

January 26, 2005

MINUTES

**WORK SESSION MEETING – EDEN TOWN BOARD
2795 EAST CHURCH STREET
EDEN, NEW YORK
JANUARY 26, 2005
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
TIMOTHY J. WALKER	-	COUNCILMAN

OTHERS PRESENT:

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

Call To Order:

Supervisor Nellis called the Work Session 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.

New and Unfinished Business:

1. Resolution on West Valley

Supervisor Nellis read the following resolution:

**TOWN OF EDEN RESOLUTION
TO SUPPORT IN ITS ENTIRETY THE WEST VALLEY CITIZEN
TASK FORCE RESOLUTION 1-2004**

WHEREAS, the Town Board of the town of Eden, at the request of the Town of Ashford, has reviewed and supports the work of the West Valley Demonstration Project Citizen Task Force to protect health, safety and economics for the future of all in Western New York; and

WHEREAS, The Citizens Task Force Resolution is copied as follows:

“**WHEREAS,** the West Valley Citizen Task Force was charged to develop recommendations to New York State Energy, Research and Development Authority and United States Department of Energy regarding the 1996 West Valley Demonstration Project Draft Environmental Impact Statement; and

WHEREAS, the West Valley Citizen Task Force has held over 100 meetings since January 1997 to develop these recommendations; and

WHEREAS, the West Valley Citizen Task Force issued its report the following year, stating it finds the site unsuitable for permanent disposal of radioactive waste,

NOW THEREFORE BE IT RESOLVED, that the West Valley Citizen Task Force’s end state vision for the West Valley Demonstration Project is one of unrestricted release; and

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BE IT FURTHER RESOLVED, that the West Valley Citizen Task Force prefers that all waste be safely stored above ground until such time as it can be permanently disposed of; and

BE IT FURTHER RESOLVED, that the West Valley Citizen Task Force request all local, state, federal and Seneca Nation governing bodies support this resolution in its entirety.

Adopted April 21, 2004”

NOW, THEREFORE The Town Board of the Town of Eden on January 26, 2005 votes to hereby support the above action of the West Valley Demonstration Project Citizen Task Force and further resolves to support West Valley Citizen Task Force Resolution 1-2004 in its entirety.

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

2. Annual Association of Towns Meeting February 20-23. Approval of Additional Attendees

Supervisor Nellis requested the Town Board’s approval of the addition of Robert Pietrocarlo, Head Assessor and Patrick Howard, Chief of Police for their attendance to the Annual Association of Towns Meeting from February 20-23, 2005.

MOTION was made by Councilman Krycia to approve the attendance of Robert Pietrocarlo and Patrick Howard to the Annual Association of Towns meeting on February 20-23, 2005; seconded by Councilman Walker; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

MOTION was made by Councilwoman Pew to close the Work Session Meeting of the Eden Town Board for public hearing; seconded by Councilman Vacco; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

Supervisor Nellis closed the Work Session Meeting of the Eden Town Board at 7:45 P.M.

MOTION was made by Councilwoman Pew to open the Public Hearing to consider proposed Local Law #1-2005; seconded by Councilman Vacco; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

Supervisor Nellis opened the Public Hearing at 7:45 P.M.

**7:45 P.M.
Public Hearing
Local Law #1-2005
Adult Entertainment Law**

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

Supervisor Nellis then added that this legislation has been available since January 13, 2005 at the Town Clerk’s office and the Eden website. All statements should be limited to this purpose, the proposed legislation. All comments should be directed to the Town Board and not to others in this room and to state their name and address for the record. We expect that these proceedings will remain civil and respectful at all times in keeping with what we have come to expect from the good people of this town.

The following citizens made comments:

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Gary Carter, 2888 East Pleasant Avenue asked if the store that is now on Main Street would now be resolved or if that would be afterwards?

Attorney Trask stated that there would not be any discussion of particular properties tonight. This meeting is about proposed legislation.

Janice O'Brien, 2930 Maple Avenue asked if the distance under the regulations of restricted uses, are these maximum?

Attorney Trask stated that those are minimum.

Charles Militello, 6840 Prescott Drive, Derby spoke regarding the proposed site allowed in the proposed Local Law is the entrance to the Town of Evans.

