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July 8, 2025

**VIA EMAIL & FEDERAL EXPRESS**

Chair Frank Redl and  
Members of the Zoning Board of Appeals  
Town of Washington  
10 Reservoir Dr.  
Millbrook, New York 12545

***RE: August Madeline Fields, LLC – ZBA Appeal***

Dear Chair Redl and Members of the Zoning Board of Appeals:

As you know, our office has been retained by Lisa Biase and Lou Casciano (collectively the “Residents”), the owners of property located at 5515 Route 82 in the Town of Washington. The Residents have expended significant amount of money and effort to stop the unlawfully permitted solar panels immediately across from their residence on lands known as 749 Stanford Road in the Town of Washington (SBL 135889-6666-00-727971-0000) (the “Project Site”). Despite the Town’s Zoning Board of Appeals (“ZBA”) already overturning the building permit for the solar panels on the Project Site, the owner of the Project Site, August Madeline Fields, LLC (“August Madeline”), has appealed certain enforcement actions resulting from the prior ZBA determination to get a second bite at the apple.

We submit this letter demonstrating that August Madeline’s appeal, dated June 13, 2025 (the “Appeal”), is barred by the doctrine of administrative res judicata and cannot be heard by the ZBA. August Madeline was represented by an attorney throughout the prior ZBA review on this matter and even participated in the public hearings. August Madeline has new legal counsel and is seeking to re-litigate the same exact issue before the ZBA to re-fresh the statute of limitations in violation of New York law. We respectfully request that the ZBA *not* entertain the Appeal in compliance with New York law. August Madeline continues to ignore the Town’s solar regulations, the ZBA’s prior determination, and the recent enforcement actions. This should not be tolerated.

The Town Building Department's correspondence to August Madeline, dated May 7, 2025, states that "[t]he Town requires that since the Building Permit is voided, the *solar panels are considered an unlawful structure and will need to be taken down from its current installation*. The Town will also verify that this has happened to be in compliance with the resolution passed by the Zoning Board of Appeals." The Town must continue its enforcement against this "unlawful" structure and require removal of the solar panels immediately.

**I. The Appeal is Barred by Administrative Res Judicata**

On August 16, 2024, the Residents filed an appeal with the ZBA seeking to overturn the building permit associated with the solar development on the Project Site because August Madeline did not obtain Planning Board approval for the solar panels, did not provide the required screening or buffers, and did not properly submit documentation demonstrating the use and amount of electricity from the solar panels (the "Residents' Appeal"). From August 2024 to February 2025 the ZBA held several meetings, public hearings and deliberated on the evidence provided to them. We request that all documentation, evidence and correspondences from the Residents' Appeal be made a part of this record (the "Residents Appeal Record").

On February 18, 2025, the ZBA properly determined that the above noted Project Site is a "non-residential" property pursuant to Town of Washington Code § 165-60, et. seq., and, therefore, any solar development on the Project Site requires site plan and special use permit approval from the Town of Washington Planning Board (the "ZBA Determination"). See **Exhibit A** [ZBA Resolution]. In doing so, the ZBA reversed the building permit for the solar development and overturned the Building Inspector's determination dated October 29, 2024. Notwithstanding that, August Madeline failed to seek Planning Board approval for the solar panels, and did not challenge the ZBA Determination in Court.

In New York, "[t]he doctrine of res judicata applies to quasi-judicial determinations of administrative agencies, including municipal zoning tribunals, and precludes relitigation of claims which previously were litigated on the merits or might have been so litigated at the time." See *Calapai v. Zoning Bd. of Appeals of Vill. of Babylon*, 57 A.D.3d 987, 989 (2<sup>nd</sup> Dep't 2008). In fact, the Court of Appeals has held that a person cannot make a challenge to the ZBA based on the mere issuance of a new, but substantially identical, determination made by a municipal enforcement official finding that doing so would be "unfair". See *Palm Mgmt. Corp. v. Goldstein*, 8 N.Y.3d 337, 341 (2007).

