

REGULAR MEETING
OCTOBER 8, 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 8th day of October 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: 11 residents

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

PUBLIC HEARING – Small Scale Solar Energy Systems Proposed Local Law

Notice of said hearing was sent to the Lockport Union-Sun & Journal on September 20, 2013 with same notice being posted on the same date at the Town Hall and on the website.

Supervisor Engert opened the hearing at 7:02PM.

Clerk Connolly read the notice of hearing.

Supervisor Engert asked for any public comment. With no one desiring to speak regarding the proposed local law, Supervisor Engert closed the hearing at 7:04PM.

REGULAR MEETING

Supervisor Engert opened the regular meeting.

RESOLUTION 114-2013

APPROVAL OF THE MINUTES

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 the minutes of the previous meetings are approved as submitted.

RESOLUTION 115-2013

APPROVAL OF THE SUPERVISOR'S MONTHLY REPORT

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 Supervisor's Monthly report be accepted as submitted.

MONTHLY REPORTS RECEIVED AND FILED:

Code Enforcement Officer
Dog Control Officer

COMMUNICATIONS

Clerk Connolly read a letter from the Barker Latrator staff thanking the Town for placing an advertisement in the 2012-2013 Barker Central School Latrator and for the support of the school.

INTERNATIONAL JOINT COMMISSION (IJC) Proposal for Lake Ontario and the St. Lawrence River

Clerk Connolly read a letter from the IJC stating the Commissioners thank the Town for the letter and Resolution No. 91-2013 and they will carefully review and consider issues raised by the Town of Somerset prior to making any recommendations to the US and Canadian governments regarding the proposal.

Clerk Connolly announced she had previously forwarded to the Board the communication from the Niagara County Refuse Disposal District designating multiple pieces of heavy equipment and tools as surplus inventory and offered the items to the municipalities for purchase.

RESOLUTION 116-2013

SEQR DECLARATION FOR LAKESHORE SITE PUD (Planned Unit Development)

On a motion of Councilman Jansen, seconded by Councilman Alt, 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, the Town of Somerset established a special advisory committee (the "Somerset Lakeshore Site Rezoning Committee", herein after referred to as "the committee", consisting of Town Board, Planning Board, Property owner, and Niagara County representatives) and hired an Engineering and Planning Consultant, Wendel, to consider the future of the Somerset Lakeshore site, a 179+/- acre parcel of land west of the power plant facility located at 7725 Lake Road in the Town of Somerset, Niagara County, New York, and

TOWN BOARD MEETING
OCTOBER 8, 2013 PAGE 3

WHEREAS, Wendel and the Committee have prepared recommendations to rezone the subject property to a new PUD designation (the "proposed action") , in conformance with the Somerset Comprehensive Plan implementation recommendations, the Town's adopted Local Waterfront Revitalization Program (LWRP), and Chapter 205, Article XV of the Town Code; and

WHEREAS, the Town, in following the required procedures and processes as set forth in Chapter 205, Article XV of the Town's Zoning Code, has received endorsement of the Conceptual PUD Plan from the Code Enforcement Officer; and

WHEREAS, Wendel and the Committee have completed the PUD materials and recommended the rezoning to the Town Board, the full PUD application materials were submitted to the Town, and the Town Board, in accordance with Article XV, referred the materials to the Planning Board for its review and findings, and

WHEREAS, the Somerset Planning Board found that the rezoning application fully complies with the applicable regulations and standards of Article XV and other applicable sections of the Town's Zoning Code and recommended its approval, and

WHEREAS, pursuant to Article 8 of the New York Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, et. seq., as amended (the "Regulations" and collectively with the SEQR Act, "SEQRA"), the Town Board must satisfy the requirements contained in SEQRA prior to approving Proposed Action; and

WHEREAS, the Proposed Action is a Type I action and a coordinated review pursuant to SEQRA is required; and

WHEREAS, the Town Board sent notices to interested and involved agencies that the Town Board intended to act as Lead Agency for the Proposed Action, and

WHEREAS, it has been more than 30 days since the Town Board sent notices of intent to act as Lead Agency and no interested or involved agency has contested Lead Agency status; and

WHEREAS, the Town Board has properly been established as the Lead Agency for the purpose of reviewing the Project and making the determination of whether the Proposed Action will have a significant adverse impact on the environment; and

WHEREAS, pursuant to SEQRA, to aid the Town Board in determining whether the Proposed Action may have a significant adverse impact upon the environment, the Town has compiled detailed information about the Proposed Action, and the potential impacts of the Rezoning, including, but not limited to, an Analysis of Environmental Impacts dated September, 2013, with associated appendices, including PUD plans, waterfront assessment form, and an agricultural data statement; and

TOWN BOARD MEETING
OCTOBER 8, 2013 PAGE 4

WHEREAS, pursuant to SEQRA, the Town Board now desires to determine whether the Proposed Action may have a significant adverse impact on the environment and whether an Environmental Impact Statement (an "EIS") must be prepared with respect to the Proposed Action.

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

Section 1. Based upon a thorough review and examination of the Project Environmental Documents and upon the Town Board's knowledge of the area surrounding the Site and such further investigation of the Proposed Action's environmental effects as the Town Board has deemed appropriate, the Town Board, as Lead Agency, makes the following findings with respect to the Proposed Action:

1. The Town Board has undertaken a coordinated environmental review of the Proposed Action pursuant to SEQRA;
2. Prior to making a recommendation about the potential environmental significance of the rezoning, the Town Board has consulted several information sources, and has considered the list of activities which are Type I Actions outlined in Section 617.4 of the SEQRA regulations, the list of activities that are Type II Actions outlined in Section 617.5 of the SEQRA regulations, and the criteria for determining significance outlined in Section 617.7 of the SEQRA regulations; and
3. The Proposed Action is a Type I action pursuant to SEQRA.

