

Town of Eden - Planning Board Minutes

October 2, 2024 7:00 pm

MEMBERS PRESENT:

Brian Reed, Chairman
Andy Romanowski
Frank Meyer, DDS
Joe Eppolito
Andy Tarasek
Katrina Schmitt-Rouf
Jennifer Crowe
Dan Buchanan

EXCUSED: Marc Timblin

OTHERS:

Town Council –Vincent Vacco, Susan Wilhelm
Applicants – **Kelly's Place – 8121 N Main Street**
Alex Laks, Elite Property Management
Curtis Martin, TG Estates
Eden PV, LLC – 2394 West Church Street
Jim Taravella, Project Manager – Development, RIC Development LLC
Sheila Ransbottom, Project Engineer - Wendel Companies
Peter Sorgi, Esq., Hopkins Sorgi & McCarthy PLLC
Eden II PV, LLC – 2027 Eden Evans Center Road
Jim Taravella, Project Manager – Development, RIC Development LLC
Sheila Ransbottom, Project Engineer - Wendel Companies
Peter Sorgi, Esq., Hopkins Sorgi & McCarthy PLLC
Knoll Eden Solar LLC – 9549 Knoll Road
Mia Morgillo, Solar Developer Associate – GreenSpark Solar
Brooke Mayer, Commercial Development Manager – GreenSpark Solar

Mr. Reed called the meeting to order at 7:00pm and asked for comments on the September minutes.

Mr. Reed made a motion to approve the minutes from the September 4, 2024 meeting. Seconded by Mr. Eppolito; Motion approved unanimously.

Kelly's Place – 8121 N Main Street – Pre-submission for expansion

The applicants advised they would like to build two additional family buildings. They would be the same design as the three existing buildings. They will be virtually identical.

Mr. Reed confirmed this was a continuation of the original plan. Mr. Rice noted that originally a temporary Special Use Permit was issued to build out all five units. The original owners did not complete all five buildings. The Town Board then determined that additional buildings would require a full review in front of the Planning Board. Mr. Reed noted that this is now an allowed use in the Mixed-Use zone and no longer subject to a Special Use Permit.

The applicants were provided a site plan checklist. Applicant must prepare a site plan, using Town Zoning code Section 225-30 as a guide. All items on the checklist must be on the site plans in some form. Additionally, an escrow payment is required. The escrow for this project will be \$3,000.00. Payment can be coordinated with the Building Department.

In order to be heard at the November 6th Planning Board meeting, the escrow payment and site plan will need to be submitted two weeks prior, by October 23, 2024.

Eden PV LLC – 2394 West Church Street – SEQR review

At the August meeting the Planning Board discussed and reviewed this project comparing the questions that were answered in Part 1 of SEQR with the list of criteria but **did not** vote on the recommendation. After submitting the recommendation, the Planning Board received feedback from the Town attorney and Town Board requesting clarification and consideration of additional agricultural impacts including, but not limited to, the Town of Eden Agriculture and Farmland Protection plan and the location of the projects within the NYS and Erie County Agriculture districts. We will look back at Part 2 of SEQR and have additional discussion. We will then conduct a formal vote and recommendation. The Town Board is lead agency and will make the final declaration. *(Applicant comments in italics)*

Impact on land - proposed action may involve construction on or physical alteration of land surface of the proposed site.

Question a. The proposed action may involve construction on land where depth to water table is less than 3 feet. The water table on this site is at plus or minus 1.5 feet.

Other Impacts: Thinking of the Agriculture and Farmland protection plan, this project would reduce or remove potential farmland. This land has traditionally been a farm, although it has not been farmed in a number of years. It is in the central area where there are a lot of farms surrounding this particular area. *Mr. Taravella clarified that the parcel is farmed but the area of the proposed project has not been farmed in at least 20 years. It is being used as a driving range.*

Because this land has not been farmed in many years, the Board feels the impact is No, or small impact.

8. Impact on Agricultural Resources – The proposed action may impact agricultural resources.

Question a. The proposed action may impact soil classified within soil group 1 through 4 of the NYS Land Classification System.

RIC's Part 1 Supplemental lists that the proposed project will occupy just over 17 acres of these soil types. It would appear to be a Moderate to large impact. It's roughly 16-20% of the parcel. *Mr. Sorgi noted that the regulations do ask that you look for mitigating factors to move it to a No, or small impact. The mitigating factor here is that this is not a permanent use where the soil will be removed. This soil can be returned to farming at the conclusion of the project.*

We don't have experience with these solar fields coming back out of service. We are trying to protect the farmland and residents down the line. Mr. Romanowski stated that there is no significant long-term

impact. Ms. Schmitt-Rouf noted that it can be returned to farmland and that resting the soil is a good thing.

