

8-14-2014 – REGULAR BOARD MEETING

Present:

Councilman Cheryl L. Earl
Councilman Leonard R. Hochadel
Councilman David L. Montgomery
Councilman Douglas J. Morrell
Supervisor Beverly Gambino

Also Present:

Attorney for the Town David DiMatteo
Town Clerk Betsy A. Marsh
28 guests

The Sardinia Town Board held its Regular Town Board meeting for August on August 14, 2014 at the Sardinia Town Hall/Community Center. Supervisor Gambino called the meeting to order at 6:30 PM. She asked if there was a Veteran present who would like lead the Pledge to the Flag. Hans Ylmar then led the Pledge.

The minutes of the July 10, 2014 Regular Town Board meeting, and the July 16, 2014 Special/Emergency Joint Meeting with the Planning Board, were submitted by the Town Clerk. On a motion by Councilman Hochadel, seconded by Councilman Earl, those minutes were approved. Carried, 5 ayes, 0 noes. Attorney DiMatteo asked that the minutes of the July 16, 2014 meeting clarify that the number of townhouses proposed for the Hutchinson Rd. parcel, which had been requested for re-Zoning and subsequently denied, was 13. The Clerk stated it was included in the minutes, but only once, and stated she would add the actual number in a few other spots for clarification.

Warrant #8 of 2014, including vouchers #428 through #513, totaling \$72,532.42, of which the General Fund was \$20,590.37, the Highway Fund was \$46,330.90, the Fire District Fund was \$4,702.23, and the Lighting District Fund was \$908.92, was approved for payment on a motion by Earl, seconded by Morrell, and carried, 5 ayes, 0 noes.

Supervisor Gambino then welcomed Mitchell Martin, Representative from Senator Pat Gallivan's office, and Karl Simith, Representative from Assemblyman David DiPietro's office. She stated they will both be here through the meeting, and will be available for questions for concerns by residents after the meeting.

Departmental Reports:

Attorney for the Town David DiMatteo reported that the Town Assessor has been served with an Assessment challenge lawsuit by Diamond Saw Works. They are assessed for \$791,500.00 and have provided an appraisal, appraising their property at \$799,000.00. He stated he is perplexed, and is uncertain how it will go in Court. He stated he would like to meet with the Board of Assessment Review to find out how they ruled on the matter. He stated he will contact the Assessor, also. Attorney DiMatteo also reported that, in the Marvin Zielonka v. Town of Sardinia case, the decision of the NYS Appellate Court, all issues were dismissed with the exception of the Whistle Blower issue. He stated that the Town is being defended by the Town's insurance carrier, NYMIR. He also informed that the case is available for review on-line, it is a SLIP decision, and the case number is CA 1302013. Mr. DiMatteo stated that there is one item that needs to be heard in Executive Session, and is an item of litigation. He also stated that, in regards to the property located at 12880 Schutt Rd., the property which was condemned by Code Enforcement Officer Gene Degman, he has been in contact with Mike Siracuse, the attorney for the Erie County Real Property Tax Service, who put him in touch with Jocelyn Gordon of the Erie County Land Bank. She stated that the Land Bank would review the property and if it is repairable, they would then repair and put back on the tax roll, however, Mr. Degman says it is not worth repairing and probably not resalable due to the small size of the lot. Ms. Gordon will be out of her office until August 25th, and will get back to Attorney DiMatteo then. Attorney DiMatteo stated he has reviewed the lease with the Sardinia Post Office, and it appears that it doesn't have much time left, ending in September of 2016 by its own term. Mr. DiMatteo stated that if the USPS decides to close this Post Office due to staffing problems or for whatever reason, the Town could take the property back to alleviate some of its own space issues, and stated it is a nice building and would make an easy transition to a Court facility. He suggested the Board might want to talk about it. In the Manfred Koch/Mark I action, having denied the application for the re-Zoning of their Hutchinson Rd. parcel, he has now received a letter from Mr. Koch's new attorney at Hodgson Russ stating that they are now requesting an Area Variance for the parcel. Mr. DiMatteo stated he has provided the CEO with some case law, and suspects the Town will have another application by next month's meeting. In the matter of the Town having adopted new Town policies on Workplace Violence and Sexual Harassment, he suggested that employees need to be provided copies of these policies and then need to sign a form that they have been notified of them, in the event a hearing should ever be needed in the future. Supervisor Gambino stated that she and her bookkeeper are in the process of inserting the new policies in the Town's Employee Handbooks. Councilman Earl suggested that notes be put in their paychecks that these new policies are in place, also. Attorney DiMatteo stated that the only other matter he had to report on is the litigation matter, to be discussed in Executive Session.

