

REGULAR MEETING
APRIL 8, 2015

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 8th day of April 2015.

Present: Daniel M. Engert ----- Supervisor
Gary R. Alt ----- Councilman
Robin R. Jansen ----- Councilwoman
Jeffrey M. Dewart ----- Councilman
Randall J. Wayner ----- Councilman
Tracy L. Carmer ----- Clerk
Michael M. Flint ----- Supt. of Highways
Melvin H. Denny ----- Supt. of Water/Sewer/Grounds
Mindy Austin ----- Confidential Asst. to the Supervisor
Brian D. Seaman ----- Counsel

Absent: Randy Roeseler----- Engineer

Attended by: numerous residents and a few BCS students

Supervisor Engert called the meeting to order at 6:30PM with the Pledge to the Flag and a prayer for guidance.

RESOLUTION 55-2015

APPROVAL OF THE MINUTES

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

ADOPTED Ayes 5 Engert, Wayner, Alt, Jansen, Dewart
Nays 0

Resolved the minutes of the previous meeting are approved.

RESOLUTION 56-2015

APPROVAL OF THE SUPERVISOR'S MONTHLY REPORT

On a motion of Councilman Dewart, seconded by Councilwoman Jansen, the following resolution was

ADOPTED Ayes 5 Engert, Wayner, Alt, Jansen, Dewart
Nays 0

Resolved the Supervisor's Monthly report be accepted as submitted.

MONTHLY REPORTS RECEIVED AND FILED:

Code Enforcement Officer
Dog Control Officer
Police Report

ACCESSORY BUILDINGS LAKESHORE DISTRICT

Supervisor Engert stated that significant comments were received at the public hearing, most notably a recommendation by one resident for an amendment to allow for property within 500'. He appreciates Dale Howard and the community's comments.

Councilwoman Jansen stated that Mr. Hoffman had concerns about what is in the LWRP, and Superintendent Denny had concerns about the sewer and water. She would like to have it passed back to the Planning Board for further evaluation.

Councilman Alt agrees with Councilwoman Jansen.

Councilman Wayner stated that he looked at the LWRP and didn't find anywhere where the statute and the LWRP were "butting heads" and he supports the 500' extension as long as it is on the same roadway. He has no issue sending it back to the Planning Board but would like it expedited.

Supervisor Engert asked if any board member feels that adding the 500' extension is unacceptable.

No members reject it.

Attorney Seaman reviewed our LWRP and stated that our code has extensive language about actions taken being consistent with the LWRP. There is a form that the board has to go through before the law would be adopted and the attorney has filled out the form in draft form and distributed it to the board members to review.

Supervisor Engert feels that to expedite this, it should remain with the Town Board and directed the attorney to draft language that is acceptable to the board.

Councilwoman Jansen asked if this will take the water and sewer concerns into account.

Superintendent Denny provided a scenario where a resident could ask for water service, but then they install a sink and it gets drained to the ditch. He stated that it doesn't happen every time, but wants the board to be aware of it. They would need to have sewer hookup.

Attorney Seaman stated that the code already provides for that so he doesn't feel it needs to be addressed specifically for this.

RESOLUTION 57-2015

TIRE DISPOSAL

Supervisor Engert advised that Modern Disposal submitted a quote for tire disposal services. Superintendent Denny contacted other vendors and recommended we retain the services of Modern Disposal.

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

ADOPTED Ayes 5 Engert, Wayner, Alt, Jansen, Dewart
Nays 0

Resolved that the Supervisor is authorized to execute the contract with Modern Disposal.

The dates are scheduled for April 27th through May 1st 7AM – 3:30PM; May 4th through May 8th 7AM – 3:30PM; and May 9th from 9AM – 11AM.

RESOLUTION 58-2015

SPECIAL MAILING

On a motion of Councilman Alt, seconded by Councilman Dewart, the following resolution was

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ADOPTED Ayes 5 Engert, Wayner, Alt, Jansen, Dewart
Nays 0

Resolved that Clerk Carmer is directed to distribute notice of the tire drop off schedule with a special mailing.

RESOLUTION 59-2015

EAGLE SCOUT PROJECT

Brandon Carmer asked the board for permission to make a nature trail in the woods behind the playground. He spoke with Mr. Denny and got his approval.

Supervisor Engert stated that we support our local Eagle Scout projects and asked about his plan.

Brandon stated that he will make a trail from the playground area and will put up signs for certain vegetation and trees.

