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2 STATE OF NEW YORK : COUNTY OF ULSTER
TOWN OF MARLBOROUGH PLANNING BOARD

In the Matter of

5 MILTON TURNPIKE SOLAR FARM

10 OPEN PUBLIC HEARING - SITE PLAN

11 Date: March 4, 2019
12 Time: 7:00 p.m.
13 Place: Town of Marlborough
Town Hall
21 Milton Turnpike
Milton, NY 12547

15 BOARD MEMBERS: CHRIS BRAND, Chairman
 JOEL TRUNCALI
16 BEN TRAPANI
 CINDY LANZETTA
17 JOSEPH LOFARO
 MANNY CAUCHI

19 ALSO PRESENT: JEFFREY S. BATTISTONI, ESQ.
20 PATRICK HINES
21 VIRGINIA FLYNN

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23 MICHELLE L. CONERO

23 MICHELLE L. CONERO
PMB #276

2 CHAIRMAN BRAND: I'd like to call the
3 meeting to order with the Pledge of Allegiance to
4 the flag of our country.

5 (Pledge of Allegiance.)

6 MR. TRUNCALI: Agenda, Town of
7 Marlborough Planning Board, March 4, 2019.
8 Regular meeting 7:30 p.m. Approval of
9 stenographic minutes for 1/22 and 2/4. Milton
10 Turnpike Solar Farm, public hearing open, site
11 plan; Wilklow, sketch, subdivision; Discussion
12 without lawyer, engineer, stenographer, Joe
13 Pettinella, Route 9W. Next deadline: Friday,
14 March 8th. Next scheduled meeting: Monday,
15 March 18th.

16 CHAIRMAN BRAND: Excellent. I'd like
17 to have that motion to approve the stenographic
18 minutes for 1/22 and 2/4 respectively.

19 MS. LANZETTA: I'll make that motion.

20 CHAIRMAN BRAND: Is there a second?

21 MR. LOFARO: I'll second.

22 CHAIRMAN BRAND: Any discussion?

23 MR. TRUNCALI: I wasn't here for 2/4.

24 CHAIRMAN BRAND: Okay. So you're
25 abstaining?

2 MR. TRUNCALI: Actually I was here for
3 that. I missed the other one.

4 CHAIRMAN BRAND: Okay. So all those in
5 favor?

6 MR. TRAPANI: Aye.

7 MS. LANZETTA: Aye.

8 MR. TRUNCALI: Aye.

9 MR. CAUCHI: Aye.

10 MR. LOFARO: Aye.

11 CHAIRMAN BRAND: Aye.

12 Any opposed?

13 (No response.)

14 CHAIRMAN BRAND: So carried.

15 First up on the agenda is Milton
16 Turnpike Solar Farm. We did get an e-mail from
17 them that they haven't received back the requests
18 for the Town of Marlborough Planning Board to act
19 as the lead agency, so they asked to be pushed
20 ahead to March 18th.

21 I'd like to have a motion to further
22 adjourn the public hearing to the March 18th
23 date.

24 MR. LOFARO: I'll make the motion to
25 adjourn it to -- what did you say, March 18th?

2 CHAIRMAN BRAND: Yes. Is there a
3 second?

4 MR. CAUCHI: I'll second it.

5 CHAIRMAN BRAND: All those in favor?

6 MR. TRAPANI: Aye.

7 MS. LANZETTA: Aye.

8 MR. TRUNCALI: Aye.

9 MR. CAUCHI: Aye.

10 MR. LOFARO: Aye.

11 CHAIRMAN BRAND: Aye.

12 Any opposed?

13 (No response.)

14 CHAIRMAN BRAND: So carried.

15 MR. TRAPANI: Do we have to do anything
16 as the Planning Board now so that when they come
17 the next time it will be taken care of, whatever
18 had to be taken care of?

19 CHAIRMAN BRAND: We are just waiting
20 for outstanding comments from two agencies I
21 believe.

22 MR. HINES: One is DEC, and I think the
23 school district didn't respond yet.

24 CHAIRMAN BRAND: Okay.

25 MS. LANZETTA: Was the school district

2 in -- did that have to do with the PILOT?

3 MR. HINES: Yes.

4 MS. LANZETTA: Okay. And what about
5 SHPO. Were we supposed to receive anything from
6 them as well?7 MR. HINES: They were on the list, yes.
8 They already have the SHPO coordination. They
9 were on the list. They received it.

10 MS. LANZETTA: Okay.

11 MR. HINES: So if they don't respond
12 within the thirty days -- they already submitted
13 through their CRIS system, their electronic
14 submission. They got back the information.

