

SPECIAL MEETING
MARCH 24, 2008

A Special 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 24th 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
	Robert Roberson -----	Counsel

Attended by: Approximately 20 people

Notice of said meeting sent to the Lockport Union-Sun & Journal on March 18, 2008 with same notice being posted at the Town Hall on the same day.

Supervisor Meyers called the meeting to order at 7:04PM with the Pledge to the Flag. Supervisor Meyers stated the main reason for the meeting is to work out a Host Community Agreement with Empire State Wind Energy (ESWE).

RESOLUTION 64-08

COURT REQUEST TO PURCHASE SAFE

Supervisor Meyers read a request from Judge Donald Martineck requesting to purchase a Gardell safe with monies received from the Justice Court grant for \$1,570.00 from Cataract Safe and Lock Company, 1219 Main Street, Niagara Falls, NY.

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 Justice Martineck is authorized to purchase a safe from Cataract Safe and Lock Company, 1219 Main Street, Niagara Falls, NY for \$1,570.00.

EMPIRE STATE WIND ENERGY HOST COMMUNITY AGREEMENT

Supervisor Meyers stated that several emails have been communicated over the past week regarding items of concern with the Host Community Agreement (HCA) as written. He stated that he and Councilman Engert had met with Keith Pitman and his associate on March 24th.

Councilman Engert stated that it was his first opportunity to meet Mr. Pitman and that he got a sense that they are very interested in pursuing a wind project in Somerset.

Supervisor Meyers stated that a HCA dated March 24th has been received by most members. Councilman Chaffee and Gow stated they had not received the agreement.

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Councilman Wayner and Councilman Engert also stated they did not have the agreement.

Councilman Chaffee questioned why representatives from Empire State Wind Energy were not present at this meeting.

Supervisor Meyers stated they could not make it because of the short notice.

Councilman Wayner stated that at the last meeting they were to meet with us and is concerned that they did not find time to meet with us.

Discussion ensued as to the lack of presence from ESWE representatives at this meeting; elements of the draft HCA dated March 24th that Supervisor Meyers presented and lack of Board members having the document prior to the meeting; and elements of the emails that were included in the draft document;

Supervisor Meyers stated ESWE has requested a final response from the Town.

Councilman Wayner stated that a final response was sent to them (ESWE) in December and in it was a request to delete Paragraph X-A regarding Article 78. He stated that document came back from ESWE with no changes.

Councilman Engert stated that he had a letter from ESWE dated January 4, 2008 with further comments. He stated he understood that the Board is working on the document.

Councilman Wayner asked if there was any specific discussion at the meeting with Mr. Pitman regarding Article 78.

Councilman Engert said there was no discussion regarding specific language. He stated Mr. Pitman asked for the town to put their document together and send it to ESWE and they (ESWE) would review it.

Supervisor Meyers stated he wanted to identify specific issues and then solutions can be discussed. He stated he wanted a good discussion on how the document can be made acceptable to the Town so it can be presented to ESWE.

Attorney Roberson stated that if it is the purpose of the Town's position that they do not want a waiver of the Article 78, the paragraph should be stricken.

Extensive discussion ensued regarding Article 78 and elimination thereof; suing for breach of contract; legal liability of the Town; rejection of ESWE for removal of the Article 78 clause; permitting process for windmills that goes to the Planning Board not the Town Board; and binding of future Town Boards.

RESOLUTION 65-08

PURSUE FURTHER NEGOTIATIONS WITH EMPIRE STATE WIND ENERGY

Councilman Engert stated that 7 other towns in the State have signed on with Empire. He stated that Somerset has been identified as a prime wind resource area, along with Sodus. He stated that Sodus signed (the agreement). He stated there have been scenarios of a lot of bad outcomes and considerable less time has been spent looking at potential good outcomes that would come from partnering with this company. He stated that the company is an upcoming company, and whether they can make it with the business model, only time will tell. He stated he hopes the right decision is made so the potential that could have been realized isn't something we (Town Board) regret years down the road.

Councilman Wayner stated that initially, he liked what he heard but not what he has seen. He stated the Town has pursued them (ESWE) however they do not provide any framework. He stated the numbers that were given to the Board and discussed at the last Town Board meeting were wrong. He stated subsequent to that, Councilman Engert and Supervisor Meyers found that it was not really \$61 million but they were going to finance 60% of that which is \$36.3 million and was not on the example provided. He stated it is a flawed agreement and if ESWE wants to pursue wind energy in the Town they are referred to Local Law #1-2006 and go to the Planning Board.

