

Bennington Town Board

August 14, 2024

Workshop Session 6:30 p.m.

Audit of bills; Highway Dept report; review Board meeting agenda

In attendance: Supervisor Ellen Grant, Councilmembers Michael Gadd, Joyce Mohun, Clerk Joanne Rosenthal. Absent: Highway Superintendent Jake Jansen, Councilmembers Chris Domes, Bernard Frounick

Regular Board Meeting 7:30 p.m.

Call Meeting to Order by Supervisor Grant; pledge of allegiance led by J. Mohun.

Set Agenda - no additions.

Report of Conflict of Interest - no conflicts.

<u>Financial Matters</u>	General Fund vouchers	# 152 to #183.	\$ 20,189.53.
	Highway Fund vouchers	#246 to #270.	\$ 40,290.17.
	Cowlesville Water vouchers	# 33 to # 38.	\$ 8,673.78.
	Cowlesville Light vouchers	# 8.	\$ 149.89.

Motion by J. Mohun, seconded by M. Gadd to approve vouchers for payment.

Ayes: All (3). Noes: 0. Abstain: 0. Absent: 2. (Domes, Frounick).

Financial Reports Supervisor Grant presented the Monthly Report of Supervisor.

Motion by J. Mohun, seconded by M. Gadd to approve the Financial Reports ending 7/31/2024.

Ayes: All (3). Noes: 0. Abstain: 0. Absent: 2. (Domes, Frounick).

Appropriation of Funds

Federal ARPA (American Rescue Plan Act) funding \$106,357.98 to the General Fund.

Transfer of Funds

From	General Fund – ARPA Revenue	\$106,357.98.
To	Highway Fund	46,000.00.
To	Special District – Lighting	357.98.
To	Special District – Water	60,000.00.

Motion by J. Mohun, seconded by M. Gadd to approve Appropriation & Transfers to accounts.

Ayes: All (3). Noes: 0. Abstain: 0. Absent: 2. (Domes, Frounick).

Unfinished Business:

Resolution #2024-8-1

**Resolution of the Town of Bennington Town Board
Approving the Site Plan for the NY Bennington 1, LLC
Large-Scale Solar Energy System Project.**

Bennington Town Board

August 14, 2024

BACKGROUND

WHEREAS, Edward H. Halsted and Terry A. Halsted (“Owner”) are the owners of an approximately 100.35-acre parcel of land located on Church Road in the Town of Bennington, Wyoming County, New York, identified on the Tax Map as Section 4, Block 1, Lot 3.1 (“Property”);

WHEREAS, NY Bennington I, LLC (the “Applicant”) is the lessee of a 13.364-acre portion of the Property (the “Project Site”); and

WHEREAS, on or about June 12, 2023, the Applicant submitted a Zoning Permit Application and supporting materials for a Special Use Permit and Site Plan Approval (the “Applications”) to construct and operate a 2.063 MW/ac solar farm array to be known as the Church Road Solar Farm Project (the “Project”) pursuant to the Town of Bennington Solar Law (Local Law No. 2 of 2017, the “Solar Law”) on the Project Site; and

WHEREAS, as part of its Applications, the Applicant submitted for the Town of Bennington Town Board’s (“Town Board”) review and consideration, the following materials in support of the Applications:

- Full Environmental Assessment Form, Part 1, dated June 9, 2023, last revised December 4, 2023 (“Long EAF”);
- Agricultural Data Statement, dated June 8, 2023;
- Preliminary Site Plan Set, dated June 12, 2023, last updated December 4, 2023 (“Site Plan”);
- Lease Agreement (redacted), dated October 21, 2021, by and between the Owner and Delaware River Solar, LLC (“DRS”), an affiliate of the Applicant (“Lease”);
- Project Memorandum, dated June 21, 2023 (“Project Memorandum”);
- Operations and Maintenance Plan, dated June 21, 2023;
- Decommissioning Plan, dated June 21, 2023, revised December 4, 2023 (“Decommissioning Plan”);
- ALTA Survey of Project Site, dated August 9, 2023;
- Line of Site diagrams, dated October 3, 2023 (“Line of Site Diagrams”);
- Visual Renderings, dated December 4, 2023 (“Visual Renderings”);
- New York State Electric & Gas Coordinated Electric System Interconnection Review, dated March 2, 2023 (“CESIR”);
- Response to Public Hearing Comments, dated October 6, 2023 (“October Response to Public Hearing Comments”); and

- Town Engineer Comment Response letter dated December 4, 2023.

