

Town of Enfield
Special Town Board Meeting Minutes
Enfield Community Building
Wednesday, June 22, 2016
7:00 p.m.

Present: Town Supervisor Ann Rider, Town Councilperson Mike Carpenter, Town Councilperson Henry Hansteen, Town Councilperson Michael Miles, Town Clerk Alice Linton. Excused: Town Councilperson Virginia Bryant.

Supervisor Rider opened the regular meeting at 7:00 p.m. by leading the assemblage in the Pledge of Allegiance to the Flag.

Resolution Declaring Future Intent Relative to Moratoria and Any Future Amendments or Updates to Wind Farm Local Law:

Supervisor Rider asked if anyone had comments on this agenda item.

Councilperson Miles asked if this resolution was needed.

Supervisor Rider stated no, this would only be a statement of intent.

Councilperson Hansteen stated a resident had suggested this resolution might give Black Oak Wind Farm a stronger case if the town board were to try to change something later.

Councilperson Carpenter was not sure the resolution had any significant positive value and could possibly have negative value. He felt it best not to pass this resolution at this time.

Resolution Approving Road Use Agreement and General Roadway Restorative Plan in Coordination with Tompkins County:

Supervisor Rider stated this resolution is a general agreement that there has to be a road use agreement. Supervisor Rider moved, with a second by Councilperson Carpenter to approve Resolution #2016-54.

RESOLUTION #2016-54 APPROVING ROAD USE AGREEMENT AND GENERAL ROADWAY RESTORATIVE PLAN IN COORDINATION WITH TOMPKINS COUNTY

WHEREAS, the Town's Wind Farm law requires as part of the permit review process that adequate roadway protection and restoration obligations be met by the developer to restore, replace, or otherwise ensure the viability of public highways used, affected, or altered during the project construction phase (and future construction phases), and the requirements therefore are set forth in Article IV § 16 and address traffic, road condition, roadway impacts, roadway remediation and like issues by regulating, specifically, traffic routes, traffic controls, and roadway remediation; and

WHEREAS, the SEQRA EIS and, as applicable the SEIS (once and if adopted), have implemented a mitigation plan more specifically requiring a road use agreement to securitize and define the roadway obligations of the developer so as to protect the Town's roadway infrastructure, guarantee its maintenance and restoration, and to otherwise effect mitigation of potential roadway impacts; and

WHEREAS, a road use agreement (RUA) has been developed in a draft but now near-final form, and

the same addresses obligations of developer for various types of roadway charges and restoration obligations as based upon the current condition and structural integrity of the roadway, the need to upgrade or change the road, the need for ongoing maintenance during project construction phases, and the need to repair and restore and resurfacing or rebuild of the base and subbase of the roadway; and

WHEREAS, part of the highway system to be utilized by the developer includes Tompkins County public highways, and the Town has endeavored to coordinate with the County, to the extent possible (given that the County has a road use law and the Town does not), to ensure that the roadways are built and restored in one coordinated process to ensure proper oversight, save costs, and minimize disruption to road usage; and

WHEREAS, the town attorney and special town counsel for the wind farm SEQRA review have reviewed the RUA as drafted and have generally approved the same; and

WHEREAS, subject to minor amendments to calculate the roadway reconstruction costs payable by the developer, the county, and town relative to a whole-road reconstruction and resurfacing at project completion in accord with the roadway plan developed by the County, to be implemented by and for the Town, among and along with other goals, through the RUA, and all with the town's costs not to exceed \$ _____, the Town Board wishes to move forward and approve the RUA; and

WHEREAS, upon due consideration and deliberation thereupon by the Town Board of the Town of Enfield, BE IT RESOLVED AS FOLLOWS:

1. The RUA as submitted to this meeting be and hereby is approved and adopted in its general form.
2. The Town Supervisor be and hereby is authorized to sign and execute the same by, for, in the name of, and on behalf of the Town, once and after the final changes are made to the form of such agreement to implement the developer-county-town restoration plan in language and a form as approved by the town attorney and the Town Highway Superintendent.

