

TOWN BOARD REGULAR MEETING  
MAY 11, 2016

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 11<sup>th</sup> day of May, 2016.

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

Absent: Jeffrey M. Dewart ----- Councilman

Attended by: approximately 30 residents and students

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

RESOLUTION 92-2016

**APPROVAL OF THE MINUTES**

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

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

Resolved the minutes of the previous meetings on April 13 and April 27, 2016 are approved as submitted.

RESOLUTION 93-2016

**APPROVAL OF THE SUPERVISOR'S MONTHLY REPORT**

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

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

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

MONTHLY REPORTS RECEIVED AND FILED:

Code Enforcement Officer  
Police Report

QUARTERLY REPORTS RECEIVED AND FILED:  
Water/Sewer

COMMUNICATIONS:

Clerk Carmer read a letter received from Senator Ortt's office informing the Town of our CHIPS apportionment for 2016-2017. The Town will receive \$89,317.29 in CHIPS funding, and an additional \$20,387.56 in PAVE-NY funding, for a total of \$109,704.85.

Clerk Carmer also advised that the Town received three notifications from Lighthouse Wind, LLC identifying municipal officers who have a property interest with them. Chris Czelusta, a Town of Somerset Planning Board member, has property located on Hosmer Road, SBL #16.00-3-11. Stephen B. Lee, a Town Code Enforcement Officer, has property located on Haight Road, SBL #17.00-1-5. Gary Alt, a Town Board member, has property located on West Somerset Road, SBL #16.00-3-20.21, 16.00-3-5.11, 17.00-1-29, and 17.00-1-30.

Supervisor Engert advised that we will be receiving funds for a generator at Faith United Methodist Church through an Emergency Preparedness Grant. The church acts as an emergency center for the school and town and applied for the grant, but the funds will be submitted by the State to the Town for distribution. The generator is being purchased for \$37,505 from the lowest bidder, Burzynski Electric.

**LOCAL LAW TO OPT OUT OF NEW YORK STATE REAL PROPERTY TAX LAW SECTION 487 EXEMPTION**

Supervisor Engert introduced the following local law:

Be it enacted by the Town Board of the Town of Somerset as follows:

Pursuant to New York State Real Property Tax Law Section 487(8) (a), the Town of Somerset, New York does hereby provide that no exemption from taxation shall be applicable with respect to any solar or wind energy system or farm waste energy system.

This Local Law shall take effect immediately upon filing with the Secretary of State.

RESOLUTION 94-2016

**PUBLIC HEARING ON LOCAL LAW TO OPT OUT OF NEW YORK STATE REAL PROPERTY TAX LAW SECTION 487 EXEMPTION**

On a motion of Supervisor Engert, Seconded by Councilwoman Jansen, the following resolution was:

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

Whereas, a Local Law "To Opt Out of New York State Real Property Tax Law Section 487 Exemption" has been introduced; and

NOW, THEREFORE, BE IT

RESOLVED, that the Somerset Town Board does hereby call for a public hearing to be held on the introduced Local Law "To Opt Out of New York State Real Property Tax Law Section 487 Exemption" at the Somerset Town Hall, 8700 Haight Road, Barker, NY 14012 at 6:30PM on June 8, 2016.

Regarding the Lighthouse Wind Article 10 project, Supervisor Engert advised that the Town filed a motion regarding stipulations. There was a ruling on the motion and Supervisor Engert read the following statement regarding the ruling:

New York State Public Service Law Section 163(5), provides for a voluntary process whereby the stakeholders in a given project, including state agencies, the applicant, and any other interested parties may enter into stipulated agreements which may narrow the issues in dispute.

Upon becoming aware of recent ongoing meetings between Apex, State and Federal agencies and being denied the opportunity to participate, our attorneys made a motion to the Administrative Law Judge ("ALJ") Panel requesting the full involvement of the Town of Somerset in all discussions regarding the Lighthouse Wind project. Recently, in an informal decision rendered verbally on a conference call between available parties by the ALJ Panel, our motion was denied and we were also informed that the discussions between Apex and government agencies were confidential. In addition the ALJ Panel imposed a verbal gag order pursuant to New York State Public Service Rules of Procedure Section 3.9(d) citing confidentiality.

New York State Public Service Law Section 163(5) also states: Any applicant shall afford the public a reasonable opportunity to submit comments on any stipulation before it is executed by the parties.

My disagreement with the position announced by the ALJ Panel is that it limits the effectiveness of public comment if the stipulations are negotiated in private without public or community input.

I am extremely disappointed that Somerset residents are unable to participate in these negotiations or discuss at this time such sensitive topics and issues which directly impact our Town. This is a direct consequence of the elimination of Home Rule in Article 10. Because of this ALJ decision our community is shutout of negotiations on critical aspects of the Apex project. I have requested our attorney, Dennis Vacco, to file an appropriate motion with the ALJs to reconsider its verbal decision so that each and every step of this Article 10 proceeding and the entire stipulation process is fully open to all residents of Somerset.

TOWN BOARD MEETING  
MAY 11, 2016 PAGE 4

Again, unfortunately, I am unable at this time to make any further comment on the stipulation process, except to say, if you are as concerned as I am about letting the sunshine in on the entire Article 10 proceeding, then write the Public Service Commission and let them know how you feel.

