

Town of Enfield
Special/Continuation Town Board Meeting
Enfield Community Building
Thursday, March 16, 2017
7:00 p.m.

Present: Town Supervisor Ann Rider, Town Councilperson Virginia Bryant, Town Councilperson Mike Carpenter, Town Councilperson Henry Hansteen, Town Councilperson Beth McGee, Town Clerk Alice Linton. Town Attorney Guy Krogh

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

Rereading of Michael Miles Motion from September 28, 2016 Meeting:

Supervisor Rider read the motion, that passed, from the September 28, 2016 meeting as follows:

- 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 its 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.

Councilperson Carpenter feels this motion allows legal costs to be paid without Black Oak Wind Farm (BOWF) having their escrow balance current. Councilperson McGee agreed that billings as a result of legal advice from town attorneys should be paid. However, legal fees regarding the Road Use Agreement would be part of the review process and she felt town attorneys should not be working on items such as that until the Town Board is ready to review the documents. Councilperson Carpenter feels the Town Board should be careful not to ask for legal advice in the future for items that don't fit into the guidelines of this resolution.

Approval of audit claims: Councilperson Carpenter moved, with a second by Councilperson Bryant to authorize the supervisor to pay General Fund vouchers #88 to #90 dated March 16, 2017 in the amount of \$2,737.00.

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

Announcement: Supervisor Rider publically thanked the Town Highway Department for living through the last 3 days of Winter Storm Stella.

Privilege of the Floor: Councilperson McGee moved, with a second by Councilperson Carpenter to include a Privilege of the Floor before New Business.

Discussion: Supervisor Rider stated this meeting is a continuation of the March 8, 2017 regular meeting. Privilege of the Floor is at the beginning of a regular meeting and the end of a regular meeting. Councilperson McGee added that it can be held at any time that a majority of the board elects.

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

Jude Lemke of Enfield understands the Town Board is considering a land use moratorium. She reiterated advice from her attorney that BOWF has no vested rights in this project. She feels it is possible to put a moratorium in place and to amend the wind energy law retroactively to BOWF since there has been no substantial legal construction and spending by BOWF. No permit has been issued to date.

Nancy Spero of Enfield spoke about the proposed land use moratorium that is on the agenda. She feels this is a good time to stop and think about what direction the town wants to go. She is for alternative energy, but it should be done right, with up-to-date technology, and the town should benefit as much as possible. She feels the Town needs to really think about how land is used.

Brad Connors of Enfield stated he feels the proposed land use moratorium is a very valid endeavor. Time should be taken to better understand complications and risks of large scale developments.

Laurie Shaver of Enfield asked the Board to support a land use moratorium. Her concerns are health and safety of those living in the area.

Tammy Alling of Enfield thanked the Town Board for their work on the BOWF project. She is disappointed that many BOWF questions haven't been answered. Many have worked tirelessly to find resolutions. She supports a moratorium on land use.

Marcus Gingerich of Enfield referred to a report done in 1985 by the Solar Research Institute, a predecessor to the National Renewable Energy Laboratory. This report did not say there was no effect from wind turbines. The report said yes, there is something going on, we acknowledge it. Yet the wind energy industry says this is old research, it doesn't matter. But there has been no research done since then to show it is safe and that this report is wrong. He would appreciate the Town Board thinking about safety and he supports a land use moratorium.

Marguerite Wells of Enfield stated she will provide the Enfield Town Board with a memo of why she feels the BOWF has vested rights. She feels moratoriums of every kind are discouraging and anti-business. Residents complain about taxes and poverty, but if business is driven away, that drives away the main source of new revenue, besides new homes. She feels with farms being sold and housing units built, Enfield could turn into a bedroom community. She feels the Town is working out of fear - there are no examples of anyone being hurt from wind turbines and no evidence of a difference in property value.

Beverly Gingerich of Enfield feels wind farms are not an irrational fear. She read an article from a resident in the North Country outlining negative impacts from a wind farm.

Ron Riddle of Enfield asked what is the price of business when looking at the quality of life. He doesn't feel residents should be forced to have something in fields next to their homes. He supports a moratorium.

