

RUSH TOWN BOARD MINUTES  
SPECIAL MEETING  
JULY 22, 2019

A special meeting of the Rush Town Board, County of Monroe, was called to order by Deputy Town Supervisor Daniel Woolaver at 7:00 PM on July 22, 2019 at the Rush Town Hall, 5977 East Henrietta Road, Rush, New York. Everyone present participated in the Pledge of Allegiance.

PRESENT: Daniel Woolaver	----- Deputy Town Supervisor
Rita McCarthy	----- Councilperson
Jillian Coffey	----- Councilperson
Gerald Kusse	----- Councilperson
Pamela Bucci	----- Town Clerk
John Mancuso, Esq.	----- Attorney for the Town

RESIDENTS PRESENT:

Jeanne Morelli	Amber Corbin
Paul Corbin	Pat Kraus
John Morelli	Shelle Chentaw
Richard DeFray	Mary Horvath
Carol & Nancy Ast	Evelyn Chaffer
Mark Henry	Bethany Choate
Paul Holtz	Janet & Dave Glocker
Joan Potenza	Carol Barnett
Tom Wickerham	Sherry Clark
Nel Hall and Trevor Bryon	Josh Burdett
Pamm Wait	Bob King
Amy Schubach	Andrey Seibert
Stephanie Anderson	Jennifer Martin
Kevin Martin	Phyllis Wickerham
Charles Luft	

OTHERS PRESENT:  
Bruce & Sandy Howlett

I. OPENING STATEMENT:

Deputy Town Supervisor Woolaver opened the Special meeting scheduled for the purpose of reviewing the changes to the Solar Energy Systems Law of 2019. A comment period will commence after the Board reviews all changes line by line.

Resident Deb Kusse stated that she assumed the meeting was a workshop.

Attorney Mancuso stated that counsel and board members would review the amendments and then open the floor to allow public feedback with the changes currently being proposed. Based on several months of comments

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received from public, town board and individuals collectively the solar law which was adopted and is now being considered with proposed amendments. The concepts are harmonized in a redline draft document. The Board wishes to evaluate the law line by line and discuss each change as to whether further changes are necessary in order to handle a particular issue currently being proposed. Specific citations and home rule law provisions allow for towns to regulate uses for its health, safety and welfare of the residents of the town.

Changes illustrated in the red-lined solar law are being further discussed. Special permit to overlay districts, Tier 2 location related to front lot line and principle structure, an additional provision of a screening buffer, abandonment or removal by the property owner will be changed from 12 months of producing to a 6-month provision along with other possible changes that will be discussed.

Applicability:

A special permit of Tier 3 is not being proposed and a solar system overlay district with additional Planning Board approval will be established. The Town of Cambria followed this practice. The Planning Board will resume full site plan and special permit authority.

Councilperson McCarthy stated that there will not be Tier 3 in an R30 zone unless there is an overlay district created. Additionally, there is a 3 layer approval process that includes a discretionary layer before an application can be approved.

Code Numbering:

Councilperson Kusse requested clarification of a section of the code numbering of Code 174 and 164 as solar energy systems.

Attorney Mancuso explained that solar law was adopted as 174 solar energy systems. General Code placed it on the website erroneously as 164. If amendments are adopted the coding will be clarified.

Tier 2 Permitting Requirements:

Councilperson Coffey clarified that the overlays be located only at rear of the principle structure and the maximum height be 8 feet. Additional revisions relating to landscape buffers and screening of land to adjacent properties is addressed.

Abandonment of Productivity Provision:

All materials will be removed by property owner at their expense if productivity ceases for a period of 12 months was discussed and further changed to 6 months of non-use. All members agreed with the change.

Solar Energy Systems Overlay District:

Councilperson Kusse questioned whether or not there would be a maximum number of overlays.

Attorney Mancuso stated that the overlays are dependent on the location restrictions.

