

MINUTES OF THE TOWN OF BINGHAMTON ZONING BOARD OF APPEALS MEETING DECEMBER 13, 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, 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), Lluís Torrent (Atlas-Applicant), John Watson (Atlas-Applicant), David Brennan (Atlas-Applicant- via Zoom), Robert Haskell (Applicant), Residents Gary Taubar, Tami Zebrowski-Darrow, Carolyn Cavallaro, Gary Sanford, Barbara Sanford, Ruth McCormick, Sara Reifler

Chairman Tagliaferri called the meeting to order at 6:30 pm. He asked that if there were any changes needed to the meeting minutes from the Soboleski hearing; as there were none, the minutes were approved. He then turned the meeting over to Alan Pope.

Alan explained that there were a list of issues and questions submitted by members of the ZBA and public from the November meeting which had been provided to Atlas to address. Some of the questions asked applied to the SEQR review, which will be gone over at the January meeting. He stated that the 239 Review by Broome County was also completed and most points would also be covered under the SEQR review. He asked ATLAS if they were okay with going over the non-SEQR items at the current meeting and then the rest at the January meeting, in which David Brennan agreed. Alan then advised the members of Atlas to address the list of questions.

1) Public Utility Variance- has Atlas Been Approved For Any Prior Such Variances.

Lluís Torrent advised that they have not. They are pursuing projects at other towns at the same time, but they are not at that stage yet. He explained how wind farms have been approved in New York State under the variance, but Solar has not yet. He stated that solar is less intrusive, less noisy, and better for the environment. Alan Pope asked if any of the other towns that they are applying with are in the Southern Tier, Lluís answered no. Alan also asked if Atlas was aware of any cases in the Southern Tier in which the variance was granted, Lluís answered that none have yet.

2) Confirm Atlas Application is for a 5.0 MW Solar farm. Does Size impact Variance Request. Does the proposed size trigger Public Service Commission oversight.

Lluís advised that the current application is for 5 MW, but they may possibly want to apply for an addition 2.3 MW. John Watson advised that the size of a project does not cause the need for oversight by the Public Service Commission, it depends on if the project is for a solar community program.

- 3) Is Atlas a Public Utility Company or Equivalent per Public Service Law. Explain.

David Brennan explained that Atlas is not a public utility like NYSEG or National Grid, but they do qualify under town law 118 as a market participant/energy provider. They are subject to the Public Service Commission Oversight.

- 4) Has Atlas had any correspondence or applications or waivers with the Public Service Commission related to this proposed Solar Farm. Explain.

Lluis Torrent explained that Atlas is registered as a company and has the documentation prepared but will not submit the paperwork until the project is approved by the town.

- 5) Is or will Atlas be regulated by the Public Service Commission. Explain.

David Brennan advised that Atlas is regulated by the Public Service Commission (PSC)- that the PSC has the authority to oversee all energy providers and provide the regulatory framework. He explained that a Public Utility is an entity that supplies services to the public, such as water, sewer, electric and gas.

- 6) Is Atlas Solar farm providing electricity directly to local Town residents. Please explain the nature and size/extent of benefit directly to the Town.

Lluis Torrent stated that there are 3 substations in the local area, with one of them being in the Town of Binghamton. The solar farm that is being proposed would connect to that substation in the town and provide electricity for approximately 1,000 homes, at a slightly discounted rate for participating in the program.

- 7) Is Atlas proposing a direct benefit to the Town in the form of a Host Community Agreement, Road Use Agreement during construction, or other alternative direct benefit.

John Watson advised that there are no agreements, but instead some alternative proposed benefits, such as scholarship funds, internships, and apprenticeships for STEM students within the school district.

- 8) Is Atlas contending there is some shortfall in serving the electricity needs of the Town. Explain.

Lluis Torrent advised that there is no public information indicating a shortfall. He stated that although there is no shortfall indicated, there is additional capacity at the substation in the town, which is why the project is being proposed. Member Taro asked for clarification about how many substations in the area have capacity. Lluis advised that there are two- one in the town of Binghamton and one in the town of Vestal which is unavailable.

9) Is Atlas Solar Farm providing electricity only to the NYSEG grid. Explain.

Luis explained that yes, NYSEG would be the only Public Utility that would be receiving the energy from the project.

