

**TOWN OF SOMERSET  
PLANNING BOARD  
August 4, 2016**

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

Attendance: Approximately 25 people

Chairman Hotaling called the meeting to order at 7:30PM.

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

On a motion of N. Jansen, seconded by G. Few, the following resolution was

ADOPTED	Ayes	4	Hotaling, Atwater, Few, Jansen
	Nays	0	
	Abstain	1	Czelusta

Resolved the Barbara Eggert/Lighthouse Wind Public Hearing reconvene from July 7, 2016.

Taylor Quarles from APEX stated the application was submitted in January, so we have been working on this for ½ year. He introduced people who were with him to help answer questions: Dan Fitzgerald, Lighthouse Wind; Robert Panasci, Young Sommer LLC; and Steve Wilkinson, Fisher Associates. He advised that he received the review of the site visit dated July 26<sup>th</sup> tonight and confirmed that this was the last item to make the application complete.

D. Reilly advised that everything has been submitted that was asked for.

J. Hotaling agreed with that.

Taylor asked for a referral to the County, or a clear, written explanation why that referral is not necessary.

D. Reilly stated that each community has its own agreement with the county. He understands that Somerset's requirement does not require it because it is not at an intersection but he will double check with the County.

Taylor stated that he looked on the website and thought it needed referral, and the referral would be needed tomorrow to make the agenda for the next meeting.

D. Reilly stated that they will accept an electronic submission.

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Taylor asked if there are any more questions

N. Jansen said the letter from the Barker Fire Department looks good and he appreciates Chief Dewart's work on it.

Taylor said he appreciates the opportunity to accompany them on the visit. He noted that both landowners are present tonight (Charlie Lyndaker and David Alt.) He stated that he felt they accessed the site quite easily in the F-150, and understood that everyone agreed that a normal size ambulance could access the site under the conditions that day.

Chairman Hotaling said he does not agree that the ambulance could get over the railroad tracks. He said the 4 wheel drive and UTV would be able to.

Taylor would like point number 1 reworded since the F-150 could be considered a rescue vehicle.

Chairman Hotaling said he would contact Chief Dewart to ask him to reword it.

Taylor addressed the mud and snow concerns. He said the landowners get back there and cross the tracks with all kinds of trucks and farm equipment with no problems. Regarding fencing and safety, Taylor stated maintenance would be something they would stipulate to. He said it is a good point, but not a concern as the towers will be monitored.

N. Jansen stated that he has driven many of the farm lanes with both trucks and tractors and said there is a big difference between the two. He said the trucks can get stuck in an inch of mud, while tractors go right through it. He feels this is a serious concern.

Robert Panasci stated this is a temporary structure that has no capability of starting on fire so you will not need a big fire truck.

N. Jansen stated that fire is not his concern, so Robert asked what would be the necessary reasons. N. Jansen said he is concerned with snowmobilers running into the guyed wires. Robert said then you are talking about trespassers on private property. Board members said that it happens all the time. Robert said the point is you have other towers with guy wires in the town so you will have to take that into account with your determination. He said he wanted to make it clear that we do not need to modify the letter.

Taylor stated the F-150 4 wheel drive truck could be outfitted with different types of equipment and that makes him comfortable with the situation that was discussed tonight.

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Chairman Hotaling stated that they had to back out of the Lyndaker to avoid damaging his crop, but if necessary they would just turn around in there so that is not an issue.

Taylor addressed a document emailed to the Board on July 22<sup>nd</sup>, followed by a hard copy on July 25<sup>th</sup>. The goal was to address each point of the Special Use Permit as requested by Drew Reilly.

Herb Linderman asked for a definition of temporary.

Taylor said it is 3 years.

Jim Hoffman spoke relative to both applications. He stated that the PSC in North Dakota has approved a set of lights that only blink when they sense aircraft in the area. He feels that should be considered if the applications are approved. He also said the US Fish & Wildlife studied birds and bats in Spring 2013 and concluded that all kinds of tower structures in the Great Lakes area are threats to bird migration. He wants the Board to refuse both applications because they are related to the turbines the Town does not want. He discussed many points relating to the wind turbine project. In addition, he stated the met towers will lead to excessive noise, odors, etc and will be a general nuisance to the community.

