

**TOWN OF GREENFIELD
PLANNING BOARD**

October 31, 2017

REGULAR MEETING

A regular meeting of the Town of Greenfield Planning Board is called to order by T. Yasenchak at 7:00 p.m. On roll call, the following members are present: Tonya Yasenchak, John Bokus, Nathan Duffney, Michael Gyarmathy, Robert Roeckle, Stan Weeks and Charlie Dake, Alternate. Thomas Siragusa is absent. Charlie Baker, Town Engineer, is present.

T. Yasenchak announces that Charlie Dake has been appointed as the new alternate to the Planning Board and welcomes him. Robert Roeckle, previous alternate, is now a regular Board member.

MINUTES – September 26, 2017

MOTION: S. Weeks

SECOND: B. Duffney

RESOLVED, that the Planning Board waives the reading of and approves the minutes of September 26, 2017 as submitted.

VOTE: Ayes: Duffney, Bokus, Gyarmathy, Roeckle, Weeks, Yasenchak

Noes: None

Absent: Siragusa

Abstain: Dake

MINUTES – October 10, 2017

MOTION: B. Duffney

SECOND: J. Bokus

RESOLVED, that the Planning Board waives the reading of and approves the minutes of October 10, 2017 as submitted.

VOTE: Ayes: Duffney, Bokus, Gyarmathy, Roeckle, Weeks, Yasenchak

Noes: None

Absent: Siragusa

Abstain: Dake

HIGH PEAKS SOLAR (S. Jenkins) – Special Use Permit

Case # 600, NYS Route 9N

Kevin Bailey is present for the application along with the property owner. T. Yasenchak explains that the applicant presented more information and it was very succinct and followed our requirements and list very well. A narrative was provided that described the construction schedule; the operations and maintenance plan; a decommissioning plan; fire protection and emergency response; glare, as well as complaints resolution; location on panels; a cross section of the panels showing maximum height; information showing the actual panels with the colors; the light capture technology; etc. S. Weeks states that the project is screened fairly well from the road. He asks if the panels have a disconnect at the panels. K. Bailey confirms. B. Duffney states that we have all the information we need and then some. T. Yasenchak states that the specs do indicate that there is an anti-reflective coating. M. Gyarmathy thanks the applicant for providing all the information we require.

A public hearing is opened at 7:07 p.m. As there are no public comments, this public hearing is closed at 7:08 p.m.

Board reviews the short form SEQRA.

RESOLUTION – High Peaks Solar (S. Jenkins) – SEQRA

MOTION: B. Duffney

SECOND: M. Gyarmathy

RESOLVED, that the Planning Board reviews Part I and makes some minor changes and completes Part II of the Short Form SEQRA. All questions are answered and the second box is checked, indicating that this will not result in any significant negative environmental impacts for the Special Use Permit for Residential Ground Mounted Solar Panels of High Peaks Solar (S. Jenkins) for property located at 4017 NYS Route 9N, TM# 125.-1-11.

VOTE: Ayes: Duffney, Bokus, Gyarmathy, Roeckle, Weeks, Yasenchak
Noes: None
Absent: Siragusa
Abstain: Dake

RESOLUTION – High Peaks Solar (S. Jenkins) – Special Use Permit

MOTION: R. Roeckle

SECOND: B. Duffney

RESOLVED, that the Planning Board approves the application of High Peaks Solar (S. Jenkins) for a Special Use Permit for Residential Ground Mounted Solar Panels for property located at 4017 NYS Route 9N, TM# 125.-1-11, per the information provided and based on:

- **In accordance with the documentation provided, stating that we have reviewed the Town of Greenfield regulations for ground mounted solar in a residential application, looking at lot coverage, the level of the system, the color, the locations, no advertising signs, no additional lighting associated with this, the Board has looked at the impact on the land, storm water runoff, reviewed sight glare and the maximum height of the facility.**
- **The applicant has provided specs about the actual installation that meet the regulations that are required in our section, Application Requirements, E, 2.**

VOTE: Ayes: Duffney, Bokus, Gyarmathy, Roeckle, Weeks, Yasenchak
Noes: None
Absent: Siragusa
Abstain: Dake

HIGH PEAKS SOLAR (M. & K. Gashel) – Special Use Permit

Case#599, Sand Hill Road

Kevin Bailey is present for the application. T. Yasenchak explains that the applicant has provided all of the required information, as per the previous application (Case #600), and sufficient information that answered the Board’s questions and meets the requirements.

