

PLANNING BOARD
Town of Kirkwood
70 Crescent Drive
Kirkwood, NY 13795

July 11, 2022
Meeting Minutes

Present:	Marchie Diffendorf, Chairman	Bob McKertich, Attorney
	Jim Bukowski, Member	Mike Maciak, Associate Member
	Kevin Balachick, Member	Matt Williams, Associate Member
	Gordie Woolbaugh, Member	
	Dan Wasson, Member	

Chairman Diffendorf called the meeting to order at 7:00 PM.

Chairman Diffendorf explained there is a change to the agenda tonight. There are problems with the SWPPP Don's Automotive Mall did. It is going back to them to look at along with our Town Engineer. It should be on the August 8, 2022 meeting.

APPROVAL OF MINUTES:

Motion by Dan Wasson and seconded by Gordie Woolbaugh to approve the minutes of the March 14, 2022 meeting as submitted.

All voted in favor. Motion Carried.

RECOMMENDATION TO THE TOWN BOARD – PROPOSED SOLAR ENERGY SYSTEMS LOCAL LAW:

Chairman Diffendorf explained there has been a committee working on this since the 6-month moratorium was enacted on April 2, 2022. The committee is comprised of Supervisor Lew Grubham, Councilwoman Katie Legg, ZBA Chairman Duane Travis, Code Enforcement Officer Chad Moran, Town Attorney Bob McKertich, and myself. They have had several meetings and hope they have a local law that is acceptable.

Mr. McKertich explained since this is a zoning law it comes to the Planning Board for two actions, to make a report/recommendation on the law and you are making that report/recommendation to the Town Board and with the SEQR documents who should be the lead agency for the SEQR environmental review. The Town Board has designated itself as the lead agency. This is just notifying you of that and you have to say whether you consent to that designation.

Mr. McKertich gave an overview of the local law to the Planning Board members. He explained this will repeal the existing solar law that is in place, Local Law No. 1-2017 and will replace it with this new law. He reviewed two definitions, commercial solar energy system and non-commercial solar energy system. The whole permitting process is broken down based upon those two definitions.

A commercial solar energy system is a system that is fed directly into the grid. People under these systems are building solar farms for commercial activities, they are going to feed into the grid and get paid for the production of this power. It is either feed directly into the grid or any system with a nameplate generating capacity of 200 kilowatts or more. These are the larger scale commercial systems.

A non-commercial solar energy system is a system with a nameplate generating capacity of less than 200 kilowatts and they are primarily used to produce energy that is consumed on site. People are building them to generate power for their home or for their own business. These are a smaller type variety.

Mr. McKertich explained they broke down the permitting process based upon those two definitions. Referring to Section 705 – Non-Commercial Solar Energy Systems these systems are going to be allowed as an accessory use in any zoning district. They are going to be either roof mounted or ground mounted systems. There are various restrictions for each. The roof mounted systems will naturally lead to the size of the building. The ground mounted ones include 20% lot coverage, only allowed in the side and rear yard, 10-foot height restriction in residential districts, 15 feet in non-residential, set back is 20 feet in the rear and side yards, must have a visual buffer including a mixture of evergreen trees no less than 8 feet tall, and a decommissioning plan for any system that is between 25 and 200 kilowatts.

Both of these can be approved through the building permit process by the Code Enforcement Officer. They don't require a Special Use Permit. They may require site plan approval under the normal site plan process.

Section 706 – Commercial Solar Energy Systems is for the larger commercial systems and they are feeding directly into the grid and not powering the property they are located on. They are only allowed in Residence, Residence 1, Agricultural/Rural Residential, and Industrial Development and require a Special Use Permit approved by the Board and the Board is the Planning Board.

Mr. McKertich explained that included in these projects are various design standards that are set forth in the law. Those standards include at least 5 acres of space for development, height is limited to no more than 20 feet, and they have to be set back 100 feet from any non-participating residential property line. Non-participating residential property line is a neighbor who is not going to be under a lease to allow these on the property. There is a 250 feet setback from any habitable residential structure, a 50-foot setback from non-participating non-residential property line, a 50-foot setback from the centerline of any public street or roadway. These setbacks were taken from the State regulations. The State uses these requirements to regulate the huge solar projects which are 25 megawatts or more. Anything more than 25 megawatts is regulated at the State level, it doesn't even come to the Town. The developer has the option from a 20 to 25-megawatt project. The committee thought it was prudent to use the stringent State level regulations for the huge projects and apply them here in Kirkwood in order to ensure there are property setbacks from neighboring properties.

Other requirements include a visual buffer of evergreen trees no less than 8 feet tall, insurance requirements, a decommissioning plan, which is a plan for when the useful life of these panels no longer exist. They must also put security down to allow the Town access to money that is put up by the developer in order to have the Town remove any non-use facility. The security has to be 120% of the estimated cost of completion. The security will be a letter of credit, the money will be on deposit in bank.

Chairman Diffendorf added that there is a decommission plan for the non-commercial as well.

Chairman Diffendorf questioned if solar carports should be included in the definitions.

Chairman Diffendorf commented we met several times and one of our biggest concerns has been screening of the solar systems. We think we have a pretty good product and there are certain limitations but if the State thinks we didn't do a good law with merit they can override us. Mr. McKertich explained that for the larger projects that are 25 megawatts or more the State will look at our law to see if they think it is reasonable or if it is

unduly burdensome on the applicant. If it is unduly burdensome they will disregard it but if they think it is reasonable they will require the applicant to meet our standards even on the large 25 megawatts or more projects that are regulated by the State.

