

TOWN BOARD REGULAR MEETING
MAY 10, 2017

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 10th day of May 2017.

Present: Daniel M. Engert ----- Supervisor
Gary R. Alt ----- Councilman
Jeffrey M. Dewart ----- Councilman
Robin R. Jansen ----- Councilwoman
Tracy L. Carmer----- Town Clerk
Melvin H. Denny ----- Supt of Water/Sewer/Grounds
Michael M. Flint ----- Supt. of Highways
Brian Sibiga ----- Engineer
David Haylett----- Attorney

Absent: Mindy Austin ----- Confidential Asst. to the Supervisor

Attended by: Approximately 45 residents and students

Supervisor Engert called the meeting to order at 6:30PM with the Pledge to the Flag

RESOLUTION 51-2017

APPROVAL OF THE MINUTES

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

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

Resolved the minutes of April 12, 2017 be accepted as submitted.

MONTHLY REPORTS RECEIVED AND FILED:

Code Enforcement Officer
Dog Control
Police Report

RESOLUTION 52-2017

APPROVAL OF THE SUPERVISOR'S MONTHLY REPORT

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

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

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

COMMUNICATIONS:

- Clerk Carmer stated that we received a letter from the Niagara County Department giving us their approval to lay the water lines for the extension at the Lighthouse Christian Camp.
- The Town of Yates sent us a notice of public hearing for a proposed local law known as A Local Law Enacting Solar Energy Systems Regulations, which was held on May 8th.
- A letter from NYPIRG (New York Public Interest Research Group) was received notifying the Town that they will be going door-to-door from May through August and should be supplying the clerk with a list of the employees' names and addresses. NYPIRG is a not-for-profit whose areas of concerns include consumer protection, environmental preservation, public health and several other public policy issues. They will circulate support statements, collect small contributions, and distribute information and recruiting support on a variety of issues of concern to the community, according to the letter.
- Old Fort Niagara sent an email advising that Wednesday, May 17th from 6:00PM – 8:00PM is Old Fort Niagara Community Night and all Niagara County residents get free admission.
- Niagara County Department of Public Works and NYSDEC are providing a FREE Household Hazardous Waste Voucher Program to all Niagara County residents from May 1 to August 31. Clerk Carmer read the items that are accepted and stated that the information will be posted on our website.

RESOLUTION 53-2017

FUEL TANK REMOVAL

Supervisor Engert stated that he has concerns of spending significant money on the project without knowing exactly what is down there and what we need to do.

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

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

WHEREAS, the Town of Somerset owns an underground fuel storage tank at 8684 Haight Road, Barker, NY that is no longer utilized by the Town; and

WHEREAS, the Town notified the New York State Department of Environmental Conservation in 2015 that the Town would permanently close or remove said tank; and

WHEREAS, the Town engineer solicited proposals for the removal of the fuel tank and the proposals received exceeded the amount budgeted; and

WHEREAS, the Town Engineer has solicited proposals for professional services to remove and test soil samples around the fuel tank to determine the viability of permanently closing the inactive fuel tank; and

WHEREAS, the Town Engineer received one verbal quote for \$3,200.00 from The Pump Doctor Inc. to provide the professional service of removing and testing four soil samples from the area surrounding the out of service fuel tank and the Town is awaiting a proposal from Nature's Way Environmental to provide the same services; and

WHEREAS, the Town Engineer received no response from any additional vendors to provide the same services; and

WHEREAS, the Town Board determines that it is in the public interest to ensure that the out of service fuel tank is in compliance with all Federal, State, and Local Laws; now therefore be it

RESOLVED, that upon receipt Nature's Way Environmental's proposal and review by the Town Engineer and Town Attorney, the Town of Somerset Supervisor is hereby authorized to execute an agreement with the lowest responsible vendor to remove and test soil samples surrounding the out of service fuel tank; and be it further

RESOLVED, that said agreement for soil removal and testing shall not exceed \$10,000.00.

