

## **Town Board Minutes October 20,2004**

Present were Councilman Brien M. Hopkins, Councilman Karl J. Simmeth Jr., Councilman Dennis J. Mead, Councilman Richard K. Hawkins, Supervisor William A. Eagan, Highway Superintendent Richard A. Poore and Town Attorney Kelly A. Vacco.

Reverend Richard Kwietkowski, Good Shepherd Lutheran Church opened the meeting with a prayer.

A motion was made by Councilman Simmeth and seconded by Councilman Hopkins to adopt the minutes of the October 6, 2004 regular meeting.

five (5) Ayes    Carried

A motion was made by Councilman Mead and seconded by Councilman Hawkins upon review by the Town Board, that fund bills on the Abstract dated October 14, 2004 in the amount of \$291,250.10 minus voucher #777 in the amount of \$59,028.81 and voucher # 778 in the amount of \$13,598.62 for a new total of \$218,622.67 be paid.

five (5) Ayes    Carried

Received and filed letter from State Senator Byron Brown regarding the State budget taking away the funding from local municipalities in traffic violation plea deals.

### **REQUESTS FROM THE FLOOR**

Burt Feltz, 9339 Dunn Road: It's been one year since the original conversation with the Boston Town Board over the condition of Dunn Road. At that time, the discussion was "what do you expect us to do, it's winter time?". October 1st has come and gone. There has been no progress on this road. It's unfair to Highway Superintendent Poore because he was not involved with some of this, but the issue goes on. There is a culvert that needs replacing. I know there is permits that need to be filed and it seems that

it's an on-going thing. The safety issue was well stated in the letters that were submitted to the Town Board. We still have pedestrians walking up and down the road and the brush has grown into the street. I know there are other issues that the town needs to address because of weather and conditions, but this is not an issue to ignore. I expected some kind of response back by now as far as what was going to happen.

Highway Superintendent Poore: In the past two weeks we have acquired a survey that has been done and I have talked with other residents. The plans are to measure out the right-of-ways, cut the brush, cut the banks back, bring grade up on the part of the road where it pops up in the winter and move the center line in order to make a sight distance from Roger Seider's house down toward the culvert. I told the other residents that after I get the right-of-way clearly marked, I will come back, talk with all the residents at once, and inform them of the plan. I will try not to disturb too much property. The culvert down below is going to be replaced this year. We have been talking with the DEC. We have the permit and have been assured that there will not be any problem as long as we don't change anything in the wetlands. The right-of-way will be ten feet wider on each side and I plan on cutting the brush over the winter.

Bert Feltz: I don't want to make this an issue with Highway Superintendent Poore other than there is a safety issue and we've gone all summer on it. Safety takes no holiday. I feel the Board has been very lax on this safety issue. These issues need to be addressed regardless of personnel changes. I will not sit back and allow issues to be ignored. I feel this issue has been ignored for one whole year. I hope we can get resolution to this somewhat quickly.

Supervisor Eagan: Just so you know, the only person who is in charge of the Roads is the Highway Superintendent. This Town Board has no authority to direct the Highway Superintendent. But, the Board did encourage Foit-Albert to work with the Highway Department to come up with a solution. I believe that Highway Superintendent Poore came in towards the end of that.

Supervisor Eagan Cont'd: The Board, within the authority we have, responded the best way we could. We didn't let you down. Whatever the situation was in our Highway Department, I don't think anyone on this board could say that we caused the problem to continue on Dunn Road. It is an unfortunate thing that it remains in that condition, but the plan was set on what to do there, according to Foit-Albert. The money was going to be appropriated to handle it and then we had the fall out in the Highway Department. This Board did everything we could do under New York State Law to help you.

Mr. Feltz: Well, a safety issue is not necessarily a State Law issue.

Supervisor Eagan: That doesn't give the Board the right to oversee his Department.

Highway Superintendent Poore: I agree with Supervisor Eagan. I don't think that would be a Board responsibility on this.

