

Town of Yates November Board Meeting  
8 S. Main St., Lyndonville, NY 14098  
November 9, 2017, 7:00PM

Present: Jim Simon, Supervisor  
Wes Bradley, Councilman  
Jim Whipple, Councilman  
Brad Bentley, Councilman  
John Riggi, Councilman  
Michele Harling, Town Clerk  
Andrew Meier, Town Attorney  
Dan Wolfe, Code Enforcement Officer  
Trisha Laszewski, Assessor

Excused: Roger Wolfe, Highway Superintendent

Others :	Susan Campbell	Mark Crosby	Larry Wolfe
	Taylor Quarles	Bob LaPorte	Agnes LaPorte
	Chris Bronson	Bob Verhyne	James Hoffman
	Alice Wolanyk	Betty Wolanyk	Cynthia Hellert
	Jim Bansbach	Steve Royce	Maryellen Royce
	Paul Lauricella	Paula Simon	Bob Verhyne

Supervisor Simon called the November Board Meeting to order at 7:04PM.

**PLEDGE OF ALLEGIANCE**

**SUPERVISOR REMARKS**

Supervisor Simon explained that at the end of the regular meeting the Board will convene an executive session to discuss contract bargaining negotiations and that no further Town business will be discussed at the close of that session.

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

Paul Lauricella, Town of Yates, questioned Resolution No. 97 and asked if the Town was under the tax cap and if the Board held the line at no tax increase.

Supervisor Simon explained that they were under the tax cap with little to spare. He believes that there will be about a 1.7% increase for 2018 but said that he does not have the final figures yet.

**RESOLUTION NO. 95-11/17**

**RESOLUTION TO APPROVE MINUTES**

RESOLVED, to approve the minutes of the October 12, 2017 Regular Board Meeting as presented to each Board Member.

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

5 Ayes 0 Nays

Motion: Carried

#### **RESOLUTION NO. 96-11/17**

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

RESOLVED, to approve the minutes of the November 6, 2017 Public Hearing and Workshop Meeting as presented to each Board Member.

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

4 Ayes 0 Nays 1 Abstain (Whipple)

Motion: Carried

#### **RESOLUTION NO. 97-11/17**

#### **RESOLUTION TO ADOPT THE PRELIMINARY BUDGET AS THE TOWN OF YATES FINAL BUDGET FOR FISCAL YEAR 2018**

WHEREAS, a Public Hearing was held on November 6, 2017 at 6:00PM at the Yates Town Hall to present the Preliminary Budget and all persons wishing to be heard had a chance to speak, be it

RESOLVED that the Preliminary Budget be adopted as the Final Budget for the year 2018 and, be it

FURTHER RESOLVED, that a copy of such budget shall be attached to these minutes.

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

5 Ayes 0 Nays

Motion: Carried

#### **RESOLUTION NO. 98-11/17**

## **RESOLUTION TO ADD DELINQUENT WATER TO TAXES AND ADD \$100.00 FEE**

WHEREAS, there are water customers with delinquent water bills that have been notified via certified mail that such bills not paid by November 10, 2017 will be relevied on their Town/County tax bill with an additional \$100.00 fee, be it

RESOLVED, that the clerk shall send a list of said delinquent water bills to the Orleans County Real Property Director and levy unpaid water bills on the 2018 Town/County bills.

Offered by Councilman Bradley, who moved its adoption

Seconded by Councilman Whipple

5 Ayes 0 Nays

Motion: Carried

## **RESOLUTION NO. 99-11/17**

### **RESOLUTION TO ALLOW SUPERVISOR TO SIGN AGREEMENT WITH GARY AND SHERIANN DENT TO MOW TOWN CEMETERIES FOR THE YEARS 2018 AND 2019**

WHEREAS, Gary and Sheriann Dent have mowed the Town cemeteries for the last 5 years and the Town is pleased with the quality of their work and have received favorable comments from visitors of the Town cemeteries, and

WHEREAS, they have read and understand the terms of the Mowing Agreement and agree to mow for the years 2018 and 2019 in the amount of \$19,500; payments to be made in eight equal payments of \$2,437.50 starting in April and the last payment in November, be it

RESOLVED, the Town Board authorizes the Supervisor to sign the Mowing Agreement with Gary and Sheriann Dent.

