

Hamilton Town Board Meeting

804

August 9, 2012

Court House

Present: Eve Ann Shwartz, Supervisor; Peter Darby, Deputy Supervisor; Carolyn Todd and Chris Rossi; Town Council, Bert Glazier, Highway Superintendent, Sue Reymers, Bookkeeper, Steve Jones, Town Attorney

David Holcomb could not attend as he was called out to work for NYSEG.

Additional: Bill Todd, Deb Kliman, Harvey Kliman, Gerald Hayes, Jody Palmer, Harmon Huff, Richard Pancoe, and Peter Klepeis

1) **Welcome**

Eve Ann called the meeting to order at 7:05. After welcoming the public she asked if there were any concerns of the Public. Deb Kliman, representing the village, shared some information. It seems the village's attorney, Jim Stokes, will now be put on a retainer. In order to do this it was necessary to change the Village's meeting from the second Tuesday of the month to the third Tuesday of the month. This will be reviewed and on a trial period for one year. The retainer cost per year of Mr. Stokes will be about \$33,000. Deb mentioned the Board of Trustees will make the final decision on Colgate's desire to make the former Parry's Hardware transition into a museum. The Village Planning board had made a negative recommendation to this proposal. A public hearing by the Village will probably be upcoming.

Eve Ann mentioned that Steve Jones, Town Attorney, will be coming in at 8 p.m. to join us to discuss and educate the Town Board, Zoning Board, Planning Board and members of the Energy Working Group. Steve is going to update us on the potential authority of the Town to regulate natural gas development.

2) **New Town Bookkeeper**

Eve Ann introduced Sue Reymers who has joined us as our new in-house bookkeeper. She will take over for Linda Manchester and Tackabury services. This will change us from an out of house service to an in-house service. We will be hiring a CPA to do the auditing of our books. Eve Ann mentioned that we are more confident that this change will be more economical and much more effective.

3) **Approval of July 12, 2012 minutes**

A motion was made by Peter Darby and seconded by Carolyn Todd to accept the 7/12/12 minutes.

Eve Ann mentioned (2nd paragraph on page 800) that a Citizens Committee had been started. Eve Ann wanted to clarify that the Town Board will be appointing this to address the issue of gas development. A committee appointed by the Town Board will be called the Energy Working Group to address the issue of natural gas development. Also, Eve Ann mentioned that on page 801, 7th paragraph, last sentence, referring to why Sue is qualified to work for us. It should read a Chenango County CPA firm reviews SPCA books and has given Sue high

marks. A later vote was asked to cover the amended issues. A motion made by Carolyn Todd and seconded by Chris Rossi to accept the amended. Motion carried.

4) **Highway Report – Bert Glazier**

Bert's projects for the month included: new culvert on Hill Road, repaired end of a culvert on Preston Hill, Tim Miers took down 3 trees on Preston, 3 on Brown Road and one on Williams Road. Chip seal was done on Bonnie, Chappel, Kiley, Furner Hill, Kelly, Barnard, Wilkinson, Brown and Smith roads. They also helped Brookfield and Eaton with chip seal and pave. They have mowed and trimmed the Hubbardsville cemetery. C. Todd asked how often they had to re-asphalt roads. Bert mentioned this was about every 5 years depending on the traffic and conditions. He indicated approximately 12 miles of 60 miles have been chip sealed this year. Bert basically rates the roads to determine which take priority. He updated all safety information for the Attorney General's office.

a) Sand Bids: There were two sand bids for 5000 yards clean ¼ inch screened abrasive sand

1) Cossitt Concrete submitted a bid of \$5.75 per yard with town loading & trucking. If Cossitt were to load our town truck, the price would be \$6.00 yard. If Cossitt were to do all the trucking, the cost would be \$11.00 per yard.

