

REGULAR MEETING and PUBLIC HEARINGS
JULY 10, 2007

A Regular Meeting and Public Hearings 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 10th day of July 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.

PUBLIC HEARINGS

1. Code Changes to Records and Water – Proposed Local Law #1-2007

Notice of said hearing duly published in the Lockport Union-Sun & Journal on June 29, 2007 with same being posted at the Town Hall on same date.

Supervisor Meyers opened the hearing at 7:31PM.

Clerk Connolly read notice of hearing to hear and consider changes to the Code of the Town of Somerset to amend Chapter 145, Records, Section 145-11 naming the Town Board to hear appeals and amending Chapter 195, Water, Section 195-7B Service Pipe.

Councilman Chaffee asked if there are water services less than $\frac{3}{4}$ inch.

Superintendent Denny stated no.

Supervisor Meyers questioned the change in the records appeals process stating that he was not aware of that in the law.

Clerk Connolly stated the law was presented at the June 27, 2007 meeting.

Marcia Koerner stated she was opposed to the change as it adds another layer of government.

Daniel Engert asked who does the appeals now.

Councilman Wayner stated the Supervisor does now, however, he stated this will spread out the decision and alleviate the opportunity for abuse of power.

Daniel Engert asked what the process is and wondered if it would be hard to get the Board together to make the decision.

Clerk Connolly explained the process as per the law.

Sharon Elnisky questioned why the change.

Clerk Connolly stated that she had attended a conference and it was suggested that the Town Board be the appeals officers in a denial as more than one opinion would be voiced.

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Marcia Koerner asked who would break a tie vote.

Councilman Chaffee stated a tie vote is a denial as per Roberts Rules of Order.

Douglas Lewis stated he is in favor of the change as it spreads out the decision and goes along with the open meetings law.

Daniel Engert suggested that notices for public hearings be placed on the website along with the law that is being amended.

RESOLUTION 85-07

With all persons desiring to be heard, 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 the hearing be closed at 7:51PM

2. Sewer Repair Reserve Withdrawal

Notice of said hearing duly published in the Lockport Union-Sun & Journal on June 29, 2007 with same being posted at the Town Hall on same date.

Supervisor Meyers opened the hearing at 7:52PM.

Clerk Connolly read notice of hearing to hear and consider appropriation from Town repair reserve funds within the Somerset-Barker Sewer District in the amount of \$10,000.00 for the purpose of replacing fencing at the Wastewater Treatment Plant.

With no one speaking for or against, Supervisor Meyers closed the hearing at 7:54PM.

REGULAR MEETING

Supervisor Meyers opened the regular meeting at 7:55PM.

RESOLUTION 86-07

APPROVAL OF MINUTES

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 that the minutes of the June 12th and 27th, 2007 meetings be approved as submitted by the Clerk.

RESOLUTION 87-07

APPROVAL OF SUPERVISOR'S MONTHLY REPORT

On a motion of Councilman Ray, 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
Dog Control Report

COMMUNICATIONS

Clerk Connolly read a thank you letter from Daniel R. Connolly, Director of School Facilities and Operations at Barker Central School to Superintendent Melvin Denny expressing his appreciation for the help that was provided to the school during the recent gas leak.

WEST SOMERSET/HOSMER ROAD INTERSECTION

Clerk Connolly read a letter from Michael Tracy, Deputy Commissioner, Niagara County Dept. of Public Works regarding the consideration of installation of a 4 way stop at the intersection of West Somerset Road and Hosmer Road. The letter stated the department has begun the process of updating the traffic counts at the intersection, along with providing an explanation on how an intersection warrants a 4 way stop.

ARTICLE X OF PUBLIC SERVICE LAW

Clerk Connolly reported that she had received letters from Senator George Maziarz and Assemblyman Steve Hawley regarding their opposition of the inclusion of wind farms in the proposed legislation to reinstate Article X licensing siting power plants. She reported that copies of the resolution adopted by the Town Board had also been sent to the Governor and the Joint Legislative Commission on Energy.

Clerk Connolly read a thank you letter from W. Ross Annable, Village of Barker Chief of Police, for the receipt of funds for the purchase of emergency equipment for the additional police car that was purchased.

