

Town Board Minutes May 3, 2000

REGULAR BOARD MEETING TOWN HALL

MAY 3, 2000 7:30 P.M.

Present were Councilman Damian P. Wiktor, Councilman Stephen K. Tills, Councilman Karl J. Simmeth Jr., Councilman Dennis J. Mead,

Supervisor Lisa M. Rood, Highway Superintendent Wayne C. Kreitzbender and Town Attorney Michael F. Perley.

Rev. John Vanhaneghan opened the meeting with a prayer.

At 7:30 a Public Information Hearing was held to hear public comments and provide information regarding the current Adelphia Cable contract and the upcoming contract renewal.

A motion was made by Councilman Tills and seconded by Councilman Simmeth to open the Public Information Hearing at 7:35 p.m.

five (5) Ayes Carried

Supervisor Rood commented that notices for the Adelphia Cable Public Information Hearing were delivered to area residents on the back of the Earth Day Flyers.

Donald Wesp, 5589 Northside Drive: I asked Councilman Tills if the town received compensation from Adelphia Cable for having the franchise and the answer was yes which was what I would expect. Are there any alternatives to Adelphia? Are there any other bidders?

Town Attorney Perley: The franchise with Adelphia is a non-exclusive franchise. The mere fact that Adelphia has been awarded a franchise by the town does not preclude any other cable operators from making an application for a franchise in any part or in all of the Town of Boston. I cannot remember any other cable operator seeking to come into the town.

Donald Wesp: Basically it is like gas and electric, we have one supplier, take it or leave it.

Town Attorney Perley: We have one supplier of cable but we have not precluded any other suppliers. I don't think the market would support another supplier.

Donald Wesp: We keep getting these little increases and the answer I get when I call is that you are adding more channels. I object to keep having additional channels thrown down my throat and saying I have to pay more when I am not asking for more. I think that is very unfair of the company to do that.

Thomas Haywood, Adelphia Cable General Manager: We must, from time to time, give rate increases. That is based on the cost of an upgrade or rebuild of a system, which we have done in the Town of Boston. We have spent seventy-five million (75,000,000) dollars upgrading our network. The Gas Company and the Telephone Company are the same as they were five (5) or ten (10) years ago. Adelphia is not. We do add additional programming and we do subscribe to ESPN and CNN and several other services. Those services have increased their costs and they pass it on to us. ESPN is going to raise their rates twenty (20) percent this year. That cost we pass on to the subscriber. In answering your question, why do we force you to take these products, it costs us the same amount to deliver one (1) channel to you as it does to deliver thirty (30) channels. As a matter of fact it costs us more to take channels away because when we receive the signals and transmit it to your home, we have to either de-scramble that signal in your home, or over our cable, or trap it out, which costs us more money. I can't tell you in the future what we are going to do but I can tell you that we do have our broadcast service, which is our lowest service which gives approximately eleven (11) channels for approximately seven (7) dollars. Then it jumps to thirty-five (35) dollars for about seventy (70) channels and then it jumps to another twenty (20) channels, then to Pay-For REGULAR BOARD MEETING TOWN HALL

MAY 3, 2000 7:30 P.M.

Adelphia Cable Public Information Hearing (cont.):

Thomas Haywood (cont.): -View, twenty-two (22) channels with forty (40) music choice channels, with a guide for eight (8) dollars on top of that. So there is choice but there is not individual choices per channel. We are governed by vendors (stations) who tell us they want to be in every single home and if they aren't they charge us more. In Erie County we service approximately two hundred and eighty thousand (280,000) customers. If we picked only the one hundred thousand (100,000) customers that wanted CNN, they would charge more than what is paid for the two hundred and eighty thousand (280,000) customers because they get money from advertisers who want to be in every home. It is very complex how we go about giving services to our customers.

Eric Johnston, 7965 Zimmerman Road: What is this franchise fee?

Thomas Haywood: It was always in the overall cost that you pay, we just broke it out. It is a franchise fee that each municipality pays.

Councilman Mead: Have you been getting complaints or reports of the quality of the signal in this area.

Thomas Haywood: Councilman Tills did bring it to my attention. We attempted to contact those customers and did not get a response. The system in the Boston area is a 750-mega-hertz, one of the most aggressive and flexible networks developed in the United States today. It is fiber-optic enriched and gives the ability to offer digital and power link service (high-speed data). There should not be problems unless the customer is off the road a ways. A bad connection could cause interference or if the VCR is connected wrong.

