

Town Board Minutes December 19, 2007

Present: Councilmen Brien M. Hopkins, Richard K. Hawkins, Dennis J. Mead, Councilwoman Cathleen M. Dobson and Supervisor William A. Eagan.

Also Present: Highway Superintendent Telaak, Town Attorney Downey, Code Enforcement Officers Ferguson, Lisowski and Juda.

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

Received and filed a letter from the Boston Christmas Lighting Committee Chairman Hopkins donating all Christmas Lighting fixtures to the Town of Boston.

Received and filed a letter from the Boston Christmas Lighting Committee Chairman Hopkins donating all Christmas Lighting funds to the Town of Boston which can be used for purchasing and maintenance of the Christmas Lighting fixtures.

RESOLUTION 2007- 38 CHRISTMAS LIGHTING COMMITTEE

Supervisor Eagan requested Boston Christmas Lighting Committee Chairman Hopkins, supply the town with an inventory list of the Christmas decorations.

Supervisor Eagan appointed the following to the new Christmas Lighting Committee, term to expire 12/31/07:

Brien Hopkins, Chairman Daniel Mule? Dennis Mead

Edward Piazza Edward Cary

Supervisor Eagan directed Town Clerk Shenk to notify the town insurance carrier of the Christmas Lighting Committee members.

A motion was made by Supervisor Eagan and seconded by Councilman Hawkins to direct Highway Superintendent Telaak, in accordance with Highway Law section 147, to clear the ditch on private property on Liebler Road, SBL# 227.00-5-11, in order to protect the road right-of-way, subject to the Erie County Highway Commissioner authorization.

five (5) Ayes Carried

Received an application from Robert and June Telaak for a Special Permit for the Dumping of Material at 7900 Feddick Road.

Councilwoman Dobson asked Deputy Code Enforcement Officer Lisowski if the Telaak application for a Special Permit was filed on time.

Town Clerk Shenk noted he received the Telaak application today.

Deputy Code Enforcement Officer Lisowski commented that Robert Telaak was told by Code Enforcement Officer Ferguson that a permit was not required because the soil was being removed from a new home construction with a legal building permit at 8010 Back Creek Road. According to Town Code, Section 101, it is legal for a person with a legal building permit to remove soil from his property. Section 101-1 states only farmers or an active farm can transfer soil from site A to site B, so therefore Robert Telaak would require a Special Permit to accept the soil.

Councilwoman Dobson asked Deputy Code Enforcement Officer if the application was filed before the dirt was dumped.

Deputy Code Enforcement Lisowski responded no, but he believes there was a misunderstanding.

Councilwoman Dobson inquired if late fees are charged for dumping if a Special Permit has not been issued.

Deputy Code Enforcement Officer Lisowski responded, yes.

A motion was made by Councilman Mead and seconded by Councilman Hopkins, upon the recommendation of Town Attorney Downey, that the Town Board has classified the Special Permit for Dumping of Material from Robert and June Telaak at 7900 Feddick Road, as an unlisted action under SEQR and therefore declares lead agency status.

Councilman Hopkins Voting Aye

Councilman Hawkins Voting Nay

Councilman Mead Voting Aye

Councilwoman Dobson Voting Nay

Supervisor Eagan Voting Aye

three (3) Ayes two (2) Nays Carried

A motion was made by Councilman Mead and seconded by Supervisor Eagan, on the recommendation of Town Attorney Downey, that the Town Board as lead agency has determined that after taking a hard look into the Special Permit for Dumping of Material from Robert and June Telaak at 7900 Feddick Road, finds the proposed action will not have a significant impact on the environment and therefore declares a negative declaration and no further action is required per 6 NYCRR part 617.

