

TOWN OF CONCORD PLANNING BOARD
Town Hall Court Room

November 5, 2019
7:00 p.m.

ITEM # 1:

The meeting was called to order by Acting Planning Board Chairman Julie Zybert at 7 p.m.

ITEM #2: Roll Call

Present:

Julie Zybert, Acting Chairman
Bruce Luno
George Donhauser
James Jozwiak
Karl R. Lux

Also Present:

Darlene Schweikert
Clyde Drake, Supervisor

Not Present:

Lawrence J. Kelly, Jr., Chairman
Joseph Edbauer

ITEM #3: Citizen Participation

There was no one for Citizen Participation.

ITEM #4: Approval of Minutes

a) October 1, 2019 – J. Jozwiak made the motion, seconded by B. Luno, to approve the Minutes as presented. All in favor. Carried.

ITEM #5: Solar Law

Supervisor Drake had a meeting with NYSERDA. Planning Board Chairman Kelly and Member Lux also attended. Supervisor Drake reviewed that meeting with the Board. The NYSERDA representatives advised the Town to try to get a new Solar Law in place; a revised one. NYSERDA also advised that the Town should get a Payment-in-Lieu-of-Taxes (PILOT) Law in effect. This is a PILOT available of approximately \$875,000 that is part of the solar farm and would be split the school districts, towns and villages that encompass it. Supervisor Drake also spoke with Wendel Consultants, the firm that did the Town’s Comprehensive Plan. Wendels are involved with the solar farm in Cambria; they advised the Town to watch the split because that is a \$500 million project and the town was offered \$18,000. All the entities were pushing to get their share. If this solar project goes through, the project could take three to five years. This is not a case where it will hit the town tomorrow but we need to have our laws in place. K. Lux agreed, noting that the Town needs to have this done within the next six months at least.

Supervisor Drake noted that there are some hard questions in the PILOT Law; it goes smooth until the annual payments: The PILOT says “(i) For Solar Energy

Systems with a capacity greater than 1 MW and less than 5 MW, \$_____ per MW of capacity.” The Town needs to come up with a dollar amount per MW of capacity. If it is greater than 5 MW, the Town needs to come up with a dollar amount for that. There is also an escalator in the draft law for every year. This is where the work will come in. The Town will need to review other PILOTS that are already existing and try to get a feel for what the dollar amount should be. The NYSERDA representatives presented at Houghton and they are really knowledgeable. The Town could reach out to these representatives as well. Supervisor Drake thought this meeting would be more pushing the Towns into this, but they really just wanted to do the best they could for the Towns. It was an informative meeting; the basic outcome is to get a revised Solar Law and a PILOT Law. The Town was also advised to brace for energy storage systems. The Town should also look into adopting this law as well. G. Donhauser asked about how the taxes would work on these since the company is only leasing the lands and what if structures are built on the property. Supervisor Drake noted that his understanding is that the land owner still pays the taxes; he does not think that the land owner gets assessed for the additional structures which would be part of the lease; if there are any agricultural exemption on the property that would come off. G. Donhauser thought the owner would have to pay back the taxes for previous years. B. Luno advised that that would depend on how the Assessors in that town would handle it; if something would be done. This is something different. K. Lux thinks, like G. Donhauser just commented, what if a big building is put up on someone’s property? Who would pay the assessment on that? He questioned how West Valley Nuclear handles this because he thinks it is all PILOT there. Supervisor Drake noted that these are good questions. B. Luno noted that the only one that the Town has their finger on is the property owner. The Solar Law could take care of this. K. Lux brought up the driveway roads that would be built. B. Luno noted that he hadn’t thought about was the handling of water. When the rain fell on the open piece of ground, it was fine but now it falls on the solar panels and runs off to a certain spot. Where would it go from there? K. Lux noted that the Town of Sheldon has about 60-70 of these over there and wonders what they do; how they get reimbursed. Supervisor Drake said there will be one built in Mt. Morris about half the size of our proposed project but it has not yet been built.

Supervisor Drake advised that the other matter discussed was a Farm Protection Plan. He reached out to the Eden Supervisor and has a copy of theirs; it’s 76 pages long. B. Luno does not have any experience with this. J. Zybert questioned how you would balance the homeowners’ right to do legal things with their property and a Farm Protection Plan which is basically saying that if you have land that is suitable for farming, that you have to not build these other things on it. Supervisor Drake noted that he has not gotten into this deep enough yet; not sure if this is where the person would have the option of putting their land into the Protection Plan. B. Luno advised that it would depend on how the Plan was set up; different towns/counties have different ways. Some are tied to the point where you can’t do anything with the property. They get paid a certain amount of money up front and if you sell that piece of property, it has to be sold for agriculture; it can’t be sold for anything different. J. Jozwiak had attended a seminar on this previously; he thought that one discussed the 100-year plan. B. Luno said he got out of that County program about five years ago. Supervisor Drake noted that some

property owners have been offered \$1,400/acre which is a lot of money. Does the Town have the right to tell an owner what they can do on their own property? J. Zybert said that if it is not illegal, she does not know how the Town can, especially if people have been approached with the ability to get money or rental. K. Lux questioned gas wells; how do people collect on that or how do they get taxed. J. Zybert wonders how they get taxed on the gas well; the gas company leases with the land owner. Supervisor Drake noted that those lease payments are taxable on income taxes. G. Donhauser noted that the gas company pays a tax on the gas well. A tax to the Town. The members were curious how the Assessor finds out that there is a gas well on the property? Questioned whether the tax is based on production.

