

REGULAR MEETING
MAY 13, 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 13th day of May 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 40 residents

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

PUBLIC HEARING – PROPOSED LOCAL LAW #1-2008 – OUTDOOR HEATING DEVICES

Notice of said hearing was duly published in the Lockport Union Sun & Journal on April 23, 2008 with same being posted at the Town Hall on the same date.
Clerk Connolly read notice of hearing.

RESOLUTION 74-08

OPEN PUBLIC HEARING

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 public hearing be opened on outdoor heating devices at 7:31PM.

Supervisor Meyers asked if any of the Board members had comments regarding the law as written.

Councilman Gow stated the intent is clear that it gives the Code Enforcement Officer the right to administer the law.

Councilman Engert stated that he wanted to hear what the members of the community have to say.

Joseph Zagmaster questioned why the law is needed and if there have been complaints.

Supervisor Meyers stated there have been complaints and that the Code Enforcement Officer needs to have a law to take action against the complaints.

Councilman Wayner stated the outdoor heating devices are becoming more prevalent and the Code Enforcement Officer needs to have a mechanism in place in case it becomes a nuisance to the neighbor.

Joseph Zagmaster asked if the nuisance is the outside water heater or the smoke.

Supervisor Meyers stated that it is the smell. He stated the law is for the unusual circumstance and that most people install them properly.

Councilman Engert stated it is important to understand what the process has been to this point. He stated the Code Enforcement Officer was requested to respond to complaints and did not have a basis to enforce anything. He stated the Code Enforcement Officer asked the Planning Board to consider a law and a lot of time was spent by the Planning Board before it was sent to the Town Board for action. He stated we are now at a point to hear the public comments.

Willis MacDonald questioned the provision where the units have to be shut down during June, July and August when 75 – 80% of them are used to furnish hot water. He asked if there is a count of outdoor heating devices in the Town of Somerset.

Supervisor Meyers took a poll of the number of attendees that have outdoor heating devices or wish to have one and then he asked how many use it to heat their hot water.

(It is noted that the majority of the attendees raised their hands to both questions.)

Supervisor Meyers stated that he did not like that portion of the law personally.

Steven Yousey stated that he had investigated how the Board had gotten to this point. He stated that the Board had seen a document from the Attorney General's Office entitled "Smoke Gets in Your Lungs". He gave an overview of the document and stated it was flawed. He provided the Board with 2 documents that he obtained that refuted the findings of the Attorney General's Office. He stated the information in the Attorney General's Office is flawed and questioned the definition of "verifiable nuisance". He stated that it is very dangerous language and gives the Code Enforcement Officer extremely broad power. He also expressed his displeasure with no provision to replace what already exists and the provision that requires the shut down of the units during the summertime.

Councilman Wayner thanked Mr. Yousey for his comments. He stated he spoke to the Code Enforcement Officer about the reason behind the summertime provision. He stated that that provision could be stricken.

Supervisor Meyers stated he appreciated the research.

Bill Wilson asked if anyone that developed the law has a wood burner stove.

Supervisor Meyers stated that a person that sells and installs the stoves was utilized when developing the law and that most of the provisions are manufacturer's guidelines.

Douglas MacDonald stated that it is confusing and stated that the town should deal with the situation as a nuisance when it comes up.

Supervisor Meyers stated that right now the law has a grandfather clause for existing units. He said they will find out more detail on what a nuisance is.

Steven Yousey stated that some people may use poor judgment in placing their unit and doesn't feel it is necessary to have this siting requirement.

Supervisor Meyers stated these will be the standards and how the system will be installed. He stated there are some issues with the law but the basic perimeters of setbacks and stack height will fit well within the manufacturer's recommendations.

Councilman Chaffee questioned Douglas MacDonald if there should be a law in place to regulate how they are installed.

Douglas MacDonald stated that you need to have something to work with. He stated that not all houses are capable of having this device and the Town needs to have something to fall back on if you get complaints. He stated the Town should send something out for anyone that is buying these so that they are aware.

Councilman Wayner stated that it is covered in the permit process of the proposed law and would be public knowledge that they couldn't be installed without a permit.

Councilman Gow stated that it would be published in the newsletter. She read the provision of the law that addresses inspection upon complaint and that the complaint needs to be filed in writing before the Code Enforcement Officer makes an inspection.

Steven Yousey stated DEC does that and that three phone numbers are listed for DEC, NYEPA and USEPA in the documents he provided.

Councilman Gow stated if you have smoke blowing into your window during the summer time you need someone local to answer the complaint instead of waiting for DEC.