10) Has Atlas had any correspondence or applications or waivers with NYSEG. Explain.

Luis advised that yes, Atlas has applied with NYSEG, as they are required to for any project with the provider in the area. Atlas was advised to proceed with their preliminary study and submitted to NYSEG. NYSEG responded with conditions and Atlas now has an interconnection form agreement with NYSEG.

11) Explain details of proposed energy connection of Solar Farm to substation. How exactly is the NYSEG Inter-Connection made and more details on the five (5) poles to be connected- where located; who owns; who pays for.

Luis displayed a diagram to illustrate where the poles will be and advised that copy of the diagram may be provided on request. The five poles for the point of connection would be within the 80 acres of the property owner's land, and all connections and equipment would be on the land.

12) Is the variance requested needed to render safe and adequate service or can Atlas do so without the Public Utility Variance.

David Brennan advised that yes, the variance is needed. If the variance is not granted, then the project cannot happen. There is no other place in the town for an alternative location.

13) Is the Atlas Solar Farm electricity and essential service to the Town. Explain.

David advised that the electricity generated from the project qualifies as an essential service. Wind cases have been around for more than ten years and have qualified.

14) What are each of the compelling reasons that Atlas needs this Public Utility Variance.

David advised that New York State has committed to 6 GW of clean energy by 2030. There is a need for sustainable energy. Current zoning laws do not allow for opportunities for the solar farm. Chairman Tagliaferri commented that this is a small project being proposed, and there would be many smaller projects needed to impact the need for clean energy. David Brennan stated that there are larger projects 10-15 times the size of this proposed project, but the need will be met by a combination of many projects. Luis Torrent stated that the call for clean energy is a global trend, not just within New York State; the transition to accessible clean energy will take time, it cannot be produced all at once.

- 15) Atlas has stated that Atlas is only in the Town to build the proposed Solar Farm and then Atlas sells the Solar Farm for a profit. Town requests details on how that process works and relation to the public utility variance.

John Watson addressed the question by explaining how their company works. Atlas is a company that develops the project with many partners- the landowner, bank, construction company, laborers, equity partners and operating/maintenance companies. Atlas has created Binghamton Solar LLC that will be functioning throughout the life of the project- this is required by the banks to fund a project like this. Atlas sells membership units to buyers, and if all are sold, then the business goes to those owners. If not all units are sold, Atlas would keep the business and hold on to the project for the life of it. David Brennan stated that the company and the business would not leave or abandon a project, that it is fully maintained over time. Member Bensley asked for clarification for no recourse- how would the town address a problem in the future if the project was sold. Lluís Torrent advised that if there was anything wrong, the financial backers (banks) would be responsible. Supervisor Rounds asked if what in 25+ years when the project is decommissioned, would the land remain Commercially Zoned? David Brennan clarified that the Public Utility Variance is not to re-zone, but only for the approval of the solar farm. Alan Pope also clarified that the application is not to re-zone, it is for a specific use. Once the use is discontinued, the variance would go away. John Watson reiterated that there is recourse if there is no upkeep of the projects- whoever owns the company would want to maintain the property for their own benefit and that the town could cite the company if there were violations.

- 16) Why is the Atlas proposed Solar Farm necessary- include specifics of necessary for whom.

Lluís Torrent explained that with New York State committing to 70% clean energy by 2030, all towns should do their part to help with the energy goals.

- 17) Are there any alternative viable locations in the Town for this Atlas proposed Solar Farm. Explain why Town of Binghamton.

Lluís advised that all parcels in the town were analyzed and there is no other option.

- 18) Are there any alternative viable locations in the Town for this Atlas proposed Solar Farm. Does Atlas have other pending applications in New York State.

Lluís advised that there are no other sites in the county that are an option. He stated that there are some applications pending in New York State, but they are with Planning Boards.

- 19) Qualifying Parcels- What size/acreage to be developed? What size/acreage for the Public Utility Variance. 80 vs 24.

Lluis stated that the proposed amount is 22-24 acres out of the 80-acre parcel. He also stated that if they were to later apply for the expansion of the additional 2.3 MW, there would be additional land needed. John Watson clarified that the lease is for a total of 36 acres. Alan Pope stated that there needs to be clarification of what land is being used. John Watson referenced the map and explained that the rest of the 80 acres is not conducive for additional panels/expansion due to the topography.

