Town of Fenner Board Meeting
August 11, 2021

Attendance: Councilperson Cody, Councilperson Wester, Councilperson Strack, Councilperson Pushlar, Supervisor Jones, Attorney James Stokes

Town Board meeting called to order at 8:00 pm with Pledge of Allegiance.

Board meeting was held in the Fenner Town Barn to accommodate a larger audience.

Previous month's minutes approved by Councilperson Strack seconded by Councilperson Cody

Town Clerk's Monthly Report motion to approve by Councilperson Wester seconded by Councilperson Pushlar

Supervisor's Monthly report was not available due to illness of bookkeeper

Highway Superintendent's Monthly Report: none

NEW BUSINESS:
Marijuana opt in or out - Town Attorney explained the 3 options:
Dispensary or onsite or both are the considerations
Town- can opt out by doing the following: 1. Local law 2. Public hearing 3. Town vote
Opt in by doing nothing and on 12/31/2021- The Town will be "locked in" but they will be subject to zoning and licensing laws
Potential Benefits:
4% tax with sales 1% - goes to Madison County 3% stays in Fenner
Because of the short timeline if Fenner decides to opt out decision should be made at September's board meeting

Board completed E.A.F. short form part 2

LOCAL LAW 2021-2

"A Local Law to amend the Town of Fenner Land Use Regulations with respect to Solar Energy Systems". This local law authorizes and regulates certain small scale, accessory use solar energy facilities while maintaining the current prohibition of solar farms that exists under the Town of Fenner zoning regulations.

NEW YORK STATE DEPARTMENT OF STATE
41 STATE STREET
ALBANY. NY 12231

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~**County**~~
~~**City**~~
of Fenner
Town
~~**Village**~~

Local Law No. 2 **of the year 2021**

A local law to amend the Town of Fenner Land Use Regulations with respect to Solar Energy Systems

(Insert Title)

Be it enacted by the Town Board of the

~~**County**~~
~~**City**~~
of Fenner **as follows:**
Town
~~**Village**~~

I. Legislative Intent. The Town of Fenner prides itself on its rural character and agrarian heritage that make it an attractive location for farms and rural residences. The Town of Fenner has been a leader in renewable energy, being the home of one of the first commercial wind energy facilities in New York State, and recognizes that appropriately utilized, solar energy may be a readily available and renewable energy source that does not create air emissions in the course of generating electricity. Development of solar farms can, however, have a deleterious effect on the community when it occurs on agricultural lands, thereby removing those lands from production and creating a visual blight upon the community.

This legislation is intended to promote the health, safety and welfare of the Town and its residents and to ensure that solar energy systems will not have a significant adverse impact on the aesthetic qualities and scenic character of the Town of Fenner. Prior to the adoption of this local law, solar energy systems have been prohibited principal uses under the Town's zoning

regulations. The Town of Fenner has determined that appropriately scaled and located small scale solar energy systems that support principal residential, agricultural and business uses can be a benefit to the residents and businesses within the Town. It is the intent of this local law to establish regulations regarding the design, placement, construction and operation of small scale solar energy systems as an accessory use while continuing the prohibition of solar farms that adversely impact the Town and its residents.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

II. Local Law 1997-1 of the Town of Fenner, as amended, (the Revised Town of Fenner Land Use Local Law) is hereby amended as follows:

A. Appendix I -DEFINITIONS, is hereby amended to add the following defined terms:

BUILDING-INTEGRATED SOLAR ENERGY SYSTEM
An accessory use solar energy system incorporated into and becoming part of the overall architecture, design and structure of a building in manner that the solar energy system is a permanent and integral part of the building structure.

FLUSH-MOUNTED SOLAR ENERGY SYSTEM
An accessory use rooftop-mounted solar energy system with solar panels which are installed flush to the surface of a roof and which cannot be angled or raised.

GROUND-MOUNTED SOLAR ENERGY SYSTEM
An accessory use solar energy system that is affixed to the ground either directly or by mounting devices and which is not attached or affixed to a building or structure.

NET-METERING
A billing arrangement that allows solar customers to receive credit for excess electricity which is generated from the customer's solar energy system and delivered back to the grid so that customers only pay for their net electricity usage for the applicable billing period.

QUALIFIED SOLAR INSTALLER
A person who has skills and knowledge related to the construction and operation of solar energy systems (and the components thereof) 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. Persons who are not on NYSERDA's list of eligible installers or NABCEP's list of certified installers may be deemed to be qualified solar installers if the Town Code Enforcement Officer or such other Town officer or employee as the Town Board designates determines such persons have had adequate training to determine the degree and extent of the hazard and the personal protective equipment and job planning necessary to perform the installation safely. Such training shall include the proper use of special precautionary techniques and personal protective equipment, as well as the skills and techniques necessary to distinguish exposed energized parts from other parts of electrical equipment and to determine the nominal voltage of exposed live parts.

