

07/21/10 Town Board Minutes

A regular meeting of the Elma Town Board was held on Wednesday, July 21, 2010, at 7:00 PM, Elma Town Hall, 1600 Bowen Road, Elma, New York, with the following members present:

Supervisor Michael Nolan
Councilman Thomas Fallon
Councilman Tracy Petrocy
Councilman Dennis Powers
Councilman Dean Puleo

Also: Town Attorney Phyllis Todoro
Building Inspector Joseph Colern
Highway Superintendent Wayne Clark - Absent
Water Superintendent Eugene Stevenson
Town Engineer James Wyzykiewicz

Approximately 30 people attended the meeting.

The meeting was opened with the reciting of the Pledge of Allegiance.

Making the Legal Notice for the Public Hearing on Local Law #1-2010, 2010 Retirement Incentive Program part of the minutes, Supervisor Nolan opened the public hearing at 7:05PM.

No one spoke for or against.

Supervisor Nolan closed the public hearing at 7:06PM.

Councilman Powers made the motion and Councilman Petrocy seconded the motion to table Local Law #1-2010 for the 2010 Retirement Incentive Program until the August 18, 2010 Town Board Meeting. Ayes-5. Noes-0. Carried.

Councilman Powers made the motion and Councilman Fallon seconded the motion to approve the minutes from the June 16, 2010 meeting. Ayes-5. Noes-0. Carried.

Department Reports

Town Engineer Jim Wyzykiewicz stated he would like the Board to call a meeting regarding Drainage District #28 the Highland Dr and Sigman Ln section on Hilltop Dr. There is a continuing drainage problem. There are two (2) properties not in the drainage district whose properties are affected. Letters will need to be sent to meet with all the residents of the district and the two not in the district to discuss with the Board the drainage problems.

Building Inspector Joseph Colern presented his monthly report for June 2010 with 36 permits issued, \$12,443.58 in fees collected and an estimated value of construction at \$1,934,137.63. The Building Department has been keeping busy with big projects like Steuben Foods and Online Trucking on Transit Rd.

Water Superintendent Eugene Stevenson reported the water tank is back in service but the project is not quite complete. The Water Department is taking care of the drainage onsite that needs to be upgraded. 768 continuous hours were worked. Over 38 million gallons of water was pumped. There were no problems at the Water Department with customers and no reported problems. Gene thanked and congratulated his staff for all their time and work on this project. Now the Water Department is catching up on water taps, replaced a hydrant on Seneca St and repaired a valve leak on Chairfactory & Crimson.

Highway Superintendent Wayne Clark was excused from tonight's meeting, so Supervisor Nolan reported the playground is complete at the Creek Road Park, the 1700 ft walking trail should be complete in the next couple of weeks and also road repair work is being done.

Town Attorney Phyllis Todoro stated there is a spot on the Old Bowen Road Resolution where it requires footage, but the survey has not been done yet. Gary Krull is presently working on the survey.

Councilman Puleo made the motion and Councilman Fallon seconded the motion to approve a negative declaration on a short form SEQR for Pirates Plank at 3131 Transit Road formerly JNC Amusements. Ayes-5. Noes- 0. Carried.

Councilman Puleo made the motion and Councilman Powers seconded the motion to approve a Business Use Permit to Nancy Ciambor for Pirates Plank at 3131 Transit Road. Building Inspector notes a permit is required for any advertising and a fire inspection within 30 days of occupancy. Ayes- 5. Noes-0. Carried.

Councilman Fallon made the motion and Councilman Puleo seconded the motion to approve a Preliminary Business Use Permit to Aurora Optometric Group PC on West Maple Court. Building Inspector notes a referral be made to the Planning Board for a site plan review. Ayes-5. Noes-0. Carried. (Building Inspector Joe Colern requests the Town Board add to the Agenda to set a public hearing date for the formation of a Drainage District for Aurora Optometric Group).

Councilman Fallon made the motion and Councilman Powers seconded the motion to approve the Music Permit for the Blue Lantern Lounge at 6120 Seneca St. Building Inspector notes the permit will expire May 31st, 2011. Music to be performed indoors, not to create a nuisance to neighboring properties. Same restrictions as previous years according to chapter 73 Elma code. Ayes –5. Noes – 0. Carried.

