

York Town Board Meeting
November 10, 2016

Present: Supervisor Gerald L. Deming, Councilmen: Amos Smith, Norman Gates and Frank Rose Jr.

Absent: Lynn Parnell

Others: Henry Fuller, Gerald Brock, Joe McIlroy, Joe Eyer, David Rose, George Worden Jr. (Highway Supt.), Kirk Richenberg, Carl Peter (Zoning & Code Officer), Pat Gardner, James Campbell (Town Attorney), Davies Nagel, Alexander Curry, Dustin Geiger and Harold Wolcott

Supervisor Deming opened the Town Board Meeting at 7:30 p.m. and invited Councilman Rose to lead with the Pledge of Allegiance.

MINUTES

RESOLUTION offered by Mr. Smith and seconded by Mr. Gates to approve the minutes of the October 13th regular Town Board Meeting and October 25th Budget Hearing. Voted on and approved, Yes-4, No-0.

HIGHWAY REPORT

Mr. Worden reported that the Highway Department has been conducting road repairs on Casey Road (potholes) as well as mowing back roadside. Preparation of our trucks and equipment is underway for the winter season, and annual inspections took place. The department also completed shoulders on Wallace Road, with the assistance of the Town of Leicester. After that work was done we reciprocated and helped Leicester with theirs.

INTERVIEW PROCESS

Mr. Worden reported that the Town received a total of 9 applications for the position of MEO for the Highway department. All individuals received an interview. After review, the committee unanimously recommends to the Town Board that Thomas Wolfe be hired as the new employee for the York Highway Department.

RESOLUTION offered by Mr. Smith and seconded by Mr. Rose to hire Thomas Wolfe for the MEO position to the Highway Department. Voted on and approved, Yes-4, No-0.

WATER/SEWER REPORT

Mr. Worden reported that the Highway Department assisted the Water/Sewer Department this week with taps on Genesee Street for a new residence. Mr. Worden expressed the desire to complete this process while the weather conditions were favorable.

The Sewer treatment facility has been running smoothly.

Mr. Worden stated that we previously discussed purchasing a 1-ton truck, and recently conducted a Public Works Committee meeting to fully review our upcoming needs. Mr. Worden stated that the truck will be a single wheel, flat box vehicle with the tool boxes being transferred from the other truck. At this time he would like to request of the Board permission to proceed.

RESOLUTION offered by Mr. Rose and seconded by Mr. Gates authorizing Highway Superintendent, Mr. Worden permission to purchase (1) one-ton truck by way of the best value law, piggy-backing off of Chautauqua County. Voted on and approved, Yes-4, No-0.

** \$38,000 for the truck will be coming out of the 2016 budget.

Mr. Worden added the existing truck has over 100,000 miles and a great deal of rust. We will service the vehicle shortly with the intention of sending it to the Palmyra auction in the spring.

NEW BUSINESS

1) YCS light request:

Supervisor Deming read aloud a letter received from Dr. Daniel Murray, Superintendent and Dwayne Dougal, Transportation Director for York Central School, in request of an additional light. Mr. Deming stated it was expressed that the need is for the area overlooking the parking section near the bus garage. The area is heavily used as an entrance and exit for both bus traffic and student drivers. A new light would greatly enhance the safety of the area. Mr. Deming commented with the addition of one new street light the cost will not affect the light district.

RESOLUTION offered by Mr. Gates and seconded by Mr. Smith to approve a new street light on the existing pole overlooking the parking lot at the YCS bus garage. Voted on and approved, Yes-4, No-0.

2) Planning Board correspondence:

Supervisor Deming stated the Board received correspondence from our Planning Board after their meeting on November 8th. Attorney Campbell reported that the Planning Board met and discussed an application submitted by Joseph Eyer of Cowan Road pertaining to a wind energy conversion system, to be located at his residence. The existing codes require site plan approval and issuance of a Special Use Permit from the Planning Board and creation of a Wind Overlay Zone from the Town Board. Mr. Campbell stated that the York Animal Hospital has such approval over a year ago. The correspondence from the Planning Board reflects their approval of the wind turbine project, with the following actions to be obtained:

- 1- County approval
- 2- Must pass sound requirements prescribed in zoning
- 3- Public Hearing (by the Town Board as a Local Law)

Mr. Campbell stated the Planning Board reviewed the application favorably and if the Town Board desires, they can instruct him tonight to proceed in preparation of the

wording for the Local law. At the Board's December 8th regular meeting they will schedule a date for the Public Hearing.

