

ZBA MEETING – JANUARY 25, 2018 (Time Noted – 7:35 PM)

FRANK DARRIGO REVOCABLE TRUST 84 LAKESIDE ROAD, NBGH
(86-1-96) R-1 ZONE

Applicant is seeking a use variance for 185-83 solar farms shall be located in an Industrial District (I Zone) to build a solar farm in a residential-1 District (R-1 Zone)

Ms. Gennarelli: The next application is Frank Darrigo Revocable Trust, 84 Lakeside Road in Newburgh and this is a use variance for 185-83 solar farms shall be located in an Industrial District (I Zone) to build a solar farm in a residential District an R-1 Zone.

Mr. Scalzo: Mr. McKelvey, I'm will be recusing myself from this action.

Mr. McKelvey: Okay.

Ms. Gennarelli: This applicant sent out one hundred and three letters. All the mailings, publications and postings are in order. Sir, do you have a proxy?

Mr. Bloom: I...I didn't submit one in advance, no, I do not.

Ms. Gennarelli: I don't have a proxy for you.

Mr. Bloom: All right a...may I make an application Mr. Chairman for a...permission to sign the proxy at or subsequent to the meeting?

Mr. Donovan: That's a matter of the Board's consent. It's the practice of the Board to have a proxy.

Ms. Gennarelli: We have one for Mr. Lease.

Mr. Donovan: I don't want to interrupt the proxy, it's not as if though Mr. Bloom is an unknown quantity, I don't think he was driving by tonight, decided to volunteer his time but I leave that up to the Board.

Mr. Levin: Inaudible.

Mr. McKelvey: What's the Board want to do?

Mr. Levin: Can we waive a proxy without a...a vote?

Mr. Donovan: Well I...see it's a matter of policy that the Board requires before someone speaks on behalf of an applicant that they are authorized by the applicant to do that and that generally is a...not generally...it's a good policy. We have a situation now where you know, as they say you know, hard law or hard cases make bad law or something like that but I mean...it's not like Mr. Bloom is...is doing this for free, it's not like he...his client doesn't know he's here so I

just...there, there sometimes it's a matter of common sense. If the Board wants to stick to your policy you can stick to your policy. If you want to hear Mr. Bloom on behalf of the applicant I can certainly understand that and would have no objection to that but that's a matter for the Board.

Mr. Bloom: May I be heard a...Mr. Chairman on the...

Mr. Donovan: I don't think they've decided yet, Dan.

Mr. Bloom: If I may say something please rather than cause consternation on the Board I will a...voluntarily and with the permission of Mr. Lease withdraw from making a presentation on his behalf and with the Board's permission I will simply sit here and monitor. I was going to turn the meeting over quite unusually anyway to my client because of his in-depth knowledge of the subject matter and I was just going to make introductory remarks so I appreciate the Board's rules and it's not my intention to violate those rules. I appreciate your respect and a...with your permission Mr. Chairman I'll turn it over to Mr. Lease.

Mr. Lease: Good evening, my name is Jeff Lease and I'm representing the Darrigo Trust for the application of a use variance for a solar farm on the existing Darrigo sixty acres on Lakeside Road. The reason for this application is that the solar rules in the Town of Newburgh though well written are only being applied to the industrial zone and a...the...we feel that the Darrigo farm is uniquely qualified to hold the solar farm because of certain conditions and those conditions are...are for variance. A...I'll go in order of a...what I also wanted to say is that this...this is only an...a use variance, there is no other variance for setback or height or anything else. It's just simply use. In all other respects, this application will comport to the a...the Code as written a...in...in...in the rules. It's...it's only in that it...it's a...in an R-1...what's being proposed in an R-1 Zone. It first instance in which the question of hardship comes up is...is a...this is in...on part of this property...I just want to point out...

Ms. Gennarelli: You can take the microphone with you please.

Mr. Lease: Oh, (Inaudible), yes on part of this property this is the...this is the existing farm as it is and I'll bring this Board up later but this is the...this is the proposal with the solar array on it. The...the sixty acre parcel here is in...in total and there's and eight point eight six portion of it in which the Darrigo's have had a...a retired hazardous waste site on the corner of the property and they've worked hard over many years to a...remediate that site and to cap it. That site has certain a...effect on the balance of the property particularly when it comes to residential. The...the eight point eight six acre may not be used for residential. It may be used with conditions from the DEC for commercial use but never for residential a...and we feel that one of the biggest aspects of this as part of the total in terms of the development as an R-1 is that the future homebuyers would have to be notified of the presence of this former hazardous retired waste site there and this would substantially and negatively affect the value. The hardship in this particular case is unique. The Darrigo's ran this a...waste site legally during the '40's and '50's, it a...it was stopped and then tested by the DEC and a...after much testing in the '90's they determined that there was some heavy metals that were a...deposited there that should not have been. They didn't have testing in the '40's and '50's for it and that they made a report...a

proposal to get a...to remediate the heavy metals at this site. The main thing about the solar farm here on this site is that it keeps the farm more farm-like than the R-1 would...would make it. The R-1 because of the topography and the...the need for internal roads because it has so little frontage on this sixty acre parcel it would require an enormous amount of...of land clearing and road building in order to access a...the property as an R-1. As a use as a solar farm if you can see the fields as they are here the proposal is to use not all of the sixty acres but part of the sixty acres and use the fields as they are and particularly expand the upper field a...which is at the back corner of the property. Just to be clear, this is Lakeside Road over here, this is Ice Time and this is Amber Fields and this is I-84. So in a sense when the question comes up will the modification significantly alter the neighborhood we feel that as use as a solar farm it will be more consistent than transferring it over into single family homes. A...and finally the fourth condition was the...was the proposed...was the condition self-made the dumpsite a...as illegality was not self-created a...after its closure in '85 and with the testing the contaminants were found there on...on site unbeknownst to the Darrigo family. A...what I would just want to describe is that this proposal is currently a...as shown is a four megawatt, it's been approved at least at this location by Central...Central Hudson. It has not gone to the design phase. It at that point an engineer would have to lay the whole thing out and Central Hudson has to weigh in as to the exact design of it. Panels get turned slightly differently and a...the...in the way that it connects currently, the connection site that Central Hudson has proposed is a...either on Lakeside Road or over to a...Meadow Hill Road and it is a...they are two a...two megawatt a...solar systems which is pretty much the standard size which is...which is being promoted right now. A...the panels themselves are about seven feet high and a...we had a town hall meeting in which we a...met the neighbors that were all this evening for tonight's variance meeting and we had that in a...the end of June and tried to determine what was important to the neighbors in terms of this proposal and if this would be acceptable and we got largely positive a...responses. And a...one of the...one of the things was that I...I just wanted to...you've seen the photographs that I...I've a...had with the application what I wanted to show was the solar panels themselves which I guess I don't have, okay. Well the...the solar panels are seven feet...seven feet high and...and three feet at...at the low edge. I'm sorry I didn't have that drawing a...the...the letter from a...the DEC was included in the package. I have a...a letter...I asked for letters of recommendation from my neighbors and I got but one from the Kneisers who live at the entrance and a...I also have a letter here from the accountants for the Darrigo trust which has been notarized in which to date the existing use of the farm has never turned a profit that has resulted in a distribution to the beneficiaries and so I'd like to...I have some copies as well. How do I present a letter to the Board? Do I just give it you or...? To Betty? Right.

Ms. Gennarelli: Do you have copies?

Mr. Lease: Yeah, I do, I think I have eight copies.

Ms. Gennarelli: Thanks.

Mr. Lease: Additionally as part of this I want to know that how I was introduced to this property is that I was...I was contacted by the Darrigo family to try to do something with the property and a...we have been trying to either sell or lease the property for the past two years and a...unsuccessfully a...and I have a letter here briefly outlining a...the history of...of that. In terms

of finding another farm use or finding someone who would take the property over as an R-1 and a...Betty I have originals, there all originals in there and eight copies I think as well.

Ms. Gennarelli: Okay, okay great, thank you. The top one is the original?

Mr. Lease: They are all originals, I...I signed them all in that particular case.

Ms. Gennarelli: Oh.

