

REGULAR MEETING
JUNE 10, 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 10th day of June 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
	Edwin J. Shoemaker----	Counsel
	Randy Roeseler -----	Engineer

Attended by: Approximately 11 residents; 4 BCS students

Supervisor Meyers called the meeting to order at 7:33PM with the Pledge to the Flag.

RESOLUTION 83-08

APPROVAL OF MINUTES

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 that the minutes of the May 13th, 2008 meeting be approved as submitted by the Clerk.

RESOLUTION 84-08

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 April and May
Police Report

COMMUNICATIONS

Clerk Connolly stated that a statement had been received from the Niagara County Treasurer's Office reporting the payments of sales tax; mortgage tax; and dog monies for 2007 to the Town of Somerset.

LANDFILL

Councilman Gow gave an overview of communications sent and received from James Austin of the Dept. of Public Service. She stated the last communication was on June 4th and we are not getting very far. She stated that an email from Mr. Morrell (DPS) stated that DPS will contact DEC regarding inspections. She stated that she had spoken to DEC and DEC said they would be willing to perform the inspections. Mr. Austin replied in an email on June 4th stating that Dave Morrell had spoken with AES who informed him that they have extensive documentation and photographs regarding their compliance with Commission orders and requirements. The email also stated that Town Officials will be meeting with AES shortly to discuss their compliance activities to date. Mr. Austin stated that he will speak with Dave Morrell about DEC compliance inspections. Councilman Gow stated that she has not had any response since June 4th and asked if Councilman Engert had received any information regarding the tour of the landfill.

Councilman Engert stated that June 25th has been set for the date for the tour and asked if morning or afternoon is preferable. Upon consensus, 9AM on June 25th was set for the tour. Councilman Engert asked Engineer Roeseler to attend.

Councilman Gow stated that she and Councilman Chaffee will continue to follow up. Supervisor Meyers asked the Attorney if monitoring the landfill was part of the agreement.

Attorney Shoemaker stated yes it was and DPS was to cooperate with DEC .

Councilman Gow stated DEC can't do the inspections until ordered to do so by DPS. She stated that DPS says they cannot order DEC to do the inspections but can ask.

Supervisor Meyers stated we need to motivate DPS to have DEC directed to do the inspection or do it themselves.

Extensive discussion ensued regarding the compliance activities and inspections.

Councilman Engert stated that he would like to have a letter drafted to Senator Maziarz to intervene for the Town with the two state agencies.

Supervisor Meyers stated that we need to get DPS to assign the inspections to DEC or for DPS to do it themselves. He questioned if it is necessary for Senator Maziarz to do it.

Councilman Wayner stated that he liked the idea to have Senator Maziarz intervene.

Supervisor Meyers stated he didn't want to jump to that step before its time.

Councilman Engert stated that those are State Agencies and that they should be doing their job.

Councilman Chaffee stated that DPS understands why the citizens of Somerset are concerned but yet they are not doing the follow up.

Councilman Gow stated that when she talked to Mr. Austin he stated he had heard from a lot of residents of Somerset.

Supervisor Meyers stated that if they agreed to do something they are not capable of doing then they need to get someone else to do it that is capable.

Councilman Engert stated that he will draft a letter to Senator Maziarz and will send all the emails that Councilman Gow has received for his review.

RESOLUTION 85-08

OUTDOOR HEATING DEVICES

Clerk Connolly had forwarded to the Town Board the revised outdoor heating device law from the Planning Board.

Supervisor Meyers stated that he attended the Planning Board meeting and that the Board addressed the concerns.

Councilman Wayner stated the three issues that were brought up at the previous meeting were addressed.

Supervisor Meyers stated that the devices will be allowed to operate year round; the definition of "existing outdoor heating device" was changed to allow existing devices to be replaced in the same spot but will have to follow the stack height requirement; and if it is violating the requirements, mitigation has to be taken to correct the problem.

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 a public hearing be held on July 8, 2008 at 7:30PM to hear and consider comments regarding the adoption of the revised Proposed Local Law #1-2008 entitled Outdoor Heating Device.

RESOLUTION 86-08

EMPIRE STATE WIND ENERGY

Supervisor Meyers stated that he had been in frequent contact with Keith Pitman and that Mr. Pitman stated that he would be willing to take another proposal to the investors for review.

Councilman Engert stated that the Board has had numerous discussions and disagreements regarding the letter received of May 12, 2008 from Empire State Wind Energy (ESWE) rejecting the Host Community Agreement (HCA) in its entirety. He stated that it is the responsibility of the Board to pursue ESWE.

