

STATE OF NEW YORK

COUNTY OF RENSSELAER

TOWN OF SCHODACK

ZONING BOARD OF APPEALS

THE STENOGRAPHIC MINUTES of the above entitled
matter which were broadcast via the Town's
Website by NANCY L. STRANG, a Shorthand
Reporter commencing on July 26, 2021, 265
Schuurman Road Castleton, New York at 7:10 P.M.

BOARD MEMBERS:

DAVID CALARCO, CHAIRMAN

EDWARD BREWER

ANTHONY MAIER

LOU SPADA

ROBERT LOVERIDGE

ALSO PRESENT:

CRAIG CRIST, ESQ., COUNSEL TO THE BOARD

NADINE FUDA, DIRECTOR, PLANNING & ZONING

MELISSA KNIGHTS, PLANNING & ZONING SECRETARY

JAMES A. MUSCATO, ESQ. YOUNG SOMMER, LLC

1 CHAIRPERSON CALARCO: Up next is Greendale
2 Solar LLC.

3 Gentlemen, as you remember we adjourned
4 from the last meeting to give you and myself
5 a little time to consider all the
6 information and what we were reviewing for
7 this decision. We called this special
8 meeting tonight to basically deal with that
9 and make that decision on the
10 interpretation.

11 So, I think the first thing we need to
12 do is we need to establish lead agency for
13 SEQRA. Do I have a motion for that from
14 someone.

15 MR. MAIER: (Raises hand.)

16 CHAIRPERSON CALARCO: Mr. Maier.

17 MR. SPADA: (Raises hand.)

18 CHAIRPERSON CALARCO: Seconded by Mr.
19 Spada.

20 All in favor?

21 (Ayes were recited.)

22 Opposed?

23 (There were none opposed.)

24 I believe this would qualify as a Type
25 II Action.

1 Do I have a motion to basically commit
2 this as a Type II Action?

3 I will make that motion.

4 Do I have a second?

5 MR. SPADA: (Raises hand.)

6 CHAIRPERSON CALARCO: Seconded by Mr.
7 Spada.

8 All in favor?

9 (Ayes were recited.)

10 Opposed?

11 (There were none opposed.)

12 Okay, because of that, nothing further
13 is required from SEQRA. You've had an
14 opportunity to consider all the evidence. We
15 closed the public hearing at the last
16 meeting. At this point I guess I will ask if
17 anyone would like to make a motion in favor
18 of the applicant's position that the
19 Building Inspector's interpretation of the
20 Code was incorrect.

21 MR. BREWER: I would.

22 CHAIRPERSON CALARCO: That the Building
23 Inspector was incorrect.

24 MR. BREWER: That's what you're looking
25 for.

1 CHAIRPERSON CALARCO: I'm not looking for
2 anything. I was just asking is that what you
3 are ready to -- are you prepared to make that
4 motion?

5 MR. BREWER: Yes, I am.

6 CHAIRPERSON CALARCO: That he was
7 incorrect.

8 MR. BREWER: Yes.

9 CHAIRPERSON CALARCO: The Building
10 Inspector.

11 MR. BREWER: Yes.

12 CHAIRPERSON CALARCO: Do I have a second
13 on that motion.

14 (There was no response.)

15 No second, Mr. Brewer.

16 Okay, without a motion in favor of the
17 applicant, I would therefore like to make a
18 motion in favor of the Building Inspector's
19 interpretation of the Code.

20 MR. CRIST: To affirm.

21 CHAIRPERSON CALARCO: To affirm, yes. I
22 had asked our counsel to help me in coming up
23 with a decision that incorporated all of the
24 things that were discussed in the issues that
25 were before this Board in the last couple of

1 meetings just so that it was clear and that we
2 would actually make sure that we covered all of
3 our bases. So he did that and I have handed out
4 to you tonight copies of that decision and what
5 I would like to do is to be fair before I
6 formally make any motion with this and ask for
7 seconds, I would like to give the Board 10
8 minutes, or 15 minutes, or whatever it takes
9 for you gentlemen to read through this front to
10 back so you can make sense of what is there. It
11 is a little long, but if you read through it,
12 it's very clear in its purpose and what it
13 says. So, if you could read through that and at
14 that point if I have a second, we can have a
15 discussion on this motion at which time you can
16 ask questions, or clarification, or amend but I
17 think that's what I would like to take a few
18 moments to do. So, we will just take whatever
19 time you need to read through this and then we
20 will take it up after that.

