

## Town Board Minutes April 7, 2010

Present: Supervisor Martin A. Ballowe, Councilmen James E. Pluta and Jeffrey A. Genzel and Jay P. Boardway and Councilwoman Cathy A. Maghran.

Also Present: Town Attorney Kobiolka and Code Enforcement Officer Ferguson.

Rev. Ronald Sprehe, St. Martin's Lutheran Church opened the meeting with a prayer.

A motion was made by Supervisor Ballowe and was seconded by Councilman Boardway to cancel the April 21, 2010 Agenda Review meeting and Regular Town Board meeting.

Supervisor Ballowe	Aye	Councilman Boardway	Aye
Councilman Genzel	Aye	Councilman Pluta	Nay
Councilwoman Maghran	Nay		

three (3) Ayes two (2) Nay Carried

A motion was made by Councilman Boardway and seconded by Councilman Genzel to adopt the minutes of the March 17, 2010 regular meeting.

five (5) Ayes Carried

A motion was made by Councilman Pluta and seconded by Councilwoman Maghran, upon review by the Town Board, that fund bills on the Abstract dated April 1, 2010 in the amount of \$124,184.12 be paid.

five (5) Ayes Carried

Received and filed Erie County Water Authority Tariff Amendments.

Supervisor Ballowe noted that a petition signed by 25 Wildwood Drive residents regarding lawn clean-up and repair due to road work in the fall of 2009 was received and filed in the Town Clerk's Office.

Donald & Elizabeth Schutt, 6181 Rice Road: We were just informed on Monday that we are included in the Water 2, Ext. #3 addition. We actually had to ask if we were included in the plan and we were told we were. We are definitely against the proposed plan as it stands. We have a good supply of water and I don't feel it's necessary for us to have it. I understand some of our neighbors are also against it. We request that the Town Board look into this and we will also investigate it further. When we bought the property in 2003, this water district wasn't proposed until 2007.

Councilman Pluta asked which town officials said you weren't in the district?

Donald Schutt: We applied for the building permit in September 2008, and spoke with Code Enforcement Officer Ferguson.

Eric & Paula Sears, V/L Deer Run Road: We have roughly 60 acres and this installation would not benefit us in any way. We would have to cross several ravines and we would never use it. We appreciate the people that do want it and need it; we want to be left out of the project.

Barbara Moore, 7004 Liebler Road requested to move the Requests from the floor section of the agenda to the end of the meeting. She noted that placing the signal light at the foot of Omphalius Road is wasteful. She noted that there are two fire stations and an emergency squad that have no emergency light in front and the 20 or 30 seconds they have to wait can mean the difference in someone's life.

Councilwoman Maghran noted that it was just being looked into as a possibility and it would only be a flashing light to slow down some of the traffic.

Barbara Moore: I understand that, I still think it's wasteful because if you are travelling in a southerly direction, you are on a blind grade immediately before you come to Omphalius Road, which means that

light won't be seen until they are right on top of it. It may be a benefit going north. Because of the proposed subdivision, I'm guessing we have a situation where we are doing double duty. We are possibly putting in this light in order to accommodate the subdivision. In speaking with a Buffalo Fireman after telling him about this light, he feels it's not a legal necessity, but definitely a safety issue. I think that is what we should be most concerned with. Two fire companies and the emergency squad have no light. They serve us well and I think we should protect them.

Wanda Betts, 6184 Wildwood Drive: I am one of the residents that petitioned the Town Board for the clean up of Wildwood Drive. What is the next step for the determination of this because all of these stones are beginning to become embedded into the ground? There were 25 homes and a third of them are senior citizens who are having a difficult time cleaning the stones.

Highway Superintendent Telaak: I have been down there several times and checked out these lawns. There are very few stones there. Driving down the street you can not even see the stones. I suggest anyone to drive down that street to see just how ridiculous this is to think that we would go down there and rake the lawns, and now you say you want them top soiled?

Wanda Betts: No, we didn't know how bad it was going to be. If you would have done the street sooner, versus a couple days ago when you were looking, the stones had been embedded because the grass is high. Some of the yards were just plastered. When we start mowing our yards there are going to be stones thrown every where. This could have been an easy situation had it been addressed immediately.

Highway Superintendent Telaak: How do you suggest that we were going to rake stones that are so fine and very few. We did eight and a half miles of road last year. You were opposed to us oil and stoning your road because you wanted a new blacktop road. You were the only one who had a complaint.

Wanda Betts: As mentioned before of the 25 homes, 9 of them have senior citizens, others have health conditions. It would just be nice if just once a resident could ask for something and the answer is "we'd be glad to do that for you", but we never get a response like that. So, hopefully a stone will not go flying and put someone's eye out because that would be a horrific ending to something that could be avoided.

