

The meeting was called to order at 6:00 p.m.

II. APPROVE MINUTES OF THE LAST REGULAR MEETING:

MOTION: To approve the minutes to the September 18, 2023 minutes.

MADE BY: Nichole Surrento

SECONDED: Tracy Gutowski

VOTE: 6 in favor, 0 opposed

III. ACTIVE SOLAR DEVELOPMENT – PUBLIC HEARING - PERTH SOLAR HOLDINGS, INC. – SOLAR FARM AND MINOR SUBDIVISION OF RAINDANCER STEAK PARLOUR INC. AT 4582 STATE HIGHWAY 30:

Planning Board Vice Chairman Nichole Surento was asked to abstain from the project as they both live within 500' of the proposed project.

A. Background:

Active Solar would like to construct a 3.5 (AC) Solar Farm and Subdivision along the west-side of NYS Route 30 (Tax Map Parcel Nos. 178.-2-34 that is 4.52+/-, 178.-2-35 that is 29+/- acres and 178.-2-36 that is 9.75+/- acres) and is owned by Raindancer Steak Parlour Inc. From the three (3) existing parcels, the Applicant would like to have one parcel that is 28.75+/- acres which would house the Solar Farm, and the second parcel that is 14.80+/- acres. A portion of the parcels is in Agricultural-Residential (A-R) District and the Commercial Residential (C-R) Zoning District.

A Solar Farm is an allowed use under the Perth Zoning Ordinance as a Special Use Permit. The 2017 Town of Perth NY Zoning Ordinance defines a Solar Farm as “the use of land where a series of one (1) or more solar collectors are placed in an area on a parcel of land for the purpose of generating photovoltaic power and said series of one (1) or more solar collectors placed in an area on a parcel of land collectively has a nameplate generation capacity of at least 15 kw direct current (dc) or more when operating at maximum efficiency.”

Chapter VI of the 2013 Town of Perth Comprehensive Plan indicates that the Town should encourage the development of solar, residential, and small commercial solar as well as large-scale solar so homeowners become more energy self-sufficient. However, the Plan states that the magnitude of the systems needs to be analyzed so there are no negative consequences to neighboring property owners that would outweigh the benefits.

On March 21, 2023, Code Enforcement Officer Mark Concilla authorized a merger of the three (3) parcels of the properties pursuant of Article 4(D)4 of the Town of Perth Zoning Ordinance. As part of the Solar Farm project, a subdivision will be required.

Town Attorney Carmel Greco indicated a conflict of interest with the application and is recusing himself from the project, and Johnson & Laws, LLC will be handling any legal matters on the project.

The project was originally 5 MW (AC), but has been scaled down and moved further east away from residents in the Della Valle Road neighborhood. The project is now 278' south of the property line of the residents of Della Valle Road.

B. September 18, 2023 meeting:

During the September 18, 2023 meeting, the Town of Perth Planning Board continued its review of Active Solar's application for a Subdivision at 4582 NYS Highway 30. At the conclusion of the meeting, the Planning Board tabled further review until the following information was answered:

1. A letter from National Grid once the interconnection agreement has become available.

STATUS: The interconnection agreement will be submitted when it becomes available. The anticipated agreement is 2024.

2. Continue to work with the Raindancer and Perth Volunteer Fire Department on mitigating patrons on the access road.

STATUS: The proposed access road to the Solar Array from NYS Route 30 will have signs posted in the Raindancer Parking Lot indicating the access road is for emergency purposes only.

DISCUSSION:

Fulton County Senior Planner Aaron Enfield indicated another solar project he is reviewing is looking at utilizing a breakaway gate to inhibit trespasser, and has sent it over to Active Solar for consideration.

Mr. Enfield gave an overview of the concept stating this might be a good solution as it will help get emergency services in and keep Raindancer traffic out.

Mr. Enfield stated that the type of signage will need to be finalized with Raindancer and Active Solar.

3. As the Operation and Maintenance Plan is finalized, it will need to be submitted to the Planning Board for review.

STATUS: The Revised O&M was sent via email.

DISCUSSION:

Planning Board members, Active Solar, Code Enforcement, and Senior Planner had a back-and-forth conversation regarding the O&M Plan.

Mr. Kruger stated that the finalized plan was not completed until just before the operation.

Mr. Enfield stated, that in reviewing other O&M Plans by Active Solar, it is quite robust and that what they provide would not be available until later down the road.

Planning Board Member Tracy Gutowski inquired if a condition of approval could be given out for the full O&M Plan?

