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PINE PLAINS PLANNING BOARD SPECIAL MEETING MINUTES

Wednesday, September 27th, 2023

7:00 PM

In Person and Zoom

IN PERSON ATTENDANCE: Michael Stabile, Chairman
Al Blackburn
Scott Cavey, Alternate
Ethan DiMaria
Dick Hermans
Kate Osofsky
Steve Patterson
Vikki Soracco

ZOOM ATTENDANCE:

(Members attending via Zoom do not count towards the quorum or voting.)

ABSENT:

ALSO PRESENT: Warren Replansky, Town Attorney, in person
George Schmitt, Town Engineer, in person
Sarah Jones, Town Liaison, in person
Frank Fish, BFJ Planning, in person
Andrew Gordon, Carson Power, in person
Alicia Legland, Carson Power Counsel, via
Zoom
Vardaan Gurung, Carson Power, via Zoom
Members of the Public, in person

Chairman Stabile opened the meeting at 7:00 pm with a quorum present.

Carson Power Special Use Permit (SUP) and Site Plan: Fish went over some talking points regarding a special use permit (see attached memo). Fish went over what a special permit is as defined by New York State. Fish then went over the ordinances for a special permit in the town law. Fish then went over the 11 objectives that are in the town's law for a SUP. Fish said the planning board can put in appropriate conditions to make sure each objective is met.

Fish said everything that the applicant has agreed to the board is now trying to make a special condition of the SUP.

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Fish then discussed SEQR as it pertains to the SUP. Fish said it was mentioned that this is not SEQR 2.0 (as pertaining to the SUP and site plan) and Fish said this is correct. Fish said that where there is an overlap with a SUP and SEQR is aesthetics and community compatibility, but that a determination was already reached during the SEQR process and therefore a detailed amount of time does not need to be spent on it for the SUP. Fish said some people may disagree, but Fish reiterated that is not SEQR 2.0.

Fish then went over his memo from September 7th (see attached). Replansky clarified that this document was an interagency communication, which is exempt from FOIL until the document is made public and discussed, and therefore that is why the FOIL requests for it were not honored after it was mentioned at the meeting of September 13th. The memo discusses the general 11 criteria for a SUP. Replansky said the criteria and objectives are different. Some SUP have supplementary regulations. Replansky said the criteria for solar are listed in the actual solar law. Replansky said the board needs to decide if the criteria in the solar law have been met. Replansky said if the objectives are not met totally then the planning board can prescribe conditions. Replansky said this could not be done during the SEQR review.

Fish then went over the last page of the memo which has 19 conditions that were created for the SUP.

Hermans asked what happens if no one wants to use the land anymore agriculturally what is Scenic Hudson's responsibility in this? Replansky answered that conservation easements are perpetual and therefore would not change unless amended. Replansky said he would make it so if there were any changes to the conservation easement it would need to be approved by the town board. Hermans asked if Scenic Hudson wanted to replace the twenty-six acres of trees being taken down could they do this. Replansky said each conservation easement is a little bit different so he would need to see the document. Hermans said the applicant could think about this as mitigation for the cutting of the trees. Gordon wanted to clarify that Scenic Hudson would not be in control of the property, but there will be restrictions on the property and Carson Power is committed to everything submitted in the conservation plan. Gordon said 70 forested acres will be protected as 70 forested acres, but it wouldn't be at Scenic Hudson's discretion what to do with the remaining agricultural field. Gordon also said Carson Power

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cannot sign anything with Scenic Hudson until after the project is approved.

Fish brought up the variance for the fence height that Carson Power received from the ZBA. Fish said this condition could be taken out since it was already approved.

Stabile said most of the conditions listed have been submitted and are in the plan. Fish agreed and said he likes to see it as outright conditions so that is clear and can be enforced by the town. Replansky said most of the items were voluntarily done by the applicant during the SEQR process.

Hermans brought up the O&M plan and having sheep graze the property. Hermans didn't think any grazing was going to be happening on this project. Hermans asked if this could be enforced. Replansky said sometimes it is difficult to mow under the solar panels so some projects do have sheep graze on them but that the planning board isn't going to mandate it. Gordon said it is Nexamp's O&M and isn't utilized at all locations. Gordon said it may be something done in the future but right now they have the pollinator friendly seed mix, etc.

