

Town of Lyme
August 13, 2014
Regular Monthly Meeting Minutes
6:30 P.M.

Supervisor Aubertine opened tonight's meeting at 6:30 p.m. with a Prayer and the Pledge of Allegiance.

Present at tonight's meeting: Supervisor Aubertine, Councilwoman Harris, Councilmen Bourquin, Henderson and Villa, Highway Superintendent Pat Weston, Assessors Marsha Barton and Roz Gotham, Town Accountant Cathy Satterley, Planning Board Chairman Frank Congel, Planning Board Member Gail Miller, Clerk to Supervisor Robin Grovesteen, ZEO/CEO Jim Millington, Three Mile Bay Cemetery Superintendent Julia Gosier, Water Board Member Dar Brown and Youth Committee Member Charlie Mount.

Supervisor's Report – July 2014 – Cathy Satterley

RESOLUTION 2014 – 89: Motion by Councilman Villa and seconded by Councilman Henderson approving the July 2014 Supervisor's Report as presented by Town Accountant Cathy Satterley. Five ayes. Motion carried.

RESOLUTION 2014 – 90: Motion by Councilman Villa and seconded by Councilman Henderson approving the Budget Transfers suggested by Town Accountant Cathy Satterley as follows:

<u>Transfer From</u>	<u>Transfer To</u>	<u>Amount</u>
General Fund A		
1990.4 Contingency Acct - \$1700	1950.4 Judgments & Claims	\$400
	3610.4 Examining Boards CE	105
	7210.4 Lyme Parks & Rec CE	210
	8810.1 Cemeteries	985
Highway Fund DB		
5112.1 General Repairs - \$14,055	5112.1 Perm Improvements PS	805

5112.4 Perm Improvement CE 13,250

Water District #3

8310.4 Administration CE - \$130 8310.1 Administration PS 130

Five ayes. Motion carried.

Highway Superintendent’s Report –Pat Weston

The cardboard packer has been removed from the Transfer Site building and scraped for \$360.00.

The water valves have been freed up so they do not have to be replaced.

At the Transfer Site a sixteen inch railing has been built out of scrap metal and painted yellow. Hopefully this safety measure will prevent any future mishaps.

Councilwoman Harris thanked Pat for addressing the kiosk so quickly.

Pat provided an estimate from the Goutremout Brothers for work they would like to have done at the Highway Garage. The estimate, in its entirety was for \$22,925.00. It included tearing off the roof and siding, replacing rotted framing where necessary, wrap overhead door jams with metal, install new steel siding on front of building, install vinyl soffit on front and back of building, install new steel roofing and new drip edge.

Clerk’s Report – July 2014

Total State, County & Local Revenues:	\$6,692.20
Total Local shares Remitted:	\$6,367.33

Audit of the Bills

RESOLUTION 2014 – 91: Motion by Councilman Villa and seconded by Councilwoman Harris approving Abstract #15 in the amount of \$6,032.88. Five ayes. Motion carried.

RESOLUTION 2014 – 92: Motion by Councilman Bourquin and seconded by Councilwoman Harris approving Abstract #16 in the amount of \$166,368.63. Five ayes. Motion carried.

RESOLUTION 2014 – 93: Motion by Councilman Villa and seconded by Councilwoman Harris approving the Regular Monthly Meeting Minutes of July 9, 2014 of the Town Board. Five ayes. Motion carried.

Committee Reports

Assessor's Report – Marsha Barton

Small Claims – Supreme Court Filings 2014 – The Assessors have received three Small Claims Review filings and one Supreme Court Filing for 2014. The paperwork is ready and the Assessors are waiting for a date.

Outpost Software – The Assessors are not interested in purchasing this software at this time. They feel that they should wait until the “bugs” are worked out before purchasing. In Marsha’s opinion, it will benefit the County more than it will the Town. In the future they may decide it will be more useful to them; for now the Assessors are satisfied with the procedures they have in place.

Municipal Water Board – Marsha Barton

Lance Development – A request to join Water District #2 has been received from the Lance Family, along with a request for the Town Board to grant a Variance from the Town of Lyme Water Use Law. The Municipal Water Board believes the wording in one paragraph should be changed. A copy of the change is included in the packets submitted by the Lance Family. They have also submitted the “Short Environmental Assessment Form”. As of Monday, August 11, 2014, the Assessors have not received the approval from DANC, the Village of Cape Vincent or the Health Department.