Supervisor Ballowe read the legal notice in regards to Proposed Local Law No. 1 of the year 2010 entitled a Local Law to rezone 7223 Boston State Road which contains approximately .76 acres of land SBL No. 211.14-1-12.1 from C-1 (Local Retail Business District) to C-2 (General Commercial District).

Meredith Connor, Attorney for Great American Tool Company: We are requesting that the consideration for rezoning be postponed and that a new notice be issued to revise the legal description to reflect what our client is buying. There have been some changes since the original contract and the seller and buyer have agreed to divide a back portion of the property that was not previously agreed upon. The legal description will be revised and we would like a new notice issued so that the rezoning notice correctly reflects what is being purchased and to consider the rezoning at the next Town Board meeting.

Town Attorney Kobiolka: Is the new description going to be within the same description which was already approved by the Planning Board?

Meredith Connor: Yes.

A motion was made by Councilman Pluta and was seconded by Councilwoman Maghran to postpone the public hearing to consider the Rezoning application of North Boston Fire Company, (Great American Tool Company), 7223 Boston State Road to rezone .76 acres from C-1 (Local Retail Business District) to C-2 (General Commercial District), Proposed Local Law No. 1 of the Year 2010.

five (5) Ayes    Carried

Town Clerk Shenk noted that the public hearing was never convened and at this point we should reschedule the public hearing.

A motion was made by Councilman Pluta and was seconded by Councilwoman Maghran to reschedule the public hearing to consider the Rezoning application of North Boston Fire Company, (Great American Tool Company), 7223 Boston State Road to rezone .76 acres from C-1 (Local Retail Business District) to C-2 (General Commercial District), Proposed Local Law No. 1 of the Year 2010 for May 5, 2010 at 7:45 p.m.

five (5) Ayes    Carried

Dolores Schlee, 7799 Hywood Drive requested the Town Board pass a referendum (resolution) to be forwarded to New York State to repeal the Health Care Bill.

Dolores Schlee Cont'd: She noted that if signatures are needed she would be happy to carry petitions. Dolores passed out U.S. Constitutions and stated that the Constitution is being turned upside down.

Scott Dinse, 8947 Deer Run Road: I oppose the water project on Hillcroft and Deer Run Roads. All the residents on Deer Run Road agree that we don't want that water if we are going to be paying \$1,200 to \$1,600 yearly for it. If this can be reworked to a point that it's \$500 or \$600 a year than that would be doable to keep us a part of.

Councilman Pluta: How long have you owned your property?

Scott Dinse: Five years.

Councilman Pluta: Were you part of the voting process?

Scott Dinse: I never got a real true line of voting on it. I was approached about it when I started building. I was ok with it because I was told to put my name on the petition if I thought it was going to be ok or if I liked it and then it would be reviewed and reworked. Now, I find out my signature wasn't just to see if we could get this going but to begin it. I feel as though I was lied to. This project has gone from being a down hill water supplied project and has been completely turned around to a top hill water supplied project now. As a new Town Board I would hope that you would review everything you need to and listen to every resident on that hill before this moves forward.

Paul Tuttle, V/L Deer Run Road: I'm definitely against the project. I was talking to my neighbor; Jarod Miller at 6142 Hillcroft and he stated he didn't know anything about it. I gave him a copy of the map, plan and report. He could not be here tonight, but he stated he was against this also.

Eric Sears: Paula and I have owned our property for five years we were never notified either. The only notification we received was a registered letter stating there was going to be a meeting about this new water district. Several of us showed up with a lot of questions and we didn't receive any answers.

Former Supervisor Eagan said it has been so long since it was looked at that he didn't know now. Unofficially we were told by our neighbors, we never had the option to vote on anything.

Councilman Pluta: I'm trying to figure out if most of the property on Deer Run Road was vacant land when the petition was circulated.

Eric Sears: About half.

Supervisor Ballowe noted that his assistant, Kathy has a packet of everything on that plan, if you would like one to please see her. As that project sits right now, the project has been stopped. The engineer's will not go forward until they hear from us as a Town Board and we get answers to the questions we have.

Eric Sears: Our property is set back 1,500 feet, for us to pipe this water back and through several ravines which really can't be done effectively. If we were forced to have it we would never use it.

Donald Schutt: As far as Elizabeth and I, we are just on a fact finding mission right now. I don't feel that it's appropriate for us to make any statements other than we don't believe that we need or it is beneficial for us to have water on Deer Run Road.

Councilman Pluta: I wasn't on the Town Board at that time, but let me give you a little back ground on how this works. Generally they develop a water district and take petitions around to the homeowners to sign. If there is a certain percentage that sign than it goes out to a vote. If the majority of the people vote yes, than the project continues. Obviously there will be a minority of residents like you that don't want it.

