

**Town of Delaware Town Board
Regular Board Meeting
September 14, 2016**

Members Present:

Edward T. Sykes, Supervisor
Cindy Herbert, Councilwoman
Alfred Steppich, Councilman
John Gain, Councilman
Christopher Hermann, Councilman

Also present: Tess McBeath, Town Clerk; James McElroy, Building Inspector/CEO; Kenneth C. Klein, Town Attorney

Supervisor Sykes opened the public hearings at 6:30 p.m.

PUBLIC HEARING 6:30 p.m.: Introductory Local Law #3-2016: Adoption of Town Code. Supervisor Sykes opened the public hearing at 6:30 p.m. There being no public comment, public hearing was closed at 6:40 p.m. on motion of Councilman Gain, seconded by Councilman Steppich; all in favor.

PUBLIC HEARING 6:40 p.m.: Introductory Local Law #1-2016: Amend Zoning Law (Commercial Solar Systems). Supervisor Sykes opened the public hearing at 6:40 p.m.

Don Castellow addressed the Board. He stated that the Baer Road neighbors studied many articles and provided the Board with their research. He does not feel their concerns were adequately addressed. He referenced a July 13 letter from the Upper Delaware Scenic Byway (UDSB) where they urged municipalities to address the topic of visual impacts and scenic vistas. Mr. Castellow stated that the PILOT may bring in \$25,000 but the Scenic Byway brings in \$17 million per year from Port Jervis to Hancock. He is disappointed in the law because after three months of study and discussion it remains virtually unchanged.

Michael Palumbo spoke of providing information to the Board; he has stood in front of the Board several times and feels his comments have been ignored. The Baer Road Neighbors were mandated to work with the energy committee and their recommendations never found their way into the document. Supervisor Sykes stated that they responded to every single issue which was raised. We had four workshops; this is our second public hearing. Mr. Palumbo feels that there was no regard for how and where these things go other than at the discretion of the property owner. Attorney Klein responded that the Planning Board will review each site specific application on their own; a public hearing will be held. If the Planning Board determines that 100' is not adequate they could require a greater setback. Supervisor Sykes added that the Planning Board has certain guidelines and discretion with each special use permit; this law is a guideline. If a solar array was next to a residence they would be more specific on the setback.

Mr. Palumbo feels the Board missed the boat on securing the possibility of a lot of loopholes. In his opinion things were left open for legal people to come in and fight any decision. The Board could have favored on the side of the residents and not a developer. Mr. Palumbo said there are certain conditions that should be guarded; none of them were taken into consideration. He doesn't see where any place is protected. The law is not even specific on the buffer. The Board asked them to do the work and they did it; a lot of research on best practices. The Board chose not to take into consideration the hard work they offered up. There are a lot of things which are going to make Mr. McElroy's job harder and the Planning Board's job harder and set the Town up for appeals. He said the Board has an opportunity to vote or not tonight; there are 3 months left on the moratorium.

Mr. Castellow said that if the law says 100' setback and the Planning Board said you need more than 100', what if the person appealed it. Attorney Klein explained that the law presently says a minimum of 100'. If the Planning Board determined that 100' is not adequate, that it should be 150' and the developer challenges on the basis of the 150' setback; which, if that's their only reason, they would not win in Court. The developer would have to prove that the Planning Board determination was arbitrary and capricious and not supported by the record. Regarding a buffer that already exists, it will have to be a buffer that will be controlled and maintained.

Mr. Castellow spoke of exclusion zones; said it wasn't really discussed. Other municipalities have done that. Mr. Castellow doesn't feel that their comments were taken seriously. If the developer wanted to double the size in 10 years, would that be up to the Planning Board? He was told that 2 megawatts is the limit now.

Doug Mills asked about staking out the property. He was told the stakes are up; four corners are staked at the height the panels will be. It's difficult to see.

Mr. Palumbo said that the Board left it in the Planning Board's hands when you had the ability to do a variance; they could have shut the door and they didn't. He feels the Board has more of an obligation to the applicants than the residents.

Pete Golod from the UDC reported that the UDC has no definitive stance and is in the process of drafting a position paper on large scale solar. He mentioned the UDC implements the River Management Plan (RMP) to 13 towns and townships. He read two definitions from the RMP; Major Commercial Development and Power Generating Stations, which are incompatible uses in the RMP. Mr. Roeder mentioned that when the RMP was written, they didn't know anything about solar power. Supervisor Sykes asked, for the record, if the parcel was in the river corridor. Mr. McElroy answered that the lower corner may be. Mr. Golod stated that this 20 acres has been under debate as to whether or not it's in the corridor. He has the GIS map and part of it is in the corridor. Councilman Hermann said that the parcel of land may be, but not where the array is going.

