

REGULAR MEETING  
MARCH 8, 2011

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 8<sup>th</sup> day of March 2011.

Present:     Richard J. Meyers ----- Supervisor  
              Randall J. Wayner ----- Councilman  
              Daniel E. Engert ----- Councilman  
              Gary R. Alt ----- Councilman  
              Robin R. Jansen ----- Councilman  
              Rebecca A. Connolly ----- Clerk  
              Kenneth J. Bigelow ----- Clerk  
              Melvin H. Denny ----- Supt. Water/Sewer/Grounds  
              Morgan L. Jones Jr. ----- Counsel  
              Randy D. Roeseler ----- Engineer

Attended by: Approximately 11 people and 1 B.C.S. student

Supervisor Meyers called the meeting to order at 7:00PM with the Pledge to the Flag.

RESOLUTION 38-2011

**APPROVAL OF SUPERVISOR'S MONTHLY REPORT**

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

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

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

RESOLUTION 39-2011

**APPROVAL OF MINUTES**

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

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

Resolved the minutes of the February 7<sup>th</sup> and February 8<sup>th</sup>, 2011 meetings are approved as submitted.

MONTHLY REPORTS RECEIVED AND FILED:

Code Enforcement Officer  
Police Department  
Dog Control Officer

Supervisor Meyers introduced Attorney Morgan Jones as the new Counsel for the Town.

### **WINDMILLS AT WASTEWATER TREATMENT PLANT**

Thomas Fleckenstein of Niagara Wind and Solar provided the Town Board with a progress report on the windmill installation at the Wastewater Treatment Plant. He stated the foundations have been delivered to the plant and the towers will be coming shortly. He stated they are coordinating the project with the project at Camp Kenan. Mr. Fleckenstein presented information to the Board and gave an overview of the projected savings of the two turbines and presented a proposal for a third turbine with a cost of \$70,000. He stated the cost to the Town would be \$35,000, after grant monies are received from NYSERDA and that he may be able to do it for \$30,000. He stated the payback for the third turbine will be 5 years. He stated that he needs the updated utility bills for the last 12 months to do an analysis.

Councilman Engert stated that he would contact John Ludkta to have that information supplied to Mr. Fleckenstein.

### **EMERGENCY COMMUNICATIONS SERVICES**

Code Enforcement Officer Hildebrant introduced John Cecula, Interim Fire Coordinator for Niagara County, Don Burrows from Niagara County and Jim Volkosh, Retired Niagara County Fire Coordinator to gave an overview and answer questions regarding the FCC's (Federal Communications Commission) Two-Way Radio Narrow Banding mandate.

John Cecula stated they will not be using existing towers because of:

1. The height of the tower
2. Re-engineering of the existing towers and the costs associated with that due to ice loading, additional antennas, and microwave pods
3. Co-location fee that could cost \$4,000 per month
4. Cannot go any higher due to interference with Canadian frequencies
5. The height of the tower has to be 150 feet

He stated the company they are working with guaranteed 95% portable coverage and that there is basically no reception inside AES and possibly the Verizon project because of the steel construction.

Fire Chief Hildebrant stated there is no radio coverage in the northeast part of Town.

Mr. Cecula stated the vendor did engineering studies within the County and found that the Barker Fire Department is an ideal location.

Supervisor Meyers asked why the tower that is ½ mile to the south of the Village cannot be used.

Mr. Cecula stated that they cannot use that tower due to the additional engineering costs however they are still looking at all options.

James Volkosh stated a variable in the equation is the owner of the tower. He stated that the County needs their permission to get to the County equipment if there are repairs and that is unacceptable for public safety. He stated that they need to address issues quickly. He stated that public/private agreements in the tower business are expensive and risky.

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Councilman Engert asked if a project manager has been hired.

Mr. Cecula said Kimble has been hired and is familiar with the project as they built the new communications center in 2006. He said they have been hired to look at the contracts with Harris and Motorola to see where costs can be cut. He said they are also negotiating with the vendors regarding the costs of the towers and diesel fired generators. He said they have to meet the January 1<sup>st</sup>, 2013 deadline.

Councilman Jansen asked who will be responsible for the testing of the generators.

Mr. Cecula said the County will do periodic testing and will be responsible for the servicing of the generators.

Don Burrows gave the history of co-location of towers and an overview of what the equipment on the towers will entail. He said there will virtually be a microwave ring around the County. He stated that co-location can also cause interference with cell phones.

Doug Lewis asked why natural gas generators are not being used.

Mr. Volkosh stated they are not as reliable as the diesel generators.

