

Newstead Town Board Meeting- November 11, 2013

A public hearing was called to order by the Newstead Town Board on Monday, November 11, 2013 at 7:15pm at the Newstead Town Hall.

Present: David Cummings- Supervisor
Justin Rooney- Councilman
James Mayrose- Councilman
Richard Baran- Councilman
Donald York- Councilman
Scott Rybarczyk- Town Engineer
Nathan Neill- Town Attorney
Dawn Izydorczak, Town Clerk
Jennifer Heberling- Deputy Clerk

Roll Call was taken with all board members present.

The Supervisor called the **public hearing** to order on the proposed **Local Law #4 of 2013** regarding amendments to the Special Event Permit Law.

The Town Clerk read the proof of publication.

Comments: Supervisor Cummings explained that the public hearing allows the public to comment on action being taken. Tonight is not an open discussion time. If any significant changes are made due to comments made tonight, another public hearing will be held.

Mary McGuire, 209 Quarry Hill Estates – questioned the time periods allowed for the concerts and thinks 10 hours is too much.

Michael Schilling, 20 Mechanic Street – thinks Braun's is a great venue; it is safe and is helping development in the area. Thinks the noise is just something you have to deal with.

Linda Jackson, Quarry Hill Estates – submitted 1 page of comments prior to the meeting. Believes this is no longer a special use for Braun's, it is a business. They should have to start over again with the planning board. She is not against a business, but wants common courtesy. Agrees growing business is good for the community. Supervisor Cummings read Mrs. Jackson's page of comments.

Helen Udder, Quarry Hill Estates – special use permit says "series". Is that the entire summer? Also asked where the 95 dbL level is measured from. Nathan stated it is measured from the source, the speakers. Also believes if Mr. Braun doesn't comply his permit should be revoked.

Dick Sutton, Quarry Hill Estates – appreciates that the board has put something together on paper. Questioned the sound level of 95 dbL. What is it based on? Councilman Mayrose explained that at 95 dbL it should drop to approximately 73 dbL at Quarry Hills first row and the decibel level was chosen based on the measurements and calculations taken over the summer. Supervisor Cummings added that the laws can always be changed. These concerts will be monitored by the CEO or other town official. Mr. Sutton is not sure if 95 dbL will be sufficient and wants that number to be negotiable.

Alvin Dahn, Quarry Hill Estates – believes that 95 dbL will be an improvement but still thinks it is going to need to come down further. Also doesn't like the time frame. Thinks they should add that amplified instruments should not be tested more than 2 hours before the concert.

Jim Richards, Quarry Hill Estates – said that 80 dbL and over causes hearing damage if over an extended period of time. Wants a level that is more reasonable than 95 dbL as he doesn't feel it will be enough to lessen the effects at their homes. Councilman Mayrose stated the readings won't be anywhere near 95 dbL in Quarry Hills. He also quoted the OSHA and NYOSH standards for noise levels.

Kris Beyer, Sandhill Road – asked if it was possible to test at the houses in Quarry Hill? Was told that was already being done. Said the law states the CEO will be called – should it say CEO will be

present to take readings. Also said since the fees will be increased, the amount of people needed to be a special event should also be increased.

Rose Dahn, Quarry Hill Estates – things have improved since we first started and some of the concerts would go until 1:00am. The vibrations in her home have subsided also.

Harold Frey, Main Road – lives almost across the street from Braun's and had several nights that were brutal. Walls shook and dishes in cabinets rattled. Not trying to have him shut down, but the base needs to be toned down. Feels that a SEQRA environmental impact study should have been done, including drainage. He feels the property needs a retention pond for drainage. Everyone should have known the impact this would potentially have had. Believes they should have had the building plans available to let people look at and found a code book from 2004 showing a noise level limit in the town of 80 dbl.

Tamara Fiorella, 20 Mechanic Street – everyone has the right to live comfortably and Braun's has been there and in existence for a long time. Questioned where the 95 dbl came from. Councilman Mayrose explained that level came from past readings over the last 1 ½ years that created a comfort level for everyone involved. The 95 dbl level assumes nothing changes with Braun's building.

Linda Jackson, Quarry Hill Estates – talked about several residents from Quarry Hills that have experienced various health issues due to the noise.

