

Town Board Minutes October 21, 2009

Present: Supervisor Richard K. Hawkins, Councilmen David Ruzzine and Councilman James E. Pluta, Councilwomen Cathleen M. Dobson and Cathy A. Maghran.

Also Present: Town Attorney Downey and Code Enforcement Officer Ferguson.

Rev. James Laun, Churchill Memorial United Methodist Church opened the meeting with a prayer.

A motion was made by Councilman Pluta and seconded by Councilwoman Maghran to approve the minutes of 10/7/09.

five (5) Ayes Carried

A motion was made by Councilman Pluta and seconded by Councilwoman Maghran, upon review by the Town Board, that fund bills on the Abstract dated October 15, 2009 in the amount of \$66,384.92 be paid.

five (5) Ayes Carried

Supervisor Hawkins: I wanted to take a moment to report on the progress the Town Board has made over the past few weeks in the fine tuning of our 2010 Budget.

As you know the only area in the tentative budget that showed a potential increase of any concern was the Highway Department. Since submitting the tentative budget on October 1st, the Board has had several discussions on how to improve upon the 2010 budget. Tonight, I wish to inform the community that once again for the third year in a row this board has been able to tighten the budget. The end result is that the tax rate for the Highway, General, Fire Protection and Ambulance Funds will be lower in 2010 than it was in 2006. Unfortunately, charges on your tax bill such as: lighting, water, and garbage are controlled by the utility, Erie County Water and Waste Management. The board has no control over

those costs on your tax bill. In addition, there will be no raises for any town employees, except for the unionized highway workers.

What this means to you the taxpayer: if the taxable assessment on your property was \$100,000, using the Highway, General, Fire Protection and Ambulance Fund rates:

The 2006 tax rates from the same categories your taxes would have been \$332.38.

Compared to the 2010 tax rates your taxes would be \$319.80.

The end result is there will be no property tax increase in Boston. The tax rates for the general fund, highway, fire and ambulance services in the 2010 budget are lower than in 2006.

Therefore, for those who have attempted to mislead our community, I can only say: "The proof is in the budget and now on the record."

We, as your Town Board, continue to work hard for the community and this budget once again confirms our commitment to the taxpayers of Boston.

Tabled request from John and Barbara Moore, Jr., 6693 Liebler Road in regards to drainage issues on their property until they return from vacation.

Paul Alico, 5556 Northside Drive, stated that he has had on road drainage problems across his frontage area for many years. He stated lawn maintenance of this area is difficult and stated that he had eleven 25 foot pine trees removed from that area, costing over \$1,200. He stated that on September 18, 2009 Highway Superintendent Telaak dug a new ditch. Water still lies in the bottom and it's unsightly and inefficient. He is requesting piping with the appropriate graded connection so that everything can be brought up to grade level. If this is done it will correct the problem, improve the curb appeal and subsequent appraisal value of the property. He stated that the property owners have maintained these sections for many years saving thousands of dollars in maintenance and man hours. He stated that he feels this is a reasonable request for on road drainage especially when you consider the recent approval of off road piping for Richard Jerome on Liebler Road. He submitted pictures of this area to the Town Board.

Councilman Pluta noted that because these issues are on town rights-of-way, Highway Superintendent Telaak would have to address the situation and offer a plan to remedy it.

Supervisor Hawkins asked Highway Superintendent Telaak to explain what the practice is for requests for drainage piping in the road right-of-way.

Highway Superintendent Telaak noted that usually the resident buys the pipe, but Paul Alico is requesting the town buy it because the town paid for Richard Jerome's pipe.

Supervisor Hawkins noted that the town did not pay for Richard Jerome's pipe and as Highway Superintendent Telaak noted the past practice was that the homeowner paid for the pipe and the town assisted them in the installation.

Paul Alico stated that he feels that with the way the homeowners maintain the properties should warrant the supply of the pipe so they can finish off their properties and have them looking nice.

Supervisor Hawkins stated that his comments would be taken into consideration.

