

SPECIAL MEETING
APRIL 23, 2008

A Special Meeting of the Town Board of the Town of Somerset, County of Niagara and the State of New York was held at the Town Hall, 8700 Haight Road, Barker, New York on the 23rd day of April 2008.

Present:	Richard J. Meyers -----	Supervisor
	Dudley E. Chaffee -----	Councilman
	April C. Gow -----	Councilman
	Randall J. Wayner -----	Councilman
	Daniel M. Engert -----	Councilman
	Rebecca A. Connolly --	Clerk
	Robert Roberson -----	Counsel

Attended by: Keith Pitman, COO of Empire State Wind Energy and approximately 40 citizens

Notice of said meeting sent to the Lockport Union-Sun & Journal on April 14, 2008 with same being posted on same date at the Town Hall.

Supervisor Meyers called the meeting to order at 7:00PM with the Pledge to the Flag.

EMPIRE STATE WIND ENERGY HOST COMMUNITY AGREEMENT

Supervisor Meyers stated the purpose of the meeting is to go through the revised proposed Host Community Agreement.

Keith Pitman introduced himself and gave some background on Empire State Wind Energy, stating the company has host community agreements in place with Sodus and other communities. He gave an overview on the changing industry including the transmission grid. He stated that he would like to hear the comments regarding the changes of the agreement.

Councilman Wayner thanked Mr. Pitman for coming back and stated that he feels the town has a viable resource. He stated that the Host Community Agreement has been looked at by the Board and he would like to see timelines included in the agreement which have been entered in the proposed agreement. Mr. Wayner stated that all members of the Board circulated the agreement with comments being included and was sent to the Attorney for revision. He stated that the Attorney put it back into legal form and this is the agreement that will be looked at.

Mr. Pitman stated that it takes 2 to 5 years to get something built and he feels that time targets is not unusual.

Supervisor Meyers went through the agreement, specifically targeting the following:

1. Pg. 3, 2nd Paragraph - Planning Board issuing permits – reference to the Town Board is removed.

2. Pg. 4, D. – added “attached hereto feasibility analysis is completed by ESWE.”
Mr. Pitman stated that would be no problem
3. Pg. 4, G. – added “Related Agencies.....”
Mr. Pitman stated that he understands it covers everybody
4. Pg. 5, III A. – added “shall be binding on ESWE and any Assignee thereof”
Mr. Pitman stated the word binding used to say applicable....he stated that he understands. He stated that he plans to leave this evening with an understanding and the agreement will be reviewed with the principals of the company.
5. Pg. 5, III B – added “Failure by the Town to object to an assignment within 45 days.....” changed from 30 days to 45 days.
Mr. Pitman stated he understood.
6. Pg 5&5, III C&D – are sections for right to first refusal that have been added.
Mr. Pitman stated he understood.
Councilman Engert stated that language was provided in the December 20th, 2007 response that was answered back in your (ESWE’s) January 4th, 2008 memo to use a shorter version.
7. Pg. 5, IV A – reference to Town of Somerset Local Law No. 1 – 2006 was added.
Mr. Pitman stated he understood.
8. Pg. 5, IV B – added the “SEQRA action” prior to signing the Host Community Agreement is not applicable to the actual wind farm.
Mr. Pitman stated they have a similar agreement with the Town of Huron and have seen the concept before.
Supervisor Meyers stated the Town Engineer has already given the Town a negative declaration.
9. Pg. 7, IV D – added wording from the town code regarding decommission and site restoration.
Mr. Pitman stated he understood.
10. Pg. 7, V – added “or Town Board” and added “ESWE shall allow access to project lands in the event of an emergency....”
Mr. Pitman stated he understood.
11. Pg. 9, VII – added “liability insurance satisfactory to the Town” and the “Town shall be a named insured on the policy.”
Mr. Pitman stated point understood.

