

MINUTES OF THE TOWN OF BINGHAMTON ZONING BOARD OF APPEALS MEETING NOVEMBER 8, 2021 AT 6:30 PM IN THE TOWN HALL, 279 PARK AVENUE, BINGHAMTON, NY.

Members Present: Chairman Gerardo Tagliaferri (via Zoom), Theresa Taro, Mark Bordeau, Sara Reifler, Tom Bensley, Alternate Member Tim Cooper

Others Present: Alan Pope and Rose Pope (Town Attorneys), Elizabeth Rounds (Town Supervisor), Chelsea Mozley (ZBA Secretary), Dean Nye (ZBA Liaison), Nick Pappas (Code Officer), Shannon Soboleski (Applicant), Zachary Soboleski (Applicant’s Son), Troy Hopkins (Resident), Lluís Torrent (Atlas-Applicant), John Watson (Atlas-Applicant), David Brennan (Atlas-Applicant- via Zoom), Robert Haskell (Applicant), Residents Tami Zebrowski-Darrow, Michael Bensley, Bill Miller & Bill Miller Jr., Gary & Barbara Sanford, Carolyn Cavallaro, Ruth McCormick, Charrie Stymacks, Gary Taubar, Joan & Stephen Zahorian, Teresa Quain, Anthony Restin, Lisa Young (via Zoom)

Alan Pope called the meeting to order at 6:32 pm. He gave an overview of the previous meeting for the area variance application at 496 Park Ave and advised that Mr. Hopkins did not provide his abstract or deed within the timeframe that was allowed. He advised that the board could then provide the motion for the Zoning application.

Member Bordeau made the motion to approve the application. Chairman Tagliaferri added the condition of combining the two lots into one deed. Member Taro seconded the motion.

Alan Pope asked for a roll call for members who attended the October 25th hearing:

Chairman Tagliaferri: Yes Member Reifler: Yes
Member Bordeau: Yes Member Taro: Yes

Alan advised the property owner that the application was approved and that they will receive a letter in the mail to confirm.

Mr. Hopkins stated that he had provided additional information. Chairman Tagliaferri advised that the additional information that Mr. Hopkins sent was provided to all the members, but there was nothing in the information that would change the decision.

Alan Pope closed the hearing at 6:35 pm. He then advised that meeting would go on to the second case on the agenda.

ATLAS Renewables LLC has applied for a use variance from the Zoning Code of the Town of Binghamton Chapter 240-64.A.(1), to utilize the Public Utility Standard in order to build a community solar farm, Tax Map No. 192.01-2-18.

Alan stated that Atlas would first provide their presentation to the board, and that the board members could ask questions throughout or after the presentation. The meeting would then be opened to the public; it is not a debate but is a place to provide comments and concerns. He advised that the hearing is being recorded and after the meeting a list will be comprised by the board so that Atlas may address any questions and concerns at the next meeting. He also stated there was a low likelihood of a decision even at a second meeting, and that there may be three or more meetings in total to come to a decision.

He then went over the ground rules of the hearing for the public: everyone should be respectful of Atlas and the board, the board members need to ask questions to get the full breadth of the case, when a resident is speaking it should not be about being pro or con solar, only one person should speak at a time and that there would not be a vote this evening. Alan advised that Atlas is looking for an approval of a Public Utility Variance; he then gave a brief overview of the differences between Use Variances and Public Utility Variances. He stated that the burden of proof is on the applicant, to prove to the board that they should qualify for the variance. He asked Secretary Mozley to confirm if all required postings and letters to the neighbors were sent out; she confirmed that the postings were completed on time and that all letters were mailed out with no correspondence received back from the neighbors. He also stated that Member Reifler had chosen to recuse herself from the hearing as she is a neighbor of the property, and that Tim Cooper would be joining as the alternate Member. Alan then asked Atlas to present their case.