Mr. Lease: The other one was notarized. The...the reason...this is a...this is a unique opportunity within the Town of Newburgh for a...solar because the applications for a solar within the Central Hudson are now closed and everyone that has a position within Central Hudson is going before the planning board. The Town of Newburgh was unusual in that it adopted a Code which was very similar to what New Windsor and a...some other...other townships adopted particularly a...Warwick but they placed entirely in the Industrial Zone. I...New Windsor already has one approved project and has another one on...on board and I think, with all due respect, I think it was a bit of a mistake to limit to the Industrial Zone. The Industrial Zone is the airport and the Danskammer Roseton power plant. There are no privately owned pieces of property of ten acres or more that you can purchase on the airport property or at the...at the Roseton plant. It was...it was well done but it was poorly placed in the Industrial Zone because it...it...it a stop it...it...it...it's a non-starter so if there's going to be solar at all in the Town of Newburgh and there may not be at all but if there is this seemed to me to be an ideal site. The first thing that has to happen with a solar site is it has to be near a substation and there is only one substation that I know of in the Town of Newburgh. This one is being hooked to a sub...substation in Montgomery. It has to be within about mile and a half otherwise it gets too expensive to bring the power down and this gets hooked to a substation which is near 747 Drive on a...on 17K and it also has a unique quality because 17K has double three phase a...power coming down the line which is very important a...to getting the power to the a...to the substation. That substation a...provides power to the...most of the Town of Newburgh, Route 300, the airport and a...the Town of Montgomery. One of the reasons is the state is very much behind a...solar power right now is this...this allows a...Central Hudson not increase the size of the lines for...to the substation when we have peak power demand and right now Coldenham is one of those substations that may need an increase. Those increase means increase cost to the lines and what the state is hoping is that these individual a...a...sources of power need the substation begin to micro grid the power supply as opposed to having it come from one giant supplier, in the case of Indian Point or...or a...power from Canada from hydroelectric. And this power will feed to the Coldenham substation and in the case of a brownout or peak demand the peak demand happens to coincide exactly when these panels will get sunlight the most that is the summer months a...between a...two o'clock and five o'clock and they actually want to turn the panels to maximize their impact at three o'clock a...so that they can...they can offset the...the peak power. Not building a new line to the Coldenham station will mean a...lower a...utility cost in terms of line upgrades exactly, I think, what the Town a...is...is trying to avoid right now in...in terms of Central Hudson request in...in terms of increasing costs. And it also will protect the Town in terms of a...power outages in that it will be able to supply backup power as long as the sun is in the sky and that's one of the reasons why they'd like to see a lot of little power stations in the future as opposed to these big single stations which we've had in the past. They are concerned

about extreme weather. They're concerned about acts of terrorism. In this particular case the Darrigo farm has so little frontage on a...on the roads it...the R-1 one acre zoning make...can work if you have a lot of frontage but over the years the Darrigo farm has...has lost most of its frontage and with 84 coming through and a wet area down here by Lakeside Road a...it...it's impossible to develop without putting a lot of excessive and costly internal roads. What's being proposed is not your Lakeside Road really cannot be seen from a...Meadow Hill. It's really the back part of the property and if you walked it you could see that. It's way, way, way up on the hill. The appearance is low impact a...the...and I think probably the nicest aspect is this is the Darrigo's get to keep the property. They are not selling the property, they're renting it. They are renting it for twenty-five years and after twenty-five years the whole installation a...if...if that's what happens will get removed from the site. There are no buildings, there are no a...a...new lines on the street, there are no lines on the property; everything will be underground on the property. The only thing that happens is that the...the fields will have to be mowed every month underneath the panels and a...they'll have to be cleaned and maintained. That's my presentation.

Mr. McKelvey: It's not going to be fenced?

Mr. Lease: It has to be fenced.

Mr. McKelvey: It has to be.

Mr. Lease: It has to be fenced. This proposal follows your Code exactly in every single respect except for the zone. According to your zone you have to provide a fence I think it's eight feet tall and the other thing that we...we heard from the town hall meeting is that the...generally the a...set back that was required was fifty feet and we made a hundred feet. We have more than enough property so we can provide a hundred foot of landscaped tree buffer and then fifty feet a...the panels begin from that but again the panels are their highpoint only this high.

Mr. McKelvey: Would it be visible from Lakeside Road?

Mr. Lease: No, they won't be. It's so far away from Lakeside Road. As you can see Lakeside is over here. The closest neighborhood that comes to it would be Amber Fields. And Amber Fields gives a kind of an indication of what would you would need in order to develop this it...as an R-1. So the tree line here that is drawn here is...is a...is fifty feet and the panels are set back another fifty feet off of the property line. It's a unique project. It's...it's a unique opportunity I think for the Town. It's a unique opportunity for the Darrigo's. It's not what was normally intended for this property in terms of an R-1 but I think it's an elegant solution that solves a number of different problems. And the Darrigo's have been farming this property quite frankly before zoning so that's third generation. They don't want to see the property sold, cut up and lost. They've been farming their...their selves and the idea here is that as they used to grow hay and alfalfa and tomatoes and broccoli on this property, the area has grown up now that they can't afford to hold on to the property and still farm it in the traditional way. This solution here is a kind of farming that pays them a rental but allows them to pay taxes and keep the area as green as possible.

Mr. McKelvey: Any questions from the Board?

Mr. Levin: Are there any sight lines from Amber Field that you looked at or in here, how...how they could see this from their homes?

Mr. Lease: Yes, actually in your package I took one of the photographs from the field looking directly at Amber Fields. It's the one that's the...it's the narrowest and it's a photograph taken...it was...it was taken right here and looks right here. This homeowner here is probably the closest right there and one of your....those are not the photos...I took...I took sight photos in the package that said four sight photos.

Mr. Bell: Inaudible.

Mr. Lease: And I believe I...I noted it as well. May I just show you that? Right, these two right here. This is the contaminated waste site looking at Amber Fields, the very last photograph, the very last two photographs show the thinnest that is what a fifty foot buffer looks like looking at Amber Fields. That's me, at high summer, standing right about here looking right there, looking at that one house because that neighbor showed up at the town...at the a...town hall meeting that we had. A...I...I...Dan can't speak but may I ask him to...a...his opinion if...if I missed anything we've talked about what we were going to present tonight? May I confer with him for just a moment?

Mr. McKelvey: Sure.

Mr. Lease: If I sound a little impassioned about this...this is...this is a...what amounts two years' worth of work going back and forth with Central Hudson and trying to figure this out. The drawing you have is the same drawings that are here this is just colored.

Mr. Levin: Jeff, I don't mean to be a spoiler here but this is high summer...

Mr. Lease: Yes.

Mr. Levin: ...I think it would be a better picture in high winter.

Mr. Lease: Yes, it would be, it would be. I did...I did go up there and you can just make out the a...the roofline of that...of that one house.

Mr. Levin: We could not walk up there because there was too much snow.

Mr. Lease: Yeah, there's a lot of snow up there. But that is...that is the worst case scenario there. In many other cases along the setbacks are as much as three or four hundred feet away from the property line because of wetness, because it just does...because of topography it just doesn't make sense. And all of this will be part of the, I think, the planning board review. My only ask...question here is can I put this use on this property? I can't get to the next stage with the engineer and Central Hudson until I have a usable site. All of the rules and regulations regarding setback and screening and fences is I think, all for...for the planning board. What I'm asking for is use here at the use that I think will serve the Town, will serve the Darrigo's and actually keep

the neighborhood as much in keeping with the way it is right now. The point that I made to many of the neighbors is...is that if you start to deforest and de-wood this property 84 and the airport are going to become very noisy. I...you're going to be able to see and hear 84 and the airport from Meadow Hill Road. You can at Amber Fields. I mean, you only need to go on that part of Amber Fields the road noise continuously. Now I don't think that this proposal will be as deforested as this over here but in order to make this eighty foot slope from the barns to the top of the hill at six percent slope you need a one thousand two hundred foot road. One thousand, two hundred feet is the entire length of the property along Amber Fields so we're talking about a lot of earth moving in order to get up there. Why not just keep the property the way it is and put...put this kind of new crop on the property? That's my proposal.

Mr. McKelvey: Any further questions from the Board? Anyone from the public like to speak? Please come to the mic.

