

Solar Update January 2023

There have been several developments on two fronts in Hecate Energy's ongoing attempt to site a utility-scale solar energy power plant on 255 acres of mostly prime farmland in Craryville. If built as currently proposed, the power plant, known as "Shepherd's Run", would violate numerous provisions of Copake's Zoning Code. Its proposed size and location (running south from State Route 23 along County Route 7 to Cambridge Road) are contrary to Copake's longstanding efforts to be effective, caring stewards of the land, as evidenced by the Town's 2011 Comprehensive Plan, 2014 Farmland Protection Plan, Copake's Solar Law (passed in 2017 and updated in 2020), and the Taghkanic Headwaters Conservation Plan, which the Town Board adopted in August.

This Board has repeatedly argued that the project, as proposed, is poorly sited and too big for our small, rural town. Nonetheless, Hecate pushes ahead, seeking to avoid complying with Copake's local laws by courting approval from New York State's Office of Renewable Energy Siting ("ORES"), which has the power to override local laws it deems to be "unduly burdensome" if they impede achievement of the State's laudable goal of quickly reducing dependence on fossil fuels. We are not climate deniers. We support renewable energy. We insist that the State's move to renewable energy must be done sensibly, through collaboration with local towns, not by allowing out-of-state profit-seeking developers to plunk down huge energy factories wherever is most convenient and least expensive to do so — regardless of the cost to the local environment, economy and character.

So...here's what's happened since I last reported to you at the December Town Board meeting.

First, regarding the pending appeal of a lawsuit in which Copake is lead petitioner (joined by 5 other upstate, rural towns and 7 non-profit organizations) challenging the regulations under which ORES operates — regulations written to favor renewable energy developers by an energy industry consultant (for which Hecate is a client): our attorneys filed a reply brief on Monday, effectively, in my view, countering arguments raised by the State. The Reply brief is clear, effective, and easy to read (even for non-lawyers). I

will post a link to the Reply Brief in the Solar Update you will find in the upcoming Copake Connection. We now expect that the appeal will be heard in March by a panel of justices from the Third Judicial Department in Albany.

There also have been several developments regarding the Shepherd's Run proposal itself. In mid-December, Hecate asked to meet with us for the first time in more than a year. We agreed, and met yesterday via Zoom. The meeting was not productive, in the sense that Hecate offered nothing by way of negotiating. Rather, they asked for the Town's interpretations of various local laws Hecate is asking ORES to waive as being "unduly burdensome". Hecate claimed it was having fruitful negotiations with the *ad hoc* Working Group. However, it is our understanding that this characterization is, to put it kindly, overly optimistic. In any case, we again reminded Hecate that no one is authorized to negotiate on behalf of Copake.

At the meeting, Hecate told us they intend to file a response to ORES' second Notice of Incomplete Application on January 27, one month later than when it was due. They previously had announced this to ORES on December 20th, and when we saw that Hecate wasn't even *requesting* an extension of the due date, we wrote to ORES and urged them not to allow Hecate to unilaterally extend the time. We suggested instead that ORES should issue another Notice of Incomplete Application. This suggestion, not surprisingly, was not adopted by ORES, which instead urged Hecate and Copake to "consult". It seems reasonable to assume that this is why Hecate sought the meeting with us — for the first time in well over a year.

One more thing: on January 9th, a letter signed by Howard Blue, Copake's Town Historian, was submitted to ORES. The letter, researched by Tom Goldsworthy and Mr. Blue, presents evidence that the proposed site of Shepherd's Run, particularly the Rasweiller Angus Farm (formerly the Niver Farm) is on land that is a significant, well-documented historical and cultural site connected to the Stockbridge Munsee Band of the Mohican Nation. The letter refers specifically to the 1859 Mohican Occupation of Niver Farm, and suggests that the history should be reviewed as ORES considers Hecate's siting application because the NYS Historic Preservation Act requires the State to review a proposed project's impact on "historical or archeological resources". The letter notes

that similar evaluations are required by federal agencies, including the Bureau of Indian Affairs.

Hecate did not raise this letter with us at yesterday's meeting. In the meantime, we await responses from the letter's various addressees, which include the Stockbridge-Musee Historic Preservation Office, the NYS Historic Preservation Office, the U.S. and NYS Offices of the Bureau of Indian Affairs, and ORES.

We will keep you posted.

Thank you.