Ralph Migliaccio, Town CEO – stated there was an approved building permit and engineered drawings for the building that Mr. Braun built.

Kelly Schultz, Stage Road – concerned with noise from pumpkin cannons and from the amusement rides potentially being in violation of this if passed. He has been doing his operations for over 17 years and doesn't know what a level of 95 dbl is like. He is concerned someone is going to try to shut him down. Supervisor Cummings said they need to clarify the noise duration periods.

Kevin Borth, Scotland Road – said that the heart and health conditions being caused by the noise is irrational. The enforcement of this concerns him and feels it is not defined enough. Liberties can be taken as it is written now so it must be more defined and needs to have another hearing for comments once it is amended.

Rose Daehn, Quarry Hill Estates - stated that street and sleep habits do affect diabetes and the shots that she needs daily have increased since all this began.

Alan Kidder, 27 Bloomingdale Ave. – questioned the hours with respect to the “Akron Fly-In Days” fundraiser. It is a pancake breakfast and the 9am start time will affect their function.

Mike Schilling – said the standard is taking the reading from 110' from the speakers.

Kevin Borth – wants to make sure there is only one meter used with printable format.

Councilman Rooney questioned the “continuous time” portion of the permit and believes that needs to be more precise in wording.

Ray Braun, 11891 Main Road – demonstrated that 95 dbl can be achieved by waving a piece of paper over his phone using a sound measuring app.

Doug Ceisner, 100 East Avenue – asked if there is an occupancy limit on Braun's building.

Jim Richards, Quarry Hill Estates – asked if the sheriffs and NYSP will have their own meter equipment.

Kevin Borth, Scotland Road – feels there is a liability/lawsuit possibility if the town is not careful with the wording.

Frank Altieri of Alden NY – feels that Braun's concerts create jobs and brings revenue to the town.

Linda Jackson, Quarry Hill Estates – believes that noise generated by the concerts is different than noise generated by the Pumpkin Farm.

Glen Wheeler, Cummings Road – has driven thru Quarry Hill and did not hear anything until he rolled his windows down.

There being no further comments a motion was made by Councilman Rooney, seconded by Councilman Mayrose to close the public hearing on Local Law #4 at 8:18pm.

Carried Unanimously

The Supervisor called the **public hearing** to order on the proposed **Local Law #5 of 2013** regarding amendments to the Town Code clarifying enforcement and approval processes.

The Town Clerk read the proof of publication. The Supervisor stated this was recommended by the Town Planning Board.

Comments:

Doug Ceisner, 100 East Avenue – asked if this meant anyone can have any business in their house? CEO & Nathan commented that the laws have been on the books and this clarifies who makes the classification of the business. All other rules still apply.

Kevin Borth, Scotland Road – has a problem with the town giving one person that much power and it should be the Town Boards decision.

Kris Beyer-Jones, Sandhill Road – questioned the renumbering in sections and doesn't think it makes sense. Supervisor Cummings explained that it is a new paragraph 2 and 2 becomes 3, 3 becomes 4, etc. She feels there is too much empowerment to the CEO position. Why remove the planning board and town board? She feels the town should not rely on only one individual for this.

Nathan explained the past problem was who had to make threshold determinations to the town/planning boards.

Kevin Borth, Sandhill Road – thinks we are going in the wrong direction. The Town Board should be more inclusive and give their opinions. Would like to see another public hearing.

There being no further comments a motion was made by Councilman Rooney, seconded by Councilman Mayrose to close the public hearing on Local Law #5 at 8:31pm.

Carried Unanimously

The Supervisor called the **public hearing** to order on the proposed **Local Law #6 of 2013** regarding amendments to the Subdivision Law of the Town.

The Town Clerk read the proof of publication. The Supervisor commented this has been recommended by Town Planning Board.

Comments:

Kevin Borth, Scotland Road – questioned what precipitated this law. Nathan responded that it was originally put in years ago and is now being taken out. Mr. Borth wonders if there could be a hardship provision instead.

Kris Beyer-Jones, Sandhill Road – questioned the numbering again. Feels that the Town/Planning Boards should have the flexibility to waive & alter fees for certain hardships. She thinks the green space fee is high and is excessive. Most of the “town parks” are actually in the village and thinks the green space fees should be used for more than just sports fields.

