

**Unapproved**  
**Minutes are subject to change prior to approval tjc**

**TOWN OF CAMBRIA TOWN BOARD**

**June 9, 2022**

The regular meeting of the Town of Cambria Town Board was held at 7:00 pm on the 9<sup>th</sup> day of June 2022 at the Town Hall, 4160 Upper Mountain Road, Town of Cambria, New York.

**BOARD MEMBERS PRESENT:**

Wright H. Ellis, Supervisor  
Matthew P. Foe, Councilman  
Benjamin D. Musall, Councilman  
Randy M. Roberts, Councilman

*Absent: Jeffrey S. Hurtgam, Councilman*

**ALSO PRESENT:**

Tamara J. Cooper, Town Clerk  
Jon MacSwan, Highway Superintendent  
Robert Roberson, Attorney  
David Godfrey, Legislator  
8 Interested individuals

Following salute to the flag, Supervisor Ellis called the meeting to order. Board members took action upon the following matters:

**APPROVAL OF MINUTES**

Upon a motion duly made by Councilman Foe and seconded by Councilman Hurtgam, it was resolved to approve the minutes of the work and regular Town Board meetings of May 12, 2022.

**Ayes: Ellis, Foe, Musall, Roberts            -Motion Carried-**

**APPROVAL OF VOUCHERS**

Having been reviewed by the Town Board, the following claims were presented for payment:

<b>June 9, 2022</b>		
<b>FUND</b>	<b>CLAIM NUMBERS</b>	<b>AMOUNT</b>
<b>Cemetery</b>	<b>5-7</b>	<b>\$173.97</b>
<b>Drainage</b>	<b>6-7</b>	<b>\$3,028.52</b>
<b>General</b>	<b>238-280</b>	<b>\$76,247.88</b>
<b>Highway</b>	<b>75-98</b>	<b>\$45,161.47</b>
<b>Refuse</b>	<b>6</b>	<b>\$33,318.68</b>
<b>Sewer Op</b>	<b>25</b>	<b>\$1,812.81</b>
<b>Trust &amp; Agency</b>	<b>7-8</b>	<b>\$10,149.00</b>
<b>Water Operating</b>	<b>84-94</b>	<b>\$15,063.57</b>

Upon a motion duly made by Councilman Roberts and seconded by Councilman Foe it was resolved that the abstract of audited vouchers dated June 9, 2022 be approved as read by the Town Clerk.

**Ayes: Ellis, Foe, Musall, Roberts                    -Motion Carried-**

Supervisor Ellis reported that one bill/invoice was submitted late- First Security Benefits in the amount of \$16,558.90. This has to do with the Service Award Program for the fire companies.

**Upon a motion duly made by Councilman Musall and seconded by Councilman Roberts it was resolved to approve the invoice from First Security Benefits in the amount of \$16,558.90-fee for the 2021 Service Award Program for the fire companies.**

**Ayes: Ellis, Foe, Musall, Roberts                    -Motion Carried-**

## **2021 FINANCIAL STATEMENT PRESENTATION**

Supervisor Ellis indicated that the 2021 financial audit results for the Town have been received. He introduced Mary Young, Lumsden & McCormick, to summarize the findings.

Ms. Young gave a brief explanation of their findings and indicated that they are delivering an unmodified independent auditors opinion on the Town's financial statement. It is the highest level the Town can receive. The Town is in receipt of the Independent Accountants' Report as it pertains to Town Board, Town Justices and Management; Management Letter and the Communication with those Charged with Governance and all of these reports were considered clean reports. The fund balance across all funds is \$5.6 million and the General Fund balance is \$1.9 million. There was an increase in all funds except water. This was due to a transfer into the Capital Project fund. The Fire Protection Fund has a balance of a little over a million dollars. This includes \$790,000.00 restricted funds for the Service Award Program. Those funds can only be used for that. The revenue for the Town has increased by approximately 12% and Real Property Taxes and Sales Tax account for about 80% of the total revenue. This increase was seen state wide. The expenses were up 4.6% and 3% of that increase was due to salaries, raises, payouts for retirement, hiring of new people and overlap of new hires; this also includes projects, road and drainage projects and the purchase of some highway equipment. The government side includes liability and fixed assets due to the above mentioned projects. Liability – the Town has no bonds but has some liability associated with employee's accrued vacation and sick time.

