

REGULAR MEETING
AUGUST 14, 2007

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 August 2007.

Present: Richard J. Meyers ----- Supervisor
 Richard N. Ray Jr. ----- Councilman
 Dudley E. Chaffee ----- Councilman
 April C. Gow ----- Councilman
 Randall J. Wayner ----- Councilman
 Rebecca A. Connolly --- Clerk
 Kenneth J. Bigelow ---- Superintendent of Highways
 Melvin H. Denny ----- Supt. of Water/Sewer/Grounds
 Edwin J. Shoemaker --- Counsel
 Randy D. Roeseler ---- Engineer

Attended by: Approximately 16 people

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

RESOLUTION 96-07

APPROVAL OF MINUTES

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

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

Resolved that the minutes of the July 10th, 2007 meeting be approved as submitted by the Clerk.

RESOLUTION 97-07

APPROVAL OF SUPERVISOR'S MONTHLY REPORT

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

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

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

MONTHLY REPORTS RECEIVED AND FILED:

Code Enforcement Officer's report
Police Report

COMMUNICATIONS

WEST SOMERSET ROAD

Clerk Connolly stated that a petition was received on July 23, 2007 signed by 12 West Somerset Road residents requesting a 10 ton limit be placed on the road to alleviate the amount of truck traffic it is now carrying.

Clerk Connolly noted that West Somerset Road is a county road. Superintendent Bigelow stated that the county has never had a 10 ton limit on the road. Chief of Police, Ross Annable stated that concerns have also been expressed in the village regarding the amount of truck traffic going to the Mayer Brothers storage facility. He stated that local deliveries cannot be restricted.

ARTICLE X OF PUBLIC SERVICE LAW

Clerk Connolly read a letter from Assemblyman Steve Hawley stating his resounding opposition of the inclusion of wind farms in the Article X legislation.

RESIGNATIONS – William Wilson Jr. and James Trinder

Clerk Connolly read letters of resignation from William Wilson Jr. and James Trinder from the Planning Board due to time constraints.

QUAKER ROAD SPEED LIMIT

Clerk Connolly read a letter from the NYS Dept. of Transportation ordering Niagara County to place a 45 MPH speed limit on Quaker Road from the Village of Barker southerly for 4/10ths of a mile.

AES ASSESSMENT LAWSUIT

Clerk Connolly reported that she had been served with a lawsuit from AES regarding their 2007 assessed valuation.

TRAVEL BAN POLICY

Supervisor Meyers stated there is nothing this month regarding the travel ban.

WIND ENERGY

Attorney Shoemaker stated that he had been in contact with attorneys for 4 towns east of Rochester that had received a proposed host agreement from Empire State Wind Energy and the counsel for the Association of Towns regarding the legality of the agreement. He provided the Board with a memorandum stating that in his opinion:

1. The Empire Host Agreement is not confidential;
2. The Empire Host Agreement is subject to the SEQRA Environmental process;
and
3. The Empire Host Agreement, in limiting discretion of successor Boards, may be void and unenforceable.

He stated that if so directed by the Board he would forward the information to the Office of the State Comptroller for an opinion.

Councilman Wayner questioned the Attorney that if by adopting the proposed resolution it would not limit the future Boards but would be a tool to move forward.

Attorney Shoemaker stated that would be so.

Councilman Chaffee stated that Supervisor Meyers has stated at the previous meeting that Host Agreements had been signed by other towns and asked for the copies.

Supervisor Meyers stated that he had been in contact in with a town in Yates County with approximately 2700 people. He said that they had encountered similar problems; they do not think that it is an issue because it is not a full host agreement until the two appendices are added which take place after the SEQR process; and they are looking to sign the agreement on Thursday and will provide a copy of the agreement.

Extensive discussion ensued regarding the host agreement; Empire's way of doing business; pro forma financial statement requirement; the lack of other town's signing the host agreement; the lack of action from Empire State Wind Energy and the costs associated for Empire State Wind Energy to complete a pro forma statement.

Councilman Wayner stated Empire is the wind energy business and they should be able to provide something.

Councilman Chaffee asked if any town has signed the agreement as stated at previous meetings.

Supervisor Meyers stated he was under the impression that they had but this will be the first town to sign if everything goes well on Thursday.

Councilman Ray stated he wanted to move ahead with the resolution as it expresses the town's interest in continuing to move forward and it protects the town from problems that may happen.

Attorney Shoemaker stated that by signing the Host Community contract, as is, it takes the discretion away from future Boards and you cannot legally commit a future board to governmental action.

