

Town of Farmington

1000 County Road 8
Farmington, New York 14425

FARMINGTON SOLAR COMMITTEE

Thursday, November 18, 2021 • 6:30 p.m.

MINUTES—FILED WITH TOWN CLERK

The following minutes are written as a summary of the main points that were made at the Farmington Solar Committee meeting. Remarks delivered during discussions are summarized and are not intended to be verbatim transcriptions. An audio recording of the meeting is available from the Farmington Town Clerk's Office.

The meeting was conducted at the Farmington Town Hall and via Zoom video conference.

Committee Members Present at the Town Hall:

Jody Binnix, Farmington Zoning Board of Appeals
Kim Boyd, Farmington Conservation Board
Ronald L. Brand, Farmington Director of Planning and Development
John Weidenborner, Farmington Zoning Inspector

Committee Member Present via Zoom Video Conference

Nate Bowerman, Farmington Town Board

Committee Members Excused:

Henry (Hal) Adams, Farmington Agricultural Advisory Committee
Dan Delpriore, Farmington Code Enforcement Officer
Douglas Viets, Farmington Planning Board

Present at the Town Hall:

Lance S. Brabant, CPESC, Town of Farmington Engineer, MRB Group D.P.C.

Present via Zoom Video Conference:

James and Nancy Falanga
James Foley
Gary Kochersberger

1. MEETING OPENING

The meeting was called to order at 6:30 p.m. by Ronald L. Brand, Town of Farmington Director of Development and Planning.

2. MEETING PUBLIC NOTICES

On November 1, 2021, notice of the meeting, the Zoom video conference registration information, and the Draft Local Law (Solar PV Systems, Version #1, dated November 1, 2021) were posted on Town of Farmington website and have remained posted.

The Draft Local Law was available on the Town website via the selection of the “Meetings/Agendas/Minutes” tab, followed by the selection of the “Solar Committee” tab.

On November 1, 2021, notice of the meeting was posted on the Town Clerk’s bulletin board at the Town Hall.

On November 3, 2021, notice of the meeting and the Draft Local Law were sent via email to Committee members by Mr. Brand.

On November 5, 2021, a news article about the meeting was published in the Canandaigua *Daily Messenger* newspaper, Page 4A.

On November 14, 2021, a reminder notice of the meeting was given by the clerk via email to Committee members and Town staff.

3. OVERVIEW OF THE COMMITTEE’S TASK

Mr. Brand: Provided the following overview of the Committee’s task prior to the meeting:

The Solar Committee is working on amendments to the Farmington Solar Photovoltaic (PV) Systems law, §165-65.3 of the Farmington Town Code, as well as amendments to other sections of the Farmington Town Code (§165-99 and §165-100).

A moratorium on Large Scale Solar Photovoltaic (PV) Systems remains in effect and will end on February 10, 2022. The proposed amendments are to be completed and submitted to the Farmington Town Board in December, for review and further submission to the Ontario County Planning Board in January. A public hearing will be held by the Town Board, on Tuesday, January 25, 2022, to consider the adoption of the amendments.

Summary of the revisions:

Section 1 lists Large-scale ground-mounted solar PV systems as special permitted uses in the A-80, GB and LI Districts.

Section 2 repeals §165-65.3 in its entirety with a new §165-65.3 (new intent section, including reference to International Code and other relocated sections from the existing code provisions).

Section 3 establishes a new Section 165-85 within Article VI which addresses special use permit and site plan approvals. This is the largest change to the existing regulations which has been created based upon our efforts with the Planning Board granting Special Use Permits, Site Plan Approval, Annual Reports, Third-year Reports, Decommissioning Plan and Surety for any large-scale ground mounted system.

Section 4 contains amendments to §165, Article VIII, Administration and Enforcement, Section 99 and Section 100 (Site Plan Approvals) of the Town Code.

4. MEETING PRESENTATION

Mr. Brand: Delivered the following presentation at the meeting:

The current moratorium on Large Scale Solar Systems is scheduled to end on February 10, 2022, or sooner depending upon the Town Board's adoption of a local law such as the one we are considering tonight.

