

**REGULAR BOARD MEETING
JUNE 3, 2015**

**TOWN HALL
7:30 P.M.**

Present: Supervisor Martin A. Ballowe, Councilmen Jay P. Boardway, Jeffrey A. Genzel, Lawrence A. Murtha.

Absent: Councilman Gary E. Vara.

Also Present: Town Attorney Kobiolka and Highway Superintendent Telaak.

A motion was made by Supervisor Ballowe and was seconded by Councilman Boardway to give Assessor Sue Fitzner approval for travel, lodging and schooling for Assessor licensing.

four (4) Ayes Carried

Councilman Genzel: Previously the Town Board tabled the Penflex points for the North Boston Fire Company. They have been resubmitted and have been approved by the Town Board.

A motion was made by Councilman Genzel and was seconded by Councilman Murtha to approve the points for posting at the North Boston fire hall.

four (4) Ayes Carried

A motion was made by Supervisor Ballowe to have the Town Board sign a document letting Orchard Park know that we will no longer collect their school taxes. He requested a roll call vote.

Councilman Murtha	Aye	Councilman Genzel	Yes
Councilman Boardway	Aye	Supervisor Ballowe	Aye

four (4) Ayes Carried

Supervisor Ballowe asked that the Town Attorney send the signed letter certified to the Orchard Park School Board and the Business office.

A motion was made by Councilman Boardway and seconded by Supervisor Ballowe to adopt the minutes of the May 20, 2015 regular meeting.

four (4) Ayes Carried

A motion was made by Councilman Murtha and seconded by Supervisor Ballowe, upon review by the Town Board, that fund bills on the Abstract dated May 28, 2015 in the amount of \$29,895.68 be paid.

four (4) Ayes Carried

Received and filed correspondence from Maplewood Cemetery Association, Inc.

The following persons were heard:

Bryant Burns, Chestnut Lane is here once again trying to get the matter resolved at the end of Chestnut Lane. He believes the matter is a violation of town code.

Russell Goldberg, Hillcrest Avenue sited the New York Highway Law Section 171. He stated that the section of the town law that he was accused under was inappropriate and was dismissed. He has not performed anymore work. He stated that as he reads the Highway Law the Town Board has nothing to do with the Highway right-of-way unless town funds are going to be expended. He asked that that Town Board stop interfering in this matter and let the Highway Superintendent take charge of it the way he should be according to the law.

Daniel Kurek, Chestnut Lane stated that Mr. Goldberg told him and Mr. Burns that he had permission to dump fill at the end of Chestnut Lane. We are now aware that he did not have a permit and dumped 27 loads of fill illegally on the town's property. Mr. Kurek sited Section 101.4 of the Boston Town Code (Required distance from public road or property line, grade of slope)

A motion was made by Councilman Genzel and was seconded by Supervisor Ballowe to open the public hearing at 7:40 p.m. granting a franchise to maintain vacant land at 8555 Boston State Road, Boston, New York.

four (4) Ayes

Carried

Councilman Genzel read the legal notice.

Councilman Genzel stated that Mr. Rachwal has done this for several years. The property is located next to the Trooper's Barracks. We are a right to farm community, so he does plant crops there, which we really appreciate because it keeps the grain in the town and he does a great job. I don't see the road being trashed. Bob can verify that. I would recommend if you have any comments or concerns please come up to the mic.

Councilman Boardway stated that Mr. Rachwal has been an excellent steward of our property. That particular piece of property is essentially unusable as anything else, we have maintained it for years and now he does it for us. He adds value to the town and maintains our individuality with respect to being a rural community.

**Notice of Public Hearing
Notice to the Citizens of the
Town of Boston**

The Boston Town Board, Erie County, New York, will hold a Public Hearing at the Boston Town Hall, 8500 Boston State Road, Boston, New York on June 3, 2015, at 7:40 PM Eastern Pre-vailing time to hear comments regarding the granting of a franchise to Donald Rachwal residing at 5474 Keller Road, Boston, New York to mow, trim and/or cultivate the vacant land owned by the Town of Boston at 8555 Boston State Road, Boston, New York SBL# 227.00-5-57.11 for the term of June 3, 2015 to October 30, 2015. Questions please call (716) 941-6113 x116.

