



# Town of Porter

## Special Meeting

~ Minutes ~

3265 Creek Road  
Youngstown, NY 14174  
[TownofPorter.Net](http://TownofPorter.Net)

Kara Hibbard  
716-745-3730

Monday, January 13, 2020

6:00 PM

Town Hall Auditorium

### I. Call to Order

6:00 PM Meeting called to order on January 13, 2020 at Town Hall Auditorium, 3265 Creek Rd., Youngstown, NY.

Attendee Name	Organization	Title	Status	Arrived
Jipp Ortiz	Town of Porter	Councilman	Present	
J. Duffy Johnston	Town of Porter	Supervisor	Present	
Jeff Baker	Town of Porter	Deputy Supervisor	Present	
Larry White	Town of Porter	Councilman	Present	
Tim Adamson	Town of Porter	Councilman	Present	
Kara Hibbard	Town of Porter	Town Clerk	Present	
Kimberli Boyer	Town of Porter	Bookkeeper	Present	
Mike Dowd	Town of Porter	Attorney	Present	

### II. Public Portion

### III. Resolutions

#### 1. Resolution 2020-1

#### Solar Energy Systems Moratorium Petition Public Hearing

Supervisor Johnston opened the public hearing on the solar energy moratorium at 6:00 PM with the pledge of allegiance. He said that the Town has adopted a solar law that may have to be tweaked a little bit. He feels that it is one of the best law's in Niagara County but he is open to changing some things. There was a petition passed with over 50 signatures and he felt that the board needed to act on it and give the public a chance to be heard.

Gloria Baker submitted a petition to the Town Clerk, Kara Hibbard, to add to the other petition that is on file.

Tom Siegrist - 3550 Porter Center road - asked the board if they could explain the law that was adopted.

Supervisor Johnston explained that a committee was formed and included a member from the Planning board and a member from the Zoning board along with Code Enforcer Jefferys.

Code Enforcers Jefferys said it was a 3 - 6 month process. A lot of information was received from NYSERTA and Jason Wrobulski from UB. The law was largely modeled after the NYSERTA law. To go through the entire law would be lengthy but there are some key elements such as decommissioning. The decommissioning plan requirements is that you need to submit a detailed estimate with approval from our Town engineer. A bond has to be put in place to fund the decommissioning if the solar development ceases to produce power. Special Use permits would be required upon approval from the Zoning board. Lot coverage would be addressed along with setbacks, to try and mitigate concerns from nearby neighbors. There is also another element which is screening. It requires both fencing and trees to be planted. 6' trees need to be planted every 8' on center with 2 shrubs in between trees.

Supervisor Johnston stated that the setbacks are one thing that are being looked at also it would have to be 100' from the road and all property lines at this point in time.

Code Enforcer Jefferys said that maybe the setbacks will have to be revisited during the moratorium. Site plan approval would be needed from the Planning board and a recommendation to the Zoning board of Appeals which does the special use permits. Both of those committee's would involve a public hearing, two phase process. If trees need to be cut down during installation (6' or more) then 2 - 3' trees will need to be replanted ideally towards the screening. The community benefit would be, community solar. There were handouts on the table describing what this is. He stated that anybody who didn't get a copy and would like one to please call the Town. Tonight we are talking about Tier 3 solar. We did address Tier 1 and Tier 2. There is another requirement for prime agricultural land of state wide significance. Those have an extra lot requirement. If it is a prime soil group, it can only have 25% lot coverage.

Tony Collard asked, what about wetlands?

Code Enforcer Jefferys responded that those determinations are made and addressed by the agency where wetlands are mapped out which would be the state or Army Core of Engineers. They have the final determination who can develop over the top of the wetland. He has had conversations with developers and what they are proposing is that there would be steel pipes driven into the ground. The Army Core of Engineers has signed off of that saying that it is acceptable over these wetlands. That is outside of our law. It's not in our jurisdiction.

Bill Dean - 2359 Lake road - Asked about the 24.9 megawatts of electricity for production, is that true?

