

Newstead Town Board Meeting- April 27, 2015

A public hearing was called to order by the Newstead Town Board on Monday, April 27, 2015 at 7:25pm at the Newstead Town Hall.

Present: David Cummings- Supervisor
James Mayrose – Councilman
Justin Rooney- Councilman
Donald York- Councilman
John Jendrowski- Councilman
Nathan Neill- Attorney for the Town
Mike Bassanello- Highway Supt
Scott Rybarczyk- Town Engineer
Jennifer Heberling- Deputy Town Clerk

Roll Call was taken with all board members present.

The Supervisor called the public hearing to order regarding a **variance request** of 126' to install a 140' **wind turbine at 7269 Sandhill Rd** owned by Don York.

The Deputy Clerk read the proof of publication.

For the record, Don York stepped down from the podium and sat in the audience.

Comments: Supervisor Cummings stated this was sent to the ZBA instead of the town board in error. ZBA did grant the variance which is null & void. The planning board has also recommended approval of this.

Robert Wideman, 11720 Hunts Corners Rd. – signed off on this variance once and wants to confirm the actual distance of the variance. He asked if it is true that no one could ever get a building permit with in the fall zone. The Supervisor confirmed that he could not, per town law.

Alex Fox, CEC Energy – also confirmed that you cannot have a human occupied building within the variance area.

Nathan stated this is not a normal “too close to the property line” variance. The wind turbines can throw ice.

Carl Klingenschmitt, 11520 Howe Rd. – there is a safety issue with the wind turbines and he believes it should either be denied or the owner should sign off on the liability.

Tim Colf, 12721 Swift Mills Rd. – asked why the wind turbine can't be put somewhere else on the 34 acre parcel.

Supervisor Cummings agreed that was a good question and he is not sure if the board was going to vote on these tonight or at the next meeting. Councilman Rooney believes whatever they decide, they should do the same for all the variance requests they are hearing tonight.

Board decided to wait so they can discuss further.

Don York, 7269 Sandhill Rd. – explained that because of where his house, outbuildings and pond are located on his property, the area requiring the variance was the best spot to put the wind turbine.

There being no further comments a motion was made by Councilman Rooney, seconded by Councilman Mayrose to close the public hearing at 7:37pm. Carried

The Supervisor called the public hearing to order regarding a **variance request** of 94' to install a 140' **wind turbine at 11734 Meahl Rd** owned by Christopher Milhollen.

The Deputy Clerk read the proof of publication.

Comments: Supervisor Cummings again explained this was already acted on by the ZBA and was approved in error.

Robert Wideman, 11720 Hunts Corners Rd. – owns property on three sides and spoke to Mr. Milhollen about moving it back 50’ from the proposed site. This could make his property more valuable for future development and Mr. Milhollen was fine with that.

Christopher Milhollen, 11734 Meahl Rd. – already sent a message to the company about moving the turbine and they are fine with the new location.

Carl Klingenschmitt, 11520 Howe Rd. – thinks the property owner should sign off and establish liability.

Again, the board will not take any action on this tonight.

Nathan asked if Mr. Milhollen has enough property and he does not. There is not enough width.

There being no further comments a motion was made by Councilman Mayrose, seconded by Councilman Jendrowski to close the public hearing at 7:43pm. Carried Unanimously

The Supervisor called the public hearing to order regarding a **variance request** of 86’ to install a 140’ **wind turbine at 8268 Fletcher Rd** owned by Darren Kanehl.

The Deputy Clerk read the proof of publication.

Comments: Supervisor Cummings read a letter to the town board from the CEO stating the wind turbine was not being placed within the federal wet lands but would be in the floodplain. Once the variance was approved a floodplain development permit would have to be applied for.

Alex Fox, CEC Energy – originally was in the federal wet lands but had to be moved. This is why they are in need of the variance.

Carl Klingenschmitt, 11520 Howe Rd. – thinks the property owner should sign off and establish liability.

Supervisor Cummings asked if there are other parts of his property this could be placed? Is all of it wet lands? Property owner was not present.

