

MINUTES

**REGULAR MEETING – EDEN TOWN BOARD
2795 EAST CHURCH STREET
EDEN, NEW YORK
APRIL 25, 2001
7:30 P.M.**

TOWN BOARD MEMBERS PRESENT:

GLENN R. NELLIS	-	SUPERVISOR
EDWARD C. KRYCIA, JR.	-	COUNCILMAN (Deputy Supervisor)
MARY LOU PEW	-	COUNCILWOMAN (<i>Arrived Late</i>)
VINCENT V. VACCO	-	COUNCILMAN
GEORGE F. ZITTEL	-	COUNCILMAN

OTHERS PRESENT:

Mary Jo Hultquist	-	Town Clerk
DianaRae Walker	-	Deputy Town Clerk

Call To Order:

Supervisor Nellis called the Regular Meeting of the Eden Town Board to order at 7:35 P.M.

Pledge of Allegiance:

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

Supervisor Nellis requested that a few items be added to the agenda with the permission of the Town Board members. Under “Unfinished Business; an update of Water District No. 4 by

John Reid of R & D Engineering and the following additional items;

- 5.) Eden Fire Department additions to active roster
- 6.) Drainage Committee appointment of Secretary
- 7.) Erie County Environmental Council Appointment
- 8.) Communication Tower

New and Unfinished Business:

Water District No. 4 Update

John Reid of R & D Engineering reported that the topographical survey of all the roads and pipeline routes has been completed and he will meet with the Erie County Water Authority on Friday to discuss the technical items that need to be resolved on the pumping station and the tank. They will be holding off on doing the survey work on the pump station site and tank site until the technical details are worked out with the Erie County Water Authority as far as locations go. They are continuing with the topographical survey of the pipeline routes and Jennings Road should have a preliminary line by next week so that the Highway Department can schedule the roadwork that is to be completed on Jennings Road.

Councilman Zittel expressed his concerns over the reconditioning of Jennings Road and that it will not be repaved until pipelines are in, would that be coordinated. Mr. Reid stated that he felt that it is possible to work a schedule on the timing of the installation of the pipelines and the reconditioning of Jennings Road. Supervisor Nellis also stated that the Town has met with the County Highway Department and Legislator Chase to ensure the two projects are coordinated. Mr. Reid added that they need the alignments first to coordinate the schedules.

Supervisor Nellis thanked Mr. Reid for the report.

1.) Request from the Home School Association of Immaculate Conception School for Town Board permission to host a circus on Thursday, July 19, 2001

Supervisor Nellis stated that a request was received from the Home School Association of Immaculate Conception School to sponsor a Circus on July 19, 2001 as a fund-raising event; a copy is on file in the Town Clerk's office. Supervisor Nellis noted that a public hearing and a special use permit are not required.

Supervisor Nellis also indicated that the circus would be held on Gal-Cor's property across the street from Immaculate Conception School and that parking would be at the Immaculate Conception Church. There will be an afternoon and an evening performance.

Mary Eillen Franz, a member of the Home School Association confirmed the information that Supervisor Nellis stated. Mrs. Franz also advised the Town Board that the Home School Association has been in contact with the Eden Police Department.

Councilman Zittel asked Mrs. Franz if there was any other Town involvement required hosting the Circus such as a certificate of insurance. Mrs. Franz responded that they have received a certificate of insurance from the Circus.

Frank Mantione of 2722 Kulp Road asked if there would be a need for medical assistance. Mrs. Franz stated that the Home School Association is going to ask for someone from the Town to cover the Circus. Councilman Zittel felt that it shouldn't be a problem.

MOTION was made by Councilman Zittel to grant permission to the Home School Association of the Regionalized School of the Immaculate Conception to host a Circus on Thursday, July 19, 2001 as a fund-raising event; seconded by Councilman Vacco; All – "Ayes"; Opposed? – None; Abstain? – None; Motion carried.

