

# Zoning Board of Appeals

The Town of Marshall

Minutes of the Regular Meeting Zoning Board of Appeals on 11 October 2024

A meeting of the Zoning Board of Appeals (ZBA) of the Town of Marshall, County of Oneida and the State of New York was held at the Town Hal 2651 State Rt. 12B, Deansboro, NY on this 11<sup>th</sup> day of October 2024.

**Present:** C. McGill, J. McNair, J. Stephenson, D. Zweifel-Yaciuk

**Absent/Excused:** None

**Guests:** Robert Blunt, Bill Culpepper, Mike Forrester, Shannon Culpepper, Victor Ciccia (Norbut Solar Farms Representative), Ashley Champion (Norbut Solar Farms Attorney), Bob Welch, Penny Rowe, Andrew Stedman, Ron Klopfanstein (Investigative Reporter), Dave Adams (CNY Snow Travelers)

This meeting was called to order at 18:30 by J. McNair.

## Resolution #1

A motion was made by C. McGill to approve the 11 September 2024 ZBA meeting minutes. J. Stephenson seconded the motion. The motion was approved 4-0-0.

## Recognition of visitors

J. McNair reminded that the ZBA adopted the Rules of Conduct at its annual organizational meeting held on 10 January 2024. J. McNair then again read aloud the rules to the visitors. J. McNair stated that he would be available to answer questions after the meeting and that anyone could call or email questions to him directly.

Penny Rowe, 7064 Sanger Hill Road resident, was first to speak. She asked as she had at the 11 September 2024 meeting

1. That the ZBA should not renew the Norbut Solar Farms (NSF) special use permit (SUP). But, to let the current SUP expire since work was not completed in 12 months. NSF would then need to resubmit their plan.
2. Then she supplied current photos of the NSF site that showed some clearing had been done, that no trees were removed from the upper driveway, and some shrubs had been cleared. In her opinion, substantial completion to the contract would mean a punch list is left for any incomplete work. And that has not been satisfied at this time.

Dave Adams, CNY Snow Travelers organization, was next to speak.

1. He explained that the snowmobile trails cut through part of the NSF property, and he was not able to contact anyone about obtaining permission to use the trail.
  - a. J. McNair will give him V. Ciccia's (NSF) contact information.

Bill Culpepper, 7065 Sanger Hill Road resident,

1. Asks that the ZBA not renew NSF's building permit.

2. He stated that C. Baldwin, TOM Supervisor, has not yet sent him the decommissioning plan.
  - a. A. Champion, NSF attorney, said a fully executed plan between the TOM and NSF had been completed.
    - i. J. McNair explained that the ZBA does not issue building permits.
3. B. Culpepper stated that G. Schreppel has not responded to him. He would like homes near NSF revalued by the tax assessor after the work is complete.
  - i. J. McNair suggested that he contact the TOM Tax Assessor directly for those details.
  - ii. B. Culpepper would like to know who will be responsible for cleaning the road debris.
  - iii. B. Welch, TOM Highway Superintendent, explained it is a county road and not the responsibility of the TOM. It was suggested that the NYS Troopers be notified.

### **New Business**

Head over Heels zoning permit

On 1 October 2024, an application was left in the ZBA Chair's mailbox at the town office. The application was passed on to G. Schreppel, CEO. The business is now operating at MJK Farms in Deansboro, NY.

- a. G. Schreppel, CEO, is in Florida and has not responded.
- b. E. Glazier, owner of Head Over Heels Athletics, did not attend the meeting.

### **Old Business:**

Norbut Solar Farms' Site Plan Extension

While J. McNair stated that it was disappointing for the ZBA, he reported that the former TOM attorney, B. Getman, failed to file three pages of the Solar Law adopted by the TOM Board to the NYS Department of State. This means the TOM Solar Law is incomplete and the ZBA can only act on what has been filed with the NYS Department of State. He reached out to B. Schmitt, TOM Attorney, for guidance. B. Schmitt advised the ZBA to grant an extension to NSF based on the timeline provided by V. Ciccio (NSF).

J. McNair read the following draft resolution to guests.

**Dated:** October 11, 2024

**Adopted:** October \_\_, 2024

## **TOWN OF MARSHALL**

### **RESOLUTION: Norbut Extension of Special Use Permit**

**WHEREAS**, by an application dated August 3, 2022, Norbut Solar Farms (hereinafter "Norbut") submitted an application to the Zoning Board of Appeals for the Town of Marshall (hereinafter "ZBA") for the necessary approvals to construct and operate a solar facility on approximately 96.64 acres of land located on Brothertown Road (hereinafter the "Project"); and

**WHEREAS**, that at the time of the application it was determined that a special use permit (Hereinafter "SUP") need be issued that required completion of the final site plan within twelve months, subject to an application to extend the effective date of the SUP that could be filed; and

**WHEREAS**, the Town of Marshall adopted a Solar Energy Law which was not properly or completely filed with the Secretary of State on August 11, 2022, which specifically did not include provisions regarding the issuance of an SUP for a solar projector or the basis for an extension thereof, which local law has not been corrected and/or refiled; and ;