Discussion: Councilperson Carpenter asked which version of Road Use Agreement this resolution was referring to.

Supervisor Rider stated the version town attorney Guy Krogh drafted.

Councilperson Carpenter asked Dan Walker, Town of Enfield Planning Board Chairperson, how to deal with damage to roads during the course of the turbine's life before decommissioning and then during the decommissioning process. After turbines are installed, the town would have no leverage with road repairs unless a plan is in place before construction begins. A Road Use Agreement should cover repairs at whatever time damages occur.

Dan Walker stated the biggest potential damage is during the initial construction. Wind turbine repairs would not generate the level of impact that construction would.

Supervisor Rider stated this resolution is to pass the general form of a Road Use Agreement. Prior to permitting, a more exhaustive plan will be needed.

Highway Superintendent Rollins stated he was not comfortable with penalties, escrow accounts and

turn-key provisions in the draft Road Use Agreement. The proposed Road Use Agreement has bonding, not escrow, provisions. He questioned why the county would be involved in the agreement. The town highway superintendent is the person who should be involved. He asked how the county feels about the agreement.

Supervisor Rider stated Guy Krogh, town attorney, wrote this resolution.

Councilperson Carpenter stated he is uncomfortable signing away rights by authorizing the town supervisor to sign the agreement. He wants to make sure whatever is signed is approved by the Highway Superintendent and doesn't feel the agreement is ready to be approved at this point.

Councilperson Miles also feels the agreement should be approved by the board before the supervisor signs it.

Councilperson Miles moved to amend the resolution in part 2, sentence 1, with a second by Councilperson Carpenter to change the wording as follows:

2. The Town Supervisor be and hereby is authorized to sign and execute the same by, for, in the name of, and on behalf of the Town, once and after the final changes as approved by the town board are made to the form of such agreement to implement the developer-county-town restoration plan in language and a form as approved by the town attorney and the Town Highway Superintendent.

Discussion: Highway Superintendent Rollins stated he does not like this resolution, and does not want it passed.

Vote on amendment to motion: Councilperson Carpenter aye, Councilperson Hansteen aye, Councilperson Miles aye, Supervisor Rider aye. Councilperson Bryant absent. Carried.

Councilperson Hansteen asked what else Highway Superintendent Rollins would like to have changed or added.

Highway Superintendent Rollins stated the dollar amount is blank and should have an amount listed. He would like to see penalties listed, an escrow account and not bonding required, and a turn-key policy added. He would also like to talk to town attorney Guy Krogh before this resolution is passed.

Supervisor Rider asked Superintendent Rollins if he had an amount he would like filled in for the dollar amount. Superintendent Rollins said he did not have a figure at this time. Supervisor Rider asked Dan Walker if he had a figure he would like filled in for the dollar amount. Dan Walker said he did not have a figure at this time.

Supervisor Rider moved, with a second by Councilperson Carpenter to amend the resolution to include an amount of \$500,000 where the resolution states "and all with the town's costs not to exceed \$ _____".

Highway Superintendent Rollins asked for clarification that this \$500,000 would be a town expense.

Supervisor Rider stated she feels this would be a comfortable maximum figure that would protect the town. This does not mean it would have to cost \$500,000, this is the maximum.

Vote on second amendment to motion: Councilperson Carpenter aye, Councilperson Hansteen aye, Councilperson Miles aye, Supervisor Rider aye. Councilperson Bryant absent. Carried.

Supervisor Rider stated she would like to pass this resolution as a general concept. This has to do with the financial instrument Black Oak Wind Farm will obtain and present to the town board for approval.

Councilperson Carpenter asked if Superintendent Rollins and Dan Walker aren't sure about this resolution, why would it be passed. What benefit is it. Even if this is a good idea, it needs more detailed information. Some of the bonding and money guarantee surety protocols seem to be problematic.