Steven Yousey stated some sort of protection is needed against nuisance.

Attorney Roberson stated that the public nuisance portion of the law would not come from the way it is being constructed; it would come from the way it is being operated. He stated the Code Enforcement Officer needs the authority to shut down, especially if the fuel being burned is offensive. He stated public nuisance is a well established concept in the law.

Steven Yousey stated that the ethanol plant in Orleans County is producing yeast which is being complained about as an offensive odor according to the Orleans County Attorney. He stated nuisance is a moving target.

Discussion ensued regarding public nuisance.

Attorney Roberson stated it has to be offensive to be considered a public nuisance.

Steven Yousey stated that it is subject to personal interpretation.

Attorney Roberson stated that the Code Enforcement Officer would determine what is offensive and obnoxious.

Councilman Wayner stated there is an appeals process included in the law where the owner can appeal the decision of the Code Enforcement Officer.

Steven Yousey asked that the Board consider that the law could be used in a way that is not intended. He stated you might be shut down during the winter and he doesn't trust the court system.

Supervisor Meyers stated the nuisance part can be rewritten. He stated if you are violating the law and a complaint is filed then you can be shut down. He stated if people follow the law they won't have problems.

Tony Porter stated that he sells the boilers and that the nuisance is an easy fix by extending your stack. He stated the Village (Barker) has said that you cannot have them. He stated if you properly extend your chimney the smoke will go up and draft out.

Councilman Engert stated the setbacks and chimney heights are established so the resident isn't restricted and it is designed so this resource is available. He stated it was not the intention of the Code Enforcement Officer or the Planning Board to restrict anyone to use this device.

Willis MacDonald asked if there was any way that a law could be drawn up so a person can't be shut down instantaneous.

Discussion ensued regarding the Code Enforcement Officer's judgment on what a nuisance is.

Melvin Denny stated the Code Enforcement Officer works for the Town Board and the Town Board should be called if the Code Enforcement Officer is overstepping his boundaries.

Steven Yousey stated he disagreed as he does not know who will be the Code Enforcement Officer or who will populate the Town Board in 10 years.

Supervisor Meyers stated that section of the law needs to be looked at.

Lee Hoffman stated that atmospheric conditions may cause a problem so there is no guarantee that there will not be a nuisance problem if the stack is proper height.

Bill Wilson stated that nuisance is in the eye of the beholder and that neighbors change all the time.

Floyd Koerner stated that he has been using an outdoor furnace for 15 years and tries to use discretion when burning. He stated he was concerned with the public nuisance part of the law.

Councilman Wayner stated that three items need to be looked at:

1. verifiable nuisance
2. June through August provision
3. replacement provisions

Supervisor Meyers agreed.

Darlene Platt asked if an established device can be replaced without replumbing.

Councilman Wayner stated that is the way it is written now but will be looked at.

Councilman Chaffee stated that if the changes are made there should be another public hearing.

Attorney Roberson stated that the law should be returned to the Planning Board to rework the areas of concerns.

Councilman Engert concurred with the items that need to be looked at and that the Planning Board should be directed to look at those concerns, redraft language and bring back to the Board. He asked Clerk Connolly to draft language for the Planning Board.

Clerk Connolly stated that the Planning Board will have the information for their meeting on May 14th and that members of the Planning Board are in the audience.

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RESOLUTION 75-08

CLOSE PUBLIC HEARING

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 public hearing be closed at 8:35PM.

Supervisor Meyers opened the regular meeting at 8:36PM.

RESOLUTION 76-08

APPROVAL OF MINUTES

Supervisor Meyers stated he wanted to clarify his statements made at the April 8, 2008 meeting that the turbines are actually 2.5 megawatts and that the revised document was to be sent back to Empire State Wind Energy.

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 minutes of the April 8th and April 23rd, 2008 meetings be approved as submitted by the Clerk.

RESOLUTION 77-08

APPROVAL OF SUPERVISOR'S MONTHLY REPORT

On a motion of Councilman Engert, seconded by Councilman Chaffee, 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 REPORT RECEIVED AND FILED:

Police Report

COMMUNICATIONS

RABIES CLINIC

Clerk Connolly read a letter from the Niagara County Health Department thanking her, Highway Superintendent Bigelow and the Highway employees for providing the facility for the rabies clinic on April 19, 2008 at which time 476 dogs, cats and ferrets were immunized.

