

TOWN OF WESTERLO TOWN BOARD
1. PUBLIC HEARING-PROPOSED LOCAL LAW No. 1 of 2017
2. SPECIALTOWN BOARD MEETING-ADOPTION OF LOCAL LAW NO. 1 OF 2017
&
3. TOWN BOARD WORKSHOP MEETING
OF
MARCH 21, 2017

PUBLIC HEARING #2-Proposed Local Law No. 1 of 2017

A copy of draft law follows the minutes of all three meetings.

The Town of Westerlo Town Board held a second Public Hearing on the proposed final draft of the law. Supervisor Rapp opened the Public Hearing held in the Town Hall at 6:30 PM with the Pledge of Allegiance to the Flag. A draft of the document was posted on the Town website and available at the meeting or through the Town Clerk's office for public review.

ATTENDING WERE: Supervisor Richard H. Rapp
Councilman Joseph J. Boone
Councilwoman Amie L. Burnside
Councilman Anthony W. Sherman
Councilman William F. Bichteman Jr.

Also present were: Zoning Administrator/Code Enforcement Officer Edwin H. Lawson, Assessor Peter Hotaling, Zoning Board of Appeals Chairwoman Virginia Mangold & members John Sefcik & Guy Weidman, Planning Board Chairwoman Dorothy Verch, Town Historian Dennis Fancher, Town Clerk Kathleen Spinato and fourteen residents.

The Town Board heard comments from the public, Town Assessor Peter Hotaling and Zoning Administrator/Code Enforcement Officer Edwin Lawson on the following:

- A resident felt the definition of commercial solar energy system should not include community based systems, it should be considered a residential solar energy system.
 - Zoning Administrator Ed Lawson responded to the above public comment. He read from Section 1-Article 6, in particular subsections 1 & 4 of the draft law where it states "a solar energy system as defined herein,". He clarified for anyone who misunderstood; a community based solar energy system is not being masked in with commercial solar. The statement only means that a community based solar energy system is better defined later in the purposed law or the existing zoning law where it can be addressed individually. The public had previously asked the Town Board to separate community based solar energy projects from commercial solar energy project and this has now been incorporated into the current draft of Local Law No. 1 -2017. A community based system is not really a residential system. It is used for residential means, but it's basically addressed within the existing laws with a Special Use Permit, with the purpose of supplying to residential customers however, is a commercial entity. The setbacks requirements are addressed separately for community based solar projects compared to commercial solar projects. The intent of the proposed law is that commercial systems would be considered large scale systems of 10 acres plus.
 - Councilman Bichteman agreed the community based systems need to be included under commercial, as it is a commercial entity when it is being leased.
- Assessor Peter Hotaling informed all attending, about solar and the effect if any, on property taxes. A community based solar energy system is for residential means, although it is not a

commercial project, there is a lease agreement involved. He reviewed how tax exemptions for solar are applied according to NYS Real Property Tax Law and the options the Town Board will need to eventually decide upon the following:

- Opt out on exemptions for solar which would make all future solar projects including residential taxable.
- Not opt out on exemptions for solar, choosing instead PILOT (Payment in Lieu of Taxes) to potentially include an agreement with the town, treating commercial or community solar differently than residential, each potential application to be examined on a case by case basis.
- The town will need to implement a procedure to require a 60 day Notice of Intent on commercial/community based solar arrays. He suggested submission of the Notice either by letter to the Assessor and/or through the building permit process.
- He gave examples of how other towns have implemented “development agreements”. He also advised the Town Board that the letter giving 60 Days - Notice of Intent needs to be defined. He then responded to a resident’s inquiry concerning tax exemptions, his response based upon information currently available to Assessors. He briefly reviewed the valuation of solar units based on depreciation and the effect on a parcel of land with an Agriculture Exemption.
- Discussion then turned to the topic of the 60 day Notice of Intent letter. A resident felt a reference should be included in the proposed law about it. Councilman Bichteman offered the opinion that this could be implemented through a resolution passed by the Town Board to possibly include the 60 Day Notice of Intent as a part of either the application for the building permit, special use permit or variance process.
- Assessor Hotaling and Councilman Sherman responded to a resident’s question if residential solar energy systems were being taxed and if this is included in the proposed law. Assessor Hotaling advised residential solar arrays are not currently taxed. It is hard to determine the resale value of a solar energy system for assessment. Taxing of solar would not be addressed in the proposed law to revise or amend the Zoning Law. Councilman Sherman clarified, right now residential solar panels are not taxed. If the town opts out, all solar would be taxable. The town has the option to NOT opt out of solar tax exemptions, to decide whether or not it wants to implement Payment in Lieu of Taxes (PILOT) on commercial solar energy systems. This would leave the tax exemption in place. Anytime a commercial system wants to come in the town the town would have to send notification of the PILOT. He believed opting out would not be a good idea, many residents would not want to install solar as it would take some of the benefit away.
- Discussions followed. Zoning Administrator Ed Lawson suggested that determinations will need to be made at a later date regarding setting of solar fees, implementing a Special Use Permit Application for commercial solar energy systems and where in the permit process to address the letter of intent.

More Public comment or suggestions followed regarding:

- Mr. Michael Doud of Borrego Solar- Had a concern that lease agreements would be accessible by the public through Freedom of Information Law (FOIL) for a commercial lease it would reveal revenue.
 - Councilman Bichteman responded the lease agreement would be needed by the Assessor to make determinations whether it is a commercial entity, to determine the amount of land included in the agreement, etc.

- Could residential solar be rated at a capacity of greater than 25 kw?
 - Assessor Peter Hotaling indicated NYSERDA defines 25 kilowatt or less as residential.
- Page 5, viii Increase the square feet to 400 square ft.
 - Discussion followed regarding changing all three dimensions in the height in feet, the length in feet and the surface area in square feet.
- Suggestion to change the insurance section to increase amount of insurance and type of insurance required.
- Review of the Sureties every five years instead of yearly.
- Page 9 - Correct sequence currently a,c,d, & e to correct a,b,c & d.
- A question concerning the bond.
- Need to add a definition in the Zoning Law of a non-conforming lot.
 - Zoning Administrator Ed Lawson explained as he had previously, a non-conforming lot is defined in section 7.80 – Non-Conforming Uses: The use of any building or land existing at the time of the enactment of the local law may be continued although such does not conform with the provisions of this local law is subject to the following; he then indicated, there are expansions and exceptions within the law. An exception was added a few years ago. If a property can meet the setback requirements of 50 ft. if zoned Rural Development/Agricultural or 30 ft. if it is zoned Residential Hamlet, a variance is not required. This would also depend on the type of residence whether it is a one or two family home, etc. A non-conforming lot would not meet the setback requirements and could not have a ground mounted solar energy system. For those properties that do not meet the setbacks there is a variance application process and a determination would need to be made by the Zoning Board of Appeals. He has reached out to the Chairs of the Planning & Zoning Boards for a workshop to review the Zoning Law so everyone has a better understanding of the Law.

There being no further public comment, Councilman Sherman made a motion to close the public hearing, seconded by Councilwoman Burnside, motion carried. Public Hearing adjourned at 7:49 PM.

SPECIAL TOWN BOARD MEETING:

Supervisor Rapp opened the Special Town Board meeting at 7:50 PM the purpose to adopt the proposed final draft of Local Law No. 1-2017. All those present for the Public Hearing remained for the Special Town Board Meeting.

The Town Board reviewed any revisions or corrections deemed necessary. There being a consensus Councilman Bichteman made a motion to adopt the following resolution:

WHEREAS: at the request of the Zoning Board of Appeals the Town Board has been asked to clarify zoning regulations for solar energy systems in the Town of Westerlo, with two Public Hearings previously held on proposed Local Law No. 1- 2017, be it hereby

RESOLVED: the Town of Westerlo hereby adopts the final draft of Local Law No. 1 of 2017 with the following revision and corrections of typographical errors:

1. Page 5 -Section 18.40, # 2 Procedure, subsection iii –line four correct a typo from vii to viii.
2. Page 5 -Subsection viii, lines three and four, change dimensions to read: “greater than 15 feet in height, or greater than 30 feet in length, or if solar array surface is greater than 400 sq. ft.
3. Page 6, f., correct typo from: buildiegs to: buildings
4. Page 9 - Subsection ii Insurance: correct typo of the order; from c to b, from d to c & from e to d.

