

TOWN BOARD SPECIAL MEETING  
FEBRUARY 1, 2016

A Special 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 1<sup>ST</sup> day of February, 2016.

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

Attended by: Overflow crowd

Supervisor Engert called the Public Hearing to order at 6:30PM with the Pledge to the Flag.

Clerk Carmer read the Notice of Hearing.

RESOLUTION 53-2016

**RECESS MEETING TO CHANGE LOCATION**

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

ADOPTED:	Ayes	4	Engert, Wayner, Alt, Dewart
	Nays	0	

Resolved the meeting be recessed to move to Barker Central School high school cafeteria, 1628 Quaker Road, to allow room for everyone in attendance. A constable will be at the town hall to advise anyone who shows up late and provide transportation if needed.

RESOLUTION 54-2016

**RECONVENE MEETING**

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

ADOPTED:	Ayes	4	Engert, Wayner, Alt, Dewart
	Nays	0	

Resolved the hearing on amending the Code of the Town of Somerset Chapter 205 Zoning be reconvened.

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Supervisor Engert stated that this is an opportunity for the community to make comments to the board and asked the audience to address the board, not other members of the audience. He also stated the comments should be directed specifically to the local law.

Before the meeting the members of the audience who wish to address the board signed up to speak. Supervisor Engert called up the residents in the order they signed up and asked everyone to keep their comments to less than 5 minutes if possible.

**LYLE WHITFORD** stated he is a 50 year resident of Somerset and is concerned about the financial future of our town. He sees Lighthouse Wind as an opportunity for the town to reduce losses from the PILOT reductions by the power plant. He was a member of the town Planning Board for 25 years and feels the proposed modification of the wind law has many items that the Planning Board lawyer used to view as arbitrary and capricious.

**ROY PLUMMER** 9521 Somerset Drive submitted a letter for the record, which was read in part by Shirley Plummer. He stated he moved here at age 35 before he became principal of Barker Central School for the beauty of the area, among other things, and still feels the same at age 83. He feels the lakeshore residents comprise a major portion of the taxes paid to the Town of Somerset and asks where the reward is. He would like to see an escrow account controlled by the Town and curbside pickup of students during construction like occurred during the building of the power plant.

**LINDA FISK** asked why is it okay that the coal plant spews residue, but when it comes to clean, non-polluting air it seems to be a problem. She feels the Board is selfish and wants them to think about the future.

**DICK FISK** is a business owner from the Town of Yates and has been a taxpayer in the area for over 50 years. He supports windmills and feels the proposed law will make it more unlikely that businesses will come here. He said that changing the rules halfway through the process tells companies that they can't trust the board.

**PEG SCHWABEL** is in favor of the proposed law and submitted a letter for the record. She addressed Item #29 Baseline Health Reports and stated it is an excellent feature. She quoted from a paper prepared by Dr. Ollson and Dr. Knopper who believe further research should be conducted into the effects of wind turbines on human health. She also applauds Item #31 Real Property Value protection and quoted author Ben Hoen, whose work is cited in the Apex PSS. He feels there is too much unknown right now about property values that are close to turbines and he would not say specifically that property values are not affected.

**PAM ATWATER** Carmen Road stated she was a member of the ad-hoc committee and all meetings were open to the public. She feels the process was thorough and comprehensive. She discussed Item #27 that states the Town's Comprehensive Plan was complied with. The items she feels are most important are "preserving the rural character of the town", "the

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aesthetic resources of the Town of Somerset include significant views, open spaces, parks, historic buildings and creeks. These resources contribute to the atmosphere and character of the Town and could be negatively affected by inappropriate development.”

**AVIS TOWNSEND** of Hoffman Road stated she moved here 21 years ago and loves windmills. She thinks they are peaceful and beautiful. She asked how the Town will offset the loss of funds provided by the PILOT when the plant shuts down because the State wants all coal plants shut down within four years. She feels the Lighthouse Wind project can make a major contribution to the Town finances. She thinks the proposed law is a ban on wind energy and might say that Somerset is closed for business. She wants the board to keep the current law and be patient until the Lighthouse Wind application comes out and receives a more thorough review.