In *Town of Wallkill v. Lachmann*, the Court held that "the issue of whether the business the defendants conducted on the property constituted a pre-existing nonconforming use was previously litigated and decided against the defendants in July 2000 by the Zoning Board of Appeals of the Town of Wallkill. Therefore, the defendants are barred from relitigating this issue under the principles of res judicata and collateral estoppel." 27 A.D.3d 724, 725 (2<sup>nd</sup> Dep't 2006)("[s]uch determinations, when final, become conclusive and binding."); see also *Goodkind v. WFS Invs. Corp.*, 192 A.D.2d 694, 694 (2<sup>nd</sup> Dep't 1993) (holding that "[a]fter lengthy proceedings, the Zoning Board determined that Fieldpoint had not constructed the subject subdivision unit in violation of the plat approved by the Village Planning Board. Since the issue is decisive of the

present action and the plaintiff had a full and fair opportunity to contest the Zoning Board's determination, the plaintiff was properly precluded from relitigating it[.]”); *Ryan v. New York Tel. Co.* 62 N.Y.2d 494, 500–02 (1984) (holding that “[w]hat is controlling is the identity of the issue which has necessarily been decided in the prior action or proceeding...such that a different judgment in the second would destroy or impair rights or interests established by the first.”)

Here, the Appeal seeks to assert that the order to remedy and related correspondence from the Town’s Building Inspector, issued after the ZBA Determination, are unlawful. However, as the Residents Appeal Record indicates, the Residents, August Madeline and the ZBA evaluated (at length) the exact issues asserted in the Appeal and have already determined this matter. In fact, the then attorney for Madeline Fields spoke at ZBA meetings and submitted documentation. Thus, August Madeline had a full and fair opportunity to litigate this issue before the ZBA. As such, August Madeline is barred from bringing this Appeal because of the doctrine of administrative res judicata and collateral estoppel. *See Calapai v. Zoning Bd. of Appeals of Vill. of Babylon*, 57 A.D.3d at 989; *Palm Mgmt. Corp. v. Goldstein*, 8 N.Y.3d at 341; *Town of Wallkill v. Lachmann*, 27 A.D.3d at 725; *Goodkind v. WFS Invs. Corp.*, 192 A.D.2d at 694.

Further, August Madeline failed to challenge the ZBA Determination in Court within the required statute of limitations. It is obvious that August Madeline is merely trying to relitigate this matter before the ZBA because of their failure to appeal the ZBA Determination through the proper legal avenues. Most importantly, the Appeal is barred because any decision on this Appeal “would destroy or impair rights or interests established by the [ZBA Determination],” which resulted in the solar panels being “unlawful structures”. *See Ryan v. New York Tel. Co.* 62 N.Y.2d at 500–02.

We ask that the ZBA immediately dismiss the Appeal given the above.

## **II. August Madeline’s Claim of Agricultural Protection Was Previously Litigated and Remains Unproven**

August Madeline claims that the order to remedy burdens its protected agricultural rights under New York State Agriculture and Markets Law (“N.Y. Agric. & Mkts. Law”). This exact issue was litigated by the ZBA during the Residents Appeal and is barred from further consideration.

The Appeal simply asserts that the solar panels are protected farm equipment without any substantial evidence demonstrating that the agricultural uses on the Project Site meet the requirements of N.Y. Agric. & Mkts. Law. This exact issue is clearly discussed in the Residents’ Appeal Record and was discussed by the ZBA and the ZBA attorney at a meeting related to the Residents’ Appeal. *See* Residents December 2024 and January 2025 Submission to the ZBA. In fact, the Building Inspector’s testimony during the Residents Appeal asserted this agricultural issue. *See Exhibit B* [ZBA Meeting Minutes].

Nevertheless, the ZBA disagreed and found that the solar panels on the Project Site required Planning Board approval given that the Project Site was not merely a residential property, but included various non-residential uses. It should be noted that post the ZBA Determination August Madeline as placed signage on the Property under the name “Fancy Fox Farm” further leading to confusion as to what uses are on the Property and seeking to add agricultural uses post hoc.

Further, August Madeline failed to demonstrate what uses on the Project Site the electricity from the solar panels would be used for. On the record during the Residents Appeal, August Madeline admitted the following:

- 1) **December 17, 2024 ZBA Meeting Minutes:** August Madeline states that “[t]he panels will only be used for his land and that the utility company will credit him for the energy being put back in the system.”
- 2) **January 21, 2025 ZBA Meeting Minutes:** August Madeline states that “utility bills for the *entire property* were used to determine the solar panel load.” (Emphasis added).

See **Exhibit B** [ZBA Meeting Minutes]. Therefore, August Madeline has documented that the electricity from the solar panels will be used for the entire property and not just the alleged agricultural uses that may or may not exist on the Project Site.

To this end, the February 18, 2025 ZBA Determination states that, “[w]hereas, applicant concedes that the electricity generated by the solar panels will support the commercial operations just as it will serve residences on the Property.” August Madeline failed to make this demonstration to the ZBA during the Residents Appeal, and is now barred from retro-actively seeking to cure any alleged defects.

