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STATE OF NEW YORK : COUNTY OF ULSTER
TOWN OF MARLBOROUGH PLANNING BOARD

----- X

In the Matter of

MILTON TURNPIKE SOLAR FARM

Project No. 18-2010
132 Milton Turnpike, Milton
Section 103.1; Block 1; Lot 33.1

----- X

OPEN PUBLIC HEARING - SITE PLAN

Date: March 4, 2019
Time: 7:00 p.m.
Place: Town of Marlborough
Town Hall
21 Milton Turnpike
Milton, NY 12547

BOARD MEMBERS: CHRIS BRAND, Chairman
JOEL TRUNCALI
BEN TRAPANI
CINDY LANZETTA
JOSEPH LOFARO
MANNY CAUCHI

ALSO PRESENT: JEFFREY S. BATTISTONI, ESQ.
PATRICK HINES
VIRGINIA FLYNN

----- X

MICHELLE L. CONERO
PMB #276
56 North Plank Road, Suite 1
Newburgh, New York 12550
(845)541-4163

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CHAIRMAN BRAND: I'd like to call the meeting to order with the Pledge of Allegiance to the flag of our country.

(Pledge of Allegiance.)

MR. TRUNCALI: Agenda, Town of Marlborough Planning Board, March 4, 2019. Regular meeting 7:30 p.m. Approval of stenographic minutes for 1/22 and 2/4. Milton Turnpike Solar Farm, public hearing open, site plan; Wilklow, sketch, subdivision; Discussion without lawyer, engineer, stenographer, Joe Pettinella, Route 9W. Next deadline: Friday, March 8th. Next scheduled meeting: Monday, March 18th.

CHAIRMAN BRAND: Excellent. I'd like to have that motion to approve the stenographic minutes for 1/22 and 2/4 respectively.

MS. LANZETTA: I'll make that motion.

CHAIRMAN BRAND: Is there a second?

MR. LOFARO: I'll second.

CHAIRMAN BRAND: Any discussion?

MR. TRUNCALI: I wasn't here for 2/4.

CHAIRMAN BRAND: Okay. So you're abstaining?

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MR. TRUNCALI: Actually I was here for that. I missed the other one.

CHAIRMAN BRAND: Okay. So all those in favor?

MR. TRAPANI: Aye.

MS. LANZETTA: Aye.

MR. TRUNCALI: Aye.

MR. CAUCHI: Aye.

MR. LOFARO: Aye.

CHAIRMAN BRAND: Aye.

Any opposed?

(No response.)

CHAIRMAN BRAND: So carried.

First up on the agenda is Milton Turnpike Solar Farm. We did get an e-mail from them that they haven't received back the requests for the Town of Marlborough Planning Board to act as the lead agency, so they asked to be pushed ahead to March 18th.

I'd like to have a motion to further adjourn the public hearing to the March 18th date.

MR. LOFARO: I'll make the motion to adjourn it to -- what did you say, March 18th?

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CHAIRMAN BRAND: Yes. Is there a second?

MR. CAUCHI: I'll second it.

CHAIRMAN BRAND: All those in favor?

MR. TRAPANI: Aye.

MS. LANZETTA: Aye.

MR. TRUNCALI: Aye.

MR. CAUCHI: Aye.

MR. LOFARO: Aye.

CHAIRMAN BRAND: Aye.

Any opposed?

(No response.)

CHAIRMAN BRAND: So carried.

MR. TRAPANI: Do we have to do anything as the Planning Board now so that when they come the next time it will be taken care of, whatever had to be taken care of?

CHAIRMAN BRAND: We are just waiting for outstanding comments from two agencies I believe.

MR. HINES: One is DEC, and I think the school district didn't respond yet.

CHAIRMAN BRAND: Okay.

MS. LANZETTA: Was the school district

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in -- did that have to do with the PILOT?

MR. HINES: Yes.

