

REGULAR MEETING
MARCH 11, 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 11th day of March 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 80 residents

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

RESOLUTION 51-08

APPROVAL OF MINUTES

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 minutes of the February 11th and February 12th, 2008 meetings be approved as submitted by the Clerk.

RESOLUTION 52-08

APPROVAL OF SUPERVISOR'S MONTHLY REPORT

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 the Supervisor's Monthly report be accepted as submitted.

MONTHLY REPORTS RECEIVED AND FILED:

Code Enforcement Officer's Report

Code Enforcement Officer Hildebrant reported that there will be NIMS (National Incident Management System) training that is required for elected officials on April 16th for a 4 hour Executive briefing at the Niagara County Public Training Facility. CEO Hildebrant explained the need to be NIMS compliant.

Police Report

COMMUNICATIONS
RESOLUTION 53-08

ARTICLE X LEGISLATION

Clerk Connolly read a letter from the New York State Coalition of Concerned Citizens regarding Governor Spitzer calling for the NYS Legislature to revise and re-establish Article X of the NYS Public Service Law, which would establish a new siting and permitting process for energy facilities in the state that would over-ride current "Home Rule" authority, wherein the State of New York will acquire the authority to supersede municipal planning, zoning and decision making regarding the siting of these energy facilities, including wind farms. The Coalition asked that the Town Board oppose the loss of Home Rule.

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

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

WHEREAS, Article X of the Public Service Law provides a streamlined siting permit procedure for certain power generation facilities and the law expired December 31, 2002; and

WHEREAS, since January 1, 2003 power generation facilities have been sited via local zoning and state DEC review; and

WHEREAS, there is currently a proposal before the Legislature to renew and revise Article X of the Public Service Law that would also include the siting of windmills; and

WHEREAS, this inclusion essentially eliminates local zoning control over windmills and has an impact on community host payments; and

WHEREAS, the Town of Somerset, along with numerous municipalities throughout New York State, has undergone considerable time and expense to develop and implement windmill siting policies that best fits our community;

NOW THEREFORE BE IT RESOLVED, that the Town Board of the Town of Somerset is strongly opposed to any inclusion of the siting of windmills in Article X of the Public Service Law as it removes local control of our landscape and violates the principles of Home Rule that has been the guiding force of our state; and

IT IS FURTHER RESOLVED that the Town Board of the Town of Somerset encourages any revision of Article X to address health and environmental issues for those who live and work near power generation facilities; and

BE IT FURTHER RESOLVED that the Town Clerk forward copies of this resolution to the Governor, Energy Committee, elected officials and the Association of Towns.

LAKE ONTARIO COASTAL INITIATIVE (LOCI)

Clerk Connolly read a letter from Stephen Lewandowski, LOCI Program Director, asking the town to contact Congresswoman Louise Slaughter to support the program advocating the clean up of Lake Ontario's coastal waters.

PROPERTY TAX BURDEN RELIEF

Clerk Connolly reported that letters have been received from Senator Maziarz and Assemblyman Hawley stating that they will work diligently during the budget process to support property tax relief.

LOCAL GOVERNMENT CONFERENCE

Clerk Connolly reported that Assemblyman Hawley will be holding a local government conference in Albany from June 1 – 3, with reservations required by March 17th.

RABIES CLINIC

Clerk Connolly announced there will be a free rabies clinic at the Somerset Highway Garage on Saturday, April 19th from 2 – 4 PM.

NYS COMMISSION ON PROPERTY TAX RELIEF

Clerk Connolly announced the NYS Commission on Property Tax Relief will be holding Commission meetings on March 20th in Rochester and April 2nd in Buffalo.

COURT GRANT

Clerk Connolly announced that Judge Donald Martineck wrote a grant requesting monies and that the Town of Somerset has been awarded a grant under the Justice Court Assistance Program for a total of \$9,709.47.

