

Town of Yates May Board Meeting
8 S. Main St., Lyndonville, NY 14098
May 10, 2018, 7:00PM

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

Excused: Roger Wolfe, Highway Superintendent

Others:	Larry Wolfe	Christine Zimmerman	John Zimmerman
	Cynthia Hellert	Anne Smith	Richard Hellert
	Pam Atwater	James Hoffman	Howard Pierce
	Becky Winters	Chris Bronson	Bob LaPorte
	Agnes LaPorte	Robert Verheyne	Paul Lauricella
	Jim Bansbach	Taylor Quarles	Jonathan Frasier
	Georgette Stockman	Alice Wolanyk	Betty Wolanyk

Supervisor Simon called the May Board Meeting to order at 7:05PM.

PLEDGE OF ALLEGIANCE

SUPERVISOR'S REMARKS

Supervisor Simon mentioned that the same rules of engagement that were outlined last month still apply with a 3 minute max comment period per resident to be made to the Board only, not to each other. The Board may respond if they need clarification but any further discussion should take place after the meeting closes. He also added that a draft of the minutes will be available for the public to review prior to the meeting as early in the day as possible.

PRIVILEGE OF THE FLOOR ON AGENDA ITEMS ONLY

Paul Lauricella, Town of Yates, questioned Resolution No. 65-5/18 and why the bookkeeper is resigning. He doesn't believe that she doesn't have time to do the job. He feels that it's because of the ongoing State audit and says that we should not be contracting with the firm that she owns either. He wondered what will happen to the new bookkeeping software that was just purchased for and belongs to the Town.

Cynthia Hellert, Town of Yates, asked what Local Law #4 was about.

Supervisor Simon responded that it is called the Historic Property Tax Exemption Law.

Howard Pierce, Town of Yates, discussed Resolution No. 59-5/18. He outlined many reasons why he felt that the Inter-Municipal agreement was a bad deal to include; the cost of the new firm as compared to the amount the Town of Yates has spent to date on the Lighthouse Wind project, the question of how the Intervenor funds will be shared, the hiring of another law firm to replace Dan Spitzer without considering other wind attorneys, and the outcome of the Somerset MET tower litigation under the new firm and their cost to litigate that case, to name a few. He felt that something this important should have been put to a Public Hearing.

Agnes LaPorte, Town of Somerset, commented on Resolution No. 59-5/18 and said that it makes sense to have one firm represent both Towns since we're fighting the same fight. She agreed that the Town of Somerset has spent a lot of money on their litigation against APEX but that the Town of Yates will be gaining all of that prior legal experience.

James Hoffman, Town of Somerset, commented on Resolution No. 59-5/18. He read a quote by Mr. Vacco at a radio interview who said a week ago "I only represent those opposed. I am principal in that matter." He said that Mr. Vacco is dedicated to the people and groups that are opposed to wind projects. He feels that we'll get an honest day's work for an honest day's pay.

RESOLUTION NO. 56-5/18

RESOLUTION TO APPROVE MINUTES OF THE REGULAR APRIL TOWN BOARD MEETING

RESOLVED, to approve the minutes of the April 12, 2018 regular Board Meeting as presented to each Board Member.

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

5 Ayes 0 Nays

Motion: Carried

RESOLUTION NO. 57-5/18

RESOLUTION TO APPROVE MINUTES OF THE MAY WORKSHOP MEETING AND PUBLIC HEARING

RESOLVED, to approve the minutes of the May 7, 2018 Workshop Meeting and Public Hearing Minutes as presented to each Board Member.

