

**TOWN OF SOMERSET
PLANNING BOARD
DECEMBER 7, 2017**

Present: Chris Czelusta
Krista Atwater
Charles Neal
Norman Jansen
David Haylett, Counsel
Ben Wisniewski, Counsel

Absent:

Attendance: Approximately 25 residents

Chairman Jansen called the meeting to order at 7:30PM and took a moment to recognize Pearl Harbor Day.

SEMI-ANNUAL APEX CLEAN ENERGY REPORT

Attorney Wisniewski stated that Code Enforcement Officer Remington sent a letter to Lighthouse Wind on November 28, 2017 listing violations of their Special Use Permits for the meteorological towers at the Eggert and Lyndaker locations. A summary of the violations:

1. The Town Code was violated by violating the conditions of the permit.
2. The quarterly written reports by APEX are inadequate and do not include data that was expressly required.
3. APEX failed to provide a biannual in-person report.
4. Failure to provide copies of reports filed in accordance with federal or state guidelines.
5. APEX failed to install and/or maintain fencing sufficient to protect the public from the danger of injury.

Taylor Quarles provided a semi-annual report and distributed wind data to the board. He stated this will be provided quarterly and in person biannually. He noted that the wind rose on the bottom of the report is cumulative and shows the average direction the wind is coming from which is South/Southwest. Taylor would like assurance that this report is adequate.

Chairman Jansen noted the speed is provided at 20 meters and asked what about the information at 40 meters and 60 meters.

Taylor said they feel that is proprietary and would harm their business interest. If they provided all of the data their competitors would be able to determine the cost to produce power for this project. They are comfortable sharing the data at 20 meters and hopes it provides a broad spectrum demonstrating the kind of data they are gathering and how it changes quarter to quarter.

Chairman Jansen stated that APEX has not provided reports on the maintenance of the snow fence. He feels we need something more substantial than snow fence with stakes in the ground. He said that area cell towers have chain link fences. Because of the

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location of the Lyndaker and Eggert towers being in open fields, the board is concerned about ATV's and snowmobilers. Chairman Jansen said he realizes there aren't trails there, but that does not stop snowmobilers.

Taylor said that he made a visual today and is aware of the condition of the fencing and guyed wire sleeves on both towers. He and Code Enforcement Officer Mark Remington will visit the sites in person and discuss what steps will be necessary to satisfy Mark. They will schedule it for next week.

K. Atwater said that part of the original discussion was that we were not sure the snow fence would be adequate with our weather conditions. She said that even with posted property people will still trespass so she would like to see a chain link fence installed.

Taylor stated that a visit with CEO Remington would be helpful.

Chairman Jansen asked if he could go along to the inspection.

Taylor said he will communicate with Mark and Mark can pass let Chairman Jansen know when they are visiting.

K. Atwater asked if all four (wind speed, wind direction, temperature and pressure) are considered proprietary over 20 meters.

Taylor stated that they only gather temperature at 3 meters and pressure at 2 meters so the report includes everything they have for that.

Chairman Jansen noted that the manufacturer's manual states that checks should be made after wind events but nothing is reported about the maintenance.

Taylor said he will reference the page numbers so he looks at it in context and will tweak the report to ensure it includes what we are interested in.

K. Atwater discussed the older tower issue from when it appeared to be leaning.

Taylor said that he and Mark inspected it and the tower was not leaning. He found a vantage point where you can see silos as a visual reference and from that point as well it did not appear to be tipping.

CEO Remington feels that if sensors are recording above 20 meters it should be reported.

K. Atwater asked if they can report it privately.

Attorney Wisniewski said that it would be a public record and subject to FOIL. He said perhaps we could put together an agreement that gives us the opportunity to review the information but not hold it.

Taylor said the data they are providing satisfies the permit conditions.

Attorney Wisniewski disagrees since the Code Enforcement Officer feels that information above 20 meters is not proprietary.

Taylor stated that he will investigate further and continue the discussion next week.

Code Enforcement Officer Remington said the fence is a big concern of his in the winter time. He would like to see a permanent fence with reflective markings. He said it is for the benefit of APEX also.

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Mark also said he would like to see maintenance on the reports.

Taylor said they have not had any issues with the sensors.

Mark said he would like to see it noted whether anyone has been out to inspect the towers.

Taylor said that there have not been any in-person inspections since they were installed but if an inspection is made he will be happy to include that in the report.

Chairman Jansen asked who the maintenance crew consists of.

Taylor said it is the company that installs the towers.

Mark said he wants to see any maintenance in writing.

Taylor said if it occurs it will be in the report.

Chairman Jansen stated that the fencing fell so there has been maintenance on the towers that has not been included in the reports.

Taylor said he will be happy to include it in the quarterly report.

K. Atwater asked if there are any regular checks on the towers. She feels just doing a visual is not acceptable as it is not maintenance.