Mr. Enfield mentioned that could occur.

4. A Decommissioning Plan will need to be updated to reflect the meeting held on September 21, 2023.

STATUS: The Fulton County Planning Department is working with the Applicant. Subsequently, it is recommended that the Town of Perth have signoff on the Decommissioning Plan before it is approved by the Planning Board.

DISCUSSION:

Mr. Enfield stated he and Mr. Kruger spoke on the project and \$262,500 was agreed upon as a price at the cost of inflation at 4.5% over the course of 25 years.

The Planning Board had a back-and-forth conversation with the Applicants on the Decommissioning Bond.

Planning Board member Gilday stated, that while he was pro-solar as a way to address energy issues, he questioned the validity of solar once a new emerging technology takes hold and solar fields are abandoned. He indicated that should this occur in the T3the County may have to

oversee this. Mr. Gilday inquired about prevailing wages that would be needed by government contracts.

Mr. Enfield stated that, while Perth previously has left the sole financial decision to the Planning Board, many other communities throughout New York State have included elected officers, such as the Perth Town Board. He stated this way it gives additional insight on the project. He also mentioned that the Town Board would be the one to activate the Decommissioning Bond, if and when it is needed.

Planning Board members agreed that some financial oversight should come from the Town Board for a sign-off.

PLANNING BOARD ACTION:

MOTION: To authorize the Fulton County Planning Department to finalize Decommissioning Cost Estimates and to send to the Town of Perth Town Board for sign-off before being approved by the Town of Perth Planning Board.

MADE BY: Ron Cetnar

SECONDED: Tracy Gutowski

VOTE: 5 in favor, 0 opposed, 1 abstain (Surrento)

5. Specifications on the chain-link fence will need to be included with the possibility of black privacy screening should the Landscaping Plan not be sufficient.

STATUS: Provided.

DISCUSSION:

Planning Board Member Treavor Gilday indicated that he would prefer green privacy strips between the fencing.

Planning Board Member Diane Conrad stated that she would prefer more trees, citing the height difference of the fence and the solar panels.

Planning Board members had a back-and-forth conversation on the die-off of taller trees and, subsequently, discussed either black or green screening on the fence.

Mr. Gilday mentioned he would prefer the green as opposed to the black. He stated that the green slats hold up better in weather.

Mr. Enfield stated that the only visual impact would be along NYS Route 30 and inquired if Planning Board members would want it along any other portion of the fence.

Planning Board members agreed that the western portion facing NYS Route 30 would be sufficient.

6. The Landscaping Plan should be updated to reflect the Fulton County Planning Board's recommendation:
 - a. Plantings must be provided along the access driveway in order to soften the appearance of the utility poles.

STATUS: There is limited area for screening but the Applicant will work on effective screening. When construction is nearing completion, the Applicants will walk the property with Code Enforcement to determine areas that will need additional screening and will work with the Department to provide appropriate type of density.

- b. The Landscaping Plan should include a mix of Norway Spruce, White Spruce, White Pine, Nigra Arborvitae, Balsam Fir, Blue Hills Spruce, Beech, and Red Maple. Varieties to be avoided are Blue Spruce, Douglas Fir, and Sugar Maple as they are prone to more diseases as well as being very site/soil selective. The plantings must be at least 8' in height at the time of planting.

STATUS: The Landscaping Plan has been revised to include native wildflower seed mixtures, as well as tree species and plantings.

- c. Plantings for residents along Route 30 should be made at intervals of not more than 10' on center by planting them in one (1) consecutive row or two (2) staggered rows so that the plantings maintain the 10' separation. The plantings must be at least 8' in height at the time of planting.

STATUS: The LMG has been revised to include native wildflower seed mixtures, as well as tree species and plantings.

DISCUSSION:

Mr. Kruger indicated that Active Solar will be inspecting the site every quarter for tree growth.

Mr. Enfield stated that will need to be included into the Landscaping Plan.

- 7. The Landscaping Plan will need to state "Operation and Maintenance Plan will maintain the same effective screening as shown on the approved drawings."

STATUS: The O&M Plan has been revised to indicate that a quarterly inspection of the screening will be made to determine any dead or dying trees/landscaping that will need to be replaced.

DISCUSSION:

The Planning Board was okay with this action.

- 8. The screening portion of the O&M Plan will need to indicate it is being checked by Active Solar every three (3) months.

STATUS: The Plan has been revised to indicate that a quarterly inspection of the screening will be made to determine any dead or dying trees/landscaping that will need to be replaced.

