

2-13-2008 – REGULAR TOWN BOARD MEETING

Present:

Councilman Ann M. Bean
Councilman Heather M. Phelps
Councilman Norman J. Uhteg
Supervisor Kathleen M. Balus

Absent:

Councilman Matthew L. Mumbach

Also Present:

Attorney for the Town Anthony DiFilippo, III
Town Clerk Betsy A. Marsh
approx. 20 guests

The Sardinia Town Board held its regularly scheduled Board meeting for February on February 13, 2008 at the Sardinia Town Hall/Community Center. Supervisor Balus called the meeting to order at 7:30 PM, with a moment of silence, asking for all to remember our servicemen and women fighting for our freedoms, and the Pledge to the Flag.

The Supervisor announced that Councilman Mumbach has submitted his resignation from the Town Board, effective immediately. She then made a motion to accept his resignation, which was then seconded by Phelps, and carried, 4 ayes, 0 noes.

The Town Clerk has submitted the minutes of the January 9, 2008 Organizational meeting, and the January 9, 2008 Regular Town Board meeting, which were approved and filed on a motion by Bean, seconded by Uhteg, and carried, 4 ayes, 0 noes.

Supervisor Balus then gave her report for the month of January 2008, stating that it had been a very productive month, and there has been a real spirit of cooperation. She then continues with the report, which included:

- The presentation of the Community Cause check by Judy Tobin, who presented \$227.00 to Virginia Domes, who accepted on behalf of the Historical Society. Ms. Tobin then announced that this month's Community Cause is the three Boy Scout and Cub Scout troops in the Town.
- The Supervisor reported that the computer work, including cabling, installation of the file server, and construction of the lockable cabinet are now complete.
- The Supervisor, along with Councilmen Bean and Uhteg, conducted the annual audit per Section 123 of the NYS Town Law.
- The Supervisor met with TVGA Consultants regarding several grants, specifically the Records Retention grant that was submitted on January 25th in the amount of \$14,257.00.
- The Supervisor met with Paul Luderman, CPA to discuss finalizing 2007, the AUD, and the audit of Waste Management and the town, per the Comptroller's audit report.
- The Supervisor and Councilman Uhteg met with Manfred Koch of Mark I, LLC to overview the project and the Site Plan currently before the Planning Board.
- The Supervisor and Councilman Bean interviewed applicants for the cleaning position at the Community Center.
- The Supervisor and Councilman Bean reviewed and interviewed applicants for vacancies on the ZBA.
- The Supervisor consulted with Attorney DiFilippo regarding the Ethics Law and responsibilities and functions of the Committee, and discussed with other Board members possible candidates for the Committee.
- The Supervisor met with County Executive Chris Collins, Kathy Konst, and other Supervisors on February 6th.
- The Supervisor met with the Youth Committee specifically about the hiring of a Parks/Recreation Director.

The Supervisor also stated that the Office of the New York State Comptroller is requesting "a standard work month for elected and appointed officials" which will require that those in the NYS Retirement System keep accurate track of their work schedules for one month.

Under Committee reports, Councilman Phelps reported that the 2008 Pool Permit has been received from the Erie County Health Department, and Highway Superintendent Walter Baker, who usually handles the permit, questioned whether he will still be the Certified Pool Operator, or if the person hired in the new position of Parks/Recreation Director will hold that position, also. After discussion, a motion was made by Phelps, seconded by Uhteg that Walter Baker will continue as the Certified Pool Operator and handle the pool permitting process, and also the Board approved payment in the amount of \$376.00 to Erie County for the pool permit fee. Carried, 4 ayes, 0 noes.

