

5-14-2026 - REGULAR MAY MEETING

Present:

Councilman Leonard R. Hochadel
Councilman Krissy Kittleson
Councilman Kathleen Becker
Supervisor Beverly A. Gambino

Absent:

Councilman Matthew Krist

Also Present:

Highway Superintendent Christopher Dabolt
Town Clerk Jennifer L Bray
Town Attorney David DiMatteo – arrived at 7pm
Approx. 5 guests

Supervisor Gambino called the Regular May meeting to order at 6:30 PM with the Pledge to the Flag led by Ronald Kenyon.

Supervisor Gambino began by noting the Town Attorney would be attending the meeting but would be late and that when he arrived the Board would be going into Executive Session for attorney/client privilege discussion. She noted that there would not be any action taken after.

Supervisor Gambino then stated that there was one set of minutes from the Regular meeting held on April 9th to be approved. **On a motion by Hochadel, seconded by Kittleson, the minutes were approved as submitted. Carried, 4 ayes, 0 noes, 1 absent.**

Warrant #5 of 2026, totaling \$62,617.24 of which \$32,801.63 was for the General Fund, \$13,841.26 was for the Highway Fund, \$14,559.32 was for the Fire Protection Fund and \$1,415.03 was for the Streetlighting Fund. On a motion by Kittleson, seconded by Becker, the Warrant was approved for payment. Carried, 4 ayes, 0 noes, 1 absent.

Supervisor Gambino announced that Deputy Miller from the Erie County Sheriff's Office received the Erie County Law Enforcement 2026 Making a Significant Difference in Community Safety Award. Deputy Miller then updated the Board on Sheriff's activities in the Town.

Supervisor Gambino presented a proposal for engineering services from the Town Engineering firm MRB in the amount of \$24,000.00 for work to be done to the building including gym renovations and new exterior doors. **On a motion by Hochadel, seconded by Kittleson, the proposal was accepted as submitted. Carried, 4 ayes, 0 noes, 1 absent.**

Supervisor Gambino stated that the next item for discussion is the contract with the Historical Society. Supervisor Gambino stated that the contract would be for \$15,000.00 per year for 3 years. Supervisor Gambino noted that the current contract had expired at the end of 2025. **On a motion by Kittleson, seconded by Becker, the contract approved as submitted. Carried, 4 ayes, 0 noes, 1 absent.**

Supervisor Gambino stated that Michelle Jones will no longer be able to work as the Assessors clerk and stated that Amanda Gentner has applied to fill the position. **On a motion by Kittleson, seconded by Becker, Amanda Gentner was appointed at a rate of \$24.00 per hour. Carried, 4 ayes, 0 noes, 1 absent.**

Department Reports

Councilman Kittleson had nothing to report

Councilman Becker had nothing to report

Councilman Hochadel reminded the Board that the summer concerts start June 9th.

Highway Superintendent Dabolt reported that he had his 284 Agreement to Spend Highway Funds forms to be signed and he read the planned road work to the board. **On a motion by Hochadel, seconded by Kittleson, the 284 Forms were approved. Carried, 4 ayes, 0 noes, 1 absent.** Mr. Dabolt noted that the rainy cold weather has made some of the spring work difficult and that he was still working to get brush chipping done. Supervisor Gambino discussed getting banners to decorate the shelters at the park.

Supervisor Gambino stated that the next item on the agenda is a resolution to set the standard work day for the part time Emergency Services Coordinator for the New York State Retirement System. **On a motion by Hochadel, seconded by Becker, the following resolution to be known as Resolution #7 of 2026 was moved for adoption.**

Resolution #7

STANDARD WORK DAY RESOLUTION REQUIRED BY NEW YORK STATE RETIREMENT

WHEREAS, the Town of Sardinia hereby establishes the following as standard work day for its employees and will report days worked to the New York State and Local Employees' Retirement System

based on the time keeping system or the record of activities maintained and submitted by these members to the clerk of this body:

Standard Work Day – Part Time Emergency Services Coordinator – 6 hours

NOW, THEREFORE, BE IT RESOLVED that The Sardinia Town Board approves these standard work days as required by New York State Retirement System.