200th BIRTHDAY OF NIAGARA COUNTY

Clerk Connolly reported that she was contacted by the Legislative Clerk for Niagara County to prepare and forward a proclamation in honor of the 200th Anniversary of Niagara County. She stated that a proclamation was forwarded to the County Legislature honoring our rich heritage and congratulating them on the 200th Anniversary.

RESOLUTION 54-08

ATTORNEY RETAINER

Supervisor Meyers stated the Town Board met on March 10th to discuss and review the attorney retainer agreement that Councilman Wayner and Councilman Engert had written up and that it was forwarded to the Attorney for review.

Attorney Roberson stated that the agreement is satisfactory.

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 retainer agreement with Andrews, Pusateri, Brandt, Shoemaker, & Roberson, PC is approved.

Supervisor Meyers stated that one of the issues of the agreement is up front costs for litigation and he asked Attorney Roberson to compile some up front costs for the pending appeal of the PILOT lawsuit.

RESOLUTION 55-08

PARK NAME REQUEST

Supervisor Meyers stated that he had asked Councilman Wayner and Councilman Gow as the Parks Committee to establish and make a policy to name the ball diamonds, as a request has been received to name a diamond.

Councilman Gow thanked Superintendent Denny for his help in making a uniform policy and read the proposed resolution establishing criteria. Councilman Gow stated that there are other memorial options in place for recognizing a person such as planting of trees.

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

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

WHEREAS, a request has been made by the Somerset Youth Baseball Organization to name a baseball diamond in honor of a long serving volunteer;
and

WHEREAS, no parameters have been established previously naming ball diamonds; and

WHEREAS, the Parks Committee met to develop criteria for naming a Somerset Town Park ball diamond;

NOW THEREFORE BE IT RESOLVED that the following criteria is established for the naming of a Somerset Town Park ball diamond:

1. Ball diamonds can be named in honor or memory of Somerset Youth Baseball Organization (herein after SYBO) volunteers only.
2. The existing ball diamonds, in their entirety, are the only structures, grounds, or facilities that can be named in honor or memory of a volunteer.
3. Volunteer must have served for a minimum of twenty-five documented years of service to the SYBO.
4. Signs shall be purchased and maintained by the SYBO.

5. Signs must be made of metal and have the following dimensions - 36" wide X 24" high.
6. Signs must be installed by the Town of Somerset Parks Department. Removal of signs for maintenance or any other reason must also be done by the Town's Parks Department.
7. Signs shall read "persons last name ... field (example: Jones Field).
8. All future requests for honorariums or memorials within the Somerset Town Park, regardless of their source or nature, shall be directed or forwarded to the Town of Somerset Parks Committee.

RESOLUTION 56-08

NAMING OF FRAISER FIELD

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

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

Resolved the center-most ball diamond in the Town Park be named "Fraiser Field" in honor of the 25 plus years of volunteer service that have been given by Larry Fraiser.

EMPIRE STATE WIND ENERGY HOST COMMUNITY AGREEMENT

Supervisor Meyers stated the Town Board has been looking at the host agreement for some time with Empire State Wind Energy (ESWE). He stated that two different developers are looking at Somerset to develop a wind farm. One of them is Empire State Wind Energy, whom was invited in to give a proposal and AES is also interested in building a wind farm. He stated that some of the issues that the Board has come across with the Host Community Agreement (HCA) are a clause that requires the town to forego the right to initiate an Article 78 proceeding. He stated that documentation had been received from the Town Attorney stating that was something the Town cannot do. He stated that the Town has received opinions from two (2) other law firms that touched on that issue stating that it is commonly included in agreements but that it is an unenforceable action. Supervisor Meyers asked if anyone had another view.

RESOLUTION 57-08

WAIVE ATTORNEY/CLIENT PRIVILEGE

Councilman Wayner asked that the comments from the two law firms be discussed. Attorney Roberson stated that the Town is the client and that the attorney/client privilege can be waived.

