

TOWN BOARD REGULAR MEETING
JULY 11, 2018

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 11th day of July 2018.

Present: Daniel M. Engert ----- Supervisor
Robin R. Jansen ----- Councilwoman
Jeffrey M. Dewart ----- Councilman
Chris Bronson----- Councilwoman
Jon Hotaling ----- Councilman
Tracy L. Carmer----- Town Clerk
Mindy Austin ----- Confidential Asst. to the Supervisor
David Haylett----- Attorney

Excused: Melvin H. Denny ----- Supt of Water/Sewer/Grounds
Michael M. Flint ----- Supt. of Highways
Brian Sibiga ----- Engineer

Attended by: Approximately 60 residents

Supervisor Engert called the meeting to order at 6:00PM with the Pledge to the Flag and a prayer for guidance.

RESOLUTION 98-2018

APPROVAL OF THE MINUTES

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

ADOPTED: Ayes 5 Engert, Jansen, Dewart, Bronson, Hotaling
 Nays 0

Resolved the minutes of June 13, 2018 be accepted as submitted.

MONTHLY REPORTS RECEIVED AND FILED:

Code Enforcement
Dog Control
Police

RESOLUTION 99-2018

APPROVAL OF THE SUPERVISOR'S MONTHLY REPORT

On a motion of Councilman Hotaling, seconded by Councilwoman Bronson, the following resolution was

ADOPTED: Ayes 5 Engert, Jansen, Dewart, Bronson, Hotaling
 Nays 0

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

COMMUNICATIONS

Clerk Carmer said that permission was given to USDA to hang traps around town to do a survey on European Cherry Fruit Flies. The traps are not a danger to anyone and individual land owners may be asked to allow them to place traps in their trees.

Supervisor Engert stated that union negotiations are going to start. He also advised that a joint meeting is going to be held with the Town of Newfane to discuss a street light study to determine if it is beneficial to convert our street lights to LED lighting or to purchase them. The meeting is scheduled for July 16th at 5:30PM.

Supervisor Engert stated that he received the annual report from Comp Alliance and it is in his office for the board to review.

Supervisor Engert announced that he received correspondence from Paul Williamson who is the new representative for the Lighthouse Wind Project. He read the email that Paul sent to him and Supervisor Simon of the Town of Yates. In the email Paul informed them that Taylor shared previous letters as well as the response to those letters and said it is evident that they have been very thorough in meeting the obligations for stakeholder engagement. He said it is not typical for the CEO to meet as requested but if there are appropriate reasons to set up such a meeting he would make efforts to do so. He said he has a complete assessment of the project which includes the concerns about the project expressed by some and the team is aware of the current level of opposition. He said a substantial number of our constituents support the project and 90% statewide support wind energy. He said this suggests that a project "should not be categorically rejected" and "much of the basis for opposition does not reconcile with the realities of what has and continues to be experienced in communities living with operating wind farms." He said the management team is in the best position to answer our questions.

Paul Williamson introduced himself and said he is from Southern Maine and grew up in an agricultural area like this one. He provided more of his background and said he looks forward to working constructively with the Town and interacting with our residents.

Supervisor Engert said that since April 2015 we have not had opportunity for any dialogue. He asked Mr. Williamson if he has reviewed the town's local laws, Comprehensive Plan, and Local Waterfront Revitalization Plan (LWRP). Paul said yes. Supervisor Engert asked him if he agrees that the proposed project does not comply with our local laws. Paul said apparently it doesn't apply now. Asked if he agrees that it does not comply with our Comprehensive Plan, Paul said he believes so but he really focused on the law so he is uncertain. When told that we do not have project info and asked if he agrees that it will not comply with our LWRP, Paul addressed the project first. He stated that without all of the land leases, it is difficult to identify where the equipment is going. He said it cannot come in the door with the details if the leases are not in place and is working on getting that completed this month. Hopefully within two months they will have a full design and will be

able to meet with the Town and show us where the equipment will be located and what type of equipment it will be. He said then they will be able to talk more specifically about whether or not it fits in with the Comprehensive Plan and ways they can work with the community to make adjustments. He said their intention is to design and provide a responsible project that is good for the local environment and local economy.

