

Nelson Gage, Zoning Board Chair  
Dale Warner, Town Planner  
Melissa Deffer, Clerk  
Teresa Bakner, Board Attorney



TOWN OF DUANESBURG  
SCHENECTADY COUNTY

Jonathan Lack, Vice Chairperson  
Link Pettit, Board Member  
Daniel Boggs, Board Member  
Matthew Ganster, Board Member

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TOWN OF DUANESBURG  
TOWN CLERK

Town of Duanesburg  
Zoning Board Minutes  
June 21<sup>st</sup>, 2022  
**Final Copy**

**MEMBERS PRESENT:** Nelson Gage- Chairperson, Jonathan Lack- Vice Chairperson, Daniel Boggs, Matthew Ganster, Link Pettit. Also attending Town Attorney-Teresa Bakner, Town Planner-Dale Warner, and Clerk -Melissa Deffer.

**INTRODUCTION:**

Nelson Gage opened the meeting at 7:00 pm. Gage welcomed everyone to tonight's meeting.

**OPEN FORUM:**

Nelson Gage opened the open forum at 7:01 pm.

Lynne Bruning located at 13388 Duanesburg Rd would like everyone to know that the Solar Law committee is meeting, and the videos are posted on the Towns website and very informative.

Nelson Gage closed the open forum at 7:04 pm.

**PUBLIC HEARINGS:**

**#22-05 Dunnsville Rod and Gun Club:** SBL#68.00-1-14, (C-1) located at 3081 Western Turnpike is seeking an Area Variance for a front yard reduction to meet the requirements for a flag lot under section 3.5.93(B); section 14.5.2(B) of the Town of Duanesburg Zoning Ordinance.

Mr. Peterson gave his presentation to the public.

**Gage/Ganster** made a motion to open the public hearing for the **#22-05 Dunnsville Rod and Gun Club** application.

Gage aye, Ganster aye, Lack aye, Boggs aye, Pettit aye. **Approved.**

John Simons located at 3070 Western Turnpike would like to know what a flag lot is.

Chairperson Gage explained that a flag lots access point to the street or highway is narrower than the lot itself. The zoning ordinance calls for 60 ft and currently this property only has 30 ft.

**Gage/Lack** made a motion to close the public hearing for the **#22-05 Dunnsville Rod and Gun Club** application.

Gage aye, Lack aye, Ganster aye, Pettit aye, Boggs aye. **Approved.**

**Gage/Pettit** made a motion to grant **#22-05 Dunnsville Rod and Gun** located at 3081 Western Turnpike SBL#68.00-1-14 a 30ft road frontage variance to meet the requirements for a flag lot under section 3.5.93(B); section 14.5.2(B) of the Town of Duanesburg Zoning Ordinance and provided a building permit be obtained within 6 months.

Gage aye, Pettit aye, Ganster aye, Lack aye, Boggs aye. **Approved.**

**#22-02 Urbano/Caschera**, SBL#35.06-3-5.2, (L-1) Located at 2610 Weast Rd is seeking a side yard setback and an Area Variance under section 7.1.6(2); 7.1.5(1) of the Town of Duanesburg Zoning Ordinance. Luigi A. Palleschi, P.E from ABD Engineers, LLP who is representing Mr. Caschera and Fabio Urbano who was also in attendance.

Mr. Palleschi gave his representation to the public.

Chairman Gage would like to know the height of the proposed single-family dwelling, the position of the house and if they still plan to build the house on the garage which will add additional height to the building.

Mr. Palleschi explained it is still the plan for the owners to build a 2 and a half story house. The reason the house was positioned the way it's on the drawing is because they lined the house up with all the other houses on Weast Rd.

Chairperson Gage asked the applicants if they were willing to move the house back?

The applicants will do what they must do to be able to build on the lot, but they are not happy about having to move the house location.

Chairperson asked that the Board take into consideration the neighboring houses and the impact on the community character of the proposed construction.

**Pettit/Boggs** made a motion to open the public hearing for the **#22-02 Urbano/Caschera** application.

Pettit aye, Boggs aye, Gage aye, Lack aye, Ganster aye. **Approved.**

LouAnn DiNardi located at 2636 Weast Rd had submitted a written concern and was present on zoom to share her concerns. Mrs. DiNardi also understands that the lot was for sale, but she was under the impression based on the codes that she read that the land in question would not be able to be developed. **(Please See Attachment)**

Kelly Mangano located at 2598 Weast Rd the house to the right if you are looking at the lot. Agrees with her neighbors and feels that the new single-family home will have a undesirable change to the community and if it's possible to move the house back more.

**Ganster/Pettit** made a motion to close the public hearing for the **#22-02 Urbano/Caschera** application.

Ganster aye, Pettit aye, Boggs aye, Gage aye, Lack aye. **Approved.**

**Boggs/Lack** made a motion to grant Urbano/Caschera located at 2598 Weast Rd SBL#35.06-3-5.2, a side yard variance of 4ft east and 4ft west under section 7.1.6 and 7.1.5 of the Town of Duanesburg Zoning Ordinance. Also, an area variance for a preexisting undersized lot under section 13.1.2 to construct a dwelling with conditions of no higher than 30ft in height and must be 98 ft from the Weast Rd right of way per the findings of section 14.5.2 providing a building permit be obtained within 6 months and all other of the aspects of the ordinance be followed.

Boggs aye, Lack aye, Gage aye, Pettit aye, Ganster aye. **Approved.**

**Lack/Gage** made a motion that the **#22-02 Urbano/Caschera** application is and exempt Type II action pursuant to Title 6 NYCRR Section 671.5(c)(16).

**No further action pursuant to SEQRA is required.**

Lack aye, Gage aye, Boggs aye, Pettit aye, Ganster aye. **Approved.**

**New Business:**

**#22-06 Callahan, Paul:** SBL#67.00-2-11.41, (R-2) located at 646 W Duane Lake Rd is seeking an Area Variance to sell an existing undersize lot as a building lot in a R-2 Zoning District under section 8.5(1) of the Town of Duanesburg Zoning Ordinance. Mr. Callahan explained that he owns a lot 200X300 feet roughly 1.3 acres that's on a private road off West Duane Lake Rd. The lot is currently vacant and a well has been dug years ago. An approved septic system design has been submitted and approved by Schenectady County. The land is linked with another 40 acres of land that's about 800 ft south of the property. The goal is to go in front of the Planning Board and subdivide the 1.3 acres off from the Parcel 800 ft away and make the 1.3 acre parcel a buildable lot, but first a variance is needed for an undersized lot. There is no road frontage on a public road. Currently Mr. Callahan owns the private road as well. There are no maintenance agreements in place as of now for the private road. To be able to subdivide the land the private road is going to have to stay part of the 1.3 acres and the entrance of the private road will have to be the road frontage for the parcel and will be considered a flag lot. A maintenance agreement via either a right of way or easement must be developed before the process goes any further. For the next meeting the Board would like to have:

1. A developed maintenance agreement

**Gage/Lack** made a motion that the **#22-06 Callahan, Paul** application is and exempt Type II action pursuant to Title 6 NYCRR Section 671.5(c)(16).

Gage aye, Lack aye, Ganster aye, Pettit aye, Boggs aye. **Approved.**

**No further action pursuant to SEQRA is required.**

**Boggs/Petit** made a motion to table the **#22-06 Callahan, Paul** application until the July 19<sup>th</sup>, 2022, meeting.

Boggs aye, Pettit aye, Ganster aye, Lack aye, Gage aye. **Approved.**

**MINUTES APPROVAL:**

**Boggs/Pettit** made a motion to approve the May 17<sup>th</sup>, 2022, Zoning Board minutes with the corrections to the new section number put into place for SEQRA.

Boggs aye, Pettit aye, Ganster aye, Lack abstain, Gage aye. **Approved.**

**OLD BUSINESS:**

**Board Member Ganster recused himself from both applications #22-03 Oakhill Solar 1 LLC and #22-04 Oakhill Solar 2 LLC due to his property abutting one of the parcels.**

**#22-03 Oakhill Solar 1 LLC,** SBL#74.00-2-5.2 Located at 13592 Duanesburg Rd is seeking a Area Variance for a height of fence under section 5.7.(1) of the Town of Duanesburg Zoning Ordinance, and application **#22-04 Oakhill Solar 2 LLC,** SBL#74.00-2-5.1 Located at 13590 Duanesburg Rd is seeking a Area Variance for a height of fence under section 5.7.(1) of the Town of Duanesburg Zoning Ordinance. Bill Pederson a representative from

AMP is in attendance via zoom. Chairperson Gage stated that the ZBA has received a written comment from Susan Biggs located at 13388 Duanesburg Rd. Chairperson Gage also, explained that by a resolution approved by the Planning Board that states a fence that is 6ft in height only and suggested that the applicant is free to apply to the Zoning Board for a variance.

the ZBA had asked do the solar panels themselves comprise the electrical equipment, the answer is yes they are attached to a critical components of the solar energy aspect of the batteries that are being stored and that does need to be fenced in. a county referral was submitted to Steve Feeney and it was deferred to local consideration with a suggestion to allow in the local ordinance to allow fences that are appropriate for this type of construction.

