

Town Board Minutes March 7, 2012

Present: Supervisor Martin A. Ballowe, Councilmen Jeffrey A. Genzel, Jay P. Boardway, Lawrence A. Murtha and Gary E. Vara

Also Present: Highway Superintendent Telaak, Deputy Town Attorney Vacco.

A motion was made by Councilman Boardway and seconded by Councilman Genzel to authorize the signing of a contract with the Boston Historical Society in the amount \$4,800 for the calendar year 2012.

five (5) Ayes Carried

Councilman Boardway noted that there has been a question raised as to the correct wording of absent or excused when a councilman is not in attendance at a board meeting.

A motion was made by Councilman Boardway and seconded by Councilman Genzel to table the minutes of the February 15, 2012 regular meeting.

five (5) Ayes Carried

A motion was made by Councilman Murtha and seconded by Supervisor Ballowe, upon review by the Town Board, that fund bills on the Abstract dated March 1, 2012 in the amount of \$99,257.57 be paid.

five (5) Ayes Carried

Received and filed Resolution from Town of Lancaster regarding opposing the proposed NYS District map with the inclusion of a 63rd State Senate District.

A motion was made by Councilman Vara and seconded by Councilman Boardway to approve the Use of Facility Application from Karen Woch for Saturday, May 26, 2012 from 12 p.m. to 6 p.m.

five (5) Ayes Carried

A motion was made by Councilman Genzel and was seconded by Councilman Boardway to accept the resignation of Mike Cartechine from the Planning Board.

five (5) Ayes Carried

A motion was made by Councilman Vara and seconded by Councilman Boardway to approve the Use of Facility Application from Hamburg Pre-K for Friday, June 15, 2012 from 8 a.m. to 3 p.m.

five (5) Ayes Carried

A motion was made by Supervisor Ballowe and was seconded by Councilman Boardway to accept the resignation of David J. Shenk as Town Clerk, Registrar of Vital Statistics, Records Management Officer, Records Access Officer and Affirmative Action Officer.

five (5) Ayes Carried

A motion was made by Councilman Genzel and was seconded by Councilman Vara to reappoint Donald H. Buckley as a regular member of the Conservation Advisory Council term to expire March 1, 2015.

five (5) Ayes Carried

A motion was made by Councilman Boardway and was seconded by Councilman Genzel to open the public hearing at 7:40 p.m.

five (5) Ayes Carried

At 7:40 p.m. a Public Hearing was held to hear comments regarding the Rezoning Application of Boston Valley Holding Company, [Part of SBL No. 226.02-4-51] located on the west side of Boston State Road, South of Deanna Drive to Rezone 21.63 acres R-A (Residential-Agricultural District) to R-3 (two or more Family Residence District), Proposed Local Law No. 2 of the year 2012.

Sean Hopkins of Hopkins & Sorgi, PLLC on behalf of the applicant presented the Town Board with handouts and had presentation boards displaying the project in question. He noted the applicant is proposing Luxury attached patio home units. This project has gone through a lengthy history, originally starting with 110 Mobile Home Units, the rezoning of approximately 45 acres. The application was supplemented in May of 2011 after receiving additional feedback suggesting that Mobile homes in general were not appropriate. As a result based on the input received from both the residents and the Planning Board the project being presented this evening is for 105 luxury townhouse units.

On behalf of the applicant he is requesting that the Town Board issue a negative declaration pursuant to the State and Environmental Quality Review Act (SEQR) and the town rezone the 23 acres from R-A to R-3 to accommodate this project with the condition that the permanent open spaces submitted on the plans be permanently protected via the recording of a declaration of restrictions at the Erie County Clerk's office.

Councilman Murtha asked what would prevent the builder from building higher than the 35 feet.

Sean Hopkins: I believe your zoning code only allows 35 feet in an R-3. But we are doing single story units with attached garages.

