

STATE OF NEW YORK
SUPREME COURT COUNTY OF SCHENECTADY

In the Matter of the Application for a Judgment
Pursuant to Article 78 of the Civil Practice Law
and Rules by:

SUSAN L. BIGGS and LYNNE A. BRUNING

Petitioners

v.

EDEN RENEWABLES LLC, TOWN OF DUANESBURG
PLANNING BOARD and RICHARD B. MURRAY

Respondents

**NOTICE OF VERIFIED
PETITION**

Index No.:

Hon.

ORAL ARGUMENT IS
REQUESTED

TO: THE ABOVE-NAMED RESPONDENTS:

PLEASE TAKE NOTICE that upon the annexed petition, verified on the 16th day of October, 2019, the undersigned will make application to the Schenectady County Supreme Court, 620 State Street, Schenectady, New York on the 19TH day of December, 2019 at 10 a.m. in the forenoon of that day, or as soon thereafter as counsel may be heard, for an order and judgment pursuant to CPLR Article 78 granting the following relief:

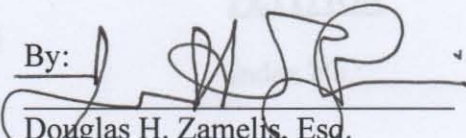
1. Annuling and vacating *ab initio* the "Town of Duanesburg Planning Board Resolution Approving Special Use Permit, Subdivision and Site Plan for the Eden Renewables Oak Hill Solar Energy Projects – 1206 Oak Hill Road" dated September 19, 2019 for failure to comply with the substantive and procedural requirements and make written findings in connection with the 7 standards for site plan review and 14 standards for special use permit all as set forth in Section 14.6.1.5, 14.6.2 and 14.6.2.4(c) of the Town of Duanesburg Zoning Ordinance and as required by Section 4(b) of the Town of Duanesburg Solar Energy Facilities Law; and
2. Granting such other and further relief as the Court may deem just, equitable and proper, including attorney's fees, and the costs and disbursements of this proceeding.

PLEASE TAKE FURTHER NOTICE that pursuant to CPLR §7804(c), unless otherwise provided by an Order of this Court, respondents' verified answers, supporting

affidavits, if any, and the certified transcript of the record of proceedings under consideration shall be served at least five (5) days before the above return date.

Dated: Springfield Center, New York
October 16, 2019

By:


Douglas H. Zamelis, Esq.
Attorney for Petitioners
7629A State Highway 80
Cooperstown, New York 13326
Tel.: (315) 858-6002

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Petitioners Susan L. Biggs and Lynne A. Bruning (“Petitioners”), by and through their attorney Douglas H. Zamelis, Esq., allege for their Verified Petition against respondents Eden Renewables LLC, the Town of Duanesburg Planning Board, and Richard B. Murray (“Respondents”) as follows:

INTRODUCTION

1. This proceeding is brought pursuant to Article 78 of the Civil Practice Law and Rules to annul and vacate the September 19, 2019 determinations of respondent Town of Duanesburg Planning Board for failure to make written findings concerning the issuance of site plan approval and a special permit pursuant to Section 14.6.1.5, 14.6.2, and 14.6.2.4(c) of the Town of Duanesburg Zoning Ordinance (the “Ordinance”) and Section 4(b) of the Town of Duanesburg Solar Energy Facilities Law (the “Solar Facilities Law”), all in connection with the application of respondent Eden Renewables LLC (“Eden”) to construct a major solar energy generating facility (the “Project”) at property now or formerly owned by Richard B. Murray at or about 1206 Oak Hill Road in the Town of

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Duanesburg, Schenectady County, New York (the "Subject Property").

PETITIONERS

2. Petitioner Susan L. Biggs ("Ms. Biggs") is a natural person who resides at 13388 Duanesburg Road in the Town of Duanesburg, Schenectady County, New York. Ms. Biggs' properties are identified as Town of Duanesburg Tax Parcel Identification numbers 74.00-3-16.3 and 74.00-3-18.
3. Petitioner Lynne A. Bruning ("Ms. Bruning") is a natural person, is the daughter of Ms. Biggs, and resides at 13388 Duanesburg Road in the Town of Duanesburg, Schenectady County, New York.
4. Petitioners enjoy, among other things, residing, gardening, hiking, dog walking, and bird and wildlife watching on the many trails on Ms. Biggs' properties which are directly adjacent to and share a boundary with the Subject Property on which the Project is proposed to be constructed and operated.
5. Petitioners also enjoy the quiet, rural and agricultural character of their neighborhood, and they are particularly concerned about the noise that will be generated during the construction of the Project.
6. Petitioners are concerned that the Project will create significant visual impacts from Ms. Biggs' properties and that the tens of thousands of solar panels covering over 60 acres will be unsightly and will be incompatible with and in stark contrast to existing neighboring structures, including buildings such as the Sheldon Farm House and those on Ms. Biggs' property.
7. Petitioners are further concerned about the extensive tree clearing and fencing

associated with the Project and how the fencing will interfere in the movement of deer and other wildlife such that Petitioners will enjoy fewer wildlife sightings on Ms. Biggs' properties.