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

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

Resolved that the two opinions of Bond, Schoeneck & King, PLLC and Whiteman, Osterman & Hanna be available for discussion.

Councilman Wayner stated that the reason for the two other opinions was to become as informed as possible as it is a very big decision. He gave an overview of Bond, Schoeneck & King, PLLC opinion noting they state:

1. "The proposed obligation, if considered by a court, is likely to be deemed an impermissible surrendering of the Town's right to commence an Article 78 proceeding."
2. In waiving this right it constitutes a "covenant not to sue" provision
3. Public Policy – "no one can lawfully do that which has a tendency to be injurious to or against the public good will or welfare"
4. Siting of different case laws included in opinion
5. "...contractual provision requiring a municipality to forgo its right to commence an Article 78 proceeding in the future...contravenes public policy and is unenforceable."
6. Potential consequences of agreeing to a provision that may be unenforceable.
7. Risk exists if the HCA is signed as is
8. Breach of contract and the possibility of legal action against the Town by ESWE
9. "...try to negotiate alternative language to be included in the HCA to eliminate or at least water down the suspect language."

Councilman Wayner stated that he draws from this opinion that the HCA is contrary to public policy as being defined as having a tendency to be injurious to or against the public good or welfare. He stated that while it may be unenforceable, it would likely be up to the courts to decide that. He stated that this position has been stated by three law firms that are independent of one another, and it brings up a serious question as to whether the agreement should be signed knowing it is as flawed as it is.

Supervisor Meyers stated he would like to address the points that were made. He stated that Councilman Wayner did bring up certain points but did not follow through with the responses to those points. One was the conclusion that it would be unenforceable however it continues on to say "faced with a contract containing both lawful and unlawful components, courts will, as a general rule, sever the offending provision and validate the basic agreement...". He stated the contract has an express severability clause in it. He stated it is also important to say (from the opinion) "that language of this nature has been included in HCAs relating to wind projects being developed by other companies".

Supervisor Meyers stated the reason they have this language is because if we were half-way through with the building of the wind farm and we decided to sue DEC, as a result all construction stops and means they (ESWE) could lose their place in line for the grid which would cost them (ESWE) millions of dollars. He stated they (ESWE) won't build a wind farm here without that clause. He stated that if the agreement with Empire is not signed AES will be contacting landowners within days. He stated that

there will not be a host agreement with AES because they will go with a PILOT like wind developers normally do. He also stated that the PILOT will not equate to 30% of the income that the Town will get from Empire.

Attorney Roberson stated that Empire can sue for breach of contract and that exposes the Town to unlimited and uninsurable liability.

Councilman Engert stated it would not be in our interest to initiate a lawsuit and breach contract and open up exposure when we can simply just terminate the agreement.

Supervisor Meyers stated we get 75% of the income.

Councilman Chaffee stated we don't know what the income is.

Councilman Wayner stated the comment has been made repeatedly that the HCA can be severed when we want, but one of the things that Whiteman, Osterman & Hanna LLP states is "all though there is no express statutory authority which enables the Town Board to enter into a HCA, it is widely accepted that towns do possess such authority under the general provision of the Town Law and Municipal Home Rule relating to the promotion and protection of the public health, safety and welfare. Accordingly....the Town may also have authority to... waive its right to commence a proceeding under Article 78..."

Councilman Wayner stated, "Yes we can do that but do we want to do that and is it in the best interest of public good to do that?" He stated Whiteman, Osterman & Hanna LLP continues to say that the town should have the right to terminate the agreement at any time. He stated that Whiteman, Osterman & Hanna LLP opinion observed the definition of "net revenue" is defined as "gross revenue" and was unclear if it includes Wind Energy Tax Credits which are sold by companies to finance the project and constitute millions of dollars, depending on the size of the project. There is also no mention of renewable energy credits. He read from the opinion of Whiteman, Osterman & Hanna LLP, "based upon our understanding of the financing of wind projects, there may not be any net revenue from operation of the project for at least the first ten to twelve years of operation, thus requiring payment of the guaranteed minimum host community payment to be detailed at Appendix B of the agreement and the parties acknowledge that Appendix B will not be completed until after the feasibility of the project is understood by Empire State Wind Energy."

