

Town of Fenner Planning Board Minutes: 5/22/2024

Present: Monica Cody, Andre Schokker, Andy Bishopp, Sue Yanulis, Pete Snyder, Andy Stone, Michael Wood

Fenner ZBA Members in attendance: Cindy Gavula, Chip Swart

Fenner Town Supervisor: David Jones

Andy Stone called meeting to order at 7:31 pm.

Discussion of Meeting Minutes from 5/15/2024:

Motion to approve the meeting minutes 5/15/2024 with the exception of the missing study number and highlighted data points which can be added at the next meeting by Andre Schokker, seconded by Sue Yanulis. Motion carries.

Review of Local Laws and Ordinances and waiver requests by Cypress Creek

Items discussed during 5/15/22 Planning Board Meeting:

Cypress Creek has submitted waiver requests to ORES. The Planning Board reviewed the requests and invited the ZBA to take part in a joint meeting to discuss preliminary responses from the Town of Fenner.

The following points of discussion were reviewed from documentation submitted by Cypress Creek to ORES. Sue Yanulis read Article 24- local law and ordinances for the group to review. Notes that have items required additional future review are highlighted in **yellow**.

- Exhibit 24: first paragraph refers to the **Town of Fenner Comprehensive Plan**- it notes towns need for solar regulation. Intention was for size between residential to 94C's jurisdiction but NOT including 94C sizing (20MW) or community solar projects.
- A: Flint Mine Solar case #18-F-0087- **Planning Board Request Town Attorney is requested to review** the subject case and determine relevance of Article 10 process and 94C's ability to forego existing local solar regulations based on previous case study.
- Exhibit 16, Appendix 16A needs to be fully reviewed to see proposal for roads and road evaluation study.
- **Planning Board Requests Town Attorney** to review case law forcing nonparticipating land owners to allow property use for installation of commercial electric transmission lines. Reference to Rapid Act approved through the NYS 2024 budget should be assessed.
- Page 3: The town has not agreed to any road use agreements, reference Appendices 2A & 2B. The town is not in receipt of any drafts of a Road Use Agreement to date. It would be impossible to agree to an agreement with no proposal. The town is significantly concerned with

emergency response vehicle access and that must be of paramount importance in any drafted agreement to be received at some future date, if ever.

- Review location of driveway entrances in Exhibit 16 and Appendix 16A must be done by Town of Fenner Highway Superintendent.
- Madison County is currently drafting road use regulations via the Board of Supervisors and Madison County Highway Superintendent.
- Appendix 24-C Statement of Justification for Waiver requests will be reviewed in full next Wednesday with the joint meeting with the ZBA. Sue Yanulis will forward the document to the ZBA for review prior to the meeting.
- Planning Board Requests Town of Fenner Attorney to provide feedback on property line boundary succession planning case studies for panels that span multiple properties not owned by the same landowner in the absence of setbacks (or waivers granted by ORES).
- Page 5: Law of easement needs to be reviewed for full discussion. If waivers are requested for existing easements used for wind turbine access, those same easements must be reviewed with evaluation of the different safety factors that the solar project has (such as adequate fire protection and truck/water access, and building codes). An easement is between a landowner and a second party, and is not universal or overseen by the Town of Fenner.
- State requirements are 15 inch diameter of pipe but roadways need to be a minimum of 20 feet for culverts. The document is not in compliance with that requirement.
- Commercial facilities should comply with unified state code the same as a residential facility must.
- Page 6: Planning Board requests the Fenner Town Board consider creation of regulations to fence requirements for Residential, Agricultural, and the addition of Commercial properties. Considering that the solar installation is in a residential area, the fence opening size needs to consider the young children that could be trapped in fence gaps.
- Additional review of noise documentation for solar panel needs to be completed.
- All items that are referred to as procedural are in fact, not merely procedure for how to accomplish a task, but founded in assessments and requirements to review each unique circumstance for public health and safety. There are unique characteristics of each lot within the town of Fenner and the individual residents, some with special needs, that need to be reviewed on a local level and cannot be replaced by a universal 94C process.

Continued discussion of remaining portion of the document as reviewed on 5/22/24 with ZBA members:

- **Exhibit 24:** Height of solar collector shall not exceed 12ft at maximum height. Visual screens proposed to mitigate are plantings and agricultural fence. Concern was expressed that because the location is a residential area, it needs to be clear what agricultural fencing style means. Electric agriculture fence is not appropriate due to the residential nature of the neighborhood, and anything larger than 2 inch presents a danger for young children, similar to deck railing requirements for child safety considering ingress/egress/entrapment. The Town of Fenner Planning Board requests that the installation be chain linked fence with no barb wire on top and it be installed at 250 ft from the center of the road to a height of 7 ft.

