

**REGULAR MEETING, PUBLIC HEARING REGARDING**  
**LOCAL LAW NO. 2 OF 2023**  
**“A LOCAL LAW MODIFYING THE SOLAR ENERGY SYSTEMS LAW”**  
**TOWN OF SHERMAN,**  
**March 2, 2023**

A regular meeting of the Town of Sherman Board was held on Thursday, March 2, 2023 at the Town Office Building, 111A Mill St, Town of Sherman, Chautauqua County, New York at 7:00 PM.

Present:	Mark D. Persons	Supervisor
	James L. Higginbotham	Council Member/Deputy Supervisor
	Howard E. Crump	Council Member
	Brant D Henning	Council Member
	Ben Nickerson	Council Member
	Tamera M Weise	Town Clerk
	Dennis Sweatman	Highway Superintendent

Guests: Greg Osman – CEO, Marty Proctor – County Legislator, Town Residents: James Irwin, Kyle Rhebergan, Gary Emory, Georgia Peck, Patrick Sweatman, Jim Mayshark, Dave Anderson – Mayville Resident, Annette Swan – Town Historian

Supervisor Persons led the Pledge to the flag and opened the Public Hearing Regarding Local Law No. 2 of 2023 “A local Law Modifying the Solar Energy Systems Law” at 7:00 p.m.

- Town resident Patrick Sweaman asked questions regarding solar panel battery storage. Supervisor Persons replied that there will be a separate Town Law regarding battery storage and also noted that Local Law No. 2 of 2023 will not pertain to the Village of Sherman’s current solar project.

After discussion and no further questions:

**RESOLUTION #7**

Councilman Brant Henning made the motion seconded by Councilman Howard Crump to close the Public Hearing.

**MOTION CARRIED**

\* Town Historian Annette Swan reported that she attended a meeting in regards to Sherman Day and the Bicentennial planning.

Annette said the following ideas were discussed and asked for the Boards impute on them:

- \* Most of the festivities to be held on Main St and at Edmund Park.
- \*Discussion on sites for the fireworks.
- \*Store fronts will be decorated with Sherman History
- \*Decedents of Dearing Dorman will be asked to part in the parade
- \*Discussion on a possible Time Capsule, Town Proclamation and Bicentennial opening ceremony.

Supervisor Persons thanked Annette for the update and to let the Town Board know if she needed anything from them.

\*Greg Osman- CEO gave his monthly report as follows:

Report for month of February

Number of inspections for 9

Number of inspections this year is are 21

Number of Permits issued for January are 4

Number of Permits for this year is 4

Dollar Amount of Permits for January are \$335,000.00

Dollar amount of Building this year are \$ 335,000.00

Miles traveled for January are 70

Permits issued to:

Nathan Miller, 3069 Armenian Rd for a house and barn

Allen Troyer, 8821 Cherry Hill Rd, for a shed

Nolan Aiken, 7484 Sherman-Stedman Rd for a mobile home

### **RESOLUTION #8**

#### **APPROVAL OF MINUTES**

Councilman Howard Crump made the motion, seconded by Councilman Brant Henning to approve the minutes from the April 2, 2023 Joint Public Hearing of The Town of Sherman & The Village of Sherman on the Petition to Annex Territory in The Town of Sherman to The Village of Sherman Pursuant to General Municipal Law Article 17.

AYES: 5      NAYS: 0      MOTION CARRIED.

### **RESOLUTION #9**

Councilman Howard Crump made the motions, seconded by Councilman Brant Henning to approve the minutes from the April 2, 2023 Regular Town Board meeting.

AYES: 5      NAYS: 0      MOTION CARRIED

### **RESOLUTION #10**

Councilman Brant Henning made the motion, seconded by Councilman Howard Crump to approve the minutes from the February 6, 2023 Special Town Board meeting.

AYES: 5      NAYS: 0      MOTION CARRIED

### **RESOLUTION #11**

Councilman Brant Henning made the motion, seconded by Councilman Ben Nickerson to approve the minutes from the February 20, 2023 Special Town Board meeting.