Mr. Feltz: So, if I notified the Town of something that is unsafe, and they are aware of it and they hand it to the Highway Department, their responsibility is relinquished?

Town Attorney Vacco: The highways and roads in the town are under the sole discretion and authority of the Highway Superintendent. This Town Board has no authority to direct the Highway Superintendent on how to handle his Highway Department or his personnel. The only authority they have over the Highway Department is to approve his budget. If something were to happen as a result of the Highway Superintendent's actions or lack thereof, the Town of Boston could have some responsibility. The Town Board would not be held negligent; it would be the Highway Department.

Councilman Mead: Is there a weight limit as far as safety?

Highway Superintendent Poore: It's a 3-ton weight limit. I don't know how it was calculated at 3-tons, but that is what's posted.

Supervisor Eagan: We researched that also, and I think the only thing we came up with was 4-ton.

Highway Superintendent Poore: That particular road is posted for 3-ton.

Councilman Mead: So there is nothing going down that road that is over 3-ton?

Highway Superintendent Poore: I have never seen anything over 3-ton.

Mr. Feltz: Are we going to leave the 3-ton limit incorrectly posted. I think the town resolution states that all Town of Boston roads will be posted at 4-ton.

Councilman Hawkins: Wasn't that the issue last year when Mr. Feltz addressed the Town Board? I'm not sure if that was the only reason why the school buses refused to go down that road.

Mr. Feltz: School buses weigh more than 4-ton.

Councilman Hawkins: The reason the whole thing came to light was because of the condition of the road and the safety of the children walking on it.

Highway Superintendent Poore: I also believe there are certain vehicles exempt from that 4-ton weight limit, such as school buses, garbage trucks and town equipment.

Councilman Hawkins: Has the school board changed their position on picking the children up?

Mr. Feltz: They are waiting for the Town to do something. It's not just the children. My girlfriend walks the road and has been run off the road once this year already because of the narrow condition of the road and the blind spots.

Highway Superintendent Poore: I can only assure you of my plans.

Mr. Feltz: Mrs. Seider's children walk that road consistently. That puts my vehicle insurance and liability in jeopardy. It's not only the children; it's the whole issue of safety. With elections nearby, I hope that if

something was to happen; I'm not going through this same thing again because the Board is not responsible for the Highway Department's actions.

Councilman Hawkins: I don't think that is going to happen, no matter what happens on Election Day. You have brought this to the Town Board's attention. Highway Superintendent Poore has told you what is in the process of what is being taking care of. Whoever is in that position, this Board will try to do whatever it has to so that this project continues on and that work is being done.

Highway Superintendent Poore asked Mr. Feltz to meet with him to show him the plans for the road.

Eric Johnston, 7965 Zimmerman Road: What is going on with this Sheriff's patrol.

Supervisor Eagan: I have a letter from the Sheriff that I will reflect upon when I give my report.

A motion was made by Councilman Hopkins to refer the Site Plan for Hodgson Agency, Inc. 7336 Boston State Road, to the Planning Board for review and recommendation.

five (5) Ayes    Carried

A motion was made by Councilman Mead and seconded by Councilman Simmeth to approve the Transfer of Appropriations as follows:

GENERAL FUND:

FROM: Acct.

Appropriation    A 960    10,500.00

Assessor-Equipment    1355.2    300.00

Auditor-Contractual 1320.4 10,000.00

Code Enforcer-Equip 3620.2 200.00

Estimated Revenues A 510 13,542.00

Franchises 1170 13,542.00

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Total 24,042.00 24,042.00

TO: Acct.

Appropriation A 960 24,042.00

Assessor-Contractual 1355.4 9,200.00

Attorney-Contractual 1420.4 6,000.00

Code Enforcement-Contr. 3620.4 600.00

Parks-Equipment 7110.2 7,000.00

Planning-Pers. Svc. 8020.1 800.00

Conservation-Contr. 8710.4 442.00 \_\_\_\_\_

Total 24,042.00 24,042.00

Motion Cont?d:

HIGHWAY FUND

FROM: Acct.