On a motion of Councilwoman Jansen, seconded by Councilman Dewart, the following resolution was

ADOPTED Ayes 5 Engert, Wayner, Alt, Jansen, Dewart
Nays 0

Resolved Brandon Carmer's proposed Eagle Scout project to construct a nature trail inside the wooded area adjacent to the playground with the guidance of Superintendent Denny is approved.

RESOLUTION 60-2015

HEALTHCARE CONSORTIUM

We are heading the drive to develop a countywide healthcare consortium. The 26 members of the consortium include all Towns and Villages, two of three Cities, the county of Niagara, two Towns in Orleans County, two school districts, the Niagara Falls Housing Authority, and the Niagara Falls Water Board. Supervisor Engert stated that there are grants available for shared services and it would apply to this.

On a motion of Councilman Dewart, seconded by Councilman Alt, the following resolution was

ADOPTED Ayes 5 Engert, Wayner, Alt, Jansen, Dewart
Nays 0

Resolved the Supervisor is authorized to submit a letter of interest to the state to express our interest in being awarded a grant for funding for the next phases of the project.

Councilman Wayner thanked the Supervisor and expressed his appreciation for the effort Supervisor Engert has put into the consortium.

Supervisor Engert stated that he met with one of our labor representatives and will meet with the other and advise him. He stated that the representatives are excited with the prospect of having more stable health care offerings.

RESOLUTION 61-2015

COUNTY WIDE GOVERNMENT EFFICIENCY PLAN

Supervisor Engert stated that the Governor has implemented a number of changes over the last several years and now towns are required to submit a plan for shared services in order to maintain eligibility for tax rebates under the property tax cap. The Town Supervisors met with the County and came to a consensus for everyone to go under a county wide plan because all of the plans that are already in place can be counted collectively toward the requirement. The resolution has to be sent to the county and the state. Deputy Supervisor Wayner is assisting with the necessary documentation. On a motion of Councilman Wayner, seconded by Councilwoman Jansen, the following resolution was

ADOPTED Ayes 5 Engert, Wayner, Alt, Jansen, Dewart
Nays 0

WHEREAS, Governor Andrew Cuomo and the New York State Legislature enacted the Property Tax Freeze Credit to provide property tax refunds to homeowners as part of the 2014-2015 State Budget; and

WHEREAS, the new law encourages local governments to generate long-term tax-relief for taxpayers by sharing services, consolidating or merging, and demonstrating and implementing operational efficiencies; and

WHEREAS, in year one of the program, which is 2015 for local governments, homeowners will receive the Freeze Credit if their local government stays within the property tax cap; and

WHEREAS, in year two of the program, which is 2016 for local governments, homeowners will receive the Freeze Credit for property taxes from any taxing jurisdiction in which the homeowner resides that stays within the property tax cap and puts forward a State-approved Government Efficiency Plan demonstrating savings equivalent to one percent of their property tax levies in each of the following three years; and

WHEREAS, while local governments may take a variety of approaches to develop their Government Efficiency Plans, the State has strongly encouraged they convene and facilitate a process to develop and submit county-wide Government Efficiency Plans; and

WHEREAS, Niagara County has offered to coordinate the development of such Government Efficiency Plans as the 'lead agency' on behalf of all other interested municipalities; and

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WHEREAS, the Town of Somerset is interested in intergovernmental cooperation with Niagara County and other municipalities in submitting a county-wide Government Efficiency Plan and desires to memorialize its intention to participate in a coordinated Plan to allow its homeowners to receive the Freeze Credit.

NOW, THEREFORE, BE IT RESOLVED that the Town of Somerset seeks to ensure that Town homeowners will receive the Freeze Credit as part of this new State law; and

BE IT FURTHER RESOLVED that the Town of Somerset did not exceed its designated property tax cap for fiscal year 2015 and memorializes that it has no intention of exceeding the cap for fiscal year 2016, which if exceeded would disqualify the Town from participation in the Property Tax Cap Freeze Credit Program; and

BE IT FURTHER RESOLVED that the Somerset Town Board does hereby express its support for, and participation in a Niagara County-wide Government Efficiency Plan; and

BE IT FURTHER RESOLVED that the Town Board urges the New York State Division of the Budget to approve Niagara County's coordinated Government Efficiency Plan with local governments with the understanding that Town has played an active role in the identification of preexisting and implementation of new shared services, consolidations or merges and operational efficiencies within the Town of Somerset for inclusion in the county-wide plan; and

BE IT FURTHER RESOLVED that certified copies of this resolution shall be forwarded to the Niagara County Manager; the Niagara County Budget Director, and the Niagara County Legislature.

