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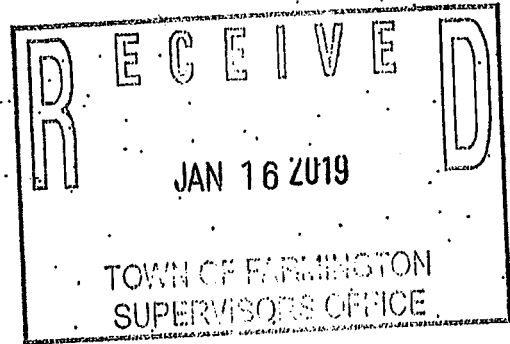
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Ed Hemminger, Chairman  
Town of Farmington Planning Board  
1000 County Road # 8  
Farmington, New York 14425

Re: Farmington Zoning Law Question

Dear Ed:

I am replying to the Planning Board's request for an opinion of section 165-65.3 F. (1)(b)[3] of the Town Zoning Code.

As this subsection [3] is part of paragraph F. (1), this all is read as part of regulations pertaining to large-scale ground-mounted solar PV systems and ground-mounted systems requiring a special use permit.

As a starting point, note that section 274-b of NYS Town Law defines "special use permit" as "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." When a zoning law classifies a particular use as a specially permitted use, it is saying such use is permitted if the stated requirements are met.

As section 165-65.3 F. (1), and its many subsections and subparagraphs, along with other provisions of section 165-65.3, set forth the requirements for an applicant to meet in order to obtain a special use permit, this section of the Zoning Law of the Town of Farmington is written to give the Planning Board the power to grant a special use permit for a large-scale ground-mounted solar PV systems on lands in the A-80 Zoning District and, specifically, on lands with soil classifications of Classes 1, 2, 3 and 4, if the Planning Board finds the applicant has met the many requirements set out in this section of the zoning law.

The Planning Board's specific question relative to section 165-65.3 F. (1)(b)[3] is what determination does this subsection [3] require the Planning Board to make before it can approve such a special use permit. Paring down the wording of subsection [3] to make it more easily readable, the requirement is, "Large-scale ground-mounted solar PV systems . . . shall be

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allowed on soils classified as Class 1 through 4 . . . once it can be determined, by the Planning Board, that there is no feasible alternative." To go with this analysis, I note that subparagraph [a] to subsection [3] establishes additional and specific requirements "Where large-scale ground-mounted solar PV systems are to be located on Class 1 through Class 4 soils".

Given a total read of section 165-65.3, it is evident that the Town Board, when enacting this section, intended to permit, either by right or by requiring a special use permit, large-scale ground-mounted solar PV systems in every zoning district within the Town and, as it pertains to active farmlands located within the delineated Active Farmland Map, on all soil classifications.

Given that soils classified as Classes 1 through 4 can all support some sort of farming activity, farming of some sort will always be an alternative use of any such farmland proposed for a large-scale ground-mounted solar PV system. It is my legal opinion, therefore, taking into account normal drafting procedures and law-writing practices, that the determination subsection [3] requires the Planning Board to make is NOT whether there is a feasible alternative use to the property in question other than the large-scale ground-mounted solar PV system.

Rather, reading this section as a whole, it is my opinion that the determination the Planning Board must make is whether there is a feasible alternative location on the property (or, as it applies to this application, properties) in question to situating the proposed large-scale ground-mounted solar PV system on soils classified as Class 1 through Class 4. It is my further opinion that, if the Planning Board determined the property or properties in question did afford a feasible alternative to situating the system on such soils, that it would not be allowed to approve such project unless it were reconfigured onto higher soil classes or lands not within the Active Farmland Map.

Please let me know if the Planning Board has any further questions or requests for opinions.

Very truly yours,

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