There being no further public comment, public hearing was closed at 7:15 p.m. on motion of Councilman Gain, seconded by Councilman Steppich, and carried unanimously.

Supervisor Sykes opened the regular meeting at 7:150 p.m.

RESOLUTION #59-2016 – ACCEPTANCE OF MINUTES: Minutes of the August 10, 2016 meetings were approved on motion of Councilman Steppich, seconded by Councilman Gain and carried unanimously, AYES-5, NAYS-0.

BUILDING INSPECTOR/CEO: No report.

TOWN CLERK: (1) August receipts totaled \$2,264 with \$2,221.50 turned over to the Supervisor. Of that, \$1,938 was building fees. (2) The Highway Department's 2016 inventory was received. (3) The Clerk reported on the election transmission process.

HIGHWAY SUPERINTENDENT: Mr. Eschenberg did not attend; however, Supervisor Sykes stated that the Town of Hamlin is interested in a used AirFlo PSV 8E Spreader, and we have one we can't use, hasn't been used in years. New ones cost \$4,000; used \$1,000-1,500. It was mentioned that we have a lot of things that aren't being used.

RESOLUTION #60-2016: AUTHORIZATION TO SELL SURPLUS PROPERTY:

Moved by: Councilman Gain
Seconded: Councilman Steppich

RESOLVED, that the AirFlo PSV 8E Spreader is declared surplus property and the Highway Superintendent is authorized to sell the equipment for not less than the minimum value of \$1,000.

Resolution APPROVED: AYES-5, NAYS-0.

ASSESSOR: No report.

GRANTS UPDATE: Supervisor Sykes reported that we have three bids out for the sidewalks on Upper Main Street. Regarding the Railroad Square Crossing, the Chief Engineer at the railroad retired. The new engineer will be meeting with us in the next couple of weeks. We want to get it rolling as the grant has a June 2017 deadline.

UDC REPRESENTATIVE: Harold Roeder reviewed the charts of the river basin storage, noting that we are in line with the long-term median. The Delaware River basin storage is a 71%; Cannonsville and Pepacton dams are at 69% capacity. Mr. Roeder mentioned that the UDC Project Review Committee reviewed nine TAG grant applications.

CALLICOON BUSINESS ASSOCIATION: Isaac Green-Diebboll stated that the Callicoon Art Walk is set for October 8 and 9, it's a two-day event this year. They have a lot of submissions.

SUPERVISOR'S REPORT: Supervisor Sykes set the Budget Workshop for September 28, 2016 at 3:30 p.m. The CBA and Girl Scouts are lobbying for a crosswalk in Callicoon by the

Klimchok building. People drive fast through town and there is poor visibility. It's a County road, so the Supervisor spoke with the DPW Commissioner, who feels that a crosswalk can give pedestrians a false sense of security. Mr. McAndrew recommended contacting an engineering firm in Albany; there's a significant cost to do a traffic engineering study - \$5,700. Supervisor Sykes is exploring other options.

COUNCIL COMMENT: Councilwoman Herbert was contacted by John Conway of the historical society; she also spoke to Pat Burns. There is someone coming from Japan, and one of the historical markers they want him to see is the Frederick Cook marker in Hortonville. The sign is in bad shape and needs painting; it could be sandblasted and re-painted. It should also be moved over to the right. Councilwoman Herbert mentioned that the towns are responsible for historical markers. Supervisor Sykes asked if she would call and get prices on the refurbishing.

Supervisor Sykes spoke of a letter we wrote regarding warning and safety issues if one of the dams were to let go. The DEP responded that they're looking into additions to the emergency action plans and how they would inform people of the impending disaster. Supervisor Sykes stated we have two hours of lead time before the water got here, if there were ever a breach. Based on the DEP maps, water would be 2' over the railroad tracks. The Supervisor sent a letter to all the fire departments on both sides of the river but no one responded. He feels we need an adequate warning system so first responders can do their jobs.

Pete Golod had contacted emergency management in Schoharie County, the Schoharie valley is just below the Gilboa reservoir. Residents started an organization (Dam Concerned Citizens, Inc.) and a letter writing campaign to the DEP. The DEP paid for 20 linked sirens going up and down the reservoir, connected to the 911 call center. They have a rotating siren and a verbal warning for the nearby campgrounds. The sirens are higher than phone poles and there is a monthly bill for the service.

Councilman Steppich asked if Mr. Roeder had heard anything about the proposed hydroelectric plant at Cannonsville. Mr. Roeder responded that NYC got a 10-year extension and he doesn't think they really want to build a hydroelectric plant by Deposit.