RESOLUTION offered by Mr. Gates and seconded by Mr. Rose authorizing Attorney Campbell permission to draft the necessary documentation for Town Board review of the proposed Local Law for a Wind Overlay Zone. Voted on and approved, Yes-4, No-0.

** Mr. Brock (developer for the Wind Energy System) stated that the project would have a 36 inch foundation and a 32 foot high structure. Mr. Campbell stated that the application meets code so a variance will not be needed.

3) Inter-municipal Agreement:

RESOLUTION offered by Mr. Rose and seconded by Mr. Smith to approve extension of the Inter-municipal Agreement between the County of Livingston and Town of York for a period of twelve months, January 1- December 31, 2017. Voted on and approved, Yes-4, No-0.

PRIVILEGES OF THE FLOOR:

1) David Rose:

Mr. Rose stated he was in attendance this evening as a member of the Conservation Advisory Council (CAC). Mr. Rose commented roughly 10 days ago the CAC reviewed the proposed Local Law to establish a temporary moratorium, prohibiting large scale solar arrays. Mr. Rose stated in the last few months any person owning over 30 acres in town received a letter from the solar energy company expressing an interest to lease their land. His land is currently in the Ag District and wondered if he could put panels in even if he wanted to, which he doesn't. Mr. Rose had specific questions pertaining to how the power gets from the panels to the grid and will there be a substation to the grid, if so, how large and how many.

Attorney Campbell replied from the information he has reviewed, they tend to build where existing stations are already in place. Mr. Rose commented they offer rates that are in the neighborhood of 10 times the current rate that owners are leasing to the farmers. Mr. Rose added the Town's Comprehensive Plan speaks on keeping this community agricultural. What kind of land do they want...cleared or flat land? Supervisor Deming responded we do not know enough about these projects at this time, there are many questions that need to be answered.

Councilman Rose asked if the CAC will be reviewing solar arrays further. David Rose responded that the Council will certainly be conducting further review once specific questions have been answered. Supervisor Deming added that the Town is very grateful that the CAC will be reviewing as much as possible pertaining to the subject.

Mr. Rose commented, depending on what information is uncovered, we may not need a full year moratorium if guidelines/regulations can be put in place.

Supervisor Deming stated as it stands currently there is nothing in our codes about leasing, whether it be to a farmer or a solar company. Attorney Campbell agreed and stated we do not have anything in our codes on solar arrays, so the next logical step would be to craft regulations into our codes. We have a great deal on wind energy, but absolutely nothing on solar. Perhaps we may need to address not allowing 30 acre panels near intersections where there could be a safety hazard with the glare that could come from them. Mr. Campbell added after attending a statewide seminar it was very clear that energy companies are looking solely at large scale arrays, but we need to know what the potential impacts may be.

Mr. Rose asked about the existing Comprehensive Plan and trying to keep this area agricultural. Attorney Campbell answered by way of the Comp Plan, the Town will try to preserve the Ag future, but some people believe solar is farming. We may not think that way but others do.

Councilman Rose asked once again about landowners rights and how the state looks at it. Supervisor Deming replied the state is pushing to have solar statewide in the years to come and sees major grants in the future to enhance solar energy in New York.

Mr. Rose commented if we proceed with the temporary moratorium it at least buys the Town some time until more permanent regulations are in place. Mr. Rose suggested addressing the price pressure issue as well. Mr. Campbell agreed we will address that topic in addition to several others.

Mr. Richenberg suggested to the Board that perhaps now may be the time to incorporate this with the matter of clear cutting of land. With all of the land cut thus far it could be used as a landfill in the near future. These large companies don't care about this community or its neighbors. Mr. Richenberg asked if this could be incorporated in order to keep wooded areas in tact because the clock is ticking.

Submitted by:
David Rose
Conservation Advisory Council
for Town Board meeting on 11/10/16

The Conservation Advisory Council (CAC) supports the proposed local law establishing a temporary land use moratorium prohibiting large scale solar installations within the Town of York.

