

December 12, 2019

State of New York
County of Fulton
Town of Oppenheim

Minutes of the Oppenheim Board meeting held on December 12, 2019 at the Oppenheim Town Hall located at 110 Route 331, St. Johnsville, NY 13452.

Present

Cynthia Breh	--	Supervisor
Patricia Haberek	--	Councilwoman
Kathleen Montana	--	Councilwoman
John Houle	--	Councilman
Gloria Brys	--	Town Clerk
Dave Rackmyre	--	Codes Enforcement Officer

Absent

Dennis Yost	--	Councilman
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Supervisor Cynthia Breh called the special meeting to order at 6:30 pm with Pledge to the Flag.

Concerning the Solar Project, Ethan Winter, and Mark Sweeney were also present for the Special meeting.

They explained Part #2 which is Identification of Potential Project Impacts and also Part #3 which is Determination of Significance.

Carolyn Johnson was present and she stated that she thinks that the map that the solar company has of the property is made up. Attorney Mark Sweeney said it is not make up, it is a computer visual program. Carolyn Johnson was still trying to get the solar company to move where the panels were going to be, but was told where she wants it moved it is wetland.

Ed Gray was present complaining about seeing panels on 3 sides of his property.

Ethan Winter explained the landscaping of the project and said that trees are going to be planted so the panels will not be so visible.

Motion made by Patricia Haberek and seconded by John Houle to accept Resolution #42 which is Establishing Lead Agency, Classifying the Action, Issuing a Negative Declaration under SEQRA, Granting Waivers, Approving Site Plans and Issuing Solar Farm Permits pursuant to Local Law #1 of 2017 for the Bantam Solar Project. The resolution is as follows:

December 12, 2020 (cont)

**TOWN OF OPPENHEIM TOWN BOARD RESOLUTION #42
ESTABLISHING LEAD AGENCY, CLASSIFYING THE ACTION, ISSUING A NEGATIVE DECLARATION
UNDER SEQRA, GRANTING WAIVERS, APPROVING SITE PLANS AND ISSUING SOLAR FARM
PERMITS PURSUANT TO LOCAL LAW NO. 1 OF 2017 FOR THE BANTAM SOLAR PROJECT**

Date: December 12, 2019

WHEREAS, on or about September 5, 2019, BANTAM SOLAR, LLC ("Bantam"), a wholly owned subsidiary of Cypress Creek Renewables, LLC ("Cypress Creek") (together, the "Applicant"), applied to the Town of Oppenheim Town Board ("Town Board") for a Solar Farm Permit pursuant to the Town of Oppenheim Local Law No. 1 of 2017, entitled "A Local Law Establishing Regulations for Solar Farm Permits Within the Town of Oppenheim" (the "Solar Law") to allow for the development of a ± 5MW solar energy facility, including solar panel arrays, an access road, collection lines and utility infrastructure (the "Project");

WHEREAS, the Project will be located at 457 County Route 151 in the Town of Oppenheim, Fulton County, New York on lands owned by Eric Johnson and Maria Bolastig (Tax Map Nos.: 125.-1-22, 125.-1-23, 125.-1-19.2)(the "Property");

WHEREAS, the Town Board received a Full Environmental Assessment Form ("FEAF") with Part 1 completed by the Applicant;

WHEREAS, the State Environmental Quality Review Act (ECL Article 8 and its implementing regulations at 6 NYCRR Part 617, collectively "SEQRA") require that no agency shall carry out, fund or approve an action until it has complied with the requirements of SEQRA;

WHEREAS, the Project will take place partially within a certified Agricultural District and an Agricultural Data Statement has been prepared;

WHEREAS, on or about October 8, 2019, the Code Enforcement Officer reviewed the application for completeness in accordance with the requirements of Section 7 of the Solar Law, and found it sufficient to be presented to the Town Board for consideration at its next regular meeting on October 15, 2019 and referred a complete statement of the application to the Fulton County Planning Board pursuant to GML § 239-m;

WHEREAS, on October 15, 2019, the Fulton County Planning Board reviewed the application and recommended approval of the application under certain conditions.

