

TOWN OF NEW BALTIMORE **Draft 8/10/16**
COUNTY OF GREENE **Approved 8/22/16**
PUBLIC HEARING ON PROPOSED LOCAL LAW 3
REGARDING REGULATION AND APPROVAL STANDARDS FOR SOLAR
COLLECTION SYSTEMS
TOWN HALL, 3809 COUNTY ROUTE 51, HANNACROIX, NY 12087
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Supervisor Dellisanti opened the Public Hearing at 6:30 PM. Also attending Deputy Supervisor Ruso, Councilmembers Briody, Irving, and VanEtten, Town Clerk Finke, Tax Collector Jordan, Highway Superintendent Jordan, and 1 member of the public who signed the attendance book.

Supervisor Dellisanti read, "Notice is hereby given that there will be a Public Hearing before the Town Board of the Town of New Baltimore on August 8, 2016 at 7:00 PM at the Town Hall, 3809 County Route 51, Hannacroix, New York to hear those members of the public who wish to be heard regarding proposed Local Law 3 of 2016, a Local Law Regarding Regulation and Approval Standards for Solar Collection Systems. All persons wishing to be heard in favor or opposition will have such opportunity at the time and place stated above. By Order of the New Baltimore Town Board, Barbara M. Finke Town Clerk." Do we have anyone that would like to speak on the solar regulations for 2016? Just so everyone knows that before you we received two documents today that will be put into the Minutes.

Letter from Pat Linger "Town Board members, as I cannot attend the board meeting tonight due to legislative committee commitments, I would like to comment on the local Law #3 regarding solar collection systems. The definition of small scale solar collector system stops at 12 kW. A larger system would be defined as utility scale. This definitive measure seems arbitrary, and not indicative of actual residential usage. The system I have installed on the roof of my residence is 12.6 kW, and was sized based on my average annual usage to provide 92% of my power. This is strictly a residential system, not utility scale. It's not uncommon for a household with 4 or more people to use 15kW of power or more. I believe the 12kW definition is too restrictive and will place undue burden on residents with larger systems meant for residential use. Based on the definition as written, this would put a larger residential, roof-mounted system, under burdensome requirements."

Letter from Clean Energy Collective: "This is in follow-up to my telephone conversation with Councilman Chuck Irving earlier today with regard to the Public Hearing to be held this evening in connection with the subject matter. I explained to Mr. Irving that Clean Energy Collective, LLC is negotiating an Option to Lease on certain land in New Baltimore in anticipation of applying to the Town to build what is termed a "Utility Scale Solar Collector System" (in our case, an approximately 2 to 2 ½ MW-DC system) under the proposed Local Law #3. Accordingly, CEC has a keen interest in the proposed Law in general and certain of its provisions in particular. Clean Energy Collective is a Colorado-based renewable energy company that has developed 43 community-owned solar facilities, serving 12 states, in cooperation with 27 utility partners. CEC has another 62 projects currently under development and, after recently receiving the permits necessary to build a project in Minisink, New York, it is actively exploring a number of other potential locations in the State, with New Baltimore high on its list. Having developed projects in nearly 50 different municipalities across the country, CEC has considerable experience with what works, and what sometimes doesn't, in local zoning laws intended to protect the integrity of the community while still encouraging the development of good, clean renewable energy sources. And we believe that Local Law #3, for the most part, achieves that difficult balance. That having been said, there are a number of matters, in order of magnitude, to which we would like to at least call your attention. **Required sureties for construction, maintenance and removal of utility-scaled collector systems:** The "required sureties for construction, maintenance and removal of utility-scaled solar collector systems" under Section C. (13) are quite burdensome and far in excess of anything we have encountered in any jurisdiction in the past. While I recognize that the amounts for such sureties are "**up to 20% of the construction value (emphasis added)**" in subsection (a) for construction and maintenance and "**up to 20% of the construction cost (emphasis added)**" in subsection (b) for removal, requiring a surety of even a fraction of that amount for either or both is unnecessary. The construction cost for an approximately 2 Y, MW system is over SM dollars. Accordingly, to require a surety in an amount of 20% or 1M dollars, or, for that matter, any surety at all, to ensure a business entity's completion of the construction of a project is unnecessary. If an entity undertakes construction of a project and does not complete it, leaving it "inoperative or abandoned" as noted in Local law #3 (which is highly unlikely considering the significant capital investment necessary to just begin construction), then the Town will have the surety for "removal" of the project in place. Accordingly, there

