

Town Board Minutes March 5, 2003

REGULAR BOARD MEETING TOWN HALL

MARCH 5, 2003 7:30 P.M.

Present were Councilman Damian P. Wiktor, Councilman Richard K. Hawkins, Councilman Karl J. Simmeth Jr., Councilman Dennis J. Mead, Supervisor William A. Eagan and Highway Superintendent Wayne C. Kreitzbender.

Received a request from Assessor Hornberger to appoint Sue Fitzner as Assessment Clerk PT.

A motion was made by Councilman Mead and seconded by Councilman Simmeth to table the appointment of Sue Fitzner as Assessment Clerk PT, pending further review.

five (5) Ayes Carried

Received a request from Patchin Fire Company to change the Community Days event dates previously approved for July 16-21 to July 9-14, 2003.

A motion was made by Councilman Mead and seconded by Councilman Wiktor to change the Community Days event dates previously approved for July 16-21 to July 9-14, 2003.

five (5) Ayes Carried

A motion was made by Councilman Simmeth and seconded by Councilman Mead to adopt the minutes of the January 22, 2003 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 the fund bills on Abstract #3, dated March 5, 2003, amount of \$216,723.67 be paid.

five (5) Ayes Carried

Received and filed the Erie County Sheriff's monthly report for January 2003.

Received and file notification of new programs and rate changes from Adelphia Cable.

Received and filed notification of a liquor license renewal for CAMC Inc. a/k/a/ Valley View Inn, 8326 Boston State Road.

REQUESTS FROM THE FLOOR

Herbert Klein, 7690 Back Creek Road: Today I received a framed picture of an elephant with a note from Town Clerk Shenk and I appreciate his thoughtfulness. I received a tax bill with an unpaid water charge added and would like to know the Town Board procedure for levying these charges on tax bills.

Deputy Clerk Ellis: Erie County Water Authority notifies the Town Clerk of unpaid water bills and Mr. Klein feels residents should be notified by the town.

Herbert Klein: When I was Town Clerk and the Board received notification of unpaid water bills, a notice was sent to the property owner offering an opportunity for the bill to be paid to the Town Clerk before being levied on the tax bill. I would like to know who the tenant is so I may attempt to recoup the money.

Supervisor Eagan directed the Deputy Town Clerk to research Mr. Klein's unpaid water bills.

Ken Nuwer, 701 Quaker Road, East Aurora, Owner Creekside Court Apartments: Recent changes have occurred in the parking situation at Creekside Court. In 1997 when I purchased the apartments I was informed by the then Supervisor that the parking in front was part REGULAR BOARD MEETING TOWN HALL

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REQUESTS FROM THE FLOOR (CONT.):

Ken Nuwer (cont.): of that initial concept and would always be provided for by the tenants. Councilman Simmeth was influential in improving the parking lot lighting. In 1998 the parking lot was striped in accordance with the 1985 amendment passed by the Town Board providing for a twenty-foot right a way. This year "no parking" signs were installed, cars were ticketed, and the parking has been totally removed. Cars are parked on lawns and I am hoping the Board can offer some help or guidance. Only 20% is plowed and I can't put parking lots in at this time of the year. My attorney spoke with Town Attorney Perley who said we could come up with an amicable solution. I have the creek in the back yard and the Army Corps of Engineers did a study showing that I am losing three feet of bank every year.

Supervisor Eagan: The study on Eighteen Mile Creek has been done by Erie County Soil & Water and bordering towns are attempting to secure funding to begin the stabilization project. Boston has the highest number of priority sites (27 sites) to be addressed.

Highway Superintendent Kreitzbender: The problem of Creekside Court parking has been going on for years. In 1985 the Town Board passed a resolution of "No parking in Creekside Court on Highway property." Mr. Nuwer did not have the right to stripe the road and his plowing service is shoving snow in highway right a way.

Ken Nuwer: In the six years I have owned this property no one ever called me with a single complaint.