Doris Pilato, 8493 Boston State Road, announced that a Halloween party will be held in the community room on Friday, October 30, 2009 from 6 ? 8 p.m. There will be games, candy, prizes and costume judging for the children in the Town of Boston.

Richard Jerome, 6837 Liebler Road: Just to set the record straight, this goes way back to when former Highway Superintendent Kreitzbender put the first pipe in and it was maintained by the town before I dug it out.

Richard Jerome Cont'd: Former Highway Superintendent Poore dug it out; Highway Superintendent Telaak dug it out until he decided he wasn't going to do it anymore. The town and I had a legal agreement and two pipes are being approved now to split the drainage because I own numerous properties that are being flooded out. I have paid for the pipe three times. This time we put plastic in.

That is the fact. In the meantime, Highway Superintendent Telaak had plugged the ditch and deferred all the water on the property even after we had this legal agreement. Now it's going to be a knee wall, 120 degrees with two pipes coming out, half coming down the road and half coming down my property because I want to put it behind me. It isn't like I just called up and said will you do this. Highway Superintendent Telaak had agreed to put that pipe in and then said he was not going to do it because he was too busy. The town then decided to hire a contractor to do it that is how it came about. I just wanted to set the record straight.

Beverly Kent, 7255 Lower East Hill Road: Many of you are aware that we don't have water. I have had several conversations with a few of the board members about this issue and I'm asking you to provide me a status of that project.

Supervisor Hawkins: The status right now is that the project started at Jeff Genzel's house, correcting a problem from previous years when they put the water line in. They went to the water supply on Wohlhueter and continued. It will proceed on Cole and Liebler Roads. They are completing Liebler Road because of the terrain. When the weather is good they can probably do 500 to 600 feet a day on the flat areas compared to the hills. Can I tell you exactly when they are going to be on your road? We have no way of absolutely telling you when it's going to be there. There could be any number of problems that arise during this installation.

Beverly Kent: When you say they are on Cole Road, what do you mean by that? What are they doing?

Supervisor Hawkins: From Wohlhueter Road to Cole Road, then Liebler Road.

Beverly Kent: Do you have a work plan of that or a plan that shows the route or progress.

Supervisor Hawkins: I believe that is in your packet that was mailed to you, it gave exactly the areas they were going to start first and where they were going to go. That contract started around the 14th or 15th of September.

Beverly Kent: I don't recall receiving a packet.

Supervisor Hawkins: Everybody on the hill that could hook up to the water line received a packet which included an itemized breakdown of the road areas where they were going to start and how they were going to progress. I believe Lower East Hill and Burr Roads were going to be in the latter stages of the contract.

Beverly Kent: So if I understand you correctly, we will likely be the last people to get water?

Supervisor Hawkins: Yes.

Beverly Kent asked what the estimated date of completion will be.

Supervisor Hawkins stated 256 days from the beginning of the contract including seeding and bedding.

Beverly Kent asked Supervisor Hawkins to give her details of his meeting with the Town Engineer and Nussbaumer and Clarke and what the completion date is.

Supervisor Hawkins stated that there wasn't a completion date other than the 256 days from the date the contract started. There is a penalty of \$700 a day for every day that contract is not completed on time.

Beverly Kent stated that she was disappointed that Supervisor Hawkins could not tell her that the 256 days would be June of 2010. She stated that this water issue was first discussed back in 2006 under former Supervisor Eagan. She also stated that during conversation with Councilman Pluta and Supervisor Hawkins this past summer it was discussed that the water lines would be installed on Lower East Hill Road by the end of fall.

Councilman Pluta noted that he understands Beverly Kent's frustration but the Town Board cannot give a completion date because the contractor could finish the job before the 256 day deadline.

Beverly Kent stated that she heard of a completion date of March 2010.

Supervisor Hawkins stated that they had originally hoped to start a lot quicker, but because Fairway Contracting was the lowest bid, the town's responsibility is to award it to the lowest bidder and they had an obligation to finish a job in Amherst before they could start here. Supervisor Hawkins noted that they are also concerned about residents on Wohlhueter that are just outside the water district that won't be getting it.