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

4 Ayes 0 Nays 1 Abstain (Bradley)

Motion: Carried

RESOLUTION NO. 58-5/18

RESOLUTION ADOPTING LOCAL LAW 4 OF 2018

WHEREAS, proposed Local Law No. 4 of the Year 2018, entitled “A Local Law Enacting a Real Property Tax Exemption for Historic Property,” was introduced at a duly called meeting of the Town Board of the Town of Yates on the 12th day of April, 2018, with a copy thereof having been duly given to all board members; and

WHEREAS, due notice of a public hearing to be held thereon on the 7th day of May, 2018, was duly published in the Batavia Daily News, the official newspaper of the Town of Yates, on April 30, 2018, and posted as required by law; and

WHEREAS, copies of the proposed local law were mailed to each person entitled to service of same pursuant to New York Town Law 264(2); and

WHEREAS, such public hearing was held on the 7th day of May, 2018, at which time all interested persons were given an opportunity to be heard thereon,

NOW, THEREFORE, BE IT RESOLVED that the Town of Yates hereby adopts Local Law No. 4 of the Year 2018, entitled “A Local Law Enacting a Real Property Tax Exemption for Historic Property.”

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

4 Ayes 0 Nays 1 Abstain (Bradley)

Motion: Carried

RESOLUTION NO. 59-5/18

RESOLUTION AUTHORIZING YATES TOWN SUPERVISOR TO SIGN INTER-MUNICIPAL AGREEMENT WITH THE TOWN OF SOMERSET FOR THE JOINT LEGAL COUNSEL OF LIPPES MATHIAS WEXLER AND FREIDMAN IN THE LIGHTHOUSE WIND ARTICLE 10 CASE

WHEREAS, the Town has entered into a legal services agreement with Lippes Matthias Wexler and Freidman LLP for representation in the ongoing Article 10 process concerning the Lighthouse Wind Project, and

WHEREAS, the agreement contemplates the sharing of fees for such legal services with the Town of Somerset, which is also represented by Lippes Matthias in the same matter,

NOW, THEREFORE, BE IT RESOLVED to authorize Supervisor Simon to execute an Inter-Municipal Agreement, setting forth the terms and conditions by which the legal fees of Lippes Matthias Wexler and Freidman LLP will be shared by and among the Towns of Yates and Somerset.

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

BOARD DISCUSSION

Councilman Whipple explained that this is not the agreement to hire Lippes Mathias; that was done last month and passed. This is the agreement that puts that into effect. He feels that the agreement has enough bite that it will slow up the use of the new attorney without the Board's approval. There should not be individual phone calls from Board members without the agreement of the whole Board. He added that Mark Davis from Lippes Mathias attended the Workshop meeting and said that the Town of Somerset had hired an outside expert on birds. This particular expert represents both sides, pro and against on the wind issue, so the argument that someone cannot represent both sides is not true. He said that he will support this resolution.

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

Let me share my thoughts on this Resolution.

First – I am not in agreement with the same law firm representing both the Town of Somerset and the Town of Yates in the opposition of the two towns to the Lighthouse Wind Project. Each town having its own law firm in this situation, as has been the case since the start of the proposed project, requires Apex to have to work against two different strategies, costing them time and money. With the two towns sharing the same law firm, Apex will now be able to dedicate all of its time to dealing with just one opposition strategy.

Second – If it is the desire of this Board to use the same law firm, I am not in favor of using Lippes Mathias Wexler Friedman LLP. As stated last month, from September of 2015 through October of 2017, the Town of Somerset expended \$264,677.20 for attorneys from Lippes Mathias Wexler Friedman LLP, while the Town of Yates during the same timeframe expended \$40,044.37 for attorneys from Hodgson Russ LLP. This number is 15.13% of what Somerset expended to basically get both towns to the same point – new Wind Laws and participation in the Lighthouse Wind Stipulations process. Never through the many conversations that I have been privy to about sharing the same legal firm have I ever heard the suggestion that if the towns are going to share law firms, why not use Hodgson Russ LLP. To me this would financially be a more logical choice and, in my opinion, we would definitely not be losing any expertise. I feel like Yates is the tail being wagged by the dog.

Third – If it is the desire of the majority of the Board to not use Hodgson Russ LLP alone or in conjunction with Somerset, law firms other than Lippes Mathias Wexler and Friedman LLP should be researched and interviewed to find the one that best fits our needs and resources and move on from there.

Fourth - 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. 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. I heard from this Board last month that we want to pay 50% of all legal fees in this Intermunicipal Agreement so that Yates will have 50% of the say in all proceedings. We could retain 100% of the say in our proceedings if we stayed with Hodgson Russ LLP or another law firm other than Lippes Mathias Wexler and Friedman LLP.