Councilman Hopkins Voting Aye

Councilman Hawkins Voting Nay

Councilman Mead Voting Aye

Councilwoman Dobson Voting Nay

Supervisor Eagan Voting Aye

three (3) Ayes two (2) Nays Carried

A motion was made by Councilman Mead and seconded by Councilman Hopkins to approve the application for a Special Permit for Dumping of Material from Robert and June Telaak at 7900 Feddick Road.

Councilman Hopkins Voting Aye

Councilman Hawkins Voting Nay

Councilman Mead Voting Aye

Councilwoman Dobson Voting Nay

Supervisor Eagan Voting Nay

two (2) Ayes three (3) Nays Denied

Supervisor Eagan referred the application for a Special Permit for Dumping of Material from Robert and June Telaak at 7900 Feddick Road to the Code Enforcement Office.

Councilman Mead questioned why certain board members voted against approving the application for a Special Permit for Dumping of Material from Robert and June Telaak at 7900 Feddick Road.

Councilwoman Dobson responded that when this is taken care of we can vote again.

Supervisor Eagan responded that if the application for the Telaak Special Permit was approved now it would technically be waiving the late fee and based upon previous discussions the appropriate action must be taken.

Councilman Mead noted there was a misunderstanding.

Councilman Hopkins noted Mr. Telaak did come to Code Enforcement.

Supervisor Eagan responded that ignorance is not an excuse when it comes to the law. Robert Telaak was present at board meetings concerning other Special Permit Applications for the Dumping of Materials. There is a procedure and the late fee regulation is specified in our town codebook and Robert Telaak has a codebook. We do not question that he discussed this issue with Code Enforcement Officer Ferguson, but as Deputy Code Enforcement Officer Lisowski stated someone should have read further into the code that clearly states a permit is required.

A motion was made by Councilman Hopkins and seconded by Councilman Hawkins to direct the Code Enforcement Office to investigate if material from 8010 Back Creek Road was taken to other sites in town and if so, those residents need to be addressed.

five (5) Ayes Carried

Highway Superintendent Telaak noted that he is not in favor of addressing town residents receiving material from 8010 Back Creek Road.

Supervisor Eagan noted that this is what happens when things get out of control and reasonable people propose reasonable solutions and others do not agree which is why we are at this juncture tonight.

A motion was made by Supervisor Eagan and seconded by Councilman Hawkins to adopt the minutes of the December 5, 2007 meeting.

five (5) Ayes Carried

A motion was made by Councilman Mead and seconded by Councilman Hopkins, upon review by the Town Board, that fund bills on the Abstract dated December 13, 2007, with the addition of \$80.00 for Laing-Gro Fertilizing, in the amount of \$61,498.65 be paid.

five (5) Ayes Carried

Received and filed Erie County Water Authority Tariff Amendments.

A Public Hearing was held at 7:51 p.m. to hear public comments regarding Proposed Local Law No. 7 of the Year 2007, entitled A Local Law Amending Chapter 60, Flood Damage Prevention; Chapter 70, Mobile Home Courts; Chapter 97, Site Plan Review; Chapter 104, Subdivision of Land; and Chapter 123, Zoning, of the Code of The Town of Boston, and Adding a New Chapter 103, to the Code of the Town of Boston, in Relation To Stormwater Management.

Supervisor Eagan read the legal notice.

There were no comments.

A motion was made by Supervisor Eagan and seconded by Councilman Hawkins to close the Public Hearing at 7:52 p.m.

five (5) Ayes Carried

A Public Hearing was held at 7:53 p.m. to hear public comments regarding Proposed Local Law No. 8 of the Year 2007, entitled A Local Law Amending Chapter 92, Sewers, of the Code of The Town of Boston, in Relation To the Prohibition of Illicit Discharges, Activities, and Connections to the Municipal Separate Storm Sewer System.

Supervisor Eagan read the legal notice.

There were no comments.