The local law being reviewed here tonight would amend Chapter 165, Article IV, District Regulations; Chapter 165, Article V, Section 165-63.3 (Solar Photovoltaic (PV) Systems; Creating a new Article VI, Section 85, Large-scale ground-mounted solar PV systems; amending portions of Chapter 165, Article VIII, Section 99 Appointment of Planning Board, powers and duties; and amending portion of Chapter 165, Article VIII, Section 100, Site development plan of the Code of the Town of Farmington is needed.

Let me start tonight by setting the stage for the proposed local law.

First, some major findings from the recent court decision on the Delaware River Solar Project:

1. The Court did not identify any alleged errors in the current solar regulations.
2. The Court did not identify any omissions in the proceedings by the Planning Board which were based upon the existing regulations.

Second, with these findings, then one might ask why are we proposing any change(s) to the existing regulations? The answer is that over the past three-year period, which began with the adoption of Local Law #6 of 2017 and since the introduction of the Delaware River Solar Application in August 2018 (which resulted in the final approvals having been granted on May 5, 2021) there were a number of public requests made to amend the solar regulations. Here are some of them:

1. Some wanted more time for input into these new solar regulations, which it was asserted over the past three years, was not made available during the original adoption process. The Town's response is that the draft local law before us tonight has been posted on the Town's website beginning on November 1, 2021, and the need

for the amendment has been identified in numerous Town Operations Reports over the past two months, and will remain on the Town's website and will continue to be reported upon in the Town Operations Reports (which are generally posted every two weeks) until the existing regulations are replaced with a new local law, probably sometime in either December 2021 or January 2022.

2. Others wanted more protection of viable farmland soils added to the Town's Solar Regulations. In this draft legislation, we have introduced proposed regulations requiring the creation of an Agricultural Conservation Easement (ACE) a term borrowed from the New York State's Agricultural Districts Laws. ACEs would be required on land nearby a proposed solar farm site that is located within the established Ontario County Agricultural Use District [Consolidated District #1]. The ACE would be agreed-to by the property owner and placed upon one or more of those lands identified in the adopted Town of Farmington Farmland Protection Plan as being Strategic Farmland.

The Strategic Farmland Parcels are shown now on the screen (*see* Attachment #1 to the minutes, p. 14). The intent here is if there is a 30-year solar farm being proposed which involves 60 acres of Strategic Farmland, then a total of 60 acres of nearby Strategic Farmland would need to be placed in one or more ACEs for the life of the proposed solar farm. It would be the solar company paying the adjacent property owner an annual income for keeping their lands in agricultural use. The nearby property owner gains income during the life of the easement. This is a rational basis for selecting nearby Strategic Farmlands to be protected during the useful life span of a large scale solar farm operation.

3. Others wanted to restrict solar farms to lands already zoned commercial or industrial. However, my research finds that there is no legal basis for a municipality to make such a restriction (or limitation) on where solar panels could be permitted to operate as the sun shines everywhere (when it's out). To otherwise do so could likely be argued as being arbitrary or even capricious, or both. In doing so exposing the Town to future lawsuits.
4. Others suggested the Town should identify sites where solar farms would best be suited, thereby making it more difficult to propose solar farms on other sites. While this idea has been studied by other municipalities there is no known municipality that has enacted such legislation (NYPF Webinar).

Third, it was identified during the course of preparing resolutions for the Planning Board's consideration upon the special use permit, site plan approvals, subdivision plat approvals and the adoption of the Town's first Solar Decommissioning Plan that existing provisions contained in the Town Code (Chapter 165) were in need of amendment.

It is for all of the above findings that the draft local law amendment under discussion tonight has been prepared for this Committee's review, understanding and consideration.

Solar History in the Town:

The Town's interest in solar regulations came about as the result of inquiries being received, in early 2016, by the Town Staff, from Town residents who were being approached by solar companies seeking interests in placing solar farms on their lands. I interject here that this practice is still continuing today.

