

PLANNING BOARD
Town of Kirkwood
70 Crescent Drive
Kirkwood, NY 13795

June 12, 2023
Meeting Minutes

Present:	Jim Bukowski, Member	Mike Maciak, Associate Member
	Kevin Balachick, Member	Matt Williams, Associate Member
	Gordie Woolbaugh, Member	Chad Moran, Building & Code Inspector
	Dan Wasson, Member	Gina Middleton, Attorney
	Chairman Diffendorf	John Mastronardi, Engineer

Chairman Diffendorf called the meeting to order at 7:00 PM.

APPROVAL OF MINUTES:

Motion by Jim Bukowski and seconded by Dan Wasson to approved the minutes from the April 10, 2023 meeting and the May 8, 2023 meeting as submitted. All voted in favor, motion carried.

E.A.F. – DEWBERRY ENGINEERS ON BEHALF OF TESLA INC.:

Chairman Diffendorf asked if there were any concerns or questions regarding Part 1 of the EAF that the applicant filled out, board members questioned #3 c, and #17. All answers were corrected in Part 1 of the EAF and are included in the file. Ms. Middleton read the questions in Part 2 of the EAF and the board members answered each question no. The completed form is included in the file.

Motion by Gordie Woolbaugh and seconded by Jim Bukowski that the Planning Board, as lead agency in this Unlisted Action, declare a negative declaration for the purpose of SEQR, since based on the review of the Short Form EAF and the updated site plan, the proposed action will not result in any significant adverse environmental impact in the Town of Kirkwood.

Roll Call Vote:	Jim Bukowski	Yes
	Kevin Balachick	Yes
	Gordie Woolbaugh	Yes
	Dan Wasson	Yes
	Chairman Diffendorf	Yes

Motion Carried.

SITE PLAN REVIEW – DEWBERRY ENGINEERSON BEHALF OF TESLA INC.:

Chairman Diffendorf explained that one of the concerns is the right-of-way. The charging station is on a property that does not have access to the road and will require a right-of-way to the charging station property.

Mr. Henry Misas, Tesla Project Manager, explained they are in the process of getting it signed.

Chairman Diffendorf, referring to the Broome County comments, asked if they knew it was in a flood plain and Mr. Misas stated they were aware. Their plans show they intent to build a mound to raise the utility cabinets and transformer to base flood elevation. The charging stations will be at pavement level, the lowest one will have a water sensor so if there is a significant flooding event the lowest charging station would capture that and it will trip the entire system and it will shut down.

Motion by Dan Wasson and seconded by Jim Bukowski to approve the site plan as submitted.

Roll Call Vote:	Jim Bukowski	Yes
	Kevin Balachick	Yes
	Gordie Woolbaugh	Yes
	Dan Wasson	Yes
	Chairman Diffendorf	Yes

Motion Carried.

E.A.F. DETERMINATION – MARSHALL MACHINERY:

Dan Wasson recused himself from this project and Matt Williams took his seat on the board.

John Mastronardi is satisfied with the latest submission and he will need to give final approval on the SWPPP.

Nick Rayner, Engineer, Lakeside Engineering and Mr. Brandon Cole from Marshall Machinery were present.

Chairman Diffendorf asked if they would be storing any hazardous materials and Mr. Rayner stated no. Chairman Diffendorf asked if the equipment would be on an impervious surface and Mr. Rayner agreed. Chairman Diffendorf asked if they would have fluids and how would they be stored and Mr. Cole explained all the fluids come directly from Kubota in gallon jugs, 55-gallon jugs, or 225-gallon drums. Chairman Diffendorf asked if they would be putting in an oil water separator and Mr. Cole stated yes. Mr. Rayner stated he discussed hooking up the town water with the town. Chairman Diffendorf asked about floor drains and Mr. Rayner explained they would be connected to the oil water separator. Chairman Diffendorf explained that a highway work permit will be needed to work on the culvert/ditch. Mr. Rayner explained due to the comments regarding the culvert and the water line hookup, the drawings have been updated with the utility plans. Chairman Diffendorf asked if they had an agreement with Monroe Tractor to pave the driveway and Mr. Cole explained they have contacted Monroe and they are working with them, there is a handshake agreement. Chairman Diffendorf stated that would be a condition of approval and it must be approved by our attorney.

