

MINUTES of the Regular Meeting/Public Hearings of the Pembroke Town Board held on May 11, 2011 at the Pembroke Town Hall, 1145 Main Road, Corfu, NY.

PRESENT: James H. Tuttle, Supervisor
John Worth, Councilman
Peter Sformo, Councilman
Edward Arnold, Jr., Councilman

ABSENT: Gary L. De Wind, Councilman

OTHERS PRESENT: Nicole M. Begin, Town Clerk; Stephen Stocking, Highway Superintendent; Deborah Conti, Assessor; Jeremy DeLyser, Clark Patterson; Thomas Schneider, ZBA Chairman; Linda Rindell; Ken Lauer; James Uebelhoefer, Indian Falls Fire Commissioner; Dan & Laurie Kearney; Scott Turner; William Brick; Don Dylag; Tim Kutter; Mr. & Mrs. Garofalo; Kathleen Mortellaro; Debra Stalker; Marilyn Roshea; Jean Hodjnowski; Dawn Silvernail; Randy Sharick

Deborah Conti gave the invocation.
Supervisor Tuttle led the Pledge to the Flag.

The **Public Hearing** for Local Law #1 of 2011, A Local Law to require prior written notice of certain dangerous conditions for the Town of Pembroke, Genesee County, New York, was called to order at 7:00 P.M. Nicole Begin reported she had the Notice of Public Hearing as printed in the Daily News as well as posted on the Town's bulletin board, the Affidavit of Posting, and the Certification of Distribution to Board Members.

**PUBLIC HEARING
LOCAL LAW #1 OF 2011**

“A Local Law to require prior written notice of certain dangerous conditions for the Town of Pembroke, Genesee County, New York”

The Public Hearing for Local Law #1 of 2011, A Local Law to require prior written notice of certain dangerous conditions for the Town of Pembroke, Genesee County, New York was called to order at 7:04 P.M.

There were no changes or discussion from the Public or Board Members.

On **MOTION** of Councilman Arnold, seconded by Councilman Worth, to close the Public Hearing at 7:10 P.M.

ALL AYES - MOTION CARRIED.

Everyone being heard that wished to be heard, Supervisor Tuttle declared the public hearing closed.

The **Public Hearing** for Proposed Water District #4, to explain the need & seek input for water on Indian Falls Road, was called to order at 7:10 P.M. Nicole Begin reported she had the Notice of Public Hearing as printed in the Daily News as well as posted on the Town's bulletin board, the Affidavit of Posting.

**PUBLIC HEARING
PUBLIC INPUT FOR PROPOSED WATER DISTRICT #4**

Supervisor Tuttle explained the reason for the public hearing was to apply once again for funding to establish a water district on Indian Falls Road and let residents know what the costs would be with or without grant monies.

Jeremy DeLyser of Clark Patterson went over the information and specifics of the water district the cost to run the water line, and the approximate cost to the residents depending on grants received. Mr. DeLyser explained that any well samples would help the application for grant funding.

One resident asked how long the debt service would be and Mr. DeLyser said that it depended on where the funding came from but it would be anywhere from 30-38 years. Mr. DeLyser said that the shorter the amount of years and depending on the grants and funding package it could increase the amount paid annually by the residents.

Another resident asked why the water district was extending to Route 77 and if the residents on Indian Falls Road would have to incur the cost to run water on vacant land. Mr. DeLyser said that Monroe County Water Authority insists that the water line creates a loop for water pressure and that having a portion of Route 77 in the water district would raise the cost a little. Mr. Brick and a couple of other residents were disappointed that the water for this district would be supplied by Erie County Water Authority. Mr. DeLyser said at this time all of the water supplied to Pembroke was from Erie County.

A petition was given to the Town Board by the residents of Indian Falls Road on December 12th, 2007 because there were a significant amount of residents on that road with dry wells.

Mr. Brick said he is not interested in water on Indian Falls Road; he has dug two new wells and said he has very good water. Mr. Dylag said he is also not interested because he has very good water.