**Gage/Boggs** made a motion to approve the following findings with respect to both Oak Hill Solar 1 and 2 LLC projects:

1. The ZBA finds that the requested interpretations issued by the ZBA are type II actions pursuant to SEQRA;
2. The ZBA finds that in the event the ZBA issues an area variance for the two additional feet of fence height, the requirements of SEQRA have already been met by the Town Planning Board, which, acting as SEQRA lead agency, issued a negative declaration of environmental significance on the projects;
3. The ZBA has examined the Town of Duanesburg Zoning Ordinance, which contains a limit on the height of privacy fences of not more than six feet and the ZBA determines that this provision does not apply to the eight-foot-high fences proposed by Oak Hill Solar 1 and 2 LLC for their solar projects, as the purpose of the fences is not to obscure views, i.e. provide privacy. Instead, the purpose of the fences, which have been designed to appear as agricultural fences, is to protect public safety by preventing access to the solar projects, which have high voltage electrical connections and other such electrical equipment located thorough out the projects as shown on the approved site plans.
4. The ZBA has examined Town of Duanesburg Local Law No. 1 of 2016, section 3(a) and finds that the language of the local law merely provides that fencing associated with a solar project be six feet in height but that there is no indication that the Town of Duanesburg Town Board intended to supersede the State and National requirements pertaining to such fences that they be at least 7 feet tall or 6 feet with three strands of barbed wire at the top of the fence. In light of this, the ZBA finds and determines that the Local Law should be more appropriately interpreted as requiring that such fences be at least 6 feet tall as interpreting it in any other way would be in derogation of State and National requirements that apply to such projects in the Town and such interpretation is consistent with the language and purposes of Town of Duanesburg Local Law No. 1 of 2016.
5. Moreover, the ZBA also finds that the request for eight- foot-high fences for the Projects meet the requirements for an area variance. The ZBA is required to apply a balancing test to balance the benefit to the applicant with the detriment to health, safety & welfare of the community by examining whether the benefit, i.e. the additional security provided by two additional feet of fencing can be achieved by other means feasible to the applicant; whether the additional two feet of fencing will cause an undesirable change in neighborhood



character or detriment to nearby properties; whether the request for an additional two feet of fencing is substantial; whether the request for an additional two feet of fencing will have adverse physical or environmental effects; and whether the request for an additional two feet of fencing is self-created (which is relevant, but not determinative).

6. In applying the balancing test for the additional two feet in height of fencing the ZBA finds as follows:

- a. that an eight-foot-high fence, rather than a shorter fence with three strands of barbed wire at the top, has less of a visual impact on the community and provides for security that meets the requirements of the State and National Codes applicable to such electrical installations;
- b. that the fences have been designed to be very similar in appearance to agricultural fences typically used in Duanesburg rather than those typically used for electrical installations at substations, for example;
- c. that the additional security provided by the higher fences cannot be met by some other means feasible to the applicant as the applicant has indicated that shorter fences are not currently available in the marketplace due to supply chain difficulties and that such shorter fences would not meet its security needs in any case;
- d. that the difference between a six-foot-high fence with three strands of barbed wire and an eight-foot-high fence with a solely agricultural appearance (as shown on the typical detail on the approved site plans) will not cause an undesirable change in neighborhood character or detriment to nearby properties which nearby properties as well as other agricultural properties in Town typically have agricultural fencing;
- e. that the request is not substantial based on the visual information included in the record before the Planning Board and here and based on the required setbacks and distances between the property boundaries and the fencing as shown on the approved site plans;
- f. that the request for an additional two feet of fencing will not have adverse physical and environmental effects—the approved site plans which were evaluated pursuant to SEQRA showed the additional two feet of fencing and the ZBA finds that the additional two feet of fencing will not cause any significant adverse environmental impact and will likely result in very little visual difference between a six feet high and an eight feet high agricultural fence with the setbacks shown on the site plans from adjacent properties and from NYS Route 7;
- g. that the request is self-created; however, the State and federal requirements demonstrate that at least a seven-foot-high fence would be required regardless and the ZBA acknowledges that both the supply chain limitations identified by the applicants and the greater security provided to the public by the higher, eight-foot-high-fences justifies the grant of the variances.

Now therefore the ZBA interprets the applicable Town laws to authorize the proposed eight-foot-high for these electrical installations and, in the alternative, grants the requested area variances for the eight-foot-high fences as shown on the approved site plans.

Gage aye, Boggs aye, Pettit aye, Lack aye. **Approved.**

**OTHER:**

Board Member Boggs explained that the Solar Committee is very informative. Also, Chairperson Gage strongly urges the Board Members and public to watch the videos on the website.

**MINUTES APPROVAL:**

**Boggs/Pettit** made a motion to approve the May 17<sup>th</sup>, 2022, Zoning Board minutes with no corrections.

Boggs aye, Pettit aye, Ganster aye, Lack abstain, Gage aye. **Approved.**

**ADJOURNMENT:**

**Pettit/Gage** made a motion **to adjourn at 8:53 pm.**

Pettit aye, Gage aye, Lack aye, Boggs aye. **Approved**

 ORIGINAL

**TOWN OF DUANESBURG ZONING BOARD OF APPEALS  
RESOLUTION ISSUING INTERPRETATION OR IN THE ALTERNATIVE  
APPROVING AN AREA VARIANCE TO ALLOW EIGHT FEET TALL FENCES  
AT THE OAK HILL SOLAR PROJECTS**

**JUNE 21, 2022**

MOVED BY Nelson Gage; SECONDED BY Daniel Boggs

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**WHEREAS**, Oak Hill Solar 1 and 2 LLC received special use permits and site plan approvals for two 5 MW Solar Projects from the Town of Duanesburg Planning Board, after the Planning Board, as SEQRA lead agency issued a negative declaration of environmental significance for the Type 1 projects; and

**WHEREAS**, the Planning Board determined as follows in its resolution of March 17, 2022, "The Planning Board is approving a fence that is six feet in height only and the Applicant is free to apply to the Zoning Board of Appeals if the Applicant is required to construct higher fences due to State or National Electrical Codes requirements;" and

**WHEREAS**, the Town Building Inspector issued a determination on April 7, 2022 that an area variance would be required for the height of the fences that Oak Hill Solar 1 and 2 LLC are requesting to construct to add two (2) feet to the height of the fence, i.e. eight foot high fences.

**WHEREAS**, the Town of Duanesburg Zoning Ordinance defines a "fence" in section 3.5. 69 as "[a]ny structure or device, regardless of composition, which encloses or divides a parcel of land or serves as a barrier, other than a building or growing plants or trees." Section 5.7(c) of the Town of Duanesburg Zoning Ordinance provides that "Privacy fences shall not exceed six (6) feet in height and be of a material compatible with the general surroundings with the finished side out. ; and

**WHEREAS**, the Town of Duanesburg Local Law no. 1 of 2016, "the Solar Energy Facilities Law" provides in section 3a that "[a]ll electrical and control equipment, including any battery and storage cells, shall be labeled and secured to prevent unauthorized access. Such equipment shall be enclosed with a six-foot fence;" and

**WHEREAS**, Oak Hill Solar 1 and 2 LLC applied for an area variance to the ZBA for an 8 feet high fence as shown on the approved site plans and fencing details for the two projects and subsequently submitted a letter dated May 6, 2022 to the Town Building Inspector also seeking an interpretation of the Solar Law (Town of Duanesburg Local Law no 1 of 2016, section 3(a), which provides that solar equipment shall be enclosed by a six foot fence, seeking to clarify that the Solar Law when taken in conjunction with other provisions of Town and Building Codes, should read as "at least six feet high"; and

**WHEREAS**, the Town of Duanesburg is subject to the NYS Building Code requirements, which include the National Requirements for Electrical Installations including section 110.31, "Enclosures for Electrical Installations" which provide, among other requirements, that "A fence shall not be less than 2.1 m (7 feet) in height or a combination of 1.8m or more of fence fabric and a 300 mm (1 foot) or more of extension using three or more strands of barbed wire or equivalent". This was confirmed by Schenectady County Planning staff in correspondence to the Town dated May 10, 2022 as confirmed by NYSEDA staff in an email dated June 14, 2019 to Schenectady County Planning Staff; and

**WHEREAS**, an interpretation issued by a Zoning Board of Appeals is a Type 2 or exempt action under SEQRA and an area variance is subject to the SEQRA negative declaration issued on the Projects by the Planning Board acting as SEQRA lead agency (the ZBA is an involved agency only); and

**WHEREAS**, the request for interpretation/area variance was referred to the Schenectady County Planning Department pursuant to the NYS General Municipal Law and the Schenectady County Planning Department determined that it would defer to local consideration (no significant county-wide or inter-community impact) on May 11, 2022;

**WHEREAS**, the ZBA held a duly noticed public hearing at its meeting of May 16, 2022 where any persons who wanted to speak or submit written comments were allowed to do so and the ZBA has carefully considered all of the comments;

**NOW THEREFORE BE IT RESOLVED**, that the ZBA makes the following findings with respect to both Oak Hill Solar 1 and 2 LLC projects:

1. The ZBA finds that the requested interpretations issued by the ZBA are type II actions pursuant to SEQRA;
2. The ZBA finds that in the event the ZBA issues an area variance for the two additional feet of fence height, the requirements of SEQRA have already been met by the Town Planning Board, which, acting as SEQRA lead agency, issued a negative declaration of environmental significance on the projects;
3. The ZBA has examined the Town of Duanesburg Zoning Ordinance, which contains a limit on the height of privacy fences of not more than six feet and the ZBA determines that this provision does not apply to the eight-foot-high fences proposed by Oak Hill Solar 1 and 2 LLC for their solar projects, as the purpose of the fences is not to obscure views, i.e. provide privacy. Instead, the purpose of the fences, which have been designed to appear as agricultural fences, is to protect public safety by preventing access to the solar projects, which have high voltage electrical connections and other such electrical equipment located throughout the projects as shown on the approved site plans.
4. The ZBA has examined Town of Duanesburg Local Law No. 1 of 2016, section 3(a) and finds that the language of the local law merely provides that fencing associated with a solar project be six feet in height but that there is no indication that the Town of Duanesburg

Town Board intended to supersede the State and National requirements pertaining to such fences that they be at least 7 feet tall or 6 feet with three strands of barbed wire at the top of the fence. In light of this, the ZBA finds and determines that the Local Law should be more appropriately interpreted as requiring that such fences be at least 6 feet tall as interpreting it in any other way would be in derogation of State and National requirements that apply to such projects in the Town and such interpretation is consistent with the language and purposes of Town of Duanesburg Local Law No. 1 of 2016.

