

A workshop of the Town Board of the Town of Moreau was held on December 8, 2020, in the Town of Moreau Municipal Building, 351 Reynolds Road, Moreau, New York, for the purpose of discussing the draft Solar Law.

The Supervisor called the workshop to order at 6:03 p.m.

The Town Clerk called the roll.

**Town Board Members Present**

|                           |               |
|---------------------------|---------------|
| John Hogan                | Councilmember |
| Kyle Noonan               | Councilmember |
| John Donohue, Jr.         | Councilmember |
| Theodore T. Kusnierz, Jr. | Supervisor    |

**Town Board Members Absent**

|                |               |
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| Alan VanTassel | Councilmember |
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**Also present:** Leeann McCabe, Town Clerk; Karla Buettner, Attorney for the Town

Supervisor Kusnierz welcomed everyone to the Town Board workshop regarding the draft solar law. He stated that the attorney for the Town had provided Board members with copies of the changes that had been discussed in earlier workshops. He stated that there were still some outstanding issues that needed to be addressed, such as abandonment/decommissioning, penalties and severability. He stated that the Town Board will also need to discuss what they want to do regarding PILOTs on these projects. He stated that the Town Attorney will also need to be given direction, if the Town Board is to consider an overlay district.

The discussion started with Abandonment and Decommissioning (149-100). Attorney Buettner stated that the wording followed the model law with a few minor changes. She stated that Tier 1 and Tier 2 systems are deemed abandoned after 1 year without electrical generation for consumption, and Tier 3 systems are deemed abandoned if the system fails to generate and transmit electricity at a rate of more than 10% of its rated capacity over a continuous period of one year.

The Supervisor read through section 149-100 in its entirety. Councilmember Noonan asked how the Town would determine if there has been no electrical generation. Attorney Buettner stated that she believed the Building Department would keep track of that. Councilmember Hogan wondered how they would know. The Supervisor stated that this gives the Building Department discretion to investigate, if there were a question. He stated that if this were called into question, the property owner would have to show proof that they're generating. Councilmember Noonan asked if this could be written into the law. Attorney Buettner stated that she could put the language in there but thought it would be better as a policy of the Building Department. She stated that it's easier to change a policy than a law. She also stated that this local law falls under the Zoning Law, and that the Building Department has the authority to inspect a property upon reasonable notice.

There were no changes made to section 149-100.

The next discussion was on Penalties for offenses (149-101). The Supervisor read the section aloud and there were no changes made.

The next discussion was on Severability (149-102). The Supervisor read this section aloud and there were no changes made.

The next topic for discussion were PILOTs (Payment in lieu of taxes). The Supervisor stated that the wording was a boiler plate from NYSERDA. Attorney Buettner stated that it was based on their model law, but with a couple changes. She explained the purpose of a PILOT and then commented that Saratoga County has their own PILOT law. She stated that the School District could do this by resolution and that the Village could do it as well, if there were properties that would accommodate a tier 3 system. Attorney Buettner directed their attention to the Contents of the Agreement (1)(h) – annual payments. She stated

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that there were two ways to handle this. You could identify in the law how much the Town wants to charge per mega-watt and what the escalation will be per year. Or, instead of assigning a payment amount for the Tier 3 systems, you can say that the annual payment will be negotiated. She stated that each agreement could be a different amount.

The Supervisor stated that if the numbers were in there, the developer would know right away what their costs would be. He stated that if the Town were to negotiate, it would give them flexibility, but it's also more time consuming. He stated that the Town Board would also have to be involved every time a project is brought before the Town.

