

RUSH TOWN BOARD
Minutes of January 23, 2013
Regular Meeting

A regular meeting of the Rush Town Board, County of Monroe, was called to order by Supervisor Richard Anderson at 7:00 PM on January 23, 2013, at the Rush Town Hall, Rush, New York. Everyone present participated in the Pledge of Allegiance.

PRESENT:	Richard Anderson	-----	Supervisor
	William Riepe	-----	Councilperson, Deputy Town Supervisor
	Kathryn Steiner	-----	Councilperson
	Cathleen Frank	-----	Councilperson
	Daniel Woolaver	-----	Councilperson
	Pamela Bucci	-----	Town Clerk
	Frank Pavia, Esq.	-----	Town Attorney

OTHERS

PRESENT:	Mark David	-----	Highway Superintendent, Resident
	Ansgar Schmid	-----	Resident
	Carol Barnett	-----	Resident
	Julia Lederman	-----	Resident
	Robert & Carolee Powers	-----	Resident
	Dave Sluberski	-----	Resident
	Beth Hoak	-----	Resident
	Jordan Kleiman	-----	Resident
	Marianne Rizzo	-----	Resident
	Cathy Hughes	-----	Resident
	Jim Bucci	-----	Resident
	Matt Schwasman	-----	Resident
	Ted Barnett	-----	Resident
	Rick Dorschel	-----	Attendee, Property owner

I. OPEN FORUM

Supervisor Anderson opened the meeting and welcomed all present wishing to address the Board. Any questions presented to the Board will be answered either during the meeting or at a later date.

II. APPROVAL OF MINUTES

RESOLUTION #53-2013

Councilperson Riepe moved to approve the Regular Meeting Minutes of January 9, 2013, as presented by Town Clerk Bucci. Councilperson Steiner seconded the motion.

Roll:

Councilperson Riepe	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Councilperson Woolaver	aye	
Supervisor Anderson	aye	carried.

III. APPROVAL OF MINUTES

RESOLUTION #54-2013

Councilperson Riepe moved to approve the Organizational Meeting Minutes of January 9, 2013, as amended by Town Clerk Bucci. Councilperson Frank seconded the motion.

Roll:

Councilperson Riepe	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Councilperson Woolaver	aye	
Supervisor Anderson	aye	carried.

IV. APPROVAL OF TRANSFER

RESOLUTION #55-2013

Councilperson Steiner, stated BE IT RESOLVED, that having audited all the unexpended balance of existing appropriations, moved that transfer #46 through #58 in the amount of \$1,623.97 be allowed.

BUDGET TRANSFERS/ADJUSTMENTS 1/23/2013 - 2012 FUNDS

Transfer from the unexpended balance of an existing appropriation'(s).

General Fund

Transfer Number	Amount	Decrease Appropriation		Increase Appropriation	
		Account	Description	Account	Description
46	68.21	A-1310.4	Finance Director Contractual To cover minor variance - leap year	A-1310.1	Finance Director Personal Services
47	11.56	A-1310.4	Finance Director Contractual To cover minor variance - leap year	A-1340.1	Budget Personal Services
	61.71	A-1355.4	Assessment	A-1355.1	Assessment

RUSH TOWN BOARD
January 23, 2013

48			Contractual To cover minor variance - leap year		Personal Services
49	280.49	A-1410.4	Clerk Contractual To cover minor variance -primarily leap year	A-1410.1	Clerk Personal Services
50	61.11	A-3410.4	Fire Protection Contractual To cover minor variance - leap year	A-3410.1	Fire Protection Personal Services
51	11.84	A-3510.4	Dog Control Contractual To cover minor variance - leap year	A-3510.1	Dog Control Personal Services
52	38.94	A-3620.4	Code Enforcement Contractual To cover minor variance - leap year	A-3620.1	Code Enforcement Personal Services
53	3.08	A-3410.4	Fire Protection Contractual To cover minor variance - leap year	A-3640.1	Disaster Personal Services
54	2.00	A-8010.4	Zoning Contractual To cover minor variance - leap year	A-8010.1	Zoning Personal Services
55	184.19	A-1220.4	Supervisor Contractual To cover minor variance	A-1420.4	Legal Contractual
56	88.26	A-1670.4	Central Printing Contractual To cover minor variance	A-1660.4	Central Storeroom Contractual
57	639.08	A-1220.4	Supervisor Contractual To cover December pumping and utilities	A-7140.4	Pavilion Contractual
58	173.50	A-1220.4	Supervisor Contractual To cover final CHA meeting attendance	A-8020.4	Planning Contractual

Roll:

Councilperson Riepe	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Councilperson Woolaver	aye	
Supervisor Anderson	aye	carried.