DISCUSSION:

The Planning Board agreed with this action and asked that it be included in the O&M Plan.

C. State Environmental Quality Review Act:

During its September 18, 2023 meeting, the Town of Perth Planning Board declared itself as the Lead Agency for the purpose of issuing a determination of significance under SEQR. Subsequently, the

Applicant and the Planning Board agreed to extend the timeframe of issuing a determination of significance.

D. Public Hearing:

The public hearing was opened at 6:19 p.m.

Speakers: There were no speakers for the Public Hearing.

The public hearing was closed or paused at 6:20 p.m.

E. State Environmental Quality Review Act (cont):

Following the public hearing, does the Town of Perth Planning Board have any concerns that has resulted from the public hearing? Subsequently, are there any environmental impacts that the Planning Board sees as a concern that would negate a Negative Declaration?

MOTION:

For the Town of Perth Planning Board to authorize the Fulton County Planning Department to complete Parts 2 and 3 of the Full Environmental Assessment Form on the Board's behalf issuing a Negative Declaration for Active Solar Development's application for a Special Use Permit for a Solar Farm and Minor Subdivision at 4582 NYS Highway 30 (Raindancer Steak Parlour) since:

1. The project will have an increase in renewable energy generating 3.5 MW of energy within New York State as part of the 2019 Climate Leadership and Community Protection Act (CLCPA) also known as the Climate Act;
2. The solar farm is in compliance with the Town of Perth's 2013 Comprehensive Plan;
3. The proposed subdivision exceeds the 1-acre minimum area guidelines of the Town of Perth's Agricultural Residential and Commercial Zoning Districts.
4. Screening of the neighboring properties, where needed, will be included in the Landscaping Plan
5. There will be no impacts on air quality.
6. There will be no impact on flooding to neighboring parcels as a majority of the project will be natural landscaping and pervious surfaces.

MADE BY:

Tracy Gutowski

SECONDED:

Treavor Gilday

VOTE:

5 in favor, 0 opposed, 1 abstain (Surrento)

F. Planning Board Action:

Following the Public Hearing, the Planning Board has sixty-two (62) days to approve, conditionally approve, with or without modification, disapprove, or grant final approval of the proposed project. Does the Planning Board wish to issue its final decision on the application at this time?

DISCUSSION:

The Planning Board members agreed to approve the project with stipulations that the following will need to be met (1) interconnection agreement with National Grid; (2) finalized O&M Plan; (3) The Town Board to accept the finalized Decommissioning Plan accepted by the Town Board; (4) Barrier for access road; and (5) CESIR report.

PLANNING BOARD ACTION:

MOTION:

To conditionally approve Active Solar's application for a Special Use Permit for a Solar Farm (Perth Solar Holdings Inc.) and Subdivision at 4611 State Highway Route 30 (Raindancer Steak Parlour) with the following stipulations:

1. A letter from National Grid once the interconnection agreement becomes available to be sent to Code Enforcement and Fulton County Planning Department
2. A finalized Operations and Maintenance Plan to be sent electronically and physically to Perth Code Enforcement and Fulton County Planning Department.
3. A finalized Decommissioning Plan accepted by the Town of Perth Town Board.
4. A copy of the Coordinated Electronic Systems Interconnection Report (CESIR) to be sent electronically and physically to the Town of Perth Code Enforcement and Fulton County Planning Department.
5. The type of barrier for the access road and agreed sign with Raindancer will need to be provided electronically and physically to Town Code Enforcement and Fulton County Planning Department.

MADE BY:

Treavor Gilday

SECONDED:

Ron Cetnar

VOTE:

5 in favor, 0 opposed, 1 abstain (Surrento)

IV. DEBORAH A. NOWAKOWSKI (LIFE USE) C/O KRISTIN M. NOWAK & AMANDA NOWAKSKI – MINOR SUBDIVISION AT 135 STEERS ROAD

A. Background:

Deborah Nowakowski owns a piece of property at 135 Steers Road (Tax Map Parcel No. 166.-1-20.12) within the Town of Perth. The existing property is approximately 29.896+/- acres. The Applicant would like to subdivide off a 2.428+/-acre parcel along Smith Road next to the adjoining parcel owned by John Ceresia.

B. September 18, 2023 meeting:

During the September 18, 2023 meeting, the Town of Perth Planning Board reviewed Deborah Nowakowski's Minor Subdivision application at 135 Steers Road. At that time, the Planning Board tabled action on this subdivision application until the following items have been met:

1. All existing structures, wooded areas, streams and other significant physical features within the portion to be subdivided and within 200' thereof. If topographic conditions are significant, contours shall also be indicated at intervals of not more than 10'.

