

REGULAR MEETING  
MARCH 12, 2013

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 12<sup>th</sup> day of March 2013.

Present:     Daniel M. Engert ----- Supervisor  
             Gary R. Alt ----- Councilman  
             Robin R. Jansen ----- Councilman  
             Jeffrey M. Dewart ----- Councilman  
             Rebecca A. Connolly ---- Clerk  
             Kenneth J. Bigelow ----- Supt. of Highways  
             Melvin H. Denny ----- Supt of Water/Sewer/Grounds  
             Mindy Austin ----- Confidential Asst. to the Supervisor  
             Randy D. Roeseler ----- Engineer  
             Morgan Jones Jr. ----- Counsel

Absent:       Randall J. Wayner ----- Councilman

Attended by: 7 residents and 18 BCS students

Supervisor Engert called the meeting to order at 7:00PM with the Pledge to the Flag and a prayer for guidance.

RESOLUTION 35-2013

**APPROVAL OF THE MINUTES**

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

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

Resolved the minutes of the previous meeting are approved.

RESOLUTION 36-2013

**APPROVAL OF THE SUPERVISOR'S MONTHLY REPORT**

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

ADOPTED    Ayes    4       Engert, 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 Officer  
Police Report

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COMMUNICATIONS:

Clerk Connolly stated a communication was received from Time Warner regarding channel lineup.

Clerk Connolly announced that a representative from Assemblywoman Jane Corwin's office will be at the Town Hall on Wednesday, May 1, 2013 to hear any concerns from the residents.

**RESIGNATION OF NORMAN ATWATER FROM ZONING BOARD OF APPEALS**

Supervisor Engert read a letter of resignation from Norman Atwater from the Zoning Board of Appeals effective February 1, 2013.

RESOLUTION 37-2013

**APPOINTMENT OF ZONING BOARD OF APPEALS – Joseph Provencher**

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

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

Resolved the resignation of Norman Atwater is accepted with regret and that Joseph Provencher be appointed to the Zoning Board of Appeals to fill the unexpired term of Norman Atwater until December 31, 2015.

Supervisor Engert read a letter from Jim & Cheryl Brown thanking Police Constable John Yotter for returning their dog to their home.

RESOLUTION 38-2013

**CHANGES TO THE CODE OF SOMERSET – Proposed Local Law #1**

On the introduction of Councilman Jansen, seconded by Councilman Alt, the following resolution was

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

Resolved a proposed local law to repeal Chapter 92, "Environmental Quality Review" and Chapter 109, "Freshwater Wetlands" is introduced.

RESOLUTION 39-2013

**CALL FOR PUBLIC HEARING ON PROPOSED LOCAL LAW #1**

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

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

Resolved a public hearing will be held on May 14, 2013 at 7:00PM on the proposed local law to repeal Chapter 92, "Environmental Quality Review" and Chapter 109, "Freshwater Wetlands".

RESOLUTION 40-2013

**CHANGES TO THE CODE OF SOMERSET – Proposed Local Law #2**

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

ADOPTED Ayes 4 Engert, Alt, Jansen, Dewart

Nays 0

Resolved a public hearing will be held on May 14, 2013 at 7:00PM on the proposed local law amending various articles of Chapter 205 of the Code of the Town of Somerset regarding the following:

Personal Wireless Telecommunications

Cluster Residential Developments

Planned Unit Developments

Planned Business Areas

Site Plan Review

RESOLUTION 41-2013

**DECLARATION OF LEAD AGENCY**

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

ADOPTED Ayes 4 Engert, Alt, Jansen, Dewart

Nays 0

**WHEREAS**, the Code of the Town of Somerset regulates development in the Town, and problems with these Code requirements, and issues concerning some sections of the Code being outdated, have been identified, and

**WHEREAS**, the Town has evaluated these regulations and determined that amendments and additions to and/or repeal of the following Chapters and Sections of the Code are needed:

- Chapter 92, :”Environmental Quality Review”,
- Chapter 109, “Freshwater Wetlands”,
- Chapter 205, Article XIII, Section 205-43.1, “Personal Wireless Telecommunications Service”,
- Chapter 205, Article XIII, Section 205-47, “Cluster Residential Development” and Section 205-49, “Planned Business Areas”,
- Chapter 205, Article XV, “Planned Unit Development (PUD) District”,
- Chapter 205, Article XVA, “Site Plan Review”,
- Chapter 205, add new Article XXI, “Cluster Residential Developments”, and

**WHEREAS**, the Town of Somerset has prepared draft language for these proposed code amendments and additions, which are subject to public review, County referral, and the New York State Environmental Review Act (SEQRA).

**NOW, THEREFORE, BE IT RESOLVED**, that the Somerset Town Board hereby sets a Public Hearing on the proposed amendments to the Code of the Town of Somerset for May 14, 2013 at 7:00 p.m., and

**BE IT FURTHER RESOLVED**, that in accordance with the New York SEQRA, the Somerset Town Board would like to establish itself as SEQR Lead Agency for this action, and therefore authorizes a Lead Agency mailing, referral to the County under Section 239 of Town Law, and that a copy of the proposed amendments be made available at the Town Clerk's office and on the Town's website.

