

Town of Northumberland  
Planning Board  
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**Planning Board Members Present:** Melanie Eggleston, Lisa Black, Brit Basinger, Chad Reinemann, Holly Rippon-Butler and Chair Susan Martindale

**Members Absent:** Jeff King, Mary Beth McGarrahan and Vice Chair James Heber

**Town Employees Present:** Dave Brennan, Town Counsel, Charles Baker, Town Engineer, Richard Colozza, Code Enforcement Officer and Tia Kilburn, Clerk

Chair Martindale opened the meeting and addressed all in attendance and asked them to stand and salute the flag at 7:00 pm.

Quorum established.

New Business, application # 0009-21, George Christian Jr., Lot Line Adjustment, the Clerk informed the Board Mr. Christian phoned and said he will be late.

Chair Martindale stated they will move on to Old Business, 1<sup>st</sup> application for Stephen Spencer, Application #0010-20, Major Subdivision Colebrook Road. Not present. Mr. Colozza explained Mr. Spencer phoned and said they will wait another month to allow Mr. Baker time to respond to their traffic study.

Next Item, At & T Centerline Communications, LLC, Application #: 0001-21, Cell Tower, Site Plan / Special Use Permit. Chair Martindale stated the notes on the file say the FAA response is needed for the height limit regarding a beacon light requirement and schedule a public hearing. Ms. Blask-Lewis said they had a public hearing at the Town Board, Mr. Brennan stated he looked at the code and it says there is a required 2<sup>nd</sup> public hearing, the Planning Board needs to conduct their own. Ms. Blask-Lewis asked if she uses the same mailing list, Mr. Brennan replied yes, the 1500' from the property. Chair Martindale stated there is a response from the County and they have approved the Town Boards adoption of the amendment to the Zoning District. Mr. Brennan explained this application was in front of this Board and this Board made a recommendation to the Town Board for the Telecommunications Special District, the Town Board did hold a public hearing, there was not comment, they were waiting for the response to come back from County Planning and they intend to adopt that zone change at their meeting in July, this Board also needs to submit it to County Planning and hold a public hearing, the remaining issue talked about at the last meeting was the height of the tower, originally they came in with 120', this Board asked them to look and see if that was a good height, they gave us the information at 120,140, 160 and 199' and also the view shed visibility at 120, 160 and 199', there is no FAA determination coming back if a light is required or not, because of the proximity to the airport above 120' you should consider it will need a light regardless of the height. The question is based on the information we have, what is the justified height, the code says 140' is the maximum height but the Planning Board can waive with good cause shown. The RF plots show there are incremental improvements in coverage as you go up to 199' and the visibility doesn't change. He stated the Verizon tower doesn't have good coverage and it doesn't allow for co-location under the existing antennas, it doesn't work for the height, that is driving the need for another tower. He stated the applicant is looking for a height to submit to the FAA and probably it will need a light on it no matter what height you pick. You will still need a tower south of this tower to cover Terrill Hills and the southern center part of the Town, there will still be a lack of coverage or coverage that needs to be improved by another facility and you are not going to change that regardless of how tall it goes here. He said this will still have to be referred to the County and schedule a public hearing, need to confirm the height so they can finalize their plans to move forward.

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Mr. Reinemann asked if regardless of height anything above 120' will need a light? Mr. Brennan replied they don't know that for sure but the Verizon tower did not need a light at 120', different information came back with a different height requiring a light, the airport is nearby, it is not in the flight path but you should expect the more you get above the trees you will need a light, there is no easy way to find that out without filing a full application with the FAA. Mr. Reinemann stated if a light is needed, he would like to go as high as they can. Ms. Black agreed. Mr. Brennan said at 200' and above it normally requires a light, so people keep it at 199' to avoid the light but with the airport it may require one. Discussion ensued on height of the tower. Mr. Brennan suggested between 150' and 199' was good. Ms. Eggleston asked if a study was done with the light visibility at night? Mr. Brennan said no, however, he understands at this height it is a white strobe during the day and a red beacon at night, usually every 5 seconds, a light in the sky is more noticeable but you know it will need a light to provide service. He added you could go 120' but then you won't be able to add a co-location carrier, Ms. Eggleston asked who are the other carriers, Mr. Brennan said AT & T, Verizon, T-Mobile and Dish Network is the 4<sup>th</sup> and At & T is saying they can't go under the Verizon at 120' because it is too low so you need to be higher than 120' or you will be driving at another Tower (3<sup>rd</sup>). Mr. Basinger asked how many carriers could they get on it at 199' or 200', you have them 10' apart so 3? Mr. Brennan said yes, at every 10' so they build the steel and footings so it will hold it, but the requirement will be it will be built to hold 2 additional carriers structurally. Vice Chair Martindale asked if there were a recommendation for the height.

Mr. Reinemann made a motion to recommend 199' - 200' for the height of the tower, he thinks the public will appreciate the service,

Ms. Black 2<sup>nd</sup> the motion,

Ms. Eggleston stated she was unsure, she is curious for the public hearing because it maybe non-visible but every time she drives up the Northway and sees the blinking light, she is glad she doesn't live there, so everybody that lives here will see the light, Chair Martindale said they are going to hold a public hearing and see at that time what the public says about the light. Ms. Eggleston stated she is not prepared to approve it, Chair Martindale said they are not approving the tower just the height to submit the paper work to the FAA and hold the public hearing. Ms. Eggleston agreed.

Mr. Basinger stated they have a motion; it was 2<sup>nd</sup> now they need a vote. Ms. Eggleston stated she only need clarification and now she is a yes, Vice Chair Martindale asked for the vote.

Motion offered, 2<sup>nd</sup> and all in attendance unanimously agreed to recommend a height of 199' for the tower.

Mr. Brennan stated they need a motion to schedule the public hearing and County referral.

Mr. Basinger made a motion to schedule a public hearing and direct the Clerk to submit to County Planning,

Ms. Black 2<sup>nd</sup> the motion,

All in attendance unanimously agreed.

