

## **Newstead Town Board Meeting- November 22, 2010**

A motion was made by Supervisor Cummings, seconded by Councilman Mayrose to go into Executive Session at 7:50pm with all Town Board members, the Town Attorney and Town Clerk present 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.

### Executive Session Discussion

Between May 2010 and November 2010, Town Supervisor Cummings and Councilman Mayrose were engaged in conducting an investigation of the Town Code Enforcement Officer John Good.

This investigation concluded on November 8, 2010, when Supervisor Cummings and Councilman Mayrose interviewed Mr. Good, presented him with the evidence against him indicating that he had been engaged in misconduct and/or that he was incompetent to perform the duties of his position.

On November 9, 2010 Supervisor Cummings and Councilman Mayrose presented Mr. Good 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. Good was also informed that effective November 9, 2010, his employment was suspended pending the completion of the termination proceedings pursuant to Section 75 of the Civil Service Law.

The November 9, 2010 notification provided to Mr. Good 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 November 17, 2010.

Mr. Good did not submit a written answer to the charges against him by November 17, 2010. On November 15, Mr. Good submitted a letter to the Town Supervisor formally requesting that a Section 75 hearing be held on or after January 15, 2011.

In light of Mr. Good's request for a hearing, the Town Board, which is the entity with the power to appoint Code Enforcement Officer's must provide Mr. Good with a hearing pursuant to Section 75 of the New York State Civil Service Law. The 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.

A discussion was held by the Board whether to appoint a hearing officer or to have the Town Board conduct the hearing itself. In the interest of fairness to Mr. Good it was decided the Board will appoint a hearing officer to conduct the hearing and provide the Town Board with a written report and recommendation. After reviewing several resumes and recommendations the Town Board decided to appoint Joseph F. Saeli, Jr. as the Hearing Officer to preside over the hearing for Mr. Good pursuant to Section 75 of the New York State Civil Service Law.

A motion was made by Councilman Baran, seconded by Councilman Rooney to go back to open session for the regular Town Board meeting at 8:10pm

A regular meeting was called to order by the Newstead Town Board on Monday, November 22, 2010 at 8:11pm at the Newstead Senior Center.

Present: David L. Cummings- Supervisor  
Justin Rooney- Councilman  
Cheryl Esposito- Councilwoman  
James Mayrose- Councilman  
Richard Baran- Councilman  
Mike Bassanello- Highway Supt.  
Nathan Neill- Town Attorney  
Scott Rybarczyk- Town Engineer  
Dawn Izydorzak- Town Clerk  
Jennifer Heberling- Deputy Town Clerk

Roll Call was taken with all board members present.

Supervisor Cummings led the pledge to the flag.

Minutes from the previous regular meeting held on November 8, 2010 were presented for approval. A motion was made by Councilman Mayrose, seconded by Councilman Rooney to approve both as presented. Carried Unanimously

**Communications** – The Town Clerk presented the following correspondence:

A letter from NYS Department of Environmental Conservation notifying the town that they have been awarded funding on a Water Quality Improvement Project for the Murder Creek Bank Stabilization project in the amount of \$212,000.00.

A copy of the proposed Kennel Law for the Town of Alden was received for any comments from our board.

Notice of an award to the Akron Fire Company of a Federal grant in the amount of \$102,659.00 for the purchase of new fire gear and equipment.

A letter of request from the Akron Soccer League requesting the use of the Town Park and all its facilities for their annual Kick It First Tournament on May 6<sup>th</sup> – 8<sup>th</sup>, 2011.

A letter from the NYS Office of Parks, Recreation & Historic Preservation notifying the town that they have not been chosen for funding thru the EPA program for 2011.

The Supervisor received an invitation to attend a meeting on the Canal Side Project on November 23, 2010 at the Erie County Harbor Development Corporations headquarters for input into the plans for the project.

A letter from Akron Central School Superintendent Zymroz requesting a member of the Town Board to sit on the ACS Budget Advisory Committee for the 2011-12 Budget process.