During the moratorium, the CAC recommends that we find answers to the following questions:

- How much land does the solar energy company want? It appears as if they would lease as many acres as possible, but that should be confirmed.
- Can land in York that is zoned agricultural be leased for large scale solar installations?

- The Town of York Comprehensive Plan specifies preserving agriculture in our community. What will be the impact of large scale solar installations on agriculture? How much land would be taken out of agriculture and put into solar?
- How would power get from the solar installations into the grid? There would have to be sub-stations, but we need to know how many, how large, where located, environmental impact, etc.
- The solar company is offering rates that are approximately 10 times the current rate that land owners are leasing to farmers. How will these rates effect the rates that farmers pay?

Once the above questions have been answered, the CAC will then be in a position to make a recommendation about large scale solar installations.

2) Davies Nagel:

Mr. Nagel stated that he supports Mr. Rose's comments for a moratorium pertaining to large scale solar arrays, but also spoke briefly on the Town's Comprehensive Plan: "The planning program will emphasize the protection of York's important natural resources, productive agricultural soils and the community's significant environmental assets. The Town's natural resources...should be protected and conserved to the greatest practical extent...along with clearly identified costs".

Mr. Nagel stated that Mr. Richenberg briefly touched upon another subject he wished to address. Our Comp Plan is also trying to protect the forest areas or woodlands within the township. Once these areas have been cleared, after a heavy rainfall flooding brings about silt. Mr. Nagel stated we need to do what we can to keep what we have. Mr. Nagel asked the Board if they would like the CAC to review natural resources as well as solar energy.

Mr. Fuller asked if the developer received a permit from DEC to do all of the clear cutting. Councilman Smith and Planning Board Chairman, Joe McIlroy stated they believe approvals had to be obtained through Soil & Water, not DEC. Mr. Fuller stated he does not put a lot of faith in DEC to follow up on given situations or if permits were needed, he's not comfortable with them protecting us. Mr. Fuller added they can't just say that panels will be located in agricultural areas, people may not be in an Ag District but still may want to put solar panels in on their property. Energy companies request 30 acres but are usually satisfied with 10-15 acres to lease. With the larger megawatts, a substation would be required, costing in the excess of a million dollars.

Attorney Campbell commented if the Town Board is through with their review of the documentation he can send the request to the County Planning Board for their review and recommendation, in order to then set a hearing.

Mr. Richenberg stated if we add bio-diversity & woods clearing with solar, don't we want to wait to include additional wording for the proposed Local Law? Attorney Campbell replied we may want to keep them separate, it might be easier to define and defend that way.

Mr. Fuller asked what the cost would be for the Local Law. Supervisor Deming replied usually under \$1,000 from start to finish. Mr. Campbell added, the wording portion has already been completed. Councilman Smith expressed the need to be clear that the moratorium would not include any small solar arrays in any form, just larger ones.

Mr. Nagel stated that the next CAC meeting is scheduled for Wednesday, November 16th and encouraged any and all interested residents to attend for additional discussion.

Mr. Campbell stated he will hold off submittal to the County until after further discussion.

11/10/16
Meeting

York Town Board
D. Nagel

1. Support for D. Rose comments... *The Town of York Comprehensive Plan:*

The planning program will emphasize the protection of York's important natural resources, productive agricultural soils and the community's significant environmental assets.

The Town's natural resources... should be protected and conserved to the greatest practical extent.

... along with clearly identified costs.

2. *Forest areas, or woodlands, are also a significant natural feature within York and currently occupy about 3,400 acres of land in the Town. These woodland areas are important to the community in a number of respects. They provide wildlife habitats, help to conserve soils and purify the air. Woodlands also provide a buffer for winds, storms and noise. In addition, the visual screening and pleasant view that woodlands provide add to the attractiveness and appeal of the area.*

Not specifically mentioned in the Comp Plan is the importance of woodlands as essential habitat to our pollinators that are said to be responsible for one third of our food and also that, "trees are the number one way in which carbon can be removed from the atmosphere and stored in vegetation over the long term."*

* How Small Forests Can Help Save the Planet, Erica Goode, 9/26/16, New York Times

Community Concerns:

- Hedgerows and habitats discussion this summer
- Noblehurst and Fraser woods clear-cut problems - DEC

Suggestion that the CAC research the ways other communities have given extra protection for these natural resources report back to the Board.

As always, no cost to the taxpayers and the findings are non-binding.