Mr. Cackowski: Good evening my name is Steve Cackowski, I live at 100 Lakeside Road. My wife Carol Davidowsky-Cackowski also live-resides with me. We own three pieces of property along Lakeside. We have ownership of the adjacent property across from the current entrance. What I would like to say is the wife and I have no issue with the solar farm being there. My wife is third generation owning the property and she can tell me stories and tell you stories if you like of the Darrigo's and her father sitting at the kitchen table enjoying coffees and etc. I think that thanking the land use from A1 residential and changing for the use of a solar farm would be for thinking...forward thinking. What we have to do is we need to think and become stewards of the environment having the Darrigo farm develop as a solar field would help in many ways. It will give us non-destructive a...electricity and if the area was to be developed for homeownership you would have more of a carbon footprint with the cars of the residents and all of the heating systems than if you would for the solar farm. I'm asking the Board to think of the future and I believe that solar farms is a way to go and a...I hope that you can consider changing the land use to allow a solar farm there. My wife and I very well would recommend solar farms so if you would please be forward thinking, please think of the environment. Thank you for your time.

Mr. McKelvey: The land use would have to be changed by the Town Board. We couldn't tell them to do it. You'd have to go to them.

Mr. Cackowski: Yes, I'll...I'll stand corrected, I may have misspoke. I'm asking the Board for a change of land use. Is that proper?

Mr. Donovan: I think you're asking...you're speaking in support of the use variance...

Mr. Cackowski: Yes.

Mr. Donovan: Not to put words in your mouth.

Ms. Gennarelli: The gentleman in the back if you could come up.

Mr. McKelvey: The gentleman in the back.

Mr. Casey: Hi, how are you? My name is Ken Casey, I live at 301 Teal Court, my question to you...I have map here like that sent out to me and I could be wrong on this. With the old way, you know, before they do any of this solar power stuff it looked like the houses had more property and when they put the solar in it looks like they lost property. Maybe I'm wrong on that but it looks that way to me.

Mr. Lease: Can I answer?

Mr. McKelvey: Come to the mic.

Mr. Lease: Okay.

Mr. Casey: Let me show you something, may be I'm wrong and if I'm wrong, I'm wrong but...

Mr. Lease: Mr. Casey, hi, Jeff Lease, hi.

Mr. Casey: Question here... (Inaudible)

Mr. McKelvey: Address this to the Board please.

Ms. Gennarelli: Excuse me.

Mr. McKelvey: Address it to the Board.

Mr. Casey: Oh, I'm sorry, I'm sorry...

Mr. Lease: Yes.

Mr. Casey: ...excuse me, I...I didn't know, alright...

Mr. Lease: Can we talk to the big map it's the same thing?

Mr. Casey: Oh, okay, sure.

Mr. Bell: Take the mic.

Board Members: Take the mic.

Mr. Lease: So that way everybody can understand because the map that you have is the same as this one.

Mr. Casey: Yeah, right.

Mr. Lease: Alright.

Mr. Casey: See how this is before you...alright...that's with the solar thing there...

Mr. Lease: Yeah.

Mr. Casey: See with this before it's...

Mr. McKelvey: Can you stand aside so we can see it?

Mr. Casey: ...before you take this it looked like it had more property...

Ms. Gennarelli: Excuse me, sir.

Mr. Lease: They want to...they want to see what...

Mr. Masten: Stand aside.

Mr. McKelvey: Stand aside.

Mr. Lease: ...you're pointing...

Mr. Masten: Stand to the side.

Mr. Bell: Get to the side over here. Excuse me.

Mr. Casey: Right here is Amber Fields, all here, now with the...with the solar power it looks like people are losing property. Now maybe I'm wrong on that but it looks that way to me.

Mr. Lease: Sir, Mr. Casey, this here is the edge of the Darrigo property so it's...it's...the property line remains the same...

Mr. Casey: Oh, okay. I didn't know it looked like you were losing property there.

Mr. Lease: No, no, no, no, no it's the same, you know they're...these two are two different drawings if...they might be off just slightly but the property line is the same it doesn't move at all.

Mr. Casey: Alright so the people don't lose any property?

Mr. Lease: No sir.

Mr. Casey: Okay, alright, thank you.

Mr. Lease: Yeah, yeah.

Mr. Casey: Thank you. Sorry about that (Inaudible)

Mr. Levin: Can I ask you where you live in relationship to this?

Mr. Casey: Pardon me sir?

Mr. Levin: Can I ask you where you live...?

Mr. McKelvey: Where you live in relation...

Mr. Casey: Can I approach there?

Mr. McKelvey: Yes, yes.

Mr. Casey: What...

Mr. Lease: Right here, Mr. Casey lives right up here.

Mr. Casey: Yeah right up in that...right up in that area there.

Mr. McKelvey: He wants to see...can he see right here on this map?

Mr. Casey: No I live right here on the corner. Yes I do.

(Inaudible)

Mr. McKelvey: Show him over here.

Mr. Casey: Oh, okay, thank you.

Mr. Casey approached Mr. Levin and the Board

Mr. Casey: Alright, let me get this here (Inaudible)...

Mr. Donovan: Do you live in Amber Fields?

Mr. Casey: Yes, yes, yes I do. I live...I live right here right on the corner there.

Mr. Levin: You live there.

Mr. Casey: Yeah.

Mr. Levin: Okay, thank you.

Mr. Casey: You're welcome. That I just wanted to...it looked like they were losing...I just wanted to ask.

Mr. McKelvey: Okay.

Mr. Casey: Sorry about the inconvenience.

Mr. McKelvey: Thank you.

Mr. Casey: Alright, thank you.

Mr. McKelvey: Anyone else?

Ms. Gennarelli: The gentleman in the back if you could come up to the microphone.

Mr. Hughes: Animal Hughes, Middle Hope, New York. I think we're on the wrong base here on everything. Mr. Lease are you a realtor?

Mr. Lease: Yes sir and an architect.

Mr. Hughes: And what?

Mr. Lease: An architect as well.

Mr. Hughes: You're a licensed architect?

Mr. Lease: I am.

Mr. Hughes: I see.

Mr. Lease: I'm a registered architect, excuse me, I'm a registered architect not a practicing one.

Mr. Hughes: So you don't have a current license you're not practicing.

Mr. Lease: No sir I do not.

Mr. Hughes: Okay. So I don't know how he is bringing this to the Board to begin with but that's another legal issue. We'll over look that for the fact of this discussion. I'm very familiar with the property the Darrigo's, my family, their family goes back for a hundred years or more. To look to the future like the one gentleman suggested is the key here and I believe that what is necessary to make this project happen is a Zoning change and the Town Board should certainly have the forbearance and the foresight to see that that's the way to go. Number one, a use variance in the State of New York is almost impossible to get. You should know that and Mr. Bloom should know that as well. The conditions that have to be met in order to attain a use variance are this far away from being impossible. So I think we're chasing our tail here. I think what needs to be done and there is a Member of the Town Board in the room at present is to approach the Town Board to use their good judgement and make a Zoning change here for this particular property and do it that way and I urge the Board to progress and approve this project in spite of all the craziness that's going on here with the people that are presenting it. Thanks for listening to what I had to say.

Mr. McKelvey: You're welcome.

Mr. Lease: May...may I speak?

Ms. Gennarelli: You can get the microphone again, thank you.

Mr. Lease: Yes. I would like to completely agree with Mr. Hughes on this point. We...I wanted to change the zoning within the Town and we had some problems and it was decided that that was not the right way to do things. And I don't want to get into the details of the...Mr. Manley (Scott) can fill you in. I went to a Council meeting to try to get that changed and we were denied. A...because we realized after the fact that the zoning though well written was placed in a zone where it wouldn't have enable solar so I agree with you Mr. Hughes but we tried, we couldn't get it done that way.

Mr. Hughes: Somebody made a mistake.

Mr. Lease: Yeah, well, I'm not here to do that. I just want to try to get this one project a...approved for variance so...

Mr. McKelvey: Could you give us a reason why they wouldn't change it...Mr. Manley (Scott)?

Mr. Manley (Scott): I believe he came and gave a presentation at the workshop...

Mr. Lease: Yes.

Mr. Manley (Scott): ...and you never followed up on after that. There was no follow-up.

Mr. Lease: No a...

Mr. McKelvey: Jerry would you give the microphone...

Ms. Gennarelli: Sorry, you have to speak into the microphone anybody that's going to talk please...

Mr. Lease: ...oh I'm sorry, I don't know what confidences I'm breeching. There was a prior application to this Board for a variance for a solar farm. That applicant then decided to, I believe, sue the Town...or was in the process of suing the Town. They felt, the Council, that if they changed the...the law that it would open up the Town to a lawsuit with respect to the prior applicant that had been turned down. And so I was asked rather than try to change the law which is what we had originally wanted to do is to go before the same Board and try to show conditions of...not try, show conditions that were unique to this property that made it a unique choice for a change of use, the solar use.