A letter from the Northern Erie Sno-Seekers Club requesting use of the west Shoreline Bike Path trails for its 2010-11 snowmobiling season.

A motion was made by Councilman Rooney, seconded by Councilman Baran 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 meeting with Akron Fire Chief Don Roth on Federal grant, water district issues, town hall & joint facility project updates, planning issues, Murder Creek project, Sno-Seekers request, Akron Central School issues, Assessor formula proposal, Contracts, personnel issues, grants, and the dog control law edits, as well as any other issues brought before the board. Tonight there was a meeting with the dog committee and the Board spoke to the Assessor regarding special districts. An executive session of the Board was held prior to the meeting on a personnel matter.

**Privilege of the Floor** –

Faith Mrowczynski-52 Brooklyn St- questioned the surveying comparisons on the Murder Creek project.

Doug Ceisner- 100 East Ave- questioned discrepancies in assessment of several properties in the Village and the Town, especially on Main Rd and Washington St. He feels waiting until 2012 for a revaluation project is too long and it needs to be done now.

Joe Mrowczynski, 52 Brooklyn- stated this Murder Creek project causes serious concern to his family and his property. He has observed high and fast water thru that creek many times and he is concerned that the proposed abutments on the north side of the bank will cause more flooding to his property not less. He is afraid his house is going to get flooded.

Val Adderly- 40 Brooklyn St- questioned how this whole project got started and why it is necessary. He has worked hard for his land and wants to protect his house and property.

Supervisor Cummings addressed this stating the October Storm caused the problem when much of the vegetation on the creek bank was lost causing destabilization of the bank.

Larry Wilson- 48 Brooklyn St- stated the board has put the requirements for easements for access on the Brooklyn St residents and questioned if the easements for Brooklyn St can be separated from the Main St easements.

CAC Chairman Carl Klingenschmitt addressed how the Main St properties will be handled as well as explaining the effect the October Storm had on the bank and the process of applying for each of the grants received.

Richard Forrestel- 11 Madison Ave- confirmed that the 2006 Storm devastated the bank and caused substantial erosion. His company worked with the town and village to do a lot of the clean up work on the bank and creek.

Ben Karas- 28 Brooklyn St- questioned if a lot of that vegetation has already grown back.

Carl replied only very small vegetation, not trees that will stabilize the bank.

Dave Wehling- 10 Brooklyn St- stated he has called the county and no one there seems to know anything about this project. He spoke to Co. Executive Chris Collins directly. He questioned why permanent easements are necessary and how the eminent domain process works. He stated they can take his property.

Patricia Adderly- 40 Brooklyn St- stated the amounts of easement footage are so varying and at this point vague. This is what causes her concern not knowing how much land they want to take.

Carl addressed the reason for the vagueness is the engineering phase and without the survey work and then the design engineering, the town cannot figure out exactly what footage is going to be required for the easements. Each property could be very different.

Faith Mrowczynski- 52 Brooklyn St- stated Carl never said they would be building a wall on the Brooklyn St side only on the Main St side.

Ben Karas- 28 Brooklyn St- stated he has spoken with Mark Gaston at the County and was told walls and berms will need to be constructed to establish the 100 year mitigation line but will not alter the flow of the creek. Where it begins and ends is not defined yet. Once easements are signed your subject to changes in engineering. He stated erosion is from the top not from the pinned bottom. Carl explained that you cannot build a "levy" you must maintain the 100 year floodplain requirements under FEMA.

Ben Karas read excerpts from the grant and stated he feels the project is not going to work the way it is being proposed. He feels once engineering is done they will find that they need to take more property than the Town thinks they will.

Supervisor Cummings stated that Phase 1 is for engineering and design work only. Then they have to go back to FEMA to present the work plan and get their opinion and recommendations in order to receive further funding.

