

November 6, 2019  
6:30 p.m.  
Public Hearing

Present: Supervisor Gerald L. Deming, Council Members: Lynn Parnell, Amos Smith,  
Norman Gates and Frank Rose Jr.

Absent: None

Others: James Campbell (Town Attorney), Mary Underhill (Liv. Co. Planning Dept.),  
Kirk Richenberg, Thomas Trathen, William Kilmer, Derek Fuller, Henry Fuller,  
Renee & William Young, Sandra & David Sliker, Barbara & Stephen Gates,  
Michael Gates, Kathy & Robert Boyer, James Powell, Thomas Guzek and Anne  
Cassidy (SolarPark Energy), Grayce Mingrino, Christopher Wall, Andy Melka  
(Horizon Solar Power) and Alan Brightman

Supervisor Deming opened the Public Hearing at 6:30 p.m. and turned the hearing over to Attorney Campbell to read aloud the official notice. Mr. Campbell stated that the purpose of said hearing is an opportunity for the public to make comment or state an opinion on the subject.

Attorney Campbell stated that a few proposed changes have resulted in the draft local law and gave a brief summary.

Permitted locations of Large Scale (Type 2) solar. The Solar committee worked throughout the year on this classification, and along with the Livingston County Planning Department's recommendation any property classified or designated as Prime Farmland or Farmland of Statewide Importance, Type 2 Solar Energy systems would be prohibited.

Setbacks, lot size and lot coverage were reviewed. Changes relating to Decommissioning and Security Bonds as well. The committee discussed at great length the Viewshed distinction.

Mr. Campbell read aloud the proposed language:

Any property located in the area that is bounded on the west by a line that runs parallel with and is 100 feet west of the west line of the Genesee Valley Greenway and is bounded on the east by the east side of the Genesee River, as such area is deemed to be a scenic viewshed and is a portion of the area that was previously identified as a scenic viewshed, pursuant to Section 514 C (6) of the Zoning Ordinance.

Attorney Campbell stated that other provisions have been added based largely on other towns ongoing solar discussions held, such as Hosting Agreements, more detailed wording with Payment In Lieu of Taxes, SEQR process and Community Benefit Agreement.

The Board asked for comments at this time:

1) David Sliker ( Mr. Sliker read aloud the following statement)

## **COMMENTS FOR TOWN of YORK PUBLIC HEARING ON LOCAL LAW #2 of 2018 Proposed Changes**

Thank you for the opportunity to speak today. My name is David Sliker, past York Town board member, 12 years, 10 years as deputy supervisor. I also spent 7 years on The Livingston County Planning Board.

I would like to start by saying that I support solar energy; it is a technology that will lessen our carbon footprint and reduce our dependency on fossil fuels. However I also believe we need to be responsible as to where and how it is incorporated into our town.

The use of map "Exhibit 1" in the proposed law allows in excess of 8700 acres to be developed as type #2 solar installations. This map was created as a soil classification map incorporating chemical make up of the soil and land characteristics from data collected in 1920 (the Model T was still in production for 8 more years); it does not accurately reflect the current physical characteristics of the land today and does not protect, in my opinion, the most valuable land in our town. As shown on the map the majority of the land available for type #2 arrays would be along the Genesee valley. The Abbey of the Genesee owns over 1400 acres of land, listed as "Not Prime Farmland" and gets some of the highest rent/acre of any land in town. This is all eligible as per the proposed law to be completely covered with solar panels.

Collateral Damage: This proposal does not take into consideration that the soil boundaries of the 100 year map don't follow property boundaries. Meaning, if a developer purchases property to develop as a solar array, and a portion is designated as PRIME FARMLAND, or FARMLAND of STATEWIDE IMPORTANCE that portion can not be developed. This will increase the number of acres removed from farming production.

Example: A developer purchases 500 acres for a solar array, and 20%, (100 acres) is either PRIME FARMLAND, or FARMLAND of STATEWIDE IMPORTANCE. Of course the 100 acres would be scattered throughout the 500 acres with 20 acres here 30 acres there, making it not practical to farm, that's if the developer wanted to, they are not in the business of renting farm land. This would make for patches of land that would become overgrown with trees and brush over the 30-50 year life of the project, removing it from production.

Trying to make this map fit for limiting how many and where type #2 solar arrays can be located in our town is not what should be done. If indeed you want to limit the amount of acreage used for solar, and not have massive 1000+ acre installations, then say that now. In 2 years, or 20 years if the numbers need to be updated, they can. But do not force fit this law as written and regret it in the future. It is easier to increase the numbers than decrease them.

I would like to follow up on my comments, and make suggestions of updates to be made to proposed changes to local law #2 of 2018.