Councilperson Bryant was asked to state for the record that Judy Hyman and Jeff Clause strongly support a wind and solar moratorium.

Councilperson McGee read a list of wind turbine failures and collapses in the past few months.

New Business:

Planner Services: Supervisor Rider contacted the Town of Ulysses, the Village of Trumansburg and the Town of Danby to get information on their planning personnel. Many town planners write grants. It was highly recommended that the Town of Enfield complete their revised Comprehensive Plan before applying for grants.

Councilperson Bryant feels completing the Comprehensive Plan is a very important step to accomplish before applying for grants. She understands no funds were budgeted for a planner in Enfield this year, but feels it might be possible to budget for one next year.

Attorney Krogh feels town planners are far more necessary in recent years. They bring a skill set to the table that doesn't exist anywhere else. They are able to help plan where a town will be ten years from now. A town can plan to succeed or fail to plan. A plan should encompass what the Enfield community wants to see in the future. An RFP would not be required when looking for a planner for Enfield.

Supervisor Rider suggested a town planner should look at our Comprehensive Plan before it is approved. Councilperson Carpenter would like to see the cost of a planner kept in line with the benefit of having a planner. He would like to see money put in next year's budget for a planner. Councilperson Bryant will look for a planner who would be willing to review Enfield's Comprehensive Plan.

Best Value Law: Supervisor Rider stated the Office of the State Comptroller felt having a Best Value Law would be a good idea for Enfield.

Attorney Krogh stated best value bidding is recognition of the fact that the lowest responsible bidder doesn't always produce the best and most affordable result. There can be value added by a bidder that isn't necessarily related to price. Best value gives you the flexibility to weigh the overall package that is provided on a bid. The criteria can be different in different cases. This can make a big difference in equipment and vehicle purchases.

Councilperson McGee understands we need to articulate procedure. She asked if the Board would need to make another policy for rules that would accompany each project.

Attorney Krogh stated many municipalities have things that should be looked at annually, such as procurement policies, and this is often routinely part of the organizational resolutions. He suggested adding a paragraph to the Town's existing procurement policy.

Councilperson McGee asked what the advantage of a Best Value Law would be over documenting the process in the minutes.

Attorney Krogh stated it is not unusual to not buy the cheapest product for a highway department because you have to know what the product is being used for. The Best Value Law probably wouldn't be used often for procurement, but more for multi-process events such as vehicles where plows and boxes need to be attached or a construction project where there is design and build or doing multiple trades in one project.

Supervisor Rider stated she feels the Town's procurement policy is not fine tuned - it should be beefed up. She would like to see more structure inserted for future Town Boards and employees. She suggested using the Town of Lansing's Best Value Law as a model for Enfield. Councilperson Carpenter suggested seeing revised language for the procurement policy and a draft Best Value Law before proceeding.

Attorney Krogh would like to see the Procurement Policy and Best Value Law working together.

Land Use Moratorium: Councilperson McGee moved, with a second by Councilperson Hansteen to adopt Resolution #2017-___.

Resolution #2017- Moratorium Regarding All Commercial/Utility-Scale Solar and Wind Development in the Town of Enfield

WHEREAS, the Town of Enfield (the "Town"), under the laws of New York State, desires to maintain its long tradition of protecting the health, safety, general welfare, property, and environment within its borders; and

WHEREAS, New York State Home Rule law grants the Town broad powers to adopt resolutions and ordinances to protect the public health, safety, general welfare, property, and environment in the Town in order to protect against adverse risks and impacts related or associated with commercial/ utility-scale solar and wind development; and

WHEREAS, the Town has undergone rigorous exploration of public concerns through providing open public comment and development of a Wind Advisory Committee, which has resulted in a desire to review and analyze our current oversight of these activities; and

WHEREAS, the Governing Board has acknowledged that ordinances in place within its jurisdiction that oversee this type of development are either non-existent or insufficient to provide for the public health, safety, general welfare, property and environment in the Town; and

WHEREAS, New York statutes are not sufficient to protect the health, safety and wellbeing of Township residents.

