

REGULAR MEETING
MAY 12, 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 12th day of May 2009.

Present:	Daniel E. Engert-----	Deputy Supervisor
	Dudley E. Chaffee ----	Councilman
	April C. Gow -----	Councilman
	Randall J. Wayner ----	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

Absent: Richard J. Meyers ---- Supervisor

Attended by: Approximately 75 residents and 20 BCS students

Deputy Supervisor Engert called the meeting to order with the Pledge to the Flag.

Clerk Connolly introduced Aaron Kaiser, a BCS Junior, who she stated was interested in local government and was shadowing her for his Senior Project.

PUBLIC HEARING – Proposed Local Law for the year 2009 to abolish the positions of three elected assessors in the Town of Somerset to be replaced by one appointed assessor effective January 1, 2010 and not subject to referendum.

Notice of said hearing duly published in the Lockport Union-Sun & Journal on April 22, 2009 with same being posted on the same day at the Town Hall.

Deputy Supervisor Engert opened the public hearing at 7:32PM.

Clerk Connolly read notice of public hearing.

Herbert Linderman asked what the rational was for proposing this law.

Deputy Supervisor Engert stated the proposed local law was the result of a lengthy study conducted by the Somerset Government Efficiency Committee (SGEC). He stated there were a number of open meetings held with respect to this issue, with data being studied and posted on the website.

Herbert Linderman asked if there will be a cost savings. He stated that he is opposed to the proposal because he feels the appointed assessor will be controlled politically.

John Sweeney Jr. asked why you are doing this without a public referendum. He stated the proposal was put before the voters in 2000 and defeated. He stated this should go to a public referendum to let the voters make the decision, not the Town Board.

Steve Yousey stated that he had three different numbers of what it costs to run the Assessors office. He stated one was from Niagara County authored by Randy Deal dated January 20, 2009 which stated the total cost for the office is \$27,982 with the cost per parcel being \$17.99 and the average for the County being \$17.69. He said another table was given to him by the Chairman of the Assessors listing the total budget as \$107,892 with \$60,000 being for a revaluation. He stated the total cost is \$47,982 which is \$30.69 per parcel. He stated the report of the Somerset Government Efficiency Committee (SGEC) stated the budget is \$56,518 with the cost per parcel being \$36.16. He asked which number was correct.

Deputy Supervisor Engert stated that SGEC numbers were derived from the salary and benefit costs of the office.

Steve Yousey asked if the benefit package had changed.

Deputy Supervisor Engert stated the Chairman gets a significant stipend over the other two for performing the chairman duties.

Steven Yousey asked if when comparing the numbers did you compare other towns.

Councilman Wayner stated the committee requested information from all the towns of Niagara County and 8 towns responded. He gave an overview of what the committee did and said the cost they have was \$54,776 divided by 1,515 parcels equaling \$36.16 per parcel.

Steven Yousey stated the 2009 report lists the town with 1,563 parcels. He then read from the Declaration of Independence and questioned why the Board would deny us the right to vote.

Councilman Wayner gave an overview of the SGEC meetings since December 8, 2008 and the mission statement of the committee to study shared services and opportunities for efficiency. He stated that he had 14 points why to go to a sole assessor and 3 points to retain the current 3 elected assessors. He stated the recommendations of the committee were shared with the entire Town Board and adopted unanimously on March 10, 2009. He stated the Board has a lot of decisions to make and the Board is accountable for their decisions and asked that they be allowed to do the job they were elected to do.

Steven Yousey stated this action is a direct assault of our liberty by taking away our right to vote on this matter. He stated that you are taking our right away to choose the people we choose to represent us.

Lee Hoffman asked Councilman Wayner to read the points that he had for appointed versus elected Assessor.