2) White Eagle Sand & Stone submitted a bid of \$5.00 per yard for sand. They will load it. We can get approximately 9 yards (approx. 15 ton) per truck. This figure (5000 yards) seems to be considerably less than we got last year due to our mild winter. Eve Ann asked Bert for his recommendation. He chose not to commit to either bid as he needs to see the sand and know that it is going to be there when we need it. Eve Ann asked that if we could approve or accept the bid contingent on Bert's approval of the quantity. Peter made a motion and it was seconded by Carolyn Todd. Motion carried.

b) Fuel Oil—Update on State Price

Bert and Doc Hayes had an appointment to go to Utica to review state bids. The meeting was set up but Bert's contact in Utica did not show. Bert checked with the Attorney General to see if he was available. Bert will try to reschedule a meeting for the week of August 13th. Bert suggested that perhaps we should think of eliminating housing the gasoline at our facility. All vehicles, except Bert's truck, require diesel fuel. We have a 1500 gallon tank for diesel fuel. Bert indicated we could purchase our gasoline from the Village. Also, the containment where the gasoline is housed is getting bad. If we get inspected there might be problems and he did not feel it was worth it. Eve Ann asked him to check on the price with the Village versus what we are paying with Mirabito. Information will be gathered so the Town can make a decision for the September meeting.

c) Solar Consultants

Bert and Eve Ann met with a representative on July 30th. Eve Ann indicated we expect to get back an estimate from the solar company. Peter asked if this would be a lease and Eve Ann responded that it would be a purchase. The ETM Solar company that was contacted does not have a lease program that would work for us. Their program is only available for residential. They have yet to send Eve Ann an equipment lease program that is different than a lease/lease. Information was sent to them to include also the light districts of Poolville and Hubbardsville. Eve Ann also spoke with John Benetti of Arista. Due to the fact we have a flat roof, all we would need to do is remove the gravel and put the system on top. We will not have to drill into the roof at all. Arista could attach the panels to concrete blocks. Eve Ann hopes to hear more from them next week. We also

received a suggestion from Jan Myers, who runs the Madison Solar program, that if we decide we want to purchase it we might want to do a community fund raiser. Donations could be tax deductible. The question was asked of how many kilowatts were needed to start. That information has not yet been discussed. Our current rate is \$.13 per kilowatt hour. The representative felt that we could put enough panels on the roof to cover Hubbardsville, Poolville and the Highway Garage.

5) **General Bills**

A motion was made by C. Todd and seconded by P. Darby to accept the payment of the General bills. Motion carried. Total amount for general bills was \$3877.19 and prepaid bills \$6,592.83.

6) **Highway Bills**

A motion was made by C. Todd and seconded by C. Rossi to accept the payment of the Highway bills. Motion carried. Total amount for Highway bills were \$80,814.46. This large total included materials needed to pave roads purchased from Vestal Asphalt.

7) **July Financials**

- a) Eve Van asked if there is anything the Board should be aware of anything that is out of the ordinary this month. Peter did not have a chance to review at this time. Every line items needs to be reviewed and the Board will become familiar with each line item as time comes due. Peter did comment that we still have a \$1.4 million balance which is in good standing. Eve Ann indicated we would postpone this discussion for upcoming meetings where considerable review and planning will be needed. We will begin our budget negotiations and developing the 2013 budget in August and September. Peter passed out a schedule of planning budgets for the State. The State sets the deadlines for the adoption of our budget for the 20th of September. Peter suggested we invite candidates for 2013 to meetings so they can have a preview of our Town budget and plans. Eve Ann suggested perhaps a press release for the newspaper and website could be available. Chris Rossi will write up a press release to invite the public to join our meetings. Eve Ann felt the release would be available right after Labor Day. Eve Ann suggested we have a conversation with Colgate about the payment in lieu of taxes. Also, there should be a contact with the fire districts to see their needs. The first budget workshop will be scheduled for August 20th with follow-up meetings. Peter will contact town chairs for the Republican and Democratic parties to see if they would like to attend our budget meetings.