Mr. Reinemann asked if for the public hearing they have all the visuals ready, Ms. Blask-Lewis said yes, they did have all the information for the Town Board public hearing and she will have it too. She stated no body appeared there and there were no comments. Mr. Colozza suggested Ms. Blask-Lewis check the mailing list for the certified notices, he stated he did not receive the notice from the Town Board public hearing and he is less than 1,000' from the cell tower now. Ms. Blask-Lewis said out of 80, 4 letters were returned. Mr. Brennan asked the Clerk who prepared the mailing list, the Clerk responded she did not do this list, she has the original list from Verizon's mailings and offered it to the Town Clerk and Deputy Clerk, Ms. Blask-Lewis stated they sent her the mailing list. Mr. Colozza stated he is within 1,000' of the Tower and he did not get a letter and he would have a couple

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neighbors that should also have gotten letters.

Chair Martindale asked if the first applicant on the agenda Mr. Christian was in attendance, Mr. Christian said yes. Application #: 0009-21, lot line adjustment. Mr. Christian explained if he steps of his walkway for the last 25 years he is on the neighbor's property, he has maintained the field for the last 25 years. Chair Martindale asked if he has the neighbor's approval for the adjustment, Mr. Christian replied yes and the previous 3 that lived there also let him maintain the field. The Board reviewed the map and Ms. Black stated he was only taking 25', Mr. Christian said they based that on a survey map he provided copies of. Mr. Reinemann asked if the frontage will meet the requirements for both lots, Mr. Christian replied yes, Chair Martindale checked the requirements and agreed and asked if there were any comments from the Board, none were noted. She then stated Mr. Christian is increasing his acreage and decreasing the neighbors however, they still meet the requirements, so they are not creating a substandard lot. Mr. Christian replied yes. Ms. Eggleston asked if they had the signed approval from the neighbor, Mr. Christian said yes, it is in the file and it is notarized. Mr. Christian asked if the Board would waive the subdivision requirements as allowed by the Ordinance, Chair Martindale asked if there were a motion to waive the subdivision requirements?

Mr. Basinger made a motion to waive the subdivision requirements and the public hearing,  
Mr. Reinemann 2<sup>nd</sup> the motion,  
All in attendance unanimously agreed.

Chair Martindale asked if there were a motion to accept and approve the lot line adjustment for Mr. Christian?

Ms. Black made a motion to accept and approve the lot line adjustment application, 0009-21 as submitted;  
Ms. Eggleston 2<sup>nd</sup> the motion,  
All in attendance unanimously agreed.

Chair Martindale asked if Mr. Spencer has arrived, he had not. She announced Application #0002-21, Angelo Rosse, site plan for a mining operation, she read the notes for the file, mining permit submitted to DEC, needs a public hearing and County review. Mr. Donald Zee introduced himself as Attorney for Mr. Rosse. Chair Martindale stated she missed the previous meeting however, she read the minutes and stated there was a discussion if this was permitted on the site according to the plat submitted when the subdivision was originally approved by the Board. Mr. Brennan stated that is where they left off and that is why Mr. Zee is here.

Mr. Zee said under the Town's 1977 Zoning Code section 21.3, amendment by Planning Board, that specific section the Planning Board had the authority to grant subdivision approval to create modifications or amendments to the Town Zoning Code. He assumes that at that time the Planning Board complied with the Town Zoning Code requirements and created an amendment to the Zoning Ordinance which restricted the use of lot 1 and at that time it was restricted to only uses that were permitted in the agricultural zone, mining was in the definitions and various other sections of the 1977 Zoning Code was not a permitted use in the agricultural zone district. That was in fact referenced on the approved subdivision map, since that time the Town of Northumberland has in fact adopted two updated Zoning Codes, one 1995 and the other 2006, he stated he wanted to point out Article 14, miscellaneous provisions, sub paragraph f, super session, in the 1995 Zoning Code it specifically says the Zoning Ordinance of the Town of Northumberland, Saratoga County, NY enacted by the Town in December 1977 together with all changes and amendments there to is hereby comprehensively revised and superseded by this ordinance. The modification to the Zoning Code that was adopted with the subdivision of Homestead phase I & II, by the creation of the limitation to the uses only permitted in 1977 were superseded by the adoption of the 1995 Code. In the Bulk

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Standards for the permitted uses in the 1995 Code under the ag district, mining is a use permitted subject to a special use permit. Having the notation of the subdivision map going back is now null and void because it was superseded by that Ordinance, he added he wanted to point out that in the existing Code of 2006, they have a supersession language as well in Article 16, Miscellaneous Provisions, the language is exactly the same, they do not reference the 1995 Code they specifically say 1977, so once again under the 2006 Zoning Code, under the uses permitted in the agricultural zone subject to a special use permit mining is permitted. As a result, based on the Town Board's determination in 1995 as well as 2006 the limitations placed by the Planning Board with the approval of the subdivision which included lot 1 which is subject to this application those limitations were superseded and eliminated by the Town Board itself. Mr. Zee stated this use is permitted subject to a special use permit in their opinion in the clear language of the Town Code. He asked if there were any questions from the Board. Ms. Eggleston asked if he had all that summarized in writing, the rational with the supersession? Mr. Zee stated it is in the Town Code, it is self-explanatory. Ms. Eggleston said she was wondering, Mr. Zee said he did not have the Code Book with him but he was reading verbatim what the Code says and it specifically says it supersedes everything. Mr. Zee stated for the public hearing he will have a document on the Board or something the Board desires saying it is in your own Zoning Book. Mr. Reinemann reiterated the request would be for this Planning Board to approve a special use permit. Mr. Zee agreed and stated it is subject to submission to County Planning and that is what they request the Board to do tonight, adopting a resolution and forwarding it to the County Planning Board for their recommendation and comment and also setting up a public hearing. Mr. Reinemann stated he is not a Lawyer and he doesn't have any legal feel for if the superseding also supersedes what is involved in that site plan or if it just supersedes the Zoning Code. Mr. Brennan interjected this is the first he is hearing this specific argument and he does not agree with Mr. Zee, that when the subdivision was approved in the 90's and there was a condition put on the maps that that lot was limited to certain uses, he believes the Planning Board exercised it's authority to amend the Zoning Law and then subsequent Zoning Laws then over wrote that. He stated it was a condition of approval that said you are limited to certain uses on that property, the predecessor of this Board imposed that condition and said upon application you can change that if in the 30 years there has been a change in conditions and he believes that it is within the Boards jurisdiction to revisit that if there is a case made for that and you will need a public hearing to understand that, but he does not believe that in 1990 the Planning Board exercised its ability to amend the Zoning Law to impose a condition that said you are limited to what you can do on that lot, that is still the case this Board can change it if they want to but he does not think a subsequent Zoning adoption changed the uses. He stated it is still not a permitted use it is a special use permit, so even if they did amend it, it is still not on the list. Mr. Brennan stated he can look into it with more detail if they are asking if it was written up in writing to the Board and he understands the argument. Mr. Zee interjected and said as a general rule of Law in NY State, the grant of Legislative authority, the ability of a Planning Board to create Zoning Ordinances is very unique, it is very limited in its use for the Town of Northumberland, he is not questioning whether the Planning Board took the necessary steps but, it says amendments by the Planning Board he stated he was talking about Section 21.3 of the 1977 Code and it says the Planning Board is empowered to make reasonable changes in this Ordinance, talking about the Zoning Law, simultaneous with the approval of the subdivision plot provided a public hearing is held within 35 days after the submission of such plot, he is not questioning if that was done, he did go over the minutes but there are some portions of the file missing going back, so within 35 days after submission of said plot and advertised at least 5 days prior to the date in a newspaper with general circulation in the Town. He read changes shall not create a greater average density or coverage of the land that is committed in the district wherein the plot lies, furthermore such changes shall safeguard the appropriate use of the adjoining land and protect the public welfare, upon approval of such plot filing with the Town Clerk such changes shall amend such parts of this Ordinance. Mr. Zee said he is assuming with the adoption of that subdivision that was part of the Ordinance and that is why he referenced the supersession clause. He stated what he believes Mr. Brennan is saying that was a condition of the approval but he believes a Planning Board cannot