NOW THEREFORE, BE IT HEREBY RESOLVED:

The Town of Enfield Governing Board hereby directs attorney, Guy Krogh, to draft a Land Use Moratorium Law that complies with all applicable regulations upon this Town to complete this action according to strict procedure set forth in New York State Law, to include the following:

A moratorium on all commercial/utility-scale solar and wind development within the boundaries of the Town of Enfield, to include all projects currently under consideration, or to be reviewed by all Town entities, officials, employees, and/or agents on applications, proposals, requests, permits, approvals, and all other compliance requirements regarding any commercial/ utility-scale solar and wind development for the duration of the moratorium.

For a period of 8 months from the date of acceptance by the Governing Board, with the option to extend. For the purpose of protecting the public interest; public health, safety, morals, general welfare, property and environment within the Town of Enfield by establishing regulations for commercial/ utility-scale renewable energy development that is consistent with the quality of life Enfield residents value and currently enjoy. To study and or adopt proper protections recommended for current technologies.

Tasks to complete in the term of the moratorium:

- Complete Wind Facilities Law updates
- Complete a solar law or other appropriate solar regulations
- Complete the Comprehensive Plan

Discussion: Attorney Krogh stated a moratorium such as this could regulate to protect values that the community shares, not just the land the community lives upon. It would take him a couple of hours to draft a law which would be fairly simple. He would be happy to find some sample laws to share. He felt the Town might not want to stop small scale development, only large scale development. The law would have to impact the entire community, not just one person. He could write size into the law.

Councilperson Carpenter asked if the moratorium would include all industrial projects currently under consideration, for instance the Delaware River Solar project.

Attorney Krogh stated there may be exemptions where projects are in the permitting process. The law could include the spot in the process where they would be exempt. The term "commercial" should probably be defined.

Supervisor Rider is concerned about the lack of action already on this subject. The item of a solar law has been on the Town's agenda seven times and she feels there has been no progress. She is concerned about the Board's ability to get something done in a set period of time.

Attorney Krogh responded the time frame involved would depend on the complexity of the issue. The Town Board doesn't necessarily have to do what they set out to do during the period of the moratorium. They can study the issues and then decide not to adopt a law. Looking at updating the wind law, a solar law and finishing the Comprehensive Plan is a lot to accomplish. If the Town Board feels it will take ten months to accomplish, don't plan a moratorium for eight months.

Councilperson Carpenter mentioned there will likely be changes on the Town Board next January.

Attorney Krogh stated it is always good to treat out-going and in-coming Town Boards with equal respect. If a moratorium is passed, a new Town Board can like it, or repeal it.

Councilperson Carpenter suggested the end of February, 2018 would be a good time to end the moratorium. That would allow a new Town Board time, and would not impact the building season.

Councilperson McGee stated she has concerns about takings and vested rights as pertains to moratoriums.

Attorney Krogh responded there is a general rule regarding vested rights that goes back to the constitution. You have property rights and you have rights in your property. The vested rights rule says that, while the community has the ability to affect land use regulations, the strongest use you can build land use on is zoning. There is a point at which you regulate for the public good by trying to mitigate certain impacts. There is a point at which you start to cross that line and regulate an individual. The courts try to balance the individual property rights against the concerns of the community. When it is ambiguous or the playing field is equal, individual property rights will almost always win. That's where the vested rights rule comes into play.

Councilperson Hansteen questioned if some individuals or companies can have vested rights without beginning physical construction.

Attorney Krogh responded that is correct. The rule generally applies to processes whereby the ability to put something in the ground is governed by an extremely lengthy permit or review process. The question is does it apply to this industry, does it apply to this particular project based on where it is on the spectrum from concept to shovel in the ground. This would take some research and then he could give his advice with a risk benefit analysis. He doesn't feel this looks like a takings case.

Councilperson McGee feels this is not just a wind moratorium, but also the flip side risk of approving and having residents suing the town. In the last municipal newsletter there was a statement that she found problematic "the wind farm committee has submitted its final report to the Board; they have made several recommendations to change the current wind farm law in view of more current information regarding safety; the Board will be reviewing these recommendations in the upcoming months and will consider updating our current wind farm local law; changes to this law would not affect the current project before the Board". To her, this is saying we know there are problems, but we aren't going to do anything about it with regard to this particular issue. She questioned what sort of risk does that put the Town Board at.