2.) Request from Conservation Advisory Board to send two representatives to the 9th Annual New York Land Trust Conference in Rochester on May 19th

Supervisor Nellis stated that a request was received from Frank Mantione, Chairman of the Eden Conservation Advisory Board for two members of the ECAB to attend the 9th Annual New York Land Trust Conference in Rochester May 19, 2001. The conference is co-hosted by The Nature Conservancy's Central and Western New York Chapter and the Genesee Land Trust. A copy of this request is on file in the Town Clerk's office. Supervisor Nellis turned to Frank Mantione, Chairman of the ECAB for additional input.

Mr. Mantione explained that this year's conference would focus on sprawl and how land trusts can work with communities to develop and implement sound planning practices. Workshops on the 19th will focus on Purchase of development Rights on farmland; laying the Foundation for a Successful Conservation Easement Program to name a few. Mr. Mantione stated that the two members that would attend the conference were Robert Stievater and himself and that they would like to attend the conference on May 19th only at a cost for the one day of \$100.00 for each member. The ECAB has sufficient funds in the budget to cover the expense.

MOTION was made by Councilman Vacco to grant permission to the Eden Conservation Advisory Board to send two representatives, Frank Mantione and Robert Stievater to the 9th Annual New York Land Trust Conference in Rochester on May 19, 2001 at a cost of \$100.00 for each member; seconded by Councilman Zittel; All – "Ayes"; Opposed? – None; Abstain? – None; Motion carried.

After the Motion was voted on, Supervisor Nellis requested Mr. Mantione to give feedback to the Town Board after the conference.

3.) Schedule Public Hearing - Proposed Conservation Easement Law

Supervisor Nellis stated that a 5th draft was received from the Eden Conservation Advisory Board and distributed to Department Heads, the Building Inspector, Town Attorney, Town Planning Consultant and others, a copy of the memo and proposed law are on file in the Town Clerk's office. Supervisor Nellis requested that a public hearing be scheduled for May 23, 2001 at 7:45 P.M. and copies of the proposed Conservation Easement Law would be available in the Town Clerk's office.

Supervisor Nellis stated that the ECAB has been hard at work drafting the law and asked Frank Mantione, Chairman of the ECAB to present a brief overview of what the ECAB has been working on.

Mr. Mantione described in brief that the ECAB has followed the implementation actions of the Eden Master Plan where they have worked the open space index and natural resources of the town. They selected a representative to serve on the Comprehensive Plan Implementation Committee. They will be working on modifying the Zoning Code and Subdivision Law. Currently they have been assisting with the GIS development system, the Agricultural

Committee and Western New York Land Conservancy researching the PACE (Purchase Agricultural Conservation of Easement) programs. Over the past several months the ECAB has been working on the proposed Conservation Easement Law.

After Mr. Mantione's brief presentation, Ruth Szalasnny of 3048 Belknap Road asked whether the Town Attorney would need to be in attendance at the scheduled public hearing regarding the proposed Conservation Easement Law. Supervisor Nellis stated that the Town Attorney has been involved with the language of the proposed law and has reviewed the 5th draft as well.

MOTION was made by Councilman Vacco to schedule a public hearing for the Proposed Conservation Easement Law on May 23, 2001 at 7:45 P.M.; seconded by Councilman Krycia; All – "Ayes"; Opposed? – None; Abstain? – None; Motion.

4.) Resolution – Authorizing Eden Town Court to submit a Justice Court Assistance Program Grant Application in the amount of \$2001.00 for improvements to their offices

Supervisor Nellis stated that Eden Town Court would like to submit a "Justice Court Assistance Program Grant Application for improvements to their offices. A copy of the grant application is on file in the Town Clerk's office. Supervisor Nellis noted that this was the second year of this program.

MOTION was made by Councilman Krycia to approve the adoption of the following resolution:

**AUTHORIZING RESOLUTION
JUSTICE COURT ASSISTANCE PROGRAM
GRANT APPLICATION**

WHEREAS, grant monies are available from the Justice Court Assistance Program for goods and/or services to enhance municipal courts; and

WHEREAS, the Eden Town Court is desirous to obtain grant funds to pay for some improvements to our Court offices;

NOW, THEREFORE BE IT FURTHER RESOLVED that the Eden Town Board authorizes the Eden Town Court to make a Grant Application to the Justice Court Assistance Program in the amount of \$2,002.00 for new filing cabinets and carpeting.

