

Town of Enfield
Special Town Board Meeting Minutes
Enfield Community Building
Wednesday, October 26, 2016
7:00 p.m.

Present: Town Supervisor Ann Rider, Town Councilperson Mike Carpenter, Town Councilperson Henry Hansteen, Town Councilperson Michael Miles, Town Highway Superintendent Buddy Rollins, Town Clerk Alice Linton. Town Councilperson Virginia Bryant arrived at 7:10 p.m.

Supervisor Rider lead the assemblage in the Pledge of Allegiance to the Flag at 7:00 p.m.

Closed Session with Town Attorneys: Supervisor Rider moved, with a second by Councilperson Carpenter to go into closed session with the town's attorneys Frank Pavia and Guy Krogh regarding legal advice in the next steps in issuance of a wind energy permit under Section 108 of the Open Meetings Law.

Discussion: Councilperson Carpenter expressed concerns that the town board should follow laws, as there is the possibility of being sued. He asked that the reason to go into the closed session be identified.

Attorney Frank Pavia stated this would be for legal requirements facing the town board under local law and SEQRA regarding the next steps toward consideration of the wind energy permit. There is some legal analysis and advice to be given to the town board regarding those steps warranting a closed session with attorneys to discuss that under Section 108 of the Open Meetings Law.

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

Supervisor Rider stated she was adding a Privilege of the Floor to the agenda when the town board comes out of closed session with an estimate of that time being 7:45 p.m.

The town board moved into closed session at 7:07 p.m. The town board returned from closed session at 8:40 p.m.

Privilege of the Floor:

Maria Ortiz of Enfield stated over the years she has lived in the area, she has not seen improvements of any kind. She wonders where money has gone. There are things to be fixed and things to be done.

Marguerite Wells of Enfield stated she is looking forward to understanding better the town board's thoughts on the Plans that are on the agenda and also, going forward, a process for communicating between BOWF, the town board, and interested town folks so the process can move forward. She would like to see more transparency in the process.

Jude Lemke of Enfield questioned the status of the \$19,500 in FOIL fees that she feels BOWF owes the town. She would like to see the town pursuing this. She feels the BOWF Plans currently submitted are seriously deficient. She would like to see the town board obtain complete leases to make sure the BOWF can build where they have indicated.

Marcus Gingerich of Enfield asked where copies of the proposed Lighting Plan can be found. Some of the Plans he has seen appear to be deficient and he hasn't seen updated Plans.

Dawn Drake of Enfield thanked the town board for caring about Enfield. She would like to hear more truth, such as where the sub-station will be located.

Rob Tesori of Enfield stated he has been unable to find the BOWF Lighting Plan. He questioned if the lights will be radar activated beacon lights or will they strobe all night. He feels the Plans he has seen are deficient.

Cliff Newhart of Enfield asked what happened to the petition requesting a moratorium on the BOWF that was submitted to the town board.

Councilperson Carpenter moved, with a second by Councilperson Miles to put in place a 90-day moratorium to consider any decisions in relation to the Black Oak Wind Farm.

Discussion: Councilperson Carpenter stated he wanted to respond to what residents requested. This matter has become very complex, and he would like to be fair to both sides and keep with the wind law.

Councilperson Hansteen stated the town attorney has indicated the town board doesn't need to respond to a request for a moratorium.

Supervisor Rider stated the town board should consider the ramifications of instituting a moratorium. She cautioned town board members to be cautious without legal advice.

Peter Bardaglio of Trumansburg, president of the BOWF board, asked the town board to remember that another petition has been filed asking the town board to move ahead with permitting the BOWF.

Councilperson Bryant felt it important for the town board to take their time, but didn't feel a moratorium was necessary.

Councilperson Miles doesn't feel a moratorium would be a benefit at this time, but the town does need to follow the process.

Vote: Councilperson Bryant nay, Councilperson Carpenter aye, Councilperson Hansteen nay, Councilperson Miles nay, Supervisor Rider nay. Not carried.

Discussion of Next Steps in Issuance of Wind Farm Energy Permit for the Black Oak Wind Farm (BOWF):

Councilperson Carpenter moved, with a second by Councilperson Miles to request Black Oak Wind Farm to provide the town board with a letter from Rich Teeter agreeing to the fact that the NYSEG sub-station will be on his property as shown under the original EIS, or that he agrees to sell that portion of his property that the sub-station would be located on.

Marguerite Wells asked that this request be given to BOWF in writing.