Supervisor Engert asked if all of the leases are set with the Heritage Project since all of the locations are known. Paul said he is not directly involved with that so he can't speak to it. He said most of our land leases are in place.

Supervisor Engert asked if Paul is familiar with the Cassedaga Wind Project and if he has reviewed the ruling in that project. Paul said he is somewhat familiar and has reviewed the ruling. Supervisor Engert then asked if he is aware that the siting board said they will apply substantive local laws and will refuse extraordinary waivers of local zoning laws. Paul said he has to review the decisions. Supervisor Engert asked if APEX is going to ask for a waiver of our local laws. Paul said they may and they are leaving themselves open for constructive interaction with the local community and will be working with state agencies.

Supervisor Engert asked if APEX is for sale. Paul said he is not entirely sure but they are in discussions with companies that are interested in a greater partnership.

Supervisor Engert asked Paul if he is willing to take questions from the community. Supervisor Engert told the constituents that this is not Privilege of the Floor, but an opportunity to ask questions. The following are the questions and answers:

- SOS is tracking all of the leases and easements recorded in the County Clerks' offices and are showing them on a map based on the property tax number. The latest leases do not include that information. Is this the new game plan? This information is not required but has been provided on every lease until now. It is disappointing learning of the number and height of the turbines from editorials, radio shows, etc. that is contradictory to what we have been told.
 - Paul said it is not part of his new game plan. He has not signed or processed any leases since he has been assigned to this project and said typically they follow the requirements when being processed. He will be glad to look into it. He said they have looked at three models, Nordix 131, GE 3.6 and a Vestis 150. The Vestis 150 is the most promising for this project and the maximum tip height of it is 587 feet. He said there would be less than 50 turbines with the Vestis 150, ideally 47 if they can fit them in with the existing landowners.
- If you are truly from the country how can you come into an agricultural beauty such as this and want to put up an electrical facility that will ruin our lives, along with the wildlife?

- Paul said he understands the concern and that this will change the landscape. He wants to be empathetic and understand our concerns and know our sensitivities, but he also is talking to landowners in the area who have invested in the community and used their property in a responsible way for a number of years for agriculture and are highly interested in the project because it provides diverse income for them. He understands there are voices on both sides of the issue and he is here to see if he can work with the community and the landowners to design a responsible project that works for everybody.
- Do you agree that the environment can be adversely affected by the simplest of things?
 - Yes
- How many jobs will be filled by local union workers vs out of state workers and out of state companies?
 - Paul said he cannot answer that but as they proceed they will interview a number of different general contractors. It is typically the general contractor's responsibility to arrange the labor. He said that APEX values local labor and local job creation and they try to work with a contractor who makes the investments in the local community and job creation.
- APEX has met with New York State agencies on a number of occasions while leaving out the Towns of Somerset and Yates. How can you justify denying town representatives access to meetings when this will have a big impact on the host communities? And how does this comply with Article 10?
 - Paul said he would not advocate for leaving the towns out of the discussions. He said it is his understanding that there has been public response and input in the process. Article 10 says they have a responsibility to consult with the state agencies. He said the record shows there has been a fair amount of local stakeholder engagement. He would be happy to bring forward information as it becomes available, either individually or attending meetings. He said he does not plan to come to the board meetings unless there is business that needs to come before the board.
- When will the stipulations phase end as it has been going on for over two years? Also, APEX says they have the desire to share information but they have not answered questions put forward in the stipulations phase that they are not obligated to answer.
 - Paul said the stipulations phase is not an open question forum, rather a process where they can respond to the comments put forth by the stakeholders. He said that some comments do not fit in or are overly burdensome. Some comments have asked them to take additional steps that do not provide any value to the project, the environment, or the community. They exercise their right to agree to certain portions of the stipulations and disagree to other portions and respect everyone's right to do that as well. He said they expect final responses in the next two weeks from the professionals

who are providing an expert response. He said this timeline is not politically motivated. He said their intention is to wrap it up as soon as possible. His objective is to have a full design within two months.