Clerk Connolly stated the Town has received official notification from the Town of Yates regarding a public hearing on a local law amending the Zoning Law for the Town of Yates regarding ponds.

TRAVEL BAN POLICY

Supervisor Meyers presented a draft policy regarding a travel ban for Board review. Discussion ensued with possible clarification of the policy and statements to be added. The policy will be revised and presented for further discussion.

BIOREMEDIATION OF LAKE ROAD PROPERTY

Code Enforcement Officer Hildebrant presented information regarding the bioremediation of 1651 Quaker Road and the progress on the site at Lake Road (SBL#10.00-1.48.2). He stated that NYSDEC signed off on the site in September 2006. He stated that the site on Lake Road has been graded off and seeded, with most of the liner being shredded and

removed in the grading process. He stated there is a berm at the back of the property to prevent any run off to Golden Hill Creek. He stated that Mr. Housel has no intentions of selling the property and intends to let it grow back to its natural state like it was when he bought the property.

WIND ENERGY

Supervisor Meyers stated the meeting held on June 27th was very productive with the Board reviewing the proposed Host Community Agreement with Empire State Wind Energy. He stated the agreement was returned to Keith Pitman and that he met with him the following day to discuss the concerns of the Board. He stated that a meeting is being set up for a future date with all the parties and attorneys to continue discussion and possibly sign the agreement on the spot.

Councilman Ray stated that he would like to have Empire State Wind return the revised agreement to Attorney Shoemaker for his review.

Councilman Wayner stated that he had talked to the Supervisor from the Town of Sodus who is in a similar situation. He stated that Sodus had passed a resolution about 3 months ago directing Empire State Wind Energy to proceed with the wind study. He stated that they have received a host community agreement and stated they also have questions. He also stated that there has been no pressure by Mr. Pitman to sign the agreement, unlike what the Town of Somerset is being told that it is necessary to sign the agreement before Empire State Wind will proceed.

Supervisor Meyers stated that he feels Mr. Pitman may see Somerset as a more viable project.

Councilman Wayner stated that Empire State Wind has contacted residents in Sodus regarding land leases. He stated that Sodus is moving forward without the agreement.

Douglas Lewis asked if the meeting would be with the entire Board and if the meeting will be opened.

Supervisor Meyers stated the full Board will meet and go into an executive session because of the negotiations; therefore the meeting will be closed to the public.

Councilman Ray stated that information regarding "Two Dozen Suggestions About Wind Power Leases for Farmers" has been received and he would like to see this distributed to the public and put on the Town web site.

Councilman Gow stated that she would like to encourage landowners to contact Mr. Pitman directly.

Councilman Chaffee asked if Empire State Wind Energy has signed any agreements with other towns.

Supervisor Meyers stated they had and he will obtain the list from Mr. Pitman and will email them to the Board.

Councilman Wayner stated that he would like to see copies of the signed Host Community Agreements for review.

Floyd Koerner asked if other companies have been pursued.

Supervisor Meyers stated that has already been done however most companies did not want to touch this area because of AES and that it would not be a viable financial option for their company.

Floyd Koerner stated a wind farm is being put up in the Town of Eagle and the company has determined that in order to have a viable wind farm at least 50 turbines need to be in operation to make a profit. He stated that the setbacks in the area are less than what the Town of Somerset's are and his concern is that there are too many restrictions. Supervisor Meyers stated that the landowners can address that with the Planning Board. James Hoffman questioned where the Town stands on the confidentiality issue. Supervisor Meyers stated that the document has been returned to Empire State Wind Energy and the town has no possession of the agreement. James Hoffman asked if there is a time frame when there will be a revenue stream coming into this town. Supervisor Meyers stated that we do not have that information and that a project takes 3 to 5 years before it is in operation, depending on the number of turbines. Councilman Wayner stated that this will have at least as much impact on the town as AES and that the Board wants to make sure that it is done right. He stated that the Board passed a resolution authorizing Empire State Wind Energy to come back to the board with a business proposal. He would like to see more action from Empire State Wind Energy. Norman Jansen questioned if variances on lot dimensions would be entertained for windmills. James Hoffman that a variance request can be made to the Zoning Board of Appeals. Floyd Koerner asked why an amendment to the law regarding dimensions is not made. Supervisor Meyers stated that could happen when the time comes. James Hoffman stated that the town should see how the law works.