Taylor said from the fence perspective, their visit next week should determine a clear path forward. From the perspective of the tower itself, that work is left to the 3rd party contractor who are the competent ones to decide on an appropriate maintenance schedule.

Attorney Wisniewski asked if Taylor could provide the maintenance schedule for the towers in the quarterly reports (upcoming and completed, along with anything notable that was discovered during the completed maintenance.)

Taylor will check with the contractor to see if he can provide upcoming maintenance.

Chairman Jansen asked if anyone has inspected the Nellist tower as it has been up for three years.

K. Atwater stated that APEX has said they consider the life span of the tower to be three years so it should have had inspections already.

Taylor said he will lean on the subject matter experts and will report if any maintenance occurs.

Chairman Jansen stated that this semi-annual report should have occurred in October so he would like assurance from Taylor that he will be more punctual.

Taylor stated that it was decided not to schedule ahead due to the unknown schedule of the Planning Board. Moving forward he will work with Clerk Carmer significantly in advance to ensure their attendance.

Code Enforcement Remington asked if APEX can report on data daily.

Taylor said that quarterly reports meet the permit conditions.

PUBLIC HEARING – DICKINSON – MINOR SUBDIVISION AT 8713 HAIGHT ROAD

Clerk Carmer read the notice of said public hearing that was duly published in the Lockport Union-Sun & Journal with the same notice being posted on November 28, 2017 at the Town Hall.

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Jim Dickinson said the farm is 82 acres behind his house. The side on Haight Road is zoned R2, and Quaker Road is R1. He provided the scenario when Dollar General wanted to purchase his property but there was opposition. He said that he and his father invested in the property forty years ago and always felt there would be some development. In the original master plan he wanted this property zoned commercial, but they zoned the property behind Nick Nicolina as commercial. If he had sold the property to Dollar General he would have had to get the property rezoned. Charlie Lyndaker currently farms the property so Jim feels it is natural to sell it to him. He would like to keep a section on Quaker Road to sell as lots down the road. Charlie would get one lot plus a 50' right of way to the north. He would also keep a piece behind his house to make the lot even with the property that has the helipad. He has been mowing to that line for years so it seems to have been part of their yard all along.

Clerk Carmer stated that a couple residents came in to view the application but there were no objections.

K. Atwater asked if the Quaker Road property is being broken into five lots now. Jim said no it is one parcel right now.

Jim Hoffman spoke on behalf of Faith United Methodist Church and asked if the right of way borders the church property. Jim said that Charlie will own the right of way and it is on the north edge of the property, not next to the church.

With no one else desiring to be heard Chairman Jansen closed the hearing at 8:08PM.

PUBLIC HEARING – GREENWALD– CONVERT EXISTING STRUCTURE INTO A ONE FAMILY APARTMENT AT 7939 TOWNLINE ROAD

Clerk Carmer read the notice of said public hearing that was duly published in the Lockport Union-Sun & Journal with the same notice being posted on November 28, 2017 at the Town Hall.

The Greenwalds could not attend the meeting tonight so the meeting was opened at 8:09PM to allow any interested parties to speak.

With no one desiring to be heard,

On a motion of C. Czelusta, seconded by C. Neal, the following resolution was

ADOPTED	Ayes	4	Jansen, Atwater, Czelusta, Neal
	Nays	0	

Resolved the hearing for Daniel and Andra Greenwald remain open.

RESUME PUBLIC HEARING – ELDRIDGE/RUTHERFORD – OPEN AND OPERATE AN AIRSOFT FIELD AND NERF-GUN FIELD BUSINESS AT 1943 QUAKER ROAD

The hearing resumed at 8:11PM.

Albert Rutherford provided a handout with the measurements the board requested. He went through the diagram and explained the fence will be a 6 foot stockade fence surrounding the property. It will be behind the trees and hide the parking lot. To the south side of the property where the neighbor lives, 20 feet behind the fence will be a 10 foot net that is made of a material like a trampoline. Beyond that there will be a 20 foot treed buffer zone.

Right after the parking lot to the left is the safety area that will be 90' x 200'. There will be fire extinguishers and first aid kits throughout the entire field. He will camouflage the net so it won't stand out to the neighbors. When they get the field ready they will not clear the whole area, only suckers. In the parking lot area they may have to clear some big trees. The emergency lane will be completely cleared and will have stone laid so an ambulance will have easy access. The age requirement is 10 years old and up. The nerf field he will eventually install will be used by the younger kids and will be blocked off with its own fence. He disturbed a hunter so was not able to finish getting measurements.

Chairman Jansen asked if parents will need to be present.

Albert said they will have multiple staff members and the parents will sign waivers.

K. Atwater said that other people who run air soft fields say their biggest problem is people wandering off if there isn't a fence and she doesn't see a fence line at the back of the property.