- Is APEX a public or private company?
 - A private company
- Is your objective to make a profit?
 - He said that is part of our objective. Our objective is to do that in a responsible and environmental way. Our mission statement is to accelerate the shift to clean energy.
- When you state that you would be prepared to override local laws to make profits then tell us you are willing to work with communities when 70% do not want it here. Families are being torn apart, and your profit will go in your pockets and the shareholders pockets, but these people have to live here. Corporate profits do not have to come first all the time. How do you feel about this?
 - Paul said he thinks there is a difference in the town about whether or not the project is wanted and he appreciates the concern.
- Can you justify the need for this project?
 - New York State has set goals to update the way current energy is generated in the state and increase the amount of renewable energy. Projects like this are needed to meet those goals. In addition, he looked at the landscape of the local community and understands the local taxes went up and there is a real interest in attracting economic investment. This project brings economic investment. Our society needs these transitions for the local environment.
- The turbines are the largest to ever be put on land. Where have you put one and tested it for infrasound and shadow flicker?
 - Off the top of his head he does not know which turbines are at which projects.
- King Fisher was opened with a huge amount of lawsuits. What are you doing to remedy those lawsuits so they don't happen in the next projects? Can we create a list of questions and provide it to our town board for you to answer? You have not proven need. We are almost 100% clean renewable from the Robert Moses, why do we need this project?
 - Paul said he cannot address all those concerns right now. It is his objective to work with the town so the town benefits from an influx of investment. They can structure that investment in a way that the town can direct where the investment goes. They can best address those benefits if they have the opportunity for an open dialogue to plan out how that money can be used. They want a fair deal where the town benefits from the project.
- The factual research you provided is from studies and peer studies from 2009. There is nothing current in the stipulations phase that addresses the worldwide issues. Why haven't baseline health studies been done if you really are concerned about our community?

- Baseline health studies have been done for this industry worldwide and peer reviewed studies come back and the evidence suggests there is not an adverse effect on public health due to these projects. He said peer reviewed studies are important because studies that look at incomplete information does not give you a full snapshot.
- The World Health Organization has already called out baseline health studies because they know there is an issue. We are guinea pigs as no one addressed the fact that the shadow from these turbines is over 1 mile long; no one addressed the flicker; no one addressed the noise. The installation diagram does not show what happens to our environment when these are installed. Can we provide our town board with a list of questions for you to answer honestly so we get a better feel for what is going on?
- Why did you choose this area?
 - Paul said this area has a very strong foundation because of the way it fits in with area land uses. Wind power and agriculture complement each other and this is a good wind resource. Also due to access to the grid.
- Have you toured the area that is in question?
 - Yes. It is a nice farming community with a lot of open land for farms. It is a beautiful area along the lake.
- APEX had continually stated that they will have a PILOT. Are you aware that all six taxing jurisdictions have already rejected a PILOT for this project? Will Lighthouse Wind proceed without the tax breaks? I would like this answered in writing.
 - Paul said he will respond via email. He said they are aware that there is not an interest in signing a PILOT agreement. He said with a full tax assessment it is still economically viable. All policies vary state to state and he understands there is an opportunity here to use a PILOT agreement with the local community to make sure the best community benefit agreement with the town is created. They would come up with an agreement with the town that is fair and equitable and would be better than what they would get if they didn't enter into a PILOT.
- There was a massive amount of letters on the DPS website. For transparency, did APEX coordinate or encourage a letter writing campaign that followed the 2017 Climate Summit meeting or was it a coincidence?
 - He said it is their objective to encourage all people who are supportive of this project to express themselves and they will continue to do that.
- How come three years ago the Department of Interior sent two letters to APEX indicating they should not build within three miles of the lakeshore but the letters are not on APEX website?
 - Paul said he is not aware whether or not they are on file. They are working with federal agencies as required and will be receiving federal permits as needed so they can build the project. If one of the agencies determines that this project is not appropriate because of its proximity to the lake, then those permits can be denied. He will check on the specific letters.

