

The regular meeting of the Villenova Town Board, held July 10, 2019 at 1094 Butcher Road, South Dayton NY was called to order by Supervisor Ardillo at 7:00PM after the Pledge to the Flag.

Present: **Richard Ardillo** - **Supervisor**
 Sarah LoManto - **Councilmember**
 Keith Butcher - **Councilmember**
 Nathan Palmer - **Councilmember**
 Yvonne Park - **Councilmember**

Others Present:

Chuck Luce - **Highway Superintendent**
Donald Michalak - **Town Attorney**
Mark Meyerhofer - **Charter Communications**
Karen & Roy Harvey - **Chautauqua Updates**
 see attached sign in sheet at the end of the minutes

Recording Secretary:

Julie Goodway - **Town Clerk**

***A **MOTION** was made by Yvonne Park, seconded by Nathan Palmer WHEREAS, minutes of the June 12 meeting be accepted as presented by Town Clerk Goodway.

Adopted: **Ardillo** - **aye**
 LoManto - **aye**
 Butcher - **aye**
 Palmer - **aye**
 Park - **aye**

Reports:

Town Clerk – received and disbursed a total of \$430.00 and presented a check to the supervisor in the amount of \$295.64 for the portion of town fees collected.

Justice – received and disbursed a total of \$785.50.

Assessor – combined 5 retired parcels, transported the final roll to Mayville on 7/1/19.

Highway Superintendent – reports everything is going good. Dye Road is finished with the exception of one spot from last year; they will be patching, sealing around town and attending to the ditching and mowing of road sides.

Supervisor – issued copies of the financial report as prepared by Bahgat & Laurito Bahgat; paid bills from last months meeting; met payroll.

***A **MOTION** was made by Sarah LoManto, seconded by Keith Butcher to accept all department head reports as given.

Adopted: **Ardillo** - **aye**
 LoManto - **aye**
 Butcher - **aye**
 Palmer - **aye**
 Park - **aye**

***A **MOTION** was made by Nathan Palmer, seconded by Sarah LoManto WHEREAS General Vouchers #67 – 73 totaling \$1,130.45, General Prepays #24 – 27 totaling \$6,250.36 and Highway Vouchers #77 – 94 totaling \$51,654.53, Highway Prepay #6 totaling \$85.93 were submitted, reviewed and approved for payment.

Adopted: **Ardillo** - **aye**
 LoManto - **aye**
 Butcher - **aye**
 Palmer - **aye**
 Park - **aye**

At this time Supervisor Ardillo asked Sarah LoManto, councilperson to excuse herself from the meeting as the board will be discussing the Ball Hill Wind Project. She promptly exited the meeting room.

Attorney Don Michalak issued the following statement regarding the Ball Hill Wind Project.

“The court issued a decision finding that further SEQRA review is needed. There is before the town board a proposed resolution prepared by special counsel that the town board disagrees with the decision and authorized an appeal. Nevertheless, the town board wishes to address the issues identified by the court, therefore to start the process such resolution proposes that the town board, as lead agency, reinstate the SEQRA process and make a

Positive Declaration limited to the issues in accordance with the decision and determine that a Draft Supplemental Environmental Impact Statement shall be prepared by the applicant. The proposed resolution further provides that in the event the county court decision is reversed on appeal this action will automatically be rescinded and the Negative Declaration previously issued by the town board will remain in full force and effect.

***A MOTION was made by Yvonne Park, seconded by Nathan Palmer as follows:

TOWN OF VILLENNOVA TOWN BOARD

Resolution of the Town Board of the Town of Villenova Reinitiating the SEQRA Process Pursuant to Supreme Court, Chautauqua County's Decision

WHEREAS, the Town Board of the Town of Villenova (the "Town Board") previously issued a Special Use Permit for the Ball Hill Wind Energy Project (the "Project") after conducting a coordinated review under the State Environmental Quality Review Act (SEQRA), which included the preparation of an Environmental Impact Statement; and

WHEREAS, Ball Hill Energy LLC ("Ball Hill") subsequently submitted an Application to modify the Project Special Use Permit, the Wind Energy Facility Law of the Town of Villenova (the "Wind Law"), and the Wind Energy Overlay District created for the Project; and

WHEREAS, the Town Board reestablished itself as the SEQRA Lead Agency for consideration of the Application to modify the Project and other Interested and Involved Agencies either stated their assent or provided no objection within the time period required; and

