

REGULAR MEETING
MAY 14, 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 14th day of May 2013.

Present:	Daniel M. Engert -----	Supervisor
	Randall J. Wayner -----	Councilman
	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

Attended by: Code Enforcement Officer Remington, 7 residents and 23 BCS students

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

PUBLIC HEARINGS – Proposed Local Laws

- 1. Local Law #1 – 2013 – Repeal Code 92 and 109**
- 2. Local Law #2 – 2013 – Amends Code 205**

Notice of said hearings duly published in the Lockport Union-Sun & Journal on May 2, 2013 with same notice being posted on the same date at the Town Hall and on the website.

Supervisor Engert called the public hearings to order at 7:02PM.
Clerk Connolly read the notice of the hearings.

Supervisor Engert said extensive time has been spent on the amendments to make the code more in line with the Comprehensive Plan. Supervisor Engert asked for comments on proposed Local Laws 1 & 2 for 2013. With no one desiring to speak, Supervisor Engert closed the hearings at 7:07PM.

3. Local Law #3 – 2013 – Cemeteries

Notice of said hearings duly published in the Lockport Union-Sun & Journal on May 2, 2013 with same notice being posted on the same date at the Town Hall and on the website.

Supervisor Engert opened the public hearing at 7:08PM.
Clerk Connolly read the notice of the hearing.

Supervisor Engert asked for comments on proposed Local Law 3-2013. With no one desiring to speak, Supervisor Engert closed the hearing at 7:10PM.

REGULAR MEETING

Supervisor Engert called the regular meeting to order at 7:11PM.

RESOLUTION 58-2013

APPROVAL OF THE MINUTES

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

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

Resolved the minutes of the previous meeting are approved as submitted.

RESOLUTION 59-2013

APPROVAL OF THE SUPERVISOR'S MONTHLY REPORT

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

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

Resolved the Supervisor's Monthly report be accepted as submitted.

MONTHLY REPORTS RECEIVED AND FILED:

Code Enforcement Officer
Dog Control Officer
Police Report

QUARTERLY WATER/SEWER REPORT RECEIVED AND FILED.

COMMUNICATIONS:

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

SOLAR ENERGY SYSTEMS

Clerk Connolly reported that she had previously forwarded to the Town Board the recommendation of the Planning Board regarding a proposed small scale solar energy systems law for their consideration.

Clerk Connolly announced that May 15, 2013 is National Peace Officers Memorial Day and asked all to pay tribute to those who took the oath to "protect and serve" and sacrifice so much to keep our community safe.

Clerk Connolly showed the Board and audience the flag holder that was made and donated by Jon Hotaling to house the flag that was flown by the New York Air National Guard during a combat mission for Operation Iraq Freedom.

RESOLUTION 60-2013

ZONING REGULATIONS – NEGATIVE SEQR

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

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

WHEREAS, Town Code problems and issues have been identified by the Town of Somerset, and the Town's Comprehensive Plan recommends revisions, and

WHEREAS, the Town and its consultants have created revisions as follows:

Section 205-43.1- Personal Wireless Telecommunications Service
Section 205-47- Cluster Residential Developments
Section 205-48, 49- PUD's and Planned Business Areas
Sections 205-53, 55, 56, 57- Planned Unit Development District
Section 205-57- Site Plan Review
Sections 205-91 thru 101- Cluster Residential Development
Chapter 92- Environmental Quality Review (repealing-outdated)
Chapter 109- Freshwater Wetlands (repealing-outdated)

, and

WHEREAS, in accordance with Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act – SEQRA) of the Environmental Conservation Law, the Somerset Town Board has conducted a coordinated environmental review of the draft Zoning Code revisions, and

WHEREAS, no other Involved Agencies have objected to the Town acting as Lead Agency, and

WHEREAS, a public hearing was held on May 14, 2013 and no adverse comments were received.

NOW THEREFORE BE IT RESOLVED, that the Somerset Town Board hereby establishes itself as SEQR Lead Agency, and

BE IT FURTHER RESOLVED, the Somerset Town Board, in accordance with the State Environmental Quality Review Act (SEQRA) has determined that the proposed zoning code revisions will not adversely affect the natural resources of the State and/or the health, safety and welfare of the public and is consistent with social and economic considerations and therefore issues the attached SEQR Negative Declaration in accordance with Section 617.7 of the SEQR regulations, and

BE IT FURTHER RESOLVED, that the Supervisor is authorized to sign the Full Environmental Assessment Form.

RESOLUTION 61-2013

REPEAL OF CODE ARTICLES 92 & 109 – LOCAL LAW #1-2013

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

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

WHEREAS, Town Code problems and issues have been identified by the Town, and the Town's Comprehensive Plan recommends revisions, and

WHEREAS, the Town and its consultants have created revisions as follows:

Chapter 92- Environmental Quality Review (repealing-outdated)
Chapter 109- Freshwater Wetlands (repealing-outdated)

, and

WHEREAS, the Town has conducted a public hearing on May 14, 2013 and completed the required County referral, and received no adverse comments, and

WHEREAS, in accordance with Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act – SEQRA) of the Environmental Conservation Law, the Somerset Town Board has issued a SEQR Negative Declaration.

NOW THEREFORE BE IT RESOLVED, that the Somerset Town Board adopts Local Law #1-2013 amending the Code of the Town of Somerset repealing Chapter 92 and Chapter 109 in their entirety as per the attached Local Law.