A public hearing is opened at 7:18 p.m. As there are no public comments, this public hearing is closed at 7:19 p.m.

The Board reviews short form SEQRA.

RESOLUTION – High Peaks Solar (S. Jenkins) – SEQRA

MOTION: B. Duffney

SECOND: M. Gyarmathy

RESOLVED, that the Planning Board reviews Part I and makes some minor changes and completes Part II of the Short Form SEQRA. All questions are answered and the second box is checked, indicating that this will not result in any significant negative environmental impacts for the Special Use Permit for Residential Ground Mounted Solar Panels of High Peaks Solar (S. Jenkins) for property located at 4017 NYS Route 9N, TM# 125.-1-11.

VOTE: Ayes: Duffney, Bokus, Gyarmathy, Roeckle, Weeks, Yasenchak
Noes: None
Absent: Siragusa
Abstain: Dake

RESOLUTION – High Peaks Solar (M. & K Gashel) – Special Use Permit

MOTION: R. Roeckle

SECOND: B. Duffney

RESOLVED, that the Planning Board approves the application of High Peaks Solar (M. & K. Gashel) for a Solar Panel Special Use Permit for property located at 50 Sand Hill Road, TM# 163.-2-8.112, per the information provided and based on:

- **In accordance to the documentation provided, stating that we have reviewed the Town of Greenfield regulations for ground mounted solar in a residential application, looking at lot coverage, the level of the system, the color, the locations, no advertising signs, no additional lighting associated with this, the Board has looked at the impact on the land, storm water runoff, reviewed sight glare and the maximum height of the facility.**
- **The application has provided specs about the actual installation that meet the regulations that are required in our section, Application Requirements, E, 2.**

VOTE: Ayes: Duffney, Bokus, Gyarmathy, Roeckle, Weeks, Yasenchak
Noes: None
Abstain: C. Dake

OLD BUSINESS

WITT CONSTRUCTION – Amendment to Subdivision/Site Plan Review

Case#506, Old Stone Ridge

T. Yasenchak states that there is no representation here, the applicant is aware that this is on the agenda. What we are doing here is a technicality. As mentioned at our last meeting, we did have a discussion about the bond, the information that was provided by Cornell Cooperative Extension, review and inspections of the replanting and Witt Construction is looking for a release of their bond. Typically the Planning Board does not do that, it would be the Town Engineer, however C. Baker was not the one who did the inspection, it was CCE who was in communication with the Building Department about this. Our Code Enforcement Official has asked this Board to make a recommendation about the Bond directly to the Town Board. This is a little bit A-typical but that is what has been asked. C. Baker states that it was a Planning Board decision to require the bond; the bond was put in place based on the nursery plan that was prepared by

