

**TOWN OF SOMERSET  
PLANNING BOARD  
July 7, 2016**

Present: Jon Hotaling  
Krista Atwater  
Chris Czelusta  
Gary Few  
Norman Jansen  
Mike Norris, Counsel  
Drew Reilly, Engineer

Attendance: Approximately 15 people

Chairman Hotaling called the meeting to order at 7:30PM.

**PUBLIC HEARING – BARBARA EGGERT/LIGHTHOUSE WIND MET TOWER  
7469 W. SOMERSET ROAD**

On a motion of G. Few, seconded by N. Jansen, the following resolution was

ADOPTED	Ayes	4	Hotaling, Atwater, Few, Jansen
	Nays	0	
	Abstain	1	Czelusta

Resolved the Barbara Eggert/Lighthouse Wind Public Hearing reconvene from June 4, 2016.

Chairman Hotaling recognized that he received hard copies of the site plan. N. Jansen wants to look at them. K. Atwater and G. Few concur. The plans were opened and passed out.

D. Reilly has a memo to be read after the public forum has taken place.

Pam Atwater would like to see all correspondence from the town and APEX that is on file be available for the public to view.

Taylor Quarles from APEX provided an update. Dan Fitzgerald of APEX and Steve Wilkinson of Fisher Associates were introduced. He stated that site plans were sent to the board. Attorney Norris stated that the site plan which was emailed by Taylor Quarles on June 21, 2016 was forwarded to the entire board by him on July 1, 2016 following a voice mail request of Mr. Quarles on July 1. The hard copies were received by J. Hotaling on July 1, 2016. Before Steve Wilkinson speaks, Taylor requested the hard copies be distributed to the board members to look at. Hard copies were distributed to board members.

Steve Wilkinson of Fisher Associates said the land to be used was surveyed. It was also surveyed by a wetlands scientist and no wetlands were found. They placed the proposed tower on the plans with the correct orientation to measure the wind correctly. All farm buildings, farm fields, farm roads, RR line and transmission lines are shown on

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the plan. Flood plains were also looked into and none were found. This project would require access for fire and emergency vehicles. The Fire Department will be contacted by J. Hotaling to conduct an inspection. Wetlands soil testing was not conducted, only visually inspected.

N. Jansen is concerned about the road over the RR track as it may be a treacherous path.

Taylor Quarles stated he was not aware of the emergency access requirement. A visual simulation from the cemetery for the Lyndaker matter was previously requested and was provided to the board on June 21, 2016 with the site plans. A request was also made from the board regarding Mercy Flight. T. Quarles contacted Mark Boies, director of Operations for Mercy Flight, and provided them with the site plan, marker lighting, marker balls that will be used, tower painting scheme and other details. Mercy flight finds the submittals acceptable.

Steve Royce has lived in the area less than a year. He wants to know exactly where these towers are going to be. He was shown the areas on a map.

Lyle Whitford thought that the planning board had 90 days to approve or disapprove a permit. He was informed that a public hearing can remain open until all information is requested and received. After a hearing is closed, the planning board has 62 days for a decision.

Floyd Koerner asked if the engineering plans for the current applications are comparable to the Nellist permit. T. Quarles stated that the current applications are more detailed. He wants to know why this permit is taking so long to decide.

Jim Hoffman has heard talk of the board being open minded and he would like the board to use their authority to reject this plan. The public doesn't want this big project. Nineteen organizations have issues with this project. The project will be the biggest in this part of the country. Overpowering things can make it rejected. We are smarter now than when the previous study towers went up. He wants it rejected because it is a bigger threat to our community.

Cathi Orr is appalled at the audacity of APEX coming into our town and trying to tell the planning board what to do. She does not feel that this project should be approved.

Chris Bronson would like the board to examine the entire letter from Mercy Flight and look at each item that they did not object to.

Joseph Fox stated that he is not connected with APEX in any way. He has no problem with towers, they will be here for three years and then they will be gone. He said the tests should be available and the results should be revealed.

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Betty Wolanyk has heard repeatedly from APEX that they will be submitting their final proposal to build industrial wind turbines. She thinks that there will not be enough time between met tower approval and when the application is filed. She thinks it is too late and encourages the board to vote no.

Agnes LaPort states that almost everyone in this town does not want the project. She doesn't see why APEX is spending so much money on this project when it isn't wanted. She would like a no vote from the board.

Dan Fitzgerald knows the larger project is controversial. It is a large decision that has to be made but it is not the issue before this board tonight. The issue tonight is the Eggert met tower. He feels all of the requested information has been provided and feels a decision should be made tonight.

Sue Davis feels the board is doing a good job.

On a motion of N. Jansen, seconded by G. Few, the following resolution was

ADOPTED	Ayes	4	Hotaling, Atwater, Few, Jansen
	Nays	0	
	Abstain	1	Czelusta

Resolved the public hearing remain open.