RESOLUTION 42-2013

**RULES OF PROCEDURE FOR THE PLANNING BOARD AND ZONING BOARD OF APPEALS**

Supervisor Engert stated the proposed rules of procedure for the Planning Board and Zoning Board of Appeals have been reviewed by both Boards and returned to the Town Board for consideration and possible adoption.

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

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

Resolved the rules of procedure for the Planning Board and Zoning Board of Appeals are approved as presented. (Attachments 1 & 2)

**FORMER BARKER CHEMICAL PROPERTY**

Supervisor Engert stated he sent a letter to Robert Schick, Director of the Div. of Environmental Remediation for NYSDEC (NYS Department of Environmental Conservation) on February 25, 2013 stating the town supports the LaBella Associates report and looks forward to returning the property to the tax rolls.

He stated that he has not received any further updates and the decision is in the hands of DEC.

RESOLUTION 43-2013

**SHOVEL READY SITE**

Supervisor Engert stated that he has attended 2 meetings with the Economic Development Council since Upstate Power has taken over the power plant, with some hope of funding for the necessary studies to pursue the shovel ready site to the west of the power plant. He said the town updated the Comprehensive Plan and has expended monies to make the parcel more appealing. He stated that the Town budgeted monies to commit to the project and suggested that \$35,000 be allocated to continue pursuing the project with anticipation of grant money being received from National Grid. He stated Commissioner Ferraro of the

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Niagara County Economic Development and Planning Department has developed a marketing tool to assist with marketing the site and asked the Board to review the draft document and offer comments. He stated the County will utilize the document for the economic development community and put it on their website.

Engineer Roeseler stated there are grant opportunities and they are trying to make the property attractive while preserving the natural environment of the site. He stated they need to prepare a description of the property and the Town will need to provide a local match monetarily. He stated that applications for grant monies will be prepared.

Attorney Jones asked if there is consideration to extend the sewer district.

Engineer Roeseler stated that will be handled similar to the Verizon project proposal.

Supervisor Engert stated that work needs to be started on what environmental studies need to be done and if we will be able to utilize some of the studies that were completed by Verizon.

On a motion of Councilman Alt, seconded by Councilman Dewart, the following motion was  
ADOPTED Ayes 4 Engert, Alt, Jansen, Dewart  
Nays 0

Resolved Supervisor Engert is authorized to expend up to \$35,000 to pursue shovel ready certification for the site west of the power plant.

RESOLUTION 44-2013

**SUPPORT OF SECOND AMENDMENT**

Supervisor Engert stated that the Councilmen and he have received several comments from residents regarding the NY SAFE Act and how it infringes on our rights. He read a letter from Councilman Wayner for the record, which stated (in part) that the actions of Governor Cuomo "to promote and sign into law the ill-conceived and mis-named NYS SAFE Act, in direct contradiction to the United States Constitution, is all the impetus required for me to oppose his irresponsible actions". The letter further stated "for us to stand by silently and allow this or any government to trample underfoot our Constitutional rights would be in direct contradiction to the very spirit and purpose of their sacrifices" (our servicemen and women) and urged the Board to adopt the proposed resolution requesting repeal of this unconstitutional and dangerous law.

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

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

**WHEREAS**, the right of the people to keep and bear arms is guaranteed as an individual right under the second amendment to the United States Constitution and under the Constitution of the State of New York, and

**WHEREAS**, the right of the people to keep and bear arms for defense of life, liberty and property is regarded as an inalienable right by the people of the Town of Somerset, New York, and

**WHEREAS**, the people of the Town of Somerset, New York derive economic benefit from all safe forms of firearms recreation, hunting, and shooting conducted within Somerset using all types of firearms allowable under the United States Constitution and the Constitution of the State of New York, and

**WHEREAS**, the Town of Somerset Town Board being elected to represent the people of Somerset and being duly sworn by their Oath of Office to uphold the United States Constitution and the Constitution of the State of New York, and

**WHEREAS**, the New York State Assembly and the New York State Senate being elected by the people of the State of New York and being duly sworn by their Oath of Office to uphold the United States Constitution and the Constitution of the State of New York, and

**WHEREAS**, legislation hastily passed by the New York Assembly and Senate and signed into law by Governor Cuomo without public hearings, infringes on the Right to Keep and Bear Arms and would ban the possession and use of firearms now employed by individual citizens of the Town of Somerset for defense of life, liberty and property and would ban the possession and use of firearms now employed for safe forms of firearms recreation, hunting and shooting conducted within the Town of Somerset, New York, and

**WHEREAS**, the Town of Somerset Town Board believes there are many other less intrusive means available other than rash, confusing and inarticulately drafted firearms laws that would effectively control, manage and reduce violence in our society such as mental health reforms, anti-bullying programs for schools, enforcement of existing firearms laws to the fullest extent possible and proper psychological counseling for those in need or who request it.

**NOW, THEREFORE, IT IS HEREBY RESOLVED** that the Town of Somerset Town Board does call upon our NYS Legislature to repeal the NY SAFE ACT and further hereby oppose the enactment of any legislation that would infringe upon the Right of the People to keep and bear arms and consider such laws to be unconstitutional, unnecessary and beyond lawful legislative authority granted to our State representatives, as there is no documented correlation between gun control measures and crime reduction.

