

Town of Yates April Board Meeting
8 S. Main St., Lyndonville, NY 14098
April 12, 2018, 7:00PM

Present: James Simon, Supervisor
John Riggi, Councilman
Wes Bradley, Councilman
Jim Whipple, Councilman
Harold Suhr, Councilman
Michele Harling, Town Clerk
Andrew Meier, Town Attorney
Dan Wolfe, Code Enforcement Officer

Excused: Roger Wolfe, Highway Superintendent
Trisha Laszewski, Town Assessor

Others:	Steve Royce	Larry Wolfe	Donna Bane
	Edward	Richard Pucher	Bob LaPorte
	Agnes LaPorte	Becki Winters	Howard Pierce
	Jim Hoffman	Anne Smith	Cynthia Hellert
	Richard Hellert	Chris Bronson	Georgette Stockman
	Dale Aikitas	Bruce T. Williams	Ralph E. Smith
	Pam Atwater	Paul Lauricella	Michael Basil
	Faith Basil		

Supervisor Simon called the April Board Meeting to order at 7:00PM.

PLEDGE OF ALLEGIANCE

SUPERVISOR REMARKS

Supervisor Simon asked that all comments be directed to the Board. He added that if a Board Member feels that it is appropriate to respond to the comment being made by the speaker and the speaker has additional questions, that they follow up with a Board Member after the meeting.

PRIVILEGE OF THE FLOOR ON AGENDA ITEMS ONLY

Paul Lauricella, Town of Yates, commented on Resolution No. 53-4/18 by saying that he is very concerned with the amount of money that could be spent with a new attorney. He's afraid that it could bankrupt the Town. He asked how the inter-municipal agreement with the Town of Somerset would work; is it a percentage, half-half, is it in writing yet?

Supervisor Simon explained that the details will be discussed later in the meeting.

Ralph Smith, Town of Yates, had the following questions about Resolution No. 53-4/18: What was the budgeted amount for legal expenses in 2018 versus the actual amount spent year to date,

has the Board been hitting their budget amounts in the last few years, and will the contract with the Town of Somerset have “Not to Exceed” language in it with regard to the Town of Yates portion of legal expenses so as not to exceed the budget in the future.

Supervisor Simon stated that the budgeted amount in 2016 and 2017 were not sufficient to cover the legal expenses and that we’re not doing badly according to track analysis of the 2018 budget.

Ralph Smith, Town of Yates, asked if the new firm would be used only for the APEX project.

Supervisor Simon responded that yes, they would only be used for the wind project, the same way that Hodgson Russ was used on the Lighthouse Wind project. He asked Mr. Smith to discuss further questions with him after the meeting.

Ed Urbanik, Town of Yates, asked what the success rate of Lippes Mathias was in their representation of the Town of Somerset so far, for example with their MET Tower lawsuit.

Supervisor Simon responded that the project is still here despite opposition from the Towns and their legal teams so neither side has been successful.

Ed Urbanik, Town of Yates offered a warning; he explained a situation when he was on the Lyndonville School Board where Lippes Mathias encouraged litigating a suit that the Board felt could not be won and it could have bankrupted the school. He urged the Town Board not to get trapped in the same dilemma.

Agnes LaPorte, Town of Somerset, said that she believes that both of the Towns have the same concerns and that up until this point both of their legal teams have been working toward the same goal and that it makes sense to be paying only one of those legal teams.

Howard Pierce, Town of Yates, outlined the three separate parts of Resolution No. 53-4/18. His concerns were; that 70% of the proposed project will be in the Town of Somerset, 30% in the Town of Yates, not a 50-50 split, that they are entering into an agreement without knowledge of the cost or where the money will come from and that the Town of Yates constituents are hard working families many of whom live below the national poverty level and cannot afford a lawsuit. He added that the Board has not brought any revenue into the Town and asked them to vote no.

Anne Smith, Town of Yates, explained that several years ago at a meeting in the Town of Somerset to discuss intervenor funds, a law judge stressed that it was imperative that both Towns go with one legal team for financial reasons. She said vote yes.

Donna Bane, Town of Yates, said that she does not agree with Resolution No. 53-4/18. She said that we are our own Town and that we should have separate attorneys. She said if we merge here, would they also be looking at merging the Townships as well.