RESOLUTION 62-2015

AUDIT OF CLAIMS

On a motion of Councilman Alt, seconded by Councilwoman Jansen, the following resolution was

ADOPTED Ayes 5 Engert, Wayner, Alt, Jansen, Dewart
Nays 0

Resolved that the bills have been reviewed by the Town Board and are authorized for payment in the following amounts:

General Fund	No. 121 through No. 153	\$ 23,730.77
Highway Fund	No. 36 through No. 46	\$ 43,864.51
Sewer Fund	No. 32 through No. 44	\$ 5,055.37
Water Fund	No. 31 through No. 42	\$ 28,869.65

PRIVILEGE OF THE FLOOR

Jon Hotaling stated there is a Special Use Permit required for the Lakeshore Accessory Building proposal and Mr. Denny's water and sewer concerns can be addressed in that.

John Wolanyk stated that Supervisor Engert made a statement in the Union Sun & Journal last month that there is no action to be taken by the board, but then stated he is planning public meetings so the residents can make an informed decision. He asked what decision is to be made if it's out of our hands. He provided the following list of questions to the Town Board and Supervisor Engert stated that they will review them and get back to him.

- What decision do the residents have to make?
- What present laws are in the Town Code? He believes it's 400' for wind turbines. Will it be changed for Apex to 570'?
- Setback restrictions of 1500' from Apex he believes is way too close.
- Is there a special panel to make decisions for our community?
- Infrastructure reports; impact studies; water wells; sewer lines; roads and highways. It will be more of an impact than the power plant was.
- Hazmat/fire – if something catches on fire 400' in the air how are they going to put it out?
- Homeland Security – radar and ham radio reception, cell phones, television, radio. He believes they are going to get knocked out.
- Quality of life and health issues – light flicker, infrasound – 76 doctors, engineers and healthcare professionals throughout the world who have declared turbines are a public health hazard.
- Richard James has been doing sound studies for 40 years. John read an excerpt from one of his articles that stated he lives two miles from Lake Michigan and started developing symptoms immediately after turbines began operating; he put his house on the market in 2011 and recently accepted an offer with financial loss. They have to take sleeping medication and sleep in their basement.
- Right to Farm law does not mean a right to wind farm.
- Allegany wind farm project was dropped.

Marcia Ray stated that she read the newsletter and appreciates the board's interest in our town. She wants the board to listen to the residents and she wants answers. Are we going to support windmills or is it out of our hands? She doesn't believe that it's out of our hands, and feels more residents are against the windmills than for it. She feels that we put up with the power plant for decades and doesn't want another energy concern. How much is it going to affect our taxes? How much is it going to affect our house value and land value? What can taxpayers do? Can the taxpayers address the state? She asked the town board members what they think we should do.

Councilwoman Jansen stated at this point we need to listen to the residents and she is trying to stay neutral.

Councilman Alt agreed with Councilwoman Jansen and stated that there is no project yet. Marcia asked him what research he is doing.

Councilman Alt stated that he is talking to landowners.

Marcia asked Councilman Wayner how it will affect our taxes. What benefit will we receive?

Councilman Wayner stated that it is too early to know the benefit. He stated that residents can state their opinion, write letters to the editor, advocate to the Town Board and the Public Service Commission (PSC) for home rule.

Marcia asked Supervisor Engert what he thinks we should do.

Supervisor Engert stated that we need to use this Privilege of the Floor to hear the residents' concerns. He stated that we will preserve the interest of the Town. We will listen to the town's concerns and make sure we are addressing them and put pressure on the PSC to address them. He advised that the Town is on record in opposition to Article X when it was adopted along with a number of towns across the state, but it was passed by the Governor. Supervisor Engert assured her that we will take a role and defend the interests of the Town. He stated the most effective way to make sure their voices are heard and be part of the record is to go to the PSC site and sign on to get information and provide information. Share their concerns of what areas they want the town to hold their feet to the fire, what to study, etc. The Town will require local concerns are addressed by the PSC.

Marcia asked when the next public meeting will be held.

Supervisor Engert stated that we are in the pre-application phase right now and the timetable is driven by the developer. The scoping phase is next, which is still pre-application. When it becomes the application phase we will have two representatives on the siting board. Supervisor Engert is looking for residents who largely don't support the project along with residents who may support the project so we have fair representation.

Marcia stated that she is concerned that Albany is telling us what to do.

Supervisor Engert said the board is too, but we will take the necessary reasonable actions to defend the Town.