MS. LANZETTA: Okay. And what about SHPO. Were we supposed to receive anything from them as well?

MR. HINES: They were on the list, yes. They already have the SHPO coordination. They were on the list. They received it.

MS. LANZETTA: Okay.

MR. HINES: So if they don't respond within the thirty days -- they already submitted through their CRIS system, their electronic submission. They got back the information.

MS. LANZETTA: Okay.

(Time noted: 7:04 p.m.)

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C E R T I F I C A T I O N

I, MICHELLE CONERO, a Notary Public
for and within the State of New York, do hereby
certify:

That hereinbefore set forth is a
true transcription from the recorded proceedings.

I further certify that I am not
related to any of the parties to this proceeding by
blood or by marriage and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 19th day of March 2019.

Michelle Conero

MICHELLE CONERO

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STATE OF NEW YORK : COUNTY OF ULSTER
TOWN OF MARLBOROUGH PLANNING BOARD

----- X

In the Matter of

WILKLOW

Project No. 19-3004
43 Baileys Gap Road, Highland
Section 95.4; Block 1; Lot 15

----- X

SKETCH - SUBDIVISION

Date: March 4, 2019
Time: 7:05 p.m.
Place: Town of Marlborough
Town Hall
21 Milton Turnpike
Milton, NY 12547

BOARD MEMBERS: CHRIS BRAND, Chairman
JOEL TRUNCALI
BEN TRAPANI
CINDY LANZETTA
JOSEPH LOFARO
MANNY CAUCHI

ALSO PRESENT: JEFFREY S. BATTISTONI, ESQ.
PATRICK HINES
VIRGINIA FLYNN

APPLICANT'S REPRESENTATIVE: SUSAN DEMSKI

----- X

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CHAIRMAN BRAND: So we will move ahead then. First up, Wilklow, 43 Baileys Gap, Marlboro, sketch, subdivision.

How are you today?

MS. DEMSKI: Good. How are you?

CHAIRMAN BRAND: Well, thank you.

MS. DEMSKI: This is a two-lot subdivision on Baileys Gap Road --

MS. FLYNN: Sue, could you speak louder for the recorder because the stenographer is not here? Thank you.

MS. DEMSKI: This is a two-lot subdivision, residential and a commercial building on Baileys Gap Road.

I did receive comments from Pat. Should I just address them?

CHAIRMAN BRAND: Sure.

Pat, why don't you just run through them and then if you want to address them you can.

MR. HINES: Note 8 on the map identifies that lot 1 is served by a well on lot 2, which is the existing agricultural building that's running as a cidery. We're recommending

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that a well be installed there on lot 1 to service that house to separate them. If that can't be done for some reason, then there needs to be legal agreements and access agreements that are going to allow the one lot to access and have maintenance rights to the well.

MS. LANZETTA: Can I just ask if that's legal?

MR. HINES: It's not a good situation, that's for sure.

MS. LANZETTA: It's my understanding that as the Planning Board we're supposed to make sure that each lot we approve is a standalone.

MR. HINES: I'm with you. I think it should.

MS. DEMSKI: We're asking that we can have an easement and maintenance agreement to be extended to that lot because it's their daughter. It wouldn't run with the land but it would be extended to Becky as an individual.

MR. HINES: It would have to run with the land because otherwise someone would sell that in the future without a well. That's the issue, it could be sold. Once it's subdivided

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off as a separate parcel, we would have -- the Town, no one else would have control over who buys it, sells it. It creates a real Hatfield and McCoy situation in the best of cases where someone turns off someone else's well or the business uses too much water during a drought.

MR. BATTISTONI: I agree with Pat. I think the point is that the newly created lot should have a well and should have septic. It's not a good idea to create a new lot that doesn't have it's own well.

CHAIRMAN BRAND: So the new lot --

MS. DEMSKI: Is being sold to the daughter.

CHAIRMAN BRAND: The new lot is the red lot?

MR. HINES: Yes.