Code Enforcer Jefferys said that the local law in the Town of Porter, addresses up to the 24.9. Once you get over 25 megawatts of power production, the State of New York takes the responsibility and authority away from the municipalities and they do the permitting process.. Those are the giant scaled solar farms. Our law only address up to the 24.9 megawatts. He feels that we have the authority to impose our Zoning requirements below the 25 megawatts which would equal 150 acres or more.

Supervisor Johnston stated that we are trying to safeguard the Town of Porter by creating our own law and due diligence. The governor is pushing renewable energy. By 2030 he wants 50% to be renewable, clean energy. They're going to take over just like they're doing in Pendleton right now. The people are fighting it but there isn't much the municipality or the people can do. This is what the Governor wants! We can't really say no to it and that we don't want it in the Town because we are going to get lawsuits.

Attorney Dowd said that the Town needs to control it. This is only for Tier 3 solar. Over 25 megawatts, the state pre-empts us.

Code Enforcer Jefferys stated that transmission lines cost about 1 million dollars per mile to install. There is one transmission line in the Town of Porter. The bigger the solar entity output, the more important it is to tie into the transmission line. Smaller entities that use 2 - 5 megawatts systems, which he expects to see here in the Town of Porter, can tie into the local distribution lines.

Supervisor Johnston stated that the only time the power is coming out is when the sun is out. There isn't any storage capacity yet. So it's not even possible to store the power. We're not sure how old the lines are.

Chris Semberg - 1938 Youngstown - Lockport road - Is there a height limit on the solar panels?

Code Enforcer Jefferys responded that the maximum height requirement is 16'. A lot of them are less than that but could be the rotating or tilting type so they can maximize the sun. Visibility of the panels is going to vary by how far off the street they are. Fencing is required to be 7' tall. Plus there will be planted vegetation.

Herb Lederhouse - 3096 Porter Center road - Asked what about hunting in those locations?

Code Enforcer Jefferys responded that you need to be 500' from a dwelling. It's really up to the DEC.

Supervisor Johnston stated this is all new to everybody. We're looking into their lifespan and when they're done, what is going to happen. What kind of bond is needed? Nobody seems to have an answer yet. Especially what is in these panels, Is there hazardous waste in them? How much of a bond do you put up on a 25 acre parcel? After 20 years, if the bond isn't enough, who pays for the difference in cost? We just don't have the answers yet. There are so many variables.

Barb - Coalition to protect our rural communities - We are willing to fight the State. We have petitions to try and push back against Governor Cuomo. It is not true that there is no legal recourse. They are a 501C4. She grew up on a farm and it is not what we want our Town's to look like. We are just horrified. We do not have to just roll over and say it's ok. We have strength in numbers. Has anyone asked when they will be putting in the lithium battery storage? Do people know that they can explode?

Mark Kramer - Porter Center road - If they take over acres of property, is it going to be stone or grassland and what about drainage and pesticides?

Code Enforcer Jefferys responded this is all addressed and currently adopted in our code plans. Pollinated plants will be planted and there may not be any pesticides used. We will be addressing this more in our moratorium and it's a good point.

Matthew Deering - 1751 Youngstown - Lockport road - Research has been done on migrating birds and solar fields disrupt their pattern. They are thrown off by the electromagnetic field. Solar is considered to be a farming business. He feels that solar will hurt people's property value. He feels that a lot of people should be able to have a small solar farm but the size should be limited.

Tom Siegrist - 3550 Porter Center road - Were in the worst area during this time of year for any sunlight. How do they expect to service with all the money that is put into these panels over the winter? They're not sinking their teeth into our areas but they're leasing the property. You know that they won't take the poles with them but they will leave them here for us. I realize that there is bonding for that reason and I am all for green energy but not to have every area in the Town covered. When does it stop? There should be some type of residency law. What is the Town gaining by having them here? Jobs? Is anybody going to be on site when the batteries are on site? Where is the safety end of this?

Supervisor Johnston said that Governor Cuomo is spending a lot of money for these solar companies to come in here.