Appropriation D960	4,925.00	
Capital Outlay (Chips)	5112.2	4925.00

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Total	4,925.00	4,925.00
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TO: Acct.

Appropriation D960	4,925.00	
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Brush & Weed Control	5140.4	4,925.00
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Total	4,925.00	4,925.00
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five (5) Ayes Carried

RESOLUTION 2004-25 UNPAID BILLS

RESOLUTION 2004-26 ERIE COUNTY DEVELOPMENT BLOCK GRANT REQUESTS

Supervisor Eagan stated that the Live Entertainment License from Couzins, 7115 Boston State Road has been in front of the Town Board since early July of 2004. The Town has extended to the owner several months of courtesy to give him time to rectify the problem of the loud bass noise coming from the establishment.

Town Attorney Vacco: The Town Board has agreed to approve the live entertainment permit for Couzins with the following conditions: Thursday night open mic to cease at 11 p.m. and live entertainment be

limited to Friday and Saturday evenings and to cease at midnight. This approval of Permit for Live Entertainment with these conditions is contingent upon the applicant providing the Town Board with evidence that the attic of the establishment has been insulated per the sound engineer's specifications by the November 3, 2004 Town Board meeting.

Supervisor Eagan: We don't have any confirmation that insulating the attic is the solution to the problem. If this matter isn't satisfactorily corrected, and the complaints continue, than we should have the right to revisit the application.

Town Attorney Vacco: The Town Board, per the Town Code, always has a right to revisit the live entertainment permit by public hearing if complaints have been brought to the Town Board.

Supervisor Eagan: Why would we put the attic issue in there then?

Councilman Hawkins: I believe part of the stipulation was when Mr. Hayden had the sound consultant come in; she suggested that part of the problem may be resolved by covering the windows and door with insulation instead of the plywood that Mr. Hayden put up. And additionally, insulating the attic further would help to deaden the bass.

Councilman Hawkins asked Mr. Hayden if anything had been done to the attic.

Mr. Hayden replied no with the gesture of shaking his head.

Councilman Hawkins asked if anything else has been done to help deaden the sound besides boarding up the doors and windows.

Deputy Code Enforcement Officer Lisowski stated that he did spend some time at a home near the establishment and also stood outside his truck at approximately 10:45 p.m. on the property line and route 391 and the bass was still evident. Deputy Code Enforcement Officer Lisowski stated that the remedies he and Mr. Hayden agreed upon fixing have not worked.

Supervisor Eagan asked Mr. Hayden if the attic was accessible.

Mr. Hayden stated that it was fairly accessible. Mr. Hayden asked if he turned the music off all together, would that fix the problem.

Mr. Hayden stated he feels that there should be a measurable point where he can be told he's wrong. He feels he can't be told he is wrong based on someone's opinion.

Mr. Hayden: I know when it's illegal to rob a store. I know when it's illegal to run a red light. I don't know when it's illegal to make noise coming from my building.

Supervisor Eagan: No one says you don't have a right to run your business.

Mr. Hayden: There has to be a measured line.

Supervisor Eagan: That is what we have been trying to accomplish over the summer. I think this board has extended a courtesy to you above and beyond what anyone would like to see. None of those neighbors objected to me about the extension of time we have give you to resolve this. Nobody wants to see you out of business. Everyone wants to be a good neighbor. They have every right to go to bed at whatever time they choose and not have to experience this bass and vibration in their home. You have your right to your position and they have theirs. The difference is what you do to rectify it.

Councilman Hawkins: There is no bass noise on Thursday nights. This Town Board would like you to take some additional steps to try and sound deaden that building so the neighbors can have a decent nights sleep. We've tried to come up with some sort of solution because every time this Board meets nothing is resolved. Tonight, we are trying to come up with some kind of solution that benefits both parties. But, you need to look at the situation of sound deadening that attic.

Mr. Hayden: I will absolutely do that. But, they know the noise is there. They are listening for it.