James Hoffman asked if the Town towers have been specifically looked at.

Mr. Cecula stated the engineers have and said the tower would not do because of the height needed for the 5 antennas.

Discussion ensued regarding the height of the tower being 150 feet; location of the tower at the Fire Hall; routing of utilities; co-location agreement that the Town has with Crown; purchasing of equipment that will be shared with the municipalities; types of radios needed; communication between Niagara County and Erie County; and the availability of a bank of channels to talk to all hospitals and various agencies.

COMMUNICATIONS:

Clerk Connolly read a letter from the Village of Barker regarding a public hearing to be held on a proposed amendment to the Zoning Code for the Village of Barker.

Clerk Connolly read a letter from the National Kidney Foundation requesting the Town adopt a resolution recognizing March 10<sup>th</sup>, 2011 as "World Kidney Day".

RESOLUTION 40-2011

**AUTHORIZATION FOR RIDE FOR ROSWELL**

Clerk Connolly read a letter from Senior Events Coordinator, Daniel Heims, requesting permission to use Town roads on June 25, 2011 for the *Ride for Roswell* program to benefit Roswell Park Cancer Institute.

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

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

Resolved permission is granted to the Ride for Roswell organization to conduct the ride on town roads on June 25, 2011 upon coordination with the Highway Superintendent.

**PROPERTY TAX CAP**

Clerk Connolly read a letter from Assemblyman Steve Hawley stating the property tax cap legislation cannot be passed without addressing the outrageous spending and expensive mandates. He stated that he would support a property tax cap if a permanent moratorium is placed on unfunded mandates.

**PROPERTY CONDITION OF 8681 LAKE ROAD**

Clerk Connolly read a letter from Mary Sajdak of 8677 Lake Road asking what is being done regarding the condition of the property at 8681 Lake Road.

Code Enforcement Officer Hildebrant stated that the property owner was sent a letter of violation. He stated that the owner called and he discussed the problems with the property, the complaints received, and her financial problems to rectify the roofing.

He stated that he also contacted the Health Department again regarding the issue.

Attorney Jones stated that he will meet with Code Enforcement Officer Hildebrant regarding the matter. He also brought to the attention of the Board that the Town needs to adopt a local law to enforce the state code.

Discussion ensued regarding the condition of the property and enforcement.

The Board asked Attorney Jones to work with the Code Enforcement Officer regarding the matter and send a letter to Mrs. Sajdak.

RESOLUTION 41-2011

**ELECTRONIC RECYCLING**

Clerk Connolly stated that she and Melvin Denny met with a representative of Sunnking, Brockport, NY regarding setting up an electronic recycling site. She said that Sunnking will pay the town 2 cents per pound for items picked up. She presented information to the Board regarding how the program works and stated this is the same company that provided the service last year when the electronic recycling events took place.

Superintendent Denny stated that he has an area reserved for the containers and suggested that drop off of items be on regular garbage day during regular business hours.

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

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

Resolved the Supervisor is authorized to execute the agreement with Sunnking, 4 Owens Road, Brockport, NY 14420 to host an electronic recycling site with drop off to be held on garbage day.

RESOLUTION 42-2011

**LOWER LAKE ROAD BRIDGE**

Superintendent Bigelow stated that bids were received on March 1, 2011 for the construction of the bridge as follows:

<u>NAME AND ADDRESS OF VENDOR</u>	<u>AMOUNT</u>
CATCO 1266 Townline Road, Alden, NY 14004	\$ 481,478.30
Mark Cerrone, Inc. 2368 Maryland Ave., P. O. Box 3009 Niagara Falls, NY 14304-7301	\$ 493,948.50
Yarussi Construction Inc. 5650 Simmons Avenue, Niagara Falls, NY 14304	\$ 521,818.00
Scott Lawn & Yard 5552 Townline Road, Sanborn, NY 14132	\$ 796,979.00

Superintendent Bigelow said that Mike Leydecker of Wendel has stated all bids meet the specifications.

Mike Leydecker stated that CATCO is one of the largest companies and they have worked with them on 6 different projects. He gave an update of the construction schedule stating the executed construction agreement from NYSDOT should be received by the Town within 2 to 3 weeks at which time the contract will be executed with the vendor. He stated there will be a pre-construction meeting with the contractor in May. He stated that they will probably start construction after the bridge is fabricated in July or August. He stated it will take 6 to 8 weeks for construction and excavation.

