

July 13, 2011

**MINUTES**

**REGULAR MEETING – EDEN TOWN BOARD  
2795 EAST CHURCH STREET  
EDEN, NEW YORK  
July 13, 2011  
7:30 P.M.**

**TOWN BOARD MEMBERS PRESENT:**

GLENN R. NELLIS	-	SUPERVISOR
MARY LOU PEW	-	COUNCILWOMAN
EDWARD KRYCIA, JR	-	COUNCILMAN
VINCENT V. VACCO	-	COUNCILMAN
RICHARD S. VENTRY	-	COUNCILMAN

**DEPARTMENT HEADS PRESENT:**

Ronald C. Maggs	-	Superintendent of Highways
John McCarthy	-	Lieutenant
Jack Rigley	-	Eden Fire Chief
Rick Kirst	-	East Eden Fire
Scott Henry	-	Code Enforcement Officer
Susan Brass	-	Recreation Director
Ray Zabron	-	Dog Control Officer

**OTHERS PRESENT:**

William Trask	-	Town Attorney
Mary Jo Hultquist	-	Town Clerk
Lisa Greiner	-	Administrative Assistant
Stephen Waldvogel	-	CRA
Mark Cavacolli	-	CRA

**Call to Order:**

Supervisor Nellis called the Regular Meeting of the Eden Town Board to order at 7:40 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 June 8, 2011; there were none.

**MOTION** was made by Councilman Ventry to approve the Town Board Minutes of June 8, 2011 as presented; seconded by Councilman Vacco; “Ayes”? Nellis, Krycia, Vacco, Ventry; Opposed? – None; Abstain? – Pew; Motion carried.

Supervisor Nellis asked if there were any additions or corrections to the Town Board Minutes of June 22, 2011; there were none.

**MOTION** was made by Councilman Vacco to approve the Town Board Minutes of June 22, 2011 as presented; seconded by Councilman Krycia; “Ayes”? Nellis, Krycia, Vacco; Opposed? – None; Abstain? - Pew, Ventry; Motion carried.

**Petitions:**

There were none.

**Budget Transfers/Amendments:**

<b>From Account</b>	<b>To Account</b>	<b>Reason for Amendment</b>	<b>Amount</b>
A2192 Charges for Cemetery Services	A8810.40 Cemetery	Money rec'd from burial to offset cost of grave opening	\$400.00
A878.4 Recreation Equip. Reserve	A7110.2 Park Equipment	Purchase of diamond groomer per permissive ref	\$10,464.00
A7550.4 Celebrations	A7550.401 Celebrations – BiCentennial	Separate out Bicentennial Expenses	\$3,500.00
A2690 Recovery of Loss	A7710.4 Parks Contractual	Money rec'd to offset damage done at Flower Field	\$625.31
SW2140 Wepax Road Revenue \$3,500.00	SW8320.401 Sw8320.402 Wepax Road Contractual	Amend budget to reflect Wepax road anticipated revenues and expenditures for 2011	\$2,400.00 \$1,100.00

**MOTION** was made by Councilwoman Pew to approve the Budget Transfers/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.

<b>DESCRIPTION</b>	<b>VOUCHER NUMBERS</b>	<b>AMOUNT</b>
General Fund	353-410	\$51,317.22
Highway Dept. Fund	169-199	\$100,211.58
Fire Dept. Fund	117-145	\$31,690.79
Recreation Dept. Fund	67-88	\$22,385.16
Refuse and Garbage Fund	10-11	\$100,570.92
Street Lights Fund	15-17	\$4,135.13
Water Fund	18-19	\$5,079.58
Trust & Agency Fund	--	--
Capital Fund		
H3410.2	8-16	\$212,164.63
H8320.401	11-14	\$203,542.98
H8320.402	10-12	\$6,889.22
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 June 2011 were presented by Jack Rigley, Eden Fire Chief; Rick Kirst for Andrew Breier, East Eden Fire Chief; John McCarthy for Michael Felschow, Eden Police Chief; Ray Zabron, Dog Control Officer; Ronald Maggs, Superintendent of Highways; 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.

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Jack Rigley, Eden Fire Chief requested removing Randy Lauber from the active roster of the Eden Fire Department after 25 years of service.

**MOTION** was made by Councilwoman Pew, with regret, to remove Randy Lauber from active service; seconded by Councilman Krycia; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

Rick Kirst, East Eden Fire Department requested adding Keith Sutton and Matt Blaszczyk to the active roster of the East Eden Fire Department, pending arson and background checks.