OLD BUSINESS:

a. RESOLUTION # 61-2016: ADOPTION OF INTRODUCTORY LOCAL LAW #3-2016 AS LOCAL LAW #2-2016: ADOPTION OF TOWN CODE:

Moved by: Councilman Gain
Seconded: Councilwoman Herbert

RESOLUTION TO ENACT LOCAL LAW NO. 2-2016

WHEREAS a public hearing was held the 14 day of September, 2016 by the Town Board of the Town of Delaware, notice of which was given as required by the Municipal Home Rule Law, the Open Meetings Law and the Town Law of the State of New York;

WHEREAS at said public hearing the Town Board considered the enactment of proposed Local Law No. 2-2016, entitled A LOCAL LAW TO PROVIDE FOR THE CODIFICATION OF THE LOCAL LAWS, ORDINANCES AND CERTAIN RESOLUTIONS OF THE TOWN OF DELAWARE INTO A MUNICIPAL CODE TO BE DESIGNATED THE "CODE OF THE TOWN OF DELAWARE"; and

WHEREAS all interested persons were given an opportunity to be heard with respect to the enactment of said local law;

NOW, THEREFORE, BE IT RESOLVED, that Local Law No. 2-2016 be enacted as follows:

(copy of local law attached)

Resolution was approved by roll call vote:
Edward T. Sykes, Supervisor voting aye,
Alfred Steppich, Councilman voting aye,
Cindy Herbert, Councilwoman voting aye,

John Gain, Councilman voting aye; and
Christopher Hermann, Councilman voting aye.

VOTE OF TOWN BOARD: AYES-5, NAYS-0

b. Commercial Solar. Attorney Klein explained that Tom Shepstone (Town Planner) prepared the full Environmental Assessment Form. It's a Type 1 action because it's a zoning wide amendment and more than 25 acres are affected. Mr. Klein then reviewed the entire document. The GML-239 review with the proposed local law was referred to the County; he reviewed the response

RESOLUTION #62-2016: SEQRA REVIEW-ZONING LAW AMENDMENT:

Moved by: Councilman Steppich

Seconded: Councilman Gain

RESOLVED, that it is the Board's determination to adopt a negative declaration, as the project is not resulting in any significant environmental impact.

Resolution was approved by roll call vote:

Edward T. Sykes, Supervisor voting aye,
Alfred Steppich, Councilman voting aye,
Cindy Herbert, Councilwoman voting aye,
John Gain, Councilman voting aye; and
Christopher Hermann, Councilman voting aye.

VOTE OF TOWN BOARD: AYES-5, NAYS-0

RESOLUTION #63 -2016: ADOPTION OF INTRODUCTORY LOCAL LAW #1-2016 AS LOCAL LAW #3-2016: AMEND ZONING LAW (COMMERCIAL SOLAR SYSTEMS):

Moved: Councilman Steppich

Seconded: Councilman Gain

SECTION I

The Zoning Law of the Town of Delaware is hereby amended by adding a new subdivision I to Section 618.5, to read as follows:

- "I. Commercial Solar Systems – Non-farm commercial solar systems generating 25kW or more of energy for sale to utility companies or for other commercial use shall, notwithstanding any other provisions of this law, be considered Special Uses permitted in the RU Rural District subject to the following additional standards and review criteria:
- (1) The owner of a commercial solar system shall, as a condition of approval, provide evidence the New York State Public Service Commission and/or the New York Independent System Operator, as the case may be, has, if required by law, approved connection of the system to the electrical grid and met all applicable standards for such connection.
 - (2) Nothing in this law shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any adjoining property to increase direct sunlight to the solar energy facility. Nothing in this law shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the sunlight flow to any solar energy facility. It shall be the sole responsibility of the facility operator or owner to acquire any necessary solar energy easements, or rights to remove vegetation.
 - (3) All commercial solar system applications shall, in addition to other ordinarily required site plan data, include the following:
 - (a) Drawings of the solar installation signed by a licensed Professional Engineer showing the proposed layout of the system and any potential shading from nearby structures.
 - (b) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures.

