

GOVERNMENT OPERATIONS COMMITTEE MEETING MINUTES  
JULY 18, 2016

GOVERNMENT OPERATIONS COMMITTEE MEMBERS PRESENT: O'Brien, Armstrong, Campbell, Gang, Shaw, Skellie, Hogan

GOVERNMENT OPERATIONS COMMITTEE MEMBERS ABSENT: None.

SUPERVISORS: Henke, Hicks, Fedler, Moore, Suprenant, Idleman, Haff, LaPointe

Debra Prehoda, Clerk of the Board

Chris DeBolt, County Administrator

Roger Wickes, County Attorney

Al Nolette, County Treasurer

Harrison Steves, Supt. Bldgs. & Grnds

Laura Chadwick, Real Property Director

Karen Pratt, IT Director

George Perkins, Greenwich Town Board

Public & Media

AGENDA AS PRESENTED IN COMMITTEE NOTICE:

- 1) Call to Order
- 2) Accept Minutes – June 20, 2016
- 3) Hlth. Insurance Consortium – John Weber, Capital Financial
- 4) Department Requests/Reports:
  - A. Buildings & Grounds – Monthly Updates
  - B. Real Property – County Owned Parcels
  - C. County Administration – Borrego Solar – PILOT Agreement
- 5) Meal Reimbursement Rates
- 6) Ethics Review
- 7) Special Assessments – Real Estate Property
- 8) Discuss Solar Opt Out
- 9) Other Business
- 10) Adjournment

Chairman O'Brien called the meeting to order at 10:00 A.M.

A motion to accept the minutes of the June 20, 2016 meeting was moved by Mr. Campbell, seconded by Mr. Gang and adopted.

HEALTH INSURANCE CONSORTIUM – John Weber, Capital Financial, addressed the committee to talk about consortiums and community co-ops. He stated under Obama Care starting in 2018 if you have over one hundred employees you can be in a trust/community co-op. If you are under one hundred, you have to be community rated and you cannot be in a trust. He stated since 1965 it has been fifty employees so they were never able to bring in the small towns and villages into a co-op. He is pushing to change regulations with Senator Little to try to make it that anyone associated with a town, village or county can join no matter the number of employees. In January, he grouped together Warren County, Washington County, City of Glens Falls and Queensbury to see if these entities were combined what the rate would look like. Blue Shield stated looking over three months of data that the rate would be -5% from where our current rate is at. It would be advantageous to group together and be in a community co-op and they have been working on this for six months. The group would not necessarily have the same plan but the estimate was on one single plan. The more in the group the less that is paid in administration fees. More information to come. Our current claims are running good which is what they want to see.

DEPARTMENT REQUESTS/REPORTS:

BUILDINGS & GROUNDS – Harrison Steves, Superintendent, addressed the following items with the committee

- June Monthly Updates: handout on file.

- Put pumps on Boilers – The way Eastern Heating and Cooling is running the system they can only get 165° water to heat the building and it should be up to 180°. If the boilers cool down, you start to get condensation on the inside and that is when they start to rust and deteriorate. He had Paul Martin, engineer, look at this and it would cost \$7500 to design. The actual project cost would be between \$20,000 and \$30,000. He did not budget for this expense. Colonie Mechanical is currently working on changing pumps and possibly this work could be done as a change order. This would make the entire system more efficient. This needs to be engineered for the pump and pipe sizes and plumbing. Even if this is done through a change order, engineering design is still required and he may be able cover that expense within his budget. It was asked if Colonie Mechanical could do the engineering design work. A motion to move requested repairs to the Finance Committee with results from the group we are with (Colonie Mechanical) to see if we can make that happen or have to go out for RFPs was moved by Mr. Campbell and seconded by Mr. Shaw. Discussion. The Treasurer recommended adding this to the HVAC capital project. The motion to move requested repairs to the Finance Committee with results from the group we are with (Colonie Mechanical) to see if we can make that happen or have to go out for RFPs was moved by Mr. Campbell, seconded by Mr. Shaw and adopted.
- RFP for paving project (parking lot) went out and are due back July 25, 2016.
- Roof top unit #2 coil leaks and compressor problems at the Law Center, will probably need to replace next year and will budget for it. Estimated cost \$20,000.
- Installed grain dryer for Aaron Gabriel at Cooperative Extension.
- Completed summer projects at Dix Avenue and St. Paul's Head Start. Working on completing Whitehall and Granville Head Start projects.
- Purchasing storage tank for Law Center \$3,200. The main water storage tank for the kitchen is starting to leak. In the mechanical room with three hot water tanks there are no shut offs or bypasses so to do this work the hot water will need to be shut off and drained. \$3200 for just the tank and another \$3000 to \$4000 for shut offs/bypass valves. Work will have to be done by an outside contractor to get this project done quickly.
- Received a call from John Delucia, Huletts Landing Fire Department, requesting use of the pavilion for free. This is for one specific date. There is an established fee for use of the pavilion and free use has not been granted. Harrison was asked to get a request in writing on fire department letterhead. A motion to move to the Finance Committee with a written request was moved by Mr. Armstrong, seconded by Mr. Campbell and adopted.

REAL PROPERTY – Laura Chadwick, Director, addressed the following items with the committee:

- County Owned Properties – Two properties in Fort Ann – gravel pits. DPW does not need these two parcels but does want to keep the Tripoli Pit. The Real Property Director stated these parcels can be put up for sale through the online auction process. The County Attorney stated they could be sold in different combinations but the first thing that needs to be done is the title work recommending she address this with Dean White, Abstractor. He stated that will also answer a lot of the questions about how we obtained the property and how do you get to it. The title work needs to be done to sell the property. Mr. Moore asked that prior to sale of the properties that someone check with the Fort Ann Planning Board to ensure how we propose to sell these parcels is in compliance with their rules/regulations. The County Administrator

stated that the Superintendent of Public Works stated this is not good quality gravel for public works uses. A motion to do title work and then go out to auction was moved by Mr. Skellie and seconded by Mr. Gang. Discussion. The Treasurer asked what account will be charged for the title work. He stated there is a line for expenses on county owned property. The motion to do title work and then go out to auction was moved by Mr. Skellie, seconded by Mr. Gang and adopted.