The Brooklyn St residents appointed Larry Wilson as their liaison to the Town Board on the project. Mr. Wilson will meet with the Town Board and get updates to the residents. The residents would like to avoid eminent domain proceedings and feel miscommunications led to them revoking the Revocable Trusts with the Town. Mr. Wilson will meet with the Board about getting them reinstated so the surveyors can complete the necessary work for the design study.

Bob Schieb- 51 Brooklyn St- spoke representing "Concerned Citizens" group on the airport project. He read and presented the board a statement regarding their opposition to any further improvements at the airport. He stated petitions are currently being circulated around the village and town in opposition to the airport projects currently being considered by the Board.

Town Attorney Neill stated the Zoning Board cannot make any decisions on these projects prior to the Town Board completing SEQRA findings.

Mr. Schieb questioned if he can get a copy of the findings once they are complete? Yes.

Gary Fogal -29 Front St- questioned if the Village and Town Boards are meeting on the airport issues. Yes they are.

**Budget Transfers:** A motion was made by Councilman Rooney, seconded by Councilwoman Esposito to approve the requested budget transfers per a memo from Bookkeeper Colleen Salmon dated 11/22/2010.

Carried Unanimously

**Approval of Bills** – Councilwoman Esposito reported that the Abstract from Batch #995 & 998 from the November 22, 2010 meeting has been reviewed with the previously un-audited vouchers and everything was found in order. She presented Abstract Batch #999. Vouchers on this abstract numbered from 1212 - 1258 totaling \$388,951.88 and were presented by Councilwoman Esposito, seconded by Councilman Baran to approve payment as follows:

Abstract Batch #999:

General Fund (A) -\$90,447.82, General Fund- Outside Village (B) \$12,296.65, Highway (DA) -\$0, Highway: Outside Village (DB) \$38,358.39, Capital Projects: CAP- Highway Garage- (HG) - \$58,314.06, CAP-Murder Creek (HM) \$0, CAP- Town Hall Addition (HT) \$184,705.25, Drainage (SD)- \$0, Fire Protection (SF) \$0, Refuse (SR) \$0, Sewer Fund (SS) \$27.08, Sewer District #2 (SS02)- \$220.57, Trust & Agency(TA)- \$1,293.75 and Water Districts (SW1) \$20.73, (SW2) \$12.74, (SW3) \$26.43, (SW4) \$22.82, (SW5) \$319.56, (SW6) \$17.02, (SW7) \$2,770.80, (SW7A) \$7.65, (SW8) \$22.11, (SW9) \$14.43, (SW10) \$54.02

Total: \$388,951.88

Carried Unanimously

**COMMITTEE AND DEPARTMENT HEAD REPORTS:**

**Highway** – today’s joint facility meeting was cancelled. There is a walkthrough of the building scheduled for tomorrow, November 23<sup>rd</sup>. Mike also informed the Board that the plows are all ready to go.

**Assessor** – no report presented

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

David Scotch	11174 Hunts Corners	Solar panels
Scott Ludtka	Moore Rd	Driveway
Benderson Development	12963 Main	Permit renewal
Bob & Karen Kleparek	7628 Maple	Addition
Gary Baehr	13828 Martin	Roof
James Nawrot	11199 Stage	Garage conversion
Kelly Roth	5898 Cummings	Windows

The Town Board accepted the report as presented. Supervisor Cummings stated that everything is working well with Clarence covering our Code Enforcement duties.

**Town Clerk**- Dawn will be on vacation from November 28<sup>th</sup> thru December 5<sup>th</sup>. Jennifer will be in charge of the office.

**Attorney for the Town** – Nothing

**COUNCILPERSONS:**

**Rooney**- Nothing

**Esposito**- Thanked Legislator Walter for coming to the library and talking to residents regarding their concerns over the proposed library funding cuts. Many people stopped by to see him.

**Mayrose**- also thanked Legislator Walter for his time. Ray informed Jim that he has a proposal he will be presenting to the legislature to try to save the library funding.

**Baran**- stated that the repairs to the roof at the senior center have been completed. The cleanup at the library is about 95% finished. They have done a fantastic job. There was a problem with the base of the statue but that has been rectified. He has been informed that an arrest is eminent with regards to the vandalism.