1. Section 2. Changes to Section 618.13 Definitions:

Remove the Definitions of:

PRIME FARMLAND - Land Designated as "Prime Farmland"

FARMLAND of STATEWIDE IMPORTANCE - Land designated as "Farmland of Statewide Importance"

2. Section 3. CHANGES TO SECTION 618.C. Zoning districts where allowed: D.

Remove complete proposed section 618.C.(5) a. (iii) as written.

Replace with: Maximum of **(5000?, 4000?, 3000?)** acres to be used as Type 2 solar installations. As permit applications are submitted with site plan the # of acres included will be deducted from the total allowed.

F. Remove 618.C.5.d.(v) as written.

Modify 618.C.5.d.(vi) to include division of property for purpose of circumventing type #2 solar maximum size.

Additional changes to Law #2 of 2018

1. Modify Section 618.C.(5) d (iii) Lot Size: Modify to include maximum lot size: Type 2 Solar Energy Systems shall be located on lots with a maximum size of **(500?, 400?, 300?)** acres.

Note: As a reference so you can visualize how big 300 acres is: The block bordered by Rt. 36 W, Rt.63 N, Retsof rd. E, and Chandler Rd. S is 300 acres. This block includes the school, Salt mine, and a lot of farm land.

2. Remove any and all references to "Exhibit 1", map, except for view shed.

3. Add verbiage that states 1 permit per land owner issued with a 5?, 7? Year waiting period before another permit can be issued.

I am sure there is a lot of legal verbiage that needs to be updated to make these changes. There is 3 months to get it done.

There has been a lot of good work done on this law, do not waste all that work by not completing the job by the end of the moratorium. Recall the current law that was sent to the county for review and start the alterations ASAP. The board owes it to their residents to get these updates completed before the moratorium runs out. I am frustrated that it took until October 2, 2019 to get any information on the progress of this law. There was 1 set of minutes to the meetings published and the town board only had two vague updates at best reported since February.

I am volunteering to be part of any meetings after this public hearing to revise the law to make it fair to all property owners in town.

Respectfully Submitted, David Sliker

11/06/19

.....  
...He asked that the Town Board do this correctly, you have 3 months to get it right.

2) Renee Young ( Ms. Young read aloud the following statement)

To introduce myself, my name is Renee Young. I have lived in the Town of York my whole life. I built my home 33 years ago on land that has been in my family since before I was born. I've seen how the town's landscape and fabric have changed over my 50 something years. It's sad to see the small farming operations struggle but times are a changing whether we like it or not. We can't save the so called "buggy whip".

So, here we are, after 2 years still discussing where the type 2 solar farms should be allowed. I stand by what I've said before, that I think solar makes a good neighbor. No traffic, No noise & No smell. Since the beginning of this debate, we were told protecting "prime" farm land was paramount in the development of this new law. Therefore the community, also known as the taxpayers, bought into the notion the solar committee was going to look out for the WHOLE Town of York's future.

So how did the committee arrive at what should be considered prime farm land? Were current production activities relied upon? No, it appears that criteria wasn't used in developing this proposed map. What the committee has submitted is a map, using data generated in 1920, to determine what is "prime" farmland in 2020. Why would the committee use such outdated information? It just didn't seem right. Why would they use a 100 year old map? I initially thought after 2 LONG YEARS of discussing it, it was just easier or convenient than coming up with a REAL comprehensive plan. The real reason for using this map became clear to me when I labeled the map with land owners. The map you are submitting to us, as a good plan for OUR town's future, doesn't deny the rights to solar development to land owners associated to either a solar committee member or town board member or someone closely related to them as follows:

\*See Attachment For Land Owner Detail and Map A For Locations \*

Below is a summary of the committee &/or board members affiliated with land not excluded for type 2 solar:

Solar Committee Members Sam Swearingen 235.8 acres

Henry Fuller 183.2 acres

Town Board Members Norman Gates 600.5 acres

Lynn Parnell 182.8 acres

Solar Committee &

Town Board Member Amos Smith 1,074.2 acres

Land Not Excluded for Solar Benefitting Solar Committee &/or Board Members: 2,276.5 acres

You can clearly see who is set up to be the winners in this solar war. All of the people in power who have "skin in the game" have preserved their full property rights. That can't be a coincidence,

There is a saying, "In politics, nothing happens by accident. If it happens, you can bet it was planned that way."

I don't believe it's coincidence that most of the committee members just happen to have the appropriate land for solar.

Now I kick myself for not trying to get on this solar committee. When other landowners find out they were shut out of the deal, they'll kick themselves also. I own 1/6th of a 160 acre farm that is interested in solar development. That is obviously chump change when playing with the big guys. I was so naive to think it would have been a conflict of interest to be on this committee. Little did I know it was imperative to get on this committee to get a fair shake.