Supervisor Meyers stated that Empire does not pursue towns under any circumstances. He stated that the Town may realize \$18.8 million over 15 years. He stated we wouldn't get 1/3 of that from anyone else. He stated that Empire wants to work with the Town in a partnership and that is their business model.

Councilman Chaffee stated if he was doing a project of this magnitude and had three law firms look at the agreement and they came back saying that it does not protect the Towns interests, serious renegotiation would have to be done. He said ESWE did not show up to negotiate and it takes two to negotiate.

Councilman Gow stated that Empire State Wind Energy is a LLC and they have a boiler plate agreement that they want everyone to sign off on. She stated that they (ESWE) are not willing to change the agreement. She stated they supposedly want a partnership and they are not here. She stated they came with what sounded like a good offer last year, but they are not backing it up. She stated if they want to pursue wind energy they are welcomed to follow the process.

Councilman Engert commented that a couple comments have been made that the legal opinions have indicated the agreement is poor or flawed. He stated he did not recall them saying that. He stated there were some suggestions for negotiation items.

Attorney Roberson stated that Mr. Shoemaker stated last year that the agreement was poor.

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

DEFEATED by Roll Call Vote 3-2

Supervisor Meyers	Aye
Councilman Chaffee	Nay
Councilman Gow	Nay
Councilman Wayner	Nay
Councilman Engert	Aye

Resolved that this Town Board pursue further discussion, negotiations and correspondence with Empire State Wind Energy with respect to the Host Community Agreement between the Town of Somerset and Empire State Wind Energy.

PUBLIC INPUT

James Gow asked Attorney Roberson if ESWE has circumvented other Boards.

Attorney Roberson stated the agreement would be binding on the Town Board, but the Town Board cannot issue permits.

Ben Atwater stated that much was said about them (ESWE) not being out here and they only had 7 business days and that is not reasonable. He questioned if ESWE was not waiting for a reply from the Town.

Supervisor Meyers stated they (ESWE) requested the Board to send a changed document.

Norman Jansen asked if the Town has submitted a document to ESWE without the Article 78 in it.

Supervisor Meyers stated yes and they (ESWE) said no.

A future resident stated that we (Town) have land and we have wind. He suggested that the Board look at what is going to make the Town stable and what are the protections for the Town.

Discussion ensued regarding companies that have been contacted by the Town Board; what other companies do and what they pay; the need for wind studies and where that information can be collected.

James Hoffman stated AES has 7 years of wind data.

Supervisor Meyers stated that AES will be here with lots of turbines.

Ben Atwater questioned what he is suppose to do now and stated that he is sure AES will be contacting him.

Councilman Gow stated that it would be in his best interest to do a lot of research and get the most money for your land.

Attorney Roberson stated that nothing about the vote prevents Empire from coming here and making a new proposal.

Harold Suhr, a Town of Yates resident stated that he has checked out wind and they (the company) say they are coming, and then they see people don't like it, and then they fade. He stated wind energy doesn't work and once you have them up they are there.

James Gow asked what happened in Lackawanna.

Supervisor Meyers stated the turbines were brand new, never been put up anywhere else, and realized the gear boxes were too small. He stated now they are down and putting in new gear boxes.

Discussion ensued regarding financial benefits to the town and how the calculations are made.

James Hoffman stated that he didn't want to see this die this way and asked the group to reach a best and final agreement.

Supervisor Meyers stated that is what they (ESWE) asked for.

Willis MacDonald asked where the Town of Somerset stands being number 8 on the list when they (ESWE) are a company that hasn't even put up a windmill yet.

Supervisor Meyers stated because of our wind resource we would stand pretty high.

Discussion ensued regarding the lack of ESWE not coming to meeting; wind resources and monitoring on the AES property; other companies not willing to compete with AES; and other companies experience with wind farms.

RESOLUTION 66-08

LANDFILL

Councilman Gow stated that Supervisor Meyers had appointed her and Councilman Chaffee to form a committee to study the status of the landfill at AES. She asked permission to contact the Environmental Engineer, Andrew Auld, for further comment and asked if the Board would approve the expenses.

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Discussion ensued regarding the status of the landfill; contacting an Engineer for facts and contacting the Public Service Commission for an update and clarification on the monitoring and construction.

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 Town Board write a letter to David Morrell of the Public Service Commission to update the Board on who is monitoring the landfill site; the frequency of monitoring; the state of the construction; the status of the liner situation; and related questions, with a copy of the letter be given to the Town Board prior to it being sent.

There being no further business, on a motion of Councilman Wayner, seconded by Councilman Gow, the meeting adjourned at 8:40 PM.

Rebecca A. Connolly, MMC
Town Clerk