At the time, the Town had no solar regulations and on November 22, 2016 adopted Local Law No. 5 of 2016 entitled "Establishing a Moratorium on Solar Collection Systems and Solar Farms." This local law became in effect with the filing with the New York Secretary of State and remained in effect for six months. During this time the Solar Committee became informed on what other municipalities were doing with creating solar regulations, what NYSEERDA was promoting as a model law, and what the New York State Department of Agriculture and Markets was promoting for protection of prime and unique classified agricultural soils and restoration of areas disturbed for solar farm construction and on-going operations. There was a wide array of legislation, some quite detailed and others no so much.

On July 25, 2017, the Town Board adopted Local Law No. 3 of 2017 entitled "A Local Law Extending a Moratorium on Solar Collection Systems and Solar Farms," to remain in effect until a new local law regulating solar collection systems and solar farms was adopted, or December 1, 2017.

On September 26, 2017, the Town Board adopted Local Law No. 6 of 2017 entitled "Solar Photovoltaic (PV) Systems Regulations." These regulations remain in effect today although there is a moratorium in effect which prohibits the Town from accepting new applications. Again, the current moratorium is scheduled to end on February 10, 2022.

Solar Committee Members were appointed by the Town Board in the middle of 2017. The Committee first met on August 15, 2017. There were a total of eight (8) members who represented various Town boards, Town advisory committees and Town staff. The present Committee consists of many of the original Solar Committee membership.

Local Law No. 000 of the year 2021 (2022) Highlights:

This draft legislation does not contain any new terms for which there would be a need to amend Chapter 165, Article II, Terminology.

The intent of this draft legislation is:

- To meet the goals and objectives for renewable energy contained in the latest edition of the Town of Farmington Comprehensive Plan, i.e.: *Support federal and state programs for sustaining renewable energy sources while protecting valuable non-renewal agricultural soils and farming operations.*

C. Agriculture

GOAL: To foster agricultural viability and protect agricultural land resources.

- To support Federal and State green energy innovations and initiatives. Support the 2015 New York State Energy Plan as being implemented through the Reforming the Energy Vision Institute.
- To support New York State Climate Leadership and Community Protection Act (CLCPA) which became effective January 1, 2020.

Major Renewable Electric Solar PV Systems that are exempt from review under these regulations are listed (*see* Local Law Draft as of November 1, 2021, page 6 of 30).

Standards for Large Scale Solar Photovoltaic (PV) Systems require a Special Use Permit. The criteria for issuing a Special Use Permit for these PV Systems are to be located within Article VI, Section 165-85 of Chapter 165 of the Farmington Town Code. Article VI is entitled Special Permit Uses.

Section 165-85.1 through 165-85.10 contains the criteria that pertains to any application for a Large Scale Ground Mounted Solar (PV) System (*see* Local Law Draft as of November 1, 2021, pp. 7–25).

Chapter 165, Article VIII, Administration and Enforcement, Section 99 is amended in its entirety. The amendments clarify that the Planning Board is empowered in accordance with the provisions of §274-a and 274-b of the New York State Town Law, and this Code, with the authority to issue special use permits for those uses listed in Article VI, Special Permit Use, of this Chapter of the Town Code citing property, or portions thereof, and for such duration, and with such reasonable conditions and restrictions as are directly related to an incidental to the proposed special use of the land at issue, as the Planning Board determines to be appropriate under the circumstances. Then notes that requests for Special Use Permits shall be subject to provisions (*see* Local Law Draft as of November 1, 2021, pp. 25–30).

Next Steps in the Local Law Adoption Process:

Amendments proposed tonight will be considered and, if appropriate, be added to the draft with a new date of amendment. The current date is November 1, 2021. There will be at least one amended version of this draft local law (e.g., Section 99 to add MSOD Main Street Overlay District).

Depending upon the nature of any proposed amendment, the Committee will either decide to reconvene or vote to recommend submission of the amended draft local law to the Town Board for its consideration and processing.

The Town Board may decide to schedule a Public Hearing upon the proposed local law. It is at this time that the Town Clerk assigns a tentative local law number to the proposed

legislation. The final number assigned will depend upon when the Town Board acts (either 2021 or 2022).