Fifth – Should this Resolution be passed this evening, and there is no doubt in my mind that it will pass, I would recommend to Supervisor Simon that he be in contact with Somerset to inform them of the following: as of May 8th, between Budget Items A1420.4 and B1420.4 (Contractual Attorney Fees) the Town of Yates has \$14,729.40 remaining for the remainder of 2018, and \$5,000.00 of that is for use toward our retainer fee for Webster Schubel & Meier LLP for 2018. Thus, the Town of Yates has \$9,729.40 left to oppose the Lighthouse Wind Project for the remainder of the year.

In conclusion – This Intermunicipal Agreement with Somerset makes no sense to me in terms of benefits to the Town of Yates.

4 Ayes 1 Nay (Bradley)

Motion: Carried

RESOLUTION NO. 60-5/18

RESOLUTION ACCEPTING THE LETTER OF RESIGNATION OF LYNNE JOHNSON FROM THE POSITION OF BOOKKEEPER FOR THE TOWN OF YATES AND AUTHORIZING THE YATES TOWN SUPERVISOR TO SIGN A CONTRACT FOR BOOKKEEPING SERVICES WITH MILLENNIUM ROADS

WHEREAS, Lynne Johnson has resigned from her position as bookkeeper effective May 10, 2018, by resignation letter dated May 4, 2018, and

WHEREAS, the Town wishes to accept Ms. Johnson's resignation and ensure continuity of bookkeeping services by engaging Millennium Roads, LLC for the performance of booking services for the Town,

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The resignation of Lynne Johnson effective May 10, 2018, is hereby accepted with regret and well wishes, and
2. The Supervisor is hereby authorized to enter into the agreement with Millennium Roads, LLC for bookkeeping services for the Town, effective May 11, 2018 and terminating December 30, 2018.

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

Councilman Suhr said that Lynne Johnson is one of the most honest people he has known over the years and that she has done a good job. He said that it is unfortunate that she is leaving but that she is very busy. He thanked her for doing a great job.

Councilman Whipple echoed that sentiment.

Councilman Bradley felt that it was prudent to continue with Millennium Roads at this point to keep the books working because as of midnight tonight we have no bookkeeping services. What happens in the future will be discussed by the Board. He said that we need to have a bookkeeper in place until then.

Councilman Riggi echoed everyone's sentiments and said that she did a good job and is an honest person.

Supervisor Simon agreed.

5 Ayes 0 Nays

Motion: Carried

RESOLUTION NO. 61-5/18

RESOLUTION TO PAY BILLS

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

RESOLVED to pay bills as follows:

A-Accounts-	\$ 31,080.96
B-Accounts-	\$ 3,231.89
DA-Accounts-	\$ 8,439.37
DB-Accounts-	\$ 12,562.77
Water 4-	\$ 1,912.58
Water 2-	\$
Fire-	\$

TOTAL	\$ 57,227.57

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

5 Ayes 0 Nays

Motion: Carried

PRIVILEGE OF THE FLOOR

Chris Bronson, Town of Somerset, thanked Councilman Riggi for the extensive and exhausting task of reading and commenting on the stipulations. She added that he took efforts to “Make Apex’s bizarrely abstract concepts into concrete and decisive statements of intent.” She said that APEX made quite a few missteps in their “Sloppy Stipulations.”

Paul Lauricella, Town of Yates, commented on the language of Resolution No. 60-5/18 to accept Lynne Johnson’s resignation and to hire Millennium Roads to do the books. He asked if this was an admission that they have been doing the books all along.

Supervisor Simon said that no, it wasn’t. The language has been reviewed legally and says that she had been doing the bookkeeping and that now the firm will be doing the bookkeeping, as per the agreement.

Paul Lauricella, Town of Yates, asked how Millennium Roads would know our books if Lynne Johnson has been our bookkeeper. He also said that he agreed with Councilman Bradley’s logic on the finances with regard to hiring a new lawyer since we have limited funds left in the budget for legal fees.