UPDATES ON LAWSUITS

Attorney Shoemaker gave an update on the pending lawsuits:

1. PILOT – Briefs have been filed by the Town and School with the IDA and AES to file their briefs within 2 weeks with a possible decision in September by Judge Klock.
2. ASSESSMENT cases are still on hold pending the PILOT decision.
3. LANDFILL – NYS Siting Board on June 21st ordered with the final order being received on June 29th amending the certificate granted to AES which incorporates the recommended decision of the Judges that NYSDEC has total monitoring authority over the landfill. Attorney Shoemaker stated that AES has until July 29th to object to the decision.

RESOLUTION 88-07

SALE OF USED TRUCK

Clerk Connolly stated bids were opened on July 9, 2007 with 3 bids being received for the used 1995 Chevrolet 2500 4 Wheel Drive Pickup Truck from:

<u>Name and Address of Bidder</u>	<u>Amount</u>
Richard L. Smith, 6161 Ridge Rd., Lockport, NY	\$ 2,851.00
Mahar Excavating & Septic, 8509 Chapman Rd, Gasport, NY	1,015.99
Eric Sutch, 8811 Coleman Rd., Barker, NY	1,105.00

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

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

Resolved that the 1995 Chevy Pickup Truck "as is" be sold to Richard L. Smith, 6161 Ridge Rd., Lockport, NY for \$2,851.00.

RESOLUTION 89-07

ADOPTION OF LOCAL LAW #1-2007

Supervisor Meyers made a motion to table adoption of Local Law #1-2007 to review how other towns handle the denial process. No second was made, therefore motion failed.

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

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

Resolved that Local Law #1-2007 is adopted as follows:

A Local Law Entitled "Amendment to the Code of the Town of Somerset"

Be it enacted by the Town Board of the Town of Somerset as Follows:

To amend Chapter 145 – Records – Section 145-11 by amending paragraph A which shall read as follows:

A. The Town Board of the Town of Somerset is hereby designated to hear appeals regarding denial of access to records.

To amend Chapter 195 – Water – Section 195-7 by amending paragraph B which shall read as follows:

B. Service pipe.

(1) Service pipe two inches or smaller shall be domestic-made Type K copper tubing. No underground joints will be permitted except where distances are greater than the lengths available from the manufacturer. In this case, a minimum number of joints will be permitted.

(2) Service pipe three inches and larger shall be cement-lined cast-iron tyton-joint pipe or AWWA C-900 polyvinyl chloride pipe with push-tight joints.

(3) All pipe shall meet all requirements for a working pressure of 150 pounds per square inch. All service pipe shall be laid in a trench not less than four feet below the surface of the earth.

(4) At the option of the homeowner, polyethylene (PE) service pipe may be provided, as required, in sizes over ¾ inch through 2 inches in diameter. Service shall be copper tube size (CTS) polyethylene tubing and have an outside diameter based dimension ration (DR) to 9 with PE 3408 material and a pressure of 200 pounds per square inch, in accordance

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with AWWA specifications C901 (latest revision). Tracer wire, for polyethylene service tubing, shall be #14, solid copper conductor with 30-mil polyethylene insulation, color blue, as manufactured by Kris-Tech Wire Co., Inc., or acceptable equivalent.

This local law shall take effect immediately upon its filing in the office of the Secretary of State.

RESOLUTION 90-07

SEWER REPAIR RESERVE FUND EXPENDITURE

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 \$10,000.00 is authorized to be withdrawn from the Sewer Repair Reserve Fund for fencing at the Wastewater Treatment Plant.

RESOLUTION 91-07

JUSTICE DEPARTMENT GRANT

Clerk Connolly reported that Judge Martineck will be submitting a grant application to the Unified Court System for office equipment and that a resolution from the Town Board is necessary.

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

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

Resolved that Judge Donald Martineck is authorized to submit a grant application to the NYS Unified Court System for equipment for the justice department.

RESOLUTION 92-07

DISPOSAL OF REFUSE CONTRACT WITH COVANTA NIAGARA

Clerk Connolly reported that all refuse contracts will be expiring at the end of the year with the disposal of refuse contract with Covanta Niagara expiring on February 15, 2008. She stated a letter needs to be sent to them 90 days prior to the expiration of the contract notifying them that the Town will not be disposing refuse after that date.

