

Town of Eden - Planning Board Minutes
September 4, 2024 7:00 pm

MEMBERS PRESENT:

Brian Reed, Chairman
Frank Meyer, DDS
Joe Eppolito
Andy Tarasek
Dan Buchanan

EXCUSED: Andy Romanowski
Marc Timblin
Katrina Schmitt-Ruof
Jennifer Crowe

OTHERS: Town Council – Richard Ventry, Vincent Vacco, Susan Wilhelm
Town Engineer – Dave Johnson
Applicant – **Knoll Eden Solar LLC – 9549 Knoll Road**
Brooke Mayer, Commercial Solar Developer– GreenSpark Solar
Matt Vanderbrook - Director of Commercial Origination – GreenSpark Solar

Mr. Reed called the meeting to order at 7:00pm and asked for comments on the August minutes, noting the below edit to Eden PV LLC and Eden II PV LLC on page 7:

The Planning Board discussed a SEQR recommendation for determining significance for the Town Board, but did not formally vote on the recommendation at this time.

Mr. Buchanan made a motion to approve the minutes from the August 7, 2024 meeting. Seconded by Dr. Meyer; Motion approved unanimously.

Knoll Eden Solar LLC – 9549 Knoll Road – Public hearing and other responses; line of sight review

The public hearing comment period from the August 7, 2024 hearing was left open for additional comments. Mason Bowen, Larry Robb, Michael Sheets and Neil Goldberg have all sent comments. These will be entered into public record (attached) for consideration as we move forward with review of this project.

GreenSpark has provided responses to CPL questions/commentary as well as additional commentary on some questions posed at the public hearing. CPL will need additional time to review the SWPPP, Operations and Maintenance plan and Decommissioning Plan in greater detail. However, there are concerns with the line of site analysis:

- Knoll Road was taken at ground level of the panel. It needs to be at standing eye level – 5 to 6 feet and also at maximum height of the panel.
- We did request an analysis from Feddick Road. It was provided but it's actually from Enser so there may have been confusion. There is a wide-open view from Feddick Road so we will need that analysis.
- The neighboring Town of Boston must also be made aware of this as there is a clear view from their town. Shelly will forward the site plan and CPL's image to Boston.

Mr. Reed and Mr. Eppolito went to the site. As you drive back the property slopes off. There appears to be ample area back there for the solar field. There would still be concern related to the Town of Boston but from a Planning Board standpoint, we'd like to see you reconfigure the site plan to minimize the impact to Knoll and Haag Roads. The back of the property is pretty well treed with some very mature vegetation which may help shield it from Feddick Road. The property does start to slope quite a bit but we would still need to understand with the panels at full tilt what it will look like. Mr. Eppolito noted there is a gas well and posts of possibly a line back there so be aware of that. Mr. Reed commented that this was noted in the Erie County response as well. It is understood that GreenSpark would want to maximize the arrays. Even if it needs to be reduced, moving it back may be the prudent way to go. This Board has received strong input from neighbors in the area and the impact it's going to have visually. There is a lot of concern for their property and the view. *We will need to revisit design related to gas line so we are exploring pushing the solar field back. One limiting factor is the slope on the eastern portion of the site. The racking has limited tolerance for navigating a slope at that grade.*

With the line of site vegetation analysis, this is a long-term project. You list year one, year five and year ten for the vegetation and screening. The residents in this area probably do not want to wait until year ten to not see the solar field.

Ms. Wilhelm asked what the height is of trees to be planted in year one? We can include that on the visual simulation. *We plant at a variety of sizes. We have heard the concern very clearly that there should be more robust screening from day one. One strategy that we've discussed with neighbors is including shrubs in addition to trees. We are looking at using the topography to our advantage as screening. We are revisiting.*

The Planning Board will not approach the SEQR review until satisfied with what is done with site plan and line of site analysis, SWPPP plan and additional reviews and comments from CPL. We will meet again in October as long as we get reconfigured site plan and SWPPP plan two weeks prior.

GreenSpark should continue to focus on Operations & Maintenance and Decommissioning plans. We want to make sure, if this project does go forward, that the land can be returned to as close as possible to original condition in the future. Be aware the Town of Eden has a Farmland Protection Plan, which will be a key factor moving forward and with the SEQR process.

Good documentation of the existing conditions is very important. Not just photos - soil testing, drone video. We are very protective of our soils in Eden. CPL will provide additional information about the desired soil testing.

Mr. Reed motioned to adjourn the Planning Board meeting, seconded by Mr. Eppolito; Motion approved unanimously.

Respectfully submitted,
Shelly Griebel, Secretary



Shelly Griebel <buildingadmin@edenny.gov>

Shelley Griebel

1 message

Bim Bowen <bimb Bowen@aol.com>
To: buildingadmin@edenny.gov

Mon, Aug 26, 2024 at 9:52 AM

Shelley Griebel
Buidingadmin@edenny.gov

My name is Mason Bowen and I live at 9709 Knoll Rd. and have for almost 50 years. I started coming to Clarksburg as an infant. My concern for Clarksburg and Knoll Road are deep and ingrained.

