

Newstead Town Board Meeting- June 13, 2016

A motion was made by Supervisor Cummings at 7:40pm to go into Executive Session to discuss the termination of the employment of a particular person pursuant to Section 75 of the New York State Civil Service Law and appointment of a hearing officer to conduct a hearing pursuant to Section 75 of the New York State Civil Service Law. Seconded by Councilman Mayrose. Town Board members present were Supervisor David Cummings, Councilman Jim Mayrose, Councilman John Jendrowski, Town Attorney Nathan Neill and Town Clerk Dawn Izydorczak.

Executive Session Discussion

On May 18, 2016, a Town of Newstead employee filed a Workplace Violence Incident Report, alleging that on May 17, 2016, Town Code Enforcement Officer, Ralph Migliaccio ("Mr. Migliaccio") violated the Town's Workplace Violence Policy when he yelled at her in a hostile and intimidating manner, upsetting her and causing her to leave work early. The employee noted that the incident with Mr. Migliaccio arose following her request that Mr. Migliaccio speak with a representative from a local contracting firm (Empire). On May 20, 2016, Town Supervisor, David Cummings ("Supervisor Cummings") received an email correspondence from Paula Grimm of Empire, complaining about the "extremely rude and unprofessional manner" in which Mr. Migliaccio dealt with her on May 17, 2016.

Upon receipt of the Complaints from the town employee and the email from Ms. Grimm, Supervisor Cummings undertook an investigation. In connection with his investigation Supervisor Cummings obtained witness statements from Town employees who were present for and witnessed the incident of May 17, 2016. On May 23, 2016, Supervisor Cummings and the Town Board, consisting of Councilman James Mayrose, Councilman John Jendrowski and Councilman Joseph Dugan, also interviewed Mr. Migliaccio as part of the investigation. On May 23, 2016, Mr. Migliaccio also submitted a written statement summarizing his position with respect to the incidents of May 17, 2016.

At the conclusion of the investigation, Supervisor Cummings presented information obtained in the course of the investigation to the Town Board. Supervisor Cummings also briefed the Town Board on Mr. Migliaccio's prior disciplinary record with respect to dealing with co-workers and members of the public in a hostile, aggressive and intimidating manner. After being presented with all of the facts, the Town Board determined that Mr. Migliaccio engaged in misconduct and/or incompetence and determined that the termination of Mr. Migliaccio's employment was the appropriate course of action.

On June 2, 2016, Supervisor Cummings, Councilman Mayrose and the Town Attorney Nathan Neill presented Mr. Migliaccio with written notice of the charges against him and notified him that the Town intended to terminate his employment due to his own misconduct and/or incompetence as is more fully set forth in the charges (attached hereto as Exhibit A). At that time Mr. Migliaccio was also informed that effective June 2, 2016, his employment was suspended pending the completion of the termination proceedings pursuant to Section 75 of the Civil Service Law.

The June 2, 2016 notification provided to Mr. Migliaccio informed him of his right to a hearing and of his right to respond in writing to the charges preferred against him within eight days, or by June 10, 2016.

On June 7, 2016, Mr. Migliaccio hand delivered a letter to Supervisor Cummings formally requesting a hearing pursuant to Section 75 of the New York Civil Service Law. Mr. Migliaccio did not submit a written answer to the charges against him by June 10, 2016.

In light of Mr. Migliaccio's request for a hearing, the Town Board, which is the entity with the power to appoint Code Enforcement Officers, must provide Mr. Migliaccio with a hearing pursuant to Section 75 of the New York State Civil Service Law. The Town Board can conduct this hearing itself or it can designate its power to a hearing officer to conduct the hearing and provide the Town Board with a written report and recommendation.

The Town Board discussed their options for conducting the hearing looking at the Perception of fairness and that the proceedings will be subject to review by Civil Service Commission and/or NYS Supreme Court. As a result the Town Board unanimously decided to hire a hearing officer to conduct the hearing instead of conducting the hearing themselves.

Discussion was held concerning which hearing officer to appoint and after looking at suggested individuals selected Joe Saeli, whose resume is attached, at a cost of \$1,500 per day.

With no further business to discuss a motion was made to go back to open session at 7:54pm by Councilman Mayrose, seconded by Councilman Jendrowski.

A public hearing was called to order by the Newstead Town Board on Monday, June 13, 2016 at 7:55pm at the Newstead Town Hall.

