

TOWN OF CONCORD PUBLIC HEARING
Comprehensive Plan Update

December 9, 2021
6:45 p.m.

PUBLIC HEARING OPENED BY CLYDE M. DRAKE, SUPERVISOR

ROLL CALL:

PRESENT: CLYDE M. DRAKE, SUPERVISOR
KENNETH ZITTEL, COUNCILMAN
WILLIAM F. SNYDER, III, COUNCILMAN
PHILIP DROZD, COUNCILMAN

EXCUSED: JAMES M. KREZMIEN, COUNCILMAN

ALSO PRESENT: DARLENE G. SCHWEIKERT, Town Clerk
BARRY A. EDWARDS, Hwy Supt
BRIAN F. ATTEA, Town Atty
DREW REILLY, Wendel Companies

MELISSA CLARK
NANCY SCHIEDEL
JARED HAURI
GEORGE DONHAUSER
RYAN LEGGIO

AMY SCHIEDEL
WILL C. VAIL
JOAN BARSALOU
MAX BORSUK, Springville Journal

Supervisor Drake opened the Public Hearing at 6:45 p.m. Town Clerk Schweikert had published the Notice of Public Hearing in the Springville Journal on November 18, 2021. The Public Hearing Notice was posted on the signboard at the Town Hall and on the Town's website: townofconcordny.com on November 15, 2021.

Supervisor Drake asked if anyone else wanted to address the Board and there were no comments at this time. Supervisor Drake introduced Drew Reilly, Wendel Companies consultant. Drew Reilly provided the Board with a synopsis of the steps taken in this regard. The Town of Concord has a 2018 Comprehensive Plan and one might question why the Town is doing an update. The County went to some of the rural communities that have potential for large-scale solar projects and said the County would give these communities money to look at your Comprehensive Plan to make sure that the issues of large-scale green energy projects and update your laws to make sure that these are addressed. The Town looked at the Comprehensive Plan and made some updates. The County provided some maps to note where County Park lands and Forest lands were and made sure that the Town knew about agricultural because the County has an Agricultural Protection Plan. This was analyzed and because the Town is under project with solar projects, large-scale solar projects, a new Solar Law was drafted. Now the Town is following up and formalizing those amendments to the Comprehensive Plan which mostly deal with agricultural related issues and how green energy will impact them. A couple of other items were tweaked also since the Town was looking at the Plan but the big focus of the Comprehensive Plan update was to update the law and then to update the Comprehensive Plan. The Town wants this information in the Comprehensive Plan is because the big 94-c projects (like the project on Genesee Road between the Town of Concord and Town of Sardinia) do not have to follow the town's local zoning; they must consider the local zoning and they must consider your Comprehensive Plan. This gives the Town two documents that the 94-c projects need to consider when they are finalizing their proposals to make application.

Supervisor Drake noted that the Town had received some comments from Mayor Krebs with changes. The Town may or may not agree with his thoughts but the Board will review the changes.

(1) Erie County Park's Master Plan: Wanted an enhanced paddle craft access

above and below Scoby Dam. Mr. Reilly advised that some of the comments are items that can be noted in the Plan; if it is something that the Town agrees with, it can be noted in the Comprehensive Plan. If the Town desires, Mr. Reilly can make that final change. Councilman Snyder felt that the Plan is specific enough to exclude that; Supervisor Drake agreed. Mr. Reilly believes that this issue was addressed in the County Park's Master Plan where they addressed some of the improvements that needed to be made to the County Parks and forestry land. This could be referenced in our Plan. Councilman Drozd noted that the Town really has no say over any of this; it would be determined by the Erie County Legislature.

(2) Definition of Vacant Land: Mr. Reilly noted that a definition could be put in. The maps that being are talked about existing land use are generated by the Town's RPS data. The Assessor makes that determination. A caveat can be placed in the Plan so people understand that existing land use is done by RPS data from the Assessor's office.

