

**TOWN OF ELLICOTTVILLE**  
**PLANNING BOARD MEETING MINUTES**  
**Monday, January 23, 2023 at the Town Center at 6:00 p.m.**

**PRESENT:** Richard Dayton, Chairman  
Sheri Barrera, Member  
Bonnie Koschir, Member  
Daniel Kruszynski, Member  
Robert Poole, Member  
Timothy Zerfas, Member

**ALSO PRESENT:** Gregory Keyser-Town Planner, Kelly Fredrickson-CEO, Adam Fishel-Marathon, Terrence Nolan-New Leaf Energy, Robert Pidanick-Nussbaumer & Clarke, Alex Porritt-42 Degrees North Subdivision, Michael Rotella-Applicant, Kyle Woodin, Jim Linsler, Mike Brennan, Randy Krotz, Sara Krotz, Lisa Krotz, Tyler Nacy, Katie Krotz, Carol Krotz, Janet Tekavec, John Metz, Melissa Hadley, Steve Hadley, Jake Hadley

Mr. Richard Dayton, Chairman, called the meeting to order at 6:00 p.m. and opened the public hearing for **TZP-2022-092, 6902 Simmons Road, New Leaf Energy, Special Use Permit and Site Plan approval for a Tier 3 Community Solar Energy System.**

Mr. Adam Fishel presented the proposal to construct a 5 MW Community Solar Energy System with site access from Simmons Road. The project includes the installation of ground mounted solar arrays with associated site grading, drainage, landscaping and access improvements. The land disturbance is minimal. Trees and shrubs will be planted on the north and west elevations to reduce visibility. We are maintaining the 500 foot setback requirement with neighboring properties. The project affects approximately 24.8 acres of land in the Agricultural-Residential District.

Mr. Terrance Nolan noted that they have entered into an agreement with National Grid to tie into the grid at the Somerville Valley Road substation. Residents can subscribe to National Grid for a reduced rate for a savings of up to 10% on their electric bill. We will be paying local school tax and Cattaraugus County tax on the land. A decommission bond will be posted with the Town for the end of life of the project.

Mr. Dayton asked for questions or comments from the people attending?

Ms. Krotz of 6799 Simmons Road stated that her family lives directly across the road from the project. The analysis with regard to glare from the panels is not an accurate representation as it does not take in the topography and the movement of the panels from March to September and was only done from one point. The Hadley house at 6765 Simmons Road was not included and they only have 3 trees in their yard. Property values will decrease up to 7% on the houses closest to the project. . The cost of the decommission bond is an issue.

Mr. Nolan said they will have a bid with a company to recycle the panels at the end of life of the project.

Ms. Krotz expressed concern with the weight limits on the bridges along Simmons Road which is 3 tons. It appears that the semi trucks bringing in the equipment will weigh up to 40 tons. Who pays for the structural damage to the road and bridges?

Mr. Nolan said they will look into this issue. There will only be semi trucks initially delivering the equipment. After that there will be normal pickup trucks and cars for workers to install and maintain the project.

Mr. Adam Fishel said we will abide by the weight limits and will have an independent analysis done on the weight limits for the road and bridges.

Ms. Krotz noted that the panels are made of silicone which contains toxic materials. Water run-off from the panels will pollute our water and creeks.

Mr. Fishel said we will use panels that are made of non-toxic materials and will not pose a hazard to the environment. We can provide the manufacturer's information about the materials and construction.

Mr. Nolan noted that they will look at the view shed and glare, the road and bridges and the materials in the panels and address any issues with the residents on Simmons Road. He noted that a 5 MW system is very low voltage.

Ms. Krotz asked, will you be putting up light poles?

Mr. Fishel said there will not be any light poles on site. There will be one motion activated light near the equipment. The poles along the road will carry the electricity to the substation.

Ms. Krotz expressed concern that the 50 acre project will affect wildlife. She noted that deer can jump a 7 foot high fence. Animals that get inside the fence will cause damage to the panels and equipment. She also noted that the white spruce and other plantings shown on the site plan are not native to Western New York and not appropriate for the growing season. Mr. Fishel said the site is 25 acres. We can change the trees and plantings.

Ms. Krotz noted the environmental impact on farmland. She referred to the Cattaraugus County Agricultural and Farmland Protection Board whose mission is to protect prime farmland, farmland if drained, and farmland of statewide importance. The protection of these soils is essential for the future of agriculture and farming in Cattaraugus County.

Mr. Randy Krotz asked what is the chemical makeup of the panels? When will we get that information?

Mr. Fishel said they will provide that information with the next submission. We will take your concerns to the manufacturer and come back with answers.

Ms. Krotz noted the area at the center of the site which is wetlands.

Mr. Nolan advised that the land in the center is not designated as wetlands. The Army Corp of Engineers provided us with the information on wetlands..

