

Town of Barre
Board Meeting
September 11, 2019

Present: Supervisor Sean P. Pogue
Councilman Richard Bennett, Councilman Lynn Hill
Councilman Larry Gaylard, Councilman Tom McCabe
Others present: Maureen Beach, Town Clerk; Dale Brooks,
Highway Superintendent; Lee Preston, Bookkeeper, Alice Mathes, Kirk
Mathes, Janice Grabowski, Alex Nacca, Robin Nacca, John Metzler,
Cyndy Van Lieshout, Richard Cox, Judy Cox, Scott Burnside, Gary
Palmer, George McKenna, DVM, Iva McKenna, Kerri Richardson, LuAnn
Tierney, Tim Tierney, Glenn Maxon, Darlene Daum, Ron Daum, Ricky
Newbould, Cody Newbould, Jean Peglow, Randy Newbould, Christine
Loss, Larry Albanese, Dora Leader, Ruth Miller, Richard Miller,
Marshall Rubens, Rhonda Waters, Dave Waters, Frank Bezon, Charles
Mathes, Barbara Verburg, Kelly Dudley, Kurt Dudley, Donald Palmer,
Steve Hickman, Ben Hickman, Julie Rozwood, Margaret Swan, Susan
Gaylard, Kevin Deuel, Debra Deuel, Jan Michael, Vinny Michael, Bill
Shetler, Dana Markle, Karen Markle, Danny Shuler, Jerry Solazzo, Mary
DeFilippo, Maralee Hicks, Amy Weese, Justin Weese, Julie Myers, Tom
Decker, Craig VanAmeron, Herman Hicks, Tom Hicks, Aaron Barnets,
Carmen O'Keefe, Jessica Walsh, Paul Williamson, Brittany Maxwell.

Meeting was called to order at 7:00pm by Supervisor Pogue with the
salute to the flag.

Minutes

The minutes for the August 14, 2019 Town Board meeting were submitted
and approved.

SUPERVISOR'S FINACIAL REPORT

REVENUES: Major receipts were:

Town Clerk Fees	1,360.38
Justice Fees	2,149.00
Traffic Diversion	1,200.00
County Mowing	7,825.18
Town of Albion/Usage	53,114.04
Town of Albion/Cost Share	2,068.69
Metered Sales	13,844.69
Maintenance Fees	3,620.75
Water Penalty Fees	329.46
Other Revenues	677.69

Total receipts for the month were: \$ 86,189.88

EXPENSES:

General Fund Townwide: Year to date expenses are \$367,674.27

Highway Townwide: Year to date expenses are \$585,697.69

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TOWN CLERK'S REPORT

The monthly report was submitted to Supervisor Pogue.

ZONING OFFICER'S REPORT

There were six Building Permits issued in August.

HIGHWAY SUPERINTENDENT REPORT

Water samples and readings completed, flushed dead end lines, mowing road sides, mowed east field at park, mowed town hall, fire hall, park and cemeteries as needed. Equipment repairs completed as required, sign repairs completed as needed, all stake out requests completed. Shared Services with Towns of Clarendon, Murray, Shelby, and Orleans County Highway. Repair 2 cross culverts on Spoil Bank East, replaced 2 cross culvert on Townline Road. Marking Verizon phone pedestals.

ASSESSOR'S REPORT

No Report

BILLS

General Funds	\$ 7,974.72
Highway - Town Wide	\$ 9,979.58
Water Fund	\$ 1,789.96
Capital Projects	\$ 2,684.42
Total Outflow	22,428.68

PAY BILLS

RESOLUTION #40 Pay Bills

Tom McCabe made a motion to approve and pay the bills, seconded by Richard Bennett. Vote 4-1, (Gaylard) passed.

PLANNING BOARD

No report, no meeting

ZONING BOARD

There were 6 building permits issued in the month of September.

