

Town of Yates October Board Meeting
8 S. Main St., Lyndonville, NY 14098
October 11, 2018, 7:00PM

Present: Jim Simon, Supervisor
Wes Bradley, Councilman
Jim Whipple, Councilman
Harold Suhr, Councilman
John Riggi, Councilman
Michele Harling, Town Clerk
Andrew Meier, Town Attorney

Excused: Roger Wolfe, Highway Superintendent
Trisha Laszewski, Assessor
Dan Wolfe, Code Enforcement Officer

Others :	Larry Wolfe	Robert LaPorte	Agnes LaPorte
	John Szalasy	Chris Bronson	Dale Aikitas
	Robert Verhyne	Pam Atwater	Anne Smith
	Judy Esposito	James Hoffman	Georgette Stockman
	Betty Wolanyk	Kathy Evans	Paul Lauricella
	Cheryl James	PJ Trebelhorn	Susan Campbell
	Linda Fisk	Harvey Campbell	Maryellen Royce
	Steve Royce	Ralph E. Smith	Mark Gates
	Tom Rivers	Kate Kremer	Jodi Gates

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

PLEDGE OF ALLEGIANCE

SUPERVISOR'S REMARKS

Supervisor Simon explained that Privilege of the Floor at the beginning of the meeting is for agenda items only. He said that there will be another Privilege of the Floor period at the end of the meeting for all other questions and concerns. He asked all of those that wish to speak to speak clearly and state your name and Town where you are from for the record.

PRIVILEGE OF THE FLOOR ON AGENDA ITEMS ONLY

Paul Lauricella, Town of Yates, commented on Resolution No. 90-10/18 and said that he is opposed to passing this resolution which he feels puts too much power in the hands of a few. He commented on Resolution No. 91-10/18 and said that he was pleased to see that trending was considered when calculating the expenditures for the 2019 budget. He feels that this will produce a more realistic budget and will save the taxpayers money. He commented on Resolution No. 93-10/18 and asked what a first amendment to the Bookkeeping contract means. He asked if there will be future amendments to the contract.

RESOLUTION NO. 89-10/18

RESOLUTION TO APPROVE MINUTES

RESOLVED, to approve the minutes of the September 3, 2018 regular Board Meeting as presented to each Board Member.

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

5 Ayes 0 Nays

Motion: Carried

RESOLUTION NO. 90-10/18

RESOLUTION TO SET PUBLIC HEARING FOR COMPREHENSIVE PLAN

WHEREAS, the Western Orleans County Comprehensive Plan has been made available at the Town Clerk's Office on the counter and on the Orleans County Department of Planning website for public review, be it

RESOLVED, to set a Public Hearing for the adoption of the Comprehensive Plan on November 5, 2018 at 5:30PM at the Yates Town Hall, 8 South Main Street, Lyndonville, NY 14098.

Supervisor Simon explained that the Public Hearing will be held on the night of the November Workshop Meeting. He added that there may not be a vote at the regular November Town Board meeting because they are continuing to get inputs from the public at the Orleans County Planning Department who is forwarding them to the Municipalities that will eventually be voting on the Plan. He said that there is still opportunity to voice your opinions and concerns.

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

5 Ayes 0 Nays

Motion: Carried

RESOLUTION NO. 91-10/18

RESOLUTION TO ADOPT THE TENTATIVE BUDGET AS PRELIMINARY BUDGET FOR THE YEAR 2019

WHEREAS, the Town Clerk presented the Town Board with the Tentative Budget on October 8, 2018 and the Board has had a chance to review such Budget and confer, be it

RESOLVED, that the Tentative Budget be adopted as the Preliminary Budget for the year 2019.

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

5 Ayes 0 Nays

Motion: Carried

RESOLUTION NO. 92-10/18

RESOLUTION TO SET PUBLIC HEARING FOR PRELIMINARY BUDGET

WHEREAS, the Preliminary Budget has been approved, be it

RESOLVED, to set a Public Hearing for the adoption of the Preliminary Budget on November 5, 2018 at 6:00PM at the Yates Town Hall, 8 South Main Street, Lyndonville, NY 14098.

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

5 Ayes 0 Nays

Motion: Carried

RESOLUTION NO. 93-10/17

RESOLUTION TO AUTHORIZE THE SUPERVISOR TO SIGN "FIRST AMENDED AGREEMENT FOR BOOKKEEPING SERVICES" WITH MILLENNIUM ROADS LLC

WHEREAS, the Agreement with Millennium Roads LLC for Bookkeeping Services for the Town of Yates was executed by Resolution No. 60-5/18 (May 10, 2018), be it

RESOLVED, to authorize the Supervisor to sign a "First Amended Agreement for Bookkeeping Services" with Millennium Roads, LLC, which provides certain clarifications as to the services and duties to be provided by Millennium Roads, LLC to the Town.