A motion was made by Supervisor Eagan and seconded by Councilman Hawkins to close the Public Hearing at 7:54 p.m.

five (5) Ayes Carried

A Public Hearing was held at 7:54 p.m. to hear public comments for the purpose of entering into a contract with the Boston Historical Society, Inc. for the preservation of historical places and objects in the amount of \$6,935 for the calendar year 2008, \$6,000 for the calendar year 2009, and \$6,000 for the calendar year 2010.

Supervisor Eagan read the legal notice.

There were no comments.

A motion was made by Supervisor Eagan and seconded by Councilman Hawkins to close the Public Hearing at 7:55 p.m.

five (5) Ayes Carried

A motion was made by Councilwoman Dobson and seconded by Councilman Hawkins, on the recommendation of Town Attorney Downey, to approve the contract and authorize Supervisor Eagan to enter into a contract with the Boston Historical Society, Inc. for the preservation of historical places and objects in the amount of \$6,935 for the calendar year 2008, \$6,000 for the calendar year 2009, and \$6,000 for the calendar year 2010.

five (5) Ayes Carried

Town Attorney Downey commented that regarding Local Laws No. 7 and No. 8 of the Year 2007, NYS requires all public entities, villages, towns and counties to enact Stormwater Legislation (MS4), stormwater management to reduce storm water pollution and enhance stormwater quality. Erie County

Environment and Planning reviewed our Local Laws and did not give a recommendation due to the fact they are based on NYS model laws and they agree it is a local action, they will not interfere nor do they want to be appointed lead agency and they will not be part of any coordinated review.

A motion was made by Supervisor Egan and seconded by Councilman Hawkins, upon the recommendation of Town Attorney Downey, that regarding Local Laws No. 7 and No. 8 of the Year 2007, the Town Board has declared lead agency status and has classified these as unlisted actions under SEQR.

five (5) Ayes Carried

A motion was made by Supervisor Egan and seconded by Councilwoman Dobson, on the recommendation of Town Attorney Downey, that the Town Board as lead agency has determined that after conducting an uncoordinated review, preparing a SEQR and taking a hard look into Local Laws No. 7 and No. 8 of the Year 2007 finds the proposed action will not have a significant impact on the environment and therefore declares a negative declaration and no further action is required per 6 NYCRR part 617.

five (5) Ayes Carried

Town Attorney Downey noted that the town held a Public Hearing on Local Law No. 7 and Local Law No. 8 of the Year 2007 and no opposition was voiced. These laws do not make substantial adverse changes to air quality or ground surface quality. The proposed actions will not cause removal or destruction of large quantities of vegetation, etc. They will not impair environmental characteristics and the proposed actions will not create a material conflict with the community's current plans or goals.

A motion was made by Supervisor Egan and seconded Councilman Hawkins to adopt Local Law No. 7 of the Year 2007, entitled A Local Law Amending Chapter 60, Flood Damage Prevention; Chapter 70, Mobile Home Courts; Chapter 97, Site Plan Review; Chapter 104, Subdivision of Land; and Chapter 123, Zoning, of the Code of The Town of Boston, and Adding a New Chapter 103, to the Code of the Town of Boston, in Relation To Stormwater Management.

five (5) Ayes Carried

A motion was made by Supervisor Eagan and seconded Councilman Hawkins to adopt Local Law No. 8 of the Year 2007, entitled A Local Law Amending Chapter 92, Sewers, of the Code of The Town of Boston, in Relation To the Prohibition of Illicit Discharges, Activities, and Connections to the Municipal Separate Storm Sewer System.

five (5) Ayes Carried

REQUESTS FROM THE FLOOR

Robert Telaak, 7900 Feddick Road, regarding his application for a Special Permit for the Dumping of Materials, commented that he only received a fraction of the dirt that came off the site at 8010 Back Creek Road, but he would never say where the rest of the dirt went because it is not up to him. He asked Councilwoman Dobson if he hauled fill into her place when she built her barn years ago.

Councilwoman Dobson responded that she did.