Highway Superintendent: You are wrong. I talked to you in 1999.

At 7:50 a Public Hearing was

held to consider the application of the Federal Bureau of Investigation for a Special permit for Co-location of two receivers and one antenna to a telecommunication facility at 6405 Ward Road.

Supervisor Eagan read the legal notice and noted that 40 neighboring property owners, the Orchard Park Town Clerk and applicant were notified and sent an Assessor's map outlining the property and a copy of the Special Permit Application.

David Early, Planning Board Member: The Planning Board would like a list of sites on the tower.

Councilman Mead: The FBI application for co-location on the tower is a result of an investigation that revealed co-locations without applications. I will give the Planning Board a list of the sites on the tower. The FBI is the last co-location that needed an application and that is the reason for the Public Hearing tonight.

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

REQUESTS FROM THE FLOOR (CONT.):

Ken Nuwer: I would like to present the Town Board with a copy of the ordinance that cites the outside perimeters.

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REQUESTS FROM THE FLOOR (CONT.):

Highway Superintendent Kreitzbender: Supervisor Eagan has a copy of the survey from Foit-Albert Engineers stating that the entire area is owned by the town and there is no easement for parking.

Ken Nuwer: It has been used for parking for thirty years.

Highway Superintendent Kreitzbender: Residents sent me letters stating that we must not know how to plow snow. We can't plow because of all the cars in the way. If there was a fire, fire trucks could not get to the hydrants. The State Police have said that either we allow everyone or no one to park there.

Ken Nuwer: You are our friend, not our enemy. We need your services. If we could mark it twenty or more feet from the perimeter, whatever you need, that would work out fine. Can we get together and find some spots for parking?

Highway Superintendent Kreitzbender: I will work with you as long as it is agreeable to the Town Attorney.

Deputy Code Enforcement Officer Lisowski: I received many complaints from people in the Creekside Court area with illegally parked cars and junk trucks etc. I resolved the issue by requesting the State

Police accompany me to the parking area where trucks are illegally parked within 15 feet of the fire hydrant. We should bring this issue to the attention of the Planning Board, with the Highway Superintendent's input, for a solution.

Received a request from Recreation Director Clesse to attend the annual NYS Recreation and Park Society Conference in Hauppauge (Long Island), New York from March 30-April 2, 2003.

A motion was made by Supervisor Eagan and seconded by Councilman Mead to grant Recreation Director Clesse permission to attend the annual NYS Recreation and Park Society Conference in Hauppauge (Long Island), New York from March 30 - April 2, 2003, all appropriate expenses to be paid.

five (5) Ayes Carried

Received a Planning Board opinion supporting the request of Deputy Code Enforcement Officer Lisowski that a Site Plan Review should include a sign review and legislation drafted to reflect such in the Boston Town Code.

A motion was made by Supervisor Eagan and seconded by Councilman Mead to refer to the Town Attorney the opinion of the Planning Board on the request of Deputy Code Enforcement Officer Lisowski regarding the inclusion of a sign review in the Site Plan Review.

five (5) Ayes Carried

RESOLUTION 2003-07 HEALTH CARE BENEFIT GUARANTEE
FOR STEELWORKERS

Councilman Wiktor noted the Health Care Resolution is very important. As a former employee of Bethlehem Steel he has eleven family members that were employed by Bethlehem Steel and will have their health benefits terminated. Some are being denied coverage by insurance companies because of pre-existing conditions and this needs to be addressed, not just for Bethlehem Steel retirees but for others nationwide.

Received a request from the Hillfest Committee to reserve the Town Park facilities August 20 ? August 25, 2003 for the Hillfest event on August 23rd and 24th.