Supervisor Simon responded that his colleagues are doing due diligence on any future spending and that Councilman Bradley’s numbers are up to date. He said that they listened to people’s concerns at last month’s meeting and discussed capping the Town’s legal expenses and that people were concerned that the Town would have to catch up and spend what the Town of Somerset had already spent, and the answer is no. He added that a case just came up yesterday about stipulations and Somerset decided that there were comments that they wanted made at the end of the stipulations phase. They asked the Town of Yates if they were interested and he said no, that the Town had already decided that they were not going to make any more comments so the Town of Somerset will pay that bill, the Town of Yates will not pay anything. He said that he trusts Dan Engert and the Town of Somerset and that he is confident that this will work and that if he missteps, that his colleagues will call him out on it.

Paul Lauricella, Town of Yates, asked if there was an escape clause in the agreement.

Supervisor Simon said that there was a 10-day notice required if the Town of Yates wants to withdraw from the agreement.

Pam Atwater, Town of Somerset, submitted documents and an affidavit to be kept on record that attests that the funding for SOS is local and donated through the efforts of the hard work, dedication, and generosity of the Town’s constituents. She stressed that to hear otherwise is disrespectful and dismissive. She added that she is tired of hearing more about the project from newspaper articles and news programs than directly from APEX. She said that there is a lot of misinformation being shared by APEX that isn’t true.

Cynthia Hellert, Town of Yates, said that at last month’s meeting she asked the Board to demand from APEX a baseline health study and wondered if that has happened. If not, is it likely that the Town will pursue this. She also said that after reading last month’s meeting minutes that she was puzzled by a statement made by Councilman Bradley where he said that he “Used information received under foil”.

She wants to know who foiled the information, him personally, the Town, APEX? She was confused because she wondered why it would be necessary for anyone to foil information that is public to everyone.

Councilman Riggi stated that the baseline health study is in the Wind Law and that it's pretty clear.

Supervisor Simon said that the wording from Somerset's Wind Law and the Town of Yates Wind Law is a little different in that section.

Councilman Riggi read Section 28 from the Town of Yates Wind Law.

Cynthia Hellert, Town of Yates, questioned whether or not it specifically stated that it was a "baseline health study".

Councilman Riggi said that it does not use the word "baseline".

Cynthia Hellert, Town of Yates, reminded the Board that APEX claims that this project will improve our health and asks how we will know that if we don't know what our health is right now. She has asked this same question of APEX but has not received an answer. She feels that a baseline study is imperative in determining the health effects of a wind project.

Agnes LaPorte, Town of Somerset, mentioned the postcards that were recently sent in the mail, she assumes by APEX, they didn't say who they were from. She said that residents have no idea what to expect because everything is yet to be determined, nothing is being told to anybody, and nobody has a clue about anything. Her emails to Taylor Quarles have been unanswered. She said that if the Town of Yates has a limited amount of funds left for 2018 legal fees, wouldn't it be nice if APEX would pack their bags and leave Town so we could all save a lot of money.

Betty Wolanyk, Town of Somerset, mentioned the recent flyer sent from APEX and their claim that there are 5 wind projects in Wyoming County. She checked into it by calling the Wyoming County Business Center and there are only 4, a misstatement of the facts. She added that when the total amount listed as payment to the Wyoming County Schools was divided by 9 years, and then by 5 School Districts that it's no wonder that the schools are having financial troubles. Lastly she commented on the changing number and size of the turbines to be placed in the Lighthouse Wind Project. She said that most recently, the number and size of turbines is less and wonders if the leaseholders will be fighting over who gets a turbine.

Howard Pierce, Town of Yates, said that with regard to a baseline health study, he would not be sharing his health status with anybody; it should be considered private information. He commented on the Agenda and how late it was available to the public. He would like to see more than resolution titles so that residents can make reasonable comments. He said that by not providing this information, the Town is not acting like an open and transparent Town Government should. He also said that during the Agenda Items only comment period, which applies to Town of Yates business; that only Town of Yates residents should be able to comment.