Seconded by Councilman Zittel; all “Ayes”; Motion carried.

5.) Eden Fire Department request to add three names to the active roster

Supervisor Nellis stated that a request was received from the Chief William Laing, Eden Fire Department requesting that David W. Agle, Joseph S. Skalski and Joseph P. Winiecki be added to the active roster subject to OSHA physicals.

MOTION was made by Councilman Zittel to add David W. Agle, Joseph S. Skalski and Joseph P. Winiecki to the active roster of the Eden Fire Department subject to OSHA physicals; seconded by Councilman Vacco; All – “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

6.) Drainage Committee appointment of Secretary

Supervisor Nellis read the recommendation from the Drainage Committee to appoint Gaye Cawdery as Secretary to the Drainage Committee at a rate of \$25.00 per meeting for minute taking and she would also perform other related tasks.

MOTION was made by a Councilman Krycia to appoint Gaye Cawdery as Secretary to the Drainage Committee; seconded by Councilman Zittel. There was a brief discussion confirming that the position was in the budget and that the Drainage Committee is a very active committee and in need of a Secretary. After the brief discussion the Motion was put to vote; All – “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

7.) Erie County Environmental Management Council appointment

Supervisor Nellis then stated that Laurence Rubin, Commissioner of Environmental and Planning of Erie County indicated in a letter that Lamont Beers’ term with the Erie County Environmental Management Council would expire May 31, 2001. Mr. Beers is a current member of the Eden Conservation Advisory Board, and Mr. Rubin is requesting the Town of Eden to re-designate or nominate someone else for a two-year term on the Council. Supervisor Nellis stated that it is the recommendation of the Eden Conservation Advisory Board to reappoint Lamont Beers to the Erie County Environmental Management Council for another two-year term.

MOTION was made by Councilman Vacco to reappoint Lamont Beers, a member of the Eden Conservation Advisory Board to the Erie County Environmental Management Council as recommend by The Eden Conservation Advisory Board; seconded by Councilman Zittel; All – “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

MOTION was made by Councilman Krycia to close the Regular Meeting of the Eden Town Board for the public hearing; seconded by Councilman Zittel; All – “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

Supervisor Nellis closed the Regular Meeting of the Eden Town Board at 8:00 P.M.

MOTION was made by Councilman Krycia to open the public hearing for the request from Pam Henrich, 9952 Tice Road and Christian Henrich, R9952 Tice Road for a Special Use Permit for a landing airstrip at 9952 and R9952 Tice Road, Eden, New York; seconded by Councilman Zittel; All – “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

Supervisor Nellis opened the public hearing at 8:00 P.M.

8:00 P.M.
Public Hearing

Request from Pam Henrich, 9952 Tice Road and Christian Henrich, R9952 Tice Road for a Special Use Permit for landing airstrip at 9952 and R9952 Tice Road, Eden, New York

Supervisor Nellis stated that the intent of the public hearing is to hear from residents of the town commenting on the request that has been received from Pam Henrich, 9952 Tice Road and Christian Henrich, R9952 Tice for a Special Use Permit for landing airstrip at 9952 and R9952 Tice Road. A recommendation has been received from the Eden Planning Board that includes a number of stipulations based on conversations they have had. Supervisor Nellis stated that comments should be addressed to the Town Board and that anyone wishing to speak should state their name and address for the minutes.

