

The August meeting of the East Otto Town Board was called to order at 6:00 PM by Supervisor Ann Rugg on Tuesday August 10, 2021. Ann led the pledge to the Flag.

Present were Town Supervisor, Ann Rugg, Councilman Dave Forster, William Spors, Sidney Barber and Angela Sherman, Highway Supervisor Tom Benz, Clerk Deanna Bowen, and CEO Jeff Holler. Guests: Bob Bowen, Mark Overall, Marlene Gregory, and Robert Komosinski.

A motion was made by Dave Forster and seconded by Sid Barber to authorize the Supervisor to pay all general and highway fund bills audited. Forster, Spors, Barber, Sherman and Rugg were in favor. Motion carried.

	Abstract #	Claim #	Amount
Highway	008	75-87	\$ 34,595.47
General	008	75-79	\$ 3,473.92

A motion was made by Dave Forster and seconded by Angela Sherman to approve and waive the reading of the July 13, 2021, meeting minutes. Forster, Spors, Barber, Sherman and Rugg were in favor. Motion carried.

A motion was made by Dave Forster and seconded by Bill Spors to accept the audit of July 2021 utility bills as presented. Forster, Spors, Barber, Sherman and Rugg were in favor. Motion carried

A motion was made by Angela Sherman and seconded Sid Barber for the following resolution:

WHEREAS, it is necessary to make application to the Cattaraugus County Youth Bureau/New York State Office of Children and Family Services.

WHEREAS, it is necessary for the Supervisor to sign for the Town of East Otto, now, therefore, be it

RESOLVED, the Town Board of the Town of East Otto does hereby authorize the Supervisor to enter into agreements with the Cattaraugus County Youth Bureau/New York State Office of Children and Family Services to run youth programs for the 2021 program year ending December 31, 2021.

David Forster	yes	William Spors	yes		
Sidney Barber	yes	Angela Sherman	yes	Ann Rugg	yes

Motion carried.

Clerk paid to Supervisor \$537.50 for July 2021 fees and commissions collected.

A motion to open the public hearing on electric, wind and battery storage moratorium was made by Bill Spors and seconded by Dave Forster. Motion carried.

Public comment:

Bill Spors asked who sets the \$500 fine. Jeff Holler stated that NYS sets the fine rate.

Robert Komosinski stated that it should not take up to a year for the town to decide if they are going to allow Solar Farms.

Mark Overall stated he is a representative of Buffalo Solar Farm and he agrees with Mr. Komosinski that it should not take up to a year to decide. He said that NYS has a comprehensive plan that the town can get. Mark said that decommissioning can not be above 125% of the cost of the project. That is the cap set by the state.

Jeff said the issue is who determines the cost of the project.

Ann stated that due to consideration for fees and storage of the batteries, NYS comptroller has advised the town to do a moratorium.

Bob Bowen asked what the recommendation was from the zoning board.

Jeff Holler responded that it is the planning board not the zoning board.

Robert stated that he would be happy to show anyone his plans for solar to come onto his property.

Jeff said we can not allow or make exceptions until the town has all their laws done.

Ann stated that everything needs to be in place before we can allow anyone to take action. She said the town does not plan on dragging its feet on this project.

Mark Overall stated that every municipality has a right to restrict things, every landowner also has a right to do things with their property. And along with these setbacks that towns impose also come lawsuits.

A motion was made by Bill Spors and seconded by Sid Barber to close the public hearing. Forster, Spors, Barber, Sherman and Rugg were in favor. Motion carried

A motion was made by Bill Spors and seconded by Sid Barber to accept the following moratorium:

David Forster	yes	William Spors	yes		
Sidney Barber	yes	Angela Sherman	yes	Ann Rugg	yes

Motion carried.

**TOWN OF EAST OTTO PROPOSED LOCAL
LAW 3-2021**

**A LOCAL LAW IMPOSING A MORATORIUM ON SOLAR ENERGY,
WIND ENERGY, AND BATTERY ENERGY STORAGE SYSTEMS IN
THE TOWN OF EAST OTTO**

*Pursuant to the Municipal Home Rule Law Section 10 and
Town Law Sections 264 and 265*

Be it enacted by the Town Board of the Town of East Otto as follows:

Section 1. Title.

This Local Law shall be known as the "Moratorium on Solar Energy, Wind Energy, and Battery Energy Storage Systems."

