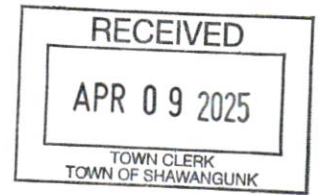


**Town of Shawangunk
Zoning Board of Appeals
March 19, 2025**



Minutes of a Public Hearing held by the Town of Shawangunk Zoning Board of Appeals on March 19, 2025, at 7:00 PM at the Town Hall, 14 Central Avenue, Wallkill, New York, County of Ulster for the following:

Present Were: Dennis Arluck, Chairman, Susan Wiand, Sandy Damon, and Chris Budney as members, Town Attorney, Richard Hoyt, Kathy Ebbrell, Zoning Board Secretary, Julie Pawson, Planning and Zoning Board Secretary, and members of the public. For the Applicant, those present were: Michael Fingar, Christopher Sparaco, Chris Koenig & Ari Goldberg, Esq.

Those Absent Were: Robert Wallner, Zoning Board Member.

Approval of Minutes: A motion was made by Sandy Damon and seconded by Sue Wiand to approve the minutes of February 19, 2025. Vote: All Aye's. Absent; Robert Wallner

All Public Hearings remain open for one hour.

Appeal/Interpretation:

Christopher Sparaco/NY USLE Bruynswick Road I LLC – TM #99.2-6-10 (RAG-4) 2319 Bruynswick Road, Wallkill, NY 12589 - §177-23.1.E(3)b) – Solar Energy Systems – Appeal/Interpretation of the Building Inspector's Ruling:

The applicant had nothing new to present or submit. Discussion ensued.

See Transcription (attached).

A motion was made by Dennis Arluck and seconded by Sue Wiand to close the public hearing and defer the Zoning Board's answer to the next meeting scheduled for April 9, 2025. Vote: All Aye's. Absent; Robert Wallner

Appearances: None

A motion was made by Dennis Arluck and seconded by Sue Wiand to adjourn this meeting. Vote: All Aye's. Absent; Robert Wallner

Meeting Adjourned at 7:35 PM

Respectfully submitted,
Julie Pawson
Zoning Board of Appeals Secretary

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ZONING BOARD OF APPEALS PUBLIC HEARING

ZONING CODE INTERPRETATION REQUEST

APPEAL BY U.S. LIGHT ENERGY and
NY USLE BRUYNSWICK ROAD 1, LLC

DATE: Wednesday, March 19, 2025

LOCATION: 14 Central Avenue
Wallkill, New York 12589

TIME: 7 p.m.

BOARD: Richard W. Hoyt, Esq.
Chris Budney
Susan Wiand
Sandy Damon
Robert Wallner (no present)
Dennis Arluck

BOARD SECRETARY: Kathy Ebbrell
Julie Pawson

REPORTED BY: Lora J. Curatolo, CSR

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(845) 464-7734

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MR. ARLUCK: Good evening everyone.
Welcome.

MS. PAWSON: Tonight we're having a meeting for the Zone Board of Appeals. On the agenda is an appeal of an interpretation for New York U.S. Light Energy on Bruynswick Road. The owner being Christopher Sparaco and the applicant is Michael Fingar. The address is 2319 Bruynswick Road in Wallkill, New York 12589, with Wallkill Central Schools being the school district, R-AG4. And this is for a large scale solar energy system spanning over approximately 33.3 gross acres and the applicant is appealing the building inspector's ruling.

MR. ARLUCK: Thank you.

Can I get -- did everybody read the minutes from last month?

Can I get a motion to accept the minutes?

MS. DAMON: I make a motion to accept the minutes.

MR. ARLUCK: Second?

MS. WIAND: I'll second.

MR. ARLUCK: Sue seconds.

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Okay.

MS. EBBRELL: Poll the board.

MR. ARLUCK: We have to vote.

Chris?

MR. BUDNEY: Aye.

MR. ARLUCK: Sue?

MS. WIAND: Yes.

MR. ARLUCK: Sandy?

MS. DAMON: Yes.

MR. ARLUCK: Aye. And Robert

Wallner is absent.

