



# MINUTES

## *Town of Binghamton Planning Board*

April 25, 2023 | 6:30pm

### **In attendance:**

- Bill McGowan, Kathy Kiekel, Ray Mastin, Dave West, Christopher Streno – Planning Board
- Michael Donahue – Town Board Liaison
- Alan Pope, Attorney
- Gina Middleton, Attorney
- 1 member of the public
- Lluis Torrent (Virtual) – Atlas/Binghamton Solar
- John Watson (Virtual) – Atlas/Binghamton Solar

The meeting was called to order at 6:31pm. Attendance was taken and the welfare of the Members was discussed.

The meeting began with a joint Legal Corner with the Zoning Board of Appeals, presented by town attorney Gina Middleton. Middleton's presentation was a discussion regarding "Problem Properties".

She covered the following topics and everyone present was given a typed outline to follow along;

- General powers, actions and limitations that can be taken by the Town Court and the Supreme Court (local).
- Seen and unseen interior problems and steps that can be taken to gain entry into the property to determine the extent of any code violations.
- Defining Administrative Inspection and the steps to obtain one.
- Evidentiary support for an Administrative Inspection Warrant if access to the property is unavailable or denied by the property owner.
- Using the Administrative Inspection to determine the best type of action to be taken (clean-up, tear down, etc.)
- Town of Binghamton Unsafe Buildings Law (Chapter 106 – copied at the end of the Minutes) which outlines the process in which the town can declare a structure unsafe or dangerous.
- Supreme Court action after a structure is declared unsafe.
- Dealing with "Unclean Properties"
  - Starts with the Town Court
  - If unsuccessful at Town Court level Supreme Court action can commence
- Ongoing requirement that property be maintained per the Code after the clean-up takes place.



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The next order of business was in regards to the Binghamton Solar Project. On March 30, 2023, members of the Planning Board received a Site Plan Supplemental Package from Binghamton Solar that contained the following Attachments;

Attachment A.1 – Boundary survey and metes & bounds of the leased area

Attachment A.2 – Updated Site Plans stamped by a LE

Attachment A.3 – Updated SWPPP

Attachment A.4 – Operation and Maintenance Plan

Attachment A.5 – Fire Safety and Emergency Response Plan

Attachment A.6 – Decommissioning Plan

Additionally, the following legal documents which the Town attorney and Binghamton Solar attorney are in discussions with:

Attachment B.1 – Draft Decommissioning Agreement

Attachment B.2 – Draft Road Use Agreement

Attachment B.3 – Draft PILOT Agreement

Attachment B.4 – Lease agreement between the Landowner and the Applicant

Representatives of Binghamton Solar also provided written responses to several follow-up questions and concerns that were relayed to them from Planning Board Members, particularly written outlines of issues from Members Ray Mastin and Bill McGowan. The company's written responses are attached to the Minutes.

Mastin discussed the GIS property Detail Summary for the Powers Road property pointing out the requirement for a Broome County 239 review. He also questioned the access of large trucks to the property, expressing some concerns regarding the tight turns that would have to be made through the neighborhood leading to the property. He provided a map of the proposed access area and the streets that lead to it. Mr. Torrent and Mr. Watson both relayed that the access options to the property are still being discussed and that related decisions of access to the property will need to be discussed with and depend on the construction company that is selected for the project. They confirmed that a company has not been selected yet.

McGowan expressed that this is the first town of Binghamton solar project since the enacting of the Town of Binghamton Solar Law and made note that we were setting precedent with this project, therefore we want to ensure that we are doing everything correctly with it.

Attorney Pope discussed the need and plan to obtain a final set of Site Plans and the Application as well as the final drawings of the project before a Building Permit will be issued.

A discussion was had regarding a Public Hearing. The consensus was that it was not necessary but Mr. McGowan was interested in exploring the idea. After further discussion, it was agreed



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that a request would be made to the Town Board to hold an informative meeting with Atlas/Binghamton Solar and the Planning Board Members.

A resolution to approve was discussed and a motion was made to approve the Binghamton Solar Project based on the following six (6) conditions;

- 1) All of the conditions set forth in the two Zoning Board of Appeals Determinations shall be applicable and complied with.
- 2) The Town Board and Atlas Renewables/Binghamton Solar agreeing on and executing a PILOT Agreement.
- 3) The Town Board and Atlas Renewables/Binghamton Solar agreeing on and executing a Decommissioning Agreement with Easement Rights.
- 4) The Town Board and Atlas Renewables/Binghamton Solar agreeing on and executing a Road Use Agreement.
- 5) Filing with the Town of Binghamton a final set of drawings and final Site Plan applications with all amendments/revisions prior to issuance of a building permit.
- 6) All conditions herein shall also be the responsibility of any successor or assign of the Applicant Atlas Renewables LLC/Binghamton Solar LLC.

The motion was passed by a unanimous vote in the affirmative by all Planning Board Members present (Keikel, McGowan, Mastin, West, Streno).

A brief discussion was had regarding the plans to build at Access Unlimited, 560 Hance Road. It was noted that the property was within 500 feet of a Municipal boundary and therefore subject to a Broome County 239 review. This information has been relayed to the property owner and there has been no further movement on the project that the Planning Board is aware of.

The meeting was adjourned at 8:18pm.

Next Quarterly Meeting scheduled for July 25, 2023 @ 6:30pm

Respectfully submitted,

**Christopher Streno -Planning Board Chairperson**



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### ATTACHMENTS:

#### **Town of Binghamton Code Chapter 106 Buildings, Dangerous or Unsafe**

[HISTORY: Adopted by the Town Board of the Town of Binghamton 9-7-1976 by L.L. No. 8-1976 as Ch. 8 of the 1969 Code. Amendments noted where applicable.]

#### **§ 106-1 Legislative purpose.**

The Town Board of the Town of Binghamton believes that it should provide by ordinance for the repair or destruction of buildings in the Town which are dangerous or unsafe to the public, in order to protect the health, safety and general welfare of the inhabitants of the Town. It therefore hereby enacts this chapter, pursuant to § 130, Subdivision 16, of the Town Law, to provide for the removal or repair of buildings that from any cause may now be or shall hereafter become dangerous or unsafe to the public.