**MOTION** was made by Councilwoman Pew to add Keith Sutton and Matt Blaszczyk to the active roster of the Eden Fire Department, pending arson and background checks; seconded by Councilman Vacco; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

Ron Maggs, as Chairman of the Off Road Drainage Committee, requested approval of the following projects:

1. Project 2011-01; Maple Avenue at Randall Place to remove trees and clean ditch at the end of Maple from East Pleasant towards Roswell at a cost not to exceed \$3,500.

**MOTION** was made by Supervisor Nellis to approve Project 2011-01 as presented, pending easements; seconded by Councilwoman Pew; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

2. Project 2011-02; Ryther Creek and South Branch of Ryther Creek to cut and remove by hand the blockages in Ryther Creek and the South Branch of Ryther Creek, in the hamlet area, at a cost not to exceed \$1,000.00.

**MOTION** was made by Councilman Krycia to approve Project 2011-02 as presented, pending easements; seconded by Councilwoman Pew; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

Mary Jo Hultquist, Town Clerk reported that a rabies clinic will be held on August 20, 2011 from 3:00 p.m. to 7:00 p.m. at the Eden Highway Garage for Eden residents and for dogs only. Mrs. Hultquist and Ray and Maureen Zabron have attended meetings with Pete Trippi from Erie County Health Department for information in hosting a rabies clinic. The event will be advertised and approximately 500 dogs are expected to attend.

#### **New and Unfinished Business:**

##### **1. Access Agreements on Second Street/Violet Parkway Water Project**

Supervisor Nellis stated that a “Right of Entry Agreement” form has been completed, which will allow the contractors the right to enter upon the property for the purpose of removing and disposing of existing waterline located within the property and to install a new residential service line within the property for the purpose of connecting the water supply to a new waterline within the public right-of-way and that the property will be reasonably restored after the completion of such work.

##### **2. Set Public Hearing Date for two Town Code changes – August 10, 2011** **a. Pending and Solicitation Law**

Supervisor Nellis stated that this item will be tabled to be reviewed and discussed at a future Town Board Meeting.

##### **b. Planned Industrial District Amendment**

Supervisor Nellis read the following Proposed Local Law:

Section 225.19 PI – Planned Industrial District

B. Uses by special permit of the Town Board

Amend (10) to read: **New or unused automobile, farm equipment, boat and trailer sales, rental, repair and services. Use Group B.** (See explanation below)

Explanation: change the Use Group for “c” to “b” to have it conform to similar uses in other zoning district of the Town of Eden.

Supervisor Nellis requested setting a Public Hearing on August 10, 2011 at 8:00 p.m.

**MOTION** was made by Supervisor Nellis to set the Public Hearing for August 10, 2011 at 8:00 p.m.; seconded by Councilwoman Pew; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

Supervisor Nellis requested declaring the Town of Eden Lead Agency.

**MOTION** was made by Supervisor Nellis to declare the Town of Eden Lead Agency; seconded by Councilwoman Pew; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

**3. Out of District Customer Water Policy**

Supervisor Nellis is seeking approval of the following Out of District User Agreement:

Town of Eden Water District No. 5  
Terms & Conditions of OUT-OF-DISTRICT USER AGREEMENT  
Between (hereinafter “Owner”) and Town of Eden Water District No. 5  
(hereinafter “Town”)

1. Owner is solely responsible for the cost of the service tap from the water main to the edge of the highway right-of-way, in compliance with Town and/or Erie County Water Authority requirements (hereinafter “ECWA”)
2. Owner is solely responsible for installation of the private water service line from the right-of-way to the Owner house/business. All materials and construction methods utilized by the Owner shall meet Town/ECWA specifications and shall meet State and local Health Department regulations. The installations may be subject to final inspection by the ECWA or such other individual as designated by the Town.
3. All inside plumbing necessary for water service will be the responsibility of the Owner.
4. The Owner must schedule a meter or meter pit installation by the ECW in a location specified by the ECWA. Owner is solely responsible for any charge related to installation of the meter or meter pit.
5. Any leak in a private water service between the right of way and the Owner’s house/business is the sole responsibility of the Owner. Weather conditions permitting, the Owner agrees to repair any such leak within 48 hours after the leak is discovered.
6. Since the subject property is located in an existing water district, but has been approved for out-of-district service from Water District No. 5, Owner acknowledges that they will continue to be liable for all taxes and assessments due to the existing water district in which their lot is located and will receive no abatement in any such taxes or assessments by virtue of this Out-of District User Agreement. In addition, in consideration for the benefit being received under this agreement, Owner agrees to pay a connection fee in an amount equal to the cost to Water District No. 5 of the service connection (“short” or “long”, to be determined by Town Engineer), plus a \$100.00 administrative