AYES: 5      NAYS: 0      MOTION CARRIED

### **RESOLUTION #12**

#### **ABSTRACTS/CLAIMS**

Councilman James Higginbotham made the motion, seconded by Councilman Howard Crump to approve payment of General Claims #31 through #46 in the amount of \$9,389.40, Highway Claims #11 through #20 in the amount of \$7,518.18, Youth Claims #1 in the amount of \$368.46.

MOTION CARRIED

### **JUDGE'S REPORT**

Judge Cooper's January report shows fines of \$650.00, civil fees of \$0 and surcharges of \$651.00 for a total of \$1,301.00.

## **CLERK/REGISTRAR'S REPORT**

- Heather Ramsey agreed that she would be willing to take Directors Position for the Youth Baseball Program.

### **RESOLUTION #13**

Councilman Brant Henning made the motion, seconded by Councilman Ben Nickerson to appoint Heather Ramsey as the director of the 2023 Town of Sherman Youth Baseball Program.

AYES: 5 NAYS: 0 MOTION CARRIED

- Clerk Weise received the following Estimate from Cole Electric to upgrade the Lights in the Town Office for the cost of \$1,435.00 and the exterior lights on the Highway Building at a cost of \$2,620.00.  
After discussion the Town Board asked Dennis Sweatman if he would work on getting one more quote for this project.
- Clerk Weise shared with the Board the ad that was placed in the 2023 Chautauqua County Travel Guide on the Towns Bicentennial Celebration Aug. 5, 2023.
- Clerk Weise presented the following report from Cory Emory on the 2023 Saturday Morning Basketball Program.

### **Town of Sherman, Saturday Morning Basketball Report – Cory Emory**

**Schedule:** December 3<sup>rd</sup> – February 17<sup>th</sup> (10 weeks) (2023)

Grades (3,4,5): Approximately 27 students each week

Grades (6,7): Approximately 24 students each week

Grades (8-9): Approximately 20 coaches, refs and helpers each week

We had the Saturday Morning Championships at the end of the school day on Friday, February 17<sup>th</sup>. The school was buzzing for the entire week about the games. It was a great experience for everybody involved. The majority of the elementary and high school students were in attendance. There were also around 50 family members in the crowd. The crowd was so loud that my father walked down to the gym to see what was going on because he could hear the crowd from his living room.

The school is having a basketball camp again this summer. This is not to replace Saturday Morning Basketball. It is just for enrichment of the students that lost a year of Saturday Morning Basketball due to Covid.

Students both young and old (high school students) look forward to Saturday Morning hoops. That is what it is all about. Getting the young student/athletes interested in basketball, and making a connection between the younger and older players.

Thank you for continuing to have this program. It is the feeder system for the jv/varsity programs at SCS. The past and present success of our teams on both the boys and girls side speaks for itself.

## ASSESSOR'S REPORT – February

- January 2023 deeds have not been received from the County Clerk as of 2/15/2023.
- Residential market documents have been printed. Data entry of all assessment changes if continuing.
- The exemption renewal process continues until March 1. I am unsure if there will be time to make reminder calls to property owners that have not renewed.
- The newly required letters to residents that MAY qualify for the Senior Low Income exemption were mailed and subsequently there have been many calls and visits to my office regarding this letter.
- The Town of Sherman never adopted the Senior Low Income Exemption. I ask that the Town Board consider adopting this exemption with the same income limit as the County limit in perpetuity. Please contact me with any questions.
- I also ask that the Town board consider adopting the volunteer firefighter/ambulance worker exemption. Please contact me with any questions regarding this exemption as well. A template of the local law is available and there are local options to consider.
- Field review of residential market documents is continuing as needed.

Thank you all for your continued support.

## HIGHWAY SUPERINTENDENT REPORT

Highway Superintendent Dennis Sweatman brought the following to the Boards attention:

- The repairs on the Excavator are no longer under warranty. The total repair cost is around \$14,000. Our sales rep is trying to get the repair cost lowered.