Be it Enacted by the Town Board of the Town of Somerset as follows:
To amend the Code of the Town of Somerset as follows:

By repealing **Chapter 92, "Environmental Quality Review,"** in its entirety.

By repealing **Chapter 109, "Freshwater Wetlands,"** in its entirety.

This local law shall take effect immediately upon filing with the Secretary of State.

RESOLUTION 62-2013

AMENDMENT TO CODE – LOCAL LAW #2-2013

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

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

WHEREAS, Town Code problems and issues have been identified by the Town, and the Town's Comprehensive Plan recommends revisions, and

WHEREAS, the Town and its consultants have created revisions as follows:

Section 205-43.1- Personal Wireless Telecommunications Service
Section 205-47- Cluster Residential Developments
Section 205-48, 49- PUD's and Planned Business Areas
Sections 205-53, 55, 56, 57- Planned Unit Development District
Section 205-57- Site Plan Review
Sections 205-91 thru 103- Cluster Residential Development

, and

WHEREAS, the Town has conducted a public hearing on May 14, 2013 and completed the required County referral, and received no adverse comments, and

WHEREAS, in accordance with Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act – SEQRA) of the Environmental Conservation Law, the Somerset Town Board has issued a SEQR Negative Declaration.

NOW THEREFORE BE IT RESOLVED, that the Somerset Town Board adopts Local Law #2-2013 amending the Code of the Town of Somerset, Chapter 205, as per attached Local Law.

Be it Enacted by the Town Board of the Town of Somerset as follows:

To amend the Code of the Town of Somerset as follows:

In **Chapter 205 Article XIII §205-43.1, “Personal Wireless Telecommunications Service,”** by repealing §205-43.1(B) and (G), and replacing with the following new §205-43.1 (B) and (G) as follows:

- B. Any new telecommunications antenna which is to be attached to any structure other than a telecommunications tower (i.e., smokestack, building, etc.) shall also comply with the requirements of this section to

the extent applicable.

- G. The special permit shall be assignable and shall run with the land; provided, however, that the assignee must comply with the conditions of the special permit, must assume all obligations thereunder, and must provide proof of insurance and proof of removal cost bonding to the Town Clerk.

By repealing **Chapter 205 Article XIII §205-47 “Cluster Residential Developments,” §205-48, “Planned Unit Developments,” and §205-49, “Planned Business Areas,”** in their entirety.

In Article XV, “Planned Unit Development (PUD) District,” by repealing §205-53, General regulations, §205-55, Permitted uses, and §205-56, Application and procedures in their entirety and replacing those sections as follows:

§ 205-53. General regulations.

It is the intent of the PUD District to provide greater flexibility and opportunity for the development of mixed uses in specific areas of the Town. Innovative design and creative use mixes are encouraged to offer the potential for a sustainable development that can provide the economic and service base consistent with the objectives of the Somerset Comprehensive Plan. In addition, the PUD District is intended to encourage imaginative ways of accommodating environmental considerations and conservation into the development plan to strike a balance of physical features, environmental responsibility and development opportunity. The PUD District is a “floating zone,” which can be applied through a rezoning application, to a property or properties within the Town. The Town in determining whether to allow the use of the PUD District shall consider the Town’s Comprehensive Plan and the objectives of this district.

- A. A requisite of the PUD District is the planning of the entire site of integrated uses (human, physical and environmental) to redefine land use concepts into a consolidated, coordinated group that offers new approaches to community development. Therefore, instead of traditional zoning and subdivision requirements and standard development review procedures, this section establishes new procedures for the review and consideration of a proposal for a PUD District.
- B. An application for any development within an existing PUD District and any proposed new PUD District must promote and adhere to most of the following objectives.
 - 1) Present a varied choice of the type of environment, tenure, types and costs of housing, commercial uses, economic opportunities and/or recreation and community facilities that exist within the Town.

- 2) Offer a more efficient and economic arrangement of land uses, traffic circulation, utilities, open space and services that would lessen the cost and maintenance of the development.
- 3) Incorporate uses and facilities that consolidate infrastructure and ancillary services to encourage self-sufficiency of the ultimate development.
- 4) Integrate the comprehensive design of storm-water management drainage, flood control and open space into the development plans.
- 5) Provide for the safe and adequate conveyance of trucks, automobiles, pedestrians and bicyclists consistent with public safety and the capacity of the existing transportation system.
- 6) Extend and enhance the usable recreation and open space in the community via size, location, diversity and suitability for use.
- 7) Preserve the physical features of the area to the greatest extent possible, including the natural topography, soils, woodlands, vegetation, marshlands, floodplains and geologic features of the landscape.
- 8) Offer a creative use of land and existing natural elements to provide an orderly transition from adjacent area uses to the proposed development and, where such a transition cannot be fulfilled, incorporate buffering and landscaping to enhance this transition.
- 9) Achieve a balance of natural and developmental elements to complement the surrounding environment and provide a succession of land uses within the development area.
- 10) In the coastal area, promote the use and access to the waterfront consistent with the resources of the area and its environmental sensitivities.
- 11) Provide a consistent and unified architectural design theme or concept for the site and its elements to produce a cohesive visual appearance throughout the development.
- 12) Create a more desirable development atmosphere than would be possible through the strict application of other sections of this Zoning Ordinance.
- 13) Offer a development pattern in harmony with and in furtherance of the Town of Somerset Comprehensive Plan.

