

**TOWN OF SOMERSET
PLANNING BOARD
March 3, 2016**

Present: Jon Hotaling
Krista Atwater
Chris Czelusta
Norman Jansen
Mike Norris, Counsel
David Haylett, Counsel
Drew Reilly, Engineer

Absent: Gary Few

Attendance: Approximately 30 people

Chairman Hotaling called the Eggert/Lighthouse Wind public hearing to order at 7:30PM.

Clerk Carmer read the notice of said public hearings that was duly published in the Lockport Union-Sun & Journal with the same notice being posted on February 17th at the Town Hall and on the town website.

**PUBLIC HEARING – BARBARA EGGERT/LIGHTHOUSE WIND MET TOWER
7469 W. SOMERSET ROAD**

Taylor Quarles submitted a letter from Barbara Eggert granting APEX permission to represent her at the hearing. He stated that the tower is model NRG60XHD. The reason they are requesting to install more towers is to acquire more wind analysis.

Chris Czelusta announced that he will not be participating in any action on anything to do with wind towers.

N. Jansen asked if the tower is the same height as the existing tower on the Nellist property and is there that much of a difference in wind velocity in different locations that necessitates more towers.

T. Quarles stated that it is the same height and their meteorologist chose the locations.

N. Jansen stated that the topography here is relatively flat so he doesn't think it would be affected much.

T. Quarles said that he understands that it does appear to be quite flat. Their goal is to be able to support data requirements as per Article X.

N. Jansen asked if the tower locations indicate where the wind turbines will be placed.

T. Quarles said not exact locations and said to refer to the permitting documents for the project boundaries.

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K. Atwater said she doesn't understand the need for more towers and asked why the proposed tower on the Lyndaker property does not include audio.

T. Quarles stated that the tower on the Eggert property will have two audio sensors at two different levels.

J. Hotaling stated that the quarterly report supplied for the tower on the Nellist property tells us nothing. He asked if APEX will send a representative to our meeting on a quarterly basis to give a verbal report if the towers are approved.

T. Quarles said yes if it is the board's request.

N. Jansen asked if the information provided by the towers is proprietary.

T. Quarles stated that they provide general wind data such as the direction of the wind, but cannot release all of the data gathered. As per Article X they will be releasing more wind data in the final application.

J. Hotaling stated that it is general knowledge that APEX has still not signed a Code of Conduct.

T. Quarles advised that they recently received an updated Code of Conduct from the Attorney General. They reviewed the new code and suggested some minor changes. The code now sits at the Attorney General's office and hopes to execute it in the near future.

D. Reilly asked for a description of the equipment.

T. Quarles stated that there are two audio sensors that are a separate add-on to measure bat species twenty four hours per day. This was suggested by their staff wildlife biologist in consultation with NYSDEC and US Fish and Wildlife. The tower has anemometers and wind vanes at three different heights to measure the wind at different heights. It also has a weather station to measure weather data.

D Reilly asked if the tower is powered by electricity.

T. Quarles said that they are run by small solar panels.

D. Reilly stated that we will need a more formal site plan. He explained how he reviewed the application. He referred to the Special Use Permit Law, our Site Plan Law and our Wind Energy Law. He also advised that we need more information on how the wires will be tied down and stated that the town prefers not to have guy wires although the existing tower has them.

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T. Quarles stated that they will install orange marker balls at two heights like the tower at the Nellist property. One of the heights will be at snowmobile level.

D. Reilly asked if there will be fencing around it.

T. Quarles said no.

D. Reilly asked if there are any problems with the tower on the Nellist property.

T. Quarles said no.

D. Reilly asked Taylor if he knows of any snowmobile trails that run through the area.

T. Quarles said he will look into it for both private and public paths.

J. Hotaling stated that he knows there is a path for four-wheelers.

D. Reilly advised that we need a SEQR form filled out.

T. Quarles thought it was included in the packet.

D. Reilly said that we will take thirty days to get information from other agencies. For example, this site is on the LWRP boundary and that requires a Waterfront Assessment Form. We also need wetland information. Drew also wants APEX to identify what areas they may be disturbing. He asked if they will be doing any improvements to the paths they will be using.