STATUS: Provided.

2. All existing restrictions on the use of land including easements, covenants and zoning lines.

STATUS: Not Provided.

DISCUSSION:

Chris Foss, Ferguson and Foss, indicated there were none.

3. Perc. and Pit test for proposed septic system.

STATUS: Provided.

4. Proposed location for well, septic, home and driveway.

STATUS: Provided.

5. Current location for Deborah Nowakowski and John Ceresia's well and septic system.

STATUS: Provided.

6. A location map of the site on the Subdivision plat.

STATUS: Provided.

C. State Environmental Quality Review Act (SEQRA):

Section 617.1 of 6 NYCRR states that, the basic purpose of SEQR is to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of State, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQR requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant effect on the environment and if it is determined that the actions may have a significant effect, prepare or request an environmental impact statement. Under these terms, the review of a Site Plan application is subject to SEQR. Therefore, the following issues must be addressed:

1. Does the Planning Board feel that the Short Environmental Assessment Form, provided by the Applicant, has been completed adequately?
2. Does the Planning Board feel that any additional information should be provided as part of the SEQR process?
3. Type I or an Unlisted Action: Section 617.6 (b)(3) of 6 NYCRR states that, when an agency proposes to directly undertake, fund or approve a Type I or Unlisted Action undergoing a Coordinated Review with other Involved Agencies, it must, as soon as possible, transmit Part I of the Environmental Assessment Form, completed by the Project Sponsor, or a Draft Environmental Impact Statement (DEIS) and a copy of any application that has been received to all Involved Agencies and notify them that a Lead Agency must be agreed upon within thirty (30) calendar days of the date the Environmental Assessment Form or DEIS was transmitted to them.

Type II Action: A Type II Action is categorically excluded from SEQR. These actions have been determined not to have significant adverse impact on the environment. Once action is determined

to be a Type II, no further environmental review is required. Section 617.5(c) provides the following actions that are not subject for a Type II Action.

4. It is recommended that the project be classified as an Unlisted Action and to do a coordinated review with the New York State Department of Environmental Conservation (NYSDEC). Does the Planning Board feel as though another agency should be involved?

PLANNING BOARD ACTION:

MOTION: To classify Deborah Nowakowski (Life Use) C/O Kristin Nowak's application for a Minor Subdivision at 135 Steers Road as an Unlisted Action and give New York State Department of Environmental Conservation (NYSDEC) 25 calendar days to offer a comment.

MADE BY: Treavor Gilday
SECONDED: Nikki Surrento
VOTE: 6 in favor, 0 opposed

D. Planning Board Action:

In accordance with Section 276 of the Town Law of New York State, the Planning Board must hold a public hearing on any subdivision application within sixty-two (62) days of the date of submittal of the completed application. Consequently, does the Planning Board wish to schedule a public hearing at this time?

DISCUSSION:

Planning Board members were in agreement to schedule a public hearing.

PLANNING BOARD ACTION:

MOTION: To schedule a Public Hearing for 6:00 pm on Monday, November 20, 2023 for Deborah Nowakowski's application for a Minor Subdivision at 135 Steers Road at Perth Town Hall.

MADE BY: Treavor Gilday
SECONDED: Tracy Gutowski
VOTE: 6 in favor, 0 opposed

V. ENVIRONMENTAL DESIGN PARTNERSHIP – CONCEPT PLAN FOR A MIXED-USE DEVELOPMENT ALONG MCQUEEN ROAD AND NYS HIGHWAY 30:

A. Background:

Mark Murphy is proposing to construct a mixed-use development on several parcels near or on McQueen Road and NYS Highway 30: 4440 State Highway 30 (Tax Map Parcel No. 178.2-10-27) that is approximately 2.317+/- acres in size; 4436 State Highway 30 (Tax Map Parcel No. 178.2-1-29) that is approximately 4.564+/- acres in size; 4436 State Highway 30 (Tax Map Parcel No. 178.-2-18) that is approximately 8.003+/- acres in size; 4438 State Highway 30 (Tax Map Parcel No. 178.2-1-28) that is approximately 1.578+/- acres in size; and 583 McQueen Road (Tax Map Parcel No. 178.-2-19) that is approximately 74.004+/- acres in size. The proposed project will include the following residential-style

townhomes along McQueen Road, with a cell tower, solar farm, a car dealership and rentable commercial spaces.

