

MINUTES
Town of Vienna
Planning Board (PB) - Regular Meeting
December 21, 2023

Call to order: Chairman Calvin Collins called the meeting to order at 7:03 pm with a quorum present.

Attendance:

Board Members: Calvin Collins, Bill Shaughnessy, Mike Piper, Orrin MacMurray, Martha Link, and Dave Gigon. There is one vacancy on the board.

Others: Several applicants and residents.

Secretary Kathy Pavelock and Liaison Darrin Smith. Codes/Zoning Officer (C/ZO) Reay Walker and Town Attorney Evan Rossi were unable to attend.

Minutes Approval:

A **motion** was made by Orrin MacMurray, seconded by Dave Gigon **to approve the November 16, 2023 regular meeting minutes with one correction (add reason for abstention by Mike Piper on SUP2023-07 – he is related to the applicants)**. No discussion. Poll Vote:

Orrin MacMurray – Aye	Bill Shaughnessy – Aye	Martha Link – Aye
Dave Gigon – Aye	Calvin Collins – Aye	Mike Piper – Aye
Vacancy – n/a		Motion Carried.

Correspondence:

- Submitted legal notices for December 21 public hearing.
- Submitted 239m reviews for SUB2023-02 to OC Planning, DEC, and OC DPW.
- Received responses of SUB2023-02 239m reviews from OC Planning and DPW.
- Contacted Liebel regarding planning board review of plats that were not filed in 2021.
- Filed plats for Relot2023-01 after receiving tax search and filing fee from applicant.
- Prepared and distributed letters of determination for SUP2023-07 (Zorn) and SUP2023-08 (Corey).

While awaiting the scheduled time for the Public Hearing, Orrin MacMurray reported that he has received some information from the Association of Towns related to Zoning Law changes. He does not have anything prepared to share with the planning board at this time.

Public Hearings:

7:10 pm SUB2023-02 Phil Amway 2-lot subdivision; 9384 Elpis Rd, 181.000-1-6.2; Zone RR3.

Motion to open public hearing for SUB2023-02 was made by Bill Shaughnessy, seconded by Mike Piper. Poll vote:

Orrin MacMurray – Aye	Bill Shaughnessy – Aye
Martha Link – Aye	Dave Gigon – Aye
Mike Piper – Aye	Calvin Collins – Aye
Vacancy – n/a	

Motion Carried at 7:13

There were no comments from the public.

Motion to close public hearing for SUB2023-02 was made by Mike Piper, seconded by Bill Shaughnessy. Poll vote:

Orrin MacMurray – Aye	Bill Shaughnessy – Aye
Martha Link – Aye	Dave Gigon – Aye
Mike Piper – Aye	Calvin Collins – Aye
Vacancy – n/a	

Motion Carried at 7:14.

Unfinished Business:

SUB2023-02 Phil Amway 2-lot subdivision; 9384 Elpis Rd, 181.000-1-6.2; Zone RR3.

The board asked about the access to 5-acre lot resulting from this subdivision. It will be from Preston Hill Road. It was noted that there is already an access road to this parcel. We have received responses from Oneida County Planning and Oneida County DPW. The responses were shared with the applicant. DEC has until tomorrow to respond. A **motion** was made by Orrin MacMurray, seconded by Martha Link to **approve SUB2023-02 given that the subdivision meets the requirements of the town Subdivision Law**. No discussion. Poll Vote:

Orrin MacMurray – Aye Bill Shaughnessy – Aye
Martha Link – Aye Dave Gigon – Aye Calvin Collins – Aye
Mike Piper – Aye Vacancy – n/a **Motion Carried.**

The chairman signed the plats. The applicant will file the approved plats with Oneida County.

New Business:

Liebel Subdivision - SUB2021-03 was approved on July 15, 2021. Mr. Liebel discovered that the plats were not filed. Mr. Liebel has submitted a mylar and prints for filing. Chairman Collins researched the Subdivision Law and determined that Mr. Liebel will need to reapply. The board agreed. Secretary Pavelock had phoned Mr. Liebel and asked him (by message) to attend this meeting. He was not present at this meeting. Secretary Pavelock will contact Mr. Liebel and request that he submit a new Subdivision Application for review at the January meeting.

Unfinished Business:

SUP2023-09 Broadway Group (Carson Styles); New business and a 9,100 sf building at corner of Rtes 49/13. 2380, 2381, 2379, 2385 NYS Rte 49; 217.000-2-24,25,26,27. Zone Commercial

Mr. Carson contacted Secretary Pavelock on December 20, 2023 explaining that he would be unable to attend tonight's meeting. He requested his application be tabled until January. Secretary Pavelock reported that Mr. Carson has sent several documents for the board to review at the next meeting.