Luis Torrent opened the Atlas presentation by introducing himself, John Watson, and David Brennan. He stated that they would go over the summary of the project, the location of the project and why they were applying for the variance. Luis first showed a map of the Town of Binghamton with the property for the proposed project indicated. He stated that the property in total is about eighty acres, with the project needing a total of 23-24 acres. In the second map, he explained how NYSEG has three substations within the county and the first two substations do not have room for additional capacity- only the third substation would have room for the solar farm. Member Taro asked for the addresses of all three substations, Luis stated that Atlas will provide them. He explained that the substation that they would like to go off only has capacity for a total of 7 Megawatts, so there would be no further capacity for additional energy providers/projects in the future. He also stated that NYSEG has no discrimination towards any solar company, so that would not be an issue. The next picture that he displayed was the county and which parts have access to solar currently, and which do not.

David Brennan gave a presentation for the legal standpoint/perspective as to why Atlas is applying for the Public Utility Variance. He explained how they could not apply directly to the planning board, as the property is within an area that does not allow solar. He explained how with a traditional use variance there are four factors that need to be proven, and it would be exceedingly difficult for them to do so. He advised that New York State is committed to having 70% clean energy by 2030, and there has been a large push for renewable products. He also explained how with solar, it is like antennas with cell towers, that they need to be in close proximity to make the connection feasibly. David stated there was no expectation of a decision at the meeting at that they want to provide information to answer any questions for the board so that they can evaluate and decide. He also stated they want to be able to limit the impact on the community with this project.

Luis continued with his presentation by explaining the choice of the parcel of land. There were only two properties in the town that would qualify for a solar project- the one that is being proposed, and property directly next to the chosen one. The property that was not chosen was excluded due to the slope of that land.

For the chosen land, he explained how it was unforested, but some foresting has been completed by the property owner. The chosen portion of the land is relatively flat- if a solar farm were constructed on sloped property, there would be a visual impact. If they construct in the center where they want to, there would be no visual impact. The solar modules would be at a maximum height of 10-12 feet, and all the trees would be kept on the perimeter of the property- the trees are 15-20 feet high so they would obstruct the view of the solar farm.

Lluis explained that the solar modules produce no sound at night, and only during the day when the power is being converted. He stated that the noise level would be like that of an air conditioner and with the nearest neighbor being more than seven hundred feet away from the farm's location, they would not be able to hear it.

He went on to talk about the environmental impact of the project. He stated that it was better to use the forested land rather than an agricultural farm. The solar farm over time would save an amount of CO₂ that would be equivalent to 10,000 trees, and it would be producing electricity. The trees could be used for lumber and the land could be used for foresting after the project concluded- which would be between 25-35 years. If fracking were done, the land would not be able to be used for foresting afterward.

Member Taro asked about foreseeable drainage issues. Lluis stated that the solar farm would not cause runoff or drainage issues as the water can be absorbed by the ground/grass underneath the solar modules. Member Bensley asked for clarification- that with twenty-four acres of land being cleared, there would be no additional drainage issues? Lluis advised that with calculations and analysis there would not be. Atlas would be able to provide additional information at the next meeting following NYS calculations.

Member Taro stated that there is a farm at the bottom of the map next to the property and asked if the property owner would be able to see? Lluis stated a 3-D map could be provided. Member Bensley asked if the solar farm would be viewable from other parts of the town. Lluis stated that they would be able to show from different perspectives, not just the direct neighbors. He also reiterated that the trees on the outside of the solar farm would be kept obstructing the view.

Lluis stated there are benefits to having the solar farm, with one of them being that taxes would be paid to the town. The construction of the farm would take about 4-6 months to complete, and 50-70 local people would be employed at the time. After the construction and during the life of the farm for the 25-35 years, there would be mostly no cars at any time, as the farm would be managed remotely, with an operator coming to make repairs or complete maintenance tasks. Another benefit would be that Atlas would go into the school district and educate the students about renewable energy, they would also be able to provide internships and scholarships. Member Bensley asked for clarification about which taxes would be paid; John Watson advised it would be both property and school taxes.

