

Town Board Minutes October 16, 2002

REGULAR TOWN BOARD MEETING TOWN HALL

October 16, 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.

A motion was made by Councilman Simmeth and seconded by Councilman Edington to adopt minutes of the October 2, 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 #10A, dated October 16, 2002 in the amount of \$118,773.55 be paid.

five (5) Ayes Carried

Received a letter from Ray Lucas, 6715 Pinehurst Drive, regarding no shoulder or sidewalks in the Holiday Subdivision and safety concerns over large trees obstructing visibility.

Councilman Simmeth noted that upon receiving a complaint from Ray Lucas concerning the Holiday Subdivision, he and Highway Superintendent Kreitzbender investigated the situation. Signs by a ninety-degree curve and 10-mph caution signs were installed. Neighbors on Maplelawn and Holiday are receptive to cutting down a few large pine trees to improve visibility.

Received and filed notification from BFI regarding recyclable contamination.

REQUESTS FROM THE FLOOR

Daniel Hurtubise, 6766 Omphalius Road: There was an organizational meeting Monday night of concerned citizens for Water District #3. Supervisor Eagan, what is happening with the litigation that you are pursuing?

Supervisor Eagan: This was brought up at an agenda review meeting and we all agree that we should take legal action to try and bring this to a head. Town Attorney Perley declared that he had a conflict due to the fact that he represents other communities, as he is doing in Orchard Park, and it was decided to have the Deputy Town Attorney represent Boston. I have a problem with that and recommended a gentleman with twenty-five years experience with the Water Authority and who has been practicing law for many years and has dealt with many water issues. I am not questioning the qualifications of either gentleman. I have concern with the conflict of interest and ethics in this area.

Daniel Hurtubise: Your Deputy Town Attorney is Mr. Terrizzi? And he works under Mr. Perley? I would submit to the Town Board that Mr. Terrizzi is tainted. If he is working under Mr. Perley then he is also influenced by Mr. Perley and should not be allowed to represent the town in this matter.

A petition signed by 46 residents asking the Town Board to expedite the process of obtaining water for Water District #3 was given to the Town Clerk.

Joseph Nowak, 6634 Omphalius Road: I have been a resident since 1986 and since 1987 I was promised a water district in our area. In 1993, I received a letter from the town stating that this water district will be formed. They had preliminary plans that are much different then they are today. In the year 2000, Lisa Rood (former Supervisor) indicated the project was a go. I understand it was a go except for the fact that we had no water source. Orchard Park has the power to block us. They even have our Town Attorney on their staff. They told us we do not deserve to have water.

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REQUESTS FROM THE FLOOR (CONT.):

Supervisor Eagan: They didn't say we don't have the right to it. They want us to pay a benefit fee of \$84,000 and if we don't pay that there is no water.

Joseph Nowak: Right now we are trucking water and we are fed up with it and I'd like to know what the Town Board is planning on doing with this. Mr. Edington who have you talked to regarding this? Do you have any plans?

Councilman Edington: I have talked to a number of residents on the hill and some have advised me to go ahead and pay the \$84,000.

Joseph Nowak: Who was that?

Councilman Edington: I don't recall names off hand but I can tell you that was told to me.

Joseph Nowak: I have a room full of people who disagree with that. Mr. Simmeth who have you talked to?

Councilman Simmeth: I talked to Bob Lichtenthal, Commissioner of the Erie County Water Authority, numerous times on this issue. Orchard Park holds the key. I have paper work on meetings and more meetings, not just with me but with Supervisors Eagan and Cudney. We can't solve it at the local level.

Joseph Nowak: Wouldn't that indicate that it is time to get a litigator in here and solve it? Either we have a case or we do not. If we don't have a case let's pay it and get on with it or if we do let's go to court and have them pay our attorney fees.

Councilman Simmeth: We instructed Mr. Perley to talk to Mr. Terrizzi.

Joseph Nowak: How is Mr. Perley going to handle this if he has a conflict?

Councilman Simmeth: We wanted to make sure that Mr. Terrizzi would take the case. Mr. Perley will you tell us how much it is going to cost to have Mr. Terrizzi represent us?

Town Attorney Perley: Nothing.

Joseph Nowak: If we prevail it won't cost us either.

Town Attorney Perley: I am not so sure about that. The concept of attorney fees in civil litigation such as this is unusual in New York State.

Joseph Nowak: It is not unheard of.

Town Attorney Perley: No, but it is very unusual.

Joseph Nowak: Let's put that in our case then.

Town Attorney Perley: You can put anything in that you would like. I discussed this matter with the Orchard Park Town Attorney when we were trying to work on a solution that did not involve litigation and we came to the conclusion last February to put together a lawsuit that would stipulate the facts and ask the court to determine what the legal responsibilities were. I suggested to the Town Board that we consider that. The Erie County Executive intervened and worked with the ECWA in attempt to resolve this matter. This summer a breakthrough was reached.

