

**UNION VALE TOWN BOARD PUBLIC HEARING JUNE 6, 2019  
TOWN HALL 249 DUNCAN ROAD LAGRANGEVILLE NY 7:30pm**

**PRESENT:** Supervisor Maas  
Council: Corrina Kelley, Steven Frazier, David McMorris, John Welsh  
Town Clerk: Andrea Casey  
Town Attorney: Jeffery Battistoni

Supervisor Maas called the meeting to order and saluted the flag. Councilman Welsh asked for a moment of silence for the 75<sup>th</sup> anniversary of D-Day.

Supervisor Maas explained the purpose of this meeting was to discuss the cell tower in Tymor Park and also noted a contract from Mid-Hudson Library System had also been received.

Councilman Welsh and Supervisor Maas each received an email regarding public opinion on the cell tower prior to tonight's meeting and Supervisor Maas also spoke with a woman on the phone whose son lives on DeForest Lane. Supervisor Maas asked the Board for their input on the biggest topic which was health related issues. She mentioned she re-read the health and safety report from the applicant which each Board member had reviewed as well, and spoke further about radio frequency sources. There was further discussion on the validity of articles that were mentioned during the public hearing regarding health concerns. Supervisor Maas also read an excerpt from an article published in 2015 from Senator Schumer who was criticizing wireless companies for inaccurate coverage maps for Dutchess County and the overall poor cellular reception. As the FCC does not allow health related concerns as something to take into consideration this element must be taken off the table.

Councilman Welsh said he heard from residents that are anxious for the Town to move forward on the tower, as it will be a significant financial benefit specifically for Tymor Park. This revenue will help offset the large capital improvement projects that are overdue. Councilman Frazier pointed out the visual pictures with the tower superimposed is without cosmetic masking therefore it will be even less visible after installation. Councilman Welsh stated that the site was chosen by Homeland Towers, not the Union Vale Town Board. Even though other sites were suggested, they were rejected due to best possible coverage area. Councilman McMorris also noted the lack of radio coverage for emergency personnel such as local police and fire. Another point Councilman McMorris made was the RF's (radio frequency) from items such as baby monitors and other household items people may not be aware of. Supervisor Maas informed everyone that the Town Board hired an independent consultant to see if there was a cell tower necessity and the report concluded that due to surrounding towers being over-taxed in capacity, the Tower is needed.

Another issue that was cited as an area of concern is a decrease in property value as a result of the cell tower. After research there was no conclusive evidence to attribute lower values to homes near cell towers. Discussion ensued on this topic.

Councilwoman Kelley stated that although they were asked by some that attended the public hearing to slow down, the pace in her opinion, has been appropriate. She mentioned that this conversation began 10 months ago, and she has done much research along the way during this process in all the areas of concern. There was further discussion on these topics by all members of the Board.

Attorney Battistoni spoke about the background for SEQRA and the regulations involved and explained the determination regarding Resolution #19-27: **SEQRA NEGATIVE DECLARATION AND NOTICE OF DETERMINATION OF NON-SIGNIFICANCE.**

Resolution 19-27: SEQRA Negative Declaration and Notice of Determination of Non-Significance (See Resolutions)

Resolution 19-28: Determination as to Monroe Balancing of Interests Test and Approval of Application (See Resolutions)

Resolution 19-29 Requesting to Alienate a Portion of Tymor Park (5,250 sq feet out of 500 acres) (See Resolutions)

**MOTION TO ESTABLISH PETTY CASH**

Supervisor Maas made a motion to establish a petty cash fund for pool, for making change for daily pool passes. This motion was seconded by Councilman Welsh and all were unanimously in favor.

Supervisor Maas stated that the Town had received a contract from the Mid-Hudson Library System, the Board had a productive conversation last work session and due to the timeline, she will send information to the Board for further discussion. The two changes noted on the contract were 2.25% increase formerly 2% and 2-year contract length rather than 1 year.

Councilman Frazier had an update on the Town Hall parking lot lights and the posts are not compatible with any other bulbs. This would require a full replacement of \$2,658 x 11-12 lights which is over 30k. He will research alternative packages which are less expensive. Councilman McMorris offered NYSERDA may be a grant avenue to obtain funding.

**MOTION TO ADJOURN**

Councilman Welsh made a motion to adjourn the meeting at 8:53pm which was seconded by Councilman McMorris and all were unanimously in favor.

