**Town of Manheim**

**Zoning Board of Appeals**

**Findings of Fact**

**on**

**SunEast Grassy Knoll Solar LLC**

**Special Use Permit Application**

**April 13, 2021**

**BACKGROUND**

The Zoning Board of Appeals (“ZBA”) received an application dated October 26, 2020 from SunEast Grassy Knoll LLC (“SunEast”) for a special use permit to install a 19.9 MW ground mounted photovoltaic solar energy electrical generating system on approximately 165 acres of a 477-acre parcel of land (Tax Parcel Nos. 115.1-1-10.1; 115.1-1-26; 115.1-1-21.1; and 115.1-1-21.3) located near the intersection of Sabin Road and Burrell Road, Little Falls (Town of Manheim), New York (the “Project”).

On October 28, 2020, the ZBA forwarded the special use permit application and supporting information to the Town of Manheim Planning Board pursuant to section 303 of the Zoning Law for a Site Plan Review and for a Report and Advisory Opinion on the Project.

The ZBA and Planning Board received additional supporting documentation on December 2, 2020, an application for certain area variances on December 8, 2020 and a revised site plan on January 18, 2021. The Planning Board held public meetings, held a public hearing, and conducted a coordinated SEQRA review of the Project. The Planning Board issued a Negative Declaration upon its completion of its SEQRA review on March 23, 2021.

On March 23, 2021, the ZBA received and reviewed the Town of Manheim Planning Board’s Site Plan Review Report, Recommendation and Advisory Opinion, dated March 23, 2021, regarding SunEast’s Special Use Permit Application and an application for area variances. Thereafter, on March 30, 2021, the ZBA held a public hearing to receive public comments in connection with SunEast’s application for a special use permit and its application for area variances. No public comment was received at the ZBA public hearing.

At the March 30, 2021 ZBA meeting following the public hearing, the ZBA reviewed and discussed an outline of Zoning Ordinance standards to be applied by the ZBA when considering whether to grant a special use permit and the requirements of Town Law § 267-b regarding factors to be considered when weighing and balancing the benefits and interests of the applicant with the benefits and interests of the community in connection with deciding whether to grant an area variance.

During its consideration of SunEast’s application, members of the ZBA reviewed the site plans and supporting data submitted by SunEast in connection with its application and its revised site plan for the Project. The ZBA has also been provided with and has reviewed all documents presented to Planning Board as a part of the Planning Board Site Plan Review and Recommendation which are part of the record before the ZBA. In addition, all the documents considered by the Planning Board as a part of its SEQRA Review and its determination, as Lead Agency, to issue a Negative Declaration are part of the record before the ZBA and have been reviewed by the ZBA. The ZBA took into consideration all the public comments that were received at the Planning Board’s Public Hearing in reaching its determination.

Each member of the Zoning Board of Appeals is personally familiar with the location and nature of both the proposed Project Site and the surrounding neighborhood and adjacent properties. In addition, members have separately and individually reviewed, studied and considered the documents constituting the record before the ZBA, including public comments.

**FINDINGS OF FACT AS PART OF DECISION**

Pursuant to section 303 Town of Manheim Zoning Ordinance (the “Zoning Ordinance”), every decision of the Board of Appeals with respect to an application for a special use permit is required to be made by resolution and contain a full statement of the Zoning Board of Appeals’ findings of fact. Accordingly, this document shall constitute the Zoning Board of Appeals’ Findings of Fact in connection with SunEast’s application for a special use permit for the Project and shall be incorporated in to and made a part of the Zoning Board of Appeals’ Resolution of even date herewith setting forth its decision to issue a special use permit for the Project and to grant SunEast’s application for area variances from setback requirements between adjacent Project Participant Parcels.

**STATEMENT OF THE ZONING BOARD OF APPEALS**

**FINDINGS OF FACT**

In conjunction with its review of the special use permit application submitted by SunEast for the proposed use of the Project Site, the ZBA took into consideration the materials submitted by SunEast in addition to comments made by the public at meetings and at the public hearings. The ZBA also reviewed the Site Plan Report and Recommendation submitted by the Town of Manheim Planning Board, found it to be well reasoned and consistent with the record, and hereby adopts and incorporates it. Based on the foregoing the ZBA makes the following findings of fact in support of its decision to issue a special use permit for the Project and to grant the Applicant’s request for area variances.

