

# TOWN OF GUILDERLAND

## Planning Department

Town Hall, Route 20

P.O. Box 339

Guilderland, NY 12084-0339

Phone: (518) 356-1980 x 1061

Fax: (518) 356-5514

Email: kovalchikk@togny.org



**Peter G. Barber**  
Supervisor

**Kenneth Kovalchik, AICP**  
Town Planner

## MEMORANDUM

To: Stephen J. Feeney, Chairman  
& Town Planning Board

FROM: Kenneth Kovalchik, AICP, Town Planner

DATE: February 4, 2021

SUBJ: Helios Energy New York 13, LLC – 6580 Dunnsville Road  
**Project Update of a Site Plan Review for a Special Use Permit to Install a 5MW Ground Mounted Solar Facility.**

---

### Background

As the Board may recall the site plan for this application was reviewed at your June 12, 2019, September 11, 2019 and December 11, 2019 Planning Board meetings. At that time the solar project was being proposed on a 61.1 acre parcel located in the Rural Agricultural (RA3) District ("Old Site" on the map below). A Site Plan report dated January 13, 2020 was forwarded to the Zoning Board of Appeals, thus completing the Planning Board review of this project.



During the site plan review a number of residents on Dunnsville Road and Village of Altamont expressed opposition to the project and concerns about the visual impacts. The application was reviewed by the Village of Altamont Rural Guilderland Referral Committee and they objected to the project due to visual impacts. The applicant did not pursue Special Use Permit approval with the Zoning Board of Appeals.

### **Project Update**

The applicant has been in discussions with a property owner to the south that owns land abutting the “old site”. The “new site” as depicted in the aerial photo above is the proposed relocated project site. The new site consists of 56.7 acres and is located in the Rural Agricultural (RA3) District. The existing site condition is characterized as agricultural, consisting of primarily an old agricultural orchard with many of the apple trees dead, or dying. Access to the property will be provided by a 20’ wide access road to the new site from an existing driveway at 6604 Dunnsville Road. The road will need to be constructed to be in compliance with applicable building codes to accommodate fire apparatus vehicles. A 30’ wide utility easement will be provided along the access the road to allow for the solar facility to be connected to existing utility lines along Dunnsville Road. The maximum height of the solar panels is proposed to be 9.8’. A 7’ high fixed knot woven wire fence is proposed to extend around the perimeter of the facility.

### Visual Assessment

The applicant has included a visual assessment from points surrounding the proposed solar facility, including Orchard Creek Golf Course, abutting property to the north, 6561 Dunnsville Road and Bozenkill Park.

Town staff provided comments to the applicant that at least 2 visual renderings should be provided from Dunnsville Road to assess how the new location has mitigated visual impacts as compared to the previously proposed location.

### Steep Slopes

The Bozen Kill flows along the southern portion of the parcel, with steep slopes extending from the water’s edge to the area where the solar facility is proposed. The applicant should update the plans to depict the angle of repose as required by §280-30.D of Town Code to assess if any of the proposed solar facility will be located within the 30’ minimum setback area.

### Wetlands

The site plans indicate 3.04 acres +/- of federal wetlands exist on the site. The Army Corps of Engineers (ACOE) does not consider solar facilities that utilize pile driven posts for the racking system to be ground disturbance. The applicant is proposing to use pile driven posts in this facility. A jurisdictional determination letter will still be required to be obtained from the ACOE.

### Archaeological

Based on responses in the SEQR EAF the site is located in an archaeological sensitive area. The applicant retained the services of Birchwood Archaeological Services to complete an archaeological site inventory. The results of the inventory will be provided to the NYS Office of

Parks, Recreation and Historic Preservation (SHPO) for review. SHPO will review and comment if any additional archaeological studies are required.

#### Decommissioning Plan

A Decommissioning Plan dated November 9, 2019 was included with the application. The following items need to be incorporated into the decommissioning plan based on requirements of Town Code, as follows:

1. The plan shall include the name of the party responsible for decommissioning.
2. The plan shall include a description of any agreement with the landowner regarding decommissioning.
3. A financial plan to ensure that financial resources will be available to fully decommission the site.

#### Lot Line Amendment

The applicant has included a lot line amendment application as part of the submittal. The proposal is to shift the existing property line between the old site (Lands of Muia) and the new site (Lands of Altamont Orchards Realty, LLC) further to the north. Lot line amendments are processed administratively and require no review/approval by the Planning Board. The lot line amendment would not be processed unless the Special Use Permit is approved by the Zoning Board of Appeals.

#### **Village of Altamont Rural Guilderland Referral Committee**

Similar to when the solar facility was being reviewed on the old site, the application will be referred to the Village of Altamont once the Planning Board has issued the site plan report to the Zoning Board of Appeals.

#### **Rural Guilderland: Open Space and Farmland Protection Plan (2005)**

The proposed solar facility is in compliance with the following sections of the Rural Guilderland plan, as follows:

1. "Protect farmlands in collaboration with landowners" – Section IV.

