

February 6, 2017

The Regular Town Board meeting of the Town of Wheatfield was held February 6, 2017 at 7:30 pm at Wheatfield Town Hall, 2800 Church Road, North Tonawanda, County of Niagara and State of New York to audit bills and to conduct any other business coming before the Town Board.

PRESENT: Supervisor Robert Cliffe, Councilmen Larry Helwig, Gilbert Doucet, Arthur Gerbec, Randy Retzlaff, Town Attorney Matthew Brooks, and Town Clerk Kathleen Harrington-McDonell.

PUBLIC INPUT

Comments regarding Quasar; Notice of Appeal

Niagara Landfill – how many lawsuits have been filed with the town? Approximately 40.

Weaver sub-division status

Moved by Councilman Doucet and seconded by Councilman Retzlaff to accept the minutes dated January 23, 2017 as presented.

This motion was CARRIED: AYES 4 – NAYS 0 – ABSTAIN Councilman Gerbec.

Moved by Councilman Helwig and seconded by Councilman Gerbec to approve the bill payment for voucher # 20170006 – 20170098 in the amount of \$227,554.68 as follows:

General Fund	\$ 17,685.42
Highway	\$ 10,368.01
Water/Sewer	\$ 24,964.20
Trust & Agency	\$ 18,440.50
Capital/Lemke-Errick Cul	\$ 90,007.79
Capital/Clescent Pump	\$ 57,010.50
Refuse	\$ 155.62

Hold Voucher #20170029 in the amount of \$50.10 and 20170030 in the amount of \$50.10 for additional information

This motion was CARRIED: AYES 5 – NAYS 0.

Moved by Supervisor Cliffe and seconded by Councilman Helwig to approve voucher #20170099 in the amount of \$94,531.25 from the General Fund.

This motion was CARRIED: AYES 5 – NAYS 0.

Moved by Councilman Helwig and seconded by Councilman Doucet to accept the quote from Greater Niagara Mechanical in the amount of \$12,480 for HVAC Rooftop system.

This motion was CARRIED: AYES 5 – NAYS 0.

Moved by Councilman Helwig and seconded by Supervisor Cliffe to approve the proposal for Street Lighting and Signage Law Updates for an estimated Time and Expense Fee range of \$6,000.00 to \$8,000.00 as outlined in Wendel's proposal letter dated February 1, 2017.

This motion was CARRIED: AYES 5 – NAYS 0.

Moved by Councilman Doucet and seconded by Councilman Helwig to Approve amendments to the 2017 General Fund and Sewer District budgets to provide for the use of fund balance to provide the additional budgetary appropriations for the Town's share of two grants, the purchase and installation of a security fence at the landfill and the purchase and installation of generators at sewer lift stations as follows:

General Fund

Increase Appropriated Fund Balance:

Account A.0000.0599 Appropriated Fund Balance \$76,976

Increase Appropriations:

Account A.8161.0200 Landfill Security Fence \$76,976

Sewer District

Increase Appropriated Fund Balance:

Account G.0000.0599 Appropriated Fund Balance \$66,734

February 6, 2017

Increase Appropriations:

Account G.8120.0202 Lift Stations Generators \$66,734

This motion was CARRIED: AYES 5 – NAYS 0.

Moved by Supervisor Cliffe and seconded by Councilman Retzlaff as follows;

WHEREAS, the Code of the Town of Wheatfield contains and specifies the Local Laws and Ordinances of the Town of Wheatfield; and

WHEREAS, the Town has developed draft language for a new Solar Energy Systems Law to be added to the Zoning Chapter of the Code of the Town of Wheatfield; and

WHEREAS, pursuant to Municipal Home Rule Law, the Town Board is proposing to adopt this Zoning Code amendment by enacting a Local Law #1 for the year 2017, as follows:

BE IT ENACTED, by the Town Board of the Town of Wheatfield, New York, that the Wheatfield Town Board amends the Code of the Town of Wheatfield as follows:

Amend Chapter 200 (Zoning) by adding a new Article _____, titled “Solar Energy Systems”; and

WHEREAS, the Wheatfield Town Board held the required Public Hearing on the proposed Local Law on December 5, 2016 and a second on January 23, 2017, and comments from the public were received and noted; and

WHEREAS, the Wheatfield Town Board has determined that the proposed Zoning Code Amendment will not result in any significant negative effect on the environment and has issued a Negative Declaration; and

WHEREAS, the Town has completed the required referral to Niagara County.