MS. DEMSKI: Yes. Lot 1.

CHAIRMAN BRAND: And it has it's own septic currently? It says septic area.

MS. DEMSKI: It has it's own septic. We had -- it provides 100 gallons per minute of water flow, so, you know, we thought that it would be good to service both lots and then --

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MR. HINES: I'm not worried about the capacity, it's just the legal issues and transfer of ownership. I wouldn't buy that lot. Just long term it needs to kind of stand on its own. It's creating a situation that can be a real problem in the future.

CHAIRMAN BRAND: Okay. Number two?

MR. HINES: The second comment, there's a new driveway proposed to serve lot 1. We'll need the highway superintendent's comments on that.

The E.A.F. that was submitted identifies that lots 1 and 2 will be supplied by their own separate wells. That should be corrected.

MS. DEMSKI: That would be corrected, yes.

MR. HINES: Actually I think we should leave it that way and correct it by installing the well.

And then the other issue is because this is in the RAG-1 Zone, Section 155-52, setbacks and buffers from active agricultural land applies. It makes it -- it supercedes the

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bulk tables in those zones and makes the setbacks 75 feet front yard, side yard, rear yard. Not only that, but it requires a buffer in the form of a berm, planting of trees for screening or similar mechanism. It leaves it generally up to the Planning Board what's acceptable, but right now we don't have any proposed.

CHAIRMAN BRAND: So that would be a buffer between the two lots?

MR. HINES: Between all the -- on all three sides, both side yards and the rear yard in this case, because they're all in active agricultural.

CHAIRMAN BRAND: Got it.

MS. DEMSKI: A solid board fence is proposed to be installed between lots 1 and 2, along the westerly line of lot 1, within six months of approval. So we're going to add a note to the map.

MS. LANZETTA: I don't think it's -- I think the intent of the regulations is more for active agricultural lands. What I would interpret that as meaning would be the two sides that are adjacent to the properties that are

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being sprayed and things of that nature. So the part that faces the buildings and stuff, I wouldn't be -- I would interpret it as much to mean --

MR. HINES: I think that's clearly not in the agricultural because they're running that cider mill and restaurant and wedding hall use under the agricultural without approval. That's the Bad Seed cidery or something.

CHAIRMAN BRAND: Mm'hm'. So they're using the agricultural loophole, so to speak, to run the business --

MR. HINES: To run that facility.

CHAIRMAN BRAND: -- versus coming in for the site plan for that?

MR. HINES: Yes.

MR. TRUNCALI: I would agree with the 75 feet on the sides that are being sprayed but I don't really think they need it on that side. Of course there's no way to really do it on that side and meet the setbacks.

MR. HINES: I'm not sure it's 75 feet. It's the 75 feet and then there's that buffer. It leaves a lot of discretion to the Board. It

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says, "Determination to the extent of the required buffer shall be reasonable and shall be the responsibility of the governing official or board to which the application is made." So it gives you, the Planning Board, the flexibility to decide exactly what we talked about. Interesting, it looks like the applicant is proposing to put the fence there and not in the other two locations you're speaking of.

MS. LANZETTA: It makes sense to put -- again, if we go back and we think that right now it's a family member but circumstances could be five years from now this family member has to sell and so now are they going to start complaining about the traffic going in and out. So in that sense I can appreciate a fence.

The 75 foot buffer, I think that -- you know, I remember when that was being discussed. I think the intent was the concerns about spray and active agricultural --

MR. HINES: Pesticides.

MS. LANZETTA: Yeah. So I personally would be okay with the fence. I think it's a good idea as a good neighbor.

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Again going back to the 75 foot berm, plantings, landscaping, I think just those sides that are adjacent to the active agricultural property I would be okay with.

CHAIRMAN BRAND: Do they own this agricultural field as well?

MR. HINES: Yeah. Currently they're in common ownership.

