

Meeting of the Town Board, Town of Yorktown held on Tuesday, July 9, 2019 at the Town Hall, 363 Underhill Avenue, Yorktown Heights, New York 10598.

Present: Ilan D. Gilbert, Supervisor
Alice E. Roker, Deputy Supervisor
Vishnu V. Patel, Councilman
Thomas P. Diana, Councilman
Edward Lachterman, Councilman

Also Present: Diana L. Quast, Town Clerk
Richard S. Abbate, Town Attorney

TOWN BOARD MEETING

Supervisor Ilan Gilbert called the meeting to order.

EXECUTIVE SESSION

Upon motion made by Councilwoman Roker, seconded by Councilman Diana, the Town Board moved into Executive Session to discuss personnel issues, litigation, and negotiations. Upon motion made by Councilwoman Roker, seconded by Councilman Diana, the Town Board moved out of Executive Session and proceeded with the meeting.

PUBLIC HEARING TO CONSIDER REPEALING CHAPTER 270, ENTITLED PRESERVATION OF YORKTOWN'S FORESTED ENVIRONMENT, AND ENACT A NEW CHAPTER 270, PRESERVATION OF YORKTOWN'S TREES AND WOODLANDS

Town Supervisor Ilan Gilbert convened a public hearing to consider repealing Chapter 270, of the Code of the Town of Yorktown entitled "Preservation of Yorktown's Forested Environment" and enacting a new Chapter 270, entitled "Preservation of Yorktown's Trees and Woodlands."

Supervisor Gilbert opened by stating that this is what makes government work. The Town Board has two proposed laws that are being analyzed and they are now here for public hearings and public comments. He explained the options and/or possibilities the Board has regarding actions on these proposed local laws.

Councilwoman Roker stated that the proposed tree law is not seeking to take away a homeowner's property rights but hopefully at the same time, we can protect the Town for future generations. She said the Board is here tonight to listen to what the public has to say. She stated that she feels the law is too long. The law should be understandable, make sense, and the various Town boards should be able to administer the law. Councilwoman Roker said she felt that this is what was wrong with previous tree laws and still may be a problem in the proposed one.

Councilman Patel thanked the members of the audience who took the time to attend tonight's hearings.

Councilman Lachterman thanked the public for all of their comments and echoed the sentiments expressed by Councilwoman Roker. Laws should not be onerous and they should be enforceable.

Supervisor Gilbert said he was at the Planning Board meeting last night and they will have a representative here this evening. He said he was asked what triggered the proposed tree and solar laws and said much of this was prompted by applications to the Planning Board regarding solar permits and the Town did not have a law on the books. Other surrounding towns do have a solar law and the Board felt it was time the Town got on board with establishing a law. The Town had tree laws in 2010 and 2016. He said potentially the law of 2010 was too onerous and the 2016 law took away protections. Supervisor Gilbert said he believed we are readdressing this law in order to find the "happy medium" between protecting the environment and protecting homeowner rights.

Councilman Diana thanked those who had a part in the drafting of these two laws, as they involved much time and effort.

Director of Planning John Tegeder highlighted the intentions of the proposed tree law and permitting requirements. In November 2018 the Town had asked the various boards to form a committee to take the law and look at inconsistencies and make the law more efficient and more

administrative friendly. Mr. Tegeder listed the members of this committee which included Linda Miller (Advocates for a Better Yorktown – ABY) who was also one of the authors of the 2010 law, Rich Fon (Chair – Planning Board), Will Batista (Engineering Department), Bill Kellner (Tree Conservation Committee), Phyllis Bock (Conservation Board), Robyn Steinberg (Planning) and himself.

Mr. Tegeder presented an explanation of the new proposed tree law, which is on file in the Town Clerk's office. His presentation explained when permits are required and mitigation measures. Mr. Tegeder stated that they tried to streamline the process for applicants as well as avoid over-permitting. His presentation also explained the approval authority for non-administrative and administrative permits. One of the major thresholds of the proposed law is the stipulation that a resident can remove ten protected trees (protected trees are trees greater than eight inches dbh – diameter at breast height) in a calendar year without obtaining a permit. The new law also defines a protected woodland and when permits are required that affect them. A permit would be required if a resident disturbs a woodland of 10,000 square feet or more, notwithstanding any requirement for a permit under Chapter 248. A woodland is defined as a canopy of trees with understory brush and also groundcover. It has to be contiguous and reach 10,000 square feet in area and that is also the canopy of the trees touching each other.

Mr. Tegeder then jumped to the stormwater law, which includes erosion and sediment control. The threshold for this law is if you disturb 5,000 square feet or more on your property, an erosion, sediment, and stormwater permit is required. If that disturbance of more than 5,000 square feet, up to 10,000 square feet, is in a protected woodland by definition, then you would have to do some of the mitigation measures that are listed in the tree law, but only need a permit under the stormwater law. This made it easier and more streamlined for the applicant and afforded some protection for the woodland.

Mr. Tegeder pointed out a new stipulation under the proposed law. Removal of any protected tree on a slope greater than 15% as determined by Town topographic maps would require a permit. Other stipulations in the proposed tree law include: in a calendar year, removal of more than two protected trees within a regulated buffer zone (on properties under one acre, five feet from side and rear property lines; removal of any specimen tree (a tree greater than 24 inches dbh); land conversion – the disturbance of 1,000 square feet of protected woodland and the permanent alteration of the site such that woodland can no longer regenerate on the site.

