

REGULAR MEETING
OCTOBER 14, 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 14th day of October 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: Several residents and concerned citizens

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

PUBLIC HEARING –Unsafe Building at 8508 Lake Road

Notice of said hearing was duly published in the Lockport Union-Sun & Journal on October 3, 2008 with same being posted at the Town Hall on the same day.

Supervisor Meyers opened the public hearing at 7:31PM. Clerk Connolly read notice of hearing.

Supervisor Meyers stated the property was purchased at County Auction 3 days ago with the owner being present.

Gary Johnson stated that he purchased the property at auction and deferred to his Attorney.

Louis Asandrov, Attorney for Mr. Johnson, spoke on behalf of Mr. Johnson stating that his client was unaware of the action at the time of purchase and asked for time to respond to the demolition hearing. He stated that they had inspected the property and it does not seem unsafe to the public. He asked that his client have time to review the written report; to get an engineer of his own for a report to submit to the town and requested four (4) weeks to do that.

Randy Roeseler, Town Engineer, stated that the report that was submitted by his firm was prepared by a licensed architect and that the reported findings stand on their own.

Code Enforcement Officer Hildebrant stated the code states under non-conformance that a building that is in need of restructuring cannot be repaired to the extent of 50% of its assessed value. He read Article 5 §205-16 of the Code of the Town of Somerset. He stated that the structure cannot be repaired or reused and that nothing meets the

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current code. He stated he stands by his decision that the building needs to be demolished.

Attorney Asandrov stated that the building is not a non-conformance building by the definition of the code and it is questionable that it has to meet the current building code.

Code Enforcement Officer Hildebrant stated that it needs to meet the current code according to NYS Law and he will not issue a building permit for that building.

Attorney Asandrov stated they need a month and under due process principle law it would require that, and based on the Inspectors own oral report to the Board, it is questionable whether or not the building is subject to NYS Codes. He stated even though there may be a NYS statute applicable, the local ordinance is questionable that the current structure is subject to demolition.

James Budziszewski stated that he lives next to that building and it is infested with raccoons, skunks and squirrels. He stated his 12 year old grandson killed a rabid raccoon this past summer from there. He stated the floors are 2" off and unlevel. He stated the previous owners had many medical problems with their two children from mold as the kitchen sink, bathroom sink and the washing machine all drain through the floor onto the ground under the house. He stated there is no basement and the roof is caving in. He stated he has lived there over 20 years and the people that have lived there never cared for the property and it is too small.

Attorney Asandrov stated they were at the property prior to the meeting and there are clearly no varmints present.

James Budziszewski stated there are piles of feces on the window sills.

Supervisor Meyers stated the question is whether the building is structurally sound and that we have a report that says no.

Councilman Gow stated that she would like to hear from the attorney as the County was served with a Lis Pendens against that property.

Attorney Roberson stated there is no due process problem with this hearing being called. He stated the County was the owner and was notified of the violations and public hearing. He stated if the County did not notify somebody of the violation that is between the buyer and the County.

Ted Collins stated that he was going to bid on the property; however, it was stated specifically in the (auction) brochure that you would have to pay to have the house torn down. He stated that created an entirely different bidding process and it was announced at the sale that is what you would have to do, so he (Mr. Johnson) was aware of it.

Gary Sandolini stated he has lived next door to the property for 30 years and that place has been on fire. He stated he knows for a fact that the floor was broken in half and has been spliced together.

Supervisor Meyers stated the question we are dealing with is allowing them extra time to have their engineer look at the building to see if it is structurally sound.

Gary Johnson, owner, stated that he did not want to start trouble with the neighbors. He stated that he has renovated 33 houses and they were a lot worse than that. He stated he bought the house at auction for \$7,500 plus fees and that he would like to have time to work out something with the neighbors.

Councilman Engert asked Attorney Roberson why the owner is not at the County's door for not providing notice.

Attorney Roberson stated they should be dealing with the County and that everyone was provided notice properly. He stated the notice was read at auction and that it may be the condition of sale. He stated the Town does what is in the best interest of the Town.

Councilman Wayner read from the engineer's report stating that it needs to be a total renovation and that it does not meet the standards to be a viable structure to meet current NYS Building Codes.

Councilman Chaffee asked if Mr. Johnson was liable to pay the County the \$7,500 for that.