**TOM STAPLES** is a lifelong resident and farmer from West Somerset Road. He supports the proposed law. He stated that windmills are disruptive to growing fruit with “frost effect” and freezes. He feels the law is not negative to business, the wind farm is. He thanked the board for writing the proposed law.

**CATHI ORR** thanked the Board for amending the law. She stated that wind energy is only produced when winds are 27-35 mph so it is not reliable. She agrees with the Board’s first finding regarding short-sighted planning creating problem industries because she has seen it first-hand. She also feels the Town Board is accurate with item #29 giving due weight to distress caused to a community. She agrees with the Board’s due diligence in amending the local law. She submitted a letter for the record.

**JIM HOFFMAN** of Lake Road has been a resident for 48 years and he also submitted a letter for the record. He and his wife own 130 acres of land and support the proposed law. He was part of the approval process of the existing law that was created in 2006. He stated that technology has changed dramatically since that time and he feels that public perception has changed regarding the green energy from wind turbines. He says the fuel is free, but the process for capturing that fuel is a dirty one and the public is now aware of that. He pointed out that our Comprehensive Plan was revised in 2012 so our current law should be replaced to assure compliance with the Comprehensive Plan. He wants the proposed law passed to preserve our rural community.

**SUSAN MCNULTY-ATWATER** lives on Lower Lake Road and was a member of the ad-hoc committee. Originally she was eager to be on the committee, but after several meetings she felt it became obvious that the committee never intended to be an unbiased, thoughtful review board. Instead, she feels that it was an attempt to create an outward impression of a reasonable process while internally the Town Board drafted a wind energy ban. She stated that at the November 2015 meeting, a rush vote was held with no option for descent and no roll call vote. They were planning to officially vote on a final recommendation at the December meeting but the meeting was cancelled. She feels the

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ad-hoc committee never made a final recommendation that was fairly commented by all members. She doesn't think the proposed law is the result of a reasonable and democratic process, but is a ban on wind energy. She feels the law will send a message to other businesses and industry that Somerset is short-sighted and close-minded. She urged the board to vote against the wind ban.

**CHRISTINE BRONSON** submitted a letter for the record. She and her husband moved here in 2003 because it is beautiful and quiet. She does not mind driving 55 minutes to go shopping. She feels that Item #18, which states that residents have chosen Somerset as their home because of a love for a rural pastoral lifestyle, correctly identifies the desires of the majority of its citizens. She thinks it is short-sighted to trade the town for dollars.

**CYNTHIA HELLERT** is a Yates resident in favor of the proposed law. She commends the Town Board for taking the lead in improving the law. She views the amendments as a means of protecting the health, safety, and well-being of the citizens of the Town of Somerset. Both Niagara and Orleans County boards of health are requesting a baseline study and she feels it is very important to lay to rest any question about the impact the wind turbines have when placed so close to residents.

**LOUISE M. CLARK** stated that she wants the community and environment protected and she speaks for bird safety and migration. She said the wind turbines are industrial monsters. She works for a company that installs air handlers, and on a one story building it is creating such a loud noise around 46 decibels that many people around the community are calling her employer complaining. She said to envision the reality of 70 industrial windmills and what it will do to our community.

**HOWARD PIERCE** is a resident of Yates and has lived about 1500 feet from the Somerset town line for over 40 years. He stated that he is still waiting for the application and details to come out before he decides if he supports the project, but he feels the proposed law is a wind ban and is unreasonable. He stated with the loss in PILOT payments, the wind energy project can make up a lot of the revenue. He feels the law would show that the town is short-sighted and not open to considering new opportunities. He urges the Board to vote against the law. His letter was submitted for the record.

