

Town Board Minutes April 18, 2001

REGULAR BOARD MEETING TOWN HALL

APRIL 18, 2001 7:30 P.M.

Present were Councilman Damian P. Wiktor, Councilman Stephen K. Tills, Councilman Karl J. Simmeth Jr., Supervisor Lisa M. Rood, and Town Attorney Michael F. Perley.

Absent: Councilman Dennis J. Mead and Highway Superintendent Wayne C. Kreitzbender

Florence Wendling, Saint Johns Roman Catholic Church, opened the meeting with a prayer.

A motion was made by Councilman Simmeth and seconded by Councilman Wiktor to adopt minutes of the April 4, 2001 monthly meeting.

four (4) Ayes Carried

A motion was made by Councilman Tills and seconded by Councilman Simmeth, upon review by the Town Board, that the General Fund and Special District Bills on Abstract #4A, dated April 18, 2001 in the amount of \$130,348.85 be paid.

four (4) Ayes Carried

A motion was made by Councilman Wiktor and seconded by Councilman Tills, upon review by the Town Board, that the Highway Bills on Abstract #4A, dated April 18, 2001, in the amount of \$12,803.73 be paid.

four (4) Ayes Carried

Received and filed Erie County Sheriff Report for March 2001.

PROCLAMATION ? EAGLE SCOUT ? MICHAEL AMADORI

RESOLUTION 2001-18 PRELIMINARY REGIONAL WATER CONSORTIUM

CONCEPT PLAN

Supervisor Rood commented that the formation of a Regional Water Consortium consisting of the towns of Orchard Park, Aurora, Wales, Boston, Colden, Holland and Eden shows that these towns have a vision for the future.

Councilman Wiktor noted that Erie County Executive Giambra's agenda has been one of regionalism and with the Regional Water Consortium there is an opportunity for cooperation because the towns cannot function independently but together are able to obtain a more favorable rate for our residents.

RESOLUTION 2001-19 NYS UNIFIED COURT SYSTEM

JUSTICE COURT ASSISTANCE PROGRAM

Received a proposal from Peter J. Smith & Co., Inc. for the Town of Boston Park Facility Assessment and Concept Plan.

Supervisor Rood commented that since the purchase of seventeen acres of land the Town Board wishes to step back and obtain an objective view of the best way to meet the needs of the citizens of Boston. Peter J. Smith & Co., Inc. will do a facilities assessment, present a concept plan for the park across from the Town Park and offer ideas for all the town properties for municipal recreational uses.

Councilman Tills commented that it will be helpful for the Town Board to receive feed back from the Peter J. Smith Co. planner who will obtain input from town recreation leaders as to how best to use our park facilities.

Town Attorney Perley acknowledged that the Peter J. Smith & Co., Inc. contract for the Town of Boston Recreation Master Plan is agreeable as to form.

REGULAR BOARD MEETING TOWN HALL

APRIL 18, 2001 7:30 P.M.

A motion was made by Councilman Tills and seconded by Councilman Wiktor to authorize Supervisor Rood to enter into a contract with Peter J. Smith & Co., Inc. for the Town of Boston Recreation Master Plan at a cost of not more than \$13,000.

four (4) Ayes Carried

Received a letter from Jeffrey Mendola requesting appointment as an Alternate Member of the Planning Board.

A motion was made by Councilman Wiktor and seconded by Councilman Tills to appoint Jeffrey Mendola as an Alternate Member of the Planning Board, term to expire 12/31/03.

four (4) Ayes Carried

Received notification from the Erie County Department of Environment and Planning that the term of Mary Alice Tock on the Erie County Environmental Management Council (ECEMC) will expire on May 31, 2001.

A motion was made by Councilman Simmeth and seconded by Councilman Tills to appoint Mary Alice Tock to the Erie County Environmental Management Council (ECEMC), term to expire 5/31/03.

four (4) Ayes Carried

A motion was made by Councilman Tills and seconded by Supervisor Rood to appoint the following to the Hillfest Committee:

Mary Ann Baumgardner	David Dix	Jeanne Mead
Duane Fischer	Susan Racinowski	Brian Hopkins
Effie Frank	Kristen Mueller	
James Staub	Kelly Soltis	

four (4) Ayes Carried

At 7:45 p.m. a Public Hearing was held for the purpose of hearing public comments regarding the application of Nextel Partners, Inc. for a Special Permit for co-location on an existing Telecommunications Tower at 6405 Ward Road.

Supervisor Rood read the legal notice and noted that thirteen (13) Orchard Park, and twenty-six (26) Boston neighboring property owners and the Orchard Park Town Clerk was notified of the Public Hearing.