Mr. Tuttle said that there is no doubt that there will be some residents that do not want water due to good wells or cost and this is the reason we are seeking permission to get outside funding to reduce the price. Mr. Uebelhoer said that as houses are added to the district the cost would go down.

One resident asked why wasn't the district designed to go straight down Indian Falls and Gabbey Road instead of looping down Route 77. Mr. Dylag wanted it noted that his and Mr. Brick's wells are good.

Mr. Brick asked "if the Town does not get grant money will the Town go through with it?" Mr. Tuttle said that if it had to it would go to a vote.

On **MOTION** of Councilman Arnold, seconded by Councilman Worth, to close the Public Hearing at 7:49 P.M.

ALL AYES - MOTION CARRIED.

Everyone being heard that wished to be heard, Supervisor Tuttle declared the public hearing closed.

The regular monthly meeting was declared open at 7:50 P.M.

PUBLIC PARTICIPATION

Many residents from Route 33 came in to get information regarding water on Route 33.

A resident asked if the Health Department wants all lines connected "why is there a whole section without water on Route 33, a State highway?" Mr. DeLyser said that it was on the Monroe County Water Authority's list of priorities and that the need was greater on Indian Falls Road at the time that the original paperwork was processed in 2008.

Mr. Kearney of Route 33 said that he "believed that the Town of Pembroke lost their paperwork and now he has to have garbage water." Mr. Kearney said he has used filter and pipe for the Town of Pembroke board to chew on. Mr. Kearney also wanted the Board to explain why the Board members have water where they live but he has to have bad water.

Mr. Kearney said that "they have health issues now and his neighbor on Wilkinson Road has a good lawyer". Mr. Kearney said the residents on Route 33 will follow that same path. Mr. Kearney said "he could care less what it costs him to get water on Route 33."

Mrs. Roshea from Route 33 asked if they had to start the process over again with another petition (the 1st petition was received at Town Board Meeting February 13th, 2008). Mr. DeLyser said he would need to look into all the paperwork from their original filing.

Mr. Kearney asked for a raise of hands by the Town Board if they have public water. Councilmen Arnold, Worth, Sformo and Supervisor Tuttle raised their hands (note: Councilman Worth, Councilman Sformo, and Supervisor Tuttle were not officers of the Town and had no employment for the Town when they received public water; Councilman De Wind still does not have public water).

Mr. Kearney said his Road has the worst water in the Town of Pembroke. Mr. Arnold said that we can try to get water for those residents on Route 33 with or without grants if they are willing to pay for it. Mr. Worth asked if the majority of the residents have contaminated wells and have had testing done. Mr. Tuttle asked how many of those wells have been tested. Mr. Garofalo said that his well had been tested.

Mr. Arnold said that if we were unable to get grants or funding for Route 33 would the residents still be interested? The residents said they would like the Town to try for grants but are interested in water either way. Mr. Arnold said that the first few water districts took years to get grant funding and that trying for grant money again could hold things up so if the residents on Route 33 want water immediately they need to know that the cost may be theirs to bear.

Mrs. Roshea asked if there was grant money out there to be had. Supervisor Tuttle and Councilman Worth said there was very little. Councilman Arnold said that the Town has not received grant money for water districts since 2008.

Mrs. Roshea asked if the Town still had the Route 33 petition from 2008. Mr. Tuttle said that it is on file.

One resident asked why both Route 33 and Indian Falls Road could not be combined into one grant application. Mr. DeLyser said that the New York State Comptroller no longer accepts applications for grants where the roads that water is run on are not connected. This is something new since 2008.

The residents of Route 33 wanted to know why the Town of Batavia is getting water and Pembroke is not. Supervisor Tuttle said not to confuse the Town of Batavia water process with the Town of Pembroke. Mr. Tuttle explained that many years ago the Town of Pembroke formed an agreement with Monroe County Water Authority (MCWA) to administer water for the Town of Pembroke. The Town of Batavia did not form that agreement and the Town of Batavia is their own water authority. Because of the agreement Pembroke has with MCWA cast iron pipes must be used instead of PVC which is more expensive and the Town is at the mercy of the rules set forth by MCWA for all water in the Town of Pembroke.