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dictate to the Town Board going forward what uses in their determination should or should not be permitted in a district and by the adoption of the 1995 Code as well as the 2006 Code and they specifically had language in the Ordinances both the 2006 and the 1995 supersession specifically says it supersedes the 1977 Zoning Code as well as any amendments or changes. Mr. Bassinger said it doesn't supersede all the previous approvals and agreements. Mr. Zee said the Planning Board cannot in the future, its like you have a subdivision today and you say you can't put in there x, y and z, and then the Town Board comes back and says they are the Legislative Board and they are the ones that make the determination of that and they are going to permit it. He added, in a sense that would allow the Planning Board to over rule the Town Board, the Legislative Board of the Municipality and he doesn't think that was the intent. Chair Martindale stated she feels the amendments to the Zoning were in a point in time forward without looking back, Mr. Basinger agreed. Mr. Reinemann stated that is what they said only that Zoning has changed over time, he thinks it is within their right to look back and want to revisit it and potentially review this as a special use permit, that is what they should consider as a Board. Mr. Basinger agreed and said it is within their purview to grant a special use permit.

Mr. Brennan stated the hang-up is this was a conservation subdivision from the 90's, that on the face of the approved plan said that lot 1 in this phase is limited to uses as of right under the agricultural district under the 1977 Ordinance, mining is not listed at all so he is saying it is not allowed at all based upon the condition of the approval, the give and take of a conservation subdivision they were conserving this open space, the issue is the predecessors of this Board imposed that condition in 1990 or 91 and the applicants come in and say they want to do it, notwithstanding that language, his opinion is 30 years later this Board can revisit the issue and decide whether it is still necessary to have that condition. Mr. Brennan then said he is not closing the door on it he is saying he doesn't agree with Mr. Zee when he says the condition doesn't exist, the Board has an application before them and Mr. Rosse has been before the Board for a while and at some point, the Board has to move forward.

Mr. Zee stated he can give an example of why he believes his interpretation is correct, he does respect Mr. Brennan's opinion, he continued for example in 1977 cell towers were not in the Zoning Code, if in another section of the Town someone said you are only allowed to put in uses that were permitted in 1977 and now the Town changed the law and cell towers are allowed, the argument that he potentially hears is in 1977 cell towers were not a permitted use even though now it has been superseded and the new use of cell towers is around, can't happen. If you look at the 1977 Zoning Code, mining was not a permitted use in any of the districts. Mr. Basinger asked if they want to move forward not only would they have to get a mining permit but they also need a special use permit. Mr. Zee agreed, Mr. Basinger stated they do not currently have a mining permit in place, Mr. Zee said they have the application, Mr. Brennan explained that the mining permit is issued through DEC, and there are different levels and the special use permit is issued by this Board. Mr. Rosse interjected it is though State jurisdiction and it is exempt. Mr. Reinemann asked what the definition of mining is in the 2006 Code? Mr. Zee read the definition of Mining #90, page 11, *The mining of sand, gravel, clay, topsoil, muck, stone, minerals or other natural material deposits for commercial use and/or sale, including the construction, alteration or maintenance of mine roads, mine tailings, piles or pumps and mine drainage. This definition shall be interpreted to exclude mining on-site for agricultural purposes.*

Chair Martindale stated because this was a conservation subdivision this changes the whole approval of the subdivision. Mr. Basinger and Mr. Reinemann agreed. Mr. Basinger stated it would be different for him if they were not able to farm it but they are able to farm it with minor modifications of the site, Chair Martindale reiterated it is being hayed now, Mr. Basinger said the reason it is not able to be farmed in certain areas is because of the previous extractions. Mr. Zee stated if there is a conflict in the uses or interpretation of the uses State Law has upheld that you must interpret it in the most favorable for the property owner, if you are saying because of the