The properties are in either the Agricultural-Residential (A-R) or Commercial-Residential (C-R) Zoning Districts, and a Mixed Use is allowed in both districts per the Town of Perth Zoning Code and is defined as “a combination of two (2) or more land uses on a tract of land or within a building or structure.” Schedule A of the Town of Perth Zoning Use Table stated that Uses allowed in each district may be combined as a mixed-use. The specific review process for each use involved shall be followed. If there is a conflict in requirements between two or more uses, the most restrictive requirement shall apply.

DISCUSSION:

Travis Mitchell, Environmental Design Partnership, gave a presentation on the mixed-use project on the five parcels owned by Mark Murphy. He provided a wider scope of the area around McQueen Road and NYS Route 30 to show the densely wooded area that add for visual screening for the solar farm component.

Mark Murphy, applicant, gave an overview of the projects here has worked on within the county, such as the Mobile Station, the Town of Caroga Post Office and Town of Perth Post Office. He indicated that he purchased the property from foreclosure from the county and has been look at what to do with it. He stated

Mr. Mitchell stated that while Mr. Murphy was looking for potential tenants for the variety of sites, he was looking to get approval and then market it to potential tenants for each of the variety of uses.

Chairman Cetnar indicated plans presented to the Planning Board the previous month indicated two concepts across from Mangino’s Auto: (1) for a site for a bank and small retail establishment; and (2) a car dealership. He inquired why only a car dealership was being presented.

Mr. Mitchell stated that, in reviewing the two different types of uses, the auto dealership would have the most environmental impact when doing the SEQR form. He indicated if something else moves into the site.

Vice Chairman Nikki Surrento inquired on the cell tower, stating during the last meeting, it was asked to be placed further away from McQueen Road.

Mark Murphy, applicant, indicated that he is debating if a cell tower would be located on the property. He stated that that area of McQueen Road has terrible cellphone reception and that it might be good to have that on the site.

Planning Board member Tracy Gutowski inquired if the solar on the property will be used for the Townhouses?

Mr. Murphy stated he was not sure but would look into it.

Mr. Gilday inquired on what part of the project he hoped to rent out first?

Mr. Murphy stated that the Flexspace would be the site they hoped to get ready first.

Planning Board members were in agreement that Mr. Murphy’s concept would be great for the Town of Perth.

Mr. Enfield reminded the applicants that they would need to seek a variance from the Zoning Board of appeals due to the setback requirements for solar.

VI. SCALE MICROGRIDS – AMENDMENT TO SPECIAL USE PERMIT AND MINOR SUBDIVISION ON A SOLAR FARM AT 4611 STATE HIGHWAY 30 (ZYNOBIA HOLDINGS LLC):

A. Background:

Scale Microgrids would like to subdivide a solar project given conditional approval by the Town of Perth Zoning Board of Appeals on January 27, 2020 to Solar Park Energy 15. The project, known as Maple North, is located at 4611 State Highway 30 (Tax Map Parcel 178.-2-29.1) is approximately 86.877+/- acres in size on property owned by Zynobia Holdings. The project was initially approved for a 9.5 MW.

On May 16, 2022, EV Solar USA came before the Town of Perth Planning Board for an Amendment to the Special Use Permit in relation to the CAB System to allow for the system to be aboveground instead of belowground citing the wetlands on the property. The Planning Board approved this Amendment.

The current owner of the solar project, Scale Microgrids, came to the Planning Board during the February 27, 2023 meeting. The application was tabled and the Applicant pulled the project shortly thereafter.

Over the past several months, the Town of Perth Planning Board Chairman, Zoning Board of Appeals Chairman, Code Enforcement Office, Town of Perth Volunteer Fire Department, and Fulton County Planning Department worked on rectifying the issues that stemmed from the April 23, 2021 New York State Public Service Commission Modifying Separate Site Requirements. Fulton County Senior Planner has spoken with National Grid in relation to the project and all parties involved have come to an agreement on the process given the precedent of the matter to the Town of Perth.