SUP2023-06 Distributed Solar generation facility (5mW); RIC Energy; 2930 NYS Rte 49; 218.000-1-27.4; Zone C (along Rte 49) WR (remaining acreage).

The board summarized the status of the project with the applicant Sean Frusco from RIC Energy. A detailed summary maintained by Orrin Mac Murray and used to direct the discussions is attached. Other key points and discussions included:

- Lead Agency letter – There have been no objections received from the Lead Agency Letter mailed on November 10. Responses were due in 30 days.
- Discussion on the color of the fence. Since it is chain link and not visible the board agreed that a normal chain link fence without special color is fine.
- Sean explained that they understand the need for snowplowing, but requests that it be plowed as needed when workers need to access the site for maintenance. The board agreed and will include this as a condition.
- Vienna Fire Chief Roberts spoke regarding a scenario if there was a fire within the project area. The Utility is called first before the Fire Department is called in. Chief Roberts attended training on Solar Farms and learned that well-maintained solar projects have no issues.

The board reviewed the Full Environmental Assessment Form (FEAF) part 1 prepared by the applicant. The board noted that there is a mistake on part 1. The project is not in a flood plain. The board proceeded to complete FEAF part 2. Orrin MacMurray made a **motion to declare a negative environmental impact**. Seconded by Bill Shaughnessy. No discussion. Poll Vote:

Orrin MacMurray – Aye Bill Shaughnessy – Aye Martha Link – Aye
Dave Gigon – Aye Calvin Collins – Aye Mike Piper – Aye
Vacancy – n/a **Motion Carried.**

The board reviewed the Zoning Law provisions regarding the timeline. The solar project must be built within 12 months of approving the special use permit. If not built within this timeframe, a new permit application will be required. Orrin MacMurray made a **motion to declare a substantially complete application and to schedule a public hearing for January 18, 2024 at 7:10 pm**. Seconded by Mike Piper. No discussion. Poll Vote: Orrin MacMurray – Aye Bill Shaughnessy – Aye
Martha Link – Aye Dave Gigon – Aye Calvin Collins – Aye
Mike Piper – Aye Vacancy – n/a **Motion Carried.**

Secretary Pavelock will submit the project for a 239m review to Oneida County Planning, NYS DOT, and NYS DEC. Sean Frusco will provide electronic site plans as required by Oneida County.

Sean Frusco will contact adjacent property owners of the public hearing. Secretary Pavelock will send a copy of the legal notice to Mr. Frusco for his use.

The planning board thanked RIC for being cooperative (and vice versa).

Sketch Plan Reviews: None

Public Comments:

Mike Piper –Mike will not be resigning from the planning board as of December 31, 2023 as indicated at the last meeting. He still recommends that the planning board be a 5-member board rather than 7.

The board explained that only the Town Council can change the number. It was pointed out that in the mid '70s the planning board had 8 members.

Other:

- Secretary Pavelock summarized the planning board training status. Martha and Mike both need hours to fulfill the 2023 requirements. Everyone else is covered. She will forward links to Martha and Mike.
- Calvin Collins has agreed to renew his term on the planning board with a new term ending 2030.
- Orrin MacMurray made a **motion to recommend that the town board appoint Kathy Pavelock as the Planning Board Secretary for 2024**. Seconded by Dave Gigon. Poll vote:
Orrin MacMurray – Aye Bill Shaughnessy – Aye Martha Link – Aye
Dave Gigon – Aye Calvin Collins – Aye Mike Piper – Aye
Vacancy – n/a **Motion Carried.**

Next Meeting: January 18, 2024. Agenda items are due to the secretary by January 11, 2024.

Orrin MacMurray made a **motion to adjourn**, seconded by Bill Shaughnessy. **Motion carried 8:42 pm.**

Minutes prepared by:

Kathy Pavelock
Planning Board Secretary

Open items are highlighted.

See added comments after Nov 16 Planning Board meeting in this font.

