

## **Town Board Minutes August 11, 2004**

Present were Councilman Brien M. Hopkins, Councilman Karl J. Simmeth Jr., Councilman Dennis J. Mead, Councilman Richard K. Hawkins, Supervisor William A. Eagan, Town Attorney Kelly A. Vacco and Highway Superintendent Richard A. Poore.

Reverend Richard Kwiekowski of Good Shepard Lutheran Church opened the meeting with a prayer.

Supervisor Eagan: At the July 14, 2004 Town Board Meeting, the Couzins Restaurant Public Hearing to consider their Special Permit for Live Entertainment was scheduled in error for August 18, 2004 at 7:45pm. The August meeting of this board was previously scheduled for August 11, 2004. Thus, we are rescheduling the public hearing for tonight. The public notice was printed on July 29, 2004 and stated August 11, 2004 at 7:45pm. A copy of this notice was sent to the owner of Couzins Restaurant and many of the neighboring property owners.

A motion was made by Supervisor Eagan and seconded by Councilman Mead to reschedule the Couzins Restaurant Public Hearing to consider their Special Permit for Live Entertainment from August 18, 2004 at 7:45pm to August 11, 2004 at 7:45pm.

five (5) Ayes    Carried

Received a letter of resignation from Deputy Highway Superintendent Hirsch, effective August 11, 2004.

A motion was made by Councilman Hawkins and seconded by Councilman Hopkins to accept the resignation of Deputy Highway Superintendent Hirsch, effective August 11, 2004.

five (5) Ayes    Carried

A motion was made by Councilman Simmeth and seconded by Supervisor Eagan to adopt the minutes of the July 14, 2004 regular meeting.

five (5) Ayes    Carried

A motion was made by Councilman Mead and seconded by Councilman Simmeth, upon review by the Town Board, that fund bills on the Abstract dated August 5, 2004 in the amount of \$639,665.93 be paid.

five (5) Ayes    Carried

Received and filed Erie County Sheriff's Report for June 2004.

Councilman Simmeth noted that Sergeant John Fox, the Town of Boston contact in the Erie County Sheriff's Department is retiring and requested that the Town Clerk send a letter thanking him for his service.

#### REQUESTS FROM FLOOR

Kent Igguldem, 4792 North Boston Road: I have been a homeowner here for twenty-nine years and I am here to see if a speed limit sign can be installed on North Boston Road. There are two sets of speed warning signs in the Town of Boston and three sets in the Town of Eden. There is no regulation speed limit on the highway, which means the speed is 55 mph. Since the new bridge was put in at Eckhardt Road, at each end of that highway there is a posted speed limit sign of 40 mph.

Councilman Hawkins: A few weeks ago there was an accident at North Boston and Eckhardt Roads. There is no posted speed limit sign on North Boston or Eckhardt Roads. I contacted Erie County and Highway Superintendent Poore and discussed installing signs.

Councilman Simmeth: If you can present a letter with your neighbor's signatures to the Town Board, a resolution could be drafted requesting a speed limit of 40 or 45 mph and a TE-9 form would be sent to Erie County, who would forward it to New York State who would make the final decision.

At 7:45 p.m., a Public Hearing was held to consider the application from Richard H. Hayden, Jr. DBA Couzins of WNY, LLC, for a Special Permit for Live Entertainment at 7115 Boston State Road.

Supervisor Eagan read the legal notice and noted that the applicant and 63 neighboring property owners were notified.

Supervisor Eagan read a letter from Rick Hayden detailing the plan he has for eliminating the sound problem in question and apologizing to neighbors for the annoyance.

Supervisor Eagan read a letter from Kim Ziegler, Environmental Control Consultant employed by Rick Hayden, describing a plan and time frame to address the noise complaints.

Rick Hayden, Owner Couzins Restaurant: My apologies are sincere. I have worked with Ms. Ziegler for the past few months. I thought I could fix the problems myself but I was wrong. In the long run I am spending less money this way. Live entertainment is a big part of our business and I know I can do it without annoying our neighbors.

Supervisor Eagan: Your letter states you can have it done by September 10th and the consultant states two weeks. Can you confirm for the Board if you actually have a schedule?

Rick Hayden: I said September 10th because that is the first time I have a band scheduled. I am certain that we can correct this in less than two weeks. The first phase is the plywood and the doors will be a couple of hours of work. If that doesn't work, I can fix the attic but the consultant doesn't think sound is escaping from there.

Councilman Hawkins: With the new smoking ban people are in and out of the doors every few minutes. I can understand the consultants point to seal off the doors.

Rick Hayden: You can go out the front door because the music doesn't carry that far. The door we are speaking of is the emergency exit door.

