

TOWN BOARD REGULAR MEETING
DECEMBER 8, 2021

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 3rd day of December 2021.

Present: Jeffrey M. Dewart ----- Supervisor
 Gail Damon ----- Councilwoman
 Fred Leuer ----- Councilman
 Tracy L. Carmer----- Town Clerk
 Jonathan D. Dewart ----- Supt of Water/Sewer/Grounds
 Michael M. Flint ----- Supt. of Highways
 Mindy Austin ----- Confidential Asst. to the Supervisor
 David Haylett ----- Attorney
 Brian Sibiga ----- Engineer

Absent: Robin R. Jansen ----- Councilwoman
 Jon Hotaling ----- Councilman

Attended by: 13 residents

Supervisor Dewart called the meeting to order at 6:00PM with the Pledge to the Flag and a prayer for guidance.

Supervisor Dewart opened the Public Hearing on the Proposed Solar Law at 6:01PM.

Clerk Carmer read the Notice of Hearing on the Solar Law. Notice of said hearing was sent to the Lockport Union-Sun & Journal on November 15, 2021 with same notice being posted on the same date at the Town Hall and on the website.

Supervisor Dewart provided an overview of the committee meetings and how they arrived at the proposed law.

Clerk Carmer read an email from resident Peg Schwabel. She provided links to two documents that she feels could help us frame highly specific and more protective regulations related to sound:

<https://www.acentech.com/resources/2020/06/yes-solar-farms-can-produce-noise/>
<http://www.niagaracounty.com/Portals/0/docs/Legislature/2021/Solar%20Panel%20local%20law%20draft%202.6.4.21.pdf?ver=2DfZMM0tjnDoWTgcJ3xiWg%3d%3d>

She said that we need to keep in mind that solar fields require transformers and inverters in addition to solar panels and that these produce unique sounds known as pure tones. She also wants us to be stringent in regard to recycling of all solar components. She urges the board to take the time to make sure that any laws put in place are as stringent as possible.

TOWN BOARD MEETING
DECEMBER 8, 2021 PAGE 2

Supervisor Dewart stated that the Niagara County Planning Board approves the plan and some towns that were in attendance at the meeting plan to use our proposed law as a guide for a law for their towns.

John Wolanyk thinks passing this law tonight is premature and spoke on the following points:

- What is the restriction on hunting near the solar panels? He was told that it is 1,000 feet, and non-adjoining properties is 400' setback.
- Toxic fluids running through the panels. He has 3 ponds and 2 wells on his property. What will be done about contamination?
- Keep the panels on brownfields, not south of 18.
- He has 25 boxes of honey bees that travel 1-1/2 miles collecting nectar. How will this affect them?
- Tier classifications – restrictions depend on which tier. He said that AES abandoned orchards across the street from him and they should be classified as farmland.

Betty Wolanyk said the toxic chemicals that John spoke of (PFAS) are noted in tier 3 and 4, but not 1 and 2. Why not? Non-glare coatings are required in tier 1 and 2 and they contain this chemical. She is concerned about noise and said that anything over 5db above background levels are considered an annoyance and she is concerned about the noise levels while people are sleeping. She provided a link <https://www.who.int/docstore/peh/noise/Comnoise-1.pdf> and referred to page 9. She said the battery storage law addresses toxic plumes in the event of a fire. She wants to know how this impacts crops, livestock, homes and gardens? Also, are there hunting restrictions?

Allison Welka said the problems and issues far outweigh the efficiency. She said that birds nest underneath them and bird poop leads to micro-cracks that render the panels useless. Gasses produced by batteries overheating cause skin irritation, eye damage and nasal damage. If it gets into the ground and groundwater what will happen? She also discussed the cost of replacing panels.

Jim Hoffman spoke on specific items that he would like addressed including zoning districts; a new vision map; application procedure and what authority does the County Planning Board have over this ordinance; prohibit forest clearing; noise average measurement; transportation safety and disposal for battery swap out; contaminated soil and debris should have a disposal plan; a list of hazardous materials should be referenced; generate report monthly (He said that solar energy systems have the characteristic of generating power when it is not need and failing to produce power when it is needed); consider allowing tier 4 construction in PUD zoning only. He suggests taking a couple more months to incorporate these comments before approval.

TOWN BOARD MEETING
DECEMBER 8, 2021 PAGE 3

Pam Atwater said that she appreciates the time and effort of the committee. She strongly encourages the Board to take the time to consider the details that Jim Hoffman provided. She said that the community looks to the Board to protect our health, welfare and safety. She stated that our laws send a strong message to developers about what is appropriate when looking to site projects in our community.