I have read the letters from others to the Planning Board which all share a similar theme. Please don't vote to approve the proposed plan for a solar project which would be an intrusion into this pristine residential and farming environment. Seems to me this proposed project serves only the interests of one family and no one else. Why would our Town officials cast aside the interests and concerns of virtually an entire community to serve the selfish interests of one family when their interest is strictly monetary. The highest and best use of the proposed site is exactly as its historical use. Farming. We all know that there are other potential locations for this proposed project in the Town where it would be welcome and unopposed.

For all the reasons reviewed by others as well this is surely not an appropriate site for this project.

Respectfully,

B. Mason Bowen

Sent from my iPad



Shelly Griebel <buildingadmin@edenny.gov>

Proposed Knoll Road Solar Project. Attention Shelley Griebel.

1 message

Larry Robb <lrobb@farmbuffalo.com>

Thu, Aug 29, 2024 at 11:49 AM

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

Dear Ms. Griebel- My name is Larry Robb. I reside at 9788 Clarksburg Road. I have been an Eden resident for 46 years.

The purpose of this correspondence is to go on record as being vehemently opposed to the proposed solar project on Knoll Road.

I echo the concerns expressed by my neighbors Neil Goldberg, Chris Greene, Michael Sheets, and Bim Bowen. And I fully support their rationale versus the location of the solar project. None of us want to replace a beautiful farm field with something that is an ugly potential environmental disaster being built by a company that will probably go belly up for a second time.

It will be a shame if the town board approves this project. Covering 18+ acres of farmland with solar panels is tantamount to paving 18+ acres for a parking lot. Would the board approve that in the Knoll Road location?

In summary my primary concern is the negative environmental impact to the Knoll Road location that will result from this project. There has to be a better and safer location for this project.

Sincerely submitted, Larry Robb

Larry Robb Chairman / Owner

716.866.7392 Mobile

FARM / 4493 WALDEN AVENUE / LANCASTER, NY 14086

GROWWITHFARM.COM

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TO: Eden Town Planning Board

RE: Knoll Road Solar Project

My name is Michael Sheets and I live on Knoll Road. I spoke at the Planning Board meeting on August 7, 2024 when I was given three minutes to speak. I would like to present in more detail my thoughts on this project which are concerned with the environmental impact of this project in particular. I have actual experience in writing environmental impact statements (EIS) which from what I've seen, are usually very boiler plate. I have yet to see an EIS for this proposed project.

At the public meeting I began by saying that this project is an environmental disaster. The property where this is proposed is one of the most beautiful in all of Eden. Having lived here for over forty years I feel qualified in making that judgement. Eden promotes itself as the garden spot of New York and this property represents that description. The acreage at issue currently supports corn, beans and hay fields. Geese, eagles, hawks and many song birds feed in those fields. I suspect the glare and noise of the solar project would scare these away. It overlooks the Boston Hills and hundreds of natural woodland acres on all sides facing North, South and East. The proposed project would sit in the middle of that acreage, just where those views are most beautiful, atop a natural peak.

Homes immediately surrounding the proposed project are inhabited by people who live there simply because of the beauty and quiet serenity of the area. The proposed project would take the beauty and serenity of peaceful farmland and turn it into a utility scale energy site. That in itself would be an environmental disaster. And, not incidentally, our home values would decline significantly.

In addition, the hill on which there is a proposed utility, funnels water on one side to an environmentally significant creek and the other side to homes that rely on shallow wells dug decades ago for water. Any run off of contaminated water to those wells could cause irreparable harm to residents. It is interesting to note that even if surface water could be collected and diverted somehow, any contaminated water that seeps into the shale strata could go anywhere including our wells. These solar panels contain gallium arsenide which is a known carcinogen. A tornado touched down recently not one mile from the site, and if that happens at the project site our water would be forever contaminated.

Jones Creek runs from Haag Road to New Oregon Road at the base of the hill where the project would be situated. It runs through hundreds of woodland acres and connects to 18 Mile Creek. It is as natural a habitat as there is anywhere, unchanged for hundreds of years. It is an almost impossible climb down into the creek which has running water at all times. The creek is protected by 60 to 100 feet of vertical cliffs. The only access points are the dip on Haag Road and a steep and long gas line close to New Oregon and Belcher Roads. The creek itself supports an incredibly diverse ecology. Minnows, crayfish, frogs' turtles, worms etc. are plentiful and provide food sources for raccoons, possum, coyotes and fox. Coyote and fox dens are built into the side of the cliffs protecting this habitat. If you live on Knoll or Haag Roads you know that deer and turkey and even pheasants that we see every day, are coming from the Jones Creek habitat area. To build a utility scale project atop a hill that feeds contaminated run off to Jones Creek would be environmentally irresponsible by altering the centuries old ecology of this unique area.

We should also be concerned for disturbance of pollinators such as bees, hummingbirds, bats etc. Pollinators are basic and important pieces to a healthy eco system. They are hugely important to Eden farmland and are threatened by habitat degradation. Close to 35% of bees and butterflies face extinction globally.

This project is intended to sit squarely in the middle of this environmentally sensitive and unique area. The company that proposes to build the solar project is weak. GreenSpeak was bankrupt in 2018 and has very few tangible assets. If tax incentives were withdrawn, it would probably go bankrupt again, as the tax incentives are its largest and most saleable assets. I question why our town would align itself with such a weak partner on a project that is intended to last for 30 years. I also question whether the bond would be sufficient to enable us to return the land to its original condition. It would be impossible to repair an ecosystem that was destroyed 30 years ago. Certainly, GreenSpeak would be long gone.

