

PLANNING BOARD

**Town of Kirkwood
70 Crescent Drive
Kirkwood, NY 13795**

**February 13, 2023
Meeting Minutes**

Present: Marchie Diffendorf, Chairman Gina Middleton, Attorney
 Jim Bukowski, Member Chad Moran, Building & Code Inspector
 Kevin Balachick, Member Mike Maciak, Associate Member
 Gordie Woolbaugh, Member Matt Williams, Associate Member
 Dan Wasson, Member John Mastronardi, Town Engineer

Chairman Diffendorf called the meeting to order at 7:00 PM.

APPROVAL OF MINUTES:

Motion by Dan Wasson and seconded by Jim Bukowski to approve the minutes of the January 9, 2023 meeting as submitted.

All voted in favor. Motion carried.

CONTINUATION OF THE PUBLIC HEARING – TRACT ENGINEERING, PLLC (SOLAR PROJECT):

Chairman Diffendorf read the public hearing continuance notice.

Chairman Diffendorf explained that he had gone over to the solar site in Conklin and the main reason for the visit was the decibel readings and the ambient noise on the inverter and the transformer. Using the Town's decibel meter, the level wouldn't go below 60 decibels so they used apps on their phones, which don't have credibility, but they did do a video of the inverter and the transformer from 50 feet and 200 feet away. Both were played for the Board. It is not real scientific but that is what they heard and it is concerning. It is a continuous noise that is called pure tone, a high-pitched tone, like a siren or fingers on the chalkboard. It isn't known how the Conklin solar farm compares to this one.

Chairman Diffendorf explained that also from Conklin he showed a picture of the 5-pole cluster that will be down by the road. These poles have been discussed at every meeting, trying to get them back further on the site away from the road. There is a letter from NYSEG stating they will be placed by the road and they won't move them back any further. That is concerning also. Dan Wasson commented that he has personally traveled a lot throughout NYS because of his job and you can pick them out due to the cluster of poles. They are ugly looking and he has seen a lot of them.

Chairman Diffendorf explained he asked the Board to do some research on solar farm fires and Dan Wasson stated he had watched some videos on that. Chairman Diffendorf commented that is very concerning also.

Chairman Diffendorf explained that one other item we want resolved is the Decommissioning Plan, which seems to be in line with research he has done. Ms. Middleton commented that the Local Law requires a letter or letters of credit for 120% of the decommissioning cost and they have a bond. She asked that the Decommissioning Plan be updated. Mr. Gourley agreed.

Ms. Middleton mentioned that they reached out to several appraisers in the last month, some have dropped out but has been speaking to someone for about 2 weeks, who was supposed to have a written proposal today but he did not, he would have it soon. She would follow-up with Mr. Gourley as soon as we have that. Once we have the proposal it will be a board decision if they want to go through with the appraisal. The appraiser is Don Fisher and he is a commercial appraiser.

Chairman Diffendorf commented about no PILOT and Mr. Gourley explained if the Town didn't opt into offering a PILOT they can't ask for a PILOT. The taxes would be based off the assessed value of the property. Chairman Diffendorf asked if there were any other tax abatements they would look for and Mr. Gourley stated no.

Chairman Diffendorf stated we have received a letter from John O'Neil and his concern is about water runoff. There was a meeting with John Mastronardi, Chad Moran, Chairman Diffendorf, Mr. O'Neil, and his engineer, Charles Gaynor last week. A letter was received and Chad read the letter into the record and it is included in the file.

