

A regular meeting of the Town of Avon was held on Thursday, March 10, 2022 at 6:00 P.M. at the Avon Opera Block/Town Hall, 23 Genesee Street, Avon, New York 14414.

PRESENT: Supervisor David LeFeber, Deputy Supervisor Thomas Mairs, Councilmen James Harrington, Malachy Coyne, and Paul Drozdziel

OTHERS: Code Enforcement Officer Brian Glise, Attorney James Campbell, Highway/Water Superintendent Thomas Crye, and Sharon M. Knight, MMC/RMC Town Clerk

VISITORS: Kevin Lillis, Edward Forsythe, Cindy Kellen, Bob Westfall, and Jeff Swan

Supervisor LeFeber called the meeting to order at 6:00 P.M. and led those in attendance in the Pledge of Allegiance.

DISCUSSION – PUBLIC COMMENTS

Supervisor LeFeber asked for public comments and they follow:

Visitor Kevin Lillis asked if the Board and Attorney received the letter from the Attorney for the neighbors of Oak Openings Road regarding the Oak Openings LLC – Special Use Permit Modification Public Comment Letter. Attorney Campbell confirmed the date on the letter and his receipt. A meeting will be held with Attorney Campbell and the Zoning Board of Appeals for legal advice.

RESOLUTION #71 APPROVAL OF MINUTES

On motion of Councilman Harrington, seconded by Supervisor LeFeber the following resolution was ADOPTED AYES 4 NAYS 0 ABSTAIN 1 (DEPUTY SUPERVISOR MAIRS)

RESOLVE to approve the minutes of February 21, 2022 joint meeting as presented by e-mail and to request they be published on the Town of Avon website at townofavon-ny.org.

Vote of the Board: Councilman Drozdziel - Aye, Councilman Harrington - Aye, Councilman Coyne - Aye, Deputy Supervisor Mairs - Abstain, Supervisor LeFeber – Aye

RESOLUTION #72 APPROVAL OF MINUTES

On motion of Councilman Harrington, seconded by Councilman Drozdziel the following resolution was ADOPTED AYES 4 NAYS 0 ABSTAIN 1 (DEPUTY SUPERVISOR MAIRS)

RESOLVE to approve the minutes of February 24, 2022 as presented by e-mail and to request they be published on the Town of Avon website at townofavon-ny.org.

Vote of the Board: Councilman Drozdziel - Aye, Councilman Harrington - Aye, Councilman Coyne - Aye, Deputy Supervisor Mairs - Abstain, Supervisor LeFeber – Aye

RESOLUTION #73 APPROVAL OF MINUTES

On motion of Deputy Supervisor Mairs, seconded by Supervisor LeFeber the following resolution was ADOPTED AYES 4 NAYS 0 ABSTAIN 1 (COUNCILMAN COYNE)

RESOLVE to approve the minutes of March 2, 2022 as presented by e-mail and to request they be published on the Town of Avon website at townofavon-ny.org.

Vote of the Board: Councilman Drozdziel - Aye, Councilman Harrington - Aye, Councilman Coyne - Abstain, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye

DISCUSSION – ENGINEER REPORT

Supervisor LeFeber provided the Engineer report stating they are working on the Town line tank inspection and the mixer. The project is expected to be completed the first week of April. Also, work continues plotting storm water and other water infrastructure on GIS.

DISCUSSION – ATTORNEY REPORT

Attorney Campbell reviewed comments from the County Planning Board with the Board regarding Local Law T-2B-2022 battery energy storage local law. A few changes were made by the Attorney and reviewed with the Board. Continued discussion will take place later in the meeting.

DISCUSSION – AMEND ZONING ON TAX MAP NUMBER 33.1-33.1

Visitor Jeff Swan addressed the Board regarding his request to change the zoning on tax parcel 35.1-33.1 from B1-General Business and Agriculture to B1-General Business. The Board took the following action.

RESOLUTION #74 AUTHORIZE ATTORNEY CAMPBELL TO PREPARE LOCAL LAW T-3A-2022 REZONING PROPERTY TO B1-GENERAL BUSINESS

On motion of Supervisor LeFeber, seconded by Deputy Supervisor Mairs the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to authorize Attorney Campbell to prepare a local law to rezone tax map parcel #33.1-33.1 from B1-General Business and Agriculture to all B1- General Business

Vote of the Board: Councilman Drozdziel – Aye, Councilman Coyne- Aye, Councilman Harrington - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye

DISCUSSION - BATTERY ENERGY STORAGE SYSTEMS REGULATIONS

Discussion continued regarding the closed public hearing for Local Law T-2A-2022. Deputy Supervisor Mairs suggested to increase setbacks even more than Attorney Campbell recommended. The Board appeared to agree to increase setbacks as follows:

- (a) two hundred (200) feet in the front from the right-of-way line of any public or private road, Street, or highway.
- (b) one hundred (100) feet from the sides and the rear property boundary line.
- (c) four hundred (400) feet from the property line of any property that contains one or more Dwellings or Accessory Buildings containing a Dwelling Unit. The above stated side and rear property setback restrictions and those setbacks relating to a Dwelling or Accessory Building containing a Dwelling Unit, may be modified (reduced) by the Planning Board and Zoning Board of Appeals for any contiguous parcel (to that parcel upon which the Battery Energy Storage System is being developed) owned by a participating landowner that owns the parcel upon which the subject Battery Energy Storage System is being placed. The above waiver shall not apply to any contiguous parcels that are not owned by the same landowner that owns the land upon which the Battery Energy Storage System is placed.

Attorney Campbell will make the changes and provide a final form of the local law to the Town Clerk.

DISCUSSION SEQR LONG FORM

Attorney Campbell reviewed the SEQR Form asking the Town Board Members the questions on the SEQR Form Part 2. The questions were answered, and the following action was taken.

RESOLUTION #75 TOWN BOARD ACT AS LEAD AGENCY FOR LOCAL LAW T-2B-2022

On motion of Councilman Harrington, seconded by Deputy Supervisor Mairs the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE the Town Board will act as Lead Agency for proposed Local Law T-2B-2022.

Vote of the Board: Councilman Drozdziel - Aye, Councilman Harrington - Aye, Councilman Coyne - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye

RESOLUTION #76 ADOPT THE FINDINGS FOR SEQR - LOCAL LAW T-2B-2022

On motion of Councilman Harrington, seconded by Deputy Supervisor Mairs the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to accept the findings for Local Law T-2B-2022.

