

WORK SESSION

May 9, 2022

The Work Session 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 6:00 p.m.

The Work Session was a joint meeting, held with the Town Board, Planning Board, Zoning Board and Ad Hoc Committee.

Supervisor Annable stated that the Hartland town board members had traveled to Mount Morris to take a tour of the solar project that is being built there by EDF. The Town has hired a group, BC 3, an independent company out of Buffalo, to research the facts and issues concerning solar projects of this size. The report contains true facts that will be compiled and mailed to all Hartland residents, along with a survey in which residents can basically state whether they are in favor or not for the solar project. It is not legal to take a vote for this project, the State is very specific on what items can be brought to a vote and only registered voters would be able to voice their opinions. The survey will enable all residents the ability to voice their concerns.

Steve Urtel, Planning Board member, asked if the survey would be available to the boards to view before it is sent out. Peggy Zaepfel questioned about how the survey would be written. Supervisor Annable answered that it will be sent out to everyone in the town, and it will be a yes/no to solar, with no name on it.

Supervisor Annable explained that when the process began, Article 10 was introduced, since that time, Article 94C has come into effect, basically speeding up the permitting process and overriding local rule. EDF expects to submit the permit in 2023.

The Supervisor introduced Shawn Grasby, Code Enforcement Officer from the Town of Mount Morris. Mr. Grasby explained the process that his town went through with the solar project with EDF and fielded questions from the boards and public.

Mr. Grasby explained that under the 94C process, the host company, (EDF), receives the permit, they must complete the compliance process, which typically takes around 6 months. The 94 C gives 1 year to approve. When his town wrote the proposal, it included battery storage, however, they will not be using battery storage as part of this project at this time. The size of the Mount Morris project is 1000 acres, which is spread out over 6 different parcels.

Concerns and questions raised were:

What is the topography of this project? - The Genesee Valley is mostly protected prime farmland; this project is built on the hillside where the soil is not prime.

What about wetlands? - This would involve a SEQR from the DEC.

Was the Town of Mount Morris supportive of the project? - 95% of the Town was in favor of the project. The host agreement and PILOT were written with specifics to ensure that all concerns would be addressed. It did include batteries, which will not be a part of it now. The host agreement states that the town will receive \$37,500.00 per megawatt, annually. The project is 377 megawatts.

Were the fire companies educated and trained in the event of an emergency? – They were involved in the process of the application.

Were there concerns about the property values of the homes near the project? – The project is spread over 6 different parcels and EDF worked with the homeowners. There were agreements between the homeowners and EDF, no public details, but the homeowners are satisfied.

Questions about setbacks, Caledonia used a 750 ft setback, there was much discussion about what setback should be used.

How to make sure that there is a plan in order and funds for decommissioning. Mr. Grasby stated that Mount Morris has a letter of credit in the town's name, which is updated every 5 years. A letter of credit is a security in the bank. There is a 2% increase annually, with the update every 5 years.

Steve MacEvoy stated that if the operation defaults, then that letter will not be worth anything. The town could be removed, and the operator is responsible for payment. If the money was not there, then it defaults to the property owner as responsible for payment, read the fine print of the contract. Who is going to enforce this in the future?

Mr. Grasby stated that all of that information is written in the host agreement. The host agreement should have inflation factored in and should be written to the town's specifications.

Does the Town Board oversee the whole financial issue? – The host agreement is between the town and the developer, not the State.

Various concerns were raised concerning setbacks, setbacks from residents, guarantees from EDF, owner agreements.

Steve MacEvoy stated that typically a company comes in and then sells within 2 years, what happens with the agreement?

Dave Snyder reflected on his years with the COGEN, he stated that the plant was sold 6 times and it always sold for a profit. With the NYSERTA, a project wasn't approved unless there was a market for what is provided.

Supervisor Annable said that there will be many informational sessions in the future, to be well informed. The State is pushing the issue and we have no control over the siting and permitting process. In the future residents will be taxed if they do not comply with the green initiatives put

forward by the State. Leo Shannon said that beginning in 2023 all new homes must comply, no more gas or oil heat.