**WHEREAS**, the ZBA issued a SUP to Norbut by resolution dated October 12, 2022 for the Project; and

**WHEREAS**, Norbut applied for an extension of its SUP which was granted by the ZBA on October 11, 2023 by reason of the issuance of a building permit to Norbut; and

**WHEREAS**, Norbut again applied for an extension of its SUP submitting that it demonstrated a substantial financial commitment and an interconnection agreement, while at the same time acknowledging that the proposed sites for the Project had not been substantially altered; and

**WHEREAS**, the ZBA, in response to Norbut's third application for an extension of its SUP, referenced a "trust gap" based on Norbut's failure to adhere to its initial timeline, but nonetheless issued a further extension of the SUP until October 11, 2024; and

**WHEREAS**, representatives from Norbut appeared at meeting of the ZBA held on September 11, 2024 to confirm that no further extensions of the SUP were needed in that a "substantial construction" milestone had been met; and

**WHEREAS**, a visit to the Project sites reflects little or no construction on site; and

**WHEREAS**, the ZBA is of the opinion that the legal effect of an SUP, without substantial visible substantial construction, and/or compliance with a timetable provided by the applicant itself should not be extended indefinitely; and

**WHEREAS**, in light of the questionable validity of the Town's Solar Energy Law, and the multiple applications for extensions sought by, and granted to Norbut, the ZBA is of the opinion that one further extension of the SUP be granted to Norbut consistent with its most recent Marshall Project timeline provided to May 9, 2025, by which date, Substantial Completion of the Project is to be recognized in accordance with the timeline Norbut has provided;

**NOW, THEREFORE, BE IT:**

**RESOLVED**, that the ZBA grants to Norbut Solar one further extension of their Special Use Permit and Site Plan Approval for the Project on Brothertown Rd, to expire on May 9, 2025, with the express condition that by such date substantial completion of the Project is established; and be it further

**RESOLVED**, that 'substantial completion' shall be defined as having completed all work as specified in the site plan as previously approved by the Town of Marshall ZBA (to include site work, perimeter fencing, screening, material installations and all other material, procedural and administrative details and requirements) and capable of beginning electricity production; and be it further

**RESOLVED**, that the Town Clerk shall immediately file a date-stamped copy of this Resolution in the Town records.

**IN WITNESS WHEREOF**, this Resolution was duly adopted by the ZBA at its re-scheduled meeting, the date of which is listed above.

James McNair: \_\_\_\_\_ Voting: \_\_\_\_\_

Colleen McGill: \_\_\_\_\_ Voting: \_\_\_\_\_

Jane Stephenson: \_\_\_\_\_ Voting: \_\_\_\_\_

Debbie Zweifel-Yaciuk: \_\_\_\_\_ Voting: \_\_\_\_\_

C. McGill asked about the building permit. To which, J. McNair replied that if construction commenced before the building permit expired, the CEO would need to opine. The building permit provisions were omitted from the law that was submitted to the NYS Department of State.

J. Stephenson made a motion to approve the resolution and D. Zweifel-Yaciuk seconded it.

At this point, there was discussion back and forth with NSF.

- a. A. Champion, NSF Attorney, stated that they were aware of the misfiling on the TOM Solar Law and asked for clarification on substantial completion v. substantial construction.
- b. She stated that NSF had vested rights and had spent substantial financial resources at this time pursuant to a building permit.

- c. In the last “whereas” clause in the draft resolution, she requested that the language of Substantial Completion be changed to Substantial Construction. She explained that it is a misalignment of terms in the solar world.
- d. She reiterated that the interconnection agreement for \$1.5 million was signed.
- e. She again stated that NSF did not need to request an extension since there was no expiration.
- f. A. Champion then asked what happens on 9 May 2025. And if the Zoning Enforcement Officer deems that a substantial completion requirement is met, then the permit would not expire?
- g. She asked if the Zoning Enforcement Officer was shared. (Bob Welch replied that yes, he was).
- h. She also stated that G. Schreppel, Zoning Enforcement Officer, was difficult to get a hold of and not responsive.

The ZBA's input was as follows:

- a. J. McNair said that no one thinks it's not realistic for the SUP not to expire and reiterated that the ZBA wants a good relationship with NSF.
- b. J. McNair also reminded NSF that the ZBA did grant the prior extensions.
- c. He also stated that the resolution will hold NSF to their construction schedule. They could complete the project early.
- d. The ZBA does not want to monitor the project
- e. The Zoning Enforcement Officer will make the determination if substantial completion is met on 9 May 2025.
- f. The above draft resolution was modified so that the first “Resolved” paragraph added “.....by such date substantial completion of the Project is established as determined by the Zoning Enforcement Officer....”

P. Rowe said she was unclear why 9 May 2025 was the date selected. J. McNair stated it was the date in the timeline that was submitted by V. Ciccio, NSF, at last month's ZBA meeting. J. McNair then read aloud the modified paragraph.

A motion was made by J. Stephenson and seconded by D. Zweifel-Yaciuk to adopt the modified resolution. The motion carries 4-0-0.

J. McNair said the Town Review Committee had no new updates.

**Executive Session:**

None required.

The meeting was adjourned at 19:43.

Initials: DZY

Date: 10 November 2024

CC: ZBA board