There will be a referral to the Ontario County Planning Board (OCPB) for an advisory review and recommendation in accordance with the provisions of Sections 239-l and -m of the New York State General Municipal Law. The next two meeting dates of the OCPB are scheduled for December 8, 2021, or January 12, 2022. Depending upon when the local law is submitted, the Town Board Public Hearing would likely be scheduled for Tuesday, December 21, 2021, or Tuesday, January 25, 2022.

The Town Board will need to consider the County's recommendation prior to taking action to adopt, modify or deny the proposed legislation.

5. COMMITTEE DISCUSSION

Committee member Hal Adams (representing the Farmington Agricultural Advisory Committee), who could not be present this evening, submitted the following comments and questions prior to the meeting:

First, a high level comment: While I detect no opposition to small-scale solar projects (particularly building-integrated installations) from residents, we have seen significant resistance to the first large-scale, grid-connected solar project proposal in the Town. Recognizing that Farmington cannot prohibit legal uses of land by private property owners, and further recognizing that both our State and Federal governments are promoting renewable energy projects through many means, I believe there is still some discretion on the part of the Town regarding our stance towards the siting of utility-scale solar installations in rural areas of Farmington.

The provisions and wording of this Town Law can range from accommodating to restrictive. I believe it appropriate for Town Board members, who will ultimately approve a new code, to express their opinions to this committee early in the rewrite process, so that the finished document has broad support before the end of the current moratorium.

Some more detailed comments and questions:

Section 2, B. (1)	The Town does not provide energy services.
Section 2, D. (2) (c)	No, New York State codes are quite enough.
Page 8 F. (and Page 17)	Normal agricultural soil testing assesses nutrient levels (nitrogen, phosphorus, potassium, micro-nutrients, organic matter, pH). If

you are looking for soil contamination, you might want to specify that.

Page 10 E.

Will this provision withstand a legal challenge?

Page 13 (20)

Is the depth 24" or 48"? I can tell you that digging trenches 4' down on some soil types in the Town will be very disruptive if it occurs over much of the land area.

Page 14 (21)

Not sure what this is referring to. Any digging will alter the natural stratification of soil horizons.

Page 14 G. (1)

This may not be appropriate or practical on some soil types.

Pages 18–24

I must wonder how feasible it is to determine what happens 20 years out, who or what mechanism determines the surety amount? The ultimate recourse will always be the landowner.

Although not germane to code revision, do we know how solar PV systems on agricultural-assessed land will be taxed?

—Submitted by Hal Adams

Ms. Boyd (representing the Farmington Conservation Board) asked about requiring a standard long-term maintenance agreement for a proposed solar project. Mr. Brabant said that the Town will require an Operations and Maintenance Agreement and a Decommissioning Plan, both of which will be part of the Special Use Permit and Site Plan processes.

Ms. Boyd asked if these agreements would be tied to the ownership of the property. Mr. Brand said yes, that these agreements would run with the property. Mr. Brabant said that each party to the solar project (landowner, Town and solar company) must be aware of these agreements and must sign the documents. He also said that the documents would be recorded in the Ontario County Clerk's Office and would be disclosed to future prospective property owners during a title search.

Ms. Boyd asked how the Operations and Maintenance Agreement and the Decommissioning Plan would be tracked by the Town. Mr. Brand said that the Town Code Enforcement Officer would provide annual inspections of the solar project and that the Operations and Maintenance Agreement would be updated every three years. Mr. Brabant said that the solar project would operate under a Special Use Permit approved by the Planning Board. He said that violations of the Special Use Permit or changes in the operations would require

amendments to the permit by the Planning Board, or the Planning Board could “pull” the permit. Mr. Brabant also said that all reports during construction and throughout the operation of the solar project would be forwarded to the Town.