Taylor replied that the applications are for two temporary towers and are not directly tied to the turbine project so it is important to separate the two matters.

Discussion ensued regarding the motion detecting lights. Dan Fitzgerald stated that these are not like the lights you would have on your garage. They are to be used on large scale projects with radar units throughout the site. It is beyond the scope of this project.

Cathi Orr stated that the towers are obviously related to the turbines and the community does not want them. She said her comments relate to both applications. She spoke about needing 5-6 semi trucks to move the towers (project). She said the trucks use diesel and that leaves a carbon footprint. She advises the board to say no to both applications.

Steve Royce stated that Route 18 is designated a Seaway Trail to protect less traveled routes and promote tourism. He said the US Fish & Wildlife Service guidelines say to avoid locating wind energy in areas having demonstrated an unmitigable high risk to birds and bats; Avoid guyed towers and lattice work towers, use tubular towers. He feels they have not complied with anything US Fish & Wildlife says should be taken into consideration so the applications should not be approved.

Marcia Ray said she strongly opposes the met towers and there is a definite connection

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to the project. She stated this Town cannot afford the cost of building or the consequences associated with the project. She does not want subsidies going to the project. She wants the Board to consider the residents' needs and wants.

Betty Wolanyk stated there is a bald eagle nest at the power plant property and has seen juvenile bald eagles along the lake. She stated that guyed wires attached to the towers are hazardous to raptors and she is opposed to the building of the towers. She said the only purpose for building them is to give APEX information that will be proprietary and only benefit them. She recommends voting no.

Joe Fox stated that he has no financial interest in the project. He is dissatisfied with the tardiness of the letter from the Barker Fire Department. He said it is unacceptable and if we had 20 projects going, we would never get anything done. He feels the author of the letter is prejudiced as he is on record against the project. Joe would like to see what information comes from this. He feels the towers should be put up so we have all of the information and can hear the full story. He wants the hearing to be closed. He feels we are opening ourselves to legal action because of our tardiness and lack of expediency. He said the letter from the fire department tells him the community is not safe so why even build here. It is telling us they can't go on farms because we don't have the equipment, but they have done it before.

Pam Sherback from Yates said that she opposes the towers. She feels APEX is getting their foot in to get the turbines up. She disagrees with Joe Fox. She thinks the board has done a great job looking after their constituents. She said that APEX dragged their feet in the beginning. She said we won't find out the bottom line until the turbines are put up and then it is going to be too late. She opposes the turbines and the met towers and would like the board to decline the applications.

Susan Davis said the board is doing a good job and she wants them to take their time.

Agnes LaPort stated the first met tower got through really fast because the board did not know as much about it. She asked how much information have we gotten from that and how much will we get from these two towers? She asked why allow them? She said they will destroy our community while a handful of farmers will benefit nicely. She feels a lot of people will be forced to move and lose a lot of money on their homes.

Dan Fitzgerald thanked the board for their thorough review of the materials they have provided to the board. He reiterated the matter before this board is the two met towers. He stated that they have been patient for 8 months and this has taken far longer than the original met tower. He said the first tower has been appropriately installed, maintained, and reported on giving us a track record of experience with met tower installation and maintenance in our community. He stated the Town knew about this five months before any lease was signed. He stated they are a respectable company and have been supportive of the community. He asked to deem the application complete and close the hearing.

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Chris Kraft of Yates said there are a lot of signs putting pressure on us to accept the project. He discussed advertising in newspapers and on billboards for the project. He feels this is making it look like we want this. He said this is going to destroy everything he has invested in. He said he might live another twenty years and the project will be the end of his life and that is why he is here. He appreciated the board letting him speak.

