

10-10-2013 -- REGULAR BOARD MEETING

Present:

Councilman Cheryl L. Earl
Councilman Daniel L. Miller
Councilman David L. Montgomery
Supervisor Mary L. Hannon

Absent:

Councilman Douglas J. Morrell

Also Present:

Town Clerk Betsy A. Marsh
Approx. 25 guests

The Sardinia Town Board held its Regular Town Board meeting for October 10, 2013 at the Sardinia Town Hall/Community Center. Supervisor Hannon called the meeting to order at 6:30 PM, with the Pledge to the Flag and a moment of silence.

The Town Clerk has submitted the minutes of the September 12, 2013 Regular Town Board meeting, which were **approved as submitted on a motion by Earl, seconded by Miller, and carried, 4 ayes, 1 absent, 0 noes.**

Departmental Report Included:

Supervisor Hannon stated that she met with Clint Salmon, our Meals on Wheels Coordinator and Tara Ellis of the WNY Meals on Wheels Program and will report later in the agenda on that; she stated she had worked on budget preparation and the TRUST Program; she informed that there are 2 Public Hearings scheduled by Erie County Senior Services regarding the abstract summary of the 2012-2016 annual implementation plan for services for older adults in Erie County, on October 23rd at the American Red Cross on Delaware Ave. at 3:00 PM, and on October 30th at the Lancaster Senior Center, at 1:00 PM.

Councilman Morrell was absent, therefore there was no report from him.

Councilman Montgomery reported that he had attended a Disaster Coordinators meeting at the Cheektowaga Fire Training Center, and starting in November, all County Executives and all Emergency Trainers will have to go to Albany for training, or will not be eligible for emergency grant money. He also stated that next year, Town Supervisors and Councilmen will need to attend. Mr. Montgomery stated he had attended the Erie County Water Quality Committee meeting where the guest was from the Springville White Water Rafting Club, who would like the dam lowered to within 10 ft. so they can open it up to rafting. The Army Corps of Engineers will need to do the work, there is no known cost for the proposal, but it is being worked on. Mr. Montgomery stated that the free rabies clinic has been scheduled for October 12th at the Town Highway Barn, from 9 AM until noon, and the Flu clinic is scheduled for November 1st from 9 AM until 1 PM.

Councilman Earl reported that the Springville Control Center is getting ready to remodel their offices and will be setting up a transport unit that will be able to take calls. The Supervisor stated she looked into the budget question that came up last month about that cost, and found that the Fire Company will not be billed for that amount. Councilman Earl stated that, concerning Zumbatonics, she talked to 4 instructors, and between their schedules and the gym schedule, none of them are available until after the 1st of the year. Ms. Earl also stated she met with Gematt Asphalt about the future of the Gabel/Thomas site and what they intend to do with the future lake. She stated they have told her that they intend to open it to the public and allow canoeing, kayaking, swimming, fishing, etc. She stated they also told her if they were allowed to start at the other end of their property, which is not in their DEC permit, and they can't do due to current litigation, the water would be there sooner, and stated that if they could come to the Town Board for approval to start mining at that end of the property, the water would be there immediately. Councilman Earl stated that the Youth Board approved the request from the Kiwanis Club to hold the annual Halloween party in the gym on Thursday, October 31st, and on a motion by Earl, **seconded by Miller, the Town Board voted to allow the Chaffee-Sardinia Kiwanis to hold their annual Halloween party in the gym on that date. Carried, 4 ayes, 1 absent, 0 noes.**

Highway Superintendent Donald Hopkins was absent, but had given Councilman Earl a written report to read at the meeting. His report stated that the Highway Garage roof project was completed on September 23rd and he noted that when it rains out, it does not rain inside; concerning the Hosmer Brook stabilization project on the Sebзда property, he has been in touch with all the people concerned with the project, and they plan on starting on October 15th; the Erie County snowplowing contract has been settled and agreed upon with a 3% increase per year for 3 years, and more paperwork for the Highway Superintendents; the State notified that the Savage Rd. Bridge would open today, but has not, but should be opened up tomorrow, and he states he has had several requests from residents on Rt. 39 asking for a speed limit reduction from Rt. 16 to the current 40 mile per hour area just east of the Hamlet, and will meet with the Supervisor next week about getting an official letter from the Town to the State DOT Traffic Engineering Dept. for a speed limit reduction.