**Article IV of the Zoning Ordinance**

The ZBA confirms and acknowledges that the Zoning Enforcement Officer has determined, pursuant to the Zoning Ordinance and the zoning district map made a part thereof, that the Project Site is in an Agricultural 120,000 (AG-120) zoning district.

**Section 531 of the Zoning Ordinance**

Initially the ZBA referred to section 531 of the Zoning Ordinance and addressed the question of whether the use proposed for the Project Site was one of the uses which is not permitted in any zoning district, except in an industrial zoning district, and then only by special permit.

Findings:

Section 531 lists five specific uses which could not be permitted in the AG-120 zoning district in which the Project Site is located.

The ZBA found that the use proposed for the Project was neither a junkyard, machinery wrecking yard nor a dump.

The ZBA found that the proposed Project will not engage in manufacturing because nothing was being “manufactured”; the energy of the sun is being converted to electricity.

The ZBA found that the Project would not store energy in batteries on the Project site and would not engage in the “bulk storage of fuels.”

The ZBA also found that no new product was being manufactured and that based on the Project’s design, no unenclosed processing would be taking place at the Project Site.

**Section 430 of the Zoning Ordinance**

The ZBA considered section 430 of the Zoning Ordinance to determine if the Project's proposed use was a permitted use under the AG – 120 zoning district where the Project Site is located.

Findings:

The ZBA reviewed the list of nine permitted uses which are allowed as of right in the

AG – 120 zoning district where the Project Site is located and found that the Project did not fall within any of the nine listed permitted uses.

**Section 431 of the Zoning Ordinance**

The ZBA next considered whether the use proposed by SunEast for the Project Site is one which is specifically listed in paragraphs 1-20 of section 431 as a use that may be permitted by special permit in an AG 120 zoning district.

Findings:

The ZBA determined that the use proposed by SunEast for the Project Site is specifically permitted by section 431 (11), as a private utility serving a public service and is therefore a use that can be permitted by special use.

**Section 530 of the Zoning Ordinance**

The ZBA notes that the proposed site underwent SEQRA review and was not found to have any large environmental impact. Secondly, the ZBA notes that due to the nature of the proposed use, proposed Project will meet New York state air and water pollution standards. The proposed Project will not emit noises in excess of 70 decibels, dBA, at property boundary lines, emit any offensive odors, emit dust or dirt that is considered offensive, emit smoke, or emit noxious gases. The proposed Project also will not cause, as a result of normal operations, a vibration which creates displacement of 0.003 of 1 inch, create a glare by lighting or signs which would impair the vision of a driver of any motor vehicle, cause a fire, explosion or safety hazard, or cause harmful wastes to be discharged into the sewer system, streams or other bodies of water. For a more detailed explanation for how the ZBA reached these conclusions it refers to the Site Plan Review Report submitted by the Planning Board which the ZBA has adopted in its entirety and is attached hereto.

**Section 313 of the Zoning Ordinance**

The ZBA next addressed whether the proposed use was in harmony with the orderly development of the zoning district where the property is located, taking into consideration the location, size of use and structure, nature and intensity of operations involved, size of site in relation to it, and location of the site with respect to streets giving access to it.

The ZBA found that the location of the proposed project is in harmony with orderly development. The ZBA notes that when the Town Board adopted the Zoning Ordinance in 1996 it made a legislative determination that private utilities serving a public service are compatible and harmonious with other permitted uses in the AG 120 Zoning District. Regarding size and use, the ZBA found that the proposed project is at a scale that will fit in with the surrounding area. The ZBA noted that there will be no structures other than the solar arrays, inverters, a substation, and access roads on site.

