

SPECIAL MEETING
MAY 4, 2009

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 4th 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
	John Philipps Jr. -----	Counsel
	Arthur Herdzik -----	Counsel (Arrived 6:15PM)

Absent: Richard J. Meyers ---- Supervisor

Attended by: A few residents

Notice of said meeting sent to the Lockport Union-Sun & Journal on May 1, 2009 with same being posted on the same day at the Town Hall.

Deputy Supervisor Engert called the meeting to order at 6:00PM with the Pledge to the Flag and stated the purpose of the meeting is to receive a status report regarding the transfer of files and other actions that were stipulated by the Board per a resolution that was adopted on April 14th. He stated the Board became aware of some issues that had surfaced regarding:

1. The election by current and former Board members to retain individual representation by the former firm and issues this raised with the substitution of counsel of a current litigation matter;
2. A conflict raised by the former attorney regarding the release of "closed" or old town matters;
3. A conflict raised by a sitting Board chairman regarding his belief of the existence of a file related to a current open town matter.
4. The 15 day deadline as per the resolution passed on April 29th.

Deputy Supervisor Engert stated for these reasons, it was determined and necessary and in the interests of the Town of Somerset to meet and collectively hear a report on the matter in order to deliberate on future actions that may be necessary to enact to protect the interests of the Town of Somerset. Deputy Supervisor Engert stated that he was pleased to report that earlier today the Town took possession of a substantial quantity of files from the former firm and that Clerk Connolly is presently inventorying them. He stated critical AES and historical files are now in the possession of our new firm so they can effectively review them in order to be able to provide exceptional legal representation for the residents Town of Somerset.

Deputy Supervisor Engert asked Attorney John Phillips to provide a summary of events and a status report moving forward for our consideration.

Attorney Phillips stated there has been trouble getting all the files from former counsel. He stated after the last meeting Arthur Herdzik contacted the former attorney to obtain the files and substitution of counsel for outstanding legal matters. He stated that at that time they were informed that some members of the Board, on an individual basis, had retained the former attorney and he would not sign a blanket substitution of counsel. Mr. Phillips stated that on April 20th he provided a different substitution of counsel and was advised by former Attorney Roberson that he wanted to make modifications to the proposed substitution of counsel. He stated that on April 23rd he picked up open town files relating to the SYBO lease; Sole Assessor; Barker Storage and Barker Commons cases. Later he determined that he had not received anything regarding subdivision regulations or possible Code Enforcement proceedings from Attorney Brandt. He stated that the AES Appellate Briefs were turned over to the Town Clerk of which he picked up on prosecutor night last month, but Attorney Roberson would not turn over anything else and refused to sign the change of attorney without providing a reason. Mr. Phillips stated that when he went to the Attorney's office today to obtain the files, he dropped off another substitution of counsel and Mr. Roberson was not there. He stated he did not know if it had been signed and at this point the firm is not the substitution of counsel for the AES case. He stated that this is necessary to be done immediately in case other parties petition NYS highest court to hear the case. He stated that he did receive quite a volume of files regarding AES today and will begin reviewing them as soon as he gets back to his office.

Councilman Wayner stated that he asked Deputy Supervisor Engert to set up the meeting because he felt that valuable time was going that the Attorneys would need once the Appeals decision was announced. He stated the decision was announced on May 1st and he felt it was imperative that our Attorneys are up to speed.

Deputy Supervisor Engert asked Attorney Phillips to clarify what a substitution of counsel is.

Attorney Phillips stated that any litigated matter that is before the Court, the Court has an "attorney of record" which is signed by the client and the attorney. Once it is signed by the attorney they would become "Attorneys of Record" with the court.

Discussion ensued regarding the substitution of counsel in the AES matter.

Deputy Supervisor Engert asked if there is a problem with obtaining a substitution of counsel as a result of current and former Board members retaining the previous firm.

Attorney Phillips stated that he fashioned the document so it would be a substitution of counsel for the Town and those people in their capacity as Board members. He stated the attorneys of record are for those people individually.

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Deputy Supervisor Engert stated the individuals are Dick Ray, April Gow and Dudley Chaffee. He asked Councilman Gow and Councilman Chaffee if that was their intention and if they had discussed it with any Board member.

Councilman Gow stated that was her intention individually and she had not discussed it as she did not feel it was necessary as an individual.

Councilman Wayner asked Attorney Phillips if his firm would be willing to represent Councilman Chaffee and Councilman Gow if they so elect.

Attorney Phillips stated yes.

Councilman Chaffee asked if Mr. Phillips has requested the substitution of counsel from Mr. Roberson today.

Attorney Phillips stated that he had faxed over a copy on April 27th and dropped it off today.

Attorney Herdzik arrived at 6:15pm and apologized for being late.

Deputy Supervisor Engert stated that all files have been turned over today and Clerk Connolly is inventorying those.