Mr. Uebelhoer said that the Board may want to apply for grants using a health concern as the reason for applying. Mr. Kearney said he would look into health issues and what other water districts have done where health issues were a concern.

Mr. DeLyser said that if the cost per resident/per year for the debt service is over \$685 per household the residents would have to vote to get water. If it is under \$685 per resident/per year the Town Board can decide to go forward without a vote. If the water district goes to a vote and people in the district vote no but the majority of the district vote yes then the residents that voted no will still have to pay for the debt service even if they do not hook into the water line.

Mr. Kearney asked if the water debt service would be a one time cost and the board explained that it would be a fee paid on your Town/County tax bill once a year for the length of the loan which is usually around 35-38 years. Water usage is billed quarterly by MCWA.

Mrs. Roshea asked if the Town of Pembroke has any money available for water or any money left over from previous water districts. Supervisor Tuttle said that when the Town is awarded grant money, if there is any money left over it has to be returned. The money cannot under any circumstances be used for another project.

Mr. Tuttle said he sees no reason that the Town can't look into applying for grant money for water on Route 33 and getting the process started again. Mr. Tuttle said that in all honesty he does not see the Town getting any funding for either project for quite some time due to the problems that the entire country is facing but he said we would do our best to try. Mr. Tuttle said that the Town would have Clark Patterson try to get a water project started on Route 33 let the residents know what it would be. The Town will try to get a grant for the project. Mr. Arnold said that the residents should be aware that applying for a grant could take some time and it could be a year or two before the Town is notified that we are approved or not. Mr. Arnold asked if the residents in attendance want to start the project right away if the Town cannot get grant money for water on Route 33. The residents in attendance agreed that they would.

Jim Uebelhoer representing the Commissioners of the Pembroke Fire District asked for a resolution to the State DOT to be done as soon as possible for oversized stop signs to be placed at Route 77 on each side of the road where Indian Falls and Gabbey Road come into the highway. He is requesting that extra big stop signs and double stop signs (both sides of the road) and also a sign stating that thru traffic does not stop to be placed there. Mr. Uebelhoer said that there were 8 accidents there in February. Councilman Arnold and Supervisor Tuttle will get a resolution together for the next meeting to support the Pembroke Fire District and submit it to NYS DOT.

Mr. Uebelhoer also asked Highway Superintendent Stocking who he should contact regarding ponding in front of his home to take care of runoff from the pond across the road from his house. Mr. Stocking said it was a County Road and he will get Mr. Uebelhoer the number for Tim Hens at the Genesee County Highway Department.

DEPARTMENT REPORTS

ASSESSOR

- Over the next three weeks Mrs. Conti will be helping residents get their paperwork together if they are going to file a grievance for their property assessment. Grievance Day is on May 24th, 2011 and may be extended to May 25th depending on the number of residents that come in. Most of the changes made on assessments were on land value. The Town has not has an update on land changes in many years so there probably will be a number of values changed on Grievance Day.

- Councilman Sformo asked when land values were assessed last. Mrs. Conti said that before now the land was contained within the values of the homes and was assessed over time. This particular change is on land value alone. Mr. Sformo asked why the assessments had to be raised now. Mrs. Conti said assessments were done this year because the Town has chosen to do them on a three year cycle and values of land have increased in the last six years. Mrs. Conti said that a home on a piece of land with one acre should not be similarly assessed in value to a home on a piece of land with 85 acres and that assessing land values was a way to assess fairly. Mr. Sformo said that he thought this was not the time to be increasing assessments.

ZONING & CODES ENFORCEMENT

- Reports submitted and filed.

HIGHWAY

- Bid Opening for the sale of the 2007 lawn mower is to be held on May 12th, 2011 at 10:00 A.M. The highest bid on the mower will be awarded by resolution at the Town Board Workshop.