Mr. Hughes: It's me again. I don't want to get into it on the open floor there's...you know, I respect everybody in the room and everybody has an angle on this thing and an intention. Let's look at what's best for everybody. Let's look at what we need to do and I think what Mr. Darrigo needs to do is to approach the Town Board again and lay it out on it, let it spell it out. A use

variance is almost impossible to get. I don't know how this Board could approve a use variance but this Board could recommend to the Town Board that a zoning change would be appropriate to seal the deal here.

Ms. Gennarelli: Anybody else?

Mr. Lease: May I say one last thing?

Mr. Donovan: Well if you don't mind before you do so...well actually, I'm sorry, go ahead.

Mr. Lease: You know one thing I didn't bring up is the fact that of Mr. Bloom has told me because he can't...he's not speaking tonight but he was going to mention that if the property were subdivided into an R-1 subdivision that everyone who would a...purchase a piece of property there would have to be notified that it was contiguous and part of a former hazardous retired waste site and that would in fact, detrimentally and substantially detrimentally affect the net value for the...for the subdivision. Even though there is a possibility of getting Town water at expense to each one of the lots the fact that the groundwater in the...on the property or near the property might be near a contaminated hazardous waste site would...would make not only the sale of the property but even potentially the financing of the homes on those properties difficult to impossible.

Mr. Donovan: To the point I wanted to make before and Mr. Lease kind of alluded to this in his presentation is that in granting a use variance the Board has four factors that it has to consider. As distinct from an area variance where there's five factors that are balanced and the Board weighs those five factors; in a use variance you have to satisfy each and every of the four factors. If you do not satisfy any one of them the use variance has to be denied. The first factor which I want to talk to is that you have to demonstrate that you cannot realize a reasonable economic return as show by competent financial evidence or what the law calls or case law calls...dollars and cents proof. In connection with that tonight we do have a letter from an accountant a...which indicates that there's never been distributions, the property has been operated at a deficit, its current state is unsustainable and that's fine but I'm going to tell you it's not good enough. The case that you spoke of before was the case that may have...was in litigation at one point in time, that litigation was successfully concluded, successfully from my point of view, the Board's point of view in that the Board's determination to deny that use variance was upheld. It's being appealed. Whether they'll perfect their appeal I don't know but they filed a notice of appeal. And in that case, we talked about that this first factor was of paramount importance, the court discussed and we argued and the court agreed that there needed to be an appraisal of the property, there needed to be an explanation of the carrying costs of the property, there needed to be an explanation of what the financial arrangement was with the solar company. Whatever that company may be that's providing that use on the property and without that information there couldn't be a determination. This Board found that there could not be a determination whether or not there was a lack of reasonable return to the existing state of the property because there wasn't dollars and cents proof. And I just went that...the letter from the accountant is not good enough for you.

Mr. Lease: Okay.

Mr. Donovan: And I'm only so smart because we just did this a couple of months ago.

Ms. Gennarelli: John, I have the Orange County report. Would you like me to read that into the record now?

Mr. McKelvey: Yes.

Ms. Gennarelli: Okay. We have the report back from the Orange County Department of Planning and their comments are: The Planning Department has reviewed the submitted materials regarding the appeal for a use variance and has found no evidence that intermunicipal or countywide impacts would result from its approval. County Planning recommends that the Board act on this variance request only if the applicant satisfies the unnecessary hardship standard, as defined by New York State law. The courts of New York hold that the unnecessary hardship standard is satisfied by competent proof of each of the following: 1) the land in question cannot yield a reasonable return, in dollars and cents, if used for any use permitted in the zone, 2) the use to be authorized by the variance will not alter the essential character of the locality, 3) the hardship is unique to the parcel and not general throughout the zoning district, and 4) the hardship is not self-created. We look forward to reviewing this project when submitted by the Planning Board. Should the ZBA wish to address the underlying issue, they could recommend as part of any action on this matter that the Town Board review §185-83 of the Town Code and determine whether other zones in the Town may be appropriate for solar installations. And this was signed January 22, 2018, David Church and the County Recommendation is Local Determination.

Mr. McKelvey: Thank you.

Ms. Gennarelli: You're welcome.

Mr. McKelvey: Does any Member of the Board have any more to ask?

Mr. Levin: I don't.

Mr. Masten: No.

Mr. Levin: I wonder if you want to take time and try and get the information for us...that it's not helping you get a use variance.

Mr. Lease: Yes, yes I would. I would like to keep the meeting open then, yes, for that preparation.

Mr. McKelvey: Is the Board in favor of keeping the meeting open or the Hearing open?

Mr. Levin: I'll make a motion to keep the Hearing open.

Mr. Masten: I'll second it.

Mr. Donovan: Just to be clear, the intention of the Board you have to continue to a date certain. Is that the February meeting, is that your intention?

Mr. Levin: Yes.

Mr. McKelvey: The February meeting.

Ms. Gennarelli: February 22nd. Okay, roll call.

Mr. McKelvey: Roll call.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

Peter Olympia: Yes

John McKelvey: Yes

Mr. McKelvey: The Board would now like to meet and see if there is anything legal with our attorney. So in order to save time we'd ask you to go out in the hall, we'll call you back.

PRESENT ARE:

DARRELL BELL
RICHARD LEVIN
JOHN MASTEN
JOHN MC KELVEY
PETER OLYMPIA
DARRIN SCALZO - RECUSED

ABSENT:

JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:20 PM)

ZBA MEETING – MARCH 22, 2018 (Time Noted – 8:05 PM)

FRANK DARRIGO REVOCABLE TRUST 84 LAKESIDE ROAD, NBGH
(86-1-96) R-1 ZONE

Applicant is seeking a use variance for 185-83 solar farms shall be located in an Industrial District (I Zone) to build a solar farm in a residential-1 District (R-1 Zone)

Mr. Scalzo: Our next application is held open also from the January 25, 2018 meeting. I will have to ask Mr. McKelvey to assist me in this. I must step aside.

Ms. Gennarelli: Okay, this is Frank Darrigo Revocable Trust and they're requesting a use variance for 185-83 solar farms shall be located in an Industrial District, that's an I Zone to build a solar farm in a residential-1 District the R-1 Zone.

Mr. McKelvey: You could take that mic off; you can pull it right off.

Ms. Gennarelli: Or there is one on the table there, thank you.

Mr. Lease: So I'm Jeff Lease of Lease Real Estate. I'm here on proxy for the Darrigo Family Trust and a...I'd just like to reiterate some of the things we're doing. We're...this is a variance request for community based solar on Lakeside Road, on forty of the sixty acres of the existing farm. It's currently an R-1 Zone and a...community solar or solar is only allowed in and Industrial Zone. This is a use variance only. We're not requesting an area...a...area setback or height variances. And a...the proposal complies with all other aspects of the zone...of the a Code as it is written. At the last meeting in January a fuller explanation of the pro...of the financial proposal as a development under the R-1 Zoning was requested and as compared to a solar farm on the same site we have submitted a comparison prepared by Greg Langer of Valuation Consultants of Newburgh. The conclusion that I think you'll see in both the original form and the addendum is that there is...there is no a...reasonable return on this property except as a solar farm and to further develop that explanation I'd like to introduced Greg Langer of Valuation.

Mr. Langer: Hi, I'm Greg Langer; I'm president of Valuation Consultants at 6 Front Street in Newburgh, New York. I'm a real estate appraiser and have been for...a pretty long time...back in the 70's. A...so I was asked to provide an analysis of this property as a...as Jeff mentioned sixty acres of which forty acres they're proposing to use as a solar farm. The remaining twenty acres will still remain with all the improvements of a few of the scary houses that are on there and the wetlands that are along Lakeside Road and a...lease is proposed with forty acres, I'm just gonna point this out at...maybe you've already...the solar field is for this part. This is the improvements here, down here is wetlands, those are just the existing fields, this is the...the forty acres I'll be discussing mostly.

Mr. McKelvey: The Board Members have visited the property.