**BE IT FURTHER RESOLVED** that a copy of this resolution be sent to President Barack Obama, Vice President Joseph Biden, Senator Charles Schumer, Senator Kirsten Gillibrand, Congressman Chris Collins, Governor Andrew Cuomo, Senator George Mazarz and Assemblywoman Jane Corwin.

RESOLUTION 45-2013

**PHONE SYSTEM FOR THE TOWN HALL**

Supervisor Engert stated the phone system had been a project that has been undertaken for the past few years and Clerk Connolly met with several vendors to solicit proposals to replace the current AT&T Merlin system that was installed around 1985.

Clerk Connolly presented quotes for a new phone system for the Town Hall as follows:

<u>Name and Address of Vendor</u>	<u>Price</u>	
	<u>Equipment</u>	<u>Maintenance/Service</u>
RONCO 595 Sheridan Drive, Tonawanda, NY 14150	\$5,492.88	\$268.20/yr. – 5 years \$760 Block Plan
SCHALLER GROUP 295 Mt. Read Blvd, Rochester, NY 14611	\$ 5,516.96	\$840 per year
MATRIX 126 Dwight Park Circle, Syracuse, NY 13209	\$ 6,795.00	\$252.00/yr. – 2 years
RICOH 303 Cayuga Rd., Buffalo, NY 14225	\$ 7,598.88	VoIP (Internet Based)

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

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

Resolved the phone system for the Town Hall be purchased from RONCO, 595 Sheridan Drive, Tonawanda, NY 14150 for \$5,492.88 for the equipment and associated costs as proposed.

RESOLUTION 46-2013

**TIRE DROP-OFF**

Superintendent Denny asked permission to conduct the annual tire drop-off at the Water/Sewer Treatment Plant using the same stipulations as last year with the plant being opened from April 22<sup>th</sup> through May 4<sup>th</sup> during regular business hours, with special hours on Saturday May 4<sup>th</sup>.

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

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

Resolved the annual tire drop-off shall be conducted as presented with it being advertised in the newsletter and the website.

RESOLUTION 47-2013

**SPECIAL COUNSEL FOR LABOR NEGOTIATIONS**

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

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

Resolved the Supervisor Engert is authorized to retain Mark Davis as special counsel for labor negotiations.

RESOLUTION 48-2013

**AUDIT OF CLAIMS**

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

ADOPTED Ayes 4 Engert, 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. 81 through No. 117	\$ 38,606.20
Highway Fund	No. 2 through No. 12	\$ 44,659.99
Sewer Fund	No. 6 through No. 21	\$ 4,333.35
Water Fund	No. 5 through No. 11	\$ 3,022.46

**PRIVILEGE OF THE FLOOR**

Dale Howard asked the Board if there has been any fallout from the sequester (US Government withholding funds).

Supervisor Engert said not on the town level.

James Hoffman asked how the \$35,000 for the shovel ready site will be spent.

Supervisor Engert stated the money will be used for engineering fees to pursue the studies that are necessary for obtaining shovel ready certification, and also the costs for hearings and the SEQR process. He said if we have a shovel ready certification site, it puts the Town in an advantageous economic market for site selectors.



Richard Wayner commended the Board on their position on the Second Amendment.

RESOLUTION 49-2013

**EXECUTIVE SESSION**

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

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

Resolved the Board enter into an executive session to discuss labor contract negotiations at 8:07PM.

RESOLUTION 50-2013

**RETURN TO REGULAR SESSION**

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

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

Resolved the Board return to regular session at 8:46PM.

On a motion of Councilman Alt, seconded by Councilman Dewart, the meeting adjourned at 8:47 P.M. subject to the Call of the Clerk. Carried unanimously.

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Rebecca A. Connolly, MMC  
Town Clerk

ATTACHMENT 1

**Town of Somerset Town Planning Board Rules of Procedure**  
Executive Summary and Preamble

The following Rules of Procedure were developed to ensure the Town Board and Town Planning Board of the Town of Somerset; Niagara County, New York is in compliance with New York Local Law, Town Law and the provisions as determined by the New York State Planning Federation.

Under New York State Town Law as of the date of adoption of these rules:  
§271 Planning Board, creation and appointment:

*Section 1* states (*in part*) the Town Board of each town is hereby authorized by local law or ordinance, to create a planning board consisting of five or seven members and shall, by resolution, appoint the members of such board and designate the chairperson thereof.

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*Section 2* provides *(in part)* for the appropriation for the planning board. The town board is hereby authorized and empowered to make such appropriation as it may see fit for planning board expenses. .... The planning board shall have the power and authority to employ experts, clerks and a secretary and to pay for their services.....

*Section 13:* The planning board may recommend to the town board regulations relating to any subject matter over which the planning board has jurisdiction under this article or and any other statute, or under any local law or ordinance of the town. Adoption of any such recommendations by the town board shall be by local law or ordinance.

*Section 14b:* The planning board may review and make recommendations on a proposed town comprehensive plan or amendment thereto. In addition the planning board shall have full power and authority to make investigations, maps, reports and recommendations in connection therewith relating to the planning and development of the town as it seems desirable, providing the total expenditures of said board shall not exceed the appropriation provided therefor.

