

January 11, 2022 Solar Workshop

The Town Board conducted a Solar Workshop via Zoom on January 11, 2022.

PRESENT: Dana Hogan, Supervisor
Richard Doyle, Councilman
William Haessly, Councilman
James Lindsay, Councilman
Dan Washburn, Councilman

OTHERS PRESENT: Jeffrey Meyer, Town Attorney
Todd Humiston, Code Enforcement Officer
Robert Dingman Planning Board Chairman
Terrence Nolan, Borrego Solar
Town Residents: Lorraine Forcier, Mike Cleveland, Chip Doty,
Dennis Kelly, Chip Doty, Colleen Allen

Supervisor Hogan opened the workshop opened at 6:36 pm. Input has been received from members of the community and solar companies. Supervisor Hogan and Code Enforcement Officer Todd Humiston have reviewed the current solar law and have proposed changes to update the law. The public has the opportunity to add their input.

At the end of the workshop Supervisor Hogan is hoping to have some consensus on the proposed changes that are in place and possibly schedule a Public Hearing to vote on a new law.

Supervisor Hogan proceeded to review the proposed changes.

Attorney Meyer has removed the definition of Commercial Solar collectors and private solar collectors, the goal is to remove the private and commercial language and focus on net metering and everything else falls under the municipal code and everything else would be designed to target the large solar companies. It is proposed the language be changed for all solar collector systems, shall be designed to prevent reflection onto a building or public roadway which causes a nuisance to: All solar panels shall have anti-reflective coating (s) and shall not emit glare or reflect light off-site.

The term net metered is used instead of commercial or private in the permitting section of the solar law. It is also proposed that ground-mounted racks and freestanding solar collectors mounted on a pole as a primary or accessory structure be allowed only in the IND-75 Industrial zoning districts. EXEMPTION: They will be permitted on brownfield sites and unbuildable wetlands in all zones subject to receiving proper permitting to construct the panels on these sites in the Town of Kingsbury. Building permits are required for all ground-mounted and freestanding solar collectors connected to a structure required by the uniform building code.

The location of the solar collectors must have a setback of not less than 100 feet minimum from the property line. Property lines adjacent to a residential property must have a setback of 500 feet with no clearing within the first 100 feet. The 25-foot setback where no ground disturbances are permitted shall be noted on the site plan and may not be disturbed for the duration of the use.

Councilman Washburn asked as far as the properly engineered to support the collectors if something should be done prior to the permit process to approve solar mounted on the roof.

Code Enforcement Officer stated they have to be properly engineered by a solar company; it must be someone certified to do that type of work.

Councilman Doyle if an amendment was to be made that allowed solar only in industrial zones and requested clarification.

Attorney Meyer stated his understanding is it is only allowed in the Industrial Zone and brownfields and wetlands but needs to be explained in greater detail. Most of the proposed projects have touched wetlands but the intention is the solar array is supposed to be located on or in primarily wetlands.

There was a discussion about solar arrays on wetlands in the Industrial Zone.

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Terence commented on the proposed setback of 500-foot setback stating it would have a significant impact on his proposed project on Hillview Drive.

Lorraine Forcier stated she is in favor of the 500-foot setback and suggested no clearing in the first 250 feet.

Supervisor Hogan continued to read additional proposed changes:

Commercial Solar collectors require a yearly permit. An application needs to be filed with the Town yearly and a site visit must be done with the Code Enforcement Officer between April and October yearly to ensure compliance with this code.

The Solar Energy System shall be a secure facility to prevent all access. The Fire Company shall be provided a key for emergency access.

The Applicant shall provide landscaping to screen the Solar Energy System such as the use of architectural features, earth berms, or other screening which will harmonize with the character of the property and surrounding area.

A 4-foot by 4-foot weatherproof sign clearly marked at the entry point with the company name, contact address and contact phone number is required.

No solar panels may be stored on site, including decommissioned or broken solar panels. Decommissioned or broken panels shall be immediately removed from site and disposed of off-site in accordance with applicable state and federal law.