Councilman Wayner stated that if you Google Article X the PSC's website will come up and you can find information to sign up. He said that it takes some work, but it's worth it.

John Wolanyk stated that it's in the article he gave the board on the Allegany project that the Town Board fought against it and won.

Supervisor Engert stated that he understands that, but it was not an Article X project. Part of the settlement agreement was for the developer to not file under Article X. This is the first project to get sited under Article X. We will always exert as much local influence on the process as we possibly can.

Paulo Oliveira wants to know what the Supervisor's position is. When Paulo voted for the Supervisor and board members, they didn't run on wind. He says that if they are all neutral they shouldn't make any decisions until November. See what the people want and if the people of this town want wind, they will keep this board, if that's what they want. He stated that we have people who hunt in this area. He talked to people in Tug Hill and they don't have deer anymore.

Tobi Hefferon thanked the Supervisor for his comments on our local laws. She stated that she opposes the Lighthouse Wind project and believes this type of development is wrong for our area. She said it was mentioned in the recent town newsletter that local law §205-13.2 was developed just a few years ago. She disagrees and says that 2006 was nearly a decade ago and much research has taken place and many lessons have been learned since then. She would like to know if the committee that developed the law used guidance from an industrial wind turbine company. If so she feels that the legislation may have been tainted with self-serving ideology. She believes there are shortfalls and omissions from the legislation including insufficient decommissioning plan requirement, insufficient setbacks, insufficient acoustic regulations for both audible and inaudible sound, lack of cyber security, transfer of regulations when sold to second parties, no compensation to homeowners if they cannot make improvements to their property due to the proximity of the turbine even if the turbine is not on their property, and the complete omission of property value protection. If Apex' statement is true that turbines do not decrease property value, it would not be an unreasonable burden. She is requesting that the law be updated and strengthened and feels it is antiquated and inefficient.

Christine Bronson is concerned about the ad-hoc nominee's feelings based on what the Supervisor has advised whether he is pro-wind or anti-wind. She would like to know how he feels about it and whose names will he submit to the state.

Supervisor Engert stated that there will be representation for both sides on his list and he will publicly post his nominations. If anyone wants to volunteer, please submit your name. Chris stated that she is hoping that both Somerset and Yates will get a representative and we want to send someone who is representing our interests.

Gail Damon addressed the nomination process. She is concerned that of the 8 nominations there isn't a guarantee that there will be one representative for each town.

Supervisor Engert stated that there could be a total of 16 nominees because Niagara County and Orleans County also submit 4 names.

Gail feels like it's a losing situation because we could be out voted 5-2.

Betty Wolanyk has heard rumors that they are looking at Newfane now so there could be 4 more people. She said to read Article X carefully because ad hoc members could possibly not be appointed at all. She thanked the members for serving on the board and said many times it's not a pleasant task. She stated that she is known for clearing up misconceptions about agriculture, and she has heard many of the members say that misconceptions are being spread. She would like the board to identify the misconceptions and she will volunteer to do the research and look at what the science actually says about the issues. She stated she is Cornell educated and very objective about things. She said that websites that state there are no health effects are looking at hearing which is not the right thing. She stated that this mostly affects people with motion sickness. She feels there should be a moratorium on the wind turbines. She said she used to be for wind turbines until the contract had a gag order. She stated that farmers with experience with this say that it has ruined their land, damaged tiles, etc. She also said that this project will take 2,000 acres out of agricultural production.

Cathi Orr said that she doesn't know how the board can say they are neutral. She said that anybody that is for it is getting money and the rest of us are suffering the consequences. The Town Board has the duty of due diligence to protect our health, safety and welfare. She feels there is no way the board could think a 570' wind turbine with 11 ton blades going 200mph with blinking lights, infrasound, audible noise, damage done to the environment, mercury leaching into the soil. She stated it ruins your life and she already sees agitation between people. She said there has to be a property protection plan. She stated that Apex is supposed to be giving us information but isn't answering any questions. Cathi advised that an article in the Arcade Herald about the Town of Eagle stated that property tax assessments went up 40% and Wyoming County went up 9%. Last year they were told by the assessor that they were already at 100% assessment but a meeting of supervisors said that they were only at 87%. So why did the assessments go up 40%? She stated that this is what we have to look forward to. In Wyoming County they are only getting 10% on Town tax as a benefit.