Mr. Tegeder then reviewed the approval authorities under the new proposed law. Non-Administrative Permits will be issued by: Planning Board (all land use permit under their authority); Town Board (all land use permits under their authority and all tree removals in excess of 20,000 SF disturbance *that does not require an approval from any other Board*; Zoning Board (all land use permits under their authority with a mitigation plan reviewed by the Planning Board). Administrative Permits will be issued by Town Engineer (all permits up to 20,000 SF disturbance that does not require the approvals from any Board).

Mr. Tegeder pointed out that removal of any tree that is dead, hazardous, damaged beyond salvaging or in an advanced state of decline, or may interfere with overhead utility lines does not require a tree permit.

Supervisor Gilbert stated that Dave Paganelli, Highway Superintendent, maintains his rights under the Highway Authority would take precedent over anything in the law. Mr. Tegeder said that he believes that there is nothing in the proposed law that would prevent Mr. Paganelli from doing his job.

Mr. Tegeder then proceeded to explain mitigation under the law. Mitigation is required for administrative permits when you are disturbing protected woodlands. At an administrative level, on-site mitigation is all that is allowed. Once mitigation goes off-site, it is referred to the Town Board. He believes that this a bigger, more difficult decision to make and thinks it should go to a panel in front of the public.

Councilman Lachterman asked if we have anyone who currently works for the Town who can identify protected woodlands and Mr. Tegeder said he believes there is someone with an environmental background in the Engineering Department who works as a consultant. Councilman Lachterman asked about contractors doing work will they be able to identify a

woodlands area. Mr. Tegeder said it depends on the type of business the contractor is doing – single-family homebuilders may not; developers have bigger teams with bigger resources and will probably have met with either the Town Engineer, Building Inspector, or himself and will have done their homework.

Councilman Patel asked if all lands in the Town (town-owned) are subject to this protection and Mr. Tegeder said yes.

Mr. Tegeder continued discussing mitigation. All non-administrative permits are subject to mitigation. The preferred mitigation includes tree replacement (on-site or off-site), understory shrub replacement, invasive removal, installation of deer fencing, other measures that are part of an approved Forest Stewardship Plan, and payment to a tree fund.

Councilwoman Roker asked if Mr. Tegeder was saying that every tree permit will require some form of mitigation and he replied that yes, essentially, it would. Unless it is an administrative permit whose subject is not a protected woodland. If you are taking a number of trees down on a large open area that you maintain as lawn, you do not do mitigation.

Mr. Richard Fon, Chairman of the Planning Board, read a memo from the Planning Board regarding their recommendations and issues with the proposed tree law. A copy of the Planning Board's memo is on file in the Town Clerk's office. The Planning Board had several issues with the proposed law. The Board questioned if smaller sized lots/single family homes warrant regulation under this law. Many of the permitting requirements, thresholds, and mitigation measures may prove to be onerous and cumbersome for the average homeowner and may fall short of the intended preservation. The Board felt that the thresholds established in the new law create a complexity that may cause confusion and have ineffective results. The Board suggests that the proper administration of the law will require significant staff and Board resources, which the Town presently lacks. The Board offered the following recommendations to improve and strengthen the efficiency and effectiveness of the law: 1) The law should contain provisions that allow, and in some cases, require the removal of trees known as having deleterious effects on woodlands and other trees that include non-native trees, mature trees that may inhibit the health, understory, and ground cover, and dead, diseased trees that transmit disease to other trees. 2) The Board suggests that properties one acre or less be exempt from the requirements of the law, except the requirement of governing tree removal in the protected buffer should remain applicable. 3) The Board recommends the removal of the requirement that a single tree on a 15% slope or greater be permitted action. The threshold is too low. 4) The Board believes the section on mitigation suggests that the approving board is charged with determining the appropriate quantity and mix of measures for mitigation plan on a case by case basis – the Board agrees with this approach but recommends that it be clarified and strengthened in the language of this section of the proposed law. 5) The Board believes the approval provision should be stated for the benefit of the applicant, notwithstanding the legal remedies under state law that are not under the authority of the Town to bestow or deny any applicant. The Board believes that stating such is beneficial to the applicants and any other users of the law. 6) The Board recommends the removal of the section regarding supersession of the law. 7) The Board recommends that the section that states the various approval authorities should be clarified to state that the Town Board is the approval authority on application of greater than 20,000 SF of disturbance on application on which the Planning Board or Zoning Board do not already have jurisdiction for other land development applications. There should be no question as to which Board has jurisdiction in any case arising under this proposed law. 8) The Board believes the public education should be expanded and strengthened. This is of prime importance and effective education will aid in preventing unwanted events as it pertains to the preservation of trees and woodlands in Yorktown.

Mr. Bill Kellner, Chairman of the Tree Conservation Advisory Commission, first spoke of the formation of the Ad Hoc Tree Law Committee the Town Board brought together to formulate the tree law and the variety of skills and experience the members brought to the task. He stated he believed they accomplished the goal of drafting a strong, science-based ordinance.

Mr. Kellner said it is important to keep in mind that the Committee's proposed revision of the tree law leaves in place the basic underpinnings of the tree law passed by the previous administration in 2016. There is no change to the basic homeowner tree removal thresholds with the exception of adding a tighter permit threshold for the five-foot property buffers on lots of one acre or less. The Committee made the following recommendations: recommend leaving the less restrictive

definition of protected trees at 8” diameter; leaving in place the 24” specimen tree provision passed by the Town Board in 2016.

