

Town of Yates September Board Meeting  
8 S. Main St., Lyndonville, NY 14098  
September 14, 2017, 7:00PM

Present: Jim Simon, Supervisor  
Wes Bradley, Councilman  
Jim Whipple, Councilman  
Brad Bentley, Councilman  
Michele Harling, Town Clerk  
Andrew Meier, Town Attorney  
Dan Wolfe, Code Enforcement Officer  
Roger Wolfe, Highway Superintendent

Excused: John Riggi, Councilman  
Trisha Laszewski, Assessor

Others :	Larry Wolfe	Chris Bronson	Bruce T. Williams
	Steve Royce	James Hoffman	Richard Fisk
	Linda Fisk	Paula Simon	Donna Bane
	Floyd Koerner Jr.	Paul Lauricella	Sandy Lauricella
	Bob LaPorte	Agnes LaPorte	Ken Howath
	Anne Smith	Cynthia Hellert	Marcia Ray
	Donn Riggi	Judy Esposito	Kathy Evans
	Faith Basil	Becky Winters	Howard Pierce
	Taylor Quarles	Rob Pannuci	Georgette Stockman
	Ruth Doughty	Susan Dudley	Roger Barth
	Pam Atwater	Mary Moore	Cornelius
	Dennis Seekins	Alice Wolanyk	Betty Wolanyk

Supervisor Simon called the September Board Meeting to order at 7:02PM.

**PLEDGE OF ALLEGIANCE**

**SUPERVISOR'S REMARKS**

Supervisor Simon asked those present to speak and act with civility toward the Board and to each other and to try and direct their comments to the Board only. He also asked the audience to limit their reactions to the testimony and content of each speaker so as not to disrupt the meeting.

**PRIVILEGE OF THE FLOOR ON AGENDA ITEMS ONLY**

Taylor Quarles, Lighthouse Wind, asked the Board to expand upon Resolution No. 82-9/17.

Supervisor Simon read the full resolution to the audience.

Roger Barth, Town of Yates, commented on Resolution No. 82-9/17. He felt that since APEX failed to extend their permit with the Bane MET tower, will they be able to follow procedures with the second Austin MET tower.

Pam Atwater, Town of Somerset, said that the residents have shared questions and concerns with the Board and APEX and wonders if any of these concerns have been addressed yet. If so, will the information be shared. If not, why did the Board bother to hold a public hearing.

Paul Lauricella, Town of Yates, thinks that industrial wind farms represent “Environmental Extremism at its Worst” and asked the Board to vote no.

Dennis Seekins, Town of Yates, mentioned that there are hundreds of wind turbines within the vicinity of the Travis Air Force Base and wondered why, if MET towers can be dangerous near air force bases, this wasn’t addressed. He would like the Board to approve the MET tower application.

Donn Riggi, Town of Yates, asked the Board to vote no to the MET tower application. She stressed that we still have not gotten any answers from APEX. She requested to see them if they are available. She added that the Niagara Falls air force base may not have concerns with wind turbines and their current operations but there could be possible risks to future operations since these would be the biggest turbines anywhere.

Linda Fisk, Town of Yates, has lived here all of her life and wants the windmills here. She wondered why people, who do not live in the town, are attending Yates Town Board meetings.

Howard Pierce, Town of Yates, felt that Resolution No. 81-9/17 on the comprehensive DOD review was nothing but a waste of money for review and attorney’s fees. He said that Resolution No. 82-9/17 should be approved or we are setting ourselves up for a lawsuit, wasting money that this Town does not have.

Chris Bronson, Town of Somerset, said that she is at this meeting because the Wind Farm will affect two Towns. She added that MET towers are a risk (as per an FFA pamphlet) because they are erected in hours, have a small footprint, difficult to see, less than 200’ usually gray and unlit, and dangerous to low flying aircraft, helicopters and mercy flight. She asked the Board to reject the application.

Faith Basil, Town of Yates, said that the first MET tower came down because they failed to renew the necessary and important “data gathering” permit. She questioned whether or not we should be doing business with them and asked the Board to vote against the application.

