

# Town of Clifton Park

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## PLANNING BOARD

ROCCO FERRARO  
Chairman

PAUL PELAGALLI  
Attorney

JANIS DEAN  
Secretary



## MEMBERS

Emad Andarawis  
Michael Hale  
Joel Koval  
Eric Ophardt  
Kim Paulsen  
Tom Werner

## Planning Board Meeting May 8, 2012

Those present at the May 8, 2012 Planning Board meeting were:

Planning Board: R. Ferraro, Chairman, M. Hale, J. Koval, E. Ophardt, K. Paulsen,  
T. Werner

Those absent were: E. Andarawis

Those also present were: J. Scavo, Director of Planning  
R. Milano, M J Engineering  
M. Montague, Environmental Specialist  
P. Pelagalli, Counsel  
J. Dean, Secretary

Mr. Ferraro, Chairman, called the meeting to order at 7:05p.m. All in attendance stood for recitation of the Pledge of Allegiance.

Mr. Ferraro announced that at its May 7, 2012 meeting, the Town Board appointed Mr. Andarawis as a full voting member of the Board. He will replace Ms. Pace who recently resigned as Planning Board member and liaison to the town's Historic Preservation Commission. Mr. Ferraro congratulated Mr. Andarawis and reported that in appointing Mr. Andarawis, Supervisor Barrett noted that, as an alternate member of the Planning Board for several years, Mr. Andarawis had provided a positive presence and had a "stellar attendance record". Mr. Ferraro announced that the Town Board will honor Ms. Pace for her ten years of dedicated service on both the Planning Board and Zoning Board of Appeals at the June 4, 2012 Town Board meeting. Planning Board members were encouraged to attend.

Mr. Ferraro announced that The Capital District Regional Planning Commission in conjunction with other regional planning agencies will present a Local Government Planning and Zoning Workshop on June 20, 2012 at Hudson Valley Community College. The focus of the workshop will be on stormwater management and mitigation as well as Green Infrastructure requirements. The plenary session will include a presentation by the Stormwater Coalition of Albany County whose members will role-play a Planning Board review of a typical proposed subdivision. Mr. Ferraro explained that attendance at the meeting will meet the state requirements for continuing education for Planning and Zoning Board members.

### **Public Hearings:**

[2012-016] **Bowman Orchards** – Proposed installation of a 48.96 KW ground-mounted solar electric system, 141 Sugar Hill Road – Preliminary public hearing for Special Use Permit No. 80868 to permit pursuant to Section 208-79E(3) to allow construction of a solar array in a CR zone and preliminary site plan review and possible determination. SBL: 282.-2-27.11

Mr. Ferraro, Chairman, called the public hearing to order at 7:06p.m. The Secretary read the public hearing notice as published in the Daily Gazette on May 2, 2012.

Mr. Carlos Newcomb, consultant for the applicant, presented this application that calls for the installation of a 48.96 KW solar electric system within the confines of Bowman Orchards. The speaker explained that the panels to be installed would be located in an open field located behind three barns in an area that was forested on three sides ensuring limited visibility from adjoining residences and Sugar Hill Road.

Mr. Scavo reported that Mr. Myers, Director of Building and Development, noted that the applicant is also proposing the installation of solar panels on the roof of another building located on the Bowman Orchard property: this installation, though included in the required Building Permit, is not part of the Special Use Permit application.

Mr. Scavo listed the criteria established by Section 208-79(E) of the Town Code and explained how the applicant had met all requirements. [Code requirements and comments by others are written in regular type: Mr. Scavo's comments are italicized.] Code requires that the setbacks proposed are available in relation to other applicable setbacks for the zone within which the installation is proposed. *The setbacks are within the standards under CR zoning.* The proposed height, width, and dimensions of the installation and housing structures, and whether the proposed installation is compatible with adjacent uses in terms of scale, siting, design, lighting, and noise generation are to be determined by the Board. *Mr. Scavo believes that the siting of the solar array is appropriate for the size and scale of the structure and will not negatively impact surrounding properties.* Mr. Newcomb, consultant, stated that there will be no noise generated by the panels. The Planning Board must consider the maximum surface area of the proposed installation in relation to the available lot size for the host parcel. *Mr. Scavo finds that the lot is large enough in land area to adequately accommodate the proposed solar array.* The energy load of the primary residence or buildings to be powered by the installation must be determined. The consultant stated that only agricultural buildings will be served by the proposed installation: no residential service is proposed. *Mr. Scavo believes that the information provided*

*in the application is sufficient.* The law requires that all installations shall be screened with an appropriate combination of natural vegetative buffer, landscaping, or other such screening as the Planning Board shall determine, and installations shall be sited so as to minimize significant adverse visual and/or auditory impacts. *Mr. Scavo stated that it appears that, based on the proposed location, no additional screening may be necessary.* The Planning Board may require visual simulations sufficient to determine potential visual impacts during the review process, as well as other information reasonable necessary in the Board's discretion. *It appears that the applicant has submitted all pertinent information for the Board to make a determination regarding approval of the Special Use Permit and site plan approval.*

The Town Engineer did not review this application.

