

TOWN OF CONCORD TOWN BOARD MEETING  
Public Hearing-Local Law #1 of 2021 Solar Law

May 13, 2021  
6:00 p.m.

MEETING CALLED TO ORDER BY CLYDE M. DRAKE, SUPERVISOR

PRESENT: CLYDE M. DRAKE, SUPERVISOR  
JAMES M. KREZMIEN, COUNCILMAN  
KENNETH D. ZITTEL, COUNCILMAN  
WILLIAM F. SNYDER, III, COUNCILWOMAN  
PHILIP DROZD, COUNCILMAN

ALSO PRESENT: DARLENE G. SCHWEIKERT, Town Clerk  
BARRY A. EDWARDS, Hwy Supt  
BRIAN F. ATTEA, Town Attorney  
JEFFREY SINGLETON, Code Enforcement  
CAROLYN A. ROBINSON, Dog Control Officer  
ANDREW REILLY, Wendel Company

GEORGE DONHAUSER  
MAX BORSUK, Springville Journal

KIMBERLY KRZEMIEN  
KELLY CAMPBELL

Supervisor Drake opened the Public Hearing regarding Local Law #1 of the Year 2021: "Amending the Town Zoning Law, Chapter 150 of the Concord Town Code by replacing the existing sections of the Code on Solar Energy Systems with a new Solar Energy Systems Law."

The Notice of the Public Hearing was published in the Springville Journal on April 29, 2021 and was also posted on the Town's website [www.townofconcordny.com](http://www.townofconcordny.com) and the Town's signboard at 86 Franklin Street, Springville, New York on April 30, 2021.

Andrew Reilly noted that Concord is not unlike any other town in New York State. He believes there are at least 100 communities that are working on Solar laws or updating their Solar Law. If the law is more than two years old, it is outdated; the laws just keep changing. He will be giving the Town a sample law for Battery Energy Storage because that will be coming too. The Town Solar Law was fairly up to date and it was not a bad law at all. The big changes were the four tiers to try to include a certain size such as over 50 acres which would be unusual for our community and should have good rules and regulations about it. Over a certain size, the Town would get at 94-C project. The Sardinia-Concord project is a 94-C project. This is the only one so far in Erie County. The good part about that is that the State agrees that under the 94-C regulations that the zoning must be in accordance with the Comprehensive Plan. The Town has a newer Comprehensive Plan; a small update was recently done just to try to address how solar would impact the Comprehensive Plan and based upon that, adjusted the zoning. When the 94-C project goes forward (it is currently in a holding pattern), there will be a new zoning law that they will have to consider. He is currently working on four 94-C projects and all the applicants are saying that they are going to meet the zoning law because they do not want to be the test case to go to the judiciary judge and try to prove that the law was overly burdensome. They would rather try to meet the Town's law. Obviously, there may be some things that they will try to vary and the Town will need to try to work with them. The Town will need to articulate what our issues are and the company will try to meet them. Included in the law, and the State of New York agrees with this, host community agreements are mandated for Tier 3 and Tier 4. PILOTS are one thing but a host community agreement is a separate negotiation the Town can do. The State of New York has said that local communities should get at least 50% of the monies or benefits of the solar project coming to the community. With a standard PILOT, the Town would not get 50% of the money. This should be negotiating that when a project comes forward; and his advice was not to start at the 50% minimum.

This is important to the Town. If these projects are going to happen, they should be done right under our law and the Town should benefit from the project as much as possible. With a host community agreement, a Town can not only get cash but can have special things done for farmers and other things; it can be a litany of things. PILOT money is tax money; it can be used certain ways; there are restrictions; it affects the tax cap. Host community agreements are very different thing and they can be used many different ways to benefit the community.

Mr. Reilly had received very good comments from the Planning Board and the Town Attorney. A letter was just received earlier this evening from Erie County with their comments. The Town will need to consider any comments heard, all the comments received and then authorize him to make any changes. If they are minor, and so far, there have been no major changes made, the Town could move forward with the adoption next month. If the changes were substantial, then another Public Hearing would need to be held. These are minor changes based on good comments from the Planning Board and Town Attorney. This law was prioritized because the 94-C project is a little backwards but not unusual. Usually, you would adopt the Comprehensive Plan changes first and then the Solar Law but in this case the Town wants to make sure the Solar Law was on the books. The Town had a very good plan already in place; this is just an update.