Chairman Diffendorf explained Broome County also wants a spill response plan and Mr. Rayner stated there is a spill response and prevention narrative in the SWPPP. Chairman Diffendorf wants to make sure the employees are aware of it.

John Mastronardi asked if the fluids would be stored inside or outside and Mr. Cole stated inside. Kevin Balachick asked if there would be secondary containment and Chad Moran stated when he goes and does the fire inspection he will take a look, if they are bigger drums they could sit inside another drum. John Mastronardi suggested they look at DEC requirements regarding if you have more than a certain volume of storage they require either a chemical or petroleum vault storage permit.

Kevin Balachick asked who would be doing the paving, Monroe or Marshall Machinery and Mr. Cole stated they would do the paving and Monroe will assist monetarily. Kevin asked if that would include drainage enhancements and Mr. Cole stated yes. Chairman Diffendorf asked if they plan on turning it over to the Town and Mr. Cole stated no, they intend to leave it as a private driveway.

Chairman Diffendorf asked if there were any issues with Part 1 of the EAF and Kevin Balachick questioned #3, acreage. Mr. Rayner explained the property is being subdivided, Marshall Machinery will own all of the property, the 10-acre parcel will be subdivided. Ms. Middleton read the questions in Part 2 of the EAF and the board members answered each question no. The completed form is included in the file.

Motion by Gordie Woolbaugh and seconded by Matt Williams that the Planning Board, as lead agency in this Unlisted Action, declare a negative declaration for the purpose of SEQR, since based on the review of the Short Form EAF and the updated site plan, the proposed action will not result in any significant adverse environmental impact in the Town of Kirkwood.

Roll Call Vote:	Jim Bukowski	Yes
	Kevin Balachick	Yes
	Gordie Woolbaugh	Yes
	Matt Williams	Yes
	Chairman Diffendorf	Yes

Motion Carried.

SITE PLAN REVIEW – MARSHALL MACHINERY:

Ms. Middleton commented to clarify for the record, last time we were waiting for the updated comments for the 239 and we did receive a response that there were no additional comments.

Motion by Matt Williams and seconded by Jim Bukowski to accept the site plan with the following conditions:

1. Paving agreement with Monroe Tractor, to be approved by the Attorney.
2. Spill Response Plan.
3. Highway work permit.
4. Final approval of the SWPPP, to be approved by the Engineer.

Roll Call Vote:	Jim Bukowski	Yes
	Kevin Balachick	Yes
	Gordie Woolbaugh	Yes
	Matt Williams	Yes
	Chairman Diffendorf	Yes

Motion Carried.

At this point, Dan Wasson rejoined the board and Matt Williams stepped down.

CONTINUATION OF PUBLIC HEARING – TRACT ENGINEERING – SIEDEL SOLAR FARM:

Mr. Fisher, Appraiser will join the meeting at 7:45 pm via Zoom.

Chairman Diffendorf read the notice of public hearing.

Chairman Diffendorf commented that he received an article by Olivia Bolt regarding the health risks living near a solar farm. A lot of the comments in that article have been addressed in the past. Mr. Tim Gourley was present and commented their April 6th submission addressed and documented all those concerns through the solar regulations by NYSERDA.

Larry Holt, Trim Street, holding an American Flag, commented that we stand for freedom, something the residents were not afforded when the Town Board passed the law allowing solar fields in residential areas. The solar company is in business to make money and the land owner wants to make money on his land but this is the wrong place to put it. The Planning Board has a job to do but we ask that you consider all the information before you give a final vote. Mr. Holt asked if any solar fields burned in the fires in Canada and what was in the smoke that came from Canada. The county representative that they contacted didn't answer but is here now.

