

**Town of Lyme
July 9, 2008
Regular Town Board Meeting
6:30 P.M.**

At 6:10 P.M. the Town Board was served with a NOTICE OF PETITION In the Matter of the Application of

Guy E. Gosier, Julia E. Gosier, David N. Bourquin, Jeanine E. Bourquin, Charles B. Kingsley, Lawrence E. Comins, Janice Comins, Charles W. Mount, Charles A. Munk, and Dawn M. Munk

Petitioners

For a Judgment under Article 78 of the Civil Practice Law and Rules

VS.

Scott G. Aubertine, Michael P. Countryman, James R. Madill, Warren A. Johnson, and G. Norman Schreib, Individually and as Members of the Town Board of the Town of Lyme, New York,

Respondents,

PLEASE TAKE NOTICE, that upon the annexed Petition of Guy E. Gosier, Julia E. Gosier, David N. Bourquin, Jeanine E. Bourquin, Charles B. Kingsley, Lawrence E. Comins, Janice Comins, Charles W. Mount, Charles A. Munk, and Dawn M. Munk, the Petitioners herein, duly verified the 6th day of July, 2008 and the affirmation of James A. Gosier, Esq. Dated the 6th day of July, 2008, and application will be made to a term of this Court, to be held at the Supreme Court, 317 Washington Street, 10th Floor, Watertown, New York on July 31, 2008 at 10:00 a.m., or soon thereafter as counsel may be heard, for a judgment pursuant to CPLR Article 78 nullifying Respondents' action on May 6, 2008 rejecting or otherwise denying a Petition filed with the Town Board of the Town of Lyme pursuant to Town Law 265 relative to an amendment of the Town of Lyme Zoning Ordinance, and nullifying or otherwise setting aside the actions taken by the Town Board of the Town of Lyme subsequent to the rejection or denial of such Petition, and for such other and further relief as to the court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that an Answer and supporting documents and affidavits, if any, shall be served at least five (5) days before the date of such hearing.

Petitioners designate Jefferson County as the place of trial. The basis of venue is the location of the Town of Lyme.

Dated: July 7, 2008

TO THE SUPREME COURT OF THE STATE OF NEW YORK

1. *The Petitioners herein, Guy E. Gosier, Julia E. Gosier, David N. Bourquin, Charles B. Kingsley, Lawrence E. Comins, Janice Comins, Charles W. Mount, Charles a. Munk, and Dawn M. Munk are each residents of the Town of Lyme, Jefferson County, New York.*
2. *The Respondents herein, Scott G. Aubertine, Michael P. Countryman, James R. Madill, Warren A. Johnson, and G. Norman Schreib, are individually and collectively duly elected members of the Town Board of the Town of Lyme, Jefferson County, New York (hereinafter referred to as the "Town Board").*
3. *That for nearly one year, the Town Board had considered an amendment to the Town of Lyme Zoning Code to regulate wind energy facilities. A local law was introduced by the Town Board and one or more public hearings were held thereon.*

As and For Petitioners' First Cause of Action

4. *That at a meeting of the Town Board held on April 17, 2008 owners of at least 20% of the land area in the Town of Lyme, including but not limited to the Petitioners, duly presented to the Town Board a Protest Petition pursuant to 265 of the Town Law with respect to the proposed local law amending the Zoning Ordinance to govern wind energy facilities. Pursuant to 265 of the Town Law, upon presentation of such a Protest Petition, the adoption of such local law would require the approval of a three-fourths majority of the Town Board members.*
5. *Upon presentation of this Protest Petition on April 17, 2008, the Town Board took no action with respect to the proposed local law.*
6. *At its next meeting on May 6, 2008, the Town Board announced a determination that the Protest Petition filed with the Town Board on April 17, 2008 was invalid and as such did not qualify as a Protest Petition under 265 of the Town Law. In nullifying or otherwise rejecting the Protest Petition, the Town Board determined that the Protest Petition had not included owners of at least 20% of the land are in the Town of Lyme. Such determination was made by arbitrarily and capriciously rejecting the signatures of the owners of nearly 45% of the total land area represented by those signing the Protest Petition. The Town Board, without basis in law or fact, arbitrarily and capriciously determined that, among other factors, each and every title owner of each parcel mush have signed the Protest Petition for that parcel to be included in the calculation of land ownership representation. In addition, the Town Board arbitrarily and capriciously determined that "each [Protest Petition] sheet should be witnessed by someone and notarized. There is no proof that the actual property owner signed the petition unless each sheet is witnessed and notarized."*
7. *Having arbitrarily and capriciously rejected the Protest Petition, the Town Board immediately voted on the proposed local law governing wind energy facilities. The proposed local law was adopted with three (3) members of the Town Board voting in favor and two (2) members of the Town board opposed. As such, the local law was adopted with less than a three-fourths majority which would have*

