

## **06/03/09 Town Board Minutes**

A regular meeting of the Elma Town Board was held on Wednesday, June 3, 2009, at 8:00 PM, Elma Town Hall, 1600 Bowen Road, Elma, New York, with the following members present:

Supervisor Michael Nolan  
Councilwoman Susan Glownia  
Councilman David Polak  
Councilman Dennis Powers  
Councilman Dean Puleo

Also: Town Attorney Phyllis Todoro  
Building Inspector Joseph Colern  
Highway Superintendent Wayne Clerk  
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 for Local Law #1-2009 Moratorium on 280-A and Sub-divisions part of the minutes Supervisor Nolan opened the public hearing at 8:03PM. No one spoke for. Speaking against was Attorney Peter Sorgi representing Craig Fargo. Timothy Mielko of Oakgrove Ct wasn't for or against he just had questions. Supervisor Nolan closed the public hearing at 8:11PM.

Councilman Polak made the motion and Councilman Powers seconded the motion to approve Local Law #1-2009 Imposing a Twelve Month Moratorium on Land Use Approval or Applications for Land Use in Sub-divisions and 280-A lots in the Town of Elma as follows: Section 1: Title. This Local Law shall be referred to as "Local Law Imposing a Twelve Month Moratorium on Land Use Approvals or Applications for Land Use in Subdivisions and 280-A lots in the Town of Elma". Section 2: Purpose and Intent. Pursuant to the statutory powers vested in the Town of Elma and its Town Board to regulate and control land use and to protect the health, safety and welfare of its Residents;

and to address present and future development within the Town; and Pursuant to the Comprehensive Plan adopted by the Town of Elma on May 21, 2003; and to continue the update of the Town's Land Use Regulations, including but not limited to the Zoning Code of the Town of Elma; the Town Board of the Town of Elma hereby declares a twelve (12) month moratorium on the approval of land use or application for land use for Subdivisions and 280-A lots in the Town of Elma. At the discretion of the Town Board, there shall be the possibility of two (2) separate (6) month periods of extension imposed, after proper notice and public hearing, to be held within forty-five (45) days prior to the expiration of said moratorium period. Section 3: Statutory Authority: Suppression. A. This Local Law is adopted pursuant to the authority granted to the Elma Town Board pursuant to section 10(1)(i); 10(1)(ii); 10 (1)(iii)(3)(d); 20 and 27 of the Municipal Home Rule Law and in compliance with section 239-m of the General Municipal Law. B. This Local Law supersedes the Resolution made by the Elma Town Board on April 7, 2004, relative to residential 280-A development in the Town of Elma. C. This Local Law supersedes #123-1 through #123-29 (inclusive) of the codes of the Town of Elma, New York. Section 4: Term. This Local Law shall be in effect for a period of twelve (12) months. There shall be the possibility of two (2) separate six (6) month periods of extension imposed, after proper notice and a public hearing to be held within forty-five (45) days prior to the expiration of said moratorium period. Section 5: Scope of Controls. A. During the effective period of this Local Law: a. The Town Board of the Town of Elma shall not refer to the Planning Board any new request for Subdivisions and 280-A lot plans. b. The Town of Elma Planning Board shall not make any recommendations or referrals to the Town Board or any other applicable Board of the Town for any approval of any Subdivision or 280-A lots. c. The Building Department of the Town of Elma shall not grant any building permits for any Subdivision plans or 280-A lot plans. Section 6: Exceptions. A. This Local Law shall not include or prohibit the consideration of any additional applications for subdivisions and 280-A lots which already received concept approval by the Elma Town Board or Town Planning Board approval. B. This Local Law shall not include any project that has received final approval, however, has not yet started construction. Section 7: Variances. A. Should any owner of property affected by this moratorium suffer an unnecessary hardship in the way of carrying out the strict letter of this moratorium, then the owner of said property may apply to the Town Board in writing for relief from strict compliance with this moratorium upon submission of proof of such unnecessary hardship. For the purpose of this moratorium, unnecessary hardship shall not be the mere delay in being permitted to make an application or writing for a decision on the application for a building permit, subdivision map, land division, variance, special

permit, change of zone or other approval during the period of the moratorium. B. Substantive requirements: No relief shall be granted hereunder unless the Town Board shall specifically find and determine and shall set forth in its resolution granting such exemptions that: a. Failure to grant an exemption to the petitioner unnecessary hardship, is substantially greater than any harm to the general public welfare resulting from the generating of the exemption; and b. The grant of the hardship, even if the project or activity for which exemption is sought is approved, will clearly have no adverse effect upon any of the Town's goals or objectives in undertaking the community planning effort or in adopting this moratorium, including but not limited to the effects resulting from uses detrimental to the community's resources or character, from loss or potential open space including areas important as wildlife habitat or from other adverse environmental impacts; and c. The project or activity for which the petitioner seeks an exemption is in harmony and consistent with any interim data or recommendations or conclusions that may be drawn from the Town or community-planning effort then progress; or the project or activity for which the petitioner seeks an exemption is submitted in connection with workforce or senior citizens affordable housing development; and d. The alleged extraordinary hardship is not the result of any delay, action or inaction by the applicant, the property owner, or predecessors-in interest and that such alleged hardship has not been self-created; and e. Failure to grant a hardship exemption to the applicant will cause hardship to the surrounding area, community, neighborhood, or general public welfare resulting from granting of the exemption. In determining the magnitude of the alleged harm, the Town Board may consider the applicant's monetary investment in the completed application, prior to the moratorium, as applicable to such application; however, such monetary investment shall be only but one factor and shall not be the controlling factor in demonstrating extraordinary hardship. C. Procedure. Upon submission of a written application to the Town Clerk by the property owner seeking relief from this Moratorium, the Town Board shall, within thirty (30) days of receipt of said application, schedule a public hearing on said application upon five (5) days written notice in the official newspaper in the Town. At said public hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have the opportunity to be heard, and the Town Board Shall, within thirty (30) days of close of the public hearing, render its decision either granting or denying the application for relief from the strict requirement of this moratorium. If the Town Board determines that the property owner will suffer an unnecessary hardship if this Moratorium is strictly applied to a particular property, then the Town Board shall grant relief from the moratorium to the minimum extent necessary to provide the property owner relief from