Councilman Wayner continued to review the opinion of Whiteman, Osterman & Hanna LLP, stating "the HCA lacks adequate provisions concerning events of default by the Town and by Empire State Wind Energy....the HCA in its current form should raise a concern on the Town's behalf that it would allow Empire State Wind Energy to engage in dilatory conduct meant to frustrate the potential development of the Town's wind resource, while precluding the Town from terminating the Agreement. The HCA also lacks provisions protective of the Town's interests which have been required of other wind projects under construction or operation elsewhere in the State." He read the conclusion stating that the HCA should be renegotiated to ensure the Town's

expectations are met;nevertheless, the Town may have authority ... to waive its right to commence an action.

Councilman Wayner stated that his attention was caught when Whiteman, Osterman & Hanna LLP said there may be no net revenue for 10 – 12 years. He stated that a Projection was received from ESWE that told the Town that for year's 1 – 10 there would be net revenue of \$1,791,000. He stated that he looked at the numbers that were given by ESWE on the projection and feel they are incorrect because of the annual debt service. He stated that he worked the numbers out on an amortization table and they do not show a profit but a loss of \$961,000.

Councilman Wayner stated that significant money has been paid for the two opinions and that he is trying to inform the public as much as he can.

Supervisor Meyers stated he was not sure how they came to those conclusions, because if you read the HCA, it stated that the agreement does not become operative until the appendices are signed. He stated if the appendices are not signed the agreement will be null and void.

Councilman Wayner stated that the Board had asked for data from ESWE. He stated Supervisor Meyers had provided them with wind measurements from the water plant and that ESWE had sent the requested information back. He questioned the numbers and if the HCA should be signed when flawed.

Supervisor Meyers stated that he thought it was clear that this is standard language in a HCA and we need to decide as a Board if we want to have a wind developer come in here, follow our laws and build a wind farm. Whether, the size we won't have much say on and how much money we get will probably go through the County IDA, we won't have much say on that. He stated these are all things that we will have no control over because they don't want us to do an Article 78 and we don't like that.

Councilman Engert stated that it is important to note that this is a 14 page document and we are discussing one aspect of it and that 8 other towns have signed the agreement. He stated there is no monetary investment at this stage of the process with this developer. He stated that this is an opportunity and that with any opportunity comes risk.

Supervisor Meyers assured the Board that there will be a wind farm in the Town of Somerset. He stated the question is who is going to put it up and how much control and benefit will we have as residents.

Councilman Chaffee agreed that everything has risks, so to mitigate that risk; we went to other consultants that are professionals in the field. He stated that we went with three law firms and all three came back and said to renegotiate the HCA.

Supervisor Meyers stated that two of the three also said that the Town Board is not prohibited to execute the agreement.

Paul Plavetski questioned what you would want to sue a government agency for?

Councilman Gow stated specifically Article X is being pushed at the State level that takes the Town's rights away for home rule that allows the Town to say how we would want wind development to occur in our Town, with local laws. She stated the State would take the rights from us to do that and be able to site windmills wherever they chose throughout the State. She stated that is where Article 78 becomes an issue and we will have no defense if we sign our rights away. She gave an overview of how the Board has been working with ESWE since last March and on the language in the agreement since last July, with a meeting being held on October 15, 2007 with the Attorneys for ESWE and the Town. She stated that an agreement was reached and specifically that this portion that signs away our rights under Article 78 we want stricken. She stated that it is in the taped conversation of the meeting.

Supervisor Meyers stated that it is not in the taped conversation because he listened to it.

Councilman Gow said that she heard otherwise.

