

**TOWN OF WESTERLO  
PUBLIC HEARING ON PROPOSED TRANSFER STATION PERMIT FEES,  
PUBLIC HEARING ON PROPOSED LOCAL LAW NO. 3-2020 EXTENDING LAND USE  
MORATORIUM &  
REGULAR TOWN BOARD  
MEETING OF  
TUESDAY, AUGUST 18, 2020**

The Town of Westerlo Town Board held two Public Hearings, the first on proposed transfer station permit fees, the second on proposed Local Law No. 3-2020 to extend the Land Use Moratorium followed by the regular Town Board meeting on Tuesday, August 18, 2020 at the Richard H. Rapp Municipal Building located at 933 County Route 401, Westerlo, NY via ZOOM # 92253625607. Supervisor Bichteman opened the meeting at 6:45 PM with the Pledge of Allegiance to the Flag.

Attending were: Supervisor William Bichteman Jr.  
Councilwoman Amie L. Burnside  
Councilman Richard Filkins  
Councilman Matthew Kryzak  
Councilman Joseph J. Boone

Also attending were: Town Historian Dennis Fancher, Planning Board Chairperson Verch, Town Attorney Javid Afzali, Highway Superintendent Jody Ostrander and Highway Employees Justin Case and Salvatore Spinnato, previous BRC member Eric Markson, previous employees Claire Marshall and Chuckie Benninger, Deputy Town Clerk Kathleen Spinnato, Acting Town Clerk Karla Weaver and approximately eleven interested residents.

ZOOM attendees: ZBA Chairman Sefcik and ZBA member Jillian Henck and several interested residents.

**PUBLIC HEARING ON  
PROPOSED TRANSFER STATION PERMIT FEES**

Councilman Boone made a motion to open the public hearing to discuss proposed transfer station permit fees. Seconded by Councilwoman Burnside, all in favor motion carried.

Councilman Filkins advised of the rising costs for contractual services for refuse and garbage. He proposed an annual permit fee for residents who use the transfer station instead of raising taxes for all landowners. He explained, collecting an annual permit fee of \$50 for 1500 trash generating residences would generate \$75,000 in revenue for the Town.

A resident believed a permit fee is the same as a tax. If there is a raise in taxes next year then there shouldn't also be a fee for transfer station permits.

Councilman Kryzak expressed concern for raising taxes, he is worried it will force people out of town.

Having a separate fee for commercial haulers and businesses were discussed. A resident cautioned imposing additional fees/taxes to businesses within town, indicating the Town of Westerlo is already unfriendly to businesses.

Supervisor Bichteman believed the Town of Westerlo offers very few services and indicated a permit fee of \$50 was too high to start.

Suggestions were made to assign permits to a person instead of a vehicle.

With no other public comment, Councilman Kryzak made a motion to close the first public hearing. Councilman Filkins seconded, all in favor motion carried.

**PUBLIC HEARING ON  
PROPOSED LOCAL LAW NO. 3 OF 2020, EXTENDING A TEMPORARY LAND USE MORATORIUM  
PROHIBITING COMMERCIAL SOLAR ENERGY SYSTEMS, ENERGY STORAGE SYSTEMS, AND  
WIND GENERATION SYSTEMS WITHIN THE TOWN OF WESTERLO**

With the current moratorium set to expire on August 28<sup>th</sup>, Councilman Kryzak made a motion to open the second public hearing to discuss extending the land use moratorium for 1 year. Councilwoman Burnside seconded the motion, all in favor motion carried.

Garrett Peterson a Co-Founder of Stella Solar, a community solar development company, read a letter to the Town Board regarding a potential project at 300 Johnny Cake Hill Rd owned by Hope and Ted Nugent. He advised that permitting was expected to begin when the moratorium was lifted and that extending the moratorium would create an unnecessary hardship for the Nugent's. The Nugent's plan to build their retirement home on the front part of their property and would be partly funded by the community solar project for hosting the solar farm on their land. He indicated that the home would generate new tax revenue and the money from the PILOT agreement would benefit both the town and local school.

Zoning Board Chairperson Sefcik mentioned that the existing moratorium also covers wind generation and energy storage systems which is not mentioned in the current zoning law.

An interested resident helping with the Comprehensive Plan indicated that the committee has heard from many people who have expressed concern about solar farms within town. Allowing the comprehensive plan process to complete will give a better picture of what the people want for the community in the future.

