

A workshop of the Town Board of the Town of Moreau was held on November 5, 2020 in the Town of Moreau Municipal building, 351 Reynolds Road, Moreau, New York, for the purpose of discussing the draft Solar Law.

Supervisor Kusnierz called the workshop to order at 6:30 p.m.

### **Town Board Member Present**

John Hogan	Councilmember
Kyle Noonan	Councilmember
Alan VanTassel	Councilmember
John Donohue Jr.	Councilmember
Theodore T. Kusnierz, Jr.	Supervisor

### **Town Board Members Absent**

None

**Also Present:** Tammy Daley, Deputy Town Clerk; Jeffrey Cruz, Principal Account Clerk; Karla Buettner, Attorney for the Town

The Supervisor welcomed everyone to the Moreau Town Board workshop on the proposed solar ordinance. He said they made some progress at the last meeting and hoped to make a lot more progress tonight.

Attorney Buettner stated the main part of tonight was to discuss small scale and large scale, between tiers 1, 2 and 3. Councilmember VanTassel started with section 147- 97, section D3. He stated he feels A & C contradict one another. He wanted to know if there was another interpretation or is he interpreting it incorrectly. Attorney Buettner stated it looks like in A it says that it may not extend above the line 18 inches below the roof's peak, and C says that they can't go higher. Councilmember VanTassel stated A says 18 inches between the roof and the highest edge of the system and may not extend above a line 18 inches below. Attorney Buettner said it's between the roof and the highest edge of the system, they can change the wording of it if they wanted. Councilmember Vantassel stated maybe it's the way he is interpreting it. To him it addresses both how far above, as well as how far below and C seems to address the same point but the two conflict.

Councilmember Noonan asked if maybe the thought of it was if it extended past the peak, it would it hang over so maybe the panels can get more exposure from the sun. Councilmember Hogan stated that what he was thinking is that there is a roof pitch, and then you have the solar panel units, and these could be anywhere from 3 inches up to 18 inches. Attorney Buettner thought they should put a question mark on this part and address those questions to Jim Martin, since he is the one who wrote the verbiage on that part.

The next section discussed, 147-98 which is for Tier 2 solar energy systems. Councilmember Hogan stated on section 3 the coverage area says 1,000 square feet, and he thought that they agreed on 4,000 square feet. Attorney Buettner was making the change to 4000 square feet and also to take out 20% of the lot size. In section D4 they talked about maximum screening of the solar systems. Councilmember Hogan asked if they were going to leave that up to the homeowner or landlord. Attorney Buettner suggested leaving that part in and have the Planning Board weigh in on that specific section.

Supervisor Kusnierz talked next about Tier 3, large-scale solar systems. He stated he had one thing he wanted to bring to the Board's attention. Since this does encompass the agricultural district, he wanted to make the Board aware of some of the statutory direction that is given to localities from the State. He said the first one begins with New York State Constitution, as it was amended in 1969. There is a sub-section in there that specifically relates to protection of natural resource development of our agricultural lands. He stated the first sentence in the policy of the State is to conserve and protect its natural resources and scenic beauty. It also states to encourage development and improvement of its agricultural lands for the production of food and other agricultural products. It includes the protection of agricultural lands. Supervisor Kusnierz went on to say he wanted to highlight from NYSEDA perspectives. This includes the

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smaller solar systems. They are not supposed to exceed 110% of a farm's anticipated electric needs. He said these types of systems have exemptions from sightings under the Agricultural and Markets Law. This means that local government can't put in place polices that are counter to that. It removes the authority from regulating them if they meet the requirements of the agricultural and Markets Law. That is something he stated they need to take into consideration when drafting the regulations of solar in the agricultural district. He said it's the State's intention to protect certain types of farm land. He also wanted the Board to keep in mind the Comprehensive Land Use Plan that was adopted in 2019. Our recommendations were to protect the farmland and open spaces. It supports the rural feel of the Town, supports crop production, and most important to restrict development on prime farmland soil when possible. He stated when they are putting together their proposal, they should keep in mind the State's Constitution, provisions of the Agricultural District's Law and our own Comprehensive Land Use Plan.

Councilmember Hogan asked if that eliminates the Board from allowing any Tier 3 plant or solar farm to go into the R3, R4, or R5 districts in the Town. Attorney Buettner stated the Tier 3 are the larger ones, they won't be used for the on-site energy. She stated the Supervisor was talking about was the Comprehensive Plan, and that is just what it is a plan, it's not a law. You should use it to guide what your determination is. It doesn't say you can't go against it. Councilmember Hogan stated he thought almost all R5 was prime farmland.

