

MINUTES

**REGULAR MEETING – EDEN TOWN BOARD
2795 EAST CHURCH STREET
EDEN, NEW YORK
SEPTEMBER 8, 2004
7:30 P.M.**

TOWN BOARD MEMBERS PRESENT:

GLENN R. NELLIS - SUPERVISOR
MARY LOU PEW - COUNCILWOMAN (*Deputy Supervisor*)
EDWARD KRYCIA, JR - COUNCILMAN
VINCENT V. VACCO - COUNCILMAN
TIMOTHY J. WALKER - COUNCILMAN

DEPARTMENT HEADS PRESENT:

Andrew C. Reilly of Wendel - Town Engineer
Ronald C. Maggs - Superintendent of Highways
Patrick M. Howard - Chief of Police
Paul Shephard - Eden Emergency Squad
Paul Laing, Jr. - Eden Fire Chief
Kevin R. Schoenthal - East Eden Fire Chief
Robert Pietrocarlo - Chairman Board of Assessors

OTHERS PRESENT:

William Trask - Town Attorney
Mary Jo Hultquist - Town Clerk
Anna M. Knack - Administrative Assistant

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 August 11, 2004; there were none.

MOTION was made by Councilman Walker to approve the Town Board Minutes of August 11, 2004 as presented: seconded by Councilman Krycia; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

Petitions:

There were none.

Budget Transfers:

Supervisor Nellis read the following “Budget Transfers” from account A1990.4 to A1420.4 for additional legal fees in the amount of \$2,000.00.

MOTION was made by Councilwoman Pew to approve the above-mentioned “Budget Transfer” as presented; seconded by Councilman Krycia; “Ayes”? Nellis, Pew, Vacco, Krycia; Opposed? – None; Abstain? – Walker; Motion carried.

Budget Amendments:

Supervisor Nellis read the following “Budget Amendment” from account A3389 to A3120.4 for RAD Kids grant received in the amount of \$3,000.00.

MOTION was made by Councilman Walker to approve the above-mentioned “Budget Amendment” as presented; seconded by Councilwoman Pew; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

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	521-584	\$29,360.09
Highway Dept. Fund	209-235	\$63,581.84
Fire Dept. Fund	183-198	\$10,626.42
Recreation Dept. Fund	113-142	\$6,387.78
Refuse and Garbage Fund	11	\$2,900.00
Street Lights Fund	20-22	\$3,666.96
Water Fund	27-28	\$4,838.84
Trust & Agency Fund	--	--
Capital Fund	16-17	\$14,597.25
Community Development	--	--

MOTION was made by Councilwoman Pew to approve the Audit of Bills as presented; seconded by Councilman Vacco – “Ayes”? Nellis, Pew, Vacco, Krycia; Opposed? – None; Abstain? – Walker (Voucher #546 only); Motion carried.

Departmental Reports:

Department reports for the month of August 2004 were presented by Paul Shephard, Eden Emergency Squad; Paul Laing, Eden Fire Chief; Kevin Schoenthal, East Eden Fire Chief; Patrick Howard, Eden Police Chief; Ronald Maggs, Superintendent of Highways; Andrew Reilly, Town Engineer; William Trask, Town Attorney; Mary Jo Hultquist, Town Clerk; Supervisor Nellis for Scott Henry, Zoning Code Enforcement Officer; Supervisor Nellis for Susan Brass, Recreation Director; Robert Pietrocarlo, Chairman Board of Assessors. All reports are on file in the Town Clerk’s office.

Pat Howard, Police Chief read the following letter that was requested to become a part of the minutes:

“My girlfriend and I were in an accident on 7-3-04 on Jennings Road. We were hit by a pick-up truck while riding on my motorcycle. Officer Shawn Bishop was the first officer on the scene as far as I’m told. I believe if it wasn’t for his efforts, training, and professionalism, Susan and I wouldn’t be here today. I would like it on record of my sincere thanks for saving and caring for Susan and I. Sincerely, George Rapson.”

Paul Laing, Eden Fire Chief expressed concerns for several vacant buildings throughout the Town of Eden. Chief Laing was instructed to compile a list for the Building Inspector, Scott Henry and Supervisor Nellis.

William Trask, Town Attorney offered the following resolutions:

Resolution No. 1:

RESOLVED, that the Eden Town Board hereby authorizes the Town Attorney and/or Special Counsel to enter into a Stipulation of Settlement with Main St. Properties North, LLC to settle the pending Article 7 proceeding protesting the assessment for the 2003-2004 and 2004-2005 tax year as follows:

SBL No. 223.04-1-13.1: Revised assessed value to be **\$236,111.00**, with refunds, if any, to be payable based upon 50% of the reduction in assessed value.