**PUBLIC HEARING – CHARLES LYNDAKER/LIGHTHOUSE WIND MET TOWER  
8746 LAKE ROAD**

On a motion of N. Jansen, seconded by G. Few, the following resolution was

ADOPTED	Ayes	4	Hotaling, Atwater, Few, Jansen
	Nays	0	
	Abstain	1	Czelusta

Resolved, that the Charles Lyndaker/Lighthouse Wind Public Hearing does reconvene from June 4, 2016.

The Planning Board was given copies of the site plan.

Taylor Quarles representing APEX stated the original application was submitted in March 2016 and has most recently provided three requests from the board:

1. Site plan
2. Visual Simulation – Completed by Fisher.
3. Mercy Flight consultation – Plans and configurations were submitted and found acceptable by Mark Boies.

Steve Wilkinson showed the site plan and said the land to be used was surveyed. It was also surveyed by a wetlands scientist and no wetlands were found. This is a simpler site with no railroad tracks. They placed the proposed tower on the plans with

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the correct orientation. All farm buildings, farm fields, farm roads are shown on the plan.

N. Jansen – The X on the site plan is where the guy wires will be located. The Nellist tower guy wires are not necessarily the same. It is based on the best way to measure wind.

K. Atwater – Is this the original site that was proposed? T. Quarles - Originally in March the tower was changed to two times the height of the property line.

G. Few – Wanted to know where Lover's Lane was in location to the proposed tower. It is not close to the project, the map is not to scale.

J. Hotaling – Asked if the Access road will be Mr. Lyndaker's driveway? T Quarles – Yes and his farm road.

Annie Smith states APEX has proposed more towers for Yates. The county planning board has put a six month moratorium on any Met Towers until more studies are done. She suggests that the Town of Somerset do the same until more information is received.

Taylor Quarles feels that he addressed the three remaining items and surveys and letters were submitted. 1. Site Plan 2. Visual Simulation 3.. Mercy Flight Consultation He requests the closing of the public hearing and that the board takes action.

N. Jansen – Wanted it pointed out where the camera man was standing while photographing the visual simulation. The camera was located at the back of the cemetery according to the plans. These towers will be temporary, how long? T. Quarles – they will be up for three years.

Jim Hoffman would like the towers to be viewed as permanent not as temporary. Some towers in the town have been up longer than their proposed time. The tower design is some of the worst design possible. The whole issue of tower design should be examined. If a tower is not there no one can run into it. A well marked tower will be obnoxious to look at. Weather may affect visibility.

Chris Bronson would like the board to close this hearing and vote no.

Pam Atwater thinks typically, public records for these types of hearing are made public. She would like access to all of the related information.

Cathie Orr agrees that all of the information should be made public and the towers painted white and orange will be obnoxious. She would like a no vote.

Agnes LaPort states all of the information should be made available to the public. The towers may or may not be pretty but they are unnecessary and the board should stop them.

Herb Linderman thinks that the town has made it clear that the public doesn't want this project. He urges the board to defeat the proposal.

Betty Wolanyk would like to see the information made public. She would like to check with Natural Resources Conservation Service on Federal wetlands designations as well as the state level. Feels that wetlands expert would not find plants on currently farmed land without a soil test.

Dan Fitzgerald feels that all of the information that was requested has been provided. This meeting is a public record and access could be made at the town hall. Inquiries can also be made at the APEX office in Barker. Home rule can be taken the other way, the landowners want a met tower on their property and the board can take that right away. Landowners want to do what they want with their land.

Resident – my land is my decision. Businesses have to make decisions that affect the community. Your land does not only affect you.

Steve Royce states that it may be your land but your neighbors don't want a garbage dump next to it.

Herb Linderman thinks that Mr. Fitzgerald can have the same right that he can have. He is limited to anything not taller than thirty five feet and said APEX is welcome to thirty five feet.

Drew Reilly – Special use permits are decided upon by a case by case basis. Each proposal is unique to itself and burden of proof is upon the applicant. Information has to be on record. Three sections of the law are applying to this project. Information from applicant was supplied as soon as possible within the thirty days in between meetings. The law states information should be given thirty days before the meeting. All special use permits typically have reasonable conditions.

