

Town Board Minutes June 5, 2002

REGULAR TOWN BOARD MEETING TOWN HALL

JUNE 5, 2002 7:30 P.M.

Present were Councilman Damian P. Wiktor, Councilman Thomas A. Edington, Councilman Karl J. Simmeth Jr., Councilman Dennis J. Mead, Supervisor William A. Eagan, Highway Superintendent Wayne C. Kreitzbender and Town Attorney Michael F. Perley.

RESOLUTION 2002-33 ADOPT A NEGATIVE DECLARATION PURSUANT TO SEQR REGARDING THE EIGHTEEN MILE CREEK STABILIZATION PROJECT

A motion was made by Councilman Simmeth and seconded by Councilman Edington to adopt the minutes of the May 15, 2002 regular meeting.

five (5) Ayes Carried

A motion was made by Councilman Mead and seconded by Councilman Wiktor, upon review by the Town Board, that Fund Bills on Abstract #6, dated June 5, 2002 in the amount of \$150,293.87 be paid.

five (5) Ayes Carried

Received and filed Erie County Sheriff's Report for April 2002.

Received and filed an acknowledgment from NYS Assemblyman Burling of receipt of a Town of Boston Resolution regarding designating US Route 219, as a Scenic Byway.

A motion was made by Councilman Wiktor and seconded by Councilman Mead to set the Summer Schedule as follows:

Agenda Reviews July 8th and August 5th

Town Board Meetings July 10th and August 7th.

five (5) Ayes Carried

Received a Soil Removal Permit Application from Joseph and Karl Simmeth, 8010 Boston State Road.

A motion was made by Councilman Wiktor and seconded by Councilman Edington, on the recommendation of the Code Enforcement Officer, to approve the Soil Removal Permit Application for Joseph and Karl Simmeth, 8010 Boston State Road.

five (5) Ayes Carried

RESOLUTION 2002-29 TOWN PARK AND RECREATION MASTER PLAN

Received a Soil Removal Permit Application from Schreiber & Winkleman, Mill Street.

A motion was made by Councilman Simmeth and seconded by Councilman Edington, on the recommendation of the Code Enforcement Officer, to approve the Soil Removal Application for Permit for Schreiber & Winkleman, Mill Street.

five (5) Ayes Carried

A motion was made by Councilman Wiktor and seconded by Councilman Mead to approve the May 27, 2002 General Fund Transfer of Appropriations as follows:

Approp A960 \$3,000

From: Auditor-Contractual A1320.4 \$3,000

Approp. A960 \$3,000

To: Accountant-Contractual A1321.4 \$3,000

Approp A960 \$2,000

From: Fiscal Agent-Contractual A1380.4 \$2,000

Approp A960 \$2,000

To: Budget-Contractual A1340.4 \$2,000

five (5) Ayes Carried

REGULAR TOWN BOARD MEETING TOWN HALL

JUNE 5, 2002 7:30 P.M.

Received a request for a Special Permit for Modification of a Telecommunication Facility from Verizon Wireless, Site 3153, Cole Road, SBL# 242.00-2-13.

A motion was made by Councilman Mead and seconded by Councilman Simmeth to refer to the Planning Board, for review and recommendation, a request for a Special Permit for Modification of a Telecommunication Facility from Verizon Wireless, Site 3153, Cole Road, SBL# 242.00-2-13.

five (5) Ayes Carried

RESOLUTION 2002-30 APPLICATION FOR PARKS GRANT

Received a request from Sharon Clark, Sharco Ent. to screen topsoil at 6752 Mill Street.

A motion was made by Supervisor Eagan and seconded by Councilman Mead to refer to the Planning Board, for review and recommendation, a request from Sharon Clark, Sharco Ent. to screen topsoil at 6752 Mill Street.

five (5) Ayes Carried

RESOLUTION 2002-27 DR. NORMAN AND ELSIE HERTZ

2002 CITIZENS OF THE YEAR

RESOLUTION 2002-28 2002 BUSINESS OF THE YEAR

BRUNNER'S EATERY ? PIZZA BARON

Received a letter of complaint from Tina Kester, 7042 Boston Cross Road, regarding enforcement of the deadline for the Summer Recreation Program.