Councilman Puleo made the motion and Councilman Powers seconded the motion to approve the Fill Permit Application with the amended change to the application: “Expected Duration of Filling Operation” to be 90 days instead of 180 days for Mr. Balducci Pound Road LLC at 521 Pound Rd. No vote taken. Supervisor Nolan interjected with a motion which supersedes Councilman Puleo’s motion. Supervisor Nolan made the motion and Councilman Petrocy seconded the motion to table this matter for further discussion. Ayes – 2. Noes – 2. Abstain – 1. (Councilman Powers and Councilman Puleo voted no and Councilman Fallon abstained). Councilman Puleo withdrew the first motion and made the motion and Councilman Powers seconded the motion to approve the Fill Permit application with amended changes to be 500 cubic yards instead of 1000 cubic yards and 90 days instead of 180 days with an opportunity to expand on that. Ayes- 4. Noes- 1. Carried. (Supervisor Nolan voted no).

Councilman Powers made the motion and Councilman Fallon seconded the motion to approve the Resolution for the Undertaking in Connection with Highway Work Permits Issued by the New York State Department of Transportation as follows: WHEREAS, the undersigned Town of Elma from time to time receives permits from the Department of Transportation of the State of New York (hereinafter referred to as the “Department”) allowing the Town of Elma to temporarily obstruct, install, construct, maintain, operate or replace any facilities within the bounds of a State Highway right of way pursuant to

Sections 52, 103, 203, 249 and/or 250 of the Highway Law; and WHEREAS, the Department requires that the municipality file an undertaking to secure the Town of Elma faithful performance within the terms of any such permit and also indemnify the State of New York (hereinafter referred to as the "State") and others with respect to all operations under such permits by the Town of Elma. NOW THEREFORE, the Town of Elma hereby undertakes, to and with the State and the Department, that: 1. The Town of Elma will well, truly and faithfully comply with and perform all the terms and conditions of each such permit on its part to be kept and performed, and abide by and comply with all such conditions, rules and regulations as may be, from time to time, promulgated by the Commissioner of Transportation of the State of New York (herein referred to as the "Commissioner"), according to the true intent and meaning of such permits, rules and regulations. 2. Town of Elma will, at its own expense, promptly complete the work allowed under each permit and within a reasonable time restore State property damaged by its work to substantially the same or equivalent condition as existed before such work was begun; and in the event that the Town of Elma fails to so restore damaged State property within what the Commissioner deems to be reasonable time, the Commissioner, after giving written notice to the Municipality, my restore the property to substantially the same or equivalent condition as existed before the Municipality began the work and require the municipality to reimburse the State for any and all costs incurred by the State in such restoration; 3. The Town of Elma will indemnify, hold harmless and defend and protect the State of New York, the Commissioner and the Department, their officials, officers, agents and employees against and pay any and all amounts, damages and costs and judgments which may or shall be recovered against said State, or its officers, or agents, or which such State may be called upon to pay to any person or corporation by reason of damages arising or growing out of operations pursuant to said permits or the manner of doing the same, or the neglect of said Town of Elma, or its agents or servants, or the improper performance pursuant to the conditions of said permits by the Municipality, its agents or servants; 4. The Town of Elma which is self-insured, will pay any and all damages, costs, including but not limited to attorney's fees and judgments recovered against the State, the Commissioner of Transportation, the Department of Transportation and their officials, officers and employees in connection with work allowed by a permit or from use of a permit by the Town of Elma or by any person acting by, through or for the Town of Elma, including omission and supervisory acts of any of the entities or persons named above; 5. It is understood that this undertaking is one of indemnity only and is not to be construed as imposing on Town of Elma an obligation to pay claims for which there would not otherwise be a remedy in law against the State of

New York; 6. Any payments required by the foregoing will be guaranteed by the full faith and credit of Town of Elma, or its districts, as applicable, and will be paid out of current budgeted funds, or if insufficient, from its liability and casualty reserve fund or from the proceeds of bonds which current laws permit the Town of Elma, to issue to pay claims against it. Ayes- 5. Noes - 0. Carried.

Councilman Puleo made the motion and Councilman Petrocy seconded the motion to amend the 280-A Resolution that was approved on February 10, 2010 under Section II Definitions, subsection b. paragraph (3) the last sentence to read: "If the applicant can not achieve one hundred and fifty (150) feet front roadside set back, the applicant may apply to the Elma Town Board".
Ayes – 5. Noes – 0. Carried.