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1. Formal Site Plans – Completed and very specific. They are missing size of access road, drainage channels and direction of flow, utility information and landscaping plan. No grading is taking place onsite so may not need drainage channels. Utility plan, no utilities used. Landscape plan, this plan may not need one. Access road size, need sizes and material.
2. No Turbine Information – no turbines. APEX has gone on the record that these towers will not produce noise.
3. Geotechnical Information – None required, no foundation.
4. Inspection after bad weather – After a large storm or wind event they should be inspected because they are only being held up by guy wires.
5. Fencing – Fencing is not proposed. Could they be climbed?
6. Wind Energy Law – Lattice and guy wire support structures are not allowed. If allowed, how will safety issues be addressed? The applicant believes painting and installation of high visibility sleeves will address these ground level safety issues.
7. Removal Bond - The applicant has offered a removal bond in case the MET facility is not removed after it is no longer in use. They will pace a three year limit that the tower will be in place and would be a condition of the SUP.
8. Certifications – The applicant will need to provide the appropriate certifications required in the law. This should be a condition of the SUP.
9. SEQR materials – Applicant is contending that these actions are Type 2 actions and do not require SEQR.
10. Drainage – No grading will take place. Pickup trucks will use existing “farm roads” into the site and no clearing will occur at the site. They do not believe there will be a site disturbance of more than one acre and will not require SPDES/SWPPP.
11. LWRP – projects are not within the area.
12. Niagara County Planning Board – The sites are both located off of State Highways but they do not appear to meet the requirement for referral.
13. Agricultural District – The sites are located within State/County designated Agricultural District and these non-agricultural uses will require an agricultural data statement. The applicant has submitted Ag data statements for both sites.
14. Mercy Flight – The issue of Mercy Flight operating in this area was raised. Marc Boies, Director of Operations, Mercy Flight was given both site plans and has stipulated that they find the lighting acceptable as follows: They would be lit with night vision goggle compatible solar powered FAA L-810 lights in the color red. These lights would most likely be a steady red light two feet from the top of the tower. Drew Riley will check with Mercy Flight to see if they want a steady or a flashing light for the tower.
15. Visibility – Concern was expressed about the aesthetic impact of the towers, as these towers would be seen from nearby cemeteries. A visual analysis was done for the Lyndaker project, but there was not enough time for the Eggert project. The visual for both would be similar.

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16. Guyed Wire Structure – The construction of “guyed wire” has been questioned by the NYSDEC (bird issues) and the Town has expressed concern due to safety issues. The applicant has proposed to install high visibility sleeves on the wires and two marker balls on the outside wires.

To complete the process, the Planning Board will need to consider comments received and input received from the SEQR process, make an Agricultural determination, then make a Special Use Permit decision (Approve, Approve in Part, Approve with Conditions, or Deny) and site plan decision.

Mr. Reilly discussed the Criteria which must be considered in the Special Permit Law:

1. Will be in harmony with the purpose of the land use district in which it is located and with the general intent and purposes of this chapter.
2. Will be detrimental to adjacent uses.
3. Will cause undue traffic congestion, unduly impair pedestrian safety, or overload existing roads considering their current width, surfacing, and condition and will have appropriate paving and be accessible to fire, police, and other emergency vehicles.
4. Will overload and public water, drainage, or sewer system, or any other municipal facility, or degrade natural resource or ecosystem.
5. Will be suitable for the property on which it is proposed, considering the property’s size, location, topography, vegetation, soils, natural habitat, and hydrology, and, if appropriate, its ability to be buffered or screened from neighboring properties and public roads, and its existing and proposed use.
6. Will result in excessive noise, dust, odors, solid waste, or glare, or create any other nuisances, and will satisfy the general land use performance standards of this chapter.
7. Will adversely affect the aesthetics of the premises and adjacent properties and the neighborhoods.
8. Will cause the site to be unduly congested, dangerous, unattractive to visitors, or unfriendly to pedestrians.

Drew Reilly suggested that APEX may want to go on record with an explanation as to why APEX is not putting up a monopole structure, in consideration of the letter received by the NYSDEC.

On a motion of N. Jansen, seconded by G. Few, the following resolution was

ADOPTED	Ayes	4	Hotaling, Atwater, Few, Jansen
	Nays	0	
	Abstain	1	Czelusta

Resolved the public hearing remain open.

Public hearing concluded at 9:18pm.

**APPROVAL OF MINUTES**

On a motion of G. Few, seconded by N. Jansen, the following resolution was

ADOPTED Ayes 5 Hotaling, Atwater, Czelusta, Few, Jansen  
Nays 0

Resolved the minutes of the June 2, 2016 meeting are approved as submitted.

Communication – A letter was read by Deputy Clerk Stoloski from David Robison, a resident of Somerset, regarding MET towers and said letter will be entered into the records.

Discussion on the Proposed Solar Energy Systems Law was held by Mr. Norris.

The following is a proposed amended version of Article XXII “Solar Energy Systems” Law for the Town of Somerset. The planning board will review and return with their comments at its September meeting.

**TOWN OF SOMERSET  
LOCAL LAW NO. \_\_\_\_\_ OF THE YEAR, \_\_\_\_\_**

**A Local Law Entitled “Solar Energy Systems”**

Be it enacted by the Town Board of the Town of Somerset as follows:

The Zoning Ordinance of the Town of Somerset, Niagara County, New York, as contained in Chapter 205 of the Code of the Town of Somerset, is hereby amended as follows:

Article XXII entitled “Small Scale Solar Energy Systems” is hereby repealed in its entirety and replaced with a new Article XXII, entitled “Solar Energy Systems”, as follows:

§ 205- 104 Findings.

