

**Newstead Town Board Meeting- July 28, 2014**

A public hearing was called to order by the Newstead Town Board on Monday, July 28, 2014 at 7:40pm at the Newstead Town Hall.

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

Roll Call was taken with all board members present.

The Supervisor called the public hearing to order on the request by David DeRose for a **Special Use Permit at 6649 Utley Rd** for placement of a wind turbine on the property at 7:40pm.

The Clerk read the proof of publication. The Supervisor stated this project has been recommended for approval by the Planning Board, however Erie County Planning has not responded yet.

Comments: no one spoke

There being no further comments Councilman Mayrose motioned to close the public hearing, seconded by Councilwoman Whiting at 7:46pm.

The Supervisor called the public hearing to order on the request by Andy Kelkenberg for a **Special Use Permit at 12607 Stage Rd** for placement of a wind turbine on the property at 7:47pm.

The Clerk read the proof of publication. The Supervisor stated this project has been recommended for approval by the Planning Board, however Erie County Planning has not responded yet.

Comments: no one spoke

There being no further comments Councilman Rooney motioned to close the public hearing, seconded by Councilman York at 7:49pm.

The Supervisor called the public hearing to order on the request by Ray Schrock for a **Special Use Permit at 8016 Greenbush Rd** for placement of a wind turbine on the property at 7:50pm.

The Clerk read the proof of publication. The Supervisor stated this project has been recommended for approval by the Planning Board, however Erie County Planning has not responded yet.

Comments: no one spoke

There being no further comments Councilman Rooney motioned to close the public hearing, seconded by Councilman York at 7:52pm.

A regular meeting of the Newstead Town Board was called to order at 8:00pm with the same Board members present as listed above.

Councilman York led the pledge to the flag.

Minutes from the previous regular meeting held on July 14, 2014 were presented for approval with the correction on the public hearing vote noting Councilman York voted Aye and was not absent. A motion was made by Councilman York, seconded by Councilwoman Whiting to approve as presented. Carried Unanimously

**Agenda Changes** – addition of L. Motion on a Lateral Restriction water application was motioned by Councilman Mayrose, seconded by Councilwoman Whiting. Carried Unanimously

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

A letter from Time Warner Cable notifying the town of the programmers and service providers they are currently in negotiations with for service.

A letter from resident Bob Tiedt expressing interest in the open library board position.

A note from resident Diane Koehler urging the Town Board to adopt the noise law.

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

**Work Session:** The Supervisor reported that at work session held last week the following issues were discussed: water district issues, building projects, contracts, highway issues, planning issues, recreation, courts, vehicle use policies, ethics board recommendations, senior center assistant & library board replacements, sign law, noise law, recycling programs costs with village, mandate relief, risk surveys, change in the trail grants budgets and any other issues brought before the Board.

**Agenda Items Question Period:**

Evan Crahen of Howe Rd questioned the possibility of adopting Clarence’s noise law.

Sue Fay Allen of Howe Rd urged the board to pass the noise law.

Jackie Rotundo of Barnum Rd concerned with the “no” votes on the noise law last time.

Robert Wahl of Quarry Hill Estates questioned when the Town Board cannot come to a decision who does make a decision.

Linda Jackson of Quarry Hill Estates stated everyone has tried their best and worked very hard on this including Ray.

Willis Utter of Quarry Hill Estates questioned if the Board received and read the copies of the article he submitted to them on the recent noise law changes in Amherst.

Laura Friend, Real Estate Agent, questioned if the Town is willing to purchase the property if Braun’s shuts down and if there is a better location for this venue within the town.

Kevin Borth of Scotland Rd questioned what has changed in 90 days, is this law enforceable, if the town has notified their insurance carrier of potential litigation, time for funding to make sound improvements, has the town done its due diligence on this law and have all the issues been really thought about.

