

REGULAR MEETING
APRIL 14, 2009

A Regular Meeting of the Town Board of the Town of Somerset, County of Niagara and the State of New York was held at the Town Hall, 8700 Haight Road, Barker, New York on the 14th day of April 2009.

Present: Richard J. Meyers ----- Supervisor
 Dudley E. Chaffee ----- Councilman
 Randall J. Wayner ----- Councilman
 Daniel M. Engert ----- Councilman
 Rebecca A. Connolly -- Clerk
 Kenneth J. Bigelow ---- Supt. of Highways
 Melvin H. Denny ----- Supt of Water/Sewer/Grounds
 Robert Roberson ----- Counsel
 Randy Roeseler ----- Engineer

Absent: April C. Gow ----- Councilman

Attended by: Approximately 55 residents

Supervisor Meyers called the meeting to order at 7:30PM with the Pledge to the Flag.

PUBLIC HEARING – Proposed Local Law 1-2009 – Dog Control

Notice of said hearing duly published in the Lockport Union-Sun & Journal on March 24, 2009 with same notice being posted at the Town Hall on the same date.

Supervisor Meyers opened the hearing at 7:31PM.

Clerk Connolly read notice of public hearing.

Supervisor Meyers asked the Board if there were any comments about the law.

Councilman Engert stated that he has been questioned by residents how this law relates to the Right To Farm law.

Attorney Roberson said there is no conflict that he is aware of.

Councilman Engert asked if there would be a conflict with breeding animals.

Attorney Roberson stated the law does not make that distinction.

Councilman Engert asked if there is a conflict with any Agriculture and Markets law.

Attorney Roberson stated he is not aware of any law that gives breeders special privileges.

Supervisor Meyers stated that he has an issue with the definition of habitual barking. He stated that he tested his own dog and he stated 10 minutes is not very long for a dog to bark, especially if provoked. He stated he is not sure how the 10 minute part can be enforced.

Attorney Roberson stated there is a provision "without provocation".

Supervisor Meyers stated that is too vague on how you determine what the dog is barking at; if the dog was provoked; and what is intermittently suppose to mean. He stated that he understands there is an issue with some dogs that hasn't been curtailed, however, we cannot be writing laws to restrict owners' rights.

Councilman Engert stated that he has been involved with the situation where the neighbor has been charged 12 – 13 times and found guilty 7 times. He stated the problem with the current law is the penalty phase and the current law is not doing the job. He stated the person has been fined \$250 several times with no jail time. He stated these penalties are not changing that person's behavior. He stated the current law is fine as written except the penalty phase.

Don Cuchie stated the Dog Control Officer comes out and the dog is still barking. He stated that the Police Department has been out several times also. He stated this is not the normal barking dog and that it is continual at all hours of the night.

Councilman Wayner stated that the goal was strengthen the law and that he does not feel that we need to be tripped up by definitions. He stated the law needs to be moved forward.

Councilman Engert stated there is an assumption being made that the law is fine however there is a problem as it is too vague and not sufficient. He stated that he and Councilman Wayner developed a more comprehensive law that clarifies the procedures and provides recourse for the court.

Discussion ensued by the Board regarding the definition of habitual barking. Councilman Engert proposed the definition of habitual barking be changed to 30 minutes and barking intermittently for one hour.

Councilman Wayner stated that 30 minutes of continually barking is very liberal and there are ways to prove the situation.

Dog Control Officer (DCO) Michelle Dewart stated she agrees with the change in the times; however she feels that taking a person's dog away is harsh. She stated she has to have proof before she will issue a ticket.

Councilman Wayner stated that taking the dog away is harsh but you have to control the situation and it is incumbent upon the owner of the dog to ensure that does not happen.

Camille Walker asked if the dogs are allowed to bark ½ hour every night and wake us up. She stated that the dogs are continually barking day and night and when you are breeding the dogs, who would want to buy a dog that continually barks.

Councilman Engert stated the penalties have been increased significantly. He stated that the law has been changed to give the DCO more authority to have the dog removed from the premises during the interim court appearance.