It is apparent the committee doesn't care how much valuable farm land is used for solar as this map allows for over 8,700 acres Not excluded for type 2 solar. Unfortunately, almost half (42%) of the solar development approved is being awarded to the few members on the solar committee, the town board or someone affiliated to them and the Abbey of the Genesee. We're talking over 3,700 acres out of the total 8,700 acres.

I took your map and blackened out the parcels associated with committee and/or town board members. I also blackened out the Abbey of the Genesee's property. The blackened out area shows such a concentrated area not excluded for type 2 solar. You can't possibly look at this blackened out map and be proud. The "View Shed" requirements were relaxed due to something about the town being cut in half. It also coincidentally changed the status of fellow committee member, Henry Fuller's, land from being excluded from type 2 solar to being Not excluded. It appears Mr. Fuller is a hypocrite when calling the town board members crooks. The map, as it looks now, DOES cut the town in half Very little property on the hill, west of Rt. 36, is being approved for solar. You give lip service to the community about protecting farm land yet the 1st thing moving forward for solar is the property owned by the Abbey of the Genesee. I don't understand this logic. You don't want the solar panels on the hill, near high tension electric lines and very low visibility to the community. For some reason, the committee prefers the solar panels be located along River Road for everyone to see. Again, common sense doesn't appear to have been used when writing this law.

Again, I ask why would this solar committee use this old map? My guess is the committee couldn't make a real decision so they are using it as a crutch. I'm sure when the committee got their first look at the map they were relieved. What good fortune. No land was being flagged that any committee or town board member cared about. How convenient you thought this was going to be. When the masses find out the truth, I can hear the excuses already. It wasn't OUR decision. We didn't make up the map boundaries. All the while, feeding the story to the taxpayers that you're shielding the prime farmland from the evil solar community. Who would have thought that when a committee member was referring to protecting "prime" farmland, they were actually referring in code to protecting "their" farmland. I'm not talking about them protecting their land from solar. No, I'm saying they are protecting "their" land from this government labeling. The committee came very close to getting away with this and then it would have been too late.

I have to thank my brother in law, David Sliker, for his diligence in shedding the light on this whole prime farm land sham. I believe this committee was counting on the masses not looking at this proposed map. It's public knowledge where the prime farm land is located in the town. It was selling for upwards of \$9,000 an acre just a few short years ago. In my opinion, the committee was trying to bury this map

until the "11th hour". I say this because you'd have to turn a blind eye to the fact one of the towns largest farming operation, Lawnel Farms, is located on non prime farm land. They appear to be thriving and on a growth trend while smaller farming operations on the west side of town are struggling. It proves the map is not useful in evaluating the current value and usefulness to today's farmer. I know first hand this map isn't worth the paper its printed on. It shows my families best most productive field as non prime farm land just because it is located on the east side of Rt. 36 which was prone to flooding back in 1920 before the Mt. Morris Dam was built in 1952.

I'm disappointed the new law doesn't protect the WHOLE communities interests. The solar committee's proposal financially benefits a few while stripping other land owning taxpayers property rights away. Many questionable decisions were made including Sam Swearingen being allowed on this solar committee when he does not live in York therefore can not vote in York. Did Mr. Swearingen curry favor with the board by selling a 5.78 acre parcel of land to our town supervisor, Mr. Deming?

In closing, if this law goes forward as written, we will be forced to exhaust all avenues available including contacting the State Ethics Committee to investigate the subjective and questionable decisions made by this committee. Using THIS 100 year old map to flag property from development using the rationale of it being prime farm land is not justifiable, warranted nor does it accurately reflect current farming standards. This proposed plan is not good for the town. I urge my fellow land owners to study this map. Since it's such a terrible idea, I expect the Town board to reject THIS proposal and send it back to committee for updates before the moratorium deadline. Remember there are 3400 residents in the Town of York who deserve equal justice from their representatives. IT HAS BEEN 2 YEARS ALREADY!