Councilman Haessly stated the solar companies should be told they must maintain their site.

Supervisor Hogan continued:

Applicant must have a Coordinated Electric System Interconnection Review (CESIR) study before Planning Board will review a site plan or set a public hearing on a potential project.

All Approvals will require an interconnection agreement with the power company prior to final site plan approval. If this agreement is terminated with the power company for any reason so will be the site plan approval. The interconnection agreement is a requirement for site approval without it the site plan will become void. Code Enforcement Officer stated Attorney Meyer had a recommendation the interconnection agreement be in place prior to any ground disturbance. A discussion followed.

All solar collectors must be completely secured in by a 6 foot or higher privacy fence. Code Enforcement Officer Humiston explained the fence must be a chain link with a privacy mesh and must be maintained throughout the project.

Lorraine Forcier asked if property were sub-divided and met the requirement to construct another solar field, could they do that and could it be preventable. Councilman Washburn stated the Town cannot stop somebody from sub-dividing their land even if they had the intent to put in two solar fields. Attorney Meyer stated it is not going to be preventable but limiting the locations for solar may have the opposite effect. Councilman Lindsay stated with the setback requirement, you would need a large parcel to sub-divide to get a field big enough to work.

Supervisor Hogan continued with the proposed changes:

The solar collectors shall not exceed 40% of the total lot coverage. A decommissioning plan. To ensure the proper removal of solar energy systems, a decommissioning plan shall be submitted as part of the application. Compliance with this plan shall be made a condition of the issuance of a permit under this section. The decommissioning plan must specify that after the solar energy system can no longer be used, it shall be removed by the applicant or any subsequent owner. The decommissioning plan shall also demonstrate how the removal of all infrastructure and the remediation of all soil and vegetation shall be conducted to return the parcel to its original state prior to construction. The plan shall also include an expected timeline for execution. A cost estimate detailing the projected cost of executing the decommissioning plan shall be prepared by a professional engineer or contractor. Cost estimations shall take into account inflation. Removal of solar energy systems must be completed in accordance with the decommissioning plan.

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Supervisor Hogan spoke of his concern in obtaining an accurate figure for a decommissioning plan. Code Enforcement Humiston stated it would be reviewed by the Town engineer and the Planning Board would not approve a project the Town engineer is not in favor of.

Terrence Nolan of Borrego asked if the 40% total lot coverage the current proposed lot coverage.

Code Enforcement Officer stated it is currently 40% because the panel square footage was used compared to the lot size. He feels 40 % is quite significant, the panels are usually at an angle.

Councilman Haessly asked why 40% was important. Attorney Meyer responded it was a policy decision of the Board due to storm water and density. A discussion ensued.

Councilman Doyle asked why the number of panels would be limited if they followed the setbacks and the fencing and found out how much land is useful; they will be located in the Industrial Zone.

Councilman Haessly stated all the area within the setbacks should be utilized so they get 100% investment in the land.

Councilman Washburn stated if the solar panels were not spaced firemen would not be able to get in if there was a fire. Code Enforcement Officer Humiston stated the requirements must be met in the site plan when it comes to stormwater and for access.

Terrence Nolan stated it does not have a major impact given the measurement of the panels themselves. The 500-foot setbacks would have a significant impact on a project and asked that there be some kind of discretion with the Planning Board for a project that is already appropriately screened.

Lorraine expressed her concern with setbacks. Supervisor Hogan stated possibly the Board could determine a way to accommodate a residential concern and provide discretionary language to the Planning Board in situations where it does not make sense.