Councilman Sherman seconded the motion a roll call vote resulted as follows:

AYES: Supervisor Rapp, Councilman Bichteman, Councilman Sherman,
Councilwoman Burnside and Councilman Boone

NAYS: None.

RESOLUTION # 17-2017 was thereby duly adopted. Draft of Local Law No.1 -2017 is attached.

Councilman Bichteman made a motion to close the Special Town Board meeting, seconded by Councilman Boone, motion unanimously carried. The Special Town Board meeting adjourned at 7:54 PM.

TOWN BOARD WORKSHOP MEETING:

Supervisor Rapp opened the Town Board Workshop meeting at 7:54 PM. All those present from the previous meetings remained, with a reduction of residents from 14 to several.

The Town Board reviewed the following items:

- Potential improvements to the Town website. Current format may need to be improved for better accessibility by cell phones and any general website updates. More discussion to be held during a regular Town Board meeting. The Town Clerk suggested that each Dept. should provide input pertaining to their relevant section of the site.
- The date has not been set for a second bid on a proposed new heating system and insulation package for the Town Hall building. Previous bids from two vendors were rejected by the Town Board. Councilman Bichteman hoped to have more information from Delaware Engineering (DE) by the April Town Board meeting. He has asked Brad Burgette of DE to reach out to B&G Plumbing regarding some changes to the specifications they had suggested a reduction in the quality of the slant fin tubing for possible cost savings.
- PSI - asbestos abatement change order letter was recently signed by Supervisor Rapp and returned to PSI for abatement of the floor tiles.
- Councilman Bichteman had reached out to Attorney Galgay about the potential of forming a Department of Public Works and abolishing the position of Highway Superintendent. He reported that more research is needs required. The Water District currently pays \$22,000 year for sampling and testing of the water. The initial thought is a Commissioner of Public Works could oversee the Water District for cost savings, current staff could be licensed to do this. This would not cost the Town any money, but it would help the water district save approximately \$4,000 to \$5,000 a year. He asked the Town Board for their opinion, Councilwoman Burnside and Councilman Boone responded seeming to be in favor of savings & diversification of duties, but they expressed a concern over the elimination of the vote on the elected position of Highway Superintendent. Discussion continued.
- Dotty Verch reported on the proposed cell tower height test and the difficulties encountered due to the recent snow storm.

- The Board discussed the option of allowing tax exemptions on solar energy systems and PILOT agreements for commercial systems in some towns.
- The Town Clerk asked if a new Utility Repair Crew Contract has been prepared. Councilman Bichteman advised that the Town Attorney had drafted a new contract however changes needed to be made pertaining to equipment and is still being worked on.
- The Town Clerk reported the balance of an unpaid dog redemption fee has been paid and the court case scheduled for March 13th in Rensselaerville Town Court was adjourned.

Residents commented and provided their thoughts on forming a Department of Public Works and they thanked the Town Board for holding a second Public Hearing on Local Law No. 1.

Councilman Bichteman made a motion to adjourn the workshop meeting, seconded by Councilman Boone, motion unanimously carried. The workshop adjourned at 8:31 PM.

Respectfully submitted,

Kathleen Spinnato, Town Clerk

DRAFT-Local Law No. 1 of 2017

A Local Law to amend Local Law #1 of 1989 (as revised and amended thereafter) to modify Article 6 by adding additional definitions pertaining to Solar Energy Systems; modify Articles 8.40 and 8.50 to refer to the requirements of the new Article 18, Solar Energy Systems; add a new Article 18. Solar Energy Systems; and renumber the remaining existing Articles in Local Law #1 of 1989 (as revised and amended).