12. Pg. 10, top – added “hold harmless from any losses, costs, expenses including reasonable attorney fees and defend the Town and its officers.”
Mr. Pitman asked that a definition be placed in the preamble “reasonable attorney fees”. He asked that a dollar per hour fee be added and he understood the point.
13. Pg. 10, X- A – Article 78 issue that has been discussed- wording was used that was agreed upon at the October 15, 2007 meeting.
Mr. Pitman stated this is compromise language. He stated they (ESWE) may want to look at a time element as to what point in the process. He stated he likes the concept but may come back with a compromise.
14. Pg. 10, X- B – if the Town changes it’s laws, language was added to protect ESWE’s rights and also site restoration plan without cost to the town was added.
Mr. Pitman stated he thinks that they may already have that right but it makes it clear and that he understood.
15. Pg. 12, XIII A – timeline was added “commencement of construction”.
Mr. Pitman stated he understood.
16. Pg. 13, XV A – timelines added for the Appendices – “feasibility analysis and produce Appendices A and B within eighteen months”.
Mr. Pitman stated this is a reasonable expectation for Appendix A and Appendix B is the financial analysis and 18 months should be within the realm of reality. He stated that a reasonable deadline is not harmful and can be compromised by the provision.
17. Pg. 13, XV A – “complete application for the proposed facility within six months”.
Mr. Pitman stated a definition of “complete application” may be needed. Councilman Wayner stated that it is spelled out in the Code.
Mr. Pitman stated that clarification can be added to the language. He asked that the Code be sent to him for review.
18. Pg. 14, XV - Payment schedule – added “Appendices shall also include a payment schedule which will allow for appropriate budgeting.....”
Mr. Pitman stated that he understood the Town needs to know when the revenue check would arrive.
19. Pg. 8, VI – The payment schedule was reviewed with Mr. Pitman stating that he understood the schedule.
20. Pg. 14, XV B – More specific language added “If Town decided not to approve, accept or execute the Appendices.....without cost, obligation or liability....”

Mr. Pitman stated he understood.

21. Pg. 15, XVII – D – added language that the Town can extend time limitations.
Mr. Pitman stated he understood.

Supervisor Meyers stated that most of the changes are clarifications; for the town not to be held liable and the taxpayers stuck with a big bill if something falls apart.

Councilman Wayner asked what happens at the end of 15 years if the Town does not opt to purchase the project.

Mr. Pitman stated the agreement ends at 15 years unless the buyout option is exercised. He stated that current NYS Real Property Tax Law ends the exemption making the project fully taxable at the end of 15 years. He stated that at that point a new agreement can be entered into or the property put on the tax roll. He stated that the Town will know how the project is performing at the 10 year mark and can decide to purchase or not to purchase.

Councilman Engert asked if ESWE is in the pipeline to obtain the structures and have you gotten into that with respect to the other seven agreements.

Mr. Pitman stated they are a small company and that they are looking at how they are going to procure the structures. He gave an overview of how the anticipated purchase will be made. He stated by adding projects, they have more volume. He stated they are in a financial position to be in the market and they can procure.

Councilman Engert asked if there were any expectations as to the timeline.

Mr. Pitman stated that 2009 is pretty much sold out and 2010 is not sold out. He stated 18 months plus is possible. He gave an overview of the process for the project and stated work can be completed before the delivery of the turbines.

Councilman Engert asked about their accessibility to the grid.

Mr. Pitman stated that a queue position (in the NYISO grid) has been filed for the Somerset switch yard by AES approximately eight months ago. He stated they (ESWE) would have been better off if they had the queue position prior to that but feels there is room for more, depending on the size and shape of the project. He explained how the position in the queue works with timelines and financing.

Councilman Engert questioned how long it takes to get into the queue with respect to a project.

Mr. Pitman stated it is one of the early stages. He stated they have to line up adequate land before filing for the queue position.

Councilman Gow questioned the cost to get in the queue.

Mr. Pitman stated that is a tremendous expense with it costing \$10,000 just to get on the list. He stated the Host Community Agreement is the foundation with the local government and that sets the stage to move forward.

Councilman Wayner asked Mr. Pitman when he will have his comments back to the Board.

Mr. Pitman stated that he will have feedback on or before May 13th.

Councilman Chaffee asked how long ago the first Host Community Agreement was signed and asked how the projects are moving along.

Mr. Pitman stated the first project was signed in September 2007 and gave an overview of how the seven projects are moving along. He stated that they intend to have the Somerset project self contained within the town limits. He stated he would take the proposed agreement and have it reviewed and apologized for any misunderstandings.

GREAT LAKES WATER LEVEL

Councilman Gow announced that the International Joint Commission on the St. Lawrence Seaway, Great Lakes Level will hold an informational meeting on April 30th at the Olcott Fire Hall., with a public hearing to be held on June 11th in Olcott. She stated she will leave the information at the Town Hall.

On a motion of Councilman Engert, seconded by Councilman Gow, the meeting adjourned at 8:20 PM subject to the Call of the Clerk. Carried unanimously.

Rebecca A. Connolly, MMC
Town Clerk