Councilman Wayner read his listing that included:

Pro appointed:

1. Tendency for more professionalism;
2. Enhanced likelihood to achieve assessment equity;
3. Lessens political bias in selection;
4. Allows for more concentrated educated vetting process;
5. Assessing is considered a service base skill such as engineering and legal;
6. Current platform utilizes a chairman;
7. Appointed assessors are required to complete an average of 24 hours of continuing education;
8. Allows for bi-town coordinated agreement with shared assessor;
9. Establishes a way to achieve a smooth and predictable transition from one assessor to the next assessor;
10. Town Board can establish required additional qualifications;
11. Required to meet the standards that are established in Real Property Tax Law §188-2.2;
12. Not directly subject to public pressure from the town's electorate or out-of-town political resistance;
13. Eliminates potential division of town residents in this highly personal area of finance

Pro Elected:

1. Chosen by the people;
2. Must endure the possible rigors of a campaign;
3. Must be a resident of the town

Lee Hoffman questioned why three sets of eyes looking at the assessments are not better than one.

Councilman Wayner stated that can add confusion and difficulties in the administration of the office.

Deputy Supervisor Engert stated they were recently made aware of internal conflict in the office. He stated the sole assessor has a consistent approach to real property tax law and interpretations. He stated three members have three different opinions and has led to internal conflict at times.

Lee Hoffman stated that the Board of Assessment Review (BAR) has three members, of which he has been a member for 20 years. He stated the Board is able to make one solution based upon the input of the three assessors and the three BAR members.

Deputy Supervisor Engert stated the ultimate decision if there is a conflict with the assessment there will be the three member appointed BAR. He stated the three current Assessors were appointed initially by the Town Board to fill a vacancy prior to running for election.

Councilman Wayner stated in 1983, 50% of assessors in New York were appointed and in 2007, 85% had gone to sole appointed assessors. He stated in Niagara County we are the only town that does not have a sole appointed assessor.

Sylvia Seitzer stated that she is the former Assessor for the Town of Somerset and she feels that one appointed assessor is the best way to go. She stated she was the sole appointed assessor in Hartland and everything worked very well. She stated the Board has more control over the appointee.

James Hoffman stated that he feels any action to take an elected position and make it an appointed one should be left to the voters by way of a referendum. He stated that in 2000 an identical proposal was voted down. He asked what has changed that this proposal is now not being left to the voters. He stated he feels there is an opportunity for more political bias if left to the appointment by three people, who could be influenced by outside pressures. He asked to have a referendum on the subject and let the voters speak.

Douglas Lewis stated he agrees with Jim Hoffman and that he does not think it is unreasonable to have three people putting their heads together when you have a \$1.4 billion facility on Lake Road. He stated he wants an opportunity to vote on those three people.

John MacDonald asked what the reasoning was to attack the assessors' office. He stated that as close as the election was last year it did not spell out any mandate to change anything. He stated the legal firm has been tossed out; you danced around the wind power issue and now you want to change something that has been in place for years that works well. He stated that he wants three elected people looking at the assessments, including AES.

Cheri Devereaux asked if this law passes if the assessor will have to be a resident of the town.

Deputy Supervisor Engert stated criteria for the selection of an appointed assessor would be determined by the Board that will include residency requirements along with education requirements.

John MacDonald asked why now?

Deputy Supervisor Engert stated the Supervisor made a decision to include three board members on the Somerset Government Efficiency Committee so that the committee would have to be open and accountable to the public and follow the open meetings law. He stated it was not a secretive process. He stated the committee was developed to make the business of governing in a more efficient and cost effective manner. He stated the committee identified several areas that they would want to look at and it was selected randomly to confront the tax assessing department.

John MacDonald stated that the town won a monumental lawsuit and it was overturned unanimously. He said we have a viable community and this is like money back in our pockets.

Councilman Wayner stated the decision was based on qualified data and found that the Town could save \$23,776.00 a year. He questioned if they would not be delinquent in not making this recommendation to the Board to save money.

John MacDonald stated the town would be losing a voted/elected position and that is the major problem.

Steve Yousey asked how much we are saving per parcel based on your numbers.

Councilman Wayner stated based on our (SGEC) numbers it would go from \$36.16 to \$20.46 per parcel.