Councilman Miller reported that on September 21st he attended the Southtowns Enhancement Coalition's Farm to Table Harvest Dinner, which was sold out and the projected profits for the Farm Trails Program was approximately \$6,000.00. He stated he had met with Town Historian Leo McCarthy and Historical Society President Dan DeGoller today, and a grant writer that they are considering hiring for one year at a cost of \$12,000.00 to write grants for historical programs. He stated the hiring will be up to the membership to decide. The Supervisor asked if there is a brochure for the Farm Trails yet and Mr. Miller stated it would not be ready until January. Supervisor Hannon stated she feels that the Town has spent a lot of money on his mileage and the dues for membership in the Coalition, and the brochure from Senator Gallivan's office is free. She stated she doesn't feel there is little benefit from the Town's membership in the Coalition. Councilman Miller disagreed, stating that the Town's involvement with the Farm Trails Program is bringing a lot of money to the Town's agribusinesses and stated, as an example, that Senator Gallivan is now a regular customer of Henhawk Acres.

The Attorney for the Town was absent, but the Supervisor read a report from her that set forth the Attorney's answers to comments made about the TRUST legislation in a letter to the Springville Journal, and spoke on the legality of the TRUST Legislation and how it was formulated. The full text of the Attorney's report is attached to these minutes.

Under Public Comments:

John Schiener of West Schutt Rd. spoke concerning the TRUST Law. He stated he was looking at the resolution that set up the TRUST program and specifically the authority cited by the Attorney for the Town. He stated that the first instance was excess funds in the capital reserve fund of a Fire District, and the opinion of the court stated it couldn't be done without a special act of the State legislature, and he asked how that could be used to justify this program. He stated that another one is case law that dealt with taxes overpaid to the City of Rochester, found to be in excess, which were then refunded to protesting tax payers, and this case allowed non-protesting taxpayers to receive refunds, also. He stated he does not see how this is on-point, either. He brought up several other questions about the cases cited, and stated he was sorry Attorney Joseph was not here herself to answer his questions, and wondered how much we paid for that editorial from her. Mr. Schiener stated that her response stated that other things were considered, but does not recall that these were brought to the public. He asked how the disbursement of the \$2 million was going to be managed and audited. He wanted to be clear that he was not against giving the money back to the people, but felt it should have been determined if that is what the people wanted, and then it should have been an equitable program, approved by the State Comptroller. Mr. Schiener asked if anyone sought the Comptroller's opinion to determine if this giveaway of Town resources was authorized, and if not, why not? He stated that would have been prudent, given the amount of the giveaway. He also asked about a statement made at a previous meeting concerning a majority of Town Board members meeting prior to Town Board meetings in violation of the Sunshine Law. He asked if that had ever been followed up on and if the practice still continues today.

Gene Parzych of Matteson Corners Rd. stated he has lived in this Town for 22 years, and has never lived in a town with so much political animosity every election period. He stated it is now about the TRUST program, and stated that some of it is his, some is yours, it belongs to everyone who pays school tax, and it is our money, and we have an excess. He stated he has heard the argument that it will hurt the Senior Citizens that don't pay school tax, and asked how many out of the 1600+ parcels are Seniors that don't pay any school tax. He stated it was studied in length by the Town Attorney and this sitting Town Board, the money will not be wiped out, and there will always be a surplus because of the Waste Management tipping fees. He stated that there was a letter in the papers that stated this Board had divided the Town, is against the Firemen, etc. He disagreed with the letter and stated he sees good management by this sitting Board, and the arguments against the TRUST Program are being made by people running for election and are nonsense.