The audience erupted and said that the money is coming out of our taxes, not his pocket. There should be a rule put in place that they have to create to offset some type of area for the wildlife.

Supervisor Johnston said that we have no idea what it is going to do to the soil.

Code Enforcer Jeffery stated that the panels are not on the ground and plants do grow underneath and around them.

Samantha Hillman - 2248 Balmer road - She comes from a farming family and they do lease the land out to a local farmer. She agrees that there does need to be restrictions. Can the Town restrict how much land is being used for solar? Are we going to look into wind power?

Code Enforcer Jefferys said that we can but there is a lot coverage requirement for every zoning district in the Town. The biggest portion of the Town is rural agricultural and the maximum lot requirement for tier 3 solar is 25% on those parcels. We do have a wind energy section of our code for commercial and residential that have been part of our zoning laws since 2010. We do have requirements that regulate it as well.

Ryan Harden - 1927 Youngstown-Lockport road - One of the proposed solar farms is right next to my house. I've got a million questions that two minutes won't cover but what about battery storage? How close do the batteries have to be to his house, because they are the size of tractor trailers. Do lithium batteries cause cancer? He has a wife and four children. We don't know if this is going to cause cancer.

This is going to be next to my house and there isn't anything I can do about it. The majority of property in this area belongs to people who don't live here. Why can someone from a different area take property from the Town of Porter and do whatever they want with it. Soak all the money out of it and then leave you to deal with it in the end. Is a 6 month moratorium enough time to change the laws?

Attorney Dowd answered by saying this particular moratorium that is being proposed by Town board resolution can be extended for 3 or 6 more months. There are a lot of questions that the board isn't in a position to answer tonight but I think a committee would be a good place to start and invite some of you folks along with a person from the Zoning and Planning boards and try to narrow things down. Hopefully at the end of a year, we will be able to tailor a law that addresses all these concerns. I think a year should be more than enough time.

Supervisor Johnston stated that tonight we are looking to pass a resolution on the moratorium with the public input that we have tonight. When the local law was drawn up, we went through all this and thought it was a pretty good law but apparently it's not. There are still a lot of unanswered questions. When it came to the Town board, we thought we would take somebody from the Planning board, Zoning board of Appeals and our Code Enforcement Officer. They worked very hard on it but as we have found out today, I believe that we should reach out to the community for your input. Maybe things can be zoned differently. I think it would be imperative to have 5 or possibly 7 members on a committee and gather input from everybody to move forward and tweak the local law.

Attorney Dowd - My gut reaction is that we need to be reasonable about it and put limitations on it. You can't legislate it out but you can legislate it where.

Code Enforcer Jefferys said that the reason for adopting the law was to protect residents and not necessarily to encourage the growth. The Town board is given the responsibility of adopting laws for all of the Town of Porter. I think the board and our committee that was involved, were trying to establish a law that was in the middle. A law that posed a level of restrictions and protection for neighbors but yet still allowed the owners some rights who wanted to do what they wanted to do on their properties.

Ryan Harden - 1927 Youngstown Lockport rd. - How do you go from an agricultural piece of land used to grow food to now this is a commercial, zoned piece of property for solar farming?

Code Enforcer Jefferys responded that your zoning district isn't changing other than the law on solar.. In your case it is a rural agricultural, zoned district. That's not changing.

Ryan said that for his home, he can't buy 100 acres and go there and put a pole barn on it without having a home on it. How can that be? But someone can put solar on property with 30 or 40 acres of solar panels on it with no home or residence. How does this happen?

Code Enforcer Jefferys stated that it happens through the legislative process.

Duffy responded by saying it's because of Governor Cuomo. That's the bottom line. It's because it's subsidized. He's throwing money at the companies to do this.

Code Enforcer Jefferys stated that when the Town first adopted this law, nobody from the Town of Porter came to speak on the behalf of whether they were for or against it. Not one person questioned the making of the law.