Richard Hellert, Town of Yates, said that we have come a long way in trying to keep the company of APEX out of the Towns. He urged each of the Board Members to vote yes to

Resolution No. 53-4/18. He said that it's a sign to the constituents that the Board is representing the majority of the people of the Town.

RESOLUTION NO. 51-4/18

RESOLUTION TO APPROVE MINUTES

RESOLVED, to approve the minutes of the March 8, 2018 regular Board Meeting as presented to each Board Member.

Offered by Councilman Bradley, who moved its adoption

Seconded by Councilman Whipple

4 Ayes 0 Nays 1 Abstain (Simon)

Motion: Carried

RESOLUTION NO. 52-4/18

RESOLUTION TO INTRODUCE PROPOSED LOCAL LAW NO. 4 OF 2018 AND TO SCHEDULE A PUBLIC HEARING

WHEREAS, the Town Board of the Town of Yates, New York desires to consider adopting legislation to implement a property tax exemption for historic property, be it

RESOLVED, that proposed Local Law No. 4 of 2018 entitled "A Local Law Enacting a Real Property Tax Exemption for Historic Property", which proposed Local Law is now in its final form as appears by a copy thereof hereto attached, is hereby introduced for adoption; and be it further

RESOLVED, that said proposed Local Law be laid upon the desks of the members of this Town Board on this date and a copy thereof be kept on file in the office of the Town Clerk until May 7, 2018, and that a public hearing be held before this Town Board on the 7th day of May, 2018, at 6:30 p.m. at the Yates Town Hall, on the advisability of enacting said proposed Local Law; and be it further

RESOLVED, that the Town Clerk shall cause notice of said public hearing to be published once in The Batavia Daily News at least five (5) days prior to the date of said public hearing, which notice shall contain the time and place of said hearing, the title and purpose thereof, as well as a statement that a copy of said proposed Local Law is on file in the Town Clerk's Office.

Offered by Councilman Riggi, who moved its adoption

Seconded by Councilman Bradley

5 Ayes 0 Nays

Motion: Carried

RESOLUTION NO. 53-4/18

RESOLUTION TO AUTHORIZE THE SUPERVISOR TO SIGN AGREEMENT FOR LEGAL SERVICES WITH LIPPES MATHIAS WEXLER FRIEDMAN LLP

WHEREAS, the Town has been a party to an Article 10 Proceeding concerning the Lighthouse Wind Project as has the Town of Somerset and while the Towns have common interests in regard to the proposed Lighthouse Wind industrial wind facility each have been represented by separate law firms, and

WHEREAS, the Town of Somerset has already retained the firm of Lippes Mathias, LLP to represent the Town of Somerset in regard to the proposed Lighthouse Wind industrial wind facility, and

WHEREAS, the Town believes that representation by one law firm of both Towns will ensure a cohesive strategy and serve to reduce legal fees to both towns, and

WHEREAS, an agreement for legal services between the Town of Yates and Lippes Mathias Wexler Freidman has been presented to the Town Board and the Town Board has reviewed this agreement, be it

RESOLVED, that the Town Board authorizes the Town Supervisor to take all steps necessary to enter into an agreement with Lippes Mathias Wexler Friedman LLP for professional legal services related to the Town's participation in the Application of Lighthouse Wind LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 to Construct a 201 MW Wind Energy Facility, Case No. 14-F-0485, and further

RESOLVED, that the Town Board authorizes the Town Attorney to draft for Town Board review and approval an inter-municipal agreement with the Town of Somerset for the sharing of legal fees and disbursements as part of the joint representation of both Yates and Somerset by Lippes Mathias, and further

RESOLVED, that the Town Board authorizes the Supervisor or Town Attorney to terminate the Hodgson Russ engagement pursuant to the terms of the Hodgson Russ engagement agreement.

Supervisor Simon said that the two concrete steps in the resolution are the termination of Hodgson Russ and to enter into an engagement agreement with Lippes Mathias; both of these drafts have been reviewed by the Board for their consideration. The agreement with the Town of Somerset is being reviewed by the Attorneys in both Towns. Right now they have a verbal agreement for a 50-50 split of legal fees despite the possible 70-30 split of wind turbine placement so that the Town will have half of the say in the decision making moving forward with this project.