- Solar Information Distributed: frequently asked questions, and RPTL 487, attached. Both the Real Property Director and the County Administrator addressed the following items:
  - Borrego Solar – PILOT Agreement – “RPTL§487 (9) (a) A county, city, town, village or school district, except a school district under article fifty-two of the education law, that has not acted to remove the exemption under this section may require the owner of a property which includes a solar or wind energy system which meets the requirements of subdivision four of this section, to enter into a contract for payments in lieu of taxes. Such contract may require annual payments in an amount not to exceed the amounts which would otherwise be payable but for the exemption under this section. If the owner or developer of such a system provides written notification to a taxing jurisdiction of its intent to construct such a system, then in order to require the owner or developer of such system to enter into a contract for payments in lieu of taxes, such taxing jurisdiction must notify such owner or developer of its intent to require a contract for payments in lieu of taxes within sixty days of receiving the written notification.” The County received a letter dated June 15, 2016 from Borrego Solar regarding their intent to construct a solar energy system on property owned by Levi and Deby Cahan in the town of Whitehall. The sixty days expires the Monday prior to the August Board meeting. Mr. Armstrong reported that Erica Sellars-Ryan, Whitehall Town Attorney, is working on a pilot agreement for the town. The County Administrator stated pilots are not needed if you opt out of the exemption; opt out of exemption then no pilot. The County could designate Whitehall as lead agency or do our own pilot on the Borrego project. A motion for make Whitehall the lead agency for Borrego project was moved by Mr. Campbell and seconded by Mr. Gang. Discussion ensued. The County Administrator stated if the County opts out of RPTL §487, Washington County will be less attractive to solar but if we want to allow these and maximize our tax revenue the County stay in the exemption and make strong pilot agreements. Mr. Campbell withdrew his motion and Mr. Gang withdrew his second. The Real Property Tax Services Director stated many towns and schools are opting out of the exemption. A motion to have the County negotiate our own pilot was moved by Mr. Skellie and seconded by Mr. Campbell. Discussion. Mr. Campbell asked if we should have Erica Sellars-Ryan, Attorney, do all the pilots. The County Attorney stated all we have to do within the sixty days is notify them that we are going to require a pilot agreement. The motion to have the County negotiate our own pilot was moved by Mr. Skellie, seconded by Mr. Campbell and adopted. Full Board consideration is required. The specifics of the pilot will be determined once the Board decides/approves moving forward with pilot agreements.
  - Solar Opt Out – Discussion ensued on opting out of solar exemption. A local law is required to opt out. A motion to send opting out of solar exemption to the Finance Committee for consideration was moved by Mr. Campbell, seconded by Mr. Hogan and adopted.

COUNTY ADMINISTRATION – Chris DeBolt, Administrator, addressed the following items with the committee:

- Meal Reimbursement Rates, Non-Union – The County Administrator stated he cannot determine the financial impact of a change in meal reimbursement rates because there is no

real way to track in the financial system because it goes through petty cash. Distributed handout indicating various county meal reimbursement rates, attached. A motion to set non-union meal reimbursement rates at \$7 – breakfast, \$9 – lunch, \$14 – dinner = \$30 per diem and \$40 per diem major metropolitan was moved by Mr. Hogan and seconded by Mr. Shaw. Discussion. Chairman O'Brien stated mirror the CSEA union rates. Mr. Campbell recommends stating only that these are the new rates with no reference to CSEA. The motion to set non-union meal reimbursement rates at \$7 – breakfast, \$9 – lunch, \$14 dinner = \$30 per diem and \$40 per diem major metropolitan was moved by Mr. Hogan, seconded by Mr. Shaw and adopted.

ETHICS REVIEW – The committee discussed concerns with the \$75 gift amount and some wording on the form. A resolution was presented to the Board for consideration and tabled to go back to committee for further review. The County Attorney discussed the wording regarding disclosure of gifts over \$75 and if they were intended to influence you. He stated these are the rules that we have been operating under; the change was to eliminate one of the forms. A motion to send the Ethics Policy back to the full Board for approval was moved by Mr. Skellie, seconded by Mr. Gang and adopted.

SPECIAL ASSESSMENTS - REAL ESTATE PROPERTY – Chairman O'Brien stated when we are talking about this it is not just about Hudson Falls. This would apply to all villages and towns and commercial properties. Putting a cap on it is only a handshake agreement and special assessments could come across as \$500,000 like the Ackley Building clean-up in the Village of Cambridge. He stated one of the things that is brought up is the County makes a profit at the tax sale and he dislikes the use of the word profit. The County makes the towns, schools and villages whole and carries that cost for two and a half years. The risk at the tax sale, the County may or may not get that money back. The County Attorney stated there is no provision in the law to limit the amount that can be added on to a tax bill by a municipality so any agreement we would make would be just that. Mr. Campbell stated they have to get the message we are not doing this because if they go ahead and do this, we have to cut them loose; on their own for tax collection and enforcement. The County cannot afford this; there is no end to the costs. Mr. Hicks stated there is an Attorney General's opinion in 1998 that you can't put demolition or clean up charges on the tax levy. Now, Mr. Nikas has another opinion from 2015 that says something a little different. An Attorney General opinion is an informal and unofficial expression of the views of that office. He mentioned a \$450 abatement cost the Village of Hudson Falls wanted to add last year to the tax roll for a parcel on Elm Street. The collection and attorney costs totaled \$1,375; three times the abatement cost was the village cost. The County would have no control over what they levy and no accounting of what their fees and costs could ever be. The County Attorney stated it is their local law that controls what they put on the tax roll. Mr. Haff stated he does not know how we could be equitable with all the towns and villages without a huge budget liability sticking out there. Let's not do this, this is a bad idea. The Treasurer stated the accounting for the deficit against the tax lien goes against a revenue account. Mr. Campbell stated it is an absolute decrease in fund balance. Mr. Haff stated the test case they provided included legal fees. A motion that we status quo, do not do this, sending a letter to Mr. Nikas stating sorry we are not interested, we are not going there, was moved by Mr. Campbell. Chairman O'Brien stated he is looking for legal advice on what Mr. Campbell said. The County Attorney stated our position is that we are not changing our position at this point of time. Chairman O'Brien stated send to all the towns and villages. Mr. Haff asked why we have to do anything when there is a resolution from January 17, 1997. The County Treasurer stated it is not legal. The County Attorney stated it is an expression of policy but it cannot be enforced. Mr. Campbell stated the only thing we can do is not enforce their tax