NOW, THEREFORE, BT IT ENACTED, by the Town Board of the Town of Wheatfield, Local Law #1 of the year 2017, which amends Chapter 200 (Zoning) by adding a new Article _____, titled “Solar Energy Systems” (copy attached for reference).

**TOWN OF Wheatfield
LOCAL LAW NO. 1 OF THE YEAR, 2017**

A Local Law Entitled “Adding Solar Electric Energy Systems Article to the Code of the Town of Wheatfield”

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

A new Article shall be added to the Zoning Chapter of the Code of the Town of Wheatfield entitled “Solar Energy Systems” as follows:

§ 200-XX. Authority

This Zoning for Solar Electric Energy Systems is adopted pursuant to Sections 261-263 of the Town Law of the State of New York, which authorizes the Town of Wheatfield to adopt zoning provisions that advance and protect the health, safety, and welfare of the community and to make provisions for, so far as conditions may permit, the accommodations of solar energy systems and equipment.

§ 200-XX. Findings.

The Town Board of the Town of Wheatfield makes the following findings:

February 6, 2017

A. The Town Board of the Town of Wheatfield, recognizing that solar energy is a clean, readily available and renewable energy source that decreases energy costs and provides local business and job opportunities, intends to accommodate and encourage the use of solar energy systems.

B. However, the Town Board finds a growing need to properly site solar energy systems within the boundaries of the Town of Wheatfield to protect residential, business areas and other land uses, to preserve the overall beauty, nature and character of the Town of Wheatfield, to promote the effective and efficient use of solar energy resources, and to protect the health, safety and general welfare of the citizens of the Town of Wheatfield.

C. Prior to the adoption of this article, no specific procedures existed to address the siting of solar energy systems. Accordingly, the Town Board finds that the promulgation of this article is necessary to direct the location and construction of these systems.

D. Solar energy systems need to be regulated for removal when no longer utilized.

§ 200-XX. Definitions.

The following definitions shall apply to this Chapter:

APPLICANT – The person or entity filing an application and seeking an approval under this Article; the owner of a solar energy system or a proposed solar energy system project; the operator of solar energy system or a proposed solar energy system project; any person acting on behalf of an applicant, solar energy system or proposed solar energy system. Whenever the term “applicant” or “owner” or “operator” are used in this Section, said term shall include any person acting as an applicant, owner or operator.

BUILDING INTEGRATED PHOTOVOLTAIC SYSTEM: A combination of photovoltaic building components integrated into any building envelope system such as vertical facades including glass and other façade material, semitransparent skylight systems, roofing materials, and shading over windows.

BUILDING-MOUNTED SOLAR ENERGY SYSTEMS – A solar energy system that is affixed to the side(s) of a building or other structure either directly or by means of support structures or other mounting devices, but not including those mounted to the roof or top surface of a building. Said system is designed and intended to generate electricity primarily for use on said lot (net metering is allowed), potentially for multiple tenants, through a distribution system that is not available to the general public.

GROUND-MOUNTED SOLAR ENERGY SYSTEM – A solar energy system that is affixed to the ground either directly or by support structures or other mounting devices. Said system is an accessory structure, designed and intended to generate electricity primarily for use on said lot (net metering is allowed), potentially for multiple tenants, through a distribution system that is not available to the general public. Ground mounted solar energy system not meeting the definition as outlined in this law will be treated as Utility-Scale Solar Energy systems and the requirements of such.

ROOFTOP-MOUNTED SOLAR ENERGY SYSTEM – Any solar energy system that is affixed to the roof of a building and wholly contained within the limits of the roof surface. Said system is designed and intended to generate electricity solely for use on said lot (net metering is allowed), potentially for multiple tenants.

SKYSPACE (SOLAR) – The space between a solar collector and the sun through which solar radiation passes.

UTILITY-SCALE SOLAR ENERGY SYSTEM – Any solar energy system that cumulatively on a lot is designed and intended to supply energy primarily into a utility grid for sale to the general public.

February 6, 2017

§ 200-XX. Applicability

The requirements of this law shall apply to all solar energy systems installed or modified after the effective date, excluding general maintenance and repair of Solar Energy Systems.