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- Kate Kramer has a copy of the letter and can provide it to Paul. It is a letter sent to Dave Phillips from U.S. Fish and Wildlife. She quoted from the letter regarding a 2016 radar study that “strongly recommends that APEX carefully consider the potential effects of the Lighthouse Wind Project.” She asked why APEX is still here.
 - Paul said they have consulted with US Fish & Wildlife and they believe they can construct it in a way that is safe for migratory birds. They can curtail the operation when needed to protect certain species. They do not have the final determination, the permitting agencies will determine if they are in compliance.
- On what basis can you put these towers up in an environmentally responsible manner?
 - Neal Habig, Northeast Development Director, said that he discussed the letter with Dave Phillips and he has had a number of conversations with US Fish & Wildlife subsequent to it. There are statements in the 2013 study that Kate read that are contradicted by the data. Three of the four sites were in close proximity to the lake. The study broadcast night radar and detects night migrants to establish a correlation between proximity to the lake and an increased passage rate. The data showed the highest passage rate occurred 50 miles from the lake. They did their own radar study and the data will be made public when the application is filed. When questioned about releasing it now since it will be released anyway, Neal agreed to make the radar data available now since there is an interest in it.
- Last week wind turbines in New York State produced 2%-4%, which equates to a 200 megawatt facility putting out 4-6 megawatts. How will that help the environment? Also, can you reassure us that property values will not be affected by this project?
 - Paul said he has no answer.
- With a tip height under 600 feet the turbines are smaller than the stack at the coal plant. Have you gotten information from the air force base regarding the impact on operations in writing?
 - Paul said they have communication from the Niagara Falls Air Force Base that they do not expect this project to have an impact on the base. The project has been submitted to the Department of Defense Clearing House to make a determination and their review has returned a positive response.
- How will a host agreement be beneficial to the community and the importance of the town board to work with you to create a host agreement that would be good for both APEX and the community?
 - Paul said that negotiating a host agreement in addition to a PILOT agreement can create an economic resource that is beneficial to the community.
 - Regarding the earlier question regarding property values there are a couple things. If you have a community with lower property taxes, values go up. If you have a community where taxes are increased and infrastructure is decreased, property values go down. It is his understanding that bringing this investment to the community, the community as a whole will benefit.

- The issue with the air base more than base operations is the matter of perception jeopardizing future realignment. Do you think it is right for your company to jeopardize the future of the base and the 3,000 people who work there for 10 possible maintenance jobs? And part of their job is to dispose of dead birds and bats.
 - Paul said if they do find any species dead, it is their responsibility to report that to the US Fish & Wildlife or state agencies.
 - Through the DOD Clearing House, the base has the right to voice their concerns and they have not expressed concerns that the project will threaten the ability for the base to operate or continue to exist.
- A resident stated she believes when they received the response from the base that President Obama was in charge and he wanted renewable energy so the military is required to follow his lead. Also, there is no evidence that any baseline health studies have been done. Are the studies publicly available or are they proprietary to the wind industry?
 - Paul said studies have been published all around the world.
- Are the baseline studies before the project is built? The issue is there is nothing to compare to because nothing was done prior to the project being built.
 - Paul said he would look into it.
- APEX has stated that communities where they have placed projects are so pleased with them that they want to have more built. Where are these communities?
 - Neal replied regarding the baseline studies stating that although a baseline study would be more comprehensive, most people have medical records so there isn't the absence of the ability to draw conclusions about health conditions pre and post construction.
 - Neal said that Lewis County is an example of a community that would like more projects. They have lived with it for 15 years and endorse it.
- A statement was made that Lewis County is the third least populated county in New York. It is also not a lakeshore community so the terrain is completely different.
 - He said that it is a different community, but the question was "where are these communities?" Neal said the turbines there are 425 feet high, and modern turbines produce less sound.
- Are you aware there is a video of Lewis County that shows how unhappy people are?
 - Neal is not aware of that.
- Do people on the board have leases with the company? Do family members of leaseholders work for the company?
 - Neal said there is probably some but not comprehensive.
- APEX is advertising in papers how great these projects are for our schools. Since the schools have a tax cap, any increased PILOT money is revenue neutral for the school. How can you justify that?
 - Neal said let's get involved in a community benefits agreement and talk about how best we can make investments in the community, including education if that is a priority for you.