A motion was made by Supervisor Rood
and seconded by Councilman Simmeth to
open the Public Hearing at 7:45 p.m.

four (4) Ayes Carried

Ken Cowley, Nextel Partners, Inc., Leasing and Zoning Specialist: We have submitted an application to construct a telecommunication facility at the already existing SBA, Inc. tower at 6405 Ward Road. This is a brief systematic of what we propose to do. What we plan to do is submit an application to locate an antenna at a 155 feet location on the existing tower. We plan on locating some of our equipment inside the already existing equipment building adjacent to the base of the tower. We have already submitted this to the Planning Board with approval. We have put together propagation studies and they are also in the application packet. Those were referred to Bill Johnson. He was asked if we needed coverage in the area and he confirmed that we have

REGULAR BOARD MEETING TOWN HALL

APRIL 18, 2001 7:30 P.M.

Public Hearing (Cont.):

Ken Cowley (cont.): inadequate coverage. He also expressed concern to see if the 155 level was the lowest level on the tower that we could go at. We have since run multiple studies. We ran propagation studies at the 125 mark and I can show the Board.

Ken Cowley displayed pictures of the propagation studies and explained the differences at levels of 125 and 150.

Audience Member: What would happen if trees grew above the sight line?

Ken Cowley: We wouldn't do too well. As it stands now we submitted an application for 155. We have been speaking to SBA, the tower owner, and there has been a small discrepancy on their part with the tower space applications. AT&T has submitted an application to go on this existing tower. To lower the proliferation of towers everyone wants to co-locate so we can keep the amount of towers down. We may have to fluctuate somewhere between 145 and 160 so we can squeeze AT&T in there and AT&T doesn't have to propose a new tower.

Patricia Gurney, 7052 Chestnut Ridge Road: Will there be more lights?

Ken Cowley: No, just the existing lights.

Audience member: How much clearance will you leave for trees?

Ken Cowley: As it shows on the drawing, twelve or fifteen feet, plus or minus.

Town Attorney Perley: When will you know the operating height that you will want to mount your rayette?

Ken Cowley: We want to mount at 155.

Town Attorney Perley: When will you know when the height is actually determined?

Ken Cowley: Hopefully within the next few days. I just received a call today from SBA and they said that there is a discrepancy.

Town Attorney Perley: I know that Nextel has certain time frames but technically speaking if this Board granted a permit at 155 feet and you wanted to go to 150 feet, in some sense we would have to start over because we would have granted you a permit for a certain height on the tower. I would suggest you do two things. Number one, I would like to send a 125 propagation to Mr. Johnson. I would feel

more comfortable recommending to the Board that the application is right for their decision when we can fix your location. That would delay a decision until May 2, 2001.

Ken Cowley: I would respectfully request the Board to possibly pass an approval. Unfortunately, until today we were set at 155 until we received that call. I wanted to bring it to the Board's attention. So we may fluctuate. The land use will stay the same.

Town Attorney Perley: If the Board is interested in affirmatively acting upon your request then we have to craft this in a fashion that allows this to go forward because the Building Inspector is going to see the application and he is going to compare it to the Board's decision and if they don't match you may not get on the tower right away. I don't want this Board to make a decision that is going to be meaningless.

REGULAR BOARD MEETING TOWN HALL

APRIL 18, 2001 7:30 P.M.

Public Hearing (Cont.):

Ken Cowley: I understand that this may affect the Building Department and also us receiving our Certificate of Occupancy possibly after construction. I am not sure if the Board would be in the position to grant approval of the application pending Bill Johnson's review of the 125-propagation study. Also the small fluctuation of tower heights won't adversely affect the land use. I would be more than happy to get the exact height as soon as I learn it from SBA. We have had the applications pending with the Town of Boston Planning Board and the Town Board for a few months now and obviously we do have time constraints.

Councilman Tills: What are the other systems heights currently?

Ken Cowley: There is currently Sprint at the top of the tower, which is at 250 feet. Cellular One is currently at 220 feet.

Town Attorney Perley: What amount of space is necessary to separate cellular operations?

Ken Cowley: The standard is about ten feet tip to tip of antennas.

Town Attorney Perley: So effectively probably what, fifteen to twenty feet?

Ken Cowley: From rad centers you are dependent upon what kind of antennas you use, so it would depend.

Councilman Tills: So it looks like you could still put another three or four?

Ken Cowley: The structural design of that tower is pretty beefy. You could put quite a few more carriers on there plus it is extendable to 300 feet if it comes to that down the road.

Councilman Tills: Is that what they are doing in Rochester? Do they have a lot of this co-location? How many do they put on a tower like that typically?

Ken Cowley: Oh yes. Unfortunately it is on a case by case basis.

Councilman Tills: Have you seen more than five or so?

Ken Cowley: I haven't seen more than five on one tower in Rochester. There are quite a few towers in the Rochester area that have three to four carriers on it currently.