Dan Walker stated when the agreement is entered into it covers one part of the Findings Statement. This commits the developer to follow through before construction begins. It follows along with the county process.

Vote on amended motion: Councilperson Carpenter no, Councilperson Hansteen aye, Councilperson Miles aye, Supervisor Rider aye. Councilperson Bryant absent. Carried.

Resolution Establishing Amount and Terms of Decommissioning Bonds and Other Security for Future Performance of Decommissioning and Removal Obligations of Developer:

Supervisor Rider moved, with a second by Councilperson Carpenter to adopt the following resolution:

RESOLUTION #2016_____ TOWN OF ENFIELD RESOLUTION ESTABLISHING AMOUNT AND TERMS OF DECOMMISSIONING BONDS AND OTHER SECURITY FOR FUTURE PERFORMANCE OF DECOMMISSIONING AND REMOVAL OBLIGATIONS OF DEVELOPER

WHEREAS, the Town's Wind Farm law requires a decommissioning bond, or equivalent security as approved by the Town Board, to be determined in amount for each tower in relation to each permit, but not less than \$125,000 per tower as delineated in Article I § 1(10) and Article VI §§ 1(D) through F); and

WHEREAS, a permit application and review are in progress and while no permits have issued to erect towers, it is necessary to attend to many details, including decommissioning costs and securitization of the developer's obligation to decommission and deconstruct towers and facilities upon obsolescence, loss, closure, and other like circumstances; and

WHEREAS, the general form of a decommissioning bond, written as a surety bond guaranteeing developer's performance, has been generally, but not specifically, reviewed and approved by the town attorney pursuant to said Articles I, § 1(10) and IV, §§ 1(D),(E), and (F) of the local law; and

WHEREAS, engineering estimates, duly reviewed by the Town, establish a cost per tower for decommissioning and deconstruction, and such amount of \$875,000 be and hereby is established as the gross initial decommissioning amount that developer shall duly guarantee or securitize in a manner as approved by the Town, with such amount to be applied severally in proportional allotments to each tower; and

WHEREAS, the developer has proposed a plan whereby it may, in the future, displace bonds with cash deposits (and pledged accounts) and, subject to approval of the same at such future time as substituted security is proposed, and the approval of the terms and amounts thereof by the Town Board per Article VI § 1, it is agreed in principal that the developer may replace the initial bonds with a cash escrow or similar pledge accounts in the amount of \$850,000.00 (or \$125,000.00 per tower, whichever is greater) to securitize the decommissioning obligations of developer; and

WHEREAS, upon due consideration and deliberation thereupon by the Town Board of the Town of Enfield, BE IT RESOLVED AS FOLLOWS:

1. The amount of \$875,000 be and hereby is set and approved as the gross project decommissioning cost, and a proportionate amount must be securitized by surety bond for each tower permit issued. Such amount is subject to change over the life of the tower and facilities as periodic reviews of the decommissioning costs may hereafter occur under the local law.
2. Subject to the approval of the Town Board as to the terms and amounts of such escrow or other pledge, the developer may substitute cash or cash-based accounts in lieu of, and in replacement of, surety bonds, upon such schedule and at such times as developer may elect. For this purpose the sum of \$850,000 (or \$125,000 per tower, whichever is greater) be and is hereby set as the initial cash or depository pledge amount to securitize the future decommissioning costs and removal obligations of the developer. Such amount is subject to change over the life of the tower and facilities as periodic reviews of the decommissioning costs may hereafter occur under the local law.

Discussion: Supervisor Rider stated that again, this resolution is not approving the Decommissioning Plan, it is just approving financial security of a decommissioning plan.

Councilperson Carpenter asked what decommission plan this resolution was referencing. Supervisor Rider stated it was a draft plan presented about three years ago and was based on the local wind law.

Councilperson Carpenter asked why this was necessary. Supervisor Rider stated it is part of the permitting process.

Councilperson Carpenter doesn't believe there is an updated decommissioning plan in existence. Councilperson Miles is working on a report that has not yet been presented.

