

REGULAR MEETING
JULY 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 July 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
Mindy Austin ----- Confidential Asst. to the Supervisor
Melvin H. Denny ----- Supt. of Water/Sewer/Grounds
Brian Seaman ----- Counsel
Randy Roeseler----- Engineer

Absent: Michael M. Flint ----- Supt. of Highways
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 83-2015

APPROVAL OF THE MINUTES

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

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

Resolved the minutes of the previous meeting are approved.

RESOLUTION 84-2015

APPROVAL OF THE SUPERVISOR'S MONTHLY REPORT

On a motion of Councilman Dewart, seconded by Councilman Wayner, 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

COMMUNICATIONS:

Clerk Carmer read a letter received from the Department of Public Service regarding the

State of Telecommunications in New York State. The commission is seeking to determine if the current regulatory system is sufficient. They will be holding informational sessions and public statement hearings throughout the state. Supervisor Engert asked the board members to check their calendars for availability to attend the meeting on August 5th at Buffalo Central Library.

RESOLUTION 85-2015

ZONING BOARD OF APPEALS APPOINTMENT

Supervisor Engert stated that there is a vacancy on the Zoning Board of Appeals created when Dale Howard resigned on March 18, 2015. The Town solicited residents and interested applicants were interviewed by the Committee who made a recommendation to the Board.

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 Toby Hefferon is appointed to the Zoning Board of Appeals with a term expiring 12/31/2017.

Councilwoman Jansen stated that she is pleased that more women are getting involved. Supervisor Engert agreed.

RESOLUTION 86-2015

PLANNING BOARD APPOINTMENT

Supervisor Engert stated that there is a vacancy on the Planning Board created when Brian Carmer resigned on June 4, 2015. The Town solicited residents and interested applicants were interviewed by the Committee who made a recommendation to the Board.

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 Krista Atwater is appointed to the Planning Board with a term expiring 12/31/2018.

RESOLUTION 87-2015

BARKER FIRE DEPARTMENT MEMBER REFERRALS

Supervisor Engert stated that with the expansion of the Fire Protection District, the board now has a responsibility to approve new members of the fire company. The applicants were approved through the Fire Department's investigative committee and their standing requirements.

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 Travis Mckenna, Thomas Miller and Paige Fudella are appointed to the Barker Fire Department.

Councilman Wayner stated that it is great to see volunteers coming in to the department. Supervisor Engert agreed.

RESOLUTION 88-2015

NYS DOT SAFETY STUDY – ROUTE 18 AND HARTLAND ROAD

Supervisor Engert stated that we had a fatal accident at the intersection of Route 18 and Hartland Road and he asked Clerk Carmer to review the records of the Town to determine whether or not the DOT has ever conducted a safety study at this location. Clerk Carmer found a resolution passed in 1977, but found no further information if a study ever occurred or the findings of a study. Supervisor Engert said it's in the best interest of the Town to study the traffic to determine if other controls may be implemented or if the speed limit can be reduced. He stated that last year's study conducted on West Somerset Road had a quick response.

Councilman Dewart feels that this has needed to be done for years as we seem to have a fatal every other year in that area. Perhaps we could have "through traffic" signs installed on the North/South roads.

Councilman Alt reminded the board that former Superintendent Bigelow cleared trees at that intersection and it helped a little, but the visibility is still bad.

Supervisor Engert stated that the State has the final say. We cannot install any signage until we have results of the study.

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 the Supervisor is authorized to request a safety study be conducted at the intersection of Route 18 and Hartland Road as soon as possible.

RESOLUTION 89-2015

**COMMERCIAL WIND ENERGY LOCAL LAW AD HOC ADVISORY REVIEW
COMMITTEE**

Supervisor Engert stated that on May 13th the board authorized the formation of a committee to review our current commercial wind energy law and study recent scientific developments and research. It is also to address the unlawful removal of home rule from Article X proceedings for energy projects and to attempt to reinstate the residents' voice. The Historical Society responded that they are unable to participate, but the remaining entities who were asked to recommend a resident for the committee responded with a recommendation. The entities submitted the following nominations:

Tom Staples recommended by Niagara County

Seanna Corwin Bradley recommended by the Village of Barker

Mary Jo Clemens-Harris recommended by Barker Central School

Pam Atwater recommended by SOS (Save Ontario Shores), in addition to President John Riggi

TOWN BOARD MEETING
JULY 8, 2015 PAGE 4

Susan McNulty Atwater recommended by APEX Clean Energy LLC, in addition to Dan Fitzgerald, Sr. Project Manager

Benjamin Atwater recommended by the Niagara County Farm Bureau

Jim Ferington recommended by the Niagara Chamber of Commerce

Herb Linderman recommended by the Niagara County Fisheries Advisory Board

The committee includes Supervisor Engert and Planning Board Chairman Jon Hotaling and the first meeting is to be held by July 24, 2015.

