

**MINUTES OF THE SPECIAL MEETING OF
THE TOWN BOARD OF THE TOWN OF NEW LEBANON
HELD ON FEBRUARY 28, 2017**

Present: Colleen Teal, Supervisor
Chuck Geraldi, Councilmember (arrived 6:23pm)
Kevin Smith Sr., Councilmember (arrived 6:14pm)
Dan Evans, Councilmember
Mark Baumli, Councilmember
Stephanie Ferradino, Town Attorney

Recording Secretary: Tistrya Houghtling, Town Clerk

Others Present: Robert Smith, Planning Board Member
Wes Powell, Planning Board Member & ZRC Member
Greg Hanna, Planning Board Member & ZRC Member
Cynthia Creech, Deputy Supervisor, Court Clerk,
Rec. Commission, CAC & ZRC Member
Cissy Hernandez, CEO/ZEO & Building
Department Administrator
Ted Salem, Zoning Board of Appeals & ZRC Member
Tony Murad, Zoning Board of Appeals & ZRC Member
Phyllis Stoller, Zoning Board of Appeals & ZRC
Member
Jeff Winestock, Highway Superintendent
Several members of the Public

CALL TO ORDER:

The meeting was called to order at 6:07 p.m. by Supervisor Teal. A moment of silence was followed by the flag salute.

SOLAR:

The following topics were discussed:

- PILOT (Payment in Lieu of Taxes) – which solar projects are subject to the PILOT? No PILOT is needed when at least 75% of the power generated is intended for on-site consumption. This will be decided at the time of the application and it will be based on the intended use of the solar array even if power usage drops at times for unforeseen reasons (example – a strip mall installs a solar array and at full capacity it is utilizing more than 75% of the power generated but then businesses vacate the strip mall and they are no longer utilizing more than 75% of the power generated, they would still not need a PILOT).
- Safety and Emergency Services – is there something written in the proposed legislation that talks about a placard being posted on site when there is solar to alert emergency service responders that it is there? We are in a mutual aid area for emergency services so in addition to notifying the local emergency responders, we should require a placard be posted next to the meter. CEO Hazel “Cissy” Hernandez will look into any size requirements of such placards.

- Flags – on page 10 section g it states that a solar farm/power plant shall not be used for the display of any advertising, flags, streamers or any other decorative items. It was requested that this be edited so that the American Flag is allowed to be displayed. The sentence could be edited to list decorative flags instead of just flags to still allow for the American Flag.
- Community Solar Energy System – do we want only 51% of the energy produced to benefit residents of New Lebanon or do we want that number to be higher? 75% of the total capacity of the solar array has to be utilized by New Lebanon residents and/or property owners. Who is going to monitor that to ensure that the energy usage by New Lebanon residents remains above 75% of the total capacity of the unit? The community solar energy system must file their subscriber list and each subscriber's energy usage annually with the Town Clerk's office.
- Lot Coverage: solar array cannot exceed 60% of the total property size – why is it limited to only 60%? The intention here was to provide proper buffering and aesthetics. If you are out in the middle of a large field with no neighboring property that needs buffering, why limit the percentage of the property that can be used? There may be cases where more than 60% could be used without the need for buffering and aesthetics, but these cases could apply for a variance. The intention here is to provide necessary buffering and aesthetics for the properties that need it.
- Do we want something in the legislation that protects people's solar investment by not allowing a neighbor to plant a 60 foot pine tree that would block the sun from the solar panels? They could put up a fence if they wanted to block the view, but not something so tall that it would render the solar arrays unusable. It is not fair to say that one person has the right to install solar on their property but the abutting property owner doesn't have the right to plant trees on their property. Every person has the right to do what they want with their own property. Other Town's do have regulations on casting a shadow on someone's solar investment, rendering it useless. People spend a lot of money on installing solar and there should be some protection of that investment. You cannot regulate what someone does on their own property. This type of regulation could open a big can of worms because if one property has a great view and a neighboring property builds a 3 story house and blocks that view, the property value may be decreased by that house being built but that doesn't mean they don't have the right to build the house.
- Setback requirements – should we take setback requirements out of this legislation and just let the solar setback requirements follow our bulk regulations? In our bulk regulations 20 feet is the smallest setback requirement. If you have to put your panel 20 feet from the lot line, it's probably unlikely that your neighbor is going to be able to put up something so high that it casts a shadow that would affect the solar panel. We want to be accommodating to people who want to have solar but don't have a large lot size which is why it is being proposed with a 10 foot setback. Those people could apply for a variance. Everybody was in agreement to let solar setback requirements follow our bulk setback regulations.
- NYS Unified Solar Permit – there are incentives from the State of New York for us to use the NYS Unified Solar Permit and it is also one of the 4 steps that we

could take to qualify as a Clean Energy Community and become eligible for funding for solar panels at the Town Hall and Highway Garage. The NYS Unified Solar Permit would be adopted by the Town Board as a separate resolution from the solar legislation. The Zoning Re-Write Committee looked at the NYS Unified Solar Permit with the former ZEO and they recommended that the Town Board adopt the NYS Unified Solar Permit.