Mr. Langer: Okay so I'll cut...I'll cut through that part you already knew that, okay. The subject is in the R...R-1 Zone, part of the property you recall is a DEC environmental contaminated site

that's undergone remediation and has monitoring wells on it. The R-1 District principal permitted uses re...resolve...revolve around single-family residences, municipal dwellings and Town activities. There are other uses allowed via special permits from the planning board including conversion of existing dwellings for multi-family use, cluster developments, membership clubs, recreation facilities, places of worship, parish houses, seminaries, dormitories, related activities, substance abuse rehabilitation homes, community residence for the disabled, marinas, public utility structures, right-of-ways, two-family dwellings and semi-detached dwellings. There are no buildings currently on the forty acres so there's no converting an existing building. There's no known demand for membership clubs, places of worship, and dormitories, that's never been built in the area for many years. The distance from services makes the...an unlikely use for rehabilitation homes and community residences for the disabled. This property sits far back from the highway...for the most part. Marinas are not applicable, two-family, single-family and det...semi-detached dwellings appear to be physically possible. We looked at what sales of other vacant land would be on it for the forty acres a...a...I've listed here seven sales that range from thirteen hundred twenty-five dollar an acre to eight thousand and eighty-eight dollars per acre. We estimate a value of six thousand per acre for those forty acres based on those...an analysis of those sales using...which would be two hundred and forty thousand dollars. We also looked at a possible subdivision of those forty acres, we came up with twenty-eight homes could be built using a formula with thirty percent of the property usually goes towards roads, setbacks and other things and we figured out that based on an analysis of twenty-two lots sold in the Town of Newburgh that they're sale price would be about fifty-seven thousand per lot. We think that the lots closest to where the remediation is...where the old contamination was would probably sell for less but those farther away from it would probably sell for more. Then we did an analysis assuming that it would take two years to sel...to go through the approval process to get all the approvals, one year to put in all the roads and then we would sell out the lots over a period of time. So, I have a...I have a discounted cash flow for as part of my submission that shows what would happen at the end of that period of time you would end up with a value of one hundred and ninety thousand dollars for the forty acres. So our two values are basically two hundred and forty thousand dollars if you sold the land forty acres outright, one hundred and ninety thousand dollars if you developed it with twenty eight lots that were worth fifty-seven thousand dollars apiece.

Mr. Donovan: I'm sorry, could you just run that back so if you did twenty-eight lots at fifty-seven thousand dollars so...

Mr. Langer: Right.

Mr. Donovan: ...so how...how do you...how do you back that down to one ninety?

Mr. Langer: Okay.

Mr. Lease: Well...there...a...I think Greg you may be mis...misstating here...the...there were two analysis done. One where the entire sixty acres was developed and one in...then I...I asked Greg to redo it for just the forty acres.

Mr. Donovan: Right, that's what...

Mr. Lease: So there...there's two different numbers. The two hundred and forty I believe is on the entire sixty acres and the a...the one ninety was just on the forty acres...

Mr. Donovan: Correct.

Mr. Lease: ...is that correct, sorry.

Mr. Donovan: Yup, so...I...just...so I'm...

Mr. Lease: (Inaudible)

Mr. Donovan: ...just trying to figure, so if we get...if we get to...I'm simple minded. Right? So if we said fifty-seven thousand...

Mr. Lease: I gotcha...

Mr. Donovan: ...times twenty-eight yields a number that's a lot higher than one ninety so how do we get down to one ninety and how do you arrive at that value? That's all I'm trying to...fill in that blank.

Mr. Langer: So...as part of that you would have to pay real estate taxes and I have a six year cash flow, if you would pay real estate taxes over the time...over time has the...if you got your approvals you're taxes typically would increase and as you made improvements to the road your taxes would increase but then as you sold lots the taxes would decrease. We figured out that the infrastructure...we averaged a hundred lineal foot per lot as average when you do a subdivision and we estimated the cost to develop the roads at two hundred and fifty dollars per lineal foot which is at the low end, it could be...it could go six seven hundred as but we...so we factored that in so that was seven hundred dollars to put the roads in. We have sales commissions to sell the lots that's at three percent. We have closing costs. We have to pay an attorney and...whoever closing costs. We...we put in ten percent for profit which is just a nominal profit. You wouldn't want to do this unless you made some money on it and then we add the miscellaneous expenses of just thirty thousand. So every year we...we have no income the first three years and then we have income the second three years when we sell the lots off but we have expenses all six years. So what we do is we discount the present worth of a right to receive a certain amount of money down the road. Like if you were going to get...receive fifty thousand dollars five years from now you wouldn't give somebody fifty thousand dollars today for that. You would discount it at...at what you considered a safe rate. In this...in this case we used twelve percent because it's a risky venture. It's not like putting your money in the bank. So we go...after we go through all this calculations we get an income stream and then we discount it and then we come out with a net income for the sale of all those lots and...

(Inaudible)

Mr. Langer: ...in this case was a hundred and ninety thousand dollars. Now the solar tenant is willing to pay eighty thousand dollars a year with two percent annual increases for a twenty-five

year period. So my second analysis...I had a chance to clean it up a little due to your snowstorm that last one so a...my second analysis I said the right to receive eighty thousand dollars annually for twenty-five years with a two and a half percent increase equals one thousand two hundred and ninety-eight thousand three hundred and sixty dollars which we round to a million three. So in this case the economic return on the solar farm is significantly better than the economic return on if you sold the property the forty acres as a whole or if you tried to develop it into twenty-eight lots. That's gonna...that's...that's the economic return a significant difference.

Mr. Lease: May I say as...and as a real estate broker...we've seen a lot of situations like this. In the case of Darrigo Farm...

Mr. McKelvey: Do you want to get closer to the mic?

Mr. Lease: Yeah, it's...it's almost a triple whammy because the R-3 Zone is so expensive to develop right now it...it...because of the constant improvements. When the zone was formulated a number years ago the improvements were not nearly as expensive as they are now. I can tell you when my...my grandfather created Fletcher Drive North, he came in to see Bob Kilpatrick and with a crayon he simply created Fletcher Drive North on piece of paper and was almost approved immediately and then they started laying gravel. The cost of development back in the '40's and '50's was really inexpensive. So I...I think this proposal as...as...as unbelievable as it may seem is rather more typical than you would imagine and the Darrigo property is especially hard-hit in that it has a number of things going against it. Number one it has very little frontage so over the years 84 bisected the property and completely made the long edge of the property completely inaccessible. There are wetlands on one portion and so the usable frontage on this property, I think, is less than a thousand feet. So subdividing the property using the existing roads would...would be the easiest and most convenient way of doing it...it is an impossibility on this. You need internal roads. Add that to the fact that there is a eighty-five foot grade difference between where the barns are in the top of the property and gradually with a solar farm using the top...the highest portions of the property on one side a...and then of course, the...the big issue is the retired hazardous waste site. Something that was unforeseen when it was created back in the '40's a...it was...it was a dumpsite that was a...used for a...farm waste and a...it was contaminated unbeknownst to the Darrigo's back in the '40's and '50's and then testing that was done in the '70's showed that there were...that there was a...heavy metals mixed in there. The Darrigo family at their expense a...cleaned it up and has capped it and that parcel remains unusable for residential development so that eight point six and it...and I say it also affects the balance of the entire property...the...the saleability of the...of the property a...that and that really is the reason that I think that solar is such a...a unique opportunity for this proper...property. It...it kind of makes something which is an impossibility as a...as an R-1 Zone and...and makes it useful and more than that as I...as I explained it will remain a kind of...it will remain as similar to the way it looks today as opposed to being lobbed up into twenty-four or twenty-six lots for residential development. It's consistent with what the neighborhood now knows. Right, I didn't want to cut you off before (Inaudible)...

Mr. Levin: Greg or Mr. Lease, do you a...are you going to have the buildings on the highway? Are they...they remained...all those funny looking buildings?

Mr. Lease: Yes.

Mr. Levin: They're not going on in that area?

Mr. Lease: Right. The barns that were...that have been there are all there. There's...there's no new structures with the solar farm.

Mr. McKelvey: All those buildings have Permits?

Mr. Lease: I don't know.

Mr. Levin: Are there any Violations on the property?

Mr. Lease: You have to know that there's been no structure been put on this...this property since before the Building Department. So everything is grandfathered in. There's no new structures after 1955. So funny looking or not they...they've been there before the establishment of the Building Department.

Mr. Levin: Are there any Violations now on the property?

Mr. Lease: I don't know. I guess Jerry (Canfield) could answer that.

Mr. Levin: He's not here.

Mr. Lease: Okay. As far as I know, no.

Mr. McKelvey: There's one building on...on the property coming up 84 it looks like a fairly new building than the 1950's.

