

**Town of Enfield
Minutes of Special Town Board Meeting
Enfield Community Building
Sunday, January 31, 2010
2:00 p.m.**

Present: Supervisor Roy Barriere, Town Councilperson Stephanie Gaynor, Town Councilperson Chris Hern, Town Councilperson Debbie Teeter, Highway Superintendent Barry Rollins, Town Clerk Alice Linton

Supervisor Barriere opened the Special Town Board Meeting by leading the assemblage in the Pledge of Allegiance to the Flag.

Filling vacancy on Enfield Town Board:

Each of the three candidates, Virginia Bryant, Herb Masser and Jean Owens spoke briefly about their qualifications and why they would like to fill the vacancy on the town board for the remainder of 2010.

The three candidates voluntarily left the room while the Board briefly discussed how important it was to remember how the public voted last fall and also the value of experience for this position. The three candidates returned to the room.

A vote was taken by having each Board member place their ballot in an envelope that was passed to Town Clerk Alice Linton.

Supervisor Barriere made a motion to appoint Jean Owens for the remainder of this calendar year to fill the vacancy on the Town Board. Councilperson Teeter seconded the motion.

Vote: Councilperson Gaynor aye, Councilperson Hern aye, Councilperson Teeter aye, Supervisor Barriere aye.

Councilperson Gaynor left the meeting at this time.

Resolution 2010-#20 Resolution of the Town Board of the Town of Enfield Authorizing the Negotiation of a Developer's Agreement with Enfield Energy, LLC.

**RESOLUTION OF THE TOWN BOARD OF THE TOWN OF ENFIELD
AUTHORIZING THE NEGOTIATION
OF A DEVELOPER'S AGREEMENT
WITH ENFIELD ENERGY LLC**

WHEREAS, Enfield Energy LLC (the "Applicant") has submitted an application pursuant to Local Law No. 1 of 2009, entitled "Wind Energy Facilities Local Law" (the "Wind Law"), proposing to develop a commercial site at Black Oak Road and at various other locations within the western portion of the Town of Enfield, for the purpose of constructing a commercial-scale windfarm (the "Project"); and

WHEREAS, the Applicant desires to facilitate a review of the Project pursuant to the Wind Law which will include, but not necessarily be limited to, evaluations of site planning elements, permit reviews, and the New York State Environmental Quality Review Act ("SEQRA") review of the Project by

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the Town Board, the Planning Board, and the Town's engineers, attorneys and consultants hired or retained in connection with the review of the Project; and

WHEREAS, in connection with the Town's review of the Project, there are and will be expenses incurred by the Town, such as, but not necessarily limited to, site plan review expenses, inspections, permit reviews, and the completion of the SEQRA review as a lead agency; and

WHEREAS, Section 2(B) of the Wind Law states that the Town shall require the Applicant to enter into an escrow agreement or Developer's Agreement whereby the Applicant agrees to reimburse the Town for any and all costs and expenses incurred as a result of the Project review, including reasonable legal and engineering fees.

NOW, THEREFORE, BE IT RESOLVED, by the members of the Town Board of the Town of Enfield, as follows:

1. The Supervisor of the Town of Enfield shall be authorized to negotiate, to such extent as is deemed necessary and/or applicable, and enter into a Developer's Agreement with the Applicant, a copy of which is attached hereto as Exhibit "A."
2. The further review of the Project's application by the Town Board shall be conditioned upon the Applicant entering into the Developer's Agreement and providing the Town the required initial deposit as set forth in said agreement.
3. This resolution shall take effect immediately upon adoption.

EXHIBIT A

BLACK OAK WIND FARM DEVELOPER'S AGREEMENT

AGREEMENT made this ____ day of January, 2010, between **ENFIELD ENERGY, LLC**, its successors, heirs, and/or assigns (the "Developer") and the **TOWN OF ENFIELD** (the "Town").

RECITALS:

WHEREAS, the Developer has proposed to develop a commercial site at Black Oak Road, and at various other locations within the western portion of the Town, for the purpose of constructing a commercial-scale wind farm (the "Project"); and

WHEREAS, the Town, in order to regulate large scale wind farms, has adopted Local Law Number 1 of 2009, which is entitled "Wind Energy Facilities Local Law" (the "Wind Law"), a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, the Developer desires to facilitate project reviews, including, but not limited to, initial evaluations in relation to site plan review elements, permit reviews, New York State Environmental Quality Review Act ("SEQRA") review, and other reviews of the Project by the Town Board, the Planning Board, and the Town's engineers, attorneys, and other consultants now existing or hereafter to be hired or retained, and in connection therewith; and

WHEREAS, in connection with this Agreement, the Wind Law, and the Project, there are and will be expenses incurred by the Town in relation to the review of the Project, such as, but not limited to, site plan review expenses, inspections, review of building permit applications, and the SEQRA review, some or all of which will require that the Developer obtain approvals or clearances to be able to proceed with the Project (the "Approvals"); and

WHEREAS, the Developer acknowledges and agrees that any expense, liability, risk, or loss assumed, undertaken and/or incurred by the Developer under, pursuant to, or in connection with this Agreement is at the Developer's sole and own risk as: (i) the Town, by authorizing and executing this Agreement makes no representations or promises, direct or implied, as to the feasibility or approval of the Project, conditioned or otherwise; and (ii) the Developer and the Town agree that the Developer is the sole party with knowledge as to the expenses and risks of ordering materials or hiring any services prior to the time that the Project receives any formal reviews or Approvals.