The following people made comments and/or stated their concerns regarding the request for the Special Use Permit:

Donald Scully of 9793 Tice Road
Steve Makuch of 9833 Tice Road
Cheryl Piffel of 9765 Tice Road
Wilbert Smutz of 3094 East Church Street

Walter Piffel of 9765 Tice Road
John Henrich of 9952 Tice Road
Edwin Winter of Route 75, North Collins
Ruth Szalasny of 3048 Belknap Road
Frank Mantione of 2722 Kulp Road
Larry Wightman of 2341 Sandrock Road
Michael T. Feeley, Attorney for the Henrich family

Michael T. Feeley, Attorney for the Henrich family asked that the Town Board consider the request favorably. This is a private use application and there is only one provision in the town code that addresses any airstrips, Section 225-32C. This is not a commercial establishment and we know that there is not any private use landing areas within the town. This airstrip has been designed to provide minimal noise and ongoing activities of take-off and landing. The takeoff will be to the southwest and landings to the northeast and low travel will be over Franklin Gulf Park.

Donald Scully of 9793 Tice Road stated that he wrote a letter to Supervisor Nellis in November 2000, went to the Planning Board meeting and couple of things happened that he didn't understand. He stated that Franklin Gulf Park does not surround the Henrich's. Take off to the southwest, he believes would be flying over Franklin Gulf Park, not true. He would be flying over Edwin Winter's land. Last spring the Henrichs applied for a building permit to house automobiles and farm equipment and if you look at the permit it doesn't mention housing an aircraft. His question is, "Why was there a need for a 45' wide door to house automobiles and farm equipment?" He felt this was more than an airstrip but an airfield with a hanger. He felt it would be noisy and requested the Town Board to read the special use permit.

Councilwoman MaryLou Pew arrived at the meeting at 8:07 P.M.

Mr. Scully also felt that the landing area has already been constructed. He referred to the agenda of the Eden Town Board meeting held April 4, 2001 where it stated to "Schedule a new date for Special Use Permit Public Hearing – Request from Pam & Christian Henrich to construct a landing airstrip on their land located at 9952 and R9952 Tice Road", which was under "New and Unfinished Business". Supervisor Nellis stated that the legal notice for this public hearing stated "a Special Use Permit for a landing airstrip". Mr. Scully asked how much more clearer could he be on the agenda published in the Penny Saver for the April 4, 2001 Town Board meeting.

Steve Makuch of 9833 Tice Road felt that he could clarify what Mr. Scully was saying. "How come an application to construct an airstrip is being discussed when the airstrip has already been built?"

Mr. Scully felt that when he attended the Planning Board meeting that none of the members of the Planning Board had visited the Henrich property. Otherwise they would have known that woods do not surround it and it is not surrounded by Franklin Gulf Park. Mr. Scully also stated that last summer a plane was taking off over O'Gorman's and it could be heard from his property. Mr. Scully stated that he owns land near Mr. Henrich's property and someday he hopes to build a house on it, however he feels it will affect the value of his property and everyone else on the road.

Mr. Scully then asked, "What is a super cub?" Supervisor Nellis turned to John Henrich of 9952 Tice Road for description. Mr. Henrich explained that a Super Cub is a two seated plane made in the 1930's by Piper. He felt the reference was made when the question of "What type of airplane might use the airstrip?" Mr. Henrich stated that he had a friend that has a Super Cub an antique airplane that may visit.

Mr. Scully then asked if the man that Mr. Henrich referred to is a family member? Mr. Scully went on to state that at the Planning Board meeting it was discussed that the airstrip would "be for own personal use, not commercial". Mr. Scully felt that meant that it was limited to the Henrich family.

Mr. Scully also expressed that if you permit this Special Use Permit it must be renewed every year and has the option to convert to permanent after 5 years. Supervisor Nellis noted that is only if the Town Board says so. It is the recommendation of the Planning Board regarding the renewal process. Lastly, Mr. Scully stated that he did not want the airstrip in his backyard.

Wilbert Smutz of 3094 East Church Street stated that whether it made any differences to the neighbors or not, but it's obvious that Mr. Feeley is not a pilot, because you don't land in one direction and take off in another, you land into the wind and takeoff into the wind.

