

Town Board Minutes October 3, 2007

Present: Councilmen Brien M. Hopkins, Richard K. Hawkins, Councilman Dennis J. Mead, Councilwoman Cathleen M. Dobson and Supervisor William A. Eagan.

Also Present: Highway Superintendent Telaak, Town Attorney Downey, Code Enforcement Officer Ferguson and Deputy Code Enforcement Officer Lisowski.

Rev. James Hakes, Faith United Church of Christ, opened the meeting with a prayer.

A motion was made by Supervisor Eagan and seconded by Councilman Hopkins to adopt the minutes of the September 19, 2007 regular meeting.

five (5) Ayes Carried

A motion was made by Councilman Mead and seconded by Councilman Hopkins, upon review by the Town Board, that fund bills on the Abstract dated September 27, 2007 in the amount of \$65,210.60 be paid.

five (5) Ayes Carried

Received and filed a Town of Holland Resolution opposing Proposed State Windmill Siting Procedure.

Supervisor Eagan noted the Town Board has adopted a similar resolution regarding opposing the Windmill Siting Procedure.

Received and filed notification of the intent to renew a Liquor License for Couzins, 7115 Boston State Road.

Received and filed notification from Erie County Department of Environment & Planning that November 1 through November 30 has been designated as the annual thirty-day time period within which a land owner may request land for inclusion into an agricultural district.

REQUESTS FROM THE FLOOR:

Dana Darling, 6540 Omphalius Road, requested that the Town Board wait a few minutes until his attorney arrives before acting on his project.

Supervisor Eagan read his 2008 Preliminary Budget Summary as follows:

This being my fifth budget in six years, I am very proud of each and every budget that I have presented. My first year budget I lowered the General Fund Tax rate by 8% and over the course of 5 years I have not put that 8% back into the General Town tax rate. The only time that the General Tax Rate was in jeopardy was in 2003 at which time the State of New York mandated that we pay an additional \$80,000 in retirement costs, two weeks before I was to present the tentative budget. At that time I was open and honest with everyone about the State mandate and its potential effect on our General Town tax rate.

While there were those who made my honesty a political issue, I publicly stated the final tax rate would not be increased by 19%, and in the end it wasn't.

Our financial safety net was the "Tax Stabilization Fund", money I had set aside during my first year in office. As it turned out we didn't need to use any portion of that fund to control the tax rate. We did end up taking over \$100,000 in funding out of the budget that year to avoid any increase in taxes due to the State mandate, so the rate did not escalate.

At our October 17, 2007 board meeting I will be presenting to this board three resolutions. The first resolution will be asking for an additional \$10,000 to the Tax Stabilization Fund, the second will I ask for an additional \$10,000 to the Senior Facility Fund and the third will ask for a \$300,000 reserve fund be

set aside for the Trooper barracks. Because of the delays caused by the State study it's probably safe to assume cost will be going up.

In this year's tentative budget I am proposing a decrease of 5% in our General Fund tax rate, 4% in the Highway Fund and a 10% reduction in the Ambulance District. There is an increase in our Garbage District for pickup by 2.5% do to contractual terms. In addition, because our fire contract has not been finalized the Fire District rate which, could potentially increase by 7.6%. Therefore, at this point we are not sure as to what effect if any it will have on the tax rate.

Additional Funding is being made available for:

Buildings and Parks - This year we replaced windows and the main roof area. Next year we plan on a new roof for the remaining portion.

Matching Grant Funds - This money will be used to match grants we received for a new rear entrance to town hall and sidewalks. It will also be used to cover our match for the parks grant we received.

I would like to thank those department heads, who at my request reduced their contractual costs. Their efforts helped to reduce our tax rates. A special thanks to our Town Clerk David Shenk, once again remembering the taxpayer. He produced a 5% reduction in the clerk's 2008 contractual budget.

In closing, I would be remised not to give a very special thank you to Kathy Selby, our town bookkeeper and budget director. Her professionalism and commitment to her job and the community is commendable.