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

BOARD DISCUSSION

Councilman Riggi noted that the case number needed to be corrected in the body of the resolution.

Councilman Whipple stated that he will be voting no on this agreement. He asked Andrew Meier, Town Attorney, if it was necessary to vote on terminating the agreement with Hodgson Russ since it has already been done.

Andrew Meier, Town Attorney, responded that it is not necessary to terminate the agreement since Hodgson Russ sent a letter earlier in the day withdrawing from representing the Town so the Town would not have to take affirmative steps to terminate engagement at this point.

Councilman Whipple said that this part of the resolution could be struck.

Andrew Meier said that it could be, theoretically.

Supervisor Simon commented that he had spoken to Dan Spitzer that morning and told him that a letter was prepared to be sent and Mr. Spitzer said that the letter would not change anything but it wouldn't hurt to send it. He added that confidentiality is mentioned in the letter and that it is a valid letter that should be sent.

Councilman Whipple said that he is not a Vacco fan. He said that the Board hears monthly testimony that comes from the internet so encouraged the audience to search Wikipedia for Vacco and they may have more questions after doing so. He said that there is no governing document in place. The resolution was changed yesterday and that he is not comfortable with approving an agreement without a governing document between the Towns of Yates and Somerset. He added that it appears that the Town has not looked at any other law firm besides Vacco so he cannot support the resolution.

Councilman Bradley prepared a comment that was submitted and added, verbatim, to the minutes:

Please allow me to read my thoughts on Resolution No. 53-4/18 instead of randomly speaking. I would prefer not to forget any points that I would like to make.

Where to begin. The Town of Yates and the Town of Somerset have intermingled history over the past 40 years. I began teaching in Lyndonville in 1975. In the late '70's, New York State Electric and Gas was proposing to build an electric producing power plant adjacent to Morrison Road in Yates. There was significant local opposition to that plant and it ended up being built in the Town of Somerset. Over the past 30+ years, Somerset and the Barker Central School District have reaped millions of dollars from that project. Yates has received nothing. In October of 2010, a Final Report of a Merger Study for the Barker and Lyndonville Central School Districts

was released. During this same timeframe, Verizon was looking at the possibility of building a major facility bordering on the power plant property. This would have brought significantly more revenue into Somerset and the Barker schools. Following the release of the Merger Study, the Lyndonville Board of Education voted to hold a public referendum to allow voters in the Lyndonville School District to decide whether they were in favor of the merger or not. The Barker Board of Education voted not to have a preliminary vote of its voters and to end talks regarding the merger. Public comments made to the Barker Board of Education during public information sessions prior to that Barker Board of Education vote commonly expressed the thought that Barker taxpayers had no desire to subsidize Lyndonville Central School taxpayers.

Embedded in the second “Resolved” of Resolution No. 53-4/18 before us right now is the following quote: “RESOLVED, that the Town Board authorizes the Town Attorney to draft for Town Board review and approval an inter-municipal agreement with the Town of Somerset for the sharing of legal fees and disbursements as part of the joint representation of both Yates and Somerset by Lippes Mathias..”. Key in this statement is “the sharing of legal fees”. Not in this Resolution, but presented by Supervisor Simon at the Town Board Workshop on Monday, 4/9/18, a workshop attended by three members of the community, was the statement that when finalized, the “the sharing of legal fees” in the inter-municipal agreement will entail both towns covering 50% of the costs of Lippes Mathias Wexler Friedman LLP in opposing Lighthouse Wind. Wow!! Using information received under FOIL, since the start of opposition to the Lighthouse Wind Project in September of 2015 through October of 2017, the Town of Somerset has expended \$264,677.20 for attorneys from Lippes Mathias Wexler Friedman LLP. During this same timeframe, the Town of Yates has expended \$40,044.37 for attorneys from Hodgson Russ LLP. This number for the Town of Yates figures out to be 15.13% of the money expended by Somerset. Basically, these expenditures by the two towns have gotten them to the same point – new Wind Laws and participation in the Lighthouse Wind Stipulations process. There has been much frustration by those opposing the project that in spite of all the efforts made and money spent to date by both towns, Apex has not withdrawn its proposal. The amount of money that the two towns may spend on this fight moving forward is an unknown. From my point of view, the real fight against this project has barely moved away from the starting line. Should Apex eventually file an Application to New York State, the costs that would be incurred by both Somerset and Yates have the potential to be enormous. What is known due to the Article 10 process is that the New York State Siting Board, not the towns, will have the final say in whether this project comes to fruition or not. What also is known is that if an inter-municipal agreement is signed, the total cost for legal fees and disbursements moving forward will be equally shared by Somerset and Yates.

