

TOWN OF EDEN
ZONING BOARD OF APPEALS
2795 EAST CHURCH ST, EDEN, NY 14057

PUBLIC HEARING DATE: June 20, 2024

BOARD MEMBERS PRESENT: Kristin Kent, Chair
Curtis Neureuter
Joe Winiecki
Patrick Riester
Herb Stocksclaeder

EXCUSED: Doug Scheu

TOWN BOARD: Gary Sam

OTHERS: Dave Rice, Code Enforcement Officer

APPLICANT: RIC Development LLC:
Jim Taravella, Project Manager – Development
Sam Parker-Fann, Permitting Project Manager
Peter Sorgi, Esq., Hopkins Sorgi & McCarthy PLLC

RE: **Appeal No. 2024-001**
RIC Development LLC
2027 Eden Evans Center Road

Appeal No. 2024-002
RIC Development LLC
2394 West Church Street

Ms. Kent called the hearing to order at 7:00 p.m. Ms. Kent asked for comments on the minutes for the Henry hearing from March 21, 2024. **Mr. Winiecki made a motion to approve the minutes; seconded by Mr. Riester. Minutes approved unanimously.**

Ms. Kent read the Legal Notice for this hearing as published in The Hamburg Sun:

Lunge: Application for a use variance at 2027 Eden Evans Center Road, tabled at the Zoning Board of Appeals hearing on February 15, 2024, to allow installation of a Utility Scale Solar Energy System in the R-2 zoning district, in violation of the location restrictions under Code section 172-4 B.

Five VL Farms, Inc.: Application for a use variance at 2394 West Church Street, tabled at the Zoning Board of Appeals hearing on February 15, 2024, to allow installation of a Utility Scale Solar Energy System in the R-2 zoning district, in violation of the location restrictions under Code section 172-4 B.

Ms. Kent confirmed with Ms. Griebel that the property notice list was completed.

Ms. Kent advised that tonight's hearing is to revisit the requests from RIC Energy to obtain a use variance for utility scale solar projects at 2027 Eden Evans Center Road and 2394 West Church Street, making use of the Delameter station connection. These requests were tabled at the February 15, 2024 hearing pending additional information from RIC and completion of SEQRA review. Ms. Kent suggested that both properties can be discussed together since items to be reviewed are the same; Mr. Taravella and Mr. Sorgi agreed.

Ms. Kent asked Mr. Taravella what information he had to respond to the questions the Board asked in February.

Mr. Taravella repeated, from the February hearing, that the search for parcels began in 2020. At that time solar projects were allowed. In 2022 the Town implemented zoning changes eliminating utility-scale solar use after contracts had been signed with the land owners. Mr. Taravella believes that RIC has demonstrated that they meet the public utility use variance standard since there is a need for energy. They have also laid out the methods used in choosing these two properties.

Ms. Kent noted that the Board was pleased to see Mr. Taravella's letter containing a definition of the "lighter" use variance standard for public utilities with two elements: (1) There is a need for electricity generated by the solar energy system, and (2) An analysis showing that there were no alternatives for siting the projects on land that is zoned in Eden for solar energy systems.

Mr. Sorgi commented that he assumes the Zoning Board of Appeals has accepted the first standard – the need for electricity. Ms. Kent noted that board members have questions about that, but what is still lacking is the analysis showing that there were no alternative locations in the zoning districts where the Town allows utility-scale solar. Ms. Kent asked, as the Zoning Board of Appeals did in February, whether RIC can demonstrate there are no locations with viable substations, and other traits identified by RIC, in AG Priority, Rural Residential or Light Industrial districts, which do allow utility-scale solar projects.

Discussion about (1) There is a need for electricity generated by the solar energy system.

Ms. Kent asked if the objective is to supply more electricity through solar to achieve wider policy goals across NYS, to reduce dependence on other fuels, as opposed to problems with electricity in Eden or Western New York? Mr. Neureuter noted the willingness to concede there is a need for electricity generated by clean energy systems; what percentage of total needed electricity in New York State will these projects contribute? Mr. Sorgi stated that it cannot be looked at so precisely. That would be a much higher standard than exists in the law. The standard is to look at electricity in the aggregate. The "CESIR" (NYS Coordinated Electric System Interconnection Review) study addresses that. The public utility is the measurer or arbiter of the demand and how much electricity is needed.

Mr. Sorgi agreed that the second prong of the public utility use variance standard is important. The first prong is whether there is a need and it's typically to satisfy the CESIR study. The second prong needs a much more thorough analysis. Ms. Parker-Fann put it into local perspective by stating this feeder/substation has a gap (in availability) in the amount of electricity it can provide. The CESIR study outlines that. National Grid needs to fill that gap per New York State rules.

Ms. Kent asked whether, even though Eden isn't experiencing a lack of electric service, there is a New York policy to generate as much alternative electricity as possible from this substation that has some available capacity? Ms. Parker-Fann said Yes.

Mr. Sorgi advised that there is a need for electricity - solar or otherwise; and an overriding policy by the State for renewable sources. The utility company is reacting to the State policy when it fills a gap.

Ms. Kent asked how much of the electricity generated from these two projects will be used in Eden, rather than elsewhere? Mr. Taravella noted electricity would be lost over distance; the electricity will stay in the community.

Mr. Neureuter asked about the provided documentation that mentions a reduction of electricity cost. What are the estimated savings? Ms. Parker-Fann said that, on average, it's roughly 10% per household.

Mr. Winiacki indicated there already is a solar farm on Delameter Road. Is it active? Is it RIC's? He is aware of an Eden customer who can't connect to electricity at Delameter. Our concern is for the Town and residents. Mr. Taravella and Mr. Sorgi discussed the "connectivity queue" for solar and explained that National Grid determines the timing of use of electricity generated by solar farms.