Mr. Kellner said the main change to the tree law recommended by the Committee is bringing regulation of clearing of vegetation in what is defined as a protected woodland into the tree ordinance. A key goal of the tree ordinance is protecting, as much as possible, the function of intact woodlands. The Committee recommends that a permitting threshold be added to the tree law for disturbance of 10,000 square feet (approximately one-quarter acre) or more in a protected woodland. Disturbance would include removing ground and mid-level woodland vegetation layers as well as trees. This is in line with the latest science in terms of preserving the important functions of woodlands such as maintaining water quality, preventing erosion, and fostering wildlife habitat.

Mr. Kellner stated that Town Code Chapter 248, Erosion and Sediment Control, already regulates vegetation disturbance in an area of 5,000 square feet or greater. An important goal of the Committee was to put the tree law and the erosion and sediment control law (as well as the wetlands ordinance) on the “same page.” If the Town Board approves the Committee’s recommendations, these chapters of the Town Code will be integrated more tightly and rationally. They will complement each other; duplication of permits will be avoided, and environmental protection will be strengthened. The Committee also recommends that mitigation be mandatory where woodland disturbance exceeds the 5,000 square foot threshold that currently exists in the erosion and sediment control chapter. He also noted that mitigation should not be mandatory for administrative tree removal permits where woodland disturbance does not occur.

Mr. Kellner summed up by saying the Committee’s recommended changes are not a radical departure from the current tree law. They are suggesting that the Town build on the base that is the current tree law while making sure that those parts of the Town Code that focus on maintaining a healthy environment work together in a clear and rational way.

The following members of the public spoke:

Ms. Linda Miller, representing Advocates for a Better Yorktown (ABY) and a member of the Ad Hoc Tree Law Committee, urged the Town Board to repeal the existing law and adopt the revised Tree and Woodland Preservation Law because this law recognizes the difference between trees and woodlands; it recognizes the different functions and values to the Town and then puts them in separate regulatory categories. This proposed law does not change significantly the regulation of trees you would find in your backyard – in fact there are some improvements in those regulations. Some of the regulations have been rewritten for clarity and simplicity. The application process has been streamlined, and the administrative permit path has been reinstated which makes it easier for homeowners to obtain a permit. Ms. Miller stressed how important it is for the Town Board to provide property owners with information about what they can do on their property with and without a permit. She said there has been a great deal of misinformation regarding the proposed law. For instance, you do not need a permit for tree maintenance. You do not need a permit for a dead, dying, or diseased tree – in fact, the 2016 law requires a homeowner to get certification from an arborist if a tree is diseased – that is in the new proposed law. You do not need a permit to remove a tree in an emergency situation – and you get to decide what the emergency is. You do not need a permit to remove an invasive species. You do not need a permit for a whole list of other activities that are listed right in the front of the law. The community forest concept is not a part of this law, as it was in the 2010 law.

Supervisor Gilbert asked Ms. Miller to clarify the removal of tree in an emergency situation. He asked what if the Town Code Enforcement says this was not an emergency and Ms. Miller responded that if the removal was something that would have required a permit, you are required to notify the Town after the fact.

Ms. Miller said Administrative permits applications do not require a formal tree survey, just a sketch. After the law was adopted in 2010, the Tree Conservation Commission put out a very useful brochure and since the new proposed law mandates that the Tree Conservation Commission have an education program, she encourages the Town Board to allow the resources to make that happen.

Ms. Miller said that the major difference between this proposed law and the current law is that the new law actually lives up to its name and its intent by protecting woodlands ecosystems as well as

individual trees – this is the significant important part of this law. It recognizes woodlands as complex ecosystems functionally and structurally different from a stand of trees. Woodlands are defined by their three vegetative layers – the groundcover, the understory, and the canopy – but they are regulated by their size. Ms. Miller addressed the question if people would be able to tell if they have a woodland on their property and assured the Board that any environmental consultant a developer may hire will be able to tell.

Supervisor Gilbert asked if this will protect fallen leaves in a woodland and Ms. Miller said yes. There is a regulation about the disturbance of the undergrowth (or “duff”) which is actually very important for the absorption of water and huge numbers of decomposer organisms, which help recycle the nutrients in the woodland.

A discussion with Ms. Miller and the Board regarding the function of a woodland vs. a wetland took place. The layers of vegetation in the woodland give the woodland a structural complexity that is the platform for a rich, diverse, and complex set of interactions between the plants and the animals and the natural environment. There is a lot of inter-connectedness in woodlands and that depends on those three layers and that is why this law addresses not just the trees but those layers, as well. Ms. Miller stated that some of these functions save us a lot of money by preventing flooding, by preventing runoff, and saves on drainage infrastructure.

Ms. Miller also touched on the topic of biodiversity – the number of living things in a particular system. Habitat destruction, such as the clearing of woodlands, is one of the major causes of the loss of biodiversity. Ecosystems with high biodiversity are inherently more stable and are better able to carry out their functions despite human intervention. We need those functions and use them.

The following members of the public spoke:

Mr. Jay Kopstein, resident, felt the proposed law was complicated and onerous for the applicant. He quoted from several sections of the proposed law to support his issues. He also mentioned the clause “supersession of conflicting law.” He said this section should be removed – you cannot say that this one piece of legislation is going to replace an entire Town Code.

