

Town of Enfield
Special Town Board Meeting
Enfield Community Building
Tuesday, August 27, 2019
6:30 p.m.

Present: Town Supervisor Beth McGee, Town Councilperson Virginia Bryant, Town Councilperson Mike Carpenter, Town Councilperson Mimi Mehaffey, Town Councilperson Becky Sims, Town Clerk Alice Linton.

Supervisor McGee called the meeting to order at 6:30 p.m. Town Clerk Linton lead the assemblage in the Pledge of Allegiance to the Flag.

Additions to the Agenda: Supervisor McGee asked for additions to the agenda. She added an executive session for discussion of an employee concern, a motion to take equipment to solid waste and an additional motion to authorize the supervisor to send a letter to Tompkins County.

Privilege of the Floor: No one wished to speak.

Old Business:

Solar Law: Supervisor McGee moved to authorize the supervisor to send a letter of response to the Tompkins County Planning Department regarding the review pursuant to Section 239-1, -m and -n of the New York State General Municipal Law regarding the Town of Enfield Site Plan Amendments for Solar Facilities action. Councilperson Bryant seconded the motion. These comments are set forth in Resolution #2019-44.

Vote: Councilperson Bryant aye, Councilperson Carpenter aye, Councilperson Mehaffey aye, Councilperson Sims aye, Supervisor McGee aye. Carried.

Councilperson Mehaffey moved, with a second by Councilperson Sims to adopt Resolution #2019-43.

Resolution #2019-43 Declaring Environmental Significance and Making Negative Declaration of Environmental Impacts in Relation to Town of Enfield Solar Amendments to Site Plan Review Local Law, Local Law #2 of 2019

WHEREAS, since 2017 a local law to implement solar power siting regulations and review standards has been under development and consideration, including to review certain solar facilities and land uses and applications to help preserve and protect the Town, its environment, and residents from the potential negative impacts that certain developments can present or cause, and a proposed final draft of such law has been duly presented to the Town Board by the Town Supervisor and the Renewable Energy Advisory Committee, and the same has been reviewed by the planning board, town counsel, and other interested parties, and public input thereupon was duly sought and considered; and

WHEREAS, the New York State Environmental Quality Review Act (“SEQRA”) expresses a desire that projects, including laws and rules that impact land use planning, be subject to review as soon as is practicable, and each identified potential environmental impact was analyzed and duly considered by the Town Board, as Lead Agency, in relation to the question of whether any potential environmental impacts were so probable of occurring or so significant as to require a positive declaration, and after weighing the above and all other potential impacts arising from or in connection with this project, and after also considering: (i) the probability of each potential impact occurring; (ii) the duration of each potential impact; (iii) the irreversibility of each potential impact, including any permanently lost resources of value; (iv) whether each potential impact can or will be controlled or mitigated by permitting or other processes; (v) the

regional consequence of the potential impacts; (vi) the potential for each impact to be or become inconsistent with the Town’s master plan or Comprehensive Plan and local needs and goals; and (vii) whether any known objections to the Project relate to any of the identified potential impacts, the Town Board found that these factors did not cause any potential impact to be or be likely to become a moderate or significant impact such that a negative declaration will be issued; and

WHEREAS, the Town desires to proceed towards adoption of this local law, and after conducting the aforesaid SEQRA review, the Town Board of the Town of Enfield has hereby duly RESOLVED AND DETERMINED AS FOLLOWS:

1. After consideration of potential environmental impacts reviewed in accord with Article 8 of the Environmental Conservation Law of the State of New York and Regulations promulgated thereunder (“SEQRA”), including 6 NYCRR § 617.7(c), the Town Board, as Lead Agency, has found and determined that: (i) the proposed action—forming the Extension—will have no moderate or significant negative environmental consequences; (ii) this declaration was made in accord with SEQRA, including based upon a thorough review of the EAF and other documents prepared and submitted with respect to this proposed action and its environmental review, a thorough review of potential relevant areas of environmental concern to determine if the proposed action may have a moderate or significant adverse impact on the environment, and the completion of the EAF on the record, including the findings noted therein; (iii) a negative determination of environmental significance is hereby issued, and an environmental impact statement is therefore not required; and (iv) responsible officer of the Town complete and sign the determination of significance confirming the foregoing Negative Declaration, which fully completed and signed EAF is incorporated herein by reference.

2. A responsible officer of the Town Board of the Town of Enfield is hereby authorized and directed to complete and sign, as required, the determination of significance, confirming the foregoing Negative Declaration, which fully completed and signed EAF and determination of significance shall be incorporated by reference in this Resolution.

Vote: Councilperson Bryant aye, Councilperson Carpenter aye, Councilperson Mehaffey aye, Councilperson Sims aye, Supervisor McGee aye. Carried.

Supervisor McGee moved, with a second by Councilperson Bryant to adopt Resolution #2019-44.