Extensive discussion ensued regarding the lack of a counterproposal from ESWE; the lack of reasons for the rejection of the HCA; the difference of the agreement of that which is signed with other towns; proposal to look at the profit sharing formula while keeping the document intact; potential numbers to propose; the impact of the agreement on the investors of ESWE; the revenue loss to the Town of Somerset if ESWE is not pursued; and comparison of what other companies are paying other towns in revenue sharing.

Councilman Chaffee stated that nothing in the letter stated they wanted to discuss anything.

Supervisor Meyers stated the risks have been increased significantly for ESWE with no returns. He stated if we make changes in the revenues what do we have to lose by submitting a proposal.

Councilman Engert said that it should be either accept or reject the agreement and this be the last and final offer.

On a motion of Councilman Engert, seconded by Supervisor Meyers the following resolution was NOT VOTED UPON:

Resolved that the Town make a best and final offer to send the agreement to Empire State Wind Energy as is with changes to the numbers only and give them an opportunity to say yes or no.

DISCUSSION

Councilman Wayner stated that ESWE has been given an opportunity to review the agreement and clearly responded. He stated that if we propose another agreement it puts the Town in a negative negotiating position and it will be like that forward. He stated that there is nothing stopping ESWE from sending a counterproposal; and that there is nothing keeping them from developing wind energy in the Town of Somerset. He stated all they have to do is submit an application to the Planning Board. He stated that he feels that the Board has done due diligence and been very responsible.

Supervisor Meyers stated that he has a different perspective as we added risks to the investors.

Councilman Wayner stated that he felt that both sides are protected based on the three law firms opinions.

Extensive discussion ensued regarding the increased risk to the investors; Article 78 clause; and taking a lower percentage of the profits

Floyd Koerner stated that the ESWE letter was a general refusal with no indications of what the hang-ups were. He asked the Board to not offer a decrease in revenues.

Supervisor Meyers said a letter will be attached clearly stating this is the final response.

Floyd Koerner stated his advice would be to go back and ask what the hang-ups are and he does not feel the price is the issue.

Supervisor Meyers stated the issue is the Article 78 and that is not an issue that we are willing to give up so you compensate them for allowing the issue.

Floyd Koerner asked if they (ESWE) officially came back and said it is the Article 78 other than the communications that Supervisor Meyers has had with ESWE. He stated don't assume what the problem is.

Supervisor Meyers said that when he talked to Keith Pitman the feeling he got was if we give ESWE more money we can talk.

Councilman Wayner said then he can come back and say that instead of the letter received.

James Dickinson asked if the Board knows what the feel of the landowners is. He feels that the landowners are frustrated because they want a deal. He stated it is hard to justify that the Board is giving up a \$13 million deal. He questioned what the worse case scenario is with the Article 78.

Councilman Gow stated it is not just the Article 78. She stated that after the appendices and figures are looked at and the Town decides they do not like them, Mr. Pitman stated that the Town can walk away. She stated the agreement has a "no cost to the town" clause as ESWE has the legal right to sue the Town to recoup their costs if the Town chooses not to go with them. She stated that they had no counterproposal.

Extensive discussion ensued regarding the submission of a counterproposal; the commitment to the document submitted; the way the revenue is calculated; the amount of revenue loss to the town in order to do business with ESWE; and the lack of any company giving a revenue sharing deal like the one offered by ESWE.

Norman Jansen asked if the amount of money is not worth the risk.

Supervisor Meyers stated AES will not give 75% of the profit to the town. He stated he has been studying wind power and right now it is prime for profit.

Floyd Koerner stated it is not just energy, it is carbon credits.

Supervisor Meyers stated that we have more control of the wind farm under ESWE and the opportunity to purchase the wind farm.

Floyd Koerner asked the Board to go back to ESWE to narrow the problem down and don't assume the problem.

Discussion ensued regarding the issues and position of the town regarding submission of a new proposal, with no change to the document except monetarily.

Supervisor Meyers stated this should be the last and best effort.

Discussion ensued regarding the amount of profit sharing and the need to add exact numbers; dealing with a timeframe; forgetting ESWE and moving on.

Benjamin Atwater stated that for them to give up \$1.7 million may not be a big deal. He asked that an offer be made.

Supervisor Meyers stated that we are taking a risk with a company that does not have a turbine up yet.