Chairman Diffendorf explained that there was a committee that worked on the solar law, they met over several months and when it was going to become law there was a public hearing on the proposed law.

John O'Neil, 1291 Route 11, commented his property is next to the proposed solar farm and you have heard it from the residents about a solar farm in the middle of a residential neighborhood. There are negative visuals, the continuous inverters and transformer noise, potential water runoff, animal migration patterns will change, and potential for fire issues. Think about where you live, do you want to walk out your front door and look at a solar farm. He asked the board to vote no and protect the people of the neighborhood. Kirkwood advertises itself as a caring community, just do that.

Don Fisher, CNY Pomoroy Appraisers joined the meeting via Zoom.

Sherry Orals, 20 Trim Street, addressed Mr. Fisher regarding his report. She commented she has never had an appraiser do a non-inspection of a property and get an appraisal by going on line and pulling properties. One of the properties she could pull from the MLS was 91 Woodcrest Way, which the report listed it sold for \$50,000 on December 22, 2017. This property was a flooded property and back in 2004 it sold for \$141,000 and had been completely renovated. It was recently listed for \$340,000 and closed June 8, 2023 for \$360,000. This had nothing to do with a solar field because they can't see it from their front door. Ms. Orals asked if he knew it was a flood property and Mr. Fisher stated no. Ms. Orals commented he is doing work of an appraisal where he has no idea of the area and asked why didn't you get an appraiser from Broome County? She went on to say she spoke to two appraisers, without saying anything about the solar field, she asked if a solar field comes into the area what affect is it going to have on properties that can see it and their response was absolutely 100% without a doubt it would. She asked if any of the properties in the report are directly across the street from a solar field?

Mr. Fisher explained what he did was not an appraisal, if it was an appraisal he would have come down to look at the properties. This was a market study that puts in ranges of, changes of sale prices of residential property before and after the construction of a solar farm. There is no solar farm on this property on Trim Street so there is no point in looking at that because that is not part of the study. The study is to look at existing solar farms and what the residential prices were before the solar farm was constructed and after the solar farm was constructed. He said this was stated very clearly in his report and where the data comes from.

Ms. Orals commented there are two out of five properties in the report, that were sold before and after, one in Conklin which was the flooded property that sold for \$50,000 and now selling for \$360,000 and is not directly across from a solar field. She asked if a visual of a solar field or a windmill or a gas lease property is not going to be affected, that's malarkey. Mr. Fisher stated he disagrees because he has done these studies for cell towers

and solar farms and water towers and he has not found, with one exception, any of these studies have shown a negative impact. The only one, which he described in the report, that did show a negative impact was an urban location in Rochester where a solar farm was put up next to an existing industrial facility and there was a small negative impact after that solar farm was put in. Every other one that was suburban or rural locations and the overwhelming information of the sale prices of before and after the construction of the solar farm is that there is no significant adverse impact because of the solar farm. He went on to say she pointed out one data point in his report that you disagree with and you didn't address any of the other data. Ms. Orals stated he has one other before and after, which was Cortland, and it was a property that sold January 30, 2013 and resold October 24, 2013. She doesn't have access to Cortland County MLS so she can't pick that apart. The only one he has, before and after, is Conklin, that sold for \$50,000. That property actually sold for \$6,000 in February 2017. Lastly, Ms. Orals showed pictures from the fall, looking out her front door to where they want to put the solar farm in and one with the leaves on the trees and she can still see the field. She asked do you want a solar field right across the street from you? It is in the wrong area. She doesn't have a problem with solar fields, she has a problem with solar fields in residential areas. It isn't just her, it is all of us. If she has to sell any of their properties a visual like that is going to affect their property.

