

Town of Scipio February 8, 2023 Board Meeting Minutes

The February meeting of the Town of Scipio, Cayuga County, State of New York was held at the Town Office, 3705 Rte. 34, Scipio Center, NY 13147, on February 8, 2023.

Present: Supervisor Gary Mutchler
Councilperson Susan Allen
Councilperson Mark Ferrari
Councilperson Mel Pitman

Excused: Councilperson Jason Botsford

Others Present: Ann Robson, Bill Hall, Jeff Eaton, Patrick Doyle, Rolland Dodge, Heather Garner

1. Call to order at 7:02pm followed by Pledge of Allegiance
2. Approval of February Town Board Agenda. Motion by Councilor Allen, Second Council Pitman
Approved Ayes 4 Mutchler, Allen, Ferrari, Pitman
 Noes 0
3. Issues from Town residents - none
4. **Resolution 2023-15 Approval of January 11, 2023 Town Board Meeting Minutes with correction in Attachment B** Gary Haff and Brandon Swearingen are both medium MEOs. Motion made by Councilor Allen; Second Councilor Pitman.
Adopted Ayes 4 Mutchler, Allen Ferrari, Pitman
 Noes 0
5. **Resolution 2023-16 Proposed Local Law 1 of the Year 2023 A Local Law to Provide for a Real Property Tax Exemption Under Section 466-g of the New York Real Property Tax Law**
WHEREAS, pursuant to Municipal Home Rule Law Section 20(4), Councilor Ferrari has introduced for consideration Local Law No. 1 of 2023 entitled "A Local Law to Provide for a Real Property Tax Exemption Under Section 466-g of the New York Real Property Tax Law" and WHEREAS, the purpose of the Proposed Local Law to provide for an exemption of the real property tax exemption currently available under Section 466-g of the New York Real Property Tax Law (RPTL) pursuant to the provisions of Section 466-a of the RPTL, as enacted in Chapter 670 of the Laws of 2022; and
WHEREAS, the Town Board desires to comply with the requirements of the State Environmental Quality Review Act ("SEQRA") and its implementing regulations set forth at 6 NYCRR Part 617 (the "Regulations"), with respect to the adoption of the Proposed Local Law; and
WHEREAS, the Town desires to comply with the requirements of the New York Town Law and the New York Public Officers Law and shall schedule a public hearing to allow the public to comment on the Proposed Local Law.
NOW, THEREFORE, BE IT RESOLVED that the Town Board will hold a public hearing on April 12, 2023 at 7 p.m. to hear all persons interested in the Proposed Local Law and to consider the adoption of the Proposed Local Law.
BE IT FURTHER RESOLVED that the Town Board hereby classifies the Proposed Local Law as a Type II Action under SEQRA involving the "adoption of regulations, policies, procedures and local legislative decisions" as set forth in Section 617.5(c)(33) of the Regulations; and
BE IT FURTHER RESOLVED that the Town Clerk shall cause notice of such public hearing to be published in the official Town newspaper in accordance with all legal requirements.

Initial motion by Councilor Ferrari was amended to move the Public Hearing to April 12, 2023; second Supervisor Mutchler.

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| Adopted | Ayes | 3 | Mutchler, Allen, Ferrari |
| | Abstain | 1 | Pitman |
| | Noes | 0 | |

6. **Resolution 2023-17 ESCROW AGREEMENT FOR PROFESSIONAL CONSULTANT FEES BETWEEN TOWN OF SCIPIO AND SUNEAST SCIPIO SOLAR LLC**

WHEREAS, SunEast Scipio Solar LLC ("Scipio Solar") is seeking to site and construct a 20-megawatt community solar photovoltaic electric generating facility (the "Project"), in the Town of Scipio ("Town"), Cayuga County, New York; and

WHEREAS, a Negative Declaration and Special Use Permit for the Project were approved by the Scipio Town Board ("Town Board") as part of the Town's land use review process, and Scipio Solar is now seeking site plan approval from the Town of Scipio Planning Board (hereinafter, "Planning Board"); and,

WHEREAS, the Town's Planning Board may require the assistance of independent professional consultants for legal and technical guidance in connection with its review of the site plan application; and,

WHEREAS, the Town desires to establish an escrow account to be funded by Scipio Solar to reimburse the Town for the reasonable and necessary cost of engaging independent professional consultants in connection with the Planning Board's review of the site plan application for the Project.

