

REGULAR MEETING  
JUNE 9, 2009

A Regular Meeting of the Town Board of the Town of Somerset, County of Niagara and the State of New York was held at the Town Hall, 8700 Haight Road, Barker, New York on the 9<sup>th</sup> day of June 2009.

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

Attended by: Approximately 15 residents and 6 BCS students

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

RESOLUTION 81-09

**APPROVAL OF MINUTES**

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

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

Resolved that the minutes of the May 12<sup>th</sup> and May 20<sup>th</sup>, 2009 meetings be approved as submitted.

Supervisor Meyers thanked Councilman Engert for acting as Deputy Supervisor in his absence.

RESOLUTION 82-09

**APPROVAL OF SUPERVISOR'S MONTHLY REPORT**

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 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 and Annual Police Report

ATTORNEY REPORT

Attorney Herdzik reported on the following pending matters:

1. AES and the Niagara County IDA have applied for leave to appeal to the Court of Appeals. He stated the Town has filed a motion to oppose the leave returnable to June 22<sup>nd</sup>. He stated that he feels the Appellate Division got it right and does not feel that this is appealable.
2. There is an argument by AES that stays the decision of the Appellate Division because they have filed a motion to the Court of Appeals and the Town has been served a show cause order that is returnable on June 11<sup>th</sup> with Judge Kloch. He stated motion papers have been filed by the Town.
3. He stated that Judge Kloch has issued a stringent scheduling order to hear the Article 7 proceedings for 2004, 2005 and 2006 of AES. He has asked the Judge for a considerable extension of time for discovery.

Councilman Wayner asked if all substitution of counsels have been signed.

Attorney Philipps stated yes.

Councilman Engert asked how long of an extension is being requested.

Attorney Herdzik stated one year and will be entertained by Judge Kloch on June 11<sup>th</sup>.

COMMUNICATIONS

RESOLUTION 83-09

**NIAGARA COMMUNITIES COMPREHENSIVE PLAN**

Clerk Connolly read a letter from the Niagara Communities Comprehensive Plan requesting Niagara County act as Lead Agent for the adoption of the proposed Comprehensive Plan 2030 for Niagara County.

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 the Town of Somerset authorizes Niagara County to act as Lead Agent for the adoption of the proposed Niagara Communities Comprehensive Plan 2030.

**SAFETY TRAINING GRANT**

Clerk Connolly read a letter from the NYS Occupational Safety and Health Hazard Abatement Board informing the Town that they have been awarded \$1,789 for the safety and health training project.

**YOUTH FUNDS GRANT**

Clerk Connolly read a letter from the Niagara County Youth Bureau stating that the Town will receive \$1,170 for the youth grant.

**WITHDRAWAL OF FIRE HYDRANT REQUEST**

Clerk Connolly read a letter from Joseph J. Fox, 9125 Somerset Drive, withdrawing his request for a fire hydrant installed in front of his new home. He requested a legal finding as to who is responsible for keeping the fire hydrant clear as per State and Town codes.

Clerk Connolly read a letter from Catherine Emerson, Niagara County Historian, thanking Lorraine Wayner, Town Historian, for her accomplishments and stated that her efforts are a template for any town historian to follow.

Clerk Connolly read a letter from Robert Roberson from Andrews, Pusateri, Brandt, Roberson & Brandt, PC, thanking the Town of Somerset, its residents and taxpayers for the honor and privilege of being their "Town Attorney.

RESOLUTION 84-09

**FIRE HYDRANT LIABILITY**

Councilman Engert asked if the question regarding the liability of the clearing of fire hydrants was referred to Counsel.

Code Enforcement Officer Hildebrant stated that he feels that it is the responsibility of the property owners and stated that the right of way issue was referred to Counsel.

Superintendent Denny stated no answer has been received from Counsel regarding the right of way issue.

Councilman Engert stated that he would like the issue referred to Counsel for an opinion on the liability on the private road.

Supervisor Meyers stated the real issue is who owns the right of way.

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

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

Resolved legal counsel is requested to issue an opinion regarding the town's liability for clearing of fire hydrants.

RESOLUTION 85-09

**SOLE ASSESSOR LOCAL LAW #2-2009**

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

ADOPTED by Roll Call Vote – 3-2	Supervisor Meyers	Aye
	Councilman Chaffee	Nay
	Councilman Gow	Nay
	Councilman Wayner	Aye
	Councilman Engert	Aye

WHEREAS, the courts have well-settled that this great nation's founding fathers by virtue of the Constitution of the United States directed that government by

representation is still the rule and direct action by the people is the exception;  
and

WHEREAS, the residents of the Town of Somerset elect their representatives to serve on the Somerset Town Board and rightfully expect and demand them to be committed to their responsibility of providing the most cost effective and efficient government services possible; and

WHEREAS the Somerset Government Efficiency Committee, during a series of open public meetings, evaluated the various options available to provide for real property assessment services to the residents and businesses of Somerset; and

WHEREAS, the Somerset Government Efficiency Committee has discovered that hard cost savings and enhanced service levels are available to the Town by transitioning from the longstanding three person Board of Assessors to a sole appointed assessor platform; and

WHEREAS, a report covering the resources, findings, recommendation, and rationale of the Somerset Government Efficiency Committee that document these savings and enhanced service levels was distributed to the members of the Town Board for their consideration on March 2<sup>nd</sup> and with unanimous approval the matter was referred to Public Hearing to be held on May 12, 2009; and

WHEREAS, public input was provided regarding this proposed change during this Public Hearing relative to the proposed local law entitled "Local Law Providing for the Appointment of a Single Assessor for the Town of Somerset";  
and

WHEREAS, the time subsequent to the May 12<sup>th</sup> Public Hearing has been available to members of the Town Board to receive additional input from the public and to further consider this decision as it relates to what is in the very best interest of the Town of Somerset.