Under Approval of Bills:

The Supervisor stated that there are several transfers within the budget that are necessary, and the following resolution, to be known as Resolution #61 of 2013, was moved for adoption on a motion by Earl, seconded by Montgomery:

**RESOLUTION #61 - 2013
APPROVAL OF FUND TRANSFER**

WHEREAS, the Town of Sardinia Board approves the following transfer of funds:

<u>TRANSFER FROM</u>	<u>AMOUNT</u>	<u>TRANSFER TO</u>
A1110.200 – Just. Equip	\$1561.53	A1110.400 – Just Contr
A7110.401 – Parks Util.	\$ 190.42	A7110.400 – Parks Cont
DA9050.800 –Unemployment	\$1925.59	DA9060.800 – Med. Ins.
SF3410.440 – Dispatch	\$3090.74	SF3410.480 – Contract
SF3410.440 – Dispatch	\$ 716.42	SF3410.491 – Apparatus

NOW, THEREFORE, BE IT RESOLVED, the Sardinia Town Board approves the above mentioned transfer of funds for 2013.

Upon roll call vote, Earl, aye, Miller, aye, Montgomery, aye, Morrell, absent, Hannon, aye. So resolved, 4 ayes, 1 absent, 0 noes.

Abstract #10, including vouchers #612 through #673, and totaling \$57,974.31, of which \$22,031.52 was General Fund expenditure; \$34,977.65 was Highway Fund expenditure; and \$965.14 was Lighting District expenditure; was then approved on a motion by Earl, seconded by Montgomery, and carried 4 ayes, 1 absent, 0 noes.

Supervisor Hannon stated that the TRUST rebate applications are coming in in leaps and bounds. She encouraged everyone to pay their taxes on time, to submit their completed applications, and then submit the receipted tax bill. She stated they are intending to start sending the checks out very shortly.

Supervisor Hannon stated that, regarding the snowplowing contract with Erie County, we are still waiting for the paperwork from the County.

Under New Business:

Concerning the Community Development Block Grant Program, Supervisor Hannon stated that the public and the Board agreed that the Town should take the grant application from last year, which was handicapped upgrades to Manion Park restrooms, done by the grant writer, and add pool renovations, walking trail, and nature trail at Veterans Park, and make application for 1 park project, along with the Rural Transit Van. She asked the other Board members if

they had any other suggestions, which they did not. The following resolution, to be known as Resolution #62 of 2013, was then introduced by Earl, seconded by Montgomery.

**RESOLUTION #62 - 2013
COMMUNITY BLOCK GRANT APPROVAL**

WHEREAS, at a meeting of the Sardinia Town Board held on October 10, 2013, the Board authorized the Town Supervisor, to sign, submit and execute a contract with Erie County Community Development Block Grant (ECCDBG) program for the following project(s) upon approval of ECCDBG.

- 1) Upgrades for handicapped accessibility to Manion Park restrooms, Pool house renovation for handicapped accessibility, and walking trail and nature trail at Genesee Rd. Park.
- 2) Rural Transit Van Program Consortium

NOW, THEREFORE, BE IT RESOLVED, the Sardinia Town Board authorizes the Town Supervisor to sign, submit and execute a contract with the ECCDBG program for the above listed project(s) upon approval of ECCDBG.

Upon roll call vote, Earl, aye, Miller, aye, Montgomery, aye, Morrell, absent, Hannon, aye. So Resolved, 4 ayes, 1 absent, 0 noes. The Supervisor then asked Councilman Miller to work on grant application, and he agreed.

The Supervisor stated that the next resolution is to allow the Town Clerk to sign a contract with the NYSDEC and asked her to explain. The Clerk stated that the DEC is changing computer programs for Environmental Conservation licenses, and therefore, it is necessary for the license issuing agent from each municipality to enter into a contract with the DEC and a resolution is needed to authorize the Clerk, as Issuing Agent, to sign the contract on behalf of the Town. The following resolution, to be known as Resolution #63 of 2013, was then moved for adoption by Earl, seconded by Montgomery:

**RESOLUTION #63 - 2013
APPROVAL OF TOWN CLERK BETSY MARSH TO ENTER AGREEMENT WITH NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR A LICENSE ISSUING AGENT**

WHEREAS, the NYS Department of Environmental Conservation has expressed a need to enter into a contract with our Town Clerk for reasons of being legally named as a "License Issuing Agent", and

WHEREAS, the Sardinia Town Board and our Attorney for the Town, Linda Joseph, has reviewed an agreement with the NYS Department of Environmental Conservation for a License Issuing Agent; and

WHEREAS, the Sardinia Town Board approves Town Clerk Betsy Marsh to sign, submit and execute a contract with the NYS Department of Environmental Conservation as License Issuing Agent.