Chairman Diffendorf asked if he did any appraisals that were within sight of a solar farm and Mr. Fisher explained this is not an appraisal, it is a market study, they look at raw sale data of houses within one mile or a half a mile radius of an existing solar farm. He looks at the sale prices before and after the solar farms were constructed. Chairman Diffendorf asked so for the market analysis did you do any property that could see the solar farm and Mr. Fisher stated the properties for each of those studies are within visual distance, visual sight of the solar farms. Chairman Diffendorf asked which ones because he looked at some and they were more than a mile away and Mr. Fisher responded everything was within a mile or half a mile from the solar farm. Some of the residences around this proposed site will be screened by trees, a tree buffer on the northwest and the north of this property and trees along the road frontage. Chairman Diffendorf pointed out that the natural screening that is there now, those trees could die. He would like to know if there is a market analysis of a house that could see the solar farm and Mr. Fisher stated he can't point out any specific addresses of his market study, he doesn't go into that much depth. He explained in detail in the market study report exactly the process that he follows.

John O'Neil speaking to Mr. Fisher stated there are no residences anywhere near those five solar farms as he showed in the market analysis. Mr. O'Neil asked if he would want to walk out his front door and look at a solar farm and Mr. Fisher stated yes, he has no problem with that.

A resident asked who paid for the market survey and Chairman Diffendorf stated the applicant. Chairman Diffendorf explained that when an application comes in for site plan review there is an escrow account started and in this case there was \$20,000 in escrow. The market analysis cost \$8,500 but the town attorney picked the appraiser so the applicant paid for somebody else's preference. Ms. Orals asked why they didn't get an appraiser from Broome County and Ms. Middleton explained they called several different appraisers and a lot of them are unwilling to do market studies of this type.

Ms. Orals stated when she spoke to Becky Jones, and appraiser, and asked her if it will affect, she said it could be positive or it could be negative. They never thought the properties down in Susquehanna, PA with the gas leasing would flourish as far as sales and raise their values but because they are getting something, royalties, which we won't get, their property values went up. An appraisal is only good for the day that the appraisal is done because the next day something else could affect it and a visual is one of those things.

Mr. Holt, referring to flooding, commented back in 2011 when we had Lee and Irene, Trim Street became a river, Route 11 was flooded, they shut down 81. That much water coming off the mountain, not river water,

with a bunch of holes in that field where is that water going to end up.

Scott Baker, Broome County Legislature, commented that recently there was a very contentious issue in Windsor and Deposit regarding windmills. It went on for years and the project still isn't completed. In that project there were people that were for it and people that were against it. In this project he hasn't found anybody for it other than the property owner and those working on the project. Do we take into consideration the fact that nearly 100% of the neighbors do not want this project in their backyard.

Chairman Diffendorf hearing no other comments closed the public hearing at 8:00 PM.

Chairman Diffendorf stated we have the affidavits of publication, affidavit of posting by the Town Clerk, notice to property owners within 500 feet of the project, Broome County Planning Department 239-m recommendation, and a short EAF has been filed.

E.A.F DETERMINATION – TRACT ENGINEERING – SIEDEL SOLAR FARM:

Chairman Diffendorf explained that Part 1 of the EAF was completed by the applicant and was just received before the meeting and asked if there were any issues. He pointed out #17, stormwater flows to adjacent properties. The stormwater discharges can't increase flow to other properties. John Mastronardi explained that the applicant submitted the SWPPP and in that plan they have to analyze a one year, a 10-year, and 100-year storm and the discharge from those storms. The applicant, using DEC guidelines demonstrated that the flow will not increase during those storms. The majority of the project will remain green space, it doesn't have a lot of impervious surfaces. Impervious surfaces generally increase the flow. During construction the service road would become compacted and that would change the infiltration rates of the existing soils. The applicant realized that and following DEC guidelines for deep ripping, basically uncompacting the soils to try to recreate those existing conditions. John went on to say he has a few other comments on the SWPPP that the applicant addressed and as of now they meet the requirement for permit coverage on DEC guidelines. There will be runoff to the adjacent property as is probably is occurring today but the post construction discharge, the flow from that property, cannot be more than it is pre-construction. They have demonstrated that in the SWPPP.