(Bert Glazier was called out to service a tree down on Barnard Road and thus had to leave this meeting.

8) **Assessor informational**

The town has been served 3 appeals challenging decisions of the Town Assessor and Board of Assessment review. They were from:

- 1) Silver Hamilton LLC(Ames Building)—Assessed \$1,704,500--seeks reduction to \$500,000
- 2) Dollar General-----Assessed \$575,000—seeks reduction to \$300,000
- 3) Colgate Inn, LLC—Assessed \$3,000,000---seeks reduction to \$1,000,000

Rochelle Harris, our Town Assessor, told Eve Ann that these matters have been referred to Steve Jones and answers have been filed. Preliminary hearings are due to come up in September. Rochelle felt that these figures are fairly accurate. The Colgate Inn just completed a \$7.5 million upgrade which would bring any assessed value to a higher figure. These upgrades would be a sizeable increase to our tax base. Carolyn Todd questioned if the owners have to present tax returns as part of the legal process. Carolyn will review this with Rochelle. The Assessor will determine the best fair market value for each of the three units.

9) **Code Officer's Report**

Paul McGinnis did not leave a detailed listing of his activities for June and July. The short listing he did leave basically covered hours of Town time. Eve Ann mentioned that the work load has been quite extensive for Paul. Eve Ann reviewed various situations that Paul addressed. One was a complaint filed of illegal use of property for a junk yard. A meeting was held on July 30th with the village and the town of Earlville to discuss the possibility of them joining us. They do have a codes enforcement officer on annual contract and are looking for better service. Earlville's cost is in the range of \$4500 for 2 hours per week. This person is also being used by the town of Lebanon. Eve Ann will try to review the situation with Jim Goldstein. Paul is willing to continue the relationship with the Town and Village but we need to find a way that is a bit less stressful. Peter commented that an advantage we have with Paul is that he is available 5 days per week which is important to the contacts. Next month Paul will submit a more detailed report referring to location and contacts he has made.

10) **Stenographer for Planning Board and Zoning Board of Appeals**

Eve Ann confirmed that an ad was placed in the MYW but we did not receive any responses. She will contact Linda Manchester to see if she might be interested.

11) **Madison County Board of Elections –Polling sites**

The Polling Districts remain the same as last year: District 1 & 2—Community Room, Hamilton Library
District 3—Village Office of Earlville and District 4—Poolville Community Center

12) **On Going Business**

- a) **ENERGY WORKING GROUP**—Chris Rossi reported they have had their 2nd meeting and are talking out what they might do with concerns and priorities. A list of concerns has been formed in which they will share with the Town attorney. Our next look will be at wind regulations. The zoning for the windmills needs to be reviewed. It would be helpful to see what neighboring towns are doing so we can be in line with them. Hydrofracking will be a long process so they will be working on this at their next meeting. Peter commented we probably will not see gas development within 5 years. Peter will be putting some money in the budget for specialized coverage of these areas. He indicated we will need some professional experts to help out as this is way too much for a volunteer committee to manage. Chris commented the group is working well together and coming up with a lot of good questions. Eve Ann expressed her appreciation for those serving on the committees.
- b) **GREENHOUSE GAS**—Peter had a meeting with Emmalee Dorfi, summer intern with Upstate Institute, on Friday, August 10th where she will present a completed draft. She is wrapping this up.

- c) **JOINT SHARED SERVICES**—Carolyn Todd had a meeting on July 17th. Debbie Kliman and Sam Cooper represented the Village, G. Hayes represented Earlville and Chris Rossi and Carolyn Todd represented the Town. We have 2 objectives right now—1) to create a report for the website and 2) develop future priorities for joint shared services. They discussed such things as court security, administrative services, sales tax, staff training. The next meeting will be August 22nd. Eve Ann asked if there was any discussion of joint highway departments. The committee did discuss highway sharing services. There was a large meeting relating to this issue last year at SOMAC. There is a very good working relationship among local and town municipalities and they are all in touch with each other.