The Lance’s are asking that they not be charged for any fees or charges associated with the Water District until the first lot is sold and water is sent up the line. The Lance’s feel that with the \$100,000 they are putting into the infrastructure for their subdivision warrants a different approach to water district charges.

The Town Board does not want to move forward with the Lance Development until they have received all the necessary approvals from DANC, the Village of Cape Vincent and the NYS Department of Health. Approvals must be received by the Town Board, in writing, prior to them moving forward.

Tower Inspecting, Cleaning, Repair and Purchase of Mixer – One of the greatest assets owned by the Town of Lyme is our Water Tower. This tower was placed in service in 1999. It is presently in need of some repair. The Water Board has been gathering information on the best way to proceed to take care of the current problem and to be pro-active in the future to protect the tank from further damage.

It is the goal of the Municipal Water Board to keep the tank in good condition and to keep the costs to do so at a minimum for the Town’s customers.

The following are quotes for inspection and cleaning of the tank:

Liquid Engineering:	Inspection and Reporting	\$2,200.00
	Cleaning, Inspecting & Reporting	3,050.00
Pittsburgh Tank & Tower	Inspection	1,250.00
Utility Service Company	Inspection	2,350.00
Liquid Engineering	PWM 100 Pax Mixer	12,400.00
Utility Service Group	PWM 100 Pax Mixer	16,850.00

The Municipal Water Board has met twice with Roger Linder, who represents Utility Service Group. After much discussion, the Water Board would like to recommend the following course of action by the Town Board.

1. The Municipal Water Board recommends purchasing the Pax 100 mixer as outlined in the proposal from Utility Service Group. This would be installed this fall to prevent further damage from icing this winter. This

could be financed from funds in the Water Reserve Account and would not require a rate increase for the customers. The money can also come from the Water Facility account within the Water Reserve Fund. They currently have \$37,627.00 in that account.

2. Utility Service Group will conduct a “Condition Assessment” on the inside and outside of the tank. This is a free service and will provide the Town with detailed information. This will be done in September with a full report available for the October Town Board Meeting.
3. Once the “Condition Assessment” is provided, Utility Service Group will prepare a cost to participate in their Maintenance Program. The Water Board will prepare a report detailing the effect it will have on our customers. The representative from Utility Service Group will attend the October Town Board Meeting and provide the Town Board with all the details and answer any questions we may have.
4. The Condition Assessment will provide information on whether they need to do immediate repair work on the inside.
5. If the repair can wait until spring, the cost of the inside repair can be included in the Maintenance Program.

This company has been in business for over 50 years and have over 6,000 tanks on a maintenance program. They will be providing us with references.

Dar Brown stated that there is already damage inside the tank caused by ice. A mixer will alleviate further damage, although the damage still needs to be addressed. A mixer would also keep the water quality at a higher level, running continuously throughout the year.

Dar went on to say that this program would be an investment in the future and life of the tank, it’s like insurance for the future.

The Municipal Water Board strongly recommends purchasing the mixer.

RESOLUTION 2014 – 94: Motion by Councilman Henderson and seconded by Councilman Villa approving the recommendation of the Municipal Water Board To purchase a PWM 100 Pax Mixer. Five ayes. Motion carried.

Leak Detection Survey – Upstate Leak Detection, LLC performed a leak detection survey for the Town of Lyme on July 30th and 31st, 2014. ULD, LLC performed the survey using additional test points provided by the Town in areas where hydrants and valves were too far apart.

The loss of water was small so they went beyond a normal survey (listening at all test points for leak noise) and performed a leak correlation between all test points. This test was done because the correlator will pick up sound that the human ear cannot, but the procedure is typically too labor intensive to be used under normal circumstances. This battery of tests would typically pick up leaks that are very small (less than 1 gpm). The results of this series of tests were negative (there were no leaks identified during this process).

Breakdowns of unaccounted for water in the Three Mile Bay water system are as follows:

Flows are typically 12 – 13 thousand gallons per day of usage.