implications. Mr. Armstrong seconded Mr. Campbell's motion; not interested, staying the way we are. Discussion ensued on what would happen if they relieved charges. We would pay them this time and then state we will no longer enforce. Chairman O'Brien stated there is a sentiment to not do anything, just let it go because that is our policy/guidelines anyways. Mr. Hogan stated his understanding is that you don't need to do anything; there is no need for a letter at this time. Chairman O'Brien stated no need for a letter at this time but I think the feeling is we want to reinforce our position. The County Attorney added which is if we see relieves you are out. He stated that is the only position we have; the only recourse the County has. Several Supervisors stated that should be in the letter. The County Attorney stated the letter should be addressed to the Village Board not Mr. Nikas. The motion that we status quo, do not do this, sending a letter to Mr. Nikas stating sorry we are not interested, we are not going there was moved by Mr. Campbell seconded by Mr. Armstrong and adopted. Mr. Hogan opposed. The County Attorney will draft the letter for the Chairman of the Board to sign. The letter will go to all village mayors. The County Attorney stated the letter will state the subject has come up, the committee has examined it and our position remains firm that we are not going to allow for relieves and if we see relieves our position will be we will not enforce village taxes for that next year.

#### OTHER BUSINESS:

CAD (Computer Aided Dispatch) System – Karen Pratt, IT Director, stated with the ongoing problems with the CAD system there was conversation late last week to look at our systems in general, network and applications and analyze that. They are going ahead to do that and exploring having someone doing/helping us with that. This is in the very early stages and do not have a quote yet. The core team tasked with monitoring the problems feels that ultimately even if we go looking at a different solution, we would still be living with this application for twelve to eighteen months so this is worthy to look at. This will be discussed at the Public Safety Committee meeting with more information available by then. They will audit anything relating to that system. There may be discussion of a total new system. Need to make sure the problem is not in the network and analysis needs to be done. IT is looking at the system as a whole.

123<sup>rd</sup> Flag – Chairman O'Brien asked if there was any town not committed to the \$200 towards framing the 123<sup>rd</sup> flag. Concern was expressed with the cost to frame. The County Administrator stated the quote is \$3100 to frame. The replica of the original flag cost was \$1200. The real flag, what remains of it, is in a museum. The County Administrator stated it looks like all will participate. By next month's meeting, all the checks should have been received.

The meeting adjourned at 12:28 P.M.

Respectfully submitted,

*Debra Prehoda, Clerk*  
*Washington County Board of Supervisors*

# BUILDINGS AND GROUNDS 2016 UPDATES

## June

- 1) Put pumps on Boilers  
(Engineer - \$7,500, Project \$25,000 - \$30,000)
- 2) RFP for paving project went out, is due back 7/25/16
- 3) Roof top unit #2 has coil leaks and compressor problems  
(May need to replace next year)
- 4) Installed grain dryer for COOP
- 5) Completed summer projects at Dix Avenue and St. Paul's Head Starts. Working on completing Whitehall and Granville Head Start projects.
- 6) Purchasing storage tank for Law Center (\$3,200). Current one is starting to seep. (Nightmare)



**WASHINGTON COUNTY  
REAL PROPERTY TAX SERVICES**

WASHINGTON COUNTY MUNICIPAL CENTER  
383 BROADWAY, FORT EDWARD, NEW YORK 12828  
TELEPHONE: (518) 746-2130  
FAX: (518) 746-2132 TDD: (518) 746-2146  
e-mail : Lchadwick@co.washington.ny.us

*Laura B. Chadwick, CCD*  
Director

Government Ops Comm. Meeting 7/18/2016

Solar

Frequently Asked Questions (FAQ):

- Local Option
- PILOTs
- Ownership

RPTL 487:

- 1(a) What is exempted
  - 1(c) Authority
  - 1(d) used to compute exemption
  - 2 15 years
  - 5 construction time period
  - 6 filing date
  - 7 use
  - 8a opt out
  - 8b contract
  - 9a PILOT
- 
- copy of exemption form RP-487 attached

Review Current options @ Towns, Schools & Villages

Prepared by Wash Co. RP lbc 7/13/16



## Department of Taxation and Finance

OFFICE OF COUNSEL

Issue #2

January 25, 2016

### RECENTLY ASKED QUESTIONS ABOUT THE REAL PROPERTY TAX LAW on the topic of SOLAR ENERGY SYSTEMS

*This is the second in a series of Recently Asked Questions (RAQs) from local officials about the Real Property Tax Law. In this edition, we will focus on the taxability of **solar energy systems** (i.e., solar panels and associated equipment), since we have received more questions on that general topic than any other over the last several months. We must emphasize, however, that the observations offered on the following pages are purely advisory, should not be equated to formal Opinions of Counsel, and should not be construed as binding in any way. Assessors and other local officials seeking definitive legal advice, or seeking guidance on how the law applies to a specific set of facts, are advised to consult their municipal attorneys.*

#### Introduction

A solar energy system is "real property" once it has been permanently affixed to land or a structure (Real Property Tax Law § 102(12)(b); see also, Metromedia, Inc. v. Tax Commission of the City of New York, 60 N.Y.2d 85, 468 N.Y.S.2d 457 (1983); 8 Op. Counsel SBEA No. 3). As such, it is taxable unless it qualifies for an exemption (Real Property Tax Law § 300).

There is an exemption statute that applies specifically to solar energy systems: Section 487 of the Real Property Tax Law (RPTL). Section 487, which also covers wind power systems and farm waste energy systems, generally provides a 15-year exemption from real property taxation for the increase in value resulting from the installation of a qualifying system. A number of questions have recently arisen concerning the application of this exemption statute.

#### Local Option

1. Must every municipality offer the § 487 exemption?

**A:** No. Each municipality may decide for itself whether to offer the exemption. Unlike most other local option exemptions, however, this exemption applies within a municipality unless the municipality has taken action to disallow it.

2. How does the local option feature work?

**A:** The local option that's attached to the § 487 exemption is structured as an *opt-out*, not an *opt-in*. That means that the exemption is automatically in effect within a municipality unless it has adopted a local law, ordinance or resolution providing that the exemption shall *not* be available therein. In municipalities that have taken no action one way or the other, the exemption is in effect. If a local law, ordinance or resolution opting out of the exemption is adopted, a copy must be filed with the New York State Department of Taxation and Finance and the New York State Energy Research and Development Authority (NYSERDA).