Subject to the provisions of this Article, solar energy systems shall be allowed as follows:

- A. Rooftop-mounted and building-mounted solar energy systems are permitted in all zoning districts in the Town through a building permit application process.
- B. Building Integrated Photovoltaic Systems are allowed under the normal building permit process for building construction or building renovations.
- C. Ground-mounted solar energy systems are permitted as accessory structures by Building Permit as long as they meet the size limitations in the following section. If they exceed the size limitations, site plan approval will be required by the Planning Board. These units are allowed in the following districts :
 - (1) Agricultural-Residential (A-R), Rural Residential (R-R), Rural Neighborhood Business (RNB), Restricted Commercial (R-C), Commercial (C-1), Planned Unit Development (PUD), or all Industrial Districts (M-1, M-2); and
 - (2) Residential-1 (R-1), Residential-2 (R-2), Residential-3 (R-3) or Residential Waterfront (R-W) only if the lot in which the freestanding or ground-mounted solar energy system is situated on is greater than 16,000 square feet.
- D. Utility-scale solar energy systems are only permitted in an Agricultural-Residential District (A-R), Rural Residential District (R-R) or all Industrial districts (M-1, M-2) by Special Permit and Site Plan approval.
- E. Any inconsistent provisions of the Zoning Law which purport to or may be interpreted to allow solar energy systems in other districts are hereby superseded.

§ 200-XX. General regulations. The placement, construction, and major modification of all solar energy systems within the boundaries of the Town of Wheatfield shall be permitted only as follows:

- A. Rooftop-mounted and building-mounted solar energy systems upon issuance of building permit (specific Town of Wheatfield Building Permit and requirements for rooftop mounted systems).
- B. Ground-mounted solar energy systems, through site plan approval issued by the Town of Wheatfield Planning Board for units exceeding the size limitations in Section 200-XX, and upon issuance of a building permit, and shall be subject to all provisions of this article, in the Agricultural-Residential (A-R), Rural Residential (R-R), Rural Neighborhood Business (RNB), Restricted Commercial (R-C), Commercial (C-1), Planned Unit Development (PUD), or all Industrial Districts (M-1, M-2). Units meeting the Size limitations will be allowed by just a Building Permit.
- C. Ground-mounted solar energy systems exceeding the size limitations in Section 200-xx through site plan approval issued by the Town of Wheatfield Planning Board, and upon issuance of a building permit, and shall be subject to all provisions of this article, in the Residential-1 (R-1), Single-Family Residence, Residential-2 (R-2) or Residential-3 (R-3) only if the lot in which the freestanding or ground-mounted solar energy system is situated on is greater than 16,000 square feet. Units meeting the size limitation in Section 200-xx will only require a building permit.
- D. Utility-scale solar energy systems shall be permitted only by Special Permit by the Town of Wheatfield Planning Board in use districts where allowed in accordance with the criteria established in this article, after SEQRA review with the Town of Wheatfield Planning Board designated as Lead Agency, upon concurrent site plan approval issued by the Town of Wheatfield Planning Board, and upon issuance of a building permit, and shall be subject to all provisions of this Article.
- E. All solar energy systems existing on the effective date of this Article shall be allowed to continue usage as they presently exist. Routine maintenance (including replacement with a new system of like construction and size) shall be permitted on such existing systems. New construction other than routine maintenance shall comply with the requirements of this

chapter.

- F. No solar energy system shall hereafter be used, erected, moved, reconstructed, changed or altered except in conformity with these regulations.
- G. Any applications (including variance applications) pending for solar energy systems on the effective date of this article shall be subject to the provisions of this article.
- H. This article shall take precedence over any inconsistent provisions of the Zoning Law of the Town of Wheatfield.

§ 200-XX. General criteria.