Last year a total of 800,000 gallons of water were unaccounted for (2200 gpd or 1.5 gpm). This is approximately 18% of daily flows. Some of this is due to fire departments using the hydrants and not reporting usage, also hydrant flushing takes a fair amount of water.

This problem is costing, at \$2.50 per 1000 gallons, approximately \$5.50 per day or an estimated \$2000.00 per year.

The possibility of multiple leaks, metering issues (meters slow down with time), maintaining residuals, and the cost of investigating and digging or upgrading the system to more closely monitor where the water is going, should be considered.

Arrangements have been made to attend a water board meeting to discuss these issues and respond to questions.

Youth Committee Report – Charlie Mount

Summer softball and baseball has ended, soccer is still going on.

The Willie Putnam Tournament was successful, there were 34 teams. The Thousand Island Powder Puff Tournament had 88 teams. The fields got a lot of use this season, there were many requests for use.

A five- minute recess was called at 7:48 and the meeting was called back to order at 7:55 p.m.

Planning Board – Frank Congel

A couple of months ago the Planning Board was charged with making the Zoning Ordinance more “user friendly”. Once into it the Planning Board realized they hadn’t had much experience directly using it themselves.

The Planning Board would like to request having a more intimate involvement in their responsibilities and free the ZBA of their task of reviewing appeals. Frank would like to have the help of Hartley and Andy from Jefferson County Planning.

Frank stated that the big change will be the Planning Board procedure with Zoning and he would like an opportunity to present his idea to the Town Board.

Charlie Mount feels strongly that would be a wrong move, the Planning Board does planning, they are not a review board.

Supervisor Aubertine would like to see recommendations in writing and see how it could fit into the Zoning Law.

Julia Gosier feels that some thought should be put into what the Town expects the ZBA to do. Our ZBA is doing tasks that are way beyond appeals and some functions having nothing to do with the appeals process.

Give our residents clarity about the steps that need to be taken for site plan reviews. People who come to the Town of Lyme are leaving because the process is confusing and cumbersome.

ZEO / CEO Report – Jim Millington

Building / Zoning Permits Issued:	11
Demo Permits Issued:	1
Certificates of Occupancy Issued:	2
ZBA Referrals:	2
Site Visits and Inspections:	8
Complaints:	1
Investigations:	1

Permits Issued For:

Home or Cottage:	1
Garage or Barn:	2
Deck or Porch	2
Addition:	1
Others:	5

New Business

Fort Drum Regional Liaison Organization

On June 26, 2014, the Army released a Supplemental Programmatic Environmental Assessment (SPEA) for Army 2020 Force Structure Realignment. This proposed Army action is to reduce and realign forces, both active component Soldiers and Army civilian employees to attempt to meet current and future national security and defense requirements. The Army's proposal is to reduce end-strength to as low as 420,000. This reduction is almost double what was analyzed in 2013, if you assume the same baseline.

It means that the Army is looking to cut 16,000 jobs from Fort Drum; 15,417 Soldiers and 583 Army civilians which includes the loss of the 3rd BCT that was announced last year and will occur over the coming months. This SPEA predicts a loss of \$877,512,000 in area income, a loss of 19,102 jobs, and decrease in population of 40,102. This type of cut would be devastating to our local communities. To understand the full impact of this proposal action on Fort Drum go to <http://tinyurl.com/lpb68s7>.

FDRLO is organizing the community response to the Army's SPEA. In support of the effort, they are asking local governments throughout the North Country to consider adopting a resolution supporting Fort Drum and asking the Army to keep the base and the 10th Mountain Division whole.

RESOLUTION 2014 – 95: Motion by Councilman Henderson and seconded by Councilwoman Harris supporting the following:

WHEREAS the Army released a Supplemental Programmatic Environmental Assessment (SPEA) for Army 2020 Force Structure Realignment in June 2014 to evaluate force reductions and realignments, and

WHEREAS this proposed action will reduce and realign active component Soldiers and Army civilian employees to help the Army meet current and future national security and defense requirements, and

WHEREAS the Army's proposal is to reduce end-strength to as low as 420,000, double the reduction proposed in 2013, and

WHEREAS the Army's SPEA is looking to cut 16,000 jobs from Fort Drum; 15,417 Soldiers and 583 army civilians which includes the loss of the 3rd BCT from the 10th Mountain Division which was announced last year, and

