

March 11, 2009

MINUTES

**REGULAR MEETING – EDEN TOWN BOARD
2795 EAST CHURCH STREET
EDEN, NEW YORK
MARCH 11, 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

DEPARTMENT HEADS PRESENT:

Ronald C. Maggs	-	Superintendent of Highways
John McCarthy	-	Lieutenant
Chris Colvin	-	Eden Fire Chief
Andrew Breier	-	East Eden Fire Chief
Robert Pietrocarlo	-	Chairman Board of Assessors
Scott Henry	-	Zoning Code Enforcement Officer
Susan Brass	-	Recreation Director

OTHERS PRESENT:

William Trask	-	Town Attorney
Mary Jo Hultquist	-	Town Clerk
Heather Ohmit	-	Deputy 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 February 11, 2009; there were none.

MOTION was made by Councilman Ventry to approve the Town Board Minutes of February 11, 2009 as presented; seconded by Councilwoman Pew; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

Supervisor Nellis asked if there were any additions or corrections to the Town Board Minutes of February 25, 2009; there were none.

MOTION was made by Councilman Krycia to approve the Town Board Minutes of February 25, 2009 as presented; seconded by Councilman Vacco; All “Ayes”; Opposed? – None; Abstain? - None; Motion carried.

Petitions:

There were none.

Budget Transfers:

DATE	FROM	TO	DESCRIPTION	AMOUNT
12/31/08	D5110.1	D9901.2	In Kind Contribution to Industrial Road	\$6784.79
12/31/08	D5130.4	D9901.2	In Kind Contribution to Industrial Road	\$9899.08

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

DATE	FROM	TO	DESCRIPTION	AMOUNT
03/11/2009	D2680	D5130.4	Insurance Reimbursement (truck #15 Accident)	\$5,322.93

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

Budget Amendments:

From Account	To Account	Reason for Amendment	Amount
A2680 – Insurance Proceeds	A3120.4 Police – Contractual	Offset Insurance money received to repair 2008 Police Ford Expedition	\$3,507.16
A3089 – Ag & Markets	A8750.4 – Ag & Livestock	Offset grant money received	\$7,500.00
A2680 Insurance Proceeds	A4540.4 Emergency Squad	Offset insurance money received to cost of repair	\$5,555.00

From Account	To Account	Reason for Amendment	Amount
A5010.1 Supt. Hwys – Personal	A9901.1 Transfer out to Capital	Time spent on Industrial Road Project transferred to Capital Fund	\$3,448.65
A1220.1 Supt. Personal	A9901.1 Transfer to Capital	Time Spent on Industrial Road Project transferred to Capital Fund	\$710.20
SW8320.4 Water Contractual	SW8320.4A Water Contractual (Wepax Road)	Additional Payable for 2008	\$240.05
SW8320.4 Water Contractual	SW9710.6 Debt Principal	Monies collected from WD #4 for Bond Principal Payment	\$355.50
SW8320.4 Water Contractual	SW9710.7 Debt interest	Monies collected from WD #4 for bond Int. pmt.	\$1,325.63

MOTION was made by Councilwoman Pew to approve the Budget Amendments as presented; seconded by Councilman Ventry; 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	87-138	\$60,431.55
Highway Dept. Fund	32-62	\$70,110.66
Fire Dept. Fund	32-53	\$16,732.09
Recreation Dept. Fund	11-21	\$6,155.77
Refuse and Garbage Fund	3	\$48,102.47
Street Lights Fund	2-3	\$3,763.50
Water Fund	4-7	\$240.05
Trust & Agency Fund	--	--
Capital Fund		
Payable – H8320.4	10	\$98,755.66
H8320.402	1	\$320.00
Community Development	--	--

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

Departmental Reports:

Department reports for the month of February 2009 were presented by Chris Colvin, Eden Fire Chief; Andrew Breier, East Eden Fire Chief; Patrick Howard, Eden Police Chief; Ray Zabron, Dog Control Officer; Ronald Maggs, Superintendent of Highways; Andrew Reilly, Town Engineer; William Trask, Town Attorney; Mary Jo Hultquist, Town Clerk; Scott Henry, Zoning Code Enforcement Officer; Susan Brass, Recreation Director; Robert Pietrocarlo, Chairman Board of Assessors. All reports are on file in the Town Clerk’s office.

