

MINUTES – TOWN OF ALLEGANY SPECIAL BOARD MEETING TUESDAY, DEC. 16, 2014 7:00 PM TOWN HALL

PRESENT WERE: Supervisor Hare Councilman Koebelin
Councilman O’Dell Councilman Hitchcock
Councilman Parker Attorney Tuttle
Town Clerk M. Peck

ALSO PRESENT: F.Defiore, M.O’Dell, R.Mosman, R.LaForge, K.Sager, J & B. Jordan, E. Giardini, K. Boser, C.Koebelin, P.Carter, L. Kardos

ABSENT: Highway Superintendent Moshier, Comptroller C. Hemphill

Salute to the Flag at 7:00 pm opened the meeting.

Supervisor Hare advised that as we start our meeting, a funeral mass is starting up the street for The young Mr. Kohn; please keep the Kohn family in your prayers.

Supervisor Hare addressed the board and audience to advise that the Town and Everpower have been negotiating since this past summer.

Supervisor Hare read the following Summary of Settlement between the Town and Everpower for Allegany Winds Project:

Described in non-legal or laymen terms:

- 1) Both the Town and Everpower will file General Releases with the Courts to withdraw the remaining lawsuits between the two parties. The releases settle all claims between the parties, whether in the lawsuit or not.
- 2) Everpower will withdraw its application for a Special Use Permit and Site Plan for the project from the Town Planning Board. Although the prior permits have expired, the Everpower application is technically still before the Planning Board. The appellate Court upheld the Planning Board’s demand for a Supplemental Environmental Impact Statement.
- 3) Everpower will withdraw its application to the Cattaraugus County IDA for financial assistance for the project.
- 4) The Town will submit a letter to the Key Bank allowing the release of Escrow Funds established at the start of the project.
- 5) Both Parties (The Town and Everpower) will sign a “Stipulation of Discontinuance” to be filed with the County Clerk.
- 6) Everpower will make a payment of \$75,000.00 to Hodgson Russ as trustee for the Town. Those monies will be released to the Town when the agreed legal documents are executed by the Town.
- 7) Both parties “stipulate” and agree that HCA is terminated and neither party has outstanding obligations to the other.
- 8) The parties “stipulate” and agree that the funds remaining in the Review Escrow Account are released to the Town.
- 9) The parties “stipulate” and agree that if either Party fails to carry out any of its obligations under the Stipulation of Settlement, the other party can take legal action and reinstate all claims.
- 10) Everpower “stipulates” and agrees that neither Everpower or Terra Firma Capital Partners (nor any of their affiliates, successor entities), will seek approval for a wind project in the Town of Allegany through the New York Public Service Law Article X process.

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- 11) Everpower “stipulates” and agrees that within one year of the execution of the stipulation agreements that it will relinquish all easements and leases and that it will not transfer any leases or easements to any 3rd party.
- 12) Everpower “stipulates” and agrees that within 120 days of the execution of the Stipulation Agreement, it will remove all meteorological towers or other information gathering equipment from the Town.
- 13) Both parties agree that no party admits liability or wrong doing of any kind.

#199-MOTION TO APPROVE SETTLEMENT OF LEGAL PROCEEDINGS WITH ALLEGANY WIND LLC

Motion by Hare **Whereas**, Allegany Wind LLC has commenced a legal proceeding against the Town of Allegany Town Board, and **Whereas**, the Town of Allegany Town Board answered the complaint of Allegany Wind LLC and brought counterclaims against Allegany Wind LLC, and **Whereas**, the Town Board and Allegany Wind LLC wish to terminate the legal proceedings.

Now, therefore be it resolved by the Town Board of the Town of Allegany as follows:

1. The Town Board hereby finds that the settlement of the legal proceedings upon the terms in the Stipulation of Settlement is in the public interest.
2. The Town Board hereby approves the attached Stipulation of Settlement, which, along with the exhibits thereto, is incorporated herein, terminating the matter of Allegany Wind LLC – vs- Town of Allegany town Board, Cattaraugus County Supreme Court Index No. 80729.
3. The Town Board authorizes the Town Supervisor and Hodgson Russ, Town Special Counsel, to execute the Stipulation of Settlement, General Releases, and other documents necessary to terminate the legal proceeding, and to file any necessary documents, and to take any other steps necessary to effectuate the Settlement.
4. The Town Board hereby authorizes Hodgson Russ to notify Key Bank National Association that the Town Board hereby consents to the release of the escrowed funds to Allegany Wind LLC in accordance with the terms of the Settlement.
5. This resolution shall be effective immediately. 2nd by Koebelin. Koebelin-aye, O’Dell-aye, Hitchcock-aye, Parker-aye, Hare-aye. CARRIED.

Supervisor Hare is to notify Dan Spitzer, Esq. of this resolution being passed.

#200-MOTION TO ACCEPT RESIGNATION

Motion by Hare to formally accept the resignation of Michele Trietley as Deputy Town Clerk, with regrets. 2nd by Hitchcock. Koebelin-aye, O’Dell-aye, Hitchcock-aye, Parker-aye, Hare-aye. CARRIED.

#201-MOTION TO SET ORGANIZATIONAL MEETING DATE AND TIME FOR 2015

Motion by Hare to set the 2015 Organizational meeting for Friday, January 2, 2015 at 3:00 PM at the Town Hall. 2nd by Parker. Koebelin-aye, O’Dell-aye, Hitchcock-aye, Parker-aye, Hare-aye. CARRIED.

Supervisor Hare reminded the Board of the End of the Year meeting to be held on Tuesday, December 30, 2014 at 7:00 pm at the Town Hall.

#202-MOTION TO ADJOURN MEETING

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Motion by Hare to adjourn meeting. 2nd by O'Dell. Koebelin-aye, O'Dell-aye, Hitchcock-aye, Parker-aye, Hare-aye. CARRIED.

Meeting adjourned at 7:10 pm

Respectfully submitted,

Mary M. Peck, Town Clerk
12/17/14