5. Moreover, the ZBA also finds that the request for eight-foot-high fences for the Projects meet the requirements for an area variance. The ZBA is required to apply a balancing test to balance the benefit to the applicant with the detriment to health, safety & welfare of the community by examining whether the benefit, i.e. the additional security provided by two additional feet of fencing can be achieved by other means feasible to the applicant; whether the additional two feet of fencing will cause an undesirable change in neighborhood character or detriment to nearby properties; whether the request for an additional two feet of fencing is substantial; whether the request for an additional two feet of fencing will have adverse physical or environmental effects; and whether the request for an additional two feet of fencing is self-created (which is relevant, but not determinative).
6. In applying the balancing test for the additional two feet in height of fencing the ZBA finds as follows:
  - a. that an eight-foot-high fence, rather than a shorter fence with three strands of barbed wire at the top, has less of a visual impact on the community and provides for security that meets the requirements of the State and National Codes applicable to such electrical installations;
  - b. that the fences have been designed to be very similar in appearance to agricultural fences typically used in Duanesburg rather than those typically used for electrical installations at substations, for example;
  - c. that the additional security provided by the higher fences cannot be met by some other means feasible to the applicant as the applicant has indicated that shorter fences are not currently available in the marketplace due to supply chain difficulties and that such shorter fences would not meet its security needs in any case;
  - d. that the difference between a six-foot-high fence with three strands of barbed wire and an eight-foot-high fence with a solely agricultural appearance (as shown on the typical detail on the approved site plans) will not cause an undesirable change in neighborhood character or detriment to nearby properties which nearby properties as well as other agricultural properties in Town typically have agricultural fencing;
  - e. that the request is not substantial based on the visual information included in the record before the Planning Board and here and based on the required setbacks and distances between the property boundaries and the fencing as shown on the approved site plans;
  - f. that the request for an additional two feet of fencing will not have adverse physical and environmental effects—the approved site plans which were evaluated pursuant to SEQRA showed the additional two feet of fencing and the ZBA finds that the additional two feet of fencing will not cause any significant adverse environmental impact and will likely result in very little visual difference between a six feet high



and an eight feet high agricultural fence with the setbacks shown on the site plans from adjacent properties and from NYS Route 7;

- g. that the request is self-created; however, the State and federal requirements demonstrate that at least a seven-foot-high fence would be required regardless and the ZBA acknowledges that both the supply chain limitations identified by the applicants and the greater security provided to the public by the higher, eight-foot-high-fences justifies the grant of the variances.

7. Now therefore the ZBA interprets the applicable Town laws to authorize the proposed eight-foot-high for these electrical installations and, in the alternative, grants the requested area variances for the eight-foot-high fences as shown on the approved site plans.

By majority vote of the Zoning Board of Appeals of the Town of Duanesburg at its regular meeting on June 21, 2022.

  
Nelson Gage, ZBA Chair

6/21/22  
Date

Present: Nelson Gage, Link Pettit, Jonathan Lack and Daniel Boggs

Absent: Matthew Ganster, recused

**Zoning Board of Appeals Board Members:**

Nelson Gage	Yea
Matthew Ganster	Recused
Link Pettit	Yea
Jonathan Lack	Yea
Daniel Boggs	Yea

## Melissa Deffer

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**From:** Lou Ann <pigpenlou@aol.com>  
**Sent:** Tuesday, June 21, 2022 11:08 AM  
**To:** Nelson Gage  
**Cc:** Melissa Deffer  
**Subject:** Re: Variance Request Discussion for 2610 Weast Road  
**Attachments:** variance Consideration 2610.pdf

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Morning,

I'm writing in regards to an item on the agenda in tonight's Zoning Board Public Hearing.

As you may remember, I wrote about this subject prior to last month's meeting. Since today's meeting has added items (Area Variance) to the application for 2610 Weast, I wanted to send the attached letter and photo's for the board's consideration. I will not be able to attend the meeting in person, but do plan on attending via Zoom. If you have any questions about the attached or you are unable to open the .pdf document please let me know.

Thank you in advance for your time and consideration.

Regards,

Lou Ann (Louise) DiNardi

Nelson Gage, Chair  
Zoning Board  
Town of Duanesburg  
5853 Western Turnpike  
Duanesburg, NY 12056

Dear Nelson Gage and the Zoning Board,

In last month's meeting I had expressed some concerns regarding the Variance application of 2610 Weast Road. Since this application will be discussed again this evening, I am writing to you today to discuss the items listed in the application and to highlight the concerns that were raised last meeting by multiple neighbors. I noticed that tonight's agenda also mentions an Area Variance under section 7.1.6(2):7.1.5(1) of the Town's Ordinance (along with the previously discussed side yard setbacks under section 12.6(2): 12.6(4); 14.5.2(B).

I'm hoping the board will consider the negative effect this will have on neighboring properties, properties owned by individual who were under the impression that 2610 was not considered a buildable lot, since the width of said lot is less than 175 feet and the square footage less than 43,560 square feet. In review of the area and the documents presented I did find the following:

- 1) Most of the houses in the Lake District Area were constructed prior to the current zoning ordinance. In a review of the houses, on Weast Road, I found that the average square footage of the homes to be less than 1,500 square feet. The application being presented is requesting consideration to build a 2,000+ sq foot home, and to set the home close to the side neighbors property lines. While there are a couple homes in the area that have a square footage > 2,000 sq. feet, I found that one is set on 1 acre of land and the other, which was build in 2004, and sits on .32 acres. I'm assuming that the house on .32 acres was replacement to a pre-existing home (or camp) and possibly grandfathered into the current regulations.
- 2) The application also reference's the public sewer access that is established on the lot. Based on documents filed with the town, dated October 2004, and addressed to Kathleen Hewitt (a previous owner) the installation of the sewer access "does not in any manner guarantee" a variance will be granted for development of the lot.
- 3) The properties on Weast, in the immediate area of this parcel, have Lake Access (across the street), something that this property does not have, despite the efforts of the current landowner to obtain such access from the neighbors.

It's my opinion that this application is not being presented by someone who looking to build on this property for personal reasons. I have spoken to a few parties who were interested in purchasing this land when it was for sale. Each person acknowledged the current position of the surrounding homes, the narrow lot and they expressed interest in building a small home, suitable for year-round living without encroaching on the surrounding properties or blocking any lake views.



In addition to the above, if an area variance were to be granted, I feel that the proposed position of the house will devalue the home to the west side of the property, cutting it off from the lake view that it currently has. As you can see in the survey map, the home to the west was constructed, at an angle, so to take in the beauty of both sides of the lake. Constructing a home, in line with 2598 Weast Road, will completely block this view. (Please see attached photos of previous and current views). The current owner of 2610 has stripped the land of picturesque trees and left them to rot on the property. Adding a home, to such a small lot will change the character of the neighborhood. As mentioned in the last meeting, by Nancy Eddings, not only the side neighbors will be affected by this. The houses on Hillside will likely loose the view that they currently have of the lake and with the current zoning it was thought that this land was not deemed as a buildable lot.

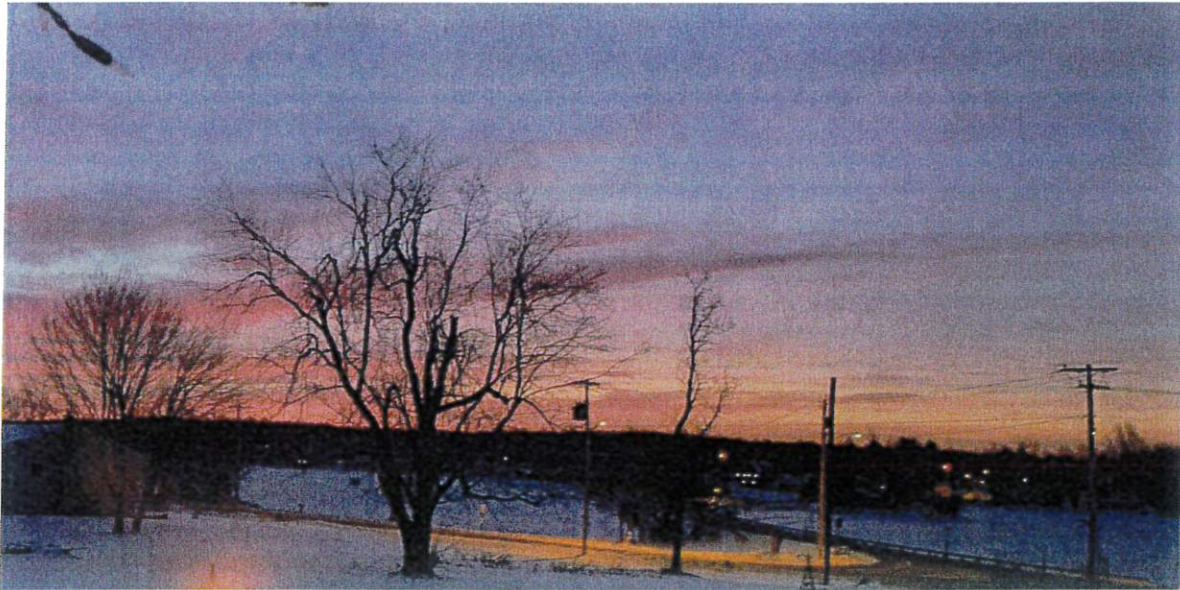
In closing, adding a house with no easement or right-a-way to the lake, in the lake district, could prove to be a nightmare for the current neighbors. I respectfully request that the board consider the points brough forth in this letter.

Thank you.

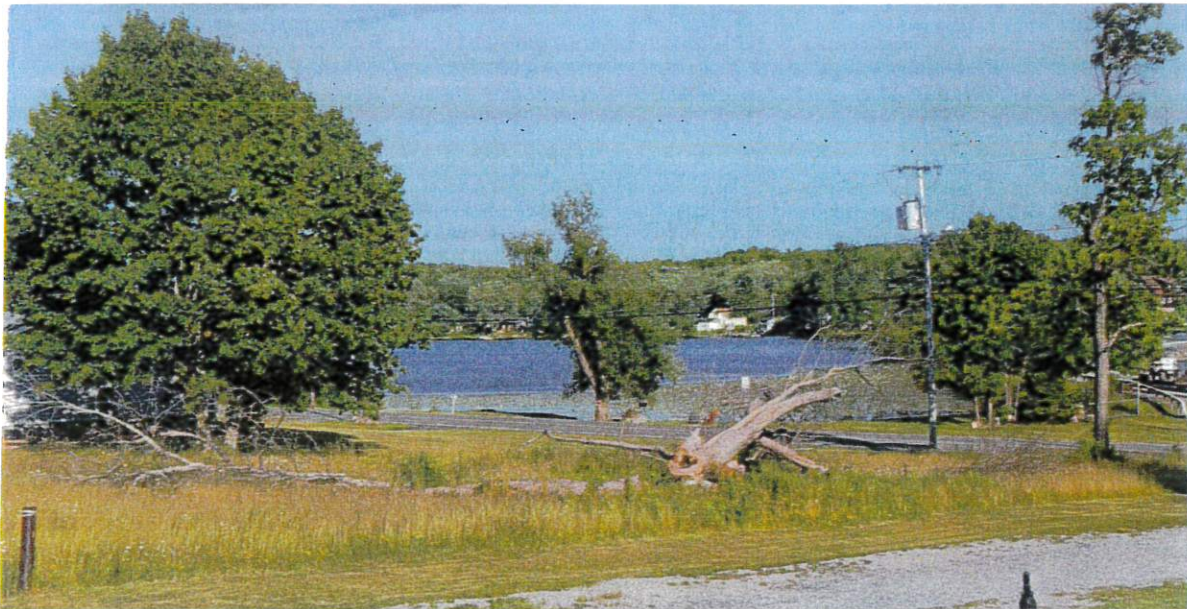
Lou Ann DiNardi



Position of the house to the West of 2610. Note the angle of the house which was done for the views of the lake.