## **BESS LOCAL LAW**

Drew Riley, Wendel, gave a brief overview of the Battery Energy Storage System Local Law. Mr. Riley indicated that the proposed Local Law is restrictive and for now NYS says the Town can regulate battery storage unless it is specifically associated with a 94C solar or wind project. The Town can regulate it and has home rule. The Town has established that it is only allowed in the Industrial Zone and the size will be limited.

## **NEGATIVE DECLARATION RESOLUTION BESS LAW**

**WHEREAS**, the Code of the Town of Cambria contains and specifies the local laws, and ordinances of the Town of Cambria; and

**WHEREAS**, the Town of Cambria does not have a local law that regulates battery energy storage systems (BESS) in the Town, and

**WHEREAS**, the Town formed a committee to work with its Planning Consultant and they have drafted a Battery Energy Storage System Local Law No. 2 of 2022, and that draft law was presented to the Town Board, and

**WHEREAS**, in accordance with Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act - SEQRA) of the Environmental Conservation Law, the Cambria Town Board has conducted a coordinated environmental review of this Local Law and has established itself as SEQR Lead Agency (no objections received); and

**WHEREAS**, a public hearing was held regarding this Local Law, and comments were received; and

**WHEREAS**, pursuant to Municipal Home Rule, the Town Board is proposing to adopt Local Law No. 2 of 2022 and amend the Town of Cambria Zoning Ordinance accordingly.

**NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:**

The Cambria Town Board, in accordance with the State Environmental Quality Review Act (SEQRA) has determined that the proposed Local Law amending the Zoning Ordinance (new BESS law, see attached copy) will not adversely affect the natural resources of the State and/or the health, safety, and welfare of the public and is consistent with social and economic considerations and, therefore, issues the attached SEQRA Negative Declaration in accordance with Section 617.7 of the SEQRA regulations; and

**BE IT FURTHER RESOLVED THAT**, the Supervisor is authorized to sign the Full Environmental Assessment Form (FEAF Parts 1, 2 &3), which will act as the Negative Declaration, and that the required notifications be completed.

**Upon a motion duly made by Councilman Foe and seconded by Councilman Roberts it was resolved to approve the Negative Declaration Resolution re: BESS Local Law.**

The question of the adoption of the forgoing Resolution was put to a roll call vote, which resulted as follows:

**WRIGHT H. ELLIS, voting AYE**  
**MATTHEW P. FOE voting AYE**  
**BENJAMIN D. MUSALL voting AYE**  
**RANDY M. ROBERTS voting AYE**

*JEFFREY S. HURTGAM absent*

The Resolution was thereupon declared duly adopted.

**ADOPTION RESOLUTION**  
**BESS LAW**

**Whereas**, the Code of the Town of Cambria contains and specifies the local laws, and ordinances of the Town of Cambria; and

**Whereas**, the Town of Cambria does not have a local law that regulates battery energy storage systems (BESS) in the Town, and

**Whereas**, the Town formed a committee to work with its Planning Consultant and utilizing the NYSERDA Model law, they have drafted a Battery Energy Storage System Law and that draft law was presented to the Town Board, and

**Whereas**, pursuant to Municipal Home Rule Law, the Town Board is proposing to enact a local law as follows:

Be it enacted by the Town Board of the Town of Cambria, New York, that the Cambria Town Board amends the Town Zoning Ordinance, of the Town of Cambria by adding new Local Law No. 2 of 2022 entitled, "Battery Energy Storage Systems" as illustrated in the attached copy; and

**Whereas**, the Town also referred this zoning law and map revision to the Niagara County Planning Board and received their comments; and

**Whereas**, the Cambria Town Board held a Public Hearing on this proposed Local Law No. 2 on May 12, 2022; and

**Whereas**, the Town Board, in accordance with Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act - SEQRA) of the Environmental Conservation Law, has issued a SEQR Negative Declaration.

**Now Therefore Be It Resolved**, that the Cambria Town Board adopts Local Law No. 2 of 2022, Battery Energy Storage System Law which will provide for the revision of the Town Zoning Ordinance as referenced above and attached.

**Upon a motion duly made by Councilman Roberts and seconded by Councilman Musall it was resolved to Adopt Local Law No. 2 of 2022-Battery Energy Storage System.**

The question of the adoption of the forgoing Resolution was put to a roll call vote, which resulted as follows:

**WRIGHT H. ELLIS, voting AYE**  
**MATTHEW P. FOE voting AYE**  
**BENJAMIN D. MUSALL voting AYE**  
**RANDY M. ROBERTS voting AYE**

*JEFFREY S. HURTGAM absent*

The Resolution was thereupon declared duly adopted.