Attorney Haylett stated that we cannot vote on this tonight because the 30 days required for the SEQRA review have not passed.

RESOLUTION 145-2021

HOLD THE PUBLIC HEARING OPEN ON THE PROPOSED SOLAR LAW

On a motion of Councilwoman Damon, seconded by Councilman Leuer, the following resolution was

ADOPTED: Ayes 3 Dewart, Damon, Leuer
 Nays 0

Resolved at 6:30PM to hold the public hearing open until next month.

Supervisor Dewart opened the Public Hearing on the Battery Energy Systems Local Law at 6:31PM.

Clerk Carmer read the Notice of Hearing on the Battery Energy Systems Local Law. Notice of said hearing was sent to the Lockport Union-Sun & Journal on November 15, 2021 with same notice being posted on the same date at the Town Hall and on the website.

Clerk Carmer read a statement prepared by Councilwoman Jansen. She advised that the committee used the NYSEDA recommended format and added to it taking content from existing Town laws, NFPA recommendations, WHO, Association of Towns, other municipalities, and information gleaned from the internet. She also met with the Barker Fire Department Chief and the Niagara County Fire Coordinator and added their recommendations. She provided comments from the Barker Fire Chief and he stated that he believes this law will help keep our community healthy and safe. The drafts were reviewed by the town attorney, town engineer, and the town supervisor. Also, copies were provided to the planning and zoning boards, and Code Enforcement Officer and Building Inspector. It ended with the town attorney making sure that the content is defensible. She stated that stand-alone systems are not permitted and the entire system must be less than 1MW. She highlighted the many sections of the law and said that our law is pretty comprehensive at 22 pages long.

Betty Wolanyk said that she feels this hearing is extremely premature. Only the 2 members of the subcommittee worked on developing these laws. The rest of the committee was given a copy at their last full committee meeting and the whole committee has not met to discuss any recommendations. The solar laws were discussed by the total committee and she sees no reason why the battery laws should not also. Referring to the statement of

TOWN BOARD MEETING
DECEMBER 8, 2021 PAGE 4

purpose and findings she stated that she does not believe that battery energy storage is clean. She described the production of the batteries and said that clean energy is a fairy tale. She re-stated the noise limitations that she discussed under the solar energy law. She asked if the regulations are sufficient in the event of a fire or explosion and do the emergency procedures include a plan for evacuation of nearby residents or just refers to personnel working at the facility? She stated that electromagnetic interference is mentioned in the beginning as a potential problem, but is it properly addressed? Should there be a ban on hunting within a certain distance of the system? She thanked the committee for preventing stand-alone lithium ion batteries from being built here. She said that the law only addresses battery storage up to 1MW so is it inferred that batteries greater than 1MW are not allowed? She feels it should be clear. She described fires that have occurred around the world. She said that industrial scale lithium ion batteries have no place in Somerset.

Jim Hoffman said that the two laws are un-identical twins and they should move together. The batteries have a history of fire and explosion and he provided information on cars that have been recalled and the owners are told to park away from their house due to risk of fire.

John Wolanyk agrees with Betty and Jim. He has concerns about hunting restrictions and contamination. He said that these battery explosions have a 2 mile radius. He thinks we have to look hard and long before passing this law. He said that corporations are taking over and he asked how much subsidy they are getting.

Pam Atwater said she appreciates the specifics that Betty mentioned and she feels that we should take the time to consider this and have the committee meet one more time.

RESOLUTION 146-2021

**HOLD THE PUBLIC HEARING OPEN ON BATTERY ENERGY STORAGE SYSTEMS
LOCAL LAW**

On a motion of Councilman Leuer, seconded by Councilwoman Damon, the following resolution was

ADOPTED: Ayes 3 Dewart, Damon, Leuer
 Nays 0

Resolved at 6:45PM to hold the public hearing open until next month.

Supervisor Dewart opened the Public Hearing on the Cannabis Opt-Out Local Law at 6:46PM.

Clerk Carmer read the Notice of Hearing for the Cannabis Opt-Out Local Law. Notice of said hearing was sent to the Lockport Union-Sun & Journal on November 15, 2021 with same notice being posted on the same date at the Town Hall and on the website.

TOWN BOARD MEETING
DECEMBER 8, 2021 PAGE 5

Supervisor Dewart commented that originally no one wanted to opt out but we have since discovered that you only get tax dollars if you have a dispensary in your town.

Attorney Haylett stated that we can opt out now and choose to opt back in later. But if we do not opt out now, we cannot opt out later. He said that the Town opting out does not include the Village of Barker. He also stated that people will still be allowed to possess and/or smoke cannabis where tobacco is allowed.