A motion was made by Councilman Eagan and seconded by Councilwoman Hawkins that the 2008 Tentative Town Budget be approved as follows:

Appropriated

Appropriations Est. Revenues Fund Balance Raised by Taxation

General	1,658,650	993,300	480,000	185,350
Highway	1,260,586	446,980	120,000	693,606
Fire	728,000	0	13,000	715,000
Light	20,000	0	20,000	
Ambulance	90,000	0	25,000	65,000
Refuse/Garbage	547,000	0	8,644	538,356
Water #1	79,909	0	79,909	
Water #2	57,000	0	57,000	
Water #1, Ext.1	6,422	0	6,422	
Water #2, Ext 2	37,035	0	37,035	
Water #3	191,500	0	0	191,500

five (5) Ayes Carried

The 2008 Tentative budgets grand totals are as follows: Appropriations \$4,676,102, Estimated Revenue \$1,440,280, Appropriated Fund Balance \$646,644, and Raised by Taxes \$2,589,178.

A motion was made by Councilman Mead and seconded by Councilman Hopkins to table the 2008 schedule of proposed salaries for the elected Town Officials.

five (5) Ayes Carried

A motion was made by Councilman Mead and seconded by Councilman Hawkins to schedule a Public Hearing on November 7, 2007 at 7:50 P.M. to hear public comments regarding the 2008 tentative budget.

five (5) Ayes Carried

A motion was made by Councilman Hopkins and seconded by Councilman Hawkins to accept the resignation of Timothy Kirst from the Boston Planning Board.

five (5) Ayes Carried

A motion was made by Councilman Mead and seconded by Councilman Hopkins to schedule a Public Hearing for the Annual CDBG Grant Application for October 17, 2007 at 7:40 p.m.

five (5) Ayes Carried

A motion was made by Councilman Mead and seconded by Supervisor Eagan to schedule a Public Hearing to consider the renewal of the Ambulance Service Contract for October 17, 2007 at 7:45 p.m.

five (5) Ayes Carried

Received and filed the annual Tax Collector's report.

Town Clerk Shenk announced school taxes are due October 15, 2007. The Town Clerk's office will be open Saturdays, October 6th and 13th from 9:00 am to 3:00 pm, Thursday, Oct. 11th, Friday, Oct. 12th until 8:00 pm, and Monday, October 15th until 9:00 pm.

Town Clerk Shenk announced he is hosting in coordination with HOME (Housing Opportunity Made Equal) an education class for landlords and tenants on Tuesday, October 30th at 6:00 pm.

Town Clerk Shenk announced flu shots will be held at the Boston Town Hall on October 26th from 10:00 am to 2:00 pm.

Highway Superintendent Telaak reported that work on Rice Road between Zimmerman and Rockwood Roads was done this week. A new chipper is in service and the old one will be taken to an auction at the fairgrounds on October 13th.

Supervisor Eagan requested that the name of the purchaser of our surplus equipment at the auction be furnished to the town for the record.

A motion was made by Councilwoman Dobson and seconded by Councilman Hopkins to schedule a Public Hearing to consider the renewal of the Fire Protection Contracts for November 7, 2007 at 7:45 p.m.

five (5) Ayes Carried

Town Attorney Downey offered a legal opinion on clarification of the long SEQR form EAF regarding the Site Plan Review for Webber, 7074 Boston State Road, Boston Valley complex. The problem is the Planning Board only approved phase one of a three-phase project and the EAF covers all three phases so they don't match which can be called segmentation. If the Town Board approves the project as is, they will be approving all three phases without looking at the other two. This is against SEQR regulations and the NYSDEC is against segmentation. The NYSDEC gave the permit on the three phases as one project. Town Attorney Downey recommended the site plan be referred back to the Planning Board for review of the project as a whole prior to making a recommendation to the Town Board.

Dana Darling noted the Planning Board was only given phase one because that is what was to be completed this year. Phases two and three would be presented to the Planning Board during the winter months when construction is limited.

Town Attorney Downey noted that all three phases were presented to the NYSDEC and they require that we look at all three phases at once unless it meets some exception, such as the other phases are not going to be completed for ten years.