Vote of the Board: Councilman Drozdziel - Aye, Councilman Harrington - Aye, Councilman Coyne - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye

RESOLUTION #77 NEGATIVE DECLARATION FOR LOCAL LAW T-2B-2021

On motion of Supervisor LeFeber, seconded by Councilman Harrington the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE this project will have no significant adverse impacts on the environment, and, therefore, an environmental impact statement need not be prepared. Accordingly, this negative declaration is issued.

Vote of the Board: Councilman Drozdziel - Aye, Councilman Harrington - Aye, Councilman Coyne - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye

RESOLUTION #78 AUTHORIZE SUPERVISOR LEFEBER TO SIGN THE SEQR DOCUMENTS AND TOWN CLERK KNIGHT TO MAKE THE NECESSARY FILINGS

On motion of Councilman Harrington, seconded by Councilman Drozdziel the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to authorize the Supervisor to sign the SEQR documents.

Vote of the Board: Councilman Drozdziel - Aye, Councilman Harrington - Aye, Councilman Coyne - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye

RESOLUTION #79 POST ON THE ENVIRONMENTAL NOTICE BULLETIN

On motion of Councilman Harrington, seconded by Councilman Coyne the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to request the Town Clerk make the necessary filing including the Environmental Notice Bulletin.

Vote of the Board: Councilman Drozdziel – Aye, Councilman Coyne- Aye, Councilman Harrington - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye

RESOLUTION #80 ADOPT LOCAL LAW 2-2022 BATTERY STORAGE LOCAL LAW

On motion of Councilman Harrington, seconded by Councilman Drozdziel the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to adopt the following local law:

TOWN OF AVON
LOCAL LAW NO. 2 OF THE YEAR 2022

A Local Law Entitled “Adding Article XVI to Chapter 130 of the Code of the Town of Avon to Provide for Battery Energy Storage System Regulation.”
Be it enacted by the Town Board of the Town of Avon as follows:

A new Article XVI of Chapter 130 of the Code of the Town of Avon is hereby added and shall read as follows:

§130-90. Authority.

The Town Board of the Town of Avon adopts this Local Law pursuant to:

- A. Article IX of the New York State Constitution, §2(c)(6) and (10).
- B. New York Statute of Local Governments, § 10 (1) and (7).
- C. New York Municipal Home Rule Law, §10(1)(i) and (ii) and § 10 (l)(a)(6), (11), (12), and 14.
- D. New York Town Law §130(1)(Building Code), (3)(Electrical Code), (5)(Fire Prevention),(7)(Use of streets and highways), (7-a)(Location of Driveways), (15)(Promotion of public welfare), (15-a)(Excavated Lands), (16)(Unsafe buildings), (19)(Trespass), and (25)(Building lines);
- E. New York Town Law §64(17-a) (protection of aesthetic interests), (23) (General powers).

The Town of Avon Planning Board shall have the authority to approve Site Plans for Battery Energy Storage Systems (hereafter defined) as set forth in New York Town Law §274-a and the Town of Avon Zoning Board of Appeals shall have the authority to approve special use permits pursuant to New York Town Law §274-b.

§130-91. Statement of Purpose and Legislative Intent.

The Town Board of the Town of Avon finds it is necessary to properly site and regulate Battery Energy Storage Systems within the boundaries of the Town of Avon to protect residential uses, Prime Farmland, Farmland of Statewide Importance, business areas and other land uses, to preserve the natural resources, overall beauty, nature and character of the Town of Avon, to promote the effective, safe and efficient use of Battery Energy Storage Systems, and to protect the health, safety and general welfare of the citizens of the Town of Avon by creating regulations for the installation and use of Battery Energy Storage Systems, with the following objectives:

- A. To provide a regulatory scheme for the designation of properties suitable for the location, construction, and operation of Battery Energy Storage Systems.
- B. To ensure compatible land uses in the vicinity of the areas affected by Battery Energy Storage Systems.
- C. To mitigate the impacts of Battery Energy Storage Systems on environmental resources such as important agricultural lands, forests, wildlife, and other protected resources; and
- D. To create synergy between Battery Energy Storage System development and the Town's Solar Energy Systems regulations as found in Article XV. Of the Code of the Town of Avon.
- E. To protect the health, welfare, safety and quality of life or the general public.

§130-92. Definitions.

As used in this law, the following terms shall have the meanings indicated:

ANSI: American National Standards Institute

BATTERY(IES): A single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this law, batteries utilized in consumer products are excluded from these requirements.

BATTERY ENERGY STORAGE MANAGEMENT SYSTEM: An electronic system that protects battery energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the battery energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected. The system generates an alarm and trouble alert signal for abnormal conditions.

BATTERY ENERGY STORAGE SYSTEM: A rechargeable energy storage system consisting of one or more devices, including batteries, battery chargers, controls, power conditioning systems and associated electrical equipment, assembled together, capable of storing energy in order to provide electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle. A Battery Energy Storage System is classified as a Tier 1 or Tier 2 Battery Energy Storage System as follows:

A. Tier 1 Battery Energy Storage Systems have an aggregate energy capacity less than or equal to 600 kWh and, if in a room or enclosed area, consist of only a single energy storage system technology.

B. Tier 2 Battery Energy Storage Systems have an aggregate energy capacity greater than 600 kWh or are comprised of more than one storage battery technology in a room or enclosed area.

CELL: The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.

COMMISSIONING: A systematic process that provides documented confirmation that a battery energy storage system functions according to the intended design criteria and complies with applicable code requirements.

DECOMMISSIONING - The removal and disposal of all Battery Energy Storage System equipment, accessories or Structures, including but not limited to Batteries, Battery Energy Storage Management System, Cells, Dedicated-Use Buildings, Non-Dedicated Use Buildings, subsurface foundations and all other material, concrete, wiring, cabling, or debris, that were installed in connection with a Battery Energy Storage System and the restoration of the parcel of land to the original state prior to construction on which the Battery Energy Storage System is built, including but not limited to restoration, regrading, and reseeded. Details of the expected Decommissioning activities and costs are to be described in the Decommissioning Plan and Decommissioning Agreement as may be required pursuant to this Article.