RESOLUTION 54-2017

BARKER FIRE DEPARTMENT MEMBERSHIP

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

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

Resolved Heather Howell is approved for membership in the Barker Fire Department effective May 10, 2017.

PRAYER SHAWL

Gail Damon, who is a resident and leads a prayer shawl ministry at Our Lady of the Lake, presented prayer shawls to Somerset Police Chief John Yotter. The shawls are used to offer comfort during emergency situations. Gail also provided shawls to Supervisor Engert, who accepted on behalf of the Niagara County Sheriff's Department.

RESOLUTION 55-2017

POWER PLANT MULTIPLE USE PLAN COMMITTEE

Supervisor Engert said that forming this committee is long overdue as the Plan was adopted in 1982 and is included in every Town planning document. He said that we are currently in phase 3. He would like the committee to report back to the Town Board a comprehensive analysis on what the site would look like for potential recreational use.

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

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

WHEREAS, in 1979, the Erie and Niagara Counties Regional Planning Board prepared the Somerset Power Plant Multiple Use Plan for the development of parkland and recreation areas on the power plant site; and

WHEREAS, the multiple use plan was submitted to the Town and the same accepted by the Town in 1982; and

WHEREAS, the Town incorporated the multiple use plan into the Local Waterfront Revitalization Program adopted in 2006; and

WHEREAS, the Town has continuously incorporated the multiple use plan in the Town Comprehensive Plan adopted in 2003 and subsequently amended in 2012 and 2016; and

WHEREAS, the multiple use plan places a strong emphasis on shoreline access and recreation activities and is consistent with current New York State Coastal Management guidelines; and

WHEREAS, the multiple use plan details recreation and development opportunities on the hills and slopes formed by the power plant including sledding, cross country skiing, hiking, and scenic vistas; and

WHEREAS, the Town Board finds that it would be in the public interest to review and study the concepts and findings in the Plan to determine whether recreational development of the lands identified in the Plan are feasible at this time;

NOW THEREFORE BE IT RESOLVED, that the Town Board hereby establishes the Somerset Power Plant Multiple Use Plan Review Committee to review the multiple use plan, carefully study recent scientific developments and research, and offer recommendations for the implementation of the concepts presented in the Plan; and be it further

RESOLVED, that the committee shall be an Ad Hoc Supervisor's committee and the members shall serve at the pleasure of the Town Board with no compensation; and be it further

RESOLVED, that the following individuals or representatives shall serve on the Somerset Power Plant Multiple Use Plan Review Committee:

- Daniel M. Engert, Town Supervisor
- Robin Jansen, Town Board Member
- James Hoffman, Town Resident
- John Hotaling, Town Planning Board Chairman
- Brian Gregson, Plant Manager, Somerset Operating Company, L.L.C.

RESOLVED, that the committee shall commence its first meeting no later than June 16, 2017 and shall be called by Mr. Engert, Town Supervisor with two weeks written notice; and be it further

RESOLVED, that Mr. Engert, Town Supervisor shall coordinate and utilize the Town Planner, Andrew Reilly P.E., AICP of Wendel to assist the committee; and be it finally

RESOLVED, that this committee shall report its findings and recommendations to the Town Board on or before December 31, 2017.

LAKESHORE EROSION

Supervisor Engert spoke on the problem of Lake Ontario flooding.

- IJC 2014 plan was instituted in January 2017. The Town felt this was a disastrous plan and is on record opposing it, along with all of the towns along the southern shore of Lake Ontario. Our certified resolution was submitted in July 2013.
- Since this is an International plan, it is like a treaty and difficult to address.
- Supervisor Engert provided a timeline beginning April 16th when he toured the areas and met with other Town Supervisors; declared the State of Emergency on April 20th; and met with Congressman Collins on April 25th.
- Governor Cuomo declared a State of Emergency on May 2nd which devotes state resources and helps to get FEMA involved. The following week the Governor reached out to the Army Corps of Engineers and it is unknown when the President will make a decision. Supervisor Engert was advised that everyone should do a good job documenting, photographing and cataloging expenditures of what is being done to fortify the shoreline so they are ready if funding becomes available.
- Supervisor Engert provided important phone numbers that are also being sent to all homeowners and being posted on the Town website.
- DEC permits and regional info are on our website.
- Friday, May 12th from 10:00AM – 8:00PM at the Olcott Fire Hall the Department of Financial Services will be available to assist with completing insurance claims.
- Sandbags are being provided for immediate structural protection for homes or businesses.
- Watch the Town website for updates.

