MEETING MINUTES
July 31, 2020 @ 8:30am
Video Conference - Zoom Meeting

Present: Christopher Land (C), Christopher Simmler (VC), Thomas Feronti (CK), Patti Haney, Michael Galasso, and Samuel Patterson
Absent: Paul Burke (T)

8:34* CALL TO ORDER
A quorum was established. The Chair called the meeting to order.

8:34 PUBLIC COMMENT
None

8:37 FALMOUTH LANDFILL SOLAR PHASE II - APPROVAL OF I.G.A BETWEEN EDIC & TOWN OF FALMOUTH

- DiGiano invited Atty. Eidelman to the meeting to answer any questions. DiGiano mentioned the discussion between the BOS with the EDIC at the last BOS board meeting. He noted the EDIC proposed a nominal rent provision for 18 months to allow the EDIC to retain all of the Citizens Energy rent to establish the Recovery Loan Program and resolve the special legislation issues, and if this was not accomplished to the satisfaction of the BOS during this time period, then the rent provision would revert back to a 50/50 split of the rent received.

- DiGiano reported that the BOS was not willing at this time to consent to a nominal rent provision. The current I.G.A. to be approved today is for the 50/50 split of the rent received by the EDIC from Citizens Energy. As well, there is language that allows the EDI to work with the BOS to develop the recovery loan program and special legislation. After this, a Town Meeting vote would be required to amend the rent provision to allow the EDIC to retain the majority of the Falmouth Landfill Solar Phase 2 rent from Citizens Energy and move forward with a business recovery loan program.

- The benefits to the Town of Falmouth from Phase II (2MW) will result with energy credit payments in the amount of approximately $700,000 over 20 years. When combined with Phase I the Town will receive $10.8 Million in total. The Phase II P.I.L.O.T. payments to the Town are expected to be $600,000 over 20 years. One of the features of Phase II is that ½ of the energy production will be sold to 250 low income households in Falmouth with the “Joe-4-Sun” program. This will result in $1.7M in energy savings for Falmouth low income households over the life of the program. Citizens Energy will be making an annual rent payment to the EDIC in the amount of $177,650.; half of which will paid to the Town of Falmouth per the I.G.A as written.

- DiGiano advised that the Phase II I.G.A. is a term of 25 years. It is basically the same agreement as the I.G.A. for Phase I. The rent provision states the EDIC will pay to the Town of Falmouth half of what the EDIC receives from Citizens Energy - $177,650.; the EDIC will pay to the Town of Falmouth $88,825. per year for the lease of the Solar Phase II 18 acres.

- Galasso reminded the Board that the original Phase I I.G.A. proposal by the EDIC was for $1 a year rent. It was negotiated to a 50/50 split with the Town of Falmouth with the condition that when the EDIC had a program that required more funding, the EDIC could return to the BOS to request a change to the rent provision in the Phase I I.G.A. The reason why the EDIC requested a $1 a year rent was because the EDIC felt that the expected gain of $14M to the Town of Falmouth was more than enough for the use of the Falmouth Landfill - that was costing the Town $100,000 in maintenance expense.
• Galasso stated this what is being done now with Phase II, however the BOS has denied the EDIC request and is not supporting the Small Business Recovery Loan Program. Galasso suggests the Board approve the Phase II I.G.A. rent payment with a $1 a year rent provision and if the Recovery Loan Program is not established within 6 months, the rent reverts to a 50/50 rent split. He is opposed to a 50/50 split now, citing the Town of Falmouth has not invested any funds to develop any part of the Falmouth Landfill Solar project and the extra rent from Phase II is greatly needed by the EDIC to support the EDIC operations and the projects that help the Falmouth businesses and community.

• **MOTION:** Galasso made a motion to approve the I.G.A. with a rent provision of $1, and if the Falmouth Recovery Loan Program was not established within 6 months, the rent would revert to a 50/50 split with the Town.

• Feronti commended Chairman Land, Vice Chairman Simmler and Mike DiGiano for their composure and decorum during the BOS meeting on Monday evening; with the staunch opposition, intimations and false claims made. He thanked them for representing the EDIC board well. He questioned what would happen if the EDIC did not approve the I.G.A., and let the Town decide what to do with the landfill property.