8. Petitioners are additionally concerned about the impermeability of the tens of thousands of solar panels covering more than 60 acres associated with the Project, the approximate 6% grade on the Subject Property that drains and flows toward Ms. Biggs' properties, and how those more than 60 acres of solar panels will affect stormwater runoff and cause possible flooding.
9. Petitioners are also concerned that the fire access lanes associated with the Project are not of sufficient width for adequate emergency access, and that such inadequate emergency access could increase the likelihood of fire spreading to Ms. Biggs' properties.
10. Petitioners are very concerned that the Project is not sufficiently and adequately screened from Ms. Bigg's properties, and Ms. Biggs stands to suffer diminution of the value of her real property parcels as a result of the construction and operation of the Project on the Subject Property directly adjacent to hers.
11. Petitioners remain concerned about the eventual decommissioning and disposal of the tens of thousands of solar panels associated with the Project.
12. By virtue of the location of Petitioners' residence and Ms. Biggs' properties directly adjacent to the Subject Property in very close proximity to the Project, Petitioners would be directly affected by the environmental impacts of the Project, including but not limited to construction and traffic impacts, visual impacts,

stormwater impacts, impacts to wildlife, impacts to agriculture, impacts to the character of their neighborhood and community, and diminution of property value, and therefore Petitioners are presumed harmed by the Project different in kind and degree than the public at large.

RESPONDENTS

13. Respondent Eden Renewables LLC (“Eden”) is, upon information and belief and according to public records, a foreign limited liability company with an address for the service of process at 2270 River Road, Castleton-on-Hudson, New York 12033. Eden applied for and on September 19, 2019 received, among other approvals, site plan approval and a special use permit for the Project on the Subject Property from respondent Town of Duanesburg Planning Board.
14. Respondent Town of Duanesburg Planning Board (the “Planning Board”) is, upon information and belief, the duly appointed planning board of the Town of Duanesburg, with a principal place of business at 5853 Western Turnpike, Duanesburg, New York 12056. Respondent Planning Board is purportedly delegated the authority to grant site plan approval and special use permits pursuant to the Ordinance.
15. Respondent Richard B. Murray (“Mr. Murray”) is a natural person who, upon information and belief, resides at 1206 Oak Hill Road, Esperance, New York 12066. Upon information and belief, Mr. Murray is now or formerly the record owner of the Subject Property identified as Town of Duanesburg Tax Parcel Identification number 74.00-2-5.

VENUE

16. Venue for this proceeding to review the determinations of Respondent Planning Board is proper in Schenectady County because the determinations complained of were made in Schenectady County.

STATUTE OF LIMITATIONS

17. Commencement of this proceeding is timely inasmuch as it is commenced within thirty days of the filing in the office of the Duanesburg Town Clerk of the Planning Board's determinations to issue site plan approval and a special use permit to Respondent Eden pursuant to the Ordinance.

BACKGROUND

18. In May of 2018 and pursuant to the Ordinance, Eden applied to the Planning Board for site plan approval and a special permit for the Project which includes, among other things, the construction and operation of two 5-megawatt solar generating facilities involving tens of thousands of solar panels covering over 60 acres at the Subject Property.
19. In July of 2018 Eden applied to the Planning Board for a lot line adjustment and minor subdivision approval in connection with the Project.
20. During the Planning Board's review of and during the public hearing held July 18 and August 16, 2019 for the Project, Ms. Biggs and Ms. Bruning provided numerous oral and written comments to the Planning Board concerning the several adverse impacts they and Ms. Biggs' properties would suffer from the Project including but not limited to construction and traffic impacts, visual

impacts, stormwater impacts, impacts to wildlife, agricultural impacts, impacts to the character of their neighborhood and community, and diminution of property value.

21. On September 19, 2019, notwithstanding Ms. Biggs' and Ms. Bruning's comments concerning the several adverse impacts they would suffer from the Project, the Planning Board voted unanimously to adopt a written resolution to grant site plan approval, special use permit and subdivision approval to Eden for the Project.
22. The "Town of Duanesburg Planning Board Resolution Approving Special Permit, Subdivision and Site Plan Approval for the Eden Renewables Oak Hill Solar Energy Projects – 1206 Oak Hill Road" (the "Approval Resolution") failed to include required findings concerning the standards for site plan and special permit approval as set forth in Section 14.6 of the Ordinance and as required by the Section 4(b) of the Solar Facilities Law.

