

Machias Town Board  
Special Meeting Minutes - *Draft*  
December 5, 2022

The meeting was called to order at 5:59 pm. The pledge of allegiance was said by all in attendance. Attending were Supervisor Stephen Cornwall; Councilmen Robert Shenk, Frank Bork, Robert Green, and Tom Reese; and Town Clerk Rebecca Grimmelt. Also in attendance were Town Attorney Joel Kurtzhalt; MDA representative Derek Rule; Brandon Boehmer; Daniel Blecha; Rick Myers; Brenda Hanson; Josh & Jen Dusterhus; Mark Foster; Mike Caplan; Dominic LeBel; Benjamin Wisniewski; Sue & Sarah Waite; Nick Glasner; Henry Zomerfeld; Gerry Heimbuch; Peter Sorgi; and Kevin Bliss.

Frank Bork made a motion to accept the minutes of the November 21, 2022, meeting. Bob Shenk seconded. All were in favor and the motion carried.

The supervisor invited Derek Rule to address the Board regarding the SEQR Pt. 2 for the Felton Road Solar projects. Derek told them that the draft is okay and that there was nothing new in the binders that they had received (printouts of the application and all studies and permits) from Peter Sorgi. They had already had access to all of that material online. Derek said that the Board needs to decide if the environmental concerns are adequately mitigated by the developer which then yields a negative declaration on the SEQR Pt. 2. A positive declaration requires that the Board must identify the specific issues that need addressed by the developer. The Board needs to make a decision. Pt. 2 was reviewed at the last Board meeting. There are four pages of additional discussion from the developer addressing the mitigation plans; Derek felt that everything had been addressed satisfactorily.

Bob Green asked if there had been a sound study. Derek replied that there was, and the clerk presented him with a printout of it. He also asked if there were any studies on the sole source aquifer. Derek said that it is in the one corner of the Felton Hill project. The Cattaraugus County Health Department and the DEC were contacted and there were no issues brought up by either agency over the type of work being proposed. Bob Green was concerned about the water running into the recharge basin that feeds multiple towns. He was also concerned that the Ground Water study was done in July and that those numbers couldn't be trusted because of the drought conditions. He wanted it redone in the wetter months. Derek was not concerned.

Dan Blecha asked if there was a moratorium in place, why was any of this even being discussed. The supervisor assured him that we were not issuing any permits of any type, just discussing the SEQR.

Steve Cornwall asked if the Board had a feeling either way. Tom Reese said that he felt everything was addressed and was comfortable with moving ahead. Bob Green said that he felt they hadn't adequately addressed his concerns and that he would move for a positive declaration on the SEQR.

Benjamin Wisniewski, the attorney for the Dusterhus', asked to address the Board. He specifically pointed to question #8 parts D and E, addressing agricultural resources; he felt that saying it is not a permanent removal of agricultural land goes against what the NYS Agriculture and Markets have said. He wants that answer to be changed to "yes." Question #9, impact to aesthetic resources should be "yes". Question 18, parts E and F should both be "yes" because it is inconsistent with the community landscape. He recommends further study and that the Board in good conduct should issue a positive declaration for this project.

Bob Shenk said that he has been very concerned with the Ag situation right along. He has been worried about possible chemicals. He has talked with a farmer who has solar panels on his land and was told that the ground underneath the panels gets so hot that it cooks the microbes in the soil. It is going to affect future agriculture use of the land. It is going to take a great deal of time to recover.

Tom asked if the residents had a binder like the developer had produced which would show him studies that would point to a positive declaration? They said they could produce something, but not tonight. Tom said that the Board had to go with the information that they had and that they were doing the best they could.

Mr. Wisniewski said that he also had an issue with the sound study that was provided regarding the noise levels at his clients' home. He said that it does not show the relative change in noise, but just the absolute level. What is the increase? How many decibels does it increase the relative noise? The town should be concerned about lawsuits.

Dave Foster asked to address the Board. He wanted to know if the binder provided by Mr. Sorgi was the binder that Bob Green just received? He was concerned that he had not had adequate access to the information. The Town Clerk assured him that the Board had access to everything in the binder online and that the binders had just been provided a few days prior.

Steve Cornwall again asked if the Board knew which way they were going to vote. Frank Bork said that he doesn't feel qualified to decide either way. Bob Green felt that if they weren't all in agreement that it should be a positive declaration.