TOWN CLERK

- Reports submitted and filed. Mrs. Begin thanked the Board for letting her attend the NYS Town Clerk's Conference May 2nd to the 4th.
- Councilman Sformo asked if it was possible to have taxes split into two payments. Mrs. Begin said that it is not done in this County and the County would be the entity to make the decision. Mr. Tuttle suggested presenting the idea to County Legislator Annie Lawrence and/or present it at GAM.
- Brooke Pontillo from Toshiba came and trained employees on the copy machine scanning capabilities.

PLANNING BOARD

- No report at this time.

ZONING BOARD OF APPEALS

- Report submitted and filed. May meeting has been cancelled. One variance was granted in April.

JUSTICES

- Reports submitted and filed. Supervisor Tuttle read the reports.

SUPERVISOR

- Supervisor's March report was submitted and filed.
- We received a valid insurance certificate and a signed agreement drawn up by Attorney Mark Boylan for the use of the Town Park by the Lyndonville Tigers semi-pro football team. There is a resolution on the table to enter into an agreement with them. There have

been discussions between Councilman De Wind and the school for the use of the football team.

- Supervisor Tuttle suggested that we are at that point in time when the Town should consider taking over the scheduling of all fields at the Town Park. Mr. Tuttle asked that the Board start thinking about it. It was suggested to ask the Lyndonville Tigers and PYA to help on May 21st, 2011 to put the fencing on the bleachers.
- Steve Hyde would like to sit down with the Board to update them on what is going on at GCEDC.

COMMITTEE REPORTS

Audit, Finance, Insurance, Investment, & Purchasing – Councilman Arnold

- No report at this time.

Building & Ground – Councilman Sformo

- Scott Strollo has been fixing small items. The board will discuss protection for the generator. Corfu Fire Department has given the inclination that they may be willing to give up any kitchen equipment at the Community Center to the Town.

Highway/Assessment/Court – Councilman De Wind

- No report at this time.

Planning, Zoning, Code Enforcement – Councilman Tuttle

- No report at this time.

Public Services, Water, Sewer, Refuse/Recycling – Councilman De Wind

- No report at this time.

Youth Recreation – Councilman Sformo

- The Town received a letter from the insurance company that covers the Youth Program. The Insurance Company is requesting criminal checks on employees and training for all employees dealing with children. Mr. Sformo will speak with Donna Fix regarding this.

Human Resources/Benefits – Councilman Worth

- We have a new backup system in place that is working very well.

Parks/Land Acquisition – Councilman Arnold

- The School is in the process of getting their fields treated and Councilman De Wind spoke with company about doing the Town fields. The cost would be approximately \$2,900.00, about \$400.00 less than last year. It would include the baseball fields. The new playground

equipment is in. Mr. De Wind has been taking with Excel fence about the safety fence on the first soccer field. They will be coming out soon. Excel fence may put the fencing on the backs of the bleachers.

Intermunicipal, Economic & Community Development – Supervisor Tuttle

- No report at this time.

Public Safety – Councilman Arnold

- The Town will get a resolution together for the next meeting to support the Pembroke/Indian Falls Fire Departments regarding signage at Route 77, Indian Falls Road & Gabbey Road.

RESOLUTIONS

On **MOTION** of Councilman Arnold, seconded by Councilman Worth, the following **RESOLUTION** was **ADOPTED** by roll call vote: Councilman Arnold, AYE; Councilman Worth, AYE; Councilman Sformo, AYE; Supervisor Tuttle, AYE.
ALL AYES - MOTION CARRIED

RESOLUTION # 33 of 2011 – Agreement with Lyndonville Tigers for use of Pembroke Town Park

WHEREAS The Town of Pembroke has been approached by the Lyndonville Tigers Football Team, regarding the use of the Pembroke Town Park Football fields, for their games and practices; and

WHEREAS upon confirmation from the Pembroke Youth Association (PYA) and the Pembroke School District, there are no conflicts with local events; and

WHEREAS The Town of Pembroke has received a “Hold Harmless” agreement with the Lyndonville Tigers and will continue to be listed as an “Also Insured” with the Lyndonville Tigers insurance carrier; **NOW, THEREFORE, BE IT**

RESOLVED that the Town of Pembroke, Town Board, enters into an agreement with the Lyndonville Tigers for use of the Town of Pembroke, Town Park Football Fields.

