

PUBLIC HEARING
OPEN FROM JUNE 22, 2020 MEETING
A PROPOSED LEASE OPTION AGREEMENT AND GROUND LEASE FOR A
SOLAR PHOTOVOLTAIC SYSTEM ON THE LANDFILL SITE
JULY 13, 2020 7:00 PM

FIRST MEETING OF THE MONTH
(ZOOM VIDEO MEETING DUE TO THE
CORONAVIRUS PANDEMIC)
TOWN BOARD TOWN OF MARLBOROUGH
JULY 13, 2020 7:00 PM

ITEM #1 Call to order - Pledge of Allegiance

ITEM #2 Moment of Silence

ITEM #3 Motion to approve agenda

ITEM #4 Motion to approve minutes from the June 22, 2020 Town Board Meeting

ITEM #5 Authorize payment of bills

ITEM #6 Comments on the agenda

ITEM #7 Presentations

ITEM #8 Report of Departments and Boards
A) SUPERVISOR - ALPHONSO LANZETTA
B) BUILDING INSPECTOR - THOMAS CORCORAN
C) POLICE CHIEF - GERALD COCOZZA
D) HIGHWAY SUPERINTENDENT – JOHN ALONGE
E) WATER SUPERINTENDENT - CHARLIE MUGGEO
F) TOWN CLERK - COLLEEN CORCORAN
G) WASTEWATER TREATMENT FACILITY- ANTHONY FALCO
H) DOG CONTROL OFFICER - ANDREW MCKEE
I) ASSESSOR - CINDY HILBERT
J) PLANNING - CHRIS BRAND

ITEM #9 Report of Committees

- A) RECREATION COMMITTEE
- B) EMERGENCY MANAGEMENT PREPAREDNESS COMMITTEE
- C) CONSERVATION ADVISORY COMMITTEE
- D) IT COMMITTEE
- E) MILTON TRAIN STATION FOUNDATION
- F) MILTON LANDING CITIZENS COMMITTEE
- G) MARLBORO HAMLET ECONOMIC DEVELOPMENT COMMITTEE
- H) MEET ME IN MARLBOROUGH
- I) HAMLET OF MILTON ASSOCIATION COMMITTEE
- J) TRANSFER STATION REVIEW COMMITTEE

ITEM #10 Old Business

- A) Tomvac Rehabilitation Update
- B) LWRP
- C) Water District Improvements (Milton Turnpike/Cross Rd)

ITEM #11 New Business

- A). COVID 19-Phase 4
- B). Bocce restart plan

ITEM #12 Correspondences

ITEM #13 Public Comments

ITEM #14 Resolutions

- A). Resolution # 64 Execution of Lease Option Agreement and Ground Lease and Monroe Analysis for a solar photovoltaic system on the Landfill site

ITEM #15 Adjournment

July 13, 2020

A). Resolution # 64 Execution of Lease Option Agreement and Ground Lease and Monroe Analysis for a solar photovoltaic system on the Landfill site

Supervisor Lanzetta proposes the following:

WHEREAS, the Town of Marlborough owns real property located at 20 Baileys Gap Road, Marlborough, New York, containing approximately 82.33 acres (the “Property); and

WHEREAS, the Property is or was formerly operated as a solid waste management facility authorized by the New York State Department of Environmental Conservation and other applicable Government Authority (“Landfill”); and

WHEREAS, the Town Board has negotiated a proposed Lease Option Agreement and proposed Ground Lease with NEXAMP SOLAR, LLC, for the lease of a portion of the Property as shown on a map attached to the proposed Ground Lease to develop, construct, operate and maintain a solar powered electric generation and energy storage facility and any uses necessary or ancillary thereto (the “Facility”); and

WHEREAS, copies of the proposed Lease Option Agreement and proposed Ground Lease are on file with the Town Clerk; and

WHEREAS, pursuant to Resolution # 63 dated May 26, 2020, the Town Board authorized a public hearing to be held on June 22, 2020 regarding the execution of the proposed Lease Option Agreement and proposed Ground Lease and regarding whether the establishment of this Facility on the Property owned by the Town of Marlborough should be exempt from the Town’s local land use regulations under the standards set forth in Matter of Monroe County (72 N.Y.2d 338; 533 N.Y.S.2d 702) and subsequent case law and whether the Town Board shall conduct the review of such application and issue any approvals deemed necessary;

WHEREAS, said public hearing was duly noticed and then held on June 22, 2020; and

WHEREAS, the matter was referred to the Ulster County Planning Board, but the Town was informed that the referral was not needed; and

WHEREAS, the Town Board previously classified the contemplated action as a Type II action under the State Environmental Quality Review Act (SEQRA) and its implementing regulations (6 NYCRR 617.5); and

NOW, THEREFORE, BE IT RESOLVED as follows:

A. The Town Board hereby authorizes the execution of the proposed Lease Option Agreement and proposed Ground Lease, subject to permissive referendum requirements.

B. The Town Clerk is directed to publish the required notice of adoption of this Resolution as required by New York State Town Law Section 90 to begin the period for permissive referendum, in the form included at the end of this Resolution.

