

REGULAR MEETING  
JULY 8, 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 8<sup>th</sup> day of July 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
	Kenneth J. Bigelow ----	Superintendent of Highways
	Melvin H. Denny -----	Superintendent Water/Sewer/Grounds
	Robert Roberson -----	Counsel
	Randy Roeseler -----	Engineer

Attended by: Approximately 16 residents

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

**PUBLIC HEARING – PROPOSED LOCAL LAW #1-2008 – OUTDOOR HEATING DEVICES**

Notice of said hearing was duly published in the Lockport Union-Sun & Journal on June 28, 2008 with same being posted at the Town Hall on June 26, 2008.

Clerk Connolly read notice of hearing.

Supervisor Meyers opened the hearing at 7:31PM and reviewed the revisions in the law including:

1. Grandfathering existing unit
2. Nuisance clause stating the word 'verifiable' was removed.

He stated that if someone is following the law and a complaint is filed, no action would be taken.

Councilman Chaffee questioned the cease and desist clause asking if someone is violating the law would he immediately have to stop using the unit.

Supervisor Meyers stated the Code Enforcement Officer would take the weather in account and would take reasonable steps.

Councilman Engert asked Attorney Roberson what steps does a resident have to challenge the Code Enforcement Officer.

Attorney Roberson stated the Code Enforcement Officer has the sole discretion for enforcing the statute. If the person charged feels that there is something unconstitutional, they can challenge it in court.

Councilman Engert said the landowner has some options.

Jon Hotaling, Chairman of Planning Board, stated the Code Enforcement Officer will use discretion.

Discussion ensued regarding the cease and desist portion of the law and the duties of the Code Enforcement Officer.

Cindy Jex questioned what will the policy and procedure be if someone is in violation. She stated there is nothing spelled out in the law.

Attorney Roberson stated it will be enforced like any other ordinance is enforced.

Cindy Jex stated there should be a timeline and not left open ended. She asked what a person can do if you don't agree with the Code Enforcement Officer.

Attorney Roberson stated the Code Enforcement Officer is the one who determines if there is a violation and they go to Justice Court for resolution.

Councilman Chaffee asked if they will have to stop usage.

Attorney Roberson stated it would be up to the Code Enforcement Officer.

Marcia Koerner stated that a person is going to have their means of heating their home cut off.

Councilman Gow stated that if someone is burning a tire in their outdoor heating device, that person would be asked to remove the tire as that is not an approved source of fuel.

Marcia Koerner stated that is discussion and not in black and white.

Supervisor Meyers stated the law needs to be broad enough so that it can apply to many situations without being so restrictive.

Marcia Koerner stated that she understood that but doesn't appreciate the fact that every time her neighbor might be angry with her that she would have to go to court. She stated that will cost her money and an Attorney.

Supervisor Meyers stated that if your system is in compliance with the law, the neighbors will not have anything to complain about because you are within the perimeters of the law.

Marcia Koerner stated she does not have an issue according to the law but has issue with the Code Enforcement Officer and the opinions of one person.

Attorney Roberson stated that happens in every situation. He stated that is the Code Enforcement Officer's job.

Supervisor Meyers stated under normal situations you may not have to shut down the system. The Code Enforcement Officer will ask you to make modifications.

Marcia Koerner asked what would happen if there is no dry wood available and only green wood which gives off more smoke. She stated that the Code Enforcement Officer might decide she is in violation and what is she suppose to do in the dead of winter or in the summer when she is heating her water.

Councilman Wayner stated that it is spelled out in the law what you can burn and you will not be in violation of the law.

Discussion ensued regarding compliance of the law and the necessity of a complaint being in writing.

Supervisor Meyers asked Mrs. Koerner how she would like to see the law changed.

Marcia Koerner stated she did not want the regulation period.

Supervisor Meyers stated he appreciated it; however there are people who do not follow the law. He stated that he feels the proposed law is good.

Marcia Koerner stated there is so much emphasis placed on the Code Enforcement Officer's discretion and what recourse does a person have if they are in violation. She stated that this is the source of heating her water.

Attorney Roberson stated that the person needs to correct the violation.

Cindy Jex stated she does not like the citations. She wants to see warnings given before a person has to go to court.

Supervisor Meyers stated that is the job of the Code Enforcement Officer.