We highlight that the Town’s solar regulations require that:

Solar energy systems installed for the purpose of supplying power measured by the *personal use of the property* shall be permitted as an accessory use so long as the solar energy system satisfies the other provisions of this section. A solar energy system shall be limited to a power generating capacity not in excess of 110% of the anticipated annual total amount of electric energy used by the applicant’s parcel (this 110% limitation is hereinafter referred to as the “110% limitation”).

Zoning Code § 165-60(E)(1) (Emphasis added).

There is no contesting that August Madeline has residential structures on the Project Site but also commercial operations. There is no indication in any of the documents provided where the energy from the solar panels is being used. Per the above provision, the solar energy must be used for “personal use of the property”. This would prohibit the energy being used for operations



that are not operated by the Project Site owner. The ZBA's own planning consultant has raised this issue via memo dated December 13, 2024 from AKRF. Certainly, the Project Site owner must provide clarity and evidence that the solar energy is utilized in compliance with Zoning Code § 165-60(E)(1).

Per NYSERDA, "solar energy installations which generate no more than 110% of a *farm's needs* are classified as "on-farm" equipment." NYSERDA, Solar Installations on Agricultural Lands, at 137. Admittedly, August Madeline is using the energy from the solar panels on *non-farm* related structures/residences, which increases the amount of panels and the visual impact to the Residents. Further, notwithstanding the above, to the extent the solar panels are not servicing on-farm equipment or structures, they are not protected by the AML and are not afforded any flexibility by the Town.

In its Appeal, August Madeline suggests that the solar panels are being used solely by the alleged agricultural operations. Yet, this is different from the above statements made by August Madeline during the Residents Appeal, which statements indicate that the energy from the solar panels is serving ALL uses on the Project Site. August Madeline is re-inventing history to skirt around the ZBA Determination.

Notwithstanding the above, the Town and the Town's Building Inspector does hold the right to restrict properly permitted farm operations where public health and safety is threatened. N.Y. Agric. & Mkts. Law § 305-a(1)(a) states that a municipality "shall not unreasonably restrict or regulate farm operations within agricultural districts in contravention of the purposes of this article *unless it can be shown that the public health or safety is threatened.*" (Emphasis added). Although August Madeline has not demonstrated their rights to protection under N.Y. Agric. & Mkts. Law, the Town is still able to require Planning Board approval for the development of the solar panels on the Project Site to ensure that the public is not threatened or endangered.

We have enclosed pictures of the solar panels taken by the Residents on March 22, 2025 from their first floor living room and second floor. See **Exhibit C** [Pictures]. The pictures display significant glare from the solar panels on the Project Site that is impacting the Residents ability to safely access their home and disrupting their day-to-day life. The solar panels have now become a safety concern and a significant traffic hazard to all vehicles on Route 82.

In addition, on December 11, 2024, a utility pole near 5548 Route 82 caught fire with a related explosion. See **Exhibit C** [Pictures]. Please note that this utility pole fire was located adjacent Goose Hollow Farm, at 5548 Route 82. How are the Residents assured that this new utility pole, which violates the Town's solar regulations, will not do the same? This is a significant concern not only for Residents but for adjacent neighbors and the Town of Washington in its entirety given the current dry climate conditions and mandatory burn bans due to droughts.

Therefore, given the safety concerns of such solar development on the traffic accessing Route 82, the Residents seeking to pull out of their driveway, and the recent explosions of utility poles, the Town is fully within its right to require removal of the existing panels and utility pole, and require Planning Board review of the solar panels on the Project Site.

### **III. August Madeline Does Not Have Vested Property Rights**

August Madeline seeks a determination that because the solar panels were constructed pursuant to a building permit, they have vested rights and the ZBA and the Building Inspector cannot mandate that they be removed. Again, this issue was previously litigated by the ZBA and the proper venue for such an argument should have been an appeal of the ZBA Determination in Court. That said, August Madeline is forgetting that the ZBA Determination found the building permit to be invalid, thus destroying any claims of vested property rights.

In *Parkview Assocs. v. City of New York*, the Court of Appeals held that that “the City was not estopped from revoking that portion of building permit which violated long-standing zoning limits, though property owner had already engaged in substantial construction in reliance thereon.” 71 N.Y.2d 274 (1988). Further, it is well settled in New York that “estoppel is not available to preclude a governmental entity from discharging its statutory duties or to compel ratification of prior erroneous implementation in the issuance of an invalid building permit.” *Id.* 71 N.Y.2d at 279 (finding also that “[i]nsofar as estoppel is not available to preclude a municipality from enforcing the provisions of its zoning laws and the mistaken or erroneous issuance of a permit does not estop a municipality from correcting errors, *even where there are harsh results.*” (Emphasis added)).