DATED: MAY 7, 2015
PUBLISHED: MAY 21, 2015

BY ORDER OF THE TOWN
BOARD
JENNIFER A. MULÉ,
TOWN CLERK

"This institution is an equal opportunity provider and employer"

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Councilman Murtha stated that he agrees, but would like to see the town look into the possibility of renting that and bringing some income to the town. It is a pretty sizable piece of farmland.

A motion was made by Councilman Genzel and was seconded by Councilman Boardway to close the public hearing at 7:44 p.m.

four (4) Ayes

Carried

**RESOLUTION 2015-05 A RESOLUTION GRANTING A FRANCHISE TO
MAINTAIN VACANT LAND AT 8555 BOSTON STATE
ROAD, BOSTON, NEW YORK UNDER § 64(7) OF THE
NYS TOWN LAW**

At a Meeting of the Boston Town Board, Erie County, New York, held at the Boston Town Hall, 8500 Boston State Road, Boston, New York on the 3rd day of June 2015 at 7:40 pm Eastern Prevailing Time, there were:

Present: Supervisor Martin A. Ballowe Councilmen Jay P. Boardway, Jeffrey A. Genzel, Lawrence A. Murtha

Absent: Councilman Gary E. Vara

Councilman Boardway presented the following resolution and moved for its adoption:

WHEREAS the Town of Boston is the owner of certain undeveloped acreage at 8555 Boston State Road, Boston, New York; and

WHEREAS the Town of Boston would like to keep the undeveloped acreage that it owns mowed and trimmed for the health, safety and welfare of its citizens with little or no cost to the Town; and

WHEREAS Donald Rachwal, who has maintained this acreage in the past, is willing and capable of mowing, trimming and cultivating at his own expense.

NOW THEREFORE BE IT RESOLVED, that the Town of Boston hereby authorizes the Town Supervisor to grant a franchise to Donald Rachwal, residing at 5474 Keller Road, Boston, New York, to mow, trim and/or cultivate the vacant land owned by the Town of Boston, located at 8555 Boston State Road, Boston, New York, SBL #227.00-5-57, for the term of June 3, 2015 to October 30, 2015; and

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Motion Cont'd: BE IT FURTHER RESOLVED, that Donald Rachwal shall provide all machinery, labor and costs for this franchise including insurance with no cost to the Town.

Seconded by **Councilman Boardway** and put this to a vote this resulted as follows: **AYES: 4 NOES: 0 ABSENT: 1**

Supervisor Ballowe reopened the floor for comments:

Daniel Kurek asked if anyone on the Town Board, Highway Superintendent or The Town Clerk gave Mr. Goldberg permission to dump fill at the end of Chestnut Lane on town property.

Town Attorney Kobiolka stated that as far as he knew there were no permits filed.

Supervisor Ballowe stated that if he does not have a permit and there is nothing in the town, than he was never given permission.

Daniel Kurek stated that the town had a bid process for having this remediated or cleaned up. Is that going to happen?

Councilman Boardway stated no, at this point it is not. There is a certain dispute between neighbors up there and there is litigation involving the town. He stated they can sue each other, but it's not the town's problem.

Daniel Kurek stated that Mr. Goldberg that he lives on Hillcrest. He and Mr. Burns live at the end of Chestnut Lane. He asked why nothing has been done for the last year.

Councilman Boardway stated that the town has exhausted all of everything we are going to do up there.

Town Attorney Kobiolka stated that Mr. Goldberg was cited in town court by the Code Enforcement officer.

Councilman Boardway stated that the town does not need to be involved in the neighbor's disputes.