Section 2. Authority and Intent; Findings of Fact; Purpose.

a. Authority and Intent. Pursuant to its constitutional and statutory authority to regulate and control land use and to protect the health, welfare, and safety of its residents, the Town of East Otto (the "Town") declares a twelve (12) month moratorium on the approval, permitting, siting, construction, implementation, and establishment of solar energy, wind energy, and battery energy storage systems within the Town.

This Local Law is intended to be consistent with and is adopted pursuant to the Town's vested authority to enact zoning laws under the New York State Constitution and the laws of the State of New York, including but not limited to the following authorities: New York State

Constitution Article IX, §§ 2(c)Cii)(10);Municipal Home Rule Law § 10; Statute of Local Governments § 10; and Town Law §§ 264 and 265.

The Town recognizes that New York State has placed limitations on the Town's authority to regulate the establishment of solar energy, wind energy, and battery energy storage systems. The Town intends this twelve (12) month moratorium to halt the establishment of these systems to the maximum extent of the Town's legal authority to do so.

b. Findings of Fact. The Town makes the following findings of fact relating to this Local Law:

1. The Town of East Otto, as a community, greatly values its rural residential character, small-town atmosphere, fine agricultural lands, and cultural, recreational, scenic, and other natural resources.
2. Preservation of the Town's irreplaceable recreational and scenic sites, high-quality agricultural land, air and water quality, and priceless and unique character, is of significant value to the inhabitants of and visitors to the Town.
3. The Town's rich natural environment is a valuable asset that creates a sense of identity and well-being for residents. Preserving and protecting the scenic, recreational, and other natural resources and aesthetics of the Town is important for both a healthy environment and a vibrant economy.
4. The Town does not currently have any regulations specifically addressing wind energy or battery energy storage systems.
5. While the Town recently enacted Local Law No. 1-2021, which regulates solar energy systems, the current regulations do not address or account for the cumulative impacts of multiple solar energy systems or the cumulative impacts of solar energy, wind energy, and battery energy storage systems on East Otto's community character, its aesthetics, its residents, or its scenic, recreational, and

other natural resources.

6. Allowing the activities prohibited by Section 4 of this Local Law without first obtaining more education and information may impair the existing character of the Town, because by their nature, such activities may have the potential to produce a combination of negative impacts upon the environment and people living near these activities. Possible negative impacts to be considered include but are not limited to noise, emergency response and fire fighting considerations, damage to roadways, damage to and loss of agricultural lands and soils, damage to and loss of open space, natural areas, and scenic views, decreased recreational opportunities, and loss of tourism.
7. During the effectiveness of this Local Law, the Town Board can study; review, revise, and update the Town's Comprehensive Plan; and create new land use regulations that systematically regulate wind energy, solarenergy, and battery energy storage systems within the Town.

c. Purpose. The purpose of this Local Law is to enable the Town to stay any and all of the activities prohibited by Section 4 of this Local Law, and all Town-level approvals relating to those activities, for a period of twelve (12) months in order to provide the Town time to study the impacts, effects, and

proper regulation of such activities, to review and update the Town's Comprehensive Plan in light of these activities, and to consider amendments to the Town's Zoning Ordinance to appropriately regulate these activities within the confines of New York State law. The Town Board believes that a twelve (12) month moratorium after the effective date of this Local Law, coupled with the mechanisms for use variances already contained in the Town Zoning Ordinance, will achieve an appropriate balancing of interests between the need to safeguard the character and other resources of the Town, the health, safety, and general welfare of its residents, and the rights of individual property owners or businesses desiring to conduct such activities during that period.

Section 3. Definitions.

For purposes of this Local Law, the following terms shall have the meanings set forth below:

- a. Battery Energy Storage System shall mean a rechargeable energy storage system consisting of batteries, battery chargers, controls, power conditioning systems and associated electrical equipment designed to provide electrical power to a building or to provide electrical grid-related services.
- b. Solar Energy System shall mean the components and subsystems required to convert solar energy into electric energy suitable for use. The term includes, but is not limited to, Solar Panels and Solar Energy Equipment. The area of a Solar Energy System includes all the land inside the perimeter of the Solar Energy System, which extends to any interconnection equipment. A Solar Energy System is classified as a Tier 1, Tier 2, or Tier 3 Solar Energy System, as those terms are defined in Town of East Otto Local Law No. 1- 2021.
- c. Wind energy system shall mean any wind turbine or wind measurement tower or combination of these, including all related infrastructure, electrical lines and substations, access roads, and accessory structures.
- d. Wind turbine shall mean a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics.
- e. Wind measurement tower shall mean a tower used for the measurement of meteorological data such as temperature, wind speed, and wind direction.

