

Town of Stuyvesant
Zoning Board of Appeals Meeting
November 16, 2022

Members in Attendance:

M. Pino, Chair
K. Handy
A. Abbati
S. Taylor
C. Sweningsen
S. Montie
Christopher Langlois, Attorney
Multiple residents of the community
Mitch Khosrova, Attorney
John Barone, Attorney from Tooher and Barone

Chairwoman M. Pino asks Secretary P. Delong to take roll call for attendance.

Chairwoman M. Pino opens with the Pledge of Allegiance and calls the meeting to order.

Call to Order: 7:00 pm

Motion: to adopt the minutes from the meeting last month made by S. Montie; seconded by K. Handy. All in favor.

M. Pino explains the next item on the agenda are the appeals filed in regard to the ELP Stuyvesant solar site. She asks to clarify before they begin with the current appeals submitted, the Board still has the grievances that were submitted during the summer and asks if they still stand as it was discussed to potentially have those withdrawn so that we're only dealing with the filed appeal. John Barone from Tooher and Barone states to keep the grievances on the record, but the legal arguments presented in the letter that was submitted afterwards, if there's any conflict between the two, the letter should supersede the grievance. He adds that Mr. Morgan is separate from Ms. Van Meter and Mr. Lease. M. Pino confers with the Board if they have all read through the grievances submitted. C. Sweningsen observes he was able to read through the letters, but when I came to the timeline, found it did not include anything about the original applications and would like to be clear about the dates. M. Pino notes that the original application was submitted on March 10, 2022. A member of the community states it is actually March 9th. S. Taylor and M. Pino discuss the next steps for the Board. He adds that assuming the Board decides they are ready for a public hearing, the board's next step tonight will be to schedule a public hearing for people to come back. C. Sweningsen asks for clarification on the date of the check. It is noted that the Board has not seen the check and therefore unable to comment. M. Pino observes that the Board is aware that there has been a second site plan review constructed, submitted stamped for the Town but cannot be discussed because it has not come before the zoning board. She adds so, we have to resolve this first, but might be resolving something that is going to be somewhat different from the next application that comes in. She looks to clarify what the legal stance is if the second site plan is different. C. Langlois advises the Board to focus on the questions in front of them. He continues, CEO Mr. Haberland issued a determination on September 2nd, and that determination largely dealt with the question of which version of the town's local law should be applied to the application. He adds, two

residents have two sets of appeals, they've raised in their submission issues that they believe should persuade this board too reach a different conclusion than the CEO did on September 2nd. You may or may not agree with those, you may want to respond and provide information that could be useful, and when you're looking at the appeals, you're going to be focusing on the arguments that have been raised in the appeal and determine and decide just those arguments. M. Khosrova addresses the ZBA Chair and states that the process with the planning board for every municipality is the same. Generally, an applicant submits an application, then go before the planning board, the planning board then has their own comments, something that they think might be missing with something that they think is too much is common with larger projects that the applicant then revises the application according to that discussion. Then once the planning board goes through those mechanics which could be several meetings then they deem the application complete and schedule a public hearing. He adds, it's not until that point that the public should be commenting because it's always going to have an evolution. M. Khosrova and the Board discuss the process and what should be irrelevant to the ZBA, and how they cannot comment on the second site plan. S. Montie asks to clarify how the Board can act on this if there has been a revision. C. Langlois advises that they are looking at the questions raised by the appeals. A. Abbati talks about the moratorium with the stay of approving projects for 6 months and if it would negate the Town accepting the application. C. Langlois confirms that the issue of the moratorium has been raised in the appeals and the ZBA will decide as a group if that is correct for incorrect, be guided by what the Town board adopted, the language that they use and interpret it, and apply it to. A. Abbati and C. Langlois discuss the moratorium and how it applies to the project. C. Langlois advises to focus on the issues in the appeals. A. Abbati voices concern about grandfathering, other companies who wanted to come in but did not because of the moratorium, and the passing of the Solar Law. M. Pino asks if everyone on the board been able to read the moratorium. She adds that she went to the Department of State website, under local laws being adopted a copy gets filed with the Secretary of State, all are available online including the official filings in the Town of Stuyvesant. M. Pino advises the Board to carefully read the wording in the moratorium and voices she was thinking there is no specific wording that prohibits receiving applications, that it put applications pending or on hold, that no further action was going to occur. C. Sweningsen and M. Pino discuss the wording. C. Langlois adds the Board is not deciding anything tonight. S. Taylor voices concern if the Planning Board should be taking up this matter. M. Pino explains it was sent to the Zoning Board because of the appeals. J. Barone asks to address and voices that the Planning Board can not truly review the application until they know which law to apply. A resident voices the project should be under the current law. C. Langlois notes that the Zoning Board is not injecting into the project and M. Pino agrees that the Board needs to decide if the ZEO was correct in sending it to the Planning Board. M. Pino adds that she has read through the statements, she can see both sides of it, and asks for the legal standpoint on a document. C. Langlois observes that Mr. Morgan pointed out some discrepancies in certain dates and other information, ha adds the question is going to be whether the Board decides if there was a mistake and whether or not that mistake was material to the determination the ZEO reached and gives examples on this. M. Pino adds that she went to the State website to try to find what is contained in a determination, seeing forms that were very specific and would like to have seen a little more specificity in the determination and observes one of the letters talks about more of an explanation as to how that determination was arrived at. M. Khosrova makes a statement that the law specifically said if it was a paid application, it was granted the CEO determination does state that, so he stated exactly would need it to be stated to make his determination. He adds his thought that what he thinks Mr. Langlois was referring to about other issues that aren't that important or relevant. He continues that the CEO did his job; that it might not be perfect but did what he needed to. J. Barone comments that they disagree about how the CEO reached his determination. M. Pino observes that people often interpret something they read differently. J. Morgan comments that it is a difficult job, that he only pointed out the errors to show there were many errors, that it is not a leap