ROOFTOP-MOUNTED SOLAR ENERGY SYSTEM

An accessory use solar energy system in which solar collectors/panels are mounted on the roof of a building or structure either as a flush-mounted system or as panels fixed to frames which can be tilted to maximize solar collection. Rooftop-mounted solar energy systems shall be wholly contained within the limits of the building's or structure's roof surface.

SOLAR ACCESS

Space open to the sun and clear of overhangs or shade, including the orientation of streets and lots to the sun so as to permit the use of active and/or passive solar energy systems on individual properties.

SOLAR COLLECTOR

A solar photovoltaic cell, panel, or array, or solar hot air or water collector device, which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored heat.

SOLAR ENERGY SYSTEM

A complete system of solar collectors, panels, controls, energy devices, heat pumps, heat exchangers, and other materials, hardware or equipment necessary to the process by which solar radiation is collected and converted into another form of energy, including but not limited to thermal and electrical, stored and protected from dissipation and distributed. For purposes of this section, a solar energy system does not include any solar energy system of four square feet in size or less.

SOLAR FARMS

A principal land use consisting of a solar energy system or collection of solar energy systems, or area of land upon which the principal use is a facility used to convert solar

energy to electricity, whether by photovoltaics, concentrating solar thermal devices or various experimental solar technologies, with the primary purpose of supplying electricity to a utility grid for wholesale or retail sales of electricity to the general public or utility provider.

SOLAR PANEL
A device which converts solar energy into electricity.

SOLAR SKYSPACE
The space between a solar energy system and the sun through which solar radiation passes.

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

B. Subsection D of section 100.4 is hereby amended to add the following sentence at the end of the existing text: Such prohibited uses shall include, but are not limited to, Solar Farms.

C. Section 100.4 is hereby amended to add a new subsection F to read as follows:

No permit, license or authorization issued by any local, state or federal government, agency, commission or board to allow the conduct of a use or activity which would violate the provisions of this Section or the Revised Town of Fenner Land Use Local Law generally shall be deemed valid or within the Town of Fenner.

D. A new section 409 is hereby added to read as follows:

Section 409 – ACCESSORY SOLAR ENERGY SYSTEMS

A. Building-integrated solar energy systems.

1. Districts where allowed. Building-integrated solar energy systems shall be permitted in all zoning districts within the Town, subject to the submission of, application for and review and issuance of an applicable building permit.
2. 2. Building-integrated solar energy systems shall be subject to the general requirements set forth in subsection D below.

B. Rooftop-mounted solar energy systems.

1. Districts where allowed. Rooftop-mounted solar energy systems shall be permitted in all zoning districts within the Town, subject to the following requirements:

(a) A building permit shall be required for installation of all rooftop-mounted solar energy systems.

(b) Rooftop-mounted solar energy systems shall not exceed the maximum allowed height of the principal use in the zoning district in which the system is located.

(c) In order to ensure firefighter and other emergency responder safety, except in the case of accessory buildings under 1,000 square feet in area, there shall be a minimum perimeter area around the edge of the roof and structurally supported pathways to provide space on the roof for walking around all rooftop-mounted solar energy systems. Additionally, installations shall provide for adequate access and spacing in order to:
(i) Ensure access to the roof.
(ii) Provide pathways to specific areas of the roof.
(iii) Provide for smoke ventilation opportunity areas.
(iv) Provide for emergency egress from the roof.

(d) Exceptions to these requirements may be requested where access, pathway or ventilation requirements are reduced due to:
(i) Unique site-specific limitations;
(ii) Alternative access opportunities (such as from adjoining roofs);
(iii) Ground level access to the roof area in question;
(iv) Other adequate ventilation opportunities when approved by the Codes Office;
(v) Adequate ventilation opportunities afforded by panels set back from other rooftop equipment (for example: shading or structural constraints may leave significant areas open for ventilation near HVAC equipment);
(vi) Automatic ventilation devices; or
(vii) New technology, methods or other innovations that ensure adequate emergency responder access, pathways and ventilation opportunities.

(e) In the event any of the standards in this Subsection B are more stringent than the New York State Uniform Fire Prevention and Building Code, they shall be deemed to be installation guidelines only, and the standards of the New York State Uniform Fire Prevention and Building Code shall apply.

