

7-11-2013 – REGULAR BOARD MEETING

Present:

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

Also Present:

Attorney for the Town Linda Joseph
Highway Superintendent Donald W. Hopkins
Town Clerk Betsy A. Marsh
Approx.20 guests

The Sardinia Town Board held its Regular Town Board meeting for July on July 11, 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 June 13, 2013 Regular Town Board meeting, which were approved as submitted on a motion by Earl, seconded by Morrell, and carried, 5 ayes, 0 noes.

The Supervisor introduced Mike Metzger, the Engineer for the Town on the Highway Garage roof repair bid project, who then opened the bids for the repair work, which were as follows:

Sahlem's Roofing	\$70,610.00
H & H Roofing	\$69,600.00

Mr. Metzger stated that both bids had the required bid bonds attached. He will now review the bids, and the Supervisor stated she would like to set up a Special Meeting for Wednesday July 17th at 10 AM to award the bid. It was felt that Mr. Metzger need not be in attendance at the meeting, and will issue a letter of recommendation to the Board for that meeting. Mr. Metzger also turned over 5 checks, from those who paid the \$25.00 non-refundable bid spec book fee price, to the Town Clerk.

Departmental Report Included:

Supervisor Hannon stated that the Town has received notice from the Town of Arcade that they are amending their Comprehensive Plan, and need approval from the surrounding Towns to take Lead Agency Status. None of the Board members had a problem with the Town of Arcade being Lead Agency for that purpose, and the Supervisor stated she will work with Attorney Alicia Rood to prepare the necessary paperwork approving the Town of Arcade to take Lead Agency status on the amendment to their Comprehensive Plan. She also stated that the Arcade Express soccer league has asked permission to hold a soccer play-off tournament at the Genesee Rd. Park in October. The Supervisor stated that the matter will be forwarded on to the Youth Board for recommendation. Supervisor Hannon noted that the Waste Management quarterly report is available at the front table and Tom Lewis is on hand if anyone has any questions. The Supervisor stated she has received e-mails concerning the Savage Rd. bridge project, and stated that the DOT has notified that the bridge will be reopened in September.

Councilman Morrell reported that he had met with Ken Zicarelli from Gernatt Asphalt at their Chaffee Plant and was pleasantly surprised with the conditions on the site. He stated they are putting in a new plant, and the new plant manager is Bill Redden. Mr. Morrell stated it looks good there and the residents of Sardinia should be proud to have the facility in Town.

Councilman Montgomery had no report.

Councilman Earl reminded that the Townwide Garage Sale will be held on July 12, 13, & 14, and there are over 30 sales on the map. She stated that on July 20th, the Youth Board will be hosting a Bike Safety check here at the Town Hall, and there will a drawing for a gift certificate, then the Erie County Sheriff's Dept will be finger printing kids for the Safety ID program. She stated that the pool has been full and the Rec program has been full, and today she received a request for an extra sun shade at the pool. She stated that there are holes being dug under the current shade and it has been suggested that maybe it should be blacktopped, however it may make it even hotter there.

Councilman Miller reported that he will be attending a meeting of the Farm Trails/Southtowns Enhancement Coalition on July 16th. He stated he has gotten some calls with concerns over a possible water district costing taxpayers an extra \$1,000.00 per year, as outlined in the Supervisor's recent letter to residents. He reminded that this Town Board had decided against such a water district a couple of years ago, the proposal is null and void, and reiterated there will be no water district. The Supervisor stated it was part of the original report. Mr. Miller stated there is no plan for a \$1,000.00 per year water district.

Highway Superintendent Don Hopkins reported that the Supervisor had already touched on the Savage Rd. bridge project, and that the project, to be constructed by H & H Construction, is anticipated to take 2 to 3 months to complete, and the weather will be a factor in the length of the closure. Concerning the Hosmer Brook wash out, the Highway Superintendent stated that the original work has been partially pushed out, and he has been in contact with Mark Gaston from Erie County Soil and Water. He stated that the Army Corps of Engineers and the DEC both had permits for the work, but that money is the issue, but it was felt that it is a short wash-out and will not continue. Mr. Hopkins stated that, concerning Bromine for the pool, the new supply is working fantastically, and the pool looks great. Mr. Hopkins stated that concerning the Erie County Snow and Ice Removal contract, he asked if everyone had received the resolution, and

was told that they had. Mr. Hopkins thanked the Board for their support and participation, and then excused himself to talk to Engineer Mike Metzger concerning the roof project bids.

