

## **Newstead Town Board Meeting- February 24, 2014**

A public hearing was called to order by the Newstead Town Board on Monday, February 24, 2014 at 7:04pm at the Newstead Town Hall.

Present: David Cummings- Supervisor  
Justin Rooney- Councilman  
James Mayrose- Councilman  
Donald York- Councilman  
Marybeth Whiting- Councilwoman  
Scott Rybarczyk- Town Engineer  
Nathan Neill- Town Attorney  
Michael Bassanello- Highway Supt.  
Dawn Izydorczak- Town Clerk  
Jennifer Heberling- Deputy Clerk

Roll Call was taken with all board members present.

The Supervisor explained the proposed local law #2 of 2014 on a noise law.

The Clerk read the proof of publication. The office received numerous emails, 4 phone calls and 2 stop in visits from patrons of Braun's Concert Cove from all over the country and the venue they provide, all of which are against the noise law believing it will put Braun's out of business. There were also several emails received from local residents in favor of the noise law.

Supervisor Cummings explained to those present that this law has been in the planning stages for 2 years and has had input from the planning board and conservation advisory council. This is not a new or unique idea. Towns all over New York State have noise laws. The board has taken what they feel are the best parts of many other municipalities existing noise laws and merged them into what they believe will be a good, enforceable law. There will be no decision made by the board tonight. The comments shared will be taken back to work session and discussed by the Board. They did receive a letter back from Erie County Planning Board with no comment and the CAC has questioned the wording in 2 sections so they will relook at that.

### Comments:

Deborah Loke of Cheektowaga spoke of a similar situation that happened in Middleport to the Basket Factory restaurant. They were already struggling financially and decided to add music on the patio to draw more people. Neighbors complained and the Village passed a noise law and the restaurant closed causing 25 full and part time workers to lose their jobs. Her business is in sound and lighting and she stated that when measuring certified decibel operators must be used.

Supervisor Cummings explained that the Town Board has researched decibel levels extensively and is very well aware.

Laura Friend of Williamsville stated she understands the Quarry Hill resident's concerns but also feels there is no justice in closing Braun's. Mr. Braun has used the concerts as a revenue stream to keep the restaurant open. She feels the fines and jail time in the law seem like overkill.

Willis Utter of Quarry Hill Estates stated the law is very well thought out but questions the exceptions in section 8. He questioned if you are going to give exceptions what good is the law.

Supervisor Cummings explained the law will apply to every business in the town not just Braun's. This is not an "out" for anyone it just leaves room for any special circumstances that may need to be taken into consideration.

Paul Jackson of Quarry Hill Estates questioned the time frame of the decibel levels. He is worried that they can play for 14 hours. He also asked the Board to reconsider the decibel level and would like to make it lower. In section 10 he asked who will be measuring the levels and enforcing them?

Supervisor Cummings read that section which details who can take the readings and enforce them.

Mike Schilling of Mechanic St is against the law even though he knows the Board worked hard on it. He feels the Board should continue to work with Braun's and the residents from Quarry Hill instead of implementing a law that will affect everyone. Things have improved and could continue to do so with dialog.

Dale Cheavacci asked if the noise law would apply to the airport and, if not, would like that added so it is not just electronic noise.

Linda Jackson of Quarry Hill Estates demonstrated 85db and asked that the law be changed to read that decibel level at 50' from the building not from the property line.

Robert Wall of Quarry Hill Estates spoke in favor of Braun's and against the noise law. He has attended most of the concerts that have been there.

Dick Sutton of Quarry Hill Estates feels the Board has done a good job with the law. He asked everyone to keep in mind that the quality of life of residents is the issue here.

Jim Richards of Quarry Hill Estates stated this is not just a Quarry Hill issue. He has spoken with many residents on Stage, Havens and in the new Havenwood development that are not happy with it either. He reminded everyone that the damage to ears and health issues need to be considered.

Mary McQuire of Quarry Hill Estates stated she thought the time frame would be shorter, not all day. She would like that time frame decreased.

Conrad Walters of Quarry Hill Estates stated he works security at the concerts and while the noise is noticeable it is not detrimental or unlivable. He does not support the noise law.

Wayne Maholik of Williamsville stated he is a longtime patron of Braun's and lives within 500 yds of the entrance to the Buffalo Airport runway. He deals with noise all the time and his town did not pass a law. Instead they worked with the residents and the airport to come to a resolution.