Brandon Boehmer said that he feels more studies need to be done. "There are studies that haven't been done and this moratorium was put in place to give the residents a leg to stand on. Even if we lose this battle, we deserve the right to do these studies to make sure that we have done everything we need to do before our town gets a major facelift." He asked that the decision be tabled to give everyone the opportunity to do their due diligence.

There was discussion about the studies being conducted to favor the person paying for the study. The developers and Derek both said that the engineers are certified and licensed by multiple agencies and wouldn't risk their credentials and livelihood to issue a report with findings that weren't accurate and non-biased.

Brandon Boehmer again asked for the decision to be tabled to allow the residents to conduct their own studies against the one-sided binder. Tom Reese wanted to clarify that we aren't giving out any permits tonight. We just want to move forward on the SEQR declaration so that the developer can move forward with their funding. He said that they have done everything that the Solar Law has required them to do, and we can't stop the project. He said he knows that the residents are hoping for that, but that it can't happen with these two developers (Green Street and RIC). An updated Solar Law may be able to prevent future development, but we need to let these projects move ahead. Do they want a lawsuit? Do we want to end up like Farmersville where the Town has been torn apart? Derek and our attorney have looked at everything and we must take their advice and move forward. We aren't giving them a free pass or issuing a permit. We will be here again.

Ben Wisniewski asked that the Board consider a third alternative and look at the moratorium. He feels that it restricts all actions, including the SEQR. Our attorney and the attorneys for the developers disagreed wholeheartedly.

Peter Sorgi, the attorney for the Felton Hill projects, addressed the Board. He thought we were through all of this. He said that he understands the Boards feeling that they aren't experts in any of this and agrees. The developer is required to give you expert studies and opinions that the Town engineer then reads and interprets. If there is a contradiction, the residents must provide their own study showing this fact. A SEQR negative declaration does not give them the approval to do anything moving forward. In fact, the SEQR regulations state that you can change a negative declaration to positive if new information is provided down the road.

Mr. Sorgi said that we have studies that go through everything and have been reviewed by our engineering firm. There are no studies that go against theirs, but if the residents want to provide their own studies that go against what has already been presented, the Board can change their mind on the SEQR declaration.

He also stressed the rights of the property owners. He realizes that the residents are there because they are concerned about their rights, but what about the landowner's rights? Shouldn't his rights over his own property be valued more than what his neighbors claim? You can't force your neighbor to change the color of his house because you don't like it. The landowner chose not to farm his land three years ago; it was his choice. As far as community character, Machias has a law that allows it, and the next town over has an existing solar farm. It is in the general area. Any time you build anything you change something.

Someone asked about neighboring solar farms affecting their property values. Mr. Sorgi said that they would have to present a study proving that it would. Bob Green said that we need to give our residents a chance to provide that. Peter Sorgi asked how many meetings have we had about this project to give the residents an opportunity to present their concerns. Several attendees claimed that they didn't know anything about these projects until very recently. They said that there were no letters delivered to their mailboxes or flyers distributed and that they do not get the Arcade Herald. The Board and lawyers stated that they had done everything that was required by New York State Law. The Town Clerk said that all meeting notices are posted on Town Hall, the Facebook page for the Town, and on the Town's website.

Steve Cornwall put a halt to public comments. He said that we came to vote on the SEQR and that was what we were going to do. Tom Reese made a motion for a negative declaration on the SEQR. Bob Green made a motion for a positive declaration. It had to be one or the other and since Tom had moved first, the motion on the floor was for a negative declaration on the Felton Hill SEQR. Attorney Joel Kurtzhals clarified that the motion was to declare a negative impact on the SEQR resolution.

Steve Cornwall read resolution #53, "Resolution for Declaration on SEQR Part 2 Felton Hill". Bob Green felt that the sole source aquifer has not been addressed. He wanted to know if we signed off on that if the Town could be held liable as Lead Agency if anything went wrong with the aquifer? Joel Kurtzhals said that would be unlikely but couldn't give a 100% guarantee. Before calling the roll, the Town Clerk asked for clarification on whether we were issuing a positive or negative declaration on the SEQR. Joel said that there was already a motion for a negative declaration. Steve Cornwall seconded the motion. Steve Cornwall said that he didn't feel qualified

to make a decision and voted “nay.” Frank Bork, Robert Shenk, Robert Green, and Tom Reese all voted “nay.” The resolution failed and no declaration was issued on the SEQR.