The supervisor clarified that not all the parks are in the village and explained the park property we are purchasing is not intended to be cleared. A lot of it will be used for walking trails and forest areas.

There being no further comments a motion was made by Councilman Rooney, seconded by Councilman Mayrose to close the public hearing on Local Law #6 at 8:41pm.

Carried Unanimously

The Supervisor called the **public hearing** to order on the proposed **Local Law #7 of 2013** regarding amendments to the Zoning Law establishing standards for yard maintenance in the Town.

The Town Clerk read the proof of publication. The Supervisor stated this has been recommended by the Town Planning Board.

Comments:

Doug Ceisner, 100 East Avenue – asked if a building is used for storage, does that mean it has to be maintained. The Supervisor explained not necessarily if it is not a proper dwelling.

Kevin Borth, Scotland Road – does not feel this law is necessary as we are living in the country. Asked if 10” of grass is really an issue around a cow barn or a storage building. He is also concerned with selective enforcement.

Kris Beyer-Jones, Sandhill Road – feels we are micromanaging our farm communities. This is a rural community and feels this law is unnecessary.

Marilyn Kasperek, Downey Road – stated this puts her in violation as soon as this law is passed. She already mows 2 acres of her property but side lot lines are close. She considers herself a good neighbor and believes this will affect a lot of people without intending to.

Shirley Keller, Hunts Corners Road – asked why people can’t just be good neighbors. Her 84 year old husband mows the neighbor’s lawn because she can’t.

Councilman Don York – has a problem with micromanaging and agrees that some residents and senior citizens have limited abilities. He feels this is wrong.

Councilman Justin Rooney – thanked Shirley Keller for her comments and he wished she was his neighbor.

Doug Ceisner, 100 East Avenue – told the board that in the village, the village mows and the cost is added to the tax bill.

Kevin Borth, Scotland Road – believes broad strokes in laws are not good. Better definitions will get better resolutions.

There being no further comments a motion was made by Councilman Rooney, seconded by Councilman Mayrose to close the public hearing on Local Law #7 at 8:56pm.

Carried Unanimously

The Supervisor called the regular meeting of the Town Board to order at 8:57pm with the same members present as listed above.

Councilman Baran led the pledge to the flag.

Minutes from the previous regular meeting held on October 28, 2013, were presented for approval. A motion was made by Councilman Rooney, seconded by Councilman Mayrose to approve as presented.

Carried Unanimously

Communications – The Town Clerk presented the following correspondence:

A letter from Time Warner Cable regarding the programmers and broadcasters they are currently in negotiations with for service.

A notice of a week of workshops across Buffalo Niagara by One Region Forward entitled “community congress” to be held starting November 12th – Nov 16th at various locations.

A notice from Erie County Environment & Planning regarding November’s 30-day period during which landowners may request inclusion into the agricultural district. A notice is posted on the bulletin boards.

The October 2013 Operation Report was received from Amherst Central Alarm Office reporting 43 calls for Akron Fire Co and 28 calls for Newstead Fire Co.

A motion was made by Councilman Rooney, seconded by Councilman Mayrose 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: water district issues, building projects, planning issues, grants, recreation evaluations, parks master plan, old highway garage updates, town park policy, dog control summons, change of date for the annual safety dinner and any other issues brought before the Board.

Privilege of the Floor – Shirley Keller, Hunts Corners Road – the county cleaned and dug out the ditches on her road, which was good, but there is a problem down the road with a field ditch. The ditch needs to be cleaned but the owner lives out of state and she hasn't been able to get in touch with him. The Supervisor will look into it and get back to her.

Doug Ceisner, 100 East Avenue – asked for figures on the safety meeting cost.

Kevin Borth, Scotland Road – still has an issue with the intersection of Scotland and Martin Road. Last time he was at a meeting he asked for an update and hasn't heard anything. With regards to the ditching issue from several years ago, he was told the trees would be replaced and he is still waiting. It is going on 3 years and he feels he has been very patient. He explained how community service is utilized in the Town of Clarence and wonders if we could offer this here as a community outreach for senior citizens in the form of lawn mowing or shoveling. Supervisor Cummings thinks this a good idea and is always looking for ideas for community service.