Ms. Krotz said the information is not accurate. The ground is wet and snow will not set on it.

Mr. Fishel said we will work with the Army Corp of Engineers to verify wetlands.

Mr. Krotz asked why can't you put the panels higher up on the topography where it will not impact the neighbors?

Mr. Fishel advised that the Town has zoning regulations that prevent the project on slopes greater than 15%.

Mr. Krotz asked where are you building the greenhouse?

Mr. Fishel said we are not building a greenhouse. That project is the property owners.

Mr. John Metz, property owner, stated that he is working with Ellicottville Greens to grow produce on his land. He plans to plant trees on the remainder of the property.

Mr. Nolan noted that the Town of Ellicottville passed a solar law which requires projects to be 500 feet from the neighboring properties. Mr. Metz is leasing 30 acres to us and is using the remainder of the property for farming.

Mrs. Melissa Hadley asked who benefits from the project?

Mr. Nolan said the community benefits with access to lower cost electricity by subscribing with National Grid. He noted that they can satisfy all the concerns.

A resident of Simmons Road noted that Ellicottville has become a tourist destination with a thriving agricultural area. The panels will destroy the beautiful view in the valley.

Mr. Nolan said we can soften the glare from the panels to prevent loss of property values.

We will do a visual look from all the impacted properties to see how we can mitigate the issue. He asked property owners to give him their contact information to arrange a site visit.

Mr. Dayton advised that the Board tries to mitigate issues, but we have to follow the rules. The owner of the private property has a right to use his land. The Board will eliminate as many issues as possible.

Mr. Dayton read the letter from Cattaraugus County Agricultural and Farmland Protection Board that he received for the record: " At the last meeting of the Cattaraugus County Agriculture and Farmland Protection Board the following statement regarding solar development in the county was adopted and the Board wishes to bring this to your attention.

The Cattaraugus County Agriculture and Farmland Protection Board wants to express our concern for the rise in large scale solar projects being proposed on quality and productive agricultural soils. We understand the need for landowners to make prudent financial decisions for themselves and their families and the importance of renewable energy, but we ask for a balanced approach.

AFPB's mission is to protect prime farmland, prime farmland if drained, and farmland of statewide importance. The protection of these soils is essential for the future of agriculture and farming in Cattaraugus County and New York State.

Following the 2019 NYS Department of Agriculture and Markets, Guidelines for Solar Energy Projects - Construction Mitigation for Agricultural Lands is vital to minimize permanent destruction of soils, a resource that cannot be restored to its original state.

The AFPB recommends that municipalities steer commercial solar energy development away from viable agricultural soils and instead focus on developing fallow or non productive agricultural land.

Landowners should also be aware that if the primary use of a parcel changes from agriculture to energy production they will lose their agricultural tax exemptions. The Board recommends that any landowner approached by a solar company should seek experienced legal counsel."

Mr. Nolan advised that they looked at several properties where they could connect to the substation and contacted several property owners before reaching an agreement with Mr. Metz.

**Moved by Mr. Zerfas to close the public hearing for TZP-2022-092, 6902 Simmons Road, New Leaf Energy, Special Use Permit and Site Plan approval for a Tier 3 Community Solar Energy System. Seconded by Ms. Barrera. Ayes all. Carried.**

Mr. Keyser noted that the Board will consider all the information gathered from the public hearing and a decision will not be made at this meeting. Also the project was sent to the Cattaraugus County Planning Board for referral and they have responded that the application is incomplete. Issues are:

1. Mitigation of visual impacts to Town Code. PILOT agreement with the Town in lieu of payment of taxes.
2. In December Cattaraugus County issued a 6 month moratorium on PILOT agreements.
3. The review of SEQR Parts 2 and 3 and mitigation of environmental impacts.

Mr. Dayton asked can we accept a PILOT agreement during the moratorium?

Mr. Fishel said that if we do not seek a PILOT agreement there are other avenues to move forward.

Mr. Keyser asked will you wait for the PILOT moratorium to be lifted or pursue other options?

Mr. Nolan noted that the Town Law requires a PILOT in place. Some municipalities move forward with a condition that a PILOT will be put in place.

Mr. Keyser stated that the Board will follow the Town requirement for a PILOT agreement.

Mr. Nolan said the next step is to make a submission. We have to look at the properties and Make additional photograph reviews. We can work with the neighbors on screening and

mitigation of other issues presented.

Ms. Barrera asked if you had to be a Town resident to subscribe for the 10% reduction in cost?

Mr. Noland said you have to live within the load zone for renewable energy which may not be unique to the Town.

Mr. Dayton noted that concerns for the Board to review and address are visual impact, toxicity and chemical makeup of panels, non-native species of plantings, wildlife protection, roads and bridges, farmland protection, and wetlands designation.

Mr. Poole stated that these are valid points. Who benefits from this? The property owner. Is this Town going to set a precedent? We need to look at the concerns before we act.