General:

- Notes dated 22 Sep referencing 21 Sep PB Meeting.
 - The PB is currently reviewing the application internally. If outside assistance is needed the Applicant has agreed to fund up to \$10,000 in engineering review expenses.
No Change.
 - The system installer is unknown currently. The Applicant will need to provide the name of the proposed system installer prior to a Building Permit being issued.
See Conditions.
 - NYS DEC wetland delineation and USACE deferment of wetland authority to NYS DEC.
Status?
Ans: Delineation Report provided. No reply from USACE currently.
DEC Email of 17 May received but does not approve delineation nor does it clearly establish DEC jurisdiction.
The Applicant is to provide to the Planning Board written documentation stating that the NYS DEC takes no exception to the wetland boundary as defined by the Wetland Delineation Report dated April 2023 and shown on the drawings. If the USACE does not defer jurisdiction to the State in writing than a similar statement is required from USACE.
 - A Visual Assessment for the project needs to be provided. The Applicant has agreed to provide a balloon study as part of this assessment with photos of the site from various locations including NYS Rt 49 and Vienna Rd. Status?
Ans: View shed Analysis was provided. Balloon photos not available yet. Will be provided at the next meeting.
A balloon photo study has been submitted.
 - A SWPPP is required prior to the application being complete and a SEQR determination.
Status?
Ans: A SWPPP dated 10/10 23 was provided signed and sealed by a NYS Professional Engineer certifying that it meets the requirements of the SPDES General Permit for Storm Water Discharges from Construction Activity.
 - A Spill Prevention Plan is required. Status?
Ans: A SPCC Plan was received dated 7 November 2023 prepared by a NYS Professional Engineer for the project.
 - Unified Solar Permit documents are required. Status?
Ans: Discussion took place the result of which was that the PB waved this requirement due to other more detailed information being provided.
 - The Applicant has agreed to meet with the local Fire Department to obtain their input and incorporate the addressing of their items into the project application. Status?
Ans: No meeting has been conducted. The Applicant sent them a letter. We asked that they meet with the Fire Chief and the head of the Vienna Fire District.
The Applicant has met with the Fire Department and the Fire Department, represented by the Chief, attended the Nov 16 Planning Board Meeting stating they have no further requests of the Applicant.
 - The Decommissioning plan will need to be signed by both the Applicant and the landowner when complete.

This needs to be done. Also, A Decommissioning Agreement must be prepared, based on the Decommissioning Plan and the financial agreement yet to be reached, between the Applicant and the Town through the Town Attorney. See Conditions.

Other Items:

- Items not the responsibility of the Planning Board for SUP review but discussed at the 21 Sep 2023 PB Meeting.
 - The Applicant has agreed to submit a NYS Solar Project Input Request Form. Status?
Ans: Not prepared yet.
See Conditions.
 - The Applicant has agreed to send a letter to the Town Supervisor with copies to the Town Assessor and Town Attorney indicating their willingness to negotiate a Host Community Agreement. Status?
Ans: Not sent yet.
Complete.
 - The Applicant intends to provide the Town a bond for the project. The Town has requested the proposed amount of such a Bond and the surety company who would issue it. Status?
Ans: No information at this time.
An Engineering Estimate of Decommissioning Costs with escalation factor dated 20 Oct 2023 has been provided. Applicant should review this with the Town Atty.
The Applicant must resolve this with the Town Atty. as part of the Decommissioning Agreement. See Conditions.
 - The Applicant has indicated they intend to negotiate a PILOT Agreement for the project. Status?
Ans: Letter sent. No further action was reported.
There will not be a PILOT Agreement. N/A

Review of Plans:

- Sheet C-100 Dated 9/14/23, Revised 10/11/23, Revised 11/3/23
 - Show landowner and reference to lease. It is suggested that another box be added at the bottom of the sheet between the box entitled Site Information and the box entitled Applicant with this information.
 - Change Applicant Box title to Applicant/ Lessor
Changes have been made.
- Sheet C-150 Dated 9/14/23, Revised 10/11/23, Revised 11/3/23
 - See Zoning Law pages 30 and 31 for required minimum information in total.
 - Example. Distances, bearing's, and areas of the site to be leased and any remaining lands of the Lessor.
 - Example, Show the boundaries of the individual tax parcels that make up the total site parcel with lot coverage percentages for the project on each individual tax parcel.
Complete. See Sheet C – 200 Revision Date 11/3/23.
 - Example, Show the area to be leased by Applicant.
Complete. The Lease Line is the Limit of Disturbance (LoD) Line as shown on the drawings.
 - Example, Location and ownership of all parcels.
Complete. Added.
 - Example, Location of Zone and District boundaries.
Complete. Shown on Sheet C-152.
 - Etc. as required.
- Sheet C-151 Dated 11/3/2023
 - Shows adjacent landowners.
- Sheet C-152 Dated 11/3/2023
 - Zoning map boundaries.

