

TOWN BOARD SPECIAL MEETING
July 27, 2021

A Special 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 27th day of July 2021.

Present: Jeffrey M. Dewart----- Supervisor
 Robin R. Jansen ----- Councilwoman
 Jon Hotaling ----- Councilman
 Gail Damon ----- Councilwoman
 Fred Leuer ----- Councilman
 Tracy L. Carmer----- Town Clerk
 Mindy Austin ----- Confidential Asst. to the Supervisor
 David Haylett----- Attorney

Audience: approximately 30 residents

Absent: Michael M. Flint ----- Supt. of Highways
 Jonathan D. Dewart ----- Supt of Water/Sewer/Grounds
 Brian Sibiga ----- Engineer

Supervisor Dewart called the meeting to order at 6:00PM with the Pledge to the Flag.

PUBLIC HEARING – PUD ZONING AMENDMENT

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

Councilwoman Damon stated that all of her questions on the SEQRA were answered and she is completely satisfied. Three of the five answers were changed.

Pam Atwater discussed a page obtained through her FOIL request that stated that NYSEG had agreed to donate a portion of the excess land at Kintigh to the Town of Somerset for lake-front development. This was noted during NYSEG's restructuring plan. Another document filed in June 1983 outlines the Multiple Use site that included development of a parking area, playground, picnic area, active play fields, nature trail and wildlife refuge. Since so much time has passed she is concerned what the status is today. If the PUD amendment is approved will this possibly be eliminated or greatly reduced? She requested that the hearing be held open as there are still many unresolved questions and she feels the Town has the opportunity to be negotiating from a position of strength.

Marcia Ray said that she is sure the board has done some investigating so hopefully they can answer some questions:

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- What will the Data Center serve?
- What source of energy will they use?
- What are the byproducts?
- How will our water system be affected?
- What will the tax base be?
- When will the back taxes be paid?
- Does this data center qualify for a PILOT program?
- If solar is used, how many panels will be used and where will they be placed?
- The same question on the tax base applies to solar panels. How will our town benefit?
- What is in it for our community?

She said that she wants specific details. She wants the farmland surrounding the Babcock Museum taken over by the Town. She also has a concern for the preservation of wildlife and natural resources and says that we cannot sacrifice any more removal of trees. She stated that if the board cannot answer with complete knowledge and understanding then she wants the board to delay the zoning matter until full disclosure is provided.

Jerry Goodenough stated:

- They are not tying the project to solar. They are working with National Grid and NYSEG and the project will be tied to the grid using Zone A power (he clarified what Zone A power is). He said that it is a mixture of power that is already in the grid.
- He said that they like the Babcock House as much as anybody and want to continue to have that as a heritage. He said that they are in talks with Supervisor Dewart about Rails to Trails, Babcock House, and the park. He said that the Zoning for the Data Center is a separate project. Supervisor Dewart agreed. He said that AES is looking at other plants in the state for projects.
- He confirmed that there aren't any byproducts. The center is air cooled and will not be cooled with lake water.
- Regarding the tax base and PILOT: he said that this sounds like a nice project for a PILOT but that is up to the taxing jurisdiction. They are paying off the taxes as much as they can on a monthly basis.
- He confirmed that they are not taking down any trees for this project.

Marcia said that she feels if they get the approval for the data center, that it will lead to other things that we won't be aware of. Jerry stated that it is not up to him to make everyone aware. Every time they do something they will have to apply for permits through the town. Discussion ensued regarding notices in the Lockport paper and attendance at Town Board meetings.

Joe Moore asked how long the board has known about this. He didn't know anything about it until a neighbor told him about it. Supervisor Dewart said that this started in

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2019 when we had the rally at the Babcock House and Councilman Leuer added that the notification is on the website. Discussion ensued about sending out flyers, going through several links on the website to find notices, and the fact that not everyone has computers.

Joe Moore said that his house will be surrounded by solar panels.

John Wolanyk discussed a letter he received from AES about fresh water on his farm and he was supposed to respond within 3 weeks. He feels they are rushing everything and he is being bullied. He stated they want to take out 200 year old trees to put up solar panels that will last 30 years.

Sarah Meza discussed her childhood being interrupted by the building of the power plant. All of that land was torn up for 40 years of energy production. She said that her and her sister's health was affected and she is concerned what the next generation of clean energy really looks like. She feels that we are being asked to give up the healthy aspects of clean water and air and she doesn't feel that this community is benefitting from the development of that land.