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REQUESTS FROM THE FLOOR (CONT.):

Supervisor Eagan: The breakthrough was that the ECWA was going to present a proposal to accommodate Orchard Park and Boston. Contrary to what Orchard Park officials are saying, they are actually costing their taxpayers money by not allowing Boston residents to share equitably in the operating expenses for the facilities needed to bring water to Boston. My concern is that if we pay \$84,000 today, when we expand again, how much is the next person going to pay? As for hiring an attorney, we outsource legal activity from time to time. If we were not able to handle a minor drainage lawsuit, I have my concerns on how we are going to have the time with our staff and other town business to handle this suit if it gets into litigation.

Joseph Nowak: Mr. Perley, why did we hire an outside firm to handle the drainage issue?

Town Attorney Perley: At the time that I joined the firm I was anticipating that drainage was going to involve substantial litigation over coverage between two insurance policies. I did not believe that I could devote the time and resources necessary for that litigation which is really outside the scope of government. It was a claim, we had been insured and we received disclaimers from two insurance companies. It was a matter that had gone on for years without any hope of resolution. In hindsight, had I known the way it was going to turn out, I would have taken that case the way I've taken many other cases in the past including virtually every Article 7 case, which are tax assessment cases, that I routinely handle that involve substantial document discovery and other matters that pertain to government.

I agree with the Supervisor that we do from time to time outsource our legal representation.

Joseph Nowak: Why do you oppose it this time?

Town Attorney Perley: I don't oppose it. I suggested to the Town Board that we commence litigation and continue to negotiate with Orchard Park in the hope of pursuing two avenues at the same time. I would suggest that Mr. Terrizzi is conversant with the issues, has open communication with other Orchard Park Town Officials and could be a good conduit for the negotiated aspect of the case. The Deputy Town Attorney and I do not share any private practice, are separately paid and have separate responsibilities. We hire the Deputy Town Attorney to handle and represent the Zoning Board of Appeals with which I can have no legal contact.

At 7:52 p.m. a Public Hearing was held regarding the use of Federal Community Development Funds in the Town of Boston.

Supervisor Eagan read the legal notice.

Supervisor Eagan noted that this is an annual procedure in order to maintain our eligibility for Community Block Grant Funds.

Linda Stranahan, Lot 76, Boston Hills Mobile Home Park: There is a question of the grant referring to the erosion problem. My home is one of the most seriously in danger. It is probably three feet from the bank and I would like to know what is going to be done. I voiced my opinion to the owner of the park last year.

Supervisor Eagan: Mr. Coyne, who lives across the street from the Mobile Home Park, and Mrs. Falkides have put in riprap. We met with our grant writers, engineers, and DEC representatives and what we are doing here is seeking Community Development Grant money to help fund the continued rip-rap of that area to stop the erosion. Mrs. Falkides is aware of what is going on and Mr. Coyne is allowing the town to use his permits. R&D Engineering has inspected the site so the process has begun.

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PUBLIC HEARING (CONT.):

Kathy Eckert, Lot 71, Boston Hills

Mobile Home Park: If the grant

doesn't come through, the owner

said they could pass the \$200,000

cost to us. Can they do that?

Supervisor Eagan: If the grant doesn't come through we will have to seek other sources. I don't know where you got the figure \$200,000 but that is an issue that you will have to discuss with your park owner.

A motion was made by Supervisor Eagan and seconded by Councilman Simmeth to close the Public Hearing at 8:00 p.m.

five (5) Ayes Carried

RESOLUTION 2002-49

COMMUNITY DEVELOPMENT BLOCK GRANT

REQUESTS FOR 2003-2004

REQUESTS FROM THE FLOOR (CONT.):

Town Attorney Perley: I worked with (Attorney) Nick Konst when he was Associate Council for the ECWA. He left the Authority

approximately ten years ago, he is knowledgeable in these matters, he is a good attorney, and with the Board's permission I will discuss openly a suggestion that I would make to the Board privately.

Supervisor Eagan: It's fine, it is their issue.

Joseph Nowak: We'd like to go with Nick Konst.

Town Attorney Perley: I would like to suggest to the Board and the Public that regardless of what else happens, Orchard Park will still be our neighbor when all is said and done. I would suggest the suit be brought and prosecuted by Mr. Terrizzi. I intended to suggest to the Board this evening that Mr. Konst would be a good resource to assist in the preparation of the papers and the formation of legal arguments for Mr. Terrizzi, based upon his knowledge of the Water Authority and the lease management agreements but I strongly suggest that Mr. Terrizzi be the attorney to take the papers into court as the lead attorney and as the spokesman for the Town of Boston.

Joseph Nowak: I don't see the point.

Town Attorney Perley: Mr. Terrizzi has established relationships with other officials in the Town of Orchard Park and those doors are open and I think we should make use of them. I agree that Mr. Konst would be a good resource.

Joseph Nowak: Then you agree we should hire him as a co-council?

Town Attorney Perley: I suggest in a consulting fashion. How to structure that relationship once the papers are drafted, I would leave to Mr. Konst and Mr. Terrizzi. Whether he would be co-council, there are a series of different ways it could be done from a legal standpoint in litigation. I understand that Mr. Konst might bring valuable information and strategy to the table.