The Town Board heard comments from many residents and members of the Comprehensive Plan in favor of waiting for the plan to be completed before lifting a moratorium.

A zoom attendee mentioned she has expressed a need for more revenue in town for a while now and believed solar would be a perfect source of revenue. She mentioned the need for the Planning Board to publicize public hearings for these projects better. She suggested extending

the moratorium on the wind generation and energy storage systems and not commercial solar energy systems, believing projects should be discussed on a case by case basis.

Supervisor Bichteman advised that the Comprehensive Plan is scheduled to be completed by August 2021 but could be done as soon as February. That would allow time for the Town Board to review changes to the Zoning Law and hold public hearings.

The Town Board heard from Mr. Nugent. He explained that the property being discussed was owed by his wife's family for many generations and that he also grew up in Westerlo. Their plan is to build a house on the property and to do so, they had to look for affordable options as they are nearing retirement age.

The Town Attorney explained that if the Town Board extends the proposed local law, it does not foreclose any property owners from coming before the Town Board to ask for a hardship exemption and if authorized, would come before the Planning Board for the regular process. Mr. Peterson explained that the hardship exemption is a more rigorous process. The Town Attorney agreed and explained the process for hardship exemptions.

The Town Board heard more comments in favor and against extending the moratorium.

Councilman Kryzak made a motion to close the second public hearing regarding extending the land use moratorium. Councilwoman Burnside seconded, all in favor motion carried.

#### **REGULAR TOWN BOARD MEETING**

Councilman Boone made a motion to open the regular Town Board meeting. Councilman Kryzak seconded, all in favor motion carried.

#### **SUPERVISOR'S MONTHLY REPORT (JULY), TOWN CLERK MONTHLY REPORT (JULY), INVESTMENT REPORT (JULY),**

Councilwoman Burnside made a motion to approve the Supervisor's monthly report for July, Investment report for July and Town Clerk monthly report for July. Councilman Kryzak seconded, all in favor motion carried.

#### **TOWN BOARD MINUTES**

Councilman Boone made a motion to approve the Town Board workshop minutes of 7/7/20 and Town Board minutes of 7/21/20. Councilman Kryzak seconded, all in favor motion carried.

#### **PAYMENT OF MONTHLY BILLS (AUGUST)**

Supervisor Bichteman made a motion to adopt the following resolution:

**WHEREAS:** the monthly bills have been audited by the town board, be it hereby

**RESOLVED:** that the following August 2020 invoices be paid Voucher # 359 through Voucher # 403 in the amount of \$109,243.66.

Councilman Kryzak seconded the motion, a vote resulted as follows:

AYES: Councilwoman Burnside, Councilman Filkins, Councilman Boone,

Councilman Kryzak, Supervisor Bichteman

NAYS: None

**RESOLUTION # 49 -2020 was duly adopted.**

## **OLD BUSINESS**

### **PROPOSED TRANSFER STATION PERMIT FEES**

After discussion, the Town Board believed \$25 was a fair amount for an annual permit fee. No decisions were made and discussion will continue at the Town Board workshop on Sept 1<sup>st</sup>.

Costs for commercial haulers were discussed with a possibility of their fee being increased from \$100 to \$400.

### **PROPOSED LOCAL LAW NO 3 OF 2020, EXTENSION OF TEMPORARY LAND USE MORATORIUM**

Supervisor Bichteman and Councilman Kryzak expressed their support for extending the moratorium. Attorney Afzali clarified the notion that passing the extension forecloses future opportunities for this particular homeowner or any other homeowner. He advised, there is a variance or exemption procedure built into the local law. Supervisor Bichteman made a motion to adopt the following resolution:

**WHEREAS:** The Town of Westerlo has held a Public Hearing on the proposed extension of the moratorium, be it hereby

**RESOLVED:** The Town Board adopts Local Law No. 3 of 2020 extending a temporary land use moratorium prohibiting Commercial Solar Energy Systems, Energy Storage Systems and Wind Generation Systems within the Town of Westerlo (see attached) for an additional 12 months.

Councilman Kryzak seconded the motion, a vote resulted as follows:

AYES: Councilman Boone, Councilman Kryzak, Supervisor Bichteman

NAYS: Councilman Filkins, Councilwoman Burnside

**RESOLUTION # 50 -2020 was duly adopted.**

## **COMBINING PLANNING AND ZONING BOARDS**

Supervisor Bichteman provided the Town Board with an analysis for potentially combining the Planning and Zoning Boards (see attached). He mentioned this probably wouldn't be instituted until the beginning of the year but brought it up because he needs to prepare the 2021 budget.

