

**TOWN OF KENDALL  
PLANNING BOARD  
MEETING MINUTES**

**Tuesday, March 23, 2021 at 7:00 p.m.**

ATTENDANCE:            Chairperson Patty Pfister        - present  
                              Jeff Conte                                - present  
                              Phil D'Agostino                        - present  
                              Steve Catone                            - present

Also present: Bob McGregor, 1909 W. Kendall Rd., Paula Browe, 1783 W. Kendall Rd., Tom Munzert, Sr. and Tom Munzert, Jr., 15959 Bridge Rd., Perry and Christine Congdon, 1807 W. Kendall Rd., Robert and Diane Furness, 1725 W. Kendall Rd., Mike Furness, 1879 Peter Smith Rd., Town Board Councilwoman Flow, Town Board Councilwoman Szozda, ZB member Rowley, Brian Harper, NextEra Resources, LLC., Mary Steblein, LaBella Associates, Code Enforce Office Hennekey, Deputy Code Enforcement Officer Strong and Recording Secretary Bakutis.

Chairwoman Pfister called the meeting to order at 7:12 p.m.

Chairwoman Pfister started the meeting off by introducing herself as the new chairwoman of the Town of Kendall Planning Board and had the board members, code enforcement officers, Brian Harper with NextEra Resources, LLC. and Mary Steblein with LaBella Associates introduce themselves.

**PUBLIC HEARING FOR A SPECIAL USE PERMIT AND SITE PLAN REVIEW:**

Chairwomen Pfister opened the public hearing at 7:15 p.m. and read the public notice:

Notice is hereby given that a public hearing will be held by the Town of Kendall Planning Board on Tuesday, March 23, 2021 at 7:15 p.m. at the Kendall Town Hall, 1873 Kendall Road, for the application of a special use permit and site plan review for DG New York CS III, LLC., Tax ID # 31.-2-27 for a ground mounted solar energy system. The property is zoned Agriculture Residential (RA). All persons wishing to speak will be heard at this time. Application is on file in the Town Clerk's Office. ALL current COVID-19 restrictions regarding public gatherings will be in effect. A copy of the application is available for review by contacting the Town of Kendall Clerk's Office at (585) 659-8721 or the Town of Kendall Code Enforcement Office at (585) 659-2341. Written comments and/or questions regarding the application may be sent by mail to the Town of Kendall Planning Board, 1873 Kendall Road, P.O. Box 474, Kendall, New York 14476 or by e-mail to [planning@townofkendall.com](mailto:planning@townofkendall.com). All comments must be received by 3/18/2021. Please provide your name and address in the comments. All written comments received will be read aloud during the meeting and recorded. The recorded proceedings and minutes will be available for review after the meeting, at a date to be determined.

By Order of  
The Town of Kendall Planning Board

Brian Harper gave his presentation. He shared who he was and the company he works for and what they are about which is a renewable energy company based in the United States. They are looking to build a 5-megawatt solar project here in the Town of Kendall. He explained initially their layout was located in the last half of the property. Once they submitted their plan to the Department of Environmental Conservation (D.E.C.) they had setback easements they had to adhere to, and it set the project more towards West Kendall Road. At the last ZBA meeting they attended they were told their property location was hugging a 150-foot buffer from the property line. They had a layout area in the south, they were able to move that up and push the project 650-feet away from the road, so as it stands now the fence that surrounds the whole project is 650-feet away from W. Kendall Rd. on the western side. Brian explained it is a community solar project which means the community can expand it, they hire energy service companies to get subscribers and you can get a discount on your electricity bill. This is a program that is throughout Central New York. It helps with the renew energy goals of New York and it interconnects with National Grid, it's clean home-grown energy. Brian said another big issue was the access road that they currently have, which was on the little cutout the property has, it is a non-conforming lot as is, it only has 40-feet of road frontage and they need 140-feet for agricultural parcels. They spoke with the Furness's, the landowner to the north of the access road last week. Brian said his colleague spoke with them regarding getting the project 650-feet away from the road, they were willing to work them for a temporary construction access road, which they have shown on the map to the north, they have trees buffering for any other sort of visual impact, that go from the north side of the project that go all the way around, that completes his summary of the project. Chairwomen Pfister thanked Brian and expressed to the room that Brian did bring an updated site plan if anyone would like to review it before the board hears comments from the public. Mr. and Mrs. Furness, Paula Browe and Mike Furness came forward one at a time to review the site plan and ask Brian questions. Chairman Pfister opened the meeting up for public comments and or concerns.