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conservation subdivision question is raised the 1995 and 2006 Zoning Codes could be clearer and he respectfully submits that it supersedes. Mr. Basinger said he gets the sense from the Board that it would not be in the spirit of the intent of the original subdivision approval to move forward with a commercial mining operation, he asked the Board if they agreed. Mr. Reinemann agreed and added the conservation subdivision was created to maintain the farming and open land. Chair Martindale added it was done in good faith, the applicant came to the Board and wanted the conservation subdivision to keep that land protected and she thinks mining is not protecting the open space concept they had when they approved the subdivision. Ms. Black stated it seems to be counter intuitive to conservation to go ahead and mine the land it goes against the spirit. Chair Martindale asked Ms. Eggleston for her thoughts, Ms. Eggleston said she felt they needed to look more into it, wasn't there something in the original agreement that after 20 years it could be mined? Mr. Brennan explained that was a different thing, that was deed restrictions between the developer and the homeowners, that was separate from the subdivision approval. Mr. Basinger said the dilemma is that it is a commercial operation and it was preserved for open space, but if this were on a different lot would they think differently about it? Ms. Rippon-Butler said yes, that would be a different situation but what they are dealing with here is there was a tradeoff, there was value exchanged for the value of something else, the intention of the tradeoff was to keep it viable for farming, she agrees they should consider a special use permit. Mr. Zee asked where in the subdivision Legislation or Planning Board minutes that specifically says anything beyond the notation on the map, Mr. Brennan stated he doesn't believe there was Legislation, Mr. Zee asked if there was an agreement, he has worked on open space with homeowner associations, there you put the restrictions on the piece of property and there is a time period or sometimes forever and the only restrictions we heard of have expired and that was between the property owners and neighbors. Mr. Basinger stated another argument they heard was the mining operation was to improve the agricultural uses and the extent of the mining operation exceeds what is required for agricultural purposes. Ms. Rippon-Butler asked where they found the information, if it was in the deeds? Mr. Brennan stated it is on the approved plan. Mr. Zee said it says the uses in the 1977 Code is what is permitted only, but it has been superseded by the Law 1995 and 2006 the Town Board and/or public and Planning Board members, because the Planning Board gets to make recommendations for any modifications to the Code, and the Planning Board did not say wait there is a restriction on this lot because there is an agreement. Ms. Rippon-Butler said they should be considering mining as a special use permit however; she doesn't believe it is in the spirit of the tradeoff that happened for the conservation subdivision. Mr. Zee stated his client was not involved in that tradeoff if it even existed. Ms. Rippon-Butler said but he bought it. Mr. Zee said there is no proof of the tradeoff and he believes the Legislative Board, the Town Board made that determination. He added it isn't just the Planning Board that makes recommendations the residents have opportunity to make a comment and in fact they could have filed a petition with the Town Board in regards to the Zoning or uses that are permitted under the Zoning Code. Mr. Brennan stated he disagrees with this line of arguments, but even if you agree that the subsequent Codes supersede it the Town Board did not allow mining as a permitted use, it is not like in the ag district mining is a permitted use. Mr. Brennan said even if you switch the 1977 Code for either the 1995 or 2006, neither one of those allow mining as a permitted use. Mr. Zee said that is why they are here for a special use permit. Mr. Brennan stated the original approval limited the uses to those uses as of right, not by special permit.

Mr. Basinger said they are not arguing that it is beyond the Planning Board's purview to consider a special use permit for mining, he feels they are arguing if the use is in spirit with the conservation subdivision and the extent to which you want to mine on this property. Mr. Zee stated that is subject to the public hearing and reviewed by the Town Engineer. Mr. Basinger stated there may be degrees to where mining might be permitted as long as it doesn't leave a big hole in the ground, that is in excess of what is required for farming. He added part of him says to fix the problem that Mr. Rosse created so all the property could be used for agricultural purposes. Mr. Zee said when he read the definition of mining there is an exclusion of the agricultural exemption. Mr. Basinger asked what

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the Board thought of a much less invasive mining operation to convert the non-agricultural part of the site. Ms. Rippon-Butler reiterated what Mr. Basinger was saying is to fix the uneven land caused by the mining that was happening without a special use permit to make that better for agricultural pursuits and not further issue a mining permit for the rest. Mr. Basinger agreed. Chair Martindale asked what would it take to fix it? Mr. Basinger said they would need to smooth some areas out, level. Chair Martindale asked how much were they planning on taking out, Mr. Basinger said generally speaking they wanted to make a big dish out of the. Chair Martindale said she went by it looked pretty level, Mr. Basinger stated it is the back corners that are high and steep. Discussion ensued on leveling the parcel and leaving it for agricultural with no extraction of the soil. Mr. Zee said he is requesting the Board set up a public hearing because he is assuming this Board will want to hear public comments on this and get the recommendation of County Planning and move forward, he added the Board could be enlighten by what the public says because looking at the special use permits besides mining as well as permitted uses on this property. Chair Martindale asked if the special use permit application for mining is a different procedure than the site plan application they have before the Board now. Mr. Brennan replied they are the same thing. Chair Martindale said the next thing to do would be to schedule a public hearing and hear from the public, Mr. Basinger said there is one more option, he continues to operate under the mining operation under the ½ acre with less disturbance. Mr. Brennan asked what he meant by ½ acre, Mr. Basinger explained in the Code there is a soil disturbance law and if you don't disturb more than ½ acre you can continue to extract, he asked if he was understanding that. Mr. Colozza said that is mostly for stormwater with the disturbance under the stormwater management. Mr. Basinger asked if there were any scenario where the landowner can continue in a very small manner? Mr. Colozza said in the current Zoning there is a window of 200 yards. Discussion ensued on the level for the DEC permit. Ms. Rippon-Butler said the mining that has been happening has been without the special use permit it should have had. Mr. Brennan said there is history to that, other than it has been happening without the special use permit and he said he would not focus on that as an issue. Mr. Basinger asked Mr. Brennan what the options are for moving forward.

Mr. Brennan explained they can say the restriction is in place and will not allow the application to go forward and you are not going to deviate from that, or you can say you will consider deviating from it, hold a public hearing and get input whether after 30 years conditions have changed to make it appropriate that is what Mr. Zee is suggesting to hold the public hearing to see what the community thinks of this use. Mr. Zee stated it is not his position that it is a deviation, but the Town Zoning Code permits mining subject to a special use permit, it has nothing to do with what transpired with the subdivision in 1977 because that was superseded. Mr. Reinemann said what he heard was this parcel is not able to be farmed, Mr. Basinger replied part of it, Mr. Brennan agreed and said a small area of it, then there is a wet area. Discussion ensued on how to improve the site.

