



JAMES BERETTA
PROPERTY OWNER
1100 RIVER RD.

December 15, 2016

Memo To: Town of Newburgh Zoning Board of Appeals

Subject: Public comment, Use and Area Variances, Troon Properties Inc.

As a property owner at 1100 River Road in the Town of Newburgh, I am opposed 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). As such, I offer the following public comment to be included as part of the official record for the Public Hearing to be held on December 22, 2016.

General Comments on the Variances:

- If the proposed solar farm is tax exempt under NYS Real Property Law or receives tax credits, the loss of tax revenue will be passed on to residents.
- In addition to a Use Variance, numerous Area Variances will be needed, giving credence to the fact that the site is not suited for the proposed use.
- It is of concern that the applicant provided conflicting information regarding site disturbance that will negatively impact neighborhood character. The claim is made on the Short EAF for Use and Area Variances submitted to the ZBA that there will be "0" acres of physical disturbance to the project site. However, the Full EAF provided to the Planning Board In September 2016 states "12.1" acres of forest will be removed. The ZBA depends on data integrity when granting variances and conflicting/misleading information can negatively impact residents.

Comments Specific to Use Variance Application:

Regarding Unnecessary Hardship and Deprivation of Economic Use

- Page 2A (A) answer to deprivation of all economic use or benefit standard is based solely on the specific 8 lot subdivision that was proposed in 2007 and not from every use permitted in the Agricultural Residence District and, therefore, does not satisfy the deprivation standard.
- Page 2A, (A) answer that applicable zoning deprives the applicant of all economic use or benefit due to "excessive Marlboro school taxes" is an unsubstantiated claim with no clear and convincing evidence given.

- Page 2A, (A) applicant states that lots that worth \$100,000 each in 2007 are now worth \$35,000 each. While the applicant may argue that a Use Variance will make the land more profitable, this argument does not prove unnecessary hardship. The property still has value and use under current zoning and there is no constitutional right to the most profitable use of a property.

- Page 2A, (C) The applicant's answer that the variance would not alter the essential character of the neighborhood is being based on visibility but without a viewshed analysis, it is impossible to determine impacts from tree removal, installation of panels, fencing, etc.

While it is stated that the site is well screened from residences by forest, it is unclear how much of the forested area will be removed but it could be 12.1 acres. The applicant's claim that the project will be visible to only one residence in winter is unsubstantiated without a viewshed analysis that should include points on Old Post Road and River Road. It should be noted that in addition to providing screening, trees also act as noise barriers for existing neighborhood homes.

- Page 2A, (C) The applicant's claim that the variance would not alter the essential character of the neighborhood is in contrast to the legislation enacted by the Town to cite solar farms in Industrial Districts in order to avoid disruption to the very nature of residential zones.

- Page 2A, (D) answer that hardship is not self-created is not supported by any clear and convincing evidence but only by a single unsubstantiated claim that the "depressed real estate market" is "caused by the high Marlboro school taxes".

Comments Specific to Short EAF for Use and Area Variances:

- EAF Part 1 (3)(b) is answered that "0.0" acres will be physically disturbed yet it is stated on Page 37 of Sept. 15, 2016 Planning Board Meeting Minutes that the area is half treed and half meadow and "The area that has the trees would have to be all cleared". Full EAF submitted to Planning Board states "12.1" acres of forest are to be removed. Therefore, (3)(b) is inaccurately answered as there will be physical disturbance of the site. All disturbance from tree-cutting, from installation of footings for racks, fencing and from pad mounted transformer must be quantified.

- EAF Part 1 (13)(a) is answered "Yes" regarding regulated wetlands or waterbodies on or adjoining the project site. A "Yes" answer requires identification of wetland and waterbodies as well as the extent of any alterations but that information was not provided on the EAF.

- EAF Parts 2 & 3 ARE to be completed by the Lead Agency but supporting documentation for many of the categories were not provided by the applicant.

For example, EAF Part 1 (15) answers "Yes" that the site contains species of animals or associated habitat listed by the State or Federal government as threatened or endangered yet provides no documents that would enable the Lead Agency to determine extent of potential impacts.

Sincerely,

A handwritten signature in cursive script that reads "James L. Beretta". The signature is written in black ink and is positioned above the typed name and address.

James L. Beretta, Property owner at 1100 River Road
29 Colburn Drive
Poughkeepsie NY 12603