Mr. Lease: You have to understand also that...that...that...they...they are a ag exemption so they are able to run it as a farm. The only useful...this...this has been a farm before it's been R-1. So they're running it as a farm and I believe that there was a barn that was rebuilt but under the ag exemption which they are in they can rebuild barns without the Building Department. I can...I can ask Danny Darrigo...I don't know how that's exactly done. I'm not a farmer.

Mr. McKelvey: I...well I just want to make sure everything is closure.

Mr. Lease: Yeah, yeah, yeah, right and I think if the Building Inspector were here we could...could ask him to say...

Mr. Darrigo: My name is Dan Darrigo, I live 86 Lakeside Road. I'm currently the trustee of the a...of the property. And yeah, we a...a fire January of 2017, my garage burnt down where I fix my equipment so I had to rebuild a new building and I was told that the...you know, I am active farm and I was able to put up a building to replace the one that burned down. So that's the new building you can see from 84.

Mr. McKelvey: Do you do farming on the property?

Mr. Darrigo: Oh, yes...yes sir.

Mr. McKelvey: Okay, just...

Mr. Darrigo: One other point I'd like to make I don't think it was mentioned but a...and I don't know, I don't have any proof on me right now but with our DEC remediation I was told by the engineering consultants that were hired on our behalf that because of that hazardous materials whatever that any person that buys a property on that has to sign off that they know that there is a hazardous material site and that possibly they could be...if something at that site were to become compromised if something should fail whatever and it's got to be re-dug up or whatever that anybody that buys property will...could...could be liable for that, could be partially, wholly or whatever so a...don't know of too many people who would really want to buy any...any of that property with that hanging over their head so... That's what I was told by an engineering consultant. I don't know the environmental laws...

Mr. Lease: Danny you saying...are you saying...?

Mr. Darrigo: That's what I was told...

Mr. Lease: ...for the...for the eight point six acres or the entire sixty?

Mr. Darrigo: I was told that anybody that builds on that property that...

Mr. Lease: On the remaining site...

Mr. Darrigo: On the remaining yeah, that's what I was told. I don't know how true that is. I never bothered to look into it because right now we don't have any plans on...on selling it until, you know, the solar farm came up so whether that weighs in your decision I don't know but once again I don't know the whole validity of that so, okay.

Mr. McKelvey: We asked...it was asked last time you were here, why didn't you get the Town to re-zone the property?

Mr. Darrigo: A...because I was letting Jeff Lease handle it. I...this is beyond me, okay? You know...

Mr. Lease: I don't know, I don't understand the question.

Mr. McKelvey: Well, legally it has to be in an I...a business district.

Mr. Lease: What does?

Mr. McKelvey: The property...for a solar farm.

Mr. Lease: The industrial district, it has to be done in...

Mr. McKelvey: Yeah, industrial, right but it's...it's residential.

Mr. Lease: Correct.

Mr. McKelvey: It was asked last month the question is...and there was a Councilman here and he said that they never followed up on it.

Mr. Lease: That's...that's not true at all. I don't remember that at the meeting. No we did try to change, we...we did make a request of..

Mr. McKelvey: He stated that you didn't follow up. You didn't follow up with the Town.

Mr. Lease: Do you know the name of the Councilperson that was here?

Ms. Gennarelli: Scott Manley.

Mr. McKelvey: Scott Manley.

Ms. Gennarelli: John, I think...wasn't it about changing the solar law?

Mr. McKelvey: Oh, maybe the solar law, I don't know.

Mr. Lease: We...we absolutely did everything we could have done. We...we begged the Town to...to change it and we did follow up. I went to a Town Council meeting where they said, listen, we thought we could change the law and a...we decided that we don't want to...we don't want to go about this, we want you to go in for a variance. The last...the last thing I wanted to do was go for a variance. I can actually written out the way that the law could be changed. It was very simple but we were stopped at a Town Council meeting. And you know it's funny because I heard that...that a...Mr. Manley had made that comment once before from Animal but I...he...he is mis...misunderstood what happened at that meeting. I think the minutes of that meeting as well as a review by the other people at the meeting will show that they specifically asked me not to try to change the law and to appear before this...I did not want to be thrown into this tar pit but here I am. I would have much preferred it. In fact, I knew exactly how to change the law very simply but we couldn't do it. We...we were turned down and that...

Mr. McKelvey: Well I'm just referring to the question that was asked that's all.

Mr. Lease: I didn't hear that...

Mr. Darrigo: I...I don't remember.

Mr. Lease: ...that question from Scott Manley.

Mr. McKelvey: He didn't ask the question. I don't...I don't know who asked the question.

Mr. Lease: No...if...yeah so I...that was something that I heard separately and I...I was incredulous. It is...it is completely unfounded. It is completely unfounded and untrue. It...it contradicts all the notes that were there in at that council meeting when we tried to change it so I done all of this at...at...made a tremendous amount of effort only because I couldn't change the zoning. I...I...really...I thought the easiest thing for us to do was simply change the...change the zoning law so that it included a property with a hazardous waste site. But it was determined at the council meeting that we should not do it that way. That was the...that was the simplest thing to do. Oh boy, I would have loved to have it that way.

Mr. McKelvey: It would have been a little lot easier.

Mr. Lease: Oh sure, what would have been easier is that if...if the zone...if the...if...if the a...let me just retract...if the zoning law had been written so that it included parcels that you could develop a solar farm on that would have been the right way to write it. And it and in my...in my introduction the last time a...we saw and I thought I showed you that there were no available properties of a size large enough to put a solar farm on. So it's in the industrial zone but again that industrial zone is either the airport or the Danskammer property and I have a map here to show you that.

Mr. McKelvey: No we...we understand that.

Mr. Lease: And so there...what you need is a minimum of about ten acres and there are no pro...properties available that were ten acres or larger.

Mr. McKelvey: There's flaws in the zoning law as far as I...I can see.

Mr. Lease: You wanted...want me to be thrown back to the zoning law again?

Mr. McKelvey: No...

Mr. Lease: Oh...oh...oh...oh, okay.

Mr. McKelvey: ...we have to...we have to...we have to abide by this zoning law.

Mr. Lease: Right, right so but that was...that was the...that was the whole thing I didn't really want to go about this because it was going to be a difficult proposal but that...that's how it came about. But the long and short of it is that it's a perfect use for this piece of property. It allows the Darrigo's to continue their ownership of the property after they've gone through a very expensive a...DEC remediation on...on something that they didn't un...they didn't know was happening during the 40's and 50's. A...so that the...the...the had...the...the a...the hardship that has been incurred was not self-created wasn't known this is part of my concluding remarks here a...the proposal for the solar farm is more in keeping with the nature of the neighborhood because this is kind of a large green farm, a buffer that protects all the other neighbors from the noise of 84 a...and that developing it as an R-1 because of the hazardous waste site, cost of the roads and a...and the a...change in the grading would make R-1 really an impossibility on the

site. A...and lastly, a...the hazardous waste site may not be used for residential uses but it may be used for commercial and with DEC approval and they will have to weigh in a...on a...a...on the review process in terms of the construction of the project. They will allow solar before a commercial use over the top of the eight and a half acres that is contaminated. It will have to be ballasted in a certain way so that it doesn't a...puncture the a...the seal that's on top of the hazardous material. What they did is they scraped all of the hazardous material and they put it into a clay lined a...container and then they...they put a top over it. In fact, Beacon is doing that exact same thing right now on about fifteen acres down a...by their sewage plant. They have a methane a...a...waste site down there and they are just completing a...a...a solar farm which is a two megawatt solar farm which will be used by the City of Beacon to offset the a...the cost of running their street lights and a...and a...traffic lights.

Mr. Bell: So my question, I got a question...

Mr. Lease: Yes.

Mr. Bell: ...when you...when you mentioned about going to the Board to request to change the law...?

Mr. Lease: Yeah.

Mr. Bell: ...when I look back in the minutes with Mr. Manley, he said, that you never followed up that's why nothing never happened and your response was, no, that you didn't follow up. I'm reading back in the minutes so...

Mr. Lease: Yeah, but...

Mr. Bell: ...I'm just trying to...

Mr. Lease: Did we...

Mr. McKelvey: That's what I was referring to.

Mr. Levin: Yeah.

Mr. Bell: ...you never...that you were supposed to come back and nothing never happened.

Mr. Levin: Jeff, I overheard that too. You didn't go back.

Mr. Lease: No you heard it from Mr. Manley, but did it...did it happen in this meeting when I was here?

Mr. McKelvey: It's...it's in the minutes...