Robert Telaak commented that he hauled fill and topsoil into Supervisor Eagan's yard when he had drainage problems and now there is a big change. He noted that this dirt came from Boston just like the dirt in Supervisor Eagan's yard. He wanted to know where the \$150 fee came from and what other towns have this fee.

Supervisor Eagan responded that he doesn't care what other towns do and this town board approved the fees that were recommended by our Code Enforcement Officer.

Robert Telaak commented that he contacted nine other towns and only Evans required a permit to dump fill in its town and there is no fee.

Supervisor Eagan responded that Robert Telaak is an elected official who knows what the codes are and has a codebook.

Robert Telaak responded that that is not true. He contacted Code Enforcement. He commented that he believes the rules in Boston are ridiculous. Two weeks ago windmill legislation was passed. We are a little town out in the county not a big city like Supervisor Eagan comes from.

Supervisor Eagan commented that this morning he was interviewed on WBEN radio and Professor Berg, University of Buffalo windmill/green energy authority, complimented this community for taking action, being proactive and using foresight with regards to enacting a code that protects this community from big companies planting windmill farms without concern for the community. They will do this if we don't have guidelines in place. Professor Berg stated that the Town of Boston did the right thing because it alerts the windmill companies that they must work with the community according to their rules and regulations.

Robert Telaak noted he has fifty-eight acres and he cannot erect a windmill with the new requirements. He asked if Supervisor Eagan thought that was fair.

Supervisor Eagan responded that he is dealing with the entire community and not just one person. He noted that Robert Telaak was told previously that we are not through with windmill legislation and consideration will be given for residential use.

Robert Telaak responded that he believes this all comes down to the fact that he did not support Supervisor Eagan's candidates in this year's election.

William Forness, 9534 West Hill Road, commented that he does not have an issue with the permit but he has an issue with the cost of the permit. He brought fill to his property as did Mrs. Dobson and Mr. Eagan. 99% of the people that bring fill into this town bring it in to improve their property. He noted the permit fee is \$150. If the cost was \$10 or \$20 there would be no issue. He asked where the \$150 was going and if Code Enforcement Officer was checking to see if it is wetlands, to see if the material was being dumped in a protected stream, are there time lines for leveling, mulching, seeding etc. The Town Board addressed William Forness's concern: this issue when Jerry Krencick began bringing in fill from out of town. He noted he did not know what happened in the last few years that fill from in town needed a permit. He believes the permit fee should run year to year not calendar year and there should be some justification for the \$150 fee. He wanted to know why the fee can't be reduced to \$20.

Supervisor Eagan noted the permit fees and late fees were changed three or four years ago.

The Code Review Committee is proposing to review and address the permit fee schedule. The Planning Board will send their comments to the Code Review Committee concerning fill requirements on property.

William Forness commented that he has heard a rumor that even the Highway Department will need a permit to dump fill.

Supervisor Eagan noted the town does not need a permit to dump material. We all agreed on the fee schedule that was adopted three or four years ago.

Councilman Mead commented that the issue was that the law that is on the book hasn't changed it is how it was interpreted. The fee was set to address the large parcels of land such as the Emerlings? etc.

William Forness commented that regarding residential windmills, the issue is not in the valley because the wind doesn't blow in the valley like it does on the hills. He noted that there are a lot of homeowners on the hills that pay a lot of taxes with their ten and fifty acres, \$300,000 homes and \$5,000 utility bills so he doesn't want the Board to say no to residential or commercial windmills. With the current restrictions the Board is basically saying no.

Supervisor Eagan commented that as he stated before, the Board took a cautionary step regarding windmills. The Board took one step with many steps to follow. The next immediate step is to address the residential requirements for windmills.

William Forness noted he doesn't want to block farmers from being able to have windmills that would keep the green land and farms around by offsetting the cost of fuel.