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

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

WHEREAS, bids were advertised on February 7, 2011 for construction of the Replacement of the Lower Lake Road Bridge (Culvert) over Fish Creek, BIN 2213660, in the Town of Somerset, Niagara County, PIN 5758.35, (the Project) and duly opened on March 1, 2011 at 11:00 a.m.; and

WHEREAS, four bids were received with CATCO, 1266 Townline Road, Alden, NY 14004 being the low bidder for \$481,478.30;

NOW, THEREFORE, BE IT RESOLVED, the Town Board of the Town of Somerset, duly convened on March 8, 2011 does hereby authorize the Supervisor of the Town of Somerset to execute all necessary agreements and construction contracts upon receipt of construction agreement from the NYS Dept. of Transportation.

**SOMERSET/HARTLAND/NIAGARA COUNTY WATERLINE AGREEMENT**

Superintendent Denny stated that an agreement has been drawn up regarding the waterline interconnection agreement between Somerset, Hartland and Niagara County. He said that he has some issues with the agreement stating that Niagara County is the responsible party for all maintenance. He asked that clarification be made prior to adoption of the agreement with the Niagara County Water District.

RESOLUTION 43-2011

**AUTHORIZATION TO CONDUCT A REASSESSMENT**

Assessor Robert Glidden requested permission to do an assessment update explaining that he has \$10,000 budgeted this year and will ask for \$15,000 to \$20,000 next year as he will need extra help to conduct the update. He said that the Assessor Clerk will have to work all office hours from December through May.

Discussion ensued regarding the anticipated cost, hiring extra help, and method of payment, possible help from the State, and the process of conducting the update.

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

ADOPTED Ayes 5 Meyers, Wayner, Engert, Alt, Jansen

Nays 0

WHEREAS, Section 305 of the New York State Real Property Tax Law mandates uniform and equitable assessments; and

WHEREAS, computer assisted mass appraisal systems technical advice and financial assistance are available by cooperative agreement with the New York State Office of Real Property Services and the Niagara County Real Property Tax Services agency; and

WHEREAS, the last town-wide reassessment of real property took place in 2000 and

WHEREAS, the Town Board is convinced that a reassessment is necessary to comply with Section 305 of the New York State Real Property Tax Law;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN BOARD OF THE TOWN OF SOMERSET, NY, AS FOLLOWS:

1. That the Assessor of the Town of Somerset is hereby authorized to undertake and implement a reassessment for the 2012 assessment roll.
2. That the Town Board does hereby agree, in conjunction with the New York State Real Property Services and the Niagara County Real Property Tax Services agency, to support the Town's assessment staff in this reassessment.

3. That the Town Supervisor and the Assessor are authorized to enter into any necessary agreements to achieve this purpose and hire additional help if necessary within the budgetary parameters set forth within the adopted budget of the Town.

**AND FURTHER BE IT RESOLVED**

The Town Board of the Town of Somerset, New York hereby requests State assistance, specifically from the NYS Office of Real Property Services to help do a reassessment project to maintain a uniform standard of assessment in accordance with Section 305 of the Real Property Tax Law; and it is further

RESOLVED, that the Supervisor is hereby authorized and directed to expend the necessary funds for the preparation of said plan and the establishment and maintenance of the Real Property Improvement Program within the budgetary parameters set forth within the adopted budget of the Town.

**HELIPAD**

Code Enforcement Officer Hildebrant presented a procurement form for the construction of a concrete helipad on Town property specifically at 8719 Haight Road as follows:

<u>Name and Address of Vendor</u>	<u>Amount</u>
Hy-Tech Concrete P.O. Box 27, Newfane, NY 14108	\$ 7,800.00
Juliana Bros. Concrete Construction, Inc. 8417 Slayton Settlement Road Gasport, NY 14067	\$ 8,222.00
Louis Fazzolari Customized Concrete Gasport, NY 14067	\$ 9,650.00

Councilman Engert asked what was budgeted for the project.

Clerk Connolly stated nothing was budgeted.

Councilman Engert said the proposal will be reviewed and see if there will be a way to fund the project.

**CHANGE OF COUNSEL FOR VERIZON PROJECT**

Supervisor Meyers stated that he feels that Chelus, Herdzik, Speyer, and Monte, PC should be retained for the litigation regarding the Verizon lawsuit as the cost would be less than having to bring the current firm up to speed.

Councilman Engert said that he would like to get a briefing from Attorney Jones and asked that this be discussed in Executive Session.

Clerk Connolly stated the Verizon files have not been turned over by Attorney Herdzik.

RESOLUTION 44-2011

**TIRE DROPOFF**

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 25<sup>th</sup> through May 6<sup>th</sup> during regular business hours, with special hours on the 2 Saturdays.