Supervisor Annable also stated that the fire department held a meeting and were instructed how to react to a battery fire. The batteries are all self-contained and can be fought with water. New York State has the highest level of safety measures. When statements are made, they must have the facts to support them, questions must be answered with the facts behind them.

Steve MacEvoy asked that with Article 94C, did the operator challenge any of the Local Laws? Mr. Grasby stated that EDF met the Local Law as written. They will have to show how they met the law and according to Article 94C they would have to justify their actions if it challenged any part of the law.

Peggy Zaepfel stated that Soil and Water said that 90% of the land is prime farmland, we need to go by what they stated. Bob Spencer added that 50% that is tilled, tilled, irrigated or fertilized is prime farmland. Steve MacEvoy asked about wetlands.

Land that EDF uses will no longer be eligible for an agricultural exemption, but they will make up the difference. There will be a PILOT and the land will not be rezoned commercial, according to Assessor Hartman.

Steve MacEvoy again stated the importance of reading the contract.

Peggy Zaepfel asked about a moratorium on the PILOT. Supervisor Annable said that if the State comes in, they will take away home rule, the community host agreement is extremely important. Zaepfel also stated that information from 7 States show a 17-30 % decrease in home values.

The Department of Agriculture requires that the lines and posts must be buried 4 feet into the ground. Decommission does not require removal of lines and posts, Department of Agriculture recommends that the topsoil is not disturbed. Steve MacEvoy then stated that if the foundations were left, the land is no longer tillable, thus no longer farmland.

It was discussed that Caledonia's agreement was much stricter and that we should consider the largest setbacks that we can get.

If the company goes bankrupt and leaves, the letter of credit is guaranteed.

EDF would have to cover all insurances in case of an accident.

The fencing around the Mount Morris is 7 feet tall and is made of metal squares that are constructed with larger squares on the bottom to allow for small wildlife to enter.

Peggy Zaepfel asked if there were only 2 residents in the Mount Morris project who were against it? - Yes, and the company made it right.

Karen Walp asked how the soil samples were taken and were they taken several times. – soil samples are being taken now.

Supervisor Annable thanked Mr. Grasby for speaking and closed the combined meeting.

Ad Hoc Meeting

Bob Harris, Planning Board Chairman thanked everyone for their input, but noted that Hartland is a much different situation from Mount Morris. He presented everyone with a copy of the present solar law, noting the town's purpose. Currently there are 5 classifications, the utility scale is old as it only addresses agricultural districts, the law is totally inadequate. The Planning Board should take the responsibility for writing and administration of the SEQR. The old law only addresses solar battery storage in about 3 lines, the new law, written by the Planning Board, uses 30 pages, much more in-depth. The old law, when written by the Planning Board, did not envision the size of the proposed project.

The New law is much different, it addresses Bonding, 500 ft setbacks, waterlines, future homeowners, 10-foot deer proof fences with evergreens for year-round green coverage. It is the duty of the Planning Board, according to the Code, to be in charge of the entire process through decommission. The liability ends with the landowner as the company could go – advice to the landowner is to do your homework, hopefully it is worth it in the end.

Bob Harris stated that the new law is fair and inclusive, he thanked the board for the opportunity to present the efforts of the Planning Board.

Supervisor Annable said that the current law was designed when the Somerset wind law was a main concern. Currently we don't allow large scale projects, we need a solid law to cover all issues.

The Ad Hoc Committee was created to look at setbacks and the concerns of increase or decrease of those setbacks.

Members of the Ad Hoc Committee were introduced:

Bob Spencer, Don Bucholz, Dave Hill, Steve MacEvoy and Peggy Zaepfel

Peggy Zaepfel noted that Caledonia calls for a 750 ft setback, our law has a 500 ft setback. We have waterlines that would be interrupted, who wants to move those. We need to think about future growth of our town, for the opportunity to continue to grow, with setbacks far enough to allow for that growth. Building the project right up to the road will affect our property values, we need space left for future homes to be built.