Mr. Stocksclaeder asked if the State is providing any incentives to the utility company to enhance their infrastructure, to accommodate connections. Ms. Parker-Fann replied that the State gives incentives to solar companies like RIC.

Mr. Stocksclaeder asked whether RIC can quantify that the only obstacle to locations elsewhere is the cost of connecting to the infrastructure? Is it an insurmountable financial burden to site a project like this in the proper zoning districts? Mr. Sorgi noted that if you get through all other hurdles and it's cost prohibitive, RIC won't do it. Mr. Stocksclaeder noted that this board doesn't consider, as a variance is being sought, whether financial obstacles are present for compliance with the Zoning Code.

Discussion about (2) An analysis that there were no alternatives for siting the proposed project(s) on land that is zoned for solar energy systems.

Mr. Taravella advised that RIC did look at other properties in other districts. The selection process is not limited to connectivity. We also have to look at topography, wetlands, size, habitats etc. and properties of a significant size as he reviewed in February. He does not have the data about that in other districts tonight, however.

Mr. Neureuter inquired how many parcels were identified that met the first two criteria: sufficient size as well as near a connection. Ms. Parker-Fann clarified that the question is how many parcels were disqualified based on those criteria? Mr. Neureuter stated that he would like to focus on the parcels that were zoned correctly and also near a substation. Mr. Stocksclaeder noted that the real question is how many parcels in zoning districts that allow this use were evaluated, and disqualified and for what reasons were they disqualified.

Mr. Taravella discussed the Eden substations and topography generally. Ms. Kent stated that at the February hearing, Mr. Zomerfeld indicated that there may not be any explanation to be studied beyond proximity to the grid (connectivity) and whether there are interested land owners. Ms. Kent restated that this board needs to see the analysis performed in other zoning districts.

Mr. Sorgi stated it was his understanding that the Board is not in a position to make a ruling tonight because SEQRA is not completed. The board is requesting a list of parcels that allow utility-scale solar and explain the rationale as to why they were disqualified. Mr. Stocksclaeder noted that there may be multiple reasons for disqualification within the appropriate zoning districts i.e. proximity, size,

topography, congruence to suitable National Grid lines and land owner willingness. The board expects to have that laid out for its review to determine the suitability of the use variance.

Mr. Stocksclaeder asked whether it's reasonable to ask this board to grant a variance solely because the power grid infrastructure that exists in this Town doesn't align with the Town's selected zoning districts. That's an infrastructure issue that the Town doesn't control.

Ms. Kent noted we await conclusion of the SEQRA review. In the meantime, we will await the RIC analysis of no alternatives.

The hearing was then open for public comment. (*Responses are in italics*) Ms. Kent reminded the audience that this board is studying whether or not the project should be allowed to be in R-2 zoning district in the Town; public comments should focus on that issue. Comments on landscaping, drainage, glare, views etc. will be considered by the Planning Board.

Mike Rosowicz, 2100 New Jerusalem Road

- All our properties are wetlands. How are you going to control erosion? *Mr. Taravella: The subject of wetlands will be addressed by the Planning Board. Mr. Rice reminded the audience that this is not the last public hearing. There will be opportunities to discuss these types of concerns with the Planning Board.*
- Ron Maggs is aware of the drainage issues.
- Have you ever done a study of your maximum generation power is throughout the year? You're going to lose it in the winter and gain now. *Mr. Taravella: Yes - we do analysis on the power produced by the facility.*

Paul Alessi, 2323 Derby Road

- I am in favor of the solar farms rather than a subdivision development.
- What is the total number of acres these two projects take away from this particular zoning area? *Ms. Kent stated the leasing of the Lunge proper is 94.2 acres and the other is approximately 20 acres. Only a portion of the leased property will be used for the panels. The response from RIC says this is a temporary diversion of property. We expect Erie County to comment about the impact of the projects on agriculture.*

Jeremy Kunch, 2323 Derby Road

- In a 20-mile radius there are currently two solar farms. Aren't two solar farms enough coverage? Why do we need to change the zoning to have two more solar farms? We'll have four in a 20-mile radius. *Ms. Parker-Fann advised that any electricity is useful; the CESIR study identifies that the substation has availability. Because there's availability, there is a need.*
- I don't want to see 500 solar farms in the Town of Eden. *Mr. Sorgi stated that will not happen, you cannot just install solar farms everywhere. There is not enough infrastructure capacity to support that. Realistically every community will have a few. He added that more often than not, the CESIR study comes back No; the additional electricity is not needed.*

James Lunge, 2027 Eden Evans Center Road

- As the owner of 2027 Eden Evans Center Road, I can tell you the property they're going to be using for the solar farm is negligible to marginal farmland according to the farmer currently using it. I think it's important that I get to develop my property. No one would see it from neighboring properties or from the road.

Ms. Kent stated the Zoning Board of Appeals will review the alternate site analysis to be provided by RIC. We have had two public comment sessions on these two solar farms and will not have another public hearing. Interested parties may attend the future public hearing sessions of the Planning Board and Town Board.

Because the Zoning Board of Appeals awaits the SEQRA review as well as RIC's alternative sites analysis, the board cannot make a decision on the use variance tonight.

Ms. Kent made a motion to table this proceeding, for a second time, until after the SEQRA determination is made by the Town Board and RIC has supplied the data about alternative locations for the projects. Seconded by Mr. Neureuter. All voted in favor, motion approved.

Meeting was adjourned at 8:02 p.m.

Respectfully submitted,

Shelly Griebel, Secretary
Eden Zoning Board of Appeals