

REGULAR MEETING
DECEMBER 1, 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 1st day of December 2009.

Present:	Richard J. Meyers -----	Supervisor
	Dudley E. Chaffee -----	Councilman
	April C. Gow -----	Councilman
	Randall J. Wayner -----	Councilman
	Daniel E. Engert-----	Councilman
	Rebecca A. Connolly --	Clerk
	Kenneth J. Bigelow-----	Supt. of Highways
	Melvin H. Denny -----	Supt. Water/Sewer/Grounds
	Arthur Herdzik -----	Counsel

Attended by: Approximately 14 residents and 12 Barker Central School students

Notice of meeting date change sent to the Lockport Union-Sun & Journal on November 24, 2009 with same notice being posted at the Town Hall on the same date.

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

RESOLUTION 141-09

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 November 4th, 2009 meeting be approved as submitted.

RESOLUTION 142-09

APPROVAL OF SUPERVISOR'S MONTHLY REPORT

On a motion of Councilman Engert, seconded by Councilman Wayner, 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:

Code Enforcement Officer's reports for October and November
Police Reports for October and November
Dog Control Officer's report for October

ATTORNEY REPORT

Attorney Herdzik reported the following:

1. Submitted reports from the Prosecutor and Planning Board Attorney.
2. As he will be acting as the Prosecutor while Attorney Degnan is on leave, he would like to meet with the Dog Control Officer.

COMMUNICATIONS

FEDERAL FLOOD MAPS

Clerk Connolly read a communication from the Federal Emergency Management Agency (FEMA) regarding the Town's protest of the Preliminary Flood Insurance Study and Digital Flood Insurance Rate Map released September 30, 2009. The letter stated that FEMA concurred with all points brought to their attention and have revised the maps to reflect the changes.

LOWER LAKE ROAD BRIDGE OVER FISH CREEK

Clerk Connolly read a letter from the NYS Department of Transportation stating that they have completed the review of the Final Design Report and concurs with the classification of the subject project as a NEPA Categorical Exclusion and SEQRA Type II action.

RESOLUTION 143-09

TRAILER MOUNTED SEWER CLEANER

Superintendent Denny provided the Board with a letter from Cyncon stating that there is a problem with the delivery of the sewer cleaner that was awarded at the August meeting. He stated that the equipment has not even started production nor is it scheduled. Supt. Denny recommended the Board award the bid to the next lowest bidder, Wm. H. Clark Municipal Equipment Inc., 589 Third Avenue Ext., Rensselaer, NY 12144 for a new John Bean Model SJ7040D Trailer Mounted Sewer Jetter for \$36,918.00 as proposed with delivery to be on or about January 27, 2010.

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 the purchase order for the trailer mounted sewer cleaner from Cyncon is cancelled due to the failure of the company to deliver the equipment and that a new John Bean Model SJ7040D Trailer Mounted Sewer Jetter be purchased from Wm. H. Clark Municipal Equipment Inc., 589 Third Avenue Ext., Rensselaer, NY 12144 for \$36,918.00 as proposed.

RESOLUTION 144-09

SETTLEMENT OF TAX ASSESSMENT MATTERS CONCERNING AES

Clerk Connolly read the proposed resolution.

Attorney Herdzik reported that this has been an extremely complex negotiation and that he recommends the Town Assessor(s) be authorized to execute the agreement upon the advice of the County Attorney.

TOWN BOARD MEETING
DECEMBER 1, 2009 PAGE 3

Discussion ensued regarding the need to include the Assessor authorization and the need for an enabling resolution.

Councilman Chaffee asked if the other Attorneys involved in this matter had any comments.

Councilman Engert stated all three taxing jurisdictions are adopting the resolution.

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

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

WHEREAS, commencing in tax year 2004 and through tax years 2006, AES Somerset, LLC, AES Eastern Energy, L.P., AES NY, L.L.C., and AES Corporation (collectively, AES) challenged its tax assessment by filing Real Property Tax Law Article 7 proceedings; such proceedings sought both a reduction in the tax assessment for such facilities as well as a refund of those real property taxes special district assessments which were paid pursuant to such assessments, and

WHEREAS, the Niagara County Industrial Development Agency (NCIDA) by its final resolution dated October 27, 2006, issued following a hearing, determined that tax certainty provided through a PILOT agreement and lease/leaseback agreements for the Somerset Generating Station was in the best interests of AES, Niagara County, Barker Central School District and the Town of Somerset, and

