Town of Enfield Regular Town Board Meeting Minutes Enfield Community Building Wednesday, August 10, 2016 6:30 p.m.

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

Supervisor Rider lead the assemblage in the Pledge of Allegiance to the Flag at 6:30 p.m.

Privilege of the Floor:

Dawn Drake of Enfield asked what the Town of Enfield might do for residents if they have side effects from the Black Oak Wind Farm turbines. She is concerned about the shadow flicker problem with wind turbines and would like the town board to understand the worries and fears residents close to the proposed wind farm have.

Jude Lemke of Enfield questioned why the Black Oak Wind Farm is pushing for a Road Use Agreement and Decommissioning Agreement when they haven't yet filed a complete application which would have information related to size and weight of trucks. She would like to see Black Oak Wind Farm bring their escrow account with the town current before the town moves forward on wind farm matters.

Mimi Mehaffey of Enfield asked how the Black Oak Wind Farm will help the town economically and environmentally. She is concerned about possible property value decreases and law suits.

Beverly Gingerich of Enfield thanked the town board for doing research on the Black Oak Wind Farm and putting agenda items on-line. However, she feels the items should be available more than 1 or 2 days before the town board meetings. Black Oak Wind Farm has said they will rebuild roads to current conditions, but on their website it says they will completely rebuild the roads.

Phil Wright of Enfield is concerned for his animals and business if wind turbines are placed close to his home. He feels they are unsafe and not good for wildlife or the town.

Craig Pyhtila of Gray Road in Enfield stated he felt it would be beneficial to Gray Road, a town road, if he could have a culvert installed for his driveway. He has been willing to purchase the culvert pipe, but stated the highway superintendent didn't work with him to have it installed.

Ron Riddle of Enfield reiterated his feelings that Black Oak Wind Farm should not be allowed to build in the proposed area. His two businesses would be leveled. He feels the wind farm technology is not safe and people will be endangered.

Marguerite Wells of Enfield responded to Beverly Gingerich's questions about road repairs. She stated that even though Black Oak Wind Farm will only be required to bring the road conditions back to current levels, they are proposing to do better.

Martha Fischer of Enfield stated if we could use less energy, we wouldn't be in this situation with Black Oak Wind Farm. She encouraged residents to have energy audits done and help each other to make homes more energy efficient.

Tammy Alling of Enfield notified those in attendance of recent break-ins in the area. A car was recently broken into. She encouraged everyone to watch out for their neighbors and lock their doors. If you see something, say something.

Eric Gasteiger of Enfield stated the Ithaca Journal had a front page article about bats with white nose syndrome. Environmental studies show bats are 99% gone, so there should be concern if even a few bats are killed by wind turbines.

Brad Connors of Enfield stated he is in favor of doing things that have a benefit, but feels the benefit of the Black Oak Wind Farm will be minuscule.

Ron Riddle doesn't feel this wind farm is about how much energy is used. The Black Oak Wind Farm is about profits. The wind turbines will change the landscape.

Eric Gasteiger of Enfield stated technology continues to change. He asked if the Black Oak Wind Farm had looked at using wind turbines with newer technology.

Marguerite Wells responded the newer technology isn't commercially available.

Jude Lemke stated she hopes Black Oak Wind Farm issues can be resolved, but she and others are willing to pool their resources to sue if issues can't be resolved.

Consent Agenda: Supervisor Rider asked if anyone would like to pull an item from the consent agenda. Councilperson Carpenter stated he would like to pull the audit claims from the consent agenda.

Councilperson Carpenter moved, with a second by Councilperson Bryant to approve other items on the Consent Agenda as follows:

Approval of Minutes of the Regular Town Board Meeting of July 13, 2016 and the Special Town Board Meeting of July 27, 2016.

Budget Amendment #2016- 19 Supervisor Equipment

WHEREAS, expenses have exceeded the budget in the General Fund line A1220.2 titled "Supervisor Equipment", now therefore be it

RESOLVED, that line A1220.41 titled "Supervisor - Contractual" be decreased by \$102.00 and General Fund line A1220.2 be increased by \$102.00.