T. Quarles said no, it is just a pickup truck and will be using the existing pathways. Where the pathways end, they will drive across the farmland.

D. Reilly stated that the guy-wire area is about ½ acre of land. He asked if that area will be disturbed as the equipment is moving around that area. He asked Taylor for a better description of how they are going to construct in that ½ acre of land.

T. Quarles said ok.

D. Reilly stated that this is a non-agricultural use in an agricultural district so we will need an agricultural data statement as per State law. He said this does not require referral to the Niagara County Planning Board since this is not on an intersection of a State highway. Drew said that he will provide a checklist for the site plan. He stated that once the board has the information we will do the thirty day review and then we will be able to do the analysis under SEQR. He stated that the last process is issuing the Special Use Permit and can determine what conditions to apply to it.

D. Reilly asked for more information on the tie-downs.

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T. Quarles said that they are just driven into the ground.

D. Reilly said that APEX submitted good information on the integrity of the tower itself, but we need to make sure the tie-downs meet the requirements.

Clerk Carmer checked the Code Enforcement Officer's office for the SEQR form but could not locate it.

T. Quarles said that he will email SEQR Part I to us.

D. Reilly stated that we use the full form rather than the short form because it gives us more information.

Attorney Norris asked what timeframe APEX will need the towers up for?

T. Quarles stated that they are temporary towers and will be removed before construction of the wind turbines.

Attorney Norris asked Taylor if he has any objection to placing a timeframe on them.

T. Quarles said that with the existing tower we renew it annually which seems like the standard agreement. He said if the board has a specific request, they are open to it.

Chris Kraft is a resident of Yates and Ridgeway. He asked when anyone is going to make APEX sign the Code of Conduct before they proceed further. He thanked the board for letting him speak, as he did not get the same opportunity with the Town of Yates.

Gail Damon of Lower Lake Road asked how can an out-of-state company suggest changes to New York State's Code of Conduct.

Jim Hoffman from Lake Road said that he is a neighbor to the Lyndaker property where a tower is being proposed. He submitted a handout to the board with many questions such as: why are more towers required? Are any more planned? Why is it so close to the Village of Barker? Will they be lit? He views the towers as permanent structures. He feels that no consideration was given to the bird and bat mortality that is caused by this tower design. He realizes that they have this kind of tower already, but stated that we know more now. He is concerned with the proximity to the helipad and wants us to pay attention to what Mercy Flight has to say.

Betty Wolanyk lives on Haight Road. She feels the met towers are being installed under 200' because lights would not be required by the FAA. She is in agreement with the concerns pertaining to Mercy Flight. Betty is in favor of the board not proceeding until APEX signs a Code of Conduct. She stated that if the wind patterns vary from 1 foot to

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199 feet, won't they also vary from 199 feet to 615 feet? If so, how can the data obtained from 199 feet be extrapolated to 615 feet? If it cannot, why do they need another tower. If it can, she feels that two more towers aren't necessary. She feels these statements are in conflict.

Cathi Orr from Johnson Creek Road feels the additional towers are not needed. She also agrees that APEX should sign a Code of Conduct.

Bob Verheyen lives on Somerset Drive and he wants the board to remember the hard time they gave a resident who wanted a 100' television antenna.

Pam Atwater from Carmen Road pointed out that there was a mowing accident with the guy-wire on the tower in Lyndonville. She stated that APEX and the Attorney General's office have been communicating for over a year so she doesn't understand why they are just now making changes to the Code of Conduct when they announced back in May that they were committed to signing it. She said they have no excuse for not signing it.

Dale Howard of Huntington Beach wants the board to let Mercy Flight drive what has to be done with the tower in order for a special use permit to be issued.