**HARVEY CAMPBELL** has been a resident of Lyndonville for 35 years. He feels if the law passes, Albany will have all of the power and no studies will be performed. He does not remember that many studies being done for the building of the power plant. He thinks the project will be a big benefit to the community and our young people. Many of whom have moved away because there is nothing here. He said we need to do something to benefit our towns and he doesn't think this law will do it.

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**NICOLE PAYNE** is a Somerset resident opposed to the proposed law. She feels that changing the rules halfway through is not playing fair and is not an example we should be setting. She also worries about the health and well-being of our school. She feels the project would bring much needed resources to the school in the form of direct payments. With the new law, businesses and families will not be attracted here and our school will die.

**JIM PAYNE** is a Somerset resident and thinks the proposed law is not a good idea. He feels we keep sending messages that businesses are not wanted here and he gave examples of the loss of Birdseye, Verizon and Key Bank. He feels the Board is sending the wrong message and asks them to vote down the law.

**SUSAN CAMPBELL** is a resident of Lyndonville. She feels the law is a ban on any wind project and keeps us from being active participants in the goals of New York State to have renewable energy. She said it's not about the money, it's about future generations and wonders how the Board will answer them when they are asked why they didn't do anything when they knew it needed to be done.

**MARY LOU FISHER** from Lakeshore Drive was reading a report on the relative distress caused to a community and its residents. She said unfortunately there aren't a lot of residents here and they had to bring in strangers to show their power. She said this project was kept a secret so she feels it is not above board. Our residents are fighting each other. She met a man who owns property in Somerset who told her that he is signing a contract because he can make a lot of money, even though he agrees with her about the terrible things the turbines can do. She told the farmers who want to give up their farms to the turbines to go, that the town doesn't need them.

Supervisor Engert reminded the audience to keep the comments directed to the board.

**PAULA SIMON** has been a farmer in Yates for 10 years. She told the Board that they used some of her comments in their response to the PSC, but some appendixes were not included so she wants to read a couple of them for the record. She provided emails and articles relating to bats and wind turbines for the record. She referred to an article from 2011 on the economic importance of bats in agriculture. She read part of the article and it states that White Noise Syndrome and increased development of wind power facilities are threatening populations of bats in North America. She stated that the loss of bats could lead to the loss of agriculture estimated at \$3.7 billion and that the conservation of bats is important for ecosystems. She stated that she had a conversation with a scientist who is a non-biased participant in many studies relating to bats and wind turbines. Western New York has two endangered species of tree dwelling bats and his research has shown that these bats are attracted to wind turbines. She appreciates the Board thinking ahead in changing the law.

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**JIM SIMON** lives on Millers Road in Yates and is now the Yates Town Supervisor. He commends the Board for doing due diligence in terms of receiving input and fashioning the law that provides for the public health, safety, and welfare of Somerset residents. He stated that he has noticed up until this point that there have been no substantive comments against any particular aspect of the law. He quoted from the Preliminary Scoping Statement submitted by Apex where they state that by good design and planning they can mitigate some adverse impacts. He said Apex also admits to having adverse impacts when turbines are too close to people. He stated there are several sections where we have a strong protection against some of these adverse impacts. He referred to Items #17, 20 and 29. The section of the PSS he read from was 2.4.2.2 on page 30. He stated that it says that by the nature of the project, all impacts cannot be eliminated so he asks how we can allow a company to do this without eliminating all adverse impacts. He stated that our noise ordinance has to remain intact.

**RUSS QUARANTELLA** from Lewiston is the business manager for the Electricians that comprises 250 members and 180 retirees. Referring to an earlier comment about strangers, he stated that they do belong here. He said that our community has very many things that people don't like, but we live with it. He is against the proposed law and he doesn't hear very much talk about green energy. He thanked the union members for showing respect by not booing.