a licensed landscape architect. If the Board is uncomfortable about whether or not the work was done; whether or not to accept Blue Neils certification of it, he would suggest the Planning Board maybe consider having the applicant have his LA who did the plan, go out and certify the work saying that it is in 100% accordance with the plan and the bond. Then you can use that information to forward it on to the Town Board. That is no different than what we would do for a town road if someone came in to ask for a reduction in a town road bond. We have their engineer look at it, the engineer determines how much of the work is completed, we go out as the Town Engineer and verify that we either agree or disagree with what they are saying and then we make the recommendation to the Town. In this case it is a little bit different because this is not a utility and it is not something that the Town is going to hold. It was put in place to solve an issue between J. Witt and the Home Owners' Association, so he would suggest that we put it right back on them as their responsibility. T. Yasenchak states that we did not require that when we went through the review, that was something that we said they could contact CCE for the inspections. C. Baker states that if the Planning Board agrees with CCE's interpretation of the work that is done, that's fine, but there is also documentation in the file from the Home Owners' Association that disagrees that the work was done. It is the Planning Board's decision as to how to move forward. S. Weeks states that he likes what C. Baker just said. He is a little uneasy about the numbers and how many were actually planted and how many were supposed to be planted. S. Weeks thinks that additional certification would certainly satisfy him. He does have a concern. B. Duffney states that he agrees with S. Weeks 100% and would like to follow C. Baker's lead on having their engineer certify that it has been done. M. Gyarmathy states that he agrees and thinks that would be a good move to have their engineer certify what has been done because we were a little uneasy about the numbers that were used. R. Roeckle states that he agrees and would not want to recommend that the work has been done. He hasn't seen it or reviewed it. Their landscape architect should take care of it. J. Bokus is in agreement and thinks it is the best way to go. B. Duffney states that it would also take some of the burden off B. Neils and putting him on the spot. He thinks that B. Neils has done a good job in trying to assess the work. T. Yasenchak questions that the Board would like to see that before making any recommendation. C. Baker states that it should be J. Witt's licensed professional that is doing the certification and not the landscaper, not the guys who planted the plants - the person who actually prepared the landscaping plan. Discussion takes place that we do not need to make a motion because we are asking for additional information. The record will show that we are asking for Witt Construction's professional Landscape Architect who prepared the landscaping plan to provide documentation to the Planning Board that the work was completed in accordance to the plan that they had provided.

PRESTWICK CHASE – PUD Amendment/SEQRA

Case #595, Saratoga Blvd.

Mark Schachner, Town Attorney, and Justin Grassi are present. T. Yasenchak explains that we have the Town Attorney here because we are discussing Prestwick Chase. She asks, as the applicant is not here but was notified, does that preclude us discussing this project or going forward, or what are the limitations if the applicant is not here. M. Schachner states that the only limitation is that we are not going to be able to ask questions of the applicant. He states that his office sent a letter to the applicant's attorney and asks if there was any other notification. They have not heard anything about the applicant attending or not, but in the letter it was stated that the Planning Board was likely taking up SEQRA review tonight at least, if not more. They received no response. T. Yasenchak explains that we did make a motion at a previous meeting that we need to rescind and that was to not reopen the SEQRA. S. Weeks asks M. Schachner to explain why we need to reopen SEQRA. M. Schachner states because the Planning Board is the designated SEQRA lead agency, who is responsible for reviewing potential environmental impacts for an action, even though the ultimate decision on the PUD rests with the Town Board, the legislative body. The Planning Board was designated as the SEQRA lead agency and you never backed down from the responsibility, so you are still the lead agency. When a new application or a material modification of a previous application is proposed, whoever is SEQRA lead agency has to, by law, take a look at the potential environmental impacts of whatever is being proposed. T. Yasenchak quoted the September motion which was to not reopen the

SEQRA. M. Schachner states that from the Town Attorney's standpoint their advice is that you should reopen SEQRA, not telling you in what direction that reopening takes, but you should look at the potential environmental impacts of the proposed amendment and you should ultimately, whether tonight or sometime in the future, reach a determination as to whether there are new significant, different, potential adverse environmental impacts that warrant the preparation of a new environmental impact statement, which is referred to as a SEQRA Positive Declaration, or you should decide that while there may be some environmental impacts, they are not new significant, different or adverse enough to require the preparation of an environmental impact statement. In which case you would be reissuing or readopting the prior or new SEQRA Negative declaration. As the SEQRA lead agency you have the responsibility to reconsider potential environmental impacts. S. Weeks states that our whole discussion was whether we would reopen the previous SEQRA that was done for the PUD, that was what the motion was based on and what our discussion was based on – did we feel that there was enough difference in the amendment so that we needed to reopen the previously approved SEQRA. M. Schachner states that he thinks he understands what S. Weeks is saying, but what they are saying is that it is not really optional, and using the synonym 'reconsider' for reopen, from their point of view, the Planning Board has an obligation to reconsider the SEQRA review. Not an option but an obligation. Where you end up with that is not the Town Attorney's call, but they feel that the Planning Board has a legal obligation to consider potential environmental impacts or to reopen SEQRA review. We think you have a legal obligation to do that. The conclusion may be that there are no new different potentially significant adverse environmental impacts and we will reaffirm.

