

REGULAR MEETING  
OCTOBER 9, 2007

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 9<sup>th</sup> day of October 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 21 people

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

RESOLUTION 112-07

**APPROVAL OF MINUTES**

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 that the minutes of the previous meetings be approved as submitted by the Clerk.

RESOLUTION 113-07

**APPROVAL OF SUPERVISOR'S MONTHLY REPORT**

On a motion of Councilman Ray, seconded by Councilman Wayner, 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  
Police Report

COMMUNICATIONS

Clerk Connolly read a letter from Drs. Clark and Barbara Godshall, thanking the Highway Department for the fine job they did in repaving Snell Grove and Somerset Drive.

Clerk Connolly read a letter from the Town of Kendall Assessor, Ken DeRoller, thanking Robert Glidden for the assistance in the re-val process.

RESOLUTION 114-07

**WIND ENERGY**

Supervisor Meyers stated that he would like to meet with officials from Empire State Wind Energy and that he had dropped off the Town of Wolcott host agreement to Attorney Shoemaker's office a few weeks ago for his review. He stated that he had not received any comments back and that the Attorney could have comments by the date the meeting is set.

Attorney Roberson stated he is not the attorney dealing with wind energy and that Mr. Shoemaker was out of town.

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

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

Resolved that the Supervisor contact Keith Pitman of Empire State Wind Energy to set up a meeting to discuss a potential Host Agreement.

**UPDATES ON LAWSUITS**

Attorney Roberson gave an update on the pending lawsuits:

PILOT – Attorney Roberson stated the decision has been received from Judge Kloch upholding the PILOT. He stated that he is awaiting a judgment with Judge Kloch that needs to be signed.

LANDFILL – Attorney Roberson stated that he understands that all issues have been resolved.

RESOLUTION 115-07

**ADOPTION OF 2008 PRELIMINARY BUDGET**

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 the 2008 Preliminary Budget is adopted and a Public Hearing is to be held on said budget on November 7, 2007 at 7:30PM.

RESOLUTION 116-07

**RECYCLING BINS**

Clerk Connolly stated that there are 2 recycling bins left and presented a procurement for the purchase of 500 recycling bins from:

<u>Name and Address of Vendor</u>	<u>Price</u>
Rehrig Pacific, 1000 Raco Court, Lawrenceville, GA 30045	\$ 3,800.00
Tulip Corp., 714 E. Keefe Ave., Milwaukee, WI 53212	\$ 4,800.00
Kraftwerks, 92 Cooper Ave., Tonawanda, NY 14150	\$ 5,950.00

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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 Clerk Connolly is authorized to purchase 500 recycling bins from Rehrig Pacific, 1000 Raco Court, Lawrenceville, GA 30045 for \$3,800.00 as per the procurement.

RESOLUTION 117-07

**FENCE FOR SEWER PLANT**

Superintendent Denny presented a procurement for the purchase of fencing materials for the sewer plant to complete the fencing project from:

<u>Name and Address of Vendor</u>	<u>Price</u>
City Fence 3893 Walden Ave., Lancaster, NY 14086	\$ 3,820.93
Fox Fence Inc. 2637 Lockport Rd., Niagara Falls, NY 14305	\$ 5,755.72
Classic Fence & Lumber Co, 3030 Niagara Falls Blvd, 3030 Niagara Falls Blvd., Amherst, NY 14228	\$ 5,803.56

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

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

Resolved Superintendent Denny is authorized to purchase fencing materials from City Fence, 3893 Walden Ave., Lancaster, NY 14086 for \$ 3,820.93 as per the procurement.

RESOLUTION 118-07

**CONSORTIUM BIDS FOR REFUSE/RECYCLING PICKUP**

Clerk Connolly stated bids were received by the Attorney for the Niagara Solid Waste Consortium on September 18, 2007 from the following:

<u>Name of Vendor</u>	<u>Price per unit</u>
Modern Disposal Services, Inc. Waste Management	\$ 171.81 \$ 215.45
No complete bids were received from Allied Waste or NEI	

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

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

Resolved that the bid proposal from Modern Disposal Services, Inc. is approved for refuse/recycling disposal for a 3 year term with the option of two additional three year terms as written.

RESOLUTION 119-07

**SNOW REMOVAL CONTRACT WITH STATE**

Superintendent Bigelow presented the snow and ice removal contract with New York State and asked that the contract be renewed for 1 year.

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

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

Resolved that Supervisor Meyers is authorized to enter into a municipal snow and ice agreement with the State of New York for the removal of snow and ice from state highways for 2007-2008.

**APPEAL OF PILOT DECISION**

Clerk Connolly read a resolution from Barker Central School authorizing the School Board Attorney to file a Notice of Appeal of the decision by Justice Richard Kloch.

RESOLUTION 121-07

**AUDIT OF CLAIMS**

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

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

Resolved that the bills be paid in the following amounts:

General Fund	No. 401 through No. 449	\$ 61,956.76
Highway Fund	No. 134 through No. 150	39,407.67
Sewer Fund	No. 94 through No. 104	4,003.02
Water Fund	No. 94 through No. 98	38,234.43

**PUBLIC FORUM**

James Hoffman commented as follows:

1. Stated that his school taxes increased 23% and voiced his disappointment with the decision of Judge Kloch upholding the PILOT and urged the Board to proceed with an appeal.
2. Landfill issue is not resolved as PSC (Public Service Commission) is still in charge and that DEC (Dept. of Environmental Conservation) needs to be monitoring the landfill site and asked the Board to press DEC for a monitoring plan and a person designated to do such monitoring.
3. Windmills- glad to see the Board is moving forward with Empire Wind as an affiliate from AES is pressing for land leases.

