

## 7-9-2008 – REGULAR TOWN BOARD MEETING

Present:

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

Also Present:

Attorney for the Town Anthony DiFilippo, III  
Highway Superintendent Walter J. Baker  
Town Clerk Betsy A. Marsh  
Approx. 40 guests

The Sardinia Town Board held its regularly scheduled Board meeting for July on July 9, 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 that our servicemen and women fighting for our freedoms be remembered. She then led the Pledge to the Flag.

The Town Clerk has submitted the minutes of the June 11, 2008 Regular Town Board meeting, which were approved and filed on a motion by Phelps, seconded by Bean, and carried, 5 ayes, 0 noes.

The Supervisor's monthly report for June 2008 included:

- The Community Cause check presentation was made in the amount of \$286.00 to the Chaffee-Sardinia Fire Company, and was accepted by Councilman Uhteg. It was announced that this month's Community Cause is the Sardinia Historical Society.
- The Supervisor thanked Denny Dick, Doug Domster, Walt Baker and the highway crew, and all others who worked at the park and stated she received many compliments about how great it looked for the Firemen's Carnival.
- The Supervisor stated she has received several requests, and they are as follows:
  - From Mark 1 LLC for a zoning change for the property on 12638 Hutchinson Road –  
Attorney DiFilippo stated that he received a copy of a letter that had been written to the Planning Board back in January. He stated that the Planning Board has been doing the Site Review for the entire Tri-County Business Park project, and that the existing DEIS does not cover that portion of the project. Mr. DiFilippo stated that the applicant must come to the Town Board with a formal petition requesting the Re-zoning. Darren Farthing of the Planning Board stated that the application had been submitted to the Town Board in January, and that there is a section in the DEIS which covers that portion of the project, and that the Town Board has been named as an Involved Agency. Attorney DiFilippo stated that once the DEIS is approved by the Planning Board, it can then recommend to the Town Board that the property be re-zoned. He also asked that he be copied on everything, including the DEIS.
  - From Gernatt for input regarding an offer of a hiking/bike path –  
The Board was in agreement that there was no interest in pursuing the offer from Gernatt due to the major ongoing litigation involving that company and the Town.
  - From Planning Board for an air conditioner, office security measures, cabling their computer to the network, and for a phone line, answering machine, and fax -  
After discussion, on a motion by Uhteg, seconded by Phelps, the Planning Board was authorized to purchase and install an air conditioner and to install locks providing office security. Carried, 5 ayes, 0 noes. It was explained that the Supervisor and Councilman Kenyon are checking into expanding the Town's phone system, and a phone line and voice mail box would be provided for the Planning Board, as well as other offices, when that work is done.

The Board then discussed the proposed Chaffee-Sardinia Fire Company Service Award Program. An informational meeting with the Fire Company and representatives of the company that has been chosen to administer the pension program was held by the Board on Tuesday, July 8<sup>th</sup>. Councilman Uhteg stated he felt the meeting was very informative and the agent answered all of his questions. He stated he will not be able to vote on the matter, but feels it is a thank you to the volunteer firemen for their service. It was noted that the Town is in a good financial position to institute such a program, with over \$2 million in its accounts. Supervisor Balus stated she still has questions, such as if the annual expenditure can come out of the General Fund, or if it must be included in the Fire District tax, and how much to budget each year for the program. Councilman Bean asked what the cost would be, and was told it will cost between \$73,000.00 and \$98,000.00 for the first year. Councilman Kenyon stated he has met with the Fire Company and thinks that for that kind of money, is there anything else the Town could do for them. He stated that he doesn't think the program is as good as the Firemen had hoped, and he wants to make sure that the Town gets the best possible plan. Attorney DiFilippo stated that 60% of the Town Board must vote to send it on to the voters in the form of a referendum, and stated that with Councilman Uhteg unable to vote, and possibly Councilman Phelps unable to vote because her husband is a fireman, he would have to get a ruling as to who is eligible to vote. The Supervisor gave the Attorney the name and phone number of the program administrator, and asked him to get in contact. Councilman Bean stated she feels that with all of the legislative restrictions on such Service Award Plans, it would be unwieldy to have the Town try to develop and administer its own program. No action was taken on the matter at this time, but will be taken up again next month.