Attorney for the Town Anthony DiFilippo, III, gave the Board an update of legal matters affecting the Town. He stated that concerning the Article 78 action, brought by the Town against the ZBA, Oral Arguments are scheduled for February 21st before Supreme Court Justice Devlin. Mr. DiFilippo stated that the ZBA's attorneys and Gernatt's attorneys have asked for a dismissal, and for the Chaffee Waterworks be named a necessary party and be enjoined in the case. He stated that the Town's position is that this is frivolous, but if the Court feels the Waterworks is a necessary party, to grant the Town permission to join them in the lawsuit. He stated he does not anticipate that it will be granted. Mr. DiFilippo stated that there are three pieces of litigation still open concerning Waste Management. The first concerns the Co-Generation Plant, and he stated there is no change in the status of that case, and the attorneys are still awaiting the

Order and Judgment from Judge Michalek in that matter. Attorney DiFilippo stated that concerning the expansion of the landfill, that case appears to be dead. He stated that there had been an Appeal filed in that case, and the deadline set by the Court to perfect that Appeal was January 28th, and this was not done. He stated that the third case is the Appeal of the upholding of the Town's Zoning Ordinance, and Mr. DiFilippo stated that the dismissal of the first four Causes of Action was upheld, but that the Appellate Division reinstated the fifth Cause of Action, that being that the Zoning did not comply with the Comprehensive Plan. He stated there will be further proceedings regarding that. The Attorney for the Town stated that he has been working with the attorney for the insurance company with regards to the lawsuit brought against the recreation department, and stated that in his opinion, that case is being properly handled. Mr. DiFilippo stated that he has also negotiated the changes to the TVGA agreement. He stated he has also received notice from NYS Dept. of Ag & Markets notifying that the Town may need to negotiate a lease with the Dog Control Officer for use of his facilities. The Attorney stated that the letter is confusing, and he was unable to ascertain the exact meaning, therefore he will contact the State. Concerning the Re-Zoning application submitted by Mark I, LLC, Mr. DiFilippo stated that the Planning Board is recommending that the proposed re-zone be approved. He stated he met with Dan Miller and Darren Farthing of the Planning Board, and they agree with him that the draft DEIS for the Tri-Cou8nty Business Park needs to be amended. Mr. DiFilippo stated he feels that all of Hutchinson Rd, needs to be re-zoned to Business/Light Industrial (BL) and that there needs to be a coordinated review of the action. The Attorney suggested that representatives of each Board meet with Mr. Koch of Mark I, LLC in a coordinated effort so that all the necessary paperwork is submitted. Supervisor Balus stated that she feels the Town should continue to work forward and try to get the procedure done right. She stated that it is very complicated and we just need to get through the procedural aspect correctly. Attorney DiFilippo concluded his report, stating he has received notice that Gernatt Asphalt has filed an amended Mined Reclamation plan, and gave the plan to the Town Clerk to file in the Clerk's office.

The Town Clerk read her financial report for the month of January 2008. The CEO's written report for January 2008 has also been submitted and is on file. On a motion by Bean, seconded by Uhteg, those reports were received and filed. Carried, 4 ayes, 0 noes.

After review by the Board members, on a motion by Uhteg, seconded by Bean, General Fund Warrant #2 including vouchers #34 through #108, and totaling \$67,866.05; and Highway Fund Abstract #2 including vouchers #7 through #24, and totaling \$13,293.87, were approved for payment, carried, 4 ayes, 0 noes.

Under Privilege of the Floor:

- John Schiener of Sardinia stated he would like to know more about the condo project, stating that he feels that an informational presentation for the public's benefit would be nice, just to let everyone know what is going on. He stated there has been an engineer hired, and asked if they are working for both sides, and if that is a conflict. He asked if the Town's interests were being protected.

In Unfinished Business, the Supervisor stated that Town Law Section 123 requires that on or before January 20th, it is the responsibility of the Town Board to audit each town officer and employees who has received or disbursed monies in the previous fiscal year. She stated that she and Councilmen Bean and Uhteg met with the Town Clerk, Justice Clerks, Supervisor's Secretary and a representative of the Recreation Dept. on January 17th to audit policy and procedures of each department. She stated that there were no findings. The following resolution, to be known as Resolution #6 of 2008, was introduced by Phelps, seconded by Bean:

RESOLUTION #6 – 2008

BE IT RESOLVED, the Sardinia Town Board hereby accepts the report of "No Findings" to satisfy Section 123 of New York State Town Law.

Upon roll call vote: Bean, aye, Phelps, aye, Uhteg, aye, Balus, aye. So Resolved.