Fish said an additional condition heard tonight from Replansky was a bonding revision. Replansky said if Carson Power is choosing to do bonding then he will need to see it and review it. Replansky said the bonding is reviewed on a periodic basis.

Hermans asked about the alternative to bonding. Replansky said they can allow the town to put a lien on the property if not in compliance. Replansky said Carson Power agreed to a bond and he would prefer that.

Stabile asked Gordon if they would be obtaining beekeepers and Gordon replied it is not in the plan.

Replansky said a pilot agreement will also need to be signed off by the town.

Stabile asked about the monitor for the forest. Schmitt said he and Drew Weaver would be doing this. Gordon said Scenic Hudson would be monitoring this as well if they go into an easement with them.

Blackburn asked if the forest is marked prior and Schmitt replied yes, this is how it is done.

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Replansky said if any of the screening dies, Carson Power will have an obligation to replant it. Blackburn asked how often this would be monitored. Replansky said the monitoring by the town's ZEO should be at least once a year. Replansky said the ZEO would also respond to complaints.

Schmitt then went over his conditions of the site plan (see attached).

Replansky said if there is a catastrophic event where the screening is destroyed then the applicant would need to reapply to the planning board for alternative mitigation.

Schmitt showed a picture to the board comparing mature forests from 1936 and today. Schmitt said this property was cleared in 1936 and therefore this is not a mature forest. Hermans does feel that taking 26 acres of trees still impacts the environment. Hermans asked the board if they should take some sort of mitigation to see that 26 acres of trees are replanted at this property or somewhere in town. Hermans feels this gesture would show the community that the board is listening.

Cavey asked if a farmer wanted to clear more acreage for planting crops would they need to get a special use permit and/or plant more trees to replace those trees? The board replied no. DiMaria said not under the ag laws - an owner could clear cut their entire property.

Gordon said they have been listening to the concerns from the planning board and the public. Gordon said the conservation easement is tremendous and is completely donated. Gordon said there will be a permanent conservation and protection of 70 acres. The acres being removed are not as visible as those being protected. Gordon feels the mitigation they have voluntarily offered is sufficient. Stabile asked about the funds being donated from the logging. Gordon said they will not be keeping any of the funds. Stabile asked if it would be going to the town(roughly 11K) and Gordon replied yes. Stabile said perhaps this could be a fund to plant trees.

Replansky asked if the donation is in their forestry plan and Gordon replied that it is.

Osofsky mentioned most of the Central Hudson substation property is already surrounded by conservation easements and asked how far another solar field could be from it. Schmitt said for another solar field to hook up to that substation there would

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need to be another upgrade (after the one that Carson Power paid for), which is usually cost prohibitive, because of how much money would be needed to upgrade it even further. Stabile asked about the distance from that hosting line. Schmitt said it gets very expensive the further it is. Gordon said there is an extremely limited capacity in Pine Plains for additional solar energy operations. Fish mentioned the moratorium on any other solar projects. Replansky said yes, for eight months. Stabile said Osofsky had an idea to have the county create a map with other conservations and wetlands and when you look at this map there is very little other area where another solar farm could go.

Fish said it might be a good idea to compare the twenty conditions needed for a special use permit to make sure they are meeting the eleven objectives needed for a special use permit. Fish then discussed each.

Stabile asked about the steep slopes and delineating them and how they really aren't building on any. Schmitt said they did have steep areas that they have already delineated.

The board discussed if they should add the size of the trees, should they need to be replaced due to a catastrophic event. Fish didn't think the size should be included since the bigger the tree the less chance it has to survive after being transplanted. Replansky said the language should be that they come back to the planning board who can then make a determination.

DiMaria asked about having appropriate flaggers, etc. when working on Rt. 199. Schmitt said that is included with the commercial driveway permit and they cannot get permission from the DOT without it.

Hermans asked about mowing 4x a year since milkweed is included with the list of plants and it shouldn't be mowed down. Hermans thinks mowing once a year would be enough. Gordon said they would only be mowing if the plants get too high and affect the panels.

DiMaria asked about property value. Fish said they have done a bit of research and what they found was since the concept is fairly new there isn't a history of it, but it is dependent on the type of solar farm and therefore the studies are inclusive. Some show a slight decrease and some show a slight increase. In general there is not a wide range in decrease or increase of

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property value. DiMaria asked if just being close to the solar project, but not being able to see it, is a consideration in property value. Fish said they are not dismissing proximity but the studies do seem to be inclusive, but in general the type of swing in value is only 1-3% in property values.