Dick Ray has a flyer from 1980 when they were building the power plant. He said that they started 20 years prior by taking the lakeshore property forcefully by eminent domain. He said it was a political ploy to get the reservoir property in Niagara Falls from the Native Americans. He hears this board being apologetic to getting someone else in there to do something new and better. He said that the board does not represent the power plant, they represent the residents and there is no hurry on this. He feels that processing bitcoin will not do a lot for our community. He wants the board to be careful how they proceed from here. He discussed the poor property maintenance where the data center will be and wants to know if this is how it will be when the project is done.

Gene Cavanaugh asked how big the project is and how many employees it will have. Supervisor Dewart stated that Phase 1 will be 2 buildings with 100 construction workers building it. There will be 15-20 full-time jobs when Phase 1 is complete. When Phase 2 is complete in a couple of years there will be up to 60 full-time jobs. Discussion ensued on the type of jobs there will be.

Jude Rizzo Hinton asked what the footprint will be.

Jerry responded that there will be two buildings 60' x 400'. Two more buildings will be constructed to the west of the two current buildings. All of the project will be to the East of the plant.

She asked why this location is appealing to them.

Jerry Goodenough gave a brief history and said the substation is a good interconnect (the ability to get energy off of the grid) and to knock down power to the proper voltage to be able to use it.

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Marcia asked why they show solar panels on the map for the data center. He said that it is not connected to this project.

John Wolanyk insists that the projects are connected.

Supervisor Dewart stated that this hearing is on the rezoning for the data center, not the solar project.

Marcia Ray asked how the PUD is changing from what it is now.

Attorney Haylett said the property was rezoned to PUD about 20 years ago but they did not have a plan associated with it. Because of that we have to amend the zoning for the center parcel to allow the plan for the Data Center which includes green space, etc. If they want to do anything in the future different from what they are proposing today they would have to go through this again.

Attorney Haylett and Supervisor Dewart confirmed that this project does not have anything to do with the property south of Route 18.

John Wolanyk said that we still have leverage for future projects.

Betty Wolanyk said that she was astonished at the July Town Board meeting when the Board voted to continue with the application process even though Beowulf representatives were unable to answer questions posed by a Town Board member. She feels that right now the Town Board has leverage to negotiate for other benefits to the town (such as Rails to Trails, lake access for our citizens, etc) and once the Board decides to allow the plan they have lost their leverage. She also feels that the solar project is part of this discussion. She said that Beowulf will be leasing the land to AES (she reminded the Board that AES already declared bankruptcy and fled our community). She said that since most of the solar decisions will be taken out of our hands by 94C, now is the time to negotiate and she wants the hearing left open. She wants Beowulf to not lease land for solar panels, but if they insist, she wants the panels to be placed north of Route 18 and east of the Babcock House. She also wants Beowulf to sell the farmland back to farmers to maintain the rural nature of our community. She begged for proper negotiations to give us a chance.

Jim Hoffman is a 50 year + Town resident, was a 38 year Planning Board member (which spanned the creation of the power plant), and he served on all three committees that tried to limit the damage to the Town while the plant was being made. The siting decision for the plant was not made by the Town. He said that handled properly this project will be beneficial to the community. He feels that we have to do something with that property, it can't just sit there. He would like to see an overview encompassing the entire 1,350 acres north of Lake Road because there are inter-relationships and he wants to see the location of the data center in relation to other features of the property. He said that it was designated PUD to protect our open space and he would like to see

the vegetation preserved. He wants to see a detailed site plan including location of structures, parking lots, setbacks, green space, etc. He said that drainage is a significant issue and a plan must be submitted to the Town Engineer for approval. He wants to know what the future plans are for the 276 acres set aside for industrial/business use, along with altering of lot sizes. He said that SEQRA applies and should be made available to the public. What was in place in 1979 under Article 8 should carry through to today. He discussed the ash pile being monitored for 30+ years and he commented on the plant's past due taxes. He provided the background on the Multiple Use Plan that was part of the plan for building of the plant for post energy production. The plan was supported by the Town back in 1982 and he feels that it is time to settle this and discuss what part of the property is available to the Town. He said that we gave up a huge amount of land and we should get some back.