Cindy Jex stated it is not spelled out in the law.

Councilman Wayner stated that if this becomes an issue, the law may be amended.

Cindy Jex stated that once you make the law and send in into Albany then it becomes a bigger issue. She asked the Board to change Section 136-6 by scratching the cease and desist clause.

Supervisor Meyers stated you are looking at the law from the outdoor device owner. He stated people have to go through a lot to write out a complaint. He stated you want us to write A law based on “the neighbor doesn’t like you” and that we have to write a law based on all aspects.

Police Chief Annable stated that most Code Enforcement Officers utilize a period of time before proceeding to court.

Supervisor Meyers stated the third point of the law that was changed was to remove in its entirety the use of the outdoor heating device in the summer months, therefore the device may be used year round.

Herbert Linderman stated that he has a problem with removal of that section. He stated why should he have to close his windows if someone is burning a smoke pot all summer with green wood.

Supervisor Meyers stated that would be when you file a written complaint.

Herbert Linderman stated that if they are only heating water it will be a smoldering fire. He stated a smoldering fire stinks.

Supervisor Meyers stated that depends on the system, the setbacks and the smoke stack height.

Cindy Jex stated that normally to keep your hot water warm you only need to put one or two twigs on there to keep the water at the temperature and very rarely will you see smoke come out of the stack when heating water.

Herbert Linderman stated that he knew someone who has a new system and he shut it down because it creosoted up so bad during mild weather. He stated that he was burning seasoned wood and that a smoldering fire is a smoldering fire.

Supervisor Meyers asked Mr. Linderman if he wanted people to find another method to heat their water.

Herbert Linderman stated yes if it is a nuisance. He stated that most people heat their water another way and that he does not want year round operation. He asked that consideration be given to the people other than those with outside wood boilers.

Supervisor Meyers stated that this is a perfect example of why the law is written the way it is as it has to address so many different aspects and the way the Planning Board put it together, it does.

Jon Hotaling, Planning Board Chairman, stated the Planning Board spent five months and reviewed twenty seven different township laws to address the health and safety concerns of the residents of the Town of Somerset.

Supervisor Meyers stated it was a well thought out law.

With all persons desiring to be heard, Supervisor Meyers closed the hearing at 8:04PM.

#### REGULAR MEETING

Supervisor Meyers opened the regular meeting at 8:05PM.

#### RESOLUTION 94-08

##### **APPROVAL OF MINUTES**

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 minutes of the June 10<sup>th</sup>, 2008 meeting be approved as submitted by the Clerk.

#### RESOLUTION 95-08

##### **APPROVAL OF SUPERVISOR'S MONTHLY REPORT**

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 Supervisor's Monthly report be accepted as submitted.

#### MONTHLY REPORTS RECEIVED AND FILED:

Code Enforcement Officer's report  
Dog Control Officer's reports for April, May and June  
Police Report

#### COMMUNICATIONS

Clerk Connolly read a letter from the Niagara Electric Lights Parade Committee inviting the Town to participate in the parade on Saturday, November 8, 2008.

##### **EMPIRE STATE WIND ENERGY**

Clerk Connolly read a letter from Empire State Wind Energy President and CEO, Keith Pitman, stating that he has received the letter dated June 12, 2008 which indicated the Somerset Town Board has passed a resolution to offer a counterproposal with respect to a wind power generation project Host Community Agreement. He asked if the Town Board has a specific "adjustment" to propose and they are willing to carefully consider the Town Board's specific details to their adjustment in revenue share.

### LANDFILL

Supervisor Meyers stated that most of the Board attended a meeting with AES on June 25<sup>th</sup>.

Councilman Engert stated the meeting was very well organized with a powerpoint presentation of an overview of the landfill construction on Landfill 2 and a tour of the entire site. He stated they saw the cornfield that was planted for wildlife preservation and that they went on top of the landfill and observed the equipment in operation. He stated it was very informative.