- been required had the Town Board not arbitrarily and capriciously rejected the Protest Petition.*
- 8. That the Town Board, by arbitrarily rejecting the Protest Petition, has failed or otherwise refused to comply with the express conditions of 265 of the Town Law.*
 - 9. That each of your Petitioners, as signatories to the Protest Petition, has been aggrieved by the arbitrary and capricious action of the Town Board.*
 - 10. That as a result of the Town Board's unwarranted rejection of the Protest Petition, the local law governing wind energy facilities was adopted in a manner contrary to 265 of the Town Law. It is respectfully submitted that the adoption of the local law was improper, unjust, and should be nullified.*

As and For Petitioners' Second Cause of Action

- 11. Petitioners repeat and reallege each of the foregoing allegations as if more fully set forth herein.*
- 12. That the adoption of Local Law No. 3 of 2008 was arbitrary and capricious. In adopting the Local Law, the Town Board arbitrarily and without justification unduly restricted the orderly development of wind generating facilities in the Town of Lyme. Specifically, the Town Board effectively banned the development of wind generating facilities by including in Local Law No. 3 a minimum setback of 4,500 feet from the high water marks of Lake Ontario and the Chaumont River as well as 4,500 feet from the Village of Chaumont and the Hamlet of Three Mile Bay. These excessive setback requirements eliminate the vast majority of the land in the Town of Lyme from development for wind generating facilities. These arbitrary setback requirements were contrary to the opinion of Town residents as expressed in a public survey and amount of exclusionary zoning.*

In addition, the adoption of the Local Law was arbitrary in That the Local Law:

Automatically determines that an application for a Wind Energy Conversion Systems ("WECS") would constitute A Type 1 action under the New York State Environmental Quality Review Act (SEQRA). As such, the Local Law makes No distinction between the establishment of a single wind Turbine or a project, which includes dozens of turbines.

Prohibits wind generating facilities which increase the Ambient noise level by more than 5 decibels. Such limits on noise levels are below those recommended by the New York State Department of Environmental Conservation and would Be among the most restrictive in the State.

Small wind generating facilities would be subject to the Approval of adjoining property owners despite the fact that the Proposed facility meets all other criteria of the Local Law. In Essences, adjoining property owners would have an absolute

Veto over residential windmills.

- 13. It is submitted that even if this Court determines that the Town Board properly rejected the Protest Petition that the adoption of Local Law No. 3 was itself arbitrary and capricious and should be nullified.*
- 14. That no previous application has been made for the relief sought herein.*

Wherefore, Petitioners respectfully request an Order of this Court,

- a) Adjudging and declaring that the Protest Petition is a valid petition pursuant too 265 of the Town Law;*
- b) Adjudging and declaring that the determination of the Town Board of the Town of Lyme on May 6, 2008 rejecting the Protest Petition was arbitrary and capricious;*
- c) Adjudging and declaring that the subsequent adoption of Local Law No. 1 of 2008 by a vote of less than three-fourths majority was invalid or otherwise void, and;*
- d) For such other and further relief as to the Court may seem just and proper.*

Supervisor Aubertine called the regularly scheduled Town Board Meeting to order at 6:30 p.m. It was opened with a Prayer and the Pledge of Allegiance. In attendance: Supervisor Aubertine, Councilmen Countryman, Schreib, Johnson and Madill, Assessor's Barton, Cornell, and Gotham, and approximately 30 others.

Supervisor's Report

RESOLUTION 2008 – 97: *Motion by Councilman Countryman and seconded by Councilman Madill accepting the budget transfers suggested by Bookkeeper Tom Bowie. Transferring four thousand dollars (\$4,000.00) from A1990.4 Contingent Account to A1420.4 Attorney Contractual Account. Five ayes. Motion carried.*

RESOLUTION 2008 – 98: *Motion by Councilman Countryman and seconded by Councilman Johnson accepting the budget transfers as suggested by Bookkeeper Tom Bowie. Transferring two thousand seven hundred twenty-nine dollars (\$2,729.00) A9060.8 Hospital Insurance to A9055.8 Disability Insurance. Five ayes. Motion carried.*

RESOLUTION 2008 – 99: *Motion by Councilman Schreib and seconded by Councilman Johnson accepting the June 2008 Supervisor's Report as presented by Bookkeeper Tom Bowie. Five ayes. Motion carried.*

Clerk's Report

Total State, County and Local Revenues: \$11,090.46

Audit of Bills

RESOLUTION 2008 – 100: Motion by Councilman Schreib and seconded by Councilman Countryman to advertise for electricians and carpenters that can provide the Town general repairs for less than \$1000.00. The ad will request rates and availability, hourly and emergency rates. Any applicants must provide proof of insurance and worker’s compensation. Five ayes. Motion carried.