3. May an opt-out be made retroactive?

**A:** No. If a municipality opts out, it is effectively disallowing the exemption to solar energy systems where construction had *not* begun by the effective date of the applicable local law, ordinance or resolution (or by 1/1/1991, if later). See § 487(8)(a). Where a system's construction *had* begun by that date, it is not impacted by the opt-out and is entitled to the exemption if otherwise qualified (though it may be obligated to make PILOTs under certain circumstances; see Q. 6-10, below).

Note that for purposes of the § 487 exemption, the construction of a solar energy system is deemed to have begun upon the execution of a contract or interconnection agreement with a utility or, if applicable, upon the payment of a deposit thereunder. The owner or developer must give written notice to the appropriate municipalities when such a contract or agreement is executed. See § 487(8)(b).

4. If a municipality has opted out, may it restore the exemption later?

**A:** Yes. If a municipality that had opted out wishes to begin offering the exemption later, we believe it may do so by repealing the local law, ordinance or resolution that opted out. This is not stated explicitly in the law, but we believe such authority is implicit in statutes of this nature, absent language to the contrary. A copy of any local law, ordinance or resolution restoring the exemption should be filed with both the Department of Taxation and Finance and NYSERDA.

5. May a municipal opt out of the exemption for commercial property while leaving it in place for residential property?

**A:** No. If a municipality *does* opt out – i.e., if it adopts a local law disallowing the exemption – it must do so for *all* properties. It cannot allow the exemption for one type of property while disallowing it for another, because § 487(8) states that once a municipality has opted out, “no exemption under this section shall be applicable within its jurisdiction” (emphasis added). If a municipality does *not* opt out, however, the law *may* allow it to treat commercial and residential properties differently when deciding what their PILOT obligations should be; see Q. 8, below.

### **PILOTs**

If a municipality does *not* opt out – i.e., if it leaves the exemption in place – then qualifying solar energy systems constructed in the municipality will be exempt from taxation for a period of 15 years. However, the municipality then has the option to require the owners of such systems to enter into contracts to make payments in lieu of taxes, which are generally referred to as “PILOTs.”

6. If a municipality leaves the exemption in place and requires owners to pay PILOTs, how much should those payments be?

**A:** That is largely a local decision, except that the statute sets limits on how large these PILOTs may be, and on how long they may last. Specifically, it provides that the PILOTs may not exceed the taxes that would have been payable if the property were not exempt under § 487. It also provides that the period over which the PILOTs are to be paid may not exceed 15 years. See § 487(9)(a). In effect, then, if a municipality leaves the exemption in place and imposes the maximum allowable PILOT obligation, then the owner will be making payments to the municipality in the same amount as if the property were fully taxable. The primary difference is that those payments will have the legal status of PILOTs rather than taxes.

7. What is the maximum PILOT for a solar farm built on vacant land?

**A:** We have heard it suggested that if a solar farm is built on vacant land, the PILOT may not exceed the amount of taxes that were payable on the vacant land immediately before the solar farm was built. In our view, that is not correct. The limit on the PILOTs in such an instance is the amount of taxes that would have been levied on the parcel as it now exists – that is, the land *with* the panels – if the municipality had opted out of the exemption.

8. May different PILOT requirements be imposed upon commercial and residential systems?

**A:** While it is clear that a municipality may not opt out of the § 487 exemption for one type of property while leaving the exemption in place for another type (see Q. 5, above), it is less clear whether it may impose different PILOT requirements on different property types. RPTL § 487(9)(a) states simply that the municipality may require “*the owner of a property*” that qualifies for the exemption “to enter into a contract” to make PILOTs (emphasis added). This wording, which arguably frames the PILOT question as an individualized determination rather than a collective one, provides no guidance as to how owners should be treated relative to one another. While principles of equal protection would clearly preclude a municipality from drawing arbitrary distinctions between similarly-situated owners when setting their PILOT requirements, we believe the law may reasonably be read as leaving open the possibility of treating owners of different types of property differently, as long as there is a rational basis for doing so. Accordingly, if differential treatment is desired, we suggest that the issue be directed to the municipal attorney, who would have to be satisfied that any such differentiation could successfully be defended in the event of litigation.

9. May a municipality enter into a PILOT agreement that requires the owner of a solar energy system to provide the municipality with energy at a discounted rate, or that bases the PILOT payments upon the amount of energy produced by the system or the value of the system?

**A:** Nothing in § 487 prohibits a municipality from structuring a PILOT as described above. However, as noted above (see Q. 6-7), § 487(9)(a) states that PILOT agreements may require annual payments in an amount *not to exceed* the amounts that would have been payable if not for the exemption. Therefore, no matter how the arrangement is structured, the PILOT obligation imposed upon the owner must comply with this limitation.

10. Our municipality received a notice stating that the sender of the notice intends to construct a solar energy system within our municipality. What is the significance of this notice?

**A:** In some cases, a municipality that has not opted out of the § 487 exemption may need to take action to preserve its rights to collect PILOTs on exempt property. The law now provides that the owner or developer of a solar energy system may notify a municipality in writing that it intends to construct such a system. If an owner or developer does so, and the municipality wishes to collect PILOTs on that system, then within 60 days of receiving the notice of intent, the municipality must notify that owner or developer that it intends to require it to enter into a PILOT contract. See § 487(9)(a). Note that the law does not require an owner or developer to use a specific form or include specific language when giving a municipality notice of its intent to construct a solar energy system.

### Ownership

11. May solar panels receive the § 487 exemption if they are not owned by the owner of the underlying land or building?

**A:** Yes. There is no ownership requirement in § 487, so solar panels that otherwise qualify are entitled to the § 487 exemption even if they are owned by a third party.

12. Solar panels will be installed on property that is owned either by a municipality or by a public or private college. The panels themselves will be owned by a private entity, which will sell the electricity to the municipality or college at a discounted rate. Due to the 15-year limit on the § 487 exemption, it has been suggested that the panels may be granted a permanent exemption under the exemption statutes that apply to municipal corporations or non-profit educational organizations, rather than under § 487. Is this permissible?

**A:** No. The real property tax exemptions that apply to municipalities and non-profit educational organizations are embodied in RPTL §§ 406 and 420-a, respectively. Each statute provides that in order to qualify for the exemption real property must be both (1) "owned by" the eligible owner (i.e., the municipality or educational organization) and (2) used for qualifying purposes. Since these panels will be used to generate low-cost electricity for the municipality or college, it may reasonably be argued that these panels will be used for qualifying purposes.