Resolution #2019-44 Resolution Adopting and Approving Town of Enfield Site Plan Review Local Law – Local Law #2 of 2019

WHEREAS, since the 2012 adoption of Local Law #2, establishing an updated site plan review local law for the Town of Enfield, certain alternative energy land uses have become prevalent, and while alternative energy is supported by the Town Board, not all systems are the same and some forms of energy production can have significant land use and other impacts, such that the site plan review law was in need of being updated; and

WHEREAS, the Town Board formed a committee of public officers, employees, and citizens to study alternative energy, and such committee worked with several agencies and persons to develop and propose amendments to the site plan law and procedures for solar facilities, including enhanced requirements for large-scale facilities and those in need of a solar permit; and

WHEREAS, a negative declaration was duly issued under SEQRA by the Lead Agency; and

WHEREAS, this matter was duly referred under General Municipal Law § 239-1, et, seq, and the Tompkins County Department of Planning and Sustainability duly responded making four official recommendations, and the Town Board has responded as follows:

1. **Tompkins County comment:** *“The proposed law would allow Ground-Mounted Solar Energy Systems, other than Large-Scale Solar Energy Systems (LSES), as accessory structures for residential use and exempt them from any site plan review law. We recommend that all Ground-Mounted Solar Energy Systems be allowed as an accessory use of the property, not just those for residential uses (page 6).”*

Enfield response: We recommend no change. The law, as written, fully complies with this recommendation already. Tompkins County has mistakenly read Section 5.B. of our law to only apply to residential lots. In fact, Section 5.B. applies to all properties other than Large-Scale Solar Energy Systems and treats those ground-mounted solar systems as accessory structures exempt from site plan review which is consistent with the county’s recommendation. On page 6 of the county’s TOOLS TO PROMOTE AND REGULATE THE DEPLOYMENT OF RENEWABLE ENERGY SYSTEMS, the county distinguishes the treatment of LSES when it recommends: *“Approval Process. Large-Scale Solar Energy Systems should be permitted either with a special use permit or with a site plan review and a public hearing on proposals should be required.”* In our draft law, LSES are required to undergo a site plan review and a public hearing, consistent with the county’s recommendations in its tools document.

2. **Tompkins County comment:** *“The proposed law would require a glare assessment survey for all LSES to address glare on other parcels of land. We recommend glare analyses only be required when there is a use nearby that is particularly sensitive to glare (page 8).”*

Enfield response: We recommend no change. We believe the burden to determine whether a glare issue exists should be put on the developer and not on the Town of Enfield. Glare assessments are relatively easy to prepare and inexpensive. The Chairman of the Town of Enfield’s Planning Board estimates that a glare assessment for a very complicated site can be prepared for less than \$5,000. Furthermore, the Planning Board has the authority to waive this requirement where warranted.

3. **Tompkins County comment:** *“The proposed law would require LSES, including related fencing, be setback at least fifty feet from lot lines and at least 125 feet from the centerline of roads. We recommend not requiring more than 30 foot rear or side setbacks, excluding fencing. (Recommendations: Solar Systems, 2nd page, “Location on a property.”)”*

Enfield response: To accommodate the County’s comments, we recommend changing the rear and side setbacks to be 30 feet, including fencing. This seems to be consistent with the county’s recommendation in its tool which states: *“Large-Scale Solar Energy Systems should ... not be required to have more than 30 foot rear or side setbacks.”* There is nothing in their tool to indicate that such setback should not include fencing. We can see no rationale for excluding the fencing in this setback. According to the Chairman of the Town of Enfield’s Planning Board this is consistent with other towns’ laws in the area.

4. **Tompkins County comment:** *“The proposed law would limit the enclosed or fenced area of an LSES to 60% of the lot on which it is installed. We recommend that there be no lot coverage limitation, and that any stormwater management issues be addressed in other ways (page 8).”*

Enfield response: We recommend that no change be made. The county misunderstands the purpose for this provision in our law. It has nothing to do with storm-water management. Rather, it is intended to address the Town’s draft Comprehensive Plan’s vision to maintain the town’s rural character. The Town of Enfield does not have a zoning law so we cannot directly control where LSES can be erected. To help address this, we are limiting the size of any LSES on any one property to help the town maintain its rural character.

and;

WHEREAS, a proposed final draft of such law has been duly presented to the Town Board by the Town Supervisor, as reviewed and recommended by the committee and a notice of a public hearing was published and posted in accord with law and a public hearing was duly held upon July 24, 2019, whereat the public was invited to comment upon the proposed local law and speak in favor of or against such local law, or any part thereof, and whereat all persons interested in the subject were duly heard and all evidence taken; and upon and in consideration of comments received thereat and upon due consideration thereupon, the Town Board of the Town of Enfield has hereby found that adoption of this local law is in the public interest of the Town of Enfield and, accordingly, the Town Board of the Town of Enfield has duly

RESOLVED, that **Local Law #2 of 2019**, entitled “**Solar Power Siting Amendments to Site Plan Review Law**”, be and hereby is approved and adopted in the form as presented to this meeting, and in such form “be it so enacted”; and it is further

RESOLVED, that in accord with Town Law and §§ 21 and 27 of the Municipal Home Rule Law the final adopted version of this Local Law shall be spread upon or attached to the Minutes of this Meeting and, within 20 days after the final adoption of this Local Law, the Town Clerk shall file a certified copy of this Local Law with New York State Secretary of State, State Records and Law Bureau, Department of State, 41 State Street, Albany, New York 12231.

Local Law #2 of 2019
Town of Enfield Addendum to the Site Plan Review Law
(Solar Energy Law Addendum)

1. Authority

This local law Addendum to the Site Plan Review Law for the Town of Enfield, to be titled the “Solar Energy Law Addendum”, is adopted pursuant to Section 10 of the State of New York Municipal Home Rule Law and Section 130 and Article 16 of the New York State Town Law to advance and protect the health, safety, and welfare of the community, and to make provision for, so far as conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor.