Marsha Ray, Town of Somerset, would be across the road from the MET tower. She asked the Board to vote no because she feels that it would be an “environmental disgrace” that would ruin the landscape. She says that she has a right to a beautiful lifestyle and environment and that this project is ruining families.

Cynthia Hellert, Town of Yates, handed the Board a series of questions that she would like answers to. They include: a tally of Public Hearing comments received for and against the MET tower, information gathered from the Bane MET tower, the conclusions of the Board upon review of all information presented to the Board at meetings and the information gathered by the Board over the span of the moratorium.

James Hoffman, Town of Somerset, owns 130 acres in the middle of what would be the wind farm. He feels that APEX has not demonstrated the need for an additional MET tower and the proof is in forgetting to renew the 1<sup>st</sup> Bane MET tower permit.

Agnes LaPorte, Town of Somerset, helped a friend who lived near a wind farm in Wyoming County at her open house. She explained that it took 5 years at a \$50,000 loss to sell her house and it's already back on the market.

Richard Fisk, Town of Yates, wants the Board to pass the MET tower application. He remembers when the residents of the Town used to help each other and now everybody has a "sue or move" attitude. He implored the Board to use some "old time wisdom" and help all of the neighbors in the Town of Yates.

Georgette Stockman, Town of Yates, submitted documentation titled "Caithness Windfarm Information Forum" which summarized wind turbine accidents through May 31, 2017. The forum predicted an upward trend in accidents unless significant changes to include a minimum safe distance between wind turbines and occupied housing and buildings is observed. She asked the Board to vote no to the application.

Kathy Evans, Town of Yates, felt that the recent primary election was yet another example of the majority's wishes to keep the wind project out. She feels that the MET tower is part of the overall project and asked the Board to vote no.

Anne Smith, Town of Yates, said that two years ago they were asking a different Board to vote no and she is asking this Board to do the same. She read a letter written by a gentleman who explains that it's too easy for Town Officials to be "duped" by smooth talking wind salesmen and she agrees. She adds, "Investigate before signing on the dotted line."

Paula Simon, Town of Yates, feels that if the Town Board sees fit to approve the MET tower application then they should erect a 600'plus tower in the Town and rent it to APEX. She added if this sounds absurd, it is, because the Town and its constituents do not want the wind project or APEX here.

## **RESOLUTION NO. 74-9/17**

### **RESOLUTION TO APPROVE MINUTES**

RESOLVED, to approve the minutes of the August 10, 2017, regular Board Meeting as presented to each Board Member.

Offered by Councilman Bradley, who moved its adoption  
Seconded by Councilman Bentley

4 Ayes 0 Nays 1 Absent (Riggi)

Motion: Carried

#### **RESOLUTION NO. 75-9/17**

#### **RESOLUTION TO APPROVE MINUTES**

RESOLVED, to approve the minutes of the August 23, 2017, Public Hearing as presented to each Board Member.

Offered by Councilman Bentley, who moved its adoption  
Seconded by Councilman Whipple

3 Ayes 0 Nays 1 Abstain (Bradley) 1 Absent (Riggi)

Motion: Carried

#### **RESOLUTION NO. 76-9/17**

#### **RESOLUTION TO AUTHORIZE WATER SHUT-OFF**

WHEREAS, the Rules and Regulations for the Water District of the Town of Yates directs the Water Superintendent to shut-off water upon the request of the Town Board because of failure of payment by the consumer, and

WHEREAS, there are water accounts that are delinquent sixty (60) days after the end of the period, be it

RESOLVED, that the Town of Yates authorizes the Water Superintendent to turn-off water for non-payment of delinquent water accounts.

Offered by Councilman Whipple, who moved its adoption  
Seconded by Councilman Bradley

4 Ayes 0 Nays 1 Absent (Riggi)

Motion: Carried

#### **RESOLUTION NO.77 -9/17**

#### **RESOLUTION TO ACCEPT SINGLE AUDIT FROM AMATO, FOX & COMPANY, PC**

WHEREAS, Amato, Fox & Company, PC has audited the records for the Town of Yates for the year ending December 31, 2016, and

WHEREAS, the Board was presented with a copy of the audit report in August for their review, be it

RESOLVED, that the Town of Yates hereby accepts the audit by Amato, Fox & Company, PC.