A motion was made by Supervisor Eagan and seconded by Councilman Mead to table the letter of complaint from Tina Kester, 7042 Boston Cross Road, regarding enforcement of the deadline for the Summer Recreation Program pending additional information from Ms. Kester and Recreation Director Clesse.

five (5) Ayes Carried

Received a request from Beverly and Terrance Lenahan, 7119 Boston Cross Road, for a speed limit reduction of 40 mph and ?Children at Play? signs for Boston Cross Road.

Councilman Simmeth commented that he discussed the request of Beverly and Terrance Lenahan with the Highway Superintendent and the NYS Police and will have a decision in a couple of weeks.

A motion was made by Supervisor Eagan and seconded by Councilman Simmeth to refer a request from Beverly and Terrance Lenahan, 7119 Boston Cross Road, for a speed limit reduction of 40 mph and ?Children at Play? signs for Boston Cross Road, to the Traffic and Safety Committee for review and recommendation.

five (5) Carried

RESOLUTION 2002-32 AUTHORIZING A SPECIAL APPROPRIATION FOR THE TOWN OF BOSTON
HISTORICAL SOCIETY

A Public Hearing was held at 7:45 p.m. on Proposed Local Law No. 2 of the Year 2002, entitled A Local Law to Regulate the Generation of Noise in the Town of Boston.

Supervisor Eagan read the legal notice.

Donna Huson, 7104 Boston State Road: I am curious as to what we can do when we are awakened at 2:00 a.m. by noise?

REGULAR TOWN BOARD MEETING TOWN HALL

JUNE 5, 2002 7:30 P.M.

PUBLIC HEARING (CONT):

Town Attorney Perley: At the present

time you can call the State Police

and you can attempt to enforce the

noise ordinance currently on the

books that has no standard and would

be very difficult to enforce in court.

The purpose of adopting a Local Law

this evening is to establish

objective standards for the

generation of noise so we can

more effectively control and

regulate those institutions that

generate noise both during the day

and in the evening. The standards

differ and it is allowed to be louder during the day than in the night. The decibel has to go down fairly significantly although it doesn't look like it from the numbers. At the present time all you can do is complain. We have a difficult time enforcing the law that we have and for that reason, at the recommendation of the Town Board last year, we began work on this. The Zoning Review Committee of the prior Town Board and this Town Board have reviewed the documents presently before this Board in an attempt to provide appropriate standards for controlling the very problem you are talking about.

Thomas Needell, 7123 Boston State Road: I haven't seen the ordinance. Is it available for us to see? What are the standards that are being enforced? My concern is that Boston ordinances like this look at outside noise levels and completely disregard the noise that we hear in our homes. It doesn't take much noise to be irritated inside your home when you are trying to sleep. Certain noises like low base sounds, typical of what we hear with bands playing, tend to penetrate houses and it may not rise to a very loud level but it is very irritating to lay in bed for a few hours listening to this base sound. So does this ordinance address that and provide some remedy?

Councilman Mead offered a copy of the ordinance to Thomas Needell.

Town Attorney Perley: I believe it does. Time will tell. We have adopted two separate sets of standards for the evaluation of noise. If you look at section four, "unreasonably intrusive noise", this is a more subjective type of a standard but it attempts to address the issue that you bring up which are noises that are not quantifiably measurable at the property line but can sometimes provide unreasonably intrusive noise. These are difficult noises both for the sound generator as well as the individuals or residents on the receiving end because some of these noises can carry over tremendous distances. We have attempted to address what you might consider the qualitative noise issues. We have addressed the quantitative noise issues, which are in section five, "measures the sound limit from the property line of

the nearest adjoining property?. Those decibel levels, 70 through 10:00 p.m. and 60 afterwards, just remember that each ten is more like the Richter scale, it is not nearly one sixth louder, it is significantly louder than that. It is our attempt to address it both ways. Whether or not we will be entirely successful and satisfy all those that are concerned remains to be seen. We have done the best we can.

Thomas Needell: I hope it works. For many of us, that base penetrating into our homes, not necessarily a high decibel level, certainly is a very irritating sound to have to listen to.

Town Attorney Perley: I can assure you this is going to be a tricky issue and there maybe additional things we have to look at.

REGULAR TOWN BOARD MEETING TOWN HALL

JUNE 5, 2002 7:30 P.M.