Robert Montgomery of Rochester stated he attends the concerts and uses earplugs. He feels the walls buffer the sound and promoted all the money he and others bring into the community.

Ray Braun of Main Rd stated he has done everything the Board has asked him to do over the past 2 years and then some which has cost him a lot of money. He is still willing to cooperate with the town to make things better. He is angry that no one has asked him for his side of the story and feels the law is directed specifically towards him. He asked Councilwoman Whiting, as a fellow business owner in town, what she would do if this was targeted toward her business and asked the Board to really think about this before voting on it.

Alvin Dahn of Quarry Hill stated he feels the board must use stronger words in sections of the law not "can" and "should" but "must" and "will". He does not want to shut Braun's down just live in his home.

Keely Battel of Main Rd stated if the law passes she will be out of a job.

Rose Dahn of Quarry Hill estates stated she is not against Braun's and loves music but wants to be able to have a livable level of noise when in her home. She just wants to live peaceably.

Larry Altieri of Alden stated that 85db at a rock concert is not feasible.

Mike Saeli of Pembroke stated there are only 25 concerts per year and are located on a Route 5 commercial property. The residents have 340 nights per year of quiet. Mr. Braun has even offered free dinners on concert nights to the complainers.

Rick Altieri of Alden attends concerts and has worked security at them for 20 years. He is not deaf or dumb and does not live here but works here.

Dave Zosh of Alden has worked with Ray on the Concert cove from the onset. He feels this law is not fair to Ray or his employees. He has spent hundreds of thousands of dollars on improvements to the site and feels this is an injustice.

Kaitlyn Zimmerman of Alden works at Braun's. She stated not everyone is going to be pleased or happy with what is decided and the board needs to consider what is best for the town not everyone else.

Joe Altieri of Cheektowaga lives near the airport and while in the military was exposed to explosions and he is not deaf. The town needs to be more concerned with jobs and revenue than noise.

John Wargo of Stage Rd stated everyone has made a point. He is worried about enacting a law that could not only affect Braun's but also the Pumpkin Farm and other businesses in town, including the town's own sanctioned functions. You need to make it work for everyone and not single out a single person.

Supervisor Cummings wanted to make it clear the town does not run the July 4<sup>th</sup> celebrations that Mr. Wargo referred to. That is run by an independent committee, which the town and village only give permission to use town and village properties to.

Janine Morlacci of Crittenden Rd stated she is a local small business owner and has been to Braun's. She questioned whether Quarry Hills Estates owners have been asked to do any improvements instead of Mr. Braun having to do them all himself.

Levant Bender of Quarry Hill Estates stated he is not trying to stop the music only lower the levels of it.

Linda Jackson asked to sit in on the next meeting the board has with Mr. Braun.

Mike Schilling suggested instead of having meetings with the board that the people should just talk directly to Ray about their concerns. He would welcome dialog with anyone interested in talking to him.

Lynn Jensen of John St stated she has an issue with the wording in the law, particularly the word "character". It is judgmental and discretionary.

Mr. Utter told those present that the owner of Quarry Hill Estates is Lakeshore New York, LLC in Illinois.

Laura Friend stated today we are "lawing" everything. She suggested making a meeting of the minds instead because this affects everything and everyone. Make sure it is legal.

Mr. Braun having the final word gave everyone present his cell phone number (553-5055) and invited anyone and everyone to call him directly and talk to him and work with him.

There being no further comments, a motion was made by Councilman Mayrose, seconded by Councilman Rooney to close the public hearing at 8:20pm.

Carried Unanimously

The regular meeting of the Newstead Town Board was called to order at 8:27pm with the same board members present as listed above.

Scott Rybarczyk led the pledge to the flag.

Minutes from the previous regular meeting held on February 10, 2014 were presented for approval with the addition under Joint facility that Hamburg overhead door would be fixing the doors for free. A motion was made by Councilman Mayrose, seconded by Councilman Rooney to approve as presented.

Carried Unanimously

**Communications** – The Town Clerk presented the following correspondence:

A letter from Time Warner Cable regarding the programmers and broadcasters they are currently in negotiations with for service.