Connie Gaglione, 2461 West Church Street, asked, when can we speak about the present situation and express our concerns?

Attorney Trask stated that the current public hearing is about the proposed legislation.

Mrs. Gaglione asked when an opportunity to ask questions would take place.

Councilman Walker stated that a "Special Meeting" was held on January 6, 2005 with over 200 people in attendance that lasted over 2-1/2 hours.

Councilwoman Pew stated that comments could be made during "Hearing of Visitors", at the conclusion of this meeting.

Paul Roeder, 8915 Woodside Drive, asked if the minimum is 1000 feet, what is the maximum?

Attorney Trask stated that there is no purpose for a maximum.

Councilman Walker stated that it states "any closer than 1000 foot radius", there is no purpose for a maximum. It is as restrictive as it can be.

Chester Emel, 9236 Jennings Road, Deacon at the First Baptist Church, stated that it is filth, can't we say that we will not allow a business in our town.

Attorney Trask stated that best summary was published in the Buffalo News, Friday, January 10, 2005, a very concise summary by Mr. Tom Ernst.

Christina Abt, asked if we could stand up to Albany and say, we don't allow this.

Attorney Trask stated that it is not so much a State Law, this is constitutional rights of property ownership and First Amendment rights, like it or not people have rights. We are setting legislation in place tonight, which specifies particular spots where this type of use could occur.

Councilman Walker stated that we do not legislate morality. That is not what we are allowed to. The way these laws work is you cannot outlaw filth, but you can restrict its use, within the geographic confines of your locality. That is what we have done. Trust us, we have done our homework.

Attorney Trask stated to Mr. Militello that when we were looking at the set back requirements we did make sure that we would be respecting residential neighborhoods to the East in the Town of Evans and the church property that is in proximity that you had mentioned. The foot print of where this type of use might be located in the Plan Industrial area takes that into consideration, so the set backs are protecting those properties, residential, school and Church properties that are in proximity in the area over there.

Charles Militello, 6840 Prescott Drive stated that it is still not appealing to our residents that are going to Church on Sunday morning.

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Christina Abt, asked if it is possible if a Town as a whole, decided they didn't want something like this, would they have the right to vote on it, as a group saying "we don't want it"?

Councilman Walker stated "We don't want it, not one of us sitting up here wants it, if that was possible, if we could legally do it, we would have.

Mr. Militello stated that we are taking it out of our front yard and putting it in their front yard. That's the entrance to our town, what if Evans did that?

Mr. Roeder stated that the Town Board did a good job in drafting the legislation. That type of establishment will need customers, with no customers he is out of business.

All persons desiring to be heard, having been heard, Supervisor Nellis closed the Public Hearing at 8:05 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.

Supervisor Nellis closed the public hearing at 8:05 P.M.

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

Supervisor Nellis opened the Work Session Meeting of the Eden Town Board at 8:05 P.M.

Councilman Walker then read the following resolution:

WHEREAS, the Town of Eden has drafted an adult use ordinance which will be know as proposed Local Law #1-2005, and

WHEREAS, in compliance with Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act – SEQRA) of the Environmental Conservation Law, the Eden Town Board has reviewed this proposed Law for potential environmental impacts, and

WHEREAS, the proposed Law will not adversely affect the natural resources of the state and/or health, safety and welfare of the public, and is consistent with social and economic considerations,

NOW, THEREFORE BE IT RESOLVED, that the Town of Eden has determined that the adoption of proposed Local Law #1-2005 is not anticipated to result in any significant effect on the environment and that a Negative Declaration (Notice of Determination of Non-Significance) is hereby issued, based on the following reasons:

1. The proposed Law will not have any substantial adverse impacts on land, water, resources, air quality, plants or animals, agricultural resources, aesthetics, open space and recreation, a critical environmental area, transportation, energy and public health.
2. The Law will not create any noise or odor impacts.
3. The Law will help to preserve the character and the quality of life in the Town of Eden neighborhoods and business areas, and will help to control such documented harmful and adverse secondary effects of adult uses in the surrounding areas.
4. The Law is in accordance with the Town's adopted Comprehensive Plan.
5. We have received from the County of Erie its response for 239-M referral and the County had no recommendation.

