

REGULAR MEETING
DECEMBER 9, 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 9th day of December 2015.

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

Absent:

Attended by: numerous residents

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

RESOLUTION 123-2015

APPROVAL OF THE MINUTES

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

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

Resolved the minutes of the previous meeting are accepted as submitted.

RESOLUTION 124-2015

APPROVAL OF THE SUPERVISOR'S MONTHLY REPORT

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

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

RESOLUTION 125-2015

AD HOC WIND LAW COMMITTEE RECOMMENDATIONS

Supervisor Engert stated that the committee has submitted a document stating their recommendation for updating the local law. He would like to have it passed on to the attorney to draft a revised local law to review at our next meeting.

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

ADOPTED	by Roll Call Vote	Supervisor Engert	Aye
		Councilman Wayner	Aye
		Councilman Alt	Abstain
		Councilwoman Jansen	Aye
		Councilman Dewart	Aye

Resolved the attorneys are directed to draft a revised local law for wind turbines in the Town of Somerset.

RESOLUTION 126-2015

NIACAP AGREEMENT

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

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

Resolved that the Supervisor is authorized to enter into an agreement with the Niagara Community Action Program (NIACAP) for 2016, for the budgeted amount of \$2,500.

RESOLUTION 127-2015

WAIVE THE READING OF THE SOMERSET PILOT RESOLUTION

Supervisor Engert stated that the PILOT being negotiated is for two years and will decline each year by \$500,000. All distribution percentages will remain the same.

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

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

Resolved that the reading of the Somerset Operating Company PILOT resolution is waived.

RESOLUTION 128-2015

SOMERSET OPERATING COMPANY PILOT AGREEMENT EXTENSION

Supervisor Engert stated that the school and county are in agreement and all three entities have identical resolutions.

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

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

WHEREAS, the Niagara County Industrial Development Agency ("Agency") and AES Eastern Energy L.P. and AES Somerset, LLC ("AES") previously entered into a relationship

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whereby the parties executed and delivered the following documents: (i) Lease Agreement between AES and Agency, (ii) a Leaseback Agreement between Agency and AES and (iii) a Payment-in-Lieu-of-Tax Agreement between the Agency and AES, and

WHEREAS, in 2012 AES transferred its interest in and to the electrical generating station in Somerset, New York ("Facility") to Somerset Operating Company, LLC ("Company") and the Company assumed AES's interest in and to the Facility and the project documents pursuant to an Assignment and Assumption Agreement and Restated PILOT Agreement, dated on or about June 26, 2012 (the "Assigned Agreements"), and

WHEREAS, in February, 2015, the Agency and Company executed among other documents, a First Amendment to Amended and Restated Lease Agreement ("First Amended Lease"), a First Amendment to Amended and Restated Leaseback Agreement ("First Amended Leaseback") and 2015 Amended and Restated Payment-in-Lieu-of-Tax Agreement ("2015 Amended PILOT"); and

WHEREAS, the 2015 Amended PILOT Agreement dated February 1, 2015 is set to expire on December 31, 2016; and

WHEREAS, the Company has now submitted to the Agency a new application requesting a two (2) year extension of the 2015 Amended PILOT Agreement, whereby the PILOT payments during the two (2) year extension will be reduced by \$500,000.00 in the first year of the extension and the PILOT payment in the second year of the extension will be reduced by an additional \$500,000.00, while retaining the remaining terms and conditions of the 2015 Amended PILOT Agreement; and

WHEREAS, it has been requested that the Town of Somerset, as one of the affected taxing jurisdictions, (i) supports the application to the Agency; (ii) consents to the two (2) year extension of the 2015 Amended PILOT Agreement; and (iii) consents to the allocation of PILOT payments as set forth herein; now, therefore, be it

RESOLVED, that the Town of Somerset does hereby supports the application of the Company to the Agency, consents to an extension of the 2015 Amended PILOT Agreement between the Company and the Agency for the electrical generating station in Somerset, New York through December 31, 2018, and further consents to the allocation of PILOT payments as follows:

1. The total PILOT Agreement payment to be paid by the Company for the County of Niagara and Town of Somerset tax year 2017 and the Barker Central School District tax year 2016-17 shall be \$4,620,000.00;
2. The total PILOT Agreement payment to be paid by the Company for the County of Niagara and Town of Somerset tax year 2018 and the Barker Central School District tax year 2017-18 shall be \$4,120,000.00;

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3. Niagara County shall continue to receive 31.5% of the PILOT payment, the Town of Somerset shall continue to receive 9.25% and the Barker Central School District shall continue to receive 59.25%; and
4. Niagara County shall continue to pay for its special districts from its portion of the PILOT payments and the Town of Somerset shall continue to pay for its special districts from its portion of the PILOT payment, and be it further

RESOLVED, that the Town of Somerset does hereby authorize the Supervisor of the Town of Somerset to execute all agreements, stipulations and other documents as may be required.

