REGULAR MEETING
TOWN OF EVANS PLANNING BOARD
WEDNESDAY, JANUARY 25, 2023

MEMBERS PRESENT: Chairwoman A. Sellers, L. Szewczyk, D. Schiedel, J. Wilson, M. Keller

EXCUSED: J. Pinter

ALSO PRESENT: William (Bill) Smith, Director of Planning & Community Development
Brittany Penberthy, Town Counsel

APPLICANTS/REPRESENTATIVES: Richard Ries, Architect; Buffalo/e2I Solar, Adam Serbert, CEO; Buffalo/e2I Solar

L. Szewczyk: I would like to welcome everyone to the January 25, 2023 Planning Board meeting. Due to the continued concern of the COVID-19 pandemic, all public meetings and public hearings currently scheduled before the Planning Board of the Town of Evans, will be held both in person and by remote access via the GoTo or ZOOM Meeting platforms/conference call while giving the public the ability to listen in and comment when given the opportunity. If any person wishes to comment on these actions, it is their right to do so when the floor is opened to the public. At that time, we ask that anyone who wishes to speak please clearly state your name and address, spelling your last name for the record. Those attending online may "raise their hand" using the function located at the lower left hand corner on your Zoom interface. We will unmute your microphones in the order the requests to speak are received. Each person is limited to one opportunity to speak and comments shall be limited to 3 minutes. Also, Board members are asked to please state their name before speaking as well. For the record, a Planning Board Public Meeting is conducted solely for the pre-determined action items listed on the official Planning Board Agenda and/or any other business that may be presently before the Planning Board as advertised. No other unrelated items may be discussed or brought before the Planning Board at this Public Meeting.

As a reminder, all links for past Planning Board Meeting Video Recordings are located on the Town's website at townofevans.org and can be found in the green Quick Links section on the Town's homepage under Agendas, Recordings & Minutes; recordings may be viewed by clicking the links provided.

1. The first item on the agenda this evening is a:

Rezone – Proposed recommendation for approval to the Evans Town Board for the rezone from General Business (GB) to Multi-Family Residential-3 (MFR-3) to convert previous office space into eight rental units. Project location: 8328 Erie Rd., Angola, NY 14006, SBL# 220.19-1-5. Petitioner: Northeast Property Partners, LLC, 9666 Northfield St., Angola NY 14006.

PROJECT BACKGROUND:

- The applicant filed a formal Rezone application in December of 2022 for the property located at 8328 Erie Rd., Angola and the project appeared before the Planning Board for review at their January 11, 2023 Planning Board Work Session.
- The applicant is before us this evening seeking a rezone recommendation from the Planning Board to the Town Board, as they hold final approval on all rezones. Should the Planning Board

choose to recommend the rezone, the applicant must also acquire front and side yard set-back variances from the Zoning Board of Appeals.

- If the applicant is successful in rezoning the property, it is their intention to renovate and repurpose the building, converting it into an 8-unit apartment building.

INTERDEPARTMENTAL REVIEWS:

- **Planning Director, Bill Smith:**
    - It is consistent with the objectives of the Comprehensive Plan which specifically to develop a range of housing styles, ensure that affordable housing options are available for all ages.
    - Any proposed alternations to the existing site and structure must be brought to the attention of the Planning and Building departments. At this time, they are not proposing any exterior alternations, but if they do those must be brought back to the Planning Board for review potentially, depending on how significant they are for a Site Plan development application and any other permitting.
    - One thing we noted is the back half of the property is in a floodplain so that needs to be a consideration for any additional structures on the site.
    - The applicants did submit their application to the ZBA as well, so those two front and side yard set-backs variances will be before the ZBA on February 8th. I did send a letter to the ZBA stating that the Planning Board already discussed it and there was general support from the Planning Board based on our work session, but I will follow-up with an official letter stating that we have recommended the rezone if we do so when we put this to a vote.
    - Tony, the Code Enforcement Officer isn't here this evening, but he did meet with the applicants originally and referred them to the Planning Board.

L. Szewczyk: OUTSIDE AGENCY REVIEWS:

- **Erie County Department of Environment and Planning:** A 239M Review was sent to the County and we are awaiting comment. Any recommendation that may be granted tonight will be contingent upon receipt of the County's review and recommendations, which must be addressed prior to Town Board approval.
- **NYSDOT:** Being located on NYS Route 5, the application was also submitted to NYSDOT for their review. If any feedback is received, it will be sent to the Planning Board for review and addressed prior the Town Board approval.
- The action may be brought back before the Planning Board if warranted based on comments received from the County and DOT.

B. Smith: I don't foresee any issues; it is really just a matter of timing. We have to give the County 30-days but that is for the Public Hearing which is before the Town Board. There is no curb cut on Route 5, only off of Bennett, and there's no change to the structure. Just recently the NYSDOT reached out to make sure that any proposed land use or rezones or anything like that on Route 5 still go before the NYSDOT.

L. Szewczyk: SEQR: The Planning Board has reviewed the Site Plan application and have found no significant environmental concerns in regards to the proposed action.

At this time, I will ask the applicant if they wish to address the Planning Board with any further information than previously submitted.