On a motion of Councilman Wayner, seconded by Councilman Dewart, 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 recommended members of the Commercial Wind Energy Local Law Ad Hoc Advisory Review Committee are approved as submitted.

RESOLUTION 90-2015

LIGHTHOUSE WIND LLC PROJECT

Councilman Wayner stated that this resolution is thoughtfully constructed, comprehensive, and is in alignment with the vast majority of households in the Town of Somerset. Over the past two months he has knocked on dozens of doors and everything he has heard is in alignment with the survey commissioned by the Town. It is important that Home Rule be re-established and the massive turbines must be opposed. Today's turbines are too big, too close and too numerous. Councilman Wayner thanked the residents for talking to him and stated he enthusiastically supports all of the elements contained in the resolution. He stated that we are moving forward and asked that we move forward together.

Councilman Dewart stated that he has been knocking on doors too and concurs with what Councilman Wayner stated.

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

ADOPTED by roll call vote	Supervisor Engert	Aye
	Councilman Wayner	Aye
	Councilman Alt	Abstain
	Councilwoman Jansen	Aye
	Councilman Dewart	Aye

WHEREAS, Apex Clean Energy has submitted a Public Involvement Plan with the Public Service Commission to begin outreach with the public and area elected officials for a potential Article X Commercial Wind Project titled, Lighthouse Wind LLC, in the Towns of Somerset and Yates; and

WHEREAS, the Lighthouse Wind LLC Project proposes as many as seventy (70) massive commercial wind turbines with incredible heights of 570 feet tall to be placed within the two

towns, the vast majority of which will be proposed to be located only within the Town of Somerset; and

WHEREAS, New York State adopted revisions to the Article X process in 2011 which primarily removed the local control from such energy projects and eliminated constitutional home rule by unfairly placing the ultimate decision to site such massive energy generation projects within the hands of unelected, appointed officials of the State; and

WHEREAS, this Town Board, along with many other Town Boards across New York State opposed the revision to the Article X Law and voiced such opposition in a resolution adopted by this Board on June 12, 2007; and

WHEREAS, this Town Board acknowledges that while local control and home rule was wrongfully taken away through this Article X law, it will endeavor to make certain that throughout this process, the voices of our residents will be heard; and

WHEREAS, this Town Board strongly believes that its primary duty is to listen to its constituents of the Town of Somerset and to be responsive to address their concerns; and

WHEREAS, this Town Board listened to many residents who voiced their concerns at numerous board meetings, reviewed many letters and emails from residents and visited many residents door to door in their homes over the past several weeks; and

WHEREAS, this Town Board also commissioned a town-wide survey to receive feedback from all town residents concerning this commercial wind generation project within the Town; and

WHEREAS, an incredible number, approximately fifty-six percent (56%) of the Town of Somerset households responded to the town-wide survey indicating their strong desire to be heard on the matter; and

WHEREAS, the completed surveys were received and tallied by the Town Clerk on June 17, 2015 at Somerset Town Hall and the results and comments have been posted on the Town's Web site; and

WHEREAS, the survey results decisively show an overwhelming majority of Town residents oppose the Lighthouse Wind LLC Project and confirm the overall desires of the Town residents who previously and continuously communicate through public meetings, letters, phone calls, emails, personal meetings and through other means; and

WHEREAS, this Town Board pledges to represent the desires and will of the Town and to address the concerns of the Town, which elected each member to do as much;

NOW THEREFORE BE IT RESOLVED, that the Somerset Town Board does hereby formally oppose the Apex Clean Energy Lighthouse Wind LLC Project within the Town of Somerset; and be it further

TOWN BOARD MEETING
JULY 8, 2015 PAGE 6

RESOLVED, that the Somerset Town Board will endeavor, through all reasonable means, to make certain that the residents of the Town of Somerset will be heard loudly and clearly despite the revised and flawed Article X law; and be it finally