Councilman Simmeth: Is your liquor permit amended to allow people to drink in the parking lot?

Supervisor Eagan: Is that considered off premises?

Rick Hayden: I think they can drink in the foyer and the hallway going in. I can sell beer and they can take beer out but I can't sell mix drinks.

Supervisor Eagan: Can they consume beer in the side parking lots?

Rick Hayden: No. I have signs at all the exits that say, "do not take alcoholic beverages beyond this point".

Councilman Simmeth: Is that being enforced?

Rick Hayden: The bartenders are enforcing it.

Supervisor Eagan: Because I am concerned about fire regulations, I think you should speak to Code Enforcement Officer Kramer before blocking the windows.

Rick Hayden: It is not a permanent block. When they are installed they lock in and it seals the inside environment from passing through.

Code Enforcement Officer Kramer: His exit passage is based on doors not on windows. Legally he would not need any windows in that building. He can use mechanical light ventilation. He does need the

required exit door that he presently has. Now by sound proofing them I am assuming that you are only talking a piece of weather stripping so that the door will still open.

Supervisor Eagan: Do you have the mechanical lights in there now?

Rick Hayden: Yes.

Councilman Simmeth: These are in and out, when a band comes in you put them in and when they are done you pull them out, right? Are you planning on putting those on the Northside of the building also?

Rick Hayden: Yes, they have handles on them.

Supervisor Eagan: If this plan fails to address the issue we are going to be hearing from these residents again. It is going to be the same issue on the vibrations which some of us have experienced ourselves. What would be the next step?

Rick Hayden: If the plywood in the windows and sealing the doors doesn't work the next step would be to line the upper roof in the attic to prevent noise from going through. I thought we were losing sound through the roof but the consultant said that the acoustic ceiling tiles have been painted and that reflects the music back to the bar.

Councilman Mead: Is the low frequency sound that the consultant is referring to, is that the base? Can the bands turn the volume down?

Rick Hayden: Yes it is the base and the bands work with me and do turn the volume down. I have been to Mr. & Mrs. Needle's and it's not that it's loud but more of an annoyance.

Supervisor Eagan: Other issues that don't affect our codes and are a law enforcement issue is outside drinking and the sounds of engines revving and motorcycles ripping up the pavement. How do you propose to address those issues?

Rick Hayden: I have a sign up that says, "Please do not burn out my parking lot?". I recently sealed it and that was an open invitation to lay rubber down. They haven't done that anymore. I can tell the motorcycles to be quiet because the police are watching.

Robert McDonald, Glenwood: I am not a resident of Boston. I haven't had an alcoholic beverage for thirty-one years. I love to patronize Couzins because of the Music. I go there and get something to eat, listen to the music and find nothing offensive about it. I feel nice and relaxed when I leave there.

Michelle Flattery, 7847 Back Creek Road: Couzins has given me a great opportunity to expand my harmonic playing. I have been fortunate to meet a lot of musicians that I would never have been able to meet unless I went into the city. I appreciate the opportunity that Rick has given me and I hope that you will continue to allow him to have music.

Arlene Weiss, 7098 Boston State Road: I have no problem with anyone trying to run a business. I have a business myself. The music may be fun to listen to but not when you are trying to sleep. I am not as close and the music doesn't bother me. The motorcycles are what is a problem for us. We feel there is going to be an accident. You are doing all these things to correct the situation but if it was down lower you wouldn't have to worry and the neighbors would appreciate it. If you find that people are not obeying your rules then ask them not to come back. Those are my solutions.

Joseph Antos, 5554 Northside Drive: My back yard and Couzins parking lot are back to back. The music doesn't bother me because I am hard of hearing but my wife can hear it. This bass noise goes on continuously and I can hear that. My brother's recording studio is lined with foam rubber. You can't hear anything outside of it. Does the town have an open container law? Are you allowed to drink in the parking lot?

Deputy Code Enforcement Officer Lisowski: That is New York State law and you would have to check the type of liquor license that Couzins has.

Joseph Antos: There were people drinking beer outside the door. I smoke and I can appreciate people going outside to have a smoke. The motorcycle noise is terrible. Motorcycles are supposed to have

baffles in the muffler. They have devices that look like mufflers but there are no baffles. I called the State Police on that and they said they would look into it. The people who come into the parking lot make a u-turn and there is dirt, gravel and dust. My wife can't keep the windows open. Not all the time just on occasion. I talked with Councilman Simmeth a few weeks ago and told him about the weeds and the next morning the weeds were cut down and I appreciate it.

