

August 12, 2009

MINUTES

**REGULAR MEETING – EDEN TOWN BOARD
2795 EAST CHURCH STREET
EDEN, NEW YORK
AUGUST 12, 2009
7:30 P.M.**

TOWN BOARD MEMBERS PRESENT:

GLENN R. NELLIS	-	SUPERVISOR
MARY LOU PEW	-	COUNCILWOMAN (<i>Deputy Supervisor</i>)
EDWARD KRYCIA, JR	-	COUNCILMAN
VINCENT V. VACCO	-	COUNCILMAN
RICHARD S. VENTRY	-	COUNCILMAN (<i>Absent</i>)

DEPARTMENT HEADS PRESENT:

Dave Johnson	-	Town Engineer
Ronald C. Maggs	-	Superintendent of Highways
Michael J. Felschow	-	Chief of Police
Chris Colvin	-	Eden Fire Chief
Scott Henry	-	Code Enforcement Officer
Susan Brass	-	Recreation Director

OTHERS PRESENT:

William Trask	-	Town Attorney
Mary Jo Hultquist	-	Town Clerk

Call to Order:

Supervisor Nellis called the Regular Meeting of the Eden Town Board to order at 7:30 P.M.

Pledge of Allegiance:

Supervisor Nellis led the assembly in the Pledge of Allegiance to the flag followed by a moment of silence.

Approval of Minutes:

Supervisor Nellis asked if there were any additions or corrections to the Town Board Minutes of July 8, 2009; there were none.

MOTION was made by Councilman Vacco to approve the Town Board Minutes of July 8, 2009 as presented; seconded by Councilman Krycia; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

Supervisor Nellis asked if there were any additions or corrections to the Town Board Minutes of July 22, 2009; there were none.

MOTION was made by Councilman Vacco to approve the Town Board Minutes of July 22, 2009 as presented; seconded by Councilman Krycia; All “Ayes”; Opposed? – None; Abstain? - None; Motion carried.

Petitions:

Supervisor Nellis accepted signed petitions from Joe Klug and Ruby Davis with over 100 signatures NOT in favor of extending Water District No. 5 to include Bauer Road, Bley Road, Belknap Road and Shadagee Road.

Budget Transfers:

There were none.

Budget Amendments:

There were none.

Audit Bills:

Supervisor Nellis asked if there were any changes or additions to the “Audit of Bills” which are on file in the Town Clerk’s office. There were none.

DESCRIPTION	VOUCHER NUMBERS	AMOUNT
General Fund	409-482	\$48,912.56
Highway Dept. Fund	183-214	\$100,348.41
Fire Dept. Fund	157-183	\$19,061.87
Recreation Dept. Fund	80-105	\$9,507.57
Refuse and Garbage Fund	11-12	\$93,248.58
Street Lights Fund	16-19	\$4,117.71
Water Fund	20-24	\$9,889.43
Trust & Agency Fund	--	--
Capital Fund H8320.4A	3	\$8,750.00
Community Development	--	--

MOTION was made by Councilwoman Pew to approve the Audit of Bills as presented; seconded by Councilman Krycia; All “Ayes”? Opposed? – None; Abstain? – None; Motion carried.

Departmental Reports:

Department reports for the month of July 2009 were presented by Councilwoman Pew for Scott Hultquist, Eden Emergency Squad; Chris Colvin, Eden Fire Chief; Supervisor Nellis for Andrew Breier, East Eden Fire Chief; Michael Felschow, Eden Police Chief; Ray Zabron, Dog Control Officer; Ronald Maggs, Superintendent of Highways; Dave Johnson, Town Engineer; William Trask, Town Attorney; Mary Jo Hultquist, Town Clerk; Scott Henry, Zoning Code Enforcement Officer; Susan Brass, Recreation Director. All reports are on file in the Town Clerk’s office.

Chris Colvin, Eden Fire Chief requested the Town Board remove Andrew Huber from the active roster of the Eden Fire Department with thanks for his 10 years of dedicated service.

MOTION was made by Councilwoman Pew to remove Andrew Huber from the active roster of the Eden Fire Department; seconded by Councilman Vacco; All “Ayes”; Opposed? - None; Abstain? - None; Motion carried.