Councilman Gow stated that the questions provided by James Hoffman were addressed by Jon Reimann of AES specifically:

1. There have been no exceptions to the agreement signed in 2007.
2. They have abandoned the moisture content modification request.
3. The status of the first landfill (SWDAI) is in the process of closure and is expected to be closed by this fall.
4. Landfill 2 (SWDAII) is active and using a portion at a time. There are 82 acres in the landfill and they develop cells as needed. They are lining the landfill as per DEC Part 360 requirements. Discussion ensued regarding the construction of the landfill; the testing of the seams and the number of monitoring wells.
5. Landfill 3 (SWDAIII) is not under construction and is at least 20 years out, possibly 30 years.
6. The leachate collection systems have been built and are gravity fed to settling basins. The Board saw the piping where the runoff is going to go once more construction starts and that no run off goes into the creek. Explanation of the independent testing was given before the filtered water is released.

James Hoffman asked if the powerpoint presentation is available.

Councilman Engert stated he will follow up to get the presentation.

James Hoffman stated coal plants are dirty and that it bears watching. He questioned about an independent organization such as DEC monitoring the site.

Councilman Engert stated that he has delivered a letter to Senator Maziarz on July 7<sup>th</sup> requesting his aid for assistance in promulgating communication between PSC and DEC so that inspections are scheduled and performed pursuant to the Joint Agreement. He stated that an August 11<sup>th</sup> deadline has been set. Councilman Engert stated that Senator Maziarz will convene a meeting of the two agencies.

Councilman Wayner stated that once inspections start, the Town should insist upon monitoring reports as part of the agreement.

RESOLUTION 96-08

**OUTDOOR HEATING DEVICES**

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 Local Law #1-2008 entitled Outdoor Heating Device is adopted:

**TOWN OF SOMERSET  
LOCAL LAW NO. 1 OF THE YEAR, 2008**

**A Local Law to add a new Chapter 136, Outdoor Heating Devices,  
to the Code of the Town of Somerset**

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

Section 1. The Code of the Town of Somerset is hereby amended by adding a new Chapter 136, "Outdoor Heating Devices," as follows:

**Chapter 136**

**OUTDOOR HEATING DEVICES**

**§ 136-1. Legislative intent and purposes.**

- A. The intent of this chapter, upon adoption by the Town Board of the Town of Somerset, New York, and filed with the Secretary of State, is to insure that outdoor heating devices are utilized in a manner that does not create a nuisance and is not detrimental to the health, safety and general welfare of the residents of the Town and adjacent municipalities.
- B. It is the purpose of this chapter to establish regulations pertaining to the operation of outdoor heating devices so as to protect the safety and environmental impacts of these heating devices, particularly the production of offensive odors and potential health effects of uncontrolled emissions.

**§ 136-2. Definitions.**

- A. As used in this chapter, the following terms shall have the meanings indicated:

CHIMNEY -- Any flue or flues that carries off exhaust from an outdoor heating device, firebox or burn chamber.

EXISTING OUTDOOR HEATING DEVICE -- An outdoor heating device that was purchased and installed prior to the effective date of this chapter, or any replacement thereof which is located in substantially the same location and uses the existing mechanical connections.

FIREWOOD -- Trunks and branches of trees and bushes but does not include leaves, needles, and vines.

NATURAL WOOD -- Clean wood, which has not been painted, varnished or coated with a similar material, has not been pressure treated with preservatives and does not contain resins or glues as in plywood or other composite wood products.

NEW OUTDOOR HEATING DEVICE -- An outdoor heating device that was purchased and installed after the effective date of this chapter.

OUTDOOR HEATING DEVICE -- Any new or existing equipment, device, appliance or apparatus, or any part thereof, which is installed, affixed or situated outdoors for the primary purpose of combustion of fuel to produce heat or energy used as a component of a heating system providing heat for any interior space or water source. Any "outdoor heating device" may also be referred to as an outdoor wood boiler, outdoor wood furnace or outdoor wood hydronic heater.

UNTREATED LUMBER -- Dry wood which has been milled and dried but which has not been treated or combined with any petroleum product, chemical, preservative, glue, adhesive, stain, paint or other substances.

- B. Unless specifically defined, the words or phrases used in this chapter shall be interpreted so as to give them meanings they have in common usage, and to give this chapter its most reasonable application.

**§ 136-3. Permit required.**

Any person, firm or corporation who or which desires to install an outdoor heating device shall obtain a permit from the Code Enforcement Officer of the Town of Somerset, as well as a copy of the regulations for the Town of Somerset. The permit fees shall be established from time to time by resolution of the Town Board.