Section 4. Moratorium and Prohibition.

- a. For a period of twelve (12) months after the

effective date of this Local Law, no application for a special permit, zoning variance, building permit, operating permit, site plan approval, subdivision plan approval, certificate of occupancy, certificate of compliance, temporary certificate, or other permit of any nature shall be accepted, processed, entertained, approved, approved conditionally, or issued by any board, employee, official agent of the Town for the construction, establishment, or use or operation of any land, body of water, building, or other structure located within the Town for a Battery Energy Storage System, a Wind Energy System, or any Solar Energy System other than a Tier 1 Solar Energy System used exclusively to generate energy for residential, on-site, non-commercial use.

b. For a period of twelve (12) months after the effective date of this Local Law, no person or entity shall use, cause, or permit to be used, any land, body of water, building, or other structure located within the Town for a Battery Energy Storage System, a Wind Energy System, or any Solar Energy System other than a Tier 1 Solar Energy System used exclusively to generate energy for residential, on-site, non-commercial use.

Section 5. Enforcement.

a. **Building Inspector.** The provisions of this Local Law shall be administered and enforced by the Code Enforcement Officer. The Code Enforcement Officer is authorized to issue appearance tickets for violations of this law requiring appearance by the alleged violator in the Town of East Otto Town Justice Court.

b. **Penalties.** Any person, firm or corporation who violates, disobeys, neglects, refuses to comply with or resists the enforcement of any provision of this Local Law or any written order of the Code Enforcement Officer directing compliance with this Local Law shall be guilty of an offense, and upon conviction thereof shall be subject to a fine of not more than five hundred dollars, or imprisonment for a period of not more than fifteen days, or both such fine and imprisonment for each offense. However, a person, firm or

corporation convicted of a second or other repeated violation of this Local Law shall be guilty of a misdemeanor, and shall be subject to a fine of not more than one thousand dollars, or imprisonment for not more than six months, or both such fine and imprisonment for each offense.

c. Civil Penalties. Any person, firm or corporation who violates, disobeys, neglects, refuses to comply with or resists the enforcement of any

provision of this local law or any written order of the Code Enforcement Officer directing compliance with this Local Law shall be deemed to have violated this Local Law and shall be liable to pay the Town a civil penalty of up to one thousand dollars for each such violation. Such a civil penalty may be assessed in any action or proceeding brought by the Town of its taxpayers, pursuant to Town Law §268(2), or by the Town, to enforce the provisions of this local law.

- d. Continuous Violations. Each day a violation or offense is continued or not corrected shall be deemed a separate violation or offense.
- e. Injunction. Compliance with this Local Law may also be compelled, and violations restrained by order or by injunction of a court of competent jurisdiction, in an action brought on behalf of the Town.
- f. Costs and Attorneys' Fees. In the event the Town is required to take legal action to enforce this Local Law, the violator will be responsible for any and all necessary costs incurred by the Town relative to such action, including attorneys' fees, and such amount shall be determined and assessed by the court. If such expense is not paid in full within 30 days from the date it is determined and assessed by the Court, such expense shall be charged to the property or properties within the Town on which the violation occurred, by including such expense in the next annual Town tax levy against such property, and such expense shall be a lien upon such property until paid.

Section 6. Superseding Intent and Effect.

This Local Law shall supersede any inconsistent provisions of the Town Zoning Code, or any and all other local ordinances, laws or resolutions of the Town of East Otto.

Section 7. Severability.

If any provision of this Local Law is determined to be unconstitutional or invalid, the validity and enforceability of the remainder shall not be affected.

Section 8. Effective Date.

This Local Law shall take effect immediately upon filing with the Secretary of State.

CEO Report: Jeff answered 15 phone calls, did 11 inspections, 1 address, issued 3 violation notices and sent 2 certified letters. He deposited \$25 to the clerk.

A motion was made by Bill Spors and seconded by Sid Barber to go into Executive Session at 7:48 PM. Forster, Spors, Barber, Sherman and Rugg were in favor. Motion carried.

A motion was made by Sid Barber and seconded by Angela Sherman to leave Executive Session at 8:00 PM. Forster, Spors, Barber, Sherman and Rugg were in favor. Motion carried.

No action taken.

A motion was made by Angela Sherman and seconded by Dave Forster to adjourn at 8:00 PM. Forster, Spors, Barber, Sherman and Rugg were in favor. Motion carried.

The next meeting will be September 14, 2021 at 6:00pm.

Respectfully Submitted
Deanna Bowen Town Clerk