View from the west side. Note that both sides of the lake are in view.



Current view. Placing on home in this area will completely block the view.





Unobstructed view of both sides of the lake.

## Melissa Deffer

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**From:** Susan Biggs <azurevista@hotmail.com>  
**Sent:** Tuesday, June 21, 2022 12:59 PM  
**To:** Melissa Deffer; Jennifer Howe  
**Cc:** Lynne Bruning; Susan Biggs  
**Subject:** Fw: tonights zoning board meeting - request condition be added to resolution  
**Attachments:** 2022 06 20 Bruning to Zoning Board-merged.pdf

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Ms. Deffer and Ms Howe,

Please include the attached forward email that I sent to the supervisor, planning board chair and zoning board chair in the Oak Hill Solar + Storage facility town record, planning record and the zoning record.

Please confirm receipt to [azurevista@hotmail.com](mailto:azurevista@hotmail.com)

Thank you for your assistance.

Susan Biggs  
518-577-4132  
[Azurevista@hotmail.com](mailto:Azurevista@hotmail.com)

Sent from [Outlook](#)

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**From:** Susan Biggs  
**Sent:** Tuesday, June 21, 2022 11:04 AM  
**To:** Bill Wenzel <[wwenzel@duanesburg.net](mailto:wwenzel@duanesburg.net)>; Nelson Gage <[Ngage@duanesburg.net](mailto:Ngage@duanesburg.net)>; jschmitt@duanesburg.net <[jschmitt@duanesburg.net](mailto:jschmitt@duanesburg.net)>  
**Cc:** jganther@duanesburg.net <[jganther@duanesburg.net](mailto:jganther@duanesburg.net)>; Ricky Potter <[rpotter@duanesburg.net](mailto:rpotter@duanesburg.net)>; dgrant@duanesburg.net <[dgrant@duanesburg.net](mailto:dgrant@duanesburg.net)>; alucks@duanesburg.net <[alucks@duanesburg.net](mailto:alucks@duanesburg.net)>; Lynne Bruning <[lynnembruning@gmail.com](mailto:lynnembruning@gmail.com)>; Joshua Barnes <[arrowrolloffs@gmail.com](mailto:arrowrolloffs@gmail.com)>; pamelarowling@yahoo.com <[pamelarowling@yahoo.com](mailto:pamelarowling@yahoo.com)>; wallaceij@hotmail.com <[wallaceij@hotmail.com](mailto:wallaceij@hotmail.com)>; danielle.unser@yahoo.com <[danielle.unser@yahoo.com](mailto:danielle.unser@yahoo.com)>; fusilier1986@yahoo.com <[fusilier1986@yahoo.com](mailto:fusilier1986@yahoo.com)>; Susan Biggs <[azurevista@hotmail.co](mailto:azurevista@hotmail.co)>  
**Subject:** tonights zoning board meeting - request condition be added to resolution

Dear Supervisor Wenzel, Planning Board Chair Schmitt and Zoning Board Chair Gage,

Tonight, the zoning board meets to review and vote on the resolution to approve Oak Hill Solar's variance for an eight-foot-tall fence.

Since time of application in May 2018 the Project's six-foot-tall fence has not complied with National Electric Code requiring a seven-foot-tall fence. Why didn't the zoning board review the Project in 2018?

The current town board, zoning board and planning board has inherited the prior administration's lack of oversight. It appears that the Project has not been required to follow the same policy and procedure that the citizens are required to follow: obtain the required zoning variance before seeking planning board approval.

It appears that the Project is being built on a crooked foundation.

For the benefit of the town's fiscal responsibility to the current and future taxpayers and the abutters I request that the town board intercede at tonight's zoning board meeting. Please require the resolution include a condition that an evergreen screen be planted and maintained around the entire fence line until decommissioning.

The Project applied for a Special Use Permit May 2018. The planning board appointed Doug Cole of Prime AE as town engineer in August 2018.

At time of application the town engineer and the town code inspector, Dale Warner, did not inform the planning board and zoning board that the Project's six-foot-tall fence did not meet 2017 National Electric Code 110.31. requiring a seven-foot-tall fence.

As a result the zoning board did not review the required fence height variance. This deprived the public, in particular the abutters, of the required notification and public hearing to comment on the May 7, 2018 site plans and the July 19, 2018 FEAF.

The May 7, 2018 site plan shows that more than 10 acres of trees in the southwest corner of the site would be removed to construct the solar array. The July 19, 2018 FEAF Part 1 E.1.b that documents 21.94 acres of trees would be removed. The Project did not comply with the town's 2016 Solar Law 3.f. limiting tree clearing to 20,000 square feet or 1/2 acre.

It appears that the town may not have followed protocol and procedures for Project review. It appears that in 2018 the Project should not have advanced to the planning board for a Special Use Permit until zoning board review. Please see attached June 20, 2022 letter from Lynne Bruning to the zoning board.

At tonight's zoning board meeting please require the zoning board to add a condition to the resolution for Oak Hill Solar + Storage fence height variance requiring the planting and maintenance of an evergreen screen around the entire fence for the lifespan of the Project.

Thank you for your time and consideration.

Respectfully  
Susan Biggs  
13388 Duanesburg Road

Sent from [Outlook](#)

PO Box 13545  
Quaker Street, NY 12141

Nelson Gage, Chair Zoning Board  
Town of Duanesburg  
5853 Western Turnpike  
Duanesburg, NY 12056

June 20, 2022

Re: Public Hearing Oak Hill Solar 1, LLC and Oak Hill Solar 2, LLC fence height variance

Dear Nelson Gage and the Zoning Board,

The purpose of this letter is to request that the zoning board add a condition to the resolution for Oak Hill Solar 1, LLC and Oak Hill Solar 2, LLC (the "Project") as posted on the town website June 19, 2022 requiring the Project to protect the abutters views, use, enjoyment and future development of their properties for the anticipated 40+ year lifespan of the Project by providing and maintaining an evergreen screen around the entire fence line. Deferring to planning board approval may deprive the abutters of protections and legal rights that the zoning board may have provided in 2018 if the zoning board had reviewed the fence height variance as required.

Since 2017 the National Electric Code (the "NEC") section 110.31 has required high voltage equipment at solar energy facilities to be enclosed by either a six feet in height fence topped with one foot of barbed wire or a seven feet in height fence.

Beginning in July 2018 the Project application depicts a fence that is only 6 feet in height. August 2018 the planning board approved Doug Cole of PrimeAE as the town engineer (the "town engineer") to review the Project.

Application documents (see Exhibit A) show that the town engineer, the planning board attorney, Teresa Bakner of Whiteman, Osterman and Hanna, and the town code inspector, Dale Warner, may not have informed the planning board and the zoning board of:

- existing NEC regulations;
- that the Project 6 feet high fence as shown was not compliant with the NEC regulations;
- that a NEC compliant fence would require zoning board approval.

Project review at time of application in 2018 may be in violation of town policy and procedure requiring applications to obtain zoning variances prior to, or in conjunction with, planning board approval. Requesting a zoning variance after planning board approval is atypical.

Inadequate review and oversight may have permitted the Project to sidestep zoning board action in 2018. As a result, the town was not obligated to inform the abutters of the Project until the mandatory notification of the planning board's public hearing on July 18, 2019. Absence of



necessary zoning board action at time of application deprived the taxpayers, neighbors and abutters of zoning board review, notification of a public hearing, and a public hearing at the beginning of Project.

As a result, parcel owners within 1,000 feet of the Project received notification of the planning board public hearing a year later, on or about July 11, 2019. This notification was the first time some of the abutters learned of the Project.

Without zoning board review and citizen input from the beginning of the application in 2018 the Project may be a detriment to the town and particularly burdensome to the abutters use, enjoyment and future development of their parcels for generations to come.

The State Environmental Quality Review Application (the "SEQRA") is flexible and may not require particularly substantive results. Yet, the courts repeatedly find that the SEQRA lead agency should not defer analysis of project impacts to professionals or involved agencies. It appears that the zoning board did not review the Project at the time of application because professional "experts" did not inform the town that the fence was not compliant with national code. As a result, the citizens were deprived of notification of the Project and a public hearing at the beginning of the Project.

We request that the zoning board add a condition to the resolution requiring the Project to plant and maintain an evergreen screen around the entire fence line for the Project's anticipated 40+ year life span. Screening would uphold Solar Law 3(e) "Evergreen tree plantings may be required to screen portions of the site from nearby residential property, public roads, and from public sites known to include important views or vistas" would be upheld.

Abutter's should not be required to use their own lands and resources to screen the noisy eyesore now or in the future. We request that the board protect the taxpayers and the town's finances.

Thank you for your time and consideration.

Respectfully,  
Lynne Bruning  
720-272-0956  
lynnebruning@gmail.com

Enc: Exhibit A listing of project submissions related to the fence  
Exhibit B Approved site plan dated June 6, 2019 sheets 1 through 10 of 1

Cc: William Wenzel, supervisor  
Jeffery Schmitt, planning board chair



# **EXHIBIT**

**A**

## EXHIBIT A

Project submissions to the planning board that address fence height include, but may not be limited to:

May 7, 2018 concept site plan submitted by project engineer, Environmental Design Partnership, to the planning board did not provide the fence height.

