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July 11, 2017

Town Board  
Town of Chester  
1786 Kings Highway  
Chester NY 10918

Re: Local Law Amending Articles I, II, V, VIII and IX of Chapter 98 “Zoning”

Dear Supervisor Jamieson and Town Board members:

This letter is being submitted for the public hearing on Zoning Text and Zoning Map amendments. Please consider the following:

- Page 8. Section K Exceptions: This should be clarified if limiting to the lots in districts zoned industrial and commercial, or if allowed in the residential districts as well. In addition, if adjacent to residential district, perhaps add language about buffers and setbacks to match the neighborhood the building is located in.
- Page 8. Section H Billboards: the text “shall not adversely affect the Town” is vague and would be hard to enforce. We suggest you set a better standard for the reason on moving billboards (e.g. protect viewshed).
- Please note, that the Town’s current code on Buffer Strips and Landscaping (98-19) is missing requirements for nonresidential uses created adjacent to residential uses within residential districts AR3, SR1, SR2, SR6. This can be of concern with parking areas and commercial lighting associated with Religious Institutions, Schools and other non-residential uses permitted in these residential zones respectively.

At last year’s Orange County Municipal Planning Federation work session on court cases, it was stressed that a municipality should review their code for what enabling power is given to the ZBA & Planning Board when reviewing site plans in case they do find themselves in court to defend their decisions. Specifically, a municipality should include criteria to consider the “aesthetic impact of the proposed land use and whether there will be a change to the visual character of the area”. We hope you will consider adding language like this in your Town Code.

As for the new section on Solar Energy Systems, we are pleased that the Town is addressing the need to provide the Planning Board with guidance on this use given the fact that they are currently reviewing and approving solar array applications without such specific use allowed in the Town Code. While “public utility” structures are allowed in the zoning districts, the town definition does not include solar farms and as such, there are no regulations on minimum lot or yard setbacks nor building coverage established as of yet. These new regulations you are incorporating into the code should provide the developer with a better understanding of the municipality’s requirements before the project begins, allowing them to plan appropriately, saving time and money throughout the regulatory process.

We reviewed several solar regulations in Orange County. We have attached the Town of Wallkill Code to this letter as an example for comparison purposes. Please note, Wallkill code requires solar farms not to exceed 15 acres of property including contiguous parcels and proposes more restrictive fencing setback requirements to roads and limits clear-cutting to 15%.

Here are some comments and questions to consider for discussion and/or inclusion in the proposal:

- Should the definition of Large scale system include a square foot range to better distinguish the acres and requirements involved between Large and Utility projects?
- Can contiguous parcels extend the scale of Large and Utility size systems in one area beyond 25 acres maximum as proposed?
- Are property tax exemptions or assessment implications involved with Utility size systems?
- Is there a requirement for proof of insurance and financing before any land development begins? A project that removes trees, grades land and builds roads but then lacks the funding to install the solar panels can leave many acres of land in a distressed state.
- It is commonly thought that solar panels are not an impervious surface due to the fact that they are elevated, tilted, and allow the stormwater to flow onto the ground. While that may be the case, the large areas of solar panels will definitely have an impact on how stormwater flows. The panels may channelize the flows and create higher velocities of stormwater. The footings for the panels, the conduit trenches, and the associated service roads may also affect the stormwater flows on and leaving a site. Therefore, with the large scale/utility arrays, a municipality should pay special attention to the stormwater management on a solar site and require best management practice be installed. This may include meadow mixes under the panels instead of gravel, vegetated swales, or naturalized basins.
- For those larger installations needing access roads, are they subject to driveway specifications?
- In the Town of Warwick, large scale ground-mounted solar energy installations require delineation and avoidance of primary conservation areas and secondary conservation areas shall be delineated in accordance to their Zoning Law. The Planning Board then considers such secondary conservation areas, after a site inspection, in the siting of ground-mounted solar energy installations. The Town of Chester does have a conservation area assessment procedure with the Clustered Development code if you want to add same to the Utility scale review.

- We found several municipalities that all prohibit ground mounted solar in the front yard (e.g. Towns of New Windsor, Hamptonburgh, Goshen, Greenville, Warwick and Wawayanda) while the Town of Chester proposes to make exceptions at the discretion of the Planning Board. Town of Greenville also prohibits large scale solar arrays in their Ridge Preservation Overlay District unlike the Town of Chester proposal which will allow them but with “heightened review” by the Planning Board.
- We found several municipalities that require solar systems to adhere to the maximum lot coverage requirement for principal uses within the zoning district in which they are located or not to exceed 50% lot coverage of the lot, as an example. There is also the option to have total surface area requirements depending on if solar is in a residential or nonresidential district. You might want to consider the Planning Board having discretion to reduce lot coverage percentage based upon the topographic and/or geographic conditions found on the proposed site.
- The Town should require the applicant to demonstrate that the proposal will not have an adverse effect on neighboring properties. When addressing screening, the Town of Chester proposal is vague on visual assessment on the “Large” systems other than stating that they will be “*substantially screened from view of adjoining properties and public roadways*”. While the regulations for the “Utility” systems goes into more detail about requiring line-of-sight profiles, we feel also requiring photographs that demonstrate perspective of the scale of the project on the site and it’s visibility from viewing areas would also be beneficial. Visual impact concerns and assessment were raised at the public hearings on the two solar applications that have been before the Town. Another consideration for the Town is requiring year round screening buffers to be guaranteed and define the procedure in which it is reviewed for compliance.

Since major tension in this issue is the balance between the benefits of solar energy and the aesthetic effects on surrounding properties, we hope the Board carefully considers the scale and locations of potential solar farms. It has been argued that solar energy fields are unattractive and can take away from the natural look of the land. In addition, concerns have been raised that too much farmland will be lost to this use so in response, there is a movement that more effort should be spent encouraging solar to be built into the planning of new housing projects with solar tile material and house orientation as well as utilizing existing commercial and industrial areas.