There was a discussion regarding the access road and filtration once the project is complete at the proposed solar farm site. John Mastronardi explained that the soils at the site, especially during construction and after, being accessed by service vehicles or inspection vehicles, they will compact the soil and won't infiltrate as well as prior to construction. The applicant's engineer didn't show details in the plans or any specifications on how they are going to de-compact the soils after construction. We need to know how the applicant is going to address re-compaction in the future. Mr. Gourley explained their intention is to maintain vegetation on the site as part of their O&M on the site. Areas that don't grow grass and does get compacted would be addressed. There overall end of the project site conditions would be their solar field, a stone perimeter road that adheres to the DEC detail for pervious road construction and their meadow conditions. If there is compaction it should show up on their ongoing site inspection that grass that won't grow from being driven on many times. If there are compacted areas they would be identified and would be re-scarified at that time. John Mastronardi asked what type of truck and how frequent the road would be used and Mr. Gourley stated a pickup truck or UTV type of truck and monthly and mowing as needed.

John Mastronardi mentioned that the detail on the drawing needs to be updated to reference geo forms and Mr. Gourley agreed. The construction sequence will be changed around, the final access road detail at the end after any scarification of the soils. John would like to see additional language in the detail #4, on de-compaction of those areas in line with DEC.

Chairman Diffendorf opened the meeting up to public participation at 7:27 PM and explained if anyone had any new comments they can come up and address the board at this time.

John O'Neil, 1291 US Route 11, commented that from what he understands there hasn't been anything done on property values yet and asked if they are still working on it and Ms. Middleton explained their firm has reached out several appraisal groups and finally has one that is willing to do the work and are waiting for a written estimate that should be in the next day or two. Depending on the cost it will be a board decision. Mr. O'Neil commented he has gone on line and he sees both sides, don't see a lot of these because they are new in residential areas. He mentioned he went to the Conklin site, didn't get close enough to the transformers but stood next to the panels and they don't make any noise. He saw the poles that would be put up and those are the poles the residents will have to look at. The road that runs up alongside the solar panels, the ditches on both sides has control of the water runoff. That is his biggest issue. The Town of Maine has a solar farm but now they have a moratorium. The Town of Binghamton had a proposal to put a solar farm on Ingraham Hill Road and the residents were against it and the project has stopped. This is happening all over and this is a bad place

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to put it. There is a project in Conklin on Powers Road that was turned down but is now going to the Zoning Board of Appeals on February 27th.

Larry Holt, 36 Trim Street, commented it has been brought up before about what to do if a panel catches on fire and the statement was let it burn. He doesn't think that is what the fire company is going to do. Firemen don't respond that way, if there is a fire you put it out. The panels, 80% are made in China and we know there are chemicals inside of them. You can't just let that burn and if you do who is responsible, the fire company or the Town? You only need one solar field to catch on fire, which is usually sitting in a field someplace and will have a disaster on your hands. This is between Route 81 and Route 11. There have been grass fires before which has shutdown 81. If there are chemicals coming out of the panels what is going to happen to the neighborhood, let along the highway. When the Town Board did this they didn't think this through. It should never have been done this way. It should have been done the same way the Comprehensive Plan, with focus groups, surveys and meeting after meeting to see what the citizens of the town wanted. The solar is new stuff, nothing against them, they are in business to make money. They talked about what brought them here, 3 phase, Route 81, and farm soil. They talk about the neighbor never doing anything with the property. There is no neighbor, there is a landowner. A neighbor is somebody who lives next door. No one lives there, it was a farm for years, then it became the church, and someone bought the property. It should be sent back to the Town Board, you did this, you straighten it out.

Jeromy Holt, 40 Trim Street, commented that the Town of Maine's solar field is next to the school and one of the reasons they put a moratorium against solar farms up there is the noise. He knows people that work at that school and the noise is a severe distraction, especially with the students. Opening the window in the school can be a pain. The noise fluctuates, sometimes days it is louder, some days it is quieter, could be the wind or the transformers being louder. He knows someone that is currently in fire training for solar panels/solar farms and you do not let it burn, you put it out immediately. It is dangerous. Houses that are that close, more than likely they would be evacuating the houses, if the smoke was going toward your house. On his recent travels to Virginia, he passed a lot of solar farms. A lot were similar in geographic layout and a lot of them had retention ponds. Why do they have those ponds? Is there a water runoff problem? There has to be a reason for them to be there.