Ms. Barrera noted that whatever decision is made it will not be objective, but based on the law.

Mr. Dayton advised that there are push backs on many levels in the state.

Mr. Nolan said we are looking at the big picture long term with a 25 year lease.

Mr. Kruszynski noted that the panels will be more efficient when new. Will they be replaced before the 25 years is up? There is no guarantee it will stay as is for 25 years?

Mr. Nolan said that is correct. Technology changes.

Ms. Koschir asked, are the lines overhead or underground?

Mr. Fishel said both with 7 new poles.

Mr. Nolan said nothing is high voltage. These are typical poles with 3 lines. We Have to replace the existing line with new lines per National Grid.

Mr. Fishel said we will reach out to the neighbors with regard to the concerns and report back to the Planning Board.

The Minutes of the November 28, 2022 meeting were read.

**Moved by Mr. Kruszynski to approve the Minutes of November 28, 2022 as read.**

**Seconded by Mr. Poole. Ayes all. Carried.**

Mr. Dayton presented TZP-2021-244, Michael Rotella, 6064 NYS Route 242, pre-application conference for a proposal for a 11-lot cluster subdivision.

Mr. Keyser presented his staff report on this proposal for an 11 lot cluster subdivision on 50.14 acres. 10 lots are proposed for single-family residential development and one lot is proposed as a conservation area. Per Section 2 .5 of the Town's subdivision regulations a Cluster subdivision may be approved in any zoning district.

The Planning board must determine if the proposed cluster subdivision is considered a

master plan development. If it is determined that the proposal is a master planned development, the applicant will need a Use Variance from the ZBA.

While the requirement states that a cluster subdivision may be approved in any zoning district, the property is in the Low-Density Residential District and the Conservation District.

Section 1.7 of the code sets forth the criteria for lots located in more than one zoning district and stipulates if any portion of a lot is in the Conservation District, the regulations for the Conservation District shall apply.

Section 4.1 (Master Planned Developments) requires that an application for a cluster subdivision include an application for subdivision approval and an application for Master Planned Development approval. In the Conservation District, Master Planned Developments are not permitted uses.

The purpose of a cluster subdivision shall be encouraged and enable the flexibility of design and development in a manner as to preserve the natural and scenic qualities of open lands and to protect natural resources.

The applicant has provided an "as of right plan" illustrating a scenario in which the lot could be subdivided into 12 building lots that meet zoning requirements. An application for a cluster subdivision will need to confirm that the "as of right" are buildable and meet applicable zoning, septic and water supply requirements.

Mr. Keyser noted that the applicant cannot create more lots than allowed in the district. There is no definition for cluster development or Master Plan Development in the zoning code. Mr. Dayton said it has to be compatible with the Conservation District.

Mr. Rotella advised that his original plan was a low-density subdivision in the Agricultural-Residential district, but the Conservation District prevented that plan.

Ms. Kosher asked, does the Conservation District remain green in a cluster development?

Mr. Dayton said the cluster can be anywhere on the property.

Mr. Keyser stated that if a parcel is in two zoning districts, the requirements for the zoning district with more than 50 percent of the acreage applies, but any portion that is in the Conservation District that district requirements apply to the total parcel.

Ms. Kosher asked, does each lot have a driveway off of Route 242?

Mr. Rotella said yes.

Mr. Poole said 10 driveways off Route 242 is a lot. NYSDOT should have input on the number of curb cuts for the driveways.

Mr. Dayton noted that the minimum lot size in the Conservation District is 5 acres. With a cluster development they could be reduced to 2 acres. The purpose of the Conservation District was to maintain the scenic corridor along Route 242 with the 100 foot setback.

Mr. Rotella said the side yard setback would be in the Conservation District.

Ms. Koschir asked, can you do fewer lots?

Mr. Rotella said he could do 300 foot wide lots instead of 200 foot wide. The development is not proposed in the Conservation District.

Ms. Barrera asked is the plan feasible if you reduce the number of lots

Mr. Rotella said no.

Mr. Keyser advised that the Board can table this application so they will have an opportunity to review the site plan and the applicable zoning codes before moving forward in the process.

**Moved by Ms. Barrera to table TZP-2022-244, 6064 Route 242, Michael Rotella, in order for the Planning Board to review the site plan and applicable zoning codes. Seconded by Mr. Zervas. Ayes all. Carried.**

Mr. Dayton presented TZP-2023-007, 42 Degrees North Subdivision, Poverty Hill Road, Alex Porritt, an amendment to the Final Plat.

Mr. Keyser presented his staff report on this amendment to the approved final plat for 42 Degrees North subdivision located on the west side of Poverty Hill Road. The subdivision was approved by the Town Planning Board on April 27, 2015 and a map cover was filed in the Cattaugus County Clerk's Office for the entire project. However construction of the road and stormwater facilities was not completed, and the applicant is seeking an amendment to the approved final plat in order to allow construction phasing of the project.