Scott Rybarczyk, Wendel Engineering – regarding all three variance applications, any movement of the wind turbine may cause them to reapply including SEQR.

There being no further comments a motion was made by Councilman Mayrose, seconded by Councilman Rooney to close the public hearing at 7:49pm. Carried Unanimously

The Supervisor called the public hearing to order regarding a **site plan request** for a **6,240 sq.ft. addition** to an auction building at **11177 Main Rd** owned by Kelly Schultz.

The Deputy Clerk read the proof of publication.

Comments: Supervisor Cummings explained the application was submitted March 25th to the planning board. Per the CEO it did not require town engineering review and the planning board recommended the application to the town board. The ZBA granted a variance allowing the addition to be 6.19 feet from the property line instead of the 30 feet required by town code. Received comments from NFC.

Mike Mutter, Chief NFC – always recommend fire alarms, security system and sprinklers as the first line of defense. There are two driveways that run parallel next to the building. If that building was on fire they would not be able to access the back of the building. There is a stone driveway proposed for the future and he is asking that it be done sooner so they could access the back of the building if needed.

Councilman Rooney explained they spoke about this in work session and he feels that going forward they need a plan for the property showing handicapped parking spots and fire company recommendations, future buildings, etc. Councilman Mayrose agrees.

Councilman Jendrowski asked if they need the driveway to be stone. Chief Mutter explained that the two driveways there butt up to the building. If the building was on fire they would not be able to get a fire truck through.

Kelly Schultz, 11080 Stage Rd. – he explained that it is empty behind the building and is confused as to what the problem is with the driveway. He does have the handicapped parking signs posted now. Also stated that Mike Metzger is working on a new master plan and he is trying to decide if there will be any new buildings. Master plan should be done in 60 days.

Chief Mutter explained that the 2 driveways already there do not go behind the building.

Board discussed whether or not they want to act on this tonight.

Mr. Schultz assured the board and Chief Mutter he will do whatever the fire department wants.

The board decided on three conditions to his site plan request:

1. Driveway that would satisfy the fire department.
2. Handicap parking marked
3. Updated master plan in 90 days.

Tom Cowan, Chairman Newstead Planning Board – believes that if there is a problem with any of the conditions the project could be held up by the CEO.

There being no further comments a motion was made by Councilman Jendrowski, seconded by Councilman York to close the public hearing at 8:00pm. Carried Unanimously

The Supervisor called the public hearing to order regarding **Local Law #3 of 2015** regarding placing a **6 month moratorium on the acceptance of new applications for wind turbines** within the town.

The Deputy Clerk read the proof of publication.

Comments: Supervisor Cummings explained that 8 or 9 years ago the Town of Newstead did have a moratorium on wind turbines. Over the last several months there have been multiple changes and many variances which means the current law needs to be updated.

Jason Kaplan, General Counsel & Head of Policy, United Wind, Inc. – passed out a letter to the town board members that was emailed to Supervisor Cummings after business hours on Monday. He also submitted a letter from Michael Bergey who is the owner of Bergey Wind Power. Mr. Kaplan went over the main points of his letter which include why variances are needed, safety concerns, climbing the tower and that the NYSERDA rebate incentive is set to expire on December 31, 2015. He also asked if the town board would consider only placing a moratorium on those wind turbines needing a variance.

Tom Cown, Chairman Newstead Planning Board – he recognizes the variances are excessive, more than half of the applications require one. He stated that the planning board wants to work with the town board to rework the law.

Edmund Burke, 27 Crescent Dr. – asked if the board would consider a three month moratorium instead of the six.

Supervisor Cummings said that even if they pass a 6 month moratorium they don't have to use the entire 6 months. The board doesn't really want to have to use the whole 6 months. They have already made some changes to the law that were going to require a public hearing. They believe that with what they have learned they can make good changes.

Tim Colf, 12721 Swift Mills Rd. – he wants to see the board take their time and do this right. His understanding is these wind turbines are leased and he doesn't want this to affect property values.

Robert Wideman, 11720 Hunts Corners Rd. – asked if there is a tax value on these.