**SUPERVISOR**- attended the Association of Erie County Government meeting last week. As an association they passed a resolution asking for funds to the libraries be restored. He also announced that he was re-elected as a director for the association. Anything else Supervisor Cummings has will be covered under new business. He thanked Councilman Baran for all his time spent on the library clean-up.

**UNFINISHED BUSINESS:**

**Water District #10**- Scott stated that they will meet next week to go over numbers for the new water district extension project.

**Shared Public Works Facility Project-** there will be a walk thru of the offices tomorrow morning.

**Town Hall Project-** The building is substantially complete with only a few punch list items to finish. The court offices began moving back in today and will continue through this week. State Police will be moving back in on November 29th & 30<sup>th</sup>. By the end of next week even the punch list items should be completed. This will be the last meeting held at the Senior Center.

**Grants-** received notification that we were denied for the NYS Trails grant that was for extending the current bike bath to the town park. The Supervisor did a walk thru with CDBG representatives on proposed projects this week and potential funding looks good.

**Murder Creek Project-** nothing new to report

**NEW BUSINESS:**

**Approval- 2011-2013 Fire & EMS Contracts:**

A motion was made by Councilman Rooney, seconded by Councilman Baran approving the proposed 2011-2013 Fire and EMS Contracts with the Village of Akron and Newstead Fire Company and authorizing the Supervisor to execute the contracts.

(Resolution Attached) Cummings-Aye, Rooney -Aye, Esposito-Aye, Mayrose-Aye, Baran-Aye  
Carried Unanimously

**Approval- Water Quality Improvement Grant Contract:**

A motion was made by Councilman Mayrose, seconded by Councilwoman Esposito authorizing the Supervisor to execute the contracts for receipt of a \$212,000 Water Quality Improvement grant from the NYS DEC for the Murder Creek Bank Stabilization project.

(Resolution Attached) Cummings-Aye, Rooney -Aye, Esposito-Aye, Mayrose-Aye, Baran-Aye  
Carried Unanimously

**Approval- Part 1 Hazard Mitigation Grant Contract:**

A motion was made by Councilman Baran, seconded by Councilman Mayrose authorizing the Supervisor to execute the contracts for receipt of a \$131,543 Part 1 Hazard Mitigation grant from the FEMA/SEMO with a federal share of \$98,657 for the Murder Creek Bank Stabilization project.

(Resolution Attached) Cummings-Aye, Rooney -Aye, Esposito-Aye, Mayrose-Aye, Baran-Aye  
Carried Unanimously

**Approval- Apex Consulting Contract:**

A motion was made by Councilwoman Esposito, seconded by Councilman Baran approving the proposed addendum contract with Apex Consulting for a topographic survey of the Murder Creek Bank area in an amount not to exceed \$7,500.00 and authorizing the Supervisor to execute the contracts.

(Resolution Attached) Cummings-Aye, Rooney -Aye, Esposito-Aye, Mayrose-Aye, Baran-Aye  
Carried Unanimously

**Approval- Earth Dimensions Contract:**

A motion was made by Councilman Rooney, seconded by Councilwoman Esposito approving the proposed contract with Earth Dimensions Inc. for a soil borings of the Murder Creek Bank area in an amount not to exceed \$5,320.00 and authorizing the Supervisor to execute the contracts.

(Resolution Attached) Cummings-Aye, Rooney -Aye, Esposito-Aye, Mayrose-Aye, Baran-Aye  
Carried Unanimously

**Akron Airport- SEQR Additional Information Request:**

A motion was made by Councilman Mayrose, seconded by Councilman Rooney authorizing the request of additional information to the Akron Airport for information the town needs to make an adequate SEQR determination on the t-hanger and runway improvement projects.