Offered by Councilman Bentley, who moved its adoption

Seconded by Councilman Bradley

5 Ayes 0 Nays

Motion: Carried

## **RESOLUTION NO. 100-11/17**

### **RESOLUTION DIRECTING TOWN OF YATES ATTORNEY TO RESPOND TO VILLAGE OF MEDINA OCTOBER 25, 2017 90-DAY NOTICE OF TERMINATION OF AMBULANCE SERVICE**

WHEREAS, the Village of Medina sent the Town of Yates a 90-Day Notice of Termination on October 25, 2017 for the Ambulance Service due to a disagreement about an invoice for service prior to the signing of the contract, and

WHEREAS, the Town of Yates board and attorney disagree with the Village of Medina's interpretation of the justification for the notice of termination, be it

RESOLVED, that the Town Board directs the Town Clerk to pay the invoice, and be it further

RESOLVED, that the Town Board directs the town attorney to respond in writing to the Village of Medina expressing Yates' significant concerns about the ambulance contract.

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

5 Ayes 0 Nays

Motion: Carried

## **RESOLUTION NO. 101-11/17**

### **RESOLUTION IN SUPPORT OF TOWN OF AMHERST BICENTENNIAL**

WHEREAS, the Town of Amherst, New York celebrates its Bicentennial in the year of 2018 and it is fitting to recognize the Town of Amherst on the occasion of this special milestone and to applaud its distinguished history, and

WHEREAS, in recognition of the Town of Amherst's rich history and enduring contributions, it is indeed an honor to pay tribute to the Town upon the occasion of its Bicentennial, now, therefore, be it

RESOLVED, that congratulations are sent to the Town of Amherst on their Bicentennial and the Town and its residents are to be enthusiastically recognized as they celebrate this auspicious occasion, and be it further

RESOLVED, that a copy of this Resolution, suitably embossed, be transmitted to the Town of Amherst Bicentennial Commission.

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

5 Ayes 0 Nays

Motion: Carried

**RESOLUTION NO. 102-11/17**

**RESOLUTION IN SUPPORT OF ORLEANS COUNTY RESOLUTION NO. 396-1017  
URGING THE NEW YORK STATE CONGRESSIONAL DELEGATION TO  
PRESERVE THE FEDERAL INCOME TAX DEDUCTION FOR STATE AND LOCAL  
TAXES**

WHEREAS, Congress is proposing significant reforms to the federal tax system, and

WHEREAS, under current federal law there is a deduction for state and local taxes and this deduction has been in place since the federal income tax was instituted in 1913, and

WHEREAS, the deductibility of these taxes prevents double taxation, since state and local taxes are mandatory payments, and

WHEREAS, state and local governments use revenues from property, income, sales and other locally generated resources to finance infrastructure, pay for K-12 education, support higher education and job training, provide for public safety and health, and implement a large array of federally mandated health and human service programs, be it

RESOLVED, the Town of Yates joins the County of Orleans and calls on the New York State Congressional Delegation to preserve the federal deductibility of state and local taxes to prevent double taxation, and be it further

RESOLVED, that the Town Clerk shall forward copies of this resolution to the President of the United States Donald Trump, Governor Andrew Cuomo, Congressman Chris Collins, Senator Chuck Schumer, Senator Kirsten Gillebrand, Senator Robert Ort, Assemblyman Steve Hawley and the Orleans County Clerk

