

**July 8, 2013**

**Alexander Town Board Regular Meeting  
Alexander Town Hall 7:00 p.m.**

Present: Supervisor Joseph Higley  
Town Board: Roy Haller III, David Miller, William Hirsch  
Absent: William Schmieder, Tom Lowe  
Town Clerk: Laura Schmieder  
Guests: Esther Leadley, County Legislator; Paul Tomaszewski, resident

Supervisor Higley called the meeting to order at 7:10 p.m. with the Pledge of Allegiance and a moment of silence for our military serving around the world.

On motion by Councilperson Hirsch, seconded by Councilperson Miller, and carried, the minutes of the June 10, 2013 regular meeting were approved as presented. 4 – Yes Higley, Miller, Haller, Hirsch  
0 – No Carried

**COMMUNICATIONS:** Mercy EMS report for May, 2013; Notice from ORPTS of 100% equalization rate; TCWC agenda and minutes-6/26/13; Notice from TWC of upgrade to internet bandwidth at no cost to us; YWCA Yes! Café luncheon-7/10/13 with Steve Hawley as speaker; Newsletters: Genesee Naturalist, Soil & Water Summer issue; Towns & Topics-May/June;

**REPORTS:**

**CEO/ZEO:** No new building permits were issued this month; zoning issues on Route 98 South being given Violation Notices; no new information on the Habitat House on Dodgeson Road at this time.

**Building Committee:** The deposit was made to Mast Roof & Coatings for work at the highway barn

**Supervisor Financial:** Monthly report was distributed-discrepancy on Town Clerk Petty Cash fund is being addressed; JCAP grant funds added to General Fund

**H'way Supt:** Pike Road has been resurfaced-will chip seal later in the summer

**Youth:** Director Buckenmeyer reports all is going well. We had notice from Genesee County that funding changes will be taking place next year, more information will be forthcoming.

**Dog Control:** The enumerator is almost complete.

**Games of Chance:** A Game of Chance license was issued to the Alexander Fire Department.

**GAM:** Minutes from the 6/20/13 meeting were discussed. ARC distributed a survey on July 3<sup>rd</sup> via email in regard to trash/recycling.

**County Legislator:** Esther Leadley was present to discuss concerns that are going on at the County level. Many road and bridges are in bad condition. They will use Capital Projects moneys to repair the worst of them. Also there are vacancies at the County level and having a difficult time filling those positions.

Town Clerk and Town Justices financial reports for the month of June were read and filed.

**OLD BUSINESS:**

**Water District Update:** The Supervisor met with the landowner of the piece of property the Town would like to purchase for the booster pump station at the intersection of Route 98 and Dodgeson Road. The contract for this purchase was signed on June 24<sup>th</sup> and the Town will proceed with the purchase. The Board will act on a resolution this evening as this will create a non-conforming parcel.

**Union Update:** A draft copy of the Agreement between the Town of Alexander and Teamsters Local 264 was received on 6/25/2013. There needs to be one change made to Appendix B before it can be signed.

**NEW BUSINESS:**

**RES. NO. 42: ACCEPT SUPERVISOR'S 2012 ANNUAL REPORT**

On motion by Councilperson Hirsch, seconded by Councilperson Haller, and carried, to accept the Annual Report of the Supervisor's 2012 financial records as submitted and reviewed. 4 – Yes Higley, Miller, Haller, Hirsch 0 – No Carried

**RES. NO. 43: APPOINT ASSESSOR**

On motion by Supervisor Higley, seconded by Councilperson Miller, and carried, to appoint Rhonda Saulsbury as Assessor for the Town of Alexander for the term 10/01/2013 – 9/30/2019. 4 – Yes Higley, Miller, Haller, Hirsch 0 – No Carried

**RES. NO. 44: APPOINT AUDITING FIRM**

On motion by Supervisor Higley, seconded by Councilperson Miller, and carried, to accept the proposal from Raymond F. Wager, CPA for auditing services for \$8,000 going through 2014. 4 – Yes Higley, Miller, Haller, Hirsch 0 – No Carried

**RES. NO. 45: BOOSTER PUMP STATION PROPERTY-IMMUNITY FROM ZONING**

On motion Supervisor Higley, seconded by Councilperson Miller, and carried, the following resolution was adopted:

**WHEREAS**, all Board Members, having due notice of said meeting, and that pursuant to Article 7, §104 of the Public Officers Law, said meeting was open to the general public and due and proper notice of the time and place whereof was given as required by law; and

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**WHEREAS**, the Town Board established the Route 98 Water District No. 2 which in order to operate to the greatest extent, requires a booster pump station to meet domestic pressure and peak daily demands of the district; and

**WHEREAS**, said parcel is approximately a 100' x 103' x 113' x 50' piece of property, and is a portion of property identified by SBL # 15.-1-8.1 which creates a non-conforming parcel (in terms of size and frontage); and

**WHEREAS**, the Town of Alexander is seeking immunity from its local land use laws which in particular are:

- Town of Alexander Zoning Law (e.g. site plan; special use permit)
- Local Law 1 of 2000 – Land Separation Law
- General Municipal Law § 239-m
- Agriculture and Markets Law § 305-a (Ag Data Statement)

**WHEREAS**, in making a determination as to whether the actions of governmental units are “exempt” from local zoning regulations, the New York Court of Appeals established a method for examining governmental immunity from land use laws using nine-factor “balancing of public interest” test (see, generally, *In the Matter of the County of Monroe’s Compliance with Certain Zoning and Permit Requirements of the City of Rochester in Connection with the City/County Airport Expansion*, 72 N.Y.2d 702 (1988)); and

**WHEREAS**, per the Court of Appeals, it is not necessary to weigh these nine factors evenly and no one factor is required or controlling; and

**WHEREAS**, the Town Board as weighed the following nine (9) factors as follows:

**1. The nature and scope of the instrumentality seeking immunity:**

▶ The Town of Alexander is seeking immunity from its own land use laws for the placement of a booster pump station required to meet the domestic pressure and peak daily demand for the operation of Route 98 Water District No. 2. The Town established this water district with the approval of the New York State Comptroller. The purpose of this water district is to provide a safe and reliable potable water supply and fire protection for residents of this water district that is not currently served by public water.

**2. The encroaching government’s legislative grant of authority:**

▶ New York State Town Law, §64, grants authority to a Town Board to acquire real property for any public purpose.

**3. The kind of function or land use involved:**

▶ A pump station is a public utility. The zoning district for the identified parcel, as deemed by the Town of Alexander Zoning Law, is Agricultural-Residential (A-R). Public utility facilities are regulated in this district by Section 605 of the Town’s Zoning Law with the issuance of a special use permit. The parcel does not meet the dimensional requirements of the law. However, by purchasing only the minimum amount of land necessary to situate the booster pump, it significantly limits the alienation of farmland.

**4. The effect of local land use regulations would have upon the enterprise concerned:**

▶ Public Utility Facilities are allowed in Agricultural-Residential (A-R) Districts with the issuance of a special use permit which is subject to site plan review. This process, including the requirement of a public hearing, could delay the project and impact anticipated funding. Also, because the proposed site is only a small portion of the overall parcel, the Town’s land separation law would apply. However, the requirement of said law is not to create nonconforming lots or parcels which would eliminate this parcel as an option for the booster pump station and impact the ability of this project moving forward.

**5. Alternative location for the facility in less restrictive zoning areas:**

▶ After considerable inquiry, the Town has determined that there is no other feasible site to locate the booster pump station. Moreover, the proposed site is ideal in that it satisfies two necessary conditions: (1) it must be near a power line and (2) it must be in close proximity to the municipal border with the Town of Batavia.

**6. The impact upon legitimate local interests:**

▶ This project meets a pressing public health and community need. Multiple residents in the proposed water district have experienced problems with their private water supply, including but not limited to, insufficient quantity of water; poor water quality; high costs to operate and maintain existing well supplies; and lack of available fire hydrants for fire protection. Providing public water through this project will address all of these issues for the residents of the proposed water district.

**7. Alternative methods of providing the proposed improvement:**

▶ The provision of water in Water District No. 2 requires a booster pump station; thus there is no alternative mechanism. Further, after considerable inquiry, the Town has determined that there is no other feasible site to locate it. Moreover, the proposed site is ideal in that it satisfies two necessary conditions: (1) it must be near a power line and (2) it must be in close proximity to the municipal border with the Town of Batavia.