## SUPERVISOR'S REPORT

Supervisor Mark Persons presented the following to the Town Board:

- Adoption of Local Law No. 2 of 2023, A Local Law Modifying the Solar Energy Systems Law: After no further discussion or questions:

### **RESOLUTION #14**

Supervisor Mark Persons made the motion, seconded by Councilman Brant Henning to accept Local Law No. 2 of 2023, A LOCAL LAW MODIFYING THE SOLAR ENERGY SYSTEM LAW with the following changes: “All large scale solar energy systems shall be set back a minimum of **200 feet** from any property line and a minimum of **500 feet** from any residential building, school, place of public worship or designated historic district or landmark.

**TOWN OF SHERMAN**

**LOCAL LAW NO. 2 OF 2023**

## **A LOCAL LAW MODIFYING THE SOLAR ENERGY SYSTEMS LAW**

Be it enacted by the Town of Board of the Town of Sherman, County of Chautauqua and State of New York, as follows:

### **SECTION 1. AUTHORITY.**

This local law is promulgated pursuant to the authority granted by:

1. Article IX of the New York State Constitution, §2(c)(10);
2. New York Statute of Local Governments, §10(1) and (7);
3. New York Municipal Home Rule Law, §10(1)(i) and (ii) and §10(1)(a), (11), (12), and (14);
4. New York Town Law §130 (11)(peace, good order and safety), (15)(promotion of public welfare); and
5. New York Town Law §64(17-a)(protection of aesthetic interests), (23)(general powers).

### **SECTION 2. PURPOSE.**

The Town Board of the Town Sherman, exercising the authority granted to under the Town Law of the State of New York to protect the health, safety, and welfare of the residents and property owners of the Town of Sherman, does hereby enact this Section to regulate the construction, maintenance and placement of solar energy systems and equipment in the Town of Sherman. The purpose of this regulation is to balance the potential impact on neighbors when solar collectors may be Installed near their property, while preserving the rights of property owners to install solar collection systems without excess regulation. The Town of Sherman recognizes the importance of solar systems in generating electricity for on-premise and off-premise use, the reduction of greenhouse gas emissions and support for emerging solar system economic development.

This Local Law is intended to supersede and replace in its entirety Town of Sherman Local Law No. 3 of 2020.

### **SECTION 3. DEFINITIONS.**

For purposes of this local law, the following terms shall have the meaning indicated:

**BUILDING-INTEGRATED PHOTOVOLTAIC (BIPV)** - A solar energy system that consists of integrating photovoltaic modules into the building structure. Technologies include PV shingles or tiles, PV laminates and PV Glass. Examples of placement include vertical facades, semi-transparent skylights, awnings, fixed awnings and roofs

**GROUND MOUNTED SYSTEMS** - A solar energy system that is anchored to the ground and attached to a pole or similar mounting system, detached from any other structure.

**LARGE-SCALE SYSTEM** - Solar energy systems used primarily to convert solar energy into electricity for off-site consumption or sale and/or systems that have the capacity to produce more than 25KW per hour of energy.

**ROOF-MOUNTED SYSTEM** - A solar power system in which solar panels are mounted on top of the structure of a roof either as a flush mounted system or as modules fixed to frames which can be tilted toward the sun at an optimal angle. Roof mounted systems shall be located on a roof of a permitted principal use or accessory structure.

**SMALL-SCALE SOLAR** - Small Scale Solar means a solar energy system that is installed and placed for the production of energy for consumption only on-site and that has the capacity to produce less than 25KW per hour of energy.

**SOLAR ENERGY EQUIPMENT** - Energy storage devices, materials, hardware, or electrical equipment and conduit associated with the production of electrical energy.

**SOLAR ENERGY PRODUCTION FACILITY** - Energy Generation facility or area of land principally used to convert solar energy to electricity, whether by photovoltaics, concentrating solar thermal devices or various experimental solar technologies, with the primary purpose of wholesale or retail sales of electricity.

