

REGULAR MEETING
MARCH 9, 2010

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 9th day of March 2010.

Present: Richard J. Meyers ----- Supervisor
Randall J. Wayner ----- Councilman
Daniel E. Engert ----- Councilman
Gary R. Alt ----- Councilman
Robin R. Jansen ----- Councilman
Rebecca A. Connolly ----- Clerk
Melvin H. Denny ----- Supt. Water/Sewer/Grounds
Arthur Herdzik ----- Counsel
Randy Roeseler ----- Engineer

Attended by: Approximately 5 residents and 1 BCS student

Supervisor Meyers called the meeting to order at 7:00PM with the Pledge to the Flag.

RESOLUTION 67-2010

APPROVAL OF MINUTES

On a motion of Councilman Alt, seconded by Councilman Jansen, the following resolution was

ADOPTED Ayes 5 Meyers, Wayner, Engert, Alt, Jansen
Nays 0

Resolved the minutes of the previous meetings are approved as submitted.

RESOLUTION 68-2010

APPROVAL OF SUPERVISOR'S MONTHLY REPORT

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

ADOPTED Ayes 5 Meyers, Wayner, Engert, Alt, Jansen
Nays 0

Resolved the Supervisor's Monthly report be accepted as submitted.

MONTHLY REPORTS RECEIVED AND FILED:

Code Enforcement Officer's Report
Police Report
Dog Control Officer Report for January and February

ATTORNEY REPORT

Attorney Herdzik reported the following:

1. Provided the Board with a confidential report from Michael Chmiel regarding prosecutor matters.

2. Submitted report from Planning Board Attorney stating the subdivision regulations need minor adjustments and will be worked on by the Planning Board.

COMMUNICATIONS:

Clerk Connolly read a letter from the NYS Department of Environmental Conservation regarding a satisfactory inspection of the Somerset-Barker Wastewater Treatment Plant.

Clerk Connolly read a letter from the Barker Lions Club inviting the Town to participate in the Spring fundraiser by sponsorship opportunities in the program booklet; attending the dinner and/or donation of a basket or gift certificate for the Chinese Auction.

RESOLUTION 69-2010

UTILITY BILL ANALYSIS

Councilman Engert introduced John Ludtka and Lauren Quimby of the Public Service Energy Cooperative who performed a cost savings analysis of 6 months of utility bills for the Town.

John Ludtka presented information regarding the analysis of the costs the town is currently paying for gas and electric service for all town buildings. He gave an overview of the price per kilowatt hour and the variation of prices paid. Mr. Ludtka stated that other towns that participate in the cooperative have fixed prices for a 12 month period. He stated they purchase wholesale and that the Town of Somerset will get better prices. Councilman Engert asked if there are any costs to the Town.

Mr. Ludtka stated there is no cost for the town to participate in the program. He stated they will do consultant work all year as a free service and that the town could realize a savings of \$4,000 per year.

Councilman Engert asked if they deal with any counties.

Mr. Ludtka stated they are trying to work with Erie County. He stated they are negotiating with the suppliers right now.

Councilman Wayner asked if they work with school districts.

Mr. Ludtka stated they would like to work with schools.

Councilman Engert asked what the Town needs to do to participate.

Mr. Ludtka stated that he can present a contract to the Town Attorney for him to look over.

Discussion ensued regarding a contract; fixed prices and timeframe; locking in prices; the variation of prices; analysis of rates; variable rate vs. fixed rates; and supply and demand pricing.

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

ADOPTED Ayes 5 Meyers, Wayner, Engert, Alt, Jansen
Nays 0

Resolved John Ludtka of New Wave Energy Corp. submits a proposed contract for the Public Service Energy Cooperative to the Town Attorney for his review.

SEWER CHARGES

Superintendent Denny stated that he had previously submitted a report to the Board regarding the cost of repairing sewer vents that are continually being broken on certain properties. He stated that he recommends a charge of \$50 per repair after the first courtesy repair.

Discussion ensued regarding the authority to impose a fee for something that is on the right-of-way; the type of replacement pipe used for repairs; and surface water getting into the sewer system.