*Section 16:* Every motion or resolution of a planning board shall require for its adoption the affirmative vote of a majority of all members of the planning board. Where an action is the subject of a referral to the county planning agency or regional planning council the voting provisions of sections two hundred thirty nine M and two hundred thirty nine N of the general municipal law shall apply.

*This section of law may be amended from time to time by the New York State Legislature and accordingly will be the laws followed.*

The New York State Planning Federation has further determined that the Planning Board should have a Rules of Procedure that is adopted annually and should be operating under the authority of the Council Liaison or Planning Committee. The NYS Planning Federation further stated that the primary responsibility of the Town Planning Board is the review of land use in the town.

The Governing Board, in most cases the Town Board, delegates review authority to the planning board, in the areas of subdivision review, site plan review, special use permits, sign permits, historic preservation, and architectural review. The Planning board has advisory powers concerning planning and development examples provided as: Development and revision of the Comprehensive Plan, zoning changes, capital budgets, recreation studies, variance request, subdivision regulations, and site plan regulations.

Additionally, the Town of Somerset Town Board, on an annual basis, shall appoint a Planning and Zoning Advisory Committee to oversee the Planning Board functions, except where local law, town law or ordinance requires full Town Board involvement. The Planning and Zoning Advisory Committee may, at its discretion, appoint a liaison to the Planning Board. The committee members appointed by the Town Board for the year 2013 shall be Councilman Alt and Councilman Dewart.

**Town of Somerset Town Planning Board  
Rules of Procedure**

Adopted March 12, 2013

*Whereas*, it is desirable for the Town of Somerset Town Planning Board to be governed by rules for the efficient and proper administration of its affairs, now therefore be it

*Resolved*, that the Town Planning Board for the Town of Somerset, Niagara County, New York, created by resolution of the Town Board, does hereby adopt the following rules as the procedures to govern its activities. These are meant to be guidelines only and may be deviated from time to time at the discretion of the Board. Such deviation shall not be grounds for challenging any action taken by the Board which would otherwise be valid.

**Article 1: Officers**

*Section 1.1 Officers*

The officers of the Town Planning Board shall consist of a Chairman, and Vice Chairman each of whom shall serve for a term of one year.

*Section 1.2 Elections of Officers*

The Chairman of the Planning Board shall be appointed by the Town Board and the Vice Chairman shall be elected for the ensuing year at the annual meeting of the Planning Board.

*Section 1.3 Secretary*

A Secretary shall be appointed by the Town Board, shall serve a term of one year and not be a member of the Board. In the event the Secretary shall be absent from any meeting, the officer presiding shall designate an alternate secretary to take meeting notes.

*Section 1.4 Duties of the Officers:*

The duties and powers of the officers of the Town Planning Board shall be as follows:

A. Chairman:

1. To preside at all meetings
2. To call special meetings in accordance with these procedures
3. To sign, with the Secretary, all official documents of the Town Planning Board
4. To see that all reports, documents and actions of the Planning Board are properly made, executed, filed or taken, as the case may be, in accordance with the law and the actions and regulations of the Planning Board
5. To serve as liaison to the Town Board, the Planning and Zoning Advisory Committee, and Town attorney

B. Vice Chairman:

1. During the absence, disability or disqualification of the Chairman, the Vice Chairman shall exercise or perform all the duties and be subject to all the responsibilities of the chairman

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*Section 1.5 Duties of the Secretary:*

Secretary:

1. To keep the minutes of all meetings in an appropriate Minute Book
2. To give or serve all notices required by law or by the procedures
3. To be custodian of records of the Town Planning Board, including Planning Board member training hours and submit the hours to the town clerk
4. To attend to all official correspondence
5. To prepare agenda, after conferring with the Chairman, one week prior to meeting and send to members, Attorney and Code Enforcement Officer
6. To lay before the Town Planning Board at its meetings all official correspondence received by the Secretary relating to the business of the Board
7. To affix to any official document of this Planning Board the official signature thereof whenever the same shall be required by law or the regulations of the Board, such action to be taken however only after such action shall have been authorized by an affirmative vote of the Board
8. To submit to the Town Clerk all decisions made by the Planning Board within five days of said decision

**Article 2: Voting and Conflicts of Interest**

*Section 2.1 Voting:*

At all meetings of the Planning Board, each member properly appointed and attending shall be entitled to cast one vote. Voting shall be by voice. A majority vote of all the members of the entire Planning Board as fully constituted regardless of absences necessary for adoption of any proposed action voting matter subject to GML 239m(5).

*Section 2.2 Conflicts of Interest:*

Any member of the Town Planning Board having any interest in any matter brought before the Planning Board, shall abstain or disqualify themselves from any consideration, discussion of vote upon such matters. Such absence or disqualification shall be noted in the minutes of the Planning Board by the secretary, who shall also note that no vote was cast by such member on said matter.

If a member of the Town Planning Board wishes to speak as a resident and not as a Planning Board member, the Board member must remove themselves from the table and sit in the community seating area. The secretary will note in the meeting minutes that such action was taken by the Planning Board member.

**Article 3: Vacancies**

*Section 3.1 Vacancies:*

Shall any vacancy occur among the members of this Planning Board by reason of death, resignation, disability or otherwise, immediate notice thereof shall be given to the Town Clerk by the Secretary. Should such vacancy occur among the officers of the Planning Board, other than the Chairman, the vacancy of the officer shall be filled by election at the next regular meeting of this Planning Board. The officer will be elected to serve the unexpired term of the office in which such vacancy shall occur.