- A. Rooftop-mounted and building-mounted solar energy systems shall not be more than three feet higher than the finished roof to which it is mounted and in no instance shall any part of the system extend beyond three (3) feet before the edge of the roof. All rooftop-mounted or building mounted solar energy systems shall meet all Building permit requirements (special Wheatfield permit for rooftop solar units) including the NYS Uniform Fire Prevention and Building Code standards.
- B. Ground-mounted solar energy systems (not utility grade systems- see special permit section for these requirements) shall be subject to the following requirements:
 - (1) The location of said solar energy system shall be placed the greater of: two (2) times the standard primary structure side yard setback requirement of the use district in which it is located or at a minimum of 20 feet from any side yard property line. The system shall also be located a minimum of 20 feet from any rear property line; and
 - (2) The location of said solar energy system shall be only located in the side or rear yard; and
 - (3) A remote disconnect must be provided and shown on the site plan.
 - (4) The height of said solar energy system shall not exceed twelve (12) feet when oriented at maximum tilt on a lot situated in a Residential-1 (R-1), Single-Family Residence, Residential-2 (R-2) or Residential-3 (R-3); and
 - (5) The height of said solar energy system shall not exceed fifteen (15) feet when oriented at maximum tilt on a lot situated in an Agricultural-Residential (A-R), Rural Residential (R-R), Rural Neighborhood Business (RNB), Restricted Commercial (R-C), Commercial (C-1), Planned Unit Development (PUD), or all Industrial Districts (M-1, M-2) ; and
 - (6) The total area occupied by said solar energy system on a lot shall not exceed 500 square feet in a Residential-1 (R-1), Single-Family Residence, Residential-2 (R-2) or Residential-3 (R-3) Zoning District (Units proposed that exceed this area limitation will require site plan approval through the Town Planning Board); and
 - (7) The total area occupied by said solar system on a lot which is two (2) acres or less situated in an Agricultural-Residential (A-R), Rural Residential (R-R), Rural Neighborhood Business (RNB), Restricted Commercial (R-C), Commercial (C-1), Planned Unit Development (PUD), or all Industrial Districts (M-1, M-2) shall not exceed 1000 square feet(Units proposed that exceed this area limitation will require site plan approval through the Town Planning Board) ; and
 - (8) The total area occupied by said solar energy system on a lot which is greater than two (2) acres and but less than five (5) acres situated in an Agricultural-Residential (A-R), Rural Residential (R-R), Rural Neighborhood Business (RNB), Restricted Commercial (R-C), Commercial (C-1), Planned Unit Development (PUD), or all Industrial Districts (M-1, M-2) shall not exceed five (5) percent of the total square footage of the entire lot (Units proposed that exceed this area limitation will require site plan approval through the Town Planning Board); and
 - (9) The total area occupied by said solar energy system on a lot which is greater than five (5) acres or more situated in an Agricultural-Residential (A-R), Rural Residential (R-R), Rural Neighborhood Business (RNB), Restricted Commercial (R-C), Commercial (C-1), Planned Unit Development (PUD), or all Industrial Districts (M-1, M-2) shall not exceed ten (10) percent of the total square footage of the entire lot (Units proposed that exceed this area limitation will require site plan approval through the Town Planning Board).

February 6, 2017

- C. Site plan Requirements for a ground-mounted solar energy system. If site plan approval is required by this article for a freestanding or ground-mounted solar energy system or a site plan is requested by the Building Inspector for any freestanding and ground-mounted solar energy system, the applicant shall be required to submit a site plan drawn in sufficient detail as follows:
- (1) Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposal layout of the solar energy system along with a description of all components, existing vegetation, any proposed clearing and grading of the lot involved, any storm water or erosion disturbances, and utility lines, both above and below ground, on the site and adjacent to the site; and
 - (2) Property lot lines and the location and dimensions of all existing structures and uses on site within five hundred (500) feet of the proposed solar panels; and
 - (3) Any proposed fencing and/or screening for said project; and
 - (4) Any such additional information as may be required by the Town's professional engineer or consultant, Town of Wheatfield Planning Board, Town Attorney, Building Inspector or other Town entity; and
 - (5) A public hearing on said site plan may be waived by the Planning Board.
- D. Solar storage batteries. When solar batteries are included as part of any solar energy system, they shall be placed in secure container or enclosure meeting the requirements of the New York State Building Code.
- E. All solar energy systems shall adhere to all applicable federal, state, county and Town of Wheatfield laws, regulations and building, plumbing, electrical, and fire codes.
- F. Any solar energy system shall be accessible for all emergency service vehicles and personnel.
- G. All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth-tone color. The design, construction, operation, and maintenance of any solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists.
- H. The development and operation of a solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town of Wheatfield or other federal or state regulatory agencies.
- I. Artificial lighting of any solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
- J. If the use of an approved solar energy system is discontinued, the owner or operator shall notify the Building Inspector within thirty (30) days of such discontinuance. If a solar energy system is to be retained and reused, the owner or operator shall further inform the Building Inspector of this in writing at such time and obtain any necessary approvals within one year, otherwise it shall be automatically deemed abandoned (and removed per this law).
- K. Any solar energy system to be used strictly for Agricultural use purposes in accordance with NYS Agriculture and Markets Law may have some of the requirements of this article waived by the Building Inspector or Planning Board and will include an expedited approval process, as necessary.