Ron Yormick submitted a valid Zoning Protest to Deputy Town Attorney Vacco. He is opposed to this project in its present form and believes that the recommendation from the Town Planner and Town Engineer should not be considered over that of the Town Planning Board who are residents of this town. He also feels there will be traffic issues if this project is built. He stated

that the 27 acres of green space being left is all wet lands and cannot be built on. He suggested that the developer come back with a smaller project.

Marianne Matyas urged the Town Board to follow the recommendation of the Planning Board who voted 5 to 1 not to allow this to be rezoned. She asked the developer to build affordable homes that the elderly can afford and that will add to the tax base. She stated that at any time of day there will be a tax on our water table, roads and sewers.

Glen Kern has concerns regarding what the traffic situation may be once this project is built. What is our vision of Boston? Is it rows and rows of patio homes or nice houses with space in between them?

Frank Lisowski noted that a previous developer for that area could not proceed because of Archeological. He also noted that green space needs to be looked into.

Sean Hopkins noted that he has a letter from the NYS Office of Parks, Recreation and Historic Preservation stating that this project will not have any impact on significant cultural and/or archeological.

William Boltz, Chairman of the Planning Board in 1995 when a similar project was voted down for some of the same reasons. The adjacent mobile home property was given to Mr. Falkides as an experimental project to see how it would work. The lot sizes were small, the people got in and then decided they wanted a patio or deck or garage. The lot sizes were not big enough to be granted. He feels this project should not be granted.

Henry Prentki noted he has concerns for traffic safety and is opposed to this project.

Chris Barlow is in favor of this project but has concerns about losing residents in the Town of Boston. He feels that class sizes are going down. If we lose enough teachers, is there a chance we could lose Boston Valley Elementary School?

Nancy Boltz asked as a senior citizen looking to downsize what would be her advantage to renting or buying one of these units and what would this project bring into the Town of Boston for tax purposes.

Sean Hopkins noted the people that are primarily interested in this project are those who are interested in downsizing.

Developer Dana Darling noted that it would produce over \$200,000 toward tax revenue. The units would be privately owned and there would not be a homeowners association.

Glen Wetzl noted that he is in favor of any project would lower his taxes if the tax base is increased because of it.

Councilman Vara asked what the estimated cost of this project is going to be.

Dana Darling noted that no one can predict the interest rates or anything for that matter, so we are going to start building one or two at a time and continue as the market calls for a demand.

Mark Matyas asked if there has been a proper traffic study done by anyone other than the developer and who conducted the Environmental Impact Study.

Sean Hopkins: The project has been reviewed by the Erie County Division of Highways and all the appropriate documentation is available.

Councilman Boardway noted that the entire project packet is available on the Town of Boston website.

Terry Barlow a current resident of West Seneca stated that he is considering selling his home and moving to Boston if this project moves forward. He also noted that you can look out any window at any time of the year and see green space.

Toby Cronk noted that this would be one of the biggest building projects in the history of Boston and it is rentals? What kind of message does that send?

Wanda Betts asked Sean Hopkins if these patio homes were going to be like the single patio homes on McKinley Avenue. She also noted that the tax base is a big factor. She stated she would love to see something developed there, but make it amicable to the people who live there. She asked how many times we have to revisit this issue after the Planning Board has denied it. We want to see proper growth in the Town of Boston.

Sean Hopkins: No.

Mark Schiralli noted that the Town of Boston Planning Board does a good job.

Judy Rados noted that if this project is built, it may hurt the resale of the homes around it. She noted that there is something like this needed in town, but this is not the right spot for it. She also noted that she is concerned about the traffic issue of turning into and off of Boston State Road, whether or not the Boston Emergency Squad can and do they want to handle this age group and the possible increase in ambulance calls. She asked how the developer was going to guarantee the age group. She feels that there may be an increase in kids on ATV's, and dirt bikes partying in the back woods. She asked that if any of the Town Board members were friends of the developer that they abstain on voting on this project.