Chairman Diffendorf commented the NYSERTA laws refer to different size solar systems that are considered Tiers 1, 2, 3, and 4. This law has 2 tiers, commercial and non-commercial. Non-commercial is up to 200 kilowatts and above that would be commercial. Kevin Balachick asked if the 200 was from the State or a general guideline. Could it be a private company supplying itself, generating 200 watts and do they automatically fall under the commercial even though they are not selling back to the grid. Mr. McKertich explained the 200 kilowatts, if they are above that amount it is going to be considered a commercial facility even if they are just supplying themselves. Chairman Diffendorf commented on the commercial ones there is a Special Use Permit that would be involved. Kevin Balachick asked if residential could sell back to the grid if they are generating more than they use and Mr. McKertich stated no, it is supposed to be something primarily used for onsite consumption.

Jim Bukowski asked who determines the decommission costs and Mr. McKertich stated they would present the proposed cost of the project and the decommissioning would be 120% of that cost. Everything is subject to review. This law allows the Board to hire consultants so we can get a consultant in place who knows the ins and outs of building these projects and that person could say we think that is a much more expensive project. It is all subject to Planning Board review. Dan Wasson asked who would pay for that and Mr. McKertich explained that is paid for by the applicant.

There was a discussion regarding the replacement of any dead or dying trees and shrubs in order to maintain an appropriate buffer. Jim Bukowski asked on the non-commercial ground mounted systems for residential it says to replace any vegetation that is deemed dead, will Code Enforcement determine that and Mr. McKertich stated yes. As to the replacement of trees what we can require is shrubs or arborvitaes and a good visual buffer. Jim Bukowski had a concern as to if a neighbor would determine what buffer the applicant has to put in and Mr. McKertich stated it would be Code Enforcement. They felt it was important to have that visual buffer even with the smaller, non-commercial facilities.

Kevin Balachick questioned if only vegetation is allowed or if fencing is allowed also for a buffer for the residential and Mr. McKertich explained this requires the vegetation buffer but someone could have both but at least they have to have vegetation. Just a fence alone would not be allowed. Jim Bukowski asked if he wanted to put in a solar system but didn't have any trees on his property would he have to put up a buffer and Mr. McKertich stated yes. The idea being we require them to put in a buffer, they put the buffer in and a year later half of them die, this is intended to require them to replace the dead or dying trees/shrubs. Gordie Woolbaugh asked why a nice vinyl fence, 8 feet tall, wouldn't qualify for a buffer and Mr. McKertich stated it could, it is a judgement call, if you think that is an adequate buffer for the non-commercial, it's something we could allow. Chairman Diffendorf commented it would have to be pretty high in some cases. It is a judgement call for the Planning Board to recommend to the Town Board on if you think there could be a fence. Right now, that fence is not sufficient. Chairman Diffendorf commented the higher the fence goes the easier for the wind to take it down.

Dan Wasson referring to Commercial Solar Energy System, #14 Lot Coverage Requirement commented you are supposed to adhere to the applicable maximum lot coverage requirements for principle uses for the Zoning District which it is in and asked do we know what that is for Residence, Residence 1, Agricultural/Rural Residential and Industrial Development. Mr. McKertich stated the maximum lot coverage in the residential district is 30%. He stated he would go back to be sure we have that nailed down.

Chairman Diffendorf asked this won't stop us from making a recommendation and Mr. McKertich explained you could say in the recommendation to examine the lot coverage requirement for commercial systems.

Mr. McKertich explained to the board you can say you recommend approval subject to these following changes or you could say you recommend approval and it is our recommendation that the board consider other buffers, consider examining that lot coverage requirement for commercial, and consider incorporating a definition for solar carport. It all depends on how tight you want to make the recommendation.

Motion by Dan Wasson and seconded by Jim Bukowski to endorse the Town Board of the Town of Kirkwood acting as Lead Agency for the Solar Energy Systems Local Law.

Roll Call Vote:	Jim Bukowski	Yes
	Kevin Balachick	Yes
	Gordie Woolbaugh	Yes
	Dan Wasson	Yes
	Chairman Diffendorf	Yes

Motion carried.

Motion by Gordie Woolbaugh and seconded by Kevin Balachick to recommend the approval of the Solar Energy System Law and for the Town Board to consider whether to:

- A. Allow fence buffer for non-commercial solar energy systems in Section 705 A. (4) v.
- B. Add a definition of a Solar Carport.
- C. Examine the lot coverage requirements in Section 706 B. (14).

Roll Call Vote:	Jim Bukowski	Yes
	Kevin Balachick	Yes
	Gordie Woolbaugh	Yes
	Dan Wasson	Yes
	Chairman Diffendorf	Yes

Motion carried.

Motion by Kevin Balachick and seconded by Gordie Woolbaugh to adjourn the meeting. The meeting was adjourned at 7:47 pm.

Respectfully Submitted,

Mary Kay Sullivan
Secretary, Kirkwood Planning Board

cc: Planning Board Members
Kelley Diffendorf
John Finch, Jr.
Chad Moran
Scott Snyder
Katie Legg
Bob McKertich