



300 State Street, Suite 502
Rochester, New York 14614
585.434.0790 *phone*
585.563.7432 *fax*
www.zoglaw.com

**VIA FIRST CLASS MAIL AND EMAIL TO edhemminger@gmail.com; rlbplans@gmail.com;
john.robortella@gmail.com**

October 1, 2020

Planning Board
Town of Farmington
1000 County Road 8
Farmington, NY 14425

**Re: Application of Delaware River Solar to construct a 7 MW solar facility at 466 Yellow Mills Road
PB # 1004-18 Preliminary Site Plan
PB # 1006-18 Special Use Permit**

Dear Planning Board Members:

We represent a group of landowners and residents concerned about the impacts of solar development in the Town of Farmington in connection with the following applications by Delaware River Solar, LLC ("Developer" or "DRS") to construct a 7 MW solar facility at 466 Yellow Mills Road (the "Project"):

PB # 1004-18 Preliminary Site Plan
PB # 1006-18 Special Use Permit

I write to inform the Planning Board of a development since its last meeting on the Special Use Permit which is relevant to the Board's consideration of that application.

As discussed in our July 22, 2020 letter, this Board cannot make the findings required by Town Code 165-99(C)(5)(a), (b), (c), (d), (e), (g) and (h) with regard to the Special Use Permit application and therefore must deny the permit. On September 8, 2020, the Town Board adopted Local Law No. 4 for the year 2020, a local law Establishing a Moratorium on Solar Collection Systems and Solar Farms (the

“Moratorium”). While the Moratorium inexplicably does not apply to the Developer’s applications¹, the statement of legislative intent further shows why this Board cannot make the required findings under Town Code 165-99(C)(5). Town Code explicitly states that “[s]hould the applicant, based on the findings of the Board, **fail to meet any one of the criteria or requirements listed above** or those listed in Article VI, either because of the basic nature and design of the project or the lack of appropriate mitigating measures, **then the request for approval of a special use permit shall be denied.**” § 165-99 (C) (6).

For the reasons set forth in this letter, we ask you to deny the Developer’s application for a special use permit.

Town Code 165-99(C)(5)(a) requires the Planning Board to make a finding that **“the Project will not adversely affect the orderly development and character of the surrounding neighborhood.”** In the Statement of Legislating Intent for the Moratorium, the Town Board explicitly states that it “is concerned that approval of expansions to any such existing [Solar PV Collection system] operations or approvals of new operations, under the existing laws, could negatively impact the value and appearance of the neighborhoods in which they would be situate and of the Town as a whole.”² While the Town Board’s finding may not be binding, *per se*, on this Board - - it certainly lends credibility to the notion that approval of the Special Use Permit application would be arbitrary and capricious.

At the August 19, 2020 Planning Board Meeting, Mr. Brand said that public input and experience in reviewing DRS’s application are the basis for this Board’s recommendations and report to the Town Board on the Moratorium.³ Further, this Board, in its resolution and report on the Moratorium adopted August 19, 2020 echoed Mr. Brand’s statement and also stated that the advice of Special Counsel for the Town on the DRS application regarding the proposed draft resolution granting a Special Use Permit with conditions to DRS raised additional issues with the existing solar law which needs further consideration and enactment during the Moratorium.⁴

Despite the fact that there are clearly areas of conflict between the law as written, the impact on the community, and DRS’s application, DRS is not subject to the moratorium. This Board, in acting under the Town’s current solar law, therefore cannot make the required finding under 165-99(C)(5)(a) that there will be no adverse impact to the character of the surrounding neighborhood as the sole basis for enacting a moratorium on solar application is experience and problems gleaned from the law as applied to this project.

¹ Application of moratoria pending as well as prospective applications is a valid use of the Town’s police power. Further, adoption of a moratorium in response to litigation which calls into questions portions of a zoning code is not “bad faith” on the part of the Town. *See, Home Depot USA, Inc. v. Vil. Of Rockville Centre*, 295 A.D.2d 426 (2d Dep’t 2002); *Ronsvalle v. Totman*, 303 A.D.2d 897 (3d Dep’t 2003); *Hyslip v. Sloan*, 124 A.D.2d 1060 (4th Dep’t 1986).

² Local Law No. 4 of 2020, Section 1.

³ August 19, 2020 Planning Board Meeting Minutes, page 11.

⁴ August 19, 2020 Planning Board Meeting Minutes, page 12.

Regards,



Bridget O'Toole

cc: Concerned Citizens of Farmington
Sheldon Boyce, Esq.
Farmington Town Board (via Town Clerk)