

RESOLUTION 2009-10

RESOLUTION ADOPTING LOCAL LAW #1 OF 2009

WIND ENERGY FACILITIES LOCAL LAW

At a Regular Meeting of the Town Board of the Town of Enfield, held in and for the Town of Enfield at the Enfield Community Building on the 14th day of January, 2009, with the following members being present: Frank Podufalski, Supervisor; Roy Barriere, Councilperson; Herb Masser, Jr., Councilperson; Stephanie Gaynor, Councilperson; and the following member being absent: Robert Harvey, Councilperson; and the following motion for a Resolution was duly made by motion of Supervisor Frank Podufalski, and was duly seconded by Councilperson Roy Barriere; and the vote was as follows: Frank Podufalski - aye; Robert Harvey - absent; Roy Barriere - aye, Herb Masser, Jr., - aye; and Stephanie Gaynor - aye; and the following Resolution therefore passed 4-0, and was duly adopted:

Whereas, for over two years, the Town Board and the Planning Board of the Town of Enfield have been researching and studying wind regulations, wind laws, wind towers, wind farms; and

Whereas, over such two plus years two different laws and many different versions were developed; and

Whereas, upon the review and recommendation of the Planning Board the Town Board undertook consideration of a proposed Local Law entitled Wind Energy Facilities Local Law, Local Law Number 1 of 2009 (as re-numbered); and

Whereas, such Local Law was subjected to numerous public information sessions both at the Planning Board and Town Board levels; and

Whereas, a public hearing was duly scheduled and held to consider the said proposed Local Law, and all persons interested in the subject mater thereof were permitted to speak and/or to submit evidence or documentation for consideration by the Town Board; and

Whereas, the Town Board duly considered the documentation, evidence, and comments provided before, at, and after the public hearing, if any; and

Whereas, the said Local Law was subject to mandatory review under General Municipal Law Sections 239-l, 239-m and/or 239-n, as applicable, and

accordingly, a referral of the proposed law was made to the Tompkins County Department of Planning; and

Whereas, the Tompkins County Department of Planning made the following paraphrased comments: (i) consideration of a greater setback from residences, roads, and other structures was recommended; (ii) sound level thresholds could be lowered from 60dB to 55dB; (iii) recommended pre- and post-construction studies for impacts upon birds and bats; (iv) take into account the Tompkins County Scenic Resources Inventory when conducting site reviews under the proposed Local Law; and (v) clarification of applicant responsibility for the costs of studies and other expenses when permit review is undertaken; and

Whereas, the General Municipal Law requires due consideration of the comments of the Tompkins County Department of Planning, therefore, the Enfield Town Board, finds:

- (i) The NYSERDA data cited by the Tompkins County Department of Planning in support of greater setbacks is, at best, equivocal. The Tompkins County Department of Planning failed to explain its rationale for suggesting a different setback, other than general supposition about needs for greater community support. Further, the setbacks set forth in the proposed Local Law are within the range suggested by NYSERDA, and the Tompkins County Department of Planning seems to have ignored those portions and provisions of the proposed Local Law that signify that the requirements of such Local Law are minimum requirements such that the setback, among other requirements, may be increased to mitigate potential adverse impacts during the application, permitting, and future SEQRA review processes; and
- (ii) NYSERDA data and recommendations form the basis for sound threshold recommendations, but the Tompkins County Department of Planning incorrectly cites the NYSERDA data and articulates no basis to suggest that measurements as they recommend will produce any variance in standards from the measurements proposed by the Local Law. Further, and again, the Tompkins County Department of Planning seems to have ignored those portions and provisions of the proposed Local Law that signify that the requirements of such Local Law are minimum requirements such that the sound level requirements, among other requirements, may be adjusted to mitigate potential adverse impacts during the application, permitting, and future SEQRA review processes; and