July 9, 2018 letter from the project engineer to the planning board states "The perimeter of the solar fields will be fenced with a 6 ft high chain link fence."

September 11, 2018 letter from the town engineer, Doug Cole of Prime AE, to planning board Section Plans 2 states "The Site Plan shows that the electrical and control equipment is enclosed within a chain link fence. However, the height of the fence is not shown on the drawing. Confirmation that the proposed fence is six feet tall, as required by the Solar Law, will be needed."

March 11, 2019 letter from the project engineer to the planning board Section Plans 2 states "The Applicant is proposing the use of a livestock style fence with a height of 6 ft as shown on the updated Site Plan."

March 11, 2019 site plan resubmitted to the planning board includes sheets 3 and 4 of 10 which show the notation "6 FT HIGH WIRE MESH & WOOD FENCE SURROUNDING SOLAR FIELD"

June 6, 2019 site plan resubmitted to the planning board includes sheets 3 and 4 of 10 which show the notation "6 FT HIGH WIRE MESH & WOOD FENCE SURROUNDING SOLAR FIELD"

September 5, 2019 site plan resubmitted to the planning board sheets 1 through 11 of 11. Sheets 3 and 4 of 11 show the notation "6 FT HIGH WIRE MESH & WOOD FENCE SURROUNDING SOLAR FIELD". Sheet 11 is the new Planting Plan for new evergreen screening on the east side of the Project site to protect some of Biggs property line along tax parcel 74.00-3-18 from views of the solar facility.

September 17, 2019 at 2:30 PM site plan sheets 1 through 10 of 10 resubmitted to the planning board includes sheets 3 and 4 of 10 which show the notation "6 FT HIGH WIRE MESH & WOOD FENCE SURROUNDING SOLAR FIELD" Sheet 11 is removed.

# **EXHIBIT**

## **B**

## EXHIBIT B

Project site plan sheets 1 through 10 of 10 submitted to the planning board on March 11, 2019, resubmitted on June 6, 2019, resubmitted on September 17, 2019, and approved September 19, 2019.

Sheet 1 of 10: A scale is not provided, graphic scale is not provided, includes unrelated tax id parcel to the north, abutter's houses are not provided, locations of 200+ tracking motors are not provided, engineer stamp is not provided.

Sheet 2 of 10: The tree line is significantly reduced compared to the May 7, 2018 site plan. The State Environmental Quality Review Act (the "SEQRA") began July 2018 and ended July 2019. Comparison of the May 7, 2018 site plan and the approved site plan dated June 6, 2019 Sheets 1 through 10 of 10 indicates that more than 10 acres of mature growth forest was removed. Duanesburg Solar Law limits tree clearing to 20,000 square feet, or less than 1/2 acre. Furthermore, it is a violation of SEQRA 617.3(a) to alter a project site while SEQRA is in effect. A graphic scale not provided, abutter's houses are not provided, location of the lay down yards, and a label for National Wetland Inventory are not provided.

Sheet 3 and 4 of 10: The battery storage locations, tracking motors, tracking gears and lay down yards are not provided. A full equipment list and location for battery energy storage, HVAC, tracking motors, tracking gears, DC-DC converters, and control gear are not provided.

Sheet 5 of 10: Does not show the two major switchgear located at the intersection of the access road and Duanesburg Road. A fence is not shown enclosing this equipment. Is a fence required? Lay down yards are not provided.

Sheet 5 and 6 of 10 The SWPPP reflects stormwater is discharged off site and the site plan reflects minimal silt fences to provide stormwater management. Abutters repeatedly requested that additional stormwater management practices be employed.

Sheet 7 of 10 The equipment staging/washout areas is noted to be 0.028 acres or 1,219 square feet. Lay down yards are not provided.

Sheet 10 of 10: omission of battery energy storage, omission of switchgear, omission of control gear, omission of length width and height for equipment. The Project did not change.

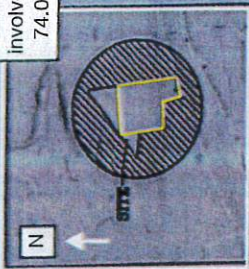
Sheet 11 of 11 Planting Plan submitted to the planning board on September 5, 2019 for evergreen screening on eastern property is not provided.



Exhibit B Biggs/Bruning to Zoning Board June 20, 2022

This site plan was submitted September 17, 2019, less than 48 hours before the planning board meeting. It omits the September 5, 2019 Sheet 11 Planting Plan.

Incorrect site outline that involves unrelated tax parcel 74.00-2-5-11 to the north



PROPOSED SITE PLAN FOR

# OAK HILL SOLAR 1&2

APPLICANT:

OAK HILL SOLAR 1, LLC & OAK HILL SOLAR 2, LLC

13950 DUANESBURG ROAD

TOWN OF DUANESBURG, SCHENECTADY COUNTY, NEW YORK

ORIGINAL

ENTERED 09/27/19  
BY: MD LHM

Neighboring house is not provided

Neighboring house is not provided

Unrelated parcel. Tax Map Number not listed in application documents

North is not oriented to top of page to match the site location map in upper left corner

Submitted March 11, 2019  
Resubmitted June 6, 2019

Engineer's stamp is not provided

Scale is not provided

Project property line for tax id parcel 74.00-2-5 is shown in yellow

FREEDOM OF INFORMATION:  
The first time this document was provided from the Town of Duaneburg to Bruning was April 18, 2022.  
Photographed at town hall with planning clerk.

Site Plan omits September 5, 2019  
Sheet 11, Landscaping Plan.

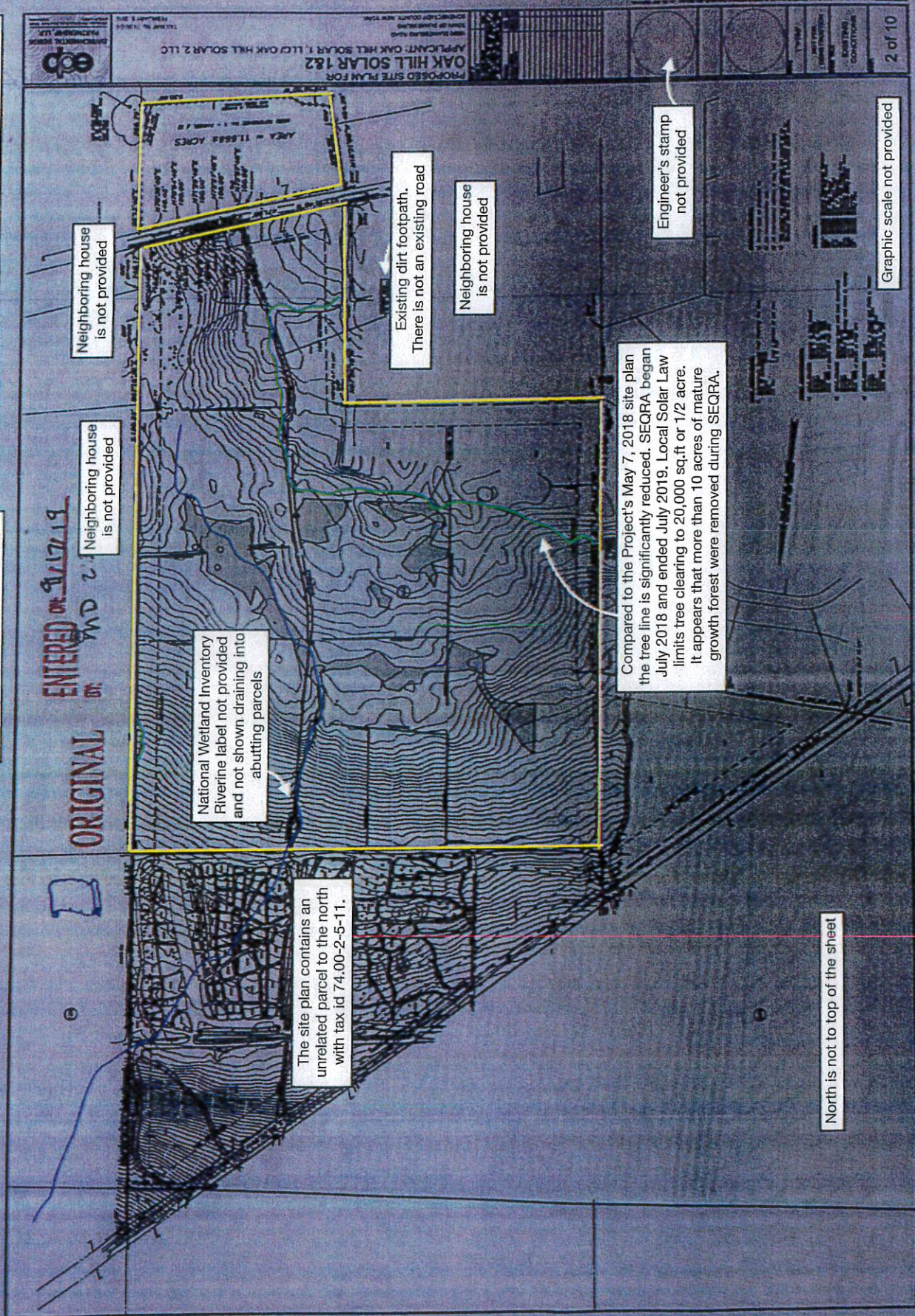
**PROPOSED SITE PLAN FOR**  
**OAK HILL SOLAR 1&2**  
APPLICANT: OAK HILL SOLAR 1, LLC / OAK HILL SOLAR 2, LLC  
TOWN OF DUANESBURG, SCHENECTADY COUNTY, NEW YORK  
Tax Map No. 74.00-2-5  
1 of 10  
PLANS PREPARED BY: **edp**  
ENGINEER: **edp**  
DATE: 09/27/19  
SHEET: 11 OF 10