Donald Schutt: I understand the need for potable water and fire protection for these residents that unfortunately have bad or dry wells, however, we have done much research before buying our parcel knowing that we had suitable water supply for potable use. I do understand that we are not in the majority that wants it, but also, we are distant from the end of the project.

Councilwoman Maghran: Does the back of your property back up to the Deer Run property?

Donald Schutt: We actually front on Rice Road. We have a driveway that goes from Rice Road to our parcel that is in between Deer Run and Rice Roads. We do not have any frontage on Deer Run Road. I just don't see how it would be beneficial to me.

Councilman Pluta: When it's voted on and it's one of the greatest things about a democratic society is that the majority rules and there are going to be minority groups out there that don't want it and I realize that.

Donald Schutt: I don't disagree with that, however, shouldn't we have been notified that we've been written into this?

Councilman Pluta: There should have certainly been notice given to every resident for a vote.

Councilman Genzel: Mr. Schutt, do you have a copy of the petition?

Donald Schutt: Yes I have and I've been trying to come up to speed on this, because this is the first time I learned we were included in the water district. When will I be notified about this again?

Councilman Boardway: At this point the project is on hold because there have been additional requirements that we are investigating. It was pointed out to all of us this week that your parcel did not have that frontage on Deer Run Road. We did question that.

But we are in a position where we have five different agencies telling us what to do. We will do everything possible to make sure the residents up there are kept aware of the project.

Town Clerk Shenk: There is no need for a vote on a project of this size as long as the petition has the majority of the property owners and it is deemed qualified by the town attorney and it was at that time. Generally, for larger projects they have a vote because collecting all the signatures would be too cumbersome.

Supervisor Ballowe: As I've told most of you in this room, we are just coming up to speed with this. We are reading through everything that was brought out and put every bit of information that Town Clerk Shenk, the attorneys and myself could find into a packet for you. I will be more than happy to organize a separate meeting with anyone who is involved.

Donald Schutt: That would be more than acceptable and we would appreciate any open discussion. In the interim we would like to find out more facts.

Scott Dinse: Is this going to go through. How do we know what we are going to be paying? I feel like I was tricked into signing this. I might be the only one on Deer Run that actually put a name down. I'm interested in reviewing this or seeing what can happen.

Councilman Pluta: There are actually two signatures from Deer Run Road on the petition and it is in the packet. The packet does have the estimated cost per property owner is \$1,349.74. It does go into what the projected cost would be. We don't set that limit. That is done by the USDA and the NYS Comptrollers Office. They set a threshold as to the maximum amount that they feel a resident should be paying.

Scott Dinse: So basically if this does go through, there is no way of turning around and seeing if people still want this. If all of us on Deer Run Road do not want it, will there still be enough votes for it to come up Hillcroft and not Deer Run Road.

Councilman Pluta: The way the petition is set up and signed, the majority of the residents signed it. I am not aware of any mechanism to reverse it. I'm not saying there isn't, just that I'm not aware of one.

Scott Dinse: It's not coming up Hillcroft Road, it's coming down from the top. But what I meant was just Hillcroft Road getting it. They need the water, we don't. I've lived in this town for 39 years and it's been great.

Councilman Pluta: The amount hasn't changed from the original petition.

Councilman Genzel noted that Scott Dinse did not sign the petition, his wife did.

Scott Dinse: That's correct, but she was not aware of anything either. She was not told and she did not get a chance to read anything. We were new to that area and we were played with.

A motion was made by Councilwoman Maghran and was seconded by Councilman Boardway to approve the following Use of Facility Applications for the year 2010:

- a. Peter & Elizabeth Liddon ? June 5                      b. Jennifer Cavarello ? August 7
- c. Kalik & Fowler ? July 18      d. Redwing Dr. Family Picnic ? June 6
- e. Boston Youth Baseball ? May 15

five (5) Ayes    Carried

A motion was made by Councilman Genzel and was seconded by Councilman Pluta to renew the Special Use Permit from Robert DeSantis for a temporary structure at 6346 May Drive to expire 12/31/2011.

five (5) Ayes    Carried

A motion was made by Councilwoman Maghran and was seconded by Councilman Boardway on the recommendation of Parks Superintendent Telaak to appoint Amanda Jensen to the Parks Department at \$9.00 per hour, as a seasonal employee beginning April 12, 2010.

five (5) Ayes    Carried

A motion was made by Councilwoman Maghran and was seconded by Councilman Boardway to change the first Agenda Review meeting of the month from Tuesday to the first Wednesday at 6 p.m.

five (5) Ayes Carried

Received a recommendation from the Planning Board to rezone Boston Valley Commons, 7074 Boston State Road from C-1 to C-2 with stipulations.