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

Resolution No. 2:

RESOLVED, that the Eden Town Board hereby authorizes the Town Attorney to enter into a Stipulation of Settlement with Mr. B's Greenhouse, Inc. to settle the pending Article 7 proceeding protesting the assessment for the 2003-2004 tax year as follows:

SBL No. 209.00-1-21.2 – NO CHANGE

SBL No. 209.00-1-28.12 – Revised assessed value to be **\$506,500.00**, before exemptions.

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

MOTION was made by Councilwoman Pew to close the Regular Meeting of the Eden Town Board for the purpose of Public Hearing; seconded by Councilman Vacco; 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 Councilwoman Pew to open the Public Hearing regarding a request for a Special Use Permit by Richard Minekime to allow an office building at 2679 Hemlock Road to be used for residential purposes as a caretaker residence; seconded by Councilman Vacco; 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 for a Special Use Permit by
Richard Minekime to allow an office building at
2679 Hemlock Road to be used for residential purposes
as a caretaker residence

Supervisor Nellis explained the purpose of the public hearing was to listen to any concerns or questions that citizens have.

Mr. Richard Minekime presented the Town Clerk with "Return Receipts" to prove the mailing process had been completed by notifying property owners within 500 feet. Mr. Minekime then explained the use and description of the building and introduced Mr. Jerry Rose of Advent, the current tenant to the building occupying approximately 1000 square feet for a showroom and business. The back of the building, approximately 1000 square feet is the proposed part of the building to be used for residential purposes as a caretaker residence.

Mrs. Joyce Harms, representing Page Harms Oil Co., Inc. voiced her concerns regarding the possibility of a caretaker using the building as a residence, with the main concern being children visiting. The proximity of the loading platform is 65 feet away, and that could be a liability with the oil business being a highly volatile business.

Discussion ensued between residents present and Town Board members. It was noted that another residence is located approximately the same distance from the loading platform as the proposed caretaker residence.

Members of the Town Board agreed to review the information, obtain a copy of the survey of the property from Mr. Minekime and make an inspection of the property before a decision could be made.

All persons desiring to be heard, having been heard, Supervisor Nellis closed the Public Hearing at 8:25 P.M.

MOTION was made by Councilman Vacco to close the public hearing; seconded by councilman Krycia; All "Ayes"; Opposed? – None; Abstain? – None; Motion carried.

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

Supervisor Nellis opened the Regular Meeting of the Eden Town Board at 8:25 P.M.

New and Unfinished Business:

1. Discussion/Decision – Prohibited Parking on a portion of New Oregon Road

Supervisor Nellis introduced Mr. William Magavern II, Attorney representing the Clarksburg Country Club members regarding the parking on a portion of New Oregon Road. At this time it is a safety issue, with the immediate concern being safety. Mr. Scott Carpenter of 9727 New Oregon Road is in favor of the prohibited parking.

Discussion ensued with the following memos to the Town Board accepted as part of the minutes:

"New Oregon Road by the Clarksburg intersection is narrow. This makes it difficult for some of the squad equipment to maneuver. When cars are parked on the side of the road this makes it more difficult for the equipment." Sincerely, Paul Shephard, Director of Operations, Eden Emergency Squad.

"In response to your memo dated 8/13/2004, which concerns the proposed local law prohibiting parking on New Oregon Road near Clarksburg Road, I feel this may help, but will not prevent all people from accessing the creek. However, if the landowners were to post their property and follow through with prosecution, the police would be able to assist with the trespassing problem. Furthermore, there are no other incidents reported from January 1, 2004 to date nor do I foresee a future problem." Pat Howard, Chief of Police.

"I would like to express my concern regarding the prohibited parking request on a portion of New Oregon Road near the Clarksburg Country Club. My understanding is that this is an

issue of the Clarksburg Country Club not wanting people swimming in the creek and/or on their property. My recommended solution is for the Clarksburg Country Club to post their own signs prohibiting trespassing and swimming. If we post the “No Parking” signs in that section it will only force these people to park elsewhere. This also doesn’t stop the people who may walk or even ride their bikes. I am strongly recommending against this proposal.” Ron Maggs, Highway Superintendent.

A verbal recommendation was also received from Kevin Schoenthal, East Eden Fire Chief stating that it is a very congested area and he is in favor of the proposed Local Law prohibiting parking.