§205-55. Permitted uses.

A. Uses and structures permitted in the PUD District are as follows:

- 1) Principal and special permit uses and structures including farm-related activities and other activities as permitted in the RLS Lake Shore Residential District, R-2 Single- and Two-Family Residential District, B Business District, GI General Industrial District and I Industrial District or similar uses as determined by the Planning Board and related accessory uses.
- 2) Permitted uses shall provide a mixture of activities, open space, services and infrastructure to provide a multi-use development designed as a cohesive development and planned as a consolidated entity. The development may contain a mixture of business/industrial type uses and residential uses, or can contain just a mixture of business/industrial type uses. It is not the intent of the Somerset PUD zoning to only create a mixture of business and residential uses. Approved concept and development plans are required for the entire area.
- 3) Accessory uses and structures as permitted in the RLS, R-2, B, GI and I Districts.

B. Dimensional and developmental requirements.

- 1) Area. The minimum area designated for establishment of a PUD District shall be 10 acres. The minimum area eligible for addition to any existing PUD District for the expansion of that district shall be two acres, subject to the approval of the Planning Board for infrastructure and coordination of area development.
- 2) Lot size and yard requirements: If creating lots within the proposed PUD, the minimum lot designated for any eligible use shall generally be as required for the district in which it is allowable (RLS, R-2, B, GI or I Districts). However, clustering and innovative grouping of structures for site design and protection of open space or natural features is encouraged and eligible for approval through the PUD rezoning process rather than through strict adherence to the lot setback, width and yard requirements (no variances would be needed by the Zoning Board of Appeals).
- 3) Height. The maximum height of any structure shall be set by the approved plan.
- 4) Landscape and open space. There shall be a minimum of 25% open space for the entire development, which shall be exclusive of storm-water management areas, roadways, driveways, buildings, paved surfaces of parking areas, and utility facilities. Such areas may be left in a natural state or landscaped for aesthetics or functional use. Landscaped and open space areas shall be designed to coordinate

development uses, buffer dissimilar uses, protect natural and environmental features, separate buildings, prevent erosion and accommodate drainage, ensure proper light and ventilation around buildings and/or link development elements.

- 5) Public facilities. There shall be the provision of adequate public facilities to accommodate the proposed development, including sanitary sewerage, potable water and roadways sufficient in size and design in accordance with local and state standards. Appropriate sites suitable for fire protection shall be identified and offered for dedication to the Town.
- 6) Streets. All streets, rights-of-way, entrances and circulation drives shall conform to the Town of Somerset Highway Construction Standards (Chapter 114) and as regulated by the New York Department of Transportation for state highways and their entry, Niagara County Department of Public Works for county highways and their entry and the Somerset Highway Department for Town roads and their entry.
- 7) Parking. Minimum parking for each use shall be as required in Article XIV for that individual activity. Multi-use parking facilities are encouraged, and the total required spaces shall be reduced up to 15% for those required for the separate uses due to the shared nature of the multi-use plan. Parking spaces shall be a minimum of nine feet by 18 feet with a twenty-foot aisle for circulation. There shall be at least 25% of each parking area reserved for open space and properly landscaped to interrupt the continuity of paved surface (which shall be countable as open space under the requirements listed in Subsection B(4) above). All parking lots shall be paved with asphalt or an equivalent permanent surface, curbed and properly drained.
- 8) Use limitation. The following uses shall be prohibited in the PUD District:
 - a) Uses that produce earth jarring, vibration or noise beyond the structure within which the use is contained.
 - b) The storage, sale, distribution or use of hazardous materials or their by-products; or the storage of any material which would unreasonably increase the risk of fire hazard to adjoining buildings.
 - c) Any use or process which would cause the emission of noxious odors or gases beyond the building, constituting a nuisance to adjacent structures or potentially injurious to nearby occupants or property.
 - d) Activities which produce smoke, fly ash, dust, dirt, fumes or stack emissions that exceed state air quality regulations.

- e) Fugitive dust. There shall not be discharged locally from any operation on any lot: fly ash, dust, dirt, smoke, vapor or gas that results in an unsightly condition or could result in damage to the public health, animals or vegetation or that exceeds the approved regulatory standards of state or federal permitting agencies.
- f) Outdoor storage of junk, refuse, trash, secondhand materials or abandoned automobiles.

§205-56. Application and procedures.

- A. Pre-application conference. Each proposal for the rezoning of an area to PUD or the potential development of an existing PUD (that does not have an approved plan or has requested a modification to an approved plan) shall be scheduled with the Code Enforcement Officer and other Town officials as appropriate.
- B. Sketch plan.
 - 1) The applicant shall prepare and submit a sketch of the conceptual development of the site and the primary components to be included in the development.
 - 2) The sketch shall be prepared on a survey of the property(s) involved and of sufficient scale to demonstrate the major natural features, roads, proposed circulation, development elements and the conceptual areas proposed for the project.
 - 3) The sketch shall be submitted to the Code Enforcement Officer as a preliminary indication of intention to develop and the initiation of the development review process.
 - 4) The Code Enforcement Officer, upon receipt of the conceptual development sketch, shall immediately notify the Town Board and Planning Board of such plan in writing. Preliminary consideration of such sketch shall take place at the next meeting of each of the Boards.
 - 5) Based on input by the Planning Board and others, the Town Board will decide whether the PUD rezoning request would be entertained (authorized to move forward in the process). If entertained, the applicant can proceed to the next steps. Entertainment of the application by the Town Board does not bind the Town Board to approve the PUD.
- C. Development plan. Upon successful consideration of the sketch concept plan, and if the applicant chooses to proceed, a development plan shall be submitted to identify proposed uses on the site in accordance with the following (this development plan, if approved, would represent the zoning of the site):
 - 1) One map at a scale of one inch equals 200 feet or greater identifying the property boundaries, existing structures, adjacent uses and road