In Councilman Reports:

**Councilman Bean** stated there is nothing new concerning water testing, and she has given Panamerican Environmental's name and number to Councilman Kenyon. Mr. Kenyon stated he will try to meet with Peter Gorton of that company. Ms. Bean also had asked that an item be put on the agenda concerning a commercial truck in a residential district. After brief discussion, since some of the involved parties were in attendance, it was decided to wait until the Privilege of the Floor portion of the meeting to discuss the matter.

**Councilman Phelps** reported on Youth Committee matters, stating that the pool is open, and the swim lesson and recreation programs started on July 7<sup>th</sup>. She stated that the pool will be closing at 5:00 PM on July 20<sup>th</sup> for the annual lifeguard dinner. Councilman Phelps stated there was apparently some problem with lifeguards getting overtime, and the pool supervisor was told that is not acceptable for guards to work over 40 hours. She stated that a suggestion was made to post a sign that the kiddie pool closes at 4:00 PM, so that an extra lifeguard is not needed. The Board expressed no problem with that idea. Councilman Phelps stated that the staff has moved some picnic tables under the shade roof, and it is working out very well. She stated that the Town-wide Garage Sale will be held on July 18, 19, and 20. Councilman Phelps has also been looking into acquiring an Automated External Defibrillator for the pool/park, and stated she has been reviewing the necessary paperwork. She stated there are really only two forms that need to be completed, and is having problems with only one question, which is Public Access Defibrillator Coordinator. It was discussed, and Councilman Uhteg stated he thinks the contact person could be the Fire Company. Councilman Phelps also stated that NY State mandates that all public buildings have an AED, and that every person who works in the building must be trained to operate the equipment. It was noted that the Town Hall/Community Center and the Old Town Hall should each have one, in that event, but it was felt that the Highway Garage is not considered a Public building.

**Councilman Uhteg** stated that, concerning a contract for the lighting outside the Town Hall/Community Center, Attorney DiFilippo has drawn up an agreement, and advised that if the Board is satisfied with the contractor and the bid, a motion could be made to award. The Board was in agreement, and on a motion by Phelps, seconded by Kenyon, Stevens Electric was awarded the bid for the electrical work, in the amount of \$3,237.60. Carried, 5 ayes, 0 noes. Mr. Uhteg also stated that the Town should be receiving a letter that the County will no longer maintain Town websites at the Erie.gov site, and the Town will need to get a webmaster. Concerning the creation of a new street lighting district in the Mountainview subdivision, the Attorney stated that Mr. Uhteg has obtained a copy of the map for him, and he has contacted Mountainview Builders' attorney, who has confirmed the information. He stated he then reviewed the law concerning creating such districts, and someone needs to circulate a petition and get the signatures of the property owners. The estimated annual cost for the 8 street lights is \$2,000.00. Mr. DiFilippo stated that the difficult part is for the Board to decide how to allocate the cost. He stated there are 16 lots, and the Board could divide equally among the lots, or the annual charge could be based on the individual assessment. He stated they should be told before they sign the petition how they will be taxed for the lighting. Councilman Uhteg stated he would talk to subdivision resident Doug Domster and have him talk to the other residents to see what method they would prefer. He stated that after the signed petition is received by the Board, a public hearing then needs to be held. Mr. DiFilippo stated he did not know what to call the lighting district, and was told by the Clerk that the other districts are named 2A, 2B, 2C, and 2C extension, so this one could be 2D if agreeable with all. Councilman Kenyon asked how the other districts are taxed, and the Clerk stated it was based on assessments. Concerning the bleachers for the baseball diamonds, Mr. Uhteg stated that 2 out of 3 of the old bleachers have been fixed, and that since the baseball season is over for this year, next year the Town can look into new ones for Manion Park and the diamond behind this building. Concerning the blacktopping of the basketball courts at both parks, Mr. Uhteg felt that the Board and Rec department should discuss if those courts should be left in the same places or in different spots before going to that expense. He also stated that he had attended the June meeting of the Springville Control Advisory Board and stated that nothing has changed. Councilman Uhteg noted that the park shelter roofing project is done, and the shade roof in the pool area is done, and the only other item is that he was contacted by Dick Rogers of the Senior Citizens about another trip, which is on the agenda for later in the meeting.