**BETTY WOLANYK** lives on Haight Road. She is in favor of the changes and views them as protecting the citizens, not banning wind turbines. She feels that if a company cannot adhere, they should not build. She saw a snowy owl on Hartland Road and wonders what the owl would think if we allowed 70 600'+ turbines in this area and how long would he survive. She appreciates the fact that the board has taken this issue seriously. She feels the only thing green about the energy produced by the turbines is the tax dollars they harvest from tax payers.

**MIKE BASIL** stated that US Fish and Wildlife submitted a letter stating that Apex should find another place for their project, yet Apex continues to look for landowners to sign. He discussed shadow and flicker stating that a 620' tower can cast a shadow 6.77 miles, not taking into account different angles of the sun during different seasons. He said that if you are in the shadow zone, every 3 to 4 seconds you will go from light to shadow to light, etc. This is part of the human health issue. Mike stated that we get most of our power from Robert Moses, which is 100% clean, renewable. He feels we are already paying our dues because we have one of the highest electric rates in the country and they will go up with the turbines. He said we would be stacking renewables on top of renewables and asked why we would do that. He stated that wind turbines last about 20 years, and \$300 million of a \$400 million project is taxpayer money that's being used as an incentive for Apex. He has issues with Article X and the fear of unreasonable resistance and why nobody knew this change was taking place. He stated that the home state of Apex headquarters does not have wind turbines. He asked why they don't if the turbines are so good. He said Apex is

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trying to establish wind farms in their home state and are being faced with the same objections from their communities. He stated that six surveys have been conducted in our area and 60% - 70% of the respondents are opposed on all of them. He said that Apex doesn't care about our town and it shows by Apex leaving both Niagara and Orleans County Boards of Health off of the Public Scoping Statement.

**BEAU SHUFF** is here representing a few residents who could not attend tonight. He submitted five letters for the record, and read four of them.

Doug Porter of West Somerset Road's family has been here for generations. His letter asks since when is it the government's job to tell him what he can and can't do on his land? Our town is a Right to Farm Town and that means the well-being of farms is the first concern. He feels the windmills will bring stability to our farming and will be another crop that we can count on to make sure this area stays farmland, which is the key to Somerset's survival since Somerset is almost  $\frac{3}{4}$  farmland. He stated that we need projects like this and Somerset keeps saying "no thanks." He stated that Lighthouse Wind would bring good jobs for people willing to work hard. He wants the Town to vote down the proposed law.

Floyd Koerner's letter states that he has been a landowner in Somerset for over 20 years. He thinks the existing wind ordinance works fine and should not be replaced. He feels the proposed law is not reasonable and is a ban on any grid-scale wind energy project. He hopes our Town Board could be more receptive and open minded about business opportunities.

The letter read for Richard and Barbara Austin states that they are proud that Somerset is a Right to Farm community and they own several hundred acres of farmland. They feel the proposed law appears to be a ban on wind energy and seems to ignore the feelings of the agricultural community of Somerset which makes up almost  $\frac{3}{4}$  of Somerset. They say that their income is highly volatile and the wind farm would be a boon to their ability to keep their land agricultural for many years. They wonder how the town and school will continue with their level of services with the decreasing power plant PILOT. They urge the Town Board to vote against this law.

David Robison is a landowner in both Somerset and Yates and feels the proposed law is a ban on wind energy. His family has farmed the land for three generations and has watched the farms and towns spiral downhill. He asks how we propose to make up for the dwindling PILOT from the power plant. He feels we are in desperate need of a new infusion of potential and thinks wind energy can provide that. He thinks the proposed law would hinder our state in reaching our clean energy goals and says it is no coincidence that our county has one of the highest cancer rates in the nation. He stated that according to scorecard.org, Somerset is home to one of the dirtiest coal burning power plants in the nation. He feels the science is clear and the disinformation is unfortunate. He urges the Town Board to vote against the law and keep an open mind.