Dana Darling responded that there is an exception in that the project is not zoned for mini storage units.

Town Attorney Downey noted he discussed the zoning as an exemption and the NYSDEC disagrees.

Supervisor Eagan commented that his concern is in taking an action that supersedes the authority of the Planning Board, the recommendation of our Town Attorney and the opinion of the NYSDEC.

Councilman Hawkins inquired if the area requires an archeological study.

Dana Darling responded that the study has already been done.

Councilman Mead noted that the project was approved by the NYSDEC for the three phases. The Planning Board approved phase one at the request of Dana Darling and he inquired if the Town Board could approve phase one contingent upon phases two and three.

Town Attorney Downey: The NYSDEC said you have to look at the project as a whole unless the other two phases are not going to be done for ten years. That is the same problem that Foit Albert had, that non-conforming use in phase three has to be resolved before Lead Agency can prepare a SEQR determination as that is segmentation.

Sean Hopkins, attorney for Dana Darling arrived.

Town Attorney Downey: The issue is, can the Town Board approve this with only phase one before the Board and recommended by the Planning Board. The long form EAF covered all three phases. If the Town Board approves the long EAF form they are approving all three phases.

Attorney Sean Hopkins: There are two separate issues. Number one, we are asking for approval of phase one of the project. Secondly, we are asking the Town Board to consider issuing a negative declaration

pursuant to SEQR for the entire project. Why the difference? The reason for the difference is that the SEQR regulations clearly indicate that when a lead agency, this Board, is considering the potential environmental impacts of a project, the entire project site should be looked at. That is why we filled out the long environmental assessment form because it provides information with respect to the entire project. If you issue the negative declaration that is certainly not any representation by this Board, the Planning Board or anyone else that you are saying you are going to approve the rest of the project. Phase three is not properly zoned at this point. We are not sure if this Board is going to want to see us try and rezone that property would rather have us proceed to the Zoning Board of Appeals for a Use Variance etc. Nonetheless, and this is consistence with what the NYSDEC wants.

Town Attorney Downey: I talked to Steve Doleski, NYSDEC Regional Permit Administrator, who said three phases were presented to him and a permit was given based on three phases. I told him only one phase was given to us but the long form covers all three phases. He was surprised and said we have to look at the project as a whole. I told him one of the phases needs a Use Variance or Rezoning and he said we have to do all phases at once, otherwise it is segmentation.

Attorney Hopkins: That's why we are asking you to issue a negative declaration for the entire project. It is not segmentation. It is the exact opposite.

Supervisor Eagan: Could the two attorney's conference call Mr. Doleski and come to a conclusion?

Attorney Hopkins: Yes.

Town Attorney Downey: Obviously, there is some miscommunication or difference from what I am hearing from the NYSDEC and what you are telling me. I think at some point we need either a conference call or meeting with them to get this resolved. We are not here to slow you down, but we are not here to make a mistake.

Attorney Hopkins: It sounds like the Board is not going to be comfortable in making a decision this evening so I would ask that you leave it on your agenda and not refer it back to the Planning Board and let me and Town Attorney Downey have an opportunity to talk to the NYSDEC and hopefully come back at your next meeting.

Supervisor Eagan: In the interest in wanting to solve this I think we would all be in agreement to have a Special Meeting if need be in the interest of moving along. Was a 239m filed with the County on this?

Code Enforcement Ferguson: Yes.

Town Attorney Downey: I have to talk to Muffet George at Foit Albert Engineers to make sure that the coordinated review was completed. That is a caveat that has to be done. We do have the permit from the NYSDEC so that may help speed that up.

Attorney Hopkins: This is an unlisted action so it doesn't require a coordinated review.

Town Attorney Downey: That is what I thought, but let me confirm.

A motion was made by Supervisor Eagan and seconded by Councilwoman Dobson to table the Site Plan Review, Webber, 7074 Boston State Road.

five (5) Ayes Carried

A motion was made by Supervisor Eagan and seconded by Councilman Hawkins to adjourn the meeting at 8:18 p.m.

five (5) Ayes Carried

DAVID J. SHENK, TOWN CLERK