## **LOCAL LAW NO 2 OF 2022-BATTERY STORAGE SYSTEM LAW**

### **LOCAL LAW No 2 OF THE YEAR, 2022 Regulating Battery Energy Storage Systems**

#### **1. Authority**

This Battery Energy Storage System Law is adopted pursuant to Article IX of the New York State Constitution, §2(c)(6) and (10), New York Statute of Local Governments, § 10 (1) and (7); sections 261-263 of the Town Law section 10 of the Municipal Home Rule Law of the State of New York, which authorize the Towns to adopt zoning provisions that advance and protect the health, safety and welfare of the community.

#### **2. Statement of Purpose**

This Battery Energy Storage System Law is adopted to advance and protect the public health, safety, welfare, and quality of life of the Town of Cambria 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 and locations suitable for 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.
- D. To promote public health and safety and prevent risks to the public and neighboring properties potentially posed by battery storage systems.
- E. To regulate the location of these systems in accordance with the Town's Comprehensive Plan.

#### **3. Definitions**

As used in this Article, 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 energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.

**BATTERY ENERGY STORAGE SYSTEM:** One or more devices, assembled together, capable of storing energy in order to supply 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, Tier 2 or Tier 3 Battery Energy Storage System as follows:

- A. Tier 1 Battery Energy Storage Systems are an accessory use that have an aggregate energy capacity less than or equal to 600 kWh. They are located in a “Non-Dedicated-Use-Building” as defined herein and are not permitted to store more than 110% of two (2) days of energy for the use on site, must be contained in an existing principal building, customarily a residence, and are a permitted use. A building permit shall be issued by the Code Enforcement Officer provided applicant is in compliance with all applicable provisions of this Local Law.
  
- B. Tier 2 Battery Energy Storage Systems are an accessory use that have an aggregate energy capacity greater than 600kWh or are comprised of more than one storage battery technology in a room or enclosed area or are located outside of the primary building. Tier 2 Battery Energy Storage Systems may not exceed storage of 110% of two-days’ of energy for the user, and are permitted in an accessory building as defined in the Town Code provided a Special Use Permit is granted by the Planning Board hereunder and provided Site Plan approval hereunder is granted.
  
- C. Tier 3 Battery Energy Storage Systems are a primary use or do not meet the definition of a Tier 1 or Tier 2 system and are limited in size to 1 MW (systems over this size are not allowed in the Town). No stand-alone systems are allowed, these systems need to be associated with a Tier 3 or Tier 4 Solar Energy System as defined in Local law No. 1 – 2021 Regulating Solar Energy Systems, are permitted to store battery power in a “Dedicated Use Building” as defined hereunder to store energy and/or to put stored energy into the power grid and are permitted provided a Special Use Permit is granted by the Planning Board hereunder and provided Site Plan approval hereunder is granted.

**BATTERY ENERGY STORAGE SYSTEM PERMIT:** A permit issued by the Code Enforcement Officer to install a “Battery Energy Storage System “ as defined hereunder.

**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.

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

**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.

**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.

**TOWN:** The Town of Cambria

**TOWN CODE:** The Town of Cambria Zoning Ordinance

**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.

#### **4. Applicability**

- A. The requirements of this Local Law shall apply to all battery energy storage systems permitted, installed, or modified in the Town of Cambria 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 this Local Law.

#### **5. 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 Town of Cambria shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 (“SEQRA”).]
- 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) are 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, all applicable provisions of the codes, regulations, and industry standards as referenced in the Uniform Code, the Energy Code, and the Town Code, and other applicable local, county, state and federal codes and regulations, including Local Law No. 1 – 2021 Regulating Solar Energy Systems, all as may be amended from time to time.
- D. Fees: Fees as set by the Town Board periodically by resolution must be paid at the time of submission of an application for site plan approval, Special Use permit, a building permit, for an amended building permit, or for renewal of a building permit. The applicant, for Tier 2 or 3 projects, may also be required to pay the costs of the Town’s engineers and attorneys for time spent reviewing and analyzing the application

#### **6. Permitting Requirements for Tier 1 Battery Energy Storage Systems**

Tier 1 Battery Energy Storage Systems shall be permitted in all zoning districts, subject to the Uniform Code, and any other applicable local NYS or Federal laws or regulations, and the “Battery Energy Storage System Permit,” of the Town of Cambria, and are exempt from site plan review.