#### **§ 106-2 Inspections authorized; construal of terms.**

At any time, the Town Board, by resolution, may direct an appropriate Town employee or hire a competent person to inspect any structure in the Town and report to the Town Board whether the structure is dangerous or unsafe to the public. The words "dangerous or unsafe to the public" shall be broadly construed for the maximum protection of the inhabitants of the Town.

#### **§ 106-3 Notice to repair; filing of copy; hearing.**

[Amended 2-3-1981]

**A.** If the person directed or employed as set forth in § **106-2** reports that the structure is unsafe or dangerous to the public, the Town Board shall cause a notice to be served on the owner or some one of the owner's executors, legal representative, agents, lessees or any other person having a vested or contingent interest in same, either personally or by registered mail, addressed to the last known address, if any, of the owner or some one of the owner's executors, legal representatives, agents, lessees or other person having a vested or contingent interest in same, as shown by the records of the Receiver of Taxes and/or in the office of the County Clerk or County Register, containing a description of the premises, a statement of the particulars in which the building or structure is unsafe or dangerous and an order outlining the manner in which it is to be made safe and secure or demolished and removed; a statement that the securing or removal of the building is to commence within 30 days of the service or mailing of the notice and shall be completed within 60 days thereafter, unless for good cause shown such time shall be extended; a date, time and place for a hearing before the Town Board in relation to such dangerous or unsafe building, which hearing shall be scheduled not less than five business days from the date of the service of the notice; and a statement that, in the event of neglect or refusal to comply with the order to secure or demolish and remove the building, the Town Board is authorized to provide forced demolition and removal, to assess all expenses thereof



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against the land on which it is located and to institute a special proceeding to collect the costs of demolition, including legal expenses.

**B.** A copy of such notice shall be filed in the office of the County Clerk of the County of Broome, which notice shall be filed by such Clerk in the same manner as a notice of pendency pursuant to Article 65 of the Civil Practice Law and Rules and shall have the same effect as a notice of pendency as therein provided, except as otherwise hereinafter provided in this subsection. A notice so filed shall be effective for a period of one year from the date of filing; provided, however, that it may be vacated upon the order of a Judge or Justice of a court of record or upon the consent of the Town Attorney. The Clerk of the county where such notice is filed shall mark such notice and any record or docket thereof as canceled of record upon the presentation of filing of such consent or the certified copy of such order.

**C.** The hearing set forth in the notice shall be held at a regular meeting of the Town Board, at which time the person served with the notice may present proof and/or witnesses in opposition to the claim that the buildings are unsafe or dangerous, and if after such hearing the Town Board still concludes that the buildings are unsafe and dangerous and such owner fails or refuses to comply with the order of the Town Board after said hearing, the Town Board shall provide for the demolition or repair of the offending building or buildings either by Town employees or by contract, and all costs and expenses incurred by the Town in connection with the proceeding to remove or secure, including the cost of actually removing the structure or structures, shall be assessed against the land upon which said structure or structures are located. Except in an emergency as hereinafter provided, any contract for the repair, demolition and removal of a building in excess of \$5,000 shall be provided through competitive bidding.

### **§ 106-4 Emergency cases.**

[Added 2-3-1981<sup>11</sup>]

In emergency cases where it reasonably appears that there is present clear and imminent danger to the life, safety or health of any person or property, unless an unsafe building is immediately repaired or secured or demolished, the Town Board may, by resolution, authorize the Building Inspector to immediately cause the repair or demolition of such unsafe building. The expense of such repair or demolition shall be charged against the land on which it is located and shall be assessed, levied and collected as hereinafter provided.

[1]Editor's Note: This ordinance also repealed original § 8-4, Survey of premises.

### **§ 106-5 Removal of damaged buildings and debris.**

[Added 7-21-2020 by L.L. No. 1-2020<sup>11</sup>]

In the event that the owner fails or refuses to secure, repair or remove such damaged or unsafe building(s) or structure(s) or debris within the time provided in the Town Board Order, the Town of Binghamton may enter upon such property and cause the same to be secured and/or removed.



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[1] *Editor's Note: This local law also redesignated former §§ 106-5 through 106-8 as §§ 106-6 through 106-10, respectively.*

### **§ 106-6 Assessment of costs and expenses.**

[Added 2-3-1981<sup>[1]</sup>; amended 11-16-2010 by L.L. No. 12-2015; 6-17-2014 by L.L. No. 29-2015; 7-21-2020 by L.L. No. 1-2020]

**A.** All expenses incurred by the Town in connection with the proceedings to repair, secure, demolish or remove the unsafe building, including the cost of actually removing the building and all related engineering, legal and other professional fees and expenses, shall be assessed against the owner(s) of the subject property and/or the land on which such building is located and shall be levied and collected in the same manner as provided in Article 15 of the Town Law for the levy and collection of a special ad valorem levy. For any assessment against the property owner(s), the Town may commence a civil action against such property owner(s) if the assessment is not paid within 30 days of presentment of the said assessment to the property owner(s) by certified mail or registered mail.

**B.** Furthermore, in accordance with General Municipal Law § 22, the Town of Binghamton as a taxing district is hereby authorized and empowered to claim against the proceeds of a policy of fire insurance insuring the interest of an owner and issued on real property located within the Town of Binghamton to the extent of any lien, claim or assessment by the Town of Binghamton pursuant to this Chapter **106** shall further constitute a lien against such insurance proceeds and which shall, as to such insurance proceeds, be prior to all other liens and claims except the claim of a mortgagee of record named in such insurance policy. Upon the adoption of a resolution by the Town Board providing therefor, the Town Supervisor shall cause a notice of intention to claim against insurance proceeds to be served upon the New York State Superintendent of Financial Services for entry in the index of tax districts maintained by upon the New York State Superintendent of Financial Services as provided in § 331 of the Insurance Law, wherein such amounts stated in such claim notice shall be a lien on the proceeds of the insurance policy of said owner until paid.<sup>[2]</sup>

[2] *Editor's Note: Original § 8-6, Report of surveyors; removal or repair of structure by Town; costs, which immediately followed this section, was repealed 2-3-1981.*

[1] *Editor's Note: This ordinance also repealed original § 8-5, Compensation of surveyors.*

### **§ 106-7 Recovery of costs and expenses.**

[Added 7-21-2020 by L.L. No. 1-2020]

In addition to the Town of Binghamton rights set forth in § **106-6**, all costs and expenses, including that of Town personnel, Town contractors and legal costs, incurred by the Town of Binghamton in connection with actions or proceedings to secure, repair or remove such building(s) or structure(s) or debris, including the cost of actually removing the same, shall be assessed against the owner individually, the applicable fire or other insurance, and against land on which such building(s) or structure(s) is located. Said assessment shall be and shall





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constitute a lien and claim against the owner individually, the applicable fire or other insurance, and upon the land so affected. The Town of Binghamton may bring and maintain an action at law against the owner individually, the applicable fire or other insurance carrier, and/or against the land for such claim, lien or assessment, and may foreclose such lien or liens.