(3) SYI: Mayor Krebs wanted it to be noted that it is funded by an Intermunicipal Agreement between the Town and the Village. Currently each contribute \$60,000 for a total of \$120,000. Councilman Snyder did not know how appropriate it would be to list dollar amounts in the Comprehensive Plan; Supervisor Drake agreed. Mr. Reilly will just reference that presently it is funded by both the Town and Village.

(4) Reference to the REDC to 2017 report; Mayor Krebs wants to know actual jobs and also reference the Concord IDA. The Town believes that the Concord IDA is defunct but New York State has not yet given the Town official notification of that; this cannot be put in the Plan at this time. Mr. Reilly felt that this should not go in the Comprehensive Plan; it is just something the Town knows that we are dealing with. Supervisor Drake noted that the Town really doesn't have the data to put specific numbers in for economic development.

(5) ECRT has already expanded the multiuse trail north and south from Springville in the Town of Concord. Mr. Reilly noted that the Town knows a lot about this since the Town has been dealing with it for years. Mayor Krebs is stating his opinion and has the right to do it but Supervisor Drake does not believe that anyone on this Board is willing to go that route at this point until our residents' have a little more voice about what is going on. Mr. Reilly advised that the Comprehensive Plan can reference it as something that is going on and state the Town will continue to provide input; and continue to participate in the process.

(6) Re-routing traffic off of Route 39; East & West Main Street: Councilman Drozd noted that Route 39 is a state road; the Town and Village have absolutely no say over what happens. This also talked about trying to re-route truck traffic out of the Village which Councilman Drozd felt would never happen. Councilman Drozd felt that nothing should be noted in the Town's Plan. Mr. Reilly advised that the power of the Comprehensive Plan is if you put something in the Plan, the State must consider it in their action. It can be ignored but it has to be considered. It would be up to the Board if other language should be included. Supervisor Drake asked if something in the future were to happen that at least there would be a reference if there was a problem. Mr. Reilly asked the Board to let him know their decision.

(7) Mayor Krebs also noted that the Town's goal to utilize Village utilities do not align with the Village Master Plan or Code. The Town went to two Village meetings last month trying to get the Village to let the Town Highway Department hook into the sewer and were rebuffed. Further notes from Mayor Krebs are that if the property isn't contiguous, it is not going to be allowed access. Mr. Reilly response to that is to understand that the regional goals all state that Towns and Villages and adjoining communities should look at ways of sharing utilities and working together. It would be up to the municipalities to work it out. A statement will be made in the Comprehensive Plan that that is the goal of regional planning and if the Town/Village ever want to get regional dollars to support these, it must be stated that the regional goal would be to try work together between the Village and Town from the standpoint of public utilities. Councilman Snyder noted that different administrations or elected officials could completely change the tone on working together.

(8) Affordable Housing: Mayor Krebs also addressed affordable housing being important to the Village. Supervisor Drake does feels it is just as important to be located in the Town as it is in the Village.

(9) Mayor Krebs noted that there is a great need to public transportation; the Town totally agrees with this. Supervisor Drake had thought that this was already addressed in our Comprehensive Plan already; Mr. Reilly will make sure it is.

Supervisor Drake asked Mr. Reilly for his recommendation. Mr. Reilly advised that he will make a couple small tweaks and at the next Board meeting the Town can adopt the Comprehensive Plan. The Resolutions are all set; there was nothing heard tonight that would completely change the Comprehensive Plan. Board members were advised to contact Mr. Reilly with any changes or concerns. Copies will be provided to the Town so that the Plan can be adopted and an electronic copy for the Town's website.