Supervisor Meyers stated that he wants a copy of the tape because "when I asked you (Clerk Connolly) for it you said you did not have it."

Clerk Connolly stated "I gave you the tape and you said you listened to it. I listened to it yesterday and it is right there."

Supervisor Meyers said "Well then that is not the same tape you gave me."

Clerk Connolly stated "It most certainly is."

Supervisor Meyers said he would like to have the tape tomorrow.

Councilman Gow stated that they agreed to take that language out and then they (ESWE) changed their mind. She stated she was also concerned with the misleading information regarding the debt service.

Alice Balcom asked if other towns have been talked to and did they have complaints.

Supervisor Meyers stated yes and that 3 or 4 of them had issues with the Article 78, got the response and said okay. He stated they are the Towns of Wolcott, Butler, Rose, Benton, Galen, Sodus and Huron. He stated that Galen who just signed with Empire is getting 50% of the income, so they (ESWE) are in closing down stage. He stated that they (ESWE) have a business model that is "if you want a wind farm in your town, call us, we will come and work with you to put a wind farm in your town", which they (ESWE) have in spite of the Article 78 argument. He stated that Empire came to the town and if the town fights them every step of the way from their perspective.....

Councilman Gow stated that we were all in the same room and we all agreed.

Supervisor Meyers stated that if he hears the tape and it says that, he will call Keith Pitman and say that "I have that right here on tape and your Attorney agreed to it".

Robert Austin asked if Empire has any wind farms in production.

Supervisor Meyers said no.

Rebecca Bigelow questioned why the money would be put out for two more law firms and then not go with what they say. She stated they said that there may not be any revenue coming in.

Supervisor Meyers stated that the law firm stated there could be a scenario where no revenue will come in. He stated the firm has no wind data, what kind of turbines are going to be used or what kind of money is available.

Rebecca Bigelow said you are saying let's sign.

Supervisor Meyers said he was not saying that. He stated that we only have one choice, either sign this document or we go with AES.

Rebecca Bigelow stated that money was wasted on the two other law firms.

Supervisor Meyers stated that both of the documents say the Town can waive the rights.

Herbert Linderman asked if they recommend to do that.

Supervisor Meyers stated that they recommend to change it (HCA), but that it is completely legal not to.

Councilman Engert commented that the more information that we get was well spent money. He stated there was significant concern as a Board to the opportunity risk factor of this investment and that we wanted to have as much information as possible. He stated that comments made are excerpts of the total opinions and encouraged everyone to read the opinions.

Councilman Wayner concurred and stated that both law firms, including the Town's law firm, suggested that the HCA should be renegotiated and that the numbers relative to the net revenue are incorrect. He stated he did not know how many other towns have been contacted in respect to ESWE but that the Town of Lyons was ready to go, however, for whatever reasons, they backed out.

Ben Atwater stated the signed agreement is no good without appendices A & B. He said if you see the numbers are no good and you get a better estimate on what the income would be, then you can make the decision at that point.

Robert Austin asked if the Town Attorney agrees with that interpretation.

Attorney Roberson stated there is a risk in signing the agreement in its current form. He stated the risk is once you sign it, it may be their (ESWE) position that they have expended tens of thousands or hundreds of thousands of dollars and then the appendices are turned down, they (ESWE) may well sue to get all their money back. There is no way to keep them from suing you and they can sue for breach of contract.

Lyle Whitford stated that after a portion of money is spent ESWE can sue for lost revenue.

Supervisor Meyers stated the town has every right to walk away for any reason.

Floyd Koerner stated that two years ago AES approached landowners to sign a contract but they have held out to see if the Town was going to take action with Empire. He stated that landowners have been waiting for the Town Board to take action and that people want something to happen.

Merrill Bender stated that two opinions have been received and also that of the Town Attorney to renegotiate. He also questioned the revenue that a Councilman brought up and that the Board had not had an Accountant look at the numbers. He further stated that the Town can go against the three attorneys who have asked that you renegotiate, and he questioned if there is any personal liability as a Councilmember. He stated that he can see going forward if you are absolutely sure that you have severability in this contract.