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Somerset shall hereby adopt the local law entitled "Local Law Providing for the Appointment of a Single Assessor for the Town of Somerset" as proposed.

Councilman Gow stated the public overwhelming spoke in favor of 3 assessors therefore, she cannot support the law.

Councilman Chaffee stated with the turnout at the last meeting he does not feel that the law should be passed without going to a public referendum.

**TOWN OF SOMERSET  
LOCAL LAW NO. 2 OF THE YEAR, 2009**

**A Local Law Entitled “Local Law Providing for the appointment of a single Assessor for the Town of Somerset”.**

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

Section 1 – TITLE

The Title of this Local Law shall be “Local Law Providing for the appointment of a single Assessor for the Town of Somerset”.

Section 2 – AUTHORITY

The Local Law is enacted pursuant to the provisions of the Real Property Tax law, §328.

Section 3 – PURPOSE

The purpose of this Local law is to change the manner of selection of a town assessor from three elective assessor positions to a single appointed assessor.

Section 4 – PROVISIONS

1. Pursuant to Real Property Tax Law §328 the Town Board of the Town of Somerset hereby elects to make the Town Assessor consist of one person to be appointed as provided in §310 of the Real Property Tax Law which appointment shall become effective January 1, 2010.
2. The Local Law shall not be subject to a referendum.
3. Pursuant to Real Property Tax Law §328, the terms of office of all assessors now in office shall terminate December 31, 2009.
4. This Local Law shall take effect upon filing in the office of the Secretary of State.

RESOLUTION 86-09

**SOMERSET YOUTH BASEBALL ORGANIZATION (SYBO) LEASE**

Councilman Engert stated the proposed agreement has been reviewed by all parties and the organization is securing the required insurance. He stated there will be a diagram of the site attached to the agreement.

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 Supervisor Meyers is authorized to execute the lease agreement with the Somerset Youth Baseball Organization.

RESOLUTION 87-09

**TRAILER MOUNT SEWER CLEANER**

Superintendent Denny asked for authorization to entertain bids for the replacement of the 1981 trailer mount sewer cleaner as budgeted and sell the old one at auction.

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 Superintendent Denny is authorized to advertise for bids for a trailer mount sewer cleaner with bids being opened on July 9, 2009 at 11:00AM. and authorize the old unit to be sold at auction.

RESOLUTION 88-09

**AUDIT OF CLAIMS**

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

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

Resolved that the bills be paid in the following amounts:

General Fund	No. 210 through 252	\$34,361.74
Highway Fund	No. 66 through 80	\$54,819.61
Sewer Fund	No. 59 through 71	\$ 5,898.36
Water Fund	No. 65 through 76	\$ 2,555.12

**LOWER LAKE ROAD BRIDGE**

Superintendent Bigelow reported the construction of the Lower Lake Road Bridge has been moved up to the 2010 construction season. He stated that there is not much accident history, therefore additional funding for the alternate plan may not be approved.

**PUBLIC INPUT**

James Hoffman addressed the Board regarding the following:

1. Announced that Paul Burdick from AES will be at the Planning Board meeting on June 10<sup>th</sup> to issue a wind monitoring report.
2. Asked what is happening with the Barker Chemical site issue.
3. Asked what the status is of dissolving the Village and if they dissolve how do you integrate all their ordinances.

Councilman Engert stated that he will get an update on the Barker Chemical status.

Councilman Wayner stated the Village came to a Somerset Government Efficiency Committee meeting and they do not have all their facts together. He stated the town was interested in shared services not dissolution.

Discussion ensued regarding village dissolution.

Robin Jansen asked who you call when finding a nuisance black bear. Councilman Wayner stated that you call a DEC officer.

Jeff Binga, representing the NYS Off-Highway Recreation Vehicle Association, stated they are developing a four-wheel (ATV) trail system in the area. He stated they (the Association) legitimize the trail system, obtain landowner permission, provide insurance, and create an infrastructure. He stated it is a private landowner trail system and they have found when they have a marked trail, 90% of the trespassing goes away. He stated the club is based in the Town of Pendleton – Tri-County Trail Riders and the trail is a multi-purpose trail that can be used for horseback riding, bikes, walkers and ATV's. He stated they may need permission from the Town in the future for crossing the roads. He stated they work with the Sheriff's Department and DEC to patrol the trails. He stated that this type of system creates revenue for the community.

RESOLUTION 89-09

**EXECUTIVE SESSION**

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 the Board go into Executive Session at 8:40PM to discuss pending litigation.

RESOLUTION 90-09

**RETURN TO REGULAR SESSION**

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 the Board return to Regular Session at 10:10PM.

On a motion of Councilman Gow, seconded by Councilman Wayner, the meeting was adjourned at 10:11PM subject to the Call of the Clerk. Carried unanimously.

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Rebecca A. Connolly, MMC  
Town Clerk