BE IT FURTHER RESOLVED, that the Supervisor be authorized to sign the Environmental Assessment Form and prepare the appropriate notices and filings in accordance with SEQR procedures.

MOTION was made by Councilman Walker to authorize Supervisor Nellis to sign the Environmental Assessment Form and prepare the appropriate notices and filings in accordance with SEQR procedures; seconded by Councilwoman Pew; All “Ayes”; Opposed? - None; Abstain? – None; Motion carried.

At that time many thanks were given to Bill Trask, Town Attorney, Drew Reilly, Town Engineer, the community, Ann Knack and Cathy Swiech for their countless hours of work.

MOTION was made by Councilman Walker to adopt Local Law #1-2005 as presented; seconded by Councilman Krycia; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

3. Results of Bid – New Vehicle – Eden Emergency and Rescue Squad

Supervisor Nellis stated that the bid opening was held on Thursday, January 20, 2005 with one bid received from R D Murray in the amount of \$142,606.00. Paul Shephard, Director of Eden Emergency Squad requested that the Town Board adopt the following resolution:

The Town Board of the Town of Eden, duly convened in regular session, does hereby resolve pursuant to the provisions of Section 6-c of the General Municipal Law of the State of New York that the Town Supervisor of the Town of Eden be and is hereby authorized and directed to transfer from the Emergency Squad Capital (Equipment) Reserve Fund of the Town of Eden to the Ambulance Contractual Account A4540.4, a sum not to exceed \$142,606.00 from said Reserve Fund to purchase one new Freightliner M2 Standard Cab Chassis Ambulance.

This resolution shall be subject to a thirty-day permissive referendum, as permitted by law.

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

The following motion was offered:

Based on the recommendation of the Eden Emergency and Rescue Squad, the Town Board hereby moves to award the bid for a new Freightliner M2 Standard Cab Chassis Ambulance to R D Murray Fire Apparatus for the price of \$149,606.00, less \$7,000.00 for the trade-in of a 1996 Ford Ambulance for a total cost of \$142,606.00. This resolution shall become effective upon the conclusion of the thirty-day permissive referendum period.

MOTION was made by Councilwoman Pew to approve the resolution as presented and award the bid for a new Freightliner M2 Standard Cab Chassis Ambulance to R D Murray Fire Apparatus for the price of \$142,606.00; seconded by Councilman Walker; “Ayes”; Nellis, Pew, Krycia, Walker; Opposed? – None; Abstain? – Vacco; Motion carried.

4. Approval of Budget Transfer and Payment to S.V. Moffett Co., Inc. for the new Jacobsen High Production Rotary Mower

Supervisor Nellis read the following “Budget Amendment”, from Account T37 to A7110.4 for purchase of a Recreation mower in the amount of \$14,430.00.

MOTION was made by Councilman Walker to approve the “Budget Amendment” in the amount of \$14,430.00; seconded by Councilman Krycia; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

Supervisor Nellis requested the Town Board approve the payment voucher for S.V. Moffett Co., Inc. for (1) Jacobsen HR-5111 High Production Rotary Mower at the New York State Contract price of \$32,500.00.

MOTION was made by Councilman Krycia to authorize Supervisor Nellis to sign the payment voucher to S.V. Moffett Co., Inc. in the amount of \$32,500.00 for the purchase of (1) Jacobsen HR-5111 High Production Rotary Mower; seconded by Councilman Vacco; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

5. Thanks to New York State Association of Towns for their active support to rescind court fee fines distribution legislation as requested by the Town

Councilman Walker read the following resolution:

WHEREAS, the Association of Towns of the State of New York has often been a source of information and legal assistance on issues before the Town of Eden as well as various municipalities throughout the State of New York; and

WHEREAS, their assistance on politically tracking our collective efforts to overturn the provision contained in the 2004 budget document which significantly reduced the court fee revenues of various municipalities in the state, including the Town of Eden; and

WHEREAS, the result was a rescinding of the loss of court fees for municipalities first by the Assembly in September, 2004 followed by the State Senate in November and finally the Governor in December; now

WE, THEREFORE, wish to express to the Association of Towns of the State of New York our profound appreciation for their helpful advice and support in our efforts to reverse this unwise state action and request that a formal copy of this resolution be forwarded by the Eden Town Clerk to G. Jeffrey Haber, Executive Director of the State Association.

