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P R O C E E D I N G S

PUBLIC HEARING

Town of Ballston
Ballston, New York

A Public Hearing

- in the matter of -

Eminent Domain Procedure Law

Section 202

July 12, 2022
6:15 p.m.

Held via Zoom

PRESENT:

Eric Connolly - Supervisor
 Kelly Jasinski - Councilperson
 Mike Carota - Councilperson
 Chuck Curtiss - Councilperson
 Rob Fendrick - Councilperson
 Debra Kaelin - Town Attorney
 Carol A. Gumienny - Town Clerk

ALSO PRESENT:

Ed Hernandez - Adirondack Mountain Engineering
 Project Engineer for Ballston Lake Sewer Project
 William F. Ryan, Esq. - Tabner, Ryan & Keniry, LLP
 Attorney for Ballston Lake Sewer Project
 Mark McNamara, Esq. - Barclay Damon, LLP
 Attorney for Niagara Mohawk Power Corporation

EXHIBITS

| <u>Number</u> | <u>Description</u> | <u>For Ident.</u> |
|---------------|---|-------------------|
| 1 | National Grid map, October 1, 2017 | 3 |
| 2 | National Grid survey description | 3 |
| 3 | Resolution Setting Public Hearing | 3 |
| 4 | Letter to National Grid, June 21, 2022 | 3 |
| 5 | Certified Mail Receipt, Mark McNamara | 3 |
| 6 | Receipt Card, National Grid | 3 |
| 7 | Certified Mail Receipt, National Grid | 3 |
| 8 | Receipt Card, Mark McNamara | 3 |
| 9 | Affidavit of Publication | 3 |
| 10 | Notice of Hearing | 3 |

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2 <https://us06web.zoom.us/j/81373986446> or call
3 1-646-558-8656, Webinar ID: 813 7398 644.

4 The installation of sewer mains, other
5 associated infrastructure and the location of the
6 access and utility easement for ingress and
7 egress will improve the sewage conveyance within
8 the Ballston Lake Sewer District and is a
9 necessary component for the Sewer District.

10 Installation of the sewer mains, other
11 associated infrastructure and the location for
12 the access and utility easement will require
13 acquisition of easements over and across real
14 property located in the Town of Ballston, the
15 exact location of which will be discussed at the
16 Public Hearing. If easements cannot be obtained
17 voluntarily from landowners, the Town of Ballston
18 shall pursue acquisition through condemnation.

19 The proposed location of the real
20 property to be acquired is as follows: New York
21 State Route 146A, SBL# 239.-1-15. There are no
22 other proposed alternate locations for the
23 installation of the sewer mains, associated
24 infrastructure and the access and utility
25 easement for ingress and egress to complete this

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1 project.

2 Please take further notice that all
3 interested persons appearing via the Zoom video
4 platform for the Public Hearing will be heard.
5 Property owners who may subsequently wish to
6 challenge condemnation of their real property via
7 judicial review may do so only on the basis of
8 issues, facts, and objections raised at this
9 hearing.
10

11 Dated June 14th, 2022, Ballston, New
12 York, Town Board of the Town of Ballston, 323
13 Charlton Road, Ballston Spa, New York 12020.

14 **SUPERVISOR CONNOLLY:** Thank you, Carol.

15 **MR. RYAN:** Has there been a motion to
16 open the Public Hearing?

17 **SUPERVISOR CONNOLLY:** There has not been.
18 We simply opened up the Public Hearing the way we
19 normally open up the Public Hearing, where I just
20 say I'm calling this Public Hearing to order.

21 Do we need a motion?

22 **MR. RYAN:** I would make the motion to
23 open the Public Hearing.

24 **SUPERVISOR CONNOLLY:** Okay. Can I get a
25 motion to open the Public Hearing?

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COUNCILMAN CAROTA: I'll move it.

SUPERVISOR CONNOLLY: Thank you. Second?

COUNCILMAN FENDRICK: I'll second.

SUPERVISOR CONNOLLY: Councilman Fendrick
for the second.

All in favor of opening the Public
Hearing for this Eminent Domain proceeding?
(Response of aye.)

SUPERVISOR CONNOLLY: Opposed?

(No response.)

SUPERVISOR CONNOLLY: Motion passes.
Attorney Ryan, are you next up on our agenda
here?

MR. RYAN: I am, and if I may, this
Public Hearing was set forth, pursuant to Section
202 of the Eminent Domain Procedure Law, and
permit me to give you a brief history of where
we're at right now.