Attorney for the Town Linda Joseph reported that there is good news concerning the 2 litigation cases, and stated that the oral arguments were heard to dismiss the lawsuit brought by John Schiener, and the Declaratory Judgment Action was dismissed. She stated that is very major because it would have embroiled the Town in Discovery and extra expense. Attorney Joseph stated that now what we are dealing with is solely an Article 78 proceeding, challenging the Town's Mining Overlay District law, and the basis for determining that is the record on which the Town Board acted and the only question is whether or not it is arbitrary and capricious. She stated she is optimistic about that and it will be basically done after we get an answer, and it will automatically come to a resolution at that point, so it won't be a long drawn out lawsuit and a lot of expense, and we have a very easy standard to meet. Ms. Joseph reported that there was an oral argument on the Motion to Dismiss the Zielonka lawsuit on June 27th. She stated that the case is being defended by the Town's insurance company, so there is no expense to the Town. She stated that the report received from the Insurance company's attorney was that Hodgeson & Russ, Mr. Zielonka's attorneys, agreed to withdraw the claim against the Supervisor, and also stated that the Judge made strong remarks indicating that he doesn't agree with the bringing of the lawsuit at all. She stated that the attorney is very optimistic about the case, and we will now wait for the Judge's decision. Concerning the Hutchinson Rd. Town House project, Attorney Joseph stated that the developer has now hired an attorney, and she has instructed Alicia Rood from her law firm to no longer attend the Planning Board meetings in order to cut legal costs for the Town. She stated that the DEC has a lot of control over the project and perhaps their new attorney may be able to address some of those concerns. Attorney Joseph stated that the DEC wants there to be a sewer corporation established, and the Planning Board is handling that. She stated she has also worked on the new proposed tax relief, for which there is a resolution later in the agenda, with the Supervisor.

Under Public Comments:

Carla Fuller of Matteson Corners Rd. stated she had many questions on the TRUST Local Law Plan, which would give each household/landowner a one time check for the amount of their 2013/2014 school taxes. She asked if the payment would be considered income, and if 1099 forms for income tax purposes would be issued to each payee. She also noted that if it is to be considered income, the school tax payment would no longer be able to be used as a deduction on income tax. Ms. Fuller asked if it had been determined how such an income addition might affect Senior Citizens for such programs as HEAP and Medicaid, and if the reduction they get with an Enhanced STAR exemption would mean they might get little or no rebate. She stated that the amount of only \$500,000.00 to be left as surplus is also a concern, and suggested that perhaps more should be left in reserve. She also asked if the survey results could be collated and made available to the public, and stated she feels that a public hearing scheduled for only 15 minutes may not be long enough for anticipated comments.

Dale Hediger of Genesee Rd. stated that concerning the proposed tax relief program, he appreciates what the Board is trying to do, but asked if the Town should be draining the reserve account. He stated that the Town may exceed the limit of what the Comptroller's office feels should be in the reserve account, but asked if there is some other type of fund that can be established. He stated he agrees that the money should be given back to help every person in this Town, but asked if it should be given back as determined by how much land they own or which school district they live in. He feels it should be given out, in equal amounts, to help each family whose primary residence is in the Town of Sardinia, and asked if business landowners such as Gernatt Asphalt and Waste Management should be entitled to a share. He suggested that if this is approved, that each primary household resident should get an equal amount of money, no matter how much property owned or where they live. Mr. Hediger then asked if there is a public hearing scheduled for August 8th, why is the Board voting tonight on the qualifications for a rebate, and suggested the matter be tabled until after a public hearing, so that the public's ideas and suggestions can be taken into consideration. He also asked if, other than the Attorney and the Supervisor, if anyone else on the Board been involved in drawing up this amendment.