WHEREAS, on October 15, 2019, the Town Board adopted a resolution declaring its intent to be lead agency for the purpose of conducting a coordinated SEQRA review for the Project and to notify all potentially involved agencies and farm operations (as defined by NYS Agriculture and Markets Law,

Article 25-AA) within 500 feet of the Project, determined the application to be complete, set a date for a public hearing at a special meeting of the Town Board on November 14, 2019 and ;

WHEREAS, the Town Board identified the following involved and interested agencies and parties:

- NYS Department of Environmental Conservation;
- Town of Oppenheim Town Board;
- Fulton County Highway Department;
- NYS Environmental Research and Development Authority;
- NYS Historic Preservation Office / OPRHP;
- NYS Dept. of Environmental Conservation and
- Fulton County Planning Department.

WHEREAS, on or about November 4, 2019, notice of application and public hearing were delivered to all farm operations (as defined in Agricultural and Markets Law, Article 25-AA) within 500 feet of the Project as well as all adjacent landowners;

WHEREAS, the Town Clerk caused the Notice of Public Hearing to be published in the Town's Official Newspaper on November __, 2019;

WHEREAS, on or about November 11, 2019, a notice of the Town Board's Intent to be Lead Agency was delivered to all Involved and Interested Agencies together with a copy of the application, Site Plans, and the Full EAF;

WHEREAS, on November 14, 2019, the Town Board held a duly noticed public hearing to hear all comments for and against the Project;

NOW, THEREFORE, BE IT RESOLVED, by the Town Board as follows:

1. That the Town Board shall be Lead Agency for purposes of conducting a coordinated, SEQRA Review of the application
2. That the Project shall be classified as a Type 1 action under SEQRA;
3. That, after reviewing the documentation submitted by the Applicant, including the application, site plans, landscaping plan, decommissioning plan and estimate and reviewing the Full EAF for the Project, as well as the testimony given at the public hearing, and reviewing the potential impacts of the Project hereby determines that:
 - a. there will be no significant adverse environmental impacts associated with the Project;
 - b. this Determination of Non-Significance has been prepared in accordance with SEQRA and the Town Board directs Town Clerk to file, publish and distribute pursuant to 6 NYCRR § 617.12 (a)(1);
 - c. this Negative Declaration of Non-Significance under SEQRA is hereby issued for reasons set forth in the attached Exhibit A

4. That Town Board's findings set forth below demonstrate the proposed construction of the Project at the Property satisfies the requirements of the Solar Farm Permit Law:
- a. The Project meets the applicable requirements of the Town of Oppenheim Solar Farm Permit Law, §§ 6 (A) except for the requested waivers discussed below;
 - b. The Project will be located on three parcels each in excess of 10 acres and the solar panel coverage for Project does not exceed 80% of any of the parcels as required under Solar Law §6(A)(2) and (3);
 - c. The Applicant has requested a waiver from the height requirement to allow for the installation of single axis tracking solar panels which at the highest point will rotate to a height of twelve feet (12') in excess of the 8' limitation required under Solar Law §6(A)(4)
 - i. The Town Board hereby finds that the additional height will create no additional visual impacts due the inclusion of a substantial landscaping buffer to be planted along Route 151 and the northwest and southwest portions of the project boundary which will effectively screen views of the Project, and that requiring the lowest elevation of the solar panels to be closer to the ground could cause lost electrical production due to snow cover.
 - ii. The Town Board therefore grants the requested waiver from the 8' height limitation under Solar Law 6(A)(4) for the project
 - d. The project meets all of the required setbacks set for in Section 6(A)(9)
 - e. A 7' fence with one foot of barbed wire for a total fence height of 8' shall be provided for the Project as shown on the plans.
 - i. The Town Board hereby finds this fence configuration satisfies the requirements of Solar Law § 6(A)(5) for the Project.
 - f. The Project requires a waiver from the requirements of Solar Law §6(A)(6) to vary the means of providing a vegetated perimeter buffer by retaining existing vegetation to the maximum extent practicable and through the installation of a substantial vegetative buffer along Route 151 and along portions of the northwest and southwest Project perimeter. Specifically, the landscape plan includes approximately 180' of vegetative buffer on the northwest portion and approximately 380' on the southwest portion of the Project perimeter, as well as a vegetative buffer along entire western portion paralleling Route 151.
 - i. The Applicant has demonstrated that the retention of substantial existing, mature vegetation together with the installation of the proposed 25' deep landscape buffer using species recommended by the Fulton County Planning Board will adequately screen views of the Project along Route 151 and from adjacent properties due to the topography of the site, existing vegetation which will remain and the relative height of the panels