Kerrie Bloom noted that she and her fiancé would not have purchased their house if they would have known there was going to be rental units in that area. She does not feel the town is going to get a lot of young families in here with elementary aged children if there is a bunch of rental units. She believes people will be pushed out of the town if these rental units are built.

Richard Brox, Town of Boston Planning Consultant: I am not for or against this project. I report the facts as I have done for the past 18 years. The Comprehensive Plan was a 20-year plan written in 2001 and the Planning Board is in the process of updating it for 2020. One of the goals in the Comprehensive Plan was to provide housing for an aging population, which this project does. Also to encourage development in and around the hamlet areas of medium density residential, which this one tends to do. The population has grown approximately 6 percent and the 55 and over population has grown approximately 6 ½ percent. These proposed 105 units would be added to the total housing stock of the town and raise the total stock of the town a percent and a half perhaps. There is a need for affordable senior housing. When the

survey was done for this plan, many stated they were opposed to growth and development, but the same people said they wanted senior housing. I have to agree that the green space set aside is undevelopable and unbuildable. When you figure land use density you figure it on the entire parcel not just what is being developed. Since 1995 the issue of having more than one point of ingress and egress has always come up at the Planning Board meetings. Emergency vehicles have to be able to get in and out safely. If the town wants to pursue this, I would strongly recommend they command an access east of the cemetery parcel tying into Deanna Drive so it loops the emergency vehicle access. It does not have to be a public thoroughfare, but at least an emergency access for fire, police, and EMS.

If the Town Board passes this rezoning, then the developer comes back to the Planning Board with a site plan that must meet all of the provisions of the zoning code site plan review process. If the Planning Board does not like what is submitted, they can still be turned down. The Planning Board has discussed the access to Deanna Drive. The Planning Board then recommends it back to the Town Board for site plan approval. Once back to the Town Board it goes through the process of a public hearing just like this evening. We are talking at least six months from tonight before a final approval of a site plan if they get a zoning approval.

I would suggest to the Town Board that if they like the project and they only build the first 8 to 16 units and the project dies, the Town Board, may be able to put in some deed or time restrictions that if the project does not proceed in a timely manner or does not follow through the zoning reverts to the R-A. I am not sure this is legal and would have to be researched by the Town Attorney.

Ron Yormick asked if this project is started and ends up being a flop, and all that land is rezoned R-3 what is to stop the developer from selling the property or another developer coming in with something totally different in an R-3 setting, once it is rezoned R-3 as long as it stays multi-family in an R-3 zoning they can practically do anything in there.

Richard Brox noted that if the developer does not follow through, there may be a legal way for the town to put in a restriction that if they build one set of buildings and if nothing proceeds after a year or two the zoning would cease and desist and revert back to the R-A. He is not sure it is legal, but it is a possibility.

Ron Yormick noted that the Town Board has dismissed the Planning Board recommendation and is taking the recommendation from the Town Planner Brox and Town Engineer Hannon.

Richard Brox noted again that he is neither for nor against the project but stated what rules comes out of the Comprehensive Plan which would permit this sort of development if the Town Board rezones it.

Marilyn Wershoven noted that she lives on Old Orchard Drive and years ago when the lots were planned they were 150'x300'. They are beautiful and the people on that street were not millionaires. I have seen similar units like this and Twilight Lane in Hamburg had them and they are not Army Barracks, they can be quite charming and each person puts their individual taste into them as we have all done on our lots. My house is paid for, but my children will not be able to afford a home like the one I have unless I leave my money to my children.

Karl Simmeth: How long have you been a Town Planner?

Richard Brox: Since 1968.

Karl Simmeth: Have you ever seen this issue come up in another town where the residents were against it and the Town Board voted it down and then the developer filed and Article 78 against the town and what do you think a judge would rule based on all your information?

Richard Brox: I think if you flipped a coin, he has a 50/50 chance. There is no guarantee that a judge would look at this document the same way a planner would.

Cynthia Williams noted that because she does not have enough information about this project yet, she is neither for nor against it, however if it is being built towards the empty nester, the senior, the only kids that will be there are going to be visiting Grandma, so it is not going to add to the school population.