Eve Ann mentioned that the Village highway department is strongly looking to build a new facility for the Highway Dept. An idea of a possibility for combined highway equipment was mentioned. Peter indicated that a common location for the Village, Town and Earlville is very difficult.

This topic will be added to the agenda for future discussion. Eve Ann asked Carolyn to find out when the next meeting was planned for the Village's Capital Plan. Eve Ann feels one member from the Town Board should be attending. We need to be open to looking at what joint services can be made.

- d) **WEBSITE, COLGATE COMPUTER TECH SUPPORT**

Carolyn mentioned how pleased she was to see that Cathy changed the time of this meeting was on the website.

- e) **WINDMILLS – TOWN OF MADISON**

A letter will be sent to Madison to ask that we be kept abreast of things.

- f) **SOMAC & TOWN'S UMBRELLA INSURANCE POLICY**

Eve Ann spoke with David Crane and we are waiting for a refund on the cancellation of our policy.

- g) **PCD REVIEW – GHEDP REQUEST FOR INCREASE IN FUNDING**

This has been finalized and sent off to the Board and tonight we have received a request for increased funding for the PCD. We have \$5000 in this year's budget and they are asking to increase our donation to \$10,000. This will be later discussed as more information and detailing is needed.

- h) **TOWN OFFICE HANDICAP ACCESS**

Once Sue Reymers has a little more insight into the budget, Sue can help Eve Ann find monies for updating our handicapped situations.

13) **Concerns of Supervisor/Town Council**

The meeting was turned over to Steve Jones to review the Town's authority to regulate some aspects of natural gas development, ZBA, Planning and Energy Working Groups. Members of these boards were invited to attend. Eve Ann thanked the members of the audience for making a special effort to come and represent Hamilton on the various committees.

14) **STEVE JONES, Town of Hamilton attorney**

Steve spoke for about 90 minutes which did include questions and answers throughout his presentation. I will try to highlight his comments and perhaps not quote every question asked.

Steve began his presentation by stating he is not an expert in this field but is a general practitioner who represents the Town of Hamilton. He has been asked to research and investigate this situation and

report to the Town. He does not make policy decisions but he can give legal advice to the people who make the policy decisions. He felt there is a need to consult experts. There are attorneys who specialize in this area of law. Steve referenced that the Town of Lebanon had listened to a presentation by David Slottje. Peter attended this meeting and was familiar with the information shared. Mr. Slottje has been very helpful and knowledgeable. Mr. Slottje did not charge for his presentation. Steve is aware of one other attorney that may be able to speak at no charge. Steve suggested he hopes that we can coordinate with other towns for speakers to be heard. David Slottje is an expert. The decision of the Town Board of Lebanon after David Slottje's 3 hour presentation was that the people wanted to hear more points of view.

WHAT ARE THE POINTS OF VIEW?

- 1) Is it necessarily going to be a pro gas point of view? Perhaps?
- 2) Are there other attorneys that can assist the Town in making a moratorium? Steve has been asked to line up other speakers that they can listen to.
- 3) Have other towns get together and try to hear these points of view at the same times.
- 4) Have other attorneys come to speak. Steve has had contact with an attorney from Ithaca who is willing to speak to us for free. He will continue to look for other experts and attorneys to speak.

WHAT POWERS DO WE HAVE?

Steve indicated that by municipal home rule for the State of New York (Section 10) towns have what is called the police power. Steve defined this by reading: It is the power to enact laws for the "protection and enhancement of its physical and visual environment" and for the "protection" of the "safety health and wellbeing of persons and property therein." There is a grant by the state to exercise these local powers. This gives us the power to enact many laws including zoning. But what the State gives us with municipal home rule, it can also take away.