Councilman Powers made the motion and Councilman Fallon seconded the motion to accept sealed bids for Cleaning Services at the Town Hall, specifications are available in the Town Clerk's Office Monday through Friday 8:00AM until 4:00PM. Bids to be accepted until August 18, 2010 at 4:00PM and will be opened at 7:00PM at the Town Board meeting. Ayes – 5. Noes – 0. Carried.

Councilman Fallon made the motion and Councilman Powers seconded the motion to declare surplus of the Building Department's 2000 Ford Ranger pick up truck and accept bids until August 18, 2010 at 4:00PM. Ayes -5. Noes -0. Carried.

Councilman Petrocy made the motion and Councilman Puleo seconded the motion to adopt the Resolution: "Old Bowen Road" as a Town of Elma Highway as follows:
WHEREAS, the Town Board of the Town Of Elma is considering the adoption of "Old Bowen Road" as a Town Highway in the Town of Elma;
WHEREAS, under § 189 of the New York State Highway Law, a road is consider a Town Highway by use. If the Town exercised use and control over the road for over a period of ten (10) consecutive years, said road shall be considered to be a "highway by use", said area consisting of a distance of 0.14 with a width of footage as per the attached survey from Gary Krull; and
WHEREAS, the Town Board of the Town of Elma is duly qualified to adopt said highway as a Town Road; and
WHEREAS, both the Town Engineer and the Superintendent of the Town Highway Department have submitted their written approvals to the Town for the adoption of the

road as a Town highway; and

WHEREAS, County Planning has also been notified as required under Section 239-m of the General Municipal Law as well as all entities required to be notified under Town Law Section 264; and

NOW, THEREFORE, BE IT

RESOLVED, that the road known as “Old Bowen Road”, is hereby a Town Highway within the Town of Elma. Ayes – 5. Noes - 0. Carried.

Councilman Fallon made the motion and Councilman Powers seconded the motion to accept the use of the Elma Town Park for the Thurman Thomas Extreme Sports Event to be held on September 18, 2010 which helps to support the Thurman Thomas Foundation. Ayes – 5. Noes – 0. Carried.

Councilman Puleo made the motion and Councilman Fallon seconded the motion to table the approval of Arthur Court from a private to a public road for C W Fargo LLC. Ayes – 5. Noes – 0. Carried.

Councilman Powers made the motion and Councilman Fallon seconded the motion to table the approval of authorization for a loan from the General Fund for emergency repairs in Drainage District #1 in Elma Meadows and to direct the Highway Department to place a fence around hazardous area. The Town Engineer will get 3 quotes for the work to be done in the Drainage District. Further discussion on this matter will be at a Special Meeting. Ayes – 5. Noes – 0. Carried.

Councilman Powers made the motion and Councilman Petrocy seconded the motion to request a speed study on West Blood Road from Ostrander Rd to Porterville Rd to reduce the speed limit from 55mph to 45mph on the request of a letter from Jay Macaluso of West Blood Rd. Ayes- 5. Noes – 0. Carried.

Councilman Powers made the motion and Councilman Puleo seconded the motion to request a speed study for Pearl Terrace to lower the speed limit to 30mph on a petition submitted by the homeowners of Pearl Terrace and also a request for a speed study on Meadowbrook Drive on the request of a letter sent in from a child on Meadowbrook Dr. Ayes – 5. Noes -0. Carried.

Supervisor Nolan set a Public Hearing date of August 18, 2010 for Local Law #2-2010

“Amendment to the Zoning Law for Temporary Storage Units and Temporary Accessory Structures of the Town of Elma”, and for TVGA for a Shift of Operation in to an Empire Zone and for Aurora Optometric Group for the formation of Drainage District #186 West Maple Court.

Councilman Powers made the motion and Councilman Fallon seconded the motion to approve Warrant #7 with two (2) noted exceptions as follows: Claim #749 to #886 General Fund \$52,727.65; Highway Fund \$142,007.44; Water District \$151,381.83; Special District \$10,889.84; Capital Project \$17,663.95. Ayes- 5. Noes- 0. Carried.

All have received the Planning, Zoning and Conservation Board and Design Guidelines Committee minutes that apply.

Supervisor Nolan announced the next Work Session will be August 11, 2010 at 6:00PM.

Meeting adjourned at 8:39PM. All in Favor.

Respectfully submitted,

Jennifer M. Ginter
Deputy Town Clerk