

**UNION VALE TOWN BOARD MEETING DECEMBER 5, 2019
TOWN HALL 249 DUNCAN ROAD LAGRANGEVILLE NY 7:30 PM**

PRESENT: Supervisor Maas
Councilmen: Steven Frazier, Corrina Kelley, David McMorris, John Welsh (Late arrival)
Attorney: Jeffrey Battistoni
Town Clerk: Andrea Casey
East Light Partners: Wendy DeWolf

Supervisor Maas opened the meeting at 7:38 PM for the purpose of discussing the Solar Development project and passing corresponding resolutions. Attorney Battistoni spoke about the background purposes the EAF Part 1. Part 2 is included in the packet tonight and he spoke further about the meaning of the negative SEQRA declaration and how it declares there was no significant environmental impacts found.

RESOLUTION 19- 35: SEQRA NEGATIVE DECLARATION AND NOTICE OF DETERMINATION OF NON-SIGNIFICANCE (See Resolutions)

RESOLUTION 19-36: DETERMINATION AS TO MONROE BALANCING OF INTERESTS TEST AND APPROVAL OF APPLICATION (See Resolutions)

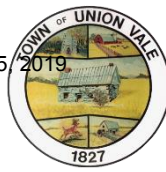
There was further discussion on the decommissioning plan and East Light Partner, Wendy DeWolf, also spoke on this subject matter. Councilwoman Kelley read the language in the contract regarding the financial security details in the decommissioning plan.

Ms. DeWolf explained that this serves 2 purposes; in the event the site is no longer in use after 20+ years or if the company is no longer in business after 15 years there will be money to restore the facility. The \$89,481.70 is what the engineer has deemed necessary, with inflation, to return the site to its original form. There was further discussion on the language and it will be revisited.

Ms. DeWolf then gave a project update to Board and those in attendance; they have submitted a request for site entrance/exit to DOT which is under review but thought to not pose any issues. They are still awaiting the interconnectivity to Central Hudson which will determine if the project will move forward and they are also waiting the PILOT (payment in lieu of taxes) for the Arlington School District. The County already agreed to not take the PILOT. If everything pans out, construction is slated to begin this summer.

The formal meeting was adjourned at 8:20 PM so they could finish any workshop discussions on other Town matters.

Respectfully Submitted,
Andrea Casey
Town Clerk



RESOLUTION 19- 35: SEQRA NEGATIVE DECLARATION AND NOTICE OF DETERMINATION OF NON-SIGNIFICANCE

This Resolution is issued pursuant to 6 NYCRR 617 pertaining to Environmental Conservation Law Article 8 (the State Environmental Quality Review Act).

Name and address of Lead Agency: Town of Union Vale Town Board (see below)

Name, address and phone number of person who can provide additional information:

Betsy Maas, Supervisor, Town of Union Vale Town Hall, 249 Duncan Road, LaGrangeville, NY 12540; (845)724-5600

Brief Description of Action: The application requested that the Town of Union Vale Town Board perform a Monroe Balancing Test to consider a proposed two megawatt solar energy facility on town-owned property located on Route 55, generally identified as 2006 Route 55, and constituting of portions of property identified as tax map parcels 135400-6660-00-544087-0000, 135400-6660-00-555048-0000, 135400-6660-00-638053-0000 and 135400-6660-00-655022-0000. A Land Lease for this property and this facility had been executed between the Town of Union Vale and ELP Union Vale Solar LLC for this purpose, subject to the latter obtaining all approvals and permits needed for the installation of the facility.

SEQOR classification of Action: Unlisted Action

Location of Action: Generally, 2006 Route 55 on real property owned by the Town of Union Vale, Dutchess County, New York and identified by the tax map parcels above listed.

PROCEDURAL AND DOCUMENTARY BACKGROUND:

1. The Town of Union Vale Town Board executed a Land Lease Agreement (herein, the "Agreement") with ELP Union Vale Solar LLC for the lease of portions of real property identified as tax map parcels 135400-6660-00-544087-0000, 135400-6660-00-555048-0000, 135400-6660-00-638053-0000 and 135400-6660-00-655022-0000 (herein, the "Property") for purposes of installation and maintenance of a two megawatt solar energy system (herein, the "Facility"), subject to ELP Union Vale Solar LLC obtaining all necessary approvals and permits. An environmental review was performed and a Negative Declaration issued which related solely to the execution of the Agreement and not in relation to any application which might be submitted pursuant to the Agreement.