**SOLAR ENERGY SYSTEM** - Includes a combination of both solar panels and solar energy equipment.

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

**SOLAR STORAGE BATTERY** - A device that stores energy from the sun and makes it available in an electrical form.

#### **SECTION 4. APPLICABILITY**

- A. The requirements of this Section shall apply to all Solar Energy Systems installed or modified after the effective date of the local law by which it was adopted, excluding general maintenance and repair.
- B. All Solar Energy Systems shall be designed, erected and installed or modified in accordance with all applicable codes, regulations and industry standards as referenced in the New York State Building Code and the Town Code as well as the National Electrical Code (NEC), National Fire Protection Code 70 (NFPA 70), and local regulations.
- C. Under SEQRA regulations, actions are classified as Type I, Type II, or Unlisted Actions. Type II Actions are exempt from review and include actions such as the construction, expansion or placement of minor or accessory structures. The Town of

Sherman considers Building-integrated solar components and Small-scale systems to be Type II Actions and therefore exempt from all SEQRA requirements, including the submission of an EAF (Environmental Assessment Form). Large Scale Systems and solar energy production facilities that meet thresholds contained in the SEQRA regulations and are considered more likely than others to have a significant adverse impact shall be considered Type I Actions. However, the need for a complete Environmental Impact Statement (EIS) shall be determined by the permitting board on a case-by-case basis in accordance with the significance of the potential adverse environmental impact.

- D. All fees for applications made pursuant to this local law shall be established by resolution of the Town Board. Nothing herein shall be read to limit the ability of the Town to enter into host community agreements with any applicant to compensate the Town for expenses or Impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required under SEQRA if an EIS is required.

#### **SECTION 5. SOLAR AS AN ACCESSORY USE/STRUCTURE.**

This section governs the placement and installation of Small-scale Solar systems as defined herein. The installation of Small-scale Solar systems does require the applicant to obtain a building permit from the Town of Sherman.

- A. Roof-mounted Systems. Roof-mounted Systems are permitted as an accessory use when attached to a lawfully-permitted principal structure and/or accessory structure, subject to the following requirements:

1. Aesthetics. Solar energy equipment shall incorporate the following design requirements:

- a. Solar energy equipment shall be installed outside the primary residence or accessory structure and as close to a public utility electrical meter as possible.
- b. Roof-mounted Panels facing the front yard must be mounted at the same angle as the roof's surface with a maximum distance of 18 inches between the roof and highest edge of the system.
- c. Access and Pathways (NFPA Section 324.7) Roof access, pathways, and spacing requirements for solar photovoltaic systems shall be provided in accordance with NFPA Sections R324.7.1 through R324.7.6

#### **EXCEPTIONS:**

[1] Roof access, pathways and spacing requirements need not be provided where an alternative ventilation method has been provided, or where vertical ventilation techniques will not be employed.

[2] Detached garages and accessory units.

- d. Size of solar photovoltaic array (324.7.1). Each photovoltaic array shall not exceed 150 feet in any direction. (45,720 mm).
- e. Roof Access Points (324.1.2). Roof access points shall be located:
  - [1] In areas that establish access pathways which are independent of each other and as remote from each other as practicable so as to provide escape routes from all points along the roof.
  - [2] In areas that do not require the placement of ground ladders over openings such as windows or doors or areas that may cause congestion or create other hazards.
  - [3] At strong points of building construction, such as corners, pilasters, hips, and valleys and other areas capable of supporting the live load from emergency responders.
  - [4] Where the roof access point does not conflict with overhead obstructions such as tree limbs, wires or signs.
  - [5] Where the roof access point does not conflict with ground obstructions such as decks, fences or landscaping.
  - [6] In areas that minimize roof tripping hazards such as vents, skylights, satellite dishes, antennas, or conduit runs.
- f. Ground access areas (324.7.3). Ground access areas shall be located directly beneath access roofs and roof access points. The minimum width of the ground access area shall be the full width of the access roof or roof access point, measured at the eave. The minimum depth shall allow for the safe placement of ground ladders for gaining entry to the access roof.
- g. Single ridge roofs (324.7.4). Panels, modules or arrays installed on roofs with a single ridge shall be located in a manner that provides two (2), 36 inches wide (914mm) access pathways extending from the roof access point to the ridge. Access pathways on opposing roof slopes shall not be located along the same plane as truss, rafter, or other such framing system that supports the pathway