Offered by Councilman Bentley, who moved its adoption  
Seconded by Councilman Whipple

4 Ayes   0 Nays      1 Absent (Riggi)

Motion: Carried

#### **RESOLUTION NO. 78-9/17**

#### **RESOLUTION AUTHORIZING THE TOWN CLERK AS TAX COLLECTOR TO COLLECT PARTIAL PAYMENTS ON ACCOUNT OF TAXES, SPECIAL AD VALOREM LEVIES, AND SPECIAL ASSESSMENTS**

At a regular meeting of the Town Board of the Town of Yates held on September 14, 2017, the following resolution was duly moved, seconded and adopted by the affirmative vote of a majority the Board:

WHEREAS, at the present time, the financial climate is such that taxpayers, particularly senior citizens on fixed incomes, often have difficulty paying their real estate taxes on a timely basis; and

WHEREAS, Section 928-a of the Real Property Tax Law authorizes a town tax collecting officer to accept partial payments for or on account of taxes, special ad valorem levies or special assessments and to apply such payments on account, provided that the town board has passed a resolution authorizing such partial payments; and

WHEREAS, the Town Clerks of all ten Towns in Orleans County, who also serve as the Tax Collectors for their respective Towns, concur that it is in the best interests of their taxpayers to have the ability to make partial tax payments if they so choose; and

WHEREAS, the Town Board of the Town of Yates hereby determines that it is in the best interests of the Town's taxpayers for the Town to accept such partial payments, on certain terms and conditions; be it

RESOLVED, the Town Board of the Town of Yates hereby authorizes the Yates Town Clerk, as the tax collecting officer for the Town, to accept from any taxpayer at any time partial payments for or on account of taxes, special ad valorem levies or special assessments and to apply such payments on the account, on the following terms and conditions:

1. County/Town property taxes, special ad valorem levies and special assessments may be paid in partial payments during the Town's tax collection period (January 1st through April 30th) of the then-current year. No partial payment will be accepted by the Town after April 30<sup>th</sup>.
2. There shall be no limit on the number of partial payments that a taxpayer may make on a tax bill for a particular tax map parcel; however, any partial payment must be at least two hundred dollars (\$200.00). If the balance due on a tax bill is less than two hundred dollars (\$200.00) after crediting all partial payments previously made for that tax map parcel, the unpaid balance must be paid in full. Partial payments on tax bills with balances less than two hundred dollars (\$200.00) will not be accepted.
3. After any partial payment hereby authorized has been paid and credited, interest and penalties shall be charged against the unpaid balance only.
4. The Town's acceptance of a partial payment shall not be deemed to affect any liens and powers of any municipal corporation conferred in any general or special act, but such rights and powers shall remain in full force and effect to enforce collection of the unpaid balance of such tax or tax liens together with interest, penalties and other lawful charges.
5. If a taxpayer requests to make a partial payment that satisfies the terms and conditions herein set forth, the Town Clerk shall not have the ability to refuse to accept such payment.
6. Nothing herein contained shall be construed to authorize the Town Clerk to accept a partial payment after the expiration of his or her warrant, or at any other time that he or she is not authorized to accept tax payments, nor shall the ability of the Town Clerk to accept partial payments of taxes authorized under any other general or special law be limited.
7. The Town Clerk shall file certified copies of this resolution with the Commissioner of the State Office of Real Property Services and the Director of Orleans County Real Property Tax Service within thirty (30) days of adoption.

### **CERTIFICATE OF CLERK**

STATE OF NEW YORK)  
COUNTY OF ORLEANS) ss.:

I, Michele L. Harling, the duly elected Town Clerk of the Town of Yates, County of Orleans and State of New York, DO HEREBY CERTIFY that I have compared the foregoing resolution duly adopted by the Town Board of the Town of Yates at a duly noticed meeting thereof held on September 14, 2017, with the original thereof now on file in my office, and the same is a correct and true copy of said resolution and of the whole thereof.