My personal position on this project is evident, but I am just a representative of everyone I've talked to about the proposed project. Our concerns are numerous and real. Certainly, there are other places for this project that are more appropriate. My neighbors and I are also concerned that we seem left out of the process. Other than a certified letter inviting me to the Planning Board session, I haven't received any communication from the town. I respectfully ask to be given an opportunity to review everything generated by either the Town or GreenSpeak with respect to this project and the approval process, before a decision is made.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael F. Sheets', with a stylized, cursive script.

Michael F. Sheets

August 27, 2024

To: Town of Eden Planning Board
Re: Knoll Eden Solar LLC-9549 Knoll Rd

I write to supplement the comments I made during the SEQR Public Hearing held on August 7, 2024. I have organized this letter in a manner that calls out the specific information and actions I am seeking. Those requests are followed with further comments and suggestions. I hope that this organizational approach facilitates your review.

Please view this submission with an appreciation that its goal is to assure that any decisions made concerning the 9549 Knoll Rd application for a special use permit, occur with the benefit of an informed consideration of all pertinent and empirically based data, and in recognition of the proper standard of care that should be applied to this review. Throughout this letter I refer to the 9549 Knoll Rd, as the PROJECT. The term BOARDS is employed throughout to refer collectively to the Eden Town Board and the Eden Town Planning Board.

At the outset I thank you for the courtesy and latitude you kindly extended to me, post eye surgery, when I spoke on August 7. I appreciate the fact that you permitted me to comment for more time than the two-three minutes that had been allocated.

To be clear, the comments and concerns I expressed at that time and my comments, and requests provided herein, are not intended to argue against the placement of all utility scale solar energy projects (hereinafter referred to as (USSEPs) in the Town. Rather, the focus is dedicated to assuring, as a concerned citizen, and as a resident property owner whose home is located immediately across the road from the PROJECT, that the criteria and authority provided for by Town Code 172, and other applicable laws and rules that apply are fully appreciated and utilized to achieve the ultimate goal of fully protecting the rights and interests of residents of the Town who are adversely impacted by the development of USSEPs in their neighborhood. It is the rigor and focused scrutiny by the BOARDS that residents of the Town rely on, in the first instance, to protect their vested interests.

As I am sure you appreciate there are many concerns that arise when a USSEP is proposed immediately across the road from your property. I have met with the Town Enforcement officer and have reviewed what I believe is the current Project site maps. Mr. Rice kindly explained various aspects of the map to my wife and me. We appreciate the time he spent with us and the information he shared. I have subsequently come to appreciate there are additional documents on file. My comments are based on what I have been able to examine to

Please send mail to our scanning center at:

date. I am presently healing from eye surgery but as soon as I am able, I intend to review the full file concerning the PROJECT. I know that many of my neighbors intend to do so as well.

OVERVIEW

- The very first entry set forth in the Vision Statement of the 2018 Comprehensive Master Plan specifically notes "Like many rural communities, Eden's assets lie in its natural beauty and open spaces."
- Under the heading Core Values, one of the very first values mentioned is "Rural Character Preservation."
- Chapter 172 of the Town Code is a vital tool that must be utilized to achieve the expressed vision and values of the Comprehensive Master Plan.
- The provisions and protections afforded all residents of the Town must be applied in accord with the "highest standards" as specifically required by Chapter 172-11. Only empirically based data can be considered in this process.
- Based on the above guidance and criteria, the application to locate a Utility Solar System Energy Project at the Knoll Rd location does not pass the rigorous scrutiny required to legally permit the issuance of a special use permit.
- The siting of a Utility Solar System must be based on a methodical approach that requires the development and application of a renewable solar energy strategic placement plan. The minutes of the August 7, 2024, hearing reflect that at present the Town does not have such a plan.
- The siting decision of a USSES may not turn on the desires of one isolated landowner who seeks financial gain.
- The siting decision may not occur on an ad-hoc basis; following an ad-hoc approach unnecessarily magnifies the potential exposure of the residents to a spectrum of foreseeable irreversible adverse impacts the BOARDS are duty bound to protect them from. These foreseeable adverse impacts can be avoided with the application of a methodological approach and dutiful application of the regulatory scheme the Town has adopted.
- The approval of a special use permit for the Knoll Rd project would set an untoward precedent that risks handcuffing the BOARDS ability to fulfill their functions in the future.
- If approved, the Knoll Rd project would be situated in one of the most bucolic areas of the Town. Knoll Rd on both its east and west sides is dominantly residential. The area is located on what is recognized as a 100 year-old flood

plain, and is also situated next to one of the most extraordinary ravines and associated wildlife habitats in the Town.