WHEREAS, on June 21, 2023, the Town of Bennington Planning Board ("Town Planning Board") reviewed the Project and provided comments to the Town Board; and

WHEREAS, on or about July 12, 2023, the Town Board, having previously notified all involved agencies of its intent, declared itself as Lead Agency under the State Environmental Quality Review Act (ECL Article 8 and its implementing regulations at 6 NYCRR Part 617, collectively "SEQRA"), began reviewing the Project in its role as lead agency pursuant to SEQRA and the Town of Bennington Zoning and Solar Laws; and

WHEREAS, on July 12, 2023, the Town Board referred the Project to the Wyoming County Planning Board ("County Planning Board") for review under GML 239m; and

WHEREAS, on August 7, 2023, the County Planning Board issued its Referral Response of no significant negative county-wide or inter-community impacts; and

WHEREAS, on or about August 9, 2023, the Town Board issued a Resolution requiring the Project to enter into a PILOT with the Town, and set a Public Hearing for September 13, 2023 on the Special Use Permit; and

WHEREAS, on or about September 13, 2023, the Town Board opened a duly noticed public hearing on the Special Use Permit and continued the public hearing to its October 11, 2023 meeting; and

WHEREAS, on Saturday, November 4, 2023, the Town Board held a special session to finalize its SEQRA review of the Project; and

WHEREAS, the Town Board coordinated the review of the Applications with several involved and interested agencies including the New York State Energy Research and Development Authority ("NYSERDA"), New York State Department of Environmental Conservation, Wyoming County Department of Planning and Development and New York State Department of Agriculture and Markets; and

WHEREAS, the Town Board's consultant MRB Group, Engineering, Architecture & Surveying, D.P.C. ("MRB Group"), reviewed the Applications, the supporting materials submitted by the Applicant, including a revised Site Plan, Line of Site Diagrams, Visual Renderings, the public hearing comments and responses to public comments and advised the Town Board that no significant adverse impacts to the environment will result from the development and operation of the Project as proposed; and

WHEREAS, on December 6, 2023, the Town Board considered the opinion of MRB Group, the criteria for determining significance as set forth in 6 NYCRR §617.7(c)(1) and the information contained in the Long EAF Part 1 and completed Part 2 and Part 3 of the Long EAF and issued a Negative Declaration under SEQRA; and

Bennington Town Board

August 14, 2024

WHEREAS, on May 8, 2024, the Town Board unanimously adopted a resolution issuing a Special Use Permit for the Project (“May 8 Resolution”); and

WHEREAS, the Town Board has determined the Project meets all the requirements of Local Law No. 2 of 2017, and the Town Board desires to approve the Site Plan, which consists of the following:

- Drawing No. C000, Cover Sheet, last revised December 4, 2023
- Drawing No. C001, General Notes, dated June 12, 2023
- Drawing No. C002, Specification Notes, dated June 12, 2023
- Drawing No. C003, Area Parcel Plan, dated June 12, 2023
- Drawing No. C004, Existing Conditions Plan, dated June 12, 2023
- Drawing No. C005, Site Plan, last revised October 4, 2023
- Drawing No. C006, Overall Grading Plan, dated June 12, 2023
- Drawing No. C007, Landscaping Plan, last revised December 4, 2023
- Drawing No. C008, Grading & Erosion Control Plan, dated June 12, 2023
- Drawing No. C009, Grading & Erosion Control Plan, dated June 12, 2023
- Drawing No. C010, Driveway Profile, dated June 12, 2023
- Drawing No. C011, Details I, dated June 12, 2023
- Drawing No. C012, Details II, dated June 12, 2023
- Drawing No. C013, Details III, dated June 12, 2023
- Drawing No. C014, Details IV, dated June 12, 2023
- Drawing No. C015, Details V, dated June 12, 2023
- Drawing No. C016, Details VI, dated June 12, 2023
- Drawing No. C017, Details VII, dated June 12, 2023

FINDINGS

The Findings of the Town Board as made by the duly adopted May 8 Resolution are hereby confirmed and readopted for purposes of these resolutions. All capitalized terms not otherwise defined in this resolution shall have the respective meanings ascribed thereto in the May 8 Resolution.