Blackburn asked if the conservation easement affects surrounding property values. Replansky said it increases the property value.

The board talked about the decommissioning plan. Stabile feels the board should look at it as potentially being there forever.

Replansky asked if he should prepare a draft resolution for the next meeting. Cavey felt it would be more prudent to hold off until after the public hearing on October 11th. It was decided to wait until after the hearing. Stabile asked for a memo for the conditions, as amended after the discussion tonight.

Stabile asked for a motion to adjourn at 8:45 pm. Motion by Hermans, second by Patterson, all in favor, motion carried.

Respectfully submitted by:

Tricia Devine

Michael Stabile

Via email

To: Town of Pine Plains Planning Board
c/o Michael Stabile, Planning Board Chairman

From: Frank Fish FAICP, Principal
Sarah Yackel, AICP, Principal

Subject: Pulvers Corners Solar – Special Use Permit Criterion and Potential Conditions

Date: September 7, 2023

Pulvers Corners Solar 1 LLC and Pulvers Corners Solar 2 LLC (together, the “Applicant”) propose to construct a solar energy facility (“Project”) located at 454 Bean River Road (“Project Site”) in the Town of Pine Plains, Dutchess County, New York (“Town”). As the Planning Board is aware, the Project requires a Special Use Permit and Site Plan approval pursuant to the Zoning Law of the Town of Pine Plains and Local Law 3 of 2022 (“Solar Law”). The Site Plans were originally submitted to the Planning Board on November 11, 2021, with a number of revisions submitted in the interim, the latest of which was submitted on June 5, 2023. Pursuant to the New York State Environmental Quality Review Act (6 NYCRR Part 617 “SEQR”), the Planning Board adopted a Negative Declaration on the Special Use Permit, Site Plan, and Area Variance for fence height on August 23, 2023.

Based on our review of the application materials, we find that the project complies with the eleven (11) special use permit criteria outlined in the Zoning Code, Article XI (Special Use Permits), Section 275-55: Special use procedures, as follows:

(1): *“The proposed use shall be deemed to be compatible with adjoining properties, and with the natural and built environment of its surroundings.”*

The Project fully complies with all portions of the Zoning Law and Solar Law with the exception of a requirement for a seven (7) foot perimeter fence which is required for compliance with the National Electric Code. The Project’s compatibility with nearby properties and with the natural and built environment of the area was discussed during the SEQR review, which included an assessment of potential visual impacts, potential impacts to water quality and forested habitat, as well as potential impacts from noise and glare. The Proposed Project, a Tier 3 Solar Energy System, is permitted in the R District pursuant to the Town of Pine Plains Zoning Code, and as such, Tier 3 solar installations have been deemed by the Town Board to be a use consistent with the R District, which has a low-density, rural setting. Additionally, the Project presents a low-density land use and has been designed, in part in response to Planning Board and public comments, to be almost entirely screened from public vantage points in keeping with the rural character of the surrounding

natural and built environment. Additionally, the Applicant is proposing a conservation easement to be held by Scenic Hudson to preserve the entire subject property including the proposed Project Site against future development. The Applicant, through the voluntary conveyance of the conservation easement to Scenic Hudson, intends to conserve the Project Site to maintain viewsheds from public roads, protect soils of agricultural significance, and safeguard wildlife habitat. These actions are consistent with the character and rural aesthetic of Pine Plains and the greater Hudson Valley.

(2): *"The site is accessible to fire, police, and emergency vehicles."*

The Project has been designed in accordance New York State Fire Code to ensure accessibility for EMS vehicles. Further, the Applicant verified with the Town of Pine Plains Fire Chief that the Project provides adequate emergency access and received written confirmation of this determination on April 20, 2023.

(3): *"The special use is suitable to its site upon consideration of its scale and intensity in relation to environmentally sensitive features, including but not limited to steep slopes, wetlands, and watercourses."*

The Project does not impact wetlands or watercourses as these features do not occur on the Project Site. Steep slopes comprise a small portion of the Project Site, but steep slope areas will either be avoided or will incorporate erosion control measures pursuant to the NYSDEC's New York State Standards and Specifications for Erosion Control to mitigate any potential adverse impacts.