### **§ 106-8 Condition of premises upon completion of work.**

In any case where a building is repaired and secured or taken down and removed pursuant to proceedings had under this chapter (where such work is being done by the owner of the property or by some third party at the direction of the owner or of the Town), the site of such work shall be left in a safe condition. There shall be removed from such site any and all broken glass, rubble, metal and any accumulation of combustible material. Furthermore, all open excavations shall be filled and/or graded in such a manner so that they are not actually or potentially hazardous to the health or safety of others.

### **§ 106-9 Severability.**

Should any section or provision of this chapter be or be held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity of the chapter as a whole or any part thereof other than said invalid or unconstitutional part.

### **§ 106-10 When effective.**

This chapter shall take effect immediately subject to provisions of the Town Law as to posting and publication.



April 24, 2023

Via E-mail Only

Christopher Streno, Chairman  
Planning Board  
Town of Binghamton  
279 Park Avenue  
Binghamton, New York 13903

RE: Application of Binghamton Solar Farm, LLC for a 5.0 MW Community Distributed Generation Solar Project - 57 Powers Road (SBL 161.14-1-35.11)

Dear Chairman Streno:

I write on behalf of Binghamton Solar Farm LLC, a subsidiary of Atlas Renewables LLC (the "Applicant"). Please accept this document as the Applicant's response to the Town's List of Comments provided on the April 24<sup>th</sup>, 2023 via two separate emails.

The Applicant is available to provide additional information and clarifications during the Planning Board meeting by April 25<sup>th</sup>, 2023.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lluís", enclosed within a blue oval shape.

Lluís Torrent  
Director of Binghamton Solar LLC, a subsidiary of Atlas Renewables LLC

CC: John Watson, COO Atlas Renewables LLC  
CC: Andreas Escher, Counsel Atlas Renewables LLC  
CC: David C. Brennan, Partner Young / Sommer LLC  
CC: Alan Pope, Of Counsel Coughlin & Gerhart, LLP  
CC: Rosemarie Pope, Of Counsel Pope, Schrader & Pope, LLP





**ATTACHMENT A: ATLAS RESPONSE TO:**

**ATLAS COMMENTS 04.25.2023**  
**SITE Plan Application-Supplemental Package**

Mr Ray Mastin  
Monday, April 24, 2023, 5:01 AM, via email.

## ATLAS COMMENTS 04.25.2023

### SITE Plan Application-Supplemental Package

#### **PACKAGE COVER LETTER**

##### ***Page 1, Paragraph 2***

The applicant submitted a Site Plan Review on **August 2021**

The matter was referred to Br. Co. Dept. of Planning on behalf of **BOTH** BOARDS.

This needs to be corrected as the Planning Board was not involve in this project before **August 2022**.

**THIS STATEMENT NEED TO BE CORRECTED**

Atlas: Comment acknowledged. Atlas will remove the word BOTH and will mention that the matter was referred to the County and behalf of the ZBA.

##### ***Page 2, Paragraph 1***

I met with Binghamton City Eng. Ron Lake 03.28.2023 on another issue. We discussed access to the proposed Solar Site thru residential streets within the City of Binghamton. He wants an Atlas representative to contact the City DPW Commissioner **DANIEL MAERKL 607-772-7021**.

Atlas: Comment acknowledged. By March 22, 2023, Atlas received the email below from Mr Ronald Lake who confirmed that he had been talking with the DPW Commissioner. If required, Atlas may contact again with Mr Lake or Mr Maerkl.

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From: Lake, Ronald B <[rblake@cityofbinghamton.gov](mailto:rblake@cityofbinghamton.gov)>  
Sent: Wednesday, March 22, 2023 8:31 AM  
To: John J. Watson | CAERO <[watson@caero.com](mailto:watson@caero.com)>; Alan J. Pope <[APope@cglawoffices.com](mailto:APope@cglawoffices.com)>  
Cc: 'Dave Brennan' <[DBrennan@youngsommer.com](mailto:DBrennan@youngsommer.com)>; Jennifer L. Fancher <[JFancher@cglawoffices.com](mailto:JFancher@cglawoffices.com)>; Gina M. Middleton <[GMiddleton@cglawoffices.com](mailto:GMiddleton@cglawoffices.com)>; Lluís Torrent Jerez <[lluis.torrent@quantum.group](mailto:lluis.torrent@quantum.group)>  
Subject: RE: Town of Binghamton - Atlas Solar

I just spoke with our DPW Commissioner and he has no problems, so from his point of view you are good to go,

Ronald B. Lake, PE, Fellow ASCE, Rev.  
City Engineer/Project Manager WWTP Renovations  
Engineering Department  
38 Hawley Street, City Hall, Binghamton, New York 13901  
Office 607) 772-7007 \* Fax (607) 772-7056  
[rblake@cityofbinghamton.com](mailto:rblake@cityofbinghamton.com)



## ATTACHMENT A.4 – OPERATION AND MAINTENANCE PLAN

### Page 3, Name of Applicant

Atlas Renewables LLC. On behalf Windfall Road Solar LLC

Does this company name need to be included in all the documentation provided to the Town of Binghamton?

Atlas: It is a template error. The correct entity is Binghamton Solar LLC. Atlas will correct it.

### Page 4, Paragraph 2

The low glare panels will not be visible from the surrounding the solar farm.