Councilman Morrell reported that the Highway Crew did an excellent job re-paving on Hand Rd. He also stated he has been checking on time clocks, and they are not working out well. He stated that with the pool closing shortly, we will have the winter to work on a solution. Councilman Earl stated she saw some of the thumb print models at Office Max, and suggested the Town look on line at the Office Max website for more information.

Councilman Montgomery reported that he attended the Erie County Water Quality Committee meeting, and there will be bus tours, for individuals and families, of the Tonawanda Creek Watershed, on August 23rd. Mr. Montgomery stated that if anyone spots Giant Hogweed, they should leave it alone and call the DEC, and they will come and take care of it. He stated he has scheduled a Free Rabies Clinic for October 18, 2014, at the Highway Garage. He also reported that NYSEG has promised that the new streetlights will be installed by the end of the month, and there will be billing to the Town other than the electric usage.

Councilman Earl reported that tomorrow is the end of the year Recreation picnic, and they handed out questionnaires on the swim lessons program, which all came back very positive, except for comments on the condition of the pool bathrooms. She

suggested that be looked into for next year. She stated that Friday Night Recreation will start in October and will run through April, and will follow the Pioneer School's calendar for cancellations. She stated that the Youth Board discussed Friday Night Rec having a swim night at the Holland School pool, which Danielle Scott can schedule, with the prices ranging from \$75.00 for under 25 people, \$100.00 for 26 to 50 people, or \$125.00 for over 50 people. Councilman Earl stated that the Girl Scouts will be having a picnic fund raiser at the White Star Inn on Sunday August 17th from 2 to 5 PM, \$5.00 per person for the picnic and non-alcoholic beverage. Ms. Earl also reported that she and Councilman Morrell had met with the Highway Employees to discuss upcoming contract negotiations. Supervisor Gambino stated that Chris Warner has done a wonderful job and the kids love him. Councilman Earl agreed and stated that attendance for the summer Rec program was up much higher than in the past years.

Councilman Hochadel thanked the Highway Dept. for getting the Welcome to Sardinia signs up, and stated they look great. He also complimented them on the job they have done resurfacing roads this year, stating that they look good. Mr. Hochadel reminded everyone that the Fire Company will be holding their annual Tool Raffle fundraiser on September 7th.

Supervisor Gambino reported that National Fuel will be holding another meeting on the proposed pipeline through Sardinia on August 27th here at the Town Hall from 7 to 9 PM. She informed that the Sardinia Historical Society will be hosting two classes on Grant Writing; anyone interested can call Dan DeGolier for more information. The Supervisor stated she is in receipt of both the July and August Fire Company financial reports, and she also announced that our Erie County Legislator John Mills will be attending the September Board meeting.

Attorney DiMatteo stated that at the Special joint meeting with the Planning Board, the Town Board agreed to go out with RFP's for engineering services to review the Tri-County Business Park's sewer plant. He stated he sent a draft RFP to Board members, and heard no concerns with the draft, and he has now sent them out to engineering firms.