As such, August Madeline’s arguments related to their protected vested rights are inaccurate and should be disregarded. The Town is fully within its right to require the solar panels be taken down.

### **Conclusion**

It is unfortunate that August Madeline is seeking relief from the ZBA on a matter that the ZBA has already determined. This comes at a great cost to both August Madeline and the Residents. The ZBA should question why August Madeline decided to spend its resources in a legal battle with the ZBA rather than to simply find a solution to the matter with the Planning Board or relocate the solar panels to an area of the 400 acre Project Site that would not result in a safety issue for the Residents and those traveling along Route 82. This has resulted in the Town correctly deeming the solar panels “unlawful structures” and requiring their removal. Unfortunately, it appears August Madeline continues to ignore the Town and has appeared to connect the panels to the electrical grid.

During the Residents Appeal, the Residents identified several different locations for the solar panels to be placed on the Project Site that would comply with the Town’s solar requirements. Yet, August Madeline seeks to continue its fight with the ZBA instead of going to the Planning Board for review and the obtaining proper permits and approvals. It is shocking that this appeal is being made to the ZBA 6-months after the ZBA Determination, rather than working with the Residents and to the Town to comply with the solar regulations.

In accordance with the above, we respectfully request that the ZBA dismiss the Appeal given that it is barred by administrative res judicata and collateral estoppel.

Sincerely,

/s/ *Charles J. Gottlieb*

Charles J. Gottlieb

Enclosures

cc: Town of Washington Town Board (*via email*)  
Kathleen Tylutki, NYS Department of Agriculture and Markets (*via email*)  
Kyle Barnett, Esq. Van DeWater & Van DeWater (*via email*)  
Lisa Biase, Esq. (*via email*)  
Lou Casciano (*via email*)

# EXHIBIT A

Town of Washington  
**ZONING BOARD OF APPEALS**  
10 Reservoir Drive  
Millbrook, NY 12545  
845-677-3419 ext. 116

**RESOLUTION OVERTURNING BUILDING INSPECTOR DETERMINATION AND  
REVOKING BUILDING PERMIT**

**Arcadia Fields**  
746 Stanford Road  
Millbrook, New York 12545

**Date: February 18, 2025**

**Motion:** Redl  
**Second:** Briggs

WHEREAS, appellants Lisa Biase and Lou Casciano, who own a 9.6-acre parcel at 5515 Route 82, Washington, NY, 12514, appeal the Town of Washington Building Inspector's ("Building Inspector") issuance of a building permit for a ground-mounted solar project (the "Project") to be constructed on property located at 749 Stanford Road, Washington, NY, 12514, Parcel No.135889-6666-00-434999-0000 ("the Property"); and

WHEREAS, appellants make various claims challenging the Project and the issuance of the building permit, including that the Project violates the 110% Rule set forth in Code Section 165-60(E)(1), that the Project violates the screening requirements of Section 165-60(F)(3)(c), that the Project would have a detrimental affect on appellants' property value, and that the Building Inspector made an incorrect determination as to the nonresidential character of the Property; and

WHEREAS, the Town of Washington Zoning Board of Appeals ("Zoning Board of Appeals") passed a motion on January 21, 2025 determining that the appeal is a Type II action under the State Environmental Quality Review Act and is not subject to review under the Act; and

WHEREAS, the Washington Town Code requires that the Zoning Board of Appeals publish notice of a public hearing at least five (5) days prior to the hearing in accordance with New York Town Law Section 267-a; and

WHEREAS, such a duly noticed public hearing was opened on December 17, 2025 at 6:30 p.m. at the Town Hall of the Town of Washington, 10 Reservoir Dr., Millbrook, NY, and continued and finally closed at the January 21, 2025 regular meeting; and

WHEREAS, at the public hearing, the Zoning Board of Appeals heard from the applicant, the appellants, and members of the public, and reviewed and considered all submissions filed with the Board while the public hearing remained open; and

WHEREAS, the Town of Washington Code Section 265-60, added by Local Law No. 1-2018, provides that approval of a ground-mounted solar energy system to be constructed on residential property does not require site plan review (Code Section 165-60(F)(3)(e)) but a solar energy system on nonresidential property requires special permit and site plan review by the Town of Washington Planning Board, ("Planning Board") (Code Section 165-60(F)(4)(e)); and