V. APPROVAL OF TRANSFER

RESOLUTION #56-2013

Councilperson Steiner stated, BE IT Resolved, that having audited all the appropriation of unreserved fund balance or unanticipated revenues, I move that transfer #1 in the amount of \$8,650.00 be allowed. Councilperson Woolaver seconded the motion.

Appropriation of unreserved fund balance or unanticipated revenues

General Fund		Increase Revenue		Increase Appropriation	
Transfer Number	Amount	Account	Description	Account	Description
1	8,650.00	DA-599	Appropriated Fund Balance To restore Hwy request – shorted due to Budget Officer error	DA-5148.1	Serv to Other Govts Personal Services

Roll:

Councilperson Riepe	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Councilperson Woolaver	aye	
Supervisor Anderson	aye	carried.

VI. APPROVAL OF ABSTRACT

RESOLUTION #57-2013

Councilperson Steiner moved, Be It Resolved, that having audited all the claims against the funds listed on Abstract #1-2, for vouchers #47 through #91, be allowed for payment in the amount of \$19,053.21. Councilperson Riepe seconded the motion.

Roll:

Councilperson Riepe	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Councilperson Woolaver	aye	
Supervisor Anderson	aye	carried.

VII. CORRESPONDENCE

Supervisor Anderson has received a Monroe Community College annual report which is being circulated to Board members. The Rush Shooting Range schedule is posted on the town website.

Supervisor Anderson received a letter from Senator Charles Schumer announcing the National Endowment for the Humanities regarding applications to its preservation and access education and training programs. Copies were provided to both the Library and Historian. Applications are due by May 1, 2013, with projects beginning January 1, 2014.

Supervisor Anderson stated that the Health Foundation is restricting its funding emphasizing city schools. The Town has previously received monies to support recreation.

A survey is being done in the 19 towns in Monroe County regarding town newsletter circulation and costs. Once the findings are available, Supervisor Anderson will present them.

VIII. REPORTS OF OFFICERS AND COMMITTEES

Councilperson Riepe attended the Fire Commissioners meeting. They are concerned about vandalism and/or fire of the vacant homes in town. Code Enforcement Kusse advised that the homes are owned by the bank and the town has no authority. Supervisor Anderson noted that the Supervisors Association has discussed recent work from the Assembly in proposing a resolution to allow towns more direct access to banks and their maintenance personnel. Highway Superintendent David has periodically cut lawns when banks have not responded to the town's requests.

Councilperson Steiner had no report.

Councilperson Frank had no report.

Councilperson Woolaver stated that he attended the Zoning Board meeting.

Town Clerk Bucci reported that the Town Clerk Monthly report was submitted to the Supervisor for the month of December. Revenues amounted to \$8,727.55.

Town Clerk Bucci asked whether or not councilpersons would be attending the annual training conference in New York City in February and whether or not the Board would be designating that person to vote on the legislative resolutions. Councilperson Woolaver responded that he would be attending and, therefore, Town Clerk Bucci will forward the designation to the Association of Towns by the deadline.

IX. OLD BUSINESS

A. Right to Farm Law – Councilperson Riepe attended the American Right to Farmland Trust meeting as well as attended the Planning Board meeting where

Planning Board member Don Sweet furnished Judy Wright of the American Farmland Trust's name. She agreed to address the Town Board as well as invite the Planning, Zoning and Conservation Boards to attend. Councilperson Riepe will coordinate. Supervisor Anderson added that Ms. Wright preferred the Town of Eden's Right to Farm Law which was provided to Town Board members.

X. NEW BUSINESS

A. LANDTECH PRESENTATION – corner of Routes 251 and 15 (and Interstate 390)
– Supervisor Anderson welcomed Landtech President John Sciarabba, representing Rush Associates LLC, who presented a site map of the property and explained its proposed commercial phase uses including information about wetlands, drainage, easements and curb cutouts. He explained that property is approximately 27 acres in size. They intend to request a change of the R30 zoned areas of the parcel to commercial; only 1.7 acres are presently zoned commercial. A flex commercial space is included. The setback of 140 feet was noted.

Property owner Rick Dorschel added that he has appeared before the Town with a number of proposals at times and the property has been for sale with no success. Because the property is zoned R30, building a house on Interstate 390 is not inviting and a commercial property is more attractive. Services that the Rush community may utilize included ATM/banking, take-out restaurant, dry cleaning, etc. Mr. Dorschel stated that the Department of Transportation was in favor of a curb cut, although placement needed to be adjusted, and he is requesting the town's support of the project and cut. The traffic flow is great during morning rush hour and evening rush hour. Otherwise the street exhibits a quiet or non-existent flow.

Supervisor Anderson, being on the Planning Board when a similar plan was presented by Mr. Dorschel, explained that the NYSDOT was not in favor of a curb cut onto Route 15. Although he could not speak for the Zoning Board of Appeals, the largest impediment was traffic flow in regards to a curb cut.

