

**TOWN OF SCHUYLER ZONING BOARD OF APPEALS**

**SPECIAL MEETING**

**JULY 28, 2020 – 6:00 PM**

Chairman Ronald J. Beach, Jr. called the Special Meeting before the ZBA to order at 6:00 PM at the Schuyler Town Office, 2090 State Route 5, Utica, NY 13502.

Other ZBA members present were: Vice Chair Jo Ann Mammone, Robert Wasyleski, David M. Pasick and Alternate Member Jeffrey Dingman. Absent was Christine Proulx.

Others present were Kevin Murphy, Esq. (Wadas Law Firm) who is serving as legal counsel for the Town of Schuyler/ZBA for this project; Chris Biamonte, Esq., (Assistant to Attorney Kevin Murphy, Esq.); Frank Palumbo, CT Male (engineering company representing the Town for this project); and Councilman Joseph Juliano, and Bette Szesny who served as Recording Secretary.

**EXECUTIVE SESSION**

Chairman Beach asked for a motion to enter into executive session with the Town's attorneys (named above) and Mr. Palumbo.

Motion by Mr. Wasyleski, seconded by Mr. Dingman; all in favor. Time: 6:08 PM.

Motion by JoAnn Mammone, seconded by David Pasick to return to open session at 6:30 PM; all in favor.

**PUBLIC HEARING RE: APPLICATION SUBMITTED BY SUN EAST DEVELOPMENT**

**WATKINS ROAD SOLAR FARM**

**JULY 28, 2020 – 6:30 PM**

Chairman Beach called the public hearing before the ZBA to order at 6:31 PM, and led the assembled persons in the Pledge of Allegiance to the American Flag.

All persons listed above remained present for this public hearing. Members of the public present included the following: Donna Thompson (Times Telegram); Stanley Murdock; Ken Green; Butch Luther; Carolyn Goodhines; Julie Todd; Thomas Todd; Paul P. Sokol; Harold Moss; Councilman Joseph Juliano; John Piseck (Herkimer County IDA); Harold Moss; and Roy L. Coffin.

It should be noted this project is located jointly in the Town of Schuyler (on Watkins Road) and the Town of Herkimer (on Sokol Road), with the larger portion situated in the Town of Schuyler.

Mr. Beach asked if there was anyone from Sun East Development. Mike Beckner (Sun-East) stated he and Jason Dickey (TRC Development) are both present. Mr. Beach asked that one of the gentlemen step up to the podium to address the public.

Mr. Beckner then stepped up to the podium and provided a background on the project's origin. He stated the project was originated with an auction in which the competitive bidding process concluded with the company awarded with renewable credits through NYSERDA. He stated the project has been on the drawing board for a couple of years during which time many environmental studies and surveys were performed, followed by the SEQR process, culminating in a Negative Declaration by the ZBA at a public hearing this past January, reflecting no adverse environmental impact resulting from this project. This was followed by a thorough overview by the Town's environmental engineering firm which has confirmed these findings. He stated tonight's Public Hearing should conclude the process, allowing the project to move forward into the construction phase.

## PUBLIC COMMENT

Mr. Beach then initiated the public comment phase of this Public Hearing. Below is a listing of all persons who provided their input on the project.

Frank a. Spatto; Frank P. Spatto; Harold Moss; Julie Todd; Paul P. Sokol; Harold Moss; and Roy Coffin.

Issues of concern brought about by members of the public are as follows:

- Mr. Frank A. Spatto stated the solar farm will prohibit him from accessing his property owned by the Todds which he has enjoyed with their permission. Another resident stated he will also lose his access through the Todd's property. Both stated this access has been granted by the Todds.
- Mr. Moss stated he owns a timber farm and the solar farm will impact his access to his property which will result in an personal economic loss. He asked if the town will provide him access via another route; otherwise he stands to lose the 80% tax benefit he currently derives from this enterprise. He and several opposing residents including Oakhill Road which would provide some access to their property, challenged the Board's claim that this road was closed back in 1972. Mr. Beach provided documentation generated by the Town of Schuyler's attorney that documents the road was indeed closed in 1972; the legal documentation was provided; nevertheless, the residents begged to differ and stated they have been using the road to access their property, it cannot legally be deemed "abandoned." Mr. Moss then read aloud the applicable section of law. He also stated when the Thruway went through, the NYS Thruway informed him he can access his property via Oak Hill Road Mr. Moss was provided with a copy of the legal opinion, and informed Mr. Moss and the other members of the public who begged to differ on this issue that Oak Hill Road was legally closed in June, 1972.
- Julie Todd stated she has allowed Mr. Spatto access thru her property, but and in 1918 he wanted her to sign a contract giving him access through her property but she could not oblige because she had already signed a contract with Sun East to site the solar farm on her land. She also stated she has never given anyone else access through her property and she has never met or seen the other individual who claims to have been granted this permission. She also stated when the Thruway went thru, many property owners signed contracts land locking their property from access via oak hill road. MR. Pasick and Ms. Mammone asked about the venue and ownership of the road and venue of the property; Ms. Todd stated this part of her property and closed road is located in the Town of Herkimer. She said he road stops right before the barn and regarding the gate, her brother Paul Sokol said the Herkimer Highway Dept. would stop just short of the gate.
- Mr. Frank A. Spatto stated no one was ever notified that the road was closed, and whether it is actually closed is debatable. He also stated his deed states he owns property u to oak Hill Rd and he uses it for hunting and he has a camp there. He said he has no objection to the solar panels and his only concern is access to his road. he suggested the project be redesigned to remediate this issue. Ms. Mammone posed questions to Mr. Spatto regarding the route of access to his property, which were clarified by Mr. Spatto. She was also informed that Sokol Road is a Herkimer Town Rd until the boarder of Schuyler; then it becomes Oak Hill Road. Additional descriptions provided by Ms. Todd and Mr. Spatto followed. Mr. Spatto stated this project will land lock many residents' properties, and the rationale for his objection to the project. Ms. Mammone stated it appears the real issue here is that it prevents the objecting individuals' access to their property through the Todd's property; Ms. Todd stated this is correct. She also stated all these properties are inaccessible by car; however, she has requested that Sun

East construct a road that will extend around the project, rendering some properties accessible. Mr. Dickey stated this is private land and is already landlocked. Further discussion between the above parties ensued; Ms. Mammone stated the opposition appears to be an issue between the Todds and the residents who oppose the project, vs. Sun East. Ms. Todd agreed. Mr. Moss stated he wants to ensure his heirs interests will be protected, regarding access to the property. Further discussion ensued regarding access to roads and land. Ms. Mammone again stated it appears this indeed appears to be an issue with the Todds, not the town or the project.

- Mr. Thomas Todd stepped up to the pedestal to address the Board. He related a long standing disagreement between his family and the opponents to this project which has involved his family being threatened with litigation to force them to provide access to their property through theirs. He said when the towns abandoned the roads it was reverted to the landowners. He described a long standing number of issues between his family and the residents who have expressed opposition to this project.
- Another resident expressed concerns about improper abandonment of the roads on the part of the towns. Mr. Beach advised this is an issue to be addressed by an attorney, and he is not an attorney.
- Mr. Spatto asked how many acres the solar farm will encompass; he was informed it would consume approximately 150 to 160 acres. The resident then asked whether the access road would be closed, thereby denying him and other property owners access to their property; he was informed there is currently no access to the property in question.
- Mr. Paul P. Sokol, co-owner of the property for the proposed solar farm site, stepped up to the podium to provide his input. He stated the solar farm will provide a great benefit to the area, and he believes this benefit overrules the opposition expressed by Mr. Spatto and Mr. Moss.
- A discussion arose regarding zoning, with claims from the opposition (referenced above) that the proposed site, which is located in a is not zoned for solar farms.
- Mr. Beach asked whether there is any further comment. Mr. Frank P. Spatto asked whether this is the end of the public comment period, and whether a vote will now be taken. Mr. Beach stated the public hearing will be closed; then the Board will discuss the comments and make a decision.
- Mr. Frank P. Spatto then stated he has discussed his concerns regarding the legality of this public hearing with his father (Frank A. Spatto) as follows: several property owners whose property is located within 500' of the proposed solar farm were not notified of the public hearing; as well, some of the property ID numbers were incorrect. Mr. Beach stated this will be investigated.
- Mrs. Carolyn Goodhines, a property owner who resides within the 500' of the project site stated she received notification of the public hearing.
- Mrs. Todd then described a disagreement between Mr. Frank A. Spatto and herself regarding a contract Mr. Spatto encouraged her to sign that would allow him access to his property via her land. She stated she was unable to sign the contract since she had already signed a contract with Sun East. She further described the disagreement that ensued, which she concludes is the basis for Mr. Spatto's opposition to the project.
- Mr. Frank P. Spatto stated there are a number of issues concerning this project as well as this some concerns about the validity of this public hearing. Mr. Frank A. Spatto added that the

misinformation regarding property ID's and property numbers within 500' were inaccurate. He also stated he and Mr. Moss both own property within 500' of the project, but neither had received legal notification. He stated these errors have rendered this public hearing to be invalid and illegal. He further stated he only knew about the public hearing through an E-mail sent by the secretary, whom he had contacted months ago to ask that he be notified.