Attorney Roberson stated unless he objects to the condition of the sale, he may or may not be committed.

Ted Collins read from the auction brochure that the property must be torn down.

Mr. Johnson asked if the town votes to demolish the building would he have the option to tear it down himself.

Supervisor Meyers stated there would have to be a time limit.

Ted Collins asked if he does tear it down would he be able to build under the new codes.

Code Enforcement Officer Hildebrand stated the lot is non-compliant and he would need a variance to build on the lot.

Mr. Johnson stated the lot is 99' by 80'.

James Budziszewski stated that his property abuts to the west side and that a ditch runs north and south and that his property goes 6' to the other side of the ditch. He stated that everyone who has lived there has used his property and the lot is way too small to put a house on there and stay in code.

Supervisor Meyers asked Mr. Johnson if he is looking to build another house on the lot.

Mr. Johnson said probably not. He stated that he knows that he can fix the house but would like 30 days to talk to the neighbors.

Supervisor Meyers asked what would happen at the end of 30 days.

Mr. Johnson said he is not convinced that it is not salvageable.

James Budziszewski stated there have been 3 contractors in there in the past 15 years to fix it.

Councilman Engert stated he would like to set a date for demolition.

Attorney Roberson stated the Town Board can pass a resolution to set a time limit for demolition.

Gary Sandolini stated he is concerned about the time limit. He stated that it has been sitting there for two years with the grass not being mowed and the rats have been coming out of the building.

James Budziszewski stated there is a trail from rats and raccoons.

Code Enforcement Officer Hildebrandt stated that this building is a detriment to public health and safety and structurally unsound.

Attorney Asandrov stated that he needs to protect his client's interests and asked the Board to defer voting on the demolition because it is questionable if the structure is subject to the ordinance.

Peter Devereaux stated there is damage beyond repair.

Supervisor Meyers stated the Town Board may give time to access it but we have our engineers report stating that the structure is not sound.

Ted Collins stated he objects vehemently for the Board to give him (Mr. Johnson) any time at all because he knew at the time (of the sale) that he was going to have to tear the house down. He stated that he (Mr. Johnson) bid so high believing that he could get the Board to do exactly what he is talking about.

Attorney Asandrov stated there was not predetermined planning on his part. He stated it does say (in the brochure) that it has to be demolished but it doesn't say that pursuant to Town Board resolution or order. He stated it could have been the County's view on it and it is ambiguous. He stated that he appreciates the amount of time that the Board has given them tonight but needs to leave.

Mr. Johnson stated that he was sorry if he may have offended anyone and he really just wanted to fix the house up. He stated that if he knew this he would have bowed out of the sale.

Ted Collins stated as a condition of the sale, the property had to be torn down and the gentlemen just admitted they had read that, therefore as a condition of sale he has to do it.

Norman Jansen asked as a condition of sale does he have to tear it down or does the Town have to do it.

Councilman Chaffee stated the Town will not pay for it. He said that Mr. Johnson will be charged if the Town does.

With all persons desiring to be heard, Supervisor Meyers closed the hearing at 8:03PM.

REGULAR MEETING

Supervisor Meyers convened the regular meeting at 8:04PM.

RESOLUTION 130-08

APPROVAL OF MINUTES

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 Sept. 9th and 25th, 2008 meetings be approved as submitted by the Clerk.

RESOLUTION 131-08

APPROVAL OF SUPERVISOR'S MONTHLY REPORT

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 Supervisor's Monthly report be accepted as submitted.

MONTHLY REPORTS RECEIVED AND FILED:

Code Enforcement Officer's report

Code Enforcement Officer Hildebrant reported that he has revised the National Incident Management Systems (NIMS) cast that the Town has to do every year and he wanted the Board to know that it is a very lengthy process and requires numerous hours.

8422 Haight Road Variance (Atwater)

Clerk Connolly provided a communication from Susan Atwater to the Board in their packets, regarding the decision of the Zoning Board of Appeals regarding division of property at 8422 Haight Road.

Attorney Roberson stated that he has read the letter and stated the Town Board has no jurisdiction over reviewing the Zoning Board of Appeals decision.

Supervisor Meyers stated they are not necessarily reviewing the Zoning Board decision but to review the law that you need to have 60,000 square feet and the Right to Farm Law that seems to conflict with that.

Attorney Roberson stated the variance has no relationship with the Right to Farm Law.