Decision

In reliance on the findings set forth in the May 8 Resolution and after review of the Applications and supporting materials, the Applicant’s presentations at the June 21, 2023 Town Planning Board meeting; July 12, 2023 Town Board meeting; August 7, 2023 County Planning Board meeting; August 9, 2023 Town Board meeting; September 13, 2023 Town Board meeting; October 11, 2023 Town Board meeting; November 4, 2023 Town Board meeting; November 15, 2023 Town Planning Board meeting and December 6, 2023 Town Board meeting; after consideration of the comments made at the public hearings held on September 13, 2023 and October 11, 2023 and the Applicant’s response to public hearing comments; and after due deliberation,

August 14, 2024

BE IT RESOLVED that the Town Board finds that the Applicant has submitted all applicable materials, met all applicable requirements as set forth in the Solar Law and hereby approves the Application and Site Plan for the proposed large-scale ground mounted solar energy system in accordance with the layout, design, specifications and notes shown on the Site Plan, subject to all applicable laws and conditions; and, be it further

RESOLVED that the Town Board hereby authorizes the Supervisor or her designee to sign and stamp the Applicant's Site Plan; and, be it further

RESOLVED that the foregoing Resolution(s) are subject to the following conditions:

1. The Applicant shall submit to the Zoning Enforcement Officer prior to the issuance of any building permit(s) the following:
 - a. A copy of a resolution from the Town Board granting Site Plan Approval of the Project;
 - b. An executed Host Community Benefit Agreement, between the Applicant and the Town for the Project in a form subject to the reasonable approval of the Town's Special Counsel, which shall include: (i) a payment by Applicant to the Town of \$10,000 per MW/AC within thirty (30) days of the Project's commercial operations date ("COD"), (ii) an annual payment on the anniversary date of the COD in the amount of \$2,000 per MW/AC, with annual increases in an amount equal to 2% and (iii) for a term matching that of the Project through completion of decommissioning;
 - c. Evidence of the Applicant and Wyoming County Industrial Development Agency entering into a Payment In Lieu of Taxation Agreement;
 - d. Copies of equipment specification sheets for the photovoltaic panels, mounting systems, inverters and all other significant system components pursuant to the requirements of Section 13(4)(A)(3) of the Solar Law; and evidence that electric components meet applicable UL Standards;
 - e. A copy of the property Operation and Maintenance Plan pursuant to the requirements of Section 13(4)(A)(4) of the Solar Law;
 - f. A Decommissioning Agreement between the Project owner and the Town in a form subject to the reasonable approval of the Town's Special Counsel incorporating the terms and conditions of the Decommissioning Plan that complies with the requirements of Section 13(4)(A)(5);
 - g. A bond to secure the costs of decommissioning subject to the reasonable approval of the Town's Special Counsel and MRB Group as to form and amount pursuant to the requirements of Section 13(4)(A)(6) of the Solar Law;

Bennington Town Board

August 14, 2024

- h. A copy of a Road Maintenance Agreement approved as to form by MRB Group;
 - i. A permit from Wyoming County Highway Department for construction of the entry road to the Project Site, if one is required;
 - j. A Stormwater Pollution Prevention Plan (“SWPPP”) approved by MRB Group or evidence that a SWPPP is not required;
 - k. Evidence of submission of an Emergency Response Plan to the Fire Department; and
 - l. Start of construction of the Project not later than eighteen (18) months after the later issuance of a Special Use Permit and approval of a Site Plan, if the Special Use Permit has not been rescinded.
2. Prior to COD, the Applicant shall install warning signs meeting the requirements of Section 13(4)(B)(5) of the Solar Law and approved by the Zoning Enforcement Officer; and, be it further

RESOLVED, that the Supervisor shall file a report of its final action by these resolutions with the County Planning Board within thirty (30) days of these resolutions; and, be it further RESOLVED, that these resolutions shall take effect immediately.

Motion by J. Mohun, second by M. Gadd to approve.

ROLL CALL	Yea	Nay	Abstain	Absent
Supervisor Grant	Yea			
Councilmember Domes		Absent		
Councilmember Frounick		Absent		
Councilmember Gadd	Yea			
Councilmember Mohun	Yea			

Ayes: All (3). Noes: 0. Abstain: 0. Absent: 2. (Domes, Frounick).

Certified copy forwarded to DiMatteo Law Firm, Melissa Melko, Delaware River Solar.