Present: David Cummings- Supervisor
James Mayrose- Councilman
John Jendrowski- Councilman
Nathan Neill- Attorney for the Town
Scott Rybarczyk- Town Engineer
Dawn Izydorzak- Town Clerk
Jennifer Heberling – Deputy Town Clerk

Roll Call was taken with all board members present except Councilman York and Councilman Dugan who are out on medical leave.

The public hearing was called to order on the proposed site plan for a 8,748 sq ft pole barn at 113 Cedar St in the I-2 zone, owned by Whiting Door Co.

The Clerk read the proof of publication. Supervisor Cummings stated the project has been recommended for approval by the Planning Board, the CEO and Wendel

Comments: no one spoke

There being no further comments, a motion was made by Councilman Mayrose, seconded by Councilman Jendrowski to close the public hearing at 7:59pm. Carried

The regular meeting of the Town Board was called to order at 8:00pm with the same members present as listed above.

Supervisor Cummings led the pledge to the flag.

Minutes from the previous regular meeting held on May 23, 2016 were presented for approval. A motion was made by Councilman Mayrose, seconded by Councilman Jendrowski to approve as presented. Carried

Agenda Changes – a motion was made by Councilman Mayrose, seconded by Councilman Jendrowski to make the following agenda changes: add a resolution for Penflex payment and a resolution to hire 2 temporary PT employees Carried

Communications – The Town Clerk presented the following correspondence:
Two letters were received from Charter Communications notifying the town of the completed merger with Time Warner Cable and also notifying the town of the programmers and service providers they are currently in negotiations with for service as part of the transition.

Correspondence and phone calls were received from several concerned residents in the area of Main Rd & North Millgrove Rd after the tragic accident that recently occurred at the intersection. Many are once again calling for a traffic light to be installed at that intersection.

The Operations Reports for April and May were received from Amherst Alarm Office. They reported 51 calls in April and 37 calls in May for Akron Fire Co and 23 calls in April and 34 calls in May for Newstead Fire Co.

A Notice of Tentative State Equalization Rate was received from the NYS Department of Taxation & Finance. The rate will be 98.5% for the 2016 roll.

A summary of the June 4th Shred-it event was provided by Village Clerk Borchert from the Village. 80 residents total attended the event with 44 being from the village and 36 from the town. Close to 4,000 lbs of materials were shredded.

Requests for Beer/Wine permits were submitted by the following: the Sylvester family party on June 19th at Skyline Park, the Heberling family party on June 25th at Veterans Park.

A letter was received from Fred Pask requesting reappointment to the Board of Assessment Review when his term is up on September 30th and the Zoning Board of Appeals when his term is up on December 31st of this year.

A notice from Erie County Highway Department that Parkview Drive from Rt.93 to East Avenue will be shut down from Wed., June 15th thru Sun., June 19th for filming of the movie “Marshall”.

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

Work Session: The Supervisor reported that at work session held last week the following items were discussed: buildings projects at town buildings, water/sewer projects, planning items- recycling, master plan, national grid, celebrations & solar, grant items, IT & AM services, the next joint meeting with the Village Board, recreation staff appointments, the next property demolition, park requests, personnel & contract issues and any other matters brought before the Board. Executive session was held regarding personnel issues with a particular employee on June 6, 2016 with no action taken at that time.

Agenda Items Question Period: no one spoke

Budget transfers: a motion was made by Councilman Mayrose, seconded by Councilman Jendrowski to approve the budget transfers as presented in a memo dated 6/13/16 by Bookkeeper Colleen Salmon. Carried

Approval of Bills – Councilman Jendrowski reported that the Abstract(s) from Batch(es) #1623 & 1625 have been reviewed with the previously un-audited vouchers and everything was found in order. He presented Abstract Batch(es) #1623 & 1625 for payment. Vouchers on this abstract(s) numbered from 532 – 589, totaling \$146,919.41. Councilman Mayrose seconded to approve payment as follows:

Abstract Batch(es) #1623 & 1625:
General Fund (A) -\$36,117.20, General Fund- Outside Village (B) \$3,216.56, Highway (DA) -\$0, Highway: Outside Village (DB) \$42,007.71, CAP-Murder Creek (HM) \$0, CAP- Scotland Rd (HS)- \$0, CAP- Water Improvement (HW)- \$0, CAP Water-Downey (HW01)- \$0, Drainage (SD)- \$737.14, Fire Protection (SF) \$35,576.00, Refuse (SR) \$27,475.18, Sewer Fund (SS) \$1,293.76, Sewer District #2 (SS02)- \$345.00, Trust & Agency(TA)- \$0 and Water Districts: Consolidated (SW00) \$150.86, (SW1) \$0, (SW2) \$0, (SW3) \$0, (SW4) \$0, (SW5) \$0, (SW6) \$0, (SW7) \$0, (SW7A) \$0, (SW8) \$0, (SW9) \$0, (SW10) \$0
Total: \$146,919.41 Carried