Budget Amendment #2016-20 Central Print and Mail

WHEREAS, expenses have exceeded the budget in the General Fund line A1670.4 titled "Central Print & Mail", now therefore be it

RESOLVED, that line A1990.4 titled "Contingent Account" be decreased by \$315.00 and line A1670.4 be increased by \$315.00.

Budget Amendment #2016- 21 Attorney Contractual

WHEREAS, expenses have exceeded the budget in the General Fund line A1420.4 titled "Attorney Contractual", now therefore be it

RESOLVED, that line A1620.4 titled "Buildings Contractual" be decreased by \$2,000.00 and General Fund line A1420.4 be increased by \$2,000.00.

Supervisor's Financial Report of moneys received and disbursed during the month of July, 2016.

Vote on Consent Agenda: Councilperson Bryant aye, Councilperson Carpenter aye, Councilperson Hansteen aye, Councilperson Miles aye, Supervisor Rider aye. Carried

Audit Claims: Councilperson Carpenter moved, with a second by Councilperson Miles to authorize the Supervisor to pay General Fund vouchers #230 to #257 dated August 10, 2016 in the amount of \$41,210.95 and Highway Fund vouchers #129 to #146 dated August 10, 2016 in the amount of \$25,685.52.

Discussion: Councilperson Carpenter asked why the CHIPS line item showed a negative balance when Highway Superintendent Rollins had sent an e-mail explaining why the line item did not have a negative balance. Supervisor Rider stated she would have the bookkeeper run a report of all expenditures under that line item.

Councilperson Carpenter then asked about the Black Oak Wind Farm escrow account. Supervisor Rider stated a check was received from them in the amount of \$30,000 dated August 2, 2016 which has not yet been deposited. There is still an amount over \$25,000 that is owed to the town. Supervisor Rider stated she has requested again that the account be brought up to date. Black Oak Wind Farm has told her as soon as they are able to pay more they will do so.

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

Correspondence: E-mail from the Office of the State Comptroller notifying the Town of Enfield they have been selected for an audit of records from January 1, 2015 to August 15, 2016. The audit process will begin August 15, 2016 at 9:00 a.m. The auditors will meet with individual board members and other town officials upon request.

Letter from the New York State Municipal Workers' Compensation Alliance with risk results and request for a written response by October 2, 2016.

Letter from NYS Department of Taxation and Finance certifying the final equalization rate for the Town of Enfield will be 100.00.

County Legislator Report: No county legislator was present.

Highway Superintendent Report: The highway superintendent was not present.

Code Enforcement Report: Code Enforcement Officer Alan Teeter reported in July there were 6 building permits issued or renewed bringing the year to date total to 38 with 4 being for new homes. There was 1 solar permit issued. He completed 2 foundation inspections and 4 final inspections. He

completed 14 progress checks and received 1 valid complaint. He will be starting annual fire inspections.

Councilperson Miles asked if the solar farms will be taxable. The town has opted out of the exemptions for the wind farm and that automatically includes solar farms. Code Officer Teeter stated the county assessment office is looking into what can be taxed.

Supervisor's Report: No report

Committee Reports:

<u>Wind Farm Advisory Committee:</u> Councilperson Miles reported meetings were held on July 19 and August 9. The committee is working through details of the permitting process. They recommend making the current law clearer on permitting. The next meeting is scheduled for August 30, 2016.

<u>Planning Board:</u> Chairperson Dan Walker reported at their last meeting a 3 lot subdivision was approved for the corner of Iradell Road and Sheffield Road.

The board looked at a draft solar law. A comment was made that the process for approval of solar farms was similar to site plan reviews, so solar reviews could possibly be incorporated into site plan reviews instead, and a new law wouldn't be needed.