2. The Resolution which authorized the Agreement was subject to permissive referendum. A notice of the adoption of the Resolution was duly posted and published pursuant

to New York State Town Law Section 90. The period for filing a petition seeking a permissive referendum expired and no such petition was filed.

3. ELP Union Vale Solar LLC submitted an application to the Town of Union Vale dated August 1, 2019 seeking approval from the Town for the Facility and requesting that the Town of Union Vale Town Board consider whether the Facility should be immune from local zoning regulations pursuant to the “balancing of interests” test enunciated by the New York State Court of Appeals in Matter of County of Monroe v. City of Rochester, 72 N.Y.2d 338 (1988).

4. The application included the following documents:

- A. Site Work Permit Application.
- B. Site Plan Drawing Set.
- C. Full Environmental Assessment Form.
- D. Stormwater Management Report, subsequently modified.
- E. Memorandum of Lease.
- F. Subsequently, correspondence dated November 22, 2019 related to Blanding’s Turtles was added.

5. By Resolution dated August 15, 2019, the Town of Union Vale Town Board classified the action as an Unlisted Action, declared its intent to serve as Lead Agency and authorized the circulation of the application. The application was circulated to the New York State Department of Transportation and the New York State Department of Environmental Conservation. Referrals were made pursuant to the NYS General Municipal Law to the Dutchess County Department of Planning and Development and the Town of Beekman. No agency served a notice declaring intent to serve as Lead Agency, nor any objection to the Town of Union Vale serving as Lead Agency.

6. By the same Resolution, the Town of Union Vale Town Board scheduled a public hearing for September 19, 2019 to review whether the application should be exempt from local land use regulations under the standards set forth in Matter of County of Monroe v. City of Rochester, 72 N.Y.2d 338 (1988).

7. The Dutchess County Department of Planning and Development advised that a referral pursuant to General Municipal Law Section 239-m was not needed for a matter involving the balancing of interests tests set forth in Matter of County of Monroe v. City of Rochester, 72 N.Y.2d 338 (1988).

8. The New York State Department of Environmental Conservation issued a conditional approval on November 7, 2019 for this proposed Post Closure Use Modification of the capped landfill.

WHEREAS, this determination of non-significance, i.e. negative declaration, is prepared in accordance with Article 8 of the Environmental Conservation Law: the State Environmental Quality Review Act (“SEQRA”) and its implementing regulations set forth in 6 NYCRR Part 617 (“Regulations”); and

WHEREAS, the Town of Union Vale Town Board hereby declares itself the Lead Agency involved in this SEQRA review; and

WHEREAS, the Town of Union Vale Town Board has classified this Action as an Unlisted action pursuant to 6 NYCRR § 617; and

WHEREAS, the Town of Union Vale Town Board has caused the preparation of Part II of the FEAF and intends that this negative declaration be attached to it and become a part of it; and

WHEREAS, the Town of Union Vale Town Board has reviewed the Action and all of the above referenced supporting information, public comments and documentation and has determined that there will be no significant adverse environmental impacts associated with the Action; and

WHEREAS, this negative declaration is supported and substantiated by the following conclusions of the Lead Agency:

1. The action will not have a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; nor a substantial increase in potential for erosion, flooding, leaching or drainage problems.

The Town Board begins by noting the very strong policy in New York to promote solar energy. The policy, identified as NY-Sun, involves a \$1 billion dollar initiative with the goal of establishing a sustainable, self-sufficient solar industry. The policy notes, as does the NYSDEC website, that solar energy “is abundant, non-polluting and does not emit greenhouse gases responsible for global warming”. To further promote this policy, the SEQRA regulations in 6 NYCRR 617.5 were amended to make the “installation of solar energy arrays where such installation involves 25 acres or less of physical alteration on ... closed landfills” a Type II action. The current action involves, in part, such a project. In addition, the New York State Department of Environmental Conservation issued a conditional approval on November 7, 2019 for this modification of the capped landfill.

The action calls for the installation of an “unmanned” facility. Neither a well, nor a septic system will be installed. The facility and related equipment will not generate solid waste and will have no impact on air quality. Erosion and drainage impacts were addressed in the Stormwater Management Report submitted by the applicant and updated to address concerns raised. Although construction vehicles will generate modest traffic impact during

periods of construction, following completion of construction, almost no traffic will be generated by the site. The construction period has been estimated as five months after construction commences. Any required Protection of Waters Permits and Wetlands Permits will be obtained.

The site plan shows that the improvements will be enclosed by a seven foot high deer fence (wooden posts with metal mesh) and a self-locking gate. There will be 4 foot high evergreen shrubs installed every ten feet outside of the fence. No exterior lighting is proposed except for safety lighting and no signage is proposed except for required electrical warning signage.