On June 14th, 2022, the Town Board
adopted a resolution setting the Public Hearing
for this evening at 6:15 p.m., and in point of
fact, the Town Clerk read the notice of Public
Hearing, pursuant to the Eminent Domain Procedure
Law, Section 202.

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2 In terms of evidence, we have an
3 affidavit of publication submitted by the
4 Schenectady -- or the Daily Gazette -- excuse me
5 -- published on five consecutive dates: June 17,
6 June 18, June 20, June 20 and -- excuse me, June
7 17, 18, 19, 20, and 21, 2022, for five
8 consecutive days as required by the Eminent
9 Domain Procedure Law.

10 We also served by certified mail upon
11 both the representative of National Grid, Pamela
12 Aspinall, and at the time I felt, because of past
13 experience, Mr. Mark McNamara from Barclay Damon,
14 as the attorney. So they received their
15 notifications per the Eminent Domain Procedure
16 Law.

17 What we're going to do tonight is have
18 Mr. Hernandez review with you, the Town Board and
19 whoever is on the platform, a description of what
20 the project is about, where it's located, the
21 address, and that there are no other alternatives
22 for the proposed Eminent Domain, and I will say
23 just for the record, the real property is located
24 at New York State Route 146A, and it's identified
25 as Section, Block, and Lot Number 239.-1-15.

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2 So, now I'm going to turn it over to Mr.
3 Hernandez, who is going to tell you that there
4 are no other proposed locations that exist for
5 the installation of the mains or other associated
6 infrastructure and for access for the utility
7 easement for ingress and egress.

8 So, Ed, the floor is yours.

9 **MR. HERNANDEZ:** Thank you, Bill. I'd
10 like to have the Town Board and everyone at the
11 Public Hearing refer to Exhibit 1, which is the
12 proposed easement map and sewer locations. It's
13 attached to the agenda packet for the Public
14 Hearing as Exhibit 1.

15 On that exhibit you can see that National
16 Grid owns both the property -- the lot they own
17 covers both sides of New York State 146A, and
18 it's necessary to cross that lot in order to get
19 sewer to the existing pump station that's on the
20 east side of their lot right on Main Street.

21 There are no other alternatives for
22 getting the sewers across the railroad to the
23 pump station except for crossing the National
24 Grid property. As a result, there's just no
25 other alternative locations.

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2 Irrevocable ingress and egress are
3 required to install and operate and maintain
4 these sewers for the long term.

5 Are there any questions associated with
6 that map for those proposed sewers?

7 (No response.)

8 **MR. RYAN:** Do you also have the property
9 description, Mr. Hernandez?

10 **MR. HERNANDEZ:** Yes, there's also a
11 formal property description of the easement. Do
12 you want that read?

13 **MR. RYAN:** No. There's no need to read
14 it. It's just part of the package that you
15 furnished to the Town; am I correct?

16 **MR. HERNANDEZ:** That's correct. It's
17 identified as Exhibit 2, which is attached to the
18 map.

19 **MR. RYAN:** Okay. And does the survey
20 description describe the taking that you propose
21 -- that we propose?

22 **MR. HERNANDEZ:** The survey description
23 does describe the proposed taking and the outline
24 of the easement.

25 **MR. RYAN:** And is it consistent with the

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2 map that we've had marked as Exhibit 1?

3 **MR. HERNANDEZ:** It is consistent with the
4 shaded area on the map identified as Exhibit 1.

5 **MR. RYAN:** Okay. And the public purpose
6 for this taking is for the installation of
7 sanitary sewer and mains, correct, and for access
8 for ingress and egress; am I correct?

9 **MR. HERNANDEZ:** You're correct on all
10 those accounts. The sanitary sewers are required
11 to address failing septic systems that are
12 currently impacting water quality on Ballston
13 Lake and impacting general public welfare, and
14 these sewers are required in order to remedy that
15 issue.

16 And these sewers are supported by the New
17 York State Department of Environmental
18 Conservation, as well as the State of New York,
19 and they have provided a significant grant and
20 funding to make this happen due to the
21 significant impact on the water quality and
22 public welfare.

23 **MR. RYAN:** Are there any other locations
24 for which the installation of this infrastructure
25 can be accomplished, other than what you've

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1 depicted?

2
3 **MR. HERNANDEZ:** There are no other
4 alternates than what I've depicted in order to
5 install these sewers.

