

**1-6-2010 – REGULAR JANUARY BOARD MEETING**

Present:

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

Also Present:

Attorney for the Town Linda H. Joseph  
Highway Superintendent Donald W. Hopkins  
Town Clerk Betsy A. Marsh  
Approx. 40 guests

The Sardinia Town Board held its Regular January Town Board meeting for 2010 on January 6, 2010 at the Sardinia Community Center. Supervisor Mary L. 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 December 28, 2009 Public Hearing on the Firemen's contract, and the December 28, 2009 End of the Year meeting, which were approved and filed on a motion by Miller, seconded by Uhteg, and carried, 5 ayes, 0 noes.

Supervisor Hannon reported that she is in the process of trying to get things in order, and there have been computer glitches, and things missing from the computer. She stated that action could be taken, if needed.

Councilman Cheryl Earl stated she has spoken to Highway Superintendent Don Hopkins about signage for the Highway Garage, and has checked the Town of Sardinia signs on the main roads and feels they are in good shape. She stated she has talked to Jennifer at Erie County about the website. She stated she would like to expand on it and utilize it more. Councilman Earl stated she would meet with Youth Board members to set up regular meetings and discuss the youth programs. Councilman Uhteg offered to turn over the website project to Ms. Earl, and she asked that he continue to send the minutes to the website for posting.

Councilman Montgomery reported that H.E.A.P. will be here on Monday, January 11 from 9 AM until 4 PM. He also reported that Erie County Health Dept. would like to conduct an H1N1 flu vaccination clinic here at the Town Hall/Community Center. He stated that the matter is further along in the agenda, but they have also requested volunteers, and also EMT's and possibly an ambulance for stand-by. Mr. Montgomery stated this will be for anyone, regardless of where they live, including regardless of County of residence. It will be held on Thursday, January 21, 2010 from 3 to 8 PM. He stated that the County has requested refreshments, such as orange juice and coffee. No one had an objection to providing.

Councilman Uhteg stated he would like to put the pool house bid notice in the papers, and the contract documents need to be typed up. Supervisor Hannon stated she would like to see the final bid sheets, since the new Board has not seen the plans or the spec sheets. He stated that the estimate for construction is \$56,000.00. She asked that the plans and specs be brought in for the Board to look at. The Supervisor also asked about the status of the external defibrillators that had been discussed and approved last year. He stated that they were not purchased and paperwork was only partially completed. He was asked to look into that and follow through on the matter. Concerning the house numbering project, the Supervisor stated she would like to form a committee to work on how this could be done, and would like Councilman Uhteg to work with Councilman Montgomery, Firefighter Laurie Smith, and Michael Hannon on the committee. Street Lighting at intersections was discussed. Mr. Uhteg stated that there were 8 or 9 intersections without streetlights, and no one wanted to go forward with the lights, since they would cost about \$100.00 per light. The Supervisor stated she would like to go forward with those lights, feeling that the lack of lighting was a safety issue. She asked Mr. Uhteg to work on that. Concerning the redirection of the overhead pipes in the vault, Councilman Uhteg stated that Danny Heineman has assured that these are the proper pipes and do not need to be moved. Mr. Uhteg stated that since Heineman Plumbing sealed the joints, they have not leaked. The Clerk expressed some concern about condensation, and stated she would not put Town records on the shelf directly under the pipes until she is satisfied there is no more water from any source. The Supervisor stated she would take it off the agenda unless there is a problem in the future.

Councilman Miller stated that the first thing he would like to do is get quotes to put a light on the flag out in front of the building. He stated that the flag is supposed to be lit unless taken down at night, and this one has never been lit. He also is looking to have wi-fi available in this building. He stated he has a contact at Verizon and will check on bringing broad band access for the Town.