John Voelpel informed the board that he was here last month and asked for the name of a farmer that dislikes windmills so he can contact him personally, but he wasn't given any information. He would like to talk to a farmer anywhere in the United States. He also stated that he doesn't know how the figure of 2,000 acres being taken out of production was arrived at because as a farmer he doesn't see that. He stated that he remembers that Somerset was the place to move to when the power plant was built because the taxes went down so much. He said it would be interesting to see how the tax will be spent and feels that some people are forgetting what the plant did for the town by decreasing taxes and increasing the population.

Dale Howard would like to see the number of the people who are for and against. He said to take the majority and push it through the levels of government: John Syracuse, then Jane Corwin, then the State. He would like to see the politicians, in addition to Senator Ortt, put an article in our newsletter stating what they are doing for the Town of Somerset.

Mr. Craft owns property in Hartland and they are talking about putting up 140' towers on the Town property so he drives around going to hearings. He also drives to check out windmills and he talked to someone who has a windmill like the ones Hartland is looking at. He asked the farmer how reliable are these and will they last 20 years. The farmer said he is unhappy. The windmill doesn't perform as proposed and they only occasionally come back and perform maintenance.

Mike Basil stated that he is not a Somerset resident but he wanted the board to know that he met with Senator Ortt and he distributed his presentation to the board for review.

John Riggi stated that he asked Apex if they signed the Wind Industry Code of Ethics and he was told no and they don't plan to unless the state approaches them. He urged the board members to inform the landowners who are thinking of signing a lease.

Ed Wahl said that we should take a look at the turbines in Wyoming County. He can't imagine 67 of them up and down the Seaway Trail with flashing red lights at night. He thinks it's a ridiculous proposition.

Patty Ray advised Supervisor Engert that she is adamantly opposed to windmills and wants to know how to be considered for the committee.

Supervisor Engert told her that he will put her name down. Others who are interested can contact him as there is plenty of time to submit names. He advised that he will get the information out to the public.

Pam Atwater stated that many residents don't know about the project so don't assume whether the residents are for or against it. She said that we have to do our research and find neutral parties in other areas to try to figure out as much as we can.

Karen Corwin stated that after the news story on Channel 4 she was watching the responses. A woman named Mary Kay said there are 308 turbines in 5 towns in Wyoming County. If it weren't for residents getting informed and involved they would have over 2,000. They don't get free or reduced rate electricity and no jobs were created, but the taxes have increased and the population has decreased.

Jim Hoffman said he admires the neutrality of the board and it will take a big effort to maintain that frame of mind. He wants the board to soak up some facts and figures. He said to drive down 77 to 20A and see if that's what we want our town to look like. He stated that he received a 38 page lease. You sign up for the first 7 years, and then it's renewable every 7 years by Apex only and you have nothing to say about it. He stated that Article X essentially takes away our home rule as they can set aside any rules and regulations they find troublesome. He feels that we will be in the minority on the siting board.

Paulo Oliveira asked if the board read the lease.

Attorney Seaman stated that he has.

Paulo asked if Attorney Seaman had nothing to do with this board and Paulo walked into his office and said he has 2,000 acres and wanted to put up a wind farm, what would he tell him.

Attorney Seaman stated that it's his job to make sure it's clear to the client and the client understands the contract, and the client has to decide. He doesn't tell his client what to do.

John Wolanyk cleared up a statement he made at the last meeting. He showed his lease to 4 attorneys and the first attorney told him not to sign.

Mike Basil advised that in the packet he gave the board is a contract. He pointed out parts of the contract that state that Apex will not be responsible. He asked why is it in the contract to hold Apex harmless if these don't occur like Apex says they don't? He also wanted to advise the board that Apex's history is to sell the leases after construction.

Cathi Orr provided a current contract to the Supervisor.

Laura Smith wants to go on record that she is opposed to the project and is concerned about the health effects and the quality of life.

RESOLUTION 63-2015

EXECUTIVE SESSION

On a motion of Councilwoman Jansen, seconded by Councilman Dewart, the following resolution was

ADOPTED Ayes 5 Engert, Wayner, Alt, Jansen, Dewart
Nays 0

Resolved the Board enter into an executive session to discuss a personnel matter with the attorney at 8:02PM.

RESOLUTION 64-2015

RETURN TO REGULAR SESSION

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

ADOPTED Ayes 5 Engert, Wayner, Alt, Jansen, Dewart
Nays 0

Resolved the Board return to regular session at 8:21PM.

On a motion of Councilwoman Jansen, seconded by Councilman Alt, the meeting adjourned at 8:22 P.M. subject to the Call of the Clerk. Carried unanimously.

Tracy L. Carmer, RMC
Town Clerk