However, the use requirement is just *one* of the requirements that must be satisfied to qualify for exemption under § 406 and § 420-a. In each case, the property must *also* be *owned by* the exempt entity in order to qualify for exemption. Where the panels are owned by a third party, they may not properly be granted a § 406 or § 420-a exemption. We understand there are policy arguments in favor of extending those exemptions to panels in these cases, but doing so would require a change in the wording of the statutes. Under current law, only the § 487 exemption is applicable to such systems.

Note that this analysis does not require the removal of the § 406 or § 420-a exemption from the land or buildings to which the panels will be attached. If that land or those buildings will remain under the ownership of the municipality or college, we see no reason why the § 406 or § 420-a exemption should be removed from the land or buildings in these cases.

### **Residential conservation improvements**

13. There is a separate exemption statute for "residential conservation improvements," namely, RPTL § 487-a. Do solar energy systems qualify for this exemption?

**A:** No. RPTL § 487-a states in its entirety:

Insulation and other energy conservation measures hereafter added to one, two, three or four family homes, which qualify for (a) financing under a home conservation plan pursuant to article VII-A of the public service law, or (b) any conservation related state or federal tax credit or deduction heretofore or hereafter enacted, shall be exempt from real property taxation and special ad valorem levies to the extent of any increase in value of such homes by reason of such addition.

It is undeniable that solar systems offer many benefits, but energy "conservation" is not among them. A conservation measure leads to the use of *less* energy. Examples include installing better insulation or upgraded thermostats, replacing leaky windows or inefficient furnaces, etc. Those are the types of improvements that § 487-a was enacted to exempt, as the legislative history indicates (see, e.g., L.1977, c.858, § 1, "Legislative Findings").

Solar systems are in a different category: They lead to the use of clean, renewable energy in place of energy generated from fossil fuels, but they do not necessarily lead to the use of less energy overall. In fact, solar systems may actually lead to the use of *more* energy, since beyond the fixed cost of installation, the electricity they produce is essentially free.

Moreover, it is a broadly-accepted principle of statutory construction that specific legislative language takes precedence over general language. While § 487-a generally applies to

"insulation and energy conservation measures," § 487 specifically applies to solar energy systems (as well as wind and farm waste energy systems). In fact, both statutes were enacted in the same year, just a few weeks apart (L.1977, c.322 and c.858). It only stands to reason that § 487-a must have been intended to apply to improvements *other than* solar energy systems.

We are aware that in 1980, three years after § 487-a was enacted, solar energy systems were added to the list of improvements that could qualify for financing under a home conservation plan pursuant to Article VII-A of the Public Service Law (L.1980, c.557). An indirect effect of that amendment was to render solar energy systems eligible for the § 487-a exemption for as long as that financing was available. However, the Article VII-A home conservation financing program was terminated on June 1, 1986 by § 135-c(1) of the Public Service Law. That being so, we believe the 1980 amendment that briefly extended this financing program to solar energy systems has no legal significance today.

Accordingly, we do not believe that the § 487-a exemption may properly be extended to solar energy systems.

## Real Property Tax Law § 487

§ 487. Exemption from taxation for certain solar or wind energy systems or farm waste energy systems. 1. As used in this section:

(a) "Solar or wind energy equipment" means collectors, controls, energy storage devices, heat pumps and pumps, heat exchangers, windmills, and other materials, hardware or equipment necessary to the process by which solar radiation or wind is (i) collected, (ii) converted into another form of energy such as thermal, electrical, mechanical or chemical, (iii) stored, (iv) protected from unnecessary dissipation and (v) distributed. It does not include pipes, controls, insulation or other equipment which are part of the normal heating, cooling, or insulation system of a building. It does include insulated glazing or insulation to the extent that such materials exceed the energy efficiency standards required by law.

(b) "Solar or wind energy system" means an arrangement or combination of solar or wind energy equipment designed to provide heating, cooling, hot water, or mechanical, chemical, or electrical energy by the collection of solar or wind energy and its conversion, storage, protection and distribution.

(c) "Authority" means the New York state energy research and development authority.

(d) "Incremental cost" means the increased cost of a solar or wind energy system or farm waste energy system or component thereof which also serves as part of the building structure, above that for similar conventional construction, which enables its use as a solar or wind energy or farm waste energy system or component.

(e) "Farm waste electric generating equipment" means equipment that generates electric energy from biogas produced by the anaerobic digestion of agricultural waste, such as livestock manure, farming waste and food processing wastes with a rated capacity of not more than one thousand kilowatts that is (i) manufactured, installed and operated in accordance with applicable government and industry standards, (ii) connected to the electric system and operated in conjunction with an electric corporation's transmission and distribution facilities, (iii) operated in compliance with the provisions of section sixty-six-j of the public service law, (iv) fueled at a minimum of ninety percent on an annual basis by biogas produced from the anaerobic digestion of agricultural waste such as livestock manure materials, crop residues and food processing wastes, and (v) fueled by biogas generated by anaerobic digestion with at least fifty percent by weight of its feedstock being livestock manure materials on an annual basis.

(f) "Farm waste energy system" means an arrangement or combination of farm waste electric generating equipment or other materials, hardware or equipment necessary to the process by which agricultural waste biogas is produced, collected, stored, cleaned, and converted into forms of energy such as thermal, electrical, mechanical or chemical and by which the biogas and converted energy are distributed on-site. It does not include pipes, controls, insulation or other equipment which are part of the normal heating, cooling or insulation system of a building.

2. Real property which includes a solar or wind energy system or farm waste energy system approved in accordance with the provisions of this section shall be exempt from taxation to the extent of any increase in the value thereof by reason of the inclusion of such solar or wind energy system or farm waste energy system for a period of fifteen years. When a solar or wind energy system or components thereof or farm waste energy system also serve as part of the building structure, the increase in value which shall be exempt from taxation shall be equal to the assessed value attributable to such system or components multiplied by the ratio of the incremental cost of such system or components to the total cost of such system or components.

3. The president of the authority shall provide definitions and guidelines for the eligibility for exemption of the solar and wind energy equipment and systems and farm waste energy equipment and systems described in paragraphs (a) and (b) of subdivision one of this section.

4. No solar or wind energy system or farm waste energy system shall be entitled to any exemption from taxation under this section unless such system meets the guidelines set by the president of the authority and all other applicable provisions of law.