#### **7. Permitting Requirements for Tier 2 Battery Energy Storage Systems**

Tier 2 Battery Energy Storage Systems are permitted through the issuance of a special use permit by the Cambria Planning Board within all zoning districts. Tier 2 Battery Energy Storage Systems shall be subject to the Uniform Code and the site plan application requirements set forth in this Section. Tier 2 Battery Energy Storage Systems associated with a Solar or Wind Energy project shall also only be allowed in conformance with the Town laws associated with these type projects (solar or wind) and this law.

- A. Applications for the installation of Tier 2 Battery Energy Storage System shall be:

- 1) reviewed by the Planning Board for completeness. An application shall be complete when it addresses all matters listed in this Local Law 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, Ownership Changes, Safety, and Permit Time Frame and Abandonment. Applicants shall be advised within 10 business days after the first Planning Board meeting on the application of the completeness of their application or any deficiencies that must be addressed prior to substantive review.
  - 2) subject to a public hearing to hear all comments for and against the application. The Planning Board of the Town shall have a notice printed in a newspaper of general circulation in the Town in accordance with the Town's special use permit requirements. Applicants shall also have delivered the notice by first class mail to adjoining landowners or landowners within 600 feet of the property at least ten (10) days prior to such a hearing. Proof of mailing shall be provided to the Planning Board at the public hearing.
  - 3) referred to the County Planning Board pursuant to General Municipal Law § 239-m if required.
  - 4) upon closing of the public hearing, the Planning Board shall take action on the application within 62 days of the public hearing (or after the SEQR process is completed, if not completed on the day of the public hearing), which can include approval, approval with conditions, or denial. The 62-day period may be extended upon consent by both the Planning Board and Applicant.
- B. 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.
- C. Signage.
- 1) 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.
  - 2) 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.
  - 3) Shall be in conformance with the Town of Cambria Signage laws.
- D. 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.
- E. Vegetation and tree cutting. Areas within 10 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 provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent possible.
- F. 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 45 dBA as measured at the outside wall of any non-participating residence or occupied community building. 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.

G. Soil Removal: All topsoil disturbed during construction reconstruction or modification of each Battery Storage System will be stockpiled and returned to the site upon completion of the activity that disturbed the soil. In the event of a fire or explosion, all contaminated soil must be removed and disposed of at an approved facility.

H. Decommissioning.

1) Decommissioning Plan. The applicant shall submit a decommissioning plan, developed in accordance with the Uniform Code, to be implemented upon abandonment and/or in conjunction with removal from the facility. The decommissioning plan shall include:

- a. A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time, for complete physical removal of all battery energy storage system components, structures, equipment, security barriers, and transmission lines from the site.
- b. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- c. The anticipated life of the battery energy storage system.
- d. The estimated decommissioning costs and how said estimate was determined (no recycle costs will be allowed in this estimate).
- e. The method of ensuring that funds will be available for decommissioning and restoration.
- f. The method by which the decommissioning cost will be kept current.
- g. The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed.
- h. A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.

I. Site plan application. For a Tier 2 Battery Energy Storage System requiring a Special Use Permit, site plan approval shall be required. Any site plan application shall include the following information (unless waived by the Town Planning Board):

- 1) Property lines and physical features, including roads, for the project site.
- 2) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
- 3) A one-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.
- 4) A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.

- 5) 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.
- 6) Name, address, phone number, and signature of the project Applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the battery energy storage system.
- 7) Zoning district designation for the parcel(s) of land comprising the project site.
- 8) 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. Where commissioning is required by the Uniform Code, Battery energy storage system commissioning shall be conducted by a New York State (NYS) Licensed Professional Engineer after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code shall be provided to the Town prior to final inspection and approval and maintained at an approved on-site location.
- 9) 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, NFPA standards and other applicable codes. This plan shall be reviewed by the appropriate Town Fire Department.
- 10) Operation and Maintenance Manual. Such plan shall describe continuing battery energy storage system maintenance and property upkeep, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code.
- 11) Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Planning Board.
- 12) Engineering documents must be signed and sealed by a NYS Licensed Professional Engineer.
- 13) Emergency Operations Plan. 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. 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.