Supervisor Meyers stated the way he read the Right to Farm Law it has everything to do with variances and read from Susan Atwater's letter.

Attorney Roberson asked how the Zoning Board variance is a restriction of the Right to Farm Law.

Supervisor Meyers stated that the Zoning Board acted in their capacity and made the proper decision. He questioned if 60,000 sq. ft should be the law and should it be changed. He stated the purpose of the law was to drive people to build into the sewer district, but if you are selling an existing property that has an existing yard, how does it fall into this law. He stated that now you are going to make them sell off farm property and block drainage because we have a law that is made to drive people into the sewer district of which is not working.

Attorney Roberson stated the amount of square footage in the law was to accommodate septic systems. He stated the problem is when a lot is cut out of a farm lot. He stated the owner can reserve drainage by an easement that would be made part of the deed. He stated an easement goes with the property.

Councilman Chaffee asked if there is any law that states you cannot block natural drainage.

Attorney Roberson stated that you cannot block natural drainage.

Councilman Wayner asked who grants the easement.

Attorney Roberson stated the seller reserves the easement to himself to maintain the natural drainage. He stated there has to be negotiations between the seller and buyer with language drafted for the easement and the problem can be resolved through an easement.

Councilman Gow asked Attorney Roberson to draft a letter to Susan Atwater with review of the letter by the Board prior to sending it.

Dog Control Officer's report
Police Report and Annual Police report

COMMUNICATIONS

RESOLUTION 132-08

BARKER LATRATOR AD

Clerk Connolly stated that a letter has been received from the Barker Central School Latrator staff requesting the Town renew their ad in the 2009 Latrator for \$150.00.

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 Town of Somerset place an ad in the Barker Central School Latrator for \$150.00.

GREAT LAKES INTERNATIONAL JOINT COMMISSION

Clerk Connolly reported that she sent letters to all the lakefront property owners regarding the lake levels and has received numerous positive responses from them. She said the residents have sent letters to various officials complaining about the erosion on their property along with pictures.

TIME WARNER CABLE TV

Clerk Connolly reported several letters have been received from Time Warner Cable informing the Town of the ongoing negotiations with LIN TV for carrying WIVB on Channel 4 and 23, with the dispute still ongoing.

PLANNING BOARD REQUEST TO REZONE PROPERTY ON HAIGHT ROAD

Clerk Connolly read a letter from the Planning Board requesting the Town Board rezone property on Haight Road from R-2 to Industrial.

RESOLUTION 133-08

UNSAFE BUILDING DEMOLITION – 8508 LAKE ROAD

Discussion ensued regarding the demolition of the structure; removal of the debris; restoring the property; the timeframe of removal; the possibility of the property owner not closing the deal with the County and the consequences after 30 days.

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 Town Board proceed with the recommendation of the Code Enforcement Officer ordering the demolition of the structure and foundation at 8508 Lake Road, SBL 9.13-1-15, including removal of all debris, site reclaimed and restored to the satisfaction of the Code Enforcement Officer within 30 days (November 12, 2008) and if the owner of the property does not do the demolition the Town will proceed with removal, with the charges to be placed on the tax bill.

RESOLUTION 134-08

IMMEDIATE DEMOLITION OF 8508 LAKE ROAD

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

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

Resolved that upon written confirmation that Gary Johnson, owner of property at 8508 Lake Road, withdraws his commitment to Niagara County for the purchase of said property prior to November 12, 2008, the Town will immediately proceed with demolition and reclamation of said property with the charges to be placed on the tax bill.

LANDFILL

Councilman Chaffee stated a letter was received from David Morrell of the NYS Public Service regarding the landfill and that he had talked to Jon Reimann of AES. He stated Mr. Reimann will have all information that is required for filing to the Town Clerk by the week of October 20th, 2008.

RESOLUTION 135-08

STREET LIGHT FOR 9503 SOMERSET DRIVE

Clerk Connolly reported that National Grid has done a study at 9503 Somerset Drive and will place a 100-watt high pressure sodium lamp and standard luminaire with a 12' arm on their existing distribution pole for the estimated annual cost of \$87.37.

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 a street light be placed at 9503 Somerset Drive as proposed by National Grid.

RESOLUTION 136-08

CHANGE OF MEETING DATE

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

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

Resolved that the next regular meeting date be changed to November 5, 2008.