Supervisor Balus stated that she and Councilman Bean interviewed five applicants to fill the vacancy of the cleaning person at the Community Center. She stated it is their recommendation that Dennis Dick be hired to fill the position. The following resolution, to be known as Resolution #7 of 2008, was introduced by Phelps, seconded by Bean:

RESOLUTION #7 – 2008

BE IT RESOLVED, that Dennis Dick of Sardinia be hired to fill the position of cleaning person at the hourly rate of \$8.70, with the number of hours each week not to exceed 19.5.

Upon roll call vote: Bean, aye, Phelps, aye, Uhteg, aye, Balus, aye. So Resolved.

Supervisor Balus stated that she and Councilman Bean had interviewed three candidates to fill the vacant position on the ZBA, as well as the alternate position on that Board. She stated it is their recommendation that Dan Moltrup fill the position on the ZBA, with term to expire 12/31/2012, and that Jean Squelch fill the position of alternate for the ZBA, with term to expire 12/31/2010. The Supervisor stated that they had considered another excellent application, but unfortunately, that person takes a month to two month vacation, and it limited the selection of that person. The following resolution, to be known as Resolution #8 of 2008, was introduced by Uhteg, seconded by Phelps:

RESOLUTION #8 - 2008

RESOLVED, the Sardinia Town Board hereby appoints Dan Moltrup to the vacant position on the Sardinia Zoning Board of Appeals, with term to expire 12/31/2012, and to appoint Jean Squelch as the Alternate member of the Zoning Board of Appeals, with term to expire 12/31/2010.

Upon roll call vote: Bean, aye, Phelps, aye, Uhteg, aye, Balus, aye. So Resolved.

The Supervisor stated that her secretary, Peggy O'Brien, has expressed serious concerns about the reliability of the

Peachtree Accounting and Payroll software. She stated that Ms. O'Brien has researched several municipal software packages, and is recommending that the Town purchase the Financial Management Software from Computer Resolutions, Inc. in the amount of \$7,500.00. She stated that it is something that has not been budgeted for this year, but the Contingency account could be used. The following resolution, to be known as Resolution #9 of 2008 was then introduced by Phelps, seconded by Bean:

RESOLUTION #9 – 2008

RESOLVED, the Sardinia Town Board hereby authorizes the purchase of accounting and payroll software in the amount of \$7,500.00.

Upon roll call vote: Bean, aye, Phelps, aye, Uhteg, aye, Balus, aye. So Resolved.

Supervisor Balus stated that Code Enforcement Officer Marvin Zielonka has sent a letter recommending that the Town begin legal proceeding against Douglas Kimball, owner of the burned out house located at 11569 Olean Rd., Chaffee, S.B.L. #296.00-1-21.11, under the authority of Local Law #2 of 2007, the Unsafe Buildings Law. Mr. Zielonka has deemed the structure to be unsafe and beyond repair. The Supervisor asked Attorney DiFilippo to explain the procedure after posting the property as being unsafe. Mr. DiFilippo explained that Mr. Kimball must be given notice, including an explanation of why it has been determined unsafe. The legislation states that he must also be told that if he doesn't commence repairs or demolition within a certain number of days, that the Town may then undertake the work. This notice must be done by certified mail. Attorney DiFilippo explained that if Mr. Kimball disputes that it is unsafe, there is then a proceeding through the local justice court to determine if it is, and if Mr. Kimball does not do the work, the Town can then complete the demolition, and special proceedings need to be started for a judgment to be put on the property tax bill. After discussion, the following resolution, to be known as Resolution #10 of 2008 was introduced by Phelps, seconded by Uhteg:

RESOLUTION #10 – 2008

BE IT RESOLVED, the Sardinia Town Board hereby approves moving forward with the notice to compel demolition of the property located at 11569 Olean Rd., Chaffee.

Upon roll call vote: Bean, aye, Phelps, aye, Uhteg, aye, Balus, aye. So Resolved.

The Supervisor stated that, concerning an Ethics Committee, there is a law on the books that was established in 1984. She read portions of the code, and stated she feels the Committee should be filled. She stated that the Board members have been in contact individually, and the people that are being recommended for appointment to the Board of Ethics are Judy Tobin, Leo McCarthy, and Virginia Domes. A question was raised by Councilman Bean about the term of the appointment, and Attorney DiFilippo stated that since there is no term listed in the Code, the Board could consider it a yearly appointment, to be made at the Organizational meeting of each year. A motion was then made by Balus, seconded by Bean, to appoint Judy Tobin, Leo McCarthy, and Virginia Domes to the Sardinia Board of Ethics, terms to expire 12/31/2008. Carried, 4 ayes, 0 noes.