A motion was made by Councilman Hawkins and seconded by Councilwoman Dobson, on the recommendation of Highway Superintendent Telaak, to approve the 2008 National Fuel Annual Blanket Highway Work Permit.

five (5) Ayes Carried

A motion was made by Councilman Mead and seconded by Supervisor Eagan to approve a Special Permit renewal for an Amateur Radio Tower for Thomas Williams, 5330 Keller Road, to expire 12/31/09.

five (5) Ayes Carried

A motion was made by Councilman Mead and seconded by Supervisor Eagan to approve the Transfer of Appropriations as follows:

General Fund

From: Acct.

Appropriations A960	28,320.00	
Buildings-cont. 1620.4	2,950.00	
Parks-Per. Service 7110.1	14,000.00	
Contingency 1990.4	11,370.00	

Total	28,320.00	28,320.00
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TO:

Appropriation A960	28,320.00	
Town Board-cont. 1010.4	570.00	
Attorney-cont. 1420.4	500.00	
Engineer-cont. 1440.4	9,500.00	
Buildings-equip.1620.2	2,950.00	
Municipal Assoc Dues 1920.4	150.00	

Dog Control-cont.	3510.4	350.00
Code Enforcement-cont.	3620.4	200.00
Parks-equip.	7110.2	10,000.00
Parks-Cont.	7110.4	4,000.00
Health Insurance	9060.8	100.00
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Total	28,320.00	28,320.00

five (5) Ayes Carried

A motion was made by Supervisor Eagan and seconded by Councilman Mead to re-appoint Herbert R. Berlin to the Board of Assessment Review, term to expire 9/30/12.

five (5) Ayes Carried

On Tuesday, December 18, 2007 at 10 a.m. the following bids for demolition of 6892 Boston Cross Road were opened and read aloud:

ETS Clearing & Grading/Economy Tree Service	\$4,878.00
Eastwood Industries, Inc.	\$5,200.00
R.P. Excavating & Landscaping	\$5,800.00
Gallman Excavating	\$6,240.00
Blizztech Contracting	\$7,875.00

A motion was made by Councilman Hawkins and seconded by Councilwoman Dobson upon the recommendation of Town Attorney Downey to accept the bid for demolition of 6892 Boston Cross Road from ETS Clearing & Grading/Economy Tree Service in the amount of \$4,878.00.

five (5) Ayes Carried

Town Attorney Downey noted that the demolition will begin immediately and will take approximately 12 days to finish.

Received and filed monthly reports from the Supervisor, Town Clerk, Assessor, Justice Court, Code Enforcement Officers, Dog Control Officers, and Town Engineer.

Supervisor Eagan wished departing Councilmen Hopkins and Mead good luck and appreciated working with them.

Town Clerk Shenk announced that the swearing in Ceremony for elected officials will be held on January 1, 2008 at 12 p.m. and wished Councilman Hopkins and Councilman Mead good luck and congratulated Councilman Mead on a nice run as councilman.

Highway Superintendent Telaak noted that he enjoyed working with Councilman Hopkins and Councilman Mead.

Councilman Mead thanked all those who have supported him and appreciated working with everybody. He also wished the Town Board good luck in the future.

Councilman Hopkins noted that the three way stop sign hasn't been installed by Erie County at the intersection of Burr, Lower East and Old Lower East Hill Roads. The new Traffic Safety & Highways liaison should follow up on this.

Councilman Hawkins wished everyone Happy Holidays and thanked Councilman Hopkins and Councilman Mead for the work they have done on this Town Board.

Supervisor Eagan stated that Boston has been known for producing some fine young individuals in this community. There are many young men achieving the rank of Eagle Scout. He recently presented a proclamation to residents Michael Kobiolka and Jonathan Dombroski and wished to give recognition to them for making this community proud.

A motion was made by Councilman Hawkins and seconded by Councilwoman Dobson to adjourn the meeting at 8:25 p.m.

five (5) Ayes Carried

DAVID J. SHENK, TOWN CLERK