Don Bucholz asked what the current setback was and what was residential and what was agricultural, how were they zoned? Supervisor Annable stated that if a property had land out back, it could be used for the project. A building lot is 150 X200. Bob Spencer stated that if

your residence was far back, you would want a 300 ft buffer zone, which is why the law needs to be a setback of 500. Mr. Bucholz stated that if the setback, from the center of the road is 100 ft, then 200 ft is not enough the more setback, the better. Peggy Zaepfel asked about setbacks of 750 so then it could be negotiated back to 650. Don also is concerned with protecting the waterlines.

The State recommendations are much less, EDF needs to come up with a legitimate reason why they want less setbacks.

Steve MacEvoy said that there needs to be some protection for the next owner, the length of the contract is in question. He also would like to keep the height of the panels to 12 feet.

Supervisor Annable stated that there could still be agricultural purposes under the panels such as beehives and small animal grazing.

Councilman Grant suggested that the Ad-Hoc committee look at the solar farms along the thruway, the fences are painted green and blend with the background. He also noted that in Orleans County the panels are right up against the road, we need to make sure that the Town controls the setback.

Bob Spencer suggested that the foliage surrounding the project be evergreens and not leaf bearing. Red cedar or arborvitae are appropriate choices as they have a sturdy root system and will provide year-round coverage.

Leo Shannon expressed his concerns for the need of farmland to provide wheat since we import much of the nation's wheat from Russia, we need to preserve our farmlands. Brown fields would be a good choice for projects. He also asked about hunting on the properties around the panels. EDF said that one could hunt right up to the fence, is the fence considered a structure? DEC sets distance limits to hunt around structures.

Supervisor Annable said that the DEC does not consider a fence as a structure. Jon Davis has contacted the DEC and this issue is very foggy in translation.

Peggy Zaepfel asked why the Planning Board isn't included in the Ad Hoc committee, Bob Harris is the chairman of the board and has been working on re-writing the solar law.

Supervisor Annable stated that he was not aware that the Planning Board had been working on writing a new law, it would have been nice if the Town Board had known. There were 2 meetings in 2019, then the public was invited to an informal meeting. When COVID came, then everything came to a stand still. EDF had talked to people in the town, and some signed on before they even came to the Town Board. It is not a done deal. The safety of the town is the number 1 priority. Farmers trying to make a living are just as important as those who are concerned with the view.

Peggy Zaepfel stated that our law is not strict enough.

Steve MacEvoy stated that we are not here to discuss whether we like solar, we need to concentrate on getting the best law that we can.

Don Bucholz said that we need to decide on setbacks and fences with consideration to our environment.

Floyd Zaepfel asked if we should be talking about the proper process, shouldn't the Planning Board present a plan to the Town Board to approve? Who is responsible?

Supervisor Annable explained that the Town Board is responsible to present the Local Law, the Ad-Hoc Committee was formed for recommendations and updates. Then it would be presented to the Planning Board. This project wasn't presented to the Planning Board, but to the Town Board by EDF. The Town Board will have the final say. He stated that he wants what is best for the Town.

Steve Urtel, new member of the Planning Board, stated that he noticed that the Town Board, Planning and Zoning Boards are not working together.

Bev Snell, Planning Board member and retired Town Clerk, stated that the Town Code says the Planning Board is responsible and the Town Board should have directed the Planning Board and did not.

Don Bucholz as Ad- Hoc member said that they should be addressing the issues of interest and then ask the Town Board to take that into consideration of their ideas and tailor them to the Town.

Bob Spencer explained that the Planning Board knew that this was coming up and they have been working on the new Local Law, instead of waiting to the last minute. Now, we have something to work with, the Planning Board is ahead of the game.

Supervisor Annable again stated that he wished that the Planning board had informed the Town Board that they were working on it.

Steve MacEvoy asked about the security bond. Supervisor Annable said that a letter of credit is stronger than a security bond and he will forward that information to the law firm that was hired to handle the solar.

Supervisor Annable stated that he will call a combined meeting with the Ad-Hoc, Town Board and Planning Board.

Leo Shannon asked why the solar project in Orleans County was built so close to the road?

Councilman Grant said that it happened because there were no laws in Ridgeway against solar.

Meeting adjourned at 8:20 pm

Respectfully submitted,

Cynthia S. Boyler RMC Town Clerk