What does this mean?

Atlas: The solar modules produce low glare compared to common surfaces, including standard window glass. The following chart and explanations were provided to the ZBA by December 22, 2021:

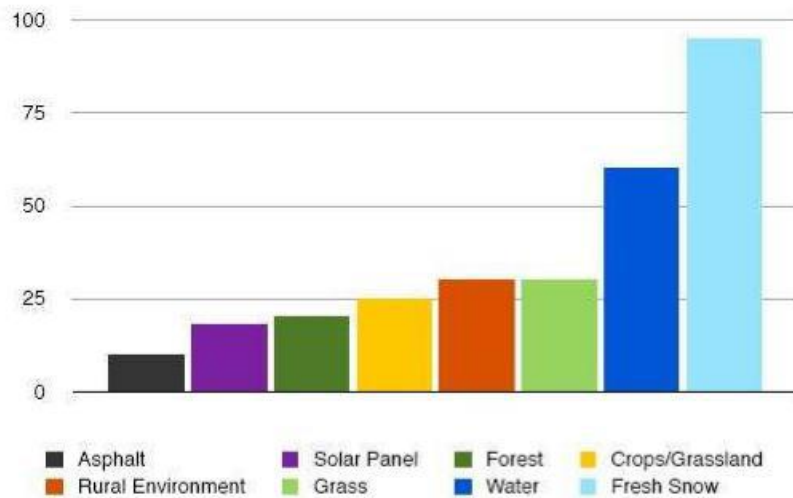


Figure 3: Comparative reflection analysis

Source: <https://www.solarchoice.net.au/blog/solar-panels-near-airports-glare-issue/>

- Research and Analysis Demonstrate the Lack of Impacts of Glare from Photovoltaic Modules July 31, 2018 by Megan Day and Benjamin Mow from The National Renewable Energy Laboratory (NREL) source: <https://www.nrel.gov/state-local-tribal/blog/posts/research-and-analysis-demonstrate-the-lack-of-impacts-of-glare-from-photovoltaic-modules.html>. **Note:** The NREL is a national laboratory of the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, operated by the Alliance for Sustainable Energy LLC.
- Photovoltaic Panels Produce Less Glare than Standard Window Glass: source: <https://www.intermtnwindandsolar.com/the-truth-about-photovoltaic-panels-and-glare/>

### Page 7, Preventive Maintenance – Tracking Equipment

Inspect hydraulic lines for signs of oil leakage.

What quantity of hydraulic fluid will be on site?

Atlas: The estimated amount is 46 gallons of hydraulic fluid for the complete solar farm.

### Page 7, Last paragraph

Herbicides?

Atlas: Atlas is proposing to use herbicides only in the event it was necessary to control a plague and as a last the resource.

**Page 9, Middle of Page**

No Pesticides or Herbicides will be used

Atlas: Atlas is proposing to use no pesticides or herbicides except in the case mentioned above.

**ATTACHMENT A.5 – FIRE SAFETY AND EMERGENCY RESPONSE**

***Page 4. 4. Operational Contacts***

The table in this section only lists local emergency responders.

Who are the Operation and maintenance contacts?

Are there going to be Operational Contacts locally or is Albany the nearest company representative?

Atlas: The Operation and Maintenance contacts will be provided once the solar project is connected to the NYSEG grid and before the energizing of the solar farm. It will be a combination of local and Albany based personnel.

Please Note: The City of Binghamton will only respond at the request of the Town of Binghamton Fire.

The Town of Binghamton contracts with:  
Broome Volunteer Emergency Squad, Inc.  
Ambulance Service  
261 Court St.  
Binghamton, N.Y. 13901

Atlas: Comment acknowledged. Atlas will add the Broome Volunteer Emergency Squad in the table.

***Page 7, 4. Emergency Situations***

Table 3. Site Personnel Contact Information is incomplete.

Atlas: See comment above for Page 4. 4 Operational contacts.

**Page 13, 9. Environmental Accident or Spill**

Second paragraph

Personnel will not respond to spills, will instead call outside responders.

Will there be any attempt to limit a spill such as applying absorption pads while waiting for trained responders to arrive?

Atlas: Yes, depending on the type of spill, there will be some attempts to limit it meanwhile waiting for trained responders.

***Page 14. 3. Quantity released***

If spill exceeds 5 gallon it is mandatory to report the spill to NYSDEC.

Atlas: Comment acknowledged.

**ATTACHMENT A.6 – DECOMMISSIONING PLAN**

***Page 11, Last paragraph***

Town of Olean?

Atlas: It is an error. Atlas will correct to the Town of Binghamton.

***Page 12. 2. Decommissioning net cost calculation***

This chart does not include removal of all buried conduit from the site.

The amount of the bond shall be established by an agreement between the Town of Binghamton Engineer and Atlas Solar, and approved by the Town Board.

Atlas: Buried conduit removal is included in MV cable. The amount of the bond is for indication purposes and according our experience with other Towns in NYS. Agreed on the proposed procedure with the Town Engineer.

## **ATTACHMENT B.1 – DRAFT DECOMMISSIONING AGREEMENT**

### ***Page 3, Section 4***

For clarity, nothing in this Section 4 of this Agreement shall infer any obligation or responsibility to Landowner, unless specifically provided in this agreement.

See Town of Binghamton permitting large-scale solar Energy Systems

Page :15 section [a] [vii] A Decommissioning Agreement entered into with the Town by all parties including the landowner.

Page :21 section (g) [3]

Page :22 section (g) [4] [e] The project owner and landowner liable

Page :22 section (g) [5] If owner and/or landowner fails to Decommission Town can remove it at the cost to the landowner.

Page :22 section (g) [6] Decommissioning not paid shall become a lien and tax upon the property.

Atlas: Comment acknowledged. Under review and negotiation between the Town Attorney and the Applicant's Attorney.

## **ATTACHMENT B.2- DRAFT ROAD USE AGREEMENT**

### ***Page 1, Paragraph 5***

A copy of this proposed Road Use Agreement should be furnished to the City of Binghamton DPW Commissioner Daniel Maerkl. 607-772-7021

17 Broad St.

Binghamton, N.Y. 13904

Atlas: Comment acknowledged. Under review and negotiation between the Town Attorney and the Applicant's Attorney.