Shawn Curry said that this should not be adopted and is counter-productive to its goals. He said that it has not been difficult to get it, even when he was a kid. He said that it would be more convenient for our residents and more difficult for kids to access it if they are going through a legal dispensary.

Pam Atwater supports the Town's position on opting out until more is known.

Jim Hoffman said we should opt out, and we can always opt back in if we have to. He does not feel that there is an economic impact or any disadvantage by opting out.

RESOLUTION 147-2021

CLOSE THE PUBLIC HEARING ON LOCAL LAW #6-2021 CANNABIS OPT OUT

On a motion of Councilwoman Damon, seconded by Councilman Leuer, the following resolution was

ADOPTED: Ayes 3 Dewart, Damon, Leuer
 Nays 0

Resolved with all persons having been heard, to close the Public Hearing at 6:51PM.

Supervisor Dewart opened the Public Hearing on the Cable Franchise Agreement at 6:53PM.

Clerk Carmer read the Notice of Hearing for the Cable Franchise Agreement. Notice of said hearing was sent to the Lockport Union-Sun & Journal on November 15, 2021 with same notice being posted on the same date at the Town Hall and on the website.

Attorney Haylett stated that the contract is for 15 years and we get 5% of the revenue. The Town does not have too much to say on the contract but he did get the contract changed to increase our statute of limitations to sue. These are regulated by the state Public Service Commission.

RESOLUTION 148-2021

CLOSE THE PUBLIC HEARING ON CABLE FRANCHISE AGREEMENT

On a motion of Councilwoman Damon, seconded by Councilman Leuer, the following resolution was

ADOPTED: Ayes 3 Dewart, Damon, Leuer
 Nays 0

TOWN BOARD MEETING
DECEMBER 8, 2021 PAGE 6

Resolved with all persons having been heard, to close the Public Hearing at 6:55PM.

RESOLUTION 149-2021

APPROVAL OF THE MINUTES

On a motion of Councilman Leuer, seconded by Councilwoman Damon, the following resolution was

ADOPTED: Ayes 3 Dewart, Damon, Leuer
 Nays 0

Resolved the minutes of the previous meetings of November 3, 2021 are accepted as submitted.

RESOLUTION 150-2021

APPROVAL OF THE SUPERVISOR'S MONTHLY REPORT

On a motion of Councilwoman Damon, seconded by Councilman Leuer, the following resolution was

ADOPTED: Ayes 3 Dewart, Damon, Leuer
 Nays 0

Resolved the Supervisor's Reports for October and November, 2021 are accepted as submitted.

COMMUNICATIONS:

Clerk Carmer noted that Councilman Hotaling submitted an email in support of the agenda. On behalf of the American Legion he thanked the highway and water department employees for help in taking down the banners.

Clerk Carmer announced some changes that are being made to cable channels. She also stated that the Department of Public Service notified us of a new Federally funded program providing drinking water and wastewater emergency assistance to eligible (low income) households following the same guidelines as HEAP. The website for more information is <https://otda.ny.gov/LIHWAP>

Clerk Carmer reminded the Board and residents that a virtual community meeting is being presented by AES on the Somerset Solar Project. It is being held on Wednesday, December 15, 2021 at 6:00PM.

RESOLUTION 151-2021

CABLE FRANCHISE AGREEMENT

On a motion of Councilman Leuer, seconded by Councilwoman Damon, the following resolution was

| | | |
|----------------------------|--------------------|-----|
| ADOPTED by Roll Call Vote: | Supervisor Dewart | Aye |
| | Councilwoman Damon | Aye |
| | Councilman Leuer | Aye |

TOWN BOARD MEETING
DECEMBER 8, 2021 PAGE 7

WHEREAS, an application has been made to the Town Board by Spectrum Northeast, LLC, an indirect subsidiary of Charter Communications, Inc., for the approval of an agreement to renew the cable television franchise for an additional fifteen (15) years, and

WHEREAS, the Franchise Renewal Agreement would bring the franchise into conformity with certain provisions of the Federal Cable Communications Policy Act of 1984, and

WHEREAS, Charter Communications has substantially complied with the material terms and conditions of its existing franchise and with applicable law, and

WHEREAS, the quality of the Charter Communications service, including signal quality, response to customer complaints and billing practices has been in light of community needs,

NOW, THEREFORE, BE IT RESOLVED, that the Town Board hereby renews the cable television franchise in the Town of Somerset for fifteen (15) years commencing on the date of approval by the Public Service Commission, and be it further

RESOLVED, that Supervisor Jeffrey Dewart be and hereby is authorized and directed to sign and execute the agreement accomplishing said renewal.

