

TOWN BOARD REGULAR MEETING
NOVEMBER 9, 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 9th day of November, 2016.

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

Attended by: approximately 40 residents and students

Notice of said meeting sent to the Lockport Union-Sun and Journal on October 20, 2016 with same notice being posted at the Town Hall and on the website on the same day.

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

Clerk Carmer read the Notice of Public Hearing.

Solar Energy Systems Local Law Public Hearing

Supervisor Engert called the hearing to order at 6:34PM.

Herb Linderman stated that he feels requiring a lot size greater than one acre for a ground mounted system in the Lakeshore Residential District is too restrictive.

Betty Wolanyk referred to page 5 item I that states the development and operation should not have a significant adverse impact on wildlife, etc. She asks what are the consequences? Page 6 item M, page 7 item D, and page 11 items E and F refer to dismantling the systems. She feels a bond should also be required. She thanked the board for their work.

Jim Hoffman said that he supports the concept but compared it to wind in that they are space hungry, rely on grants and tax breaks, are unreliable as the sun does not shine all the time, among other things. He pointed out on page 3 item D that he feels this should require a special use permit; page 3 item I he asked why our Town is exempt from its own law; page 6 item L he asked what might be waived because of the Ag and Markets Law; page 6 item M regarding disposal he feels it should refer to EPA regulations (40 CFR Part

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273) since batteries and possibly solar panels are considered hazardous waste and possibly consider recycling; page 7 item D decommissioning same comments as page 6 item M; page 8 item B he feels needs clarification and provided an example if he has 200 acres, is that considered two lots; page 9 item H is a study required by the applicant for wildlife impact; page 9 item N regarding signs he asked if the Town has a sign law. In general he feels all systems should be registered with the local fire company. He believes a maintenance plan for fire prevention should be required and we should consider a requirement for fire suppression. He would like to see the Planning Board return to allowing informal comments at their meetings. He feels some of this could have been worked out prior to the public hearing. He also would like to know how and when does Article X apply to the proposed law.

Cathi Orr said requiring a bond would be good because of the hazardous materials.

With no one else desiring to be heard, on a motion of Councilman Alt, seconded by Councilman Wayner, the following resolution was

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

Resolved the public hearing is closed at 6:45PM.

Supervisor Engert stated this is being heard at the County Planning Board this month so we will not take any action at this time. The board will also review the comments presented tonight.

2017 Budget Public Hearing

Supervisor Engert opened the hearing at 6:47PM.

Clerk Carmer read the Notice of Public Hearing.

Dale Howard would like the Board to add a PR line item to address Article X and have a PR firm make a commercial to get back our home rule to be broadcast throughout Western NY and the Capitol District.

Richard Meyers stated that \$0 was spent on Economic Development in 2015, \$14,000 was budgeted for 2016 and it dropped to \$10,000 for 2017. He asked what that money is planned for? On employee benefits he asked why the state retirement dropped from \$62,000 to \$45,000 in the General Fund. The Fire and Police retirement dropped from \$8,000 to \$2,300. He noted that the attorney fees were \$35,000 in 2015, \$85,000 in 2016, and are \$200,000 for 2017 and he asked why that increased. He would also like to know why the engineering fees went from \$28,000 to \$35,000 to \$100,000. He asked if the Property Tax Non-Distribution (sales tax) was transferred because it was increased in the Town Outside Village (B) fund, and decreased in the Highway (DB) fund. The Services for

Other Governments dropped from \$450,000 in 2015 to \$191,000 and he would like to know why. He stated that we are spending \$300,000 for Article X and that is more than we are getting in the PILOT and thirty times what we are putting into economic development. He said we should be focusing on bringing in tax money and options for the Town, instead of fighting attorneys with attorneys.

Supervisor Engert stated that he would get the answers to Richard.

With no one else desiring to be heard, on a motion of Councilman Dewart, seconded by Councilwoman Jansen, the following resolution was

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

Resolved the public hearing is closed at 6:55PM.

RESOLUTION 141-2016

APPROVAL OF THE MINUTES

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

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

Resolved the minutes of the previous meetings on October 12, 2016 and October 26, 2016 are approved as submitted.