**BEN ATWATER** of Lower Lake Road stated that when he was first contacted by APEX in 2013 he set up a meeting with Supervisor Engert. He stated that the supervisor told him that he was contacted by APEX a few weeks earlier and he was enthusiastic about the project. He feels the proposed law is a ban on wind energy and a ban on the agricultural

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community's ability to benefit from the impact a wind farm would have in providing a stable return on their investment. He thinks the majority of town is in favor of wind. With Councilman Alt not voting, he feels that farmers are not being represented. He urged the Town Board not to pass this ban on wind farms and to keep an open mind.

**GAIL DAMON** of Lower Lake Road supports the ad-hoc committee who worked on the proposed law and feels it is long overdue. She wants the Town Board to look at the use of the term "applicant". The applicant is APEX so what happens when they sell off? Who will be responsible? Her specific areas of concern are on pages 42 and 45.

**JOE WHITMAN** lives in Niagara County and is in favor of wind turbines.

**TAYLOR QUARLES**, Project Manager for APEX, provided an outline of the work so far. He stated that members of his team first spoke with Supervisor Engert in September 2013 and they first appear in the board minutes in November 2013. Five months after the first conversation they signed their first landowner. They now have signed over 6,000 acres in Somerset with over 50 landowners. One year after reaching out to the board they filed their Public Involvement Plan (PIP), on September 21, 2014. The requirement for public outreach is only six months but they did for a year doing things that include sponsoring the 4-H Fairs, holding town hall meetings, sending out mailings and attending board meetings. They also opened an office in Barker and hired a local employee. On November 23, 2015, they filed the Public Scoping Statement and are working on responses to the comments received on it. Those responses should be out in mid-February. They anticipate the final application to occur this summer and will have details on decommissioning and all of the studies they were required to do. He reviewed the proposed law and feels it is a ban on wind energy, targeting this and future projects. He stated that the definition of Wind Energy Conversion Systems in the law is so broad that it eliminates any wind project in town. If they were to follow the law and place 450' turbines, it would only allow 5-10 turbines and they would never be able to connect to each other and the substation. The setback requirements cut out a large portion of the project. The proposed law bars the issuance of any building permit within 2000 feet of a wind energy conversion system so the property owner would never be able to do any improvements to their property. He feels it is over-reaching the town's authority and is inconsistent with the town's comprehensive plan. He requested the hearing be left open for the law to be amended and to be able to stand up in court. He thanked the residents that he has worked with so far and reminded everyone that the final application will be open for review for up to one year. The project will provide several hundred construction jobs, ten full time operations jobs, at least \$1.5million in PILOT payments to the taxing jurisdictions, and \$1million annually to the participating landowners.



**DAN FITZGERALD** of APEX submitted a letter that has their responses to specific parts of the law and he provided an overview of it. He stated that they have been active in the community for over two years and was surprised in May when the Town Board established a committee to review and revise the local wind law. He feels this directly targets the Lighthouse Wind Project. He provided the same timeline as Taylor Quarles and reminded everyone that it was five months after their first talks before they signed their first landowner. He felt that the town was totally receptive to wind energy as Supervisor Engert was encouraging meetings with individuals such as Senator Maziarz. During the timeframe up to the filing of the Public Involvement Plan, there was no mention of a revision to the law. He feels that attempting to change the law two years after the project was conceived shows the Town is trying to stop the project. He appreciates that the town included him to be on the ad-hoc committee, but feels it was a thinly veiled attempt to ban Somerset's participation in utility scaled wind projects. He stated that the final meeting was cancelled where they were to discuss a final recommendation to be sent to the Town Board. He feels that instead, a recommendation was sent to the Town Board without committee consent or approval. He said that there was a rushed vote, where only the ayes were heard; there was no request for votes of nay or abstentions; nor a roll call vote. He stated that the committee was never given an opportunity to comment on the final recommendation. He feels that the proposed law does not follow sound planning and zoning but is an effort to preclude wind energy development. He asked to keep the hearing open until the law can be amended so it would stand up in a court of law. He looks forward to bringing a project to our town that will benefit us for 30 years to come.