§ 200-XX. Special permit requirements.

Applications under this article shall be made in accordance with Article XI Special Use Permits and as follows: Applicants for a special permit to place, construct, and make a major modification to a utility-scale solar energy systems within the boundaries of the Town of Wheatfield shall submit six (6) sets of the following information to the Building Inspector, who shall first present it to a professional engineer or consultant for an initial review and then onto the Planning Board for its review and recommendation. The Planning Board may make such additional referrals as it deems appropriate. No such application shall be deemed filed until any required application fee has been paid. The following information shall be contained in the application:

- A. A completed State Environmental Quality Review Act (SEQRA) short form environmental

February 6, 2017

assessment form (EAF), unless a Full form is required by the Town's professional engineer or consultant or the Town of Wheatfield Planning Board, with the Town of Wheatfield Planning Board designated as lead agency for the SEQRA process.

B. Necessary Permit Information:

- (1) Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include the name, address, and telephone number of the applicant and a letter or other written permission signed by the property owner authorizing the applicant to represent the property owner; and
- (2) Documentation of access to the project site(s), including location of all access roads, gates, parking areas, etc; and
- (3) Documentation of the clearing, grading, storm water and erosion control plans; and
- (4) Utility interconnection data and a copy of written notification to the utility of the proposed interconnection; and
- (5) One or three-line electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and over-current devices; and
 - (a) A property owner who has installed or intends to install a utility-scale solar energy system may choose to negotiate with other property owners in the vicinity for any necessary solar skyspace easements. The issuance of a special use permit does not constitute solar skyspace rights, and the Town shall not be responsible for ensuring impermissible obstruction to the solar skyspace as a result of uses or development performed in accordance with Town Code.

C. A site plan drawn in sufficient detail as follows:

- (1) Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposal layout of the entire solar energy system along with a description of all components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved, and utility lines, both above and below ground, on the site and adjacent to the site; and
- (2) Property lot lines and the location and dimensions of all existing structures and uses on site within five hundred (500) feet of the solar panels; and
- (3) Proposed fencing and/or screening for said project.

D. A Decommissioning Plan to ensure the proper removal of utility-scale solar energy systems. The Decommissioning Plan is to be submitted as part of the special use permit application to the Building Inspector for approval and must specify that after the utility-scale solar energy system is no longer in use (as determined by the owner/operator or the Building Inspector), it shall be removed by the applicant or any subsequent owner. The Decommissioning Plan shall identify the anticipated life of the project. The plan shall demonstrate how the removal of all infrastructure and restoration shall be conducted to return the parcel to its original state prior to construction. The plan shall also include an expected timeline for execution and a cost estimate for decommissioning prepared by a Professional Engineer or qualified Contractor. Cost estimates shall take inflation into consideration and be revised every five (5) years during operation of the system and include any salvage value. Removal of the large-scale solar energy system must be completed in accordance with the approved Decommissioning Plan and the standards provided as follows:

- (1) All structures and foundations associated with the large-scale solar energy systems shall be removed;
- (2) All disturbed ground surfaces shall be restored to original conditions including topsoil and seeding as necessary; and

February 6, 2017

(3) All electrical systems shall be properly disconnected and all cables and wiring buried shall be removed.

- E. A bond or other approved security shall be provided to cover the cost of removal and restoration of the area impacted by the solar system. Security shall be in an amount equal to 150% of the construction estimate as presented in the approved Decommissioning Plan.
- F. Any such additional information as may be required by the Town's professional engineer or consultant, Town of Wheatfield Planning Board, Town Attorney, Building Inspector or other Town entity.

§ 200-XX. Special permit criteria.