5. The exemption granted pursuant to this section shall only be applicable to solar or wind energy systems or farm waste energy systems which are (a) existing or constructed prior to July first, nineteen hundred eighty-eight or (b) constructed subsequent to January first, nineteen hundred ninety-one and prior to January first, two thousand twenty-five.

6. Such exemption shall be granted only upon application by the owner of the real property on a form prescribed and made available by the commissioner in cooperation with the authority. The applicant shall furnish such information as the commissioner shall require. The application shall be filed with the assessor of the appropriate county, city, town or village on or before the taxable status date of such county, city, town or village. A copy of such application shall be filed with the authority.

7. If the assessor is satisfied that the applicant is entitled to an exemption pursuant to this section, he or she shall approve the application and enter the taxable assessed value of the parcel for which an exemption has been granted pursuant to this section on the assessment roll with the taxable property, with the amount of the exemption as computed pursuant to subdivision two of this section in a separate column. In the event that real property granted an exemption pursuant to this section ceases to be used primarily for eligible purposes, the exemption granted pursuant to this section shall cease.

8. (a) Notwithstanding the provisions of subdivision two of this section, a county, city, town or village may by local law or a school district, other than a school district to which article fifty-two of the education law applies, may by resolution provide that no exemption under this section shall be applicable within its jurisdiction with respect to any solar or wind energy system or farm waste energy system which began construction subsequent to January first, nineteen hundred ninety-one or the effective date of such local law, ordinance or resolution, whichever is later. A copy of any such local law or resolution shall be filed with the commissioner and with the president of the authority.

(b) Construction of a solar or wind energy system or a farm waste energy system shall be deemed to have begun upon the full execution of a contract or interconnection agreement with a utility; provided however, that if such contract or interconnection agreement requires a deposit to be made, then construction shall be deemed to have begun when the contract or interconnection agreement is fully executed and the deposit is made. The owner or developer of such a system shall provide written notification to the appropriate local jurisdiction or jurisdictions upon execution of the contract or the interconnection agreement.

9. (a) A county, city, town, village or school district, except a school district under article fifty-two of the education law, that has not acted to remove the exemption under this section may require the owner of a property which includes a solar or wind energy system which meets the requirements of subdivision four of this section, to enter into a contract for payments in lieu of taxes. Such contract may require annual payments in an amount not to exceed the amounts which would otherwise be payable but for the exemption under this section. If the owner or developer of such a system provides written notification to a taxing jurisdiction of its intent to construct such a system, then in order to require the owner or developer of such system to enter into a contract for payments in lieu of taxes, such taxing jurisdiction must notify such owner or developer of its intent to require a contract for payments in lieu of taxes within sixty days of receiving the written notification.

(b) The payment in lieu of a tax agreement shall not operate for a period of more than fifteen years, commencing in each instance from the date on which the benefits of such exemption first become available and effective.



# Application for Tax Exemption of Solar or Wind Energy Systems or Farm Waste Energy Systems

1. Name and telephone numbers of owner(s):

2. Mailing address of owner(s):

\_\_\_\_\_  
 \_\_\_\_\_  
 Day No. ( ) \_\_\_\_\_  
 Evening No. ( ) \_\_\_\_\_  
 E-mail address: \_\_\_\_\_

3. Location of property (see instructions):

Street address \_\_\_\_\_ Village (if any) \_\_\_\_\_  
 \_\_\_\_\_  
 City/town \_\_\_\_\_ School district \_\_\_\_\_

Property identification (see tax bill or assessment roll)

Tax map number or section/block/lot \_\_\_\_\_

4. Description of solar or wind energy or farm waste energy system:

<input type="checkbox"/> Wind energy system	<input type="checkbox"/> Solar energy system
<input type="checkbox"/> Electrical generation <input type="checkbox"/> Mechanical power	<input type="checkbox"/> Active <input type="checkbox"/> Hot water <input type="checkbox"/> Heating <input type="checkbox"/> Cooling <input type="checkbox"/> Electrical generation <input type="checkbox"/> Combination
<input type="checkbox"/> Farm waste energy system	<input type="checkbox"/> Passive <input type="checkbox"/> Greenhouse <input type="checkbox"/> Sunspace <input type="checkbox"/> Mass wall system <input type="checkbox"/> Thermosiphon air panels <input type="checkbox"/> Direct gain <input type="checkbox"/> Other

Written description (attach additional sheet if necessary): \_\_\_\_\_

5. Date of completion of solar or wind energy or farm waste energy system: \_\_\_\_\_ (month) \_\_\_\_\_ (year)

6. a. Cost of solar or wind energy system or farm waste energy system: \$ \_\_\_\_\_ (attach proof)

b. Incremental cost (see instruction 2): \$ \_\_\_\_\_ (attach proof)

### Certification

I/We, \_\_\_\_\_, hereby certify that the information on this application and accompanying pages constitutes a true statement of fact.

Signature of owner or authorized representative \_\_\_\_\_ Date \_\_\_\_\_

Signature of owner or authorized representative \_\_\_\_\_ Date \_\_\_\_\_

**For assessor's use**

Date application filed \_\_\_\_\_  
 Applicable taxable status date \_\_\_\_\_

- Application approved  
 Application disapproved

Assessed valuation of exemption granted. (see next column if applicable). \$ \_\_\_\_\_

First assessment roll on which exemption is to be granted.

Last assessment roll on which exemption is to be granted.

- (a) Total cost of solar or wind energy system or farm waste energy system ..... \$ \_\_\_\_\_
- (b) Incremental cost of system (cost of components which make possible the production of the solar or wind energy or farm waste energy) ..... \$ \_\_\_\_\_
- (c) Ratio of incremental cost to total cost (b ÷ a) ..... \$ \_\_\_\_\_
- (d) Increase in assessed value of property attributable to addition of solar or wind energy system or farm waste energy system ..... \$ \_\_\_\_\_
- (e) Assessed value exempt due to addition of system (d × c) ..... \$ \_\_\_\_\_

Assessor's signature \_\_\_\_\_

Date \_\_\_\_\_

**Instructions**

**Authorization for exemption**

Real Property Tax Law section 487 exempts from taxation, but not special ad valorem levies or special assessments, real property which includes a solar or wind energy system or farm waste energy system satisfying guidelines established by the New York State Energy Research and Development Authority. The solar or wind energy system or farm waste energy system must be existing or constructed before July 1, 1988, or constructed after January 1, 1991, and before January 1, 2025. A county, city, town or village may adopt a local law or a school district (except the city school district of New York City, Buffalo, Rochester, Syracuse or Yonkers) may by resolution provide that no solar or wind exemption or farm waste energy system shall apply within its jurisdiction for systems constructed after January 1, 1991, or the date of such local law or resolution, whichever is later.