RESOLUTION – PRESTWICK CHASE – SEQRA

MOTION: J. Bokus

SECOND: B. Duffney

RESOLVED, that the Planning Board rescinds the previous determination/motion to not reopen SEQRA for Prestwick Chase, Case #595, PUD Amendment for property located at Saratoga Blvd., TM#152.-1-109.1, TM#152.-1-111 and TM#152.-1-115.

S. Weeks states that he understands that the Town Attorney feels that the SEQRA needs to be done early in the process. M. Schachner explains that it is not how he feels, the SEQRA regulations say 'as early as possible'. He states that it has nothing to do with how he or J. Grassi feels, but they do know a little bit about SEQRA review. There are a number of principles in SEQRA review and they don't all mesh perfectly. One of them is exactly what S. Weeks just said – there is provision in SEQRA regulations that says SEQRA review should be conducted as early in the application process as possible. Sometimes it is possible to do it really, really early in the process. Sometimes for other reasons it is difficult or impossible to do it really early in the process. There are a number of SEQRA review principles that are general principles and they don't mesh perfectly. S. Weeks states that we tend to do it very late in the process and in his opinion part of that is because we don't have a planning department so when we say an application is complete, as in this case, which was 112 days ago, we said it was complete but we were nowhere ready to do SEQRA, in fact we start changing things almost immediately – asking additional questions as if the application is not complete. That is a huge issue with him. If something should be done up front, the application should really be complete enough so that we do SEQRA. M. Schachner states that we would generally agree with that. Maybe you are deeming applications complete prematurely. There are Boards that do next to no completeness review and if the form has been signed by someone they say the application is complete, schedule a public hearing and then at the public hearing night they find out that they are missing all kinds of information that they should have asked for. Don't lose sight of what was said earlier, there are a number of general principles of SEQRA review and they don't always mesh perfectly. The most thorough, diligent, careful, conscientious Planning Board imaginable, which you sometimes are and maybe sometimes not – there is no such thing as a perfect completeness review. Once in a while, during the course of review you are going to find, or any Planning Board is going to find, that no matter how thorough and complete the obligation appeared on day 10, you are going to find on day 30 that you need additional information about an item. That is perfectly fine, if the need for that additional information means that you couldn't conduct SEQRA review right out of the gate as early as physically possible, so be it. One of the competing principles