Budget Transfers: a motion was made by Councilman Mayrose, seconded by Councilman Rooney to approve the budget transfers per the memo from Bookkeeper Colleen Salmon dated November 11, 2013. Carried Unanimously

Approval of Bills – Councilman Mayrose reported that the Abstract from Batch(es) # 1336 from the October 28, 2013 meeting have been reviewed with the previously un-audited vouchers and everything was found in order. He presented Abstract Batch(es) #1337, 1339 & 1341 for payment. Vouchers on this abstract(s) numbered from 1099-1157, totaling \$166,164.99. Councilman York seconded to approve payment as follows:

Abstract Batch(es) #1337, 1339 & 1341 :
General Fund (A) -\$48,818.19, General Fund- Outside Village (B) \$187.49, Highway (DA) -\$0,
Highway: Outside Village (DB) \$74,028.09, Capital Projects: CAP- Highway Garage- (HG) - \$0,
CAP-Murder Creek (HM) \$500.00, CAP- Equipment Purchase (HR02)- \$0, CAP- Library Basement (HR04) \$0, CAP- Scotland Rd (HS)- \$0, CAP Water-Downey (HW01)- \$3,330.00, CAP- Town Hall (HT)- \$0, CAP- Water Improvement (HW)- \$0, Drainage (SD)- \$167.38, Fire Protection (SF) \$4,561.36, Refuse (SR) \$25,070.52, Sewer Fund (SS) \$2,437.92, Sewer District #2 (SS02)- \$217.50, Trust & Agency(TA)- \$0 and Water Districts: Consolidated (SW00) \$6,846.54, (SW1) \$0, (SW2) \$0, (SW3) \$0, (SW4) \$0, (SW5) \$0, (SW6) \$0, (SW7) \$0, (SW7A) \$0, (SW8) \$0, (SW9) \$0, (SW10) \$0
Total: \$166,164.99 Carried Unanimously

COMMITTEE AND DEPARTMENT HEAD REPORTS:

Highway – not present

Assessor – no report presented.

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

Kevin Stoldt	5048 Havenwood	One Family home
Kevin Stoldt	5048 Havenwood	Driveway

Jean Leising	7507 Greenbush	Relocation of house
Garry Bauer	7855 Cedar	Addition
Brandon Hoffman	12754 Dorsch	Addition
Shawn Carter	4891 N Millgrove	Remodel
Salvatore Militello	12275 Meahl	Shed
Kevin Stoldt	5040 Havens	One Family home
Kevin Stoldt	5040 Havens	Driveway
Kris Jones	7065 Sandhill	Shelter

The Town Board accepted the report as presented.

Town Clerk- Dawn will be on vacation the rest of this week.

Attorney for the Town – nothing at this time.

COUNCILPERSONS:

Rooney – attended joint EMS meeting, went to the Legion to thank the Veterans that were there, took care of some recreation business, attended court and let everyone know that Time Warner is experiencing problems with their on demand.

Mayrose – spoke with Julie Brady regarding office policies and procedures, spoke with Deb Sabbatis at the senior center regarding current and proposed programs, met with Mike Bassanello regarding documents related to the joint facility floor, spoke with some recreation board members as well as some parents regarding some issues with the fall recreation program, updated some concerned residents on the status of the airport and spoke to Village Trustee Forrestel regarding the court consolidation.

Baran – the lighting on the Denio has been taken care of and he has been looking into a shed for the library.

York – done some research on the shed for the library, thanked the Vets that have served, spoke to Ed Rath’s office regarding the engineering on the Swift Mills bridge and was told there is funding for it to be repaired in the spring.

Supervisor – met with Newstead Fire Company regarding the senior center, met with grant writer, met with Councilman Mayrose and some of the office staff, spoke to Ed Rath’s office regarding the Swift Mills bridge being repaired next year, thanked Harold Finger for his work on the library lower level. Town Historian is all moved in and thanked the highway crew and met with Ken Lombardo regarding the computer hookup.

UNFINISHED BUSINESS:

Joint Facility- nothing new.

Planning Issues- nothing new.

Conservation issues- Emerald Ash Borer- nothing new. There is a grant in progress.