Section 2. Based on the Town Board's analysis of the Proposed Action and its review of the Comprehensive Plan, the Town Board finds the following:

1. The Rezoning would be in conformance with the Somerset Comprehensive Plan as it specifically recommends that this site become shovel ready for light industrial and business uses.
2. The Rezoning is for the land adjacent to the Upstate New York Power Producers Power Plant, the Town's largest industrial site, which is also zoned PUD, and nearby the Mayer Brothers facility. The site is currently zoned PUD, allowing a large scale Data Center. Thus, the Project would be situated in the vicinity of compatible uses and would enhance this industrial area along Lake Road in conformity with the Comprehensive Plan.
3. The Rezoning is designed to avoid damaging the sensitive environmental features on the Site, such as the lakeshore bluffs, the successional woodland and a small wetland area situated within the woodland, and is designed to preserve the natural character of those areas.

4. The Rezoning will ensure the preservation of the 10± acre Cobblestone Property, which contains the Town's Historical Society and Welcome Center. The Cobblestone Property will also provide a visual buffer for the Project to ensure preservation of the neighborhood character.
5. The Rezoning will contribute to a sensible pattern of development through the use of environmental design considerations and specific use and design requirements, and would not significantly impact land use resources or Town planning objectives.

For all of the foregoing reasons, the Rezoning of the Site to the new PUD designation is consistent with the requirements for a PUD and the Comprehensive Plan.

Section 3. Based on the Town Board's analysis of the Proposed Action and its review of the LWRP the Town Board finds the following:

1. The Site is situated on Lake Ontario and contains a length of steep bluffs and rocky beach that are considered natural protective features. The shoreline area is also a State-designated Coastal Erosion Hazard Area. The PUD Plan includes restrictions to development along portions of the shoreline and would not have a significant impact on natural protective features or result in coastal erosion.
2. Significant areas of open space would be maintained along the shoreline, including approximately 22± acres of successional growth woodlands, which include small areas of wetlands, and an open area along the shoreline. This would constitute an effective buffer between any site development and the lakeshore.
3. Groundcover would only be removed where required for future Project development activities and disturbed areas would be restored with landscaping, as appropriate. Topsoil would be stockpiled for reuse on-Site.
4. The proposed PUD designation for the Site is further supported in the Town LWRP. The future use of the Site as a PUD district is illustrated on the Future Land Use Map, which is included in the LWRP. This PUD designation was confirmed through correspondence with the NYSDOS.
5. The PUD Plan promotes waterfront dependent and waterfront enhanced uses in those areas closer to the waterfront that are noted for potential development (eastern end of the waterfront area).

For all of the foregoing reasons, the Rezoning would be consistent with the LWRP Policies.

Section 4. Based upon the Project Environmental documents and the Town Board's investigations of the potential environmental impacts of the Proposed Action and considering both the magnitude and importance of each environmental impact indicated, the Town Board hereby issues a negative declaration for the Proposed Action meaning that the Project will not have a significant adverse environmental impact. Reasons supporting this determination are as follows:

1. The Project would conform with the proposed rezoning to PUD – Planned Unit Development by incorporating a mix of uses and open space and is consistent with the Town's planning and development objectives. The Project would also be consistent with other land uses in the vicinity of the Site because the Site is located near compatible industrial uses. Thus, the Project would not have a significant impact on land use and zoning.
2. The PUD Plan is designed to avoid disturbance of the small areas of Federal jurisdictional wetlands located in the northwest corner of the Site, thus permits from the U.S. Army Corps of Engineers and the New York State Department of Environmental Conservation would not be required. Lastly, adequate supplies are currently available for the potable flow and pressure requirements for use of water for future Projects. Thus, the Rezoning would not have a significant impact on water bodies in the area.
3. Per the PUD Plan, future Projects would be designed to accommodate runoff from these Project sites. Storm water would be collected on-site through a network of engineered swales and/or pipes and conveyed to at least one retention basin where it would be treated for water quality in accordance with established standards, and then discharged to Lake Ontario. The retention pond/drainage basin(s) may exceed ten acres of surface area; however this impact would not be potentially large because this drainage system would help prevent any increase in runoff to any Town or other storm sewer system. Also, such a basin would include water quality treatment to prevent storm water pollution from entering Lake Ontario. Also, a Storm Water Pollution Prevention Plan would be developed to manage storm water runoff during construction so that future Projects would comply with the requirements of the State Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Construction Activity (GP-0-10-001). Thus, the Rezoning would not have a significant impact on water quality.
4. Future Project operations would not produce significant air emissions as the PUD Plan restricts such uses. Although the rezoning would increase the density of industrial development and the amount of land committed to industrial use, this impact is not potentially large because the PUD zoning restrictions would only allow potential emissions to the atmosphere from typical business operations (heating, cooling and from cars and trucks). All emissions to the atmosphere would be in compliance with State and Federal air quality standards, therefore the Rezoning would not have a significant impact on air quality.

5. The Project would impact 100± acres of agricultural land on the Site, which is presently being farmed. Due to farming operations on-site, it is highly unlikely that threatened or endangered species are located on the Site or that the Site is utilized as valuable habitat. Also, the 22± acre woodland and small wetland areas on-site would be avoided by future Projects as required by the PUD Plan. Thus, the Rezoning would not have a significant impact on plants and animals.