NOW THEREFORE, the parties agree as follows:

1. The Town agrees to engage such independent professional consultants it deems reasonably necessary in connection with the Planning Board's review of Scipio Solar's site plan application for the Project. The Town agrees to engage such consultants at the prevailing hourly rate customarily and usually charged by such consultants for similar services provided to municipal entities in Cayuga County, New York. The Town agrees to provide Scipio Solar with the consultant agreement\retainer agreement for each independent professional consultant proposed to be engaged by the Town.
2. Scipio Solar agrees be responsible for all independent professional consultant costs deemed reasonably necessary and reasonably incurred by the Town in connection with the Planning Board's review of Scipio Solar's land use applications for the Project.
3. Scipio Solar agrees that the independent professional consultant costs reasonably necessary for the Planning Board's review of Scipio Solar's land use applications are in addition to, and not in lieu of, any applicable application fees.
4. the Town agrees to use the escrow funds exclusively to pay the reasonable and necessary costs of services provided by the independent professional consultants in connection with the planning Board's review of Scipio Solar's land use applications for the Project. Scipio Solar agrees to fund the escrow funds as follows:
 - a. Upon execution, Scipio Solar shall initially provide the Town with a check in the amount of \$10,000 to be deposited.
 - 1) The Town will provide timely written or email notices to Scipio Solar whenever the balance in the Escrow funds drops below \$2,500. Upon receipt of written or email notice from the Town that the balance in the Escrow Account has fallen below \$2,500, Scipio Solar will, within 10 business days of receipt of such notice, provide the Town with such additional funds which may be necessary to bring the balance of the Escrow funds to \$5,000. Aggregate deposits into the

Escrow funds by Scipio Solar under this Agreement shall not exceed \$30,000, without prior written consent from Scipio Solar, such consent not to be unreasonably withheld.

b. Scipio Solar understands that if the balance of the Escrow funds falls beneath \$2,500 and is not replenished as provided above, the Planning Board may suspend their respective reviews of Scipio Solar's land use applications for the Project, and/or the Code Enforcement Officer may refuse to issue permits and/or certificates with regard to the Project, unless the Town has been advised by its consultants that no additional charges will accrue.

5. Prior to withdrawing or expending any funds from the Escrow fund to pay for consultant services related to the Project, the Town agrees to provide Scipio Solar with a copy of each consultant's invoice\statement, which invoice\statement shall detail the work performed and the charges for such work. The Town's specifically reserves the right to redact from any invoice\statement any entry which implicates the attorney-client privilege or any other privilege.

6. Prior to the Town making any payment from the Escrow fund, Scipio Solar shall have the opportunity to provide the Town with its comment regarding whether the work performed was reasonably necessary and the reasonableness of the charges for the services provided. If Scipio Solar does not provide comments to the Town within ten (10) days of receipt by Scipio Solar of the consultant's invoice/ statement, it will be presumed Scipio Solar has no comments and the Town may proceed with payment.

7. Upon request by the Scipio Solar, no more frequently than once every two months, the Town shall render an accounting of all funds received and expended from the Escrow Account in connection with the Project.

8. Prior to the Town making any payment from the Escrow fund, the Town shall comply with the claim and audit procedures of Town Law §§118 and 119.

9. Scipio Solar acknowledges that to its knowledge and belief the independent professional consultants retained by the Town do not have any business relationship, obligation, duty, or fiduciary relationship to the applicant.

10. Escrow Account funds may not be used to reimburse the Town for a consultant's review of studies prepared for state or federal agencies or services related thereto, except to the extent the consultant's review of such studies is relevant and reasonably necessary to advising the Planning Board in connection with their review of Scipio Solar's land use applications for the Project.