On a motion of N. Jansen, seconded by G. Few, the following resolution was

ADOPTED	Ayes	4	Hotaling, Atwater, Few, Jansen
	Nays	0	
	Abstain	1	Czelusta

Resolved the public hearing is closed.

**PUBLIC HEARING – CHARLES LYNDAKER/LIGHTHOUSE WIND MET TOWER  
8746 LAKE ROAD**

On a motion of N. Jansen, seconded by G. Few, the following resolution was

ADOPTED	Ayes	4	Hotaling, Atwater, Few, Jansen
	Nays	0	
	Abstain	1	Czelusta

Resolved, that the Charles Lyndaker/Lighthouse Wind Public Hearing does reconvene from July 7, 2016.

Taylor Quarles reiterated the points from the Eggert hearing. He said he is satisfied the most recent submission and the fire department visit have completed the application. He asked if there are any questions deeming it complete?

Chairman Hotaling stated that he believes we have received everything and has no issue.

Robert Panasci asked if the same standard applies here for the referral to the County Planning Board.

D. Reilly said yes and he will email Amy tomorrow.

Taylor said to refer back to the first public hearing for comments. He stated that he has full approval from the landowner and asked if there are any questions.

There were no questions from the board.

Annie Smith from Yates said she appreciates everything that has been done and the time that has been taken for the towers. She referenced the song Living in a Fantasy and said that she has been living in a nightmare for the last twenty months. She does not want to have to leave her home, and she does not want this to be an industrial waste land. She has a lot of medical problems that will be accentuated from wind turbines. She wants the board to take into consideration the health of the residents.

Cathie Orr thanked the board for their thorough investigation. She said the concerns of the project are documented in Orangeville. She wants the board to refuse both towers.

Pam Atwater thanked the board and said taking time is important. She asked if the towers have not gone up yet and the applications are supposed to be submitted soon, how much information is going to be gathered by these towers to make any difference in the application? Referring to the Great Lakes radar study, she said they mention communication towers being an issue. She asked if there is any consideration in removing the tower that is up and has been collecting data for awhile if the new towers are approved? She quoted a statement Taylor Quarles made in the Buffalo News, "the Towns and landowners and everyone has to live with, like it or not." She said that we do not like it and will do everything we can to stop the project. She said this is a democracy and every person in the room should have a vote on whether it goes through.

Marcia Ray said that APEX has had enough time to gather data, and she wants to know what is taking so long for APEX to hear us and move on to a different location?

Agnes LaPort stated the proposed offshore turbine factory in Long Island will be 30 miles offshore so as not to be visible to any homeowner. She said she understands these turbines will be visible at Eastern Hills. She does not believe all leaseholders have been recorded with the county yet.

On a motion of N. Jansen, seconded by G. Few, the following resolution was

ADOPTED	Ayes	4	Hotaling, Atwater, Few, Jansen
	Nays	0	
	Abstain	1	Czelusta

Resolved the public hearing is closed.

Chairman Hotaling stated the board will digest and review all of the information they have received on both applications and will make a decision at a later date. He thanked everyone for their input.

D. Reilly reviewed the criteria for issuing a Special Use Permit and reminded the board that each property is unique so individual decisions have to be made.

1. Will the project be in harmony with the purposes of the land use district in which it is located?
  - a. It is in the agricultural district which allows WECS through Special Use Permits
  - b. Article XIII provides the rules for WECS and provides a purpose section. The applicant has provided the information required under the code (acknowledging that these are MET towers, not WECS units.)
2. Will it be detrimental to adjacent uses?
  - a. The structures meet the setback requirements and have been shown to not have any direct, physical impact on adjacent uses).
3. Will it cause undue traffic congestion, etc?