Norm Jansen said that the ash pile should be monitored forever, not just 30 years. He said that this meeting is for the PUD development only. Beowulf is already approved for the 179 acres around the Babcock House for a Data Center and they would not have to do a thing to start building right now. Instead they want to place it on the east side of the plant where it would not be seen from the road. If it were built by the Babcock House it would be seen. He feels that the plant is doing the Town a favor by doing this.

John Wolanyk stated that he would appreciate this being tabled and not voted on tonight so negotiations can be done. He said that this all ties together.

Don Stoll agreed with him.

Supervisor Dewart discussed his meeting with Beowulf:

- Rails to Trails – have a trail to the Babcock House and around to a park area. He said that this will take some time to figure out and it will take a couple of years to remove the rails. He said that Beowulf is receptive to this.
- Babcock House – we are looking for a lease with financial help or the possibility of purchasing the Babcock House with 10 acres of land. This would allow us to apply for grants for the upkeep. He stated that we are not walking away from any of this.

Councilman Leuer said that there a lot more details that need to be ironed out.

Supervisor Dewart said that one detail is the railroad trestle, whether it will be removed or who will maintain it.

Jude Rizzo Hinton wanted to know about the decommissioning and deconstruction of the plant.

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Jerry Goodenough said that the buildings are all coming down and the entire site will be 18" above grade. He said that it is not toxic and that fly ash is in the landfill and will be monitored. All fluids were drained and removed from the site.

Norm Jansen talked about how the Town of Penn Yann converted a railroad line to pedal cars.

Councilman Leuer said that SEQRA would tie into the decommissioning. He said that explosives information regarding eagle nesting season needs to be passed on to the demolition crew. He asked if any of Jim Hoffman's questions could be answered.

Jerry Goodenough said that everything that Jim asked for is in a set of drawings, although voluminous. He said that all of these drawings are required, that they are not that large to try to pull the wool over anyone's eyes.

Jim Hoffman said that only what is in writing counts. As time passes it gets forgotten. He wants to see the decommissioning plan in writing.

Supervisor Dewart called for a motion to close the hearing and was interrupted.

Marcia Ray asked how can they vote without answers to the questions? She said that she is not happy with the answers.

Don Stoll discussed the safety of the lithium ion batteries and suggested the Board do some research before they close the meeting. He said that Tracy Carmer fielded several phone calls about an explosion recently that shook his house. It turned out to be tannerite. He said that if that shook his brick home, what will the batteries do?

Discussion ensued regarding battery storage and explosions.

Joe Moore said to do research on solar panels. He feels this is a new project that is hurting our environment and public safety. He said that the projects are connected. His house will be surrounded by solar panels and discussed the lack of sun around here so the batteries will be used to store the energy.

Sarah Meza says that big corporations see people from small, rural towns as uneducated and she doesn't want us to get into something that we cannot get out of and wants us to use the leverage to our advantage.

Comments were made asking to keep the hearing open.

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Councilwoman Damon said that she hears a lot of concerns and it does make her think. She thinks the community needs something and she is going totally on her faith and people telling her the truth.

Marcia Ray asked if the Board is satisfied and 100% sure they know what exactly is going to happen.

Dick Ray said that once the leverage is gone, they will never go back and follow through. He wants the Board to "hold the plant's feet to the fire".

Councilwoman Damon feels that Supervisor Dewart and Councilman Leuer are taking the right steps by meeting with the plant.

Betty Wolanyk asked about all of the people who will be affected by 1,000 acres of solar panels around their homes and lithium ion batteries. The plant controls whether that is going to happen or not.

John Wolanyk asked what is the affect his property will have when 200 year old trees are taken down next to his property? He said they need to keep their solar panels north of Route 18.

Jude Rizzo Hinton wants to see the decommissioning plan in writing.

Jerry Goodenough confirmed that they are taking energy off of the grid for the Data Center. He provided details on how they are going to drop the voltage down.

Discussion ensued regarding solar panels.

John Wolanyk asked how long the park has been in the works?

Supervisor Dewart said that the park could have been dealt with 30 years ago. The Town had the opportunity 30 years ago to lease or purchase that and past administrations did not do anything about it until now.

Dick Ray reiterated his comment about the Board not being apologists for the project.

Marcia Ray feels that the Town Board already has their mind made up from a previous meeting and she is disappointed with them. She said they have to respect the community's concerns. She wants our community to remain rural and green. She said if they vote yes, she will be very disappointed.