2. The action will not result in the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources.

The site consists, in part, of a closed landfill. On the entire site, very few trees, if any, and very little vegetation needs to be removed. The action will have no impact on fish as there are no waterbodies or watercourses being disturbed. The project will have no significant impact on resident or migratory wildlife species.

Although the Property may be a site involving Indiana Bats, the applicant will only be able to cut and remove trees and habitat for such bats during periods permitted by the US Fish and Wildlife Service and must obtain any required permits from such Service. Although the Property may be a site involving Blanding's Turtles, the applicant has committed to follow the mitigation measures identified in the publication "Blanding's Turtle Habitat in Dutchess County" by Hudsonia Ltd. if any Blanding's Turtles are identified on site during construction.

A gravel driveway will be installed for access to the site. It will provide access for construction purposes, but following completion of construction, will only be accessed for maintenance and emergency purposes. It will not be open to the public for use and will be secured by a self-locking gate and fencing. Required silt fencing will be installed and maintained during construction.

3. There will be no impairment of the environmental characteristics of a critical environmental area as designated pursuant to section 6 NYCRR 617.14(g), because the property does not include and does not border such an area.

4. The action does not create a material conflict with a community's current plans or goals as officially approved or adopted.

As noted above, New York State now has a very strong policy promoting the use of solar energy systems. The Town also encourages solar energy in its Code Section on solar energy systems.

5. The action will not result in the impairment of the character or quality of important historical, archeological, architectural or aesthetic resources of existing community or neighborhood character.

No such resources exist on this section of Route 55, which has intermittent commercial development and substantial commuter traffic. Part of the property involves a closed landfill and the Town's transfer station.

6. The action will not result in a major change in the use of either the quantity or type of energy.

The action involves the use of solar energy which, as stated above, has been declared to be abundant and non-polluting, and does not emit greenhouse gases.

7. The action will not result in the creation of a hazard to human health.

By promoting the use of solar energy, the action should have a positive effect on human health.

8. The action will not result in a substantial change in the use, or intensity of use, of land, including agricultural, open space or recreational resources, or in its capacity to support existing uses.

As above stated, part of the site involves a closed landfill and the Town's transfer station. The remaining portion is not currently used for agriculture, open space of any significance or recreation.

9. The action will not encourage or attract a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action.

As stated above, the Facility will be "unmanned". The Facility is not open to the public and, following completion of construction, would only be accessed by maintenance and emergency personnel.

10. The action will not result in the creation of a material demand for other actions that would result in one of the above consequences.

The action will not result in the creation of a material demand for anything. Please see number "9" above.

11. The action will not result in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment.

None of the above criteria results in a significant impact on the environment and the combination of any impacts will also not result in a substantial adverse impact.

12. This action does not involve two or more unrelated actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria above listed.

This action is a stand-alone action which does not involve any related actions.

NOW, THEREFORE, BE IT RESOLVED, that the Town of Union Vale Town Board has determined that the Action will not have any significant adverse impact on the environment; and

BE IT FURTHER RESOLVED, that the Town Board of the Town of Union Vale issues this Negative Declaration in relation to the Town Board's decision on the Monroe balancing of interests test and the approval of the application for the Facility; and

BE IT FURTHER RESOLVED, that the Town of Union Vale Town Board hereby issues this Negative Declaration and notice thereof pursuant to the requirements of SEQRA and its implementing Regulations; and

BE IT FURTHER RESOLVED, that the Town of Union Vale Town Board hereby authorizes the filing this Negative Declaration and notice thereof pursuant to the requirements of SEQRA and 6 NYCRR § 617.12 of its implementing Regulations.

Councilman McMorris proposed the above Resolution, which was seconded by Supervisor Maas. A copy of this Resolution will be appended to the minutes of the meeting and has been posted on the Town's website.

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The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

Supervisor Maas	Aye
Councilman Frazier	Aye
Councilwoman Kelley	Aye
Councilman McMorris	Aye
Councilman Welsh	Absent

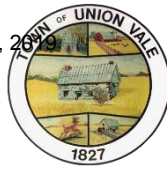
The resolution was thereupon declared duly adopted.

DATED: Union Vale, New York
December 5, 2019

Ayes 4 Noes 0 Resolution No. 19-35

I, Andrea Casey, Town Clerk of the Town of Union Vale DO, HEREBY CERTIFY that the foregoing is a true copy of a resolution offered by Councilman McMorris seconded by Supervisor Maas and adopted at the meeting of the Town Board, held on December 5, 2019.