- Screening requirements – there is no screening requirement for a pitched roof. There is a screening requirement for a flat roof but they are exempt from the tilt and pitch requirements. They can be pitched at a steeper angle and therefore they need screening from the road. Some people expressed an opinion that the screening should not be required as they don't mind seeing them from the road. The Town Board agreed that the screening requirement for the flat roof should remain as written in the proposed legislation.

MISC PROVISIONS OF ZONING CODE:

The following topics were discussed:

- Fences requiring a permit - if we have regulations in place but no permitting process is required, it makes enforcement very difficult. Farmers should be exempt from the required permit for fencing. Current fence regulations exempt farms. There are sight distance restrictions at intersections on fencing. If we exempt Agriculture from fence permit requirements, how do we ensure they are following setback and sight distance restrictions? It would be the responsibility of the person installing the fence to ensure that they are complying with sight distance restrictions. If they install an agricultural fence that blocks sight lines, they would need to take it down. The Town Board agreed that all fences require a Zoning Permit with a \$25 fee except for those exempted in section 205-7 B(4)[a](1).

SIGNS AND POSTERS:

The following topics were discussed:

- Signs for shopping plazas with multiple businesses – the current law allows one freestanding sign for the business complex that can be up to 24 square feet and one freestanding sign for the businesses with each business being allowed up to 10 square feet. The wording should be changed to allow for either two separate signs or to combine all signage allowed onto one sign. The current law states that these two signs cannot exceed 75 square feet combined. Any shopping plaza with more than 5 businesses in it would not be able to stay under 75 square feet unless they decreased the size of each business sign to less than 10 square feet. Should we increase the limit of the 75 square feet total to allow for complexes with more than 5 businesses to still have 10 square feet for each business in addition to the 24 square feet for the complex? Any complex with more than 5 businesses could apply for a variance. Two out of our three shopping plazas have more than 5 businesses. Do we want them to have to apply for a variance or do we want just increase the total size that cannot be exceeded with the same regulations of 24 square feet for the complex and 10 square feet per business? The Town Board agreed that the wording should be changed to allow either one sign or two signs but that the overall size limit of 75 square feet should not be changed.
- Why did we remove conservation and no trespassing signs from being allowed to

be made of non-permanent material? The words conservation and no trespassing were removed as they fall under the definition of temporary signs, which are allowed to be made of those materials. The wording will be edited to specifically state that conservation, no trespassing and temporary signs are allowed to be made of cardboard, paper or similar non-permanent materials.

- Monument or masonry-type signs – current proposed wording states that they shall not exceed four feet in height. Could it be dangerous to have one higher than four feet? It would need to be properly installed for safety but there is no need to limit the size. The Town Board agreed to remove that wording.
- The current height limit on a freestanding sign is 30 feet – do we really want to allow signs as high as 30 feet? The law has read this way for a long time. 30 feet is as high as a 3 story building appropriate for places like the Taconic State Parkway where cars are going fast and have to see it from far away. Midtown Mall's sign is 17 feet. The Town Board agreed to bring the height limit on a freestanding sign to 20 feet.
- Temporary signs and requirement of zoning permit – currently the proposed wording states that all signs, except temporary signs, require a zoning permit. It lists 6 types of temporary signs each with their own restrictions. Signs for special events or activities is a temporary sign but should require a zoning permit so they can be regulated. The Town Board agreed to change the wording so that the other 5 types of temporary signs do not require a zoning permit but signs for special events or activities do require a zoning permit.
- Number of temporary signs – currently the proposed wording limits temporary signs for special events or activities to four in number. There are more than 4 major intersections in town that would require a sign for this type of event. The Town Board agreed to increase this number to 6 per event.
- Definition of a sign – the longer the definition, the more room for interpretation. When you keep the definition short and concise it is easier to enforce and litigate. The original definition of a sign is short and concise. The proposed definition is much longer. We want the definition to reflect that a pictorial representation of a product sold in a business, even with no words on it, is considered a sign. Can we elaborate on the intent in the original definition? The intent is subject to interpretation which is why the proposed definition goes into more detail than just stating “intended to attract the attention of the public”. An object outside that is actually the product being sold as opposed to advertising what is for sale inside the business would not be a sign, for example the trucks outside a truck dealership would not each be considered a sign. The goal of the new definition is to not leave as much up to interpretation. Non-verbal aspects of a sign should be included as signage if the intent is to advertise a business or the products being sold. The Town Board agreed that the Attorney would work on the definition for a sign that combined the old definition and the new proposed definition, keeping it short and concise yet integrating the intention of not leaving as much up to interpretation. She will email it out to all involved to look over, give feedback and edit.
- One promotional banner announcing “open,” “sale” or similar message is permitted – is that ongoing or do we need to define some parameters? Because it says open and sale we would assume that a business would not leave it up when they are closed. If it says sale it could be left overnight for the time the sale is running. Then a store could always have a sale going on and the sign would stay up

permanently. We do not want these banners up all the time indefinitely. We will add the wording “during hours of operation”.

ADJOURNMENT:

A motion was made by Supervisor Teal and seconded by Councilmember Geraldini to adjourn the meeting at 9:06 p.m.

Respectfully submitted,

Tistrya Houghtling
New Lebanon Town Clerk