Respectfully Submitted,  
*Andrea Casey*  
Town Clerk



**RESOLUTION 19- 27: SEORA 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 wireless telecommunications facility consisting of a 150 foot monopole with antennas, access driveway, together with related equipment within a 4,410± square foot fenced compound within a 5,220± square foot leased area constituting a portion of property identified as tax map parcel 132200-6659- 00-960870-0000 and by the street address of 43 Deforest Lane.

SEOR classification of Action: Unlisted Action

Location of Action: 43 Deforest Lane on real property owned by the Town of Union Vale located in the Town of Beekman, Dutchess County, New York.

**PROCEDURAL AND DOCUMENTARY BACKGROUND:**

1. 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. 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. The Property is owned by the Town of Union Vale as part of Tymor Park and is located in the Town of Beekman.

4. 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).

5. The application included the following documents:

- A. Full Environmental Assessment Form.
- B. EAF Mapper Summary Report.
- C. Property Location Map.
- D. Site Plan prepared by APT Engineering, last revised 3/28/19.
- E. Compound Plan prepared by APT Engineering, last revised 3/28/19.
- F. West Elevation prepared by APT Engineering, last revised 3/28/19.
- G. Custom Soil Resource Report.
- H. National Wetlands Inventory, NY090 – Beekman II – Federal Wetlands.
- I. NY090 – Beekman II – DEC Wetlands.
- J. Environmental Resource Mapper.
- K. NYS OPRHP Cultural Resource Information System (CRIS) Map.
- L. Visual EAF Addendum.

6. By Resolution dated April 18, 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 Town of Beekman Town Board and Town of Beekman Planning Board and neither served a notice declaring intent to serve as Lead Agency.

7. By the same Resolution, the Town of Union Vale Town Board scheduled a public hearing for May 21, 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).

8. Copies of said Resolutions and the application with all supporting materials were mailed to the Town of Beekman Town Board and the Town of Beekman Planning Board on April 24, 2019.

9. An inquiry was made of the Dutchess County Department of Planning and Development as to whether a referral needed to be made to said Department pursuant to General Municipal Law Section 239-m and said Department advised that such a referral did not need to be

made for matters involving the balancing of interests tests set forth in Matter of County of Monroe v. City of Rochester, 72 N.Y.2d 338 (1988).

10. Prior to the submission of the application, a balloon test was conducted on April 17, 2019 with an orange balloon having been flown at the site at a height of 150 feet above ground level for a period of 8 hours, with prior notice having been given to the Town of Beekman Town Board and the residents along Deforest Lane by publication and mailing. (The specifics of the balloon test are described in the Visual Resource Assessment subsequently referenced herein.)

11. On May 20, 2019, the applicant hand delivered supplemental materials to the Town of Union Vale Town Board, the Town of Beekman Town Board and the Town of Beekman Planning Board, said materials consisting of the following:

- A. Cover letter of Robert D. Gaudio, Esq., of Snyder & Snyder, LLP, attorneys for Homeland Towers, LLC.
- B. Pinnacle Telecom Group Antenna Site FCC RF Compliance Assessment and Report dated April 30, 2019.
- C. Affidavit of Raymond M. Vergati dated May 16, 2019 as to alternate sites considered.
- D. Verizon Wireless Communications Facility Engineering Necessity Case – “Cumberland” dated May 13, 2019.
- E. Saratoga Associates Visual Resource Assessment dated May 14, 2019 consisting of 12-page Report and 14 pages of color Visual Resource Assessment Figures.
- F. Certification of APT Engineering as to the Facility meeting ANSI/TIA-222G Structural Standard.
- G. Plans prepared by APT Engineering dated May 15, 2019 consisting of Title Sheet and Index, Abutters Plan, Overall Site Plan, Partial Site Plan, Access Driveway Profile and Details, Landscaping Plan, Compound Plan, Elevations, Erosion Control Notes, Erosion Control Details, Site Details, Verizon Equipment Plan & Details, and Verizon Antenna Plan & Details.

12. A presentation of the application was made at the public hearing on May 21, 2019 by Raymond M. Vergati of Homeland Towers, LLC and Robert D. Gaudio, Esq., of Snyder & Snyder, LLC. Questions from the public related to the presentation were answered. The public hearing was opened and all comments were received by the Town of Union Vale Town Board and then the public hearing was adjourned to June 4, 2019. A notification sign had been posted at the Property in advance of the public hearing.