Karen Cavanaugh stated that her neighbor is harassing them and is threatening their dogs. She stated he (the neighbor) is malicious and teasing the dogs. She asked what is going to protect her.

Councilman Wayner stated that one of the terms in the law is “without provocation”.

Karen Cavanaugh asked how she would prove that.

Supervisor Meyers stated when the DCO shows up the determination can be made.

With all persons desiring to be heard, Supervisor Meyers closed the hearing at 8:00PM.

REGULAR MEETING

Supervisor Meyers opened the regular meeting at 8:01PM.

RESOLUTION 56-09

APPROVAL OF MINUTES

On a motion of Councilman Chaffee, seconded by Councilman Wayner, the following resolution was

ADOPTED Ayes 4 Meyers, Chaffee, Wayner, Engert
Nays 0

Resolved that the minutes of the March 10th and 23rd, 2009 meetings be approved as submitted by the Clerk.

RESOLUTION 57-09

APPROVAL OF SUPERVISOR'S MONTHLY REPORT

On a motion of Councilman Engert, seconded by Councilman Chaffee, the following resolution was

ADOPTED Ayes 4 Meyers, Chaffee, Wayner, Engert
Nays 0

Resolved that the Supervisor's Monthly report be accepted as submitted.

MONTHLY REPORTS RECEIVED AND FILED:

Code Enforcement Officer's Report
Dog Control Officer's Report
Police Report

COMMUNICATIONS

Clerk Connolly read a letter from the Erie-Niagara Tobacco-Free Coalition thanking the Town for the resolution supporting the removal of all tobacco advertising from retail outlets.

Clerk Connolly read a thank you note from the HoganWillig law firm for meeting with them recently.

Clerk Connolly stated that the Board is in receipt of a letter from the Planning Board requesting to retain Attorney Brandt for the completion of the subdivision regulations.

RESOLUTION 58-09

ADOPTION OF LOCAL LAW 1-2009 - DOG CONTROL

On a motion of Councilman Wayner, seconded by Councilman Chaffee, the following resolution was

ADOPTED Ayes 4 Meyers, Chaffee, Wayner, Engert
Nays 0

Resolved that Local Law 1-2009 entitled Dog Control is approved with the changes of Habitual Barking to reflect barking for 30 minutes or barks intermittently for one hour.

A Local Law Entitled "Amendment to the Code of the Town of Somerset"

Be it Enacted by the Town Board of the Town of Somerset as follows:

To amend **Chapter 65 - Animals** - Chapter 65 of the Code of the Town of Somerset is repealed and replaced with the following new Chapter 65.

DOG CONTROL

- § 65-1. Purpose and intent.
- § 65-2. Definitions.
- § 65-3. General regulations and restrictions.
- § 65-4. Enforcement.
- § 65-5. Procedure.
- § 65-6. Seizure of dogs.
- § 65-7. Penalties for offenses.
- § 65-8. Dog license fees.
- § 65-9. Impoundment fees: additional costs.
- § 65-10. Liability of town.
- § 65-11. Severability
- § 65-12. Filing and Effective Date

§ 65-1. Purpose and intent.

The purpose of this law shall be to promote the health, safety and general welfare of the Town of Somerset, including the protection and preservation of the property of the town and its inhabitants, by specifying, establishing and imposing certain restrictions, regulations and responsibilities relating to the control of dogs within the Town of Somerset, as hereinafter defined.

§ 65-2. Definitions.

As used in this law, the words in the following list shall have the following respective meanings:

AT LARGE -- Any dog shall be deemed to be "at large" if not accompanied by a person who is in control of the dog or who is providing restraint of the dog elsewhere than on the premises of the owner, keeper or another responsible person who has knowledge of the dog's presence and who assents thereto.

ATTACK -- Any action by a dog that might cause reasonable apprehension of harm or injury to a person, together with the apparent ability of the dog to inflict such harm. An actual bite by the dog is unnecessary to meet the qualifications of this definition.

CONTROL -- When a dog comes, heels, and stays promptly upon command.

