

**RESOLUTION OF THE TOWN BOARD OF THE TOWN OF
RUSH REGARDING THE CREATION OF A SOLAR ENERGY
SYSTEMS OVERLAY DISTRICT FOR FOREFRONT POWER,
LLC’S DEVELOPMENT OF TIER 3 SOLAR ENERGY
SYSTEM AT 8427 WEST HENRIETTA ROAD**

WHEREAS, Forefront Power, LLC (the “Applicant”) has applied to the Town of Rush (the “Town”) pursuant to Section 120-74 of the Zoning Law of the Town of Rush (the “Town Zoning Law”) for the development of the Werner Solar 4 megawatt (MW) alternating current (AC) Photovoltaic Array on 22.28 acres (the “Project Site”) of an approximately 116.48-acre parcel of land located at 8427 West Henrietta Road, Rush, New York (the “Property”) (the foregoing proposed project, the “Project”); and

WHEREAS, on November 13, 2019, the Town Board of the Town of Rush (the “Town Board”) referred the Project application to the Town of Rush Planning Board (the “Planning Board”) for its review and recommendation under Section 120-74 of the Town Zoning Law; and

WHEREAS, on December 17, 2019, the Planning Board recommended to the Town Board that the Project application be positively considered with regard to requesting creation of a Solar Energy System Overlay District, subject to preparation and submittal by the Planning Board of a corresponding report to the Town Board; and

WHEREAS, the Planning Board prepared and approved its report on January 21, 2020, which considered the factors under Section 120-74(H)(18) of the Town Zoning Law, found the applicable acceptable, and recommended approval of the Solar Energy Systems Overlay District for the Project, a copy of which report is attached hereto as Exhibit “A” and is incorporated herein by reference in its entirety (the “Planning Board Report”); and

WHEREAS, on June 10, 2020, in accordance with the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 NYCRR Part 617, as amended (collectively referred to as “SEQRA”), the Town Board satisfied the requirements of SEQRA with respect to the Project by adopting by resolution a Negative Declaration; and

WHEREAS, on July 22, 2020, the Town Board held a properly noticed public hearing with respect to the Solar Energy Systems Overlay District application and site development plan for the Project, in accordance with the requirements of Section 120-74 of the Town Zoning Law, and notice was posted as required by law; and

WHEREAS, on or about July , 2020, the Town referred the Project to the Monroe County Planning Department together with a full statement on the Project as required by Section 239-m of the General Municipal Law; and

WHEREAS, all persons at the hearing desiring to speak on the matter were heard, all correspondence on the matter was read, and all comments and statements that were received during the public hearing and/or at other duly held meetings of the Town Board were considered by the Town Board, and

WHEREAS, the Town Board has considered the recommendations contained in the Planning Board Report and is mindful of the criteria set forth in Section 120-74(18)(e) of the Town Zoning Law for the creation of a Solar Energy Systems Overlay District.

CHECK ONE OF THE FOLLOWING:

_____ **NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE TOWN BOARD** that each of the Whereas Clauses in this Resolution is incorporated by reference as specific findings of this Resolution and shall have the same effect as the other findings herein, and the application for the creation of a Solar Energy Systems Overlay District for the Project is hereby approved. The Town Board has considered the recommendations contained in the Planning Board Report and the additional factors under Section 120-74(18)(e) of the Town Zoning Law. The reasons supporting this approval include:

1. Location, arrangement, and appearance of the Solar Energy System.

The Solar Energy System is designed and placed on the Project Site in a way that is compatible with the surrounding landscape. The Project Site is located in an R-30 Residential District and not in or within 1,000 feet of R-20, R-MH, RR-5, or R-TH zoning districts in the Town as prohibited by Section 120-74 of the Town Zoning Law. The Proposed Action, as currently designed, does not require any variances and is consistent with the landscaping, buffering, height, acreage, lot coverage, and density limitations contained in the Town Zoning Law. The Project Site is located in a rural agricultural area of the Town, and while residential and farmland uses are to the north and east, the Project Site is over 250 feet from the nearest residence, and adjacent to Interstate 390 and a Power Transmission Line on the south and west. The Applicant worked closely with the Property owner to locate the Project Site in the least productive area of farmland on the Property. The Property contains 95 acres of tillable land, with 70 acres of tillable land still being available and supporting a sustainable vegetable/truck farm operation. Farming will continue to occur on surrounding agricultural areas in proximity to the Project Site. Visual simulations were also prepared from numerous vantage points surrounding the Project Site, which collectively demonstrate that the Project will not be visible from any scenic resource and that the Project will have a minimal impact on the surrounding properties.