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REQUESTS FROM THE FLOOR (CONT.):

Supervisor Eagan: When the question of conflict arises I think the ethical person will step back and recognize that. I think Mr. Perley has made that attempt. I do feel if we couldn't use Mr. Terrizzi to handle the drainage problem, and I know his practice isn't restricted to government, that he does have expertise in other areas, then I don't see why in such an important matter that concerns all of you, that we should be using the Town Attorney who openly has a conflict and has removed himself from that situation. To go ahead and use Mr. Terrizzi, because it still leaves in my opinion, and I'm waiting for an opinion from another source, to confirm whether or not that would be an ethical thing to do. I feel that Mr. Konst, and all credit to him, has the wherewithal, and I don't know anyone in the water business that doesn't recognize his name, including the Orchard Park Attorney, I know Mr. Konst, who has been retired a number of years, still handles water issues and the only thing I am concerned with is, I don't care if somebody has the relationship with Orchard Park, I care about getting this done, getting to litigation.

Joseph Nowak: Well how much time does he (Mr. Terrizzi) have?

Supervisor Eagan: Between his court dates I am not sure. Our Town Attorneys both have full plates and their duties and responsibilities are to this town. This is the best name I could come up with. If you can come up with another name of anyone who has experience in this area, please tell us. It doesn't have to be Mr. Konst. I picked him because I have been familiar with him for thirty some years and I've been a business acquaintance from time to time. I respect what he does and I respect his credentials.

Joseph Nowak: I feel the office is tainted and in general he hasn't the time to devote to it, that is my opinion.

Town Attorney Perley: Mr. Terrizzi assured me he does have the time to devote to it. If there is a concern about the ethical issues I can solicit an opinion from the Erie County Bar Association.

Timothy Nizialek, 7706 Omphalius Road: My family and I moved into the area in 1996. The only reason we moved up here is because they said we have a referendum coming up. It looks good. Supervisor Kennedy felt confident. He told us Water District #1 would get water first and we would have to wait three or four years. When Mr. Eagan's predecessor told me in 1999 it is six months away, then in 2000, it is six months away, then she told me there is a problem with the engineering but we're

getting close. All the paper work is filed, everything is done, the money is in place, and we're ready. Here we are today. I have had conversations with the Town of Orchard Park in their work sessions regarding this issue. Mr. Perley, I thought what you wrote on the Lease Management Agreement was a very strong opinion and the paragraph, which states that Orchard Park shouldn't do this, was very well done. The Orchard Park attorney told me he didn't think it could be enforced. When an attorney says he doesn't think that means there is an opening. Mrs. Cudney said, "we have water, you don't and you are going to pay for it?". This isn't about a want, it is about need. They won't even tell their own people the savings they would realize if they turn that district over to the ECWA.

Supervisor Eagan: Right now their taxpayers are responsible for 100% of the costs of the tank and the pumping station.

Timothy Nizialek: Their own town government is charging them retail for water where ECWA will charge them wholesale price and their cost for water and maintenance will go down.

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REQUESTS FROM THE FLOOR (CONT.):

Supervisor Eagan: Supervisor Cudney was informed of that at the Water Consortium and shown the dollars and cents savings to the taxpayers that her and her board have expressed great concern over saving those taxpayers dollars. The consultant said no town, village or city should be in the water business.

Timothy Nizialek: Supervisor Cudney feels that Orchard Park will control the infrastructure, water to the outlying towns, East Aurora, Aurora, Colden, Boston and extensions off that, they will be at the switch. I said what about neighbors? She said, "it doesn't have anything to do with neighbors, it has to do with power." I suggest Mr. Perley step aside, Mr. Terrizzi step aside and we get someone who was there when those contracts were written between ECWA and Orchard Park, those Lease Management Agreements because in my opinion and the opinions of others, we have a good case.

Town Attorney Perley: Unfortunately Nick Konst wasn't there when those were written. It is actually a modified management agreement. Nick was not there at the time, he worked on the draft of the lease

management agreement before that. That was a heavily negotiated item. That is not to say that he lacks the expertise but unfortunately he wasn't there at the time. The current form of that agreement was negotiated with former Commissioner Hasiotis. I participated with our agreement and our agreement and Orchard Park's agreement served as the model. I read the agreement the way that you read it. We guaranteed Orchard Park that we would make no use of their capital facilities that would impair their ability to serve the district. If District #17 needs more tank capacity or pump capacity to serve its residents because of what we are drawing off, we will build the tank and pump stations. In spite of that they still want \$84,000.

Timothy Nizialek: When District #3 branches into phase 2 and phase #3 in the future, the ante is going to go up. They are going to give us a break and spread the \$84,000 over ten years. Their citizens need to wake up and realize that their town board can save them some money and give us a break. Mr. Byers said, "Don't you realize District #17 was the most expensive water district in NYS when it was put in." This board needs to do something expeditiously.

Town Attorney Perley: There were a series of things that happened with our financing that we lost and got back. We lost a grant from the Water Authority and it took a year to a year and a half to get it back.