Andrea Casey
Town Clerk, Union Vale – ~~Andrea Casey~~



RESOLUTION 19-36: DETERMINATION AS TO MONROE BALANCING OF INTERESTS TEST AND APPROVAL OF APPLICATION

Councilman Frazier proposed the following Resolution, which was seconded by Supervisor Maas. A formal reading of the Resolution is waived, as a copy will be appended to the minutes of the meeting and has been posted on the Town's website.

WHEREAS, the Town of Union Vale Town Board executed an Land Lease Agreement (herein, the "Agreement") with ELP Union Vale Solar LLC for the lease of portions of real property identified as tax map parcels 135400-6660-00-544087-0000, 135400-6660-00-555048-0000, 135400-6660-00-638053-0000 and 135400-6660-00-655022-0000 known generally as 2006 Route 55 (herein, the "Property") for purposes of installation and maintenance of a two megawatt solar energy system (herein, the "Facility"), subject to ELP Union Vale Solar LLC obtaining all necessary approvals and permits; and

WHEREAS, the Resolution which authorized the Agreement was subject to permissive referendum, a notice of the adoption of the Resolution was duly posted and published pursuant to New York State Town Law Section 90 and no petition seeking a permissive referendum was filed; and

WHEREAS, ELP Union Vale Solar LLC submitted an application to the Town of Union Vale dated August 1, 2019 seeking approval from the Town for the Facility and requesting that the Town of Union Vale Town Board consider whether the Facility should be immune from local zoning regulations pursuant to the "balancing of interests" test enunciated by the New York State Court of Appeals in Matter of County of Monroe v. City of Rochester, 72 N.Y.2d 338 (1988).

WHEREAS, the application included the following documents:

1. Site Work Permit Application.
2. Site Plan Drawing Set.
3. Full Environmental Assessment Form.
4. Stormwater Management Report, subsequently modified.
5. Memorandum of Lease.
6. Subsequently, correspondence dated November 22, 2019 related to Blanding's Turtles was submitted; and

WHEREAS, the Town of Union Vale Town Board served as Lead Agency in the environmental review of the application and held a public hearing on September 19, 2019 to review whether the application should be exempt from local land use regulations under the standards set forth in Matter of County of Monroe v. City of Rochester, 72 N.Y.2d 338 (1988) and to hear comments from the public related to environmental and any other matters related to the application; and

WHEREAS, on December 5, 2019, the Town of Union Vale Town Board issued a determination of non-significance, i.e. negative declaration, by Resolution prepared in accordance with Article 8 of the Environmental Conservation Law, namely the State Environmental Quality Review Act ("SEQRA") and its implementing regulations set forth in 6 NYCRR Part 617 ("Regulations") and said Resolution applied to the review under the standards set forth in Matter of County of Monroe v. City of Rochester, 72 N.Y.2d 338 (1988), and the approval of the application; and

WHEREAS, the New York State Court of Appeals, in Matter of County of Monroe v. City of Rochester, 72 N.Y.2d 338 (1988), recognized that municipal entities in New York State can be exempt or immune from local land use regulations and provided the nine factors to be considered when analyzing whether such exemption or immunity applies: and

WHEREAS, those nine factors are as follows:

1. The nature and scope of the instrumentality seeking immunity;
2. The encroaching governmental entity's legislative grant of authority;
3. The kind of function or land use involved;
4. The effect local land use regulation would have upon the enterprise concerned;
5. Alternative locations for the facility in less restrictive zoning areas;
6. The impact upon legitimate local interests;
7. Alternative methods of providing the proposed improvement;
8. The extent of the public interest to be served; and
9. The intergovernmental participation in the project development process and an opportunity to be heard. And

WHEREAS, the Town Board of the Town of Union Vale has analyzed each of these nine factors in determining whether the application should be exempt or immune from local land use regulations;

NOW, THEREFORE, BE IT RESOLVED, that the Town of Union Vale Town Board makes the following findings and has determined that the application is exempt or immune from local land use regulations:

1. The nature and scope of the instrumentality seeking immunity is, in effect, the Town of Union Vale, since it has executed a Land Lease Agreement with ELP Union Vale Solar LLC. The Town of Union Vale Town Board acted in its governmental proprietary capacity for the benefit of its residents when seeking to make productive use of town-owned land, to provide "clean energy" at discounted rates for the Town and its residents and to develop revenue from a source other than real property taxes. Since the Town Board has historically controlled uses of town-owned properties, it was appropriate for the Town Board to review this application as opposed to the Planning Board.