- For non-participating landowners, there must be landscaping that provides screening from the solar panels at a height that fully covers line of sight at the time of installation, not at a future plant maturity point. The landscaping should also assist to minimize the audible decibel emissions to below 45dB at the property line. The Planning board requests an analysis of audible decibels be done to ensure this is possible or the setback to panels and screens be increased to negate noise impact on non-participating neighboring properties. This request is being made for the panels at all locations and the substation.
- The foundation of requirements for lot surface area coverage ratio is based on water and land permeability. The Planning Board requests verification that studies were completed to show water runoff with greater ground coverage than required as designed in this project, and the watershed impacts. This is an issue for soil erosion, and runoff planning, especially on non participating properties and municipal roadways.
- Town of Fenner requests documentation of what is considered a “qualified installer” of solar panels, there is no documentation to certify that someone is qualified to safely install solar panels.
- Planning Board requests a certified electrical inspector inspect all panel installations whether through 94C or town code. This waiver should not be granted if qualified electrical inspectors are not required.
- The Town of Fenner Planning Board requests that the Fenner Town Board consider creating a town law to hold the PV panel manufacturer accountable for disposal and/or safe recycling. Town of Fenner planning board requires a SDS for panels and components to provide to fire departments to ensure safety in the event of fire fighting. We also request that the wind ratings for panels be provided and an appropriate inspection method be supplied and performed to confirm proper installation is completed.
- As Authority Having Jurisdiction, life safety is the town of Fenner’s responsibility. To adequately fight fire and/or prevent spread, each PV field should have a 40 foot wide road and around panel fields to get appropriate fire trucks with 26 inches of gravel base at a minimum. This would allow 2 fire trucks filled with water to appropriately navigate the PV fields. Based on potential residential exposure points in the event of a PV fire, fire trucks must be able to navigate around each field, with additional space requested in priority areas closest to houses.
- Emergency Markings- the solar panels are commercial structures and should comply with commercial markings for emergency response. Residential markings are not adequate for facilities of this stature. The Town of Fenner Planning Board requests a fire breaker around the entire facility so fire cannot spread beyond the commercial facility.
- Town of Fenner Planning Board requests that compaction samples be obtained for the access roadways to ensure they can handle the weight of maintenance and safety vehicles.
- The town of Fenner land use regulations were created to allow for wind energy in a specific locale that did not include residences. History shows that the majority of fires in our area come from residential burning that goes out of control. The solar farm is in a residential area, increasing the opportunity for burning within the PV fields based on prevailing winds and brown matter/ dead grasses that will accumulate around solar panels in an opportunistic area. PV panels would be better suited to safely be installed in a land zone C, where there is less external residential activity that could present opportunities for uncontrolled burns.

Review of Appendix 24-C: Waiver Requests

- Based on findings for other referenced solar projects, ORES should not find a similar finding with the Oxbow Hill Solar project because:
 - Fenner does allow and embrace renewable energy developments in allocated area, where we have 20 productive windmills for over 25 years, and another 5 approved. This zone was sited and town concerns were addressed to appropriately embrace solar technology in that area of the town.
 - Communities that host existing high voltage infrastructure near available vacant land is not considering that the agricultural land is not vacant, this is being proposed in agriculture land that is currently productive and on residential properties.
 - The active agricultural lands and 150 acres of productive old growth trees that will be clear cut to install this project negates the carbon footprint savings that solar panels would offer. Over the panels' lifespans, corn and hay fields harbor more carbon during production months than is created in the manufacturing and transportation of panels. There is no net benefit to this project from a carbon sequestration versus fossil fuel consumption standpoint. ORES should perform a carbon footprint calculation to evaluate if there is a net benefit for the project installation if installed with town's requested safety features to ensure public safety. **XXX insert carbon footprint** calculations. ([Solar Panels Are Three Times More Carbon-Intensive Than IPCC Claims — Environmental Progress](#))
 - Some studies suggest that the carbon footprint of solar panel manufacturing could be as high as 80-106g CO₂/kWh
 - Studies estimate the annual soil carbon sequestration rate for corn to be around 300 to 1,000 pounds (0.14 to 0.45 metric tons) of CO₂ per acre through practices like no-till and cover crops. ([Understanding the role of carbon in agriculture – Part 2 - Field Crops \(msu.edu\)](#))
 - perennial grasses like alfalfa can sequester 12-20 tonnes (metric tons) of carbon per acre when combined with grazing practices, due to their extensive root systems. ([Alfalfa, grasses top choices to aid in carbon sequestration | The Western Producer](#))
 - As noted in Scott Ingmire's report, Madison County already produces more green energy than the entire county consumes. There is no local net benefit to the production of additional green infrastructure in this area. The transportation of that excess energy, to locals and great distance, loses energy as it travels. The infrastructure need to transport that excess energy, also requires more carbon footprint for the manufacturing of the materials to transport (ie. Copper wire, conduit, batteries, etc.). Again, the net benefit of saved carbon versus green energy production is nonexistent. The end-of-life recycling of the panels should also be included in the lifetime green benefit of the project, further negating the overall value of the project.
 - The town of Fenner requests that Oxbow Hill abides by the current NYS budget, in which there is a 1% fee to put solar panels on prime farmland.
 - The removal 806 acres of currently used agricultural lands negatively impacts neighboring farmers by increasing land rental rates as it decreases land accessibility. This hurts farmers more and adds to the carbon footprint more because farm vehicles are

driving farther to get to available fields, increasing farmer costs, road wear and tear, and increasing carbon creation from additional fossil fuel consumption.