Supervisor Rood: Many people ask why the cable companies charge additional charges for each television hook-up because they equate it with the telephone.

Thomas Haywood: It is \$1.05 per unit and one reason is that we are governed by the FCC and also by the NYS Public Service Commission. Our signals operate on aeronautical frequency which means that we have actual truck traveling the entire system with devices that are able to pickup a signal if there is a crack in the cable or the cable is not connected properly and leaking in the air. There has to be some sort of police over this because if a customer makes a connection or does something in the house we are still responsible and can be shut down. When operating an aeronautical frequency there could be interference between a plane and also where they communicate in Cheektowaga. Under 165.15 of the Penal Code for service, you have to put a charge to that. Once we put a charge to it, if customers are

making connections within a house, we can govern that. If we don't charge then we have no authority to tell them they cannot do that. The other reason, the comparison to the Telephone Company is not right because if you have two (2) or three (3) lines in your house you really only have one line. You cannot make two (2) separate telephone calls at one (1) time. You can watch one (1) station down stairs and one (1) station upstairs. It costs us additional money when we do a rebuild and we do a calculation that says that each customer is going to have three (3) or four (4) sets in their house. We have to put additional electronics within our system to support the necessary signal to get to that house. In the future we may do something with that charge but I can't tell you today. We did decrease it. It was \$3.50 and now it is \$1.05. The annual rate increases usually are in August. We have missed the filing for that so there will not be a rate increase or a rate adjustment in August.

Supervisor Rood: Is that an increase or an adjustment?

REGULAR BOARD MEETING TOWN HALL

MAY 3, 2000 7:30 P.M.

Adelphia Cable Public Information Hearing (cont.):

Thomas Haywood: It is a rate adjustment and what that means is that our higher paying customers will actually stay the same or decrease and our lower paying customers will actually increase.

Councilman Mead: Is Adelphia or the homeowner responsible for running the extra lines through the house?

Thomas Haywood: We would run the lines for an installation charge.

Supervisor Rood: I would applaud the Adelphia Senior Discount Program but it doesn't pertain to many seniors in town because they fall above the income limit. Is there discussion in raising the income guideline to encompass more seniors at a more realistic rate?

Thomas Haywood: There isn't at this time. It is difficult for us to target a particular group. Some seniors can afford cable and some young families can't so it is difficult for us to pick a certain group. The income

limit for the seniors was calculated by taking the average income in the City of Buffalo and spreading it over the entire area.

Councilman Tills: Has Adelphia updated the channel cards recently?

Thomas Haywood: Yes we did update the cards during the rebuild and I will leave some behind.

Councilman Simmeth: Do you have any time frame of when local programming will be offered through the satellite dishes?

Thomas Haywood: I hope never. I heard rumors of two (2) years. They would have to go each broadcaster as we do and negotiate a re-transmission contract. Adelphia negotiated with the three (3) local networks for a three (3) year contract.

Councilman Simmeth: If and when that happens will Adelphia become more competitive?

Thomas Haywood: We are looking at our two (2) pay customers and above and are looking to have those rates comparable to a direct TV service. There are obviously economic issues that we are confronted with that the satellites companies are not such as fees, franchise fees, and Public Education Government Access Channels that cost us money and that we have to provide to our customers. For subscriber that we lose, the municipality also loses.

Supervisor Rood: Do you have an update on Digital TV? I heard that when they have it in place we will be forced to get it.

Thomas Haywood: The broadcasters are going to go digital with two (2) or three (3) channels on top of the ones they already have. They have asked us to insure that we will carry their digital signals. We are not going to commit to that now because we do not want to force subscribers to buy a digital TV. I don't think they are going to force customers to buy a \$5,000 TV today when they may be down to \$200 or \$300 in five (5) years. There may be a box on your TV that will convert the digital signal to analog for the

TV to accept. I have not seen a box as yet. I can't see the government saying you have to buy digital TV's.

Councilman Wiktor: How does Adelphia determine which channels will be carried on the cable system?

REGULAR BOARD MEETING TOWN HALL

MAY 3, 2000 7:30 P.M.

Adelphia Cable Public Information Hearing (cont.):

Thomas Haywood: We look at the ratings of various channels and look at the inquiries to determine what people want.

Donald Wesp: You made a statement that if your costs go up you pass it on to the users and with rate adjustments the higher end people would be lower and the lower end people would have their rates raised. How do you justify that?

Thomas Haywood: Our higher end people may jump to a dish. I look at a customer that is paying forty-five (45) dollars, if they jump to a dish, I lose forty-five (45) dollars. If they stay the same and I get an increase from the bottom, we will save customers.