## **ATTACHMENT B.4 – LEASE AGREEMENT AND AMENDMENTS**

### ***Page 1. Option Period & Extension***

The Option Period is 12 months and an Extended Option Period is 2 - 6 month periods.

The Town must immediately be notified if these options are executed, all terms of the agreement with the Town will remain intact.

Atlas: Comment acknowledged. Under review and negotiation between the Town Attorney and the Applicant's Attorney.

### ***Ground Lease Agreement***

#### ***Page 4, 1.27 Solar Facility, Energy storage facility***

Utility scale battery station(s) shall not be included in the Solar Facility without Land Owner's written consent "and the consent of the Town of Binghamton Town Board."

Atlas: Atlas is not planning to install a utility scale battery station and it is not part of this Special Use Permit. In our views, it is not necessary to modify the ground lease agreement with the Landowner as, if the Applicant decided to install a battery station, it would be necessary to go through an Special Use Permit process.

### ***Page 7. Article 5.1 (d)***

Lessee shall provide Lessor information regarding identity, quantity, location, and purpose and storage method for all Hazardous Materials brought on to the Property "and seek consent of the Town of Binghamton Town Board before these materials are brought onto the site."

Atlas: Same comment than above.

***Contract Addendum***

There is no mention of usage areas outside of the Leased Area.

Atlas Solar agreed to plant evergreen trees to shield the Miller Property from the solar project. Are the trees located within the Leased Area?

February 14, 2022

The TOB ZBA required an agreement between Atlas and Mr. Haskell to limit tree cutting around the solar facility. John Watson advised Mr. Haskell was in agreement to committing to the requested buffer zone outside of the leased area. Alan Pope asked Atlas submit a letter documenting the agreement. Please supply the Planning Board with a copy of this agreement.

Atlas: After several deliberations with the ZBA, by February 2022 it was agreed that Atlas would modify the leased area in order to include the setback distances requested by the ZBA. Being that the case, the setback areas will always be under the Applicant's control. That April 6, 2022, contract addendum between the landowner and Atlas has been included in the submittal to the Planning Board by March 2023. As it may be observed comparing the September 2020 proposed ground lease area and the April 2022, the Landowner and Atlas agreed to reallocate the 30-acre leased area as per the ZBA's request, keeping the same amount of acres, but making possible to have a setback all around the solar farm under the control of Atlas.



**ATTACHMENT B: ATLAS RESPONSE TO:**

**SITE PLAN USE PERMIT SET**

Mr Ray Mastin  
Monday, April 24, 2023, 5:01 AM, via email.



## SITE PLAN USE PERMIT SET

### NY-LAY-002. GENERAL NOTES

#### **SCHEDULE OF CONSTRUCTION ACTIVITIES NOTES:**

17. CAPTURE, REMOVE AND **PROPERLY** DISPOSE OF ACCUMULATED SILT OR SEDIMENT  
**ADD THE WORD PROPERLY**

Atlas: Comment acknowledged. Atlas will add the word 'properly'.

20. REMOVE ALL TEMPORARY EROSION CONTROL PRACTICES UPON ARRIVAL OF FINAL STABILIZATION BY THE **QUALIFIED INSPECTOR**.  
**THIS NOTE MAYBE IN CONFLICT WITH THE EROSION AND SEDIMENT NOTE 5 WHERE THE PERSON IN CHARGE IS AN ENGINEER.** (A.O. B. E.) AS ORDERED BY ENGINEER  
Atlas: Comment acknowledged. Atlas proposes to keep in both cases 'Qualified inspector'.

#### **EROSION AND SEDIMENT CONTROL NOTES:**

5. ALL CONTROLS SHALL BE PLACED PRIOR TO STARTING EARTHWORK OPERATIONS AND SHALL REMAIN IN PLACE UNTIL THE NEW SLOPES ARE STABILIZED WITH SEEDING AND/OR SLOPE PROTECTION AND A.O.B.E.  
**THIS NOTE MAYBE IN CONFLICT WITH THE EROSION AND SEDIMENT NOTE 5 WHERE THE PERSON IN CHARGE IS AN ENGINEER.** (A.O. B. E.) AS ORDERED BY ENGINEER  
Atlas: See comment above.

12. **ISTO** IS MISS TYPED, ADD A SPACE BETWEEN WORDS: **IS TO**  
Atlas: Comment acknowledged. Atlas will add a space between the words.

15. OPERATIONAL HOURS OF THE FACILITY WILL BE 24 HOURS PER DAY, 7 DAYS PER WEEK  
**IS THIS DURING CONSTRUCTION OR DURING SOLAR OPERATION?**  
Atlas: Only during solar operation, not during construction.

#### **ENVIRONMENTAL NOTES:**

1. NORTHERN LONG EARED BAT  
**THIS SPECIES WAS ELEVATED TO AN ENDANGERED SPECIES ON NOVEMBER 29, 2022.**  
Atlas: Comment acknowledged. For clarity purposes, Atlas is using the federal publicly available sources and information (<https://ipac.ecosphere.fws.gov/>), which states the following:
- **Mammals:** Northern Long-eared Bat (*Myotis septentrionalis*)  
No critical habitat has been designated for this species on the project area.