**§ 136-4. Regulations and requirements.**

- A. No person shall, from the effective date of this chapter, construct, install or establish an outdoor heating device without a permit. No person shall operate an outdoor heating device unless such operation conforms with the manufacturer's instructions regarding its installation and operation and the requirements of this chapter regarding fuels that may be burned in an outdoor heating device as set forth in §136-2 and §136-5 and chimney height as set forth in § 136-5.
- B. All outdoor heating devices shall be constructed, established, installed, operated and maintained in conformance with the manufacturer's instructions and the requirements of this chapter. In the event of a conflict, the requirements of this chapter shall apply unless the manufacturer's instructions are stricter, in which case the manufacturer's instructions shall apply.
- C. The owner of any new outdoor heating device shall produce the manufacturer's owner's manual or installation instruction to the Code Enforcement Officer to review prior to installation.
- D. All new outdoor heating devices shall be laboratory tested and listed to appropriate safety standards such as UL, CAN/CSA, ANSI or other applicable safety standards.
- E. Exception. If an outdoor heating device is, through the course of proper investigation by local authorities, creating a nuisance and is violating requirements of §136-5, the following steps shall be taken by the owner and Code Enforcement Officer having jurisdiction:
  - (1) Modifications made to the unit to eliminate the nuisance such as extending the chimney or relocating the outdoor heating device, or both.
  - (2) Cease and desist operating the unit until reasonable steps can be taken to ensure that the outdoor heating device will not be a nuisance.

**§ 136-5. Operation requirements.**

Outdoor heating devices shall be constructed, established, installed, operated and maintained pursuant to the following conditions:

- A. Fuel burned in any outdoor heating device shall be only firewood, natural wood, untreated lumber, wood pellets, corn products or other listed fuels specifically permitted by the manufacturer's instructions such as fuel oil, natural gas or propane backup.
- B. The following fuels are strictly prohibited in any outdoor heating devices:

- (1) Wood that has been painted, varnished or coated with similar material and/or has been pressure treated with preservatives and contains resins or glues as in plywood or other composite wood products, or particle board.
- (2) Rubbish or garbage, including but not limited to food wastes, food packaging, food wraps, animal carcass, paint or painted materials, furniture, construction or demolition debris or other household or business wastes.
- (3) Any plastic materials including but not limited to nylon, PVC, ABS polystyrene or urethane foam, and synthetic fabrics, plastic films and plastic containers.
- (4) Rubber, including tires or other synthetic rubber-like products.
- (5) Any items not specifically allowed by the manufacturer or this section or any items prohibited by Federal, State or County law, rule or regulation.

C. Setbacks for any new outdoor heating device.

- (1) The outdoor heating device shall be located behind the forward line of the principal residence.
- (2) The outdoor heating device shall be located on property in compliance with manufacturer's recommendation and/or testing and listing requirements for clearance to combustible materials.
- (3) The outdoor heating device shall have the minimum setbacks for accessory uses as required by Chapter 205, Zoning Schedule.

D. Chimney heights for new outdoor heating devices:

- (1) Furnace should be located no less than 100 feet from any residence not served by the furnace.
- (2) If located within 100 feet to 300 feet to any residence not served by the furnace, it is recommended that the stack be at least 2 feet higher than the peak of that residence.
- (3) If located more than 300 feet of any residence not served by the furnace, manufacturer's instructions and requirements must be met.

E. All plumbing, electrical and mechanical terminations and penetrations to the residence must conform to the requirements of the New York State Uniform Fire Prevention and Building Codes.

**§ 136-6. Appeals.**

Appeals from any actions, decisions, or rulings of the Code Enforcement Officer or for a variance from the strict application of the specific requirements of this chapter shall be made to the Zoning Board of Appeals. Requests for all appeals shall be made in writing to the Zoning Board of Appeals not later than 30 days from the act, decision, or ruling from which relief is sought.

**§ 136-7. Penalties for offenses.**

Any violation of this chapter shall be considered a violation within the meaning of the Penal Law of the State of New York and shall subject the owner of the property on which the outdoor heating device is located to the penalties provided in Article XVII, § 205-61, of the Code of the Town of Somerset.

**§ 136-8. Inspection upon complaint.**

Any person, firm or corporation who or which has secured a permit to install an outdoor heating device in doing so shall have agreed to permit the Town Code Enforcement Officer or any other person designated by the Town to inspect the outdoor heating device if a complaint is filed, in writing, relative to a violation of this chapter.

