

**April 6, 2023**

The combined work session meeting of the Town Board and the Planning Board of the Town of Hartland, County of Niagara, State of New York, was held on the above date at the Town Hall, 8942 Ridge Road, Gasport convening at 2:00 p.m.

**Supervisor Annable:** We held this meeting to discuss our updated solar and battery energy storage laws and we have invited our Planning Board to get an idea of where we are headed. I've asked Drew Reilly from Wendel to address some of those issues and update us on where we are and where some of the other towns are at as well.

**Drew Reilly:** The biggest difference that everybody notices from the Town of Somerset solar law, is basically that I took what was in the Somerset law and put it in the format of your existing law. We are going to go through and show you that 99% of what is in the Somerset law, is also in the Town of Hartland law. I'm also going to point out the things that are different between the Somerset law and your law, and the things we suggest changing. The first big difference between the Town of Hartland and the Town of Somerset law is that the Town of Somerset and their committee when on and on. The first section of any law says what authority you have to adopt a law. We put that under the general authority of the section of town law, you can basically add sections to your zoning code. The Town of Somerset attorney and I agreed afterwards that it wasn't necessary, but they referenced every law in the state of New York. You only have to reference one law. If you want to add all the other references, that's fine and it doesn't change the intent of the law at all. The next big difference between the Town of Hartland and the Town of Somerset's law is we have a "findings" or statement of purpose. For your law, it is very concise. The number one thing was that it said solar is energy efficient and good for the state and I took that out. I agree that doesn't need to be in there. The purpose of this law is that you want to properly site these things. You want to make sure that you're not introducing uses that aren't compatible with other uses and you don't want environmental problems and you want to make sure they are removed properly. The Town of Somerset law goes on for three pages with about 21 reasons and findings. You can talk to your attorney, but I think it is a waste of time and paper to put all of that in there. If you want me to put all of that in there, I'd be happy too, but it is a waste in a local law. The findings and purpose of a law should be very clear. I can't give you legal advice and you should talk to your attorney but basically you just want to say you want a law to make sure these things are properly sited in your community. You can tell me which ones you want to add in there, but it is frivolous to add to a law. Somerset had an opposition group, and they were part of the committee and they wanted to put their point of view in there. I've helped towns process 50 solar projects and 10 94C projects now. When it comes to 94C, your purpose and intent section means absolutely nothing. I've actually seen judges say that your purpose and intent section is specifically designed to try and stop solar in your community, and they throw the rest of the law out. Don't make it sound like the purpose of the law is to stop every solar project in your community. You want to regulate it. Make sure you have what you

want in there. Again, please remember this is not just for 94C projects that you have very little control over, it is for the non 94C projects. You haven't had the pleasure of dealing with these smaller 5-megawatt projects, yet which is a 20 or 40 acre project. You may get some of those in the future. Right now, if the 94C project goes through you may not get many of the smaller ones because it would use up most of the capacity in the lines out there. If the 94C project goes away, you will see a line of companies jumping in to put the 5-megawatt projects in. The New York State Sun Program will fund anything that is 5 megawatts or less. That is why you may see a lot of these 5-megawatt projects. There is no funding available for projects between 5 and 25 megawatts. When you get to 25 megawatts, you move into 94C. You will not see a 25-megawatt 94C project though, because it doesn't make sense financially. The smallest 94C proposed in New York is 90 megawatts and it was originally 110 but it was reduced to 90. They are typically in the range of 100 megawatts to the biggest one right now which is 400 megawatts. Your project is 350 megawatts, so you are on the larger end of that. You are either going to get something 5 megawatts or smaller, or 100 megawatts or over. Once you get over into the 94C projects, there are a lot of requirements, and it is cost prohibitive to do something between 25 and 100. I got to seminars and listen to people and that is what the solar companies are saying. So, you can regulate those 5-megawatt projects all you want. For 94C projects if you put in 1000 foot or 500-foot setbacks the judges have ruled in all cases that the State of New York has set standards for setbacks, and they are going to ignore local standards. For non 94C projects you can put in whatever setbacks you want but the problem is you are going to have to trust your Zoning Boards because what I have seen is they will come in with a project and say they can't meet the setback requirements and they apply to the Zoning Board for a variance. Most of the variance permits are granted. The company will go through the five criteria and basically prove to them that there is no other way that they can get the project onto that property. So, understand that no matter what you put in a solar law, you cannot limit what a ZBA can do. That doesn't mean a ZBA can't turn down a variance with good reasoning, they can do that too. But say for example you do not allow a solar project within a certain zoning district, some of the solar companies will say they are just going to get a use variance and because they are a utility, they just need to prove need. They are not a utility. They would have to prove that they cannot get a reasonable economic return on the property. Most of the use variances are turned down but I have seen a few accepted because the farmer will say they need solar on the property to get a reasonable economic return. Hopefully, the ZBA is properly trained. There are four criteria to get a use variance and you have to meet all four. So, we have written this solar law and broken it down into four different types of solar. First you have the ones that are occurring now which is homeowners putting solar panels on their rooftops. We are going to continue to allow that. I don't think the town wants to stop that. If someone wants to put solar on the rooftop of their house they would come in and get a building permit and make sure they meet all the codes and regulations for that. Then you have the group of people that want solar at their house but for some reason they are unable to install them on the roof - they want to install small back yard units. This is tier 2 solar and has to be used as an accessory to a building. They can't put in for a