Attorney Afzali explained that any time a Zoning Law or ordinance is passed by the Town Board, as a matter of statutory requirement, the Zoning Board is deemed corrected. If the ZBA is a creature of statute that is required to be there subject to the Town having zoning laws, that is non-discretionary. What is discretionary, is the Planning Board powers fall initially to the Town Board however under Town Law, the Town Board can delegate those powers to another administrative body. The Town Board would not be dissolving the ZBA, they would just be vesting them with additional powers that have been given back to the Town Board by the dissolution. He also mentioned that the Town Board can add additional members to the ZBA and it can be renamed. Attorney Afzali also indicated that if the Planning Board is dissolved, the

Town Board would have to amend the local law to allow for additional members to the ZBA. The Town Board has appointing power.

Councilman Boone is concerned that the Planning and Zoning Boards deal with different matters and if the ZBA is revised to adopt Planning Board members or not, there is a learning curve that will be evident.

Councilwoman Burnside asked how a resident can appeal a decision made by the Planning Board. Attorney Afzali indicated that if someone was dissatisfied with a Planning or Zoning Board decision, their right to appeal goes right to the Court under an Article 78.

Councilwoman Burnside and Councilman Kryzak were unprepared to make a decision this evening on the possibility of combining the two boards. Councilman Kryzak was concerned with giving too much power to one board. He would like to speak with all the Planning and Zoning Board members to get their opinions. He advised that he didn't speak with them prior to voting to take away their pay and later found out that those Board members weren't on the same page and ultimately the Planning Board lost a member. He would like to do his due diligence.

A resident believed the Planning and Zoning Boards should remain separate, also indicating there is too much change in the Town all at once, the Board should take time to think about this. Another resident agreed, indicating the Town didn't want to rush with the Solar, they shouldn't rush with this decision either, too much too quickly. She suggested thinking about revenue, all she has heard is cut, cut, cut. She also recommended amending the Local Law to allow for two co-chairs if combining the two boards.

A resident inquired if the ZBA was willing to take on all the work of the Planning Board in addition to their ZBA duties? No response given.

Planning Board Chairperson Verch asked the Town Attorney if the Town Board could cut salaries of the Planning and Zoning Boards without the members voluntarily turning it back in. Attorney Afzali clarified, the Town Board has the power to do so, but his recommendation was that they receive input first. Mrs. Verch indicated no one asked the Planning Board and requested that the Town Board reinstate salaries.

Discussion to possibly reinstate salaries and potentially combine Planning and Zoning Boards will continue at the Town Board Workshop meeting on September 1<sup>st</sup>.

#### **US CENSUS PROGRESS & REMINDER**

Supervisor Bichteman reminded the residents to complete the US Census, it's important.

#### **NEW BUSINESS**

##### **ADOPTION OF LGS-1 (RECORDS RETENTION AND DISPOSAL)**

Supervisor Bichteman made a motion to adopt the following resolution:

**WHEREAS:** The State Archives is revising and consolidating its local government records retention and disposition schedules and issuing a single, comprehensive retention schedule for all types of local governments on August 1<sup>st</sup>, 2020. The new schedule, *Retention and Disposition Schedule for New York Local Government Records* or LGS-1, will supersede and replace the MU-1 be it hereby,

**RESOLVED:** By the Town Board of Town of Westerlo, 933 County Route 401, Westerlo, NY that *Retention to Disposition Schedule for New York Local Government Records (LGS-1)*, issued pursuant to Article 57-A of the Arts and Cultural Affairs Law, and containing legal minimum retention periods for local government records, is hereby adopted for use by all officers in legally disposing of valueless records listed therein.

**FURTHER RESOLVED:** That in accordance with Article 57-A:

- (a) Only those records will be disposed of that are described in *Retention and Disposition Schedule for New York Local Government Records (LGS-1)*, after they have met the minimum retention periods described therein;
- (b) Only those records will be disposed of tht do not have sufficient administrative, fiscal, legal, or historical value to merit retention beyond established legal minimum periods.