Lluis stated that for the residents, they would have the option to enter a community solar program, with a 5-10% savings if they were to connect to the program. John advised that there would be 60+ local jobs created during the construction phase. Chairman Tagliaferri asked what construction will involve- how will they connect, what infrastructure is need, will the construction be visible. Lluis stated that the entirety of the construction would be completed and contained within the parcel. Chairman Tagliaferri asked for clarification that no additional equipment/transmitters would be needed other than what is provided and used by Atlas, the construction company and NYSEG? John advised that there would be five telephone poles for the equipment, but they would also be on the land.

Member Bordeau asked if there are any similar projects in New York that members could look at for reference. Lluis advised that there are none yet, but there are three pending. Member Bordeau asked if Atlas had decommissioned any projects since their company began that the members could reference. Lluis advised there were none in America yet, but in other countries. He advised that he could provide links to show how the decommission project works. Member Bordeau asked what is the guarantee that in 25-35 years from now the project will be decommissioned? Lluis stated that out of the income that is provided, after ten years money goes into a trust fund for the decommissioning. Member Taro asked if there was any data on how the project would affect the property values for neighbors. Lluis advised that can be +/- 3%, depending on location and visual impacts.

Chairman Tagliaferri asked how many houses would the solar farm supply? Lluis advised 1200 households. Chairman Tagliaferri asked if there is a guarantee that it would only be providing energy for the Town of Binghamton? Lluis advised that other locations cannot be prevented, but priorities can be established for the town residents. John advised that there could be a promotional period in the beginning to get town residents to sign up, and if all 1200 spots were filled, there would be none to go to anyone else. If not all the spots were taken, others could sign up. For example, someone could sign up for a wind farm in Niagara for a discount even though they do not live there. Member Bensley asked if anyone could currently sign up for other farms? John advised yes, but there are waiting lists for many of the options.

Member Taro asked if the state could provide financial assistance to upgrade the current electric infrastructure. Louis advised that the state only helps with big towers with robust electricity, not for smaller areas like this. It is also not in the records for NYSEG to upgrade the existing substations in the area, as it would cost 1-4 million dollars per mile.

Member Bensley asked how many farms Atlas currently has in the country. Lluis advised that once they establish the solar farm, it is then maintained by another company and that they currently do not have any projects operating. Member Bensley asked what the personal gain for Atlas as a business is. Lluis advised that they sell their projects as assets based off production. Member Bensley asked what is the return on an \$8.7 million project? Lluis stated he could not provide that information. Member Bordeau ask of all the projects they worked on in the world, have they all been sold. Lluis advised yes, they have all been sold. He also advised that he used to construct the projects and is now trying to work on projects here in the US.

Chairman Tagliaferri asked about the Rosenberg standard and the aspects about regulations, who is Atlas regulated by if they have no current projects? David Brennan stated that the regulations pertain to the industry as a whole, not just a company specifically. He stated that solar farms are routinely developed, built, and then sold. Lluís also advised that they are subject to the same regulations as all other energy providers, like NYSEG and other providers in NY.

Chairman Tagliaferri stated there were no other questions for now. Alan Pope opened the meeting to the public and advised that people should address the board members. He also stated that everyone should ask their questions so that a list can be provided to Atlas to answer at the next meeting. If multiple people have the same concerns, please advise. Lastly, each person should try to keep their time to 2-3 minutes.