21 (There was a brief break in the
22 proceedings.)

23 I closed the public hearing at the last
24 meeting. All testimony and information that
25 this Board would consider has been taken in.

1 We are not going to consider anything
2 further from anyone; from the Town.

3 MR. MOSCADO: It would not be in the vein
4 of public comment, it would be in the vein of -

5 CHAIRPERSON CALARCO: Not public comment,
6 but in general - a question about the
7 procedure?

8 MR. MOSCADO: A question about the
9 reasonings and a question about the issues that
10 are being decided.

11 CHAIRPERSON CALARCO: No, we're not doing
12 that tonight. There is a venue for that, you
13 know.

14 MR. MOSCADO: I just don't know if the
15 Board understands the full ratifications of the
16 decision. It may be that the Board ultimately
17 disagrees with the applicant on this, but this
18 reasoning could suggest then that if the Town
19 Board believed that -

20 CHAIRPERSON CALARCO: I appreciate your
21 attempt to try to get into a discussion. What I
22 am saying is that the time for that was last
23 meeting. We did all this. We went back and
24 forth quite a bit. We were here for quite a
25 while.

1 MR. MOSCADO: We just found out there
2 wasn't going to be anymore testimony -

3 MR. CRIST: The testimony that you
4 objected to, yes. The Board elected not to do
5 that.

6 MR. MOSCADO: We didn't know that wasn't
7 going forward -

8 CHAIRPERSON CALARCO: But I did close the
9 public hearing. At the end of our meeting I did
10 close the public hearing.

11 MR. MOSCADO: I just found out tonight
12 that there was no more further testimony. We
13 expected that there was going to be some
14 questions asked of Nadine and we would have a
15 chance to discuss that.

16 CHAIRPERSON CALARCO: But there aren't any
17 questions being asked of Mrs. Fuda. We are not
18 taking any more information.

19 MR. CRIST: Your comments are noted.

20 MR. MOSCADO: You did a little switch up,
21 of the rules five minutes before you even
22 started. This is the first time that we heard
23 there was going to be no discussion.

24 CHAIRPERSON CALARCO: Did you hear at the
25 last meeting that I closed the public hearing?

1 MR. MOSCADO: It's not a public hearing
2 question. It was a question that you are going
3 to solicit evidence.

4 MR. CRIST: And you objected to that.

5 CHAIRPERSON CALARCO: And you objected to
6 that.

7 MR. MOSCADO: And I was scheduled for this
8 particular meeting.

9 CHAIRPERSON CALARCO: No, we said we may.

10 MR. MOSCADO: There was supposed to be
11 further discussion tonight.

12 MR. CRIST: And the public hearing was
13 closed. Your comments are noted.

14 CHAIRPERSON CALARCO: Okay, thank you,
15 sir. We appreciate your comment.

16 MR. MOSCADO: I don't think that's true,
17 but thank you.

18 CHAIRPERSON CALARCO: Gentlemen, has
19 everyone had an opportunity? Not yet? Mr.
20 Loveridge, do you need a few more minutes?
21 That's fine. You can take all the time you
22 need.

23 (There was a brief break in the
24 proceedings.)

25 If everyone has read that, rather than

1 me take the time to read it into the record,
2 can I have a motion to waive the reading of
3 this Resolution?

4 MR. SPADA: (Raises hand.)

5 CHAIRPERSON CALARCO: Mr. Spada.

6 I will second that.

7 All in favor?

8 (Ayes were recited.)

9 Opposed?

10 (There were none opposed.)

11 MR. LOVERIDGE: Mr. Chairman, before you
12 proceed. Since I was not here at the last
13 meeting, would I be able to abstain from voting
14 on this?