Okay. We did hear pretty much everything that you guys had to say last month but it wasn't official. So you can go over it again if you'd like or if you have something you'd like to add, we'd be more than willing to listen.

MR. FINGAR: Do you have anything to add?

I have nothing to add. So Michael Fingar, thanks for having us again tonight. Nothing to add in particular but I did want to have an opportunity for anyone to ask questions from what we presented last time.

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MR. ARLUCK: Okay.

MR. FINGAR: If there was any.

MR. ARLUCK: The only thing I noticed was from the 2017 overview photo that the entire site seemed to have a large canopy over it of trees. And then looking at what you guys had said was actually what you considered to be mature trees didn't kind of fit with me a little bit because it seemed like the whole entire site was covered with canopy. And that's just a statement I'm making. I'm not saying -- I just don't know if anything was ever altered from that, was there any other clearing that was done.

MR. FINGAR: No.

MR. ARLUCK: So it's pretty much the same?

MR. FINGAR: It's pretty much the same.

MR. KOENIG: Did you say 2017 photo?

MR. ARLUCK: Yes.

MR. KOENIG: Okay. So probably -- was it a summertime view, it was all green?

MR. ARLUCK: Yes. Sure.

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MR. KOENIG: So it's pretty apparent that the canopy would be like that because of the season -- right? -- and all the leaves growing.

MR. ARLUCK: Absolutely.

MR. KOENIG: What we showed was to show the historical context in comparison to what you are looking at from a more recent context to show the maturity of the older trees on the site.

MR. ARLUCK: Okay. Just making a statement.

MR. KOENIG: Yup.

MR. ARLUCK: You were here, you have nothing to add or no questions to ask?

MR. BUDNEY: No.

MR. HOYT: If I may.

MR. ARLUCK: Yes, you may.

MR. HOYT: Good evening. Rich Hoyt. I just want to clarify, everything that you submitted and said a month ago is part of our record. The "official" the chair referred to was a publication defect which we have since cured. A notice was in the local

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paper timely for tonight's continuation. It's probably the main reason we had to continue the hearing to this evening.

So I want the record to reflect two things. Everything that was said and transcribed -- very helpful, by the way, thank you -- is part of our record. We opened the hearing legally it's just that we couldn't close it until we fixed that minor issue. So that's one thing.

The second thing. Since our last meeting I don't have much more to add except some interesting things that I was alerted to. And just for our record, and here's a copy for the applicant, it's a letter Pace Energy and Climate Center wrote to the Town of Mt. Pleasant Planning Board in connection with a proposed clear cutting of 26 acres at the Gate of Heaven Catholic Cemetery in Westchester County. If anyone has ever heard of Gate of Heaven, it's a huge cemetery. Pace weighed in on the issue of forest versus solar.

So I thought, well, it might be appropriate for the board to just look at that.

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So I have seven copies of this two-page Pace letter, one is for the applicant, one is for our record, and I brought five more for board members. So I'll just pass them out right now.

You don't need to read this tonight, I don't think it's going to add to this evening's discussion, but when you do have a chance to read the letter you'll see that they -- this opinion from Pace was actually forwarded by the planning board to a judge in Westchester County because Mt. Pleasant Planning Board or Zoning, I can't remember which, actually turned down a special use permit, and there's reasoning why.

So what I did was -- and I didn't have time to copy it for all board members -- but when you read that case, then you'll be able to read the decision of the Westchester Supreme Court for the applicant. I didn't have time to copy the case, it's about ten pages, I'll give it to Julie and ask her to copy it for the board members.

But it's kind of an interesting case. I wouldn't say it's a hundred percent on

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point with what we're talking about but for the first time I read about a judge talking about tree clearing and the effects of tree clearing, probably heavily influenced by the Pace letter that I previously passed out. So if you can make copies for board members; I have it, your record has it, the applicant has it.

And again, it's just something to consider if you elect to close the hearing tonight. And I think the chair's going to suggest that a decision be deferred --

MR. ARLUCK: Yes.

MR. HOYT: -- to a future meeting and the applicant will be notified when --

MR. ARLUCK: Yes.

