

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 FEBRUARY 26, 2020 AT 7:00 P.M.

RESOLUTION #5-94/2020 To Approve Special Use Permit Application No. 2020-003 – Namaste Solar

On Motion of
Supervisor Schultz

Seconded by
Councilmember Stafford

WHEREAS, an application was filed with the Town Board of the Town of Henrietta by Namaste Solar (the "Applicant"), regarding the Applicant's proposal to develop a 5MW AC Commercial Solar Energy Facility located on property in close proximity to 6161 East River Road and on portions of land having the Tax ID Nos. 201.01-46.112, 201.01-46.113, and 201.01-1-47, for which the Applicant requests that the Town Board grant a Special Use Permit approval pursuant to Town Code Section 295-52.5, and

WHEREAS, the Applicant has requested Special Use Permit approval to construct a 5MW AC Commercial Solar Energy Facility (the "Project") (Special Use Permit No. 2020-003), and

WHEREAS, the Town Board has carefully considered all relevant documentary, testimonial, and other evidence submitted, including but not limited to the Special Use Permit application, Letter of Intent, other plans and reports, and other materials and information submitted by the Applicant, correspondence and oral testimony from the public, State, County and local agencies, and other information, and the Town Board makes the findings of fact set forth in Schedule "A" attached hereto and made a part hereof, and

WHEREAS, the Town Board has considered each of the criteria for granting of the requested special use permit approvals, as set forth in Town Code Section 295-53, and the Town Board finds that, given the conditions imposed herein, the criteria are satisfied as set forth at Schedule "A," attached hereto and made a part hereof, and

WHEREAS, on February 26, 2020, in accordance with the New York State Quality Review Act ("SEQR"), the Town Board, as the lead agency, issued a Negative Declaration for the Project (the "Negative Declaration").

THEREFORE, BE IT RESOLVED, that based on the aforementioned information, documentation, testimony and findings (set forth herein and in Schedule "A"), the Town Board hereby grants approval for Special Use Permit No. 2020-003 for the Project, to develop a 5MW AC Commercial Solar Energy Facility subject to the following conditions:

1. The solar panels will be installed only by driving or auguring poles into the ground.
2. The solar panels will be installed at a height (tbd) sufficient to allow wildlife to pass underneath.
3. Nitrogen fixers and/or pollinators will be planted (and replanted as necessary) under the panels.
4. Any damaged or defective panels will be replaced or removed to prevent leaching into the soil.

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5. A decommissioning plan and bond or escrow account will be created sufficient to cover the cost of removing the entire array when it reaches end of life or has become abandoned.
6. A Notice of Intent (NOI) must be filed with the New York State Department of Agriculture and Markets (NYSDAM). The NOI process must be completed and approved by NYSDAM prior to any site plan submission to the Henrietta Planning Board.
7. The Commercial Solar Array Project shall be in compliance with the New York State Department of Agriculture and Markets "Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands" revised October 18, 2019.
8. Agricultural easements/deed restrictions must be in a form acceptable to the Planning Board Attorney, which maintain agricultural use on not less than 75% of the farmland parcels occupied by the solar energy project and shall be filed in the Monroe County Clerk's Office prior to the issuance of a building permit.
9. All the items on the Town's Site Plan checklist shall be properly addressed.
10. Equipment specification sheets shall be provided for all photovoltaic panels, significant components, mounting systems, and inverters that are to be installed.
11. A landscaping/screening plan which specifies how landscaping and/or screening will mitigate any adverse aesthetic effects of the system shall be provided.
12. An insurance policy providing coverage for liability which may arise as a result of the solar energy system will be required.
13. Enclosure by fencing to prevent unauthorized access shall be required.
14. The submission of a property operation and maintenance plan shall be required. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.
15. Information regarding lease and any other easements or agreements shall be provided to the Town.
16. Acceptance of all items listed above by the Director of Engineering and Planning.

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

SCHEDULE "A"

Town Code Section 295-54 sets forth the criteria to be considered by the board in determining whether to grant a Special Use Permit. The Town Board makes the following findings with respect to each of these criteria, based upon its own knowledge and investigation or from testimony or other information submitted to it:

- A. Whether the proposed use is substantially consistent in its scale and character with those uses permitted and the existing built permitted uses in the subject zoning district and neighborhood or will otherwise impair such uses due to inconsistency?**

The proposed use is right out of the pages of the Town's recently adopted Farmland Protection Plan and Comprehensive Land Use Plan Update that allows working farms to use up to 25% of their acreage for large scale solar arrays in order to provide supplemental income to help keep their farms financially afloat. As per the plan, the site plan for the proposed use avoids the better farming areas within the farm and instead sticks to areas with subpar soils, drainage, or access.