Donald Wesp: And the lower guy gets stuck.

Thomas Haywood: The lower guy does not get stuck because I have to be concerned with the lower, a basic customer, and that is right around \$35.50 which is around what a dish is now. The broadcast service, our lowest tier, which is \$7.00 a month is still regulated by the FCC. There is a calculation involved in that. I am not maximized on that particular service which is \$7.00. The calculation says that I can charge \$8.00, so I will raise it to \$8.00. Direct TV offers local broadcast stations as I do for the \$8.00.

They will be charging between \$5.00 and \$8.00 and will not have Canadian channels so they will have a lower level of service than we do.

Eric Johnston: I live on Zimmerman Road. Channel 4 and Channel 7 has snow. CNN has snow.

Thomas Haywood: There is no reason for CNN to have snow unless there is a bad connection in your home or on the feeder line. I will take your name and have an engineer look at it.

Supervisor Rood: When I called to report the cable was out I was told that I would have to wait until they get so many calls.

Thomas Haywood: That is no longer the policy. I will talk to the

manager at the call center and be sure that does not happen. We have what is called customer care numbers, which means the system has to be in operation for 99.9% of the time. We are going to get into the telephone over cable television business in the near future. We will be testing this by June. It will be a digital signal connected through the Internet so that when you go to a web page and punch telephone you are going to be able to talk to a receptionist through the cable, through the Internet, through cable television. For the network to provide that service we have to provide that 99.99% of the time the system will be up and working. We are at 99.9. To get to the next decimal we are putting standby power in all the standby power supplies in Western NY with battery back-up and monitors back to our hub site. We can monitor each power supply, which is the main reason why outages occur. On battery back up, a technician can be dispatched to fix a problem and the customer doesn't even know there was a problem. Another customer care number to meet is that over 65% of customers have to be serviced within 24 hours of the time they call and 90% within 48 hours of the time they call. The telephones have to be answered within a certain amount of time.

Councilman Mead: I recently got Powerlink with Adelphia and we are fortunate in the Town of Boston because there are more populated areas that don't have the ability to get cable modem access. In talking to installers, this is taking off like wildfire but the problem is that so many people want it that it has a tendency to take away from the telephone cable. Are you finding that this is becoming a problem? I had a problem and they had to send a technician, an inspector and an engineer.

REGULAR BOARD MEETING TOWN HALL

MAY 3, 2000 7:30 P.M.

Adelphia Cable Public Information Hearing (cont.):

Thomas Haywood: Cable modems are only available in 20% of the United States. In Western NY it is 80% so we are ahead of the gun. There is no manual on how to deliver this service. We have learned in the last two years how to do it and we have a Tack and a Knock Center in Pennsylvania. It is a network operational center that oversees the network to check if anything is down. You are calling that Tack. Tack was not communicating with the Knock and not communicating with us. Every week we have a conference call on problems that we are having with the network and we are hiring eighty-five (85) people. We have twenty thousand (20,000) square feet in the old IBM building. That is additional assistance for the Powerlink service only.

A motion was made by Supervisor Rood and seconded by Councilman Tills to close the Public Information Hearing at 8:07 p.m.

five (5) Ayes Carried

Supervisor Rood thanked Thomas Haywood for attending the meeting.

A motion was made by Councilman Mead and seconded by Councilman Simmeth to adopt the minutes of the April 19, 2000 monthly meeting.

five (5) Ayes Carried

A motion was made by Councilman Simmeth and seconded by Councilman Tills, upon review by the Town Board, that the General Fund and Special District Bills on Abstract #5, dated May 3, 2000 in the amount of \$25,995.80 be paid.

five (5) Ayes Carried

A motion was made by Councilman Tills and seconded by Councilman Mead, upon review by the Town Board, that the Highway Bills on Abstract #5, dated May 3, 2000, amount of \$2,534.99 be paid.

five (5) Ayes Carried

A motion was made by Councilman Wiktor and seconded by Councilman Tills to accept the Town Clerk's Report for April 2000.

five (5) Ayes Carried

Received and filed a notification from NYS DOT that a 45 MPH speed limit will be established for Boston State, Boston-Colden, Zimmerman and Omphalius Roads and a 40 MPH speed limit established for Back Creek Road. Erie County will post all necessary signs.

Councilman Simmeth noted that the Town Board is happy that the speed limit requests were approved in a timely manner.