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

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

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

RESOLUTION 45-2011

**FURNITURE FOR TOWN CLERK'S OFFICE**

Clerk Connolly asked permission to purchase furniture for the Town Clerk's office as budgeted from Service Office Supply, 100 John Glenn Drive, Amherst, NY 14228 for \$3929.94.

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

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

Resolved Clerk Connolly is authorized to purchase furniture for the Town Clerk's Office from Service Office Supply, 100 John Glenn Drive, Amherst, NY 14228 for \$3929.94.

**APPRAISAL OF TOWN PROPERTY/ASSETS**

Clerk Connolly provided the Board with a proposal from Industrial Appraisal to conduct a reappraisal for all town properties and equipment. She stated that the company was retained in the early 80's to conduct a state mandated assessment of fixed assets and has continued to update the inventory annually. She stated the last reappraisal was conducted in 1999 and the company is requesting to do another one. Clerk Connolly said that all changes in the inventory are provided to the company annually with a report turned over to the insurance company for proper coverage.

Discussion ensued regarding the need for the reappraisal and the extent of insurance coverage with the matter being deferred to budget time.



RESOLUTION 46-2011

**BUDGET AMENDMENT**

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

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

Resolved the following budget amendment is approved:

<b>WATER FUND</b>	<b>CREDIT</b>	<b>INCREASE APPROPRIATION</b>
SW3991	\$ 33,681.15	SW8340.21 \$ 33,681.15
<b>SEWER FUND</b>	<b>CREDIT</b>	
SS3990	\$ 33,681.15	SS8130.21 \$ 33,681.15

RESOLUTION 47-2011

**AUDIT OF CLAIMS**

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

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

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

General Fund	No. 79 through No. 112	\$ 48,729.46
Highway Fund	No. 21 through No. 33	\$ 27,912.90
Sewer Fund	No. 19 through No. 32	\$ 43,170.20
Water Fund	No. 17 through No. 27	\$ 39,706.40

**PUBLIC COMMENT**

Doug Lewis asked if the lawyer prior to Mr. Herdzik was kept on to serve as counsel for litigation with AES.

Supervisor Meyers stated they (Board) did not seek replacement until everything was done with AES.

James Hoffman, addressed the Board regarding the following:

1. Asked what is new with Verizon  
Supervisor Meyers said they are moving forward and are not concerned with the sale of AES as they like the site. He said they are waiting for National Grid to determine if there is enough power generated in this region to power their needs.

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2. He asked what the schedule is for the lawsuit.  
Attorney Jones gave the timeframe for the lawsuit and stated the appeal date is not scheduled yet.
3. He stated NYSDEC has adopted new outdoor boiler regulations that are in substantial disagreement with town law and are much stricter.
4. He stated he sent an email 2 weeks ago regarding AES and PILOTS and asked what the elected officials are doing at the state level to help AES. He said the Town needs to make noise at the state level regarding all the regulations that are placed on AES.  
Discussion ensued regarding what has been done and what is being done.

RESOLUTION 48-2011

**EXECUTIVE SESSION**

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

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

Resolved the Board move into Executive Session at 9:20PM to discuss pending litigation and a personnel matter.

RESOLUTION 49-2011

**RETURN TO REGULAR SESSION**

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

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

Resolved the Board return to regular session at 10:20PM.

RESOLUTION 50-2011

**APPOINTMENT OF NIMS COORDINATOR**

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

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

Resolved that Code Enforcement Officer Randall Hildebrant is appointed NIMS (National Incident Management System) coordinator.

RESOLUTION 51-2011

**ADDITIONAL SALARY FOR CODE ENFORCEMENT OFFICER**

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

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

Resolved the budget is amended to provide additional compensation to Code Enforcement Officer Hildebrant in the amount of \$1,850.00 due to the additional duties being placed on the Code Enforcement Officer as NIMS coordinator as follows:

DB		CR	
B3620.4	\$1,850.00	B3620.1	\$1,850.00

RESOLUTION 52-2011

**SUBSTITUION OF COUNSEL FOR THE VERIZON LITIGATION**

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

ADOPTED Ayes 3 Wayner, Engert, Jansen  
Nays 2 Meyers, Alt

Resolved Seaman, Jones, Hogan & Brooks, LLP, Morgan L. Jones Jr., Esq. is authorized to take over the Verizon litigation and authorizes the Supervisor to execute a Consent to Change Attorney form.

On a motion of Councilman Alt, seconded by Councilman Engert, the meeting was adjourned at 10:25PM subject to the Call of the Clerk. Carried unanimously.

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Rebecca A. Connolly, MMC  
Town Clerk