- Sheet C-200 Dated 9/14/23, Revised 10/11/23, Revised 11/3/23
 - Tier 3 Solar Electric System not allowed in Commercial Zone. Commercial Zone extends 500 feet from CL of NYS Rt 49. Entrance road and electrical components are in the Commercial Zone. Show Zone boundary.
Shown on Sheet C-152
 - Tier 3 Solar Electric Systems are allowed in WR Zone.
 - See setbacks on “Zoning Compliance Table” and on Dwg.
Complete.
- Sheet C-300 Dated 9/14/23, Revised 10/11/23, Revised 11/3/23
 - Who delineated the wetlands?
Ans: Wetland Delineation Report dated April 2023 prepared by McFarland Johnson has been submitted.
 - Does the NYS DEC agree? Document this.
Ans: No NYS DEC document presented to confirm their agreement yet.
See comment under General section above.
 - Has USACE differed wetland jurisdiction to NYS DEC? Document this.
Ans: Pending.
A letter from USACE referenced in the Planning Board meeting of Nov 16 by the Applicant is said to cover this issue and will be provided to the Planning Board. A copy of the letter should be sent to the Secretary with curtesy copies to the Chair and Orrin MacMurray.
 - Are contours and tree lines from actual survey by Thew Assoc?
 - Ans: Yes.
 - If not, what is source of contours? N/A
 - Access road is right next to PL. In some locations grading appears on plan to be on adjacent property. Consider moving access road east to create buffer along PL to protect adjacent landowner. Access Road has been moved on plan farther east of the westerly property line. However, in one area it still appears on the plan to be about 10 feet from the property line. Road should be relocated further east at this location.
Ans: Listened to issue. Will talk with engineers and consider.
Road has been moved further east to avoid grading on adjacent property.
- Sheet C-301 Dated/Revised 10/11/23, Revised 11/3/23
 - See last comment for Sheet C-300 regarding Access Road Enlargement A and B.\ Road moved further east.
- Sheet C-400 Dated 9/14/23, Revised 10/11/23, Revised 11/3/23
 - Revision has deleted the contours on the east side of the site including the Class C Stream area which appears to now be designated Zone A on the drawing. Replace these contours to a minimum of 200 feet to the east of the stream for clarity on stream location and slopes.
Done
 - Plot centerline of Class C Stream on drawing.
FEMA Zone A has been added to address this.
- Sheet C-401 Dated 9/14/23, Revised 10/11/23, Revised 11/3/23
 - Total disturbed area of all phases shown is 22.5 acres. Is this correct?
 - New phasing plan is shown.
Complete.
- Sheet C-500 Dated 9/14/23, Revised 10/11/23
 - No comment at this time.
What color will the fence be? Green is requested.
- Sheet C-501 Dated 9/14/23, Revised 10/11/23
 - Where will Geogrid be installed? Clarify on Dwgs.
Shown on Sheet C-200 Revised 11/3/23.
 - Where will Geoweb be installed? Clarify on Dwgs.
Shown on Sheet C-200 Revised 11/3/23.

- Sheet L-100 Dated 9/14/23, Revised 10/11/23, Revised 11/3/23
 - No plantings proposed except for “Meadow Mix” and “Grass” as shown?
Ans: Correct.
- Sheet L-500 Dated 8/18/23, Revised 10/11/23
 - Who will be responsible for maintenance, including watering, as detailed here?
Ans: The Applicant.
 - What guarantee does the Town of Vienna have that the site will be maintained?
Ans: No answer was provided.
Include wording that commits future owners of the project to this requirement.
Applicant to provide written statement signed by the applicant stating that if the project is sold all future owners of this project shall be bound by all documents, terms and conditions of this Special Use Permit. See Conditions.

Review of Application Document Dated August 30, 2023:

- App A - Special Use Permit Application
 - Confirm with PB Secretary.
- App B - Building Permit Application
 - Confirm with Code Enforcement Officer
- App C - General Description.
 - No Comments at this time.
- App D – Site Plan Check List
 - Some information remains incomplete.
All information shown by Applicant is accepted.
- App E – Civil/Site/Drainage Plan
 - See Drawing Comments
- App F – SEQR FEAF Part 1
 - There is a Class C Stream on Site. Please show center line on drawings.
FEMA Zone A is now shown on Dwgs.
 - Status of wetland authority. DEC? USACE? Documentation?
See notes under General.
 - FEAF, B, list all permits and their issuing agencies.
Complete.
 - FEAF, D.1.e, please confirm that all “Phases” shown on C-401 are to be constructed as one project.
Ans: Confirmed.
 - FEAF, D.1.h, will stream protection and SWPPP require retention? If so revise.
Not required under SWPPP.
 - FEAF, D.2.b, please review when stream is plotted.
 - FEAF, D.2.e, please include how storm water quality, volume and runoff will be handled.
See SWPPP and Drawings.
 - *The Planning Board will send out a letter to those parties to this action indicating that it intends to take Lead Agency status.*
Letter sent.
- App G – Verification of Utility Notification
 - What is the projects “Queue position”?
Ans: They have agreement from National Grid to take the power. No date.
- App H – Landowners within 500 feet
 - Provide readable map.
See Drawing C-151.
- App I – Property Operation and Maintenance Plan
 - Fire Dept. requirements?
See Conditions.