tier 2 and just generate power. It has to be for the house. So, we have regulations for that. We are also going to allow this for business use. Realize also, that if a solar system is used for agricultural uses, you can put them through a process but in the end, you have to approve them because the Department of Agriculture and Markets will say that it is an agricultural use. As long as it doesn't produce more than 110% of the power needed on that site, it was related to his agricultural business. That 110% is very important and is in your law because as a business, or owner of a house, the only way I would do a solar energy system is to get credits from the State of New York. The only way they can get that money is if they only produce 110%. It is supposed to help a homeowner reduce their dependency on the grid, not sell a bunch of power to the power company. But realize that the power you produce is not going into your operations because it can't unless you have systems in place, it just runs your meter backwards. So anyway, we are pretty comfortable with those two. It is the next level that we have always had questions and problems with – tier 3. That is the large scale system. You have the ability to regulate that. That typically takes up between 20 and 40 acres of land. A tier 3 or large-scale project is not an accessory use. It is a primary use of the property. It is being installed to sell power to the grid and make money. We have had some property owners do tier 3 systems. That is where you can run into problems sometimes because they buy cheap equipment somewhere and try to install it on their property. If their purpose is to sell power to the grid, we are going to regulate that. One of the things we have to work on is where you want to allow tier 3 systems, and what the requirements will be. Is this law how you want these regulated? I have most of the standards that are in the Town of Somerset law, but obviously your big thing is where you're going to allow them. Pretty much 90% of this town is one zoning district. Right now, the law states that a tier 3 system will be allowed in the agricultural district by special use permit. I also noticed we are allowing it in the AB district, but do you have an AB district in the town?

**Supervisor Annable:** We put that in there in case there was a need.

**Drew Reilly:** Okay, and we allow it in the light industrial areas. So, we are allowing it in most of the town except for your major residential districts. That was the first big decision that had to be made and the Town of Somerset went in the same direction. That doesn't mean every property owner in the town can have a 5-megawatt project, because you have a lot of rules and regulations about it. Plus, the first thing we are going to do when we do a Comprehensive Plan update, and we recommend this to all communities, is map where the power grid is. I've worked with some communities that spent months writing solar energy laws, and when we looked at the map, we realized there is nowhere in that town to attach a solar energy system to. There are reasons why a lot of communities don't have solar energy projects and it's usually because they don't have access to the grid. Niagara County is blessed or cursed to have one of the major generators of power in Western New York and guess where the major power lines run through. The Town of Batavia hired me and when we and NYSERDA put the map together, they had 25 power lines running through the town. The map showed that they could have solar energy systems just about anywhere in their town. They estimated that they could get 30 – 40 5 megawatt systems in the

town easily. At that point the town decided to make some changes. At first, they only had a two-page solar law that basically just allowed it, but when they saw that they decided to put some controls on it. That is the biggest decision about where you are going to allow it. Then you have the restrictions in place. The Planning Board had some questions about whether or not we have the right restrictions in place for people who are going to do these tier 3 projects. I think the biggest worry was about the impact on agricultural lands and soils. The state's model law and most of the laws I've assisted in writing agree with Ag and Markets because we want to restrict them on the properties that have prime or important soil on them. I believe for this one it is 50% or more. So, for example if you have a 100-acre piece of property and you are going to lease 50 acres to a company for a 5-megawatt project what we're saying is if that property has 50% or more prime agricultural soils, we don't want to allow that. The 94C company gets waivers on that all the time. There was a 5-megawatt project that was controversial in the Town of Lockport, and they were impacting more than 50% and Ag and Markets supported us on our decision and made them amend the plan to impact less of those agricultural soils. The Planning Board wants to make sure we have done enough to protect that prime agricultural soil. Remember too that you have the most powerful tool in New York State. You have the SEQRA law. Any 5-megawatt project is a type one action under SEQRA, and it will ask if the project is impacting prime agricultural soils. So, if you miss something in your law, the most powerful tool you have is SEQRA. Just about everything you are worried about is in part 2 – hazardous materials, agricultural lands, view sheds, etc. I have had four solar projects stopped because of SEQRA. They met everything in the law but because of the SEQRA the town ordered a positive deck and told the solar company that they would have to address a bunch of issues and the solar company walked away. Instead of doing an environmental impact study and spending \$60,000 or \$100,000 they walked away. Understand the SEQRA is your most powerful tool. Downstate, every project is positive decked. Here, we tend not to. If you have a 5-megawatt project and they are meeting your law, but you believe there are some major impacts you can still positive deck that project. At the end, you can decide in favor of the project, but you get to control the mitigation that they have to do. So, if for example you only require a 200-foot setback, you can change that based on additional reasons. Remember all of these projects are type one under SEQRA which are large projects that tend to have an impact on the environment. SEQRA is still the tool to address all those individual concerns that will occur on a property. A law cannot address the uniqueness of every piece of property within the Town of Hartland. SEQRA will look at every individual piece. In Busti there was an area with some steep slopes and where they were putting it was going to be visible to the whole community up on top of the hill. These people paid top dollar to have this beautiful viewshed and there was no mitigation they could provide. So, under SEQRA they turned the project down even though they had met the zoning requirements. Everybody thinks they will be sued by the company if they issue a positive deck but in the history of New York State, no one has ever sued a municipality and won for issuing a positive deck. A positive deck is not a final decision, it is a request for additional information. It is not ripe for judicial review. You can always positive deck a project to ask them to do more mitigation than what is in your

law. You have the right to do that. Don't abuse that. Down state abuses the SEQRA law. They positive deck every project and make them do environmental impact panels.

**Councilman Huntington:** Does SEQRA only apply to tier 3?

**Drew Reilly:** No, SEQRA applies to every approval. Issuance of a building permit is not subject to SEQRA. Tier 1 projects that require just a building permit are not subject to SEQRA. Any project that goes before the Town Board, Planning Board, or Zoning Board, has to go through SEQRA. I can provide some training manuals on SEQRA. You don't usually deal with it. I deal with a lot of smaller communities that have never done SEQRA much less and environmental impact panel. It is a very powerful tool to make projects better. If it can't be made better, then you shouldn't approve that project. I still want this law to be perfect, but you do have this powerful tool as well. Any tier 3 project is going to be a type one action under SEQRA. Tier 3 projects that need Planning Board approval are also subject to SEQRA.