Councilman Jendrowski stated he has spoken to the assessor and she needs to wait and see how it plays out in the market. It actually may work against property values.

Christine Falkowski, Clerk Newstead Planning Board – asked Mr. Kaplan if NYSERDA's financial incentive will expire 12/31 permanently.

Mr. Kaplan said he didn't know if it would be reinstated.

Supervisor Cummings asked Mr. Kaplan how long this program has been in existence and he replied since 2011.

There being no further comments a motion was made by Councilman Mayrose, seconded by Councilman Rooney to close the public hearing at 8:17pm. Carried Unanimously

The **regular meeting** of the Newstead Town Board was called to order at 8:17pm with the same members present as listed above.

Councilman Rooney led the pledge to the flag.

Minutes from the previous regular meeting held on April 13, 2015 were presented for approval. A motion was made by Councilman Mayrose, seconded by Councilman Rooney to approve as presented. Carried Unanimously

Agenda Changes – a motion was made by Councilman Jendrowski, seconded by Councilman Rooney to make the following agenda changes:

M. Approve contract of Residential Observation Services with Wendel in connection with Installation of Draper Road water line.

N. Approve Memorandum of Understanding with Erie County Stop DWI office.

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 from Lewis Tandy requesting his reappointment to the Erie County Environmental Management Council for a new term.

An application for a beer/wine permit on June 20, 2015 at Skyline Park for a graduation party by Charles Staebell.

An application for a beer/wine permit on July 26, 2015 at Veterans Park for a reunion by David Cummings.

A notice from Ironwood Heavy Highway LLC that they will be in the area working on behalf of National Grid performing integrated vegetation management on the transmission line areas.

An announcement from the Buffalo & Erie County Public Library regarding a new "Read Aloud 15 Minutes" program that will kick off numerous reading events in 2015.

An update on the April 21st meeting of the Akron/Newstead Community Coalition.

A notice of a meeting by Erie County Legislator Ed Rath and Supervisor Cummings to update Swift Mills Rd area residents on the status of the bridge project, which will be held on May 5th at 7pm at the town hall.

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

Work Session: The Supervisor reported that at work session held last week the following items were discussed: a meeting with Native American representatives on the Indigenous Peoples Day idea, water issues- Downey Rd start date, buildings projects, parks, highway issues & joint facility contracts, planning items, grants, IT services and management access, executive session regarding several personnel issues and any other matters brought before the Board.

Agenda Items Question Period: no one spoke

Budget Transfers: a motion was made by Councilman Mayrose, seconded by Councilman York to approve the proposed budget transfers per memo dated 4/27/15 from Bookkeeper Colleen Salmon.
Carried Unanimously

Approval of Bills – Councilman Mayrose reported that the Abstract(s) from Batch(es) #1502 from the April 13, 2015 meeting have been reviewed with the previously un-audited vouchers and everything was found in order. He presented Abstract Batch(es) #1504 for payment. Vouchers on this abstract(s) numbered from 368-409, totaling \$26,894.73. Councilman York seconded to approve payment as follows:

Abstract Batch(es) #1504:
General Fund (A) -\$23,507.62, General Fund- Outside Village (B) \$425.75, Highway (DA) -\$0, Highway: Outside Village (DB) \$2,338.95, 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) \$461.07, Sewer Fund (SS) \$32.36, Sewer District #2 (SS02)- \$81.87, Trust & Agency(TA)- \$0 and Water Districts: Consolidated (SW00) \$47.11, (SW1) \$0, (SW2) \$0, (SW3) \$0, (SW4) \$0, (SW5) \$0, (SW6) \$0, (SW7) \$0, (SW7A) \$0, (SW8) \$0, (SW9) \$0, (SW10) \$0 Total: \$26,894.73
Carried Unanimously

COMMITTEE AND DEPARTMENT HEAD REPORTS:

Highway – tire drop off was 4/25/2015, white goods pick up is being held today and tomorrow, working in the parks and rolling fields, worked in shop repairing the electrical and plow hitch on #8, checking road for shoulder work, went to Norwich NY to look at a 2004 gradall, working on quotes for Berghorn, Moore and Downey Roads for C.D.B.G., met with the soccer president on 4/18 & 4/19 and wants to thank Dawn for ordering the signs for the parks.