- Paula Browe stated her name and address, her concerns are, the pheasant preserve that Bob Furness started years ago, herself, hunters and youth having permission to access the property to enjoy it may not be worth anything to anyone else but now to have this in your backyard she feels is heartbreaking. She feels this maybe something that is positive for the town as far as money that could come in for the town, she's all about green but feels there are so many other properties this project can look instead of taking the view of the land and animals in their backyards. Basically, her concerns are cosmetic and what the solar project will take away from her family and her neighbors and their families.
- Mr. Furness came forward and told the board he's the one that is going to get the bird's eye view of this solar project behind his house. He has lived in the town of Kendall for 80 + years. He graduated from school here, got married in 1950, lived in the city for a couple of years while he was working at Kodak then was drafted into the Marines for 2 years. When he came home from the service, in 1954, he and wife purchased the property where they live now. They have rebuilt and added to the house over the years, he and his wife belong to the fire department, auxiliary and Lions Club, amongst other things, they try to be

involved in everything that goes on in this town. He said a lifetime of work went into this home 80 years plus and now when he looks out his back window their going to see solar panels, that's not what he's used to looking at, he didn't like it two weeks ago and he likes it less now. The more he thinks about it, well it just doesn't seem right. He said he's not going to benefit from it, the only one who's going to benefit from it is the landowner and he doesn't even live around here, so he could care less. His big concern is his property value.

- Bob McGregor stated his name and address, he lives south of the Furness's, he told the board he would like to know what is the purpose of this project, who will be in control of safety of the grounds with all the equipment, who will be responsible for all the maintenance? Who will be responsible for all this stuff? Jeff Conte said the applicant will be responsible, Brian Harper agreed. Jeff explained the town didn't approach the company, the company came to the town, the PB is here to either approve or disapprove the application. Bob asked when will the board be voting on this. Jeff and Patty told him the board must have all the information before they can vote. They explained to Bob the company approached the town over a year ago, but the application was not considered complete until recently, after a completed application is in place then a public hearing can be held to hear what everyone has to say. Patty told Bob the application is in the clerk's office along with a site plan that was redone and submitted tonight as the new site plan and all the meeting minutes are on the Town of Kendall website for anyone to review. Bob asked how much closer is the board to a decision than they were last year? Jeff told him the board is no closer to a decision because there were a lot of questions the board had asked the applicants and they had to wait for answers. It had been a slow process and they have been in contact with the code enforcement officer because there has been a lot of changes to the site plan which raises additional questions.
- Dan Strong stated his name and address. He wanted to bring a couple of things to the boards attention and for the record he said, I am sure you are well aware of the fact that in the code under Special Use Permit Requirements, Section G, Cause for Property Operation and Business Plan, it talks about mowing, trimming, landscaping, etc. in addition to that, Section H, talks about "a plan must be in place as to how emergency crews will be able to access the site in the event of an emergency." He would also like to share with the board a discussion he had with Assistant Fire Chief, Mike Schultz on Wednesday, February 16, 2021 and again on Thursday, February 17, 2021 regarding the application being presented to the Orleans County Emergency Management Office for their review as well. The towns of Gaines, Albion, and Ridgeway, all submitted their solar plans to the Emergency Management Office also for comment. As a result from that, a letter was generated and provided to the applicant regarding what the Orleans County Emergency Management Office will be requiring for the site, they feel it is best to deal with emergency responses there, and in addition to that the Emergency Management Offices intention to do or what they are trying to do is standardization as far as the way these projects are going to be laid out

and how emergency access is going to be utilized on some of these sites. With that said he has a counter letter from March 23, 2021 from the Orleans County Emergency Management Office and he would like to comment, in regard to the letter, he says in the letter it has been requested that installation of personnel access gates be installed every 300-feet around the fenced perimeter. The enclosure consists of approximately 34 acres in a chain-link fence with all kinds of panels and metal framing scattered throughout the project, so one of the concerns would be a brush fire. If the wind should shift or the fire gets beyond the perimeter of the fence the fire department will have the ability to access these personnel gates. He reads responses relating to the Orleans County Emergency Management letter dated 2/23/2021, as follows:

1. The fences perimeter reduces the points of ingress and egress for fighting a fire at one of the structures or in the event of a grass fire. This could potentially make it difficult to extinguish a fire or worse cause firefighter entrapment within the fenced in area.