6. The Rezoning could eventually result in the conversion of 159± acres of active agricultural land to industrial use and open space which may compact the Site's soil profile. Although the Rezoning could result in a loss of farmland, this impact would not be potentially large in terms of the agricultural economy of the Town, the extent of valuable farmland that exists in the community, and the Town's desire for increased development in certain areas, in accordance with the Town's Comprehensive Plan. Agriculture and agricultural-related activities and uses are allowed as a right in this new PUD classification. Therefore, the Project would not have a significant impact on agricultural land resources.

7. The Project would result in changes to the current viewshed of open farm fields and structures within the 10± acre Cobblestone Property. This impact would not be potentially significant, because the rezoning includes design requirements for frontage properties meant to reduce potential visual impacts. The Cobblestone Property would remain intact. Also, any future Project lighting would be designed to minimize off-site impacts. Therefore, the Project would not result in significant adverse visual impacts.

8. The Site presently includes the Cobblestone Property, which is comprised of the locally historic Babcock House and other buildings associated with the former use of the Site as a farm. The Cobblestone Property could be preserved for the continued use of this area for public purposes. Also, the Site has not been identified as an archaeologically-sensitive area and a previously completed Phase 1A archaeological investigation has revealed no archaeological issues of concern. Therefore, the Project would not significantly impact any cultural or archeological resources.

9. There is sufficient capacity on Lake Road and other local roadways for the future Projects; thus the additional traffic generated by future Projects is not anticipated to impact the level-of-service on Lake Road or on other local roadways in the vicinity of the Site. Also, existing development surrounding the Site is extremely sparse, such that the traffic generated by the Project would be unlikely to adversely affect current traffic conditions. It should be noted that if a large traffic generator is proposed, future environmental analysis and design review would determine if any improvements/mitigations are needed. Therefore, the Project would not have a significant impact on the transportation network or traffic in and around the vicinity of the Site.

10. The Project would not significantly impact energy resources, as future Projects are expected to operate at an acceptable power utilization factor and not place a significant strain on the existing energy generating system, per the requirements provided by National Grid.

11. The Rezoning requires future projects to be designed to meet Town Code requirements for noise. Also, future Projects should not generate any types of unusual odors as they are restricted in the zoning. Therefore, the Project would not have a significant adverse impact on noise or odor levels.

12. The Project would not significantly impact public health. Future development projects are restricted from having uses that present explosive risks, and any storage of chemical products on the Site would be undertaken in accordance with all State and Federal requirements. Lastly, the Phase 1 Environmental Site Assessment previously completed on the site concluded that the Site has no known environmental conditions that would be disturbed during Project construction nor result in a potentially large risk of explosion or release of hazardous substances during Project construction or operation. Therefore, the Project would not have an impact on public health and safety.

13. There are no recreation or critical environmental areas at the Site; however much of the Site is open space. Much of this open space, including the woodland and lakeshore areas, would not be developed and at least 25 percent of the Site would be preserved as open space. Therefore, the Project would not have a significant adverse impact on open space, recreation and/or critical environmental areas.

14. As the rezoning will allow future industrial facilities, they would be situated nearby other industrial facilities, and would not be out of character with surrounding development. The rezoning will eventually result in an increase in the density of land use; however this impact would not be potentially large because the development of the Site is consistent with the Town's stated land use goals in its Comprehensive Plan and LWRP, as noted previously. Also, the Rezoning could provide much needed economic development to the Town, through its addition of construction jobs and post-construction jobs into the local economy. Furthermore, any growth would likely be accommodated by the Town's existing resources. Also, the Project would not create a significant additional demand on community services. Thus, the Project would not significantly impact community character.

15. The rezoning will allow businesses that could generate solid and liquid wastes that would be accommodated by existing waste disposal facilities and the Town's wastewater treatment facility, respectively. Future Projects could discharge their liquid waste through a Lake Road connection into the Town's system, which has capacity to accommodate future flows. Otherwise, if on-Site disposal is used for liquid waste, an individual on-site treatment system would need to be designed in compliance with State and County standards. Therefore, the Project would not result in significant waste generation or disposal impacts to the environment.

16. Construction of future Projects could result in the generation of additional traffic. Also, construction of future Projects may involve more than one phase or stage and may continue for more than one year. However, these impacts are not considered potentially large because there is sufficient capacity on area roadways, so the level-of-service is not expected to decrease to unacceptable levels. Mitigating features could include employees working in shifts and an efficient scheduling of deliveries, routing and construction activities to minimize traffic. Therefore, the Rezoning would not have a significant impact on the transportation network or traffic in and around the vicinity of the Site.

17. Cumulative adverse environmental impacts could occur due to other simultaneous or subsequent actions which are included in any long-range plan, are likely to be undertaken as a result of the Project, or are dependent upon the Project. The Project would not result in such cumulative adverse environmental impacts because there are no other projects proposed in the general vicinity of the Site that should be considered in conjunction with this Project. This environmental analysis looks at the potential development of the entire site but it does not include a worst case scenario, full build out analysis, as such development is too long term and speculative as this may not ever happen. Such an approach is warranted under the circumstances and will be no less protective of the environment.