**Councilman Huntington:** What I am asking is, does SEQRA apply to tier 4 also?

**Drew Reilly:** Tier 4 as we described it, includes 94C and non 94C projects. 94C overrules the process of SEQRA by saying the 94C regulations and law will make sure that the project cannot impact the environment. Some tier 4 projects that don't choose to go through 94C will require SEQRA. If they choose to go through 94C regulations, SEQRA is taken care of by the process. There are 25 megawatts or above, which is about 100 acres. This market is changing. At first, most companies that wanted to do 50 megawatt projects were using 94C regulations because it was easier to get approval. I'm seeing now, those companies are going through local regulatory approval. We have a wind turbine project in Weathersfield, New York. They are going to redo all those. They are fighting with New York State and saying the project was originally approved under local approvals, and we don't want to go through 94C.

**Supervisor Annable:** What size are the Lewiston projects that are going on?

**Drew Reilly:** I don't know what size it is, but I know it's not a 94C project. Right now, the only 94C projects in Niagara County are the Town of Somerset, Town of Hartland, Town of Cambria, and Pendleton. The Town of Cambria and Pendleton are in litigation. The judge ruled that they need to remove 125 acres from their project and the applicants are appealing that and the town is appealing the ruling that the judge threw out other things. I believe those are the only ones that are 94C. I warned Royalton that they may have a project coming. If you go on ORES website and go under applications it will take you to all the ones that are active but if you click on others, Royalton still has listed a company that was interested in doing a 125-megawatt project. I told them that hasn't gone away yet. Some other companies do exactly what I do and go to that website and say there must be a possibility of doing that 125-megawatt project. I have sent out letters warning these communities that they are listed on that website. For example, if this company decided not to go forward with this 94C project, there would probably be other companies lined up to jump on taking over. They would have to get the same leases with the

landowners and everything. Sometimes the landowners don't want to be part of it anymore. At next Thursday's meeting we want to present the minor modifications to the public. We did clarify a bunch of things in the law, and we've highlighted everything we have changed. We only have one paragraph in the proposed law about the emergency operations plan. It says that an approved emergency operation plan will be given to local fire officials, and we require that they submit an emergency operation plan. The Somerset law goes into great detail about what should be in that emergency operation plan. What I tell people is, why spell it out. You want to come up with what they need to have based on each project. You should have a guidance document but don't put it in your law. That way you have something to start with. For 94C, the state already has other requirements for their emergency operation plan.

**Supervisor Annable:** We are also looking to do an infrastructure law. Not specifically for this but for any kind of construction in the town to protect our roads and things like that. Should that go into that law?

**Drew Reilly:** Yes, it can. As a matter of fact, the applicant complained because we require things like road use agreements. They said it is contract zoning. It is not contract zoning. I talked to your attorney, and I know it is not contract zoning. Contract zoning is saying we will approve the project if you do something for us like quid pro quo. We are just saying that it is a requirement of the law. If they are going to use a town highway, we want to make sure they aren't damaging that town highway when they are running trucks down there or bringing equipment in or building their access roads. The big difference between our law and the Somerset law is that the Somerset law goes into great detail of what needs to be incorporated in an emergency operations plan. Do you want me to incorporate all of that? My recommendation would be no. Just refer to the town's guidance document and keep that up to date. I like things outside of laws because you can update them any time you want. Just keep updating them and changing them and say if the project is unique you can add to it.

**Councilman Huntington:** If you list it in the law your hands are kind of tied right?

**Drew Reilly:** Yes, if that is what is in your law that is what they are going to do. I will make a reference here that the town has a guidance document. You can add whatever you want then. If a fire official comes in and says there is a big risk at a certain location, then you would want to add other things into that emergency operation plan.

**Supervisor Annable:** Does that plan have to be approved with 94C?

**Drew Reilly:** There is an emergency operations plan. In the Town of Busti the applicant sat down with local fire officials and asked if they were missing anything. They would rather submit an application to the state when the town agrees that they have addressed their concerns. They know that if they don't address concerns in the pre-application stage, when they submit their application, we are going to apply for intervener funds and hire experts and make these comments anyways.

**Councilman Hill:** We just have to make sure we get that document created.

**Drew Reilly:** I am going to give you the list from Somerset so you can just take that and add different things if you want. Leave yourself some room. At the end of the document say, and other things that are unique to this piece of property. The hard part about zoning is that every property is unique. So, you want to leave yourself the opportunity to address those unique things.

**Supervisor Annable:** The other thing is our infrastructure like ditching is of big importance to us.

**Drew Reilly:** That was a big issue in Newfane too. These tier 3 projects are going to go through a special use permit process. The most important part of a special use permit process is deciding the conditions that will be placed on a project. For most tier 3 projects, there are anywhere from 20-30 conditions for how the project will operate. You are going to have bonds, insurance, requirements for training, and all those things that are in your law. It is hard to enforce things that are just in your law though, but if it is in a special use permit it is a lot easier. The Town of Batavia closed down a tier 3 project on Route 5. They were not doing what they were supposed to be doing with maintaining the landscape, so the building inspector got a stop work order and made them turn the system off until they addressed the issues and violations of the special use permit. Keep in mind that when you issue that special use permit you should place conditions. It is enforceable. If you have a special use permit and they are not following the conditions, you can get a judge to issue a stop work order. When they aren't making their \$10,000 a day or whatever they're making they will address the issue. I will provide the town a sample so you can see what I'm talking about. The last one I did was 27 conditions that they had to meet in order to continue to operate. The other one was a requirement for inspection. We just said it has to be inspected at the end. The Town of Somerset got into all the specific things about inspecting the property. They also wanted a stipulation saying that every time a severe weather came through, they wanted a report from them to say the system wasn't damaged. It's my opinion that if the system is damaged, they are going to go out there and fix it. I don't have all of that in this law. If you want to incorporate that separately you can. It doesn't change the intent of the law. This last one was a miss on my part, and we can either make it a condition or add it back in. The Town of Somerset requires an annual report from them. If you want me to put that back in I can. At the end of every year, they have to report on the rate of capacity of the system, the amount of electricity that was generated, identify any change of ownership, identify any change in the property responsibility, evidence of any assurity required, any annual testing and whatever else. You know you are going to require a decommissioning bond for this, and someone has to be in charge of making sure that decommissioning bond is renewed. The wind turbines in Hamburg and Lackawanna went offline about 3 years ago. The company went bankrupt and walked away from them. The town tried to collect on their decommissioning bond, and they had three town attorneys in that time, and no one had kept up with the bond. Thank God someone bought the facility and started them up again or the town would have been stuck with rotting wind turbines with no demolition bond. Bonds are an easy thing to request but they take a lot of work to keep