is you want to have a complete set of information. So you see how those don't necessarily mesh. S. Weeks states that the challenge in this particular case is that we were supposed to have a recommendation done within 35 days, the applicant gave us an extension, but we are now at 112 days. He feels that is not fair to us and it is not fair to the applicant because of the process we are in. M. Schachner states, you are right, but don't confuse the time deadline on the PUD amendment referral recommendation, that is one responsibility you have. That is not the same responsibility as the SEQRA review as lead agency which is not subject to a deadline. The provision of the Town of Greenfield Zoning Law that you are talking about does not say only if the Planning Board is also serving as SEQRA lead agency nor does it say only if the Planning Board is not serving as SEQRA lead agency. It is a generic provision that says something like, a PUD application including a PUD amendment gets referred to the Planning Board for its advisory recommendation. It then says that the Planning Board has 35 days in which to make that recommendation and then it actually includes something that they would never recommend but they are not the authors, it has sort of a default of approval provision. That is a separate responsibility and is true in any PUD scenario in the Town of Greenfield – you have referral process and the time in which to make a recommendation. What is not true in each and every PUD in Greenfield is that the Planning Board would necessarily be serving as the SEQRA lead agency. That has tended to be the practice here; it is not a bad practice, but that responsibility is completely separate and apart from your referral recommendation responsibility and that is not governed by this 35 day provision. S. Weeks asks how you resolve that conflict – if we drag out the SEQRA process because we tend to do that because we have all sorts of additional questions after we say the application is complete, we are way beyond the 35 days, which in our code says it is a positive recommendation, but he thinks that the Town Attorney said that we must have a SEQRA recommendation to the Town Board before the Town Board can act. M. Schachner states that is true. The last thing S. Weeks mentioned, the Town Attorney does not see as a conflict. The Town Board cannot lawfully act on the PUD amendment application until there has been a SEQRA determination made. If the Planning Board were not the lead agency, the Town Board could make that determination. Some of this is a gray area because the principles don't always mesh, but one thing that is not gray – neither the Town Board nor any other agency taking action on the Prestwick Chase PUD amendment can do so until a SEQRA determination has been made. The tension is what about the 35 day deadline. Since you have to conduct SEQRA review, do so reasonably promptly, you are certainly not dragging this out for any intentional reason, you are just doing your job as responsibly as you can. When you reach your determination on the SEQRA review, if you want at that time to make some kind of recommendation to the Town Board, by definition the Town Board won't have acted yet, so you can make a recommendation. The applicant will likely take the position that if your recommendation is anything other than favorable it is too late, it is superseded by the passage of time – we don't know, we don't really care, not to sound uninterested. He states that the Planning Board is familiar with the referral process to the County Planning Board. There are certain applications under General Municipal that have to be referred to the County Planning Board for its advisory recommendation to the Planning Board before you act on certain subdivisions, site plans or special use permits. The County Planning Board referral process also has a time deadline, which is actually shorter. If the County Planning Board doesn't act in time, then you are allowed to take action without awaiting the County Planning Board response. You are allowed to take action; you are not compelled to take action. If for reasons having nothing to do with the County Planning Board, you don't take action and in the meantime the County makes its recommendation, you are allowed to take the recommendation into account. Similarly, even though the 35 days has come and gone, and even if there was an extension that has come and gone, if the Planning Board wishes to make a recommendation in addition to the SEQRA determination back to the Town Board, the applicant can say you can't do that because we already have this default positive recommendation, the Planning Board can say we understand that but here is what we think in addition or instead and the Town Board can accept or ignore the opinion or take it for what it is worth. It is not a perfect scenario because there is an inconsistency.

VOTE: Ayes: Duffney, Bokus, Gyarmathy, Roeckle, Weeks, Yasenchak
Noes: None
Absent: Siragusa
Abstain: Dake

