

REGULAR MEETING AND PUBLIC HEARING
NOVEMBER 7, 2007

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 7th day of November 2007.

Present:	Richard J. Meyers -----	Supervisor
	Richard N. Ray Jr. -----	Councilman
	Dudley E. Chaffee -----	Councilman
	April C. Gow -----	Councilman
	Randall J. Wayner -----	Councilman
	Rebecca A. Connolly ---	Clerk
	Kenneth J. Bigelow ----	Superintendent of Highways
	Melvin H. Denny -----	Supt. of Water/Sewer/Grounds
	Robert Roberson -----	Counsel
	Randy D. Roeseler ----	Engineer

Attended by: Approximately 10 people

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

**PUBLIC HEARINGS – SPECIAL DISTRICT ASSESSMENTS AND
2008 PRELIMINARY BUDGET**

Notice of said hearings duly published in the Lockport Union-Sun & Journal on October 25, 2007 and October 31, 2007 with same being posted at the Town Hall on October 25th and October 30th respectively.

Supervisor Meyers opened the public hearings at 7:31PM.

Clerk Connolly read notice of hearings.

James Hoffman asked how the budget compares with last years budget.

Councilman Wayner stated that last years budget was \$3,733,649 and this year is \$3,488,213 so the budget is down by less than \$300,000.

Mr. Hoffman questioned what the tax rate will be.

Councilman Gow stated same as last year at \$2.35 per thousand.

Mr. Hoffman stated that he sees that the amount to be raised by taxation is \$557,646 and suggested that figure should be a target value as a minimum for windmills to erase the town tax.

Supervisor Meyers stated that the number that was looked at in the financial proforma for the imaginary site at the Sewer Plant for 20 turbines was \$1.3 million so the turbines should bring in more than enough to take care of the town tax. He stated how the town tax would be displaced is a whole different issue because we just can't drop the tax rate as that will completely mess up the equations when it comes to the PILOT. He stated "so we will have to figure out some way of I don't know if we are looking at refunds or what kind of ways we can do that...we can't just eliminate the tax so we are going to have to displace the tax".

Mr. Hoffman asked what effect the PILOT had on the budget and how much was lost.

Supervisor Meyers stated about \$300,000 was lost and by dropping the legal bills we took care of most of that.

Mr. Hoffman stated the legal bills dropped because we aren't being sued anymore except for the appeal.

Supervisor Meyers stated we are not suing and they are not suing.

With all persons desiring to be heard, Supervisor Meyers closed the hearings at 7:37PM.

REGULAR MEETING

Supervisor Meyers called the regular meeting to order at 7:38PM.

RESOLUTION 127-07

APPROVAL OF MINUTES

Supervisor Meyers asked for clarification of the following issues:

Regarding the October 15th meeting, he would like to see any comments that are forwarded to the Clerk regarding the wind energy agreement.

Regarding the October 9th meeting:

1. Supervisor Meyers asked Attorney Roberson if all the issues in the landfill case have been resolved. Attorney Roberson stated no and that the Administrative Law Judge is still addressing some of the environmental conservation issues and DEC regulating issues.
2. Appeal clarification that is not in the minutes and he feels it should be. Supervisor Meyers stated that Mr. Roberson stated at the last meeting that we would have a 90% success rate. Supervisor Meyers asked Mr. Roberson once the appellate court accepts this case for the docket, will we have a 90% chance on actually winning the case.

Attorney Roberson stated we do not have to win the right to be heard. He said all we have to do is have a judgment signed by Judge Kloch that is filed with the Niagara County Clerks office. He stated the Judge still has not signed the judgment and that a notice of appeal cannot be filed until a notice of judgment is filed. He stated once we file the notice of appeal we are in the Appellate Division and the Appellate Division automatically hears the case when we file the notice of appeal.

Supervisor Meyers asked once the argument is done do we have a 90% chance of winning? Attorney Roberson stated if the Appellate Division follows the law as it is now written, we should have a very good chance of winning this appeal.