**Section 2. Severability.**

If any part of this local law is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this local law.

**Section 3. Repealer.**

All local laws or parts of local laws inconsistent with this article are hereby repealed, except that such repeal shall not affect the validity of any criminal prosecution or civil action commenced or pending.

**Section 4. Effective Date.**

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

RESOLUTION 97-08

**LAND LEASE AT SOMERSET BARKER WASTEWATER TREATMENT PLANT**

Clerk Connolly stated one bid was received for rental of the property at the Somerset Barker Wastewater Treatment Plant from Joseph C. Czelusta for \$100.00 per year.

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 rental of the land at the Somerset Barker Wastewater Treatment Plant for 10 ½ years is awarded to Joseph C. Czelusta, 1643 Hosmer Road, Appleton, NY 14008 for \$100.00 per year as specified in the lease agreement.

RESOLUTION 98-08

**EMPIRE STATE WIND ENERGY (ESWE)**

Supervisor Meyers stated that the letter was received from Keith Pitman and that they (ESWE) are open to negotiations. He proposed that the Board look at what

TOWN BOARD MEETING  
JULY 8, 2008 PAGE 12

Councilman Engert had suggested in May by keeping the Host Community Agreement as written with the changes to Article XI which currently reads will be 75%, with changes as follows:

- 60% of the net revenues received for years 1, 2 and 3
- 65% of the net revenues received for years 4, 5, and 6
- 70% of the net revenues received for years 7, 8, 9, and 10
- 75% for years 10 and on

He asked if there are any other suggestions.

Councilman Chaffee stated the he felt the intent of the discussion last month was for ESWE to come back with a counterproposal.

Supervisor Meyers stated they responded and asked what the Board has.

Councilman Wayner stated that he made his position clear at the last meeting and it has not changed. He stated that he did not feel that the Town should be bound by an unproven wind farm developer and that the 75% share of net revenue is the number the Town should stick with. He stated that ESWE rejected the Town's Host Community Agreement in its entirety that contained that percentage. He stated that he is prepared to make a motion the Town accept the May 12<sup>th</sup> rejection letter from ESWE as being the definitive final word regarding HCA negotiations with the town and that further interests in wind farm project by ESWE shall be administered to the Town's Planning Board as provided by Local Law #1-2006. He stated it is a mistake for the Town to devalue the resource to try to buy back interest. He stated that he left the meeting (April 23<sup>rd</sup>) with Mr. Pitman very optimistic we (the Town) would receive a counterproposal (from ESWE) with slight modifications that we all could live with and move forward. He stated that the wind resource of the town should be opened up to other developers.

Councilman Gow sited an article dated June 18<sup>th</sup> where Bill Wolcott of the Lockport US&J interviewed Keith Pitman where Mr. Pitman stated "It was the overall package...compare it with the agreement that was originally proposed and there are numerous differences. It wasn't any one thing, just the overall picture. It's not a good way to go." She stated it goes on to further quote Mr. Pitman as saying: "Somerset does not have a compelling reason to make us more interested as opposed to other parts of the state. We are beyond what we have done in any other community." She stated that it is pretty clear that it backs up their rejection letter of May 12<sup>th</sup>. She also stated that she takes Floyd Koerner's suggestion that the Board not nail us down and that they should come to us to give us an offer of what revenue they would find palatable and they have not done that.

Councilman Engert stated the quote in the paper is identical to that letter and to suggest that we don't see further correspondence and ignore it, he does not agree. He stated that the Board should reach out to ESWE with a different revenue plan that will entice them to take on our HCA that it is vastly different from the others that have been signed (by ESWE). He stated the compelling reason is to provide them with an economic

package that will still vastly overshadow any discussions that we have with another wind developer. He stated that he investigated other companies including Horizon that have similar projects around the state and they have very similar Host Community Agreements and revenue sharing plans with their communities. He stated that this is not the only business model in existence in New York State right now. He stated Horizon Wind Energy has PILOT arrangements, host community arrangements, and neighboring agreements. He stated there is copy catting to their business model going on that it is profitable and can be done in that manner. Councilman Engert stated that he would like to give them (ESWE) an opportunity for a last and final offer. He stated his goal is to take this to a final conclusion, give them an opportunity to sign our HCA intact and still with a revenue share that is profitable and a benefit to the Town of Somerset.