Bob Iovenitti asked what the age restriction is on this project.

Dana Darling noted that there is no age restriction as it would violate the Fair Housing Act.

Karl Simmeth: He is 100 percent behind the rezoning of this property. He is a lifelong resident of the Town of Boston. He sat on the Town Board from 1998 to 2006. As a taxpayer the town board needs to look at keeping this town moving forward and believes this project will do that. If we do not move forward we are stagnant with the current and future taxpayers picking up the tax bill. The added tax revenue from this project no matter how small will certainly take some burdens off the taxpayers back. We must not look at our town as being an island upon itself, but embrace new ideas and new ventures. The proposed project is a win-win situation for the developer and the taxpayers. Look back to 1940 and if all of the farmers in town looked and said ?I do not want that sub-division, 75% of the people in the audience tonight would not be here.

Henry Prentki noted that this was taken up years ago by the farmers. People signed the petition stating they did not want this. This gentleman says they wanted it, it is wrong. The farmers cannot be 100 percent wrong.

Dolores Schlee noted that she did not fully understand this project but these two entrepreneurs have spent money and time trying to do the project with consideration for our community. She asked how much would each person in attendance want to put in to help these young men accomplish something excellent for our community. She is not for or against this project. She stated that she is hearing anger and negative things. She gave her compliments to the developers at a time when the world is operating at 20 percent unemployment, that they are willing to take something on. That is what being an American is about. She stated that if you have something positive that will not cost a fortune or can give a helping hand, then do it, but do not just knock someone down because they are trying to accomplish something.

A motion was made by Councilman Boardway and was seconded by Supervisor Ballowe to close the public hearing at 9:03 p.m.

five (5) Ayes Carried

Councilman Boardway noted that there has been a legal challenge to a petition that has been submitted wherein the developer believes it is invalid. The Town Board will need time to review the petition with the town attorneys.

A motion was made by Councilman Boardway and was seconded by Councilman Genzel to table the Rezoning application of Boston Valley Holding Company, [Part of SBL No. 226.02-4-

51] Proposed Local Law No. 2 of the year 2012 pending review of the legality of the submitted petition.

five (5) Ayes Carried

A motion was made by Councilman Vara and was seconded by Supervisor Ballowe to appoint Jason Keding as a Regular Member of the Conservation Advisory Council, term to expire 3/1/2013.

five (5) Ayes Carried

Supervisor Ballowe noted that a request for consideration of appointment to Town Clerk from Jennifer A. Mule' was received. He stated that resumes are being accepted in his office for the town clerk's position and interviews will be held in the near future.

Supervisor Ballowe noted that with the resignation of former Town Clerk Shenk, the workload for the Town Clerk's office staff has increased and requested their salaries be increased to compensate their workload.

A motion was made by Supervisor Ballowe and was seconded by Councilman Boardway to approve the total pay increase for the month of March for Jennifer A. Mulé to \$1,010.72 and Elizabeth A. Martin to \$1,308.98.

five (5) Ayes Carried

A motion was made by Councilman Vara and seconded by Councilman Genzel to approve the Use of Facility Application for Trooper David C. Brinkerhoff Foundation for June 15 and 16, 2012.

five (5) Ayes Carried

A motion was made by Councilman Boardway and was seconded by Councilman Genzel to authorize Supervisor Ballowe to enter into an inter-municipal agreement with the Town of Hamburg to provide dog control services in the event the Boston Dog Control Officer is unavailable. This contract shall be for a period of one (1) year commencing on the date both towns sign the agreement.

five (5) Ayes Carried

Councilman Boardway noted that as most are aware the Boston Fire Company is considering building a new fire hall. There is no dispute that a new truck bay is needed for their equipment. We received a letter from the President of the Fire Company specifically requesting the Town Board issue a building permit. The Boston Fire Company was involved in a legal dispute with an adjoining property owner. We have been advised by attorneys on both sides that this dispute has essentially been resolved. The legal dispute involved an easement which ran through the center of where they want to build. The Town Board, on behalf of the taxpayers and on the advice of numerous attorneys that council us need to have that finalized before we can legally move forward with granting a building permit. We need to have the deed in our hands for the parcel that is being transferred. If a legal action was filed, we need to see stipulation of discontinuance and we need to see some proof from the homeowner that she has waived that easement. Once this happens, that will modify the site plan, and will then require another visit to the Planning Board and the town engineer for review.