Supervisor Simon explained that the language in the original Bookkeeping contract was basic and needed more detail and a statement of work. The statement of work was provided to all of the Board members for their review to make sure that the details are more specified within the contract.

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

4 Ayes 1 Nay (Bradley)

Motion: Carried

RESOLUTION NO. 94-10/17

RESOLUTION TO PAY BILLS

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

RESOLVED to pay bills as follows:

Fund A (General – Townwide)	\$ 33,874.02
Fund B (General – Outside Village)	\$ 1,559.02
Fund DA (Highway – Townwide)	\$ 11,742.56
Fund DB (Highway – Outside Village)	\$ 10,294.52
Water 4-	\$ 9,137.47
Water 2-	\$ 41,957.18
Youth-	\$
Fire-	\$

TOTAL	\$108,564.77

Offered by Councilman Suhr, who moved its adoption

Seconded by Councilman Bradley

5 Ayes 0 Nays

Motion: Carried

PRIVILEGE OF THE FLOOR

Pam Atwater, Town of Somerset, brought to the Board’s attention a few things that had transpired since the last Board meeting. One article was titled: “Power Coalition briefs state lawmakers on opposition to Lighthouse Wind project” where Senator Ortt met with members of the POWER Coalition. Another article “Industrial wind turbines do kill birds” says that the American Bird Conservancy has major concerns about Apex’s plans to build their project along the 12-mile stretch of Orleans and Niagara County shoreline. The last thing she submitted was a copy of a delegation letter that was posted on the DPS site that was written by Senator Ortt and three Assemblymen to the Siting Board about the intense local opposition to the Lighthouse Wind project including new health concerns.

Ralph Smith, Town of Yates, asked the Board if in the payment of legal bills they have exceeded the original budget line item for legal services for 2018 and if so, where will the money be transferred from into the legal services account to pay those bills.

Anne Smith, Town of Yates, thanked those Board members that voted to consolidate the Towns legal teams as suggested by law judges back in 2016 at the intervenor funds meeting. She said that

she attended the APEX forum on October 2nd and asked about the importance of doing a health study and her question was not answered. She submitted a study published by professors at the Harvard Kennedy School where their findings show that the transition to wind would require 5 to 20 times more land than previously thought which in turn would warm average surface temperatures over the Continental US by 0.24 degrees Celsius which would negatively affect the climate system.

Harvey Campbell, Town of Yates, asked why the Town Board is paying 50% of the Lighthouse Wind legal fees when they are only getting 16.33% of the turbines. He asked how they justify that and asked where the money is coming from to pay those bills. He added that wind turbines will do away with global warming, carbon footprints and the gas house affect.

Paul Lauricella, Town of Yates, asked that the Town Board members at the Public Hearing on the 5th of November to vote on the Comprehensive Plan to please fully and thoroughly read the bill and understand it prior to voting for it. He said here we go again with neighbor against neighbor in the Town of Barre with another windfarm that will not do anything to help the environment.

Judy Esposito, Town of Yates, thanked the Board for their support in fighting the windfarm. She is in favor of the 50-50 split. She said that they have been in this fight for 5 years and the placement of the turbines is not written in stone. She said that we are fighting this fight together, with the Town of Somerset and we should support each other.

John Szalasny, Town of Amherst, was here representing the Sierra Club Niagara Group. He said that while he attended last month's meeting he heard a comment "by a Sierra Club member" that inaccurately portrayed the organization's stance on wind energy. He submitted a letter from the Club's Niagara Chairperson that stated that since Lighthouse Wind had not released its site plan to date that "the implication that the project was improperly sited had no basis in fact and the speaker did not speak for the Sierra Club".

Kathy Evans, Town of Yates, thanked the Board for agreeing to work with Somerset and split the legal fees 50-50. She said that we are in this together and need to work together to solve this problem.

James Hoffman, Town of Somerset, commented on the APEX forum held on October 2nd and said that it was a "staged propaganda event tightly controlled and well organized, to send APEX's intended messages". He said that based on the site plan the Towns local laws were totally ignored and is a huge challenge to our home rule. He added that the Host Community agreements that APEX discusses are a huge bribe and would come at a steep price to the community and to beware.