Supervisor continued with financial surety. In addition to the decommissioning plan, the applicant shall also provide an estimate, prepared by a qualified engineer, setting forth the costs associated with decommissioning the solar energy collectors. The Planning Board shall also establish the amount of such surety to be established by the applicant prior to ground disturbance. The surety must be in the form of escrow funds held by the Town of Kingsbury and remains in place for the life of the solar energy system and available to the Town to ensure the solar energy system is decommissioned in accordance with the approved decommissioning plan. It is the intention of this provision to ensure that the Town has sufficient funds available to remove the installations, including all mounting hardware, and restore landscaping consistent with this chapter, in the event the applicant fails to comply with its decommissioning obligations. The Decommissioning plan and financial surety will be reviewed every 3 years by a qualified engineer to ensure there are sufficient funds for the Applicant to comply with its decommissioning obligations. Failure to update the decommissioning plan and financial surety shall be a term of default under the escrow agreement with the Town of Kingsbury. Councilman Haessly expressed his concern about a company walking away from a solar energy collector and the labor costs charged to the Town and suggested prevailing wage should be language included in the law.

Code Enforcement Officer suggested the rates for a building permit for a solar energy collector should be based on capacity on the solar collector and not the square footage.

The Board discussed the PILOT program.

Lorraine Forcier asked about the height of solar panels; a 6-foot fence will not hide panels that are 20 feet high. She also asked if a visual assessment or a noise test should be conducted and is it possible that a solar field is going to be placed on some type of agricultural /residential piece of property.

Code Enforcement Humiston stated the Town has a noise ordinance and sees no reason why the Town would require a noise test. Someone could build a private solar array if they owned a lot of property. Brownfields, roofs, and wetlands are where solar energy collectors could be built; there are not many homes near wetlands.

Terrence Nolan stated he appreciates the chance to be part of the dialogue and everything he heard has been reasonable to him.

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Dennis Kelly asked about the adjustment of the decommissioning cost if a company goes defunct and sells it to another company, you could be skipping the 3-year term and how would you make the money up. Attorney Meyer stated it does not matter where the money comes from as long as it is there to be used for its intended purpose. Mr. Kelly asked if the money could be in an interest-bearing account. Attorney Meyer stated it could be in an interest-bearing account, but the Town would not benefit.

Councilman Haessly asked about the annual licensing and also suggested there be a periodic review of the lease agreement between the solar company and the Town in terms of what goes on with the lease. Code Enforcement Officer stated that information could be added into the yearly permit; the 3-year decommissioning review and make sure all the information is updated, they could do an on-site review and make sure the property is maintained properly.

Attorney Meyer explained the licensing process for junkyards and the benefit of having people apply annually so things do not get forgotten. All the language for licensing the solar energy collectors would be cut and pasted into a separate section of the solar law. The yearly licensing would also provide up to date contact information. Attorney Meyer stated a memorandum of the lease would be recorded with the County Clerk Office and the Town Assessor will get a notice that the lease has gone on record, and you can find out who owns it.

The Board has no objection to removing the clause in regard to exceeding 40% of the total lot coverage. Supervisor Hogan would like to meet with Code Enforcement Officer Todd Humiston and Attorney Meyer and anyone else interested to weigh in to create language to address the 500-foot setback and provide for a variance from the Planning Board to adjust the number to where it makes sense, where a neighbor is not being impacted.

Supervisor asked if the Board could schedule a Public Hearing; Attorney Meyer stated yes and once the notice is posted the Town may get calls as to what it looks like. The language should be finalized about the same time the notice is published. If the notice is not published 10 days before the Public Hearing the Board cannot act on the law that night because it has not been before the Board 10 days.

Attorney Meyer does not like giving Planning Boards the ability to grant waivers, technically that is what Zoning Boards are for.

Supervisor Hogan would like to schedule a Public Hearing on February 1, 2022.

Code Enforcement Officer Humiston would like to clear up some of the language in the proposal. He would like to add a condition on the net-metered items that states net-metered power must be used on the parcel.

Supervisor Hogan asked Terrence Nolan what the typical height was for a fence around a solar array. Mr. Nolan responded 7 feet and nothing higher than 8 feet.

Lorraine Forcier asked if during the decommissioning process if the panels could be recycled. Supervisor Hogan stated they would be decommissioned according to state and federal law which the Town could not supersede.

The solar workshop was adjourned at 8:19 pm.

Respectfully submitted,

Cynthia Bardin, Town Clerk

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