

REGULAR MEETING
APRIL 8, 2008

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 8th day of April 2008.

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

Attended by: Approximately 20 residents

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

RESOLUTION 67-08

APPROVAL OF MINUTES

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

ADOPTED Ayes 5 Meyers, Chaffee, Gow, Wayner, Engert
Nays 0

Resolved that the minutes of the March 10th, March 11th and March 24th, 2008 meetings be approved as submitted by the Clerk.

RESOLUTION 68-08

APPROVAL OF SUPERVISOR'S MONTHLY REPORT

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

ADOPTED Ayes 5 Meyers, Chaffee, Gow, Wayner, Engert
Nays 0

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

MONTHLY REPORTS RECEIVED AND FILED:

Dog Control Report for February and March
Police Report
Code Enforcement Officer Report

Attorney Report

Attorney Roberson reported on the following:

1. The passing of Andrew Auld who was the Environmental Engineer for the Town regarding the AES landfill issue
2. No communication has been received from Niagara County regarding the Workers Compensation claim

COMMUNICATIONS

Clerk Connolly reported that the Town of Yates will be holding a public hearing on April 10, 2008 at 7:00PM to consider adoption of a local law governing wind energy facilities.

NATIONAL MANAGEMENT INCIDENT SYSTEM (NIMS)

Clerk Connolly reported Niagara County will be holding a Public Officials Conference on April 16, 2008 from 10AM to 2PM for elected officials with topics covering NIMS mandates and compliance issues.

WEST SOMERSET ROAD SPEED REQUEST

Clerk Connolly read a letter from the NYS Dept. of Transportation to Niagara County Dept. of Public Works stating that a 45 MPH speed limit has been established for West Somerset Road from the Village of Barker line west to Hartland Road.

RESOLUTION 69-08

USE OF TOWN HALL BY BAR-LYN ORGANIZATION

Clerk Connolly stated that the Bar-Lyn Organization has requested to use the Town Hall for signup on April 19th and a Saturday in May.

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

ADOPTED Ayes 5 Meyers, Chaffee, Gow, Wayner, Engert
Nays 0

Resolved that the Bar-Lyn Organization is granted permission to use the Town Hall as requested.

Supervisor Meyers stated a Certificate of Appreciation has been received from NIACAP for the Town's continuous support of the community action program.

RESOLUTION 70-08

OUTDOOR HEATING DEVICES

Clerk Connolly reported that a proposed local law regulating outdoor heating devices was received from the Planning Board.

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

ADOPTED Ayes 5 Meyers, Chaffee, Gow, Wayner, Engert
Nays 0

Resolved that a public hearing be held on May 13, 2008 at 7:30PM to hear and consider proposed Local Law 1-2008 amending the Code of the Town of Somerset by adding a new chapter regulating outdoor heating devices.

Clerk Connolly announced that Niagara County will be hosting a reception on May 20, 2008 at 6:00PM at the Niagara County Court House to celebrate the completion of the book entitled Niagara County: A Bicentennial History.

Councilman Gow reported that she received an email from Environmental Advocates stating that New York State has joined the Great Lakes Compact to work with the Great Lake St. Lawrence River Basin to protect the water levels of the Great Lakes.

Councilman Wayner expressed his concern with the passing of Andrew Auld and his expertise on the landfill issue. Attorney Roberson reported that Attorney Shoemaker has asked for a recommendation to take the place of Mr. Auld.

LANDFILL

Councilman Gow reported that she had contacted David Morrell from the NYS Public Service Department as a follow-up to the March 25th letter. She said that Mr. Morrell will respond in writing and asked him the following:

1. The status of Area I landfill.
2. If there has been monitoring day to day – Mr. Morrell stated that he has been by AES a few times and that he is under the impression the DEC has been monitoring the site.
3. Mr. Morrell stated that AES is supposed to supply testing of the landfill from their engineers.
4. Change requests - Mr. Morrell has not received any change requests.

Councilman Gow stated that she will follow-up with DEC.