C. The Town Board has reviewed whether the establishment of the Facility on the Property owned by the Town of Marlborough should be exempt from the Town's local land use regulations under the standards set forth in Matter of Monroe County (72 N.Y.2d 338; 533 N.Y.S.2d 702) and subsequent case law and whether the Town Board shall conduct the review of any application submitted and issue any approvals deemed necessary. The Town Board makes the following findings and has determined that the application is exempt or immune from local land use regulations and that the Town Board approves the proposal from NEXAMP SOLAR, LLC:

1. The nature and scope of the instrumentality seeking immunity is, in effect, the Town of Marlborough, since it has awarded a bid for the Facility to NEXAMP SOLAR, LLC and will execute a Lease Option Agreement and Ground Lease, subject to permissive referendum requirements, with NEXAMP SOLAR, LLC. The Town of Marlborough Town Board is acting in its governmental proprietary capacity for the benefit of its residents.

2. There is not an “encroaching government” in this matter. The Town Board has historically made all decisions regarding the operation of the Property and is the appropriate Board to consider and approve this matter.

3. The kind of function or land use involved is for NEXAMP SOLAR, LLC to develop, construct, operate and maintain a solar powered electric generation and energy storage facility and any uses necessary or ancillary thereto. This Facility will result in energy savings to the Town, rental income for the Town and less reliance on fossil fuels for the production of electricity.

4. Exemption from the Town’s land use regulation is appropriate because the Property includes the Town’s former landfill and is subject to a landfill closure plan. The Property also includes the Town’s transfer station. New York State law strongly encourages the development of solar energy systems, especially on landfill properties. The State amended its SEQRA regulations to make solar energy systems on landfills a Type II action in order to expedite review and development of such systems.

5. There are no alternative locations for the Facility in less restrictive zoning areas. This is the only landfill site which the Town owns.

6. The impact upon legitimate local interests is positive, since the Facility will generate solar based power, result in energy savings to the Town and result in rental income which the Town would not otherwise have from this portion of the Property.

7. There are no effective alternative means of providing the proposed improvement. As stated above, this is the only landfill site which the Town owns.

8. The extent of the public interest to be served by the improvements is substantial. The Facility helps to implement the State’s policy encouraging the development of solar energy systems. The Town will receive rental income from land which otherwise would not generate income (the landfill). The Town will also receive savings on its energy bills.

9. Intergovernmental participation in the project development process and an opportunity to be heard have both been available. The Town Board requested

comments from the Planning Board and did refer the matter to the Ulster County Planning Board. It turned out that such referral was not necessary, because of this “Monroe” analysis.

BE IT FURTHER RESOLVED that, if the period for permissive referendum expires without the filing of a petition for permissive referendum, the Town Board authorizes the Supervisor and any other appropriate Town official to execute any and all documents reasonably necessary to give effect to this Resolution, including an Agreement with NEXAMP SOLAR, LLC related to the value of distributed energy resources and credits.

NOTICE OF ADOPTION OF RESOLUTION

TAKE NOTICE that the Town of Marlborough Town Board, Ulster County, New York, has, on the ____ day of July, 2020, duly adopted a Resolution, subject to permissive referendum, an abstract of which follows:

WHEREAS, the Town of Marlborough Town Board has negotiated Lease Option Agreement and proposed Ground Lease with NEXAMP SOLAR, LLC, for the lease of a portion of the property located at 20 Baileys Gap Road, Marlborough, New York, containing approximately 82.33 acres, said portion shown on a map attached to the proposed Ground Lease to develop, construct, operate and maintain a solar powered electric generation and energy storage facility and any uses necessary or ancillary thereto; an Option and Ground Lease Agreement with Homeland Towers, LLC, for the lease of real; and

WHEREAS, copies of the proposed Option Agreement and Ground Lease between the Town and NEXAMP SOLAR, LLC, are on file with the Town Clerk; and

WHEREAS, central terms of the said agreements include rental income to the Town, energy savings to the Town, a long term lease with options to renew, and the continued operation of the Town's transfer station on this Property without interference from the solar Facility.

THE ACTION TAKEN by the Resolution was: (1) the authorization of the execution of the Option Agreement and Ground Lease Agreement; (2) publication of a permissive referendum notice as required by NYS Town Law Section 90; (3) the exemption of the Facility from local land use regulation pursuant to a “Monroe” analysis; and (4) the authorization for the Supervisor and any other appropriate Town official to execute any and all documents reasonably necessary to give effect to this Resolution, including an Agreement with NEXAMP SOLAR, LLC related to the value of distributed energy resources and credits.

Dated: Milton, New York
July ___, 2020

Colleen Corcoran, Town Clerk
Town of Marlborough

The foregoing Resolution was duly put to a vote which resulted as follows:

Supervisor Lanzetta _____

Councilman Molinelli _____

Councilman Corcoran _____

Councilman Baker _____

Councilman Koenig _____

The resolution was thereupon declared duly adopted.

DATED: Milton, New York
July ____, 2020

Colleen Corcoran, Town Clerk