6 **MR. RYAN:** Mr. Supervisor, we have
7 nothing further to add on this particular matter.
8 There may be members of the public who wish to
9 speak or provide a statement to the Town Board.

10 **SUPERVISOR CONNOLLY:** Sure thing. Thank
11 you for all the evidence.

12 Anyone on the Zoom call who would like to
13 add to the public record, please go ahead and
14 raise your hand.

15 We do have somebody raising their hand.
16 So, you'll be asked to please tell us your name
17 and address, please, and we will have Councilman
18 Carota keep time for us. We'll keep comments to
19 three minutes given we have a public meeting
20 after this. Stand by.

21 **MR. McNAMARA:** All right. My name is
22 Mark McNamara. My address is 1841 Billington
23 Road, East Aurora, New York 14052, and I am an
24 attorney with Barclay Damon, and we represent
25 Niagara Mohawk Power Corporation, which is also

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2 known as National Grid.

3 **SUPERVISOR CONNOLLY:** Thank you. And
4 your public comments?

5 **MR. McNAMARA:** I will give a brief
6 statement, and then I can provide it in writing
7 to Bill Ryan for the Board's convenience. I'll
8 just e-mail that to him afterwards.

9 National Grid, Niagara Mohawk Power
10 Corporation, which I'll refer to as National Grid
11 throughout here, is the owner of various natural
12 gas and electric transmission and distribution
13 systems and infrastructure, which I'll call
14 utilities infrastructure, which is at issue in
15 this Eminent Domain Procedure Law, Article 2
16 Public Hearing, which will -- that utility
17 infrastructure will be negatively and materially
18 impacted by the Town of Ballston's proposed
19 acquisition of various property rights from
20 National Grid for the installation of the sewer
21 mains and other associated infrastructure for the
22 Ballston Lake Sewer District and a proposed
23 access and utility easement for ingress and
24 egress, which is your description, and I'll refer
25 to it as The Project.

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2 of Cheektowaga, or, two, "where the new use would
3 not materially interfere with the initial use,"
4 which is from the Long Island Railroad case
5 versus LILCO, which is an Appellate Division case
6 that was affirmed by the Court of Appeals in
7 1985.

8 As detailed below, the area in which the
9 Town proposes to take various property interests
10 and install the project is already being used by
11 National Grid for the public purpose of its
12 utility gas and electric transmission and
13 distribution systems, with which the project will
14 materially interfere and jeopardize the health
15 and safety of the community.

16 National Grid owns various property
17 rights in the real property that is the subject
18 of this procedure, and has been identified as
19 Route 146A, the SBL Number is 239.-1-15, as was
20 previously stated.

21 I'll refer to that as the Property. That
22 property contains various infrastructure, which
23 infrastructure which National Grid owns and
24 operates as part of its natural gas and electric
25 transmission and distribution systems, including,

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2 but not limited to, the following facilities:
3 The Shore Road Substation, a high pressure gas
4 regulation station, an 8-inch plastic gas
5 distribution main, an underground electric 4.8 kv
6 distribution line, a 34.5 kv sub transmission
7 line, which is the Ballston Shore Road/Shore Road
8 Rosa Road 5 line, a 10-inch gas transmission
9 line, and a 12-inch gas distribution critical
10 main line.

11 These facilities are critical to
12 maintaining safe and reliable electric gas
13 service for the public.

14 **COUNCILMAN CAROTA:** That's three.

15 **MR. McNAMARA:** Pardon?

16 **COUNCILMAN CAROTA:** Three minutes. I
17 just wanted to -- I was keeping time, but if you
18 want to wrap, finish it up.

19 **MR. McNAMARA:** I'll read fast, and then
20 you cut me off when my time is up and I'll give
21 the rest of the statement to Bill.

22 The Town's proposed installation of sewer
23 mains and other associated infrastructure is
24 intended to cross underneath National Grid's gas
25 transmission and distribution and underground

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2 electric facilities, which will materially
3 interfere with prior use of the property and
4 threaten the safety and reliability of National
5 Grid's regional gas and electric transmission and
6 distribution for the Town.

7 Accordingly, the Town's acquisition is
8 barred for that reason.

9 There are significant safety concerns
10 that result from this project. The Project, as
11 described by the Town, has certain dangers posed
12 to nearby residents, infrastructure, work crews,
13 and the environment.

