

MINUTES – TOWN OF ALLEGANY
PUBLIC HEARINGS & REGULAR BOARD MEETING
TUESDAY, OCTOBER 26, 2021 7:00 PM BIRCH RUN

PRESENT:

Supervisor Hitchcock	Town Clerk D. Pinney
Councilman Maguire	Councilman Nazemetz
Councilman Cooper	Councilwoman Martin
Attorney Tuttle	

ABSENT:

Comptroller D. Piccioli, Hwy. Superintendent Moshier

ALSO PRESENT:

Stephanie Guthrie, Mike Higgins, Chris Cover, Alan Covert & Scott Simpson

Public Hearing - Town of Allegany Solar Moratorium

1. Supervisor Hitchcock opened the Public Hearing
2. Supervisor Hitchcock shared a list provided by the Building & Zoning/Code Enforcement Department detailing why the Moratorium is needed as follows:

The purpose of the proposed Solar Energy Moratorium, is to revise the Town of Allegany Solar Energy Local Law.

As one of the first municipalities within our region to adopt and enforce such a law, we have gained knowledge we had not previously possessed, and encountered several scenarios which could be better defined within our Local Law.

This moratorium will allow the Town time to reassess the current Solar Law and make adjustments that address situations that have arisen since the first solar law, such as the requirement for glare studies, as well as making adaptations to Appendix 3 “Decommissioning Plan” and Appendix 4 “Security Bonds”, in order to better clarify what the Town requires.

River Valley Solar – Pecks’

- Permit issued 6/23/2020 (has since expired)
- Near forced acceptance of their Electrical Inspector
- Electrical Inspector did not make or keep the inspection meetings with Jerry
- National Grid will not allow array to be hooked to the grid, as there are components they are not willing to sign off on
- Requested copies of all inspections (to include days/times of what was inspected) not a single one has been received
- Equipment has been installed for months, sitting unused

MINUTES – TOWN OF ALLEGANY
PUBLIC HEARINGS & REGULAR BOARD MEETING
TUESDAY, OCTOBER 26, 2021 7:00 PM BIRCH RUN

Countryside Solar – Duggan & Duggan’s

- Battling our department for months regarding Decommissioning Bond, including documentation that the Town required Decommissioning Plans and Bonds (Please see attached)
- Numerous requests to have Completion Certificates for portions of project (Our department has informed them several times we do not issue “Completion Certificates” for partial projects, as the permit is for the completion of the project in its entirety) We were informed they require the certificate in order to receive tax credits for this year
- October 4, 2021 sent a new, separate Decommissioning Agreement for the Town to legally sign off on. Regarding the Town releasing the Decommissioning Bond – this has been forwarded to Wendy

Birch Run Solar – Giardini’s

- Approved in October of 2019, one- year extension granted on November 13, 2020 (to date permit still not obtained, full application packet has not been received)
- Months waiting for completed information regarding equipment for estimate of Decommissioning Bond
- Bond template received has an end date of 1 year (leases on land generally last 25 yrs)
- Communication from 10/08/21 asking that the Town execute the bond

3. Supervisor Hitchcock also expressed concerns about setbacks, glare, distance from residential property & income for the Town that may need revisions.
4. Supervisor Hitchcock opened the meeting for public comments.
5. Alan Covert of Two Mile Road in Olean questioned the current Solar Law & its enforcement. He stated that Code Enforcement failed to do a study. He stated that his house has lost value and asked who is going to pay for it. He asked if anyone had looked the pictures that he sent & stated there are health hazards. He said its like a 10-acre mirror pointed at his house. He stated he can’t sell his house & can’t enjoy it. He says he needs answer from the Town for his Lawyer as to what the town will address. He said the law was passed to protect people like him.
6. Attorney Tuttle replied that if there are violations of our Solar Law they need to be brought to the attention of code enforcement. Mr. Covert said they didn’t show up to his house. He said someone did come watch it glow at night. He also stated that there are all sorts of bugs. He said it doesn’t shut down; it continues to glow. Wendy suggested he submit a complaint to Code Enforcement or to the Town Board & they will look at it if they haven’t. She said that one of the reasons we are here tonight is because of complaints like Mr. Covert’s & it has shown us that we need to clean up our law a little. Wendy stated that previously we were working with what we had & now we are hearing

MINUTES – TOWN OF ALLEGANY
PUBLIC HEARINGS & REGULAR BOARD MEETING
TUESDAY, OCTOBER 26, 2021 7:00 PM BIRCH RUN

of problems with what we did & we are going to take another look at it. This is a reason that we are here tonight proposing a moratorium and to address concerns such as those of Mr. Covert.