Section 5. The Supervisor and the Town Clerk of the Town are hereby authorized and directed to distribute copies of this Resolution and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 6. The Town, in completing this SEQR analysis has looked at impacts related to the rezoning and for aspects of future development at the site. In completing this analysis, the Town must note (as required under SEQR) that all future project impacts have not been fully analyzed and are being segmented from this current SEQR Determination. These future projects are extremely speculative in nature (have little information on them), are too varied in nature, may not occur or only occur in small parts, and are functionally independent of this current rezoning (This action does not commit the Town to any future project). Each future project proposal will be subject to its own SEQR analysis and Determination (can utilize information in this PUD and the SEQR work). This current segmented environmental analysis is no less protective of the environment, as it is a thorough analysis of environmental issues, but it also allows the Town to complete additional environmental reviews on future projects. This will help to ensure that future projects will not have any specific adverse environmental impact.

TOWN BOARD MEETING
OCTOBER 8, 2013 PAGE 10

Section 7. This Resolution has been prepared in accordance with the requirements of SEQRA and shall serve as a negative declaration for the Proposed Action and shall take effect immediately.

RESOLUTION 117-2013

ADOPTION OF PUD LOCAL LAW #6-2013

Councilman Jansen stated over the course of many months, the residents and property owners in the Town of Somerset and the Village of Barker have had ample time to provide their input on the direction the town should be going, in both the updating of the comprehensive plan and the revision of the PUD at the Lakeshore site. She stated she attended the committee meetings and talked to residents that attended these sessions with the major topic of conversations being about jobs and job creation, along with the need to expand our tax base. She said her main concern is about the future of the families that live in our town and as a resident and property owner paying school taxes, our children are not able to find jobs locally, therefore they are moving away from the family. She stated by completing the rezoning of this parcel and marketing the Town of Somerset as a great place to do business, we are not only creating jobs, but helping our families to stay together. She urged the Board to approve the rezoning of the Lakeshore site.

On a motion of Councilman Alt, 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, in June of 2013, pursuant to prior Resolution of the Town Board, a special advisory committee known as the Somerset Lakeshore Site Rezoning Committee (hereinafter referred to as "the Committee") was established with a mandate to make recommendations for possible rezoning of the Somerset Lakeshore Site to new zoning in conformity with the implementation recommendations of the Town's recently-adopted Comprehensive Plan; and

WHEREAS, the so-called "Somerset Lakeshore Site" consists of the westerly 179" acres of land owned by Somerset Operating Company LLC, upon which site Upstate New York Power Producers, Inc. operates its power plant at 7725 Lake Road in the Town; and

WHEREAS, the aforesaid Committee, which included representatives from the Town Board, the Town Planning Board, the County of Niagara, the landowner and the Town's engineers, Wendel, has met on four (4) occasions over the past several months, which meetings have been open to the public and input has been solicited from both Committee members and the public; and

TOWN BOARD MEETING
OCTOBER 8, 2013 PAGE 11

WHEREAS, the Committee, through its consultant, Wendel, has submitted a conceptual plan for such rezoning to the Town's Code Enforcement Officer for review and such Code Enforcement Officer, pursuant to Chapter 205, Article XV of the Town Code, has recommended to the Town Board and the Town Planning Board that they entertain the proposal for rezoning; and

WHEREAS, a PUD - Planned Unit Development District must be based on a development plan and the Application includes a development plan for the Site which divides the Site into different use areas that would include: a 105" acre area for development of the Somerset Lakeshore Business Park, which would include buildings, parking, storm water management and associated facilities, and would include two sub-areas for special road frontage development; a 31" acre area for potential waterfront enhanced or dependent facilities; a 31" acre area for open space and environmental preservation; a 10" acre site for the existing historical society/welcome center, which would be potentially subdivided and transferred to the Town; and a 2" acre area for the buffering of the historical society/welcome center site; and

WHEREAS, the Application to rezone the Site to PUD was referred to the Highway Superintendent and Town Engineer, both of whom recommended approval; and was referred to the Town Planning Board for its review, and the Town Planning Board recommended that the Town Board approve the rezoning of the Site as requested; and

WHEREAS, the Niagara County Planning Board has reviewed the plan for rezoning, and has recommended approval thereof; and

WHEREAS, a public hearing was held on September 17, 2013 at 7:00 p.m. to hear and consider adoption of a proposed Local Law for the year 2013, amending the Code of the Town of Somerset and Map to rezone the Site, presently zoned as a Planned Unit Development ("PUD") (specifically for a data center) as defined in the Town Code of the Town of Somerset, to a designated PUD District (for a business park, per the final application) subject to all regulations created and established relative to Planned Unit Developments under Chapter 205, Article XV of the Town Code of the Town of Somerset, and said hearing was left open to receive comments through October 4, 2013, and comments from the public were fully considered; and

WHEREAS, the Town adopted a new Comprehensive Plan in November of 2012 (the "Comprehensive Plan"), and the Town Board has considered the goals of the Comprehensive Plan relative to the Rezoning; and

WHEREAS, the Comprehensive Plan, in its implementation recommendations, recommends that: "The Town should explore getting this site designated as "Shovel-Ready" for light industrial and business uses. This would help support economic development in the Town, in an area where there is already similar development types"; and

WHEREAS, according to §205-53 of the Town Code, the intent of the PUD District is to provide greater flexibility and opportunity for the development of mixed uses in specific areas of the Town, and the PUD District is also intended to encourage innovative design and creative use mixes to offer the potential for sustainable development that can provide