Upon roll call vote, Earl, aye, Miller, aye, Montgomery, aye, Morrell, absent, Hannon, aye. So Resolved, 4 ayes, 1 absent, 0 noes.

The Supervisor stated that the next resolution is to contribute toward the Senior Citizens Thanksgiving dinner on November 21st. The following resolution, to be known as Resolution #64 of 2013, was then moved for adoption on a motion by Earl, seconded by Miller:

**RESOLUTION #64 - 2013
APPROVAL OF SENIOR THANKSGIVING DINNER**

WHEREAS, the Sardinia Town Board has received a letter from the President of the Sardinia Senior Citizens, Clint Salmon, requesting a donation from the Town for their annual Thanksgiving Dinner to be held at the Holland Willows on November 21, 2013 at 12:30 p.m., and

WHEREAS, the Sardinia Town Board has reviewed this request and notes that there are appropriated monies for this event in the Seniors Budget line, and

WHEREAS, the Sardinia Town Board hereby approves the request to contribute towards the annual Senior Thanksgiving Dinner not to exceed \$950.

Upon roll call vote, Earl, aye, Miller, aye, Montgomery, aye, Morrell, absent, Hannon, aye. So Resolved, 4 ayes, 1 absent, 0 noes.

Supervisor Hannon stated that the next resolution is for permission for the use of the building by the Girl Scouts. The following resolution, to be known as Resolution #65 of 2013 was moved for adoption by Earl, seconded by Montgomery:

**RESOLUTION # 65 - 2013
APPROVAL OF GIRL SCOUTS OF WNY ENCHANTED MOUNTAINS NORTHEAST
USE OF TOWN HALL FOR CRAFT SHOW**

WHEREAS, the Sardinia Town Board has received a request from the Girl Scouts of WNY Enchanted Mountains Northeast for the use of the Gymnasium in the Town Hall for their Craft Show, as described in their letter, on November 9, 2013, and

NOW, THEREFORE, BE IT RESOLVED, the Sardinia Town Board hereby authorizes the Girl Scouts of WNY Enchanted Mountains Northeast to utilize the Sardinia Town Hall Gymnasium on November 9, 2013 for the purpose of their craft show.

Upon roll call vote, Earl, aye, Miller, aye, Montgomery, aye, Morrell, absent, Hannon, aye. So Resolved, 4 ayes, 1 absent, 0 noes.

Concerning the Meals on Wheels program, the Supervisor stated that she met with Tara Ellis and Clint Salmon and basically what has happened is that a grant application submitted by the Southtowns Meals on Wheels program was rejected and was carried by the WNY Meals on Wheels program. She stated that the big concern is if the meals delivered from Buffalo will still be hot. The volunteers from the Southtowns group will have to decide if they want to go with the WNY group, or go out on their own, providing the meals themselves. She stated she doesn't know what will happen, but stated that after January 1st, things need to change.

The Supervisor stated that a letter was received from Manfred Koch asking that the rezoning of the Townhouse project be put on hold until he forms his sewer company and water company. She stated that the project has been approved by the Planning Board. Councilman Montgomery asked if they are forming a sewer and water district, and was informed by Councilman Miller that, no, it is not a district, it is a private company to service just the Tri-County Business Park and Townhouses only, not outside the Business Park, as per NYS Regulation. Planning Board Chairman Bob Hill stated it is a bonded corporation to go on forever. The Supervisor stated the Board could deny the request and make the decision now, but saw no need to do so, and on a **motion by Earl, seconded by Miller, the Board agreed to allow the process to be delayed. Carried, 4 ayes, 1 absent, 0 noes.**

Supervisor Hannon stated she would like to schedule the public hearing on the Preliminary Town Budget for Thursday November 14 at 6:15 PM. She stated if this is not appropriate by law, per the Town's accountant, she would like to move the hearing to November 7th at 6:15 PM.

