

**TOWN BOARD
TOWN OF SULLIVAN
REGULAR MEETING
April 15, 2020
5:00 P.M.**

A regular meeting of the Town Board of the Town of Sullivan was convened at the Town Office Building by Supervisor John Becker at 5:00 P.M. on April 15, 2020.

Those in attendance at the Town Office Building were Supervisor John M. Becker and Attorney for the Town John Langey.

The meeting was noticed in accordance with Town Law and applicable NYS Executive Orders, to include utilization of the Zoom videoconferencing platform.

Members participating via Zoom were: Councilors John Brzuszkiewicz, Jeff Martin, Kerry Ranger, and Tom Kopp; Comptroller Beth Ellis; and Secretary to the Supervisor Elaine Morgan.

The meeting opened at 5:00 P.M.

Pledge to the flag was led by Supervisor Becker.

**APPROVAL OF THE BID FOR BRIDGEPORT GATEWAY
GREEN INFRASTRUCTURE PROJECT**

A motion was duly made by Councilor Kerry Ranger and seconded by Councilor John Brzuszkiewicz and unanimously passed by the Board to accept the bid by David Wallbridge, Inc 5861 Pyle Dr. East Syracuse, New York 13057. The amount of the bid accepted was \$254,000.00 for the Lump Sum Contract Number 1-Base Bid and \$126,000.00 for the Lump Sum Contract Number 1 – Additive Bid Item Number 1. The total amount for being \$380,000.00, see tabulation of Lump Sum Bids Received March at 10:00am.

Town of Sullivan
Bridgeport Green Infrastructure Gateway Enhancement Project
Contract No. 1

GIGP Project No. 1383
CWSRF Project No. C7-6292-07-00


148.149.002
26-Mar-20
KFE/KMK

TABULATION OF LUMP SUM BIDS RECEIVED MARCH 25, 2020 AT 10AM

Item	Description	Estimated Quantities	Unit	Davis Wallbridge, Inc. 5861 Pyle Drive East Syracuse, New York 13057	McGinnis Nelson Construction 4833 Apple Tree Ridge Manlius, New York 13104	Egelston Construction 117 Auriesville Road, Fultonville, New York 12072
1	Lump Sum Contract No. 1 - Base Bid	Nec.	LS	\$254,000	\$260,000	\$490,000
2	Lump Sum Contract No. 1 - Additive Bid Item No. 1	Nec.	LS	\$126,000	\$130,000	\$490,000
Anticipated Project Total				\$380,000	\$390,000	\$980,000
				Apparent Low Bid		

WE CERTIFY THAT THIS TABULATION IS A TRUE AND CORRECT COPY OF THE CANVAS OF BIDS.

BARTON & LOGUIDICE, D.P.C.:

BY: 
Keith Ewald, RLA, AICP

Project Budget Summary			KFE/KMK
Bridgeport GIGP Gateway Enhancement Project			
B&L Jn 148.149.001 & 148.149.002			
April 1, 2020			
Post-Bid Project Budget			
	Description	Amount	Comment
1	GIGP Grant Funding (90%)	\$800,000	Can cover Construction & Engineering
2	Town Match (10%)	\$88,889	10% Per GIGP application; Labor, equipment, staff time
3	Total Project Funding/Budget	\$888,889	
4	B&L Planning, Design, & Bid Phase Services	\$116,805	
5	Sub Fee Allowance	\$38,645	Sub Allowance - \$26,155.23 spent to date
6	Construction Phase	\$50,000	100% B&L labor
7	Contractual Costs Auth. to Date	\$205,450	
8	Remaining Budget Subtotal	\$683,439	(Line 11 - Line 16)
9	Targeted (T) In-Kind Services - Labor/Equipment	\$20,000	Need to revisit/confirm again with Andy at Town prior to Pre-con
	Targeted (T) In-Kind Services - Administration	\$5,000	Town Comptroller time for processing and administration
10	Targeted (T) Material Purchase	\$35,000	Stone, aggregates, soils for bioretention - need to confirm again
11	Total (T) Targeted Share	\$60,000	9% Est. % of Total Project Cost (Line 11/Line 17)
12	Remaining Budget Subtotal	\$623,439	(Line 18 - Line 22)
13	Apparent Low Bidder for Construction	\$380,000	
14	Post Construction Bid Budget Balance	\$243,439	
	Anticipated follow on activities		
15	Construction Contingency (10%)	\$38,000	
17	Estimated Total Project Cost	\$683,450	
16	Estimated Budget Balance	\$205,439	