Assessor – no report was presented.

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

Charles Eashak	11180 Hiller	I.G. Pool
James Donner	11872 Stage	Pergola
Robert George	12056 Buckwheat	Generator relocation
Rothland's Links LLC	12089 Clarence Center	Sign
Aleksandr Matskevich	7500 Greenbush	One family home
Doug Rifenberg	11556 Stage	Shed
Henry Meinzer	13218 Dorsch	Garage/mudroom
Stephen Ward	7647 Greenbush	Addition
Robert Meyers	5872 Crittenden	A.G. Pool
Kelly Schultz	11079 Main	Truss roof
Christopher Milhollen	11734 Meahl	Special use permit-renew

The Town Board accepted the report as presented.

Town Clerk- the Dog Control Officers report for the 1st quarter of 2015 was distributed to the board.

Attorney for the Town – nothing

COUNCILPERSONS:

Rooney – spoke with residents regarding Indigenous People Day and attended the Clarence/Newstead Chiefs meeting.

Mayrose – met with the Supervisor and office staff regarding some reorganizing ideas, Christine Falkowski regarding some planning department issues and the court clerk regarding numbers and other issues.

York – attended the library board meeting, celebration committee meeting and spoke to Mike Lotz regarding the new power going to the second pole.

Jendrowski – attended the library board meeting, celebration committee meeting, met with DCO DeYoung and received a call regarding a ditch on McNeeley Road which was referred to Mike Bassanello.

Supervisor – forming a committee on Indigenous People Day with Councilman Rooney and himself and they will be meeting with members of the Tonawanda Nation. Also reported we did not get any bids for mulching the debris on Sandhill Road, have one potential bid for the DCO vehicle, discussed with Erie County Grants regarding how we are going to put in for grants, we have work at the library we are hoping to get a grant for, it was suggested we apply for the C.D.B.G. to fix roads in certain areas of the town and discussed several engineering issues regarding water and trailways projects.

UNFINISHED BUSINESS:

Buildings – looking at some upgrades at the town hall and applying for grants for work at the library and senior center.

Planning – Carl will be setting up a meeting regarding the EAB. More information to come.

Water – looking at starting the first part of May

Sewer – have information from Niagara Label they need to discuss. Also need numbers for Bloomingdale.

Grants – put in another archive grant, town trailways is being worked on, the town park needs to be resubmitted this year and the library will be applying for the Greatbatch grant. Will discuss in work session.

Code –some will be looked at tonight and some are being put on the back burner.

Park Usage – the two parks that we own are owned by the Town of Newstead but they are not just for Newstead residents.

NEW BUSINESS:

Approval- Change of Rezoning Conditions-5055 Havens Rd:

A motion was made by Councilman Jendrowski, seconded by Councilman York based on a recommendation from the Planning Board, approving the waiver of the original condition number 5 and 6 for 5055 Havens Rd in 2012.

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

SEQR & Approval- Local Law #3 of 2015:

A motion was made by Councilman Mayrose, seconded by Councilman Rooney issuing a determination of non-significance of Local Law on the proposal to place a 6 month moratorium on the acceptance of new applications for wind turbines within the town effective April 13, 2015 and declaring it a Type II action under SEQR.

(Resolution Attached)Cummings-Aye, Rooney -Aye, Mayrose-Aye, York-Abstain, Jendrowski- Aye Carried

LL#3 cont:

A motion was made by Councilman Mayrose, seconded by Councilman Jendrowski approving the proposed Local Law #3 of 2015 placing a 6 month moratorium on the acceptance of new applications for wind turbines within the town effective April 13, 2015.

Councilman Jendrowski stated that there have been too many variances.

Councilman Rooney wants to get this done in less than 6 months. The last thing they want to do is create a financial hardship for the residents.

Supervisor Cummings is supporting this because he feels it is what is right for the residents.