Thank you for your time,

Renee Young

11/6/19

Attachment to the Town of York - Proposed Lands not Excluded for Type 2 Solar Map

Parcels "personally" connected to either a Town of York Solar Committee Member &/or a Town of York Board Member as follows: Note: Information available at Livingston County Mapping Program

<u>No.</u>	<u>Owner of Land</u>	<u>Acreage</u>	
1A.	Sam Swearingen	164.8	
1B	Sam Swearingen	54.5	
1C	Sam Swearingen	<u>16.5</u>	Total Sam Swearingen 235.8 acres: Solar Committee Member
3A	York Land & Cattle Comp.	425.5	
3B	York Land & Cattle Comp.	87.1	
3C	York Land & Cattle Comp.	57.9	
4A	Lawnel Farms	320.7	
4B	Lawnel Farms	75.5	
4C	Lawnel Farms	57.9	
4D	Lawnel Farms	<u>49.6</u>	Total Amos Smith 1,074.2 acres: Solar Committee & Board Member
5A	Henry Fuller	<u>183.2</u>	Total Henry Fuller 183.2 acres: Solar Committee Member
6A	Gates Farm	146.9	
6B	Tom Gates	130.6	
6C	Tom Gates	80.0	
6D	Tom Gates, Jr.	130.6	
6E	Tom Gates, Jr.	42.7	
6F	Tom Gates, Jr.	<u>69.7</u>	Total Norman Gates 600.5 acres: Board Member
7A	Ken Parnell	124.8	
7B	Ken Parnell	<u>58.0</u>	Total Lynn Parnell 182.8 acres: Board Member
Total parcels affiliated with 5 solar committee &/or board members:			2,276.5 acres