- ii. Additionally, The Town Board hereby finds that the proposed screening will sufficiently screen views of the proposed Project and therefore makes the need for a berm as recommended by the Fulton County Planning Board unnecessary. The Town Board also notes that such additional height for landscaping could cause shading on the solar panels thus impairing the production of the solar array.
- iii. The Town Board hereby grants the requested waiver from the requirements of Solar Law 6(A)(6) for the Project

I The site plans demonstrate that the Project:

- i. is designed and located to prevent solar panels from reflecting solar radiation or glare onto any habitable buildings or adjacent roads and that the solar panels include a non-glare coating and is designed to absorb the maximum amount of solar rays such that it will not misdirect or reflect solar rays onto such habitable buildings or adjacent roads in excess of that which already exists as required under Solar Law § 6(A)(7);
- ii. will minimize the use of overhead utility installations through the installation of underground electrical wiring throughout the solar array area, and that any overhead electrical poles installed will follow industry standards, mimic existing electrical infrastructure, and be placed within necessary easements and in compliance with applicable electrical and town codes as required under Solar Law § 6(A)(8);
- iii. the solar farm modular panels will not contain hazardous materials as required under Solar Law § 6(A)(10);
- iv. the requirements of Solar Law § 6(A)(11) have been met;
- v. no artificial lighting is proposed in accordance with Solar Law § 6(A)(12);
- vi. that any signage will be in accordance with the applicable town requirements and the manufacturers and/or installers identification and appropriate warning signage shall be posted as required under Solar Law § 6(A)(13);
- vii. the Project provides sufficient off-street parking as required under Solar Law § 6(A)(14);

5. The requirements of Solar Law § 6(B) have been met;

- a. The Applicant will cooperate with the local fire departments in developing and updating its emergency response plan;
- b. The Applicant will identify a contact person for the life of the project and update the contact with the Town Clerk as needed;
- c. The Applicant submitted the required documentation to demonstrate the utility has approved the interconnection of the Project;
- d. The Applicant has agreed to and shall maintain the Project in good condition, maintain its access road and coordinate access for emergency services

6. As required under Solar Law § 6(C), a surety bond in the sum of \$406,000.00 for the Project, as set forth in the Decommissioning Plan submitted as part of the application shall be provided to the Town of Oppenheim Town Clerk to be held in escrow, prior to commencement of the construction; and
7. That the Code Enforcement Officer is hereby directed and shall issue a Solar Farm Permit for the Project;
8. That as a condition of these approvals, the Applicant shall submit to the Code Enforcement Officer prior to the issuance of any building permit(s):
 - a. An executed Payment-In-Lieu-of-Taxes Agreement (“PILOT Agreement”) between the Applicant and the Town for the Project in a form subject to the reasonable approval of the Town’s Attorney, which shall include: (i) an annual payment by Applicant to the Town equal to twenty-three percent (23%) of \$5,500 per megawatt AC of installed capacity, (ii) an annual payment increase of 1.75% annually, and (iii) a term of fifteen (15) years unless otherwise earlier terminated.
 - b. An executed Host Community Agreement (“HCA”) between the Applicant and the Town in a form subject to the reasonable approval of the Town’s Attorney which shall require Applicant to make a total payment of twenty thousand dollars (\$20,000.00) to the Town at mechanical completion of the Project.
9. That the Board shall file a report of its final action with the Fulton County Planning Board within thirty (30) days of this resolution addressing the following:
 - a. Soil Conditions: The Applicant provided a map depicting the prime agricultural soils within the project area and demonstrated that such prime soils have been avoided to the extent practicable, that the landowner has advised that the addition of the solar project to his property will enable him to continue and possibly expand his organic dairy operation on the Project site;
 - b. Landscaping Berm and Plantings: The Applicant submitted a detailed Landscaping Plan establishing a ±25’ deep buffer with plantings along its entire frontage on Route 151, ±180’ going east along the northern boundary from Route 151 to where it meets an existing tree line and ± 380’ going east from Route 151 along the southern boundary to screen views from a residence on adjacent property. The Town Board, based on this plan and its knowledge of the area, determined this landscaped buffer to be sufficient to screen views as required under its Solar Law. Additionally, the Town Board did not require a berm to be established as it recognized the concerns of the Applicant regarding potential shading of the system and the relative lack of benefit such a berm would provide due to the effective landscaping to be provided as shown on the Landscaping Plan.
 - c. Species Mix: The Applicant’s Landscaping Plan incorporated the mix of species recommended by the Fulton County Planning Board.