J. Special Use Permit Standards.

- 1) Setbacks. Tier 2 Battery Energy Storage Systems placed outside of the primary structure shall comply with the setback requirements of the underlying zoning district for principal structures or as prescribed below, whichever is greater. The systems:
  - a. Shall not be placed in the front yard.
  - b. Shall be setback a minimum of 50 feet from any side yard or rear yard if not abutting a residential district.
  - c. Shall be setback a minimum of 100 feet from a side yard or rear yard abutting any residential district.
- 2) Height. Tier 2 Battery Energy Storage Systems shall be limited to ten (10) feet in height.
- 3) 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, or as otherwise required in Federal, State, local laws and codes including National Codes and Standards, and/or professional consensus standards.
- 4) 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 not interfering with ventilation or exhaust ports.

- K. 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 Town of Cambria 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 Town 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 Town 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.

**8. Permitting Requirements for Tier 3 Battery Energy Storage Systems**

Tier 3 Battery Energy Storage Systems (as defined in this law – no stand-alone systems) are permitted through the issuance of a special use permit by the Cambria Planning Board within the Town’s Industrial zoning district and shall be subject to the Uniform Code, site plan application requirements set forth in this Section and the requirements of Local Law No. 1 – 2021 Regulating Solar Energy Systems. These systems shall be subject to the same processes, standards, and requirements for Tier 2

systems and other requirements of this Code, with the following additional or modified standards and requirements.

A. Special Use Permit Standards.

- 1) Setbacks. Tier 3 Battery Energy Storage Systems shall be setback a minimum of 500 feet from any property line, and if any adjoining property is zoned residential or commercial, that setback shall be increased to 1,000 feet.
- 2) Height. Tier 3 Battery Energy Storage Systems shall have building/structure height limitation of 20 feet.
- 3) Fencing Requirements. Tier 3 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, or as otherwise required in Federal, State, local laws and codes including impacting national Codes. Standards, and/or professional consensus standards.
- 4) Screening and Visibility. Tier 3 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 not interfering with ventilation or exhaust ports. The Planning Board shall provide the direction on the location and type of screening based on a visual analysis/study to be submitted by the applicant.
- 5) Safety standards. Tier 3 Battery Energy Storage Systems shall meet all required New York State and Federal safety standards including, but not limited to requirements for spill containment, personal protection (eye wash stations, safety showers, etc.) and fire suppression. After completion of a Tier 3 system but prior to beginning operation, the fire department and applicable emergency service providers will be provided a training and education “day” with the owner and equipment manufacturers on the system (at the cost of the owner/applicant).

B. Other Tier 3 Requirements

- 1) A Road Use Agreement with the Town will be required if utilizing Town roads for construction access.
- 2) Insurance Requirements: A Tier 3 BESS shall have the same insurance requirements as a Tier 3 or Tier 4 Solar Energy System project (see local law).
- 3) Decommissioning: Unsafe, inoperable, and/or abandoned battery energy storage systems, and battery energy storage systems for which a special use permit has expired or revoked, shall be removed (equipment removed) by the owner within six months of a determination that the systems is unsafe, inoperable and or abandoned or the special permit having been expired or been revoked. A battery energy storage system shall be deemed abandoned when it fails to store energy at 50 % or less of its designated rating for at least one year (based on yearly reports provided to the Town by the applicant/owners). All safety hazards created by the installation and operation of the battery energy storage system shall be eliminated and the site restored (complete restoration of the site) to its preexisting condition (or as determined in the Decommissioning Plan) within six months of the removal of the battery energy storage system.
- 4) Decommissioning Fund. In addition to the requirement of an approved decommissioning plan (as part of the approval process), the owner and/or operator of the energy storage system, shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town Attorney for the removal of the battery energy storage system, in an amount to be determined by the Town (a minimum of 125% of the Town approved cost of removal in accordance with the decommissioning plan – not to include any recycle value), for the period of the life of the facility. The bond or fund shall be renewed every three to five years, with the cost estimate updated and reflecting inflation. This fund may consist of a letter of credit from a State of

New York licensed-financial institution. All costs of the financial security shall be borne by the applicant.