DANGEROUS DOG -- A dog that, without provocation, chases or approaches in either a menacing fashion or in an apparent attitude of attack or attempts to bite or otherwise endanger any person or domestic animal while that dog is off the premises of its owner, keeper or harbinger and not under the control of its owner, keeper or harbinger.

DESTRUCTION -- Euthanasia of a dog; the act of painlessly causing the death of the dog.

DISPOSAL -- Arrangement for the sale or destruction of a dog.

DOG -- Includes the plural "dogs" and refers to any dog of either sex or any age unless otherwise indicated herein. Any member of the species *Canis familiaris* regardless of age, male and female, licensed and unlicensed.

DOG CONTROL OFFICER -- Any person who is appointed by the Town Board to assist in the enforcement of this article.

DOMESTIC ANIMAL -- Any cat, other dog or any other animal defined as a domestic animal in Article 7, § 108, of the Agriculture and Markets Law of the State of New York.

FEE SCHEDULE -- A list of all fees charged by the Town of Somerset in conjunction with this article.

FORFEITURE -- The loss or giving up of any claim to a dog.

GUIDE DOG -- Any dog trained to guide blind, deaf or other handicapped persons.

HABITUAL LOUD HOWLING OR BARKING -- A dog that barks, bays, cries, howls, or makes any other noise for a period of thirty (30) minutes or barks intermittently for one (1) hour or more to the disturbance of any person at any

time of day or night, regardless of whether the dog is physically situated in or upon private or commercial property, provided, however, that a dog shall not be deemed a "barking dog" for purpose of this Law, if, at the time the dog is barking or making any noise, a person is trespassing or threatening to trespass upon private property in or upon which the dog is situated or for any other legitimate cause which teased or provoked the dog.

HARBOR -- To provide food and shelter for any dog.

LEASH, LEASHED or RESTRAINED BY A LEASH -- That the dog is equipped with a collar or harness to which is attached a leash of sufficient strength to restrain the dog, unless the dog is accompanied by its owner or other responsible person able to control the animal by voice command.

MENACING FASHION -- The behavior of a dog which would cause a person to reasonably believe that the dog would cause physical injury to such person.

OWNER -- Any person who is a licensed owner of a dog. This term also includes any person who owns, keeps or harbors or who has the care, custody or control of a dog, and can include more than 1 person. Dogs owned by minors shall be deemed to be in the care, custody and control of the minor's parents or other head of the household where the minor resides.

PENALTIES -- Punishment fixed by law.

PERMIT TO BE KEPT -- Any person who harbors a dog for an individual or owner who lives off the premises.

SECURITY DOG -- Any dog owned or harbored by any State or Municipal Police Department.

SERIOUS INJURY -- Any injury to humans, domestic animals, or deer that results in broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery.

TOWN -- Includes all who reside in the Town of Somerset

VICIOUS DOG -- A dog that, without provocation, bites, injures or kills a human being, other dog, cat or domestic animal.

WITHOUT PROVOCATION -- The dog was not teased, tormented or abused by a person or the dog was not coming to the aid or the defense of a person who was not engaged in illegal or criminal activity and who was not using the dog as a means of carrying out such activity.

WORKING DOG -- Any dog being used to shepherd or guard cows, sheep or any other domestic animals.

§ 65-3. General regulations and restrictions.

It shall be unlawful for any owner of or any person harboring any dog in the Town of Somerset to permit or allow such dog to:

- A. Run at large unless accompanied by its owner or a responsible person able to control the animal. For the purposes of this law, a dog or dogs lawfully hunting or field training in the company with a hunter(s) or handler(s) shall be considered as accompanied by and under the control of its owner.

- B. Engage in habitual loud howling or barking or to conduct itself in such manner so as to habitually annoy any person other than the owner or person harboring such dog.
- C. Cause damage or destruction to property or commit a nuisance upon the premises of a person other than the owner or person harboring such a dog
- D. Chase or otherwise harass any person in such a manner as to reasonably cause intimidation or to put any person present in reasonable apprehension of bodily harm or injury.
- E. Habitually chase or bark at motor vehicles.

§ 65-4. Enforcement.