Mr. Reilly asked if anyone had questions. Supervisor Drake asked if the 94-C projects would need to abide by this new law once it was passed. Mr. Reilly said that the 94-C projects would have to live with the law too. That project is currently in a lull; they have not proceeded with their project. Mr. Reilly would highly recommend that under the new 94-C regulations, the intervener funds which the Town was talking about getting to help the Town review these massive projects; these funds don't come now until after the application is made to the State; where everything may be done by then. He anticipates that when this 94-C project comes in, they will want to come in and negotiate the host community agreement, the PILOT, the zoning requirements; so all the Town's are upfront and not at the time of application or after application. NYSERDA has said that the Town should negotiate and escrow payment at the beginning to pay legal costs, engineering costs, etc. because a lot of the Town's work will be upfront prior to the application. The project wants your complete support when the application is made. By the time the application is made, there would be no intervener funds because the Town would have said that the project is all set. The Town needs to get these intervener funds upfront. He will provide the Town with sample agreements. The Genesee Road project is the only 94-C project in Erie County. There are others in surrounding counties.

Mr. Reilly noted that the County's first big comment is about the lot coverage requirement. The Town law says that for industrial, 20% lot coverage is allowed. The law allows 50% for agricultural. Mr. Reilly's understanding is that the Town of Concord also very much values their commercial/industrial land and doesn't want to see all their commercial/industrial land just having solar on it; the projects really don't generate jobs. No businesses will be associated with it. Industrial/commercial property is more valuable; he doesn't believe anyone would lease industrial/commercial property for \$1000-\$1500/acre for a 20-year period. The County has said that the mines would be perfect conversions at a later date. The Town has a mining zoning district so that would not apply. If the mining closure plan wants to come in and say part of their closure plan was to put solar in, the Town would work with them to work that out. All mines have to have a plan with the DEC for reclamation. The other comments received from the County were pretty small. This law is a good law. Ours is similar to Sardinia (he will provide the Town with a copy of the Sardinia law). Mr. Reilly advised that a lot of communities are going the route of not allowing these large projects. If one does want to go in, the company would just apply to the State and say that they are in compliance with the town because there are no regulations. That is why the Town needs regulations; have very strict regulations that they must follow. Supervisor Drake asked CEO Singleton about his concern with Canadian companies. CEO Singleton noted that they cannot come unless they have a NYS engineered stamped; that is in our law. The Town Attorney will help in the review process and make sure they are done correctly and that bonds and insurances are correct. The Planning Board questioned the Tier 2 stamped drawing requirement and remember that Tier 2 is bigger units; not rooftop. These are installed units on the ground.

The company and the Town want that assurance. If something terrible happens at that location, the person who stamped and signed the drawings will be responsible for it; not the CEO, not the Planning Board. The CEO just notes if the drawings are in general conformity with our law; the Town does not assume the liability if something were to happen.

Mr. Reilly will work with the Supervisor and Town Attorney to have draft resolutions for the June 10<sup>th</sup> meeting. He will wait a couple weeks for any additional questions or other issues. Supervisor Drake believes that the big issue is the setback requirements; seeing the projects from the road. Town Atty Attea noted that it is not just aesthetics; there is also issues of glare. Because it is new, we are just starting to bump into some of the issues that arise from neighboring parcels. Mr. Reilly advised that these are not inexpensive projects; the companies will pay for it; they will put in the right amount of landscaping if that is required. Done in a way to minimize those impacts; that is what zoning is about. CEO Singleton asked if anything is to be set aside for firefighting. Mr. Reilly noted that in this law it is noted that they need to refer to the fire department; the fire companies are most interested in access: how to get emergency vehicles in and out; gates; good access to the inverters. When battery energy storage systems start, that can be very complicated from the firefighting capability. Mr. Reilly is hopeful that the fire codes have been improved. In Java, their emergency plan for the lithium-ion battery buildings was that that your cordon off a mile around it and let it burn out which could take days. Supposedly now the batteries are compartmentalized and should not spread between all the units. Mr. Reilly will send the Town a copy of the Battery Energy Storage Law for review. There are three tiers of battery energy storage: home use, commercial use and large-scale use. The projects are not currently putting in battery energy storage because the companies don't want to go through the regulatory process; but within five years, they will be putting in battery energy storage. The wind turbines are now having battery energy storage units put in; they need to have some place to store it. As more and more solar comes into the system, solar does not generate power at night; you need to have some place to store that energy. There needs to be 6000 megawatts of battery energy storage in the system within the next seven to eight years. There needs to be a place to store the energy.