(4): *"Adequate screening and separation distances are provided to buffer the use from adjoining properties."*

The Project has been sited in areas which are generally not visible from public roads, namely Bean River Road and Route 199, which are adjacent to the Project Site. Visual impacts have been minimized by locating the solar facilities in substantially less visible areas of the Project Site, areas almost completely screened by existing vegetation and topography. In addition, the Applicant is proposing to install supplemental vegetative screening to the existing forested areas to minimize visual impacts to the best extent practicable.

In response to comments made by the Planning Board and the public regarding potential visual and community character impacts, the Applicant voluntarily provided a revised site plan (March 2023) that removed a number of proposed panels from the ridgeline in the southeast section and moved them to interior sections of the Project Site. In doing so, the Applicant provided for retention of additional mature forest area in the southeast corner of the Project site, which increases the retention of natural vegetative screening currently on the Project Site. The Applicant is proposing new vegetative screening (plantings) to be located on the ridgeline approximately 20 feet higher in elevation than the plantings proposed on the previous site plan.

Additionally, the Applicant submitted a revised plan that enhanced the proposed plantings from a single row of 6-foot plantings to a double row of 12-foot plantings. The combined removal of panels from this section, preservation of existing vegetative buffer, increased altitude of the planted vegetative buffer, and the increased height and depth of the planted vegetative buffer impacts will virtually eliminate all visual impacts to private residences located on Skunks Misery Road.

Further, the Applicant submitted a Glare Study, prepared by Colliers Engineering & Design CT, P.C. (DBA Maser Consulting Engineering & Land Surveying), dated May 1, 2023. The Glare Study provided an extensive analysis on the proposed solar array area and determined that it is highly unlikely that glare from the proposed solar project will be problematic in any manner to the surrounding area. At a 25-degree resting angle for the fixed-tilt panels facing south at 180° it was found that no glare is predicted throughout the entirety of the surrounding area.

(5): *“The use will not impact ambient noise levels, generate excess dust or odors, release pollutants, generate glare, or cause any other nuisances.”*

Once constructed, there will be almost no noise from the Project. Any post-construction noise will be due primarily to the inverters or other electrical equipment located on the equipment pads. However, this equipment is located approximately 1,600 feet from the road, inside the system, which will absorb the noise. Any such noise is typically indiscernible from background levels at a distance of 50 feet. Noise generated during construction will be temporary and will be mitigated to the greatest extent possible pursuant to the Construction Noise Mitigation Plan submitted to the Planning Board on April 7, 2023. The Construction Noise Mitigation Plan demonstrates voluntary limitation on the hours of noisy construction activities on Saturdays and Sundays and by reducing construction noise by reducing the amount of wood chipping activities. Additionally, the Project will not produce any dust or odors nor will it release any pollutants. Lastly, the solar panels used for the Project will have an anti-reflective coating per industry standard and the Applicant submitted a Glare Study on May 3, 2023, demonstrating no potential adverse impacts on glare resulting from the Project.

(6): *“Parking demand shall be met on-site, unless alternate arrangements are approved by the Planning Board as may be allowed by this Zoning Law.”*

The Project does not include permanent parking facilities. Parking needs during operation will be limited to occasional operations and maintenance visits (e.g., mowing, electrical maintenance, etc.), and as such, this criterion is not applicable to the Project.

(7): *“Vehicular, pedestrian and bicycle circulation, including levels of service and roadway geometry, shall be safe and adequate to serve the special use.”*

During operation, vehicular and pedestrian traffic is limited to occasional operations and maintenance. The proposed driveways provide adequate access for vehicles to reach the equipment areas. Additionally, the site plans include a turning analysis to ensure that construction and delivery vehicles can adequately access the Project Site during construction.

(8): "The location, arrangement, size, and design of the special use, including all principal and accessory structures associated with same, shall be compatible with the character of the neighborhood in which it is situated."

As noted above, the Project, a Tier 3 Solar Energy System, is permitted in the R District pursuant to the Town of Pine Plains Zoning Code, and as such, Tier 3 solar installations have been deemed by the Town Board to be a use consistent with the R District, which has a low-density, rural setting. Further, the Planning Board took a hard look at the impact of the Tier 3 Solar System on the existing architectural scale and character of the surrounding area and the impact on the existing natural landscape. The Project has been sited in areas which are generally not visible from public roads, namely Bean River Road and Route 199, which are adjacent to the Project Site. Impacts to community character have been minimized by locating the solar facilities in substantially less visible areas of the Project Site, areas almost completely screened by existing vegetation and topography. In addition, the Applicant is proposing to install supplemental vegetative screening to the existing forested areas to minimize visual impacts to the best extent practicable.

