

December 27, 2022 – SPECIAL MEETING

A Special Meeting of the Town of Dickinson Town Board was called to order by Supervisor Michael A. Marinaccio at 5:30 PM on Tuesday, December 27, 2022 at the Town of Dickinson Town Hall, 531 Old Front Street, Binghamton, NY 13905 and via Zoom.

The members of the Town Board present were:

**Michael A. Marinaccio, Supervisor
Stephen M. Gardner, Councilperson (via Zoom)
Sharon M. Exley, Councilperson
Danny F. Morabito, Councilperson**

Also in attendance:

**Nathan D. VanWhy, Esq., Town Attorney
Susan M. Cerretani, Town Clerk**

Also in attendance:

**Town Engineer Ron Lake, Planning Board Chair Ford, Tim Gourley,
Nicholas Scarantino, Esq., and 6 other members of the general public.**

Via Zoom:

**Code Enforcement Officers Rafferty and Doyle, Councilman Gardner, and 4
other members of the public.**

Absent: Thomas J. Burns, Councilperson

Join Zoom Meeting

<https://us02web.zoom.us/j/85227758334?pwd=VIFSS243ZUI5NGxoRGNPNCtOT1ViUT09>

Meeting ID: 852 2775 8334

Passcode: 841824

Phone: 1-646-876-9923

Supervisor Marinaccio noted that one of the board members will be participating via zoom as he is at home convalescing from major surgery, and one board member is absent this evening. However, we have a quorum in person. Mr. Marinaccio thanked the folks for attending tonight's meeting.

PUBLIC HEARING: 5:30 PM

A LOCAL LAW AFFECTING A TEMPORARY MORATORIUM WITHIN THE TOWN OF DICKINSON ON THE DEVELOPMENT AND CONSTRUCTION OF SOLAR ENERGY SYSTEMS.

The purpose of the Local Law is to prohibit the development of commercial and industrial solar systems while the Town of Dickinson conducts a comprehensive review of its solar regulations.

Supervisor Marinaccio opened the Public Hearing meeting at 5:32 PM noting that the purpose of the Public Hearing is to take look at our Local Law which is going to affect a temporary moratorium within the Town of Dickinson on the developments of the construction of solar energy systems.

Supervisor Marinaccio stated that if the moratorium passes by the Town Board tonight, starting rather quickly, he will be forming a solar committee. Now we are getting inundated with a lot of applications. We need some time to readjust and look at what we have going, especially in the Glenwood Road area where they seem to be focused.

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PUBLIC COMMENTS:

Michael Voltz addressed the Board stating that he is a resident of Glenwood Road next to the solar project and that the project is going to affect him and his wife Kathy. He said we are all in the same community and we all need to be on the same page about things. He is all about the Green Energy revolution, but this is too soon, too fast. He noted that he realizes there are economic incentives for companies to come in and put this through. He feels that these developers are picking the low-lying fruit next to the substations. He stated that we should be building infrastructure to do it right. Mr. Voltz went on to say that he could go on for hours about water erosion etc. and all the negative side effects. He stated that the developers are in it for the money, not the community. He talked about how New York wants to have zero emissions by 2040 and spoke about fusion and fission and that the code was just cracked and if we could wait a couple of years and let technology pave the way, we would all be better off. We need to consider the bigger picture.

A Zoom participant asked if we impose this moratorium while we study this, how will that affect the decree from Albany to be totally green by 2040? Will New York State provide the town with the specs? Supervisor Marinaccio replied that we are not interfering with NY State law; basically what we want to do is take a breath, we are looking at maybe six months to do a little further study and that is not going to interfere with the New York State directive. What we did the last time when we put together a town law pertaining to battery and solar, we consulted with State people, experts, and **NYSERDA** and we put together a good committee.

Attorney VanWhy noted that it is important for everyone to remember what we are doing here. This is a zoning law update. We are not delving into the intricacies of New York State's grand plan for energy production in the state. This is about the Town of Dickinson and what is allowed in what zones under what specific criteria. The Town has a comprehensive solar zoning law currently and had a committee that reviewed the law that was passed in 2017. Since that time there have been numerous changes in the model law from **NYSERDA** as well as updates in general understanding about how these things impact communities. The immediate influx of development on the Glenwood Road area has created the need for a more in-depth update of the existing solar law so we can be as present and up to date as we can with our law. This review is not about Glenwood Road specifically. This is about the entire Town of Dickinson. The State has not usurped town local land use authority.

