

Town of Athens Zoning Board of Appeals  
2 First Street, Athens, NY 12015  
Meeting Minutes: March 8, 2023

The Town of Athens Zoning Board of Appeals was called to order at 7:00 pm at the EJ Arthur Elementary School, 51 3rd Street, Athens. The meeting began with the Pledge of Allegiance.

Board Members present: Chairman Eric Nelson, Member Christian Ames, Member Helen Ihde and Member Christian Pfister, Member James Morabito. Also present: George McHugh - Town Attorney, Albert Gasparini - Town Code Enforcement Officer, Annmarie Krause - ZBA Secretary.

Also in attendance: Brent Frary - Attorney, Murray Law Firm, Dave Swanson - SunEast Power, Joshua Lazarus - TRC Companies, Adam Yagelski - Delaware Engineering, Nora Adelman, Karen Dudley, Melissa Beck and Kenneth Fuller.

**Project: Freepoint Solar, Potic Mountain Road / Center Road, Athens, NY 12015**  
**Tax Map #: 103.00-3-17, 103.00-6-1, 103.00-6-2, 103.00-6-4, Public Utility Solar Project**

Brett Frary of Murray Law Firm explained that they are working on the Viewshed Report and intend to have it completed before the April meeting. They will also review the memo from Attorney John Dowd of Dreyer Boyajian and will respond in writing. Their plan is to submit everything in time for the April meeting and possibly schedule a Public Hearing in May.

On March 7th Freepoint Solar submitted a partial response to the Delaware Engineering memo, submitted in December. Chairman Nelson discussed the summary and the responses.

*A: Sunk capital costs information.* Will be provided in the next month.

*B: Ensure ZBA has all items constituting application, such as an EAF.* Is 90% complete with the exception of finalizing the Viewshed.

*C: Documentation that the Freepoint solar facility proposed is a public necessity.* Freepoint has given a position on this subject and Attorney Dowd has submitted an opinion as well. More discourse is expected over the next month. Once all the documentation is received, it will be reviewed by the board.

*D: Documentation that the Freepoint solar facility in the RU Zone is required to provide safe and adequate service.* Positions from both parties have been given and are available on the FTP Site.

*E: Steep slopes requirements (Section 180-32) conformance information.* Mr. Yagelski explained that there is an access road that is semi-permeable and used to access the electrical equipment and also a 15 ft perimeter access corridor running around the entire site. It is not clear how these areas are going to be improved and is asking for clarification. There is need for more detail because this area traverses very steep slopes to the south and east.

In the steep slope drawing TRC added polygons in areas of 10-15% and 15% to less than 25%. The code prohibits any disturbance on slopes of 25% or greater and Mr Yagelski asked for clarification of these areas. From a SEQR standpoint a construction general permit is not valid if you disturb soils in slopes of 25% or greater. Mr. Yagelski believes there is no

grading across the site with the exception of the access road, but he feels the entire site would cause land disturbance because it is being cleared. More information is needed on what type of land disturbance and what type of permitting is needed. This may affect storm water permitting and may relate to the Five Acre Waiver Request.

The way TRC calculated the steep slopes are done as a percentage of disturbance relative to the entire parcel. Mr. Yagelski believes this should be calculated as relative to the steep slopes within the limit of disturbance; if it is not touched it does not apply. Mr. Yagelski is not sure this proportion is accurately calculated. Attorney Frary asked that these question be clarified in writing. Mr. Yagelski agreed.

F: *Documentation that there are compelling reasons, economic or otherwise, which make it more feasible to construct the solar facility in the RU zone than to use alternative locations where the use is permitted.* This is pending and will be provided next month.

G: *Updated Viewshed analysis, including response to the comments/discussion/decisions at the ZBA meeting.* This item is pending.

H: *Updated landscaping plan (i.e., driven by viewshed analysis) and landscaping property operation and maintenance plan.* This item is pending.

I: *Stormwater narrative.* Open item with expected update in the next month

Chairman Nelson presented a memo from Attorney John Dowd. This memo is relative to the documentation showing the Freepoint Solar facility is a public necessity. Freepoint Solar has stated that there is legislation in the state of New York that makes this solar project a necessity.