Randy Hildebrant stated that he is getting the impression from taxpayers they are sick of hearing about this and to move on to somebody else.

Councilman Engert stated that he wanted to amend the motion and make a new motion.

Clerk Connolly stated the first motion should be withdrawn.

Councilman Engert stated that he withdrew his first motion with Supervisor Meyers withdrawing the second to the motion.

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

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

Resolved that a letter be sent to Empire State Wind Energy stating the Board stands by the Host Community Agreement that was proposed on April 23, 2008; would Empire State Wind Energy consider discussing a revenue share adjustment; and that a response in writing must be received by July 1, 2008.

NIAGARA COUNTY WORKERS COMPENSATION PLAN

Clerk Connolly stated no other information has been received from Niagara County regarding the Worker's Compensation claim.

Councilman Wayner stated that Attorney Brandt stated that the Town took the tail payments when the Town withdrew, but other towns did not. He stated that is why the statute of limitations has expired.

Supervisor Meyers stated that someone at the County level who should know told him that they (the County) don't have a leg to stand on and that they (the County) have passed the statute of limitations.

HISTORIC TRAIL

Historian Lorraine Wayner presented information to the Board that she has submitted to the Niagara County Historic Trail to be included in the brochure.

RESOLUTION 87-08

HISTORY BOOK OF THE TOWN OF SOMERSET

Historian Lorraine Wayner presented a proposal to have the history of the Town of Somerset printed. She stated that she has been working on the project for 2 years and has entitled it "Welcome to Somerset". She stated that she has five chapters completed with two more to go. She stated that the history has not been updated or published since 1972. She stated she intends to have the history printed and ready for distribution before the end of the year.

Name and Address of Vendor

Costs

Service Office Supply Corp.
P.O. Box 2, Getzville, NY 14068

500 for \$1,649.00 – 1000 for \$2,235.00

Summit Print & Mail LLC
6042 Old Beattie Road, Lockport, NY 14094

500 for \$ 3796.16 – 1000 for \$ 5,031.52

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 Historian Wayner is authorized to have 1000 copies of the History of Somerset printed as proposed by Service Office Supply Corp., P.O. Box 2, Getzville, NY 14068 for \$2,235.00 as per the procurement.

RESOLUTON 88-08

SAFETY TRAINING

Superintendent Denny presented a proposal from Onsite Enterprises to conduct the annual safety training for the employees and inspections of the buildings for \$2,200.00. He stated that Supervisor Meyers called Niagara County Community College to see what service they could provide.

Supervisor Meyers said that NCCC received a grant from the state and said they have to give additional hours of training. He stated that he will receive information regarding the program and that there is no cost only the manuals. He stated they do not do the annual DOT testing nor the portable fire extinguisher training. He stated the training could be on site or at the corporate center in Lockport.

Councilman Gow asked if there was any cost for them to come to Somerset.

Supervisor Meyers stated the only cost will be the cost of the manuals even if they come to Somerset.

Councilman Engert asked if it would be done at the convenience of the departments.

Supervisor Meyers said they could work around the schedule and be open to any format.

Superintendent Denny stated there may be a problem finding another company to do the rest of the items. He said they have to be fit tested for respiratory protection by a qualified tester; CPR training; and drug and alcohol testing.

Councilman Engert stated there may be a timing issue if the employees are out of compliance.

Superintendent Denny stated that they may be out of compliance now and that he will contact Onsite Enterprises to check the status.

Supervisor Meyers stated that he will get the documents from NCCC.

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 expenditure of up to \$2,200.00 is authorized with Onsite Enterprises to conduct the annual training unless alternative measures can be made for less money in order to keep the employees in compliance with testing requirements.

LOCAL GOVERNMENT CONSOLIDATION

Supervisor Meyers reported that there has been a study on Local Government Consolidation released by New York State and that he has met several times with the Mayor of Barker and the Superintendent of Schools regarding this issue. He stated he wanted to form a committee to look into consolidation that can be done at the local level.

Supervisor Meyers appointed Councilman Wayner, Councilman Engert and himself to the committee.

RESOLUTION 89-08

BRIDGE RESOLUTION

Superintendent Bigelow reported that documents had been sent to Supervisor Meyers regarding a resolution that needs to be passed to proceed with the replacement of the bridge. He presented a letter that was sent to Supervisor Meyers regarding the matter. He stated that the resolution needs to state that the Town is willing to agree to the funding of the bridge.

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 Town agrees to designate funds in order to proceed with the bridge replacement on Lower Lake Road as requested by New York State.