15 MS. LANZETTA: Okay.

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17 (Time noted: 7:04 p.m.)

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C E R T I F I C A T I O N

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7 I, MICHELLE CONERO, a Notary Public
8 for and within the State of New York, do hereby
9 certify:

10 That hereinbefore set forth is a
11 true transcription from the recorded proceedings.

12 I further certify that I am not
13 related to any of the parties to this proceeding by
14 blood or by marriage and that I am in no way
15 interested in the outcome of this matter.

16 IN WITNESS WHEREOF, I have hereunto
17 set my hand this 19th day of March 2019.

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Michelle Conero

MICHELLE CONERO

STATE OF NEW YORK : COUNTY OF ULSTER
TOWN OF MARLBOROUGH PLANNING BOARD

In the Matter of

WILKLOW

Project No. 19-3004
43 Baileys Gap Road, Highland
Section 95.4; Block 1; Lot 15

SKETCH - SUBDIVISION

11 Date: March 4, 2019
12 Time: 7:05 p.m.
13 Place: Town of Marlborough
Town Hall
21 Milton Turnpike
Milton, NY 12547

15 BOARD MEMBERS: CHRIS BRAND, Chairman
16 JOEL TRUNCALI
16 BEN TRAPANI
17 CINDY LANZETTA
17 JOSEPH LOFARO
17 MANNY CAUCHI

19 ALSO PRESENT: JEFFREY S. BATTISTONI, ESQ.
20 PATRICK HINES
21 VIRGINIA FLYNN

21

MICHELLE L. CONERO
BMR #276

56 North Plank Road, Suite 1
Newburgh, New York 12550
(845)541-4163

2 CHAIRMAN BRAND: So we will move ahead
3 then. First up, Wilklow, 43 Baileys Gap,
4 Marlboro, sketch, subdivision.

5 How are you today?

6 MS. DEMSKI: Good. How are you?

7 CHAIRMAN BRAND: Well, thank you.

8 MS. DEMSKI: This is a two-lot
9 subdivision on Baileys Gap Road --

10 MS. FLYNN: Sue, could you speak louder
11 for the recorder because the stenographer is not
12 here? Thank you.

13 MS. DEMSKI: This is a two-lot
14 subdivision, residential and a commercial
15 building on Baileys Gap Road.

16 I did receive comments from Pat.
17 Should I just address them?

18 CHAIRMAN BRAND:

Pat, why don't you just

20 them and then if you want to address them you
21 can.

22 MR. HINES: Note 8 on the map
23 identifies that lot 1 is served by a well on lot
24 2, which is the existing agricultural building
25 that's running as a cidery. We're recommending

2 that a well be installed there on lot 1 to
3 service that house to separate them. If that
4 can't be done for some reason, then there needs
5 to be legal agreements and access agreements that
6 are going to allow the one lot to access and have
7 maintenance rights to the well.

8 MS. LANZETTA: Can I just ask if that's
9 legal?

10 MR. HINES: It's not a good situation,
11 that's for sure.

12 MS. LANZETTA: It's my understanding
13 that as the Planning Board we're supposed to make
14 sure that each lot we approve is a standalone.

15 MR. HINES: I'm with you. I think it
16 should.

17 MS. DEMSKI: We're asking that we can
18 have an easement and maintenance agreement to be
19 extended to that lot because it's their daughter.
20 It wouldn't run with the land but it would be
21 extended to Becky as an individual.

22 MR. HINES: It would have to run with
23 the land because otherwise someone would sell
24 that in the future without a well. That's the
25 issue, it could be sold. Once it's subdivided

2 off as a separate parcel, we would have -- the
3 Town, no one else would have control over who
4 buys it, sells it. It creates a real Hatfield
5 and McCoy situation in the best of cases where
6 someone turns off someone else's well or the
7 business uses too much water during a drought.

8 MR. BATTISTONI: I agree with Pat. I
9 think the point is that the newly created lot
10 should have a well and should have septic. It's
11 not a good idea to create a new lot that doesn't
12 have it's own well.

13 CHAIRMAN BRAND: So the new lot --
14 MS. DEMSKI: Is being sold to the
15 daughter.

16 CHAIRMAN BRAND: The new lot is the red
17 lot?

18 MR. HINES: Yes.

19 MS. DEMSKI: Yes. Lot 1.

20 CHAIRMAN BRAND: And it has it's own
21 septic currently? It says septic area.

22 MS. DEMSKI: It has it's own septic.
23 We had -- it provides 100 gallons per minute of
24 water flow, so, you know, we thought that it
25 would be good to service both lots and then --

2 MR. HINES: I'm not worried about the
3 capacity, it's just the legal issues and transfer
4 of ownership. I wouldn't buy that lot. Just
5 long term it needs to kind of stand on its own.
6 It's creating a situation that can be a real
7 problem in the future.