Councilman Chaffee stated that they should have come back to us with "X" percent.

Extensive discussion ensued regarding the letter received from EWSE; the motion that was passed in June regarding revenue share adjustment; nothing put unprofitable in the HCA; other companies interest in the Town and revenue differences between companies.

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

NOT APPROVED	Ayes 2	Meyers, Engert
	Nays 3	Chaffee, Gow, Wayner

Resolved that the language that was written by Councilman Engert regarding the percentages be put into the prior approved Host Community Agreement and sent back to Empire State Wind Energy.

Councilman Chaffee asked that the article in the Lockport Union-Sun & Journal on July 6<sup>th</sup> be clarified.

Supervisor Meyers stated that he received a call from the writer of the article to find out if the information was correct and he stated it was not.

Councilman Wayner stated that he had contacted the writer and that there will be a retraction in the paper.

Supervisor Meyers stated there were several things wrong with the article.

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

INTRODUCED

Resolved the May 12<sup>th</sup> rejection letter from Empire State Wind Energy be accepted as the definitive final word regarding HCA negotiations with the Town of Somerset and any

future interest in a wind farm project by ESWE shall be administered via application to the Town's Planning Board as per Local Law #1-2006.

Supervisor Meyers asked how we (the Board) can pretend the letter of June 30<sup>th</sup> doesn't exist.

Councilman Engert stated he has no idea what the purpose of the motion is.

Councilman Wayner stated that he wants closure.

Councilman Engert stated that the closure was made by the 3-2 vote of the motion that ended negotiations.

Supervisor Meyers stated that is the closure that we are not going to send a counterproposal to Empire and that AES is free to build.

Councilman Wayner stated that he retracts the motion with Councilman Gow stating the same.

Floyd Koerner asked if negotiations will be opened up with AES.

Supervisor Meyers stated that AES will come to the Planning Board with their proposal.

Susan Atwater asked if it was appropriate to send a letter to ESWE telling them of the decision.

Supervisor Meyers stated that he will do that.

#### RESOLUTION 99-08

##### **INCREASE IN MILEAGE RATE**

Clerk Connolly stated that IRS raised the federal mileage rate from 50.5 cents to 58.5cents on July 1<sup>st</sup>.

Discussion ensued regarding leasing vehicles vs. paying mileage for use of vehicles and the increased gas prices.

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

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

Resolved the mileage reimbursement rate for use of personal vehicles for town business be increased to 58.5 cents per mile effective July 9, 2008.

#### RESOLUTION 100-08

##### **SNOW AND ICE REMOVAL CONTRACT WITH NEW YORK STATE**

Clerk Connolly noted that a resolution has to be passed by the Board to accept the increased monies paid by New York State due to the severity of the winter.

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 Supervisor Meyers is authorized to sign the amendment to change the estimated expenditure for the snow and ice agreement with the State of New York due to the severity of the winter during 2007/08.

RESOLUTION 101-08  
**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	
A960		A960	
A5132.4	\$ 12,115.00	A5132.2	\$ 12,115.00
A1990.4	<u>1,066.48</u>	A1410.2	624.30
	\$ 13,181.48	A7520.4	<u>442.18</u>
			\$ 13,181.48

DB960		DB960	
DB5110.1	\$ 50,000.00	DB5120.2	\$ 50,000.00

RESOLUTION 102-08  
**BRIDGE RESOLUTION**

Clerk Connolly reported that last month the resolution that was needed for the Lower Lake Road Bridge was not provided to the Town Board for approval and that the resolution could not be certified as the actual resolution adopted. She asked that the resolution as presented be adopted.