B. Smith: The applicants are not in attendance in-person or via Zoom.

L. Szewczyk: There being no further comments from the petitioner are there any questions or comments from the Board before I open the floor to the public? *No comments or questions offered.*

There being no further questions or comments from the Board, I will open the floor for any public comment. *No comments from the floor or remotely.*

There being no further comments, I will close the floor to the public. There being no further comments or questions from the Board, may I please have a motion regarding an approval recommendation.

J. Wilson: WHEREAS, it is the responsibility of the Planning Board of the Town of Evans to make recommendation to the Town Board pertaining to the rezone of property; and
WHEREAS, the applicant, Northeast Property Partners, LLC wishes to rezone the property located at 8328 Erie Rd., Angola, NY 14006, SBL# 220.19-1-5 from General Business (GB) to Multi-Family Residential-3 (MFR-3) for the purpose of developing the property for residential use; and
WHEREAS, the Planning Department has received the required application, forms and fee from the applicant and reviewed the proposed rezone with Planning Board at Work Session; and
WHEREAS, the Planning Board has expressed no concerns regarding any potential adverse environmental impacts of the proposed rezone.
NOW, THEREFORE, BE IT RESOLVED, that the Planning Board hereby approves recommendation to the Town Board of the proposed rezone of the 1.19-acre parcel located at 8328 Erie Rd., (SBL# 220.19-1-5) from General Business (GB) to Muti-Family-3 (MFR-3) for the following reasons:

- The action is consistent with the objectives of the Town of Evans Comprehensive Plan to increase housing options.
- The project will constitute the use of an underutilized property.
- The action is not expected to result in any significant adverse impacts.

AND BE IT FURTHER RESOLVED, that this recommendation is contingent upon receipt of the County and NYSDOT review and recommendation, which must be addressed prior to Town Board approval.
A. Sellers: Second.

Roll Call Vote: All in Favor…Carried

L. Szewczyk: <u>NEXT STEPS</u>: We will send a letter to the Town Board notifying them of our recommendation this evening and request a public hearing be set. The Town Board will set a public hearing and a legal notice will appear in the Observer notifying the public of the date and time of the public hearing. Once published, abutter notices will be sent out to all property owners within 100-feet of your property with the legal notice attached. The public will be given the opportunity to speak in regards to your Rezone request at the public hearing. Once the public hearing is closed; the Town Board will make their determination in regards to the approval of the Rezone request. Good luck to Mr. & Mrs. Zielinski as you as you continue through the process.

2. The second item on the agenda this evening is a:

Site Plan Amendment – Proposed alterations to a previously approved site plan for the development of a 283.3 kw Type 2 solar photovoltaic system to generate power for existing apartment units at 7008 Erie Road in Derby, NY (SBL: 206.00-3-21.14). Petitioner: Buffalo Solar, 3279 Walden Ave., Depew, NY 14043.

PROJECT BACKGROUND:

- The Planning Board approved the original Site Plan for a low-lying, ground-mounted, Type 2 Solar array on approximately 1.14 acres at 7008 Erie Road at their January 26, 2022 meeting.
- However, some changes to the design of the solar array are now being proposed, which include reducing the setback from the residential neighbors on Chafee Court, so the applicant is back before us this evening seeking approval to amend the Site Plan.
- The array would still remain in the minimum setback requirement from neighboring property owners, but the applicant has been asked to address any potential new impacts as a result of the proposed alteration to the approved plan.

INTERDEPARTMENTAL REVIEWS:

- **Planning Director, Bill Smith:**
    - My biggest concern is that the approval of the original plan took into account the large natural buffer between the proposed array and the rear property line of the neighbors on Chaffee Court.
    - The new plan has reduced that natural buffer by 32 feet to 52 feet in certain sections, which may result in the Planning Board requesting additional screening to mitigate any potential adverse visual impacts, or go back to what was originally approved in the original submission.
    - Due to these concerns, a visual impact analysis was requested by the Planning Board from the applicant at the last work session, which was shared with the Board. I see there are two of the neighbors here and we have shared the visual impact analysis with them also. So it is now our job to determine if any additional mitigation measures will be required for final Site Plan approval.
    - Code Enforcement Officer, Tony Fischione is at conference so could not be with us this evening, but he also has concerns as to whether or not this was actually a Type 2 solar project based on the criteria that it only powers the facilities on the property. He also questioned whether or not the applicant intends to subdivide this portion off from the rest of the property as well which would leave the property with no frontage which is not allowed by Town Code.

OUTSIDE AGENCY REVIEWS:

- Erie County Department of Environment and Planning: A 239M Review was sent to the County and was deemed a matter of local concern.

L. Szewczyk: SEQR: the Planning Board previously reviewed the proposed Project and considered all of the criteria for Determination of Significance listed in the SEQR regulations, and had found that the proposed action is not anticipated to result in any significant adverse impacts on the environment and a Negative Declaration was granted.

At this time, I will ask the applicant if they wish to address the Planning Board with any further information than previously submitted.