Supervisor Meyers stated that the reason the Town doesn't have an accountant look at the numbers is because they are completely irrelevant.

Councilman Wayner questioned why the numbers are released out to the public.

Supervisor Meyers stated the numbers were requested by certain individuals on the Board and when we got those numbers we were basically told that these are the wind numbers you gave us and these are the numbers we should get with those winds. He stated the Town is not going to hire an accountant to look at fictional numbers.

Merrill Bender stated you don't sign a \$61 million contract unless you know your numbers better than that.

Supervisor Meyers stated that they are all fictional.

Extensive discussion ensued regarding the revenue numbers provided.

Patricia Fuller asked why the company can't send a representative to discuss this instead of arguing.

Supervisor Meyers stated that they can and the real issue is Article 78. He stated the finances are discussed in Appendix C.

Councilman Wayner said it was Appendix B.

Frederick Atwater questioned if anyone would put in a wind farm with an Article 78 and asked is there a higher agency that would guarantee safety of the whole project?

Councilman Gow stated that at the conclusion of one of the legal opinions it states that prior SEQRA (State Environmental Quality Review Act) is required prior to the agreement being executed that will address environmental concerns.

Supervisor Meyers stated that wind farms are highly regulated and there are a lot of studies that have to be done.

Attorney Roberson stated that no other agency will protect the Town rights.

Frederick Atwater stated several concerns:

1. AES will use their own grid.....what will another company do
2. No other agency will look over the Town like the Board would
3. People being forced to move

Floyd Koerner stated that the Board seems to be at a stand still. He asked that ESWE come back to address the items and if not satisfied, walk away.

Councilman Wayner stated that since the October 15, 2007 meeting, the Board has been going back and forth with ESWE over the Article 78 and they are not willing to negotiate that out. He stated and that he is not willing to give up that right. He also stated that the revenue does not include any credits that they (ESWE) will be receiving.

Willis MacDonald stated that they say (ESWE) that the Town will receive the 75% of all profit and questioned the revenue formula, specifically if green credits are specified.

Councilman Gow stated that there are no green credits included in the calculation for revenue.

Willis MacDonald stated that he did not agree with that, as that is profit.

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Councilman Wayner stated this is not strictly financial but that the Town will be changed forever if the windmills go up. He stated that signing an agreement that you know is suspect warrants more consideration.

Supervisor Meyers stated that he is much less concerned about the income than the control over how many and where they are placed, which will you will get with Empire and not get with another developer.

Robert Austin stated the Article X at the state level will make the Town lose all control over it.

Supervisor Meyers stated that the state representative says it is not close to being passed by anyone and that is years down the line.

Councilman Chaffee stated that we shouldn't be forced into this at all. He stated that Whitman, Osterman & Hanna LLP stated that the HCA lacks provisions to protect the Town's interests that have been required of other wind projects under construction or operation elsewhere in the State.

Ben Atwater questioned if the Town decides not to go with ESWE then he will probably have a phone call within 24 to 48 hours from AES and there will be no more discussion about windmills with the Town Board because the Town has nothing to say.

Supervisor Meyers stated that we have a law written, if they (AES) follow the law.

Councilman Engert stated that he would like an opportunity to review the numbers, specifically the numbers that Councilman Wayner has arrived at. He stated there are points of disagreement and there are also some points of agreement, but there are some issues that need to be looked at and it is worth one more opportunity to reach out to Empire to work out the Article 78 language.

Supervisor Meyers stated that we can reword the Article 78, just like we did before and like suggested by one of the law firms. He said we can also listen to the tape and if the tape says from their Attorney's mouth that we agreed to that, then we have a case.

Councilman Wayner stated that we asked them to take that out.