Clint Salmon of Savage Rd. apologized to the Senior Citizens for being too busy to think about others. He stated he and the Supervisor had attended Meals on Wheels meeting where they found out that the County has been investigating the recipients of that program to see if they could take less. They found out that the Federal Government gives the money to the State, which then goes to the County, and then to the program and the money that has been forthcoming for the last 13 years has not been given back to pay the hospital for the meals since January 1st of 2013. He stated that he was also recently in the Town of Castile, and where an old house used to stand, there is now a beautiful new house built for the Senior Citizens in which to hold meetings and serve meals. He stated that if they can have one in Castile, why can't we? Mr. Salmon stated that we don't know what will happen with the Meals on Wheels program, but stated that if a home such as that could be built in Sardinia, we could set up our own food distribution program. He stated that no one realizes how many Senior Citizens there are in this Town, that there are 65 signed up to be notified of trips and other programs, but that there are many more who do not. He stated it boils down to them needing a place to take care of themselves, and asked the Board to give serious thought to building some place for our Senior Citizens.

John Schiener of West Schutt Rd. stated that regarding the proposal on the table tonight for tax relief, he asked that the issue be tabled or killed. He asked that the Board take its time with the plan, and asked what is the urgency. He suggested that the Board solicit input from the residents to find out what they want. Mr. Schiener stated that at the last election, there was a survey for the voters, and this idea was not included, and seems to have come out of nowhere. Mr. Schiener stated that the last time the Board took up this issue was in June 2011, and there was no mention of paying school taxes and stated that there was a resolution to keep the money for future tax abatement. He asked what has changed: the Town has the same accountants as then, the State limits have stayed the same, and there is about the same amount of money in the reserve account. He stated there are a lot of things that could be done with this money, including improvements to the Town Hall, the Parks, drainage improvements, etc., and he asked that the Board find out what the people want. He stated there were some big questions raised tonight about the plan, and stated there is an inequity in the plan, with some people getting the full amount and others getting nothing. Mr. Schiener asked that the Board look into Quality of life improvements and take their time with this issue.

The Supervisor stated that there is a budget necessary tonight to cover the cost of the fireworks celebration, and the following resolution, to be known as Resolution #46 of 2013, was then moved for adoption on a motion by Earl, seconded by Montgomery:

**RESOLUTION #46 - 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>
A1990.400 Contingency	\$1900.00	A7989.410 Celebrations

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, aye, Hannon, aye. So Resolved.

Abstract #7, including vouchers #394 through #467, and totaling \$58,717.01, of which \$27,026.59 is General Fund expenditure; \$13,636.76 was Highway Fund expenditure, \$16,418.60 was Fire District expenditure, and \$1,635.06 was Lighting District expenditure, was then approved on a motion by Earl, seconded by Morrell, and carried 5 ayes, 0 noes.

In Unfinished Business:

The Supervisor stated that the next resolution was received from the Town of Lancaster. She stated she did send a letter to County Legislator John Mills concerning the issue on the recommendation of the Highway Superintendent, and Mr. Mills has sent a reply letter stating he agrees with the Town's position. The following resolution, to be known as Resolution #47 of 2013, was then moved for adoption on a motion by Earl, seconded by Miller:

**RESOLUTION #47 - 2013
APPROVAL TO SUPPORT
RESOLVING ISSUES OF CONTRACT BETWEEN ERIE COUNTY
DEPARTMENT OF PUBLIC WORKS AND 25 TOWNS IN ERIE COUNTY FOR SNOWPLOWING DE-ICING
SERVICES**

WHEREAS, the Town of Sardinia recognizes that plowing and de-icing the town, as well as county roads, is in the best interest and safety of its residents, and

WHEREAS, Erie County and the 25 towns within the county have negotiated contracts which assure that the majority of the county roads within the towns would be maintained according to the same snow and ice control methods used on all town roads, and

WHEREAS, such methods have been approved by the Erie County Department of Public Works, and

WHEREAS, in the past, all costs of manpower, equipment, and materials have been calculated to the satisfaction of all parties, and

