

**REGULAR MEETING / PUBLIC HEARING ON LOCAL LAW No. 1 & LOCAL
LAW No. 2 of 2020, TOWN OF SHERMAN,
March 5, 2020**

A regular meeting of the Town of Sherman Board was held on Thursday, March 5, 2020 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
	Bessie V. Endress	Council Member
	Ben Nickerson	Council Member
	Tamera M Weise	Town Clerk
	Dennis Sweatman	Highway Superintendent

Absent

Guests: Greg Osman-CEO and Joel Seachrist – Town Attorney

Supervisor Persons called the meeting to order at 7:00 and led the Pledge to the flag.

Public Hearing Local Law No. 1:

- Supervisor Mark Persons opened the Public Hearing on Local Law No. 1 of 2020 in regards by which the Town of Sherman would opt out of the tax exemptions given to renewable energy projects under R.P.T.L. 487. Attorney Joel Seachrist explained the detail of the law and answered questions from the Town Board on the law.

RESOLUTION #8

Councilman Howard Crump made the motion, seconded by Councilman James Higginbotham to adjourn the Public Hearing and adopt Local Law No. 1 of 2020.
MOTION CARRIED.

**TOWN OF SHERMAN
LOCAL LAW NO. 1 of 2020**

**A LOCAL LAW OPTING OUT OF THE TAX EXEMPTIONS PROVIDED BY
SECTION 487 OF THE REAL PROIPERTY TAX LAW**

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

SECTION 1. Legislative Authority

This local law is enacted pursuant to the authority contained in Real Property Tax Law Section 487.

SECTION 2. Opt Out of Real Property Section 487 Tax Exemption.

The Town of Sherman hereby opts out of the tax exemptions provided by Section 487 of the Real Property Tax Law for Solar or Wind Energy Systems or Farm Waste Energy Systems constructed after the effective date of this local law.

SECTION 3. Repealer

All ordinances, local laws, and parts thereof inconsistent with this local law are hereby repealed.

SECTION 4. Validity

The invalidity of any provision of this Local Law shall not affect the validity of any other portion of this Local Law which can be given effect without such invalid provision.

SECTION 5. Effective Date

This Local Law shall take effect immediately upon filing in the office of the Secretary of State, the New York State Department of Taxation and Finance, and the New York State Energy Research and Development Authority.

- Supervisor Mark Persons opened the Public Hearing for Local Law No. 2 of 2020, by which the Town would adopt regulations for telecommunication towers, including regulations and a fee structure for small wireless facilities installed as part of the 5G network build-out at 7:05 p.m. Attorney Seachrist explained the details of this law and answered any questions in regards to the law.

RESOLUTION #9

Councilwoman Bessie Endress made the motion, seconded by Councilman Ben Nickerson to adjourn the Public Hearing and adopt Local Law No. 2 of 2020. MOTION CARRIED.

**TOWN OF SHERMAN
LOCAL LAW NO. 2 of 2020**

**A LOCAL LAW REGULATION TELECOMMUNICATIONS FACILITIES AND
SMALL WIRELESS FACILITIES**

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

Section 1. Purpose.

The purpose of this local law is to promote the health, safety and general welfare of the residents of the Town of Sherman; to provide standards for the safe provision of communications consistent with applicable federal and state regulations; to minimize the total number of communication towers in the community by encouraging shared use of existing and future towers and the use of existing tall building and other high structures; and to minimize adverse visual effects from communication towers by requiring careful siting, visual impact assessment, and appropriate landscaping, thereby protecting the natural features and aesthetic character of the Town of Sherman.

Section 2. Definitions.

For purposes of this local law, the terms listed below shall have the definitions that follow:

“Accessory Structure” - A non-habitable accessory facility or structure serving or being used in conjunction with a communications tower and/or similar facility or antenna, and located on the same lot as the communications tower or antenna. Examples of such structures include utility or transmission equipment, storage sheds or cabinets.

“Antenna” - A system of electrical conductors that transmit or receive radio frequency signals. Such signals shall include but not be limited to radio, television, cellular, paging, personal wireless communication services (PWCS), and microwave communications.

“Board or Town Board - The Town Board of the Town of Sherman.

“Co-Located Antennas” - Telecommunications facilities which utilize existing towers, buildings, or other structures for placement of antennas and do not require construction of a new tower.

"FAA" - The Federal Aviation Administration.