- The Town of Fenner requests that the “farmland designation”, if solar panels are put on them, be changed from “Ag” designation to “commercial property” and taxed as such while panels and pilings are installed and land is not activity tilled for production agriculture.
- Town of Fenner requests that all poles, towers, structures, etc. that are above the town regulation heights comply with any appropriate FAA and NEC codes.
- Existing laws regarding property lines and maintaining 40 ft setbacks on either side of the property lines should be maintained. Anything less than that presents an undue burden on the town regarding long term land ownership successions, and possible estate issues. It also creates precedent for all future buildings and property line waivers, opening the town up to undue burden for regulations and legal liability if other applications are not treated with the same waivers. As an example, if one of the 2 participating landowners chooses not to extend their lease, or sells their property, or does not pay the taxes on their property and it becomes a tax foreclosure, the 40 foot setback would then need to be removed at that time. Additionally, that 40 foot setback would need to be fenced on both sides of the 2 property lines. Every property must be individually fenced.
- 50 ft from the centerline of public roads is questioned because of snow throw from county and town snow removal, which can exceed 150ft. A waiver on distance from centerline creates burden on the town/county in the event of legal action from property damages from snowthrow.
- The town requests that the county planning department review and approve the substation lot variance and that ORES heed to those recommendations. A study between the noise differential of a larger footprint station should be conducted/compared to the existing design to determine which option would have less impact on neighboring and non-participating properties. Additionally, the long term land ownership changes should be considered to be sure the town is protected in perpetuity from legal actions that could arise based on these decisions.
- By not putting landscaping screen uniformly around all PV panels, 8.5% of the town of Fenner’s quintessential rural viewsheds that support county tourism and local culture will be deteriorated. To that end, all roadsides should be uniformly hidden to not put undue burden on residents, tourists, and potential landowners in the town of Fenner to maintain our historic agrarian culture.
- Current residential status does not preclude there from being future residences and property changes on non-participating landowner properties. There has been a steady increase of new home construction in the town of Fenner over the past 5 years and increasing, so it is not appropriate to say that any lot in the town of Fenner would be considered unlikely to be built on. It is also shortsighted knowing that the MICRON project could potentially increase the greater Syracuse population by upwards of 125,000 people (and more, considering support businesses and families of new employees), of which Fenner and Madison county sit squarely in the middle of their Syracuse and Utica sites, and are a highly motivated new home destination location.

- By not preserving the existing non-solar paneled viewsheds, property values in a highly competitive and low inventory environment will be diminished. Presenting undue burden on all existing town of Fenner residents when there is a once in a lifetime opportunity for land values to soar in the near term as a bolus of additional people will be moving to our region.
- All underground facilities must be removed upon project decommissioning. That includes wiring, concrete, building, and all debris associated with this project. Returning to the pre-commissioned status is the only option to ensure the long term sustainability of land use. Creating a dumping ground on pristine and historically cared for agricultural land is entirely unacceptable for a green energy project. Fenner has taken great efforts to clean up portions of the town that have been poorly cared for by prior residents, and to have a commercial facility admit that they would be equally disrespectful of our pristine town for a green energy project is unacceptable, especially at a commercial scale of 1000 acres.
- See previous notes from 10/4/2023 for additional information on 15 items that were requested of Cypress Creek.
 - #9- mitigation strategies for displaced animal populations was requested. The only wildlife referenced in any documents from Cypress Creek to date has been regarding raptors. Exhibit 12 and 11 must be addressed.
 - #16: creation of an agricultural fund for crop loss due to displaced wildlife. Farmland Conservation Fee Article 8, page 22 of 2024 budget. Page 41, section 4A of 2024 budget- impact of farmland to within the region. How will these funds be allocated to the town?
 - In the event that glare exists and there is no proposed remediation proposed, it should be noted who from Cypress creek that local residents should contact to express complaints and what the remediation strategy will be when the panels are installed as proposed: this is outside of the town of Fenner jurisdiction being it is a 94C process; will ongoing complaints with citizens be overseen by 94-C as well?

Motion to close by Sue Yanulis, second by Andre Schokker at 10:43 PM. Motion carried.

Respectfully Submitted,

Monica Cody