RESOLUTION 95-2016

**AUDIT OF CLAIMS**

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

ADOPTED: Ayes           4       Engert, Wayner, Alt, Jansen  
              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. 162 through No. 189	\$ 54,750.69
Highway Fund	No. 59 through No. 71	\$ 27,610.58
Sewer Fund	No. 47 through No. 57	\$ 9,707.59
Water Fund	No. 33 through No. 40	\$ 6,235.51

PRIVILEGE OF THE FLOOR:

Pam Atwater discussed a required legal notice that was submitted to the newspaper by APEX. She clarified her husband Randy's position in conveying property to Lighthouse Wind, LLC, advising that their Michigan partners sold their property in an online public auction. Randy and Pam had no involvement in the auction and they were not aware of who was bidding on the property. She stated that they have no financial interest going forward, and the transaction had no implications with them personally. She also discussed a letter she wrote to the Attorney General which she submitted for the Town's records and is posted on the DPS website. The letter addressed Apex Clean Energy's false claims regarding Save Ontario Shores, Inc. and advised that an Apex representative made a presentation to the Buffalo Sierra Club and made many assertions during the session that were either misleading or untrue. She wrote in her letter that these deceptive practices must not be allowed to continue. Three SOS members were at the meeting and swore in an affidavit to the truthfulness of their letters.

Marcia Ray is livid at the course of communication between the townspeople and Apex. She said that she is proud of the SOS members as they are reasonable, educated and fair. She stated that they have a personal interest in this and do not receive outside funding. She asked if we should take a bus to Albany to make them hear us. She applauded the Supervisor for keeping his cool and continuing his efforts.

Chris Bronson stated that she was one of the members who attended the meeting with Pam Atwater. She said that Bo Shuff spoke for 1-1/2 hours about SOS, saying that the members are migratory and that they are paid by big oil. She said that Sierra Club members think it is all about the money.

TOWN BOARD MEETING  
MAY 11, 2016 PAGE 5

Cathi Orr said that this is her second project so she is targeted as a “mover.” She feels this is an unethical company that is brow beating us. She agrees with Marcia that we should take a bus to Albany.

Betty Wolanyk spoke regarding Bo Shuff’s statement that opponents have not lived here long, and stated that she graduated from Barker in 1972. She discussed leases and submitted her statement for the record. She said that Apex has stated that they have more than 100 landowners who have signed leases with 8,500 and almost 9,000 acres in Somerset and Yates. She stated that these numbers do not reconcile with the leases that have been filed with Orleans and Niagara Counties. The filings show that 31 entities made up of 53 individuals have signed 7,113 acres on 113 parcels. She also stated that of these, 9 lease holders with 1,545 acres do not live in Somerset or Yates. She quoted Adolf Hitler: “The great mass of people will more easily fall victim to a big lie than to a small one” and she feels that this is Apex’ business model.

Jim Hoffman congratulated the Town for the pressure they are putting on the project and asked them to keep pressuring. He feels the Town is winning the PR battle.

Agnes LaPort is wondering who the 100 lease holders are. She thought they had to publicize it after they signed the Code of Conduct. She also said that she is happy to see the Methodist church running the Farmer’s Market this year, seeing it move to the Town. She asked what is happening with a bank moving to Barker.

Supervisor Engert provided information on what he has been doing but said he is still waiting. They discussed having a kiosk, but he said the challenge is getting a bank to commit to buying property and installing one.

Agnes asked about Evans Bank.

Supervisor Engert did check with Evans Bank but it is not feasible for them.

Sue Davis agrees with Marcia Ray about taking a bus to Albany. She said she loves Somerset and has lived here her whole life. She would not mind having her taxes raised to fight this.

Taylor Quarles provided updates on the wind project:

- Apex continues to perform compliance measures and are currently in compliance with the code of conduct. He expects to complete the compliance measure within a couple weeks to a month.
- They are in the final stage of the pre-application process. They released their first stipulations and will release the remainder in the next couple of weeks. After that everyone can enter into work sessions to discuss the proposed stipulations and comments.

He stated that he is excited to get through all of the stipulations, complete the required studies, and to release the locations and participants as it has been frustrating for everyone to not have all of the details. After the application is released, the review will take 1 to 1-1/2

TOWN BOARD MEETING  
MAY 11, 2016 PAGE 6

years. He reminded everyone that they have office hours in Barker and welcomed anyone to stop in.

Wally Coates spoke as President of the Barker Fire Department and thanked the Town for plowing and mowing at the Fire Hall. He said that Mel Denny and his crew have done a great job on it this past winter. Regarding wind, he has an issue with the statement that none of the older families are opposed to the project. He stated that his family has been here for 8 generations on the same property.

John Wolanyk said that he reviewed a contract from Apex for about 6 months and said that he feels sorry for every leaseholder because they are liable for any damage, not Apex. He said that is not ethical. He asked how the Town is going to hold Apex personally liable after they sell.

RESOLUTION 96-2016

**EXECUTIVE SESSION**

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

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

Resolved to enter into executive session at 7:15PM at the request of Highway Superintendent Flint to discuss a personnel matter.

RESOLUTION 97-2016

**RETURN TO REGULAR SESSION**

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

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

Resolved to return to regular session at 7:34PM.

On a motion of Councilman Alt, seconded by Councilwoman Jansen, the meeting adjourned at 7:35P.M. subject to the Call of the Clerk.

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Tracy L. Carmer, RMC  
Town Clerk