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- a. The project will not create any traffic congestion, etc.
- b. A meeting has been held with emergency providers and was discussed earlier in the hearing.
4. Will it overload any public water, drainage, or sewer system, or degrade any natural resource or ecosystem?
  - a. The project does not create any demand for public water, does not generate wastewater, does not create impervious surfaces that would generate stormwater and does not impact any other municipal facility.
  - b. It has been shown to not impact wetlands, water bodies, forested habitats, etc except as follows: the construction of the 200 foot guyed wire structure has a potential to impact local and migratory birds.
5. Will it be suitable for the property on which it is proposed?
  - a. The site is an existing farm field and MET structure is being placed as to minimize any impacts to the property.
  - b. The structure will be seen from surrounding properties and roads and cannot be screened. The applicant believes that these impacts have been minimized due to the locations and the fact that the impacts will be temporary (3 years or less.)
6. Will it result in excessive noise, dust, odors, solid waste, or glare, or create any other nuisances, and will it satisfy the general land use performance standards of this chapter?
  - a. The project will not create any excessive noise, etc.
  - b. It meets the standards in this chapter except that guyed wire structures are not supposed to be built.
7. Will it adversely affect the aesthetics of the premises and adjacent properties and the neighborhoods?
  - a. It will be seen from surrounding properties.
  - b. The structure will be seen from the Seaway Trail and will have an impact on this important resource (referenced in the purpose section of the WECS law.)
8. Will it cause the site to be unduly congested, dangerous, unattractive to visitors, or unfriendly to pedestrians?
  - a. No.
  - b. The town was concerned about the safety issues related to the guy wires and snow mobiles.

Drew stated that he understands the frustration of the public. It is hard to separate these applications from the turbine project. He feels the board has done a good job focusing on the MET structures. He stated the following relating to these applications:

- They are a Type II action under SEQR
- They are not within the LWRP
- Will have to determine the agricultural impacts

N. Jansen has no more questions.

K. Atwater asked if we, as a group, are going to discuss each of the items.

D. Reilly said yes. You should take the information home and make notes.

K. Atwater said she has a problem separating the two projects because there is no reason to have the towers except for the future proposed turbine project.

D. Reilly stated that the planning board is not making the decision on the future project, but hope the State will take into account our local law and comprehensive plan and make the right decision.

Chairman Hotaling stated the Eggert tower will be hard to see. The Lyndaker tower will be very visible though. He wants the board to drive down Marshall Road and see the tower there before they make a decision.

D. Reilly said the application is complete, be prepared to discuss at the next meeting, but we have 62 days to make a decision. He asked if the members need anything more from anyone. All members said no.

D. Reilly said he will copy Taylor on the email that he is sending to the county tomorrow. The meeting is August 15<sup>th</sup> at 2:00PM. He said the county considers the regional impacts of the project, while we consider the impacts on the town.

#### **APPROVAL OF MINUTES**

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

ADOPTED	Ayes	5	Hotaling, Atwater, Czelusta, Few, Jansen
	Nays	0	

Resolved the minutes of the July 7, 2016 meeting are approved as submitted.

#### **SOLAR ENERGY LAW DISCUSSION**

Chairman Hotaling attended a conference on rooftop units on houses and said even if the units are tagged out, they generate enough electricity that firemen can still be electrocuted.

D. Reilly stated the New York State Building Code addresses the rooftop units and we refer to it in our law. He stated that there is no way to discharge a unit.

Chairman Hotaling stated that dispatch should know who has one.

D. Reilly said we could have a requirement that the Code Enforcement Officer registers them with the Barker Fire Department.



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Chairman Hotaling stated that we would be taking from five to one hundred acres agricultural and turning it into an industrial site. He said that solar should be taxed as industrial.