Construction is contingent upon final contract language approved by the Attorney for the Town and the Town's Consulting Engineer.

APPROVAL OF MARCH 18, 2020 REGULAR MEETING MINUTES

A motion was duly made by Councilor Martin, seconded by Councilor Brzuszkiewicz and unanimously approved by the Board to approve the minutes from the March 18, 2020 Town Board Meeting.

**DETERMINATION OF AN APPLICATION BY OMNI NAVITAS HOLDINGS, LLC
FOR A USE VARIANCE FROM LOCAL LAW NO. 4-2019
("A Local Law Imposing a Twelve (12) Month Moratorium on Commercial
Free-Standing Solar Photovoltaic (PV) Systems within the Town of Sullivan")**

Attorney Langey advised the Town Board that it must now make a determination relative to the request by Omni Navitas Holdings, LLC for a use variance relative to their pending application for a proposed commercial free-standing solar photovoltaic (PV) system to be located on property owned by Michael Callahan and located at 7677 Black Creek Road (Tax Map No. 24.-2-81). Attorney Langey reviewed with the Board a proposed resolution with potential findings which would deny the request for the use variance for the reasons stated within the resolution and based upon the findings of fact contained therein. On motion of Councilor Brzuszkiewicz, seconded by Councilor Kopp, the application for a use variance was unanimously denied by the Town Board, as set forth below:

**RESOLUTION
TOWN OF SULLIVAN TOWN BOARD
USE VARIANCE FINDINGS AND DECISION**

Date of Resolution: April 15, 2020

Owner/Applicant:	<u>Michael Callahan</u> <u>Omni Navitas Holdings, LLC</u>	Zoning District:	<u>Agricultural (A)</u>
	<u>as Owner</u> <u>as Applicant</u>	Published Notice:	<u>DONE</u>
Address:	<u>9089 Callahan Drive</u> <u>75 Central Street, 3rd Fl</u>	Notice to County:	<u>N/A</u>
	<u>Canastota, NY 13032</u> <u>Boston, MA 02109</u>	Hearing Held On:	<u>February 19, 2020</u>
Tax Map ID #	<u>24.-2-81</u>		

Property Location: 7677 Black Creek Road

Reasons for which Variance is Requested: Applicant wishes to obtain relief from Local Law No. 4-2019, a Local Law imposing a 12-month moratorium on commercial free-standing solar photovoltaic (PV) systems within the Town of Sullivan.

Applicable Section of Town Zoning Law from which Relief is Sought: Local Law No. 4-2019

Permitted Uses of Property: One-family, two-family and multiple-family dwellings, farm-related structures, medical facilities, agricultural, agricultural associated low-impact storage/warehousing, veterinary, cemetery, hotel/motel, club, motor vehicle wrecking yards, riding stables, etc.

SEQR Determination:	Lead Agency <input type="checkbox"/>	Type I <input type="checkbox"/>	Negative Declaration <input type="checkbox"/>	N/A
		Type II <input type="checkbox"/>	Positive Declaration <input type="checkbox"/>	
		Unlisted <input type="checkbox"/>		

TEST: No use variance will be granted without a showing by the applicant that the applicable zoning regulation(s) and restriction(s) have caused unnecessary hardship. The following tests must be met for each and every permitted uses, including uses allowed by special use permit (or conditional uses).

