

**TOWN OF CANAJOHARIE  
MONTGOMERY COUNTY**

**June 27, 2019**

The Town Council met for a special meeting to discuss variance fees for Article 10 Mohawk Solar project and proposed escrow agreement from Mohawk Solar at the Town Hall building, 12 Mitchell Street, Canajoharie, New York.

**Present:** Supervisor Peter Vroman, Councilpersons: William Armitstead, John Toomey, Jr., Rodney Young, John Peruzzi, Sr.; Bookkeeper Amy Kretser; Highway Superintendent Timothy Jones

The meeting was opened by the Supervisor at 7:30pm, and the evening's agenda was presented

On a **motion** by Supervisor Vroman, **seconded** by Councilman Peruzzi, the **agenda** was **unanimously approved**

**Public Comment-** None

-Town Clerk gives brief report to the Board regarding telephone conference held with Atty. Bakner and Town of Minden Supervisor re: Mohawk Solar's proposed resolution for area variance fees and escrow agreement:

-the attorneys for Mohawk Solar responded to the Town's Resolution #5 of 2019 which set building permit fees for commercial solar projects within the Town. Mohawk Solar does not intend to file any applications for building permits, as they are supplanted by the Article 10 process.

-however, the attorneys for Mohawk Solar has presented a proposed resolution for area variance fees and escrow payment for professional consultation fees, as they will be applying for area variances

-Attorney Bakner did not agree with some verbage contained within the proposed resolution; she has reworded it and suggests the Town adopt the revised version

-Attorney Bakner is in agreement with the proposed escrow agreement

RESOLUTION 15 OF 2019  
DATED: JUNE 27, 2019  
CANAJOHARIE, NEW YORK

RESOLUTION BY: Supervisor Peter A. Vroman

SECONDED BY: Councilman John Peruzzi, Sr.

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**RESOLUTION SETTING FEES FOR REVIEW, INSPECTION, AND CERTIFICATION OF UTILITY-SCALE ENGERY FACILITIES SUBJECT TO ARTICLE 10 OF THE NEW YORK STATE PUBLIC SERVICE LAW AND AUTHORIZING THE TOWN SUPERVISOR TO SIGN ESCROW AGREEMENT FOR SUCH FEES FOR THE MOHAWK SOLAR PROJECT (AVIN GRID)**

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**WHEREAS**, the Town of Canajoharie (the "Town") desires to establish the fee schedule for its review of commercial solar projects and clarify the manner of calculating the fee; and

**WHEREAS**, such fee shall be \$250.00 per acre of the project in the Town, and in addition thereto, the applicant shall reimburse the Town for all costs and professional services, including but not limited to engineering and legal fees, incurred by the Town associated with the application, permit or review as deemed necessary by the Town, and

**WHEREAS**, such fee shall apply for any local approvals sought in connection with such projects, such as a request for an area variance, as well as for the inspection, and certification of utility-scale energy projects which are subject to Article 10 of the NYS Public Service Law and to clarify the manner of calculating the fee; and

**WHEREAS**, the Town Code provides that the Town can require the applicant before the Town of Canajoharie Planning Board or Zoning Board of Appeals (the “Board”) to establish an escrow account to facilitate reimbursement by the Applicant of all costs and professional service fees incurred by the Town in connection with an application before the Board; and

**WHEREAS**, accordingly, Mohawk Solar and the Town are to enter into an Escrow Agreement for Professional Consultation Fees, attached hereto and made a part hereof, to which Mohawk Solar will make the applicable deposit to the escrow account.

**NOW THEREFORE, BE IT RESOLVED**, that the fee for such commercial solar projects shall be \$250 per acre for: (1) all fenced in acreage of each parcel leased under contract by the commercial company for the project; and (2) all acreage outside the fenced in areas utilized by the project for access roads, operation and/or maintenance buildings, and/or vegetative screening;

**AND BE IT FURTHER RESOLVED**, that the Town Supervisor of the Town of Canajoharie is authorized and directed to sign the Escrow Agreement for Professional Consultation Fees with Mohawk Solar.

**RESOLVED,**

Vote on resolution:

Supervisor	Pete Vroman	AYE
Council member	John Peruzzi, Sr.	AYE
Council member	Rodney Young	AYE
Council member	William Armitstead	AYE
Council member	John Toomey, Jr.	AYE

<u>Peter A. Vroman</u>	<u>Laurie M. Vroman</u>
SUPERVISOR	TOWN CLERK

**TOWN OF CANAJOHARIE**  
**ESCROW AGREEMENT FOR PROFESSIONAL CONSULTATION FEES**

The undersigned hereby agree to the following:

1. Mohawk Solar, LLC (“Mohawk Solar”) is seeking authority from the New York State Board on Electric Generation Siting and the Environment to construct a 90.5 megawatt solar photovoltaic electric generating facility (the “Project”) in the Towns of Canajoharie and Minden, Montgomery County, New York, pursuant to Article 10 of the New York State Public Service Law.
2. An application has been made by Mohawk Solar to the New York State Board on Electric Generation Siting and Environment. Separately Mohawk Solar intends to apply to the Town’s Zoning Board of Appeals for certain area variances (the “Area Variance Applications”).
3. Mohawk Solar understands and agrees that the Town of Canajoharie (“Town”) has adopted a resolution (the “Resolution”) setting fees for the review, inspection, and certification of utility-scale energy facilities subject to Article 10.
4. Mohawk Solar understands that the Zoning Board of Appeals may seek the services of planning, engineering, environmental, legal or other technical consultants or professionals as reasonably deemed necessary by the Zoning Board of Appeals to review the Area Variance Applications. Mohawk Solar will be responsible for all independent professional consultant costs deemed reasonably necessary and reasonably incurred by the Town in connection with the Zoning Board of Appeals’ review of the Area Variance Applications. The Town agrees to engage such consultants and professionals at the prevailing hourly rate customarily and usually charged by such consultants for similar services provided to municipal entities in Montgomery County. Mohawk Solar understands that no employee of the Town or any member of the Zoning Board of Appeals can advise Mohawk Solar in advance of what the total consulting fees might be. Funds paid under this Escrow Agreement may not be used for services or studies under the jurisdiction of state or federal agencies, except to the extent the review of studies prepared for or by such state or federal agencies is relevant to advising the Zoning Board of Appeals for its review of the Area Variance Applications.
5. The Town has retained the law firm of Whiteman Osterman & Hanna LLP and the environmental consulting engineering firm of Barton & Loguidice, D.P.C. to provide professional consulting services to the Zoning Board of Appeals. Copies of the retainer letters have been provided to Mohawk Solar. The Town shall provide Mohawk Solar with any similar retainer letters for additional professionals retained to assist the Zoning Board of Appeals in its review of the Area Variance Applications.
6. Upon submission of the Area Variance Applications, Mohawk Solar shall provide a minimum retainer in the amount of \$15,000 payable to the Town, to be held in an escrow account and managed by the Town, which shall be applied toward the payment of consultation and professional fees incurred by the Town with regard to the Area Variance Applications. When the public hearing is initiated, Mohawk Solar shall deposit an additional retainer amount of \$5,000 into the escrow account. Mohawk shall deposit an additional \$5,000 into the escrow account before a decision is rendered by the Zoning Board of Appeals. Prior to withdrawing or expending any funds from the escrow account to pay for consultant services related to the Area Variance Applications, the Town shall provide Mohawk Solar with a copy of each consultant’s invoices/statements detailing work performed and the charges incurred for such work. Prior to the Town making any payment from the escrow account, Mohawk Solar shall have the opportunity to provide the Town with its comments regarding whether the work performed was reasonably necessary and the reasonableness of the charges for the services provided. Prior to the Town

making any payment from the escrow account, the Town shall comply with the claim and audit procedures of Town Law §§118 and 119. Mohawk Solar reserves the right, within 15 business days of receipt of any invoice/statement, to protest any escrow account withdrawal or payment to a consultant which it contends is not reasonably necessary for the Zoning Board of Appeals review of the Area Variance Applications, is not consistent with the consultant agreement, is not reasonable in amount, or is excessive.

7. Mohawk Solar understands that if Mohawk Solar withdraws the Area Variance Applications prior to any action being taken by the Zoning Board of Appeals, Mohawk Solar is still responsible for any expenses incurred by the Town with regard to such Area Variance Applications prior to such withdrawal.
8. Mohawk Solar understands that if at any time the minimum balance in said escrow account falls below \$2,500 and is not timely replenished, the Zoning Board of Appeals may suspend its review of the Area Variance Applications, unless the Town has been advised by the consultant that no additional charges will accrue. The Town will provide timely written notices (email suffices) whenever the balance in the escrow account drops below \$4,000.
9. Mohawk Solar understands that when it has been determined by the Town that all final charges against the escrow account established for the Area Variance Applications have been paid, the remaining balance in the account, if any, shall be returned to Mohawk Solar.
10. Mohawk Solar understands that if there are still outstanding consulting fees relative to the Area Variance Applications at the termination of the Zoning Board of Appeals' review and approval process, the Town will pursue all legal options to retrieve such fees.
11. Mohawk Solar understands that the imposition of escrow account fees is in addition to, not in place of, other fees set forth in the Town's Resolution setting fees for the review, inspection, and certification of utility-scale energy facilities subject to Article 10.
12. The Town and Mohawk Solar agree that the independent professional consultant costs related to the Zoning Board of Appeals' review of the Area Variance Applications are separate and apart from any intervenor fees which may be part of the Article 10 Proceeding.
13. If, after the completion of the area variance approval process, there are funds remaining in the escrow account these funds shall be returned to:

A check will be made out to the entity named below and mailed to the address indicated below. A tax identification is required.

Name: Avangrid Renewables, LLC  
Address: 1125 NW Couch, Suite 700, Portland, OR 97209  
Telephone: (503) 796-7000  
Federal ID#: 93-1177933

MOHAWK SOLAR LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TOWN OF CANAJOHARIE

By: \_\_\_\_\_  
Pete Vroman, Supervisor

Town Board and Highway Superintendent Jones discuss construction on the existing Town Barn to fit the new truck and plow inside

-Superintendent Jones would like to extend the rear wall of the 2<sup>nd</sup> bay on the right, next to the bay that was extended in 2009; A gas line needs to be moved in order to do this; The height of the bay is adequate, they will store the Walthers outside

-Councilman Young asks whether Superintendent Jones has received any other estimates than the one received for the electrical work and one for the construction; Superintendent Jones has not

-Superintendent Jones states the additions needs to be completed before Fall

-Councilman Young and the Board require the Superintendent to obtain additional estimates from other contractors/electricians before going ahead with the project; Councilman Young will assist the Superintendent with this task

Town Supervisor briefly mentions to the Board Barton & Loguidice's grant services

**Adjournment**

On a **motion** by Supervisor Vroman, **seconded** by Councilman Armitstead, all in favor, ayes, the meeting was adjourned at 8:05PM.

Respectfully submitted,

Laurie M. Vroman, Town Clerk