Highway Superintendent Hopkins stated he would like a Town issued cell phone for his use. He stated that currently he uses his own. He stated he would like to make that cell number known so that he can be contacted by the public at anytime. On a motion by Hannon, seconded by Montgomery, the Board approved the acquiring of a cell phone for the Highway Superintendent. Carried, 5 ayes, 0 noes. Mr. Hopkins also stated he is looking to purchase a chipper for the Highway Dept. and that money was put in the 2010 budget for that purpose. He stated that it can be purchased on Federal bid. Possible programs for the public to use the chipper were discussed. Councilman Uhteg wanted to make sure that Mr. Hopkins had checked with other companies for quotes, and Mr. Hopkins stated there was one company he found with a cheaper cost, but stated that the machine was more cheaply made, also. The chipper will be brought up again at the February meeting. Highway Superintendent Hopkins stated that he would also like to purchase a new, heavy duty pick up truck to replace the 2004 one currently used by the department. He stated that he currently plows and sands with that truck, and it is not meant for the amount of work it does. Mr. Hopkins stated he would like to buy one with

a dump box, and stated the money for the truck was also put in the 2010 budget. He stated he can purchase it on State bid, has the bid specs at the Highway Garage, and will bring them to the next meeting with a price. The Highway Superintendent stated his department is also in need of a replacement for the 1974 rubber tired draught. He stated it broke down and was repaired with even older parts. He would like Board approval to let him find a used rubber tired excavator, stating a used machine would be much less money but still useable. A turnover program was discussed, and an audience member stated that Arcade pays an hourly rate of \$12.50 per hour for their loader. Supervisor Hannon asked that the Highway Superintendent bring back proposals to the next meeting. Mr. Hopkins then stated that retired Highway Superintendent Walt Baker worked for the Town for 37 years and served as Highway Superintendent for the last 20 years. He stated that the Highway Department would like to hold an open house for Mr. Baker on Saturday January 9<sup>th</sup> from 2 until 5 PM, with finger foods and refreshments and would like permission to have it in the Town Hall/Community Center gym. He stated he would like permission to serve beer, also, which must have Town Board approval. No one on the Board objected. Mr. Hopkins invited everyone in attendance to come.

On a motion by Montgomery, seconded by Miller, General Fund of Warrant #1 of 2010, including vouchers #1 through #23, totaling \$54,865.65; and Highway Fund Abstract #1 of 2010, including vouchers #1 through #7, and totaling \$24,632.84, were approved for payment. Carried, 5 ayes, 0 noes.

Under unfinished business, Landscape Architect Bill Arlow updated the Board on the Parks Master Plan, stating that they will be finishing the preliminary Parks Master Plan, and it will then be in the Clerk's office and on line for 30 days for comment. It will then become the final plan.

Under New Business:

Supervisor Hannon asked for a resolution to appoint Brian Downey as Special Counsel. Councilman Uhteg stated he had a comment. He stated that according to a law student he knows, in Robert's Rules of Order, under the reconsider section, you cannot bring up a motion that was denied, for a period of one year. He stated that anyone that was in the minority of that vote cannot bring it up again. The Attorney for the Town advised that this is not a motion to reconsider; it is a resolution to appoint Special Counsel. She stated there was never a resolution on record. Ms. Joseph also stated that she would like make a comment. She stated she would like to assure the citizens of the Town of Sardinia that she takes her professional duties and responsibilities very seriously and she would never undertake to work on anything for the Town in which she has a conflict of interest. She stated that she is not going to be involved in this particular matter, and she believes that one of the reasons this Town Board is looking at appointing a Special Counsel is that she acted as Counsel for the ZBA on the litigation matter. She stated that it would be a conflict of interest for her to switch sides, stating that this is what the rules of ethics indicate. For that reason, she stated she is recusing herself and not being involved in this matter, and will not be giving any advice to the Town Board. She also stated she is very proud and very happy to be appointed to this position and is really looking forward to working with the Board and doing the best she can for the Town. She stated she will always give her best opinions, based on the law, not on any politics, and will try to guide the Town in order to be in compliance with the law. Attorney Joseph stated that is very important to her, and knows it is very important to the Town. The following resolution, to be known as Resolution #2 of 2010 was then moved for adoption by Montgomery, seconded by Earl:

#### **RESOLUTION #2 – 2010 Appointing Special Counsel**

**WHEREAS**, the newly elected Town Board wishes to consider the desirability of ending the Article 78 Proceeding filed by the Town Board against the Town of Sardinia Zoning Board of Appeals and Gernatt Asphalt Products, which is currently pending before the Appellate Division Fourth Department;

**WHEREAS**, Linda H. Joseph, the newly appointed Town Attorney, previously represented the Zoning Board of Appeals and it would be a conflict of interest for her to advise the Board of this matter.

**NOW THEREFORE BE IT RESOLVED** that the Town Board appoint Brian Downey as special counsel to advise the Board regarding possibly discontinuing the Article 78 Proceeding filed by the Town Board against the Town of Sardinia Zoning Board of Appeals and Gernatt Asphalt Products.

Upon roll call vote: Earl, aye, Miller, aye, Montgomery, aye, Uhteg, no, Hannon, aye. So Resolved, 4 ayes, 1 no.

The Supervisor stated that the Board would then go into Executive Session to discuss pending litigation with its Special Counsel. On a motion by Earl, seconded by Montgomery, the Board moved into Executive Session at 7:14 PM, carried 5 ayes, 0 noes.

The Board returned to Regular Session at 7:32 PM on a motion by Montgomery, seconded by Miller, and carried 5 ayes, 0 noes.

The following resolution, to be known as Resolution #3 of 2010, was then introduced by Earl, seconded by Montgomery:

#### **RESOLUTION #3 – 2010 Suspending Robert's Rules of Order**

**WHEREAS**, the Town Board believes the best interests of fairness and of the Town of Sardinia to allow the minority (that is the losing party) on a vote on a motion or resolution to be able to make a motion or resolution on the same matter he or she lost on; and

**NOW, THEREFORE BE IT RESOLVED**, that the Town Board of the Town of Sardinia suspends the Roberts Rules of Order permanently to allow a minority (that is a losing party) on a vote on a motion or resolution to be

able to make a motion or resolution on the same matter he or she lost on.

Upon roll call vote: Earl, aye, Miller, aye, Montgomery, aye, Uhteg, no, Hannon, aye. So resolved, 4 ayes, 1 no.

The following resolution, to be known as Resolution #4 of 2010 was then introduced by Montgomery, seconded by Miller:

**RESOLUTION #4 - 2010 Withdrawal from Lawsuit**

**WHEREAS**, the Town Board believes the Article 78 Proceeding and its appeal against the Zoning Board of Appeals of the Town of Sardinia and Gernatt Asphalt Products, Inc. is not in the best interests of the Town of Sardinia; and

**WHEREAS**, continuation of the appeal will cost the Town additional funds; and

**WHEREAS**, the Town Board agrees to abide by the Supreme Court decision in this case; and

**NOW THEREFORE BE IT RESOLVED**, that the Town Board of the Town of Sardinia on its own behalf and on behalf of the Town of Sardinia withdraws from the Article 78 Proceeding and its appeal against the Zoning of Appeals of the Town of Sardinia and Gernatt Asphalt Products; and

**FURTHER BE IT RESOLVED**, that Town Supervisor Mary Hannon is authorized to sign on behalf of the Town of Sardinia and the Town Board of the Town of Sardinia the documents necessary to effectuate the withdrawal from the Article 78 Proceeding and its appeal; and

**AND FURTHER BE IT RESOLVED**, that Special Counsel Brian Downey is directed to take the necessary actions to effectuate the withdrawal from said Article 78 Proceeding and its appeal.

Upon roll call vote: Earl, aye, Miller, aye, Montgomery, aye, Uhteg, no, Hannon, aye. So resolved, 4 ayes, 1 no.