WHEREAS, any issues that have arisen during snow and ice control in previous years have been resolved by all parties involved, and

WHEREAS, a new contract between the Towns and Erie County is currently being negotiated, and

WHEREAS, on March 20, 2013, there was a tentative agreement between the towns and Erie County which included a 3-year term with an annual increase of 5.0% as was past practice, and

WHEREAS, this agreement was considered fair and within the budgeting confines of Erie County, and

WHEREAS, ON April 16, 2013, Erie County made a counter proposal to increase the contract from 3 years to 5 years and to reduce the monetary increase to 0.5% and

WHEREAS, the county proposed rate is one the towns cannot afford, and

WHEREAS, the budgetary planning for 2014 is going to be starting in many municipalities, and

WHEREAS, the deadline for towns to order road salt de-icer is now past,

NOW, THEREFORE, BE IT RESOLVED, that the Town of Sardinia calls on the Erie County Executive and the Erie County Legislature to help resolve the issue between the Erie County Department of Public Works and the 25 towns within the County of Erie with regards to snow removal and de-icing of county roads within the towns that is fair and equitable to all parties, and

BE IT FURTHER RESOLVED, that the Town Clerk of the Town of Sardinia is to transmit copies of this resolution to Erie County Mark Poloncarz, Erie County Legislator John Mills, Erie County Legislature Chairwoman

Betty Jean Grant, and Erie County Department of Public Works Commissioner John Loffredo, and the other towns within Erie County.

Upon roll call vote, Earl, aye, Miller, aye, Montgomery, aye, Morrell, aye, Hannon, aye. So Resolved.

The Supervisor stated that the next resolution is on the tax relief program. She stated that when she ran for Supervisor, a letter went out to the residents signed by herself and Councilmen Earl and Miller, promising to give the money back to the people. She stated it will need to be application based and a copy of their paid school tax bill will be required. She stated there were a lot of good comments tonight which will be looked at, and if someone feels it will affect their taxes, they need not apply. She stated that for those with higher school taxes, the cap is at \$1,500.00, and if you don't pay a lot of school taxes, you will get 100% of the bill paid, but the good news is that you will get back what you paid out. Supervisor Hannon stated that as far as multiple parcels are concerned, she stated this was looked at and it was decided that to be fair, only one rebate per household or business would be allowed, with the \$1,500.00 cap, and the choice of parcel to be paid is the choice of the taxpayer. She stated that businesses will be included. She stated this resolution is not putting the law in place, it is just putting it before the public so that a public hearing can be held. Councilman Earl stated that this law will not deplete the account. Attorney Joseph stated that the other thing that should be mentioned is that the amount to be retained is the amount the Town accountant recommends based on the amount received by Waste Management. She also stated that the accountant told them that there is a very big concern that the State will come and take this money if it remains in the General reserve to the extent that it is in there.

Supervisor Hannon stated that she is not here to build other buildings, she is here to give the money back to the people, and that is what she wants to do. She agreed that the Public Hearing could be moved to 6:00 PM to give more time. The Attorney then explained that the Board is not adopting a local law tonight, but in the process to adopt a law, you need to have something very specific that is put out there for notice. She stated that there then can be input from the Board and changes can be made. The Supervisor then opened the discussion to Board members. Councilman Miller stated he had contacted the Association of Towns, office of the Special Counsel Murray Jaros, and it is their opinion that a tax rebate must be approved by a special resolution of the State Legislature, and it was also their opinion that some of the reserve fund should be put in a trust for capital improvements or other unexpected expenditures. He stated he feels the Board is moving too fast on this and until more information is gathered, the matter should be tabled. The Supervisor stated she disagreed with that, and asked if there were any other comments from the Board. There were none. She then asked for a resolution to approve the proposed law and to hold the Public Hearing in August 8, 2013, at 6:00 PM. The following resolution, to be known as Resolution #48 of 2013 was then moved for adoption on a motion by Earl, seconded by Montgomery:

RESOLUTION #48 - 2013

SETTING A PUBLIC HEARING ON THE PROPOSED AMENDMENT OF TOWN CODE TO AMEND CHAPTER 99 TO ADD A NEW ARTICLE IV, SECTIONS 99-12, 99-13, 99-14, 99-15, 99-16, 99-17 AND 99-18

