

TOWN OF POMPEY
PLANNING BOARD MEETING
December 20, 2021

The Town of Pompey Planning Board meeting was held on Monday, December 20, 2021.

Chairperson Sue Smith called the meeting to order at 6:38 PM.

In attendance: Chairperson Sue Smith. Members: Roy Smith, Dan Bargabos, Carl Fahrenkrug, John Shaheen and Kevin Coursen. Planning Board Attorney Jamie Sutphen. Town Engineer Steve Snell.

Recited the Pledge of Allegiance.

Chairperson Sue Smith made a motion to approve the minutes from the meeting dated November 15, 2021. Roy Smith first and Kevin Coursen seconded the motion. All members voted in favor, and the motion carried unanimously.

AGENDA ITEM

Komar Farm 2-part subdivision. 4253 Oran Delphi Rd. Tax map #005.-01-17.0

Public Hearing-

Landowner Arne Komar and his Realtor Carol O'Leary were present.

Chairperson Sue Smith asked the Planning Board members if they got a copy of the map and if all members reviewed the map.

Town Engineer Steve Snell- For the most part everything has been addressed. There are two Federal wetlands that were not addressed on the map. Steve stated that he will point them out on the map.

Lot 2 – Will stay with Landowner Arne Komar.

Lot 1—Will be sold

Members Dan Bargabos and Kevin Coursen asking that the back property line be clear on the map.

Discussion ensued regarding the back property line for lots 1 and 2 was lengthy between Landowner Arne Komar his Realtor Carol O'Leary, Planning Board Attorney Jamie Sutphen, Planning Board Engineer Steve Snell, and Members of The Board. Question: Where do you want the back property line to be? Discussion went back and forth between placing the back property line in the middle of the creek or the East side bank of the creek. Landowner Arne Komar stated multiple times during the discussion that he would put the back boundary wherever the Board tells him to put it, he just wants this settled tonight.

Planning Board Attorney Jamie Sutphen stated the Board could vote for an approval tonight with it contingent upon receiving a corrected map that the Planning Board Chairperson can approve.

Chairperson Sue Smith- Looking at the map, the back boundary is center line of creek for all the other landowners

Planning Board Attorney Jamie Sutphen; the question is what is acceptable to the Board?

Chairperson Sue Smith- All other property owners are down the middle of the creek. I would like consistency

Planning Board Attorney Jamie Sutphen expressed that the line should be where best suits an orderly development of land.

Planning Board Members -Kevin Coursen, John Shaheen, Roy Smith, and Carl Fahrenkrug discussed the Top of Bank being a suitable place for the line.

Chairperson Sue Smith- stated the majority would rule and that the appropriate line should go back to surveyor and make sure the line is there before the map is signed.

After further and significant discussion thereon by all members and input of the applicant, it was determined that for consistency with other properties the center of the creek is an appropriate property line.

Chairperson Sue Smith explained that Line D, C should be extended to the midpoint of the creek. Favor in of creek. She noted that the County Planning Board referral noted that there must be DOT approval before the plan is approval.

Dan Bargabos noted that the proposed driveway dotted line must be removed as no driveway is approved. Further, Mr. Coursen concurred.

Planning Board Attorney Jamie Sutphen requested that a metes and bounds legal description be provided.

Chairperson Sue Smith began the SEQRA review and there was discussion regarding Part 2 SEQRA Questions 1 through 11. All answers were No, or small impact may occur. Number 7 was wrongfully marked "YES" on the application. For records, this needs to be corrected to "No."

Chairperson Sue Smith made a motion for a negative SEQRA declaration for this project, based on these findings. John Shaheen seconded. Motion carried unanimously.

Chairperson Sue Smith made a motion to re-open the public hearing that had been adjourned. Carl Fahrenkrug seconded the motion. The motion carried unanimously.

Chairperson Sue Smith re-opened the Public Hearing and there were no public comments.

John Shaheen made a motion to close the public hearing. Roy Smith seconded the motion.