11. Scipio Solar agrees that should it withdraw its land use review applications for the Project prior to any action being taken by the Planning Board, Scipio Solar will remain responsible for the cost of any necessary and reasonable independent professional consultant services incurred prior to the withdrawal of such applications regardless of whether the invoice or statement for such services is received by Scipio Solar before or after the date of withdrawal.

12. Scipio Solar agrees that upon the completion of the Planning Board's review of Scipio Solar's land use applications for the Project and within 10 business days after the Town has determined that all independent professional consultant costs have been paid, the remaining balance in the Escrow Account, if any, shall be promptly returned to Scipio Solar.

13. The Town reserves the right to pursue its legal options to recover any costs for independent consulting services related to the Planning Board's review of Scipio Solar's land use applications for the Project which may remain unpaid and are outstanding at the termination of the Planning Board's land use review process.

Motion made by Councilor Ferrari, second by Councilor Allen.

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| Adopted | Ayes | 4 | Mutchler, Allen, Ferrari, Pitman |
| | Noes | 0 | |

7. Resolution 2023-18 Further Extending Certain Deadlines Related to SunEast Scipio Solar LLC, as Successor to Duke Energy Renewables Solar LLC

The Town Board for the Town of Scipio, New York (the "Town"), duly convened in regular session on February 8, 2023 at the Town Office Building, located at 3705 Route 34, Scipio Center, NY 13147, does hereby resolve as follows:

WHEREAS, on or about January 23, 2019, Duke Energy Renewables Solar, LLC ("Duke Energy"), applied to the Town of Scipio Town Board ("Town Board") for a Special Use Permit and Site Plan Approval (the "Applications") pursuant to the Town of Scipio Zoning Regulations to allow for the development of a ± 18 MW solar energy facility, including solar panel arrays, an access road, collection lines and utility infrastructure (the "Project").

WHEREAS, on November 4, 2020, the Town Board duly issued a conditional Special Use Permit to Duke Energy for the Project (the "Special Use Permit").

WHEREAS, the Special Use Permit required Duke Energy to finalize and execute a Host Community Agreement (the "HCA") with the Town within six months from the date of issuance.

WHEREAS, the Special Use Permit required Duke Energy to submit an application for Site Plan Approval within twelve months of the date of issuance of the Special Use Permit.

WHEREAS, following issuance of the Special Use Permit, Duke Energy and the Town engaged in on-going discussions related to the completion of the HCA and indicated that each intends to continue these discussions to finalize the HCA and submit and review an application for site plan approval.

WHEREAS, Duke Energy timely requested an extension of the deadline to finalize the HCA with the Town and the deadline to submit an application for Site Plan Approval.

WHEREAS, on November 3, 2021, the Town passed the Resolution Extending Certain Deadlines Related to the Duke Energy Renewables Solar LLC Scipio Solar Energy Project which extended certain deadlines.

WHEREAS, Duke Energy timely requested an extension of the deadline to finalize the HCA with the Town and the deadline to submit an application for Site Plan Approval.

WHEREAS, on March 9, 2022, the Town passed the Resolution Extending Certain Deadlines Related to the Duke Energy Renewables Solar LLC Scipio Solar Energy Project which extended the deadline to enter into an HCA to August 30, 2022 and the deadline to submit an application for Site Plan Approval to October 4, 2022.

WHEREAS, Duke Energy transferred its interest in the Project to SunEast Scipio Solar LLC ("SunEast").

WHEREAS, SunEast timely requested an extension of the deadline to finalize the HCA with the Town and the deadline to submit an application for Site Plan Approval.

WHEREAS, on September 14, 2022, the Town passed the Resolution Extending Certain Deadlines Related to SunEast Scipio Solar LLC, as Successor to Duke Energy Renewables Solar LLC.

WHEREAS, on February 6, 2023, SunEast Scipio Solar LLC requested a further extension of the deadline to finalize the HCA with the Town.