DULY ADOPTED, this 14th day of May, 2026 by the following vote: Becker, aye, Hochadel, aye, Krist, absent, Kittleson, aye, Gambino, aye. So resolved, 4 ayes, 0 noes, 1 absent.

Supervisor Gambino stated that the next resolution is for the standard work day and reporting for elected and appointed officials. **On a motion by Kittleson, seconded by Becker, the following resolution to be known as Resolution #8 of 2026 was moved for adoption.**

**Resolution #8
STANDARD WORKDAY AND REPORTING RESOLUTION FOR ELECTED AND APPOINTED OFFICIALS**

| NAME | TITLE | CURRENT TERM | STANDARD WORK DAY | RECORD OF ACTIVITIES | PAY FREQUENCY |
|--------------------|-------------------------------|-------------------------|-------------------|----------------------|---------------|
| Beverly Gambino | Supervisor | 01/01/2026 – 12/31/2028 | 6 | 20.62 | Bi-Weekly |
| Christopher Dabolt | Highway Superintendent | 01/01/2026 – 12/31/2028 | 8 | 36.92 | Bi-Weekly |
| Jennifer Bray | Town Clerk | 01/01/2026 – 12/31/2028 | 6 | 24.74 | Bi-Weekly |
| Matthew Krist | Councilman Town Board | 01/01/2026 – 12/31/202 | 6 | .36 | Monthly |
| Gerard Whittington | Emergency Service Coordinator | 01/01/2026 – 12/31/28 | 6 | .50 | Monthly |

BE IT RESOLVED, that the Town of Sardinia, hereby established the above standard work days for these titles and will report the officials to the New York State and Local Retirement based on their record of activities.

DULY ADOPTED, this 14th day of May, 2026 by the following vote: Becker, aye, Hochadel, aye, Krist, absent, Kittleson, aye, Gambino, aye. So resolved, 4 ayes, 0 noes, 1 absent.

Supervisor Gambino reported that the proposed solar project on Savage Rd. had been withdrawn and would not be proceeding. She noted that there is a Battery Energy Storage project that has applied for. She noted that the next resolution is for a proposed escrow agreement with the company that has applied. Supervisor Gambino noted that the escrow funds would be used to pay for professional services such as engineering and legal fees associated with the project. It was noted that once this is approved by the Board it will be sent to the applicant for approval. **On a motion by Kittleson, seconded by Becker, the following resolution to be known as Resolution #9 of 2026 was moved for adoption.**

**Resolution #9
ESCROW AGREEMENT FOR PAYMENT OF MUNICIPAL EXPENSES**

This Agreement, dated May 14 , 2026, is by and between the Town of Sardinia, Erie County, State of New York, a municipal corporation duly organized and existing under the Laws of the State of New York with its principal office located at 12320 Savage Road, Sardinia, NY 14134 (the “Town”), and Sardinia East, LLC, a New York Limited Liability Company with its principal place of business at 101 Summer Street, Second Floor, Boston, MA 02110, and Nexamp Solar, LLC, a New York Limited Liability Company with its principal place of business at 101 Summer Street, Second Floor, Boston, MA 02110, (the “Applicant”); The Town and the Applicant may sometimes be referred to herein individually, as a “party” and, collectively, as the “parties.”

WHEREAS, Applicant has submitted an application to the Town for site plan approval and related permits for the development of a large-scale battery energy storage project to be located at VL Genesee Road in the Town of Sardinia, and identified on the Erie County Tax Map as Parcel No. 309.00-2-3 (the “Project”); and

WHEREAS, the Applicant has submitted a proposed site plan, an Agricultural Data Statement, and other documents describing the proposed installation; and

WHEREAS, pursuant to Article IX of the New York State Constitution, New York Municipal Home Rule § 10, and Section 115-62F(2)(H) of the Town's Zoning Code, the Town has the authority to engage professional consultants, including legal counsel and engineering firms (the "Firms"), to assist in the review of the application at the Applicant's expense; and

WHEREAS, the Town has determined that it requires the assistance of a land use attorney and an engineering consultant to adequately review the application, ensure compliance with local laws, and fulfill its obligations under SEQRA as Lead Agency; and