2. Statement of Purpose

A. This Solar Energy Law Addendum is adopted to advance and protect the public health, safety, and welfare of Town of Enfield, including:

- 1) Taking advantage of a safe, abundant, and renewable energy resource;
- 2) Decreasing the cost of energy to the owners of commercial and residential properties, including single-family houses;
- 3) Increasing the benefit of solar energy to low-to-moderate income households through community solar projects;
- 4) Protecting our environment and resources for future generations by minimizing the impacts of Solar Energy Systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources;
- 5) Managing commercial renewable energy development to provide a balance between energy needs that protect our environment and respect for our rural agricultural landscape; and
- 6) Maintaining a balance between property rights of individual landowners and the community at large.

3. Definitions

The definitions of the Site Plan Review Law shall apply unless otherwise indicated in this Addendum.

BUILDING-MOUNTED SOLAR ENERGY SYSTEM - A solar panel system located on the roof of any legally permitted building or structure for the purpose of producing electricity for onsite or offsite consumption. A Building-Mounted Solar Energy System shall include any Solar Thermal Energy Systems that meet the definition in the preceding sentence.

GROUND-MOUNTED SOLAR ENERGY SYSTEM - A Solar Energy System that is anchored to the ground and attached to a pole or other mounting system, detached from any other structure. A Ground-Mounted Solar Energy System shall include any Solar Thermal Energy Systems that meet the definition in the preceding sentence.

LARGE-SCALE SOLAR ENERGY SYSTEM - A Solar Energy System that feeds electricity directly into the grid, is ground mounted and is larger than four thousand (4,000) square feet in total area, including solar collectors, the enclosure and/or fence surrounding the Solar Energy System per each lot or per adjacent lots under common ownership or under common operation. A Large-Scale Solar Energy System shall include any Solar Thermal Energy Systems that meet the definition in the preceding sentence.

PERMITTEE – The party holding a Solar Permit granted pursuant to this Solar Energy Law.

QUALIFIED SOLAR INSTALLER – A person who has skills and knowledge related to the construction and operation of solar electrical equipment and installations, and has received safety training on the hazards involved. Persons who are on the list of eligible photovoltaic installers maintained by the New York State Energy Research and Development Authority (NYSERDA), or who are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be qualified solar installers for the purposes of this definition.

SOLAR ENERGY EQUIPMENT - Electrical energy storage devices, material, hardware, inverters, or other electrical equipment, infrastructure, and conduit of photovoltaic devices associated with Solar Panels and with the production of electrical energy.

SOLAR ENERGY SYSTEM - An electrical generating system composed of a combination of both Solar Panels and Solar Energy Equipment.

SOLAR PANEL - A photovoltaic device capable of collecting and converting solar energy into electrical energy.

SOLAR PERMIT – A permit issued by the Planning Board pursuant to the provisions of this law for the construction and operation of a Large-Scale Solar Energy System.

SOLAR THERMAL ENERGY SYSTEMS - Solar hot water technology consisting of solar thermal equipment and any related Solar Energy Equipment. Thermal energy is transferred to a heat transfer system via a collector and heat exchanger.

STORAGE BATTERIES: Devices that store energy and make it available in an electrical form.

4. Applicability

The requirements of this law shall apply to all Solar Energy Systems installed or modified after the law’s effective date, excluding general maintenance and normal repairs of such Solar Energy Systems. Any repairs that are material in nature, in the judgment of the Planning Board, shall be subject to the requirements of this law. The requirements of this law must be met and a Solar Permit issued prior to or simultaneously with the application for or receipt of any required building permits.

The installation of any Solar Energy System, as provided by this law, does not carry with it a right to a clear line of sight to the sun. It is the responsibility of the applicant, installer or developer to gain any and all permits, easements or agreements to maintain a line of sight to the sun, if necessary.

5. Solar as an Accessory Use or Structure

A. Building-Mounted Solar Energy Systems.

- 1) Building-Mounted Solar Energy Systems that use the electricity onsite or offsite are permitted as an accessory use when attached to any lawfully permitted building or primary structure.
- 2) Height. Notwithstanding anything in the Site Plan Review Law to the contrary, Building-Mounted Solar Energy Systems shall require a site plan review by the Planning Board pursuant to the provisions of the Site Plan Review Law if such Solar Energy System would result in an increase of the overall structure height by six (6) feet or more.
- 3) Except as provided in paragraph 5.A.2) above or except as otherwise part of a project that is subject to review under Article II of the Site Plan Review Law, Building-Mounted Solar Energy Systems that use the energy onsite or offsite shall be exempt from site plan review under the Site Plan Review Law.

B. Ground-Mounted Solar Energy Systems.

- 1) Ground-Mounted Solar Energy Systems, other than Large-Scale Solar Energy Systems, are permitted as accessory structures for residential use and, except as provided in paragraph 5.B.2) below or except as otherwise part of a project that is subject to review under Article II of the Site Plan Review Law, shall be exempt from any site plan review under the Site Plan Review Law.
- 2) Height. Notwithstanding anything in the Site Plan Review Law to the contrary, Ground-Mounted Solar Energy Systems shall require a site plan review by the Planning Board pursuant to the provisions of the Site Plan Review Law if such Ground-Mounted Solar Energy System would exceed twenty (20) feet in height.
- 3) Setback. Any Solar Energy Equipment and any related fencing or other enclosures, other than Large-Scale Solar Energy Systems and related fencing and other enclosures, shall be setback at least twenty (20) feet from the side and back lines of the property owner's lot and at least fifty (50) feet from the centerline of any road bordering on such lot. In the event the property has no road frontage or is a flag lot, the setback shall be at least twenty (20) feet from all sides of the lot. For setback requirements for Large-Scale Energy Systems, see Section 6.C.2. of this Addendum.