William Trask, Town Attorney requested authorization to sign a stipulation settlement in connection with Article 7 assessment proceedings for the Wilson Farms store reducing their assessment from \$326,000.00 to \$260,000.00. The Board of Assessment Review and Head Assessor Robert Pietrocarlo agreed that it is a fair and equitable settlement. There will be no refund for the past two years that it has been under protest and part of the current litigation. The assessed value will remain at the \$260,000.00 assuming no additions, no damage to the property and no town-wide evaluation.

MOTION was made by Councilwoman Pew to authorize William Trask, Town Attorney to sign the documents as presented; seconded by Councilman Krycia; All “Ayes”; Opposed? - None; Abstain? - None; Motion carried.

Supervisor Nellis and the entire Town Board expressed their thanks and appreciation to John McCarthy, as interim Police Chief.

Councilwoman Pew, on behalf of the entire Town Board expressed thanks and appreciation to Bob Stickney and the emergency services for their help during the February 12, 2009 windstorm.

Robert Stickney, Chairman of Emergency Disaster Preparedness Committee submitted a report on the February 12, 2009 windstorm.

New and Unfinished Business:

1. Appointment of Police Chief

Supervisor Nellis read the following resolution:

RESOLVED, that the Town Board of the Town of Eden hereby appoints Michael J. Felschow, to the position of Police Chief at an annual salary of \$75,301.00 to be pro-rated for the balance of 2009.

Such appointment is effective March 16, 2009 and is subject to a probation period of 26 weeks and certification by Erie County Civil Service.

AND IT IS FURTHER RESOLVED that Supervisor Nellis is hereby authorized to execute, on behalf of the Town of Eden, an employment agreement with the appointee, containing such additional terms and conditions as have been negotiated and agreed to by the parties, subject to final review by the Town Attorney.

2. Approval of request from Town Clerk to attend Annual State Conference in Rochester

Supervisor Nellis read correspondence from Mary Jo Hultquist, Town Clerk Requesting permission to attend the New York State Town Clerk’s Conference to be held in Rochester, New York from April 26, 2009 to April 29, 2009.

MOTION was made by Supervisor Nellis to approve the request of Mary Jo Hultquist, Town Clerk to attend the annual NYS Town Clerk’s Conference in Rochester, New York from April 26, 2009 to April 29, 2009; seconded by Councilwoman Pew; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

3. Approval of Bid for Motor Fuels and Related Services

Ron Maggs, Highway Superintendent recommended awarding the Motor Fuels and Related Services bid to Page Harms Oil Co., being the only bidder. The bid results are as follows:

No-Lead Gas	\$1.3434
Diesel Fuel	\$1.4453
Kerosene	\$1.7348
Hourly Rate	\$0.00

MOTION was made by Councilman Ventry to award the fuel bid to Page Harms Oil Co., based on the recommendation of Ron Maggs, Highway Superintendent; seconded by Councilman Vacco; All “Ayes”; Opposed? - None; Abstain? – None; Motion carried.

4. Resolution on “Buy American”

Supervisor Nellis read the following resolution:

2009 Resolution on the Spending of Federal Economic Renewal Grants

WHEREAS, the economic downturn is having a critical impact on everyday Americans who are struggling to maintain or find jobs in an increasingly difficult environment, and

WHEREAS, those same Americans are the taxpayers that provide the revenue needed to operate essential government services, and

WHEREAS, Congress and President Obama are planning a taxpayer-sponsored economic recovery package that will provide billions of dollars to help economically devastated cities and states immediately provide jobs to millions to out-of-work

March 11, 2009

Americans through considerable infrastructure rebuilding, green energy projects and other projects that will require manufactured components, and

WHEREAS, our taxpayer dollars should be spent to maximize the creation of American jobs and restoring the economic vitality of our communities, and

WHEREAS, any domestically produced products that are purchased with economic recovery plan monies will immediately help struggling American families and will help stabilize our greater economy, and

WHEREAS, any economic recovery plan spending should – to every extent possible – include a commitment from Town of Eden to buy materials, goods, and services for projects from companies that are produced within the United States, thus employing the very workers that pay the taxes for the economic recovery plan spending in the first place.