The Town Board of the Town of Somerset makes the following findings:

- A. The Town Board of the Town of Somerset recognizes that solar energy is a clean, readily available and renewable energy source and the Town of Somerset intends to accommodate the use of solar energy systems.
- B. However, the Town Board finds a growing need to properly site all types of solar energy systems within the boundaries of the Town of Somerset to protect residential, business areas and other land uses, to preserve the overall beauty, nature and character of the Town of Somerset, to promote the effective and efficient use of solar energy resources, and to protect the health, safety and general welfare of the citizens of the Town of Somerset.



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- C. Prior to the adoption of this article, the Town’s laws only addressed the siting of small scale solar energy systems. Since technology has changed and newer and larger systems are being considered, the Town Board finds that the promulgation of this Article is necessary to direct the location and construction of all types of solar energy systems.
- D. Solar energy systems need to be regulated from permitting through construction and ultimately for their removal when no longer utilized.

§ 205-105. Definitions.

The following definitions shall apply to this Chapter:

**APPLICANT** – The person or entity filing an application and seeking an approval under this Article; the owner of a solar energy system or a proposed solar energy system project; the operator of solar energy system or a proposed solar energy system project; any person acting on behalf of an applicant, solar energy system or proposed solar energy system. Whenever the term “applicant” or “owner” or “operator” are used in this Section, said term shall include any person acting as an applicant, owner or operator.

**BUILDING-INTEGRATED SOLAR/PHOTOVOLTAIC (BPIV) SYSTEM**- A solar energy system incorporated into and becoming part of the overall architecture and design of a building or structure in a manner that the solar energy system is a permanent and integral part of the building envelope or structure.

**BUILDING-MOUNTED SOLAR ENERGY SYSTEMS** – A solar energy system that is affixed to the side(s) of a building or other structure either directly or by means of support structures or other mounting devices, but not including those mounted to the roof or top surface of a building. Said system is designed and intended to generate electricity solely for use on said lot, potentially for multiple tenants, through a distribution system that is not available to the general public.

**GROUND-MOUNTED SOLAR ENERGY SYSTEM** – A solar energy system that is affixed to the ground either directly or by support structures or other mounting devices. Said system is an accessory structure, designed and intended to generate electricity solely for use on said lot, potentially for multiple tenants, through a distribution system that is not available to the general public.

**ROOFTOP-MOUNTED SOLAR ENERGY SYSTEM** – Any solar energy system that is affixed to the roof of a building and wholly contained within the limits of the roof surface. Said system is designed and intended to generate electricity solely for use on said lot, potentially for multiple tenants, through a distribution system that is not available to the general public.

UTILITY-SCALE SOLAR ENERGY SYSTEM – Any solar energy system that cumulatively on a lot is designed and intended to supply energy solely into a utility grid for sale to the general

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public and consists of an overall footprint of greater than five (5) acres and less than one hundred (100) acres. Ground mounted solar energy system not meeting the definition as outlined in this law will be treated as Utility-Scale Solar Energy systems and the requirements of such.

§ 205-106. Use districts where allowed. Subject to the provisions of this Article, solar energy systems shall be allowed as follows:

- A. Rooftop-mounted, building-mounted, and Building-Integrated (BPIV) solar energy systems are permitted in all zoning districts in the Town through a building permit application process (BPIV systems may be permitted under an overall building permit for a structure).
- B. Ground-mounted solar energy systems are permitted as accessory structures (with Planning Board site plan approval) in the following districts (unless restricted in any Zoning Overlay District):
  - (1) Agricultural District (A), Business District (B), Planned Unit Development (PUD), or all Industrial Districts (I and GI); and
  - (2) Single- Family Residential District (R-1), Single- and Two-Family Residential District (R-2) or Lake Shore Residential (RLS) only if the lot in which the ground-mounted solar energy system is situated on is greater than one (1) acre.
- C. Utility-scale solar energy systems are only permitted by special permit in an Agricultural District (A) or all Industrial districts (I and GI).
- D. Any inconsistent provisions of the Zoning Law which purport to or may be interpreted to allow solar energy systems in other districts are hereby superseded.

§ 205-107. General regulations. The placement, construction, and major modification of all solar energy systems within the boundaries of the Town of Somerset shall be permitted only as follows:

- A. Rooftop-mounted, Building-Integrated and building-mounted solar energy systems upon issuance of building permit.
- B. Ground-mounted solar energy systems after SEQRA review and upon concurrent site plan approval issued by the Town of Somerset Planning Board, and upon issuance of a building permit, and shall be subject to all provisions of this Article, in the Agricultural District (A), Business District (B), Planned Unit Development (PUD), or all Industrial Districts (I and GI).
- C. Ground-mounted solar energy systems after SEQRA review with the Town of Somerset Planning Board, upon site plan approval issued by the Town of Somerset Planning Board, and upon issuance of a building permit, and shall be subject to all provisions of this Article, in the Single- Family Residential District (R-1), Single- and Two-Family Residential District (R-2) or Lake Shore Residential (RLS) only if the lot in which the ground-mounted solar energy system is situated on is greater than one acre.