Deputy Code Enforcement Officer Lisowski stated that he cited Mr. Hayden for nuisance, not noise. It wasn't the loudness of the music; it was the bang of the bass.

Councilman Mead: Our only concern is if we table it, the four nights a week is going to continue. That is why we decided to approve the permit contingent on the time restrictions.

Mr. Hayden: I made the initial decision to start my bands at 9:00 p.m. so they can finish at 1:00 a.m. I can't get people to come out before 10:30-11:00 p.m. If you make me quit my bands at 11:00-12:00 p.m., I'm not making any money. I did my Thursday's 8:00 p.m. to midnight and they still don't come out until 10:00-10:30 p.m.

Dan Tomasullo, 7106 Boston State Road: The noise was never a major issue, but we could hear the music. It is just a matter of this being tabled so long, that it is getting to the point of being ridiculous. It's a matter of responsibility. He has had more than enough time to rectify this situation. It's the responsibility of the business owner for not only what happens inside but also outside. Other bars have bouncers at the door. There has been two fights outside within the last month. There should be someone outside controlling the noise.

Councilman Simmeth asked Deputy Code Enforcement Officer Lisowski about the court proceedings.

Deputy Code Enforcement Officer Lisowski: It was adjourned until December 6.

Donna Huson, 7104 Boston State Road: I don't understand why we just can't turn the bass down? That would solve everybody's problems.

Councilman Simmeth asked Town Attorney Vacco if there has to be a start time in addition to the cut off time restriction.

Town Attorney Vacco: There are stipulated conditions, which you can put on a live entertainment license, which are stated in the Town Code. If you do place conditions upon a live entertainment permit

and those conditions are not met, after a public hearing, the town can consider revoking that permit. Decibel levels of noise are stated in the town code.

Councilman Simmeth asked Mr. Hayden if he planned on having a live band on Saturdays.

Mr. Hayden responds with no.

Councilman Hawkins: I'm not so sure we should grant something and then take it back.

Town Attorney Vacco: That isn't what I was suggesting. If the conditions placed on the permit are not met or are disregarded, at such time that permit may be revoked with a public hearing.

Mr. Hayden asked what is the decibel reading.

Town Attorney Vacco stated that it is in the codebook under the noise section of the town code.

Councilman Mead: We are all under the same understanding. It's not the decibel reading that is the problem. It is the reverberation from the bass. We don't want to hurt a businessman in the Town of Boston and yet we are concerned for the residents so that their quality of life isn't being infringed upon. We hope that Mr. Hayden will address the issue with someone who has more experience to be able to deal with this issue.

Supervisor Eagan: The understanding is if the conditions aren't met, we can revoke the permit. There is no guarantee that this is going to resolve it. My next point is if it isn't resolved, then we can revisit this.

Town Attorney Vacco: Under Section 123-71, subsection 6c, Revocability states, the Town Board of the Town of Boston may revoke any such permit after a public hearing thereon. The grounds for such revocation shall be limited to the provisions of this subsection or the failure of the permit holder to comply with such additional conditions imposed at the time of issuance of the permit. So, the Town

Board could call a Public Hearing for the revocation of the permit based on a violation of any section of 123-71, or any conditions the Board has placed on a conditional permit.

Supervisor Eagan: I will just caution those involved in this that again, we are trying to reach a resolve here and not push anyone out of business and not push our residents over the edge. On my part, I would say this is the last compromise, Mr. Hayden. We have been extending the courtesy and we are trying to get a consensus here. I think we have found it.

Mr. Hayden: I don't get customers in until 10:30 p.m. on band night. You are cutting an hour off of every band night. You are strangling me. I've been working with the residents all summer long. I've done the wrong things and now you are going to cut my hours. I didn't say I wasn't going to fix it. I'm still trying. Have you seen the big, ugly thing on the side of my building?

Supervisor Eagan: I imagine when you do reach the point of fixing it we can revisit the hours.

Mr. Hayden: You just said you didn't want to see a businessman go out of business.