Supervisor Drake informed the Board that he just wanted the Board to be aware of the challenges that are ahead of the Town. G. Donhauser questioned is there any chance that the Town does all of this and then the Governor says none of this applies; they can do whatever they want. Supervisor Drake noted that Article 10 is very powerful. Supervisor Drake advised that the Town may be able to put in the lease that they will need to improve the roads that they are driving over to do the project. G. Donhauser thought was already in place; that they have to bond the road. Supervisor Drake noted that we can ask for improvements; bond would only bring it back to where it was; and you'd have to chase the insurance company. B. Luno said as a land owner he would not get excited to have a solar farm on his land. Supervisor Drake advised that the solar company said they almost have as much land as they need. J. Zybert asked about the location where the solar farm is going; what is the land? Farm land? Vacant? What is being done with that land today? Supervisor Drake noted that a lot of it is farmland; very marginal farmland. K. Lux said not productive farmland. J. Zybert continued that if someone came and offered the farmers \$1,800/acre per year that is way more than they could get? G. Donhauser said definitely yes. Supervisor Drake informed the Board that the company is saying that there is nothing being done with the land that would affect future use; the land would be in the same condition as before. B. Luno feels that the land would not be back to farming quickly since there would be shrubbery stuff growing around the solar farm. Sheep will be used in these solar farms.

J. Zybert noted that with the information received from Supervisor Drake and K. Lux, there really isn't an action for the Planning Board at this point? Supervisor Drake agreed. There are a lot of hoops to jump through in getting these laws in effect. B. Luno asked if there was a timeframe to start; K. Lux wondered who would be preparing the draft laws for review. The PILOT is short, only three pages; but the Town would need to decide on the dollar amount. The Solar Law should be fairly easy since we already have a law in place. The battery storage systems one is about 10 pages. The Town just needs to find the expertise to get these laws drafted. J. Zybert wondered if the Town could get one from outside of New York State. Supervisor Drake noted that Wendel did say they could assist but there would be a fee associated with that help. K. Lux said that reaching out to NYSERDA representatives would be free. J. Zybert questioned whether NYSERDA offered any guidelines of what the Town is expected to do? Supervisor Drake said warnings not guidelines.

Supervisor Drake reminded the members that the solar project is only one-third in the Town of Concord. Wendel says this project would affect the Town more than it would the school districts. Supervisor Drake said he has talked with Daniel Castle, Erie County Environmental Commissioner, a few times and he has a negative approach to this so Supervisor Drake has heard both sides of these laws. J. Zybert asked if Commissioner Castle offered a rationale as to why the Town should put the brakes on this. Supervisor Drake advised that some of these meetings had to do with farm lands and just doesn't want to see the Town get taken. Supervisor Drake noted that one of the catches of the project that he sees is that the Town of Sardinia does not have a tax rate because of Waste Management and two-thirds of the project is in Sardinia. Supervisor Drake spoke with Sardinia Supervisor Gambino who said that she didn't think the project would go through and that their town did not need a PILOT. At this point the Town only knows what the developer is telling us with regard to the project and the land already under lease. Discussion ensued about which land owners may want to get involved with this project. The developer had at Town Board meetings reported that the parcels do not have to be contiguous. An informational meeting was held at the East Concord Fire Hall and more meetings will be scheduled. B. Luno brought up the Town's set back requirements and if it makes sense to have any separation between property lines if it is such an advantage for the company to have all the panels. K. Lux thought maybe for resale later on. B. Luno said our law would have to stick to that. G. Donhauser noted that this project needs 2500 acres to have the project go; they won't be using it all but they need that amount to make it work. Supervisor Drake noted that according to Wendel, no company has had approval in less than five years. K. Lux noted that there are a lot of approvals other than town/schools; there's federal, state. A lot of people continue power flow; it will be interesting to see how it will work because a lot of those transmission lines may not have the capacity to take the additional power.

ITEM #6: Business from the Members

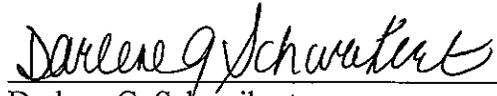
Acting Chairman Zybert asked if there was any business from the members:

1) Supervisor Drake reviewed the Planning Board members' terms and B. Luno's term is up at the end of the year and asked if he would like to remain on the Board. B. Luno has been on the Planning Board since 1976. B. Luno will let Supervisor Drake know.

2) Acting Chairman J. Zybert informed the members that the next meeting is December 3rd. J. Jozwiak advised that he will not be attendance for our December 3rd meeting. He will be on vacation.

ITEM #6: Motion of Adjourn

K. Lux made the motion, seconded by J. Jozwiak, to adjourn the meeting at approximately 7:38p.m. All in favor. Carried.



Darlene G. Schweikert
Planning Board Secretary