**Budget Transfers:** a motion was made by Councilman Mayrose, seconded by Councilwoman Whiting approving the budget transfers per memo from Bookkeeper Colleen Salmon dated 7/28/14. Carried Unanimously

**Approval of Bills** – Councilman Mayrose reported that the Abstract(s) from Batch(es) #1411 & 1413 with bond payment from the July 14, 2014 meeting have been reviewed with the previously un-audited vouchers and everything was found in order. He presented Abstract Batch(es) #1416 & 1418 with BAN payoff for payment. Vouchers on this abstract(s) numbered from 719 - 764, totaling \$1,839,790.62. Councilwoman Whiting seconded to approve payment as follows:

Abstract Batch(es) #1416 & 1418 with BAN payoff:

General Fund (A) -\$19,304.23, General Fund- Outside Village (B) \$1,085.00, Highway (DA) -\$0, Highway: Outside Village (DB) \$49,107.19, CAP-Murder Creek (HM) \$0, CAP- Scotland Rd (HS)- \$318,000.00, CAP- Water Improvement (HW)- \$1,406,250.00, CAP Water-Downey (HW01)- \$0, Drainage (SD)- \$0, Fire Protection (SF) \$21,589.88, Refuse (SR) \$0, Sewer Fund (SS) \$2,756.98, Sewer District #2 (SS02)- \$81.50, Trust & Agency(TA)- \$0 and Water Districts: Consolidated (SW00) \$21,615.84, (SW1) \$0, (SW2) \$0, (SW3) \$0, (SW4) \$0, (SW5) \$0, (SW6) \$0, (SW7) \$0, (SW7A) \$0, (SW8) \$0, (SW9) \$0, (SW10) \$0 Total: \$1,839,790.62 Carried Unanimously

**COMMITTEE AND DEPARTMENT HEAD REPORTS:**

**Highway** – Brucker Rd had some minor flooding this morning but is ok now. They are working with the Village on removal of soil behind the Akron House property and road work continues.

**Assessor** – no report presented

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

Clayton Albrecht	7804 Cedar	Patio Roof & Roof
Erick Durick	7636 Greenbush	Pool deck
Lawrence Dellinger	12532 Hunts Corners	Permit renewal
Glenn Kraft	11368 Miland	A.G. Pool
Astrum Solar/Lisa Kelly	7342 Cedar	Solar array
Jacqueline Zielan	4374 Billo	Permit renewal
Jason Tomei	12292 Clarence Center	Repair
Kevin Stoldt	4450 S Newstead	Fill
Bill Hawes	6216 Utley	Garage & remodel
Whiting Door Manu	113 Cedar	Addition
Kevin Stoldt	4450 S Newstead	One Family Home
Tom Owen	12859 Main	Pole barn

The Town Board accepted the report as presented.

**Town Clerk**- she is working on some dog law changes with the DCO to present to the town board that would address puppy mills and the dangerous dog laws.

**Attorney for the Town** – nothing at this time

#### **COUNCILPERSONS:**

**Rooney** – he attended a highway committee meeting, a Newstead Fire Co board meeting and spoke with several people on the noise law.

**Mayrose** – he spoke with Judge Campbell regarding the status of the court data analysis, met with Highway Supt Mike Bassanello regarding the joint facility and other town projects, met with CEO Ralph Migliaccio and Clerk Christine Falkowski regarding some current and upcoming planning department projects, met with the granting agency from the State in regards to the new bike path addition and walked the site of the new bike path with Supervisor Cummings to get an idea as to the scope of the project, attended the joint comprehensive planning meeting with Supervisor Cummings and members of the Village Board and spoke with a number of residents regarding the noise law.

**York** – spoke with several residents regarding the noise law.

**Whiting**– spoke to Judge Campbell regarding the court data analysis, took a call from Kristine Sutton regarding a leak in the library roof and took several calls and emails regarding the noise law.

**Supervisor**- the June Supervisor’s report is on file with the Town Clerk. The budget schedule and sheets for the 2015 budget have been handed out to department heads. He met with the Senior Director on several issues, spoke with many regarding the noise law, met with the CEO and clerk on several issues, attended the highway committee meeting, met with the Recreation Director, met with the Town Historian on the new job description and met with DOT representatives on the new bike path grant the town has received as well as walking the site to look at the scope of the project.

#### **UNFINISHED BUSINESS:**

**Planning Projects**- after the recent storms there are several building roof leaks to address.

**Conservation issues**- Murder Creek- they are starting tomorrow to install the access road.

**Water projects**- materials bid opening will be on July 31<sup>st</sup> at 10:30am.

**NEW BUSINESS:**

**Special Use Permit- 11936 Rapids Rd:**

A motion was made by Councilwoman Whiting, seconded by Councilman York approving the Special Use Permit at 11936 Rapids Rd for a 140 ft wind turbine by owner Jeff Jendrowski, subject to the terms set forth in the resolution.

