

**12-30-2008 - 2008 END OF THE YEAR MEETING**

Present:

Councilman Ronald L. Kenyon  
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. 25 guests

The Sardinia Town Board held its 2008 End of the Year meeting on December 30, 2008, at the Town Hall/Community Center. The Supervisor called the meeting to order at 7:30 PM with the Pledge to the Flag. She stated that the purpose of the End of the Year Meeting is to pay the end of the year bills, and to wrap up any business that has been worked on through out the year.

Supervisor Balus stated that Highway Superintendent Walter Baker has spoken to her regarding the Town pool. Mr. Baker stated there are new Federal regulations now in place, which have to do with pool drainage systems. He stated he has spoke with the Erie County Health Dept. and was informed that any new pools or renovations will need to be up to the new standards, and the State and County will be involved. Mr. Baker stated he will be attending a conference on the matter in late January. He stated that if the Town does not renovate the pool, it may be "grandfathered". The Supervisor asked if we would be "grandfathered" except for the drains, and Mr. Baker stated that he believes that as long as the pool has two drains, it will be legal. He stated he will know more after the seminar. Supervisor Balus stated if the Town gets the Block grant for pool renovations, we may be able to address it, and if it does not get the grant, the Town may have to address it another way. Mr. Baker stated it could be quite costly.

Concerning the Highway Employees' contract, Councilman Uhteg stated they are still talking, and the Employees are aware it will not be completed by January 1<sup>st</sup>. He stated that the contract, when executed, will be retroactive to the first of the year. Supervisor Balus stated she was hoping to act on it tonight, but they will hopefully sign it on January 14<sup>th</sup>.

The Supervisor then started discussion on the Service Award Program for the Chaffee-Sardinia Fire Company. She stated the Town has been working on this program for a least a couple of years. She stated it may appear to some that they are trying to squeeze a vote on the issue before a new Board gets seated. She stated this is not the case. She stated that they had wanted to vote on it at the last meeting, but the length of time of the program had been in question. Supervisor Balus stated that the 20-year plan would cost approximately \$72,000.00 per year, the 10-year plan would cost approximately \$97,000.00 per year, and the 5-year plan would cost approximately \$150,000.00. She stated that she thinks the Board is now looking at the difference between the 10-year plan at approximately \$100,000.00 per year, and the 5-year plan at approximately \$150,000.00 per year, which would save the Town approximately \$250,000.00, and would be done in 5 years. The Supervisor wanted to make it clear that this vote is to send the plan to the voters, and which plan to send to the voters that would be the best for the Town and the Fire Company. She then opened the floor to discussion by Board members. Councilman Montgomery stated that there is one option missing, that of a one-time payment. He sated that he has contacted Tompkins Insurance agent Donald Brooks, who informed him that if the Town were to pay a one lump sum buy-out, it would cost \$532,000.00, rather than almost \$1 million. Supervisor Balus stated that she had discussed the buy-out with Attorney DiFilippo and a couple of other Board members, and thought that a one time deal would be something that the voters would not be able to grasp. She stated that she had a concern that the public would not understand the terms like the Board does, and they would not support the expenditure of almost \$600,000.00 in one lump sum, and it would not fly with the public. She stated this is something we want to see for the Firemen, and if it were broken down over more years it would be a better option for the voters. Mr. Montgomery stated he does not think that people understand it is going to cost \$30,000.00, plus \$2,200 for administration costs, each year even after the large payments are done, for your children and grandchildren to pay. Councilman Montgomery stated that personally, he feels the Town should take over the administration of the plan. He stated that the Firemen are entitled to something, but feels that the rest of the taxpayers feel they deserve something, too. He stated that the voters are not in the mood to pay \$1 million now. Supervisor Balus stated that the Town has a total annual budget of \$1.9 million, and \$30,000.00 per year is a pretty small, insignificant amount of money when our budget is \$1.9 million. Councilman Kenyon stated that he is appointed, but there is no restriction to his voting because he is not elected. He also stated that he feels that all the "conflict of interest" questions are pointed at he and Councilman Uhteg. He stated that if there is a conflict of interest because they have chosen to serve their community in more than one way, then he guesses there is a problem. He stated he is absolutely behind this program. He feels it is good and it is right, but he fears it is going to become a political circus. Mr. Kenyon stated nobody is trying to shove anything down anyone's throats. He stated he is for it, he will vote for it if the vote comes tonight, but he wishes it could be voted on in January so that no one can say it was pushed through. Mr. Kenyon reminded that this vote is only to send it through to the voters. Councilman Uhteg replied to Councilman Montgomery that if the Town runs the program, it will still have to pay for an administrator and it will be expensive. He stated that the State runs the program and the insurance company handles the books, including the point system. He stated that the whole Town gets the benefit of the Fire Company, including the pumping of basements like this past weekend. Mr. Uhteg stated that he feels the Fire Company should be rewarded, there is also a lot of time put in for training and work details and they should get a little thank you. Councilman Phelps stated she agrees with Mr. Kenyon and Mr. Uhteg. She stated her husband is a fireman and she knows what it is like to have that alarm go off at 2:00 in the morning. She stated she doesn't think that anyone here is against it, and feels that they need a pat on the back and a thank you. Councilman Uhteg stated it is only \$400.00 per month and if it entices more people to join, it is a good thing. Councilman Phelps stated that the Firemen are not qualified automatically, there is a point system and they need to earn points in order to be eligible and earn their years of eligibility. Councilman Montgomery stated that there have been statewide surveys which show that these programs do not bring in new members. Mr. Uhteg stated that in some companies, it does, and it boosts the morale. Councilman Montgomery also stated that the Fire Company should be providing the Town with a monthly report of calls, and that the taxpayers are entitled to that report. The Supervisor stated that she would be in favor of that. Fire Company President Danny Heineman stated he had spoken

