

Town of Canton

Planning Board Meeting Minutes

November 17, 2020

Board Room, Canton Municipal Building

6:30pm

Members Present

Chairperson Michael Morgan; Debra Backus; Sigie Barr-Sapp; John Casserly; Joel Howie
Recording Secretary Jeni Reed

Members Absent

None

Others Present

Code Enforcement Officer Jeff Murray; Michael Fingar; William Sparkman; Jim & Pam Rose; Edward Rider

Call to Order

The meeting of the Town Planning Board was called to order at 6:32 pm by chairperson Michael Morgan.

Approval of Minutes

A motion was made by Debra Backus to approve the minutes from the October 27, 2020 Town Planning Board Meeting. The motion was seconded by Sigie Barr-Sapp and carried.

Agenda Items

1. Discussion of proposed Solar Project at 161 Meade Road, Canton

It was indicated by Chairman Mike Morgan that the County Planning Board had returned comments on the proposed solar project at 161 Meade Road.

Jim & Pam Rose are owners of the neighboring property to the proposed project, and attended the meeting. Mike Fingar indicated that he had tried to reach out to them through the Body Shop owned by Mr. Rose, and asked if this would be an appropriate method for reaching them in the future which was confirmed.

It was acknowledged by all parties that the County comments had been received, and the company appreciated the quick turnaround. They want to address the comments from the first pass of the site plan that was sent to them and they hope to come to a resolution that is amenable to both the Town and owners of neighboring properties. Chairman Morgan stated he would go through the list provided by the County and address the comments one by one.

1. *Comment: the proposed access road does not follow the designated right-of-way, but rather crosses private property. No attempt was made by the applicant to communicate with the property owner to negotiate the plotted access road. The property owner has no interest in offering the access as drawn.*

The company indicated that the County had access to only their first iteration of the site plan, prior to receiving all their survey information. They offered apologies to Mr. & Mrs. Rose for showing the road on their property, which was not their intent. The proposed road will be entirely on the right-of-way until it reaches the leased property, with the bulk of the access road on the land owned by Mr. Brewer which is being leased by the company. Mike Morgan indicated he spoke with Jim Rose and asked if he had any comments; the primary issue is who owns the right-of-way? Jim Rose stated it is owned by them and granted to the Brewer lot for ingress and egress only. The question was asked if that agreement is deeded? Mr. Fingar stated the right-of-way is intended to be used by the company for access to the lot only with no equipment on that property. It was noted that this is bordered also by land owned by the Cornell Cooperative Extension. The Survey team is still working on mapping this with a lot of historic deed information and they are working through this. The County planning board also questioned this access. This is an Issue that needs to be addressed and access needs to be clarified prior to any kind of approvals. It was indicated that the associated deeds are of poor quality and difficult to interpret but they are trying to determine that there is indeed access from Meade Road to the Brewer parcel.

At this time Chairman Morgan shared that the County Planning Board denial/disapproval will require a majority + 1 approval from the Town Planning Board to override their comments; as such they will absolutely need to see the access resolved prior to any kind of approval. The prior chain of ownership on the property in question was identified: the Burwell property defaulted to the Farm Credit Bureau which was then purchased by Mr. Brewer with the assumption of deeded access.

Pam Rose asked how the company intends to get the power in and out of the property and how will this affect the Rose's power access as well as any damage resulting to their property. Mr. Fingar responded that the intent is to extend the existing 3-phase access then add a few poles to extend into the leased property. The poles would be on the right-of-way on the Rose's property; would they be willing to discuss an easement to outline pole locations on the southern boundary of their parcel? Jim Rose replied there was a lot more to discuss and they are unsure how everything will work with the road being on their property, adding poles on their property, etc. Mrs. Rose was concerned that no one had reached out to them about the project and they found out through surveyors on the land or other methods of communication rather than direct communication from the company. She shared that they pay to maintain the access road, they paid to install the current electric poles, they pay to upkeep the lawn which currently has no additional poles on it; the Rose's are concerned about the addition of poles and lines on their property plus the solar farm wrapped around their property. Mrs. Rose indicated she is not against solar at all, but is just concerned about the way this project has been handled so far. Jim Rose indicated that the right-of-way reads just ingress and egress, not poles or power lines, and they would need to determine if this is appropriate for this right-of-way.

Chairman Morgan indicated that there is a need to address the right-of-way existence first; is it there legally?

Mr. Fingar offered apologies to the Rose's due to the previous lack of communication, and indicated a desire to develop a more feasible plan in conjunction with them, as well as present the idea of some screening around their property. He would like to speak with the Roses off-line to address their concerns.

Summary: the company will look at the deeds to confirm there is something more concrete than just a proposal for access and will present this at the next meeting.

