

MINUTES OF THE ZONING BOARD OF APPEALS - THE TOWN OF KINGSBURY

Minutes of May 27, 2021

MEMBERS PRESENT:

Hank LaFountain, Chairman
Brian Heasley
Katherine Henley
Jim Ross
Bill Whipple
Scott Winchell

MEMBERS ABSENT:

ENFORCEMENT OFFICER

Todd Humiston

TOWN ATTORNEY

Jeff Meyer, ESQ.

The meeting was called to order by Chairman LaFountain at 7:00 P.M.

Roll call of all Members and Officials.

Chairman Dingman entertained a Motion to Approve the Minutes of October 22, 2020.

ON A MOTION BY MR. WHIPPLE, seconded by Mr. Winchell, the minutes of the October 22, 2020, meeting were approved.

AYES: 5

NAYES: 0

ABSTAIN: 0

MOTION CARRIED

1. The Town of Kingsbury Zoning Board of Appeals will conduct a regular meeting on Thursday May 27, 2021, at 7 pm at the Kingsbury Town Hall, 6 Michigan Street, Hudson Falls. Attendees must wear a mask and social distancing must be maintained.

Chairman LaFountain welcomed Jim Ross to the Board.

Attorney Meyer stated the meeting itself is open.

Attorney Meyer stated the reason for this meeting and procedurally as we move forward and take a step back to the Notice of Annulment. On March 10, 2021, Todd Humiston, Enforcement Officer for the Town of Kingsbury issued this notice to Geer Road Solar 1, LLC, Geer Road Solar 2, LLC, Geer Road Solar 3, LLC.

The Solar farm was designed and approved by Matrix. Through the process the applicant frequently made a number of representations to the Planning Board. The Planning Board used this information and the representation to base their decision.

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What Mr. Humiston found was they made material misrepresentation. And, based on the language of the Code, if he makes that finding he is permitted to revoke site plan approval. With this finding Mr. Humiston revoked the approval.

Mr. Humiston issued the Notice of Annulment to the Geer Road Solar Applicant, and they essentially had a couple of options at that point. One is they can apply to the Planning Board and try to correct whatever was wrong, they can file an appeal with the Zoning Board of Appeals challenging Mr. Humiston interpretation and potentially questioning any findings he may have made. They can do nothing, or they can create a fourth option which is to file an Article 78 against the Town. They also filed a Civil Rights Claim against Mr. Humiston and the Town. Essentially this is "I had this permit, and now the Town is taken the permit away. Because of it the Town owes me for the paper."

These things are all pending in a court at this time. The Town has filed a motion to dismiss. Additionally, they filed this appeal challenging Mr. Humiston decision which essentially is what this Board is looking at. We are not looking at whether or not we like solar or anything relative to the actual project.

Attorney Meyer stated tonight he is laying some groundwork so the Board can ask questions if they have any.

What is going to happen is there is likely going to be a Public Hearing. Most likely the next Zoning Board of Appeals meeting. The people from AES will probably be at the meeting as well.

At the Public Hearing AES will be presenting evidence showing presumably where Mr. Humiston went wrong and why he was wrong. To counter, Mr. Humiston will have the opportunity to speak for himself and to defend what he did and how he did it.

Attorney Meyer introduced Attorney Josh Koss, The Town Law Firm, PC, whom will be defending Mr. Humiston in this lawsuit. Mr. Koss was hired by the Town to represent Mr. Humiston.

On a motion by Mr. Winchell, seconded by Mr. Whipple, and carried by a vote of 5 ayes to enter into an executive session to discuss.

Motion by Mr. Whipple, seconded by Mr. Winchell and carried by a vote of 5 ayes to enter into Executive Session at 7:15 p.m. to discuss potential litigation. Motion by Mr. Winchell, seconded by Mr. Whipple and carried by a vote of 5 ayes to go out of Executive Session at 8:00 p.m.

ON A MOTION BY MR. WHIPPLE, seconded by Ms. Henely, all in favor, the meeting was adjourned at 8:00 P.M.

Michelle Radliff
Secretary