**SITE STATISTICS**

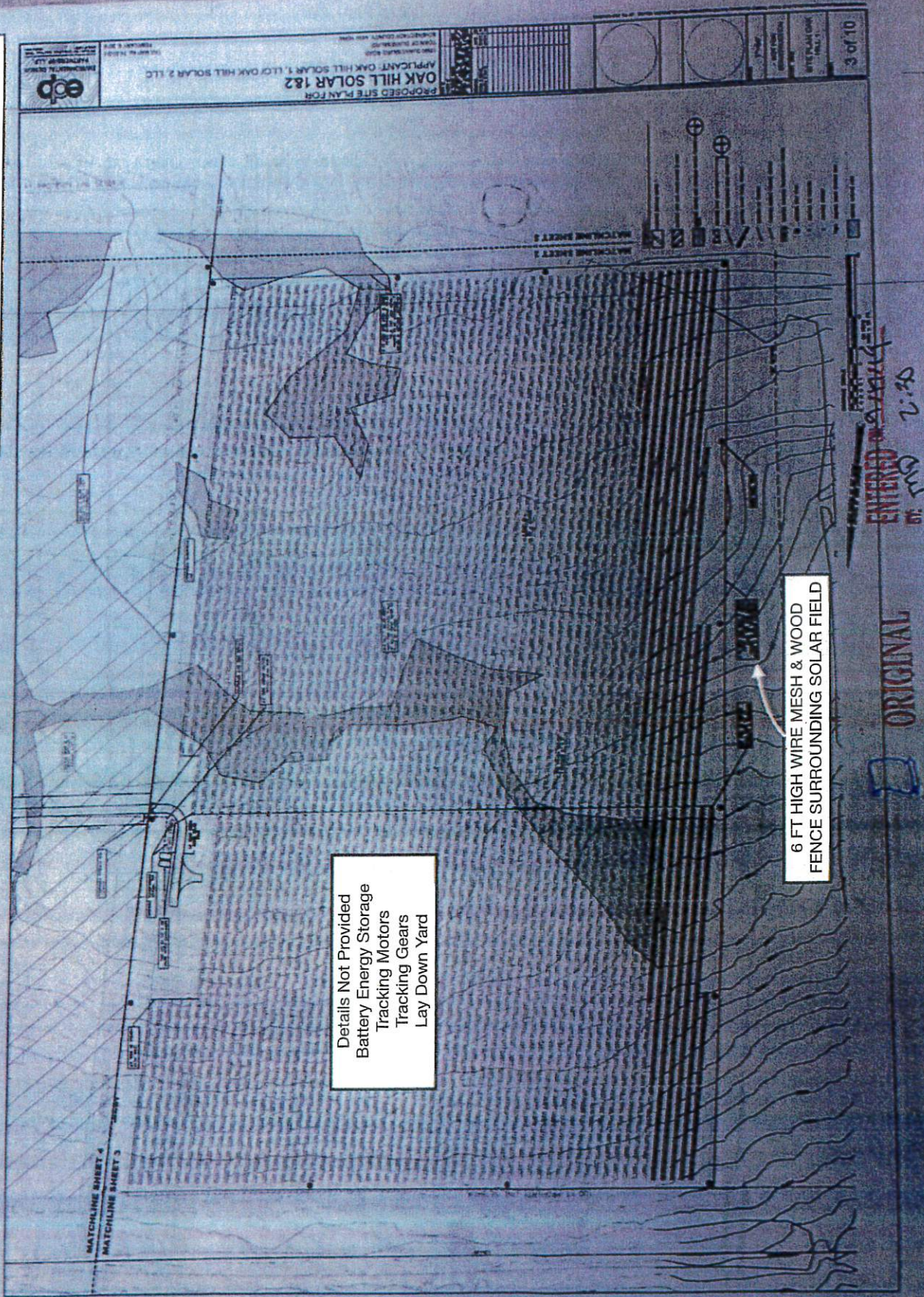
APPROXIMATE AREA	1.00 AC
APPROXIMATE PERIMETER	111.00 FT
APPROXIMATE VOLUME	111.00 CU YD
APPROXIMATE WEIGHT	111.00 TONS
APPROXIMATE LENGTH	111.00 FT
APPROXIMATE WIDTH	111.00 FT
APPROXIMATE DEPTH	111.00 FT
APPROXIMATE SURFACE AREA	111.00 SQ FT
APPROXIMATE VOLUME	111.00 CU YD
APPROXIMATE WEIGHT	111.00 TONS
APPROXIMATE LENGTH	111.00 FT
APPROXIMATE WIDTH	111.00 FT
APPROXIMATE DEPTH	111.00 FT
APPROXIMATE SURFACE AREA	111.00 SQ FT
APPROXIMATE VOLUME	111.00 CU YD
APPROXIMATE WEIGHT	111.00 TONS