RESOLUTION 137-08

RECORDS RESOLUTION

Clerk Connolly reported that the Governor has taken funds from the dedicated records management improvement fund to help in balancing the general fund budget for New York State. She explained the "sweeping" of funds and the deletion of 6% of grant funds that were awarded to local governments to conduct records management. She explained the Town has received approximately \$65,000 through this program and asked the Board to adopt a resolution opposing the taking of dedicated funds.

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

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

WHEREAS, the Local Government Records Management Improvement Fund was established through chapter 78 of the Laws of 1989; and

WHEREAS, this law provided for the \$5 surcharge on every document recorded in the County Clerks Office throughout New York State; and

WHEREAS, the revenues collected were dedicated to fund competitive records management grants administered by the State Archives; and

WHEREAS, this grant program has had tremendous positive impacts in counties, towns, cities, school districts and special districts throughout NYS awarding \$168 million to 8500 local governments; and

WHEREAS, in March, 2008 a little known provision of the State Budget allowed \$500,000 of these dedicated funds to be "swept" into the State's general fund; and

WHEREAS, an additional 6% of "unexpended" funds has now been reduced from grants awarded from this dedicated fund;

NOW THEREFORE BE IT

RESOLVED, that the Town Board of the Town of Somerset asks the State Legislature to recognize that these funds are local funds raised by local Clerks for local governments; and

RESOLVED that the Town Board of the Town of Somerset requests that no further "sweeping" or other transferring of money from this valuable dedicated fund be permitted; and be it further

RESOLVED, that a copy of this resolution be forwarded to Governor Paterson and the members of the NYS Senate and Assembly.

RESOLUTION 139-08

UNPAID WATER AND SEWER BILLS/UNSAFE BUILDING CHARGES PLACED ON TAXES

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 any unpaid water and sewer bills and all expenses incurred for unsafe building and code violations at various properties, including legal and engineering fees, be placed on the county taxes for 2008.

RESOLUTION 140-08

REZONING OF PROPERTY AT 8713 HAIGHT ROAD

James Dickinson, 8713 Haight Road, stated he has property across from the Town Hall and rents the property at the current time. He stated that he was approached by Jeffrey Thuman of J.T. Precision to purchase some property at that location to expand his business because of the services the property offers including three phase electric service, natural gas and sewage. Mr. Dickinson presented maps dated October 13, 2008 with two variations of the proposed rezoning from R-1 and R-2 to Industrial.

Jeffrey Thuman stated that he currently owns a machine shop at 8463 Lower Lake Road and he stated that he wishes to expand his business. He stated that he has looked at various areas for expansion including Lockport. He stated that he has a C&C shop making stuff out of plastic and metal. He stated they have 10 employees currently and would like to have 20. He stated the building would be block and brick construction with approximately 10,000 to 12,000 square feet. He presented non-engineered drawings of the proposed building and how it would lay on the site. He stated the building would occupy 10 – 12% of the lot with adequate parking.

James Dickinson requested the Board to rezone 4.82 Acres from R-1 & R-2 to Industrial as presented.

Councilman Engert asked the nature of the shift work.

Mr. Thuman stated that he now has 1 shift that work 8 – 10 hours; however he may go to 2 or 3 shifts in the future.

James Hoffman commended Mr. Thuman for keeping business in Somerset but he questioned if it is the right location. He stated the old Barker Chemical site on West Somerset Road has been cleaned up by the Environmental Protection Agency under the Brownfields Initiative and is zoned Industrial. He stated that there may be credits and tax advantages by considering the property.

Mr. Thuman stated they had looked at the site but it would be too costly to demolish the buildings. He stated that he is working with the Niagara County Industrial Development Agency (IDA) on the expansion and stated that he has been invited to go to Sanborn and Lockport; however he would like to stay in Somerset.