An overlay district will be designed in addition to site plan approval. The Board referenced potential amendments. Previously, there were 2 approvals necessary. There are now 3 potential layers of approval protection. The overlay district is a legislative zoning decision. The Town Board must retain jurisdiction and the Planning Board would have both site plan and special permit authority. Applicants need 3 discretionary approvals in order to proceed.

In order to limit the number of overlay districts, limitations of acreage and megawatt must be set. Nothing is currently set.

Councilperson McCarthy confirmed that the law states the town is not allowing solar in R-30 districts or in any other districts unless there is an overlay district created. Additionally, there are 3 layers of application protection.

Councilperson Kusse asked if there could be development of up to 6 or 7 overlay districts.

Councilperson Coffey noted that the overlay districts are a compromise created by the Rush United to Save Our Town which is a citizen organized group.

Attorney Mancuso stated that there are acreage limitations because the nature of number of overlay districts. While not containing a number limit, there are currently acreage limits. Once the acreage limit is met, the number of districts are maximized.

The Board further discussed minimums and maximums of overlay districts versus acreage allowed. Overlay districts have been limited to 20- or 50-acre parcels with a 150 acres total allowed in Rush. Less than 1% of total acreage in town can be occupied by solar. Councilperson Coffey noted that the 150 acres are dictated by what the substation can withstand.

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Attorney Mancuso stated that the process of creating an overlay district is like traditional zoning of R-30, R-20 and others. Within the district there are certain uses governing what is allowed in the district. The concept is similar of defining characteristics of what is allowed in that district including following the requirements of the overlay district. It is defined in the current amendments to the law. Assessment paperwork would be required. If adopted, the town zoning map would then be amended.

Councilperson McCarthy stated that collectively both groups agree that unless an overlay district is established Tier 3 is not allowed anywhere in Rush.

Councilperson Kusse stated his concern for the number of overlay districts established as opposed to the number of acres.

Attorney Mancuso stated that the size and acreage must work together with the overlay districts. The Board discussed appropriate sizes, number of overlays and acreage.

Councilperson Kusse stated that eventually town board members would change and they may not have the same attitude about the laws. This law should be agreeable with the residents.

Councilpersons McCarthy, Coffey and Woolaver agreed that the elected Town Board is the body that adopts the laws for the town.

Councilperson McCarthy stated that the Board's goal is to keep the Horseshoe Solar Project out of Rush. All layers are helpful. Rush has many large lots.

The Board must find a reasonable way to limit Horseshoe but provide resident solar energy on their large parcels.

The Board will further discuss the overlay concept.

Deputy Town Supervisor Woolaver cautioned that the Board wishes to stop Horseshoe Solar in Rush. If it cannot be substantively stopped, the Board must amend a law without making it unduly burdensome to comply.

Height:

Varied installations may apply based on technology. There are regulations. Height has been changed to no more than 12 feet.

Batteries:

Councilperson Kusse believes there should be a moratorium of batteries.

Deputy Town Supervisor Woolaver stated that batteries may be a siting board decision and must meet the requirements of fire prevention and building code as well as applicable federal, state and county laws and regulations as noted in the proposed law.

Attorney Mancuso stated the town engineer may be able to answer that configuration as it relates to the Genesee River area.

#### Setbacks

There is no agricultural zoning; it is essentially an R30 district. Setbacks could be increased to 50 feet side setback. Councilperson Coffey suggested a setback of 200 feet as a general setback. Screening will also be a barrier. A variance can also be requested.

All agreed of a 200-foot general setback.

#### Fencing

Fencing is set at 7 foot.

Consideration is combined with hedgerow, landscape buffering including screening of adjacent properties, rights of ways and level of maturity will be a criterion addressed further in planning restrictions. Plantings are to be done outside of fencing areas.

#### Security (Letter of Credit), Decommissioning:

Specifics are noted in the law.

#### Special Permit Required and Site Plan Approval:

Requirements are consistent with current approvals. Owner must be operator for decommissioning requirements.