Merrill Bender stated that there are three Attorney's opinions, estimated numbers that are questionable without green credits, and urged the Board to go back to ESWE.

Virginia Purnella asked if the Board had gone back to ESWE to tell them what the Attorneys said.

Supervisor Meyers stated yes and they say basically what the Attorneys say, that it is common in wind host agreements.

Virginia Purnella stated that anything that is a project as big as this has to be done right and that it is a long process.

Supervisor Meyers stated this has to be done within the next few weeks. He stated he wants to look at the numbers and listen to the tape before a decision is made. He stated that we can re-write the Article 78 and submit it to them.

Councilman Wayner stated that Supervisor Meyers has already re-written the Article 78 and that he sent it to ESWE and they said no way.

Supervisor Meyers stated that we can still put it in our agreement and send it to see what they say.

Floyd Koerner stated that you have other Attorneys opinions to back up your position.

Councilman Engert stated that he would like to meet with Keith Pitman, that he would like to see the numbers, draft language and work out an agreement.

RESOLUTION 58-08

MEETING WITH EMPIRE STATE WIND ENERGY

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 Board extend and take the process of a week for review and draft negotiated Article 78 language pursuant to the recommendation of Bond, Schoeneck & King, PLLC.; that the Town Board meet with ESWE to finalize the Article 78 clause and review the financials, along with the transcribed portion of the October 15, 2007 meeting tape dealing with the Article 78 clause; and that a meeting deadline is set for March 25, 2008 at 7:00PM to make a decision.

Discussion ensued regarding where and when the meeting will be held with ESWE and the need to hold the meeting at the Town of Somerset, as it is an open meeting with the full Board present.

Supervisor Meyers stated that he will tell Keith Pitman that he, his Attorney and anybody else who might be remotely associated with making the decision on this agreement be present at the meeting.

LANDFILL

James Hoffman questioned the status of the landfill.

Attorney Roberson stated that everything is at a dead stop and they are waiting for a reply from AES to DEC.

Supervisor Meyers stated that this needs to be discussed between the Board and Attorney and that it is his understanding that it is completely done.

Attorney Roberson stated that AES asked to have the landfill application modified. Supervisor Meyers stated that he has a written document from DEC that it is done.

James Hoffman questioned if the Town of Somerset is satisfied.

Supervisor Meyers stated that he would discuss it after the meeting.

TIRE COLLECTION

Superintendent Denny reported that tire collection will be changed this year. He stated that residents will drop their tires off at the Water/Sewer Treatment Plant. He stated the Plant will be opened from April 25th through May 4th during regular business hours and special hours on the 2 weekends before the collection. He stated that the tires will be picked up by Modern Disposal on May 5th. He stated the specifications and times will be in the newsletter.

RESOLUTION 59-08

PURCHASE OF MOWER DECKS

Superintendent Denny asked permission to purchase four (4) John Deere mower decks to replace the current mower decks for the John Deere tractors and presented a procurement as follows:

<u>Name and Address of Vendor</u>	<u>Amount</u>
Ontrac Equipment Corp. 7689 Ridge Road West, Brockport, NY 14420	\$ 5,643.00
Drake Lawn & Garden, Inc. 9570 County Road, Clarence Center, NY 14032	\$ 5,973.00
Goodridge Farm Supply 7615 Lewiston Road, Oakfield, NY 14125	\$ 6,611.00

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 four (4) John Deere mower decks be purchased from Ontrac Equipment Corp., 7689 Ridge Road West, Brockport, NY 14420 for \$ 5,643.00 as per the procurement.

RESOLUTION 60-08

PURCHASE OF ROTARY CUTTERS

Superintendent Bigelow asked permission to purchase two (2) five foot rotary cutters for the Ford tractors and presented a procurement as follows:

<u>Name and Address of Vendor</u>	<u>Amount</u>
Niagara Frontier Equipment Sales Inc. 4060 Lake Avenue, Lockport, NY 14094	\$ 4,990.00
Niagara Implement Inc. 2337 Lockport-Olcott Road, Newfane, NY 14008	\$ 4,550.00

Discussion ensued regarding the differences between the Woods cutters and the Bush-Hog cutters; compatibility with the current equipment; gauge of steel; the weight of mower and the quality.