"FCC" - The Federal Communications Commission.

“Small Cell Facility(ies)” or “wireless facilities” - Whether singular or plural, means and includes the following types of facilities:(a) antenna; and (b) associated Accessory Equipment, which is more particularly known as wireless facilities that, individually and collectively, are part of a system that meets the following qualifications: (1) each antenna of no more than six cubic feet in volume or such greater limits as the federal communications commission has excluded from review under Section 106 of the National Historic Preservation Act; (2) the equipment enclosure is cumulatively no larger than twenty eight cubic feet in volume or such higher limits as the federal communications commission has excluded from review under Section 106 of the National Historic Preservation Act; and (3) the increased or resulting height of the wireless support structure on which the small cell facility is placed is no more than ten feet higher than before, or no more than fifty feet high overall, whichever is greater; or if placed on a new utility pole, the new utility pole is no more than ten feet higher than existing utility poles adjacent to the new pole, or no more than fifty feet high overall, whichever is greater. Accessory equipment is not to be included in the calculation of equipment volume and may be located outside the equipment enclosure. The term small cell facility includes micro facilities, DAS and other wireless technologies meeting the above qualifications and may be referred to as a “node(s)” when referencing the numbers of facilities per application or elsewhere in this Resolution, and be it further

“Telecommunication Facilities” - Towers and/or antennas and accessory structures used in connection with the provision of cellular telephone service, personal wireless communication services (PWCS), paging services, radio and/or television broadcast services, microwave transmission and/or similar or like broadcast services.

“Tower” - A structure designed to support antennas. It includes, without limitation, free-standing towers, monopoles, and similar structures which do, or do not, employ camouflage technology.

Section 3. Special Use Permit Required; Exception.

A. No telecommunication facility shall be sited, located, constructed, erected, or modified, without the issuance of a Special Use Permit as prescribed by this local law.

B. This local law shall not apply to modifications to existing telecommunications facilities determined by the Code Enforcement Officer to be “Eligible Facility Requests”, as set forth in 47 C.F.R. Section 1.40001(b)(3), as that section may be amended from time to time; provided, however, that applicants for such modifications shall obtain a non-discretionary permit from the Code Enforcement Officer, and shall pay the permit fee list below.

C. The Town Board is hereby authorized after public notice and a hearing to review and approve, approve with modifications, or disapprove Special Use Permits pursuant to this law. The Town Board shall have the authority to impose such reasonable restrictions and conditions as are directly related to or incidental to the proposed antenna, tower, or accessory structures.

D. Notwithstanding any inconsistent provisions of other local laws adopted by the Town of Sherman, towers and antennas shall be permitted and regulated only in accordance with the provisions of this local law.

Section 4. General Standards.

No permit or renewal thereof or modification of the conditions of a current permit relating to a telecommunication facility shall be authorized by the Town Board unless it finds that such telecommunication facility or proposed modification thereto:

- A. Is necessary to meet current or expected demands for the services supported by the telecommunications facility;
- B. Conforms with all applicable regulations promulgated by the Federal Communications Commission and/or any other applicable State or Federal regulatory agency.
- C. Is designed and constructed in a manner which minimizes its visual impact.
- D. Is the most appropriate site within the immediate area for the location of a telecommunication facility. It is preferred that telecommunication facilities be co-located as provided in this local law unless the Town Board finds that co-location is not appropriate under the circumstances.

Section 5. Submittals.

All applicants for a special use permit for the construction of a telecommunication facility in the Town of Sherman shall submit the following:

A. A report from a professional engineer which shall:

(1) Describe the tower and the technical, economic and other reasons for the tower design.

(2) State that the tower is structurally sound.

(3) Describe how many and what kinds of antenna are proposed.

(4) Describe how many and what kind of antenna are possible on the tower.

(5) Demonstrate that the site can contain on-site substantially all ice-fall or debris from tower failure.

(6) An analysis of the area containing existing topographical contours and a visual study depicting where within a three-mile radius any portion of the proposed tower could be seen.

B. A copy of the applicant's Federal Communications Commission (FCC) license, including any requirements from the Federal Aviation Administration (FAA).

C. A letter of intent committing the tower owner to negotiate in good faith for shared use by third parties in the future. This letter, which shall be filed with the Building Inspector prior to the issuance of a building permit (assuming the telecommunications tower is approved), shall commit the tower owner and its successors in interest to:

(1) Respond in a timely, comprehensive manner to a request for information from a potential shared-use applicant.