WHEREAS, under the Code, residential property is defined as "real property that is primarily used for residential purposes and contains a one- or two-family residence" and nonresidential property is defined as "real property that is not considered residential property" per Code Section 165-60(C); and

WHEREAS, the Building Inspector determined that the Property is residential property and therefore issued the building permit for the Project without referral to the Planning Board for special permit and site plan review; and

WHEREAS, the Property is located in the RL-5 (low-density residential) zone, is classified as a special farm (180) use, and receives significant Agricultural and Forest Land tax exemptions; and

WHEREAS, the record demonstrates that the Property owner lives in one residence, rents out two other residences situated on the Property to tenants, and also engages a horse-boarding operation and tree farm operation on the Property; and

WHEREAS, applicant concedes that the electricity generated by the solar panels will support the commercial operations just as it will serve the residences on the Property.

NOW, THEREFORE, the Zoning Board of Appeals makes the following determinations:

BE IT RESOLVED, that the Property is nonresidential property under the Code because it is not "primarily" used for residential purposes and, therefore, the Project requires Planning Board review for issuance of a special permit and site plan approval; and

BE IT FURTHER RESOLVED, that the Building Inspector's determination is overturned insofar as the Property should be characterized as nonresidential and the building permit is vacated; and

BE IT FURTHER RESOLVED, that the Building Inspector shall refer the matter to the Planning Board for appropriate review and approvals; and

BE IT FURTHER RESOLVED, that, because the nonresidential characterization of the Property is dispositive in this matter, the Zoning Board of Appeals declines to address appellants' other claims, which may be addressed by the Planning Board.

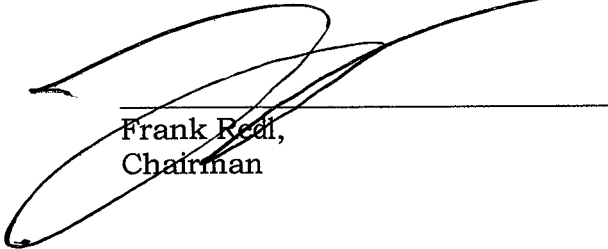
The foregoing Resolution was duly put to a vote which resulted as follows:

	YEA	NAY
Chairman Redl	<u>  /  </u>	<u>          </u>
Member Briggs	<u>  /  </u>	<u>          </u>
Member Kollmar	<u>  /  </u>	<u>          </u>
Member Kunkle	<u>  /  </u>	<u>          </u>
Member Rolland	<u>  /  </u>	<u>          </u>
Alternate Frederick	<u>          </u>	<u>          </u>

Dated: Millbrook, New York  
February 18, 2025

**CERTIFICATE**

I, Frank Redl, Chair of the Zoning Board of Appeals of the Town of LaGrange, do hereby certify that the foregoing is a true copy of a decision of the Zoning Board of Appeals made at a meeting thereof duly called and held on the \_\_ day of \_\_, 2024.

  
\_\_\_\_\_  
Frank Redl,  
Chairman

# EXHIBIT B



## **Town of Washington Zoning Board of Appeals**

10 Reservoir Drive

Millbrook, NY 12545

### **Minutes of the December 17, 2024 Meeting**

**Members Present:** Chair Frank Redl  
Alexander O Kollmar  
Katie Briggs  
Tate Kunkle  
Annie Rolland  
Alex Frederick (Alternate)

**Others Present:** Councilman Joe Rochfort, ZBA Liaison  
Howard Schuman, CAC Member  
Kyle Barnett, Town Attorney  
Allan B. Rappleyea, Esq., Attorney for Cornells  
Charles Gottlieb, Attorney for Arcadia Fields Appellant  
Lisa Biase and Lou Casciano, Arcadia Fields Appellants  
Alicia Moore, Town Planner AKRF (via Zoom)  
Jonathan Ialongo, Town Building Inspector & Zoning Administrator

Chair Redl called the meeting to order at 6:30 PM

Motion to Approve the November 19, 2024 Minutes:

Made by: Tate Kunkle

Seconded by: Annie Rolland

Motion PASSED by the following vote:

Chair Frank Redl	AYE
Alexander O Kollmar	AYE
Katie Briggs	AYE
Tate Kunkle	AYE
Annie Rolland	AYE

### **Arcadia Fields Solar Installation: 749 Stanford Road Parcel # 727971-0000 Public Hearing**

Public hearing for an appeal from Attorney Charles J. Gottlieb on behalf of Lisa Biase and Lou Casciano, owners of the property located at 5515 Route 82, regarding a solar field permit that was previously issued for 749 Stanford Road.