Attorney Shoemaker stated that the Consortium will be advertising for bids for refuse and recycling pickup and disposal. He stated that Covanta Niagara could bid on the disposal portion of the contract however they have no hauling capability.

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

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

Resolved that Covanta Niagara be notified that the Town will be terminating their contract on February 15, 2008.

ENERGY AUDIT

Superintendent Denny reported that he checked into the Energy Audit and found that each separate building will be charged \$400.00 for the audit. He stated that he has investigated with NYSERDA and found a local contractor J. C. Brown Service that performs the audit. He recommended that an audit be performed at the Waste Water Treatment Plant before any other buildings be audited.

Discussion ensued regarding other contractors that perform the service and what Wendel-Duchscherer has on record, with further investigation needed.

Superintendent Denny reported that an emergency repair had to be done on an ITT Flygt pump for a pumping station. He stated a new pump had to be purchased and that he intends to have the used pump repaired to have that on the shelf.

RESOLUTION 93-07

VOTING MACHINE MAINTENANCE

Clerk Connolly reported that the voting machines have had no maintenance performed on them since the County assumed ownership. She stated there were problems with the machines in November 2006 and recommended if permission is received from the County, that the town pay to have the machines maintained for the 2007 elections.

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

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

Resolved that the Town of Somerset request of Niagara County to have the voting machines maintained with the Town to pay the costs associated with such maintenance.

RESOLUTION 94-07

DOG ENUMERATION

Clerk Connolly reported the count of licensed dogs in the town has dropped approximately by 400. She stated that the potential dog enumeration was advertised in the April newsletter with about 80 dogs being licensed by June 30th. She stated that state law allows a fee of \$5.00 per unlicensed dog be charged in order to aid in the cost of conducting the enumeration. She stated that rabies is a big concern and that there are numerous stray dogs. She requested permission to begin conducting the enumeration and that she will start with a mailing.

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 Clerk Connolly is authorized to conduct a dog enumeration.

Councilman Gow distributed an article that was in the Medina Journal Register acknowledging Assemblyman Steve Hawley's efforts in opposing the proposed Article X legislation which usurps local control over wind energy. She stated that the Assembly bill

passed with Assemblyman DeMonte voting in favor of the bill; however it does not match the bill passed by the Senate.

Douglas Lewis questioned if the town has control over the siting of power plants.

Attorney Shoemaker stated that Article X has expired; therefore, there is no regulation currently in place for the placement of power plants.

RESOLUTION 95-07

AUDIT OF CLAIMS

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 bills be paid in the following amounts:

General Fund	No. 271 through No. 316	\$ 81,133.85
Highway Fund	No. 86 through No. 100	42,611.71
Sewer Fund	No. 60 through No. 71	8,943.26
Water Fund	No. 70 through No. 78	2,680.73

PUBLIC FORUM

James Hoffman congratulated the Board on almost winning the Landfill lawsuit. He questioned how long the trucking will be taking place on Hartland Road.

Councilman Wayner stated that the new landfill is being worked on at AES.

Sharon Elnisky expressed her concern with the traffic conditions on Somerset Drive, north of Hass Road, specifically speeding and failure to stop at the stop sign. She also stated that garbage is being thrown out of the vehicles.

Supervisor Meyers stated that he will meet with representatives from the Lighthouse Christian Camp to see if they will restrict use of Somerset Drive for deliveries only. He stated he would like to restrict the entrance.

Becky Bigelow stated that the majority of people are using the Lower Lake Road entrance.

Herbert Linderman stated that the Zoning Board had requested a sign on Lower Lake Road for their entrance and that all their literature advertises using that entrance.

Daniel Engert stated he had sent an email to Supervisor Meyers and Councilman Wayner regarding the residency of the Upstate Empire State Development Chairman.

Councilman Wayner handed out a proposed resolution for Board consideration at the next meeting regarding the request to have the new Economic Chairman reside in Western New York.

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There being no further business, on a motion of Councilman Ray, seconded by Councilman Wayner, the meeting adjourned at 9:28PM subject to the Call of the Clerk. Carried unanimously.

Rebecca A. Connolly, MMC
Town Clerk