The location, arrangement, size and design of the Project as set forth on the Site Plan is compatible with the character of the surrounding neighborhood given the Project's lack of visibility from public vantage points, proposed screening, proposed conservation easement, and its location in close proximity to similar uses (Central Hudson Power Substation).

(9): "Utilities, including stormwater, wastewater, water supply, solid waste disposal and snow removal storage areas, shall be adequate to serve the proposed use."

The Project does not include sewage or water supply and only a limited amount of solid waste removal will be required during project construction. The Applicant submitted a Stormwater Pollution Prevention Plan ("SWPPP") in conjunction with the Site Plan, which demonstrates that the proposed stormwater facilities will be adequate to serve the proposed use. Finally, the proposed access roads are sufficient to facilitate snow removal from the Project area.

(10): "The use shall not impact the character of the Town, neighborhood or values of surrounding property."

See discussion above under item (8).

(11): *“The special use shall not impact historic, scenic or natural environmental features on-site or within the adjoining neighborhood.”*

As discussed during the Planning Board’s SEQRA review, the Project will not have a significant adverse impact on the historic, scenic, or natural environmental features of the Project Site or neighborhood as all such potential impacts have been addressed or mitigated.

Special Use Permit Conditions

To ensure that the Project complies with all of the above requirements, the Planning Board should consider the measures as potential conditions to the Special Use Permit:

1. The Applicant shall construct the Project in accordance with the June 5, 2023 Site Plan.
2. The Applicant shall provide a perpetual conservation easement on the entire 172-acre Project Site as described in the June 16, 2023 Property Conservation Plan. This includes the permanent protection of 70 forested acres and the remaining area as agricultural fields.
3. The Applicant shall receive a variance from the Pine Plains Zoning Board of Appeals to allow for a seven (7) foot perimeter fence as required for compliance with the National Electric Code.
4. The Project shall be designed in accordance with the New York State Fire Code to ensure accessibility for EMS vehicles.
5. The Applicant shall design and construct the proposed stormwater facilities in accordance with the Stormwater Pollution Prevention Plan (“SWPPP”), as revised June 5, 2023.
6. The Applicant shall incorporate erosion control measures pursuant to the NYSDEC’s New York State Standards and Specifications for Erosion Control to mitigate any potential adverse impacts.
7. The Applicant shall limit tree clearing activities to between November 1 and March 31 to ensure potential direct impacts to the Indiana and Northern Long-Eared Bats are avoided.
8. The Applicant shall construct a wildlife friendly fence as shown on the Site Plan to allow small mammals, insects, and other species to freely travel throughout the project site.
9. The Applicant shall provide bat boxes on the Project Site as shown on the Site Plan.
10. The Applicant shall install supplemental vegetative screening to the existing forested areas to minimize visual impacts to the best extent practicable as shown on the Site Plan.
11. The Applicant shall comply with the Construction Noise Mitigation Plan dated April 7, 2023 which reduces construction hours to 8:00 AM to 6:00 PM Monday through Saturday and also requires that noisy construction activities such as tree clearing and grading will only take place on weekdays.
12. The Applicant shall comply with the Tree Disposal Plan dated June 5, 2023, which includes best practices outlined in the May 8, 2023 Tree Survey completed by Hudson Valley Forestry.

13. No herbicides or pesticides shall be used in the operation and maintenance of the Project.
14. The Applicant shall comply with Construction Mitigation for Agricultural Lands (revised 10/18/2019) (“NYSDAM Guidance”), which requires an Environmental Monitor (“EM”) be designated to oversee construction, restoration, and follow-up monitoring in agricultural areas. The EM shall be an individual with a confident understanding of normal agricultural practices and able to identify how the project may affect the site and the applicable agricultural practices with experience with soil penetrometer for compaction testing and record keeping. Following construction, the EM shall determine appropriate activities to return the area to agricultural use. These activities may include decompaction, rock removal, and revegetation.
15. The Applicant shall comply with all requirements of the Operationa and Maintenance Plan dated February 8, 2023 and Decommissing Plan dated November 21, 2023.
16. The Applicant must apply for and receive a Commercial Access Highway Work Permit from the New York State Department of Transportation.
17. The Applicant shall include anti-glare coating on all solar panels as presented in the Solar Panel data sheets provided to the Planning Board on March 28, 2023.
18. The Solar Special Use Permit is conditioned and contingent on Planning Board approval of the Site Plan dated June 5, 2023.
19. No change shall be made on the Project Site to add an improvement or to change the footprint or location of any improvement shown on the Site Plan dated June 5, 2023 approved by the Planning Board unless approval for the addition or change is first obtained from the Planning Board.

