

2-11-2009 – REGULAR TOWN BOARD MEETING

Present:

Councilman Mary L. Hannon
Councilman David L. Montgomery
Councilman Heather M. Phelps
Councilman Norman J. Uhteg
Supervisor Kathleen M. Balus

Also Present:

Attorney for the Town Anthony DiFilippo, III
Highway Superintendent Walter J. Baker
Town Clerk Betsy A. Marsh
Approx. 45 guests

The Sardinia Town Board held its regularly scheduled Board meeting for February on February 11, 2009 at the Sardinia Town Hall/Community Center. Supervisor Balus called the meeting to order at 7:30 PM, with a Moment of Silence and the Pledge to the Flag.

The Town Clerk has submitted the minutes of the January 14, 2009 Organizational Meeting, the January 14, 2009 Regular Town Board meeting, and the minutes of the January 23, 2009 Special Meeting concerning the acceptance of absentee ballots for the Firemen's Service Award Program referendum. Councilman Hannon noted that on the last page of the Organizational meeting minutes, she had stated that she felt the question period of the meetings should be put back into the agenda after New Business, but that she had not stated it would be at the discretion of the person running the meeting, and based on the availability of time, but that the Supervisor had added those stipulations. The Clerk stated she would make that correction. These minutes were then approved and filed, with the correction, on a motion by Phelps, seconded by Uhteg, and carried, 5 ayes, 0 noes.

The Supervisor's report included:

- The Community Cause Committee is looking for volunteers to head up this year's committee. Kara Kane is now asking people to bring items of food and clothing that she will then take to the Trading Post in Springville, but they are still looking for cookies, coffee, and other refreshments.
- A report on the Audit of Waste Management will be presented at the March 2009 Board Meeting; Mr. Lewis is out of Town.
- The Supervisor stated she had met with Councilman Uhteg, Tom Lewis, and Dick Sturgis, both of Waste Management to review the Host Agreement, water testing and payments in 2008.
- She also reported that she attended the Public Informational meetings concerning the proposed Firemen's Service Award program with Don Brooks, Tomkins Insurance Agency and Damien Ulatowski to present and explain the program to residents of Sardinia.

Requests included:

The Supervisor stated she would like to form a Committee to meet with TVGA to discuss the scope of the Feasibility Study for the Parks and the Community Center, including parking and green space, possible skating rink, and where they could go. She suggested that the committee could include perhaps Darren Farthing of the Planning Board, Councilman Phelps and Uhteg from the Culture and Recreation Committee, Laura Marshall from the Tiny Tots Rec program, etc. She stated that Judge Vossler has requested a phone line for a credit cards machine, and there have been other requests for one ring on the phone answering system. The Clerk informed that they had gone to the Avaya Support website and downloaded instructions for switching the system to one ring, but they were having trouble getting it to do so. She stated she would Call Avaya tomorrow. Councilman Uhteg stated he would call Verizon about the credit card phone line.

Discussion items included:

The Homestead Exemption discussed at the last meeting. The Supervisor stated that resident homeowners would not have to pay the taxes, but businesses would. However, she has been informed by the NYS Comptroller's office that in order to establish a Homestead Exemption, the Town must do a Re-Val update of all properties. The Supervisor stated that she has absolutely no interest in doing a Re-Val, nor does this Town Board, and therefore, the exemption is not something she is interested in.

The Supervisor stated that Dennis Dick is doing an amazing job as caretaker, and goes above and beyond in his duties. She asked if anyone on the Board had any interest in giving him a raise, stating that he is being paid \$9.00 per hour for the cleaning portion of his job. Councilman Hannon stated she was absolutely interested in raising his pay, sating that she had suggested it last month, but no one else was interested. The Supervisor asked the Board if they felt that \$13.00 per hour was fair, and on a motion by Balus, seconded by Uhteg, Dennis Dick will be paid \$13.00 per hour as the building Caretaker. Carried, 5 ayes, 0 noes.

Concerning the upcoming referendum vote on the Firemen's Service Award Program, the Board of Elections has now decided that if the Town wants to use a voting machine for the vote, the Board must adopt a resolution to do so, and

the Highway Department would have to pick up the machine in Buffalo. The consensus of the Board was that the referendum should be done on a voting machine, and the following resolution, to be known as Resolution #7 of 2009, was introduced by Montgomery, seconded by Uhteg:

RESOLUTION #7 – 2009

RESOLVED, the Sardinia Town Board hereby directs that the Referendum vote, to be held on February 24, 2009, to determine whether or not to establish a Firemen's Service Award Program, should be conducted on a voting machine, rather than paper ballots.