Supervisor Rood reported that in 1999 a member item grant was received from Senator Volker for the purchase of playground equipment and the following quotes were received for the installation:

Miracle Recreation Equipment Company \$4,700

Celtic Builders, Inc. \$5,300

A motion was made by Supervisor Rood and seconded by Councilman Mead to award the contract for the installation of the following playground equipment: swing, stand alone slide, 12' overhead flyer, twin rider, animal rider, geo music dome, and motorcycle rider, to Miracle Recreation Equipment Co. at a cost of \$4,700.

five (5) Ayes Carried

REGULAR BOARD MEETING TOWN HALL

MAY 3, 2000 7:30 P.M.

Councilman Mead noted that the Highway Department will be doing all the prep work prior to installation.

Supervisor Rood thanked David Tomasello, Lakeside Recycling, for donating all the wood cushioning to be used in the North Boston Park, South Boston Park, Town Park and Creative Playground.

Supervisor Rood appointed the following to the Zoning Review Committee:

Lisa Rood, Town Supervisor

Karl Simmeth Jr., Councilman

Dennis Mead, Councilman

Gerald Hice, Chairman Zoning Board of Appeals

Kevin Maxwell, Planning Board

Damian Wiktor, Councilman

Stephen Tills, Councilman

Michael Perley, Town Attorney

Richard Brox, Town Planner

Supervisor Rood announced the first meeting of the Zoning Review Committee will be on May 11, 2000 at 7:00 p.m. at the Town Hall.

Received notification from the Planning Board that Kevin Maxwell accepted the nomination to be the Planning Board Representative to the Zoning Review Committee.

A motion was made by Supervisor Rood and seconded by Councilman Simmeth to refer to the Planning Board a rezoning request from Gary R. Eckis, Boston Hills LLC Manager, for the 44-acre site Rice Road Exit, northeast quadrant ? Rt. 219 Expressway from R-A to M-1 Zoning.

five (5) Ayes Carried

On May 1, 2000 at 10:00 a.m. the following bids were received, opened and read aloud for two (2) 2001 New and Unused Five Ton Dump Trucks:

NAME NC DELIVERY DATE PRICE

Bison Truck Center X 10/26/00 \$63,242.80*

\$65,140.08**

Emerling Ford X Can?t \$69,344.00

Guarantee

* Current Price ** Possible Increase - 2001 prices not available

A motion was made by Councilman Mead and seconded by Councilman Simmeth, on the recommendation of Highway Superintendent Kreitzbender, to award Bison Truck Center the bid for two (2) 2001 New and Unused Five Ton Dump Trucks at a cost not to exceed a 3% increase over \$63,242.80.

five (5) Ayes Carried

Supervisor Rood reported that the Town of Boston contracted with Advantage Energy for gas savings and has researched various companies for savings on electrical service.

Comparison of estimated Electricity Savings Reports:

Mirabito Fuel Group - Savings for town would be \$ 643.09

Empire Natural Gas Annual Savings \$4,230.00

75% Savings to Town \$3,172.50 25% Savings to Empire \$1,057.50

Advantage Energy Annual Savings \$4,161.75

82% savings to Town \$3,412.64

18% savings to Advantage \$ 749.11

Supervisor Rood commented that the Boston Chamber of Commerce has endorsed Advantage Energy for energy savings to chamber members.

REGULAR BOARD MEETING TOWN HALL

MAY 3, 2000 7:30 P.M.

Town Attorney Perley reviewed the confidential financial statement provided by Advantage Energy and in his opinion concluded that the town is not incurring any meaningful risk of the insolvency of Advantage Energy or any risk to the town or taxpayers by entering into this contract.

A motion was made by Councilman Mead and seconded by Councilman Simmeth to authorize Supervisor Rood to enter into a contract with Advantage Energy Inc. for electricity usage.

five (5) Ayes Carried

SUPERVISOR REPORT

A) Supervisor's March Bank Account Report and March Monthly Report received and on file in Town Clerk's office.

HIGHWAY SUPERINTENDENT REPORT

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

Highway Superintendent Kreitzbender reported that Town road repair has begun. There has been a lot of damage from frost this year and there is forty (40) miles of road to repair.

Highway Superintendent Kreitzbender reported that work has begun on the baseball diamonds in the park. On Saturday, May 6, 2000 Highway Superintendent Kreitzbender, his Forman and the baseball and softball association members will donate their time to install a new softball diamond. The baseball season will begin May 15th.