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

Councilperson Miles moved, with a second by Councilperson Carpenter to request of Black Oak Wind Farm these final documents: the Fire and Emergency Plan; the Community Relations and Dispute Resolution Plan; the Decommissioning Plan; the Landscaping Plan; the Invasive Species Control Plan; the Lighting Plan; the Department of Environmental Conservation approved SPDES Permit and SWPPP, SPCC Plan, Dust Control Plan, Soil and Erosion and Sediment Control Plan; if necessary a Blasting Safety and Management Plan; Road Use Agreements with the Town of Enfield and County of Tompkins; the establishment of a decommissioning fund of \$180,000 per turbine or such greater amount that is reasonably determined by the town for each wind turbine and/or wind energy facility comprising the project, decommissioning funds shall be retained for the life of the project and shall be provided in the form of surety bonds, letter of credit, cash or other security instruments which shall guaranty funds; and also, per the previous motion, a letter asking for confirmation from Rich Teeter that the sub-station will be allowed on his property or that he will sell the property in case it wasn't allowed; and that there may be other documents required as are deemed necessary.

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

Supervisor Rider stated a draft Fire and Emergency Plan has been reviewed by the local fire department. She has a letter from Lee Shurtleff, Director of the Tompkins County Department of Emergency Response, who has reviewed the Plan stated he found the Plan acceptable and consistent with the objectives of the County's Comprehensive Emergency Management Plan and related response plans and protocols.

Supervisor Rider moved, with a second by Councilperson Carpenter, to accept the BOWF Fire and Emergency Plan as complete as required by the local wind energy law.

Discussion: Councilperson Carpenter requested that all Plans be run by LaBella before approval.

Councilperson Miles stated the town board has asked, as part of the previous motion, for the final BOWF Fire and Emergency Plan so it doesn't make sense to ask for it and then vote on it.

Supervisor Rider withdrew her motion.

Supervisor Rider stated an estimate of decommissioning funds was passed by the town board on August 16, 2016.

Councilperson Carpenter stated he felt that was not the final Plan.

Supervisor Rider stated she will send this to LaBella for review. The Landscaping Plan and the Invasive Species Plans are inadequate. The Lighting Plan has not been presented. That leaves the Community Relations and Dispute Resolution Plan and the Road Use Agreements.

Councilperson Carpenter stated he felt it would be best to send a complete package of all Plans to LaBella and have them look at all parts together.

Councilperson Miles felt it would be best to not approve any Plans until the final versions of all Plans have been reviewed.

Councilperson Hansteen questioned if the process was to get Plans from BOWF, have the town board review them, and then send them to LaBella for review.

Councilperson Bryant doesn't want to send Plans to LaBella piecemeal - it would be better to send them all at the same time.

Councilperson Miles understands that LaBella has technical expertise, but the town board could let BOWF know what concerns they have. Final documents should be reviewed by both LaBella and the town board. He feels that BOWF should put all the documents together and submit them to the town board at the same time.

Marguerite Wells stated some of the Plans are in as final form as BOWF can provide until they receive feedback of items to be changed. The Lighting Plan is part of the draft EIS.

Councilperson Carpenter suggested he could write the Community Dispute Resolution Plan and then have BOWF review it.

Review of 2017 Tentative Budget and Move to 2017 Preliminary Budget:

Councilperson Carpenter asked if the additional amount (\$5,000) in line A9950 was for a new town hall.

Supervisor Rider stated it was for a reserve fund set up to build an energy efficient town hall.

Councilperson Carpenter stated he would like to find a way to have no increase in town taxes this year. He felt that would mean taking \$20,000 to \$30,000 from the total of the tentative budget. He felt that the highway budget had gone up significantly in past years, and that if there were emergencies they could be covered by other funds.

Supervisor Rider stated general funds and highway funds cannot be comingled.

Highway Superintendent Rollins stated for the last 3 years he has presented his budget requests, and they have not been discussed. He has given the town board an equipment replacement plan and items that are still needed for the new highway facility. He questioned when funds will be put aside to start saving for needed equipment. The new highway facility has no generator and therefore no phone for emergencies. The highway building needs to have repairs done. He and his guys have saved the town a lot of money over the past few years. There has been no plan made for the future.

Councilperson Bryant left the meeting at this time - 9:50 p.m.

Councilperson Carpenter stated he wants residents to pay the exact amount in town taxes that they paid last year. He wants residents to feel that the town board did something in keeping with their statements to the town board that says we heard you and we would like to do our best towards not having you have a significant tax increase this year, or any at all, if we can do that.

Supervisor Rider asked if any board members would like to see further changes made to the tentative budget.

Councilperson Miles moved, with a second by Council Hansteen to approve Resolution #2016-61.