Dated: September 14, 2017

(Seal)

Michele L. Harling  
Town Clerk

Offered by Councilman Bradley, who moved its adoption  
Seconded by Councilman Bentley

4 Ayes 0 Nays 1 Absent (Riggi)

Motion: Carried

#### **RESOLUTION NO. 79-9/17**

#### **RESOLUTION TO RE-APPOINT RICHARD PUCHER TO THE ASSESSMENT REVIEW BOARD**

WHEREAS Richard Pucher's term on the Assessment Review Board will expire September 30, 2017, be it

RESOLVED, that Richard Pucher shall be re-appointed to the Assessment Review Board commencing on October 1, 2017 for a 5 year term through September 30, 2022.

Offered by Councilman Bentley, who moved its adoption  
Seconded by Councilman Whipple

4 Ayes 0 Nays 1 Absent (Riggi)

Motion: Carried

#### **RESOLUTION NO. 80-9/17**

#### **RESOLUTION TO AUTHORIZE THE TOWN OF YATES SUPERVISOR TO SUBMIT A GRANT TO NEW YORK STATE FOR REPAIR TO TOWN OF YATES PROPERTY ON THE LAKE ONTARIO SHORLINE DAMAGED FROM 2017 FLOODING**

WHEREAS, New York State Homes and Community Renewal is making available \$10 million in federal Community Development Block Grant funding to assist local municipalities impacted by recent flooding along the Lake Ontario coastline, and

WHEREAS, The Town of Yates has sustained considerable damage to town-owned property at the Town Park and elsewhere, now therefore be it

RESOLVED, that the Yates Town Board authorizes the Town Supervisor, working closely with the Yates Highway Superintendent and the Yates Town Board, to apply for the block grant funding no later than September 29, 2017.

Offered by Councilman Bradley, who moved its adoption  
Seconded by Councilman Whipple

4 Ayes   0 Nays   1 Absent (Riggi)

Motion: Carried

Councilman Bentley asked if there was an estimate of the amount of damage in the Town Park.

Supervisor Simon responded that there was several thousand dollars' worth of repairs needed to include the Town Park, the end of Countyline Road and the end of Marshall Road.

#### **RESOLUTION NO. 81-9/17**

#### **RESOLUTION REGARDING ARTICLE 10 PROCESS AND COMPREHENSIVE DOD REVIEW OF LIGHTHOUSE WIND LLC PROJECT**

WHEREAS, New York State has replaced the local home rule review and approval process for the siting of electrical generation projects greater than 25MW, and

WHEREAS, Apex Clean Energy is planning construction of up to 70 wind turbines that could reach heights of over 600 feet, and

WHEREAS, Military bases and state legislatures in numerous states, including U.S. Army Fort Drum in our own State, have expressed concerns that large wind turbines in close proximity to military installations could interfere with flight and radar operations and constitute an encroachment to base operations, and

WHEREAS, The Niagara Falls Air Reserve Station (NFARS) currently is listed by the military as an encroachment free base, and

WHEREAS, Despite this status and its many other assets, NFARS has been recommended for closure by two previous Base Realignment and Closure Commissions (BRAC), and

WHEREAS, The President's budget calls for a BRAC in 2021 and there are bills in both Houses of Congress also calling for another BRAC process, and

WHEREAS, Article 10 regulations require an application to construct and operate an electrical generation facility include detailed information about potential impacts on transportation facilities including airports and military installations and operations (16 NYCRR 11001.25(e)) and

WHEREAS, The Article 10 Siting Board may request either an "informal" or "formal" review of a proposed generation facility by the Department of Defense (32 Code of Federal Regulations, Sections 211.6 and 211.7), and

WHEREAS, The Niagara County Legislature has gone on record calling for a complete and thorough study of all potential impacts the Apex project could have on NFARS, now therefore be it



RESOLVED, That the Town of Yates calls upon Governor Cuomo and the Article 10 Siting Board to request the Department of Defense conduct a formal review of the Apex application under 32 Code of Federal Regulations, Section 211.7 when that application is submitted, and let it be further

RESOLVED, That the Town of Yates calls upon the Orleans County Legislature to join the Town of Yates and the Niagara County Legislature requesting the formal DoD review, and let it be further

RESOLVED, That a copy of this resolution be transmitted to the Governor, Lt. Governor, members of the Article 10 Siting Board, and members of the Western New York Senate and Assembly delegation and the members of the Western New York Congressional delegation.