Section 1.

ARTICLE 6. DEFINITIONS, of Local Law #1 of 1989 (as revised and amended thereafter), is hereby amended to add the following definitions:

1. **COMMERCIAL SOLAR ENERGY SYSTEM:** A solar energy system, as defined herein, which is intended to be utilized for any purpose other than private residential or agricultural use, including community-based systems.
2. **EXPEDITED PROCESS:** The application, review and approval process for any solar Energy system with a rated capacity of 25 kilowatt (KW) or less, which process is further detailed in Section 5 herein.
3. **GROUND-MOUNTED SOLAR ENERGY SYSTEM:** A solar energy system, as defined herein, that is directly installed in or on the ground and is not attached or affixed to an existing structure. Also referred to as a “freestanding” solar energy system.
4. **RESIDENTIAL SOLAR ENERGY SYSTEM:** A solar energy system, as defined herein, which is intended to be used solely in a direct private residential or agricultural capacity.

Section 2.

ARTICLE 8.40. RURAL DEVELOPMENT/AGRICULTURAL DISTRICT is hereby amended to replace the language in Section 2(d) as follows:

- (d) solar energy systems, as regulated by Article 18 herein

Section 3.

ARTICLE 8.50, RESIDENTIAL HAMLET DISTRICT is hereby amended to replace the language in Section 2(b) as follows:

- (b) solar energy systems, as regulated by Article 18 herein

Section 4.

There shall be a new ARTICLE 18, entitled **SOLAR ENERGY SYSTEMS**.

ARTICLE 18: SOLAR ENERGY SYSTEMS

Section 18.10: Purpose

The Town Board of the Town of Westerlo (hereinafter referred to as “the Board”) recognizes that in recent years the installation of solar energy systems on commercial and residential properties has become widespread due to various tax incentives and leasing and provider incentives. Solar panels are promoted by both New York State and the Federal Government as sustainable, renewable energy sources that reduce dependence on fossil fuels. Solar panels are becoming typical accessory uses for residential and commercial properties, and the Town of Westerlo recognizes that solar panels have many benefits for the property owner and the community in general.

The Town of Westerlo (hereinafter referred to as “Town”) has always recognized the existence, importance and relevance of solar energy. The Town of Westerlo, in its Zoning Law (hereinafter referred to as “Zoning Law”) adopted in 1989 addressed solar energy. The Zoning Law (which is still in effect) defines solar energy as “radiant energy (direct, diffuse, and/or reflected) received from the sun. The Zoning Law further defines “solar energy system” as “an arrangement or combination of components and structures designed to provide heating, cooling, hot water, or electricity through the process of collecting, converting, storing, protecting against unnecessary dissipation, and/or distributing solar energy”. The Zoning Law specifically includes “solar energy systems” as a use permitted by right in the rural development/agricultural district and the hamlet district, subject to the remainder of the zoning requirements (to wit, setbacks, height, etc.).

This law is intended to provide more specific standards and guidance to the Town, the Town’s Code Enforcement Officer and Building Department, and the regulatory boards within the Town, including but not limited to the Zoning Board of Appeals and the Planning Board, with respect to the construction and installation of roof mount and ground mount Solar Energy Systems, as defined herein. This law is intended to establish guidelines for such construction and installation that take into consideration the impact of these systems on the surrounding neighbors and street traffic, and ensure that solar collectors are located in a manner that reasonably minimizes shading of adjacent properties while still providing adequate solar access for collectors, while preserving the rights of property owners to install Solar Energy Systems.

Section 18.20: APPLICABILITY

This Law is applicable to all Solar Energy Systems, for which a building permit or special use permit has not yet been issued by the Town: however, any modification, expansion or alteration of an existing system or approved, but not yet constructed system, shall be subject to the terms and provision set forth herein. All applications hereunder shall be on the application form designated by the Town of Westerlo.