WHEREAS, the Niagara County Industrial Development Agency (NCIDA) granting tax abatement relief in the form of a payment in lieu of taxes (PILOT) agreement and lease/leaseback agreements to AES with respect to the electrical generating station in Somerset, New York (Somerset Generating Station), and

WHEREAS, the Niagara County Industrial Development Agency (NCIDA), as a condition for granting such PILOT required that all of the aforementioned Article 7 proceedings be discontinued in all respects, and

WHEREAS, litigation was commenced challenging the PILOT granted to AES by the Niagara County Industrial Development Agency, such case is captioned Barker Central School District. v. Niagara County Industrial. Development Agency, and

WHEREAS, AES made all required PILOT payments in tax years 2007, 2008 and 2009, and

WHEREAS, the protracted litigation of these tax matters has resulted in financial uncertainty for AES, Niagara County, Barker Central School District and the Town of Somerset,

TOWN BOARD MEETING
DECEMBER 1, 2009 PAGE 4

WHEREAS, the protracted litigation of these tax matters results in significant legal expenses to Niagara County, Barker Central School District and the Town of Somerset, and

WHEREAS, to remove such financial uncertainty, AES, Niagara County, Barker Central School District and the Town of Somerset have agreed upon a settlement of all tax related matters for Tax years 2004 through and including tax year 2015, and

WHEREAS, as a condition of such settlement, Niagara County, Barker Central School District and the Town of Somerset have agreed to support the application of AES for a PILOT agreement from the Niagara County Industrial Development Agency (NCIDA), for the electrical generating station in Somerset, New York for tax years 2011 through 2015, and

WHEREAS, as a condition of such settlement, AES has agreed to discontinue all litigation and challenges concerning those taxes and PILOT amounts which were paid for tax years 2004 through and including 2010, and

WHEREAS, as a condition of such settlement, AES, Niagara County, Barker Central School District and the Town of Somerset have agreed that the case captioned Barker Cent. School Dist. v. Niagara County Industrial Development Agency shall be discontinued, now, therefore, be it

RESOLVED, that the Somerset Town Board does hereby authorize the Attorney for the Town of Somerset to complete all negotiations, agreements and stipulations so as to cause the case captioned Barker Central School District v. Niagara County Industrial Development Agency, to be discontinued; and be it further

RESOLVED, that the Somerset Town Board does hereby authorize the Attorney for the Town of Somerset and the Supervisor of the Town of Somerset and the Assessor for the Town of Somerset to complete all negotiations, agreements and stipulations so as to cause the application of AES for a PILOT agreement from the Niagara County Industrial Development Agency (NCIDA), for the electrical generating station in Somerset, New York for tax years 2011 through 2015 to be obtained, and be it further

RESOLVED, that the Somerset Town Board does hereby authorize the Attorney for the Town of Somerset to complete all negotiations, agreements and stipulations so as to cause all litigation and challenges concerning those taxes and PILOT amounts which were paid for tax years 2004 through and including 2010 to be discontinued and dismissed, and be it further

TOWN BOARD MEETING
DECEMBER 1, 2009 PAGE 5

RESOLVED, that the Somerset Town Board does hereby authorize the Supervisor of the Town of Somerset and the Town Assessor(s) to execute all agreements and stipulations so as to cause the case captioned Barker Cent. School District v. Niagara County Industrial Development Agency, to be discontinued, and be it further

RESOLVED, that that the Somerset Town Board does hereby authorize the Supervisor of the Town of Somerset and the Town Assessor(s) to execute all agreements and stipulations so as to cause all litigation and challenges concerning those taxes and PILOT amounts which were paid for tax years 2004 through and including 2010 to be discontinued and dismissed.

Councilman Chaffee asked if this is setting up the PILOT.

Supervisor Meyers stated the resolution give the Attorneys the authority to start executing the PILOT.

Councilman Engert stated there are two documents than need to be resolved:

1. The stipulation order by Judge Klock regarding the Article 7 proceedings; and
2. An endorsement from the taxing entities so the Niagara County Industrial Development Agency (NCIDA) can prepare a PILOT agreement to the satisfaction of the entities.

Councilman Wayner stated that this sends the signal for all parties to move forward to get an agreement.

Councilman Gow asked if the NCIDA will be getting a fee for this PILOT.