13. On May 23, 2019, a revised Full EAF was submitted to correct the zoning designation for the Property and a Noise Confirmation Letter was submitted, with said submissions being made to the Town of Union Vale Town Board, the Town of Beekman Town Board and the Town of Beekman Planning Board.

14. The Town of Union Vale Town Board caused an analysis to be made of the RF submissions from the applicant, retaining Ronald E. Graiff, P.E. for that purpose.

15. Ronald E, Graiff, P.E. submitted his report to the Town of Union Vale Town Board on May 28, 2019.

16. On June 3, 2019, the applicant hand delivered supplemental materials to the Town of Union Vale Town Board, with copies to the Town of Beekman Town Board and the Town of Beekman Planning Board, said materials consisting of the following:

A. Cover letter of Robert D. Gaudio, Esq., of Snyder & Snyder, LLP, attorneys for Homeland Towers, LLC.

B. Further revised Full EAF with all attachments.

C. Alternative site analysis from Verizon Wireless' RF engineer confirming that the Town Hall parcel will not remedy the gap in service.

D. Phase I Archeological Survey from EBI confirming that there are no Historic Properties in the area of potential effects and confirming no adverse effect on archeological resources.

E. Revised Alternate Site Analysis from Raymond M. Vergati including the relevant deed restrictions.

F. Letter from EBI confirming no adverse effects on threatened or endangered species.

G. Property Value Appraisal Report from Lane Appraisals confirming no diminution in property values from proposed Facility.

17. An additional presentation of the application was made at the adjourned public hearing on June 4, 2019 by Raymond M. Vergati of Homeland Towers, LLC and Jordan Fry, Esq., of Snyder & Snyder, LLC. Questions from the public related to the presentation were answered. The public hearing was re-opened and all comments were received by the Town of Union Vale Town Board, and the public hearing was then closed. On that date, a submission was made by the applicant from Verizon Network Engineering dated June 4, 2019 addressing analysis of existing cell towers providing coverage and capacity to the area.

18. On June 6, 2019, in response to comments made at the public hearing about RF emissions, the applicant submitted a letter by email attachment from Pinnacle Telecom Group, LLC dated June 5, 2019 which provided general information about RF emissions from commonly used devices and in areas of common exposure.

19. 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. The SEQRA review and this Negative Declaration apply to that process, as well as to the Monroe analysis and balancing of interests test.

20. A draft application with supporting documentation has been prepared for submission to the appropriate state legislators and the New York State Office of Parks, Recreation and Historic Preservation, subject to completion of the SEQRA process.

**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 Parts II and III 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 action calls for the installation of an "unmanned" facility. Neither a well, nor a septic system will be installed. All improvements will be installed outside of the wetlands and wetland buffers on the Property. The tower and related equipment will not generate solid waste and will have no impact on air quality. Erosion and drainage impacts were addressed in the Erosion Control Notes, Erosion Control Details and Site Details submitted by the applicant. 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 2-3 months.

The site plan shows that the fenced-in compound will be located outside of the buffer zones for the two wetlands that are partially on the Property.

The partial site plan shows that the compound will be enclosed by an 8 foot high chain link fence with brown privacy slats. There will be evergreen landscape screening installed with approximately 23 evergreen trees used. The Landscaping Plan shows that 8 foot high Norwegian Spruces will be installed.

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 of 16.2 acres of land and only about one-half of an acre will be disturbed. The action will have no impact on fish as there are no waterbodies or watercourses being disturbed. Since such a small percentage of the land will be disturbed, the project will have no significant impact on resident or migratory wildlife species.

The applicant submitted a letter from EBI Consulting dated June 3, 2019 regarding threatened and endangered 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. EBI's letter noted no evidence for actual habitat of the Northern Long-eared Bat at the site. EBI's letter summarized habitat related to Bog Turtles and noted that the applicant will take measures in accordance with USFWS's guidelines involving a pre-construction survey, working education and exclusion fencing. Based upon the contents of the letter and the mitigation measures, there will not be a significant impact on habitat area for threatened or endangered species.

A gravel driveway will be installed for access to the site. It will be 12 feet wide and approximately 470 feet long. 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 posts and chain. Required silt fencing will be installed and maintained during construction.