NYS Oil and Gas Law (Section 23-0303(2) of Environmental Conservation Law says: "The provisions of this article shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries; but shall not supersede local government jurisdiction over local roads or the rights of local government under the real property tax law. Steve gave a brief explanation of this law. The operative term in this law is "regulate". If our Town tried to "regulate" wells such as by requiring particular setbacks or limiting hours of operation, that would likely violate the State law and would be struck down. Several years ago, our NYS Court of Appeals, our highest court, held a similar law regarding mining that did not prohibit a town from prohibiting mining completely, through its land use or zoning laws. Recently, Judge Cerio in the Middlefield decision and Judge Rumsey in the Dryden decision have upheld the right of those towns to ban new gas wells. If the towns tried to "regulate" the well such as by requiring particular setbacks, or limiting hours of operation, that would likely violate the State law and would be struck down. Instead, the outright ban by these towns did not "regulate" and was therefore permitted according to those two judges. Supreme Court is our trial level court; the case can be appealed to the Appellate Division and then to the Court of Appeals.

- 1) A Notice of Appeal was filed in the Middlefield and Dryden cases, no further paperwork has been filed since February that we know of. It raises a question about how anxious the gas industry is to appeal or whether they will appeal at all. A question arose if Middlefield and Dryden banned town wide in both cases; if we have the power to ban town wide, would we have the power under our Zoning law to create districts where it could be allowed. Carolyn had a question regarding the definition of the word "mining" vs "mineral". We do have a zoning law in place for mining.

- 2) Even if the appeals are pursued, it will take one or probably two years for the matter to be resolved by the higher court. Steve indicated that if the Town wants to enact a moratorium, it would be better to proceed now rather than wait. Steve felt the DEC would likely come down with a decision relatively soon.
- 3) In the meantime, the NYS DEC is likely to begin issuing permits to drill. We hear all sorts of rumors about limiting the drilling to a few counties south of here, but no one knows. We do have indications that the State will at least “consider” whether a municipality wants drilling or does not. The question is whether the municipality should choose now or later.
- 4) Waiting to act until after the appeals are decided, or even until the State begins issuing permits, may expose the Town to a “takings” argument. Currently, no one can have a permit because of the State moratorium. Once the State starts issuing permits and the State moratorium is lifted, landowners who want drilling on their land, may argue that local government can’t take away a permit they can get from the State. That is a very simplified version of the argument but there is at least some concern that local government who want to ban gas activity should do so before the state allows it. One of the drawbacks of a moratorium or ban is that you are going to have a lot of angry people.

WHAT CAN THE TOWN DO?

If it chooses, the Town Board can consider its own moratorium on new gas activity. This would be a local law. It would require introduction by a member of the Town Board, preparation by the Town attorney and a public hearing where the public can be heard. There is no referendum on this so there would be no public vote of people. Before that vote takes place, we have to submit the proposed law to the Madison County Planning Dept. If they were to disagree with the local law then it would require a super majority of the Town Board to pass the law. These local laws are not simple. Steve reviewed the one considered by the Town of Eaton, which is over 10 pages long. Types of gas activity which might be prohibited during the moratorium are exploration, extraction and support activities, but repair and continued use of existing units would be allowed. There would also be a variance opportunity because we do have a zoning law. It is not a simple law, but could be enacted within 45 days or so. Steve defined a moratorium as a stop-gap measure, a temporary prohibition on new gas activity, until the Town can investigate and decide whether to ban all gas activity through its zoning law, or limit gas activity to certain areas of the Town. A moratorium is usually for a one year term. Six month extensions may be applied for up to one year. It also could end sooner if the Town Board chooses.

WHAT ARE THE DRAWBACKS?