2. *Comment: no attempt was made by the applicant to avoid development on the delineated wetland identified as Wetland B on the site plan.*

Chairman Morgan indicated this was discussed at the last Town Planning Board meeting. Mr. Fingar indicated they had looked at the wetland as related to area, and there is nothing preventing this proposal of use. The wetland use was done to utilize the full capacity of the approved project by National Grid, as well as minimize unnecessary clearing of other parts of the land as recommended in the Town's solar law. Installation of some solar racks would be over the wetland area. The Army Corps of Engineers does not have an issue with installation of solar racks over wetland as it provides minimal disturbance. John Casserly asked will the committee see a release from the Army Corps? Mr. Sparkman indicated that as an unregulated activity this would not require any kind of permit so no permit or release will be sought; however they can provide some kind of correspondence from their Ecology team in terms of what is required by the Army Corps.

Mr. Casserly asked what will the wetlands look like when the machines go through? Mr. Sparkman indicated there is minimal impact with the way the arrays are installed, and ballasts can be used or high floatation tires to minimize the impact to the underlying soils. It will also require decompaction of underlying soils as part of the project.

The committee asked if the company can get something from the Army Corps to say they won't regulate this? The company indicated they will provide something. It was also asked that the last meeting's minutes be clarified to change "allowed" activity to "unregulated" activity. The company indicated they will be strategic in their utilization of equipment and conditions to avoid damage to the area.

Chairman Morgan asked Mr. Rose about the wetland area? Mr. Rose indicated this is a very rare year with the water table way down, but usually the area is very wet and hasn't been farmed because it is so wet. There are also cattails growing up. Mr. Rose asked about the DEC as relates to this project, as he is aware they are adamant you don't disturb cattails in a wetland area. Mr. Rose would like to see that this project is an allowed activity by the Army Corps, as well as how the company plans to prevent damage. It was indicated that the DEC does not "trump" the federal protections from the Army Corps and that this wetland would be entirely under their jurisdiction. Mr. Fingar indicated that post-construction there will be minimal disturbance of the wetland; the only disturbance will be the solar racks themselves.

Debra Backus asked if the company could place their solar racks somewhere else to avoid the wetlands? Mr. Fingar responded that they are limited on available cleared area on the property, with some challenging topography and a desire to minimize tree clearing. They can address in their follow up what other options are available and why or why not they are feasible for this project.

Mr. Fingar indicated that they want to keep the project at maximum capacity as approved by National Grid. The approved proposed size is the maximum possible under the community solar program; they could potentially downsize the project, but that impacts the economics for the project and may prevent it from being built. Mr. Rose asked how this compares to the Village solar project which is only five acres and that was viable. Mr. Fingar indicated he can't speak to that, but proposing a smaller project under community solar is less viable. He shared that the difficulties with these projects beyond finding a willing landowner is the capability of the interconnection to handle the proposed size which is available at this

location on Meade Road; this is why they are proposing this project and why it was approved by National Grid. It is theoretically possible to propose a smaller size project. Bob Washo shared that the village solar array is not under the community solar program but is a municipal project meant to offset municipal use, which is widely different from community solar.

3. *Comment: no attempt was made by the applicant to avoid development on prime and prime if drained agricultural land. This land has been and continues to be actively farmed.*

Chairman Morgan asked when was the last time this land was farmed? Mr. Rose indicated it was this summer. What is grown is changed every year to keep it rotated but it is planted every year; Mr. Brewer was leasing his land for farming and it appears he has taken it back this year and is now farming his own crop. It is up to the landowner on how they use their land; it is not a concern of the board if it is being farmed as long as its usage falls under allowed use.

Regarding the displacement of fine soils, the town policy says removal of prime agricultural soil is prohibited but building is allowed. Mr. Fingar indicated with this project there would be little disturbance of the soil and no soil removal from the site. No grading is currently proposed. There would be some tree disturbance not on the existing agricultural land. It was indicated that the soil can be moved on the parcel as long as it doesn't leave. Confirmed this property is prime farmland but is not drained, and as part of the NYSERDA application the company would be abiding by NYS Ag & Markets guidelines for installation of solar in prime agricultural land. This project would have minimal impacts for foundation systems as they would use a ground screw system or driven pile. It was indicated that the County Planning Board was very strongly opposed to the use of prime farmland. The comment was that no attempt was made to avoid this land, but the company stated they had found a willing landowner who wants to use their land for solar.

It was asked if the company can provide a cross section for any foundations as it needs to be level with adjacent fields; including the installation of the gravel road which would require digging. The company currently proposes no grading during the process; would the installation of the gravel road on top of grade be an alternative to minimize soil disturbance? This would apply to the access road that goes into the middle of the leased property, but could also be an option for the extension of the existing access road.