Supervisor Kusnierz said that is not true. When they drafted this proposed law it came from other places. He stated he worked with Counsel, the Zoning Administrator, and it's actually mirrored to other local solar ordinances from other parts of the State that already have solar ordinances in place. He stated the agricultural district in the Town of Moreau is comprised of 8,386 acres total. If you look at the prime and farm land soils of statewide importance of that total, only 55% fall into that category which is 4,575 acres. So half of that acreage doesn't even fall into that category that we are looking to protect. He stated all that land is not actively farmed. Of that total number only 3,898 acres are actually farmed, which is only 46% of the agricultural district. At this point you are looking at a majority of the agricultural district has the potential for having solar arrays as our draft law is written right now. Councilmember Hogan asked if the prime farmland isn't being farmed right now does it take away from being prime land definition. Supervisor Kusnierz stated no because the prime farm land is based on USDA soil classification. He also stated out of that 46% that are being farmed, only 1,947 acres are classified as prime soil. Out of the 3,898 acres only 323 acres are deemed as farmland, statewide enforced, of importance. The bottom line is that they are only looking to protect 27% of our agricultural district. Supervisor Kusnierz also stated that with this draft they weren't looking to ban the solar arrays, he is in support of allowing the Tier 2's which are 110% use on the operation. Supervisor Kusnierz believes that the Board has an obligation to protect that limited resource because they are not making any more of it. He said he thought by having these definitions in there, they still allow the use of the majority of the that property to be used for solar, but also looking to protect that small portion of prime land and soils.

Councilmember Donohue thought in the New York State 2021 budget that there is a big push for solar. He said his understanding is that if the Board doesn't come up with something reasonable and not too restrictive that New York State will step in and tell them what to do. Attorney Buettner stated not exactly, she thinks he was talking about what went into effect in this year's budget 2020. That was for the larger over 25 megawatts. Those have to go to what is called Article 10 citing determination, and that process takes it completely out of the local government's hands. She stated the ones we have here that we are working on are below 25 megawatts, but there still needs to be something in place for the ones that are below 25 megawatts. Councilmember Donohue said they really have to be careful putting restrictions on some of the farms. There are a lot of farms out there that are really hurting. This could even hurt their working properties even more. He stated if they can't stay sustainable, they will develop that property and put houses or developments out there. He doesn't want to see the agricultural district covered with solar panels either. He said there has to be a balancing act. Councilmember Noonan stated he believes there are restrictions on housing in the agricultural district already. Supervisor Kusnierz stated you need 250 feet of road frontage and you do a shared driveway, and you need five acres to build a single family home.

Supervisor Kusnierz wanted to say again that this was not a law that was drafted to prohibit commercial power generation in the agricultural district at all. He feels they are doing their due diligence to have some

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protection for land, not all land but the most valuable land from an agricultural standpoint. He stated he supports single family homes being built in the agricultural district. He also said by putting this law forward, we are giving more rights to those land owners in the agricultural district. Because as of now, with our Zoning Law, you can't put those structures there.

Councilmember VanTassel stated that in the draft language they put in additional language to help protect prime farmland, which is compliant to the New York State Department of Agricultural and Markets. He stated some of those laws are quite strict, and specifically around the prime soils. Also there is prime farmland that is outside of the USDA's agricultural district, and we have to make sure to that keep that in mind. He said he is a little concerned about other districts not having the same restrictions around prime farmland or soils deemed that way.

Supervisor Kusnierz stated that he did not look at prime land outside of the agricultural district because when the agricultural district that was created, is reviewed every eight years. It is required by State Law. Those property owners have the ability to remove their parcels from agricultural land for whatever reason. Previous property owners may have chosen not to be included in the agricultural district, be removed, or not be a part of it at all. He said the whole purpose of the agricultural district is to have additional protections for the landowner for the purpose of agricultural. The Board agreed to keep moving forward, to where the Board finds common ground and go back to these other issues.

The next section they discussed was section 149-99. The Supervisor stated a lot of this section was taken from NYSEDA. Councilmember Noonan talked about the screening plan. He stated he would like to see a certain number of trees be planted and should be so many feet apart because when they grow it will look like a nice hedge row. He said if there is specific language in there so it doesn't hinder the sunlight, he would like that language somehow included in that section. Supervisor Kusnierz said that sounds like a good idea, because the greatest concern to people, is they don't want to see glass over 100 acres. He stated if the Board wants to put that type of structure on their property it would be shielded per Town Code. Councilman Noonan stated he would like to work with everyone and have them shielded, and not in plain sight if they could do that. Supervisor Kusnierz stated he has talked to several developers over the years and most of them don't have a problem with doing that. The Supervisor said it might only be a problem if the parcel was on an incline or a major State highway, there might be some challenges because of the topography. Attorney Buettner stated that this is the same language that is in Tier two, she wanted to know if the Board wanted the same language in Tier 3. Councilmember VanTassel thinks there should be stronger language in Tier 3 than Tier 2. Attorney Buettner stated what they might want to do is put that all in there and then say to the Planning Board, you know what works and doesn't work; have they had any problems with the developers or engineers. She feels maybe the Planning Board could focus on this as well.

Supervisor Kusnierz stated in the operation and maintenance part of the solar panels or arrays, the Planning Board makes the decision whether or not the owner has to have an escrow account for the maintenance of them. This would also include mowing and trimming. His thoughts were to change it to have it state that the owner is required to have an escrow account for the maintenance, instead of having it be at the discretion of the Planning Board. All Board members agreed.

The workshop ended at 8:00 p.m.

Respectfully submitted,

Tammy Daley, Deputy Town Clerk