Cheryl Piffel of 9765 Tice Road stated that Mr. Feeley said that it would be the only airstrip around and asked why does it have to be on their street. Mrs. Piffel also stated that in the early or late fall she filed a complaint for when she was standing on her deck it scared her to death when she heard the airplane and was on the phone with her mother who asked what the heck that was. After the incident she filed the complaint. She said she doesn't want the airstrip, they are antique airplanes and she felt they would fall out of the sky. Lastly she stated that she moved out of Cheektowaga to get away from the airport noise and now she may be near another.

Edwin Winter of Route 75, North Collins stated that he owned property on two sides of the property being considered for the airstrip. Mr. Winter stated that he purchased the property about tens years ago, which is about 40 acres, part in North Collins and part in Eden. Mr. Winter went on to explain that it is joined by the Buffalo Southern Railroad on the west about $\frac{3}{4}$ of a mile. And he has a third interest in the Buffalo Southern Railroad along with DR. O'Gorman and Monty Reifler. He mainly purchased the land to have use of the railroad because he wanted to use the rail strips for the display of antique trains. Mr. Winter went on to explain the process in which he cleared part of the property, tried to utilize it and on several occasions had to stop what he was doing because of complaints of not having the proper permits. He stated that he is taking a neutral position on the request. It will not be his fault on whether the airstrip goes through or not.

Ruth Szalasny of 3048 Belknap Road asked "Why is it when anybody else wants to do anything in that area it is wrong?" She stated that Mr. Henrich and group threatened to sue the town if the acreage in that area was rezoned during the process of the previous Master Plan worked on several years ago. She also inquired whether the SEQR process had been pursued in this case. If the short form was followed why are so many property owners concerned about the environment being affected. Gowanda State Road is not far from the take off and landing path.

Mr. Feeley, Attorney for Henrich family commented that Mr. Scully's property is adjacent to the Henrich property. It is separated by high transmission power lines right-of-way. The reason the takeoffs are to the southwest and the landings to the northeast is because the planes will not fly over the power lines. Secondly, Mr. Feeley clarified that the construction Mr. Scully referred to was not construction of an airfield at all. It was taking a horse pasture and

a hay field and instead of using them as such, cutting the grass down to a lower level so the wheels of a plane could travel over that area. Dirt was removed and a couple of stumps were pulled out. Mr. Feeley stated that there is a contention that disturbances would be great and have an overwhelming nature. Mr. Feeley reminded the Town Board that the area is Rural Residential and there are occasional interferences of farm equipment and other operations of a farm. This is an occasional landing of an airplane. It is certainly not a quality effect of the life in the neighborhood in a significant way over a consistent period and if it happens more than once a day that would be extremely notable. Mr. Feeley also stated that the SEQR short form was used. The Town Board has copies. Also, the mapping and comments made were turned in with the Special Use application. Lastly Mr. Feeley expressed that although the Henrich family disagrees with the application of the whole provision of Section 225-32c of the Town Code, they do not believe that a Special Use Permit is required for this occasional use. This application was made at the request of Mr. Scott Henry, Building Inspector and is now submitted with his approval and this approval was communicated to the Planning Board in an effort to cooperate with the Town and its administrative bodies so that the Town could feel confident that it had some authority over this and provide reasonable accommodations to the neighbors so this could be done safely and in a cooperative fashion.

Frank Mantione, Conservation Chairman of 2722 Kulp Road, asked what were the results of the SEQR short form and was there any impacts regarding the environment. Supervisor Nellis state the SEQR short form was filed April 9th and would check with the Planning Engineer.

Mr. Scully then stated that the power lines were not between properties and that about 400 to 500 tall trees separate them. Mr. Scully felt that the area is not rural but a residential community.

Steve Makuch of 9833 Tice Road stated that in the minutes of the Planning Board March 8, 2001, Mr. Henrich stated that only one neighbor was opposed and yet there is about a half of dozen neighbors here tonight that don't feel comfortable with the landing strip. Lastly, regarding Mr. Scully's point about the fact that it appears on the surface the airstrip has been constructed, we as neighbors have to ask what else is already approved on the use of the strip. He felt it was devious in a way that the strip was already put in and if the Special Use Permit is approved I just wonder what will happen down the line. Will there be more planes flying in that are not family members.