Mr. Gourley commented your question was will there be discharge from the site and the answer is yes, not will there be more discharge or new discharge, yes there are existing conditions out there.

Ms. Middleton read the questions in Part 2 of the EAF and the board members answered no to all except one question. For question #3 the Board answered moderate to large impact. There was a lengthy discussion regarding question #3, will the proposed action impair the character or quality of the existing community. Mr. Gourley responded by saying they did check that as being a compatible use in there. They have adhered to the zoning regulations that were revised on the project submission, the moratorium went in and changed everything and they have complied with all the additional setback requirements, the screening requirements, essentially they have met all those requirements to mitigate that as per your regulation. Ms. Middleton stated she would like every board member to determine what they believe this would be. There should be a discussion and some degree of consensus. Chairman Diffendorf stated he believes it will have a moderate impact on the community. Dan Wasson agreed it would have a moderate impact. Jim Bukowski commented he thinks it is a moderate impact also. Ms. Middleton clarified that the applicant acknowledged it does impact but they have mitigated it. Mr. Gourley commented the EAF is written for the community at large, not just the five properties around it. Overall what is the impact to the total community. With the size of the community he would say it was a small impact. Kevin Balachick commented he thinks it is a moderate impact and Gordie Woolbaugh agreed also, a moderate impact. The completed form is included in the file.

Since a Negative Declaration isn't required this will required an Environmental Impact Statement. Mr. Gourley asked what are we responding back to. As stated before they have followed the letter of the law with the requirements proposed by the board. They provided additional screening, additional setbacks. They need direction on what you are looking for. Chairman Diffendorf commented for him the five-pole cluster is an issue because they will be sitting right by the road, they are a considerable eyesore. Mr. Gourley again stated they have addressed that, NYSEG responded that is how the poles are set. Another issue is the noise from the transformer and the inverters. Mr. Gourley again stated they have met the requirements in the town's ordinance and have done what the board asked regarding the ambient noise, removing the highway noise from their calculations. They have met all the requirements, addressed all the issues. Now you are asking for additional information, we are asking what do we need to do or what could be done because they have addressed everything under the law that has to be done. Chairman Diffendorf commented you would have to get rid of the poles and that isn't going to happen. We don't know about the noise they will produce. Mr. Gourley stated the poles are non-negotiable because they have talked to NYSEG. In terms of the noise their equipment would sit outside and through Code Enforcement if we exceed the decibel limits there would be other options to deal with it, enclosing it or not. What they have shown and what they have provided they have met the requirements of your zoning ordinance. Chairman Diffendorf commented solar farms may be suitable for some residential locations but he doesn't believe this is one.

Ms. Middleton explained the next step will be the applicant has to prepare an environmental impact statement, which is supposed to address your concerns specifically to the items you believe make it a moderate to large impact. He is looking for guidance on what you need. Mr. Gourley commented with respect to the community, the market study was done, will it affect property values. From the report that was written it doesn't. All the information is pointing towards that it doesn't. What is the community at large, the neighbors that are right there or the town itself. It is not affecting the town itself. Chairman Diffendorf commented it is affecting the people that live near it, no question about that. Chairman Diffendorf asked if he agreed it would affect the people in that area and Mr. Gourley stated yes but they have made a plan to address their concerns. Ms. Middleton asked in terms of the impact statement are we asking the applicant to consolidate and clearly lay out exactly the things they have done to mediate the moderate to large impact and additionally is there anything else specific we are looking for. They do have to prepare an actual impact statement to be presented to the board. Kevin Balachick commented we all agree it is a moderate impact, have they mitigated it and have they met the town code, yes. You are torn between it is an impact on the community, but with the evidence and the way the town code is written they are meeting everything required by the law. Mr. Gourley commented if you are asking for more information, they have given everything they have, exhausted all their avenues. The appraisal study, market value, things like that, they have done all of that. If they hadn't done that, yes that could be a question of an impact and that would need to be done but they have done all that. As far as the pole issue, they went back to NYSEG to see if they could be moved and they said no. Chairman Diffendorf commented they are an eyesore, I wouldn't want to live across from them. It is a nice setting, now you have industrial type poles, 40 feet high with transformers on them, switches, it is a big concern to him. Mr. Gourley explained possibly they could still have a pole at the road and space the other poles further back in.