Looking at the current budgets for both towns, Budget Items A1420.4 and B1420.4 (Contractual Attorney Fees) total \$300,000 in the 2018 Town of Somerset Budget. Comparatively, these same two Budget Items total \$20,000 in the 2018 Town of Yates Budget. Additionally, between Budget Items A1440.4 and B1440.4 (Contractual Engineer Fees), the 2018 Town of Somerset

Budget totals \$85,000. Comparatively, the 2018 Town of Yates Budget does not have any budgeted engineering fees for these Budget Items. Putting all of the above together, I see much higher legal fees for the Town of Yates in the future if Lippes Mathias Wexler Friedman LLP is hired to represent us in opposing this project. Honestly, looking at these budget numbers, sharing all legal fees 50% to 50% could be a difficult situation. Additionally, not yet having a proposed inter-municipal agreement in place, I have not yet seen anything that would guarantee the Town of Yates an equal share in all decision-making regarding the use of the mutual legal team.

To me, the discrepancy in the money spent to date by the two towns in opposing Lighthouse Wind to get to basically the same point is eye opening. We can go one step further than the attorney fees, as well. Over the last several years the Town of Somerset has been using reserves to help keep town taxes down. That option being very minimal this year, town taxes for the Town of Somerset rose by 110.73% for 2018. Comparatively, town taxes for the Town of Yates outside the Village of Lyndonville rose by 0.67% and inside the Village of Lyndonville by 1.18% for 2018. It is very apparent to me why Somerset would love to have Yates sharing 50% of all legal fees in this battle.

The proposed location of the wind turbines in this project will not be known until/if Apex files an Application to New York State. Based on the area proposed in each of the two towns for the project, Somerset would very likely have more turbines than Yates, likely in a 2 to 1 ratio. As noted above, through these past 30+ years, the Town of Yates has not had the financial coffers that the Town of Somerset has had. In the end, should the Siting Board vote to move forward with this project, for the Town of Yates to pay 50% of all legal fees in opposing the project and end up receiving approximately 33% of the financial gains does not seem to be a reasonable choice by this Town Board.

Lastly, the third “Resolved” in this Resolution, “authorizes the Supervisor or Town Attorney to terminate the Hodgson Russ engagement pursuant to the terms of the Hodgson Russ engagement agreement”. If it is the desire of the majority of this Board to terminate this agreement, so be it. It is not my desire. Having two different firms working against the project allows for two different strategies that can work together to make a stronger case. Going with the same firm for both towns allows Apex the opportunity to only have to deal with one plan of attack. Thus, for these many reasons, I feel that hiring Lippes Mathias Wexler Friedman LLP is not the correct avenue to take. Other law firms should be researched and interviewed to find the one that best fits our needs and resources. Most importantly, I feel that hiring Lippes Mathias Wexler Friedman LLP could very likely jeopardize the financial future of the Town of Yates.

3 Ayes 2 Nays (Whipple, Bradley)

Motion: Carried

RESOLUTION NO. 54-4/18

RESOLUTION TO PAY BILLS

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

RESOLVED to pay bills as follows:

A-Accounts-	\$ 38,143.67
B-Accounts-	\$ 3,601.02
DA-Accounts-	\$ 23,605.35
DB-Accounts-	\$ 7,010.29
Fire-	\$ 38,700.00
Water 4-	\$ 13,663.02
Water 2-	\$ 31,538.78

TOTAL	\$156,262.13

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

5 Ayes 0 Nays

Motion: Carried

PRIVILEGE OF THE FLOOR

Ed Urbanik, Town of Yates, said that he was on the School Board when they tried to negotiate with Barker over a merger. He added that he was surprised that the Town would enter into an agreement with Somerset when initially they wanted all of the defense money that was being offered. He said that the Town will have much higher taxes as a result of this and that three people on the Board are responsible for it. Lastly he said that they are not using wise strategy.