Request installation of personnel gates every 300 feet around the fenced perimeter.

Response: It is out understanding that the Town Code and NYS Fire Code do not specify a required amount nor distance between forms of egress on solar sites. (DCEO Strong refers to the Town Law where it states we have to put a plan in place for these projects). He continues to read the response: A 300-ft requirement may result in approximately 16 additional egress points which may not be financially feasible and may provide some security risk due to unnecessary points of unwanted access into the site. (DCEO Strong's personal comment to financial feasibility of a company this size, he thinks additional gates are not going to be a deal breaker financially for a project of this size). He continues to read: The applicant has proposed with the existing application three points of egress where the standard industry design is only one. (DCEO Strong expressed again that standard industry design he may be referring to states there is no specified required amount, so he has no idea what he's referring to, he says that statement doesn't hold water. Again, he tells the board we must have a plan in place for this, he continues to read: We would like to propose that the frequency be adjusted to 1,000-ft which will provide four additional points of egress. – DCEO Strong shares with the board he performs CEO duties for the towns of Gains and Albion as well and the solar companies that come to those towns are willing to do the gates with the 300-ft distance, this company is included with one of those projects. He feels the statement/response back to the OCEM holds no merit. DCEO Strong says the towns are trying to standardize for all the firefighters across the county.

2. Due to the proximity of the fence to the solar panels, we have concerns over the ability of brush fire apparatus being able to turn at all corners. Request enough distance at all corners for a 4x4 crew cab, dual rear wheel pick up to turn unimpeded. (DCEO Strong tells the board this site plan does not show that. During a brush fire the firefighters take a brush truck and go around the curves the best they can, you cannot take a hose 3,000-

feet to accomplish it, you have to get closer than that. He continues to read the response from DG New York CS III, LLC.

Response: The application will be revised to accommodate 25-foot turning radii for 4x4 Crew Cab vehicles at fence corners.

DCEO Strong does not see the accommodations for the vehicles on the drawing, he feels it should be shown, he also says the drawing is so vague that you can't even make out where the panels are, its just a bunch of notes. He continues to read the letter:

3. In order to reduce the likely hood and severity of a brush fire request all brush/grass within the fenced perimeter be maintained at a height not to exceed 10 inches. (DCEO Strong says its in the operations maintenance plan, he does not have it in front of him at this time, he is going to ask the Town's engineer if they studied that part of it and to make sure it is included. That would be an item that would have to be enforced by the CEO to verify the grass is not above that height).

Response: The Operation and Maintenance Plan has been revised to reflect average 10" of vegetation height during the growing season.

4. Due to the heavy weight of fire apparatus, there are concerns over the ability of the gravel driveway and bridge to support the load. Request all driveway access be able to support 70,000 lbs. at a minimum year round. (DCEO Strong's reason he wanted to bring this to the boards attention is during his discussion with Chief Schultz he told him their heaviest piece of equipment, which is their tanker, is 60,000 lbs., you want a load that can support a tanker when it goes into that site. He told the board the town engineer would have to verify that with this design that was presented to the town).

Response: The road design will be reviewed with the project Geotechnical Engineer who will confirm road design capacity meets the required loading.

5. A Knox box must be located at the main gate with any required keys, to insure quick access to the project site. (DCEO Strong says this is a simple one, put a Knox box at the main gate, the firefighters can access the site and start to extinguish fires or size up the situation and go from there).

Response: Noted.

6. The driveway width will make it difficult for fire apparatus to pass each other. Due to the distance of some of the structures from the roadway, rural water operations will likely be required, and vehicles will need to be able to travel past each other to do so. Request vehicle pull offs that are 10' wide and 50' long every 500'. (DCEO Strong explains to the board, if they had to set up a tanker and pumper operation, you would pull a pumper up and parallel park next to a tanker, the pumper would then sit there with a portable pond, the tankers can go in and out to fill the portable pond, then the pumper would pump onto the trucks as they come to refill, that is why they want it parallel to the driveway besides the 20' driveway because vehicles can pass each other on 20' driveways, but they do not want a pumper and a portable pond set up in that 20'

section, they want another 10' x 50' area that's parallel to the road to pull off that then they can sit up there.