(2) Negotiate in good faith for shared use by third parties.

(3) Allow shared use if an applicant agrees in writing to pay charges.

(4) Make no more than a reasonable charge for shared use based on generally accepted accounting principles. The charge may include, but is not limited to, a pro rata share of the cost of site selection, planning, project administration, land cost, site design, construction and maintenance, financing, return on equity, and depreciation, and all of the cost of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.

D. The reports and evaluations required in Section 7 below, regarding shared use and use without causing electromagnetic interference.

Section 6. Use of existing building and changes to tower and equipment.

A. When an existing building is proposed to be used, the applicant shall submit the following:

(1) A full environmental assessment form (EAF) and the visual addendum to the EAF. The Town Board may require submittal of a more detailed visual analysis based on the results of the visual addendum.

(2) A site plan.

(3) Any other material that the Town Board deems necessary to evaluate the application.

B. Any permit granted pursuant to this local law shall be valid only for the number and any type of antennas, and the related equipment in the application and approval.

Section 7. Shared Use.

A. At all times, shared use of existing towers shall be preferred to the construction of new towers.

B. An applicant shall be required to present an adequate report inventorying existing towers, and approved, but unbuilt towers, within a reasonable distance of the proposed site. If an appropriate communications tower or towers are available, the applicant shall submit a written evaluation of the feasibility of sharing such tower.

(1) The evaluation shall analyze, but is not limited to, the following factors:

(a) Structural capacity of the tower or towers;

(b) Radio frequency interference;

(c) Geographic service area requirements;

(d) Mechanical or electrical incompatibilities;

(e) Inability or ability to locate equipment on the tower or towers;

(f) Cost, if fees and costs for sharing would exceed the cost of a new communications tower over a twenty-five-year period; and

(g) Any restriction or limitations of the Federal Communications Commission that would preclude the shared use of the tower.

C. An applicant shall not be required to share use of an existing telecommunications tower if the cost is unreasonable. Those costs include, but are not limited to, structural reinforcement of the existing tower, preventing transmission or receiver interference, additional site screening, and other charges including real property acquisition of a lease required to accommodate shared use. Costs associated with this subsection shall be considered unreasonable if they exceed the cost of the proposed new use at a new and separate location, over a twenty-five-year period.

D. The applicant shall be required to submit a report demonstrating a good-faith effort to secure shared use of an appropriate existing communication tower. Written requests and responses for shared use shall be provided.

Section 8. Use of Existing Buildings.

A. The use of suitable existing buildings and structures shall be encouraged over the construction of new towers, wherever feasible.

B. The applicant shall prepare an inventory of buildings and structures in the cell search area to determine if any may be suitable to accommodate the antenna. If suitable structures are located, the applicant shall enter into good-faith negotiations with the building owner to secure rights to place one or more antennas on such structures.

C. The applicant shall be required to submit a report demonstrating a good-faith effort to secure shared use of the existing building or structure. Written requests and responses shall be provided.

D. An applicant shall not be required to use an existing building or structure if the cost is unreasonable. Costs associated with this subsection shall be considered to be unreasonable if they exceed the cost of the proposed new use at a new and separate location, over a twenty-five year period.

Section 9. Setbacks.

A. Telecommunication towers shall be set back from the lot lines a distance at least equal to 150% of the height of the tower. Where an applicant proposes to locate a telecommunications tower at a location consisting of multiple adjacent lots owned or leased by the applicant, the term "lot line" shall mean the exterior boundaries of the applicant's owned or leased property which adjoin property not owned or leased by the applicant.

B. No telecommunication tower shall be located nearer than 300 feet or three times the height of the tower, whichever is greater, from a residential building, school, place of public worship, or designated historic district or landmark.

Section 10. Visibility.

A. All towers and accessory facilities shall be sited to have the least practical adverse effect on the environment.

B. Placement of the antenna or tower on a suitable existing structure, such as a church steeple, water tower or silo is encouraged, whenever feasible.

C. Towers shall not be artificially lighted, except as required by the Federal Aviation Administration (FAA).

D. Towers shall be a galvanized finish or painted gray or silver above the surrounding tree line and painted gray, green or black or other neutral color below the surrounding tree line, unless other standards are required by the FAA. Towers should be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements.

E. Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees exceeding four inches in diameter, measured at a height of four feet off the ground, shall take place prior to approval of the special use permit.