Supervisor Drake asked those in attendance if there were any comments on the update of the Comprehensive Plan. Melissa Clark addressed the Board on behalf of most of the people in attendance pertaining to the solar farm that is proposed at Genesee and Trevett. Does this have anything to do with the Comprehensive Plan; Supervisor Drake said not directly. Mr. Vail asked when they can voice their concerns; Supervisor Drake noted under Public Comment. Mr. Reilly said he is dealing with dozens of solar projects and for the 94-c projects, you are at the applicant's will until application is made there is no format for comments. Mr. Reilly provided information regarding the 94-c project on Genesee Road in the Town of Concord and Town of Sardinia. This is not the same solar farm as the proposed one at Genesee and Trevett. Supervisor Drake advised that a new solar law was passed to try to protect the Town. Mr. Reilly provided information about 94-c project requirements and advised that information on 94-c projects can be found on the ORES (Office of Renewable Energy Services). ORES is the office that makes the decision on these projects. Mr. Reilly recommends the residents to send letters to ORES and to the Town with respect to the 94-c projects and their concerns. ORES completely ignore property values; he tells people to think about what is impacting your property values (visual, etc.) and don't specifically talk about property values. Decisions were made by Judges that property value is not an issue that needs to be considered in solar installation.

Joan Barsalou asked if allowing to let this happen and let people put in solar panels on their property that they own and pay for, is that going to impact on their farming title for the properties out here? Supervisor Drake advised that if there is an agriculture exemption it could well change it. Mr. Reilly advised that if you convert farmland and the landowner has been getting tax credits because you are farmland, they will have to pay the past ten years tax breaks that were given. This is usually paid by the developer. Back taxes would need to be paid pursuant to Ag & Markets Law. If there was an agricultural exemption and your property is converted to non-agricultural use, which solar farms are non-agricultural use, these tax breaks would need to be paid. More information on solar can be found on the NYSEDA website.

Motion by Councilman Drozd, seconded by Councilman Zittel, to close the hearing at 7:09 p.m. Councilmen Zittel, Snyder & Drozd; Supervisor Drake, voting aye; Councilman Krezmien, excused. Carried. Supervisor Drake thought it best to let the residents hear the information directly from Mr. Reilly who is guiding the Town through this process.

After the Town Board adjourned the meeting, Mrs. Barsalou was confused. She received a letter from a neighbor and questioned if basically is the Town interested in the fact that there is only about 48 acres instead of the actual 50 acres that they are concerned with trying to get this settled or the fact that they are trying to put it in a farm area. Town Clerk Schweikert advised the Board that Mrs. Barsalou was referring to the Hoffman solar project. The residents in attendance are concerned with this project; not the 94-c project. This smaller project would be right in their backyards. Supervisor Drake advised that the last time the Town heard anything from developer DSR was in June of 2021. One of the residents heard information 1.5 weeks ago. Mr. Reilly noted that the project would fall under the new law. At the time of the application, DSR did not meet the Solar Law requirements. The new law increased the setbacks. The developer told the Town that if that was the setback requirement, they did not think that they could continue the project. Mr. Vail reviewed the February 2021 Planning Board Minutes where DSR presented their project. Mr. Vail did not see any concerns noted in the Minutes that the neighbors would have; property values being the biggest concern. This project sits low; is there consideration to the effect on the water table; how is the gas well on the property going to be mitigated; those solar panels are encased, if one breaks, what happens with

