

Newstead Town Board Meeting- April 28, 2014

A regular meeting was called to order by the Newstead Town Board on Monday, April 28, 2014 at 8:05pm at the Newstead Town Hall.

Present: David Cummings- Supervisor
Justin Rooney-Councilman
James Mayrose- Councilman
Donald York- Councilman
Marybeth Whiting- Councilwoman
Scott Rybarczyk- Town Engineer
Nathan Neill- Town Attorney
Jennifer Heberling- Deputy Town Clerk

Roll Call was taken with all board members present.

Nathan Neill led the pledge to the flag.

Minutes from the previous regular meeting held on April 14, 2014 were presented for approval. A motion was made by Councilman Mayrose, seconded by Councilwoman Whiting to approve as presented. Carried Unanimously

Communications – The Deputy Town Clerk presented the following correspondence:

A letter from Time Warner Cable notifying the town of the programmers and service providers they are currently in negotiations with for service.

A letter was received from Harris Beach, PLLC notifying the town that the PILOT agreement for Arrowhead Golf Club Links LLC has been terminated by the ECIDA effective July 16, 2013.

A resolution was received from the Town of Alden regarding a proposed Local Law to increase the number of their Planning Board members from 5 to 7.

A letter from the Erie County Comptroller's office regarding projected sales tax revenues for the 1st quarter of 2014.

A motion was made by Councilman Mayrose, seconded by Councilwoman Whiting to accept and file the presented correspondence. Carried Unanimously

Work Session: The Supervisor reported that at the work session held last week the following issues were discussed: a review of the 2013 audit, water district issues, building projects, parks issues, highway issues, planning issues, recreation issues, court reports, contracts, Older American month, labor forms, master plan and any other issues brought before the Board.

Agenda Items Question Period:

Carl Klingenschmitt, 11520 Howe Road – is in favor of passing Local Law #2 and is concerned that if it isn't approved the Town sets a precedence that we don't care what a neighbor does to a neighborhood.

Linda Jackson, 86 Quarry Hill Estates – reported that Bob Duttweiler from Quarry Hills passed away and his doctor said the noise made his condition worse. The Town should vote on the laws and the Town should pay for a berm to be put in between Quarry Hills and Brauns to help with the noise.

Supervisor Cummings replied that if the Town pays for the berm it would come out of tax money.

Diane Koehler, 5771 Barnum Road – urges the board to pass the Local Law.

Jacquelyn Rotundo, 5814 Barnum Road – wants justice for all. Petitions were signed and turned in to the town. These represent people who can't be at the meeting tonight. She urges the Board to vote to approve Local Law #2. This is a rural community. Not the proper venue for loud rock concerts.

Dick Sutton, 84 Quarry Hill Estates – supporting Local Law #2. Thinks it is time the Board votes on this and puts it into effect. This may not solve the entire problem but he feels it is a step in the right direction.

Alvin Dahn, 87 Quarry Hill Estates – passed out a letter from his wife’s doctor stating that the noise from the concerts has made her health problems worse.

Jim Richards, 108 Quarry Hill Estates – voicing his support for the Local Law to be passed.

Bill Utter, 49 Quarry Hill Estates – is in favor of the noise law. People should be able to watch TV in the comfort of their own home. It’s time to take control of the area.

Rose Dahn, 87 Quarry Hill Estates – is in favor of the Board passing the noise law. Read a paragraph entitled “We Are the Generation”.

Mary McGuire, 209 Quarry Hill Estates – wanted to make it clear that their intention was never to shut down Braun’s. They have always just wanted the noise level reduced. There has been no input for the last 2 years from Braun’s. She has served her country for 20 years and fought for freedom but now feels like her freedom has been violated.

Mike Shilling, 20 Mechanic Street – believes this situation has been mishandled from the beginning. A sound engineer should have been brought in right away. Passing this law would be atrocious considering Mr. Braun has done everything that was asked of him. He also believes that things will be reflected in the election next November.

Kevin Borth, 7553 Scotland Road – with regards to the joint facility he has not seen leadership in this town since Supervisor Cummings’ tenure. He sees management. He presented a 21 page report from the State Comptroller’s Office alleging money spent on the joint facility that was not properly voted on. He believes this should go to the State Inspector General. Supervisor Cummings rebutted that when the town received the report it was found that nothing was done illegal by any of the Town or Village Board members. They were procedural issues that needed to be rectified and a report was filed with the comptroller’s office that satisfied them. Mr. Borth believes that Supervisor Cummings appoints Board members for political reasons and gains. Claims the \$300,000 could have built a lot of berms. Has also worked with the group home team and has seen Marybeth Whiting and Justin Rooney and they do something very different than what he sees at the Town Hall. They ask qualified questions, have passion for what they are doing and they ask for other peoples input. Mr. Borth also questioned why the lowest bidder was not used for the lower level of the library. Supervisor Cummings will look into that and get back to him.