them in place. So, the annual report should provide assurity of that. They should also show the renewable schedule. It is typically 5 years. So, they take that bond estimate and project it out for 5 years and they have to renew it every 5 years and come out with a new estimate and make sure the bond matches. If you have 8% inflation for three years in a row it may not match. The other thing I am trying to get opinions on, and the State of New York has not issued an opinion on, is I think the bond should be estimated at prevailing wage rate and publicly bid. The attorneys in the industry are arguing that it is not a public project. If a solar company goes bankrupt as an LLC, the town has to collect on the decommissioning bond. First of all, that is a pain. It is not easy to collect on a bond. But when you do collect on that bond, it is a public project because now the town has to put it out to bid and pay prevailing wage rates. It is going to cost the town 25-50% more than a private company can do. SO far, for the 5-megawatt projects we have made them prevailing wage but for 94C projects we have not won that argument yet.

**Supervisor Annable:** Are other towns using a letter of credit or are they using the bonding?

**Drew Reilly:** They are using the bonding. I've seen one smaller project use a letter of credit because the town liked it better. Most projects use bonds and assurity companies because it's easier for them to get. I can always tell when a solar company is not very good because when I tell them they need a half a million-dollar bond for a 5-megawatt project, they think it is way too expensive. A good company will say no problem. Bonding companies charge based on their trust in the company knowing what it's doing so if the company can't get a bond, they usually don't know what they're doing. Then we go to a letter of credit with a really high number because I don't trust them if the bonding company doesn't. So, I have gone through the things that are missing and I am going to put the annual report back in. Some of the other questions were related to setbacks. There was a question about why we didn't have larger setbacks. I did match the Town of Somerset setbacks. For the 94C project they are going to ask for a waiver. They will try to meet them as best they can but everyone in New York state has asked for a waiver on the setback requirements if they weren't matching the state. They have agreed that the state law is wrong for the front yard setback. Under 94C, it states the setback is 50 feet from the center line of the road. A typical state highway is 100 to 120 feet of right of way so the state is saying solar panels can go in the right of way of the road. The state is not going to allow that. Most, including this company, have said they will go 50 feet from the right of way or more if it can be accommodated. Are you comfortable with a 200-foot setback knowing ahead of time that you also have SEQRA. If they can put it 200 feet back from the road and it is not visually impacting anybody, then it's fine. If it is visually impacting, you have SEQRA to do a visual impact study. We also have that and landscaping in the law. Is everyone comfortable with the 200-foot number? It seems to be a number that is used in a lot of communities. It is slightly larger than NYSERDA models, theirs is 100 feet. I think the suggestion was 500 feet. I think with 500 feet you would have a lot of variances.

**Robert Harris:** If you put a 200-foot setback, and can you allow in some locations a 50-foot setback if the road allows for that?



**Drew Reilly:** I think what we have in our proposed law, is for tier 3 projects from any zoning district boundary a minimum of 200 feet from a nonparticipating residential property line. Understand the importance of that nonparticipating because what happens a lot is they are leasing 2 parcels of property, so they don't have to be 200 feet off of that property line. The other thing I've seen happen is they come in and want to be closer than 200 feet. The adjoining property owner wants that enforced. The solar company will sign an agreement with the adjoining property owner to pay them per year to be a participating part of the project so they can get closer to that property line. They can be 10 feet from the participating property line. You also have buildings and structures on a nonparticipating property. Your system has to be 200 feet from a building or structure and 500 feet from a dwelling. If a house sits close to a property line, the requirement is I'm supposed to be 200 feet from that property line but it still can't be placed there because it has to be 500 feet from the house. So again, are you comfortable with these setbacks? We also have 100 feet from the right of way of the road.

**Steve Urtel:** Is the right of way the center line?

**Drew Reilly:** The right of way is the property line, so it is not the center. Again, I've seen many projects proposed with four houses right across the street and with SEQRA the board is able to ask them to move it, so it is less visually impactful. You are not going to be able to completely screen a 30-acre solar project. There is actually no way. You would have to put in 50-foot-tall trees and fences to do that. The further you get from the property the more you are going to see them. You can minimize the visual impact based on topography. Are we comfortable with the setbacks here or would you recommend changing them? They seem to follow what a lot of other communities are doing, and they are more restrictive than the state rules are. I think they are reasonable.

**Councilman Huntington:** They have to be reasonable or else they just don't make any sense.

**Supervisor Annable:** If you put in too large of a setback, they may have to take up more farmland due to that loss.

**Drew Reilly:** You also have the additional requirements of showing the visualization from any surrounding property and houses. Again, we are talking about tier 3 projects. Tier 4 projects have these regulations, and they are going to try to meet them and if they don't they are going to get waivers anyways. For setbacks all the judges have said the state has already made that decision as long as they meet the state setback requirements. They basically said this has already been settled. But we need these regulations for tier 3 projects which you do have control over.

**Councilman Grant:** I have a question, but it is not related to setbacks. The project on Slayton Settlement Rd, several people have commented that they scraped the topsoil off of that farm. What regulation can the town set that it has to stay there?

**Drew Reilly:** That is actually an Ag and Markets law. They have to scrape the topsoil off and store it. Part of the decommissioning plan is they have to replace all that soil at the end. That is an Ag and Markets requirement and I believe we have referenced that in this law. Ag and Markets has strict standards for that. That drives the cost of decommissioning up on agricultural land because it has to be returned to agricultural use.