- C. Storage Batteries. When Storage Batteries are included as a part of the Solar Energy System, they must be placed in a secure container or enclosure when in use. Storage Batteries no longer in use must be disposed of in a timely manner in accordance with the laws and regulations of the Town of Enfield, Tompkins County, New York State, and all other applicable laws and regulations.

6. Approval Standards for Large-Scale Solar Systems for a Solar Permit

- A. Large-Scale Solar Energy Systems are permitted through the issuance of a Solar Permit, subject to the requirements set forth in this Section and Section 7, including a site plan review pursuant to the provisions of the Site Plan Review Law. Notwithstanding anything in the Site Plan Review Law to the contrary, applications for the installation of a Large-Scale Solar Energy System shall be reviewed by the Planning Board which can include approval, approval with conditions, or denial.
- B. Solar Permit Application Requirements for a Solar Permit. The site plan application process under the Site Plan Law is to be used as supplemented by the following provisions:
 - 1) If the project is to be located upon lands owned by a third party, then proof of appropriate rights of use for the project duration shall be submitted in their full and complete form, whether they are licenses, easements, leases or other rights in title or estates in land.
 - 2) Site Plans showing the layout of the Solar Energy System signed by a registered professional engineer licensed in the State of New York. The Town reserves the right to have an applicant's engineering drawings, opinions, or conclusions reviewed by an engineer hired by the Town, the cost of which shall be reimbursed by the applicant.

- 3) The equipment specification sheets shall be documented and submitted for all significant components, including but not limited to, photovoltaic panels, mounting systems, and inverters that are to be installed.
- 4) A Property Operation and Maintenance Plan shall be submitted. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming. No chemical herbicides or pesticides shall be used in the project.
- 5) Projected production plans showing the annual amount of energy that will be generated and transmitted for each one year period during the life of the project.
- 6) A glare assessment survey and a complaint and mitigation plan reasonably acceptable to the Planning Board to address glare on other parcels of land on an ongoing basis during the life of the project.
- 7) A Decommissioning Plan shall be submitted. See Abandonment and Decommissioning in Section 7.B.
- 8) A general complaint plan, with a procedure for determining mitigation, that is reasonably acceptable to the Planning Board shall be submitted.
- 9) No Solar Permit may be transferred to a new owner and/or operator of a Large-Scale Solar Energy System without the prior approval of the Planning Board. Such approval shall be conditioned upon a written assumption by the new owner and/or operator of any and all requirements imposed upon the original owner and/or operator, including, without limitation, evidence that the new owner and/or operator has either assumed the existing financial surety required under Section 7.B. or has secured an equivalent financial surety, reasonably acceptable to the Town Board, in its place. Failure to comply with these requirements will be deemed an abandonment of the Large-Scale Solar Energy System pursuant to Section 7.B. shall be subject to the terms and provisions of Section 7.B. as such.

C. Solar Permit Standards.

- 1) Height. Large-Scale Solar Energy Systems shall not exceed twenty (20) feet in height unless a variance is approved by the Planning Board pursuant to the standards set forth in Section 3.1 of the Site Plan Review Law or any successor provisions.
- 2) Setbacks. Any Solar Energy Equipment and any related fencing or other enclosures of a Large-Scale Solar Energy System shall be setback at least thirty (30) feet from the side and back lines of the property owner's lot and at least one hundred twenty five (125) feet from the centerline of any road bordering on such lot. In the event the property has no road frontage or is a flag lot, the setback shall be at least thirty (30) feet from all sides of the lot.
- 3) Lot Size. Large-Scale Energy Systems shall be located on lots with a minimum lot size of 5 acres.
- 4) Lot Coverage. The enclosed or fenced in area of a Large-Scale Solar Energy System shall not exceed 60% of the lot on which it is installed.
- 5) Storage Batteries. When storage Batteries are included as a part of the Solar Energy System, they must be placed in a secure container or enclosure when in use. Storage Batteries no longer in use must be disposed of in a timely manner in accordance with the laws and regulations of the Town of Enfield, Tompkins County, New York State, and all other applicable laws and regulations.
- 6) Fencing. All Large-Scale Solar Energy Systems shall be enclosed by fencing to prevent unauthorized access. Warning signs with the emergency contact information shall be placed on the entrance and perimeter of the fencing as required in the judgment of the Planning Board. The type

of fencing shall be approved by the Planning Board and shall be a maximum of 8 feet and a minimum of 6 feet in height.

