

TOWN BOARD REGULAR MEETING
June 9, 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 9th day of June 2021.

Present:	Jeffrey M. Dewart-----	Supervisor
	Robin R. Jansen -----	Councilwoman
	Jon Hotaling -----	Councilman
	Gail Damon -----	Councilwoman
	Fred Leuer -----	Councilman
	Tracy L. Carmer-----	Town Clerk
	Jonathan D. Dewart -----	Supt of Water/Sewer/Grounds
	Mindy Austin -----	Confidential Asst. to the Supervisor
	David Haylett-----	Attorney
	Anthony Sirianni -----	Attorney

Audience: approximately 30 residents

Absent:	Michael M. Flint -----	Supt. of Highways
	Brian Sibiga -----	Engineer

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

PUBLIC HEARING – LOCAL LAW #3-2021 BATTERY STORAGE MORATORIUM

Clerk Carmer read the notice of public hearing. Notice of said hearing was sent to the Lockport Union-Sun & Journal on May 21, 2021 with same notice being posted at the Town Hall and on the website on the same day.

Deputy Supervisor Jansen provided an overview of what has transpired so far. The committee started with the NYSERDA recommended format and added content from existing town laws, information from NFPA, comments from the Niagara County Fire Coordinator and the Barker Fire Department Chief, information provided by the Association of Towns, and information found on the internet. The current draft law is 21 pages. As it was prepared it was periodically reviewed by the town attorney and engineer for their comments. Currently the draft is being reviewed by the Niagara County Fire Coordinator, Barker Fire Chief, and the rest of the Town Board. Once they comment on it, the draft will be revised and send back to the town attorney and engineer to ensure that the content is defensible. When this is done, the whole law will need to be reformatted since it was derived from a lot of different documents and we need to make sure that it has all of the required definitions. After a final review we will hold a public hearing.

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Clerk Carmer read a letter submitted by Jim Hoffman stating that he fully supports the proposed moratorium. With the increased pressure from Albany on renewable energy systems, the Town of Somerset must have adequate laws in place to assure that the rural character of our town is preserved and the health and safety of our citizens is protected. He said to pass the local law tonight.

Betty Wolanyk stated that she is in favor of the moratorium and is appreciative of the Town Board.

Pam Atwater thanked the board and said it is an important issue and that we should take our time to make sure it is done right for our town. She supports it.

RESOLUTION 73-2021

CLOSE PUBLIC HEARING

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

ADOPTED Ayes 5 Dewart, Jansen, Hotaling, Damon, Leuer
 Nays 0

RESOLVED, with no one else desiring to be heard, to close the public hearing at 6:05PM.

DATA CENTER PRESENTATION

Jerry Goodenough from Beowulf discussed his history with the plant and introduced his team: John Maribella, Environmental Director for the northeast; Doug Roll, Project Manager; and Chuck White from Barton LoGuidace.

He stated that they will convert from producing energy to using it. They plan to put 2 buildings on the site, with eventually 2 more new buildings. The ISO has to model this to make sure this load can interwork with the grid. They will have a second study with NYSEG and National Grid to make sure that they can support this load. This will be on 8.00-1-1.11 (the north piece on route 18) and is approximately 400 acres. This will be to the east of the plant where it is a contractor parking lot. They are using Environmental Resources Management and expect to be able to startup by November 1st. He stated that they have been putting a lot into this for over a year and it is time to start getting the permitting.

Councilman Leuer asked what is the voltage they will be using primarily on the site. Jerry said that they will be knocking down from 345,000 to 13.8 to 480. They are looking at two buildings for 47.5mw each with a total of 95mw.

Supervisor Dewart asked how many employees will be in each building. Jerry said they are targeting 18-20 employees for the first wave of 95mw.

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Councilman Hotaling clarified that there will be 140-150 construction jobs and asked if they have contractors already.

Jerry said that they will be bidding it and it will be local, probably union.

Councilman Leuer asked how many employees after the facility is constructed.

Jerry said that eventually they want to get to 500mw and that will probably be 70-100 full-time employees. He stated that there will not be any support employees at the site.

Councilwoman Damon asked if the materials coming in are coming over the road.

Jerry said. He doesn't feel there will be nearly the amount of traffic as when the plant was running. It will also be only temporary as it is supply delivery.

Councilman Hotaling stated that we have designated heavy haul roads.

Jerry asked if we have that on a map. They will take a look at it.

Supervisor Dewart stated that Hartland Road or Lake Road are designated.

Councilman Hotaling stated that Hartland Road definitely is. He said that GPS sends the trucks down Quaker Road past the school.

Jerry said that if we can highlight the exact route that we want them to take, they will address it. He also does not want to have trucks going by the school.

RESOLUTION 74-2021

APPROVAL OF THE MINUTES

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

ADOPTED: Ayes 5 Dewart, Jansen, Hotaling, Damon, Leuer
 Nays 0

Resolved the minutes of the previous meeting on May 12, 2021 are accepted as submitted.

