

REGULAR MEETING AND PUBLIC HEARING  
MAY 11, 2010

A Regular Meeting and Public Hearing 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 11<sup>th</sup> day of May 2010.

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

Absent:       Randall J. Wayner ----- Councilman

Attended by: Approximately 18 residents and 6 BCS students

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

**PUBLIC HEARING – Local Law #1-2010 – Sewer Vent Charge**

Notice of said hearing was duly published in the Lockport Union-Sun & Journal on April 29, 2010 with same being posted at the Town Hall on same date.

Supervisor Meyers opened the hearing at 7:01PM with Clerk Connolly reading the notice.

With no one speaking for or against, Supervisor Meyers closed the hearing at 7:02PM.

**REGULAR MEETING**

Supervisor Meyers opened the regular meeting at 7:03PM.

RESOLUTION 87-2010

**APPROVAL OF MINUTES**

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

ADOPTED   Ayes 4       Meyers, Engert, Alt, Jansen  
              Nays 0

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

RESOLUTION 88-2010

**APPROVAL OF SUPERVISOR'S MONTHLY REPORT**

Councilman Engert asked for year to date comparison for the sales tax revenue. On a motion of Councilman Engert, seconded by Councilman Jansen, the following resolution was

ADOPTED Ayes 4 Meyers, 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

ATTORNEY REPORT

Attorney Herdzik reported the following:

1. Provided the Board with a confidential report from Attorney Chmiel regarding prosecutor matters.
2. Submitted report from Attorney Conidi regarding matters of the Planning and Zoning Board.
3. Stated that he prepared a draft local law for Flood Damage Prevention and sent the draft to the Board via email for their review. He stated the draft needs to be submitted to NYSDEC for their review with a public hearing to be held in July for final adoption by August 19, 2010. He suggested that the Board review the option of an application fee before the next meeting.

Engineer Roeseler stated the draft should be submitted to DEC by June 17<sup>th</sup> and stated that the Board will need to establish SEQR lead agent and call for a public hearing in July.

QUARTERLY WATER/SEWER REPORT received and filed.

COMMUNICATIONS:

RESOLUTION 89-2010

**USE OF TOWN HIGHWAYS**

Clerk Connolly read a letter from "The Ride for Roswell" requesting use of town highways for their annual ride on Saturday, June 26, 2010.

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

ADOPTED Ayes 4 Meyers, Engert, Alt, Jansen  
Nays 0

Resolved that the parties responsible for "The Ride for Roswell" are authorized to use the Town Highways on Saturday, June 26, 2010.

Clerk Connolly read a letter from the Village of Youngstown requesting community support in efforts to ensure that our environment and safety and quality of life be protected by attending a protest rally on May 22, 2010 at 10:30AM at the Niagara Falls Storage Site in light of the US Army Corp of Engineers deciding what to do with the hazardous and radioactive wastes stored in the temporary containment cell at the Niagara Falls Storage Site.

**FOIL APPEAL**

Clerk Connolly stated that she provided the Board with copies of a FOIL Appeal from James Hoffman on May 6th, 2010 regarding access to the grant for windmills at the Town Hall. She stated the Town Board has 10 days from the date of the appeal to make a decision.

Supervisor Meyers stated that he has been working with NYSERDA on this project and that he is looking at moving the project to the sewer plant because the wind turbines would generate 50% more power at that site. He stated that he was advised by the project coordinator, the Malcolm Pirnie Company, that NYSERDA would consider a revised application.

Councilman Alt asked if a revised application would jeopardize the current grant.

Supervisor Meyers stated that it would not and that NYSERDA was not happy with what they read in the paper about opposition to the placement of the turbines in the woods. He stated that he is cautiously optimistic.

Councilman Engert asked if there was anything in writing.

Supervisor Meyers stated no.

Councilman Engert stated that the grant is still in the process of a bid and he is concerned if some of the information is released, it would taint the bid process.

Supervisor Meyers stated that NYSERDA is not in favor of releasing information before the bid process. He stated he just received the grant application from Malcolm Pirnie yesterday afternoon after he left the office.

Councilman Engert asked the Attorney to review the package for a recommendation.

Attorney Herdzik stated that he would make a report.

RESOLUTION 90-2010

**ADOPTION OF LOCAL LAW #1-2010 - SEWER VENT CHARGES**

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

ADOPTED	Via Roll Call Vote	
	Supervisor Meyers	Aye
	Councilman Engert	Aye
	Councilman Alt	Aye
	Councilman Jansen	Aye

**Adoption of Local Law continued**

LOCAL LAW NO. 1 OF THE YEAR, 2010

A Local Law Entitled "Amendment to the Code of the Town of Somerset"

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

To amend Chapter 152 – Sewers – Section 152-30 – Rate Schedule by adding a new paragraph F, which shall read as follows:

F. The repair of a vent upon a sewer service connection shall be \$50.00.

This local law shall take effect immediately upon its filing in the Office of the Secretary of State.

RESOLUTION 91-2010

**SEWER CHARGE POLICY**

Superintendent Denny submitted a policy for the repair of a sewer vent on the right-of-way.