Deputy Supervisor Engert said that was a 43.5% savings.

Steve Yousey stated the price of freedom is \$16 and he would pay that any day.

Deputy Supervisor Engert stated it was looked at as a professional service standpoint. He stated this person should be going to a parcel looking at it independently of politics and make a real property assessment based on formulas and real property data. He stated that an assessor should go to properties and not have to worry about if one person is going to vote him out of office or not. He stated an assessor is a professional service.

Steve Yousey questioned Councilman Engert if he was saying if you have an elected official that they are automatically suspect.

Deputy Supervisor Engert said absolutely not and the assertion that he is making is intended to insulate that position as much as possible from the Board who sets the tax rate and insulation from the voter who may represent more people than the next guy down the street.

John Wolanyk stated that a bitter taste is left to take any elected officials away at this point.

Roy Plummer stated that he represented Barker Central School at the time when AES (then NYSEG) contested their valuation. He stated that the result of the meeting with everyone was to get a professional valuation of AES. He stated that he wants three elected assessors to make the electorate happy.

Councilman Wayner stated by NYS Law the assessment is set by NYS Office of Real Property Services (ORPS) on the power plant and that the town secured the services of Black & Veatch, a consultant relative to the energy business, to conduct an appraisal and they confirmed the figures. He stated that the Assessors use those numbers.

Norman Jansen asked what the cost would be for one assessor elected. He stated he likes the elected officials.

Herbert Loesch asked how long an appointed assessor stays.

Deputy Supervisor Engert stated that it is a 6 year term and supersedes the terms of the Board with the term extending beyond the terms of the Board.

Herbert Loesch asked if a part-time appointee will receive health insurance. He stated he wants elected assessors.

Councilman Wayner stated that insurance is not provided to part-time appointed officials.

Cindy Jex stated the issue is not three people versus one but elected versus appointed. She stated that we the people would like the right to vote and if we find that they are not doing their job we can get rid of them when they run again.

Gary Alt asked if there was any consideration to have a referendum to let the people decide.

Councilman Wayner stated yes there were discussions but most towns do not go to referendum.

Gary Alt stated that it was put to a vote in 2000 and defeated and why not consider going to a vote again.

Deputy Supervisor Engert stated that he was not aware of the election in 2000.

Sylvia Seitzer stated that it was a 42 vote difference.

Steve Yousey stated prior to 2006 the law stated in order to change an elected office it was mandatory to have a referendum. He stated since 2006 the law now allows you to do this without a vote. He asked the Board if they were aware of this change.

Deputy Supervisor Engert stated he was aware of the current legislation.

John Wolanyk asked what the Board is going to do tonight after you have heard everything and all the questions are answered.

Deputy Supervisor Engert stated that action will be taken pursuant to the agenda at a later time during the meeting.

Lee Hoffman asked why not let the people vote and why does the Board not want us to vote.

Floyd Koerner stated that he is assuming the town is doing this to save money.

Deputy Supervisor Engert stated that is one of the points of the recommendations.

Floyd Koerner questioned was this suggested by New York State for a leaner government.

Deputy Supervisor Engert stated there are recommendations from the Comptroller's Office, Division of Local Government Efficiency, to evaluate this.

Floyd Koerner stated that Albany has enough problems without stirring up problems locally. He asked why all the Board members were not on the SGEC committee.

Deputy Supervisor Engert stated the Supervisor has the authority to set committees and the committee met every other week. He stated the committee made recommendations to the Board and the Board unanimously adopted the plan.

Councilman Wayner stated the recommendations were provided to the entire Town Board on March 2, 2009.

Councilman Chaffee stated the committee makes the recommendations and it is up to the entire Board to transact business.

Floyd Koerner asked Councilman Chaffee and Councilman Gow if they were supportive of the recommendations.

Councilman Chaffee and Councilman Gow both stated yes at that time.

Steve Yousey asked if this is not taxation without representation.