RESOLUTION 75-2021

APPROVAL OF THE SUPERVISOR'S MONTHLY REPORT

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

ADOPTED: Ayes 5 Dewart, Jansen, Hotaling, Damon, Leuer
 Nays 0

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

COMMUNICATIONS

Clerk Carmer said that around June 15th new customers will have a better package from Spectrum and existing customers can add to their package for \$5 more per month.

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Clerk Carmer said that we received a letter from NYS Department of Health advising us that the guidelines for eating fish have changed due to decreasing contamination.

Clerk Carmer read a letter from Jim Hoffman commenting on the PUD rezoning request. He said that we require much more information on the data center. He asked what is the decommissioning plan and if the landfills will continue to be monitored. Also, will the wildlife be protected? He asked about the status of the Multiple Use Plan, continuing access to the Babcock house and property, the status of Rails to Trails, sPower's plans, compliance with the own Comprehensive plan, and tax and economic issues.

A letter was submitted by Peg Schwabel with comments on open space and recreational facilities. She said that town parks enhance the well-being of everyone in the community and bring tourists to the region. If we update our park similar to the plan for the Town of Hartland, we would expand upon the goals of the Niagara Greenway Trail. Their goal is to create a world class trail and greenspace network that communities can be proud of. She stated that funds may be available to assist in developing such a park. She urges the board to consider ways to enhance public spaces to make our lakeshore community able to attract tourists and residents alike to enjoy the unique setting that we are privileged to have.

Supervisor Dewart advised that we will be doing a dog enumeration with mailings on July 1st and responses back by August 31st. This should be done every 3-5 years.

RESOLUTION 76-2021

LOCAL LAW #3-2021 MORATORIUM ON BATTERY STORAGE

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

ADOPTED	BY Roll Call Vote:	Supervisor Dewart	Aye
		Councilwoman Jansen	Aye
		Councilwoman Damon	Aye
		Councilman Hotaling	Aye
		Councilman Leuer	Aye

WHEREAS, The Town Board of the Town of Somerset having duly called and held a Public Hearing at Somerset Town Hall, 8700 Haight Road, Barker, New York 14012, on the 9th day of June, 2021 upon the question of the enactment of "A Local Law Establishing a Moratorium on Battery Energy Storage Systems within the Town for a Period of Six Months"; and

NOW, THEREFORE, BE IT RESOLVED, by the Town Board of the Town of Somerset that "A Local Law Establishing a Moratorium on Battery Energy Storage Systems within

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the Town for a Period of Six Months” is hereby enacted and effective upon its filing with the New York State Department of State.

Attorney Haylett provided an overview of the process of rezoning:

1st step is to go before the Planning with a sketch plan

2nd step the Town Board makes a decision to proceed

3rd step the Planning Board reviews a more comprehensive development plan

4th step goes back to the Town Board to call for a public hearing

RESOLUTION 77-2021

APPLICANT MOVE FORWARD WITH PUD REZONING

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

ADOPTED: Ayes 5 Dewart, Jansen, Hotaling, Damon, Leuer

Nays 0

WHEREAS, the Town of Somerset received a conceptual development sketch plan to rezoning the existing planned unit development district plan to a new plan for the property located at tax map number 8.00-1-1.11 from Lake Mariner Data LLC; and

WHEREAS, the Town Planning Board recommended to the Town Board that the applicant be able to proceed with the rezoning request;

NOW, THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Somerset hereby authorizes Lake Mariner Data LLC to move forward with the rezoning process of the current planned unit development district located at 8.00-1-1.11 to a new planned unit development.

Attorney Haylett advised that Somerset Operating Company has retained Wendel for their engineer so we need to hire a separate firm for the PUD rezoning project. Because it is a professional service it is not subject to bidding.

RESOLUTION 78-2021

RETAIN ENGINEER FOR PUD REZONING

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

ADOPTED: Ayes 5 Dewart, Jansen, Hotaling, Damon, Leuer

Nays 0

WHEREAS, the Town has received conceptual development sketch from Lake Mariner Data LLC to rezone an existing planned unit development district to a new planned unit development; and

WHEREAS, Nussbaumer & Clarke, Inc. has submitted a proposal to assist the Town Planning Board and Town Board with the engineering review of the development plan to be submitted by Lake Mariner Data LLC; and

WHEREAS, proposals for professional services are not subject to the competitive bidding requirements of the Town's Procurement Policy;

NOW THEREFORE, BE IT RESOLVED, that the Town Board of the Town of Somerset hereby retains Nussbaumer & Clarke, Inc. to review and provide technical assistance to the Town Planning Board and Town Board for the development plan to be submitted by Lake Mariner Data LLC in an amount not to exceed \$15,000.00; and be it further

RESOLVED, that the Supervisor is authorized to execute any and all documents in such form as is satisfactory to the Town Supervisor and the Town Attorney, and take whatever other actions may be necessary to give effect to this resolution.