Special Permits issued for a utility-scale solar energy systems shall meet the following conditions:

- A. Minimum lot area: The minimum lot area shall be two (2) acres.
- B. Maximum lot area: None
- C. Setbacks: Any utility-scale solar energy system shall adhere to the following setbacks:
 - (1) From any residential (R-W, R-1, R2 or R-3), business (RNB, R-C, or C-1), or Planned Unit Development (PUD) use district: A minimum one hundred (100) feet from all property lot lines bordering these use districts (and any screening that is required).
 - (2) From any industrial (M-1, M-2) use district: A minimum of fifty (50) feet from all property lines bordering an industrial (M-1, M-2) use district.
 - (3) From any property lot lines: A minimum of fifty (50) feet from any property lot line, plus appropriate screening.
 - (4) From buildings or structures:
 - (a) A minimum of two hundred and fifty (250) feet from any inhabited building or structure, except for buildings and structures located on the proposed project lot ,
 - (5) From public roads :
 - (a) A minimum of one hundred (100) feet from any public road (measured from the road right-of-way or property line); and,
 - (b) Where the lot line abuts a public right-of-way, the setbacks specified above shall be measured from such right-of-way line.
- D. Maximum overall height. The height of a utility-scale solar energy system shall not exceed twenty (20) feet when oriented at maximum tilt.
- E. A utility-scale solar energy system shall only be located in a rear yard if there is a principal structure or dwelling on said lot.
- F. A utility-scale solar energy system shall adhere to all applicable federal, state, county and Town of Wheatfield laws, regulations, building, plumbing, electrical, and fire codes.
- G. Development and operation of a utility-scale solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town of Wheatfield or other federal or state regulatory agencies.
- H. The design, construction, operation, and maintenance of a utility-scale solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists.
- I. All structures and devices used to support solar collectors shall be non-reflective and/or painted a subtle or earth-tone color.
- J. All transmission lines and wiring associated with a utility-scale solar energy system shall be buried and include necessary encasements in accordance with the National Electric Code and Town requirements. The applicant is required to show the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan.

February 6, 2017

- K. All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.
- L. Artificial lighting of utility-scale solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
- M. Any signage used to advertise the solar energy facility shall be in accordance with the Town's signage regulations.
- N. Any site containing a utility-scale solar energy system shall contain fencing or other device acceptable to the Town enclosing all solar energy system components that prevent safety hazards.
- O. A berm, landscape screen, or other opaque enclosure, or any combination thereof acceptable to the Town capable of screening the site may be required along any property line that abuts an existing residence.
- P. After completion of a utility-scale solar energy system, the applicant shall provide a post-construction certification from a professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans.
- Q. Compliance with regulatory agencies: The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of a utility-scale solar energy system.
- R. A bond or other appropriate form of security shall be offered by the applicant as part of their Decommissioning Plan to cover the cost of the removal and site restoration by the Town of Wheatfield Planning Board and said proof of appropriate form of security shall be filed prior to construction and on an annual basis with the Town Clerk.
- S. Clearing, grading, storm water and erosion control:
 - (1) Before the Town of Wheatfield shall issue a clearing, grading, storm water or building permit for a utility-scale solar energy system, the applicant shall submit a storm water and Erosion Control Plan to the Town of Wheatfield for its review and approval; and
 - (2) The Plan shall minimize the potential adverse impacts on wetlands and Class I and II streams and the banks and vegetation along those streams and wetlands and minimize erosion or sedimentation.

§ 200-XX. Maintenance, procedures, and fees.

- A. Time limit on completion. After the granting of a special permit of a utility-scale solar energy system with concurrent site plan approval or site plan approval of a freestanding or ground-mounted solar energy system by the Planning Board, the building permit shall be obtained within six months and the project shall be completed within twelve months. A six month extension to obtain a building permit or the completion time can be issued by the Planning Board upon application by the applicant. If not constructed, the special permit and/or site plan approval shall automatically lapse within twelve months after the date of approval by the Town of Wheatfield Planning Board (unless an extension is granted).
- B. Inspections. Upon reasonable notice, the Town of Wheatfield Building Inspector or his or her designee may enter a lot on which a solar energy system has been approved for the purpose of compliance with any requirements or conditions. Twenty-four (24) hours advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice. Furthermore, a utility-scale solar energy system shall be inspected annually by a New York State licensed professional engineer that has been approved by the Town or at any other time, upon a determination by the Town's Building Inspector that damage may have occurred, and a copy of the inspection report shall be submitted to the Town Building Inspector. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.
- C. General complaint process. During construction, the Town Building Inspector can issue a stop order at any time for any violations of a special permit or building permit. After construction is complete, the permit holder of a utility-scale solar energy system shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit

February 6, 2017

- requirements.
- D. Continued Operation. A solar energy system shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all approval requirements and conditions. Further, the Building Inspector shall also have the right to request documentation from the owner for a solar energy system regarding the system's usage at any time.
- E. Removal. All solar energy systems shall be dismantled and removed immediately from a lot when the special permit or approval has been revoked by the Town of Wheatfield Planning Board or the solar energy system has been deemed inoperative or abandoned by the Building Inspector for a period of more than three hundred and sixty-five (365) days at the cost of the owner. If the owner does not dismantle and remove said solar energy system as required, the Town Board may, after a hearing at which the owner shall be given an opportunity to be heard and present evidence, dismantle and remove said facility and place the cost of removal as a tax lien on said parcel.
- F. Determination of Abandonment or Inoperability. A determination of the abandonment or inoperability of a solar energy system shall be made by the Town Building Inspector, who shall provide the Owner with written notice by personal service or certified mail. Any appeal by the owner of the Building Inspector's determination of abandonment or inoperability shall be filed with the Town of Wheatfield Zoning Board of Appeals within thirty days of the Building Inspector causing personal service or mailing certified mail his written determination and the Board shall hold a hearing on same. The filing of an appeal does not stay the following time frame unless the Zoning Board of Appeals or a court of competent jurisdiction grants a stay or reverses said determination. At the earlier of the three hundred and sixty-six (366) days from the date of determination of abandonment or inoperability without reactivation or upon completion of dismantling and removal, any approvals for the solar energy system shall automatically expire.
- G. Application and annual fees.
- (1) Utility-scale solar energy system. An applicant shall pay an initial application fee in the amount as set by the Town Board, upon filing its special permit and site plan application to cover the cost of processing and reviewing the application. If approved, the Owner shall pay an annual fee in the amount as set by the Town Board, to cover the cost of processing and reviewing the annual inspection report and for administration, inspections and enforcement.
 - (2) Site plan Application for a Freestanding and ground-mounted solar energy systems. An applicant shall pay the standard site plan review fee as determined from time to time by the Town Board, by resolution.
 - (3) The Town of Wheatfield reserves the right to, by local law, provide that no exemption pursuant to the provision of the New York State Real Property Tax Law (RPTL) § 487 shall be applicable within its jurisdiction.
- H. Prior to the issuance of a building permit, the applicant shall document that all applicable federal, state, county, and local permits have been obtained.
- I. Special permits for a utility-scale solar energy system granted under this article shall be issued only following a public hearing held as required by the Town Zoning Law.
- J. The Planning Board may:
- (1) For utility-scale solar energy systems, grant a Special Permit, deny a Special Permit, or grant a Special Permit with written stated conditions. The Planning Board in making this decision shall make Findings in accordance with Section 220-74 of Article XI. Denial of a Special Permit shall be by written decision based upon substantial evidence considered by the Board. Upon issuance of a Special Permit, the applicant shall obtain a building permit for the utility-scale solar energy system.
 - (2) For ground-mounted solar energy systems when review is required by the Planning Board pursuant to this article, grant site plan approval, deny site plan approval or grant site plan approval with written stated conditions. Denial of site plan approval shall be by written decision based upon substantial evidence considered by the Board.

February 6, 2017

Upon issuance of a site plan approval, the applicant shall obtain a building permit for the freestanding or ground-mounted solar energy system.

- K. Any changes or alterations post construction to a utility-scale, freestanding or ground-mounted solar energy system shall be done only by amendment to the Special Permit and/or site plan (if required) subject to all requirements of this Code.
- L. Special permits for utility-scale solar energy systems shall be assignable or transferrable so long as they are in full compliance with this article and all the conditions, and the Building Inspector is notified in writing at least fifteen (15) days prior thereto.
- M. In addition to the requirements of this Article, the special permit application shall be subject to any other site plan approval requirements set forth in the Zoning Law.

§ 200-XX. Revocation.

If the applicant violates any of the conditions of its special permit, site plan approval or violates any other local, state or federal laws, rules or regulations, this shall be grounds for revocation of the special permit or site plan approval. Revocation may occur after the applicant is notified in writing of the violations and the Town of Wheatfield Planning Board holds a hearing on same.