Councilman Gow stated that she has a problem with the language in the original host agreement that states if NY State comes in with a looser regulation than the town has, the town is not able to sue Empire State Wind Energy.

Supervisor Meyers stated that was one of the changes proposed and that Mr. Pitman did not have a problem with that. He stated that he thinks the resolution can be passed but thinks that Empire State Wind Energy will say that if you want to deal with Empire Wind, then this is how we do business. He stated there are plenty of people interested.

Councilman Gow stated they came to the town on the premise that they would work with the town for the betterment of the town.

Supervisor Meyers stated he doesn't have a problem with the resolution, he has a problem with the "what if's".

Councilman Ray stated it sounds like everyone is still looking at the Host Community contract as no one has signed it yet.

RESOLUTION 98-07

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

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

WHEREAS, Empire State Wind Energy, LLC, (hereinafter referred to as "Empire") has proposed an Agreement with the Town of Somerset, (hereinafter referred to as "the Town") to facilitate the construction and operation of a wind energy facility in the Town; and

WHEREAS, the Empire proposal would grant to the Town an option for clear, renewable energy and provide a revenue stream from profits generated from sale of wind generated electricity; and

WHEREAS, in anticipation of a formal Host Community Agreement the Town is adopting this Resolution to indicate its intention to proceed with the project subject to receipt of pro forma financial information detailing the scope of the project as well as financial details relating to distribution of revenues generated by the proposal.

NOW, THEREFORE, it is RESOLVED

1. That the Town will enter into negotiations with Empire to specify rights, obligations and interests of the parties to an agreement in the event a project is constructed in the Town;
2. That upon receipt of a pro forma financial statement and feasibility report prepared by Empire, the Town will determine in the best interests of its residents, whether to proceed with the project;
3. That all terms and conditions in the proposed agreement will be subject to approval by the Town Board of the Town of Somerset;
4. That the agreement as well as the project will be subject to compliance with the Environmental Conservation Law of the State of New York;
5. That the Town will facilitate in all ways possible, the successful completion of the project subject to all local, state and federal requirements;
6. That host community payments will be subject to negotiation between the parties; and
7. It is understood that Empire will offer to sell the project to the Town at the termination of the host agreement on terms and conditions acceptable to Empire and the Town.

UPDATES ON LAWSUITS

Attorney Shoemaker gave an update on the pending lawsuits:

1. PILOT – Judge Klock has reconvened the fraud hearing on Aug. 15th with the County. The Town and School have rested their cases, the 60 days are up and that Judge Klock has not filed a decision.
2. ASSESSMENT- The 2007 lawsuit has been filed by AES over their assessment and the cases are still on hold pending the PILOT decision.
3. LANDFILL – On July 16th, the AES Attorneys filed with the Siting Board in Albany all documents with a letter stating settlement was accepted, which included a letter from Jon Reimann to Secretary Billing stating AES accepts the amended certificate. On July 17th, a letter signed by Jon Reimann was filed with the Siting Board that included a package with the monitoring and construction program for the revised landfill 2. He stated 6 entities were served with the package including the Town Clerk. On August 1st, he received a call from Albany stating that within the documents was a request for the modification of the liner system that deals with the permeability of the soil. Attorney Shoemaker stated that he immediately requested an extension to the comment period. He noted that PSC, DEC and the Siting Board did not catch the change. The extension was granted by Judge Epstein until August 31st and that Mr. Alesi, the Attorney for AES, filed a letter of apology as they had not been made aware of the change. He stated that the DEC Attorneys are investigating and that he will be meeting with DEC Region 9.

Supervisor Meyers stated that he had been in contact with Region 9 DEC and they told him that the moisture content is not the issue but the permeability is the problem.

Councilman Wayner questioned who makes the decision and is there anything the town can do.

Attorney Shoemaker stated that DEC will make a recommendation to the Siting Board and that a procedure for any activity at the landfill needs to be set up.

RESOLUTION 99-07

LOW COST ENERGY CONSORTIUM

Supervisor Meyers stated that Erie and Niagara County recently formed a consortium to purchase energy in bulk to obtain lower prices and has received a letter for the Niagara County Dept. of Public Works stating that it has been expanded it to include the Town of Somerset. He stated that Fluent Energy would conduct a cost projection of the savings after reviewing the utility bills.

Clerk Connolly noted that this study was conducted by Fluent Energy through the program with Niagara County approximately 2 years ago and the cost savings was minimal due to the billing method from the County that was used at the time.

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

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

Resolved that Niagara County Dept. of Public Works and Fluent Energy are authorized to review the utility bills and present a savings projection report.