Ms. Dina Carroll, resident, related something that occurred on her street, Overhill Street. Two homes had trees taken down – she had no knowledge that this would happen. She ended up spending \$6,000 to abate her water problems caused by the removal of trees on those lots. She feels that the homeowners did not even know they needed permits. She asked the Board to take into consideration an education program for homeowners so they are aware of their responsibilities.

Ms. Maura Gregory, resident, said that her understanding of specimen trees is that they are protected because of their size and age and how they add character to the Town. She said there is a section of town-owned land behind her home and the when the Town changed the tree law in 2016, a swath of land about 15 to 20 feet wide all the way up the hill was clear cut of trees. She does not know who cut the trees down – she assumed it was the Town. She spoke of the possible erosion into Mohegan Lake. She said the entire law must be passed in order to look at the important function of woodlands.

Mr. Dale Saltzman, resident, spoke in favor of the new tree law. He said without having a framework to operate within, we can only remain where we are, which is a slow disaster for our forests and us. This law combines erosion control, wetlands, understory, and trees. Mitigation is not a choice but a necessity. A homeowner or corporation should not be allowed to remove vital woodlands without replanting a similar amount of living material.

Ms. Susan Siegel, resident, thanked everyone for attending this evening’s meeting as well as the members of the Ad Hoc Tree Law Committee. Ms. Siegel directed her remarks to the issue of mitigation. Mitigation is not an unconstitutional taking; it is a legitimate use of the Town’s police power to protect the health, safety, and welfare of its residents and community as a whole. The new law will strengthen the mitigation requirements in the current tree law (under the current law, mitigation is optional; under the new law, it is required but only under certain circumstances). She also said she has enormous respect for the Planning Board, but does not necessarily agree that mitigation is asked for when they are considering applications.

She cited some lapses in mitigation on several tree permits that were part of a FOIL request she submitted. The proposed law requires that mitigation plans be referred to the Conservation Board and the Tree Conservation Advisory Commission for their review and expertise.

Mr. John Tegeder, Director of Planning, in response to Ms. Siegel's remarks regarding the Planning Board, said that as far as landscaped trees not being mitigation, this law in its first iteration required permits for taking down trees on landscaped commercial properties. There was an acknowledgement that trees in every location they exist have importance. The Planning Board, long before the 2010 law, understood the value of trees and is probably the single most successfully entity in Town in preserving trees. Given the fact that there had not been required mitigation for a time, they accomplished this preservation by way of their judicious layout and amount of development they approved. When you do mitigation, where do you plant those trees? It is a tall order to understand; doing it is another thing entirely. While it may seem like the Planning Board may not have mitigation in their records, they do it all the time and have been doing it even prior to mitigation.

Mr. Paul Moskowitz, resident, gave an example of why the Town needs this law. He cited the example of the construction across from Town Hall, located on the old Murphy's Restaurant site. He said there were protected trees taken down that were outside of the work area. This was done legally. He said he hopes the new tree law will protect trees from arbitrary and capricious cutting of trees that do not have to be cut. If the new law calls attention to this, maybe they can be marked and saved. It will take many years for a 2-inch tree to grow into a 10-inch tree; therefore, it would be better to save them in the first place than to replant saplings.

Mrs. Jenny Sunshine, resident, said developers cannot be relied upon to care about clear cutting trees for their project. She also feels that there are many residents who are not aware of a tree ordinance and also mentioned that it should be clearer on the Town's website. She said we should care about trees for three reasons: 1) climate change, 2) habitat – where there are trees, there are habitats, 3) animals. She is in favor of the adoption of the new proposed tree law.

Mr. Ken Belfer, resident, said that in his role as part of the Lake Mohegan Association, he has had the opportunity to go over the watershed with scientists who have scientifically established formulas for different types of terrain and how much phosphorous and other pollutants pass through or come from different types of terrain. They use this information to determine what is happening in the watershed and its impact on the lake. The best thing you can have is a woodland surrounding a waterbody in terms of the amount of phosphorous that gets through. It creates a great environment for absorbing rainfall and absorbing nutrients and it is a very important function worth protecting.

Mr. John Kincart, member of the Planning Board, showed maps of Yorktown farmland in 1947. He said we have more trees now than we did 70 years ago. As a member of the Planning Board, he addressed some of Ms. Siegel's comments. Mr. Kincart then showed maps of the steep slopes in Yorktown with 25% and 15% slopes. All of these areas are currently regulated in terms of development – it will not happen in 25% area. Most of the Town that is going to be developed has been developed. He then showed a map of publicly owned properties, which is significant. He explained how clustering is used to preserve areas. Mr. Kincart identified himself as a real estate broker with strong opinions about property rights. He made 7 quick points: 1) He stated that education of the public is necessary because property owners will be more aware of how to take care of their property. 2) What is the reason for this law – is there evidence to support its need? 3) What is the impact of the law? He feels it will create confusion and larger commercial properties/developers will find this very onerous. 4) How will the law be implemented? Town departments do not have the staff to do this. 5) How will the new law be enforced? Mr. Kincart said that the public lands be taken care of first in order to lead by example.

Ms. Lisa Gorin, resident, related a piece of property clear-cut near her on French Hill which caused a lot of upsetment among the neighbors. She feels it is important we have a tree law.

