**Town of Manheim**

**Zoning Board of Appeals**

**Findings of Fact**

**on**

**ClearPath Energy, LLC**

**Special Use Permit Application**

**April 20, 2021**

**BACKGROUND**

The Zoning Board of Appeals (“ZBA”) received an application dated November 11, 2020 from ClearPath Energy, LLC (“ClearPath”) for a special use permit to construct a 5-megawatt ground mounted solar energy facility (“Lapp Solar Energy Project”) on the 98 acres of the 147-acre parcel of land owned by Amos D. Lapp and Annie S. Lapp (Tax Map Parcel No. 108.1-1-4), situated east of State Route 170a and in the Town of Manheim (“Project Site”).

On December 8, 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 the initial application dated November 11, 2020 on December 8, 2020 and received additional supporting documentation on January 25, 2021, February 15, 2021, and March 10, 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.

Pursuant to Section 239-l, -m and -n of the New York State General Municipal Law, the Planning Board referred the application to the Herkimer-Oneida Counties Comprehensive Planning Program on December 9, 2020, and on December 22, 2020, the planning agency responded with “no recommendation as to final action”, signifying that no significant Countywide or intermunicipal impacts were identified.

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 ClearPath’s Special Use Permit Application. Thereafter, on March 30, 2021, the ZBA held a public hearing to receive public comments in connection with ClearPath’s application for a special use permit. No public comment was received at the ZBA public hearing.

At the March 30, 2021 ZBA meeting following the ZBA’s public hearing, the ZBA reviewed and discussed the Zoning Ordinance standards to be applied by the ZBA when considering whether to grant a special use permit.

During its consideration of ClearPath’s application, members of the ZBA reviewed the site plans and supporting materials submitted by ClearPath 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 several meetings 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 Zoning 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 ClearPath’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.

**STATEMENT OF THE ZONING BOARD OF APPEALS**

**FINDINGS OF FACT**

In conjunction with its review of the special use permit application submitted by ClearPath for the proposed use of the Project Site, the ZBA took into consideration the materials submitted by ClearPath in addition to comments made by the public at meetings. There were no public comments made at either the Planning Board or ZBA 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.

**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 ClearPath 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 ClearPath 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 use and Project site underwent a coordinated SEQRA review and was not found by the lead agency to have any large or significant adverse environmental impact. Secondly, the ZBA notes that due to the nature of the proposed use, the 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, supporting utility infrastructure, site appurtenances, 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 46 acres of a 147-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 State Highway 170a and noted the State Department of Transportation (“DOT”) 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.

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 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 structures, underbrush, hedgerows and trees, and will be further obscured from some off-site views due to existing topography. The ZBA determined that the proposed Landscape 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.

**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 $233,173 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. State Department of Transportation Highway Requirements.

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

1. Regulatory Permits Required by DEC.

If required by regulation, DEC, or the Army Corps of Engineers, the ZBA requires the Applicant as a condition for the issuance of the special use permit to comply with such regulations or to apply for and comply with any permits which the DEC or Army Corps of Engineers may deem necessary in connection with the construction and/or operation of the Project. Prior to commencement of construction that will result in soil disturbance of one or more acres of land, the Applicant shall provide a copy of the New York State DEC issued Notice of Intent (NOI) Acknowledgement letter indicating coverage under the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity has been obtained.

1. Site Access Road.

Prior to the issuance of the building permit, the Applicant shall demonstrate that it has revised the plan for the installation of the proposed gravel access road to include nine (9”) inches of gravel that will be underlain by geotextile fabric to stabilize the roadway from the highway entrance to the intermittent stream that bisects the Project site in order to provide more suitable access for emergency vehicles.

The ZBA found that the granting of a special use permit for the Project shall be conditioned as 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 Planning Board’s Site Plan Review Report approving the applicant’s revised site plans and its Advisory Opinion and Recommendations dated March 23, 2021 with respect to the application for a special use permit and finds that the Project is specifically permitted by section 431 (11) of the Zoning Ordinance, as a private utility serving a public service.