The following two governmental links provides information about the NLEB:

<https://ecos.fws.gov/ecp/species/9045>

[https://www.dec.ny.gov/docs/wildlife\\_pdf/nlebtowns.pdf](https://www.dec.ny.gov/docs/wildlife_pdf/nlebtowns.pdf)

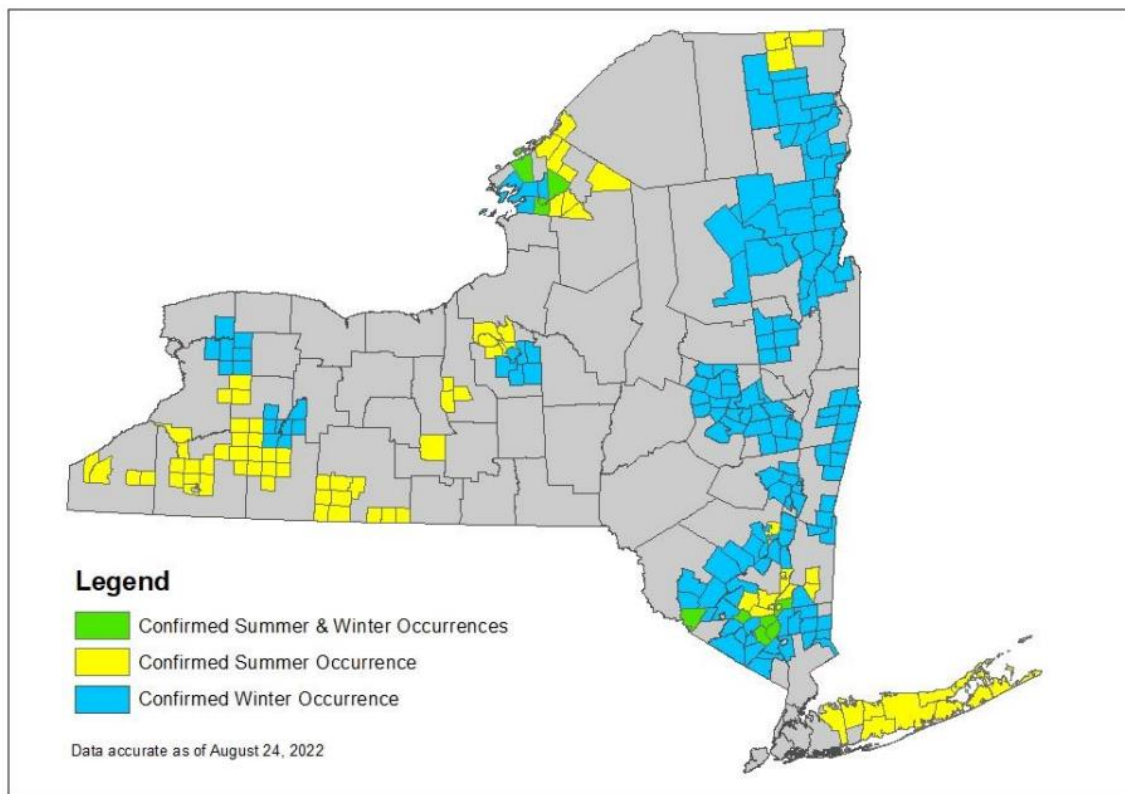
The links refers to occurrences of the NLEB during summer and winter time of the Northern Long-eared Bat (NLEB). As it can be observed on the following table and map, the Broome County and the Town of Binghamton are not included in that list and map:

County	Town	Occurrence	
		Winter	Summer
<b><i>Albany</i></b>	Berne	Yes	
	Bethlehem	Yes	
	Coeymans	Yes	
	Guilderland	Yes	
	Knox	Yes	
	New Scotland	Yes	
	Westerlo	Yes	
<b><i>Allegany</i></b>	Allen		Yes
	Angelica		Yes
	Belfast		Yes
	Caneadea		Yes
	Centerville		Yes
	Friendship		Yes
	Granger	Yes	
	Hume	Yes	
	New Hudson		Yes
	Rushford		Yes
<b><i>Cattaraugus</i></b>	Ellicottville		Yes
	Farmersville		Yes
	Freedom		Yes
	Great Valley		Yes
	Little Valley		Yes
	Lyndon		Yes
	Machias		Yes
	Mansfield		Yes
	Napoli		Yes
	New Albion		Yes
	Otto		Yes
	Salamanca		Yes

Table 1: NLEB occurrence by town (Source: [https://www.dec.ny.gov/docs/wildlife\\_pdf/nlebtowns.pdf](https://www.dec.ny.gov/docs/wildlife_pdf/nlebtowns.pdf))

The table above is sorted out by alphabetic order. The Broome County and the Town of Binghamton do not appear in the table.

## Northern Long-eared Bat Occurrences by Town



Map 1: NLEB occurrence by town (Source: [https://www.dec.ny.gov/docs/wildlife\\_pdf/nlebtowns.pdf](https://www.dec.ny.gov/docs/wildlife_pdf/nlebtowns.pdf))

### **SURVEY NOTES:**

1. FIELD SURVEY WAS COMPLETED ON MAY 18, 2021 BY KEYSTONE  
 PER SHEET B-1 THE FIELD WORK WAS COMPLETED ON DECEMBER 14, 2022.  
 Atlas: Comment acknowledged. It will be changed to December 14, 2022.

4. BOUNDARY SURVEY WAS COMPLETED ON JANUARY 18, 2023  
 PER SHEET B-1 THE MAP IS DATED FEBRUARY 17, 2023.  
 Atlas: The boundary survey was completed on site by January 18, 2023. The drawings were updated by February 17, 2023. Atlas is proposing to keep January 18, 2023, on the Environmental notes.

### **RACKING SYSTEM NOTES:**

2. THE STRUCTURE SHALL MEET THE DEAD LOAD, WIND LOAD AND SEISMIC STANDARDS. STRUCTURAL STABILITY AND THE MEANS OF ATTACHMENT WILL BE CERTIFIED BY A LICENSED ENGINEER.  
 WHERE ARE THE CALCULATIONS AND SUBSTANTIATION OF THE STRUCTURE?  
 Atlas: Mechanical calculations will be provided with the building permit application.

### **GROUNDING SPECIFICATION NOTES:**

3. SYSTEM TO BE BONDED AND GROUNDED IN ACCORDANCE WITH ARTICLES 250 AND 690 OF NEC.  
 ADD SPACE: OF NEC  
 Atlas: Comment acknowledged.

5. Equipment grounding conductors (egc) shall be sized according to 250.122.

**What standard: NEC?**

Atlas: Correct, it is referred to NEC 250.122. Atlas will add the word NEC on this bullet point.

***SIGNS AND LABELING NOTES:***

6. ALL REQUIRED EQUIPMENT SHALL BE NRTL LISTED AND LABELED ACCORDINGLY.

**WHAT IS NRTL? SIMILAR TO UL?**

Atlas: Nationally Recognized Testing Laboratory.