Offered by Supervisor Simon, who moved its adoption  
Seconded by Councilman Bentley

Councilman Bentley mentioned that Fort Drum is expanding and asked if anyone has heard about possible complications with the proposed wind farm.

Supervisor Simon responded that several studies are in the process. He added that this is not just unique to the Niagara Falls Air Force Base.

4 Ayes   0 Nays   1 Absent (Riggi)

Motion: Carried

## **RESOLUTION NO. 82-9/17**

### **RESOLUTION REGARDING AUSTIN MET TOWER PERMIT APPLICATION**

WHEREAS, the Town Board of the Town of Yates received an application for a Special Use Permit from Lighthouse Wind LLC for a MET Tower Permit on Tax Parcel 12-1-16.21 (the Austin MET Tower); and

WHEREAS, the application is a TYPE II action under the State Environmental Review Act and no environmental review is required; and

WHEREAS, the Town Board posted and published a Notice of Public Hearing and conducted a public hearing on the application, now therefore be it

RESOLVED by the Town of Yates Town Board as follows:

- 1) The Austin MET Tower is approved subject to the posting of the required bond.

2) Nothing in this Resolution, which solely addresses the Austin MET Tower application, shall be evidence of any support or opinion on the proposed Lighthouse Wind project nor any aspect of the Project subject to Public Service Law Article 10, nor waives any right of the Town in regard to the Lighthouse Wind project.

3) The APEX Special Use Permit Application is approved for a period of two years with the conditions that the tower shall have nighttime lighting and full tower paint in accordance with FAA standards. The Code Enforcement Officer may issue the permit upon the posting of the Decommissioning Plan Security.

4) This Resolution shall be effective immediately.

Offered by Councilman Bradley, who moved its adoption  
Seconded by Councilman Whipple

Councilman Bentley said that this vote has caused a lot of controversy but that the decision of this MET tower is not a vote for the wind farm; that it is, by itself, a single unit. He added that the constitution has worked for a very long time and that the MET tower does not pose any danger to people or the environment. He compared it to the Bane MET tower where there was no damage done to the site. He believes that any accidents involving MET towers are due to pilot error. Lastly he said that he will vote for it because it is legal and poses no danger.

Councilman Whipple agrees that the MET tower does meet the Town of Yates zoning regulations but he is not happy that APEX has not been courteous enough to answer the questions of the Board and its constituents. Because of this he will vote against the application.

Councilman Bradley read a prepared statement (see attached to these minutes) where he stated that in June of 2015 the Yates Town Board voted to approve the Bane MET Tower because there was no legal reason to deny it and they were sued by SOS. He added that the case was dismissed and the Town received a bill for \$27,000 to cover the legal expenses. He said that the Board is now faced with another MET tower application and to deny it will certainly result in another lawsuit and legal costs. He stressed that the Board needs to base its actions on the facts and whether or not the application meets the zoning laws of the Town of Yates, not their heart and public opinion.

Supervisor Simon read a prepared statement (see attached to these minutes) where he outlines and expands upon three unanswered questions from Lighthouse Wind. The first question is "Why has Lighthouse Wind LLC failed to provide quantifiable proof that an existing viable alternative to the Austin MET Tower-that of building a MET Tower to the hub height of the planned turbines-is cost and time prohibitive?" The second question was "Why has Lighthouse Wind LLC provided contradictory answers to the question of how many MET Towers they plan to build, and what is the comprehensive MET Tower plan for this project?" The third question was "Why is Lighthouse Wind LLC unwilling to share the data already collected by the Bane MET Tower in order to determine the viability of the wind resource for their proposed project?"

Councilman Bradley repeated a portion of his earlier statement that read “I know that it has been stated by members of this Board that questions asked of Apex regarding this application have not been answered. In actuality, some have been answered, though many have not. This disappoints me, as well. If they had, it would make this whole situation a lot simpler. No matter what the answers to those questions might be, though, none of them would change the fact that the Austin MET Tower Special Use Permit Application meets all of the zoning laws of the Town of Yates, which is what we are voting on tonight.