John Wolanyk said if the Board is voting tonight, to please vote no. Remember how disruptive this Town got over the windmills, it is going to happen again. They will get the community together.

RESOLUTION 89-2021

CLOSE THE PUBLIC HEARING

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 with no one else desiring to be heard, to close the public hearing at 7:10pm.

Engineer Robert Pidanick said that his firm did an independent review of the SEQRA documentation and they are recommending the Town Board issue a Negative Declaration. This is a Type 1 action because it involves the adoption of rezoning involving more than 25 acres of land. As part of their obligation, the Engineer walked the Board through SEQRA Part 2. He advised that NYSDEC responded that since the environmental impacts are primarily of local significance, they concur that the Town of Somerset should act as Lead Agency. He said that the DEC commented that they documented within some certainty that the bald eagle is within 800 feet of the project area so no construction should be done between January and September.

**NEGATIVE DECLARATION
Determination of Non-Significance**

Lead Agency: Town of Somerset Town Board

Date: July 27, 2021

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The Town of Somerset Town Board (the "Town Board"), as the lead agency, has reviewed the proposed action and determined that it will not result in any significant adverse environmental impacts and that a Draft Environmental Impact Statement will not be prepared.

Name of Action: Empire State Data Hub

Project Sponsor: Lake Mariner Data, LLC

**Location of
Project Site:** 7725 Lake Road – Town of Somerset

SEQRA STATUS: Type I. The project has been classified as a Type I action pursuant to 6 NYCRR Part 617.4 since it involves the adoption of changes in the allowable uses within any zoning district, affecting 25 or more acres of the district.

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The Town has conducted a coordinated environmental review of the proposed action. A lead agency solicitation letter dated June 14, 2021 along with project documentation including the Full Environmental Assessment Form, Schematic Site Plan was provided to numerous involved and interested agencies.

The following exhibits and supporting documentation are included with this document:

- Exhibit 1: Part 1 of the Full Environmental Assessment Form Prepared Pursuant to the State Environmental Quality Review Act ("SEQRA");
- Exhibit 2: Part 2 of the Full Environmental Assessment Form Prepared Pursuant to the State Environmental Quality Review Act ("SEQRA").
- Exhibit 3: Copy of Town of Sommerset PUD Zoning Plan/Development Plan Prepared by Lake Mariner Data LLC PUD;
- Exhibit 4: Copy of Schematic Site Plan [Drawing C-1] as Prepared by Barton & Loguidice,
- Exhibit 5: Copy of Section 205-40 of the Town of Somerset Zoning Code (Titled "Industrial and GI General Industrial District"); and
- Exhibit 7: Color Copy of Town of Somerset Comprehensive Plan

The involved agencies that were provided with the required thirty (30) days to comment on the Town Board's request to be the designated lead agency.

Description of the Proposed Project ("Action"):

The Town has been provided with project documentation including reports and studies addressing potential adverse environmental impacts. A data center, initially consisting of two (2) buildings, 400-ft. x 60-ft which will house new computer systems along with all related site improvements and the required discretionary approvals and permits. Ultimately, four buildings will be constructed on the Project Site. Site improvements will consist of the construction of the new buildings as well as other improvements including new paving areas, site grading, installation of storm sewers and landscaping. Power for the data centers will be provided by an electrical feed from the existing site transformers formerly used to provide power to the grid.

Reasons Supporting this Determination:

The Town Board has identified the relevant areas of environmental concern and has taken a hard look at each of the identified areas as required by the State Environmental Quality Review Act ("SEQRA"). The Town Board has compared the Project with the criteria for determining significance identified in 6 NYCRR § 617.7(c)(1) and in accordance with 6 NYCRR § 617.7(c)(2) and (3). As indicated below in the discussion of each criterion specified in 6 NYCRR § 617.7(c)(1), the Town Board has thoroughly evaluated the identified relevant areas of environmental concern and determined that the proposed action will not result in any significant adverse impacts on the environment.

A. Traffic Impacts:

There will be no impacts to Traffic for the daily operations at the Site. There will be temporary traffic increase during construction.

B. Noise Impacts:

The project is not anticipated to result in significant noise impacts. Increases in noise levels at the Project Site associated with construction activities are anticipated but construction related noise impacts represent an unavoidable temporary impact. fans will produce 95 Decibels at the source and will dissipate to below 80 decibels 200 feet from the source. No impact to adjacent landowners.