Mr. Joe Riina, Professional Engineer with Site Design Consultants, was asked to review the proposed law from the perspective of the developer and landowner and comment. Mr. Riina read his comments, which are on file in the Town Clerk's Office. He also answered questions from the Town Board. Mr. Riina concluded that the replacement of the current law is warranted in any way and stated his reasons:

First, he does not believe the Town's trees, woodlands, or open spaces are in jeopardy of being depleted or their health affected. Taking in consideration the Town as a whole, this is obvious with only an insignificant amount of potential development left. Secondly, there is a process in place where the impacts of development are responsibly reviewed by the various Town Boards and staff, including the removal of trees. He stated that this proposed law is a duplication of that process. Mr. Riina asked the Town Board to leave the law as it currently exists.

Supervisor Gilbert said the only thing he is concerned with is that the Town may have a good Planning Board now, but we do not know what future Planning Boards will look like. There should be a presumption of mitigation, which could be rebutted at the discretion of the Planning Board.

Mr. John Kincart thanked the Ad Hoc Tree Law Committee for their work. He said he neglected to mention that all of the green on the map he showed was publicly owned or private parklands (no conservation easement or protected property).

Ms. Linda Miller said an option available to large property owners is to develop a forest stewardship plan. This is a fantastic resource for large property owners available through New York State for people who are particularly interested in maintaining their properties and woodlands. Once the stewardship plan is established, then no tree permits are required from the Town. You can manage your woodland for timber, wildlife habitats, sugaring, etc. Ms. Miller said it seemed several people seemed uncomfortable with the idea that woodlands can extend across several property lines that would hamper them from being able to do work. She stated that the same circumstance applies to wetlands (it is measured the size that it is, regardless of how many property lines that it crosses). Ms. Miller stated that this is just an inconvenient thing about nature – it does not recognize property lines. She addressed Mr. Riina's statement about the time it would take for referral to the different advisory boards. Non-administrative permits are in the time line of the land development regulations that overlay the referral – they run concurrently, not end to end. The requirements are not that much different from the 2016 law. She addressed the issue of mitigation by saying there are many options that are available to the homeowner or developer from which they may select.

Mr. Ken Belfer said that many have moved to Yorktown because of its green and open spaces and just because we may have much of this, does not mean they should not be protected and preserved for the future. He also does not feel that the Town mostly being built-out is a reason not to have a tree law. Re-development can have a large impact on trees and protected woodlands.

All those present having been given the opportunity to be heard and there being no further discussion, the hearing was adjourned. Upon motion made by Councilwoman Roker, seconded by Councilman Diana and carried.

Supervisor Gilbert said that there had been reference to receiving many emails regarding this proposed law and were taken into consideration. He mentioned a particular letter from the law firm of Zarin & Steinmetz that is on file in the Town Clerk's office.

PUBLIC HEARING TO CONSIDER AMENDING CHAPTER 178, ENTITLED FRESHWATER WETLANDS

Town Supervisor Ilan Gilbert convened a public hearing to consider amending Chapter 178 of the Code of the Town of Yorktown entitled "Freshwater Wetlands."

All those present having been given the opportunity to be heard and there being no further discussion, the hearing was adjourned. Upon motion made by Councilwoman Roker, seconded by Councilman Diana and carried.

PUBLIC HEARING TO CONSIDER AMENDING CHAPTER 248, ENTITLED STORMWATER MANAGEMENT, AND EROSION AND SEDIMENT CONTROL

Town Supervisor Ilan Gilbert convened a public hearing to consider amending Chapter 248 of the Code of the Town of Yorktown entitled "Stormwater Management and Erosion and Sediment Control."

All those present having been given the opportunity to be heard and there being no further discussion, the hearing was adjourned. Upon motion made by Councilwoman Roker, seconded by Councilman Diana and carried.

PUBLIC HEARING TO CONSIDER AMENDING CHAPTER 300 OF THE CODE OF THE TOWN OF YORKTOWN ENTITLED “ZONING” BY ADDING A NEW ARTICLE VII, SECTION 300-81.4, SOLAR POWER GENERATION SYSTEMS AND FACILITIES

Town Supervisor Ilan Gilbert convened a public hearing to consider amending Chapter 300 of the Code of the Town of Yorktown entitled “Zoning” by adding a new Article VII, Section 300-81.4 “Solar Power Generation Systems and Facilities.”

Mr. John Tegeder, Director of Planning, said this is probably a more simplistic law in its writing and length and proceeded to explain its intent. He explained that across the state and Westchester, many municipalities are experiencing requests and applications for development of solar arrays on already developed properties, as well as undeveloped properties, and some have adopted legislation to address this. This law is essentially a law to regulate solar power generation systems and is split into two types: large scale and small scale. Small scale is essentially a system that does not produce more than 12 kilowatts per hour of energy and serves only the building or structures on the lot upon which the system is located. This would entail accessory uses for residential properties and, in many cases, include accessory installations on commercial properties (i.e., on roofs or parking area canopies). Large scale would be a system that produces over 12 kilowatts per hour of energy and is intended to be a generator of electricity that it put into the grid (a clean energy generator) from which everyone can benefit. Small-scale energy systems on a house would be administered by the Building Inspector by permit process (may also be included ABACA referral depending upon their location). Large-scale energy systems on commercial buildings will need to comply with certain conditions that would be determined by the aesthetics of the installation. Large-scale systems will be allowed in single, two, and three-family zones with the proviso that the installations are properly and completely screened from view. There are standards that apply – the size of the property, the coverage, and how it affects the storm water.