F. No portion of any tower may be used for signs or advertising purposes, including the company name, banners, streamers, etc.

G. The applicant shall demonstrate that proposed height for the tower and antenna is the minimum necessary to function satisfactorily. No tower or antenna that is taller than this minimum height shall be approved.

Section 11. Screening.

A. The Town Board may require fencing around the tower and any associated building(s). The fence shall be a minimum of eight feet in height.

B. Landscaping shall be planted on the outside of the fencing. The landscaping may be installed on the inside of the fencing, subject to the approval of the Town Board, if the survivability or utility of landscaping on the exterior of the fencing is questionable.

C. The Town Board may require evergreen hedges or other planting strips as necessary to screen portions of the facility. Installation of new plantings will not be required in those places where the presence of existing vegetation or structures is sufficient to screen the tower and accessory buildings, or in cases where the proposed landscaping would not be visible.

Section 12. Removal of Obsolete Facilities.

A. All obsolete and unused telecommunication towers shall be removed within 12 months of cessation of use.

B. The owner of the telecommunication tower shall annually file a declaration with the Town as to the continuing operation of every facility installed subject to this local law.

C. The Town Board may require, as a condition of approval of the special use permit, that the applicant post a bond with the Town, sufficient to allow the Town to have the unused tower removed, if the owner fails to do so within the prescribed time period.

Section 13. Application Fees; Consultant fees.

A. **New Facilities.** The applicant shall pay an application fee of \$3,000 to the Town Clerk on the application's being filed with the Town for the proposed telecommunications tower. Said application fee is not refundable if the application is denied. For each antenna, there shall be an additional fee of \$1,000; provided, however, that this initial application fee for tower antennas shall not exceed \$6,000.

B. **Modifications.** Any increase in the number or change in the type of antennas or tower equipment for any existing tower must be approved by the Town Board, as provided herein, subject to an application fee of \$1,000. If such modification is an "Eligible Facility Request", no Town Board approval shall be required, but an administrative fee of \$1,000 shall still apply.

C. **Small Cell Facilities.** The permitting fees for Small Cell Facilities shall be as follows:

(1) An initial, non-refundable permit/administrative fee of \$500.00 for each permit application submitted to place and operate up to five (5) Small Wireless Facilities on public right-of-way or other public property, or on private property, with an additional \$100.00 for each node beyond five;

(2) An initial, non-refundable permit/administrative fee of \$1,000.00 for each new pole and/or new support structure (i.e., not a collocation) intended to support one or more Small Wireless Facilities.

(3) An annual license fee of \$270.00 per Small Wireless Facility in the public right-of-way or on other public property.

(4) This fee structure is intended to comply with the FCC Declaratory Ruling, Order No. 18-133, which sets certain “safe harbor” provision for permitting fees imposed by local municipalities to recover costs associated with the review and permitting of small wireless facilities,

D. The Town of Sherman reserves the privilege to charge additional, reasonable fees to the applicant for engineering and/or other consultants' services as may from time to time be required in conjunction with reviewing and analyzing pertinent information relative to such applications.

Section 14. Supersession of Conflicting Laws.

This local law is intended to supersede and replace Local Law No. 1 of 1997, which was adopted for the same purpose, and all subsequent amendments thereof.

Section 15. 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 16. Effective Date.

This Local Law shall take effect immediately upon it being filed in the office of the Secretary of State.

The Regular meeting for the Town of Sherman resumed at 7:15 p.m.

- Attorney Joel Seachrist explained the process for a Solar Law and how this is and up and coming issue. After questions and discussion it was decided to have Joel do markup of the Solar Law and get it to the Town Board for the April Board meeting.
- Supervisor Persons brought to the Boards attention about people wanting to have animal cremations/remains buried in the Sherman Cemeteries. After discussion and advice from the Town Attorney Joel Seachrist it was decided it would be in the Towns best interest to move not to allow animal burials/cremations in the Town Cemeteries.

RESOLUTION #10

Councilman James Higginbotham made the motions, seconded by Councilwoman Bessie Endress that animal cremains or remains **CANNOT** be put in the Sherman Cemeteries.
MOTION CARRIED.

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

Number of inspections for February are 5.

Number of inspections this year is are 5.

Number of Permits issued for February are 1.

Number of Permits for this year is 1.