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In the event that a Planning Board member misses 3 meetings or more in a year, the Chairman may ask the Board member to retire or resign from the board, in order to maintain continuity regarding the policies.

**Article 4 Meetings**

*Section 4.1: Annual meetings:*

The annual meeting of the Town Planning Board shall be the first meeting after the beginning of the year. Such meeting shall be devoted to the election of officers for ensuing year and such other business as shall be scheduled by the Town Planning Board Chairman.

*Section 4.2 Establishment of the Agenda:*

The submission deadline for an item to be placed on the Planning Board Agenda is 12 o'clock Noon, two (2) days prior to the scheduled meeting. A new application must be received 16 calendar days prior to the scheduled meeting for proper advertisement and review.

In the event an application is received after the deadline and all fees and escrow are paid, the Chairman shall decide if the application will be considered at the regular meeting and placed on the agenda, or if a special meeting is to be called, or if the application will be placed on the following month's agenda for consideration.

The Chairman shall communicate to the Planning & Zoning Advisory Committee on matters which are likely to have town-wide impact prior to placement on agenda.

*Section 4.3 Special Meetings:*

Special meeting of the Town Planning Board shall be held at a time and place designated by the Chairman. Notice thereof shall be given to all members.

*Section 4.4 Quorum:*

At any meeting of the Town Planning Board, a quorum shall consist of a majority of the members of the board. No action shall be taken in the absence of a quorum, except that those members present shall be entitled to call a special meeting at a subsequent date.

*Section 4.5 Proceedings:*

A. At any regular meeting of the Planning Board, the following shall be the regular order of business:

1. Call to order
2. Approval of minutes of the preceding meeting
3. Communications
4. Officers reports
5. Committee reports
6. Unfinished business
7. New Business
8. Announcements
9. Public comments
10. Adjournment

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- B. Each action of the Planning Board required by law, rules or regulations shall be embodied in a formal resolution duly entered in full upon the Minute Book after an affirmative vote.

*Section 4.6 Record of Meetings:*

The Planning Board secretary keeps minutes of all Planning Board meetings and hearings. Minutes include names of persons appearing and addressing the Planning Board, and will faithfully reflect the record or a summary of all proposals, matters discussed, comments received at public hearings, resolutions, findings and the reasons thereof, and any matter formally voted upon, including the vote thereon. Copies of the Planning Board's meeting minutes will be available to all Planning Board members and Town Clerk no later than two (2) weeks from the date of the Planning Board meeting. The minutes become official only after they have been formally accepted by a vote of the Board at a regular meeting. Copies of the minutes will be available at the Town Clerks office and the Town's website.

*Section 4.7 Correspondence:*

All correspondence by Town Planning Board members shall be directed to the Chairman for consideration. No correspondence shall be directed to the Town Attorney except by the Town Planning Board Chairman or the Planning and Zoning Advisory Committee or Secretary if the Chairman so designates.

**Article 5: Application Procedures**

*Section 5.1 Receipt of Applications and other Correspondence:*

The Town Clerk is hereby authorized to receive petitions and communications on behalf of the Town Planning Board. The Code Enforcement Officer is hereby authorized to receive applications that require Planning Board action. The Town Clerk and Code Enforcement Officer shall immediately notify the Secretary of the Planning Board and transmit to said secretary, any forms, letters or other materials. All applications shall be received by the Secretary sixteen (16) calendar days prior to the Planning Board meeting for consideration at the next Planning Board meeting. The secretary shall request the chairman of the Planning Board to call a special meeting of the Planning Board, if necessary.

All applications must be accompanied by payment of applicable fees and escrow deposits as set forth in the Planning Board's fee schedule. No application will be processed or considered without payment of the requisite fees and escrow deposits. All appropriate SEQR documentation should accompany the application.

**Article 6: Consultant Review**

*Section 6.1 Consultant Review:*

All consultants, outside of the Town Engineer, Code Enforcement Officer or other Town Department managers, must receive prior authorization from the Planning and Zoning Advisory Committee, or committee liaison, before attending a Planning Board meeting or accepting materials for review.

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The Planning Board Chairman will forward all appropriate materials to the attorney and/or town engineer for review. Planning Board attorney and/or town engineer must submit their reviews to the Planning Board Chairman no later than two (2) business days prior to the next Planning Board meeting. The Planning Board Chairman may authorize consultant reviews to be forwarded to applicants or their representatives prior to the meeting.

The Chairman may request that a Planning Board consultant attend a meeting. At the meeting, any Planning Board consultant requested to attend will be prepared to discuss and analyze the application in sufficient detail to aid the Planning Board in its review of the application, including the identification of relevant issues raised by the application, and the identification of any deficiencies or any material information missing from the application.

**Article 7: Conduct of Public Hearings**

*Section 7.1 Conduct of Public Hearings:*

The Chairman opens the public hearing. The Secretary will read the public hearing notice published in the official Town newspaper. The applicant or his/her agent presents a summary of the proposal for members of the public. (Prior to the public meeting, the application and supporting materials will be available for review by the public at the Town's Clerk's Office in the Town Hall located at 8700 Haight Road, Barker, NY 14012).