- A broad spectrum of the Town's residents take advantage of this marvel of nature for recreational purposes.
- There can be no debate that in many respects the placement of what is tantamount to an industrial development into a rural residential neighborhood such as this would irreparably undermine the character of the neighborhood, and profoundly adversely impact the Town Property Owners Rights.
- It is submitted that if the Town were to approve the issuance of a special use permit for the Knoll Rd USSES, it would be challenging, if not impossible, for it to subsequently refute the argument of another developer that the site it has chosen, must also be approved.
- It is readily foreseeable that in any instance where the Town determines that it is not appropriate to issue a special use permit for a proposed USSES ,it will be confronted with the following argument by the developer:
 - If the Town was willing to issue a special use permit for a USSES on an idyllically located town road, situated in a neighborhood that is not only enjoyed by its residents, but which because of its vistas, beauty and other wonderful characteristics is also used regularly by a broad spectrum of the Town's residents for organized bike riding, snowmobiling, cross country skiing, hiking etc., that the same modest application of the Town's regulatory scheme should also be applied to the review their undesirable application as well.
 - The discussion contained below should not be read to mean or insinuate that any part of the proposed plan is believed to pass legal muster. Rather, it is intended to identify and show some of the steps that are required to merit even further consideration of the proposed project.

REQUEST 1

1. The ability to review all documents submitted by GreenSpark, or the Town that relate to the application by GreenSpark for a special use permit for the proposed Knoll Rd. project.

Kindly note that I have filed on line a FOIA Request for this information.

REQUEST 2

2. As the comments and requests contained herein are intended to supplement those I made at the Public Hearing I request that this letter be included as an addendum to the minutes of the meeting.

REQUEST 3

3. My understanding is that as comments and questions are received, they are considered by the Planning Board and submitted to GreenSpark for a response. I request that as additional documentation is generated during this process that appropriate notification be provided.

REQUEST 4

4. It is requested that the criteria and standard of review set forth in Chapter 172 be vigorously applied to the BOARDS' review of the PROJECT.

COMMENTS

Before I proceed further it is of singular import to briefly comment on the standard of care Chapter 172 mandates this body employ in its consideration of GreenSpark's proposal for a special use permit.

The specific values, rights and interests of property owners of the Town are codified in, among other places, Chapter 172-1 and 172-2.B. Those sections note that although the Town intends to "**accommodate**" the use of solar systems as a renewable energy source:

"regulation of the siting, installation and use of solar energy systems is **NECESSARY** (emphasis supplied) for the purpose of **protecting the health and safety of neighboring property owners, and the general public and the aesthetics of the community.**" (Emphasis added).

Further, although it is recognized that there is a need to improve solar energy sustainability Chapter 172-2.B., specifically provides that it is the BOARDS' responsibly to focus on:

"... preserving the public health, welfare, and safety, as well as environmental quality, visual, and aesthetic values, and existing neighborhoods, social and ecological stability". (Emphasis added.)

Further, the articulated overriding “intent” of the Town “is to minimize any adverse impacts on the character of the neighborhoods, property values, scenic, traffic, historic, and environmental resources of the town”. (Emphasis added).

The collective interests of property owners as specified in Chapter 172 will hereinafter be referred to as TOWN PROPERTY OWNERS RIGHTS.

It is clear that protecting the TOWN PROPERTY OWNERS RIGHTS is one of the Town’s highest priorities. Further, the highest standard of care must be applied by the BOARDS to achieve the Town’s “intent” and priorities. Chapter 172-11 provides that the interpretation and application of the criteria set forth in Chapter 172 are only the “minimum” requirements that must be followed to protect the health and safety of the Town’s residents. Of most significance, Section 172-11 states that in any instance where “... the requirements contained in Chapter 172 are at variance with the requirements of any other lawfully, adopted regulations, rules, or laws, the most restrictive, or those which impose the ‘highest standards’, shall govern”. (Emphasis supplied).

As I proceed forward with my comments and requests, let us keep in mind that it is the “highest standards” of protection provided by law that apply, not only those specified in Chapter 172. The term “laws” as used in Section 172-11, is not circumscribed in any way by the text of the Section. There is no limitation on which laws and conduct are to be considered to impose the “highest standards” in the approval process. It is clear that both federal and state constitutions and other applicable laws and rules also must be followed by the BOARDS as they exercise their respective roles during the permitting process. In many respects, therefore, the TOWN PROPERTY OWNERS RIGHTS, are constitutionally protected rights.

The bottom-line message from the above discussion is that when the BOARDS engage in the process of balancing an “accommodation” against their manifest duty to preserve the TOWN PROPERTY OWNERS RIGHTS only the “highest standards” of care may be applied.

This approach comports with common sense. A solar energy developer does not have a legal right to locate a utilities scale, solar energy system in an agricultural priority district. A solar energy development of this nature can only take place if a special permit is approved. Note the term “special“. The word speaks for itself; issuing a special permit is an exception to the rule, not a right.

In contrast, the indicia of the TOWN PROPERTY OWNERS RIGHTS are not only protected by Chapter 172, but also by both federal and state constitutions because the preservation of the TOWN PROPERTY OWNERS RIGHTS prevails over a mere “accommodation.” This is so unless it can be shown by the solar system developer that the conditions the Town insists on as a prerequisite to the issuance of a special permit are so effective at minimizing the recognized adverse impacts that they are rendered minimal or negligible.

REQUEST 5

THE SITE PLAN

5. It is requested that GreenSpark be required to provide a restructured Project Site Plan to address the flaws contained in the plan on record.