The stormwater pollution prevention plan has been provided with the company's site plan.

It was asked will any stumps be pulled in cleared areas? Mr. Fingar indicated that yes, that is the proposal as needed where the solar array is being installed.

Mrs. Rose offered the following clarification and question: the land rises up from the Rose's property and drains down; there are concerns about the draining worsening with the installation of the solar array. Would their yard become a wetland? Mr. Fingar responded that the DEC stormwater pollution prevention plan indicates there will not be an increase in stormwater due to a small footprint on the ground. The rain will still fall down to the ground and make its way to low-lying areas, the same as it would have if the array was not there; this project may even improve the drainage potential of land.

Mr. Fingar clarified that they are not proposing pulling any stumps in the federal wetland, and that the foundation pads are internal and are outlined in the site plan; a cross-section will be provided to the Planning Board, but these are located outside the wetland area. The primary equipment for the project is located on a concrete pad which is internal to the array and shown on the site plan. He indicated that they

will have to review the intent of the law as far as pouring concrete and adding gravel. Mr. Washo mentioned that there is no need to remove the topsoil and that the intent of the law requires moving any disturbed topsoil and storing for decommissioning (must remain on the parcel). The property at decommissioning must be restored to its original state from the start of the project.

4. *Comment: The development proposes the removal of trees without offsetting the removal elsewhere on the property as specified in the Town of Canton Solar Law. The applicant does not offer any visual buffering between the solar development and the adjacent residential property.*

The company responded that the County only saw their initial site plan, and that updates have been made already incorporating some of this discussion. Regarding screening they indicated that they had wanted to reach out and discuss this with the Roses but as they were in attendance they would share at this time. The company is proposing a line of trees surrounding the property line; they would be planted on Mr. Brewer's property but used to provide screening for the neighboring residential property. It was asked if they would provide mature trees/bushes to allow for screening immediately? Mr. Fingar indicated that they would like to continue the discussion but intend to provide something with height from day one that would also grow quickly. He plans to discuss this with the Roses. In the past they have used a Northern Bayberry bush which starts around 3 feet in height and grows up to 1 foot per year; Evergreens also have been used with a height around 6 feet and would grow from there. It was asked how tall would the plant need to be? Mr. Fingar indicated he would like to review a viewshed, but he is aware that the solar racks run 9-12 feet and will also run uphill. It was asked what is the height at the Rose's property versus the height of the field? Mr. Fingar indicated he would like to review the topography and discuss offline.

It was asked if the buffering around the Rose's property would replace most of the trees to be cut? Mr. Fingar indicated he would need to do an additional survey, but anticipated this would offset but not likely completely replace trees removed. They are not proposing to plant in the wetlands. The company will be issuing a new site plan with an updated map.

Mr. Rose asked about the site plan and how many acres of trees they planned to cut. The company stated they believe the plan shows the removal of two acres of trees. Mr. Rose shared his concerns with the county and shared them at the meeting, showing a copy of the site plans from the company, and a concern about the outline in the design that shows different from the plan. He felt that based on superimposed images they would be cutting closer to 10 acres of trees. The company indicated that their survey map will be presented eventually and will be subject to change so the image previously shared is not accurate or up to date; at this time they are actually proposing less tree clearing - the updated plan will put everything in better clarity. The equipment pad shown in green on the site plan will be concrete, and no solar panels will be installed there. The company will be providing an updated survey which will show the new boundary, with area calculation for removal of trees and amount of wetlands involved. Mr. Rose indicated that 4-5 acres of the proposed area is wetland. The committee indicated that the removal of trees should be minimized or offset; the company stated they do not have additional vegetation plantings proposed at this time but will be making an effort to minimize tree clearing and offset planting screenings.

At this time in the meeting, additional concerns and questions were addressed:

- Ms. Backus - asked the company to discuss the interconnection cable and if it will be above ground or buried? Mr. Fingar indicated they would be under ground wherever possible, with the cable installed at the pole and then run underground from there. It was asked how deep the cable would be buried as the minimum is 48 inches by the Town code. It was requested that this information be provided in their updates.