Section 18.30: EXPEDITED PROCESS

1. **APPLICABILITY:** This section shall apply to Solar Energy Systems with a rated capacity of 25 KWs or less, notwithstanding the use therefor. No ground mounted system, however, shall be permitted on a nonconforming lot, as the same is described in the Zoning Law, and all ground-mount systems must meet the set-back requirements set forth for said zoning district in the Zoning Law.
2. **PROCEDURE:** To utilize this procedure the applicant shall submit to the Town Building Department/Code Enforcement Officer the following:
 - a. A completed application, as provided by the Town;
 - b. A set of project plans which includes, at a minimum:
 - a. The project address
 - b. Section, block and lot number of the subject property (tax identification number)
 - c. Property owner's name, address and telephone number
 - d. Name, address and telephone number of the person preparing the plans
 - c. A site plan showing the location of the major components of the solar Energy system and other equipment to be located on a roof or legal accessory structure, along with all defined setbacks and height measurements for all ground mounted systems. The plan should set forth the relative location of the components at the site, including but not limited to, location of the solar array, existing electrical service location, utility meter, inverter location, system orientation and tilt angle, and the access and pathways that are compliant with International Fire Prevention and Building Code, if applicable.
3. **APPROVAL:** Once the application and all required supporting documentation is submitted to the Building Department/Code Enforcement Officer, and the Building Department/Code Enforcement Officer is satisfied that all of the necessary plans and information have been included, the Building Department/Code Enforcement Officer shall issue a combined building and electrical permit for a grid-tied solar electric system.

Section 18.40: RESIDENTIAL SOLAR ENERGY SYSTEM

1, **APPLICABILITY:** This provision shall apply to small scale Solar Energy Systems used strictly for private residential or agricultural purposes, and which have a capacity of not greater than 25 KW.

2. **PROCEDURE:**

All small scale Solar Energy Systems shall be designed, erected and installed in accordance with all applicable codes, regulations and industry standards as referenced in the International Building Code, International Fire Prevention Code and NAFPA 70.

a. Rooftop and flush-mount Solar Energy Systems: Solar Energy Systems that are installed on rooftops and/or are flush with existing legal structures are permitted in all zoning districts in the Town, subject to the following conditions:

- i. A building permit shall be required for installation of all rooftop and flush-mounted Solar Energy Systems
- ii. The structure upon which the solar Energy system is installed must:
 1. be legally permitted
 2. comply with the height limitations for the subject zoning district as set forth in the Zoning Law.
 3. comply with all setback requirements for the subject zoning district as set forth in the Zoning Law
- iii. Solar Energy System must be installed a minimum of three feet away from any chimney and shall not be installed on any roof overhangs.
- iv. Solar Energy Systems installed on any pitched roof shall not extend more than eighteen inches from the surface of the angle of the roof

b. Ground-mount and freestanding Solar Energy Systems: Ground mount and freestanding Solar Energy Systems shall be permitted as an accessory structure in the Rural Residential/Agricultural Districts in the Town, subject to the following conditions:

- i. No ground mounted system, shall be permitted on a nonconforming lot, as the same is defined in the Zoning Law.
- ii. All Solar Energy Systems shall be designed and installed in conformance with the applicable International Building Code, International Fire Prevention Code and NAFPA 70 Standards.
- iii. A building permit shall be required for installation of all ground-mount and freestanding Solar Energy Systems. In the event that the proposed