Donna Huson, 7104 Boston State Road: I live a couple of houses away from Cousins and the motorcycles are a problem. When they are leaving they rev their motors and the girls are laughing. A solution is parking lot police. Maybe they can hire someone to stand out there and make sure that the people out there are not loud, not having fights and they control the motorcycle noise.

Thomas Needell, 7123 Boston State Road: We live immediately to the south of Cousins. We seem to be the ones that get the most music. Unfortunately we get the base and when the windows are open we get a mixture of everything. When Rick bought the place he introduced himself and said that there would be blues once in a while. What we have is music four days a week. This isn't just an occasional problem. This is something that persists and that is a big problem for us. We have an enclosed porch and we can't sit there and enjoy it. The other night I was taking a shower and even with the water running you could hear the base.

Patricia Needell: We like music but our own choice and the hours when we want to listen to it. Not at 1:00 a.m.

Thomas Needell: We were there a long time before the music. The music moved in on the neighborhood. That was a business decision so I think it has to be a business decision to control the noise. We are not saying we want silence. We want sound to commence with a residential neighborhood. Listening to this base hour after hour is intruding into our space and we all have to share this space. We are asking for this problem to be solved. If the music license is issued the town must be cognizant that it has to remain so and shouldn't be something that it is alright now. We wanted to solve the problem before it got this far. Rick has been very cordial. I have to go on the list of people who said hire a consultant.

Patricia Needell: This has gotten to the point that I am starting to get migraines. It is affecting my health.

Arlene Weiss: We want everybody to be happy. Donna's suggestion of parking lot police is not bad. You can't expect one town police car to be there every time somebody revs up a motorcycle but if you would take care of this and have somebody checking outside then we would all be happy. I think it is a very good suggestion.

Rick Hayden: I think it is a great suggestion but it is not relevant to what we are here for. I am trying to get my Live Entertainment Permit. The noise outside the building has nothing to do with my permit.

Supervisor Eagan: It does in the respect that if you didn't have the live entertainment the parking lot would not be as busy. From what we hear tonight the problem does not end with the major problem of the base. It is the crowds that come to listen to the music and entertainment you offer that presents an additional problem that could be taken into consideration when we look at the whole picture.

Rick Hayden: When we have live entertainment I do have a bouncer who stops them at the door with their alcohol. He stands right by the entrance door.

A motion was made by Supervisor Eagan and seconded by Councilman Mead to close the public hearing at 8:13 p.m.

five (5) Ayes Carried

RESOLUTION 2004-21 MEMBER ITEM GRANT ADMINISTRATION FOR BALL DIAMOND IMPROVEMENTS AND SNACK SHACK

Supervisor Eagan thanked Councilman Simmeth for his effort in securing a grant for the ball diamond improvements from Senator Volker.

A motion was made by Councilman Mead and seconded by Supervisor Eagan to adopt the Town of Boston Internet / Email Use Policy.

five (5) Ayes    Carried

Town Attorney Vacco noted that she has reviewed the Adelphia Cable Communication Franchise Agreement and it is in order.

Councilman Simmeth questioned if it was standard wording on page six of the agreement that states that cable service will be provided to a subscriber within 150ft.

Town Attorney Vacco responded that the wording was standard.

A motion was made by Councilman Mead and seconded by Councilman Simmeth to authorize the Supervisor to sign the Franchise Agreement Renewal with Parnassos L.P. d/b/a Adelphia Cable Communication for a term of ten years from the date of approval by the NYS Public Service Commission with an option to renew for an additional five years upon written notice.

five (5) Ayes    Carried

Received and filed a letter from Kathleen Andolina with additional information regarding building problems with 4748 Keller Road.

A motion was made by Supervisor Eagan and seconded by Councilman Mead to table the letter from Kathleen Andolina, 4748 Keller Road.

five (5) Ayes    Carried

Supervisor Eagan requested a response from Town Attorney Vacco regarding the letter from Kathleen Andolina by the August 30th Agenda Review meeting.

#### SUPERVISOR REPORT

A) The Supervisor's Financial Report for July 2004 was received and is on file in the Town Clerk's Office.

Supervisor Eagan reported that areas in the Town of Boston are included in the NYS funded project of \$326,706 for the stabilization in the Eighteen Mile Creek watershed by the Erie County Soil and Water Conservation District. The Boston Town Board has approved a resolution to fund a contribution to the program pending additional costs. There are twenty-seven high priority areas of bank erosion as of the date of the study.

Supervisor Eagan reported that the Town of Boston Snack Shack is completed and he thanked everyone involved. A Grand Opening is planned for the first football game in September.

Supervisor Eagan requested the Highway Department stripe the backfield and the field behind the State Police Barracks.