Mr. Montague, Environmental Specialist, reported that the ECC found this application acceptable.

Ryan and Jack Wright, young sons of the consultant representing the applicant, stated that, in their opinions, the solar panels would provide a good alternative to current utilities and were located far enough from the roadway and other residences to be acceptable.

There being no additional public comment, Mr. Ferraro moved, seconded by Mr. Werner, to close the public hearing at 7:19p.m. The motion was unanimously carried.

Mr. Hale commended Bowman Orchards for working to incorporate new technologies into their agricultural business. He encouraged the applicant to include the panels in tours that might be offered of the orchard in order to illustrate the benefits of solar energy. Mr. Ferraro reiterated these thoughts, stating that he, too, was impressed by the applicant's willingness to implement new technologies to enhance his business.

Board members first considered approval of the Special Use Permit.

Mr. Pelagalli advised the Board to ensure that its approval included language indicating that the application met all of the criteria outlined in Section 208-79E (3) of the Town Code for issuance of a Special Use Permit to allow the construction of a solar array within the CR zone and all other requirements for installation of solar panels.

Ms. Paulsen moved, seconded by Mr. Werner, to establish the Planning Board as Lead Agency for this application, an unlisted action, and to issue a negative declaration pursuant to SEQRA. The motion was unanimously carried.

Mr. Ophardt offered Resolution #6 of 2012, seconded by Mr. Hale to grant approval to Special Use Permit No. 80868 to permit the construction of a solar array in a CR zone pursuant to Section 208-79E(3) of the Town Code since it meets the standards for issuance of the permit and all other requirements for the installation of solar panels contained therein. Ayes: Ophardt, Paulsen, Hale, Werner, Koval, Ferraro. Noes: None.

The Board then considered site plan approval.

Mr. Koval moved, seconded by Ms. Paulsen, to establish the Planning Board as Lead Agency for this application, an unlisted action, and to issue a negative declaration pursuant to SEQRA. The motion was unanimously carried.

Mr. Hale moved, seconded by Mr. Ophardt, to grant preliminary and final site plan approval to this application since it meets the standards for issuance of a Special Use Permit and all other requirements for the installation of solar panels contained within the Town Code. The motion was unanimously carried.

[2011-035] **Benway, James** – Proposed (2) lot subdivision, 601 Kinns Road – Preliminary public hearing and possible determination. SBL: 265.-1-38.2

Mr. Ferraro, Chairman, called the public hearing to order at 7:26p.m. The Secretary read the public hearing notice as published in the Daily Gazette on May 2, 2012.

Mr. Scott Reese, consultant for the applicant, presented this application for Board consideration. Mr. James Benway and his daughter, Dawn Freemire, applicants, were in attendance at the meeting. Mr. Reese explained that although the application remains generally as presented at the November 9, 2011 meeting, the area of Lot #2 has been increased to 1.76 acres and the area of Lot #1 has been reduced to 9.4 acres. The proposed lot line adjustment between the Lands of Benway and the Lands of Jeffries remains as previously shown. The speaker reported that previous comments issued by the Planning Department, M J Engineering, the Director of Building and Development, and the Planning Board have been addressed. He explained that the proposed residence for Lot #2 will be constructed with the front access at road level: a walk-out basement will be constructed to the rear of the new home. The area of disturbance will be limited to approximately .7 acres. Wetland areas have been delineated and mapped and topographic information has been added to the plat.

Mr. Scavo reported that Mr. Myers, Director of Building and Development, provided the following comments regarding this application in a memo dated April 27, 2012. The applicant must provide verification from NYSDEC that wetlands and buffers exist as delineated on the plan since the maps prepared by Saratoga County indicate a more significant wetland area. The property apparently lies with a flood plain: boundaries of the flood plain should be clearly delineated on the plan. Mapping should reflect existing and new conditions in relation to the existing residence to the east of the property shown. It appears that there are structures built in both the wetland buffer and flood plain: further subdivision and approval should take this into consideration. Mr. Myers notes that a full Stormwater Pollution and Prevention Plan can be required on a less than one acre site where the potential exists for a “significant contribution of pollutants to surface waters of the state.” Due to the site’s proximity to wetlands and floodplains, he recommended that a full stormwater management plan be prepared. Mr. Scavo reported that, in subsequent discussions with Mr. Myers, it was agreed that an erosion and control plan protecting the stream from contamination and siltation during construction of the proposed residence would be sufficient.