TOWN BOARD MEETING
OCTOBER 8, 2013 PAGE 12

the economic and service base consistent with the objectives of the Somerset Comprehensive Plan, as well as imaginative ways of accommodating environmental considerations and conservation into any development plan to strike a balance of physical features, environmental responsibility and development opportunity; and

WHEREAS, the Town has adopted a Local Waterfront Revitalization Plan ("LWRP") and the Site is located within the boundaries of the Town's Local Waterfront Revitalization Area and is, therefore, subject to review for consistency of the LWRP policies, and the Town Board has considered the goals of the LWRP relative to the proposed Rezoning, and such rezoning is found to be in conformity with such LWRP, and is recognized as such by the New York State Department of State; and

WHEREAS, pursuant to and consistent with the requirements of Article 8 of the New York State Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQRA Act") and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, *et. seq.*, as amended (the "Regulations" and collectively with the SEQRA Act, "SEQRA"), the Town Board has adopted a negative declaration for the Rezoning,

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

Section 1. Based on the Town Board's analysis of the Rezoning application and its review of the Town's Comprehensive Plan, the Town Board finds the following:

1. The Rezoning would meet the goals set out in the implementation recommendations of the Comprehensive Plan through an innovative design for a mixed-use business park as specified in the application and site map included therein.
2. The Rezoning is for the land adjacent to the Upstate New York Power Producers, Inc. power plant, the Town's largest industrial site, which is also, zoned PUD, and near the Mayer Brothers processing facility. Thus, the site is situated between comparable and compatible uses, and would enhance this industrial area along Lake Road in conformity with the Comprehensive Plan.
3. The Rezoning is designed to avoid damaging the sensitive environmental features on the Site, such as the lakeshore bluffs, the successional woodland and small wetland areas situated within the woodland, which is designed to preserve the natural character of the area.
4. The Rezoning will ensure the preservation of the 10" acre Cobblestone Property, which contains the Town's Historical Society and Welcome Center. The Cobblestone Property will also provide a visual buffer for the Project to help preserve the visual appearance character of the neighborhood.

For all of the foregoing reasons, the Rezoning of the Site to the new PUD designation is consistent with the requirements for a PUD and the Comprehensive Plan.

Section 2. Based on the Town Board's analysis of the Proposed Action and its review of the LWRP, the Town Board finds the following:

1. The Site is situated on Lake Ontario and contains a length of steep bluffs and rocky beach that are considered natural protective features. The shoreline area is also a State-designated Coastal Erosion Hazard Area. The PUD Plan includes restrictions to development along portions of the shoreline and would not have a significant impact on natural protective features or result in coastal erosion.
2. Significant areas of open space would be maintained along the shoreline, including approximately 22" acres of successional growth woodlands, which include small areas of wetlands, and an open area along the shoreline. This would constitute an effective buffer between any site development and the lakeshore.
3. Groundcover would only be removed where required for future Project development activities and disturbed areas would be restored with landscaping, as appropriate. Topsoil would be stockpiled for reuse on-Site.
4. The proposed PUD designation for the Site is further supported in the Town LWRP. The future use of the Site as a PUD District is illustrated on the Future Land Use Map, which is included in the LWRP. This PUD designation was confirmed through correspondence with the NYSDOS.
5. The PUD Plan promotes waterfront dependent and waterfront enhanced uses in those areas closer to the waterfront that are noted for potential development (eastern end of the waterfront area).

For all of the foregoing reasons, the Rezoning would be consistent with the LWRP Policies.

Section 3. The official Map of the Town of Somerset shall be amended by rezoning premises located on Lake Road, Barker, New York, part of SBL#7.00-3-28, from Planned Unit Development (PUD) District to a new Planned Unit Development (PUD) District, consisting of 179" acres of land and more specifically described as follows:

All that tract or parcel of land, situate in the Town of Somerset, County of Niagara and the State of New York, being Lot 15 and the West part of Lot 14, in the fifth section, Township 16, in the sixth range being a part of the property conveyed by deed recorded in the Niagara County Clerk's Office in Liber 2926 of Deeds, Page 96 and bounded and described as follows:

BEGINNING at the Southwest corner of Lot 15 which point is located in the center line of Lake Road;

THENCE from said point of beginning, North 00° 18' 13" East, along the West Line of Lot 15, 3693.03 feet to the Southerly side of Lake Ontario; and

TOWN BOARD MEETING
OCTOBER 8, 2013 PAGE 14

THENCE along the Southerly side of Lake Ontario the following sixteen (16) courses and distances along the water's edge of Lake Ontario:

1. North 77° 31' 30" East, 91.68 feet; and
2. North 85° 44' 30" East, 139.06 feet; and
3. North 81° 46' 44" East, 204.73 feet; and
4. North 80° 08' 30" East, 111.01 feet; and
5. North 80° 41' 16" East, 110.75 feet; and
6. North 76° 14' 15" East, 76.11 feet; and
7. North 77° 46' 26" East, 57.10 feet; and
8. North 82° 46' 33" East, 260.39 feet; and
9. North 81° 26' 00" East, 99.37 feet; and
10. North 82° 02' 46" East, 148.58 feet; and
11. North 83° 49' 48" East, 102.40 feet; and
12. South 86° 57' 21" East, 42.59 feet; and
13. North 79° 23' 40" East, 194.45 feet; and
14. North 81° 11' 02" East, 246.19 feet; and
15. North 81° 08' 00" East, 110.23 feet; and
16. North 82° 08' 29" East, 81.44 feet; and

THENCE South 00° 47' 49" West, 4019.28 feet along a line parallel with the West line of Lot 14 to the center line of Lake Road;

THENCE along the center line of Lake Road the following two (2) courses and distances:

1. North 89° 12' 11" West, 1408.42 feet; and
2. North 89° 52' 41" West, 606.66 feet to the point or place of beginning.

Being and intended to describe the portion of SBL No. 7.00-3-28 in the Town of Somerset located North of and contiguous with Lake Road and consisting of approximately 179" acres.