RESOLUTION 129-2015

ANNUAL AUDIT

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

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

Resolved, that the audit committee, consisting of Councilman Jansen and Councilman Dewart, shall perform the year end audits of the Supervisor, Town Clerk, Tax Collector and Justice.

RESOLUTION 130-2015

BUDGET AMENDMENTS

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

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

Resolved as provided in section 107 and 115 of the Town Law, that the Supervisor of the Town of Somerset is hereby authorized to expend from the unexpended balances or surplus revenues such sums as may be necessary to cover amounts by which the actual expenses were incurred in 2015 in any amount exceeding the amount budgeted.

RESOLUTION 131-2015

ENCUMBRANCES

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

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

Resolved the funds for invoices of goods not received for 2015 are encumbered.

RESOLUTION 132-2015

BUDGETED SALARIES

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

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

Resolved that salaries as budgeted are approved effective January 1, 2016.

RESOLUTION 133-2015

PREPAYMENT OF BILLS

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

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

Resolved that all bills incurred for 2015 are authorized to be prepaid.

RESOLUTION 134-2015

NYSDOT SNOW/ICE AGREEMENT

We have not received the agreement yet but would like authorization for the Supervisor to sign when it is received and reviewed by the attorney.

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

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

Resolved that Supervisor Engert 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 2016, subject to attorney approval.

RESOLUTION 135-2015

AUDIT OF CLAIMS

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

ADOPTED Ayes 5 Engert, Alt, Dewart, Jansen, Wayner
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. 407 through No. 449	\$ 55,358.02
Highway Fund	No. 144 through No. 161	\$ 21,003.54
Sewer Fund	No. 132 through No. 142	\$ 3,423.78
Water Fund	No. 110 through No. 120	\$ 4,713.32

PRIVILEGE OF THE FLOOR

Taylor Quarles provided an update to the board that the PSS was submitted on November 23rd and the comment period was extended to January 6th. He stated that this is a good time to voice your opinion and they are open to meet with any members of the public.

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Supervisor Engert stated his disappointment that during the ruling to extend the comment period deadline, the law judge didn't acknowledge the Town's request for an extension that was submitted in May. Our attorneys submitted a subsequent motion for a 90 day deadline. That was received by the commission last week and we are awaiting a decision on that motion. Also, requests for intervenor funding need to be submitted by December 30th. Supervisor Engert stated that we submitted a request to extend that to January 29th due to the governing entities involved being in the midst of reorganization and we are trying to coordinate our requests. He said that the public is encouraged to go online and submit their comments.

Marcia Ray asked if the website is where we make the comments and are these the comments that APEX will review.

Supervisor Engert said yes.

Marcia commented on the timing of the PSS happening during the holidays. On another matter she asked if we don't get the agreement from the state, will the Town plow?

Highway Superintendent said that we will plow, and Supervisor Engert said that we will get the agreement.

Betty Wolanyk thanked the board for their actions taken so far and said the law firm is excellent. Her concern is on the impact of homeland security, aircraft, and the Niagara Falls air base. She provided information on a project in Maryland, and the outcome of a study by MIT that showed significant interference with the Department of Defense. That wind farm project has been abandoned. Betty would like the board to work with our congressmen and senators on the impact of security.

Supervisor Engert stated that Congressman Collins requested a study on the Air Force Base.

Marcia Ray asked if the contract with Mercy Flight would be canceled.

Councilman Dewart said they don't have a contract. They have indicated that they do not want to fly in the area with wind mills.

Supervisor Engert stated that Mercy Flight is waiting for final details before they officially comment.

Jim Hoffman asked if there will be a public hearing on the PILOT.

Supervisor Engert advised that it will be held on January 12th at 4:00PM and will be posted on our website.

Jim stated that he has reviewed much of the Lighthouse Wind Project PSS and said that it lacks detail, like how many, where will they be placed, what size they will be, etc. He said that it is entirely biased toward a favorable project decision and is loaded with unsubstantiated statements that should be challenged. he listed a number of statements

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that he feels are controversial including the project being consistent with current land use practices, a trend toward farm abandonment, positive impacts on public health, infra sound not producing adverse impacts, etc.

Cathi Orr commented on a transformer fire where transmission oil was found in a well, and stated there are several turbines where you can see oil coming down the turbine even though they are "sealed."

Floyd Koerner asked the Supervisor for clarification. At the rally at the fire hall the Supervisor stated that APEX was contacting landowners before he was aware of it.

Supervisor Engert said that is correct.

After much discussion regarding timing of conversations with the particular landowner, Floyd said he mainly wanted clarification of the Supervisor's statement that APEX Energy did not contact him before he contacted the landowners.

Supervisor Engert said that is correct.

Floyd thanked the Supervisor.

On a motion of Councilman Wayner, seconded by Councilwoman Jansen, the meeting adjourned at 7:12PM subject to the Call of the Clerk. Carried unanimously.

Tracy L. Carmer, RMC
Town Clerk