RELEVANT PROVISIONS OF THE SOLAR FACILITIES LAW

23. Section 1 of the Solar Facilities Law defines "Solar energy system, major - a ground or roof mounted solar energy system that produces power to off-site customers".
24. Section 4(b) of the Solar Facilities Law provides:

Prior to installing a Solar Energy System Major, the applicant shall obtain site plan approval and a special use permit from the Town of Duanesburg Planning Board. A Solar energy System Major shall only be permitted by special use permit and site plan approval in the R-2, C-1, and C-2 Zoning districts. All of the substantive and procedural requirements

for site plan review and special permit review as set forth in the Town of Duanesburg Zoning Ordinance set forth in Section 14.6 (emphasis added).

RELEVANT PROVISIONS OF THE ORDINANCE

25. Section 14.6.1.5 of the Ordinance provides standards for the Planning Board to apply in reviewing and making determinations on site plans including:
- a) Location arrangement, size and design and general compatibility of buildings, lighting and signs.
 - b) *Adequacy and arrangement of vehicular traffic access* and circulation including intersections, *road widths*, pavement surfaces, dividers and traffic controls.
 - c) Location, arrangement, appearance and sufficiency of off-street parking and loading.
 - d) Adequacy and arrangement of pedestrian access.
 - e) *Adequacy of stormwater and drainage facilities.*
 - f) Adequacy of water supply and sewage disposal facilities.
 - g) *Adequacy, type and arrangement of trees, shrubs and other landscaping constituting [sic]*" (emphasis added).
26. Section 14.6.2 of the Ordinance provides 3 standards for the Planning Board to apply in reviewing and making determinations on special permits including:
- a) Such use is reasonably necessary of convenient to the public health, welfare or the economic or social benefit of the community;
 - b) Such use is suitably located in relation to transportation, water and sewerage requirements of this Ordinance or, where not specifically required, that such facilities are otherwise adequate to accommodate anticipated use;
 - c) *The character of the neighborhood and values of surrounding property is reasonably safeguarded* (emphasis added);
27. Section 14.6.2.4(c) of the Ordinance provides 11 additional standards for the Planning Board to apply in reviewing and making determinations on special permits including:

- 1) the proposal is subject to the State Environmental Quality Review Act and, if so, to initiate the process in accordance with Section 14.6.2.7;
- 2) *the proposed use will not have a significant negative effect on existing adjacent land uses;*
- 3) the arrangement of pedestrian traffic access and circulation, including intersections, road widths, pavement surfaces, channelization structures and traffic control, is adequate.
- 4) the location arrangement, appearance, and sufficiency of off-street parking and loading is sufficient;
- 5) the location, arrangement, size, design and general site compatibility of buildings, lighting and signage is satisfactory;
- 6) *the storm water and drainage facilities are adequate;*
- 7) the water supply and sewage facilities are adequate;
- 8) *the type of arrangement of trees, shrubs and other landscaping constituting a visual and/or noise deterring buffer between the Applicants and adjoining lands, including maximum retention of existing vegetation are adequate;*
- 9) *performance Standards, if necessary, if necessary are imposed to ensure protection of adjacent or neighboring properties against noise, glare, unsightliness or other objectionable features;*
- 10) *the Fire lanes and other emergency zones and the availability of fire water, water points or hydrants are adequate; and*
- 11) *building appearance is compatible with existing neighboring structures (emphasis added).*

**AS AND FOR PETITIONERS' FIRST CAUSE OF ACTION
(Failure to Make Findings Concerning Site Plan Approval)**

28. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 27 hereinabove.
29. Section 14.6.1.5 requires that the Planning Board consider and make findings pursuant to 7 separate and specific standards applicable to site plan review including but not limited to "adequacy of storm water and drainage facilities" and "adequacy, type and arrangement of trees, shrubs and other landscaping".
30. The Project constitutes a "solar facilities system, major" as defined by the

30. Ordinance. of the Solar Facilities Law requires that an applicant for approval of
31. Section 4(b) of the Solar Facilities Law requires that an applicant for approval of a solar energy system major “shall obtain site plan approval” and requires that the Planning Board apply “all of the substantive and procedural requirements for site plan review . . . as set forth in the [Ordinance] set forth in Section 14.6”.
32. Section 14.6.1.5 of the Ordinance sets forth 7 site plan review standards requiring written findings by the Planning Board.
33. The Planning Board’s September 19, 2019 Approval Resolution omits and fails to include written findings concerning the 7 site plan review standards as required by the Ordinance and the Solar Facilities Law.
34. By failing to consider and make written findings for the 7 site plan review standards in its September 19, 2019 Approval Resolution, the Planning Board failed to perform a duty enjoined upon it by law, proceeded in excess of jurisdiction, and the Planning Board’s determination to issue site plan approval to Eden for the Project was therefore made in violation of lawful procedure, was affected by error of law, was arbitrary and capricious, was an abuse of discretion, and the Planning Board’s September 19, 2019 Approval Resolution should be annulled and vacated *ab initio*.