Recreation Partnership: No report

Enfield Community Council: No report

<u>Enfield Volunteer Fire Company</u>: There were 29 calls in July of which 13 were EMS calls, 3 MVA's, 1 smoke detector activation, 1 trailer fire and 1 trash fire. There were 10 mutual aids given. August trainings will include extrication training and truck checks.

<u>Facilities Manager</u>: Supervisor Rider reported the painting of the town hall is expected to be completed by this Friday. Norm Smith will provide weather-stripping to be painted for the overhead doors and then he will install the weather-stripping.

Tompkins County Council of Governments: No report

Old Business:

<u>Building Assessment on Highway Garage:</u> Councilperson Carpenter reported he has received a variety of opinions on the highway garage. He feels the LaBella report was a good starting point, but there are more issues and problems than were addressed by LaBella. He asked how much money the town would be willing to spend for upgrades. He also wonders how other highway departments deal with moisture in winter. He will spend the next month looking at other highway buildings and will report back at the next meeting. Dan Walker mentioned we have an affordable building, but not an efficient building.

Decommissioning Bond for Black Oak Wind Farm:

Councilperson Hansteen moved, with a second by Councilperson Miles to approve the following resolution:

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 \$180,000 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 \$1,260,000.00 (or \$180,000.00 per tower, whichever is greater) to securitize the decommissioning obligations of developer; and

WHEREAS, the Enfield Town Board is concerned about the potential to adversely affect road conditions during the decommissioning process 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 \$1,260,000 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. The amount of \$100,000 be and hereby is set and approved as the amount which must be set as the maximum amount to be set aside for the restoration of Town roads, and a proportionate amount must be securitized by surety bond. Such amount is subject to change over the life of the wind farm as periodic reviews of the decommissioning costs may hereafter occur under the local law. 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 \$100,000 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.

3. Subject to the approval of the Town Board as to the terms and amount 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 \$1,260,000 (or \$180,000per tower, whichever is greater)be and is hereby set as the initial cash or depository pledge amount to securitize the future decommissioning coasts 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 cost may hereafter occur under the local law.

Discussion: Supervisor Rider stated this is a broad, all-over mechanism of protection for the town roads, and the town, from the cost of decommissioning. This is a financial mechanism to ensure this will happen.

Councilperson Miles feels \$100,000 for road repair seems low. Councilperson Hansteen mentioned the town is asking for \$500,000 for construction and \$100,000 for decommissioning. Supervisor Rider replied this document can be reviewed as often as the town board wants, and the dollar amount can be changed.

Councilperson Carpenter questioned the language in the third paragraph and if the town attorney had approved the language of the decommissioning bond. He also asked where the developer's plan was that would displace bonds with cash deposits as stated in the fifth paragraph.

Councilperson Hansteen stated he felt a surety bond wasn't a guaranteed method of payment. A letter of credit seems to be more of a guarantee and what the town would want.

Councilperson Carpenter stated it was unclear how long the Black Oak Wind Farm wanted the bond in place before switching to something more secure. He has not seen anything submitted yet. He also feels there hasn't been sufficient time to work through this as the original information was submitted only two weeks ago. He questioned who asked the town attorney, Guy Krogh, to write this document. Supervisor Rider stated she asked him for this draft many, many months ago. Councilperson Carpenter stated he doesn't feel this is in keeping with what the town wants. He does feel we need a resolution, but wants one that reflects more of what the board wants. He would like to see it rewritten and then have time to review it. The town needs to protect itself.

Councilperson Bryant feels there is not enough information that is confirmed. There needs to be a firm plan.

Councilperson Carpenter is more concerned about the FSEIS which the board hasn't even started to look at yet than about the decommissioning resolution. Kathy Spencer sent an e-mail suggesting more escrow funds be received from Black Oak Wind Farm before starting more work. Although she said LaBella is ready to go, she feels the town can get the process started and LaBella can work with the town's draft when authorized to do so.