EXCEPTIONS:

- [1] Roofs with slopes of 2 units vertical in 12 units horizontal (16.6 percent) or less.
- [2] Structures where an access roof fronts a street, driveway or other area readily accessible to emergency responders.
- [3] One access pathway shall be required when a roof slope containing panels, modules or arrays is located not more than 24 inches (610 mm) vertically from an adjoining roof which contains an access roof.



- h. Hip roofs (324.7.5). Panels, modules and arrays installed on dwellings with hip roofs shall be located in a manner that provides a clear access pathway not less than 36 inches (914mm), extending from the roof access point to the ridge or peak, on each roof slope where panels, modules or arrays are located.

EXCEPTIONS:

- [1] Roofs with slopes of 2 units vertical in 12 units horizontal (16.6 percent) or less.
- [2] Structures where an access roof fronts a street, driveway or other area readily accessible to emergency responders
  - [i] Roofs with valleys (324.7.6), Panels and modules shall not be located less than 18 inches (457 mm) from a valley.

EXCEPTIONS:

- [a] Roofs with slopes of 2 units vertical in 12 units horizontal (16.6 percent) or less.
- [ii] Allowance for smoke ventilation operations (324.7.7). Panels and modules shall not be located less than 18 inches (457 mm) from a ridge or peak.

EXCEPTIONS:

- [a] Where an alternative ventilation method has been provided or where vertical ventilation methods will not be employed between the uppermost portion of the solar photovoltaic system and the roof ridge or peak.
- [b] Detached garages and accessory structures.

B. Ground Mounted Systems.

1. All ground mounted solar panels shall be installed in the rear yard.
2. Setback(s). The setback from any property line shall be 75 feet. If the applicant controls multiple, contiguous parcels, only the exterior boundary of the aggregated parcels shall be considered the “property line” for purposes of determining setbacks.
3. Height. The maximum height of a ground-mounted solar energy system shall be 15 feet as measured from the finished grade. All height measurements are to be calculated when the solar energy system is oriented at maximum tilt.

4. Lot Coverage. The surface area of ground mounted solar panels shall be included in lot coverage and impervious surface calculations and shall not exceed thirty percent (30%) of the lot size.
5. Other:
  - a. Any application for installation and placement of small scale solar energy system under this section in a side yard location shall require an application containing a site plan showing the location of all solar energy system components, their location on the premises, their location on the premises in relation to the property line and any and all structures on the premises, and the nearest structure located on the premises adjacent thereto.

C. Notification to the Fire Service. Notification in writing to the Fire Department having operational authority at the location where the system will be installed shall be made no later than ten (10) days following installation:

1. Notification shall include a site map showing the location of the solar energy electrical panel, as well as the proper operation of the disconnect switch(s) in the event of a fire or other emergency situation where the homeowner, tenant or other personnel is not available or familiar with the safe shut down operation of the unit so as to have the ability to cut power from the solar panels.
2. In addition, a proper written statement showing the method of shut down shall be posted inside the main electrical panel of the unit which can be readily accessible for and to firefighting personnel.

#### **SECTION 6. SOLAR AS PRINCIPAL USE.**

- A. Large Scale Solar Systems are permitted by the issuance of a Special Permit issued by the Town Board, subject to the requirements set forth in this section.
  1. Every application for a Large Scale System within the Town of Sherman shall be made to the Town Board and shall be approved by a majority vote thereof.
  2. The Town Board shall hold a public hearing upon ten (10) day's notice duly posted and published in the official newspaper of the Town and on the Town bulletin board, before granting the Special Permit.
- B. Special Permit Application Requirements. Every application for a Special Permit under this section shall contain the following information:
  1. Verification of utility notification. Foreseeable infrastructure upgrades shall be documented and submitted. Off-grid systems are exempt from this requirement.
  2. Name, address, and contact information of the applicant, property owner(s) and agent submitting the proposed project application.