Highway Superintendent Poore responded that he spoke to Jim Reichert, Football Commissioner, regarding what needs to be done. The main field is ready to go and the others will be done by next Wednesday.

Supervisor Eagan congratulated the Boston Senior Baseball team that made it to the playoffs.

#### TOWN CLERK REPORT

A motion was made by Councilman Simmeth and seconded by Councilman Hawkins to approve the Town Clerk's monthly report for July 2004.

five (5) Ayes Carried

Received a request from Vanessa Miller, Hickory Meadows Subdivision, for permission to hold a Block Party on August 28, 2004, with a rain date of August 29, 2004, from 2:00 to 9:00 p.m.

A motion was made by Supervisor Eagan and seconded by Councilman Hawkins to approve the request for a block party in Hickory Meadows subdivision contingent upon all barriers to the street be removed should an emergency situation arise.

five (5) Ayes Carried

Town Clerk Shenk announced that New York State Conservation Licenses for hunting and fishing will go on sale Monday, August 16, 2004. There are no significant price or procedure changes this year.

Town Clerk Shenk announced that his office is selling the yellow "Support Our Troops" ribbons and the American Flag magnets. The cost is \$5.00 and the proceeds will benefit the Boston Valley Elementary School Emergency Fund.

#### HIGHWAY SUPERINTENDENT REPORT

Highway Superintendent Poore thanked Tracy Hirsch for acting as Deputy Highway Superintendent when the town needed him the most. He will be greatly missed. There is a vacancy that will be filled after review by the Town Attorney.

Town Attorney Vacco noted that the Town Board must approve the Highway Superintendent's authority to appoint. This is a newly created position and she would like an opportunity to review the New York State Highway law to be sure the Town Board appoints correctly. She is aware that there is a timeframe to appoint.

Highway Superintendent Poore requested a salary review and a lower adjustment for the Deputy Highway Superintendent position.

Highway Superintendent Poore announced the Town Hall clock will be mounted tomorrow weather permitting.

Highway Superintendent Poore announced that he, Councilman Mead and an Army Corps of Engineers representative toured Eighteen Mile Creek inspecting the log jams noted by Supervisor Eagan and Councilman Hawkins. The public should be aware that the Highway Department, Erie County and the NYS DEC are working on the problem.

Highway Superintendent Poore reported that work in the town ditches and on drainage problems will continue as long as the equipment is running.

#### COUNCILMAN REPORTS

Councilman Mead reported that Dolores Seufert, President of the Boston Seniors Group, presented the Town Board with a petition to address the issue of the Town Hall back door being too hard for seniors to open. The Town Hall Laborer has removed the restraint at the top of the door and the problem is being addressed.

Town Clerk Shenk noted that quotes are being sought for a power-assisted door.

Councilman Mead announced that the Boston Chamber of Commerce held their annual Ice Cream Social and the Boston Town Band played at the August 4, 2004 Boston Summer Concert Series.

Councilman Mead announced that the Summer Recreation Program ended August 6, 2004. Councilman Mead congratulated the Recreation Department and Director for a great year and thanked the parents for their patience during the transition period with a new Recreation Director. The Town of Boston has one of the best recreation programs in New York State.

Councilman Hopkins thanked Tracy Hirsch for his help in the Highway Department noting that he did a great job.

Councilman Simmeth reported that he is working on street lighting in the Hickory Meadows Subdivision and requests the resident's patience.

Councilman Hawkins thanked Tracy Hirsh for a great job in the Highway Department.

Councilman Hawkins reported that he contacted the Erie County Highway Department regarding posting speed limit signs on Zimmerman Road.

#### ASSESSOR REPORT

- The Assessor monthly report for July 2004 was received and is on file in the Town Clerk's Office.

#### TOWN JUSTICE REPORT

- The Town Justice monthly report for July 2004 was received and is on file in the Town Clerk's Office.

#### TOWN ENGINEER REPORT

- The Town Engineer's report for January, 2003 through June, 2004 were received and are on file in the Town Clerk's Office.

#### CODE ENFORCEMENT OFFICER'S REPORT

· The Code Enforcement Officers monthly reports for July 2004 were received and are on file in the Town Clerk's Office.

#### RECREATION DIRECTOR REPORT

· The Recreation Director Report for July, 2004 was received and is on file in the Town Clerk's Office.

Supervisor Eagan thanked Tracy Hirsh for doing a great job as Deputy Highway Superintendent.

A motion was made by Supervisor Eagan and seconded by Councilman Hawkins to adjourn the meeting at 8:40 p.m.

five (5) Ayes Carried

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DAVID J. SHENK, TOWN CLERK