Mr. Bell: It's in the minutes that of that meeting...

Mr. McKelvey: ...it's in the minutes of the meeting.

Mr. Bell: ...this is the word for word minutes of the last meeting that we had which were about this when...as a matter of fact, when you first brought it forward, you know...

Mr. Levin: I was surprised.

Mr. Bell: ...that was mentioned about that, yeah.

Mr. Lease: Yeah, yeah, yeah. That...that's easily...

Mr. Levin: Evidently that was the easier way to go.

Mr. Lease: What's that?

Mr. Levin: That was the easier way to go.

Mr. Lease: Right.

Mr. Bell: Which would have been easier, you're right...

Mr. Lease: But, but it's completely incorrect and I wish...I wish I had heard that comment I was here for the last one, I didn't hear Scott say that at all.

Mr. McKelvey: Scott sat right over there next to Mr. Canfield.

Mr. Lease: Right, right and I'm sorry I didn't hear that but it is completely...I...I would have preferred to go that way, that was the easier way to go. But I think that if you speak to Mark Taylor, if you speak to Mr. Piaquadio or Andy Zarutskie they were here at the meeting and they said please don't do it this way. And if I need to put a fine point on it the reason why they asked me not to go in that direction, which is why I'm somewhat incredulous, is that you had a law suit, a pending law suit with respect to Troon Development and Troon Development had to go before the variance Board in order to get a use variance as well as area variance and setback variance and the Town Council felt that if I were...if we were to change the zoning law in...after the fact that Troon had gotten turned down by this Board then that would open up Town to an Article...58?

Mr. Levin: 78.

Mr. Lease: 78 and for that reason they wanted us to get turned down or approved in the exact same manner that Troon was turned down. That was...that was the reason for that. Now I don't know how Scott Manley walked away from that meeting with a separate understanding. There was no...I...I said please don't do it this way. And they said, that's our decision, that's the way we want to do it. We want you approved or denied. I...I agree that would have been the simplest way to do it and I...I actually re-wrote the law, put in there exactly how it was going to go,

submitted it ahead of time, was not there. Somehow I don't quite understand and I didn't hear Scott's comment there but I don't understand where that's coming from.

Mr. Bell: Well it was on tape so...

Mr. Lease: I believe it was said...

Ms. Gennarelli: And you answered him.

Mr. Bell: Yeah.

Mr. Lease: What was that?

Ms. Gennarelli: You answered him.

Mr. Bell: Yeah, you answered him.

Mr. Lease: I answered him at that meeting? And what did I say?

Ms. Gennarelli: No.

Mr. Bell: Right here...no.

Ms. Gennarelli: No.

Mr. Lease: I said no.

Mr. Levin: Well what was...what came on tape before that though?

Ms. Gennarelli: Well Scott said...do you want to read that to him?

Mr. Bell: You want me to read the whole thing...there, can you...?

Ms. Gennarelli: I believe he came and gave a presentation at the work shop...

Mr. Lease: Yes.

Mr. Bell: Mr. Lease said, yes.

Ms. Gennarelli: ...and you never followed up on after that...there was no follow up and you said, no.

Mr. Bell: No, yeah, yeah.

Mr. Lease: There was no follow up because I...I was completely shut down. They said you cannot do it, don't do it this way.

Mr. Bell: The Board said don't do it this way?

Mr. Lease: That's correct, the...the council said don't do it this way we want you to get approved or denied in the same fashion that Troon was denied.

Mr. Bell: Right.

Mr. Lease: Do it...do it this way.

Mr. Bell: Right.

Mr. Lease: It made...it made sense it was protecting the Town from an Article 78 and that was it. And that's...that's why we're here. And it would have been so much simpler to do it that way but the reason I'm a little excited is that I mean, I spent nine months doing it or six months from that meeting and to come back and saying you didn't follow it up I...I mean it's almost...

Mr. Darrigo: Are there any? Can I ask a question? Are there any...? Are there any mention in that workshop meeting of...of the...of the council telling Jeff to...to go to...

Mr. Lease: He doesn't have the council minutes.

Mr. Bell: We don't have the council minutes. We don't have that, no.

Mr. Lease: But they...but they do exist.

Mr. McKelvey: They exist.

Mr. Bell: You have to go back to them.

Mr. Lease: But something...Mr. Manley is...I wish he was here because that just...I don't remember that...that exchange. I'm sorry but it is...it is...without calling...

Mr. McKelvey: There's got to be minutes of that work session.

Mr. Lease: Right, but the point is...

Mr. Donovan: Well whatever was said or wasn't said or may have been said you need to decide this application on the merits that's in front of you, so...

Mr. Lease: Right, exactly.

Mr. McKelvey: Yeah.

Mr. Lease: Exactly, perfect.

Mr. Bell: Yup.

Mr. Lease: Okay.

Mr. McKelvey: Did we...Dave...did you accept what they had for financial statement?

Mr. Donovan: Well I mean...Mr. Langer submitted information. I asked a couple of questions, he answered those questions.

Mr. McKelvey: Yeah.

Mr. Donovan: Obviously he's competent...that's a compliment, competent in the field obviously a well-known expert so you take it for what it's worth. You know, if it satisfies you then the criteria...

Mr. McKelvey: Said what it was, I know you asked for it.

Mr. Lease: I think that the bottom line is there are no reasonable return for this property other than a solar farm. That...that's the bottom line, there is no reasonable return on this property except for use as a solar farm. I think the other points of...of the application for a variance are...are pretty straight forward and clear too. It's a great use. The Town of New Windsor is putting one in...in place, they've only got one. The application process for solar farms is...is for all intents and purposes closed so this is...this is it.

Mr. McKelvey: I don't know what their solar law is though.

Mr. Lease: In the Town of New Windsor?

Mr. McKelvey: Yeah.

Mr. Lease: Exactly like yours except...any zone you can place it in with the proper setbacks. That's...it's...

Mr. McKelvey: Well see that's the difference.

Mr. Lease: Dynamite.

Mr. McKelvey: The I/B is the sticker.

Mr. Lease: Exactly. But you...I know...I wish it was there...I wish it had been created with that in mind. I wish it was done like New Windsor which is the same as Hamptonburgh's, is the same as a number of other ones. It was...

Mr. McKelvey: I've seen all of these in the papers.

Mr. Lease: Right. It...it's really great but having said all of that and done all of that the point is is that here...

Mr. Donovan: You really like Hamptonburgh's law?

Mr. Lease: What's that?

Mr. Donovan: Do you really like Hamptonburgh's law?

Mr. Lease: No, no, no, I misspoke when I said...

Mr. Donovan: Did you not like that?

Mr. Lease: No, what happened?

Mr. Donovan: Oh, I wrote it so that's just wondering.

Mr. Lease: But it...it...if...if...it's much more...it's much more wide open and allows for a variety of different places to put it. So it would allow the size of the property to determine where it would allow...

Mr. Bell: To go.

Mr. McKelvey: Do we have any other questions from the Board? Mr. Bell?

Mr. Bell: No, I'm good.

Mr. Masten: I don't have anything John.

Mr. Levin: I'm fine.

Mr. McKelvey: Mr. Marino?

Ms. Gennarelli: Mr. Marino left for a second. He'll be right back I guess.

Mr. McKelvey: He'll be right back. Do you have any further questions Mr. Marino?

Mr. Marino: No.

Mr. McKelvey: Anybody in the audience? Is there anybody in the audience that would like to speak?

No response.

Mr. McKelvey: I guess we'll look for a motion.

Mr. Bell: I make a motion to close the Public Hearing.

Mr. McKelvey: Do we have a second?

Mr. Masten: I'll second it John.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: Yes

John McKelvey: Yes

Ms. Gennarelli: The Public Hearing is closed.

Mr. Lease: Thank you.

Mr. McKelvey: We can bring Mr. Scalzo back in.

Ms. Gennarelli: Can you send Mr. Scalzo back in? Thanks... Do you want me to read the before proceeding...?

Mr. Scalzo: Yes, please.

Ms. Gennarelli: Okay, before proceeding the Board will take a short adjournment to confer with Counsel regarding legal questions raised by tonight's applications. If I could ask in the interest of time if you could wait out in the hallway and then we'll call you in very shortly or maybe a little longer.

(Time Noted - 8:38 PM)

ZBA MEETING – MARCH 22, 2018 (Resumption for decision: 9:01PM)

FRANK DARRIGO REVOCABLE TRUST 84 LAKESIDE ROAD, NBGH
(86-1-96) R-1 ZONE

Applicant is seeking a use variance for 185-83 solar farms shall be located in an Industrial District (I Zone) to build a solar farm in a residential-1 District (R-1 Zone).