**Steve Urtel:** So, they can't sell that topsoil off?

**Drew Reilly:** No and the state monitors that. That soil has to stay available. I don't know about that for 94C. We haven't had one constructed yet in Western New York so I'm trying to see if Ag and Markets will make sure those things are occurring. A crazy thing about solar projects is the Army Corp has determined that you can put them in wetlands. It is not considered the filling of wetlands. And, if it is wooded wetlands, you can cut all the trees down and remove the stumps and it is still an allowable use in a federal wetland because they are not filling the wetland. The State of New York disagrees with that. I have seen one 94C project disapproved because they were impacting 110 acres of state designated wetlands. Now they are redesigning the project to impact less. Ag and Markets should be taking care of all of those smaller ones, and it has been referenced here. Slayton Settlement was a very controversial project. The adjoining farmers went out and used pesticides to burn some not very nice things in the front lawn. The DEC removed his license to put pesticides on his farm because they said he abused them and did not use them properly.

**Councilman Grant:** We have a controversy on North Quaker Road where someone put a berm up to shield lights. Wouldn't that make sense for a solar project? If they have to keep the topsoil for 40 years, they could make it into a berm.

**Drew Reilly:** That is something you can consider in the approval of a project. Your law says they have to provide screening. A lot of people hate berms because to construct a berm properly it has to be done well. You have to have a four-five-foot flat spot on the top and you have to have a maximum of 40:1 side slopes and if you're talking about a five-foot-tall berm you do the math. You have a fifty-foot-wide berm now that has to be maintained. I've had a few projects that require berms and they fell over backwards when they realized the cost because it has to be maintained and be a certain size. If you are going to plant trees on it, it has to be maintained in a certain way or the trees will just die.

**Beverly Snell:** When you replace the soil you would also have to get rid of all those trees then.

**Drew Reilly:** Yup. By the way, one of the things you should be thinking about with this 94C project is if this project goes forward, they will work with you on the type of vegetation you would like to see planted.

**Councilman Hill:** As far as road repair and any damage done to the roads, it gives them 60 days to fix it. Is that normal?

**Drew Reilly**: That is what is in the law but if you want a road use agreement you can always do something different. For a road use agreement, you will go out and take pictures of your roads and then after they're done you have the ability to compare and tell them what damage was done and needs to be fixed. You should have a very good road use agreement to address those issues. We have that in our law for 94C and non 94C projects even though the 94C company doesn't necessarily think it is legal. We would also like an agricultural economic impact statement. It is not required under 94C, but we'd like to see it and tell us how it will affect the community.

**Councilman Grant**: When they built the powerplant in Somerset, they promised to correct any damage to the highway, and they did. But they said they would fix Hosmer Road and that plant is shut down now and they still have never fixed it.

**Drew Reilly**: That is why you have a legally binding agreement and not just someone saying they will do something. A road use agreement is a legally enforceable document. It is basically a contract with the town.

**Councilman Grant**: What if it isn't a town highway?

**Drew Reilly**: I can't speak about that project, but the town will have a road use agreement for solar projects. If the county or state wants to do something, that is up to them. Will 94C do it? Probably not. They will ask for a waiver but hopefully the judge will agree with us. They will say they never damage roads because they use small equipment and bring everything in with rubber wheeled vehicles.

**Steve Urtel**: Who paid for Hartland Road? When I moved in, that road was destroyed. They had to raise that road 3 or 4 feet.

**Supervisor Annable**: That is not a town road so I'm not sure. It is a county road.

**Steve Urtel**: I wanted to bring up the drainage problem because right now is a good time to take a look at it. The ditch overflows onto my property and into my yard. I've taken a lot of videos and pictures. It is wetlands. I could cut trees down, but I could never remove stumps. Now they can?

**Drew Reilly**: That is what I have been hearing recently. They are allowing them to go in and grind the stumps out. At first, solar projects were going to go through wetland areas and cut the trees and leave the stumps, but their contractors said it would be impossible to put the systems in because they kept hitting stumps so now, they go in and grind the stumps out. Remember those are federal wetlands. State wetlands you still try to avoid.

**Supervisor Annable**: The state gives us a hard time on that little DEC property that we have. We have a ditch that runs alongside there, and we have to battle with them to get permits just to complete ditching.

**Drew Reilly**: The State of New York has determined that solar panels are not impervious structures and they do not create an increase in drainage. The theory is the water hits the solar panel and falls to the ground, so it does not increase the drainage.

**Robert Spencer**: If they are concrete how is water going to penetrate the concrete?

**Drew Reilly**: According to the design of them they have to have as much pervious surface as possible underneath and they claim that it improves drainage. You don't control permitting of drainage. It is under the DEC. Panels are considered pervious structures.

**Supervisor Annable**: EDF has already agreed that they will allow 100 feet of right of way for our ditch. The bottom line is they don't really want flooding on those panels to begin with.

**Drew Reilly**: In Newfane there are three 5 megawatt projects proposed on the chemical plant and they've been approved but one of the conditions of approval was they provide drainage easements for all the creeks and streams that run through there and they will pay for the town highway department to maintain those ditches. That was big for that project because they know those drainage issues are very important and they want to make sure they are properly maintained and be able to get in there on an emergency basis. You know that if a ditch gets blocked in the middle of the night the highway superintendent gets called. Also, if the highway superintendent has to get out there and do repair, they are going to back charge the solar company so have those things as conditions if you have a major drainage way going through there. Your highway superintendent tried to work with them and gave them all the locations of all the ditches, so we have them all mapped with all of the easements. I don't think you'll be able to get them to pay for the maintenance of the ditches through 94C but at least you'll be able to get in there and do the things you need to do if you have to get in there and fix them.

**Supervisor Annable**: As long as we have the ability to get in there, that is the key.

**Drew Reilly**: You are like every other Niagara County town. Flat as a pancake with not the best soil in the world.

**Steve Urtel**: I had talked to Kevin Campbell on Tuesday about the noise ordinances and while I had him, I took him for a ride around the block. He did take a lot of pictures of all that water. That was one of my issues. The old town ditch went right through the center of my property and the new town ditch goes down the property line. But the old town ditch is still there and flows and that is why there is water in my yard all the time. That was one of my issues.