Mr. Scavo offered comments prepared by the Planning Department. Prior to the stamping of the final subdivision plan, the consultant should be certain that the following items are shown on the plan. A label should be added to the plan that indicates that the LC (Land Conservation) zone corresponds to the 100' NYSDEC buffer. The boundaries of the 100 year flood plain must be shown on the plan. The consultant is also asked to add the words "Dwaas Kill Nature Preserve" at each location that is currently labeled "Lands of the Town of Clifton Park." A note must be added which states the following:

The Dwaas Kill Nature Preserve is ±240 acres of permanently protected, public nature preserve surrounding this subdivision. Under Town Code Chapter 152 entitled Nature Preserves, hunting is prohibited and motorized vehicles are strictly prohibited, except for emergency purposes.

The stream should be labeled as the Cooley Kill Stream to emphasize the applicability of the Land Conservation zone. Mr. Scavo reported that the Saratoga County Planning Board reviewed this application and found it acceptable.

Mr. Dan Hartnett, representative of the Trails Subcommittee of the Open Space, Trails, and Riverfront Committee, asked that the 15' easement along Kinns and Carlton Roads from the existing Benway boundary line on Kinns to the Carlton Road boundary of Lot #2 – as the applicant previously agreed to – be illustrated on the plan. The 15' strip is to be measured from the edge of existing pavement. Mr. Scavo pointed out that the town would waive the required parkland fee in exchange for the easement.

Though he noted that all prior comments from a November 4, 2011 letter have been addressed, Mr. Milano reported that the following issues were identified by MJ Engineering and Land Surveying, P.C. in a letter dated May 4, 2012 that was addressed to the applicant's consultant. The project should be referred to the Saratoga County Planning Board (Section 239 Referral). The entire limits of all wetland boundaries for the property should be indicated on the plans and correspondence from NYSDEC should be provided to confirm agreement of the wetland delineation identified on the plans. The electric fence area should be relocated from Lot #2 onto Lot #1. Town Code prohibits the keeping of livestock on lots smaller than 5 acres in size. It is recommended that a note be added to the Subdivision Plan indicating that the existing barn on Lot #2 is a non-conforming existing condition as the accessory structure does not meet the current required 80 foot front yard setback. Erosion Control Note # 9 should be revised to indicate a 100 foot buffer from water bodies. Utility Note #1 should be revised to include Saratoga County Sewer District #1 (SCSD #1). Standard Clifton Park Note #3 should be revised to remove the reference to road conveyance to the Town. The hydrant located at the southeastern corner of Lot #2 appears to be located outside of the right-of-way. The location of the existing water main should be added to the plans and the Clifton Park Water Authority (CPWA) should be contacted to verify if there is an existing utility easement for the hydrant. If an easement exists, it should be added to the plans. If not, it is recommended that an easement be established. The sanitary sewer manhole located at the southwestern corner of Lot #1 appears to be located outside of the right of way. The location of the existing sewer main should be added to the plans and SCSD #1 should be contacted to verify if there is an existing utility easement for the sewer system. If an easement exists, it should be added to the plans. If not, it is recommended that an easement be established. The type of material for the water service lateral should be confirmed by the CPWA. It is recommended that sections of split rail fence be installed at the 100 foot wetland buffer and restrictions for conservation of natural areas be incorporated into the deeds. The proposed grading and response to prior comments indicate that the existing berm along Carlton Road will be removed. As a result of this, the existing guy line for the utility pole on Carlton Road located to the east of the proposed driveway may likely be impacted as grade

will be lowered approximately 4 to 5 feet in the area. National Grid should be contacted to evaluate the impacts to the guy line and to determine if a new guy line or modifications to the existing line will be required. The silt fence shown between the proposed 78 and 80 contours cannot be installed prior to soil disturbance as the area is proposed to receive 2 to 4 feet of fill. It is recommended that the Erosion & Sediment Control Plan be revised to show silt fence down slope of the grading limits and additional secondary silt fence be included toward the rear of the property to ensure the stream and wetland areas are protected. All silt fencing should be shown parallel to existing and proposed contours. Erosion control blankets should be installed on all proposed and disturbed slopes graded at 3H: 1V or steeper.