RESOLUTION 142-2016

APPROVAL OF THE SUPERVISOR'S MONTHLY REPORT

On a motion of Councilman Wayner, seconded by Councilman Dewart, 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
- Police Report

COMMUNICATIONS:

Clerk Carmer announced that she and Village Clerk Detschner have partnered to bring a presentation to our residents. The NYS Citizen Preparedness Corps will be here to inform our residents what they would need in order to be prepared for an emergency. They will teach you how to develop an emergency plan, build a survival kit, and give you information to sign up to receive emergency notifications. The presentation will take place on December 6th at 6:00PM in the Court Room. It is free and open to the public.

RESOLUTION 143-2016

EMERGENCY REPAIR – LOWER LAKE ROAD WATER LINE

Supervisor Engert stated that the firm we selected to perform the work has not complied so we received other pricing options. The price came in much less than what we had previously approved for the project.

Brian Sibiga stated that we received two quotes, the lower one being \$7,975. The other bidder was just under \$12,000. The other two bidders did not respond. We expected to spend \$25,000 - \$30,000 but our Water Department under the direction of Superintendent Denny has done a lot of the work themselves saving the Town a lot of money. He said Kandey Company has done work in the area and is a reputable contractor. Before they begin, Superintendent Denny will meet with the contractor to be comfortable with them.

Supervisor Engert thanked Superintendent Denny and Brian Sibiga for all the work they have put into this.

Councilman Alt asked if the price includes materials. Brian told him it does.

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

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

WHEREAS, the Town Board previously passed a resolution declaring the water main break in a water line crossing Fish Creek in in the Town of Somerset an emergency pursuant to GML §103(4) and authorized the Supervisor to execute an agreement with Scanex Pipe to address and fix the water main break at a maximum expenditure of \$50,000.00, and

WHEREAS, although it initially appeared that Scanex Pipe was available to do the work, they were ultimately unavailable in the tight timeframe necessitated by the emergency nature of the situation, however Kandey Company, Inc. was identified by the Town's engineers as also being a reputable firm with the ability to address and fix the water main break and was available to complete the work immediately, now therefore be it

RESOLVED, that Kandey Company, Inc. be substituted for Scanex Pipe and compensated for work performed in fixing the water main break at an amount not to exceed \$10,000.00, this resolution serving as a ratification of all actions taken to engage them to do the work, and the Supervisor is authorized to execute further agreements and documents necessary to effectuate the same.

RESOLUTION 144-2016

2017 BUDGET

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

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

Resolved the budget for 2017 is adopted as presented.

RESOLUTION 145-2016

2017 FIRE DEPARTMENT CONTRACT

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

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

Resolved the Supervisor is authorized to enter into an agreement with the Barker Fire Department for fire protection services for 2017.

RESOLUTION 146-2016

COMPREHENSIVE PLAN UPDATE

Supervisor Engert stated that the plan has been in place for five years and there have been changes in Town that necessitate a review of the Town's Comprehensive Plan. Clerk Carmer will post the preliminary draft to the web so the residents can view the proposed changes before we hold a public hearing.

On a motion of Councilman Dewart, 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
	Councilman Dewart	Aye

WHEREAS, the Town of Somerset has worked diligently in preparing a Comprehensive Plan update for the Town, and

WHEREAS, through the coordinated actions of the Town Board, Town departments and the Town Planner, the Town has completed a draft Comprehensive Plan update, and

WHEREAS, the Town of Somerset has determined this draft Comprehensive Plan update is sufficiently complete for official agency input and continued public review and input, and

WHEREAS, in accordance with part 617 of the Implementing Guide Regulations pertaining to Article 8 the State Environmental Quality Act (SEQRA) of the Environmental Conservation Law, the Somerset Town Board would like to begin the environmental review process of the Comprehensive Plan update by conducting a coordinated review requesting Lead Agency status and beginning the adoption process; and, now therefore,

BE IT RESOLVED, that the Somerset Town Board accepts the draft of the Comprehensive Plan Update as complete and ready for public review and request the designation as the SEQRA Lead Agency in accordance with SEQRA regulations for the purpose of conducting a coordinated review of this action; and

BE IT FURTHER RESOLVED, that the Town of Somerset authorizes Wendel to begin the SEQRA coordinated process, and

BE IT FURTHER RESOLVED, that the Somerset Town Board directs that a public hearing be held in accordance with New York State Town Law November 30, 2016 at 6:00PM at the Town Hall to solicit comments on the draft Comprehensive Plan Update, and

BE IT RESOLVED, that copies of the document be made available for public review at the Town Hall and on the Town's website.

