



February 13, 2017

Memo To: Town of Newburgh Zoning Board of Appeals  
From: James L. Beretta, property owner, 1100 River Road, Newburgh  
Subject: Additional public comment, Use and Area Variances, Troon Properties Inc.

After reviewing the Dec. 22, 2016 Public Hearing Meeting Minutes regarding Troon Properties, as a property owner at 1100 River Road in the Town of Newburgh, in addition to my prior comments dated Dec.15, 2016, I offer the following comment for the record regarding my opposition to the granting of a Use Variance and Area Variances to Troon Properties Inc. to permit a solar farm to operate at Bessie Lane/Old Post Road in an Agricultural Residence Zoning District (A/R).

1) Per the Dec. 22, 2016 Public Hearing Meeting Minutes, Mr. Brown, as engineer for the applicant, stated *"They took title of the property in 2010 and they've been trying to sell it ever since a...nobody has even looked at it because it's priced out of the market."*

The statement by Mr. Brown that the property is "priced out of the market" is cause for concern. The fact that the property is "priced out of the market" may very well be the reason why the property has not sold under current zoning.

It is unclear what offers were received on the property. It is unclear where and how long the property was advertised. It is unclear if reasonable offers were made that were turned down by the applicant who was seeking higher than market price. The failure to sell does not necessarily mean that it cannot be sold for a reasonable return in its current zoning status.

When seeking a use variance, the applicant must prove to the ZBA that the property is unable to return a reasonable return for any use currently allowed. According to the NYS Department of State Division of Local Government Services, *"the opportunity for the owner to make more money from a property's sale or rental if the zoning is changed or a use variance is granted is NOT the same as being unable to make a reasonable return on the property in its current zoning status."*

2) Per the Dec. 22, 2016 Public Hearing Meeting Minutes, Mr. Brown stated "*I bring up the taxes because that's what's caused the lot values in this area of Town to drop so low. I mean these lots were valued at a hundred and twenty thousand dollars when I first started the subdivision in '05.*"

The alleged hardship on this property, whether it be due to school taxes or property value depreciation, is not unique as it is no greater than on nearby lands.

Minutes note that ZBA member James Manley acknowledged "*that hardship isn't unique just for that parcel*" and that "*everybody's property values have dropped...*".

3) Per the Dec. 22, 2016 Public Hearing Meeting Minutes, owners of two properties on Cedar Court, Mr. Frank Muthig and Mr. Ralph Diaz raised concerns regarding existing drainage issues and the potential for worsening of those conditions due to extensive tree clearing. I have personal knowledge of two properties on Old Post Road owned by relatives that have experienced drainage problems ever since trees were removed on property adjacent to the Troon property. Extensive removal of trees and vegetation, especially at a higher level such as this, will exacerbate the water accumulation issue on the lower level.

According to the Full EAF provided to the Planning Board in September of 2016, "**12.1**" acres of forest will be removed. According to Sept. 15, 2016 Planning Board Meeting Minutes, "*The area that has the trees would have to be all cleared*".

When determining benefit vs. detriment, the law requires the ZBA to consider whether a proposed variance will have an adverse effect or impact on the physical or environmental conditions of the neighborhood.

4) Per the Dec. 22, 2016 Public Hearing Meeting Minutes, Mr. Brown states that removal of trees is not considered "disturbance". This was in response to my Dec. 15, 2016 comment that EAF Part 1 (3)(b) is answered that "0.0" acres will be physically disturbed yet 12.1 acres of trees are to be removed.

The NYSDEC "EAF Workbooks Glossary" definition of "Physically Disturbed" is "*When the landscape is altered such as, but not limited to grading, scrubbing, **tree removal**, or excavation.*" (emphasis added)

While Mr. Brown may not consider removal of trees to be property disturbance, the NYSDEC, which is charged with the administration of the SEQRA process which includes the EAF, does define tree removal as disturbance.

5) Per the Dec. 22, 2016 Public Hearing Meeting Minutes, Mr. Brown stated "*The*

*owner/applicant you know had no control over a...the real...or...the...the taxes. We're all aware of what happened with the Danskammer plant and how they challenged the taxes they were paying and the Marlboro School taxes went through the roof and that's why these property values are so depressed in this...this part of the Town of Newburgh."*

Minutes also show that Mr. Brown stated that title was taken to the property in 2010.

On August 22, 2008, the Times-Herald Record, in an article entitled "Marlboro schools raise taxes sharply", reported "*The bad news will hit mailboxes here in about two weeks: School taxes are going up more than 30 percent.*"

It also noted "*The tax increase is the result of the settlement of six years' worth of lawsuits by Dynegy, the owner of the Roseton and Danskammer power plants in the Town of Newburgh.*" An increase in the 10% range to Town of Newburgh taxpayers for town and special district taxes for the following year was also reported.

While Mr. Brown stated the applicant had no control over the taxes and what happened with the Danskammer plant, it should be noted that the rise in school taxes and town taxes due to Danskammer challenges was known well before the property owner took title in 2010.

The use variance procedure is not a mechanism to compensate property owners for questionable business decisions. As noted in *Barby Land Corp v. Zeigner*, "*The courts should not be placed in the position of having to guarantee the investments of careless land buyers*".

6) Per the Dec. 22, 2016 Public Hearing Meeting Minutes, the issue of taxes was discussed. ZBA Member Richard Levin asked whether tax abatement was applied for. The response from Mr. Brown was "*that I don't know*".

Subsequently, Mr. Brown stated, as a positive impact, that "*the project would generate tax revenue for the Town*".

Mr. Jason Kuflik from Green Street Solar Power stated that such use of the land "*would allow for, you know, additional revenue for the Town in the form of, you know, property taxes.*"

However, Section 487 of the New York State Real Property Tax Law provides a 15-year real property tax exemption for solar farms unless local governments opt out of the exemption.

According to the NYS Department of Taxation and Finance, as of February 9, 2017, neither Orange County, nor the Town of Newburgh nor the Marlboro School District chose to disallow the exemption.

Therefore, it appears that the solar farm will not generate additional revenue in the form of taxes to the County, the Town of Newburgh or the Marlboro School District for at least 15 years.

7) Per the Dec. 22, 2016 Public Hearing Meeting Minutes, regarding impact on the character of the neighborhood, Mr. Brown stated multiple times that the site was elevated and only visible from two residences.

This was an increase from the Use Variance Application dated Nov. 28, 2016 that stated "*Only one residence has visibility of the site and that is only winter season when the trees have no leaves*".

This conflicting information supports my Dec. 15, 2016 comment that without a viewshed analysis in leaf-off conditions it is impossible to determine visibility from various neighborhood points such as Old Post Road, River Road, Cedar Hill Cemetery, etc.

8) Per the Dec. 22, 2016 Public Hearing Meeting Minutes, regarding viewshed impact, Mr. Kane of Green Street Solar Power stated "*these trees are...are screening the...the location*" and that the field would only be visible "*when the leaves are off the trees*".

If, according to documents, all 12.1 acres of trees are to be cleared from the site, it is unclear how Mr. Kane can make the claim that trees will screen the site.

In conclusion, as stated in my prior comments of Dec. 16, 2016, the Use Variance request along with numerous Area Variances gives credence to the fact that the site is not suited for the proposed use.

As stated in the NYS publication, Zoning Board of Appeals, Local Government Technical Series, "*Great care must be taken to ensure that the purpose and intent of the ordinance or local law is carried out, lest too many changes without proper foundation destroy the zoning itself.*"

Sincerely,



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