Councilman Snyder questioned upkeep and maintenance; is it handled through the Special Use Permit process? Mr. Reilly advised that the Town can attach conditions. When the Town gets the first solar project, be very articulate in the Special Use Permit conditions. There could be 15-20 conditions which would include bonding and insurance. The Town should remember that these companies sell these a lot and the Town needs to make sure that the next owner knows all the conditions for operation and maintenance. Councilman Snyder asked why this would not be contained in the law. Mr. Reilly noted that the law has an O&M (Operations and Maintenance) Plan but if the Board has any suggestions these could be added into the O & M Plan. Otherwise, it is up to the Planning Board and the Town to make sure the O&M Plan is suitable. Councilman Zittel questioned bonds. The Sardinia project said that the state bonds everything. Mr. Reilly said that is wrong. The state for any 94-C projects has bonding requirements but the bond should be in the name of the Town. There should also be a yearly fee for these projects because there will be costs associated with your Town Attorney reviewing the bonds every five years when renewed and making sure the bonds are in place and having a process to maintain the bonds. Bonds have been around for a while for telecom towers and wind turbines. The Town needs to make sure the bonds are up to date and someone needs to make sure the bonds are in place and are reviewed every five years. If they are not renewed, then the company cannot operate the system and the Town would need to have the system removed if it were not being operated correctly. The Town needs to control these bonds. Councilman Drozd asked if Mr. Reilly if there should be a yearly fee. Mr. Reilly noted that the Town should adopt a separate fee schedule and there should be annual fee for (a) the CEO to go out and make sure it is being operated correctly and that all the Special Use conditions have been met. If trees are dying, the trees need to be replaced. (b) the Town Attorney to review and make sure the bond and insurances are in place and that they are properly maintained. The companies need to submit yearly reports to the state. The Town Law states that if the company stops operating at a certain level for a certain time period, then the company is inoperable and

the company will have to remove the system or the Town will collect on the bond and remove the system. The Town cannot let it sit out there not functioning. That is a warning sign, if the project is not functioning at that level, the company that owns it may be going bankrupt shortly. Councilman Zittel presumed that there are different permit fees for the size of the utility that is going up and Mr. Reilly confirmed this. The Town should work on the fee schedule and add these amounts to the schedule and review/adopt on an annual basis including a renewable fee. Councilman Zittel asked if Mr. Reilly could recommend a town's fee schedule for the Town to review and he noted that he hasn't found a good one yet but he will do some research. The laws are easy to do but fees are adopted outside of the zoning and law because you don't want fees in the law because every time it needs to be changed, the Town needs to do a local law. The Town should just adopt the fee schedule every year during the reorganizational meeting. Mr. Reilly will try to find something; he will see if NYSERDA has a sample. Town Atty Attea noted that even a range of what Mr. Reilly is seeing out there that information would be helpful for the Town to frame what might be appropriate. Mr. Reilly noted that if the Town CEO does not want to oversee these projects, then the Town would need to subcontract it out to inspect and check the landscaping and there would be costs to the Town.

Councilman Snyder asked about prime land rather than just workable land. Mr. Reilly noted that Ag & Markets believes that prime farmland soils are the most important thing in the state and they will support the Town in trying to limit the destruction of prime farmland soils. This is in accordance with the state standards: To protect prime land soils. Erie County has maps. For larger projects that would impact lots of farmland, the Town will require an Agricultural Impact Statement. If a company were to take 200 acres of farmland that is being leased to another farmer, now that farmer does not have that land available to him and additional land can't be found that person may stop leasing other lands so it could be a snowball effect. That is why the Town asks for the Agricultural Impact Statement. If someone takes out 40 acres of farmland, if it is not prime farmland, hopefully the farmer leases 40 acres of land for solar and then the money from the project could be used to keep the farm operational. It can be lucrative. \$1000 to \$1500 acre. That is the theory behind it. Niagara County is doing research to determine how much farmland can be theoretically be lost and where it will become non-economical because agriculture is the largest business in Niagara County. Erie County has been asked to update their Agricultural Protection Plan so see how this is being impacted. The County is building an Agricultural Business Park in the Town of Evans to support local agriculture and keep agriculture moving forward. No sense doing that if it is lost to solar. Councilman Snyder noted that the Town would want to preserve workable farmland but also the Town doesn't want to unnecessarily restrict what someone can do on their own property. Mr. Reilly noted that the Town law has a creative section in it. They can buy agricultural easements from other farmers; it is complicated but there is an option if they want to put in a 94-C project going over a certain percent; this will help protect other farmland by buying agricultural easements from them as a form of mitigation. NYS has not looked at the consequences of how many acres of farmland will be lost. In some areas, Mr. Reilly has seen where several acres of woods are being cut down to put in solar to avoid farmlands. Town Atty Attea wanted to make sure the Town can preserve some discretion and authority to balance some interests here. Mr. Reilly noted that the big 94-C project is really a Town of Sardinia project but extends into Concord; the Town still has two major transmission lines in the Town of Concord that could be another source of a 94-C project. That is what the Town needs to be prepared for. The 40-50-acre ones will come; the Town is already seeing but hopefully they will be few and far between but those are just really small businesses making money. The 94-C projects that will try to fill the gaps of the state's 70% green energy. Mr. Reilly told the story of a new transmission line being run in Niagara County down through Newstead, Alden. The communities all said they were fixing the weak energy system; however, it says specifically in the legislation that this line is being put in to facilitate green energy systems. After this line goes in, there will be solar projects or battery energy storage. Erie County has at least started a map where the major transmission lines are so there is an idea of where these projects could go. Next, they need to map where there are capacities in the substations and the systems; that is what the developers are doing; that is the first step then they look for willing partners for the lands. Supervisor Drake asked if the Town needs an overlay of the power lines. Mr. Reilly

