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PUBLIC HEARING OF THE TOWN BOARD TOWN OF DUNKIRK
December 21, 2021
(Local Law Amending Solar Law)

The Town Board of the Town of Dunkirk held a public hearing at 6:15 p.m. on Wednesday December 21, 2021 at the Town Hall, 4737 Willow Road, Town of Dunkirk, New York with Supervisor Richard A. Purol presiding.

PRESENT:

Supervisor Richard A. Purol
Councilman Robert Penharlow
Councilman Pagan
Councilman Walldorff
Councilman G. Jay Bishop (via zoom)

OTHERS PRESENT: Town Clerk, Rebecca Yacklon, Attorney Jeffrey Passafaro, Deputy Town Clerk, Kyle Coughlin, Nathan Rizzo, Solar Liberty, Larry Ball, Dan Leary, Our Generation, (via zoom) Riley Rising, Seaboard Solar, (via zoom) Elie Schechter , Our Generation, (via zoom).

Supervisor Purol stated the purpose of the Public Hearing was to revise the Solar Law in the Town of Dunkirk.

The Town Clerk, Rebecca Yacklon published the Public Hearing Notice on Friday, December 10, 2021 and read as follows:

TOWN OF DUNKIRK
NOTICE OF PUBLIC HEARING
ON PROPOSED LOCAL LAW

PLEASE TAKE NOTICE that a public hearing will be held by the Town Board of the Town of Dunkirk on December 21, 2021 at 6:15 p.m. at the Dunkirk Town Hall, 4737 Willow Road, Dunkirk, New York, regarding the adoption of a proposed local law for the Town of Dunkirk for the year 2021. An Abstract of the Local Law is as follows:

The proposed Local Law would enact a new Solar Facilities Law regarding the placement, erection, and maintenance of all Solar Energy Facilities in the Town of Dunkirk, amending Local Law #3 of 2017.

The law defines Solar Energy Facilities, including but not limited to building integrated solar systems; collective solar; and further categorizes them as either small scale, commercial scale, or utility scale.

Sets forth the zones in which said Solar Energy Systems may be permitted, and sets forth requirements, rules, and regulations.

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All Solar Energy Facilities will be sited by special use permit only, upon application to the Town Board. Such solar applications shall include an operation and maintenance plan, and decommissioning plan.

A complete copy of the Local Law is available for inspection at the Town Clerk's Office.

The Town Board shall also consider all matters under the State Environmental Quality Review Act as relates to the proposed local law at the public hearing.

All persons shall be heard in person or in writing and may submit written comments to the Town Clerk prior to the Public Hearing, which will be admitted into the record of the Public Hearing.

Dated: December 1, 2021

By Order of the Town Board
Town of Dunkirk
Rebecca Yacklon, Town Clerk

The following letter was submitted to our office from the County regarding our 239 referral.

Richard Purol, Supervisor
Town of Dunkirk
4737 Willow Road
Dunkirk, NY 14048

December 17, 2021

RE: MUNICIPAL ZONING REFERRAL No. 2021-62
LOCAL LAW OF 2021- SOLAR ENERGY SYSTEMS LAW UPDATE
Dear Supervisor Purol,

This letter is in response to your municipal zoning referral received in full by this office on December 8, 2021 regarding adoption of an updated solar energy system law.

As one of the designated staff to the Chautauqua County Planning Board. I have reviewed the above-noted referral. With regard to General Municipal Law 239-m, this proposal is subject to a referral to the County since it is within 500 feet of multiple municipal boundaries.

I have reviewed the pertinent inter-community and county-wide considerations with respect to this proposal and its effect on the relevant concerns that are listed under General Municipal Law 239-1. Based on this review, I find that the proposed action would have no significant county-wide or inter-community impact and that the proposal would be a matter of local concern.

However. in order to help the Town with its decision, I offer the following informal comments:

1. Overall, I find that this proposed law is well thought out, with attention paid to a number of important details regarding solar energy systems. These details include the requirement for pollinator

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friendly plantings surrounding Tier 3 solar energy systems and for snow removal on project sites (see Section 5.E).

2. Allowable Zoning Districts - Practically speaking, because Tier 3 solar energy systems are limited by the Town Solar Law to the M-1 and M-2 Zoning Districts, there are only a handful of parcels on which these types of systems could be built. These parcels are easily identifiable, and the Town may wish to consider the potential for solar projects on each.

3. Host Community Agreement – This proposed solar law is the first that I have seen to include a requirement for a Host Community Agreement between project applicants and the Town for Tier 3 Solar energy systems. This is a concept that our department has seen gain increasing traction in other communities in the state, and the fees collected through this agreement should help the Town address any potential impacts associated with Tier 3 solar energy systems.