COMMENTS

It should not be a surprise that one of the concerns of the adversely impacted Knoll Rd homeowners is that the present site plan does not properly visually screen the solar array from the neighborhood. The line of site documents, photos and simulated depictions that have been provided to date show that traffic proceeding north and south on Knoll Rd, including bicyclists and joggers, will all be exposed to the solar array as they pass along the length of the site.

The proposed visual buffer does not extend to the southern boundary of the 9620 property line where the visual screen is presently designed to end. Thus, at that end of the PROJECT not only is the solar array significantly visible from 9620, but also to all residents who proceed in a northly direction on Knoll Rd. A similar situation exists at the northern end of the PROJECT.

REQUEST 6

THAT 3D COMPUTER GENERATED ANIMATIONS AND VIRTUAL TOUR SOFTWARE BE APPLIED, AMONG OTHER TOOLS, TO THE REVIEW PROCESS TO ALLOW FOR A TRANSPARENT AND THOROUGH COMPREHENSIBLE ASSESSMENT OF THE ADVERSE IMPACTS OF THE PROPOSED PROJECT(DEPICTIONS AND RENDERINGS)

6a. It is requested that GreenSpark be required to provide computer generated depictions and renderings that allow one to visualize from all pertinent points of view, including, without limitation, road level, what parts of the proposed solar system farm will be visible if the presently proposed visual barrier is installed.

Given that alternative approaches to attempt to make the visual barrier truly effective have and will be made prospectively, it is requested that the same style of renderings, drawings and studies similarly be prepared as part of the review process.

COMMENTS

In the parlance of a lay person the aforementioned depictions and renderings can be thought of, in part, as eye level studies that show the potential adverse impact of the presently proposed visual barrier. A number of the suggested alternative approaches to attempt to improve the visual barrier are provided below.

During the zoom call described in detail below between representatives of GreenSpark and a number of concerned residents, it was disclosed that at present there are no line of site depictions that show what a resident would experience, from road view, while travelling by any means including jogging, bicycling etc. along Knoll Rd.

Although I have referred to the requested studies and depictions as road view studies, Chapter 172-8.K appears to anticipate the need for a report in situations such as this and calls them “digital viewshed reports.” If a “digital view shed report” does not encompass the use of the virtual, multidimensional software described above, we request that this readily available software be incorporated into the review process as well.

Studies of this kind, whether called “road view” or “viewsheds” are indispensable for an assessment of the effectiveness of the present visual barrier proposal, as well as the potential to assess the effectiveness of attempted improvements to it.

6b. In addition, it is requested that GreenSpark be required to submit a narrative description of alternative approaches it is aware of that would enhance the effectiveness of the proposed visual buffer.

COMMENTS

Due to the magnitude of alarm and concern the PROJECT has generated a number of concerned homeowners requested a conference call with Mia Morgillo. On behalf of GreenSpark a zoom call was held on August 21. In addition to Ms Morgillo, the zoom was also attended by Brooke Mayer of GreenSpark.

The call was requested to afford GreenSpark and the adversely impacted homeowners an opportunity to constructively and cooperatively attempt to address the visual barrier issue in depth. During the call a number of questions were asked concerning alternative, or supplemental steps that could be taken to attempt to create a barrier that actually fulfilled its intended function.

For example, as trees grow slowly, could the proposed barrier be supplemented with fast growing shrubs to fill in the spaces between the trees?

Could some of the unused land at the site be harvested to create an earth based buffer that if placed behind the proposed plantings and trees would address the visibility issue totally?

Could the configuration of the solar array be modified or reconfigured so that more panels would extend north and south?

This approach would allow GreenSpark to capitalize on an existing, natural topographical berm located toward the middle of the site that would act as a natural visual buffer. Unfortunately, under the present proposal a number of solar panels would actually be placed on top of this natural berm.

Throughout the course of this discussion, it became clear that the studies and information that have been provided to date do not provide the tools or information necessary to assess and gauge whether the present approach is effective at all.

The bottom line is that to meaningfully assess the adverse visual impact the PROJECT will have from the standpoint of preserving the rural character, aesthetics and property values of the adversely impacted residents a more comprehensive study and review of this core issue is required. This is the reason why the requested software and renderings described above are so vital to the review of this PROJECT.

REQUEST 7

THE BOARDS ARE REQUESTED TO CONSIDER THE AGE DEMOGRAPHIC OF THE IMPACTED RESIDENTS ON KNOLL RD IN CONSIDERING WHETHER THE PROPOSED VISUAL BARRIER FOR THE PROJECT SATISFIES CHAPTER 172

7. It is clear that the special permit process is designed to assure that all pertinent information is considered. The very essence of the procedure is to determine, in the context of the proposed site, how the PROJECT will adversely impact on the resident population. Stated differently, it is a context driven process.

In the case of the majority of the residents who reside most proximate to the PROJECT, this assessment must include consideration of their age. Virtually all of the residents who own property most proximate to the proposed project on the west side of Knoll Rd are either retired, or of retirement age.

At present there is a lack of detail and clarity concerning the nature of the plantings, shrubs and trees that will be used to develop the visual barrier.

A visual barrier that consists of small trees that may not provide a buffer for 5 years or more provides no solace or relief for a resident population that may not live long enough for the buffer to actually fulfill its function. The only effective buffer for this population is one that is effective immediately. It is for this reason that there is a compelling need to have a site and landscaping plan developed that provides an effective visual buffer quickly.