Supervisor Gilbert said the Planning Board has recommendations that Mr. Tegeder shared with the audience. The Planning Board feels that the proposed law needs to be further researched and reviewed since the Town has little experience with solar projects and their regulation. The Planning Board had the following comments: 1) the Town Board should construct the law so that it contains adequate tools and measures for the Planning Board to be able to approve solar arrays with appropriate conditions; 2) the minimum acreage requirement should be increased from 2 to 10 acres with a lot coverage requirement of 60% in residential zones; 3) the Board suggests that the law should state a preference for sites that are already considered disturbed; 4) all solar arrays should be screened appropriately to the satisfaction of the approving authority; 5) referring to Section 300-81.4G(c) of the proposed law, clarify the language regarding the decommissioning procedure in that the site must be restored to a useful, nonhazardous condition before the site is used for another entity or purpose; 6) the visual impacts on roof installations are important and the Town Board should include adequate protection for this issue; 7) projects that are considered under this proposed law in commercial zones should only be allowed as an accessory to a main use. The Planning Board does not believe these large-scale solar projects should be located within commercial hamlet areas.

Mr. Tegeder suggested a site visit be arranged for the Town Board to visit a large-scale solar operation in another community.

Supervisor Gilbert asked the Town Attorney, Richard Abbate, for his comments regarding the change from 2 to 10 acres. Mr. Abbate confirmed that Cortlandt Manor has a 10-acre minimum in their Town Code. Supervisor Gilbert said changing our proposed law to the 10-acre minimum would provide continuity as long as it does not adversely affect Yorktown.

Councilwoman Roker asked Mr. Tegeder’s opinion on solar arrays. He stated that they are a coming phenomenon for which we have had a number of inquiries. They are coming whether we like it or not and the best thing to do is be proactive by having a law in place to handle them. He thinks that in a residential zone, while many may not understand why the law may allow them there, the arrays have an extremely low impact and their carbon footprint is a net gain. Any trees removed would be covered by the tree law and mitigation will be required, as well as storm water plans. Residential areas can be better screened to blend in a rural area. The obvious benefit is the clean energy aspect. Mr. Tegeder stated that he thinks it is a positive thing for the country, the state, and Yorktown.

Supervisor Gilbert said that the Planning Board will still be able to approve, disapprove, or approve with conditions the solar array applications.

The following members of the public spoke:

Ms. Patty Peckham, resident and owner of Arcadia Farm, spoke in favor of the solar law with the exception of the limitation on production of megawatts. She stated that allowance should be given for technology to become as efficient as possible and the acreage to produce as much solar as it can within the lot coverage limitation. Pressures to develop unused land and farmland for housing developments are strong and tempting. She said she has been in discussion with a solar company who wants to put an array in her back pastureland and the solar law would benefit her. This law has a real impact on her and other farms in Yorktown. This is not a tree vs. solar farm issue but a housing development vs. solar issue. The economic reality is that land will be developed. Housing and commercial buildings increase carbon emissions and are permanent land disruption. Solar farms have minimal land disruption and, when decommissioned, are revegetated back to the original and are developable as originally zoned. Solar farms produce significant amounts of power and reduce carbon emissions. She again addressed the limitation of megawatt production and lot size. She said she is concerned the Town Board will linger on this law, as it has on the tree law, and look for the perfect and throw away the good. Funding opportunities are now; after 2019 the Federal Tax Incentives on renewable energy projects drop from 30% to 26%. Ms. Peckham also stated that globally we only have 10 years to stop carbon emissions. Solar energy and renewable energy is our future.

Mr. Paul Moskowitz, resident, professional engineer and environmentalist, said the question is what are the consequences of the law? While this law appears to be a good law on the surface, it will result in certain developments in the immediate future. Mr. Moskowitz cited the CEC Corporation who has been working with the Town officials for over a year. Their plans are to strip trees on two sites: one between Foothill and Lockwood and the other along Underhill Avenue (the gateway road into Yorktown). Mr. Moskowitz showed photographs of the area on Underhill Avenue for the proposed solar arrays that would be visible from the road. He also showed photographs of how this array would be visible from Turkey Mountain. Mr. Moskowitz then showed photographs of how solar panels are used as carports in parking lots. He feels that Yorktown has many large parking lots that can be utilized in this way. A discourse took place between Mr. Moskowitz and Supervisor Gilbert regarding the effects of the law and how the law would be implemented.

Councilwoman Roker asked Mr. Moskowitz how he would feel if the same size area were to be developed for housing. Mr. Moskowitz said a housing development would not require the same clear cutting of trees and woodlands that a solar farm would require. He is opposed to the proposed solar law and feels this is a rezoning of the entire Town. He said this law would turn our neighborhoods into quasi-residential and industrial sites.

Mrs. Jennie Sunshine, resident, said she believes that solar is the future and belongs on every home and business. She stated solar arrays make sense but should be done so that they weave in to the culture of the Town. She was in favor of solar carports in parking lots. Ms. Sunshine expressed concern for habitats that may be affected. She spoke about technology moving faster than these arrays and what would happen to the structures if they become obsolete. Ms. Sunshine questioned the safety of the arrays for neighboring homes. She believes more information is needed in order to pass a law.