There being no further business to come before the Board, on a motion by Earl, seconded by Montgomery, the meeting was adjourned at 7:02 PM. Carried, 4 ayes, 1 absent, 0 noes.

Respectfully Submitted,

Town Clerk

TOWN ATTORNEY REPORT

TO: TOWN BOARD

FROM: Linda H. Joseph, Town Attorney

Re: Report on TRUST and Response to Letter Which Appeared In the Springville Journal

Date: October 9, 2013

I am submitting this brief report to explain the TRUST program and to respond to the citizen who complained in an editorial to the Springville Journal that this tax relief program did not exclude business or limit the relief to residents below a certain income level and/or who were renters instead of land owners. I have asked the Town Supervisor to read this report to all present tonight since I am out of Town this evening for business and unfortunately cannot attend the Board's monthly meeting this month.

The Town Board, with my assistance as Town Attorney, considered options that would have taken the approaches suggested by this citizen but unfortunately concluded that we could not adopt such an approach without violating the law. Furthermore, all businesses must be treated equally so the proposal of this citizen to exclude businesses would not only have violated the law, but it also would have made it impossible to assist the farming families in our community. It has always been a policy of our community to encourage and benefit farming.

The reason that the tax relief program could not limit the relief to residents below a certain income level and/or who were renters instead of landowners is that a program designed in this fashion would be illegal because the case law would interpret it as a "gift" to individuals in the Town rather than a lawful tax rebate program. The New York State Constitution prohibits the Town from making a gift of public funds. This has been interpreted to include providing tax relief UNLESS it can be shown that the tax relief is in furtherance of a public benefit. Thus, to provide a rebate to persons who are renters and have not paid the tax or to provide it on a basis of individual need, rather than public benefit that helps the entire community, constitutes an illegal "gift" under the case law. In addition, once a public benefit is identified, all similarly situated individuals and entities have to be treated the same. This means that the Town could not, for example, provide tax relief for some business property owners—such as local farmers and small businesses—and not others, such as Verizon or Waste Management.

Given these legal restrictions, the Town Board—with my assistance as Town Attorney—considered the options and developed a tax relief program that was designed around a public—rather than individual—benefit. One of the public benefits of the tax relief program identified by the Town Board was providing relief to the businesses within the Town as well as encouraging people to pay school taxes. The program also has the public benefit of encouraging young

families as well as seniors to own property in the Town by moving to the Town or remaining in the Town despite the hardship that school taxes—attendant to land ownership—may impose on them. In assisting the Town Board in designing the TRUST program, the Town Board and I also looked at a number of options for limiting the tax relief to only locally owned businesses but this would not have met the requirement that similarly situated persons and companies be treated the same. Excluding businesses entirely would have meant that small local businesses, including farmers, would have been ineligible for the tax rebate. One major public benefit the Board wanted to achieve was assistance to family owned farm businesses and small locally owned businesses—because these businesses are integral and important components of our community and actually enhance directly and indirectly the lives of all citizens in the community.

As to limiting the rebate based on income, this was also considered. Some of you may just have completed the State Star registration, where you were required to provide your social security number so that the State can check the income limits against your state tax return. While the State can do this automatically because you file your returns with the State, the only way for the Town to verify any income eligibility requirement would have been to require residents to submit to the Town their personal and business tax returns. Because this could be seen as an invasion of personal privacy, and because the Town does not have the systems in place to meet the requirements of federal and state laws governing how such information must be kept secure, this option was not considered practicable. Moreover, the citizen who wrote to the Springfield Journal suggested that the Town Board actually should have provided the rebate to renters based on income or need and not based on land ownership which carries with it the tax obligation. Again, as noted above, such an individual benefit is not permitted as a matter of law. Therefore, the program is based on ownership of land and payment of the taxes and treats all individuals and businesses equally.

While one can always criticize any government action, it seems ironic that a program intended to benefit the community should become the target of so much criticism. I believe the Town Board's program struck the right balance between meeting the needs of the community and complying with the law.