

Newstead Town Board Meeting- October 26, 2009

A Public Hearing was called to order by the Newstead Town Board on Monday, October 26, 2009 at 7:15pm at the Newstead Town Hall.

Present: David Cummings– Supervisor
Tom George- Councilman
Harold Finger- Councilman
Cheryl Esposito- Councilwoman
Mike Bassanello- Highway Supt.
Nathan Neill- Town Attorney
Scott Rybarczyk- Town Engineer
Dawn Izydorczak- Town Clerk

Roll Call was taken with all board members present except Councilman Justin Rooney.

Supervisor Cummings called the public hearing on proposed Local Law #3 of 2009 on changes to the Zoning Law regarding home based businesses and day care facilities to order at 7:15pm.

The Town Clerk read the proof of publication.

Supervisor Cummings stated that this issue has been looked at for several years. A draft proposal of the law was presented at a meeting of local business owners earlier this summer where the Town Board sought their input on the draft law. The 1-1/2 hour meeting included some very good dialog on the subject and many of the comments from that session were used in drafting the law presented tonight. The Town Planning Board was also asked for their recommendations/comments on the law. Everyone who attended that meeting was mailed a copy of tonight's proposed local law. No action will be taken on this issue tonight. Comments will be reviewed from tonight and a final decision made by the board.

Comments:

Diane Ernst, 12144 McNeeley Rd stated she is a neighbor adjacent to Mr. Peronne's business and questioned how the law will affect her as a neighbor to a business.

Supervisor Cummings stated the law provides protection for both the business and neighbors. Noise and odors issues are addressed in the law, as well as methods of filing a complaint. Currently operating businesses will be allowed to remain. The law is designed to provide all citizens with protections and a process for filing complaints where currently there is nothing provided in the law.

Bill Perrone, 6500 Draper Rd questioned whether complaints would be required to be in writing and signed or would verbal complaints be taken as well. He also questioned who would fill the complaint form out, the complainant or the Code Enforcement Officer.

The Supervisor responded complaints would be preferred in writing and should be filled out and signed by the person filing the complaint.

Mr. Perrone also questioned the reasons and timing for revoking a special use permit as outlined in Section F and expressed his concerns that an established business could be made to move from their current location because of complaints. He questioned the definition of a home based business and businesses where no business is conducted at the home where it is only traffic for coming and going.

Town Attorney Nathan Neill expressed that every home based business currently operating in a residential area is operating illegally as they are not a conforming use in residential areas. That is why the town is trying to correct the existing businesses and have some control over future businesses in those areas. As long as businesses are compliant with the law there will be no problems or need for anyone to move. As for the coming and going traffic he stated that would depend on each situation and the neighborhood the business is in.

Councilman George stated that many issues such as traffic and the types of vehicles that can be stored on properties are addressed in other areas of the town code and are pre-existing.

Charles Keppler, 12151 Stage Rd questioned does the law relate to the Master Plan?

Supervisor Cummings responded yes it does. There are currently not a lot of complaints about existing businesses, but agreed with the Town Attorney that the town needs to retain the current businesses while controlling that type of growth in the residential districts for the future.

Dale Fryling, 13543 Stage Rd stated it looks like a lot of time has been spent on this law and feels it is a step in the right direction. He questioned the definition of a site plan and the 1,000 foot notification area process and would they apply to both existing and new businesses. Supervisor Cummings stated site plans would be required for both, but only new businesses would be subject to the 1,000 foot notification process.

He asked for clarification that if you follow the perimeters set in the law you are given the opportunity to have a business in a residential area. The Supervisor responded correct.

Colleen Scotch, 11174 Hunts Corners Rd questioned types of businesses not specifically addressed in the law that might be considered retail such as roadside fire wood stands, golf ball stands, fruit & vegetable stands as well as home parties such as Avon parties. She feels this law will open up lawsuits to the town and because of the way sections are worded many uses won't be allowed. She also agrees in reference to Section F that as a neighborhood changes the businesses should not be allowed to be kicked out.

Town Attorney Neill emphasized again that commercial businesses should be operating in a commercial zone not a residential zone. Retail sales are not allowed now in a residential zone.

Councilman George stated he agrees residential neighborhoods are just that, residential and any other uses in that zone should be in concert with the neighborhood. If a business is growing to the rate it is receiving complaints or is growing too large, it should move to an appropriate area such as a commercial zone. The Board is just trying to protect the community.

Kathleen Balser, 7487 Maple Rd filed a complaint against her neighbor during the summer. She questioned how she knows if anyone ever addressed this complaint. She never received a call back from the Code Enforcement Officer. She stated her neighbor owns a landscaping business and he is always digging holes and burying concrete or burning tree stumps on his property that he has hauled home from job sites. His burying things has created drainage problems for the neighbors which caused their pool deck to shift.

The Supervisor told her she should contact the Code Enforcement Officer for an update on the complaint and that if the neighbor is operating a business out of the home he would need to get a permit to operate there under the new law.