**NY-LAY-007 – LAYOUT AND PLAN MATERIAL**

QUESTIONS CONCERNING THE SOUTHEAST CORNER OF THE SOLAR FARM

THE CB 6 - INVERTER 2 DOES NOT SHOW A CONNECTION TO THE LAST 3 ROWS OF COLLECTORS.

**PLEASE EXPLAIN**

Atlas: These 3 rows of collectors are connected to the main tray through a secondary, smaller tray. Secondary trays are not represented in this site layout for clarity purposes.

THE LAST 12 ROWS OF COLLECTORS SEEM TO ENCROACH INTO THE PERIMETER SETBACK DISTANCE.

**PLEASE EXPLAIN**

Atlas: The setback distance of the mentioned 12 rows is approximately 50 ft to 70 ft, meanwhile the rest of the solar farm has a minimum 100 ft setback. Considering the southern east portion of the parcel is very flat and there are no close dwellings, the Applicant requested the Zoning Board of Appeals to consider a reduced setback in that corner, which was approved by May 2022.

The setback distances in the southern east corner represented on the site plan set submitted by March 2023 are the same than the distances approved by the ZBA on May 2022 and February 2023.

THE EVERGREEN TREE PLANTING BEING DONE TO SHIELD CAROL & WILLIAM MILLER'S VISIBILITY OF THE SOLAR COLLECTOR LOOKS LIKE THE TREES WILL SHADOW THE COLLECTOR AS THEY GROW. IN THE WINTER WITH A LOW SUN ANGLE THIS SHADOWING WILL COMPOUND. WILL IT BE NECESSARY TO TRIM THE EVERGREENS TO REDUCE THEIR HEIGHT?

**PLEASE EXPLAIN**

Atlas: Yes, it will be necessary to trim the evergreens to 10 to 12 ft maximum.

**NY-LAY-013 - SINGLE LINE DIAGRAM**

NOTES:

5. PROTECTIVE RELAY ALARM CIRCUIT TO BE WIRED OR PROGRAMMED TO TRIP SWITCH FOR REDUNDANCY PER **NATIONAL GRID** REQUIREMENTS.

**NATIONAL GRID SHOULD BE CHANGED TO NYSEG THRU OUT THE PLAN SHEETS.**

Atlas: Comment acknowledged. Atlas will correct the Single Line Diagram.



**ATTACHMENT C: ATLAS RESPONSE TO:**

**SITE PLAN USE PERMIT SET**

Mr William McGowan  
Monday, April 24, 2023, 7:42 AM, via email.

**Atlas – Binghamton Solar – Comments**  
**William McGowan**  
**April 22, 2023**

The provided booklet is a good starting point and template. Prior to our Public Hearing, I would like the Planning Board to have a completed and updated booklet containing the following:

- Proposal
- Maps
- SPPP
- Operation and Maintenance Plan
- Fire Safety and Emergency Response
- Decommissioning Plan
- Agreements:
  - Decommissioning Plan
  - Road Use Agreement
    - Town of Binghamton
    - City of Binghamton
  - Pilot Agreement

[Atlas: Decommissioning Agreement, Road Use and PILOT are being negotiated with the Town Board.](#)

- Lease Agreement and Amendments

[Atlas: Already provided to the Town Attorney. Being private docs, Atlas proposes to limit public exposure.](#)

- SEQR

[Atlas: Already provided to the Planning Board.](#)

More specifically,

- The maps that were provided are difficult to read. Differentiating the entire Haskell property from the solar farm was confusing. This leads me to the following questions:
  - Are we working to approve the total 80+ acre site or just the 20+ acre solar farm?

[Atlas: the ZBA approved a use variance for 30 acres of leased area, including 20+/- acres of fenced area for solar, the access road, the utility interconnection and ~10 acres for a forever perimeter tree buffer.](#)

- If we are just working on the solar farm, how do we assure that the owner of the remaining 60+/- acres conform to the stipulations set forth in the documentation? Does the “owner” have to sign off?

[Atlas: the 30 acre of leased area includes a perimeter buffer around the solar project.](#)

- Updated Stormwater Pollution Prevention Plan
  - Are the Town’s Engineers in agreement with this plan?
- Facility Operation and Maintenance Plan
  - Who/What is Windfall Solar Farm? Is this a template error?

[Atlas: Windfall Road Solar LLC is a template error. Atlas will correct to Binghamton Solar LLC](#)

- Who/What is Windfall Road Solar LLC?

[Atlas: Windfall Road Solar LLC is a template error. Atlas will correct to Binghamton Solar LLC](#)

- Who performs and/or is responsible for the maintenance items?
- Who is contacted if the plan is not followed?

Atlas: the contact person and the team responsible for construction will be provided prior to receive the building permit approval. The operation and maintenance team will be provided prior to the construction completion and before receiving the construction certificate from the Town of Binghamton Code Enforcement Officer.

- Is there an inspection clause for the Town?
- Fire Safety and Emergency Response
  - Again, Who/What is Windfall Road Solar LLC?

Atlas: Windfall Road Solar LLC is a template error. Atlas will correct to Binghamton Solar LLC

- Require completed operation contacts before moving forward.

Atlas: confirmed operation contacts will be placed on record before receiving the construction certificate from the Town of Binghamton Code Enforcement Officer.

- Who will routinely perform training for First Responders and subsequent training of “new” First Responders?

Atlas: Binghamton Solar LLC will provide training opportunities by opening the site for drills and familiarization purposes. The fire departments are well-equipped and accustomed to training their first responders on regular basis.

- Will Binghamton Solar contribute to training of First Responders and to the necessary equipment?

Atlas: Yes. Binghamton Solar will make the site, it’s representatives and any reference documentation available to the fire departments and its firefighters at any time for training purposes. Firefighters are trained to respond to emergencies at substations and other commercial facilities of similar nature already. The biggest concern is electric shock and making sure the power is isolated from the inverter. There will be clearly marked electrical disconnect switches on site. There is no extra necessary equipment needed specifically for a solar farm.

- Require completed “emergency situation” contacts before moving forward.

Atlas: confirmed “emergency situations” contacts will be placed on record before starting the operation and maintenance.