Supervisor Eagan: I was told by Mr. Mendez of the ECWA to get this water issue rolling because they don't know how long they are going to be able to hang on to the grant money. As far as costs go in hiring this attorney, we haven't even approached the Town of Colden yet to see if they would participate in this legal action. They are in crisis. They have a school there and they had to buy a water tank to bring water in. Marilyn Calhoon (Colden Supervisor) is ready to move on this and I believe she is receptive to participating financially in this lawsuit. I don't think this cost is anything less than prudent.

Timothy Nizialek: I agree and I think this Board needs to act quickly to file the lawsuit against Orchard Park and an outside attorney is called for at this time.

Supervisor Eagan: If we hire an outside council he should have a free rein to handle this case without having to be of service as a consultant but be the lead attorney and not worry about any areas of conflict of interest.

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REQUESTS FROM THE FLOOR (CONT.):

Thomas Rzepecki, 6553 Omphalius Road: I've been here since 1974. I voted on water in 1974 and it failed. All I have heard is 1999, 2000. The land is not bought. The papers are sitting on his desk. I'm tired.

Donato Delmonto, 6588 Omphalius Road: I have been out here since 1949. I've got a good well but I've got a lot of neighbors suffering. I don't think it is right and I don't think that the Town Board should sit here and continually go over the same project, the same complaints. Nothing gets done. Your predecessor, I was promised at all kinds of meetings, you're going to definitely have it. How long am I going to live? I am seventy-seven now, do you think I'll make it? I came out here when I was twenty-seven.

David Early, 7125 Omphalius Road: It seems to be a political football here. The people here would really like to know, where do we stand on the water? Can you tell us exactly where we stand, how much it will cost for an attorney, what is stopping you from going ahead and letting our contracts, either \$84,000 or we have litigation. What is stopping us?

Town Attorney Perley: We have an agreement with the Town of Orchard Park that we will not let a contract until we have reached further agreement with them. That was a condition of hooking up the water line that we built for the people on Chestnut Ridge Road. The basis of my suggestion to pursue litigation is if we had that pending an agreement to abide by the event, perhaps the Town of Orchard Park would let us get going. We're in suit, that will decide the issue and perhaps we can go forward on that basis. The County Executive became involved and tried to work out a different solution and it didn't bear any fruit.

David Early: What is the litigation going to cost?

Supervisor Eagan: It is \$135 per hour.

Town Attorney Perley: With outside council at that rate about \$10,000 to 15,000.

Supervisor Eagan: I think the Board should yield to the wishes of the public. You are here and now our decision can be based on what you tell us.

A motion was made by Councilman Mead to retain Nick Konst as the attorney to work with Deputy Town Attorney Terrizzi subject to the Erie County Bar Association opinion.

The motion died for lack of a second.

A motion was made by Councilman Mead and seconded by Supervisor Eagan to retain Attorney Nicholas Konst to represent the Town of Boston in reference to securing water service for Water District #3 from the Town of Orchard Park and/or any other party he may wish to sue regarding this matter, at \$135 per hour rate.

five (5) Ayes Carried

David Early: Who is going to be the person to work with Colden to get them involved?

Supervisor Eagan: Colden is involved. Supervisor Calhoon is up to speed and she and her Board lends their full support.

David Early: At the next board meeting can we expect a full report as to where things are?

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REQUESTS FROM THE FLOOR (CONT.):

Supervisor Eagan: I would like to thank each and every one of you for standing up for your rights. The press has covered us fairly well and I hope this time they do a better job of letting Orchard Park know that this is no joke. People can't sell their homes, they can't bathe their children. Due to a lack of water the Erie County Health Department may shut down the Colden Elementary School. Orchard Park can't take advantage of the Towns of Boston, Colden and any future water users.

Paul Meyer, 6560 Omphalius Road: We agreed that this is going to head forward so I want to say thank you very much.

Gary Klumpp, 7228 Boston State Road: I have been a resident here for five years and have a question regarding an article I read last Thursday in the Hamburg Sun about the budget. Councilman Simmeth, in the town hall, outside of elected officials, how many full time positions are there?

Councilman Simmeth: Not counting the highway, there are four.

Gary Klumpp: Are the salaries fairly competitive with others in the area? Not the elected positions but the appointed positions?

Councilman Simmeth: As far as we are concerned for now, yes.

Gary Klumpp: In one of your quotes you are looking to change a few things as far as a few positions and turning them into part-time. How many are we talking about?

Councilman Simmeth: Just one.

Gary Klumpp: What position?

Councilman Simmeth: The bookkeeper.

Gary Klumpp: Does the bookkeeper work directly with the Supervisor?

Councilman Simmeth: She works for the Supervisor.

Gary Klumpp: Correct me if I'm wrong, we have a surplus of 1.3 million?

Supervisor Eagan: That is correct.

Gary Klumpp: Above that I believe you have a \$400,000 entry into the budget regarding positions as well as other needs for the town, is that correct?

Supervisor Eagan: That approximate figure is correct.

Gary Klumpp: If we have all this, I don't understand as a Board, why you are taking full time positions to part-time positions when you have this kind of excess. Can you clarify this for me?