- iv. solar Energy system requires a Special Use Permit (see subsection vii below) no building permit shall be issued until and unless a Special Use Permit has first been issued by the Town of Westerlo Planning Board (“Planning Board”).
- v. All solar collectors shall be installed at least 50’ from any lot line, and must be located in compliance with NYS Department of Environmental Conservation (“DEC”) and Federal Flood Plain regulations and specifications as they pertain to waterways, waterbodies, and designated wetlands.
- vi. All solar collectors shall be installed so as to prevent any glare and heat that is perceptible beyond subject property’s lot lines.
- vii. All solar collectors shall have a maximum height of 20 feet from ground elevation, measured from the base of the unit or support structure, as it touches the ground.
- viii. If solar storage batteries are included in the proposed project, the batteries must be placed in a secure container or enclosure meeting the requirements of the International Building Code, International Fire Prevention Code and NAFFPA 70. When the batteries are no longer in use, they shall be disposed of in accordance with the International Building Code, International Fire Prevention Code and NAFFPA 70 as well as the local laws of the Town, and any other applicable laws or regulations.
- ix. A Special Use Permit from the Planning Board is required for all ground-mounted and freestanding Solar Energy Systems greater than 10 feet in height or greater than 20 feet in length, or if the solar array surface area is greater than 200 square feet in the aggregate. The Planning Board shall follow the Special Use Permit procedure as set forth in the Town Zoning Law.

Section 18.50: COMMERCIAL SOLAR ENERGY SYSTEMS

1, APPLICABILITY: This provision shall apply to Solar Energy Systems that are intended to be used for purposes other than residential or agricultural. Commercial Solar Energy Systems are permitted in Rural Residential/Agricultural Districts in the Town subject to the conditions set forth in Section 2 below. No ground mounted system, shall be permitted on a nonconforming lot, as the same is defined in the Zoning Law.

2. GENERAL REQUIREMENTS: All Commercial Solar Energy Systems require issuance of a Special Use Permit and are subject to site plan review approval by the Planning Board as set forth in the Zoning Law and in accordance with the following specifications:

- a. All Solar Energy Systems shall be designed by a NYS licensed architect or licensed engineer and installed in conformance with the applicable International Building Code, International Fire Prevention Code and NFPA 70 Standards.
- b. A building permit shall be required for installation of all commercial Solar Energy Systems, which shall only be issued after a Special Use Permit has first been issued by the Town of Westerlo Planning Board (“Planning Board”).
- c. All solar collectors shall be installed at least 100’ from any lot line, and must be located in compliance with DEC and Federal Flood Plain regulations and specifications as they pertain to waterways, waterbodies, and designated wetlands, except for Community Solar Farms, which shall be installed at least 50’ from any lot line, and be located in compliance with DEC and Federal Flood Plain regulations and specifications as they pertain to waterways, waterbodies, and designated wetlands,
- d. All solar collectors shall be installed so as to prevent any glare and heat that is perceptible beyond subject property’s lot lines.
- e. All solar collectors shall have a maximum height of 20 feet from ground elevation.
- f. All buildings and accessory structures, other than the actual solar collectors, associated with the solar Energy system shall be in compliance with the height limitations in the Zoning Law.
- g. All buildings and accessory structures associated with solar energy systems shall be a minimum of 100’ from any lot line, except Community Solar Farms, which buildings and accessory structures shall be 50’ from any lot line.
- h. A solar energy system, inclusive of buildings and accessory structures, shall only cover a particular parcel as set forth herein, with a maximum coverage of a parcel being 20 acres:
 - a. For lots located in the Hamlets of Westerlo and South Westerlo, the maximum coverage shall be $\frac{1}{3}$ (33 $\frac{1}{3}$ %) of the entire parcel
 - b. For lots consisting of 3 acres to 10 acres, the maximum total coverage shall be $\frac{1}{3}$ (33 $\frac{1}{3}$ %) of the entire parcel
 - c. For lots consisting of 10 acres to 20 acres, the maximum total coverage shall be $\frac{2}{5}$ (40%) of the entire parcel
 - d. For lots consisting of 20 acres to 30 acres, the maximum total coverage shall be $\frac{1}{2}$ (50%) of the entire parcel
 - e. For any parcel 30 acres and more, the maximum total coverage shall be 20 acres
- i. If solar storage batteries are included in the proposed project, the batteries must be placed in a secure container or enclosure meeting the requirements of the International Building Code, International Fire Prevention Code and NFPA 70. When the batteries are no longer in use, they shall be disposed of in accordance with the International Building Code, International Fire Prevention Code and NFPA 70 as well as the local laws of the Town, and any other applicable laws or regulations.