Resolution #2024-8-2 Resolution of the Town of Bennington Town Board Approving the Site Plan for the Niagara NY Solar Large-Scale Solar Energy System Project

Bennington Town Board

August 14, 2024

WHEREAS, The Town of Bennington received a proposal for a change for zone, Special Use Permit application and Site Plan Approval application from Duke Energy Renewables on March 27, 2019; and

WHEREAS, The Town of Bennington declared its intent to be the Lead Agency under the State Environmental Quality Review Act (SEQRA) for the purposes of review of said applications and classified the project as a Type 1 Action; and

WHEREAS, The project referral was made to the Wyoming County Planning Board, a public notice of the project, and an agreement to enter into an escrow account for expenses incurred by the Town, on May 8, 2019; and

WHEREAS, Public hearings were held on June 12, 2019 and July 10, 2019 to hear comments from the community, with said public comment period closing on July 10, 2019; and

WHEREAS, Following public hearings, all materials were forward from the Town to the Wyoming County Planning Board for their review and recommendation for their August 1, 2019 meeting; and

WHEREAS, On August 5, 2019, the Wyoming County Planning Board issued their approval of the application to the Town of Bennington; and

WHEREAS, On August 14, 2019, the Town set a workshop date of August 27, 2019 for the applicant to meet with Town Officials and its representatives to review the SEQRA Application and financial agreements; and

WHEREAS, The following agencies had a part in reviewing the application: Town of Bennington Planning Board and Town Board, New York State Department of Environmental Conservation, New York State Department of Transportation, Wyoming County Planning Board, United States Army Corps of Engineers and the MRB Group (Town engineering consultants); and

WHEREAS, The Town approved applicable zoning changes, Special Use Permit, and Site Plan Approval for the Niagara NY Solar Project on September 11, 2019; and

WHEREAS, The Town issued a two-year extension of the Special Use Permit and Site Plan Approval that will expire December 29, 2025; and

WHEREAS, The Applicant has supplied additional requested information including an updated Site Plan and Decommissioning & Site Restoration Plan and a preliminary Operations and Maintenance Plan for the Project; and

WHEREAS, The Applicant agrees to provide to the Town and the Wyoming County Fire and Building Codes Department a Stormwater Pollution Prevention Plan and a Maintenance Plan for approval at the time of application for a Building Permit;

Bennington Town Board

August 14, 2024

NOW, THEREFORE BE IT RESOLVED, That after due deliberation, the Town Board finds that the Applicant has submitted all applicable materials, met all applicable requirements as set forth in the Solar Law and hereby approves the Site Plan for the proposed large-scale ground mounted solar energy system in accordance with the layout, design, specifications and notes shown on the Site Plan, subject to all applicable laws and conditions; and, be it further

RESOLVED that the Town Board hereby authorizes the Supervisor or her designee to sign and stamp the Applicant's Site Plan; and, be it further

RESOLVED that the foregoing Resolution(s) are subject to the following conditions:

3. The Applicant shall submit to the Zoning Enforcement Officer prior to the issuance of any building permit(s) the following:
 - a. A copy of a resolution from the Town Board granting Site Plan Approval of the Project;
 - b. An executed Host Community Benefit Agreement, between the Applicant and the Town for the Project in a form subject to the reasonable approval of the Town's Special Counsel.
 - c. Evidence of the Applicant and Wyoming County Industrial Development Agency entering into a Payment In Lieu of Taxation Agreement;
 - d. Copies of equipment specification sheets for the photovoltaic panels, mounting systems, inverters and all other significant system components pursuant to the requirements of Section 13(4)(A)(3) of the Solar Law; and evidence that electric components meet applicable UL Standards;
 - e. A copy of the property Operation and Maintenance Plan and Landscaping Plan pursuant to the requirements of Section 13 of the Solar Law;
 - f. A Decommissioning Agreement between the Project owner and the Town in a form subject to the reasonable approval of the Town's Special Counsel incorporating the terms and conditions of the Decommissioning Plan that complies with the requirements of Section 13(4)(A)(5);
 - g. A bond to secure the costs of decommissioning subject to the reasonable approval of the Town's Special Counsel and MRB Group as to form and amount pursuant to the requirements of Section 13(4)(A)(6) of the Solar Law;
 - h. A Stormwater Pollution Prevention Plan ("SWPPP") approved by MRB Group.
 - i. Evidence of submission of an Emergency Response Plan to the Fire Department; and

August 14, 2024

- j. Start of construction of the Project not later than eighteen (18) months after the later issuance of a Special Use Permit and approval of a Site Plan, if the Special Use Permit has not been rescinded.
4. Prior to COD, the Applicant shall install warning signs meeting the requirements of Section 13(4)(B)(5) of the Solar Law and approved by the Zoning Enforcement Officer; and, be it further

RESOLVED, that the Supervisor shall file a report of its final action by these resolutions with the County Planning Board within thirty (30) days of these resolutions; and, be it further

RESOLVED, that these resolutions shall take effect immediately.

Motion: J. Mohun. Second: M. Gadd.

ROLL CALL	Yea	Nay	Abstain	Absent
Supervisor Grant	Yea			
Councilmember Domes	Absent			
Councilmember Frounick	Absent			
Councilmember Gadd	Yea			
Councilmember Mohun	Yea			

Ayes: All (3). Noes: 0. Abstain: 0. Absent: 2. (Domes, Frounick).

