

**TOWN OF JACKSON
PLANNING BOARD MEETING
September 3, 2024**

The Town of Jackson Planning Board met on September 3, 2024 at 6:30 pm at the Town of Jackson Town Hall. The following people were in attendance-

Board Members:

- Kelly Donahue
- Erik VandenBerg
- Mark Mahoney
- Irene Headwell
- Amy Maxwell
- Steve Chuhta

Others Present:

- Jay Skellie
- Sharon Dunn
- Lewis Steele
- Eric Strebel
- Michael Ammaturo
- Alita Giuda & John Ahearn
- Terrea Bakner and Steve Lefevre (via video conference)

AUGUST 6TH MINUTES

A **motion** was made by Mark Mahoney and seconded by Irene Headwell to approve the August 6, 2024 meeting minutes as written. Motion carried in favor 6-0.

COMPREHENSIVE PLAN UPDATE

Board member Erik VandenBerg gave an update on the August 27th Comprehensive Plan Committee meeting. Committee members reviewed survey results of the survey that was handed out at the July 26th Town Picnic and the Town Hall. The survey was provided on the Town website and through a QR code posted in the Eagle newspaper throughout the month of August. The survey garnered around 45 responses from residents. Erik will be sending out the full report of responses to Board members once he has the report together. In general, the overwhelming response from the survey is that residents would like to keep the rural character of the Town. Erik hopes to have a draft Comprehensive Plan put together for review at the October 1st Planning Board meeting.

LEWIS STEELE SITE PLAN DISCUSSION – JACKSON SOLAR 1, LLC

Chair Donahue opened a discussion on the Jackson Solar 1, LLC site plan project following a concern brought forth by resident Lewis Steele on the timeline of the project's approval. After reviewing the Town's Site Plan Review law (LL#2 of 2017) Article 800 titled 'Extension of Time for Applicant to Complete Approved Land Use Activity', Lewis shared his opinion via email sent on September 3rd, 2024 to the Town Clerk/Planning Board Clerk and Planning Board Chair that the text of the article indicates the approval of the project is no longer valid (see Attachment A for text of letter). The initial approval of the project site plan was issued by the Planning Board in May of 2021, with extension granted by the Planning Board in May of 2022 and final approval with the signature of the Site Plans issued in May of 2023. The text of Article 800 of LL#2-17 states 'Approval of a site plan shall be valid for a period of one (1) year from the date issued by the Planning Board. The applicant may apply for a one-year extension by writing to the Planning Board at least thirty (30) days prior to the expiration of the initial one-year approval period.' As construction for the Jackson Solar 1, LLC project was not complete by the May 2023 deadline, Lewis believes this would require project sponsors Generate Capital to return to the Planning Board for a new site plan review and subsequent approval, following the expiration of the currently instated Solar/Wind/Alternative Energy Moratorium in 6-18 months, and under the provisions of the Solar law that was passed in April of 2023. Lewis added that if an argument is made that the project approval was in fact May of 2023, the project would either need to be entirely constructed or extension applied for by May of 2024, which is also not the case.

The Town's solar attorney Terresa Bakner of Whiteman Osterman & Hanna LLP and project engineer Steve Lefevre conferenced in to the Planning Board meeting via video call to weigh in on this concern. Attorneys Alita Giuda and John Ahearn of Couch White, LLP were also present on behalf of Jackson Solar 1, LLC. Terresa stated that the Town's local law enacting a temporary moratorium on utility scale solar, wind and alternative energy facilities (LL#2-24) that was passed at the August Town Board meeting clearly states that the moratorium would not apply to any projects completed before July of 2024. Since the project had received approval prior to this date, they would not be required to wait the duration of the moratorium if another review was required by the Planning Board.

Alita Giuda of Couch White LLP spoke on behalf of the project sponsors as her firm has worked with the Jackson Solar 1, LLC project for several years. Alita stated that at the time the extension period was set to be over, the project sponsors had approached the Town Planning Board for guidance on how to proceed with the project to satisfy the Town's laws, as there is no Zoning Board of Appeals in the Town of Jackson nor a Code Officer that could confirm the satisfied code. Building permits are also not required for utility scale solar projects so approval of a building application was not issued. As the Planning Board had agreed at the May 2023 PB meeting that all required conditions of the May 2021 approval resolution had been satisfied, the project sponsors had taken that approval as the Town's agreement they would not need to seek further extensions or have construction of the facility complete by that date. Alita added that the

title of Article 800 of LL #2-17 'Extension of time for applicant to complete approved Land Use Activity' is not grounds enough to require construction of a site plan project to be complete within that time frame as the Site Plan law is otherwise silent in regards to any deadline for construction.

Terresa questioned the Board on how they would like to proceed with the issue. The Board could either approve the project to proceed as is based on the 2023 Resolution authorizing the Planning Board Chair to sign the site plans, take the plain meaning of Article 800 of the Site Plan law and require the project sponsors to be reapproved following a public hearing or take the approval of 2023 as the start date of the land use activity and extend the deadline of project completion to May of 2025. Project Engineer Steve Lefevre of Barton and Loguidice added that the project sponsors would not need to seek another environmental declaration if the PB decides to rereview the project. Planning Board members agreed that they would like time to digest all of the information provided.