Councilman Simmeth: For the past four years the bookkeeper was responsible for payroll. Mr. Eagan has taken it upon himself to have a payroll service this year. I believe that payroll is a big part of that bookkeeper's job. Why keep the bookkeeper on full time with benefits when half of her job is being done by an outside contractor?

Supervisor Eagan: Can you qualify how you determine half? You are here two or three nights a month and pop in to pick-up your mail. Six years as Assessor, ten months as Supervisor, and suddenly you're a CPA. The good thing is that I've never seen so much interest in our finances as I have since I've taken office.

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REQUESTS FROM THE FLOOR (CONT.):

Councilman Simmeth: That's my job.

Supervisor Eagan: When you speak to the fact that I hired ADP, you have a short memory. I brought this to the Board at an agenda meeting upon the recommendation of our town accountant because of the confusion and the old manner in which the books were kept. There are irregularities all over the place. I can't speak to them because I have been told that I have to refrain until the Comptroller, who has been here seven weeks, is finished with the report and files with the Board. Unfortunately, that is not going to happen until after the election, but I can tell you that anything that I've done since the first of the year concerning that office of bookkeeper has been well qualified with the guidance of our town accountant, with the guidance of our NYS Comptroller, and I put in a young lady, Kathy Selby, the best decision I ever made. She has a degree from Cansisus College in accounting. She has done a superb job and I take great exception that Mr. Simmeth forgets one thing. When I presented my budget there is one ingredient left out of this budget and that is politics. If any of you believe that his move is not political, just listen to the reasons that he wants to give you. Clarke & Koller concluded that we needed help based upon the confusion in that office such as we found out payroll taxes weren't paid. When they were paid, they were paid twice. Books didn't balance. They still don't balance. I am getting criticized for the changes I made for the betterment of this community by Mr. Simmeth and maybe a few others on this Board that have no room to talk. I'll give you an example. I didn't transfer \$100,000 out of Water District #1 & #2 to pay the bills in Water District #3. I didn't take \$112,000 out of the Highway Fund, Mr. Perley, that we spoke about earlier, which Mr. Perley has given me an opinion on regarding another matter, that was wrong. Where was the legal opinion and where was the financial concern and sound financial responsibility of this Board when they did those things to cause his department to go in the red? And they are going to decrease the hours of my bookkeeper? And they can't legitimately qualify that remark. Mr. Simmeth has no accounting background, to justify his position to say that 50% of what she does is payroll. He also knows that thanks to them agreeing to temporarily hire ADP, we discovered that the new hand imaging time clock for the highway department that allows us to track work and time spent on work, so we can better budget, also allows us to do payroll because it gives us the calculations and the hours. That has to be integrated with our bookkeeping system. To do that we had to have a program written by the same individual who wrote the bookkeeping department software. Mr. Simmeth doesn't want to tell you this. It is just not, 'do the payroll?', because we are done doing things manually. Anyone who wants to come down to my accounting office and witness what the bookkeeper has done would know how shameful any idea to cut her hours would be. It is not justified. This town is not in poor financial shape. It is in good shape and part of that reason is because she knows what she is doing. She has been a great asset and service to this community. There is no way he can qualify anything other than

this being a political move. It is a shame that you have to bring this up. I gave you an opportunity to at the agenda review meeting to speak about this.

Councilman Simmeth: I didn't bring this up.

Supervisor Eagan: Here is an individual that was the first one at my house the day after I won the election to congratulate me. The next thing out of his mouth was, "could I be appointed Deputy Supervisor?" I told him I couldn't do that. I also understand he wants to remove that from the budget but it was important enough for him to get the \$500 a year that I am now paying Mr. Hawkins. I'm using that position correctly. Instead of a Councilman bonus, I have somebody who at least makes some contribution.

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REQUESTS FROM THE FLOOR (CONT.):

Councilman Wiktor: What does all this have to do with what???

Supervisor Eagan: It has to do with the fact that this man has been a nemesis and so have some of you in everything that I have tried to do for this community. It took a whole group of people to come in here tonight to tell this Board what they wanted and what was good for them. Now you guys want to consider changing the budget, taking that bookkeeper's job and reducing it, and all you are doing is being an obstructionist. You've gotten reports filled with more information than you ever got before.

Councilman Wiktor: If you are saying, "you guys", the comments were made by one person.

Supervisor Eagan: Councilman Wiktor, you and I have had a discussion when you said to me, "we are moving too fast in the accounting department?".

Councilman Wiktor: I asked you for reports that we were used to getting and that we could understand until we got accustomed to these.