- a) In the event of default upon performance of such conditions, after proper notice and expiration of any cure periods, the cash deposit, bond, or security shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The cash deposit, bond, or security shall remain in full force and effect until restoration of the property as set forth in the decommissioning plan is completed.
- b) In the event of default or abandonment of the Battery Energy Storage System, the system shall be decommissioned as set forth in this law.

## **9. Safety**

- A. System Certification. Battery energy storage systems and equipment shall be listed by a Nationally Recognized Testing Laboratory to UL 9540, or most recent standard (Standard for battery energy storage systems and Equipment) with subcomponents meeting each of the following standards (or the most recent standard) as applicable:
  - 1) UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power, and Light Electric Rail Applications),
  - 2) UL 1642 (Standard for Lithium Batteries),
  - 3) UL 1741 or UL 62109 (Inverters and Power Converters),
  - 4) Certified under the applicable electrical, building, and fire prevention codes as required.
  - 5) 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.
- B. Site Access. 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 or Tier 3 Battery Energy Storage System is located in an ambulance district, the local ambulance corps.
- C. 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.

## **10. Permit Time Frame and Abandonment**

- A. The Special Use Permit and site plan approval for a battery energy storage system shall be valid for a period of 12 months, provided that a building permit is issued for construction and construction is commenced. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Planning Board, within 12 months after approval, the Town may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 18 months, the approvals shall expire.
- B. The battery energy storage system shall be considered abandoned when it ceases to operate consistently for more than one year. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, enter the property and utilize the available bond and/or security for the removal of a Tier 2 or Tier 3 Battery Energy Storage System and restoration of the site in accordance with the decommissioning plan.

## **11. Construction Inspections**

- A. Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer. The permit holder shall notify the Code Enforcement Officer when any element of work described in Subdivision B of this section is ready for inspection.
- B. Elements of work to be inspected. The following elements of the construction process shall be inspected, where applicable:
- 1) Work site prior to the issuance of a building permit.
  - 2) Footing and foundation.
  - 3) Preparation for concrete slab.
  - 4) Framing.
  - 5) Building systems, including underground and rough-in.
  - 6) Fire-resistant construction.
  - 7) Fire-resistant penetrations.
  - 8) Solid-fuel-burning heating appliances, chimneys, flues or gas vents.
  - 9) Energy Code compliance.
  - 10) Inspection after all work authorized by the building permit has been completed and signed off by the Town Building Inspector and town Engineer.
  - 11) A final inspection by the fire marshal must be completed prior to activation.
- C. Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.
- D. Fee. A fee will be set by the Town Board for construction inspections and that fee must be paid prior to or at the time of each inspection performed pursuant to this section.

## **12. Enforcement**

Any violation of this Battery Energy Storage System Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of Town.

## **13. 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.

**REZONING APPLICATION – NIAGARA COUNTY PROPERTY**

Drew Riley, Wendel, indicated that the County would like to turn their property on Lockport Junction Rd. into a business park. Last month the Town Board authorized a SEQR Coordinated Review. This month the County is asking that the Town Board request a SEQR Positive Declaration of Significance, Acceptance of the Draft Scoping Document and Scheduling a Public Scoping Meeting.

**Resolution for the Issuance of a SEQR Positive Declaration of Significance, Acceptance of the Draft Scoping Document and Scheduling of a Public Scoping Meeting**

WHEREAS, the Town of Cambria has received a Rezoning application from Niagara County, and

WHEREAS, the application is for the rezoning of approximately 60 acres of land, located on the west side of Lockport Junction Road, SBL# 107.00-2-32 from A-R to P-D, and

WHEREAS, it is the intent of Niagara County to create a Business Park, and

WHEREAS, the rezoning application appears to be in conformance with the Comprehensive Plan, and

WHEREAS, pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act - SEQR) of the Environmental Conservation Law, the Cambria Town Board conducted a coordinated SEQR process to designate themselves as Lead Agency and require a GEIS, and no objections to Lead Agency were received.

NOW, THEREFORE BE IT RESOLVED, that the Cambria Town Board has determined that certain significant adverse environmental impacts may result from the proposed action and hereby issues a Positive Declaration of Significance, requiring the preparation of a Generic Environmental Impact Statement (GEIS), in conformance with the SEQR regulations, to fully evaluate the potential adverse environmental impacts associated with this action, and

BE IT FURTHER RESOLVED, that the Cambria Town Board accept the draft scoping document submitted by Niagara County, refers the scoping document to the Planning Board, and schedules a Public Scoping Session for July 14, 2022 at 7:00 pm at the Cambria Town Hall to specify the focus of the GEIS to only the potentially significant adverse impacts that may result from the proposed action, and to eliminate consideration of those impacts that are irrelevant or non-significant.