systems, topography at five-foot intervals, existing natural features, drainage features, wetlands, floodplains, and coastal and other environmental features.

- D. Proposed land uses, acreage of each and estimated development densities (dwelling units, approximate square footage of buildings, etc.). In addition to the development plan, the applicant shall submit the following information to assist with the review of the PUD designation:
- 1) Proposed access and circulation and their connection to the highway system; primary pedestrian and bicycle circulation.
 - 2) Existing and proposed water and sewer systems to serve site development, their connections to the municipal system and the adequacy of that system to accommodate proposed flows.
 - 3) Preliminary grading implication for proposed development, storm-water management drainage and erosion and any development impact on floodplains, floodways and wetlands.
 - 4) Preparation of a State Environmental Quality Review Act environmental assessment form (Part 1) for the proposed development and any necessary back-up/supplemental information needed.
 - 5) Treatment of major open space areas and primary landscape forms.
 - 6) Sketches of typical structures and development elements to identify the basic concepts and the architectural approach to be used.
 - 7) Any additional information requested by the Planning Board or Town Board.
- E. Planning Board review. A development plan and other information received by the Town Code Enforcement Officer shall be sent to the Town Engineer, Highway Superintendent and such other agencies or Town officials as appropriate for review and recommendation. The Code Enforcement Officer shall forward all documents and comments to the Planning Board for its review. Within 62 days of submission of complete documentation to the Planning Board, the Planning Board shall review and make a finding that the application complies fully with the applicable regulations and standards prescribed by this chapter or, absent compliance, is recommended for approval with modifications, returned to the applicant for amendments to the development plan or disapproved. The Town Board and the applicant shall be notified of the Planning Board's determination and any basis for its findings.
- F. Town Board determination. Upon receiving a recommendation for approval from the Planning Board or upon receipt of any application to the Town Clerk following a Planning Board recommendation other than approval, the Town Board shall schedule a public hearing in accordance

with its procedures (rezoning of property) to consider the development plan submitted. The Town Board shall make a determination and decision on the development plan within 62 days of the public hearing (this time period does not begin unless the SEQRA process is completed), considering the regulations and the objectives of the PUD contained therein; the report of the Planning Board in its deliberations; the comments from the public hearing; the SEQRA process and any pertinent documentation; and the protection of the public health, safety and welfare. A decision by the Town Board on the approval or amendment of a PUD or the approval of a development plan shall constitute a zoning determination (a rezoning of the property- local law revision) and include the same rights and obligations of a zoning matter. The development plan shall become an amendment to the zoning classification for the designated properties and thereby modify the Town Zoning Map and the eligible uses appropriately. The modification of the development plan, once approved by the Town Board, is through the same process in which it was originally approved.

- G. Development plan implementation. Upon approval of a development plan (rezoning to PUD) by the Town Board, specific site development approval may then proceed in accordance with the approved PUD plan, and the standard review requirements of the Somerset Zoning Ordinance. (Applications can be made to the Town for site plan and, if necessary, subdivision approval). The applicant can proceed with approval and development of the entire PUD, or the applicant can apply for any portion of the development area designated by the approved development plan. These applications shall be submitted consistent with the regulations and procedures of Town site plan review and, if applicable (creating subdivision lots), the Town of Somerset Subdivision Ordinance.

Proposed development shall be generally consistent with the approved PUD plan as determined by the Planning Board.

By amending **Article XVA, "Site Plan Review," to add a new paragraph to §205-57.1 as follows:**

C. Exemptions.

- 1) The following actions/projects have been deemed to be minor in nature, and if they are shown to meet the criteria in this section, will not require site plan approval as outlined in this article. The first criterion needed to be met to obtain this exemption from site plan approval is that an approved site plan representing the project site must be on file at the Town (valid site plan or building plan from previous construction on the site). If the project meets this criterion, requires no variances, and, in general, meets one or more of the following criteria, the project may not require site plan approval:

- a) Additions to existing structures, new accessory structures or additions to accessory structures, of less than 1,000 square feet or which represent less than 10% of the existing structure as shown on the approved filed site plan, whichever is less.
 - b) Modifications to the exterior of the building.
 - c) Interior changes to a building or structure not requiring additional parking (as determined by the Code Enforcement Officer).
- 2) To obtain this exemption the following process shall be followed. Upon application for a building permit, the Town's Code Enforcement Officer, utilizing a form created by the Town, will review the application and make a preliminary determination as to whether site plan review is required. This form, and the Code Enforcement Officer's determination, will be reviewed by the Town Engineer (or another person designated by the Town Board) and if both agree that the project does not warrant site plan review, sign the form. This signed form will allow the applicant to proceed with acquiring a building permit. If it is determined that the project does not meet the criteria for an exemption, the project must be processed through the requirements of site plan approval outlined in this article.