An announcement of a seminar by One Region Forward on “Building Economic Resilience to Disasters in the Buffalo Niagara Region” to be held February 25 & 26<sup>th</sup> at the Conference Center Niagara Falls, 101 Old Falls St.

A letter from Harter Secrest & Emery LLP regarding the proposed development of 42 Jackson St with a packet of supplemental information on the project.

A notice of a public hearing by the NYS Department of Public Service on the joint rate proposal filed by National Fuel Gas and other parties to be held on February 24<sup>th</sup> from 3:00pm-6:30pm at the Buffalo Public Library and February 25<sup>th</sup> from 3:00pm – 6:30pm at the Niagara Falls Public Library.

An information brochure regarding the 2014 Western New York Stormwater Conference and Tradeshow to be held March 19<sup>th</sup> at the Buffalo Convention Center.

A letter from National Fuel Gas requesting information on any proposed road projects in the Town for 2014 that might coincide or conflict with pipeline replacement projects they have planned.

An email from NYSEFC regarding the new Buy American requirement for Iron and Steel on any Clean and Drinking Water Revolving Funds projects.

A copy of a letter from NYS Senator Mike Ranzenhofer to Commissioner Kelley at the OPWDD regarding the placement of a sex offender in the group home located on Rapids Rd.

A letter from NYS Department of State notifying the town that local law #1 of 2014 was received and filed on February 13, 2014.

A motion was made by Councilman Mayrose, seconded by Councilman York to accept and file the presented correspondence. Carried Unanimously

**Work Session:** The Supervisor reported that no work session was held last week but the following issues were discussed prior to tonight’s meeting: water district issues, building projects, parks master plan, highway issues, joint town-village meeting topics, group homes issues, contracts, planning issues, personnel issues, and any other issues brought before the Board.

**Agenda Items Question Period:** No one spoke

**Budget Transfers:** none

**Approval of Bills** – Councilman Mayrose reported that the Abstract from Batch(es) #1369 and 1375 from the February 10, 2014 meeting have been reviewed with the previously un-audited vouchers and everything was found in order. He presented Abstract Batch(es) #1380 for payment. Vouchers on this abstract(s) numbered from 129-170, totaling \$48,730.67. Councilman York seconded to approve payment as follows:

Abstract Batch(es) #1380:  
General Fund (A) -\$23,415.30, General Fund- Outside Village (B) \$310.21, Highway (DA) -\$0, Highway: Outside Village (DB) \$24,826.24, Capital Projects: CAP- Highway Garage- (HG) - \$0, CAP-Murder Creek (HM) \$0, CAP- Equipment Purchase (HR02)- \$0, CAP- Library Basement (HR04) \$0, CAP- Scotland Rd (HS)- \$0, CAP Water-Downey (HW01)- \$0, CAP- Town Hall (HT)- \$0, CAP- Water Improvement (HW)- \$0, Drainage (SD)- \$0, Fire Protection (SF) \$0, Refuse (SR) \$0, Sewer Fund (SS) \$31.44, Sewer District #2 (SS02)- \$98.94, Trust & Agency(TA)- \$0 and Water Districts: Consolidated (SW00) \$48.54, (SW1) \$0, (SW2) \$0, (SW3) \$0, (SW4) \$0, (SW5) \$0, (SW6) \$0, (SW7) \$0, (SW7A) \$0, (SW8) \$0, (SW9) \$0, (SW10) \$0 Total: \$48,730.67

Carried Unanimously

**COMMITTEE AND DEPARTMENT HEAD REPORTS:**

**Highway** – announced April 26, 2014 from 9-12 is tire drop off and April 28-30 will be white goods pick-up. Planning only one pick-up this year due to the fact Modern Disposal does pick up white goods as part of the regular garbage collection.

**Assessor** – no report presented

**Building Office** –the building report was presented by Christine Falkowski of the Planning & Building Department:

Marano/Marc Equity Corp	4040 Pohl	One Family Home
Rothland’s Links LLC	12089 Clarence Center	Demolition
Ride for Roswell	Town & Village roads	Special event permit

The Town Board accepted the report as presented.

**Town Clerk-** Dawn announced that the town has now registered thru her office to receive email updates from the state and sheriff’s office sex offender registries and that the profiles of the 4 current offenders living in Newstead are now hanging on their information board. This will be kept up to date as any changes occur. She is also working to have the website links added to the town’s website.