Supervisor Simon called for a roll vote, alphabetically.

Councilman Bentley: Aye

Councilman Bradley: Aye

Supervisor Simon: Nay

Councilman Whipple: Nay

Absent: Councilman Riggi

Motion: Not Carried

## **RESOLUTION NO. 83-9/17**

### **RESOLUTION TO ALLOW LIGHTHOUSE WIND TO RESUBMIT AUSTIN MET TOWER APPLICATION**

WHEREAS, the Austin MET tower application was denied due to unanswered questions from the Town Board and its constituents, be it

RESOLVED, to allow Lighthouse Wind LLC the opportunity, at the Board's discretion, to resubmit their Austin Met Tower application upon submitting the responses to the questions of this town.

Offered by Supervisor Simon, who moved its adoption

Seconded by Councilman Whipple

Councilman Bentley asked how we follow up if APEX responds to the questions.

Supervisor Simon replied that we could reconsider the Austin MET Tower Application at a later date as the Board sees fit.

Councilman Bradley stressed that Lighthouse Wind can submit another MET Tower Application anytime and that the Board would be obligated to vote on it regardless of this resolution.

Supervisor Simon explained that he thought that this was the prudent step to take.

Councilman Bradley said that this is an unnecessary resolution.

3 Ayes   1 Nay (Bradley)   1 Absent (Riggi)

Motion: Carried

## **RESOLUTION NO. 84-9/17**

### **RESOLUTION TO PAY BILLS**

WHEREAS, bills have been reviewed by the Town Board, be it

RESOLVED to pay bills as follows:

A-Accounts-	\$ 37,524.36
B-Accounts-	\$ 1,421.38
DA-Accounts-	\$ 76,991.54
DB-Accounts-	\$231,499.64
Water 4-	\$306,225.66
Water 2-	\$
Youth-	\$ 3,000.00
Fire-	\$

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TOTAL \$656,662.58

Offered by Councilman Whipple, who moved its adoption  
Seconded by Councilman Bentley

4 Ayes 0 Nays 1 Absent (Riggi)

Motion: Carried

### **PRIVILEGE OF THE FLOOR**

Paul Lauricella, Town of Yates, mentioned that he has concerns with the Town Budget as he knows that the Board is currently working on it. He said that he's happy to see that the second half of the E. Yates Ctr. Rd. is paved and that it's time to seal the first half of the road, which is cracking. He felt that the Highway Superintendent's duties should all be combined under one title with one salary amount and thought that money could be saved for the residents if the Towns in the County would share some of these personal services. He asked about the progress of the new business in the old Atwater building and voiced his frustration over the delay.

James Hoffman, Town of Somerset, said that there is an area wide problem with the growing turbine sizes. He added that the size of these huge units "present incredible logistical, environmental and physical issues to our community." He also submitted language from an APEX lease where confidentiality is addressed between the tenant and the landlord.

Steve Royce, Town of Appleton, said that he would be a mile and a half down the road from the proposed wind farm and that as the turbine sizes grow, the impact to him grows. He added that all residents that would be affected should be allowed to speak at the meetings.

Agnes LaPorte, Town of Somerset, said that even if she was a large landowner/farmer that signed a lease that producing food for the community would be her priority.

Dennis Seekins, Town of Yates, is confused and concerned because we are getting conflicting information on lease restrictions. He wonders who is telling the truth.

Roger Barth, Town of Yates, explained that as an attorney he reviewed the APEX lease contract and that there were tremendous restrictions to the landowner.

Howard Pierce, Town of Yates, discussed that the Town, for the first time in many years, is operating under a deficit. He added that it is directly related to the Town's legal expenses.

Richard Fisk, Town of Yates, said that even if the turbine heights were 700 feet, that would only be 75 feet taller than the chimney at the power plant located in the Town of Somerset.

Faith Basil, Town of Yates, said that APEX is not from Lyndonville; they are not a local company; they are from Virginia.

#### **TOWN OFFICERS REMARKS**

No Officer Reports

Councilman Bentley mentioned that the water line is almost ready for residents to hook into on Ward and Goodwin Roads.