Mr. Reinemann stated what he is concerned about is this is a conservation subdivision and he would not want a mining operation that has no time table. Mr. Brennan said there has been different information provided on the life of the mine, not the extent of the perimeter but the length of the mining, 5 years is the current time limit to take the soils off. He then said it is his opinion that it is not necessary to remove the soils to make that parcel able to be farmed. Mr. Reinemann stated he wanted to make sure that are not missing a chance to improve the site, if they allow the owner to remove soils, improve the site and make money off the operation it is a win-win in his opinion. Mr. Brennan said he would caution that the DEC regulates mining, the perimeters of mining will not be very developed in case law, the Town can regulate some things, this Board has to be careful and not say something that is not enforceable. Ms. Rippon-Butler stated her position was to hold a public hearing for the special use permit for mining, and see what people have to say however, she feels that is going against the conservation subdivision. Mr. Brennan said in his experience they will not have people coming in and saying mining is a great thing next to them. He then encouraged the Board to move forward with this application.

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Mr. Basinger made a motion to schedule a public hearing and instruct the Clerk to send the application to Saratoga County Planning for review.

Ms. Eggleston 2<sup>nd</sup> the motion,  
All in attendance unanimously agreed.

Chair Martindale announced the next item on the agenda, Application #0003-20, Proposed Solar Farm, Kim Renz Family Irrevocable Trust. Mr. Basinger recused himself. Chair Martindale stated they received a response from the County; No Significant County Wide or Intercommunity Impact and it will need a County DPW driveway permit is required for 2 curb cuts.

Mr. Peter Mcauliffe introduced himself and stated he represents Omni Navitas and is replacing Dan Csaplar. Chair Martindale reiterated there have been no changes, Mr. Mcauliffe displayed a full-size copy of the plan and stated it was the same as previously submitted and sent to the County. Ms. Trigg, Attorney for the applicant, stated they have been before the Board for a while and the Board has acknowledged that the County responded with no significant County wide or intercommunity impact, they have heard comments from the Board and the public and they believe they have addressed all the comments and concerns. In response to them the applicant has adjusted the project and downsized it to maximize residential buffers and vegetative screening to reduce visual impacts to the neighbors, she stated they understand some members of the public and some members of this Board prefer they be invisible. She stated as a Board they have to rely on their Zoning Code and the restraints in it and site this facility where it is permitted by district and area where it will have the least environmental impact, the Code allows this use, and further for the record there are no significant environmental impacts from this project. All involved agencies have been engaged; all have said there will be no environmental impacts to the land. She added there will be minor aesthetic impacts however, as demonstrated by the environmental assessment, the landscaping buffer and the lack of anything historic, scenic byways or national heritage sites the impacts would be mitigated and are minor. Due to the fact the land owner is willing to lease the land for the project, the Codes allows it and the proximity to the infrastructure this location is the appropriate location for the project. They are respectfully asking the Board to complete part II of the EAF tonight and make a determination of no significant adverse environmental impact and approve this clean renewable energy resource in accordance with the States goals to achieve 70% of renewable energy by the year 2030.

Mr. Reinemann said the County asked if the Town of Northumberland would request additional buffer for the existing residential uses surrounding the site, he asked if the applicant had a response to that comment? Mr. Mcauliffe stated they have tried to mitigate that for the surrounding houses, in a perfect world it would be invisible. If the Board feels additional screening is needed but they feel the screening they have does mitigate it to an extent, but they are open to address that. Ms. Trigg asked the Clerk if all the visuals were submitted to the County, the Clerk replied yes. Discussion ensued on the visual impact to surrounding landowners.

Chair Martindale asked each Board member if they had any comments at this point. Ms. Black asked if the homes on Beaver St up on the hill would be overlooking the panels, Ms. Trigg said she did not have the visuals in front of her, Ms. Black said for instance Mr. Countermine sitting out on his deck is that what he will be looking at now? Ms. Trigg said potentially but she would have to look at the visuals. Mr. Mcauliffe stated they have tried to mitigate it they cannot make it invisible but they have tried to mitigate it and they did shrink it and move it so they are hoping that will help it even more. Ms. Black stated that is her biggest concern because it devalues their property, nobody will want to buy it and look at it. Ms. Trigg said that was not true it is a subjective analysis, not all people think solar panels are ugly and there are additional mitigations that the landowner can take, she stated she lives across the street from a neighbor with 20' shrubs and they can't see the farm behind them, if that is



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something the landowner is concerned about they can also take the initiative and install additional native plants. Ms. Eggleston asked for a refresher on one of the benefits of the reduction in cost for electricity who does that go to, Mr. Mcauliffe stated basically anybody who is serviced by National Grid, they do like to start in the municipality where the project is proposed they do need a certain number of subscribers because all the credits annually have to be allocated so it could be just the residents within Northumberland or it could be outside the municipality. Ms. Eggleston asked if the people have to sign up for something, Mr. Mcauliffe said yes they do a certain amount of outreach, they have a branch of their company that deals with that. Ms. Eggleston asked if there were a cost to sign up, Mr. Mcauliffe said no, and it does lower the electricity bill. Ms. Eggleston asked if that is through National Grid, Mr. Mcauliffe replied it is through National Grid now, in the corner of the bill you will see 235 Wall St Solar and the discount you receive.

Mr. Brennan asked how many mega watts it was, Mr. Mcauliffe said they were able to keep it at 5 and they were able to bump up the efficiency of the panels. Mr. Brennan asked how many residences would 5 MW cover, even though they don't have to only offer to residential, Mr. Mcauliffe replied for a 5 MW with fixed tilt it would be about 400 to 500. Mr. Mcauliffe stated there are other benefits, there is a PILOT agreement that covers three jurisdictions and usually they go through the IDA so tax revenue will be generated by the project that is usually on a megawatt and is paid on a yearly basis to the 3 jurisdictions, the school, municipality and county. There is also construction jobs, some parttime maintenance. He added that they would not have pursued the project from the beginning if the landowner hadn't believed this is the best use for the property, it is being hayed right now but it is not prime farm land. He stated he would hate for see a property owner who has owned it for decades have to start selling off lots and not keep it within his family for future generations, he has expressed he has interested to sublet this for a sheep farm. Mr. Brennan asked what was the number per megawatt for the PILOT, Mr. Mcauliffe said \$5,000 per megawatt, Mr. Brennan said so when you are talking about property taxes the County Board of Supervisors set a \$5,000 per megawatt PILOT number, each County is different. He explained this is looking at \$25,000 in taxes spread among the County, Town and School District, it is not necessarily the same split you see on your tax bill. Mr. Brennan said that should give you a sense of what you would get as compared to if there were 3 or 4 houses there. Ms. Trigg interjected that is better than what it is currently because there is an ag exemption. Mr. Brennan stated that was his next point and he discussed a recent article in the paper that discussed local ag land for ag and what the property owner is getting when converted to solar.