Richard Ries, Buffalo Solar/e2i: Regarding the question about subdividing the property from the Building Inspector; we have no plans of subdividing the solar project. Just to give a quick rundown of the project; the main reason we had to shift it was to meet the drainage requirements required by the State and the Town Engineer. There is also a gas line, although not a huge problem, it is one of the factors. We have been able to keep our area of disturbance under an acre to maintain the originally approved Site Plan and we still maintain a lot of great natural green screening which will be year round and between the project and Chaffee Court. We are also providing 14 trees along the interior, the western side of the project, to screen the existing apartment buildings. The panels themselves are low profile, only about 18"-24" off the ground, so very minimal impact. We are not requesting any variances as we are within all of our setbacks.
B. Smith: The height of the panels is 24-inch, and is the proposed fence chain link?
R. Ries: Yes, 7-foot chain link.
B. Smith: The visual impact analysis where you have taken pictures from points 'E' and 'F' which are setback considerably from where the edge of the array will actually be. So if I am looking at this correctly, where you've taken for example, photo 'E', those trees that are immediately in front of the picture would then be removed, correct?
R. Ries: Correct.
B. Smith: Okay, the point of the impact analysis was to see from where the clearing would occur, not from where the existing natural buffer would be.
A. Sellers: And for what it would look like once it was complete.
B. Smith: We anticipated that the images would be from where the edge of the proposed clearing so that we could see how dense that final natural buffer would be, not to see a picture of what you are proposing to clear.
R. Ries: Okay.
A. Sellers: I have another question. When we left the Work Session we had clearly stated that we would have difficulty approving a plan change when we had already called in the neighbors and everyone had agreed with accepting the plan as you had submitted it. So I asked you to get together with the neighbors, but I understand that you have not contacted the abutting property owners on Chaffee Court. Is that true?
R. Ries: That is correct. I spoke with them previously before the prior meeting and there was only one neighbor that was not happy with the project.
A. Sellers: But, after the change, which for some of the properties really reduced their distance from the project, they would need a chance to speak. In speaking with some of them today, and finding out you did not speak with them, means that we have some here tonight who we need to hear from before we can consider this plan. You could have helped yourself and discussed this with them prior to tonight's meeting.
R. Ries: Absolutely. I apologize for that I must have misheard you.

B. Smith: And again the visual impact analysis doesn't help. I know what's already there and I wasn't going to ask the board to go hiking back through the woods to see what it looks like from the edge. That's what we were looking for, from the edge of what you're proposing to clear, what is the view from the neighboring properties; will the natural buffer that you are now proposing provide proper screening. This analysis is showing from the middle of the proposed array and where the existing edge of the woods is, so it doesn't really serve the purpose that we were looking for. I'm sorry if it wasn't clear what we were expecting.

R. Ries: So the images from November are much closer to the area of clearance so you can see it from there, it's pretty thick, but yes the winter photos were taken a little bit further than that.

A. Sellers: We have in front of us a breakdown of how many fewer feet it is from some properties. When the floor is open to the public to the public, I think you will have some questions to answer before we can think about approving this change.

D. Schiedel: One of my concerns is when we spoke about this at Work Session we talked about screening on the apartment side, but not on the other side. I guess I am disappointed to see that was included.

A. Sellers: The developers are screening their own investment. That's why we wanted to see what the property would look like after they cleared.

L. Szewczyk: There being no further comments from the applicant are there any questions or comments from the Board before I open the floor to the public?

Barbara Reuman, 6880 Chaffee Ct., Derby: I have been a resident of that house since I built it 48 years ago. My problem is it is now being moved 32-feet closer to my house from what we agreed on. I would like to know what the environmental impact is, not only to myself and my neighbors but to the wildlife in the area. When I spoke to the gentleman from Buffalo Solar I was guaranteed that the farthest out trees that I could see would be remaining, but now it looks like they are going to be cutting them down and that is a big negative as far as I'm concerned; this is totally against from what was presented to me from Buffalo Solar and there has been no further contact to me or any of my neighbors from Buffalo Solar. I don't understand why the Site Plan had to change and why they encroaching more towards my house.

John Speyer, 6884 Chaffee Ct., Derby: Mine is the one that according to this plan does not change anything, but I want to make sure everybody is aware of how wet that property is. I lived in areas that have wet zone permanent areas and the property behind us is wet so again, as Barb has stated, I'm concerned about the effect on wildlife. I'm also concerned about the effect on drainage. I have a drainage culvert on the back of my property, but again, the property immediately behind it stays wet, it never dries up. Consequently, a lot of those trees have died because it stays so wet all of the time, they just fall over and rot. If there is going to be adequate screening added, I'd like to see that as a requirement. Right now what is there, there wouldn't be anything blocking it visually. I realize it's 60-feet away, but it's still not going to make any difference because the trees are still going to be falling over.