- (iii) The bird and bat studies proposed are within the requirements of the Local Law, and the study cited by the Tompkins County Department of Planning does not explain or require such studies as part of a proposed local law. Further, any proposed permit will be the subject of further environmental review where such impacts can be further studied and identified; and
- (iv) The Tompkins County Scenic Inventory should be (and will be) duly considered when the sight impacts of an application are identified and required mitigation measures implemented in the permitting process. In addition to other matters, the proposed Local Law specifically provides for sight view inventories, specialized photographic study, specialized sight impact SEQRA review forms and processes, and other related forms of review and regulation of sight impacts. Even further, any proposed permit will be the subject of further environmental review where such impacts can be further studied and identified; and
- (v) The Tompkins County Department of Planning's reference to developer cost shifting is already covered by such proposed Local Law, and even further, the proposed Local Law requires such expenses to be paid or reimbursed during the wind permit *and* building permit processes, and can even require a developer or applicant to sign a developer's agreement to further bind any applicant or developer to pay for or reimburse the Town or other agency for costs and expenses arising from the review of applications, permitting, site planning, the issuance of building permits, etc.; and

Whereas, the concerns of the Tompkins County Department of Planning were duly considered, but it is noted that the Tompkins County Department of Planning failed to explain its rationale for its recommendations, and it is further noted that the Tompkins County Department of Planning failed to identify how or in what manner the issues raised raise concerns about potential negative county-wide or inter-municipal negative impacts. Thus, the Town Board, as Lead Agency, declines to accept the recommendations of the Tompkins County Department of Planning as the comments provided relate to the proposed Local Law as the listed items of concern are already adequately addressed within the said Local Law and the permitting processes and the proposed Local Law envisions mitigation measures for the issues raised; and further, many items would be reviewed at the time of application and under any future SEQRA reviews as to project approvals and permit issuance, if any; and

Whereas, the concerns of the County only raise two recommendations for actual changes to the proposed Local Law, but as to the same, the County has failed to clarify or identify how or in what manner it believes the issues identified may or will have negative inter-community or county-wide impacts. It is also noted that as to setbacks and noise issues, the proposed Local Law envisions minimum standards that may be increased through the permitting and application processes, as well as the future review of the site. Thus, the site or future environmental impacts may well require setbacks or noise restrictions greater than the minimum standards set forth in the proposed Local Law, an issue that the County did not address; and

Whereas, as all of the County Planning Department's comments are and address matters already covered and regulated in and by such proposed Local Law, and as their concerns are already adequately addressed in the permitting process, which envisions and provides for mitigation as a requirement of permitting, the Town Board, to the extent required by such comments, declines to follow each and all of the recommendations of the County, and accordingly, the Town Supervisor shall, consistent with the requirements of the General Municipal Law, so notify the County and provide the explanations herein proffered to the County; and

Whereas, the Led Agency having conducted an environmental review of the potential impacts of the proposed Local Law and having issues a negative declaration of environmental impacts; and

Whereas, and after review and discussion of each of the foregoing premises and the proposals set forth or referenced herein, and upon due consideration of the input and recommendations of the Planning Board, the comments and concerns from the public, and the Tompkins County Department of Planning, among others, the Town Board of the Town of Enfield has hereby

RESOLVED, that Local Law #1 of 2009 be and is hereby enacted and adopted, reading in its entirety as appended hereto; and it is further

RESOLVED, that in accord with §21 of the Municipal Home Rule Law, the final adopted copy of this Local Law shall be presented to the Supervisor for approval; and it is further

RESOLVED, that upon such approval by the Supervisor (or other approval occurring pursuant to said §21 of the Municipal Home Rule Law), and within 20 days after the final adoption of this Local Law, the Town Clerk shall file a certified copy of this Local Law, together with the required Certifications, in the Office of the Town Clerk and with the New York State Secretary of State as

required by Municipal Home Rule Law §27. Said filing may be made by delivery to the State Records and Law Bureau, Department of State, 41 State Street, Albany, New York 12231; and it is further

RESOLVED, that the Town Supervisor deliver a copy of this Resolution to the Tompkins County Department of Planning in reply to the Section 239 comments of the Tompkins County Department of Planning in fulfillment of the obligations of the Town of Enfield under such law to provide an explanation as to why the recommendations of the Tompkins County Department of Planning were, or were not, implemented or accepted.

SEQRA: Type I Action.