Ms. Grace Caporino, resident and ABY member, spoke in support of the concept of solar energy but not the law. They agree that homeowners should be allowed to install solar panels for their private use and commercial businesses should be allowed to install solar panels on their roofs or as canopies to parking lots. Ms. Caporino stated the proposed solar law would allow solar farms on virtually any undeveloped residentially zoned parcel of at least 2 acres. This invites open season; potentially changing the character of dozens of our residential neighborhoods. She stated that Yorktown is not for sale to corporate solar developers.

Mrs. Dorothy LaScala, resident, approves of homeowners putting panels on their homes but not solar farms. She feels the panels scar the land and is opposed to the law, as proposed.

Ms. Elise Graham, ABY member and resident, supports transitioning to solar energy but has reservations allowing commercial for-profit solar farms in residential zones as a primary use. She cited seven neighboring towns' legislation on solar farms and compared it to the proposed law. Ms. Graham said all seven laws were based on the model solar law prepared by NYSERDA (New York State Energy Research and Development Authority).

Supervisor Gilbert interrupted for a moment to say that is how our law was also formed and there is some misunderstanding that the Town utilized some other form.

Ms. Graham continued that NYSERDA makes it clear that each municipality should modify the law to suit its community. Yorktown's proposed law is the most generous and makes the most concessions to the solar industry. It is the most open ended, has the fewest restrictions and the fewest guidelines. She proceeded to compare Yorktown's proposed law to other communities' laws.

Ms. Graham read a letter from ABY member Steven Filler who was not present. The letter is on file in the Town Clerk's office.

Ms. Linda Miller, member of ABY, said she fully supports transferring to solar energy to replace fossil fuel. Yorktown needs to balance solar energy with the Town's other goals and values (protecting trees and woodlands) and needs to state this. The NYSERDA model solar law addresses the need for balance but Yorktown's law has omitted those suggestions for balance. It does not mention the impact on the environment and needs to address its goals and intents. Specific sites do not need to be addressed first – a solar law for the whole Town should be addressed, not just two sites previously mentioned. Although the solar law requires landscaping to screen the solar installations from neighborhoods but landscaping does not replace the functions and valuable services of woodlands. To think otherwise is to be more concerned with how things look rather than how they work. Ms. Miller stated there is no question that we have to address climate change, but said we should not throw away the benefits that we derive from trees and woodlands.

Ms. Lucy Nash, resident, stated she is in favor of a solar law, not necessarily this one. However, if we are trying for a perfect law, nothing will get accomplished. She feels that the decision the Board comes to, will affect the rest of her life. She wants to be proud to come from a Town that will take a green approach towards the future. She does not feel that aesthetic reasons should not block a solar installation because we do not have time to think about this. This is a "now" issue with future generations lives at stake. Ms. Nash said that she does support the need for balance and believes there is space in Yorktown to accommodate installations (cited the Jefferson Valley Mall). Ms. Nash feels we cannot wait for better solutions to come along. She stated there is a lot of misinformation about solar arrays and would appreciate clear information presented to the public.

Mr. Kevin Murphy, resident, raised the issue of solar installation affecting the ecology. He said that over 450 species of birds in the Hudson Valley would be affected by large solar installations. Birds can be killed by the high voltage if they land on the panels. Forty-six percent are water dependent birds and when they land on the panels, they die. Mitigation for this exists, but it costs money. A 16-acre solar farm will kill thousands of birds in a ten-year period in Yorktown. A proposed law should address this.

Mr. Alexander Mulgrew, resident, stated that just because other towns' laws were taken into consideration does not make our law or theirs a good law. He does not feel that people understand the size of these installations and put it into perspective. If this law allows commercial use in residential neighborhoods, it will change the landscape of the area. The Town should also consider the benefit the Town would receive (payment in lieu of taxes). He also said the size of some of these installations would be difficult to screen. He also raised the issue of Planning Board and Zoning Board's ability to waive provisions. This is of concern regarding what is being waived.

Mr. Bill Kellner, Chairman of the Tree Conservation Advisory Commission (TCAC), stated that the law should specifically state that whatever tree ordinance is in effect should be applicable to this kind of development. TCAC, in general, supports the outline and goals of the proposed ordinance. He then spoke as a private resident – he said that Mr. Murphy's comments about birds are totally off base and there is no data to support his statements. Owners of residentially zoned properties have an "as of right" ability to develop their properties which can permanently alter the

property. He is in support of commercial properties using residential zoned areas for installations primarily because of the ability to restore the land in an ecologically sound way. There are many forests and woodlands that are completely degraded and not functioning. Developers of solar installations would also remove invasive species that further reduce biodiversity. They plant pollinator friendly perennial plants; the required fencing will limit deer damage and allow newly planted native plants to thrive. The solar law's required restoration after decommissioning has the potential to give us healthier forests than before. Residential development results in permanent loss of healthy forest especially when one considers the biodiversity killing effects of fragmenting large wooded parcels with lawns, driveways, houses and access roads. He is suggesting a change to the proposed law to raise or eliminate the one and two megawatt per hour generation maximum for lots for up to and over 10 acres. Numbers will improve as technology improves. He said we must take steps here at home to reduce the green house effects. Solar development makes a significant positive impact on emissions after tree removals are taken into consideration. Mr. Kellner stated that this should not be a case of "I support solar installations, but not in my backyard."

