Enfield Town Board Special Meeting, September 28, 2016

Councilperson Miles moved, with a second by Councilperson Carpenter to:

1) Direct the Town Supervisor to send an official notice to Black Oak Wind Farm requesting payment for any undisputed outstanding balance plus an additional $15,000 to replenish the escrow account per it's developer agreement with the Town of Enfield. Said notice shall be sent within 5 business days from approval of this motion.

2) Stop any further review of the wind permit process by the Town of Enfield for the Black Oak Wind Farm that will incur any additional costs to the town until all outstanding balances plus the additional $15,000 are paid in full, per part 1 of this motion.

3) Costs exempt from part 2 of this motion are future legal costs that may be incurred as a result of Town of Enfield officials seeking advice from its attorneys, specifically Frank Pavia and Guy Krogh.

4) This motion shall take effect immediately upon approval by the Town of Enfield board.

Discussion: Supervisor Rider stated she did go through the Harris Beach accounting, and received a communication from LaBella with a separation on their invoices of FOIL (Freedom of Information Law) billings. As of August 30, 2016 the BOWF escrow account was in arrears $19,526.17. It is still being determined how much BOWF actually owes the town.

Councilperson Miles stated this amount is a significant difference from previous balances. He asked what has been excluded from that amount. Supervisor Rider stated FOIL has been excluded.

Councilperson Hansteen stated he doesn't believe FOIL matters should be excluded. In the Developer's Agreement it states "any and all reviews by the Town and its engineer and attorneys, the costs and expenses thereof (excluding any outside of Tompkins County travel time), and all other reasonable and necessary 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 that Project requires such action, expense or review in order to obtain the Approvals. Such determination of what expenses are reasonable and necessary shall be made by the Town in its sole discretion, but shall not include out of county travel time. Such reviews and expenses, and any money spent in relation thereto, shall be referred to as the "Review Costs"."

He feels a FOIL request regarding BOWF is part of the reviewing of the Project. He doesn't want to pay for these expenses out of his taxes and doesn't believe other town residents want to pay for FOIL review requests if they're directly related to BOWF.

Councilperson Miles believes if the application for the BOWF permit were not in place, these FOIL requests would not exist as they are specific to the FOIL requests for BOWF.

Councilperson Hansteen read an e-mail sent from Guy Krogh, town attorney to Supervisor Ann Rider. Guy Krogh felt the amounts might best be worked out be agreement. Councilperson Hansteen would like the board to consider voting on whether to bill BOWF for FOIL requests relating to the wind farm.

Councilperson Miles amended his original motion to state "for any undisputed outstanding balance".

Supervisor Rider asked to go back to her original understanding that this is a two part permitting process. First a wind energy permit is issued and then a final building permit. She questioned if there wouldn't still be leverage with the building permit to have everything in order.

Councilperson Miles stated his motion addresses financial implications. It does not stop the town board from talking about it, since talking about it does not incur those costs. Costs are incurred when the town board asks LaBella for professional advice that will incur costs. Those costs have been building up and the town has not been reimbursed for them yet. This has been going on for many months, and discussed at most town board meetings. When the account is paid in full, then the town can get expert advice. The Town of Enfield is in an awkward position with this large outstanding balance.

Councilperson Hansteen asked if the wind energy permit is approved, will the town board still have the ability to negotiate the five Plans put forth by BOWF.

Councilperson Carpenter feels the town's wind farm law is faulty, particularly in the area of the wind energy permit being approved. It mixes up the building permit and puts the Code Enforcement Officer in a position of saying ok, but I can't issue the permit until you've done all the things the town board has asked you to do. He's not in a position to say whether BOWF has complied with all the restrictions the town board has asked them to do. That's a town board issue. So the permit is now in the hands of the town board to make the decision. If the town board has already made the decision, in saying ok we'll give you the wind permit and now all you need is the building permit, the town is in an impossible position. It puts the town in a position of having no say anymore in the building permit decision because the town has given the responsibility of complying with the wind farm conditions to someone who can only approve the building permit who has no say in the conditions that were made by the town in terms of giving the wind energy permit. He feels the best choice is for the town to not approve the wind energy permit until all conditions that the town wind law require have been met. Once those have been completed, the town can issue the wind energy permit.

Councilperson Miles stated the board has an obligation to make sure everything is complete.

Councilperson Bryant stated she would like to see all information submitted together and not piecemeal.

Councilperson Carpenter stated that in addition to the five Plans submitted by BOWF there are other requirements that still need to be met. One is the location of the sub-station.

Councilperson Miles stated he agrees this process goes beyond the five Plans. On April 14, 2010 the town board voted on whether the application was complete according to the wind law. Part of the minutes of that meeting read "Frank Pavia explained the application was originally submitted in December 2009. The application was not determined to be complete at that time. A supplemental submission was made by the applicant that contained additional information and was discussed at the February 10, 2010 town board meeting. The supplemental application was then reviewed. A memorandum was submitted to the board from Harris Beach showing that some studies and information is lacking, but the board has been advised that this information can be submitted at a later date, particularly when a draft Environmental Impact Statement is prepared by the applicant and submitted to the town board for review and assessment. As long as the applicant realizes that more information will be needed at a later date, Harris Beach is prepared to recommend to the town board that the application is substantially complete for purposes of continuing the review under the Wind Law and commencing the SEQRA review process. That recommendation is conditioned upon the fact that those remaining pieces of information would be provided as part of a draft Environmental Impact Statement and as part of the SEQRA review".

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