Richard Baran, 12784 Carney Road – was on the board until this year and knows the Board has tried very hard to correct the issues on Main Road. If he was still a member of the Board his vote tonight would be no because Ray Braun has done everything that was asked of him. He has been in the mobile home park during concerts and doesn’t agree that the noise and vibration was as bad as some of the residents reported.

Budget Transfers: : a motion was made by Councilman Mayrose, seconded by Councilwoman Whiting to approve the budget transfers per the memo from Bookkeeper Colleen Salmon dated April 28, 2014.
Carried Unanimously

Approval of Bills – Councilman Mayrose reported that the Abstract(s) from Batch(es) #1389 & 1393 from the April 14, 2014 meeting have been reviewed with the previously un-audited vouchers and everything was found in order. He presented Abstract Batch(es) #1394 for payment. Vouchers on this abstract(s) numbered from 375 - 417, totaling \$40,485.94. Councilman York seconded to approve payment as follows:

Abstract Batch(es) #1394:
General Fund (A) -\$25,195.85, General Fund- Outside Village (B) \$198.68, Highway (DA) -\$0, Highway: Outside Village (DB) \$14,570.45, CAP-Murder Creek (HM) \$0, CAP- Scotland Rd (HS)- \$0, CAP- Water Improvement (HW)- \$0, CAP Water-Downey (HW01)- \$0, Drainage (SD)- \$0, Fire

Protection (SF) \$0, Refuse (SR) \$0, Sewer Fund (SS) \$34.65, Sewer District #2 (SS02)- \$78.82, Trust & Agency(TA)- \$360.00 and Water Districts: Consolidated (SW00) \$47.49, (SW1) \$0, (SW2) \$0, (SW3) \$0, (SW4) \$0, (SW5) \$0, (SW6) \$0, (SW7) \$0, (SW7A) \$0, (SW8) \$0, (SW9) \$0, (SW10) \$0 Total: \$40,485.94 Carried Unanimously

COMMITTEE AND DEPARTMENT HEAD REPORTS:

Highway – was not present but reported to the Board that the tire drop off held on Saturday was successful. The white goods pick-up began today and will continue on Tuesday and Wednesday if needed. The soccer tournament will be held this weekend and the Town and County fields are all set to go.

Assessor – no report presented

Building Office –the building report was presented by Christine Falkowski of the Planning & Building Department:

Michael Borth	13546 Stage	Special Use Renewal
Norbert Schroeder	13502 Bloomingdale	Shed
Kris Beyer Jones	7065 Sandhill	Permit renewal
George Burg	12836 Main	Roof
Glenn Kraft	11368 Miland	A.G. Pool
CMK Builders	5015 Havenwood	One family home
CMK Builders	5015 Havenwood	Driveway
Rothlands Golf Course	12089 Clarence Center	Shed
Krehers Poultry Farm	11072 Main	Equipment building
Robert Niescier	12249 Meahl	A.G. Pool
Dr. Sandra Corrie	12638 Main	Remodel
Brian Pazderski	6827 Sandhill	Roof
Steve Carlson	6837 Sandhill	Roof

The Town Board accepted the report as presented.

Town Clerk- nothing at this time

Attorney for the Town – nothing at this time

COUNCILPERSONS:

Rooney – thanked the staff that called, texted and emailed him after his surgery and thanked the same for the flowers he received, corresponded with Ed Rath and his office regarding the park purchase and the group home/registered sex offender, spoke with Assemblywoman Jane Corwin’s office regarding the park purchase, spoke with Assemblyman Sheldon Silver’s office regarding the park purchase, spoke with residents regarding the noise law, the soccer tournament and the use of Veterans Park, attended the Newstead Cultural Center dedication, spoke with soccer representative Pat Winney regarding preparedness on Town property and Erie County property for the upcoming soccer tournament, requested a letter from the Town or a resolution asking the Christian Airman to have a no fly on Memorial Day. Thinks if we give them a notice to post the incoming pilots would know. He also heard that both the Akron & Newstead Fire Departments received a couple of applications at this weekend’s membership drive.