New and Unfinished Business:

1. Lovell Safety Management Co., Certificates of Achievement – Eden Fire District and Eden Emergency & Rescue Squad

Supervisor Nellis stated that Certificates of Achievement in recognition of the Town of Eden Fire District and Town of Eden Emergency & Rescue Squad had been received from Lovell Safety Management Co., LLC for having no reportable workers’ compensation claims for the 7/1/07 – 7/1/08 policy year.

2. Notification of Liquor License Renewal Requests – Eden Bowling Center and Four Corners’ Café

Supervisor Nellis stated that liquor license renewal requests have been received from Eden Bowling Center and Four Corner's Café. This is informational only.

3. Approval of Eden's Farmland Protection Plan

Supervisor Nellis stated that a presentation was given at the Town Board Meeting on July 22, 2009 along with a Public Hearing held at 8:00 p.m. with favorable comments, approval of the plan is recommended at this time.

MOTION was made by Councilman Krycia to approve Eden's Farmland Protection Plan as presented; seconded by Councilwoman Pew; All "Ayes"; Opposed? – None; Abstain?- None; Motion carried.

4. Approval of Annual Stormwater Management Report

Supervisor Nellis stated that a presentation was given at the Town Board Meeting on July 22, 2009 along with a Public Hearing held at 8:30 p.m. with no comments, approval of the plan is required by New York State Law.

MOTION was made by Councilman Vacco to approve the Annual Stormwater Management Report as presented; seconded by Councilman Krycia; All "Ayes"; Opposed? - None; Abstain? - None; Motion carried.

5. Minekime Subdivision Approvals – Memorandum of Understanding Authorization

William Trask, Town Attorney read the following resolution:

WHEREAS, the application of Richard Minekime (hereafter "developer") for approval of Evergreen Acres Subdivision – Part 1 has been in process for several years, and

WHEREAS, in February 2005, such development received conditional preliminary approval from the Eden Planning Board and Final Plat approval was re-issued by the Eden Planning Board in July, 2009, and

WHEREAS, the developer applied for and was issued one or more Public Improvement permits for drainage and utility improvements under Chapter 158 of the Town of Eden Code, and

WHEREAS, the developer has installed such public improvements for Evergreen Acres Subdivision – Part 1 and is seeking Town Board acceptance of these public improvements so that the Planning Board Chair can sign-off on the final plat for this portion of the development, and

WHEREAS, the Town Board has received a report from the Highway Superintendent indicating his inspection and approval of such public improvements and has also received a report from Town Engineers, Conestoga-Rovers and Associates (CRA) indicating satisfactory completion of drainage improvements, and

WHEREAS, developer has posted required financial security for maintenance in the amount of \$4,600.00 as required by Chapter 158 of the Town of Eden Code, and

WHEREAS, developer and Town of Eden Officials have negotiated an agreement in the form of a Memorandum of Understanding (MOU) whereby developer has agreed to convey to the Town of Eden approximately 5.2 acres of land to be used and dedicated for recreational purposes and developer has provided other consideration in lieu of developer paying recreation fees on the lands comprising Evergreen Acres Subdivision – Part 1 and other lands of the developer described in the MOU.

NOW, THEREFORE IT IS RESOLVED that the Eden Town Board does hereby accept the public improvements for Evergreen Acres Subdivision – Part 1, subject to the Town Attorney receiving a final verification of developer's good title to the recreation

lands and the drainage and utility easement areas to be conveyed to the Town of Eden, and receipt of fully-executed original instruments and all recording and filing fees of the developer necessary to complete such conveyances, and it is further

RESOLVED, that Supervisor Glenn R. Nellis is hereby authorized to enter into and execute as the act of the Town of Eden the MOU negotiated with developer, and it is further

RESOLVED, that upon satisfactory completion of the proceeding conditions in this Resolution, the Planning Board Chair shall be authorized to sign the Plat for Evergreen Acres Subdivision – Part 1.

MOTION was made by Councilwoman Pew to approve the resolution as presented; seconded by Councilman Krycia; All “Ayes”; Opposed? - None; Abstain? - None; Motion carried.