CHAIRMAN BRAND: Didn't we do this in the past where we said that we could have a note on the map that if the property were to be sold it could be installed at that time?

MS. DEMSKI: That's what we -- I have a copy of a note from another subdivision that states that, that the provision shall take effect upon the second conveyance of said lots and shall be completed within six months of said conveyance. So that's what we were hoping for.

MR. HINES: It's up to the Board.

CHAIRMAN BRAND: Again, I'm just saying we have done that in the past in this same scenario. I just want to make sure that I'm correct.

MR. HINES: It was common ownership in

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that one as well. At that time we told them it was only a family member.

CHAIRMAN BRAND: Right.

MR. HINES: It would take some fancy covenants or something to make that happen and have it shown in the deed so that the next buyer would beware. The title company would tell them they'd be responsible, for what I don't know. Who approves it? Who checks it out? Who even knows it got sold?

CHAIRMAN BRAND: And then just my question would be the 75 foot setback, is that to the edge of the berm or the berm is included in the 75 feet?

MR. HINES: It's included in the 75. The 75 is the setback from the structure to the property line.

CHAIRMAN BRAND: So the berm -- okay.

MR. HINES: It increases -- actually, in this zone it doesn't touch the rear yard but it changes your side yards from 35 and 80 to both of them being 75.

CHAIRMAN BRAND: So the setback in question is not the east side to the agricultural

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field, it's the --

MR. HINES: It's the east and the north. The side yard to the east and the rear yard to the north. They propose a fence along that western property line.

CHAIRMAN BRAND: That is 75 feet, though.

MS. LANZETTA: To here. The berm and the deck are all within that 75 foot area.

CHAIRMAN BRAND: So it would be 75 feet from the edge of the arbor are we talking about, Pat? That's not connected.

MR. HINES: No. That arbor is in the 75. The setback is there shown as 75, which is okay, but within that 75 feet there's a requirement that they provide buffers, berm, planting of trees for screening effect or similar mechanism. In the past we've had people plant, you know, a row or a double row of pine trees or something to provide that. The ordinance came about from complaints that people were putting kids' swingsets along the rear property line, the farmer was coming by spraying whatever it is farmers were spraying that day.

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CHAIRMAN BRAND: Right.

MR. HINES: They got some complaints from the residents in the subdivisions. It puts the burden on the single-family lot, not the farmer. It's not on the farmer's side, it's on the residential lot to provide that additional setback.

MR. BATTISTONI: I also have a question. On the eastern side of the house, on one of the corners it says it's 75.6 feet to this new boundary line. If you went to the northwest corner of the house and you drew a line from there to the new division line, it doesn't look to me like it would be 75 feet. It doesn't meet the 75 foot requirement. They would need a variance.

MR. HINES: I didn't measure it.

CHAIRMAN BRAND: He's saying from here to here.

MS. LANZETTA: That's supposed to be 75 feet.

CHAIRMAN BRAND: That's the pool, though.

The pool doesn't come into

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consideration; right? It's just the structure?

MR. BATTISTONI: The statute refers to any habitable structures. That wouldn't include the pool.

MR. HINES: It does not meet the 75 feet. So the easterly line does not meet the 75 foot setback from the corner of the house.

CHAIRMAN BRAND: And so that cidery building wouldn't -- that wouldn't require a 75 foot --

MR. HINES: Clearly it's agricultural, and then it's the resulting 19 acres. The entire thing is an agricultural use. I don't know if they want to give that up because --

CHAIRMAN BRAND: I mean the area -- what's it listed, 52-8 on our map? They don't need 75 feet from the corner of that building to that property line, from the cidery building out?

MS. LANZETTA: This is not agricultural.

MR. HINES: Not the cidery building. From the house on lot 1 to that same property line is not 75 feet.

CHAIRMAN BRAND: Got it. So they could

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just move it over to that gravel lane?

MR. HINES: They could.

MR. TRUNCALI: Yeah, there's room to
move it.