At this time, Steve Lefevre updated Board members on the current status of the project's preconstruction engineering review. Following Barton and Loguidice's review of the project's preconstruction drawings in June of this year, they had noticed several substantial changes from the approved 2021 site plans that needed to be addressed before construction could commence. Some of the most substantial changes involved the removal of 3-4 retention basins that were put in place to mitigate water runoff, the removal of a wetland protection barrier, and the layout of gravel diaphragms meant to impede water flow. Steve noted several other less impactful changes that were highlighted in the plans. Project contractors Mill Creek Renewables were notified in an August 29th email from B&L that these changes related to stormwater management needed to be addressed before any further work was permitted to continue. Since then, Mill Creek Renewables has been working with B&L to address these changes in the plans.

Terresa questioned if the Board would like to set a date for a public hearing for the reapproval of the Jackson Solar 1, LLC project at this time. Board members agreed to schedule a special meeting for Wednesday, September 18th at 6:30 pm to allow the Planning Board time to think over this issue and, if rereview of the project was decided by the Board at that time, a public hearing could be set for the October 1st Planning Board meeting.

Resident Sharon Dunn raised a concern about the selling and reselling of the project, and the requirement to notify the Town of new ownership. Terresa Bakner advised that the Town was notified when Generate Capital purchased the project. Board member Steve Chuhta stated we could add increased penalties in the Solar Law regarding failure to notify the Town of changed ownership. Supervisor Skellie thanked resident Lewis Steele for bringing the issue of site plan approval and extensions to the Board's attention.

A **motion** was made by Amy Maxwell and seconded by Erik VandenBerg to adjourn the meeting at 7:43 pm.

Motion carried in favor 6-0.

Next Meeting: Wednesday, September 18th, 2024 @ 6:30 pm

Adjourned: 7:43 pm

Respectfully submitted,

Molly Dixson, Town of Jackson

Attachment A

Dear Planning Board Members and Town of Jackson Attorneys:

I am a Town of Jackson resident and a retired attorney. I am fully licensed to practice law in the State of New York and have more than 40 years of experience in doing so.

This will write with respect to the Solar 1 project which will be discussed at the September 3, 2024 Planning Board meeting.

I support solar power and the use of other sources of renewable energy to relieve us of our reliance on fossil fuels. However, we need to make sure that we do not ignore the law in the course of doing so.

This being the case, know that Article 800 of the Town of Jackson Site Plan Statute entitled “Extension of time for applicant to complete approved Land Use Activity” provides that “[a]pproval of a site plan shall be valid for a period of one (1) year from the date issued by the Planning Board. The applicant may apply for a one-year extension by writing to the Planning Board at least 30 days prior to the expiration of the initial one-year approval period”. Attached for your information is a copy of that Article of the Town of Jackson Site Plan Statute.

In this case, as the Planning Board minutes of May 2, 2023 indicate, Solar 1’s site plan was initially issued on May 4, 2021 and a one year (final) extension was granted on May 3, 2022. I have attached for your information a copy of the May 2, 2023 Planning Board minutes. See pp. 1, 2. I have also attached a copy of the notice requesting an extension.

In the circumstances here and by the clear and explicit terms of the Town of Jackson Site Plan Statute, the approved Solar 1 site plan is no longer valid. In this regard, the Solar 1 project’s “land use activity” was required to be completed by May 4, 2023. However, that did not occur. In fact, construction of the Solar 1 project only began more than a year after that, and only a short time ago this summer.

Since the issued Solar 1 site plan expired prior to May 4, 2023 and since the approved land use activity was not completed by that time, if the project’s sponsors wish to engage in the Solar 1 project, it is necessary that they return to the Jackson Planning Board subsequent to the expiration of the moratorium currently in effect and seek the issuance of a new site plan. Consistent with the recent conversations about the need and importance for the Solar 1 project to be in compliance with current conditions and standards, this will ensure that the project will meet the standards and conditions for solar projects appropriate to today’s world as opposed to the standards and conditions appropriate to 2021, more than 3 years ago.

Moreover, to the extent that the commencement of the relevant time period is the date that the project sponsor completed all project conditions required by the project, the site plan has still expired. In this regard, as the May 2, 2023 Town of Jackson Planning Board minutes make clear, the project sponsors completed all of the project’s preconstruction conditions prior to that date. As a consequence and since no one-year letter of extension was provided by the project

sponsor, the project was required to be completed no later than on or before May 4, 2024. However, and as indicated above, the project was not complete by that date and in fact construction of the project did not even begin until after the expiration of that time period.

All of the above being the case, I reiterate that if the project's sponsors wish to engage in the Solar 1 project, it is necessary that they return to the Jackson Planning Board subsequent to the expiration of the moratorium currently in effect and at that time seek the issuance of a new site plan.

Lewis Steele