(Resolution Attached) Cummings-Aye, Rooney -Aye, Esposito-Aye, Mayrose-Aye, Baran-Aye  
Carried Unanimously

**Public Hearing- Fire Alarm Services Contract:**

A motion was made by Councilman Baran, seconded by Councilman Mayrose approving the calling of a public hearing on the proposed Fire Alarm Services Contract to be held December 13, 2010 at 7:50 pm at the Newstead Town Hall and authorizing the Town Clerk to publish the legal notice. (Resolution Attached) Cummings-Aye, Rooney -Aye, Esposito-Aye, Mayrose-Aye, Baran-Aye  
Carried Unanimously

**Public Hearing- Local Law #6 of 2011- Dog Law:**

A motion was made by Councilwoman Esposito, seconded by Councilman Rooney approving the calling of a public hearing on the proposed amendments to the Town of Newstead Dog Law to be held December 13, 2010 at 7:30 pm at the Newstead Town Hall and authorizing the Town Clerk to publish the legal notice. (Resolution Attached) Cummings-Aye, Rooney -Aye, Esposito-Aye, Mayrose-Aye, Baran-Aye  
Carried Unanimously

**Appointment of Hearing Officer:**

A motion was made by Councilman Mayrose, seconded by Supervisor Cummings 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, Rooney -Aye, Esposito-Aye, Mayrose-Aye, Baran-Aye  
Carried Unanimously

**Akron Soccer League 2011 Tournament:**

A motion was made by Councilman Mayrose, seconded by Councilman Baran approving the request of the Akron Soccer League to use the Town Park facilities for their 2011 Kick It tournament on May 6<sup>th</sup> – 8<sup>th</sup>, 2011. Cummings-Aye, Rooney -Aye, Esposito-Aye, Mayrose-Aye, Baran-Aye  
Carried Unanimously

**Approval- IP Logic Contract- Town Hall:**

A motion was made by Councilman Rooney, seconded by Councilman Baran approving the proposed contract with IP Logic for phone system service for a 5 year period on the Town Hall phone system. Cummings-Aye, Rooney -Aye, Esposito-Aye, Mayrose-Aye, Baran-Aye  
Carried Unanimously

**Approval- Northern Erie Sno-Seekers Request:**

A motion was made by Councilman Mayrose, seconded by Councilman Baran approving the proposed contract with the Northern Erie Sno-Seekers Snowmobile Club for use of the bike path trail areas within the Town for their 2010-11 season pending the verification of last year's payment and receiving payment of this year's fee. (Resolution Attached) Cummings-Aye, Rooney -Aye, Esposito-Aye, Mayrose-Aye, Baran-Aye  
Carried Unanimously

**CEO Job Description:**

A motion was made by Councilman Mayrose, seconded by Councilman Baran approving the proposed job description for the Code Enforcement Officers position as proposed by the Building Department. Cummings-Aye, Rooney -Aye, Esposito-Aye, Mayrose-Aye, Baran-Aye  
Carried Unanimously

Supervisor Cummings stated that one of the communications we received was from the school asking for a Town Board member to serve on the ACS Budget Advisory Committee for the 2011-12 Budget process. Councilman Mayrose volunteered to serve.

Supervisor Cummings also informed the board that there will be a meeting regarding the health insurance on Monday the 29<sup>th</sup> at 10am. Any interested board members are welcome to attend.

**Question Period-**

Bob Scheib – 51 Brooklyn Street – asked Councilman Rooney what the name of the company doing the soil borings on the Murder Creek Bank area. He was informed it is Earth Dimensions. He then asked the three pieces of information the town is requesting from the Akron Airport to make an adequate SEQR determination. He was told it was noise, storm water and hazardous conditions.

Doug Ceisner – 100 East Avenue – told the board that he would like to see the residency requirement put into the job description for the Code Enforcement Officer. It was explained to Mr. Ceisner that since the job is civil service we may not be able to stay with someone within the Town.

There being no further business to come before the board a motion was made by Councilman Baran, seconded by Councilman Mayrose to adjourn the meeting at 9:52 pm.

Carried Unanimously

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