The Supervisor asked about the ranges that could be charged. Attorney Buettner stated that NYSERDA has a list that they strongly recommend. She used National Grid as an example for this area and stated that the range is between \$1,700 and \$5,100 per mega-watt. She stated that those figures are for all the taxing jurisdictions combined. The County has in their law that they get \$1,000. What's left is \$700.00 to \$4,100.00. She stated that the Town can put a number in there but would need to know what the School would want out of it. She suggested that the Town may want to have a conversation with the School. She stated that in this area you can't get more than \$5,100.00 per mega-watt. The Supervisor stated that the County initially had \$3,500.00 in their law but the Supervisors reduced it to \$1,000.00, so the local municipalities would get a larger portion of that number. Attorney Buettner stated, that if the School chose to do this, they would have to create their own PILOT. She asked if they wanted to put a number in there for now as a placeholder. Councilmember Noonan asked if the number can be changed afterwards. Attorney Buettner stated, only if you change the law. The Supervisor stated that he would prefer general language that states: There shall be an annual payment as determined by the Town Board. He stated that there could be a separate resolution that can be changed by any Board. He stated that the fees could be set as they do for building permits. Attorney Buettner stated that any new fees each year would only pertain to new installation. Any system that's already in place would pay the escalation as determined with their first payment. The Town Board members agreed to have the general language, that there shall be an annual payment as determined by the Town Board. Attorney Buettner stated that the fees can be changed annually at the Organizational meeting. The Supervisor stated, that within the policy, they can have the escalation percentage per year. Attorney Buettner stated that she would remove subsections (i) and (ii) and section (h) will read: That the Annual Payment shall be per resolution of the Town Board at the Organizational meeting. Attorney Buettner stated that she will put this section right after the decommissioning section, which will make this section 149-101, the penalty section will become 149-102, and severability will become 149-103. The Supervisor stated that they should come up with a number for the annual fee that they can present at the time of the public hearing. He stated that they'll have a little time to work on that.

The next topic to discuss was whether or not the Town Board wished to create an overlay district. Attorney Buettner describe what an overlay district was. She stated that an overlay district will allow the Town Board to determine where the Town will have Tier 3's, and not limit them to specific zoning districts. She stated that it could be over the entire Town, as long as the requirements are met for zoning. She stated that it allows for a little more flexibility. The Supervisor stated that in the current draft there are restrictions in different zoning districts. He asked if an overlay would supersede any limitations that are in there. Attorney Buettner stated that it would. The Supervisor asked if you would have to meet greater requirements from what's in the zoning for each district. Attorney Buettner stated that it would be up to the Town Board. She explained that right now Tier 3's aren't allowed in the R-3 zone. However, with an overlay district, if it included these zones, they could be considered if they met all the other zoning requirements. Attorney Buettner stated that she had reached out to NYSERDA on this and there are a couple of municipalities that have the overlay, but she stated it's not common. She stated that she had spoken with Jim Martin after hearing from some of the Board members, who were concerned if there was proper acreage in a zone but where Tier 3's aren't allowed. She stated that this is up to the Town Board and that they don't have to do an overlay if they don't want to. The Supervisor stated, from his perspective, he was inclined to go with what they have right now and not do an overlay district. He stated that there are options that would be available such as variances and PUD's for those zoning districts that they aren't allowed. He suggested that they bring this to the public the way it is but make them aware of

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the option of an overlay district during the public hearing. The Town Board members were in agreement to keep the draft as is, without an overlay district.

There were no further items to discuss. Attorney Buettner stated that she would make all the changes that were discussed and get a clean copy of the draft law to the Planning and Zoning Boards. She thought it would most likely be discussed at their January meetings. She stated that after they've reviewed the draft, they'll send it back to the Town Board with comments, and then it goes out to a public hearing.

Attorney Buettner stated that she had reached out to the Building Inspector for code information relating to roof mounted solar. She stated that the information he provided is now in the draft.

The Supervisor stated that there had been some discussion as to how other municipalities handle the fee schedule for the permitting process. He read through some of the fees that are charged from other municipalities. He stated that it wouldn't have to be in the law and that it could be part of the Town's fee schedule. Attorney Buettner replied that he was correct.

The workshop concluded at 6:44 p.m.

Respectfully submitted,

Leeann McCabe  
Town Clerk