3. If the property of the proposed project is to be leased, legal consent among all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements.
4. Blueprints showing the layout of the proposed system signed by a Professional Engineer or Registered Architect.
5. Equipment specification sheets for all photovoltaic panels, significant components, mounting systems and invertors that are to be installed.
6. A property operation and maintenance plan describing continuing photovoltaic maintenance and property upkeep, such as mowing, trimming, etc.
7. Decommissioning Plan:
  - a. To ensure the proper removal of large scale systems, the decommissioning plan shall include details regarding the removal of all infrastructures, including the removal of concrete to a depth of four feet, and the remediation of soil and vegetation back to its original state prior to construction, unless otherwise permitted. A cost estimate detailing the projected cost of executing the decommissioning plan shall be prepared by a Professional Engineer or contractor. Cost estimates shall take inflation into account. In the case of a lease, the cost of decommissioning shall be borne by the entity or corporation that is leasing the property in question and not the landowner.
  - b. A form of surety, through escrow, bond or the equivalency of, shall be established prior to the commencement of construction to cover the cost of decommissioning the site. The amount of surety required may not exceed 125 percent of the estimated cost to decommission.
8. Maintenance Plan: Applications shall include a maintenance plan for all leased lands (including required setbacks/buffers). Noxious weeds shall not be tolerated. Monthly mowing shall occur in the months of May, June, July, August, and September. Monthly debris removal from the fence line is required.)
9. A certification from the applicant stating that the panels and anti-glare coatings that will be used will not contain any PFAS's or other hazardous materials.

#### C. Special Permit Standards

1. Setback(s): All large scale solar energy systems shall be set back a minimum of 2000 feet from any property line and a minimum of 500 feet from any residential building, school, place of public worship, or designated historic district or landmark. If the applicant controls multiple, contiguous parcels, only the exterior boundary of the aggregated parcels shall be considered the "property line" for purposes of determining setbacks.
2. All large scale solar energy systems shall be enclosed by fencing to prevent unauthorized access. Warning signs shall be placed on the entrance and perimeter

of the fencing. The height and type of fencing shall be determined by the Special Permit process.

3. On-site electrical interconnection lines and distribution lines shall be placed underground, unless otherwise required by the utility.
4. The removal of existing vegetation shall be limited to the extent necessary for the construction and maintenance of the solar installation.
5. Glare. All solar panels shall have anti-reflective coating(s) and proof of such submitted.
6. Roads. The applicant is responsible for remediation of dedicated roads damaged by the construction and maintenance of a large-scale solar energy system. A public improvement bond or other financial security, the amount thereof to be approved by the Town Board and the bond approved by the Town Attorney as to form, sufficiency, and manner of execution, shall be posted as a condition of permitting.

#### D. Solar Storage Batteries.

1. If solar storage batteries are included as part of the Solar Energy Collection system, they must be placed in a secure container or enclosure meeting the requirements of the New York State Building Code. All solar storage batteries, their maintenance, placement, and location shall also comply with all applicable rules and regulations as promulgated by New York State Building Code and the National Electric Code.
2. When batteries are no longer in use, they shall be disposed of in accordance with the laws of the State of New York and any applicable Federal or Local disposal rules or regulations.

#### E. Ownership Changes.

If the owner of the solar energy system changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the solar energy system shall notify the Code Enforcement Officer of such change in ownership or operator within 30 days of the ownership change. A new owner or operator must provide such notification to the Code Enforcement Officer in writing. The special use permit and all other local approvals for the solar energy system would be void if a new owner or operator fails to provide written notification to the Code Enforcement Officer in the required timeframe. Reinstatement of a void special use permit will be subject to the same review and approval processes for new applications.