Mr. Reed clarified that the Planning Board is trying to determine if there should be a negative or positive declaration. A positive declaration is not an end to a proposed project. It simply means that additional information will be needed. *Mr. Sorgi stated that if it was a positive declaration requiring an environmental impact statement, there is nothing else to study and no more additional information. The work has been done.*

Mr. Reed asked if RIC has any project that you built that have completed and been decommissioned? *Mr. Sorgi advised that solar is too new. The earliest projects there wasn't much attention to type of panels etc. People would hear solar and hear stories about radioactivity etc. There are new regulations in place to ensure panels are not endangering soil. The technology now is different.*

Mr. Reed asked if any studies can be provided that discuss materials? *Materials are largely silica (sand). The bulk of material is essential the same as your windows. Aluminum is use for the frames. Copper is also used. These materials that are nontoxic and do not leech into soil.*

Can you provide MSDS sheets? *Yes, we can provide those.*

Mr. Eppolito asked if there are any liquids? *No.*

Question f. The proposed action may result, directly or indirectly, in increased development potential or pressure on farmland. Mr. Reed questioned that, as more farmland gets converted, does that create pressure on other farms? *Mr. Sorgi stated it's all about how much the grid can handle. The grid can't handle solar fields all over the place.*

The town of Eden is a farming community. We want to make sure that we understand if there's any additional pressure on farms to look at this opportunity. Mr. Tarasek noted that this farm in particular has not been farmed.

17. Consistency with Community Plans – The proposed action is not consistent with adopted land use plans.

Question a. The proposed action's land use components may be different from, or in sharp contrast to, current surrounding land use pattern(s). Mr. Reed feels this is a moderate to large impact because it is in sharp contrast with everything that's built around there. What is the significance here; does it need to be investigated more? Mr. Tarasek stated that we all live in Eden and will drive by that. You will not really see it.

Question c. The proposed action is inconsistent with local land use plans or zoning regulations.

Utility scale solar is not a permitted use currently in R2. Mr. Reed feels this is a significant difference. The applicant will have to go through the variance process. *Mr. Sorgi noted that there are four criteria to receive a use variance. One of them is that the project will not have a negative impact on the community. This question will take care of itself through the Zoning Board of Appeals. If they believe it will negatively impact character of the community, they will deny the variance.*

Regarding the Comprehensive Plan and looking at future use layout, this was an area the Town thought would be good for residential. It is in a sewer district and utilities are nearby. This project impacts this because it takes out an ideal location. *Mr. Sorgi stated that it doesn't take it out permanently. If you have properties that are vacant before that, it will probably take that much time to get to this parcel.*

18. Consistency with Community Character – The proposed project is inconsistent with the existing community character.

Question f. Proposed action is inconsistent with the character of the existing natural landscape.

Pointing to our Comprehensive Plan related to rural character and preservation of farmland, is there a significance we need to address? Mr. Romanowski stated that mitigation has been addressed.

There are no notes of significance in this review of Part II of SEQR. The Board held a formal vote on a determination of non-significance and recommendation of negative declaration. All in favor, none opposed. For Eden PV LLC, a negative declaration recommendation will be sent to the Town Board.

Eden II PV LLC – 2027 Eden Evans Center Road – SEQR Review (Applicant comments in italics)

To date, we have received no response from the Town of Evans with input on this proposed project.

Impact on land - proposed action may involve construction on or physical alteration of land surface of the proposed site.

Question a. The proposed action may involve construction on land where depth to water table is less than 3 feet. This project does have a water table less than 3 feet. There are some wetlands on this property. Mr. Tarasek stated the layout is working around wetlands.

8. Impact on Agricultural Resources – The proposed action may impact agricultural resources. We will run through this again with Agriculture and Farmland Protection plan in mind as this is a farmed location.

Question a. The proposed action may impact soil classified within soil group 1 through 4 of the NYS Land Classification System.

RIC's Part 1 Supplemental lists that the proposed project will occupy just over 9 acres of these soil types. Mr. Reed noted that a goal of the Farmland Protection Plan is to stabilize the Town's agricultural land base and maintain 95% of current active agricultural land in production through next 10 years. In 2009 this was 8,500 acres of active farmland. 425 acres to maintain that 95%. There have been other conversions over time that impacted these acres. We do not currently have an accurate running tally but we are well over 100 acres in converted land over the last couple of years. We could use additional information to understand from an environmental impact and protecting our town resources.

Mr. Sorgi commented that you need to take into account if the property can revert back to farming. Many times, a farmer wants something like this because it supplements the rest of the property which is being farmed. Mr. Taravella noted that the areas of the property for the proposed project is the wetter, less productive areas. The farmer is willing to give them up because of the lack of productivity. When the Comprehensive Plan was written, this parcel was zoned agricultural. In 2022 it was rezoned to not be agricultural. Theoretically if you're trying to maintain agricultural you don't rezone. AG requires special use permit in this zone. Mr. Reed noted that solar is not permitted in this zone.

Mr. Tarasek stated this is more significant and comes down to decommissioning plan and the actual production plan. Are there historically any issues with these fields and reliability issues, causing them to be decommissioned? *Solar is not old enough for that data. However, if that were to happen it would be decommissioned either by the company or the Town through the bond and returned to farmland at an earlier date.*

17. Consistency with Community Plans – The proposed action is not consistent with adopted land use plans.

Question a. The proposed action's land use components may be different from, or in sharp contrast to, current surrounding land use pattern(s).