2. Rooftop-mounted solar energy systems shall be subject to the general requirements set forth in subsection F below.

3. Permit application requirements for rooftop-mounted solar energy systems.
(a) In addition to the requirements specified in Subsection B paragraphs 1 and 2 above, an applicant must submit the following materials to the Code Enforcement Officer:
(i) Unified solar permit eligibility checklist.
(ii) A site plan showing the location of major components of the solar energy system and other equipment on the roof or legal accessory structure. This plan should represent relative locations of components at the site, including, but not limited to, location of arrays, existing electrical service locations, utility meters, inverter locations, system orientation and tilt angles. This plan should show access and pathways that are compliant with New York State Uniform Fire Prevention and Building Code, if applicable.
(iii) One-line or three-line electrical diagram. The electrical diagram required by NYSERDA for an incentive application and/or utilities for an interconnection agreement may also be provided here.
(iv) Specification sheets for all manufactured components. If these sheets are available electronically, a web address will be accepted in place of an attachment, at the discretion of the Town.
(v) All diagrams and plans must be prepared by a professional engineer or registered architect as required by New York State law and include the following:
[1]
Project address, section, block and lot number of the property;
[2]
Owner's name, address and phone number;
[3]
Name, address and phone number of the person preparing the plans; and
[4]
System capacity in kW-DC.
(f) Permit review and inspection timeline. Permit determinations will be issued within 14 days upon receipt of complete and accurate applications. The municipality will provide feedback within seven days of receiving incomplete or inaccurate applications. If an inspection is required, a single inspection should be sufficient and will be provided within seven days of inspection request.

C. Ground Mounted Solar Energy Systems.

Districts where allowed. Ground-mounted solar energy systems are permitted as accessory structures in all zoning districts of the Town, subject to the following requirements:

(a) A building permit shall be required for installation of all ground-mounted solar energy systems irrespective of the zoning district in which the ground-mounted solar energy system is located.

(b) Site plan approval from the Planning Board shall be required for the installation of all ground-mounted solar energy systems.

(c) Ground-mounted solar energy systems are prohibited in front yards.

(d) Ground-mounted solar energy systems shall comply with the area and yard regulations in each applicable underlying zoning district in which said system is constructed; provided, however, that further setbacks and bulk restrictions may be required by the Planning Board in order to protect the public's health, safety and welfare.

(e) The height of the solar collector/panel and any mounts shall not exceed 12 feet in height when oriented at maximum tilt measured from the ground and including any base.

(f) Ground-mounted solar energy systems shall be screened when possible and practicable from adjoining lots and street rights-of-way through the use of architectural features, earth berms, landscaping, fencing or other screening which will harmonize with the character of the property and the surrounding area. The proposed screening shall not interfere with the normal operation of the solar collectors/panels.

(g) The ground-mounted solar energy system shall be located in a manner to reasonably minimize view blockage for surrounding properties and shading of property to the north, while still providing adequate solar access for the solar energy system.

(h) Neither the ground-mounted solar energy system, nor any component thereof, shall be sited within any required buffer area.

(i) The total surface area of all ground-mounted solar energy system components shall not exceed the area of the ground covered by the building structure of the largest building on the lot measured from the exterior walls, excluding patios,

decks, balconies, screened and open porches, and attached garages, provided that nonresidential placements exceeding this size may be approved by the Planning Board, subject to site plan review.

(j) The area beneath the ground-mounted solar energy system shall be included in calculating whether the lot meets the maximum permitted lot coverage requirements for the applicable district, notwithstanding that the collectors are not "buildings."

F. General requirements applicable to building-integrated, rooftop-mounted and ground-mounted solar energy systems.

1. All solar energy system installations must be performed by a qualified solar installer.

2. Solar energy systems shall be permitted only to provide power for use by owners, lessees, tenants, residents or other occupants of the premises on which they are erected, but nothing contained in this provision shall be construed to prohibit the sale of excess power through a net-metering arrangement in accordance with New York Public Service Law § 66-j or similar state or federal statute.

3. Prior to operation, electrical connections must be inspected by the Town Code Enforcement Officer and by an appropriate electrical inspection person or agency, as determined by the Town of Fenner.

4. Any connection to the public utility grid must be inspected by the appropriate public utility.

5. Solar energy systems shall be maintained in good working order.

6. Solar energy systems shall be permitted only if they are determined by the Town Code Enforcement Officer not to present any unreasonable safety risks, including but not limited to:

(a) Weight load;

(b) Wind resistance; and/or

(c) Ingress or egress in the event of fire or other emergency.