WHEREAS this SPEA looks at the socio-economic impact of this action and it predicts a loss of \$877,512,000 in area income, a loss of 19,102 jobs and a decrease in population of 40,288, and

WHEREAS Fort Drum and the surrounding communities have developed a unique relationship in regard to providing housing, education, health care and infrastructure to support the installation, and

WHEREAS this proposed force reduction under review by the Army would have a devastating impact on jobs, education, health care, quality of life and the ability of local governments to provide essential services for its residents,

WHEREAS the Town of Lyme has welcomed Soldiers and their families as residents, benefited from sales tax income, housing, education, etc. and

Whereas the Town Board of the Town of Lyme recognizes the Army needs to review force reductions and realignments as part of a long-term solution to the current fiscal crisis;

NOW THEREFORE BE IT RESOLVED that the Town Board of the Town of Lyme believes that the proposed cut of 16,000 at Fort Drum currently under review by the Army will have devastating and long lasting impacts on the local economy as forecast in the Army's own SPEA, and

BE IT FURTHER RESOLVED that the Town Board of the Town of Lyme asks that the Army, as part of their decision making process, consider our community's ability to continue to Fort Drum and the 10th Mountain Division and to provide those essential services needed by our citizens, and

BE IT FURTHER RESOLVED that the Town Board of the Town of Lyme asks that due to these socio-economic impacts no further reductions in personnel occur at Fort Drum or to the 10th Mountain Division beyond those that were identified in the 2013 PEA.

All Town Board Members were in support of the Resolution and the Motion was carried.

Youth Commission Soccer By-Laws

RESOLUTION 2014 - 96: Motion by Councilwoman Harris and seconded by Councilman Henderson accepting the Soccer by-Laws as written. See Addendum A-8-13-14. Five ayes. Motion carried.

Old Business

Computer Upgrades – The Town Board discussed the necessary upgrading of computers, the server and a replacement schedule.

Councilman Henderson will begin investigation options for immediate replacement of The Town Clerk's, Deputy Town Clerk, and the Clerk to Supervisor's computers.

The Town Board feels that a three-year replacement schedule would be reasonable. They discussed replacing the server in 2015.

Ag and Markets Decision / BS Recreational Farm – In response to a letter dated August 7, 2014, from NYS Department of Agriculture and Markets regarding AML 305-a, Subd. 1 Review Concerning A Special Use Permit to Construct and Operate a Small Wind Energy Production Facility on BS Recreational Farm, Jefferson County Agricultural District No. 2: The Town Board has 30 days in which to respond to the Department's review of the Town of Lyme's Zoning Code and the Town of Lyme's Renewable Energy Law, as applied to the BS Recreational Farm, which is located within Jefferson County Agricultural District No. 2. By a letter dated December 6, 2013, Supervisor Auberitne described the Town's Renewable Energy Law and its application to BS Recreational Farm.

A full copy of the letter from NYS Department of Agriculture and Markets, dated August 7, 2014 can be reviewed by referring to Addendum B-9-13-14.

Councilman Henderson had three questions in response to the letter:

1. Income verification and clarity therein, concerning receipts and tax statements.
2. Councilman Henderson spoke to Bob Somers, Division of Land & Water Resources and he would like clarification as to whether or not hay is or is not considered a farm product. He stated that the answer has been different depending on who you talk to.
3. Councilman Henderson would like to understand the logic behind the generic setback that has been created by NYS Ag and Markets. How do they arrive at a justification of their height and tip speed? Have they taken a look at Bruce's proposed wind tower?

Councilman Villa had a good conversation with Bruce today and he indicated to the Board that he is ready to move forward. He did raise the question as to what would happen if BS Recreational Farm ceased to exist; what happens to the

exemption and the tower? Councilman Villa stated that he will move forward on the States recommendation.

Councilman Bourquin agrees with Dan; and the Town Board will need documentation on safety and health.

Councilman Henderson feels we need to have the calculations of blade throw and is asking that NYS document their position for the future.

Councilwoman Harris indicated that Dave and Dan's questions were good ones.

Councilman Henderson will write a letter and get it right back to NYS Ag and Markets Director, Michael Latham.

Supervisor Aubertine asked Planning Board Chairman, Frank Congel if he would look into how the Town Law differs from State Law.