Chairperson Sue Smith- motion carries unanimously to close the public hearing at 7:49PM

Chairperson Sue Smith made a motion to approve the Subdivision Plan as presented with 2 revisions to be made as follows: 1. Remove proposed driveway lot#1 and 2. place back boundary line at center of Limestone creek moving C further west and point B further west as it exists on plan from 6-7-21. The Subdivision is contingent upon the revisions being made and the map by Cottrell Land Surveyors being returned to the Planning Board Chairperson, with the Chairperson having the authorization to sign map after the revisions have been made.

John Shaheen seconded the motion to approve, and the motion carried unanimously.

AGENDA ITEM

Tier 3 Solar Farm- Sweet Rd, Tax Map 012.-01-03.1 Tier 3 solar farm proposal.

Chairperson Sue Smith opened the further discussion regarding a proposed recommendation to the Town Board on the pending Solar Application. She noted that this is a diverse board and all opinions matter. This Board is reviewing the application/proposal according to the current law and how it was written. Mr. Coursen was not at the last meeting, and we await his comments first.

Kevin Coursen noted that Mr. Smith stated the significant farm soils in Town of Pompey so wondered whether with such criterions, is there any place we can put a solar farm?

Roy Smith reiterated that most of Town of Pompey on the open land is good soils.

Kevin Coursen comments on the issue of Power infrastructure (3phase) and soils. If there is no place to put it in Town of Pompey, why did we put this together? When I look at this proposal, I know there are things we can do to screen it, but if we say we are not going to put a solar farm on any prime soil in Pompey, why did we allow the proposal?

Chairperson Sue Smith stated that the thoughts of this Board are relevant, and this Board has looked at everything and laws NY agriculture and markets; this is not an easy decision. Majority of prime farmland soils is within the viewshed that is protected. People who live close are not in favor. She stated that we have to look at the here and now not future. Is this a good location and does it meet the criteria and law? Is this the place for solar?

Kevin Coursen stated that this board should look at the whole picture. For example, we put in a windmill ordinance, yet we can see the Fenner windmills in Pompey. What happens in 15 to 20 years when they are taken down?

Roy Smith opined that if this Board goes too far with the way its worded, a group of houses on that land could do the same thing to view shed; though less offensive to look at; but it could destroy the soil.

Planning Board Attorney Jamie Sutphen explained that the issue at hand is not a discussion about houses going in; rather it is the solar. And, for example, someday the Town Board could change it and it could become industrial site.

Kevin Coursen opined that we need to think about the future more. We have designed our codes in a certain fashion. If we design the solar codes to be prohibitive throughout the town for solar farm it could be prohibitive for future housing.

Carl Fahrenkrug stated that this Board is carryout, not creating the plan. We must follow the rules and guidelines.

Kevin Coursen noted that this Board is tasked with reporting back to the Town board our opinion.

Carl Fahrenkrug believes that there needs to be more clarity in the master plan on what the Town wants to do with renewables. It is not clear, therefore that this should be recommended.

Planning Board Attorney Jamie Sutphen asked whether all of Pompey is prime farmland?

John Shaheen advised that approximately 75% of the land in Pompey is prime farmland and/or farmland of statewide significance.

Kevin Coursen asked Mr. Shaheen if he considered the 3 phase and where it is located on the remaining 25%?

John Shaheen referred to the minutes of last month's meeting. He stated that he does not think that prime farmland is the issue if the applicant meets the maximum useage criteria of the local law.

There was discussion regarding the zone change and whether it would affect 50% of the parcel or 50 % of the Total land of applicant.

It was determined with input of Mr. Shaheen that it would be 50% of the total proposed parcel that would be affected by the zone change and that is all that would be allowed.

Chairperson Sue Smith spoke to the prime farmland that is tillable including land that is woodland, it is still prime farmland.

Chairperson Sue Smith- read from Master Plan Strategy #5 Strategic End: "Alternative Energy technology promoted and utilized to reduce energy costs while not infringing on agricultural interests, established view sheds, residential interests, or the environment"

Planning Board Attorney Jamie Sutphen explained that zoning is in place for certain usage

John Shaheen noted that in other Towns, solar farms are allowed by special permit.

Dan Bargabos expressed concern about the screening for the solar farm

Kevin Coursen expressed concern about the viewshed; can the neighbors see it; or they just do not want it?

Carl Fahrenkrug noted that neighbors are concerned about the property values

Kevin Coursen noted that it is difficult to agree to that.