RESOLUTION 2008 – 101: Motion by Councilman Countryman and seconded by Councilman Madill accepting Abstract # 13 in the amount of \$3,530.58. Five ayes. Motion carried.

RESOLUTION 2008 – 102: Motion by Councilman Johnson and seconded by Councilman Madill accepting Abstract # 14 in the amount of \$75,450.98. Five ayes. Motion carried.

RESOLUTION 2008 – 103: Motion by Councilman Schreib and seconded by Councilman Johnson to give the fifth phone to Deputy Zoning Officer James Millington. Five ayes. Motion carried.

RESOLUTION 2008 – 104: Motion by Councilman Madill and seconded by Councilman Schreib approving the June 2008 Regular Meeting Minutes. Five ayes. Motion carried.

It has been recommended that the building that houses the baler at the Transfer Site is kept warm and dry during the winter months. The Town board has previously passed a Resolution approving \$65,000.00 to update the Transfer Site. Councilman Countryman and Schreib will look into the building project at the Transfer Site.

Department Reports

Assessor’s Report – Marsha Barton – The final roll has been completed. Final roll figures and a comparison showing the increase from 2007 are as follows:

Town of Lyme 2008 Final Tax Roll

2008

Assessment Total	113,614,940
Village Taxable Assessment	11,475,639
Town Taxable Assessment	106,107,643
County Taxable Assessment	105,494,462
School Taxable Assessment	107,109,818

2007

Assessment Total	110,373,680
Village Taxable Assessment	10,944,075
Town Taxable Assessment	102,806,351
County Taxable Assessment	102,762,794
School Taxable Assessment	103,675,131

Increase

Assessment Total	+ 3,241,260
Village Taxable Assessment	+ 531,564
Town Taxable Assessment	+ 3,301,292
County Taxable Assessment	+ 2,731,668
School Taxable Assessment	+ 3,434,687

Municipal Water Board Report – Marsha Barton:

Old Town Springs Road Water District # 5 project is still waiting on funding and Comptroller approval. The Town has received a revised Pre-Eligibility Determination (Interest Rate Change) letter from Rural Development. A new interest rate of 2.75% is now in effect, which will revise the anticipated user cost of \$741.00 per year.

Point Salubrious Proposed Water Project:

There is nothing new to be reported. The feasibility study is now being conducted.

Three Mile Point Proposed Water Project:

There is nothing new to report. Residents are still gathering signatures.

Water Facility:

The coin receptor has been replaced and the revenues for this year are approximately \$1,500.00 over the same time last year.

Fern Comins:

Marsha spoke to Fern on July 7th and Fern stated she had not heard from Tim Mason as of yet. She will be trying to contact him again.

Water Use Law:

The Water Board has finished their re-writing of the Water Use Law. They are going to ask Bill Scarpecchi to review it before we present it to the Board. They will also submit the revised copy to Mark Gebo for his review and approval.

Three Mile Bay Cemetery Report – Julia Gosier:

There was a burial June 13th with a \$350.00 internment fee.

Julie discussed landscaping the Cemetery entrance with Lynn Godek from NYS Department of Transportation.

A copy of the Cemetery lot map went to Jeanine Munger from the NYS Department of Transportation. This information was needed for their survey work.

Julie met with two families regarding their lot layouts. A four-grave lot and a prepaid internment resulted in \$1,350.00 in revenues for the Cemetery.

Terra House continues to work hard at mowing and trimming. The frequent rains make it difficult for her to keep up.

Planning Board Report – Judy Tyndall:

Judy addressed the Town Board with a letter tendering her resignation as the Planning Board secretary at the May meeting. The position was posted and Cathy Munger applied. Judy personally feels that Cathy would be a good choice to connect the Zoning Board of appeals and the Planning Board, since they are so entwined with many of the same issues.

Judy took the opportunity to say it was a pleasure working with everyone involved and one of the greater learning experiences of her life. She said she could certainly appreciate what everyone must go through as a Town Board member. It is not an easy task to be confronted by a neighbor and / or a long time friend on controversial issues. It is even harder to leave personal likes and dislikes at the door and make decisions that benefit the majority of the Town of Lyme residents knowing that others will be unhappy with those decisions. She commended the Board for that task.

Judy thanked everyone and stated that it had been a pleasure but it is time to move on.