7. Mr. Covert stated again that he can't enjoy his property & can't sell it. He stated the town needs to do something about this. He has a lawyer and they will be in contact.
8. Attorney Tuttle & Supervisor Hitchcock urged Mr. Covert to submit any complaints that had not been addressed. Mr. Covert made a complaint on March 9th that he said has not been addressed. He stated the Town adopted three laws and then didn't follow them.
9. Supervisor Hitchcock said he had been up there 3 or 4 times and not witnessed any glare.
10. Chris Covert, sister of Alan, said she has many pictures of the glare.
11. Supervisor Hitchcock stated that Jerry Dzurhoff, CEO had been there and saw the pictures. Councilwoman Kathy Martin also came to the property to observe. He also said the reason we are doing this now is to make corrections of what may have been done wrong originally.
12. Chris Covert asked what resolution does he get out of this when things were done wrong originally.
13. Chris Covert asked what resolution does he get out of this when things were done wrong originally such as frustration & anxiety and relationships with neighbors & being able to be at his house. She is happy that the Town is doing the Moratorium but would like to know how to make up from the past. She said the glare study should have been done. She also said that he is seriously hiring an attorney and this is causing him money problems.
14. Attorney Tuttle stated that we are doing a moratorium to address those issues and if there are code violations out there that can be corrected we can look into those.
15. Supervisor Hitchcock stated that with the current law if there are no law prohibiting or regulating a certain area where there is a problem it is hard for us to enforce it if it isn't part of the law.
16. Chris Covert stated that it is part of the Town law about the glare & doing an assessment of the glare on an adjacent property.

MINUTES – TOWN OF ALLEGANY
PUBLIC HEARINGS & REGULAR BOARD MEETING
TUESDAY, OCTOBER 26, 2021 7:00 PM BIRCH RUN

17. Supervisor Hitchcock stated that it seems like the construction company that put the solar farm up would do that study & give a report as to what they found and make a correction if necessary.
18. Chris Covert asked that wouldn't the town be responsible if it's the Towns Law to ensure that it was done?
19. Attorney Tuttle stated that when violations are cited we have the obligation to look into it to see if a violation has occurred and to see if something can be done about it.
20. Ms. Covert stated that they have gotten FOIL requests & spoken to Jerry Dzurhoff. She said he is looking for resolutions that his property value has dropped tremendously because of the glare. She said it is not always bad & changes with the seasons and the bugs are bad.
21. Mr. Hitchcock also mentioned that at this point none of the three approved solar projects are operating yet. He also said that we are working on resolving the situations.
22. Attorney Tuttle said that all violations will be considered & if there is a violation, corrective action will be taken.
23. Scott Simpson introduced himself & stated that he was on the committee that helped to work on the Town of Allegany Solar Law. He said he is a solar enthusiast and has them on his home. He questioned the set-backs. Supervisor Hitchcock said he was thinking in the residential areas where neighboring properties might be affected. Mr. Simpson spoke of the free market & value of investment property.
24. Councilwoman Martin discussed how the Covert property is zoned (Ag Forest) and what is allowed in that zone. If you choose to build in Ag Forest you run the risk of having to deal with the things that are allowed in the designation. She did agree that if there were violations by the developer, that they need to be addressed and mitigated somehow.
25. Mr. Simpson stated that he built his house on the Four Mile close to an active oil well & he realizes when you are in that zone noise & smells happen, but he knew the risk. He is more in favor of deregulations some of those laws. It is a way for people to get passive income and help some aging farmers. He did say that the town will get income tax after production starts and the property owners could get paid for site maintenance. He said it is better than farm land sitting vacant & not being used.