BE IT FINALLY RESOLVED that the Cambria Town Board authorizes the Town of Cambria Town Clerk to complete the appropriate paperwork and filing requirements and publish the required public meeting notice for the Public Scoping Session.

**Upon a motion duly made by Councilman Foe and seconded by Councilman Musall it was resolved to approve the Resolution for the Issuance of a SEQR Positive Declaration of Significance, Acceptance of the Draft Scoping Document and Scheduling of a Public Scoping Meeting.**

The question of the adoption of the forgoing Resolution was put to a roll call vote, which resulted as follows:

**WRIGHT H. ELLIS, voting AYE**  
**MATTHEW P. FOE voting AYE**  
**BENJAMIN D. MUSALL voting AYE**  
**RANDY M. ROBERTS voting AYE**

*JEFFREY S. HURTGAM absent*

The Resolution was thereupon declared duly adopted.

## TOWN PARK SECURITY CAMERA SYSTEM

Councilman Foe- nothing new to report.

## DISPOSAL OF TOWN PROPERTY

Supervisor Ellis reported the property at the former Lockport Air Station will be appraised by GAR Associates and will be part of the re-val in the next couple months.

## ACCEPTANCE OF 2021 AUDIT AND FINANCIAL STATEMENT

**Upon a motion duly made by Councilman Roberts and seconded by Councilman Foe, it was resolved to acknowledge the receipt and filing of the audit of the Town of Cambria financial statements for the period ending 12/31/2021 as prepared by Lumsden & McCormick, LLP certified public accountants. The audit included the examination of the Justice Court records and dockets, a summary was provided with the report.**

The question of the adoption of the forgoing Resolution was put to a roll call vote, which resulted as follows:

**WRIGHT H. ELLIS, voting AYE**  
**MATTHEW P. FOE voting AYE**  
**BENJAMIN D. MUSALL voting AYE**  
**RANDY M. ROBERTS voting AYE**

*JEFFREY S. HURTGAM absent*

The Resolution was thereupon declared duly adopted.

## TOWN CLERK REPORTS

The Town Clerk reported receipt of the following:

- |                                  |                       |    |              |
|----------------------------------|-----------------------|----|--------------|
| • Town Clerk Report May:         | Total Receipts:       | \$ | 166,799.65   |
| • Building Inspector Report May: | Total fees collected: | \$ | 6,257.15     |
| Estimated value of construction: |                       | \$ | 2,187,255.00 |

### **Building Inspector 2022 Fee Schedule:**

<i>Residential Roof Mount Solar Permit Application Fee</i>	<i>\$125.00</i>
<i>Residential Ground Mount Solar Permit Application Fee</i>	<i>\$150.00</i>
<i>Residential Ground Mount Site Plan for Planning Board</i>	<i>\$200.00</i>
<i>Residential Roof Mount Site Plan for Planning Board</i>	<i>\$200.00</i>

**Upon a motion duly made by Councilman Roberts and seconded by Councilman Musall it was resolved to approve the Building Inspector Fees for residential roof and ground mounted systems for the 2022 Fee Schedule.**

**Ayes: Ellis, Foe, Musall, Roberts**

**-Motion Carried-**

## HIGHWAY SUPERINTENDENT REPORTS

Jon MacSwan, Highway Superintendent, reported as follows:

- Burch Rd. -leveling coat which will sit a couple weeks.
- A couple more roads in the Town need work but holding off until he finds out the price of blacktop.
- Brush pick up will resume next week.
- There will be a ditch project on Rt. 93 next week.

- Trying to keep up with road side mowing.

### **WATER SEWER REPORTS**

- Service repairs on Rt. 31, Church Rd. and Upper Mt. Rd.
- New sewer/water service on Rt. 31.
- Hydrants are being painted.
- Dead end flushing.