The Chairman then opens the hearing to the public for comments and questions. All comments and questions are directed to the Chairman who determines whether a response is necessary and, if so, who will respond.

- a. All who speak are asked to identify themselves as to name
- b. Anyone wishing to comment on the application will do so verbally at the hearing, or by a signed, written statement submitted to the board prior to the hearing

There shall be a set time limit of five (5) minutes for anyone other than the applicant or his/her agent to speak on a matter before the Board. Extensions may be granted with the permission of the Chairman.

Planning Board members and consultants may ask questions during the hearing at any time.

When all who wish to do so have spoken the Chairman:

- a. Closes the hearing if the Board is satisfied that all comments have been received and all questions of the Board members have been answered, or
- b. Adjourns the hearing to a specified date if that is possible, or
- c. Adjourns the hearing to an unspecified date if additional information is necessary and no time frame exists as to when the information will be available. In this case, the hearing must be re-noticed in accordance with Town and State requirements.

**Article 8: Training requirements**

*Section 8.1 Training requirements:*

Planning Board members must complete at least four hours of training each year and the training must be approved by the Town Board. Training in excess of four hours may be carried over into succeeding years. To be eligible for reappointment to such board, the member shall have completed the training. The secretary shall notify on an annual basis, the hours of training completed to the Town Clerk.

**Article 9: Amending Procedures**

*Section 9.1 Amending Procedures:*

Upon conferring with the Planning Board, these procedures may be amended by resolution of the Town Board.

**Article 10: Former Procedures**

*Section 10.1 Former Procedures*

These procedures shall supersede any and all procedures previously adopted.

ATTACHMENT 2

**Town of Somerset Zoning Board of Appeals Rules of Procedure**  
Executive Summary and Preamble

The following Rules of Procedure were developed to ensure the Town Board and Town Zoning Board of Appeals of the Town of Somerset; Niagara County, New York is in compliance with New York Local Law, Town Law and the provisions as determined by the New York State Planning Federation.

Under New York State Town Law as of the date of adoption of these rules:

**§267 Zoning Board of Appeals:**

*Section 2* states each town board which adopts a local law or ordinance and any amendments thereto pursuant to the powers granted by this article shall appoint a board of appeals consisting of three or five members as shall be determined by such local law or ordinance and shall designate the chairperson thereof. In the absence of a chairperson the board of appeals may designate a member to serve as acting chairperson. The town board may provide for compensation to be paid to experts, clerks and a secretary and provided for such other expenses as may be necessary and proper, not exceeding the appropriation made by the town board for such purpose.

*Section 3:* states (*in part*) No person who is a member of the town board shall be eligible for membership on such board of appeals.

**§267-a Section 4:** Unless otherwise provided by local law or ordinance, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the



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administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article. Such appeal may be taken by any person aggrieved, or by and officer, department, board or bureau of the town.

*Section 11: (in part)* Compliance with state environmental quality review act. The board of appeals shall comply with the provision of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations as codified in title six, part six hundred seventeen of the New York codes, rules and regulations.

*Section 13a: Decision of the board.* Except as otherwise provided in subdivision twelve of this section, every motion or resolution of a board of appeals shall require for its adoption the affirmative vote of a majority of all members of the board of appeals as fully constituted regardless of vacancies or absences. Where an action is the subject of a referral to the county planning agency or regional planning council the voting provisions of section two hundred thirty-nine-m of the general municipal law shall apply.

**§ 267-b.** *Section 1:* states *(in part)* The board of appeals may reverse, affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whom order, requirement, decision interpretation or determination the appeal is taken.

*Section 2a: (in part)* The board of appeals .....shall have the power to grant use variances as defined herein.

*Section 3a: (in part)* The zoning board of appeals shall have the power .....to grant area variances as defined herein.

*This section of the law may be amended from time to time by the New York State Legislature and accordingly will be the laws followed.*

Additionally, the Town of Somerset Town Board, on an annual basis, shall appoint a Planning and Zoning Advisory Committee to oversee the Zoning Board of Appeals functions, except where local law, town law or ordinance requires full Town Board involvement. The Planning and Zoning Advisory Committee may, at its discretion, appoint a liaison to the Zoning Board of Appeals. The committee members appointed by the Town Board for the year 2013 shall be Councilman Alt and Councilman Dewart.

**Town of Somerset Zoning Board of Appeals  
Rules of Procedure**

Adopted March 12, 2013

*Whereas*, it is desirable for the Town of Somerset Town Zoning Board of Appeals to be herein after governed by rules for the efficient and proper administration of its affairs, now therefore be it

*Resolved*, that the Town Zoning Board of Appeals for the Town of Somerset, Niagara County, New York, created by resolution of the Town Board, does hereby adopt the following rules as the procedures to govern its activities.

**Article 1: Officers**

*Section 1.1 Officers*

The officers of the Town Zoning Board of Appeals shall consist of a Chairman, and Vice Chairman each of whom shall serve for a term of one year.

*Section 1.2 Elections of Officers*

The Chairman of the Zoning Board of Appeals shall be appointed by the Town Board and the Vice Chairman shall be elected for the ensuing year at the annual meeting of the Zoning Board of Appeals.