Supervisor Balus stated that only one application was received for the Zoning Board of Appeals secretarial position, and feels that another ad should be placed for secretarial pool, stating that she feels that people do not understand what a ZBA secretary is. Mike Hannon was on hand to say that he cannot proceed without a secretary, and there are 5 or 6 variance applications that are waiting to be heard. He stated that a secretary would have to run legal ads, send meeting notices to the members, do the minutes, etc. Mr. Hannon stated that he would like to ask Patty Thornton if she would fill in until someone else could be hired, and get the backlog of applications taken care of. He stated that she was being paid \$9.00 before she resigned and asked if she could be paid \$11.00 now. Discussion of a possible Member/Secretary was held, and Mr. Hannon stated that none of the members have been interested in doing the job. He also stated that Attorney DiFilippo has sent him a packet of what needs to be done by whoever holds the secretarial position, so that a copy can be given to whoever is hired to fill the spot. Supervisor Balus stated she would get the ad in the papers tomorrow. On a motion by Bean, seconded by Phelps, the Board authorized ZBA Chairman Hannon to contact Patty Thornton and see if she will fill in as ZBA secretary temporarily for \$11.00 per hour until another secretary is hired. Carried, 5 ayes, 0 noes.

The Supervisor asked about the tree stump in the side yard of the Community Center. The Highway Superintendent stated that he will contact the County to see if they can grind out that stump, and if the County can't do it, he stated he has some other trees that need to come down and can have that company do it. She also reported that Historian Leo McCarthy states that work on the grant for the Old Town Hall is coming along. Supervisor Balus also reminded that there is a concert in the gazebo at the Park on Thursday, and will be Country Western music.

Councilman Bean stated that concerning the gardens at the Park, she has contacted three local landscapers and received no responses back. Councilman Uhteg stated that Doug Domster has offered to trim the bushes, but that's as far as he wants to go. The Supervisor asked if she could speak to Dennis Dick and Doug Domster to see what they can do, feeling that it would be cheaper if Town workers could do some of the work themselves, maybe get some volunteers in to do some of the work, and go from there. Virginia Domes stated her brother was interested in the job. Councilman Bean stated that if the Town's own people could do it, it would be much cheaper. The Supervisor asked that the authorize her to spend up to \$1,000.00 for garden supplies; she would see what she could get done. Therefore, on a motion by Uhteg, seconded by Phelps, the Board authorized Supervisor Balus to spend up to

\$1,000.00 for the purchase of mulch, plants, topsoil, and shrubbery, etc. to enhance the gardens at the Park using Town workers. Carried, 5 ayes, 0 noes.

Supervisor Balus also stated that volunteers are needed for the Labor Day in the Park event, and stated that interested parties can sign up with her secretary.

Attorney Anthony DiFilippo, III gave the Board an update of legal issues concerning the Town. He stated that the litigation involving the Town, the ZBA and Gernatt was scheduled to be heard tomorrow morning, but was adjourned until July 16<sup>th</sup> at 9:00 or 9:30 AM. Mr. DiFilippo stated that he and Attorney Seeger are prepared to go forward with the case. In the Waste Management matters, the active portion involves the Zoning Ordinance. He stated that there have been Discovery documents exchanged, and they have an outstanding demand to examine, under oath, those Board members who were in office at the time of the enactment of the Ordinance. Attorney DiFilippo stated he has filed a motion on behalf of the Town asking for a Protective Order, stating that those officials were acting in a legislative capacity, and are therefore immune from being examined. He stated that the matter is scheduled for argument on July 31<sup>st</sup>. He stated there is also a pending Appeal in the Waste Management Co-Generation Plant matter. Mr. DiFilippo stated he had also handled routine matters, including several contracts and the street lighting matter, as well as routine correspondence.