INVESTMENT

Councilman Gow asked Supervisor Meyers if any of the revenues are being invested in CD's and how he is optimizing the revenues.

Supervisor Meyers stated that he would check on it.

RESOLUTION 90-08

VETERAN'S PAGE INITIATIVE

Councilman Engert stated that the Board had authorized a committee be formed to discuss the feasibility of placing a page on the website honoring the veterans. He stated the committee met on June 3rd, 2008 to discuss moving forward with the concept. He stated he was pleased with the results with the input of the Historian Lorraine Wayner, Town Clerk Becky Connolly, and a local veteran Leroy Wolfe. He stated that the purpose of the meeting was to share a common bond and conceptualize the service and commitment of all those who served the community. He expounded upon the parameters of what qualification will be included:

1. Born in Somerset
2. Who live or who have lived in Somerset
3. Attended school in Somerset or the Barker Central School
4. A current or former member of the Herbert W. Carr Post #425 of the American Legion

Councilman Engert stated there will be a Service Data Form available if a person feels they may be qualified. He referred to the Town of Colonie, NY webpage that is being used as an example for building the Somerset webpage. Councilman Engert stated that Clerk Connolly had been putting together resources to transcribe the data that Historian Wayner has already in place regarding the veterans. He stated this is a significant undertaking in order to get the information into a spreadsheet so it can be uploaded to the website for easy access. Councilman Engert stated that Clerk Connolly had

contacted Deborah Dearborn at Barker Central School who has offered to put the data together in the proper format. Councilman Engert requested that \$1,000 be allocated to the committee to move this project forward.

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

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

Resolved that \$1,000.00 be allocated to the Veterans' Remembrance Page Initiative Committee for the creation of a webpage dedicated to the veterans of Somerset.

PROMOTE SOMERSET

Councilman Wayner stated that the committee has been at a standstill and that the Tourism committee needs to meet to move forward.

TIRE PICK-UP

Superintendent Denny reported that in 2007, 30.90 tons of tires had been picked up by the Water/Sewer Department along with the Highway Dept. and in 2008, 22.06 tons of tires were delivered to the Sewer Plant. He stated the cost of disposal remained at \$90 per ton.

RESOLUTION 91-08

LEASE OF SEWER PLANT LAND

Superintendent Denny stated that he has 8.5 acres of land at the Waste Water Treatment Plant that could be rented for tillable land for hay. He requested permission to offer for bid the land for a 10 year lease for farm use. He asked that the bid be advertised in the newspaper and on the website.

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

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

Resolved that Superintendent Denny and Attorney Shoemaker are authorized to put a lease together for rental of the land at the Waste Water Treatment Plant and to advertise the same, with the bids being opened on July 7, 2008 at 11:00AM.

RESOLUTION 92-08

ATTORNEY FEES

Discussion ensued regarding the charges of the Attorney; notice of claim and what constitutes services over and above the retainer agreement. Procedures will be worked out regarding issues that come up during the month and the way a decision can be made. Councilman Engert reported that any decision via email regarding town business violates the Open Meetings Law in the opinion of Director Robert Freeman. He stated that a procedure needs to be put into place for something that arises during the month in order to remove any shade of impropriety.

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 \$2,800 is authorized for Attorney representation of the Town during the Board of Assessment Review process.

RESOLUTION 93-08

AUDIT OF CLAIM

Supervisor Meyers questioned the bill from Regulatory Watch.

Attorney Shoemaker explained that there are supplementary actions regarding the defense of the Town.

Supervisor Meyers questioned Attorney Brandt's invoices and asked that they be submitted monthly.

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

Resolved that the bills be paid in the following amounts:

General Fund	No. 236 through 292	\$ 40,929.94
Highway Fund	No. 69 through 86	\$ 14,898.73
Sewer Fund	No. 53 through 62	\$ 4,758.67
Water Fund	No. 65 through 74	\$ 1,290.63

Councilman Wayner reported that Lowell McAdam, a former Somerset resident, has donated \$50,000 to the Barker Central School for a virtual interactive site, in honor of his mother Marie McAdam.

PUBLIC INPUT

James Hoffman stated that it is an excellent idea to contact Senator Maziarz regarding AES, especially the landfill status of SWDA1.

On a motion of Councilman Gow, seconded by Councilman Wayner, the meeting adjourned at 10:00 PM subject to the Call of the Clerk. Carried unanimously.

Rebecca A. Connolly, MMC
Town Clerk