Via email

To: Pine Plains Planning Board Work Session

From: Frank Fish FAICP, Principal

Subject: Special Permit and Site Plan Discussion, Carson Power

Date: Wednesday, September 27, 2023

Items for Discussion on the Special Permit:

1. Special Permit Procedures under State Law, Section 2746.
2. What is a Special Permit?
Other Special Permits in Town Law.
3. The Special Permit as part of the Town of Pine Plains Solar Law.
4. Relationship of SEQR to the Special Permit.
 - "This is not SEQR 2.0"
 - What the Negative Declaration covered.
5. BFJ Memo of September 7, 2023
 - Objectives of the Special Permit
 - 19 suggested conditions to approval

Court review

11. Court review. Any person aggrieved by a decision of the authorized board or any officer, department, board or bureau of the town may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceedings shall be instituted within thirty days after the filing of a decision by such board in the office of the town clerk. The court may take evidence or appoint a referee to take such evidence as it may direct, and report the same, with findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The court shall itself dispose of the matter on the merits, determining all questions which may be presented for determination.

Costs

12. Costs. Costs shall not be allowed against the authorized board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

Preference over all civil actions

13. Preference. All issues addressed by the court in any proceeding under this section shall have preference over all civil actions and proceedings.

Note: See Department of State Legal Memorandum LU15, "Can Local Boards Regulate the Hours of Operation of a Business?"

Note: General Municipal Law §239-nn requires that notice be sent to the clerk of the adjacent municipality prior to holding a hearing on a site plan or special use permit for property which is within 500 feet of the municipal line. Notice must be given at least 10 days prior to the hearing.

§ 274-b. Approval of special use permits.

Defines term "special use permit"

1. Definition of special use permit. As used in this section the term "special use permit" shall mean an authorization of a particular land use which is permitted in a zoning ordinance or local law, subject to requirements imposed by such zoning ordinance or local law to assure that the proposed use is in harmony with such zoning ordinance or local law and will not adversely affect the neighborhood if such requirements are met.

Approval of special use permits by planning boards or other administrative bodies

2. Approval of special use permits. The town board may, as part of a zoning ordinance or local law adopted pursuant to this article or other enabling law, authorize the planning board or such other administrative body that it shall designate to grant special use permits as set forth in such zoning ordinance or local law.

Application for area variance made to ZBAs

3. Application for area variance. Notwithstanding any provision of law to the contrary, where a proposed special use permit contains one or more features which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section two hundred sixty-seven-b of this article, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

Conditions on issuance of special use permits

4. Conditions attached to the issuance of special use permits. The authorized board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit. Upon its granting of said special use permit, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the town.

Waiver of requirements by authorized board

5. Waiver of requirements. The town board may further empower the authorized board to, when reasonable, waive any requirements for the approval, approval with modifications or disapproval of special use permits submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in the ordinance or local law adopted pursuant to this section, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular special use permit.

ARTICLE XI
Special Use Permits

§ 275-55. Special use procedures.

- A. Authorization to grant or deny special uses. The Town Board authorizes the Planning Board to authorize the issuance of special use permits in accordance with the requirements set forth in this section. No special use listed in this Zoning Law may be permitted, enlarged or altered unless approved by the Planning Board.
- B. Findings. On application and after public notice and hearing, the Planning Board may authorize, by resolution, the issuance of a special use permit exclusively for uses that require such a permit under this Zoning Law. In authorizing the issuance of a special use permit, the Board shall take into consideration the public health, safety, and welfare and shall prescribe appropriate conditions and safeguards to ensure accomplishment of the following objectives:
- (1) The proposed use shall be deemed to be compatible with adjoining properties, and with the natural and built environment of its surroundings.
 - (2) The site is accessible to fire, police, and emergency vehicles.
 - (3) The special use is suitable to its site upon consideration of its scale and intensity in relation to environmentally sensitive features, including but not limited to steep slopes, wetlands, and watercourses.
 - (4) Adequate screening and separation distances are provided to buffer the use from adjoining properties.
 - (5) The use will not impact ambient noise levels, generate excess dust or odors, release pollutants, generate glare, or cause any other nuisances.
 - (6) Parking demand shall be met on-site, unless alternate arrangements are approved by the Planning Board as may be allowed by this Zoning Law.
 - (7) Vehicular, pedestrian and bicycle circulation, including levels of service and roadway geometry, shall be safe and adequate to serve the special use.
 - (8) The location, arrangement, size, and design of the special use, including all principal and accessory structures associated with same, shall be compatible with the character of the neighborhood in which it is situated.
 - (9) Utilities, including stormwater, wastewater, water supply, solid waste disposal and snow removal storage areas, shall be adequate to serve the proposed use.