that? It would go into the ground and into their wells. Mr. Reilly advised that these solar projects are not going to be railroaded through as with the 94-c projects. A smaller project is defined as less than 25-megawatts. This Hoffman project was a 5-megawatt project. That size is the standard size used because that size is funded through New York State. These projects are all local approvals and Mr. Reilly's understanding is that there has been no action on this project. A new law has been adopted and if they don't like the new law, the developer may never come back. The new law addresses a lot of those issues except property values. There are larger setbacks, screening requirements. The Town may never see that project again. It did not receive any approval from the Town; they met with the Planning Board. The developer has to meet the new law and address all those issues. The Town has not heard from the developer since June and if they come back, they will have to fall under new law and they may or may not get approved under that new law. Mrs. Clark said she had second hand knowledge that this project may still be moving forward. Town Atty Attea advised that there is nothing the Town can do to prevent that company or any other company from coming back and applying or reapplying to try to get a project approved but it is a project subject to local law. Town Atty Attea noted that that project did not get far enough to have any approvals and would now be subject to the new revised local law if they come back and because of that many of the concerns raised were specifically addressed by the changes the Town Board made with the advice of Mr. Reilly's company so that those protections are now in place and enforceable. That was the action of this Board under the direction of Mr. Reilly and his company. As this area of law evolves, and as this potential energy source becomes more popular, as it goes through its modifications, this Town Board is trying to keep up. This is based on a lot of input provided by the landowners that the Town Board can make those changes. If DRS does come back, they will have to face the new law that hopefully has a lot of protections in place that will either make them look for a different site or modify their plan in a manner that will not be as obtrusive to the neighboring landowners. It is a wait and see now. Mr. Reilly stated that are hundreds of solar companies looking for projects in New York State because NYS is funding them. These companies will be talking to your neighbors; will talk to anybody in rural areas near powerlines. The best thing is to talk to your neighbors and have the discussion not to do these solar projects. Town Atty Attea advised that these companies that these companies are knocking on every door. There is a lot of government money out there to make programs like this attractive so that people continue to experiment with renewable energy resources and as long as that money is out there, these companies will continue to find a way. Not all of that may end up bad, but the Town is constantly trying to keep up with laws that will not allow them to just railroad neighboring landowners. Mrs. Clark appreciates the differentiation of the size of the projects; she feels much better that this is one of the smaller ones. Town Atty Attea reminded the residents that there are no guarantees what is coming down the pike but the Town Board with proper guidance has already tried to stay in front of. Mr. Reilly advised that the Town has to give these projects their due process. The Town cannot tell them to go away; the Town has to follow our Law, go through the process and make a decision on the record. Town Atty Attea advised that the smaller projects have to abide by the new local law. Mr. Vail questioned how concerns about property values, sight lines, battery storage, substations; how would this affect groundwater? The panels will be putting pollution into the land. Is there something the residents can go to and look at and understand if these are being met and what are their concerns? The State, for all the right reasons, was looking for clean energy but what are the impacts, downsides. Is there a way to look at this? Mr. Reilly answered that the NYSEDA website will address these issues and give a perspective on it; and give you an understanding that the State has looked at these concerns but for projects that are under 25-megawatts, the Town has a local law. The law is a good law that addresses a lot of these issues: stormwater, potential hazardous materials, sight lines; how to minimize the view. The technology is changing quickly and these laws will need to be looked at often over the years. By 2030, 70% of the NYS power has to be produced by green energy and the only viable way to do that right now is solar power. Town Atty Attea noted that that is the standard NYS has set right now and the state has put incentives in place to encourage these companies to grow and to try to develop. Local municipalities are trying to maintain the character of their communities by putting local laws in place. The one thing that a local community cannot do is strictly prohibit so based on the information that is available today, the Town has to put in place what the Town would hope to be an appropriately balanced protection based on the interests that this Town

Board is hearing from the local community and the experts in the field right now. Mr. Reilly advised that the new energy source that is coming is hydrogen fuel cells. This technology is now becoming more affordable. Mr. Reilly noted that the State did change the rule and it is the new law, that these projects are not supposed to be placed on prime agricultural soil. If the site contains 50% or more of prime agricultural soils, they are to avoid that property. Environmental studies are required for local ones; for the big ones there is a list of 105 studies that need to be submitted with the application. The Town has the power on any project to ask for environmental studies; ask for environmental impacts. NYSDERDA has a system that will determine where they believe solar can go; solar can only go where they are near a major transmission line. They need the capacity and a powerline within a certain distance of the property. A map is included in the Comprehensive Plan. The technology could change in the future and that could change.

This discussion continued until 7:34 p.m.



Darlene G. Schweikert
Town Clerk