RESOLUTION 152-2021

LOCAL LAW #6-2021 CANNABIS OPT OUT

On a motion of Councilwoman Damon, seconded by Councilman Leuer, the following resolution was

| | | |
|----------------------------|--------------------|-----|
| ADOPTED by Roll Call Vote: | Supervisor Dewart | Aye |
| | Councilwoman Damon | Aye |
| | Councilman Leuer | Aye |

WHEREAS, the New York State Marijuana Regulation & Taxation Act permits local governments to opt-out of allowing adult-use cannabis retail dispensaries and on-site consumption licenses from locating within their jurisdictions by local law subject to permissive referendum, and

WHEREAS, a local law has been introduced to opt-out the Town of Somerset from allowing such recreational cannabis facilities, and

WHEREAS, a public hearing has been held on the proposed local law on December 8, 2021 at 6:00 p.m. at the Town of Somerset Town Hall, 8700 Haight Road, Barker, NY, now therefore be it

RESOLVED, that the Local Law entitled, "A local law opting out of licensing and establishing retail cannabis dispensaries and on-site cannabis consumption establishments

TOWN BOARD MEETING
DECEMBER 8, 2021 PAGE 8

within the Town of Somerset,” is hereby adopted by the Town Board of the Town of Somerset, subject to permissive referendum.

Attorney Haylett explained that permissive referendum means that a petition can be presented by 10% of the population who voted in the Governor’s election within 45 days of adoption and have the law tossed out.

RESOLUTION 153-2021

SEWER BUDGET AMENDMENT

On a motion of Councilman Leuer, seconded by Councilwoman Damon, the following resolution was

ADOPTED: Ayes 3 Dewart, Damon, Leuer
 Nays 0

WHEREAS, the Town Board previously approved the 2022 Town Budget on November 3rd, 2021; and

WHEREAS, an accounting error was subsequently discovered and the Town Board desires to rectify the error,

NOW, THEREFORE, BE IT RESOLVED, that the Somerset-Barker Sewer District appropriations, Interfund Transfers, Capital Project funds (page 27) for the 2022 adopted budget be amended from \$13,353.00 to \$3,558.00; and be it further

RESOLVED, that the Somerset-Barker Sewer District Special Assessments line (page 28) be amended from \$143,274.00 to \$132,439.00; and be it further

RESOLVED, that the Somerset-Barker Sewer District Special Assessment line (page 28) Total Real Property Taxes line be amended from \$224,019.00 to \$214,224.00.

RESOLUTION 154-2021

2022 REORGANIZATIONAL MEETING

On a motion of Councilwoman Damon, seconded by Councilman Leuer, the following resolution was

ADOPTED: Ayes 3 Dewart, Damon, Leuer
 Nays 0

Resolved the reorganizational meeting of the Town Board will be held on January 5, 2022 at 6:00PM.

RESOLUTION 155-2021

PREPAY BILLS

On a motion of Councilwoman Damon, seconded by Councilman Leuer, the following resolution was

TOWN BOARD MEETING
DECEMBER 8, 2021 PAGE 9

ADOPTED: Ayes 3 Dewart, Damon, Leuer
 Nays 0

Resolved that all bills incurred for 2021 are authorized to be pre-paid.

RESOLUTION 156-2021

BUDGET AMENDMENTS

On a motion of Councilman Leuer, seconded by Councilwoman Damon, the following resolution was

ADOPTED: Ayes 3 Dewart, Damon, Leuer
 Nays 0

Resolved as provided in section 107 and section 115 of the New York State Town Law, that the Supervisor of the Town of Somerset is hereby authorized to expend from the unexpended balance or surplus revenues such sums as may be necessary to cover amounts by which the actual expenses were incurred in 2021 in any amount exceeding the amount budgeted.

RESOLUTION 157-2021

YEAR-END AUDIT

On a motion of Councilwoman Damon, seconded by Councilman Leuer, the following resolution was

ADOPTED: Ayes 3 Dewart, Damon, Leuer
 Nays 0

Resolved that the Audit Committee, consisting of Councilwoman Damon and Councilman Leuer, are authorized and directed to perform the year-end audits of the Town Clerk, Code Enforcement Officer, Supervisor, Justice and Tax Collector on a date and time to be determined.

RESOLUTION 158-2021

ENCUMBRANCES

On a motion of Councilman Leuer, seconded by Councilwoman Damon, the following resolution was

ADOPTED: Ayes 3 Dewart, Damon, Leuer
 Nays 0

Resolved that all bills incurred for 2021 are authorized to be pre-paid.