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- How does that help the school?
 - Neal said it doesn't. If you have a PILOT agreement the asset doesn't increase the property wealth which determines state aid. If you don't have a PILOT agreement, that adds to property wealth which has a negative effect on state aid.
- How many projects has APEX built, and how many does it currently own and operate today, and why?
 - There are currently nine. They have sold many of them but still manage them. They have over sixty projects under development. Their business model is they build projects and some of the projects they continue to maintain and that generates capital for the business so they can put that back into future development. Some of the projects they sell to other parties and that gives them an immediate return so they can invest in additional projects. Many companies they sell projects to do not have experience in renewable energy so they will hire APEX to manage and operate the project for them.
- Why not look at a passive situation and put in a massive solar field?
 - Paul said that is an interesting consideration. He said the turbine takes one acre (while being built) of land. Afterward, it takes up about ¼ acre and the farmer can use all the space around that turbine. One turbine makes about 4 megawatts and that equals approximately 20 – 25 acres of solar panels. That takes up most of the activity that can happen on that acreage.
 - Their turbines will have a capacity factor of above 35% and they have proof of that. They can provide it but asks the residents to have some understanding and patience when they ask for information. He said their objective is to design a project that is responsible and will share all of the information they have available pertaining to the project.
- Will you provide meteorological report?
 - Paul advised that they provide them quarterly to the town.
- When is your next public meeting?
 - They will schedule one when they have information that is ready to produce.

Discussion ensued regarding the difference in their meetings with the public versus public events, along with capacity factors around the state.

- Will you confirm that in two months you will have a siting plan?
 - Paul said approximately, he will do his best to get there.
- You acknowledge that it will be in opposition to local law?
 - To the current law, yes.
- Because of that, you will be asking for an extraordinary waiver from the state?
 - Paul said they will work with the local community and if the local community cannot make adjustments to the ordinances, they will be looking at a waiver and will be following the precedence of other waivers that have been granted in the state.
- Will you confirm that the expected longevity is about 30 years?
 - Yes. They have a full decommissioning plan to take it down and erase the footprint.

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- How big of a hole and how many yards of concrete for a 587 foot turbine?
 - Neal said about 10 feet, 600 yard of concrete.
- How do you return it to farmland?
 - Neal said you bring it 3 feet to 4 feet below grade. You can farm on 4 feet of topsoil.
- Who pays for this?
 - Every wind farm in New York has a bonded decommissioning plan. A 3rd party engineer will certify the decommissioning cost and they will post a bond to support those costs. Periodically, typically every two – three years, the engineer will update the cost and the bond will be increased. It is the obligation of the developer to remove it. If they default then the bond covers it. The bond goes with new owners.
- How big is the project?
 - 47 turbines
- What is the total cost?
 - Neal said it is somewhere less than \$1,500,000 per megawatt. A 200 megawatt project is \$300,000,000. This project will probably be less than that based on available land.
- How much taxpayer money is going to subsidize this?
 - There is a federal subsidy that is phasing out. It is not a grant, it is a production tax credit. They do not get money ahead of time to build a project. They only get it based on production of energy. They get approximately \$2 per megawatt hour.
- What emissions will result from construction? How will public health improve during that phase? Is that statement based on current emissions from the coal plant? Have you done any studies on the current atmosphere in the towns of Yates and Somerset? How many residents are suffering from lung diseases as a result of the toxic emissions from the coal plant right now? We need to know, not just a blanket statement that this will be better than the coal plant.
 - Paul said health improvement estimates are based on the project they are proposing compared to the amount of emission reductions that typical oil or coal generates. It is not specifically tied to the Somerset plant. New York State is shutting down coal plants because of the concern for public health as a whole.
- The APEX website states that projects are in full compliance with local, state and federal safety regulations. Can you explain what this statement means?
 - Paul said it is their intention to comply with the laws as applied to the local area within the legal jurisdiction of the state of New York to develop and design a responsible project. They will do that to the best of their ability. If local laws are designed to be hostile to this type of development, you may see waivers.

