

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ONEIDA

NY ROME OLD ONEIDA ROAD SOLAR, LLC,

Petitioner,

For a Judgment Pursuant to Article 78 of the Civil Practice
Law and Rules

Index No.: EFCA2024-
001813
Hon. William F. Ramseier

v.

ZONING BOARD OF APPEALS OF THE CITY OF
ROME, NEW YORK and the PLANNING BOARD
OF THE CITY OF ROME, NEW YORK,

Respondents.

**STIPULATION AND ORDER OF SETTLEMENT
AND DISCONTINUANCE**

WHEREAS, NY Rome Old Oneida Road Solar, LLC (Petitioner) is a limited liability company organized under the laws of New York, with a principal office at 149 Walker Street, Suite 302, Norwalk, Connecticut 06854, and is in the business of developing, owning, and operating solar energy facilities; and

WHEREAS, Petitioner sought a special use permit pursuant to Section 80-19.2 of the City of Rome Zoning Code (Zoning Code) and Section 80-19.11 of the Zoning Code (Solar Law) from the City of Rome Zoning Board of Appeals (ZBA) for its proposed 4.2-megawatt solar energy facility (Project) to be located on a 20-acre portion of approximately 179 acres of leased land located on Old Oneida Road in the City (Property); and

WHEREAS, Petitioner sought site plan approval from the City of Rome Planning Board (Planning Board) pursuant to Section 80-19.4 of the Zoning Code for the Project; and

WHEREAS, the ZBA denied the special use permit application (Denial) citing various environmental concerns in direct conflict with its own Negative Declaration issued pursuant to the New York State Environmental Quality Review Act (SEQRA) and contrary to all record evidence supporting a grant of the special use permit; and

WHEREAS, said Denial was based on an error of law; and

WHEREAS, as a result of the Denial, the Planning Board denied the site plan application, without prejudice; and

WHEREAS, Petitioner commenced the above-entitled Article 78 Proceeding (Proceeding) challenging the ZBA's Denial; and

WHEREAS, to date, Respondents have not filed an Answer; and

WHEREAS, the Parties desire to resolve this Proceeding in its entirety;

NOW, THEREFORE IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, who are the attorneys of record for the above parties with full, direct, and actual authority of their respective clients to do the same, that this Proceeding shall be settled and compromised in the following manner:

1. The ZBA shall issue the special use permit (SUP) to Petitioner as requested in Petitioner's application.

2. The ZBA shall include the following conditions in its resolution issuing the SUP:
 - a. Petitioner shall provide a Decommissioning Surety and shall enter into a Decommissioning Agreement, the terms of which shall be approved by the City of Rome Corporation Counsel, to ensure the Project is decommissioned pursuant to the Decommissioning & Reclamation Plan prepared by Petitioner for the Project and provided to the ZBA.
 - i. The Decommissioning Surety, which may be in the form of cash, surety bond, or irrevocable letter of credit, shall be in an amount of at least 125% of the cost of removal of the Project and restoration of the Property (as stated in the Decommissioning Estimate prepared by Petitioner for the Project and provided to the ZBA) and shall increase by 2% per year for the life of the Project. The Decommissioning Surety shall remain in full force and effect for the life of the Project. The Decommissioning Surety shall be provided to the City prior to the start of construction.
 - b. The Project shall be maintained in good working order and shall comply with the Operations and Maintenance Manual (dated January 5, 2024) prepared by Petitioner for the Project and provided to the ZBA.
 - c. The Project shall comply with the State Pollutant Discharge Elimination System (SPDES) General Permit for Storm Water Discharges from Construction Activities (GP-0-20-001) and the Stormwater Pollution Prevention Plan (SWPPP) prepared by C&S Engineers, Inc. for the Project (dated January 2024) and provided to the ZBA.
 - d. The Project shall comply with the Landscaping Plan prepared by C&S Engineers, Inc. for the Project (dated January 2024) and provided to the ZBA, which proposes double-row evergreen plantings to decrease visibility of the Project from nearby vantage points as much as practicable.
 - e. The Project shall comply with the Noise Assessment prepared by C&S Engineers, Inc. for the Project (dated January 5, 2024) and provided to the ZBA.
 - f. The solar panels installed as part of the Project shall have an anti-reflective coating.
 - g. No components of the Project shall be installed in the stream delineated on the Property or in the wetlands or 100-foot wetlands buffer delineated on the Property.

h. The Project shall follow the New York State Department of Agriculture and Markets' Guidelines for Solar Energy Projects – Construction Mitigation for Agricultural Lands (10/18/19).

3. Once the ZBA issues the SUP, the Planning Board shall review Petitioner's site plan application, subject to the conditions set forth herein.

4. This Stipulation will be submitted to the New York State Supreme Court, Oneida County, for signature and entry and these proceedings shall thereupon be discontinued on the merits, with prejudice, and without costs in favor of any party against another.

5. The Parties hereto represent that the individuals executing this Stipulation have been fully authorized by their respective clients to enter into this Stipulation with the intent of binding these Parties to the terms of this Stipulation.

6. This Stipulation is the full, final, and complete Stipulation and supersedes any prior oral or written agreement between the Parties. This Stipulation may not be modified except by a subsequent writing signed by the authorized representatives of the Parties herein, and "So Ordered" by this Court.

7. This Stipulation may be signed in counterparts with the execution of the Order by all of the parties named herein constituting one original signed Stipulation.

8. If any term or provision in this Stipulation is stricken, or deemed unenforceable or illegal, the rest of this Stipulation remains in full force and effect and shall be construed as reasonably as possible so to give full effect to the original intent of that term or provision.

9. This proceeding is hereby discontinued with prejudice, pursuant to CPLR § 3217(b)

upon this Stipulation being “So Ordered” by the Court.

DRAFT

DATED: _____

HODGSON RUSS LLP

Attorneys for Petitioner

Daniel A. Spitzer, Esq.

Alicia R. Legland, Esq.

677 Broadway, Suite 401

Albany, NY 12207

(518) 465-2333

DATED: _____

City of Rome Corporation Counsel

Attorneys for Respondents

Gerard Feeney, Esq.

Angela M. Twomey, Esq.

Rome City Hall

198 N Washington Street

Rome, NY 13440

Tel: (315) 339-7672

SO ORDERED:

Hon. William F. Ramseyer