Supervisor Eagan: We don't, but we're not locking your door. We're just saying resolve the problem.

Councilman Hopkins: The simple solution is turning down the bass.

Mr. Hayden: I have turned it down.

Councilman Hopkins: Evidently, it hasn't been enough.

Mr. Hayden: Is there some way we can measure it?

Councilman Hopkins: I think the only measurement is the neighbors standing out there around 10:30 p.m. for 15 to 20 minutes just listening until we can say, "there it is, and it sounds good?". I don't think a hand-held DB level is going to help anyone out in this case.

Mr. Hayden: Before we set a curfew on my music, why don't we have more than just the neighbors come out.

Councilman Hopkins: If someone wants to set up a time, I'll be there.

Mr. Hayden: Gladly, then everybody can agree to a volume it needs to be at.

Councilman Hopkins: I agree and I think the neighbors agree. It sounds like all of them agree that it's just the bass. I've sat here and listened to everybody talk about insulation and you are worried about the money. It sounds like it's just the matter of turning a little knob down. Set up a date preferably on Friday or Saturday night.

Councilman Hawkins stated that he would also attend.

Supervisor Eagan: The issue isn't so much that you can feel it when you are standing outside. But, when I stepped into the resident's home, it was quite evident what the problem was. We can gather outside any night of the week, but we're not going to experience what they do in their home.

Councilman Mead: Based on that, why don't we table it until the next meeting?

Councilman Hawkins: I want to do this on a night when there is a band, but I don't want to table this to the point that the neighbors have to continue putting up with it for two weeks, or two months. We need to resolve this situation now.

A motion was made by Councilman Simmeth and seconded by Supervisor Eagan to approve the application for live entertainment from Couzins with conditions.

two (2) Ayes    three (3) Nays    Denied

A motion was made by Councilman Mead and seconded by Councilman Hopkins to table the application for live entertainment for Couzins until the November 3rd Town Board meeting.

Councilman Mead Aye

Councilman Hopkins Aye

Councilman Simmeth    Nay

Councilman Hawkins    Aye

Supervisor Eagan Nay

three (3) Ayes    two (2) Nays    Carried

Supervisor Eagan stated that Highway Superintendent Poore has indicated that the property owner has met all the conditions that were set forth regarding the Willow Drive turnaround.

Town Attorney Vacco: The dedication of a road to the Town of Boston has been accomplished. Highway Superintendent Poore has a signed order of dedication which states that he has determined that the a town highway shall be laid out in accordance with the descriptions set forth in the deed of dedication. The consent of the Town Board to this order of dedication is required. I do have a signed copy of this consent.

Town Attorney Vacco reads the Consent of Town Board to Order of Dedication.

A motion was made by Councilman Mead and seconded by Councilman Hawkins to approve the Consent of Town Board to Order of Dedication.

five (5) Ayes    Carried

## SUPERVISOR REPORT

- Supervisor's report for September 2004 was received and is on file in the Town Clerk's office.

Supervisor Eagan stated that he received an inspection report from the county concerning the Nutrition facility and is very proud of the staff. The letter congratulated the Nutrition program and encouraged them to keep up the great work.

Supervisor Eagan stated it is a terrific program, the food is good, the price is right and that there needs to be more participants.

Supervisor Eagan stated that County Executive Joel Giambra came forward with the idea of the Sheriff's patrols and charging the town's extra money. Sheriff Patrick Gallivan came out, met with him, and told him that of the 16 towns cited by the budget director 12% received the Sheriff's services and the City of Buffalo received 60%. Supervisor Eagan believes that the Sheriff didn't find this acceptable. Supervisor Eagan suggested that a letter be sent to the County Legislature and County Executive stating the Town's position about putting further financial burden on our community whether it is for the Sheriff's Department or the Snow removal. Supervisor Eagan stated that the Town of Boston is already under contract with the County of Erie to remove snow on many County Highways. Supervisor Eagan attested to the fact that the amount the Town is paid doesn't cover overtime and material used on some of these roads. Supervisor Eagan noted that town contracts are up Countywide this coming year and will be revisited by every Town Supervisor and Highway Superintendent. Supervisor Eagan stated that he opposes any increase in sales tax.

