

REGULAR MEETING  
FEBRUARY 12, 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 12<sup>th</sup> day of February 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  
                 Robert Roberson ----- Counsel  
                 Randy Roeseler ----- Engineer

Attended by: Approximately 30 residents and Barker Boy Scouts, Troop 26

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

RESOLUTION 41-08

**APPROVAL OF MINUTES**

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 minutes of the January 3<sup>rd</sup> and January 8<sup>th</sup>, 2008 meetings be approved as submitted by the Clerk.

RESOLUTION 42-08

**APPROVAL OF SUPERVISOR'S MONTHLY REPORT**

On a motion of Councilman Chaffee, 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 Report  
Dog Control Officer's Report  
Police Report

**POTENTIAL BROWNFIELDS**

Code Enforcement Officer Hildebrant stated that the inventory list he received in November regarding brownfields only contained areas mostly in Niagara Falls. He stated he received another letter on February 11<sup>th</sup> with a new list and will find out where the list came from as most of the sites identified are active businesses or non existent. He stated he was not aware of any brownfields in the Town of Somerset.

ANNUAL REPORTS RECEIVED AND FILED:

Historian  
Judge

Councilman Engert asked Historian Lorraine Wayner if there is a list of updated veterans for Somerset. Mrs. Wayner stated that the Veterans' list dates back to the Civil War and is up to date to the current conflict.

Councilman Gow thanked Mrs. Wayner for the wonderful job.

COMMUNICATIONS

**REFUSE CONTRACTORS**

Clerk Connolly reported that Modern Disposal Services will be responsible for refuse/recycling pickup beginning on February 15<sup>th</sup> and that new totes are available from their company if the residents desire to rent or purchase them.

**NIAGARA COUNTY COMPREHENSIVE PLAN**

Clerk Connolly reported a letter had been received from Clough, Harbour & Associates, LLP, the firm that is the lead consultant responsible for preparing the Niagara Communities Comprehensive Plan. Ms. Connolly stated that Supervisor Meyers will act as the Town's liaison at the Steering Committee meetings with Supervisor Meyers appointing Roger Klatt to act as the alternate representative to attend the meetings beginning February 27<sup>th</sup> and ending September 24<sup>th</sup>, 2008.

**TOWN OF CAMBRIA BICENTENNIAL CELEBRATION**

Clerk Connolly read a letter inviting the Town of Somerset to participate in a basket raffle for the Town of Cambria's 200<sup>th</sup> anniversary celebration being held on March 9, 2008.

RESOLUTION 43-08

**BARKER CENTRAL SCHOOL LATRATOR AD**

Clerk Connolly read a letter from the Barker Central School *Latrator* Advisor requesting the town to place an ad in the 2008 yearbook.

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

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

Resolved the Town place a ½ page ad in the 2008 Barker Central School *Latrator* for \$150.00.

RESOLUTION 44-08

**NIAGARA COUNTY REALITY CHECK**

Clerk Connolly read a letter from the Niagara County Reality Check Coordinator, Megan Peterson, stating they are a group of youth working together to reduce the use of tobacco and exposure to secondhand smoke in Niagara County. The letter

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requested the town adopt a resolution supporting the group's efforts to reduce, rearrange or eliminate tobacco advertising and promotion in the retail environment. On a motion of Councilman Engert, seconded by Councilman Chaffee, the following resolution was

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

WHEREAS, smoking is the number one cause of preventable death in the United States; and

WHEREAS, the Surgeon General has concluded that tobacco advertising contributes to youth smoking rates; and

WHEREAS, in 2003 tobacco companies spent \$15.1 billion to market cigarettes in the United States, including \$516 million in New York; and

WHEREAS, children who report seeing cigarette advertising in stores are 33% more likely to have experimented with smoking; and

WHEREAS, three out of four teenagers are reported to shop at convenience stores at least once a week, and are therefore exposed at high rates and with great frequency to tobacco marketing; and

WHEREAS, stores within 1000 feet of schools in New York were significantly more likely to place ads near candy displays and also had significantly more tobacco advertisements posted on the store exterior than stores further from schools; and

WHEREAS, an estimated 1/3 of adolescent experimentation with smoking can be directly attributed to tobacco advertising and promotional activities;

NOW THEREFORE BE IT RESOLVED that the Town Board of the Town of Somerset hereby supports the efforts of Niagara County Reality Check to protect the youth of the Town of Somerset and the Village of Barker by reducing advertising.