B. Smith: Our engineering and MS4 officer has looked at this and are okay with the drainage. Richard has commented that these changes were to satisfy the requirements of the drainage plan and the engineer's review, and the engineer was adamant that this project goes back before the Planning Board. I will confirm with the engineer once again to make sure that the drainage plan is corrected. I've

walked back there a couple of times too and drainage is absolutely something that needs to be considered. We have Adam Serbert online. Adam could you please unmute and speak.
Adam Serbert: Hey everybody, I am with Richard Ries on this and I just wanted to make one really quick comment on the subdivision of land. So there has been some, I guess investment, and a little bit of ownership change on some of the property. There is a piece of land in the back that I think is potentially in front of you guys to curve off like 11 acres or something that's well behind the property, but it has nothing to do with the apartment buildings or the solar farm or anything like that, but I didn't want you to have maybe one thing on your list and then you hear something different because Richie probably just doesn't know about that. So it has nothing to do with this, it's 11 vacant acres that's behind the complex holistically.
B. Smith: Yeah, I have been in contact with the owner about a subdivision project on the back abutting project property there but they're working in partnership with the existing property owners with the land abutting. I've not heard anything specific, so maybe that's where the confusion came in.
A. Serbert: Very good, very good. Just want to make sure that we're all saying the same thing. Outside of that, I will hand it over to Richie's very capable hands. But thank you so much, I appreciate it.
B. Smith: Richard, obviously there are still concerns from the neighbors regarding visibility and drainage on this change. One thing I'd like to do is confirm with our engineer on the drainage on this. I know you stated that there were changes made to the drainage plan, but again, I need to confirm that with our engineers.
A. Serbert: Absolutely. So there's been a whole vegetative Swale placed along the backside of it and then also all the drainage calculations from the licensed civil engineer were submitted as well, so all that is available.
B. Smith: And it's under an acre, so a SWPPP is not required. At this point, we need to see more; either the visual analysis from where it's showing the natural buffer from where it's anticipated to be cleared and that plus I think you have to propose some additional screening on that east side of it.
A. Sellers: Especially for the two properties that are cut back so and the natural screening being taken down. So it's very disappointing that you didn't do this before the meeting, I think you could have worked this out. I think the neighbors realize that you have the right to do this, but we have to protect that neighborhood. I think when you are looking at proposing additional screening, you might want to talk to the neighbors and come up with trees that can take some wet if that area that is affecting the houses where the set back is so affected. If that area is just as wet, and I don't know that that is, you'll have to have trees that can survive the wet.
A. Serbert: Yeah, I can absolutely talk with the neighbors. I've been talking with my partner too. We would be willing to add some additional trees as a screening buffer in between there. At this point I just thought that that existing buffer was pretty dense. It was a pretty densely wooded area and didn't require any; it provided a really nice natural screening throughout the year. But if that's what you guys recommend, then we can certainly do that for you.
A. Sellers: So if you don't have that list of the neighbors whose properties are abutting that, you can call the planning office and get that.
B. Smith: I would recommend tabling until we can confirm with the engineer on the drainage and Richard, you can provide us with an amended plan showing some screening along there and after hopefully after you have talked with the neighbors.

R. Ries: Okay, so if you'll speak with the engineer, I'll speak with the neighbors, and we will add some additional screening. Other than that, are there any other requests that could make the project happen?
M. Keller: Perhaps if we could see some sort of rendering or anything like that of what the visual impact would be after you've had that conversation on the screen.
R. Ries: Okay.
B. Smith: Thanks, Richard and Adam and I'll be in contact with you probably the next day or two.
R. Ries: I appreciate it. Have a nice day everybody. Thank you.
A. Sellers: I'll move that we table the Site Plan amendment for the Type 2 solar voltaic system to generate power at 7008 Erie Rd. in Derby, until the February meeting, due to concerns of drainage and screening for neighbors; Petitioner Buffalo Solar…I so move.
D. Wilson: The date would be February 22nd.
B. Smith: Do we want to do a conditional approval? I think they need to do a little more homework.
A. Sellers: Yeah, I'm not ready to do a conditional approval. We need a second?
L. Szewczyk: I'll second it.

Roll Call Vote: All in Favor…Carried

3. The third item on the agenda this evening is a:

Code Amendment – Recommendation for approval to the Evans Town Board, the Adoption of Regulations to encourage Agri-business and Agri-tourism Enterprises within the Town's Agricultural Zoning Districts. Petitioner: Town of Evans, 8787 Erie Road, Angola, NY 14006.

PROJECT BACKGROUND:

- As part of the grant received from the Erie County Office of Agriculture to aid the Town with updating its Zoning Ordinance to address issues around agricultural land use planning, additional opportunities were identified to help protect farmland as well as the public health, safety, welfare, and quality of life in the Town of Evans.
- To this end, the proposed Code for Permitting of Battery Energy Storage Systems was drafted to regulate the siting, design and permitting requirements for all Type 1, 2 & 3 Battery Energy Storage Systems in the Town.
- Previous drafts of the proposed code amendment were reviewed at the meeting of the Evans Code Review Committee on November 16th and at the Planning Board Work Session on December 21st with a final draft before us tonight.

INTERDEPARTMENTAL REVIEWS:

- **Planning Director, Bill Smith:**
    - I'll add that the Agricultural Advisory Committee reviewed it as well.
    - The goal here is to create a more farm-friendly environment in the Town that allows for agricultural businesses to develop and thrive while also protecting the surrounding rural communities from any negative impacts.
    - This proposed code includes a delineation between small, moderate and large enterprises based on potential impacts and lessening the burden on small enterprises

from the requirements of applying for full site plan review and special use permits, which would be reserved for and required of larger and/or more impactful enterprises only.

- Included with the proposed code amendment is a draft Planning Board waiver form which will be required from the applicant and reviewed by the Planning Director and Code Enforcement Officer to determine if the proposed project meets the criteria for a small, moderate or large impact project.
- Members of the Ag Advisory Committee also recently attended the work session on December 21st and provided input which was addressed and had no objections. Melissa has done a good job on addressing all comments that have been received from all committees; Planning, Code Review and Ag Committee and I do have a drafted letter that I'll be sending to the Ag Committee requesting support to the Town Board.

