

GOVERNMENT OPERATIONS COMMITTEE MEETING MINUTES
OCTOBER 24, 2016

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

GOVERNMENT OPERATIONS COMMITTEE MEMBERS ABSENT: None.

SUPERVISORS: Henke, Hicks, Moore, 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

Media & Public

AGENDA AS PRESENTED IN COMMITTEE NOTICE:

- 1) Call to Order
- 2) Accept Minutes – September 22, 2016
- 3) Department Requests/Reports:
 - A. Buildings & Grounds – Monthly Updates
 - B. Real Property – Online Auction Update
 - C. County Administrator
 1. Contract Renewals
 - a) Auditing Services
 - b) Labor Negotiations & Legal Services
 - c) Workers Comp. & Disability Administration
- 4) Discuss Purchasing
- 5) Solar Opt-Out
- 6) Other Business
- 7) Adjournment

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

A motion to accept the minutes of the September 22, 2016 meeting was moved by Mr Gang, seconded by Mr. Skellie and adopted.

BUILDINGS & GROUNDS – Harrison Steves, Superintendent of Buildings and Grounds, addressed the following items with the committee:

- Monthly Updates:
 - WIC Reception is almost complete – just odds and ends to finish.
 - Parks are closed for 2016 season
 - Installing UPS in the phone room – for IT equipment.
 - Getting machinery ready for the winter
 - Replaced bathroom floor at Whitehall Head Start – toilet leaked and had to replace floor.
 - Will mow lawns one last time and put mowers away
 - Spoke with DOH about lead testing for the Head Start buildings – The schools are testing for lead and Head Start is a federal program and exempt. He spoke with Claire Murphy, EOC Executive Director, and they agree they should test for lead once a year. The cost is about \$700 for all of the Head Start schools.
 - Ready to implement County Caller I.D. – Currently when you call out from the County; it only shows the County's main number. With the implementation of the caller ID, the person will get the number of the person calling. There is caller ID coming in to the building so employees know who is calling. Mr. Shaw asked if there was a cost and the County Administrator stated he did not believe there was any additional cost because we already have it, now the number is being mapped to the caller verses all identified by the main number.
 - Cost for 3 boiler pumps (\$26,000) – The Superintendent of Buildings recommends adding an additional \$3,000 to \$4,000 to that cost for wiring. He also recommends

going with a charge order to the vendor who is installing the main pumps this fall. A motion to authorize change order for three (3) boiler pumps was moved by Mr. Campbell and seconded by Mr. Armstrong. Discussion. He does not have this funding in his budget. Mr. Campbell, Budget Officer, recommends taking the funds from Contingency. The motion to authorize change order for three (3) boiler pumps was moved by Mr. Campbell, seconded by Mr. Armstrong and adopted.

Float for Lake Lauderdale Swim Program - Buffy Race, Waterfront Director for the Lake Lauderdale Swim Program, addressed the committee. She clarified that she was not looking for funding to purchase a float. Isaac Robertson, an Eagle Scout, is making the float for his Eagle Scout project. This is for the participants to become better swimmers and to learn how to enter the water by diving or jumping in. They are making the float so it can be pulled to shore and locked to a tree during non-swim program times. The Superintendent of Buildings, who maintains the parks, stated he believes if the Department of Health inspected the park, that float would have to conform to their rules. Ms. Race will contact the Department of Health for specifics for compliance. He feels this will also cause a problem for the lifeguards asking why they can't use it. Ms. Race stated it will be locked to the tree just like the row boat. The suggestion was made to attach a sign that states for lessons only. The float will stay in the shallow water. This float is only going to be used for swim lessons from 9 to 11 AM. The public would not have access to the float. Chairman O'Brien would like the County Attorney's opinion on the liability prior to approval. He stated if we decide to approve the float, there is no cost to the county; the swim program will take in and out on a daily usage basis, a sign stating not for public use – owned by swim program, and built in compliance with Department of Health regulations. Mr. LaPointe stated this will be an attractive nuisance and an added burden for the lifeguards. He stated kids will get on it and jump off. A motion to approve allowing float for Lake Lauderdale swim program pending approval from the County Attorney from a legal liability standpoint was moved by Mr. Hogan, seconded by Mr. Gang and adopted.