Supervisor Eagan: You got reports and we changed things accordingly. The NYS Comptroller's auditor has been in town and has recommended some changes. When she found we made some good changes, she complemented us. She says there are more changes to be made. Mr. Simmeth's idea of making that comment, if you don't think it is political, he makes a comment, "Eagan has included raises beyond the standard 3% for the bookkeeper, for the Deputy Town Clerk. The budget also includes a raise of \$3,540 or 9% for the Town Clerk, a democrat. What he forgets to tell the reporter is that the clerk in the Justice Department is asking for an 8% raise but maybe he didn't want to tell you because that person is the chairman of their next week fundraiser. In this grouping you have another individual looking for a 16% raise. By the way, I agree with all these raises. Her salary is \$20,200 a year. We've got people in the Highway Department who are hard workers, and I respect them, making mid thirties. We've got people full time in here, and I might remind Mr. Simmeth, we agreed to hire a gentleman tonight to do a salary survey, he is already seen a sample of that in the Town Topics magazine. I see these figures and I don't disagree with these requests for raises whether they are democrats, republicans or conservatives. I am funding the job and I am showing respect for mostly women I might say. Women who's morale in this building hasn't been very high in the last couple of years. A new assessor took my former position and had to take a cut in pay. No one asked this man to take a cut in pay but she did. And the same thing happened with the court clerk so I am telling you people here it is not only a water issue but it has now become politicized because I take great exception after asking and being forthright with these board members that Mr. Simmeth in particular, and I apologize to you Mr. Wiktor because I don't mean to single you out.

Councilman Wiktor: Well you used a phrase that was all-inclusive.

Supervisor Eagan: He used the word, "we're looking at", and I know I'm certainly not part of "we are" because I haven't been consulted about any budget activity since I presented it. I am very concerned about the fact that we will not only lose a very talented bookkeeper but a position that, if it was good enough for Lisa Rood to have a full time bookkeeper, and it was good enough for her to have a full time secretary, why shouldn't I? Why shouldn't this community? As Lisa Rood said, "my job is part-time and I need someone full time in this office?". And this town should say to this Board on November 5th, "if you are not happy with what is going on here you can change the make-up." You have

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REQUESTS FROM THE FLOOR (CONT.):

Supervisor Eagan (cont.): the right to term limits and you can exercise your right to vote. You should not let this happen. This is very destructive to town government. You might as well limit Dave Shenk's job to part-time and Karen's and everybody else. Mr. Simmeth has no idea about what goes on in that bookkeeper's office other than what he thinks politically. I kept politics out of that budget and I will remind the people too. I gave back the surplus that the Comptroller's office in the last two audits said, you must do and it fell on deaf ears.

Bookkeeper Selby: I don't know if anybody knows how much work I put into everything. I took work home weekends to get everything up and going and for the record starting in 2003, I will be doing payroll too. There is no way this is a part-time position.

Supervisor Eagan: Who is going to do the payroll Karl, after we take it back?

Councilman Simmeth: When were we told that?

Supervisor Eagan: I just told you tonight but you are still talking about reducing her job.

Councilman Simmeth: Well maybe I'll rethink that now that we are not going to have the ADP service.

Supervisor Eagan: Maybe if you do rethink it you'll do the right thing. I do have faith that you can do the right thing.

Councilman Simmeth: Well speaking of political Mr. Eagan, I have requested from your assistant, the budget requests. I've asked our Town Clerk for the budget requests. Both democrats and we have yet to see them so how do we know what requests they put in? That is your word. We don't know. When are we going to get those?

Supervisor Eagan: First of all, Mr. Shenk is not in possession of those documents so why you asked him is beyond me.

Councilman Simmeth: He is the Town Clerk. Can't he make copies?

Supervisor Eagan: He had no reason to be in possession of them.

Councilman Simmeth: Can't you give him the copies?

Supervisor Eagan: Certainly, if he asked me.

Councilman Simmeth: All I'm asking is when are we going to get the budget requests?

Supervisor Eagan: Mr. Shenk, did you ask me for those documents in the last three business days?

Town Clerk Shenk: No. Councilman Simmeth called me on Tuesday and I forwarded a verbal request to Assistant to the Supervisor Costello, and she said she would get back to me.

Councilman Simmeth: Yes she said she was going to get back to me on Friday too but Bill had the requests. That is three democrats against one republican. When are we going to get the budget requests?

Supervisor Eagan: You will probably get them Friday. As soon as I have time to do it.

Councilman Simmeth: Can that go on the record?

REGULAR TOWN BOARD MEETING TOWN HALL

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REQUESTS FROM THE FLOOR (CONT.):

Supervisor Eagan: It is on the record.

Councilman Simmeth: It would be nice if the town board could go over them and look at them.

Supervisor Eagan: You shouldn't go over them without me anyway. If you are going to have a meeting, under the law you can't.

Councilman Simmeth: Can't we all look at them?

Supervisor Eagan: Absolutely. I have nothing to hide.

Councilman Simmeth: Mrs. Selby, I have nothing against you and I know you work hard down there.

Bookkeeper Selby: I took the job because I live in Boston and I am doing it more like a community service. I took a huge pay cut to take this position.

Councilman Simmeth: I've asked you for paperwork and you've had it in a matter of seconds. I have nothing against you or your work ethic. From what Bill tells me you are great over there.

Bookkeeper Selby: There is no way that is a part time position even without the payroll. I do half the payroll now. I still have to record everything and give them hours. It doesn't take much off the other way.

Gary Klumpp: Are we going to be able to see a revised budget when this happens, as a public?