Betty Wolanyk, Town of Somerset, submitted research done with regard to windfarms and tax reduction. She outlined examples of windfarms in Miami and Cass Counties in Indiana, Flat Rock Windpower LLC and Flat Rock Windpower 11 LLC, and Canastota Wind LLC located in the Town of Fenner where in these examples the tax savings was either very little, short-lived, or a fraction of what they would have been if the wind projects paid taxes on fair and full assessments.

Susan Campbell, Town of Yates, said that it was easy for Town of Somerset residents to say that they don't want a PILOT from APEX when they already had the benefit of PILOT payments for 30 years from the power plant that was located there. She added that Niagara County has already given them money for a lawyer to fight the turbines and we will be paying 50% of the legal fees to support them and stop a project that could help Yates residents pay their taxes and she thinks this is ridiculous.

Kate Kremer, Town of Yates, thanked the Board for negotiating the 50/50 division of legal costs with the Town of Somerset to fight the wind project as recommended by the Administrative Law Judge. She added that at stake is \$200,000 in intervenor funds in the event that APEX files an application. The Town of Yates will have 50% of the voice to decide how to proceed with those funds. She explained that the Town of Somerset has given up their larger share of the Intervenor funding because of this agreement.

Agnes Laporte, Town of Somerset, said that she was interested in how the turbines would be decommissioned. She read that the oldest wind farm was in Alberta, Canada, 23 years old, and no longer functional. She said that in that case they will be removing all of the concrete from the ground and that APEX plans to take out only 4 feet of the concrete and leave the rest in the ground which could affect the soil. She thinks that all of the concrete should all be removed.

TOWN OFFICERS REMARKS

Councilman Bradley asked Supervisor Simon if he was correct in saying that the Siting Board has not been convened yet and will not be convened until there is an application.

Supervisor Simon said that that is correct and is his understanding as well.

Councilman Suhr said that he saw the map of the proposed turbines, there is no definite yet, and that we will be getting 8 in the Town of Yates and that the people that thought that they would be getting one will not be which must be driving a wedge in that group. He added that he thought that the Sierra Club was a sketchy group that says they're for birds and trees and carbon footprints and even the President spoke about this at his last rally and said that if you want to find a bunch of dead birds and animals, go to the bottom of a windmill. He said that if the President of the United States with a lot more resources than any of us have tells us that the windmills are terrible, we have a good President.

Councilman Riggi read the following prepared statement:

Much discussion has taken place regarding APEX Clean Energy's PILOT payment offer and why the Town of Yates has opted out of the New York State Real Property Tax Law (RPTL)-487. As you may remember, the RPTL requires the town to enter into a PILOT with an entity to compensate the Town for tax revenue loss due to real property use. In this case APEX's Lighthouse Wind project will use real property and our position is that APEX will pay full tax for that use.

Normally, entities will want to enter into a PILOT due to the expense of paying full taxation for the use of taxable property (in this case land). This is exactly why APEX wants the Town of Yates to enter into a PILOT, which again, we will not do.

A quick look at the numbers will make the case for full taxation.

- APEX wants to pay a PILOT total to both Yates and Somerset of \$1,500,000 annually. Sounds like a lot of money, right?

However,

- The PILOT will be paid based on the number of turbines within the Town. As we all now know, APEX has proposed eight turbines for Yates (17% of the total = 8/42).
- The Orleans County portion of the Lighthouse Wind Project would receive \$255,000 of the total PILOT.

Again, sounds like a lot of money, right? But wait:

- That \$255,000 needs to be split with the School, County and Town with each getting:
 - The School receives 50% = \$127,000
 - The County receives 30% = \$ 76,000
 - The Town receives 20% = \$ 51,000

The injustice is that the Town, which will absorb most of the punishment from a wind turbine factory, reaps the smallest benefit.

Now, with the Town of Yates and school opting out of RPTL-487 and the County supporting these positions, APEX's tax bill changes significantly.

- APEX has chosen a Vesta-150 for the Lighthouse Wind project which will cost a minimum of \$4,000,000 per Turbine.
- 8-Vesta-150's at \$4,000,000 per turbine is \$32,000,000 in assessed value
- The approximate tax rate in the Town of Yates is a bit over \$31.00/\$1,000 assessed value.
- At that tax rate, the Town of Yates would yield \$1,000,000 a year from full taxation on 8 turbines (32,000 x \$31.28).

So at full taxation, the Town of Yates would gain \$1,000,000 per year in taxes, an increase of \$949,000 annually over APEX's PILOT offer.