3. PROCEDURE: All commercial Solar Energy Systems shall provide a site plan in accordance with the site plan requirements of the Zoning Law. The Site Plan, in addition to said requirements, shall also include and/or comply with the following:
- a. All signage pertaining to the solar Energy system shall be indicated on the site plan and shall be in conformance with the sign requirements in the Zoning Law.
 - b. All commercial Solar Energy Systems shall be sited in a manner to have the least possible visual effect on the immediate neighbors and general environment.
 - c. The Site Plan shall include a Visual Environmental Assessment Form (Visual EAF), landscaping plan and visual assessment report, including appropriate modeling and photography assessing the visibility from key points identified in the Visual EAF, existing tree lines, surrounding topography and proposed elevation.
 - d. Proposed landscaping, screening and/or earth berming to minimize the potential visual impacts associated with the commercial solar Energy system and its accessory buildings, structures and/or equipment. If the same is deemed inadequate by the Planning Board, additional landscaping, screening and/or earth berming may be required to mitigate visual and aesthetic impacts.
 - e. Any associated structure shall be screened, placed underground, depressed, earth bermed or sited below the ridgeline to the greatest extent feasible, particularly in areas of high visibility, and the same shall be noted in the Site Plan. Where feasible, all utilities serving the site shall be underground.
 - f. A lighting plan shall be included with the Site Plan. No artificial light is permitted, unless the same is required by a federal, state or local authority. Exterior lighting may be provided for associated accessory structures and access entrances as may be determined appropriate for security purposes only.
 - g. The Site Plan shall also include written confirmation that the electric grid has the capacity to support the energy generated from the commercial Energy system.
 - h. The Site Plan shall identify all existing and proposed access routes to the site, including road, electric power, emergency access, land-based telephone line connection, and other utilities, existing and proposed, within the property boundaries of the proposed location. Whenever possible, existing roadways shall be used for access to the site.
 - i. The Site Plan shall include a minimum of a six-foot high security fence with two feet of barbed wire topping to prevent unauthorized access and vandalism to the commercial solar energy system. The Planning Board may require additional security measures for the site upon site plan review.
 - j. The Site Plan shall provide for placement of noise-producing equipment such that placement of the same minimizes noise impacts on adjacent properties.

4. ADDITIONAL REQUIREMENTS:

- a. LEASE: Where a commercial solar energy system is to be located on private lands owned by a party other than the applicant, a copy of the lease agreement with the property owner must accompany the Special Use Permit application, and shall remain on file with the Building Department
- b. STATUS OF SYSTEM: The applicant shall provide to the Building Department on an annual basis on the anniversary date of the commencement of operation of the commercial solar energy system documentation from the utility company verifying that said system is active.
- c. INSURANCE, ESCROWS AND INDEMNIFICATION:
 - i. Prior to the processing an application, the applicant will establish an escrow account of not less than \$2,500.00 (two thousand five hundred and 00/100 dollars) to cover all costs and expenses incurred by the Town for the attorney's and consultant's/expert's evaluation and consultation with the town, as may be necessary to review the proposal, including but not limited to the review of financial and technical aspects of the proposal and of the financial and technical practicability of alternatives which may be available to the applicant. The total fee may vary with the scope and complexity of the project and the degree of cooperation of the applicant. Additional funds, as required, shall be paid by the applicant.
 - ii. Insurance:
 - a. The system owner shall secure and at all times maintain a \$1,000,000.00 commercial insurance policy, including coverage for the Town of Westerlo and its officials, employees and agents as insureds. The policy shall be issued by an agent or representative of an insurance company licensed to do business in New York State, and shall contain an endorsement obligating the insurance company to furnish the Town with at least thirty (30) days written notice in advance of the cancellation of the insurance.
 - c. Renewal or replacement policies of certificates shall be delivered to the town at least fifteen (15) days before the expiration of the insurance which such policies are to renew or replace.
 - d. Within 15 days of issuance of the special use permit, and prior to construction of a permitted solar energy system, the system owner shall deliver to the Town a copy of each of the policies of certificates representing the insurance in the required amounts.
 - e. Failure to comply with the foregoing shall automatically deem the special use permit revoked without further proceeding. Written revocation of the special use permit shall be forwarded to the system

owner within five days of the revocations.