4. Agricultural Impacts - Given the importance of agriculture to Chautauqua County's economy and culture, our department pays particular attention to the potential agriculture impacts of utility-scale energy solar systems. This proposed law provides fairly strong agricultural protection by limiting Tier 3 solar energy systems to the M-1 and M-2 Zoning Districts and limiting the amount of important farm soils that a solar energy system can be installed on (See Section 5.C.h).

5. Visual Impacts – Our department also pays attention to the potential visual impacts of large solar energy systems. I applaud the Town for including screening and visibility requirements for Tier 3 solar energy systems, which will help mitigate potential visual impacts (see Section 5.C.e).

6. Tree Cutting – An increasing number of large-scale solar energy projects in Chautauqua County are clearing forested areas in order to construct solar arrays. With this in mind, the Town may wish to include stronger protections for trees than are currently included in the proposed law (see Section 5.C.n).

7. Decommissioning and Surety – Decommissioning plans and security are essential tools to ensure that land utilized for solar arrays is returned to a useable condition once the array is no longer in use. I commend the Town for including detailed requirements for decommissioning plans in this local law.

8. Ongoing Staff Efforts- This proposed law would place some burden on Town staff to perform a number of tasks, including ensuring the annual submittal of operations reports to the Town Board (see Section 5.E), ensuring that decommissioning cost estimates are updated every 3 years (see section 5.F), and keeping track of decommissioning security (see Section 5.G). The Town may wish to consider which staff will be responsible for these tasks.

Respectfully,
Matthew Bourke, AICP
Senior Planner

Dan Leary and Elie Schechter of OurGeneration submitted a letter with comment to the Town Board regarding the Solar Energy Local Law:

Town of Dunkirk
RE: comments to the draft Solar Energy Local Law

We applaud the Town of Dunkirk for pursuing a well-thought-out local law for solar energy projects. The draft law is comprehensive and clearly outlines the Town's responsibility to preserve the natural

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beauty of the region while encouraging investment by homeowners, business, and landowners in clean, local, and renewable energy. OurGeneration LLC is a solar energy developer, and we are pursuing projects within the Tier 3 classification of the draft law. Most tier 3 projects will be categorized as Community Solar systems, which provide access to solar energy for many homes and businesses that otherwise cannot put solar on their leased or owned properties.

We are supportive of the draft law, which accomplishes its stated objective of regulating the construction, maintenance, and placement of solar energy systems greater than 1 Megawatt, while mitigating potential impacts on neighboring properties. In our view, the draft law achieves this in large part by limiting Tier 3 projects to only 20-40-acre parcels in the M-1 and M-2 Zoning Districts. This will keep larger solar projects out of the other Zoning Districts of the Town, which we would assume is an important priority for the Town in developing this law.

However, the law then requires 100' and 200' setbacks for Tier 3 projects, which we feel will be unnecessarily burdensome. By allowing Tier 3 projects on only 20-40-acre parcels in the Town. These parcels in the M-1 & M-2 Zoning districts, the Town will in effect relegate these projects to only a handful of potential parcels in the Town. These parcels will have a very difficult time accommodating such significant setbacks. Losing large setback acreage from an otherwise eligible parcel will create unnecessary financial burdens for projects that will struggle to achieve economies of scale, challenges for Property Owners, who will find themselves with excessive unused buffer areas that they will not be able to monetize, and lost revenues for the Town, which will receive lower PILOT and Host Community Agreement revenues, and potentially lose out on projects as developers target other Towns in the area that have distribution lines connecting to substations in the Town of Dunkirk.

In our view, 100' and 200' setbacks are recommended, and at times necessary, in Towns with very large parcels, and/or expansive permitted solar uses that allow Tier 3 projects in multiple zoning districts. We hope that the Town will recognize that these types of setbacks are not necessary given the already restrictive list of allowable parcels in M-1 and M-2 Zoning Districts, and that the setbacks will constrain the stated objectives of the Solar Law. We recommend that the Town consider a minimum 50' setback, while maintaining the Board's ability to require increased setbacks on a case-by-case basis, if the Board determines 50' to be insufficient.

Additionally, there are circumstances where two abutting M-1 or M-2 parcels could both participate in hosting separate Tier 3 solar projects in accordance with the Solar Law's guidelines. If those contiguous parcels have common ownership, we feel added language for these specific circumstances will continue to achieve the law's stated goal's provide maximum benefit to the Town and area solar energy subscribers, while not impacting nonparticipating neighbors. The suggested language is the following:

For the purposes of calculating the minimum and maximum eligible lot size, contiguous parcels under common ownership, hosting separate and distinct Tier 3 solar energy systems shall have their acreage considered in aggregate. And;

Adjacent parcels under common ownership, hosting separate and distinct Tier 3 solar

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energy systems shall not be subject to setbacks requirements along the shared parcel boundary between the two contiguous parcels.