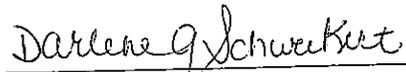
advised that they are in the new Comprehensive Plan. Supervisor Drake noted that technically the Town could say we didn't want them here; would that be too restricting? Mr. Reilly noted that if Erie County helps the Town with this and identifies that one of these transmission mains and substations have plenty of capacity, the Town could take a look at that and possibly update the law at that time. The one line in the Town runs through the Town's major agricultural area. Mr. Reilly noted that Newfane has just adopted a good law because they have orchards. Newfane basically said that they do not want any solar projects in the orchard area of the Town. This would create long time problem; the orchards would never come back. Mr. Reilly advised the Board to keep pushing Erie County to help with the long-term planning of where there are capacities in the system. The Town can always tweak this law if something comes up and restricted areas could be noted. Councilman Snyder asked if Mr. Reilly has ever seen language introduced that deals with disposal so that 20 years from now there is a plan. Mr. Reilly advised that Erie County should talk to Niagara County; Niagara County just passed a law last week basically mandating the recycling of solar panels. The industry said there is no market for recycling but Niagara County said that they did not care; it is now a requirement in Niagara County that you recycle solar panels. When the panels are taken out, the County wants to see the receipt that these have been recycled. The mounts can be recycled. Niagara County's hope is that someone will start a business and figure out a way to do something with these old solar panels. Right now, they are going into the landfill. Niagara County now made that illegal.

Mr. Reilly asked if there were other questions. Carolyn Robinson asked about the runoff. She is downstream from a proposed project and she has concerns about what runs off those panels and the brackets. Those brackets are recycled steel, is it clean steel? Is there going to be a problem downstream? Mr. Reilly noted that the law does address this; the Town will make sure the company submits their MS-DS sheet for any materials they are using so the Town knows exactly what is in the system. In the older systems, there was cadmium in the panels and now the new solar panels don't have them and the Town has to make sure that they don't. The theory is that the water hits the solar panels and goes into the ground like it does now. From the standpoint of toxic materials, it is being addressed that way. Right now, we are not seeing that; the Town will ask what is being included in the components. There will be water that runs off the property; the theory is that it comes down and runs into the ground like it did before but roads are being put in, inverters stations are being put in so there will be runoff from the fields. The company will need to follow NYS rules and Town rules on controlling runoff. If the project disturbs more than acre, a pond will need to be put in. The companies try to avoid that because they don't want to put in a pond. The companies are trying a design system that does not require a pond; that the water stays within the property. Councilman Drozd asked Mr. Reilly when the negotiations for community host agreements take place. Mr. Reilly noted that for small projects, Tier 3 solar project, 50 acres; before a Special Use Permit, a host community agreement must be signed with the Town Board. Solar projects are typically paying the range of \$5000. A 5 megawatt for a 50-acre project is \$25000. That is theoretically the money that is available in that project. If there was just a PILOT, the Town would get about 10% of that; with a host community agreement, the Town would negotiate starting at more than 50% of that; start at \$18,000 and then the County IDA would finish negotiating the PILOT and the Town would get a small percentage. For the 94-C projects, the company will be coming in very shortly to negotiate the host community agreement and the PILOT. Mr. Reilly noted that Governor Cuomo slipped language in the law that the state will assess the value of the solar project now; that power has been taken away from the Town Assessor. NYSERDA is doing the research on this and will come up with a reasonable number. The state's concern was that these projects have been valued anywhere from \$3000/megawatt to \$12500/megawatt. NYSERDA believes it should be in the \$5000-\$6000/megawatt range.

May 13, 2021

There were no further questions or discussion. Supervisor Drake thanked Mr. Reilly for taking the time to come to tonight's meeting and talk to the Board.

Motion by Councilman Snyder, seconded by Councilman Krezmien, to close the Public Hearing at 6:57 p.m.



---

Darlene G. Schweikert  
Town Clerk