**Drew Reilly**: I always love it when I have the pleasure of going to the Town of Wheatfield and people complain about drainage and water in their backyards. I tell them they live in a town that has 2 feet of drop across the entire town and if you look at a map 90% of the soil in the town are hydric and potential hydric soils. It isn't going to drain.

**Councilman Grant:** To get back to your comment about poor soils in Niagara county, if you take 104 to Lewiston that is the number one soil in America.

**Drew Reilly:** There are some great soils in Western New York and Niagara County but a lot of it is high clay content. There are good fields and bad fields. The original hope was that the solar panels would go into the poorer farm fields and keep the better farm fields with better soil. It just hasn't been occurring that way. It is tough enough trying to find someone to lease land to them, so they don't get to pick land that is bad or good. The theory fell out. With smaller projects we have been able to push them around and save those better soils. The original theory when I first heard this legislation was that the smaller projects will be great for farmers because they can lease 30 or 40 acres of land and they will have a better chance of staying in business and maintaining more of their property. Some of the farmers I've met have taken the money and moved to Florida because they are done busting their chops to earn an income when they could just be leasing their property. This is a lucrative business. I told the Town of Somerset the other day it is not going to slow down. First of all, you need to determine where the power systems are in your community because as of January 1<sup>st</sup> there are even more incentives for developing solar. As a matter of fact, it is up to 70%. You can get up to 70% of the costs in government incentives. If you are within 5 miles of a closed coal power plant, you can get another 8% in addition. The same works for communities that are labeled low-income, which most of Niagara County is. So, the solar companies are looking at those maps to see where they can get the most benefit. Municipalities also get tax breaks to do solar projects. You'd get direct payment. So, if you were to do a \$10 million solar project and met the criteria, \$7 million would be tax credits and you would get payments each year. They've added more incentives for solar companies to develop because New York State is between a rock and a hard place. They put a law in place that says 70% of their power is going to be produced by green energy by the year 2030. They are far behind. If you talk to the state, they say you need to set a high goal. NYSERDA has to have a plan to say how they are going to meet that goal. They understand that the power grid cannot handle that. National Grid and NYSEG all say there is no way we can do this, but the State of New York is going forward. Anyways, I want to get an amended law to you as early as Monday, so you have a chance to look at it, so you are comfortable with your Public Hearing Thursday night. You know that Niagara County passed a law that says all solar panels must be recyclable. 94C basically says that is unreasonable. There is no place to recycle solar panels. Another argument I've had is there really aren't any hazardous materials in modern day solar systems. Most solar panels are silicon, metal, and electrical wiring. The only time we found hazardous materials is when they put aftermarket antiglare on there. We forbid that because it is sprayed on and could leak into the soil. They also have a lot of invertors that have hydraulic fluid in them. Most of the companies have agreed to use organic based hydraulic fluids. So, we can put this in there but the industry is asking what hazardous materials we are talking about. We're leaving that in there but basically the applicant is saying they will request a waiver of it. They have for every 94C project. Under your local law, for tier 3 projects I would ask for proof and a guarantee that there are no hazardous materials in it.

**Supervisor Annable:** That is one of the things that EDF's attorney sent us a response on.

**Drew Reilly:** Yes, these are mostly comments made by EDF. We were contemplating changing that but if you don't want to, we don't have to. And the contingency we left in the law. That is my protection for the prevailing wage rate. EDF is saying the State of New York has said it is 115% and that is all we're going to get but we're going to continue to ask for 125%. We are not changing that. The bond will also be renewed every 5 years and address changes in inflation.

**Robert Harris:** Could it come to pass that the bond gets too expensive, and we have to do something else for 94C?

**Drew Reilly:** For 94C they are setting the bond amount. The State of New York is setting and approving the bond amount and the bond is in your name. The State of New York is going to hold the bond, but the bond will be in the town's name. We are trying to get the State of New York to provide a guarantee for that in case the town tries to collect on the bond and remove the project and the town incurs more than the bond amount worth of cost. If the state is setting the bond and holding the bond, they should guarantee it.

**Robert Harris:** Of course, they won't. My crystal ball says we're going to get stuck with this thing 50 years down the road. I don't think this bond situation is going to be enough. When I was a kid a Hershey bar was a nickel and now 60 years later, it is \$1.19. What does that say for our estimation of this bond.

**Drew Reilly:** I agree, and we don't have any samples yet of a large-scale solar project being removed so you're right. Say this project gets approved 2 years from now and they use that bonding amount and five years go by and they renew that bond. Hopefully within the next 5 to 10 years we have some samples and are able to prove to them that the bonding funds are not enough. Any 94C project is going to last at least 15-20 years because that is their window to return on investment. These big companies go out and get investors because there is a guaranteed return on these. So, we're hoping that by then we have some samples out there to say we have enough money to decommission these projects. The solar companies are saying that just because a project becomes non-profitable that doesn't mean the company will go out of business because they are large companies and will uphold their promises when it comes to decommissioning and you are not going to have to collect on the bond. They know that the minute a community starts collecting on a bond, that company will never be able to get a bond again.

Supervisor Annable: So, they have a financial incentive to decommission.

**Drew Reilly:** Yes, and hopefully we will have those samples to say to the State of New York, we need a higher bonding amount. Right now, we think they could be around 15% short in the bonding amount. Any good engineer puts 10-15% contingency in there. I want additional because I don't know if I will have to pay the prevailing wage rate or what other things could occur. It is a mystery because no one has removed 1000 acres of solar panels.

**Robert Spencer:** I'll give you an example – all the gas wells out west. They had bonds, and they weren't anywhere near enough. The states were going bankrupt and then they went federal, and they still didn't have enough to cap those wells.