EMPIRE STATE DEVELOPMENT

Clerk Connolly read a letter from the Niagara Erie Regional Coalition that was sent to Governor Patterson regarding the unanimous vote to urge the Governor to maintain an upstate focus on economic development by headquartering the Empire State Development (ESD) Corporation in Buffalo and by appointing Dan Gundersen chair of ESD for the state.

ARTICLE X

Clerk Connolly stated that she had received a letter from Governor Patterson acknowledging the resolution that was sent to him regarding opposition of Article X legislation.

Clerk Connolly reported that she had received a communication from the Association of Towns stating that the Article X has been put on hold until the new State Energy Plan is complete. She stated Governor Patterson has issued an Executive Order to establish a State Energy Planning Board charged with preparing a State Energy Plan.

NIAGARA COUNTY WORKERS COMPENSATION PLAN

Clerk Connolly read a letter from the Niagara County Attorney that included documentation regarding the county claim that the Town of Somerset owes money to the Niagara County Municipal Self-Insurance Plan.

Clerk Connolly provided the Town Board with a packet that included the history of the buyout since 2000 prior to the Town's withdrawal from the plan.

Councilman Wayner asked the Attorney what the statute of limitations is on this issue.

Attorney Roberson explained that the statute of limitations has expired on such claim 12/31/2006 as the charges were for 1999 and 2000. He stated the statute of limitations runs from the time that the County has the right to make the claim. He stated the claim is a medical expense for 2000 and the town was a fully paid member in 2000 and 2001.

LANDFILL

Councilman Chaffee reported that he had contacted Jim Austin from the Dept. of Public Service and that he has not gotten back to him regarding the letter sent to David Morrell from DPS who was supposed to get back to the town by the end of April. He stated Mr. Austin is Mr. Morrell's boss and that he will get to the bottom of it.

Councilman Wayner questioned if anyone has been inspecting the site.

Councilman Gow stated we do not know that, only that Mr. Morrell has driven by two times.

Supervisor Meyers asked if Mr. Morrell is qualified to inspect.

Councilman Gow stated that he is one of the staff members.

Councilman Engert stated that he will follow up with Jon Reimann regarding the tour of AES.

RESOLUTION 78-08

OUTDOOR HEATING DEVICES

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 proposed law on outdoor heating devices is referred back to the Planning Board for revisions specifically regarding:

1. verifiable nuisance definition
2. replacement of existing units
3. removal of the restriction of no operation during June, July and August

EMPIRE STATE WIND ENERGY

Supervisor Meyers read a letter to the Town Board from Empire State Wind Energy dated May 12th that he received on May 13th stating the Host Community Agreement offer from the Town “is rejected in its entirety” and “at this time we have no counterproposal to offer. Your offer differs significantly from those that we have successfully negotiated with the growing list of Towns in New York (currently 7 towns).” Supervisor Meyers stated that he talked to Keith Pitman at length and the Article 78 issue is the stumbling block. He stated that Mr. Pitman stated the investors wanted to know why the agreement was being changed for Somerset as they have signed agreements with other towns. Supervisor Meyers stated that he clearly thinks there is room to work with Empire and make a compromise that will make the investors comfortable while protecting the interests of the town.

Councilman Engert stated he is disappointed in just getting access to the letter. He stated he does not share that there is room for negotiation by the language he reads in the letter. He stated that Empire does not want a business deal with the Town. He stated that we need to significantly reduce the agreement as it was proposed.

Supervisor Meyers stated that if you compare our agreement with Sodus, the clear difference is the Article 78 language.

Councilman Gow stated there is a lot more language included in our agreement.

Councilman Engert stated that Empire needs to put in writing what the specific issue is.

Supervisor Meyers stated that the Board needs to take time to review the letter.

QUARTERLY WATER REPORT

Superintendent Denny presented a quarterly water report showing the amount of gallons used and showing a 2.7% water loss for the quarter.

RESOLUTION 79-08

PASSPORT CAMERA PURCHASE

Clerk Connolly presented a request to purchase a camera that will be used to take passport photos, specifically a SONY UPX-C200 Passport System. She stated she researched cameras and checked with other Passport Agents and found this system comes highly recommended. She stated the camera will be portable and will be able to be used off site. She stated that prices vary from \$7.99 to \$15 for photos and proposes to charge \$9.00 and that the purchase will enhance service to the public in today's economy.

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 Clerk Connolly is authorized to purchase a SONY UPX-C200 Passport System from Pakor for a total of \$1,647.15 as proposed.