*Section 1.3 Secretary*

A Secretary shall be appointed by the Town Board, shall serve a term of one year and not be a member of the Board. In the event the Secretary shall be absent from any meeting, the officer presiding shall designate an alternate secretary to take meeting notes.

*Section 1.4 Duties of the Officers:*

The duties and powers of the officers of the Town Zoning Board of Appeals shall be as follows:

C. Chairman:

1. To preside at all meetings
2. To call special meetings in accordance with these procedures
3. To sign, with the Secretary, all official documents of the Town Zoning Board of Appeals in accordance with the requirement of these procedures
4. To see that all reports, documents and actions of the Zoning Board of Appeals are properly made, executed, filed or taken, as the case may be, in accordance with the law and the actions and regulations of the Zoning Board of Appeals
5. To serve as liaison to the Town Board, the Planning and Zoning Advisory Committee, and Town attorney at the direction of the Zoning Board of Appeals

D. Vice Chairman:

1. During the absence, disability or disqualification of the Chairman, the Vice Chairman shall exercise or perform all the duties and be subject to all the responsibilities of the chairman

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*Section 1.4 Duties of the Secretary:*

Secretary:

1. To keep the minutes of all meetings in an appropriate Minute Book
2. To give or serve all notices required by law or by the procedures
3. To be custodian of records of the Town Zoning Board of Appeals, including Zoning Board of Appeals member training hours and submit the hours to the town clerk
4. To attend to all official correspondence
5. To prepare agenda, after conferring with Chairman, one week prior to meeting and send to members, Attorney and Code Enforcement Officer
6. To lay before the Town Zoning Board of Appeals at its meetings all official correspondence received by the Secretary relating to the business of the Board
7. To affix to any official document of this Zoning Board of Appeals the official signature thereof whenever the same shall be required by law or the regulations of the Board, such action to be taken however only after such action shall have been authorized by an affirmative vote of the Board
8. To submit to the Town Clerk all decisions made by the Zoning Board of Appeals within five days of said decision

**Article 2: Voting and Conflicts of Interest**

*Section 2.1 Voting:*

At all meetings of the Zoning Board of Appeals, each member properly appointed and attending shall be entitled to cast one vote. Voting shall be by voice. A majority vote of all the members of the entire Zoning Board of Appeals as fully constituted regardless of absences shall be necessary for adoption of any proposed action subject to GML 239m(5).

*Section 2.2 Conflicts of Interest:*

Any member of the Town Zoning Board of Appeals having any interest in any matter brought before the Zoning Board of Appeals, shall abstain or disqualify themselves from any consideration, discussion or vote upon such matters. Such absence or disqualification shall be noted in the minutes of the Zoning Board of Appeals by the secretary, who shall also note that no vote was cast by such member on said matter.

If a member of the Town Zoning Board of Appeals wishes to speak as a resident and not as a Zoning Board of Appeals member, the Board member must remove themselves from the table and sit in the community seating area. The secretary will note in the meeting minutes that such action was taken by the Zoning Board of Appeals member.

**Article 3: Vacancies**

*Section 3.1 Vacancies:*

Shall any vacancy occur among the members of this Zoning Board of Appeals by reason of death, resignation, disability or otherwise, immediate notice thereof shall be given to the Town Clerk by the Secretary. Should such vacancy occur among the officers of the Zoning Board of Appeals, the vacancy of the officer shall be filled by election at the next regular meeting of this Zoning Board of

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Appeals; the officer will be elected to serve the unexpired term of the office in which such vacancy shall occur.

In the event that a Zoning Board of Appeals member misses 3 meetings or more in a year, the Chairman may ask the Board member to retire or resign from the board, in order to maintain continuity regarding the policies.

**Article 4: Meetings**

*Section 4.1: Annual meetings:*

The annual meeting of the Town Zoning Board of Appeals shall be the first meeting after the beginning of the year. Such meeting shall be devoted to election of officers for the ensuing year and such other business as shall be scheduled by the Town Zoning Board of Appeals Chairman.

*Section 4.2 Establishment of the Agenda:*

The submission deadline for an item to be placed on the Zoning Board of Appeals Agenda is 12 o'clock Noon, two (2) days prior to the scheduled meeting. A new application must be received 16 calendar days prior to the scheduled meeting for proper advertisement and review. No matter will be placed on an agenda unless all required materials are received by the submission deadline.

The Chairman shall communicate to the Planning & Zoning Advisory Committee on matters which are likely to have town-wide impact prior to placement on agenda.

*Section 4.3 Special Meetings:*

Special meeting of the Town Zoning Board of Appeals shall be held at a time and place designated by the Chairman. Notice thereof shall be given to all members.

*Section 4.4 Quorum:*

At any meeting of the Town Zoning Board of Appeals, a quorum shall consist of a majority of the members of the board. No action shall be taken in the absence of a quorum, except that those members present shall be entitled to call a special meeting at a subsequent date.

*Section 4.5 Proceedings:*

A. At any scheduled meeting of the Zoning Board of Appeals, the following shall be the regular order of business

1. Call to order
2. Approval of minutes of the preceding meeting
3. Communications
4. Officers reports
5. Committee reports
6. Unfinished business
7. New Business
8. Announcements
9. Public comments
10. Adjournment

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- B. Each action of the Zoning Board of Appeals required by law, rules or regulations shall be embodied in a formal resolution duly entered in full upon the Minute Book after an affirmative vote.