RESOLUTION 100-07

ENERGY AUDIT

Randy Roeseler stated that he would like authorization to have an Energy Engineer to do a walk through the buildings and give a range of savings that could be achieved, along with possible rebate programs. He stated it would cost about \$500 to conduct the cost analysis with payback of projection of savings on all the buildings.

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

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

Resolved that Wendel-Duchscherer is authorized to proceed with an energy audit of the town buildings and provide a written report for a cost not to exceed \$500.00.

PROMOTE SOMERSET

Councilman Wayner updated the Board on the "Promote Somerset" committee. He stated the committee has met twice and have developed a template for a brochure that would include:

1. Civic Organizations
2. School information and where the school rates among other schools
3. 10 top reasons to locate in Somerset
4. Local recreation and attractions
5. Evaluation of taxes as compared to other towns
6. BCS and the Town website

He stated the committee will be meeting within a week to meet with a graphic designer to prepare the information for publishing.

RESOLUTION 101-07

SENIOR CITIZENS BUS TRIPS

Clerk Connolly stated that she had been contacted regarding the policy regarding bus trips for the Senior Citizens and if the trips should be canceled if there is not enough participation from Somerset residents or opened the trip up to non-residents.

Councilwoman Gow stated that when the contract was drawn up years ago it was the intent that the Senior Citizens would use the money as they wish.

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

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

Resolved that the expenditures for the bus trips of the Barker Senior Citizens be left to the discretion of their members and elected officers.

RESOLUTION 102-07

SNOW AND ICE REMOVAL CONTRACT WITH NEW YORK STATE

Clerk Connolly stated that the New York Department of Transportation has made an adjustment to the snow and ice removal contract and have increased the amount by \$20,302.02. She stated that a resolution acknowledging the increase is needed by the State Comptroller's office.

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

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

Resolved that the Town of Somerset acknowledges the adjustment increase in the amount of \$20,302.02 for the snow and ice agreement with the State of New York for 2006-2007.

RESOLUTION 103-07

PLANNING BOARD APPOINTMENT

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

ADOPTED Ayes 5 Meyers, Ray, Chaffee, Gow, Wayner

Resolved that Gary Alt be appointed as a Planning Board member to fill an unexpired term with the term ending December 31, 2012.

Discussion was held regarding the posting of the vacant positions on the Planning Board. The Board asked Clerk Connolly to advertise the positions on the website, in the newspaper and post the notice around town.

Councilman Chaffee questioned Supervisor Meyers personal quarterly newsletter that stated refuse costs are second to the Attorney fees. He stated there has to be other expenses that are higher.

Supervisor Meyers stated that he has a report that goes through all that if he would like to see it. He stated personnel costs are probably higher but he does not have the numbers spent on salaries available to him. He stated that he will find out how much are spent on salaries and offered to email the report.

Councilman Wayner stated that you have to be careful about expenditures when you are looking at the equation you have to look at what you get for what you pay.

Superintendent Denny stated that he proposed the local law for the pipe not the Zoning Officer as stated in Supervisor Meyers newsletter.

Supervisor Meyers stated that he would make that correction.

PUBLIC FORUM

REFUSE/RECYCLING COSTS

Becky Bigelow questioned if we did not pay for recycling too.

Discussion was held regarding the costs of refuse/recycling and the importance of recycling more. Supervisor Meyers stated that the town pays less per ton to have recycled materials disposed of and would like to motivate people to recycle.

Councilman Ray stated that when the Refuse Consortium was formed, the consortium negotiated contracts with several vendors to provide the service for the whole area. He stated that we obtain a better price with more towns included.

James Hoffman expressed his concern regarding the AES landfill on:

1. That the Town might be back to square one with the landfill situation at AES and that it is up to AES to prove, through an independent lab, the permeability of the soil.
2. Come up with a monitoring program that will state who the responsible party is with reports stating when someone visited and tested the site to be issued and filed with the town.

Supervisor Meyers stated that DEC will be doing the testing of the soil.

Attorney Shoemaker stated that the monitoring program is part of the agreement.

RESOLUTION 104-07

AUDIT OF CLAIMS

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

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

Resolved that the bills be paid in the following amounts:

General Fund	No. 317 through No. 360	\$ 52,642.68
Highway Fund	No. 101 through No. 116	42,941.34
Sewer Fund	No. 72 through No. 80	3,716.21
Water Fund	No. 79 through No. 89	36,603.11

There being no further business, on a motion of Councilman Ray, seconded by Councilman Wayner, the meeting adjourned at 9:00PM subject to the Call of the Clerk. Carried unanimously.

Rebecca A. Connolly, MMC
Town Clerk