On **MOTION** of Councilman Sformo, seconded by Councilman Arnold, the following **RESOLUTION** was **ADOPTED** by roll call vote: Councilman Arnold, AYE; Councilman Worth, AYE; Councilman Sformo, AYE; Supervisor Tuttle, AYE.
ALL AYES - MOTION CARRIED

RESOLUTION # 34 of 2011 – Adoption of Local Law No. 1 of the Year 2011

WHEREAS a public hearing was scheduled to be held by the Pembroke Town Board at a regular meeting on May 11th 2011 at the Pembroke Town Hall, 1145 Main Road in said Town at 7:00 P.M. pursuant to a Notice of Public Hearing, published in The Daily News on April 29th 2011, and posted on the sign board at the Pembroke Town Hall, A Local Law to require prior written notice of certain dangerous conditions for the Town of Pembroke, Genesee County, New York; and

WHEREAS a public hearing was held at the regular meeting of the Town Board on May 11th 2011; and

WHEREAS the auditors of Freed Maxick & Battaglia PC have recommended enactment of such law; and

WHEREAS the members of the Town Board have had said Local Law No. 1 of the Year 2011 in final form for the period required under Section 20 of the New York Municipal Home Rule Law; and

WHEREAS the Town Board of the Town of Pembroke, after due deliberation, finds it in the best interest of the Town to adopt said Law; **NOW, THEREFORE, BE IT**

RESOLVED, that the Town Board of the Town of Pembroke hereby adopts said Local Law as Local Law No.1 of 2011, a true copy of which is attached hereto and made a part of this Resolution, and **BE IT FURTHER**

RESOLVED, that the Town Clerk be, and she hereby is, directed to enter this Resolution and said Local Law in the minutes of this meeting, enter said Local Law No. 1 of 2011 in the Local Law Records Book of the Town of Pembroke, and send a certified copy thereof with due notice of adoption to the New York Secretary of State for filing at the New York Department of State.

This Local Law shall become effective upon its filing with the New York Secretary of State.

A LOCAL LAW TO REQUIRE PRIOR WRITTEN NOTICE OF
CERTAIN DANGEROUS CONDITIONS FOR THE TOWN OF PEMBROKE,
GENESEE COUNTY, NEW YORK

Be it enacted by the Town Board of the Town of Pembroke as follows:

Section 1.

No civil action shall be maintained against the Town of Pembroke (the "Town") or the Superintendent of Highways of the Town, or against any improvement district in the Town for damages or injuries to person or property (including those arising from the operation of snowmobiles) sustained by reason of any highway, bridge, culvert, highway marking, sign or device, or any other property owned, operated or maintained by any improvement district therein, being defective, out of repair, unsafe, dangerous or obstructed unless written notice of such defective, unsafe, dangerous, or obstructed condition of such highway, bridge, culvert, highway marking, sign or device, or any other property owned, operated or maintained by the Town, or any property owned, operated or maintained by any improvement district, was actually given to the Clerk of the Town or the Superintendent of Highways of the Town, and that there was a failure or neglect within a reasonable time after the giving of such notice to repair or remove the defect, danger or obstruction complained of; and no such action shall be maintained for damages or injuries to persons or property sustained solely in consequence of the existence of snow or ice upon any highway, bridge, culvert or any other property owned by the Town or any property owned by any improvement district in the Town unless written notice thereof, specifying the particular place, was actually given to the Clerk of the Town or the Superintendent of Highways of the Town and there was a failure or neglect to cause such snow or ice to be removed or to make the place otherwise reasonably safe within a reasonable time after the receipt of such notice.

Section 2.