Also not designated "prime" farm land

2A	The Abbey of the Genesee's property	1,428.0 acres
		Total 3,704.5 acres

\*Map A shows parcel locations\*

\*Map B shows above properties blackened out\*

# LAND OWNER DETAIL MAP A

## Town of York

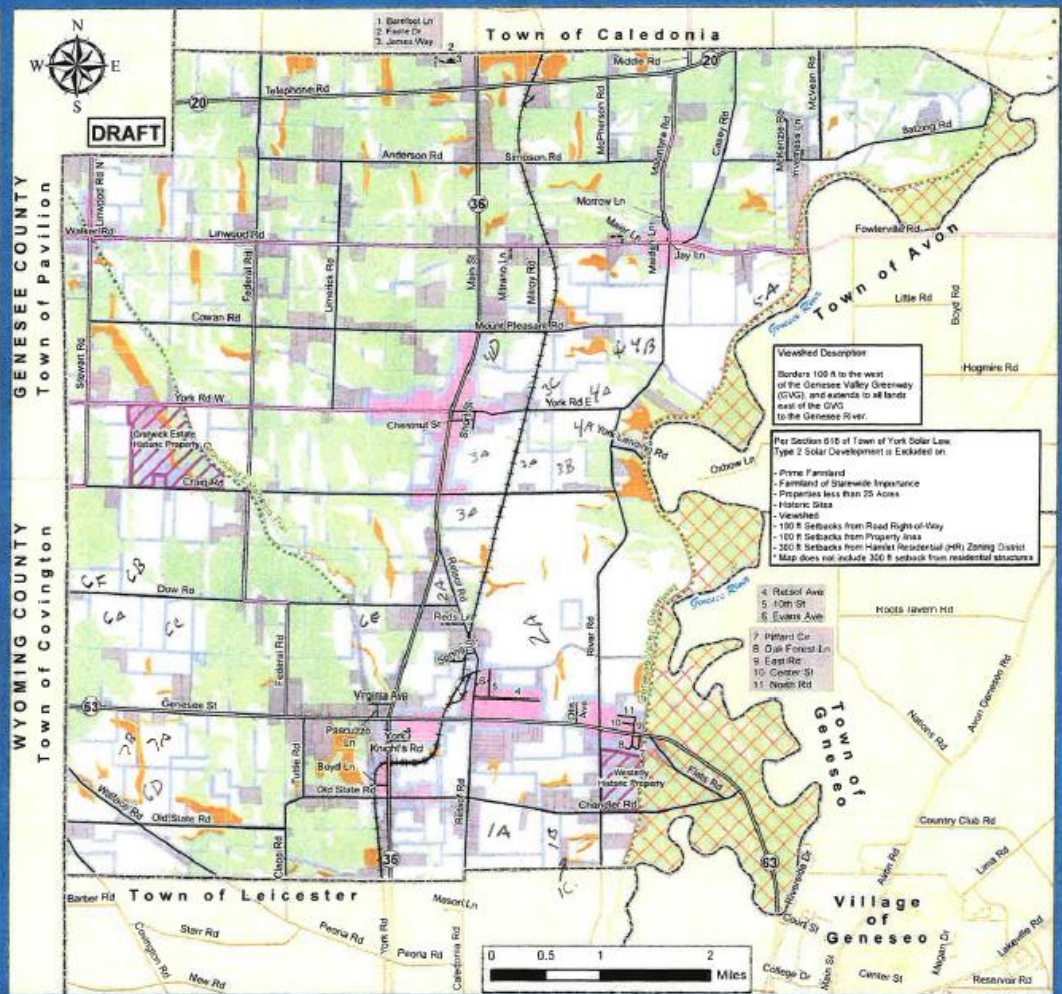
Lands Not Excluded for Type 2 Solar

Livingston County

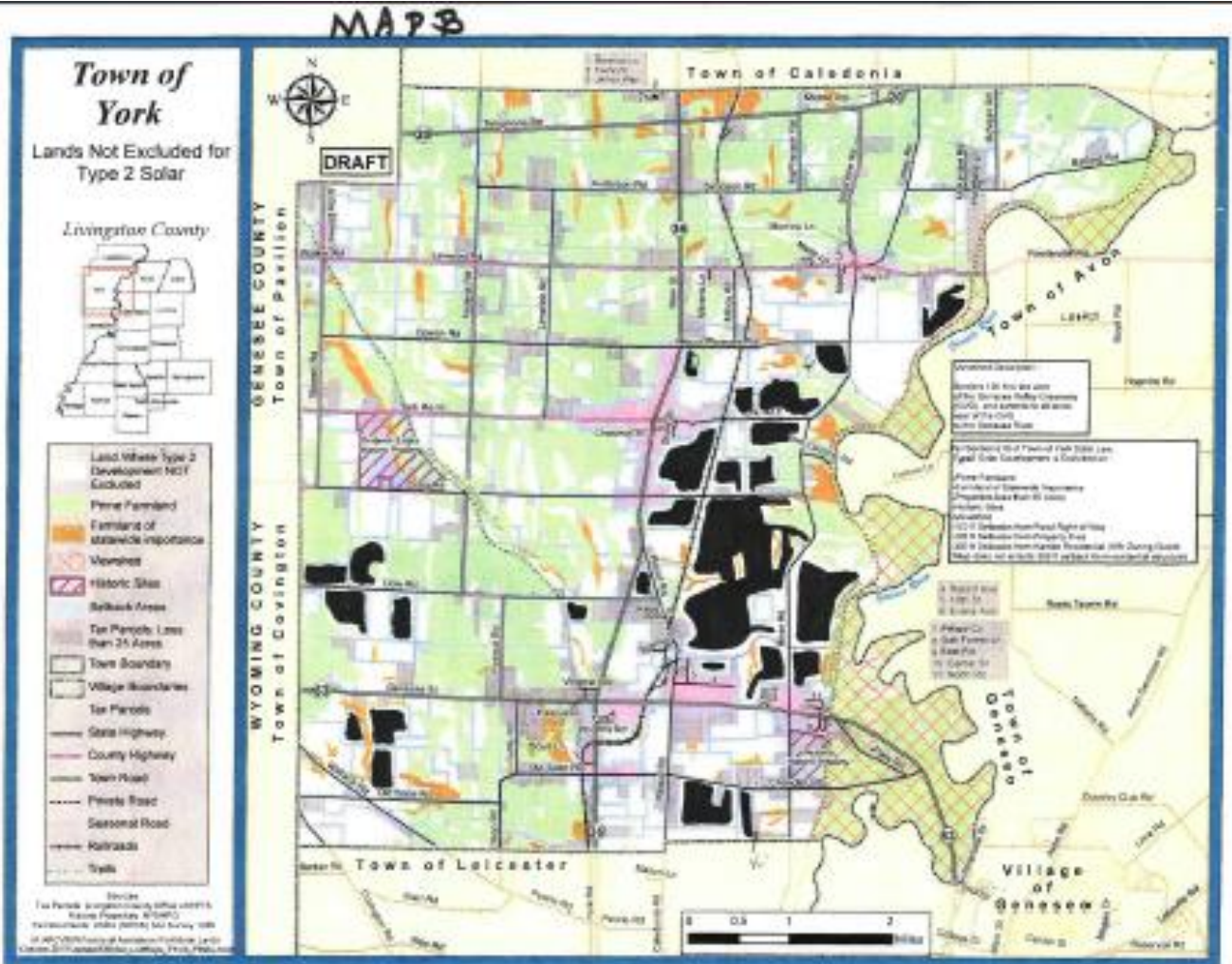


- Land Where Type 2 Development NOT Excluded
- Prime Farmland
- Farmland of statewide importance
- Viewshed
- Historic Sites
- Setback Areas
- Tax Parcels, Less than 25 Acres
- Town Boundary
- Village Boundaries
- Tax Parcels
- State Highway
- County Highway
- Town Road
- Private Road
- Seasonal Road
- Railroads
- Trails

Sources:  
 Tax Parcels: Livingston County Office of RPTIS  
 Historic Properties: NYSHPO  
 Farmland Soils: USDA (NRCS) Soil Survey 1995  
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Ms. Young stated once again this law is not good for the Town and asked the Town Board to reject it.