MR. HOYT: -- that will be. I'm not meaning to tell you you have to close the hearing but I'm questioning what else might come in.

MR. ARLUCK: The only thing I would say is if you have something more that you think you are going to add at the next hearing, I will keep it open. But if not, I would like to close it.

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2 MR. HOYT: Just one more for the
3 record, I think at the end of the day the board
4 is going to be faced with what a court will be
5 faced with, a question of statutory
6 interpretation, what do these words mean. And
7 of course the building inspector already gave
8 you his opinion and that's why you're here, but
9 when you get into the weeds on statutory
10 interpretation it can be a whole body of law;
11 what does "mature" mean, what does "clear cut"
12 mean, etcetera.

13 So it occurred to me that at some
14 point the board is going to have to get back
15 into finding out what did the town board intend,
16 because I think that's what a court is going to
17 ultimately say, what was behind all of this.

18 So I did a little more research and
19 what I can report for the record is that the
20 initial drafting of the solar law, which started
21 in 2016, it wasn't adopted until 2018, I looked
22 for the word "mature trees" and I didn't find
23 it. I found "wooded area."

24 So the very origin of this solar
25 law, whose context is the matter for this

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2 appeal, was in the modeling process, like all
3 local laws are. There were zoning committees,
4 there were inputs from different people. And my
5 file indicates wooded area deemed to be too
6 general, does that include scrub and saplings
7 and overgrown whatever? I think -- and I'm
8 speculating now -- that's how "mature tree"
9 ended up in the law.

10 So I just wanted to give a little
11 bit of that background because I think the law
12 controls but, again, if we're trying to get to
13 legislative intent you almost have to peel the
14 layers back a little bit and I was able to do
15 that.

16 Last thing I wanted to mention is
17 our comp plan from 2019, two volumes of it, in
18 certain areas discuss some of the overall goals
19 of the town and all legislation zoning should be
20 based on the comp plan. And there are a couple
21 of sections that jumped out at me, so I would
22 just like to cite them for the record. The comp
23 record is obviously a public record so I didn't
24 feel the need to copy it and hand it around.
25 But there's references to the community, strong

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2 support. The development blends in with the
3 natural environment through high quality
4 environmentally sensitive design and
5 landscaping. Admittedly a global statement but
6 don't forget the comp plan and the new zoning
7 law were adopted at about the same time, maybe a
8 year apart. Residents strongly supported
9 protecting and preserving important natural
10 resources and views, particularly those in
11 connection with the Shawangunk Ridge.

12 So there's nuggets in the comp plan
13 that I wanted to reference because between now
14 and the decisional meeting if the board wants to
15 look at the comp plan, I didn't think it was
16 prevented from doing that, and now I've
17 highlighted a couple of sections for you.

18 Again, the comp plan, if you've
19 never seen it, it's actually kind of an
20 interesting document. This is what it looks
21 like. It's in town hall. 2019 was the comp
22 plan.

23 MR. ARLUCK: I have copies of it.

24 MR. HOYT: And it was a long
25 process. The town met with stakeholders and had

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2 little groups of people meet and discuss what do
3 we want in this town.

4 So I thought that would be important
5 to mention.

6 MS. EBBRELL: It's also on the
7 website.

8 MR. HOYT: Thank you, Kathy.

9 So I don't think I have anything
10 more on my end. And again, if anyone has
11 anything else to add, I don't see a reason why
12 you -- I'm sorry. One more thing. You know how
13 lawyers are, one more thing.

14 The negative -- I'd like to site in
15 the record the negative declaration that the
16 Town Board adopted before it had adopted the
17 solar law, because it was a Type I action --
18 more than 25 acres is Type I on any rezoning --
19 and the town board went through SEQRA, and lo
20 and behold in the vegetation and flora section
21 cited verbatim the language that's at issue here
22 now.

23 So that's in the neg dec from 2018
24 as adopted by the Town Board. And that neg dec
25 actually is 20 pages or more. It's public

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record, I'll refer to it tonight and obviously the applicant can get a copy of it if they need to.