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

5 Ayes 0 Nays

Motion: Carried

**RESOLUTION NO. 103-11/17**

**RESOLUTION AUTHORIZING YATES HIGHWAY SUPERINTENDENT TO  
CONSULT WITH ORLEANS COUNTY REGARDING POSSIBILITY OF  
DECREASING SPEED LIMITS ON CERTAIN TOWN ROADS.**

WHEREAS, several Yates residents are concerned with the speeding that occurs on their county roads – including Platten Road as it approaches the Village of Lyndonville and Millers Road in the Hamlet of Millers, be it

RESOLVED, that the Town Board authorizes the Yates Highway Superintendent to directly consult with Orleans County regarding the possibility of decreasing the speed limits on these roads to protect the health , welfare and safety of Yates residents.

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

5 Ayes 0 Nays

Motion: Carried

## **RESOLUTION NO. 104-11/17**

### **RESOLUTION TO PAY BILLS**

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

RESOLVED to pay bills as follows:

A-Accounts-	\$ 29,896.86
B-Accounts-	\$ 1,504.16
DA-Accounts-	\$ 10,548.01
DB-Accounts-	\$ 11,874.86
Water 4-	\$ 3,371.17
Water 2-	\$
Youth-	\$
Fire-	\$

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TOTAL \$ 57,195.06

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

5 Ayes 0 Nays

Motion: Carried

Supervisor Simon asked if there were any other resolutions to be brought before the Board.

Councilman Bradley presented Resolution No. 105-11/17.

## **RESOLUTION NO. 105-11/17**

### **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 vote by the Town Board of the Town of Yates on September 14, 2017, regarding this application was not carried by a vote of 2 Aye, 2 Nay and 1 absent;

WHEREAS, there is a Tolling Agreement currently in place while this issue is sorted out,

WHEREAS, some members of the Board stated their concerns were that questions to Apex from the Board and the public had not been answered;

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 Bentley

Discussion:

Councilman Riggi explained that this resolution was sprung on the Board minutes before the board meeting and that the Board recently signed a tolling agreement that gave the Board until January 28, 2018 to make a decision on the Austin MET tower. He added that Special Counsel advised that the Board wait for his recommendations before they move forward with a decision. He believes they should follow Mr. Spitzer's recommendation and asked why the rush. He said that the Town has spent one and a half years opposing the project and that the prior 2-2 vote on the Austin MET tower means that the resolution was defeated. Lastly he said that we don't need a MET tower if there isn't a wind project and that he will be abstaining from the vote.

Councilman Bentley said that the Board has no legal right to deny the Austin MET tower application because of any of their Town laws. He added that it does not change the vote on the larger project and that the Board should approve it.

Councilman Bradley said that this vote has been delayed for 18 months. He explained that the Board received the answers to the questions that were asked and that there is no legal reason for denial. He said that if the Austin MET tower is denied a lawsuit is inevitable. He added that the tolling agreement can be terminated anytime by either party. If this case goes to court it is a lawsuit that we cannot win so why waste taxpayers money when it can be spent in a better way. He said that it's time to move on. Lastly he said that he respectfully disagrees with Councilman Riggi and his interpretation of Special Counsel, Dan Spitzer's, recommendations.

Supervisor Simon said that he was disappointed that this resolution was presented so late before the meeting which didn't leave the Board any time for review. He gave a timeline snapshot of the Austin MET tower application progression beginning with the 2-2 denial vote and interpretation of Special Counsel from both parties; Apex's attorney said that it was not a denial, Dan Spitzer said that it was a denial. Next was the motion passed to reconsider the MET tower application after questions of the Board and its' constituents were answered. He explained that the Board was waiting for Mr. Spitzer to review those answers and to respond as to whether or not their concerns were adequately addressed and that the Tolling Agreement was signed to give them the time to do this.

Supervisor Simon called for a roll call vote.