Councilman Kryzak seconded the motion, a vote resulted as follows:

AYES: Councilman Boone, Councilman Kryzak, Supervisor Bichteman,  
Councilman Filkins, Councilwoman Burnside

NAYS: None

**RESOLUTION # 51 -2020 was duly adopted.**

### **LIBRARY APPOINTMENTS**

Supervisor Bichteman mentioned two appointments need to be made for the Westerlo Public Library. The Library recommends both Susan Keitel and Maureen Sikule who are two existing candidates that wish to be reappointed as Library Trustees. Supervisor Bichteman made a motion to adopt the following resolution:

**WHEREAS:** The Library needs to appoint two trustees and has made recommendations, be it hereby

**RESOLVED:** The Town Board reappoints Susan Keitel and Maureen Sikule as Library Trustee members their terms expire August 23, 2025.

Councilwoman Burnside seconded the motion, a vote resulted as follows:

AYES: Councilman Boone, Councilman Kryzak, Supervisor Bichteman,  
Councilman Filkins, Councilwoman Burnside

NAYS: None

**RESOLUTION # 52 -2020 was duly adopted.**

### **STORY WALK**

Supervisor Bichteman gave an update on the Story Walk proposed by the Library in the Westerlo Town Park. Both he and Councilman Kryzak volunteered their time to help dig post holes at the park.

## **HEALTH CARE OPTION REPORT**

Councilman Kryzak indicated the Town is looking at potential savings for health care for town employees. He discussed the possibility of the Town going from a gold to silver plan with a potential savings of 29%. He also reviewed HMO vs EPO plans and Councilwoman Burnside indicated employees can go anywhere for emergencies with both HMO and EPO plans. Supervisor Bichteman suggested the Town contribute 70% of the deductibles with the employee paying 30% out of pocket. He also suggested everyone pays 20% of any plan going forward.

Discussion will continue at the next Town Board Workshop meeting on September 1<sup>st</sup>.

Highway Superintendent Jody Ostrander was not in favor of having to pay 20%. He mentioned there are some employees who took the job based on free health insurance 20+ years ago. He also advised he makes the same amount of money now as he did when he started and that he took this job for the benefits and the free health insurance. He suggested if the town wants new hires to contribute 30%, they will know that coming on board but he signed up for zero. He also mentioned that there are municipalities that pay longevity pay.

## **TOWN PARK FEE CLARIFICATION**

Acting Town Clerk Karla Weaver asked for clarification regarding a resolution that was passed at the March 17, 2020 meeting regarding town park fees. It is unclear if the \$50 for resident and \$100 for non-resident fee was for both town parks or if this needed to be addressed further. The Town Board made no decision.

## **AUDIO SYSTEM FOR THE TOWN HALL**

Supervisor Bichteman mentioned that the current audio system at the Town Hall does not have the capacity for more microphones. We can get by with the system we currently have and will be able to see the zoom attendees on the projection screen by the next meeting however would like a better system for budget discussions. He has received an estimate for a new audio system which includes; speakers in the ceiling, microphones for the Board and a microphone for the podium. Pricing is between \$6,500-\$8,500.

Councilman Kryzak would like to try to get by with the current system. He can't justify spending that money when they've asked everyone to tighten the belt.

## **PUBLIC COMMENT**

There were no public comments.

## **EXECUTIVE SESSION**

Supervisor Bichteman announced the Town Board will be entering into executive session to discuss a personnel disciplinary matter and legal matter before the Board. Councilman Kryzak made a motion to enter into executive session at 9:50 pm. Seconded by Councilwoman Burnside, all in favor motion carried.

Councilman Kryzak made a motion to adjourn the executive session at 10:43pm. Seconded by Councilman Boone, all in favor motion carried.

**ADJOURNMENT OF MEETING**

Councilman Kryzak made a motion to adjourn the Town Board meeting. Councilman Filkins seconded, all in favor motion carried. Meeting adjourned at 10:43pm.

Respectfully Submitted,

Karla J. Weaver  
Town Clerk

**TOWN OF WESTERLO**  
**LOCAL LAW NO. 3 of 2020**

**A LOCAL LAW EXTENDING A TEMPORARY LAND USE MORATORIUM PROHIBITING COMMERCIAL SOLAR ENERGY SYSTEMS, ENERGY STORAGE SYSTEMS, AND WIND GENERATION SYSTEMS WITHIN THE TOWN OF WESTERLO**

**BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF WESTERLO AS FOLLOWS:**

**SECTION 1. PURPOSE AND INTENT.**

Previously the Town Board of the Town of Westerlo ("Town Board") adopted Local Law 2019-02, a temporary Moratorium effective August 28, 2019 to preserve its intended objectives and ensure future possible implementation of new zoning regulations regarding the creation or siting of Commercial Solar Energy Systems installations, Commercial Energy Storage Systems, and Commercial Wind Generation Systems pending the further development and adoption of a comprehensive plan, local laws and/or ordinances prepared to regulate and govern such installations.