3) Kirk Richenberg:

Mr. Richenberg began by saying he is not in favor of the Board proceeding with the moratorium for solar arrays.

Mr. Richenberg asked what the time line was for Linwood water. Supervisor Deming answered hopefully the line will be in the ground within 3 weeks. Mr. Richenberg questioned the liability involved with the project and asked if the Town has seen any documents. Supervisor Deming stated the Town has not viewed anything, the project at this point is between the owners and the company doing the work. Attorney Campbell added that the company will have to build it to a faction that the Town will accept once dedicated. Mr. Richenberg asked if the Town has signed off on it, which Mr. Deming replied we have not, and commented we will be reviewing it. Mr. Richenberg stated that this is a very unusual case, which Supervisor Deming replied Yes, it is.

Mr. Richenberg expressed his concerns to the Board if something should go wrong with this project, the Town needs to protect all residents not just the company putting this in. Mr. Richenberg suggested once again that the board consider another level of protection by having an additional on-site inspector, besides Clark Patterson. Supervisor Deming responded that he and the Board are comfortable and confident with the engineers, as well as Bond Counsel involved and the Town Attorney. Mr. Deming added, the unusual part of this process is that someone else is putting in a line and then dedicating back to the town.

Mr. Richenberg referenced if a person has a development usually infrastructure is put in by them first, then dedicated over after, but in this process we are dealing with public lands. Attorney Campbell stated although this is different from what usually takes place, it is actually not uncommon in other areas. The developer has the ability to do work in the public right of way, this just happens to be on a large scale here, which there is always potential for liability. Mr. Campbell added that Mr. Richenberg is correct that the town needs to be aware of many aspects, which they are addressing and reviewing.

Mr. Richenberg asked what the rest of the Consolidated Water customers will be paying? Supervisor Deming responded that the Engineers have estimated costs right now, but will be scheduling a meeting with Rick Henry shortly to address costs and other information. Nothing has gone out to bid as of yet.

Mr. Richenberg questioned what the sheets were the Board was reviewing after the last meeting on October 25th. Supervisor Deming replied the sheets were petitions prepared for the Linwood water service area, requesting water to that section. Mr. Deming reported that the Town had already formed the district 10-15 years ago but Bond Counsel felt more comfortable asking the current residents to sign off on the project and the upcoming costs. Mr. Campbell stated Bond Counsel is available solely to give guidance through the process.

Mr. Richenberg stated this is being done so a private contractor can use the Town's credit rating...what will the cost be to the residents? Supervisor Deming replied the residents will be paying a yearly debt service and if they connect to the line, a water bill four times per year. Mr. Richenberg asked if the residents in this area are able to weigh in, why can't the existing consolidated district customers? Supervisor Deming answered, the residents in the Linwood area will be paying a debt service of \$585.00 for a one-family residence or \$.50 per foot for vacant land abutting the water district. The existing consolidated customers will have an increase of roughly \$25.00 for improvements to the district. (FYI: current consolidated customers paid \$ 199.82 on the January-2016 County & Town tax bill). Mr. Richenberg asked if there is a threshold number and if we are doing this for Bond Counsel. Mr. Deming answered Yes, there is a threshold and it is for Bond Counsel. Mr. Richenberg stated once again that the rest of the district should have the opportunity to weigh in. Supervisor Deming stated that he will be setting up a meeting with Mr. Henry and the Town Board to review documentation and necessary costs involved for improvements (new pumps) to be spread across the benefitted users. Attorney Campbell commented if the majority of the residents decide not to sign the petition, the process cannot take place for water to them, but updates to the existing district will proceed.

Mr. Richenberg stated that the upcoming upgrades are being put in because of this project. Attorney Campbell agreed that perhaps now the project will benefit but upgrades would have been needed anyway. Supervisor Deming added that some of the existing customers have dealt with pressure issues and the upgrades will assist. Mr. Richenberg commented that it sounds like the upgrades were going to happen even if the project didn't go forward, which he doesn't believe is true. Mr. Campbell stated the upgrades to the existing customers will roughly be a \$25.00 increase, and stressed that there is value in proceeding with it. Mr. Richenberg commented he hopes Mr. Henry has answers when he comes.