Mr. Milano focused upon several items that remained of concern. He asked that the applicant delineate and map “the entire limits of wetlands on both properties” to provide the “best and most complete mapping” of the area. When questioned about the relocation of an existing barn, Mr. Reese explained that the building was to be relocated to an existing slab on Lot #1. Mr. Koval commented that Mr. Myers should be informed of the relocation since it appears that the structure will be located within the buffer zone. Mr. Milano asked that correspondence from NYSDEC be submitted that verifies the proposed delineation. In response to Mr. Milano’s question regarding existing easements for water and sewer utilities, Mr. Reese stated that, to date, no documentation of established easements has been discovered. If no evidence of such easements is found, necessary utility easements will be established. Mr. Reese agreed to change the type of material for water service as requested. Though Mr. Milano recommended the use of split-rail fencing to define the buffer boundary, Mr. Reese stated that the applicant would prefer that restricted uses within the LC zone were outlined in property deeds since fencing would limit the use of the backyard area. Mr. Koval pointed out that it would not be necessary to provide fencing along the entire length of the buffer line: segments of fencing would work as well. Mr. Milano’s stated his concern with the impact of grading on the existing utility pole and guy wire. Mr. Reese agreed to consult with National Grid regarding impacts, acceptable grading, and possible relocation of the existing guy wire. Mr. Milano requested that additional silt fencing be added down gradient, emphasizing the need to “provide total stream protection in the event of significant storms.”

Mr. Montague, Environmental Specialist, reported that the ECC requested that the applicant install a split-rail fence along the wetland buffer.

There being no public comment, Mr. Ferraro moved, seconded by Mr. Werner, to close the public hearing at 7:48p.m. The motion was unanimously carried.

Mr. Hale recommended the use of light excelsior fabric on the “long expanse of grading” along the westerly side of the proposed house on the 3:1 slope to prevent erosion and excessive siltation of the stream. Mr. Montague commented that the ECC would likely approve of the installation of posts to provide demarcation of the buffer area. In response to Mr. Ferraro’s question regarding the most appropriate location of such posts, Mr. Reese proposed that the posts be placed at the location of the buffer boundary along the eastern and western property lines. Mr. Ophardt stated that although he did not believe that continuous fencing was necessary, he supported that use of split-rail fencing to be consistent with Board conditions imposed on other applicants. He noted that there were several decorative fencing options available: an individual is likely to find one that attractively defines land conservation areas. Ms. Paulsen expressed concerns that single posts installed along respective property lines may not sufficiently indicate

the angled buffer boundary line. She recommended that fencing be installed at property boundaries as well as areas where the buffer lines appeared to be significantly “angled”. Board members appeared to find this acceptable. Mr. Koval explained that, although the property owner and applicant probably find the required fencing onerous, the Planning Board must be concerned with encroachment on wetland areas and contamination of the stream corridor. He noted that extension of the lawn area could result in contamination of the stream by pesticides and other harmful chemicals. Mr. Ferraro supported Mr. Koval’s comment, noting that the Cooley Kill – Dwaas Kill stream corridors were “elevated in status” and their protection was extremely important. He supported the addition of notes on the plan regarding the Dwaas Kill Nature Preserve, stating that such a note would “reinforce the environmental sensitivity of the area” and provide protection against “disruption” of the preserve. In conclusion, the Board favored the installation of split-rail fencing in sections along the buffer boundary as drawn by Mr. Reese on the plan presented for review. Mr. Reese agreed to address all outstanding issues including the installation of erosion controls as necessary, the establishment of necessary easements for utility lines, and the satisfaction of all technical comments outlined by the Town Engineer.

Mr. Ophardt moved, seconded by Mr. Werner, to establish the Planning Board as Lead Agency for this application, an unlisted action, and to issue a negative declaration pursuant to SEQRA. The motion was unanimously carried.

Mr. Koval offered Resolution #7 of 2012, seconded by Mr. Hale, to waive the final hearing and to grant preliminary and final approval to this subdivision application conditioned upon satisfaction of the comments issued by MJ Engineering and Land Surveying, P.C., the comments issued by the Planning Department at this meeting and in the final comment letter, and comments offered by the Planning Board, particularly related to the installation of adequate erosion and control measures to protect the Cooley Kill, the strategic placement of split-rail fencing to define the LC boundary, and the relocation of the existing barn. Ayes: Ophardt, Paulsen, Hale, Werner, Koval, Ferraro. Noes: None.

