

TOWN BOARD WORK SESSION
JANUARY 18, 2016

A Work Session 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 18th day of January, 2016.

Present:	Daniel M. Engert -----	Supervisor
	Randall J. Wayner -----	Councilman
	Robin R. Jansen -----	Councilwoman
	Jeffrey M. Dewart -----	Councilman
	Tracy L. Carmer-----	Town Clerk
	Michael J. Norris -----	Attorney
	Daniel Seaman -----	Attorney
Excused:	Gary R. Alt -----	Councilman
	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: 10 residents

Supervisor Engert called the session to order at 4:30PM with the Pledge to the Flag.

Attorney Dan Seaman provided an overview of the proposed local law entitled "A Local Law Amending the Code of the Town of Somerset Chapter 205 Zoning" which was introduced by Supervisor Engert on January 13, 2016.

The Purpose clause relates to the health, safety and welfare of the community.

The Findings section is very lengthy and is an important part of this local law. He feels it is important that the state and others understand what the findings of the Town Board are.

The Definitions section includes definitions that may not be found elsewhere, including in our Town Code. If the definitions are different, then these apply.

The Applicability/Severability section of the law is important. We have a local law that applies to commercial wind generation already. This law does not repeal it, but supersedes it. If any provisions of this law are found to not be enforceable, the current local law would remain in effect.

Attorney Seaman pointed out that this is a Special Use Permit Local Law, not an Overlay District Local Law.

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The Application Process is found on pages 11 – 23. This part provides that the Board can require more from the applicant and the board can engage their own experts.

Page 26 – 44 are the standards that would apply to any permitted Wind Energy Conversion System in the Town. There is a section to provide for property values where in the event a property owner feels there is a diminishment in their property value, anytime in a 10 year period they can go through a process. If their claim is substantiated there would be a reimbursement.

There is a strong emphasis in this law on protecting the environment, especially the bird and bat populations since this is an active migratory area.

A health standard background study would be required. Individuals can participate if they want to.

When this proposed law was put together, the attorney and the committee spent a lot of time going through the LWRP and our Master Plan. Included in this are setback requirements of ½ mile from the Village of Barker and 1500 feet from the residential district boundary.

Supervisor Engert noted that Attorney Seaman used a lot of caution to avoid being unreasonable.

Attorney Seaman stated that Finding #1 addresses this and that it should be used in conjunction with Article X. The committee noted that there is a lot of concern on the effect of wind turbines on farming and orchards.

The Standards section includes extensive decommissioning stating that the turbines have to be taken down when they are no longer used. Attorney Seaman stated that had there been decommissioning in place in the early part of the century, we wouldn't have so many brownfields. There are fees, management oversight of operations when they are built, and a provision that recognizes that this law is not intended to infringe on the private rights of any residents of the town.

Supervisor Engert asked for a definition of the use of the words Applicant and Owner/Operator.

Attorney Seaman stated that we can put in the definition section that they are interchangeable.

Supervisor Engert referred to page 10 and said the committee discussed evolving technology in battery structures that are designed to hold the energy produced. He asked if it is specifically addressed.

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Attorney Seaman stated that it is not separated out, but related infrastructure and/or accessory structures encompasses it.

Councilwoman Jansen asked if old batteries would be considered solid or hazardous waste.

Attorney Seaman stated that is covered under conditions. He said that the time may come where the Town would want to address batteries in general (not just on wind turbines) in a separate local law.

Supervisor Engert referred to page 16 and asked if there is a reason the law states the appraiser has to be NYS licensed.

Attorney Seaman stated that it should be a NYS licensed appraiser. A big firm should have one.

Supervisor Engert discussed electromagnetic interference. Broadband could likely become the Town's most significant means of internet and he is wondering if wireless and broadband are interchangeable.

Councilman Wayner feels that it is covered under wireless or satellite.

Supervisor Engert asked Attorney Seaman to have broadband added to that section.

Referencing page 20, Supervisor Engert discussed the military effects and wants to include radar interference.

Attorney Seaman feels it is a broad enough definition to include radar interference but will add it.

Supervisor Engert referred to the Disclosure of Financial Interests section on page 22 and asked if we should include a Code of Ethics.

Attorney Seaman does not recommend trying to incorporate it into the WECS law. He stated the WECS law is to address the siting, process, etc.

Supervisor Engert stated regarding the wind speed data relating to wind turbine height, the lowest height possible would be the one allowable in the Town. He asked how the Town would evaluate that they are doing it.

Attorney Seaman stated there will be a provision in the application to provide the analysis. He discussed the maximum height and stated that he doesn't know of any other WECS law that does not specify a maximum height.

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Supervisor Engert stated the current law states a maximum height of 450'. Turbine heights are changing since the current law was enacted.

Councilman Wayner stated that he feels the height changes are covered under the lowest maximum height.

Attorney Seaman stated that if we do not have fixed maximum heights, we then do not have a standard to go by. He recommends having a maximum height.

Councilman Wayner then referred to the Audible Noise section on page 36 and stated the attorney agreed to add the word intermittent in addition to a steady tone. He also advised that Shadow Flicker on page 14 will include public access areas in addition to residences.

Attorney Seaman stated that buildings are included but not parks. He will add it.

Councilwoman Jansen stated there needs to be a wording change on page 29, section 9. The word appropriate should be changed to applicable.

Councilman Dewart stated that his clarifications related to fire and communications and have been answered.

Attorney Seaman stated that we need to hold another meeting prior to the public hearing to amend the law as introduced.

RESOLUTION 47-2016

WORK SESSION

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

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

Resolved the Town Board of the Town of Somerset will hold a work session on Thursday, January 21, 2016 at 2:00PM at the Town Hall, 8700 Haight Road.

RESOLUTION 48-2016

EXECUTIVE SESSION

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

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

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Resolved the board entered into executive session at 5:22P.M. for consultation with the Town Attorney to discuss a legal matter.

RESOLUTION 49-2016

RETURN TO REGULAR SESSION

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

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

Resolved the board return to regular session at 5:30P.M.

On a motion of Councilwoman Jansen, seconded by Councilman Wayner, the meeting adjourned at 5:31 P.M. subject to the Call of the Clerk. Carried unanimously.

Tracy L. Carmer, RMC
Town Clerk