Beverly Kent noted that she was disappointed that the Town Board has ignored the public health and economic issues. Children in these areas do not have fluoridated water.

Anthony Zeniuk, 6540 Hillcroft Drive, stated that there is a new development going on with Eighteen Mile Creek. He is concerned about losing government money if nothing is done. He also noted that in front of his property there is a culvert pipe that has a huge sink hole that is working its way back toward his driveway and is concerned that one of his or neighborhood children may be injured. He stated that he's not hearing anything from the town on how it's being fixed.

Supervisor Hawkins stated that he is in his office everyday at 3:30 p.m. and can be contacted anytime for anything. He stated that he had a meeting today with the NYS DEC, and several Erie County Officials discussing Eighteen Mile Creek.

Supervisor Hawkins Cont'd: He stated that the Town of Boston is probably going to lose the first round of funding for Hillcroft Drive. The problem is that one of the neighbors refuses to sign a temporary easement so we can not go onto private property without permission from all residents affected.

Town Attorney Downey noted that there is a homeowner using his constitutional right to not allow anyone on his property. Unfortunately, that particular property is integral to the project and bids can not be done without having legal access to it.

Anthony Zeniuk asked Town Attorney Downey for his legal opinion in regards to a tree that has fallen on his property from the neighbors and that neighbor refuses to clean it up but told him that Erie County Soil and Water would.

Town Attorney Downey noted that he can not speak to that issue without having additional facts and they can discuss it further after the meeting.

Supervisor Hawkins stated that he is aware that there are two trees that are on Anthony Zeniuk's property from Bernhard Huber's.

Anthony Zeniuk asked where Bernhard Huber would get that Erie County Soil and Water would remove those trees.

Supervisor Hawkins noted that they probably would have removed the trees when and if they were in the area doing work. Supervisor Hawkins stated that this is now an issue between neighbors, not the Town of Boston.

Anthony Zeniuk stated that there is nothing being done to fix this.

Town Attorney Downey stated that the town is aggressively trying to get Bernhard Huber to agree and sign the easement. He stated that Bernhard Huber has been met with numerous times, and sent numerous letters. He stated that he has talked to the county attorney and John Whitney, EC Soil and Water, so there are things being done. The problem is that there are certain legal rights that he has and one of them is that he can refuse us access. We want him to do this voluntarily so that we don't have to go through the whole legal procedure.

Anthony Zeniuk stated that there should be a time limit put on it so that the town does not lose that grant money and get that project moving.

Town Attorney Downey stated that we are dealing with many agencies. Erie County Soil and Water is also trying to do it voluntarily because it becomes more complicated and more expensive to do it any other way. Town Attorney Downey stated that there are ways that this has to be done and we can't just jump over those issues. The town has tried every means possible to get this resident to agree. Every person has constitutional rights that need to be respected. He stated that this is a private issue between their two properties and Anthony Zeniuk will have to hire his own attorney to deal with it.

Supervisor Hawkins asked if the pipe he is concerned about is in the road right-of-way and asked Highway Superintendent Telaak if he could check to see if it is and if some stone can be put there to help avoid any injuries.

Anthony Zeniuk stated that he has probably lost a half an acres of property and his taxes are still the same.

Councilman Pluta stated that the Town Board is just as frustrated as he is.

Councilwoman Maghran noted that it is frustrating that all this work can be done, all these meetings are attended and discussions are had and it's all held up by one person.

Supervisor Hawkins noted that his concern is for the residents if something isn't done soon. He stated that he will continue to work and fight on this issue. He stated that there have been four projects that have been approved by FEMA to clean debris out of Eighteen Mile Creek and he has to go through the same process of getting easements from all those residents.

Anthony Zeniuk stated that he understands the Town Board's position, but felt he needed to try and obtain some answers tonight.