MR. ARLUCK: I'm wondering if anybody has seen the new DEC wetlands map, which added a million acres to the state wetlands. And I don't know whether -- there is some wet areas on that property, whether that did get added. And I also know that you can appeal it and for 90 days you can ask them to disregard that if it has been included. I don't know if it has, I haven't seen the new map.

MR. KOENIG: Yeah, the mapping is informational so it's not a jurisdictional map. And what's required is for delineation to occur, which we did, and to have jurisdictional determination specific to that work.

MR. ARLUCK: Did you apply to them for that relief?

MR. KOENIG: No.

MR. ARLUCK: Because you have 90 days to apply for relief. And if they don't get back to you within 10 days from the 90, it's moot.

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2 MR. KOENIG: You have 90 days to
3 apply or -- you apply for a jurisdictional
4 determination and they have up to 90 days to
5 respond.

6 MR. ARLUCK: To respond.

7 MR. KOENIG: Yes, that's right. So
8 I wouldn't call it relief.

9 MR. ARLUCK: If they don't respond,
10 they have 10 more days, from what I understand.

11 MR. KOENIG: Right, there's
12 procedure in place. We are looking at that at
13 this site and a number of different sites as
14 well, so we are in tune with the evolving
15 practices at the DEC and central office and
16 Region 3.

17 MR. ARLUCK: My reasoning is it
18 could reduce the amount of land that you can use
19 and have to increase setbacks, if any occurred.

20 MR. KOENIG: We're not anticipating
21 that based on our interpretation of those rules,
22 but thank you.

23 MR. ARLUCK: Sure.

24 MR. HOYT: Just following up. Do
25 you have mapped DEC wetlands right now?

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MR. KOENIG: No.

MR. HOYT: Because my understanding -- and please correct me, this is new for all of us, relatively new -- that if you are already mapped, the changes don't impact as much as if you were not mapped but now potentially will be designated. And I think the word "map" goes out the window. As you pointed out, it's informational.

The big change was you weren't in DEC wetland unless you were on a map. And I think -- and I'll speculate that when Army Corp got too busy to handle this, DEC kind of stepped in because a lot of what they are doing now seems to track the way Army Corp used to do their JDs. I'm speculating.

MR. KOENIG: There's a whole standard operating procedure that DEC published where they make those determinations from different resources and classifications of wetlands and procedures for landowners and consultants to engage DEC on these issues. So that's all publicly available on the DEC's website, you can go through how they make these

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jurisdictional determinations.

But in general, yes, any state wetland that was previously a state wetland on the old maps is still a state wetland, but there are other wetlands that could potentially become state wetlands based on multiple characteristics.

MR. HOYT: And you will no longer be able to go to a map and see that, it's just done by department determination on a case by case?

MR. KOENIG: At a desktop or a parcel level, yes. At a project level it's -- the onus is on the landowner and the applicant to provide delineation to DEC to then review.

MR. HOYT: Interesting. Thank you for that.

MR. ARLUCK: I saw an overlay of what was not considered a wetland in the new map -- it's a proposed map, I don't think it's in stone -- but it showed an area that had like a little -- tiny little creek going through it and now it's been expanded back, like, a couple hundred yards on each side of it.

MR. KOENIG: Again, that mapping --

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was it a purple polygon you were probably looking at on the map? That's informational mapping. It's not definitive, it's not based on any boots-on-the-ground information, it's based on actually an algorithm that was developed by DEC and Cornell for a number of different things.

But we are aware of where the wetlands are on this site and we've delineated that already, yeah.

MR. FINGAR: If I just may add, I appreciate the context here but we're getting a little off track in talking about the definition of "mature tree." Recognizing that the wetland conditions on site need to be met by the authority having jurisdiction, that's something we anticipate continuing to work through once we're able to get back to the planning board.

And if I could also just add a couple of comments on this letter. I do appreciate you presenting this. There's a couple of things, since the board has asked to consider it, that I would like to point out.

It does talk about healthy forest.

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And I'd encourage you to look at our arborist's report that talks about -- it also considers the health of the trees on our property, so the context we're talking about for our particular site.