Response: The applicant will propose three additional 'Accepted Alternative to 120-ft Hammerhead' turn around areas as the intention is that the road is a dead end road. (DCEO Strong told the board that is not the most efficient way to do it, that could be a discretion at some point. Hammerhead would be acceptable, but parallel is the original idea. That is why they have the 10' wide 50' long every 500'. In relation to the hammerhead turn around areas, when he looks at the drawing, he does not see anything in relation to that, all he see's is notes on a piece of paper saying their going to do that. He told the Planning Board prior to the approval of any site plan you would want to go back through these items and make sure there aren't any drawings you don't want prior to approving the site plan. Instead of going by in form of a letter you want everything clearly marked on the site plan of what they are going to do. This is his recommendation to the planning board).

- Mike Furness came forward stated his name and told the board Robert and Diane Furness are his parents. He let the board know that this has gotten his father so upset that he was in AFib at RGH yesterday morning to get shocked back. They have not agreed to anything as far as any access, he wants to make that very clear. His concern is the view in his parents back yard and the value of their home. He expressed that he worked for Helena, and they recently put up on Rt. 18 a 20+ acre solar field right behind their building, the company walked off the site last August and haven't been back, the grass is very high, every other tree they put up is dead. He feels this company will have the save outcome even though they say they won't do that.

Chairwomen Pfister closed the public comment portion of the hearing at 7:48 p.m.

Chair. Pfister asked Brian if he would like to say anything. Brian asked the board if they had any questions. Member Conte asked Brian on the printout the parts where the wetlands are in the panels it says no excavation, how is that possible, how are you driving post in the ground if it isn't considered excavation? Brian responded with driving post in wetlands is not considered full excavation, they will be driving piles in those wetlands, not grading, filling or anything else to not cause disturbance. Jeff stated he also observed spaces in between rows, how are you to get to point A and B with the wires exposed without any kind of excavation in that area? Brian said they have wires that are underneath the panels and not trenched around. Jeff mentioned even when there's a space in rows, he sees there are gaps. Brian said it may get trenched up by the road, but the road doesn't go through any wetlands. Jeff also asked if the temporary road is not allowed the width of the current road is not big enough so what will the plan be? Brian told him as far as the code is concerned, they do not have road frontage so they would need to go for a variance on that, he said they need a variance regardless of what plan they go with. Jeff asked with the maintenance agreement how often does the plan say the lawn be mowed and the trees will be trimmed or removed and replaced if they should die? Brian said mowing is

on an as needed basis or once per quarter. Jeff mentioned certain times of the year once per quarter isn't efficient when the grass is growing fast. They will have a local contract out of CNY has other companies go around to maintain the sites, snow plowing is also on a needed basis. They would only have someone plow it if maintenance was needed. Jeff feels as far as the fire department goes the roads would have to be maintained throughout the year. DCEO Strong added, this is also why the 10-inch grass height should be in the site plan, because for the fire department to work in and pull hoses through that grass it can be dangerous. The requirements are being distributed throughout Orleans County from the Emergency Management; this is not something that was singled out for the Town of Kendall. The PB should request snow removal in the operations maintenance plan also.

Public hearing closed at 8:02 p.m. Regular meeting resumed.

Chairwomen Pfister asked for a motion to close the public hearing. Jeff Conte motioned to close the hearing, seconded by Steve Catone. All in favor. Meeting closed at 8:02 p.m.

**APPROVAL OF MINUTES:**

Minutes from the February 23, 2021 meeting submitted by Recording Secretary Bakutis were reviewed. Jeff Conte moved to accept the minutes as presented, seconded by Phil D'Agostino. All in favor.

**ADJOURNMENT:**

Jeff Conte made a motion to adjourn, seconded by Steve Catone. Meeting adjourned at 8:23 p.m.

**NEXT MEETING:**

Tuesday, April 26, 2021 at 7:00 p.m.

Respectfully Submitted,

Tammy Bakutis  
Recording Secretary