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A motion was made by Councilman Mead and seconded by Supervisor Eagan to table the request of the Hillfest Committee for use of the Lions Shelter, Town Hall Park and restroom facilities for the Hillfest event August 20-25, 2003 and to request Hillfest Member Stephen Tills to attend the Agenda Review meeting on March 19, 2003 for further discussion.

five (5) Ayes Carried

Received notification from Erie County Department of Personnel regarding the creation of (2) Truck Driver (Non-Competitive Class) positions.

A motion was made by Councilman Wiktor and seconded by Councilman Simmeth to approve the creation of (2) Truck Driver (Non-Competitive Class) positions.

five (5) Ayes Carried

Received an Engineering and Consulting Agreement between the Town of Boston and Foit-Albert Associates.

A motion was made by Councilman Mead and seconded by Councilman Hawkins, on the recommendation of Town Attorney Perley, to authorize Supervisor Eagan to sign the Engineering and Consulting Agreement between the Town of Boston and Foit-Albert Associates.

five (5) Ayes Carried

Received a request from J. David Early for re-appointment to the Planning Board.

A motion was made by Councilman Mead and seconded by Councilman Simmeth to re-appoint J. David Early to the Planning Board, term to expire, 2/1/10.

five (5) Ayes Carried

Deputy Clerk Ellis noted the term of Planning Board Alternate Member Jeffery Mendola expires 12/31/03.

SUPERVISOR REPORT

A) Supervisor's monthly report for February 2003 was received and is on file in the Clerk's Office.

Supervisor Eagan reported that there is an Erie County Industrial Development Agency (ECIDA) program to provide tax and financial incentives to businesses for renovations and expansion purposes. The goal is to encourage small local businesses to enhance their properties to benefit the community.

Supervisor Eagan thanked Colden Supervisor Calhoun and the Colden Town Board for a \$1,000 check toward legal fees for the creation of Water District #3 and for their support.

Received and filed a Quarterly Grants Development Status Report from Grant Consultant Connie Miner. Supervisor Eagan is pleased with the grants awarded the Town of Boston in 2002.

Supervisor Eagan reported that the State Police submitted preliminary plans for the proposed new police barracks and hopefully it can be built this year.

Deputy Code Enforcement Officer Lisowski noted that we now have a State Police building difficult to adapt to another use. He suggested that the new State Police Barracks be built with clear span trusses. If the use of the building changes, it would then be possible to move walls to accommodate another tenant.

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TOWN CLERK REPORT

A motion was made by Councilman Wiktor and seconded by Councilman Mead to accept the Town Clerk Monthly Report for January 2003.

five (5) Ayes Carried

Deputy Town Clerk Ellis reported that the 2003 Town and County tax collection is going well and noted that Monday, March 17th is the last day to pay taxes without penalty.

Deputy Town Clerk Ellis reported that she has been in constant contact with Town Clerk Shenk who is now at Fort Dix after returning from training in Miami. His troop, the 1982nd Forward Surgical Team has been cleared for deployment overseas and is packed and ready to go. He said there are 56,000 troops at Fort Dix and overcrowding is a serious problem. Trucks bring in water for the men to take showers and many sleep on cots on the floor. David lucked out and has a bed. Morale is low as everyone wants to get this war situation over with and return home. If and when David goes overseas we will communicate by army e-mail.

HIGHWAY SUPERINTENDENT REPORT

Highway Superintendent Kreitzbender reported that as discussed with the Town Board last fall, the trees in front of the Town Hall have been removed to increase the parking lot about eight feet and also create handicap parking. There will be new landscaping to offer a better view of the Town Hall.

Highway Superintendent Kreitzbender reported the park bleachers are completely refurbished. The Town Park fencing and batting cages will be completed by mid May.

Highway Superintendent Kreitzbender presented an update on the miles and man-hours spent on snow removal.

Highway Superintendent Kreitzbender requested authorization to purchase a 2003 ¾ ton pick-up truck through NYS Fleet Pricing for the Highway Department. A Highway Dept. one ton dump truck will replace an inoperable truck in the Parks Department.