DECOMMISSIONING AGREEMENT - A written Agreement between Applicant, Initial Landowner and Town that sets forth the obligations of the Applicant and/or the Initial Landowner to properly decommission the Battery Energy Storage System if the use of such system is discontinued, abandoned, or becomes inoperable.

DEDICATED-USE BUILDING: A building that is built for the primary intention of housing battery energy storage system equipment and is classified as Group F-1 occupancy as defined in the International Building Code, and it complies with the following:

- 1) The building's only use is battery energy storage, energy generation, and other electrical grid-related operations.
- 2) No other occupancy types are permitted in the building.
- 3) Occupants in the rooms and areas containing battery energy storage systems are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system and other energy systems.
- 4) Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage system, provided the following:
 - a. The areas do not occupy more than 10 percent of the building area of the story in which they are located.
 - b. A means of egress is provided from the administrative and support use areas to the public way that does not require occupants to traverse through areas containing battery energy storage systems or other energy system equipment.

ENERGY CODE: The New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law, as currently in effect and as hereafter amended from time to time.

FARMLAND OF STATEWIDE IMPORTANCE – Land designated as “Farmland of Statewide Importance” in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic (SSURGO) Database on Web Soil Survey, that is of statewide importance for the production of food, feed, fiber, forage and oilseed crops as determined by the appropriate state agency or agencies.

FIRE CODE: The fire code section of the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

INITIAL LANDOWNER – The record title owner to the real property upon which a Battery Energy Storage System is constructed, at the time such Battery Energy Storage System is originally constructed.

kWh: Abbreviation for kilowatt-hour, which is a measure of the energy capacity of a battery and a battery energy storage system.

NATIONALLY RECOGNIZED TESTING LABORATORY (NRTL): A U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.

NEC: National Electric Code.

NFPA: National Fire Protection Association.

NON-DEDICATED-USE BUILDING: All buildings that contain a Battery Energy Storage System and do not comply with the dedicated-use building requirements.

NON-PARTICIPATING PROPERTY: Any property that is not a Participating property.

NON-PARTICIPATING RESIDENCE: Any residence located on Non-Participating Property.

OCCUPIED COMMUNITY BUILDING: Any building in Occupancy Group A, B, E, I, R, as defined in the International Building Code, including but not limited to schools, colleges, daycare facilities, hospitals, correctional facilities, public libraries, theaters, stadiums, apartments, hotels, and houses of worship.

PARTICIPATING PROPERTY: A Battery Energy Storage System host property or any real property that is the subject of an agreement that provides for the payment of monetary compensation to the landowner from the Battery Energy Storage System owner (or affiliate) regardless of whether any part of a Battery Energy Storage System is constructed on the property.

PRIME FARMLAND - Land, designated as “Prime Farmland” in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic (SSURGO) Database that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these uses. It has the soil quality, growing season, and moisture supply needed to produce economically sustained high yields of crops when treated and managed according to acceptable farming methods, including water management. In general, Prime Farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt, and sodium content, and few or no rocks. They are permeable to water and air. Prime Farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding.

UL: Underwriters Laboratory, an accredited standards developer in the US.

UNIFORM CODE: the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

§130-93. Applicability.

- A. The requirements of this Local Law shall apply to all Battery Energy Storage Systems permitted, installed, or modified in the Town after the effective date of this Local Law, excluding general maintenance and repair.
 - B. Battery Energy Storage Systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.
 - C. Modifications to, retrofits or replacements of an existing Battery Energy Storage System that increase the total Battery Energy Storage System designed discharge duration or power rating shall be subject to and completed pursuant to the requirements of this Article.
- §130-94. General Requirements.

- A. A building permit and an electrical permit shall be required for installation of all Battery Energy Storage Systems.
 - B. Issuance of permits and approvals by the Planning Board and/or Zoning Board of Appeals shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 (“SEQRA”)]. All Tier 2 Battery Energy Storage Systems shall be deemed as Type I Actions for purposes of compliance with the New York State Environmental Quality Review Act.
 - C. All Battery Energy Storage Systems, all Dedicated Use Buildings, and all other Buildings or Structures that (1) contain or are otherwise associated with a Battery Energy Storage System and (2) subject to the Uniform Code and/or the Energy Code shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code, all applicable provisions of the Energy Code, and all applicable provisions of the codes, regulations, and industry standards as referenced in the Uniform Code, the Energy Code, and the Local Laws and Ordinances of the Town.
- §130-95. Permitting Requirements for Tier 1 Battery Energy Storage Systems.

- A. Tier 1 Battery Energy Storage Systems shall be permitted in all zoning districts, subject to the Uniform Code and the “Battery Energy Storage System Permit.”
- B. Tier 1 Battery Energy Storage Systems serving and providing energy storage for the exclusive use of a One-Family Dwelling, or a Two-Family Dwelling are exempt from Site Plan review.
- C. Tier 1 Battery Energy Storage Systems serving and providing energy storage for a Multifamily Dwelling, business (including a farm operation to the extent permitted by law) or industrial use shall be subject to Site Plan review pursuant to §130-45 E.
- D. Ground-mounted Tier 1 Battery Energy Storage Systems are permitted as Accessory Use and are subject to the following requirements:
 - (1) The height of the ground-mounted Tier 1 Battery Energy Storage System and any mounts shall not exceed 12 feet.
 - (2) The total surface area of the ground-mounted Tier 1 Battery Energy Storage System on the lot shall not exceed 5% lot coverage.
 - (3) The ground-mounted Tier 1 Battery Energy Storage System shall not be the primary use of the property
 - (4) The ground-mounted Tier 1 Battery Energy Storage System shall be located in a side or rear yard.

(5) The ground-mounted Tier 1 Battery Energy Storage System shall comply with the minimum setbacks for Accessory Buildings applicable to the zoning district in which the Battery Energy Storage System is sited as set forth in Schedule A, Area, Lot, and Bulk Regulations.

(6) The ground-mounted Tier 1 Battery Energy Storage System shall be screened from adjacent Dwellings through the use of architectural features, earth berms, landscaping, or other screening which will harmonize with the character of the property and surrounding area.

E. Where Site Plan approval is required pursuant to §130-95. C. above, such Site Plan review shall include review of the adequacy, location, arrangement, size, design, and general site compatibility of proposed ground-mounted Tier 1 Battery Energy Storage System.

§130-96. Permitting Requirements for Tier 2 Battery Energy Storage Systems.