BOOKKEEPER'S REPORT

Account	Ending Balance
General Fund	\$424,084.59
Highway Fund	623,100.59
Highway Equip.	195,908.43
Water Dist. #1 Oper,	266,319.83
Water Dist. #2 Oper,	10,675.88
Water Dist. #3 Oper,	14,665.63
Water Dist. #4 Oper,	35,280.54
Water Dist. #5 Oper	22,573.08
Water Dist. #6 Oper.	26,757.41
Water Dist. #7 Oper.	16,153.94
Water Dist. #8 Oper.	15,370.60

OLD BUSINESS

RESOLUTION #41 Rescind Resolution #34/Reimbursement Agreement
Tom McCabe made a motion to rescind resolution #34 of 2019,
"Professional Fee Reimbursement Agreement", seconded by Richard
Bennett. Vote 4-1, (Gaylard Abstains), passed

RESOLUTION #42 Heritage Wind Reimbursement Agreement
Councilman Lynn Hill made a motion to accept the following
Professional Reimbursement Agreement submitted by Heritage Wind,
(Apex), motion seconded by Councilman Tom McCabe. Roll Call Vote:
Councilman Gaylard - Abstains, Councilman Hill - Yes, Councilman
Bennett - No, Councilman McCabe - Yes, Supervisor Pogue - Yes. Vote
passed.

Professional Fee Reimbursement Agreement

This AGREEMENT is made this 11 day of September, 2019 by and between the
[Town of Barre], a [municipal corporation] with its principal office located at [] (hereinafter, the
"Town"), and Apex Clean Energy Management, LLC., a Delaware limited liability company,
hereinafter referred to as the "Developer." Each of the Town and the Developer may be referred
to herein as a "Party" and together the "Parties". **RECITALS**

WHEREAS, the Developer has conveyed to the Town its intention to pursue permitting
approval for and construct (through its affiliate, Heritage Wind, LLC) the planned Heritage Wind
project within the Town (the "Project").

WHEREAS, Applicant has submitted request seeking to have the Town consider
amendments to its zoning provisions applicable to wind energy generation (the "Proposal").

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OLD BUSINESS Con't

RESOLUTION #42 Heritage Wind Reimbursement Agreement Con't

WHEREAS, the Town has retained [special legal counsel and/or a technical consultant] (the "Town Consultant(s)") to assist it in the review of aspects of the Proposal and these firms will be billing the Town on a time and material basis for such services.

WHEREAS, the Town has requested that the Developer reimburse the Town for the cost associated with the aforementioned hiring of the Town Consultant(s), as such costs will be solely and directly attributable to the Town's review of the Proposal and are not provided for in the Town's budget.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and Developer hereby agree as follows:

1.0 REIMBURSABLE COSTS

The Developer shall reimburse the Town for Reimbursable Costs up to Fifty Thousand Dollars (\$50,000) in aggregate (the "Fee Cap"); the Reimbursable Costs shall not exceed the Fee Cap without prior written approval by the Developer, which shall not be unreasonably withheld. "Reimbursable Costs" shall mean of all reasonable and documented outside legal and/or professional fees and other costs of Town Consultant(s) that are reasonably incurred by the Town in reviewing the Proposal. The Developer agrees to pay all such Reimbursable Costs, whether or not the Proposal is ultimately approved by the Town.

In the event that the Town's Reimbursable Costs exceed the Fee Cap, the Developer will consider, for good cause shown, an amendment to this agreement increasing the Fee Cap.

2.0 MUTUAL ACCEPTANCE OF COSTS

It is understood that the Town has selected, or may select, Town Consultant(s) to provide legal and/or professional services in connection with the Town's review of the Proposal as described herein. It is understood and agreed by the Parties that the Town's engagement of Town Consultant(s) for these purposes and consistent with the Fee Cap is reasonable and necessary for the purposes contemplated herein.

3.0 TIMING OF REIMBURSEMENT PAYMENTS

The Developer shall promptly reimburse the Town for all Reimbursable Costs as follows:

The Town shall submit monthly invoices to the Developer for Reimbursable Costs incurred by the Town during the preceding month. The Town's invoices to the Developer shall be based on invoices that have been received by the Town from Town Consultant(s) even though not yet paid by the Town. The Developer shall pay each invoice issued to the Developer by the Town in full, up to the Fee Cap, within thirty (30) days following the Developer's receipt of the invoice. If Developer disagrees with any portion of an invoice, it shall pay the invoice, notify the Town in writing of the amount in dispute and the reason for its disagreement within the thirty (30) day period after receipt of the invoice, and pursue dispute resolution regarding those amounts, as

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RESOLUTION #42 Heritage Wind Reimbursement Agreement Con't
outlined below. Developer may at any time (including up to six months after the termination or expiration of this Agreement) audit or request reasonable additional supporting documentation for any invoice and the Town agrees to make its employees, consultants and agents available to answer Developer's questions about invoices.