Highway Superintendent Don Hopkins reported that he had submitted to the Board a bid that had been accepted by Chautauqua County for a ½ pickup truck, at a cost of \$21,837.00, which he could "piggyback" on and purchase the same truck for Sardinia. He stated that Ford is not okaying that same amount for the 2015 models, however, Chevy is offering a 2015 model, with a tow package, for \$24,734, available at Emerling Chevrolet in Springville. Mr. Hopkins stated that the Board questioned why he wants a ½ ton truck, and he explained that it is a money saving measure, since it is only used for running for parts and transporting mowing machines. He stated it must be ordered before the end of September because it takes 6 to 8 weeks from time of ordering to receive. Mr. Hopkins stated that his current is a 2001 and is falling apart, needing brakes, rotors, front end repair, etc. and he has spoken to the Town of Elma Superintendent, who has a 3 year trade program, and Mr. Hopkins would like to start turning his trucks over regularly, to, because of the trade-in being so much higher, therefore the price is lower. He stated he would like to trade in his 1 ton pickup next, and uses it 24/7. He then asked the Board to, under the "piggybacking" policy, to allow him to accept this bid for a ½ ton pickup. Councilman Montgomery asked him if he'd be better off with a ¾ ton pickup to plow with. Mr. Hopkins stated that a ¾ ton is really not heavy enough to plow with, and for what it will be used for, we are better off with a ½ ton, and getting rid of the 2001 Chevy they have now. **On a motion by Hochadel, seconded by Morrell, the Highway Superintendent was given approval to purchase a 2015 Chevy ½ ton pickup truck from Emerling Chevrolet by "piggybacking". Carried, 5 ayes, 0 noes.** The Highway Superintendent stated that, as discussed at the Work Session in April, they have in past years, rented a power washer to clean the pool, and it was felt by Board members that the Town should purchase its own for use by the Highway Dept. and the Parks Dept., to be used to clean the pool, clean the Parks bathrooms, at the Highway Garage, etc. He has found one by Karcher that is gas powered and guaranteed for 5 years, at a cost of \$1,250.00. **On a motion by Earl, seconded by Montgomery, Highway Superintendent Hopkins was given permission to purchase the Karcher power washer, with the 5 year warranty, at a cost of \$1,250.00, and to split the cost between the Highway Dept. and the Parks. Carried, 5 ayes, 0 noes.** Mr. Hopkins continued, stating that he has contacted the State OGS unofficial bid winner, American Rock Salt, and found out that salt will cost \$48.90 per ton, last year it cost \$33.20 per ton. He stated that he used 5,000 tons of sand, and is down to \$3,800.00 in his sand and salt budget for 2014, which allows for the purchase of only 781 tons. Mr. Hopkins stated that that cost is good through the entire winter, and he could purchase more after the first of the year out of the 2015 Budget. Supervisor Gambino and Councilman Earl felt he should get it all early and have it, and his budget for 2014 could be adjusted to allow that. The Highway Superintendent stated that, coming up, he will be working on the Manion Park parking lot, and the Highway Garage fuel building.

Supervisor Gambino stated the next item is a resolution to approve updated software for the Town Clerk's accounting and licensing system. The following resolution, to be known as Resolution #37 of 2014, was then moved for adoption on a motion by Earl, seconded by Hochadel:

**RESOLUTION #37 - 2014
APPROVAL FOR UPDATE OF WILLIAMSON LAW BOOK TOWN CLERK SOFTWARE**

WHEREAS the Town Clerk's office is in need of updated software program for their Town clerk duties, and

WHEREAS, William Law Book Company provides a software program for Town Clerk's, and

WHEREAS, the current Town Clerk's program is obsolete with the current operating system, and

WHEREAS, it is advantageous and critical to have the Town Clerk's software up to date so that services will not be interrupted to the public and records can be maintained without problems, and

WHEREAS, the William Law Book Town Clerk's software compliments and is compatible with the software used in the Supervisor's office for accounting and payroll, and

WHEREAS, the current Williamson Law Book Town Clerk's software has not been updated for the last 6 years, with a cost savings of \$3,993.00 to the town, and

NOW, THEREFORE, BE IT RESOLVED, that the purchase of the Town Clerk Plus Software (restart) at \$900.00 (nine hundred dollars) and 1 Year of support for \$665.50.

Upon roll call vote, Earl, aye, Hochadel, aye, Montgomery, aye, Morrell, aye, Gambino, aye. So resolved, 5 ayes, 0 noes.

The Board then moved into Executive Session at 7:10 PM to discuss litigation, on a motion by Earl, seconded by Hochadel, and carried, 5 ayes, 0 noes, with Attorney DiMatteo stating that there will be action taken after the Executive Session.