Councilman Engert asked Attorney Herdzik to investigate a possible fee and verbiage of such fee.

Attorney Herdzik stated he would provide a report to the Board at the next meeting.

RESOLUTION 70-2010

UNSAFE BUILDING – 9517 SOMERSET DRIVE

Code Enforcement Officer Hildebrant stated that Mr. Carney did not respond to the notice of violation by March 1st and nothing has been done to improve the property. He asked the Board to authorize further action according to the Code of the Town of Somerset to have the building demolished with a hearing to be held on such matter on April 13th, 2010. Code Enforcement Officer Hildebrant stated that as a courtesy he will notify the neighbors.

On a motion of Councilman Alt, seconded by Councilman Jansen, the following resolution was

ADOPTED Ayes 5 Meyers, Wayner, Engert, Alt, Jansen
Nays 0

Resolved that Code Enforcement Officer Hildebrant and Attorney Herdzik are authorized to proceed with the unsafe building ordinance for the property located at 9517 Somerset Drive with a public hearing to be held on April 13, 2010 at 7:30PM regarding said matter.

RESOLUTION 71-2010

PREVENTION OF ASIAN CARP FROM ENTERING THE GREAT LAKES ECOSYSTEM

Supervisor Meyers stated that Asian Carp have moved up the Mississippi River and they are looking at ways to keep it out of the Great Lakes because they can wreak havoc on the other fish. He presented a resolution regarding the prevention of Asian Carp from entering the Great Lakes Ecosystem.

On a motion of Councilman Jansen, seconded by Councilman Alt, the following resolution was

ADOPTED Ayes 5 Meyers, Wayner, Engert, Alt, Jansen
Nays 0

Resolved the reading is waived for the following resolution:

WHEREAS, the economics of New York State and Niagara County are heavily reliant upon Lake Ontario, Lake Erie, and the Niagara River waterway, and

WHEREAS, the economic impact of sport fishing on those counties bordering Lake Ontario, namely the Counties of Niagara, Orleans, Monroe, Wayne, Cayuga, Oswego and Jefferson was \$54 million in 2007, per research by Cornell University's Department of Natural Resources, and

WHEREAS, fishing activity on the most prominent embayments of Lake Ontario within Niagara County, the Eighteen mile and the Twelvemile Creek Watersheds, have been severely restricted by the United States Environmental Protection Agency, thereby reducing the fishable waterways of Niagara County substantially, and having a detrimental impact on the county's economy, and

WHEREAS, canal-ways constructed by the Metropolitan Water Reclamation District of Greater Chicago, in the State of Illinois, have allowed the potential for migration of fish between the Mississippi River Drainage basin and the Great Lakes drainage basin, and

WHEREAS, the Asian carp is not native to nor present in the Great Lakes system, but is currently present within the Mississippi River system, and is considered a nuisance invasive species, and

WHEREAS, the Asian carp has been detected within six miles of the Great Lakes ecosystem, and

WHEREAS, the Asian carp can grow to be 100 pounds and can consume massive quantities of plankton, the base of the entire Great Lakes food chain, and

WHEREAS, in addition to the clear economic impact on sport fishing and agriculture, such removal of plankton can also have a detrimental impact on the availability of clean drinking water, and

WHEREAS, the Attorney General of the State of Michigan did file a lawsuit to compel the severing of access points between Lake Michigan and the Chicago Sanitary and Ship Canal, as well as portions of other waterways connecting the Great Lakes and Mississippi River ecosystems, which was subsequently joined by the Attorneys General of the States of Wisconsin, Minnesota, Ohio, Pennsylvania, Indiana, and the Province of Ontario, and

WHEREAS, the Honorable Andrew M. Cuomo, Attorney General of the State of New York, did file a brief with the United States Supreme Court supporting said lawsuit on January 4, 2010, and

WHEREAS, the United States Supreme Court did subsequently reject said lawsuit's request for a preliminary injunction on January 19, 2010, but allowed plaintiffs to file briefs to reopen the case, provided such briefs are submitted by February 19, 2010, and