Mayrose – met with Christine Falkowski regarding some building/code issues, wants to thank the Highway Superintendent Mike Bassanello and the rest of the Highway department personnel for getting the fields ready for this weekend’s soccer tournament, met with the joint facility committee to discuss the status of some ongoing building projects, met with Supervisor Cummings and CEO Ralph Migliaccio regarding a complaint from a resident regarding a building permit. Also met with the home owner to discuss the issue, spoke with some residents about the noise law and attended the opening reception of the Newstead Cultural Center.

York – met with Celebration Committee and worked on plans for the upcoming July 4th celebration, looked at the Swift Mills Bridge and it looks like they are working on the engineering study and spoke to Ed Rath’s office to find out when construction on the bridge will begin.

Whiting – attended the opening of the Newstead Cultural Center and spoke to Rhonda Frederick from People Inc.

Supervisor – attended the murder creek meeting, the joint facility meeting with the Village Representatives, had several meetings concerning the building/planning department, visited the resident’s home that is having the issue, the rural transit recognition meeting, the Association of Erie County Government meeting, the dedication of the Newstead Cultural Center, met with representatives from Senator Ranzenhofer and Legislator Rath’s office at the Octagon House looking for funding to help with renovations the home needs. Also spoke to them regarding the sex offender situation and the park transfer and Senator Ranzenhofer will be setting up a meeting with a representative from the OPWDD. Had several discussions with the grant writer concerning a park grant and future grants.

UNFINISHED BUSINESS:

Joint Facility- nothing

Planning Projects- Several public hearing to be set

Building Projects- nothing new

Conservation issues- Emerald Ash Borer- nothing new Murder Creek- on schedule for a May 22nd bid opening for next phase

Water projects- nothing

Parks- nothing

NEW BUSINESS:

Public Hearing- Time Warner Contract:

A motion was made by Councilwoman Whiting, seconded by Councilman York approving the calling of a public hearing on the proposed Time Warner Cable Franchise Agreement renewal to be held on May 12, 2014 at 7:45pm and authorizing the Town Clerk to publish the hearing notice. (Resolution Attached) Cummings-Aye, Rooney-Aye, Mayrose-Aye, Whiting-Aye, York-Aye
Carried Unanimously

Bid- Murder Creek Phase 2:

A motion was made by Councilman York, seconded by Councilwoman Whiting authorizing the town to go to bid on the Murder Creek Phase 2 project. (Resolution Attached) Cummings-Aye, Rooney-Aye, Mayrose-Absent, Whiting-Aye, York-Aye
Carried Unanimously

Determination of Non-Significance – Local Law #2 of 2014 – Noise Law:

A motion was made by Councilman Mayrose, seconded by Councilwoman Whiting declaring a determination of Type II action under SEQRA on the proposed Amendment to the Noise Law of the Town of Newstead and therefore no other action is required. (Resolution Attached) Cummings-Aye, Rooney-Aye, Mayrose-Aye, Whiting-Aye, York-Aye
Carried Unanimously

Local Law #2 of 2014- Noise Law:

Councilman Mayrose commented and stated that what he was going to say was his opinion and his only. He explained that as a Councilman he doesn’t have the luxury of choosing a side. He was elected to represent the people. This law is the best they can do right now. There is more that Braun’s could do and this law is a compromise. If this is passes he said that any contracts already signed will not be affected. This would be going forward with new contracts and any new venues.

Supervisor Cummings went through the titles of the sections of the proposed law. He explained that the town is not trying to put anyone out of business and he believes this is the best for the people.

Councilman Rooney stated that this is something the board has struggled with for a long time. In his opinion this law is against what he believes in. He feels we should have a culture that encourages business. Government exists to help people and he doesn't believe Quarry Hill Estates, Barnum Road or Mr. Braun will be helped by this law. He also doesn't believe that they have done enough and he doesn't believe this is going to solve any of the problems.

A motion was made by Councilman Mayrose, seconded by Councilwoman Whiting approving the adoption of the proposed Noise Law known as Local Law # 2 of 2014.

(Resolution Attached) Cummings-Aye, Rooney-No, Mayrose-Aye, Whiting-Abstain, York-No
Not Carried

Lead Agency- Site Plan for Niagara Specialty Metals:

A motion was made by Councilman Rooney, seconded by Councilman Mayrose declaring lead agency status and approving the conduction of a coordinated review on the proposed construction of a 6,400 sq ft storage building at 12600 Clarence Center Rd as requested by owners Niagara Specialty Metals Inc.