John Wolanyk from Haight Road said that the board should not do any more business with APEX until the Code of Conduct is signed.

Clerk Carmer read a letter that was submitted by Supervisor Engert. He advised that the Town of Somerset has not been consulted with and/or participated in the drafting of the Code of Conduct. He stated that the Town attorneys are communicating with the Attorney General's office to provide the Town's suggested corrections and clarifications. He requested that the Planning Board fully consider whether it is in the interest of the Town to require the developer to sign the final Code of Conduct as a special condition of the Special Use Permit.

On a motion of N. Jansen, seconded by K. Atwater, the following resolution was

ADOPTED	Ayes	3	Hotaling, Atwater, Jansen
	Nays	0	
	Abstain	1	Czelusta

Resolved the public hearing remain open.

Chairman Hotaling called the Lyndaker/Lighthouse Wind public hearing to order at 8:15PM.

D. Reilly asked Taylor to contact Mercy Flight for lighting requirements. He said that in all other areas, towers over 100' are required to be lit.

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Attorney Norris asked how many days are required for a coordinated review.

D. Reilly stated that around 30 days is the time period from the date of mailing to the involved agencies.

T. Quarles stated that the tower for the Lyndaker tower is identical to the other tower, less the acoustic monitors. He submitted a letter from Charles Lyndaker allowing APEX to represent him at tonight's hearing.

N. Jansen said that our town laws are not specific to meteorological towers so we have to refer to other areas of law.

D. Reilly stated that due to that he had to refer to our Wind Energy Law, which is what the use is.

N. Jansen stated that the application shows the tower is 296 feet from the lot line. He asked if the law is 1-1/2 times the height and said if it is, the tower is within 6 inches of the required distance.

D. Reilly stated that the new law is 2x the height, which is 394 feet.

N. Jansen said that Jim Atwater owns the adjoining land.

T. Quarles stated that they are amenable to a slight adjustment of the siting to meet the requirements.

K. Atwater asked why the height of the meteorological tower is only 175 feet if the wind turbine may be over 600 feet. She asked if that is to stay under the height of the FAA rules.

T. Quarles said that the tower model is a widely available model.

K. Atwater said she still doesn't understand why they need another tower. She asked if they could lease a spot on the smokestack to obtain information since that is close to the height of the wind turbines.

T. Quarles said that when moving the location a couple of miles there is a difference of topography and ground cover. Regarding the height of the towers, he doesn't believe there are towers that are 600 feet tall so they have anemometers at different levels on the towers to be able to extrapolate what the wind would be at a higher level than the tower is physically at.

J. Hotaling stated that he is a strong advocate of getting the helipad installed. He advises APEX to find a different location and make sure it is lit.

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T. Quarles said that they consulted with Mercy Flight by phone and in person. Prior to construction they will furnish the exact coordinates and height of the towers to Mercy Flight, crop dusters, etc.

J. Hotaling would like something in writing from Mercy Flight saying that they are ok with the location of the towers.

T. Quarles said he will reach out to them.

D. Reilly said if the tower is required to be lit, he would like to see how it will be lit. He also told Taylor he will need to look at the wetlands soils in that area. Drew asked how far the tower will be from the cemetery. He said that there are regulations regarding cemeteries being aesthetically impacted so visitors don't have to be visually interrupted.

J. Hoffman stated that it abuts the Lyndaker property and he showed Drew on the map where the cemetery is located.

Cathi Orr spoke regarding sound studies. She said they cannot get good sound at 200 feet, so how can the data be extrapolated when air pressure varies.

Chris Kraft wrote to the panel in Albany regarding research done in 2014. He said that usually there are siting issues and wonders if anyone higher than New York State has looked at this project.

Bob Damon from Lower Lake Road spoke of an observation he made. He said that Taylor mentioned Article X a lot. He wonders why they have to have more towers if they only need two towers for Article X. Do they need more towers to expand their project? He also thinks it is convenient that the meteorologist found the most convenient spots for the meteorological towers are to be placed on lease holders' property.