Privilege of the Floor

Jim Millington – Comments regarding Bruce Kingsley's Farm; partly from a Zoning aspect and partly as a citizen.

ZEO/CEO Millington stated that farms have a lot of privileges; many of their buildings house animals and not people. Zoning Laws address residents and has everything to do with neighbors.

He personally doesn't have a problem with a farm having a wind mill but he is asking that the Town Board uphold our Law. The Planning Board took a lot of care in drafting the Law and they took the time to talk with a host of experts in doing so.

Jim asked the Town Board to hold solidarity and adhere to our Wind Law.

Bruce Kingsley – Wanted to remind the Town Board that we came close to settling with the ZBA but could not compromise on the decibel level.

As far as the concerns with maintaining the farm and wind mill; it's a simple solution, go back to the Zoning Ordinance. If the wind mill fails to function or does not meet NYS Ag & Markets standards, the wind mill will have to be disassembled.

Bruce has provided Assessor Barton documentation showing he has maintained over \$10,000 associated with his agricultural exemption and provided a copy of his income tax return. He stated that the sales of hay and wood qualify. Bruce also has spent a lot of money on fencing the water side of his property.

Bruce's last statement to the Town Board was in regard to the NYS setbacks; stating that engineering experience is where they come up with the 1.1 setbacks.

Executive Session

RESOLUTION 2014 – 97: Motion by Supervisor Aubertine and seconded by Councilwoman Harris moving the Town Board into Executive Session to discuss a medical and financial matter at 9:12 p.m. Five ayes. Motion carried.

RESOLUTION 2014 – 98: Motion by Supervisor Aubertine and seconded by Councilman Villa moving the Town Board back into open session at 9:35 p.m. Five ayes. Motion carried.

Credit Card Machine – The Town Board will have Steve Ferency set up the credit card machine and make an appointment to have him go to the Transfer Site to give a lesson to Kim and the transfer site attendants on the use of the machine.

Banners – The Town Board would like to suggest budgeting to have the sponsored banners on the telephone poles in Three Mile Bay replaced. The price quoted was approximately \$65.00 per banner.

Adjournment

A Motion was made by Councilman Villa and seconded by Councilman Bourquin adjourning tonight's meeting at 9:50 p.m. Five ayes. Motion carried.

Minutes of Tonight's Meeting Are Respectfully Submitted by,

*Kim Wallace
Town Clerk*

Addendum A

9-13-14

**Town of Lyme
Youth Commission
Soccer/Basketball
Team By-Laws**

TOWN OF LYME
YOUTH COMMISSION
SOCCER/BASKETBALL TEAMS BY-LAWS

PURPOSE:

Purpose of this by-law shall be to provide:

- a) A uniform interpretation of requirements and guidelines specifically adopted by the Lyme Town Council. These by-laws may supersede, or be in addition to any league by-laws.
- b) Town of Lyme Youth Commission coaches and volunteers with instruction and direction for coaching and assisting with the participants in the town sports programs.
- (c) The highest possible standards of sportsmanship among the players, coaches, parents and spectators of the Town of Lyme Youth Commission sponsored teams.

ROSTERS AND WAIVERS:

The town insurance requires that a roster and player waivers/medical release forms are necessary and must be turned in to the Town Clerk prior to the first scheduled game. The roster must include the players name and certified birth date (school or birth certificate).

PLAYING LEVELS:

Only under extenuating circumstances (such as travel requirements, exceptional skill level, height, weight, etc.) may a player play at a level higher than the one for their age group. Switching or playing at another level outside the age requirements may only occur after the Youth Commission has received a written request from

the parent or guardian of the player and the players skill level has been assessed by the coach, a Youth Commission member and, if possible, one of the Town Board Youth Commission representatives. It is recommended that coaches determine within the first few practices which level a player is best suited to play on, and if at all possible, keep that player at that level the entire season. The town prefers that no higher level player should play at the lower level unless there are extreme extenuating circumstances. Safety is the utmost concern. A child's size, and not their skill levels should be the deciding factor as to whether a child can play at a lower age level.

AGE LEVELS:

The various leagues, in which Town of Lyme Youth Commission teams are members, have different cut off dates for age levels. A four month "leeway" in age determinations will be granted based upon the conditions in the previous paragraph and only if allowed by the league.