- B. Whether the proposed use aligns with the vision, goals and recommendations of the Comprehensive Plan and other applicable plans and studies conducted by or on behalf of the Town.**

The Update to the Comprehensive Land Use Plan, adopted January 2019, added large scale solar arrays up to 25-acres to be installed on working farms as part of the code changes suggested in the Farmland Protection Plan that was adopted in the spring of 2018. A full GEIS was conducted as part of the Comprehensive Land Use Plan and saw that by allowing these solar arrays on working farms, it would help preserve agriculture in Town by providing auxiliary farm income. As part of the recommendations from the Farmland Protection Plan, Comprehensive Land Use Plan Update, and associated GEIS, the arrays would be installed in a manner that minimizes agricultural impacts on the working farms and that revitalizes the soil lying under the arrays. The proposed use meets all of the standards dictated in those plans and studies.

- C. Whether the proposed use aligns with the purpose, intent, and applicable design and development standards of the zoning district(s) in which the use is proposed to be located.**

The proposed use aligns with the recent changes to the newly created Rural Residential Zoning District in which the site for the proposed use resides. The Rural Residential Zoning District was created by combining the two former Rural Residential RR-1 and RR-2 Zoning Districts and by adding a number of uses and guidelines from the Farmland Protection Plan and adding them to the zoning district. The proposed use is one of those newly added items.

- D. Whether the proposed use will be a nuisance in law or in fact due to its being materially noxious, offensive or injurious by reason of the production of or emission of dust, smoke, refuse, poisonous substances, odors, fumes, noise, radiation, vibration, unsightliness or similar conditions, or will contaminate waters.**

The proposed use will not create any materially noxious, offensive, or injurious issues. The only potential contamination would be due to the deterioration of abandoned solar panels.

Because the code requires a decommissioning bond or escrow to fully cover the removal and proper disposal of the solar panels, even that potential has been eliminated.

- E. Whether the proposed use will create material hazards or dangers to the public or to persons in the vicinity from fire, explosion, electricity, radiation, traffic congestion, crowds, parking of vehicles, or other causes.**

The proposed use will create no fire, explosion, or radiation hazards. There will be high voltage electricity generation on site, but that generation will be contained within a secured area behind a high perimeter fence, thus mitigating the danger. The solar array requires minimal on-site attention, so there will be no traffic, crowds, or parking issues.

- F. Whether the proposed use will create materially adverse impacts that cannot be adequately mitigated, such as to adversely impact natural resources or the environment, agriculture, community services or other areas required to be addressed by the State Environmental Quality Review Act (SEQRA).**

The proposed use will not create any materially adverse impacts that cannot be mitigated. While the panels will displace some low-value agriculture (a Christmas tree nursery), the panels will not be in the areas of the farm that contain the high-value agriculture. In addition, the proposed use will plant native plants including nitrogen fixers and pollinators so as to restore the soil underneath the panels since the current pine trees have acidified the soil over the years. As a result, when the arrays are removed, the soil will be better for agricultural use than it is today.

- G. Whether the physical conditions and characteristics of the site are suitable for the proposed use considering site size, configuration, location, access, topography, vegetation, soils, and hydrology for effective stormwater management and, if necessary, the ability to be screened from neighboring properties and public roads.**

The natural screening from woods and topography will mean that the solar arrays will be completely screened from adjacent properties. The least amount of screening is along the southern exposure of the solar arrays, however in that direction lies the 40+ acres of active farmland, a line of trees, and then the back lot of the Museum of Transportation, so they will not be in the view-shed of any residences or businesses.

- H. Whether there are adequate public infrastructure, utilities, community facilities and emergency services, either existing or to be provided by the applicant or others, to effectively serve the proposed use. A proposed use shall not create or contribute to an existing inadequacy.**

The only required utility is a connection to a power distribution line, which is present along the western portion of the property. As the proposed use is an unmanned facility, there are minimal other requirements for services and infrastructure. A well-constructed service road will provide access to the site.

- I. Whether the proposed use will provide, maintain, or enhance, as necessary, safe and efficient vehicular traffic patterns, nonmotorized travel, and pedestrian circulation as**

well as, where feasible, access to public spaces, parks, recreation, and open space resources.

As it is an unmanned facility located in the middle of a private farm, the proposed use will not alter the current vehicular traffic patterns, non-motorized travel, or pedestrian circulation. There are no adjacent public spaces, parks, or open spaces to which this property provides access to and as such will have no adverse impacts on the same.