Upon roll call vote, Hannon, aye, Montgomery, aye, Phelps, Uhteg, aye, Balus, aye. So Resolved, 5 ayes, 0 noes.

Councilman Phelps stated that only 14 people have signed up to ride the bus for the Splash Lagoon field trip.

Councilman Phelps reported that only 14 people have signed up to ride the bus for the Splash Lagoon recreation field trip, and noted that the matter is on the agenda later in the meeting; it will be discussed at that time.

Councilman Uhteg reported that the Highway Contract has now been executed, and that the Old Town Hall ceiling is now being dry walled and is almost complete. Councilman Hannon asked if there was a copy of an asbestos report on that building, and stated that what she has been given is an evaluation, not asbestos report. Councilman Uhteg stated that one set of tiles may be asbestos, but is not airborne. Councilman Hannon stated that if you have a public building, you need an asbestos report, and stated she is very concerned about the liability to the Town. Mr. Uhteg stated that no one is guaranteeing that there is none, but that experienced people say they don't feel there is. Supervisor Balus stated she has spoken to Eric Slocum of Arcade/Knight Agency, the Town's insurance carrier, who has inspected and feels that the risk is manageable. Councilman Hannon stated that if they are satisfied, she will have to be. She also stated that OSHA Regulations State that anyone working above 10 feet makes the owner liable and it is strictly the owner's liability. She stated she feels the Town needs a "hold harmless" clause. Attorney DiFilippo stated that he recommended previously that Slocum be contacted and the Town should be named as an additional insured on the contractor's policy. Councilman Uhteg stated that the Town had volunteer work done in the gym a few years ago, and in the Park, and stated that is what insurance is for. The matter was discussed further and no action was taken.

Councilman Hannon stated that the Rural Transit Service has sent a letter asking for support for funding for their program, and she stated she has prepared a letter on behalf of the Board asking for support for New Freedom funding for that Service. On a motion by Phelps, seconded by Montgomery, Supervisor Balus will sign and send the letter of support for the Rural Transit Service. Carried, 5 ayes, 0 noes.

Councilman Hannon stated that she has worked on a rental policy for the Town Hall/Community Center, which was then discussed by the Board. On a motion by Hannon, seconded by Uhteg, the rental policy will be as follows:

- Rental will be allowed by Board approval only
- Alcohol or food preparation will be allowed only upon Board approval
- The cost of Events with 40 or more people in attendance will be \$100.00 plus a \$50.00 Security Deposit
- The cost of events for under 40 people will be \$25.00
- Town Residents only may rent the facility.

The policy was adopted by a vote of 5 ayes, 0 noes.

Councilman Hannon stated that she has contacted the Heating and Energy Assistance Program, or HEAP, and they would be willing to come to the Town Hall/Community Center on February 26th, from 9 AM until 4 PM to sign people up for the program. On a motion by Balus, seconded by Phelps, the Town will sponsor having the HEAP program come in and assist our residents on Thursday, February 26th from 9:00 AM until 4:00 PM. Carried, 5 ayes, 0 noes.

Councilman Montgomery reported on the House numbering project, stating that the Town needs to change the current Ordinance, and he has come up with some points to include. He stated that the Town could purchase and install signs for all existing buildings, and all future new builds would be charged for the signs, at a cost of about \$11.00. The Board then discussed where the sign would be installed. It was the consensus that uniformity was the best option. Councilman Uhteg stated that some municipalities were having trouble getting right-of-ways for their numberings. Councilman Hannon stated the numbers would have to be visible from the road, which may rule out putting them on the building in many cases. Attorney DiFilippo stated that the CEO could be the one who approves the placement of the signs. Councilman Uhteg agreed that this would be the best idea. The Supervisor asked Councilman Montgomery to, based on these comments, continue to work on the wording of an ordinance and contact Senator Volker's office for possible funding. It was suggested that the initial sign installation could be the responsibility of the homeowner, and if they cannot due to age or infirmity, perhaps the Fire Company could assist. A penalty for not complying with the Ordinance was also discussed. Mr. Montgomery stated that the price quote will be expiring soon. He stated that the Cattaraugus County Dept. of Public Works had the best price, with the sign costing just over \$5.00 each and the posts costing \$5.60 each. The Supervisor asked Mr. Montgomery to let the attorney know when he has the wording for the ordinance, and stated that at the next meeting, the Board could schedule a public hearing.