### 3) Andy Melka (Horizon Solar Power)

Mr. Melka commented he has been working with farmers for over 12 years, with practices constantly changing. Many of the farmers feel the need to diversify and should be allowed to do so. Prime farmland is a bit inconsistent. You can encourage the Prime farmland restriction designation, but it will not affect the food productivity. Mr. Melka cautioned the Board on arbitrary lot sizes. As long as the lot can serve it, why limit it. Mr. Melka suggested perhaps total acreage of solar in the Town may be the route to go. As a developer he has seen many regulations, the timelines in this proposed law are very tight and will be hard to achieve and should be adjusted, you need to be fair. A suggestion would be to change to 12 months each or 18 months for the total project. National Grid alone takes a great deal of time, the proposed timeline is restrictive. Mr. Melka stated that the PILOT wording is sufficient and fair, but feels the Community Benefit Agreement is not. There may not be any limit to what the Town would or could receive, which is extortion. Mr. Melka commented that developers want to pay fairly for taxes but not overpay. He commended the Town for undergoing this process.

#### 4) Kirk Richenberg

Mr. Richenberg stated that he wishes to discuss a few points. The first being the Viewshed distinction. Amendment 3C II describes the scenic viewshed, but nothing in our Zoning Ordinance even outlines that the Genesee Valley Greenway is a viewshed. What is proposed doesn't accurately reflect boundaries. In some places the Greenway is more than 1 mile from the Genesee River.

Secondly, the issue of Prime farmland. With all of the projects before the Board over the last few years, this is the first time (for solar purposes) that Prime farmland has been discussed for need of protection. This sets the Town up for a huge litigation, and Mr. Richenberg added the process was a bit flawed. The Solar committee had a few meetings early on and then they tapered off. October 2<sup>nd</sup> was the first time the committee saw the changes as a whole and never reviewed again, then the law was presented to the Town Board at the October 14<sup>th</sup> regular meeting.

Lastly, with the Community Benefit Agreement, no where is "potential negative impacts associated with Type 2 Solar Energy System" outlined, which opens the Town up again for litigation.

Mr. Richenberg stated that the Board needs to go back to the drawing table, and also asked if the Board could leave the Public Hearing open for additional comments.

#### 5) Henry Fuller

Mr. Fuller commented that he was on the Solar committee, not for selfish reasons but for continuing education purposes. There seems to be a great deal of negative assumptions pertaining to solar, he thought with additional education, more positive could be brought to light. He also thought this was going to be done with local assistance, but meetings were run by County Planning.

Mr. Fuller outlined Section 1 (B) (1) of the proposed law. Wording describes enhancement and regulate orderly growth, development and redevelopment of the Town in accordance with a well-considered plan, so the Town may realize its potential. Mr. Fuller stated this was not the feeling he got at the solar committee meetings, it was all about protecting prime farmland, which he is unhappy about. Mr. Fuller expressed that he is fully supportive of solar. Solar energy is quiet, with no trucks going up & down roadways, and no infrastructure to deal with, after the initial installation. The real issues come with farming practices, not solar.

Mr. Fuller posed a question to the Board...if I own the land, why don't I get the choice to do with it as I wish. The community needs to face the music that many farms are unable to continue to do what they once did and by bringing in an industry (solar) for 30 years it could assist them.

#### 6) Andy Melka

What are the negatives involved with solar ?

7) Grayce Mingrino

Mrs. Mingrino commented that she would like to see the Board take into account the entire community as a whole to see how all could benefit with solar, perhaps as a “community solar”, which could encourage people to embrace solar energy.

8) Kirk Richenberg

Mr. Richenberg addressed viewshed wording once again. Mr. Richenberg states that the viewshed easterly boundary should not be on the east side of the Genesee River because the Town of York boundary is at the centerline of the Genesee River.

9) Thomas Guzek (SolarPark Energy)

Mr. Guzek stated it is refreshing to know that this community believes in solar energy. Everyone wants an equal opportunity for solar. Mr. Guzek suggested that the Board decide specifically what they wish to protect in order to develop a law that best suits your community. Mr. Guzek mentioned that he has witnessed several things in different communities on how they achieved it. The committee has done a good job, but more work still needs to be done, don't use arbitrary numbers. Mr. Guzek expressed if the intent is to preserve viewshed focus on that or if the intent is to encourage farming, write it accordingly. Be specific on what you want. Mr. Guzek stated that the Town of Rush went through 9 months of discussions. This issue can divide a community and hopes it won't be the case. At least the solar committee is willing to have discussions on the subject.