Carl Fahrenkrug said the primary issue is where does this use go?

Chairperson Sue Smith asked Gordon Woodcock of Pivot Energy if they had any solar farms that had been decommissioned and the land returned to prior use. Could he say what condition the soils were? Gordon said no.

Chairperson Sue Smith made a motion to not recommend based on what is given in the Town's Master Plan and NYS in the Ag and Markets, interpretation to protect prime farmland soils, preserve the established viewshed, preservation of open space, and compatible use with nearby residences. The motion is as per the attached **Exhibit A** as presented to the Board in advance.

Carl Fahrenkrug- seconded the motion.

Discussion-

Carl Fahrenkrug expressed concern that the priorities were not straight. Zoning should have come first then the plan should be finished.

Kevin Coursen opined that the local law is now written and now we can't go back.

John Shaheen noted that there were 6 months of hearings before the local law was passed during which concerns were raised and addressed.

Chairperson Sue Smith brought the discussion back to the motion; not what did or didn't happen 6 months ago.

Carl Fahrenkrug felt that some Board member thought that the criterion used in this motion are not valid.

Chairperson Sue Smith- Chairperson Smith reminded the Board that there is a motion and a 2nd.

Kevin Coursen noted that the law as written allows only 50% of land to be used for solar farms. He indicated that it was made to sound as if the whole property was being used.

Planning Board Attorney Jamie Sutphen explained that the Chairperson was referring to farmable land. is stating it is farmable land

Chairperson Sue Smith reminded everyone that A YES vote means not recommended and asked for a roll call vote.

Chairperson Sue Smith- Yes

Carl Fahrenkrug-Yes

John Shaheen- No

Kevin Coursen- No

Roy Smith- Yes

Dan Bargabos- Yes

Results= 4 Yes 2 No

Chairperson Sue Smith- Based on the vote Motion is approved to not recommend the solar farm.

Planning Board Attorney Jamie Sutphen – Since this is a recommendation to the Town, and the dissent has been significant, Attorney Sutphen suggested that Board members that voted No make statements to Town Board to be included in the minutes.

John Shaheen Statement- As I have indicated before, my opinion is that the local law allows the use of prime farmland as long as they meet the criteria in the law. Therefore, I don't see that as an issue. Previously, the land was essentially scrub that was cleared and is now utilized for growing hay. From a viewshed standpoint as I have said before, I would rely on a viewshed analysis which would happen at the overlay district hearing part of the process. However, based on my observations, I believe the view shed concerns are addressable; ie it is doable. In other words, my position from a viewshed standpoint and a soils standpoint, is that this application should receive a positive recommendation to the Town Board to proceed with the Overlay portion of the process. Mr. Shaheen's prior written submission to this Board is attached hereto as Exhibit B.

Kevin Coursen Statement- It is my belief that the applicant has met the requirements for the Solar Law written by and approved by the Town Board, Town of Pompey and part of that requirement is that they have land that if it is airable land they can only use 50% of that land. The landowner has 80 acres and is requesting 20 acres to be used for a solar farm that meets the requirements of local law and will be able to be shielded and work within the requirements of that law.

Chairperson Sue Smith- next step is to send the recommendation to the Town Board with the two dissenting comments.

Planning Board Attorney Jamie Sutphen will review the draft recommendation with the dissensions attached for finalization.

Chairperson Sue Smith- Question meeting night 3rd Monday, several federal holidays interrupt the date. Is anyone willing to change the date of the meeting?

Too many conflicts so we will keep the meetings on the 3rd Monday of the month.

Kevin Coursen motion to adjourn, Dan Bargabos seconded the motion. All members voted unanimously. Motion carried. Meeting adjourned at 9:32 PM.

Respectfully submitted by,

MaryBeth Pazaras

Exhibit A Resolution to Town Board regarding Solar Array

The Planning Board of the Town of Pompey has considered the request of Pivot Energy to develop a community solar project on Sweet Road (Tax ID 012.-01-3.1) in the Town (“Project”). The Board has reviewed the letter of Gordon Woodcock, Director, of Project Development dated July 6, 2021, and the attached information as well as supplemental information provided by Gordon Woodcock on October 15, 2021. The Board has heard from the owner of the property upon which the Project is intended to be located and members of the public at public meetings of the Planning Board.