Supervisor Ballowe stated that when the town is being sued or in litigation or dealing with insurance companies, everything comes to a halt, we don't do anything until all that is done under advisement of our town attorney.

Daniel Kurek: Why did you get proposals to get the fill removed?

Councilman Boardway stated he was hoping it was only going to be 50 cents, because he was going to throw money up there on the hill.

Supervisor Ballowe stated that when they started getting proposals it was because he and Councilman Genzel went up there with Town Engineer Hannon and looked at it. Now, they are dealing with insurance companies, lawyers and law suits. So it comes to a halt.

Daniel Kurek stated that everyone on the board seems to give them the benefit of the doubt. He asked why Councilman Boardway has such a problem.

Supervisor Ballowe stated that they do the best they can with getting things settled and they work hard at them.

Althea Killeen, Cole Road spoke regarding the Omphalius/Cole Road Community Services Group home. She and the town attorney have had some very constructive conversations and she wanted to add some information and encouragement to the Town Board. As she mentioned previously, the Department of State has a local government services office where they act in whatever way is helpful to the Town Board and to the municipality. The person who is very aware of this particular situation's name is Christopher Eastman and his telephone number is (518) 473-3376. He is not an attorney. He is on the staff of the Local Government Services. She stated both she and the Town Attorney agree that procedurally where the town is at now is the Commissioner hasn't made his decision. But the underlying information was incorrect. The Town Attorney has shared his articulate motion to dismiss, which she is sure the Commissioner will ignore completely because we were in the wrong forum. The hearing went forward, by mistake. It went forward because the town building inspector, by mistake, stated that it was a buildable lot. She is suggesting that Christopher Eastman help give background information to the board or any individuals from the town who call him. At some point the Commissioner will decide something and then maybe they will permit the siting of the group home at that location. At that point, Community Services would come back to the town for a request for a building permit and the town would be absolutely correct in denying it. Then Community Services would have to start over and seek a variance here at the town level. Office of counsel, particularly for the town attorney to contact, that phone number is (518) 474-6740. The entire group of individuals she has spoken to in Albany are incredibly supportive of the town's position. She offered her help in any way if needed.

Linda Janish, Chestnut Lane stated that she believed it was last October that Supervisor Ballowe and Councilman Genzel went up to Chestnut Lane with a landscaper and physically inspected the area in question. At that time both of them advised her, Mr. Burns and Mrs. Kurek that they wanted the issue resolved

Linda Janish Cont'd: as quickly as possible. She stated she was advised that a survey would be done and weather permitting, there would be improvements to get it as close to its original pristine condition. It is now eight months later and nothing has been done. She questioned the personal guarantee by Supervisor Ballowe and Councilman Genzel, but yet nothing has been done.

Councilman Genzel stated that he personally thinks that area is an environmental mess. He stated they were up there and they did get a cost and had the town engineer look at it. He stated the quote for that was expensive, about \$8,000. We also received a price from Mr. Kurek to remove all of it for a little over \$5,000. We've had several other roads destroyed from hauling heavy trucks. He stated he would love to get that taken care of it, but it costs. He stated that it would be more aesthetic and good for the road to crown it, slope it, seed it, plant some trees and try to get it back to aesthetically pleasing. He apologized that this has not been taken care of. He stated he is one vote and spending \$8,000 to go in and do that is difficult for some of these board members to swallow. We do have the litigation going on. He does not know which way to turn. He stated that Mr. Goldberg should remove every single spoonful of dirt from that right-of-way that is considered unimproved. Mr. Goldberg stated that he was going to petition the Highway Superintendent, but Mr. Goldberg needs a reason to petition, you can't just say "I want a road in front of my property". He suggested that an expert in this area be contacted to realize what exactly the process is. He stated he knows the law and the process, but he's not an attorney, so he won't speak on how that process works.

Supervisor Ballowe stated that they were both up there and weather didn't permit us to do it at the time. Then you take into litigation and what happens with litigation is the town ceases to do anymore until it's all settled.