# 10) Mary Underhill (Liv. Co. Planning)

Based on the Town of York Solar Law Amendments under review. Created 10/9/2019

Town Land & Ag	Acres	Percent
Total Acres in Town of York	± 31,404	± 100%
Number of Acres in Active Farmland (RPTS Ag Exemption)	± 25,450	± 81% of all land in Town

Prime Farmland	Acres	Percent
Total Acres of Prime Farmland in Town of York	± 15,440	± 49% of All Acres in Town is Prime farmland
Type 2 (Large Scale) Solar Development is Excluded in/within: - Prime Farmland - 100 ft setbacks from property lines - 100 ft setbacks from road ROW - 300 ft setbacks from all HR Zoning areas - Designated Viewshed Areas - Historic Properties - Parcels less than 25 acres		
Total Acres of All Lands Not Excluded for Type 2 Solar Development	± 9,530	± 30% of All Acres in Town Not Excluded for Solar Development

Prime Farmland & Farmland of Statewide Importance	Acres	Percent
Total Acres of Prime Farmland & Farmland of Statewide Importance in the Town of York	± 16,751	± 53% of All Acres in Town is Prime Farmland & Farmland of Statewide Importance
Type 2 (large scale) Solar Development is Excluded in/within: - Prime Farmland - Farmland of Statewide Importance - 300 ft setbacks from all HR Zoning areas - 100 ft setbacks from road ROW - 100 ft setbacks from property lines - Designated Viewshed Areas - Historic Properties - Parcels less than 25 acres		
Total Acres of All Lands Not Excluded for Type 2 Solar Development	± 8,748	± 28% of All Acres in Town Not Excluded for Solar Development

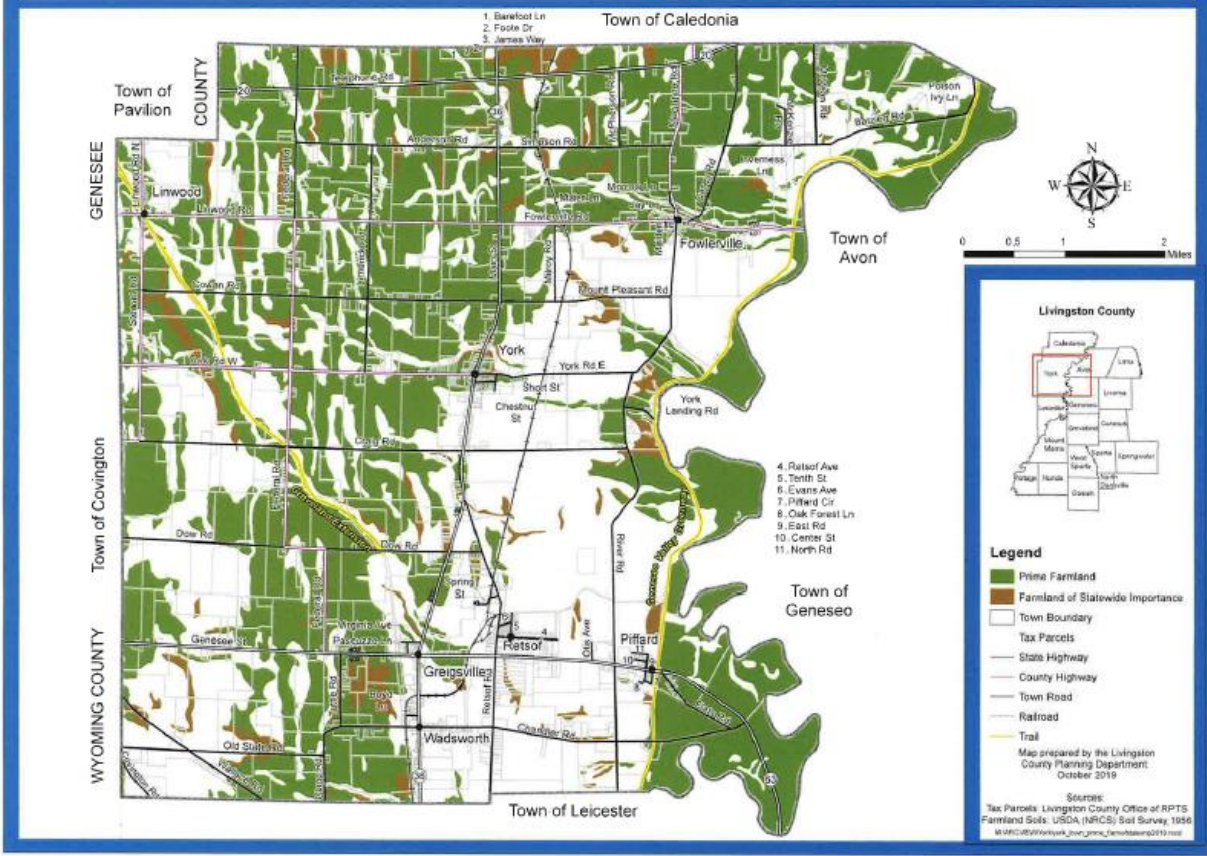
PRIME FARMLAND - Land, designated as "Prime Farmland" in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)'s Soil Survey Geographic (SSURGO) Database that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these uses.