An animal control officer or other proper authority designated by the Town Board, as provided by § 114 of the Agriculture and Markets Law and other applicable laws and provisions, may enforce the provisions of this law and may also investigate and report to a Town Justice any dangerous dog as described in § 121 of the Agriculture and Markets Law and see that the order or orders of the Town Justice in such case are carried out.

The Town Board shall appoint a Dog Control Officer or Officers as needed pursuant to Article 7 of the Agriculture and Markets Law of the State of New York. It shall be the duty of such Dog Control Officer or Officers, as well as all peace officers within the Town of Somerset, to enforce appropriate provisions of this article, as well as the Agriculture and Markets Law, with respect to dogs in the Town of Somerset. The Town Board authorizes the Niagara County Sheriff's Office and the New York State Police to enforce any provisions of this article, as well as applicable provisions of the Agriculture and Markets Law of the State of New York. In addition, any Dog Control Officer or peace officer of the Town is hereby authorized to serve any process related to any proceeding, whether criminal or civil in nature, including any appearance ticket (pursuant to Section 150.20 of the Criminal Procedure Law), in accordance with the provisions of this article. If the Dog Control Officer serves said appearance ticket and it is disregarded, the Town Justice shall permit the filing of an information from said Officer and shall issue a warrant of arrest for such person.

- A. Authority of the Dog Control Officer. The Dog Control Officer or Officers of the Town of Somerset may seize a dog or any dogs, tagged or untagged, which are found to be in violation of any provision of this article, as well as any dog or dogs otherwise required to be seized under and by virtue of Article 7 of the New York State Agriculture and Markets Law.

- B. Appearance tickets; filing of complaints.
- (1) Any dog control officer in the employ of or under contract with the Town of Somerset, observing a violation of this local law in his presence shall issue and serve an appearance ticket for such violation.
 - (2) Any person who observes a dog causing damage or destruction to property other than its owner or committing a nuisance upon the premises of a person other than its owner may file a signed complaint, under oath, with the Town Clerk, and such complaint shall be referred by the Clerk to the Dog Control Officer, specifying the objectionable conduct of the dog, the date thereof, the damage caused, a description of the dog, if known, and the name of the owner or person harboring said dog, if known.
 - (3) Oral complaints made to the Town Clerk or Dog Control Officer must include the complainant's name and address and may be used only as a basis for investigation by the Dog Control Officer or peace officer.

§ 65-5. Procedure.

- A. The Dog Control Officer may issue an appearance ticket to any person believed to be in violation of this local law.
- B. Upon receiving an appearance ticket in proper form the Town of Somerset Justice shall proceed in accordance with all applicable criminal procedures. Upon a conviction the Town of Somerset Justice may, in addition to imposing the penalty authorized by § 65-7 of this law, order:
- (1) That the dog be restrained by a collar and leash at all times.
 - (2) That the dog be kept on the owner's premises at all times.
 - (3) That the dog be confined.
 - (4) Such other remedy as may be warranted by the circumstances of the case.
- C. A violation of any order issued by a Town of Somerset Justice pursuant to this section shall itself be an offense punishable as provided in § 65-7 of this law.

§ 65-6. Seizure of dogs.

The seizure and redemption of dogs in violation of this law shall be as provided in § 118 of the Agriculture and Markets Law of the State of New York.

- A. The owner of any seized dog shall be required to pay the fees as set forth in §65-9 of this Chapter whether or not such owner chooses to redeem his or her dog.

§ 65-7. Penalties for offenses.

A violation of this law shall be deemed an offense against such law, and any person convicted hereunder shall be fined an amount not less than fifty dollars (\$50) and not more than one hundred fifty dollars (\$150); provided, however, that if the person committing such offense shall have been convicted of an offense in violation of this law within the preceding two (2) years, the fine shall be not less than one hundred fifty dollars (\$150) and not more than five hundred fifty dollars (\$550.); and if such person shall have been convicted of two (2) or more offenses within the preceding two (2) years, the fine shall not be less than five hundred fifty dollars (\$550) and not more than one thousand dollars (\$1000); and if such person shall have been convicted of four (4) or more offenses within the preceding two (2) years, the penalty, in addition to applicable fines may also include the seizure of the dog pursuant to the requirements of section 65-6 of this law. Any dog ordered seized shall be immediately adopted, sold or euthanized pursuant to the provisions of § 118 of the Agriculture and Markets Law.