Supervisor Nellis then reviewed the conditions of the Special Use Permit as recommended by the Eden Planning Board, which are on file in the Town Clerk's office.

Councilman Vacco clarified and read again condition #10 that "After five years, the Town Board **may, at their discretion** convert the annual renewal permit to a permanent Special Use Permit."

Mrs. Szalasny stated that she found it interesting that on December 23, 2000, the deed from 9952 Tice Road was changed from "John & Pamela Henrich" to "Pamela Henrich" only. She asked the Town Board to consider deeply their decision on this Special Use Permit. Mr. Scully agreed with Mrs. Szalasny.

Larry Wightman of 2341 Sandrock Road asked if the conditions agreed upon were not met on a yearly basis, would they be reviewed. Councilman Vacco stated that there is a policy now that at years end a public hearing is held to review the renewal. Mr. Wightman also asked that if the land has already been constructed are there any fines because the construction has taken place before the approval of the Special Use Permit. Supervisor Nellis stated that if so it would be part of consideration.

Mr. Scully also asked who would be watching over this airstrip. Is it a grass field? Supervisor Nellis reiterated that the Town already has a renewal process in place that is held each year during a public hearing.

Mr. Wightman asked for clarification on the Environmental Study. Has it been done or will it be done? Supervisor Nellis stated that it is part of the review process of the Town Board and the results are then made public.

Walter Piffel of 9765 Tice Road stated that he felt that this is in the woods and it is an accident waiting to happen. He also felt that the clearing is not good because there are too many houses and trees near by. He felt that if it were near a cornfield or something, it would be better; he felt it shouldn't be put where it is planned.

Lastly Mrs. Szalasny commented that the airport on Eden Evans-Center Road is under foreclosure, a little airport at a bargain price.
There were no further comments.

MOTION was made by Councilman Zittel to close the public hearing; seconded by Councilwoman Pew; All – “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

Supervisor Nellis closed the public hearing at 8:50 P.M.

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

Supervisor Nellis re-opened the Regular Meeting of the Eden Town Board at 8:50P.M.

Supervisor Nellis stated that a public hearing provides the Town Board an opportunity to listen and to consider items brought to our attention and to take time to review comments made. Councilman Zittel felt that there was enough discussion to do further review and to wait at least two weeks for an opinion. Supervisor Nellis stated that possibly it would be on the May 9, 2001 Town Board meeting agenda. Supervisor Nellis again thanked everyone for their input.

8.) Communication Tower

Supervisor Nellis stated that further discussions are needed with the Town Planner, Andrew Reilly regarding Communication Towers. There will be conversations held over the next couple of months. Supervisor Nellis then tabled the item.

Supervisor's Report:

Supervisor Nellis reported that the Business Survey is underway working with the Eden Chamber of Commerce, interviews have been set-up and responses are being received. Individual interviews of businesses are occurring as well.

Supervisor Nellis also reported that letters were received from the State Emergency Management Office regarding two grant proposals that the Drainage Committee had worked on. Jennings Road and Hemlock Road have past the first critical step. There is still further review to take place regarding the flooding that has taken place in these areas. Supervisor Nellis felt that the Town is in good position to gain one or maybe both grants.

Lastly Supervisor Nellis reported that there is no specific date for the installation of the traffic light at Schoolview Drive, Welch Lane and Route 62. He was told it would be installed in the Springtime and as soon as he knows of the date he would advise, he was also told that the light is in the designing stage at this time. Supervisor Nellis thanked the State Department of Transportation for they have been supporting with several things in the town.

Hearing of Visitors:

Ruth Szalasny of 3048 Belknap Road
John Cardarelli of 9454 Sandrock Road
Ray Tewilliger of 9306 Sandrock Road

Adjournment:

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

Supervisor Nellis adjourned the Regular Session of the Eden Town Board at 9:00P.M.

Respectfully submitted by,

Mary Jo Hultquist
Town Clerk