- Specify month in which testing will be done?
See Conditions.
- Snow plowing of 1,500 foot +/- access road for emergency access? Plowing is to be performed such that no more than 6-inches of snow accumulates on any portion of the access rod at any time.
See Conditions.
- App J – Agricultural Data Statement
 - No Comments at this time.
- App K – Equipment Spec Sheets
 - What is the useful life of the equipment?
Ans: 25 years.
 - Coordinate with Code Enforcement Officer.
- App L – Consent to Lease
 - No Comments at this time.
- App M – Panel anti-reflective properties
 - In comparison with other technology available today to reduce glare where does this system fall?
Ans: All are about the same.
 - Are there other panels available with better properties?
Ans: No.
 - If so, what are they? N/A
 - Are there any environmental or pollution hazards created by the solar panels or other equipment? If so, how are they being mitigated?
Applicant states there will be none.
- App N – Decommissioning Plan dated 14 Sep 2023
 - Page 3, state that all foundations will be removed unless the owner wants them left in place. Please revise to same wording as for driveways on page 2 and 3.
Still needs to be addressed.
 - Top of Page 3 states all underground wiring will be removed. Page 4, Section 2.5, states underground wiring must be left in place. Which is correct? Clarify wording.
This has been clarified.
 - Please provide an estimate of the cost of Decommissioning and an appropriate annual escalation percentage for the agreement.
This has been submitted dated 20 Oct 2023.
 - **Bond amount and surety company proposed.**
 - Who is responsible for Decommissioning if the project is sold? Where is this covered?
Conformance with SUP requirements would follow the Owner of the project.
- App O – USGS 7.5 Minute Topo
 - What is the purpose of this Appendix?
Additional information.
- App P – LIDAR Elevation
 - Is this the same data that is shown in the drawings?
Substantially the same.
- App Q – LIDAR Slope
 - No Comments at this time.
- App R – FEMA Flood Insurance Rate Map
 - No Comments at this time.
- App S – NYSERDA NOI Form
 - Are these standards being complied with?
 - If so, where stated?
Yes.
- App T – NYSDAM Solar Construction Guidelines

- Are these standards being complied with?
- If so where stated?
- Yes.
- App U – One Line Diagram
 - Coordinate with Code Enforcement Officer.

Conditions for SUP under consideration: (Additional conditions or amendments to conditions shown here will be added as SUP application review continues.)

- Compliance with the provisions of all documents presented as a part of the SUP review process for the duration of system use and decommissioning.
- Submittal to the Town of Vienna in January of each year an Annual Maintenance Report including the following:
 - What testing or maintenance was performed the preceding year in accordance with the Property Operation and Maintenance Plan.
 - When such maintenance was performed.
 - A certification by the system owner that the information reported is true and correct.
- Prior to the commencement of operations of the system an on-site, in person orientation will be provided by the Owner and Operator to the Town of Vienna and the Fire Department. This orientation will at a minimum cover the following:
 - System components and their purpose.
 - System operation.
 - Physical and Environmental hazards.
 - Emergency response plans and requirements.
 - Emergency Contact information for on call operating staff.
- The Applicant shall provide the name and contact information of the System Installer to the Town of Vienna Code Enforcement Officer before a Building Permit will be issued.
- Prior to the issuance of a Building Permit the Applicant must execute a Decommissioning Agreement including decommissioning costs, escalation provisions and bond requirements with the Town as approved by the Town Attorney.
- Prior to the issuance of a Building Permit the Applicant shall complete and submit to the Town Assessor a NYS Solar Project Input Request Form satisfactory to the Assessor.
- If this project is sold in the future the Applicant will incorporate into their sales agreement that all subsequent owners/ lessors are bound by the terms and conditions of this Special Use Permit. Failure to comply with any term of this SUP will be grounds for the Town of Vienna to terminate the permit and require that Decommissioning in accordance with the Decommissioning Plan and Agreement take place immediately.
- The Operator will provide snow removal for the access road and hammer head turnarounds in order to facilitate emergency vehicle access such that no more than 6-inches of snow accumulates on the road at any time. (This condition will not be required if the Applicant adds this action to the Property Operation and Maintenance Plan.)