Deputy Supervisor Engert stated no.

Gloria Arnold thanked the SGEC for working so hard and they made a lot of very good points.

Susan Atwater commended the committee and said that we need to be good stewards of the taxpayers' money regardless of how much money comes in from AES. She stated that her right to vote is not being taken away and that she can vote anyone out of office. She stated that we elect our officials to represent us and you cannot expect every huge item that comes before a Board to be put out to referendum for the voting public. She stated the voting public does not take the time to become educated as you (the Board) are required to do. She stated she appreciates the time the Board does doing their job.

Scott Donaldson stated that he does not understand why you are doing this and does not like to have his right to vote taken away. He stated that it seems to him that the Board's mind is already made up no matter what we say. He stated it reminds him of the school meetings before the PILOT program where everyone was against it (the PILOT) and all of a sudden we have a PILOT.

Councilman Chaffee stated the most important part of this whole process is the public hearing and that his mind is not made up.

Herbert Linderman stated that you have done a lot of research and asked if there was a person in mind. He stated you don't know what the salary or education would be, or if it would be an out of town person. He stated he owns property in another town that has a shared assessor and you can never get ahold of that person. He stated in our town I can come in and there is always an assessor here. He stated he likes the way it is here. He stated that cost savings is anticipated but you do not know what the cost benefit package or salary will be.

Deputy Supervisor Engert stated the whole process will not be made until the decision takes place. He stated those issues are for discussion at budget time. He stated only a sole appointed assessor has specific educational requirements and that there are no requirements for an elected assessor. He said training has to be completed after elected.

Herbert Linderman stated that you are basing your decision on possible cost savings that are not complete.

Deputy Supervisor Engert said the cost savings was incorporated into the formula. He stated discussions were held regarding the proposed salary. He stated if the appointed person does not accept the salary the Board sets, he will not be appointed by the Board.

Douglas Lewis stated this is what is happening in the City of Lockport and Royalton. He stated they are having trouble getting an Assessor and you can read that in the paper. He said it sounds like it will happen here now.

James Gow stated that training is on the job for the Supervisor and Board, so training is not an excuse.

Deputy Supervisor Engert stated that he did not say that the Assessors were not trained.

Herbert Loesch asked what happens if the Assessor is sick and gone. He stated as it is today, you have two assessors that can take over.

Julie Hoy stated that she is disappointed and offended by not letting the people vote on the Assessor positions. She stated that we can make an intelligent choice and with all the people here tonight it shows that these people want to vote. She asked what is the harm and what are you afraid of.

Merrill Bender stated that perhaps at the time somebody thought this was a good idea and started the process and now in hindsight you realize it is a bad idea. He said efficiency makes sense if you are looking to share purchases or buy a truck. He stated to change from an elected position to an appointed position, the citizens of Somerset should have a say. He stated that you should not do this.

Sylvia Seitzer asked if there will be a clerk for the Assessor.

Deputy Supervisor Engert stated yes that has been discussed.

Sylvia Seitzer stated that she had a Clerk in Hartland and when she had to take a leave due to illness the Clerk acted as the Assessor. She stated that she never did go back but Hartland had a backup plan to have the Clerk stay until they could get another person trained.

James Hoffman asked if the proposed costs include the Clerk.

Deputy Supervisor Engert stated yes.

Dale Howard stated that he does not want to lose his right to vote. He stated efficiency in government is done in all areas not just one thing. He asked the Board to let all the departments do the cost savings instead of zeroing in on one thing.

Councilman Wayner stated that the committee had six initiatives in the beginning and felt that we would take one at a time. He stated there are other areas they want to look at.

Dale Howard stated that if you look at them all at the same time you will have a better idea of the cost savings. He stated that if you end up contracting out you will have to spend more money.

Grace Bodine asked when you start with the assessors it starts a whole ball of worms going and that can start the potential for downsizing. She stated that she is for keeping the elected official and not appointing. She stated that it seems like you are taking our power away and even if you go to a sole assessor, make it an elected position so we have a voice in it.