In addition to above comments, we want to bring the following to your attention:

The Town’s 2015 Comprehensive Plan recommends allowing “*non-nuisance light industrial uses*” within the Office Park district (CP page 89). However, last year the Town rezoned a large area of Office Park into the Industrial (I) district, in which some uses might not be considered non-nuisance.

Please note, the Table of Schedule of Use and Area Requirements for Industrial districts (I and IP) include a footnote – “*A building height up to 90 feet is allowed only with Town Board authorization prior to site plan approval*”. Unless the Town Board is going to conduct a thorough SEQR review, this approval circumvents the environmental review process of the Planning Board. Given the new zoning of Industrial district off the Greycourt Road corridor and the existing area outside Sugar Loaf, you might want to consider reducing or eliminating such heights of structures in these areas close to residential uses.

Reviewing the Town's existing zoning map and proposed changes, it appears that the remaining Office Park (OP) zoning will be replaced with the Industrial zone. These changes have the potential to increase industrial uses that might not be anticipated in the future. Perhaps further review of these parcels is needed to determine what options there are with either special use permits, adding uses to existing zone or choosing a different zone that works best as a transition between incompatible uses – such as Residential Office zone. The Comprehensive Plan does discuss this as an option - *“The Plan supports such zones as transitional districts along state highways and busy streets where commercial uses may be desirable, but retail uses generate excessive traffic and are incompatible with an area's residential use.”* (CP page 104)

After more review of the Tables, we also wanted to bring your attention to uses in the SR-2 district in regards to conversion of single-family homes to a two-family dwelling and two-family dwellings not to exceed a total of two dwelling units per lot - see page 15. There are several vacant SR-2 areas of Town, perhaps totally 200 acres, in addition to existing neighborhoods with hundreds of homes. If the code allows two buildings per lot, with two units per building, does that actually allow four units per acre? If that is not the intent, then could it be clarified?

As you know, the Town's Comprehensive Plan has a long list of improved regulations and recommendations that need to move forward in order for the Plan to be effective. We've highlighted a few excerpts from the Plan that directly or indirectly applies to uses, text and zoning changes under review at this time:

- The Plan supports the existing Ridge Preservation Overlay District, and strengthening the Town's subdivision regulations consistent with protecting these scenic resources. In some cases, this may involve increased setbacks for structures or other restrictions such as building height or placement limits, to protect the viewshed. (CP page 19)
- The Comprehensive Plan encourages the protection of mountains, hillsides and steeply sloped backdrops, and the adoption (or refinement) of measures to avoid the wholesale re-grading and disturbance of these areas for any land-use. This Plan also encourages the adoption of provisions in the subdivision regulations to reduce and avoid slope disturbance, and to encourage the sensitive siting of dwellings and their access ways in a manner that works with the natural contours of the land and entails minimum disturbance. (CP page 20)
- This Plan further supports the creation of Visual Assessment criteria to guide Planning Board review. (CP page 20)
- This Plan recommends riparian zones be established along all major streams...and their tributaries, to prevent stream bank erosion and mitigate damage during major flooding events. (CP page 23).
- This Plan supports the protection of the Town's critical natural resources, particularly its aquifers and groundwater quality. Wellhead protection legislation should be adopted to provide an additional measure of protection for these irreplaceable water resources. This Plan supports wellhead and groundwater protection measures and the development of more detailed plans and studies to protect these vital resources. (CP page 26)
- This Plan seeks the long-term preservation of the Town's agricultural resources, promotes diversity of farm types, and supports the economic viability of the farming community and the profitability of each farm. (CP page 34)

- This Plan also supports the adoption of design guidelines for these commercial corridors. The design guidelines would provide guidance for creating aesthetically pleasing and functional commercial corridors. It is recommended such guidelines include both standards (requirements) and guidelines (suggestions), to guide the Planning Board's review of new commercial development. (CP page 89)
- Those areas in the Office Park District that are prone to flooding should be considered for Agricultural Industrial Designation. (CP page 95)
- This Plan also recommends a tree ordinance to regulate and manage tree cutting (CP page 97) This Comprehensive Plan recommends the Town strengthen its land-use regulations to better regulate tree clearing and topsoil removal, and grading and excavating to protect important viewsheds and habitat, and to prevent soil erosion (CP 107).

There are more issues to address as you plan for the build out potential in the Town in an effort to balance economic growth and sustainability. We hope attention is given to the compatibility of new development with surrounding uses as well as the creation of a Plan to protect farmland, historic buildings and other resources important to the community.

The vision statement in the Town's Comprehensive Plan is "*to accommodate new growth while retaining its unique heritage and enhancing the Town's rural character and quality of life*". Given that there is a building moratorium in effect for only residential development, this is the best opportunity for the Town to further review the Plan's recommendations and adopt improved regulations for subdivisions before the moratorium expires.

In the meantime, I hope you find our comments, questions and information provided in this letter helpful as you deliberate on the draft Local Law Amending Articles I, II, V, VIII and IX of Chapter 98 "Zoning".

Thank you for your consideration.

Sincerely,



Tracy Schuh  
President  
TPC, Inc.

Attachments: Town of Wallkill Solar Farm Town Code

cc: Town of Chester Planning Consultant (Planit Main Street Inc.)  
Town of Chester Planning Board  
Orange County Planning Department

***The Preservation Collective, Inc. is a non-profit 501c(3) tax-exempt corporation whose mission is to educate the community by bringing attention to and defending against the environmental impacts of new development and advocating for improved controls for sustainable growth to protect the scenic, historic and cultural landscapes in Orange County.***



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