Jay Boardway, 6530 Fairlane Ave., inquired about the legality of Town of Boston Invoice #090928. He inquired as to why other town residents have not been afforded the same benefits that the resident at 6837 Liebler Road was given. He stated that on October 7th the Town Board approved payment for a contractor to perform work on private property.

Jay Boardway inquired as to why the Moore letter was tabled without an explanation. He also asked as to why the Town Board, without any public notice spent tax payer dollars on a project on private property. He noted that he wants answers to these questions because many people are asking him and would like to be able to give an accurate assessment.

Councilman Pluta clarified to the public that Jay Boardway is running for Councilman.

Town Attorney Downey noted first, that according to Highway Superintendent Telaak's public discourse that this was not in the road right-of-way. Second, in Richard Jerome's case the town has maintained those ditches for at least 30 years. He noted that the reason the town was involved is because water

flowed from the main road to a ditch and it affected the highway. He noted that you can not go on private property without owner permission or county approval. As far as the expenditure, Highway Superintendent Telaak said he was going to take care of it.

Highway Superintendent Telaak stated that he would take care of it if the Town Board approved it.

Town Attorney Downey stated that he is correct; the Town Board does have to give him approval to do off road drainage in addition to having homeowner permission.

Highway Superintendent Telaak stated that according to Highway Law Section 147 in order to go off the road right-of-way and do work you have to get county superintendent approval.

Town Attorney Downey noted not unless you have permission from the resident. The town does not need county approval to do drainage issues that affect the town highway, but they do need land owner approval. In addition, the town has been doing this work for many years. Town Attorney Downey noted that Highway Superintendent Telaak said that he did not have time to do that work. So that is why the town hired someone to do it.

Jay Boardway asked when the town taxpayers were going to be told about this.

Town Attorney Downey stated it was discussed at a meeting.

Jay Boardway noted that a lot of time was spent talking about the precedence that had been set through 30 years of the town preparing this right-of-way. He asked if it were correct that the homeowner had made modifications to what the town had been doing for 30 years which caused the problem.

Town Attorney Downey noted that, yes, that was part of the issue and Richard Jerome was cited. Town Attorney Downey pointed out that improvements are both within the right-of-way and on private property.

Jay Boardway stated that the bottom line is that the Town Board used \$1,500 to make improvements on private property despite prior precedent. He stated that he has spoken with many residents on many different streets that have that same exact situation and no one is helping them and they are asking why.

Supervisor Hawkins commented on the question of the Moore letter being tabled. He stated that the Moores are out of town on vacation and the town attorney is checking into their request. He and Councilman Ruzzine would like to speak to the homeowners about their issue when they return.

Richard Jerome noted that if you check town records you will see where the town applied for an easement after they had already gone on private property and dug a ditch that went into the woods, that is when he said no. He stated he asked Highway Superintendent Telaak for help with a plugged up ditch and he refused, so he had to hire a contractor. That is when the action started. He noted that Highway Superintendent Telaak later offered to bring up a telephone pole to clean out his driveway culvert. Richard Jerome stated that he would just purchase a new one and asked Highway Superintendent Telaak to install it.

Highway Superintendent Telaak stated that he did not agree to that and would not go back on private property without Town Board approval.

Councilwoman Dobson stated that Highway Superintendent Telaak announced at one of their agenda review meetings that he would have done it, but his schedule did not permit him to do it and that the Town Board should hire a contractor.

Councilman Pluta noted that the town is taking water that runs off of Liebler Road and running it through private property. Councilman Pluta quoted State Comptroller opinion in regards to the maintenance of drainage ditches on private property that the Town Board can reasonably request the Town Highway Superintendent to do this work as long as it does not interfere with the performance of the Superintendent's other statutory duties. He stated that the Town Board can ask him to go onto private property because it's draining the town highway and according to the State Comptroller, it's perfectly legal to do.

Councilwoman Maghran noted that it would have cost more to pay the Highway Department workers to do this work than it was to pay a contractor.

Highway Superintendent Telaak asked how she knows that.