In accordance with Local Law 1 of the Town of Pompey 2021 this Project is considered a “Tier 3 Solar Energy Systems” project. Per said local law this Board is charged in the first instance, with delivering a report to the Town Board after review of concept site plan and overlay zoning review.

This Board has reviewed the relevant issues, law and matters surrounding this proposal and finds that Overlay Zone that would permit a Tier 3 Solar Energy System on the parcel as proposed is **not** recommended.

Town’s Comprehensive Plan at page 12 sets an order of priorities for the Town summarized as:

1. Preserve Agricultural Land
2. Preserve open space
3. Preserve quality of life for all residents
4. Protect scenic beauty and viewsheds

A Primary consideration of this Board in making the recommendation herein is that this parcel of land is considered Prime Farmland by the USDA.

The Town’s comprehensive plan places a high priority upon protection of farmland within the Town. Specifically, per the Agriculture and Markets Law of the State of New York, this is Prime Farmland as it contains significant soils two of which soils are Lima Silt Loam and Honeoye Silt Loam, which are some of the most important rotational farmland and soils.

In addition, the applicant has not provided a full view shed analysis for this project. However, this Board has reviewed what has been supplied by the applicant and has made its own easily viewed observations.

The solar array is a very large footprint, and the topography and location would appear to make the array highly visible from the road and all those who pass by; and not easily shielded or made less conspicuous. It also appears the array would be highly visible across a panoramic view of the area and visible to neighboring properties, without provision for protecting neighboring properties from glare and visual pollution.,

The Board notes that north of this site is a communication tower, however, given the current zoning of the area and the surrounding use and town priorities, residential development of some nature seems a more appropriate use of the property, if agriculture is not feasible. Strategy 6 on page 26 of the Comprehensive Plan.

While Alternative energy is mentioned down the list of priorities in the Comprehensive Plan, the weighing of all factors herein more strongly supports the preservation of farmland, preservation of open space, viewsheds, and other priorities. Also, this Board has considered that there may be instances wherein extenuating circumstances and/or mitigation measures might make any particular site potentially feasible for Tier 3 solar development, but no such circumstances exist in this case.

Exhibit B – Further comments to accompany dissenting option of Mr. Shaheen

SOLAR TIER 3 PRIME FARMLAND USEAGE LIMITATION

As I was Chairman of the committee charged with drafting of local Law No 1 2021, I'd like to provide some background as it relates specifically to preservation of farmland. Preservation of farmland as well as protection of viewsheds was of critical importance to the committee. Afterall, that's what Pompey is about and why many of us live here. There were many discussions on how to accomplish these two goals in particular, while still allowing for Tier 3 solar facilities. Regarding farmland preservation, we initially considered banning Tier 3 solar facilities on Prime Farmland but abandoned that idea for the following reasons. Per the soils information in the Solar Tier 3 guidance document currently used by the Planning Board, there are approximately 42,614 acres that comprise the Town. Of those 42,614 acres, approximately 20,215 acres, or approximately 50% of the total area of the Town is Prime Farmland (including if drained). Another approximately 11,380 acres is considered Farmland of Statewide significance. Together they make up approximately 75% of the total land area in the Town. The remaining land area available is further reduced by the fact that the Committee had already decided that Tier 3 systems would not be allowed in Hamlet (Residential & Commercial), R & R-40 Districts. Further, as you know, 3 Phase infrastructure is required to host a Tier 3 facility. Limited 3 Phase infrastructure as well as limited hosting capacity of that infrastructure reduces available sites still further. For these reasons, the Committee decided that limiting the use of Prime Farmland, Unique Farmland and Farmland of Statewide significance (Prime or other important farmland) for these types of facilities was a more workable option rather than banning the siting on Prime and other Important Farmlands outright. Based on that we decided on the limitation of up to 50% Prime or other important farmland utilization on a given parcel, as stated in Local Law No 1 2021 page 12. (It should be noted that the reviewer of our law at Central New York Regional Planning and Development Board (CNYRPDB) advised that the 50% threshold was excessively conservative.)