

TOWN OF ELLICOTTVILLE
PLANNING BOARD MEETING MINUTES
Monday, November 28, 2022 at the Town Center at 6:00 p.m.

PRESENT: Richard Dayton, Chairman
Caitlin Croft, Member
Bonnie Koschir, Member
Gary Mathe, Member
Robert Poole, Member
Timothy Zerfas, Member

ALSO PRESENT Gregory Keyser-Town Planner, Kelly Fredrickson- CEO,
Adam Fishel-Marathon, Terrrence Nolan-New Leaf Energy,
Bruce McCullough-T-Mobile/American Tower, Chris Kornig-Pivot Energy,
Mike Brennan

Mr. Richard Dayton, Chairman, called the meeting to order at 6:00 p.m. and opened the public hearing for **TZP-2022-077, 8030 Jackman Hill Road, Special Use Permit for Colocation of Cellular Antennas by American Tower Inc.**

Mr. Keyser advised that this is an application for a Special Use Permit to collocate antennas and equipment on an existing telecommunications facility. The project involves the installation of new antennas on an existing 301-foot tower and the installation of ground mounted equipment within the existing fence line of the current base station. The facility is on approximately 41.95 acres of land in the Agricultural-Residential District.

Mr. Dayton asked for questions or comments from the people attending.
Mr. Keyser advised that no written or verbal comments were received in response to the public hearing notice which was published in accordance with local law.

A resident of the area near the site, asked if there will be another tower?
Mr. Dayton said no. There will be antennas added to the existing tower for 5G cell phone service. We had an engineering firm check the tower and it is alright to add another antenna. He noted that the tower at the top of the hill is out of service. Are there any plans to demolish it?
Mr. Keyser said he did not know.

Moved by Ms. Koschir to close the public hearing for TPB-2022-077, 8030 Jackman Hill Road, American Tower Inc, Special Use Permit for colocation of cellular antennas. Seconded by Mr. Mathe. Ayes all. Carried.

The minutes of the October 24, 2022 meeting were read.

Moved by Mr. Poole to approve the Minutes of October 24, 2022 as read. Seconded by Mr. Zerfas. Ayes all. Carried.

TZP-2022-077, 8030 Jackman Hill Road, Cellular Antenna Colocation

Mr. Dayton presented TZP-2022-077, American Tower Inc., Special Use Permit application for discussion.

Mr. Keyser noted that the project does not exceed any Type 1 thresholds under 617.4 of SEQR nor does it meet the definition of any Type 2 actions under 617.5 of SEQR. A coordinated review is not recommended because there does not appear to be any other involved agencies. The applicant has completed Part 1 of the Full Environmental Assessment Form. The Planning Department has prepared Part 2 and Part 3 of the FEAF for the Planning Board's consideration. The Planning Board should classify the project as an Unlisted Action, review Part 2 and Part 3 of the FEAF and make a SEQR determination, either a Negative Declaration or a Positive Declaration.

Barton & Loguidice has reviewed the technical material and has not noted any concerns with the proposal. The Planning Department recommends that the Special Use Permit be approved.

The Planning Board reviewed Part 2 and Part 3 of the FEAF.

Moved by Mr. Zerfas to accept the SEQR findings in Parts 2 and 3 of the Full Environmental Assessment Form and to issue a Negative Declaration. Seconded by Ms. Koschir. Ayes all. Carried.

Moved by Mr. Poole to approve the Special Use Permit to allow American Tower Inc. to install cellular antennas on the existing tower at 8030 Jackman Hill Road, as presented in materials in TZP-2022-077. Seconded by Mr. Mathe. Ayes all. Carried.

TZP-2022-092, 6902 Simmons Road, 5 MW Community Solar Energy System

Mr. Dayton presented TZ-2022-092, 6902 Simmons Road, Special Use Permit Application for a 5 MW Community Solar Energy System for discussion.

Mr. Keyser presented his staff report on this special use permit and site plan review of a proposal to construct a 5 MW Community Solar Energy System with access from Simmons Road. The proposed improvements include the installation of ground mounted solar arrays along with associated site, grading, drainage, landscaping and access improvements. The project affects approximately 24.8 acres of land in the Agricultural-Residential District. The Board reviewed the project at the September meeting and classified it as a Unlisted Action requiring a coordinated review. The applicant has provided the Full Environmental Assessment Form. Letters of Intent for Lead Agency status have been sent to the Involved and Interested Agencies. New York State Department of Environmental Conservation and

New York State Department of Agriculture and Markets have responded with no opposition to the project. Comments did not raise substantial issues or concerns. A public hearing can be set.