Motion to Open the Public Hearing:

Made by: Chair Frank Redl

Seconded by: Tate Kunkle

Motion PASSED by the following vote:

Chair Frank Redl      AYE

Alexander O Kollmar   AYE

Katie Briggs            AYE

Tate Kunkle             AYE

Annie Rolland          AYE

Attorney Charles Gottlieb began with summarizing the appeal submitted to the ZBA in August 2024 and reiterated that the ZBA should revoke the solar panel permit. He stated that the Town's solar law has been violated because of inadequate screening conditions and that the permit holder (Arcadia Fields) is not a residential property. He stated that Arcadia Fields required a special use permit before being issued a building permit. He requested that the solar panels are relocated to a different spot on the property.

He discussed the letters that have been submitted to the ZBA in support of the Appellants and that are accessible to the public on the Town website. He discussed the various submissions that have been given to the ZBA and summarized that they obtained the documents they requested by FOIL request very late in the process.

He summarized their Dec. 13 submission to the ZBA after receiving documents from the Town. He stated that the stop work order should have been given in August but did not occur until October and referenced NYS Law that the work should have stopped immediately. He questioned whether or not the permit holders are on a residential or non-residential property.

Attorney Gottlieb stated that the Building Inspector considered the property residential due to the existence of multiple residential structures, and they would like the project site to be deemed non-residential. The property is not residential because it is not primarily used for residential purposes and that the commercial operations are not accessory to the residential structures; rather, they are commercial operations for horses that are leased by a business on the property. It's a separate equine use, not a residential use. He also referenced that there is a tree nurse on the property.

Attorney Gottlieb noted that they have hired a landscape engineering firm (Studio A) to review the property and the screening difficulties. He stated that the panels are not currently screened and the landscape plan provided is contrary to industry norms and that they do not include enough information to give sufficient assurances that the panels will be screened at all times.

He referenced photos that the Appellant's have provided to the ZBA showing how impossible it would be to screen the panels and referenced letters submitted by Studio A to the ZBA. He stated that proper

procedures weren't followed by the Town before approving the building permit and did not ask for renderings or any studies. He also pointed out the utility pole that has been installed on the property would not have adequate screening and that poles are not allowed unless required by the utility company. He could not find a utility company making this assessment in the paperwork they received by FOIL request and also noted that it's a fire hazard.

Appellant Lisa Biase spoke on behalf of herself and her husband, Lou Casciano (5515 Route 82). They own the property and love it. They have been renovating the property to make it look old, and their full-time residence is in Hoboken, NJ. She stated that this is a getaway property like so many other people have in TOW and called it a "Labor of Love." They have spent hundreds of thousands of dollars on the barn renovation. She showed additional photos, including a before and after, and asked for them to be added to the administrative record.

Town resident Dorothea Moony, owner of 683 Stanford Road, stated that she doesn't like the appearance of solar panels and lives near the property but cannot see the panels from her property.

Town Building Inspector & Zoning Administrator Jonathan Ialongo spoke regarding his prior determination issuing the building permit and noted that it was difficult to determine how the property was being used but that the Town doesn't delineate based on those aspects. He noted that the property is zoned as agriculture and that differentiates it from a property zoned as residential or non-residential. Agricultural properties don't have the same restrictions as other properties as a way for NYS to promote agriculture and referenced various agriculture materials. He stated that the agricultural resources he is referencing will be supplied to the ZBA.

Vicki Sachar of Sun Common, attending via Zoom, stated that the array spot was chosen based on where the service needed to be pulled to/from and the related expense.

Michael Pryor, owner of August Madeline Fields, stated that the property has a main house, log cabin, and an apartment. There is one vacant structure, one that is rented, and his. He said that they have previously planted corn on the property and that they grow trees to sell them. He is there often.

Mr. Pryor apologized to his neighbors, the Appellants, for the problems and stated he was unaware until now of how this had affected them. He said there are 17 or 18 horses on the property and that there are also additional horses that are being boarded for other people. The panels will only be used for his land and that the utility company will credit him for the energy being put back into the system.

Attorney Gottlieb asked the solar company for site plans and asked for more data regarding the panels and topographical information. Ms. Sachar said that they don't currently have this information but they will send it to the ZBA.