Steven Bedford, 6820 Cedar questioned how this law pertains to his business.

Supervisor Cummings stated his is a special situation that needs to be discussed and this law does not pertain to his business as over the years his business has gone thru several permitting processes with the Town Board and Planning Board to regulate it.

The Supervisor thanked everyone for their input and stated no action would be taken tonight. If no changes are made to the law it could be passed at any upcoming meeting. If changes are made a new public hearing will be held on the changes.

There being no further comments a motion was made by Councilman Finger, seconded by Councilwoman Esposito to close the public hearing on the Local Law #3 at 7:55pm.

Carried

Supervisor Cummings called the public hearing on proposed 2010 Budget to order at 7:55pm.

The Town Clerk read the proof of publication.

Comments: Walt Nelson, 172 Main St. requested that compensation increases to elected officials and town staff be removed from the budget for any and all non-union employees. In light of the current economic conditions raises should be forsaken.

There being no further comments a motion was made by Councilman Finger, seconded by Councilwoman Esposito to close the public hearing on the 2010 Budget at 8:00pm.

Carried

Supervisor Cummings called the public hearing on proposed rezoning of land owned by Niagara Specialty Metals to order at 8:00pm.

The Town Clerk read the proof of publication.

The Town Engineer had no comments on the request.

Comments: no one spoke. The Town Attorney stated a local law process will be necessary for this request.

There being no further comments a motion was made by Councilman Finger, seconded by Councilwoman Esposito to close the public hearing on the rezoning of land owned by Niagara Specialty Metals at 8:04pm.

Carried

A regular meeting of the Newstead Town Board was called to order at 8:04pm with the same board members present as listed above.

Councilman George led the pledge to the flag.

Minutes from the previous regular meeting held on October 13, 2009 and the special meeting held on October 19, 2009 were presented for approval. A motion was made by Councilman Finger, seconded by Councilman George to approve as presented.

Carried

Communications – The Town Clerk presented the following:

A letter from Northern Erie Sno-Seekers Snowmobile Club requesting permission to use portions of the bike path for their annual snowmobile season as in past years.

Information was received on the 2009 Holiday Toy Program for Erie & Niagara Counties thru Central Referral Service 2-1-1.

A motion was made by Councilwoman Esposito, seconded by Councilman Finger to receive and file correspondence as presented.

Carried

Work Session: The Supervisor reported that at the last work session held the following issues were discussed: water district issues, Joint Facilities, grant submissions, multiple planning issues, 2010 Budget comments, fire contracts, as well as any other items found necessary.

Privilege of the Floor – Walt Nelson, 172 Main St spoke regarding the Sno-Seekers request to use the bike path. Based on past practice they are not very good at complying with the rule to stay off the paved bike path areas. They cause ruts in the pavement and make cross country skiing and other winter recreation very difficult.

James Baker of Burdick Rd questioned when waterlines will be installed on Burdick Rd. He stated they get no service from the County Highway department on their road conditions and shoulder mowing.

Budget Transfers: a motion was made by Councilman Finger, seconded by Councilwoman Esposito approving the budget transfers as requested by Bookkeeper Colleen Salmon in a memo dated 10/26/09.

Carried

Approval of Bills -Councilwoman Esposito reported that the Abstract from Batches # 879 & 881 from the October 13, 2009 meeting has been reviewed with the previously UN-audited vouchers and everything was found in order. She presented Abstract Batches #883 & 884. Vouchers on these abstracts numbered from 1124- 1162 totaling \$78,866.05 and were presented by Councilwoman Esposito, seconded by Councilman Finger to approve payment as follows:

Abstract Batch #883 & 884:

General Fund (A) -\$11,929.91, General Fund- Outside Village (B) \$340.26, Highway (DA) -\$0, Capital Projects: CAP- Highway Garage- (HG) - \$16,581.10, CAP- Town Hall Addition (HT) \$1,400.00, CAP-WD#10 (HI)- \$0, Highway: Outside Village (DB) \$40,974.32, Drainage (SD)- \$2,850.00, Fire Protection (SF) \$1,500.00, Refuse (SR) \$0, Sewer Fund (SS) \$3,219.73, Sewer District #2 (SS02)- \$70.73, and Water Districts (SW1) \$0, (SW2) \$0, (SW3) \$0, (SW4) \$0, (SW5) \$0, (SW6) \$0, (SW7) \$0, (SW7A) \$0, (SW8) \$0, (SW9) \$0, (SW10) \$0, Trust & Agency(TA)- \$0
Total: \$78,866.05

Carried

COMMITTEE AND DEPARTMENT HEAD REPORTS:

Highway – Supt. Bassanello reported Ray Schrock started back to work today. The trucks & plow equipment have been inspected and the salt & sand is all mixed. The new stop signage has been posted on Martin & Scotland Roads. The Nextel contract needs to be signed by the Supervisor. Mike questioned when the new wall at the Denio will be erected for the historian’s office.