#### F. Waiver Relief.

The Town Board recognizes that no regulation can anticipate every creative plan that may be devised, which, though not in strict compliance with the provisions of this article, nevertheless, is not objectionable. Accordingly, the Town Board is hereby empowered to grant relief to an applicant from the strict application of this Section where the applicant provides sufficient grounds for a finding that the proposal comports as much as feasible with the spirit and letter of this Section and, though not in strict compliance therewith, remains

aesthetically pleasing, protects neighboring properties, and preserves property values within the Town of Sherman.

G. Reimbursement of Fees and Expenses.

1. An Applicant shall reimburse the Town for any fee or expense incurred in hiring subject matter experts and attorneys to review whether a Solar Energy System proposed for siting pursuant to Article 10 of the New York Public Service Law or Article 94-c of the Executive Law complies with the substantive provision of this local law.
2. The applicable fees for any review or permit required by this local law shall be set from time to time by resolution of the Town Board.
3. An Applicant for either state or local siting approval shall deliver to the Town Board, along with its application, if local approval is sought, or one-hundred eighty (180) days prior to the filing of an Article 10 or Article 94-C application, if applicable, an amount equal to one percent (1%) of the estimated cost of the project (the "Initial Deposit"). This sum shall be held by the Town in a non-interest bearing account and shall be available to the Town to pay consultants and attorneys engaged by the Town to assist in its review of and preparation for an Article 10 or Article 94-c application. Should the Town be awarded intervenor funds, it shall switch to and deplete those funds before making further use of the Initial Deposit. Following the approval or denial of the state or local application, the Town shall return to the Applicant any excess funds remaining in escrow. If the escrow account has been depleted prior to approval or denial of the application, the Applicant shall deposit such funds necessary for the Town to pay any outstanding consulting fees.

H. Host Community Agreement & PILOT Agreement.

Prior to the issuance of a building permit for any Large-scale Solar Energy System, the Applicant for such system shall enter into a Host Community Agreement with the Town of Sherman, which shall:

1. Contractually obligate the Applicant to comply with any terms and conditions of any special use permit approval of the Town Board;
2. Provide for payment by the Applicant to the Town of an impact fee to be used and applied by the Town to pay for and/or offset the costs and impacts incurred by and/or arising due to the development and/or operation of the Large-scale Solar Energy System. The amount of such impact fee shall be established by the Town Board by resolution adopted from time to time, based upon the amount of energy produced by the project and such other factors as the Board shall determine;
3. Provide for such other contractual requirements as may be necessary given the specific elements of a particular project; and
4. If the Applicant and/or owner of the project shall enter into a payment-in-lieu-of-taxes (PILOT) agreement with the Chautauqua County Industrial Development Agency, the Host Community Agreement shall be cross-defaulted with the agreements between the Applicant and/or owner and the Chautauqua County Industrial Development Agency.
5. The final terms of any such PILOT agreement shall be determined by the Town and its Assessor in the exercise of their sound discretion in consideration of such factors as the size and capacity of such solar facility and shall require annual payments in an amount

not to exceed the amount which would otherwise be payable but for the exemption provided pursuant to RPTL § 487 for a period of not more than 15 years commencing from the date on which the benefits of such exemption first becomes available and effective. The Town reserves the right to reject any such proposed PILOT for any reason.

#### **SECTION 7. ENFORCEMENT.**

- A. Any violation of any provisions of this local law shall be punishable by penalty or a term of imprisonment as prescribed in Section 268 of the Town Law of the State of New York.
- B. Notwithstanding the above, the Town Board of the Town of Sherman hereby reserves the right to proceed to enforce the provisions of this section by civil action, injunction, and any other remedy afforded to it by the laws of the State of New York or the United States.