BROADBAND INITIATIVE

Supervisor Engert stated that the Governor developed a map for New York that showed all internet access and it showed that 65% of Somerset had high-speed internet, which was not accurate. Time Warner was not interested in expending funds to expand our coverage. We surveyed the town, address point to address point, to determine the actual number of homes that are not serviced and in 2013 joined with 7 other towns to form the Niagara Orleans Regional Alliance Initiative. Time Warner was sold to Spectrum who has agreed to improve infrastructure as part of their purchase agreement and is in Phase 1 of the project.

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Councilman Alt asked for an update on West Somerset Road construction. Supervisor Engert said that environmental (wetlands) issues were discovered at the East end and further studies needed to be done.

RESOLUTION 56-2017

AUDIT OF CLAIMS

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

ADOPTED: Ayes 4 Engert, Alt, Dewart, 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. 168 through No. 205	\$ 82,959.05
Highway Fund	No. 59 through No. 67	\$ 3,732.80
Sewer Fund	No. 50 through No. 55	\$ 2,026.51
Water Fund	No. 39 through No. 49	\$ 8,249.75

PRIVILEGE OF THE FLOOR:

Pam Atwater spoke of a study done by a former law judge that says that developers need to build public support/acceptance of citing. In the northeast land values are higher than average and values are strongly tied to development. It says elected officials must work harder to engage communities before projects are cited and approved. He stated that second homeowners have proven savvy opponents and she feels this is dismissive of the issues our residents have been bringing to light. She read part of the article that mentions our towns and finds it interesting that NYPIRG is coming to our town now.

Supervisor Engert advised that he will be sending a letter to NYPIRG asking for the number of people, vehicles, etc.

Steve Royce stated that in the 1950's cigarette companies were claiming that their product was harmless and similarly in 2009 the wind turbine industry reported that the symptoms of Wind Turbine Syndrome are a subset of annoyance reactions and are of little clinical consequence. He said that according to medical professionals in 2013 noise induced annoyance is considered to be a health risk and should be classified as a serious risk. He is concerned that no one knows what an adequate setback is and he feels that our citizens are being used as guinea pigs.

Chris Bronson discussed the importance of getting a good night's sleep. People who do not sleep have lots of things happen to them, and people who live near wind turbines do not get good sleep. A doctor in Australia is willing to expose his experience of treating wind farm victims of sleep problems. She stated that this is like sea sickness, where not everyone is affected but one out of five will be. Sleep deprivation cause problems concentrating in children.

Peg Schwabel said that APEX says the sound level is fine at 45 DBA and that is based off old World Health Organization guidelines that did not include wind turbines. The standards are being redone to include wind turbine sounds. The WHO website suggests community noise be less than 30 DBA in homes for good quality sleep and less than 35 DBA in classrooms. In a 2014 study in Health Canada states that scientific evidence base in relation to wind turbine noise exposure and health is limited and results may not be generalized to areas beyond the sample. She reported from a study that says when noise levels get to 45 DBA 45% of the population will have strong appeals to stop the noise. 25 DBA represents a rural night time environment.

Mary Ellen Royce stated that APEX billboards prioritize education. She is concerned about the effects of flicker, infrasound, and low frequency emissions on children with disabilities. All of the stories she has read ends with the caviat "more studies are needed." She said that APEX needs to wait for the studies before building so close to children.