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

- Online Auction Update – The two County-owned parcels for sale in Fort Ann are on the Auctions International website. As of this morning, there is a bid on Lot #1 for \$8,100 and Lot #2 for \$5,100 and a combined bid of \$20,100. She mentioned there is a property class code on those two parcels of 720 meaning mining or quarry. December 18th is the online auction end date. Both parcels are in the Fort Ann school district. Mr. Shaw asked if the property was ever looked at regarding having any valuable timber on the properties. Mr. Shaw will look at the property and report back at next month's meeting.

BARNSTORMERS SNOWMOBILE CLUB – The Clerk stated that annually the Barnstormers Snowmobile Club requests permission to maintain and ride on a designated snowmobile trail on County owned property, the above-mentioned parcels in the Town of Fort Ann. Permission will be granted to the club and advised that the County has advertised these parcels for sale.

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

- Contract Renewals: Distributed and explained the attached summary quotes for the contract renewals. These are professional services and going out to bid is not required with committee approval. He recommends staying with these vendors. Mr. Haff recommends RFP for these services. Mr. DeBolt stated it has not been the practice to RFP these every time they come up.
 - Benetech – Worker's Comp Administration & Disability 2017 - 2019 – \$55,623,

\$57,292, \$59,010 and Disability \$7,576, \$7,803 & \$8,037.

- Whittemore, Downen & Riccardelli – Auditing & GASB Services - \$53,450
- Larry Paltrowitz – Labor Negotiations & Other Services - \$45,000

A motion to accept contract renewals was moved by Mr. Campbell, seconded by Mr. Gang and adopted.

DISCUSS PURCHASING – Chairman O'Brien stated with the new purchasing process going on with the New World Financial System there has been a bigger burden placed on the Purchasing Department and there are pieces of Purchasing out in other departments. He plans within the next six months to look at what is needed to bring all the purchasing together. Chairman O'Brien will bring a recommendation back to the committee in a few months with a goal of more efficiency and less cost to the County. The County Administrator stated there is the issue of the procurement card that currently is handled by the County Treasurer's Office and with centralized purchasing those duties would not be handled by the Treasurer's Office. Currently, purchasing is handled by a part time Purchasing Coordinator. The Treasurer stated that purchasing needs a full time person.

INFORMATION TECHNOLOGY – Chairman O'Brien also plans to look at the IT Department after the budget process to potentially issue an RFP for a consultant to evaluate our IT needs noting not that there is anything wrong but looking at the massive amount of information they handle and how the IT department is relied on, it should be looked at overall. The plan is to look at this in the future. He does not have any estimate yet on what this IT consulting might cost. The County Administrator recommends taking it out of the IT capital project. Chairman O'Brien suggested a target price of \$50,000 to \$75,000 and this will be looked into after the budget process.

SOLAR OPT-OUT (Handout attached.) – Chairman O'Brien placed the solar opt-out on the agenda for further discussion. Laura Chadwick, Real Property Director, shared information from a recent conference she attended. Renewal energy PILOTS (payments in lieu of taxes) were discussed with the recommendation to do them through the IDA but noted in Washington County the majority of the entities do not have zoning and our IDA does not get involved in these projects. Notification of these projects is an issue and the conference discussed working with Code Enforcement/local compliance officers on permits. If the PILOT option is considered, she recommends a blanket/standardized PILOT to follow. A new 483-e exemption has been instituted that applies to the anaerobic digester waste for agricultural purposes; they are now treated separately. Discussion ensued. A new resolution is needed to pass the local law to opt-out. The County Attorney stated a new local law and public hearing are not required. A motion to present a resolution to opt-out of solar exemption was moved by Mr. Shaw, seconded by Mr. Gang and adopted. Mr. Armstrong opposed.