James Hoffman, Town of Somerset, submitted a picture of a wind turbine blade being transported to the

Arkwright Summit Wind Farm at a traffic circle and submitted specific information on that windfarm. He stated that there are huge pieces of equipment and turbine parts that are needed to build an industrial wind farm being transported on less than suitable roads and that in the end there will be visual pollution seen for miles along the lakefront, which is a unique asset to both of the Towns.

TOWN OFFICERS REMARKS

Dan Wolfe, Code Enforcement Officer, addressed the term “unkempt property” and read what it states in the Property Maintenance Law. He listed examples of unkempt property and said that it’s a difficult judgement call to make that can be subjective. He encouraged residents to call with complaints and he’ll check into it. He said that he had a recent question about permitted uses in the Waterfront Residential District and that there are very few permitted uses there. He explained that there are 7 zoning districts and that he was taught that the term “reasonable expectation” applies to what you would expect to see in each district and that concept is applied across the board. Another term that they use in zoning is “Prescriptive Law” which means that if the local zoning does not specifically state that something is permitted, then it’s not.

Tricia Laszewski, Town Assessor, stated that Grievance Day would be on Thursday, May 24th from 4:00pm – 8:00pm, here at the Town Hall.

Councilman Bradley wanted to publicly thank the Lyndonville Area Foundation for donating \$7,500 toward the Town of Yates Summer Recreation Program.

Councilman Suhr said that he loves that the Town of Somerset residents comes to our meetings and speak since they are our neighbors.

Councilman Riggi commented on the Lighthouse Wind mailing. He warned residents to be careful when you consider the numbers that were in it and reminded them that these were all pre-Article 10 numbers, not Article 10 procedures. There were PILOT payments and Host Community Agreements involved and in the Article 10 world the developer doesn’t have to do a Host Community Agreement, but it wouldn’t change his mind anyways. These numbers look great until you apply the \$1.2 million dollars from the current potential PILOT program and apply to the Town of Yates and you get \$40,000. You can talk to Roger Wolfe and he’ll tell you that \$40,000 won’t buy you a pickup truck. He feels that because APEX wants the project here that they are willing to play a little fast and loose with the truth. Mr. Becker, the Town of Sheldon Supervisor sang the praises of the financial success and tax relief from their wind farm and that may be because Mr. Becker is a member of a family with leaseholders, who are benefitting highly.

Supervisor Simon thanked the public for all of those who posted for the stipulations; there were dozens. It was heartwarming to see the level of professionalism, in-depth analysis and critique that was offered to the developer. He is concerned over the lack of communication from APEX and has expressed this to Taylor. Both Town Supervisors wrote to the CEO of APEX back in February in a professional, non-chippy, stating the facts letter opposing the project and they have not heard back from him. He commented on the Comprehensive Plan and how important it is to take a fresh look at things. He said that the work done on it 20 years ago was excellent and that they are almost finished with the new Plan. He wanted to publicly thank Linda Fisk, Mark Hughes, the Coville’s, Katie Whipple, the other Towns

and Villages and the Committee Members for their efforts and contributions. It has been a long 18-month haul that should be ready for public review soon. There will be a local Public Hearing and vote. He stressed that it is critical for residents to give the Board feedback.

Councilman Riggi said that there are meetings going on with regard to the Lake Ontario Parkway. There are potential plans to cut it down to 2 lanes, to shorten and not maintain portions of it. He attended a meeting in Kendall where a consultant gave a presentation that leaned toward taking 2 lanes out to make it park land. There was a lot of push back from this especially from Kendall and Carlton. What was potentially agreed upon that night is that the Towns wanted 4 lanes open and maintained with enhancements like pull offs, picnic space and park land. He said that no one past the end of the Parkway has been heard from and he felt that the Parkway could be an economic driver for the Town of Yates. He encouraged residents to take the survey that is available on the Town website. It will remain open until August.

ADJOURNMENT

Moved by Councilman Whipple, Whereas there is no new business to be brought before the Board, the meeting is adjourned at 8:00PM.

Seconded by Councilman Bradley

5 Ayes 0 Nays

Motion: Carried

Respectfully Submitted,
Michele L. Harling
Yates Town Clerk