RESIDENCE:

Players parents or guardians must be residents of, or pay taxes in, the Town of Lyme or Lyme Central School district to be eligible to play on town teams. Parents of players from other towns or school districts requesting to play on a Town of Lyme team must send a written request to the Town Board, and if deemed necessary, attend a town board meeting stating the reason for the request. The Town Board may or may not approve such request.

COACHES:

It is recommended that coaches reside within the town of Lyme, however, the town board understands the difficulty in finding coaches and embraces, and supports, the spirit of volunteerism. Any coach violating these by laws, or league by laws, may be removed from coaching.

Addendum B

9-13-14

**NYS Department of
Agriculture and
Markets Letter – Dated
August 7, 2014**

**Regarding BS
Recreational Farm**



STATE OF NEW YORK
DEPARTMENT OF AGRICULTURE AND MARKETS
Division of Land and Water Resources
10B Airline Drive, Albany, New York 12235
Tel: 518-457-3738 Fax: 518-457-3412
www.agriculture.ny.gov

August 7, 2014

Hon. Scott Aubertine, Supervisor
Town of Lyme
12175 NYS Route 12E
PO Box 66
Chaumont, NY 13622

Re: AML §305-a, subd. 1 Review Concerning A Special Use Permit to Construct and Operate a Small Wind Energy Production Facility on BS Recreational Farm, Jefferson County Agricultural District No. 2

Dear Supervisor Aubertine:

The Department wrote a letter to you, dated November 13, 2013, concerning the Department's review of the Town of Lyme's Zoning Code and the Town of Lyme's Renewable Energy Law, as applied to the BS Recreational Farm, which is located within Jefferson County Agricultural District No. 2. By letter dated December 6, 2013, you described the Town's Renewable Energy Law and its application to BS Recreational Farm.

From information received, Mr. Kingsley applied to the Town to construct a wind turbine on his property. At the time of his application, it appears that Mr. Kingsley's turbine would have stayed within the height limits, but could not meet the setback and noise limits as specified within the Renewable Energy Law. Mr. Kingsley applied to NYSERDA for funding for acquisition and construction of a Bergey small wind energy device on his property. According to NYSERDA Project Manager Mark Mayhew, Mr. Kingsley applied for funding of a 153 feet turbine (total height), capable of generating an average of 16,000 kWh/year of electricity. Mr. Mayhew informed the Department that the turbine may produce slightly less energy, but well over 15,000 kWh/yr.

When the Department initiated its review, Mr. Kingsley produced hay and wood products. At that time, BS Recreational Farm consumed approximately 13,875 kWh/yr in electricity. This figure was obtained from an energy audit conducted by L&S Energy Services, Inc. (dated June 6, 2013), which examined energy used by BS Recreational Farm from April 20, 2012 through April 19, 2013. The audit suggests that approximately 10,317 kWh/yr of electricity was associated with equipment/farm use and 3,558 kWh/yr of electricity was used for residential purposes. Upon further review by the Department, it was apparent that the farm's electrical requirements fell below the average electrical generation capacity predicted for the Bergey small wind energy device. Mr. Kingsley was notified that in keeping with the Department's guideline on *Local Laws Affecting Small Wind Energy Production Facilities and Solar Devices* (enclosed), his energy demand at that

time did not demonstrate a need for an energy production facility that generates, on average, 15,000+ kWh/yr. The Department informed Mr. Kingsley that to be considered part of a farm operation for purposes of AML §305-a, the amount of electricity generated by the Bergey turbine could not exceed 110% of the farm's anticipated electrical demands, which was calculated to be 11,350 kWh/yr.

In late summer/early fall of 2013, Mr. Kingsley purchased 13 calves to add to his hay and wood businesses. Mr. Kingsley suggested that the energy demands of the farm would increase. He stated that he would have to have a water heater in the calves' drinking water to keep it from freezing and, in general, would require additional electricity to maintain the water pump, portable heaters, lights and electric fencing. Mr. Kingsley submitted his electrical bills to the Department for review. From December 20, 2013 to April 19, 2014 the farm's electrical demand increased by 12,400 kWh over the same four month period in 2012 to 2013 (prior to obtaining the cattle). From April 20, 2012 to April 19, 2013, Mr. Kingsley used 13,857 kWh of electricity. From April 20, 2013 to April 19, 2014, Mr. Kingsley used 26,672 kWh of electricity. Discounting his residential usage of electricity and with the addition of the cattle to the farm, the annual electrical demands from BS Recreational Farm currently requires more than 15,000+ kWh of electricity.