Nathan Neill asked if the application is already submitted and they need to change where on the property the wind turbine will be placed, will they still be grandfathered. Supervisor Cummings said that will be addressed on a case by case basis.

(Resolution Attached) Cummings-Aye, Rooney -Aye, Mayrose-Aye, York-Abstain, Jendrowski- Aye
Carried

Approval- Site Plan-11177 Main Rd:

A motion was made by Councilman York, seconded by Councilman Jendrowski approving the request for site plan approval for a 6,240 sq. ft. addition to the auction building at 11177 Main Rd owned by Kelly Schultz, subject to the terms set forth in the resolution.

Councilman Mayrose said that instead of approving the current site plan he would rather see the site plan amended with the recommendations added before approval.

(Resolution Attached) Cummings-Aye, Rooney -No, Mayrose-No, York-Aye, Jendrowski- Aye
Carried

Public Hearing- Variance-Wind Turbine-7722 Moore Rd:

A motion was made by Councilman Rooney, seconded by Councilman Mayrose approving the calling of a public hearing on the proposed variance of 75 feet and 72 feet for placing a wind turbine at 7722 Moore Rd owned by Bonnie Dee, to be held on May 11, 2015 at 7:45pm at the town hall and authorizing the Clerk to publish notice of the hearing.

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

Public Hearing- Variance-Wind Turbine-12067 Nice Rd:

A motion was made by Councilman Mayrose, seconded by Councilman Rooney approving the calling of a public hearing on the proposed variance of 192.5 feet for placing a wind turbine at 12067 Nice Rd owned by Dan Andrusz, to be held on May 11, 2015 at 7:50pm at the town hall and authorizing the Clerk to publish notice of the hearing.

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

Approval- Lateral Restriction request:

A motion was made by Supervisor Cummings, seconded by Councilman Rooney approving the request by Aleksandr Matskevich for a Lateral Restriction Hardship Exception to connect to the Waterlines in District #10 at 7500 Greenbush Rd.

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

Approval- Beer/Wine Permit:

A motion was made by Councilman Mayrose, seconded by Councilman Rooney approving the request for a beer/wine permit for Skyline Park on June 20, 2015 for the Staebell Graduation.

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

Approval- Beer/Wine Permit:

A motion was made by Councilman Mayrose, seconded by Councilman Rooney approving the request for a beer/wine permit for Veterans Park on July 26, 2015 for the Cummings Reunion.

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

Appointment- Lewis Tandy:

A motion was made by Councilman Mayrose, seconded by Councilman Rooney approving the reappointment of Lewis Tandy to the Erie county Environment Management Council for another term beginning June 1, 2015.

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

Approval- Senior Center Assistants Rate Adjustments:

A motion was made by Councilman Mayrose, seconded by Councilman York approving the retroactive pay rate adjustments for Senior Center Assistants Karen DeYoung and Sarah Young.

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

Approval – Contract with Wendel Engineering for Resident Observation Services:

A motion was made by Councilman Mayrose, seconded by Councilman approving the contract of Residential Observation Services with Wendel Engineering dated April 24, 2015 which contract is based upon time and expense basis with a maximum cost of \$24,000.

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

Approval – Memorandum of Understanding with Erie County Stop DWI Office:

A motion was made by Councilman Mayrose, seconded by Councilman Rooney to approve the Memorandum of Understanding with the Erie County Stop DWI office.

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

Privilege of the Floor/Question Period:

Supervisor Cummings announced that on May 5th at 7:00pm at the town hall Erie County Legislator Ed Rath will hold a meeting to update the residents on the status of the Swift Mills Road bridge.

Alex Fox, CEC Energy – asked how the moratorium affects the applications that have already been submitted. Supervisor Cummings told him as long as the application was in and complete before April 13th it will be grandfathered.

There being no further business to come before the board a motion was made by Councilman Mayrose, seconded by Councilman York to adjourn the regular meeting at 8:56pm.

Carried Unanimously

Respectfully Submitted,
Jennifer Heberling, Deputy Town Clerk