Chairman Nelson reference the following sections of the memo:

- a. *A demonstration based on facts that the project is required by the community (e.g., commitments from Town property owners to purchase the power generated)* This includes a list of questions associated with the request.
  - b. *A detailed discussion of the fact-based direct and objectively measurable negative consequences that would be suffered by the property owners of the Town of Athens if the relief sought by Freepoint (the ability to construct the project in the RU Zone is not granted (e.g., cost increases for existing power services directly tied to the inability to construct the project in the Town's RU Zone)*
  - c. *Information about whether residents and/or businesses in the Town are, or can be, provided solar electricity by other means, such as obtaining power from another community solar facility*
3. *Documentation that the Freepoint solar facility in the RU zone is required to provide safe and adequate service.*

In the memo, Attorney Dowd also asks questions related to the progress New York State has made in the areas referenced in the Freepoint Solar application.

Chairman Nelson expects a response from Freepoint Solar on all questions in the memo.

Member Pfister asked about what happens to the site after decommission takes place. Will there be plantings and inspections?

Member Ames asked about floodplain maps. CEO Gasparini stated he looked at the DEC plan that has not been updated since 2008. He explained that Potic Creek swells and this runs into the Catskill Creek. In the areas around Sandy Plains Road, Green Lake Road and Leads all the water goes into these areas and then flows into the Village of Catskill. This project is at 660 feet and so there is concern for runoff during and after construction. Attorney McHugh said FEMA updated flood zones after the last hurricane and made some areas flood zones that were not previously classified in that way. Chairman Nelson asked Delaware Engineering to look into this.

Mr. Yagelski stated that the guidance from the DEC states that there are two types of projects. One that requires post construction controls and one that does not. It depends on the amount of impervious surfaces. In the SWPPP (Stormwater Pollution Prevention Plan) for this project, some additional post construction storm water management practices are shown. One example is level spreaders designed to disperse concentrated flow, discharging water over time to reduce velocity and spread volume over a larger area. Although there is not a lot of impervious area proposed on this site, this issue will be looked at in more detail including looking at the modeling and a pre/post comparison.

Member Morabito expressed concern about creek water going into Buttermilk Falls and does not want to exacerbate the current situation. Mr. Yagelski explained that modeling has been done and will make sure the modeling conforms to engineering standards and DEC requirements.

Kenneth Fuller - Green Lake Road asked about liability for any issues that may occur. Mr. Yagelski said if the project is at fault they are liable, but there are mitigating measures to guard against some issues.

Karen Dudley - Potic Mountain Road asked what happens with road damage to pavement and about trees falling on panels that would cause toxins to enter ground water. Chairman Nelson said that is a question for the public hearing.

Mr. Lazarus stated that trees won't be too near the panels because that would block the sun. The site is monitored 24/7 because the utilities need to know the output of the site in all situations. He stated that there would be reasonable response time because the contractors would be local.

Member Morabito said the trees help with controlling water flow, they give air to breath and block the wind. Removal can cause environmental problems and hurt the residents on the mountain.

Chairman Nelson stated that the information will all be reviewed and if complete a Public Hearing will be scheduled for May.

Kenneth Fuller - Green Lake Road asked about how people are notified about the Public Hearing and Chairman Nelson explained that there will be a mailing and it will be published in the newspaper.

**Meeting Minutes: February 8, 2023**

A motion was made to approve the Minutes of February 8, 2023 as written.

Motion: Member Pfister

Second: Member Ihde

Vote: 5 Ayes - Nelson, Pfister, Ames, Ihde, Morabito

**Further Business:**

Member Ames said the Stay at Lina's applicants are now selling the property. There is still an intent to create short term rentals. Chairman Nelson explained that the zoning approval stays with the property.

With nothing further to come before the Board, a motion was made to adjourn the meeting

Motion: Member Morabito

Second: Member Ames

Vote: 5 Ayes - Nelson, Pfister, Ames, Ihde, Morabito

Meeting Adjourned 7:38 p.m.

Respectfully Submitted,  
Annmarie Krause, ZBA Secretary