- fee. These fees are separate from and in addition to any fees payable to the ECWA by Owner.
7. Owner acknowledges that the connection fees payable under Paragraphs 6 of this agreement are subject to change and/or surcharge in the event the Town incurs additional expense in maintaining, repairing, improving or upgrading facilities in the water district serving Owner's property.
  8. Owner agrees that the existence of the Out-of-District User Agreement and the status of this lot as receiving water service through an Out-of-District User Agreement, will be disclosed to all future purchasers of the subject premises. Future owners may be required to ratify this agreement in writing in order to continue receiving water service.
  9. Owner is prohibited from extending water service to any other location without the prior approval of Town and Erie County Water Authority
  10. The Town may terminate and disconnect water service in the event Owner (or any future owners) are in default of any of the terms and conditions contained herein. The Town shall give at least ten (10) days written notice of its intent to terminate and upon expiration of the ten (10) days, may terminate service.
  11. The provisions of the Out-of-District User Application are incorporated herein and made a part thereof.

Mr. Larry Huntoon, 2183 Ferrier Road presented the Town Board and the Town Clerk with a document, which is on file in the Town Clerk's office, requesting that before adopting the Out of District Customer Water Policy that they take the time to review the information that he provided and he urged them to consider his request before approval tonight.

Mrs. Barbara Huntoon, 2183 Ferrier Road stated that she has been working with the town for 2 years and she is concerned with the consequences if the 104 acres of land were sold in the future.

After much discussion, Supervisor Nellis requested an Executive Session to review the material presented with William Trask, Town Attorney, Stephen Waldvogel, CRA and Mark Cavacoli, CRA.

**MOTION** was made by Councilman Ventry to close the meeting to go into Executive Session to discuss Water District No. 5, Out of District Customer Water Policy; seconded by Councilwoman Pew; All "Ayes"; Opposed? – None; Abstain? – None; Motion carried.

The Town Board along with William Trask, Town Attorney, Stephen Waldvogel, CRA and Mark Cavacoli, CRA went into Executive Session at 9:00 p.m.

**MOTION** was made by Councilman Krycia to return to the Regular Meeting of the Eden Town Board at 9:50 p.m.; seconded by Councilwoman Pew; All "Ayes"; Opposed? – None; Abstain? – None; Motion carried.

Supervisor Nellis stated that after reviewing all the information presented, the Town Board is prepared to move on the draft policy of the Out of District Customer Water Policy.

**MOTION** was made by Supervisor Nellis to approve the Out of District Customer Water Policy as presented, reviewed by William Trask, Town Attorney as it relates to Water District No. 5 for improved property to switch service to Water District No. 5; seconded by Councilman Krycia; All "Ayes"; Opposed? – None; Abstain? – None; Motion carried.

**4. Resolution on Lease Management Amendment to contract with Erie County Water Authority**

Supervisor Nellis read the following resolution:

**AMENDMENT NO. 2**

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**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 hereinafter referred to collectively as the “District”, and described in attached Exhibit “A” dated 122/98, entered into a Lease Management Agreement (Agreement) on October 16, 1997, subject to further renewals; and

**WHEREAS,** The Authority and the Town Board of the Town of Eden acting as Water Commissioners entered into Amendment No. 1 to the Agreement on February 17, 2005 to include Water District No. 4, along with amended Exhibit “A”; and

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

**WHEREAS,** the Town has since created an additional Water District known as Water District No. 5, 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 Water District No. 5; and

**WHEREAS,** The Town has newly constructed a transmission main and pump station along Shadagee road, to service and benefit all of the Consolidated Districts and Water District No.4 and Water District No. 5; and

**WHEREAS,** The Authority was created to provide a safe and adequate supply 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 set forth, the parties agree as follows:

1. Water District No. 5 shall be included in the Agreement, date 10/16/97, and shall be subject to each and every provision of said agreement.
2. Exhibit “A”, dated June 16, 2011, amended to include Water District No. 5 shall be substituted for Exhibit “A”, dated August 24, 2004.
3. **TOWN COUNCIL RESOLUTION:** The Town shall provide the Authority with a certified copy of a Town Council 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 and between the Authority and the Town on October 10, 1977 shall remain in full force and effect until (date to be inserted by the Authority), subject to further renewals pursuant to Paragraph 9.1 of the Agreement.

**MOTION** was made by Supervisor Nellis to authorize Supervisor Nellis to sign the document along with Francis G. Warthling, Erie County Water Authority; seconded by Councilman Ventry; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

**5. Extension of contract with Police Chief Michael Felschow**

**MOTION** was made by Supervisor Nellis to approve the extension of contract with Police Chief Michael Felschow; seconded by Councilwoman Pew; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

**6. Approval of Kelly Miller Circus performing at Eden American Legion on July 22, 2011**

Supervisor Nellis stated that information has been received that the circus will be held in East Concord, not in Eden, approval not necessary.