COMMITTEE AND DEPARTMENT HEAD REPORTS:

Highway – a report was submitted stating the crews have been mowing field ditches, they got the equipment ready for oiling and oiled & stoned 7 roads, they did a road pipe & 495’ of road ditching on Dye Rd, worked with the village crews on Hoag Ave project, worked on the new bike path section cleaning brush & trees and helped Clarence to black top Kraus Rd.

Assessor – a report was presented regarding the changes implemented by the NYS Governor and Legislature regarding the STAR program and how that program will be changing in the future.

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

Buffalo Drilling	12264 Main	Permit renewal
Timothy Trzenski	7746 Moore	Porch alteration

Daniel Wetzler	12543 Clarence Center	Garage
David Hill	4758 Crittenden	Roof
Mooney's Restaurant	11891 Main	Special event permit
Tom Schumacher	12081 Meahl	Roof
Brandon Hoffman	12754 Dorsch	Above ground pool
Michael Coppola	5393 Barnum	Pool deck
CMK Builders	12072 Buckwheat	One family home
Anthony Armstrong	11897 Meahl	Rooftop solar system
Don York	7269 Sandhill	Permit renewal
Eric Pirson	11732 Rapids	Permit renewal
Don Nicholas	5360-5364 Barnum	Roof & siding
William Budziszewski	13881 Bloomingdale	Porch
Joseph Burg	11109 Rapids	In-ground pool, spa & pool house
Frank Nappo	228 Golden Pond Est	Roof
Curtis Mohr	11831 Clarence Center	Permit renewal

The Town Board accepted the report as presented.

Town Clerk- nothing at this time

Attorney for the Town – nothing at this time

COUNCILPERSONS:

Mayrose – he met with the Highway Supt on equipment needs/purchases and the highway contract, had several meetings on the Code Enforcement issue, attended the Shred-it event, and had several conversations about the need to install a light at Main Rd and N Millgrove Rd intersection.

York – not present

Jendrowski- he met with a Dye Rd resident on an issue, attended several meetings on the Code Enforcement issue and attended the library board meeting.

Dugan – not present

Supervisor- he attended the Supervisors meeting in Elma, met with the Highway Supt on ditching and the bike path, received 2 calls regarding the concert held at Mooney's, spoke with Wendel several times on water and sewer issues, spent several hours on the library sewer back up, met on the highway contract, and met with the fire companies on contract renewals.

UNFINISHED BUSINESS:

Buildings- town hall project is ongoing

Planning- Carl reported that Clarence will inject our ash trees for EAB for time and materials at a cost of approximately \$5.00/inch.

Water/Sewer- Scott reported we are moving forward with the Sewer project which is now in the permit phase. Permits are in and under review and we next need to get approvals from the Village for the tap into the system. On the Cedar St waterline we next need to get approvals from ECWA.

Grants- we are getting ready to resubmit the park grant soon. A meeting will be held this week on that submission.

NEW BUSINESS:

Public Hearing- Wind Turbine- 8268 Fletcher Rd:

A motion was made by Councilman Mayrose, seconded by Councilman Jendrowski approving the calling of a public hearing on a wind turbine project to be erected at 8268 Fletcher Rd by Darren Kanehl with the hearing to be held on June 27, 2016 at 7:45pm to hear comments from the public on the proposed project.

(Resolution Attached) Cummings-Aye, Dugan -Absent, Mayrose-Aye, York-Absent, Jendrowski-Aye Carried

Approval- Site plan- 113 Cedar St Project:

A motion was made by Councilman Mayrose, seconded by Councilman Jendrowski issuing a negative SEQR declaration and approving the revised site plan dated May 2, 2016 for a 8,748 sq. ft. pole barn project to be erected at 113 Cedar St by Whiting Door Co. subject to the terms set forth in the resolution.