15 CHAIRPERSON CALARCO: That's your choice,
16 sir.

17 MR. LOVERIDGE: I don't know if I'm
18 unfamiliar with what happened here before.

19 MR. CRIST: Did you watch the meeting, did
20 you read the minutes? There are no minutes, so
21 if you don't feel comfortable -

22 MR. LOVERIDGE: I had no minutes to read.

23 MR. CRIST: So, you are abstaining.

24 MR. LOVERIDGE: I am abstaining.

25 CHAIRPERSON CALARCO: All right, Mr.

1 Loveridge.

2 Can you note that please?

3 MS. FUDA: Yes.

4 CHAIRPERSON CALARCO: So, gentlemen if you
5 have any concerns or questions or
6 clarifications -

7 MR. CRIST: You're making a motion to
8 adopt that?

9 CHAIRPERSON CALARCO: Yes, let me do that.
10 You're right. I will do that first. So, I will
11 formally make the motion to adopt this
12 decision.

13 Do I have a second from anyone?

14 MR. SPADA: (Raises hand.)

15 CHAIRPERSON CALARCO: Mr. Spada. I made
16 that motion and Mr. Spada seconded it. So, it
17 has been seconded. Discussion on the motion? Is
18 there something you would like to ask questions
19 about? Maybe some clarification on something in
20 there that maybe didn't read right?

21 MR. BREWER: Who would we ask questions
22 to?

23 CHAIRPERSON CALARCO: You can ask myself
24 or Mr. Crist. I'm sure he could answer some of
25 them.

1 MR. BREWER: I have a few questions.

2 CHAIRPERSON CALARCO: Go ahead, but tell
3 us where you are.

4 MR. BREWER: Number 14, issue presented.
5 There are three parts to that. And while I
6 understand the first one and I think that one
7 is the most compelling argument to me about the
8 process of this, the other two - using my own
9 common sense and background in my profession
10 and not allowing the setback with the utility
11 to a utility, more or less - what I don't
12 understand - I understand the Paul Puccio line
13 and all of that. I knew Paul for a long time
14 and I think he was very - the word is erudite.
15 He put something in there and I heard your
16 discussion about why he wanted that in there
17 and all of that, but I can't say that he
18 would've predicted this specific circumstance
19 and that he would have necessarily been opposed
20 to it. Of course, he has passed and we can't
21 ever ask him that, but to make - parts two and
22 three here tied to the interpretation of the
23 drawing up of that specific drafted law, I have
24 trouble accepting that premise of that.

25 That's my question that I raise to this

1 in this discussion of those two issues about
2 the setback. Specifically, it seems that it
3 doesn't fit the interpretation that I am
4 reading and the rest of this, in my opinion.

5 CHAIRPERSON CALARCO: Mr. Brewer, I
6 understand what you're saying. I think what you
7 might be misconstruing - what the intent was -
8 the Code specifically says the setback applies
9 to any property line; whether it be in this
10 case the National Grid property line - and that
11 is a property line - it's not an easement or
12 right-of-way. They own that. Their property
13 line - in this case, you are right. It is owned
14 by National Grid which happens to be another
15 utility, but if it weren't National Grid --
16 let's say this was another instance where Mrs.
17 McGillicuddy's property or house or home - it
18 would be the property line. So, the principal
19 is any property line. In other words, does the
20 principal apply that you need a 200-foot
21 setback from any property line? The Code states
22 that it does. However, in this case which you
23 just referred to, the applicant has a right as
24 does anyone to come to this Board for a
25 variance. That's not what they chose to do.

1 They still have the right even after - if we
2 were to render a decision unfavorable to them,
3 they would still have the right to come back
4 and say okay, we would like to apply for a
5 variance. Let me just say that I don't think
6 you're wrong and that this may be the one
7 unique case where we have utility up against a
8 utility that this Board might be able to help
9 the applicant - give them relief with a
10 variance and not impact neighbors. This is
11 probably one scenario where we would not be
12 making - harming the health, welfare and safety
13 of the public. They have the right to do that,
14 but that's not what they're doing. What we are
15 doing is making a determination that: Is the
16 Building Inspector's interpretation that it
17 applies to property lines regardless of whether
18 it's National Grid or Mrs. McGillicuddy, it
19 applies to property lines. Again, they have the
20 right to come in and ask for that variance.
21 They did not do that.