Section 4. The Town of Somerset, in approving this rezoning, also approves the PUD Plan for this site. Projects proposed in the area described under this PUD designation, in accordance with Section 205-56 of the Somerset Town Code, shall be in accordance with the approved PUD Plan. This Plan includes the materials in the rezoning application dated August 23, 2013, which includes the Lakeshore Site PUD Zoning description, a PUD Zoning Map of the site, the PUD Development Plan Summary, and other information.

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

RESOLUTION 118-2013

NEGATIVE SEQR DECLARATION FOR SMALL SCALE SOLAR ENERGY SYSTEMS

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 upon review of the proposed local law entitled Small Scale Solar Energy Systems, the Town of Somerset Town Board names itself lead agency and declares there will not be a negative impact on the environment.

RESOLUTION 119-2013

ADOPTION OF LOCAL LAW #7-2013 – Small Scale Solar Energy Systems

On a motion of Councilman Wayner, seconded by Councilman Alt, 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 be it Enacted by the Town Board of the Town of Somerset as follows:

To amend the Code of the Town of Somerset by adding a new **Article XXII entitled “Small Scale Solar Energy Systems”** as follows:

§ 205-104. Purpose.

The purpose of this article is to encourage and promote green energy systems while protecting the health and safety of the residents of the Town of Somerset by establishing regulations for the installation of small scale solar energy systems (as herein defined) for residential and commercial purposes.

§ 205-105. Applicability.

The requirements of this article shall apply to all solar energy system installations modified or installed after the effective date of this article.

§ 205-106. Definitions.

As used in this article, the following terms shall have the meanings indicated:

BUILDING-INTEGRATED SOLAR/PHOTOVOLTAIC (BPIV) SYSTEM - A solar energy system incorporated into and becoming part of the overall architecture and design of a building or structure in a manner that the solar energy system is a permanent and integral part of the building envelope or structure.

BUILDING-MOUNTED SOLAR ENERGY SYSTEM - A solar energy system that has its solar collectors affixed to the side(s) of a building or other structure either directly or by means of support structures or other mounting devices, but not including those mounted to the roof or top surface of a building. Solar energy systems constructed over a parking lot are considered building-mounted solar energy systems.

GROUND-MOUNTED SOLAR ENERGY SYSTEM - A solar energy system that has its solar collectors affixed to the ground either directly or by support structures or other mounting devices.

ROOFTOP-MOUNTED SOLAR ENERGY SYSTEM - A solar energy system that has its solar collectors installed on the roof or top of a building or principal structure.

SMALL SCALE SOLAR ENERGY SYSTEM - Any solar energy system that (1) is an accessory use or structure, designed and intended to generate energy primarily for a principal use located on site; although, if excess energy is produced, it may be sold to a utility under a net energy metering agreement; and (2) consists of an overall area of less than 5,000 square feet of surface area of the solar collector(s).

SOLAR COLLECTOR - A solar or photovoltaic cell, plate, panel, film, array, reflector, or other structure affixed to the ground, a building, or other structure that harnesses solar radiation to directly or indirectly generate thermal, chemical, electrical, or other usable energy, or that reflects or concentrates solar radiation to a solar or photovoltaic cell, plate, panel, film, array, reflector, or other structure that directly or indirectly generates thermal, chemical, electrical, or other useable energy.

SOLAR ENERGY SYSTEM - A complete system intended for the collection, inversion, storage, and/or distribution of solar energy and that directly or indirectly generates thermal, chemical, electrical, or other useable energy. A solar energy system consists of, but is not limited to, solar collectors, mounting devices or structures, generators/turbines, water and energy storage and distribution systems, storage, maintenance and/or other accessory buildings, inverters, combiner boxes, meters, transformers, and all other mechanical, electrical, and plumbing components.

SOLAR-THERMAL ENERGY (STE) SYSTEM -- For purposes of this Article, any system which gathers sunlight and converts it to heat for heating water or air for residential or commercial use, which does not involve the generation of electricity.

§ 205-107. Building permit required; Installation requirements.

- A. Except as otherwise provided herein, building permits shall be required for installation of all solar energy systems.
- B. Except for small solar panels, all solar energy collectors/systems must be installed according to the manufacturer's instructions and inspected by a licensed electrical inspector.

§ 205-108. Rooftop and building-mounted solar collectors.

- A. Rooftop and building-mounted solar collectors are permitted in all zoning districts in the Town of Somerset subject to the following conditions set forth in this section.
- B. Height limitations of the Town of Somerset Zoning Code shall not be applicable to roof-mounted solar energy systems, provided that solar collectors are mounted to such height as is reasonably necessary to accomplish the purpose for which they are intended to serve and that such structures do not obstruct solar access to neighboring properties.
- C. Roof-mounted solar collectors must have a two foot setback on at least two sides.

- D. Roof and building-mounting structures must be properly engineered to support collectors. The applicant must provide a signed and sealed certification from a New York State licensed professional engineer containing the following information:

(1.) Design for mounting scheme appropriately considers "Climatic and Geographic Design Criteria" for Town of Somerset in conformance with the New York State Building Code (Chapter 3 of the Residential Code), which are: severe weathering; 90-mph wind zone; 50 pounds/square foot ground snow load; and Seismic Design Category "B".