- People in this community care about each other, regardless of race, religion, etc. How can APEX allow this division?
 - Paul stated that there is a conflict of opinion. One group is looking for the opportunity for diverse income; the other group is not a wealthy group but has invested in this town for a long period of time and are part of the heart and soul of the community. He provided a personal story of his brother as a farmer and compared it to farmers in our community who will benefit from this project. They are interested in a baseline income to help support them through the ups and downs of the market. They have a right to use their property as they see fit.
- As a businessman if I wanted to open a business in this community but I walked in and saw all of this opposition, why would I open a business here? If APEX is not money driven and has any conscience at all, why are they still here?
 - Paul said it is his goal through community interaction to continue to bring forward information and the community will begin to understand and learn that this project is a benefit to the community.
- What are the tax incentives?
 - It is difficult to bring investment into rural areas. There are not a lot of other opportunities coming to this area. Other communities with wind projects have benefited from them.
- If we have a Host Community Agreement, there are two issues. The definition of Net Revenue is gross revenue minus expenses, and the expenses are so great that there is not any revenue for the town. The other issue is that the Town would give up its ability for Article 78 so APEX would own our town with no recourse. He hopes an agreement would not include these two factors.
 - Paul said if the town comes to terms with them on an agreement, he would suggest the town only sign the agreement if they feel it is an overall benefit to them. At the end of the day this should be a win-win situation.

Paul was asked to keep in mind that many of us are in farming families and the “Right to Farm” does not imply you can do anything with your property, that’s why there are zoning laws. It means you won’t complain because there is manure on the road, etc. She said APEX keeps monetizing the project, but you can’t put a dollar sign on the reasons most of us live here. You can’t put a price on the beauty of this land. She also wanted him to know that SOS funding does not come from the Coke Brothers. She said they have raised a lot of money from local people who support their position.

- Do you have future plans to go to the lake shore?
 - Currently they do not, but they are prospecting other areas further up the lake.
- Is there a specific amount of time APEX is responsible for the project being up before they sell it to another company?
 - Paul said no.

Supervisor Engert said he would also like to know when Leaseholder meetings are scheduled so we can publish those on the website.

Discussion ensued regarding the meetings and information that is provided. Neal said they have supporter meetings that they will advertise more broadly and they will do better keeping the town apprised of the information they provide the leaseholders. For example, the number of turbines.

RESOLUTION 100-2018

AUDIT OF CLAIMS

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

ADOPTED: Ayes 5 Engert, Jansen, Dewart, Bronson, Hotaling
 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. 256 through No. 292	\$ 17,564.99
Highway Fund	No. 85 through No. 91	\$ 2,188.46
Sewer Fund	No. 72 through No. 82	\$ 2,730.02
Water Fund	No. 48 through No. 57	\$ 47,454.30

PRIVILEGE OF THE FLOOR

Louise Clark said that Niagara County cannot afford any more destruction. We have CWM, Twelve Mile Creek, Love Canal, and coal waste. She said we are not going to let APEX destroy our pristine land and the air above. She said she is in favor of a grand park on the lakeshore. She would also like the Niagara Shuttle to come along Route 18 to the Town of Somerset. She said if turbines are so wonderful, why can't the take down the old turbines and replace them with new ones.

Cathi Orr spoke of the economic impact in Wyoming County. In 2007 the NYS property tax register stated that wind turbines erode the tax base. Landowners with turbines on their land do not pay taxes so the rest of the residents' taxes go up. The tax base is 65% higher and 50 – 75 people she knows have moved out of Wyoming County because of the wind turbines.

Jim Hoffman read a response he received from an editorial he place in the paper. The response said that when it gets cold outside and the air density is thicker, the noise from the turbines is a low moaning sound like the sound of a bass. He said it causes a lot of stress and really affects your health. The letter claims that government is corrupt.

Vivian Szulist asked the Town Board to consider asking other companies to put forward projects so that everyone benefits.

Supervisor Engert said the town does not own the land assets necessary but they look and evaluate every proposal that comes before us.

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Geri Linderman said that she has been here for twenty five years and worked hard to be able to enjoy the nature around us. She is looking forward to retiring and it sickens her that turbines may be in her backyard.

On a motion of Councilwoman Jansen, seconded by Councilman Dewart, the meeting adjourned at 8:18.M. subject to the Call of the Clerk.

Tracy L. Carmer, RMC
Town Clerk