Certified copy forwarded to Joe Kirisits - SunEast Power

New Business:

Resolution #2024-8-3 Set Date for Public Hearing on Local Law #4 Year 2024 to extend a Moratorium for six months on the acceptance of applications for Solar Energy Projects within the Town of Bennington.

WHEREAS, The Town Board of the Town of Bennington met at a regular board meeting at the Town Offices of the Town of Bennington located at 905 Old Allegany Road, Attica, in the Town of Bennington, New York on the 14th day of August, 2024, commencing at 7:30 p.m., at which time and place the following members were present: Supervisor Grant, Councilmembers Mohun and Gadd. Absent: Councilmembers Frounick and Domes.

WHEREAS, all Board Members, having due notice of said meeting, and that pursuant to Article 7, §104 of the Public Officers Law, said meeting was open to the general public and due and proper notice of the time and place whereof was given as required by law; and

Bennington Town Board

August 14, 2024

WHEREAS, the Town Board of the Town of Bennington has considered a proposed local law known as “Extending the Moratorium on Applications, Approvals, and/or Construction or Installation of Solar Energy for a Six Month Period” to temporarily halt development of solar, for an additional period of up to 6 months, while the Town considers comprehensive zoning changes and the enactment of zoning measures to specifically address the matters of community concern; and

WHEREAS, pursuant to section 239 l-m of the General Municipal Law, said local law with all supporting documents is to be submitted to the Wyoming County Planning Board for its comments; and

WHEREAS, the Town Board of the Town of Bennington recognizes that this local law is a Type II Action under SEQR, and therefore SEQR review will not be required as there are no adverse environmental impacts; and

WHEREAS, the Town Board of the Town of Bennington finds it in the best interest of the Town of Bennington to hold a public hearing on the adoption of said local law.

NOW ON MOTION OF J. Mohun which has been duly seconded by M. Gadd, be it

RESOLVED, by the Town Board of the Town of Bennington will hold a public hearing on the proposed local law on the 11th day of September, 2024, at 7:30 p.m., at which time and place all interested parties and citizens for or against the proposed law will be heard.

Ayes: All (3). Noes: 0. Abstain: 0. Absent: 2. (Domes, Frounick).

Certified copy forwarded to DiMatteo Law Firm.

Communications

Minutes of Previous Meetings - all minutes approved as submitted.

Supervisor

- Presented letter of resignation from Park Maintenance worker John Perl.
- Presented from Wyoming Co. Office of Aging a Senior Form to be held on Wednesday, August 21, 2024 at the Arcade School. RSVP required.

Town Clerk

Certificate of Liability Insurance on file for TRJ of Rochester INC. DBA Generator Supercenter of Upstate NY.

Departments

Highway

- Paving done August 14-16 on the North half of Tinkham Rd.
- Maintenance work being done on Sierk Rd., Graff Rd., and Sinn Rd.

Town Clerk

- Presented Town Clerk July monthly report for disbursement of received funds.
- Vital Statistics 2024 YTD. Birth 0. Marriage Permits Issued 6. Deaths 10.
- Presented Wyoming County Zoning Dept. Monthly Report for July 2024.

Zoning/Planning

- Update on Zoning Law per member of ZBA - no pole barns are permitted unless property is occupied.

Assessor

- Modifications to Senior Citizens and Veterans exemptions - Jim Kirsch presented fact sheets on Cold War Veterans Exemptions, Alternative Veterans Exemptions, Aged Exemption Income Limits. Make an appointment for clarification.

Recreation

- The Summer Swim Program at Byrncliff Resort ends on August 15, 2024. There were 51 children enrolled this year.

Water District

- Installation of new water meters in the Cowlesville Water District continues with an anticipated completion date of November 1, 2024 .

Petitions and public concerns

- The Cowlesville Historical Society/Museum had repair work done to the outside facia; it is recommended that a new roof be considered.
- Highland Glens HOA is considering a 2 megawatt solar project. Present: Anthony Bell, Renewable Properties, Senior Permitting Manager.
- Town Historian Michael Mohun - Look for more information regarding an October 2024 presentation, a 50 minute documentary on local veterans interviews done.
- Forest Hill Cemetery in Buffalo, NY purchased the cemetery on Rt. 98 in Attica and renamed it Forest Hill Cemetery.

Any other Business to Come before the Board/County Matters

None presented.

Adjourn meeting at 8:53 pm.

Motion by J. Mohun

Attendance: 21