This is very similar to Eden PV LLC in that it's inconsistent with local and Erie County land use plans.

Ms. Wilhelm asked how much of this land is prime? Mr. Reed noted that 23% of this parcel is prime land and land of statewide importance being used for this project. Mr. Reed noted that under a positive declaration there would be a scoping process – decommissioning, operations and maintenance plan would be part of the EIS, addressing any concerns returning land back to active farms.

There are no notes of significance in this review of Part II of SEQR. The Board held a formal vote on a determination of non-significance and recommendation of negative declaration. All in favor, none opposed. For Eden II PV LLC, a negative declaration recommendation will be sent to the Town Board.

Eden Knoll Solar LLC - line of site review

We have received additional resident comment letters from Cameron Greene, Neil Goldberg and Kelli & Ken Spawton. They will be added to the public record.

Mr. Reed requested that GreenSpark provide references of projects that they have completed; property owners and towns they're in to see how the project went and if there are any issues.

The updated line of site diagrams and updated site plan were reviewed and discussed. (*Applicant comments in italics*)

In the latest site plan, five rows of panels are still visible from Knoll Road. The Planning Board would like to see a site plan with those panels removed to ensure no panels are visible from Knoll Road. *We can continue to improve and create a more robust screening. As we revisit the visual impact from Knoll Road to determine economic viability, we would like to ask for some flexibility in how we solve for that impact. It is understood that the ideal would be to remove those five rows to eliminate visual impact; if we can propose an alternate strategy through plantings or other means, would the Board be willing to evaluate?*

Mr. Reed noted that we would like to see zero visual impact from the start, not seven years in the future. We are trying to balance this. There are a lot of concerns from residents in the area. We are willing to look at alternate strategies but will not guarantee that it will satisfy the requirement.

Mr. Buchanan noted one of the resident concerns was the screening near the road blocking the view that they are used to. Perhaps the screening needs to be further back or eliminated. *The screening can be located further back. There is a significant positive to having the screening that close because the closer the visual screening, the more the initial value you're blocking is much greater.*

Mr. Eppolito asked if it's possible to lower the panels. *They are already quite low, only standing at just over 9 feet at full tilt.*

Susan Wilhelm did research on Great Lakes native plants and pollinators. Nothing on the seeding list is native to the area. Mr. Reed noted we will lean on the Conservation Board and ask for recommendations on plantings.

Ms. Schmitt-Rouf asked if soil studies can be provided. *We can commit to regular soil testing and monitoring once the installation is in place. As part of the decommissioning plan there would be preexisting soil testing conditions. Are there studies on a past project that you may be able to show residents that soils did not decline? It may ease concerns. I don't believe that we have testing to draw on but we can pull peer reviewed data or research.*

Mr. Eppolito commented that on the latest layout the transformer pad near the road needs appropriate screening. Mr. Buchanan noted we understand it needs to go there but it will require screening.

There are delineated National Grid owned poles and customer owned poles. Customer poles need to be underground. *These will be trenched. Presently we proposed one utility pole and four customer poles. The utility pole is owned by National Grid. We are continuing to go through CESIR process, which should be complete in late October. We will have additional detail as to what Grid wants to see. We will be beholden to National Grid as far as what that detail looks like. The intent is to bury as much as possible.*

The Planning Board would like a comprehensive final submission ahead of the November meeting including:

- Updated site plan
- Knoll Road and Haag Road lines of site,
- References from property owners and municipalities
- Photos of similar installation

At the November meeting the Planning Board will review the updated site plan and lines of site as well as the Decommissioning and Operations & Maintenance plans, initiate Part II of SEQRA review, and discuss setting a public hearing in December for site plan review.

Mr. Reed suggested that GreenSpark review Part I of the SEQRA to ensure it matches with the reconfigured site plan.

Other Business – Existing Code Reviews

Mr. Buchanan and Mr. Tarasek did research on other town setbacks as it pertains to recreational activities. Other towns do not have the level of detail that Eden does. For example,

- Hamburg does not have a chart by activity. They have zones where these activities are allowed. The setback is 25 feet from a residence in their PR and Recreation Land district.
- Amherst is 50 feet for all outdoor recreation facilities when abutting a residence
- North Collins is 30 feet when the exterior side yard abuts an R district boundary in C or M districts where they allow these uses.

Our code is very well pull together and in alignment with other towns. Our code is very clear and detailed. The setback distances seem very appropriate. Mr. Rice noted that when this code was established, a lot of thought was put into it as most are in the Mixed-Use zones where there is a lot of residences.

Based on this review, the Town of Eden recreation code is very clear and setbacks are comparable to other towns. The Planning Board recommends no changes at this point.

Mr. Reed will ask Mr. Timblin to assist Mr. Eppolito and Dr. Meyer in the review of lighting code.

Dr. Meyer motioned to adjourn the Planning Board meeting, seconded by Mr. Tarasek; Motion approved unanimously.