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- D. Utility-scale solar energy systems shall be permitted only by Special Permit by the Town of Somerset Planning Board in use districts where allowed in accordance with the criteria established in this article, after SEQRA review with the Town of Somerset Planning Board, upon concurrent site plan approval issued by the Town of Somerset Planning Board, and upon issuance of a building permit, and shall be subject to all provisions of this Article.
- E. All solar energy systems existing on the effective date of this Article shall be allowed to continue usage as they presently exist. Routine maintenance (including replacement with a new system of like construction and size) shall be permitted on such existing systems. New construction other than routine maintenance shall comply with the requirements of this chapter.
- F. No solar energy system shall hereafter be used, erected, moved, reconstructed, changed or altered except in conformity with these regulations.
- G. Any applications (including variance applications) pending for solar energy systems on the effective date of this article shall be subject to the provisions of this article.
- H. This article shall take precedence over any inconsistent provisions of the Zoning Law of the Town of Somerset.
- I. This article shall not apply to any lot owned by a municipality.
- J. This article shall not apply to any lot located within the Village of Barker.

§ 205- 108. General criteria.

- A. Rooftop-mounted and building-mounted solar energy systems shall not be more than three feet higher than the finished roof to which it is mounted and in no instance shall any part of the system extend beyond three (3) feet before the edge of the roof. All rooftop-mounted or building mounted solar energy systems shall meet all Building permit requirements including the NYS Uniform Fire Prevention and Building Code standards, and be installed by a qualified solar installer.
- B. Ground-mounted solar energy systems shall be subject to the following requirements:
  - (1) The location of said solar energy system shall be placed no closer than three (3) times the height of the solar energy system, but not less than 25 feet; and
  - (2) The location of said solar energy system shall be only located in the side or rear yard;
  - (3) The orientation of said solar energy system shall not be pointed at any adjoining dwelling, where feasible; and
  - (4) The height of said solar energy system shall not exceed ten (10) feet when oriented at maximum tilt on a lot situated in a Single- Family Residential District (R-1), Single-

and Two-Family Residential District (R-2) or Lake Shore Residential (RLS) only if the lot in which the ground-mounted solar energy system is situated on is greater than one (1) acre; and

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- (5) The height of said solar energy system shall not exceed fifteen (15) feet when oriented at maximum tilt on a lot situated in an Agricultural District (A), Business District (B), Planned Unit Development (PUD), or all Industrial Districts (I and GI).
  - (6) The total surface area of said solar energy system on a lot shall not exceed the allowed accessory structures or combinations of accessory structures where permitted in a Single- Family Residential District (R-1), Single- and Two-Family Residential District (R-2) or Lake Shore Residential (RLS); and
  - (7) The total surface area of said solar system on a lot which is two (2) acres or less situated in an Agricultural District (A), Business District (B), Planned Unit Development (PUD), or all Industrial Districts (I and GI) shall not exceed one thousand square feet; and
  - (8) The total surface area of said solar energy system on a lot which is greater than two (2) acres and but less than five (5) acres situated in an Agricultural District (A), Business District (B), Planned Unit Development (PUD), or all Industrial Districts (I and GI) shall not exceed five (5) percent of the total square footage of the entire lot; and
  - (9) The total surface area of said solar energy system on a lot which is greater than five (5) acres or more situated in an Agricultural District (A), Business District (B), Planned Unit Development (PUD), or all Industrial Districts (I and GI) shall not exceed ten (10) percent of the total square footage of the entire lot.
- C. Site plan Requirements for a ground-mounted solar energy system. If site plan approval is required by this article for a ground-mounted solar energy system or a site plan is requested by the Building Inspector for any ground-mounted solar energy system, the applicant shall be required to submit a site plan drawn in sufficient detail as follows:
- (1) Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposal layout of the solar energy system along with a description of all components, existing vegetation, any proposed clearing and grading of the lot involved, any storm water or erosion disturbances, and utility lines, both above and below ground, on the site and adjacent to the site; and
  - (2) Property lot lines and the location and dimensions of all existing structures and uses on site within five hundred (500) feet of the solar panels; and
  - (3) Any proposed fencing and/or screening for said project; and
  - (4) Any such additional information as may be required by the Town's professional engineer or consultant, Town of Somerset Planning Board, Town Attorney, Building Inspector or other Town entity; and
  - (5) A public hearing on said site plan may be waived by the Planning Board.

- D. Solar storage batteries. When solar batteries are included as part of any solar energy system, they shall be placed in secure container or enclosure meeting the requirements of the New York State Building Code.