REQUEST 8

8. It is requested that GreenSpark also provide a revised landscaping plan, in narrative form, to assist in the assessment of the visual barriers, adequacy and effectiveness.

COMMENTS

As noted above, despite good faith efforts on the part of all participants on the zoom call, a number of the homeowner participants expressed an inability on their part to be able to discern

from what is available at this point the details of the of landscaping component of the screening plan. It is hoped that a written narrative will assist in this process and provide an important supplement to the information presently available.

REQUEST 9

9. The following provides a list of a number of reasonably foreseeable scenarios that the Town and its property owners may confront in connection with the subject project. For example, purposes and brevity, the focus is on the visual barrier issue. It is requested that based on the discussion below GreenSpark address each of these scenarios and that the BOARDS require that each scenario is adequately addressed as a prerequisite to the approval of the PROJECT. The specific conditions required, without limitation, are contained on pages 10-11.

COMMENT AND REQUESTS

It is requested that the conditions specified on pages 10-11 be incorporated into the approval process for the PROJECT.

At this point the reliability and financial accountability of GreenSpark is not fully known. If the Town at some point were to determine that it is appropriate to issue a special use permit for the PROJECT, assumedly it will have done so after finding that all recognized adverse impacts that can arise from the PROJECT have been appropriately, and consistent with the "highest standard" of care been fully addressed to protect the TOWN PROPERTY OWNERS RIGHTS. Of necessity that analysis would include a determination that the undeniable adverse visual impact of a utility scale solar energy system has been fully addressed in both the short and long term. An adequate plan to address these issues would involve the development, among other things, of a visual profile and landscaping plan in conjunction with a setback study which includes screening, fencing and the planting of appropriate trees and shrubs.

To be acceptable the visual barrier has to be effective in the short term, and maintainable in the long term.

Having said that it is reasonably foreseeable that a number of untoward scenarios may unfold which must be addressed while the BOARDS have the leverage to do so.

A few of these scenarios are as follows:

Scenario 1. GreenSpark's finances deteriorate, and it is unable, or unwilling to comply with the conditions imposed on it to regularly maintain the visual buffer.

Scenario 2. GreenSpark sells its interests in the project to another entity. Either GreenSpark or the successor entity fails to properly, regularly and effectively maintain the buffer.

Scenario 3. Due to the lack of a financial incentive GreenSpark simply isn't dedicated to appropriately maintaining the buffer, trees and plantings; it fails to timely replace the plantings that do not survive.

I trust it is apparent that based on the reasonable possibility that one of these scenarios will unfold, that appropriate conditions must be included in a special use permit to address them.

REQUESTS

Those conditions should include, at minimum, the following:

1. Based on landscaping best practices standards, a maintenance plan for the buffer screen that includes a dedicated schedule that is reasonably calculated to be effective, particularly in an area of the Town where there literally are more hungry deer than residents. The plan must include a narrow time period within which trees, plants and shrubs that do not survive are replaced.
2. A reputable reliable landscaping contractor should be designated to implement and maintain the landscaping plan to assure it is executed in a timely and effective way.
3. A defined monetary fund should be dedicated to the maintenance of the visual buffer if GreenSpark breaches its duties. This will assist the BOARDS to assure that what is envisioned as an effective visual screen, doesn't degenerate into a blighted eyesore.

In this regard kindly note that the bond provided for in Chapter 172-8.G would not likely apply to a situation presented by one of these scenarios.
4. The condition that if GreenSpark does sell its interests in the PROJECT, that as a condition of the transaction, the purchaser be required to fully assume all conditions the Town places in the special use permit. Failure to abide by any of the conditions stated should result in a forfeiture of the special use permit.
5. Paragraph J, of Chapter 172-8.J provides that the applicant and the Town can enter into a Host Community Agreement. A fee which is to be paid annually is to be used, among other things, to "mitigate the costs and impacts the solar development will have on the community...."

At minimum we seek to assure that if a situation should develop where the buffer and other conditions of the special permit are not complied with, that the Town has dedicated, part of the funds recovered from the Host Community Agreement for use to remedy the situation.

6. The express condition by GreenSpark, and its successors, or assigns, recognize they have a special duty to the homeowners on both Haag and Knoll Roads to comply with all conditions contained in the special use permit.

REQUEST 10

10. It is requested that gates be incorporated into the revised site plan for the two entrances into the project site from Knoll Rd.

COMMENTS

The proposed primary entrance drive into the project site from Knoll Rd is 20 feet wide. This drive is situated to the north of the 9620 Knoll property and is located across Knoll Rd from the Winter property. There is another 10' wide drive that is virtually across Knoll Road from the entrance of the drive into 9620 Knoll Road. Without the installation of gates at roadside all traffic, including bicyclists and joggers that pass by the PROJECT will be exposed to the solar array. This is another visual intrusion that must be effectively addressed.

IMPACT ON PROPERTY VALUES

REQUEST 11

11. It is requested that once GreenSpark provides the final version of its buffer plan, that a real estate appraisal of the impact the implementation of that plan will have on the property values of the impacted property owners be commissioned.