Zoning Enforcement Officer's Report – Deputy Zoning Officer – Jim Millington:

Mr. Millington would like to sit down with Councilman Schreib to be certain they have all the rules and regulations of the Town's Zoning Laws.

June 11, 2008 thru July 8, 2008

	Issued	Denied	Resolved	Pending
Zoning Permit Application	8	5		5
Demolition Permits	1			
Variance Applications	4			3(*)
Complaints	15			15
Site Visits	28			
Stop Work Orders	1			
Investigations	0			
Letters / Correspondence	8			
Special Permits	0			

Permits issued for:

Deck	4	2		
Garage	1	1		
Home / Cottage				
Pole Barn				
Storage Buildings / Sheds	3			

(*) Indicates Variance Applications submitted to the Town of Lyme Zoning Board of Appeals.

Other Actions

While investigating a complaint on Fire Road 33 / 34, the ZEO discovered five additional properties with serious Town of Lyme Buildings and Law violations and Zoning type violations.

While investigating a complaint on Spencer Road the ZEO discovered a serious Town of Lyme Buildings and Structures Law violation.

All violations have been entered in the Complaint / Violations log and action has been started in all cases.

The Town Board as a whole, indicated that they were very impressed with the ZEO and Deputy ZEO's job performance.

Resolutions and Motions

RESOLUTION 2008 –105: Inter Funding Resolution:

Councilman Schreib who moved its adoption, and seconded by Councilman Countryman offered the following resolution:

WHEREAS, the Town Board of the Town of Lyme has created a special improvement district known as the Town of Lyme Water District #5, and

WHEREAS, in conjunction with the creation of the District there are various documents the Supervisor must sign, for the construction and funding of such District, and

WHEREAS, the Town Board is in the process of completing the application for funding through the United States Department of Agriculture Rural Development to assist with the costs associated with the creation and construction of Town of Lyme Water District #5, now therefore be it

RESOLVED that the Town Board of the Town of Lyme does hereby authorize the Supervisor to execute any and all necessary documents associated with the creation, funding and construction of the Town of Lyme Water District # 5.

The question of the adoption of the foregoing resolution was duly put to vote as follows:

<i>Councilman James Madill</i>	<i>Yes</i>
<i>Councilman Mike Countryman</i>	<i>Yes</i>
<i>Councilman Norm Schreib</i>	<i>Yes</i>
<i>Councilman Warren A. Johnson</i>	<i>Yes</i>
<i>Supervisor Scott Aubertine</i>	<i>Yes</i>

The resolution was thereupon declared and duly adopted.

RESOLUTION 2008 – 106: Motion by Councilman Schreib and seconded by Councilman Madill appointing Cathy Munger to the position of Planning Board Secretary, replacing Judy Tyndall for the remainder of 2008. Five ayes. Motion carried.

RESOLUTION 2008 – 107: Motion by Councilman Countryman and seconded by Councilman Johnson allowing the baseball teams participating in the 2008 Willie Putnam Tournament to be held on July 18, 19, and 20th permission to use the Morris Track Ball Field. Five ayes. Motion carried.

Correspondence

Information on Local Government Conference in Potsdam

Willie Putnam Request and Insurance Form

Jefferson County Agricultural Society: Request for budgeted appropriations for 2009 from Towns to help offset the increased cost of the County Fair and it's promotion.

Letter addressed to the Town Board from Trina Comins:

A copy of the letter was provided to the Board Members and they were given a month to review the contents. A copy of the letter was also given to Water Board Chairman, Marsha Barton.

Old Business

Three Mile Bay Easement

Councilman Madill feels that there is no need in trying to pursue getting more money from the NYS DOT for the Three Mile Bay Cemetery land acquisition due to the cost of appraisals and anything else that may arise.

Councilman Schreib is setting up an appointment with a woman from the DOT to discuss this matter and will report to the Town Board at the next meeting.

New Truck was purchased under the “*Shared Services Program*”. The Town and Village will each have use of the vehicle. The truck will be here by September.

Sandy Cornell – provided the Town Board with a picture of a sign that is used by the Town of Clayton; placing it on any properties that will be involved with a public hearing. The sign would let neighbors know of any activity that may be associated with that particular piece of property. The sign is placed in front of the subject property 10 days prior to a public hearing.

New Business

Salt Pile – Councilman Schreib and Superintendent Parker will be meeting with Bernier and Carr tomorrow at 9:00 a.m. at the new site for the salt pile on the Town’s 12E property.

Privilege of the Floor

There were no comments taken from any one attending the meeting.

Councilman Countryman made a motion to adjourn at 7:45 p.m.

Minutes Respectfully Submitted by

Kim Wallace
Town of Lyme Clerk