Motion to adjourn the Public Hearing to the January meeting:

Made by: Tate Kunkle

Seconded by: Katie Briggs

Motion PASSED by the following vote:

Chair Frank Redl AYE

Alexander O Kollmar AYE

Katie Briggs AYE

Tate Kunkle AYE

Annie Rolland AYE

**Yadgard: 610 Stanford Road** Parcel # 042590-0000

Applicant Joshua Mackey, on behalf of the property owner Daniel Yadgard, has applied for variances to install a backyard swimming pool.

Motion to Proceed into Attorney-Client discussion:

Made by: Tate Kunkle

Seconded by: Katie Briggs

Motion PASSED by the following vote:

Chair Frank Redl AYE

Alexander O Kollmar AYE

Katie Briggs AYE

Tate Kunkle AYE

Annie Rolland AYE

Motion to Close the Meeting:

Made by: Tate Kunkle

Seconded by: Katie Briggs

Motion PASSED by the following vote:

Chair Frank Redl AYE

Alexander O Kollmar AYE

Katie Briggs AYE

Tate Kunkle AYE

Annie Rolland AYE

The Zoning Board of Appeals Meeting closed at 7:45 PM

## **Town of Washington Zoning Board of Appeals**

10 Reservoir Drive

Millbrook, NY 12545

### **Minutes of the January 21, 2025 Meeting**

**Members Present:** Chair Frank Redl      ABSENT

Alexander O Kollmar

Katie Briggs

Tate Kunkle

Annie Rolland

Alex Frederick

**Others Present:** Councilman Joe Rochfort, ZBA Liaison

Councilman Michael Murphy

Howard Schuman, CAC Member

Kyle Barnett, Town Attorney

Charles Gottlieb, Attorney for Arcadia Fields Appeal

Lisa Biase and Lou Casciano, Arcadia Fields Appellants

Alicia Moore, Town Planner AKRF (via Zoom)

Daniel Stafford, Attorney for Arcadia Fields Property Owner

Vicki Sachar, Representative for SunCommon (via Zoom)

Member Tate Kunkle called the meeting to order at 6:30 PM

Motion to Approve the December 17, 2024 Minutes:

Made by: Katie Briggs

Seconded by: Annie Rolland

Motion PASSED by the following vote:

Alexander O Kollmar    AYE

Katie Briggs            AYE

Tate Kunkle            AYE

Annie Rolland          AYE

Alex Frederick          AYE

### **Arcadia Fields Solar Installation: 749 Stanford Road Parcel # 727971-0000 Continued Public Hearing**

Continued public hearing for an appeal from Attorney Charles J. Gottlieb on behalf of Lisa Biase and Lou Casciano, owners of the property located at 5515 Route 82, regarding a solar field permit that was previously issued for 749 Stanford Road.

Town Attorney Kyle Barnett advised the ZBA members that the appeal should be classified as a Type II Action for SEQRA because it's challenging the Building Inspector's original determination.

Motion to classify the appeal as Type II Action for SEQRA:

Made by: Katie Briggs

Seconded by: Alexander O Kollmar

Motion PASSED by the following vote:

Alexander O Kollmar AYE

Katie Briggs AYE

Tate Kunkle AYE

Annie Rolland AYE

Alex Frederick AYE

Motion to open the Continued Public Hearing:

Made by: Katie Briggs

Seconded by: Annie Rolland

Motion PASSED by the following vote:

Alexander O Kollmar AYE

Katie Briggs AYE

Tate Kunkle AYE

Annie Rolland AYE

Alex Frederick AYE

CAC Member Howard Schuman asked if there's been any communication with the state regarding this matter. Kyle Barnett said that he is unaware of any NY Ag and Markets opinion on the matter.

Attorney Charles Gottlieb discussed their recent submission to the ZBA responding to comments and questions that were raised at the public hearing held on Dec. 17, 2024. He noted that at the last meeting they informed the ZBA of work that has been continuing at the project site. He reminded the ZBA that the Town Building Inspector was asked to look into the violations.

Since the public hearing, the Appellants have noticed that another utility pole has been constructed. The property owner is still not complying with the Town Zoning code. The ZBA needs to uphold the building permit or revoke the permit. The solar panels are supposed to be for personal use only and should be limited to 110% of anticipated total power used by the property owner. He insisted that the permit should be revoked.