8 CHAIRMAN BRAND: Okay. Number two?

9 MR. HINES: The second comment, there's
10 a new driveway proposed to serve lot 1. We'll
11 need the highway superintendent's comments on
12 that.

17 MS. DEMSKI: That would be corrected,
18 yes.

19 MR. HINES: Actually I think we should
20 leave it that way and correct it by installing
21 the well.

22 And then the other issue is because
23 this is in the RAG-1 Zone, Section 155-52,
24 setbacks and buffers from active agricultural
25 land applies. It makes it -- it supercedes the

2 bulk tables in those zones and makes the setbacks
3 75 feet front yard, side yard, rear yard. Not
4 only that, but it requires a buffer in the form
5 of a berm, planting of trees for screening or
6 similar mechanism. It leaves it generally up to
7 the Planning Board what's acceptable, but right
8 now we don't have any proposed.

9 CHAIRMAN BRAND: So that would be a
10 buffer between the two lots?

11 MR. HINES: Between all the -- on all
12 three sides, both side yards and the rear yard in
13 this case, because they're all in active
14 agricultural.

15 CHAIRMAN BRAND: Got it.

16 MS. DEMSKI: A solid board fence is
17 proposed to be installed between lots 1 and 2,
18 along the westerly line of lot 1, within six
19 months of approval. So we're going to add a note
20 to the map.

21 MS. LANZETTA: I don't think it's -- I
22 think the intent of the regulations is more for
23 active agricultural lands. What I would
24 interpret that as meaning would be the two sides
25 that are adjacent to the properties that are

2 being sprayed and things of that nature. So the
3 part that faces the buildings and stuff, I
4 wouldn't be -- I would interpret it as much to
5 mean --

6 MR. HINES: I think that's clearly not
7 in the agricultural because they're running that
8 cider mill and restaurant and wedding hall use
9 under the agricultural without approval. That's
10 the Bad Seed cidery or something.

11 CHAIRMAN BRAND: Mm'hm'. So they're
12 using the agricultural loophole, so to speak, to
13 run the business --

14 MR. HINES: To run that facility.

15 CHAIRMAN BRAND: -- versus coming in
16 for the site plan for that?

17 MR. HINES: Yes.

18 MR. TRUNCALI: I would agree with the
19 75 feet on the sides that are being sprayed but I
20 don't really think they need it on that side. Of
21 course there's no way to really do it on that
22 side and meet the setbacks.

23 MR. HINES: I'm not sure it's 75 feet.
24 It's the 75 feet and then there's that buffer.
25 It leaves a lot of discretion to the Board. It

2 says, "Determination to the extent of the
3 required buffer shall be reasonable and shall be
4 the responsibility of the governing official or
5 board to which the application is made." So it
6 gives you, the Planning Board, the flexibility to
7 decide exactly what we talked about.
8 Interesting, it looks like the applicant is
9 proposing to put the fence there and not in the
10 other two locations you're speaking of.

11 MS. LANZETTA: It makes sense to put --
12 again, if we go back and we think that right now
13 it's a family member but circumstances could be
14 five years from now this family member has to
15 sell and so now are they going to start
16 complaining about the traffic going in and out.
17 So in that sense I can appreciate a fence.

18 The 75 foot buffer, I think that -- you
19 know, I remember when that was being discussed.
20 I think the intent was the concerns about spray
21 and active agricultural --

22 MR. HINES: Pesticides.

23 MS. LANZETTA: Yeah. So I personally
24 would be okay with the fence. I think it's a good
25 idea as a good neighbor.

2 Again going back to the 75 foot berm,
3 plantings, landscaping, I think just those sides
4 that are adjacent to the active agricultural
5 property I would be okay with.

6 CHAIRMAN BRAND: Do they own this
7 agricultural field as well?

8 MR. HINES: Yeah. Currently they're in
9 common ownership.

10 CHAIRMAN BRAND: Didn't we do this in
11 the past where we said that we could have a note
12 on the map that if the property were to be sold
13 it could be installed at that time?

14 MS. DEMSKI: That's what we -- I have a
15 copy of a note from another subdivision that
16 states that, that the provision shall take effect
17 upon the second conveyance of said lots and shall
18 be completed within six months of said
19 conveyance. So that's what we were hoping for.