• DiGiano said if the I.G.A and the Sub-Lease were not signed the project could not proceed. They have the P.O.P approved by the Town. The original Citizens Energy bid said all documents needed to be signed by June 30th, to start construction in September and complete the project by March 2021. Per the EDIC request, Citizens extended the requirement for document execution until July 31st. A further delay in signing would cause a delay in the start of the project, approvals for financing and construction, permits, connection agreements and some of the incentives could expire. He doubts that if the EDIC or the Town rebids this project at a future date that the terms will be as favorable as they are currently.

• Land stated he perceived that the BOS had a lack of trust in the EDIC’s ability to manage the project; and perhaps the EDIC should turn it back to the Town to find another partner to develop the Phase II Solar project. DiGiano advised that the EDIC has the lease with the Town for the entire 48 acres of the landfill; however, we could sub-lease the Phase II acreage.

• Simmler suggested the Board move forward with the I.G.A. if the language provides an option to return to request additional rent a later time, to move the project forward. Galasso noted that the current condition of language in the I.G.A.’s rent provision is so onerous that he has grave doubts that it will ever occur; citing the EDIC has previously requested a reconsideration of the rent provision, and was denied. Galasso has no confidence the BOS will approve a future request to change the rent provision.

• Patterson stated that he believes the BOS appreciates the volunteer work done by the EDIC Board and the initiative to try to improve Falmouth. Patterson said the BOS does not want to give up the Phase II rent as they are facing declining revenues due to COVID-19 and the loss of the wind turbines; citing the Town is in a very different and difficult position right now. He said the BOS wants to help small businesses; however, he questions if the EDIC is the right vehicle to help the small businesses. He does not think the EDIC has provided an adequate business plan to gain his confidence. He thinks the 50/50 rent split should remain until a viable and convincing business plan showing the return on investment is created to present to the BOS for reconsideration. Patterson said the BOS is not closed out to the changing of the rent provision in the I.G.A., but they will need to be convinced of the viability and likelihood of success, and that it will be administered in an efficient way.

• Discussion ensued by the Board about special legislation and a Town Meeting vote for the rent provision and the differing legal opinions.

• Haney stated she thinks the EDIC board operates on a different sphere than other Town Boards due to the EDIC municipal corporation standing as a 501(C)3 organization. She thinks that this may be causing some conflict between the BOS and the EDIC in terms of differences in understanding of operating practices.
• Atty. Audrey Eidelman said she thinks that Town Counsel will not advise differently on his opinion regarding special legislation and Town Meeting vote approval. She stated that if the EDIC presents to the Town a new but similar I.G.A. to the ones that have been presented twice previously, she does not envision the response will be any different. She has concerns representing the EDIC regarding the public procurement process to award a contract to Citizens who is waiting for the executed documentation. A non I.G.A. will kill the Phase II development and could be a risk to the EDIC.

• The Board discussed voting on the I.G.A. and the financial affects the I.G.A. rent provision will have on the EDIC operations and the Small Business Recovery Loan Program.


9:26 FALMOUTH LANDFILL SOLAR Phase II – APPROVAL OF THE SUB-LEASE BETWEEN THE EDIC AND CITIZENS ENERGY

• This document sets forth the terms under which Citizens Energy develops and operates the 2MW Phase II solar project. It is modeled after Phase I. It is 20-year term with a 4-year option to extend. The rent remains the same.

• Atty. Audrey Eidelman advised that the Phase II Solar has a different state incentive program – the Smart Program which allows for up to 50% of the output for a low-income resident category. There will be regulations and checks to make sure the program is being run fairly and equitably with commercially reasonable terms and conditions. This program will run for at least 2 years and amounts awarded will be based on energy output.

• Galasso asked if the project could move forward with just the sub-lease and not the I.G.A.. Atty. Eidelman advised there was not; both documents were required.


9:32 SMALL BUSINESS RECOVERY LOAN PROGRAM – Next Steps

• DiGiano advised that a continued process will need to take place as instructed by the Town, to continue to work on this program. At this point the EDIC has spent a substantial amount of time on this project and the Board needs to decide if and define how to proceed.

• Land created a sub-committee to explore options for consideration at the next board meeting. Land appointed Simmler (to Chair), Patterson and Feronti. Galasso will provide all supporting informational documentation.

9:39 ADJOURNMENT

MOTION: Haney made a motion to adjourn the Public Meeting Session meeting and move into Executive Session and not return. Patterson 2nd. Roll Call: Galasso Aye, Patterson Aye, Haney Aye, Feronti Aye, Land Aye. Motion passed.