- **Code Enforcement Officer, Tony Fischione –** Feedback was provided by the CEO as a member of the Code Review Committee and reflected in the final draft. No additional comments at this time.

L. Szewczyk: <u>OUTSIDE AGENCY REVIEWS</u>:

- **Erie County Department of Environment and Planning:** A 239M Review was sent to the County and only minor comments were provided by the Erie County Dept of Planning and Environment, which have been addressed. Sarah Gatti of the ECDEP was also involved as she is on the Steering Committee. Her comment was to:
  - Amend definition of Agritourism to include horticulture and "sugar shacks," which we did, so those comments have been addressed.

<u>SEQR</u>: The Planning Board has reviewed the project and have found no significant environmental concerns in regards to the proposed action.

L. Szewczyk: Are there any comments or questions from the Board before I open the floor to the public?

A. Sellers: I was thinking that none of these have required a Special Use Permit (SUP) because I would like a SUP for some of them. I look at the criteria for the large scale enterprises and I don't know if that requires a SUP. I mean, I like the idea of not needing an SUP and having these waivers from the Planning Board and the Ag Board, but I was wondering if I had discouraged the neighbor from speaking when the Kwilos' came in, because it was such a nice project, but I don't want to do that, I want to make sure the neighborhoods are protected. We have such a mix of neighborhoods where you have a lot of residentials and some of those Ag Districts. I don't know if a cannabis growing business was going in next to me, I might like a SUP so I could speak about it, or anything as far as that goes.

B. Smith: Just to clarify, an SUP would still be required for the large ones. Only minimum impact would might be eligible for a waiver. Under 'C', large scale, would require full site plan review and a potential SUP based on the proposed use.

A. Sellers: And does it say potential in this or did I miss something? I know at that meeting I was sick and I came in online when we reviewed that, but I don't see where it says SUP, I see criteria and permitting large scale to require a site plan be submitted and reviewed by the Planning Board, but I don't see where it calls out SUP called out in the law, so I must be missing something.

B. Smith: So if it's a permitted use within the district then a SUP wouldn't be required anyway. A large scale would require a full site plan review though depending if it's a permitted use.
A. Sellers: But if it's a permitted use and no SUP is required?
B. Smith: It would require a full site plan application.
J. Wilson: What takes you to that? What is the road map to that?
A. Sellers: Well what my thought is if you have severe objection from the neighbors, this could still be a permitted use and they wouldn't need a SUP. Is the neighborhood getting enough protection? If the use generates over 80 vehicle trips a day, entering the premises. I'm not as worried about a bed and breakfast because no bed and breakfast is going to be the size of a hotel that have that kind of vehicle use, but a brewery might, if you were growing cannabis, does that mean you could have a little farm market and sell some out in front as a micro business for agri-tourism? We do mention cannabis in here specifically.
B. Smith: Yes, the Office of Cannabis management permits it. It would be treated the same as a winery or anything like that. And again it would require a full site plan.
A. Sellers: A full site plan but not a SUP.
B. Smith: The only thing that would be eligible for the waiver are small, with minimum impact. You pick operations, agricultural, craft, gift sale and less than 10 attendees at a given time and less than 5 vehicles on site at a given time, less than 30 trips a day and does not require additional structures greater than 300 square feet.
A. Sellers: Does any other board members have any concerns about that being protective enough?
B. Smith: Just to be clear, the waiver would be reviewed by planning department (by myself) and Code Enforcement and go through interdepartmental review of the town. It would not require a full site plan application or SUP.
A. Sellers: So the Planning Board would not see it?
B. Smith: No, it will go through interdepartmental review. Similar to a Planning Board Waiver forms that we have today for those projects that meet that criteria within our general business and other districts.
A. Sellers: Does anybody else on the board have any concerns about that; that it is enough review and enough protection for the neighbors if it's a permitted use?
J. Wilson: I think for me that Bill has confirmed that the path is correct and is taken care of and addresses that; I'm comfortable.
A. Sellers: But if it's only reviewed by departments, does the public have an opportunity to come in and speak on it, on what's happening in their neighborhood. I'm sorry?

Town Counsel, B. Penberthy spoke but her comments were inaudible.

B. Smith: And then we can also make a determination based on potential impacts or proximity of neighboring properties to say from interdepartmental reviews that this would require additional review by the Planning Board.
A. Sellers: Should there be something in here stating it should be subject to additional review by the Planning Board? Is there anything that says before those waivers are issued that the public has the opportunity to come in and speak on it?
B. Smith: There is; should the waiver not be permitted; the applicant could submit a full site plan review.
A. Sellers: There is something that says waivers… but is there anything that says before those waivers are issued that the public has the opportunity to come in and speak on it?
B. Smith: No, but the farmers also have the right to farm.
A. Sellers: I'm not complaining about that. I just wonder if that's enough protection for the neighbors. Does anybody else have that concern or not?

Planning Board member Don Schiedel spoke, but recording is inaudible.