A. Tier 2 Battery Energy Storage Systems are permitted in Agricultural Districts (A), General Business Districts (B-1), Light Industrial Districts (L-1) and Combined General Business – Light Industrial Districts (B1 – LI), subject to the Uniform Code and the requirements set forth in this Article, including Site Plan approval pursuant to §130-45 E., and are allowed only after issuance of a Special Use Permit pursuant to §130-35 and this Article.

(1) Tier 2 Battery Energy Storage Systems shall not be permitted on land within an Agricultural District that is classified as Prime Farmland or Farmland of Statewide Importance.

(2) Tier 2 Battery Energy Storage Systems may be permitted within a Planned Development District (PDD), subject to the requirements of §130 -18 H.

B. Special Use Permit Application Requirements. The applicant shall submit to the Zoning Board of Appeals 10 copies of the Site Plan application submitted to the Planning Board, and information required by §130-35 and the following documents and information:

(1) Name, address, phone number, and signature of the project Applicant.

(2) If the property of the proposed Battery Energy Storage System is to be leased, proof of legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements between the parties. Any lease agreement between the Applicant and an Initial Landowner shall conform to or be amended such that it conforms with the requirements for Applicant and Initial Landowner as set forth in the Decommissioning Agreement referenced in §130-96 B. (16) (a) below. Applicant shall be required to provide, as part of the application, any Lease Agreement, easements and other agreements between itself and Initial Landowner or any owner of property contiguous to the land upon which the Battery Energy Storage System (or any component thereof, including access ways or utility lines) shall be constructed.

(3) Pre-Development Site Condition – Applicant shall provide a written and visual record of the pre-development site condition (which shall include the site condition prior to any logging/timber harvest or clearing of land in anticipation of the development of a Battery Energy Storage System), which must be verified as to being complete by the Building and Zoning Department, to facilitate full and proper remediation of the site upon Decommissioning.

As part of this record, Applicant shall provide an analysis of pre-construction soil samples, with such samples collected and analyzed pursuant to the New York State Department of Agriculture and Markets Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands (or similar successor document of the Department of Agriculture and Markets) that are in effect as of the date of sampling. Such samples shall be taken from various locations on the property on which the Battery Energy Storage System is to be located and are specifically intended to demonstrate the pre-development condition and properties of the soils to ensure that full and proper remediation of the site occurs upon Decommissioning.

(4) Plans and drawings for the Tier 2 Battery Energy Storage System signed by a Professional Engineer showing the proposed layout of the Battery Energy Storage System along with providing a description of all components, Buildings or Structures, existing vegetation, any proposed clearing and grading of the lot(s) involved, any anticipated or possible storm water or erosion disturbances, and utility lines (both above and below ground) on the site and adjacent to the site.

(5) Submitted plans and drawings shall show all property lot lines and the location and dimensions of all existing Buildings or Structures and uses on any parcel within 750 feet of the outer perimeter fence line of the Tier 2 Battery Energy Storage System.

(6) Proposed exterior lighting and screening vegetation or Structures.

(7) A three-line electrical diagram detailing the Battery Energy Storage System layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.

(8) An equipment specification sheet that documents the proposed Battery Energy Storage System components, inverters and associated electrical equipment that are to be installed. Any changes to the equipment specification sheet due to unavailability of proposed equipment shall be submitted prior to the issuance of building permit.

(9) Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the Battery Energy Storage System. Such information of the final system installer shall be submitted prior to the issuance of building permit.

(10) Clearing, grading, storm water and erosion control plan. Applicant shall submit an engineered Storm Water and Erosion Control Plan to the Town of Avon Engineer for its review and approval which shall demonstrate that post development runoff, storm drainage and erosion will not be negatively impacted by placement of the Tier 2 Battery Energy Storage System on the site.

(11) Noise Study. Applicant shall provide a noise study of the impacts of construction and operation of the proposed Battery Energy Storage System. Said study shall reference any then existing regulations or suggested industry or development standards put out by the NYS Office of Renewable Energy Siting. Such study shall analyze the projected noise levels for both daytime and nighttime periods generated by the Battery Energy Storage System and all appurtenant substation equipment relative to all surrounding Dwellings.

(12) Screening and Landscape Plan. A screening and landscaping plan prepared by a landscape architect showing proposed screening and buffering of all Structures on the site. The plan shall include the proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures, and the plan for ongoing vegetation management. The screening and landscaping plan shall include locations, elevations, site lines, height, plant species, and/or materials that will comprise the structures, landscaping and/or grading used to screen and/or mitigate any adverse aesthetic effects of the system. The plan shall identify the use of native, non-invasive, perennial plant and seed species.

Invasive species that shall not be planted as part of the landscape buffer, include, but are not limited to, winter creeper, garden loosestrife, Chinese silver grass, yellow flag iris, bamboo, Norway maple, Japanese barberry, sweet autumn clematis, burning bush and siebold's viburnum, or other invasive species as identified by the NYSDEC or the NY Invasive Species Clearinghouse at Cornell University.

(13) Viewshed/Line of Site Analysis. Applicant shall provide a viewshed/line-of-site analysis, with scaled color visual renderings to demonstrate the adequacy of proposed buffering/screening at the completion of construction of the Battery Energy Storage System, and similar visual renderings of the projected maturation of the buffering/screening at five (5) years and ten (10) years after completion of the Battery Energy Storage System. The Planning and/or Zoning Board of Appeals may require the above viewshed/line-of-site analysis and scaled color visual renderings from multiple angles or perspectives as it/they deem appropriate.

(14) Parking. Applicant shall a designated parking area on the site of the Battery Energy Storage System for employees of Applicant (or the successor owner of the Battery Energy Storage System) to park when providing monitoring or maintenance of the Battery Energy Storage System.

(15) SEQR. A Full Environmental Assessment Form shall be provided by Applicant.

(16) Fire Safety Compliance Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code.

(17) Commissioning Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code.

(18) Operation and Maintenance Plan. Such Plan shall describe all ongoing or periodic maintenance of the Tier 2 Battery Energy Storage System and property upkeep. Such Plan shall provide for biennial preventative maintenance site inspections that will include a representative from the owner or operator of the Battery Energy Storage System and Code Enforcement Officer (or his/her designated representative). Additionally, the owner or operator shall provide the Code Enforcement Officer with reports of annual safety inspections of the Battery Energy Storage System, as well as quarterly reports of inspection of the security systems relating to such Battery Energy Storage Systems. Said Plan shall demonstrate how the Applicant (or the successor owner of the Battery Energy Storage System) shall ensure proper removal and disposal of all Batteries and/or Cells or other equipment that becomes inoperable or is no longer being utilized and the same shall be disposed of outside the jurisdictional limits of the Town of Avon, unless there is a properly certified and/or licensed recycling facility within the Town that recycles such Batteries, Cells or other equipment.