Supervisor Meyers stated that the PILOT fee was paid by AES and the second PILOT fee has been waived by NCIDA.

Councilman Engert stated that he sent a summary document to the Town Board the afternoon of the Town Board meeting giving an overview of the new PILOT Highlights as follows:

The New PILOT:

1. Resolves all outstanding Article 7 tax challenges for 2004 - 2009 and even then forward to 2015 (under agreement).
2. Ends all associated litigation costs that are conservatively estimated to be \$450,000 - \$600,000 for each party currently.
3. Eliminates all risk and potential for back payments and back billings that could be significant, especially given the number of years in litigation currently.
4. Provides tax payment and tax revenue certainty for a prescribed period of time that allows for efficient and effective budget preparations.
5. Creates established distribution amounts that protect the town (and other tax jurisdictions) from being squeezed out on the basis of tax rate fluctuations. Distribution amounts are:

AES - Pays exactly \$15.8 million annually
BCSD - Receives approximately \$9.3 million annually
Niagara County - Receives approximately \$4.9 million annually
Somerset - Receives approximately \$1.4 million annually.

6. The reduced and more manageable time frame for the agreement of five (5) years provides for more opportunity to evaluate merits and thus provides increased incentive for AES Somerset to remain under PILOT agreement. Language defines the consequences of default to include immediate resort to assessment value as determined by the Town Assessor.
7. All parties (AES Somerset, Niagara County, Town of Somerset, Barker Central School and NC IDA) were equally involved in these negotiations and each were able to recognize and appreciate the respective issues of one another and all have come away in unison to recognize the merits of this agreement and endorse its' implementation.
8. Lastly, creates the culture of cooperation and collaboration that can be built upon for future agreements.

Discussion ensued regarding the process by which the agreement was arrived at with Supervisor Meyers offering a 5 year PILOT plan and the cooperation of the Superintendent of Schools and the Business Manager.

Councilman Engert stated this is a victory for all jurisdictions.

Councilman Wayner stated it is not done yet but we will be diligent in completing the process.

Supervisor Meyers stated that it was a team effort between the School, County and Town and that this is a turning point for our Town to start moving in a different direction.

RESOLUTION 145-09

PURCHASE OF WATER METERS

Superintendent Denny requested he be authorized to purchase additional water meters as per the procurement presented:

<u>Name and Address of Vendor</u>	<u>Price per Meter</u>
Lock City Supply Inc. 650 West Avenue, Lockport, NY 14094	\$ 164.88
Blair Supply Corp. 785 Beahan Road, Rochester NY 14624	\$ 173.00
Schmidt's Wholesale Inc. P.O. Box 5100, Monticello, NY 12701	\$ 176.75

Superintendent Denny stated the purchase of Badger Meters is territorial and recommended to purchase the meters from Lock City Supply Inc. at \$164.88 each with some of the unexpended balances that he has left in the Water and Sewer Fund Budget.

TOWN BOARD MEETING
DECEMBER 1, 2009 PAGE 7

Superintendent Denny stated that 353 meters have been changed to date with 611 meters remaining.

Discussion ensued regarding the progress of the radio read meter program and the possibility of getting a reduced price for the purchase of a larger quantity of meters.

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 Superintendent Denny is authorized to purchase meters from unexpended balances of the Water and Sewer Fund Budget from Lock City Supply Inc. at \$164.88 each.

RESOLUTION 146-09

ANNUAL AUDIT

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

RESOLUTION 147-09

BUDGET AMENDMENTS

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 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 2009 in any amount exceeded the amount budgeted.

RESOLUTION 148-09

PREPAYMENT OF BILLS

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 all bills incurred for 2009 are authorized to be pre-paid.

RESOLUTION 149-09

ENCUMBRANCES

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

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

Resolved the funds for invoices of goods not received for 2009 are encumbered.

RESOLUTION 150-09

SALARIES AS BUDGETED

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 salaries as budgeted are approved effective January 1, 2010.

RESOLUTION 151-09

KENNEL CONTRACT

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

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

Resolved the contract with Fort Hyde Kennels for kennel service for 2010 at \$4,200.00 per year is approved.

RESOLUTION 152-09

POLICE CONTRACT

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

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

Resolved the contract with the Village of Barker Police Department for 2010 at \$37,000.00 is approved.