B. Smith: Again, we're talking about no more than five cars on the site at a given time.

A. Sellers: I'm not talking about the smallest, least impactful ones, I'm more concerned about the two larger ones and with the waivers by the Planning Board and the Ag Board does that call for any input from the public before those waivers are improved?
B. Smith: Well basically this is saying it's the discretion of the Planning Board Waiver Committee and the Agricultural Advisory Committee. Further, should the waiver be denied, the applicant would have to submit a full site plan to the Planning Board in accordance with Town Code Section 200-42.
A. Sellers: At which point would you have public input. Is that enough protection for the public?
B. Smith: The Planning Board Waiver Review Committee and the Agriculture Advisory Committee is the internal departmental reviews that's what we do, so if we get a Planning Board Waiver request today, because it meets certain criteria, creates no more than 10 parking spaces, less than 300 square feet, this is not for agricultural but for general business, not visible from the highway, part of an already approved plan and a permitted use, that goes through interdepartmental review and this would also be reviewed by the Agricultural Advisory Committee. Should the waiver be denied, then it goes through full site plan review by the Planning Board.

Planning Board member Don Schiedel spoke, but once again recording is inaudible.

B. Smith: That would require licensing.
M. Keller: We define an agribusiness as being operated as an accessory use to an active farm. So in order to do anything like that, the owner would have to be a farmer with a legitimate agricultural operation.
D. Schiedel: That's understood. So let's assume that is in place. Corns done, it's November and I already harvested and now I want to have a Woodstock on my property. Five hundred thousand people want to come here. I'm already a farmer, I'm permitted to have this on my property.
B. Smith: I can answer for you right now Don. It has to go through an event permit license, same thing as if you want to have a 5K run in Lake Erie Beach, or a hot dog/wiener run or anything like that. You have to have a license which starts with the clerk's office, it then goes to Code Enforcement, Highway and Police. It is all reviewed to see what would be required. We do the same thing with fireworks down in Lake Erie Beach. Any large events, anything that could have impacts, are subject to an application, licensing, etc. You have to put an application together, map out your plan, showing where restrooms are, showing security, emergency vehicle access, all that stuff and that goes through the same interdepartmental reviews to determine if it is permitted.
A. Sellers: So that's not a part of the law, so in large scale where it mentions not limited, such as equestrian shows, on farm concerts, event centers, on farm restaurants and farm stays, large wedding venues, those are permitted use under large scale under this law.
B. Smith: But it goes through full site plan review as a large scale project and any major events that would have traffic impacts or anything like that, live music licensing, and any other special event licensing would go through interdepartmental reviews to make sure it's not going to create any issues.
A. Sellers: So there would be special events licensing that is not part of this law.
B. Smith: Yes, just like our local bars have to get live music licenses.
L. Szewczyk: Are there any more questions from the Board before I open the door to the public?

No further questions or comments.

L. Szewczyk: There being no further questions or comments from the Board, I will open the floor to the public.

Joey Kwilos: I am just here to listen; I didn't know what it was about. Obviously with what we are doing I would like to see more, to show what Evans has for agriculture.
B. Smith: Okay, thank you Joe.
L. Szewczyk: There being no further comments, I will close the floor and bring it back to the Planning Board for further questions/comments. Are there any further questions or comments from the Planning Board?

No further questions or comments.

L. Szewczyk: There being no further questions from the Planning Board may I please have a motion regarding recommendation to the Town Board?
D. Schiedel: WHEREAS, the Evans Planning Board seeks to adopt regulations to promote agritourism and agribusiness uses in the Town of Evans, while maintaining the Town's rural character; preserving farmland of the area; and, protecting the health, safety, and welfare of the public; and
WHEREAS, the proposed Local Law #1 shall apply to all agribusiness and agritourism enterprises taking place in the Agriculture Open Space (AOS) District, and the Rural Agriculture (RA) District; and
WHEREAS, the Town Board is to receive recommendation from the Planning Board regarding any amendments to local zoning regulations; and
WHEREAS, the Planning Board of the Town of Evans has determined that the proposed code amendment will not result in any significant adverse impacts to the environment; and
WHEREAS, the Town of Evans has submitted a full statement of proposed action to the Erie County Division of Planning pursuant to GMU Section 239-M, and comments have been addressed; and
WHEREAS, the proposed code amendment has been reviewed by the Agricultural Advisory Committee with comments addressed.
NOW THEREFORE BE IT RESOLVED, that the Evans Planning Board hereby recommends adoption of Local Law #1 of the Year 2023 to amend Chapter 200, Article IIIA of the Town Code regulating structures and uses within the Town's Agricultural Districts.
J. Wilson: Second.

Roll Call Vote: All in Favor…Carried

L. Szewczyk: The Planning Office will send a letter to the Town Board advising them of our recommendation and request a Public Hearing be set, as the Town Board has final approval on all Code Amendments. Please watch The Observer for the corresponding Legal Notice which will confirm the date of the public hearing.

4. The fourth item on the agenda this evening is a:

> **Code Amendment** – Recommendation for approval to the Evans Town Board, the Adoption of Regulations for the Permitting of Battery Energy Storage Systems. Petitioner: Town of Evans, 8787 Erie Road, Angola, NY 14006.