Councilwoman Maghran stated that she knows how much each worker makes an hour.

Councilwoman Dobson noted that it's her understanding the Highway Department did not have the time to do the work, but had the time to sit out on the street and watch the work being done.

Bill Forness, 9534 West Hill Road, stated that former Highway Superintendent Kreitzbender did not install a pipe on Richard Jerome's property. Three years ago Richard Jerome illegally blocked the ditch on his property. He quoted a March 2, 2007 Foit Albert, Town Engineer recommendation to reestablish the existing ditch characteristics and that Town Attorney Downey should be contacted regarding the legality of moving the fill.

Councilman Pluta stated that the Town Attorney did not say that it was legal to remove it; the Town Engineer recommendation said to check into the legality of removing it.

Bill Forness quoted a January 9, 2008 letter from Town Attorney Downey on behalf of the Town Board directing Highway Superintendent Telaak to clean the ditch at 6837 Liebler Road per Highway Law Section 147. He suggested that the Town Board hire an attorney who is more familiar with NYS drainage laws.

Councilwoman Dobson asked Bill Forness if he ever cleaned out the ditch on Richard Jerome's property in the 20 years he's worked for the town.

Bill Forness stated that he was up there one time and cleaned two scoops from a culvert pipe 15 years ago.

Town Attorney Downey pointed out that improvements are both within the right-of-way and on private property. At that point we did not have permission to go on property to remove that part of the blockage that was on private property.

Town Attorney Downey Cont'd: The town went through extraordinary lengths to get affidavits. He stated that he got affidavits from town employees that said they had been on that property multiple times. The town workers did not have county approval to do the work. They had the right to because at that time they had permission of the private landowner, which is what the law states.

Beverly Kent asked what the process is for appointing new board members.

Supervisor Hawkins responded through the election process.

Keith Kaszubik, 5550 Maple Grove Drive, quoted from Town Code Chapter A-126.5, Rules of Order and Agenda states fair and courteous treatment shall be extended to all persons appearing before the Town Board. He stated that he has been disrespected, labeled as political and has had his name mispronounced.

Keith Kaszubik also made a comment in regards to Town Code A-126-10, Item #5, Departmental and Committee Reports. He goes on to state that although most of the Town Board members treat him with courtesy and he appreciates it, certain Town Board members have not treated him with respect. He stated that October is National Polish Heritage Month and many polish people have lived and died in the Town of Boston. He noted that through research he has found that there have been three Polish-American Supervisors in the Town of Boston; Leo Stromecki, Joseph May and John Jablonski. He noted that he presented this information at a Town of Boston Historical Society meeting which only Councilman Pluta attended.

Councilwoman Maghran commented that she feels Keith Kaszubik is referring to her and stated that at a previous meeting she had apologized to him for mispronouncing his name and that it had nothing to do with his heritage.

RESOLUTION 2009-21 ERIE COUNTY COMMUNITY DEVELOPMENT BLOCK GRANT REQUESTS

Received and filed monthly reports from the Supervisor, Town Clerk, Code Enforcement Officers and Dog Control Officers.

Supervisor Hawkins noted that once again he's met with various county officials to discuss Eighteen Mile Creek and four of the six areas we requested help with have been approved. Discussion contained removing sediment and debris from the creek. He noted that he is discussing the ability to once again get soil removal permits from the DEC to be able to remove rock and sediment from the creek.

From the audience, Bill Forness asked if there were any bids for the Eighteen Mile Creek project released.

Supervisor Hawkins noted that bids were received and we still have to get easements.

Councilman Pluta noted that all of the affected homeowners will be notified because easements have to be obtained.

From the audience, Bill Forness: Inaudible?

Councilman Pluta stated that we are not trying to get the homeowners' hopes up before we know everything is complete. We have to follow the process.

Town Clerk Shenk announced that on Sunday, November 1st the first come first served deer management permits will be available in areas 8A, 8F, 8G, 8H, 8J, 8N and in Erie County, 9A and 9F.