Ms. Binnix asked about the surety which is discussed in several sections of the draft Local Law. She asked how often the surety is reviewed and if it changes based upon inflation. Mr. Brand said that the Town requires two forms of sureties, i.e., a Letter of Credit which is filed with the Town Clerk and is in effect during the construction of a project, and a Maintenance Bond (a separate form of surety) which would remain in effect during the life of the solar project. He said that the Maintenance Bond would be reviewed on a regular basis to determine the effect of inflation upon the amount, and if items have been added to or deleted from the solar project.

Mr. Brabant said that the Maintenance Bond is part of the Decommissioning Plan and runs during the length of operation of a solar operation, and that a Letter of Credit is posted by the applicant during the construction phase of a project.

Mr. Brabant said that the draft Local Law only discusses the term “surety.” He said that the draft does not specify whether the surety is a Letter of Credit or a Maintenance Bond. He asked if it might make sense to identify in the Local Law that a Letter of Credit is posted during construction and that a Maintenance Bond is associated with a Decommissioning Plan and will run for the duration solar installation.

Mr. Brand said that courts have held that when a municipality issues a Special Use Permit, the permit runs with the land. But he said that recent court decisions have held that a municipality can specify that a Planning Board has a right to revoke a Special Use Permit if an applicant is in default of the conditions of approval of the permit. He said that these decisions have held that a Planning Board has the right to bring an action to terminate a Special Use Permit after notice [to the applicant] and a hearing. He said that this is a provision which the Town’s Special Legal Counsel has recommended, that it has been included [in the draft Local Law], and that it may be applied to any Special Use Permit in the Town.

Mr. Brand also said that other changes include the location of sidewalks, bike lanes and trails. He said that these topics relate to other sections of the Town Code and that the Town is modifying the powers and duties of the Planning Board.

6. PUBLIC COMMENTS

Mr. Brand asked if anyone on the Zoom video conference wished to comment or ask questions on the draft Local Law.

Mr. Falanga said that it was difficult to hear several of the comments at the beginning of the meeting. He asked if Mr. Brand would reintroduce the Committee members. Mr. Brand

then reintroduced the Committee members and the Town staff who are participating with the Committee.

Mr. Falanga asked if minutes of this evening's meeting will be taken. Mr. Brand said that the written minutes of the meeting will be posted on the Town website.

Mr. Falanga asked about the prospective date of the Town Board Public Hearing on the draft Local Law. Mr. Brand reviewed the steps which will follow this evening in the formal adoption process of the Local Law. These include completion of the draft by the Committee, presentation of the draft to the Town Board, and referral by the Town Board to the Ontario County Planning Board prior to the Town Board adoption. Mr. Brand said that depending upon when the local law is submitted, the Town Board Public Hearing could likely be scheduled for Tuesday, December 21, 2021, or Tuesday, January 25, 2022.

Mr. Falanga asked if questions can be submitted after he and others read the minutes, and when the questions should be submitted. Mr. Brand said that the video of this evening's meeting will be posted on the Town's YouTube channel within the next few days. He suggested that Mr. Falanga and others submit their questions to him via email (rlbplans@gmail.com) by November 30, 2021, to provide time for review and responses to be prepared for the next Committee meeting on December 6, 2021.

Mr. Falanga said that he had no additional comments or questions this evening.

Mr. Brand said that the Committee will also need to consider a number of Mr. Adams's and Mr. Brabant's comments. Mr. Brabant said that he has reviewed solar laws from a number of communities and the Farmington solar law is strong.

Mr. Brabant then provided the following additional comments on the draft Local Law:

Local Law Draft as of November 1, 2021, Page 8:

§ 165.85.3. Criteria for accepting a special use permit application.

Mr. Brabant suggested that all responsible parties to an Operations and Maintenance Plan be identified in the Local Law.

Road Maintenance Agreement:

Mr. Brabant asked about including a Road Maintenance Agreement which would be in effect during construction for the protection of Town roads. He said that some communities which do not require Letters of Credit during construction are now requiring Road Maintenance Agreements for the maintenance of public roads during construction. Mr. Brand asked if Mr. Brabant could provide a sample agreement for consideration. Mr. Brabant said that he would do so.