FACTORS CONSIDERED:

1. Can the owner realize a reasonable return on the property? (provided the lack of return is substantial and based upon competent financial evidence) Yes ☐ No ☐¹ **Failed to Establish**

Reasons: The Applicant failed to present the required specific proof in "dollars and cents" form evidencing the lack of a reasonable return for the property for each and every Permitted Use and Specially Permitted Use under the Zoning Regulations. While the Applicant submitted a self-prepared letter claiming to have incurred various expenses associated with the processing of portions of its application for a proposed solar energy system at the premises, no actual proof of said expenditures were made or presented. Indeed, the entirety of Applicant's "proof" for claims of the potential expenditure of monies to undertake interconnection to the utility grid was in

¹ If "No" application must be denied pursuant to New York State Law.

a letter from Omni Navitas, not the Owner. Applicant further references its offer to pay the owner of the premises (Mr. Callahan) "substantial annual rental fees for a period of 25 years." The claims made by Omni Navitas were unsupported with any facts, including any cancelled checks, a copy of the Lease with Mr. Callahan or any other proof. Further, the Applicant has failed to analyze any of the other allowed uses to establish a reasonable return on the property. Most importantly however, is that the property owner (Mr. Callahan) has failed to present any evidence with respect to his inability to obtain a reasonable return for any of the allowable uses permitted in the Zoning District. Since no true "dollars and cents" proof was provided, the Applicant and the Owner have failed to meet their burden as to this leg of the test.

2. Is the alleged hardship relating to the property unique? (the hardship may not apply to a substantial portion of the zoning district or neighborhood) Yes ☐ No ☒

Reasons: The Applicant has failed to even address this portion of the test for a use variance. However, the Board determines that the hardship in this instance is not unique since all similar situated premises would be barred from proceeding during the period of time in which the moratorium is in place. The Board is also unaware of any other unique hardship not experienced by other areas of the Town applicable to this particular property.

3. Will the requested use variance, if granted, alter the essential character of the neighborhood? Yes ☐ No ☐ **Undetermined**

Reasons: The Applicant has also failed to address this leg of the test in any fashion. Should the variance be granted, the Applicant and the Owner would be permitted to pursue their application for a Site Plan approval and Special Use Permit for the establishment of a large solar farm on the premises.

4. Is the alleged hardship self-created? Yes ☐ No ☒*

Reasons: The hardship is not self-created since the application for a solar farm was pending at the time of the adoption of the moratorium. However, the land use tool of a moratorium has expressly been granted to Towns to utilize in instances where it is believed that the existing Zoning framework is not sufficient to properly address a particular use. It has been noted that throughout Madison County numerous applications for large solar farms have been filed simultaneously. In this instance, the Town of Sullivan has determined that it must study and potentially amend its Zoning Ordinance to address such uses.

DETERMINATION OF TOWN BOARD BASED ON THE ABOVE FACTORS:

The Town Board, after reviewing the four (4) factors above, finds that:

☒ **The applicant has failed to prove unnecessary hardship through the application of the four-part test as required by Town Law Section 267-b(2)(b)(1)-(4) and therefore the use variance request is denied.**

☐ The applicant has proven unnecessary hardship through the application of the four-part test as required by Town Law Section 267-b(2)(b)(1)-(4). In finding such hardship, the Town Board grants a use variance to allow use of the property in the manner detailed below, which is the minimum variance that should be granted in order to preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Reasons: As an initial matter, the Property Owner himself (Michael Callahan) is not a party to this appeal. It is incumbent upon the current Owner to bring the appeal for a use variance. Further, neither the Applicant nor the Owner have attempted to address the 4-point standard necessary for the consideration of relief of a use variance. In this instance, the Applicant has merely made bald conclusory statements regarding alleged payments that they have incurred or may be incurred in the future relative to the costs associated with the development of the property for a solar facility. In any instance, after the moratorium has been lifted, the Applicant may apply for any necessary Site Plan or Special Use Permit, depending on the changes to the Zoning Ordinance. Further, the Applicant has failed to address many aspects of the required proof and has relied entirely upon the claims of certain expenses, which they have or will have to undertake in order to pursue this request. Insofar as a Special

* If "No" application must be denied pursuant to New York State Law.