**Duration and computation of exemption**

The exemption is equal to the increase in assessed value of the property attributable to the inclusion of the solar or wind energy system or farm waste energy system and is to be granted for a period of fifteen (15) years. Where the system or its components are also part of the building structure, the increase in value to be exempted from taxation equals the assessed value attributable to the system or components multiplied by the ratio of the incremental costs of the system or farm waste energy system or components to the total cost of such system or components. "Incremental cost" is the increased cost of a solar or wind energy system or farm waste energy system or component which also serves as part of a building structure, above that for similar conventional construction, which enables its use as a solar or wind energy system or farm waste energy system or component. For further information, see the Energy Research and Development Authority guidelines. Note that municipalities that offer the solar or wind energy system exemption may require payments in lieu of taxes not to exceed the amount of the exemption.

**Place of filing application**

Application for exemption from county, city, town and school district taxes must be filed with the city or town assessor who prepares the assessment roll used in levying county, city or town and school district taxes. If the property is also located within a village assessing unit, a separate application for exemption from village taxes must be submitted to the village assessor. In Nassau County, application for exemption from county, town and school district taxes must be filed with the Nassau County Board of Assessors. In Tompkins County, application for exemption from county, city, and town, village, and school district taxes must be filed with the Tompkins County Division of Assessment. Two copies of this application are to be filed with the assessor. **Do not file the application with the Office of Real Property Tax Services.** Upon approval or disapproval, the assessor shall transmit one copy of the application to the State Energy Research and Development Authority, 17 Columbia Circle, Albany, NY 12203.

**Time of filing application**

The application must be filed in the assessor's office on or before the appropriate taxable status date. In towns preparing their assessment rolls in accordance with the schedule provided in the Real Property Tax Law, the taxable status date is March 1. In towns in Nassau County, the taxable status date is January 2. Westchester County towns have either a May 1 or June 1 taxable status date; contact the assessor. In cities, the taxable status date is determined by the city charter provisions and the city assessor's office should be consulted for the specified date. Taxable status date in most assessing unit villages is January 1, but the village clerk should be consulted for variations.

**Exemption guidelines**

Guidelines for determining eligibility for this exemption are available from the New York State Energy Research and Development Authority.

Solar

Municipal Corporations Exemption (RPTL §406)

Real property owned by a municipal corporation within its corporate limits held for a public use shall be exempt from taxation and exempt from special ad valorem levies and special assessments to the extent provided in section four hundred ninety of this chapter. (Subdivision 1)

Nonprofit Organizations Exemption (RPTL §420-a)

Real property owned by a corporation or association organized or conducted exclusively for [various purposes, including religious, charitable, and educational], and used exclusively for carrying out thereupon one or more of such purposes either by the owning corporation or association or by another such corporation or association as hereinafter provided shall be exempt from taxation as provided in this section. (Subdivision 1(a))

Solar, Wind and Farm Waste Energy Exemption (RPTL §487)

Real property which includes a solar or wind energy system or farm waste energy system approved in accordance with the provisions of this section shall be exempt from taxation to the extent of any increase in the value thereof by reason of the inclusion of such solar or wind energy system or farm waste energy system for a period of fifteen years. (Subdivision 2) *Note: This is a local option exemption.\**

Residential Conservation Improvements Exemption (RPTL §487-a)

Insulation and other energy conservation measures hereafter added to one, two, three or four family homes, which qualify for (a) financing under a home conservation plan pursuant to article VII-A of the public service law,\*\* or (b) any conservation related state or federal tax credit or deduction heretofore or hereafter enacted, shall be exempt from real property taxation and special ad valorem levies to the extent of any increase in value of such homes by reason of such addition.

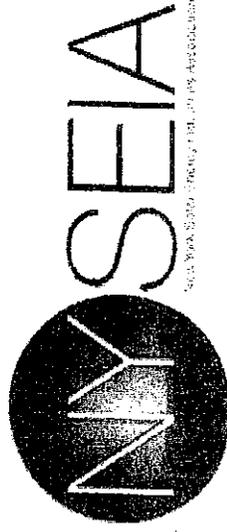
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\* Counties, cities, towns, villages and most school districts may opt not to grant the §487 exemption per subdivision 8. Those that do not exercise this option (i.e., those that leave the exemption in place) may require an owner of eligible property to enter into a PILOT contract of up to 15 years in duration per subdivision 9. The PILOT contract may require annual payments in an amount not to exceed the amounts which would otherwise be payable but for the § 487 exemption.

\*\* Public Service Law Art 7-A nominally makes enables 1, 2, 3 and 4 family homes to qualify for financing for a home energy conservation plan consisting of: caulking and weatherstripping of all exterior doors and windows; furnace efficiency modifications; furnace and boiler retrofits; furnace and boiler replacements, provided that such replacements meet minimum efficiency standards; heat pumps that meet minimum efficiency standards; clock thermostats; ceiling, attic, wall, foundation, air duct, heating pipe, and floor insulation; hot water heater insulation; storm and thermal windows and doors; solar and wind systems; load management devices and energy use meters, together with associated wiring (§135-b). However, eligibility for this program ceased on June 1, 1986, per §135-c.

# PILOTS

- Subdivision 9 does not specify when a PILOT should be required, but typically jurisdictions have done PILOTS for projects above a certain size. To date that size has been projects larger than 3 MW (these have all been wind projects so far)
- PILOTS across New York have typically been annual payments of \$8,000-\$9,000/MW of nameplate system capacity.
- State data demonstrates that jurisdictions that remain opted in and provide the property tax exemption have collected equal or at times better PILOTS than those who had opted out.



RESOLUTION NO. 106

TITLE: AGREEMENT TO ACCEPT PAYMENTS IN LIEU OF TAXES [PILOT] FOR  
COMMERCIAL SOLAR INSTALLATIONS IN SCHOHARIE COUNTY

OFFERED BY: J. Carl Barbie Who moved its adoption.

