



**TOWN OF VESTAL  
ZONING BOARD OF APPEALS**  
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**ZBA BOARD MEMBERS:**

Chairman: Mark Tomko (acting)  
Members: Clayton Ellis  
Tom Smallcomb  
Thomas Jackson, Jr.  
Eugene Burns  
Alternate: John Taylor  
Attorney: Matthew Butler

**TOWN OF VESTAL  
ZONING BOARD OF APPEALS**

In the Matter of the Application of

Wildcat Renewables, LLC/Brain Madigan  
879 Sanchez Street  
San Francisco, CA 94114 &  
840 Jensen Road  
Vestal, NY 13850  
B.C.T.M.P. # 174.04-1-1

**RECEIVED**

AUG - 4 2021

**VESTAL CODE**

**DECISION**

For an appeal of an Interpretation of the Code Enforcement Officer as provided for in Chapter 24, Article II, Division 3, Section 24-49 of the Code of The Town of Vestal, Broome County, New York (Zoning Ordinance)

At a meeting duly scheduled meeting for July 22, 2021 the Zoning Board of Appeals of the Town of Vestal held a public hearing to consider the application of Wildcat Renewables, LLC/Brain Madigan, regarding premises situate at 840 Jensen Road, Vestal, NY 13850, (B.C.T.M.P.# 174.04-1-1) for an Interpretation of the Code Enforcement Officer as provided for in Chapter 24, Article II, Division 3, Section 24-49 of the Code of The Town of Vestal, Broome County, New York (Zoning Ordinance), pertaining to the proposed construction/installation of a solar electrical generating facility in a Rural Residential (RR) Zoning District. Appearing on behalf of the applicants, Wildcat Renewables, LLC, for the Interpretation request are Brian Madigan of Wildcat Renewables, Kelly Sullivan of Bergman Associates, and Charles Malcomb of HodgsonRuss Attorneys.

Proof of publication of the notice of the hearing in the Town Crier was submitted, and the Board's letter to the applicant in response to his application was read. The applicant submitted a letter outlining his request along with two maps and a copy of the application.

Board members present, Mark Tomko, Acting Chairman, Tom Smallcomb, John Taylor, Eugene Burns and Clayton Ellis. All Board members stated that they had visited the site and were familiar with the character and nature of the area and this property.

After due deliberation, the Zoning Board of Appeals makes the following findings of fact and conclusions of law:

Applicant is requesting an Intrepretation of the Code Enforcement Officer's decision to the construction/installation of a 28 +/- acre solar electrical generating facility, commonly referred to as a "solar farm" on the property at 840 Jensen Road, a RR, Rural Residential Zoning District. The

Code Enforcement Officer has determined that a solar electrical generation facility does not fall within the Code of the Town of Vestal. In the Code of the Town of Vestal, Chapter 24, Article IV, Division 1, Section 24-151, electrical generation is not listed under the table of permitted uses. This code section does permit the use of an “Electrical distribution substation and other public utility structures” upon granting of a Special Permit from the Zoning Board of Appeals (ZBA).

The Code of the Town of Vestal, Chapter 24, Article IV, Division 1, Section 24-151, in the beginning, states, “The uses permitted in the districts below are as indicated. Uses not listed below are prohibited unless provided otherwise.” Based on electrical generation not being a listed use in the RR zoning district, it is the determination of the Code Enforcement Officer that a use variance would be required to be granted by the ZBA. The applicant states that their position is that the generation facility falls under the definition of a public utility, and therefore is a permitted use upon receipt of a Special Permit from the ZBA.

Mr. Madigan presented a brief synopsis of the applicant’s structure and business model along with the scope of the project. The project size is 28 +/- acres and would be a 5 MW community distributed generation solar energy facility and that this meets the Town’s definition of a Public Utility Structure. Mr. Malcomb states that the project falls under the definition of the “Public Utility Structure” and should be given a Special Permit especially since the statutory interpretation is to “effectuate the intent of the Legislature, and where the statutory language is clear and unambiguous, the court should construe it so as to give effect to the plain meaning of the words used. In addition, the project falls under the definition of “Public Utility Structure” and any ambiguity should be construed in favor of the applicant. Applicant further states that they will be regulated by a number of Federal and State regulatory agencies and that they have received favorable interconnection data NYSEG and that other Zoning Boards of Appeals who have evaluated this same issue have determined that renewable energy facilities, like this project, meet the definition of public utility uses.

Applicant also states that they believe that the generation of electricity is a broadening of the definition and is in conjunction with the transmission, distribution or regulation of water, gas, electric, telephone or other public utility service by a municipal corporation or by a corporation subject to regulation by state and/or federal regulatory agency. When asked if the company has been issued any prior judicial decision establishing them as a public utility, they responded in the negative at this time. The members of the ZBA in attendance proceeded to ask the applicant a number of questions around the definition of the code and generation, project size, scope of the project, land purchase or lease, useful life of the panels, disposal of the old panels, fencing, and vegetation and animal control.

The meeting was opened to the public, and eight (8) members of the public spoke in regards to the project. While no one expressed any objection in regards to solar energy generation, the main consideration points were in regards to the cutting of numerous acres of trees (when other open lands are present in the Town), The definition of the Town Code, the preservation of the integrity of the land and its effect on the wildlife, fauna, the effect on the wetlands near the site and if the site would expand in land use down the road, and the benefits of the project to the residents. The public portion was closed as no additional members of the public wished to be heard.

The Board members did ask some clarification questions of the applicant based on the public comments and the applicant even answered and responded to the public directly when asked about

project size, herbicide use, land and property values. The applicants clarified several aspects of the plan until no more questions or clarifications were raised by the ZBA members.

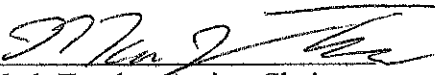
Therefore in consideration of the above, a motion was made by Thomas Smallcomb to uphold the Code Enforcement Officers determination as per Chapter 24, Article IV, Division 1, Section 24-151 at B.C.T.M.P.# 174.04-1-1 aka 840 Jensen Road, Vestal, NY 13850 that a use variance would be required to be granted by the ZBA based on the presentation to the Board. The motion was seconded by John Taylor. A vote was called and:

The request for an **Interpretation of the Code Enforcement Officers Determination** is hereby **Upheld** by a 5-0 vote. The vote was unanimous and the votes were cast as follows: Acting Chairman, Mark Tomko-AYE, Tom Smallcomb-AYE, John Taylor-AYE, Eugene Burns-AYE and Clayton Ellis-AYE.

The Code Enforcement Officer is herewith authorized to take the necessary action to carry out the provisions of this Decision.

Dated: August 3, 2021

ZONING BOARD OF APPEALS  
OF THE TOWN OF VESTAL

BY:   
Mark Tomko, Acting Chairman