Deputy Supervisor Engert stated this Board unanimously took action against the proposed legislation that Governor Paterson had put forward to make the Highway Superintendent and Town Clerk appointed positions.

Merrill Bender stated that to him efficiency has to balance quality of service and we have a certain quality of service that we expect. He stated we have quality of service for a small town by having the office covered and the people should be elected. He stated he appreciates the work the committee has done but sometimes efficiency can do havoc on the quality of service.

Robert Foley stated he does not see the Assessors office as one that falls into the political dimension. He stated that this is more of a technical capacity which works well as a staff position. He stated the responsibility of the appointee is to oversee the appointed person and hold that person accountable. He asked if you can expect the residents to delve into the requirements to elect the best person for the job. He stated he does not feel that we are losing our right to elect a political person and the efficiency committee is doing a positive thing. He stated that he supports going from an elected to an appointed position with a technical staff.

Gordon Porter stated that we are gradually doing away with our freedoms. He stated that assessors date back to the 1700's and asked why change now when people have been satisfied with the way things are. He stated the three assessor system has proven itself and is the best.

With all persons being heard, Deputy Supervisor Engert closed the hearing at 8:57PM.

Deputy Supervisor Engert stated a short intermission will be taken so the BCS students can have their papers signed and leave.

REGULAR MEETING

Deputy Supervisor Engert opened the regular meeting at 9:00PM.

RESOLUTION 67-09

APPROVAL OF MINUTES

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

ADOPTED Ayes 4 Engert, Chaffee, Gow, Wayner
Nays 0

Resolved that the minutes of the April 14th and May 4th, 2009 meetings be approved as submitted.

RESOLUTION 68-09

APPROVAL OF SUPERVISOR'S MONTHLY REPORT

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

ADOPTED Ayes 4 Engert, Chaffee, Gow, Wayner
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

ATTORNEY REPORT

Deputy Supervisor Engert introduced Art Herdzik and John Philipps and asked if there was a status report.

Attorney Herdzik stated he had nothing to report.

Attorney Philipps stated the transition has gone well with substitutions of counsel in place. He stated there may be more substitutions of counsel needed and they are looking into that. He stated they are doing research into the AES matter.

Councilman Wayner asked if there are any deadlines ahead that need to be met.

Attorney Philipps stated there are no court deadlines in any litigated matters.

Councilman Gow asked Attorney Herdzik if he had determined if the billing for AES back taxes goes back to the inception of the PILOT agreement.

Attorney Herdzik stated that he is looking into it.

Discussion ensued regarding potential litigation matters and the possibility of discussing strategy in executive session.

Attorney Herdzik stated that when they respond to these issues they need to get it right.

QUARTERLY REPORT FROM WATER/SEWER DEPARTMENT RECEIVED AND FILED.

SUPERVISOR'S ANNUAL REPORT RECEIVED and filed with the Comptrollers Office on April 24, 2009. Deputy Supervisor Engert stated that the report will be amended as there is a discrepancy with receipts in January for the water and sewer bills.

COMMUNICATIONS

FEMA MAPS

Clerk Connolly reported a protest letter has been filed with the Federal Emergency Management Agency on April 22, 2009 regarding the flood maps.

FIRE HYDRANT REQUEST

Clerk Connolly read a letter from Joseph J. Fox, 9125 Somerset Drive, requesting the Board to have a fire hydrant installed in front of his new home on the Town's water easement with all costs to be paid by him. The letter stated that he accepts the Town's fire code for fire regulations and hydrants, but he is concerned by the lack of concern by the right-of-way owner that poses a direct threat to all property owners on the right-of-way and he cannot risk the threat of fire to his new home.

Deputy Supervisor Engert referred the letter to Superintendent Denny and Superintendent Bigelow. He stated that the Attorney has been made aware of the situation.

Barker Fire Chief Randall Hildebrant stated that the house is not in jeopardy of fire and that the existing hydrants are adequate, along with the fire equipment that the Fire Dept. has.