### **ATTORNEY REPORTS**

Robert Roberson, Attorney, reported as follows:

Requesting the following resolutions from the Town Board:

**Upon a motion duly made by Councilman Foe and seconded by Councilman Roberts it was resolved to authorize the Town Attorney to proceed with legal proceedings seeking the judicial dissolution of the Cambria Housing Authority.**

**Ayes: Ellis, Foe, Musall, Roberts                    -Motion Carried-**

**Upon a motion duly made by Councilman Foe and seconded by Councilman Roberts it was resolved to authorize the Supervisor to send a letter to the NYS DOT Residential Engineer requesting NO PARKING signs on both sides of State Rt. 425 starting at the intersection (church) Lower Mountain Road and moving west to the creek.**

**Ayes: Ellis, Foe, Musall, Roberts                    -Motion Carried-**

Mr. Roberson reported that the Town of Cambria was sued in December 2021, by Tyler Booth/Forsythe Warren Tavern. This was regarding an Article 78 proceeding as it pertained to an action taken by the Zoning Board of Appeals in October 2021. On May 18, 2022, the judge dismissed the petition without argument and without prejudice in the Town's favor.

Supervisor Ellis reported as follow:

### **BEAR RIDGE SOLAR PROJECT**

Cypress Creek has been put on the list to be eligible for tax credits from NYCERTA and is contingent on being approved by ORESS in getting their permits.

Preparing responses to the supplemental information that was presented by them in response to the second finding of non-completeness of their petition.

### **CONCERNS OF CITIZENS**

#### **Roger Palmer-Subbera Rd.**

Mr. Palmer has contacted WGRZ Channel 2 News and Spectrum News regarding a misleading report that the Governor approved 22 sites (solar). Mr. Palmer indicated to them that she has no power to approve those. He has not heard back from either.

Supervisor Ellis indicated that the Governor was only supposed to announce who was receiving the tax credits.

Mr. Palmer also emailed Senator Ortt to ask if the state's people were looking to get an injunction against the state for home rule. He has heard nothing from the state or county.

**David Godfrey, County Legislator**, reported as follows:

- Junction Road project is very exciting. It is a prime location for an industrial park and it is much needed.
- Economic Development announced that the Façade Program (to fix up the front of small businesses) has a little over \$5,000,000.00 from ARPA Funds and will hopefully bring in over \$13,000,000.00 worth of business.
- Concerned with the Governor's push to get rid of natural gas. New builds must stop gas lines by 2025 and old builds must be converted by 2035. There will not be enough green energy to replace natural gas and the cost for businesses, for example, will be very expensive.

**Sharon Tasner- Subbera Rd.**

Ms. Tasner asked the Legislator what they are doing about the issues that are concerning the citizens. The Legislature, Mr. Ortt, Mr. Morinello were asked to keep an account of what is being done with regard to the proposed solar project. So far nothing has been reported. There was misinformation to the public last week and Ms. Tasner has received numerous messages with people thinking the project was approved. She feels something needs to be done.

Mr. Godfrey reported that the County is working with Senator Ortt, Assemblyman Norris and Assemblyman Morinello. It comes down to the voters.

Ms. Tasner stated that they just need reassurance that they are handing it to somebody.

**DOT-RESPONSE LETTER**

Supervisor Ellis reported that the Town Board received a response letter from the DOT re: the guard rail on the intersection of Rt. 425 and Upper Mountain Rd. and they will be conducting a study of the area.

**NEW BUSINESS**

**PROCUREMENT POLICY PURCHASE**

**2022-10 General**

Sealing of the Town Hall Parking Lot

**QUOTES:**

Baughman Magic Seal \$6,595.00

***Black Gold Sealer \$4,347.00***

Ohol Driveway Sealing no hard copy provided

**Upon a motion duly made by Councilman Musall and seconded by Councilman Roberts it was resolved to approve a purchase from Black Gold Sealer in the amount of \$4,347.00 to seal the Town Hall parking lot.**

**Ayes: Ellis, Foe, Musall, Roberts**

**-Motion Carried-**

Mr. MacSwan, Highway Superintendent, is working on quotes for repair of Community Room roof and should be ready for the July meeting.

**ADDITIONAL MATTERS**

**COMSTOCK RD. AND MEAHL RD. SANITARY SEWER EXTENSIONS**



**ADJOURNMENT**

**As there was no further business, the meeting was adjourned by motion made by Councilman Musall and seconded by Councilman Foe. Time: 7:51 pm**

**Ayes: Ellis, Foe, Hurtgam, Musall,**

**-Motion Carried-**

Respectfully submitted,

Tamara J. Cooper, Town Clerk