§ 200-XX. Interpretation; conflict with other law.

In their interpretation and application, the provisions of this article shall be held to be minimum requirements, adopted for the promotion of the public health, safety and general welfare. It is not intended to interfere with, abrogate, or annul other rules, regulations or laws, provided that whenever the requirements of this article are at a variance with the requirements of any other lawfully adopted regulations, rules or laws, the most restrictive, or those which impose the highest standards, shall govern.

§ 200-XX. Severability

If any section, subsection, phrase, sentence, or other portion of this article is for any reason held invalid, void, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

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

This motion was CARRIED: AYES 5 – NAYS 0.

Moved by Councilman Doucet and seconded by Councilman Gerbec to re-appoint Wheatfield Town Board Member, Larry Helwig, as the Town Board's Member and representative to the Wheatfield Local Development Corporation Board of Directors.

This motion was CARRIED: AYES 5 - NAYS 0.

Moved by Supervisor Cliffe and seconded by Councilman Retzlaff to authorize Wendel Engineers to complete bid documents and advertise for bids for the Niagara Sanitation Landfill Fence Project, with the Town reserving its right to reject any and all bids.

This motion was CARRIED: AYES 5 – NAYS 0.

Moved by Councilman Doucet and seconded by Councilman Gerbec to authorize the Recreation Department to hire a permanent, part-time employee at the Youth Center at the rate of pay and hours as indicated by the job specifications, pending Human Resource Department approval and a Niagara County Sheriff's Department background check.

This motion was CARRIED: AYES 5 – NAYS 0.

Moved by Councilman Retzlaff and seconded by Councilman Gerbec to authorize the Recreation Department to purchase a 52" Quick Hitch Rotary Broom from Drake Lawn and Garden for a total of \$2,152.50, for the purpose of sweeping off the newly installed pathway at Fairmount Park. Said unit will attach to the Recreation Department's current John Deere tractor. Additionally, said expenditure will be made from the Recreation Department's 2017 Budget.

February 6, 2017

This motion was CARRIED: AYES 5 – NAYS 0.

Moved by Supervisor Cliffe, there was no second; to authorize expenditure of \$7,500.00 representing the Town of Wheatfield's share to commence a study by GAR Associates to prepare a report on purchase and development rights surrounding the Niagara Air Base in order to protect the viability of the Niagara Air Base.

No action taken.

Moved by Councilman Helwig and seconded by Councilman Gerbec as follows;

WHEREAS, the Town of Wheatfield received a Grant in the amount of \$ 138,000 under the 2016 Bridge New York Program for rehabilitation of the Cayuga Drive Extension Bridge over Bergholtz Creek, and

WHEREAS, the Town of Wheatfield has an Agreement with Wendel WD Architecture, Engineering, Surveying & Landscape Architecture P.C. (Wendel) for Professional Engineering Services including design, survey and construction services for Locally Administered Federal Aid Projects, and

WHEREAS, Wendel is pre-qualified to perform these services for municipalities within New York State Department of Transportation, Region 5, and

Now, Therefore, Be It Resolved, that the Board of the Town of Wheatfield designates Wendel as the design engineer for the Cayuga Drive Extension Bridge over Bergholtz Creek Rehabilitation Project, and

Be It Further Resolved, that Wendel will submit a specific fee proposal for review and approval once details of the project are confirmed.

This motion was CARRIED: AYES 5 – NAYS 0.

Moved by Councilman Doucet and seconded by Councilman Helwig to approve the hiring of Amy Carr as a typist in the Water/Sewer Department effective February 20, 2017.

This motion was CARRIED: AYES 4 – NAYS 0 – Abstain Supervisor Cliffe.

The next Town Board meeting is scheduled for February 27, 2017 at 7:30 pm with a Public Hearing to discuss a Local Law granting partial tax exemption for people with limited income who are 65+ years of age at 7:15 pm.

PUBLIC INPUT

Street light out Errick & Lemke

Moved by Councilman Gerbec and seconded by Councilman Helwig to adjourn at 8:22 pm.

This motion was CARRIED: AYES 5 – NAYS 0.

Respectfully submitted,

Kathleen Harrington-McDonell
Town Clerk