Deputy Supervisor Engert asked the Attorney to report back regarding the codes at their convenience.

RESOLUTION 69-09

RESCIND SOLE ASSESSOR PROPOSED LOCAL LAW

Councilman Gow read a prepared statement stating, in part, that the issue of three elected assessor positions was voted upon in 2000 and defeated; therefore the Town still retains three elected positions. She stated that the Town has a unique situation with the power plant and that her support of this law was the wrong choice.

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

DEFEATED Ayes 2 Chaffee, Gow
Nays 2 Wayner, Engert

Resolved that the proposed local law to abolish the positions of three elected assessors to be replaced by one appointed assessor is rescinded.

RESOLUTION 70-09

TABLE SOLE ASSESSOR PROPOSED LOCAL LAW

Councilman Wayner stated there are compelling arguments that he would like to review regarding the adoption of the proposed law.

Deputy Supervisor Engert stated there are items that he would like to review and that Supervisor Meyers needs to be made aware of the comments of the public hearing.

Councilman Wayner stated that the purpose is to save money and do what is right for the Town and it was not his intention to take a vote away from the people. He stated he will reconsider that position.

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

DEFEATED Ayes 2 Wayner, Engert
Nays 2 Chaffee, Gow

Resolved that the vote on the proposed local law to abolish the positions of three elected assessors to be replaced by one appointed assessor be tabled.

SOMERSET YOUTH BASEBALL ORGANIZATION (SYBO) LEASE

Deputy Supervisor Engert stated that there are concerns from the SYBO and Superintendent Denny for the proposed lease and that SYBO is currently working on getting an insurance rider.

RESOLUTION 71-09

TENT FOR MEMORIAL DAY

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

ADOPTED Ayes 4 Engert, Chaffee, Gow, Wayner
Nays 0

Resolved that the Town will provide the tent for the Memorial Day ceremony on May 25, 2009 at the Town Park.

RESOLUTION 72-09

AUDIT OF CLAIMS

Councilman Gow questioned General Fund bills Claim#168 and Claim#175. She stated on #168, the invoice has no date of service, is not signed and is for \$1,000.00 which requires Town Board approval per the procurement policy. She also questioned #175 stating that the bill is for litigation for \$202.50 and is clearly clerical, not litigation.

Discussion ensued regarding transfer of files for the Attorney being billed at the litigation rate.

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

ADOPTED Ayes 4 Engert, Chaffee, Gow, Wayner
Nays 0

Resolved that the bills be paid in the following amounts withholding General Fund Claim #168 for \$1,000.00 and Claim #175 for \$202.50:

General Fund	No. 161 through 209	\$51,339.88
Highway Fund	No. 52 through 65	\$23,076.55
Sewer Fund	No. 48 through 58	\$12,673.48
Water Fund	No. 52 through 64	\$13,766.50

Deputy Supervisor Engert stated that he will contact the accounting firm and also discuss the bill with the Attorney.

PUBLIC INPUT

PILOT LITIGATION

John MacDonald congratulated the past and present Board members and Attorney Shoemaker on the win in court over the PILOT. He stated that winning a suit of this magnitude is monumental and he asked if the attorney fees are recoverable and if the Town will pursue this.

He stated that it disturbs him that the Supervisor was quoted in the newspaper stating that he can't wait to sit down and negotiate with AES. He questioned when the Supervisor has the authority to negotiate an assessment.

James Hoffman thanked the long term Board members for voting in 2007 to pursue the appeal and asked what is next. He stated his school taxes went up 23% because of the PILOT and he feels the process should be open. He asked what happens next.

Deputy Supervisor Engert stated that papers have been filed.

Attorney Herdzik stated AES and the Niagara County IDA have 30 days to appeal to the Court of Appeals and the decision came down on May 1st, with a certificate being filed by the Clerk of the Court. He stated that it is not easy to get a leave from the Court of Appeals under these circumstances.