Regarding nature and intensity of the operations involved, the ZBA found that the size of the proposed ground mounted solar array on the site creates less “hardscape” impermeable surfaces than other permitted uses and is consistent with buildings and improvements in the area. The ground mounted solar array on the site will not be any taller than permitted buildings in the area. The ZBA found the size of the solar array is an appropriate size for the site and is located on the site within limits set by the Zoning Ordinance. The ZBA observed that the Project will encompass only approximately 165 acres of a 477-acre parcel. The ZBA further determined that other permitted uses would likely be a more intense use given the frequency of vehicle visits and volume of business activity for permitted uses compared to the frequency of vehicle visits and business activity for the proposed Project.

Regarding the location of the Project Site, the ZBA agreed with the Planning Board’s Site Plan Review Report regarding the adequacy of street access and vehicular circulation and adopts it completely. The ZBA found that the site will have immediate road access to a County Highway known as Burrell Road and noted the County Highway Department raised no concerns regarding impact on traffic volume or patterns.

The ZBA also noted that based on their personal observations that the nature of the proposed Project would fit into the existing mixed-use character of the zoning district and adjacent properties.

The ZBA also considered whether the location, nature, and height of buildings, walls and fences will discourage the appropriate development and use of adjacent land and buildings, impair their value.

The ZBA found that the location, nature, and height of the solar array will not discourage the appropriate development and use of adjacent land and buildings or impair their value. First, the ZBA found that the size of the proposed use will be moderate in scale, meets the setback requirements and satisfies the requisite fifteen (15’) feet of landscaping around the site which will mitigate any potential impacts which might impair appropriate development of adjacent land. The ZBA noted that the topography and proposed landscaping of Project’s site mitigates against off-site view of the solar array. Given the proposed setbacks and landscaping of the Project site and the existing tree buffers, the ZBA determined that the Project would not impair the value of adjacent land and buildings, that there would be no “glare” and that solar arrays would not be “distracting” to passing motorists.

The ZBA reviewed several studies which assessed the impact of nearby commercial scale solar facilities on property values. Those studies indicate that the greater distance between the home and solar installation, the less negative was the impact on property values. In particular, the impact on property values of 20 MW facility was most closely associated with the residential facilities located within 100 feet of the facility. In addition, some studies indicated that there was either no impact or positive impact on home values depending on the size of the facility and the distance from a residence. Studies indicated that mitigation measures such as vegetative screening, setbacks and keeping panels low to the ground would further reduce any potential for negative impact on property values; all of which are part of the SunEast project design. A property value impact study based on appraisals of solar projects of varying sizes indicates that “there is no consistent negative impact… to adjacent property that could be attributed to the proximity … to the adjacent solar farms.”

In considering whether the proposed use conflicts with the Town of Manheim’s master plan ZBA found that the Town of Manheim does not have a master plan; accordingly, there is no conflict.

The ZBA considered whether the operations of the proposed use will be more objectionable to nearby properties then would be the operations of any use permitted in the district. The ZBA reviewed the memorandum regarding potential impacts of the Project on adjoining landowners prepared by the Town engineer.

The ZBA found that the proposed Project will not be more objectionable to nearby properties than other operations of any use permitted in the zoning district. The land uses immediately adjacent to the Project include farms, homes, high tension electric towers and wires, and a public utility electrical substation. The farms in the zoning district have structures which are equally visible to adjacent properties, are taller, and create more impermeable services and ground water runoff than the proposed solar array.

Also, there will be no noise generated by the Project, the facility will be visually shielded by existing hedgerows and trees and obscured from some off-site view due to topography. The Site Plan requires the installation and placement of landscaping to shield the solar array and substation from potential views from neighboring roads and residences.

The Project design called for additional planting of vegetative screening at points where off-site views from roads or nearby residences would be most likely and frequent. In addition, the Project design relied upon existing hedgerow and underbrush growth to screen the Project from off-site views. Some property owners’ residences are several hundred feet from the property line and are also screened by trees and other growth on those properties and around their buildings. The ZBA determined that the proposed vegetative screening plan was appropriate and adequate for the Project.

Finally, the ZBA found that there was no existing violation of the Zoning Ordinance which would preclude the issuance of a special use permit for the proposed Project.

**Area Variance Application.**

The ZBA has considered the Applicant’s request for area variances regarding setbacks between Project Participant parcels.