Councilman Bentley: Aye  
Councilman Bradley: Aye  
Councilman Riggi: Abstain  
Supervisor Simon: Abstain  
Councilman Whipple: Aye

Motion: Carried

## **PRIVILEGE OF THE FLOOR**

Paul Lauricella, Town of Yates, spoke to a resident who does not have access to Town water and is interested that lives on the Ridgeway Yates Townline Road. He told the resident to come in and talk to the Town Board. He also asked that all of the Town of Yates Highway trucks be marked with the Town logo so that they can be better identified.

Agnes LaPorte, Town of Somerset, explained that she attends both Somerset and Yates Board meetings because the wind project would be located in both Towns. She said that the Somerset power plant is closing and their PILOT is much diminished so that the plant has not been a windfall to the Town. She added that large companies in small communities are not a good thing. Their bottom line is always to maximize profits while in operation and that when they close, the buildings stay and rot away.



Susan Campbell, Town of Yates, read a letter where she stated that at last month's regular meeting she explained that she is not a leaseholder who stands to gain financially, but wants the wind project for her children and grandchildren to have a viable future and was told by a resident against the wind project that if she loved her family, she would not want the turbines. She believes that the project will be good for the Town because of funds for tax relief, attracting new business, additional money for the school and reducing our need for fossil fuels.

James Hoffman, Town of Somerset, called the Lighthouse Wind Project a "regional problem" and said that there are very few details to prove that it would be an economic benefit. He asked when it became acceptable for a company to decide the amount that they will pay for taxes. He said that based on the overall investment of the project APEX should be paying 5-10 times more than the numbers he's heard mentioned.

Betty Wolanyk, Town of Somerset, submitted an article from the Burlington Free Press where Vermont lawmakers have imposed limits on wind power to prevent sound from disturbing resident's health and sleep. She submitted another article titled "Why Wind Farms Affect Property Values" and a handout titled: "Opinion: PILOT savings will not be a windfall locally, says Hopkinton property owner".

Cynthia Hellert, Town of Yates, asked about the Marshall Road bridge closure and the condition of Lakeshore Rd. along the ditches where culvert pipes have been left to sit in the weeds and look terrible.

Councilman Bentley responded that he has been monitoring the Marshall Road Bridge and stated that he talked to some of the workers on site and it should be open by the beginning of next week.

Supervisor Simon responded that he will look into the condition of Lakeshore Rd.

Bob Verhyne, Town of Somerset, asked the Town Board to reconsider using Dan Spitzer as their Special Counsel for the wind project. He thinks that the Town of Yates could save some money if they hire the Town of Somerset's Attorney. He added that Mr. Spitzer has worked for wind companies in the past.

## **TOWN OFFICERS REMARKS**

Dan Wolfe, Code Enforcement Officer, said that he had been gone for 2 weeks on vacation. He added that although he is only in the Town of Yates 1 day a week, he is always willing to take Yates phone calls or questions anytime.

Councilman Riggi congratulated the election winners and thanked those that ran good campaigns. He added that it's important to our way of life that those interested care enough to run for elected positions. He also said that he was disappointed in the Town Board over the Austin MET tower vote. He feels that wind projects should go where they are wanted and that the Austin MET tower is a "crumb of food" that makes it look like the Town of Yates supports APEX when they do not.

Supervisor Simon announced that he and the Town Clerk and Town Bookkeeper will be meeting with a NYS auditor on Wednesday to discuss an upcoming State Audit.

**RESOLUTION NO. 105-11/17**

**RESOLUTION TO CONVENE AN EXECUTIVE SESSION TO DISCUSS COLLECTIVE BARGAINING NEGOTIATIONS**

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

5 Ayes 0 Nays

Motion: Carried

A motion was made at 8:19 to return to open session.

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

5 Ayes 0 Nays

Motion: Carried

**ADJOURNMENT**

Moved by Councilman Whipple, whereas there is no new business to be brought before the Board, the meeting be adjourned at 8:20PM.  
Seconded by Councilman Bradley

5 Ayes 0 Nays

Motion: Carried

Respectfully Submitted,  
Michele L. Harling  
Yates Town Clerk