The Town Clerk gave her financial report for the month of June 2008, and it was noted that CEO Marvin Zielonka has also submitted his report for June 2008.

Highway Superintendent Walter Baker gave a report of Highway Dept. activities for the month. He reported that the Town's roller is back after repairs and they have done patching, including the spot outside the back door of this building. Mr. Baker stated that they have erected "No through Traffic" signs at Manion Park due to the safety concerns expressed last month. He stated that he has purchased a new finishing mower, and there was an extra shipping charge due to the high cost of gasoline. The Superintendent stated in response to the question concerning the old slide and swing set that were removed when the new playground went in a few years ago, he stated that he junked them because they were no longer up to code. He stated they were sent with the other scrap metal to Preivity's that spring following their removal. Mr. Baker stated that the teeter-totter and slide removed from Manion Park went to the same place. He stated that selling or giving them away would be a liability issue since they are no longer up to code. The Highway Superintendent informed that the County will finally be making repairs to Allen Rd., and will be milling it down and paving. He stated he has been told it is a \$250,000.00 job. Supervisor Balus stated that the County will also work on Curriers Rd., and Mr. Baker stated he understands they will be patching it and then chipping and sealing. He stated that his crew will be chipping and sealing Town roads, as well. Councilman Uhteg stated that he was approached at the Carnival concerning the work done on the old playground at the Genesee Rd. Park. He stated that he was told that the boxing in and rubber mulch underneath the structure needs to come out 6 feet beyond the edge of the playground itself. Supervisor Balus stated she will speak to Doug Domster and Dennis Dick about the work. Mr. Baker suggested that rounded landscape timbers be used so there are no hard edges, and then some sand with rubber mulch on top of the sand.

The Planning Board has submitted the minutes of its June 14, 2008, and its June 18, 2008 meetings, which were received and filed on a motion by Bean, seconded by Kenyon, and carried, 5 ayes, 0 noes.

After review by the Board members, on a motion by Uhteg, seconded by Bean, General Fund Warrant #7 including vouchers #319 through #372, and totaling \$30,924.84; and Highway Fund Abstract #7 including vouchers #80 through #94, and totaling \$8,040.30, were approved for payment, carried, 5 ayes, 0 noes.

Under Privilege of the Floor:

Larry Green of Deerfield Dr. asked why the "No Truck" signs were taken down on his street. Highway Superintendent Baker stated that he had them taken down because they were illegal; no Town Board action was ever taken to have them erected. He stated that the previous Highway Superintendent had put them up without authority of the Board.