- 20) Explain Atlas' Analysis for the three (3) location in Town of Binghamton; Substation capacity- increased substation capacity; Other substation locations Atlas considered, specifically 81050 substation. Reasoning for Atlas to discount other locations.

John explained that there are three substations in the area- Town of Binghamton, Town of Vestal and City of Binghamton. Once the capacity at a substation is reached, it would be very expensive to upgrade- one in Broome County had an estimate of \$2,000,000 to upgrade, which would not be feasible. Member Taro asked if the substation in the Town of Vestal would be an option, Lluis Torrent explained that it is not due to a submission from another applicant. He also explained that the substation in the City of Binghamton is not an option, as there is no open land near it. John Watson explained that all options were reviewed, and this was the only place where they would be able to have the solar farm.

- 21) Is Atlas proposing or intending to propose a battery storage use in connection with the proposed Solar Farm.

John verified that it is not being proposed.

- 22) Decommissioning Fund or Bond- Atlas mentioned a 10-year period. See Solar Law. Is Atlas proposing a variance of what is required by the Town's Solar Law. Explain.

John explained that a bond is installed after ten years into the lifetime of the project. They would want the town and residents to be comfortable with the plan.

- 23) Tree Cutting Impact. Explain what Atlas sees as impact or no impact.

John advised that most of the large trees were already cut by the landowner, which had already been approved and permitted on the landowner's behalf. The remaining area is brushy. The CO₂ savings would be equivalent to 10,000 savings.

- 24) Visual impact. Explain what Atlas sees as impact or no impact. Atlas indicated it could produce 3D Schematics to assist the ZBA. Provide any mitigation details regarding glare or other visual impacts.

John explained that there was a study done over multiple seasons which concluded no visual impact. Atlas spoke to Mr. Miller and committed to put a double layer of evergreen trees to obstruct their view. For solar farms the glare issue is at a minimum for planes. There are multiple airports throughout the world that have solar farms next to them.

- 25) Noise Impact. Atlas discussed this but provide details of what Atlas sees as impact or no impact.

John explained that expect for the inverter, the solar farm is silent. The inverter for this project is 500+ feet from another parcel, and the noise level is equivalent to an air conditioner- this should not be heard by anyone else.

- 26) Drainage Impact/Issues. Atlas discussed this in general for construction and operation periods but provide details what Atlas sees as impact or no impact, and how any mitigation would be proposed. Atlas mentioned it has calculations- can those be provided and explained.

John advised that their engineering firm did a SWPP and concluded that the farm would actually improve drainage.

- 27) SWPPP Issues. Explain what Atlas sees as impact or no impact. Please speak to any runoff impacts and mitigation.

John explained that the study concluded there would be a positive impact. They would plant natural grasses to improve drainage. Chairman Tagliaferri asked how the access road would affect the area. Lluís Torrent explained that they would be installing a gravel road, it would not be paved.

- 28) General Neighborhood Impact. Explain what Atlas sees as impact or no impact on specific neighbors, neighborhood, wildlife, flora, or other. What buffers does Atlas proposed or explain if not required.

John Watson explained that there would be a fence around the solar farm, which would be a minimum of 50 feet from the parcel boundary. The fence would be comprised of wired mesh, not chain link; small animals would still be able to get through. There would be wildflowers planted. Birds like the type of solar farm that would be constructed, it is not intrusive to them. Traffic would increase slightly during construction, but there would be limited hours throughout the day. The traffic would consist of a few delivery trucks, piledrivers for the foundations and ground clearing equipment. Construction would take about 4-6 months.

29) Operation & Maintenance Impact/Issues. Explain what Atlas sees as impact or no impact. How does the operator keep the site maintained at an acceptable level visually speaking? Explain fencing around the solar farm in relation to the Town code.

John advised that the site would be managed by a company that only maintains solar farms. An operator would go onsite to test equipment and laborers to clear and maintain the grounds. There would be no pesticides or herbicides used. The solar farm would be monitored in real-time via a remote computer. There would be no outages if the farm was down. This is all standard operating procedure for a solar farm.

30) Atlas spoke about other Atlas Projects. Provide details, including Atlas operation of such other Projects.