#### **ADJOURNMENT**

Moved by Councilman Bradley, Whereas there is no new business to be brought before the Board, the meeting be adjourned at 8:10PM.

Seconded by Councilman Bentley

4 Ayes   0 Nays   1 Absent (Riggi)

Motion: Carried

Respectfully Submitted,  
Michele L. Harling,  
Yates Town Clerk

Wes Bradley

### **Statement for the Yates Town Board Meeting on 9/14/17**

I have undertaken significant consideration in making a decision as to my vote this evening regarding the Austin MET Tower Special Use Permit Application.

Back in June of 2015, the Yates Town Board voted on an application for a Special Use Permit for a MET Tower on the property of Donna Bane. With no legal reason to deny the permit, the Board at the time voted for approval. Several months later, the Town and the individual Board members were served with papers, signed by the SOS President at the time, John Riggi, suing over this approval. As we had been advised would happen, the judge dismissed the case relatively quickly, there being no basis for the lawsuit. The Town received a bill in the amount of \$27,000 for the legal defense of that lawsuit.

September of 2017 – the Town of Yates has had another application submitted for a Special Use Permit for a MET Tower. To deny the permit would certainly produce a lawsuit by Apex. Having no zoning laws within the Town to deny such a permit, the legal fees to defend the Town would be significant with no identifiable reason for a court to support such a decision. I feel that this would be an unwise use of taxpayer money. It would be my hope that in approving the permit, the Town would not be sued, once again, by SOS. Past precedence would say that the money to defend this lawsuit could be used much more effectively for general Town purposes.

When voting as a member of the Yates Town Board, you need to vote based on the facts of the matter, not based on your heart or public opinion. In fact, New York State law specifically prohibits a vote against an application based on public opposition. Bottom line, the decision for this matter is to be based on whether the permit application meets all the zoning laws of the Town of Yates. The answer is that YES it does. I know that it has been stated by members of this Board that questions asked of Apex regarding this application have not been answered. In actuality, some have been answered, though many have not. This disappoints me, as well. If they had, it would make this whole situation a lot simpler. No matter what the answers to those questions might be, though, none of them would change the fact that this Austin MET Tower Special Use Permit Application meets all of the zoning laws of the Town of Yates, which is what we are voting on tonight.

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**Statement at Town Board Meeting with regard to Austin Met Tower SUP Application**  
**by Yates Town Supervisor Jim Simon**  
September 14, 2017

**1. First Unanswered Question:**

*Why has Lighthouse Wind LLC failed to provide quantifiable proof that an existing viable alternative to the Austin Met Tower – that of building a Met Tower to the hub height of the planned turbines—is cost and time prohibitive?*

In Lighthouse Wind LLC's July 7, 2016, Statement of Intent signed by Mr. Rob Panasci, in Paragraph IV.2., titled, "No Existing Viable Alternatives," Mr. Panasci states, "...that a Met Tower is the most effective method by which Lighthouse can measure wind data to assess the viability of the Town of Yates as a wind resource."

However, in the sworn affidavit attached to the July 7, 2016, Statement of Intent, Mr. Drew Silverman (who is presumably an expert in Met Towers despite the fact that no curriculum vitae or credentials were provided) states in Paragraph 15, "While wind measurements at the proposed hub height of the wind turbine would be ideal, Met Towers of these heights are generally cost and time prohibitive."

Mr. Silverman rightly asserts that the "ideal" wind measurements should be done at the hub height of the proposed turbines. Therefore according to the Lightened "Use Variance" Standard cited in Mr. Panasci's letter, an **existing viable alternative** does in fact exist, an alternative that would best inform the Article 10 application should Lighthouse Wind submit one, and an alternative that would eliminate the need for proprietary, extrapolated, remotely-obtained data. That alternative is to resubmit a Met Tower application that reaches to the hub height proposed by the applicant. Since no quantified "costs" or "time" prohibitions were included in the Austin Met Tower application, how can Lighthouse argue that no existing viable alternatives exist?

Other sworn statements by Mr. Silverman clearly indicate the decreased veracity of data Lighthouse must expect to obtain the further removed the sensing equipment is from the actual location being measured.