**AS AND FOR PETITIONERS’ SECOND CAUSE OF ACTION
(Failure to Make Findings Concerning Special Use Permit)**

35. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 34 hereinabove.

36. Section 4(b) of the Solar Facilities Law requires that an applicant for approval of a solar energy system major shall obtain a special permit from the Planning Board and that all of the substantive and procedural requirements for special permit review as set forth in Section 14.6 of the Ordinance shall apply.
37. Section 14.6.2 and 14.6.2.4(c) require that the Planning Board consider and make findings pursuant to a total of 14 separate and specific standards applicable to special permit review including but not limited to “Such use is reasonably necessary or convenient to the public health, welfare or the economic or social benefit of the community”, “The character of the neighborhood and values of surrounding property is reasonably safeguarded”, “the proposed use will not have a significant negative effect on existing adjacent land uses”, “the type and arrangement of trees, shrubs, and other landscaping constituting a visual and/or noise deterring buffer between the applicant’s and adjoining lands, including the maximum retention of existing vegetation are adequate”, “performance Standards, if necessary are imposed to ensure protection of adjacent or neighboring properties against noise, glare, unsightliness or other objectionable features”, “the “Fire lanes and other emergency zones and the availability of fire water, water points or hydrants are adequate”, and “building appearance is compatible with existing neighboring structures”.
38. The Project constitutes a “solar facilities system, major” as defined by the Ordinance.
39. Section 4(b) of the Solar Facilities Law requires that an applicant for approval of

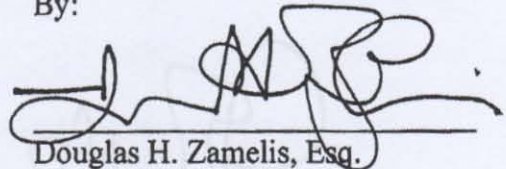
1. A solar energy system major "shall obtain . . . a special use permit " and requires that the Planning Board apply "all of the substantive and procedural requirements . . . for special permit review as set forth in the [Ordinance] set forth in Section 14.6".
40. Section 14.6.2 of the Ordinance sets forth 3 special use permit standards and Section 14.6.2.4(c) sets forth an additional 11 special permit standards, all requiring written findings by the Planning Board.
41. The Planning Board's September 19, 2019 Approval Resolution omits and fails to include written findings concerning the 14 special use permit review standards set forth in 14.6.2 and 14.6.2.4(c) as required by the Ordinance and the Solar Facilities Law.
42. By failing to consider and make written findings for the 14 special use permit review standards in its September 19, 2019 Approval Resolution, the Planning Board failed to perform a duty enjoined upon it by law, proceeded in excess of jurisdiction, and the Planning Board's determination to issue a special use permit to Eden for the Project was therefore made in violation of lawful procedure, was affected by error of law, was arbitrary and capricious, was an abuse of discretion, and the Planning Board's September 19, 2019 Approval Resolution should be annulled and vacated *ab initio*.

WHEREFORE, Petitioners respectfully request that this Court issue a decision and order granting their verified petition, and awarding judgment to the Petitioners and against Respondents as follows:

1. Annuling and vacating *ab initio* the "Town of Duanesburg Planning Board Resolution Approving Special Use Permit, Subdivision and Site Plan for the Eden Renewables Oak Hill Solar Energy Projects – 1206 Oak Hill Road" dated September 19, 2019 for failure to comply with the substantive and procedural requirements and make written findings in connection with the 7 standards for site plan review and 14 standards for special use permit all as set forth in Sections 14.6.1.5, 14.6.2 and 14.6.2.4(c) of the Town of Duanesburg Zoning Ordinance and as required by Section 4(b) of the Town of Duanesburg Solar Energy Facilities Law; and
2. Granting such other and further relief as the Court may deem just, equitable and proper, including Petitioners' attorney's fees, and the costs and disbursements of this proceeding.

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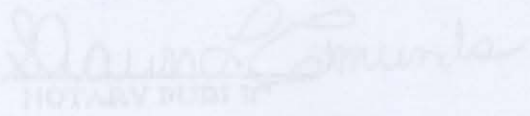
By:



Douglas H. Zamelis, Esq.
Counsel for Petitioners
7629A State Highway 80
Cooperstown, New York 13326
Tel.: (315) 858-6002

October 16, 2019
Richfield Springs, New York

Sworn To Before Me
This 16th Day of
October, 2019



NOTARY PUBLIC

SHARON L. EDWARDS
Notary Public, State of New York
Registration No. 01224027007
Qualified as Notary Public
Commission Expires May 14, 2022