OTHER BUSINESS:

Town of Hartford Audit – Mr. Haff stated the Town of Hartford was recently audited by the NYS Comptroller's Office. They inquired if the town had a disaster recovery plan and breach notification and data stored off site policies. In 2014, funds were budgeted in a capital project for a County disaster recovery plan. IT might have a plan developed but no County policy has been adopted.

The meeting adjourned at 11:22 A.M.

Respectfully submitted,
Debra Prehoda, Clerk
Washington County Board of Supervisors

	Prior Agreement		Renewal		Difference	
Preferred Advocates / Larry Paltrowitz						
Labor Negotiations & Labor Litigation Services	2014	\$ 42,000	2017	\$ 45,000	3,000	7%
	2015	\$ 42,000	2018	\$ 45,000	3,000	0%
	2016	\$ 42,000	2019	\$ 45,000	3,000	0%

Whittemore, Downen & Ricciardelli, LLP						
Annual Auditing Services		\$ 49,400		\$ 52,350		
GASB 68		\$ 1,650		\$ -		
NYS DOT		\$ 1,050		\$ 1,100		
Total Services	2016	\$ 52,100	2017	\$ 53,450	1,350	3%

Benetech, Inc.						
Workers Compensation Claims Administration	2014	\$ 52,430	2017	\$ 55,623	0	0%
	2015	\$ 54,003	2018	\$ 57,292	1,669	3%
	2016	\$ 55,623	2019	\$ 59,010	1,718	3%

Benetech, Inc.						
Disability Claims Administration	2014	\$ 7,140	2017	\$ 7,576	0	0%
	2015	\$ 7,354	2018	\$ 7,803	227	3%
	2016	\$ 7,576	2019	\$ 8,037	234	3%

RECENTLY ASKED QUESTIONS ABOUT THE REAL PROPERTY TAX LAW

on the topic of

SOLAR ENERGY SYSTEMS

NYS Department of Taxation & Finance

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

See: RPTL § 487 on Page 25

From Page 24: NYS Dept. of Taxation & Finance Answers Questions on RPTL § 487

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., 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., 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

See: RPTL § 487 on Page 26

30 YEARS OF SERVICE

- Site Planning & Design
- Geotechnical Engineering
- Structural Analysis & Design
- Surveying & Mapping
- Environmental Remediation & Investigations
- Hydraulics & Hydrologic Analysis
- Zoning & Comprehensive Planning
- Hazard Mitigation Planning
- Transportation & Infrastructure
- Water Resources
- Power & Energy
- Construction Management
- Special Inspections
- Materials Testing

TECTONIC
Practical Solutions, Exceptional Service

70 Pleasant Hill Road
Mountainville, NY 10953
Tel 800-829-6531
www.tectonicengineering.com

**From Page 25: NYS Dept. of Taxation & Finance Answers
Questions on RPTL § 487**

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, 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 property 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

See: RPTL § 487 on Page 26

**From Page 26: NYS Dept. of Taxation & Finance Answers
Questions on RPTL § 487**

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 potentially applicable to such systems.

See: RPTL § 487 on Page 29

Laberge
ENGINEERING
ARCHITECTURE

Group
SURVEYING
PLANNING

Celebrating
50
YEARS OF
EXCELLENCE
1964 - 2014

- Municipal Engineering
- Wastewater
- Stormwater
- Water Treatment
- Surveying
- Transportation Infrastructure
- Grant Writing & Administration
- Economic Development
- Environmental Assessment
- Site Planning & Design
- Building Feasibility Analysis
- Planning & Zoning
- Public Outreach
- Municipal Facilities
- Shared Services
- Asset Management

From Page 28: NYS Dept. of Taxation & Finance Answers Questions on RPTL § 487

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. □

SPREAD THE WORD!

Need to reach
20,000-plus New York State town officials?

We will run your announcements regarding any grant, job or training opportunities around New York State, as well as notable achievements.

Please send your announcements to
Libby Schirmer, Publications Specialist,
150 State Street, Albany, NY 12207.