Ryan Harden explained that the Town of Porter needs to be a little more informative to the people here and the reason he says that is because I went to somebody's house today and asked them to sign the petition form for this and they took that paper and threw it back at me and said that they were not touching it because nobody came to support them when they put that crap pond in my backyard. Now, that being said, I had no idea or knew anything about that.

Supervisor Johnston said that it's all about the DEC. It's totally different! It's publicized on our website and in the paper.

Attorney Dowd said that is why we have a moratorium. Sometimes the most well intentioned local laws

pass because no one really knows what the ramifications will be. We are at that point now. The Town did not slip anything by anybody. The Town was well intentioned and you folks are well intentioned. That is what this moratorium is for. To fix whatever needs fixing. Give us a chance.

Supervisor Johnston said "do you see the full room that we have here tonight" Terry Duffy from the Sentinel is sitting right here. Articles are put in the Sentinel for this purpose. There is no way in the world that anybody is trying to slip anything by. We knew that this was going to be a problem. We thought that we were way ahead of this game. The committee worked very hard to do this and we received accolades from it from Clean Energy and everybody and now we have to look at this from a different angle. We made sure that everybody knew that we were going to have this moratorium. It was publicized in the paper and on our website and also word of mouth.

Matthew Deering - I think all of you have the best intentions and I don't think that you are trying to put anything past us. But, who is going to pay for the research? We're not experts. What happens to the solar panels in 20 years? How are they going to affect property values?

Gloria Baker - I want to thank Peter (Code Enforcer Jefferys) for his presentation tonight. I think we are all here for the same purpose and I believe that the Town board wants what is best for all of us.

Debbie Parker - What happens to the taxes on solar land?

Code Enforcer Jefferys said that there are exemptions for solar and wind, however, the Town has adopted a PILOT law in the Town of Porter which means, payment in lieu of taxes. It will allow the Town to negotiate with Tier 3 developers and impose an annual fee that gets paid to the Town of Porter to help offset that.

Kristen Savard from Lynnbrook Drive in the Town of Porter, said that she owns a development and survey company and they represent solar companies across the state and "I want to commend your board and your staff because I have been on the other side of many of these projects and I see every aspect of representation. What I wanted to say tonight is that your Town code is your business plan and you are the deed to that business plan and you represent the people that are part of that plan but at the same time, you are bound by what our state and federal government is imposing on you and these are regulations that control what you are able to do on so many levels. Although the public's concerns are very valid, it really can't be recoded into the different aspects of your law. I encourage the public to be part of whatever process gets put in place tonight. Work together and possibly work together with the companies that are looking to come in because everybody is at risk for an issue down the road. Thank you for everything that you are doing. Don't let emotions get in the way and lose sight of everything".

Supervisor Johnston said that this is NOT going to be the last public meeting on this. This is not something that we are going to rush through. We will move forward with this and have more public meetings and more public input and also invite the developers to talk on their behalf. They also deserve the right to talk. Tonight is to establish a 6 month moratorium and possibly extend it in the future. We want and are going to listen to the residents of our community. That is why we are all elected and sitting up here.

**Motion was made by Councilman Adamson and seconded by Councilman Ortiz to adopt the local law establishing this moratorium. This moratorium is only for Tier 3 solar. This does not include Tier 1 or 2.**

**Roll call vote was taken and Supervisor Johnston, Councilman Adamson, Councilman White and Councilman Ortiz were in favor. Deputy Supervisor Baker abstained.**

**Motion was made by Deputy Supervisor Baker and seconded by Councilman Ortiz to close the public meeting at 7:09 PM**

**Roll call vote was taken and all present board members (Supervisor Johnston, Deputy Supervisor Baker, Councilman Adamson, Councilman White and Councilman Ortiz) were in favor.**

<b>RESULT:</b>	<b>ADOPTED [4 TO 0]</b>
<b>MOVER:</b>	Tim Adamson, Councilman
<b>SECONDER:</b>	Jipp Ortiz, Councilman
<b>AYES:</b>	Jipp Ortiz, J. Duffy Johnston, Larry White, Tim Adamson
<b>ABSTAIN:</b>	Jeff Baker

---

---