The Project proposes to divide Tax Parcel No. 115.1-1-10.1 (located on the east side of Burrell Road) into one 34-acre parcel to be owned by the Applicant and the remaining 182-acre parcel to remain in the ownership of David Grasse. After division, both parcels will remain part of the Project and both owners will remain Project Participants.

The Project proposes to install Project components within the setback which would technically be required between the two proposed new parcels and two existing tax map parcels on the west side of Burrell Road.

The Planning Board recommended that the ZBA grant the area variances to relieve the Applicant from the dimensional requirement for a setback from these parcels’ common boundary line because the strict application of the setback requirement between these Project Participant parcels because the setback would serve no useful planning or regulatory land use purpose. In fact, if an area variance were not granted, the footprint of the proposed Project would have to be enlarged, potentially encompassing additional prime or important agricultural land and freshwater wetlands.

In connection with the area variance application, the ZBA made the following findings:

1) that granting the area variances for setbacks located internally within the Project site would not produce an undesirable change which would be a detriment to nearby property owners; 2) the benefit sought by the Applicant cannot be achieved by some method reasonable for the Applicant to pursue other than by an area variance, since compliance with the setbacks would require an additional Project footprint and potentially impact additional prime or important agricultural land and freshwater wetlands; 3) that the requested area variance was not substantial when compared to the setback requirements which have been complied with on the perimeters of the Project; 4) as demonstrated by the SEQRA negative declaration, the requested area variances will not have an adverse impact on the physical or environmental conditions of the neighborhood and zoning district; 5) that the need for the area variance was self-created since the Zoning Ordinance setback requirement predated the Project, but nevertheless should not, standing alone, preclude the granting of the area variance.

The ZBA agrees with and adopts the Planning Board’s recommendation and grants the Applicant’s request for area variances for setbacks between the above-described Project Participant Parcels.

**Additional Findings and Conditions:**

1. Decommissioning Plan and Bond.

The ZBA adopts the Decommissioning Plan submitted by the Applicant and approved and recommended by the Planning Board and makes the Decommissioning Plan, which includes posting a surety bond as a condition for the issuance of the special use permit. The Applicant shall enter into a Decommissioning Agreement with the Town Board before applying for a Building Permit. Prior to the commencement of construction, the Applicant shall provide a surety bond in the initial the amount of $211,492 and as thereafter required by the Decommissioning Plan. This will provide the Town with financial security in the event the Applicant fails to complete construction of the Project or in the case of Discontinuance of Operations.

1. County Highway Requirements.

The ZBA requires the Applicant to satisfy the County Highway Department’s design standard and receive the permits required by the Highway Department for work in the County Highway right-of-way as a condition for issuance of the special use permit.

1. Operation of Facility and Maintenance of Project Site.

As a condition of granting the special use permit the ZBA has determined the operation and maintenance of the facility shall be the responsibility of the Applicant, either directly or through contract. The required maintenance includes safeguarding operational safety through maintenance of Project components, compliance with the attached Vegetation Management Plan dated September 2020, keeping the Project Site in a neat and orderly fashion and the removal of snow from the access roads. All operation and maintenance contracts for the Project shall be submitted annually to the Town of Manheim Code Enforcement Officer.

1. Notification of New Owner\Assumption of Obligations. A new owner or operator of the Solar Energy System shall notify the zoning enforcement officer of such change in ownership or operator within [30] days of the ownership change. The successor owner or operator of the Solar Energy System shall assume in writing all the obligations of the Special Use Permit, site plan approval, decommissioning plan and other conditions upon which the special use permit was granted.

The ZBA found that the granting of a special use permit for the Project shall be conditioned the conditions set forth above and made a part of the special use permit granted by the ZBA.

**Adoption of Planning Board Site Plan Report,**

**Advisory Opinion and Recommendations**

The ZBA adopts and incorporates into its findings of fact the Site Plan Review Report and Advisory Opinion and recommendations made by the Planning Board dated March 23, 2021 and finds that the Project is specifically permitted by section 431 (11) of the Zoning Ordinance, as a private utility serving a public service.