20 MR. HINES: It's up to the Board.

21 CHAIRMAN BRAND: Again, I'm just saying
22 we have done that in the past in this same
23 scenario. I just want to make sure that I'm
24 correct.

25 MR. HINES: It was common ownership in

2 that one as well. At that time we told them it
3 was only a family member.

4 CHAIRMAN BRAND: Right.

5 MR. HINES: It would take some fancy
6 covenants or something to make that happen and
7 have it shown in the deed so that the next buyer
8 would beware. The title company would tell them
9 they'd be responsible, for what I don't know.
10 Who approves it? Who checks it out? Who even
11 knows it got sold?

12 CHAIRMAN BRAND: And then just my
13 question would be the 75 foot setback, is that to
14 the edge of the berm or the berm is included in
15 the 75 feet?

16 MR. HINES: It's included in the 75.
17 The 75 is the setback from the structure to the
18 property line.

19 CHAIRMAN BRAND: So the berm -- okay.

20 MR. HINES: It increases -- actually,
21 in this zone it doesn't touch the rear yard but
22 it changes your side yards from 35 and 80 to both
23 of them being 75.

24 CHAIRMAN BRAND: So the setback in
25 question is not the east side to the agricultural

2 field, it's the --

3 MR. HINES: It's the east and the
4 north. The side yard to the east and the rear
5 yard to the north. They propose a fence along
6 that western property line.

7 CHAIRMAN BRAND: That is 75 feet,
8 though.

9 MS. LANZETTA: To here. The berm and
10 the deck are all within that 75 foot area.

11 CHAIRMAN BRAND: So it would be 75 feet
12 from the edge of the arbor are we talking about,
13 Pat? That's not connected.

14 MR. HINES: No. That arbor is in the
15 75. The setback is there shown as 75, which is
16 okay, but within that 75 feet there's a
17 requirement that they provide buffers, berm,
18 planting of trees for screening effect or similar
19 mechanism. In the past we've had people plant,
20 you know, a row or a double row of pine trees or
21 something to provide that. The ordinance came
22 about from complaints that people were putting
23 kids' swingsets along the rear property line, the
24 farmer was coming by spraying whatever it is
25 farmers were spraying that day.

2 CHAIRMAN BRAND: Right.

3 MR. HINES: They got some complaints
4 from the residents in the subdivisions. It puts
5 the burden on the single-family lot, not the
6 farmer. It's not on the farmer's side, it's on
7 the residential lot to provide that additional
8 setback.

9 MR. BATTISTONI: I also have a
10 question. On the eastern side of the house, on
11 one of the corners it says it's 75.6 feet to this
12 new boundary line. If you went to the northwest
13 corner of the house and you drew a line from
14 there to the new division line, it doesn't look
15 to me like it would be 75 feet. It doesn't meet
16 the 75 foot requirement. They would need a
17 variance.

18 MR. HINES: I didn't measure it.

19 CHAIRMAN BRAND: He's saying from here
20 to here.

21 MS. LANZETTA: That's supposed to be 75
22 feet.

23 CHAIRMAN BRAND: That's the pool,
24 though.

25 The pool doesn't come into

2 consideration; right? It's just the structure?

3 MR. BATTISTONI: The statute refers to
4 any habitable structures. That wouldn't include
5 the pool.

6 MR. HINES: It does not meet the 75
7 feet. So the easterly line does not meet the 75
8 foot setback from the corner of the house.

9 CHAIRMAN BRAND: And so that cidery
10 building wouldn't -- that wouldn't require a 75
11 foot --

12 MR. HINES: Clearly it's agricultural,
13 and then it's the resulting 19 acres. The entire
14 thing is an agricultural use. I don't know if
15 they want to give that up because --

16 CHAIRMAN BRAND: I mean the area --
17 what's it listed, 52-8 on our map? They don't
18 need 75 feet from the corner of that building to
19 that property line, from the cidery building out?

20 MS. LANZETTA: This is not
21 agricultural.

22 MR. HINES: Not the cidery building.
23 From the house on lot 1 to that same property
24 line is not 75 feet.

25 CHAIRMAN BRAND: Got it. So they could

2 just move it over to that gravel lane?

3 MR. HINES: They could.

4 MR. TRUNCALI: Yeah, there's room to
5 move it.

6 MR. HINES: That barn needs a 35 foot
7 setback in this zone. It's not much that they're
8 missing it by.

9 MS. LANZETTA: So let me see if I
10 understand this correctly. It's possible for us
11 to waive the berm but we can not waive the 75
12 feet?