C. Air Quality Impacts:

The Project will not result in significant adverse air quality impacts. During construction, there may be minor, temporary dust impacts from soil disturbance, but those will not be significant.

D. Wetland Impacts:

LaBella Associates, D.P.C. completed a wetland delineation for state and federally regulated wetlands on April, 2021. The results of which were summarized in its Wetland and Stream Delineation Report dated April, 2021. The Wetland Delineation Report includes a map depicting the limits of wetland delineation during the investigation, Appendix A, Exhibit 2. USFWS NWI mapping indicates there are two NWI-mapped wetlands within the Study Area.

LaBella delineated three PEM wetlands, one PuB wetland, one intermittent stream, two intermittent ditches, and two ephemeral ditches with the Study Area, and concluded that there will not be any impacts to the existing wetlands on the project Site.

The Wetland Delineation Report was submitted to the United States Army Corps of Engineers ("USACE") and New York State Department of Environmental Conservation ("NYSDEC") on May 18, 2021, as part of the jurisdictional determination request. USACE provided a reference number (LRB-2021-00683). To date, the USACE has not responded due to a backlog of applications. The Project Sponsor will be required to provide the Town with a copy of the Jurisdictional Determination issued by the USACE, once issued.

Based upon the wetland delineation study provided, the Town Board has determined that there will not be any significant wetland impacts resulting from development the Project.

E. Impact on Plants and Animals

The New York State Department of Environmental Conservation has identified from New York State Natural Heritage Program databases on known occurrences of rare or state-listed animals and plants. A Bald Eagle nest has been documented in the project area as well as a documented occurrence of Peregrine Falcon at the site. The Project Sponsor retained Labella Associates in April 2021 to conduct a threatened and endangered species survey. Based upon Labella Associates

field investigations it appears the bald eagle nest is approximately 800-ft northeast of the project site. The Project Sponsor requested a determination from the NYSDEC relating to the bald eagle nest. In a response dated July 16, 2021, it was determined that this proposal is not likely to result in any impact to threatened or endangered species and to avoid an incidental take, blasting and other loud noises related to the construction of the development must not occur within one-half mile of the nest during the breeding season (January 1 – September 30). During construction there will be no blasting or other loud noises associated with development of the project and will not impact threatened or endangered species.

F. Erosion, Flooding and Drainage Impacts:

The Project Site is in a regulated floodway or a regulated 100 yr. floodplain. The Project Site will be improved with new drainage infrastructure designed to comply with the current stringent storm water quality and quantity standards of New York State Department of Environmental Conservation. The control of runoff from construction activities will be properly managed in accordance with the detailed information contained in a Stormwater Pollution Prevention Plan. No significant adverse environmental impacts are anticipated from development in the 100 yr. floodplain.

Distribution List

Involved Agencies:

New York State Department of Environmental Conservation
Attn: David Denk, Regional Permit Administrator
270 Michigan Avenue
Buffalo, NY 14203
Email: David.Denk@dec.ny.gov

U.S. Army Corps of Engineers
Buffalo District
Attn: Steven V. Metivier, Regulatory Branch
1776 Niagara Street
Buffalo, NY 14207-3199
Email: steven.v.metivier@usace.army.mil

Niagara County Department of Health
Attn: David Drust, P.E.
Mountview Campus – Shaw Building
5467 Upper Mountain Road, Suite 100
Lockport, NY 14094-1894
Email: david.drust@niagaracounty.com

New York State Department of Transportation
Attn: Edward S. Rutkowski, P.E., SEQR/Site Plan Review
100 Seneca Street
Buffalo, NY 14203
Email: Edward.Rutkowski@dot.ny.gov

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Niagara County Planning Board
Attn: Amy Fisk
Vantage Center – Suite One
6311 Inducon Corporate Drive
Sanborn, NY 14132
Email: amy.fisk@niagaracounty.com

Niagara County Center for Economic Development
Niagara County IDA
Attn: Susan Langdon
6311 Inducon Corporate Drive
Sanborn, NY 14132
Email: susan.langdon@niagaracounty.com

New York Power Authority
Attn: Erika Cozza
123 Main Street
Mail Stop 10 – B
White Plains, NY 10601-3170
Email: erika.cozza@nypa.gov

Interested Agencies:

Town of Somerset – All Town Departments

RESOLUTION 90-2021

NEGATIVE SEQRA

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

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

WHEREAS, on June 24, 2021, Lake Mariner Data LLC, presented an application to the Town Board of the Town of Somerset, which application requested that the Town Board rezone a portion of SBL # 8.00-1-1.11, Lake Road at 7725 Lake Road in the Town of Somerset, Niagara County, New York to an amended Planned Unit Development District so that Lake Mariner could construct and operate a data center along with open space and drainage improvements; and

WHEREAS, according to Article 8 of the New York 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 as amended, the Town Board must satisfy the requirements contained in SEQRA prior to approving a proposed action; and

WHEREAS, a proposed action is a Type 1 Action in a coordinated review pursuant to SEQRA is required; and

WHEREAS, the Town Board has properly been established as the Lead Agency for the purpose of reviewing the project and determining whether the proposed action will have a significant adverse impact on the environment; and

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 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:

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 and environmental affects as the Town Board has deemed appropriate, the Town Board as Lead Agency makes the following findings with respect to the proposed action:

The Town Board has undertaken a coordinated environmental review of the proposed action pursuant to SEQRA prior to making a recommendation about the potential environmental significance of the rezoning and project, the Town Board has consulted several information sources and considered the list of activities which are Type 1 actions on line and section 617.4 of the SEQRA regulations of the list of activities that are Type 2 actions on line and section 617.5 of the SEQRA regulations and the criteria for determining the significance on line and section 617.7 of the SEQRA regulations and the proposed action is a Type 1 action pursuant to SEQRA; and

Based upon the foregoing reasons the rezoning 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

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for the proposed action, meaning that the project will not have a significant adverse environmental impact for the reasons as set forth in the negative declaration dated July 27, 2021.

Prior to voting on the resolution, Councilwoman Jansen reminded the Board that the proposed project is on the property where the plant currently resides. The West Property was zoned a PUD for a data center in 2013, along with 30 acres for solar. Today, the property is zoned that way and the plant could have placed it there. She thinks placing the data center on a parking lot on property that the Department of State has classified as a brownfield is an appropriate use for that property. She fully supports the rezoning.

RESOLUTION 91-2021

LOCAL LAW #4-2021 AMENDMENT TO THE CODE OF THE TOWN OF SOMERSET

On a motion of Councilman Leuer, 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, on June 24, 2021, Lake Mariner Data LLC, ("Lake Mariner"), filed an application (the "Application") with the Town Board of the Town of Somerset (the "Town"), which Application requested that the Town Board rezone a portion of SBL # 8.00-1-1.11 (the "Rezoning") totaling approximately 410 +/- acres located on the north side of Lake Road at 7725 Lake Road in the Town of Somerset, Niagara County, New York (the "Site") to PUD – (Planned Unit Development) District so that Lake Mariner could construct and operate data centers with associated parking, open space and utility and storm drainage improvements (collectively, the "Project"); and

WHEREAS A Planned Unit Development District (PUD) 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 the Data Centers (approximately 30+/- acres), and three areas of greenspace (approximately 104 +/- acres), and an area for future Industrial/Business Uses (approximately 276 +/- acres), as shown in the Development Plan; and

WHEREAS, pursuant to a resolution dated December 18, 1995, a referral to Niagara County Planning Board for its recommendations relative to the Project as described in Section 239-m of Article 12-B of the New York General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, is not required; and

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WHEREAS, the Application to rezone the Site to PUD 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, a public hearing was held on July 27, 2021 at 6:00 p.m. to hear and consider adoption of a proposed Local Law for the year 2021, amending the Code of the Town of Somerset and Map to rezone the Site, presently located in an PUD District as defined in the Code of the Town of Somerset, to an amended PUD District subject to all regulations created and established relative to said Planned Unit Development District pursuant to Section 205-65 of the Code of the Town of Somerset; and

WHEREAS, the Town adopted a Comprehensive Plan in 2003 (the "Comprehensive Plan"), which has been amended from time to time most recently in 2016, and the Town Board has considered the goals of the Comprehensive Plan relative to the Rezoning and the Project; and

WHEREAS, the Comprehensive Plan sets forth several goals designed to maintain the rural and agricultural character of the Town, achieve a pattern of development that minimizes travel time to meet daily needs, protect environmental resources from adverse effects, create a vital and sustainable economy for the Town that provides a strong tax base and jobs for our citizens, and provide high quality community facilities and services at an acceptable cost to the local taxpayer, among other things; and