The Supervisor stated that she has spoken to Attorney DiFilippo concerning the matter. She also told Mr. Green that she has informed him that they have contacted an attorney. Mr. DiFilippo stated he was unable to find anything in the Town's Zoning Ordinance or any other Town legislation that would prohibit the truck to travel or be parked on Deerfield Drive. Supervisor Balus stated she would like Attorney DiFilippo to contact their attorney, Ronald Bennett to find out what he sees in the laws that would constitute a violation. Councilman stated this is not a new situation, and they have been using Deerfield Drive for years, only parking in a different spot. The Greens stated that the diesel fumes and being awakened early in the morning are a problem. The Supervisor stated that she doesn't have an answer for the problem, but that you just don't see 18-wheelers in residential areas, for example, in Orchard Park or Hamburg. She stated she does not know what kind of legislation is in place, but we should take one step at a time to resolve the situation, and that there does not seem to be a lot of compromise with the individual. She stated that we will have to see legally what we can do here. Mr. Green stated that he had spoken to a Sheriff's Deputy, who felt there was a violation, and Councilman Kenyon then told them that the Deputy had no right to say that, and that he was their boss. Mr. Kenyon stated that was not true. Mr. Kenyon tried to work out a compromise by having the trailer parked elsewhere, but the Greens stated it was the tractor that was the problem. He then asked if the truck driver would be "grandfathered" if there was future legislation, and Attorney DiFilippo stated he will research the question, but stated they very well may be "grandfathered in". The Supervisor asked if there was a difference if the individual is self-employed, vs. working for someone else. Mr. DiFilippo stated he couldn't answer that, but that there are exemptions from weight limits and other legislation if it interferes with interstate commerce, but a lot would depend on the type of legislation. Councilman Uhteg stated that since this matter has come up, he has been noticing how many commercial size trucks there are in the Town in driveways. He stated that any legislation is passed, it would effect a lot of people, not just this one situation. Zeno Lee was on hand to support the Greens. Supervisor Balus stated that the Board will see what the facts are and will try to do the right thing for all.

John Schiener stated that the proposed work on the old playground is a good idea, but stated that the black tire mulch is being thrown around and doesn't stay in place, and asked if something else, such as sand, can be used. It was discussed, and it was suggested that maybe the rubber mulch could be moved to the playground here. Highway

Superintendent Baker stated it would only take 3 or 4 loads of sand.

In Unfinished Business, Supervisor Balus stated that lifeguard Jessica Nickerson was hired as a lifeguard at the hourly rate of \$8.00, however she is a WSI and should receive \$9.50 effective immediately, along with back pay to date of hire. The following resolution, to be known as Resolution #41 was then introduced by Phelps, seconded by Bean:

#### **RESOLUTION #41 - 2008**

**RESOLVED**, the Sardinia Town board hereby authorizes that Jessica Nickerson, who was hired as a lifeguard but has her WSI certification, should receive \$9.50 per hour, effective immediately, and also should receive back pay to her date of hire.

Upon roll call vote, Bean, aye, Kenyon, aye, Phelps, aye, Uhteg, aye, Balus, aye. So resolved, 5 ayes, 0 noes.

Supervisor Balus stated that the Office of the New York State Comptroller has requested that the Board reviews and approves the sample months submitted by retirement members, and hours for elected officials and regular employees. The following resolution, to be known as Resolution # 42 of 2008, was introduced by Phelps, seconded by Bean:

#### **RESOLUTION #42 - 2008**

**BE IT RESOLVED**, the Sardinia Town Board hereby approves the sample calendars submitted by NYS Employee Retirement System members, and further, reiterates that elected officials total hours recorded will be based on a 6 hour work day, and all other employees, part-time and full time will be based on an 8 hour work day.

Upon roll call vote, Bean, aye, Kenyon, aye, Phelps, aye, Uhteg, aye, Balus, aye. So resolved, 5 ayes, 0 noes.

Concerning the Secretarial Pool position, on a motion by Uhteg, seconded by Phelps, Supervisor Balus was authorized to run an ad for applicants to fill the position. Carried, 5 ayes, 0 noes.

In New Business, the Supervisor stated that The Chaffee-Sardinia Fire Company has requested approval for the membership of John Luke and Kyle Tackentien, who are active members in the Fire Company but are currently living out of the district. In addition, Todd Catalano who was an approved out-of-district member has moved back in to town and no longer needs out-of-town membership approval. On a motion by Kenyon, seconded by Phelps, John Luke and Kyle Tackentien were approved as out-of-district members of the Fire Company, and Todd Catalano as a regular in-the-district member. Carried, 4 ayes, Councilman Uhteg abstaining, and 0 noes.