And this is why APEX wants to pay a PILOT: \$51,000 per year vs. \$1,000,000 per year. Exactly why the old rule of thumb regarding these projects rings true: "No PILOT-NO Project".

APEX is trying to get off on the cheap and we're not going to let them. Frankly, even \$1,000,000 a year is no-where near enough to offset the destruction and punishment this project will inflict on the town and constituents. This is one of the many reasons the Town of Yates is and continues to be overwhelmingly opposed to APEX Clean Energy's Lighthouse Wind Industrial Turbine Project.

As a final note he said that none of the proposed turbines to be sited in the Town of Yates are legal. None of them meet the Town's 3-mile limit from the lakeshore as outlined in the Town Law and they do not meet the 6-times height from residences, they are not legal. He said that APEX does not care about our Town Law and that they want to get turbines in here regardless of whether or not they need to shove them down our throats and we are not going to stand for it.

APEX is not our friend.

Supervisor Simon said that we are just about at the end of what was budgeted in 2018 for legal expenses. He said that it is tight and he thinks we'll be close. He is hopeful that they prudently looked at the amount in the budget that they allotted. He is in communication with Supervisor Engert about legal expenses and the budget. He feels that the steps they took for the motion with regard to APEX's behavior were appropriate and the good news is that they spent half of what they would have. He explained that if they were still working through Hodgson and Russ that they would still be "double handling the freight". He said that on the surface it looks inappropriate to proceed with a 50-50 split of the legal bills and outlined seven reasons why that split is still a good idea.

1. It gives us a 50-50 voice. He said we should have an even voice in protecting the citizens of the Town of Yates and in what direction the legal team goes in protecting the residents of the Town.
2. It reduces our costs by half for legal action to be taken by the legal firm. He explained that we could have conceivably spent twice as much without the agreement for all legal action taken.
3. The avoidance of double handling of the freight is important and figuring out and deciding a smaller percentage like 20% or 17% would be difficult to decipher when talking about trashing our local laws and throwing them aside. He asked how we would decide what 17% of the input from a legal team would be worth to represent the Town of Yates' interests.
4. The Administrative Law Judges strongly recommended that the Towns of Yates and Somerset combine legal teams as documented on the Department of Public Services website.
5. It is very valuable to have a former Attorney General, Dennis Vacco, on our law team because he is one of the few people who understand the inner workings of the dictatorial system that the State has set up in the Article 10 process that the State has forced upon us.
6. Nobody knows the actual percentage of the project that will be in the Town of Yates. A board was displayed at the APEX forum with dots on a map held at the school but none of the public has seen an electronic copy that has been submitted to the Department of Public Service for public viewing yet. So, because these plans have not been made public except for those dots on a map nobody knows where the access roads, operation buildings, concrete batch locations, power lines and substations will go. There may be more than 17% of the project located in Yates. He finds it very frustrating that the public does not yet have full public disclosure of the details of the project.

7. He said by having a joint legal team with a 50-50 voice we have the best chance of stopping APEX from eviscerating our local laws. He said that it is very frustrating that after years of thoughtfully approaching the changes to our local laws, APEX plans to throw them all out. They are not abiding by the 3-mile Fish and Wildlife recommendation, the 6-times the height of the turbine which at 590 feet high puts them at over half of a mile and based on what was depicted on the map they are all closer than a half mile; less than a third of a mile in some cases with no regard for property lines which is also in our local law. They are not paying any attention to our laws and will be relying on the Siting Board to make the decisions. So, we need a legal team to fight this company and the possibility of a Siting Board who is going to shove it down our throats in a State proceeding because all of our laws are being ignored. He was very pleased to see the letter from Senator Ortt, Assemblyman Hawley and Assemblyman Norris that was just posted about the NYS Health Alliance request for a public health analysis and baseline health study. He said that APEX is planning on a 45 decibel maximum; the sad part is that this is not allowable in either Town Law, our limit is well below that and it is also below that for nighttime. He feels that for all of our laws that have been discarded, this one is the most disturbing. He is glad to see that at the State level, they will be fighting for us. He stressed that the 50-50 split of the legal bills is still the prudent thing to do and welcomed further discussion after the meeting.

ADJOURNMENT

Moved by Councilman Riggi, Whereas there is no new business to be brought before the Board, the meeting is adjourned at 7:52PM.

Seconded by Councilman Suhr

5 Ayes 0 Nays

Motion: Carried

Respectfully Submitted,
Michele L. Harling
Yates Town Clerk