Cindy Jex announced that a special recognition ceremony will be held at the Veteran's Memorial Park at Noon on May 16th in Lockport to honor her nephew, Albert Jex, who was killed in Iraq.

John Sweeney Jr. stated that as the former Supervisor of the Town when the PILOT was initiated he appreciates Councilman Chaffee, Councilman Gow, Councilman Wayner, and former Councilman Ray for holding the course in seeing this through on the reversal of this PILOT.

Councilman Chaffee thanked John Sweeney for providing the leadership.

John MacDonald asked if the legal fees are recoverable.

Attorney Herdzik stated they cannot get the legal fees back.

Douglas Lewis asked how long it will be before AES goes back on the tax roll.

Deputy Supervisor Engert stated it is currently being researched and a decision will be made by the end of the week.

Douglas Lewis stated the negotiations need to be opened and they need to go to the Federal government if they need a bailout and not the taxpayers of Niagara County.

James Atwater asked how long can they (AES) keep this in court and not pay.

Attorney Herdzik stated that the Article 7 lawsuits need to be resolved within 1 ½ years or so; and they can also go back to Niagara County and ask for another PILOT. He stated they are going to be assessed and paying taxes.

Chris Czelusta asked if they should have to pay interest also.
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Attorney Herdzik stated that was a good question.

Merrill Bender stated that the Board should ask AES to pay their fair share. He stated the PILOT was not good for the community and they are already getting a tax break. He asked the Town Board and the Attorney to get it fair and right.

Roy Plummer stated he agrees and this is not settled in anyway.

James Hoffman asked what the status is of the 6 assessment lawsuits.

Attorney Herdzik stated they are now revived and they need to get substitution for counsel for those suits.

Councilman Gow stated that since the final tax roll has to be filed by June 1st have you (Attorney) prepared an amount to put on the roll.

Attorney Philipps stated that he has been conferring with Chairman Hildebrant regarding the matter and will probably have that done by Friday.

Councilman Chaffee asked the Attorney who will be at the meeting with Judge Klock tomorrow (May 13th).

Attorney Herdzik stated Judge Klock suggested they get together, however the meeting has been cancelled pending substitution of counsel.

Councilman Chaffee asked if there should be a change of venue.

Douglas Lewis asked if negotiations have begun already.

Deputy Supervisor Engert stated that in the interest of the entire Town when it comes to litigation there are discussions that need to take place so we do not relinquish the position that we are in right now. He stated that Judge Klock was involved in the initial Article 7 proceedings.

Herbert Linderman stated Judge Klock demonstrated bias.

Deputy Supervisor Engert stated the Attorneys are working to get up to speed.

Roy Plummer stated that he hopes that we are not trying to save a dollar when the former law firm has done a lot of homework on it and wouldn't you want to take advantage of that research.

Attorney Philipps requested an Executive Session regarding pending litigation with the Barker Commons assessment case.

RESOLUTION 72-09

EXECUTIVE SESSION

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

ADOPTED Ayes 4 Engert, Chaffee, Gow, Wayner
Nays 0

Resolved the Board go into Executive Session at 9:50PM to discuss pending litigation.

RESOLUTION 73-09

RETURN TO REGULAR SESSION

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

ADOPTED Ayes 4 Engert, Chaffee, Gow, Wayner
Nays 0

Resolved the Board return to Regular Session at 10:40PM.

Regular Session was reconvened at 10:41PM.

RESOLUTION 74-09

BARKER COMMONS SETTLEMENT

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

ADOPTED Ayes 4 Engert, Chaffee, Gow, Wayner
Nays 0

Resolved that Attorney Philipps is authorized to enter into an agreement with Barker Commons to set the assessment for 2009, 2010, and 2011 at \$348,855.55 full value.

On a motion of Councilman Gow, seconded by Councilman Chaffee, the meeting was adjourned at 10:44PM subject to the Call of the Clerk. Carried unanimously.

Rebecca A. Connolly, MMC
Town Clerk