**AGNES LAPORT** commended the board for listening to the residents once they realized what the people want. She stated that she lived here prior to the power plant and saw many homes destroyed for it. She likes the section of law that states that all hazardous waste is to be removed from the site. The electricity that will be generated will not be used here and she feels future generations will question the sanity of the installation. She thinks greed separates the leaseholders from the rest of the community and stated that any jobs that are generated will be filled by people from Virginia like they have done on their other projects. She said it is not worth the ten jobs that will be created full-time.

**BRIAN SCRUTIN** is representing Local 1163 that consists of 720 members. He stated that they are in support of APEX and feels the town board members are not responsible stewards of the community. He stated that APEX has told them that they are going to use local labor for this project. He feels that the proposed law states that we don't want the wind project.

**JOHN RIGGI** is a resident and councilman of Yates and served on the ad-hoc committee. He stated that the committee's goal was to ensure the Town of Somerset was protected with reasonable laws. He stated the committee was chartered in May 2015 and he listed the members who were on the committee. He feels the proposed law is the kind of legislation that will protect the Town of Somerset and is proud of the work accomplished by

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the committee. He stated that many Yates residents have the same concerns that Somerset residents have been raising and the Town of Yates is now opposed to the project. He read finding #3 in the law and stated that small communities are targeted because of the small number of large landowners that APEX needs to target. He recommends adopting the proposed local law.

**RICHARD MEYERS** advised that his comments are on the proposed local law, not the APEX wind project. He stated that the previous law was written because windmills were going to be banned by the town. That committee took a year to come up with the current law and was meant to cover many years into the future. Setback requirements were not specific so as the height increased, the setbacks increased. He said that the proposed law was supposed to be an update to the existing 10 page law, and is now 54 pages. He feels that the five pages of findings that are included in the proposed law are mostly propaganda from special interest groups. He stated that personal opinions should not go into town law. He feels the new law is a ban on windmills. He stated one of his experiences as Supervisor was when Verizon wanted to locate here. In a letter, they told him when they pulled up to the property next to the coal plant they almost did not want to get out of the car because of the coal plant but would have with wind turbines. He offered to present the letter to the board and said that companies today look for sustainable energy.

**DALE HOWARD** lives on Huntington Beach and said that whether or not you are for windmills, we need a dedicated air corridor and it should be one of the paramount things we look at.

**BRETT EWALD** from Yates supports the proposed law. He stated that our natural beauty and resources need to be protected and said there are a record number of birds that come through our area. There is a list of the ten worst sitings for wind turbines and our region is on the list. He has a nature tour company and brings clients from around the country. Other groups visit our area and that will cease if wind turbines get built. He said that will lead to lost business because the tour groups eat at and purchase from our local establishments. He said that as raptors decrease, rodents increase and sport game decreases. He said that we will lose our natural resources like turkeys and pheasants. He is for green energy but is against wind turbines. He submitted a letter to the PSS and noted many deficiencies in the studies that they are proposing. He pointed out that none of APEX' brochures show a wind turbine in it.

**JOSEPH FOX** is a 20 year resident and lives on Somerset Drive. He doesn't believe he will lose property value nor gain anything financially from the wind project. He feels that most things in the proposed law do not make sense. How asked how can we ask for a property value guarantee when there are so many things that go into property value. He feels the law is ripe for fraud and litigation. The law is subjective and will cause more litigation. He said if the project is approved, the town should lower our property values 20-40%. He stated that the law says "don't do business in Niagara County, especially Somerset." He

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said that Somerset lost three businesses in 2015 and feels the loss of those jobs is a loss of progress, and a loss of progress is a loss of prosperity. He is against the proposed law.

There being no further business, Supervisor Engert closed the hearing at 8:37PM.

On a motion of Councilman Wayner, seconded by Councilman Dewart, the meeting adjourned at 8:38 P.M. subject to the Call of the Clerk.

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Tracy L. Carmer, RMC  
Town Clerk