N. Jansen discussed parts of the law:

- Page 4, section A: he questioned if three feet is wide enough for a fireman with all of his equipment. Attorney Norris consulted with the Fire Inspector in the Town of Lockport when he wrote their code and he deemed it to be enough. D. Reilly stated that three feet down the center of the roof is now required also (by the State).
- Page 4, section 7: he feels 1,000 square feet of solar panel is a lot for an area less than two acres. D. Reilly agreed and stated that each district is different so coming up with a general number to accommodate all districts was a bit difficult, but he reminded the board that the applicant has to come before the board for site plan approval.
- Page 4, section 8: he also feels 5% of a parcel for 2-5 acres is a lot. D. Reilly stated that is the maximum size allowed and they have to meet all of the other aspects of the code. He said solar installations are typically in the range of 5-10 acres. N. Jansen stated that a two acre site can have 4,326 square feet. He has a barn that is 4,400 square feet on five acres and said that is big for five acres. Discussion ensued regarding the various sizes allowed. C. Czelusta stated that residents may not like the looks of the ground installation. D. Reilly stated that we have to determine if we need to make this more restrictive. Our current code does not even allow commercial installation. N. Jansen asked what everyone else thinks. K. Atwater said that she is concerned about the birds because they think the solar panels are water. D. Reilly stated that he has heard of glare issues. He said that poor units tend to glare. He will ask UB if they have issues with birds as theirs are black. N. Jansen said if you put rain on it, they become a mirror. C. Czelusta said that we can issue a permit and have no idea how the product is.
- Page 5, section C5: N. Jansen asked if we want to waive a public hearing. He feels any project of this scope should have a hearing for site plan review. Attorney Norris stated that he will change the wording that a public hearing shall be held.
- Page 5, section H: N. Jansen is concerned about glare. D. Reilly stated the Planning Board will have to look at the setback, angle and direction the panels are facing. He stated it is not an easy thing to evaluate. Villages have a restriction that you cannot have panels on rooftops that face the street because there are so many houses around that the panels would affect.
- Page 5, section F: Regarding emergency vehicle access to ground mounted systems, C. Czelusta asked what if the system is way back in a field. D. Reilly stated that access would have to be provided. Chairman Hotaling said we should have a requirement that the access road has to be maintained.

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- Page 9, section P: N. Jansen asked if this section means a berm would replace a fence. D. Reilly stated this section is for the large scale projects that don't require fencing. He stated that the board can require a berm to screen the panels from a road, neighbor, or anything else they feel is necessary.
- Page 9, section S: N. Jansen stated he thinks the word "may" should be "shall." D. Reilly stated that he is not an attorney but they used the word may because some Department of State officials believe that you cannot ask for a bond.
- Page 10, section A: N. Jansen asked if leeway could be given to a contractor for extenuating circumstances. D. Reilly said yes, they would have to return to the board to obtain approval. He said he will add a sentence regarding getting an extension.
- Page 12, section L: N. Jansen clarified that our Special Use Permits are transferred to new owners. D. Reilly stated that is how our permits are, but we want to be notified of the transfer.

K. Atwater asked if a qualified solar installer is required for everything (including small scale) as stated on Page 4, section A. D. Reilly said yes, and it should also say it for the ground mounted. He said you're dealing with a structural project so the Code Enforcement Officer wants someone who knows what they are doing. K. Atwater asked if existing installations are grandfathered. D. Reilly said yes. K. Atwater said she has a son who wants to live off grid and this could be the difference between him purchasing land in Somerset or somewhere else. D. Reilly said that most towns are going to this so in almost any community you will not be able to do it yourself anymore. N. Jansen asked if you are going to live off grid, do you need an electrical inspection. D. Reilly said he would have to talk to our Building Inspector. C. Czelusta thinks you need to for fire insurance. Attorney Norris stated that you need one for a pool so you likely need it for this.

D. Reilly stated you have to look this over and see if this is what the town wants. Did we set the right levels? Do we want all three levels, and do we have the right criteria for all three levels.

C. Czelusta asked if we have fees for them? Attorney Norris stated the fees are on page 11 for Industrial projects, and the small scale would follow the fees for a site plan application which is currently \$175.

N. Jansen asked if we could hold a hearing before we make the law to find out what the public wants. Attorney Norris said that he will ask the Town Board if they would like to introduce a hearing. He stated that he does not prefer to do it unless the law is pretty well set because if there are significant changes you have to hold another hearing, which cost the Town more money.

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There being no further business, G. Few moved to adjourn the meeting at 9:17PM, seconded by N. Jansen. Carried unanimously.

Respectfully submitted,

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