The extensive RF analysis documents submitted by the applicant demonstrate the need for the Facility in terms of coverage and capacity. The applicant has submitted satisfactory documentation regarding alternative sites considered.

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.

Since the time when Town of Union Vale acquired title to the various parcels of land which comprise Tymor Park, the Town of Union Vale Town Board has controlled all uses of and improvements to the Park. The Park consists of many buildings, fields, trails and land for recreation purposes, but it also consists of residences which are rented, the Town Hall, vehicle and equipment storage buildings and additional improvements not associated with recreation. The Town has pledged, and the Option and Ground Lease Agreement requires, that all net rental income from the Lease be used solely to improve and maintain the Town parks and the structures and improvements now in them or added to them. The action will result in improved cell phone service throughout Tymor Park, which benefits all of its users (many of whom are residents of the Town of Beekman) and promotes the safety and welfare of the people using the Park.

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.

The site plan shows that the nearest residence is located over 500 feet away from the tower. Although the contemplated Monroe analysis might make the action exempt from local land use regulations, the tower height (150 feet) meets the requirements of both the Town of Beekman Town Code and the Town of Union Vale Town Code. It also meets the roadway setback requirements of both Codes.

The site does not have important historical, archeological, architectural or aesthetic resources. There are presently no improvements on the Property. The applicant submitted a Phase I Archeological Survey Report from EBI Consulting which concluded that the site is not recommended for inclusion on the National Register of Historic Places and recommended a "No Historic Properties" determination. It noted that if, during construction, any artifacts or culturally modified soil deposits are encountered, construction must stop until a qualified archeologist views the finds and makes an evaluation.

The Visual Resource Addendum prepared by Saratoga Associates used an area of a two-mile radius from the proposed Facility. Deforest Lane was described as an 1,100-foot-long unpaved dead-end street currently serving 7 single family residences. There are 9 residences within 1,000 feet of the Facility.

The Visual Resource Addendum summarized the methodology and standards used. It reported that "no actual visibility" was identified during the April 17<sup>th</sup> balloon test in the viewshed from Tymor Park, nor in the viewshed from the Beekman Recreation Park. For residential areas within a 1-mile radius, it reported that views of the Facility "will be

substantially screened by intervening dense mature woodland vegetation – even during winter leaf-off season”. For Deforest Lane, it reported that “the Facility will be directly visible above the intervening tree line” when viewed from the intersection with Route 55, but the view becomes increasingly screened as one moves eastward towards the Facility. In the Summary and Conclusion Section of the Report, the NYSDEC Visual Policy is referenced, and the Report provides that “it is clear that any remaining project visibility is not of a size or extent that it would constitute an unacceptable magnitude. Nor does the Facility affect a sufficient number of public viewers or geographic area where the Facility can reasonably be deemed to be visually important as defined by SEQRA.” It concludes: “As such the proposed Project will not result in an adverse visual impact”. The Town Board accepts the findings and conclusions of the Report.

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

The applicant will connect to the existing electrical utility grid and will install underground utilities on the site. An on-site emergency back-up generator will be installed within the fenced compound for use during temporary power outages. The noise from the generator will not exceed any noise regulations which could apply.

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

The Report submitted by Pinnacle Telecom Group entitled Antenna Site FCC RF Compliance Assessment and Report indicates that the FCC has established a limit for general population maximum permissible exposure levels for continuous human exposure to radio frequency (RF). The analysis found that at ground level, the tower with all antennas installed would produce a maximum level of 2.0026 percent of the FCC MPE level. The Report also describes this as 45 times below the FCC MPE limit.

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, the site consists of 16.2 acres of land and only about one-half of an acre will be disturbed. The Park as a whole consists of over 500 acres of land, so use and intensity of use by this action is minimal. The action will improve cell phone service in the Park, so it is a benefit and a promotion to the safety and welfare of all users of the Park. In addition, when the site is no longer in use, the improvements must be removed and the site returned to its prior state. A performance bond or other security will be required for this purpose.

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 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, the New York State parkland alienation process and the issuance of a Municipal Home Rule Resolution and related documentation, 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 authorizes the Supervisor to execute Part III of the FEAF; 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.

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

Supervisor Maas	<u>Aye</u>
Councilman Welsh	<u>Aye</u>
Councilman Frazier	<u>Aye</u>
Councilwoman Kelley	<u>Aye</u>
Councilman McMorris	<u>Aye</u>

The resolution was thereupon declared duly adopted.