6. Resolution on Changing Tax Collection Time for County and Town Taxes

Supervisor Nellis read the following resolution:

WHEREAS, the Erie County Legislature is currently in the process of updating the Erie County Tax Act from 1997; and

WHEREAS, the Erie County Association of Tax Receivers & Collectors has been working with the Erie County Director of Real Property Tax Services to propose changes to the Erie County Tax Act that would enhance the tax collection process for all towns in Erie County; and

WHEREAS, a proposal has been made by the committee that all those involved feel would benefit the tax payers of Erie County as well as unifying the tax collection process in Erie County; and

WHEREAS, it is proposed to the Erie County Legislature that all towns in Erie county go to the same tax cycle from January 15th through February 15th annually (penalty free period) instead of the current two cycle system in place with Towns of the 1st Class collecting from January to February and Towns of the 2nd Class collecting from February 15th to March 15th; and

WHEREAS, this proposal would allow Towns of the 2nd Class to incur the same penalty schedule currently set for 1st Class towns (1.5% penalty from 2/16-3/1, 3% from 3/2 – 3/15, 4.5% from 3/16-3/31, 6% from 4/1-4/15 and 7.5% from 4/16-4/30) instead of unfairly jumping into a 7.5% penalty for any late payments made after March 16th, which would benefit the taxpayers in Towns of the 2nd Class saving them substantial amounts in penalties; and

WHEREAS, Towns of the 2nd Class would benefit by receiving their tax dollars sooner, thereby enhancing the Town’s bond rating and Towns of the 1st Class would see no adverse effect to their collections.

NOW, THEREFORE BE IT RESOLVED AS FOLLOWS:

1. The Eden Town Board hereby supports the proposal to amend the Erie County Tax Act to bring all towns in Erie County under one tax collection cycle from January 15th to February 15th annually (penalty free period).
2. The Eden Town Board also supports the reduction in the penalty schedule for Towns of the 2nd Class, which will result in savings to its residents.
3. The Town Clerk is directed to send a certified copy of this resolution to County Executive Collins, Erie County Legislature Chairperson Marinelli and Erie County Finance Committee Chairperson Konst, and all the Towns in Erie County.
4. This resolution shall take effect immediately.

MOTION was made by Supervisor Nellis to approve the resolution as presented; The Motion failed for lack of a second.

7. Police Personnel Part-Time Officers – Resignation of Michael Rich and Appointment of Ian Hodkin

Supervisor Nellis read correspondence from Michael Felschow, Chief of Police regarding the resignation of Michael T. Rich, Part-time Police Officer.

MOTION was made by Councilwoman Pew to accept the resignation of Michael T. Rich, Part-time Police Officer; seconded by Councilman Vacco; All “Ayes”; Opposed? – None; Abstain? - None; Motion carried.

Supervisor Nellis read correspondence from Michael Felschow, Chief of Police regarding the appointment of Ian Hodkin, Part-time Police Officer.

MOTION was made by Councilman Krycia to appoint Ian Hodkin as Part-time Police Officer; seconded by Councilman Vacco; All “Ayes”; Opposed? – None; Abstain?- None; Motion carried.

8. Resolution regarding Electrical Inspectors

After much discussion, William Trask, Town Attorney read the following Resolution:

**RESOLUTION OF THE EDEN TOWN BOARD
(Authorizing Individuals to Perform Electrical Inspections)**

WHEREAS, the New York Board of Fire Underwriters (NYBFU) has been the exclusive agency conducting electrical inspections on behalf of the Code Enforcement Office of the Town of Eden, and

WHEREAS, on July 20, 2009, the Town received a letter from NYBFU advising that, effective July 14, 2009, NYBFU discontinued receiving new applications for inspections in New York State, and

WHEREAS, such action by NYBFU has left the Town without a properly authorized, qualified and insured agency to conduct electrical inspections on behalf of the Town of Eden, and

WHEREAS, the Town has interviewed candidates to act as authorized electrical inspectors for the Town of Eden on an emergency and interim basis,

NOW, THEREFORE IT IS RESOLVED, that Pat Cullinan, Frank Boncore and Paul Pederson of Commonwealth Electrical Inspection Service, Inc., William Briggs, dba, National Electrical Certified Inspections and Peter M. Butry of Niagara Frontier Inspection Agency are hereby granted temporary authority to conduct electrical inspections on behalf of the code Enforcement Office of the Town of Eden, subject to the following conditions:

- (1) The individuals and firms hereby authorized are, at all times, to be considered independent contractors of the Town of Eden without any authority other than the authority to conduct electrical inspections on behalf of the Code Enforcement Office of the Town of Eden.
- (2) The authorized individuals and/or their firms agree to hold harmless and indemnify the Town of Eden, its duly elected or appointed officers and employees from and against all loss, damage or claim resulting from the acts of omissions of the authorized individuals and/or their firms while acting pursuant to such authority.
- (3) Prior to receiving final authorization to proceed, the authorized individuals and/or their firms shall provide such insurance coverage in the amounts determined as reasonable and necessary by the Town Board in its sole discretion and shall

provide certificates of insurance or other proof as may be required by the Town of Eden evidencing such coverages and naming the Town of Eden as “Additional Insured” at all times during the period of this authorization.

- (4) This authorization is subject to suspension, modification and/or revocation, with or without cause, by further act of the Eden Town Board, in its sole discretion and the individuals and firms acting under this authority hereby waive all claims and rights of action against the Town of Eden and all elected or appointed officials or employees of the Town of Eden as a condition to their acceptance of this authorization. The authorization granted herein may further be amended, modified or terminated by future acts of the Town Board including, but not limited to enactment of local laws, ordinances or regulations which have the effect of superseding the authority granted herein.
- (5) The authority granted herein is not intended to be exclusive to the individuals or firms noted herein and may be extended to other individuals or firms determined by the Town of Eden to be qualified and properly insured to perform such services.
- (6) All authorized individuals and/or firms shall, prior to exercising the authority granted herein, be required to execute a copy of this Resolution acknowledging their receipt and review of same and their agreement to be bound by the terms and conditions set forth herein in the form and content set forth below.

MOTION was made by Supervisor Nellis to approve the resolution as presented; seconded by Councilwoman Pew; All “Ayes”; Opposed? - None; Abstain? – None; Motion carried.

9. Time-Warner Contract Renewal

Supervisor Nellis stated that this item would be tabled to review and discuss at a future Town Board Meeting.

10. Scheduling of Public Hearing – Special Use Permit – Sticht Commercial Dog Kennel

Supervisor Nellis read the following correspondence from Mark Agle, Chairman Eden Planning Board regarding Sticht Site Plan for a Commercial Dog Kennel:

“Please be advised that the Planning Board has received, at its July 28, 2009 meeting, a site plan submission for the above referenced kennel. This proposed use would require a Special Use Permit (SUP) by action of the Town Board and therefore the Town Board is deemed lead agency under SEQRA.

Therefore, the Planning Board is hereby referring this matter to the Town Board to begin the SEQR coordinated review process, including a 239-m referral, and to also schedule the necessary public hearing on this matter.

Further, be advised that the Planning Board also referred this application to the Zoning Board of Appeals as the Sticht’s desire to seek the required variances to enable them to proceed with the site plan as currently submitted.

Please commence the commence and coordinate these SUP related activities as you see fit.”

MOTION was made by Supervisor Nellis to set a Public Hearing for **September 23, 2009 at 8:00 p.m.** for the purpose of Sticht Commercial Dog Kennel; seconded by Councilwoman Pew; All “Ayes”; Opposed? - None; Abstain? - None; Motion carried.

11. Audit of Court

Supervisor Nellis read the following resolution:

WHEREAS, Section 2019-a of the Uniform Justice Court Act requires that town and village justices annually provide their court records and dockets to their respective town

and village auditing boards and that such records then be examined and that fact entered into the minutes of the board's proceedings; and

WHEREAS, the Eden Town Justice court records and dockets for the year ending December 31, 2008 have undergone the required examination by the Town's independent auditing firm of Drescher & Malecki;

NOW, THEREFORE the Eden Town Board goes on record acknowledging that the required audit of the Town of Eden Court's financial records for the year 2008 was conducted and that a copy of this resolution and the Court Audit be forwarded to Dennis W. Donnelly, Director of Internal Audit, NYS Office of Court Administration, 98 Niver Street, Cohoes, New York 12047.