- (10) The use shall not impact the character of the Town, neighborhood or values of surrounding property.
- (11) The special use shall not impact historic, scenic or natural environmental features on-site or within the adjoining neighborhood.

C. Application.

- (1) Application form. Application for a special use permit shall be on forms prescribed by the Planning Board. The application shall be submitted to the Zoning Enforcement Officer for consultation and review. Once the Zoning Enforcement Officer determines that the application contains the relevant data required for submission of a special use permit application, the application shall be forwarded to the Planning Board for its review in accordance with the provisions of this article. **[Amended 5-21-2015 by L.L. No. 2-2015³²]**
- (2) Site plan required. A site plan application shall be submitted simultaneous with any special use permit application unless a site plan is waived in accordance with the provisions of this Article XI of the Zoning Law.
- (3) Fees. Fees for the special use permit application shall be in accordance with the standard schedule of fees of the Town of Pine Plains.
- (4) Informal consultation. Prior to submission of a formal application, an applicant is encouraged to meet with the Zoning Enforcement Officer to review submission requirements. An applicant is also encouraged, but not required, to discuss the proposal with abutting landowners to ascertain any concerns early in the application process.

D. Public hearing required.

- (1) The Planning Board shall conduct a public hearing within 62 days from the day a complete application is received. Public notice of the hearing shall be printed in a newspaper of general circulation in the Town at least five days prior to the date thereof.
- (2) Not less than 10 days prior to the hearing, written notice of the public hearing shall be mailed to the owners of all property within 300 feet of any property line of the lot which is the subject of a special use application, as the names of said owners appear on the most current tax assessment roll of the Town of Pine Plains.
- (3) The notice shall include the name and location of the application, the date, place, and time of the public hearing.

32. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

Moreover, the Court added, even if an ordinance sets forth standards, the legislative body "has not divested itself of the power of further regulation, unless the standards expressed purport to be so complete or exclusive as to preclude [it] from considering other factors without amendment of the zoning ordinance."¹⁰ It is important to keep in mind that the generalized police power that resides in a local legislative body sets it apart from other boards, which are severely limited by the standards established by their enabling legislation.

Strict Standards

If a legislative body confers the power to issue special permits to another board, it must provide clear standards to guide the issuing board through the process. These standards may not be so general or tautological as to allow the board unchecked discretion.¹¹

In addition, such a board does not have the residual blanket authority in the interest of health, safety and welfare to deny a permit that a legislative body would have had it retained the power to issue special permits itself. Accordingly, these other boards must strictly comply with the applicable standards.

If an applicant meets them and is nevertheless denied a special permit, the denial will be set aside as arbitrary and capricious.¹²

In analyzing cases dealing with special permits it is critical to bear in mind the board whose decision is being reviewed because judicial standards differ when reviewing an action of a legislative body in granting or denying a special permit and when reviewing a decision of some other authorized board.

In 1992, the State Legislature added a section on special permits to the Village, Town and General City Laws.¹³ The new statute permits local legislative bodies to empower authorized boards to waive any requirements for the approval of applications for special permits.

Boards may exercise these waivers if they find that specific requirements are not in the interest of the public health, safety or general welfare or are inappropriate to a particular special permit. This is significant because, under prior case law, boards (other than local legislative bodies) were not authorized to waive requirements that, in effect, would result in the granting of a variance to a special permit applicant.¹⁴

Under the new statute, if a proposed special use permit contains one or more features that do not comply with the zoning regulations, the applicant may specifically request an area variance instead.¹⁵ (The burden of proof on an applicant for a special permit is much lighter than that for a variance.¹⁶) Municipalities may wish to set forth their policy on waivers by non-legislative boards, either to expand or renounce the concept, by exercising their powers under the Municipal Home Rule Law.