(Resolution Attached) Cummings-Aye, Rooney-Aye, Mayrose-Aye, Whiting-Aye, York-Aye
Carried Unanimously

Public Hearing- Site Plan for Niagara Specialty Metals:

A motion was made by Councilman Rooney, seconded by Councilwoman Whiting approving the calling of a public hearing on the proposed site plan for a 6,400 sq ft storage building to be constructed by Niagara Specialty Metals Inc, which will be held on May 12, 2014 at 7:40pm and authorizing the Town Clerk to publish the hearing notice.

(Resolution Attached) Cummings-Aye, Rooney-Aye, Mayrose-Aye, Whiting-Aye, York-Aye
Carried Unanimously

Proclamation- Older Americans Month:

A motion was made by Supervisor Cummings, seconded by Councilwoman Whiting issuing a proclamation declaring the month of May Older Americans Month in the Town of Newstead.

Cummings-Aye, Rooney-Aye, Mayrose-Aye, Whiting-Aye, York-Aye
Carried Unanimously

Proclamation- Municipal Clerk's Week:

A motion was made by Councilwoman Whiting, seconded by Councilman Mayrose issuing a proclamation recognizing May 4 – May 10, 2014 as Municipal Clerk's Week in the Town of Newstead and expressing the Towns gratitude and appreciation for its Town Clerk Dawn Izydorczak and Deputy Town Clerk Jennifer Heberling.

Cummings-Aye, Rooney-Aye, Mayrose-Aye, Whiting-Aye, York-Aye
Carried Unanimously

Approve Part-Time Parks Hire:

A motion was made by Councilman Mayrose, seconded by Councilwoman Whiting approving the hiring of Robert Massaro as a part time worker for the parks department at \$12.71 an hour.

Cummings-Aye, Rooney -Aye, Mayrose-Aye, Whiting-Aye, York-Aye
Carried Unanimously

Approve Completion of Water Line – Draper Road:

A motion was made by Councilman Mayrose, seconded by Councilwoman Whiting to complete the water line installation on Draper Road.

Cummings-Aye, Rooney-Aye, Mayrose-Aye, Whiting-Aye, York-No
Carried

Privilege of the Floor/Question Period:

Before Supervisor Cummings called on the residents here to speak about ditching he explained that at next Monday's work session the road side ditching policy was going to be discussed.

Kevin Frost, 12251 McNeeley Road – built his house 6 years ago and at the time asked for a pipe to be installed in the ditch so he could fill it in. Superintendent Bassanello informed him that you can't fill ditches in the town and Mr. Frost has a copy of a town policy that says he can. He understands there are codes that need to be followed but he has been waiting 6 years to get this taken care of. None of his neighbors have open ditches because they built their houses a year before he did. He doesn't understand the run around or why county roads are treated differently. He has pictures of no water in the ditch even in a heavy rain. Supervisor Cummings stated that he would get back to him in a week.

John Healy, 6253 Dye Road – brought this up in the past, but the town okayed Arrowhead to fill in their ponds which overflowed and flooded Rothlands. Then the town dug a ditch from Clarence Center Road to the wetlands and now that floods all of their back yards. Believes the town needs to have board designated to handle water and drainage issues. Thinks the Town Board is shooting from the hip and doesn't feel it's working well.

Joe Commisso, 12215 McNeeley Road – three years in a row he has asked to fill his ditch and this year the response was the town is working on a policy. He wants to get this taken care of.

Fred Drahms, 12604 Clair Drive – already spoke to the Supervisor regarding his ditching problem at his house. Tried to work with Superintendent Bassanello and hasn't gotten anywhere with him. Contacted him last month and his response was the town doesn't have a ditching policy. Mr. Drahms finds that interesting because he himself has a copy of the ditching policy. Superintendent Bassanello told him he was going to have to speak to the town engineer and building department because he wasn't aware of the ditching policy. Mr. Drahms finds this hard to believe. Feels all the residents here are getting a run around.

Elisa Dugan, 12352 Rapids Road – can't enjoy her home now that it is warm out. They hear screaming and the police or an ambulance are over there every day. The police have told her to mind her own business. The psychiatric patients are scaring her more now than the sex offender. The patients are now being walked up and down the road by employees and if the Dugans in their yard the patients are screaming vulgarities at them.