B. Town of Perth Zoning Board of Appeals:

During the October 17, 2023 meeting, the Town of Perth Zoning Board of Appeals reviewed six (6) Area Variances:

1. One for Solar Component Setbacks, allowing a 50-foot setback on the original and previously-approved property rather than the allowable 500-foot setback prescribed by Article 13: Solar Farms Codes, Section D.11 under Local Law No. 2-2023.
2. One for Solar Component Setbacks, allowing a 50-foot setback on the north boundaries of both proposed lot 1 and lot 2 rather than the allowable 500-foot setback prescribed by Article 13: Solar Farms Codes, Section D.11 under Local Law No. 2-2023.
3. One for Solar Component Setbacks allowing 30-feet between the solar panel arrays of the proposed lot 1 and lot 2 subdivisions rather than the allowable 1000-foot distance between solar panel arrays that is prescribed by Article 13: Solar Farms Codes, Section D.11 and this variance will exclude fencing between proposed lot 1 and lot 2 rather than the minimum allowable twelve foot (12') fencing prescribed by Article 13: Solar Farms Codes, Section D.3 under Local Law No. 2-2023.
4. One for Fence Enclosure Height, allowing an eight-foot (8') fence with a self-locking gate to surround both proposed lot 1 and lot 2 as one unit rather than the allowable 12-foot fencing prescribed by Article 13: Solar Farms Codes, Section D.3 under Local Law No. 2-2023.
5. One for Solar Component Setbacks, allowing a 50-foot setback from the fence enclosure on the west boundary of proposed lot 1, which is adjacent to proposed lot 3, rather than the allowable 500-foot setback prescribed by Article 13: Solar Farms Codes, Section D.11 under Local Law No. 2-2023.
6. One for Solar Equipment Installations, allowing the installation of solar equipment on soils labeled as "prime agricultural land" and "of State importance" prescribed by Article 13: Solar Farms Codes, Section D.17 under Local Law No. 2-2023

The Town of Perth ZBA conditionally approved Scale Microgrid's request for six (6) Area Variances on the following conditions:

1. The area variances set forth above are contingent on the approval of the proposed subdivision lot boundaries by the Town of Perth Planning Board as specified for the property 178.-2-29.1 located on the Lands of Zynobia Holding Company, LLC. owned by Joseph Cassella.
2. The area variances set forth above are contingent on the approval of Fire and Emergency Access Roads, and the Appropriate Number of Entrances and Exits to the Fenced Enclosure as decided by the Town of Perth Planning Board and the Town Fire Chief.
3. The area variances set forth above are approved only for as long as these proposed subdivision lots are used for a solar farm. At the time of decommissioning, the three (3) proposed subdivision lots will be protected by the Town of Perth's then existing local zoning laws and Comprehensive Plan.
4. The area variances set forth above are no longer approved when and if one or more of these proposed subdivision lots change ownership. At that time, the new owner(s) and/or leaser(s) must return to the Town of Perth Planning Board and, if necessary, the Zoning Board of Appeals for review and/or extension or change of the area variances.

DISCUSSION:

In a phone conversation with Monica Ryan of the New York State Department of State Division of Local Government Services, on October 23, 2023, this condition with the Zoning Board of Appeals is invalid as Variances run with land, not ownership. Cited in *St. Onge V. Donovan*, NYS Court of Appeals (May 31, 1988). This has been held up in court for both Use and Area Variances.

5. However, when the solar farm is decommissioned, all land classified as "prime agricultural land" and "of State importance" will be protected by the Town of Perth's then-existing local zoning laws and Comprehensive Plan.
6. In making the decisions set forth above, the Town of Perth Zoning Board of Appeals (ZBA) is not setting a precedent for future ZBA requests. The above decisions were made because of the uniqueness of the Applicant's situation and the lack of alternative solutions that would be reasonable and just in the light of the Applicant's circumstances, as presented.

Subsequently, per NYS General Municipal Law 239-m, the ZBA forwarded the application to the Fulton County Planning Board, which will be held on Tuesday, November 14, 2023. Should the County Planning Board see any regional impacts, the Zoning Board of Appeals will continue its review. Should any additional regional impacts be sought, it would come back to the Zoning Board of Appeals.

C. Fulton County Planning Department Review:

SUBDIVISION: Article 4.5 of the Town of Perth Subdivision Regulations identifies the information an Applicant is required to submit to the Planning Board for a minor subdivision proposal. Upon review of the proposed preliminary plat by the Fulton County Planning Department, the following comments have been raised:

1. The location of that portion which is to be subdivided in relation to the entire tract and the distance to the nearest existing street intersection.

STATUS: Provided.

2. All existing structures, wooded areas, streams and other significant physical features within the portion to be subdivided and within 200' thereof. If topographic conditions are significant, contours shall also be indicated at intervals of not more than 10'.

STATUS: Partially Provided. Does the Planning Board wish to have topography lines on this Subdivision?

DISCUSSION:

Planning Board members wished to have this provided on the Subdivision Plat.