WHEREAS, the Town Board desires to formalize the requested extensions through this Resolution. NOW, THEREFORE, BE IT RESOLVED the Town Board does hereby determine that:

1. The request to extend the deadlines for the HCA was properly received.
2. The extension of time requested by SunEast to finalize the HCA is approved.
 - a. The revised deadline for SunEast and the Town to finalize the HCA is extended to August 31, 2023.
 - b. The above extension is conditioned upon SunEast's deposit of \$10,000 in escrow for any professional expenses of the Town related to the negotiation and approval of the HCA within 30 days of the date of this Resolution.

- c. SunEast may request further extensions, provided that such request is delivered in writing at least thirty (30) days prior to the expiration of such deadline.
 - 3. This resolution shall take effect immediately.
 Motion made by Councilor Ferrari, second by Councilor Pitman
 Approved Ayes 4 Mutchler, Allen, Ferrari, Pitman
 Noes 0
- 8. Town of Scipio vs Lemmon litigation – no update to report.
- 9. Officers Reports
 - a. Assessor – Discussion was had on proposing Local Law #2 of 2023 to increase Real Property Tax Exemption to Senior Citizens and Disabled Persons with limited income. A resolution can be prepared for the March 8, 2023 Town of Scipio Town Board meeting with a Public Hearing set for April 12, 2023. Supervisor Mutchler okayed Assessor Garner to publicize the availability of these tax savings to the targeted groups. Information will be sent to Bond, Schoeneck and King to prepare the mailings. Motion made by Supervisor Mutchler, second by Councilor Ferrari.
 Adopted Ayes 4 Mutchler, Allen, Ferrari, Pitman
 Noes 0
 - b. CEO – A written report was prepared. Three permits were issued, and 24 hours of training approved by the NYS Division of Code Enforcement and Administration was completed.
 - c. Clerk – Disbursements paid to the Town Supervisor totaled \$1664.50. The deadline to submit articles for the town’s spring newsletter will be March 27, 2023.
 - d. Highway – Superintendent Hall reported due to mild weather conditions, his employees’ over time totals 85 hours compared to 200 + hours this time last year. Seven Town Highway Departments met on February 8, 2023 with representatives from Suit-Kote to discussed shared services. Advocacy Day in Albany is scheduled for March 8, 2023 and he plans on attending.
- 10. Board Member Reports
 - a. Susan Allen – The current contract with Casella to pick up recyclables expires in April, 2023. Town Attorney Eaton stated since the annual contract amount is under \$30,000 a RFP is acceptable and to seek three bids.
 - b. Jason Botsford – no report
 - c. Mark Ferrari – It was mentioned that the local Baseball Little League needs to find an approved Little League diamond. In the past Cargill has maintain the diamond behind the Scipio Fire Department. The local fire department will be contacted regarding support.
 - d. Melinda Pitman – It was reported that the SLV Fire District is discussing separation options as the current pooling of resources and designated rotation of expenditures is in contention. Councilor Pitman will be attending the NYS AOT Conference in NYC from February 19th thru the 22nd and will be the town’s representative on the Owasco Lake Watershed Management Council’s 9 Element Plan working committee.
- 11. Supervisor’s Report
 - a. The Money Market account is earning 4% interest for the town.
- 12. Other – Executive Session – Supervisor Mutchler made a motion to move to Execution Session to review ongoing litigation, Council Allen second. No action was taken in Executive Session.

Councilor Ferrari made a motion to come out of Executive Session, second by Councilor Pitman.
All in favor.

13. Review of 2023 Abstract 2

- a. **Resolution 2023 – 19** Approve General Fund – vouchers 16-32, total \$7183.40 Motion made by Councilor Allen. Second by Council Pitman.

Adopted Ayes 4 Mutchler, Allen, Ferrari, Pitman
 Noes 0

- b. **Resolution 2023- 20** Approve Highway fund – vouchers 9-12, total \$754.24 Motion made by Supervisor Mutchler. Second by Councilor Ferrari.

Adopted Ayes 4 Mutchler, Allen, Ferrari, Pitman
 Noes 0

14. Next Town Board Meeting – Wednesday, March 8, 2023, 7pm

15. Adjournment – Motion to adjourn was made by Councilor Pitman at 9:37pm. All in favor.

Respectfully submitted,

Ann Robson
Town of Scipio Clerk