The special permit has been gaining popularity as a land use tool in New York and is frequently employed by municipalities with respect to uses such as schools, libraries, clubs, parking lots, gas-line stations and nurseries.

As a practical matter, presentations made at public hearings and within the state environmental quality review act process often are determinative of the entire application process.

Questions concerning substantial evidence, weight of the evidence, etc.,

are critical to the analysis and the reviewing board in its findings will have to justify either granting or denying the special permit. An applicant who is denied a special permit may commence an article 78 proceeding in which that decision can be reviewed, even if it was made by a local legislative body.

1. See, e.g., Village Law §7-725-b(1).
2. See, e.g., *In the Matter of C.B.H. Properties Inc. v. Rose*, 205 AD2d 686 (2d Dept. 1994).
3. *In the Matter of Texaco Refining & Marketing Inc. v. Valente*, 174 AD2d 674 (2d Dept. 1991).
4. *In the Matter of St. Onge v. Donovan*, 71 NY2d 507 (1988).
5. *In the Matter of Old Country Burgers Co., Inc. v. Town Board*, 160 AD2d 805 (2d Dept. 1990).
6. *In the Matter of Tandem Holding Corp. v. Board of Zoning Appeals*, 43 NY2d 801 (1977).
7. *In the Matter of C.B.H. Properties, Inc. v. Rose*, supra.
8. See, e.g., Village Law §7-725-b(2).
9. See *C.K. Olivers Inc. v. Incorporated Village of Williston Park*, 153 AD2d 548 (2d Dept. 1989).
10. *Cummings v. Town Board of North Castle*, supra (citations omitted).
11. *In the Matter of Tandem Holding Corp. v. Board of Zoning Appeals*, 43 NY2d 801 (1977).
12. *Id.*
13. See, e.g., §7-725-b of the Village Law.
14. See, e.g., *Wisoff v. Amelkin*, 123 AD2d 623 (2d Dept. 1986).
15. Village Law §7-725-b(3).
16. *In the Matter of Carrol's Development Corp.*, 73 AD2d 1050 (4th Dept. 1980).



September 12, 2023

Mr. Michael Stabile
Planning Board Chairman
P.O. Box 955
Pine Plains, NY 12567

Re: Carson Power

Dear Chairman Stabile,

This Office has reviewed the submitted site plan for the above referenced project dated Dec. 23, 2022, and last revised June 5, 2023. The site plan was prepared by Bergmann Architects Engineers Planners and contains thirty sheets in total. The focus of our review has been the Site Plan requirements found in Article XII § 275-62 of the Zoning Code. The following comments are for your use and deliberations in your continued review of this application.

1. The boundary Survey submitted Nov. 15, 2022 should be made a part of the site plan set.
2. It is recommended that the proposed screening depicted on Site Plan sheet C007 be installed prior to the solar panels. If the Board agrees, this should be added into the construction sequence listed on sheet C001.
3. A map should be prepared and submitted illustrating habitats identified in the Significant habitats mapping prepared by Hudsonian for the Town of Pine Plains. This sketch map is required per 275-62 Part A-1-d.
4. §275-62-C (1) -h requires steep slopes and rock outcrops be shown. Previously a map was prepared and presented to the board that identified these areas. That map sheet should be made a part of the site plan set.
5. It is recommended that the Decommissioning Plan provide additional information concerning how often the original sum is increased (annually, biannually?), additionally it should be stated that no credit is



to be taken for anticipated recycling of materials.

6. It is recommended that the operation and maintenance plan, originally submitted, Nov 7, 2022 be reviewed by the board for compliance with the current proposal.
 - a. Will pesticides be used in the O & M?
 - b. What are the specific criteria for inspecting and replacing, if necessary, the proposed screening?
 - c. What are the specific criteria for inspecting and replacing existing vegetation providing screening?
7. Any and all permits from involved or interested agencies should be obtained and submitted to the board prior to final approval being granted.

Based on the above-described review, the plans, as submitted, are in substantial compliance with the Site Plan requirements.

If you have any questions or require additional information, please feel free to contact me at 518-267-3290 or via email at gschmitt@cplteam.com.

Very truly yours,

George Schmitt
Senior Engineering Project Manager