WHEREAS, Applicant has agreed to enter into this Escrow Agreement to reimburse the Town for its reasonable and necessary out-of-pocket expenses incurred in connection with the review of the Project.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Town and Applicant agree as follows:

1. The Applicant shall reimburse all of the Town's reasonable and necessary legal, engineering, and consultation fees, costs, and expenses incurred in connection with the review of the Project. This includes all services required to process the application, review the project for compliance with the Town's Zoning code and Battery Energy Storage Systems Law (Local Law No. 2 of 2021), and complete the SEQRA process. Applicant shall not be required to reimburse the Town for any legal fees associated with litigation arising in connection with the Town's review process.

2. The Applicant shall reimburse all of the Town's reasonable administrative expenses, including but not limited to publication fees, paper and printing costs, collation and binding costs, transcription costs, etc., incurred in connection with the review of the Project, upon the Town having given fifteen (15) days' notice and opportunity to the Applicant to remedy the reason for which such administrative expense is to be incurred, if the ability to remedy is applicable. Nothing herein shall be construed to exempt the Applicant from the submission of a complete application which is compiled, collated, tabbed, bound, and in a format easily reviewed by the Town's Officials, experts, and consultants.

3. The Town shall designate its consultants and provide the Applicant with a copy of any retainer agreement or engagement letter, at the Applicant's request. The Town has retained DiMATTEO ROACH & KELLY, ATTORNEYS AT LAW as legal counsel and the consulting engineer. Applicant agrees that these firms possess the technical capabilities to provide the necessary services.

4. The Town may retain additional experts as necessary, upon advance written notice to Applicant. The notice shall specify the Firm or Firms which the Town wishes to retain, the Firm or Firms' expertise, and the Firm or Firms' billing rates. Applicant shall have fifteen (15) days after the receipt of such notice to advise the Town in writing of any objection to the retention of the additional Firm or Firms. If Applicant raises an objection, the parties agree to meet to discuss a resolution within ten (10) days of the Town's receipt of the notice of objection.

5. Within ten (10) business days of execution of this Agreement, Applicant shall deposit the sum of thirty-five thousand dollars (\$35,000.00) with the Town Clerk, to be held in an interest-bearing escrow account maintained by the Town (the "Fee Escrow Account"), with interest accruing to the Applicant's benefit. These funds shall be used exclusively to pay the Town's legal, engineering, and consultant fees incurred in connection with the review of the Project.

6. Invoices for engineering services, legal services, and administrative expenses will be submitted to the Town Board, which will review the invoices on a monthly basis. Upon approval by the Town Board, the Town Clerk will thereafter be directed to disburse funds from the Fee Escrow Account to pay the invoices. Copies of all invoices shall be provided prior to approval by the Town Board to Applicant through Applicant's designated attorney(s), except for any privileged portions of legal billings. Applicant shall have the right to review all invoices submitted by the Town's consultants, subject to the Town's right to redact any privileged, attorney-client, proprietary, or otherwise confidential materials, and shall notify the Town of any objections to the same within fifteen (15) days of receipt of the subject invoices from the Town. If Applicant raises an objection, the parties agree to meet to discuss a resolution within ten (10) days of the Town's receipt of the notice of objection.

7. The Town shall provide monthly Fee Escrow Account Statements to Applicant, together with an itemized accounting of monies disbursed from the Fee Escrow Account, if applicable. In no event shall Applicant allow the balance of the Fee Escrow Account to fall below the sum of fifteen thousand dollars (\$15,000.00). In the event that such balance falls below fifteen thousand dollars (\$15,000.00), the Town shall immediately notify Applicant in writing of the amount of the deficiency, and Applicant shall replenish the balance of the Fee Escrow Account to a minimum of \$20,000.00 within fifteen (15) days of receipt of the Town's notice.

8. In no event is the Applicant required to reimburse the Town for fees paid to professional consultants in an amount greater than fifty thousand dollars (\$50,000.00) unless otherwise agreed to by amendment to this agreement. The Applicant may terminate this agreement upon receipt by the Town of ten (10) days written notice. Upon such termination, the Applicant shall no longer be responsible for costs related thereto and any remaining funds, minus any outstanding costs, fees or expenses incurred by the Town up to ten (10) days subsequent to the date of receipt of the notice of termination will be returned to the Applicant.

