

AS ACTED UPON DURING A DULY NOTICED OPEN MEETING OF THE TOWN BOARD OF THE TOWN OF HENRIETTA, COUNTY OF MONROE, STATE OF NEW YORK, HELD AT THE HENRIETTA TOWN HALL AT 475 CALKINS ROAD, HENRIETTA, NEW YORK ON DECEMBER 22, 2021 AT 6:00 P.M.

RESOLUTION #27-339/2021 To establish tree removal limits to maintain existing SEQR Determination and Special Use Permit approval for Application No. 2020-003 for the Remelt Solar Project.

On Motion of
Supervisor Schultz

Seconded by
Councilmember Sefranek

WHEREAS, Delaware River Solar has approached the Town Board to expand the limits of tree clearing, cutting, and trimming previously approved under Special Use Permit No. 2020-003 through Town Board Resolution #5-94/2020, as well as its corresponding SEQR Determination and Negative Declaration through Town Board Resolution #5-93/2020; and

WHEREAS, the above said decisions were based upon the proposed site plans and amount of tree clearing, which indicated only 0.72-acres would be removed, as per SEQR FEAF Part 1, E.1.b, filled in by Kyle Sundman, Project Developer, on January 17, 2020, as well as indicated on the site plan map associated with the special use application; and

WHEREAS, based on the limited clearing of trees, the Town Board issued a negative declaration saying that the impact on the natural habitat, on the nearby wetlands, and on the agricultural activity taking place on the working farm would be minimally affected; and

WHEREAS, the proposed additional tree clearing, cutting, and trimming shown on the map to a larger extent than was originally proposed, referred to henceforth as the "Expanded Tree Activity Area;" and

WHEREAS, this Expanded Tree Activity Area appeared to be significant to members of the Town Board, and so to further understand the extent of the proposed tree clearing, cutting, and trimming in the Expanded Tree Activity Area, the Town Board, as well as other representatives from the Town, walked the site with Delaware River Solar representatives; and

WHEREAS, based on discussions of the Town Board at subsequent workshop meetings, the consensus was that what Delaware River Solar labeled as "trimming" or "topping" was in fact, what the Town Board considered to be "clearing" since the trees were to be cut down just inches above the soil, effectively killing the tree; and

WHEREAS, Delaware River Solar labeled the activity as "clearing" only when they subsequently then removed the dead stumps from the ground, which the Town Board felt, by consensus, to be a misleading distinction; and

WHEREAS, in the language provided to the NYSDEC for expanded tree clearing, cutting, and trimming that was now taking place within the protected wetland buffers, Delaware River Solar also used this same claim there would be "no clearing" but just "the selective cutting and topping of trees and the removal of trees;" and

WHEREAS, during the site visit, Delaware River Solar made it clear that their revised plan called for all of the trees in a large portion of the wetland buffer to be removed down to the ground; and

WHEREAS, during the site visit, Delaware River Solar made it clear that their revised plan called for removal of all of the trees in a large portion of the visual screen to the west of the solar arrays to be removed down to the ground; and

WHEREAS, during the site visit, Delaware River Solar made it clear that their revised plan called for the removal of all of the trees in a large portion of the visual and agricultural screen to the south of the solar arrays, up to the parcel boundary; and

WHEREAS, during the site visit, Delaware River Solar made it clear that their revised plan called for the removal of a number of large trees that, although currently with a fall zone outside the solar arrays, that they wished to remove these trees as they might grow tall enough such that in twenty to twenty-five years they would present fall hazards for the solar arrays.

THEREFORE, BE IT RESOLVED, that the Town Board determines that the proposed additional clearing, cutting and trimming does not comport with the representations and parameters of the Special Use Permit approved by this Board on February 26, 2020 per Application No. 2020-003 and as proposed will require a new Special Use Permit Application and approval and SEQR determination unless it is significantly altered to satisfy the concerns of the Town Board as expressed below.

BE IT FURTHER RESOLVED, that based on the proposed map, the site visit, discussions with Delaware River Solar, discussions with the Department of Engineering and Planning, and discussions and deliberation by the Town Board itself, the consensus of the Town Board is as follows:

1. The Town Board has **no** objection to the removal of any dead tree or any "scrub tree" (such as poplar, aspen, etcetera) within the proposed Expanded Tree Activity Area.
2. The Town Board **does** have an objection to what it considers the unnecessary removal of trees, and especially older growth hardwoods, when that tree is to the north of the solar arrays and sufficiently distant so as to not present an immediate fall risk to the solar arrays. The Town Board does not consider a risk to the fencing to be sufficient grounds for the removal of a tree.
3. The Town Board **does** have an objection to what it considers the unnecessary removal of trees to the east and west of the solar arrays to reduce shading through the method of cutting them a few inches above ground when true "topping" of the tree, similar to the practice employed by utility companies under utility lines, could eliminate the vast majority of shading. The Town Board does not consider shading that occurs as the sun is near the horizon just after sunrise or just before sunset to be sufficient grounds for the removal of a tree.
4. The Town Board **does** have an objection to what it considers the unnecessary removal of trees to the south of the solar arrays to reduce shading through the method of cutting them a few inches above ground when true "topping" of the tree, similar to the practice employed by utility companies under utility lines, could eliminate the vast majority of shading – especially since the trees are to the north of taller evergreens that are on an adjacent property and are part of an agricultural wind break that cannot be removed. The Town Board believes the majority, if not all, of these hardwood shade trees could be topped so as to eliminate the majority of shading as well as potential for damage to the solar arrays from tree fall.
5. The Town Board **approves** of the plan to add additional tree screening to the west of the solar arrays where there are clear lines of sight between the adjacent residential properties to the west and the solar arrays. The Town Board **recommends** the cultivation of Christmas Trees as over six acres of this agricultural activity was displaced by the solar arrays, and as Christmas Trees are harvested prior to growing tall, they will not present a shade effect nor a fall risk to the solar arrays.

The Town Board does authorize Delaware River Solar to top any Christmas Trees planted in this manner should the farmer/property owner fail to harvest them when they have achieved what would present a shade effect or fall risk to the solar arrays.

6. The Town Board **recommends** the cultivation of new evergreens along the southern property line so as to replace some of the agricultural wind screening that will be lost when the scrub trees are removed along the southern property line. Said evergreens should be a native species that will flourish in the shade of the mature evergreens that compose the agricultural wind screening on the parcel to the south.
7. The Town Board recommends **against** the use of American Arborvitae trees as additional screening as they are particularly prone to deer predation and would most likely all be dead very quickly, thus defeating their purpose of additional screening.
8. The Town Board believes that by removing the large number of trees as proposed within the Additional Tree Activity Area, that this would create a significant adverse impact, under SEQR laws, and would thus issue a Positive Declaration SEQR determination and a suspension of the Special Use Permit until such a time as those potential significant adverse impacts could be mitigated or an Environmental Impact Study could be completed that proposed alternatives to the areas of objection of the Town Board.
9. The Town Board believes that should the developer propose alternative plans that address the objections and concerns raised by the Town Board and mitigate the potential adverse impacts from the proposed tree removal within the Additional Tree Activity Area, then the Town Board will reaffirm its original Negative Declaration SEQR determination and update Special Use Permit No. 2020-003 to reflect the modified plans as mutually agreed upon by the developer and the Town Board.

Duly put to a vote:

Councilmember Barley	voting	Aye
Councilmember Stafford	voting	Aye
Councilmember Sefranek	voting	Aye
Councilmember Bolzner	voting	Aye
Supervisor Schultz	voting	Aye
		Carried