Linda Janish asked if the litigation that the town's involved with involves the issue of the illegal dumping of Mr. Goldberg.

Town Attorney Kobiolka stated that it is part of the issue, but not the total issue. He noted that if the Town Board has an estimate and would like him to send a copy to Mr. Goldberg, he could send a copy for the prior damage for the balance for the damage and material to the Highway a year ago, which he has not responded to and owes the town \$1,400 just for that without the dumping, and then give him a reasonable amount of time to correct the situation, and if not, the board can authorize further action.

Councilman Genzel stated they have spent numerous hours going over this. We got a lot of other things going on too, but obviously this is our job and he wishes it could be cleaned up and he wishes it never happened, but it did. His personal opinion is that Mr. Goldberg should remove it.

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Linda Janish wanted to be clear on the Town Board's decision that until all of the litigation is totally and completely resolved, nothing, whatsoever, no further action is going to be taken. It's going to be left in its environmental mess. She asked if this was a fair and clear understanding on her part.

Town Attorney Kobiolka stated he would want to resolve the lawsuit so that there are funds available to take care of the matter.

Supervisor Ballowe stated that we can move forward once the lawsuit is taken care of. He stated we did have the engineer out there. He gave us a full report on the slope, the grade, everything that we should do and we were planning to do it.

Linda Janish stated "so this could take years"?

Supervisor Ballowe stated unfortunately, we can't do anything. We are held by the law and insurance companies. They tell us what to do.

Robin Reiner, Chestnut Lane stated what happens if someone gets injured on that piece of property. Whose responsibility is it then?

Town Attorney Kobiolka stated that is a complicated question because it is the town's property, but someone intervened and made the situation dangerous.

Robin Reiner asked if the town will try to recoup the money from Mr. Goldberg.

Town Attorney Kobiolka stated yes.

Robin Reiner stated she is just concerned that someone could be injured on that property.

Supervisor Ballowe stated that the property is posted and gated. He would be willing to put up "No Trespassing signs" if it would make the residents feel better. He stated that there is still \$1,400 owed to the town, which is the cost of the bollards. If they get that settled, they will go from there.

Althea Killeen, Cole Road inquired if the town has considered simply having Mr. Goldberg arrested for criminal trespass and then restitution would be automatic because people become inspired to pay the bill when they are facing jail.

Councilman Boardway stated that they are not allowed to interfere with the court system. This is a board of essentially legislators. We are prohibited against interfering with our justices in town and suggesting to them or giving them any advice on what they should or should not do in individual instances.

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Althea Killeen commented that was not correct. The Town Attorney should be talking to the district attorney about whether criminal trespasses are applicable. That's all she's suggesting. Not that the Town Board act in any way.

Councilman Boardway noted that the Town Board has explored every option.

Althea Killeen stated that was too bad.

A motion was made by Supervisor Ballowe and was seconded by Councilman Boardway to close the floor.

four (4) Ayes

Carried

A motion was made by Councilman Genzel and was seconded by Supervisor Ballowe to approve the live entertainment license for Couzins, 7115 Boston State Road.

four (4) Ayes

Carried

A motion was made by Councilman Boardway and was seconded by Councilman Genzel, regarding the request for a special permit for dumping from Russell Goldberg at 6570 Hillcrest Ave, and that in light of the past actions of this property and in light of the fact that prior restitution has not been paid to the Town of Boston, and in light of the ongoing dispute both in the criminal court system and the civil court system regarding this particular parcel, that this application be denied.

four (4) Ayes

Carried

Patricia Bailey, Registered Architect and consultant to Ken Klober stated that the project is an expansion of the current showroom and additional office space for expansion in the future. Everything has been approved through the site plan, it is in compliance with all of the zoning. It has already met approvals from the Town Engineer.