Use Permit is a not a guaranteed right to the Applicant, they have likewise failed to meet their burden. In addition to all of the above, it is noted that the Applicant's representative failed to appear at the scheduled Public Hearing on the requested use variance, despite having been provided notice of same at a prior meeting. For all of the above reasons, the application for relief from Local Law No. 4-2019 imposing a moratorium on commercial free-standing solar photovoltaic (PV) systems in the Town of Sullivan is hereby DENIED.

STANDARD CONDITIONS (If Approval is Granted):

1. ~~That the applicant obtain any necessary permit(s) from the Codes Enforcement Officer or otherwise commence the use within one (1) year from the filing of the variance decision.~~
2. ~~That the applicant notify the Codes Enforcement Officer on completion of the footing of any project for which a variance has been obtained.~~
3. ~~That the applicant obtain a Certificate of Occupancy and/or Certificate of Compliance, as required, from the Codes Enforcement Officer.~~
4. ~~That the construction be completed in strict compliance with the submitted plans and application materials.~~

ADDITIONAL CONDITIONS (If Approval is Granted): The Town Board finds that the following conditions are necessary in order to minimize adverse impacts upon the neighborhood or community, for the reasons following: N/A

The Board by motion made by J. Brzuszkiewicz and seconded by T. Kopp adopted the above Resolution.

John M. Becker, Supervisor April 15, 2020

RECORD OF VOTE

	MEMBER NAME	AYE	NAY	ABSENT
Councilor	JOHN E. BRZUSZKIEWICZ	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councilor	THOMAS J. KOPP, JR.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councilor	KERRY RANGER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Councilor	JEFFREY MARTIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Supervisor	JOHN M. BECKER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**SLEEPY HOLLOW WATER DISTRICT AND SLEEPY HOLLOW WATER DISTRICT
EXTENSION NO. 1 REPORT & UPDATE**

Supervisor Becker and Councilor Martin discussed the status of the potential increase to the maximum amount to be expended for Sleepy Hollow Water District and Sleepy Hollow Water District Extension No. 1. After discussion it was determined that the residents would be allowed to petition the Town Board to follow procedures under the Town Law for an increase to the maximum amount proposed to be expended. Councilor Martin will work with Attorney Langey to obtain the petition and advance the same, utilizing appropriate social distancing protocols. If sufficient petitions have been collected, this will be placed on the agenda for the May 6, 2020 meeting to schedule a public hearing for the June meeting.

**DECLARATION OF THE BRIDGEPORT GATEWAY GREEN INFRASTRUCTURE
ENHANCEMENT (STREETSCAPES) PROJECT AS AN ESSENTIAL PROJECT**

A motion was duly made by Councilor Martin, seconded by Councilor Kopp and unanimously approved by the Board to declare that the Bridgeport Streetscapes Project is deemed an essential project pursuant to NYS Executive Order.

EXECUTIVE SESSION

A motion was duly made by Councilor Martin, seconded by Councilor Ranger and unanimously approved by the Board to enter executive session to discuss the work history of a particular employee at 6:15 P.M.

A motion was duly made by Councilor Martin, seconded by Councilor Kopp and unanimously passed by the Board to close the executive session at 6:40 P.M.

ADJOURNMENT

A motion was duly made by Councilor Kopp, seconded by Supervisor Becker and unanimously approved by the Board to adjourn the Town Board Meeting at 6:41 PM.

Respectfully Submitted,
John R. Langey, Attorney for the Town