**RABIES CLINIC**

Clerk Connolly reported that the Town will be hosting a Free Rabies Clinic on Saturday, April 19, 2008 from 2 – 4PM at the Highway Garage.

**LOCAL GOVERNMENT CONFERENCE**

Clerk Connolly reported that Assemblyman Steven Hawley is trying to organize a Local Government Conference in Albany for local officials in May.

**SCHOLARSHIP**

Clerk Connolly reported that the Niagara County Assessors' Association is offering a \$500 scholarship to a Niagara County graduating senior who will be attending college and that applications are available at the Town Hall.

**BALL DIAMOND NAME**

Clerk Connolly read a letter from Somerset Youth Baseball Organization (SYBO) President David Desmarais, stating that the organization would like to honor Larry Fraiser for his 27 years of service and requested that the Town name the center ball diamond in his honor and that they be allowed to put up a sign designating the diamond in his honor.

Extensive discussion ensued regarding requests to name diamonds and the requests received over the years.

Councilman Gow stated that the Parks Committee will review the request and develop a policy regarding naming facilities and report back at the next Town Board meeting.

RESOLUTION 45-08

**PROPERTY TAX RELIEF**

Clerk Connolly read a letter from Town of Wilson Supervisor Joseph Jastrzemski, requesting the Town Board adopt a resolution supporting Governor Spitzer's plan for property tax relief, a cap and other reforms.

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

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

WHEREAS, New York's per capita local tax burden is the highest in the nation and more than twice that of the national average; and

WHEREAS, according to the Office of the State Comptroller, outside of New York City, school districts account for 61% of the property taxes paid by New Yorkers; and

WHEREAS, during the past five years, school district tax levies have grown by an average of 7.3% annually; and

WHEREAS, New York's local government spending is nearly \$2,600.00 above the national average and also exceeds our peer states; and

WHEREAS, local government officials point to unfunded mandates as a major factor that drives spending;

NOW THEREFORE BE IT RESOLVED, We, the Town Board of Somerset, New York, do hereby support Governor Eliot Spitzer's plan to appoint a bipartisan Commission to examine school district property taxes and charged with developing the following:

- Reforms that address the major costs driving local school district property taxes;
- Proposals to increase the fairness and effectiveness of New York's property tax relief system for middle class taxpayers; and
- A fair and effective property tax cap for school districts that controls property taxes; and

We also urge our local, county and state representatives to support the Governor in this commendable effort.

### **LANDFILL AT AES**

Clerk Connolly read a letter from David Morrell of the NYS Public Service Commission that was sent to Jon Reimann of AES confirming the general agreement reached during a series of conference calls with the staff of the Department of Public Service (PSC), the Department of Environmental Conservation (DEC), AES, and the Town of Somerset regarding the numerous technical issues relating to the compliance filing for Solid Waste Disposal Area II (SWDAII). He stated that a number of items were resolved with a number of items requiring clarification. The letter stated that AES committed to adopting or otherwise implementing all of the remaining items and therefore the Staff (PSC) concluded that the issues raised have been addressed satisfactorily and expects that AES will take the necessary steps to fully implement the provisions.

Attorney Roberson stated the Town is awaiting the written comments regarding this matter from the Town's Environmental Engineer Andrew Auld and anticipates the comments anytime.

### RESOLUTION 46-08

#### **EMPIRE STATE WIND ENERGY HOST COMMUNITY AGREEMENT**

Supervisor Meyers stated the Town Board decided to obtain a second opinion on the Article 78 issue and the Town's right.

Councilman Wayner stated that he would like to obtain 2 opinions so that there will not be a conflict.

A motion was made by Supervisor Meyers to obtain two second opinions to clarify any conflict that may arise by one second opinion.

No second received – MOTION FAILED.

Extensive discussion ensued regarding the need for multiple opinions; clarity and confirmation on the Article 78 language; review of attorney recommendations from the Association of Towns and other names/firms; the likelihood of another wind developer coming forward if the host agreement is not signed; other Towns host agreements; the ability to terminate the host agreement; the loss of revenue by failure to sign the host agreement with Empire Wind State Energy; selection of attorneys for the opinions; and the package that will be forwarded to the attorneys.

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

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

Resolved that Supervisor Meyers is authorized to contact James Rooney from Bond, Schoeneck & King, PLLC and Teresa Beckner from Whiteman, Osterman & Hanna, LLP to review the proposed Host Community Agreement from Empire State Wind Energy specifically in regards to the legality of the Article 78 clause in 10A and the legality of the town relinquishing its right to Article 78.