- Environmental Accidents or Spill:
  - Need list of hazardous materials/chemicals

Atlas: No hazardous materials or chemicals are kept on site. Upon construction completion, a Safety Data Sheet (SDS) will be provided to the Town or Fire Departments, to the extent an SDS is applicable, because most, if not all of the equipment does not require an SDS.

- Require quantities on site
- List of instructions on how to handle spill
- First aid instructions
- Required Federal and State groups to contact along with contact information
- Actions to be taken by material when spill first discovered

Atlas: Refer to Fire Safety and Emergency Response Plan

- Will AED be present on site? Align documentation with presence or lack of presence.

Atlas: an AED will not be present on-site, unless it is decided it is needed to be on site by law or necessity.

- Decommissioning Plan
  - Who/What is Windfall Solar Farm?

Atlas: Windfall Road Solar LLC is a template error. Atlas will correct to Binghamton Solar LLC

- Who is responsible for performing the decommissioning phase?

Atlas: the Applicant, Binghamton Solar LLC.

- Decommissioning costs should be in alignment with costs determined by TOB Engineering group.

Atlas: Comment acknowledged. Amount for indicative purposes.



- Is the 2% annual escalator realistic?

Atlas: This is a common value in most of the Towns of the NYS and aligned with the average inflation value, which over the past 10 years has averaged 1.88%.

- Draft Decommissioning Agreement needs review and approval by Legal and Town Board.

Atlas: Draft under review and negotiation between the Town Attorney and the Applicant's Attorney.

- Draft Road Use Agreement
  - Draft Road Use Agreement needs review and approval by Legal, Highway Superintendent, and Town Board.

Atlas: Draft under review and negotiation between the Town Attorney and the Applicant's Attorney.

- List of exhibits i.e., maps, list of roads, easements, etc. needs to be completed.
- In order to access Town Roads, City Of Binghamton roads will be used. The developer should minimally discuss and document the topic of Road Use with the City prior to final approval of the project.

Atlas: Atlas has communicated with the City of Binghamton and the City Engineer, Mr Lake. See the email chain below:

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**From:** Alan J. Pope <[APope@cglawoffices.com](mailto:APope@cglawoffices.com)>  
**Date:** Wednesday, March 22, 2023 at 8:33 AM  
**To:** 'Lake, Ronald B' <[rblake@cityofbinghamton.gov](mailto:rblake@cityofbinghamton.gov)>, John J. Watson | CAERO <[watson@caero.com](mailto:watson@caero.com)>  
**Cc:** 'Dave Brennan' <[DBrennan@youngsommer.com](mailto:DBrennan@youngsommer.com)>, Jennifer L. Fancher <[JFancher@cglawoffices.com](mailto:JFancher@cglawoffices.com)>, Gina M. Middleton <[GMiddleton@cglawoffices.com](mailto:GMiddleton@cglawoffices.com)>, Lluís Torrent Jerez <[lluis.torrent@quantum.group](mailto:lluis.torrent@quantum.group)>  
**Subject:** RE: Town of Binghamton - Atlas Solar

Ron – thanks. We will put your email into the Planning Board record.

**Alan J. Pope** | Of Counsel  
**COUGHLIN & GERHART, LLP**  
 99 Corporate Drive | Binghamton, NY 13904  
 P.O. Box 2039 | Binghamton, NY 13902-2039  
 Tel: 607.723.9511 | Direct Tel: 607.584.4267  
 Fax: 607.723.1530 | Toll Free: 1.877.COUGHLIN  
[apope@cglawoffices.com](mailto:apope@cglawoffices.com) | [www.cglawoffices.com](http://www.cglawoffices.com)

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**From:** Lake, Ronald B <[rblake@cityofbinghamton.gov](mailto:rblake@cityofbinghamton.gov)>  
**Sent:** Wednesday, March 22, 2023 8:31 AM  
**To:** John J. Watson | CAERO <[watson@caero.com](mailto:watson@caero.com)>; Alan J. Pope <[APope@cglawoffices.com](mailto:APope@cglawoffices.com)>  
**Cc:** 'Dave Brennan' <[DBrennan@youngsommer.com](mailto:DBrennan@youngsommer.com)>; Jennifer L. Fancher <[JFancher@cglawoffices.com](mailto:JFancher@cglawoffices.com)>; Gina M. Middleton <[GMiddleton@cglawoffices.com](mailto:GMiddleton@cglawoffices.com)>; Lluís Torrent Jerez <[lluis.torrent@quantum.group](mailto:lluis.torrent@quantum.group)>  
**Subject:** RE: Town of Binghamton - Atlas Solar

I just spoke with our DPW Commissioner and he has no problems, so from his point of view you are good to go.

Ronald B. Lake, PE, Fellow ASCE, Rev.  
 City Engineer/Project Manager WWTP Renovations  
 Engineering Department  
 38 Hawley Street, City Hall, Binghamton, New York 13901  
 Office 607) 772-7007 \* Fax (607) 772-7056  
[rblake@cityofbinghamton.com](mailto:rblake@cityofbinghamton.com)



- Draft Pilot Agreement
  - Requires approval by appropriate authorities.
  - Agreement is for the Town and School District. What about County taxes?

Atlas: The PILOT agreement is a multilateral agreement between the Town, the County and the School District in one side and the Applicant, Binghamton Solar LLC, on the other side. This is under review and negotiation between the Town Attorney and the Applicant's Attorney.

- Lease Agreement and Amendments
  - Description and Map of Property and Depiction of Leased Area are blank and need to be completed.
  - Maps are difficult to read.
  - Are the agreements and amendments consistent with current Town law, in particular Solar?
  - A portion of Option to Ground Lease Agreement states "to lease all or part of the Property" while another section reads "to lease approximately 30-acre portion of the Property". Need to know and document exactly what is being leased. Need to know if any other options can be exercised in the future. This should not be changed without approval of the Town.

Atlas: Currently, there is an Option to lease agreement in place between the Landowner and Atlas, with the right for Atlas to exercise the Lease Agreement when the solar project is approved by the Town. The lease agreement which will be exercised will include the boundary survey and the metes and bounds as the documents provided by Atlas on the Attachment A.1.

- Misc
  - Town of Orleans needs to be removed from documentation.

Atlas: This is a template error and will be removed and corrected.