MOTION was made by Councilman Krycia to approve the resolution as presented; seconded by Councilwoman Pew; All "Ayes"; Opposed? - None; Abstain? - None; Motion carried.

12. Resolution – Water

Supervisor Nellis read the following resolution:

WHEREAS, the Town of Eden (the "Town") has constructed water system facilities within many areas of the Town, which are lease managed by the Erie County Water Authority (ECWA) pursuant to a Lease Management Agreement dated September 17, 2005; and

WHEREAS, the Town under the Lease Management Agreement has a number of obligations with respect to the water lines and other related facilities within the Town, including the obligation to pay for capital items as defined in the Lease Management Agreement and to undertake periodic upgrades of water lines and other facilities at the request of the ECWA, while the ECWA has responsibility for maintenance, non-capital repairs and all billings; and

WHEREAS, the ECWA provides direct service to various other communities within the region and for these areas, the ECWA owns the water system facilities and has all responsibilities including capital improvements and maintenance; and

WHEREAS, several other neighboring communities are currently converting or considering converting to ECWA direct service/lease management due to anticipated cost savings; and

WHEREAS, the Town believes there may be opportunities to reduce costs and improve efficiencies for their residents by having the ECWA takeover water service within the Town as a direct service provider, there by eliminating all future involvement and responsibility of the Town with respect to its water system facilities except for the payment of certain hydrant fees; and

WHEREAS, the ECWA has certain water system standards that the Town must comply with prior to becoming a direct service customer, and such standards may require improvements which the Town must identify and determine the financial impact of; and

WHEREAS, the Town in collaboration with the ECWA is submitting an application to the New York State Local Government Efficiency (LGE) Grant Program to study the feasibility of consolidated/regionalizing water services; and

WHEREAS, the LGE Program has announced that it will accept applications for its "High Priority Planning Grant Project", where the maximum grant request is \$50,000, including a required 10 percent matching local share; and

WHEREAS, the LGE Grant Program provides technical assistance and awards financial support for projects that will improve municipal efficiency and reduce costs through shared services, cooperative agreements, mergers, consolidations and dissolutions; and

WHEREAS, opportunities may exist between the Town and the ECWA to work collaboratively to find ways to improve efficiencies, reduce service costs, and provide for a sustainable water infrastructure for their respective ratepayers; and

WHEREAS, an application entitled the “Town of Eden and Erie County Water Authority Water Consolidation Study” would consist of a detailed feasibility study to determine the viability of consolidating the Town water system into the ECWA county wide system as a direct service customer for the benefit of their ratepayers; and

BE IT RESOLVED that the Town hereby authorizes the Supervisor, Glenn Nellis (project contact person) to enter into an Memorandum of Understanding (MOU) or and Inter-municipal Agreement (IMA) with the ECWA that will be contingent on the awarding of the grant; and

BE IT FURTHER RESOLVED by the Town that it hereby authorizes the Supervisor to apply for a High Priority Planning Grant from the New York State Department of State in an amount of \$50,000, with a local match of 10 percent (\$5,555), to be paid by the Town; and

BE IT FURTHER RESOLVED that the Town is hereby designated as the “Lead Agency” for this High Priority Planning Grant and fully authorizes the Supervisor to apply and execute all administrative and financial processes to supervise the grant.

MOTION was made by Supervisor Nellis to approve the resolution as presented; seconded by Councilwoman Pew; All “Ayes”; Opposed? - None; Abstain? – None; Motion carried.

William Trask, Town Attorney read the following resolution:

WHEREAS, the Town of Eden wishes to proceed with advertising for bids for construction of water mains, fittings, valves, hydrants, water services, pavement replacement and appurtenances along Route 62 in the Town of Eden and

WHEREAS, project engineers, Conestoga-Rovers and Associates (CRA) have advised that the project should be receiving final agency approval shortly and

WHEREAS, it is desirable to have the Supervisor authorize to advertise and receive bids for this project as early as possible,

NOW, THEREFORE, IT IS HEREBY RESOLVED that Supervisor Glenn Nellis is hereby authorized to advertise and set the date to receive bids for this project as soon as CRA confirms its receipt of final agency approvals.