PUBLIC HEARING (CONT.):

A motion was made by Councilman Mead and seconded by Supervisor Eagan to close the Public Hearing at 7:53 p.m.

five (5) Ayes Carried

A motion was made by Councilman Edington and seconded by Councilman Simmeth to declare no adverse environmental impact as a result of the adoption of Local Law #2.

five (5) Ayes Carried

A motion was made by Supervisor Eagan and seconded by Councilman Mead to adopt Local Law No. 2 of the Year 2002, entitled A Local Law to Regulate Generation of Noise in the Town of Boston.

five (5) Ayes Carried

A Public Hearing was held at 7:54 p.m.
on Proposed Local Law No. 3 of the
Year 2002, entitled A Local Law to
Enact a Six-Month Moratorium on the
Issuance of Permits for Permanent
Signs in the Town of Boston.

Supervisor Eagan read the legal notice.

There were no public comments.

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

five (5) Ayes Carried

A motion was made by Councilman Mead
and seconded by Supervisor Eagan
to declare that no adverse environmental
impact as a result of the adoption of
Local Law #3.

five (5) Ayes Carried

A motion was made by Councilman Mead and seconded by Councilman Wiktor to adopt Local Law No. 3 of the Year 2002, entitled A Local Law to Enact a Six-Month Moratorium on the Issuance of Permits for Permanent Signs in the Town of Boston.

five (5) Ayes Carried

A Public Hearing was held on June 3, 2002 at 6:00 p.m. as a result of inspections of the property owned by Ronald Wierzba, at 8146 Boston State Road made by the Deputy Code Enforcement Officer. Pursuant to Town Code, Chapter 47, of the Town of Boston, the Town Board determined that unsafe building (s) are located at 8146 Boston State Road.

Town Attorney Perley commented that prior to the 6/3/02 Public Hearing he was contacted by the attorney representing Ronald Wierzba who indicated an interest in rehabilitating the building. Based upon the current zoning law and the amount of land involved, and other issues, the owner needs to investigate whether or not rehabilitation of the building would otherwise be in conformance with our zoning.

REGULAR TOWN BOARD MEETING TOWN HALL

JUNE 5, 2002 7:30 P.M.

A motion was made by Councilman Mead and seconded by Councilman Edington to delay the Demolition Order for property at 8146 Boston State Road for thirty days to allow the property owner to submit a plan for rehabilitation of the building.

five (5) Ayes Carried

The Town Board, at the regular meeting of May 15, 2002, tabled a request by JoAnn Santonocito, 7549 Valley Circle Lane, for a second accessory building.

The Town Board on June 3, 2002 inspected the site at 7549 Valley Circle Lane.

A motion was made by Councilman Wiktor and seconded by Councilman Mead to approve the application of JoAnn Santonocito, 7549 Valley Circle Lane, for a second accessory building.

five (5) Ayes Carried

Highway Superintendent Kreitzbender reported that Resolution 2002-31 is part of the road rehabilitation started a few years ago and as previously planned, money must be borrowed to continue the program. Residents have seen much progress in the past few years and this year more than fifty percent of the roads will either be totally resealed or micro-sealed.

RESOLUTION 2002-31 ISSUANCE OF SERIAL BONDS TO
FINANCE THE RESURFACING/RECONSTRUCTION
OF CERTAIN HIGHWAYS

Town Attorney Perley noted that he will send a copy of Resolution 2002-31 to the lender and close in approximately thirty days.

A motion was made by Councilman Edington and seconded by Councilman Simmeth, on the recommendation of the Conservation Advisory Committee, to appoint Daniel Hurtubise and Paul Speich to the Conservation Advisory Council, term to expire 3/1/05.

five (5) Ayes Carried

SUPERVISOR REPORT

Supervisor Eagan commented that regarding the Noise Ordinance, he spoke to the Town Attorney and Councilmen regarding seeking additional legislation, which will add support to the ordinance. A sound device will be purchased to regulate the noise and the Code Enforcement Officers will be trained. The State Police will review the ordinance and offer help with enforcement.

Town Attorney commented that the draft legislation is almost complete.

Supervisor Eagan reported that the Erie County Department of Environment and Planning is co-sponsoring a waste drop-off day with the NorthEast Southtowns Solid Waste Board (NEST) on

July 22, 2002 at ECC South. Flyers are in the Town Clerk office.

Supervisor Eagan complimented the Highway Superintendent and crew on the progress on the Town Park project.