During the August 7, public hearing Ms. Morgillo commented that there are studies that show that the introduction of a USSES into a neighborhood has been determined to not adversely impact on property values. Unless those studies were conducted for the population in the town of Eden they have no relevance or scientific reliability. The analyses mandated by Chapter 172 can not be influenced by unsubstantiated assumptions or speculation. Rather, what is required in the production of reliable evidence.

One of the core adverse impacts a homeowner can suffer is the loss of the value of their property. The only way to quantify the magnitude of that harm is by having an appraisal conducted with a focus on the value pre installation of the proposed project and one based on the whether the value of the property depreciates if the visual buffer is not sufficiently effective, or due to other impactful characteristics of the PROJECT.

ENVIRONMENTAL ISSUES

REQUEST 12

12. A study of the potential impact the project will have on the water supply of the

Knoll Rd residents is required. Further it is requested that GreenSpark be required to dig monitoring wells on the PROJECT site.

COMMENTS

Kindly note that the well for 9620 is situated a mere 130 feet from Knoll Rd. Other property owners on Knoll Road have private wells that are also located close to it. The potential adverse impact to this neighborhood would be severe, and potentially irreversible, if the construction, installation, or usage of the proposed solar farm depleted the quantity and/or compromised the quality of water from the natural sources that feed it.

Further, the water table on this hill is close to the surface. An untoward, but reasonably foreseeable significant weather event, such as the tornado that created massive property damage just around the corner from Knoll Rd, on East Eden-Haag Road, could significantly damage the proposed solar installation. If the solar panels, inverters and/or other components that GreenSpark intends to use contain toxic materials the water table could be compromised.

REQUEST 13

13. Based on the above discussion it is requested that GreenSpark disclose the identities of the manufacturers of all components that will be incorporated into this project.

Further, it is requested that GreenSpark provide material composition lists so that it can be determined whether any of the parts and components used in the PROJECT contain toxic elements that can potentially leach into the water table.

REQUEST 14

14. It is a request that GreenSpark produce photographs of the full complement of panels and parts that will be incorporated into the solar array.

Based on the discussion above concerning the potential adverse impact to the water table, it is requested that GreenSpark be required to produce pertinent plans such as construction, operations, maintenance and monitoring plans to fully address the concerns expressed herein.

ENVIRONMENTAL ISSUES

REQUEST 15

15. Given the extraordinary beauty, unique character and unusual wild life and plant life described by Mr. Sheets at the public hearing, it is requested that GreenSpark be required to secure a report from the Erie County Department of Soil and Water Conservation that addresses

the potential environmental issues that the location of a USSES at the proposed site would have.

I appreciate that Mr. Sheets called this issue out during the Public Hearing. However, there are no words that can adequately describe the beauty of the area he referred to. The Planning Board has noted that this issue is part of the SEQR review process. My request is to supplement what is presently envisioned so that the expertise and input of The County Department of Soil and Water is appropriately taken advantage of.

REQUEST 16

16. It is urged that the Planning Board as a matter of course, with respect to all developers that apply for a special permit to develop a USSES in the Town, require a due diligence of each such entity to assure that the developer is a responsible and reliable entity.

16a. It is also requested that GreenSpark be required to provide the locations of 3 visual barriers it has incorporated into its projects so they can be inspected.

COMMENTS

It is respectfully suggested that appropriate due diligence should be conducted by the Town of each applicant for a special solar energy related special permit. These solar systems have been announced to last for 25 + years. The Town and its citizens are going to have to live with these solar developers for a long time. We owe it to each other to investigate what experience other municipalities that have entered into solar energy deals with entities such as GreenSpark have had. Certainly, it is in the best interests of every resident of the Town for its Planning Board to take all reasonable steps to assure, before the issuance of a special permit is recommended, that it is dealing with a responsible, accountable, and capable solar developer.

By way of example only, it should be determined whether GreenSpark has uniformly followed industry best practices in its development, installation and usage and management of its solar projects. Has it fully complied with the conditions other municipalities have included in the special permits they have issued?

By way of another example, has GreenSpark properly maintained the visual screens and buffers and honored the other conditions it has agreed to? It would be unconscionable to issue a special permit to a solar developer that cannot answer these and related questions with a resounding yes.

REQUEST 17

17. It is requested that the Town follow a measured, methodical approach in its review of utility scale solar energy system applications. This approach is described below.

COMMENTS

A METHODOICAL PILOT PROJECT APPROACH

It is respectfully submitted that the starting point of a review of whether the TOWN PROPERTY OWNER RIGHTS will be adversely impacted by the selection, development and placement of a USSEP in their neighborhood should neither have as its catalyst, nor turn on, the ad-hoc desires of one landowner who seeks to financially benefit from leasing his land and reaches out to a developer.

The Town now has considered, or is in the process of considering, four utility scale solar projects. It is assumed that Eden, and most other towns for that matter, have had only limited experience with troublesome issues that can arise during the installation, usage and regulation of utility scale solar energy operations which have the potential to have a consequential negative impact on the community.

Given this fact, at minimum, it is urged that a calculated, judicious and methodical approach be embraced as part of the approval process. It is respectfully submitted that there is no need to simultaneously approve four special permits for utility scale solar projects in the Town. To do so would be inconsistent with the priorities and values set forth in the 2018 Comprehensive Master Plan.