Respectfully submitted,
Shelly Griebel, Secretary

Concerns Regarding Knoll Road Solar Farm Proposal

1 message

Kellie Spawton <semperkellies@outlook.com>

Mon, Sep 23, 2024 at 12:45 PM

To: "buildingadmin@edenny.gov" <buildingadmin@edenny.gov>

To Whom it May Concern,

We write to provide our comments and concerns relating to the efforts to place a solar farm at 9549 Knoll Road. We live at the intersection of Knoll Road and New Oregon Road. We moved to the Town of Eden last year because of its character, rural atmosphere, commitment to supporting agriculture, proximity to hiking and skiing locations, and its sheer beauty. The local response to those impacted by the recent tornado confirmed our belief that Eden is a community of citizens who care about each other. We trust that the Planning Board has a similar mindset.

We are counting on the Board to protect our environment and quality of life from the adverse impacts that the proposed solar farm would have on us, our neighbors and friends, and the Town as a whole. My husband and I both work from home, and are deeply immersed in outdoor pursuits, making our environment a vital part of the quality of life we enjoy and pay taxes to sustain. Knoll Road and its surroundings is the area where we exercise, enjoy the beauty of nature and all of its creatures, and immerse ourselves in this pastoral setting. Daily, we and others from the neighborhood and Town hike and bike Knoll Road and its surroundings, including a beautiful ravine just east of the proposed solar farm site. The road is used for organized biking as well. From the top of Knoll Road at Haag Road, all the way down to New Oregon Road, the views of the countryside, as well as encounters with wildlife, are spectacular. In just the past week, on my walks I have seen deer, eastern newts, migrating monarchs, turkeys, hawks, bald eagles, and great blue herons. Most days, I am accompanied by a flock of eastern goldfinches, encouraging me up the hill.

We understand that the developer of the proposed site plans to place a visual barrier along the road to make it impossible to see the solar farm. The downside of a visual barrier, however, is that the stunning vista and wildlife just described would no longer be visible. Additionally, the type of barrier used, such as site fencing, may impede wildlife movement and result in habitat fragmentation, decreasing wildlife species. Without a visual barrier, this gorgeous area of Eden, which is comprised of natural woods, agricultural land, and residences, would be marred by an industrial installation.

We are firm believers in finding ways to create alternative energy sources and reduce the dependence on fossil fuels. That said, when a town is considering such projects, it is important to consider existing statutes regarding land use and protection, and to ensure compliance with same. Environmental considerations, such as impacts on soil, water supply and tables, and wildlife (including any threatened or endangered species), should also be addressed. Additionally, it is important to consider what such projects, if approved, may mean for future applications. As we explore ways to reduce our environmental impact, we must ensure that we are not creating further damage or opening the door for industrial sprawl in a town that prides itself on its commitment to agriculture and nature. The Town must also seek to protect itself and its taxpayers from future costs relating to maintenance and eventual decommissioning, and from adverse impacts relating to possible water table and other types of damage.

When attempting to understand how the Town is able to consider an application for an industrial solar farm on Knoll Road, it seems that all that is required is for a landowner with enough acreage to contact a developer and request that a solar farm be located on the property. If there is neighborhood opposition, the developer seeks to enter into agreements with immediate neighboring homeowners to compensate them for possible adverse impacts. We understand that this compensation may be substantial. We also understand that the developer pays a substantial annual fee to the Town.

We do not attribute a negative motive to the Town for entering into agreements of this kind; we appreciate the fact that the Town would reap the same fees, regardless of location. However, one landowner, one developer, and a few substantially compensated individuals should not impose random industrial sprawl on the Town. Our concern is that in agreeing too quickly to this proposal, the Town may be subject to further industrial sprawl, putting the very essence of the character and quality of Eden at stake. It is in no one's interest to have the most scenic areas of Eden blemished by industrial sites. Town government should be dedicated to protecting against random industrial sprawl and to ensuring its commitment to its core values of supporting agriculture and preserve the scenic qualities of the town.

We urge you to reject this project in favor of creating a sustainable energy project plan for the Town that preserves its very nature. Careful planning and choosing sites that can absorb renewable energy projects will ensure the continuation of Eden's well-deserved reputation and slogan as the Garden Spot of New York.

Thank you for your kind consideration of our comments.

Sincerely,

Kellie and Ken Spawton
9908 New Oregon Road

To the Eden Planning Board re the proposed Knoll Road Solar Project

My husband and I reside at 9706 Knoll Road Eden. I write to express my deep concerns about the proposed Knoll Eden Solar Project at 9549 Knoll Road Eden. My concerns include, but are not limited to, the following:

- I have major concerns and questions about the potential negative environmental impact of this Project on the surrounding lands, and specifically our property. Our home is located down the hill which could experience a significant run off and drainage of water from the Project. Any contamination of any kind resulting from the construction and operation of this site would have a direct negative impact on our property, and neighbors around us. In addition, I am concerned about our water supply. Like our neighbors, we are on wells. Any construction Project especially from this Project which is uphill and relatively close to our property poses a potential threat to our health and safety through the possible contamination of our water. We have seen no independent environmental studies which prove that this Project will not affect or compromise our water supply. The Eckhardt Sisson Hwy Solar Site apparently approved by the Town Board is serviced by municipal water: our property and all our neighbors are on well water and therefore is exposed to that significant additional risk.
- I also have major concerns about the negative impact of this Project on the aesthetics and the rural character of our area. The Town's Comprehensive Plan, entitled "Cultivate Eden" which I understand was adopted by the Town Board in 2018- has numerous references to "Rural Character Preservation" as a Core Goal. The first of the Major Findings on page 32 of the Plan begins, " the rural character of Eden is a highly valued element...." There are numerous references in the Plan to the importance of " visual quality and aesthetics" (page 37) and the protection of "scenic views which contribute to the character and marketing of Eden (page 38)". With this Project, it appears clear the the Site Plan and the line of site studies provided to date do not obscure the site from view from those walking, jogging, bicycling or driving along Knoll Road. Further there appears to be no evidence of a contract by the developer that would provide immediate and continuous visual landscaping buffers that would obscure this site. There is also no security being offered that could be relied upon if there were a breach of such obligation.
- Another concern is that we have not been given access to the full presentation by the developer to the Board, as well as all material follow up communications. I have personally spoken with owners of residences contiguous to the Eckhardt Road Session Hwy Solar Project who have expressed their extreme disappointment and concern over that project. A lot of this happened during COVID and information to those I listened to was not transparent to them and once they realized this was happening , the feeling was this was a "done deal" and they had no say. Our neighbors and I are deeply concerned that the impact of the Eden Knoll Project will be even worse , given potential threats to the environment, water systems and aesthetics of the community . I believe in the importance of green energy but not in projects like this that pose an immediate and direct risk and threat to our property, our neighbors property and to the Core Values of The Town's Plan.

Cameron R Greene

September 9, 2024

TO: Town Of Eden Planning Board
RE: Knoll Eden Solar LLC-9549 Knoll Rd.

OVERVIEW

- The August 14th Letter from the Erie County Department of Environmental Planning notes that locating the Project at the 9459 Knoll Rd site is contrary to multiple Town and County Planning documents.
- The Project site is in conflict with the Town's energy systems laws.
- A land ranking system should be utilized in evaluating the suitability of a proposed site for a utility scale solar energy project.
- Although "limited development" in rural areas is encouraged, the conversion of rural and agricultural lands is **discouraged**.
- To date the information provided by GreenSpark concerning visual assessment issues is inaccurate, incomplete, or nonexistent.
- To date the requests for visual impact assessment related information by the Town Engineer in two letters to this Board, have not been meaningfully responded to by GreenSpark.
- The Full Environmental Assessment Form submitted by GreenSpark raises a number of questions and in some instances contains responses that are either out of context, or erroneous.
- The May 2024, Draft Operations and Maintenance Agreement and Plan is flawed in many respects and should be amended to adequately protect the Town and its residents. The potential absence of appropriate insurance and other efforts provided for in the Agreement to avoid accountability to the Town by the "Owner" and "Operator" is not acceptable. The coverages provided for in the Agreement must be structured to insure that the PROJECT "OWNER" and "OPERATOR" can fully respond to plenary claims asserted by the Town and its residents for damages that are incurred should of the potential perils that can arise

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during the installation, operation, maintenance, or decommissioning of the PROJECT materialize.

- The May 24, 2024 Decommission Plan does not adequately protect the Town from the enormous cost and expense it will encounter should it seek to enforce its rights under the Plan. All attorney's fees and expenses associated with the enforcement procedure should be included in the bond. Absent this change the Town would incur legal expenses that likely are in excess of \$ 100,000.00 dollars. Depending on how protracted the litigation would be the associated attorney's fees might well exceed \$200,000.00 dollars or more.
- The accuracy of the amount of the bond should be evaluated by an independent expert as urged by the Town Engineer. As presently structured the amount provided for by the bond is inadequate.
- The 2% inflation step ladder contained in the proposed bond is inadequate and inconsistent with historical inflationary pressures. If the 2% rate is not increased the Town risks being exposed to significant unanticipated expenses in the decommissioning process.

PREFACE

In my letter to this Honorable Board (hereinafter Board), of August 27, 2024, I noted that, as of that date, I had not been physically able to review the full file concerning the Knoll Eden Solar LLC-9549 Knoll Rd utility scale solar project. (hereinafter referred to as the PROJECT). As I have now been able to do so, I respectfully submit additional questions, comments, and requests for this Board's consideration and response.

My comments are also intended to provide concerned citizen input relating to a number of issues referenced during the September 4, 2024, Board meeting.

I recognize that some of the comments contained in my August 27, letter, as well as some of those provided below, are legalistic. At the same time, I hope it is apparent, that they are intended to provide an approach to various issues that, if adopted, protect the Town and its residents from incurring the full spectrum of damages and expenses that it is presently foreseeable they may be exposed to. I stand ready to expand on the suggestions contained herein, and/or to explain them in detail to the Town Attorney.