Ms. Eggleston asked if the grass grows under the panels? Mr. Mcauliffe stated they usually will plant some kind of pollinator mix, it will be mowed and maintained so once the project is decommissioned, they can restore it to its current condition. Ms. Eggleston asked where would the panels be disposed of? Mr. Mcauliffe said he was not sure of the physical disposal location but the decommissioning plan and bond will take care of the physical removal of the panels from the property so the landowner or the Town is not left with that. Mr. Brennan stated he heard somewhere that there is a market for the panels as the efficiency of them decline and they are replaced, there is a secondary market for them. They can resell them. Ms. Eggleston asked where the panels were made, Ms. Trigg responded China, there is a company in the US but they are not as efficient.

Mr. Reinemann stated his comment goes back to the County's comment on screening. He does feel they can look at screening the houses in the front, Mr. Mcauliffe said they can take a look. Ms. Trigg stated they did provide a landscaping plan so they would like the Board to move forward tonight and that could be a condition of an approval.

Chair Martindale asked Ms. Rippon-Butler if she had any comments, Ms. Rippon-Butler said her comments center around the Town's solar law and she feels their determination should consider if it has a significant adverse impact

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on agricultural. She stated Ag and Markets has given the green light but they don't live in this Town, she feels they should take a better look at the impact on farming here. A couple things are happening, it is on the flattest part of the land so it is the most productive and also by approving this it is setting a precedence to how the Solar Law will be interpreted in the future. Farm land is going away in massive acreage numbers every year in the State and Counties, she expressed we cannot afford to lose anymore. She stated she supports solar however, if they allow the Law to be interpreted that way, they are going to see solar on more ag parcels, if they push back on it maybe there would be more incentive to see them over parking lots or someplace other than farmland. She stated if the landowner has to sell because this is not an option for them then maybe another farmer will buy it. She discussed farms becoming less viable because of solar. Mr. McAuliffe responded that this lot is not viable farmland and he asked what would be the reasoning for an adverse impact to ag, Ms. Rippon-Butler stated it is currently being farmed, it is currently providing feed for cattle. She stated she has friends that run an entire farm on 20 acres of extremely not farmland and that supports 2 families, so she thinks the "prime" thing is important in some cases but it doesn't tell them if a farmer can make money and there is significantly decreasing land available for prime farmland. Ms. Trigg stated she did not believe there is a shortage of ag land, this landowner is not making a sustainable income from it so he has chosen to lease his land for this use and under the Code this use is permitted. She added that Ms. Rippon-Butler says it is interpreted in a certain way, she feels it is pretty clear and the Town is about to pass a moratorium so you can further evaluate it but you have to proceed with the way the Code is written with this project, she encourages the Board to keep that in mind. Discussion on the loss of agricultural land ensued. Mr. Brennan explained for clarification that the Town Board held a public hearing regarding the moratorium on the Solar to revisit the Code, they are waiting for the County to respond and his expectation it will be adopted at the July Town Board meeting., he added the moratorium excludes this project.

Mr. Countermine stated the lease for this project is \$1,500.00 per acres and he asked how many acres this project is consuming? Mr. McAuliffe stated total footprint including everything is 16.64 acres, Mr. Countermine reiterated 16 acres, 16 x \$1,500.00 is what the owner is selling out for and the surrounding residences have to put up with this project. Mr. McAuliffe stated the lease rate doesn't have anything to do with the special use permit, Mr. Countermine stated he was just a concerned citizen. Mr. McAuliffe said as far as setting precedence there is a moratorium going into place and he understands there was another solar project that has been cancelled and he asked if there were any other solar projects coming into the Town. Chair Martindale replied yes. Mr. McAuliffe said he understands concerned citizens and he wants to understand where the statement of precedence is coming from, he said he did not think there is going to be a flooding of solar projects coming in due to the limited capacity on the National Grid lines, he added they have used up the capacity. He added there are projects in the Town of Wilton that are hooking up to the same lines he said he does think it is a good idea to beef up the Solar Law and the concern about precedence, however, he feels there will not be a flooding of projects and he would hate to see a better piece of land than this one that meets the requirements of the new solar law be used for a solar project. This parcel may produce hay but it is not prime farmland and it is not being used productively and there are benefits that will offset the loss he added he thinks it is a net gain.

Chair Martindale stated she had a comment, looking at the proposed 10% she would save on her power bill and she knows it is not on the delivery services, take a look at your power bill, at least ½ is the delivery fee so in the last 3 months she would have saved \$23 at the most. She asked is \$23 worth not supporting the farmers, her neighbors in the Town of Northumberland? She stated she takes appreciates what those farmers provide and she would say that is worth a lot more than a discount on her power bill. She stated she is an unusual power consumer, but she still does not believe it would be worth it and she would rather support the people and farmers that could use the land in a better manner.