Glenwood Road resident John Resseguie addressed the Board and stated that he thinks this moratorium is a good idea because it is a big change to the neighborhood. If in ten years from now they decide whoever happens to own that solar farm decides it is not worth it, if they come up with new ideas, then we have a big chunk of property that has to be taken down if they decide it is no longer worth maintaining. The other project that is being considered across the road wraps around three houses. It is a big change in a residential neighborhood that has to be looked at very carefully. He would like to see them put in open spaces where no trees have to be cut down and not right next to houses. The negative effect on property values has to be taken into consideration. He said he thinks it is a good idea to take some time and consider all the possibilities because it is a big change for a residential neighborhood. Supervisor Marinaccio stated that in the development of these projects, the Planning Board puts together a decommissioning plan and based on costs there is a bond that will cover the decommissioning costs to put things back to where they were. Mr. Resseguie replied that sometimes they sell to other companies.

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Glenwood Road resident Kathy Voltz of Glenwood Road stated that she and her husband bought their house two years ago and have a young daughter. They have been putting their heart and soul into the place to improve it so if one day, when they do go to sell, they can make a profit. She thinks about the eighteen acres, the view, nature, and the deer. They bought the place for peace and quiet. She stated that they work hard and want to build a home for their daughter. Why is this being built so close to people? She stated she is very upset and feels her life could be hugely affected. She is worried about her home value.

Supervisor Marinaccio stated that he appreciates all the comments from the public and he welcomes them. He also said that this meeting is not to scrutinize the developers, this is to weigh the importance of a moratorium. Our focus is to enhance the current town law to make sure protections are in place for the residents. Our current town law is fairly comprehensive, but things have changed since 2017.

Town of Dickinson resident and **SUNY Broome** employee Lorie Brewer addressed the board as a major supporter of the moratorium. Lorie stated that she was the lead applicant grant writer for **SUNY Broome NYSERDA** award to put geothermal wells on campus. She did an enormous amount of research. The geothermal wells are heating and cooling two major buildings on campus. The campus is a model for the rest of the community colleges at the state level and nationally. **SUNY Broome** is doing everything they can to reduce the carbon footprint on campus which is helping the Town of Dickinson reduce their footprint. Take a look around the entire Town of Dickinson to do site research, location research where might be the best places for solar development. A moratorium gives all of us the opportunity to do our homework. We have more work to do.

Tim Gourley, representing 494 Glenwood, the developer for the project on the east side of the road, took the floor. He commented that the property on the west side of Glenwood Road has significant problems and is not a feasible location for a solar project at all. The project on the west side of Glenwood Road is not affiliated with the 494 Glenwood project on the east side of Glenwood Road. His company walked away from that location because it did not meet the setback requirement, natural aesthetics, and had public opposition. 494 Glenwood submitted their project back in September. They have been through several meetings, several comments. The Planning Board does have guidance. There is a Local Law out there. You have noted that technology has changed but a lot of underlying themes of the Local Law still stand. The setback requirements, the lot coverage is still consistent. The Planning Board has reviewed it. Some of the comments go above and beyond what is actually written in the law. There has been a lot of back and forth. The Planning Board has been very active in their concerns as to how it is going to affect the neighborhood. The developer made the investment in the property because they know what the laws are in black and white. Trying to minimize impacts to the surrounding neighborhood so what they have done is they have set back from the road, plans to situate up and behind, and screen the views. Finished up the Public Hearing in November and are working through their last set of comments. We were hoping for approval at the end of the January meeting. They were caught off guard with the request for a moratorium. They would request no moratorium as they are about done with their project and have addressed all the concerns put before them. The decommissioning plan is written into the ordinance. We come up with an estimate. The Planning Board has requested one above that, with a signed and sealed engineers estimate. On top of that, the ordinance will review the cost every five years and make any type of adjustment to that. As part of the approval process the Town holds a bond with a name attached to it. They have submitted a \$310,000.00 bond. The bond has to be renewed annually. If ownership were to change, the bond would change, and the town would know about it. This is included in their operations and management plan. Contact information will be provided.

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As far as future goals in the project area, they are concentrating their efforts on the 494 and 512 Glenwood Rd. area. Also another thirteen acres north – have an agreement with them. It would be the same type scenario - setback from the road, isolated from the community below, situated on a hilltop, minimize the views. There are not many properties available to develop in the Town of Dickinson. They are here because there is capacity and a substation on Glenwood Rd.

He stated that the Town has an ordinance in effect that is comprehensive, it may not be up to date, but it is an ordinance to work by. There are actions in place that the Planning Board has addressed through their comments.

He does not feel they should be punished. They have submitted a pre-application and the Planning Board has made comments and they have the ability to regulate that. He asked for approval to move forward.

Supervisor Marinaccio stated that we are not scrutinizing his project. He would like to concentrate on the moratorium.

Ms. Brewer noted that many of her questions were not addressed by the developer such as what will happen to the property values and what happens to the decimation of eighteen acres of forest.