The Board felt that they weren’t qualified to decide either way, putting them back to square one. The Town Clerk asked to play devil’s advocate about the discussions that had occurred. She wanted to know if the residents are asking for more studies, who is going to pay for these studies? There is no money in the Town’s budget to pay for studies; the developers paid for the studies that we required. Now the residents want more studies on the aquifer and the noise, etc., who is paying? Bob Green asked if the Board could ask the developer to fund more studies. The consensus was that they had done everything that was asked, and we couldn’t require them to fund further studies. Brandon Boehmer said that he would research the cost of a relative sound study because of his tinnitus, even a two-decibel difference causes problems. He said he would investigate the financial aspect of both and if necessary, would pay for them himself. Rick Myers offered to contribute to the cost.

Peter Sorgi asked what the endgame to all of this was. If the Board doesn’t think that they have the qualifications to review this now, even with our engineer (Derek) advising us, how are we going to have the expertise to review twice or three times as many studies? At some point the SEQR declaration must be made and the Board has to rely on the experts that they hired. Derek Rule spoke up. He stated that this project has been going on since June of 2022, and RIC in July of 2022. In both instances, the Board elected to become the Lead Agency with MDA Engineering overseeing the applications. The studies have been provided by the developers and it has been five and six months respectively since the applications were made as required. Have any of the studies suggested by the residents been started? This process cannot be delayed forever. There are SEQR timeframes that the Town must abide by, or we are open to a lawsuit. We are already past those deadlines. Well past those. The developers have been kind enough to wait those out. If you are going to provide studies, it must be done expeditiously. Dave Foster wanted to know when they would get a copy of the binder to review the studies. Steve Cornwall said that they wouldn’t. They then wanted to know how they were supposed to know what studies to have conducted since they are not experts. Tom Reese said that they all have access to the Solar Law and the requirements are in there.

Benjamin Wisniewski asked for an Environmental Impact Study to be conducted. There was more discussion regarding the transmission lines on Felton Hill and whether they would be above ground or below ground because the substation was in one of their back yards. Derek let them know that there would be five poles and

transmission lines that would connect directly to the existing lines on the road. They wouldn't be going through the substation or onto another property. These are small scale projects that use existing transmission lines that are not at full capacity.

At this point, there is no declaration either way. If the Board is to issue a positive declaration, they must address what further studies they will require the developer to conduct. Bob Green says that he has asked for another study on the aquifer and where the runoff from the project goes. Does it go into the recharge area of the aquifer? He said that according to the Federal Safe Water Act of 1974, the aquifer cannot be disturbed. He wants the study redone in the spring when the water table is higher.

Peter Sorgi said that if the Board isn't qualified to review the current studies, how are they going to review more? If the experts that the Board hired (MDA Engineers) determine that more studies are necessary, the Board could change a negative declaration to a positive pending outcome of those new studies. This is expressly stated by the law. The Board's job once they decided to be lead agency (June) is to issue a negative or positive declaration. The Board has already passed their deadline for the SEQR process.

The result of the special meeting is that no negative declaration was issued for the Felton Hill SEQR. Joel Kurtzhals said that the Board couldn't issue anything further because Parts 2 and 3 of the SEQR were not prepared appropriately to target the areas that have a large environmental impact and why that is so. If we want to move in that direction, the engineer needs to rework Parts 2 and 3 of the SEQR documents. Derek said that he will rework the SEQR by the meeting on December 19<sup>th</sup>.

Resolution #54, "Resolution to Authorize the Purchase of a New Chevrolet 2500 Diesel with 9 Foot Commercial Plow with Wings" was read by the supervisor. Robert Shenk made a motion to approve the resolution. Bob Green seconded. Steve Cornwall, Bob Shenk, Bob Green, and Tom Reese were in favor; Frank Bork abstained. The resolution was accepted.

Tom Reese made a motion to adjourn the meeting and Bob Shenk seconded. All were in favor and the meeting ended at 6:57 pm.

Respectfully submitted,

Rebecca Grimmelt, Town Clerk