**MINUTES – TOWN OF ALLEGANY
PUBLIC HEARINGS & REGULAR BOARD MEETING
TUESDAY, OCTOBER 26, 2021 7:00 PM BIRCH RUN**

26. Councilwoman Martin stated in these times of climate change renewables are part of our salvation.
27. Councilman Maguire said no one should be subject to a light shining through one's kitchen window.
28. Attorney Tuttle stated that just because we haven't seen the glare doesn't mean it doesn't exist and there are glare provisions within our existing law. We need to get with the developer to be sure these steps have been taken to determine if there has been a violation and proceed with any violations that have been received. She also said that what we really need as part of our moratorium is a process to develop a more concise plan for enforcement provisions.
29. The board would like to see the report from Jerry Dzurroff in writing for the complaint investigations at the Covert property.
30. Mr. Simpson urged that the moratorium if set would be relatively quick so that the tax credit from the government could be taken advantage of that is only available until the end of the year.

#132-MOTION TO CLOSE THE PUBLIC HEARING

Motion by Councilman Nazemetz to close the public hearing at 7:36 pm. 2nd by Councilman Maguire. Hitchcock-aye, Martin- aye, Maguire-aye, Cooper-aye, Nazemetz-aye. CARRIED

Regular Town Board Meeting

Salute to the Flag opened the meeting

#133-MOTION TO ACCEPT MINUTES FROM THE OCTOBER 12, 2021 PUBLIC HEARING & REGULAR BOARD MEETING

Motion by Councilwoman Martin to accept the minutes from the October 12, 2021 Public Hearing & Regular Board Meeting as written. 2nd by Councilman Cooper. Hitchcock-aye, Martin- aye, Maguire-aye, Cooper- aye, Nazemetz-aye. CARRIED

CORRESPONDENCE

1. NYS Dept. of Public Service invite to discuss Joint Proposal to increase annual electric & gas delivery revenues.

MINUTES – TOWN OF ALLEGANY
PUBLIC HEARINGS & REGULAR BOARD MEETING
TUESDAY, OCTOBER 26, 2021 7:00 PM BIRCH RUN

NEW BUSINESS

1. Adopt Solar Moratorium (Local Law #3 of 2021)

Motion # 134 of 2021

Motion by: Councilwoman Martin 2nd by: Councilman Cooper

**LOCAL LAW NUMBER 2 - 2021
TOWN OF ALLEGANY, COUNTY OF CATTARAUGUS, NEW YORK**

A local law establishing a six (6) month moratorium on applications, approvals and/or construction or installation of Commercial Solar Energy Facilities and/or Solar Farms in the Town of Allegany, New York.

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF ALLEGANY NEW YORK AS FOLLOWS:

Section 1. Title

This Law shall be known as the “2021 Town of Allegany Commercial Solar Energy Facility and Commercial Solar Farm Moratorium Law.

Section 2. Purpose and Intent

The Town of Allegany presently has an established Zoning Ordinance for the Town of Allegany, New York and a Solar Energy Local Law.

The Town Board of the Town of Allegany is concerned that the current Solar Energy Local Law does not adequately address set back and lot coverage requirements, glare concerns, security bonds or decommissioning plans, among other things.

The Town Board of the Town of Allegany is of the opinion that the current Solar Energy Local Law should be reviewed in its entirety to better address the concerns outlined above and to clarify the application process.

The Town Board of the Town of Allegany finds that a moratorium is in the public interest and should be enacted to enable the Town of Allegany to review and reassess the application process for Commercial Solar Energy Facilities and/or Commercial Solar Farms in the Town of Allegany, New York.