Clerk Connolly stated that 20 to 25 cubic foot of record was turned over to Attorney Phillips this afternoon.

Deputy Supervisor Engert questioned Councilman Chaffee and Councilman Gow if they elect to retain the former attorney that the fees are their responsibility

Councilman Chaffee and Councilman Gow both stated yes.

Councilman Wayner asked if this election by Councilman Chaffee and Councilman Gow precludes Attorney Roberson from signing a substitution of counsel.

Attorney Phillips stated that he did not know that and he had not been back to the office today since the files were picked up. He stated Mr. Roberson may have called the office and he will inform the Board tomorrow. He stated the document he prepared specifically excludes the individuals.

Councilman Chaffee stated that it does not affect getting a substitution signed.

Extensive discussion ensued regarding the substitution of counsel after the appeal decision; recourse if substitution of counsel is not signed; possible litigation options; permissible right of AES to file an appeal to the Appellate Court decision that was an

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unanimous decision; status of the Article 7 proceedings; commitment by new firm to answer questions by the regular Board meeting; and possible conflicts with moving forward with the Article 7 proceedings.

Attorney Herdzyk stated that the individuals are not parties in the Article 7 proceedings and the Town is the respondent, therefore he sees no conflict.

Councilman Chaffee asked with the appeal being decided in the Town's favor, does AES have to pay back taxes for the previous two years.

Attorney Herdzyg stated they will have to study that.

Assessor Hildebrant stated that he has been in conversation with Bill Budde, Niagara County Real Property Tax Director, to determine exactly what the procedure will be to obtain the back taxes and putting AES back on the final assessment roll by June 1st.

Discussion ensued regarding the back tax status and obtaining an opinion from the Town Attorney.

Councilman Chaffee stated that he has received a phone call from a school board member that the BCS Board of Education would like to meet with the Town Board to discuss what the next step will be.

Deputy Supervisor Engert stated that he has talked to Superintendent Klatt and he understands the Board will be receiving a letter in the next few days requesting such a meeting. He thanked the Attorneys for the status report.

RESOLUTION 66-09

LEGAL RETAINER

Councilman Wayner stated the retainer has been reviewed and finalized.

Councilman Chaffee noted that Clerk Connolly had pointed out some additions and asked if they had been included.

Clerk Connolly stated the suggestions were included and minor adjustments needed to be made. She stated the final retainer will be prepared for signature after the Board meeting.

Councilman Chaffee stated that he cannot vote for the retainer as he did not vote to retain the firm.

Deputy Supervisor Engert stated the Board is authorizing him to sign the retainer.

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

ADOPTED Ayes 3 Engert, Chaffee, Wayner
Nays 1 Gow

Resolved that Deputy Supervisor Engert is authorized to sign the retainer agreement with Chelus, Herdzyk, Speyer & Monte PC. in the absence of Supervisor Meyers.

Councilman Gow stated that she wants to commend the former law firm for the hard work they did and for winning the appeal. She stated they are excellent litigators and does not agree with the change in counsel. She stated the former firm had far more experience and has saved millions of dollars in tax dollars. She stated the retainer agreement should have been adopted when the new firm was hired and that she disagrees with the rate based on municipal law experience and litigation experience.

Councilman Wayner stated he would also like to commend the previous Attorneys on the win of the Appeal and that we owe them a debt of gratitude on their past experience. He stated it is time to focus on the future.

Councilman Chaffee stated he would also like to commend the former firm.

Douglas Lewis stated he saw in the paper that Supervisor Meyers is anxious to engage in negotiations with AES. He stated he thinks it is important to learn from the fall of the PILOT agreement and that AES did not open their books. He stated that their books need to be opened to the taxpayers of Niagara County if there is a need for a bailout. He stated they should go to the federal government for the bailout and not the taxpayers. He stated that negotiations should be held in the public and not behind closed doors.

Councilman Chaffee questioned the untruths that were in the paper this week that were totally inaccurate.

Deputy Supervisor Engert stated that he drafted a statement announcing the meeting and stated that when discussing the issues there were open matters, closed matters and litigation matters. He stated that his comments were regarding open matters that the Attorney had advised they had received that included 2 files containing 33 papers. He stated he cannot control what is reported in the newspaper. He stated the point of the article was we did not have all the open files.

Councilman Gow said she wanted the Attorneys to know that AES has repeatedly asked for an assessment of \$100 million. She stated that efforts have been made at least 20 to 38 times to negotiate with AES by the Town and that at one time \$400 million was agreed upon in intervening years.

Assessor Hildebrant stated that after the 3 year agreement of \$400 million was ended, the Town offered AES the same agreement and AES turned that down.

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On a motion of Councilman Wayner, seconded by Councilman Chaffee the meeting was adjourned at 6:50PM.

Rebecca A. Connolly, MMC
Town Clerk