SECONDED BY: James Buzon Chairman Rules & Legislation Committee

WHEREAS, the County of Schoharie wishes to cooperate and partner with the towns, villages, and school districts in creating a unified policy to deal with the taxable status of commercial solar installations, and

WHEREAS, the real estate parcels that contain those solar installations will fall into overlapping taxing districts, and

WHEREAS, in order to treat all commercial solar installations equally within the County and to avoid a competition between townships because of variations in taxable status on commercial solar projects, and

WHEREAS, NYS Real Property Tax Law Section 487 [9] states that solar, wind and farm waste energy projects are exempt from property taxes for a period of 15 years, but are eligible to contribute to their host community through PILOT agreements, and

WHEREAS, the County of Schoharie and many of the towns, villages, and school districts agree that residential solar projects should be tax-exempt but commercial solar projects should pay their fair share of the costs of municipal expenses.

THEREFORE, upon approval of this Resolution, it is understood a PILOT [Payment in Lieu of Taxes] agreement will be put into place for all new commercial solar installations and no action is needed as far as "opting out" of the automatic tax exemption by any of the taxing districts. Each taxing entity will leave the state-adopted exemption in place as-is. The Town will be the lead agency in putting Solar PILOT agreements in place. Each taxing district will have input into the PILOT agreement but will accept the Town's final decision.

FURTHERMORE, all commercial solar panel arrays will be subject to a PILOT agreement to be put into place by the Town, and the PILOT proceeds will be shared by each taxing district on a pro-rated amount based upon their percentage of tax payments prior to the solar installation [ex: 50% school, 30% county and 20% town], and

WHEREAS, all residential and agricultural solar installations would remain as tax exempt for the 15 year period unless the law changes regarding tax exempt status. This Resolution only applies to commercial installations, and

WHEREAS, under Section 487(9) of the Real Property Tax Law, the PILOT agreement must not exceed the amount of taxes that the entity would have paid on the new array if there were no tax exemption. [For example, if a \$100,000. solar farm is built on a \$5,000. plot of land, the PILOT cannot exceed what the property taxes would have been on a \$105,000. assessed value], and

WHEREAS, it is understood the PILOT will be for 15 years. The first year, the commercial solar installation PILOT payment will be 50% of what the tax liability would have been if there was no exemption. [Example: if the total combined annual tax bills on a \$105,000. parcel are \$5,000., then the PILOT payment for year #1 will be \$2,500. The revenue will be divided among the taxing districts as described above i.e. school 50%, county 30%, town 20%]. PILOT payments shall increase by 5% each year for years 2 through 15 [compounded]. [In this case, at the end of the PILOT, the final PILOT payment in year 15 would be \$4,950.].

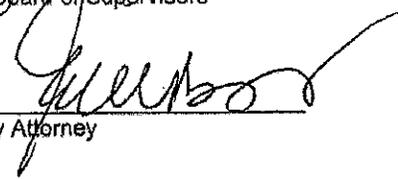
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THEREFORE BE IT RESOLVED, that the Schoharie County Board of Supervisors is in agreement with this multi-jurisdictional cooperation agreement.

Dated: November 18, 2015  
Filed: November 18, 2015

  
Clerk Board of Supervisors

APPROVED AS TO FORM AND LEGALITY.

  
County Attorney

STATE OF NEW YORK  
COUNTY OF SCHOHARIE ss:

I, the undersigned, Clerk of the Board of Supervisors of the County of Schoharie, New York, DO HEREBY CERTIFY that I have compared the above copy of a resolution with the original resolution adopted by the Board of Supervisors of said County on the 20 day of November, 2015, at a regular meeting of said Board and said copy is a true copy of said resolution and of the whole thereof.

I, FURTHER CERTIFY, that at the time said resolution was adopted said Board was comprised of 16 members, with total weighted vote of 2974 and votes were cast as follows: Yes 2407, No, 326, Milone \_\_\_\_\_, Absent  
241, Town of Jefferson, Vroman \_\_\_\_\_

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Board this 20 day of November, 2015.

 Clerk,  
Board of Supervisors of the County of Schoharie



**BORREGO SOLAR**

**Borrego Solar Systems, Inc.  
1460 Broadway  
New York, NY 10036**

Wednesday, June 15, 2016

County Administrator  
Chris Debolt  
383 Broadway  
Fort Edward, NY 12828

RE: Levi and Deby Cahan  
218 Buckley Road  
Whitehall NY 12887

Parcel 51-1-28.4

Dear Mr. Debolt,

I am writing on behalf of Borrego Solar Systems, Inc. to notify you, in accordance with Real Property Tax Law §487 (9)(a), of our intent to construct a solar energy system on the above referenced property. We have commenced the development process at this site and believe it is an attractive location at which to build clean, distributed, renewable energy generation, and we anticipate commencing construction after the expiration of the sixty day notice period under §487 (9)(a). The project will create jobs by employing local construction, electrical and maintenance contractors. It will bring investment to Washington County, and it will bring electricity cost savings to community National Grid rate payers.

We look forward to working with you throughout the development and construction process. Please do not hesitate to contact me if you have any questions.

Sincerely,

Rob Garrity  
Borrego Solar Systems, Inc.



WASHINGTON COUNTY  
OFFICE OF THE ADMINISTRATOR  
WASHINGTON COUNTY MUNICIPAL CENTER  
383 BROADWAY  
FORT EDWARD, NEW YORK 12828  
TELEPHONE (518) 746-2590  
FAX (518) 746-2108 TDD (518) 746-2146  
*countyadmin@co.washington.ny.us*

## MEMORANDUM

**TO:** Government Operations Committee  
**FROM:** Chris DeBolt, County Administrator  
**RE:** Meal Reimbursement Rates  
**DATE:** 6/20/16

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The table below lists meal reimbursement rates for various counties within the State. There has been some discussion among employees and Department Heads that our current meal reimbursement rates are not adequate.

County	Breakfast	Lunch	Diner	Per Diem	Per Diem Metro
Washington	\$4.00	\$6.00	\$12.00	\$22.00	\$34.00
Cayuga	\$6.00	\$10.00	\$20.00	\$36.00	
Schenectady	\$7.00	\$10.00	\$20.00	\$37.00	
Wyoming	\$8.00	\$10.00	\$20.00	\$38.00	
Livingston	\$8.00	\$12.00	\$22.00	\$42.00	\$42.00
Chautauqua	\$7.00	\$11.00	\$23.00	\$51.00	\$51.00
Warren	\$11.00	\$12.00	\$23.00	\$51	\$59-\$74