Mr. Dayton asked, should we set it for the January meeting?

Mr. Keyser noted that the next meeting would be December 26, 2022. Will that affect attendance? Typically the Board has canceled the December meeting.

Moved by Mr. Zervas to cancel the December 26, 2022 Planning Board meeting. Seconded by Ms. Croft. Ayes all. Carried.

Mr. Keyser noted that by January all involved agencies should have responded.

Ms. Koschir asked if all the minor issues would be resolved by January 23, 2022?

Mr. Terrance Nolan of New Leaf Energy said yes. They are addressing the issues raised by Barton & Loguidice.

Mr. Keyser noted that the noise study is too general and the SWPPP needs to be finalized.

Mr. Nolan said the Pilot agreement needs to be negotiated with the Town.

Moved by Mr. Zervas to set a public hearing for TZP-2022-092, 6902 Simmons Road, 5 MW Community Solar Energy System for January 23, 2022 at 6:00 p.m. Seconded by Ms. Croft. Ayes all. Carried.

Mr. Poole stated that people are expressing concerns about the chemicals in the solar panels and their effect on the environment. He hopes they speak at the public hearing.

Mr. Fishel said we can provide specifications on the solar panels. We use chemical free panels.

Mr. Keyser advised that a public hearing notice is sent to abutors to the project site.

Mr. Dayton asked what is the advantage to the Town to have a Solar Farm?

Mr. Fishel stated that the Town benefits from the financial contribution, upgrades to the substation and lines, and the opportunity for residents to apply for service with a reduction in cost of electricity.

**TZP-2022-135- 6064 NYS Route 242, SEQR Lead Agency Request.
Use Variance for 2.5 MW Community Solar Energy System**

Mr. Dayton presented TZP-2022-135, 6064 NYS Route 242, an application for a 2.5 MW Community Solar Energy System for discussion.

Mr. Keyser advised that there is an application before the Town Zoning Board of Appeals for a Use Variance, and area variances in order to construct the 2.5 MW Community Solar Energy System. The ZBA reviewed the Environmental Assessment Form and classified the project as a Unlisted Action and started the coordinated review requesting that the Town Planning Board be the Lead Agency. Letters were sent to other Involved and Interested Agencies, who have 30 days to respond.

Part of the property is located in the Conservation District where a 3 Tier Solar Energy System is not allowed, therefore generating the need for a use variance. The applicant is also requesting area variances to the setback lines. There are residents within 500 feet to the proposed project. The site also has designated wetlands and Great Valley Creek runs through the property.

Once the Town Planning Board makes a SEQR Determination of Significance and issues either a Negative or Positive Declaration the project will go back to the ZBA for review of the variance requests. If the variances are denied, the applicant could make changes to the project and reapply.

Mr. Chris Kornig, of Pivot Energy said there is not a lot of room for a redesign.

Mr. Keyser noted that one of the criteria the ZBA must review is: "Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance?" The ZBA cannot act until SEQR is completed. The question before the Planning Board is will you be the Lead Agency?

Mr. Zerfas asked will Barton & Loguidice be involved?

Mr. Keyser said yes. They will review the project and advise of any concerns or issues.

Mr. Zerfas asked is the property in the Conservation District?

Ms. Koschir said part of it is.

Mr. Kornig said that part of the site is in the Agricultural-Residential District and part in the Conservation District. He presented the map of the site with setback lines proposed.

Mr. Dayton asked if the land on both sides of Route 242 are in the Conservation District?

Mr. Keyser said yes. The array will be in the land between Route 242 and Great Valley Creek.

Mr. Kornig said the project site is 12 acres. The Buffalo & Pittsburgh Railroad owns the parcel along the railroad track.

Mr. Keyser asked if you accept Lead Agency status, what do you want to see? A complete application?

Mr. Kornig said we can develop a complete application.

Ms. Koschir said that the Planning Board deals with Lead Agency status on many projects. She is comfortable with the Board being the Lead Agency.