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- E. All solar energy systems shall adhere to all applicable federal, state, county and Town of Somerset laws, regulations and building, plumbing, electrical, and fire codes.
- F. Any solar energy system shall be accessible for all emergency service vehicles and personnel.
- G. All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth-tone color.
- H. The design, construction, operation, and maintenance of any solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists.
- I. The Development and operation of a solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town of Somerset or other federal or state regulatory agencies.
- J. Artificial lighting of any solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
- K. If the use of an approved solar energy system is discontinued, the owner or operator shall notify the Building Inspector within thirty (30) days of such discontinuance. If a solar energy system is to be retained and reused, the owner or operator shall further inform the Building Inspector of this in writing at such time and obtain any necessary approvals within one year, otherwise it shall be automatically deemed abandoned.
- L. Any solar energy system to be used strictly for Agricultural use purposes in accordance with NYS Agriculture and Markets Law may have some of the requirements of this article waived by the Building Inspector or Planning Board.

§ 205-109. Special permit requirements.

Applications under this article shall be made in accordance with Article XX Special Use Permits and as follows: Applicants for a special permit to place, construct, and make a major modification to a utility-scale solar energy systems within the boundaries of the Town of Somerset shall submit twelve (12) sets of the following information to the Building Inspector, who shall first present it to a professional engineer or consultant for an initial review and then onto the Planning Board for its review and recommendation. The Planning Board may make such additional referrals as it deems appropriate. No such application shall be deemed filed until any required application fee has been paid. The following information shall be contained in the application:

- A. A completed State Environmental Quality Review Act (SEQRA) short form environmental assessment form (EAF), unless a Full form is required by the Town's professional engineer or consultant or the Town of Somerset Planning Board.

B. Necessary Permit Information:

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- (1) Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include the name, address, and telephone number of the applicant and a letter or other written permission signed by the property owner authorizing the applicant to represent the property owner; and
- (2) Documentation of access to the project site(s), including location of all access roads, gates, parking areas, etc; and
- (3) Documentation of the clearing, grading, storm water and erosion control plans; and
- (4) Utility interconnection data and a copy of written notification to the utility of the proposed interconnection; and
- (5) One or three-line electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and over-current devices; and
- (6) A property owner who has installed or intends to install a utility-scale solar energy system may choose to negotiate with other property owners in the vicinity for any necessary solar skyspace easements. The issuance of a special use permit does not constitute solar skyspace rights, and the Town shall not be responsible for ensuring impermissible obstruction to the solar skyspace as a result of uses or development performed in accordance with Town Code. In the event that solar easements are negotiated by an applicant or property owner for a utility-scale solar energy system, a copy or documentation of any solar skyspace easements shall be provided, properly recorded as such, negotiated with neighboring property owners that shall, at a minimum, include:
  - (a) The restrictions placed upon buildings, structures, vegetation and other objects or uses that would potentially obstruct the solar skyspace of the solar energy system; and
  - (b) A description of the dimensions of the easement expressed in measurable terms, such as the maximum height of buildings and structures, vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector may not be obstructed, or a combination of these descriptions; and
  - (c) The amount, if any, of permissible obstruction of the solar skyspace through the easement, expressed in measurable terms, such as a specific percentage of the solar skyspace that may be obstructed or hours during the day; and
  - (d) Provision for trimming vegetation that would impermissibly obstruct solar skyspace, including any compensation for trimming expenses; and

- (e) Provisions for compensation of the owner/operator benefitting from the easement in the event of impermissible obstruction of the solar skyspace that would be in violation of the easement; and

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- (f) The terms or conditions, if any, under which the easement may be revised or terminated.

C. A site plan drawn in sufficient detail as follows:

- (1) Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposal layout of the entire solar energy system along with a description of all components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved, and utility lines, both above and below ground, on the site and adjacent to the site; and
- (2) Property lot lines and the location and dimensions of all existing structures and uses on site within five hundred (500) feet of the solar panels; and
- (3) Proposed fencing and/or screening for said project.

D. For all Utility-Scale Solar Energy Systems, the applicant shall submit a decommissioning plan for review and approval as part of the special use permit application. The decommissioning plan shall identify the anticipated life of the project, method and process of removing all components of the solar energy system and returning the site to its pre-existing condition and estimated decommissioning costs, including any salvage value.

E. Any such additional information as may be required by the Town's professional engineer or consultant, Town of Somerset Planning Board, Town Attorney, Building Inspector or other Town entity.

§ 205-110. Special permit criteria.

Special Permits issued for a utility-scale solar energy systems shall meet the following conditions:

- A. Minimum lot area: The minimum lot area shall be five (5) acres.
- B. Maximum lot area: The maximum lot area shall be one hundred (100) acres.
- C. Setbacks: Any utility-scale solar energy system shall adhere to the following setbacks:
  - (1) From any Agricultural District (A), Residential District (R-1, R-2 or RLS), Business District, or Planned Unit Development (PUD) use district: A minimum two hundred feet (200) feet from all property lot lines bordering these use districts.
  - (2) From any Industrial (I, GI) use district: A minimum of (100) feet from all property lines bordering an industrial (I, GI) use district.
  - (3) From any property lot lines: A minimum of one hundred (100) feet from any property lot line.