Mr. Richenberg stated he was made aware last week that Western New York was given a foundation permit for concrete, and asked why this was done. Zoning & Code Officer, Carl Peter replied that the zoning cost schedule does address foundation permits, and in many cases it is not common but does happen, and is allowed in some permits.

Mr. Richenberg asked how this decision was made. Supervisor Deming replied that he, Mr. Campbell and Mr. Peter reviewed the zoning regulations and verified it was an accepted practice. Mr. Richenberg stated there is nothing in the codes to address a foundation permit and why not "run" this past a full board since it is such an unusual

situation. Attorney Campbell answered that the Town Board and zoning are separate. The Board does not have the authority to issue building permits, only the Zoning Officer can and actually wording does exist pertaining to foundation permits.

Mr. Richenberg asked Mr. Peter if he could show where in the codes this exists, which Mr. Peter answered no, not off the top of his head. Mr. Peter stated this is not done very often in this community because the majority of the permits issued are residential or agricultural. Mr. Richenberg stated because we haven't done a lot of industry, all the more reason to slow it down and do it right. Mr. Campbell read from the existing regulations, stating that Mr. Peter has the authority to issue a permit for all or a portion of construction.

Mr. Richenberg expressed that the Town Board should really look more closely and fully to this project. There have been several problems through this process already and if the Town does not pay attention we will pay for it later.

4) Henry Fuller:

Mr. Fuller stated he has been to every Planning Board, Zoning Board of Appeals and Town Board Meetings and commented, personally he thought the Town Board was elected officials and didn't think they could do whatever they wanted. The builder, DFA and contractor were all in a meeting last month and not a word was said about needing a permit for a foundation. Now they seem to need a permit immediately and questioned what the hurry was. Without a building permit or set of plans, why ask for a foundation permit.

Mr. Fuller commented that they can't build this building on what they have shown previously, and stated that the process should be completely overhauled. Mr. Fuller questioned the height variance matter. Supervisor Deming replied at their last meeting, the Zoning Board of Appeals questioned the height variance application and request and stated that they wouldn't approve what was submitted. After that took place, DFA rescinded their request in order to finalize their actual heights. Mr. Deming added at the meeting on the 8th, the ZBA accepted the advice of the Attorney to request revised plans for the height variance. Attorney Campbell commented that these boards are trying to look at things carefully, and even explained that decisions and/or approvals will not happen the same evening. The developer/applicant need to get things in order.

Mr. Fuller asked if they don't have permission to build the building, how can we give a foundation permit? Mr. Campbell replied that the foundation would not be affected by the height variance. Mr. Fuller expressed that he has listened to Attorney Campbell at all of the meetings and feels comments and actions are not proceeding properly.

Mr. Campbell answered that each of the boards (Town Board, Planning and Zoning) have their own responsibilities, trying to review this very large project. Mr. Fuller stated that he is not blaming the Planning Board, and sees that they are trying. Attorney Campbell stated after Mr. Richenberg and Mr. Fuller questioned Planning Board minutes, they clarified the February 9th meeting minutes recently to reflect it, but additional questions still seem to be asked. Mr. Richenberg asked, how can you close a

meeting but keep written comment period open. Mr. Campbell answered that this practice happens all the time. Mr. Richenberg stated, in our regulations it specifies the steps needed to properly close a meeting and feels it was not done. Attorney Campbell replied that it was done back in February, but in the event it was missed in the written minutes, this week it was clarified, amended and then adopted again. Mr. Richenberg expressed that there must have been a problem in order to change the Planning Board minutes from February. Mr. Campbell stated once again that action was correct in February but the minutes didn't reflect that so they re-addressed, amended and adopted Tuesday night.

BILLS

RESOLUTION offered by Mr. Gates and seconded by Mr. Rose to approve all claims brought before the Board. Voted on and approved, Yes-4, No-0.

General Fund Claim	# 324-348	\$ 9,396.50
Joint Water & Sewer	# 260-284	\$ 180,253.73
Street Lights	# 10	\$ 1,522.86
Highway Fund Claim	# 198-221	\$ 64,575.13

ADJOURNMENT

RESOLUTION offered by Mr. Gates and seconded by Mr. Smith to adjourn the Town Board Meeting until December 8th. Voted on and approved, Yes-4, No-0.

Town Board Meeting closed at 8:55 p.m.

Respectfully Submitted,

Christine M. Harris, Clerk