Said Plan shall also obligate the Applicant (or the successor owner of the Battery Energy Storage System) to provide the Town, not less than every year (commencing the second year after the Battery Energy Storage System is commercially operable), with test results from soil sampling collected and analyzed pursuant to the New York State Department of Agriculture and Markets Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands (or similar successor document of the Department of Agriculture and Markets) that are in effect as of the date of sampling, to demonstrate that the soils upon which the Battery Energy Storage System is constructed have not been contaminated in any fashion as a result of the Battery Energy Storage System placed on the property. Such test results shall be compared to the pre-construction soil sample analysis referenced in paragraph (3) (Pre-Development Site Conditions) above.

(19) Decommissioning Plan. To ensure the proper removal of Tier 2 Battery Energy Storage Systems after such improvements are no longer reasonably operable or have been abandoned, a Decommissioning Plan shall be submitted as part of the application. The Decommissioning Plan must specify that after the Tier 2 Battery Energy Storage System is no longer operational or has been abandoned, it shall be removed by the Applicant or any subsequent owner of the improvements and/or the subsequent owner of the property upon which the Tier 2 Battery Energy Storage System is placed. The plan shall demonstrate how the removal of all infrastructure and the remediation of soil and vegetation 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 detailing the projected cost of executing the Decommissioning Plan, which is to be prepared by a Professional Engineer or reputable contractor. Cost estimations shall take into account inflation and shall be based on the operating life expectancy of the system.

(a) Prior to obtaining a building permit and as a condition to issuance of any Special Use Permit, the Applicant and Initial Landowner must enter into a Decommissioning Agreement with the Town that sets forth the obligations of the Applicant and/or the Initial Landowner to properly decommission the Battery Energy Storage System if the use of such system is discontinued, abandoned or becomes inoperable pursuant to this Article. Said Decommissioning Agreement shall require the Applicant to provide an irrevocable financial security bond (or other form of surety such as, but not limited to, letters of credit, etc. that is acceptable to the Town of Avon at its discretion) for the removal of the Tier 2 Battery Energy Storage System, with Avon as the designated assignee/beneficiary, in an amount approved by the Planning Board which is equal to 150% of the estimated removal cost. The bond or surety shall provide for an annual increase in the amount of the surety to compensate for the cost of inflation or any other anticipated increase in costs of removal. Each year after a Tier 2 Battery Energy Storage System has been constructed, and no later than sixty (60) days prior to the anniversary date of the issuance of the building permit for such Battery Energy Storage System, the then owner/permit holder for the system shall provide the Town of Avon with written proof that the required financial security bond (or other form of surety) is still operable and valid and that such surety has been properly increased to account for inflation or any other anticipated increase in costs of removal as provided for above. The Decommissioning Agreement shall provide that Initial Landowner (or the successor and/or assigns of Initial Landowner) shall be responsible for all obligations pursuant to the Decommissioning Agreement in the event Applicant (or the successor owner of the Battery Energy Storage System) does not complete all obligations as required by said Decommissioning Agreement.

The Decommissioning Agreement shall be recorded at the office of the Livingston County Clerk and shall be indexed as deed restrictions against the property upon which the Battery Energy Storage System is constructed, with the Town as a benefitted party, so as to put all future owners of the subject real property on notice of the obligations contained in the Decommissioning Agreement.

(20) Emergency Operations Plan. To ensure proper safety protocol after a Tier 2 Battery Energy Storage System is constructed, an Emergency Operations Plan shall be developed and approved in consultation with local fire code officials, County Emergency Management Services and local fire and emergency response providers. Such Plan shall include response logistics, including site-specific conditions, in order to provide year-round emergency response access.

The Plan shall also include provisions for initial training and annual site-specific training drills, at the system owner/operator's expense, for the Town Code Enforcement Officer, local fire departments, local and County Emergency Responders, Livingston County Emergency Management Services, and local law enforcement. A copy of the approved Emergency Operations Plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. Any modifications or updates to such Plan shall be likewise provided. The emergency operations plan shall include the following information:

- (a) Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.
 - (b) Procedures for inspection and testing of associated alarms, interlocks, and controls.
 - (c) Procedures to be followed in response to notifications from the Battery Energy Storage Management System, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service, and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.
 - (d) Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire.
 - (e) Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
 - (f) Procedures for dealing with Battery Energy Storage System equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged Battery Energy Storage System equipment from the facility.
 - (g) Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders.
 - (h) Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures.
- (21) At the time of application, Applicant shall be required to furnish a deposit in an amount that the Town deems initially sufficient to be used for reimbursement of expenses and costs associated with one or more private professional consultants utilized to assist the Planning Board and Zoning Board of Appeals in the review of an application for a Tier 2 Battery Energy Storage System. Such consultants may include a professional engineer, attorney, planning consultant or other specialist.

It is the specific intention of this section that all expenses relating to professional consulting services rendered to the Town or any of its Boards, relating to an application for development of a Battery Energy Storage System, be borne by the Applicant and not the taxpayers of the Town. Any such deposit shall be held in a non-interest-bearing account and shall be used to reimburse the Town for expenses that have been incurred as a result of such consultants. Prior to the Town making any payment or withdrawal from such account, the Town shall provide Applicant with notice of such intended payment and documentation supporting such payment.

Applicant shall have the right, within five (5) business days from receipt of such notice, to protest any account withdrawal or payment to a consultant which it contends is not reasonably necessary or is not reasonable in amount. The Town Board shall thereafter have thirty (30) days to provide its determination with regard to Applicant's objection, which shall be provided to Applicant in writing. Should such deposit be depleted prior to final approval, the Town may require that additional monies be deposited with the Town before further review of the application will continue. A reviewing Board may suspend indefinitely the review of any application as a result of the failure of Applicant to timely remit a required deposit or to promptly reimburse the Town for expenses relating to such consultants. Any such suspension shall supersede any Town of New York State law, rule or regulation relating to the timing of issuance of decisions for such applications.