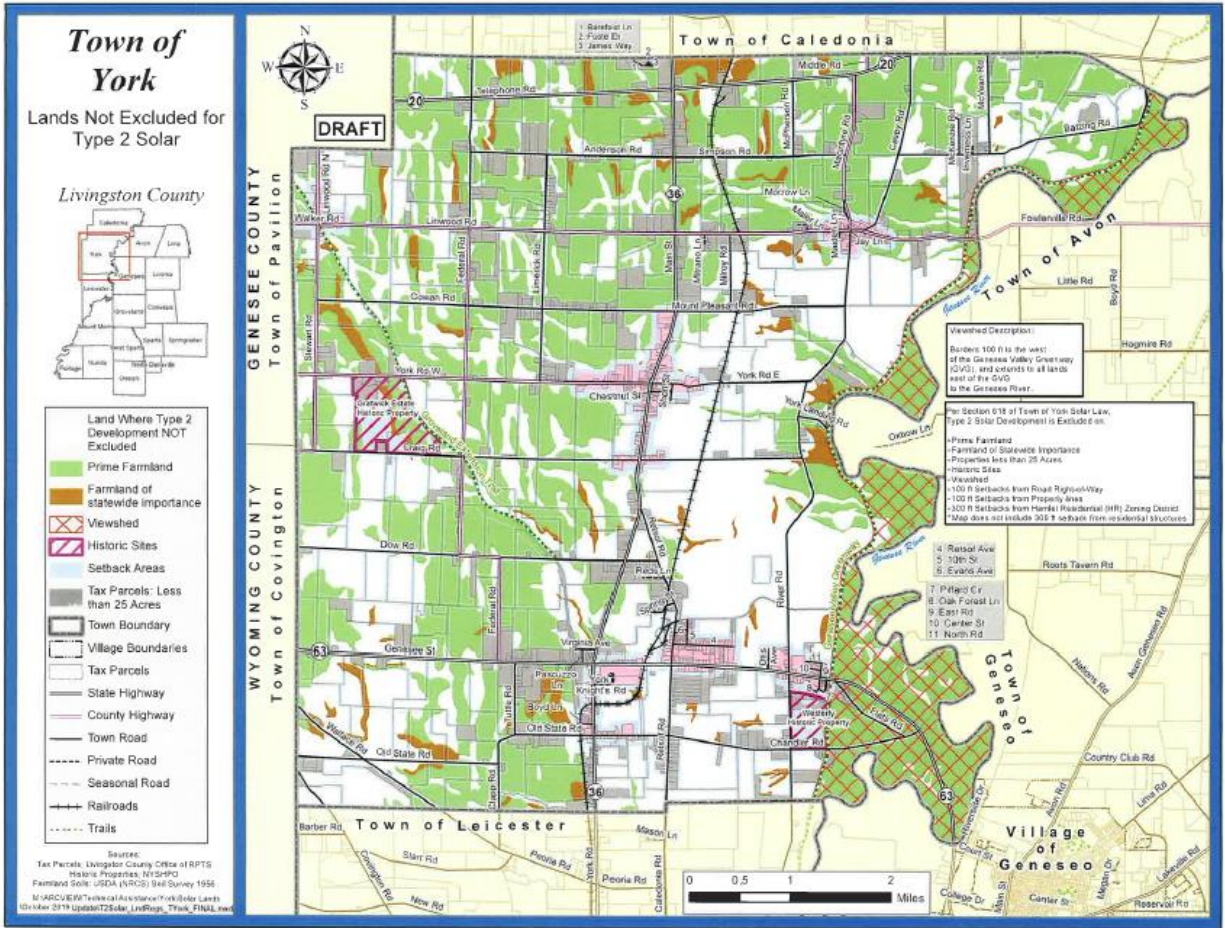
FARMLAND OF STATEWIDE IMPORTANCE:

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 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.

# Town of York

Prime Farmland and Farmland of Statewide Importance: 2019





After no further comments from the public...

RESOLUTION offered by Mr. Smith and seconded by Mrs. Parnell to close the Public Hearing at 7:20 p.m. but accept written comments until **Friday, November 15, 2019, 2:00 p.m.** Voted on and approved, Yes-5, No-0.

Respectfully Submitted,  
*Christine M. Harris,*  
 Christine M. Harris, Clerk