PROJECT BACKGROUND:

- As part of the grant received from the Erie County Office of Agriculture to aid the Town with updating its Zoning Ordinance to address issues around agricultural land use planning, additional opportunities were identified to help protect farmland as well as the public health, safety, welfare, and quality of life in the Town of Evans.

- To this end, the proposed Code for Permitting of Battery Energy Storage Systems was drafted to regulate the siting, design and permitting requirements for all Type 1, 2 & 3 Battery Energy Storage Systems in the Town.
- Previous drafts of the proposed code amendment were reviewed at the meeting of the Evans Code Review Committee on November 16th and at the Planning Board Work Session on December 21st with a final draft before us tonight.

INTERDEPARTMENTAL REVIEWS:

- **Planning Director, Bill Smith:**
    - Unlike solar, Type 1 or large scale battery energy storage systems are a much more intense land use and pose a much greater risk to the safety of abutting property owners, therefore the CRC and Planning Board expressed agreement that the most appropriate location for these installations at this time should be limited to the General Industrial (GI) District and subject to more significant setback requirements.
    - However, in an attempt to promote energy efficiency in the town, we are proposing that Type 2 (powering only on site) be permitted within all commercial, industrial and agricultural districts while subject to the design requirements and site plan review. While type 3 residential units are permitted in all districts and only subject to the review of the Code Enforcement Officer.
- **Code Enforcement Officer, Tony Fischione –** Tony had provided plenty of feedback as a member of the Code Review Committee and they are reflected in the final draft. No additional comment at this time.
- **Deputy Attorney, Brittany Penberthy –** No comment.

OUTSIDE AGENCY REVIEWS:

- **Erie County Department of Environment and Planning:** A 239M Review was sent to the County and only minor comments were provided by the Erie County Dept of Planning and Environment, which have been addressed. They were:
    - Remove the 110% generation regulation and limit power supply to onsite only.
    - Include screening requirement for type 3 systems. With that said, as Code Enforcement looks at any building permit that comes in as type 3, if it is visible to neighboring property owners, to bring it to the Planning Office to have our input as to what screening we want to see; that is included in the Code too. If Type 2, again, if visible, depending on size, that would come to Planning Board as well. If we do get a Type 1 in the GI District, that would be subject to full site plan approval and special use permit.

L. Szewczyk: SEQR: The Planning Board has reviewed the project and have found no significant environmental concerns in regards to the proposed action.

Are there any comments or questions from the Board before I open the floor to the public? *No comments or questions.*

There being no further questions or comments from the Board, I will open the floor for any public comment.

B. Smith: There are a few people online. If there is anyone who wishes to speak on the Battery Energy Storage Systems Law, or any questions or concerns in general, please raise your hand. Please note there will be additional time to review the code which will be available at the Clerk's Office. There will also be an additional public hearing scheduled in February by the Town Board. But, if you have any initial questions or comments we encourage it.

L. Szewczyk: There being no questions or comments, I will close the floor and bring it back to the Board for any questions or comments. *No questions or comments.*

There being no further questions or comments, may I please have a motion regarding recommendation to the Town Board.

J. Wilson: WHEREAS, the Evans Planning Board seeks to advance and protect the public health, safety, welfare, and quality of life of the Town of Evans by creating regulations for the installation and use of Battery Energy Storage System; and
WHEREAS, the proposed Local Law #2 shall regulate the siting, design and permitting requirements for all Type 1, 2 & 3 Battery Energy Storage Systems in the Town; and
WHEREAS, the Town Board is to receive recommendation from the Planning Board regarding any amendments to local zoning regulations; and
WHEREAS, the Planning Board of the Town of Evans has determined that the proposed code amendment will not result in any significant adverse impacts to the environment; and
WHEREAS, the Town of Evans has submitted a full statement of proposed action to the Erie County Division of Planning pursuant to GMU Section 239-M, and comments have been addressed; and
WHEREAS, the proposed code amendment has been reviewed by the Agricultural Advisory Committee with comments addressed.
NOW THEREFORE BE IS RESOLVED, that the Evans Planning Board hereby recommends adoption of Local Law #2 of the Year 2023 to add a new subsection to Chapter 200 of the Town Code regulating Battery Energy Storage Systems throughout all zoning districts.
A. Sellers: Second.

Roll Call Vote: All in Favor…Carried

L. Szewczyk: The Planning Office will send a letter to the Town Board advising them of our recommendation and request a Public Hearing be set, as the Town Board has final approval on all Code Amendments. Please watch The Observer for the corresponding Legal Notice which will confirm the date of the public hearing.

5. The fifth item on the agenda this evening is a:

> **Code Amendment** – Recommendation for approval to the Evans Town Board, the Adoption of Architectural Design Standards for the General Business (GB), Neighborhood Business (NB) and Motor Services (MS) Zoning Districts. Petitioner: Town of Evans, 8787 Erie Road, Angola, NY 14006.