RESOLUTION 71-08

SELL ROTARY CUTTERS AT AUCTION

Superintendent Bigelow stated he would like to sell the old rotary cutters either by sealed bid or at auction in Palmyra in May. He stated that the Town of Hartland is taking items to auction and will take the cutters to Tietsworth in Palmyra.

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

ADOPTED Ayes 5 Meyers, Chaffee, Gow, Wayner, Engert
Nays 0

Resolved that Superintendent Bigelow is authorized to sell the rotary cutters (2) at auction in Palmyra.

Councilman Engert reported that Eunice Blood, a 96 year lifelong resident of Somerset, had passed away.

NIAGARA COUNTY COMPREHENSIVE PLAN

Councilman Gow asked the status of the Niagara County Comprehensive Plan.

Supervisor Meyers stated meetings have been held with engineers and that the Town of Somerset is working with Wilson and Newfane as lakefront communities. He stated that Roger Klatt attended the first meeting and he went to the March meeting and gave an overview of the meetings. He stated that James Hoffman attends as a member of the Niagara County Environmental Council.

James Hoffman stated that the meetings have been very worthwhile with them breaking up into groups for discussion and the value of rural preservation and open space like we have in Somerset an important issue.

RESOLUTION 72-08

ABSTRACT OF CLAIMS

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

ADOPTED Ayes 5 Meyers, Chaffee, Gow, Wayner, Engert
Nays 0

Resolved that the bills be paid in the following amounts:

General Fund	No. 149 through 188	\$ 43,196.40
Highway Fund	No. 37 through 54	\$ 15,017.42
Sewer Fund	No. 30 through 40	\$ 4,034.71
Water Fund	No. 42 through 54	\$ 26,763.80

PUBLIC INPUT

John Syracuse, Niagara County Legislator, stated that he was approached by a group of Somerset residents regarding the Host Community Agreement (HCA) with Empire State Wind Energy (ESWE) and was asked to come before the Board. He stated that he was under the impression that there was a spirit of cooperation to support this agreement to benefit the entire town and to pursue the agreement; however he wondered what happened at the last meeting with things falling apart. He stated that perhaps the Board may have acted too quickly. He stated there appears to be a lot at stake with money available for the landowners and the potential to offset property tax assessments. He asked the Board to reconsider the agreement by finding common ground and move forward for the residents.

Councilman Chaffee stated that there has been a lack of communication with ESWE. He stated that a wind developer that he was approached by stated they (the wind developer) would sign that HCA as they would have complete control of how much money the town would get just by the way the formula is with fees being added so there would be a small profit or no profit at all. He stated that was the same feedback the attorneys have given and that is basically why negotiations were discontinued.

Councilman Wayner stated what was voted on (at the March 24th meeting) was to suspend negotiations with ESWE regarding the Host Community Agreement and (the Board) did not vote not to have further negotiations with Empire State Wind Energy.

Supervisor Meyers stated that the town will have a set amount or 75% of the profit.

Extensive discussion was held regarding other wind developers; contact of landowners for signed leases; the procedure and timeframe that was followed regarding development of a Host Community Agreement;

Councilman Engert expressed his disappointment with the decision made to suspend negotiations regarding the Host Community Agreement. He stated that the Board voted last year to pursue an agreement and if they (ESWE) rejected what the proposed agreement was going to be then so be it.

Councilman Gow stated the agreement has been gone over and dissected. She stated that there were legal opinions that the agreement as written was not a good agreement for the Town.

Lee Hoffman questioned the cost of the two law firms to give an opinion and if it was needed.

Supervisor Meyers stated approximately \$9,000 and that the Board was suppose to fix the agreement and send it back to Empire.

Discussion ensued regarding the change of meeting date from March 25th to 24th due to the use of the Town Hall; failure of representatives from Empire to attend; and lack of communication from Empire.

Norm Jansen stated that \$9,000 is a pile of money and were any other Towns contacted that have signed the host agreement.

Councilman Wayner stated that he contacted the Town of Benton and that their Attorney advised against signing the agreement, but they signed it anyway.

Norm Jansen stated that he is upset with the Board for the vote to suspend negotiations.

Councilman Wayner stated that he poured over the agreement and could not authorize a signature on the agreement as it is.