to Councilman Montgomery about the Town running the program, and he has since spoken to the State, and was told that towns cannot run the program. Supervisor Balus stated she wanted to make it clear that she had allowed Mr. Heineman's comment because he is the President of the Fire Company, and will now allow Mary Hannon's question because she is the incoming Councilman, but she is not allowing other questions or comments this evening. Mrs. Hannon stated she is under the assumption that the Fire Company has money, and asked how much. Fire Company Treasurer John Schiener stated that the Company has \$280,000.00 in reserves, but the next anticipated truck purchase is estimated at \$180,000.00. Ms. Hannon suggested that the Town purchase the equipment and the Fire Company pay for the Service Award Program. Supervisor Balus stated if the Town had to hire firemen, it would cost millions. She stated that our firemen are getting older. She stated if it were just that the program were just for retention of firemen, amen. She stated she doesn't feel the Town comprehends what would happen if there were not enough firemen, how much it would cost. She stated that the Fire Company saved her father's life about 30 years ago, and for that she will be eternally grateful. The Supervisor then stated that the Board will move on and decide which one of the plans they will move forward with: the 5-year plan at \$150,000.00, saving \$250,000.00 from the 10-year program; the 10-year program at \$100,000.00; or the 20-year program at \$75,000.00, which she doesn't feel anyone is interested in. Councilman Uhteg stated there is a large saving, approximately \$697,000.00, from the 20-year plan. He also felt that the 10-year plan of \$97,000.00 would be more agreeable to the voters than the \$600,000.00 buy-out proposed by Councilman Montgomery. Mr. Uhteg stated he was more comfortable with the 10-year plan. Supervisor Balus stated she feels that the voters need to be informed, which is the Board's responsibility. Councilman Kenyon stated that if we can sell the 5-year plan, we'd save a lot of money, and stated for him, it is between the 5-year and the 10-year plans. Councilman Montgomery stated he is for the buy-out. Supervisor Balus stated that she feels that if people see the \$600,000.00, they would freak out and wouldn't understand. She feels it is more palatable to go with the 5 or 10 year plan. Councilman Phelps felt that the 10-year plan would be more palatable to the public. Attorney DiFilippo stated that in order for the plan to start this year, the referendum must be held within 90 days of January 1, 2008. Dates were discussed for informational meetings and a special election. Councilman Kenyon felt that having informational meetings twice would be desirable. The dates of Thursday, February 5<sup>th</sup> at 7:00 PM and Saturday February 7<sup>th</sup> at 10:00 AM were set for informational meetings. They then scheduled Tuesday, February 24<sup>th</sup>, 2009, at the Town Hall Community Center from noon until 9:00 PM for the special election on the Firemen's Service Award Program. Attorney DiFilippo asked the Town Clerk if disclosure statements had been received from Councilman Kenyon and Councilman Uhteg, disclosing their membership in the Fire Company, and from Councilman Phelps, disclosing that her husband is a member of the Fire Company. The Clerk stated she had received all three of the disclosure statements. Mr. DiFilippo stated they will need to be made a part of the official record. The following resolution, to be known as Resolution # 52 of 2008 was then introduced by Phelps, seconded by Uhteg:

#### **RESOLUTION #52 - 2008**

**RESOLVED**, the **TOWN OF SARDINIA** shall hold a mandatory referendum for the eligible voters of the **TOWN OF SARDINIA** to determine whether the **TOWN BOARD** shall establish a Service Award Program as provided in Section 216 of General Municipal Law.

**RESOLVED**, that this Service Award Program shall be administered by the **Town Board**.

**RESOLVED**, the type of Service Award Program shall be a Defined Benefit Program as outlined in Section 219 of General Municipal Law.

**RESOLVED**, the normal entitlement age for plan participants shall be **sixty-five (65)** with at least **one (1)** year of active plan participation.

**RESOLVED**, the estimated benefit of the Service Award Program shall be **\$20.00** multiplied by years of service. Past Service shall be limited to the **five (5)** calendar years immediately preceding the adoption of the Service Award Program. Total years of service shall not exceed **twenty (20)** years. Years of Service shall be calculated as of **January 1, 2009**, the effective date of the Program.

**RESOLVED**, the estimated annual cost of the Service Award Program shall be **\$97,522.39** based on the proposed membership consisting of **44** participants which averages **\$2,216.42** per participant.

**RESOLVED**, the first year administration fee to be \$2,224.00 plus a one time charge of \$750.00 for plan documents.

**RESOLVED**, contributions shall be made at least annually and shall be amortized over a **ten (10)** year period.

**RESOLVED**, the minimum age to participate in the Service Award Program shall be **eighteen (18)**.

**RESOLVED**, the program shall include a Death Benefit of the greater of **\$10,000.00** or the present value of accrued benefit at the time of death. The program shall also carry a disability benefit that will be equal to the present value of accrued benefit at the time of disability.

**RESOLVED**, that a point system shall be constructed pursuant to Section 217 of General Municipal Law. A year of firefighting service shall be credited under the Service Award Program for each calendar year commencing on **January 1, 2009** in which an active and qualifying firefighter accumulates at least fifty (50) points.

**RESOLVED**, that a participant shall be 100% vested upon completion of five (5) years of service.

**RESOLVED**, the payment of the award to a plan participant shall be in the form of a Life Annuity with 120 payments guaranteed and such payments shall be actuarially equivalent to any other method of payment permitted under the law.

**RESOLVED**, the Service Award Program Payments are authorized to commence one year after the date the Service Award Program is established.

**RESOLVED**, that Death and Disability Payments are authorized to commence upon the date the Service Award Program is established.

**RESOLVED**, that all provisions of the plan shall be in accordance with Article 11-A of General Municipal Law as amended from time to time.

**RESOLVED**, that the date on which the proposition authorizing the adoption of the program shall be submitted to referendum shall be **February 24, 2009**.

The adoption of the foregoing resolution was recorded by **Town Clerk Betsy Marsh** and duly put to a vote by roll call vote which resulted as follows: Kenyon, aye, Montgomery, abstained, Phelps, aye, Uhteg, aye, Balus, aye. Resolved, 4 ayes, 1 abstention, 0 noes. **So RESOLVED** by the **TOWN BOARD** of the **TOWN OF SARDINIA** by favorable vote of not less than sixty percent (60%) of the eligible **Town Board**.