3. Supervisor Meyers stated he would like the minutes to reflect that "setbacks from the property lines" need to be addressed under Susan Atwater discussion.

4. Supervisor Meyers stated that he would like it noted that Merrill Bender had documents prior to the Board having received notification of any of the documents being in existence regarding the LWRP and NOAA.

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

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

Resolved that the minutes of the previous meetings be approved as clarified.

RESOLUTION 128-07

APPROVAL OF SUPERVISOR'S MONTHLY REPORT

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

ADOPTED Ayes 5 Meyers, Ray, 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

Marcia Koerner questioned if there has been people speeding where the 35 mph was lowered.

Supervisor asked if that was south on Quaker Road.

Ms. Koerner stated yes.

Supervisor Meyers stated that there is no police report this month and no one is present to ask. He stated the Police Department did an excellent job patrolling during Halloween and he will let the Police Chief know.

COMMUNICATIONS

Clerk Connolly read a letter from the Niagara Military Affairs Council requesting financial support to ensure that the work they started 11 years ago for advocacy and action for the Niagara Falls Air Reserve Station continue.

LWRP

Clerk Connolly stated that an email was received from the NY Department of State and forwarded to the Board regarding the Office of Coastal Management Resources incorporating the Town of Somerset Local Waterfront Revitalization Plan (LWRP) into the New York State's Coastal Management Program by a letter dated November 2, 2007.

Clerk Connolly read a letter from the Niagara River Anglers Association inviting the Town to participate in their 25th Anniversary celebration by purchasing an ad in the Program Booklet.

AES

Clerk Connolly read a letter from Kevin Pierce, President at AES, stating that the company has launched a website to share as much information as possible with the community and interested stakeholders about the development of the AES Somerset Lake Unloading Project.

RESOLUTION 129-07

APPROVAL OF THE 2008 SPECIAL DISTRICT TAX ROLL

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

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

Resolved the Special District Roll for 2008 is approved as filed with the Town Board and Assessors.

NIAGARA MILITARY AFFAIRS COUNCIL FUNDING

Supervisor Meyers stated that there is not that much in the flexible fund to cover the request.

Councilman Wayner suggests that the request be put on next meeting's agenda.

Supervisor Meyers stated the problem is that if the budget is approved and the funding is not in the budget then we can't do it. Supervisor Meyers asked what the deadline for the budget is.

Clerk Connolly stated the deadline for adoption is November 20th but the budget can be amended if the Board finds a need to contribute.

Supervisor Meyers stated that this will be discussed at the next meeting.

RESOLUTION 130-07

APPROVAL OF THE 2008 BUDGET

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

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

Resolved the 2008 Budget is adopted.

EMPIRE STATE WIND ENERGY

Supervisor Meyers stated the Board had a meeting with Keith Pitman about 3 weeks ago. He stated he had talked to Keith Pitman and that Empire State Wind Energy has signed with another community. Mr. Pitman stated he will contact his Attorney to move forward with an agreement in a timely fashion.

Councilman Wayner asked if Mr. Pitman provided any timeline.

Supervisor Meyers stated no but he will press him on that. He stated they did sign with another town and that takes higher priority as they signed the document.

Councilman Chaffee asked who the other town was.

Supervisor Meyers stated he did not ask but will find out those two items and email it.

RESOLUTION 131-07

SNOW AND ICE CONTRACT WITH NIAGARA COUNTY

Superintendent Bigelow stated the County wants to mirror the contract the State has for snow and ice control except for the parts they don't like. He stated the County has a problem with the liability issue, therefore, negotiations are continuing among the Highway Superintendents and it is necessary to sign an interim contract.

Attorney Roberson stated the County does not want to indemnify the Towns like the State does.

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

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

Resolved that the interim snow and ice contract with Niagara County be approved until January 15, 2008.