14 Ruptured gas lines can incinerate
15 everything around a blast radius of up to 1,200
16 feet, and you have several significant gas lines
17 in this area where the sewer line is supposed to
18 go.

19 Contact with electric lines can cause
20 burns and other injuries. As stated above, the
21 property contains extensive underground
22 infrastructure to which both the gas and
23 electricity are transmitted and distributed.

24 The Town's proposal to install those
25 sewer mains and associated infrastructure would

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2 cross underneath National Grid's underground gas
3 and electric facility, posing significant risks
4 of an accident which would cause catastrophic
5 damage to everything in its vicinity.

6 Finally, I'll just touch on these and,
7 again, give the statement, the rest of the
8 statement to Bill.

9 Another objection we have is that the
10 EDPL requires that these Public Hearings be in
11 person, and so one of our objections would be
12 that holding it by conference call or video
13 platform violates the EDPL, and that argument is
14 laid out in the statement that I'll provide to
15 Bill.

16 The proposed acquisition constitutes an
17 excess taking. It's a well-established principle
18 the condemnor has no right to take more than that
19 which is necessary to effect the public purpose
20 of its project.

21 Here the Town and National Grid
22 negotiated the detail, or came close to
23 concluding the detailed terms of a license
24 agreement to address all of the safety and
25 operational concerns that National Grid had with

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2 respect to its existing public utility
3 infrastructure through a variety of limitations
4 that would have been imposed on the Town in that
5 license agreement -- or on the Town as the
6 licensee.

7 For the Town to now reject the license in
8 favor of an easement without such limitations
9 exceeds its authority to take only what is needed
10 for the purported public purpose.

11 And the last item is, we essentially
12 reserve our rights with respect to whether the
13 Town has complied with SEQRA, since we haven't
14 had an opportunity to see what, if any,
15 environmental review of the project the Town has
16 had.

17 With that, I will conclude my remarks,
18 and thank you for allowing me to go over the
19 three-minute mark.

20 Again, I will provide this. I assume
21 that that is satisfactory if I just e-mail this
22 statement to Bill Ryan, or do you want me to send
23 it to the Town?

24 **SUPERVISOR CONNOLLY:** Go ahead, Bill.

25 **MR. RYAN:** You can send it to me, and

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2 then I'll furnish it to the Supervisor and to the
3 Town Board.

4 **MR. McNAMARA:** All right. Thank you.

5 **MR. RYAN:** You're welcome. Just so that
6 we're clear in terms of the evidence: We have
7 the affidavit of publication, the letters to
8 Pamela Aspinall and Mark McNamara, and the map
9 and description that Mr. Hernandez referenced in
10 his presentation.

11 **SUPERVISOR CONNOLLY:** Thank you. Anyone
12 else on the Zoom call that is allowed to happen
13 via the Governor's order who would like to raise
14 their hand and leave a public comment?

15 (No response.)

16 **SUPERVISOR CONNOLLY:** Seeing no hands
17 raised, it is 6:36 p.m., and I'd like to ask for
18 a motion to close this Public Hearing.

19 **COUNCILWOMAN JASINSKI:** So moved.

20 **SUPERVISOR CONNOLLY:** Councilwoman
21 Jasinski, and a second?

22 **COUNCILMAN FENDRICK:** I'll second.

23 **SUPERVISOR CONNOLLY:** Councilman Fendrick
24 with a second.

25 Discussion?

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2 (No response.)

3 **SUPERVISOR CONNOLLY:** All in favor of
4 closing the Public Hearing?

5 (Response of aye.)

6 **SUPERVISOR CONNOLLY:** Opposed?

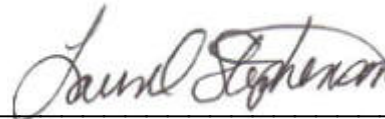
7 (No response.)

8 **SUPERVISOR CONNOLLY:** And it passes.

9 (Whereupon, at 6:37 p.m. the proceedings
10 in the above-entitled matter were concluded.)

C E R T I F I C A T I O N

I, LAUREL STEPHENSON, a Court Reporter and Notary Public in and for the State of New York, do hereby certify that the foregoing record taken by me at the time and place as noted in the heading hereof is a true and accurate transcript of same, to the best of my ability and belief.



Laurel Stephenson

Date: July 20, 2022

Martin Deposition Solutions, Inc.
Malta Commons Business Park
100 Saratoga Village Boulevard
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Malta, New York 12020
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