By repealing **§205-57, Purpose and Intent**, in its entirety and replacing with the following:

§205-57. Purpose and intent.

It is the intention of this article to ensure the efficient use of land, consideration of potential impacts on the environment and their avoidance, wherever possible, and the promotion of high standards in the design, layout, landscaping and construction of development, and to ensure development conforms to the provisions of this chapter.

By amending **§205-57.3, Site Plan Review Procedures, Subsection A**, by replacing the first sentence with the following:

- A. Staff evaluation. An application for site plan review must be complete as specified in this section and submitted to the Code Enforcement Office at least 30 days prior to the Planning Board meeting to provide adequate opportunity for review, distribution of notices and advertisement of necessary meetings.

The remainder of the paragraph remains the same.

By amending Chapter 205 by adding a new **Article XXI, "Cluster Residential Developments,"** as follows:

§205-91. Statement of intent and purpose.

The purpose of a cluster development shall be to enable and encourage flexibility of design and development of lands in such a manner as to enhance and preserve the natural and scenic qualities of open lands and to thereby maintain

the rural quality of the community. This includes the preservation of unique or significant features of the site, including, but not limited to, a vegetative feature (i.e., important woods, etc.), wildlife habitat, endangered species area, unusual land formation, agricultural land, waterfront or other significant features. It may also include an important view or aesthetic/scenic component of the Town, or help to preserve the rural character of the community. In some instances, the cluster development concept may be utilized to create an important recreational or scenic component for the community. It is not the intent of cluster development to create useless open space such as standard lawned areas or vacant field.

§205-92. Statutory authority.

Pursuant to the provisions of Town Law §278, the Town Board of the Town of Somerset does hereby authorize the Planning Board of the Town of Somerset to approve a cluster residential development simultaneously with the approval of a plat or plats. Approval of cluster developments shall be subject to the conditions set forth in this article and in Town Law §278, and the subdivision approval process set forth in the Code of the Town of Somerset, Chapter 171.

§205-93. Preemption.

In addition to provisions of Town Law §278, the provisions set forth in this chapter shall be followed in reviewing applications for cluster development. Whenever the provisions of this chapter are more restrictive than, or contain additional requirements to, §278, the provisions of this chapter shall prevail.

§205-94. Definition; where allowed; discretion.

- A. "Cluster residential development" shall mean a subdivision plat or plats, approved pursuant to this article, in which the applicable Zoning Ordinance or Local Law is modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks and landscaping in order to preserve the natural and scenic qualities of open lands where allowed, while maintaining the same density of use within such plat as would otherwise be allowed in the relevant district(s).
- B. Cluster residential developments may be allowed in the following districts: A, RLS, R-1, R-2 and PUD.
- C. Cluster residential development shall not be a use allowed by right. It may be allowed at the discretion of the Planning Board. The procedure set forth herein and the authorization of cluster development may be followed and allowed at the discretion of the Planning Board if, and in the Planning Board's judgment, its

application would benefit the Town, meet the Town's goals, and the objectives and the purposes of this article.

§205-95. Density.

A cluster residential development shall result in a permitted number of building lots or dwelling units, which shall in no case exceed the number which could be permitted, in the Planning Board's judgment, if the land were subdivided into lots conforming with the minimum lot size and density requirements of the Zoning Law of the Town of Somerset applicable to the district or districts in which such land is situated and conforming to all other applicable requirements. Where the plat falls within two or more contiguous districts, the Planning Board may approve a cluster development representing the cumulative density as derived from the summing of all units allowed in all such districts, and may authorize actual construction to take place in all or any portion of one or more such districts.

§205-96. Maintenance.

The Planning Board, as a condition of plat approval, shall establish such conditions on the ownership, use and maintenance of such open lands shown on the plat as it deems necessary to assure and preserve the natural and scenic qualities of such open lands, such as deed restrictions on development, conservation easements, or the like. The filed plat shall clearly indicate that no further development shall be permitted in the open lands.

§205-97. Plat requirements.

The plat showing such cluster residential development shall depict the areas within which structures may be located with building footprints, the height and spacing of buildings, open spaces, and their landscaping, off-street open and enclosed parking spaces, streets, driveways, and any other features required by the Planning Board.

§205-98. Dual plats required.

At the time of submission of the sketch or concept plan, or in the event that the developer elects to submit a preliminary plan, at the same time of such submission, two plans shall be submitted, with one layout designating the layout of a standard subdivision in the underlying district and the second layout showing the proposed cluster residential development. Each lot in the standard subdivision layout shall meet the minimal lot size and lot width requirements of the Zoning Law of the Town of Somerset for the district in which the property is located. The standard subdivision layout shall be utilized by the Planning Board to determine the maximum density for the cluster residential development.

- A. The standard subdivision layout required to determine the proper density for a cluster development shall be in all respects consistent with federal, state and Town laws, including, but not limited to, laws regulating:

- (1) Construction in floodways.
- (2) Wetland protection.
- (3) Subdivision regulations.
- (4) Zoning.

- B. A specification sheet shall be attached showing all calculations used to arrive at density and open space.
- C. Based on this submission and other required information and information requested by the Planning Board, the Planning Board shall determine whether to allow the applicant to proceed with a cluster development or deny its usage.