**ATTORNEY RETAINER**

Supervisor Meyers stated that Councilman Wayner and Councilman Engert are working on the attorney retainer with Andrews, Pusateri, Brandt, Shoemaker & Roberson PC as decided at the February 11, 2008 meeting.

RESOLUTON 47-08

**AWARD GASOLINE BIDS**

Clerk Connolly stated that one bid was picked up and received from:

<u>Name and Address of Bidder</u>	<u>Amount</u>
Drum Oil & Propane	Diesel Fuel \$2.8848
8776 Rochester Road	Firm Add On \$ .1080
Gasport, NY 14067	Total \$2.9928
	Winter Blend \$3.2175
	Firm Add On \$ .1080
	Total \$3.0593
	Unleaded Gas \$2.5652
	Firm Add On \$ .1380
	Total \$2.7032

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 the bid for gasoline from Drum Oil & Propane, 8776 Rochester Road, Gasport, NY 14067 is approved as presented.

RESOLUTON 48-05

**APPOINTMENT OF SENIOR CITIZEN DIRECTOR**

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

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

Resolved that JoAnn Greenwald is re-appointed as Senior Citizen Director with the term ending December 31, 2008.

RESOLUTION 49-08

**ABSTRACT OF CLAIMS**

Extensive discussion ensued regarding the bills received from Regulatory Watch and Andrews, Pusateri, Brandt, Shoemaker & Roberson, PC.; the landfill proceeding; review of billing for emails received from non-elected officials and residents; and general billing procedures.

A motion was made by Supervisor Meyers that items referencing residents of the Town not be paid.

No second received – MOTION FAILED.

Councilman Wayner stated that he would like to know the circumstances for the billing and would like a review of the billing.

Supervisor Meyers stated that he would like the general portion of the bill that he has asked to be changed for the last four months on the Attorney bills not paid.

Councilman Engert stated that it has been paid in the past and that this will be addressed in the new 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 that the bills be paid in the following amounts with the exception of the items regarding review of non-elected officials and residents emails on the bills received from Regulatory Watch and Andrews, Pusateri, Brandt, Shoemaker & Roberson, PC and that the bills be reviewed for possible payment at the next meeting:

General Fund	No.	32 through 106	\$327,476.13
Highway Fund	No.	4 through 20	\$ 32,561.25
Sewer Fund	No.	7 through 20	\$ 13,803.46
Water Fund	No.	11 through 32	\$ 10,278.87

RESOLUTION 49-08

**REMOVAL FOR PAYMENT**

Councilman Gow stated that the bill for Barker Central School Claim No. 107 regarding a FOIL request of Supervisor Meyers for Attorney bills of the school be withdrawn as those records should not be made part of the town records.

Extensive discussion ensued regarding the need for those records.

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

ADOPTED Ayes 3 Chaffee, Gow, Wayner  
Nays 2 Meyers, Engert

Resolved that Claim No. 107 be removed for payment.

**PUBLIC COMMENT**

Marcia Koerner asked for clarification regarding the attorney retainer.

Supervisor Meyers stated that Councilmen Wayner and Engert are working on a retainer agreement.

Councilman Wayner stated he spoke with the Attorney Shoemaker to work out a flat fee for general Town business and he agreed to give an estimate for litigation. He stated they are also working on cost over run and stages of litigation if any.

Marcia Koerner asked if there will be a resolution to the wind agreement.

Supervisor Meyers stated as soon as they get a response from the Attorney regarding the second opinion, the Board will meet to make a decision.

James Hoffman addressed the Board regarding the Landfill status (at AES) and the quarterly water monitoring reports that are to be filed with the Town Clerk according to the PSC order of June 2007.

Clerk Connolly stated they have not been filed.

Mr. Hoffman stated he will contact Jon Reimann regarding the filing.

David Desmarais, President of SYBO, stated that the organization would like to name the center ball diamond in honor of Larry Fraiser for his 27 years and would appreciate the consideration of the Board in the request.

William DiLorenzo, a Boy Scout, spoke regarding the windmill agreement and stated that he does not feel it is right for one of our rights to be taken away by signing a piece of paper.

Supervisor Meyers thanked the Boy Scouts for attending.

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

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Rebecca A. Connolly, MMC  
Town Clerk