Supervisor Rider stated she has not scheduled a meeting with Kathy Spencer yet. Supervisor Rider feels it is irresponsible to schedule more work with LaBella when the Black Oak Wind Farm escrow account is so far behind. She also feels there is a concern about the board's ability to address some of the technical environmental items.

Councilperson Miles stated it is the town's responsibility to produce the report, but will need the technical expertise of LaBella. His expectation several months ago was that LaBella would organize the comments into categories. He feels the town board should work closely with LaBella and feels we haven't even started discussions with LaBella. LaBella could be asked how the best way is to work through this.

Councilperson Hansteen believes the town board could have a special meeting to organize the comments into categories that are the most significant concerns.

Dan Walker stated traditionally a lead agency will often ask the applicant to do the initial screening and organization of the comments. That gives the applicant control over the costs. He believes the understanding of Harris Beach and LaBella was that the applicant would do the original screening of the comments and provide a draft document.

Marguerite Wells stated she has been working on the comments herself, but then was understanding that the town board would be doing this. She will take this to her board and talk about how they would like to proceed.

Councilperson Miles feels incurring more bills is not fiscally responsible. If the wind farm has a large negative balance in their escrow account, the town is taking on responsibility when we don't know the fiscal state of the wind farm.

Councilperson Hansteen is concerned this escrow account may never be brought current.

Supervisor Rider stated Black Oak Wind Farm has told her they have no money to bring the escrow account current.

Councilperson Hansteen withdrew his motion to pass the Town of Enfield Resolution Establishing Amount and Terms of Decommissioning Bonds and Other Security for Future Performance of Decommissioning and Removal Obligations of Developer.

New Business:

Supervisor Rider added an item to the agenda regarding the <u>Black Oak Wind Farm Draft</u> <u>Supplemental Environmental Impact Statement</u> (DSEIS). She stated there have been concerns about the town running up bills when the Black Oak Wind Farm (BOWF) escrow account is not in compliance with the Agreement. There has also been a question of expertise on addressing some of the comments received on the DSEIS. She suggested holding a public meeting for the purpose of organizing the comments. A special town board meeting was scheduled for August 16, 2016 at 7:00 p.m. at the Enfield Community Building, 182 Enfield Main Road, to go through the public comments and organize them.

Councilperson Hansteen requested that the BOWF escrow account be brought up to date before any more expenses are incurred.

Supervisor Rider will send another notice, on August 11, 2016, to BOWF requesting more funds. She noted that a portion of the SEQRA law states that all fees are not reimbursable. All FOIL costs are not subject to be reimbursable since the town is obligated to provide this service as a regular part of their business.

Public Hearing for Local Law "Procedures for Public Access to Records of the Town of Enfield Under the Freedom of Information Law":

Councilperson Miles moved, with a second by Councilperson Carpenter to approve Resolution #2016-56.

Resolution #2016-56

TOWN OF ENFIELD PUBLIC HEARING ON LOCAL LAW FOR PROCEDURES FOR PUBLIC ACCESS TO RECORDS OF THE TOWN OF ENFIELD UNDER THE FREEDOM OF INFORMATION LAW

WHEREAS, the Town of Enfield adopted a resolution regarding the Uniform Rules Relating to the Administration of Public Access to Public Records on June 12, 2002 and

WHEREAS, the State of New York has made several changes and additions to the Freedom of Information Law in the intervening years, including the application of strict rules pertaining to FOIL responses, such as frequently changing archiving rules for FOIL demands and responses, the Town Board opts to update its FOIL procedures to bring them up to 2016 standards as recommended by the Committee on Open Government, and

WHEREAS, the Town Clerk and the Deputy Town Clerk have met with the Town Attorney, Guy Krogh regarding this draft Local Law, and

WHEREAS, a draft of a Local Law is on file with the Town Clerk for public review and has been provided to Town Board members for review and discussion, and

WHEREAS, this proposed Local Law would be a Type II SEQRA and not require the preparation of an EAF, now therefore be it