WHEREAS, the Town Board unanimously passed a resolution at its Board Meeting on June 13, 2013 approving the collection of data and information for a possible tax relief program; and

WHEREAS, substantial data has already been collected through the efforts of the Town Supervisor, Town Tax Assessor, the Town Attorney and the Town's Accountant and the Town Supervisor has sent a letter dated July 1, 2013 to the citizens enclosing a survey and requesting further input by August 1, 2013 regarding the proposed amendment of the Town Code to provide tax relief to the property owners in the Town of Sardinia; and

WHEREAS, the Town of Sardinia receives the vast majority of its revenues from tipping fees paid by Waste Management under a municipal host agreement and these fees have enabled the Town—by taking appropriate steps to ensure financial responsibility for its other expenses—to eliminate the Town portion of property taxes and to build up a general reserve fund of approximately \$2.5 Million and additional contractual commitments were obtained through negotiations conducted by the Town Supervisor and approved by the Town Board in 2013 to ensure the continuation of these revenues well into the future; and

WHEREAS, the Town's accountant has informed the Town that the New York State Comptroller has expressed concern that the General Reserve Fund exceeds the limits permitted by law; and

WHEREAS, the data and information gathered to date indicate that it would be possible to provide a one-time tax relief totaling \$2,000,000 collectively to property owners in the Town of Sardinia and still retain a reserve of approximately \$500,000 which will be more than sufficient, particularly given the annual income in tipping fees and the average annual spending of \$1.5 Million by the Town as reflected in recent budgets set during the past four years to provide an adequate reserve and at the same time preserve the elimination of Town portion of property taxes; and

WHEREAS, the data and information collected to date indicate that the utilization of an appropriate portion (consisting of approximately \$2 Million) of the Town's general reserve fund which now totals approximately \$2.5 Million for a one-year tax relief program will benefit the Town and constitute a "public purpose" by benefiting a number of public needs including attracting and retaining family farms, young families, businesses and seniors and providing an economic stimulus to the local economy; and

WHEREAS, the Town Board has determined that it is in the public interest to hold a public hearing to obtain input from the Town residents and taxpayers as to an Amendment to the Town Code to add a new Article IV to Chapter 99 for the purpose of establishing a Tax Relief Program for 2013.

NOW, THEREFORE, BE IT RESOLVED, that a public hearing is scheduled for 6:00 PM on August 8, 2013 to solicit input and comments from the taxpayers, property owners and residents of the Town of Sardinia on the proposed amendment to the Town of Sardinia's Town Code to add a new Chapter IV to Article 99 with the following proposed sections which are proposed to establish a Tax Relief Program for the 2013:

§ 99-12. Title. This Local Law shall be known and cited as the Town Relief Under Sardinia Taxes" law or "TRUST."

§ 99-13. Qualification for Tax Relief Provided For One Year.

- A. Tax Relief shall be provided for a single year, anticipated to be 2013, on Real Property situated within the bounds of the Town of Sardinia, Erie County, New York, owned by one or more persons and provided further that for purposes of qualification each business and/or household shall receive only one tax rebate so that those businesses or households holding more than one parcel may choose the particular parcel on which to base their tax rebate. The amount of the tax relief to be provided to each such business and/or household shall be up to 100% of the school tax levy paid on the parcel but not to exceed a total tax rebate for each such parcel of \$1,500.00 as the maximum amount.
- B. In addition to the qualifications set forth in paragraph § 99-13 A, the title of the property must be vested in the owner or all of the owners of the property, pursuant to the requirements of Section 467 of the New York State Real Property Tax Law prior to the date of making application for the Tax Relief.

§ 99-14. Application for Tax Relief.

An application for such the real property Tax Relief must be submitted by the owner or owners of the property to the Town Supervisor’s Office within 30 days after the due date for payment of the school taxes and thereafter, before a check will be issued, there must be submitted proof of timely payment of the total school tax levied. An application form shall be provided by the Town Supervisor. A failure to submit a timely application or failure to pay the school tax on a timely basis shall be an irrevocable waiver and disqualification for this Tax Relief payment.