T. Yasenchak states that we do have a part one that was provided by the applicant and signed by the applicant's engineer, Luigi Palleschi, in June of 2017. T. Yasenchak asks M. Schachner, when reviewing the Part I, when we see things that are incomplete or prepared inaccurately, we ask the applicant if we can fill that in while they are here or we ask for additional information, because the applicant is not here, how would he suggest that we proceed. M. Schachner states that ultimately, as part of SEQRA lead agency, part of your mandate is to make sure that the information in Part I is accurate. If there is information that is not accurate and you know it is not accurate and you know the accurate information, you can direct that the Part I be changed in accordance with what you say is accurate. The best practice is exactly what T. Yasenchak just said which is that typically the applicant is around and typically doesn't disagree. The applicant will then sign or initial the revised environmental assessment form. Here we can say here are the things we think are wrong with the Part I, take that to the applicant and make sure that they agree with the accurate answers and initial them, or you can just do that as the lead agency saying that part of your responsibility is to have the accurate information. As long as it is an objectively verifiable fact, you can make the change as lead agency. The Board reviews Part I and makes some corrections to the responses completed by the applicant. There are some questions that were left unanswered by the applicant. R. Roeckle states that we should complete the form to the best of our ability and have the applicant update it to be an accurate representation of our corrections. C. Baker concurs. S. Weeks asks C. Baker to address the water usage and the comments from the Environmental Commission regarding the aquafer. C. Baker states that it is not an easy question to answer. There are a whole bunch of theories behind public sewers, the whole idea behind why we have public sewers in the area that we live in. It is really not an easy question to answer. T. Yasenchak states that is addressed further in Part II. T. Yasenchak asks M. Schachner how the Board should proceed. Should the Board wait and ask the applicant for clarification of the items in question in Part I or can they proceed to Part II. M. Schachner states that the Board can do either. Keep in mind that it is entirely possible that the applicant is not present because they do not intend to participate in this exercise at all – not only tonight, but ever. We have no idea what is going on in the applicant's or his attorney's mind. M. Schachner states that the Board can stop now and prepare some sort of letter to the applicant stating that the Board reviewed the Part I, made the following revisions and has the following questions, or can continue. T. Yasenchak states that knowing the questions that the Board will face in Part II, there may be additional questions or information that we may need when looking at Part II. If we ask the applicant to provide that at the same time as updating the Part I, that might make the process a little more defined rather than asking them for more information for Part I, getting that or not, and then have to ask again in Part II. R. Roeckle asks if it is possible to have them review our comments, update their form and provide it to us, and let them know that we will be reviewing it at our next meeting, November 14. If they provide the information and a representative, we can ask questions at that time. If they don't provide the information, we will just do it based on what we have. M. Schachner states that the Board could also note that no one was present at this meeting despite having been told that the Board was going to commence its review and ask the applicant if they want the Board to continue the SEQRA review or do they want to withdraw the application. T. Yasenchak states that the Board's choices would be to continue and do what is almost a partial review of Part II and see if we need additional information to complete the Part II to give the applicant a more succinct list of the additional information that we need for both parts; as R. Roeckle stated, we could provide the applicant with a list of the additional information we need for Part I, notifying them that we will be reviewing it at that next meeting and asking them for a response. M. Gyarmathy states that M. Schachner's comment regarding whether the applicant wants to withdraw their application is important. R. Roeckle states that we should also let them know that we made the motion to rescind the original motion to not review the SEQRA. B. Duffney states that he agrees with the comments made. S. Weeks states that we already have a number of questions from Part I that the applicant did not respond to and he would not want to start Part II, it would be a waste of our time without knowing their intention. Board agrees. T. Yasenchak states that because the applicant is not here it is unclear their intentions on how they would like to proceed. They had been notified of the Board's intentions regarding rescinding the previous motion. The motion was rescinded tonight. We have reviewed Part I and have documented in our minutes and will make a list of the items that we need more clarification on. There were questions in Part I that were not answered and we are asking the applicant to complete. We are asking the applicant to do so for our next meeting. Our intent is that we

would like to review this at our next meeting, have the applicant present, but we are also asking the applicant whether or not they would like us to proceed with SEQRA or if they would like to withdraw their application.

ZBA REFERRAL

David Vanderzee – T. Yasenchak states that there is an application before the ZBA and when the application went before the ZBA, the ZBA had not yet determined whether it needed Open Development or if it was going to be a zoning variance that the application required. They asked the Planning Board to be lead agent for SEQRA; it was for one residential lot. We reviewed SEQRA, came to a negative declaration and when we made our motion, we said open development, but we did not include the possibility of zoning variance. The ZBA asked the Planning Board to revise their motion to include in the SEQRA negative declaration the possibility for the variance vs. open development. T. Yasenchak states that it does not change anything with the plan, with coverage, etc. T. Yasenchak explains the project. M. Schachner states that as a residential lot line adjustment and not a subdivision, this is not subject to SEQRA review. T. Yasenchak states that the ZBA asked us to do that. C. Baker states that it is an existing land locked parcel. M. Schachner reiterates that based on what he is understanding, this is not subject to SEQRA review. It doesn't matter if the ZBA wants the Planning Board to do SEQRA review; it is not subject to SEQRA review. C. Baker states that he thought that he had made the recommendation that the Planning Board did not have to do SEQRA review. M. Schachner states that the Board can revise their motion, rescind it or just leave it. He suggests telling the ZBA that it is not subject to SEQRA review.

DISCUSSION

T. Yasenchak states that the Board should review the Part II of the SEQRA in case that is the way we go forward for Prestwick Chase.

R. Roeckle states that he has a question on Town Board minutes. They reference the open development on Lake Desolation and that they have no recommendation. Did they not receive the Planning Board recommendation? T. Yasenchak states that we made a resolution. K. McMahon states that she will check.

Meeting adjourned, 8:54 p.m. All members in favor.

Respectfully submitted,

Kimberly McMahon

Rosamaria Rowland