Approving four projects in a short period of time without the benefit of sufficient experience creates the possibility that unwittingly four times the damage has been allowed to occur. It is submitted that the initial approval of two such projects, at most, would afford the Town the ability to acquire vital experience in terms of the most practical and appropriate approaches that should be taken to assure the "intent" of the Town is achieved. The proposed methodology will help assure that a proper balance is reached between securing renewable solar energy, and at the same time protecting the health, welfare and safety of our citizens and the environmental, rural and aesthetic character of our Town.

It stands to reason that a comprehensive, efficient and accurate assessment of the merits of each proposed utility scale solar energy project is most likely to be achieved if it is informed by the benefit of experience that only time can afford.

At present, it is noteworthy that one site has already been approved and is under construction. A second site to learn from may be the one situated at 2027 Eden-Evans Center Road. It appears that the placement of a solar project at the 2027 Eden Evans Center location would be a win win. It would provide a source of renewable energy, and apparently, based on the recorded comments to date, would not be visible to neighbors, otherwise create an eyesore, or diminish property values.

By any standard the installation of a utility scale solar system will impact our community in many ways. Some of those ways although perhaps reasonably foreseeable with an abundance

of hindsight, are not readily identifiable in the present. Special care and patience needs to be exercised in the evaluation process as it is apparent that unforeseeable negative impacts once they occur can have irreversible consequences.

We all know that once water passes through the spigot, it can't be returned to its source. Please let us not fall into the ad-hoc hurry and rush trap.

There is another significant reason why additional special permits for utility scale solar energy installations should be issued, if at all, gradually and in a strategic manner. The 2010 census indicated that the population of the Town is 7686. Eden is a small Town that benefits from its hometown rural atmosphere. Eden's atmosphere and character are a magnet for people who love the outdoors and the beauty of the area. That rural character, and the businesses and citizens it attracts, are a vital economic driver. At this point in time to assure that additional solar projects do not undermine the very essence of who we are and why we live in the Town, a careful assessment of how many utility scale solar energy systems this small Town can absorb without risking the progressive erosion of its character and values must be made. The time to make that assessment is now; not after inadvertently passing an irreversible point of no return.

REQUEST 18

18. It is requested that the further consideration of the PROJECT should be delayed pending the completion of the initiatives outlined by the Planning Board concerning the following: 1) creating an inventory of farmland; 2) creating a solar farm density goal.

Toward the end of the August 7 planning board meeting the board laudably adopted an initiative to assess the issue of farmland preservation. It declared that it intends to have an inventory of categorized agricultural parcels created. It also indicated that it is going to create a solar farm density evaluation. **"The idea with this recommendation is not to inundate any areas with high concentrations of solar sites."**

The recognition of the factors the above noted initiative is designed to address, provides another compelling reason why the methodical approach urged for herein should be adopted.

Please note that the farmland located on Knoll Rd that the PROJECT proposes to replace has been farmed for generations. An investigation by this Board will show that this land is vital to the leasee of this land, especially because there is a paucity of other available farm land in the vicinity to lease. This is in part the case because significant amounts of farmland in the Knoll Rd area have been removed from farming and replaced with residential housing. Mr. Robb specifically called this issue out when he made his comments on August 7. Before the removal of the Knoll Rd. land from the farmland inventory of the Town is permitted, the Planning Board's initiatives should be completed and evaluated. The results should then be factored into the calculus that Chapter 172 mandates.

REQUEST 19

During the Public Hearing I requested that a review of more suitable alternative locations should be undertaken.

My comments were made before this Board announced the two initiatives discussed above.

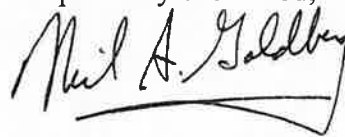
I renew my request at this point because the initiatives may well reveal the availability of alternative sites that will not present the magnitude of adverse impact the Knoll Rd PROJECT does.

While I support the development of renewable solar energy, I believe that approval of the PROJECT, as currently proposed, at the Knoll Road location, is not in the best of the residents of Eden. I urge you to carefully consider the concerns that have been expressed to date and the precedent the approval of a project like this will set for our community. The Knoll Rd neighborhood has progressively transitioned to residential dwellings. That progression has been approved consistently. A drive along East Eden Road toward Hagg Rd will readily show that there are many new homes being built on the road. If approved the PROJECT removes even more farmland from the inventory of farmland that is available for one of the Town's articulated priorities-farming. Moreover, the PROJECT will irrefutably despoil for generations one of the Town's most bucolic neighborhoods.

I urge the Board to capitalize on the information its laudable initiatives will generate to identify alternate locations within the Town that are actually aligned with the expressed values, vision, findings and priorities set forth in the Master Plan. The PROJECT is clearly not such a location.

Based on the detailed discussion provided above, it is respectfully submitted that given the magnitude of the irrefutable adverse impacts on the residents of the Town, including the TOWN PROPERTY OWNERS RIGHTS the PROJECT poses, GreenSpark cannot by mitigation efforts, or otherwise, satisfy the criteria provided for by Chapter 172 for the issuance of a special use permit. Simply stated, on their face, the protections provided for by Chapter 172 present an unsurmountable highest standard of protection that the PROJECT can never satisfy.

Respectfully submitted,



Neil A. Goldberg

NAG:tb