Superintendent Bigelow stated that the Town has had Woods mowers for 20 years and they are used for 8 years before needing replacement. He stated the Woods mower weighs 1030 pounds and the Bush-Hog weighs 900 pounds.

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 stay with the heavier model and authorize the purchase of two (2) Woods Rotary Cutters from Niagara Frontier Equipment Sales Inc., 4060 Lake Avenue, Lockport, NY 14094 for \$ 4,990.00 as per the procurement.

RESOLUTION 61-08

PHONE SERVICE PROVIDER

Clerk Connolly stated that she had investigated phone service providers, stating the contract with MetTel had expired several months ago and they are offering a reduced rate if a two year contract is signed. She stated that Verizon quoted a much higher rate and that Time Warner was also investigated with the costs for all the buildings being higher than MetTel. She stated that MetTel has reduced the prices per line and per minute, with more money being saved if a two year contract is signed.

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

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

Resolved that Clerk Connolly is authorized to enter into a 2 year agreement with MetTel (Metropolitan Communications) to provide phone service for the Town buildings.

WIND MILL INCOME

Herbert Linderman questioned if income is going to be realized from wind farms when a PILOT is granted and the reduction of the equalization rate.

Supervisor Meyers stated that the town will never get pure profit. He stated the PILOT and Host Agreement are two separate items. He stated that we will make enough off of the PILOT to cover any loses in revenue in the equalization rate.

RESOLUTION 62-08

ABSTRACT OF CLAIMS

Supervisor Meyers questioned a charge on the bill from Andrews, Pusateri, Brandt, Shoemaker & Roberson, PC. regarding preparation of new agreement.

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

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

Resolved that the bills be paid in the following amounts with the exception of the item regarding preparation of agreement on the bill received from Andrews, Pusateri, Brandt, Shoemaker & Roberson, PC:

General Fund	No. 107 through 148	\$ 55,542.16
Highway Fund	No. 21 through 36	\$ 22,912.67
Sewer Fund	No. 21 through 29	\$ 3,705.40
Water Fund	No. 33 through 41	\$ 2,905.15

REPLACEMENT OF CULVERTS

Superintendent Bigelow reported that the twin culverts between on Lower Lake Road between Johnson Creek and Quaker were installed in 1955 and that he had requested funding from the Highway Bridge Rehabilitation and Replacement program last year. He stated in October 2007 he received a letter that a yellow structural flag was placed on the culverts. He stated that he received notification that his request for funding was approved for replacement with 80% federal funding, 15% state funding and 5% local funding. He stated the estimated cost of the project is \$825,000, with the Town's share being \$41,000. He stated that the Town is responsible for paying the costs up front as the project progresses before reimbursement. He stated the federal government pays within a few weeks of request and the state makes semi-annual payments.

RESOLUTION 63-08

UPDATED BUILDING CODES

Code Enforcement Officer Hildebrant stated that he had received updated building codes and asked if the old code books could be donated to Barker Central School Technology Dept. for their curriculum. He stated that the normal cost is \$1,000 but because he is certified, the Town receives them for free.

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 Code Enforcement Officer Hildebrant is authorized to give the old building code books to Barker Central School.

Robert Austin questioned how soon the code updates will be on the website.

CEO Hildebrant stated that the Town Codes are on the town website. He stated that the codes he was referring to are the International and NYS Building and Fire Codes. He stated they are working on putting them on the State website in the future.

On a motion of Councilman Chaffee, seconded by Councilman Gow, the meeting adjourned at 9:55 PM subject to the Call of the Clerk. Carried unanimously.

Rebecca A. Connolly, MMC
Town Clerk