7. All solar energy systems described in this section shall meet and comply with all relevant and applicable provisions of the New York State Uniform Fire Prevention and Building Code standards. To the extent the provisions of the New York State Uniform Fire Prevention and Building Code are more restrictive than the provisions set forth in this section, the provisions of the New York State Uniform Fire Prevention and Building Code shall apply.

8. If solar storage batteries are included as part of the solar energy system, they must be placed in a secure container or enclosure meeting the requirements of the New York State Building Code when in use, and when no longer used shall be disposed of in accordance with the laws and regulations of the Town and other applicable laws and regulations.

9. All utility services and electrical wiring/lines shall be placed underground and otherwise be placed within the walls or unobtrusive conduit. No conduits or feeds

may be laid on the roof. Feeds to the inverter shall run within the building and penetrate the roof at the solar panel location.

10. If a solar energy system ceases to perform its originally intended function for more than 12 consecutive months, the property owner shall completely remove, at his own sole cost and expense, the system, mount and all other associated equipment and components by no later than 90 days after the end of the twelve-month period or within 10 days of written notice from the Town.

11. To the extent practicable, solar energy systems shall have neutral paint colors, materials and textures to achieve visual harmony with the surrounding area.

12. The design, construction, operation and maintenance of the solar energy system shall prevent the direction, misdirection and/or reflection of solar rays onto neighboring properties, public roads, public parks and public buildings.

13. Marking of equipment.

(a) Solar energy systems and components shall be marked in order to provide emergency responders with appropriate warning and guidance with respect to isolating the solar energy system. Materials used for marking shall be weather-resistant. For residential applications, the marking may be placed within the main service disconnect. If the main service disconnect is operable with the service panel closed, then the marking should be placed on the outside cover.

(b) In the event any of the standards in this subsection for markings are more stringent than applicable provisions of the New York State Uniform Fire Prevention and Building Code, they shall be deemed to be guidelines only and the standards of the state code shall apply.

III. This local law shall be effective immediately upon filing with the Secretary of State.

Individual vote **Councilperson** Strack - aye Councilperson Wester -aye Councilperson Cody - aye Supervisor Jones -aye Councilperson aye

Resolution 2021-18 was read by Town Supervisor Jones

RESOLUTION NO. 2021-19
OF THE TOWN BOARD
OF THE TOWN OF FENNER

A RESOLUTION MAKING A DETERMINATION OF ENVIRONMENTAL NON-SIGNIFICANCE UNDER THE NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT AND ENACTING LOCAL LAW 2021-2 TO AMEND THE LAND USE REGULATIONS OF THE TOWN OF FENNER WITH RESPECT TO SOLAR ENERGY SYSTEMS

WHEREAS, this Town Board has developed and is considering proposed local law 2021-2 to enact revisions to the Town's Land Use Local Law to amend the Town of Fenner Land Use Regulations with respect to Solar Energy Systems, and

WHEREAS, pursuant to a referral duly made pursuant to the provisions of Section 239-m of the General Municipal Law, the Madison County Planning Agency has reviewed proposed Local Law 2021-2 and has recommended that the question of the adoption of this local law be returned to this Town Board for local determination, and

WHEREAS, proposed Local Law 2021-2 was duly referred to the Town of Fenner Planning Board on or about June 9, 2021, and the comments as set forth in the Planning Board's minutes of June 16, 2021 have been reviewed and considered, and

WHEREAS, upon notice duly published and posted, a public hearing on the adoption of proposed Local Law 2021-2 was duly convened and held by this Town Board on June 9, 2021, which public hearing was continued to July 14, 2021 and thereafter to provide broader opportunity for public comment and input; and

WHEREAS, the public hearing has been, or hereby is closed, and

WHEREAS, this Town Board has previously determined that the adoption of this local law to amend the Town of Fenner Land Use Regulations with respect to Solar Energy Systems constitutes an unlisted action for purposes of the New York State Environmental Quality Review Act, that there are no other involved agencies with respect to this action, and the action does not involve the exercise of eminent domain or other public acquisition of land or the advance of public funds for any construction or development

WHEREAS, this Board has reviewed the short environmental assessment form, has listened to and considered the extensive public comments and has taken a hard look at the likelihood of any potential adverse environmental impacts that might result from the adoption of Local Law 2021-2.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Town Board of the Town of Fenner makes the following legislative findings:

That the Town of Fenner prides itself on its rural character and agrarian heritage that make it an attractive location for farms and rural residences. The Town has always had an agricultural base and is now also home to a growing Amish community that continues to sustain many farms that may have otherwise fallen into disuse.
That the Town of Fenner has been a leader in renewable energy, being the home of one of the first major commercial wind energy facilities in New York State since 2002.
That appropriately utilized, solar energy may be a readily available and renewable energy source that does not create air emissions in the course of generating electricity.
That appropriately scaled and located small scale solar energy systems that support principal residential, agricultural and business uses can be a benefit to the residents and businesses within the Town.
That ground mounted solar farms are currently, and historically have been, a prohibited principal use under the Town of Fenner Land Use Regulations, and this prohibition will continue to be in effect upon adoption of this local law.
That development of ground mounted solar farms can have a deleterious effect on the community when it occurs on agricultural lands, thereby removing those lands from production, thus thwarting the ability of families to continue their farming heritage and creating a visual blight upon the community.
That this legislation is intended to promote the health, safety and welfare of the Town and its residents and to ensure that solar energy systems will not have a significant adverse impact on the Town's agricultural base, its aesthetic qualities, and the scenic character of the Town of Fenner.
That it is the intent of this local law to establish regulations regarding the design, placement, construction and operation of small scale solar energy systems as an accessory use while continuing the prohibition of solar farms that may have an adverse impact upon the Town and its residents.
That the enactment of this local law is in accordance with the Town of Fenner comprehensive plan's stated goals of preserving the rural and scenic character of the township while enhancing the quality of residential and agricultural life in the Town.

AND BE IT HEREBY FURTHER RESOLVED that the enactment of Local Law 2021-2 will not have any significant adverse effects upon the environment. This resolution shall constitute a negative declaration pursuant to the New York State Environmental Quality Review Act in accordance with SEQRA'S implementing regulations. The reasons supporting this determination are as follows:

The action consists solely of a legislative enactment.
There is no project site and no construction or development associated with this action.
There will be no physical changes or impact to the land, waters, air or environment generally as a result of this action.
This action is designed and intended to avoid the potential adverse environmental impacts of the conversion of viable agricultural lands to non-agricultural use and the associated adverse impacts upon family farms and farmers as well as the adverse impacts on the rural character of the Town and its scenic views and vistas.
That the enactment of this local law is in accordance with the Town of Fenner comprehensive plan's stated goals of preserving the rural and scenic character of the township while enhancing the quality of residential and agricultural life in the Town.

AND BE IT HEREBY FURTHER RESOLVED that the adoption of Local Law 2021-2 will promote and protect the health, safety and general welfare of the Town of Fenner and its residents, and that Local Law 2021-2 entitled "A local law to amend the Town of Fenner Land Use Regulations with respect to Solar Energy Systems", is hereby adopted, to be effective immediately upon its filing with the Secretary of State, and that the Town Clerk be and hereby is directed to enter said Local Law in the minutes of this meeting, and to give due notice of the adoption of said Local Law to the public and to the Secretary of State.

Dated: August 11, 2021

Move to accept Resolution 2021-18 made by Councilperson Strack seconded Councilperson Pushlar

Individual vote **Councilperson** Strack - aye Councilperson Wester -aye Councilperson Cody - aye Supervisor Jones -aye Councilperson aye

OLD BUSINESS:
Keith Sulliman presented an overview of where the solar project is:
They are seeking to build a 140 Megawatt Solar Farm entirely in the Town of Fenner.
Currently they have leased 1,386 acres of land from local residents.
750 acres will contain panels inside a fence line.
517 acres will be on active farmland.
Studies are being conducted currently - wildlife, National Grid. etc.
They are making a 100,000. Nonrefundable deposit to begin this process this month (August)
They plan to seek a waiver to overrule Local Law 2021- 2
They have started the permit process under the 94C - pre application is done
Community engagement must be filed with NYSERDA and NYSERDA will be reaching out to the Town

Host community will benefit in various ways such as utility bill credit, pilot and taxes
2023 construction to begin
2024 project will go live

Public Comment:
Lots going on with projected wind and solar projects looking to set up in Fenner
Concerns about the toxicity of the solar panels
What is the process to have the speed limit changed on Moraine Rd - process was explained: petition must be brought to Town, Town submits to County, in turn it is sent to State for final determination.

Motion to adjourn - 8:34 Councilperson Wester seconded by Councilperson Strack

Vouchers

a. General Fund – G21-79 – G21-93 for 25,383.78 approved by Councilperson Pushlar, seconded by Councilperson Cody
b. Highway Fund – H 21-43 – H 21-53 for 207,438.64 approved by Councilperson Strack and seconded by Councilperson Wester

Motion to adjourn Councilperson Wester at 8:41 pm seconded by Councilperson Strack

Respectfully submitted

Lisa Dolan
Town Clerk