RESOLUTION 79-2021

SEQRA LEAD AGENCY

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

ADOPTED: Ayes 5 Dewart, Jansen, Hotaling, Damon, Leuer
 Nays 0

WHEREAS, the Town of Somerset has received a conceptual development sketch for the rezoning of property located within an existing planned unit development located at tax map number 8.00-1-1.11 and 8.00-1-1.2 from Lake Mariner Data LLC; and

WHEREAS, on June 3rd, 2021, the Town Planning Board recommended to the Town Board that the applicant be allowed to proceed with the rezoning request; and

WHEREAS, the Town of Somerset has determined that the applicant may proceed with the rezoning request of the existing planned unit development district; and

WHEREAS, in accordance with Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act - SEQRA) of the Environmental Conservation Law, the Somerset Town Board would like to begin the environmental review process of the rezoning request submitted by Lake Mariner Data LLC by conducting a coordinated review and requesting Lead Agency status and beginning the adoption process, and

NOW, THEREFORE BE IT RESOLVED, that the Somerset Town Board requests designation as the SEQRA Lead Agency, in accordance with the SEQRA regulations, for the purposes of conducting a Coordinated Review of this action; and

BE IT FURTHER RESOLVED, that the Town of Somerset authorizes Nussbaumer & Clarke, Inc., to begin the SEQR coordinated process.

RESOLUTION 80-2021

BARKER FIRE DEPARTMENT APPLICANT

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

ADOPTED: Ayes 5 Dewart, Jansen, Hotaling, Damon, Leuer
 Nays 0

Resolved Rebecca Pisarski's application for the Barker Fire Department is approved.

RESOLUTION 81-2021

AUDIT OF CLAIMS

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

ADOPTED: Ayes 5 Dewart, Jansen, Hotaling, 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. 182 through No. 213	\$ 34,928.73
Highway Fund	No. 54 through No. 63	\$ 16,875.91
Sewer Fund	No. 60 through No. 67	\$ 4,616.91
Water Fund	No. 43 through No. 47	\$ 912.49

PRIVILEGE OF THE FLOOR

Dick Ray stated that our bicentennial is coming up in 2023. He said that he sat through many meetings with the power plant and they said that they would take care of our community. Now he has concerns about the company doing things piecemeal. We do not have a contract for the Babcock House which is the welcome center for Somerset. Access to the lake was taken away when the plant was built and he'd like to see it come back now that the plant is no longer operating. He asked the board not to be rushed in making their decisions.

Pam Atwater thanked the attorney for his explanation. She quoted Governor Cuomo from July 2019 stating that he does not want to put a date on a carbon free economy when he knows that we cannot make it. Yet 94c was adopted in April 2020 and the regulations were finalized in March 2021. She stated that the Heritage Wind Project is next to wildlife areas and is likely to be approved even though the US Fish and Wildlife strongly stated that the project should not be committed. She feels that we are about to lose a lot of important assets in our community. She wants the board to be thoughtful

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about how we move forward relative to renewals. A May 19th map shows Somerset as a point of potential connection for Great Lakes Wind and she wonders if that is a long-term plan here. She wants our rights to be determined at the outset, not the end of talks.

Mary Ellen Royce stated that the process is underhanded as they have been working on it for one year yet we are just hearing about it tonight. She feels that the request for bit coin mining by Beowulf is a way for them to invalidate our laws, with the net result approving the solar project, hooking up offshore wind turbines, and anything else that might be possible because we have not made a plan. She wants to consider a portion of the site set aside for recreation. Is it ethical for the town to subsidize solar development for the benefit of a private company? What is status of Rails to Trails? How much of site off limits to bald eagle nest(s)? Does project fit with LWRP? What is to become of the Babcock House?

Bob Damon wants the board to start dialogue for answers on the historical site (Babcock House).

Betty Wolanyk said that she hopes the town learns what the company means by a data center because there is a huge difference between bitcoin and cloud storage.

Tom Staples emphasized that a lot of the property being discussed is in the Ag District and he wants it to remain in the Ag District and continue to be farmed. He said that the lakefront is beautiful and we lost a lot of it through the years through the plant and residential. He would like to see it preserved. He then asked what is happening about West Somerset Road.

Supervisor Dewart said that it is a county project and they are slowly working on it. He will find out what the plan is.

Chief Miller stated that we have no longer have Officer Yotter and Officer Bond. He hired Officer Micale for SRO (School Resource Officer) duties. She will be ready with the appropriate training by the Fall.

Marcia Ray said it is important to realize the historical significance of the Town of Somerset. We are the only area for miles where we can grow special fruits and we are abundant with wildlife. We need to consider the environment. The roads are torn up from industry. We need to protect our rural area and have thorough planning and understanding from all parties involved. She stated that we are stretched to the limit and the industry is not to benefit to us, they are for outside areas.

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On a motion of Councilwoman Jansen, seconded by Councilwoman Damon, the meeting adjourned at 6:50P.M. subject to the Call of the Clerk.

Tracy L. Carmer, RMC
Town Clerk