

REGULAR MEETING
DECEMBER 11, 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 11th day of December 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
 Robert Roberson ----- Counsel
 Randy D. Roeseler ---- Engineer

Attended by: Approximately 20 people and 10 BCS students

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

RESOLUTION 135-07

APPROVAL OF MINUTES

Councilman Chaffee asked for clarification where the previous minutes stated “because legal bills were dropped we would have extra money for expenses.” He stated that we have been sued once since the PILOT went into force for last year’s assessment. Supervisor Meyers stated not since the PILOT went into force.

Attorney Roberson stated that AES commenced action in September 2007 against the Town for the 2007 assessment.

Discussion ensued regarding the pending litigation and the expense involved.

Supervisor Meyers stated that the landfill litigation is close to being finalized.

Attorney Roberson stated that was not quite accurate. Mr. Roberson stated that Mr. Shoemaker had issued a memorandum after a long phone conference with DEC; AES and all parties involved in the landfill litigation and at this time is not complete. He stated DEC and AES representatives have serious questions over compliance as stipulated in the settlement. He stated that the lawsuit was to be settled by stipulation and is not resolved at this time.

Supervisor Meyers asked if this was not the job of DEC to handle.

Attorney Roberson stated it is unsettled at this point and it is not just a DEC issue.

Supervisor Meyers stated that he will get clarification in the next few days from DEC.

Councilman Chaffee stated that the town is being sued at this time.

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 minutes of the previous meeting be approved as submitted by the Clerk.

RESOLUTION 136-07

APPROVAL OF SUPERVISOR'S MONTHLY REPORT

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 Supervisor's Monthly report be accepted as submitted.

MONTHLY REPORTS RECEIVED AND FILED:

Code Enforcement Officer's report

PRESENTATION TO REBECCA CONNOLLY

Randall Hildebrant, Chief of the Barker Fire Department, stated that over the past few years Becky has helped the Fire Department to obtain money through the Federal Assistance to Fire Fighters Grant program obtaining almost one quarter of a millions dollars. He stated with that money the Fire Department has been able to purchase turnout gear for all the firefighters; all new hose; a thermal imaging camera; and SCBA air packs with all new bottles. He stated this has saved the fire department a ton of money by enabling them to meet the NFPA and OSHA requirements. He stated that Becky has written these grants on her own time at no cost to the fire department, which is unheard of for a grant writer. He presented a certificate of appreciation to Rebecca A. Connolly.

Dog Control Officer's report for September, October and November
Police Report

Councilman Wayner thanked Chief Annable for the good job.

Supervisor Meyers stated the town appreciates the excellent job the police department is doing.

ATTORNEY REPORT

Attorney Roberson reported:

Landfill report given previously

Wind Energy – Mr. Shoemaker received information regarding the wind energy agreement and will prepare a memorandum in the next several days.

PILOT – A judgment was filed November 15th and the notice of appeal was filed on November 19th. Mr. Roberson stated that he is preparing the record on appeal.

COMMUNICATIONS

RESOLUTION 137-07

WEST SOMERSET ROAD SPEED LIMIT REQUEST

Clerk Connolly stated that a petition had been received from residents on West Somerset Road between Quaker and Hartland Roads requesting the speed limit be reduced as follows:

1. to 30 MPH on the south side of the road to coincide with the north side which is the village line
2. to 45 MPH west to the Hartland Road

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 petition be referred to Niagara County for a traffic study.

RESOLUTION 138-07

VILLAGE OF BARKER CENTENNIAL CELEBRATION

Clerk Connolly read a letter from Mayor JoAnn Greenwald giving an overview of the centennial celebration for the Village of Barker to be conducted on January 4th and 5th, 2008. Mayor Greenwald requested a donation of \$2,000 to help offset expenses of the celebration.

Discussion ensued regarding the donation request and budgeted items.

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

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

Resolved that \$1,000 be encumbered for 2007 for the Village of Barker celebration.

NIAGARA COUNTY BICENTENNIAL COMMITTEE

Clerk Connolly read a letter from the Niagara County Bicentennial Committee requesting that the town purchase banners for \$200 each.

CABLE TV

Clerk Connolly read a letter from Time Warner Cable regarding a rate increase.

ELECTRONIC CODE BOOK

Clerk Connolly presented information to the Board regarding electronic access of the Code Book for the Town of Somerset on the website.

RESOLUTION 139-07

JANUARY JOG 5K ROAD RACE

Clerk Connolly read a letter from Sara Budde requesting approval for the second year of the "January Jog" 5K Road Race and Fun Run in Barker.

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 the Town grants permission for Sara Budde to conduct the "January Jog" on January 12, 2008.

RESIGNATION OF ALFRED VOGT

Clerk Connolly read a letter from Alfred Vogt resigning from the Planning Board after serving 27 years.

The Board asked Clerk Connolly to send a letter of thanks.