**Steve Urtel:** There are thousands of uncapped gas wells. Is that something that wasn't bonded in the first place?

**Drew Reilly:** I don't know the history. All I know is that for your law and for anything that is not 94C, you set the bond amount. You review the estimates. For 5 megawatt projects we have had estimates come in at \$80,000 because they say all of it is recyclable and salvageable. We believe \$400,000-\$500,000 is the standard bond. For 94C unfortunately, it is what it is. The State of New York has set the amount. It is not a miniscule amount of money. They're not granting them all the salvage value. It is a substantial amount of money. There is no firm out there that will sign to say it is the right amount of money. The bonding company is saying they are willing to bond it, but it is not a guarantee that it is enough money to do what they need to for decommissioning.

**Robert Harris:** That would probably sink our town if we were subject to an extra 40 million dollars of cost that we have to bear to get rid of this.

**Drew Reilly:** At that point you would talk to your attorneys about suing the State of New York. It would be their responsibility if they guarantee the bond.

**Robert Spencer:** What about the property owner? They ought to bear some of the responsibility for it.

**Drew Reilly:** These property owners better have had good attorneys writing up the leases for them to determine what they are and are not responsible for.

**Robert Harris:** Could those people have any liability?

**Drew Reilly:** It depends on what their lease agreement says. Hopefully the people have smart agreements. Right now, our agreement is that they have to post a bond and if we go to collect on it in 15 years and the bond is not enough, we are going to sue the State of New York. They're the ones that said it would be enough.

**Steve Urtel:** That is why I brought up the gas. A friend of mine bought a piece of property and took the gas rights with them and as soon as they owned the property it was \$35,000 to cap the well.

**Drew Reilly:** That is why you do phase one audits. You are responsible for it once you own it.

**Beverly Snell:** Most of these points say that the applicant can request a waiver.

**Drew Reilly**: That is all under 94C, not local. We are telling them in response that they have to request a waiver because we aren't changing the law.

**Beverly Snell**: To whom do they request the waiver?

**Drew Reilly**: One of the things they have to do when they submit the application is take all the local rules and regulations that apply to this project and say whether they are meeting them or not. If they can't, they have to say why they can't and request a waiver. ORES and the judge determine whether they get that waiver or not. There have been 10 or 15 projects that have gone through application and every waiver has been granted. The bottom line is to achieve the state's goals of the climate action plan. If you are going to effectuate change in this project, and make it as best as it can be, preapplication is the time. Once the application goes to the State of New York, it does not change. They get waivers or it gets approved. In Somerset, in the pre-application process, they got them to appease some of the things they wanted. They still got waivers, but they minimized the damage. They made some good changes but we're going to challenge some of them. We all know that we have about a 0% chance of winning that, but we are still going to make our statements. They are under 94C and have worked through their application for the last four months. It was supposed to go in yesterday, but I think it went in today. I have to check the website. We will get a notice for them and then we have 30 days to apply for intervenor funds. You get \$1000 per megawatt. When this project goes through the application phase, they will basically put \$350,000 on deposit with the state where you can hire experts if you still dispute something in the application. There haven't been a lot of wins if any, but you still should dispute. You want to go on record saying you have a problem with this. In Somerset they got them to reduce it and move it away from certain locations to get it away from people that they felt were going to be impacted and come closer to meeting some of the setbacks. They are going to ask for waivers on the decommissioning requirements. I know they are going to get that waiver. They are going to get a waiver on every setback requirement.

**Supervisor Annable**: That is why we are having conversations now. We have at least a year, maybe a year and half before they are going to apply. They have relented on setbacks and cluster areas and good neighbor agreements.

**Drew Reilly**: They do all of this in the hopes that in the end, you will submit a letter of support for their project. You will not do this, and the Supervisor knows this. You are going to reserve your rights to battle those things. But you will get a better project. In preapplication time they want to try to work with you as much as possible and minimize those waivers. That is why they paid you to look at your law. We took it as we can make this law better, but we are not going to take it as saying they do not need to get waivers. They were hoping that we would make some changes and as you can see from their letter, we did not change a lot of things that they wanted us to change. I tried to explain to EDF that each town has their own unique issues. I have some input here and I'm going to make changes. If you have other suggestions for modifications to the law, please get them to the Supervisor because my hope is to get you a revised law by Monday to



show the changes I've made. I am going to make sure to reference Ag and Markets, I am going to put back in the 6-inch diameter, I am going to put back in the section of inspection, I am going to reference the emergency operations guidelines, that the town is going to adopt,

**Supervisor Annable:** One of the things that they had mentioned were the transmission lines and that everything has to be buried. One of their issues would be that they may be places where they would run them above ground.

**Drew Reilly:** We can continue to put that in the law. By the way, for a 5-megawatt project, once they enter the site, everything is going to be underground. From the site to the connection, there will be three, five, or seven poles. They are going to ask for a variance from your law. I'm not going to change the law. National Grid and NYSEG does not allow underground connections. Their law is anything from the property line to the connection point has to be above ground because it is easier for them to maintain.

**Robert Harris:** They can't go on someone else's property though?

**Drew Reilly:** No, they go on the property they are leasing. That was a big problem Wilson had. They approved a solar project and the only problem they had was the property was located in the back and they had to install seven poles so the people that live next door have seven poles along the property line. We did everything we could to move it and minimize it, but the power company would not allow that to be underground. We got a variance for it because there was no other way to do it. The argument was if you live next to a Dollar General how bad could seven poles be. By the way, if you get a proposal for a Dollar General, ask for design standards. Go look at the Dollar General they built in the Town of Clarence. At first the Town of Clarence said there is no way they were going to allow it, but they approved it because they improved the building. It is on Main Street on the left side going towards the hollow. You have to look at issues that may be causing problems with your economic development. I am making a comprehensive plan with the Town of Sardinia and all they want is economic development. I tried to get a Dollar General down there, but they don't have the population to support a store.

**Robert Spencer:** We have the main drag right here though and then you have to think about the construction people who will be working on the solar project and tourism. I'd want some sort of commercial restaurant company.

**Drew Reilly:** Those are things you need to look at and discuss what the needs are for something like that to come into your community.