RESOLUTION 80-08

HIGHWAY GARAGE ROOF

Superintendent Bigelow requested replacing the roof at the highway garage and presented proposals from vendors as follows:

<u>NAME AND ADDRESS OF VENDOR</u>	<u>PRICE WITHOUT TEAROFF</u>	<u>PRICE WITH TEAROFF</u>
James Chutko 8437 Carroll Rd., Gasport, NY 14067	\$ 9,985.00	\$ 12,885.00
M.H. White Siding & Roofing Co. 4507 E. Lake Rd, Wilson, NY 14172	11,515.00	19,340.00
Ken Heitzenrater Roofing & Siding 1406 Hartland Rd., Barker, NY 14012	13,035.00	20,935.00
Roberts Roofing & Siding Co., Inc. 6279 Ridge Rd., Lockport, NY 14094	14,000.00	20,860.00

Superintendent Bigelow stated the roof is 23 years old. He stated that the lowest proposal was requesting payment in advance and delivery date was 120 days from delivery of roof materials. Superintendent Bigelow stated that he has specified in the proposal 120 days from award of the bid.

Discussion ensued in the differences of the proposals and if there is a need for complete tear off.

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

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

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Resolved that M. H. White Siding & Roofing Co., 4507 E. Lake Rd, Wilson, NY 14172 be contracted to replace the roof without tearing off the existing roof at the Highway Garage for \$11,515.00.

RESOLUTION 81-08

BUDGET AMENDMENT

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 following budget amendment is approved:

DR		CR	
A960		A960	
A1990.4	\$2,000.00	A1010.4	\$2,000.00
A3021	4,439.47	A1110.21	2,495.99
		A1110.41	<u>1,943.48</u>
			\$ 4,439.47

Supervisor Meyers stated that he had talked to Attorney Brandt regarding the litigation bills presented and that he was waiting for an estimate on the costs for the PILOT litigation.

Councilman Engert stated the estimate is provided in the packet.

Attorney Roberson stated the proposal is for hours and explained the stages of the briefs. He stated that this is an estimate at this point.

Supervisor Meyers stated that is sounds good.

RESOLUTION 82-08

ABSTRACT OF CLAIMS

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

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

Resolved that the bills be paid in the following amounts:

General Fund	No. 189 through 235	\$ 42,660.19
Highway Fund	No. 55 through 68	\$ 24,067.40
Sewer Fund	No. 41 through 52	\$ 5,608.38
Water Fund	No. 55 through 64	\$ 5,076.30

PUBLIC INPUT

Joseph Zagmaster asked why the town does not buy wind turbines and put them up at the sewer plant.

Supervisor Meyers stated the turbines are about \$3 million each and that Councilman Engert went to a wind seminar.

Councilman Wayner stated that this was looked at by prior administrations and asked Engineer Roeseler to give an overview of the length of the payback being years.

Discussion ensued regarding the possibility of the Town putting up its own wind farm.

Councilman Engert stated that he will have a report at the next meeting regarding the community wind seminar.

Supervisor Meyers stated there is a limited amount of time before AES builds the wind farm and that we have to make sure that we are making good decisions. He stated he still believes that the agreement with Empire Wind is not dead and that a community based wind farm is not out of our reach and asked that all options be looked at.

Norman Jansen stated he feels bad about the letter received and asked that the Article 78 be thrown out, sign the agreement and get Empire in here.

Councilman Gow stated that she does not feel that Article 78 is the only issue.

Discussion ensued regarding the Article 78.

Councilman Engert stated he did not feel it was prudent to discuss on speculative issues that aren't stated in the letter from Empire State Wind Energy.

Councilman Wayner stated there is no data provided in the letter.

Dexter McCanty addressed the Board regarding the bioremediation site on Lake Road stating it is not covered as it is supposed to be.

Supervisor Meyers stated that DEC has closed the site but will check with the Code Enforcement Officer and he will contact DEC to find out what the status is.

Dexter McCanty thanked Superintendent Bigelow for the drainage ditch cleaning along his property. He stated that the rest of the drainage ditch in the Village of Barker needs to be cleaned out from Coleman Road to Mayer Brothers.

Supervisor Meyers stated he will follow up with the Village.

Superintendent Bigelow stated there is a by-pass ditch that goes to Fels Road that will take the overflow from the ditch.

Floyd Koerner asked whose responsibility it is to maintain the ditch.

Superintendent Bigelow stated after the ditch is cleaned it is the property owner's responsibility to maintain the ditch.

On a motion of Councilman Gow, seconded by Councilman Wayner, the meeting adjourned at 9:30 PM subject to the Call of the Clerk. Carried unanimously.

Rebecca A. Connolly, MMC
Town Clerk