§ 65-8. Dog License Fees.

Pursuant to § 110 of the Agriculture and Markets Law of the State of New York, the annual fee for each dog license issued shall be:

- A. Spayed or neutered dog shall be five dollars (\$5.)
- B. Unspayed or unneutered dog shall be fifteen dollars and fifty cents (\$15.50)
- C. Purebred license if no more than ten registered purebred dogs shall be thirty five dollars (\$35.)
- D. Purebred license if no more than twenty-five registered purebred dogs shall be sixty dollars (\$60.)
- E. Purebred license if more than twenty-five registered purebred dogs shall be one hundred ten dollars (\$110.)

§ 65-9. Impoundment fees: additional costs.

- A. Any dog which has been seized pursuant to §118 of the Agriculture and Markets Law of the State of New York, or this law, shall pay the following impoundment fees:
 - (1.) Twenty Dollars for the first impoundment of any dog owned by that person;
 - (2.) Forty Dollars for the second impoundment of any dog owned by that person;
 - (3.) Sixty Dollars for the third impoundment of any dog owned by that person;

- (4.) Seventy-Five Dollars for the fourth impoundment of any dog owned by that person;
- (5.) One Hundred Dollars the fifth and any subsequent impoundment of any dog owned by that person.
- B. In addition to the aforesaid impoundment fee, the owner shall be responsible to pay the sum of Ten Dollars for 24 hours or part thereof for sheltering, feeding and watering said dog.
- C. In the case where veterinary care is necessary to protect the health and welfare of a dog, in addition to the impoundment fee, the Town shall also charge Twenty-Five Dollars for each trip to the veterinarian and for all cost of such veterinary care.
- D. The owner of any dog not redeemed within 7 days of the date of his sentencing shall forfeit all title to the dog(s), and the dog(s) shall be sold or destroyed pursuant to the provisions of § 118 of the Agriculture and Markets Law.

§ 65-10. Liability of Town.

The owner, possessor or harbinger of any dog destroyed under the provisions of this chapter shall not be entitled to any compensation, and no action shall be maintainable thereafter to recover the value of the dog.

§ 65-11. Severability.

The sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance.

§ 65-12. Filing and Effective Date.

This local law shall become effective upon its filing with the Office of the New York Secretary of State.

RESOLUTION 59-09

FLOOD MAP PROTEST

Engineer Roeseler stated that he submitted a preliminary draft protest letter for the town to submit to the Federal Emergency Management Agency (FEMA). He stated they reviewed the maps and find there is an area along the south side of West Somerset Road to the west of Hartland Road that he believes should be removed from the 100 year flood plain. He stated there appears to be some errors made on the map and recommends the town file a formal protest to request that area be removed from the flood map.

Councilman Engert questioned what happens after the protest letter is filed.

Engineer Roeseler stated that a determination will be given one way or the other from FEMA.

Councilman Engert asked if this is the town's responsibility or the property owner.

Engineer Roeseler stated that FEMA has issued revised maps and until the time they are approved, it would be diligent of the Town to protest this area. He stated once the maps are adopted it would be up to the individual property owner to contest the maps.

Councilman Chaffee asked what is the time line for protest.

Engineer Roeseler stated he believes that the letters have to be in by May 18th and then there may be 90 days for FEMA to respond.

Supervisor Meyers asked when the final map will be completed.

Councilman Engert asked if the map is issued by municipality or region.

Engineer Roeseler stated that the maps will be completed after all letters of protest have been reviewed. He stated that the Niagara County map will be issued at one time and there are several protests from other municipalities.

Code Enforcement Officer Hildebrant stated that the Town of Wheatfield and the Town of Lockport are having a lot of problems with the maps.