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

ADOPTED Ayes 4 Meyers, Engert, Alt, Jansen  
Nays 0

Resolved a policy for the repair of a sewer vent is as follows:

**Policy for Repair of a Sewer Vent on the Right-of-Way**

1. One free repair after 5/11/2010. For every repair thereafter, the property owner will incur a \$50.00 charge. The charge will be added to the next sewer bill.
2. Notification to Homeowner:
  - a. When property changes ownership, the new owner will be notified of the policy. Each property owner gets one free repair.
  - b. Notify property owner after 5/11/2010 before the sewer vent is fixed, if this is the free repair or if there are charges and that they will be added to the next sewer bill.
  - c. Information regarding repairs will be documented and kept at the sewer department.

RESOLUTION 92-2010

**LOWER LAKE ROAD BRIDGE Purchase of Right-of-Way**

Superintendent Bigelow stated that authorization needs to be given to purchase the necessary right-of-way for the construction of the Lower Lake Road Bridge for a total of \$2,250.00.

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

ADOPTED Ayes 4 Meyers, Engert, Alt, Jansen  
Nays 0

**WHEREAS**, The Town of Somerset wishes to replace the Lower Lake Road Bridge over Fish Creek, BIN 2213660; and

**WHEREAS**, The Town of Somerset has received Federal and State Aid for this Bridge Replacement Project PIN 5758.35; and

**WHEREAS**, the Town Board has committed to administer the various phases of this Project; and

**WHEREAS**, replacement of the Lower Lake Road over Fish Creek, will require the fee acquisition of right-of-way as well as temporary and permanent easements for construction of the project.

**BE IT RESOLVED**, that the Town Board does hereby authorize the Supervisor to proceed with the Right-of-Way Acquisition for said properties in the Town of Somerset within P.I.N. 5758.35 for the Lower Lake Road over Fish Creek Culvert Replacement project.

#### **UTILITY BILL ANALYSIS**

Councilman Engert stated that he has spoken with John Ludtka and that there were a few issues with some municipalities, namely Wheatfield and Cheektowaga, which have conflicts in their policy. He stated that New Wave Energy has reworked the contracts so they would be compliant with their policy. He stated the Towns are very significant and would drastically affect the rates. He stated there are 2 enrollment periods and it is anticipated that the Town will be enrolled during the June 2<sup>nd</sup> enrollment period. He stated that a copy of the agreement will be sent to the Attorney for his approval.

#### **BARKER CHEMICAL STATUS**

Councilman Engert stated the Town and School have been receiving the taxes on the property from Niagara County for a total of \$13,400 to date. He stated there is an unknown liability on the property and that the County is not interested in taking ownership of potential hazardous waste properties. He stated that it has been the recommendation of the Engineer and Attorney that the Town does not take ownership of the property due to the potential liability.

He stated that Legislator Syracuse and he have asked the Niagara County Center for Economic Development to place this property on the marketing list in order to secure a private investor.

RESOLUTION 93-2010  
**NIMS COORDINATOR**

Supervisor Meyers stated that Randall Hildebrant has resigned as NIMS Coordinator. On a motion of Councilman Jansen, seconded by Councilman Alt, the following resolution was

ADOPTED Ayes 4 Meyers, Engert, Alt, Jansen  
Nays 0

Resolved that Daniel Engert is named the NIMS (National Incident Management System) Coordinator.

**SUBDIVISION REGULATIONS**

Clerk Connolly reported that she, upon order of the Planning Board, provided the Town Board with copies of a proposed local law amending the Code of the Town of Somerset Subdivision Regulations with a copy of a letter from Attorney Conidi that approves the proposed document.

Councilman Engert stated that he would like further time to review the document.

**TRAVEL POLICY**

Councilman Engert stated that a travel policy is in draft stage and being reviewed.

RESOLUTION 94-2010  
**ATTORNEY RETAINER**

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

ADOPTED Ayes 4 Meyers, Engert, Alt, Jansen  
Nays 0

Resolved that the current retainer agreement with Chelus, Herdzik, Monte and Speyer, PC with an increase in the monthly rate to \$4,166.67 retroactive to April 1, 2010 through December 31, 2010 is approved.

RESOLUTION 95-2010

**SNOW AND ICE CONTRACT WITH NIAGARA COUNTY**

Superintendent Bigelow presented a renewal contract for removal of snow and ice from County roads.

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

ADOPTED Ayes 4 Meyers, Engert, Alt, Jansen  
Nays 0

Resolved the Snow and Ice Contract with Niagara County is approved.

RESOLUTION 96-2010  
**BUDGET AMENDMENT**

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

ADOPTED Ayes 4 Meyers, Engert, Alt, Jansen  
Nays 0

Resolved the following budget amendment is approved:

DR		CR	
A1990.4	\$ 5,283.68	A1220.2	\$ 283.68
		A1430.4	<u>\$ 5,000.00</u>
			\$ 5,283.68

**COMPUTER FOR ASSESSOR CLERK**

Councilman Alt stated that the Assessor has told him that the Assessor Clerk is in need of a computer. Councilman Alt stated the cost of the computer is \$989.00 and asked that the money be taken from the Contingency Account for the purchase.