- 1) PUBLIC OPPOSITION—many people will be upset if the Town imposes a moratorium
- 2) TOWN COULD END UP IN COURT—It is possible but not likely. Steve mentioned that over 70 local governments have adopted a ban or moratorium and so far only Dryden and Middlefield were challenged in court. When taken to court the function was to get the law thrown out, not to recover money damages from the government. Could the Town be sued—yes but not very likely.
- 3) EXPENSE—of adopting a local law. We can pay Steve to draft a moratorium or we can consider Mr. Slottje who will do it for free and represent you for free so long as we do it his way.
- 4) GAS COMPANY REACTION—The town of Avon adopted a moratorium which included a grandfathering clause to allow continuation of current wells. The gas company now claims that it can not. The gas

company sent a letter to everyone who had a gas lease that the gas company could not do any more activity in the town of Avon. The gas company indicated because of the moratorium on new gas activity, it could not continue its current activity. There was a grandfather clause in the law, but the gas company claimed it could not operate within the town of Avon any longer.

WHAT ELSE CAN WE DO?

Steve spoke of some ideas that were used in other towns. In the town of Lebanon, they used several devices to bring the gas company to the bargaining table on repairing roads they damaged. Steve mentioned that there has been drilling going on for close to 40 years. He has been the attorney for the town of Lebanon for nearly 20 years. Every town has considerable power over the roads.

- 1) The Town of Lebanon adopted a weight limit road use law for the town roads. This allows the Highway Superintendent to sort certain roads and prohibit heavy truck traffic when the roads are susceptible to damaging roads. This was done through a simple local law.
- 2) Gas companies want to construct pipelines. The town of Lebanon adopted a policy that no one could drill under their roads without filing an application submitted to the Lebanon Town Board. This gave the Town more leverage. The gas company then agreed to sign a road agreement and give the Town a bond to repair any roads so damaged by their vehicles, not only during the pipeline construction, but also during other gas activities.
- 3) Road repair agreements are great but only if someone agrees. We have no authority to stop trucks and have them sign an agreement. In Lebanon an agreement was reached because they wanted to run pipelines. A better way to get a road use agreement is to adopt a comprehensive Road Use Law.
- 4) A road use law that regulates heavy truck traffic year round can be helpful. Madison County and the Town of Lebanon are considering adopting one now. There is a company named Delta Engineering that presents themselves as experts in road use laws. Their company provides such services as inventory of your roads, propose local laws for your roads, document damage to the roads and more. Of course, there is a substantial fee for this. Eve Ann mentioned that Madison County is negotiating with Delta to see if the County can get a certain number of towns to join in the process. Steve mentioned that it is important for the towns to video the roads each year so there is documentation available on the conditions.

Chris Rossi asked if the town of Lebanon is considering a moratorium at this time. Steve said that at least three members of the Lebanon Board wanted to hear different view points before considering a moratorium.

Steve wanted to mention that Town Board members making this policy decision should identify and disclose when they have a possible conflict of interest. Some property owners may want to lease their land to a gas company or may have already done so. Other property owners may be opposed to drilling because they have concerns about possible pollution, or noise, or extraction of gas from beneath their property, or impact on their land values. Steve mentioned we need to review the Town's Code of Ethics. The Attorney General's Office of the State of New York is asking every town to provide a copy of their Code of Ethics to the Attorney General and to appoint a Board of Ethics. Carolyn Todd mentioned that our Codes of Ethics may not have proper disclosure for this issue. The right to vote of Board members may be affected if a Board member does have a well and are receiving funds. The question of vested interest was discussed. Steve mentioned the issue of

compulsory integration of which the State will handle. Carolyn Todd had a question regarding the conflict of interest. Carolyn spoke with Lori Mithen, Council for the Association of Towns, and she said the conflict of interest paper is not clear. Different courts have different positions about prohibitive conflicts. She did ask if the coalition has taken a position with the State of New York. Peter Darby would like to revisit the issue of regulatory activity. If there is no ban and activity starts, the next Board ability to invoke a ban is somewhat compromised.

ADJOURNMENT

At 9:45 pm, a motion to adjourn the meeting was made by Eve Ann and seconded by Chris Rossi. Motion Carried.

Respectfully submitted,

Carol Dewey, Deputy Town Clerk