Supervisor Balus stated that the Senior Citizens are requesting funds for a bus trip to Cambridge Springs, PA to attend a tour and a comedy show, "Bermuda Ave Triangle" on September 11<sup>th</sup>. She noted that there is currently over \$5000 in the Seniors' budget line. The Supervisor stated that she would like to see the Senior Citizens do something other than trips, and would like to see an accounting as to how many people go, etc. On a motion by Uhteg, seconded by Phelps, the Board authorized up to \$3,000.00 for the trip to Cambridge Springs, PA. Carried, 5 ayes, 0 noes.

The Supervisor stated that Summer Recreation Program recreation program is requesting funds to attend the Seabreeze Amusement Park in Rochester on Friday, August 8<sup>th</sup>. Councilman Phelps stated that they are requesting no more than \$3,000.00, based on 80 people going, at a cost of \$13.00 per child, with each child paying \$5.00 and the Town picking up \$8.00 each, and \$2,250.00 for buses. On a motion by Balus, seconded by Bean, the Board approved up to \$3,000.00 for the Recreation Program field trip to Seabreeze Amusement Park in Rochester, NY. Carried, 5 ayes, 0 noes.

Supervisor Balus stated that, concerning the necessary upgrade to the chlorinator at the Town Hall/Community Center, Danny Heinemann & Sons has submitted a proposal based on recommendations made by the County Health Department to acting Supervisor Ron Kenyon last month. This proposal includes installing an upgraded and approved Water Treatment System at the Community Center on Savage Road, at a cost of \$2,897.00. She stated that the terms of the proposal include ½ down payment in advance to be deposited in an escrow fund at the Bank of Castile, with balance due upon completion. On a motion by Phelps, seconded by Uhteg, the proposal for the chlorinator work was accepted at the cost of \$2,897.00, and with the stated terms. Carried, 5 ayes, 0 noes.

The Supervisor stated that at the June meeting, the mileage reimbursement rate for Town employees doing Town business was increased from \$.485 per mile to \$.585 due to the cost of gasoline. Mr. Kenyon stated that the Board had decided to tie the mileage rate to the IRS allowable, which is changed in January and July. He stated that as of July 1<sup>st</sup>, the rate is now \$.585 per mile. It was noted that no action need be taken, since the Board had decided to make any change in the reimbursement rate automatic. The Supervisor's secretary Peggy O'Brien will adjust mileage claims accordingly.

During the Question period:

Michael Hannon suggested that the Town use an engineer for the chlorinator project, stating that though the County Health Dept. has approved the specs, they will not back them if something goes wrong.

David Malachowski stated that Councilmen Uhteg should have abstained on the vote concerning the out-of-district members of the Fire Company. Mr. Uhteg agreed, and the Clerk was directed to amend that vote to reflect Mr. Uhteg's abstention.

Virginia Domes stated that the "Dead End" sign on her street, Benton Rd., has fallen over and is now grown over, and she asked if it could be replaced. Highway Superintendent Baker stated he would do so.

Supervisor Balus then made the following announcements:

The Next meetings are scheduled as follows:

Regular Town Board Meeting – August 13<sup>th</sup>, 7:30 PM

Planning Board meetings:

July 16<sup>th</sup> @ 7:30 PM

August 6<sup>th</sup> @ 7:30 PM

Other Information:

- The Sardinia Historical Society will hold its 2<sup>nd</sup> Annual Ecumenical Church Service at the Old Town Hall, on Sunday July 20<sup>th</sup> at 11:30 AM
- There will be another Concert in the Park on Thursday, July 10<sup>th</sup>, from 7:00 PM unit 9:00 PM, featuring “Yesteryear” Old-time Country Band, and another concert is being tentatively scheduled for Thursday July 24<sup>th</sup>
- The Town wide Garage Sale will be held on July 18<sup>th</sup>, 19<sup>th</sup>, and, 20<sup>th</sup>
- Labor Day in the Park will be held on Monday, September 1<sup>st</sup>

There being no further business to come before the Board, on a motion by Phelps, seconded by Bean, the meeting was adjourned at 9:10 PM. Carried, 5 ayes, 0 noes.

Respectfully Submitted,

Town Clerk