(2.) The roof structure is strong enough to support the additional weight of the solar units as per Chapter 16 "dead load" standards of the New York State Building Code.

(3.) The mounting brackets and hardware and the attachment to the roof will meet or exceed New York State Building Code requirements for the geographic design criteria for the Town of Somerset.

(4.) Solar collectors are in compliance with Chapter 14 of the New York State Mechanical Code.

(5.) Solar energy systems used for heating potable water or using an independent medium for heating potable water shall comply with the applicable requirements of the New York State Plumbing Code.

(6.) The solar energy system is constructed and installed in compliance with Article 690 of the National Electric Code.

§ 205-109. Building-integrated photovoltaic (BIPV) systems.

BIPV systems are permitted outright in all zoning districts. No additional building permit is required if the system is installed when the structure that the BIPV is part of is constructed.

§ 205-110. Ground-mounted racks and free standing solar collectors.

Ground-mounted and free standing solar collectors mounted on poles are permitted as accessory structures in all zoning districts of the Town of Somerset, subject to the following conditions:

- A. The location of the solar collectors must meet all applicable setback requirements for accessory structures in the applicable zoning district.
- B. The unit must be installed in a side or rear yard.
- C. No unit shall exceed 15 feet in height from the ground unless an area variance is obtained from the Zoning Board of Appeals.
- D. The Town encourages installations that would employ landscape screening and other methods of enhancing the appeal of the ground-mounted and free standing solar collector, such as the use of architectural features, earth berms, or other screening which will harmonize with the character of the property and surrounding area.

§ 205-111. Small solar panels.

Small solar panels of less than one square yard for charging batteries and powering small instruments or devices shall not require a permit or engineering approval.

§ 205-112. Solar-thermal energy systems.

A. Solar-thermal energy systems are permitted in all zoning districts subject to provision of a certification from a New York State licensed engineer including the information required by §205-108, above, to the extent applicable.

B. All units shall be installed according to the manufacturer's specifications.

§ 205-113. Safety.

A. Prior to operation, electrical connections must be inspected by the Code Enforcement Officer and by an electrical inspection person or agency as determined by the Building Inspector in conformance with the State Building Code.

B. Solar energy systems shall be maintained in good working order and shall be removed if not in use for more than 12 months by removal of such system and mounting hardware within 90 days after the end of the 12th month.

C. Rooftop and building-mounted solar collectors shall be designed to be and installed to be in conformance with the New York Uniform Fire Prevention and Building Code standards that are applicable when the building permit is issued.

D. If solar storage batteries are included as part of the solar collector system, they must be placed in a secure container or enclosure and installed in accordance with manufacturer's specifications and the National Electrical Code.

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

RESOLUTION 120-2013

ELECTRICITY SUPPLY BID

Supervisor Engert stated Request for Proposals (RFP) for electricity supply were mailed to eight vendors and advertised with one vendor submitting a bid:

Name and Address of Vendor
New Wave Energy Corporation
434 Delaware Avenue
Buffalo, NY 14202

Price
\$.06225/kWh for 2 or 3 years

Supervisor Engert suggested the Board authorize a 3 year contract in order to stabilize prices.

TOWN BOARD MEETING
OCTOBER 8, 2013 PAGE 19

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 Supervisor Engert is authorized to execute a contract with New Wave Energy Corporation, 434 Delaware Avenue, Buffalo, NY 14202 for electricity supply for all accounts for the Town of Somerset at \$.06225/kWh for a 36 month period.

RESOLUTION 121-2013

FIRE DEPARTMENT TRENCH WORK

Supervisor Engert asked Attorney Jones if he has a recommendation regarding the trench work at the Fire Department.

Attorney Jones offered the following solutions for consideration:

1. A short term shared services agreement that covers the one installation; or
2. A municipal agreement with the Fire Dept. that could be used for equipment and personnel for an ongoing basis and vice versa where neither party pays.

He recommended the Town enter into an informal agreement where occasionally you share personnel and equipment.

Supervisor Engert said he had a concern that was related to the liability and to make sure that if our manpower was used to dig they are adequately covered.

Attorney Jones said there is no problem with the liability. He said what generates litigation in that area is when there is not a clear cut delineation on who is giving the instructions to the employee. He said if an employee is sent to dig a trench they take their instructions from Superintendent Denny and not someone from the Fire Company.

Supervisor Engert said we should have an Intermunicipal agreement to delineate what those responsibilities are going to be and have plans submitted that are approved. He asked if there have been any plans submitted by the Fire Company.

Superintendent Denny said the official plans have not been submitted yet; however they have painted lines on the pavement and the ditch where they want the trench dug. He stated in the past we have borrowed their tanker to wash the road down and there have been other times we have used their equipment. He said he would lean toward the Intermunicipal agreement for an ongoing basis.

Supervisor Engert asked what the timeframe is for the work.

Superintendent Denny said two days and 2 guys at the maximum. He said he would like to have a point person to coordinate the job.

Councilman Dewart said the point person will be Bruce Devereaux and that he will coordinate with the gas company.

Supervisor Engert asked Attorney Jones to draft an agreement within two days.

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 enter into an agreement with the Barker Fire Company for sharing manpower and equipment occasionally.

RESOLUTION 122-2013

UNPAID WATER AND SEWER BILLS PLACED ON TAXES

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

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

Nays 0

Resolved any unpaid water and sewer bills be placed on the county taxes for 2014.