Councilman Tills: But there aren't many more cellular carrier companies to begin with covering a certain area so you are never going to have that.

Ken Cowley: There may be a possibility of more carriers coming into the area. AT&T is just starting to start their build out and they have put an application into SBA on this tower. They are going through the

Rochester and Buffalo area to try and enhance their coverage also. You already have two carriers up there and we are the third carrier and possible down the road you may see AT&T come through.

Councilman Tills: You say AT&T has filed an application for this?

Ken Cowley: With the tower owner not the town.

Patricia Gurney: What will your antenna look like?

REGULAR BOARD MEETING TOWN HALL

APRIL 18, 2001 7:30 P.M.

Public Hearing (Cont.):

Ken Cowley: It would be another array. There are two arrays up there now. The best visual example would be the second carrier down which is Cingular, which used to be Cellular One. Our antennas and their antennas look predominately the same.

Councilman Simmeth: Could we go back to the propagation studies again? At what height was the top right?

Ken Cowley: This one is at 150 feet and the bottom right is at 125 feet.

Ken Cowley explained the different pictures and the difference in scales.

Councilman Wiktor: Cingular is approximately 220 feet on the pole so why wouldn't you want to be the next down for greater density coverage as opposed to being possibly the third or fourth one down from that position?

Ken Cowley: It is interference within our own network. As we get farther up the tower, especially for this existing tower, when you look due north into the city of Buffalo it is a clear shot. We want to come a little further down the tower and tilt our antennas just slightly to have the signal site shooting straight to come out at a slight 3 to 6 degree angle so we have more control over where the signal is going, so we have less frequency interference problems.

Councilman Wiktor: So what you are looking at is not a larger area but a more dense area?

Ken Cowley: Correct, a more controlled dense area.

Patricia Gurney: So if we look at the tower, the antenna will be visible at the tree line?

Ken Cowley: Yes, at the 155 looking at the tower it will be just above the tree line. It won't be way up on the tower where the other two carriers are. It will be a lot farther down the tower. It will be visible but it depends on where you are looking at it from. If you are up right near the woods where the access road runs you may not see it because it is far enough down the tower.

Patricia Gurney: If you are on Serpentine or anywhere from 7052 Chestnut to down the road beyond that you can see the tower.

Ken Cowley: Correct. You should be able to see the tower and the existing carriers.

Councilman Simmeth: I agree with Town Attorney Perley. I would like to see the studies at 125.

Town Attorney Perley: I will have to take the propagation studies from Mr. Cowley tonight or have him send a copy direct to Mr. Johnson for his review. It is up to Mr. Cowley as to how he wants to proceed in that regard.

Ken Cowley: I can give you a copy of the 150 and the 125 propagation study and the line of sight.

Patricia Gurney: I know what the Board's obligation is according to the Telecommunication Act. How far are we obligated to keep increasing Sprint's revenue? They wanted their own tower, they got it. I think it's nice that we are not going to put up more towers but where does our obligation end? Do we have to build that tower up as much as it can be built or can we say no to these people?

REGULAR BOARD MEETING TOWN HALL

APRIL 18, 2001 7:30 P.M.

Public Hearing (Cont.):

Town Attorney Perley: That is a matter that I would prefer to discuss privately with the Town Board as it may involve potential litigation with other applicants in the future. The Federal Telecommunication Act is a very strongly worded act. Municipalities for years have been seeking ways to reduce the interference of telecommunication providers. Therefore I think it would be unwise for me as Town Attorney to discuss that matter publicly. Each application has to be determined on a case by case basis. That is what the Board is about on the Nextel Application. The purpose of the Nextel application is for co-location. According to Mr. Johnson, they have demonstrated a need for service in the area. First of all Sprint doesn't own the tower anymore. Second, whether companies make money from towers I don't think is an appropriate concern of this Board. An appropriate concern of this Board is to determine if this application falls within the ambit of the Telecommunication Act. Once again because these matters are sensitive and may involve potential litigation, if not with this applicant but with another application in the future, I don't think it is wise for me to comment publicly. If directed specifically by the Board to do so, I will.

Audience Member: I am curious. How does the town benefit from the tower?

Supervisor Rood: Just the permit fee and service to our residents.

Town Attorney Perley: And to the extent that more facilities going in might increase the assessment. There is no direct benefit to the Town in the sense that they don't pay a franchise fee or anything like that.

Patricia Gurney: Who is responsible for collecting fees?

Councilman Wiktor: SBA, the owner of the tower.

Town Attorney Perley: And ultimately that comes back to Nextel because I am sure they have a net lease. We have in our possession tonight a copy of the lease but the financial terms have been blacked out, which is the custom with the applications.