RESOLUTION 153-09
BUDGET AMENDMENT

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 the following budget amendment is approved:

DR		CR	
SS 600		SS600	
SS9055.8	\$ 6.18	SS8120.1	\$ 6.18
SS9060.8	\$ 331.48	SS8120.1	\$ 331.48
SS1950.4	\$ 17,966.88	SS911	\$ 17,966.88
SW9055.8	\$ 5.01	SW8310.1	\$ 5.01
A1110.2	\$ 3,464.74	A1990.4	\$ 23,602.60
A1620.4	\$ 1,739.36		
A1660.4	\$ 88.95		
	\$ 23,602.60		

HONORING RETIRING BOARD MEMBERS

Supervisor Meyers honored Dudley Chaffee who has served the Town of Somerset for 28 years and April Gow who served the Town for 17 years on their retirement from town service.

Councilman Engert and Councilman Wayner offered comments and their congratulations.

Supervisor Meyers presented Dudley Chaffee and April Gow with plaques honoring their years of service.

Councilman Chaffee thanked the residents of the Town for investing in his service.
Councilman Gow offered her thanks for allowing her to serve the residents of Somerset.

PUBLIC INPUT

Norman Jansen offered his thanks to Councilman Chaffee and Councilman Gow.

James Hoffman thanked Councilman Chaffee and Councilman Gow for their service specifically stating that we would not be here today with the adoption of the settlement with AES without their support in the decision to move forward to appeal the PILOT.

CROSS COUNTRY TEAM STATE CHAMPIONS

Councilman Chaffee stated that the Barker Central School Cross Country team achieved a major accomplishment by being named State Champions and he would like the town to do something to recognize this accomplishment. He asked that a proclamation be approved.

Supervisor Meyers said that a proclamation will be put forth at the Reorganizational Meeting.

RESOLUTION 154-09

AUDIT OF CLAIMS

Councilman Gow questioned the Attorney bill regarding a \$135 charge that she feels should not be charged.

Supervisor Meyers stated that he will follow up with the Attorney regarding this matter.

Attorney Herdzik stated that the amount in question is regarding the amount of money that the Niagara County Attorney agreed months ago to pay, however, no money has been received. He stated that required a modest amount of effort.

Supervisor Meyers said they would address the issue at the January meeting.

On a motion of Councilman Chaffee, 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 with the stipulation that the \$135.00 charge on the Attorney bill be addressed:

General Fund	No. 439 through 477	\$ 35,279.91
Highway Fund	No. 159 through 171	\$ 120,651.76
Sewer Fund	No. 141 through 146	\$ 3,398.70
Water Fund	No. 120 through 127	\$ 2,828.69

REORGANIZATIONAL MEETING

Supervisor Meyers stated the next meeting will be the Reorganizational Meeting to be held on January 5, 2010 at 7:30PM.

James Hoffman addressed the Board regarding the following:

1. Asked when the taxpayers are going to see a reduction in the tax bills now that the AES PILOT has been agreed upon.

Supervisor Meyers said the school and town have gained and the town can look at lowering town taxes and hopefully the school will be able to do the same. He stated that this will begin with the 2011 tax bills and no refunds will be issued.

2. Asked the status on Barker Chemical.

Councilman Engert said there is no update. He stated that he will talk to the County Attorney to schedule a meeting and invited him to attend the meeting.

TOWN BOARD MEETING
DECEMBER 1, 2009 PAGE 11

Jon Hotaling stated he heard the old gas station at Somerset Corners failed to sell recently due to the fact that the buyer failed to sign off on the contaminated soil. He stated the he knows they removed the gasoline tanks from the property. He stated that there is a kerosene tank on the east side of the building and there is a waste oil tank under the concrete floor of the building.

Code Enforcement Officer Hildebrant stated that he has dealt with the owner of the property and that there are documents showing that the property is clean and the soils are not contaminated.

On a motion of Councilman Gow, seconded by Councilman Chaffee, the meeting was adjourned at 8:50PM subject to the Call of the Clerk. Carried unanimously.

Rebecca A. Connolly, MMC
Town Clerk

PREPAID ITEMS AS PER RESOLUTION 148-09

General Fund	No. 478 through No. 532	\$ 41,980.96
Highway Fund	No. 172 through No. 183	\$ 52,042.70
Sewer Fund	No. 147 through No. 159	\$ 4,851.98
Water Fund	No. 128 through No. 138	\$ 4,813.05