(22) If a Tier 2 Battery Energy Storage System is proposed to be developed on land that is or could be in agricultural production, Applicant shall demonstrate how the proposed development complies with the then current guidelines as may be established by the New York State Department of Agriculture and Markets relating to Construction Mitigation for Agricultural Lands.

C. Review Procedure

(1) The Town Code Enforcement Officer and the Town's engineering/planning consultant will review the application for completeness. An application shall be complete when it addresses all matters listed in this Article including, but not necessarily limited to: (i) compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code and (ii) matters relating to the proposed Battery Energy Storage System and Floodplain, Utility Lines and Electrical Circuitry, Signage, Lighting, Vegetation and Tree-cutting, Noise, Decommissioning, Site Plan and Development, Special Use and Development (if applicable), Ownership Changes, Safety, and Permit Time Frame and Abandonment.

(2) Applicants shall be advised within 45 business days of the completeness of their application or any deficiencies that must be addressed prior to substantive review.

(3) The application shall be subject to a Public Hearing to hear all comments for and against the application. The Planning Board and/or Zoning Board of Appeals shall cause a notice of such Public Hearing to be printed in a newspaper of general circulation in the Town at least 5 days in advance of such Public Hearing. Applicants shall deliver the Public Hearing notice by first class mail to adjoining landowners or landowners within 500 feet of the property at least 10 days prior to such Public Hearing. Proof of mailing shall be provided to the Planning Board and Zoning Board of Appeals prior to the Public Hearing.

(4) The application shall be referred to the Livingston County Planning Department pursuant to General Municipal Law § 239-m.

(5) Upon closing of the Public Hearing, the Planning Board and Zoning Board of Appeals shall take action on the application within 62 days of the Public Hearing, which can include approval, approval with conditions, or denial. The 62-day period may be extended upon consent of the Planning Board, Zoning Board of Appeals and Applicant.

(6) Prior to determination or issuance of any permit, all Tier 2 Battery Energy Storage System applications shall be subject to review pursuant to the New York State Environmental Quality Review Act (6 NYCRR 617). All applications (Site Plan and Special Use Permit) for approval of a Tier 2 Battery Energy Storage System shall be deemed to be Type I Actions for purposes of compliance with the New York State Environmental Quality Review Act.

The Planning Board and the Zoning Board of Appeals shall conduct a coordinated review of all Tier 2 Battery Energy Storage Systems. Such review shall not be completed or closed out, and a final determination of significance made, until after the review of the application has been completed.

D. Site Plan and Special Use Permit Approval Standards. Approval of the site plan and special use permit application requires that the Planning Board find that the proposed Battery Energy Storage System protects adjacent land uses, assures that the proposed use is in harmony with local laws of the Town, will not adversely affect the neighborhood, and conforms to the following minimum requirements:

(1) Utility Lines and Electrical Circuitry. All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.

(2) Signage. The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage systems, any special hazards associated, the type of suppression system installed in the area of battery energy storage systems, and 24-hour emergency contact information, including reach-back phone number.

(3) As required by the NEC, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

(4) Lighting. Lighting of the battery energy storage systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties.

(5) Vegetation and tree cutting. Areas within 20 feet on each side of Tier 2 Battery Energy Storage Systems shall be cleared of combustible vegetation and other combustible growth. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground covers shall be permitted and be exempt, provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent possible.

(6) Setbacks. All setbacks set forth below shall be measured from the fencing surrounding the Battery Energy Storage System. Landscape buffers for screening may be placed within the setback area. Tier 2 Battery Energy Storage Systems and related structures shall have the following setbacks:

(a) two hundred (200) feet in the front from the right-of-way line of any public or private road, Street, or highway.

(b) one hundred (100) feet from the sides and the rear property boundary line.

(c) four hundred (400) feet from the property line of any property that contains one or more Dwellings or Accessory Buildings containing a Dwelling Unit. The above stated side and rear property setback restrictions and those setbacks relating to a Dwelling or Accessory Building containing a Dwelling Unit, may be modified (reduced) by the Planning Board and Zoning Board of Appeals for any contiguous parcel (to that parcel upon which the Battery Energy Storage System is being developed) owned by a participating landowner that owns the parcel upon which the subject Battery Energy Storage System is being placed. The above waiver shall not apply to any contiguous parcels that are not owned by the same landowner that owns the land upon which the Battery Energy Storage System is placed.

- (7) Height. Tier 2 Battery Energy Storage Systems shall not exceed twelve (12) feet in height as measured from the highest point of any equipment to the ground directly beneath it.
- (8) Fencing Requirements. Tier 2 Battery Energy Storage Systems, including all mechanical equipment, shall be enclosed by a 7-foot-high fence with a self-locking gate to prevent unauthorized access unless housed in a dedicated-use building and not interfering with ventilation or exhaust ports.
- (9) Screening and Visibility. Tier 2 Battery Energy Storage Systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and will not interfere with ventilation or exhaust ports.
- (10) Security. Buildings must be protected from vehicle impact, including but not limited to protection provided by bollards.
- (11) Noise. The 1-hour average noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level of fifty (50) dBA during the day and forty-five (45) dBA during the night, as measured at the outside wall of any non-participating residence or occupied community building, existing or under construction at the time of the permit application. Applicants may submit equipment and component manufacturers noise ratings to demonstrate compliance. The applicant may be required to provide Operating Sound Pressure Level measurements from a reasonable number of sampled locations at the perimeter of the battery energy storage system to demonstrate compliance with this standard.

E. Decommissioning.

- (1) Decommissioning Plan. To ensure the proper removal of Tier 2 Battery Energy Storage Systems after such improvements are no longer reasonably operable or have been abandoned, a Decommissioning Plan shall be submitted as part of the application. The Decommissioning Plan must specify that after the Tier 2 Battery Energy System is no longer operational or has been abandoned, it shall be removed by the Applicant or any subsequent owner of the improvements and/or the subsequent owner of the property upon which the Tier 2 Battery Energy Storage System is placed. The Plan shall demonstrate how the removal of all infrastructure and the remediation of soil and vegetation 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 detailing the projected cost of executing the Decommissioning Plan, which is to be prepared by a Professional Engineer or reputable contractor. Cost estimations shall take into account inflation and shall be based on the operating life expectancy of the system. The Plan shall set forth the proposed method of ensuring that funds will be available for decommissioning and restoration and the method by which the decommissioning cost will be kept current.
- (2) If the use of an approved Tier 2 Battery Energy Storage System is discontinued, the owner or operator shall provide written notice to the Code Enforcement Officer within thirty (30) days of such discontinuance. Should a Tier 2 Battery Energy Storage System become inoperative and/or abandoned such that it ceases to operate consistently for more than 180 days, such system will be deemed inoperative or abandoned. The above time frames may be extended by the Town Board, at its sole discretion, upon a showing of good cause by the then owner or operator of the Battery Energy Storage System.