13 MR. HINES: Right. That would be the
14 Zoning Board.

15 MS. LANZETTA: So there you go.

16 MR. HINES: The berm is required on all
17 three property lines under the code. I think the
18 fence meets the intent on that easterly property
19 line -- the westerly property line. The east
20 side and the rear yard are where I think they are
21 proposing to use that note from --

22 MS. LANZETTA: But we can't -- we can't
23 make it --

24 MR. HINES: You can't waive the
25 setback.

2 MS. LANZETTA: They have to go to the
3 ZBA; right?

4 MR. HINES: They have to go to the ZBA
5 or modify the lot line line.

6 CHAIRMAN BRAND: As far as the berm
7 goes, I mean I know we probably don't like the
8 idea of allowing people to do that but I feel
9 like we need to be consistent. If we did allow
10 one applicant to do that, then we should probably
11 allow another applicant to do that as well as far
12 as making it a covenant on the deed that should
13 this be conveyed again, that's when the berm
14 would be installed. I'm all about consistency.

15 MS. LANZETTA: But we have to -- the
16 reason that we did it the first time was because
17 it was a farm family.

18 MR. HINES: It was a relative. The
19 relatives were involved in the conveyance.

20 MS. LANZETTA: It was a farm -- you
21 know, it was a family farm. In this case if it's
22 a family farm, then that's consistent. It's not
23 consistent in any other --

24 CHAIRMAN BRAND: This is a family farm,
25 though. That's what I just said. Yeah.

2 MS. LANZETTA: Yeah. I'm agreeing with
3 you. I'm saying the consistency only comes
4 because we're trying to accommodate our farmers
5 in the community, --

6 CHAIRMAN BRAND: Right.

7 MS. LANZETTA: -- not for any people
8 outside of the --

9 CHAIRMAN BRAND: Since it's all in the
10 same family. Right.

11 MS. LANZETTA: But we still can't --

12 CHAIRMAN BRAND: Right.

13 MS. LANZETTA: We still can't do
14 anything.

15 MR. LOFARO: You're only talking about
16 the one lot line that separates the two parcels?

17 MS. LANZETTA: Yeah.

18 MR. LOFARO: You're not talking about
19 the outside has to be done regardless?

20 MR. HINES: The outside has to be done
21 upon the second conveyance. If the family sells
22 it, there will be a requirement in the deed for
23 the installation of the buffer. Someone has to
24 really want that lot.

25 MS. LANZETTA: But it's still going to

2 be hard to meet that requirement with the 75 on
3 the west side.

4 MR. HINES: It's clearly going to have
5 to tell you what that is. They won't be coming
6 back here. I don't recall exactly what the note
7 said. Maybe there should be a plan filed with
8 this that it references that it's going to be X
9 number of trees forty feet on center or
10 something. You have no control. That conveyance
11 could occur --

12 CHAIRMAN BRAND: Yeah. I would like to
13 have that included. I think we did do that for
14 the previous.

15 MR. HINES: I don't have the note. It
16 was awhile ago.

17 CHAIRMAN BRAND: I think we did approve
18 that it was going to be a three or four foot berm
19 with plantings of some type of tree. We were
20 pretty specific with that.

21 MR. HINES: I think in that case it was
22 only a rear yard. Here you have a --

23 CHAIRMAN BRAND: Right.

24 MS. LANZETTA: We have to see what they
25 can do with the west side.

2 CHAIRMAN BRAND: Right. I think the
3 issue of the well is something that needs to be
4 cleared up as well.

5 MS. DEMSKI: Okay.

6 CHAIRMAN BRAND: Anything else, Board?
7 Comments, questions?

8 (No response.)

9 CHAIRMAN BRAND: Did you have anything
10 else, questions or comments?

11 MS. DEMSKI: No.

12 CHAIRMAN BRAND: No. All right. Thank
13 you.

14 MS. DEMSKI: Thank you.

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16 (Time noted: 7:28 p.m.)

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C E R T I F I C A T I O N

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7 I, MICHELLE CONERO, a Notary Public
8 for and within the State of New York, do hereby
9 certify:

10 That hereinbefore set forth is a
11 true transcription of the recorded proceedings.

12 I further certify that I am not
13 related to any of the parties to this proceeding by
14 blood or by marriage and that I am in no way
15 interested in the outcome of this matter.

16 IN WITNESS WHEREOF, I have hereunto
17 set my hand this 19th day of March 2019.

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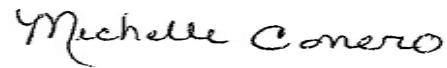
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MICHELLE CONERO