STATUS OF 2014 TENTATIVE BUDGET

Supervisor Engert reported on the status of the 2014 tentative budget that was discussed at the Board meeting last night (October 7, 2013) stating there are some loose ends that need to be taken care of and stated the following highlights:

- Includes a 11 ½% reduction in appropriations
- Revenues were projected at less than 1%
- PILOT has been reduced by 52%
- Tax levy has been reduced by 10%
- Revenues make up 38% of the budget
- Reserves make up 29% of the budget
- PILOT is 11% of the budget
- Taxes are 22% of the budget
- Tax rate has been reduced by 9%
- Fire Protection district went up 13% due to no sales tax being applied for a tax rate of \$.51/thousand
- Refuse district went down significantly 79% to \$23.32 per unit

Supervisor Engert scheduled a meeting for October 16, 2013 at 5:30PM to continue discussions on the 2014 Tentative Budget.

Supervisor Engert scheduled the Public Hearing on the 2014 Budget for October 30, 2013 at 6:00PM.

RESOLUTION 123-2013

WATER/SEWER HOOKUP ON LOWER LAKE ROAD

Superintendent Denny stated there is a property owner on Lower Lake Road that is requesting water and he will be running power to the building that is currently on the property. He stated the property is in the Sewer District and the property owner does not want to hook up to the sewer because of the distance. He stated there is an easement from the road to where the property starts so he would have to go through that easement to install the utilities. He stated he conferred with the Engineer to make sure the grinder pump could get to the force main and he agreed that it would work. He stated according to the Code the property owner has to hook into the sewer district. Superintendent Denny said he also talked to Attorney Jones and told the property owner that he needed to hook into the sewer. He stated the property owner told him he would contact his lawyer.

TOWN BOARD MEETING
OCTOBER 8, 2013 PAGE 21

Attorney Jones stated the property owner applied to the County Health Dept. for a septic system and it was approved. He stated the Health Dept. was not aware the property was located in the sewer district. He said the Town is responsible for making the decision according to the Code. He said if he is running utilities through the easement then he should run the sewer line.

Supervisor Engert asked if there is an out clause in the Code in case of hardships.

Attorney Jones said no.

Discussion ensued regarding the costs of hooking into the sewer versus a septic system; benefits of special assessment areas; and the requirement to hook into the sewer system.

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

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

Resolved Superintendent Denny is authorized and directed to follow the Code of the Town of Somerset regarding installation of the sewer line.

RESOLUTION 124-2013

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. 339 through No. 373	\$ 33,491.97
Highway Fund	No. 82 through No. 93	\$ 8,187.90
Sewer Fund	No. 96 through No. 104	\$ 1,339.58
Water Fund	No. 78 through No. 84	\$ 38,588.63

PRIVILEGE OF FLOOR

Priscilla Whitford representing the Town of Somerset Historical Society stated the Board received a letter from the Board of Directors regarding services being cut in 2014.

Supervisor Engert said the letter was received and stated that no services will be cut for 2014. He stated that for the 2015 Budget we would like to have a discussion on ways that we can work together to cut costs. He said we appreciate the Historical Society and what they do.

Wally Coates stated as a taxpayer he is not as enthusiastic about the cuts that you are making specifically to the Sewer/Water Treatment Plant. He said he is concerned that the testing is going outside the town and jobs leaving Town. He asked how many of the Board members have toured the sewer plant. He said the sewer is the second most hazardous job for workers compensation. He explained (when he was in charge) the testing that was done that has a 28 day process. He stated preventative maintenance on the machinery is very important and more maintenance is needed since Southland is no longer giving high flows. He said the water/sewer rates were the lowest in WNY and wants to know why you are reinventing the wheel. He stated reduced manpower cannot cover it (preventative maintenance). He commended the Board for the work on the PUD but asked that you don't make the Town look like a mess by making cuts. He said you are creating a hazard for employees in both departments and urged that services be maintained in a safe manner.

James Hoffman addressed the Board regarding the following:

1. Asked if there is anything new with the former Barker Chemical property.
Supervisor Engert said the bore sampling has been completed and DEC has started to get contractors.
Attorney Jones stated there are no sampling results as of yet.
2. Asked the status of the Kenyon Property on Lake Road.
Supervisor Engert stated that Code Enforcement Officer is working with the property owner.
3. Complained about the condition of the property on the Northwest Corner of Lake Road including unregistered vehicles.

Norman Jansen stated on garbage day the recycling totes are being left in the road after pickup and it is dangerous.

Supervisor Engert referred the comment to the Refuse Committee.

Councilman Wayner said he will call Modern to follow-up.

LAKESHORE DRIVE REFUSE PICKUP

Supervisor Engert said he sent a letter to the Lakeshore Drive residents. He stated they would like to have a dedicated bin specifically for those residents. He referred the matter to the Refuse Committee.

RESOLUTION 125-2013

EXECUTIVE SESSION

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 Board enter into Executive Session at 8:45PM to discuss a personnel matter of a particular person.

TOWN BOARD MEETING
OCTOBER 8, 2013 PAGE 23

RESOLUTION 126-2013

RETURN TO REGULAR SESSION

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 the Board return to regular session at 9:03PM.

On a motion of Councilman Dewart, seconded by Councilman Jansen, the meeting adjourned at 9:04P.M. subject to the Call of the Clerk. Carried unanimously.

Rebecca A. Connolly, MMC
Town Clerk