§205-99. Layout limitations.

Areas which would not be available for construction on standard layout, in the judgment of the Planning Board, must be preserved as open space on the standard subdivision plan, including, but not limited to:

- A. Portions required or set aside for drainage basins or drainage purposes;
- B. All streets and rights-of-way (public or private);
- C. Major utility easements; and
- D. Portions of the developed area which are not available for building because of slopes, soil conditions, or other conditions rendering the area not suitable for development.

§205-100. Additional requirements.

In addition to the above, cluster residential developments shall meet the following criteria:

- A. Streets, private driveways and rights-of-way providing access to individual residences shall be shown and shall be of sufficient design and construction to permit access by emergency vehicles;
- B. If any dwelling unit is not to have access by way of a street or highway (i.e., by way of private driveway, right-of-way, or easement), designation of the cluster residential development as an open development area by resolution of the Town Board pursuant to Town Law §280-a shall be required;

- C. No structure in a cluster development shall be closer to a pre-existing street or highway than a structure in a standard subdivision;
- D. All structures shall be set back sufficiently from the street or highway to accommodate all necessary public and private utilities and easements; and
- E. Individual lot size shall not be less than 6,000 square feet if public sewer is available or, where public sewer is not available, lot size shall not be less than 20,000 square feet or the minimum size required by the Niagara County Health Department for septic system design approval, whichever is greater.

§205-101. Open space.

- A. In reviewing proposed cluster developments, the Planning Board shall evaluate subdivision layout with respect to scenic views, natural landscape features, topography of the site, woodlands, wetlands, other features of the site, and other adjacent areas, and shall require development in a fashion or manner which it finds will enhance and preserve such features, including, but not limited to:
 - (1) Lands adjacent to or linking with existing parks and publicly accessible open spaces along the waterfront and important creeks within the Town;
 - (2) Lands adjacent to other dedicated open space areas on adjacent parcels;
 - (3) Buffer lands between adjacent active agricultural uses and residential development;
 - (4) Trail networks which meet Town of Somerset open space goals.
- B. In addition, the Planning Board may require additional amenities, enhancement of, changes to configuration of, and location of open space, to enhance the benefits to the residents and/or the Town derived from the cluster residential development. Failure or refusal to include such requirements shall result in disapproval of the proposed plan.

§205-102. Further restrictions; effect.

- A. The provisions of this article shall not be deemed to authorize a change in the permissible use of such lands as provided elsewhere in the Zoning Law of the Town of Somerset applicable to such lands.

- B. Nothing herein shall supersede any requirements of the subdivision regulations in effect, which may impose additional requirements for approval of the proposed subdivision.
- C. Further subdivision of an approved cluster residential development shall not be allowed. This shall be indicated on the final subdivision plat.

§205-103. Reference to Guidelines.

Applicants for cluster residential development approval are referred to the Rural Development Guidelines published by the Dutchess County Department of Planning and Development, dated October 1994, copies of which may be obtained from the Town of Somerset Town Clerk.

This local law shall take effect immediately upon filing with the Secretary of State.

RESOLUTION 63-2013

CEMETERIES – LOCAL LAW #3-2013

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

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

Resolved Local Law #3-2013 entitled Cemeteries is approved as follows:

Be it Enacted by the Town Board of the Town of Somerset as follows:

To amend **Chapter 82 – Cemeteries** by repealing it in its entirety and replacing it with the following Chapter 82:

§82-1. Rules and regulations

- A. All graves sold for Somerset Cemeteries shall be in accordance with the provisions of the laws of the State of New York and shall not be used for any other purpose than as a burial place for deceased human beings. The sale of graves shall be limited to past or present Town of Somerset residents and their spouses or distributees. Full purchase price of graves must be paid before a deed will be issued or a burial permitted in a grave. All graves sold are under the permanent care of the cemetery.
- B. Graves shall be used only by the purchaser or the purchaser's spouse or distributees.
- C. Tree/shrub planting will be controlled and allowed only by permission granted by the Superintendent of Grounds, Town of Somerset.

D. One crock, vase of flowers, shepherd's hook or wreath per grave is allowed and it must be located immediately next to the headstone. Two eternal flames are allowed and must be located immediately next to each side of the headstone. Crocks, vases and shepherd's hooks may be placed on the graves after May 15th and shall be removed by November 1st of each year. Wreaths may be placed on the graves after November 1st and shall be removed by April 1st. Eternal flames may be left year round. The Town of Somerset reserves the right to remove all items from graves as soon as they become unsightly or according to the schedule above.

E. Headstones.

(1) Only headstones of the flat, bevel, slant or monument types are allowed.

(a) The base maximum for a single grave is 14 inches in depth, 36 inches in length and six inches in height.

(b) The base maximum for a double and triple grave is 14 inches in depth, 54 inches in length and six inches in height.

(c) The base maximum for a quadruple grave is 14 inches in depth, 72 inches in length and six inches in height.

(2) The overall height for all headstones and bases combined shall not exceed 34 inches.

(3) All foundations shall be constructed under the direction and according to specifications of the Superintendent of Grounds at a charge to the owner.

(4) Only one monument shall be permitted on a grave. No monument shall be placed on the grave until the foundation is installed and ready to receive the monument. No monument shall be placed in the center of the grave.