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 reading of the actual resolution be waived and the following resolution is approved:

**Authorizing the implementation and funding in the first instance 100% of the Federal-Aid eligible costs of a Transportation Federal-Aid Project, to fully fund the local share of Federal-Aid eligible and ineligible project costs, and appropriating funds therefor.**

WHEREAS, a Project, for the Replacement of the Lower Lake Road Culvert over Fish Creek, in the Town of Somerset, Niagara County, PIN 5758.35, (the Project) is eligible for funding under Title 23 U.S. Code, as amended, that calls for the apportionment of the costs of such program to be borne at the ratio of 80% Federal funds and 20% Non-Federal funds; and

WHEREAS, the Town of Somerset desires to advance the Project by making a commitment of 100% of the Non-Federal share of the costs of the Preliminary Engineering (Design I-VI) and Right-of-Way Incidentals phases of the project PIN 5758.35,

NOW, THEREFORE, the Town Board of the Town of Somerset, duly convened on July 8, 2008 does hereby

RESOLVE, that the Town Board of the Town of Somerset hereby approved the above subject project; and it is hereby further

RESOLVED, that the Town Board of the Town of Somerset hereby authorized the Town of Somerset to pay in the first instance 100% of the Federal and Non-Federal shares of the cost of the Preliminary Engineering (Design I-VI) and Right-of-Way Incidentals phases of the project or portions thereof, and it is further

RESOLVED, that the sum of \$50,000 is hereby appropriated from DB5120.2 and made available to cover the cost of participation in the above phases of the Project; and it is further

RESOLVED, that in the event the amount required to pay in the first instance 100% of the Federal and Non-Federal shares of the cost of the project's Preliminary Engineering (Design I-VI) and Right of Way Incidentals phases exceeds the amount appropriated, \$50,000 and/or 100% of the full Federal and Non-Federal shares of the cost of the project's Preliminary Engineering (Design I-VI) and Right-of-Way Incidentals phases exceeds \$235,000, the Town of Somerset shall convene its Board as soon as possible to appropriate said excess amount immediately upon the notification by the New York State Department of Transportation thereof; and it is further

RESOLVED, that the Supervisor of the Town of Somerset is hereby authorized to execute all necessary Agreements, certifications or reimbursement requests for Federal Aid on behalf of the Town of Somerset with the New York State Department of Transportation in connection with the advancement or approval of the Project and providing the administration of the Project and the Municipality's first instance funding of Project costs and permanent funding of the local share of Federal-Aid Eligible Project costs and all Project costs within appropriations therefor that are not so eligible; and it is further

RESOLVED, that a certified copy of this Resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary Agreement in connection with the Project; and it is further

RESOLVED, this Resolution shall take effect immediately.

RESOLUTION 103-08

**AUDIT OF CLAIM**

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 bills be paid in the following amounts:

General Fund	No. 293 through 327	\$ 24,682.45
Highway Fund	No. 87 through 99	\$ 83,452.04
Sewer Fund	No. 63 through 76	\$ 5,829.14
Water Fund	No. 75 through 84	\$ 34,159.02

**UTILITY BILLING SYSTEM**

Superintendent Denny stated that at budget time he talked about purchasing a new billing system. He stated that he will be obtaining proposals for discussion at the next meeting.

RESOLUTION 104-08

**CHANGE METERS TO RADIO READ METERS**

Superintendent Denny stated that he would like to change all the water meters to radio read meters, a system that is are used to read the meters. He explained the way the system works with the billing system and the efficiency of installing the system. He asked permission to obtain bids.

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 Superintendent Denny is authorized to advertise for bid radio read meters with the bids being opened on August 11, 2008 at 11:00AM.

Superintendent Denny requested an Executive Session to discuss a personnel issue.

**PUBLIC INPUT**

Norman Jansen stated that he was sorry to hear about the windmills and also questioned if there was a water leak on the SW corner of Johnson Creek Road and Lake Road.

Superintendent Denny stated that he will look into it.

RESOLUTION 105-08

**EXECUTIVE SESSION**

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 the Board enter into executive session to discuss the employment of a particular person at 9:10PM.

RESOLUTION 106-08

**RETURN TO REGULAR SESSION**

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 Board return to regular session at 9:27PM.

RESOLUTION 107-08

**CREATION OF ACCOUNT CLERK/TYPIST POSITION**

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

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

Resolved that the position of Account Clerk/Typist is created to comply with Civil Service requirements.

RESOLUTION 108-08

**APPOINTMENT OF ACCOUNT CLERK/TYPIST**

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

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

Resolved that Tracy Carmer is appointed to the position of Account Clerk/Typist at an annual salary of \$31,026 to be prorated for the remainder of 2008.

On a motion of Councilman Gow, seconded by Councilman Chaffee, the meeting adjourned at 9:35 PM subject to the Call of the Clerk. Carried unanimously.

---

Rebecca A. Connolly, MMC  
Town Clerk