RESOLVED, that the Somerset Town Board requests that our local state representatives, State Senator Robert G. Ort and Assembly members Jane Corwin and Stephen Hawley, join with us to represent their affected constituents in formally opposing this massive commercial wind generation project being proposed in our quaint and peaceful Town; and be it further

RESOLVED, that certified copies of this resolution be mailed by the Town Clerk to Governor Andrew M. Cuomo, Lieutenant Governor Kathy C. Hochul, New York State Senator Robert G. Ort, New York State Assemblywoman Jane Corwin, New York State Assemblyman Stephen Hawley, the Chair of the NYS Department of Public Service (DPS), the Commissioner of the NYS Department of Environmental Conservation (DEC), the Commissioner of the NYS Department of Health (DOH), the Chair of the New York State Energy Research and Development Authority (NYSERDA) and the Commissioner of NYS Economic Development (Empire State Development), the Chairman of the Niagara and Orleans County Legislatures, the Town of Yates Town Board, the Village of Barker Board, the Village of Lyndonville Board, and the Niagara County IDA.

RESOLUTION 91-2015

AUDIT OF CLAIMS

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

General Fund	No. 236 through No. 264	\$ 37,910.10
Highway Fund	No. 72 through No. 85	\$ 95,624.95
Sewer Fund	No. 65 through No. 79	\$ 6,347.35
Water Fund	No. 62 through No. 71	\$ 33,927.04

PRIVILEGE OF THE FLOOR

Cathi Orr complimented the Board and thanked them for keeping God in our town meetings. She is concerned that a tragedy similar to the one we just had on Lake Road will occur on Johnson Creek Road. She lives on the curve and has a 16' trailer to transport her animals. Vehicles come around the corner too fast and she is concerned of a fatal accident occurring when she is pulling out or backing into her driveway as recently a motorcycle almost back-ended her. She asked if it's possible to have a sign installed to slow people down.

Supervisor Engert asked Cathi to speak with him after the meeting because our Highway Superintendent is away attending his son's graduation. Supervisor Engert will coordinate it with Superintendent Flint.

Pam Atwater thanked the Supervisor and Town Board for supporting the results of the survey and responding to the majority of the people in our community. She supports our community's Right To Farm distinction and feels agriculture is a large part of the appeal to remain here. She doesn't believe the Right To Farm includes the right to industrialize our community with APEX's proposed wind turbine project. Digging at her home they ran into bedrock at a depth of 4 feet. Foundations of 25-50 feet deep are needed to support the turbines so she wants to know how blasting bedrock will affect our water table or neighboring homes.

Marcia Ray thanked Supervisor Engert and the Board for their diligence and commitment. She hopes they stick to their commitment and know that the community strongly supports them. She thinks it would be great if Somerset set a precedent and rejected Article X.

Dale Howard feels that the resolution and committees are not enough. He stated that for five months he has been saying that we need to hire a law firm that is far reaching into Albany and has a history of winning that will protect our Home Rule. He will repeat this every month until we do it.

Chris Bronson thanked Clerk Carmer for her work in getting all of the comments onto the website. She realizes it was a lot of work. She stated that she is anti-turbine and is not going away. She stated that she has nothing against Mr. Quarels, but wants to see APEX leave. The community has been driven apart by a small minority that signed leases. She hopes the Board members follow through with the anti-turbine agenda and stated that SOS will continue to have a presence at the Board meetings until this is all done.

Gail Damon asked if the wind energy law committee is still meeting no later than July 24th. Supervisor Engert said yes.

Gail asked if the siting board ad-hoc members are still going to be interviewed.

Supervisor Engert said yes.

Gail stated that Supervisor Engert replied to an email regarding the request for 90 days to review the PSS stating that he will be having a meeting with Senator Ortt and an Assemblyman.

Supervisor Engert stated that he is meeting with Senator Ortt on July 21st.

Gail stated that we are running out of time.

Betty Wolanyk asked if the list of people we are sending a resolution to includes the Niagara County IDA.

Supervisor Engert said no, but we can add them to the list.

Betty thinks they should get the resolution and said that she researched IDAs and found their incentive is to have PILOTs and the Town has little to say how much money we will get from it. She asked if the school and town board can reject the PILOT.

Supervisor Engert stated that the Town has significant experience with PILOTs and if it comes to that we will have the same type of discussion as we had with the AES PILOT.