Chris Bronson of Somerset Drive spoke regarding the Code of Conduct. She stated that they said the old Code of Conduct isn't relevant with Article X. In today's newspaper, Taylor was quoted as saying that they are an ethical company so it is mute, they do not have to rush to sign it. She said that the old code required all lease signers to be posted and if they had signed the old code, she would not have had to detective work and embarrass people. She feels this shows how unethical they are and she wants to make sure the board does not do business with APEX until they sign the Code of Conduct.

Betty Wolanyk stated that if they can extrapolate accurately from 200 feet to 600 feet, then they do not need two more towers.

On a motion of N. Jansen, seconded by K. Atwater, the following resolution was

ADOPTED	Ayes	3	Hotaling, Atwater, Jansen
	Nays	0	

Abstain 1 Czelusta
Resolved the public hearing remain open.

SEQR COORDINATED REVIEW

On a motion of N. Jansen, seconded by J. Hotaling, the following resolution was

ADOPTED Ayes 3 Hotaling, Atwater, Jansen
Nays 0
Abstain 1 Czelusta

Resolved the Planning Board would like the engineer to conduct a coordinated review of the two applications and authorize a mailing to all interested agencies.

APPROVAL OF MINUTES

N. Jansen stated that he has not read the minutes yet.

On a motion of K. Atwater, seconded by J. Hotaling, the following resolution was

ADOPTED Ayes 3 Hotaling, Atwater, Czelusta
Nays 0
Abstain 1 Jansen

Resolved the minutes of the February 4, 2016 meeting are approved as submitted.

COMMUNICATIONS

Clerk Carmer stated that the Planning Board received from the attorney's office a completed Full Environmental Assessment Form.

SPECIAL USE PERMIT RENEWALS

Clerk Carmer stated that she received a response from Larry Parlier. She did not receive a response from either Mr. LaForest or Mr. Perry and will send them a second notice.

K. Atwater asked if the tower on the Nellist property has been inspected. She stated that she went to the Nellist property to familiarize herself with the proposed towers so she knows what she is voting on and the tower appears to be tipping. She viewed the other towers and they appear to be straight.

J. Hotaling asked T. Quarles if he objects to the Town sending the Code Enforcement Officer to inspect the tower.

T. Quarles stated that he would be happy to. An appointment will be made with the Code Enforcement Officer.

J. Hotaling provided updates:

- He has not been able to catch up with Lester Bontrager to discuss possible signage. He will try again this month.
- Donovan Orchards has expanded their parking and installed a turn around.

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- Voelpel Farms no longer has the trailers on the property so Clerk Carmer is to send them a letter advising them that their Special Use Permit is cancelled.

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

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

Resolved the following Special Use Permits are renewed as per the terms of their permits:

1. ALT, Gary - House Trailer
7455 West Somerset Road, Appleton, NY 14008
3. AT&T MOBILITY - Communications Tower
Johnson Creek Road, Barker, NY
4. AUSTIN, Carl - Animal Husbandry
9039 Lake Road, Barker, NY 14012
6. BONTRAGER, Lester – Custom Doors and Millwork
9707 Townline Road, Barker, NY 14012
7. BRATTON, Michael - Housing of 4 horses & 2 beef cows
8495 Lake Road, Barker, NY 14012
8. BUFFINGTON, John - Auto Repair Service
2036 Hartland Road, Appleton, NY 14008
9. CHUTKO, James - 4 Unit rental structure
8689 Haight Road, Barker
11. DEWART, Jonathan - Animal Husbandry
1408 Quaker Road, Barker, NY 14012
12. DIEZ, Laura – Dog Grooming Business
9760 Haight Road, Barker, NY 14012
14. DOWNS, Herbert & Kathleen - Retail Shop
1214 Quaker Road, Barker, NY 14012
15. FAITH UNITED METHODIST CHURCH – Lighted Sign
1449 Quaker Road, Barker, NY 14012
16. FELLOWSHIP HOUSE FOUNDATION INC. - Treat recovering alcoholics
7397 Lake Road, Appleton, NY 14008