Supervisor Rider stated she feels the resolution clearly outlines that the wind farm law requires a decommissioning bond or equivalent surety.

Councilperson Carpenter feels there is no point to the resolution at this time as there is no plan in place. The resolution is missing a lot of information so he is uncomfortable approving it. There is no road remediation in the event of turbine replacement during the course of the life of the wind farm project. There is a Road Use Agreement for the start and for the decommissioning at the end. There are serious questions about bonds. There are also questions about hazardous waste, environmental contamination, and tort liability.

Councilperson Hansteen stated there could be problems with a bond.

Councilperson Carpenter feels it will be some time before a Findings Statement is ready so there is plenty of time to prepare a Decommissioning Plan.

Supervisor Rider stated it would be a benefit to Black Oak Wind Farm to understand the money involved.

Highway Superintendent Rollins stated if a bond is used, the work would need to be completed and then paid for before being reimbursed. The town doesn't have that much money in its accounts now.

Councilperson Miles stated he would like to understand the total scope of decommissioning, including hazardous materials. He doesn't have details on the proposed turbines and what materials are involved. If dealing with special materials, will there be a place to take them and what will be the cost.

Dan Walker stated consideration should be given to removal of the turbines from sites. What would be the real cost to take them down and haul away. Not only materials, but time, should be considered.

Supervisor Rider withdrew her motion.

New Business:

Councilperson Carpenter moved, with a second by Councilperson Miles to adopt Resolution #2016-55.

**Resolution #2016-55 New York State Environmental Quality Review Act (SEQRA)
Extension**

WHEREAS, a predecessor-in-interest of Black Oak Wind, LLC (the "Project Sponsor") filed a site plan application with the Town Board of the Town of Enfield (the "Town Board") pursuant to the Town of Enfield's Wind Energy Facilities Local Law #1 of 2009 for the development of a seven (7) turbine wind-powered generating facility (the "Project"); and

WHEREAS, on June 9, 2010, the Town Board passed a resolution accepting its role as Lead Agency pursuant to the New York State Environmental Quality Review Act and its implementing regulations at 6 NYCRR Part 617 (collectively referred to as "SEQRA"); and

WHEREAS, after preparation of both draft and final environmental impact statements, on December 14, 2015, the Town Board issued a Findings Statement for the Project pursuant to SEQRA; and

WHEREAS, on June 24, 2015, the Town Board received a submission from the Project Sponsor outlining two (2) minor modifications to the Project; and

WHEREAS, on July 8, 2015, the Town Board determined that a supplemental environmental impact statement or modified findings statement was not required for the modifications submitted on June 24, 2015; and

WHEREAS, the Project Sponsor further proposes to potentially re-locate two (2) of the approved wind turbines to 2 of 3 proposed locations, as well as relocate a substation, add a new permanent wind measurement tower just south of Turbine 4, and relocate approximately 8,400 linear feet of buried collection line but, except as noted, the Project would otherwise remain as consisting of seven (7) wind turbines generating 16.1 megawatts (MW) of electricity utilizing the GE 2.3-107 model wind turbines; and

WHEREAS, the Project Sponsor prepared a Draft Supplemental Environmental Impact Statement ("DSEIS") assessing the potential significant adverse environmental impacts associated with the proposed modifications to the Project as summarized above; and

WHEREAS, on March 9, 2016, the Town Board passed a resolution accepting the DSEIS as complete; and

WHEREAS, the public comment period for the DSEIS expired on April 22, 2016; and

WHEREAS, the Town Board is now required to prepare a final SEIS for the Project ("FSEIS").

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE TOWN BOARD OF THE TOWN OF ENFIELD AS FOLLOWS:

Section 1. Pursuant to Section 617.9(a)(5)(ii) of the SEQRA regulations, the Town Board determines that additional time is necessary to prepare the FSEIS adequately, and therefore is extending the timeframe to complete the FSEIS to September 15, 2016.