The Attorney for the Town Anthony DiFilippo, III then reported on legal matters affecting the Town. He stated that, concerning the Waste management Zoning Litigation, a non-jury trial is scheduled for the first week in September 2009, and he will file motions at the appropriate time. He stated that the Town's proposed Appeal has now been submitted to the Concerned Citizens attorney in the Waste Management Co-generation plant matter. He stated that in the Gernatt matter, the record for appeal must be agreed upon. Mr. DiFilippo stated that there are still a couple of pending accident matters being handled by the insurance company, including the Hornberger and West matters. Attorney DiFilippo stated that he drafted the proposed legislation on the house numbering signs; was on hand for the informational meeting concerning the Firefighters Service Award referendum; and has researched the ZBA term matter, which will be discussed later in the meeting. Councilman Hannon stated she had a question on the referendum ballot wording. She stated that

there is no mention of the 10 year limit on the annual payments of \$97,000.00, and felt that this was misleading. She stated that at the informational meeting, Damien Ulatowski responded to the question by saying that it would be unethical for him to take \$97,000.00 past the ten year time period, but did not say it would be illegal. Attorney DiFilippo stated that the referendum wording is in order, that he specifically asked Mr. Ulatowski, who okayed the wording. Mr. DiFilippo stated he had reviewed the Town of Wales referendum on their Service Award Program, which had similar wording. He stated that the Town cannot legally pay beyond the 10 years, and he is satisfied that the referendum and the resolution are both correct.

The Town Clerk's monthly report for the month of January 2009 was submitted, as was the Code Enforcement Officer's report.

Highway Superintendent Walter Baker reported on Highway Dept. activity for the month of January 2009. He stated that it has been a busy couple of months, and that in January, his department used 1700 gallons of diesel fuel. He stated he has put together a "wish list" of needed equipment. He stated there is a large repair bill for the transmission on the pickup truck, and the axle went on the large plow truck. The Highway Superintendent stated there is now water leaking from the block of the other plow truck. He stated they are trying to hold it together but he doesn't think it will be possible. Mr. Baker stated that this winter has beaten the hell out of the equipment for the last two and a half months solid. He stated that replacing the Mack truck would be priority #1, and stated that it would cost approximately \$190,000.00 for the truck, plow package, and sander on State bid. He stated it would be another International. Mr. Baker stated that this is the truck that was purchased from the Town of Concord, and has over 100,000 miles on it. He stated that hopefully, we can have the new one by fall. Supervisor Balus stated she was referring the matter to Councilmen Hannon and Montgomery. Councilman Montgomery stated that he and Councilman Hannon had met with Mr. Baker at the Highway Garage, and stated that the truck in question is in sad shape. Supervisor Balus directed them to bring back a list of what it will cost to repair the vehicle. Ms. Hannon stated that it will cost \$18,000.00 to repair the truck, and it will need more next year to keep it running.

The Planning Board minutes has submitted the minutes of its December 17th, January 7th, and Jan 21st meetings.

On a motion by Phelps, seconded by Hannon, all reports and minutes were received and filed, carried 5 ayes, 0 noes.

After review by the Board, General Fund Warrant #2 of 2009, including vouchers # through # , and totaling \$; and Highway Fund Abstract #2 of 2009, including vouchers # through # , and totaling \$, were approved for payment on a motion by Phelps, seconded by Uhteg, and carried, 5 ayes, 0 noes. The Supervisor wanted to note for the record that there is another Schroeder Joseph legal bill on the Warrant in the amount of almost \$10,000.00 for the months of May through September. She stated that for the year 2000, legal bills totaled \$105,000, \$55,000.00 of which was for Attorney DiFilippo and Seeger, and \$50,000.00 for Schroeder Joseph. She stated that in 2008, the Town went over budget for legal fees. Councilman Hannon suggested that if the Town has problems with the ZBA attorneys, perhaps they should not appeal the court ruling.