§ 99-15. Expiration.

This law shall expire upon the payment of the one-time Tax Relief payment to all qualified tax payers, unless renewed by Town Board, in its sole discretion, and upon a finding of adequate funding in future years.

§ 99-16. Separability.

Should any section, paragraph, clause or phrase of this Local Law be declared unconstitutional or unjust for any reason by a court of competent jurisdiction, the remainder of this Local Law shall not be affected thereby.

§ 99-17. Inconsistency.

The tax relief provided hereunder is in addition to any other tax relief and/or exemption to which the property owner or owners are entitled.

§ 99-18. Effective date.

This Local Law shall take effect immediately.

Be it so resolved,

Upon roll call vote, Earl, aye, Miller, no, Montgomery, aye, Morrell, no, Hannon, aye. So Resolved, 3 ayes, 2 noes.

Supervisor Hannon stated that, concerning Mike and Julie Juliano’s request for reduced speed signs, there is still no word from the State and County; the Supervisor again reminded that Susan Johnson, representative of Senator Gallivan’s office, will be coming to the August 8, 2013 board meeting; and the Memorial Volunteer Fire Company of Chaffee-Sardinia will be holding their Tool Raffle on September 8, 2013.

The Supervisor stated that the next resolution is to approve the printing costs of the new Zoning and Code books, since it was above the \$500.00 previously approved. The following resolution, to be known as Resolution #49 of 2013, was then moved for adoption on a motion by Earl, seconded by Morrell:

**RESOLUTION #49 - 2013
APPROVAL OF PURCHASE OF PRINTING NEW ZONING BOOKS
FOR TOWN OF SARDINIA**

WHEREAS, the Supervisor Mary Hannon has reviewed the need for new updated Zoning Books and Town Code Books for the Town of Sardinia which are easier to update in the future, and

WHEREAS, the cost for the Zoning Books, binders, cover sheets, and document review costs have exceeded the \$500 amount, totaling \$713.90, costing \$14.28 for each book; and

WHEREAS, the Sardinia Town Board realizes the need for improvement on these books which would save money and confusion for the Town in the future, and

NOW, THEREFORE, BE IT RESOLVED, the Sardinia Town Board hereby approves the bill from Anything Printed in the amount of \$713.90 for the printing of the new Zoning Books/binders/cover sheets/ and review of documents.

Upon roll call vote, Earl, aye, Miller, aye, Montgomery, aye, Morrell, aye, Hannon, aye. So Resolved.

The Supervisor stated that the next resolution is for approval of the books. The following resolution, to be known as Resolution #50 of 2013, was moved for adoption by Earl, seconded by Montgomery:

RESOLUTION #50 - 2013

APPROVAL OF NEWLY PRINTED ZONING BOOKS AND TOWN CODE BOOKS FOR THE TOWN OF SARDINIA

WHEREAS, Supervisor Mary Hannon has reviewed the need for updating the current Zoning Ordinance Books and the Town Code Books for the Town of Sardinia, and

WHEREAS, after careful review, the Sardinia Town Board approves the updated documents to take the place of the old Zoning Books and Town Code Books for the Town of Sardinia, and

NOW, THEREFORE BE IT RESOLVED, the Sardinia Town Board hereby approves the documents known as the "Town of Sardinia Zoning Ordinance, and the Code of the Town of Sardinia New York" as the newly updated documents for the Town to utilize this day forward.

Upon roll call vote, Earl, aye, Miller, aye, Montgomery, aye, Morrell, aye, Hannon, aye. So Resolved.

The Supervisor stated that the Town is in receipt of Memorial Volunteer Fire Company of Chaffee-Sardinia, NY Reports as follows: Audit for 2012 - no problem with that; minutes of May, 2013 Fire meeting; and Treasurers Report of May, 2013.

There being no further business to come before the Board, on a motion by Earl, seconded by Montgomery, the meeting was adjourned at 7:12 PM. Carried, 5 ayes, 0 noes.

Respectfully Submitted,

Town Clerk