John stated that Atlas started developing projects in 2019. The projects are with multiple planning boards and could provide references. They also have projects in other countries and could provide references.

31) Health Effects/Impacts. Explain what Atlas sees as impact or no impact.

John advised that with how the solar farm is being proposed, there would be no health effects. The modules are made of PVC, which will not leech toxic chemicals or heavy metals. There would be no pesticides or herbicides used. The solar farm will actually improve the air quality. There would be no impact from electromagnetic frequencies, household items provide more than the solar farm.

32) Temporary Construction Period. Explain what Atlas sees as impact or no impact. Does Atlas propose any mitigation to nearby residential areas during construction. Explain.

John advised that the construction period is expected to last 4-6 months. There would be a limited increase in traffic. Roads and grounds will be documented before and after construction. If there any issues arise from the construction, they would pay to correct them.

33) Access to Parcel. Need to Understand Ownership/Easements. It appears there are access issues as proposed.

John stated that per their engineering firm, tax maps and surveys, there is an access point. There are two points where there is access to Forest Hill Road and Sanford Road directly to the property.

34) CO2 savings- Atlas mentioned there are savings. Provide proof of same.

John stated that there is savings of approximately 10,000 trees.

35) Permanent Employees- explain/details. Provide details on systematic security, repair and maintenance of Town and Neighbors can expect.

John explained that there are about 120,000 man hours after construction. There would be a plan for four full-time employees during the life of the farm- operations, security and maintenance. There will be a fence, gate and security cameras. The neighbors may see a pick-up truck 3-4 days a week for operations and maintenance.

36) Property Values Impact. Explain what Atlas sees as impact or no impact. Does Atlas have studies to show no significant impact. Provide.

John stated that there are studies that show no impact or a positive impact, but each individual situation varies. Because this proposed parcel is surrounded by trees and invisible to the naked eye, there would not be a visual impact. Lluís Torrent stated that there was a study completed by the University of Texas in 20 different states, that determined that the impact varies by property.

Once the list of questions was answered, Alan Pope asked if there were any further questions from the board members.

Supervisor Rounds asked about a concern that Tami Zebrowski-Darrow had brought up regarding a solar farm in Marathon that has been under construction for around 2 years. John Watson explained that the Atlas project would be approximately 4-6 months to complete the construction of the farm.

Member Taro asked what the tax implications would be for the school and county. Lluís Torrent advised that the town opted out of the PILOT program, so Atlas would be taxed. John Watson confirmed that the business would be taxed like normal. Member Bordeau asked if the company would have a tax break. John Watson confirmed that there would be no tax break due to the town opting out of the PILOT program.

Chairman Tagliaferri asked for clarification of the acreage for the lease agreement. David Brennan confirmed that the lease is for 30 acres, but there is an option for 35. Chairman Tagliaferri asked if Atlas could provide a copy of the cite plan, and Lluís Torrent confirmed that they could. Alan Pope asked if a copy of the redacted lease could be provided, David Brennan confirmed that they could.

Alan Pope stated that as the board members had no further questions that the public could once again provide comments or questions.

Tami Zebrowski-Darrow asked what the solar panels and modules would be cleaned with. Lluís Torrent confirmed that only water would be used.

William Miller asked that if the variance for the solar farm is approved that in the language for the stipulations that the trees that are being planted also need to be maintained. He also asked that organic materials be used. He stated that the solar farm is not invisible from all areas and would like to know if there would be a survey completed for the property lines.

Supervisor Rounds asked if there would be anything in place to prevent the property owner from clearcutting the remaining trees. David Brennan stated that they would speak to the applicant and respond.

William Miller asked for clarification of the actual placement of the solar farm on the property. John Watson displayed the map of the land and proposed area.

As there were no further comments or questions from the public, Alan Pope suggested that the public comment portion of the hearing be closed. Chairman Tagliaferri agreed and stated that the public comment portion was officially closed. He stated that if the board members had any further questions to provide to him so that Atlas could prepare a response for the next meeting. Alan Pope stated that the SEQR discussion would begin at the next meeting on January 10th at 6:30 pm. Chairman Tagliaferri stated that the plan would be to have a final decision by the February meeting. He concluded the meeting at 8:50 pm.

Respectfully submitted,

Chelsea Mozley
Zoning Board of Appeals Secretary