Chairman Diffendorf commented that the appraisal wasn't worth the paper it was written on. There were no houses that they looked at for the market analysis that is looking at a solar farm. Chairman Diffendorf asked what happens now and Ms. Middleton explained the next step is the environmental impact statement and it sounds like addressing the potential valuation concerns if you have alternative or other sources for that issue. Mr. Gourley commented you hired a professional to do that and we aren't going to find anything different that what was already done. Ms. Middleton suggested looking at the report and identifying the locations that are across the street from a solar farm. Chairman Diffendorf stated ultimately it is up to this board to determine if the property values have increased or decreased because you are next to or across the road from the solar farm. The houses in the appraisal weren't anywhere near a solar farm. That is the moderate impact.

SITE PLAN REVIEW – TRACT ENGINEERING – SIEDEL SOLAR FARM:

Chairman Diffendorf commented a few concerns that were raised included solar panels don't have MSDS sheets, both fire departments don't have any concerns, if approved and noise was an issue we would want that mitigated, a petition with 47 signatures against it, 5-pole cluster that is uncharacteristic of the residential neighborhood, it looks industrial, the appraisal report, and solar farm law allows for solar farms in residential zoning districts but not sure if this is the right location. You have to asked yourself if you lived across the street from it how would it affect you and your property values.

Chairman Diffendorf commented the site plan review was pretty much covered in the EAF. Ms. Middleton explained until we get the environmental impact statement we can't make a determination. The environmental impact statement is on the specific issue that you deemed to be a moderate to large impact.

Mr. Gourley stated he needs clarification on what the board wants him to do. All he is hearing is that it's not suitable for this location. Chairman Diffendorf commented because of the poles and if he lived across the street from it he wouldn't like it, it will change the value of my home. Ms. Middleton stated what I'm hearing is the board wants additional information provided in the environmental impact statement showing that there is no impact. She understands his position, that the report was done, there is room for additional information from the applicant. The issues to address are the sound, including a semi enclosure to direct the sound toward 81. As far as the poles a suggestion was made to move all but one back further. The environmental impact statement is an explanation of how you mitigated to the best of your abilities. Mr. Gourley asked if we want to call it an impact statement or a supplementary information to the appraisal report and Ms. Middleton stated the board has found a large to substantial impact, they would like an environmental impact statement so it is going to be mandatory for the SEQR. What should be included is visual, noise and the appraisal values.

Chairman Diffendorf commented this will require more money in the escrow account, more work for the engineer and the attorney. Ms. Middleton will notify Mr. Gourley what is left in the account.

There was a discussion on whether to reach out the appraiser again. It was determined they would not.

Chairman Diffendorf commented that the special use permit has a line in there specific to property values and that special use permit question is on this board.

The public hearing will be continued at a later date, to be determined.

Motion by Gordie Woolbaugh and seconded by Dan Wasson to adjourn the meeting. The meeting was adjourned at 8:50 pm.

Respectfully Submitted,

Mary Kay Sullivan
Secretary, Kirkwood Planning Board

cc: Planning Board Members
Kelley Diffendorf
John Finch, Jr.
Chad Moran

Bob McKertich
Gina Middleton
Katie Legg
Scott Snyder