Joe Dugan, 12352 Rapids Road – explained to the board these patients are completely different than the residents he met. Came home one evening and there were three Erie County Sheriff cars, a state trooper and an ambulance. He said it was completely out of control. He spoke to Rhonda Frederick regarding the female patient and she claims they are trying to relocate her. This patient triggers a male patient when she is upset. The male patient did walk out of the home and they were assured that this could not happen.

Elisa stated that the police are there every day and it is not a home for developmentally disabled people, it is a psychiatric center.

Joe explained that the patients are being walked up and down Rapids Road and not always with an employee. He wants to put a privacy fence across the front of his home. They need help.

Kevin Borth, 7553 Scotland Road – the potential for violence was talked about at the first meeting. Seeing an increase in the severity and last week there was a physical altercation between a neighbor and a resident from the home. A citation was issued to the neighbor. This situation is escalating. Nowhere in the Padavan Law does it trump a sex offender law. The intent of this law is to put people into group homes that are developmentally disabled. It doesn't state that code 2 or code 3 violent offenders are given the same level of protection under that law. He believes the Town does still have a defense and it is around the Padavan Law. He also suggests the Town retain independent council, someone who has experience in this area and try to work with OPWDD.

Elisa & Joe Dugan both commented that this is nothing like People Inc. said it would be and it is very different now that the weather is warmer.

Kevin praised both Councilwoman Whiting and Councilman Rooney for everything they are doing on this committee. Also stated the Rhonda Frederick left the meeting she was at saying that a privacy fence along the back would be installed. To date, it has not been.

Joe said he brought that up to her and the situation with the parking when he spoke to her several weeks ago.

Karen Borth, 7553 Scotland Road – disappointed in things that have recently been happening.

Kevin Borth, 7553 Scotland Road – here to talk about issues he is having with the CEO. About 18 months ago a family member came in to apply for a building permit to put a roof on. He attempted to do the right thing and was harassed by the CEO. Approximately a year ago Mr. Borth was in the office to pay for a dog license and the CEO came up behind him and told him he better pay for the dog or he was going to shoot it. The CEO claimed he said it in jest but in the least it was in poor taste. He met with Supervisor Cummings and Councilman Mayrose and was told a plan was put in place but after several months it abated. Unfortunately the situation did not. Shortly after Mr. Borth publicly opposed broadening the CEO's power regarding a home based business, he had a family member receive a revocation of a special use permit with no reason given and no proposed remedies suggested. Mr. Borth does not believe these were coincidence. After threatening litigation it was removed and Mr. Cowan from the planning board apologized and said it was signed in haste and shouldn't have been done. Recently he came to the Town Hall to discuss a building permit with the CEO. He couldn't meet with him at that time so he set up an appointment for that Friday. The CEO then went to the property owned by Mr. Borth and verbally and physically harassed the contractor and entered the property without permission. When you are asked to leave, you leave. He is not alone in this issue. Almost everyone he has spoken to agrees and have had issues with the CEO.

Also has an issue with the WC requirement. The insurance company provided the information and was threatened because it wasn't correct. Mr. Borth was threatened with a stop work order through the insurance agent. Mr. Borth tried in good faith to work with the CEO. He explained that his contractor had to open up a wall because of an emergency situation with the plumbing. Copper plumbing was stolen out of the house and he knew once the wall was opened he needed to get the CEO involved. What really infuriated Mr. Borth was the CEO claims "he was stoked up by one of the town secretaries." The primary concern he has is the two people who have oversight for him are the same two that voted to expand his power for home based business even knowing all of this was going on.

Mr. Borth believes this is part of a broader issue. Management verses leadership. A leader would have taken care of this issue and he doesn't see that. He doesn't know how a Town could allow this to continue. He submitted a new building permit today with accurate information on it. He feels he has been singled out in a lot of issues. He keeps being given different information. He sees prejudice and a variance on how the laws are being upheld. He doesn't want to take legal action, has already threatened it once, but the next time he is going to. His independent contractor has a heck of a criminal case and also has a case against the Town for civil issues. No one deserves to be treated that way. He is imploring the Town Board to make a change; in how this employee acts and also in how the Town Board works. Wants whoever has the best capabilities be appointed to the various committees. Doesn't see any objectivity. He does commend the councilpeople because he knows how hard they work for a small amount of money.

There being no further business to come before the board a motion was made by Councilman Rooney, seconded by Councilwoman Whiting to adjourn the regular meeting at 9:33pm.

Carried Unanimously

Respectfully Submitted,
Jennifer Heberling, Deputy Town Clerk