MOTION was made by Councilman Krycia to approve the resolution as presented; seconded by Councilman Vacco; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

Supervisor Nellis read the following resolution:

WHEREAS, the Town of Eden wishes to proceed with advertising for bids for construction of water mains, fittings, valves, hydrants, water services, pavement replacement and appurtenances along Shadagee Road in the Town of Eden and

WHEREAS, project engineers, Conestoga-Rovers and Associates (CRA) have advised that the project should be receiving final agency approval shortly and

WHEREAS, it is desirable to have the Supervisor authorize to advertise and receive bids for this project as early as possible,

NOW, THEREFORE, IT IS HEREBY RESOLVED that Supervisor Glenn Nellis is hereby authorized to advertise and set the date to receive bids for this project as soon as CRA confirms its receipt of final agency approvals.

MOTION was made by Councilwoman Pew to approve the resolution as presented; seconded by Councilman Vacco; All "Ayes"; Opposed? – None;

13. Off-Road Drainage

Supervisor Nellis read correspondence from Ron Maggs, Off-Road Drainage Committee Chairperson recommending that the Town Board approve Project 2009-05; mowing a 3196 Hickox Road and other areas at a cost not to exceed \$4,000.00.

MOTION was made by Supervisor Nellis to approve Project 2009-05, mowing at 3196 Hickox Road and other areas at a cost not to exceed \$4,000.00 as recommended by Ron Maggs, Off-Road Drainage Committee Chairperson; seconded by Councilwoman Pew; All "Ayes"; Opposed? - None; Abstain? - None; Motion carried.

14. Schintzius Road repairs

William Trask, Town Attorney read the following resolution:

**RESOLUTION OF THE EDEN TOWN BOARD
(Authorizing Emergency Repairs to Water Lines on Schintzius Road)**

WHEREAS, severe thunderstorms on August 9, 2009 caused catastrophic damage to portions of Schintzius Road in the Town of Eden, and

WHEREAS, the Town of Eden Supervisor Glenn R. Nellis declared a state of emergency as a result of such severe thunderstorms, and

WHEREAS, Erie County Executive Chris Collins and New York State Governor David Patterson have made similar emergency declarations as a result of these major storms events, and

WHEREAS, such storms have caused damage to and exposed some sections of public water lines in the area of the storm damage, and

WHEREAS, such damage constitutes and imminent threat to public safety requiring the invocation of emergency powers of the Town of Eden to contract for services to promptly make repairs to such damage, and

WHEREAS, the firm of Conestoga-Rovers and Associates (CRA), engineers for the Town of Eden, was authorized, on an emergency basis to solicit contractors bids for such emergency repairs, and

WHEREAS, several responses to such solicitations have been received and analyzed by CRA and the Town.

NOW, THEREFORE IT IS RESOLVED that the bid contract for such emergency repairs is hereby awarded to UCC Constructors Inc. at a price of \$8,000.00, subject to such change orders as may be required by field conditions and subject to such other terms and conditions as may be determined necessary to effectuate the immediate, workmanlike repairs to the Town water lines and roadway.

MOTION was made by Councilwoman Pew to approve the resolution as presented; seconded by Councilman Krycia; All "Ayes"; Opposed? – None; Abstain? – None; Motion carried.

NOTE: Bids were also received from Kandy Co., Nichols, Long & Moore and ENR General Construction Inc.

August 12, 2009

Supervisor's Report:

Supervisor Nellis reported that Sisson Highway is closed from Hardt Road to East Church Street due to substantial damage related to the recent rainstorm.

Hearing of Visitors:

The following residents spoke in opposition of the proposed Water District No. 5 in the areas of Bley Road, Belknap Road and Bauer Road:

Ruby Davis, 7742 Bley Road
Joe Klug, 7700 Bley Road
Kathleen Meyer, 7804 Bley Road

Adjournment:

MOTION was made by Councilman to adjourn the Regular Meeting of the Eden Town Board; seconded by Councilman ; All – “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

Supervisor Nellis adjourned the Regular Meeting of the Eden Town Board at 10:05 P.M.

Executive Session:

Supervisor Nellis adjourned the Executive Session of the Eden Town Board Meeting at 11:45 P.M.

Respectfully submitted by,

Mary Jo Hultquist
Town Clerk