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Mr. Brennan explained procedurally this has been before the Board for a long time and you get to a point where there has to be a decision. For everyone's benefit there are 5 people (members) out of 7 presents, he has heard 2 people say no and what he would normally do is put together the provisions of what you are looking at in making a determination and the Board can walk through that with him and come up with a conclusion, have an affirmative vote, 4 out of 7 tonight and he is not sure if they will have 4 votes one way or the other to make a decision tonight. He explained he would get a feel of what the Board wanted, asked the Board for a straw vote and then direct him to write a decision with what the majority of the Board wants done. He stated he does not like to just vote, projects of this scale need a written decision including the criteria and the Board's reasoning for either denying or approving the application because in one Town they had a denial and they have an article 78 they are defending, so typically you have a written decision to start defending. Maybe the neighbors will want to sue, he stated he did not know, he explained in this case tonight 4 or more members tell him to write either a denial or an approval, he will and get it to the Board a week before the next meeting, the Board can then review it and edit it or accept it and then at the meeting they formally adopt that decision, the Chair signs it, it gets filed with the Town Clerk and 30 days starts the clock if someone wants to sue. He stated his concern is with only 5 people sitting on the Board if 4 are going to tell him one way or the other to do something. In fairness it is up to the applicant as well because there have been other Towns that will say because we don't have a full compliment of the Board (full Board) tonight they will table it. Tonight, there are 2 Board members that have expressed they don't like it, so it could be 2 against 3 and you need 4 to agree. Chair Martindale asked if the Board was ready to vote tonight, Ms. Black asked if they wanted to wait for Ms. McGarrahan and Vice Chair Heber to be present, Chair Martindale stated if they have 4 no's they do not have to wait, she asked if that was fair. Mr. Reinemann stated maybe ask the applicant. Mr. Brennan asked Ms. Trigg her thoughts, Ms. Trigg asked if she could step out with her client to discuss. The applicant and Counsel left the room for a discussion.

Chair Martindale asked if the Board was ready to go through the criteria Mr. Brennan had for them, Ms. Rippon-Butler stated she did not want to go through it tonight and then have to go back through it all in a month. Ms. Black asked if they could sue. Mr. Brennan explained normally they would go into executive session to discuss attorney client privilege but he is not saying anything extreme here so, yes they can sue, the applicant or the neighbors can sue, you never know the economics, you don't know who is the millionaire next door he said if we get sued because you approved it and then we loose that law suit the decision is annulled / overturned and remained back to this Board because usually that is a procedural misstep, if you deny it and they sue, kind of the same thing happens, it is rare at this level for a judge to say no you made the wrong decision and says issued the permit, it will be remained back and say you did not have enough to support your decision so the judge will say you have to reconsider it and give more. In these cases, they are not suing you for money, they are suing you saying you made the wrong decision.

Ms. Trigg and Mr. Mcauliffe returned to the room and stated they would like to return to the discussion and understand where the Board is, she said they would like to get through part II. Mr. Brennan explained she is asking the Board to complete part II of the SEQRA, State Environmental Quality Review Form determining whether there is going to be a significant affect on the environment, he then stated his position is they can talk about it but you don't have to make a SEQRA determination if they are going to deny a project. There are 2 things he doesn't like to do, he doesn't like to issue a positive declaration and ask the applicant to do an impact statement, spend a year and money just to deny it, he stated he felt it was abusive. He said he also does not want to issue a negative declaration and say there is no negative affect on the environment and then they say now you have to approve it because you said there was no negative affect. He said they can talk about it, Mr. Baker the Town Engineer is here and he can tell you what he thinks the technical answers are but you will probably see a lot of the answers will be

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there is no significant impact. Ms. Eggleston asked if they were going to do that tonight? Mr. Brennan stated he can read the questions and discuss it, they are not going to vote on it tonight, but if you are going to approve it you will issue a negative declaration with no adverse impact. If the Board is going to deny it, you don't have to issue it and the Board can say it doesn't meet the criteria for the special permit. Chair Martindale stated it was her opinion that they not do the SEQRA at this time until it is determined the application will be approved. Mr. Brennan said the criteria for the SEQRA are the same as for the special use permit, so you can talk about it and if at the end of the night you have enough votes one way or the other you can direct him to write a decision consistent with the discussion. Mr. Reinemann asked if it was the Counsel's recommendation, they do a straw poll to see what they have for votes, Mr. Brennan replied you could if you want to or you could just talk through some things, then he said you can do that because if the straw vote is 3 to 2 you could end the discussion because if you don't have the votes, you may as well not go through it tonight. Mr. Brennan stated the Board knows what the issues are it has been under review for over a year and you know what the standards are, you know what the neighbors' concerns are and what the applicant has proposed, you can do a straw vote to see if you have enough to direct him to write the approval or denial and if it is neither he prefers they wait for 7 people and have the discussion.

Mr. Mcauliffe asked if this didn't go through and was sliced into 5 or 6 lots for single family homes would those be approved would that fall under the Code? Mr. Reinemann stated they would have to be 5-acre minimum lots in the ag district. Mr. Colozza interjected in the APD district they can also do somewhat of a cluster where they could develop a few homes along the road and preserve the rest for agricultural forever. He said you cannot compare a 25-year life, he stated he has not heard any explanation of the impact of removing ag land from the Town for 25 years, that is the Town's major industry. Ms. Trigg said the point they are trying to make is if they slice the lots off one at a time each are minor subdivisions and they build one home at a time that would have a bigger impact than this 25-year lease. Mr. Colozza stated the single-family residences would give more income to the school district, the Town and the County because they are private individuals, he added this project does nothing for the Town of Northumberland he said they think they will get 500 from the Town to sign up for the reduction and he felt that would be slim. Mr. Mcauliffe stated there are benefits and from that argument they just eliminated the impact to ag because it sounds like that would remove ag but the Town would consider it because of the income it will bring in. Mr. Colozza stated with the APD district they would not be building on prime farmland that would be preserved, they would be able to build a house but they cannot build on the prime farmland, he added they are not doing that, they are building on the prime farmland. Mr. Mcauliffe stated it is all designated not prime farmland, Mr. Colozza disagreed and said by his definition, not by the Town's definition, he said go look at all the Comprehensive Plans the Town has done that is considered prime farmland to the Town's farms, almost 80% of Town is being farmed with the same soils. Mr. Colozza reiterated the State and the Applicant say it is not prime farmland for the Town it is. Mr. Mcauliffe said he was not debating opinions, but if the Town is going to write a new Solar Law that prohibits it on prime farmland are you going to classify that as people's opinion or are you going to look at State maps because looking at the maps this is not prime farmland. Discussion ensued on determination of prime farmland.