MR. HINES: That barn needs a 35 foot
setback in this zone. It's not much that they're
missing it by.

MS. LANZETTA: So let me see if I
understand this correctly. It's possible for us
to waive the berm but we can not waive the 75
feet?

MR. HINES: Right. That would be the
Zoning Board.

MS. LANZETTA: So there you go.

MR. HINES: The berm is required on all
three property lines under the code. I think the
fence meets the intent on that easterly property
line -- the westerly property line. The east
side and the rear yard are where I think they are
proposing to use that note from --

MS. LANZETTA: But we can't -- we can't
make it --

MR. HINES: You can't waive the
setback.

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MS. LANZETTA: They have to go to the ZBA; right?

MR. HINES: They have to go to the ZBA or modify the lot line line.

CHAIRMAN BRAND: As far as the berm goes, I mean I know we probably don't like the idea of allowing people to do that but I feel like we need to be consistent. If we did allow one applicant to do that, then we should probably allow another applicant to do that as well as far as making it a covenant on the deed that should this be conveyed again, that's when the berm would be installed. I'm all about consistency.

MS. LANZETTA: But we have to -- the reason that we did it the first time was because it was a farm family.

MR. HINES: It was a relative. The relatives were involved in the conveyance.

MS. LANZETTA: It was a farm -- you know, it was a family farm. In this case if it's a family farm, then that's consistent. It's not consistent in any other --

CHAIRMAN BRAND: This is a family farm, though. That's what I just said. Yeah.

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MS. LANZETTA: Yeah. I'm agreeing with you. I'm saying the consistency only comes because we're trying to accommodate our farmers in the community, --

CHAIRMAN BRAND: Right.

MS. LANZETTA: -- not for any people outside of the --

CHAIRMAN BRAND: Since it's all in the same family. Right.

MS. LANZETTA: But we still can't --

CHAIRMAN BRAND: Right.

MS. LANZETTA: We still can't do anything.

MR. LOFARO: You're only talking about the one lot line that separates the two parcels?

MS. LANZETTA: Yeah.

MR. LOFARO: You're not talking about the outside has to be done regardless?

MR. HINES: The outside has to be done upon the second conveyance. If the family sells it, there will be a requirement in the deed for the installation of the buffer. Someone has to really want that lot.

MS. LANZETTA: But it's still going to

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be hard to meet that requirement with the 75 on the west side.

MR. HINES: It's clearly going to have to tell you what that is. They won't be coming back here. I don't recall exactly what the note said. Maybe there should be a plan filed with this that it references that it's going to be X number of trees forty feet on center or something. You have no control. That conveyance could occur --

CHAIRMAN BRAND: Yeah. I would like to have that included. I think we did do that for the previous.

MR. HINES: I don't have the note. It was awhile ago.

CHAIRMAN BRAND: I think we did approve that it was going to be a three or four foot berm with plantings of some type of tree. We were pretty specific with that.

MR. HINES: I think in that case it was only a rear yard. Here you have a --

CHAIRMAN BRAND: Right.

MS. LANZETTA: We have to see what they can do with the west side.

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CHAIRMAN BRAND: Right. I think the issue of the well is something that needs to be cleared up as well.

MS. DEMSKI: Okay.

CHAIRMAN BRAND: Anything else, Board? Comments, questions?

(No response.)

CHAIRMAN BRAND: Did you have anything else, questions or comments?

MS. DEMSKI: No.

CHAIRMAN BRAND: No. All right. Thank you.

MS. DEMSKI: Thank you.

(Time noted: 7:28 p.m.)

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C E R T I F I C A T I O N

I, MICHELLE CONERO, a Notary Public
for and within the State of New York, do hereby
certify:

That hereinbefore set forth is a
true transcription of the recorded proceedings.

I further certify that I am not
related to any of the parties to this proceeding by
blood or by marriage and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 19th day of March 2019.

Michelle Conero

MICHELLE CONERO