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is no need to have an additional surety for the completion of the project. But, if it is deemed necessary to have some reasonable amount of surety, there should at least be some language providing a mechanism for the release of such surety upon satisfactory completion and operational start-up of the project. Further, the cost for "long-term maintenance" of any such project, which is mostly keeping fencing and landscaping in good repair and the grass cut (as anything else that is not maintained will result in the project becoming inoperative) will be minimal and, therefore, any such surety that may be required for that purpose should be consistent with the likely costs for such upkeep. Finally, while almost all municipalities in all states require a "decommissioning" or removal" surety to protect the community in the event that a project becomes inoperative or abandoned, we have never encountered the requirement for a surety of anywhere near "20% of construction cost" ... or, in what would be our proposed project, 1M dollars! Most often, communities require that a qualified engineer present a "Decommissioning Plan," which includes an estimated removal cost in today's dollars, and then require a surety in that amount or that amount plus an escalator for inflation. In Minisink, New York, for example, the cost of removal for that 1MW project was estimated to be \$62,000. Minisink's Local Law calls for a surety in the amount of 150% of the decided upon removal amount, so the surety was set at \$93,000. A copy of the engineer's letter and the Decommissioning Surety Agreement is attached for your information. **Setback:** While a front yard setback requirement of 100feet is reasonable (although far more than what is required for any other use in any zoning district in New Baltimore), requiring such a 100-foot setback for the side and rear yards is unnecessary. It would be more reasonable to require those setbacks to be the same as what is required for less passive, more visible and impactful uses in each respective zoning district. **Lot coverage:** As solar facilities require no parking lots and, because all of the solar panels are set above the ground, have minimal, if any, effect upon stormwater runoff and drainage, limiting such uses to the lot coverage of other far more impactful uses in any zoning district is unnecessary. If a solar facility complies with the front, side and rear setback requirements, that is most often deemed to be sufficient. **Fencing:** As many communities deem tall fences to be less attractive than the uses behind them, municipalities often adopt 6-foot height restrictions on the fences around solar facilities. This does not work, however, as the National Electrical Code requires such facilities to be enclosed by 7-foot fences. Accordingly, perhaps the 8-foot fence requirement currently proposed in Local Law #3 might be reduced to 7 feet. Your consideration of these comments and/or suggestions is indeed appreciated.'

Ellie Alfeld: Are we going to hear what you are proposing?

Tal Rappleyea, Esq.: Basically what it boils down to there's a three-tier review or potential three-tier review. If it's for personal use and the system will be producing 12 kilowatts or less, there's just a real streamlined, you fill out a couple of forms, you go through the Building Inspectors, you get it done. If it's something bigger than that but is still just for personal use, you don't get a streamlined version, you still only go through the Building Department and get your building permit and then proceed. If it's a utility scale, in other words one of these big farms, then they have to come in to the Planning Board for site plan review. Did we limit it to certain districts or did we say Townwide?

Councilmember VanEtten and Supervisor Dellisanti: We said Townwide.

Supervisor Dellisanti: Any questions?

Ellie Alfeld: Is there a fee to apply for these things?

Tal Rappleyea, Esq.: There should be.

Councilwoman VanEtten: There is a fee, but we should review probably the fee schedule.

Ellie Alfeld: Do you have some idea of what that fee is going to be?

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Tal Rappleyea, Esq.: What most towns do is base it off of the actual kilowatts that are going to be produced and that way the fee has a logical basis to the size of the application.

Ellie Alfeld: And by the Building Inspector inspecting the site or the property owner submitting the paperwork, you will then be able to tell by the usage or amount the solar is going to produce, how much you're going to charge. Am I correct?

Tal Rappleyea, Esq.: Right, that will be part of the packet.

Ellie Alfeld: Do you have any numbers now as to what type of monies you're looking to charge?

Councilmember VanEtten: I don't think we've gone that far; this is just the law regulating.

Supervisor Dellisanti: That's going to be under discussion. We're going to get some comments from our Code Enforcement Officer and Planning Board; we'll come up with a number. Any other questions? Any of the Board members have any questions on this? I will entertain a Motion to close the Public Hearing.

The Public Hearing was closed at 7:04 PM on a Motion by Councilmember VanEtten seconded by Deputy Supervisor Ruso

AYES: Dellisanti, Ruso, Briody, Irving, VanEtten

NAYS:

ABSTAIN:

ABSENT:

Lazlo Polyak: Point of Order. New York State law requires that the meetings be at least a minimum twenty minutes for Public Hearings. You closed it in less than five to open the Town Board meeting. So you may need to reopen it or stand for another 15 minutes or schedule a new Public Hearing before you make a Motion to adopt that resolution. If you need to, you can check with Mr. Freeman.

Tal Rappleyea, Esq.: Can you recite the section of law that that's required under?

Harold Vadney: Mr. Rappleyea, you should be familiar.

Tal Rappleyea, Esq.: I am not and that's why I'm asking because I don't claim to know everything, but I certainly would like to know this.

Lazlo Polyak: I would refer you to Mr. Freeman, it is a minimum of 20 minutes for a Public Hearing.

Tal Rappleyea, Esq.: I will do that.

Supervisor Dellisanti: Now can we reopen the Public Hearing and let it sit for 15 minutes?

Councilmember VanEtten: He doesn't know; he couldn't even recite the law.

Deputy Supervisor Ruso: We can take 15 minutes and relax.

Supervisor Dellisanti: It's up to the Board; what do you want to do?

Councilmember VanEtten: I think that unless he can recite the law that tells us that, I think we keep going. What do you think, Tal?

Tal Rappleyea, Esq.: I've never heard of it before I have to say. I've never seen anything in the Freedom of Information Law.

Deputy Supervisor Ruso: If there's any potential truth with that, I wouldn't want anything that we do today to be held null and void.

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Tal Rappleyea, Esq.: You may as well.

Supervisor Dellisanti: Let's reopen the Public Hearing for 15 minutes, I'll make that Motion seconded by Deputy Supervisor Ruso at 7:19 PM.

Deputy Supervisor Ruso: Just in case he's half right.

AYES: Dellisanti, Ruso, Briody, Irving, VanEtten

NAYS:

ABSTAIN:

ABSENT:

Supervisor Dellisanti: I would like to make a Motion to close the Public Hearing at 7:35 PM seconded by Councilwoman VanEtten.

AYES: Dellisanti, Ruso, Briody, Irving, VanEtten

NAYS:

ABSTAIN:

ABSENT:

Respectfully Submitted,

Barbara M. Finke,
Town Clerk