- (c) A description of the solar facility and the technical, economic and other reasons for the proposed location and design with confirmation by a licensed professional engineer that it complies with all applicable Federal and State standards.
 - (d) Electrical diagram detailing the solar system layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over-current devices.
 - (e) Documentation of the major system components to be used, including the PV panels, mounting system, and inverter.
 - (f) An operation and maintenance plan which shall include measures for maintaining safe access to the installation as well as general procedures for operational maintenance of the installation.
 - (g) Information on noise and reflectivity/glare of solar panels and any potential impacts on adjoining or nearby property owners.
 - (h) Location of the nearest residential structure(s) on the site and located off the site, and the distance from the nearest proposed solar farm equipment.
- (4) All ground-mounted panels shall not exceed twelve (12) feet in height.
 - (5) All mechanical equipment, including any structure for batteries or storage cells, shall be completely enclosed by a minimum 8' high fence with a self-locking gate.
 - (6) The total surface area of all ground-mounted and freestanding solar collectors and associated impervious surface, shall not exceed 25% of the total lot area.
 - (7) A vegetated perimeter buffer shall be installed and/or maintained to provide year round screening of the system from adjacent properties. All commercial solar systems are designed and located in order to prevent reflective glare toward any habitable buildings, as well as public streets.
 - (8) All onsite utility and transmission lines shall, to the extent feasible, be placed underground.
 - (9) A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
 - (10) All commercial solar system components shall have a minimum 100 foot setback from any lot lines.
 - (11) Solar modular panels shall not contain hazardous materials.
 - (12) There shall be no signs except announcement signs, such as "no trespassing" signs or signs required to warn of danger. A sign shall be placed at any entrance to the facility that identifies the owner and operator with an emergency telephone number where the owner and operator can be reached on a 24-hour basis.
 - (13) The commercial solar system owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire department. Upon request, the owner or operator shall cooperate with local emergency services in developing an emergency response plan.
 - (14) The commercial solar system shall, at all times, be maintained in good condition. Site access shall be maintained to a level acceptable to the local Fire Department and Emergency Medical Services.
 - (15) A valid performance bond or other financial surety suitable to the Town Board shall be assigned to the Town of Delaware for decommissioning purposes and all

applications for a solar farm shall be accompanied by a decommissioning plan to be implemented upon abandonment and/or in conjunction with removal of the facility.”

SECTION II

If any clause, sentence, phrase, paragraph or any part of this local law shall for any reason be adjusted finally by a Court of competent jurisdiction to be invalid, such judgment shall not effect, impair or invalidate the remainder of this local law, but shall be confined in its operation and effect to the clause, sentence, phrase, paragraph or any part thereof, directly involved in the controversy or action in which such judgment shall have been rendered. It is hereby stated to be the legislative intent that the remainder of this local law would have been adopted had any such provisions not been included.

SECTION III

This local law shall take effect immediately upon filing in the office of the Secretary of State.

Resolution was approved by roll call vote:

Edward T. Sykes, Supervisor voting aye,
Alfred Steppich, Councilman voting aye,
Cindy Herbert, Councilwoman voting aye,
John Gain, Councilman voting aye; and
Christopher Hermann, Councilman voting aye.

VOTE OF TOWN BOARD: AYES-5, NAYS-0

NEW BUSINESS:

a. RESOLUTION # 62-2016: RE-APPOINT EDMUND C. RAUM TO BOARD OF ASSESSMENT REVIEW:

Motion by Councilman Steppich, seconded by Councilman Gain, to re-appoint Edmund C. Raum to the Board of Assessment review for a five-year term October 1, 2016 to September 30, 2021.

Resolution thereupon ADOPTED: AYES-5, NAYS-0.

b. RESOLUTION # 63-2016: SIDEWALKS: Bid opening is set for September 10 at 11:00 a.m. Motion by Councilman Gain, seconded by Councilman Steppich to set a Special Meeting to award the sidewalk bid on September 22, 2016 at 3:45 p.m. Resolution carried unanimously.

PUBLIC COMMENT: Karen Mills questioned how solar affects property values. Harold Roeder explained that one would have to compare properties that are near solar, then take the sales (it has to be sales) and compare. You would have to prove that the site is diminishing your value.

PAYMENT OF BILLS: On motion of Councilman Gain, seconded by Councilman Steppich, it was resolved that the bills be paid on Abstract #9-2016 in the following amounts:

Callicoon Light	Voucher #9	\$ 754.96
General Fund	Voucher #288-323	51,477.28
Highway Fund	Voucher #189-212	92,636.10
Kohlertown Light	Voucher #9	199.29
Sewer #1	Voucher #2	3,062.00
Sewer #2	Voucher #106-120	33,938.24

Resolution was thereupon APPROVED: AYES-5, NAYS-0.

ADJOURNMENT: With no further business, on motion of Councilman Gain, seconded by Councilman Hermann, the meeting adjourned at 8:05 p.m.

Respectfully submitted,

Tess McBeath, RMC
Town Clerk