WHEREAS, the Town Board has already zoned the Site to a Planned Unit Development District, but an amendment to the current PUD is necessary to conform to the Application submitted by Lake Mariner; and

WHEREAS, this Rezoning and the Project would offer the opportunity to reuse the Site, which is currently a decommissioned coal fired power plant and allow for a greater mix of uses on the Site; and

WHEREAS, according to Section 205-53 of the Code of the Town of Somerset, 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 imaginative ways of accommodating the environment and conservation into a development plan to strike a balance of physical features, environmental responsibility and development opportunity; and

WHEREAS, the Town adopted the 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 with the LWRP policies; and

WHEREAS, the Applicant has submitted an LWRP questionnaire as part of its Application and the Town Board has considered the goals of the LWRP relative to the Rezoning and the Project; and

WHEREAS, pursuant to and consistent with the requirements of 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, "SEQR"), the Town Board has adopted a negative declaration for the Rezoning and the Project.

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

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

The Rezoning meets the goals and objectives of the Comprehensive Plan by developing a light industrial use at the Site utilizing existing infrastructure. The Rezone request is located at the former AES Power Plant, the Town's largest industrial site. Thus, the Project is located on an existing Industrial site and would be in conformity with the Comprehensive Plan.

The Rezoning is designed to protect important environmental resources from adverse effects, such as the lakeshore bluffs and small wetland areas located on the Site. The Project will not disturb the lakeshore bluff nor the small wetland located on the Site.

The Rezoning will further create a vital and sustainable economy for the Town that provides a strong tax base and jobs for its citizens. The Site previously hosted the AES Power Plant and employed numerous employees until it was decommissioned. The Project will provide numerous construction jobs and approximately twenty permanent jobs once construction is completed.

The Rezoning will contribute to a sensible pattern of development through the reuse of an existing industrial site into a light industrial site with data centers. The design of the Project would not significantly impact land use resources or Town planning objectives.

For the foregoing reasons, the Rezoning of the Site to an amend PUD is consistent with the requirements for PUD and the Comprehensive Plan.

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

The Site is situated on Lake Ontario and contains a length of steep bluffs and rocky beach that are considered natural protective features. Development of the Data Centers in accordance with the Application would be set back from the shoreline and would not have a significant impact on natural protective features or result in coastal erosion.

The Applicant has proposed maintaining a significant area of greenspace at the Site, including twenty-seven acres to the northwest of the data center site and along the lakeshore and twenty-nine acres to the northeast of the data center site along the lakeshore, providing a buffer between the Project development and the lakeshore.

The Project will require excavation for grading, foundation work, and trench work. This work will not impact shoreline resources and natural features on the property. The ground cover removal would be limited to only areas of the site for installation of the project buildings and electrical equipment. Ground cover removed from these areas will be stockpiled and re-used for this project or future development projects.

Existing water and sewer connections are located on the project site to service the existing Admin/IT/Warehouse building. The existing waterlines and sanitary sewers are adequate to handle the Project service demand.

Development of the Project site will result in the removal of ground cover, excavation, and the construction of buildings and some impervious surfaces, requiring clearing and regrading. These activities will alter existing drainage flow patterns. Stormwater from the developed area will be collected and conveyed to the existing on-site stormwater management system. Stormwater management will comply with the requirements of the State Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Construction Activity (GP-0-20-001) and will employ best management practices; accordingly, a Storm-Water Pollution Prevention Plan has been developed for the Project.

For 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 the premises located north of Lake Road, Barker, New York, part of SBL # 8.00-1-1.11, from the existing Planned Unit Development to the amended Planned Unit Development as set forth in the application by Lake Mariner Data LLC dated June 24, 2021.

This local law shall take effect immediately upon its filing in the Office of the Secretary of State.

Section 4. A copy of the development plan depicting the above-described parcel, which is to be zoned a PUD District pursuant to this Local Law, shall be on file with the Town Clerk.

Section 5. The Supervisor of the Town Board and the Town Clerk are hereby authorized and directed to distribute and publish a copy, summary or abstract of this Local Law to the Applicant and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

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On a motion of Councilwoman Jansen, seconded by Councilman Hotaling, the meeting adjourned at 7:40P.M. subject to the Call of the Clerk.

Tracy L. Carmer, RMC
Town Clerk