**Attorney for the Town** – nothing to report

### **COUNCILPERSONS:**

**Rooney** – attended special meeting regarding group homes, spoke with Ed Rath and Jane Corwin’s office and various residents regarding the group homes, spoke with Jane Corwin’s office regarding the purchase of the park property and that amendment to the bill is finalized, spoke to Senator Mike Ranzenhofer’s office in regards to the group homes, reviewed information with the Newstead Fire Company, reviewed the sex offender law with the State and People Inc., met with residents with regards to noise and attended the drainage committee meeting.

**Mayrose** – attended special meeting regarding group homes, attended the Association of Towns training in NYC, prepared the court analysis for 2013 and will be reviewing it with Trustee Forrestel, had numerous conversations with residents regarding with residents about the group home issue and the noise issue.

**Whiting** – attended the drainage committee meeting where they discussed the history of the committee and grants that are available, met with group home committee several times, spoke with Akron Police Department, residents, Ed Rath, Jane Corwin and Patrick Gallivans offices regarding the group homes and also spoke with Ed Rath regarding IDA’s and visited the joint facility.

**York** – attended the special meeting regarding group homes, spoke to Ed Rath regarding the group homes and met with celebration committee.

**Supervisor** – the January Supervisors Report is on file with the Town Clerk, he attended the Association of Towns in NYC, One Region Forward meeting, met with Comptroller Stefan Mychajliw, County Clerk Chris Jacobs, the Alden Supervisor, grant writers regarding drainage grants, Erie County regarding park scheduling, attended legislative majority caucus downtown, the special group home meeting, sent comments to Ed Rath, Jane Corwin and Mike Razenhofer asking them to be diligent on the group home law issues, spoke to Scott regarding water and the master plan. He also announced that Legislator Ed Rath will be at the next meeting.

### **UNFINISHED BUSINESS:**

**Joint Facility-** the doors are being worked on and the two that were down are now operable. They are coming back to do maintenance on the rest of the doors. Replaced 3 panels on damaged door and fixed the track and openers. Supervisor Cummings asked for a report on what was fixed and the plans for other doors.

**Planning Issues-** nothing to report

**Conservation issues-** Emerald Ash Borer- nothing new

**Murder Creek-** nothing new

**Water projects-** Scott is getting information for next work session.

**Group Homes** – received positive feedback regarding informational meeting. Committee will be meeting next Monday prior to work session.

**NEW BUSINESS:**

**Approval- 2014 Contract with Municipal Solutions:**

A motion was made by Councilman York, seconded by Councilman Mayrose approving the contract with Municipal Solutions for Bond borrowings, disclosure updates and general financial services and authorizing the Supervisor to sign the contract.

(Resolution Attached) Cummings-Aye, Rooney -Aye, Mayrose-Aye, Whiting-Aye, York-Aye  
Carried Unanimously

**Approval- Home Rule- Clarence IDA:**

A motion was made by Councilman Mayrose, seconded by Councilwoman Whiting approving the home rule request by Senator Gallivan on the Clarence IDA issues.

(Resolution Attached) Cummings-Aye, Rooney -No, Mayrose-Aye, Whiting-Aye, York-Aye  
Carried

**Privilege of the Floor/Question Period:** no one spoke

Supervisor Cummings announced there will be a joint meeting of the Village and Town Boards following the town board meeting. This segment of the meeting ended at 8:50pm.

A joint meeting of the Town of Newstead and Village of Akron Boards was called to order at 9:20pm.

Present:

Village Board Members

Mayor Carl Patterson  
Trustee Peter Forrestel  
Trustee Keith Hatswell  
Trustee Cathy Capan

Attorney Don Shonn  
Clerk/Treasurer Dan Borchert

Town Board Members

Supervisor David Cummings  
Councilman Justin Rooney  
Councilman Jim Mayrose  
Councilman Don York  
Councilwoman Marybeth Whiting

Attorney Nathan Neill  
Town Clerk Dawn Izydorczak  
Highway Supt. Mike Bassanello  
Town Engineer Scott Rybarczyk  
CAC member Ed Burke

**Murder Creek:** Dr. Burke reported that everything is holding well and the neighbors are satisfied. There have been no issues with the unusual amount of snow this year.