Supervisor Engert stated that the Town Planner will present an overview the first hour and the public hearing will open after that.

CREDIT CARD AGREEMENT

Supervisor Engert stated that in the process of finalizing the agreement for processing credit cards with the new Utility program, the Town Attorney identified an area of concern and passed along a memorandum on it. Subsequently we have determined that it is common language and many county agencies have adopted agreement with that language, along with the Village of Barker.

RESOLUTION 147-2016

ZONING BOARD APPOINTMENT

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

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

Resolved Kent Wakefield is appointed to another term on the Zoning Board with the term expiring December 31, 2021.

RESOLUTION 148-2016

NYS AOT HOME RULE RESOLUTION

Supervisor Engert stated that a resolution was put forward to the Association of Towns to support Constitutional Home Rule in the siting of Wind and Solar Energy Facilities. At the annual meeting the resolution did not get adopted as a formal legislative item. He stated with further knowledge of Article X he would like to re-introduce the resolution and he has spoken to the Niagara County Supervisors Association and the supervisors will also be adopting the resolution to call upon the Association of Towns to take a more active role in the issue of home rule. He stated that there were thirty five towns in attendance at a

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meeting he attended in Syracuse and the resolution is being distributed to that group as well.

On a motion of Councilman Wayner, 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
	Councilman Dewart	Aye

WHEREAS, the New York State Constitution grants towns broad home rule powers to adopt local laws with respect to (1) their "property, affairs and government" and (2) other powers granted in statute whether related to their property, affairs and government or not, and

WHEREAS, Home Rule establishes a local government's authority as the source for local zoning and planning power and gives municipalities great flexibility in dealing with local regulation of land use, keeping these decisions as close to the citizens who live there as possible; and

WHEREAS, the New York State Legislature enacted amendments to Article 10 of the Public Service Law to establish procedures for certifying major electric generating facilities to include renewable energy sources such as wind and solar; and

WHEREAS, industrial wind and solar power developers now seek certification from the New York State Board on Electric Generation Siting and the Environment and not local governments, to erect industrial turbines and expansive solar installations over many thousands of acres in towns across the state; and

WHEREAS, wind and solar projects are now being proposed in record numbers across the state and numerous towns are now faced with complex regulations, enormous and expensive tasks in order to protect the health, safety and general welfare of their citizens; and

WHEREAS, prior to Article 10, local governments successfully developed, implemented and administered local wind and solar energy siting laws and policies with the input and guidance of local taxpayers, residents, business, agricultural representatives, environmentalists, energy generators, planners and lawyers; **NOW THEREFORE BE IT**

RESOLVED, that the Town of Somerset calls for the Association of Towns to aggressively support the constitutional rights of a local government, which is closest to the citizens of that region, to decide how land will be used within its jurisdiction; and

BE IT FURTHER RESOLVED, that the Town of Somerset calls for the Association of Towns to actively seek amendments to Article 10 to afford local governments and communities with 1) more meaningful participation in the siting of industrial wind and solar energy facilities and 2) the associated funding to do so in order to protect the health, safety and general welfare of the citizens.

RESOLUTION 149-2016

AUDIT OF CLAIMS

On a motion of Councilman Dewart, seconded by Councilwoman Jansen 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. 380 through No. 420	\$ 36,673.68
Highway Fund	No. 133 through No. 142	\$ 6,815.72
Sewer Fund	No. 128 through No. 140	\$ 4,161.23
Water Fund	No. 86 through No. 102	\$ 62,316.88

PRIVILEGE OF THE FLOOR:

Cathi Orr stated she is proud of the Board for standing up for our rights.

Marcia Ray stated the amount of work and time put into this has not gone unnoticed. She also stated she is proud of Mel Denny and his workers.

Pam Atwater thanked the Board and wants them to stand strong against the lawsuit brought by APEX. She talked about a publication entitled "Wind Turbine Noise and Human Health: A Four Decade History of Evidence that Wind Turbines Pose Risks" that was released last month. It was prepared by two authors that do not take a pro-wind or anti-wind position. They conclude that further investigation on the noise and specific health effects in exposed individuals is sorely needed. They state that people should be protected by conservative siting guidelines. They feel the objective of research "should be to reveal directions for the industry in balancing the energy needs of society with the need to protect public health." Pam said the people of Somerset and Yates do not want to end up as collateral damage.