Highway Superintendent Telaak noted that brush pick up is complete for this year and leaf pick up will begin on Monday. Sale of the equipment at auction brought in \$34,875. There is still dirt fill and leaves available if anyone is interested.

Highway Superintendent Telaak noted that because of the new no burning law there will be more leaves to pick up and asked the Town Board to consider adding money to the budget for leaf pick up because the current amount won't be enough to cover this year's expenditure. He noted that if the rain holds out, black top work should be finished soon.

Highway Superintendent Telaak noted that once again there was no increase in the highway budget. He stated that in the past few years he has lost two men because of budget cuts. He stated that the proceeds from the sale of his equipment was put toward keeping the tax rate down when it should be put toward replacing a 23 year old truck. He stated that he can only do so much with the men and equipment he has. The cost of blacktop and salt and many other things have increased this year and yet the taxes have not increased in the highway budget. He noted that he feels that the severe cuts in his budget do not look out for the best interest of the resident of the Town of Boston.

Highway Superintendent Telaak noted that the water off Feddick Road diverts onto his driveway comes back through his neighbors and crosses his driveway and wants to know if the town is going to replace his driveway pipe?

Councilwoman Maghran stated that the Town Board spent hours going through the highway budget and it's the best they can do without having to raise taxes, which is what this Town Board promised to do.

Councilman Pluta noted that Dr. Norman Hertz is the new Chairman of the Conservation Advisory Counsel and the next two meetings have been changed to November 17th and December 15th.

Councilman Pluta noted that Highway Superintendent Telaak noted that Highway Superintendent Telaak budget is set at \$50,000 and right now he has used \$27,000 of that budget. Even if it was projected to use \$5,000 a month till year end that would make it \$42,000 so he'd have a surplus.

Councilman Pluta Cont'd: He stated that this Town Board would not put the town or its residents in jeopardy. They are trying to maintain the taxes so that residents can afford to live here.

Highway Superintendent Telaak stated that the highway overtime was cut.

Councilman Pluta stated that if prior year overtime was compared to this year they can show that the Town Board is projecting the same amount of overtime for next year as was used this year.

Councilwoman Maghran noted that the Parks Department met with Ed Carey in regards to the Christmas decorations and a tentative installation will be the week before Thanksgiving. New brackets will replace the old ones. The Girl Scouts have volunteered to replace all the broken light bulbs.

Councilwoman Maghran noted that the Planning Board meeting has been cancelled next week due to no new business.

Councilwoman Maghran noted that she is looking for volunteers from the senior groups to help set up a Health Advisory Council Committee.

A motion was made by Councilwoman Maghran and was seconded by Councilwoman Dobson to establish a Health Advisory Council Committee for the Town of Boston.

five (5) Ayes Carried

Councilwoman Maghran noted that the first official meeting will be held at the North Boston Fire Hall November 12th from 7 ? 9 p.m. featuring nationally recognized nutritionist Sharon Lawrence. Contact the town hall if you wish to join the committee.

Councilwoman Maghran stated that she has requested a shelter for the North Boston Park and Ride from Legislator Reynolds Office and the NFTA.

Councilwoman Dobson noted that she has met with several residents in regards to drainage and erosion issues.

Councilman Ruzzine reiterated that the bids have been received for the four approved projects on Eighteen Mile Creek. Work will begin as soon as the easements are received.

Councilman Ruzzine noted that he met with the Moores before they went on vacation and they didn't want anything discussed at the meeting because they wouldn't be there.

Councilman Ruzzine asked Highway Superintendent Telaak if he lived on a town or county road.

Highway Superintendent Telaak noted that he lived on a county road.

Councilman Ruzzine suggested that Highway Superintendent Telaak contact the county if he has an issue with his driveway culvert pipe.

A motion was made by Supervisor Hawkins and seconded by Councilwoman Dobson to adjourn the meeting at 8:55 p.m.

five (5) Ayes Carried

DAVID J. SHENK, TOWN CLERK