Jim Hoffman stated his appreciation for being placed on the Multiple Use Plan Committee and said the plan was endorsed by the Public Service Commission. He spoke of an article about the Oregon desert where migrating wildlife was used to kill projects. In Oklahoma tax credits were eliminated and turbines will be taxed. He stated that hydro power in Niagara is not being fully utilized and we should take up the issue to use Niagara's hydro power.

BROADBAND INITIATIVE – LEGISLATOR GODFREY

Legislator Godfrey provided an update that is current as of this week. Senator Ortt asked if there is enough money left in round three to reach the last child, the last house and the last mile and he was told yes. The third round opens June 15th. Spectrum has committed to 145,000 homes as part of the agreement with the FCC and they have 4 years to complete the build out. Niagara and Orleans counties are scheduled to be part of the first year build out. He is not sure when it started but within the first year 95% - 97% has to be complete. He said that the boards have been lobbying for 3 years to get broadband to our residents. He said there are 943 units in Niagara County that are not included in round one and he provided a map that shows the coverage. For those who are not being covered, the alliance trying to get a wireless vendor to provide a solution. He stated there are two potential vendors that say this is doable if the funding is there and he found out 2 days ago that the funding is there.

Betty Wolanyk asked about the wireless service.

Legislator Godfrey stated the technology can provide 50 Meg download and will run fiber where it is feasible. He stated there is enough money to fiber every home in New York State.

Agnes LaPort asked if we will notice it when it is installed.

Legislator Godfrey said it may be buried or aerial, he does not know.

LAKE LEVEL UPDATE – LEGISLATOR GODFREY

Legislator Godfrey stated that the mobile command center that is being set up on Friday is strictly for insurance. He said the DEC has streamlined the permit process and one of his residents received her approval in less than 24 hours. This is to repair and fortify what you already have, not for new builds. He stated that today a bill was passed for municipalities who have sustained damage to their infrastructure (water treatment facilities, dockage, etc.) A Somerset resident related that she had installed \$10,000 worth of boulders and they are gone, along with her boathouse.

Legislator Godfrey said that he cannot help with the cost at this point, but she can get a permit to put them back. He is not an engineer and has no recommendation, but hopes that Albany and Washington will provide funding.

Norm Jansen asked if the state will do anything about the lighthouse at Golden Hill State Park.

Legislator Godfrey said that they will have money for that.

Peg Schwabel said that insurance will not cover erosion and asked what to expect if she goes to Olcott on Friday.

Legislator Godfrey suggested that she go and inquire about what to do. He said the people that are there helping are from the New York State Department of Financial Services.

Legislator Godfrey was asked what are the chances of getting Plan 2014 changed? He said that President Trump can rescind if he wants and he can replace the commissioners. He said the lake level is the highest in 157 years, higher than the floods of 1973.

Supervisor Engert stated that Congressman Collins said that we can take care of the United States Commissioners but there are still Canadian Commissioners.

Legislator Godfrey agreed and said it is all about power generation.

Jon Hotaling asked if FEMA will eventually help the residents out?

Supervisor Engert said as of this afternoon it is still unknown. He said there are thresholds that have to be hit at the state level before federal funding kicks in.

Legislator Godfrey has a book with 70+/- letters that were sent to the IJC in September 2016 in opposition to the plan.

RETURN TO PRIVILEGE OF THE FLOOR

Cathi Orr said that APEX's statement that the turbines will create only 45 decibels, is not true. Her friend has a turbine 1,500 feet from her house and the noise sounds like a non-stop wind storm. She stated that when the World Health Organization made the recommendation that turbines have a 1-1/4 mile setback was when turbines were only 200 feet tall.

Agnes LaPorte stated that she is proud to be a Somerset resident as our board truly cares.

Highway Superintendent Flint stated that he is dividing his property so that his daughter can have 14 acres to build a house. He wanted it known that he will be putting in culverts and will have the receipts to show that he personally paid for it.

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On a motion of Councilman Dewart, seconded by Councilman Alt, the meeting adjourned at 8:08P.M. subject to the Call of the Clerk.

Tracy L. Carmer, RMC
Town Clerk