Supervisor Eagan inquired as to the price of the 2003 ¾ ton pick-up truck.

Highway Superintendent Kreitzbender responded the price is approximately \$31,000.

A motion was made by Councilman Wiktor and seconded by Councilman Mead to authorize Highway Superintendent Kreitzbender to purchase a 2003 ¾ ton pick-up truck through NYS Fleet Pricing.

five (5) Ayes Carried

A motion was made by Councilman Simmeth and seconded by Councilman Wiktor to authorize Highway Superintendent Kreitzbender to advertise for bids for a 2003 Single Axle 4 Wheel Drive Truck and separate bids for a Multipurpose Dump Box, Plow, Wing and Hydraulics.

five (5) Ayes Carried

A motion was made by Councilman Simmeth and seconded by Councilman Wiktor to authorize Highway Superintendent Kreitzbender to advertise for bids for (2) Ford 550 Truck Cab and Chassis or equal with a trade-in of (2) 2000 Ford 550 Truck Cab and Chassis.

five (5) Ayes Carried

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A motion was made by Councilman Mead and seconded by Councilman Hawkins to authorize Highway Superintendent Kreitzbender to advertise for bids for a 2003 New and Unused Chevrolet Silverado 2500 HD EXT 143.5? WB4WD LT CR25753 or Equal.

five (5) Ayes Carried

COUNCILMEN REPORT

Councilman Mead asked how the 3230 Highway man-hours for snow removal this year compared to last years total.

Highway Superintendent Kreitzbender responded that the man-hours for snow removal for 2003 are considerably higher than 2002. Every vehicle but one is now a one-man vehicle, which has eliminated having two men to a truck. At full time labor, over \$60,000 was saved compared to last year.

Councilman Mead noted he would like to see a plan for the front of the Town Hall.

Supervisor Eagan commented that the plan for the front of the Town Hall should be designed properly before work is done.

A motion was made by Councilman Wiktor and seconded by Councilman Simmeth to authorize Supervisor Eagan to sign the Erie County Storm Water Phase II Coalition.

five (5) Ayes Carried

Councilman Wiktor thanked the Highway Superintendent and crew for repairing potholes on the roads.

Councilman Wiktor reported that residents in subdivisions have requested to have the mounds of snow removed before flooding occurs.

Highway Superintendent responded that he will address the removal of snow mounds in subdivisions.

A motion was made by Councilman Simmeth to appoint Kelly Vacco as Town Attorney, term to expire 12/31/03.

Supervisor Eagan: In January Mr. Perley advised the Town Board that he would be resigning as Town Attorney and it was rumored his replacement would be Mrs. Vacco, the choice of the Republican majority. The Board advertised for the position and nineteen resumes were submitted. According to State Law the applicant must be a resident of Boston. Only three applicants qualified. Mr. Downey's credentials surpassed the other candidates. He is a life long Boston resident with seventeen years experience as a practicing attorney having experience with government. The Republican majority would like everyone to believe that they based their decision solely on the resume and interview process when in fact Mrs. Vacco was introduced at a Republican Club meeting as Mr. Perley's replacement. Mrs. Vacco leaves me confident of her intelligence and enthusiasm for the law. I expect her to be appointed and will work with her. Those in the majority owe these applicants an apology for their failure to deal in good faith. You have tainted the process with politics, which insults the intelligence of our community and confirms that your first commitment is your politics.

Councilman Hawkins: I interviewed the three applicants and as elected officials we were elected by the people for the people. Not just certain parties but all parties. As elected officials we should put the best qualified in this position especially this year when we have Highway Department labor negotiations coming up,

Water District #3 issues, drainage issues, and rip-rap on Back

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COUNCILMEN REPORT (CONT.):

Councilman Hawkins (cont.): Creek. Mrs. Vacco spent the last few years at home raising her children, not practicing law. She has no experience with Article 78 cases, or Town Law and this Town should not have to hire an outside attorney to represent the Town for the Highway contract. This is not on the job training. We need someone qualified and this Board needs to look beyond affiliations. Mr. Downey was the Town of Boston Prosecutor for two years.