Reducing the setback distance in the M-1 and M-2 Zoning Districts and allowing for flexibility between contiguous parcels under common ownership will improve the likelihood of projects' overall feasibility, while not detracting from the Town's objective of responsibly siting Tier 3 Solar Energy Systems or creating hardships on neighboring properties.

Noel P. Dill Vice President from Stephen Development submitted a letter from Lakeside Park with comments on the Solar Law:

Town of Dunkirk

December 21, 2021

Re: Comments on Proposed Solar Law

I am writing with respect to the draft Solar Law that is up for Public Hearing. Stephen Development Represents the ownership of Lakeside Park, and we would like these comments to be added to the record and for the consideration of what we feel are legitimate modifications to the draft law.

Lakeside Park has a significant interest in the draft law because we own property zoned land well removed from a public right-of-way where we would like to see a solar project. Without viable Community Solar projects our Lakeside residents are otherwise unable to access to clean solar power for their homes.

In consideration of the limited amount of properly zoned land in the town, we believe that the Town should maximize the density of the solar on qualifying parcels so that:

- The Town is able to receive greater revenue return from each qualifying parcel;
- Households have access to clean solar power without needing solar panels on their individual dwellings;
- Open spaces are preserved.

For these reasons, we respectfully request that, in consideration of the substantial setback from the public right-a-way already established elsewhere in the law, the required equipment setbacks be modified to include an alternative of a 50' setback from the property line to the edge of the solar equipment when appropriate screening is provided, including, by visual screening with natural vegetation. Fencing and perimeter road should be permitted in this setback area if it remains out of sight behind the screening.

Secondly, regulatory requirements limit the amount of solar generation capacity that can be located on a single tax parcel. As a result, some solar projects may end up being divided into separate Tier 3 projects, each on their own separate parcel. We recommend that the Town consider that projects

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May require what would be otherwise arbitrary subdivisions, and that these subdivisions may require a solar project to be less than twenty acres, while the overall scope of combined projects could be made up of multiple adjacent parcels that would in total comply with the proposed law's acreage requirements. These subdivisions would then also create additional setbacks to themselves unless addressed in the law.

For this reason, we would propose the following language to allow for subdivisions to meet regulatory requirements while allowing for the intent of proposed law to remain intact:

“To the extent that the electrical utility, independent regulator, or governmental body having jurisdiction limits the solar generation capacity allowed on an individual parcel, the total acreage of multiple parcels each being utilized for Tier 3 generation projects may be added together to meet the requirement of a 20-acre minimum parcel size, provided that the parcels in question are contiguous, under common ownership, and have been lawfully created, including for the purpose of meeting such regulatory requirement. The common property boundaries of such contiguous parcels shall be exempt from setback requirements with each other along the common property lines.”

We thank the Town for its consideration of these comments and look forward to bringing a project to The town of Dunkirk for review when the moratorium is lifted.

Sincerely,
Noel P. Dill
Vice President

Nathan Rizzo from Solar Liberty Buffalo, New York stated he reviewed the Solar Law and felt the Town had done a fair job. On page 4 under Tier 1, small scale, it reads 20kWh. Which he wanted the Board to know was incorrect.

Attorney Passafaro had informed Mr. Rizzo that this was a typing error that would be corrected.

Mr. Rizzo also stated that he also recommends the board changes the 20 kw to 25kw because that is what the NYSERDA guidelines state.

Supervisor Richard Purol asked Attorney Passafaro, if that sounded correct in his experience with solar laws.

Attorney Passafaro stated that he has not looked at those guidelines himself, but he has heard that from other representatives from various solar projects.

Councilman Bishop stated that he felt that the board should change the 20kw to 25kw, if that is what NYSERDA says.

Councilman Penharlow stated that the board could always change that figure in the future, if needed.

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Attorney Passafaro suggested that the board change that figure at this meeting rather than at a later date.

Councilman Pagan explained to Board members that the committee that worked on this law worked very hard. He explained that they decided on 20kw over 25kw to give the Town more control on these different projects. He stated that he felt they should keep the number at 20kw for that reason.

Councilman Penharlow then agreed with Councilman Bishop to change the 20kw to 25kw.

Supervisor Purol stated that he did not see any reason not to change this number to align better with the NYSERDA guidelines.

Mr. Rizzo then explained that he liked that the Town included farm and solar definitions. He explained that he would like to see this included in other districts.

Supervisor Purol stated that they would not be updating that, if needed the companies could always look to apply for a variance.

Councilman Penharlow then asked the representative if he could tell him what the rating of a panel would be.

Larry Ball from the audience explained that he has a residential system, and he has 240 watts, and he has 40 panels.

A motion was made by Councilman Walldorff to adjourn the public hearing. The motion was seconded by Councilman Penharlow and carried.

Respectfully submitted,

Rebecca Yacklon
Town Clerk