**Emerald Ash Borer:** Dr. Burke reported that with the discovery of ash yellows and ash decline in addition to the ash borer their work has slowed until they can take a closer look in spring to determine whether they are worth treating or not. At this point they are only looking at the critical cases.

**Archives:** Village Clerk Borchert reported he has not moved the documents yet as the Village is putting together a grant application for a data imaging project. The town is also working on a similar grant.

**Joint Facility Floor and Doors:**

Doors- the 2 broken doors have been fixed and they are doing the maintenance necessary on all the other ones. Councilwoman Whiting asked that they make sure that all the issues they find are being fixed and then the town would like a report of exactly what was done.

Floor- the committee met a few weeks ago and the floor issues were discussed. Councilwoman Whiting showed everyone a piece of the floor that was kicked up when she was there last week. It seems to be the worst by the beams. Everyone agreed and asked the attorneys to write letters to all those involved on the project regarding the floors starting with Stantec right down to the

subcontractors and suppliers. Once Jon Cummings is back from vacation they will get all the necessary information from him and send out the letters.

The gas pressure issue is also being addressed and they are looking at the possibility of splitting the main line in two. Highway Supt. Bassanello will keep them informed.

**Joint Master Plan:** Supervisor Cummings presented Wendel's proposal to everyone to do an update. The costs range from \$25,000 to \$60,000 depending how in depth they want to go with the study. It has been 10+ years since the last one and everyone agreed it needs to be updated. Mayor Patterson stated a joint perspective should be used and will talk with their grant writers about finding funding. Dave has already had the towns grant writers looking. Scott Rybarczyk once again offered Wendel's services as well. Everyone agreed that whether a funding source is found or not they need to move forward on this by next year and should budget funds to do it just in case.

**2014 Recycling Events Schedule:** Village Clerk Borchert had a meeting with Environmental Hazard Solutions on the household hazardous waste drop-off to set dates for 2014. He also reported that there will be no additional fee as previously thought for the CRT units dropped off for 2014 as the supplier has found a way of covering those costs for now. In 2012 we recycled a total of 49,000 lb. of electronics and in 2013 we recycled 75,000 lb.

**Court Consolidation:** Councilman Mayrose reported the final 2013 numbers have been compiled and sent to Trustee Forrestel and now they are just waiting for the village to report the total cost savings to them to be able to see the big picture. They hope to have a full report next meeting.

**Joint Emergency Services Committee:** no meeting has been able to be held since the last meeting due to scheduling conflicts. Councilman Rooney hopes to have the next meeting scheduled soon.

**Sewer/Wastewater Treatment Plant expansion:** Trustee Forrestel stated we need to determine the grant writer we are going to use finally because we can't move forward until then. Once funding for the study is secured we can move forward. Scott Rybarczyk offered Wendel's services in that once again and stated they are more than willing to help out and quickly. Mayor Patterson stated the villages grant writer and engineer can help out as well.

**Niagara Label Sewer District:** Paul Vesper, the attorney for Niagara Label was supposed to contact Scott at Wendel on the design figures and provide flow information and unit numbers and has not done that yet. Mr. Vesper needs to contact Wendel before this can move forward so that Wendel can come up with the cost estimates.

Mayor Patterson spoke about the Governors proposed property tax freeze plan. He feels that not enough detail has been given to really understand or explain how it would be back funded. He encourages everyone to really read the details of the proposal. He will email it to Dawn to send out to everyone on the Town Board.

**Parkland Purchase Update:** bill amendments held up the review but it should be resubmitted next week and then voted on. It should take place during this session. The town is prepared to take over as soon as it is transferred.

Supervisor Cummings asked if the celebration committee has come to the Village Board yet for permissions to use their facilities for the July 4<sup>th</sup> celebrations. No, the village has not seen them yet and it is getting late in the process. Councilman York reported he had a tentative schedule of activities from their last meeting. He will share it with both boards via email thru the Town Clerk.

The Supervisor thanked everyone for coming. The next meeting is scheduled for June 2, 2014 at the Village Hall at approximately 8:30pm.

There being no further business to come before the board a motion was made by Councilman Mayrose, seconded by Councilwoman Whiting to adjourn the regular meeting at 10:08pm.

Carried Unanimously

Respectfully Submitted,  
Dawn D. Izydorczyk, RMC, Town Clerk