WHEREAS, the Town Board, by resolution dated August 8, 2018, issued a SEQRA negative declaration (the "Negative Declaration") with respect to the proposed modifications to the Project, determining that a Supplemental Environmental Impact Statement ("SEIS") was not required; and

WHEREAS, the Town Board granted Ball Hill's Application to modify the Project Special Use Permit, adopted local legislation modifying the Wind Law, and adopted a local law to modify the Wind Energy Overlay District for the Project; and

WHEREAS, litigation was commenced against the Town and Ball Hill challenging the SEQRA review of the proposed Project modifications and the approvals granted in August 2018 related to the Project (*McGraw et al. v. Town Board of the Town of Villenova et al.*; Index No. EK12018001343) (the "*McGraw* matter" or "*McGraw* decision"); and

WHEREAS, Supreme Court, Chautauqua County (Dillon, J.) issued a decision, dated June 24, 2019, in the litigation, which found that "the record submitted is devoid of any information concerning the effect that the increase in height of the turbines could have on the bald eagle population which was mentioned in the 2016 SEIS. Additionally, the only mention of the environmental impact of the placement of the approximately 5 miles of electrical lines underground was of the decreasing of visual pollution from the prior plan. There is no examination of the potential environmental impact in the area where the lines were to be installed"; and

WHEREAS, the Town Board disagrees with the decision, believes that its prior Negative Declaration was properly issued, and asserts that there was no basis to disturb the approvals for the modified Project; and

WHEREAS, notwithstanding the Town Board's disagreement with the decision, it determines to address these identified matters as expeditiously as possible, conducting a further SEQRA review in accordance with the decision; and

NOW THEREFORE BE IT RESOLVED by the Town Board of the Town of Villenova as follows:

1. This Resolution is adopted by the Town Board without prejudice to its position in litigation and/or on appeal in the *McGraw* matter. This Resolution is in direct response to the decision and is an effort to comply with it as soon as possible. Once the decision is reduced to an order and/or judgment, the Town Board hereby authorizes an appeal of the same. In the event that the order and/or judgment of Supreme Court, Chautauqua County is reversed, with the litigation being finally concluded, this Resolution shall be deemed rescinded and the Negative Declaration previously issued by the Town Board will remain in full force and effect.

2. Following the decision in the *McGraw* matter, the Town Board determines to require a SEIS for those issues identified by Supreme Court, Chautauqua County. Ball Hill is directed to prepare and submit a draft SEIS. Scoping will not be conducted. *See* 6 N.Y.C.R.R. § 617.9(a)(7)(iii). The scope shall be the decision, which identified the deficiencies in the SEQRA review according to the Court. It is noted that the SEQRA regulations limit SEISs to "the specific significant adverse environmental impacts not addressed or inadequately addressed in the EIS that arise from . . . changes proposed for the project, newly discovered information, or a change in circumstances related to the project." 6 N.Y.C.R.R. § 617.9(a)(7)(i).

3. The attached Positive Declaration, incorporated herein by reference, is hereby issued without prejudice as set forth in paragraph 1 of this Resolution. Further, in the event the final order and/or judgment of Supreme Court, Chautauqua County is reversed, the Positive Declaration shall be automatically rescinded and the Negative Declaration previously issued by the Town Board will remain in full force and effect pursuant to paragraph 1 of this Resolution.

4. Special Counsel for the Town is hereby authorized to complete the required SEQRA notices, filings, and/or publications as may be applicable, and to take any and all steps in furtherance of procedural compliance.

5. This Resolution shall be effective immediately upon adoption and shall remain in effect except as set forth in paragraphs 1 and/or 3 of this Resolution.

Roll Call:

Ardillo	- aye
Butcher	- aye
Palmer	- aye
Park	- aye

PASSED AND ADOPTED BY THE TOWN BOARD OF THE TOWN OF VILLENNOVA on the 10th day of July 2019.

**STATE ENVIRONMENTAL QUALITY REVIEW ACT
POSITIVE DECLARATION**

**Notice of Intent to Prepare a Draft SEIS
Determination of Significance
Lead Agency: Town of Villenova Town Board
Date: July 10, 2019**

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law. The Town of Villenova Town Board (the "Town Board"), as lead agency, has reviewed the proposed action in light of the Court's decision in *McGraw et al. v. Town Board of the Town of Villenova et al.*; Chautauqua County Index No. EK12018001343, which asserted that the action may have a significant adverse environmental impact on the environment related to proposed modifications to the action. Thus, the Town Board, without prejudice and as set forth below, has determined that a Draft Supplemental Environmental Impact Statement shall be prepared.