Supervisor Hannon stated that the next item is to pass a resolution selecting an auditor to prepare a report on the Town's finances in fiscal year 2009. The following resolution, to be known as Resolution #5 of 2010 was introduced by Montgomery, seconded by Earl:

**RESOLUTION #5 - 2010 Selecting Auditor**

**WHEREAS**, the 2010 Town budget specifically included funds for the Town to retain an auditor to prepare a review of the 2009 expenditures and finances of the Town; and,

**WHEREAS**, the current Supervisor is required to file and certify an annual report with the Office of Comptroller within 60 days of the close of the fiscal year; and,

**WHEREAS**, it has been a long-settled practice for the Town Board at its organizational meeting to retain and hire the auditor to review the prior year's financial transactions; and,

**WHEREAS**, the prior Town Board in a departure from this well-settled practice, and in contravention of the 2009 and 2010 budgets, amended the 2009 budget and entered into a contract with Freed Maxick & Battaglia, PC to perform the fiscal year 2009 audit and said contract was on a time and effort basis not to exceed \$7,100; and,

**WHEREAS**, upon assuming office of Supervisor, Supervisor Hannon discovered that certain records of the Town were not maintained on the Town's computer system but had been transferred to an outside computer;

**WHEREAS**, Supervisor Hannon is investigating this transfer of town records and to obtain their return; and,

**WHEREAS**, in light of the forgoing the current Town Board deems it advisable to retain its own auditor to review the Town's 2009 finances and to prepare and audit.

**NOW THEREFORE BE IT RESOLVED** that the Town shall not utilize the service of Freed Maxick & Battaglia PC to conduct an audit of fiscal year 2009 audit and the Town hereby appoints Drescher & Malecki to prepare the necessary audit of fiscal year 2009 transactions at a rate of \$75.00 per hour, not to exceed \$7,100.00.

Upon roll call vote: Earl, aye, Miller, aye, Montgomery, aye, Uhteg, aye, Hannon, aye. So resolved, 5 ayes, 0 noes.

Councilman Uhteg asked what is missing from the computer, and Supervisor Hannon stated that she would not like to

discuss it in public. Councilman Earl stated that when trying to open a file, the message stated it was corrupted. Mr. Uhteg asked if that meant that it was missing, and the Supervisor stated that computer was empty of everything.

Supervisor Hannon stated that the next resolution is in response to a request from Randall and Vicki Mayer for use of a room in the Town Hall/Community Center one night per week for a Bible study class. The matter was discussed and the following resolution, to be known as Resolution #6 of 2010 was introduced by Uhteg, seconded by Montgomery:

**RESOLUTION #6 – 2010 Approving Use of the Community Center Cafeteria By Randy and Vicki Mayer For Bible Study Group**

**WHEREAS**, Randy and Vick Mayer have requested that the Town make available the Cafeteria in the Community Center for a period of three months to conduct a weekly bible study class; and,

**WHEREAS**, the Town Attorney has advised the Town that, if it makes a public building available to other groups for regular weekly meetings, it may not decline a request based on grounds that the stated purpose of the meetings is to conduct bible study a is required to provide the same terms of access as provided to non-religious entities; and,

**NOW THEREFORE BE IT RESOLVED**, that the Town authorizes Randy and Vicki Mayer to use the Cafeteria on Thursday evenings for the next three months to hold regular weekly meetings. The Town Board further finds that the intended use is for non-profit purposes and waives the requirement for the payment of fees for rental of the Cafeteria.

Upon roll call vote: Earl, aye, Miller, aye, Montgomery, aye, Uhteg, aye, Hannon, aye. So resolved, 5 ayes, 0 noes.

The Supervisor stated that the next resolution is for an H1N1 flu vaccination clinic. The following resolution, to be known as Resolution #7 of 2010 was moved for adoption by Earl, seconded by Miller”

**RESOLUTION #7 - 2010 Approving Use of the Community Center by The Erie County Department of Health for A Flu Vaccination Clinic**

**WHEREAS**, the Erie County Department of Health has requested that the Town make available the Community Center for a Flu Vaccination Clinic and it is submitted that it is in the interests of the residents of the Town to hold a vaccination clinic within the Town.