Mr. Scalzo: Okay, the final item on this evening's agenda would be the Frank Darrigo Revocable Trust, 89 (84) Lakeside Road, Newburgh seeking a use variance for 185-83 solar farms shall be located in an Industrial District (I Zone) to build a solar farm in a residential-1 District (R-1 Zone). I will recuse myself from voting but I will maintain the microphone. So in this case, Dave this is a...

Ms. Gennarelli: The use variance questions.

Mr. Donovan: Sure but in terms of the SEQR this actually an Unlisted Action. So if the Board is going to move forward and grant the variance. You would need to issue a Negative Declaration as a prerequisite to that. So if you want to go through the balancing tests firsts or you want to address SEQR first that's a matter of the Board. I'm sorry not the balancing tests address the four factors for the use variance.

Mr. Scalzo: Okay, that's a...the order I like to prefer if you don't mind.

Mr. Donovan: Okay.

Mr. Scalzo: We will go through the test the four questions for a use variance application. All four of these criteria must be met or the Zoning Board is barred by New York State Town Law from granting an approval. To allow a use not otherwise allowed in zoning, an applicant must demonstrate to the Board - unnecessary hardship satisfied by competent proof. Such demonstration includes all of the following, for each and every use permitted in that zone. The first is the land cannot realize a reasonable return, in dollars and cents, substantial as shown by competent financial evidence.

Mr. Donovan: If I could just summarize for the Board, so the information that you have in front of you is correspondence from John J. Lease Realtors, dated 24, January, 2018 indicating that they've been marketing the farm for rent and sale without any success. You also have correspondence from; I apologize for mispronouncing, Nicholas Johannets, CPA regarding profit of the Daniel Darrigo Trust and you have a report issued by Valuation Consultants, dated February 8, 2018 and a supplement to that report dated February 22, 2018. Relative to the first criteria those are the items that are in the record before the Board.

Mr. Scalzo: Do we have comment from the Board?

Mr. Bell: Well I mean I think that the...the return information is put out pretty good. It is it can't be and like it's concrete, you know what I mean, a 100% but I mean it was a really good

presentation for it where he did a lot of work and you see that a lot of work was put in to it to a...to try to bring it before us to kind of give us a pretty good breakdown on the return costs and return value sale.

Mr. Scalzo: So Mr. Bell your opinion is the competent financial evidence has been met.

Mr. Bell: Yeah, (Inaudible)

Mr. Scalzo: Yeah, okay (Inaudible)...Mr. McKelvey?

Mr. McKelvey: Yeah.

Mr. Scalzo: Mr. Levin?

Mr. Levin: Yes.

Mr. Marino: Are we voting now?

Mr. Donovan: No, no, no. We're just going through the four...four different criteria.

(Inaudible Members speaking)

Mr. Scalzo: Mr. Marino, I'm just...I'm still on the first question if the applicant has provided competent financial evidence a...that the land cannot realize a reasonable return.

Mr. Marino: I think he has, I think those who spoke in favor of the proposition... (Inaudible)

Mr. Scalzo: Mr. Masten, yes? Second, the alleged hardship is unique and does not apply to substantial portion of district or neighborhood? A...Dave if you could help me...and well I'm not voting on this so I...a but if...if you went through this with the applicants prior in...in an earlier portion...

Mr. Donovan: I thought the applicant has submitted information relative to their position as to why they believe that the hardship is unique and...and forgive me while I read my cheat sheet is unique and does not apply to a substantial portion of the district or neighborhood. The Board has to determine whether a...they accept that position because of a...whatever condition the property may be affected by.

Mr. Scalzo: And you know, I can also remind the Board we have sixty-two days to make this determination...

Mr. Bell: Right, exactly.

Mr. Scalzo: ...so if...if we need more time to a...determine this...so state.

Mr. Bell: Re-read that question one more...

Mr. Scalzo: Sure.

Mr. Bell: ...time.

Mr. Scalzo: The alleged hardship is unique and does not apply to substantial portion of district or neighborhood.

Mr. Bell: Yeah, well, I do recall the last meeting that we had the...there were...there were a personnel here that were from the neighborhood and they were seemed to all be in agreement with this so I don't think it would really affect them much, they seemed all...they all came in with approval as far as from the neighborhood...

Mr. Donovan: Just if I may, I think the evidence that's been submitted relative to this issue is that the uniqueness of the property is perhaps that it was previously utilized as a landfill and does have some DEC a...remediation that was required and completed...

Mr. Bell: Right.

Mr. Donovan: ...I don't know that there is any other areas in the neighborhood that are...that are similarly affected.

Mr. Scalzo: Okay, I'm going to move on to the third question I can come back to the second later or we can determine that at...

Mr. Marino: No I...

Mr. Scalzo: ...further...future time...

Mr. Marino: ...on the...on the second one I would say it's a...been demonstrated.

Mr. Levin: I'll go with that...

Mr. Bell: That's what...

Mr. Levin: ...it was demonstrated.

Mr. Bell: ...where I'm going.

Mr. Scalzo: Moving on to the third criteria, the requested variance will not alter the essential character of the neighborhood.

Mr. Marino: I would agree with that also. I...I...that particular site I...I do know, I'm familiar with it so yeah, it's not going to disrupt the neighborhood.

Mr. Scalzo: Okay.

Mr. Bell: I agree with, I agree.

Mr. Scalzo: And lastly, that the alleged hardship has not been self-created.

Mr. Levin: It has been self-created.

Mr. McKelvey: It has been self-created.

Mr. Bell: It has been self-created.

Mr. Donovan: Well let me just say, recall that in the context of a use variance if the hardship is...if you find the hardship is self-created you must deny the variance. So the situation would be if there was a new property owner a...that purchased this property with knowledge of the zoning that would be a self-created hardship. I don't know what the situation of the ownership here is or whether the Board has knowledge of who may have owned the property for a period of time but if the situation is the property has been owned in a common ownership or a common family ownership over a period of time and was subject to a zone change during that ownership then the hardship would not be self-created.

Mr. Levin: I believe he said that they owned it before zoning.

Mr. Bell: Yeah.

Mr. Marino: But what if we're talking about members of the same family? If...if as he indicated some of these problems occurred back in the 40's and 50's obviously he is not responsible for that.

Mr. Masten: No.

Mr. Marino: So, even though you might say well family did it, he didn't and I don't think he...he should be, I don't think he should be punished for the ills of someone else in the family years ago.

Mr. Donovan: I think the issue relative to this specific criteria is Tony, you own the property, the zone was changed a...a zoning came into place for solar while you owned it right, so it's not self-created as to you. I buy it from you with knowledge or at least imputed knowledge it's self-created to me. So I...I think that's the issue that the Board needs to...I...I don't really know what the ownership is. I think that the testimony in front of the Board is that's been in common family ownership for an extended period of time.

Mr. Marino: Yeah, I think it has been for the same...same family for many, many years.

Mr. Masten: Yeah.

Mr. Scalzo: Keeping in mind all four of these criteria must be met or the Zoning Board is barred by the New York State Town Law from granting approval. Again, do we have anything further from the Board on this application?

No response.

Mr. Scalzo: Hearing none, does the Board have a motion of some sort or would the Board prefer to postpone the decision, which is the still a decision?

Mr. Marino: I would make a motion that we approve (Inaudible).

Mr. Scalzo: We have a motion for approval from Mr. Marino. Do we have a second?

Mr. Levin: I'll second.

Mr. Bell: I'll second, I make a second the motion. I second it.

Mr. Scalzo: I think Mr. Levin had a second in there.

Mr. Bell: All right.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

Anthony Marino: Yes

John Masten: No

John McKelvey: No

Mr. Donovan: So the vote is three to two, you have five people here so the motion fails. It's a seven member board you needed four affirmative votes so that is a denial, three to two. Right? Did I do my math right?

Mr. Scalzo: That's correct, I abstained.

Mr. Donovan: And...and Mr. Scalzo abstained so that's a denial. Three, two is a denial.

Mr. Scalzo: That being said, I don't need to go through the SEQR requirement.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN
ANTHONY MARINO
JOHN MASTEN
JOHN MC KELVEY
DARRIN SCALZO - RECUSED

ABSENT:

PETER OLYMPIA

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:11 PM)