- 7) Screening. The Planning Board may require screening by landscaping to avoid adverse aesthetic impacts.
- 8) Utility Connections. To the extent reasonably practicable, all utility connections for any Large-Scale Solar Energy Systems shall be placed underground, depending upon the appropriate soil conditions, shape and topography of the site and any requirements of the utility provider. Electrical transformers for utility connections may be above ground if required by the utility provider.
- 9) Lighting. The Planning Board may permit motion-activated or staff-activated security lighting around the equipment of a Large-Scale Solar Energy System or accessory structure. Such lighting should only be activated when the area within the fenced perimeter has been entered. Lighting shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.
- 10) Liability Insurance during Construction. The developer of a Large-Scale Solar Energy System shall provide proof of liability insurance with a minimum coverage requirement of \$1 million per occurrence and a \$2 million aggregate coverage, that names the Town of Enfield as an additional named insured party, during the construction period of the project.
- 11) Liability Insurance during Operation. The owner and/or operator of a Large-Scale Solar Energy System shall provide annual proof of liability insurance with a minimum coverage requirement of \$1 million per occurrence and a \$2 million aggregate coverage, that names the Town of Enfield as an additional named insured party, during the operational period of the project.
- 12) Site Plan Review. Notwithstanding anything to the contrary in the Site Plan Review Law, any application under this Section shall meet any substantive provisions contained in site plan requirements of the Site Plan Review Law that, in the judgment of the Planning Board are applicable to the system being proposed. In addition, notwithstanding anything to the contrary in the Site Plan Review Law, the Planning Board may approve waivers pursuant to the standards set forth in Section 3.1 of the Site Plan Review Law or any successor provisions.
- 13) SEQRA. Permit applications shall be deemed unlisted action under SEQRA. In fulfilling the requirements of the SEQRA, the Planning Board may require a Full Environmental Assessment Form for the proposed Large-Scale Solar Energy System.
- 14) Notifications. Notwithstanding anything to the contrary in the Site Plan Review Law or SEQRA, any notifications required pursuant to the Site Plan Review Law or SEQRA with respect to any Solar Energy System shall be sent to all landowners within one (1) mile of the boundary of the parcel on which the proposed site is located.
- 15) Qualified Solar Installer. The project must be installed by a Qualified Solar Installer.
- 16) Every Solar Energy System shall be built, operated and maintained to acceptable Industry standards, including but not limited to the most recent, applicable standards of the Institute of Electric and Electronic Engineers (“IEEE”) and the American National Standards Institute (“ANSI”).
- 17) In order to verify that the Solar Energy System’s owners and any and all lessees, renters and/or operators of the Solar Energy System place, construct, modify and maintain such Systems, including solar collectors and solar inverters, in accordance with all applicable technical, safety, fire, building codes, laws, ordinances and regulations and other applicable requirements, the Town may inspect all facets of said System’s placement, construction, modification and maintenance. Any inspections required by the Planning Board that are beyond its scope or ability shall be at the expense of the applicant and/or the operator of the System.

- 18) Other. The Planning Board may impose conditions on its approval of any Solar Permit under this Section in order to enforce the standards referred to in this Section or in order to discharge its obligations under SEQRA.
- D. Large-Scale Solar Energy Systems shall not be located in the following areas unless otherwise approved by the Planning Board in conjunction with the Solar Permit approval process provided in this section:
- 1) Prime farmlands soils as identified by the USDA-NRCS or alternative available resources;
 - 2) Areas of potential environmental sensitivity, including Unique Natural Areas as designated by the Tompkins County Environmental Management Council, flood plains, historic sites, airports, state-owned lands, conservation easements, trails, parkland, prime soils, and wetlands as identified by Tompkins County, the New York State Department of Environmental Conservation or the United States Army Corps of Engineers; and
 - 3) On slopes of greater than fifteen percent (15%), unless the applicant can demonstrate through engineering studies and to the satisfaction of the Planning Board that the proposed development will cause no adverse environmental impact that will not be satisfactorily mitigated.
- E. The Planning Board, at the expense of the applicant, may employ its own consultant(s) to examine the application and related documentation and make recommendations as to whether the criteria for granting the Solar Permit has been met, including, but not limited to, whether the applicant's conclusions regarding safety analysis, visual analysis, structural inspection, and storm water management aspects are valid and supported by generally accepted and reliable engineering and technical data and standards.

7. Abandonment and Decommissioning

- A. Applicability and purpose. This section governing abandonment and decommissioning shall apply to Large-Scale Solar Energy Systems. It is the purpose of this section to provide for the safety, health, protection and general welfare of persons and property in the Town of Enfield, by the Town requiring abandoned Large-Scale Solar Energy Systems to be removed pursuant to a decommissioning plan. The anticipated useful life of such systems, as well as the volatility of the recently emerging solar industry where multiple solar companies have filed for bankruptcy, closed or been acquired creates an environment for systems to be abandoned, thereby creating a negative visual impact on the Town. Abandoned commercial systems may become unsafe by reason of their energy-producing capabilities, serve as an attractive nuisance and/or may create an environmental hazard.
- B. Abandonment. A Large-Scale Solar Energy System shall be deemed abandoned if the system fails to generate and transmit electricity over a continuous period of one year at a rate of at least 25% of its projected production based on the application approved by the Planning Board for the project. A Large-Scale Solar Energy System also shall be deemed abandoned if following site plan approval construction of the system is not completed within 18 months of issuance of the first building permit for the project.
- 1) Extension of time. The time at which a Large-Scale Solar Energy System shall be deemed abandoned may be extended by the Planning Board for an additional period of up to one year, provided the system owner presents to the Planning Board a viable plan, reasonably acceptable to the Planning Board, outlining the steps and schedules for placing the system in service or back in service within the time period of the extension. An application for an extension of time shall be made to the Planning Board by the Large-Scale Solar Energy System owner and/or operator prior to abandonment as defined herein. Extenuating circumstances as to why the Large-Scale Solar Energy System has not been operating or why construction has not been completed may be considered by the Planning Board in determining whether to grant an extension.
- C. Removal required. A Large-Scale Solar Energy System which has been abandoned shall be decommissioned and removed. The Large-Scale Solar Energy System owner and/or owner of the land upon which the system is located shall be held responsible to physically remove all components of the system within one year of abandonment. Removal of the Large-Scale Solar Energy System shall be in accordance with a decommissioning plan approved by the Planning Board.