The Board came back into Regular Session at 7:45 PM on a motion by Earl, seconded by Hochadel, and carried, 5 ayes, 0 noes.

Attorney DiMatteo stated that, concerning Manfred Koch's sign on Rt. 16, which should have had only the names of those businesses and organizations that are actually in the Tri-County Business Park also included advertisements for businesses not in the Business Park. He stated he has drafted a proposed resolution, which is an agreed upon settlement between Mr. Koch and the Town, to settle the litigation matter, stating that the resolution provides for Mr. Koch to remove those signs for those businesses not actually in the Tri-County Business Park. The proposed resolution, to be known as Resolution #38 of 2014, was then moved for adoption on a motion by Hochadel, seconded by Morrell:

**RESOLUTION #38 – 2014
A RESOLUTION TO SETTLE LITIGATION BETWEEN THE TOWN OF SARDINIA
AND MANFRED KOCH, PRESIDENT OF MARK I, LLC**

WHEREAS, all Board members, having due notice of said meeting, and that pursuant to Article 7, Section 104 of the Public Officers Law, said meeting was open to the general public and due and proper notice of the time and place whereof was given as required by law; and

WHEREAS, the Town of Sardinia has alleged in an information (an accusatory instrument under C.P.L. Section 100.15) dated August 16, 2013, against Mr. Manfred Koch that he is in violation of Section 115, subdivision 22-2-A of the Town of Sardinia Zoning Code, such that he "advertised businesses on a sign [herein the "Sign"] on his property at 13700 Tri-County Business Park, Chaffee that are not on his property"; and

WHEREAS, a hearing upon the information was held in Justice Court in the Town of Sardinia before the Hon. Sharlene J. Vossler on August 27, 2013; and

WHEREAS, on August 27, 2013, pursuant to the hearing, the Justice Court ruled that the Sign violated Section 115, subdivision 22-2-A of the Town of Sardinia Zoning Code as alleged in the Information, and therefore denied Mr. Koch's motion to vacate said ruling; and

WHEREAS, Mr. Koch timely filed notices of appeal and timely perfected the appeals from the Justice Court's Orders, identified as Appeal No.'s 2013-APP-149, 2014-APP-001, and 2014-APP-036; and

WHEREAS, Mr. Koch has agreed to comply with Section 115, subdivision 22-2-A of the Town of Sardinia Zoning Code on or before August 31, 2014; and

WHEREAS, the Town Board of the Town of Sardinia feels it is in the best interests of the Town of Sardinia to resolve the above-stated information and Appeals without further litigation;

NOW, ON A MOTION OF Councilman Hochadel, which has been duly seconded by Councilman Morrell, therefore, be it

RESOLVED, that the Town of Sardinia's legal counsel, the Law Office of David M. DiMatteo, Esq., is authorized to approve and bind the Town Board of the Town of Sardinia to a "Stipulated Order to Discharge Defendant and Discontinue Appeals" with the following terms:

1. Mr. Koch is discharged, without costs, and thus all claims and controversies alleged against him in said Information are dismissed on the condition that the names of remote businesses, specifically Kless Boys and Tri-County Supply, are removed from the Sign in compliance with Section 115, subdivision 22-2-A of the Town of Sardinia Zoning Code on or before August 31, 2014;
2. Appeals No.'s 2013-APP-149, 2014-APP-001, and 2014-APP-036 are hereby discontinued;
3. In the event Mr. Koch fails to comply with the foregoing condition, the Court shall reinstate the Information and Appeal upon the Town of Sardinia's written request to the Court and written notice thereof sent to Mr. Koch's counsel, and a new scheduling Order for the Appeal, particularly the Town of Sardinia's response deadline, shall thereafter be issued;
4. The foregoing terms embody the entire agreement between the Town of Sardinia and Mr. Koch.

Upon roll call vote, Earl, aye, Hochadel, aye, Montgomery, aye, Morrell, aye, Gambino, aye. So Resolved, 5 ayes, 0 noes.

There being no further business to come before the Board, on a motion by Earl, seconded by Morrell, the meeting was adjourned at 7:46 PM. Carried, 5 ayes, 0 noes.

Respectfully Submitted,

Betsy Marsh, Town Clerk