Section 2. The Town Board further directs that notice of this resolution shall be filed and circulated to the extent required by any applicable ordinance, statute or regulation.

Section 3. This Resolution shall take effect immediately upon adoption.

Discussion: Councilperson Carpenter stated there is still a long way to go in this process and felt a two month time extension was reasonable. Ann Koreman, an investor in Black Oak Wind Farm, was present and stated she felt Black Oak Wind Farm would have no problem with this resolution.

Vote: Councilperson Carpenter aye, Councilperson Hansteen aye, Councilperson Miles aye, Supervisor Rider aye. Councilperson Bryant absent. Carried.

Public Comments:

Councilperson Miles requested time for the public to make comments to the board.

Tammy Alling of Enfield stated she has concerns if there is a fire at a wind turbine site. There is a lot of oil in the turbines and she is concerned with the toxicity of materials in the turbines.

Councilperson Miles responded that the town's wind law says there must be a fire protection plan in place.

Brad Connors of Enfield repeated his previous question to the town board of why this project is being pursued, as he feels it has no measurable contribution or purpose. He feels the town board should be looking out for the interests of the community.

Ron Riddle of Enfield asked what protection there was for landowners. He would like the town board to say no to the project. There are new turbines being developed that are much smaller and bladeless. The turbines Black Oak Wind Farm is proposing may be out of date in three to five years as new technology is being developed that will have fewer side effects.

Jude Lemke of Enfield would like to see a representative government that will make the right decisions. She feels health and safety need to be taken into consideration. She asked that privilege of the floor be held at the beginning of all town board meetings and that all documents to be discussed at a meeting be posted on the town's website far enough in advance of meetings so residents have an opportunity to review and respond to them. This would create more trust between the town board and residents.

Councilperson Miles stated he likes the way Tompkins County puts materials on their website in advance of meetings and would like to see more effort made by the Town of Enfield to do the same.

Beverly Rollins of Enfield stated her concern that approval of some matters is hurried. She feels in some instances there has been more passion for the wind farm project than for town residents. At the last meeting three resolutions were presented for disclosure and now they are all on a special agenda with no privilege of the floor.

Judy Perkins of Enfield asked if there is a point in the wind farm process where the town board can just say no to the wind farm.

Councilperson Carpenter responded that comments have been submitted and will be addressed by Black Oak Wind Farm and LaBella. After that the town board can address the comments and a Final

Supplemental Environmental Impact Statement will be written. This document will go to interested and involved parties for comments. The town board will then decide whether or not to approve the document and whether to add conditions. If there are conditions, Black Oak Wind Farm can comply or not. There has to be a valid reason for the Town of Enfield to say no to the wind farm and those reasons will need to be documented in the Findings Statement.

Councilperson Miles added the town is obligated to follow the process laid out by state law.

Councilperson Hansteen stated he is still pushing for the idea that property owners should be compensated for loss of property value if they choose to sell their property.

Erica Newhart of Enfield stated the issue is not only about property values, but also about lost business.

Buddy Rollins, Enfield Highway Superintendent, questioned the issue of setbacks. A committee was formed to look at this issue and the possibility of changing them, while still allowing wind farms in the town. He feels town board members should listen to residents of the Town of Enfield and not non-Enfield residents.

Councilperson Hansteen reported Marcus Gingerich, a resident of the Town of Enfield, sent him interviews of people who have left their homes due to wind turbines. There needs to be peer review science involved in the process.

Councilperson Carpenter talked to a lawyer about setbacks and found there is a clause in the Town of Enfield Wind Farm Law that says setbacks can be changed without rewriting the law.

Judy Perkins stated Black Oak Wind Farm currently owes the Town of Enfield money. She asked how the town can get the money paid back.

Supervisor Rider stated she needs to write a formal request to Black Oak Wind Farm to demand payment, which she has not yet done.

Adjournment: Supervisor Rider moved with a second by Councilperson Miles to adjourn at 9:58 p.m. Motion carried.

Respectfully submitted,

Alice Linton, Enfield Town Clerk