ATTORNEY REPORT

Attorney Roberson gave the following updates:

1. AES PILOT – Attorneys are waiting for Judge Kloch to sign the judgment so notice of appeal can be filed.
2. LANDFILL - The landfill is awaiting further action by the Administrative Law Judge regarding compliance by AES with the environmental conservation law and DEC rules and regulations.
3. WIND ENERGY – Attorney Shoemaker is awaiting a redraft agreement from the Attorney for Empire State Wind Energy.

RESOLUTION 132-07

AUTHORIZATION TO PURCHASE A PNEUMATIC POST DRIVER

Superintendent Bigelow asked permission to purchase a Rhino PD39 Post Hole Driver from the Triplex Group, New Hope, PA from \$2,105.00 to put in snow fence posts. He stated this will be truck mounted and there is money left in his budget.

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

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

Resolved Superintendent Bigelow is authorized to purchase a Rhino PD-39 Post Driver with a 2" Chuck Adapter from The Triplex Group, LLC, P.O. Box 428, New Hope, PA 18938 for \$2,105.00.

TOWN HALL ROOF

Superintendent Denny reported that representatives from Mullen Roofing inspected the Town Hall roof and stated that the roof is one of the best constructed flat roofs that they have ever seen. He said they patched the roof and suggested that the roof be inspected yearly for moisture content and be repaired as necessary. The representatives from Mullen stated that the roof should last forever if properly maintained.

PUBLIC FORUM

Marcia Koerner asked what a flexible fund is.

Supervisor Meyers stated it is not a flexible fund but did not have the exact terminology. He said it is a fund that is used for extra expenditures as long as it falls within one of the categories in the budget. He stated it is not a free spending fund but has to be used for specific things.

Councilman Gow stated it has to fall within a budgetary line item.

Marcia Koerner asked why it would not have been in the budget.

Supervisor Meyers stated because we do not know if it exists yet. As long as it falls into one of the categories and we have somewhat of a buffer in that category then we can do it.

James Hoffman addressed the Board regarding the following:

1. Announced three Planning Board members are attending a Farmland Protection seminar on November 8th.
2. Stated he is confused about the extent of the PILOT and is under the impression that the 7 properties at AES are tax exempt for any future improvements under the PILOT via ad valorem.

Attorney Roberson stated that is what the PILOT says for 12 years.

Supervisor Meyers clarified that does not mean that we do not get revenue from those things, we do not get tax revenues.

3. LWRP was written with professional help and took 2 years to complete. He expressed his dismay with the letters opposing the LWRP and the organized effort to impugn the document.

Attorney Roberson stated that the document has been filed and accepted by OCRM.

RESOLUTION 133-07

AUDIT OF CLAIMS

Supervisor stated that he had issues with certain items on the Attorney's bill.

Councilman Wayner referenced voucher number 475 with entry dated 10/17/07.

Discussion ensued regarding the items in question.

Supervisor Meyers stated the bill from Paul Nolan is dated back to May and he would like to see monthly billing.

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

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

Resolved that the bills be paid in the following amounts with the exception of Voucher No. 475 in the General Fund until it is reviewed:

General Fund	No. 450 through No. 495	\$ 35,299.30	minus No. 475
Highway Fund	No. 151 through No. 176	25,775.16	
Sewer Fund	No. 105 through No. 119	8,608.46	
Water Fund	No. 99 through No. 107	4,790.46	

RESOLUTION 134-07

AUTHORIZATION TO PAY ATTORNEY BILL

Clerk Connolly asked when the Attorney bill will be paid and explained that the Town has 30 days to pay an invoice. Clerk Connolly explained the processing of the bills for payment.

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

ADOPTED Ayes 5 Meyers, Ray, Chaffee, Gow, Wayner

Nays 0

Resolved that the Supervisor is authorized to review the Attorney bill and withhold whatever portion that needs to be discussed until the next meeting, paying the balance of the invoice.

Supervisor Meyers stated that he will contact Attorney Shoemaker to discuss what that particular item was.

There being no further business, on a motion of Councilman Gow, seconded by Councilman Wayner, the meeting adjourned at 8:25PM subject to the Call of the Clerk. Carried unanimously.

Rebecca A. Connolly, MMC
Town Clerk