3. The name of the owner and all adjoining property owners as disclosed by the most recent municipal tax records.

STATUS: Provided

4. The tax map section, block and lot number, if available.

STATUS: Provided.

5. All of the utilities available on all existing streets.

STATUS: Provided.

6. The proposed pattern of lots including lot width and depth, recreation areas, systems of drainage and sewer and water supply within the subdivided area.

STATUS: Partially Provided. The existing home on the property will need to show where the septic and well is located.

Chairman Cetnar brought up the need for a perc. and pit test on the two sites to be subdivided

Planning Board members had a back and forth conversation inquiring on the necessity of having it done given it is an already built solar project.

Mr. Enfield inquired if at the time of Decommissioning, should it go to something other than a solar farm (i.e. a commercial or residential site) than a perc and pit test will be necessary if municipal sewer is not available.

Planning Board members were in agreement to this.

7. All existing restrictions on the use of land including easements, covenants and zoning lines.

STATUS: Not Provided.

DISCUSSION:

Nathan Mingolelli, Scale Microgrid, indicated that there were no existing easements, covenants or dead restriction.

8. An actual field survey of the boundary lines of the tract giving complete descriptive data by bearings the distances, made and certified by a licensed land surveyor.

STATUS: Provided.

9. All onsite sanitation and water supply facilities shall be designed to meet the minimum specifications of the State Department of Health and a note to this effect shall be stated on the plat and signed by a licensed engineer.

STATUS: N/A

10. The proposed subdivision name and the name of the Town and County in which it is located.

STATUS: Provided.

11. The date, north arrow, map scale, name and address of record owner and subdivider.

STATUS: Provided.

12. A completed Short Environmental Assessment Form.

STATUS: N/A

On January 27, 2020, the Town of Perth Planning Board authorized a negative declaration under SEQRA for the original Applicant, Solar Park Energy. As this project is an amendment to the original Special Use Permit application, which also includes a Minor Subdivision, redoing SEQRA is not necessary for this project. Subsequently, the Town of Perth would be segmenting SEQR.

AMENDMENT TO SPECIAL USE PERMIT:

As a result of the subdivision of the project is also Amending the approved Special Use Permit Process. The following issues have raised a concern that would alter the subdivision and/or the Applicant did not follow through on the items listed in the January 27, 2020 conditional approval:

Decommissioning Plan:

As a result of the project being subdivided, it would null and void the current Decommissioning Plan. While the Applicant has provided numbers to the Planning Board for both proposed lots, it is recommended to have a 3rd party review the Decommissioning Plan for a Technical Review sign-off.

DISCUSSION:

Planning Board members were in agreement to hire a third party engineer to review the Decommissioning Plan.

MOTION:

To authorize the Fulton County Planning Department to coordinate with the Town of Perth Code Enforcement and third-party entity to review the Decommissioning Plan and to send to the Town of Perth Town board for sign off before being approved by the Town of Perth Planning Board.

MADE BY:

Treavor Gilday

SECONDED:

Diance Conrad

VOTE:

6 in favor, 0 opposed.

Emergency Access Road:

The area variances are contingent on the approval of Fire and Emergency Access Roads, and the Appropriate Number of Entrances and Exits to the Fenced Enclosure as decided by the Town of Perth Planning Board and the Town Fire Chief.

DISCUSSION:

Mr. Enfield stated that the access road around the project will need to be 20' wide to get emergency access vehicles through.

Mr. Mingolelli provided a letter by Perth Fire Department that indicated sign off from the project.

Landscaping:

During the November 19, 2019 Fulton County Planning Board meeting, the Planning Board recognized the potential aesthetic impacts that may result from the project and to recommend that the Town of Perth Planning Board approve Solar Park Energy's Special Use Permit for a Solar Farm along NYS Route 30 with the stipulation that the project be screened from view on all four (4) sides with a mix of Norway Spruce, White Spruce, White Pine and arborvitae.

During the January 27, 2020 meeting, the Town of Perth Planning Board agreed upon 198 trees from 67 which was in the December 2019 application. Fulton County Planning Consultant Sean Geraghty pointed out that the increase in plantings seems to address the County Planning Board's recommendation that the project be completely screened from NYS Route 30 and adjacent residential properties. He noted that the species recommended by the County Planning Board have also been used in the Landscaping Plan.

At that time, Mike Ingalls P.E., Ingalls & Associates LLP, indicated language was going to be included in the O&M as the Applicants would be responsible for maintaining that project which would have a 2-year warranty.

Since several years have passed on this project, does the Town of Perth Planning Board wish to make any changes to the current Landscaping Plan?