D. Decommissioning and Removal.

- 1) Decommissioning and removal of a Large-Scale Solar Energy System shall consist of:
 - (a) Physical removal of all above ground and below ground equipment, structures and foundations, including but not limited to all solar arrays, buildings, security barriers, fences, electric transmission lines and components, roadways and other physical improvements to the site related to the Large-Scale Solar Energy System;
 - (b) Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations;
 - (c) Restoration of the ground surface and soil;
 - (d) Stabilization and revegetation of the site with native seed mixes and/or plant species (excluding invasive species) to minimize erosion.
- 2) Upon petition to the Planning Board, the Planning Board shall permit the system owner and/or landowner to leave certain underground or above ground improvements in place, provided the owner can show that such improvements are part of a plan to redevelop the site, are not detrimental to such redevelopment, and do not adversely affect community character or the environment.

E. Solar Permit conditions. The following conditions shall apply to all Solar Permits issued for a Large-Scale Solar Energy System. No Solar Permit shall be issued unless the Planning Board finds that the conditions have been or will be met.

1) Decommissioning plan. All applications for a Large-Scale Solar Energy System shall be accompanied by a decommissioning plan to be implemented upon abandonment and/or in conjunction with removal of the system. The decommissioning plan shall address those items listed in the above section and include:

- (a) An estimate of the anticipated operational life of the system;
- (b) Identification of the party responsible for decommissioning;
- (c) Description of any agreement with the landowner regarding decommissioning;
- (d) A schedule showing the time frame over which decommissioning will occur and for completion of site restoration work;
- (e) A certified and sealed cost estimate prepared by a qualified structural engineer or professional engineer, who shall be reasonably acceptable to the Planning Board, estimating the full cost of decommissioning and removal of the solar PV system, including, but not limited to, the cost of solid waste disposal and the cost to clean-up any hazardous waste leakage on the property. No scrap value shall be taken into account for purposes of estimating these decommissioning and removal costs. The Planning Board shall have the sole discretion to require a structural engineer or a professional engineer and regardless of which type of engineer is chosen, such engineer shall be licensed by the State of New York. The Planning Board shall have the right, in its sole discretion, to have this estimate reviewed by an independent structural engineer at the system owner's and/or operator's expense;
- (f) A financial plan to ensure that financial resources will be available to fully decommission the site.
 - 1) Financial surety. Prior to the issuance of a building permit and every two years thereafter, the Large-Scale Solar Energy System owner and/or operator shall file with the Town evidence of financial security to provide for one hundred twenty five percent (125%) of the full cost of decommissioning and removal of the solar PV system, which amount shall automatically be increased by two percent (2%) the following year. Evidence of financial security shall be in effect throughout

the life of the system and shall be, in the sole discretion of the Town Board, either in the form of an irrevocable letter of credit or cash security acceptable to the Town Board. The irrevocable letter of credit shall include an auto extension provision if possible, to be issued by an A-rated institution solely for the benefit of the Town and for the benefit of the landowner if the land is leased to the operator of the system. Any letter of credit shall provide that issuer shall notify the Town in the event such letter of credit is canceled or otherwise terminated which notice shall be made no later than seven (7) business days after such event. The Town shall be entitled to draw on the letter of credit in the event that the Large-Scale Solar Energy System owner and/or landowner is unable or unwilling to commence decommissioning activities within the time periods specified herein. In the event a demand for decommissioning is made by the Town to a landowner that leases his or her property to the operator of the system, such landowner may also be entitled to draw on such letter of credit if the owner and/or operator of such system is unable or unwilling to commence decommissioning activities within the time periods specified herein. No other parties, including the owner and/or operator shall have the ability to demand payment under the letter of credit. Upon completion of decommissioning, the owner and/or landowner may petition the Town to terminate the letter of credit. In the event ownership of the system is transferred to another party, the new owner (transferee) shall file evidence of financial security with the Town at the time of transfer, and every two years thereafter, as provided herein. Failure to keep a surety in place as required by this law shall result in the revocation of the Solar Permit and the termination of the project unless and until such surety is restored; provided, however, that any lapse of a surety in excess of 180 days shall be deemed an abandonment of the project pursuant to Section 7.F. herein and subject to complete decommissioning in accordance with this law.

2) Amount. The amount of the surety shall be determined by the Town Board based upon a current estimate of decommissioning and removal costs as provided in the decommissioning plan and subsequent bi-annual reports required pursuant to paragraph 3 below. For purposes of this determination, any subsequent bi-annual decommissioning report shall be required to meet the same requirements set forth in Section 7.E. I.e. as the original decommissioning cost estimate. The amount of the surety shall be adjusted by the Town Board as appropriate upon receipt of a bi-annual report containing an updated cost estimate for decommissioning and removal.

3) Annual report. The Large-Scale Solar Energy System owner and/or operator shall on a yearly basis provide the Town Clerk a report showing the rated capacity of the system and the amount of electricity that was generated by the system and transmitted to the grid over the most recent twelve-month period compared to the amount of energy that was projected to be generated in the application approved by the Planning Board. The Town Clerk shall forward such report to the Town Board, the Planning Board and the Code Enforcement Officer within five (5) business days of receipt of the report. The report shall also identify any change in ownership of the Solar Energy System and/or the land upon which the system is located and shall identify any change in the party responsible for decommissioning and removal of the system upon its abandonment. The annual report shall be submitted no later than 45 calendar days after the end of the calendar year. Every second year, to coincide with the filing of evidence of financial security, such report shall also include a recalculation of the estimated full cost of decommissioning and removal of the Large-Scale Solar Energy System in accordance with the provisions of this Section 7. The Town shall require an adjustment, as appropriate, in the amount of the surety to reflect any changes in the estimated cost of decommissioning and removal. Failure to submit a report as required herein shall be considered a violation of Section 7 of this Solar Energy Law.