RESOLVED that a Local Law be considered for adoption pursuant to the authority granted by and in the Statute of Local Governments, the Municipal Home Rule Law and Public Officers Law Article 6 and the regulations promulgated there under. Such Public Officers Law, Article 6, is more commonly known as the Freedom of Information Law and together with its rules and regulations, and as amended from time to time, it is hereinafter referred to as "FOIL" and it is further

RESOLVED that a public hearing on the matter be held at 182 Enfield Main Rd., Ithaca, NY 14850 on Wednesday, September 14, 2016 at 6:30 PM to consider the aforesaid Local Law, and to hear all persons interested in the subject thereof and concerning the same, to take and consider such evidence as may be submitted, and to take such action thereon as is required or permitted by law and it is further

RESOLVED, that the Town Clerk of the Town of Enfield, Tompkins County is hereby authorized and directed to cause a proper Notice of Public Hearing to be duly and timely published in the official newspaper of the Town, and to further post a copy thereof on the Town signboard maintained by the Town Clerk, in accordance with law.

Discussion: Supervisor Rider stated in the proposed law she put the Enfield Town Board as the designated persons who shall determine appeals regarding denial of access to records.

Councilperson Miles asked to have reference to faxing requests removed from the proposed law on page 7.

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

<u>Road Protection Law:</u> Supervisor Rider spoke with town attorney Guy Krogh and he stated that we have to first discuss what we want to include in the law. One item that needs to be included is being able to post roads. She needs to understand how much the town can limit agriculture in the law.

Councilperson Miles wants to be sure that any town permit application states there is a law so everyone will be aware of it.

Dan Walker will provide some samples of Road Use Laws.

<u>Cleaning of Town Hall:</u> Town Clerk Alice Linton proposed cleaning the town hall in place of Vanessa's Cleaning Service. Supervisor Rider will negotiate with Vanessa's Cleaning Service for the cleaning of the Community Building, both upstairs and downstairs.

Councilperson Carpenter moved, with a second by Councilperson Hansteen to hire Alice Linton at the rate of \$25 per week to clean the town clerk's office and directed the town supervisor to negotiate a lesser price than \$110 per week for Vanessa's Cleaning Service to clean the Enfield Community Building.

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

Extension of Time to Extend SEQR Period: Since information has not been provided to town board members yet, this item will be on the agenda of the special town board meeting to be held August 16, 2016.

Privilege of the Floor:

Mimi Mehaffey requested that all correspondence be read that any town board member receives. She also asked if there were any ramifications for Black Oak Wind Farm not keeping their escrow account current. They don't appear to be fiscally responsible.

Jude Lemke stated she feels the town is in a Catch 22 situation with Black Oak Wind Farm. They are not keeping their escrow account current so the town board doesn't feel it can move forward with LaBella. She is concerned the wind farm is controlling the agenda and the town should move forward without using LaBella.

Theresa Guler asked if there was information on a tower going up on Fish Road. Do towers like this need to be approved? Clarity Connect has put up this tower. She also asked if there was any plan to deal with solar farms since the town has no solar farm law.

Melinda Tesori asked if the resolution regarding town roads was for county roads also. Dan Walker responded this was just for town roads. The county will issue its own permits.

Sue Shults stated she feels it is risky working with Black Oak Wind Farm since they have no money.

Councilperson Miles stated he would like to get attorney Guy Krogh's opinion on this subject. Councilperson Hansteen feels the town shouldn't incur any future expenses until Black Oak Wind Farm pays what they owe the town. Councilperson Bryant agreed.

Supervisor Rider stated she will make it clear to Black Oak Wind Farm that they need to pay the money owed the town.

Councilperson Hansteen said the language in the Agreement appears the wind farm will need to be sued if they do not bring their account current.

Adjournment: Supervisor Rider moved, with a second by Councilperson Hansteen, to adjourn at 9:45 p.m. Motion carried.

Respectfully submitted,

Alice Linton, Enfield Town Clerk