Ms. Susan Siegel, member of the ABY, reminded the Board that the Conservation Board is opposed to this proposed law. The Board needs to go back to the drawing board and reconsider how and where the Town should regular large-scale solar farm. More than one option for regulating them needs to be explored. She suggested two suggestions for a better solar law: allowing the commercial solar farm the Board is basically rezoning the area from residential to commercial – why not call it like it is (a rezoning) and go that route for solar farms. Instead of an open-ended law that says any undeveloped residentially zoned open parcel can become a commercial use, why not create a brand new, unique zoning district (ex. alternate energy generation district) and set specific special permit criteria so that if and when an applicant comes in with a particular site in mind that criteria can be applied. This way each property can be reviewed on a case-by-case basis. Ms. Siegel proceeded to lay out ways in which this special zone could be applied. The Town could also consider an energy generation overlay zone, modeled after the existing agricultural overlay zone in the zoning code. There are several options that are not being considered.

Supervisor Gilbert said that it has been implied that the Board has worked in conjunction with commercial applicants in developing the proposed law and that is not true.

Mr. Steven Schaffer, resident, said he is in favor of residential installation of solar panels but has some issues with the commercial installations. He feels that solar farms are "eye pollution." He feels the Town needs to look at the real benefit of allowing this to happen.

Mr. Howard Frank, resident, said the overall grid in the Town of Yorktown has not been discussed. He explained how the substations and feeders work and questioned the distribution of electricity produced by solar farms. He would like to see Con Edison and NYSEG meet to discuss if they can service a 700-megawatt solar farm – where are they going to put the electricity.

Mr. Joe Shanahan, Vice President of Real Estate and Permitting for Clean Energy Collective, said their big picture goal begun two years ago was to initiate the exploration of a solar law in Yorktown. The other goal was to explore developing projects on two locations. This has been researched and reviewed and not done quickly. Mr. Shanahan addressed the issue of commercial solar facilities in residential areas. The bottom line is to say there would be the opportunity to do a solar facility on each lot in town is a significant exaggeration, especially if there is a 10-acre minimum. The number of sites in Town where that can be done is very limited. The issue of not allowing commercial installations in residential zones is that you run into a situation where you get much larger sites that are much more visible and are located heavily traveled areas and are usually locations that are impossible to screen. It also leads to 20-25 megawatt installations that are huge and cannot be screened. He also said that if you do not allow these large installations in residential zones, the applicants will go to the Planning Board who may try to deny it based on its size. The applicant can then go to court, which leaves the Town open to a charge of capricious and arbitrary zoning. This also may apply to commercial zoning, as well.

Mr. Paul Moskowitz said he failed to mention the headquarters of CEC is located in Breckenridge, Colorado and spoke of the mining of the local river and how the river bottom was completely dredged and became lifeless. The Town of Breckenridge took 20 years to clean it up – all of which

was paid for with taxpayer dollars. He is concerned that if we install an industrial facility like a large-scale solar farm we will be left with cracked glass and rusting steel.

Ms. Susan Siegel addressed the comments made by Mr. Shanahan regarding the Town being sued if a solar developer is denied an application. If the Town has a law that says you cannot do it in either residential or commercial, why would a developer even come here? A zoning application is at the discretion of the Town Board, so the threat of a lawsuit should be taken off the table. If a law were created that gives blanket coverage with criteria, the Planning Board would find it hard to say no if the criteria were met. In effect, you have more control over where to site a solar farm if you do it as a rezone. She asked that this option be explored.

Mr. Shanahan said it was not his intent to threaten litigation; he was just giving a scenario.

Mr. John Tegeder, by way of clarification, read the section of the Chapter 195 – Land Use that addresses the waiving of environmental regulations, which it actually does not. He read, “The Planning Board may waive one or more of the requirements therein.” The Planning Board may waive one or more of the requirements if they feel they do not apply to that particular site. That is the only intent of that statement. The law was constructed without collaboration from any outside corporations and exists to the extent that he and the Town Attorney worked on it without any input from anybody because that is the Town Board’s job. He felt comments to the contrary were made in a manner to besmirch what he does and he takes exception to this.

Councilwoman Roker and Supervisor Gilbert both stressed there needs to be further discussion regarding this proposed law. Supervisor Gilbert assured the public that their comments and correspondence have been heard and read.

All those present having been given the opportunity to be heard and there being no further discussion, the hearing was adjourned. Upon motion made by Councilwoman Patel seconded by Councilman Patel and carried.

Councilman Lachterman said the proposed law needs to be brought back to a work session. He suggested that given the calendar, the Town Board will need to schedule this as soon as the next available work session is held on July 23, 2019.

PUBLIC HEARING TO CONSIDER AMENDING CHAPTER 300, ENTITLED ZONING BY ADDING A NEW ARTICLE VII, SECTION 300-81.5 “SOLAR ENERGY SYSTEM PILOT LAW

Town Supervisor Ilan Gilbert convened a public hearing to consider amending Chapter 300 of the Code of the Town of Yorktown entitled “Zoning” by adding a new Article VII, Section 300-81.5 “Solar Energy System PILOT Law.”

All those present having been given the opportunity to be heard and there being no further discussion, the hearing was adjourned. Upon motion made by Councilwoman Roker, seconded by Councilman Diana and carried.

ADJOURN MEETING

Upon motion made by Councilman Lachterman, seconded by Councilman Patel, the Town Board meeting was adjourned.

DIANA L. QUAST, TOWN CLERK
TOWN OF YORKTOWN
CERTIFIED MUNICIPAL CLERK