In the event of a dispute, the Developer will meet with the Town to attempt to resolve the dispute. If the dispute cannot be resolved amicably, the parties will seek mediation of the dispute. If the dispute remains unresolved, the parties will pursue arbitration.

4.0 REPRESENTATIONS AND WARRANTIES

4.1 Orleans County, New York, will be the venue for any matters arising from this Agreement, except as otherwise required by law.

4.2 Developer Representations and Warranties. Developer makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) *Existence and Good Standing*. Developer is a validly existing Delaware limited liability company.

(b) *Approval and Authorization*. Developer has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder. Developer is duly authorized to execute and deliver this Agreement and perform all of its duties and obligations contained herein, and, to the extent permitted by applicable law, this Agreement constitutes a valid and legally binding obligation of Developer, enforceable in accordance with its terms except as may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights generally and subject to general equitable principles (regardless of whether enforceability is considered in a proceeding in equity or at law).

4.2 Town Representations and Warranties. The Town makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) *Existence and Good Standing*. The Town validly exists as a political subdivision in good standing under the laws of the State of New York.

(b) *Approval and Authorization*. The Town has full power and authority to enter into this Agreement and to fully perform all of its duties and obligations hereunder. The Town has duly authorized the execution and delivery of this Agreement and the Town's performance of all of its duties and obligations contained herein, and, to the extent permitted by applicable law, this Agreement constitutes a valid and legally binding obligation of the Town, enforceable in accordance with its terms.

(c) *Lack of Relation to Town's Determinations*. The Developer's payments under this Agreement, which are being made at the Town's request, shall not influence or have any bearing whatsoever upon the Town's determination with respect to the Proposal, any application, or otherwise related to the Project.

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RESOLUTION #42 Heritage Wind Reimbursement Agreement Con't

5.0 ENTIRE AGREEMENT

The entire Agreement between the Parties with respect to the subject matter hereunder is contained in the Agreement. There are no other understandings, representations or agreements nor incorporated herein.

6.0 MODIFICATION

No waiver, alteration or modification of any of the provisions of this Agreement shall be enforced unless in writing and signed by both Parties to this Agreement.

7.0 GOVERNING LAW

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to the conflict of laws provisions in such state.

8.0 NOTICES

All notices, requests, demands and other communication hereunder shall be in writing and shall be deemed to have been duly given (i) when delivered by messenger or by reputable national overnight courier service, (ii) three (3) business days after mailing when mailed by certified or registered mail (return receipt requested), with postage prepaid and addressed to the Parties at their respective addresses shown below or at such other address as any Party may specify by written notice to the other party, or (iii) when delivered by electronic mail to the Parties at the e-mail addresses listed below:

a. If to the Developer: Apex Clean Energy Management, LLC, 310 4th Street, N.E. Charlottesville, VA 22902 Attn: Neil Habig, Project Develop. neil.habig@apexcleanenergy.com with a copy to: Apex Clean Energy Management, LLC, 310 4th Street, N.E., Charlottesville, VA 22902, Attn: General Counsel legal@apexcleanenergy.com

b. If to the Town: Town Supervisor, 14317 West Barre Road, Albion, NY 14411

Either Party may change the name(s) and or address(es) to which notice is to be addressed by giving the other Party notice in the manner herein set forth.

9. MISCELLANEOUS

9.1 Exercise of Rights and Waiver. The failure of any Party to exercise any right under this Agreement shall not, unless otherwise provided or agreed to in writing, be deemed a waiver thereof; nor shall a waiver by any Party of any provisions hereof be deemed a waiver of any future compliance therewith, and such provisions shall remain in full force and effect.

9.2 Severability. In the event that any clause, provisions or remedy in this Agreement shall, for any reason, be deemed invalid or unenforceable, the remaining clauses and provisions shall not be affected, impaired or invalidated and shall remain in full force and effect.

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9.3 Headings and Construction. The section headings in this Agreement are inserted for convenience of reference only and shall in no way effect, modify, define, or be used in construing the text of the Agreement. Where the context requires, all singular words in the Agreement shall be construed to include their plural and all words of neuter gender shall be construed to include the masculine and feminine forms of such words. Notwithstanding the fact that this Agreement has been prepared by one of the Parties, all of the Parties confirm that they and their respective counsel have reviewed, negotiated and adopted this Agreement as the joint agreement and understanding of the Parties. This Agreement is to be construed as a whole and any presumption that ambiguities are to be resolved against the primary drafting party shall not apply.