In Paragraph 19, Mr. Silverman states, "Remote sensing and other indirect wind measurement methods can be inaccurate, making them far less useful for purposes of evaluating conditions at a particular site when used as a standalone measurement tool." In Paragraph 20, Mr. Silverman states, "Remote sensing equipment are less reliable than direct wind measurement. These problems can cause remote sensing devices to generate less than 25% of the data needed for a wind resource assessment."

**2. Second Unanswered Question:**

*Why has Lighthouse Wind LLC provided contradictory answers to the question of how many Met Towers they plan to build, and what is the comprehensive MET tower plan for this project?*

In Paragraph 10 of Mr. Silverman's affidavit he states, "The selection of a Met Tower location is a crucial step in evaluating a project location for wind energy applications. In general, there are three phases for meteorological monitoring: The initial period where one or two Met Towers are deployed to get an indication for the variability of a wind project, the enhancement phase where additional Met Towers are interspersed throughout the project area to measure the diversification of the wind climate across the site, and the final phase where Met Towers are deployed across the remaining parts of the project site in order to have a complete understanding of the variations in the wind climate across the site."

And yet, on August 10, 2017, Mr. Panasci stated at the Yates Town Board Meeting, "...that this was the last MET tower for the project that was needed to collect data." (see Meeting Minutes, August 10, 2017, townofyates.org)

Which is it? How can the Town Board approve an application when two officials representing Lighthouse Wind LLC are presenting conflicting information?

If in fact there are more MET towers planned (as the sworn affidavit clearly states), then it would be a reasonable and good faith step for Lighthouse Wind LLC to provide the board this information before it is asked to approve the Austin MET tower.

Like Paragraph 10, Mr. Silverman states in Paragraph 12 that, "Met Towers have to be sufficiently interspersed so as to provide the meteorologist with a uniform database of estimated wind resource across the projected boundary for the proposed wind project."



Once again, this assertion indicates multiple MET towers are planned despite Mr. Panasci's specifically stating the contrary to the Yates Town Board at our August meeting.

Lastly, three more quotes from Mr. Silverman's sworn affidavit strongly indicate the need for multiple towers. Paragraph 24, "A complete and accurate understanding of the wind climate across a site is vital for the success of any wind power project. An adequate number of well-placed Met Towers are the key to this understanding of the wind climate, and the eventual success of the project over its lifetime." And Paragraph 25, "With respect to the Project, to adequately assess wind resources, Met towers have to be placed strategically throughout the proposed Project area. The data taken from the Met Towers will be extrapolated across the site using modeling, and vertically to cover expected wind speed at the height of any potential wind turbine rotor." And Paragraph 23, "Wind shear at each Met Tower location will vary by location, so the more Met Towers that are used for a wind project, the better the extrapolation will be for each wind turbine in the proposed project."

What is the comprehensive Met Tower plan for this project? How can the Yates Town Board analyze the impact of the Austin Met Tower without knowing what the potential cumulative effects will be from multiple Met Towers in our town?

### **3. Third Unanswered Question:**

*Why is Lighthouse Wind LLC unwilling to share the data already collected by the Bane Met Tower in order to determine the viability of the wind resource for their proposed project?*

In Paragraph 11, Mr. Silverman states, "The use of meteorological data is crucially important to reducing power production uncertainty. The goal of meteorological monitoring is to have measurements which are representative of the area in the vicinity of the towers."

Since meteorological data now in fact exists, why wouldn't Lighthouse Wind LLC provide the results to the Yates Town Board? This Board has been reminded, repeatedly and rightly so, by Lighthouse Wind LLC and constituents of the town, that the Town Board should be patient with the Article 10 process and that Lighthouse Wind LLC will provide as much information as early as it is available.

Is it not reasonable, and would it not be a gesture of good faith, for Lighthouse Wind LLC to provide the Yates Town Board the following data from the Bane MET

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tower before we can fully understand whether or not the Austin MET tower is necessary?

1. Mathematical Model used to determine wind resource, to include all wind extrapolation algorithms
2. All wind generated data
3. Data verification methodologies
4. All conclusions based on the data and rationale for conclusions

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Jim Simon". The signature is fluid and cursive, with a long horizontal stroke extending to the right.