Town Attorney Perley: No. Under the law if the Supervisor prepares a revised budget and wants to show people, that's fine. Legally, the preliminary budget that was adopted is on file in the Town Clerk's office. The Town Board will conduct a Public Hearing on November 6, 2002 and receive public comments.

Town Clerk Shenk: By law we have to have an adopted budget by November 15, 2002.

Town Attorney Perley: If there are changes to the budget it is adopted that night without further public comment. You are not legally entitled to see any document other than what is on file in the Clerk's office now.

Supervisor Eagan: What about the Supervisor before that Public Hearing? Do I get to see that revised budget?

Town Attorney Perley: There is no revised budget unless a revised budget is adopted by the Town Board. Anybody can make proposed revisions to the budget. They can do any of their own work if they want. This Board can schedule its own meeting to review the budget as a group if it wants. It just has to publish that because it is a public meeting. There is a meeting of which the Public Officers Law notice is required to be given. They can bring up amendments that night if they like.

Gary Klumpp: I just know that this town hasn't progressed too much and I've seen it in four or five years and a lot of people here work very hard including all of you respected individuals up there. I just hope the "Good Old Boys" politics ride out of here and we keep progressing.

Received a Soil Removal Permit application from Greg Gerwitz, Back Creek Road.

October 16, 2002 7:30 P.M.

A motion was made by Supervisor Eagan and seconded by Councilman Simmeth to refer the Soil Removal Permit application from Greg Gerwitz, Back Creek Road to Town Engineer Harris.

five (5) Ayes Carried

Received a request from Town Justices Bender and Tills to return the funds removed from the Justice Department appropriation based upon their opinion that the Supervisor lacks the legal authority to amend the budget absent a Town Board resolution.

Supervisor Eagan commented that he re-allocated funds and the Town Attorney reviewed the law and a determination was made that in spite of the guidance of the Town Accountant who supplied directions in writing, he made an error. The funds will be credited appropriately in the near future.

Received two proposals for a municipal salary review as follows:

Ametk Management Services Corp. \$9,600

Professor Nathaniel Richmond, Ph.D. \$2,500

A motion was made by Supervisor Eagan and seconded by Councilman Wiktor to award the contract for a municipal salary review to Professor Nathaniel Richmond, Ph.D., fee not to exceed \$2,500.

five (5) Ayes Carried

A motion was made by Councilman Simmeth and seconded by Councilman Edington to approve the following Transfer of Appropriations ? October 10, 2002:

GENERAL FUND

Appropriation A960 \$1,200.00

From: Contingency Account A1990.4 \$1,200.00

Appropriation A960 \$1,200.00

To: Drainage - Contractual A8540.4 \$1,200.00

Total: \$1,200.00

five (5) Ayes Carried

Received an opinion from Town Attorney Perley that there is no legal impediment to the Town Board considering the application of Verizon Wireless for a Special Permit for modification to a telecommunication facility at 8881 Cole Road.

A motion was made by Supervisor Eagan and seconded by Councilman Mead to approve the application of Verizon Wireless for a Special Permit for modification to a telecommunication facility at 8881 Cole Road.

five (5) Ayes Carried

Received a letter from Town Attorney Perley noting that the proposed resolution from Erie County Legislator Swanick regarding the reduction of assessments for special districts in county agricultural districts for water purposes will affect the method of collection of the underlying ad valorem tax that is levied on each property. Town Attorney Perley suggests that the Town Board obtain information from the Assessor concerning the practical effect of such a resolution prior to further action.

A motion was made by Supervisor Eagan and seconded by Councilman Simmeth to refer the proposed resolution regarding the reduction of assessments for special districts in county agricultural districts to the Assessor for review and recommendation.

five (5) Ayes Carried

REGULAR TOWN BOARD MEETING TOWN HALL

October 16, 2002 7:30 P.M.

A motion was made by Councilman Mead and seconded by Councilman Simmeth to schedule the Bid Opening for the Eighteen-Mile Creek Bank Stabilization Project for October 31, 2002 at 10:00 a.m.

five (5) Ayes Carried

Received a Planning Board recommendation of approval for a Special Permit for co-location submitted by Mobiletech Communication Corporation to a telecommunication facility at 6405 Ward Road with the following stipulations: that proper application and associated fees are received, proper inventory of all existing locators and verification that the fees have been paid, a letter from the Town Clerk verifying that all existing locators have an application on file and fees received prior to any additional reviews by the Town Board.

Town Attorney Perley noted that he has not received the color propagation studies.

A motion was made by Supervisor Eagan and seconded by Councilman Wiktor to schedule a Public Hearing for December 4, 2002 at 7:45 p.m. for the Mobiletech Communication Corporation application for a Special Permit for Co-Location to a telecommunication facility at 6405 Ward Road.

five (5) Ayes Carried

A motion was made by Supervisor Eagan and seconded by Councilman Mead to refer back to R&D Engineering, Inc. the proposed update of the Town Construction Specs for further discussion.

five (5) Ayes Carried

SUPERVISOR REPORT

Received and filed Supervisor's Financial Report for September 2002.