On a motion of Councilman Engert, seconded by Councilman Chaffee, the following resolution is

ADOPTED Ayes 4 Meyers, Chaffee, Wayner, Engert
Nays 0

Resolved that Supervisor Meyers is authorized to submit a letter of protest for the maps with the Federal Emergency Management Agency to have the areas on West Somerset Road removed from the proposed flood maps.

RESOLUTION 60-09

LEASE WITH SOMERSET YOUTH BASEBALL ORGANIZATION (SYBO)

Councilman Wayner stated the Parks Committee met and addressed the concerns over the lease and was resubmitted to Attorney Roberson.

Superintendent Denny stated that the changes that were submitted are not included in the new agreement.

Councilman Wayner stated that there were concerns if SYBO ceases to exist.

Superintendent Denny stated he did not think the intent was to provide the batting cages for public use.

Attorney Roberson stated the proposal provides for public use and their own use. He stated they would have to provide appropriate rules and they can determine when it is available for public use and have it supervised accordingly.

Supervisor Meyers asked if someone is injured during the public use time does that fall under their (SYBO) liability insurance.

Attorney Roberson stated yes as they are the owner of the facility and have to provide insurance. He stated that he has not had any feedback from the SYBO.

Councilman Engert stated that it was proposed by SYBO to be open to everyone in the Town.

Attorney Roberson stated if this agreement is satisfactory to the baseball organization, they need to have a Board of Directors meeting and adopt a resolution authorizing the President to sign the lease.

James Harris asked if the pitching machines will be available to the public or just the cages.

Attorney Roberson stated the facility as a whole will be available.

On a motion of Councilman Chaffee, seconded by Councilman Wayner, the following resolution was

ADOPTED Ayes 4 Meyers, Chaffee, Wayner, Engert
Nays 0

Resolved that Supervisor Meyers is authorized to sign the lease with the Somerset Youth Baseball Organization as proposed.

RESOLUTION 61-09

LOWER LAKE ROAD BRIDGE STATE ENVIRONMENTAL QUALITY REVIEW (SEQR)

Supervisor Meyers read the resolution that declares the Town of Somerset the Lead Agency for the construction of the Lower Lake Road Bridge.

On a motion of Councilman Engert, seconded by Councilman Wayner, the following resolution was

ADOPTED Ayes 4 Meyers, Chaffee, Wayner, Engert
Nays 0

WHEREAS, The Town of Somerset wishes to replace the Lower Lake Road Bridge over Fish Creek, BIN 2213660; and

WHEREAS, The Town of Somerset has received Federal and State Aid for this Bridge Replacement Project PIN 5758.35; and

WHEREAS, the Town Board has committed to administer the various phases of this Project; and

WHEREAS, replacement of the Lower Lake Road Bridge over Fish Creek, defined as the Action, is subject to State Environmental Quality Review (SEQR) under Article 9 of the Environmental Conservation Law.

NOW, THEREFORE BE IT RESOLVED, that in accordance with Part 617 of the implementing Legislation pertaining to Article 9 (SEQR) of the Environmental Conservation Law, the Town Board wishes to conduct a coordinated review and establish itself as Lead Agency for this action and inform the other Involved and interested agencies of their intent.

Superintendent Bigelow reported that he and Michael Leydecker of Wendel Duchscherer met with Kevin O'Brien from Niagara County Public Works to try to obtain additional funding for the Lower Lake Road Bridge over Fish Creek. He stated that the preferred method of construction is Alternative 2 and a request has been made for \$300,000 of additional funding. He stated that the funds are coming from the federal government but are not part of the infrastructure stimulus package.

RESOLUTION 62-09

SOLE APPOINTED ASSESSOR – PROPOSED LOCAL LAW

On the introduction of Councilman Wayner, seconded by Councilman Engert, the following resolution was

ADOPTED Ayes 4 Meyers, Chaffee, Wayner, Engert
Nays 0

Resolved that a local law is proposed to change the manner of selection of a town assessor from three elective assessor positions to a single appointed assessor pursuant to Real Property Tax Law §328 effective January 1, 2010, with the local law not subject to a referendum.