WHEREAS, President Barack H. Obama has proposed a White House summit among Great Lakes states affected by the Asian carp matter, and

WHEREAS, the outcome of such lawsuit may have significant impact on the economy of the Great Lakes region, and therefore on the economy of the Town of Somerset, now, therefore, be it

RESOLVED, that the Town Board of the Town of Somerset does hereby commend Attorney General Cuomo for his actions in supporting the State of Michigan's lawsuit, and be it further

RESOLVED, that the Town Board of the Town of Somerset does hereby urge Attorney General Cuomo to file briefs to reopen the case, and, should it prove the most effective strategy, to enjoin any lawsuit against the U. S. Army Corps of Engineers in the matter, seeking closure of connecting waterways, and be it further

RESOLVED, that the Town Board of the Town of Somerset calls upon the entire Western New York delegation to the New York State Legislature, and those chairmen and ranking minority members of relevant committees in the New York State Senate and Assembly, to provide such support as shall be necessary to the Office of the Attorney General in pursuit of an outcome in this matter favorable to the interest of the State of New York and County of Niagara, including disbursement of such public funds as shall be necessary to compel such outcome as is in the best interest of the State of New York, the County of Niagara and the Town of Somerset, and be it further

RESOLVED, that the Town Board of the Town of Somerset does hereby urge Governor David A. Paterson to attend any Great Lakes states summit arranged by President Obama and the White House, and to represent the position that New York only favors a resolution of this matter that includes the closure of those waterways connecting the Mississippi River and Great Lakes ecosystems, primarily but not exclusive to the Chicago Sanitary and Ship Canal, and be it further

RESOLVED, that the Town of Somerset shall forward copies of this Resolution to Governor Paterson; Attorney General Cuomo; Senator George D. Maziarz; Member of the Assembly Stephen Hawley; and all others deemed necessary and proper.

WNY STORMWATER COALITION

Councilman Wayner stated that he had been contacted by a Cambria Councilperson regarding sending someone to the WNY Stormwater Coalition meetings and had found that the Town was not sending anyone.

Engineer Roeseler presented an overview on how the WNY Stormwater Coalition began due to the EPA Cleanwater Act and now they (EPA and DEC) are looking into removing pollutants from freshwater because of stormwater discharges. He stated where they are starting are the MS4 area (Municipal Separate Storm Sewer System) and is based on population density. He stated it initially started in Niagara Falls and

they used Census data to create the boundary and part of Cambria is in the MS4 boundary. He stated there are numerous regulations for storm water drainage and the treatment. He gave a complete overview of the coalition and stated that it does not apply to the Town of Somerset at this point of time.

RESOLUTION 72-2010

MOWER FOR PARKS AND CEMETERIES

Superintendent Denny presented a proposal to purchase a new 60" diesel zero turn mower on state contract. Extensive discussion ensued regarding purchasing on state contract versus buying locally; equipment made in America; the size and use of the mower; cost savings; delivery time; maintenance costs; overtime costs; and the need to go to bid.

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

ADOPTED Ayes 5 Meyers, Wayner, Engert, Alt, Jansen
Nays 0

Resolved that Superintendent Denny is authorized to advertise for bid for the purchase of a new 60" diesel zero turn mower with bids to be opened on April 8, 2010 at 11:00AM.

RESOLUTION 73-2010

TIRE DROPOFF

Superintendent Denny asked permission to conduct the annual tire drop-off at the Water/Sewer Treatment Plant using the same stipulations as last year with the plant being opened from April 19th through May 2nd during regular business hours, with special hours on the 2 weekends. Supt. Denny stated the plant is staffed by one person on the weekends.

Discussion ensued regarding how the plant is staffed on the weekends and the associated costs.

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

ADOPTED Ayes 5 Meyers, Wayner, Engert, Alt, Jansen
Nays 0

Resolved the annual tire drop-off shall be conducted as presented with it being advertised in the newsletter and staffed by one person.