- The Rose's then asked if there is any undervoltage/overvoltage potential that could affect residents nearby? Mr. Fingar indicated he would like to get back to them with more in depth information, but National Grid performs feasibility studies to confirm that there is no additional impact and that the reliability will be the same as it would be without the project. A rigorous study was performed and National Grid is telling them the system is capable of handling the additional energy with no negative impact.
- It was asked if the proper setback of 100 feet around 3 sides of property (from residential neighbor) has been maintained? Mr. Fingar stated this has been accounted for as a 100 foot setback from the residential property and the auto body shop, and a 25 foot setback on the fourth border.
- Mr. Rose addressed the company and the board as to why the project was presented as a preliminary project while also going into such detail? Especially when there was the awareness that things would need to be addressed prior to any approvals from the Town? Mr. Fingar indicated that they felt the preliminary plan met all the requirements for a proposal and discussion, with the intent of presenting a final report later for official approval. The timeline happened to encourage quick movement with presenting to the county due to the holidays.
- There was concern over the amount of money presented as being available for the eventual decommissioning of the project. It was shared that the company and the Board were aware the decommissioning plan would not be acceptable in its current state, but the minutes of the previous meeting had not been available to the County to share this information. The decommissioning plan will be amended and financial surety will be provided per the solar law.
- It was asked what hazardous waste the panels contain. This information should be provided at the next meeting, but Mr. Fingar indicated that there would be no leaching of materials from the panels, and they will be removed entirely from the site at decommissioning. The modules are silicon based and do not contain any cadmium or chromium. No MSDS sheets are available for the solar panels.
- It was indicated that the Town Attorney will be consulted after the next meeting to confirm that everything for the project is laid out correctly, and to discuss the Community Benefits for the project.

It was determined that the Town Planning Board would set another follow up meeting to discuss things that are still lacking with the company. It was requested that the required items be sent ahead of time in writing by a few days so there is time to develop appropriate questions and fully review the documentation.

After some discussion, a motion was made by Debra Backus to set the next meeting for December 15 at 6:30pm, with the hope that all concerns could be addressed at that time. The motion was seconded by Sigie Barr-Sapp and carried.

It was noted that the next step would be a public hearing which could be held as soon as January 5th.

Other Items

- Bob Washo - he feels there are continuing issues with the proposed right-of-way for the solar project at Meade Road. There is also concern over their ability to manipulate wetlands and he feels this is an oversight in the solar law; the Town might want to rethink some of their language in the law.
- Jeff Murray - what the company is saying regarding the use of a solar array in a federally protected wetland is perfectly acceptable to the Army Corps of Engineering.
- Chairman Morgan indicated that the issue now is we can't change the law to apply to this project; Mr. Washo indicated he will reach out to the Town Attorney to discuss if we find a deficiency in our law at this point and what we can do? He stated he will share this with the board when determined.

- It is anticipated that the Town Planning Board will probably run into another solar proposal soon. This is the first attempt at this type of project, and the board needs to make sure they create the timeline. Go slow and don't fast track anything. Mr. Washo also highly urges the Board to look at other communities regarding fees charged; doing research on other communities and benefits from these projects. This would be a discussion for the town board as the standard building permit fee may not be adequate for a project like this.
- Pam Rose - she stated concern that there was very little public outreach on this project, and she wants to make sure the town is looking out for the members of the community. Mr. Rose indicated he felt it was appropriate for interested projects to reach out to everyone involved prior to moving forward with a project such as this.
- Jeff Murray - a wetland survey is currently being performed on Nickerson Road; however there is no concrete information at this time on why this might be happening.
- Some conjecture was discussed regarding the amount of the lease agreements being paid to the landowner in the Meade Road Solar Project. The Board is not privy to any information at this time.

Adjournment

A motion to adjourn was made by John, seconded by Joel, and carried. The meeting was adjourned at 8:13 pm.

Next Meeting

The next meeting of the Town Planning Board will be held on December 15 at 6:30pm. UPDATE: This meeting will be held via Zoom virtual meeting.

Action Items

It is the request of the Board that the following items be provided by US Light Energy/Chazen Company for follow up:

- Information regarding the proposed right-of-way leading from Meade Road to the Brewer property. It is key that this access be properly identified as fully legal from the information available on the current deeds to all involved properties.
- Communications or some type of written information regarding the Army Corps of Engineers standing regarding solar array development in a federally protected wetland; in addition they should provide documentation of how they intend to prevent damage in the wetland area.
- Written statement addressing the use of wetland area and tree clearing as proposed, and the feasibility of each showing why the proposed plan provides the best usage of the parcel.
- Cross section of proposed foundation installations and access road.
- An updated decommissioning plan addressing the movement of prime soils and plans for restoring the parcel to its original condition, and also including the required financial surety for the decommissioning process.
- New site plan with updated map; particularly addressing the planting of screening and any other replacement vegetation.
- Written summary of any discussions and resolutions reached with the Roses who own the neighboring residential property.
- Inclusion of cable buried depth to meet minimum requirements.
- Information regarding hazardous materials and the material make-up of the solar panels being proposed.