RESOLUTION 63-09

SOLE APPOINTED ASSESSOR LOCAL LAW PUBLIC HEARING

On a motion of Councilman Chaffee, seconded by Councilman Engert, the following resolution was

ADOPTED Ayes 4 Meyers, Chaffee, Wayner, Engert
Nays 0

Resolved that a public hearing be held on May 12, 2009 at 7:30PM to consider adoption of a proposed local law changing from three elective assessor positions to a single appointed assessor.

RESOLUTION 64-09

LEGAL SERVICES

Supervisor Meyers stated that Request for Proposals for legal services were received and firms were interviewed. He stated the current firm was retained until the end of the month.

Councilman Chaffee stated the current firm has served us well and it is up to this Board to protect the citizens of the Town of Somerset and we do not make a decision so that other people can profit from those decisions, we make it so the town people profit. He stated that last Fall it was brought up time and time again that the we paid over \$1M for legal services but it saved us \$67 million. He stated that from the interviews conducted he cannot see any firm that has near the experience as our current firm and it will cost a great deal of money to get a new firm educated. He stated that he would like to see the current firm retained.

Councilman Engert stated that there is a significant experience factor relevant to the discussion with that firm. He stated that the Board took the process very seriously, with significant research done and that he will move to change to a new firm due to the comparisons and determinations that he made.

Councilman Wayner stated that he feels by entering into a Request for Proposal process is to seek an improvement and if there is an improvement then the opportunity must be seized. He stated four firms were interviewed with two finalists. He researched resources that were presented; cost effectiveness; obtained opinions of different departments including Barker Central School; and reviewed any over riding issues that may exist if the firms are changed. He stated this is not an indictment of the current firm as none is warranted but about the future. He stated that he endorses a change to a new firm for the future of Somerset.

On a motion of Councilman Engert, seconded by Councilman Wayner, the following resolution was

ADOPTED Ayes 3 Meyers, Wayner, Engert
Nays 1 Chaffee

WHEREAS the Town of Somerset finds it both necessary and appropriate to retain the services of a qualified law firm to represent the interests of the Town and to serve as Attorney for the Town; and

WHEREAS the Town Board conducted an open and exhaustive search to secure the most advantageous resource with respect to legal services by soliciting competition for such and by requiring responses to a formal Request for Proposal from any qualified law firm; and

WHEREAS the Town Board dutifully evaluated all submitted responses and carefully measured the qualifications of each respondent law firm; and

WHEREAS the Town Board studied and compared such criteria as professional rating, cost of service, relevant municipal law experience, complete and required response to the request for proposal, practical and long term condition of the law firm, responses to questions posed by each Board member coupled with the level of preparedness exhibited relative to the critical issues facing the Town as articulated by the Board during the interviews, follow-up with submitted references and other evaluation criteria as determined by individual Board officials;

NOW THEREFORE BE IT RESOLVED by the Town Board of the Town of Somerset that the law firm of Chelus, Herdzyk, Speyer and Monte, PC is hereby appointed as the attorney for the Town effective immediately.

BE IT FURTHER RESOLVED that upon such appointment, the Town Board requires the appointed firm to dutifully and faithfully perform such services as customarily performed or as otherwise stipulated by the Town Board be performed by the attorney for the Town pursuant to a retainer agreement that

must be approved and adopted by both parties. Such retainer agreement shall be negotiated immediately and executed without delay.

BE IT FURTHER RESOLVED that the current law firm of Andrews, Pusateri, Brandt, Roberson, & Brandt., PC shall be substituted as counsel for any and all litigated matters and to immediately coordinate and accomplish the relinquishing, in their entirety, all files and original documents to include either digital, "hard copy" or other form, including but not limited to, all correspondence (including e-mail) to and on the behalf of the town, all memorandums, pleadings, minutes, notes, discovery, motions, briefs, or other work products done on behalf of the Town or its subdivisions to the law firm of Chelus, Herdzyk, Speyer and Monte, PC. Such transfer shall be completed within fifteen (15) days. Compensation for remaining actions of transfer shall be made under the terms stipulated by the retainer agreement that was authorized to continue through April 30, 2009, unless performance of required action pursuant to this resolution is not satisfactory to the Town. In any event, costs associated with such transfer should not exceed the agreed upon monthly retainer amount of \$2,300.00 for April 2009 without prior approval by the Town Board.