MINUTES – TOWN OF ALLEGANY
PUBLIC HEARINGS & REGULAR BOARD MEETING
TUESDAY, OCTOBER 26, 2021 7:00 PM BIRCH RUN

Section 3. Moratorium

- A. A Moratorium on the construction or installation or for issuing building permits, site plan approval and/or any zoning permits or variances for the installation, construction, modification, alteration, approval or extension of Commercial Solar Energy Facilities and/or Commercial Solar Farms is hereby imposed for a period of six (6) months from the effective date of this Local Law. During the period of this moratorium the Town of Allegany, including but not limited to, the Code Enforcement Officer, Planning Board or Zoning Board of Appeals shall not accept any application for new construction or installation of Commercial Solar Energy Facilities and/or Commercial Solar Farms in the Town of Allegany.
- B. For the purposes of this Local Law, the terms Commercial Solar Energy Facilities and/or Commercial Solar Farms are defined as follows:
COMMERCIAL SOLAR ENERGY FACILITIES – any facility designed to generate electric power to be marketed, sold or used for other than the power demands of any improvements on the property in which such facility is located. Excluded from the definition and from the scope of this moratorium are Solar Energy Facilities which are residential or accessory uses as roof mounted on ground pole-mounted solar energy systems occupying ¼ acre or less of area for the site of installation.
COMMERCIAL SOLAR FARM – a collection of solar panels covering ¼ acre or more of land which are designed to capture sunlight and convert it into electricity. This shall include all freestanding and ground pole-mounted photovoltaic and parabolic solar installations.
- C. This action is exempt under SEQRA pursuant to 6 NYCRR Section 617.5 (30) as a type 11 action involving the adoption on a moratorium on land development or construction, and the moratorium is enacted by the Town of Allegany pursuant to its authority to adopt local laws under Article IX of the New York State Constitution and Municipal Home Rule Law Section 10.

Section 4. Violation

A violation of this law shall constitute an offense under the penal law. Any person convicted of violating this law shall be subject to a fine not exceeding \$1000.00 or ninety (90) days in jail or both.

Section 5. Enforcement

MINUTES – TOWN OF ALLEGANY
PUBLIC HEARINGS & REGULAR BOARD MEETING
TUESDAY, OCTOBER 26, 2021 7:00 PM BIRCH RUN

This Local Law shall be enforced by the Code Enforcement Officer for the Town of Allegany or such individuals as designated by the Town Board of the Town of Allegany, New York.

Section 6. Supersession

All Local Laws, ordinances, or parts of local laws and ordinances of the Town of Allegany that are in conflict with the provisions of this Local Law are hereby suspended to the extent necessary to give this Local Law full force and effect during the effective period of the moratorium.

Section 7.

This Local Law shall take effect immediately upon filing with Secretary of State.

Hitchcock-aye, Martin- aye, Maguire-aye, Cooper- aye, Nazemetz-aye.

CARRIED

2. Marijuana discussion (possible Public Hearing)

#135-MOTION TO SET A PUBLIC HEARING TO DISCUSS CANABIS

Motion by Councilman Maguire set a Public Hearing November 9, 2021 at 7:00 pm prior to the regular board meeting to get public opinion on adult-use cannabis retail dispensaries or on-site consumption licenses within the Town of Allegany. 2nd by Councilwoman Martin. Hitchcock-aye, Martin- aye, Maguire-aye, Cooper- aye, Nazemetz-aye. CARRIED

OLD BUSINESS - none

OTHER BUSINESS – none

COMMITTEE REPORT

MINUTES – TOWN OF ALLEGANY
PUBLIC HEARINGS & REGULAR BOARD MEETING
TUESDAY, OCTOBER 26, 2021 7:00 PM BIRCH RUN

1. Supervisor Hitchcock gave an update on Town Hall renovation project
2. Councilman Maguire gave an update on Allegany Crossings

FROM THE FLOOR - none

#136- MOTION TO ADJOURN THE MEETING.

Motion by Councilman Cooper to adjourn the entire meeting at 8:10 pm. 2nd by Councilman Maguire. Hitchcock-aye, Martin- aye, Maguire-aye, Cooper- aye, Nazemetz-aye. CARRIED

Respectfully submitted,

Deryle L. Pinney, Town Clerk
10/26/2021