At the end of the day, what is set forth in my August 27 letter, and herein, (hereinafter referred to jointly as the LETTERS) provide a respectful attempt, by an adversely impacted landowner, concerned citizen, and devotee of The Town of Eden and all of the richness the Town and community of Eden provides, to maximally assure that the Board, in its consideration of the

September 9, 2024

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application for a Special Use Permit, will achieve the laudable goals provided for by the Town's Comprehensive Master Plan and Town Code Chapter 172.

Although it is my position that the PROJECT should not be sited at the 9549 location, as a citizen of the Town, I cannot ignore the issues the Town will repeatedly have to consider and address with regard to applications for utility scale solar projects in the future. Accordingly, in many respects my comments apply to any application for a utility scale project in the Town.

Nothing contained herein should be read to mean, or insinuate, that any part of the proposed plan can pass legal muster, or not be in stark conflict with the norms this Board is duty bound to enforce.

Indeed, a brief review of merely some of the documents contained in the Project file, reflect concerns at various levels of government regarding the extent to which the proposed siting of the PROJECT, is in utter conflict with the standards the Board is bound to apply in the consideration of the subject application.

For ease of reference, I have identified the document each of my comments apply to. Where possible I have also provided page citations.

Before turning to the documents contained in the PROJECT File, I refer to the comment made by Chairman Reed noting an effort on the part of some of the impacted homeowners to open a constructive dialogue with GreenSpark, concerning ,among other issues, line of sight and visual barrier interplay. Two letters to the Board from the Town Engineer and the minutes of the August 7, Public Hearing, identify concerns and request action from GreenSpark to provide meaningful and comprehensible information concerning various line of sight, landscaping, screening ,and configuration issues. (hereinafter referred to VALUES OF EDEN ISSUES).

My letter of August 27, to the Board referenced a zoom call conducted on August 21, with Ms. Morgillo and Ms. Taylor. During that call it was repeatedly emphasized that care and attention to the VALUES OF EDEN ISSUES was of import so that the total picture presented by the Site Plan could be fully understood. On August 30, Ms. Mayer sent an email to Mr. Greene and the undersigned which indicated that the previously submitted line of site study that is incorporated in the Site Plan was inaccurate. A revised line of sight depicted was included in Ms. Mayer's email.

Based on the above, it was disappointing that at the Sept 4th Board meeting, additional, accurate, line of sight studies were not presented to the Board by GreenSpark. Every comment by Chairman Reed to the GreenSpark representatives during the Board meeting concerning PROJECT reconfiguration, placement, visual barrier construction, line of sight issues, etc., were appreciated and commendable. The fact that a number of Board members, including Chairman Reed have walked the proposed PROJECT SITE is also appreciated. As Board member Mr. Joe Eppolito accurately noted, "it's beautiful back there."

What is neither clear, nor appreciated, however is, why when faced with the callouts and requests described above, no documents of a material nature were provided by GreenSpark at the September 4th meeting that respond to the VALUES OF EDEN issues. While many of the adversely impacted citizens of the Town have been and will continue to be prepared to engage in constructive dialogue, much more than collegial discussions is required. **We request that GreenSpark provide robust, focused and responsive information to Chairman Reed's requests.**

Chairman Reed indicated that as of the September 4th meeting, the Board had not had the opportunity to review my letter of August 27. That letter outlines the format and style of studies that GreenSpark must provide for a reasonable review of its application to take place. Chairman Reed indicated that the Board would kindly review the letter and other comments submitted to it after the Public Hearing and provide responses at the next Board Meeting.

In the interim, GreenSpark has been requested to submit materials to the Board that directly respond to Chairman Reed's comments to it.

I request that the LETTERS and the other post public hearing comments submitted to the Board be shared with GreenSpark, and that it be requested to respond to the questions and concerns stated in those letters before the October Board Meeting.

I also request that when the materials requested by the Board are provided by GreenSpark that notice be provided to permit the careful review of them by concerned citizens before the October 2, 2024, meeting takes place.

DISCUSSION

August 14, 2024

Letter from Erie County Department of Environment and Planning

Under the heading comments, the letter provides (emphasis added):

- That the proposed project would be located on a site “which is comprised of approximately 80% of farmlands of statewide importance.”
- “The conversion of an agricultural parcel with prime and statewide important soils will result in the loss of a large agricultural parcel and adverse impacts farm operations and agricultural resources. This includes the fragmentation of agricultural lands resulting in smaller, separated farm fields, creating farm management challenges and the conversion of land containing soils of statewide importance.”

- “Once converted to non-farm use, it is unlikely these soils will ever be returned to active agriculture production.”
- **“This is contrary to the intent of both the Town’s and County’s Agricultural and Farmland Protection Plans and multiple Town and County Planning documents.”**
- The document notes that “nonagricultural development is encouraged, provided that best practices are followed, including the avoidance of active farmlands and high value agricultural soils.”
- “As the parcel is enrolled in the County Agricultural District Southwest #8, the proposed project is in conflict with the Town’s Energy Systems law.”
- The Town of Eden Farmland Protection Plan provides that, “projects on farmland be subject to enhanced Planning Board review through the use of a land ranking system. The Planning Board should utilize this land ranking system to request further review and/or design modifications that minimize the impact of a non-farm development on valuable farmland.”
- “This project is located in a rural area. Actions in the rural areas should encourage limited development and reinvestment in rural centers and **discourage the conversion of rural and agricultural lands.**”

Page 3. The Town should consider hiring at developer cost, an individual or firm with expertise to review construction plans and to monitor the construction and operation of the facility to ensure consistency with NYM guidelines adherence.