*Section 4.6 Record of Meetings:*

The Zoning Board of Appeals secretary keeps minutes of all Zoning Board of Appeals meetings and hearings. Minutes include names of persons appearing and addressing the Zoning Board of Appeals, and will faithfully reflect the record or a summary of all proposals, matters discussed, comments received at public hearings, resolutions, findings and the reasons thereof, and any matter formally voted upon, including the vote thereon. Copies of the Zoning Board of Appeals meeting minutes will be available to all Zoning Board of Appeals members and Town Clerk no later than two (2) weeks from the date of the Zoning Board of Appeals meeting. The minutes become official only after they have been formally accepted by a vote of the Board at a regular meeting. Copies of the minutes will be available at the Town Clerks office and the Town's website.

*Section 4.7 Correspondence:*

All correspondence by Town Zoning Board of Appeals members shall be directed to the Chairman for consideration. No correspondence shall be directed to the Town Attorney except by the Town Zoning Board of Appeals Chairman or the Planning and Zoning Advisory Committee or Secretary if the Chairman so designates.

**Article 5: Application Procedures**

*Section 5.1 Receipt of Applications:*

The Code Enforcement Officer is hereby authorized to receive communications on behalf of the Town Zoning Board of Appeals. The Code Enforcement Officer shall immediately notify the secretary of the Zoning Board of Appeals and transmit to said secretary, any forms, letters or other materials. All applications shall be received by the Secretary sixteen (16) calendar days prior to Zoning Board of Appeals meeting for consideration at the next Zoning Board of Appeals meeting. The secretary shall request the chairman of the Zoning Board of Appeals to call a special meeting of the Zoning Board, if necessary.

All applications must be accompanied by payment of applicable fees as set forth in the Zoning Board of Appeals fee schedule. No application will be processed or considered without payment of the requisite fees. All appropriate SEQR documentation should accompany the application.

**Article 6: Consultant Review**

*Section 6.1 Consultant Review:*

All consultants, outside of the Town Engineer, Code Enforcement Officer or other Town Department managers, must receive prior authorization from the Planning and Zoning Advisory Committee, or committee liaison, before attending a Zoning Board of Appeals meeting or accepting materials for review.

The Zoning Board of Appeals Chairman will forward all appropriate materials to the attorney or town engineer for review. Zoning Board of Appeals attorney or town engineer must submit their reviews to the Zoning Board of Appeals Chairman no later than two (2) business days prior to the

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next Zoning Board of Appeals meeting. The Zoning Board of Appeals Chairman may authorize consultant reviews to be forwarded to applicants or their representatives prior to the meeting.

The Chairman may request that a Zoning Board of Appeals consultant attend a meeting. At the meeting, any Zoning Board of Appeals consultant requested to attend will be prepared to discuss and analyze the application in sufficient detail to aid the Zoning Board of Appeals in its review of the application, including the identification of relevant issues raised by the application, and the identification of any deficiencies or any material information missing from the application.

**Article 7: Conduct of Public Hearings**

*Section 7.1 Conduct of Public Hearings:*

The Chairman opens the public hearing. The Secretary will read the public hearing notice published in the official Town newspaper. The applicant or his/her agent presents a summary of the proposal for members of the public. (Prior to the public meeting, the application and supporting materials will be available for review by the public at the Town's Clerk's Office in the Town Hall located at 8700 Haight Road, Barker, NY 14012).

The Chairman then opens the hearing to the public for comments and questions. All comments and questions are directed to the Chairman who determines whether a response is necessary and, if so, who will respond.

- a. All who speak are asked to identify themselves as to name.
- b. Anyone wishing to comment on the application will do so verbally at the hearing, or by a signed, written statement submitted to the board prior to hearing.

There shall be a set time limit of five (5) minutes for anyone other than the applicant or his/her agent to speak on a matter before the Board. Extensions may be granted with the permission of the Chairman.

Zoning Board of Appeals members and consultants may ask questions during the hearing at any time.

When all who wish to do so have spoken the Chairman:

- a. Closes the hearing if the Board is satisfied that all comments have been received and all questions of the Board members have been answered.
- b. Adjourns the hearing to a specified date if that is possible.
- c. Adjourns the hearing to an unspecified date if additional information is necessary and no time frame exists as to when the information will be available. In this case, the hearing must be re-noticed in accordance with Town and State requirements.

**Article 8: Training requirements**

*Section 8.1 Training requirements:*

Zoning Board of Appeals members must complete at least four hours of training each year and the training must be approved by the Town Board. Training in excess of four hours may be carried over into succeeding years. To be eligible for reappointment to such boards, the member shall have completed the training. The secretary shall notify on an annual basis, the hours of training completed to the Town Clerk.

**Article 9: Amending Procedures**

*Section 9.1 Amending Procedures:*

Upon conferring with the Zoning Board of Appeals, these procedures may be amended by resolution of the Town Board.

**Article 10: Former Procedures**

*Section 10.1 Former Procedures*

These procedures shall supersede any and all procedures previously adopted.