Murder Creek- a report was received from Apex Consulting for inspections done on 10/15/13 – 11/6/13. The pictures taken show the flexible hose has been added to help with the erosion.

Water projects- Downey and Draper Roads have been approved and the design phase is complete. Ready to move to construction phase in the spring.

NEW BUSINESS:

Approval- 2014 Budget:

A motion was made by Councilman Baran, seconded by Councilman Mayrose approving the proposed Budget for 2014 with the presented amendments.
(Resolution Attached) Cummings-Aye, Rooney -Aye, Mayrose-Aye, Baran-Aye, York-Aye
Carried Unanimously

Public Hearing- Local Law #8 of 2013:

A motion was made by Councilman York, seconded by Councilman Mayrose authorizing the calling of a public hearing on the proposed Local Law #8 of 2013 regarding amendment to the Zoning Law on accessory building provisions, to be held on Monday November 25th at 7:55pm at the town hall and authorizing the Clerk to publish the notice.
(Resolution Attached) Cummings-Aye, Rooney -Aye, Mayrose-Aye, Baran-Aye, York-Aye
Carried Unanimously

Approval- Correcting CDBG Resolution:

A motion was made by Councilman Mayrose, seconded by Councilman Rooney approving the correction of the CDBG resolution passed at the October 14, 2013 meeting to correct the ranking order of the projects, nunc pro tunc, and moving the Denio handicapped bathroom project to number 1 and the rural transit van service to number 2.
(Resolution Attached) Cummings-Aye, Rooney -Aye, Mayrose-Aye, Baran-Aye, York-Aye
Carried Unanimously

Approval- Grant Request to DEC:

A motion was made by Councilman Baran, seconded by Councilman York authorizing the Supervisor to file an application with NYSDEC for an Urban Forestry Community Grant in an amount not to exceed \$25,000 for a comprehensive tree inventory and assessment throughout the Town and Village and authorizing him to execute a project agreement on behalf of the Town.
(Resolution Attached) Cummings-Aye, Rooney -Aye, Mayrose-Aye, Baran-Aye, York-Aye
Carried Unanimously

Approval- SEQR Akron Airport access road & knox boxes:

A motion was made by Councilman Rooney, seconded by Councilman Mayrose approving the negative SEQR declaration for the Akron Airport Access Road and Knox Box installation only.
(Resolution Attached) Cummings-Aye, Rooney -Aye, Mayrose-Aye, Baran-Aye, York-Aye
Carried Unanimously

Approval- Name Library lower level:

A motion was made by Councilman Mayrose, seconded by Councilman York approving the name for the Newstead Library's lower level to the Newstead Cultural Center.
Cummings-Aye, Rooney -Aye, Mayrose-Aye, Baran-Aye, York-Aye
Carried Unanimously

Approval- December work session changes:

A motion was made by Councilman Baran, seconded by Councilman York approving the cancellation of the 12/2 and 12/16 work sessions to be replaced by a new session on 12/17/13.
Cummings-Aye, Rooney -Aye, Mayrose-Aye, Baran-Aye, York-Aye
Carried Unanimously

Approval- Purchase of Shed for Library:

A motion was made by Councilman York, seconded by Councilman Baran approving the purchase of a shed at a cost not to exceed \$1550 for the library property.
Cummings-Aye, Rooney -Aye, Mayrose-Aye, Baran-Aye, York-Aye
Carried Unanimously

Declaration of Surplus Material from Library Storage:

A motion was made by Councilman Mayrose, seconded by Councilman Rooney authorizing the declaration of surplus material for approximately 60 chairs at the library lower level and authorizing the Town Board to donate to either the local fire companies or other local organization.
(Resolution Attached) Cummings-Aye, Rooney -Aye, Mayrose-Aye, Baran-Aye, York-Aye
Carried Unanimously

Question Period – Doug Ceisner, 100 East Avenue – questioned the total cost of the joint facility.

Kevin Borth, Scotland Road – asks that old highway garage be auctioned and asked if the improvements done at the Akron airport have increased the assessment.

There being no further business to come before the board a motion was made by Councilman Mayrose, seconded by Councilman Baran to adjourn the regular meeting at 9:35pm.

Carried Unanimously

Respectfully Submitted,
Dawn D. Izydorzak, Town Clerk