2. The encroaching government's (the Town of Union Vale Town Board) legislative grant of authority comes from the New York State legislature since it is a duly incorporated town in the State of New York.

3. The kind of function or land use involved is the installation and maintenance of a two-megawatt solar energy system which helps to make productive use of town-owned land, provides "clean

energy” at discounted rates for the Town and its residents and develops revenue from a source other than real property taxes.

4. The effect local land use regulation would have upon the enterprise concerned is as follows. The Property is located in the TC Zoning District (Town Center), but includes the Town’s transfer station and capped landfill. Those uses are being supplemented with solar energy and thus that property is being put to productive use.

The Town Code has ambiguity about large-scale solar energy systems, because they are not allowed in a TCB District (which does not exist under the Town Code), but are allowed by special use permit and site plan approval in the Town Center District. The Town Code has a specific section on solar and wind energy systems, Section 210-36, which provides the general policy that solar energy systems shall be encouraged. In addition, New York State has developed a very strong policy, known as NY-Sun, which promotes the development of solar energy systems. Separately, this section of Route 55 has not developed as a town center as hoped.

5. There are no alternative locations for the Facility in less restrictive zoning areas. The installation of solar energy arrays on capped landfills has been specifically encouraged by New York State. The additional property which is the subject of this application has not been put to any uses previously and is well situated away from residential areas.

6. The impact upon legitimate local interests is positive, since the Facility will make productive use of town-owned land, provide “clean energy” at discounted rates for the Town and its residents and will develop revenue from a source other than real property taxes.

7. There are no effective alternative means of providing the proposed improvement. As stated above in item “5”, the location is very appropriate for this type of use.

8. The extent of the public interest to be served by the improvements is substantial. To reiterate, the Town is making productive use of town-owned land, providing “clean energy” at discounted rates for the Town and its residents and developing revenue from a source other than real property taxes.

9. Intergovernmental participation in the project development process and an opportunity to be heard have both been substantial. The Town Board is the appropriate board to review this application given its long history of reviewing and approving uses of town-owned land. This includes the construction of the new Town Hall many years ago, the use and development of recreation parks including the 500+ acre Tymor Park and the use and maintenance of the closed landfill and transfer station. Input has been sought from the Planning Board and Zoning Board Appeals, and neither board has objected to the Town Board handling this review. The application was referred to the Fire Advisory Board. A written response was requested.

BE IT FURTHER RESOLVED that the Town of Union Vale Town Board approves the application submitted by ELP Union Vale Solar LLC, and authorizes the Supervisor and any other appropriate Town of Union Vale personnel to execute any and all documents reasonably necessary to give effect to this Resolution; and

BE IT FURTHER RESOLVED that ELP Union Vale Solar LLC shall submit a decommissioning plan in form to be approved by the attorney for the Town with cash security in the amount of eighty-nine thousand four hundred eighty-one dollars and seventy cents (\$89,481.70) to be paid on or before December 5, 2024; and

BE IT FURTHER RESOLVED that this approval is subject to the following conditions:

1. Payment of all fees charged by the Town related to this application and reimbursement of all consultant's costs and expenses for the Town related to this application.
2. Receipt of an executed Interconnection Agreement with Central Hudson (or the appropriate utility by whatever name known).
3. Receipt of all needed approvals from the New York State Department of Transportation regarding access to Route 55 and boring or tunneling under Route 55.
4. Compliance with all requirements of the New York State Department of Environmental Conservation regarding the Post Closure Use Modification of the capped landfill.
5. Posting of the required decommissioning plan, in form approved by the attorney for the Town, and the payment of the cash security on or before December 5, 2024.
6. Receipt of any Protection of Waters Permit and Wetlands Permit, if required.
7. The addition of a note on the site plan that tree removal must occur between October 1 and March 31, not including shrubs and brush.
8. Prior to the issuance of a building permit, a satisfactory written response must be received from the Fire Advisory Board.

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The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

Supervisor Maas	Aye
Councilman Frazier	Aye
Councilwoman Kelley	Aye
Councilman McMorris	Aye
Councilman Welsh	Absent

The resolution was thereupon declared duly adopted.

DATED: Union Vale, New York
December 5, 2019

Ayes 4 Noes 0 Resolution No. 19-36

I, Andrea Casey, Town Clerk of the Town of Union Vale DO, HEREBY CERTIFY that the foregoing is a true copy of a resolution offered by Councilman Frazier, seconded by Supervisor Maas and adopted at the meeting of the Town Board, held on December 5, 2019.

Andrea Casey
Town Clerk, Union Vale – Andrea Casey