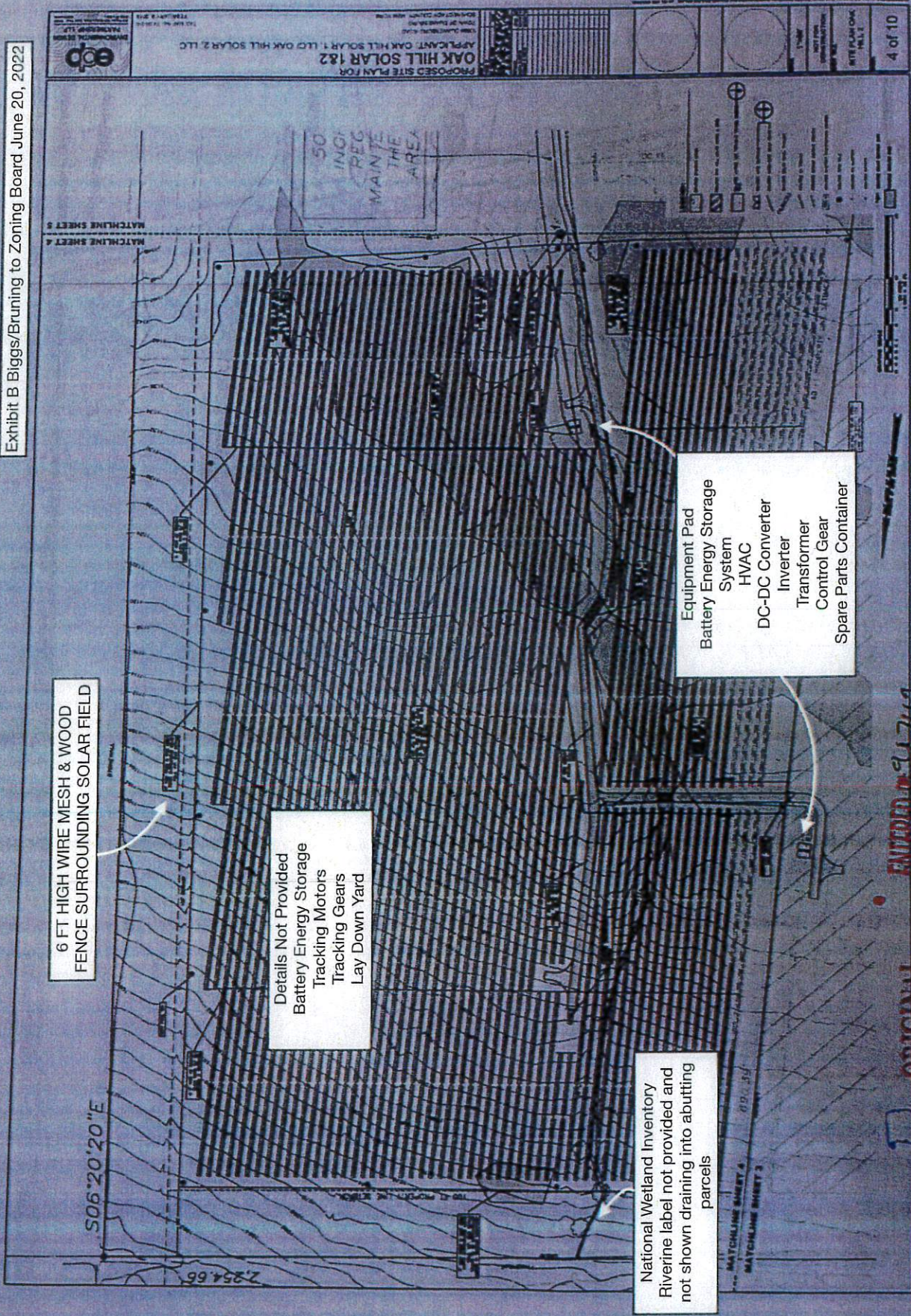
Image is not centered on the page



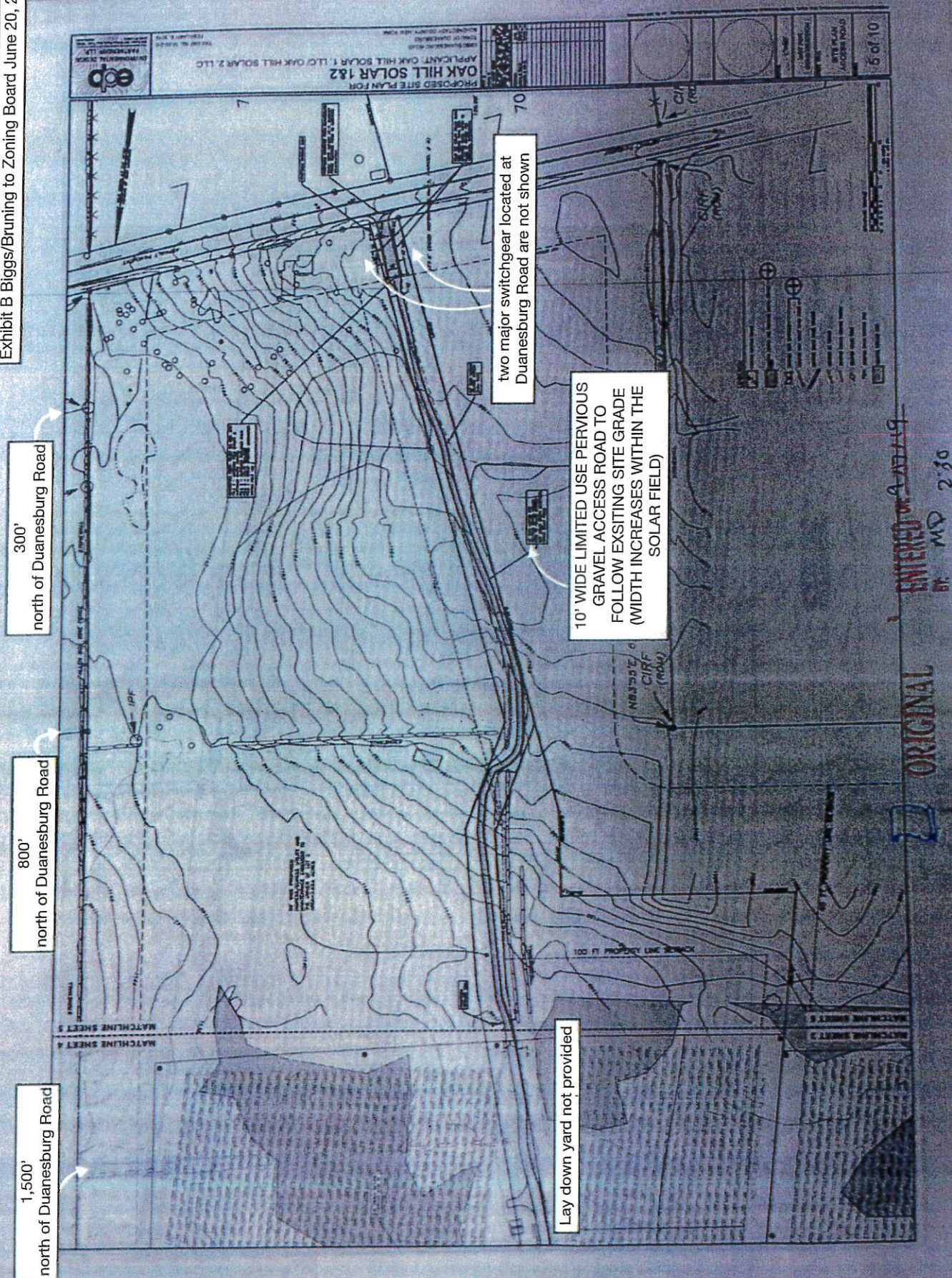












800'  
north of Duaneburg Road

300'  
north of Duanesburg Road

two major switchgear located at Duanesburg Road are not shown

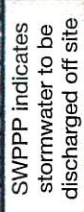
10' WIDE LIMITED USE PERVIOUS  
GRAVEL ACCESS ROAD TO  
FOLLOW EXSITING SITE GRADE  
(WIDTH INCREASES WITHIN THE  
SOLAR FIELD)