Supervisor Balus stated that there are preliminary plans for an Earth Day this year, which came about due to her suggestion to plant a living tree to use for the Town's official Christmas tree each year, at a cost of \$400.00 or \$500.00. She stated she is not asking for the approval of funds at this time, until she gets a closer estimate. At this time, she stated she is only asking for approval of the use of this building on Sunday, April 27th between noon and 6:00 PM. The Supervisor stated that co-chairs of the event, Jay Burney and Sheila Vrenna, have plans for exhibits and presentations by students and other organizations, and it will be called "The Earth Day is Every Day Ecology Fair and Exposition". On a motion by Uhteg, seconded by Phelps, permission was given for the use of the Town Hall/Community Center for the Earth Day celebration on April 27, 2008 between noon and 6 PM. Carried, 4 ayes, 0 noes.

Supervisor Balus stated that the Highway Department has indicated that, time permitting, it would be willing to build picnic tables for the Park shelters. Upon discussion, the cost per table was estimated at \$150.00, and the Board agreed that funding should be approved for construction of up to ten tables. On a motion by Uhteg, seconded by Bean, the Board approved the expenditure of \$1,500.00 for the building of picnic tables for the Town parks. Carried, 4 ayes, 0 noes.

The Supervisor stated that the Town Clerk has asked for authorization to attend the annual New York State Town Clerks Association's training conference, to be held in Saratoga Springs, from April 27th through April 30th 2008. She stated that the cost of Registration is \$60.00, and the three day stay, which includes meals, is \$459.00. The following resolution, to be known as Resolution #11 of 2008, was introduced by Balus, seconded by Phelps:

RESOLUTION #11 – 2008

RESOLVED, the Sardinia Town Board hereby authorizes the Town Clerk's attendance at the 2008 New York State Town Clerks Association in Saratoga Springs from April 27 through April 30, 2008, including the payment of \$459.00 for lodging, meals, and transportation.

Upon roll call vote: Bean, aye, Phelps, aye, Uhteg, aye, Balus, aye. So Resolved.

Councilman Uhteg asked the Attorney for the Town what the procedure is for replacing Councilman Mumbach, whose resignation was accepted earlier in the meeting. Mr. DiFilippo stated that the Town Board may replace with an appointed person for the balance of the year, but it will need to go to an election in November to fill Mr. Mumbach's term is up, so therefore, they would have to run again next year. He stated that if a majority of the Board cannot agree on an appointee, the Governor can, but seldom does, appoint someone to fill the vacancy. Supervisor Balus then respectfully asked that the Board appoint Chuck Tobin, who lost the election by three votes. On a motion by

Balus, seconded by Uhteg, the Board voted on the appointment of Charles Tobin to the Town Boards to fill the vacancy created by the resignation of Matthew Mumbach. Upon roll call vote, Bean, no, Phelps, no, Uhteg, yes, Balus, yes. The motion was defeated due to lack of a majority vote.

Under questions, Robert Kaiser asked what happened. He stated that everyone is working together, and he is very encouraged, and he asked the Board to continue to work together.

Town resident Gene Parzych stated that this Town is split right down the middle, and rather than bring someone in, it should go to an election. The Supervisor stated that it just makes a lot more work for the ones remaining on the Board when there are only 4 members.

The Supervisor made the following reminders and announcements:

- The next Regular Town Board meeting will be held Wednesday March 12th at 7:30 PM
- The next Planning Board meetings are scheduled for Wednesday February 20th and Wednesday March 5th at 7:30 PM
- Town Offices will be closed Monday February 18th in Observance of Presidents Day
- County Legislator Kathy Konst has asked to be able to come in the hour before the March 12th Board meeting to speak with the public, so she will be here at 6:30 PM., and will be advertising that meeting.

There being no further business to come before the Board, on a motion by Phelps, seconded by Bean, the meeting was adjourned at 8:30 PM. Carried, 4 ayes, 0 noes.

Respectfully Submitted,

Town Clerk