10. That this resolution shall be filed in the office of the Town Clerk and take effect immediately.

PASSED AND ADOPTED by the Town Board of the Town of Oppenheim on the 12th day of December, 2019

Roll Call Vote:	Yes	No	Abstain/Absent
Supervisor Cynthia Breh	X		
Councilwoman Patricia Haberek	X		
Councilman John Houle	X		
Councilwoman Kathleen Montana	X		
Councilman Dennis Yost			X

EXHIBIT A

NEGATIVE DECLARATION

Determination of Non-Significance

Town of Oppenheim Town Board

Dated: December 12, 2019

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The Town of Oppenheim Town Board (the "Town Board"), as lead agency, has reviewed the application on behalf of Bantam Solar, LLC (the "Project"), a wholly owned subsidiary of Cypress Creek Renewables, LLC, pursuant to Local Law No. 1 of 2017 entitled "Local Law Establishing Regulations for Solar Farm Permits within the Town of Oppenheim" ("Solar Law"), and has determined that the proposed Action will not have a significant adverse environmental impact and that a Draft Environmental Impact Statement will not be prepared.

Name of Action: Bantam Solar Project

Location of Action: 457 County Route 151, Oppenheim, NY
(Tax Map Nos.: 125.-1-22, 125.-1-23, 125.-1-19.2)

SEQR Status: Type 1 Action.

Description of Action: The Project consists of the construction, operation and maintenance of a ±5.0 MW (AC) ground mounted solar energy facility to be connected to the local electrical grid along Route 151 in the Town of Oppenheim, Fulton County, New York. The Project will use state-of-the-art solar panels mounted on a system of steel posts and racks. The panels will rotate to follow the path of the sun to the maximum extent possible. An equipment pad will be located near the panels (within the fenced area) with inverters, transformers, data systems and switch gears. The site will be enclosed by a seven (7') foot tall chain link fence with one foot (1') of barbed wire for a total fence height of 8'. The solar system will be located on a leased parcel of ± 45.29 acres.

Reasons Supporting this Determination: Potential environmental impacts associated with the Project are identified in the Full Environmental Assessment Form ("FEAF") submitted by the Applicant for the Project. There are no significant adverse impacts as the Project meets the standards set forth in the Solar Law except in minor instances where waivers/variance from certain standard have been requested. The Town Board compared the Application and FEAF for the Project to the criteria for determining significance identified in 6 NYCRR § 617.7(c)(1) and in accordance with 6 NYCRR § 617.7(c)(2) and (3). As indicated below in the discussion of each criterion specified in 6 NYCRR § 617.7(c)(1), the Project will not have a significant adverse impact on the environment.

- (i) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;**

Consultation has occurred with the New York State Department of Environmental Conservation (NYSDEC). The Applicant submitted a detailed wetland delineation report establishing that the project area contains federal wetlands. The Wetland Delineation report establishes that project location and layout have been made to avoid any impacts to wetland resources. There are no water or sewer services required for the proposal. A storm water pollution prevention plan (SWPPP) has been prepared for the Project. The solar project has no air emissions, except for some fugitive dust emissions and emissions from construction vehicles which are short-term, temporary and reversible. No traffic and related noise impacts will occur as, after construction, the site will be remotely monitored and limited, regular maintenance visits by a single pick-up truck or utility vehicle will occur. There will not be a substantial increase in solid waste production, or a substantial increase in potential for erosion, flooding, leaching, or drainage.