#### Additional Comments:

Councilperson Kusse read aloud a statement that the law must represent the people of the town and not a corporate entity. There is now Rush resident input into the law. The Town of Stafford law represents the town residents. If the law being amended has a pivotal point of debate, there may be items in that law that would compliment the Rush law and its residents' interests.

Councilperson Coffey asked for a particular area that could be recommended.

Councilperson Kusse will email Councilperson Coffey.

#### PUBLIC COMMENT:

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Deputy Town Supervisor Woolaver opened the floor for comments regarding the solar law amendments.

A resident spoke highly about the Town of Stafford solar law.

A resident, former NYSERDA employee, noted that interactions he was involved in realized that most supporters of solar derive an income and asked what benefit the Horseshoe Project will provide Rush residents.

Councilperson McCarthy stated that the Town Board is opposed to the Horseshoe Project. The special meeting is regarding the town's current solar law and amending it for smaller projects.

Resident Choate, 50-year resident of Rush, realized that solar is the future. Solar is now economically viable. Solar arrays on his property are unnoticed at 100 feet off the road and 15 feet high. The arrays create more energy than the property can use. Energy goes into the grid. There are positive points for industrial solar installation. Big installation would be good.

Councilperson McCarthy noted that the comment period is intended for comments to the Town Board and not a debate session.

Resident Bethany Choate is a proud solar house owner and will continue solar for the future of her family.

Resident Deb Kusse asked for an expansion of where the attorney invenergy funds for Horseshoe Solar are being used by Rush and how both the Rush United attorney and town attorney are aligning the opposition against the Horseshoe Solar Project.

Attorney Mancuso stated that in part the town was awarded \$21,000 which is 1/3 of the entire award allowed under the statute. Certain items can be funded in the Article 10 process. No actual award has been provided to any of the parties and the contracts are being negotiated with the state. All three parties have filed their quarterly reports and they are available on the Horseshoe website. A conference call was scheduled by the developer prior to the June 28 timeframe allowed subject to the stipulation. Attorney Mancuso objected to the meeting and call, being in an airplane, although the discussions were of general nature. There is no impact on the Town of Rush. Horseshoe precluded to do anything until June 28<sup>th</sup>. The siting board established a ruling of Rush's participation in the stipulation process.

Councilperson Coffey stated that both the Town of Rush attorney and Rush United attorney have been meeting on a regular basis.

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Resident Charles Luft voiced his concerns and recommendations regarding solar.

Resident Hans Schmitthenner urged the Town Board to discuss solar projects with the Rush United members and suggested that protection be placed in the solar law regarding setback of trails and waterways and the inclusion of side setbacks.

Deputy Town Supervisor Woolaver stated that a number of meetings have occurred between Rush Board representatives, Rush United representatives and both attorneys.

Resident Carl Ast supports the Town of Stafford solar law.

Resident John Kaman thanked the Town Board for collaborating with the resident group in making the law stricter and made additional suggestions.

Resident Dave Glocker stated that it is unrealistic to expect the Town Board to be solar experts and suggested the continuation of taking advantage of the residents researching about solar and using it to the town's advantage.

Resident Marianne Rizzo commented on overlay district which appears like spot zoning. The acreage should be decreased and recommends Mendon's Code regarding tree cutting.

Resident John Morelli stated that there are many issues being discussed about solar and the vision is moving in the right direction.

Resident Amber Corbin recommended limiting overlays, increased setbacks, minimizing of height and that the batteries need review as they relate to responding emergency personnel. The Town Board is moving in the right direction. An additional subject, although not a subject of this meeting, Attorney Mancuso agreed to review the pilot of opting out.

ADJOURNMENT:

Deputy Town Supervisor Woolaver moved having no further town business to

conduct adjourned the meeting at 9:22 PM. All parties agreed.

Respectfully submitted,

Pamela J. Bucci

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Town Clerk