Highway Superintendent Kreitzbender will be working with Councilman Simmeth on drainage problems on Hickory and Woodland Drives. Residents will be informed that a new road will be installed during the second week in June.

TOWN ATTORNEY REPORT

Town Attorney Perley reported that notification was received from Assemblyman Smith that a Home Rule is required from a local municipality for legislation that he sponsored, Assembly Bill 7136-B, which would grant retroactive membership in the NYS and Local Employees Retirement System to William A. Eagan. Town Attorney Perley noted that Section 2 of Assembly Bill 7136-B provides that "(a)ny cost incurred as a result of the enactment of this act shall be borne by the City (sic) of Lackawanna." This legislation applies to the Town of Boston in the same manner as it applies to all other towns in NYS. By its terms, Assembly Bill 7136-B only affects the City of Lackawanna. In the opinion of Town Attorney Perley, the Town of Boston does not have the jurisdiction to initiate this Home Rule Request and should refer the matter to the City of Lackawanna for consideration. No action by the Town Board need be taken at this time.

Received a request from the North Boston Fire Co. for Town of Boston approval of a note for payment of property being purchased by the North Boston Fire Co. on Herman Hill Road so that the interest payments will be tax exempt.

Received a copy of the legal notice and information on a Public Hearing held at the North Boston Fire Co. on April 11, 2000 as a prerequisite for the issuance of bonds by the Fire Company for the purchase of land on Herman Hill Road. Interest paid on this obligation will be exempt from tax to the bondholders.

RESOLUTION 2000 ? 15 AUTHORIZATION FOR THE NORTH BOSTON VOLUNTEER FIRE COMPANY TO
ISSUE NOTES FOR PURCHASE OF HERMAN HILL RD. PROPERTY

REGULAR BOARD MEETING TOWN HALL

MAY 3, 2000 7:30 P.M.

COUNCILMAN REPORT

Councilman Wiktor reported that on April 26, 2000, a Buffalo News article stated that Erie County Legislator Dusza is offering a proposal to grant a property tax relief to volunteer firefighters. Councilman Wiktor feels this proposal has merit due to the fact that volunteers service most towns and villages in Erie County. This is a worthwhile project and could be a small way of enticing new volunteers because membership is dwindling. Councilman Wiktor forwarded a request to Legislator Dusza to include in his proposal the same tax exemption for members of volunteer emergency medical squads such as in the Town of Boston, which are independent from fire companies.

Councilman Simmeth received notification from Sargent John McGee, NYS Police, that NYS Trooper Alan T. Carpenter retired from the NYS Police in March of 2000 and recommended Trooper David C. Carpenter succeed his brother Alan as a member on the Town of Boston Traffic Safety Committee.

A motion was made by Councilman Simmeth and seconded by Councilman Tills, on the recommendation of NYS Police Sargent McGee, to appoint Alan C. Carpenter to the Town of Boston Traffic Safety and Highway Committee, term to expire December 31, 2000.

five (5) Ayes Carried

Councilman Simmeth announced that Earth Day was held on Saturday, April 29, 2000, at the Boston Town Hall. Approximately 24 tons of used tires were collected. Approximately seventy (70) residents attended the Birds of Prey Program by Hawk Creek. There were approximately thirty (30) thermometers exchanged at the Mercury Thermometer Exchange from Erie County and twenty (20) participants in the Soil Testing Program by Master Gardeners from Cornell co-op. Councilman Simmeth thanked Councilman Tills and former CAC Chairman Chris Bifaro for helping with the Earth day event and a

special thanks to the Boston Fire Department, who call themselves ? A Society for a Better Boston?, for picking up debris throughout town.

Councilman Tills thanked the Boston Fire Company for their efforts in helping with the Earth Day tire drop-off program.

Councilman Tills met with the South Boston Park Committee for the annual inspection of the park and reported that the park was in good condition. Items of request included the placing of a garbage can by the basketball court and installing a bench for spectators.

CODE ENFORCEMENT OFFICERS REPORT

A) Code Enforcement Officers monthly report for April 2000 was received and is on file in the Clerk's Office.

DOG CONTROL OFFICER MONTHLY REPORT

A) Dog Control Officer monthly report for April 2000 was received and is on file in the Clerk's Office.

TOWN ENGINEER REPORT

A) Town Engineer's monthly report for April 2000 was received and is on file in the Clerk's Office.

A motion was made by Councilman Mead and seconded by Councilman Simmeth to adjourn the meeting at 8:37 p.m.

David J. Shenk, Boston Town Clerk