(3) Determination of Abandonment or Inoperability. A determination of the abandonment or inoperability of a Tier 2 Battery Energy Storage System shall be made by the Town Code Enforcement Officer, who shall provide the permit holder, owner or operator and owner of the real property upon which the Tier 2 Battery Energy Storage System is located with written notice by personal service or certified mail. At the earlier of the 91 days from the date of determination of abandonment or inoperability without reactivation or upon completion of dismantling and removal, any approvals and/or permits granted or issued for the Battery Energy Storage System shall automatically expire.

(4) Removal. All Tier 2 Battery Energy Storage Systems (and related infrastructure) shall be dismantled and removed immediately from a Lot where the Special Use Permit or Site Plan approval has been revoked by the Town of Avon Zoning Board of Appeals or the Town Planning Board respectively, or if the Battery Energy Storage System has been deemed by the Code Enforcement Officer to be inoperative or abandoned for a period of more than 180 days (unless the time frame is extended by the Town Board pursuant to the provisions of paragraph (1) above) and the Lot shall be restored to its pre-development condition. The responsibility to dismantle and remove and all such costs of removal shall be the sole responsibility of the permit holder, owner, or operator and/or owner of the real property upon which the Tier 2 Battery Energy Storage System is located. If the permit holder, owner or operator and/or owner of the real property upon which the Tier 2 Battery Energy Storage System is located does not dismantle and remove said Tier 2 Battery Energy Storage System as required by the Decommissioning Agreement, the Town Board may complete removal and decommissioning as set forth in the Decommissioning Agreement and levy all related expenses (not covered by any removal bond or other form of surety provided pursuant to such Decommissioning Agreement) associated with the removal onto the real property tax bill associated with the property upon which the Tier 2 Battery Energy Storage System was located, regardless of who the permit holder, owner or operator and owner of the real property upon which the Tier 2 Battery Energy Storage System is/was. Any costs or expenses related to removal (by the Town or completed on behalf of the Town's authority pursuant to this section) that are to be levied onto the real property tax bill for the property on which the Tier 2 Battery Energy Storage System was located, shall not be off-set, reduced or diminished for any recycling or salvage credits or value relating to the removed equipment, except and unless the Town has actually received such credits or value prior to the relevy of such costs and then, such reduction shall be limited to the actual dollar value received by the Town. Nothing in this Article shall be interpreted to require or obligate the Town to undertake to obtain salvage or recycling credits, value or proceeds with regard to any equipment to be removed pursuant to this section.

(5) As set forth in §130-96 B. (19) (a) above, prior to obtaining a building permit and as a condition to issuance of any Special Use Permit, the Applicant and Initial Landowner must enter into a Decommissioning Agreement with the Town that sets forth the obligations of the Applicant and/or the Initial Landowner to properly decommission the Battery Energy Storage System if the use of such system is discontinued, abandoned or becomes inoperable pursuant to this Article. Said Decommissioning Agreement shall require the Applicant to provide an irrevocable financial security bond (or other form of surety such as, but not limited to, letters of credit, etc. that are acceptable to the Town of Avon at its discretion) for the removal of the Tier 2 Battery Energy Storage System, with Avon as the designated assignee/beneficiary, in an amount approved by the Planning Board which is equal to 150% of the estimated removal cost.

The bond or surety shall provide for an annual increase in the amount of the surety to compensate for the cost of inflation or any other anticipated increase in costs of removal. Each year after a Tier 2 Battery Energy Storage System has been constructed, and no later than sixty (60) days prior to the anniversary date of the issuance of the building permit for such Battery Energy Storage System, the then owner/permit holder for the system shall provide the Town of Avon with written proof that the required financial security bond (or other form of surety) is still operable and valid and that such surety has been properly increased to account for inflation or any other anticipated increase in costs of removal as provided for above.

The Decommissioning Agreement shall provide that Initial Landowner (or the successor and/or assigns of Initial Landowner) shall be responsible for all obligations pursuant to the Decommissioning Agreement in the event Applicant (or the successor owner of the Battery Energy Storage System) does not complete all obligations as required by said Decommissioning Agreement. The Decommissioning Agreement shall be recorded at the office of the Livingston County Clerk and shall be indexed as deed restrictions against the property upon which the Battery Energy Storage System is constructed, with the Town as a benefitted party, so as to put all future owners of the subject real property on notice of the obligations contained in the Decommissioning Agreement.

F. Ownership Changes. If the owner of the battery energy storage system changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the battery energy storage system shall notify the Code Enforcement Officer of such change in ownership or operator within 30 days of the ownership change. A new owner or operator must provide such notification to the Code Enforcement Officer in writing. The special use permit and all other local approvals for the battery energy storage system would be void if a new owner or operator fails to provide written notification to the Code Enforcement Officer in the required timeframe. Reinstatement of a void special use permit will be subject to the same review and approval processes for new applications under this Local Law.

G. Safety.

(1) System Certification. Prior to commencement of operation, Battery Energy Storage Systems and equipment shall be certified and/pr listed by a Nationally Recognized Testing Laboratory to UL 9540 (Standard for Battery Energy Storage Systems and equipment) with subcomponents meeting each of the following standards as applicable at the time of development, along with any other standards adopted after the date of enactment of this Article:

- (a) UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power, and Light Electric Rail Applications).
- (b) UL 1642 (Standard for Lithium Batteries).
- (c) UL 1741 or UL 62109 (inverters and power converters); and
- (d) Certified under the applicable electrical, building and fire preventions codes as required.

(e) Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 and applicable codes, regulations and safety standards may be used to meet system certification requirements.

(2) Site Access. Tier 2 Battery Energy Storage Systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and, if the Tier 2 Battery Energy Storage System is located in an ambulance district, the local ambulance corps.

(3) Tier 2 Battery Energy Storage Systems, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70.