Mr. Marinaccio reassured her that we are not restricting comments.

Engineer Lake stated that he would like to recommend approval of holding off any more applications and to impose the moratorium so that we have a chance to study what the real effects all this has on our community.

Attorney Nicholas Scarantino representing 494 Glenwood Rd. solar developer asked if it is possible, if the board is not going to table this decision for a later date, to allow the Planning Board to complete the process of going through his client's application and all the comments, along with comments the County has submitted as it has gone through a 239 review, it was comprehensive and considering we are nearly ninety percent through the project, is there a way that their application can be preserved if there was a moratorium?

Attorney VanWhy replied that the language of the draft moratorium would put a stop to all approvals which would include your client's project pending which has not received formal action by the Planning Board to finally approve it so this Local Law would say the Planning Board cannot issue any approvals for any project for a period of one year. There is not an explicit exception for your client's project. There is a hardship variance in the draft law which is something the town would have to provide under any moratorium. People can always apply for variances of zoning laws, and this is effectively a variance of that. If you applied for that then certainly you would go before the Zoning Board for consideration, and it is possible the Zoning Board would agree that particular project should move forward. It could go before court.

Tim Gourley commented that a lot of the concerns are with the project situated west of Glenwood. He asked that they finish off their project with the Planning Board and the Town Board would still have the option to re-write the law. He stated that they made an investment in the project and have played by a comprehensive set of rules. He asked that the Board table this decision, at least get approval for their project.

Supervisor Marinaccio asked if any of the Board Members were interested in tabling the solar moratorium.

Councilperson Morabito and Councilperson Exley answered no.

The Supervisor would not entertain a motion to table the moratorium.

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RESOLUTION 2022 – 55

The following Resolution was offered by Councilperson Morabito, who moved its adoption, seconded by Councilperson Exley to wit:

BE IT RESOLVED, by the Town Board of the Town of Dickinson, Broome County, New York as follows:

**RESOLUTION A LOCAL LAW AFFECTING A TEMPORARY MORATORIUM
WITHIN THE TOWN OF DICKINSON ON THE DEVELOPMENT AND
CONSTRUCTION OF SOLAR ENERGY SYSTEMS**

The question of adoption of the foregoing Resolution was duly put to a vote on roll call which resulted as follows: All in favor. Vote Ayes-3, Nays-0, Absent-2.

Supervisor Marinaccio voting Aye
Councilperson Gardner voting Absent Unable to vote
Councilperson Exley voting Aye
Councilperson Morabito Aye
Councilperson Burns voting Absent

All in favor.

Effective upon Department of State filing per overnight delivery tomorrow.

Supervisor Marinaccio asked Attorney VanWhy, when we put the committee together and start the process and once all the recommendations are ready to be put in place, is that cause for a Public Hearing? Mr. VanWhy replied it would result in the adoption of another Local Law, presumably. You would amend your solar zoning law with whatever updates you may have, the whole comprehensive thing, you would repeal the whole thing and adopt a new one. There will be a requirement for a Public Hearing. Mr. VanWhy would suggest establishing a committee. The Town Board should discuss what types of community reps you would like to see, what types of representatives of various community and constituent groups, stakeholders in the process. You can have industry, you can have NYSERDA, the community, to give you as many different points of view as to what the community concerns are, what the state thinks is appropriate. Attorney VanWhy stated that frankly, he thinks what industry needs in order for them to develop is important to understand when enacting regulations, so you know what you are doing as opposed to getting some unintended consequences. That is a Board policy issue. Mr. VanWhy recommended starting that process as soon as possible.

Supervisor Marinaccio stated that engineering, Planning Board, and NYSERDA will be involved. Supervisor Marinaccio will consult with the Town Board members and come up with a list and start the committee process as soon as possible.

Attorney VanWhy replied to Planning Board Chair that the Local Law that was just adopted prohibits action by the Planning Board on any applications for solar projects and expressly included language under the municipal home rule law to supersede town law and any default approvals that might occur as a result of any failure to act by planning and zoning boards on special permits.

Mr. VanWhy replied to Mr. Gourley that the Planning Board is not prohibited from meeting, but they cannot act and approve anything. The Local Law has to be filed with the Department of State and will be

effective prior to your next meeting. The status of the application is on hold and is pending and will be pending until such time the Town adopts a new solar energy law. The project would pick back up and the

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developer would not have to pay another application fee. The law would be reviewed at that time and applied to his project.

As an industry representative Mr. Gourley requested to be a part of the process. Supervisor Marinaccio stated that he will consider it.

On a motion of Councilperson Morabito and seconded by Councilperson Exley the meeting was adjourned at 6:32 PM.

Respectfully submitted,

Susan M. Cerretani, RMC
Town Clerk