22 MR. BREWER: That helps clarify that
23 point. This particular piece of property - my
24 overriding feeling is that it's pretty much
25 worthless for anything else, if you're familiar

1 with it. There is not much - the highest and
2 best use is likely something like this. So, to
3 more or less deny based on procedural -

4 CHAIRPERSON CALARCO: We are not denying
5 anything.

6 MR. BREWER: I don't mean to say deny, but
7 you understand my point. I think this is a good
8 use for that property and I would like to just
9 be able -- if the solution is to have them come
10 back for a variance, I know we've already been
11 delayed a long time. The process has been slow
12 moving and not totally on either side's fault,
13 but it seems like to me the overwhelming thing
14 is this is a good use for that property and as
15 far as - I don't want to see them go away and
16 not do the project because of what I consider
17 to be -

18 CHAIRPERSON CALARCO: Well, that's a very
19 valid point Mr. Brewer. Let the record show
20 that they already have approval for this
21 project. Our decision tonight will in no way be
22 denying them anything. This is just an
23 interpretation of what the Building Inspector
24 had interpreted. We are not denying. They
25 already have an approval. They have a PD 2

1 created and approved by the Town Board. That
2 was with the 200-foot setback required by the
3 Code. All we are saying is that we believe that
4 the way the interpretation of the Building
5 Inspector there was that it applies to property
6 lines, regardless of whether it's National Grid
7 or like I said, Mrs. McGillicuddy's. I don't
8 disagree with you that this is a good use for
9 this site. I would venture to say this Board is
10 very amenable to even considering a variance
11 for this application. But that's not what the
12 applicant chose to do. He chose to challenge
13 the interpretation of the law which says the
14 property boundaries are property boundaries and
15 there's a 200-foot setback. I hope you can see
16 where in many instances that would be the
17 reason to protect a barrier from someone being
18 impacted. In this case, like you said, being
19 that it is a utility up against utility, it's
20 probably the one case where if this Board were
21 to consider a variance, we would not be setting
22 a precedent because it is a utility against
23 utility.

24 MR. BREWER: Okay, thank you.

25 CHAIRPERSON CALARCO: And had the

1 applicant chose to do the variance thing, I
2 would venture to say that they would've gotten
3 a decision at the June meeting and been out of
4 here.

5 MR. BREWER: Okay, thank you.

6 CHAIRPERSON CALARCO: Anyways, that's all
7 I can help you with there. Anything else?

8 Members, questions about this?

9 (There was no response.)

10 If not, then you can call the role
11 please.

12 MS. FUDA: Mr. Calarco?

13 CHAIRPERSON CALARCO: Yes.

14 MS. FUDA: Mr. Brewer?

15 MR. BREWER: No.

16 MS. FUDA: Mr. Loveridge abstains.

17 Mr. Maier?

18 MR. MAIER: Yes.

19 MS. FUDA: Mr. Spada?

20 MR. SPADA: Yes.

21 MS. FUDA: So, it's three yeas, one
22 abstains and one against.

23 CHAIRPERSON CALARCO: Okay gentlemen,
24 thank you. I appreciate your diligence and
25 looking that over in consideration.

1 MR. LOVERIDGE: Motion to adjourn.

2 CHAIRPERSON CALARCO: Motion made to
3 adjourn.

4 MR. MAIER: Second.

5 CHAIRPERSON CALARCO: Seconded by Mr.
6 Maier.

7 All in favor?

8 (Ayes were recited.)

9 Opposed?

10 (There were none opposed.)

11 Thank you gentlemen.

12
13 (Whereas the proceeding was concluded at 7:39
14 PM)

1 CERTIFICATION

2
3 I, NANCY L. STRANG, Shorthand Reporter
4 and Notary Public in and for the State of
5 New York, hereby CERTIFIES that the record
6 taken by me at the time and place noted in
7 the heading hereof is a true and accurate
8 transcript of same, to the best of my
9 ability and belief.

10
11 Date: August 13, 2021

12
13 ***Nancy L. Strang***

14 Nancy L. Strang

15 Legal Transcription

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