QUESTION:

Does the Town intend to retain an independent consultant?

August 5, 2024
Letter to Richard Ventry from
New York State Department of
Environmental Conservation

In a letter to Mr. Ventry from the NYS DEC it is noted “the entire project site is located within Chautauqua (sic) County Agricultural District Number 8. **Impacts to the agricultural district should be considered during the review of this action**” (emphasis supplied).

The documents described above make it clear that the Town has repeatedly been urged to carefully consider the adverse impacts and legal obstacles the placement of the PROJECT

presents. As the County noted, the project is contrary to the intent of multiple Town and County Planning documents.

**Full Environmental Assessment Form
Dated May 30, 2024**

P.3.para.D.1.a.

This paragraph indicates that the general nature of the proposed project is Commercial.

COMMENT:

The reality is that the project is industrial, not commercial. It will be 18 acres in size and is highly industrial in appearance and operation.

P.8.para.m.

This document also notes that the proposed action will exceed existing ambient noise levels during construction. (pg. 8).

QUESTION:

What is the decibel reading?

In response to the inquiry concerning whether the site is used for public recreation, it should be noted that it is. The full panoply of winter sports are carried out their by Town residents including snowmobiling, cross country skiing, etc.

P. 10.para.h.

Page 10 states that there has been a spill at the site. The site is listed in the NYSDEC spills incident database.

QUESTION:

What are the details concerning the spill?

P.11.para.g.

COMMENT:

Although there is not a unique geologic feature on the project site, this does not provide the full picture. The project site adjoins a natural ravine that is stunning. The location of the project impedes the ability to reach the ravine and presents a stark and dysfunctional contrast to

the beauty of the area that those who regularly explore the ravine experience. Moreover, this natural feature is enjoyed by many Town residents, not only those who reside in the immediate neighborhood.

P.12.para.m.

The response to this inquiry does not identify rare animals or birds that occupy the project site and adjacent area.

QUESTION:

It is requested that the applicant identify the date(s) the subject area, including the adjoined ravine were studied.

It is also requested that the individual who conducted the study be identified and that all pertinent qualifications of this person be disclosed.

QUESTION:

It is claimed that the site or adjoining area is not currently used for hunting or trapping. (p.12).

This is incorrect. The area is routinely used for hunting.

P.12.para.E.3.b.

P. E.3.b.

The response to this section concedes that the project site would take out of farm production 16.9 acres of "highly productive soils present."

Knoll Eden Agricultural Assessment

Dated May 31, 2024

The Agricultural Assessment Plan pursuant to chapter 172-8 L, third paragraph, notes that, the farmer (land owner) is given discretion in terms of whether he will continue to farm the farmland between the visual barrier and the solar array. The assessment states that it is "anticipated" it "will be farmed if he desires."

REQUEST:

It is urged that for the Town to be true to its Comprehensive Master Plan, the farmer-land owner must be required to allow the land to be farmed as has been the case for generations.

An appendix to this document includes a Sheep Grazing Master Services Plan. One of the options contained in that plan references, Toxicity Testing.

REQUEST:

If there has been toxicity testing a copy is requested.

On a page titled, Optional Riders On Fencing, Signage, and Security, it is noted “in the event of vehicle access, the vehicle must park in the open area just next to the gate entrance under no circumstances are vehicles allowed around the solar array”
To the extent it addresses the parking issue, it is requested that the optional rider be incorporated into any agreement concerning grazing.

**Draft Operations and Maintenance Agreement
and Plan dated May 2024**

Page 1 states that the document has been prepared for the Town of Eden. However, it provides for no duty that runs to the Town’s favor in the event the Plan is breached, or the Town is damaged.

The agreement is actually between Sustainable Energy Developments, Inc. dba GreenSpark, Solar Operator and Knoll Eden Solar (owner). One is apparently a subsidiary of the other.

The document appears to be, among other things, an agreement between two incestuously linked entities to memorialize their rights and duties relative to each other.

A review of the agreement shows a breath-taking effort to immunize the principals to the agreement from liability and personal financial liability exposure.

The agreement, given its potential significance, must be carefully analyzed while the Town has the leverage to request additional information and conditions.

REQUEST:

Responses to the following questions are respectfully requested:

1. Has a due diligence been performed with regard to the entity that is providing a guarantee plan: Omnidian Inc.
2. Under the heading Services(p.3), Paragraph 3.1C, it is noted that high-priority alerts shall be addressed within 24 hours.

QUESTION:

In the event of a consequential event that has the potential to jeopardize life or property, is there a plan for an immediate and timely response?

3. Section 3.4 notes that the “operator shall comply with all laws applicable to the operation, maintenance and management of the project and the performance of the Services.”