Local Law Draft as of November 1, 2021, Page 9:

§ 165.85.3 (H). A cost estimate prepared by a licensed engineer which is to be reviewed and accepted by the Town Engineer estimating the full cost of decommissioning and removal of the solar PV system.

Mr. Brabant asked if all items which are to be removed during decommissioning should be specified in this section of the Local Law, including ancillary items.

Local Law Draft as of November 1, 2021, Page 9:

§ 165-85.4. Criteria for accepting an application for site plan approval for a large-scale ground-mounted solar PV system.

Mr. Brabant asked if the Local Law should specifically require the approval of a Site Plan. He said that landscaping, visual requirements and fencing requirements are already included in a Special Use Permit which goes hand in hand with a Site Plan.

Fire Code:

Mr. Brabant said that some municipalities are requiring a 20-foot width around the perimeter of a solar farm between the solar panels and the fence. He asked if the Town would want to specifically include and identify such a perimeter around a solar installation as a safety measure. He said that this 20-foot width would not necessarily have to be a road. Mr. Brand said that Fire Marshal August Gordner and Zoning Officer John Weidenborner will be asked to look into this.

Access Gates:

Mr. Brabant said that some municipalities require access gates at various distances along a fence line around a solar installation. He specifically mentioned that a solar installation in Orleans County requires both a 20-foot perimeter between the solar panels and the fence, and emergency access gates at multiple areas within the fence line. Mr. Brabant said that the Town should be aware of these gates. Mr. Brand requested that Mr. Brabant provide the information from Orleans County. Mr. Brabant said that he would do so.

In clarification of a previous comment, Mr. Weidenborner said that New York State adopts its own version of the ICC fire code. He said that the recommendation would be for the Town to follow the State code which is the State's version of the international code.

7. NEXT MEETING AND ADJOURNMENT

The next meeting of the Committee will be held on Monday, December 6, 2021, at 6:30 p.m. at the Farmington Town Hall and via Zoom video conference.

If needed, a third meeting of the Committee will be held on Thursday, December 16, 2021.

■ The meeting was adjourned at 7:55 p.m.

Following the meeting, the clerked locked the front entrance doors to the Town Hall.

Respectfully submitted,

John M. Robortella, Clerk of the Farmington Planning Board L.S.

E-mail Distribution:

Adams, Hal
 Binnix, Jody
 Bowerman, Nate
 Boyd, Kim
 Brand Ron
 Delpriore, Dan
 Viets, Douglas
 Weidenborner, John

Casale, Michael
 Herendeen, Ron
 Holtz, Steve
 Ingalsbe, Peter

Bellis, Adrian
 DeLucia, Timothy
 Hemminger, Edward
 Sweeney, Aaron

Attardi, Jill
 Marshall, Jeremy
 Ruthven, Tod
 Yourch, Thomas

Brabant, Lance
 Sowinski, Collin

Cody, Leland
 Daniels, Marcy
 Finley, Michelle
 Ford, Tim
 Giroux, Don
 Gordner, August
 Hargather, John
 Heilmann, Matt
 MacDonald, Robin
 Mitchell, Sarah
 Orians, David
 Robinson, Phil
 Wirth, Patricia

Affiliation:

Committee/Agricultural Advisory Committee
 Committee/Zoning Board of Appeals
 Committee/Town Board
 Committee/Conservation Board
 Committee/Director of Development and Planning
 Committee/Code Enforcement Officer
 Committee/Planning Board
 Committee/Zoning Officer

Town Board
 Town Board
 Town Board
 Town Supervisor

Planning Board
 Planning Board
 Planning Board
 Planning Board

Zoning Board of Appeals
 Zoning Board of Appeals
 Zoning Board of Appeals
 Zoning Board of Appeals

Town Engineer
 Town Engineer

Town Staff
 Town Staff
 Town Clerk
 Town Staff
 Town Highway Superintendent
 Town Staff
 Town Staff
 Town Staff
 Town Staff
 Town Staff
 Town Staff
 Chief, Farmington Volunteer Fire Association
 Ontario County Planning Board Representative