that the conclusion he came to is subject to major review including the mistakes in his six-sentence determination. S. Taylor voices his opinion on Mr. Haberland's determinations, trying to interpret what was he was going to say or didn't say, never appeared in a public hearing or before the Board, he is trying to read the tea leaves and wonders why our part-time ZEO is not here tonight to explain things. A resident asks if Mr. Haberland actually wrote the decision. The Board and residents discuss. C. Sweningsen talks about materiality being primary if it is possible to receive an application during the moratorium and there was no specific language prohibiting that. C. Langlois affirms that this is just a conversation about the moratorium. K. Handy reads the wording in the moratorium. The Board discusses and M. Pino adds that there is a lot of information in each of the appeals. P. Cassidy states that there is some competency and Mr. Haberland is a novice zoning enforcement officer, and there's some question of when he actually even certified being certified to evaluate building code versus being the arbiter of entire towns zoning code are two different things, and this award is set above him as the code enforcement officer to make a higher decision. M. Pino and P. Cassidy discuss the ZEO's certification. M. Pino adds that when he took over for the former person there was a lot left undone, he had his hands full, it's not an easy job and the ZEO requires many more hours of training by the State than the Board. S. Taylor states that the zoning law is not that comprehensive and compares it to the Town of Chatham. The Board and a resident discuss a zoning revision committee and the solar law revision. C. Sweningsen adds that the previous ZEO requested a second building inspector as there was too much work and he could not do it on his own. The Town hired a second person and then lost the original Zoning Officer. A resident asks about the point of the moratorium. M. Pino explains that the moratorium was written by the Town, any provisions can be put in the moratorium, and would have to see how pending applications fit into this moratorium. C. Sweningsen adds that the concern of the Board may have been construction projects and not when applications were accepted. A resident reads the minutes from the March 3rd Town Board meeting. The Board discusses the language in the moratorium passed and the date the local law was passed. S. Montie affirms the appeals are very well informed, have a lot of knowledge and this is a very big project for the Town. A resident states that it is a big project that doesn't benefit the Town. M. Pino explains that she feels that there isn't anyone who doesn't empathize with the people who live there but the Board has to follow the laws that the Town has, look at the moratorium, make their decisions based on what they have to work with and the appeals. M. Pino works to establish a date for the Public Hearing. A. Abbati asks if it is possible to ask the applicant what the project would look like under the old and new solar laws and how that would affect the project. C. Langlois voices he would also be curious about the difference, but with that said it shouldn't matter to the Board how it affects the applicant or the project. A. Abbati observes it might matter to the residents. S. Montie asks about the process, on the ZBA decision, the plan goes back to the Planning Board, then the applicant will submit the revision. A. Abbati voices her thought that it would decrease the scope and size. P. VanMeter reads page 35 of the new law and states that this project violates an explicit provision in the new solar law that didn't exist in the old solar law which basically says parcels over 20 acres, this being a parcel of almost 200 acres, that contain more than 35% of prime farmland or farmland of statewide importance, would be required to preserve a lot for agricultural purposes, a block of prime soils being of such size and shape that provides access and allows for effective and efficient farming that encompasses 75% of the soils of prime farmland or farmland of statewide importance. J. Morgan voices that it boils down to that this was a paid application rushed to the Town on March 9th and reiterates what is in his statement. M. Pino points out an example of the process of the check. S. Taylor voices his thoughts asking what the motivation to put anything before the planning board unless it in fact was an application. J. Morgan and M. Pino discuss a reference of papers in the Town minutes. M. Khosrova states he is uncomfortable to innuendos and affirms that the submission was an application. C. Sweningsen adds that the Board has to be fair to the applicants who are submitting projects. C. Langlois and M. Khosrova discuss a written appeal which includes a copy of precisely what was filed with the

Town for the March submission. M. Pino again suggests the 30th of November at 7:00 pm for the Public Hearing. M. Pino and C. Langlois discuss scheduling separate public hearings for each of the separate appeals on the same night. The audience and the Board discuss when residents will be able to speak. M. Pino speaks on the last public hearing where the Board closed the public hearing but left the record open for 10 days from the date of the public hearing so, if there were people who were not here at that public hearing, they would be able to submit in writing any additional concerns or their opinions. She continues that the Board can do that again. J. Barone states that he thinks it's very important that if their attorney is going to respond, that they should have the opportunity to be able to read that response so that we could respond within that 10 day. A member from the audience, M. Pino and S. Montie discuss public comments and the public hearing.

Motion: to set the Public Hearing for November 30th, made by S. Taylor; seconded by S. Montie. All in favor

The Board discusses what they will do in the event of inclement weather.

Motion: to adjourn, made by S. Montie; seconded by K. Handy. All in favor.

Adjournment: 8:27 pm

Respectfully submitted,

Patricia DeLong
Zoning Board Secretary