THEREFORE, BE IT RESOLVED THAT we the undersigned will work to maximize the creation of American jobs and restoring economic growth and opportunity by spending economic recovery plan funds on products and services that both create jobs and help keep Americans employed.

BE IT FURTHER RESOLVED THAT we commit to purchasing only products and services that are made or performed in the United States of America whenever and wherever possible with any economic recovery monies provided to Town of Eden by the American taxpayers and

BE IT FURTHER RESOLVED THAT, as Legislators of Town of Eden, we commit to publish any requests to waive these procurement priorities so as to give American workers and producers the opportunity to identify and provide American products and services that will maximize the success of our nation's economic recovery program.

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

5. Resolution on Smoking (Tobacco Advertising)

Supervisor Nellis read the following resolution:

TOBACCO POINT OF PURCHASE RESOLUTION

WHEREAS, Tobacco products are addictive and contribute to the premature illnesses and deaths of our citizens; and

WHEREAS, The Surgeon General has concluded that tobacco product marketing encourages people to use tobacco, especially youth; and

WHEREAS, in 2005, tobacco companies spent \$13 billion to market cigarettes in the United States, most of which was spent at point of sale; and

WHEREAS, the economic impact of tobacco use is a drain on our community keeping taxes high and making employers spend more money on health insurance which reduces jobs in our region; and

WHEREAS, the vast majority of tobacco users regret their decision to start smoking and find their ability to quit using tobacco constrained because of nicotine addiction; and

WHEREAS, we have a responsibility to protect the public's health, especially those who are young and most vulnerable.

WHEREAS, an estimated 1/3 of adolescent experimentation with smoking can be directly attributed to tobacco advertising and promotional activities.

NOW, THEREFORE BE IT RESOLVED that the Town of Eden hereby supports the efforts of Erie-Niagara Tobacco-Free Coalition and to protect the children of Erie and Niagara Counties and the Town of Eden by asking local retailers to reduce tobacco advertising by doing the following:

- No price promotions or discounts.
- Removing all tobacco brand advertising inside and outside of their store.
- Keeping tobacco displays out of view of customers.
- Agreeing to place material in their store advising smoking customers where they can get assistance to stop using tobacco products.

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

6. Approval of Town Engineer

Supervisor Nellis stated that after review by a committee formed to select a Town Engineer and review by the Town Board, it has been decided to select Nussbaumer & Clarke, Inc. to be named the Town Engineering firm for the year 2009. The firm is located at 3556 Lakeshore Road in Hamburg, New York.

MOTION was made by Supervisor Nellis to approve Nussbaumer & Clarke, Inc. as the Town Engineer for the year 2009; seconded by Councilman Krycia; “Ayes”; Nellis, Krycia, Vacco, Ventry; Opposed? – Pew; Abstain? - None; Motion carried.

7. Approval of Personnel Policy for appointed non-union employees

Supervisor Nellis suggested that this item be moved to “Old Business” to be reviewed and discussed at a future Town Board Meeting.

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

Supervisor Nellis closed the Regular Meeting at 8:00 p.m.

MOTION was made by Councilman Ventry to open the Public Hearing to discuss Proposed Local Law #1 and Proposed Local Law #2; 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

Proposed Local Law No. 1 – Amendments regarding Home Occupations
Proposed Local Law No. 2 – Amending the Public Improvement Law

William Trask, Town Attorney read the following:

Proposed Local Law No. 1-2009

A Local Law Amending the Town of Eden Zoning Law, Supplemental Use Regulations, Regarding Home Occupations, to bring the Local Law into Compliance with the New York State Uniform Code Requirements

Town of Eden Code Section 225-32 (O) (1) shall be amended to read as follows:

“In the case of home occupations, only persons residing within the residence shall be engaged in such occupation and the use must be clearly incidental and subordinate to

the use of the premises for residential purposes, and the area devoted to such home occupation use shall not exceed fifteen percent (15%) of the ground floor area of the principal structure. A home occupation shall be conducted wholly within the principal structure.”