Councilman Alt stated that he would volunteer to be the designated point person for the Assessor.

**PUBLIC COMMENT**

Douglas Lewis questioned the Board on the amount of increase in the Attorney retainer and what the percentage increase was.

Councilman Engert stated the amount last year was \$3333.33 and reflects a 25% increase.

Herbert Linderman asked if it had been settled as to Attorney representation at the Planning and Zoning Board meetings.

Supervisor Meyers stated that the Attorney will attend the meetings.

Attorney Herdzik stated the firm is exploring ways for the Attorney to be more effective and if it is necessary to attend all meetings.

H. Linderman stated that he never knows what question will arise at the meetings.

Supervisor Meyers stated the agreement that has been reached is that the Attorney will come to the meetings. He stated they have already put restrictions on who can contact the attorney. He stated Attorney Herdzik came to them with a listing of all the work they have been doing since they became the attorneys and they have been running in the red. He stated they may explore the issue of having the Attorney on standby.

Councilman Engert stated the agreement allows the Chairman to call and ask for the Attorney to attend the meetings.

Supervisor Meyers stated the Chairmen of the Boards are the people who can contact the Attorney.

Norman Jansen asked if moving the two windmills to the sewer treatment plant may negate getting a larger turbine there in the future.  
Supervisor Meyers stated that the placement will be kept in mind.

April Gow asked if the Board needs to make a formal motion to amend the application to NYSERDA. She also asked if letters of support for the change of the location to NYSERDA would be helpful.

Supervisor Meyers stated that they could adopt a motion and that letters of support would be helpful.

Mrs. Gow stated in regards to the FOIL appeal, that the information could be redacted and then you can provide the information.

Supervisor Meyers stated there are certain numbers that need to be redacted.

Mrs. Gow stated that she supports the change in the location for the placement of wind turbines to the sewer plant. She stated that the pristine woods are too valuable to lose.

Supervisor Meyers stated that a Forester will be coming out to determine the health of the woods, what can be done to make it healthier, and try to incorporate the woods into the park.

Superintendent Denny stated that he met with the Forester from NYSDEC today and that the Forester will prepare a report.

Mrs. Gow stated the woods are very accessible for walking.

John Sweeney asked what initiated the change of the location for the windmills from the park to the sewer plant.

Supervisor Meyers stated he always wanted the turbines at the sewer plant and the initiation was the power output.

John Sweeney stated that he was in agreement that the woods are valuable and should not have the turbines placed there.

Herbert Linderman stated he agrees the woods need to be preserved.

Supervisor Meyers asked that letters of support be written and forwarded to Clerk Connolly at which time they will be forwarded to Malcolm Pirnie.

Herbert Linderman asked why they (NYSERDA) are against windmills at the sewer plant.

Supervisor Meyers stated this particular grant application did not include turbines at a Wastewater Treatment Plant.

Discussion ensued regarding the placement of windmills, power output, wind resource at Camp Kenan, the need for a building permit, the requirement of the windmill laws, the possible need for a variance, and the kind of windmills.

Douglas Lewis stated when the sewer plant is paid off, perhaps the Town can pay to put up a windmill at the sewer plant.

Supervisor Meyers stated that the cost payback is not cost effective unless there is grant money available.

**CHIPS FUNDING**

Superintendent Bigelow stated that he is not sure if the CHIPS funding will be included in the state budget which is \$69,000 for the Town. He stated the Highway Superintendents are lobbying for the funding to be included.

RESOLUTION 97-2010

**AMENDMENT TO WINDMILL GRANT APPLICATION**

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

ADOPTED Ayes 4 Meyers, Engert, Alt, Jansen  
Nays 0

Resolved that the grant application be modified to change the location of the two residential windmills from the Town Park to the Wastewater Treatment Plant.

James Hoffman addressed the Board regarding the following:

1. Thanked the Board for considering an alternate site for the windmills and presented the Board with 8 reasons why the turbines should not be in the woods.
2. He stated he did his own research and the people that he talked to at NYSERDA were surprised that the grant information was unavailable.
3. He stated if you are trying to suggest that anything he did or the people he contacted compromised any negotiation, all activity that he did was started after April 13<sup>th</sup>, the day Supervisor Meyers announced the award.

RESOLUTION 98-2010

**AUDIT OF CLAIMS**

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

ADOPTED Ayes 4 Meyers, Engert, Alt, Jansen  
Nays 0

Resolved the bills in the following amounts be paid:

General Fund	No. 172 through No. 220	\$ 52,527.46
Highway Fund	No. 47 through No. 55	\$ 3,987.84
Sewer Fund	No. 45 through No. 55	\$ 11,819.12
Water Fund	No. 47 through No. 59	\$ 34,503.20

On a motion of Councilman Alt, seconded by Councilman Jansen, the meeting was adjourned at 8:40PM subject to the Call of the Clerk. Carried unanimously.

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Rebecca A. Connolly, MMC  
Town Clerk