No civil action will be maintained against the Town and/or the Superintendent of Highways of the Town for damages or injuries to person or property sustained by reason of any defect in the sidewalks of the Town or in consequence of the existence of snow or ice upon any of its sidewalks, unless such sidewalks have been constructed or are maintained by the Town or the Superintendent of Highways of the Town pursuant to statute, nor shall any action be maintained for damages or injuries to person or property sustained by reason of such defect or in consequence of such existence of snow or ice unless written notice thereof, specifying the particular place, was actually given to the Clerk of the Town or to the Superintendent of Highways of the Town and there was a failure or neglect to remedy such defect, to remove such snow or ice, or to make the place otherwise reasonably safe within a reasonable time after receipt of such notice.

Section 3.

The Superintendent of Highways of the Town shall transmit, in writing, to the Clerk of the

Town, within five (5) days after the receipt thereof, all written notices received by him/her pursuant to this law, and he/she shall take any and all corrective action with respect thereto as soon as practicable.

Section 4.

The Clerk of the Town shall keep an index record, in a separate book, of all written notices which the Town Clerk shall receive of the existence of a defective, unsafe, dangerous or obstructed condition in or upon, or of an accumulation of ice and snow upon, any Town highway, bridge, culvert or sidewalk, or any other property owned by the Town, or by any improvement district, which record shall state the date of the receipt of the notice, the nature and location of the condition stated to exist, and the name and address of the person from whom the notice is received. The record of such notice shall be preserved for a period of five (5) years from the date it is received. The Town Clerk, upon receipt of such written notice, shall immediately and in writing notify the Superintendent of Highways of the Town of the receipt of such notice

Section 5.

Nothing contained in this law shall be held to repeal or modify or waive any existing requirement or statute of limitations which is applicable to these causes of action but, on the contrary, shall be held to be additional requirements to the rights to maintain such action, nor shall anything herein contained be held to modify any existing rule of law relative to the question of contributory negligence, nor to impose upon the Town, its officers and employees, and/or any of its improvement districts any greater duty or obligations than that it shall keep its streets, sidewalks and public places in a reasonably safe condition for public use and travel.

Section 6.

If any clause, sentence, phrase, paragraph or any part of this law shall for any reason be adjudged finally by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this law but shall be confined in its operation and effect to the clause, sentence, phrase, paragraph or part thereof directly involved in the controversy or action in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that the remainder of this section would have been adopted had any such provisions not been included.

Section 7.

This Local Law shall take effect immediately upon the filing with the New York State Secretary of State.

On **MOTION** of Councilman Arnold, seconded by Councilman Sformo, the following **RESOLUTION** was **ADOPTED** by roll call vote: Councilman Arnold, AYE; Councilman Worth, AYE; Councilman Sformo, AYE; Supervisor Tuttle, AYE.
ALL AYES - MOTION CARRIED

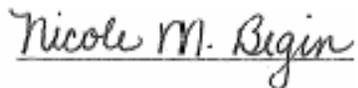
RESOLUTION # 35 of 2011 - Payment of Abstract 5 of 2011

RESOLVED the Town of Pembroke Town Board, authorizes the Town of Pembroke Supervisor to make all payments and bills contained in Abstract 5 of 2011.

On **MOTION** of Councilman Arnold, seconded by Councilman Worth, to approve the Minutes of the Regular Meeting - April 13th, 2011, the Workshop Meeting - April 28th, 2011, and the Public Hearing - May 5th, 2011
ALL AYES - MOTION CARRIED.

On **MOTION** of Councilman Arnold, seconded by Councilman Worth, to adjourn the meeting at 9:17 P.M.
ALL AYES – CARRIED.

Respectfully submitted,



Nicole M. Begin, Town Clerk

THESE MINUTES ARE A DRAFT ONLY OF THE TOWN BOARD PUBLIC HEARING OF MAY 11, 2011 AND ARE SUBJECT TO CHANGE AND/OR REVISION PRIOR TO APPROVAL BY THE TOWN BOARD.