Supervisor Eagan commented that an investment vehicle was offered to the Town of Boston by J.P. Morgan Chase that yielded 2.1% and was liquid. The Evans Bank was not able to meet this rate but as a result of that investment Evans Bank officials have now offered an investment vehicle of 2.4% that is totally liquid. Evans Bank has stated that they love being in this community and working with us and they came to the table with an excellent proposal.

Supervisor Eagan apologized to all and to Mr. Simmeth for his previous outburst.

Supervisor Eagan reported that the services of ADP will not be required after the first of the year because at that time our payroll software will be fully implemented.

Supervisor Eagan presented to the Town Board a proposal for the 2003 budget to reduce the cost to Water District #3 users from \$500+ for the 101 households with service to \$357. For households without service the ad valorem tax went from \$139 to \$107. This would keep it within the range that was projected. The revenue to be raised by taxes is lowered due to the fact that we are now earning a higher interest rate. The operating and maintenance expenses were lowered as a result of a review of incorrectly recorded capital and maintenance expenses previously on the books. This district was never properly separated between operating, maintenance and capital funds. Upon the recommendation of the Comptroller's office the necessary corrections are being made.

REGULAR TOWN BOARD MEETING TOWN HALL

October 16, 2002 7:30 P.M.

SUPERVISOR REPORT (CONT.):

Supervisor Eagan at the last meeting requested that Town Attorney Perley prepare a resolution concerning the Fireman and Ambulance exemption, a resolution for the \$50,000 Tax Stabilization Fund and a resolution to commit \$40,000 to a Senior Citizen Complex Fund and requested that they be ready for the budget review.

Town Attorney Perley noted he will have the resolutions for the budget review and he needs to research whether the issue of the tax assessments requires a Local Law or a Resolution.

Supervisor Eagan presented Town Attorney Perley with a letter regarding CDBG funds for a Meals on Wheels Van which was approved but the van was purchased through another source. Connie Miner, Grants Consultant has been working on this.

TOWN CLERK REPORT

A motion was made by Councilman Wiktor and seconded by Councilman Simmeth to accept the Town Clerk Monthly Report for September 2002.

five (5) Ayes Carried

Town Clerk Shenk reported that Erie County Highway announced that Back Creek Road will be closed between Patchin and Hillcroft from October 21-25, 2002. Official notice will be forwarded to emergency services.

Town Clerk Shenk received a request for a Cheerleading sleepover in the Community Room on Friday, October 18, 2002 from 7:00 p.m. to 9:00 a.m. October 19th. There will be adult supervision.

A motion was made by Councilman Mead and seconded by Councilman Simmeth to grant the Cheerleaders permission to have a sleepover in the Community Room October 18th and 19th, 2002.

five (5) Ayes Carried

HIGHWAY SUPERINTENDENT REPORT

Highway Superintendent Kreitzbender reported that the final brush pick-up of the year will begin October 20, 2002.

Highway Superintendent Kreitzbender reported that over 50% of the roads in town have been micro-sealed and he thanks his Highway workers and the towns of Colden, Eden and Concord for their help.

COUNCILMAN REPORT

Councilman Mead inquired if the Highway Superintendent has investigated the erosion of Eighteen Mile Creek on Back Creek Road.

Highway Superintendent Kreitzbender reported that the county has closed Back Creek Road this week and is putting in new culverts and riprap for stabilization along the banks.

Councilman Wiktor announced the annual Halloween Party will be on October 31, 2002 at the Boston Town Hall Community Room from 7:00 p.m. to 8:00 p.m.

REGULAR TOWN BOARD MEETING TOWN HALL

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COUNCILMAN REPORT (CONT.):

Councilman Wiktor (cont.):

A motion was made by Councilman Wiktor and seconded by Councilman Mead to appoint the following to the Friday Night Recreation Program, term effective immediately and to expire on May 31, 2003.

NAME TITLE RATE

Ashley Guzzetta Counselor \$6.50

Connor Reilly Counselor \$6.50

Jerrin Edwards Sub Counselor \$6.50

Andrew Lundberg Sub Counselor \$6.50

Marcia Palczewski Sub Counselor \$6.50

James Soloman Sub Counselor \$6.50

Sarah Knaak Sub Counselor \$6.50

five (5) Ayes Carried

Councilman Wiktor reported that last night at the Erie County Sewer meeting the final report on the installation of the sewer project was presented. The County has a million-dollar performance bond held against the contractor and the money is being held for one year to be sure that all conditions are met and all homeowners' property is returned to pre-construction condition.

Councilman Simmeth reported that a Resolution to reduce the speed limit on Rockwood and Boston Cross Road to 35 mph has been sent to NYS DOT from Erie County for determination.

Received and filed the Dog Control Officers monthly reports for September 2002.

Supervisor Eagan noted that TVGA acquired free poles through the NYS DOT, which the Town of Boston can utilize, and this will save fourteen weeks on the Boston State/Boston Colden/West Tillen Road traffic signal project.

A motion was made by Councilman Mead and seconded by Councilman Wiktor to adjourn the meeting at 9:25 p.m.

DAVID J. SHENK, TOWN CLERK