F. Concrete, steel or fiberglass vaults shall be used.

G. Burial of cremation ashes shall be done by the Town.

(1) One regular and one cremains burial will be allowed in one grave.

(2) Four cremains burials will be allowed in one grave.

H. No interment shall be allowed without a permit furnished by the Funeral Director, properly issued by the Registrar of Vital Statistics, on the prescribed form provided by the New York State Department of Health. Payment for burial services shall accompany the burial permit. No prepayment for burial services will be allowed.

- I. Corner posts or markers of a suitable material may be installed by the Town of Somerset at the corners of lots at the sole discretion of the Superintendent of Grounds. A lot is considered a group of four consecutive graves owned by one family. Only the Town of Somerset may install such corner markers and the expense shall be incurred by the grave owner requesting the marker.
- J. The Town Board reserves the right to remove any article found within the grounds of Town cemeteries not permitted in accordance with the rules and regulations set forth herein. In addition, agents and employees of the Town Board shall have the right to enter upon or use any adjoining grave or lot to carry out its responsibilities as to interment or maintenance of the cemetery.
- K. The Town of Somerset assumes no responsibility for monuments, memorials or markers or any other articles of any nature removed from any plot or grave, or for damage or destruction of any such articles.
- L. All burials and disinterments will be done during the normal workday, Monday through Friday beginning at 7:00 a.m. and to be completed by 2:30 p.m.
- M. No holiday or weekend burials will be conducted; however, and only in the event that an extremely exigent circumstance exists, the Town will consider such request(s) and weigh the matter accordingly.
 - (1) Such request for holiday or weekend burial should be made to the Town and should include the facts and circumstances surrounding the exigent need.
 - (2) The Parks and Recreation Committee shall make a determination and assign any associated fees for service.

§82-2. Fee schedule.

The fees for cemetery services for the sale of graves and interments shall be established periodically by the Town Board by resolution, which fees shall be incorporated herein and made part of. A copy of current fees may be obtained from the Town Clerk.

§82-3. Collection of fees.

The Town Clerk shall be responsible for collecting and turning over to the Town all interment fees and consideration received for the sale of graves.

This local law shall take effect immediately upon filing with the Secretary of State.

RESOLUTION 64-2013

ESTABLISHMENT OF CEMETERY RATES

Supervisor Engert said the fees of for the cemeteries have not been increased since 1996 and need to be adjusted.

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

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

Resolved the following fees are established:

Graves:	\$300.00 per grave
Grave Opening:	\$350.00 per grave
Cremation Ashes:	\$200 per grave
Headstone Foundation:	\$50.00 per running ½ foot with a minimum of \$200.00
Disinterment Fee:	\$500 per disinterment

RESOLUTION 65-2013

OPPOSITION TO CONSTRUCTION OF CHAMPLAIN HUDSON TRANSMISSION LINE

Supervisor Engert stated the Niagara County Legislature has approved a resolution opposing the construction of the Champlain Hudson Transmission Line in NY and asked the Town Board to consider passing a resolution.

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

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

WHEREAS the New York State Public Service Commission did, on April 18, 2013, approve construction of the Champlain Hudson Transmission Line, a line capable of moving 1,000 megawatts of hydropower from Quebec to New York City, and

WHEREAS the construction of said line would benefit Canadian state-owned power producers Hydro-Quebec, as well as New York City- based international investment firm "The Blackstone Group", and

WHEREAS construction of a 335 mile line under Lake Champlain and the Hudson River would come at the expense of existing New York State based power generators including Upstate New York Power Producers Somerset Operating Facility, and

WHEREAS the New York Power Authority has previously approved construction of a 660 megawatt power transmission line to supply Midtown Manhattan with electrical power from the State of New Jersey, at the expense of New York State based power generators, and

WHEREAS the Energy Highway Blueprint that was released last year which will upgrade the NYS transmission system and solve transmission bottlenecks that currently prevent abundant, cost effective surplus upstate power generation from making it to the power hungry NYC market, and

WHEREAS the Energy Highway Blueprint which was deployed after the concept of the Champlain Hudson Transmission Line project was conceived and makes the project completely unnecessary, and

WHEREAS every megawatt of electricity made in New York represents New York jobs and tax base, and

WHEREAS the jobs that will be lost due to ill-conceived and short sighted power importation initiatives are estimated to number in the thousands and the potential tax losses for upstate communities like Somerset will be devastating,

NOW, THEREFORE BE IT RESOLVED, the Town Board of the Town of Somerset in Niagara County does oppose construction of the proposed Champlain Hudson Transmission Line, and

BE IT FURTHER RESOLVED, the Town Board of the Town of Somerset does hereby call upon the entire upstate New York delegation to the New York Legislature and those chairman and ranking minority members of relevant committees in the New York State Senate and Assembly, to use all oversight tools at their disposal to block the construction of this transmission line which forces private business to compete with foreign state-run monopolies, and

BE IT FURTHER RESOLVED, does hereby call upon the New York delegation in the US House of Representatives and the United States Senate to also utilize any and all means necessary to block this project for the sake of New York jobs, New York workers and New York communities, and