Attorney Krogh stated you don't generally have liability for making a legislative determination. Your determination can either be upheld or struck down. The last section of the paragraph turns on the vested rights rule. Some things will affect vested rights, some things won't. He can give options - guidance and opinion. He will try to assess and give the Town Board options and decide what is best for Enfield. He will provide some sample moratoriums - one simple, one complex, and a couple in the middle. Councilperson McGee suggested tabling this resolution for now and determining a time frame and define "commercial". She would like to see sample laws and then decide which way to go.

Councilperson McGee moved, with a second by Councilperson Hansteen to table this resolution.

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

Councilperson Carpenter suggested having this on the agenda for the April Town Board meeting.

At this time, 9:17 p.m., Councilperson Bryant left the meeting.

Councilperson McGee asked if BOWF had paid their outstanding balance yet. Supervisor Rider responded no. Councilperson McGee asked if any correspondence had been received from BOWF regarding this outstanding balance. Supervisor Rider responded there has been no contact from BOWF as to why they haven't paid, but at a previous meeting Marguerite Wells had stated they will pay when they can get the money.

Announcements: Supervisor Rider stated there will be a blood drive at the fire station March 23.

Privilege of the Floor:

Mimi Mehaffey of Enfield asked if there was a way to use the application process to force BOWF to pay or close the application.

Attorney Krogh responded there are remedies built into the contract and consequences built into the local law. The normal process would need to be followed - notify BOWF of default - follow due process under the contract to call a default. There are built-in consequences for breach of contract. However, it should be determined if it is worth the fight. The Town should be in a solid position before declaring a breach of contract and it could still be challenged - control your risks. His advice is to make sure the Town is on solid ground.

Beverly Gingerich of Enfield finished reading the article she started at the beginning of the meeting. She stated she would be fine with Enfield remaining a bedroom community.

Jude Lemke of Enfield understands BOWF said they would deliver a letter from NYSEG saying they can build the sub-station on Rich Teeter's land, but the Town Board is still waiting for it.

Judith Perkins of Enfield stated she would be interested to know how much money the Town Board has already spent on the BOWF project. She stated Marguerite Wells is present and could be asked why BOWF isn't paying their bill. She would like to get to the bottom of this. She would like this information by the next meeting.

Supervisor Rider stated she has not done that cost analysis. She will try to have information on how much money the Town has spent on the BOWF project by the next meeting.

Councilperson Carpenter stated there are costs that have been reimbursed and some that haven't. Some are direct and not monetary. Everyone is worn out from this. The Town Board, Town Supervisor, Town Clerk and residents have all paid an incredible cost in time.

Marguerite Wells stated \$195,000 has been paid to the Town of Enfield so far.

Councilperson McGee stated there are other costs the Town has paid, such as advice by our Town Attorney. Councilperson Carpenter mentioned that costs such as FOIL have not been reimbursed. Councilperson Hansteen added that figure is close to \$20,000 at last count.

Councilperson McGee stated if the Town does a moratorium, she wants to be sure to protect the Town and residents and do everything properly.

Tammy Alling of Enfield stated many letters have been sent in response to the SEQR review - when will there be answers.

Attorney Krogh responded when the SEQR was withdrawn by BOWF, that ended that process. During public hearings there is no obligation by the Town Board to answer questions, but they represent the people. Minutes only need to be a record of decisions made at meetings - a summary of proceedings.

Councilperson Carpenter stated he read all the comments and would be happy to answer questions after the meeting.

Councilperson McGee stated sometimes answers come in the form of action. She has read all the comments as well.

Theresa Guler of Enfield thanked Councilperson Hansteen and encouraged him to join the audience at future meetings.

Councilperson Hansteen stated being a member of the Town Board has been a valuable experience for him.

Adjournment: Supervisor Rider moved, with a second by Councilperson Carpenter to adjourn at 9:50 p.m.

Vote: All in favor.

Respectfully submitted,

Alice Linton, Enfield Town Clerk