**Robert Spencer:** There are 2 on 31 and one over in Gasport. On a Saturday or Sunday I've seen entire families turn around and walk out and say there needs to be another restaurant.

**Drew Reilly:** Before I forget, the new 94C projects have talked about doing economic development things for communities. That is something that they'll offer. In Busti they offered to

plant blueberries in a certain area and work with a farmer to set up an Agri-tourism business. If you can think of something, these companies love it because it is great PR for them. Obviously, you're going to have one little business where someone will have to bring sheep to the property or mow the property. If you want other businesses from it talk about what you can do to elicit other business from it. When the panels are covered with snow, they will not produce power, but the solar companies say it is too expensive to pay someone to go out there and clean snow off.

**Councilman Grant:** The state says at state conferences that solar panels function 24/7.

**Drew Reilly:** They don't function at night. Once they go below a certain threshold the invertors turn off. That is what they guarantee you because the invertors are the only things that make noise, so they say that once the sun goes down those invertors shut off and don't make any noise.

**Steve Urtel:** Kevin Campbell told me that they ramp down at night, but they run 24/7.

**Drew Reilly:** That is a question you should have ready for them because if the invertors are running at night and they are 65-70 decibels you are going to hear it. During the day it won't be a problem because by the time you reach the nearest receptacle it is going to be 30-35 decibels. That is nothing during the day but at night people will be able to hear that sound.

**Steve Urtel:** They also give off low level frequencies that interfere with cell phone service and is supposed to be bad for your health.

**Drew Reilly:** The last project I worked on down state was with a guy that did a subdivision. There was a power line going through the piece of property, so the guy was about to buy it for basically nothing. He wanted to build a 49-lot subdivision there and sell half-a-million-dollar homes. I asked who would want to live next to power lines and the guy sold every one of those houses. People didn't care. Look at a power line over a farm field. All of the corn near or below the power lines is half the size and stunted in growth. It is from the EMF off of those.

**Robert Harris:** The land that is next to our park – is that slated for solar?

**Supervisor Annable:** I believe they have inquired but not at this time, no.

**Robert Harris:** Wouldn't that go against that 500-foot setback from any park?

**Supervisor Annable:** That is why we put that in there and actually I would like 1000 feet.

**Drew Reilly:** If you think of anything else get it to me or the Supervisor. I am going to get a draft law out on Monday to make sure everyone is comfortable with it. We can present it at the Public Hearing and show that we heard people and show the changes we made to the law. Hopefully you will then get authorization to move forward with adoption. We have to do a SEQR negative declaration and adoption law.

**Beverly Snell**: I think this has been a wonderful meeting and it has been very important to have this but are we being hasty closing the public hearing?

**Supervisor Annable**: We don't have to close the public hearing.

**Drew Reilly**: If you get additional comments and want to leave it open for a month, we can.

**Supervisor Annable**: Drew is going to do an explanation at the meeting. I also have someone from Wrights Corners Fire Hall coming to talk about the effects of the solar panels and batteries so the public can hear that. We have already come to the determination that this is not a public health hazard. People are still pushing that. If it was the state would not allow it. If you can put 50 feet of solar panels in your back yard whether you have 50 acres or 500 acres, you are still going to have panels that can catch fire, but they are not going to be an evacuate the town kind of fire. I know it's still out there, but it isn't true. The local fire departments have all agreed. It is still a concern because anything can burn. Your house or garage or the town hall can burn and create a plume of smoke. But it is not a public safety hazard.

**Drew Reilly**: Solar panels can't burn but there is electrical equipment. A house burning puts more contaminants into the air than solar panels do. What you can get is a field fire. The applicant wants to make sure that doesn't happen because it damages their equipment. The bigger problem is the rooftop fires. The fire departments don't want to go up there because it isn't safe. The newer models are trying to come up with a way to discharge the panels. If there is a rooftop solar fire, there is usually a kill switch for the system, but you still can't touch the panels because they are still charged. They are trying to come up with a system to discharge that charge so the fire department can do what they need to. Otherwise, they sit back and let it burn because you can be electrocuted.

**Supervisor Annable**: Long story short, we can leave the Public Hearing open for as long as we want. We will get some more input and put out some more information.

**Drew Reilly**: For 94C they are not applying until next year so you can pass your law next month or the month after. The worst-case scenario would be that someone walks in tomorrow and proposes a 5-megawatt project. Your old law would cover it, but you can also say we are within a month of passing this new law, so they have to follow these regulations. If you need to table it Thursday night that is fine and you aren't in a big hurry. Get it right and be comfortable with it before you get the law in place. But the industry is changing so fast that you may have to tweak the law in a year or two. The battery energy storage law is state of the art as of two months ago. That involved fire departments and electricians, but we all agree that a year or two from now, that technology will have changed. Someone asked why we only talk about lithium-ion batteries. Lithium ions are the worst-case scenario and as they come up with better things, they will still have to follow this law. On two of the projects I've worked on that include battery energy storage, the company looked at the local law and said it was too restrictive and they couldn't meet it so they walked away. But battery energy storage systems are coming. Home storage

systems are coming. Your building inspector should be up to code on that. Years ago, the options for putting a whole house generator in were gas powered. The battery energy storage systems are coming down in price. A guy in my neighborhood has one and he has it mounted in his garage with a small set of solar panels on the roof that keep it charged.

**Robert Spencer**: Have you seen the battery buses they have in the City of Buffalo? Some have asked what happens if the buses are stuck in another blizzard. Those buses come with a diesel generator.

**Drew Reilly**: The state may pass all these regulations about electrification but guess what? The Bills stadium is all natural gas.

**Supervisor Annable**: I thank everybody for coming and thank you Drew for all of the information.

The meeting ended at 3:50PM. The next regularly scheduled meeting will be held on April 13, 2023 at 7PM at Town Hall 8942 Ridge Rd Gasport NY 14067

Respectfully submitted,

A handwritten signature in black ink that reads "Rachel M. Kushner". The signature is written in a cursive, flowing style.

Rachel M. Kushner

Town Clerk