H. Permit Time Frame and Abandonment.

(1) The Special Use Permit and Site Plan approval for a Tier 2 Battery Energy Storage System shall be valid for a period of 24 months after Site Plan and Special Use Permit approvals are granted. In the event construction is not completed in accordance with the final Site Plan (or as may have been amended) within 24 months after approval, the time to complete construction may be extended by each of the approving Boards, at their sole discretion, upon a showing of good cause by the applicant. Any such extension granted by the approving Boards shall not exceed 180 days. If the owner and/or operator fails to perform substantial completion of the construction after 30 months, the Site Plan and Special Use Permit approvals shall expire.

§130-97. Enforcement. Any violation of this Article shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the land use regulations of the Town.

§130-98. Severability. The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.

Vote of the Board: Councilman Drozdziel – Aye, Councilman Coyne- Aye, Councilman Harrington - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye

DISCUSSION ATTORNEY REPORT – continued

Attorney Campbell stated he is continuing to work on solar, Oak Opening mine and with the Code Enforcement Officer regarding enforcement of the Code.

DISCUSSION – HIGHWAY/WATER DEPARTMENT REPORT

Highway/Water Superintendent Crye provided the following report:

HIGHWAY: Snow removal, shop, snow removal clean-up, brush, fixing potholes, GIS has been completed with signs and crossovers.

WATER: Everyday maintenance & sampling, GIS.

Supervisor LeFeber stated fuel is high and the budget may need adjustments. At the County, bids for piping came in high. We should be good with the salt price as we have been locked in. Road work will be high. Highway/Water Superintendent Crye stated our roads are in good shape.

DISCUSSION – CODE DEPARTMENT REPORT

Code Enforcement Officer Glise reported on the following:

Working with our Engineers at MRB Group, violations, water run of on Rochester Street. Just received a seventeen-page document from Oak Opening Resident Carolyn McKee.

Councilman Harrington asked about a question of lighting in East Avon and new property owners on land that was recently foreclosed by the County. Deputy Supervisor Mairs suggested a complaint be filed with the Code Enforcement Office.

DISCUSSION – TOWN CLERK DEPARTMENT REPORT

Town Clerk Knight confirmed receipt of her report dated March 10, 2022 as received by the Town Board.

RESOLUTION #81 ACCEPT THE MONTHLY REPORTS

On motion of Deputy Supervisor Mairs, seconded by Councilman Harrington the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to accept the monthly reports for February 2022 from the Town Supervisor and from the Town Clerk as shown below:

Town Clerk’s February 2022 Report:

Total Local Shares Remitted:	\$ 4,914.07
New York State Department of Health	\$ 45.00
NYS Ag. & Markets for spay/neuter program	\$ 58.00
NYS Environmental Conservation	\$ 1,041.17
TOTAL	\$ 6,058.24

Vote of the Board: Councilman Drozdziel - Aye, Councilman Harrington - Aye, Councilman Coyne - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye

RESOLUTION #82 AUTHORIZE THE SUPERVISOR TO SIGN THE KENRON PROPOSAL

On motion of Deputy Supervisor Mairs, seconded by Councilman Harrington the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to authorize the Supervisor to sign the Kenron heat pump proposal as follows:

Vote of the Board: Councilman Drozdzial – Aye, Councilman Coyne- Aye, Councilman Harrington - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye

DISCUSSION – CONTRIBUTION TO THE CHAMBER OF COMMERCE

Supervisor LeFeber will be requesting the Chamber of Commerce attend a meeting in the future as the Town is continuing to provide them with financial support.

DISCUSSION - CLAIMS

Councilman Coyne questioned two vouchers that were not signed. Supervisor LeFeber signed both vouchers.

RESOLUTION #83 ACCEPT THE CLAIMS

On motion of Deputy Supervisor Mairs, seconded by Councilman Harrington the following resolution was ADOPTED AYES 5 NAYS 0

RESOLVE to accept for payment Abstract 2022-05 in the following amounts:

Concerning ABSTRACT of Claims Number 2022-05 including claims as follows:

General Fund	Amounts totaling \$18,603.33
Highway Fund	Amounts totaling \$4,187.89
Water Fund	Amounts totaling \$7,177.11
Royal Springs Lighting	Amounts totaling \$1,111.68

Vote of the Board: Councilman Drozdziel – Aye, Councilman Coyne- Aye, Councilman Harrington - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye

DISCUSSION – SUPERVISOR REPORT

Supervisor LeFeber stated we have received the grant funds from the Unified Court System for the third-floor project.

The County is working on expansion of broadband grants.

DISCUSSION – OPEN ITEMS

Councilman Harrington questioned where we are regarding cyber security. Councilman Drozdziel responded that we are better than one year ago. Hurricane is providing recommendations and we as a Board have dedicated financial support of their recommendations.

Councilman Coyne reported that after a request by the Town Board and County Highway Department to New York State Department of Transportation to reduce the speed limit on Oak Opening, they responded with a determination that a reduction of the speed limit is not warranted at this time.

Councilman Drozdziel provided an update on the third-floor project. The project was readvertised and a walk through is planned for tomorrow.

He is looking forward to receiving bids. Attorney Campbell reviewed the WICKS law but did not find any exceptions or ways to move forward with less restriction.

RESOLUTION #84 EXECUTIVE SESSION

On motion of Councilman Harrington, seconded by Councilman Drozdziel the following resolution was
ADOPTED AYES 5 NAYS 0

RESOLVE to enter executive session for the purpose of the medical, financial, credit or employment history of a person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a person or corporation inviting Attorney Campbell. TIME 7:08 P.M.

Vote of the Board: Councilman Drozdziel - Aye, Councilman Harrington - Aye, Councilman Coyne - Aye, Deputy Supervisor Mairs - Aye, Supervisor LeFeber – Aye

RESOLUTION #85 CLOSE EXECUTIVE SESSION

On motion of Councilman Harrington, seconded by Councilman Drozdziel the following resolution was
ADOPTED AYES 5 NAYS 0

RESOLVE to close executive session with no action taken at 7:51 P.M.

Vote of the Board: Councilman Drozdziel – Aye, Councilman Harrington – Aye, Councilman Coyne – Aye, Deputy Supervisor Mairs – Aye, Supervisor LeFeber – Aye

On motion of Deputy Supervisor Mairs, seconded by Supervisor LeFeber the meeting was adjourned at 7:52 P.M.

Respectfully submitted by:

Sharon M. Knight, MMC/RMC Town Clerk