iii. Any special use permit issued hereunder shall contain a provision requiring the holder of the permit, to the extent permitted by law, to defend, indemnify, protect, save, hold harmless and exempt the town, officials of the Town, its officers, agents, servants, and employees, from any and all penalties, damage, or charges arising out of claims, suits, demands causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of or are caused by the construction, erection, modification, location, products performance, operation, maintenance, repair, installation, replacement, removal, or restoration of a solar energy system within the Town. Reasonable attorney's fees, consultant's fees and expert witness fees are included in those costs that are recoverable by the Town.

D. SURETIES/BOND: The applicant shall be required to provide sureties, as set forth below, for the removal of the commercial solar Energy system

i. Abandonment/Removal:

- a. The owner of a solar energy system shall annually, by January 15, file a declaration with the Town of Westerlo certifying the continuing safe operation of said system installed subject to these regulations, as well as the status notification set for in 4(c) above. Failure to file a declaration shall mean that the system is no longer in use and shall be considered abandoned.
- b. At the time that a system owner plans to abandon or discontinue operation of a solar energy system, such owner must notify the Town by certified U.S. Mail of the proposed date of abandonment, or discontinuance of operations. In the event that a system owner fails to give notice, the system shall be deemed abandoned upon such discontinuance of operations. In any event, a solar energy system shall also be considered abandoned when it has not been used for the purpose for which it was permitted, for a period of twelve months.
- c. Upon abandonment or discontinuance of use, the system owner shall physically remove the solar energy system, and all accessory structures and/or equipment within 90 days from the date of abandonment or discontinuance of use. "Physically remove" shall include, but shall not be limited to:
 - i. removal of panels, collectors, support units (including all underground wiring), mounts, equipment shelters and security barriers from the property
 - ii. proper disposal of the waste material from the site in accordance with local and state solid waste disposal regulations.
 - iii. Restoring the location of the solar energy system to its natural condition, except that any landscaping and grading shall remain in the "after" condition.

- d. If the owner of the system fails to properly remove said solar energy system and associated structures and equipment within 90 days from the date of abandonment, the Town may exercise its option to remove said system at its own discretion upon notification to the owner of the system and the property owner, at the expense of the owner for which the surety set forth in section f herein shall be used.
- e. The applicant must provide the Town with written authority from the owner or owners of record for the subject property where the solar energy system is located to bind successors and assigns to allow the Town to enter onto the subject property to physically remove the system in the event that the owner fails to remove the system in accordance with the requirement of this law.
- f. The applicant shall provide the Town with a bond in an amount determined by the Planning Board, but in no case less than 20% of the construction cost to cover the cost for the removal of the system and remediation of the landscape, in the event the Town must remove the facility. The bond shall be in a form acceptable to the Town Attorney, which include but are not limited to letter of credit, perpetual bond, or any combination thereof. The amount shall be reviewed every year by the Planning Board and shall be adjusted if deemed necessary. If the bond is deemed to be adjusted the applicant shall have 90 days from notice to provide an adjustment bond.

Section 18.60 FEES

The Town Board shall establish by resolution, which may be amended from time to time, a schedule of fees to cover application and permitting, review and approval, and monitoring costs. Fees may include the reasonable costs of an independent technical assessment of the application by a consultant.

Section 5

ARTICLE 18 of Local Law No. 1 of 1989 (as revised and amended thereafter), shall be renumbered to ARTICLE 19, and all ARTICLES thereafter, shall be renumbered sequentially.

Section 6 SEVERABILITY OF PROVISIONS

Should any section or provision of this local law be declared null, void, voidable or invalid, such finding shall not affect the validity of the remaining portions of this local law.

Section 7 EFFECTIVE DATE

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