#### **SECTION 8. VALIDITY AND SEVERABILITY.**

If any part or provision of this Local Law shall be declared invalid, void, unconstitutional or unenforceable by a court of law, all unaffected provisions hereof shall survive such declaration and this Local Law shall remain in full force and effect as if the invalidated portion had not been enacted.

#### **SECTION 9. EFFECTIVE DATE.**

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

#### **MOTION CARRIED**

Supervisor Mark Persons – AYE  
Councilman James Higginbotham – AYE  
Councilman Howard Crump - AYE

Councilman Brant Henning – AYE  
Councilman Ben Nickerson – AYE

- Resolution continuing the Sherman Agricultural district – After no further discussion or questions:

#### **RESOLUTION #15**

Councilman Brant Henning made the following resolution, seconded by Councilman James Higginbotham that the Sherman Town Board continue the Sherman Agricultural District and adopt the revised boundary lines pursuant to the attached map and description.

**MOTION CARRIED.**



- Supervisor Mark Persons presented and read the following Resolution to the Town Board:

## **TOWN OF SHERMAN**

### **RESOLUTION AND DETERMINATION OF GOVERNMENTAL IMMUNITY FROM ZONING**

**WHEREAS**, the Village of Sherman (“Village” desires to lease land owned by it within the Town of Sherman (“Town”) to SL Sherman, LLC and SL Sherman II, LLC (the “Developer”) to build and operate two contiguous solar facilities (the “Project”) with a combined electric generating capacity of 9.65 MW-AC on approximately 40.5 acres owned by the Village, currently identified on the official tax map of Chautauqua County as SBL 328.10-2-1.1, 328.00-1-11 and 328.00-1-10 (the “Property”); and

**WHEREAS**, the Village of Sherman has requested the Town of Sherman to grant the Project governmental immunity from local zoning regulations

**WHEREAS**, the Project will provide new revenue to the Village that will permit it to perform needed upgrades to the Village utility systems, which will result in significant benefits to Village utility customers and taxpayers; and

**WHEREAS**, the Town and Village have entered into a Host Community Agreement with the Owner with regard to the Project; and

**WHEREAS**, in 1988, the New York State Court of Appeals issued a decision in the case of *Matter of Monroe v. City of Rochester*, 72 N.Y. 2d 338, in which the Court established a “balancing of interests” test to allow local municipalities to determine whether certain municipal projects on public property qualify for immunity from local zoning requirements, and established a “balancing of interests” test to determine whether a qualified project was immune from zoning,

### **NOW, THEREFORE, BE IT**

**RESOLVED**, that based on careful consideration of all nine (9) factors identified by the *Monroe* Court, and all information available to date with respect to the Project, the Town of Sherman finds that the application of the *County of Monroe* “balancing of interests” test is appropriate for this Facility, and be it further

**RESOLVED**, that the Town Board resolves to grant immunity to the Project proposed by the Village of Sherman and SL Sherman, LLC and SL Sherman II, LLC from the applicable requirements of the Town Code, and that the Project is determined to be immune from any further land use and zoning review, and be it further

**RESOLVED**, that this grant of immunity is limited only to the Project and will not apply to nor have any precedential value in any similar review performed by the Town for other uses proposed by the Village within the Town of Sherman.



.....  
The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

<u>Supervisor Mark Persons</u>	VOTING	Yes
<u>Councilman James Higginbotham</u>	VOTING	Yes
<u>Councilman Howard Crump</u>	VOTING	Yes
<u>Councilman Ben Nickerson</u>	VOTING	Yes
<u>Councilman Brant Henning</u>	VOTING	Yes

The resolution was thereupon declared duly adopted.

- Confiscated dog cost discussion:  
Dog Control Officer Kelly Thornton reached out to Supervisor Persons in regards to a dog issue where that the dogs were confiscated and charges will be made against the owner. Kelly is hoping that any accrued costs will come back through court fees.

Councilman James Higginbotham made the motion to adjourn the meeting.

MEETING ADJOURNED AT 8:00 p.m.

Respectfully Submitted,

Tamera M Weise  
Sherman Town Clerk