Assessor – no report presented, at GIS training.

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

Mark Hellenbach	7266 Scotland	Windows, roof, siding
Steven Batzold	45 Randy	Roof
Sharol Martell	4473 Billo	One family home
Kevin Gaik	11678 Main	Roof
Harold Frey Sr.	4473 Billo	Driveway
Patricia Pasinski	5976 Crittenden	Roof
Benderson Development	12963 Main	pharmacy
Mary Whitcomb	12817 Swift Mills	Pole barn
Ivy Ridge Equities Corp	12089 Main	Roof

The Town Board accepted the report as presented.

Town Clerk- Dawn extended a “thank you” to everyone for the cards, flowers, prayers and well wishes during her surgery. 2009-2010 school tax collection is 90% complete and they will continue taking late payments thru 11/30/09.

Attorney for the Town – nothing at this time

COUNCILPERSONS:

George- nothing at this time

Finger- nothing at this time

Rooney- not present

Esposito- nothing at this time

SUPERVISOR- He and Councilman Finger have been meeting with the fire companies on contract negotiations. They will set aside work session time next week to discuss some proposals that have been made. Dave thanked the fire company members present for their service and their quick response at his motor cycle accident last week.

UNFINISHED BUSINESS:

Water District #10- Scotland Rd Extension/Consolidation- Scotland Rd project bid opening will be on November 4th. Several project books have already been picked up at the Wendel offices so there is good interest in the project.

They are in the process of completing the November 9th Consolidation hearing prep work.

Shared Public Works Facility Committee- good weather has permitted more work to be done on site. The drainage structures are on order and the site is ready. Schematic plans and costing is the topic of the next committee meeting.

Grants- CDBG grant application has been submitted. The 3rd of 3 grants on the Murder Creek Mitigation project has been submitted. The Supervisor thanked Carl, Doc Burke and the office staff for all their hard work on getting all these grants out. Silvestri will be in on Thursday to meet on the town hall addition project.

NEW BUSINESS:

Phase 1 Final Plat Approval- Havenwood 29-lot Subdivision:

A motion was made by Councilwoman Esposito, seconded by Councilman Finger issuing a Negative Declaration of a Type 1 project under SEQRA on the proposed 29-lot subdivision project known as Havenwood to be located at Stage & Havens Road and approving the final plat for Phase 1 of the project conditional on the town being granted a permanent easement to access all storm water management areas and subject to all other terms set forth in the resolution.

(Resolution Attached) Cummings-Aye, George-Aye, Finger-Aye, Rooney -Absent, Esposito-Aye
Carried

Fire Hydrant Approval- Havenwood 29-lot Subdivision:

A motion was made by Councilman Finger, seconded by Councilman George approving the installation of additional fire hydrants on the proposed 29-lot subdivision project known as Havenwood to be located at Stage & Havens Road with all costs to be absorbed by the Town of Newstead.

(Resolution Attached) Cummings-Aye, George-Aye, Finger-Aye, Rooney -Absent, Esposito-Aye
Carried

Bonding Approval- Joint Highway Facility:

A motion was made by Councilman George, seconded by Councilwoman Esposito approving the appropriation of \$125,000 in serial bonds to be used on the Joint Highway Facility project.

(Resolution Attached) Cummings-Aye, George-Aye, Finger-Aye, Rooney -Absent, Esposito-Aye
Carried

Terms & Conditions Amendment Approval:

A motion was made by Councilwoman Esposito, seconded by Councilman Finger approving the amendment of the employee terms and conditions renewal of benefits to change sick, vacation and personal time off to an employee from calendar year dates to the anniversary date of each employee.
Cummings-Aye, George-Aye, Finger-Aye, Rooney -Absent, Esposito-Aye Carried

Clerk Typist Position Approval:

A motion was made by Councilman George, seconded by Councilwoman Esposito approving the appointment of Clerk Typist Julie Brady to a permanent position and granting a \$0.50 raise as of her 6 month probationary period end date of 10/20/09.

Cummings-Aye, George-Aye, Finger-Aye, Rooney -Absent, Esposito-Aye Carried

Nextel Contract Approval:

A motion was made by Councilman George, seconded by Councilman Finger to authorize Supervisor Cummings to sign the Nextel Agreement documents.

Cummings-Aye, George-Aye, Finger-Aye, Rooney -Absent, Esposito-Aye Carried

Question Period- Kathy Baker of Burdick Rd questioned if consolidating the water districts will bring the price down of getting them water on Burdick and how it will affect the residents. Supervisor Cummings stated yes, more people share lower costs. He encouraged her to attend the meeting on November 9th where all the information will be presented fully and questions can be answered.

There being no further business to come before the board a motion was made by Councilman Finger, seconded by Councilwoman Esposito to adjourn the meeting at 8:43pm.

Carried

Respectfully Submitted,
Dawn D. Izydorczak, Town Clerk