

**RESOLUTION 19- 28: DETERMINATION AS TO MONROE BALANCING OF INTERESTS  
TEST AND APPROVAL OF APPLICATION**

**WHEREAS**, the Town of Union Vale Town Board executed an Option and Ground Lease Agreement (herein, the “Agreement”) with Homeland Towers, LLC for the lease of a portion of real property identified as tax map parcel 132200-6659-00-960870-0000 and by the street address of 43 Deforest Lane (herein, the “Property”) for purposes of installation and maintenance of a 150 foot monopole telecommunications tower and related equipment (herein, the “Facility”), subject to Homeland Towers, LLC, obtaining all necessary approvals; 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**, the Property is owned by the Town of Union Vale as part of Tymor Park and is located in the Town of Beekman; and

**WHEREAS**, Homeland Towers, LLC submitted an application to the Town of Union Vale Town Board dated April 16, 2019 seeking approval 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); and

**WHEREAS**, because the Property is located in Tymor Park, a recreation park of the Town of Union Vale, it is necessary for the Town of Union Vale Town Board to proceed with the parkland alienation process through the New York State Office of Parks, Recreation and Historic Preservation and the New York State Legislature; 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 May 21, 2019 and on June 4, 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 June 6, 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), the approval of the application and the parkland alienation process; 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 an Option and Ground Lease Agreement with Homeland Towers, II. The Town of Union Vale Town Board acted in its governmental proprietary capacity for the benefit of its residents, the users of Tymor Park, the users of cell phone services in

the area and the emergency services personnel when seeking to provide enhanced cell phone coverage and capacity as well as revenue from a source other than real property taxes.

2. The encroaching government's (the Town of Union Vale) 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 installation and maintenance of a 150 foot monopole telecommunications tower and related equipment to provide enhanced cell phone service and to assist in remedying a coverage gap and capacity limitations.

4. The effect local land use regulation would have upon the enterprise concerned is as follows. The Property is located in the LC Zoning District under the Town of Beekman Town Code. The enterprise would not be a permitted or specially permitted use in that District. However, the Code also provides a preference for locating such enterprises on municipally-owned lands and in "as low population density areas as possible". DeForest Lane, where the enterprise will be located, is an un-paved, dead-end road currently serving seven residential properties and there are 9 residences within a 1,000 foot radius of the Property.

The Facility does meet the tower height restrictions, roadway setback requirements, screening requirements and noise restrictions which exist under the Town of Beekman Town Code and the Town of Union Vale Town Code. The Facility allows four co-location by four carriers on the tower.

5. There are no alternative locations for the Facility in less restrictive zoning areas. An Alternative site analysis was provided and then updated which showed that several alternative sites were considered and none of them were feasible. They were either encumbered by restrictive covenants which would prevent the use or they would not help to remedy the coverage gap and capacity limitations.

6. The impact upon legitimate local interests is positive, since the Facility will provide enhanced cell phone service, access for providers of emergency services at no charge, revenue from a source other than real property taxes, with all such revenue being dedicated to the maintenance and improvement of the park and recreation facilities and programs. Information submitted by the applicant showed that the RF emissions from the Facility, at full build-out with four carriers co-locating on the tower, would be 45 times below the maximum permissible exposure (MPE) level set by the Federal Communications Commission (FCC).

7. There are no effective alternative means of providing the proposed improvement. As stated above, the analysis of alternative sites showed that none of them were feasible. They were either encumbered by restrictive covenants which would prevent the use or they would not help to remedy the coverage gap and capacity limitations.

8. The extent of the public interest to be served by the improvements is substantial. Tymor Park has a substantial number of buildings, roadways, athletic fields, and equestrian center, a pond with a boathouse and dam and other improvements. The Lease provide revenue which will help to maintain and improve these facilities and the programs offered in them. Cell service within the park will be improved, which will help all users of the park. Emergency services will also be improved because of their ability to use the cell tower at no rental charge. The Facility will help to remedy a coverage gap and capacity limitation so area residents and travelers will benefit from improved cell phone service.

9. Intergovernmental participation in the project development process and an opportunity to be heard have both been substantial. The submissions by the applicant have been very extensive and have been updated or supplemented at least twice. Copies of all such submissions were provided to the Town of Beekman Town Board and the Town of Beekman Planning Board. Notification of the application was provided to all residents on DeForest Lane. Notification of the balloon test was also provided to residents of DeForest Lane. A public hearing was held. It was adjourned to a second date, then re-opened and subsequently closed. Members of the Beekman Town Board attended the hearing and asked questions. The attorney for the Beekman Town Board attended both dates of the public hearing and made comments on both dates. Most, if not all, residents of DeForest Lane attended the public hearing and made comments. Color Photos of the balloon test and visual simulation were posted in the Town of Union Vale Town Hall for all to see. At both dates of the public hearing, representatives for the applicant appeared and answered all questions asked of them by member of the public who were in attendance.

**BE IT FURTHER RESOLVED** that the Town of Union Vale Town Board approves the application submitted by Homeland Towers, II, 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.

**BE IT FURTHER RESOLVED** that the Town of Union Vale Town Board authorizes the execution and submission of all documents reasonably necessary to comply with the New York State parkland alienation process and authorizes the Supervisor to take any other actions reasonably necessary in relation to that process and approval.

\_\_\_\_\_ proposed the following Resolution, which was seconded by \_\_\_\_\_. A copy of this Resolution will be appended to the minutes of the meeting and has been posted on the Town's website.

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

Supervisor Maas	_____
Councilman Welsh	_____
Councilman Frazier	_____
Councilwoman Kelley	_____
Councilman McMorris	_____

The resolution was thereupon declared duly adopted.

DATED: Union Vale, New York  
June 6, 2019

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Andrea Casey, TOWN CLERK