Ms. Middleton explained there will be one more continuation, just until there is a decision on the appraisal. If they do get the appraisal in, which we will have by the next meeting, that would be the last part we would need public comment on. Chairman Diffendorf stated this public hearing will be continued on March 13, 2023 at 7 PM.

Chairman Diffendorf commented he would like the board to asked questions, make a comment, or are there any items you are concerned about.

Mr. Gourley responded to the concerns that were brought up tonight. Referring to the sound study from the Conklin site Chairman Diffendorf shared with the board, he doesn't know if it is comparing apples to apples. From his standpoint they can't compare the two because they have no idea what is going on there. Is designed from a different standard? The information they provided was provided by their manufacturer. Per the ordinance they feel they can comply with that. As far as the telephone issues they are at the mercy of NYSEG, they are their poles and they can't dictate how it is configured or where the poles can be placed. In regards to fires, the probability of a fire happening is a small percentage. We are waiting on the appraiser. John Mastronardi's comments, they understand those comments now and will be working on another revision to address those comments.

Ms. Middleton commented we are currently in the process of trying to find the specifics for the Conklin site to see if it is apples to apples.

Dan Wasson asked Mr. Gourley why he wouldn't take Mr. O'Neil's berm into consideration and Mr. Gourley explained if they had put a berm in they would be channeling that water to the south and dumping it into the road on the other side of the ditch. They would be potentially creating another problem somewhere else. Dan Wasson commented that he has an engineer with 47 years of experience saying it would be a good idea. Mr. Gourley explained if he was the engineer he would say that too, please remove it and divert it around but they have to account for everything coming off the hillside as well. Chairman Diffendorf stated they did look at that when they were on the site and it would be moving the water to someone else's property. John Mastronardi explained when you redirect stormwater to the state or county, in this case into their right-of-way, they will ask the applicant or whoever is discharging the water to provide a drainage study showing that there is not an increase flow to that point of analysis. By creating a berm, it would be channelizing it and it was discussed, a berm is possible but other treatment practices, other stormwater practices in place to address the flow to the county system. It is more complicated than constructing a berm and redirecting the water. Mr. O'Neil asked if the berm would be put in and Chairman Diffendorf explained no, it was discussed thoroughly. Mr. O'Neil commented you can't redirect water to another area but it will be directed toward his property. Chairman Diffendorf commented if it is done properly, it should not create anymore flow than is already there. John Mastronardi agreed and stated he has asked the applicant to replicate pre-construction drainage conditions as opposed to post-construction. Chairman Diffendorf stated there should be no increase in flows if this is done properly and that is part of what we hire the code office and the engineers for so when this project is done there won't be any increased flow anywhere on the property. Mr. O'Neil asked if there is then what and it was suggested he could call his attorney and engineer.

Gordie Woolbaugh asked when the transformers are installed and it does exceed the decibel levels what is the remediation for that and Mr. Gourley explained they can either shield it with a masonry wall or enclose it. Their first option is distance, they try to set everything back from the property line as far as possible. If not their second option would be a concrete masonry wall. Gordie Woolbaugh asked if it does exceed does that fall on code and Chad Moran stated yes. Mr. Gourley explained when they go into operation and you receive a complaint from a neighbor that it is too loud, code will come out and if they exceed that it is their problem then. They will have to prove they can get to the level.

Chairman Diffendorf commented that the sound, Pure Tone, at any decibel it is not going to be comfortable to listen to. Mr. Gourley stated they are working with the guidance of the Town's ordinance. Chairman Diffendorf commented that the integrity of the 50 dB at the property line would be a high-pitched noise. Mr. Gourley commented he doesn't know if the same transformer that was referenced is the same as what they are doing. Chairman Diffendorf asked if it was the transformers that make the noise and Mr. Gourley stated it is the transformers and the inverters. Chairman Diffendorf commented they are both about 65 decibels and Mr. Gourley agreed. Chairman Diffendorf asked if they were a very high pitch and Mr. Gourley stated he couldn't tell, he can't speak to that. Chairman Diffendorf commented that the esthetics and the noise are the most important things, and runoff too. It is very concerning.