Patricia Gurney: So how can I get an answer to that question?

Councilman Tills: Town Attorney Perley, can you give an overview of what the Telecommunication Act states?

Town Attorney Perley: The Telecommunication Law basically states that when an applicant demonstrates a need for a telecommunication facility within an area, municipal regulation cannot prevent the construction of that facility. It can affect the siting of that facility but it cannot flat out prevent the construction of that facility, which is what the Sprint case was all about.

Supervisor Rood: Because it is a public service.

Town Attorney Perley: Because it is so designated by the Telecommunications Act. A television station is a public service but they don't have the protection of the Telecommunications Act and you have to understand the technology of the industry. The technology of the industry is based upon a network of antennas that are fairly close to each other in proximity. Broadcast facilities such as television or radio put an antenna in a location to broadcast for radio stations for hundreds of miles. So it is an entirely different set of technologies. This Board enacted legislation to minimize the construction of towers in

the REGULAR BOARD MEETING TOWN HALL

APRIL 18, 2001 7:30 P.M.

Public Hearing (Cont.):

Town Attorney Perley (Cont.): Town of Boston. This Board or its predecessor Board fought not to have the Sprint tower built and we lost the case in court. This Board fought to site the Verizon Tower in an area that was as unobtrusive as humanly possible.

A motion was made by Supervisor Rood and seconded by Councilman Tills to close the Public Hearing at 8:14 p.m.

four (4) Ayes Carried

Supervisor Rood: In my personal opinion I don't think it would be prudent for us to make any decision on this until we get the rest of the information from Mr. Johnson.

Received a request from Eugene Wallace requesting appointment as an Alternate Member of the Zoning Board of Appeals.

A motion was made by Councilman Simmeth and seconded by Councilman Tills to appoint Eugene Wallace as an Alternate Member of the Zoning Board of Appeals, term to expire 12/31/03.

four (4) Ayes Carried

Town Attorney Perley commented that because the ECWA does not have a direct transmission main into the Town of Boston, in order for Water District #3 or any portion of it to come on line, the Town of Boston needs the consent of the Town of Orchard Park. In his opinion the Water Supply Agreement is appropriate for the Town of Boston to adopt.

A motion was made by Supervisor Rood and seconded by Councilman Wiktor to adopt a Water Supply Agreement between the Town of Orchard Park Water District #17 and the Town of Boston Water District #3.

four (4) Ayes Carried

TOWN CLERK REPORT

A motion was made by Councilman Wiktor and seconded by Councilman Simmeth to accept the Tax Collector Monthly Report for March 2001.

four (4) Ayes Carried

CODE ENFORCEMENT OFFICERS REPORT

Received from Code Enforcement Officer Kramer an inspection report dated April 17, 2001, determining to be unsafe, a home and two out buildings on the Burkhardt property at 9356 Boston State Road, SBL#258.05-1-15 and recommending that they conform to code.

Town Attorney Perley commented that he understands that Ms. Burkhardt does not reside on the premises and may be in a custodial situation with the Department of Social Services. Based upon this information he will contact the Department of Social Services, ascertain Ms. Burkhardt's status and report to the Town Board at the next meeting.

TOWN ATTORNEY REPORT

Town Attorney Perley noted that he can appreciate how difficult it is to become an Eagle Scout and he commends Michael Amadori Jr.

Town Attorney Perley announced that contracts have been received for the transfer of Sewer District #2. The contracts will be executed this evening and forwarded to the Erie County Attorney.

REGULAR BOARD MEETING TOWN HALL

APRIL 18, 2001 7:30 P.M.

TOWN ATTORNEY REPORT (CONT.):

Town Attorney Perley reported that in consultation with the Highway Superintendent it has come to his attention that the position of Highway Working Crew Chief has remained open since the removal of Mr. Feltz. The current labor negotiations do not call for that position to be filled at any time in the foreseeable future.

A motion was made by Councilman Simmeth and seconded by Councilman Wiktor, on the recommendation of Town Attorney Perley, to eliminate the position of Highway Working Crew Chief in the Town of Boston Highway Department.

four (4) Ayes Carried

COUNCILMAN REPORT

A motion was made by Councilman Simmeth and seconded by Councilman Tills to grant Supervisor Rood and Councilman Wiktor permission to attend the Southern Tier Local Government Conference at Houghton College on May 10, 2001, all appropriate expenses to be paid.

four (4) Ayes Carried

Councilman Wiktor thanked the Town Supervisor and Town Attorney on behalf of the Patchin Fire Company for their expedience in assisting them with the forms needed to purchase their fire truck.

A motion was made by Councilman Wiktor and seconded by Councilman Tills to adjourn the meeting at 8:28 p.m.

KAREN A. ELLIS, DEPUTY TOWN CLERK