APPEAL TO FOIL (Freedom of Information Law) – James Hoffman

Clerk Connolly stated that an appeal was received on November 29, 2007 from James Hoffman regarding a request he made dated November 9, 2007 for the letter sent by Supervisor Meyers to the State Comptroller regarding an audit of the attorney fees and the response of the State Comptroller to said letter. Clerk Connolly stated the letter was denied as Supervisor Meyers had not filed the letter with the Clerk and that the letter was written from home.

Mr. Hoffman's letter of appeal stated that he had been in contact with Robert Freeman, Executive Director for the Committee on Open Government and that Mr. Meyers was acting in the capacity of Supervisor and cannot deny access to the letter.

Clerk Connolly reported since the appeal had been filed, she had received the letter from Supervisor Meyers dated October 16, 2007 to State Comptroller, Thomas DiNapoli and forwarded it to Mr. Hoffman. She stated the response of the State Comptroller has not been received by her office.

Supervisor Meyers explained the record was denied because it is not maintained by this agency.

James Hoffman stated that at this point only half of his request has been met and asked what is going on with the audit.

Supervisor Meyers stated the auditors came, made copies and took them back to their office. He stated he gave them two weeks to respond. He called them and they said they are looking at it. He is awaiting a final report.

Mr. Hoffman stated it looks like this Town is moving towards secrecy as he has been denied access before regarding the Host Community Agreement.

Supervisor Meyers stated that had nothing to do with the Town as the (confidentiality) restriction was not put on the document (Host Community Agreement) by the Town and in fact the document was returned.

APPEAL TO FOIL (Freedom of Information Law) – Mark McNamara – Hiscock Barclay

Clerk Connolly reported that she had received an appeal dated November 19, 2007 from Mr. Mark McNamara of Hiscock Barclay regarding copies of all documents and records in possession, custody or control of Barker Central School pertaining to all legal expenses.

Clerk Connolly stated that she answered the appeal on November 30, 2007 stating the Town is not the repository for any District records.

NIAGARA MILITARY AFFAIRS COUNCIL REQUEST FOR FUNDS

Supervisor Meyers stated that this request was not included in the budget.

Councilman Gow stated that the request should be visited in a year they (the base) are being challenged (with closure). Councilman Wayner and Councilman Chaffee voiced their agreement.

RESOLUTION 140-07

WIND ENERGY

Supervisor Meyers stated the Board members all have a copy of the Host Agreement that he received that afternoon and stated most of the changes have been made that were requested. He stated they are going to check on the tax implications that fiscal year has and changes had been made in the revenue part of the agreement so that a set amount will be able to be budgeted. He stated that the Article 78 clause is still in the agreement and the Board had asked to have that removed.

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 Host Community Agreement with Empire State Wind Energy be tabled until the next meeting pending final review by the Attorney and the Board.

RESOLUTION 141-07

GRINDER PUMP FOR SEWER PLANT

Superintendent Denny stated that they had put in a grinder pump this week and asked permission to purchase a new grinder pump to have in stock. He stated each one that is installed is paid for by the user. He presented a quote from Fluid Kinetics Inc., P.O. Box 655, Orchard Park, NY 14127 for \$4,842.00. He stated that the prices had been checked on the internet and all prices led back to Fluid Kinetics as the distributor.

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 a grinder pump be purchased from Fluid Kinetics Inc., P.O. Box 655, Orchard Park, NY 14127 for \$4,842.00.

RESOLUTION 142-07

ANNUAL AUDIT OF DEPARTMENTS

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 Audit Committee perform the year end audits of the Town Clerk, Code Enforcement Officer, Supervisor, Justice and Tax Collector.

RESOLUTION 143-07

BUDGET AMENDMENT

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 as provided in Section 107 and 115 of the Town Law, the Supervisor of the Town of Somerset is hereby authorized to expend from the unexpended balances or surplus revenues such sums as may be necessary to cover amounts by which the actual expenses incurred in 2007 in any amount exceeded the amount budgeted.

RESOLUTION 144-07

AUTHORIZE PRE-PAYMENT OF BILLS INCURRED FOR 2007

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

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

Resolved that all bills incurred for 2007 are authorized to be pre-paid.

RESOLUTION 145-07

ENCUMBRANCES

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

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

Resolved the funds for invoices of goods not received for 2007 are encumbered.

RESOLUTION 146-07

APPROVAL OF KENNEL CONTRACT

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 the contract with Fort Hyde Kennels for kennel services for 2008 at \$4,200.00 per year is approved.

RESOLUTION 147-07

SALARIES FOR 2007

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

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

Resolved that salaries as budgeted are approved effective January 1, 2008.

RESOLUTION 148-07

SECOND COAL PLANT AT AES

Supervisor Meyers stated that the Huntley facility in Tonawanda is coming toward the end of its allowable time to get its act together before it gets approval from the State.