**NOW THEREFORE BE IT RESOLVED THAT**, the Town approves the use of the Community Center by the Erie County for the purposes of holding a vaccination clinic within the Town, the date and times to be determined by the Erie County Department of Health in consultation with the Town Clerk.

It was also noted that a date has been set, and it is January 21, 2010 from 3 to 8 PM. Upon roll call vote: Earl, aye, Miller, aye, Montgomery, aye, Uhteg, aye, Hannon, aye. So resolved, 5 ayes, 0 noes.

Supervisor Hannon stated that the next resolution is to authorize Town Board members to attend training sessions, offered by the Association of Towns. She stated that she and Councilmen Earl, Montgomery, and Miller will be attending in Rochester on January 13, 14, and 15, 2010. Councilman Uhteg stated he wished he had known they were going. The Supervisor stated it was in the Town Topics magazine, and is also being offered in New York City, but that she and the other Board members had chosen Rochester because it is much cheaper to attend there. Supervisor Hannon stated he could consider a later session. The following resolution, to be known as Resolution #8 of 2010 was then introduced by Montgomery, seconded by Earl:

**RESOLUTION #8 – 2010 Approving Town Board Members To Attend Training Provided by the Association of Towns of the State of New York**

**WHEREAS**, the Association of Towns of the State of New York is offering its annual training for elected officials in Rochester New York on January 13, 14, and 15, 2010; and,

**WHEREAS**, it is submitted that it is in the best interests of the Town for the elected officials to attend this conference;

**WHEREAS**, the costs of said training is \$200 per person for the three day training;

**NOW THEREFORE BE IT RESOLVED**, that, the following Board members are authorized to attend the Association of Towns’ training program being held in Rochester New York: Mary Hannon, Dave Montgomery, Daniel Miller, Cheryl Earl. The Town shall pay reasonable hotel expenses for three nights and for any meals, not covered by the registration fee, in accordance with the Town’s meal reimbursement policy,

as well as mileage to and from Rochester.

Upon roll call vote: Earl, aye, Miller, aye, Montgomery, aye, Uhteg, aye, Hannon, aye. So resolved, 5 ayes, 0 noes.

During the Public Comment Period:

Sheila Vrenna of Savage Rd. stated that the residents of Hutchinson Rd. are asking for a streetlight at the end of the street, which is a dead end. She stated they are having trouble with vandalism and feel this would help. She also stated that residents on Rt. 39 are asking for a School Zone speed limit in the area of Early Bird Nursery School since the bus stops there for quite a while, and trucks come down the hill very fast. The Highway Superintendent stated he would contact the State DOT to see if they could do something.

Bill Connors of Meyers Rd. suggested that the Board use the sound system, stating it is available. He was informed that it is no longer available to the Town.

John Schiener of West Schutt Rd. made his own suggestions for several positions filled during the Organizational meeting, including that Ron Kenyon should be appointed Disaster Coordinator. He also suggested that Councilman Uhteg should be appointed to more Board Committee assignments, and made several other suggestions, including the monthly meeting time, commented on Special Counsel, stating that the Gernatt Appeal should be allowed to run its course, and stated that State bid can be more expensive than regular bid.

David Malachowski of Deerfield Dr. commented on the lighting of the Flag, stating that it is recommended but not mandatory,. He also stated his concerns over the higher attorney fees.

Denise Schiener of West Schutt Rd. asked the Supervisor to bring the Warrant and Abstract totals to future meetings, stating she likes to write them down and keep track. The Supervisor apologized and stated she would do so, and the Clerk suggested that Ms. Schiener call her office for the totals, as they are always available under FOIL.

There being no further business to bring before the Board, on a motion by Montgomery, seconded by Miller, the meeting was adjourned at 7:54 PM. Carried, 5 ayes, 0 noes.

Respectfully Submitted,

Town Clerk