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

6. 2004 Eden Senior Transportation Program Report

Supervisor Nellis read the 2004 Senior Transportation Program Report that was Prepared by Kay Czaster, Senior Transportation Coordinator for the Town of Eden. A total of 325 calls were completed in 2004.

The Town Board expressed their thanks to Kay and the following volunteers:

- | | | |
|--------------|-------------|-----------------|
| Walter Henry | Suzanne Fox | David Sully |
| Marcia Sully | Ron Smith | Jim McGowan |
| Frank Miller | Ed Sturm | Sharon Brockman |

7. Wepax Road Water Rates

Supervisor Nellis stated that the water rates for Wepax Road had been received with a minimum charge for the first 6,000 gallons of \$26.00 and \$2.56 per 1,000 gallons thereafter.

MOTION was made by Councilman Walker to approve the water rates as presented; seconded by Councilman Vacco; All ‘Ayes’; Opposed? – None; Abstain? – None; Motion carried.

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8. Water Authority Lease Agreement for Water District #4

Supervisor Nellis read the following resolution:

AMENDMENT NO. 1

AMENDMENT NO. 1 made this 26th day of January 2005 by and between
ERIE COUNTY WATER AUTHORITY
329 Ellicott Square Building
295 Main Street
Buffalo, New York 14203

A public benefit corporation hereinafter referred to as the “Authority”, and

TOWN OF EDEN
2795 East Church Street
Eden, New York 14057

A municipal corporation hereinafter referred to as the “Town”

WHEREAS, the Authority and the Town Board of the Town of Eden acting as Water Commissioners for Consolidated Water District Nos. 1 through 8 and extensions thereto herein after referred to collectively as the “District”, and described in attached Exhibit “A” dated 12/2/98 entered into a Lease Management Agreement on October 16, 1997 until October 16, 2007, subject to further renewals; and

WHEREAS, the Authority and the Town desire to amend the Lease Management Agreement pursuant to Paragraph 9.1 of said Agreement; and

WHEREAS, the Town has since created an addition Water District known as Water District No. 4, in accordance with provisions of Town Law, Section No. 198, and is now the owner of facilities to be employed in the sale and distribution of water to customers in District 4; and

WHEREAS, the Authority was created to provide a safe and adequate supply to water to the residents of Erie County and has the capacity and expertise to operate and manage the District’s facilities; and

WHEREAS, the parties find it mutually advantageous for the Authority to furnish a supply of water to the District and to operate and manage the District’s facilities;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the parties agree as follows:

1. Water District No. 4 shall be included in the Lease Management Agreement, dated 10/16/97, and shall be subject to each and every provision of said Agreement.
2. Exhibit “A”, dated August 26, 2004, amended to include Water District No. 4 shall be substituted for Exhibit “A”, dated 12/2/98.
3. **TOWN COUNCIL RESOLUTION:** The Town shall provide the Authority with a certified copy of a Town Board resolution authorizing this amendment as well as to pay when due any costs incurred herein, including hydrant fees.
4. **AUTHORITY TARIFF:** This amendment is subject to all provisions, rules and regulations of the Authority Tariff.
5. **LEASE MANAGEMENT AGREEMENT:** The Agreement entered into between the Authority and the Town on October 10, 1997 shall remain in full force and effect until 1/26/2015.

BE IT FURTHER RESOLVED that the Town Board authorize Supervisor Nellis to execute Amendment No. 1 to the Lease Management Agreement with Erie County Water Authority for Eden’s new Water District No. 4.

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MOTION was made by Councilwoman Pew to accept the resolution as presented and authorize Supervisor Nellis to sign the agreement as presented; seconded by Councilman Walker; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

Hearing of Visitors:

Christina Abt
Wilbert Smutz
Robert Stickney
Glenn Scott
Kelly Thiel
Colleen Gaglione
Jamie O’Brien
Robert Zimmerman
Robert Palmer
Chester Emel

Adjournment:

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

Supervisor Nellis adjourned the Work Session Meeting of the Eden Town Board at 9:05 P.M.

Executive Session:

Supervisor Nellis adjourned the Executive Session of the Eden Town Board at 9:30 P.M.

Respectfully submitted by,

Mary Jo Hultquist
Town Clerk