Russ Metcalf: At the June Planning Board meeting Mr. Brox said it would not have to go back to the Planning Board.

Richard Brox: I said that before I knew there was a change in ownership and a change in the parcel.

Russ Metcalf: There is not a change in ownership.

Councilman Boardway: There should be a release of easement that runs through the property and then a transfer of a narrow strip on the west side of the property.

Russ Metcalf: Can the town confirm that they received a confirmation of an agreement from Ms. Will?'s attorney.

Town Attorney Vacco: We have received informal confirmation that the parties have reached an agreement. But we do not know the details of that agreement.

Russ Metcalf: In what ways do these details affect the site plan?

Town Attorney Vacco: If you deeded over property to Ms. Will that changes the boundary lines of the property you originally had before the Planning Board for site plan review, than it does affect the town especially because there has been pending litigation with regard to this easement. If that has been taken care of there needs to be documentation that we can present to the Town Board so they know there will not be any further legal problems between the parties involved before they can grant that permit.

Richard Brox: If there was any change to the property boundaries, it has to go back to the Planning Board. If there are only easements and no change in the boundaries that the Planning Board approved, then it does not have to go back to the Planning Board.

A motion was made by Councilman Murtha to approve the Special Permit for the Boston Fire Company.

Town Attorney Vacco: There are legal issues that affect the Town Board that have not been resolved. I cannot recommend that the Town Board approve this at this time.

Councilman Murtha: Would it put us in a legal situation?

Town Attorney Vacco: The Town Board is aware that it is a legal situation. Both parties are represented by council and while both parties acknowledge that they have come to a resolution when you threaten litigation, which the parties did in this case, there needs to be a concrete resolution of that.

Russ Metcalf: Since it is well known, and I believe you are confident that there is a resolution in the matter, can the town vote on a contingency of receiving contract of sale.

Town Attorney Vacco: I am not going to recommend that the Town Board do that.

Councilman Murtha withdrew his motion to approve the Special Permit for the Boston Fire Company.

A motion was made by Councilman Boardway and was seconded by Councilman Genzel to table the Special Permit Application from the Boston Fire Company until a full resolution of the legal issues is placed before the Town Board.

five (5) Ayes Carried

Supervisor Ballowe noted that the safe from the vault downstairs was estimated to cost about \$95. The Town reached out to the Boston Valley Conservation Society to see if they would like an old safe for their firearms.

A motion was made by Supervisor Ballowe and was seconded by Councilman Genzel to release the safe from the Vault to the Boston Valley Conservation Society for a fee of \$95.

five (5) Ayes Carried

Deputy Town Clerk Mulé noted that Saturday, March 17, Churchill Memorial will hold their annual Corned Beef dinner from 4 p.m. to 7 p.m. Tax Collection hours will be Saturday, March 10 from 9 a.m. to 1 p.m. and Tuesday and Wednesday, March 13 and 14 from 9 a.m. to 8 p.m. and Thursday, March 15, from 9 a.m. to 9 p.m.

Parks Superintendent Telaak noted that a few Highway employees completed some maintenance on the Parks vehicle and bucket truck.

Highway Superintendent Telaak noted that the fire alarm panel at the highway department is outdated and it needs to be updated.

A motion was made by Supervisor Ballowe and was seconded by Councilman Boardway to authorize Highway Superintendent Telaak to order a new fire alarm panel for the Highway Department at a cost of \$2,750.

five (5) Ayes Carried

Highway Superintendent Telaak noted that there is wood chips and fill still available and there is pine wood available for bonfires if anyone would like it.