COMMUNITY PHONE BOOK

Supervisor Meyers stated the Barker Business Association is looking at putting together a town wide phone book with the help of the Town. He presented phone books from other areas and stated the phone book would include advertisements for local businesses along with coupons. He stated all the residents in the town will be included in the book. He proposed the town put the book together and then the Barker Business Association will raise the funds for ½ of the costs through advertisements and the town

can pay the other half. He stated the book would be distributed to residents and stated it is a good community document.

Councilman Engert asked what the costs are.

Supervisor Meyers stated they would be approximately \$2.50 each for 800 households which mean the towns share will be \$1.25 each. He stated that the costs need to be nailed down. He stated that usually the ads pay for the book but since our advertisement base is a little small, he feels the town will have to kick in some funding.

Discussion ensued regarding who will get the ads; if there would be other businesses included other than Somerset businesses; how much the ads would be; the costs; obtaining phone numbers and addresses; and developing sense of community.

BROADBAND SURVEY

Supervisor Meyers reported that he has compiled broadband data and that Time Warner is taking longer than he anticipated to do their part so they will not meet the second broadband grant application deadline. He stated the data needs to be complete in order to apply for the grant. He stated that there is a total of \$7.8 Billion allocated for broadband with only \$500 million awarded so far. He stated the town has 23% coverage, with 77% of road mileage not covered and is unacceptable. He stated Time Warner is going to provide a cost to cover the whole town.

Discussion ensued regarding the coverage area.

SOMERSET GOVERNMENT EFFICIENCY COMMITTEE

Councilman Wayner reported the Somerset Government Efficiency Committee last met on February 8th and the goal was to have a recommendation relative to part time elected officials contributing towards the expense of health care by this meeting (March 9th) but the calculations have not been completed. He stated they (the committee) will have a recommendation prior to the next meeting for discussion at the April meeting.

SETTLEMENT OF LITIGATION WITH AES – PILOT and Stipulation

Supervisor Meyers stated the goal of the PILOT being signed and the Stipulation Agreement being filed has been accomplished, so all the lawsuits with AES are now in the Somerset history books.

RESOLUTION 74-2010

AUDIT OF CLAIMS

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

ADOPTED Ayes 5 Meyers, Wayner, Engert, Alt, Jansen
Nays 0

Resolved the bills in the following amounts be paid:

General Fund	No. 82 through No. 127	\$ 51,187.53
Highway Fund	No. 16 through No. 34	\$ 23,162.06
Sewer Fund	No. 19 through No. 32	\$ 5,529.18
Water Fund	No. 23 through No. 36	\$ 3,748.74

PUBLIC COMMENT

James Hoffman addressed the Board regarding the following:

1. Questioned when the Townwide Yard Sale will be conducted.
Clerk Connolly said the first Saturday of August (Aug. 7th)
2. Questioned the status of Barker Chemical.
Councilman Engert stated there is nothing new to report.
3. Questioned the terms of the AES PILOT and the Stipulation of Continuance. He stated that he said there are some positives and some negatives, including the lack of signatures and the ending of all lawsuits.
Extensive discussion ensued regarding the verbiage of the PILOT and the Stipulation agreement. Councilman Engert stated the Stipulation Order was signed by Judge Kloch on March 4th and there should be a signed copy on file. Clerk Connolly stated that no signed Stipulation Order has been received by the Clerk's office.

RESOLUTION 75-2010

EXECUTIVE SESSION

On a motion of Councilman Jansen, seconded by Councilman Alt, the following resolution was

ADOPTED Ayes 5 Meyers, Wayner, Engert, Alt, Jansen
Nays 0

Resolved the Board move into Executive Session at 9:15PM to discuss some contract issues.

RESOLUTION 76-2010

RETURN TO REGULAR SESSION

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

ADOPTED Ayes 5 Meyers, Wayner, Engert, Alt, Jansen
Nays 0

Resolved the Board return to regular session at 10:42PM.

TOWN BOARD MEETING
MARCH 9, 2010 PAGE 9

On a motion of Councilman Alt, seconded by Councilman Jansen, the meeting was adjourned at 10:43PM subject to the Call of the Clerk. Carried unanimously.

Rebecca A. Connolly, MMC
Town Clerk