The status of the Gernatt litigation was then discussed. The Supervisor stated she had asked Attorney DiFilippo to attend this meeting to explain the status of the litigation. The Attorney for the Town stated he had received the Notice of Order of Judge Devlin's decision by fax on December 12<sup>th</sup>, and received the original on December 15<sup>th</sup>. He stated that it is his legal opinion that the deadline for the Town to make a decision to file an appeal is January 12<sup>th</sup>, and the Board's next meeting is not until January 14<sup>th</sup>. He explained that the Board only needs to vote to appeal to hold the right to appeal, but would not have to perfect the appeal if they subsequently choose not to follow through with the appeal of the decision. Supervisor Balus stated that the Board had discussed the matter in Executive Session, and stated that though she hates lawsuits, sometimes they are necessary. She stated it may not be a popular decision, but she could not sleep nights if she did not vote to appeal, feeling that the decision to allow Gernatt to mine was a huge mistake. She stated that the people on Chaffee Water fear for their water supply and have the right to have this case heard by another judge. Councilman Uhteg stated he feels that a majority of the Town has fought this mine since 1990, and feels that we definitely need to appeal. Councilman Montgomery asked when is the bleeding going to stop? He stated that you want people to work on the Planning Board and on the ZBA, and then you sue them. He stated that there are only two people making money on these lawsuits and that is the Attorney for and the Attorney against and the taxpayers are footing the bill. Councilman Kenyon stated that the Board has an obligation to appeal to try and save the well serving 80 households. Councilman Phelps agreed, stating she has been on this Board for 7 years, and fully believes that appealing is the right thing to do. Discussion concerning a well that went dry on Genesee Rd., and the possibility of the Chaffee Water well going dry was held. Councilman Montgomery suggested that the money used for the lawsuit could be used for upgrades to the water system. Supervisor Balus stated the Town cannot do that because the Water Company is a private entity. Councilman Kenyon stated he feels that water is something we should be looking at. The following resolution, to be known as Resolution #53 of 2008 was introduced by Phelps, seconded by Uhteg:

#### **RESOLUTION #53 - 2008**

**RESOLVED**, the Sardinia Town Board hereby authorizes Attorney David Seeger and Attorney for the Town Anthony DiFilippo, III to file the appropriate paperwork to file a Notice of Appeal and to Perfect the Appeal in the case of the Town of Sardinia vs. the Sardinia Zoning Board of Appeals.

Upon roll call vote, Kenyon, aye, Montgomery, no, Phelps, aye, Uhteg, aye, Balus, aye. Resolved, 4 ayes, 1 no.

Supervisor Balus stated that the Town received a check from Gernatt Asphalt Products in the amount of \$250.00 for the Tiny Tots Recreation Program, and stated she does not feel it is in the Town's best interest to accept, considering the status of litigation concerning that company. She asked the Board for their thoughts on the check, and Councilman Phelps, Uhteg, and Kenyon felt it should be sent back, and Councilman Montgomery felt it should be put on the bank. It will be sent back.

After review by the Board, General Fund Warrant #12 (continued), including vouchers #621 through # totaling \$5,312.03; and Highway Abstract #12 (continued), including vouchers #172 through # , and totaling \$1,927.38, were approved for payment on a motion by Kenyon, seconded by Phelps, and carried, 5 ayes, 0 noes.

The Supervisor then announced that the next meetings would be held, as follows:

The 2009 Organizational meeting will be held on January 14, 2009 at 7:00 PM

The next Regular Town Board Meeting will be held on January 14, 2009, immediately following the Organizational meeting.

The next Planning Board meeting will be held on January 7, 2009, at 7:00 PM.

Supervisor Balus asked Attorney DiFilippo if, because the term of one Planning Board member will be expiring on December 31<sup>st</sup>, what happens with that member. Mr. DiFilippo stated that the term continues until a new appointment is made, and that member whose term is expiring will stay on until re-appointed or replaced.

Councilman Uhteg thanked Councilman Kenyon for his service on the Board, as Supervisor Balus had done at the last meeting. The Supervisor stated she hoped he would continue on as her Deputy Supervisor.

There being no further business to come before the Board, on a motion by Kenyon, seconded by Phelps, the meeting was adjourned at 8:36 PM. Carried, 5 ayes, 0 noes.

Respectfully Submitted,

Town Clerk