(4) From buildings or structures:

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(a) A minimum of two hundred and fifty (250) feet from any building or structure, except if said building or structure is used for the actual operation of the utility-scale solar energy system; and,

(b) A minimum of five hundred (500) feet from any dwelling on adjoining lots.

(5) From public roads and railroads:

(a) A minimum of two hundred (200) feet from any public road or railroad (measured from the road right-of-way or property line); and,

(b) Where the lot line abuts a public right-of-way, the setbacks specified above shall be measured from such right-of-way line.

(6) From schools, public parks: A minimum of five hundred (500) feet from all property lot lines bordering a school or public park.

(7) Notwithstanding the setback provisions set forth in this section, such setbacks from property lines do not apply if the application is accompanied by a legally enforceable agreement that runs with the property for a period of twenty-five (25) years or the life of the Special Permit, whichever is longer, that the adjacent landowner(s) agrees to the elimination of the required setbacks. These setback requirements in this section can only be varied through this agreement process with adjoining landowners and not through a variance with the Zoning Board of Appeals. Any agreement to the elimination of such property line setbacks shall not constitute the reduction or elimination of required setbacks from structures, as previously identified, and such setbacks from structures, for safety reasons, shall not be reduced or eliminated.

D. Maximum overall height. The height of a utility-scale solar energy system shall not exceed twenty (20) feet when oriented at maximum tilt.

E. Number of utility-scale solar energy systems allowed per lot. There shall only be allowed one utility-scale solar energy system per lot.

F. A utility-scale solar energy system shall only be located in a rear yard if there is a principal structure or dwelling on said lot.

G. A utility-scale solar energy system shall adhere to all applicable federal, state, county and Town of Somerset laws, regulations, building, plumbing, electrical, and fire codes.

H. Development and operation of a utility-scale solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town of Somerset or other federal or state regulatory agencies.

I. The design, construction, operation, and maintenance of a utility-scale solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists.



- J. All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth-tone color.

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- K. All transmission lines and wiring associated with a utility-scale solar energy system shall be buried and include necessary encasements in accordance with the National Electric Code and Town requirements. The applicant is required to show the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan.
- L. All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.
- M. Artificial lighting of utility-scale solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
- N. Any signage used to advertise the solar energy facility shall be in accordance with the Town's signage regulations.
- O. Any site containing a utility-scale solar energy system shall contain fencing or other device acceptable to the Town enclosing all solar energy system components that prevent safety hazards.
- P. A berm, landscape screen, or other opaque enclosure, or any combination thereof acceptable to the Town capable of screening the site may be required along any property line that abuts an existing residence.
- Q. After completion of a utility-scale solar energy system, the applicant shall provide a post-construction certification from a professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans.
- R. Compliance with regulatory agencies: The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of a utility-scale solar energy system.
- S. A bond or other appropriate form of security may be required to cover the cost of the removal and site restoration by the Town of Somerset Planning Board and said proof of bond or security shall be filed prior to construction and on an annual basis with the Town Clerk.
- T. Clearing, grading, storm water and erosion control:
  - (1) Before the Town of Somerset shall issue a clearing, grading, storm water or building permit for a utility-scale solar energy system, the applicant shall submit a storm water and Erosion Control Plan to the Town Engineer for its review and approval; and
  - (2) The Plan shall minimize the potential adverse impacts on wetlands and Class I and II streams and the banks and vegetation along those streams and wetlands and minimize erosion or sedimentation.

§ 205-111. Maintenance, procedures, and fees.

- A. Time limit on completion. After the granting of a special permit of a utility-scale solar energy system with concurrent site plan approval or site plan approval of a ground-mounted solar energy system by the Planning Board, the building permit shall be obtained within six months and the project shall be completed within twelve months. If not constructed, the special permit and/or site plan approval shall automatically lapse within twelve months after the date of approval by the Town of Somerset Planning Board.
- B. Inspections. Upon reasonable notice, the Town of Somerset Building Inspector or his or her designee may enter a lot on which a solar energy system has been approved for the purpose of compliance with any requirements or conditions. Twenty-four (24) hours advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. Furthermore, a utility-scale solar energy system shall be inspected annually by a New York State licensed professional engineer that has been approved by the Town or at any other time, upon a determination by the Town's Building Inspector that damage may have occurred, and a copy of the inspection report shall be submitted to the Town Building Inspector. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.
- C. General complaint process. During construction, the Town Building Inspector can issue a stop order at any time for any violations of a special permit or building permit. After construction is complete, the permit holder of a utility-scale solar energy system shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements.
- D. Continued Operation. A solar energy system shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all approval requirements and conditions. Further, the Building Inspector shall also have the right to request documentation from the owner for a solar energy system regarding the system's usage at any time.
- E. Removal. All solar energy systems shall be dismantled and removed immediately from a lot when the special permit or approval has been revoked by the Town of Somerset Planning Board or the solar energy system has been deemed inoperative or abandoned by the Building Inspector for a period of more than three hundred and sixty-five (365) days at the cost of the owner. If the owner does not dismantle and remove said solar energy system as required, the Town Board may, after a hearing at which the owner shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and place the cost of removal as a tax lien on said parcel.