Supervisor Meyers asked Councilman Wayner and Councilman Engert to work on a new retainer agreement with the new firm.

SUMMER RECREATION PROGRAM

Roger Klatt, Barker Central Superintendent of Schools, stated that he wished to share information and to thank the Town for their support that he feels has improved the lives of our residents. He stated most recently and specifically Becky Connolly for coordinating the electronic and paper recycling programs. He stated collaborative efforts have been made for offering services to the community including the Senior Swim Program, the opening of the school for walkers; the track being made available for use by the community; the adult education program; and the summer recreation program. He stated through collaboration, they will be enriching the summer recreation program by offering day long field trips. He extended invitations to the community to attend the Virtual Field Trip programs that were a gift to the school by the McAdam Family. He thanked the town and stated he wants the school to be there for the community.

PUBLIC CONCERN

Jon Hotaling, Planning Board Chairman, stated that the Planning Board had sent a letter to the Town Board requesting the retention of Attorney Thomas Brandt until the subdivision regulations were completed and adopted. He stated that the letter has not been addressed.

Supervisor Meyers stated it has been addressed and the Board chose not to retain Mr. Brandt and that the new law firm will get together with the Planning Board to get up to speed on what is going on.

DISSOLUTION OF VILLAGE OF BARKER

Patricia Fuller addressed the Board concerning the possible dissolution of the Village of Barker. She stated that she has provided Clerk Connolly with questions that she has regarding such dissolution and they are questions that have to be answered by the Town, in order to have a knowledgeable vote.

Supervisor Meyers stated if the Village Board takes action, the Town would like to be involved.

Patricia Fuller stated that such a study can take a couple of years and runs from \$20,000 to \$40,000.

Supervisor Meyers stated it is up to the Village residents to initiate this action.

WOOD BURNING COMPLAINT

Gene Cavanaugh addressed the Board regarding a cease and desist order that was issued to his neighbor. He stated that he is having a problem with the neighbor who put in an outdoor heating source and has complained to the Code Enforcement Officer regarding the matter. He stated that he received a letter that there was a "cease and desist order". He stated that the situation is a health hazard for his family and animals. He stated the individual is still burning and there has been no improvement as per the Outdoor Heating Device Law.

Councilman Engert asked if it was an outdoor heating device.

Code Enforcement Officer Hildebrant stated it is a wood burning stove in a greenhouse. Mr. Hildebrant explained the Code and that he has been working with the property owner and tenant to eliminate the nuisance.

Discussion ensued regarding the violation and compliance. Code Enforcement Officer Hildebrant stated that he will continue to monitor the situation and order it shut down if necessary.

LEGAL SERVICES

Robert Wendler stated that he did not hear a timeframe for the retention of legal services.

Councilman Engert stated legal services are an annual appointment and will be in the form of a retainer agreement.

SUPERVISOR'S ANNUAL REPORT

Councilman Chaffee stated that the year is over and he has not received the Supervisor's Annual Report yet and asked if it will be prepared soon.

Supervisor Meyers stated that he is bringing someone in to look at it.

Councilman Wayner asked if there is an expense for that person to come in and is there an estimate.

Supervisor Meyers stated there will be an expense and he will get that.

RESOLUTION 65-09

ABSTRACT OF CLAIMS

On a motion of Councilman Wayner, seconded by Councilman Chaffee, the following resolution was

ADOPTED Ayes 4 Meyers, Chaffee, Wayner, Engert
Nays 0

Resolved that the bills be paid in the following amounts:

General Fund	No.	116 through 160	\$	93,621.71
Highway Fund	No.	45 through 57	\$	34,047.96
Sewer Fund	No.	32 through 47	\$	6,640.33
Water Fund	No.	36 through 51	\$	50,474.32

On a motion of Councilman Wayner, seconded by Councilman Engert, the meeting adjourned at 9:10 PM subject to the Call of the Clerk. Carried unanimously.

Rebecca A. Connolly, MMC
Town Clerk