Allowing landowners the option to install a solar facility on a portion of their property, as an option to selling land to a developer, protects farmland and open space in the long term compared to building homes. The NYSDEC and Army Corps of Engineers do not consider solar facilities that use pile driven posts to install the racking systems as land disturbance. Additionally, the DEC and ACOE do not consider the internal access roads as land disturbance. Ground mounted solar facilities preserve the natural state of the land, and if the solar facility is decommissioned in the future the land can be reverted back to an agricultural use.

Most leases for large scale solar facilities are typically 20 years in length, with options to extend the lease in 5 year intervals. The NYSDEC and ACOE and have determined that solar facilities are not classified as land uses that disturb the land. The courts have determined that large scale solar facilities "are consistent with a natural use of the land." Allowing solar facilities could be

considered as a type of conservation tool considering the natural state of the land is being retained, and while the solar facility is in use it is protecting farmlands from other types of land uses that could have a greater environmental impact ie. residential or commercial development that is a permanent use of the land with greater land disturbance impacts.

2. “Provide incentives through a series of short and long term incentives that would help reduce the cost of farming, provide potential funds for investment in the farm operation, and reduce development pressure.” – Section IV

Allowing farmers and large landowners the option to have ground mounted solar facilities installed on their property is, in essence, a financial incentive. The landowner has the ability to designate a portion of their land for solar development and receive annual lease payments from the solar developer. The additional income can be used to supplement the existing farm operation and/or assist the large landowner with the increasing cost of property taxes and property maintenance. Allowing famers/landowners the option of having this financial incentive may allow them to retain ownership of the land and not sell the land to a developer, where a more intense land use with greater environmental impacts would be developed.

3. “Provide alternatives to landowners” – Section IV

“Some of the ways in which the Town can help farmers keep farming is by providing assistance with grants, tax incentives and purchase of development rights. The Town can also show this support by allowing for economic development opportunities that enhance the community.”

Similar to what was discussed in item #2 above, allowing farmers and large landowners the option to have ground mounted solar facilities installed on their property is providing an alternative to generate additional means of income to keep the farm intact and/or allowing the landowners the alternative to having to sell the property to a developer.

### **Helderberg Escarpment Planning Guide (2002)**

In 2002 the Helderberg Escarpment Planning Committee prepared the Helderberg Escarpment Planning Guide (Guide) to encourage a consistent approach among municipalities regarding land-use decisions affecting the Helderberg Escarpment. Additionally, the Guide encourages appropriate land use and development in the Escarpment region so that the unique character of the area can be enjoyed by future generations. The Guide recommends mitigation techniques for development that can be utilized by developers and municipalities.

As stated in the Executive Summary of the Guide “the document has no force of law, nor is it envisioned as a blue print to frustrate growth. The Guide is written to assist municipal boards, landowners and developers to appreciate the unique character of the Escarpment area and to understand better how to design growth which will be respectful to the uniqueness.”

Chapter 8 of the Guide is related to aesthetic review, recommendations for what should be considered as part of visual and aesthetic analysis and recommendations for mitigation of possible impacts. As an example, during the Planning Board review of the “old site” Dunnsville

Road solar project the Board recommended mitigation techniques that are encouraged in the Guide, as follows:

- Screens and Visual Buffers – The new site provides an increased visual buffer from Dunnsville Road. The site is surrounded on 3 sides by existing mature trees.
- Place Structures on Flanks of Hills, Rather Than Crests – The site of the solar facility consists of rolling hills. The old site solar facility was located on a northerly facing flank of one of the rolling hills and below the crest of the hill. By placing the solar facility on the northern flank of the hill very little to none of the facility would have been seen from on top of the Escarpment. The new site is located on a flank of a slope that faces south and will be more visible from the Escarpment. The Escarpment is approximately 5 miles away, when measured from the scenic overlook parking area in Thacher Park.

### **Town Code**

The site plan is consistent with the Purpose section of §280-40.U.1 (Solar Energy Systems) of Town Code, which encourages the siting, development, and decommissioning of solar energy systems in accordance with the Comprehensive Plan and subject to reasonable conditions to reduce potential impacts to adjoining properties while promoting development of renewable energy resources by :

- (a) Supporting the Town’s renewable energy initiatives in becoming a “Climate Smart Community” as recognized by the NYS Department of Environmental Conservation and a “Clean Energy Community” as recognized by the NYS Energy Research Development Agency, and pledging to address climate change by adopting climate smart land use principles, setting goals for climate action, decreasing fossil fuel energy use and shifting to renewable energy.
- (b) Supporting the New York State Energy Plan (2015) of achieving 100% of the State’s energy needs from renewable sources by 2040.
- (c) Recognizing that solar energy is an abundant and renewable energy resource, and its conversion to electricity will reduce dependence on nonrenewable energy resources and decrease the greenhouse gas emissions that result from the use of nonrenewable energy sources.
- (d) Protecting scenic and environmental resources from the impact of major solar energy facilities on parklands, trails, wetlands, wildlife, scenery, flood plains, historical and cultural sites, and recreational activities.

cc: J. Coons