9.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

NEW BUSINESS

RESOLUTION #43 Sale of Highway Truck
Tom McCabe made a motion to allow Highway Superintendent, Dale Brooks, to sell the 2007 truck, #309, at auction on October 5, 2019. The motion was seconded by Lynn Hill. Vote 3-2, passed.

RESOLUTION #44 Board Workshops
Tom McCabe made a motion to re-instate the monthly Town Board Workshops for the Monday preceding the monthly board meeting unless the Monday falls on a holiday, then the workshop would be scheduled for the Friday before the monthly board meeting, at 11:30AM. Larry Gaylard seconded, Vote 4-1, Bennett. Passed.

Paul Williamson, Heritage Wind gave a presentation on wind turbines. He discussed how this project will help the community, school, and town and each resident, and he gave information that contradicted several recent statements presented to the town board. Mr. Williamson also discussed the PILOT and Host agreements.

NEW BUSINESS (Con't)

Lynn Hill made a motion to allow Highway Superintendent, Dale Brooks, to purchase a 2019 new 10 wheel Peterbilt, Tom McCabe seconded. After discussion, motion was tabled.

RESOLUTION #45 Demolition of Barn/Keeler
Richard Bennett made a motion to allow Keeler Construction to demolish a barn on their property, seconded by Larry Gaylard. Vote 5-0, passed.

RESOLUTION #46 Assessor Reappointment
Richard Bennett made a motion to reappoint Barry Flansburg as the Town of Barre Assessor, for a six year term beginning October 1, 2019 and ending September 30, 2025. The motion was seconded by Lynn Hill. Vote 5-0, passed.

PUBLIC COMMENT PERIOD

Richard Cox - he asked when will the board meet with the county and school regarding the PILOT and what is the legal number allowed in the board room.

Kerri Richardson - she brought items that the Apex Representative stated in his presentation, she addressed areas where she has contrary information.

Jan Grabowski - she commended Larry Gaylard and Richard Bennett for standing up regarding the truck purchase.

Alex Nacca - he mentioned defects and what about eminent domain?

Kirk Mathes - he discussed a Culver Road property that went up sale in August for above assessed value.

Cyndy VanLieshout - she stated that we need to help tax payers of Barre, and she discussed property rights, set backs, and the \$50,000.00 payment.

PUBLIC COMMENT PERIOD Con't

Barb Verburg - thanked Larry Gaylard for going to Senator Ort's meeting. She thinks we need to re-locate large meetings.

Christine Loss - to the board, stay strong, keep up the good work, residents of Barre need help.

Dave Waters - he stated that he is a 12 year resident of Barre, he would like specific percentages of our tax rate decrease and other issues regarding turbines issues.

George McKenna - he commented on the overcrowding of board room, the \$50,000.00 payment concerns, we need to make a wind turbine committee, health concerns are more important and comments on Senator Ort's meeting.

Tom Hicks - he stated that he is a life time resident of Barre, he has heard pros and cons, the town may be able to provide more for residents, this will help residents, a great opportunity for Barre.

Robin Nacca - she thanked the Better Barre Committee for the flowers at the Town signs, she mentioned the point of order from the last meeting regarding the vote. She thanked the board for rectifying the issue tonight.

John Metzler - he asked how much lower taxes, how much would the town receive without a PILOT or host. Resale values do go down. He asked if the town would use Senator Ort's professionals with the \$50,000.00?

Sue Gaylard - she attended Senator Ort's presentation, it was all one sided, very disappointed.

Iva McKenna - she would like everyone to ask themselves why is Paul so positive, he will not be around here, he does not live around here. The information from the health department should be listened to, look at the information from Senator Ort's meeting.

Jean Peglow - very embarrassed by town board. She addressed comments made by others at last month's meeting, keep comments about others nice. Farmers are always told what to do, farmers will be here also.

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Larry Gaylard made a motion to go into Executive Session for negotiation purposes, the motion was seconded by Richard Bennett. Vote 5-0, passed.

Executive Session began at 9:25pm.

Executive Session ended at 9:59.

Larry Gaylard made a motion to adjourn the meeting, seconded by Tom McCabe.

Meeting Adjourned at 10:03pm

Respectfully submitted,

Maureen Beach, Town Clerk