Town of Eden Code Section 225-32 (O) (3) shall be amended to read as follows:

“There shall be no change in the outside appearance of the structure or premises or other evidence, visible from the outside, of the conduct of such home occupation or resident/professional office.”

The following residents spoke in opposition of Proposed Local Law No. 1-2009:

Adam Henrich, 9930 Tice Road, stated that this is a rural community and the change to the law would be prejudicial against a lower socio economic class. As a rural community, tell the state no.

Pamela Henrich, 9952 Tice Road, stated if the state asks for money, it does not encourage business. What’s important, the wording or the people.

Proposed Local Law No. 2-2009

A Local Law Amending the Public Improvement Law of the Town of Eden

Town of Eden Code Section 158-3 (B) (4) “Maintenance Bond” shall be amended to read as follows:

“Maintenance Bond or Security. The developer/contractor shall provide a Maintenance Bond or certified funds payable to the Town of Eden or cash to be held in escrow by the Town of Eden to guarantee the maintenance and repair of all the improvements which were the subject of the public improvement permit for a period of one year after said improvements have been accepted by the Town. The Maintenance Bond or Security shall be in the amount of ten percent (10%) of the full value of the improvement(s) as determined by the Town Board, and shall be in a form acceptable to the Town Attorney.”

There were no comments on Proposed Local Law No. 2-2009

All persons desiring to be heard, having been heard, Supervisor Nellis closed the Public Hearing at 8:10 p.m.

8:15 P.M.

Public Hearing

Establishment of Proposed Water District No. 5

Steven Waldvogel and Mark Cavacoli, Consulting Engineers for CRA Infrastructure & Engineering, Inc. gave a power point presentation regarding the establishment of Proposed Water District No. 5.

The purpose of the Public Hearing is to allow the Town Board to hear comments, suggestions, and concerns from residents about the proposed Water District No. 5 before any official action is taken. Comments will be received for 2 weeks before a decision is made.

The following persons spoke in favor of the formation of the district:

Chester Oszust, 2525 Bauer Road

The following persons spoke in opposition of the formation of the district:

Carla VanNote, 2511 March Rd. Herbert Stockschlader, 2533 Bauer Rd.
Deborah Ricey, 2510 Shadagee Rd. Frank Shattuck, 9288 Sauer Rd.

March 11, 2009

Ron Abram, 2037 New Jerusalem Rd.	John Ricey, 2510 Shadagee Rd.
Charles Dias, 2187 New Jerusalem Rd.	Raymond Yackle, 2292 Ferrier Rd.
Mike Rosowicz, 2100 New Jerusalem Rd.	Frank Nicotra, 2473 Bauer Rd.
Eric Cooper, 2375 Hemlock Rd.	Jennifer Ersing, 2365 March Rd.
Wendy Rayburg, 3048 Belknap Rd.	Keith Herms, 2480 Bauer Rd.
Roger Domin, 2452 Bauer Rd.	Mark Zittel, 2988 Bley Rd.
Jim Anderson, 2188 New Jerusalem Rd.	Phillip Charette, 3034 Bley Rd.
Joseph Joseph, Bley Road	Chris Morano, March & Shadagee
Richard Gondeck, 2435 March Rd.	Alisa Brown, 2251 March Rd.
Joann Breidenstein, 2400 March Rd.	Bob Heferle, 2370 March Rd.
Joseph Klug, 7700 Bley Rd.	

All persons desiring to be heard, having been heard, Supervisor Nellis closed the Public Hearing at 10:35 p.m.

Adjournment:

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

Supervisor Nellis adjourned the Regular Meeting of the Eden Town Board at 10:35 P.M.

Respectfully submitted by,

Mary Jo Hultquist
Town Clerk