NOW, THEREFORE, in consideration of the foregoing recitals and facts, all of which shall be deemed a material part of this Agreement, and upon the exchange of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Developer and the Town, the Developer and the Town agree as follows:

1. The Developer shall comply with the requirements set forth under the Wind Law, including, but not limited to, the permit requirements set forth under Article II, the application requirements set forth under Article III, and the standards for wind energy facilities set forth under Article IV of the Wind Law.

2. Any and all reviews by the Town and its engineer and attorneys, the costs and expenses thereof, and all other reasonable expenses of the Town, including, but not limited to the publication, posting, and mailing of notices, shall be conducted or incurred by the Town when appropriate based upon either: (i) the request of the Developer, or (ii) the Town's determination that the Project requires such action, expense or review in order to obtain the Approvals. Such determination shall be reasonably made by the Town in its sole discretion, without recourse. Such reviews and expenses, and any money spent in relation thereto, shall be referred to as the "Review Costs".

3. The Developer shall initially deposit the sum of Fifteen Thousand Dollars (\$15,000.00) with the Town to pay for such anticipated Review Costs (the "Deposit"), and the Town may use such funds to pay its Review Costs. The Town shall hold said funds in a non-interest bearing account, in escrow, to be applied as provided under this Agreement (the "Escrow Account"). Upon consumption or depletion of any Deposit below the sum of Two Thousand Dollars (\$2,000.00), the Developer shall replenish the Escrow Account within fifteen (15) business days notice from the Town in an amount equal to the initial deposit unless otherwise agreed to by the Developer and the Town.

4. At the time of final Project Approval, or in the event of delivery of written notice by Developer indicating that the Developer is abandoning the Project and surrendering all rights, permits and Approvals, if any and as applicable, relative to Project development, the Town will return to the Developer any portion of the Deposit not used or necessary to pay any outstanding attorneys and/or engineering fees, or any other fees owing by the Town associated with the Project.

5. The obligations and liabilities set forth in or required by this Agreement shall be binding upon the Developer, its successors, heirs and assigns. This Agreement is and shall be and remain enforceable at law in the Town Court, or at law or in equity in such other court with appropriate

jurisdiction. In the event the Town is required to bring suit to collect any Deposit or Review Costs, the Town shall be entitled to recover its reasonable attorneys' and experts' fees and expenses incurred in connection therewith, together with any related court costs and expenses.

6. The Developer acknowledges and agrees that Developer is not an agent of the Town for any purpose, and may not speak for, represent, or bind the Town to any agreement or promise proposed or published in favor of any third party.

7. The Developer shall indemnify and hold the Town harmless, to the fullest extent permitted by law, from and against all claims, expenses, losses, liabilities, damages, judgments, suits, and legal proceedings, and any and all costs and expenses arising in connection therewith (including attorneys' and experts' fees), arising out of or in any manner connected with this Agreement and the Project.

8. If any provision of this Agreement is held invalid or unenforceable by a court or other tribunal of competent jurisdiction, such invalidity shall not affect the validity or operation of any other provision, and such invalid provision shall be reformed to the minimum extent required to bring it into compliance with applicable law, or to otherwise make such provision enforceable. Such reformation shall be performed by first taking into account the purposes sought by the Town in any such provision; and second, by the intent of the parties as set forth in such provision; and third, by the intent of the parties as gleaned from other provisions in this Agreement. If such reformation is not possible, then such provision shall be severed from this Agreement. Any provision of this Agreement that is held or declared illegal or unenforceable under any set of facts and/or circumstance shall be and be presumed valid and enforceable as to any other set of facts and/or circumstances.

9. Except as otherwise provided for under the Wind Law, this Agreement constitutes the entire understanding of the parties, revokes and supersedes all prior discussions, negotiations, and oral or written agreements between the parties, and is intended as a final expression of their agreement. No waiver by the Town of any requirement of this Agreement or any default hereunder shall be deemed a waiver of any prior or subsequent requirement or default of the same or other provisions or obligations of this Agreement. In the event that there is a conflict between the terms of this Agreement and the Wind Law, the terms of the Wind Law shall govern the respective rights and obligations of the Developer and the Town.

10. Notwithstanding anything to the contrary contained in this Agreement, Developer hereby acknowledges and agrees that it may not assign its rights and obligations under this Agreement to any other person or entity without the prior written consent of the Town.

IN WITNESS WHEREOF, the Developer and the Town have each executed this Agreement as of the date(s) set forth below.

Councilperson Teeter moved to accept the Resolution, seconded by Councilperson Hern.

Discussion: Exhibit A, the Agreement, will need to be signed by a representative of Enfield Energy, LLC. If any changes are to be made, we will have to go through the attorney for the town, Harris Beach.

Councilperson Owens was sworn in. Councilperson Hern asked to be recused from this vote due to the proximity of his property to the wind farm site.

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Vote: Councilperson Hern asked to be recused, Councilperson Teeter aye, Councilperson Owens aye, Supervisor Barriere, aye.

Supervisor Barriere moved to adjourn the meeting, seconded by Councilperson Owens.

Meeting adjourned at 2:30 p.m.

Respectfully submitted,

Alice Linton, Town Clerk