Based upon the information provided by Mr. Kingsley, including income derived from the sale of hay and wood in 2011, 2012, and 2013 and the anticipated sale of cattle in 2014, and a site investigation, the Department has determined that BS Recreational Farm is a "farm operation" for purposes of AML §305-a(1). Further, in prior AML §305-a reviews, the Department has considered wind turbines used to supply a portion of a farm's electrical needs (not exceeding 110% of the farm's anticipated demand) to be on-farm equipment or an on-farm building. The Department has determined that Mr. Kingsley has met this standard and that the wind turbine proposed for the premises supplies a portion of the farm's electrical needs, not exceeding 110% of its anticipated demand.

Town of Lyme's Zoning Code

1. Town of Lyme Renewable Energy Law (REL)

In 2012, the Town of Lyme amended Local Law No. 1 (from 1989) to add a Renewable Energy Law to its zoning ordinance. Subsection A of the law was amended to establish a new Section 775 entitled "Renewable Energy Systems." Section 775(A) (1) provides that no Renewable Energy System (RES) can be constructed or installed without the receipt of a special permit from the Town's Zoning Board of Appeals (ZBA).

In general, it is the Department's view that the construction of on-farm buildings and the use of land for agricultural purposes within a county adopted, State certified agricultural district should not be subject to site plan review, special use permits or non-conforming use requirements. The purpose of an agricultural district is to encourage the development and improvement of agricultural land and the use of agricultural land for the production of food and other agricultural products as recognized by the New York State Constitution, Article XIV, Section 4. Therefore, generally, agricultural uses and the construction of on-farm buildings as part of a farm operation located within an agricultural district should be allowed uses.

Town Law §274-b (1) allows a town board to authorize a planning board or other designated administrative body to grant special use permits as set forth in a zoning ordinance or local law. "Special use permit" is defined as "...an authorization of a particular land use which is permitted in a zoning ordinance or local law to assure that the proposed use is in harmony with such zoning ordinance or local law and will not adversely affect the neighborhood if such requirements are met." Agricultural uses in an agricultural district are not, however, "special uses." They are constitutionally recognized land uses which are protected by AML § 305-a (1).

The application of special use permit and site plan requirements to farm operations can have significant adverse impacts on such operations. Special Permit and site plan review, depending upon the specific requirements in a local law, can be expensive due to the need to retain professional assistance to certify plans or simply to prepare the type of detailed plans required by the law. The lengthy approval process in some local laws can be burdensome, especially considering a farm's need to undertake management and production practices in a timely and efficient manner. Therefore, absent any showing of an overriding local concern, generally, an exemption from site plan requirements should be provided to farm operations located within an agricultural district. However, as discussed in more detail in the Department's *Guidelines for Review of Local Zoning and Planning Laws* (copy enclosed), the Department recognizes the desire of some local governments to have an opportunity to review agricultural development and projects within their borders. Therefore, the Department developed a model streamlined site plan review process which attempts to respond to farmers' concerns while ensuring that local issues are examined. The Department's *Zoning and Planning Guideline* discusses the Department's recommended streamlined site plan review process in greater detail.

Although the Department has taken the position that "Special Use Permits" are, generally, unreasonably restrictive; the Town's application of its special use permit application requirements in lieu of site plan to farm operations located within an agricultural district would be appropriate if the special permit review/approval process described in Zoning Code §§505 through 525 generally conform with the streamlined site plan review process described in the Department's *Guidelines for Review of Local Zoning and Planning Laws*.

Zoning Code Section 515(B) (6) discusses SEQRA review. Please be advised that agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with "generally accepted principles of farming" are designated as Type II actions which do not require preparation of an Environmental Assessment Form (EAF) and are not subject to compliance with State Environmental Quality Review (SEQR). 6 NYCRR §617.5(a), (c)(3). [See *In the Matter of Pure Air and Water Inc. of Chemung County v. Davidsen*, 246 A.D.2d 786, 668 N.Y.S.2d 248 (3rd Dept. 1998), for application of the exemption to the manure management activities of a hog farm.] The SEQR regulations require localities to recognize the Type II actions contained in the statewide list.