Councilman Genzel noted that the Town board will not schedule a public hearing to rezone 7074 Boston State Road until phase 1 landscape and drainage requirements are completed in their entirety.

Received and filed monthly reports from Town Clerk, Tax Collector, Recreation Director, Dog Control Officer, Assessor and Code Enforcement.

#### PROCLAMATION MUNICIPAL CLERK'S WEEK

Highway Superintendent Telaak noted brush pick up has begun. All streets will be completed once and the next pick up will begin the first week of May. Call the Highway Department if you need your ditch cleaned. Pot hole patching will begin soon.

Councilwoman Maghran noted that there have been some very large piles of brush put out and believes it may become dangerous.

Highway Superintendent Telaak noted that the flyer distributed states there will be no complete tree removals, especially when tree companies take the trees down. If a tree blows over in your yard and you cut it up yourself and drag it out to the road, we will pick it up.

Town Attorney Kobiolka noted that at the last board meeting he was asked for his legal opinion in regards to insurance coverage of boys and girl scouts who work with the Conservation Advisory Council when they come and work on town property. He stated that in his opinion these volunteers are well covered.

Town Attorney Kobiolka stated that he has had a chance to work with Town Engineer Hannon and welcomed him.

Town Attorney Kobiolka noted that the town has been receiving a lot of complaints about the parking at Boston State and Boston Cross Roads. At the request of the Town Board he will be taking a look at the possible remedies and local laws that can be applied to alleviate this issue.

Councilman Pluta reminded about the Fishing Derby on May 8th at 10 a.m. He thanked Supervisor Ballowe for donating prizes.

Councilman Pluta inquired whether Highway Superintendent Telaak had a chance to look at the areas near the ponds. There are some issues with holes near the ramps that need addressing.

Highway Superintendent Telaak noted that they will look at it tomorrow.

Councilman Genzel noted that he met with various people to review and revise the site plan process. The next meeting is April 13th.

Councilman Genzel noted he met with Town Engineer Hannon to discuss the Creekside Subdivision.

Councilman Genzel noted that he met with landowners on Hywood Drive, Meadow Drive and Homestead Road in regards to Drainage.

Councilman Genzel noted that the Capital Improvement Committee met for the first time and they are investigating the future of the old trooper's barracks. The next meeting will be April 29th and they will be doing a walk through to see what the possibilities can be.

Councilman Genzel noted that they are still looking for volunteers for the ethics committee.

Councilman Genzel noted that children under the age of 16 do not need a fishing license for the Fishing Derby.

Councilman Boardway met with all the fire chief's in town and discussed the hazardous materials response team that the town wants to use. He stated per NYS the town has to make provisions to have an arrangement with a hazardous materials response team to work with the fire companies. In the Southern tier, we have two options; we can use Erie County, who provides the service for free. We have to sign a letter of understanding with them to have them come out. In the past Southtown's Hazardous Materials response team has been used at a cost of approximately \$2,000. In an effort to investigate saving money, that contract has only been renewed on a three month basis for this year so far. The fire chief's are recommending that we keep Southtown's Haz-Mat, but the Town Board wants to further investigate to possible use Erie County.

A motion was made by Councilman Boardway and was seconded by Councilman Genzel to authorize Supervisor Ballowe to extend the current contract with Southtown's Hazardous Materials team for an additional three months, expiring June 30, 2010.

five (5) Ayes    Carried

Councilman Boardway noted Director Crotty forwarded him the job descriptions he would like the Town Board to adopt for the mission of the Office of Emergency Management. The Town Board will be given these descriptions for review. They have been assigned radio call numbers, so we are officially on the grid now.

Councilman Boardway noted there are still some 50 Grand Gala tickets available and there will be a gun raffle at Boston Fire Company on April 17th and the next Meat Raffle at Patchin Fire Company will be May 8th.

Councilman Boardway noted that he will be attending a meeting for the Southern tier Scenic By-way organization. There is grant money available for the Scenic By-way and the Town of Boston may be eligible for some signage and beautification projects.

Councilwoman Maghran noted that registration is underway for Baseball and Softball. Bids to repair the scoreboard have been solicited. Summer Recreation applications for Day Camp and Employment are available in the Town Clerk's office and online. All former employees were contacted.

Councilwoman Maghran noted that the Erie County Health Department was contacted in regards to the inspection of the snack shack.

Councilwoman Maghran noted that the annual egg hunt was a success.

Councilwoman Maghran noted that bids were received for the installation of a water fountain in the town park. We are waiting on more.

A motion was made by Supervisor Ballowe and seconded by Councilman Genzel to adjourn the meeting at 8:30 p.m.

five (5) Ayes    Carried

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DAVID J. SHENK, TOWN CLERK