9. Applicant shall immediately notify the Town in writing of any material changes to the Project, including but not limited to the scope, location, or ownership structure. The Town reserves the right to require additional review and associated fees for such changes.

10. The consultants retained by the Town shall have no fiduciary duty to the Applicant and shall act solely in the interest of the Town in reviewing the Project application.

11. The services covered by this Agreement shall include those necessary for the Town's review of the Project application and SEQRA compliance. The rates charged by the Town's consultants shall be consistent with customary rates for similar services within the region.

12. Compliance with the terms of this Agreement shall be a condition of any approval issued by the Town to the Applicant related to the Project.

13. Execution of this Agreement does not constitute or imply approval of the Applicant's Project. The Town reserves the right to deny or conditionally approve the Project in accordance with applicable laws, regulations, and its local laws and ordinances.

14. The Town reserves the right to amend its zoning laws, policies, or procedures during the pendency of the Project review, and Applicant shall comply with any such amendments.

15. Upon completion of the Town's review of the Project and final payment of all outstanding consultant fees, any remaining balance in the escrow account shall be returned to the Applicant.

16. At the Applicant's request, the Town shall provide a written accounting of all funds received and disbursed from the escrow account.

17. Applicant may not assign or transfer its rights or obligations under this Agreement without the prior written consent of the Town. Any unauthorized assignment shall be void.

18. Any notices contemplated hereunder shall be given in writing and delivered to the parties by first class mail, postage prepaid, at the addresses as set forth hereafter:

i. Notices to the Town:

Town of Sardinia
Attn: Supervisor
12320 Savage Road
Sardinia, New York 14134

With a Copy to:

DiMatteo Roach & Kelly
Attn: Elijah H. McWhinney, Esq.
87 North Main St.
P.O. Box 190
Warsaw, New York 14569

ii. Notices to the Applicant:

Sardinia East, LLC
c/o Nexamp, LLC
101 Summer Street, 2nd Floor
Boston, Massachusetts 02110

19. In the event of a dispute arising out of or relating to this Agreement, including regarding the reasonableness of any fees or charges, or the establishment, administration, or replenishment of the escrow account, the parties shall submit said dispute to alternative dispute resolution in the form of non-binding mediation before a mutually agreed-upon mediator. In the event that either party determines to

proceed with resolution of the dispute through judicial intervention, this agreement to submit disputes to mediation will not be used against any party in the judicial forum.

20. Any claims, causes of action, disputes, or controversies arising out of or relating to this Agreement that cannot be resolved through mediation shall be litigated exclusively in the Supreme Court of the State of New York, County of Erie. The parties hereby consent to the personal jurisdiction of such court and waive any objections based on improper venue or forum non conveniens.

21. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

22. If any provision of this Agreement is found to be invalid or unenforceable, the scope of such provision shall be reduced to the extent necessary to make it enforceable, and the remaining provisions shall continue in full force and effect.

23. This Agreement constitutes the entire understanding between the parties and supersedes all prior discussions, agreements, or understandings of any kind. Any amendment or modification of, or waiver under, this Agreement shall be in writing and acknowledged by the Parties.

24. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other (or further) exercise thereof.

25. When several counterparts of this Agreement have been executed, all counterparts shall constitute one and the same instrument.

DULY ADOPTED, this 14th day of May, 2026 by the following vote: Becker, aye, Hochadel, aye, Krist, absent, Kittleson, aye, Gambino, aye. So resolved, 4 ayes, 0 noes, 1 absent.