F. Decommissioning and removal by Town. If the Large-Scale Solar Energy System owner and/landowner fails to decommission and remove an abandoned facility in accordance with the requirements of this section, the Town may enter upon the property to decommission and remove the system.

1) Procedure

- (a) Upon a determination by the Planning Board that a Large-Scale Solar Energy System has been abandoned, the Code Enforcement Officer shall notify the system owner, landowner and permittee by certified mail: (a) in the case of a facility under construction, to complete construction and installation of the facility within 180 calendar days; or (b) in the case of a fully constructed facility that is operating at a rate of less than 25% of its projected production

level as outlined in the application approved by the Planning Board, to restore operation of the facility to no less than 80% of rated capacity within 180 calendar days, or the Planning Board will deem the system abandoned and commence action to revoke the Solar Permit and require removal of the system.

- (b) Being so notified, if the system owner, operator, landowner and/or Permittee fails to perform as directed by the Code Enforcement Officer within the 180 day period, the Code Enforcement Officer shall notify the system owner, operator, landowner and permittee, by certified mail, that the Large-Scale Solar Energy System has been deemed abandoned and the Town intends to revoke the Solar Permit within 60 calendar days of mailing said notice. The notice shall also state that the Permittee is entitled to appeal the decision of the Planning Board to the Town Board. The Town Board shall schedule an appeal hearing no later than 60 calendar days from the receipt of any such written request for an appeal hearing. A final determination regarding such appeal shall be made by the Town Board no later than 60 calendar days following such hearing, which determination can be further appealed pursuant to Article 78 of the New York Civil Practice Laws and Rules.
- (c) Upon a determination by the Planning Board or Town Board that a Solar Permit has been revoked, the decommissioning plan must be implemented and the system removed within one year of having been deemed abandoned or the Town may cause the removal at the owner and/or landowner's expense. If the owner and/or landowner fails to fully implement the decommissioning plan within one year of abandonment, the Town may collect the required surety and use said funds to implement the decommissioning plan.
- (d) Removal by Town and reimbursement of Town expenses. Any costs and expenses incurred by the Town in connection with any proceeding or work performed by the Town or its representatives to decommission and remove a Large-Scale Solar Energy System, including legal costs and expenses, shall be reimbursed either from the financial surety posted by the system owner or landowner as provided in section 7.D. Decommission and Removal Plan herein and/or by the owner of the land upon which such Large Scale Energy System is located. Any costs incurred by the Town for decommissioning and removal that are not paid for or covered by the required surety, including legal costs, shall be assessed against the property, shall become a lien and tax upon said property, shall be added to and become part of the taxes to be levied and assessed thereon, and shall be enforced and collected, with interest, by the same officer and in the same manner, by the same proceedings, at the same time and under the same penalties as are provided by law for the collection and enforcement of real property taxes in the Town.

8. Enforcement

Any violation of this law shall be fully subject to the enforcement provisions of Section 5.3 of the Site Plan Review Law or any successor provisions thereunder; provided, however, that in lieu of the monetary fines and/or civil penalties specified in Section 5.3 of the Site Plan Review Law for a First, Second or Third Violation, the monetary fines and/or civil penalties for any such violations shall be Five Hundred Dollars (\$500) per day . For this purpose, any reference to "this Local Law" in Section 5.3 of the Site Plan Review Law shall be deemed to include a reference to this Solar Energy Law as well.

9. Fees and Escrow

An application fee, as determined by the Town Board, shall accompany the application for a Large-Scale Solar Energy System. The amount of such required Large-Scale Solar Energy System fees may be revised from time to time by the Town Board in the future by resolution.

The applicant shall deliver with its application an amount as determined by the Town Board from time to time by resolution or as specifically agreed upon between the Town and the applicant to be held in escrow during the application review process. The sum shall be held by the Town in a non-interest bearing account and these funds shall be available to the Town to pay for the costs of reviewing the application, including, but not limited to, the costs of consultants engaged by the Town to assist in any review of the application as well as any costs related to any related notices and/or hearings. Following grant or denial of the application, the Town shall return to the applicant any excess

remaining in escrow. If the escrow account has been depleted prior to grant or denial of the application, the applicant shall deposit such funds as are then necessary for the Town to pay any outstanding fees before the Town is required to proceed with any further review of the project.

10. Host Community or PILOT Agreement

Nothing in this Law shall be read as limiting the ability of the Town Board to enter into host community agreements or Paid in Lieu of Taxes (PILOT) agreements with any applicant to compensate the Town for expenses or impacts on the community.

11. Severability

The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision or phrase of the aforementioned sections as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision or phrase, which shall remain in full force and effect.

Discussion: Councilperson Sims asked about PILOT agreements for solar farms. Supervisor McGee explained the information about this is a little complicated. At some point, the Board will need to decide whether to opt in or out and there are pros and cons for each choice. She does not feel it is problematic to pass this law without a PILOT in place.

Vote: Councilperson Bryant aye, Councilperson Carpenter aye, Councilperson Mehaffey aye, Councilperson Sims aye, Supervisor McGee aye. Carried.

Wind Law: Supervisor McGee stated the draft law has been sent on to attorney Abraham to do a desk review. Whether to follow his recommendations will be something the Town Board will have to determine for itself and how it serves the Town. Comments should be ready for the next Town Board meeting.