Chair Martindale interjected they are not moving forward, she understands the applicant does have the right to defend their opinion, this is a farming community and she hopes this Board does support the farmer how it goes she is unsure so if the Board wants to vote by paper yes or no, the Clerk can look at them and say there are 4 votes yes or no, she asked Mr. Brennan if that was acceptable. Mr. Brennan said it did not have to be secret, but if they want. Chair Martindale agreed and said she wanted to vote, Ms. Trigg asked if they could express the reason, they are voting the way they will. Mr. Brennan said they will go back through and state the reasons if there are 4 votes one way or the other, the Board will tell him why and then we will come back at a subsequent meeting and formally adopt the resolution.

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Chair Martindale stated her vote is a no, Ms. Black, Ms. Rippon-Butler and Ms. Eggleston all stated no, Mr. Reinemann stated he was a yes pending improvements on the screening. Mr. Brennan said there would be 4 no's in a month too, Mr. Brennan stated he is looking at Article VI, Agricultural Protection District has findings and purpose of what the district is about, numbers 1-7, there are special permit use standards he stated he will go through them and then the Board can discuss it. Under the APD district and he read the following from the Zoning Ordinance;

The purposes of the Agricultural Protection District (hereafter referred to as the APD), among others, are as follows:

1. To protect and maintain the Town's farmland for present and future agricultural use within the Town's Agricultural District as established under Article 25AA of New York State Agricultural and Markets Law;
2. To implement the Town of Northumberland Comprehensive Land Use Plan, which contains the goals of protecting rural and agricultural lands, discouraging nearby incompatible land uses, and promoting agriculture as an important and integral component of the local economy;
3. To support and protect farming by stabilizing the agricultural land base;
4. To maintain a viable agricultural base which will support agricultural processing and service industries;
5. To separate agricultural land uses and activities from incompatible residential, commercial, industrial development, and public facilities;
6. To prevent the fragmentation of the Town's existing farming community by non-farm development; and
7. To reserve the Town's most productive soils for agriculture.

He said based upon what he is hearing is some of the Board members do not think this project on this parcel in the APD district satisfy those criteria. He then read;

In granting a special use permit for a farm related use or other special permit uses allowed in the APD, the Planning Board shall consider the following relevant factors, in addition to the standards set forth in other sections of this zoning ordinance and the APD regulations:

- a. The potential for conflict with agricultural uses;
- b. The need of the proposed use for a location in agricultural area;
- c. The availability of alternative locations;
- d. Compatibility with existing or permitted uses on adjacent lands;
- e. The agricultural productivity of the lands or soils involved;
- f. The need to minimize the amount of agricultural soils converted to non agricultural use;
- g. The need for public services created by the proposed use;
- h. The availability of adequate soils for subsurface sewage disposal; and
- i. The effect of the proposed use on the Town's natural resources.

He stated in reading that what he is understanding is Ms. Rippon-Butler and some members think the project on a parcel in the Ag District is not satisfying most of those criteria, some are not applicable.

Ms. Trigg asked if in the Resolution he will list which ones? Mr. Brennan said yes, and he has heard Ms. Rippon-

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Butler and some others state other reasons, so they can restate what those concerns are.

Mr. Brennan then read from Article IX, section G. General Special Permit Use Standards, subsection 1;

Adjacent land uses: The Planning Board shall not approve the special permit use unless, in its determination, the proposed use will not have a negative effect on existing adjacent land uses.

He stated this is where he understands 4 of the members are saying they are concerned with the impacts both East and West properties, Wall St and Beaver St will be adversely impacted by way of the view shed. The members agreed. He said #2 under that Article goes into the location and size of the use, which goes into the concern. He stated most of the remaining listed in the Ordinance would not be applicable. He then said Article X, Section E., subsections 1 & 2 as follows, are the ones it appears the Board is concerned with and the remaining subsections of the Article do not seem to be applicable as concerns;

1. Aesthetics:

- a. Site development shall be planned so that it harmonizes with the existing landscape character and blends into the landscape by using existing landforms and vegetation.
- b. Where new construction or substantial rehabilitation is concerned, the needs of the site for plantings, paving, screening and other landscaping amenities shall be considered.

2. Off-Site Impacts:

- a. Development shall be planned and undertaken so as to minimize impacts upon adjoining and nearby land uses.
- b. Any noise, odor, vibration, dust, gas or emission of any type that is likely to result from the nature of the operation shall not be hazardous or create a nuisance.

Mr. Brennan then stated he would not read the entire SEQRA, State Environmental Quality Review Form, however, he stated he will discuss the 18 areas of part 2 where there is questions about whether there is a significant impact, no or minor upon the environment, basically he read the titles to each section and the general overview of each. He stated in the interest of moving along those were the criteria he thinks the Board is concerned with, he will write up a decision with the criteria of concern and listing what people have said over the last couple months he will then email it to the Board members then when the Board reconvenes it can be discussed, edited and as long as 4 members are satisfied it covers the reasoning it can be adopted and filed with the Town Clerk.

Chair Martindale introduced Application # 0007-21, Richard O'Brien / Athena Saratoga, LLC, Phase II Saratoga RV Park Expansion.

Mr. Hutchins explained he understood Mr. Baker needed time to review and comment, he was in attendance tonight to touch base and possibly request the application go to Saratoga County for review and schedule the Public Hearing. He did say he discussed the proposed camp store with the owner and they decided it would not be opened to the general public.

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Mr. Reinemann made a motion to send the application to Saratoga County for Review and Comment and to schedule a public hearing for the next meeting,  
Ms. Eggleston 2<sup>nd</sup> the motion,  
All in attendance unanimously agreed.

Discussion ensued on moving monthly meetings to the 4<sup>th</sup> Monday of the month to try and be more efficient with applications needing to go to Saratoga County for review. Meetings will be held the 4<sup>th</sup> Monday of the month at 7 pm, the first being July 26<sup>th</sup>.

Ms. Rippon-Butler made a motion to adjourn the meeting at 10:00 pm  
Ms. Eggleston 2<sup>nd</sup> the motion,  
All in attendance unanimously agreed.

Respectfully Submitted,  
Tia Kilburn, Planning Board Clerk