DATED: Union Vale, New York  
June 6, 2019

Ayes 5 Noes 0 Resolution No. 19-27

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 Supervisor Maas, seconded by Councilman Welsh and adopted at the meeting of the Town Board, held on June 6, 2019.

Andrea Casey  
Town Clerk, Union Vale – Andrea Casey



**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.

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



Supervisor Maas	<u>Aye</u>
Councilman Welsh	<u>Aye</u>
Councilman Frazier	<u>Aye</u>
Councilwoman Kelley	<u>Aye</u>
Councilman McMorris	<u>Aye</u>

The resolution was thereupon declared duly adopted.

DATED: Union Vale, New York  
June 6, 2019

Ayes 5 Noes 0 Resolution No. 19-28

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 Welsh, seconded by Councilman McMorris and adopted at the meeting of the Town Board, held on June 6, 2019.

Andrea Casey  
Town Clerk, Union Vale – Andrea Casey



**TOWN BOARD OF THE TOWN OF UNION VALE  
DUTCHESS COUNTY, STATE OF NEW YORK**

**RESOLUTION 19-29 REQUESTING FROM THE NEW YORK STATE LEGISLATURE THE  
AUTHORITY TO ALIENATE A PORTION OF THE TOWN OF UNION VALE'S  
TYMOR PARK**

**WHEREAS**, the town of Union Vale Town Board requests authorization to lease 5250 sq feet of space a small portion of unused property located within Tymor Park ("Property") owned by the Town of Union Vale, located in the town of Beekman for purposes of installation and operation of a wireless communication facility ("cell Tower"), as illustrated in the attached Exhibit "A", and

**WHEREAS**, the small portion of Tymor Park contemplated for use as the wireless communication facility is currently in the forest, near a less popular hiking trail; and

**WHEREAS**, the proposed wireless communication facility constitutes critical network infrastructure which will provide wireless service to emergency personnel (including police, fire and ambulance), users of Tymor Park, as well as members of the general public nearby and along State Route 55 in the Town of Beekman, and

**WHEREAS**, such proposed lease requires parkland alienation legislation by the New York State Legislature and compliance with the State Environmental Quality Review Act ("SEQRA"); and

**WHEREAS**, the town of Union Vale Town Board has carefully considered the potential environmental impacts related to the installation and operation of the wireless communication facility at the proposed location on the Property and after conducting a public hearing and other public meetings on the subject, has confirmed that the proposed wireless communication facility will not result in any significant adverse environmental impacts and, as such, has issued a Negative Declaration pursuant to the requirements of SEQRA; and

**WHEREAS**, to assist Members of the New York State Senate and Assembly who will be sponsoring legislation authorizing the alienation and the Office of Parks, Recreation and Historic Preservation, the Town Board has prepared the Parkland Alienation Form: Municipal Information attached hereto as Exhibit "B".

**NOW, THEREFORE BE IT RESOLVED**, the Town of Union Vale Town Board requests that the New York State Legislature adopt legislation authorizing the Town of Union Vale Town Board to alienate a small portion of Tymor Park for purposes of installation and operation of a wireless communication facility, as illustrated in the attached Exhibit "A", and be it

**FURTHER RESOLVED**, that the Supervisor of the Town of Union Vale is hereby empowered and directed to execute any agreement, documents, or papers as may be necessary to implement the intent and purpose of this Resolution, and be it

**FURTHER RESOLVED**, that the Clerk of the Town of Union Vale Town Board in conjunction with any other duly authorized representatives is hereby directed to send a copy of this Resolution and all supporting documentation to the New York State Senate and Assembly home rule officers, Senator Sue Serino and Assemblyman Kieran Lalor.

Councilwoman Kelley proposed the following Resolution, which was seconded by Councilman Frazier. 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	<u>Aye</u>
Councilman Welsh	<u>Aye</u>
Councilman Frazier	<u>Aye</u>
Councilwoman Kelley	<u>Aye</u>
Councilman McMorris	<u>Aye</u>

The resolution was thereupon declared duly adopted.

DATED: Union Vale, New York  
June 6, 2019

Ayes 5 Noes 0 Resolution No. 19-29

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 Councilwoman Kelley, seconded by Councilman Frazier and adopted at the meeting of the Town Board, held on June 6, 2019.

Andrea Casey  
Town Clerk, Union Vale – Andrea Casey