the strict compliance with this Moratorium. The Town Board may impose any conditions on any grant that is deemed necessary. Section 8: Severability. Each separate provision of this Local Law shall be deemed independent of all other provision herein, and if any provisions shall be deemed or declared invalid, all other provisions hereof shall remain valid and enforceable. Section 9: Effective Date. This Local Law shall take effect immediately upon filing in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law. Ayes- 5. Noes- 0. Carried.

Councilman Powers made the motion and Councilwoman Glownia seconded the motion to approve the minutes from the May 20, 2009 meeting.  
Ayes- 5. Noes-0. Carried.

#### Department Reports

Building Inspector Joseph Colern stated he would like to add to the agenda the Pondbrook Wastewater Treatment Facility Roof. The roof at the plant is in serious need of repair. He will put specs together so the roof work can be bid out. Supervisor Nolan stated there is a \$41,000 fund balance to cover the expense.

Councilman Powers made the motion and Councilman Polak seconded the motion to add the Pondbrook Wastewater Treatment Facility roof to the agenda. Ayes- 5. Noes- 0. Carried.

Councilman Polak made the motion and Councilwoman Glownia seconded the motion to bid out the roof at the Pondbrook Wastewater Treatment Facility with the sealed bids due by June 17, 2009 at 4:00PM. The Building Inspector will prepare the bid specs. Ayes- 5. Noes – 0. Carried.

Water Superintendent Gene Stevenson stated the fire service line has been installed for Blossom Fire Co and the line passed all inspections; annual hydrant painting has started; the valve exerciser program is just getting started (the delivery is expected June 12) the Town Board is invited to stop and see how the valve exerciser works.

Highway Superintendent Wayne Clark stated with the nice weather, roads are being patched, grass is getting cut and culverts are in.

Councilman Powers made the motion and Councilman Polak seconded the motion to approve the following proclamation for the Relay for Life on June 20th and 21st , 2009 as follows: Whereas, Relay for Life is the nationwide signature event for the American Cancer Society, and Whereas, teams in Elma, New York will join 2.5 million people across America in this overnight event to fight cancer, and Whereas, the Relay for Life

represents our hope that those lost to cancer will not be forgotten, that those battling cancer will be supported and that one day cancer will be eliminated, and Whereas, the American Cancer Society is the nationwide community based voluntary health organization dedicated to eliminating cancer as a major health problem by preventing cancer, saving lives and diminishing suffering from cancer, through research, education, advocacy and service. Now Therefore, the Town Board of Elma does hereby proclaim June 20th and 21st, 2009 as “Relay for Life” weekend in Elma, New York and call upon our citizens to support the American Cancer Society with voluntary services and donations in an effort to eradicate cancer. Ayes – 5. Noes -0. Carried.

Councilman Puleo made the motion and Councilman Polak seconded the motion to issue a negative declaration on a short form SEQR to Michael Heusinger for MH Tech Services at 2363 Bowen Road. Ayes- 5. Noes- 0. Carried.

Councilman Polak made the motion and Councilwoman Glownia seconded the motion to issue a Business Use Permit to Michael Heusinger for MH Tech Services at 2363 Bowen Road. Building Inspector notes a fire inspection within 30 days of occupancy and a permit is required for any advertising signs. Ayes- 5. Noes-0. Carried.

Councilman Polak made the motion and Councilwoman Glownia seconded the motion to approve the Supervisor to sign to amend the “B” bill version of the Home Rule Request regarding Senate and Assembly Bills S.1566-A & A.6273-A which includes language referencing “a county having a population of not less than 950,000 and not more than 951,000”. Ayes – 5. Noes – 0. Carried.

Councilman Polak made the motion and Councilwoman Glownia seconded the motion to approve the repairs for Drainage District #7 (Briggswood) culvert repairs at the cost of approximately \$600.00 which will be charged back to the residents in the district. The Highway Department will do the work. Ayes- 5. Noes- 0. Carried.

Councilman Powers made the motion and Councilman Polak seconded the motion to approve the following budget amendment: Resolution for Transfer Station Repairs WHEREAS, the Town wishes to make repairs at the Transfer Station, and WHEREAS, the Town did not include the funding for such repairs within the Adopted 2009 budget, and

WHEREAS, the Town does have sufficient fund balance in the General Fund which would allow for such repairs

NOW, THEREFORE, be it

RESOLVED, that the Town Board hereby authorizes the repairs at the Transfer Station for \$60,000.

BE IT FURTHER RESOLVED, that the Town Board authorizes the amending of the Town's 2009 adopted budget to provide for the appropriation of fund balance required for the repairs at the Transfer Station, as follows

Increase Appropriations: A8160.404 Sanitation – Outside Contractors \$60,000.00

Increase Appropriated Fund Balance: A599 Appropriated Fund Balance \$60,000.00

Ayes- 5. Noes- 0. Carried.

Councilwoman Glownia made the motion and Councilman Powers seconded the motion to approve the bid for the Library roof to Carolina Home Improvement, Inc for \$17,500. Ayes- 5. Noes- 0. Carried.

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

Supervisor Nolan stated there will not be a Work Session on June 10, 2009.

Meeting adjourned at 8:32PM.

Respectfully submitted,

Jennifer Ginter  
Deputy Town Clerk