Taylor Quarels (APEX) thanked the Board for their diligence in establishing the local law ad-hoc committee and said they look forward to participating in that committee. He stated that the major part of this process is engaging with the community and announced that they are adding another member of their team to staff the Barker office for a full-time presence. He feels that dialogue with the community will help dispel some of the misinformation that is going around and will take the concern of local residents into consideration. He stated that the Attorney General code cannot be downloaded and signed and they are waiting for the paper from the Attorney General's office. On April 1st APEX sent a letter to their office stating that they will sign, and Taylor stated that in the meantime they are conducting themselves in a highly ethical manner. He advised that they are actively working on the PSS and anticipates it will be submitted in late summer. He stated that there are 41 studies that are required, and said that Article X is not perfect, but it is thorough. Before submitting their application they have to submit the studies to the Siting Board and that's when the studies will be open to the public for review. He feels that that is the time to judge APEX on their merits and encourages the community to be patient. Taylor advised that the Met Tower has been installed in Yates. If the community has any questions, he encourages everyone to stop at the office. He feels that once the studies are conducted it will be more apparent that this is a project that is good for the environment and will be a great benefit for the community.

Paulo Oliveira said that for five months he asked the Board for their position on the wind turbines. He is saddened that they didn't give their answer until after the survey and he personally doesn't trust the board now. Until today he hadn't heard that they went door-to-door and said it would have been nice to know that. He stated that 67% of the residents gave APEX their answer. He said he is running for Town Supervisor and told APEX as God is his witness, he guarantees APEX will be out of town.

Bob Verheyen stated that a couple members of our board are lease signers. He looked through our Code of Ethics and doesn't find anywhere that it says a son of a lease signer can still be on the board and he wants Councilman Alt to step down. He also stated that a friend of his from Newfane bought property on Johnson Creek Road and Code Enforcement Officer Lee told his friend that he should team up with APEX and make some

money. As a taxpayer, he doesn't think it is right to pay for these people to sit on boards. He said there are four people now between the Town Board, the Planning Board and someone's secretary, and he wants them to step down. He said with only four people voting now, who is going to break a tie? He said that someone should talk to Mr. Lee about promoting business with APEX and stated that he works for the residents.

John Wolanyk said that Supervisor Engert stated in the Buffalo paper a few months ago that he has been talking with APEX for a couple years. He asked the Supervisor why he didn't bring that to the attention of the community. John said the Supervisor stated in the article that there was no opposition to the project. He said that APEX now has their foot in the door and asked the Supervisor he didn't bring it up to the community two years ago because they would be out the door.

Supervisor Engert stated that he addressed it publicly at the Board meeting the very day it was brought to his attention and it is in the minutes.

John said that it wasn't brought to the public's attention.

Supervisor Engert stated that it was brought to the attention of the public at a public Town Board meeting on the very day.

John said but you advertised in the paper that you have been talking to them for two years and then you brought it public.

Supervisor Engert said he will be happy to discuss it with him.

John Riggi said that the Board did an awesome job. They did the work and listened to everyone and wished Yates did the same job. He stated that the Code of Conduct that Mr. Quarels said cannot be downloaded was very easy for him to find and download. He is concerned that APEX is unethical until it's signed and the Board is unprotected until it is signed. He said that APEX should not be waiting for the state of New York to get back to them, they should sign whatever is available.

Cathi Orr stated that wants to back up Bob Verheyn's conversation because she also talked to the Newfane resident that Code Enforcement Officer Lee spoke to. He told Cathi that Mr. Lee asked him what he thinks about wind turbines and the resident told Mr. Lee that it's a rip off and we don't need them. Then Mr. Lee told him that he could make a lot of money with them.

Supervisor Engert said that we will look into it. This is the first it has been brought to his attention.

Agnes LaPort stated that she is in favor of green energy. People say how beautiful wind turbines are in other areas so she took a ride to see them. She said they are pretty from a distance. When you are near them there is a whooshing sound that is serene for a few

TOWN BOARD MEETING
JULY 8, 2015 PAGE 10

minutes, but she wouldn't want to live next to it. She said the windmills are everywhere and are so big. She wants to know if any lease signer has ever gone and stood below one. She doesn't want them anywhere near her and she feels a lot of good people from this area are going to be moving.

On a motion of Councilwoman Jansen, seconded by Councilman Wayner, the meeting adjourned at 7:24 P.M. subject to the Call of the Clerk. Carried unanimously.

Tracy L. Carmer, RMC
Town Clerk