Councilman Wayner stated they have some financial hurdles to cross.

Supervisor Meyers stated that Senator Maziarz and Assemblyman Hawley would like Governor Spitzer to know that there are other options and asked the Board to consider adopting a resolution.

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

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

WHEREAS, AES Somerset LLC, 7725 Lake Road, Barker, NY 14012, which owns and operates an existing power plant (hereinafter referred to as Plant 1) in the Town of Somerset; and

WHEREAS, that an application was filed in connection with a bid by AES Somerset LLC in response to a request for proposal (RFP) from the New York State Power Authority (NYPA) to build a 680 megawatt integrated gasification combined cycle (IGCC) plant (hereinafter referred to as Plant 2) in the Town of Somerset, Niagara County, New York; and

WHEREAS, the application indicates that Plant 1 and Plant 2 will, combined, employ 245-265 full time employees and will generate between 1000 and 1500 construction workers annually during the 3-4 year construction period of Plant 2 at an estimated projected cost of \$1 billion to \$1.2 billion;

NOW, THEREFORE, BE IT RESOLVED the Town Board of the Town of Somerset hereby resolves to support AES Somerset LLC in its efforts to obtain the NYPA grant for a 680 megawatt IGCC plant in the Town of Somerset, Niagara County, New York; and be it further

RESOLVED, that the Town Board will cooperate to secure on behalf of its citizens a fair and responsible financial package to assist its residents in dealing with the fiscal and environmental impacts resulting from Plant 2; and be it further

RESOLVED, that the Town Board together with its Planning Board will take all necessary steps to assure Town residents that any new construction will meet all current and applicable environmental and other regulatory standards relating to such construction.

RESOLUTION 149-07

AUTHORIZATION TO INVESTIGATE A SOUND SYSTEM FOR BOARD ROOM

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 Superintendent Denny and Clerk Connolly investigate the feasibility of purchasing a sound system for the board room.

REQUEST TO ADDRESS THE BOARD

Jon Dewart asked for the opportunity to address the Board in regards to a personnel matter.

Supervisor Meyers stated after the public session the Board would move to Executive Session.

PUBLIC INPUT

James Hoffman addressed the Board regarding the following:

1. LWRP does endorse the second coal plant and wind energy.
2. He asked if the proposed wind energy host agreement addressed the revenue stream in case of malfunction.
3. Looked at letter from Kevin Pierce of AES received last month and welcomed Jon Reimann to the meeting and asked if he was willing to meet with groups.

Jon Reimann stated that he has attended meetings and will attend as his schedule allows. He stated they are planning a very open process and that the station is covered under Article 8 of the Public Service Law and they will be following those guidelines. He stated that they will be holding an open house in the near future and encourages everyone to utilize the website at www.aesbuildsniagara.com.

James Hoffman asked what kind of new revenue will be realized from the unloading project.

Jon Reimann stated that they intend to work with the Town of Somerset, Niagara County and Barker schools on a fair and equitable agreement and reiterated that there will be new net revenue and that negotiations will begin in 2008 with the taxing entities.

Marcia Ray stated that she has been a lifelong resident of Somerset and it saddens her that the face of this town is being turned around and being run by a corporation.

Darlene Lutz stated I'm sorry that you don't see AES as an addition to this Town.

RECOGNITION OF RICHARD RAY JR.

Councilman Chaffee presented a plaque to Richard Ray Jr. in recognition of 20 years of dedicated and faithful service to the Town of Somerset.

RESOLUTION 150-07

AUDIT OF CLAIMS

Supervisor stated that he had issues with certain items on the Attorney's bill and asked for further breakdown specifically for claims 529 and 551.

Discussion ensued regarding the items in question.

Supervisor Meyers stated that he would resolve the bills the next day.

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 bills be paid in the following amounts with the exception of Voucher No. 529 and 551 in the General Fund for further review with those vouchers to be paid no later than December 18, 2007:

General Fund	No. 496 through No. 554	\$ 69,556.74
Highway Fund	No. 177 through No. 191	10,862.33
Sewer Fund	No. 120 through No. 133	4,454.81
Water Fund	No. 108 through No. 118	3,314.97

RESOLUTION 151-07

EXECUTIVE SESSION

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 the Town Board enter into Executive Session at 8:35PM to discuss a particular personnel matter.

RESOLUTION 152-07

RETURN TO REGULAR SESSION

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 the Town Board return to regular session at 9:39PM.

RESOLUTION 153-07

LEAVE OF ABSENCE REQUEST

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 the leave of absence request of Jonathan Dewart is denied.

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There being no further business, on a motion of Councilman Gow, seconded by Councilman Chaffee, the meeting adjourned at 9:41PM subject to the Call of the Clerk. Carried unanimously.

Rebecca A. Connolly, MMC
Town Clerk