Under Privilege of the Floor:

Meals on Wheels volunteer driver Richard Rogers stated he took exception to the cheap shot about Meals on Wheels that was made at the last meeting. He stated that he would like to know how it was illegal to give gasoline to the volunteer drivers when the Town Board approved it. He suggested that the total amount paid for gasoline for the volunteers in a year should be compared to the Town Board members' pay. Mr. Rogers stated that this is the first time he has ever heard a negative comment about the Meals on Wheels Program. Supervisor Balus responded that she had simply stated the fact that they get mileage reimbursements.

Town resident Gene Parzych commented on the Firemen's Service Award Program, stating that there was no emergency need, so he does not understand the short time frame for the referendum vote. He stated he does not feel the voters have been given enough time to know what's going on, and asked what is the rush. He also asked why the Board members who will benefit from the program did not abstain from the vote. Mr. Parzych stated he does not think anyone doesn't feel the Firemen deserve something, but feels that this has been pushed through too quickly.

Chaffee resident Ronald Kenyon commented on the house numbering project, stating that he can provide names and phone numbers of contacts in Allegany and Cattaraugus County that have dealt with similar programs. He stated that the numbers must be uniform and all in the same place, that this is the critical part. He also commented that if Highway Superintendent Baker says we need a new truck, we probably do.

There were no further requests for the Privilege of the Floor.

The Supervisor stated that Councilman Phelps has requested that funds be approved for the scheduled Recreation trip to Slash Lagoon. On a motion by Uhteg, seconded by Phelps, the Board approved an amount not to exceed \$600 for the purchase of tickets for entry. Carried, 5 ayes, 0 noes. It was noted that the bus will not be needed.

Supervisor Balus stated that there is a vacancy on the Planning Board, and that she and Councilman Uhteg have recommended that Nancy Spink fill the term ending December 31, 2015. The following resolution, to be known as Resolution #8 of 2009, was introduced by Phelps, seconded by Uhteg:

RESOLUTION #8 – 2009

RESOLVED, the Sardinia Town Board hereby appoints Nancy Spink to the Sardinia Planning Board to fill the term ending December 31, 2015.

Upon roll call vote, Hannon, no, Montgomery, no, Phelps, aye, Uhteg, aye, Balus, aye. So resolved. The Board thanked Robert Church for his service.

Supervisor Balus stated that a resolution is needed to correct an error in the Organizational Meeting for ZBA Positions and term endings. She explained that the terms and the people who filled them were accidentally transposed in the 2004 Organizational Minutes. She stated that Richard Burke, Chairman of the ZBA resigned, and Michael Hannon, who has already served one year, was given the Chairmanship, while Lew Markle was appointed to fill the term of Mr. Burke. She stated that it has not been an issue until now, when the term now expires. The following resolution, to be known as Resolution #9 of 2009 was then introduced by Phelps, seconded by Uhteg:

RESOLUTION #9 – 2009

WHEREAS, the Town Board of the Town of Sardinia has reviewed minutes of its past appointments to the Zoning Board of Appeals to determine the name and term of each member, and

WHEREAS, the Town Board, consistent with the provisions of Town Law, appointed David Malachowski as member of the Zoning Board of Appeals on January 14, 2009, to fill the position left vacant by the member whose term expired on December 31, 2008, and

WHEREAS, at a Regular Town Board meeting on February 13, 2002, Michael Hannon was appointed to the Zoning Board of Appeals to fill the unexpired term of Ronald H. Kenyon, which term was set to expire on December 31, 2003; and

WHEREAS, at a Special Town Board Meeting on March 18, 2003, Lewis Markle was appointed to the Zoning Board of Appeals to fill the unexpired term of Richard Burke, which term was set to expire on December 31, 2004; and

WHEREAS, after Mr. Hannon's term expired on December 31, 2003, and at its meeting, the Town Board reappointed Mr. Hannon, for the full five year term permitted by law, which expired on December 31, 2008; and

WHEREAS, the minutes erroneously state Mr. Hannon's term would expire on December 31, 2009, when in fact it expired on December 31, 2008; and

WHEREAS, members of the Zoning Board of Appeals serve maximum 5-year terms consistent with the provisions of the New York State Town Law; and

WHEREAS, the correct and actual term expiration for Zoning Board of Appeals' member Michael Hannon was December 31, 2008 and the correct and accurate term of Lewis Markle is set to expire on December 31, 2009; it is hereby

RESOLVED, that David Malachowski was appointed to the Zoning Board of Appeals on January 14, 2009 to fill the expired term formerly held by Michael Hannon, which term expired on December 31, 2008, and that Lewis Markle remains a member on the Zoning Board of Appeals, term expiring December 31, 2009.