DISCUSSION:

Planning Board members did not see anything that needed to be changed but expressed an interest to have the dead trees replanted.

Full Reprint of the Site Plan & Submittal to Fulton County Office of Real Property:

The Town of Perth Code Enforcement Officer and the Fulton County Planning Department keep a record of the approved projects for the Town. This subdivision will also include altering the currently-approved Special Use Permit, a new set of drawings with the revision date will need to be included.

Subsequently, if and when the Planning Board approves the amendments, any conditions will need to be met. At the time of the filing, some additional items as part of the packet will be asked to be filed with the Fulton County Office of Real Property.

D. Planning Board Action:

As the project involves a Subdivision, a Public Hearing is necessary. Does the Perth Planning Board wish to schedule a Public Hearing at this time or table the project until further information is provided by the Applicant?

MOTION: To Schedule a Public Hearing for 6:00pm on Monday, November 23, 2023 on Scale Microgrid's application for a Subdivision amending the Special Use Permit for a Solar Farm.

MADE BY: Teavor Gilday

SECONDED: Kaleb Walker

VOTE: 6 in favor, 0 opposed

VII. LARGE-SCALE BATTERY STORAGE SYSTEMS MORATORIUM:

A. Background:

During the October 23, 2023 Town of Perth Planning Commission meeting earlier in the evening, Treavor Gilday and several other members spoke on other alternative energy types that may potentially come into the Town of Perth. While Fulton County, and the Town of Perth does not have the capacity for wind turbines, there was some concern raised on the development of Large-Scale Battery Storage, which is becoming more prevalent in communities around the State. Planning Board members JJJ

DISCUSSION:

Mr. Enfield provided information to the Planning Board on reasons why the Planning Board might want to enact a moratorium on Battery Storage based on what other communities have done.

The Planning Board had a back-and-forth conversation on the four reasons and felt as though all should be included in the recommendation to the Town Board.

PLANNING BOARD ACTION:

MOTION: To recommend that the Town of Perth Town Board enact a Moratorium based on the following reasons:

1. Public concern regarding the potentially volatile nature of lithium-ion batteries and the fear that operation of this type of land use will pose a threat to the health, safety and welfare of the public including the impact upon the surrounding roadways, infrastructure, and the orderly evacuation of improved areas if necessary.
2. The Moratorium will be useful in controlling or temporarily inhibiting development and to undertake a review and examine its existing ordinance, local laws and Zoning Code provisions insofar as they may be affected by the adoption of such local law(s) regulating the creation and/or siting of Large-Scale Battery Energy Storage system installations.
3. The Town of Perth will need to consider how best to permit such installations so as to harmoniously integrate such installations with the existing agricultural community and landscape and to mitigate potential undesirable environmental impacts that may be associated with such use.

4. Additional information and assurance about the safety of these types of facilities, including, but not limited to, ensuring the technology and availability of equipment necessary for local fire districts to be able to suppress a fire should one occur, precautions related to air emissions and deterring any necessary fire suppression chemicals from impacting surface and groundwater, and the adequacy of location and other special exception standards for siting these facilities.

MADE BY: Treavor Gilday
SECONDED: Kaleb Walker
VOTE: 5 in favor, 0 opposed

VIII. OTHER BUSINESS:

A. Planning Board Chairman:

November meeting:

Chairman Cetnar stated that the next Planning Board meeting was on Monday, November 20, 2023. He mentioned if someone has a conflict and will not be attending, to let him know.

Tryon Tech Park

Chairman Cetnar inquired on what has been occurring with Tryon Tech Park.

Mr. Enfield stated that there has been no movement with any projects involving Winstanley. However, he indicated that Vireao is set to open production of recreational marijuana; however, there has been a delay from the Office of Cannabis Management.

B. Fulton County Planning Department:

UAlbany Masters of Urban & Regional Planning Program Studio within Fulton County

Mr. Enfield indicated that the UAlbany Planning Program is looking at the County's Hazard Mitigation Plan and reviewing critical dams within the County such as the municipal dams for the City of Gloversville, City of Johnstown, Village of Canajoharie, Pine Lake, Woodward Lake, and Inghams Dam along the East Canada Creek shared with Herkimer County. He stated that the students are primarily working with County Emergency Management with some support from the County Planning Department.

IX. CLOSE OF THE MEETING:

MOTION: To close the meeting at 8:19 pm

MADE BY: Treavor Gilday
SECONDED: Diane Conrad
VOTE: 5 in favor, 0 opposed