The construction phase for the Project, excluding electrical work to be performed by National Grid, will be approximately 12-16 weeks. During this time, construction and installation of the arrays will primarily occur Monday through Friday, during normal working hours and occasionally on Saturdays. During construction normal site traffic will consist of approximately 50-70 people, some heavy equipment and delivery trucks. The maximum number of deliveries per day is expected to be minimal with most deliveries occurring Monday-Friday, between 8:00 am and 1:00 pm.

Operation of the site will consist of visits for maintenance onetime per month, on average. No staff will report to the site on a daily basis. Typical site visits for maintenance may occur Monday through Friday, during normal business hours. Other visits may occur should any emergencies arise. The typical maintenance vehicle is a pick-up truck, but a larger vehicle may be used from time to time depending on the maintenance being performed. The Project will not result in significant adverse impacts to transportation.

(ii) the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources;

The Project will not result in the removal or destruction of large quantities of vegetation or fauna, interfere with the movement of any resident or migratory fish or wildlife species, adversely impact any significant habitat area, substantially adversely impact a threatened or endangered species of animal or plant, or the habitat of such a species, or create any other adverse impacts to natural resources.

(III) the impairment of the environmental characteristics of a Critical Environmental Area as designated pursuant to subdivision 617.14(g) of this Part;

The Project is not located within or adjacent to a *Critical Environmental Area* as designated under 6 NYCRR § 617.14(g).

(iv) the creation of a material conflict with a community's current plans or goals as officially approved or adopted;

The Project complies with standards set forth in the Solar Law except as identified in waiver/variance requests to allow for the panels for the Project to exceed the height limitation in the Solar Law and the use of the proposed landscaped buffer to buffer views from County Route 151 and adjacent properties. In each instance, the Applicant demonstrated that the proposed project design is equally protective of the environment due to the topography of the land, the distance between the Project and residences on adjacent lands, the import of maximizing the use of the remaining lands by the landowner, and existing mature vegetation.

(v) the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character;

The Applicant submitted visual simulations demonstrating the minimization of visual impacts due the proposed landscaped buffer, panel height and topography of the parcel. These elevations demonstrate that the Project will preserve the character of the Town and will not impair the character or quality of important historical, archeological, architectural, or aesthetic resources, or of existing community or neighborhood character, and provides increased opportunity to preserve those areas.

The Project will include the installation of solar panels within the ±43 acre limit of disturbance all of which will have an anti-glare coating designed to absorb the sunlight. The Town Board considered potential glare and determined based on the glare information provided in the application as well as the distance between the panels and the nearest receptors and determined the Project presents no material glare risk to the community, neighboring view sheds or roadway.

The project area is not in an archaeologically sensitive area and there are no historic resources in the project area. The State Historic Preservation Office has been consulted and determined the Project will not have an adverse impact on archaeological or historic resources.

(vi) a major change in the use of either the quantity or type of energy;

The Project will result in the generation of renewable, solar energy produced from the solar array. This energy will feed into the National Grid electrical grid and will be utilized to offset the utility bill of National Grid customers under a Community Distributed generation project and/or an off-taker pursuant to a Power Purchase Agreement. The operation of the Project should not result in adverse impacts to energy.

(vii) the creation of a hazard to human health;

The solar panels contain no hazardous substances. The Project will not create a hazard to human health.

(viii) a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses;

The project area is largely rural area, consisting of some farmland, open fields and woodlands. The area is not part of an adopted open space plan.

(ix) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;

The Project will not attract a large number of people to the Project site.

(x) the creation of a material demand for other actions that would result in one of the above consequences;

The Project will not create a material demand for other actions that would result in one of the above consequences.

(xi) changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment; or

The Project will not result in changes in two or more elements of the environment which, when considered together, would result in a substantial adverse impact on the environment.

(xii) two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision.

The Town Board has evaluated the Project's impacts individually and cumulatively under the Solar Law and determined that the Project will not result in a cumulative impact that meets the criteria set forth in the SEQRA regulations.

For Further Information:

Contact Person: Cynthia M. Breh
Town of Oppenheim Town Supervisor
Address: Town of Oppenheim Town Hall
110 State Route 331
Saint Johnsville, New York 13452
Telephone Number: (518) 568-2837

With no further business on a motion by Councilwoman Haberek and seconded by Councilwoman Montana the meeting was adjourned at 8:10 p.m.

Respectfully submitted,
Gloria J. Brys, Town Clerk