Albert stated that there will be a fence in the back. He stated the only stockade fence will be around the nerf field and across the front by the driveway. The rest of the fence will be "homemade" from trees that will be cut down.

Discussion ensued regarding the pond that is approximately 500' – 600' away.

K. Atwater stated that she is very "pro" this business and her biggest concern was the fencing. She also feels the old cars are going to be an issue. She would like to see him eliminate the cars and put up buildings

Albert said the cars are for hiding behind and not using them will not make or break him.

C. Czelusta is concerned with the noise issue with using loud speakers.

Albert stated that the hours will be 9AM – 4PM and it will not be constant.

Rick Ray is a neighbor and stated that he works the off shift so tries to sleep during that time.

Albert said to let him try it and if it is a problem he will shut it off.

C. Neal stated that on the SEQR form Albert said it will not affect the wetlands. He asked how that was determined. He believes part of it is wetlands and depending on whether it is state or federal could affect if he is able to put the emergency lane in.

Attorney Haylett stated that the field may not touch them.

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Discussion ensued regarding wetlands and due diligence. Attorney Haylett stated that he should check into it now to make sure he will not have any surprises later and he would like to see it on the map. If it is a large impact on a wetland we will have to go through a very large review.

Attorney Haylett asked if the 15 foot entrance is currently a ditch.
Albert stated it is and he will have to install a culvert.

Attorney Haylett asked about the proposed hours.
Albert said they are trying to follow what another field does and they play from 9AM – 4PM, usually the weekend or they can play one week on and one week off.
Chairman Jansen asked Rick Ray if he works weekdays or weekends. Rick told him both.

Chairman Jansen stated he feels the loudspeakers would be a major issue.
Albert said if there is any doubt to this then he will not go into it. The big appeal for this business is the simulation and if he can't do it then people will not turn out and there is no sense of doing it.

C. Czelusta asked about facing the speakers directly east so they are not aimed toward the neighbors.

Albert said they will be directed. Also there is not noise everywhere. There will only be one speaker at both ends or just one in the middle. They also play in stages.

K. Atwater added that it is not constant noise.

Albert stated that if the neighbors can hear it in their homes he will stop or find a comfortable level.

Chairman Jansen asked where Rick Ray's house is in comparison to this.

Rick and Patty said it is across the road, about 600 feet away.

Conditions for the permit were discussed.

Rick stated that he wants new business but along with consideration. He asked how the property will be restored if it does not work out.

Albert said that everything is removable and he is all about the environment. The foam buildings will be the only items that are not natural.

C. Czelusta asked how far back does the property go.

Albert said approximately 1900 feet.

With no one else desiring to be heard,

On a motion of K. Atwater, seconded by C. Czelusta, the following resolution was

ADOPTED	Ayes	4	Jansen, Atwater, Czelusta, Neal
	Nays	0	

Resolved the hearing for Eldridge/Rutherford remain open.

Chairman Jansen opened the regular meeting at 8:45PM.

APPROVAL OF MINUTES

On a motion of K. Atwater, seconded by C. Neal, the following resolution was

ADOPTED Ayes 4 Jansen, Atwater, Czelusta, Neal
Nays 0

Resolved the minutes of the November 9, 2017 meeting are accepted as submitted.

DICKINSON MINOR SUBDIVISION

Attorney Haylett noted that the board members have all reviewed SEQRA Part 1. He stated that this project is unclassified. He read through Part 2.

On a motion of K. Atwater, seconded by C. Czelusta, the following resolution was:

ADOPTED Ayes 4 Jansen, Atwater, Czelusta, Neal
Nays 0

Resolved the Somerset Planning Board declares that the project will result in no major impacts and, therefore, will not cause significant damage to the environment. A Negative Declaration under SEQRA is therefore issued for this project.

C. Czelusta asked if it would benefit Jim Dickinson to split all of the lots now. Attorney Haylett stated that would become a major subdivision.

On a motion of C. Czelusta, seconded by C. Neal, the following resolution was:

ADOPTED Ayes 4 Jansen, Atwater, Czelusta, Neal
Nays 0

Resolved the Dickinson minor subdivision is approved as presented.

Jim Hoffman asked the board what was approved for the Mayer Brothers expansion. He said the parking lot is going right up to the road. Was there landscaping approved?

C. Czelusta recalled that having the parking lot right up to the road was approved due to the nature of the space needed to back up the semi-trucks.

Jim said that is one thing, but permanent parking is another.

Mark Remington said the he contacted the plant manager and the trucks were moved.

Jim does not want trucks parked permanently near the road.

Mark is satisfied that the trucks were moved.

There being no further business, K. Atwater moved to adjourn the meeting at 8:55PM, seconded by C. Neal. Carried unanimously.

Respectfully submitted,

Tracy L. Carmer, RMC
Town Clerk/Planning Board Secretary