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F. Determination of Abandonment or Inoperability. A determination of the abandonment or inoperability of a solar energy system shall be made by the Town Building Inspector, who shall provide the Owner with written notice by personal service or certified mail. Any appeal by the owner of the Building Inspector's determination of abandonment or inoperability shall be filed with the Town of Somerset Zoning Board of Appeals within thirty days of the Building Inspector causing personal service or mailing certified mail his written determination and the Board shall hold a hearing on same. The filing of an appeal does not stay the following time frame unless the Zoning Board of Appeals or a court of competent jurisdiction grants a stay or reverses said determination. At the earlier of the three hundred and sixty-six (366) days from the date of determination of abandonment or inoperability without reactivation or upon completion of dismantling and removal, any approvals for the solar energy system shall automatically expire.

G. Application and annual fees.

- (1) Utility-scale solar energy system. An applicant shall pay an initial application fee of Two Thousand Five (\$2500) Dollars, or such other amount as the Town Board may, from time to time, determine by resolution, upon filing its special permit and site plan application to cover the cost of processing and reviewing the application. If approved, the Owner shall pay an annual fee of One Thousand (\$1000) Dollars, or such other amount as the Town Board may, from time to time, determine by resolution, to cover the cost of processing and reviewing the annual inspection report and for administration, inspections and enforcement.
- (2) Site plan Application for a ground-mounted solar energy systems. An applicant shall pay the standard site plan review fee as determined from time to time by the Town Board, by resolution.
- (3) The Town of Somerset reserves the right to, by local law, provide that no exemption pursuant to the provision of the New York State Real Property Tax Law (RPTL) § 487 shall be applicable within its jurisdiction.

H. Prior to the issuance of a building permit, the applicant shall document that all applicable federal, state, county, and local permits have been obtained.

I. Special permits for a utility-scale solar energy system granted under this article shall be issued only following a public hearing held as required by the Town Zoning Law.

J. The Planning Board may:

- (1) For utility-scale solar energy systems, grant a Special Permit, deny a Special Permit, or grant a Special Permit with written stated conditions. The Planning Board in making this decision shall make Findings in accordance this Article and with Section 205-83 of Article XX. Denial of a Special Permit shall be by written decision based upon substantial evidence considered by the Board. Upon issuance of a Special Permit, the applicant shall obtain a building permit for the

utility-scale solar energy system.

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(2) For utility-scale or ground-mounted solar energy systems when site plan review is required by the Board pursuant to this article, grant site plan approval, deny site plan approval or grant site plan approval with written stated conditions. Denial of site plan approval shall be by written decision based upon substantial evidence considered by the Board. Upon issuance of a site plan approval, the applicant shall obtain a building permit for the ground-mounted solar energy system.

- K. Any changes or alterations post construction to a utility-scale or ground-mounted solar energy system shall be done only by amendment to the Special Permit and/or site plan (if required) subject to all requirements of this Code.
- L. Special permits for utility-scale solar energy systems shall be assignable or transferrable so long as they are in full compliance with this article and all the conditions, and the Building Inspector is notified in writing at least fifteen (15) days prior thereto.
- M. In addition to the requirements of this Article, the special permit application shall be subject to any other site plan approval requirements set forth in the Zoning Law.

§ 205-112. Revocation.

If the applicant violates any of the conditions of its special permit, site plan approval or violates any other local, state or federal laws, rules or regulations, this shall be grounds for revocation of the special permit or site plan approval. Revocation may occur after the applicant is notified in writing of the violations and the Town of Somerset Planning Board holds a hearing on same.

§ 205- 113. Interpretation; conflict with other law.

In their interpretation and application, the provisions of this article shall be held to be minimum requirements, adopted for the promotion of the public health, safety and general welfare. It is not intended to interfere with, abrogate, or annul other rules, regulations or laws, provided that whenever the requirements of this article are at a variance with the requirements of any other lawfully adopted regulations, rules or laws, the most restrictive, or those which impose the highest standards, shall govern.

§ 205-114. Severability

If any section, subsection, phrase, sentence, or other portion of this article is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

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

York.

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C. Czelusta Would like to know how the Town of Newfane regulates Solar. D. Reilly stated that he will look into it.

There being no further business, C. Czelusta moved to adjourn the meeting at 9:37PM, seconded by N. Jansen. Carried unanimously.

Respectfully submitted,

Stephanie G. Stoloski  
Deputy Town Clerk