Attorney Haylett advised that the highway department is in need of an emergency repair. He stated that the 2016 plow truck has been to Orleans Ford many times without being able to determine the issue. He took it to Basil Ford and they diagnosed the problem.

RESOLUTION 159-2021

HIGHWAY TRUCK REPAIR

On a motion of Councilwoman Damon, seconded by Councilman Leuer, the following resolution was

TOWN BOARD MEETING
DECEMBER 8, 2021 PAGE 10

ADOPTED: Ayes 3 Dewart, Damon, Leuer
 Nays 0

WHEREAS, The Town of Somerset Highway Department utilizes a 2016 F550 Ford plow truck that is in need of repair, specifically, the replacement of the diesel particulate filter and corresponding parts to correct an ongoing issue, and

WHEREAS, the truck is inoperable unless it is repaired, and

WHEREAS, the plow truck is necessary for efficient clearing of snow and ice from Town and State highways during the winter months, and

WHEREAS, the Town Highway Superintendent had previously taken the plow truck to Orleans Ford of Medina, who was incapable of diagnosing and fixing the problem, and

WHEREAS, the Town Highway Superintendent has taken the plow truck to Basil Ford of Niagara Falls, who has diagnosed the problem and provided a quote in the amount of \$8,786.31 to make the necessary repairs,

NOW THEREFORE BE IT RESOLVED, the Town Board of the Town of Somerset hereby authorizes the Town Highway Superintendent and Town Supervisor to enter into an agreement to repair the 2016 F550 Ford plow truck with Basil Ford of Niagara Falls at an amount not to exceed \$8786.31 pursuant to the Town Procurement Policy, Guideline 7(k).

RESOLUTION 160-2021

AUDIT OF CLAIMS

On a motion of Councilwoman Damon, seconded by Councilman Leuer, the following resolution was

ADOPTED: Ayes 3 Dewart, Damon, Leuer
 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. 393 through No. 434 | \$ 74,585.51 |
| Highway Fund | No. 117 through No. 125 | \$ 37,917.43 |
| Sewer Fund | No. 136 through No. 148 | \$ 3,395.64 |
| Water Fund | No. 88 through No. 90 | \$ 113.08 |

PRIVILEGE OF THE FLOOR

Pam Atwater talked about an article from December 6th in NY Times discussing Bitcoin and it mentions Somerset. It mentions that Bitcoin can use more electricity than most cities and Somerset is part of a \$550 million project and it will be using hydropower salvaged from

TOWN BOARD MEETING
DECEMBER 8, 2021 PAGE 11

Niagara Falls that is otherwise hard to send to other locations because of grid congestion.
<https://www.nytimes.com/2021/12/05/nyregion/bitcoin-mining-upstate-new-york.html>
She also mentioned an article in the Buffalo News that discusses noise issues from fans associated with US Bitcoin Corp. Niagara Falls facility.
https://buffalonews.com/news/local/niagara-falls-bitcoin-site-agrees-to-tone-down-the-noise/article_04b0016c-4c9e-11ec-94a6-570a11f0ffd3.html#:~:text=Bitcoin%20facility%20at%20the%20former,Buffalo%20Ave.%20in%20Niagara%20Falls.&text=The%20heat%20generated%20by%20the,asked%20not%20to%20be%20identified.

Betty Wolanyk said regarding Somerset Solar, she would like to see the Board consider a resolution similar to the one against wind because 94c gives us no say. But if the Town is against the project it works in our favor. Possibly we need to do another survey. She feels that is the only thing we can do to protect ourselves against being surrounded by panels and batteries. She reminded us that at our meeting they said that they were going to have 20MW battery storage, but at their public information session they said that they aren't going to have any storage.

Jim Hoffman discussed data center noise. He asked for a status on the center. Supervisor Dewart said that they are still in the building process and he believes they have hired 9 full-time employees.

Randy Atwater said that he hopes that the Data Center is not give a PILOT. Supervisor Dewart said that we opted out of the PILOT program. Attorney Haylett clarified that it pertains only to energy projects.

Betty Wolanyk asked the status of Rails to Trails. Supervisor Dewart said it is still in the works but there has not been any discussion since the Fall. He stated that he discussed the Babcock House with them regarding a long-term lease with financial help or turning over the house to the Town. Councilwoman Damon said that the Historical Society has not had a lease since 2018 and they are asking for a 10 year lease. They also provided a list of projects that need to be done.

John Wolanyk said that instead of a walking trail why don't we put in a lake port and use the rails to ship produce?

On a motion of Councilwoman Damon, seconded by Councilman Leuer, the meeting adjourned at 7:20P.M. subject to the Call of the Clerk.

Tracy L. Carmer, RMC
Town Clerk