2. Adequacy, type, and arrangement of screening/landscaping constituting a visual buffer between adjacent uses and adjoining lands.

The Project proposes two rows of native evergreen trees along New York State Route 15 and along other boundaries of the Project Site. Under Section 120-74 of the Town Zoning Law, a landscape buffer is required to provide complete screening from adjacent properties, and the Project, as currently designed, is consistent with the landscaping and buffering limitations contained in the Town Zoning Law. These will provide a visual buffer between adjacent uses and adjoining lands. The Project Site is also adjacent to Interstate 390 and a Power Transmission Line on the south and west, which provide an additional visual buffer.

3. Location and adequacy of open space.

The Project consists of the installation of an approximately 22-acre ground-mounted photovoltaic (PV) solar energy generating facility on an approximately 116-acre parcel of land, and the balance of the approximately 95 acres will not contain the Solar Energy System and will remain as open space that is part of the existing agricultural operation. The Project Site constitutes 0.43% of available agricultural land in the Town. The Project is small in scope in relationship to farming activities in the Town, and its location on the Property combined with remaining agricultural land will protect the Town's existing rural and open character.

4. Projection of adjacent properties against Glare, unsightliness, or other objectionable features.

Under Section 120-74 of the Town Zoning Law, solar panels are required to have anti-reflective coating to reduce glare to the maximum extent practicable. The panels to be used for the Project are smooth glass surface material with an anti-reflection coating (ARC), and will be on a south-facing fixed-tilt array. The Project proposes two rows of native evergreen trees along New York State Route 15 and along other boundaries of the Project Site. Under Section 120-74 of the Town Zoning Law, a landscape buffer is required to provide complete screening from adjacent properties. This will minimize the potential for glare and unsightliness to adjoining properties, and minimize visibility from residential uses in proximity to the Project Site. No lighting is proposed as part of the Project.

5. Compliance with SEQRA

The Town Board reviewed thousands of pages of documents relating to the impact of the Project on the environment, received comments from the public, and involved and interested agencies, about potential impacts, and over a period of several meetings undertook a thorough and comprehensive review of the Project and issued a negative declaration by resolution containing its reasoned elaboration that the Project will result in no potential significant adverse environmental impacts requiring the preparation of an environmental impact statement.

IT IS HEREBY FURTHER RESOLVED that approval of the application for the creation of a Solar Energy Systems Overlay District for the Project is subject to the following conditions:

1. The Applicant shall obtain all other necessary local, state, and federal permits and approvals required for the Project.
2. Upon receipt of all other necessary local, state, and federal permits and approvals required for the Project, the Town shall amend the Zoning Map of the Town of Rush to establish and define the boundaries of the Solar Energy Systems Overlay District.

IT IS HEREBY FURTHER RESOLVED that the Town Board directs the Town Clerk to maintain a copy of this resolution in the Office of the Town Clerk in files that are readily accessible to the public and made available upon request, subject only to the limitations established by the Freedom of Information Law.

OR

_____ **NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE TOWN BOARD** that each of the Whereas Clauses in this Resolution is incorporated by reference as specific findings of this Resolution and shall have the same effect as the other findings herein, and the application for the creation of a Solar Energy Systems Overlay District for the Project is not approved.

IT IS HEREBY FURTHER RESOLVED that the Town Board directs the Town Clerk to maintain a copy of this resolution in the Office of the Town Clerk in files that are readily accessible to the public and made available upon request, subject only to the limitations established by the Freedom of Information Law.

The adoption of the foregoing Resolution was moved by _____, seconded by _____, and duly put to vote, which resulted as follows:

| | <i>Yea</i> | <i>Nay</i> | <i>Abstain</i> | <i>Absent</i> |
|----------------------------|------------|------------|----------------|---------------|
| Supervisor Gerald Kusse | [] | [] | [] | [] |
| Councilman Daniel Woolaver | [] | [] | [] | [] |
| Councilwoman Amber Corbin | [] | [] | [] | [] |

The Resolutions were thereupon duly adopted.