Supervisor Eagan reported that at the May 15, 2002 Town Board meeting, Councilman Simmeth questioned the Refuse CD (Certificate of Deposit) for \$90,345 as well as a Refuse savings account in the amount of approximately \$310,000. Since Councilman Simmeth chose to ask a question at a meeting format, Supervisor Eagan thought it appropriate to address the Refuse CD issue at this meeting. He noted that the headline of a local news article read, "Boston CD Account Balance Questioned". He said that in January

REGULAR TOWN BOARD MEETING TOWN HALL
JUNE 5, 2002 7:30 P.M.

SUPERVISOR REPORT (CONT):

Supervisor Eagan (cont.): of this year there was \$93 in the Refuse checking account, \$3,334 in the Refuse savings account, and \$90,345 in the Refuse CD that Councilman Simmeth referred to. The town could not meet its obligation to pay approximately \$30,000 per month over the next three to four months without sufficient funds. Not being aware of when tax dollars would be submitted from the Town Clerk, it was the decision of Supervisor Eagan to hold the entire amount in the savings account rather than withdraw funds prematurely from a CD and be penalized. With the support of the Town Accountants (Clarke & Koller), money was withdrawn on the maturity date of 1/26/02 and deposited in the savings

and checking accounts. \$310,000 of Refuse money was turned over in mid March, and deposited in our savings account. With interest rate fluctuations and the state of our economy it was decided to retain the funds in the savings account until a determination was made as to how much to invest and where to receive the best rates. Supervisor Eagan asked Councilman Simmeth to call him the next day (May 16, 2002) for a specific response to his question. Supervisor Eagan noted it appeared that it was more show than concern because he spoke with Councilman Simmeth on the phone and attended meetings with him after May 15th and not once did he refer to the Refuse issue. He noted that under our new policy, agenda items are ready the Friday before a Board meeting to give Board members ample time to review and comment before being asked to vote on a issue. Supervisor Eagan feels the question was politically motivated because Councilman Simmeth had five days to ask him about the Refuse CD prior to the meeting and three weeks since to follow up. He saw an opportunity to take a political shot and the paper picked up on this as he hoped they would. Councilman Simmeth stated the CD was to be used to lower taxes. Supervisor Eagan responded to use refuse money to lower taxes is wrong, it is a contractual charge to the homeowners and not a tax. Simply, the town acts as a collection agency for BFI and they are paid monthly. Some money is put into a CD until needed. Councilman Simmeth stated he looked in the 2001 budget. Supervisor Eagan wants to know how he made a determination from last year's budget since a budget addresses what is to be spent the next year and where the money is coming from. Supervisor Eagan noted that he never said he was a financial wizard or a government expert. All he really said was that he could do a better job dealing with people and letting government be not only by the people but also for the people. He noted some people see him as just a democrat but a broad range of voters, not just democrats elected him. He represents the whole community and has an agenda for change that includes how residents are treated, how government is run and all with an emphasis on people before politics. Supervisor Eagan noted that some may throw him a curve but they will never ruin his spirit or intent to do the best job he can for the Town of Boston.

HIGHWAY SUPERINTENDENT REPORT

Highway Superintendent Kreitzbender reported that the 2002 Spring brush pick-up has been completed.

Highway Superintendent Kreitzbender reported that the road projects for the year has begun.

Highway Superintendent Kreitzbender announced that repaving has begun in the Creekside Subdivision for the Sewer Project.

Highway Superintendent Kreitzbender reported that the Erie County Highway Department has informed him that bids have been opened but not yet awarded for the Omphalius Road project. The project is scheduled to begin in August.

REGULAR TOWN BOARD MEETING TOWN HALL

JUNE 5, 2002 7:30 P.M.

HIGHWAY SUPERINTENDENT REPORT (CONT.):

Highway Superintendent Kreitzbender reported that Cole Road is closed above Liebler Road because new cross over pipes are being installed. Erie County Highway Department noted it is the intent to resurface the road this year if money is available.

Highway Superintendent Kreitzbender reported that the bathrooms for the parks are due to be delivered next week. G & W Plumbing volunteered to do the plumbing and Dennis Greenauer will do the main line tap in. Someone is needed to do electrical work.

Highway Superintendent Kreitzbender reported that a fence has been moved in the Town Hall Park by the softball diamonds to move the traffic away from the snack shack and diamond four.

Highway Superintendent Kreitzbender reported that a new backstop was installed in North Boston Stadium and the adult league games will begin Sunday.