PROJECT BACKGROUND:

- Over the past couple decades, the Town has taken steps to adopt architectural design standards for new development, such as those previously proposed for the Highland Overlay District and more recently adopted in the Waterfront Mixed Used District.
- In accordance with 2019 Evans-Angola Comprehensive Plan, the Planning Board now seeks to adopt architectural design standards for the Town's Business Districts in order to steer future growth; plan for the physical design of the community's commercial corridors; and reflect the Town's unique character.
- A draft zoning code to establish design standards for the General Business, Neighborhood Business, and Motor Services Districts was first reviewed by the Planning Board at the September 14, 2022 work session as well as by the Code Review Committee at the September 15 and November 16, 2022 meetings. Drafts of the code were further reviewed by Planning Board at the December 21, 2022 and the January 11, 2023 work sessions with a final draft before us tonight.

INTERDEPARTMENTAL REVIEWS:

- **Planning Director, Bill Smith:**
    - It's important to be more proactive in our approach and give Planning Board the ability to enforce these design standards as well as some flexibility to determine the appropriate character of development in our Business Districts.
    - This will result in higher quality commercial development for the town and thereby promote further economic and community development that is aligned with the goals of the comprehensive plan.
    - Comments received at our last work session were addressed by Melissa, and we made sure to include the MS District, ad GB & NB structures and uses are also permitted within that District.
- **Code Enforcement Officer, Tony Fischione –** Feedback was provided by the CEO as a member of the Code Review Committee and reflected in the final draft. No additional comment at this time. If anything does come up, again this is a recommendation to the Town Board, so any additionally comments can be addressed then.
- **Deputy Attorney, Brittany Penberthy –** I have nothing further.

OUTSIDE AGENCY REVIEWS:

- **Erie County Department of Environment and Planning:** A 239M Review was sent to the County and we are still awaiting a response. Any recommendation that may be granted tonight will be contingent upon receipt of the County's review and recommendations, which must be addressed prior to Town Board approval. The action may be brought back before the Planning Board if warranted based on comments received from the County.

L. Szewczyk - SEQR: The Planning Board has reviewed the project and have found no significant environmental concerns in regards to the proposed action.

Are there any questions or comments before I open the floor to the public?

A. Sellers: I've been waiting on this for years. I had put together a proposed law to establish a Board of Architectural Review I think 25 years ago, but had a Town Board that would not agree to it because they thought it slowed down development while other Towns were already developing Boards of Architectural Review such a Board. I think this is a great way of doing it without slowing any development or redevelopment; I think it is a great asset.
L. Szewczyk: Yes, and I think it is good for business as well, because there is clarity; they don't have to guess what we are looking for, we are telling them what we are looking for. If you don't set standards, you get what you get, the cheapest. So, it's good for them and the whole hope of this is it gives the businesses some appeal so it will attract more business and they'll attract more customers. It's not all about pretty. Anybody else? *No further questions or comments.*

There being no further questions or comments from the Board, I will open the floor for any public comment.

B. Smith: Is there anybody online who wishes to speak about the proposed Architectural Design Standards? A draft of the code will be available at the Town Clerk's Office for review. If you have any initial thoughts on the Town adopting Architectural Design Standards, please raise your hand. There will also be an additional public hearing scheduled in February by the Town Board. But, if you have any initial questions or comments we encourage it. *No questions or comments.*

L. Szewczyk: There being no questions or comments, I will close the floor and bring it back to the Board for any questions or comments.
B. Smith: I will say the last Work Session we had we really went through each item and spent painstakingly amount of time on it and I think there was some really good work done by everyone. Thank you to the Code Review Committee and especially Melissa for all her hard work on this draft.
L. Szewczyk: There being no further questions or comments from the Planning Board, may I please have a motion regarding recommendation to the Town Board.
A. Sellers: WHEREAS, the Evans Planning Board seeks to promote high quality development and design and to foster economic growth throughout the Town's business districts, and
WHEREAS, the proposed Local Law #3 will provide specific guidance and architectural design standards for development located in the General Business (GB), Neighborhood Business (NB) and Motor Service (MS) districts, and
WHEREAS, the Town Board is to receive recommendations from the Planning Board regarding amendments to local zoning regulations, and
WHEREAS, the Planning Board of the Town of Evans has determined that the proposed code amendments and architectural design standards will not result in any significant adverse impacts to the environment, and
WHEREAS, the Town of Evans has submitted a full statement of the proposed action to the Erie County Division of Planning pursuant to GMU Section 239 and is awaiting response.
NOW THEREFORE BE IS RESOLVED, that the Evans Planning Board hereby recommends adoption of Local Law #3 of the year 2023 to amend Chapter 200, Article 6, of the Town Code regulating the design of structures within the Town's business districts.
AND BE IT FURTHER RESOLVED, that this recommendation is contingent upon the receipt of the counties 239M review and recommendation which must be addressed prior to Town Board approval.

J. Wilson: Second.

Roll Call Vote: All in Favor…Carried

L. Szewczyk: The Planning Office will send a letter to the Town Board advising them of our recommendation and request a Public Hearing be set, as the Town Board has final approval on all Code Amendments. Please watch The Observer for the corresponding Legal Notice which will confirm the date of the public hearing.

Thank you everyone for joining in on our meeting this evening, whether in-person or remotely. We ask that you continue to watch The Observer for pending Legal Notices and the Town's website for updates for further meeting notifications. May I please have a motion to adjourn.

J. Wilson: Motion to adjourn.
A. Sellers: Second.

Roll Call Vote: All in Favor…Carried

L. Szewczyk: Goodnight everyone.

Respectfully submitted by:
Debra L. Wilson