Per Section 2.6(A) of the subdivision regulations, the Planning Board should review the proposed amendment to allow construction phasing and determine if the request is substantial. In determining whether the proposed amendment is substantial, the Planning Board shall also determine if the SEQR review needs to be reopened and whether the change is minimal as related to environmental review. The Planning Board may waive the requirement for public hearing and make a determination on the proposed amendment, if it determines the requested change is not substantial and that SEQR does not need to be reopened. If the Planning Board determines the proposed construction phasing is substantial, the procedure for review of final plat applications shall apply.

Mr. Robert Pidanick, of Nussbaumer & Clarke, representing the applicant, advised that the approved plan in 2015 was for 142 acres to be divided into 25 lots, 24 for single family homes and the 25th for 10 acres of green space. The road would be private under the care of the HOA. 2000 feet of road with base coat and 24 feet wide with 3 foot shoulders on each side was constructed by C.J Wallace Engineering. The turn around on lot 22 meets the zoning requirements. SWPPP was completed. The applicant is asked to complete the project in four phases.

Mr. Dayton asked, does the private road have standards?

Mr. Pidanick said it was built per standards, but not current Town Road Standards.

Mr. Dayton said the concern is that the road will not be finished.

Mr. Pidanick said the top coat will be added after construction of the houses, to prevent damage by construction vehicles.

Mr. Alex Porritt said the road will be completed in Phase 1.

Mr. Keyser said the applicant is here to resurrect the project that was not completed. Is it substantial or minimal?

Mr. Dayton said 4 lots and a road are minimal. Will you complete Phase 1 before moving to Phase 2?

Mr. Porritt said he plans to sell all lots in Phase 1 first. However they may not be built on.

Mr. Fredrickson asked, why does Phase 1 not include the 2 lots that are sold?

Mr. Porritt said that lots 3 and 4 are sold, but lot 4 is under contract back to me.

Mr. Kruszynski noted that usually a Phase is developed completely, road and utilities before moving on to Phase 2. Is the infrastructure for Phase 1 in place?

Mr. Porritt said the phasing is for the infrastructure. We will finish the road with chip and tar as per the approved plan in 2015.

Mr. Dayton noted that the 2015 approved plan should have been completed in 2 years per the zoning code. Applicants are required to ask for an extension if that does not happen. Do we grant an extension with a condition that the road be completed?

Mr. Poole said the road needs to be serviable with gravel and top coat.

Mr. Dayton said that building permits should not be issued until the road is built to code.

Mr. Fredrickson stated that the road has to meet fire code and emergency vehicle standards.

Mr. Keyser advised that the project is stranded. Does the road need to be built to Town Road Standards? Does the stormwater plan meet the requirements? Was the NOI closed?

Mr. Dayton stated that the project timeline has expired. The current standards should apply.

Mr. Zervas noted that construction standards would have changed since 2015.

Mr. Porritt said he would be willing to build the road to current Town Road standards.

Ms. Koschir noted that one project is now being turned into four phases.

Mr. Keyser asked, is four phases a minor or major change? Will there be a significant environmental change?

Mr. Pidanick said there are no environmental changes. The SEQR still stands. We are asking for an extension also? We can provide verification that the stormwater permit is still in place.

**Moved by Ms. Barrera that the request for phasing for the 42 Degrees North Subdivision project is a minor change that does not require SEQR to be reopened and to waive a public hearing. Seconded by Mr. Zervas. Ayes all. Carried.**



**Moved by Mr. Zerfas to grant an extension for TZP-2023-007, 42 Degrees North Subdivision as requested by Alex Porritt, applicant. Seconded by Ms. Koschir. Ayes all. Carried.**

Mr. Keyser noted that SWPPP needs to be reviewed before approval of Phase 1 is granted. Mr. Pidanick that in 2020 new SWPPP standards were adopted. Do they apply to the NOI which was filed in 2015? If so we will make the necessary changes.

**Moved by Ms. Barrera to approve Phase one for 42 Degrees North Subdivision as presented in application materials in TZP-2023-007 received from Alex Porritt with the following conditions:**

- 1. The SWPPP and NOI is still open and viable,**
- 2. The road will be built to Town Road Standards**
- 3. The Turnaround on lot 22 will be 60 feet by 60 feet and built to fire code standards.**

**Seconded by Mr. Zerfas. Ayes all. Carried.**

Mr. Keyser advised that the Town Board is forming a committee to look at regulations for Short Term Rentals. They would like 2 members of the Planning Board to be on the committee.

Mr. Kruszynski and Mr. Poole volunteered.

**Moved by Mr. Zerfas to adjourn. Seconded by Mr. Poole. Ayes all. Carried.**

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