**8. The extent of the public interest to be served by the improvements:**

▶ This project meets a pressing public health and community need. Multiple residents in the proposed water district have experienced problems with their private water supply, including but not limited to, insufficient quantity of water; poor water quality; high costs to operate and maintain existing well supplies; and lack of available fire hydrants for fire protection. Providing public water will address all of these issues for the residents of the proposed water district.

**9. Intergovernmental participation in the project development process and an opportunity to be heard:**

▶ This project is within municipal borders of the Town, and therefore no intergovernmental participation is necessary, with the exception of New York State Comptroller approval to establish the

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water district (which expressly included the pump station). Regarding public participation, it is noted that the Town was petitioned by local residents to establish a water district. The Town Board, as part

of the process to establish this district, held a public hearing giving opportunity for its citizen’s to be heard. Based on the record, including citizen comments, this project is consistent with the public’s stated interests.

**NOW ON MOTION OF** Joseph Higley which has been duly seconded by David Miller, therefore, be it

**RESOLVED**, that the Town Board of the Town of Alexander, based upon the foregoing, it is the determination of this Town Board to grant immunity from its local law use laws in accordance with the County of Monroe “balancing of interests” test. [72 N.Y. 2d 338].

Dated: July 8, 2013

Ayes – 4 Higley, Miller, Haller, Hirsch

Nays – 0

Absent – 1 Schmieder

Carried

**RES. NO. 46: DESIGNATION OF THE NYS SECRETARY OF STATE AS AGENT FOR NOTICE OF CLAIM – REVISED**

On motion by Supervisor Higley, seconded by Councilperson Hirsch, and carried, the following resolution was adopted:

**WHEREAS**, all Board Members, having due notice of said meeting, and that pursuant to Article 7, §104 of the Public Officers Law, said meeting was open to the general public and due and proper notice of the time and place whereof was given as required by law; and

**WHEREAS**, General Municipal Law, §53 requires Towns to file a certificate with the Secretary of State designating the Secretary of State as agent for service of a notice of claim; and

**WHEREAS**, General Municipal Law, §53 requires the certificate to include the applicable time limit for filing the notice of claim and the name, post office address and electronic mail address, if available, of an officer or person for the transmittal of notices of claim served upon the Secretary as the Town’s agent; and

**WHEREAS**, pursuant to General Municipal Law, §50-e(1)(a), the application time limit for the filing of a notice of claim upon a town is ninety (90) days after the claim arises, or in the case of a wrongful death action, ninety (90) days from the appointment of a representative of the decedent’s estate.

**NOW ON MOTION OF** Joseph Higley which has been duly seconded by William Hirsch, now, therefore, be it

**RESOLVED**, that the Town Board of the Town of Alexander, County of Genesee, designates Laura Schmieder, in her capacity as Town Clerk to receive notices of claims served upon the Secretary of State by mail at 3350 Church Street, P. O. Box 248, Alexander, New York 14005 and by email at [clerkax@rochester.rr.com](mailto:clerkax@rochester.rr.com).

Dated: July 8, 2013

Ayes – 4 Higley, Miller, Haller, Hirsch

Nays – 0

Absent – 1 Schmieder

Carried

**DISCUSSION:**

1. Policy – Code of Ethics: Supervisor Higley talked to the County and we can still use a County Board of Ethics if the need arises. This is consistent with the original resolution done in 1970, but this verbiage needs to be added to the policy itself prior to a vote in August.
2. Peddler’s Local Law: Supervisor Higley and Councilman David Miller will meet with the Planning Board at their next meeting on July 22<sup>nd</sup> to compare the versions adopted by the Planning Board and the one the Town Attorney sent to us.
3. 3-Wheeler: The State Policy confiscated a 3-wheel ATV in the Town of Alexander last year and it has not been claimed. It therefore becomes property of the Town. Supervisor will contact SunnySide in Alexander to see if there is any interest in the vehicle for parts.

On motion by Councilperson Miller, seconded by Councilperson Haller, and carried, to pay the bills on Abstract #7 as follows:

General Fund A	Vouchers 147 – 164	\$11,756.56
General Fund B	Vouchers 38 - 46	5,037.92
Highway Fund A	Vouchers 8 - 9	6,278.53
Highway Fund B	Vouchers 99 - 116	74,380.66
Highway Fund H	Voucher 4	11,407.50

On motion by Councilperson Miller, seconded by Councilperson Haller, and carried, the meeting adjourned at 9:45 p.m.

Respectfully submitted,

Laura Schmieder, Town Clerk