Charles Gottlieb further stated that there are bigger questions regarding the property status: Is it residential, commercial, or agricultural? He said that all types of properties need to go through the

permitting process. He reiterated from the first public hearing that the number of horses being housed on the property matters. The panels are also not fully screened. The Appellants did not receive the topography they previously requested, but he acknowledged that they did receive other relevant information including the site plans from SunCommon. The consultant hired by the Appellants (Studio A) looked at the project site and found two very good alternative locations for the panels. Even if the work continues despite the Stop Work Order that was issued by the Town Building Inspector, the developer can be forced to remove the panels and change the original construction so it adheres to the Zoning Code.

He continued to insist that the solar panels are not protected by NY Ag and Markets law because they are supplying energy to other things. He said that they are not being used primarily for the equine business. Studies conducted so far on the property and the panels are not sufficient. The solar panels are highly visible from the Appellants' residence. There might be some relief in 10 years if the landscaping is adequate, but that assumes the trees will grow to the appropriate height and there are other unknown variables.

Attorney Daniel Stafford, representing property owner Michael Pryor, approached the ZBA table. He stated that they do have 13 horses grossing a lot of money. He referenced the Building Inspector's prior emails. If the property were to be classified as residential, it would automatically be Type II with no additional study required. Type I is optional, not mandated. The study referenced today by Charles Gottlieb assumes that baby trees are being planted. He insisted that this is not the case. They are a tree farm. They have trees of many sizes. They have mature trees of 20' in size. The panels will be much lower than the trees. He asked the ZBA to view the study carefully. They can supplement the record with actual tagged trees so people can make a more appropriate assessment and said that they will be happy to do that. He reiterated that the visual shields will be adequate.

Annie Rolland asked the property owner if cost was the primary reason for the current location of the solar panels and stated that they could have connected to bedrock.

Michael Pryor said that the first site they looked at as a possibility was all rock. It would have been a huge job to trench. They ultimately looked for the simplest and easiest site. If they put the solar panels in the middle of the property, it would have been very difficult and a lot more work would have been needed regarding trenching. He guaranteed that nobody will be able to see the solar panels when they are finished. It will be totally invisible to the neighbors. He said that utility bills for the entire property were used to determine the solar panel load.

Appellant Lou Casciano approached the ZBA and stated that the Building Inspector is not enforcing the Code. They can put a trench wherever it's needed for the solar field. Why is it in the current location? There are many other options. The proposed trees will need constant treatment to prevent disease. How will they keep up with the maintenance over time? Will future property owners take over this responsibility? He stated that his family is all for responsible solar energy. They are not "anti-solar."

Charles Gottlieb said that the trees shown in their visual examples match what the developer plans on planting. Regarding SEQRA inaccuracies, he asked that the ZBA refer to the Town's counsel.

Vicki Sachar from SunCommon, attending via Zoom, said that they did send the site plans that were requested 48 hours after the first public hearing. Central Hudson was informed of the Stop Work Order that was issued, but she cannot speak to actions they have or haven't taken.

Motion to close the Public Hearing:

Made by: Katie Briggs

Seconded by: Alexander O Kollmar

Motion PASSED by the following vote:

Alexander O Kollmar AYE

Katie Briggs AYE

Tate Kunkle AYE

Annie Rolland AYE

Alex Frederick AYE

Tate Kunkle accepted into the record Attorney Charles Gottlieb's Jan. 21, 2025 submission sent to the ZBA on behalf of the Appellants and Daniel Stafford's Jan. 17, 2025 letter sent to the ZBA on behalf of the property owner.

**Yadgard: 610 Stanford Road** Parcel # 042590-0000

Applicant Joshua Mackey, on behalf of the property owner Daniel Yadgard, has applied for variances to install a backyard swimming pool.

Upon request from Attorney Allan Rappleyea, representing property owner Daniel Yadgard, this matter will be adjourned to the next ZBA meeting scheduled for Feb. 18, 2025.

Motion to adjourn to the Feb. 18, 2025 meeting:

Made by: Katie Briggs

Seconded by: Annie Rolland

Motion PASSED by the following vote:

Alexander O Kollmar AYE

Katie Briggs AYE

Tate Kunkle AYE

Annie Rolland AYE

Alex Frederick AYE



Motion to Close the Meeting:

Made by: Tate Kunkle

Seconded by: Alexander O Kollmar

Motion PASSED by the following vote:

Alexander O Kollmar AYE

Katie Briggs AYE

Tate Kunkle AYE

Annie Rolland AYE

Alex Frederick AYE

The Zoning Board of Appeals Meeting closed at 7:20 PM

# EXHIBIT C





# **Utility Pole Fire at 5548 Route 82**