Dollar Amount of Permits for February are \$50,000.00

Dollar amount of Building this year are \$50,000.00

Miles traveled for February are 22

Permits issued to:

Marvin Byler, 8610 Alder Bottom Rd for a house.

- CEO Greg Osman brought to the Boards attention that he has had some issues with Allen Detweiler over a building permit. He has been brought to court on this issue and has been told in court what needs done to resolve the issues.
- Greg asked for Boards approval for his attendance at the yearly CEO schooling in Rochester. The Town of Busti will again be paying for ½ of the expenses.

RESOLUTION #10

Supervisor Mark Persons made the motion, seconded by Councilman Howard Crump to approve CEO Gregg Osman to attend this years (2020) schooling in Rochester, NY.

MOTION CARRIED.

RESOLUTION #11

APPROVAL OF MINUTES

Councilwoman Bessie Endress made the motion, seconded by Councilman James Higginbotham to approve the minutes from the last board meeting. MOTION CARRIED.

RESOLUTION #12

ABSTRACTS/CLAIMS

Councilman Howard Crump made the motion, seconded by Councilman James Higginbotham to approve payment of General Claims #29 through #43 in the amount of \$6,306.0, Highway Claims #27 through #38 in the amount of \$40,014.38. MOTION CARRIED

JUDGE'S REPORT

Judge Neal's February report shows fines of \$150.00, Civil fees of \$28.60 and surcharges of \$38.00 for a total of \$216.60. Judge VanVolkenburg's February report shows fines of \$698.00, civil fees of \$70.00 and surcharges of \$603.00 for a total of \$1371.00.

CLERK/REGISTRAR'S REPORT

- Clerk Weise read a thank-you note that was received from Betty Persons Family.
- Dog Control Officer Sandy Kochanowski would like to have a Rabies Clinic in the Town of Sherman in April. Dr. Tim Rice has offered to donate his time and the County Health Dept. employee Jerimiah Maring will help Sandy along with other volunteers. They do require a sponsor for the clinic who will provide a Certificate of Liability. Sandy asked if The Town of Sherman would be willing to sponsor the clinic.

RESOLUTION #13

Councilwoman Bessie Endress made the motion, seconded by Councilman James Higginbotham to go ahead and sponsor a rabies clinic to be held in the Town of Sherman pending the ok from Edwards Insurance on the Town providing a Certificate of Liability Insurance. MOTION CARRIED.

- Clerk Weise reported to the Board that Councilwoman Bessie Endress had audited the Courts Records and Dockets along with the Town Clerks.

RESOLUTION #14

Town Supervisor Mark Persons made the motion, seconded by Councilman Howard Crump that the Courts records and docket were audited on Feb. 27, 2020 and has been approved by the Sherman Town Board.

ASSESSOR'S REPORT - February

- There were 5 deeds recorded in December and 5 in January.
- The exemption filing deadline is March 1st. Many Ag exemptions have yet to be renewed. The last week in February I will begin to reach out to property owners that have a renewal application and have not returned it.
- Data entry of all new assessments has been completed. The final step of the Reassessment process is running several reports to verify that all has been done correctly, and that NYS ORPTS is satisfied with the project. When this is complete, I will begin to print Assessment Change Notices to send to property owners.
- Inspection of new construction and demolition will begin upon completion of the revaluation work.

HIGHWAY SUPERINTENDENT REPORT

Highway Superintendent brought the following to the Boards attention:

- Highway employee Jan Freligh will be retiring the end of March. The Town will owe Jan for 17 years of service, unused vacation / sick time. Clerk Weise is waiting to hear from the Chaut. Co Workers Comp on how much reimbursement the Town will receive in regards to Jan's case last summer. This will determine the amount of sick time that will be owed to him.
- Dennis shared his concern on being short on funds with the Highways 2020 budget with Jan's retirement along with the fact that there is 27 pays for 2020 because of Leap Year. He feels he needs to wait for a couple of months before hiring a replacement to help cover the shortage he will have in payroll.
- The Chautauqua County Snowmobile Club put a new trail out on the Townline road this year. Dennis is concerned about the legality with the Town should there ever be an accident on that trail. Supervisor Persons recommended that Dennis contact the club and recommend that they contact the Town before adding a trail to any of the Town roads.
- The new LED lights have been installed in the Highway building are producing a lot more light in the building.

MEETING ADJOURNED AT 7:57 p.m.

Respectfully Submitted,

Tamera M Weise
Sherman Town Clerk