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 a Public Hearing be held on November 5, 2008 at 7:30PM to hear and consider adoption of a local law amending the Town of Somerset Zoning Ordinance and Map to rezone the following property situate on Haight Road, Barker, New York 14012, presently located in a R-1 and R-2 District as defined in the Town of Somerset Zoning Ordinance, is hereby re-zoned and designated Industrial District, subject to all regulations created and established relative to said Industrial District pursuant to Section 205-40 of the Code of the Town of Somerset and described as follows:

Beginning at the intersection of Quaker Road and Haight Road, Town of Somerset, Niagara County, New York, and running easterly along the center line of Haight Road 875 feet to a point; thence northerly at right angles to said center line, 200 feet to a point; thence westerly at right angles to the last described boundary 200 feet to a point; thence northerly at right angles 300 feet to a point; thence easterly parallel to the center line of Haight Road 500 feet to a point; thence southerly at right angles to the aforementioned boundary 500 feet to the center line of Haight Road; thence westerly along said center line 300 feet to the point or place of beginning. Also being described as part of SBL # 9.00 - 2 - 39.11 in the Town of Somerset, containing 4.82 acres, more or less.

RESOLUTION 141-08

FIRE CONTRACT WITH BARKER FIRE DEPARTMENT

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

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

Resolved that a Public Hearing shall be held on the Fire Contract with the Village of Barker/Barker Fire Department Inc. for 1 year at \$225,000 per year on November 5, 2008 at 7:30PM.

RESOLUTON 142-08

2009 PRELIMINARY BUDGET

Supervisor Meyers stated that he has some issues with the budget and that he had researched unreserved fund balances. He stated that the Town needs to account for unappropriated fund balances in the budget. He stated that he would like to put \$1 Million in the budget for a community center.

Councilman Engert stated that he had some unresolved issues with the budget and would like to set a date for another meeting to discuss the budget.

Clerk Connolly explained the legal timeframe for the adoption of the budget and the public hearing.

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

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

Resolved that adoption of the 2009 Preliminary Budget be tabled for further discussion and that a date be set for a meeting.

Discussion ensued regarding when the meeting would be and was decided to continue the meeting for budget discussions after all business is completed.

Attorney Roberson stated that a community center may be subject to General Municipal Law §204C and may require a public referendum. He also stated that the Board needs to budget for potential liabilities.

Supervisor Meyers stated he had done some research and that the State Comptroller requires that monies be allocated to something and sited the 2002 Audit Report of the Town.

Discussion ensued regarding the audit; funds available; potential liabilities; and holding a public referendum on the building of a community center.

PUBLIC INPUT

Herbert Linderman questioned the Board regarding a Community Center and stated that he has not heard anything about it.

Supervisor Meyers stated that he has formed a committee to look into the feasibility of building a community center and that he would like some of the unallocated funds allocated for that purpose.

Herbert Linderman stated that it sounds like a money pit.

Councilman Engert asked if there was room for more on the committee.

Supervisor Meyers stated that he has a committee of 10 and that he sent letters to all the community organizations asking them to send a representative to the meeting.

Herbert Linderman stated that he was concerned in these economic times that we are being taxed and the added cost to the town and stated there are several areas in the town for meetings including the Firehall. He questioned how the town was going to maintain it.

Discussion ensued regarding the taxes; appropriated reserves; the impact of the PILOT of AES on the school and the town; litigation and lawsuit settlements; allocation of unappropriated reserves; anticipated building of a community center; and public referendum for approval of expenditure for community center.

Supervisor Meyers stated that the community center would not be built before May 2009.

Gary Wass asked what the status is on windmills.

Supervisor Meyers stated that AES has given leases to landowners and that the landowners are having their attorneys look over the lease proposal. He stated AES is waiting for some signed leases and that as soon as they have one they will be opening a storefront in the Village for anyone interested in having a windmill. He stated that he has spoken to some landowners and that they like what they (AES) are offering.

RESOLUTION 143-08

AUDIT OF CLAIM

On a motion of Councilman Wayner, seconded by Councilman Chaffee, 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. 415 through 464	\$ 54,875.94
Highway Fund	No. 132 through 150	\$ 8,891.80
Sewer Fund	No. 108 through 121	\$ 10,735.10
Water Fund	No. 108 through 118	\$ 36,126.07

2009 PRELIMINARY BUDGET DISCUSSIONS

Extensive discussion ensued regarding budget expenditures for 2009.

RESOLUTION 144-08

ADOPTION OF PRELIMINARY 2009 BUDGET

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

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

Nays 0

Resolved that the 2009 Preliminary Budget is approved as amended and a public hearing shall be held on said budget on November 5, 2008 at 7:30PM.

On a motion of Councilman Engert, seconded by Councilman Wayner, the meeting adjourned at 10:55 PM subject to the Call of the Clerk. Carried unanimously.

Rebecca A. Connolly, MMC
Town Clerk