TOWN ATTORNEY REPORT

Town Attorney Perley reported that he is working on legislation addressing noise issues concerning the residents of Boston, and with adoption of the moratorium, he will work on legislation to address the regulation of signs in the Town of Boston so a new sign law can be in place before the expiration of the moratorium.

COUNCILMAN REPORT

Councilman Mead complimented the Highway Superintendent on the good job he is doing in the Parks and with the roads. Gates have been installed which inhibit entrance to the parks. A few weeks ago in the North Boston Park, someone with a truck latched on to the gate and damaged it. It is a shame that residents are paying to have improvements done and this vandalism is still occurring. If the gate wasn't installed more damage would have been done.

Councilman Mead reported that he attended the Boston Chamber of Commerce Dinner Meeting and Awards Ceremony on June 1, 2002. Councilman Mead read a letter from Dr. Norman and Elsie Hertz thanking the Town Board for recognizing them at the Town Board meeting.

Councilman Wiktor announced that North Boston Fire Company has negotiated with the NYS DOT Signal Department in procuring equipment to assist in controlling traffic in the event of power failure. The Fire Company purchased transfer switches for the traffic signals at Boston State/219 exit and Boston State/Zimmerman Road. The transfer switch will enable a portable generator to be plugged into a traffic signal to allow power until power can be restored. This will ensure the safety of the firefighters, and residents. A traffic light is being considered for the Boston State/Boston Colden Roads.

Councilman Wiktor reported that a flyer has been distributed to residents seeking their help in aiding the town to obtain a grant to develop the Town of Boston newly purchased parkland. Residents are asked to write a letter and drop off at the Boston Town Hall or Boston Valley School to be forwarded to Albany. The more public positive response, the more points are added to the request for consideration. The deadline is June 10th.

Councilman Simmeth reported that regarding the Boston State/Omphalius Road intersection, the Erie County Project Design Consultant will provide a final recommendation to proceed with highway alignment corrections during the upcoming construction. West Tillen, Boston Colden Roads, are nearing completion and the final recommendation and highway mitigation are forth coming. At REGULAR TOWN BOARD MEETING TOWN HALL

JUNE 5, 2002 7:30 P.M.

COUNCILMAN REPORT (CONT.):

Councilman Simmeth (cont.): the Boston Town Hall, a final determination for an established pedestrian control device will be depend on the Town of Boston finalizing the land use and corresponding pedestrian activity.

Councilman Simmeth reported that NYS DOT is conducting a traffic study on Trevett Road regarding a speed limit reduction request.

Councilman Simmeth thanked Supervisor Eagan for responding to his inquiry regarding the Refuse CD account and for the five minute dissertation on what a great job he is doing as Supervisor.

Councilman Edington reported that he attended Mabel Lougen's 100th Birthday luncheon and presented a plaque on behalf of the Town Board.

Received and filed Zoning Board of Appeals recommendation dated May 28, 2002, by majority of written ballot, voting Ralph Gibson as Chairman.

A motion was made by Supervisor Eagan and seconded by Councilman Simmeth, on the recommendation of the Zoning Board of Appeals to appoint Ralph Gibson as Chairman, term to expire 4/1/03.

Councilman Wiktor Voting Aye

Councilman Edington Voting Aye

Councilman Simmeth Voting Aye

Councilman Mead Voting Nay

Supervisor Eagan Voting Aye

four (4) Ayes One (1) Nay Carried Carried

Councilman Mead is in agreement with ZBA Chairman Hice's recommendation of Brien Hopkins for Chairman of the ZBA and therefore voted against the appointment of Ralph Gibson.

Received and filed a request from the Conservation Advisory Council for Town Board consideration of the installation of sidewalks and trails in new and existing residential areas within the town for the health, safety and general welfare of the residents and business owners.

A motion was made by Councilman Edington and seconded by Supervisor Eagan to refer the Conservation Advisory Council request for Town Board consideration for sidewalks and trails in new and existing residential areas to the Capital Improvement Committee for review and comment.

five (5) Ayes Carried

Received and filed Code Enforcement Officers report for May 2002.

Received and filed Town Engineer monthly report for May 2002.

A motion was made by Councilman Mead and seconded by Councilman Simmeth to adjourn the meeting at 8:26 p.m.

DAVID J. SHENK, TOWN CLERK