Resolution #2016-61 Move 2017 Tentative Budget to 2017 Preliminary Budget

Whereas, the following changes have been recommended to be made to the 2017 Tentative Budget:

A1010.1 Change from \$12,038.40 to \$11,802.40
A1010.11 Change from \$11,298.27 to \$11,298.72
A1110.489 Change from \$21,500.00 to \$24,000.00
A1316.1 Change from \$8,385.60 to \$8,364.00
A9950 Change from \$10,000.00 to \$15,000.00

Now, Therefore, be it resolved that the above changes be made to the 2017 Tentative Budget and the 2017 Tentative Budget be moved to the 2017 Preliminary Budget.

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

Privilege of the Floor:

Tammy Alling of Enfield stated it would be nice if residents could be supplied with answers for their questions at town board meetings. She would like to know where the BOWF proposes to place their turbines and where the sub-station will be located. Supervisor Rider stated the sites of the proposed turbines are in the BOWF findings statement.

Mimi Mehaffey of Enfield stated she would like the town board to look at all turbine set-backs and make sure they comply with town law. She asked the town board to protect residents and comply with minimum set-backs as listed in the local law. The town board should have to approve moving of the turbines. Councilperson Miles stated while changes were made to the turbine height and approved in July 2015, at that time the town board felt no further SEQRA review was necessary. However, the wording of the motion in July should be looked at, as it is critical regarding set-backs. BOWF said none of the turbine locations would be moved, and the motion only related to larger turbines and moving the sub-station slightly.

Jude Lemke of Enfield asked why the town board isn't requiring full copies of leases. She feels the town board should also ask Donny Gunning for a letter similar to the one asked for from Rich Teeter. She understands that Turbine 5 is 183 feet from her property line and that distance is not sufficient for a 2.3 mega watt turbine. She also asked what the urgency was for BOWF to have something approved by mid-October. Their letter said if there was no final approval by mid-October the project was dead. Why is the town board going ahead with work on this project. She also questioned what the town board would be doing about the \$19,500 in attorney fees for FOIL work. Councilperson Hansteen stated he asked both town attorneys about the \$19,500 FOIL work and they said it was a gray area.

Melynda Tesori of Enfield asked how residents could obtain information if they didn't submit FOIL requests. Councilperson Miles stated if the FOIL requests are a gray area, they could easily be challenged. He feels it is the duty of the town to respond.

Marcus Gingerich of Enfield asked the town board to be sure when all of the BOWF Plans are finalized that they become public. Responding to the town budget, he said it would be helpful if there was a column to show what was actually spent each year, not just what was budgeted. He asked for

confirmation that the DSEIS was withdrawn by the BOWF. Supervisor Rider stated she had received an e-mail stating BOWF was withdrawing their DSEIS.

Marcus Gingerich then asked if the plan now on the table was the one from July, 2015 with 2.3 mega watt turbines on the original configuration. Councilperson Hansteen stated that was his understanding. Mr. Gingerich then asked if items not on the agenda are presented to the town board, can the town board respond?

Bill Goodman, Town of Ithaca supervisor, responded that town board members can respond, but they are not required to.

Carol Woods of Enfield asked who is the client when attorney-client privilege is discussed. She also asked why legal concerns aren't open to the public.

Bill Goodman stated that as part of the NYS Open Meetings Law, town boards can go into closed sessions to seek the advice of counsel. It is just town board members receiving advice and it is up to the town board members to decide how to act on that advice. Any action taken has to be done in public.

Cliff Newhart of Enfield stated he is concerned that Councilperson Carpenter is writing a document for the BOWF. It could lead to all kinds of legal ramifications.

Councilperson Carpenter stated he has had conversations with representatives of the BOWF and was asked what he feels is important for him to be comfortable with the process. He feels writing the Plan would be an extension of saying what he would like to see in the document.

Marcus Gingerich asked why the town board is doing so much of the BOWF's work when they have budget problems to work on.

Tammy Alling of Enfield stated she understands the budget is tight, but would hate to see the highway budget cut. There could be problems for the fire department and school buses if roads aren't adequately maintained. Public safety needs to be considered.

Theresa Gulier of Enfield thanked the town board for staying so late to take care of business. She has met a lot of wonderful people in Enfield. There are two months left this year to work on issues. She hopes that next year more can be done for the community with projects.

Beverly Gingerich thanked Councilperson Carpenter for responding to the petition requesting a moratorium on the BOWF project. She has copies of affidavits from some people who live in the area of the Shirley Wind Farm that she would be glad to share with town board members.

Adjournment: Supervisor Rider moved, with a second by Councilperson Miles, to adjourn at 11:05 p.m. Motion carried.

Respectfully submitted,

Alice Linton, Enfield Town Clerk