Lay down yard not provided

ORIGINAL

ENTERED ON 9-17-19  
BY MD 230

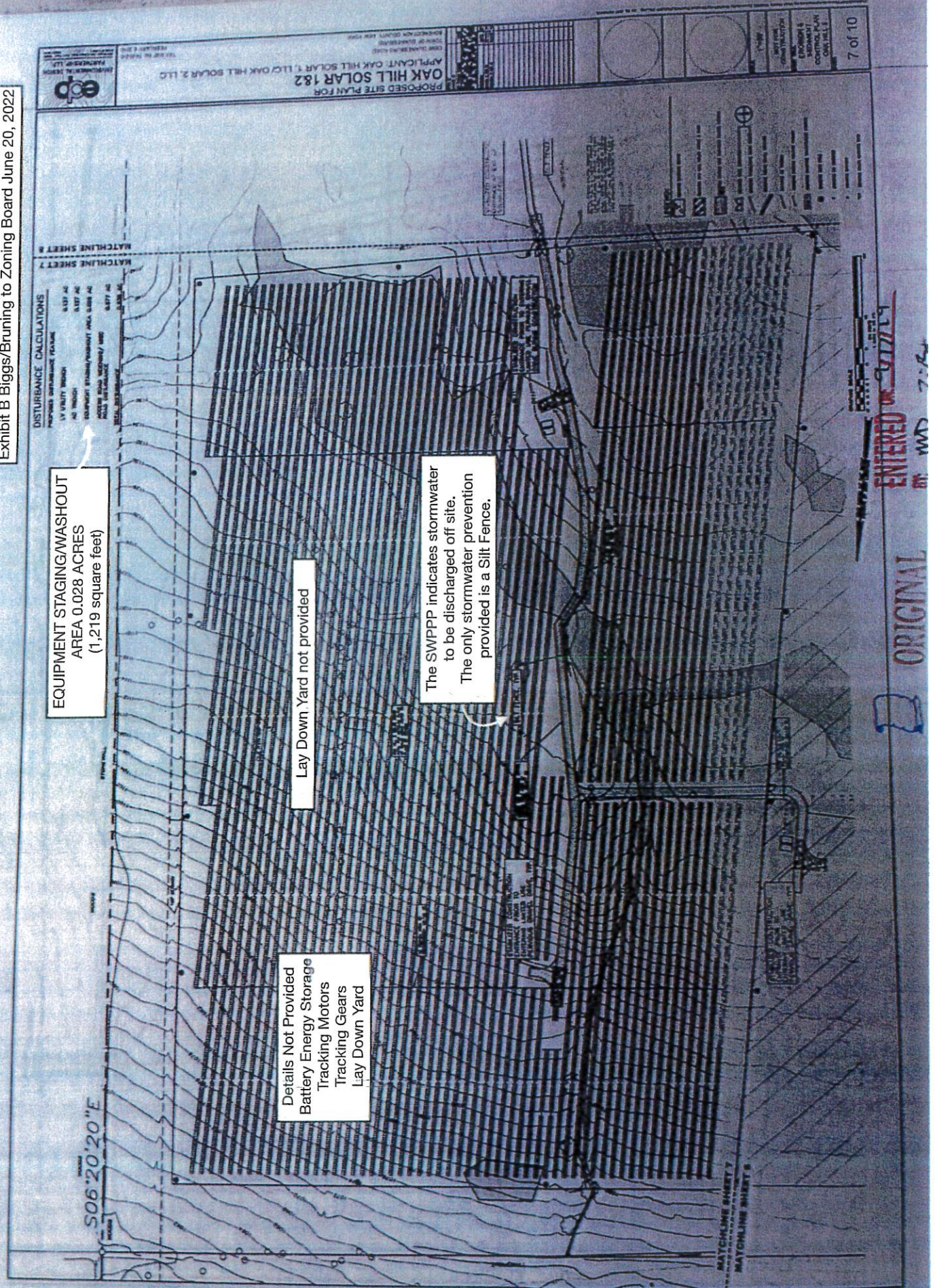




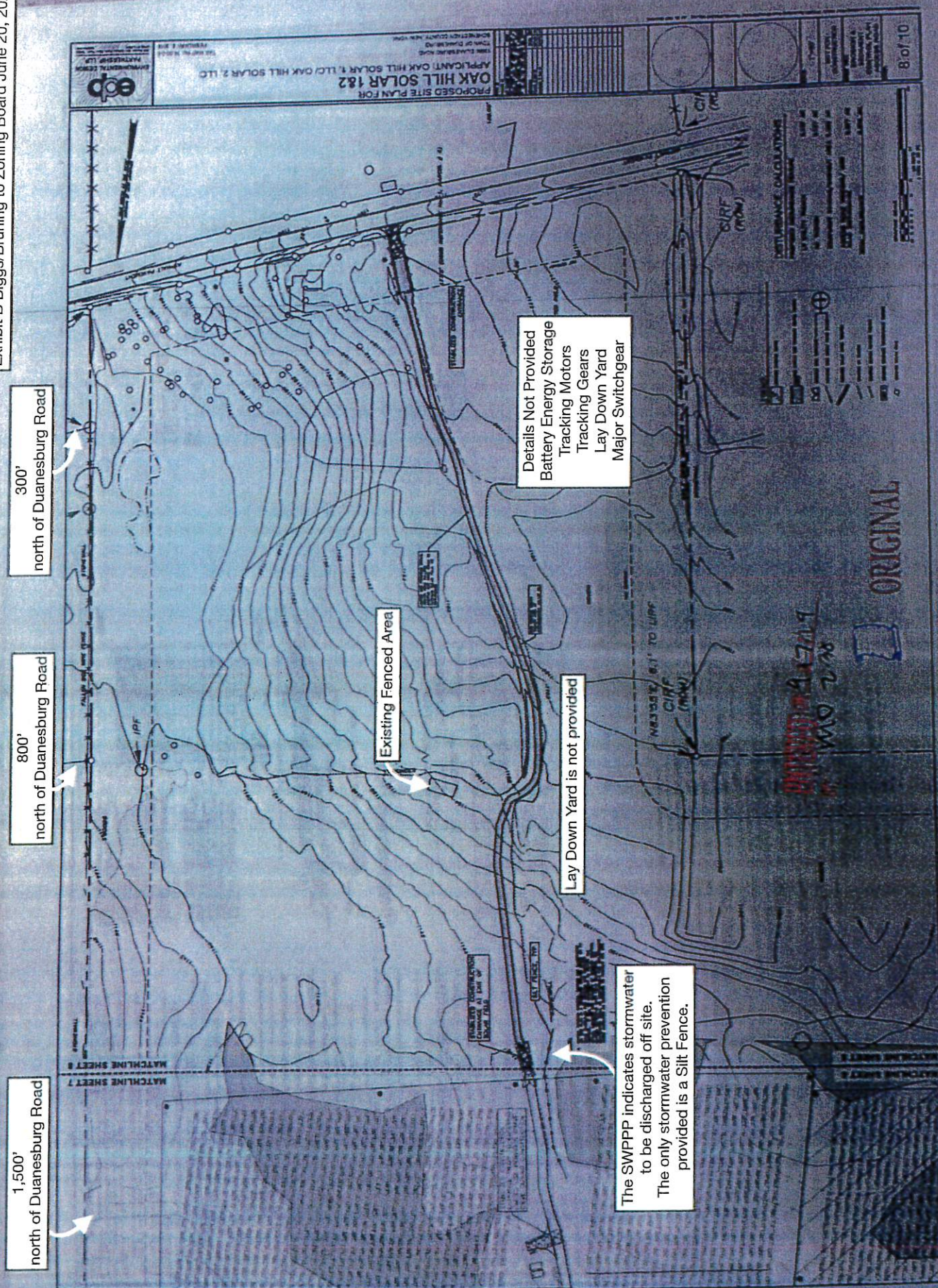
ORIGINAL  
ENTERED BY  
WD 210



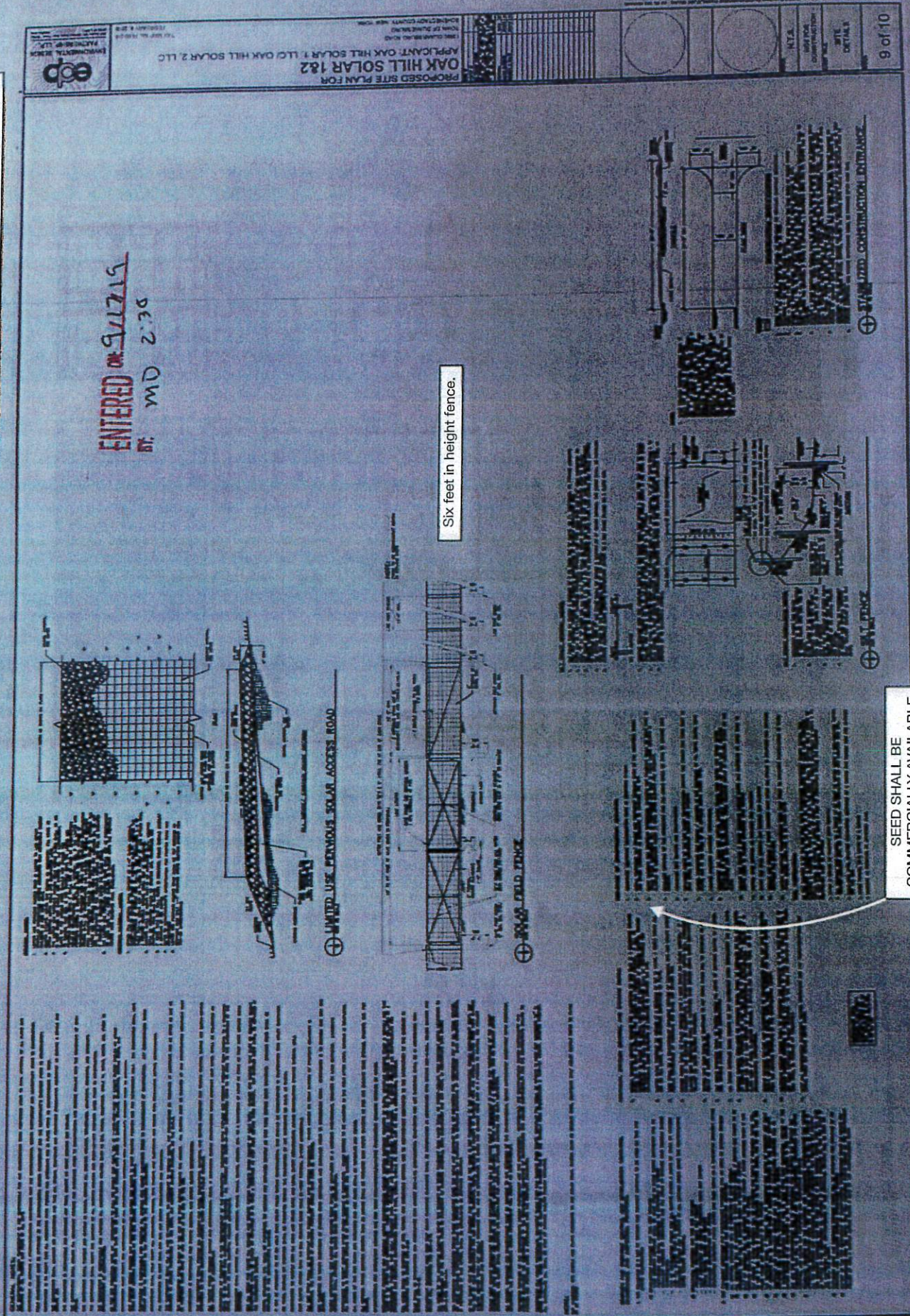












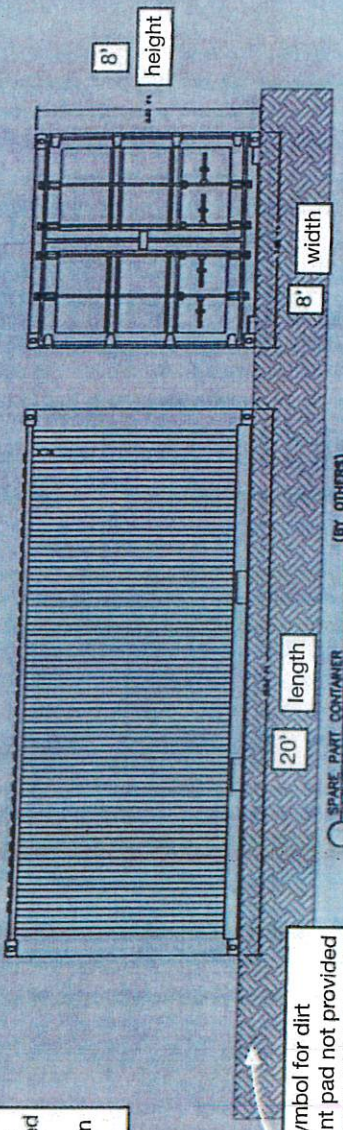
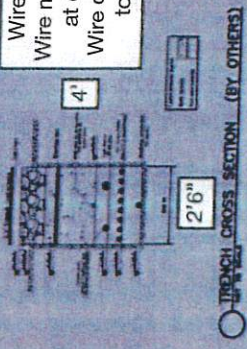
SEED SHALL BE  
COMMERCIALY AVAILABLE  
MIXTURE OF PERENNIAL RYE  
AND UTILITY GRADE FESCUE.



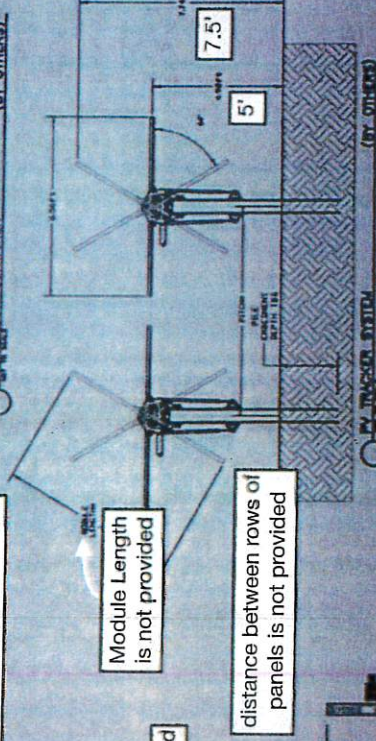
Electrical drawings not provided

Tracking panel system drawings not provided

Wire is not in conduit.  
Wire may not be removed  
at decommissioning.  
Wire coatings are known  
to contain PFAS.

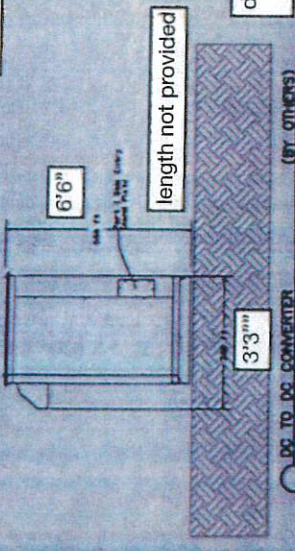


symbol for dirt  
equipment pad not provided

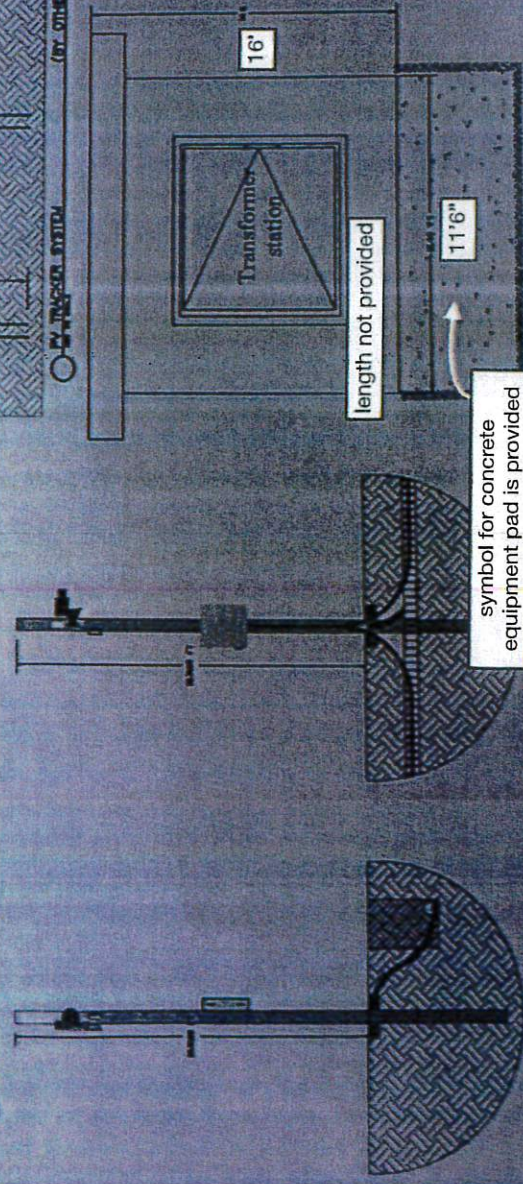


Module Length  
is not provided

distance between rows of  
panels is not provided

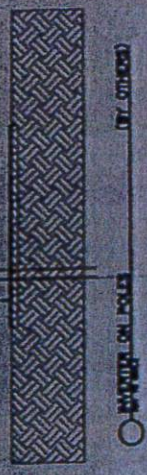


- DETAILS NOT PROVIDED
- Battery Energy Storage
  - Equipment Pads
  - HVAC
  - Control Gear
  - Switchgear
  - Tracking Motor
  - Tracking Gear Assembly
  - Tracking Wiring Harness



symbol for concrete  
equipment pad is provided

TRANSFORMER STATION (BY OTHERS)



TRACKING SYSTEM (BY OTHERS)