### **Old Business:**

No items of Old Business were scheduled for this evening’s meeting.

### **New Business:**

No items of New Business were scheduled for this evening’s meeting.

### **Minutes Approval:**

Board members were concerned that a portion of the minutes of the April 25, 2012 did not accurately reflect the issues discussed and asked that approval of the document be deferred until the May 23, 2012 meeting.

Mr. Koval moved, seconded by Mr. Hale, adjournment of the meeting at 8:10p.m. The motion was unanimously carried. The next meeting of the Planning Board will be held as scheduled on **WEDNESDAY**, May 23, 2012.

Respectfully submitted,

Janis L. Dean,  
Secretary

cc: Planning Board Members, Planning Department, Clough, Harbour, and Associates, Supervisor, Town Administrator, Assessor, Zoning Board, Department of Building and Development, Town Clerk, Town Board Members, Highway Superintendent, Lou Renzi, Town Attorney, Tom McCarthy, Town Attorney, Paul Pelagalli, Town Attorney, ECC, Clifton Park Water Authority

**NOTICE OF DECISION**

**Resolution #6 of 2012**

**APPROVAL**

**Special Use Permit**

At a meeting of the Planning Board of the Town of Clifton Park, Saratoga County, New York, held at the Town Office Building, One Town Hall Plaza, on May 8, 2012 there were:

Present: R. Ferraro, Chairman, M. Hale, J. Koval, E. Ophardt, K. Paulsen  
T. Werner

Absent: E. Andarawis

Mr. Ophardt offered Resolution #6 of 2012 and Mr. Hale seconded, and

Whereas, an application has been made to this Board by Bowman Orchards for approval of Special Use Permit #80868 to permit the construction of a solar array in a CR zone pursuant to Section 208-79E(3) of the Town Code;

Whereas, pursuant to Section 276 of the Town Law a public hearing was advertised and was held on May 8, 2012 in the Town Office Building,

Whereas, the Planning Board was established as Lead Agency for this application, an unlisted action, and a negative declaration was issued pursuant to SEQRA, and

Whereas, it appears to be in the best interest of the Town that said application be approved,

Now therefore, be it resolved that the Planning Board approves the application of Bowman Orchards for approval of Special Use Permit #80868 to permit the construction of a solar array in a CR zone pursuant to Section 208-79E(3) of the Town Code since it meets the standards for issuance of the permit and all other requirements for the installation of solar panels contained therein.

**Resolution #6 of 2012** passed 5/8/2012

Ayes: Ophardt, Paulsen, Hale, Werner, Koval, Ferraro

Noes: None

R. Ferraro,  
Chairman

**NOTICE OF DECISION**

**Resolution #7 of 2012**

**Preliminary and Final Subdivision Approval**

At a meeting of the Planning Board of the Town of Clifton Park, Saratoga County, New York, held at the Town Office Building, One Town Hall Plaza, on May 8, 2012, there were:

Present: R. Ferraro, Chairman, M. Hale, J. Koval, E. Ophardt, K. Paulsen  
T. Werner

Absent: E. Andarawis

Mr. Koval offered Resolution #7 of 2012, and Mr. Hale seconded, and

Whereas, an application has been made to this Board by James Benway for approval of a subdivision entitled Subdivision of a Portion of the Lands of James and Shirley Benway consisting of (2) lots and the transfer of .547 acres of land;

Whereas, pursuant to Section 276 of the Town Law, a public hearing was advertised and was held on May 8, 2012;

Whereas, the Planning Board was established as Lead Agency for this application, an unlisted action, and a negative declaration was issued pursuant to SEQRA on May 8, 2012;

Whereas, it appears to be in the best interest of the Town that said application be approved,

Now, therefore, be it resolved that the final hearing for this application is waived and that the subdivision plat entitled Subdivision of the Lands of a Portion of the Lands of James and Shirley Benway consisting of (2) lots and the transfer of .547 acres of land is granted preliminary and final approval conditioned upon satisfaction of the comments issued by MJ Engineering and Land Surveying, P.C., the comments issued by the Planning Department at this meeting and in the final comment letter, and comments offered by the Planning Board, particularly related to the installation of adequate erosion and control measures to protect the Cooley Kill, the strategic placement of split-rail fencing to define the LC boundary, and the relocation of the existing barn.

Resolution #7 of 2012 passed 5/8/2012

Ayes: Ophardt, Paulsen, Hale, Werner, Koval, Ferraro

Noes: None

Rocco Ferraro,

Chairman