REQUEST:

Compliance should be required, without limitation, for all terms and conditions provided for by the Special Use Permit.

4. As presently written the document does not provide for a special duty of care that is owed to the Town of Eden, or to adversely impacted neighbors.

REQUEST:

A provision of this kind should be required from all solar energy developers and operators.

REQUEST:

5. It is requested the names and relationships of each individual who is an officer, director, or shareholder of the projects “owner”, “operator”, and Omnidian be provided for review.

REQUEST:

It is also requested that the “owner” and “operator” fully disclose their stock ownership interest in each other.

REQUEST:

6. It is requested that each of the entities referenced above be required to disclose their balance sheets, and provide pertinent financial records from which it can readily be determined what their financial health is.

REQUEST:

7. Section 9 of the Agreement relates to INSURANCE. It is requested that a copy of each of the liability policies of insurance referenced in that section be provided for review and

analysis. The critical issue that must be analyzed is whether the policies actually provide the insurance coverage it is assumed they do.

For example, do the policies provide coverage to impacted landowners if, as a consequence of the project, either immediately, or at anytime after installation and/or decommissioning, the quantity or quality of the water source is compromised. The policies must be structured to afford the Town and its residents the ability to seek damages from a fully insured “Owner”, and “Operator.”

REQUEST:

8. In short, a full coverage analysis should be required, at the developers cost, and by a law firm that specializes in insurance coverage analysis.

9. It is also requested that the installation of monitoring wells be included in the project.

10. Section 10 is entitled Indemnification and Liabilities. Whether due to environmental reasons, water quality reasons, or other reasonably foreseeable events, it is requested that full indemnification running to the favor of the Town of Eden be included in the subject document. Further it is requested that the Town be designated as an Additional Insured on all policies of insurance secured in connection with any solar renewal project proposed for the Town.

11. Under the heading LIMITATIONS OF LIABILITY, the Agreement, except as provided for in section 10.1 (a) ,limits liability of the operator to \$500,000. It is respectfully requested that this section be deleted from the agreement.

12. With regard to Section 11.1 (C), it is respectfully requested that it be removed from the Agreement. The entities to the Agreement should be held accountable for their actions.

13. EXHIBIT A, titled SCOPE OF SERVICES speaks to broad performance obligations.

QUESTION:

Does this Scope Of Services encompass the maintenance of the visual barrier?

REQUEST:

If it does not, it is requested that a provision to compel same be included in the Scope of Services.

QUESTION:

Similarly, does this section require the timely and regular reporting to the Town of any failure to comply with the O&M Plan?

REQUEST:

14. The Exhibit references the preparation of an annual maintenance report. It is urged that quarterly reports be required, to assure timely notice to the Town of maintenance related issues.

REQUEST:

15. Under the heading Preventive Maintenance there is a reference to the Omnidian Scope of Services. The information provided does not specify the frequency with which each of the preventative maintenance and or maintenance tasks will be performed. A schedule which provides this information is requested.

REQUEST:

16. The graphic depiction of service plan types contained in the Exhibit does not indicate the level of service the operator intends to purchase. Three levels are specified. It is requested that this information be provided, and that the "Owner/Operator" be required to obtain the highest level of service available.

REQUEST:

17. The chart contained in paragraph 15, does not reference in any manner a schedule for the maintenance of the visual barrier. It is requested that this information be required.

REQUEST:

18. Exhibit B pertains to Guaranty Plan Services. The first paragraph of the document states that GreenSpark Solar will financially guarantee the terms and payments as defined under Omnidian plan(Exhibit B).

REQUEST:

19. Does GreenSpark solar have a fund in escrow to address that issue? If not, it is requested that it be required to maintain an escrow fund of this kind.

DECOMMISSION PLAN-May 24, 2024

Page 1. The document indicates Knoll Eden Solar LLC, is the “project owner and that it is an affiliate of Sustainable Energy Development Inc. d.b.a. GreenSpark Solar.” It is flawed as presented and can be improved in many ways.

REQUEST:

The decommissioning plan does not include as one of the costs that will be covered by the proposed bond, **attorney’s fees** the Town of Eden would incur should it, for any reason, seek to have the PROJECT decommissioned. The Plan should be modified to afford the Town this level of protection.

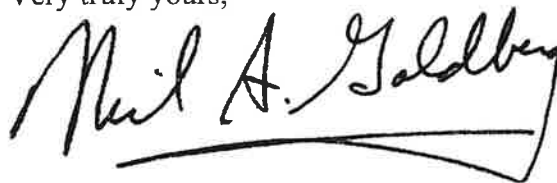
Comment:

The 2% inflationary rate included in the cost of decommissioning is inadequate. It should be increased to 3 1/2% to more realistically reflect historic inflationary increases.

REQUEST:

The engineering letter from Mr. Johnson suggests that an independent consultant be retained to assess the accuracy of the decommission plan. It is urged that the Town implement this suggestion.

Very truly yours,

A handwritten signature in black ink that reads "Neil A. Goldberg". The signature is written in a cursive style and is underlined with a single horizontal line.

Neil A. Goldberg

NAG:tb