**7. Resolution approving Streetscape Project for Main Street in Eden**

Supervisor Nellis presented the following resolution for consideration:

**RESOLUTION**

**AUTHORIZING THE IMPLEMENTATION AND FUNDING OF THE FEDERAL-AID ELIGIBLE COSTS OF A TRANSPORTATION FEDERAL-AID PROJECT, TO FULLY FUND THE LOCAL SHARE OF FEDERAL-AID ELIGIBLE AND INELIGIBLE PROJECT COSTS AND APPROPRIATING FUNDS THEREFOR**

**WHEREAS**, a Project, the Hamlet of Eden, Main Street (US Route 62) Streetscape Project; to Improve Pedestrian Amenities along the Main Street Business District, in the Hamlet of Eden, Erie County, PIN 5757.62, (the "Project") is eligible for funding under Title 23 U.S. Code, as amended, that calls for apportionment of the costs such program to be borne at the ratio of 80% Federal Funds and 20% Non-federal funds; and

**WHEREAS**, the Town of Eden desires to advance the Project by making a commitment of 100% of the Non-Federal share of the costs of the Preliminary Engineering (Design I-VI) and Construction & Construction Inspection phases of the project PIN 5757.62.

**NOW, THEREFORE**, the Town Board of the Town of Eden, duly convened does hereby

**RESOLVE**, that the Town Board of the Town of Eden hereby approves the above subject project; and it is hereby further

**RESOLVED**, that the Town Board of the Town of Eden hereby authorizes the Town of Eden to pay the Non-Federal share of the cost of the Preliminary Engineering (Design I-VI) and Construction & Construction Inspection phases of the Project or portions thereof, with the Federal share of such costs to be applied directly by the New York State Department of Transportation ("NYSDOT") pursuant to Agreement; and it is further

**RESOLVED**, that the sum of \$59,992 is hereby appropriated pursuant to Town Board Resolution adopted July 13, 2011 (in addition to \$12,000 previously appropriated for the project's Preliminary Engineering (Design I-VI) phase via Town Resolution No. 11-2010 adopted on April 28, 2010) and made available to cover the cost of participation in the above phases of the Project; and it is further

**RESOLVED**, that in the event the Non-Federal share of the cost of the project's Preliminary Engineering (Design I-VI) and Construction & Construction Inspection phases exceeds the amount appropriated, \$71,992, the Town of Eden shall convene its Board as soon as possible to appropriate said excess amount immediately upon the notification by the New York State Department of Transportation thereof; and it is further

**RESOLVED**, that the Supervisor of the Town of Eden be and is hereby authorized to execute all necessary Agreements, certifications or reimbursement requests for Federal Aid on behalf of the Town of Eden with the New York State Department of Transportation in connection with the advancement or approval of the Project and its providing for the administration of the Project and the Municipality's funding of the local share of Federal-Aid Eligible Project costs and all Project costs within appropriations therefore that are not so eligible; and it is further

**RESOLVED**, that a certified copy of this Resolution be filed with the New York State Commissioner of Transportation by attaching it to any necessary Agreement in connection with the Project; and it is further

**RESOLVED**, this Resolution shall take effect immediately.

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After much discussion, the following motion was offered;

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

**8. Erie County Emergency Services request to co-locate two antennas on the tower located on East Church Street**

Supervisor Nellis read a request from Mike Felschow, Chief of Police regarding a request from Erie County Department of Emergency Services, requesting permission to place two antennas and a small microwave dish on the tower located on East Church Street at Jennings Road. As this will improve radio communications at no cost to the town, Mr. Felschow recommended that the Town Board approve this request.

**MOTION** was made by Councilwoman Pew to approve the request as presented by Chief Felschow; seconded by Councilman Vacco; All “Ayes”; Opposed? – None; Abstain? – None; Motion carried.

**Supervisor’s Report:**

- 7/28/11 Erie County Farm Group holding an Open Meeting at 7:30 in the Town Hall
- Susan Pratt, Town Assessor received certification
- No Town Board meeting 7/27/11

Councilwoman Pew publicly thanked Bob Stickney for all his work in preparation of changes effective 1/1/2013 regarding FCC regulations for all radios in the Town of Eden emergency departments, fire, police, and emergency squad.

**Hearing of Visitors:**

There were none.

**Adjournment:**

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

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

**Executive Session:**

Supervisor Nellis adjourned the Executive Session of the Eden Town Board Meeting at 12:00 A.M.

Respectfully submitted by,

Mary Jo Hultquist  
Town Clerk