Steve Royce, Town of Appleton, reminded the audience that Article 10 and APEX put us in this position and that it's not the Board's fault. Also, he was looking at the event logs and has not seen a 4th quarter 2017 or a 1st quarter 2018 event log yet. He added that APEX promised informational meetings that he has not seen, along with mailings, to the project area.

Paul Lauricella, Town of Yates, asked why the Public Hearings are scheduled on the Workshop Meeting dates and why they start so much earlier than in the past. He said that it's hard for people to attend a 5:30pm meeting and asked if they could be scheduled later in the future.

Supervisor Simon said that they hold Public Hearings on the night of a Workshop Meeting as opposed to the night of a Town Board Meeting to give the Board a few days to review public comment. He asked if 6:30pm would work better for most people and changed the time of the Public Hearing on Local Law #4 of 2018 scheduled on May 7, 2018, from 5:30pm to 6:30pm.

Paul Lauricella, Town of Yates, added that he knows that all five Board Members are against the wind project and that Councilman Bradley made a lot of sense when he said that it's better to have two different legal teams with two different strategies. He said that it's a shame that it will all come down to the decision of the Siting Board and that he would hate to see taxes go up because people are struggling to pay them now.

Ralph Smith, Town of Yates, expressed his disappointment in not seeing a "Not to exceed figure" in the resolution and said that it's uncomfortable giving politicians a blank check especially in light of the over expenditures in the legal services over the last few years.

Anne Smith, Town of Yates, read an excerpt from a Chautauqua County Journal where there is a wind project in the Town of Arkwright. It says that the grid is not ready for wind. The infrastructure is not there. It reads that the infrastructure will cost tax payers billions to make ready. Wind power is not storable or reliable, the utilities must cycle gas and coal fired generators all the time to back up intermittent wind which is a waste of fossil fuels. The overall result is a net economic negative.

Cindy Hellert, Town of Yates, read a statement where she asks the Town Board to demand that APEX fund a baseline health assessment of residents prior to application. She says that APEX claims that their project will improve health but without a baseline, how can this be proven. She added that the Niagara County Board of Health addressed this concern with APEX and they responded that "the length of time it takes to conduct such a study is directly related to cost". She stressed that no price can be placed on her health and her families health.

TOWN OFFICERS REMARKS

Dan Wolfe, Code Enforcement Officer, said that he is closing out last year's building permits and continuing on property maintenance and fire safety inspections.

Councilman Suhr said that the power plant was originally supposed to be a nuclear plant which was probably why people were afraid of it. He said that Barker taxes have gone up because the power plant had been on a PILOT and runs sporadically which raises the question of why wind is needed when they have a plant in Barker that only runs occasionally. He said that the school deal with Barker was a shell game and that a lot of the folks involved with that now support wind mills. He said that the State encouraged the Towns to combine legal forces. He thinks that the Towns can help each other with this litigation and that it's a good move. Lastly he said that we need a 50-50 vote going into this because it gives us the right to put the brakes on spending if we need to.

Councilman Riggi said that there are a lot of different views on the potential money that could be spent. He agrees with Councilman Suhr that the State was very clear in saying that the Towns should combine forces as much as they possibly can. He said that if anyone should be blamed for this it is the State of New York for not representing us; instead they represent a company that is going to come in and spend money and give the State money and the State gives APEX money as their accomplice.

Supervisor Simon said that he and Roger Wolfe have been working with FEMA for about six weeks on the remediation and mitigation of the Town Park lakefront damage along with the foot of Marshall and Countyline Roads. The application is almost done. Throughout this process the Town was waiting to hear from the State after submitting paperwork at the end of 2017. The State told the Town that everything was on hold until FEMA decided if they were going to fund the project. Today he heard from the State that the Town was awarded \$412,000 for mitigation of these projects. He doesn't have any details yet. If FEMA funded the project, 75% of the costs would be covered; the State will cover 100% of the project. He will get the details out as they become available to him and he is very pleased that the State came through.

ADJOURNMENT

Moved by Councilman Riggi, Whereas there is no new business to be brought before the Board, the meeting be adjourned at 7:55PM.

Seconded by Councilman Whipple

5 Ayes 0 Nays

Motion: Carried

Respectfully Submitted
Michele L. Harling, Town Clerk