## TOWN CLERK REPORT

A motion was made by Councilman Mead and seconded by Councilman Simmeth to accept the Town Clerk's report for September 2004.

five (5) Ayes    Carried

Town Clerk Shenk announced that beginning on November 1st first come, first served Deer Management permits will be available in his office. However the DEC has not specified which Wildlife Management Units will be available

#### HIGHWAY SUPERINTENDENT REPORT

Highway Superintendent Poore stated he is in the process of filing a DEC permit to work on the Eighteen Mile Creek to remove logjams. He will get the application filled out ASAP and hopes to remove a lot of the logjams with the Highway Department's own equipment. There will also be some stabilization in some spots.

Highway Superintendent Poore stated that there was about 5 inches of snow on Lower East Hill and there was some plowing done there. Highway Superintendent Poore stated that all the snow plowing equipment is ready to go.

#### COUNCILMAN REPORTS

A motion was made by Councilman Hopkins and seconded by Councilman Mead to appoint the following members of the North Boston Fire Company to active Fire Police Status until such time as resignation, removal, or replacement.

John Braun	David Lisowski
Frank Forney	Robert Pollinger
Michael Frank	Justin Proudman
Susan Frank	Kevin Rockwood
William Gross	Frederick Shear
William Kleis	Kevin Steward
Jeff Knowles	Eugene Wieckowski

Richard Lee      Karen Wieckowski

five (5) Carried

Councilman Simmeth read section 2 of Proposed Local Law #2 of the year 2002 and stated that he hoped that the Judges are referring to that policy when Mr. Hayden appears in court.

Councilman Hawkins stated that Erie County is closing part of Haag Road from CR482, Knoll Road to Enser Road in the Town of Boston for the purpose of culvert replacement. Holmes and Murphy will perform the work. Closure will be from 7:00 a.m., Monday, October 25th until completion.

Supervisor Eagan: I received a call today from the Town of Concord Supervisor regarding the Town of Boston sending in a dozer to be used to build a bus parking lot. My concern is that I think we should have an indemnification agreement especially when the equipment is used on private property.

Highway Superintendent Poore: I was told that it would be used at the Town Park and at the bus garage. The bus garage did have board approval and there was a mutual aid agreement on file with Erie County and the WNY Highway Superintendent Association of Erie County that all towns in the County of Erie can loan equipment back and forth. Whoever has the equipment, it's on their insurance. They are liable.

Supervisor Eagan: I can assure you that there was not Town Board approval for them to go onto private property. The Highway Superintendent, as of today, is aware of that according to the Concord Supervisor. They had no knowledge of it.

Highway Superintendent Poore: As long as we are talking about loaning equipment, and In defense of the Concord Highway Superintendent, we also had their back hoe for one month during the flood we had in May

Supervisor Eagan: I just want to make sure we aren't exposed to any liability.

Highway Superintendent Poore: I will contact the Erie County Highway Superintendent Association and find out.

Town Attorney Vacco: The mutual aid agreement would speak exactly to the conditions under which an exchange of equipment can occur.

#### ASSESSOR REPORT

- Assessor's report for September 2004 was received and is on file in the Town Clerk's office.

#### TOWN JUSTICE REPORT

- Town Justice report for September 2004 was received and is on file in the Town Clerk's office.

#### CODE ENFORCEMENT REPORT

- Code Enforcement Officer's report for September 2004 was received and is on file in the Town Clerk's office.

#### DOG CONTROL REPORT

- Dog Control Officer's report for September 2004 was received and is on file in the Town Clerk's office.

A motion was made by Supervisor Eagan and seconded by Councilman Hawkins to adjourn the meeting at 8:53 p.m.

five (5) Ayes Carried

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DAVID J. SHENK, TOWN CLERK