Tami Zebrowski-Darrow stated that she did some research ahead of the meeting, although it was mostly in the states of CA and MI but would like to bring up some questions and concerns. She said: although the solar farm would be 700+ feet from the neighbors, what about in the winter when there are no leaves? Will the farm be visible then? The county had dug a ditch at the edge of the property in the recent past and there has been drainage/flooding issues on Lillian Drive since then. Her main reasoning against the project are environmental questions- has an environmental impact study been done? Has there been a study on air traffic/will there be an impact on visibility? Will property values degrade? Will there be an affect on the existing water tank for the surrounding properties? What about electromagnetic radiation from the solar panels? What about those with electromagnetic sensitivities? Would the surrounding habitat degrade? Would heat from the panels kill the birds and bees? Will hazardous materials be used to clean the panels/modules? Will the cleaning agents come to the houses through drainage? What if a panel breaks, does it go to our landfill, will our landfill accept it? Will there be traffic issues during the construction period? All her questions were submitted to the board in writing.

Michael Bensley stated that Atlas' business is sighting and designing the solar farms. They are not a utility; they are more of a construction company. He also stated how the company would not disclose their Return on Investment for the project.

Bill Miller stated that he owns the farm that is adjacent to the field and is visually protected on the West and the East side. The farm looks down on the proposed property and that in the winter when the leaves are gone, he would be able to see the farm. He asked if additional trees could be added. He is concerned about property value and that an additional visual buffer may help. Runoff already does affect his property and he has heard of other solar farms in the area creating run off issues. What about decommissioning the farm? Would the property be encompassed by a fence? How would that affect the wildlife/deer?

Gary Sanford stated he is concerned about the traffic and road conditions from the trucks during the time of construction. Atlas is a construction company- to whom would they be selling it? We cannot have a conversation with them as it is not yet determined. This seems like a significant benefit to the Town to receive the additional tax payments.

Robert Haskell- the owner of the proposed property had a question for Alan Pope. He wanted clarification that any solar project over twenty kilowatts need to go through the Zoning Board? Alan advised that is correct, anything larger is not permitted due to the zoning in the town. He stated that if Atlas were to be approved for the Public Utility Variance, they would then need to go to the Planning Board. Robert stated that he wanted to bring up three points: 1) There is a Public Light utility on his property currently that he provided right of way; 2) There were water tanks placed on Bill Miller's property for the town with no issues by Mr. Miller; 3) Mr. Haskell sold a piece of his property to the town for \$1 for a water pumping station to increase the water pressure on Lillian Drive.

Bill Miller stated that he would like to clarify that his property for the water tanks that was sold to the town was not by choice, but he has a good relationship with the town.

Lisa Young stated that NYSEG cut down trees on her property without consent. In this instance can there be something stated to prevent the logging of trees by the property owner so that the view remains obstructed. Alan Pope stated that the town would investigate it or add it to the list of questions. Lisa stated she is not only concerned about visual issues, but also additional drainage issues caused by deforesting.

Robert Haskell wanted to provide additional input that the property was logged around 1999 and there were no drainage issues. He had additional logging done this year with no issues.

Bill Miller Jr. asked for clarification of the variance and what it can be used for if approved. Alan Pope advised that it can only be used for what is applied for at the time and that it runs with the land.

Gary Sanford asked if the application is for the entire property or only for the twenty-four acres that is being proposed. Alan stated he would add that to the list of questions. Lluís stated that if the variance application were approved, they would have to keep the project at only what was then approved by the Planning Board.

Supervisor Rounds asked for clarification about the Public Utility Variance and would it stay with the property or go back once the project was completed. Alan stated that a stipulation could be provided that once the solar farm project was completed the right would go away.

Bill Miller Jr. stated he wanted it noted that Atlas would not be servicing the project. He also asked if Atlas vets the companies that they end up selling the projects to.

Alan Pope advised that the next meeting would be on December 13th at 6:30 pm, and again on January 10th at 6:30 pm, if needed. He wants to hold the public hearing open so that additional input may be provided. Residents may submit additional questions to the town clerk until November 30th, and all questions will be provided to Atlas by December 3rd to give them time to get the answers together. He concluded the meeting at 8:37 pm.

Respectfully submitted,

Chelsea Mozley
Zoning Board of Appeals Secretary