Supervisor Gambino stated that the next item is a resolution to approve issuing an RFP for Engineering Services to work on the Town's behalf in regards to the Battery Energy Storage Project. **On a motion by Hochadel, seconded by Kittleson, the following resolution to be known as Resolution #10 of 2026 was moved for adoption.**

Resolution #10

TOWN OF SARDINIA RESOLUTION TO ISSUE REQUEST FOR PROPOSALS FOR ENGINEERING SERVICES REGARDING SARDINIA EAST, LLC BATTERY STORAGE ENERGY SYSTEM APPLICATION

WHEREAS, the Town Board of the Town of Sardinia met at a regular board meeting at the Town Hall located at 12320 Savage Road in the Town of Sardinia, New York on the 14th day of May, 2026, commencing at 6:30 P.M., and

WHEREAS, all Board Members, having due notice of said meeting, and that pursuant to Article 7, §104 of the Public Officers Law, said meeting was open to the general public and due and proper notice of the time and place whereof was given as required by law; and

WHEREAS, the Town of Sardinia received an application for a new battery storage project from Sardinia East, LLC c/o Nexamp Solar to be located at VL Genesee Road, Sardinia, New York, parcel identified as Tax ID No. 309.00-2-3; and

WHEREAS, recognizing the complexity that comes with the review of such applications, the Town feels it is necessary to engage the services of an engineer familiar with the technical language of battery storage siting regulations who will be able to advise the Town on compliance of this application with the Town's regulations; and

WHEREAS, per Section 115-63(F)(2)(h) ("Application Fees") of the Town Code of The Town of Sardinia, the Town shall require the applicant to enter into an escrow agreement in order to cover all engineering costs required to review such application; and

WHEREAS, the Town specifically desires for such engineer to review application materials, with comments to be provided on such application materials, to teleconference and video-conference as needed with the Town and the Town's specialists to discuss the application and specific regulations, and to attend Town Board and / or Planning Board meetings as necessary to discuss the law with the Board and with residents in the case of a public hearing; and

WHEREAS, the Town of Sardinia now desires to enlist the services of an appropriately qualified engineer to assist with the review of the aforementioned application; and

WHEREAS, the Town of Sardinia further desires to send out a Request for Proposals to the following engineering firms to request sealed bids for engineering services regarding battery storage regulations:

- i. Clark Patterson Lee
- ii. Colliers Engineering & Design
- iii. C & S Companies
- iv. Labella Associates
- v. MRB Group
- vi. Nussbaumer and Clarke, Inc.
- vii. Wendel

; and

WHEREAS, the Town Board of the Town of Sardinia further desires to enlist the services of the Town Attorneys, DiMatteo Roach & Kelly, Attorneys at Law, to assist with the process of drafting and sending out such Requests for Proposals; and

NOW ON MOTION OF Councilman Hochadel which has been duly seconded by Councilman Kittleson, be it

RESOLVED, that the Town of Sardinia shall send out Requests for Proposals to the following engineering firms to request sealed bids for engineering services regarding the application for a new battery storage project from Sardina East, LLC c/o Nexamp Solar to be located at VL Genesee Road, Sardina, New York, parcel identified as Tax ID No. 309.00-2-3:

- i. Clark Patterson Lee
- ii. Colliers Engineering & Design
- iii. C & S Companies
- iv. Labella Associates
- v. MRB Group
- vi. Nussbaumer and Clarke, Inc.
- vii. Wendel

; and be it further

RESOLVED, that the Town of Sardinia hereby authorizes the Town Attorney, DiMatteo Roach & Kelly, Attorneys at Law, to draft and send the Requests for Proposals to the aforesaid companies.

DULY ADOPTED, this 14th day of May, 2026 by the following vote: **Becker, aye, Hochadel, aye, Krist, absent, Kittleson, aye, Gambino, aye. So resolved, 4 ayes, 0 noes, 1 absent.**

On a motion by Gambino, seconded by Kittleson, the Board adjourned into Executive Session at 7:03 pm. Carried, 4 ayes, 0 noes, 1 absent.

On a motion by Hochadel, seconded by Becker, the Board returned from Executive Session at 7:38 pm. Carried, 4 ayes, 0 noes, 1 absent.

There being no other business to come before the Board Supervisor Gambino asked for a motion to adjourn the May meeting. **On a motion by Becker, seconded by Gambino, the May meeting was adjourned at 7:39 pm. Carried, 4 ayes, 0 noes, 1 absent.**

Respectfully Submitted,

Jennifer L. Bray, RMC
Town Clerk