Councilman Wiktor: During the interview it was apparent that because of Mrs. Vacco's experience at the corporate level and public sector she has acquired a network of contacts for the Town Attorney's office. Mrs. Vacco is not affiliated with any legal office and provides the distinction of being able to perform as a full time attorney for the Town, making her very accessible. She has no other legal responsibilities at this time.

Supervisor Eagan: Having a network of contacts is very good but that does not excuse the fact that politics played a major part of the decision. Mrs. Vacco has worked a couple of years here, one year there and the last three years she has worked out of her home. This isn't a full time job so I wouldn't expect her to work beyond the requirements of the job. Mrs. Vacco as a Town Prosecutor in Brant for one year, did traffic tickets. Mr. Downey handled Code Enforcement issues defending code and zoning issues which was beyond Mrs. Vacco's experience. There is no excuse to ignore qualifications. There are eighteen projects that we will be dealing with this year. I would hope that she wouldn't need to use her network of contacts for everything she needs to do.

Councilman Wiktor: I am not one to respond to rumors because in most cases rumors can be manipulated in a way to present a certain fact that you want to come out. One of the local newspapers published an article that it was rumored that? Well obviously the reporter got the story from someone who wanted to start that rumor.

Supervisor Eagan: I informed the reporter of what I heard. I will pledge my full cooperation and support to Mrs. Vacco. I am not interested in her failure because her failure would be a failure for this town.

Councilman Simmeth: It was the Republican majority that brought this situation to the floor. It was not a big issue with the Democratic Councilman and Supervisor. They had time to bring up this appointment under Preliminary Matters and they had time to put it on the agenda. We are missing a Town Attorney, the position is very important and they refuse to bring it up.

Supervisor Eagan: At any time you could have requested it be put on the agenda. No indication was made at Monday night's agenda meeting.

Councilman Hawkins: You had many times to comment on this discussion. Why do you wait until we are on the council floor to bring it up when you had other opportunities?

Councilman Simmeth: It was an honor for me to sit on this Board from 1997 to 2001 with the first female supervisor in the history of the Town of Boston. It would also be an honor to appoint the first female Town Attorney for the Town of Boston. I have letters from the Associate Commissioner of NYS Department of Health and John Giodano, Ciminilli Construction Company recommending Kelly Vacco for the position.

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A motion was made by Councilman Simmeth and seconded by Councilman Wiktor to appoint Kelly Vacco as Town Attorney, term to expire 12/31/03.

Councilman Wiktor Voting Aye

Councilman Hawkins Voting Nay

Councilman Simmeth Voting Aye

Councilman Mead Voting Aye

Supervisor Eagan Voting Nay

three (3) Ayes two (2) Nays Carried

CONSERVATION ADVISORY COUNCIL REPORT

Received and filed a letter from Mary Alice Tock requesting the installation of signs and marked crosswalks indicating that the Boston State Road is a roadway shared by pedestrians, cyclists and motorized vehicles.

Received and filed a letter from Richard Lee, Chairman of the Conservation Advisory Council supporting Mary Alice Tock's suggestion for the installation of signs for pedestrians and cyclists and also suggesting walking/biking paths be developed or re-established.

Received and filed a letter from Richard Lee, Chairman of the Conservation Advisory Council supporting the request of Deputy Code Enforcement Officer Lisowski for a sign review in the Site Plan Review.

DOG CONTROL OFFICERS MONTHLY REPORT

A) Dog Control Officers monthly report for January 2003 was received and is on file in the Clerk's Office.

A motion was made by Councilman Mead and seconded by Councilman Wiktor to adjourn the meeting at 8:47 p.m.

KAREN A. ELLIS, DEPUTY TOWN CLERK.