A motion was made by Councilman Boardway and was seconded by Councilman Genzel upon the recommendation of the Town Engineer, James Hannon, that the Town Board has classified the Site Plan Review - Hamburg Overhead Door, SBL # 211.14-1-5.111] located at 5659 Herman Hill Road, as an unlisted action under SEQR and therefore declare lead agency status.

four (4) Ayes

Carried

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A motion was made by Councilman Boardway and was seconded by Councilman Genzel upon the recommendation of the Town Engineer, James Hannon, that Town Board as lead agency, has determined that after taking a long hard look into the Site Plan Review - Hamburg Overhead Door, SBL# 211.14-1-5.111] located at 5659 Herman Hill Road received and dated May 12, 2015, find that the proposed action will not have a significant impact on the environment, and declare a Negative Declaration and that no further action is required per 6 NYCRR part 617.

four (4) Ayes

Carried

A motion was made by Councilman Boardway and was seconded by Councilman Genzel upon the recommendations of the Planning Board and Town Engineer Hannon to approve the proposed Site Plan for the expansion of Hamburg Overhead Door, located at 5659 Herman Hill Road as submitted by Jeff Kuhn.

four (4) Ayes

Carried

Town Clerk Mulé reported on the following:

- Boston Free Library "Dinner and a Show" Fundraiser held by Legislator Mills, Thursday, June 11, 5:30 pm to 7:00 pm. Entertainment by Nickel City Reptiles & Exotics, at 6 pm
- Household Hazardous Waste Drop-off, Erie Community College, South Campus, Saturday, June 13th 9 am-2 pm
- The Trooper Brinkerhoff 5k and 10k run will be June 20th. Registration and packets will be available on Friday, June 19 from 5 pm to 8 pm. You can find a link on the Town of Boston's website under Happening Now.
- Next UNYTS Blood Drive, Tuesday, June 23 from 2:30 pm to 6:30 pm

Highway Superintendent Telaak reported on the following:

- Shoulders of the roads are being mowed.
- Highway workers are out doing some skid paving on Rice, Shero and Rockwood Roads.

Town Attorney Kobiolka had nothing to report.

Councilman Murtha had nothing to report.

Councilman Genzel reported on the following:

- As fire company liaison met with three presidents and two chief's for the Fire Company negotiations. Submitted recommendations to the Town Board.

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- Calls for this month: North Boston - 5, Patchin - 7, Boston - 6. He did not receive numbers for the Boston Emergency Squad. Suggests it could
- Patchin Fire Company meat raffle, Saturday, June 13.
- Boston Fire Company Auction, Sunday, June 7.
- Storm Water project on Boston Cross Road bid opening June 15 @10 a.m. Received a \$100,000 grant for this project.
- July 4th fireworks celebration is coming up quickly. Received \$1,200 of our \$5,500 goal. Donations can be sent to the Supervisor's Office in care of the fireworks display.
- Thanked the Parks employees for their hard work.

Councilman Boardway reported on the following:

- Summer recreation registration continues. Please register early. Recreation Director will be interviewing for staff positions.
- There's an ongoing investigation of the hit and run. Please contact the NYS Police.
- Received notice from Zoning Board of Appeals Chairman Beverly Kent.

Councilman Vara was absent.

Supervisor Ballowe reported on the following:

- Received monthly reports from the Town Clerk, Code Enforcement officer and Dog Control Officer.
- Recently obtained new park benches and bleachers.
- Concrete will be poured soon under the shelters at the south end of town, under the shelter behind the Recreation Center, and in the places where there are new park benches.
- Erosion took part of the walking path and land. Erie County Water and Erosion Department will be contacting us for assistance.
- Thanked everyone who helped out with Memorial Day. Read a Thank you Letter from Erie County Clerk Christopher Jacobs.
- Constantly working on the proposed housing project at Cole and Omphalius Roads.

A motion was made by Supervisor Ballowe and was seconded by Councilman Boardway to adjourn the meeting at 8:23 p.m.

four (4) Ayes

Carried

JENNIFER A. MULÉ, TOWN CLERK