4. Proposed Pier at AES – stated a port proposal was presented in the 70’s and shot down by PSC due to no all weather operations. He pointed out several issues including no new tax revenues; questioned new jobs other than construction; home land security; coal handling; noise; dust; property values; navigation; boating; and aesthetics. He asked the Board to invite AES to brief the town.

Discussion ensued regarding the impact of the pier on the Town and the permitting process.

#### RESOLUTION 122-07

#### **AUTHORIZE APPEAL OF PILOT**

Attorney Roberson stated that he needs a resolution authorizing the Attorney to pursue appeal of the PILOT decision to the Appellate Division.

Supervisor Meyers made a motion to have a public meeting first to discuss the appeal. Motion failed due to no second.

Extensive discussion ensued regarding expenses, procedures, mechanics of appeal, decision issued and timeframe.

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

ADOPTED	Ayes 4	Ray, Chaffee, Gow, Wayner
	Nays 1	Meyers

WHEREAS, the Town of Somerset has received a decision by Justice Richard C. Kloch, Sr. denying Petition by the Board demanding PILOT Agreement between NCISA and AES Somerset, et al, be vacated and voided: and

WHEREAS, the resulting financial impacts to the District would be severe if this decision is allowed to stand,

NOW, THEREFORE, it is resolved that the Town Attorney be authorized to file a Notice of Appeal of that decision with the Appellate Division, Fourth Department in Rochester and to process that appeal to its conclusion.

#### **PUBLIC FORUM CONTINUED**

LeRoy Wolfe questioned the status of interviewing candidates for Boards.

Supervisor Meyers stated the committee will be worked out before next meeting.

Jon Hotaling stated the Planning Board cannot wait as they will have members absent for the hearing at the next meeting.

Discussion ensued regarding the need for a committee to make recommendations and privacy issues.

Herbert Linderman asked where information can be obtained regarding the proposed pier at AES.

Supervisor Meyers stated that he received a press kit and will make that available at the Town Hall. He stated he would call AES to set up a meeting.

Darlene Lutz stated that AES is planning an open house.

#### RESOLUTION 123-07

#### **REQUEST FOR AES TO ATTEND MEETING**

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 that Clerk Connolly send a letter to AES requesting a representative attend a meeting to discuss the plans for the power plant property.

The Board advised Clerk Connolly to invite AES to the December meeting.

Susan Atwater stated there could be a real problem with the setbacks and she would like the law regarding setbacks for windmills reviewed.

Councilman Gow stated that applications will show a plan and the site at which time the applicant can get a variance.

Supervisor Meyers stated the property lines need to be addressed.

Floyd Koerner stated that the Town of Eagle setbacks are 1 ½ times the height of the windmill and that setbacks should be considered as a whole not on an individual basis. He stated the setbacks are too restrictive.

James Hoffman stated he feels that the Board should wait for any proposal and that setbacks solve a lot of problems. He also stated his concern that the proposed leases have indemnification clauses in them excluding risks associated with unknown dangers such as electromagnetic fields.

Merrill Bender addressed the Board regarding:

1. Thanked the Board for proceeding with an appeal to the PILOT.
2. Pier – stated that the Town Board has been opened for business and questioned why AES has not come to the Board after being invited numerous times. He stated he was concerned that Senator Maziarz has contacted NOAA (National Oceanic and Atmospheric Administration) asking that the Town's LWRP (Local Waterfront Revitalization Plan) be set aside and asked if anyone on the Board had been contacted.

Clerk Connolly stated that the Dept. of State had called regarding letters received by NOAA concerning the LWRP. Supervisor Meyers asked that copies of letters be provided to the Town Board.

RESOLUTION 124-07

**EXECUTIVE SESSION**

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 Town Board enter into Executive Session at 9:02PM to discuss the employment of particular persons.

RESOLUTION 125-07

**RETURN TO REGULAR SESSION**

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

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

Resolved the Town Board return Regular Session at 9:27PM.

RESOLUTION 126-07

**APPOINTMENT OF PLANNING BOARD MEMBER AND ALTERNATE**

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

ADOPTED Ayes 3 Ray, Chaffee, Gow  
Nays 2 Meyers, Wayner

Resolved that Joseph C. Czelusta be appointed as Planning Board Member to fill an unexpired term until 12/31/2008 and Robert Schian be appointed Planning Board Alternate.

The Board directed Clerk Connolly to send letters to:

1. Thank you letters to all that applied for the Planning Board positions.
2. Department of Environmental Conservation asking who is responsible for monitoring the landfill at AES with a copy to the Public Service Commission.

There being no further business, on a motion of Councilman Gow, seconded by Councilman Wayner, the meeting adjourned at 9:40PM subject to the Call of the Clerk. Carried unanimously.

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Rebecca A. Connolly, MMC  
Town Clerk