And additionally I do recognize in the back it says that there is other options that are widely available for siting renewable energy on non-forest land. Now, I would just ask you to also consider the comprehensive plan that focuses on protecting agricultural land, which is often available and cleared, and balancing that with marginal land that may have some trees on it.

MR. GOLDBERG: Also, if I could -- this is Ari Goldberg, attorney for the project.

So I looked back at my notes and the transcript from the hearing last month. One of the themes that emerged was that whatever "mature" is is ambiguous, hard to define. The words Mr. Hoyt used was the definition is elusive.

Unfortunately, zoning code itself does not define the term. It sounds like

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despite best efforts during the adoption of the solar law, they tried to really pin down what that meant, it did not make it into the code itself.

Exhibit 6 to our appeal, which was Exhibit 5 to the interpretation request itself, it notes, I think, the seven different uses of "mature" or "mature tree" throughout the entirety of the zoning code, because you're supposed to read the entirety of the zoning code as a whole to determine what the definition of a certain word is when it's not defined.

I want to point you to one specific part of that code, Zoning Code 177-6(J) (8) (b) (7). This is what it says mature plant preservation is encouraged, and then the code goes on to say, quote, "existing trees over 8 inch dbh" -- diameter at breast height -- "shall be incorporated into the site design to preserve existing vegetative resource."

Sounds like that's in the spirit of the comp plan that was discussed and we're, of course, glad to see some sort of clear consideration of a specific marker for -- of

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2 height, and considering what kind of trees need
3 to be preserved. But again, that 8 inch dbh
4 doesn't even say directly mature trees.

5 So again, even within your own
6 code -- the code of the town, excuse me -- we
7 still don't have a plain definition of "mature."

8 The CEO, code enforcement officer,
9 in his interpretation said "mature" is any tree
10 that flowers. We have that expert report from
11 the certified arborist, that Mike just
12 mentioned, that said a dbh of 16 inches or
13 higher along with the considerations of the
14 quality of that timber and the health of that
15 tree, dictates maturity for a pin oak, just one
16 species of tree. That's the most common tree on
17 the site though.

18 And even when we first started this
19 review, and I think this got to the earlier
20 comment from Chairman Arluck, maturity by age
21 was discussed as a possible marker for how you
22 define a mature tree. That's why Chris and his
23 team submitted all of those historical photos of
24 the area going back 50 years to show this plot
25 of land was at one point cleared and then has

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since grown back.

Needless to say, I think that Mr. Hoyt is right, a clear bright line definition of mature, a definition that wouldn't have us here, that's elusive, we don't have it here.

So how does that ambiguity factor into what the board does next? I think, you know, with Mr. Hoyt's introduction of another case about zoning board authority, I think it's important to look at some of our application materials that were also submitted as part of the record. And some of that is citing to New York State courts about what a zoning board -- some of the rules that zoning boards need to follow when an interpretation appeal is before you. I'm sure it's not nearly as common as what you're used to in area variances.

But New York courts say that ambiguity in a zoning code is interpreted in favor of the landowner and the applicant. That's us, that's Mr. Sparaco. This is compounded by another court's point of law that a zoning code generally is construed against the

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2 municipality seeking to enforce it because it's
3 in derogation of common law. It's a writing
4 that was set forth by a municipality, so it's
5 interpreted against you as the drafter and in
6 favor of the landowners.

7 The point is the ambiguity, which I
8 think we're all coming to recognize, to be very
9 blunt it benefits the applicant in this
10 situation. We've offered a definition of
11 "mature" in our expert report and we, of course,
12 prefer that definition, it has grounding in
13 silvicultural science, forestry and it was given
14 by a certified arborist. And under that
15 definition he identified 78 mature trees on the
16 property. "Mature" as used in his report.

17 So it's our position that
18 interpreting that ambiguous code in our favor
19 under New York State courts of law, that there
20 are 78 mature trees on the property. 78 mature
21 trees on the property per our definition of
22 "mature."

23 If that's the case, if the board
24 accepts that, I'm not sure we necessarily need
25 to get into what defines clearing or clear