2. Town of Lyme's Small Wind Energy Conversion Systems (SWECS)

Section 775(C)(2) establishes a maximum tower height of 125 feet, including maximum vertical blade extension. NYSERDA has informed the Department that most of the turbines it funds have tower supports that are 140' tall and total heights in excess of 150 feet because

steadier winds are at higher altitudes, which result in a more efficient operation of a SWECS. Furthermore, to meet the energy demands of the farm, the higher the tower, the more electricity produced. To limit the tower height to 125' and not allow Mr. Kingsley to construct a SWECS at the desired height of 153' unreasonably restricts his farm operation in possible violation of AML §305-a.

Code Section 775(C) (3) provides that SWECS must be setback from a property line at least five times the tower height and conform to the building code. At 153', the BS Recreational Farm wind turbine would have to be set back at least 765' from the property line to be in compliance with the Zoning Code. The Department's guideline on *Small Wind Energy Production Facilities and Solar Devices* (enclosed) states that the tower should be set back 1.1 times the combined height of the tower and blades from property lines and power lines.¹ Applying the Department's recommended 1.1 times setback to a tower height of 153', the tower should be set back at least 168' from the property line or power line. The construction of the turbine to meet the 765' setback would require the construction of a road and cost more to run underground electrical lines to the farm structure where the inverter will be located. It would be a significant cost savings to the farm operator to keep the turbine within the distances specified by the Department's Small Wind Energy guideline and NYSERDA (1.1 times the tower height). The Code's SWECS setback requirement of five times the tower height unreasonably restricts the farm operation in possible violation of the AML.

Section 775(C) (11) provides that all SWECS must be designed and constructed to comply with the Uniform Building Code and National Electric Code. Building Code of New York State (BCNYS) Section 101.2, subdivision 4 states that "[s]tructures such as radio and television transmission, communication and wind generation towers not attached to buildings" are exempt from the State Code. As for electrical inspections and compliance, as long as the electrical controls for the turbine are installed within an agricultural building, such buildings are exempt from the BCNYS, including the electrical code (BCNYS §101.4.1). However, in prior reviews, it appears that NYSERDA and the applicable public utility require inspections of the SWECS electrical components.

Section 775(C)(14) places limits on noise generated by the SWECS. The Code states that the system shall not exceed 35 decibels from 9:00 pm to 7:00 am and 50 decibels from 7:00 am to 9:00 pm as measured from the property line.

The Bergey Excel 10 Owner's Manual, dated March, 2011, states that the BWC-7 airfoil rotor blades were designed to provide high efficiency and low noise. Noise levels recorded by the United States Department of Energy (US-DOE) National Wind Technology Center in Boulder, Colorado found that for the 10kW Bergey Excel Wind Turbine, the acoustic noise generated by an on-line Bergey Excel turbine is less than 5 dB(A) above background noise. See referenced link for more information on this topic.
<http://www.windmonkey.com/pdfs/bergey/misc/NREL.Excel.Noise.Test.Data.pdf>

¹ *Guidelines for Review of Local Laws Affecting Small Wind Energy Production Facilities and Solar Devices*, NYS Department of Agriculture and Markets as well as NYSERDA, On-Site Wind Turbine Incentive Program – Program Opportunity Notice (PON) 2438, ["Siting Considerations" page 8 or <https://www.nyserda.ny.gov/Funding-Opportunities/Current-Funding-Opportunities/PON-2439-On-Site-Wind-Turbine-Incentive-Program.aspx>.]

Hon. Scott Aubertine, Supervisor
Town of Lyme
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Sincerely,

A handwritten signature in cursive script, appearing to read "Michael Latham". The signature is written in black ink and is positioned above the printed name and title.

Michael Latham
Director

Enclosures

cc: Bruce Kingsley, BS Recreational Farm
Doug Shelmidine, Chair, Jefferson County AFPB
Jay Matteson, Jefferson County Agricultural Coordinator
Robert Somers, Division of Land & Water Resources
Danielle Cordier, Esq., Counsel's Office, Dept. of A&M