Supervisor Meyers stated that an agreement was reached in October 2007 to reword the Article 78 clause and it was never put in the document and sent back to the Town.

Councilman Engert stated that the Bond, Schoeneck, & King wording of the Article 78 clause was voted upon at the March 11th meeting to include that in the document.

Kurt Lutz questioned why that didn't happen.

Supervisor Meyers stated that he expected at the March 24th meeting that the Board was going to make the document correct to submit to Empire Wind.

Councilman Wayner stated that was not the purpose of the meeting.

Ben Atwater stated that there are all these issues and questioned if the Board had talked to Mr. Pitman.

Discussion ensued regarding the lack of representatives of Empire State at the March 24th meeting.

Robert Degnan stated that Tom Golisano is a millionaire and that the Town has an opportunity to be number one on the list. He stated it needs to happen or there has to be a very good reason why it isn't happening or won't happen. He stated that the reason has not been given to the people.

James Hoffman stated the town is ready to accept proposals from anyone and that there are laws on the books. He stated the Planning Board has not been approached by a wind developer. He stated that AES has been studying wind in the town since 2001.

Supervisor Meyers stated that Empire State Wind Energy will follow the laws. He stated that the town is looking at 5 times the amount of money from the company versus any other developer. He stated that we need to make sure that we have exhausted all options before walking away from this deal.

Robin Jansen asked the Board which direction will increase the revenues to reduce the tax liability.

Discussion ensued regarding talking to Empire State Wind Energy; liability of the town; rewording the agreement;

Floyd Koerner stated the landowners have been holding back in signing leases in hopes that the Town would come to an agreement with Empire State Wind and requested the Board get together with ESWE. He asked that Councilman Wayner share the numbers that he has.

Supervisor Meyers stated the numbers are for a wind farm and are based on 20 turbines (2. megawatt per turbine) at the wind speed that is at the sewer plant.

Councilman Wayner reviewed the revenues that were supplied by Empire State Wind Energy stating based on the facts that were provided the annual debt service was \$6,695,373 not \$4,242,331. He stated that Councilman Engert and Supervisor Meyers followed up and found that they (ESWE) are financing 60% of the project which is \$36.6 million and based on that, their numbers are correct.

Discussion ensued regarding disclosure of numbers; proper projection of revenues and verification of facts.

Dan Hogan asked the Board to talk to ESWE again.

Robin Jansen asked if the revenue would be applied to the town or individuals throughout the town.

Supervisor Meyers stated it is complicated and cannot eliminate Town tax because of the PILOT and the ratio. He stated that he would like to rebate the taxes.

Discussion ensued regarding reopening discussions with Empire State Wind Energy.

RESOLUTION 73-08

MEETING WITH EMPIRE STATE WIND ENERGY

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

ADOPTED Ayes 4 Meyers, Chaffee, Wayner, Engert
Nays 1 Gow

Resolved the resolution of March 24th be set aside and reopen discussions with Empire State Wind Energy and due diligence in regards to the Host Community Agreement.

Discussion ensued setting a time line to have the Host Community Agreement signed; breach of contract; legal liability; alternative language; and the necessity of having the Attorney for ESWE present.

Councilman Gow stated she did not feel the resolution of March 24th needs to be set aside.

Discussion ensued regarding where and when the meeting will be held with ESWE. Supervisor Meyers stated he would contact Empire State Wind Energy for three dates.

Code Enforcement Officer Hildebrant reported he received a phone call from a company from Niagara on the Lake interested in buying property in Somerset to raise pigs in order to make prosciutto.

James Hoffman addressed the Board regarding the following:

1. Glad that the Board is following up on the landfill.
2. The amount of paperwork that is on file with the Town regarding the landfill.

Councilman Engert stated that he spoke to Mr. Reimann and he invited the Board out to see the landfill and take a tour. He stated that he will follow-up with Jon Reimann on dates for the tour.

Kurt Lutz asked who is monitoring the landfill.

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Supervisor Meyers stated that Councilman Gow and Councilman Chaffee are trying to get the answers.

Paul Burns stated he felt the meeting was encouraging for the many residents of the Town.

On a motion of Councilman Gow, 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