After much discussion, Supervisor Nellis recommended the Town Board take action on the proposed Local Law, which is as follows:

**Town of Eden
Proposed Local Law No. 6-2004
A Local Law Amending Article II Parking and Standing
Of the Town of Eden Vehicle and Traffic Law**

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF EDEN AS
FOLLOWS:

1. Section 204-5. Prohibited Parking of the Town of Eden Vehicle and Traffic Law shall be amended as follows:

Add to S 204-5 Prohibited Parking:

- D. On either side of New Oregon Road from its intersection with Clarksburg Road and going southeasterly a distance of 680 feet, more or less, and on both sides of the cutoff road connecting Clarksburg Road with New Oregon Road.
2. This law shall take effect immediately upon filing with the Office of the Secretary of State as provided in Section 27 of the Municipal Home Rule Law.

MOTION was made by Supervisor Nellis to approve Proposed Local Law No. 6-2004 Amending Article II Parking and Standing of the Town of Eden Vehicle and Traffic Law; seconded by Councilman Krycia; “Ayes”; Nellis, Krycia; Opposed? – Pew, Walker; Abstain? – Vacco; Motion declared lost.

At that time, Mr. Magavern suggested that the Town Board reconsider the Proposed Local Law if the portion of the Local Law was revised to delete the section “and on both sides of the cutoff road connecting Clarksburg Road with New Oregon Road”.

Councilman Walker asked Ron Maggs, Highway Superintendent if by removing the above-mentioned language, would it make a difference? Mr. Maggs agreed with the

revision. Councilman Vacco also agreed. Councilwoman Pew stated that more time would be required for a decision. Attorney Trask stated that the Town Board had the authority to amend the proposed Local Law.

Supervisor Nellis recommended that the Town Board take action on the revised proposed Local Law No. 6-2004.

MOTION was made by Councilman Walker to adopt Proposed Local Law No. 6-2004 as amended as follows: Section 204-5 the amended to add Section 204-5 Prohibited Parking D. on either side of New Oregon Road from its intersection with Clarksburg Road and going southeasterly a distance of 680 feet, more or less. This motion is based on the revised proposal that Mr. Magavern brought to our attention and the fact that both Pat Howard, Chief of Police and Ron Maggs, Highway Superintendent are now in favor of or at least not opposed to this particular proposal as presented; seconded by Councilman Krycia; “Ayes”; Nellis, Krycia, Walker; Opposed? None; Abstain? - Pew, Vacco; Motion carried.

2. **Award of Bid – Sealing of Eden Library Parking Lot**

Supervisor Nellis read correspondence from Ron Maggs, Highway Superintendent regarding the sealing of the Eden Library Parking Lot. The following bids were received:

1. Ballou Enterprises, Inc. - \$975.00 for sealing, \$125.00 for stripping, total \$1,100.00
2. Palmieri Paving & Sealing - \$1,225.00 for sealing, \$125.00 for striping, total \$1,350.00.

The recommendation of Ron Maggs, Highway Superintendent was to award the bid to Ballou Enterprises, Inc., the project with the low bid of \$1,100.00.

MOTION was made by Councilman Walker to award the bid to seal the Eden Parking Lot to the low bidder, Ballou Enterprises, Inc. in the amount of \$1,100.00; seconded by Councilwoman Pew; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

3. **Resolution – Court Fees**

**TOWN OF EDEN RESOLUTION
COURT FEE REVENUES**

WHEREAS, the recently approved state budget includes language that will adversely affect the return of significant court fee revenue to towns and villages; and

WHEREAS, this action by the state will not generate significant revenue for the state but will cause serious financial damage to towns and villages that are attempting to hold down local property taxes; and

WHEREAS, the loss of this revenue to the Town of Eden will be approximately \$45,000 in 2005 and will give us no choice but to increase real property taxes up to 7 per cent; and

THEREFORE, BE IT RESOLVED that the Town of Eden further urge our State Legislative leaders, Senator Joe Bruno and Assembly Speaker Sheldon Silver as well as Governor George Pataki, to work together with a sense of urgency to restore these monies back to towns, villages and other affected local government; and

BE IT FURTHER RESOLVED that we also urge our individual State Senators and Assemblyman to remind the state legislative leaders of the dire tax consequences to municipalities if the state legislative leaders and the Governor do not eliminate the language contained in the state budget; and

FINALLY, BE IT FURTHER RESOLVED that copies of this resolution be forwarded to Governor George Pataki, Senate Majority Leader Joe Bruno, Assembly Speaker Sheldon Silver, Assembly Majority Leader Paul Tokasz, State Senator Dale Volker and other elected stated officials from Western New York.