Name of Action: Ball Hill Wind Energy (the "Project").

Location: Town of Villenova, Chautauqua County; *see* Project application maps.

SEQRA Status: Type I Action.

Scoping Scoping will not be conducted. The scope shall be the decision in *McGraw et al. v. Town Board of the Town of Villenova et al.*; Chautauqua County Index No. EK12018001343.

Description of Action: The Town has previously approved the 29 tower Ball Hill Wind Energy Project, and the project developer has now proposed modifications, which would be implemented through amendment of the Project's Special Use Permit and two Local Laws. The proposed modifications are to increase the wind energy turbine maximum total height to 599 feet, increase minimum allowable setbacks from public roads and non-participating property lines to 599 feet, eliminate the southern substation and 5.8-mile overhead transmission line, and install lines underground.

Reasons Supporting this Determination:

In the *McGraw* decision, the Court found that "the record submitted is devoid of any information concerning the effect that the increase in height of the turbines could have on the bald eagle population which was mentioned in the 2016 SEIS. Additionally, the only mention of the environmental impact of the placement of the approximately 5 miles of electrical lines underground was of the decreasing of visual pollution from the prior plan. There is no examination of the potential environmental impact in the area where the lines were to be installed." The Court further found that the Town Board "failed to take the requisite hard look at these issues. Therefore, the Court returns this matter to the Town Board for either a SEIS or other steps to complete the SEQRA process and grants

the motion of the petitioner to enjoin the construction of the project until it does so.” The Town Board, without prejudice to its position that a Negative Declaration was and is appropriate, issues this positive declaration, requiring a SEIS in direct response to the two issues raised in the *McGraw* decision. In the event the final order and/or judgment of Supreme Court, Chautauqua County is reversed with the litigation finally concluded, this Positive Declaration shall be automatically rescinded and the Negative Declaration previously issued by the Town Board will remain in full force and effect.

For Further Information:

Contact Person: Richard Ardillo, Town Supervisor
 Address: Town of Villenova
 1094 South Butcher Road
 South Dayton, New York 14138
 Telephone Number: (716) 988-3476
 E-mail: villenovatownhall@hughes.net

The Town Board will notify the applicant to start the SEQRA.

Councilmember Sarah LoManto was asked to return to the regular meeting of the board at 7:07PM.

Privilege of the floor was given:

Judy Phillips asked the highway superintendent if he could place cones for the fund raiser conducted by the Villenova Burial Association to be held Sept. 15th wherein they will have a 5k walk/run. He simply asks for routing information and times the cones need to be out and he will place them. She inquired about parking on town highways.

Tina Graziano inquired about an article in the paper addressing the lack of planning board members, and read a section of town law stating there are to be 5 – 7 members. She read a letter of interest from Alan Crowell to be on that board, and a text from Mikal Raag to be considered a member of the planning board.

Nancy Huber expressed her interest in being appointed to the planning board.

Diana Ermer read her resume and expressed desire to be appointed to the planning board.

Betty Ebling read here resume and asked consideration to the planning board.

John Robinson expressed his views on the caucus and inquired as to why the notices were not published in the paper and put on the town web site.

A lengthy discussion occurred from all attending, **Town Attorney** addressed those in attendance and explained the caucus’s are not town business, therefore their questions would not get a response from the board and asked to move on with town business, stating this was not appropriate and was improper for the board to respond.

*****A MOTION** was made by Sarah LoManto, seconded by Yvonne Park to adjourn meeting at 7:24PM

Adopted:	Ardillo	- aye
	LoManto	- aye
	Butcher	- aye
	Palmer	- aye
	Park	- aye

Respectfully Submitted
Julie Goodway
Villenova Town Clerk

TOWN OF VILLENova

TOWN OF VILLENova: Sign in sheet.

	NAME	ADDRESS
1.	Barbara Wise	Hamlet
2.	Richard Wise	"
3.	Judy Phillips	Freshville
4.	Lisa Sayers	Forestville
5.	Mark Huber	Round Top
6.	Diana Gomer	Round TOP
7.	J. W. Plinski	Round Top Rd
8.	Max Meyerhuber	Charter Com.
9.	Sue Brannon	Rt 83
10.	Mark Tomlinson	Freedom
11.		
12.		
13.		
14.		
15.		
16.		
17.		