Since the adoption of Moratorium, the Town's Comprehensive Plan Committee has worked diligently to prepare a draft comprehensive plan and make proposed recommendations for zoning law amendments. However, due to unforeseen delays resulting from the unprecedented global health pandemic, the committee's work has been stalled. Therefore, in order to continue the purpose of the Moratorium to the completion of the process, it is necessary to extend the Moratorium for an additional twelve months.

## **SECTION 2. EXTENSION OF TEMPORARY MORATORIUM.**

Local Law 2019-02 is hereby extended and restated as if fully set forth herein for an additional twelve (12) month period from the effective date of this local law.

## **SECTION 5. STATUTORY AUTHORITY; SUPERSESSION.**

This local law is promulgated and adopted pursuant to Municipal Home Rule Law and the State Environmental Quality Review Act, and its implementing regulations. It expressly supersedes any provisions of the Town Code of the Town of Westerlo, and sections 267, 267-a, 267-b, 267-c, 274-a, 274-b and 276 of the Town Law of the State of New York.

This local law shall supersede and suspend those provisions of the Town Code and New York state law which require the Planning Board and the Town Code Enforcement officer to accept, process, and approve land use applications within certain statutory time periods.

## **SECTION 6. SEQRA DETERMINATION**

The Town Board hereby determines that the adoption of this local law is a Type II action under 6 NYCRR 617.5(c)(36) and that environmental review under the NYS Environmental Quality Review Act (SEQRA) is not required.

## **SECTION 7. CONFLICTS.**

For and during the stated term of this legislation, unless the stated term thereof shall be modified or abridged by the Town Board, this moratorium shall take precedence over and shall control over any contradictory local law, ordinance, regulation or Code provision.

## **SECTION 8. SEVERABILITY.**

The invalidity of any word, section, clause, sentence, paragraph, part or provision of this local law shall not affect the validity of any other part of the law which can be given effect without such invalid part or parts.

## SECTION 9. EFFECTIVE DATE.

The effective date of this local law shall be immediate upon its filing with the Secretary of State.

Supervisor William Bichteman Jr.  
Councilwoman Amie L. Burnside  
Councilman Richard Filkins  
Councilman Joseph J. Boone  
Councilman Matthew Kryzak

Aye – Nay – Abstain  
Aye – Nay – Abstain  
Aye – Nay – Abstain  
Aye – Nay – Abstain  
Aye – Nay – Abstain

Adopted this \_\_\_\_ day of \_\_\_\_\_ 2020.

**By Order of the Westerlo Town Board**

**Karla Weaver, Town Clerk**

### 2020 budgeted Cost of Planning and ZBA

Chairs	\$	6,750.00	
Members	\$	15,000.00	
	\$	21,750.00	2020 Cost

### ZBA combined with Planning Board / 2 meetings per month

Per meetings	\$150 C/\$100 M	\$130 C/\$80 M	\$100 C / \$50 M	
Chair	\$ 3,600.00	\$ 3,120.00	\$ 2,400.00	
<b>6 Members</b>	\$ 14,400.00	\$ 11,520.00	\$ 7,200.00	
	\$ 18,000.00	\$ 14,640.00	\$ 9,600.00	Proposed Cost
	\$ 21,750.00	\$ 21,750.00	\$ 21,750.00	2020 cost
<b>Savings</b>	\$ 3,750.00	\$ 7,110.00	\$ 12,150.00	

  

Per meetings	\$150 C/\$100 M	\$130 C/\$80 M	\$100 C / \$50 M	
Chair	\$ 3,600.00	\$ 3,120.00	\$ 2,400.00	
<b>4 Members</b>	\$ 9,600.00	\$ 7,680.00	\$ 4,800.00	
	\$ 13,200.00	\$ 10,800.00	\$ 7,200.00	Proposed Cost
	\$ 21,750.00	\$ 21,750.00	\$ 21,750.00	2020 cost
<b>Savings</b>	\$ 8,550.00	\$ 10,950.00	\$ 14,550.00	

\* no compensation for site visits