Kevin Balachick commented it is the same thing with the sound, if there are drainage issues afterwards that would have to be remediated.

Chairman Diffendorf explained the next meeting we are going to try and finish this up. If for some reason the appraiser is not available or it doesn't work out that we hire him it would be up to this board to make the decision whether or not those property values have been affected. Mr. Gourley commented that one of the things written into the local law is that it talks about this local law is specifically looking to maintaining property values. That is one of the considerations the town had that was written in there. From their standpoint they look at it as the setbacks, lot coverage, noise issue, the overall Town of Kirkwood ordinances and regulations have addressed that and you are trying to look out for the neighbors and maintain property values and integrity of the facility. By them complying with all the laws and regulations in the local ordinance they feel they have met that by adhering to the code and not asking for any type of variance or relief from any provisions.

Jim Bukowski commented that might not be necessarily be so if an appraiser came in and said different. If they did the market value and comps in that area before and after the solar farm was built and it came back and showed that they had a depreciation of 10% or 12% on sale, whether they had codes or not if doesn't really have a bearing on it, that is market value. Mr. Gourley understood. Jim Bukowski went on to say he understands what Mr. Gourley has said, by following the code should be good enough, essentially because you have met all the requirements of the law but when you start talking about property values it fluctuates, it is not a static thing particularly when you are changing the environment which those homes are in. The property value doesn't necessarily get attached to what our requirements are for that field, something entirely different. Mr. Gourley commented that becomes more of an assessment issue, are we looking at changing everyone's assessment in that area. Jim Bukowski stated it could be a positive or negative, if the houses there took some value directly from the grid where it supplemented the utility bills that would be a value.

Chairman Diffendorf commented this board may have to make a final decision and the best way to do that is to picture you living across the street from it and how does that affect you.

Mr. Gourley asked if his response to John was the only thing left and Ms. Middleton explained that the decommissioning plan needs to be updated and the SEQR will have to be done at the next meeting. Mr. Gourley handed out to the Board an updated Full EAF for their review before the next meeting. Nothing changed significantly just updated some references that were requested by Broome County.

Chairman Diffendorf explained that the fire chiefs from both departments will be invited to review the application and come to the next meeting. Mr. Gourley explained that typically where they have gone with the local fire chiefs is the emergency response plan, having someone here, what their response time would be and what the expectations would be from the fire department. Most of the guys will show up and they will go to the gate but won't open up the gate, they will wait. They won't take charge, if there is a fire and the fire department respond before their people get there they contain and control, don't let it spread to surrounding properties. Once someone from their company shows they figure out what to do, how to shut things off and determine the next course of action. Chairman Diffendorf asked if they have ever had a fire at their facilities and Mr. Gourley stated no. Chairman Diffendorf asked how many facilities they have, 100s and Mr. Gourley stated no. They do provide site specific training and chiefs now are asking for an annual refresher due to turnover. They will provide it but they depend on the fire chief requesting it when they have new members.

Chairman Diffendorf explained that the EAF will be addressed next month as well as the special use permit, which the board received the criteria for granting that. Ms. Middleton explained this may be an unlisted action because it is a small size. We have the Full EAF but we will only do the short form. She will double check that and will let the board know.

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Motion by Kevin Balachick and seconded by Gordie Woolbaugh to adjourn the meeting. The meeting was adjourned at 8:08 pm.

Respectfully Submitted,

Mary Kay Sullivan
Secretary, Kirkwood Planning Board

cc: Planning Board Members
Kelley Diffendorf
John Finch, Jr.
Chad Moran
Scott Snyder
Katie Legg
Bob McKertich
Gina Middleton