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

**Special Use Permit- 12375 Meahl Rd:**

A motion was made by Councilman York, seconded by Councilwoman Whiting approving the Special Use Permit at 12375 Meahl Rd for a 140 ft wind turbine by owner John Jendrowski, subject to the terms set forth in the resolution.

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

**Public Hearing- Local Law #4 of 2014- Sign Law changes:**

A motion was made by Councilman Mayrose, seconded by Councilwoman Whiting approving the calling of a public hearing on the proposed Local Law #4 of 2014 regarding amendments to the sign law, to be held on August 25, 2014 at 7:45pm and authorizing the Clerk to publish to legal notice.

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

**Approval- State Mandate Relief:**

A motion was made by Councilman Rooney, seconded by Councilwoman Whiting approving the resolution requesting mandate relief from Governor Cuomo and the State Legislatures.

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

**Approval- Recycling Costs Agreement with Village:**

A motion was made by Councilman Mayrose, seconded by Councilwoman Whiting approving the agreement with the Village of Akron to proportionately split the cost of joint Hazardous Household Waste recycling events between the town and village according to the percentage of participation of residents from each municipality that attend each event.

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

**Approval- Trail Grant Budget Change:**

A motion was made by Councilman York, seconded by Councilwoman Whiting approving the consolidation of two grants, one from the State TEP funds and one from the Federal RTP funds, to the new attached proposed budget on the bike path project.

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

**Approval- Vehicle Use Policy Amendments:**

A motion was made by Councilwoman Whiting, seconded by Councilman Mayrose approving the proposed changes to the Code Enforcement Officer Vehicle Use Policy and the Town Vehicle Use Policy.

Cummings-Aye, Rooney-Aye, Mayrose-Aye, Whiting-Aye, York-Aye Carried Unanimously

**Approval- Comprehensive Assessment Policy:**

A motion was made by Councilman Mayrose, seconded by Councilwoman Whiting approving the re-adoption of the Comprehensive Assessment Policy presented at the last meeting with minor amendments.

Cummings-Aye, Rooney-Aye, Mayrose-Aye, Whiting-Aye, York- No Carried

Gradall Bid discussion prior to vote: Councilman York stated based on the limited number of hours the current machine has on it and is used currently he feels this is not in the town's best interest. He would like to fix what we have. Councilwoman Whiting stated she would like more time to discuss this as well. Supervisor Cummings stated this has been discussed several times at length and recommended by the Highway Supt and Head Mechanic. This action is just to gather numbers to look at the possibility of replacing the current machine. If the Board does not like the bids that come back we do not need to proceed with a purchase.

**Approval- Gradall Bid:**

A motion was made by Councilman Mayrose, seconded by Councilman Rooney approving going to bid on the purchase by the Highway Department of a 2004 or newer Gradall machine.

Cummings-Aye, Rooney-Aye, Mayrose-Aye, Whiting-No, York-No Carried

**Approval- Advertise for Open Positions:**

A motion was made by Councilwoman Whiting, seconded by Councilman Rooney approving the advertisement for the open positions of Senior Center PT Assistant and a new Library Board member.

Cummings-Aye, Rooney-Aye, Mayrose-Aye, Whiting-Aye, York-Aye Carried Unanimously

**Approval- Lateral Restriction Hardship application:**

A motion was made by Councilman Mayrose, seconded by Councilwoman Whiting approving the application for a lateral restriction hardship for water service at 11226 Hiller Rd due to past presence of coliform levels in the ground water in that area.

Cummings-Aye, Rooney-Aye, Mayrose-Aye, Whiting-Aye, York-Aye Carried Unanimously

**Board Comments on Noise Law prior to Adoption Vote:**

Supervisor Cummings stated he is not sure if anyone has really read the law. He hopes people have. The decibel levels are not measured at the property line, but at the position of the complainant (property) and several special exemption clauses are present in the law to enable the town to work with venues. This will not affect any contracts that are currently in place as of this evening but will affect any future signed contracts for venues. This is being put in place to work at trying to make it better for everyone involved in noise issues.

Councilwoman Whiting read the following statement:

Ladies and Gentlemen, I have been a Town of Newstead Board Member for 7 months now. The first time the Noise Law was brought to this Board for a vote was in April. I had been a board member for just 4 months. I had spoken with many of the residents in our Town that had a complaint about noise. However I, personally, had not had the opportunity to talk with the business owners that hold events that include amplified sound in an open area. That would include businesses such as Rothland’s and Arrowhead Golf courses as well as Braun’s Concert Cove. I felt as a new board member, I needed additional information and therefore, I abstained from the vote.