Jim Hoffman agrees with everything that has been said so far. He thanked the Town Board and the Planning Board that are taking hits with a lawsuit that was filed against us for defending our rights. He provided some articles to the Board. One was written about the Prime Minister of Saskatchewan cancelling a wind project due to potential negative impacts to birds, among other risks. That project would have consisted of 79 wind turbines with approximately 42 miles of access roads and 60 miles of trenched transmission lines.

Another article stated the American Bird Conservancy is going to sue the Ohio National Guard for violating the Endangered Species Act and other federal laws. The American Bird Conservancy also produced an article that wind does not belong on great lakes shores stating the turbines pose an “unacceptably high risk” to migratory birds.

Dick Hellert of Yates has been in real estate for thirty years. He submitted a letter he received from a potential home buyer who is choosing to omit our area from their search due to the excessive number of wind turbines likely to be placed. If the project does not proceed, they will resume their search here. He said the letter refers to Orleans County but we should consider it pertaining to Somerset because they would have the same reaction if they were looking here.

Agnes LaPort thanked the Board for their hard work. She said APEX is suing because they are not getting what they want.

Peg Schwabel thanked the Board also. She referred to a wind turbine project in Buffalo that has fourteen turbines 410’ tall. She said they are built on a brownfield, formerly Bethlehem Steel. She said here they want to place turbines 620’ – 650’ on prime land. She said there is no comparison between the brownfield and the land in Somerset. She said they will get large tax credits annually along with power purchase agreements that are taxpayer funded. She believes the credits are up to \$25million annually.

Mike Basil thanked the Board for working as a team. He said that APEX says they are looking forward to working with our community, yet they serve us with a lawsuit. He talked about deception by omission. He said the information APEX provided during the information phase isn’t the problem, it is the information they did not provide. He said it took our citizens to come up with the truth and asked why we had to find out ourselves about the many letters with the Department of Interior; the shadow length produced by the 600’-700’ turbines; the amount of people being affected both off-season and during the summer. He wants to know why they didn’t do an impact map of our area showing us where they will be placed and how big they will be. He asked why they didn’t tell us about the issues with the lease holders. He said they have problems with noise, shadow and flicker at their latest installation in Oklahoma. He asked why they will not tell us that they will do everything possible to make sure that does not happen here. He said we have brought up time and time again that we do not want the project but APEX will not go away. He stated that now that the Boards are trying to protect us, APEX sues us. He said do not be afraid to go to court. He wants us to make public what they are doing.

Betty Wolanyk agrees with everything that has been spoken so far. She stated On November 2nd SOS had a program by Mike Allen talking about restoring the Bald Eagle. She read a letter from a man in Michigan who is a bird-kill control specialist. He has a job picking up dead birds at the base of wind turbines which is full time because he has to pick up the birds as soon as possible so photographers cannot document them. He said that

birds are intent on getting to their destinations and get into a rhythm of flight and assume those elevations are free of obstacles.

Dale Howard said in planning for a worst case scenario he thinks of how to protect his home if the project comes. With blasting, his foundation can be cracked or even moved and he would need to hire an engineering firm to monitor it. He would need more insurance. When he built his home he read hydrology maps and wants to know if the water will be diverted. He wants to know who is going to pay for all of this monitoring. He estimates a minimum of \$600 to start the process to monitor his property.

Taylor Quarles said they are working diligently toward submitting the application and many of the frustrations over lack of details will be covered with the forty one exhibits. He provided an example stating that exhibit #19 took two years of work on environmental studies in the area in conjunction with US Fish & Wildlife and the DEC. He said they are looking to finishing the stipulations process so they can learn what additional studies they will need so they can get the application submitted as soon as they can and give us the answers we are looking for. He stated that they continue to have office hours over the holidays, but encourages calling or emailing first in case they are not there.

Supervisor Engert reminded everyone of the Veteran's Dinner on Sunday at the Fire Hall. Wally Coates added that there will be a replica of Iwo Jima on display in front of a mural the artist painted.

On a motion of Councilwoman Jansen, seconded by Councilman Dewart, the meeting adjourned at 7:47P.M. subject to the Call of the Clerk.

Tracy L. Carmer, RMC
Town Clerk