(Resolution Attached) Cummings-Aye, Dugan -Absent, Mayrose-Aye, York-Absent, Jendrowski-Aye Carried

Contract Award- Library Sidewalk Project:

A motion was made by Councilman Jendrowski, seconded by Councilman Mayrose approving the contract with Rehwaltd Builders for work on the Library sidewalk project in an amount not to exceed \$19,900.00 and authorizing the Supervisor to execute the contract.

(Resolution Attached) Cummings-Aye, Dugan -Absent, Mayrose-Aye, York-Absent, Jendrowski-Aye Carried

Appointment of Hearing Officer:

A motion was made by Councilman Mayrose, seconded by Councilman Jendrowski authorizing the appointment of Joseph F. Saeli, Jr. as a hearing officer under Section 75 of the New York State Civil Service Law relative to the allegations against the Code Enforcement Officer.

(Resolution Attached) Cummings-Aye, Dugan -Absent, Mayrose-Aye, York-Absent, Jendrowski-Aye Carried

Public Hearing- Local Law 1 of 2016:

A motion was made by Councilman Jendrowski, seconded by Councilman Mayrose authorizing the calling of a public hearing on proposed Local Law #1 of 2016 placing a moratorium on solar farms to held on June 27, 2016 at 7:50pm and authorizing the Town Clerk to publish the notice.

(Resolution Attached) Cummings-Aye, Dugan -Absent, Mayrose-Aye, York-Absent, Jendrowski-Aye Carried

Approval- Recreation Summer Staff:

A motion was made by Councilman Mayrose, seconded by Councilman Jendrowski approving the appointment of the Recreation staff for the summer session as presented by the Recreation director and Recreation Board and attached to these minutes.

Cummings-Aye, Dugan -Absent, Mayrose-Aye, York-Absent, Jendrowski- Aye Carried

Approval- Beer & Wine Permit Requests:

A motion was made by Councilman Mayrose, seconded by Councilman Jendrowski approving the requests for Park Use/ Beer & Wine as follows: the Sylvester family party on June 19th at Skyline Park, the Heberling family party on June 25th at Veterans Park, and use of Veterans Park for the July 3rd fireworks display.

Cummings-Aye, Dugan -Absent, Mayrose-Aye, York-Absent, Jendrowski- Aye Carried

Approval- Salary Adjustments for Staff:

A motion was made by Councilman Mayrose, seconded by Councilman Jendrowski approving a \$0.50 raise effective immediately for the following staff members: Elizabeth Pask, Karen DeYoung, Sarah Young, Barb Gaik

Cummings-Aye, Dugan -Absent, Mayrose-Aye, York-Absent, Jendrowski- Aye Carried

Approval- Contract with Wilson Environmental:

A motion was made by Councilman Jendrowski, seconded by Councilman Mayrose approving the hiring of Wilson Environmental Technologies Inc to conduct a wetland delineation at a cost of \$2,900 on the Cedar St waterline project.

(Resolution Attached) Cummings-Aye, Dugan -Absent, Mayrose-Aye, York-Absent, Jendrowski-Aye
Carried

Approval- Penflex Payment:

A motion was made by Councilman Mayrose, seconded by Councilman Jendrowski approving the eligibility of Dennis Schweigert to receive a one-time payment from LOSAP in an amount as specified by Penflex, Inc. and authorizing the Supervisor to sign the authorization letter to be sent to Paul Barone at the Emerling Agency LLC.

(Resolution Attached) Cummings-Aye, Dugan -Absent, Mayrose-Aye, York-Absent, Jendrowski-Aye
Carried

Approval- Contractual Hire of CEO's:

A motion was made by Supervisor Cummings, seconded by Councilman Mayrose approving the hiring by contract of Jim Pusateri and Michael Borth as temporary part time CEO's at a rate of \$30/hour with no mileage or other benefits to cover until a permanent replacement can be hired.

(Resolution Attached) Cummings-Aye, Dugan -Absent, Mayrose-Aye, York-Absent, Jendrowski-Aye
Carried

Privilege of the Floor/Question Period:

Dale Cheavacci of 113 John St presented pictures to the Board of the Akron Airport and what appears to be the starting of another runway in violation of the court order. He also questioned how they can keep making improvements and adding buildings and yet their assessment keeps being lowered.

Supervisor Cummings stated the Board will investigate this and get back to him.

There being no further business to come before the board for the regular meeting a motion was made by Councilman Mayrose, seconded by Councilman Jendrowski to adjourn the regular meeting at 8:40pm.
Carried

Respectfully Submitted,
Dawn D. Izydorczak, RMC, Town Clerk