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17. FIACCO, Steven – Animal Husbandry
1148 Quaker Road, Barker, NY 14012
18. GOW, April - Animal Husbandry
7349 Lake Road, Appleton, NY 14008
19. GREENWALD, ANDRA – Hair Salon
7939 Townline Road, Appleton, NY 14008
20. HAIGHT’S PARK (Erwin, Robin & Juanita, Haight, Terry) - Campground
9225 Lower Lake Road, Barker, NY 14012
22. LEWIS, Douglas - Animal Husbandry
8456 Haight Road, Barker, NY 14012
23. LOCKPORT YMCA – Camp Kenan – 2 wind energy conversion systems
For 8571 Lower Lake Road, Barker, NY 14012
24. LUTZ, Peter - Outboard Motor - Small Engine Repair
8444 Haight Road, Barker, NY 14012
26. MILLER, Willis – Machine Shop and Storage Shed Assembly
2046 Countyline Road, Barker, NY 14012
27. NEAL, Charles - Ultra Light Airstrip
7440 Hoffman Road, Appleton, NY 14008
30. ORR, Cathi – Sale of sheds
1953 Johnson Creek Road, Barker NY 14012
31. PARLIER, Lawrence Jr. - Apartment
1640 Carmen Road, Barker, NY 14012
32. PARLIER, Lawrence Jr. - Woodworking Shop
1640 Carmen Road, Barker, NY 14012
34. PLUMMER, Courtney – Apartments
9541 Lower Lake Road, Barker, NY 14012
35. PORTER, Anthony & Candy - Berm to conceal construction supplies
1988 Quaker Road, Barker, NY 14012
36. REYNOLDS, Marvin & Jacquelyn - Park tractor trailer truck in residential
area
8719 Lake Road, Barker, NY 14012

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37. SOMERSET CONSERVATION CLUB - Firing Range
1129 Johnson Creek Road, Barker, NY 14012
38. SOMERSET UNION MUSEUM
8501 Lake Road
39. STEVENS, David – Sign
8398 Lower Lake Road, Barker, NY 14012
40. THUMAN, JEFFREY – Machine Shop
8463 Lower Lake Road, Barker, NY 14012
42. WEKENMANN, John & Dionne - Kennel
7471 Townline Road, Appleton, NY 14008
43. WEST, Terry - Apartment to accommodate mother
9318 Coleman Road, Barker, NY 14012
44. WEST SOMERSET BAPTIST CHURCH - Double lighted sign
1876 Hosmer Road, Appleton, NY 14008
45. ZAGMESTER, Joseph - Windmill
2000 Carmen Road, Barker, NY 14012

On a motion of C. Czelusta, seconded by N Jansen, the resolution was

ADOPTED	Ayes	3	Atwater, Czelusta, Jansen
	Nays	0	
	Abstain	1	Hotaling

Resolved the following Special Use Permit is renewed as per the terms of their permit:

2. AMERICAN LEGION HERBERT CARR POST #425 – Signs on Lake Road - Jon Hotaling

On a motion of N. Jansen, seconded by K. Atwater, the resolution was

ADOPTED	Ayes	3	Hotaling, Atwater, Jansen
	Nays	0	
	Abstain	1	Czelusta

Resolved the following Special Use Permit is renewed as per the terms of their permit with the condition that the tower is to be inspected within 30 days:

28. NELLIST, Larry (APEX)– Meteorological Tower
9698 Lower Lake Road, Barker NY 14012

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Attorney Norris advised as per Town Law §274 (b), neighbors did not need to be notified for the Public Hearing on the meteorological towers.

There being no further business, C. Czelusta moved to adjourn the meeting at 8:55PM, seconded by N. Jansen. Carried unanimously.

Respectfully submitted,

Tracy L. Carmer, RMC
Town Clerk/Secretary