Ms. Croft said she is concerned with setting a precedent. Are you allowed to build that close to the Great Valley Creek?

Mr. Kornig said that will be addressed in the application materials. We have the base elevations from FEMA for a 100 year flood based on FEMA guidelines.

Mr. Keyser said there is a possibility that after SEQR is complete the ZBA could deny the use variance if hardship is not met. The applicant is aware of this and wants to continue the process.

Mr. Poole asked are we just handling SEQR?

Mr. Keyser said yes. You will work to make a Determination of Significance and issue a Negative or Positive Declaration. If the ZBA grants the variance requests the project would come to the Planning Board for Special Use Permit and Site Plan review.

Ms. Koschir asked, can the array be installed without being in the Conservation District?

Mr. Kornig said the array is not in the Conservation District but the Conservation District setbacks apply because part of the land is in that district. The array is in the Agricultural-Residential District.

Moved by Ms. Croft that the Planning Board accept Lead Agency status in the SEQR review of the 2.5 MW Solar Energy System at 6064 Route 242 as requested by the Zoning Board of Appeals. Seconded by Mr. Zervas. Ayes all. Carried.

Mr. Keyser asked, what information do you need to proceed?

Mr. Dayton said the project should be referred to Barton & Loguidice for their review and advice to the Planning Board on what is needed to complete the application.

Mr. Keyser noted that the applicant has completed the Full EAF and the ZBA has classified the project as an Unlisted Action.

Mr Poole stated that the Conservation District was created for a reason. Great Valley Creek is a major waterway. The DEC may be involved. If the creek water is polluted, who is responsible?

Ms. Koschir asked, how do you mitigate the 100 year flood issue?

Mr. Dayton said the report from Barton & Loguidice will help us determine how to address issues and act.

Mr. Keyser said that the SEQR response period ends on December 1, 2022. He does not think anyone will ask to be Lead Agency. The application should probably be tabled pending a response from Barton & Loguidice.

Moved by Ms. Croft to table TZIP-2022-155, 6064 Route 242, Pivot Energy, 2.5 MW Solar Energy System until January 23, 2023 pending a response from Barton & Loguidice. Seconded by Ms. Koschir. Ayes all. Carried.

Short Term Rental Discussion

Mr. Dayton advised that he and Mr. Keyser attended a seminar on Short Term Rental which included laws adopted by other municipalities. The Town Board wants a recommendation from the Planning Board if the Town Board should consider a zoning amendment to regulate Short Term Rentals and develop a Short Term Rental Policy.

Mr. Keyser noted that information from the seminar for the Board to review is included in the meeting materials. You do not have to make a decision tonight.

Mr. Poole said he had discussions with Dan Brown of Great Valley on this issue. Mr. Brown wants the Town of Ellicottville and the Town of Great Valley to adopt similar regulations so there is a common law in both municipalities.

Mr. Dayton noted that the Village of Ellicottville has a Short Term Rental law and the Town of Mansfield is working on one. He asked, will we get to review the law after the Town Board writes it?

Mr. Keyser said yes. There would be a public review of the proposed law before it is adopted.

Ms. Croft advised that some municipalities are capping the number of days you can rent short term.

Mr. Fredrickson said there are approximately 400 rental properties in the Town. We have had about 15 complaints.

Ms. Koschir asked, what is our purpose in adopting a law? Do we have a problem or are we trying to prevent issues? There are rural properties that are being rented on AirBnB.

Mr. Fredrickson said homes are becoming commercial properties. There are safety issues. The Town could be liable if something happens without regulations. HoliHuts is thinking of adopting their own HOA regulations to control short term rentals.

Mr. Fredrickson asked, are we trying to stop short term rentals or control them?

Mr. Dayton said we should look at the issue.

Moved by Mr. Zerfas that the Planning Board recommends that the Town Board look into adopting a Short Term Rental Law. Seconded by Mr. Poole. Ayes all. Carried.

Mr. Dayton advised that this is Mr. Mathe's last meeting after serving on the Planning Board many years. He thanked Mr. Mathe for his dedication to the Board and said he will be missed.

Moved by Mr. Poole to adjourn. Seconded by Ms. Koschir. Ayes all. Carried.

The meeting was adjourned at 7:45 p.m.