BE IT FURTHER RESOLVED, the Town Board of the Town of Somerset shall forward copies of this resolution to President Barack Obama; US Senator Charles Schumer; US Senator Kirsten Gillibrand; US Congressman Chris Collins; US Congressman Brian Higgins; NY Governor Cuomo, Senate Vice President Pro Tem George Mazarz; Senate Temporary President Dean Skelos; Senate Majority Leader Thomas Libous; Member of the Assembly Jane Corwin; Member of the Assembly Ray Walter; Member of the Assembly John Ceretto; Member of the Assembly Robin Schimminger; Member of the Assembly Kevin Cahill; Member of the Assembly Philip Palmesano; Mr Garry Brown, Chairman, New York State Public Service Commission; Mr. Gregg Sayre, Commissioner; Mr. James Larocca, Commissioner; Ms. Maureen Harris, Commissioner; Ms. Patricia Acampora, Commissioner, and all others deemed necessary and proper by the Town Clerk.

RESOLUTION 66-2013

APPOINTMENT OF ASSESSOR

Supervisor Engert stated that Dominic Penale has finished his contract with the Town and asked that Anthony Dispenza be appointed Assessor. He explained Mr. Dispenza's credentials.

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

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

Resolved that Anthony Dispenza is appointed Assessor for a six year term.

RESOLUTION 67-2013

COMPENSATION FOR ASSESSOR

Supervisor Engert asked that he be authorized to execute an independent contract with Anthony Dispenza for \$375.00 per week.

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

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

Resolved Supervisor Engert is authorized to execute a contract with Anthony Dispenza to provide assessment services working 7 hours per week for the remainder of the year at \$375.00 per week.

SALE OF SURPLUS ITEMS

Clerk Connolly reported there are numerous surplus items that need to be sold and stated she is investigating different avenues for the sale of the items.

Supervisor Engert asked Clerk Connolly to report back at the next meeting.

RESOLUTION 68-2013

RIGHT TO FARM RESOLUTION COMMITTEE

Councilman Wayner stated that he and Councilman Alt have been contacting people to sit on the Right to Farm Resolution Committee and recommended the appointments as follows:

John Sweeney representing the farming community

Daniel Greenwald representing the non-farmer outside the residential area

James Trinder representing the non-farmer/residential area

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

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

Resolved that John Sweeney, Daniel Greenwald and James Trinder are appointed to the Right to Farm Resolution Committee.

RESOLUTION 69-2013

SHOVEL READY SITE UPDATE AND ZONING PROPOSAL

Supervisor Engert said that several options for a shovel ready certification have been pursued for the property west of the power plant and asked Engineer Roeseler to explain them.

Engineer Roeseler stated the parcel is currently zoned PUD (Planned Unit Development) for a data center. He said consequently any proposal that may be received other than that would have to go through a rezoning process. He said that a site selector usually asks what the zoning is prior to proceeding with a project so the thought is to rezone the property to a PUD with several uses identified and where those uses would be allowed. He said the rezoning process would have to be done along with a SEQR (State Environmental Assessment Review) determination. He said the developer would still have to do a site specific site plan approval and would also include another environmental review process. He said an extensive generic environmental assessment form would be conducted at the time of rezoning. He recommended that the rezoning process be pursued.

Supervisor Engert said the marketing brochure has been finalized and distributed throughout the northeast and southern Ontario. He said that this will move the Town one step closer to a shovel ready site.

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

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

Resolved Supervisor Engert is authorized to pursue rezoning of the property west of the power plant with the Engineers, with the expenditure not to exceed \$42,000.00.

RESOLUTION 70- 2013

SALE OF RIGHT OF WAY ON JOHNSON CREEK ROAD

Supervisor Engert stated that he was approached to sell part of the road right of way to a resident on Johnson Creek Road at the lake. He said that Attorney Jones investigated the law regarding the potential sale and he recommended that there was not a public interest served by such a sale.

Attorney Jones reviewed the pertinent laws with the Board.

Councilman Jansen stated that she does not feel that we should give up town access to the lake for the sole purpose of one resident.

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

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

Resolved Supervisor Engert is authorized to send a letter to the resident that requested to purchase the property stating the Town is not interested in selling.

RESOLUTION 71-2013

AUDIT OF CLAIMS

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

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

Resolved that the bills have been reviewed by the Town Board and are authorized for payment in the following amounts:

General Fund	No. 153 through No. 199	\$ 43,017.32
Highway Fund	No. 34 through No. 43	\$ 9,801.22
Sewer Fund	No. 48 through No. 55	\$ 2,697.34
Water Fund	No. 37 through No. 44	\$ 3,155.21

PRIVILEGE OF THE FLOOR

James Hoffman spoke to the Board regarding the condition of the property on the southwest corner of Lake Road. He stated he feels it is an unsafe building.

J. Luszak asked what happens to the dogs in the kennel.

Clerk Connolly stated they are returned to the owner, adopted out, or sent to the Erie County SPCA for adoption.

RESOLUTION 72-2013

EXECUTIVE SESSION

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

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

Resolved the Board enter into an executive session to discuss contract negotiations at 8:00PM.

RESOLUTION 73-2013

RETURN TO REGULAR SESSION

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

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

Resolved the Board return to regular session at 9:15PM.

On a motion of Councilman Alt, seconded by Councilman Dewart, the meeting adjourned at 9:18 P.M. subject to the Call of the Clerk. Carried unanimously.

Rebecca A. Connolly, MMC
Town Clerk