Since that time, I have spoken with many people regarding this law including Mr. Braun. I think that it is important to note that in the creation of this law, the Newstead Town Board looked at other area noise laws:

- Town of Clarence - Noise Law                      Town of Lancaster - Noise Law
- Town of Amherst - Noise Law                      Town of Tonawanda - Noise Law

Of course, there are open music venues all over the country, and so I researched noise laws across the country– among hundreds, I found these venues that people might be familiar with:

- Town of Morrison Colorado, home of Red Rocks Amphitheater – Noise Law
- City of New Orleans, home of Bourbon Street - Noise Law
- And the City of Austin Texas, home of one of the largest music festivals in the country - Noise Law

This isn’t rocket science – The Town of Newstead isn’t any different than other communities: where there is loud noise and residents in an area more often than not, there is a noise law in place. It is an effort for everyone to co-exist NOT to close any one business down. This helped me make my decision regarding our local noise law.

The issue of revisiting the Noise Law has been on our town board work session agenda throughout June and July. At a recent work session, when Supervisor Cummings brought up Noise from the agenda, I indicated that I was now able to cast a vote. This board consists of 5 members, and we EACH get a vote. It would be wrong to conclude that my vote counts any more than anyone else’s vote on this board. However, Mr. Braun has chosen to single me out – in very vile, demeaning, and derogatory ways through social media. In doing so, Mr. Braun has shown this entire community the person he truly is~ Life is full of choices. I could have chosen to respond in kind, but integrity and character mean a lot to me, so I did not. Again life is full of choices, I choose to do things like serve my community and have contributed thousands of volunteer hours for the betterment of this community in various capacities. And you, Mr. Braun – you have chosen to do what you are doing -- as well as what you are NOT doing regarding your business – do not blame me, or anyone on this board, for your own choices.

Councilman York stated the Town Board is obligated to make decisions in the best interest of all of its residents, which can sometimes be nerve wracking. The town's job is to create an environment that is healthy for our residents. It has been no small trial to come to mutual agreements on this law. There are no winners here. We are just trying to bring people together through this law. Hopefully with sound abatement measures the noise can get better.

Councilman Mayrose stated as he had at the prior vote of the law this is a compromise. He as a Councilman cannot take a side. He must look at both sides and come up with a compromise, which is not easy. This is a work in motion and we will be looking at this continuously. This is not the end all. He agrees with Councilwoman Whiting's statements regarding the nature of the facebook messages and was appalled at some of the comments he read. It got very ugly. Even though many of those comments were made by people not from this community, they were appalling.

Councilman Rooney stated this topic has divided this community. He feels we could have done more and can continue to do more now. It is a difficult decision for everyone and has not been easy for the Board. As someone who has throughout this issue over the past 2 years had his integrity questioned and insinuations and threats made, he feels bad for Marybeth and what she has gone through the past few days. It should not have happened to him or her, but he cannot let emotion weigh into his decision. It must be based on what is best for the whole community. His decision may affect him over the next 17 months, but it is his job for the next 17 months to address this issue.

**Adoption- Local Law #3 of 2014- Noise Law:**

A motion was made by Councilwoman Whiting, seconded by Councilman Mayrose to adopt the proposed Noise Law known as Local Law #3 of 2014.

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

**Privilege of the Floor/Question Period:**

Kevin Borth of Scotland Rd spoke about another accident on Scotland Rd that involved his son on May 25<sup>th</sup>. The County removed guardrails after the accident & have not replaced. He wants the speed limit reduced to 40 mph on the road and a 4-way stop sign put up. He requested the town put pressure on the County again.

Janet Lindquist of Cedar St spoke about speeding problems as well on Cedar St in the Village that she feels needs better monitoring by the police.

Linda Jackson added that it takes several people pushing really hard to get a traffic light installed at intersections.

Supervisor Cummings stated the Town will send out a letter to the County again regarding Scotland Rd, as well as several of our other very dangerous intersections in the Town.

The Board entered executive session at 9:11pm on a personnel matter. They exited executive session at 9:35pm having taken no formal action.

There being no further business to come before the board a motion was made by Councilwoman Whiting, seconded by Councilman York to adjourn the regular meeting at 9:36pm.

Carried Unanimously

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