Upon roll call vote, Hannon, abstained, Montgomery, abstained, Phelps, aye, Uhteg, aye, Balus, aye. So resolved. Councilman Hannon commented that she feels that this is a strategy for the Gernatt case, and stated that the Board is opening a door that is endless. She stated that the Gernatt Appeal decision was a compromise, and that they are opening the door.

Supervisor Balus stated she is in receipt of a Resignation Letter from the Town Prosecutor Jeff Markello. She stated that she and Councilman Uhteg have interviewed a qualified attorney to fill the position to insure that there is not a lapse in February, as well as to avoid a back up of cases. The Supervisor stated they have recommended that the position be filled for a 90-day trial period by Attorney Deborah Carr-Hoagland, at a rate of \$325 per month. Supervisor Balus stated that she and Mr. Uhteg had interviewed Ms. Carr-Hoagland, and two more resumes had come in after the interview period. On a motion by Phelps, seconded by Uhteg, Deborah Carr-Hoagland was appointed as Town Prosecutor for a 90m day trial period, at a rate of \$325.00 per month. Carried, with Hannon and Montgomery voting no, and Phelps, Uhteg, and Balus voting aye. Councilmen Hannon and Montgomery stated that the reason they voted no was because they feel that the other two applicants should have been interviewed and considered.

The Town Clerk has informed that, according to Board of Elections Commissioner Ralph Mohr, the Town must hold a Voter registration before the Special Town election on the Firemen's Service Award Program. The following resolution, to be known as Resolution #10 of 2009, was introduced by Uhteg, seconded by Phelps:

RESOLUTION #10 – 2009

RESOLVED, the Sardinia Ton Board hereby sets Saturday, February 14, 2009 as a Local Voter Registration Day, to be held at the Town Hall/Community Center Cafeteria from 12:00 noon until 4:00 PM; two elections inspectors will be employed, one from each political party, and will be paid \$50.00 for the day.

Upon roll call vote, Hannon, aye, Montgomery, aye, Phelps, aye, Uhteg, aye, Balus, aye. So resolved.

During the question period:

Gene Parzych commented that he feels the referendum vote should be held in November.

Michael Hannon asked why Lew Markle had been informed two weeks ago that there might be a problem with the terms of office, but that he had not been informed or asked by anyone.

Sheila Vrenna asked when absentee ballots need to be back for the Special Election. The Town Clerk responded that

the law states no absentee ballot received after 5 PM on the day of the election shall be counted. Councilman Hannon asked if there will be a grace period for the absentee ballots, as during regular elections, where they must be postmarked the day before the election. The Clerk answered that this is what the law states in the case of Special Town elections. Councilman Uhteg stated that he had no interest in extending the time limit, and felt they should adhere to what the Clerk has already set up.

Councilman Montgomery stated that someone should pare down the amount of numbers in the Town, and asked who assigned the 5 digit house numbers. It was explained that the Erie County Emergency 9-1-1 system designated the numbering range.

The Supervisor announced that the next scheduled meetings will be held as follows:

- The Regular Town Board Meeting will be held March 11, 2009 at 7:30 PM
- The next Planning Board meetings will be held on January 21, 2009 at 7:30 PM and February 4, 2009 at 7:30 PM

Other Announcements included:

- The Public Referendum on the Firemen's Service Award will be held at the Town Hall/ Community Center on February 24, 2009; Polls open 6AM until 9:00 PM
- Voter Registration Day will be held on Saturday February 14th from 12:00 noon until 4:00 PM at the Town Hall/Community Center
- The C-S Fire Co. Pancake Breakfast, Sponsored by Kiwanis will be held on Sunday, March 22nd from 8:00 AM until 1:00 PM at the Sardinia Fire Hall

There being no further business to come before the Board, on a motion by Phelps, seconded by Uhteg, the meeting was adjourned at 9:11 PM, carried 5 ayes, 0 noes.

Respectfully Submitted,

Town Clerk

