

SPECIAL MEETING, TOWN BOARD, TOWN OF LITTLE FALLS, JULY 7, 2023

A special meeting of the Town Board, Town of Little Falls was held on July 7, 2023 at the town hall commencing at 6:05 p.m. with the following members present:

Present: Supervisor Dan Casler
Councilman Kirk Schwasnick
Councilman Kevin Sullivan
Councilman Mitch Soules

Absent: Councilman Anthony Viscomi

Others Present: Town Clerk, Sandra Regan; Highway Superintendent, Donald Cotton; Town Attorney, Nicholas Macri; Wladis Law Firm Attorney, Christopher Baiamonte; Planning Board Members Marianne Graziadei and Ken Schlag.

-Wladis Law Firm Attorney, Christopher Baiamonte, stated Attorney Macri had asked him to attend this meeting to discuss the 94C process for permitting major renewable energy facilities.

Attorney Baiamonte distributed and reviewed a handout which gave an overview of the process. Mr. Baiamonte stated that NYS passed the Accelerated Renewable Energy Growth and Community Benefit Act in 2020 to speed up the process of permitting major renewable facilities that generate over 25 megawatts of power, that energy facilities are now permitted, not through the town or planning board, but through the NYS Office of Renewable Energy Siting (ORES), who have all the responsibility to review applications and approve or disapprove a project, that the state's goal through this process is to go from application to final permit approval within one year.

Attorney Baiamonte stated that 10 megawatt is about 100 acres, that although the town has ways to get involved with the permitting process, ultimately the state makes all the decisions, but the town has a voice.

Attorney Baiamonte explained the application process and timeline steps as follows:

That at least 60 days before filing an application, a facility has to file a notice of intent with the state and the town. They are supposed to meet with the town supervisor and hold a public meeting and that any review the planning board wants to take is discretionary.

That once an application is in, the town can apply for money. That the developer has to kick in \$1,000 per megawatts into a fund that's held in escrow by NYSERDA that can be utilized to pay for engineering and lawyer fees. That 75% of that money is specifically reserved for the locality.

That the town will have a standing contract with his firm for representation and any bills will be submitted to the town for approval, then go right to the developer and then be sent to NYSERDA.

That 60 days after the application is complete, the state will issue a draft permit that will spell out all the conditions upon which the state will permit the project, such as screening, setbacks, etc. That whatever the town has goes out the window, that the state has standard uniform conditions that replaces what the town has. The state staff will take a look at the project and amend those standard conditions to fit whatever local particularities the town has such as wildlife, wetlands, etc. That their process in doing this is to replace the SEQR, but it covers the same stuff. Once a draft permit is issued, a municipality is required to submit to the state everything in the application that contradicts with its local law. That the Town is also permitted to submit additional things that can be negotiated with the applicant or it can go directly to the state, such as any comments from the town or public. Attorney Baiamonte stated that he, as the lawyer, would handle this.

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Attorney Baiamonte was questioned who notifies the neighbors of a project and replied that the applicant has to do this in the beginning when they file the Notice of Intent and that information on the project will be put up on the website.

Attorney Baiamonte stated that the town will submit what the local law contradicted, any other comments it has, and it will also negotiate the Decommissioning and Host Community Benefit agreement portions. That the state's law says that the developer has to negotiate a decommissioning agreement with the municipality, but it also says that if the developer and municipality can't come to an agreement, then the state office gets involved. One thing that's different in the state's law is that they won't do a bond as surety, they will do a letter of credit.

That the Host Community Benefit Agreement is sort of linked with the Pilot Agreement that the town won't negotiate, it's negotiated with the IDA. It's a little benefit in the form of money that the applicant has to pay to the municipality for the privilege of being in their municipality, which can be paid in a lump sum or spread out over a number of years. That it's not something the town has to adopt, it's required in the state's law; that the town could adopt a guideline, but the town doesn't have the authority to supercede what the state thinks is reasonable.

That the town will negotiate the Decommissioning and Host Community Benefit Agreements. The size of the Host Community Benefit is proportionary to the size of the project; if it's 500 megawatts you're looking at easily six figures or somewhere in that range. For projects that are 25 mega watts or bigger, the state automatically says the developer has to throw money in a pool for the municipality to use; smaller ones can be handled by your planning and town boards. Generally the town won't hold decommissioning money, it will be in the form of a bond issued by an insurance company, for larger state projects it's a line of credit through a bank.

After the public comment period and the 60 days elapses, if there are still points of disagreement, the state has an adjudicatory process where the municipality or anyone else that has significant issues with the application, as proposed, can submit a petition to the state office to resolve whatever discrepancies they don't like and the state will make a determination.

Attorney Macri asked if there was a safety net to keep these projects cleaned up, if there's a fund to use for this purpose if needed. Attorney Baiamonte stated the state reserves, for itself, the authority to enforce all the pertinent conditions; that the place is kept in orderly condition and the landscape is maintained. A first case of action if needed would be to notify the state office and inform them that the developer isn't complying with the requirements of the permit and the state needs to do something. The state may or not be helpful, if they're not, then you call on the decommissioning agreement.

Mr. Baiamonte was asked if the town issues any permits and if the Town's Codes Enforcer is involved with the project. Mr. Baiamonte stated that he issues no permits, but can still issue codes violations for such things as the grass is too high, he just doesn't have the authority to approve or disapprove the initial project. That most of the time, on small projects, the town will assess a building permit fee, that the Host Community Benefit on big projects is sort of replacing the building permit fee.

-Supervisor thanked Mr. Baiamonte for coming. Mr. Baiamonte left the meeting.

-Meeting adjourned at 6:50 p.m.-Councilmen Soules, Schwasnick.

Respectfully submitted,
Sandra Regan, Town Clerk