- Secretary Szesny stated she received the names, addresses and ID numbers of the property owners within 500' of the proposed project from the project's team leaders, and she presumes they were correct; she therefore generated the legal notices which she believes were accurate.
- Ms. Mammone asked Mr. Frank Spatto whether he is aware of the names and addresses of the actual property owners within 500'. Mr. Spatto stated he does not have this information; however, he believes the last public hearing elicited no members of the public present due to errors in notifying the correct residents; as well, the legal notice for the first public hearing was published in the Times Telegram (legal newspaper of the Town of Schuyler) only 7 days prior to the first public hearing, instead of the required 10-day notification.
- Ms. Todd then spoke, stating the likely rationale for this issue relates to the large spans of land this project will assume; therefore, her property along with that of Mrs. Goodhines were likely the only property owners who met the legal notification requirement.
- Mr. Spatto stated his property and Mr. Moss' are within 500 ft. of the borders of the project area; therefore, they should have been legally notified; hence, the issue of the three property owners who were not legally notified of this public hearing.
- Mr. Dickey stated Sun East did not generate the mailing list; however, this project area encompasses approximately 470 acres, with a project footprint area of 170 acres.
- Mr. Spatto then stated it appears the project location, as stated in the legal notice, appears to be on the wrong side of the road vs. where it is actually slated to be situated.
- The discussion between Mr. Spatto and Mr. Dickey (Sun East) continued, with regard to the actual location of the project in proximity to the accurate Tax ID numbers, along with the issue concerning proper notification (or lack of) to adjacent property owners within 500 ft. of the proposed action. Differences with regards to descriptions of property boundaries between the original option to lease agreement and the actual lease agreements between the landowners were established to be likely due to alterations of the actual project location vs. that of the original footprint; however, it was established the project's actual location will remain as stated in the application, with regard to the property Tax ID numbers.
- Chairman Beach then intervened, asking if anyone else in attendance has any additional public comment. Mr. Frank A. Spatto stated he has more concerns. Mr. Beach stated he believes Mr. Spatto has already provided adequate information with regard to his concerns.
- Mr. Frank P. Spatto then asked to be heard. He stated the application for this project states the proposed solar farm will be located in an "Agricultural & Forest Zone;" however, according to the Town of Schuyler's zoning laws, there are only certain properties that can be utilized for a solar farm, and among them, solar farms are not included. He also continued to speak on the failure of the Town to notify all the actual property owners within 500 ft. of the project.
- Mr. Beach then stated the purpose of this public hearing is to receive public comment regarding the proposed action; he believes enough public comment has been received, and it is now time to close this public hearing. Mr. Frank A. Spatto asked if the public hearing can be extended to

another date. Mr. Beach stated it cannot and will not be extended.

- Mr. Frank P. Spatto then stated the location of the proposed solar farm is located in a C-T (cell tower) zone of the town; in accordance with the Town's zoning ordinance, it is zoned for agricultural and forestation; and in accordance with the Town's zoning law, Article 10, only certain properties that can be used for solar farms; and C-T is not one of the zones where solar farms can be located; therefore the Town is violating its own zoning laws by allowing a solar farm to be situated in this location.
- Mr. Beach then asked for a motion to close the public hearing. Motion was entertained by David M. Pasick.
- Mr. Frank A. Spatto then asked to make one additional comment: he said the ZBA is closing this public hearing when there are still outstanding questions and concerns.
- The motion to adjourn the public hearing was then seconded by Jeffrey Dingman. All members voted affirmatively; motion carried.
- Mr. Beach asked if there is any Board comment. Mr. Wasyleski stated it appears the public comment elicited at this hearing represents a property dispute, rather than an issue with the proposed solar farm. He suggested the property owners get together and make an effort to resolve their differences, and to elicit the Town of Herkimer's intervention, as well, since this project will be partially located within the Town of Herkimer.

Mr. Beach then asked for a motion to close the Public Hearing. Motion by David M. Pasick, second by JoAnn Mammone; all in favor. Motion carried. Time: 7:42 PM.

#### **EXECUTIVE SESSION**

Mr. David Pasick then entertained a motion for the Board to enter into Executive Session with legal council to discuss the legal aspects of this proposed application brought forth during the public comment period. The motion seconded by Mr. Beach, all in favor. Motion carried. Time: 7:43 PM.

#### **RETURN TO OPEN SESSION**

Motion by David Pasick, second by Robert Wasyleski to return to open session; all in favor. Motion carried. Time: 8:06 PM.

#### **ADJOURNMENT**

Chairman Beach adjourned the meeting at 8:09 PM.

*– Bette Szesny, Recording Secretary*