Councilperson Carpenter asked for a timeline of what needs to happen in order to pass a wind law.

Supervisor McGee responded that the draft was sent to attorney Abraham and she expects to have comments back by the September 11 Town Board meeting. At that point the Board can set a special meeting date to just work on the wind law, which would be her preference. The draft law will then be sent to the county and to Guy Krogh for review. The Board could wait until after the county review and Guy Krogh's review before having a public hearing. A public hearing could be set for after the 30 days that the county has to do their review so the Town can make changes before the public hearing.

Councilperson Mehaffey suggested the Board might want to include public comments along with the changes made by the county and attorney Krogh so only one public hearing might have to be held. She suggested seeking input from the county, Guy Krogh and the public. It was agreed to see how things look after comments are received from attorney Abraham. A public hearing could possibly be held at the beginning of the October Town Board meeting.

Supervisor McGee mentioned a special meeting might be needed to present the preliminary budget. A special Town Board meeting was scheduled for Tuesday, September 24 at 6:30 so there could be a focus on the wind law at that meeting.

Salt Storage: Supervisor McGee has been working to see how a salt storage building fits into budget and capital plans. Her preference is not to bond for the Town's 50% share. There are a few options. She has had great communication with the grant administrator at the DEC. As long as the Town contracts with them by April 30, 2020, we can extend our actual time of contract to April 2023. If we've shown significant progress, they have the ability to extend beyond that. She is looking at grant funds from another source. The Town can't use those grant funds towards our 50%, but there are other projects and purchases we could apply for grants so we have more funds for this project. She has 3 different levels of

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expense for the building. The wood structure is about \$700,000. Another company could build for \$360,000 with a floor and a cloth with galvanized steel building. She has called and they have excellent references. Another will charge about \$450,000 for the same type of building. This will have to go out for RFP. The Town Board will need to determine how much they are willing to spend for the Town portion, or we can bond for this. She will have information on a short-term bond soon. In 2026 the highway bond will be paid off, and she would not want to entertain a new Town hall before then. The Board could explore changing the purpose of the new building fund reserve, which might be subject to permissive referendum. A reserve fund needs to be created by resolution and she's not sure if the new building fund was ever created that way. She would prefer to follow the protocol as closely as possible so there will be no problems later on. There can be discussion of this during budget season. The Board will need to decide how much of Town funds to spend for our share.

Proposed Renewable Energy PILOT (Payment in Lieu of Taxes) Law: Supervisor McGee stated we opted out of the PILOT in our wind law. Once that law is replaced, the Town will have to officially opt in or out and report to NYSERDA and NYS. Opting out means we do not allow the exemption. If a facility is built, it's up to the assessor to determine what that assessment would be. Jay Franklin, head of the Tompkins County Assessment Department, has stated they will not assess higher for residential installations. If a developer doesn't like what the taxes will be, they can go to the Industrial Development Agency. We have a PILOT for Delaware Solar and Mecklenburg Solar, on the north side of Route 79. The solar farm on the other side of Route 79 has no PILOT and Tompkins County assess that property. Supervisor McGee does not believe Host Community Agreements are enforceable. The Town can only do 15 years if we do our own PILOT. She recommended going through laws granting authority that she previously sent to Board members, and look at 2 proposals – one to remain opted out and one to opt in to 487 and have our own law and set our own amount.

Tax Cap Override Law Information: Supervisor McGee stated she obtained information for the tax cap. For the coming budget, the State Comptroller's Office calculates our tax cap limit will be 4.16%. She will present 2 tentative budget figures. One will be based on what the highway superintendent gave as his budget request. That way it will be clear what the requests are, and what that budget would look like. She will also present her tentative budget that will include highway figures.

New Business:

Sexual Harassment Training Dates: Supervisor McGee is going to a training on September 10 to become a trainer for the sexual harassment policy. The Town needs to provide a sexual harassment training. Next year the training will be done together with workplace violence training. She will set a date for training at the highway facility, plus another training at a different place and time. She will be willing to do a training at a planning board meeting, possibly October 2.

Application Fees – Public Hearings: Supervisor McGee stated the law allows the Town to charge application fees for whatever is reasonable. The usual fee for a legal ad is \$50-\$65. She believes it is a reasonable cost for a developer to pay. She moved to charge for publication of public hearing notices when they are required. Councilperson Bryant seconded the motion. The legal ads are needed if a site plan review is required. Councilperson Mehaffey suggested charging the cost of the legal ad plus 15%, or \$75, and if a second notice is required due to applicant error or negligence, they would pay the additional \$75 fee. Supervisor McGee withdrew her motion and will put this on the September agenda.

Announcements: Enfield Town Court will not be in session on Labor Day, September 9, or September 15, 2019.

Supervisor McGee moved, with a second by Councilperson Carpenter to enter into executive session regarding an employee issue, and invited the Town Clerk to join the session.

Vote: Councilperson Bryant aye, Councilperson Carpenter aye, Councilperson Mehaffey aye, Councilperson Sims aye, Supervisor McGee aye. Carried.

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At 8:15 the Town Board moved into executive session.

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At 8:50 p.m. Supervisor McGee moved, with a second by Councilperson Carpenter to move out of executive session.

Vote: Councilperson Bryant aye, Councilperson Carpenter aye, Councilperson Mehaffey aye, Councilperson Sims aye, Supervisor McGee aye. Carried.

Adjournment: Supervisor McGee adjourned the meeting at 8:50 p.m.

Respectfully submitted,

Alice M. Linton, RMC
Enfield Town Clerk