Highway Superintendent Telaak noted that ditches within subdivisions will be cleaned out at the request of the resident. Call his office at 941-5869.

Highway Superintendent Telaak noted that there were no downed trees during the last high wind storm because of the preventative maintenance that was performed.

Councilman Murtha noted that he spoke with Legislator Mills regarding drainage and he has a call into Mark Gaston from Erie County Soil and Water for help on the subject. The issue is a trash rack and right-of-way issues. Three residents are having severe erosion problems and are losing huge areas of land from their properties.

Councilman Genzel as Engineering Liaison met with Town Engineer Hannon and Grant Writer Miner, Town Attorney Kobiolka, Supervisor Ballowe and Bookkeeper Selby to kick off the Boston Cross Road drainage relief project which is being partially funded by a \$100,000 grant. They walked the site and Town Engineer Hannon has met with the surveyor and the engineering will tentatively begin in the Fall. Councilman Genzel attended a Marcellus Shale web seminar. He noted that there is a fine line that runs down through Southern Erie County and anything North of that line will have to go through the SEQR process which makes it quite expensive for anyone wanting to drill.

It seems the Town of Boston is out of that area. He noted that there is one gas play going on in Boston on Ward Road for Utica Shale. This is not a non-fracking well.

Councilman Genzel noted that Grant Writer Miner submitted to the Town Board a lateral water line connection grant for homeowners who need help tapping into the water system being installed.

Councilman Genzel as Planning Board Liaison noted that there was no agenda but the Planning Board members held a work session on the Comprehensive Plan. A questionnaire may be sent out with a future tax bill asking where they see Boston in 20 years. The next Planning Board meeting is March 13 at 7:30 p.m.

Councilman Genzel as Boston Community Foundation Liaison asked our town groups such as Historical Society and sporting leagues to submit a letter of interest to Supervisor Ballowe's office for the July 4 celebration. He noted the Town Board would like to see some booths to educate or sell items for fundraising to town residents.

Councilman Genzel as Christmas Lighting Liaison Supervisor Ballowe's office has ordered ten new snowflakes with LED lighting. All purchases were made with money donated for this purpose.

Councilman Genzel noted that Town Historian Kaszubik sent his 2011 annual report to NYS and a letter from the NYS Education Department commending Keith for a job well done as Town of Boston Historian.

Councilman Boardway noted that he met with Assemblyman Smardz regarding the progress on some of the mandate relief and redistricting. He will report more at a future meeting.

Councilman Boardway congratulated Recreation Director Clesse for her article in the Voice Magazine commending the Town of Boston for their efforts in opening the new Recreation Center.

Councilman Boardway noted that he was assured by the Public Relations Director for the NFTA that the bus lines in Boston are staying. There is a possibility that one out of the three lines may be eliminated but that will be determined later this summer.

A motion was made by Councilman Vara and was seconded by Councilman Murtha to appoint Rick Skinner as a member of the Planning Board.

Deputy Town Clerk Mulé noted that the proper procedure is to submit requests to the town clerk's office so that it may be referred to the appropriate board for review and recommendation.

Councilman Boardway noted those requests need to be submitted to the Planning Board first.

Councilman Vara noted that he had a letter in his possession.

Supervisor Ballowe instructed Councilman Vara to give the letter of request to Deputy Town Clerk Mulé and she will forward it to the Planning Board.

Councilman Vara noted that the seniors have a Kentucky Derby Day scheduled for April 24th. There will be information given on raising horses.

Councilman Vara noted that he will be attending the Southtown's Solid Waste Management Board in Orchard Park.

Councilman Vara would like it to go on record that he has many reservations regarding the proposed building project and cannot vote on it.

A motion was made by Supervisor Ballowe and seconded by Councilman Genzel to adjourn the meeting at 9:35 p.m.

five (5) Ayes Carried

JENNIFER A. MULÉ, DEPUTY TOWN CLERK