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

4. **Bus Route – Gowanda to Hamburg**

Supervisor Nellis attended a meeting with Niagara Frontier Transportation Authority (NFTA), regarding a bus route from Hamburg to Gowanda. More information will be forthcoming.

5. **Community Development Block Grant – Scheduling of Public Hearing**

Supervisor Nellis recommended scheduling a public hearing on September 29, 2004 at 7:30 P.M. regarding the Community Block Grant program to provide a opportunity for citizens to express community development and housing needs and to discuss possible projects that would benefit low and moderate-income persons in the Town of Eden. The hearing will also present a review of prior Community Development projects and expenditures and a discussion of eligible activities.

MOTION was made by Supervisor Nellis to set the public hearing for September 29, 2004 at 7:30 P.M.; seconded by Councilwoman Pew; All “Ayes”; Opposed?- None; Abstain? – None; Motion carried.

6. **Approve Purchase of a New Pool cover for Town Pool**

Supervisor Nellis read correspondence from Susan Brass, Recreation Director regarding a recommendation and request to purchase a Town Pool Safety Cover. In compliance with the Town of Eden’s procurement policy the Recreation Department obtained seven quotes,

three verbal and four written, which were presented. The recommendation of the Recreation Director was to award the bid to Sunsational Pool Remodeling of 372 Cascade Drive, Springville, NY at a cost of \$3,326.32. The budget was reviewed sufficient funds are available for this purchase.

MOTION was made by Councilwoman Pew to approve the purchase of a new pool cover at a cost of \$3,326.32 from Sunsational Pool Remodeling; seconded by Councilman Krycia; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

7. Reappointment – Historic Review Board

Supervisor Nellis read correspondence from Stacey Callinan, Secretary to the Historic Review Board regarding reappointment of Tim Schnauffer to the Historic Review Board for a 2-year term. It was recommended by the Historic Review Board to advertise for board members that two openings exist on that board.

MOTION was made by Councilman Krycia to reappoint Tim Schnauffer to the Historic Review Board for a 2-year term; seconded by Councilman Vacco; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

8. Appointment – New Part-Time Deputy Town Clerk

Supervisor Nellis read correspondence from Mary Jo Hultquist, Town Clerk regarding the recommendation of the appointment of Heather Ohmit of 8616 Woodside Drive, Eden, NY to fill the part-time position at a starting wage of \$8.00 per hour for 7 hours per week, with additional hours during tax time.

MOTION was made by Councilman Vacco to approve the appointment of Heather Ohmit as part-time Deputy Town Clerk at a wage of \$8.00 per hour for 7 hours per week, with additional hours during tax time; seconded by Councilman Walker; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

Supervisor’s Report:

No report was given.

Hearing of Visitors:

Mike Bolo, 9998 Clarksburg Road
Pat Howard, 9525 Gowanda State Road
Diana Howard, 9525 Gowanda State Road

At the recommendation of Councilwoman Pew the following “Hearing of Visitors” has been included in the minutes:

Pat Howard stated the following:

“I am having a problem with the Building Department regarding issuance of Certificate of Occupancy. A Temporary Certificate of Occupancy was issued in November 2003. It was a Temporary CO because grass was not planted yet. The Temporary CO was issued for 6 months and the fee of \$50.00 was paid at that time. When spring came, I had the dirt moved, the grade put in and the grass was planted. The final CO had been applied for purposes of filing with the bank and attorney 3 months prior and still I have not received a Final Certificate of Occupancy. Without the final CO there is only so much warranty the builder would stand behind if something would come up during an inspection I would be responsible for it instead of the builder. A week ago last Monday I went to the Building Department and asked for the CO and was told that it was in the mail, I still have not received it. I’m not the only one in town with problems, it is something that I need and I paid \$50.00 for it, I think I should have it. Give me my CO, that’s all I want.”

Diana Howard stated the following:

“I went to the Building Department in July to see if I needed an extension of my Temporary Certificate of Occupancy and was told it wasn’t necessary. The original had expired but I was told that I didn’t need another.”

Councilwoman Pew stated that she had been approached by others that they hadn’t received their Certificate of Occupancies.

Supervisor Nellis stated that he had discussed this previously with Pat Howard, he understands his frustration.

Councilman Walker stated that he would be calling the Building Inspector and requesting that the Building Inspector give a report by the next months Town Board meeting to include any other unresolved and why.

Adjournment:

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

Supervisor Nellis adjourned the Regular Meeting of the Eden Town Board at 9:55 P.M.

Executive Session:

Supervisor Nellis adjourned the Executive Session of the Eden Town Board Meeting at 10:30 P.M.

Respectfully submitted by,

Mary Jo Hultquist
Town Clerk