Councilperson Riepe added that at one time, a light was requested. Mr. Dorschel stated that after further study, a light installation was not recommended or necessary.

Councilperson Steiner asked of vendor interest. Mr. Sciarabba responded that there were several interested parties. Mr. Sciarabba noted that they would be meeting with the NYSDOT, would appear before the Planning Board and if required the Zoning Board.

Supervisor Anderson stated that the Town of Rush has no sewers. Mr. Dorschel stated that this project does not require sewers. Supervisor Anderson provided his knowledge of a previous engineering study done for the Town of Rush which required sewage to be pumped upward. Expansion of pipes with the Town of Henrietta was discussed. Different systems and sewer districts were discussed. The Town of Rush is not anti-sewer.

Town Attorney Frank Pavia clarified the zoning process for new councilpersons stating that rezoning a property is a legislative act that the Town Board takes action upon. The process includes an application, SEQR review, recommendation by the Planning Board and a final action of the Town Board.

Resident Dave Sluberski stated that he was not particularly fond of COMIDA properties because of the non-benefit tax base. Mr. Dorschel answered that he had no contact with COMIDA other than once in 45 years, with no choice other than to file an agreement with them. Mr. Sciarabba added that he foresees jobs being created and Mr. Dorschel envisions potential flex space.

Attorney Pavia strongly advised Landtech to meet informally with the Planning Board. A formal petition for zoning will then need to be presented with a plan, description and the intent including an environment assessment form. The Town Board will instruct the applicant on the next steps including a public hearing. Supervisor Anderson stated that a courtesy call to the Zoning Board Chair would be recommended. Attorney Pavia recommended that the Zoning Board members be specifically invited to the informal Planning Board meeting.

Resident Mariann Rizzo asked when the previous plan for the property discussed was presented to the Planning Board and what has changed. Supervisor Anderson, being previously on the Planning Board, believed the plan presentation was roughly 6-7 years ago and the economics and technology may have changed, especially regarding sewer matters.

B. Agreement to Spend Highway Funds – Supervisor Anderson stated that the Agreement, under provisions of Section 284 of the Highway Law refers to repair and improvement of highways and the receipt of State Aid. The repairs and improvements listed in the agreement refer to areas of Keyes Road, Wardell Road, Stull Road and Honeoye Falls Five Points Road. All maintenance funds are incorporated into the approved 2013 budget in an amount of \$121,157 of which \$38,000 will be returned through the NYS C.H.I.P.S. funding.

RESOLUTION #58-2013

Supervisor Anderson moved to approve the annual repairs and improvements including cold mix pave and surface treatment and single layer surface

treatments as budgeted for in the areas of Keyes Road, Wardell Road, Stull Road and Honeoye Falls Five Points Road with approved budgeted and state aid funds in the amount of \$121,157.00. Councilperson Riepe seconded the motion.

Roll:

Councilperson Riepe	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Councilperson Woolaver	aye	
Supervisor Anderson	aye	carried.

C. Report of the Citizens Working Committee on Hydrofracking – Supervisor Anderson opened the floor to Committee Co-Chair Jordan Kleiman. The committee was created to assess the possible impact to the town associated with gas drilling related activities (hydrofracking). A lengthy report was distributed to the Board including an Executive Summary, Goals and Objectives, Methodology and Findings and Analysis, Recommendations, Acknowledgments and Appendices. The CWC recommend steps in passing amendment to the Comprehensive Plan by the end of the moratorium, March 28, 2013, including amending the Zoning Code. The CWC requested to further discuss ramifications with the Highway Superintendent and produce a separate report to compliment and support the committee goals. The members requested that the Board act promptly, no later than March 28, 2013, because Rush is a viable area for drilling. Mr. Kleiman also discussed the town's decision making and Governor Andrew Cuomo's position of non-regulatory rights and banning activities. The CWC stressed the urgency in moving before the end of the moratorium.

Supervisor Anderson thanked the CWC for the in-depth work done on the topic. Although time is of the essence, Supervisor Anderson stated that the Board received the report on Monday, January 21 and requires time to read through and absorb the information. A copy of the report has been furnished to the town attorney and the matter will be discussed.

Attorney Pavia added that adopting the rezoning is required and a precise procedure and process must be followed including requesting a legislative act. The Planning and Zoning Boards must provide input to the Town Board and a SEQR review process must be completed prior to the town amending the zoning code. The Board may only then act on any zoning code amendments.

Councilperson Riepe commended the CWC for their work for the Town.

Councilperson Steiner asked how long the procedure would take. Attorney Pavia stated that it would be determined by the input of other Boards and the

determination of the extent of a SEQR review, either the issuance of a negative declaration (environmental impact report not required because there is no determined potentially significant environmental impact) or a positive declaration (preparation of an environmental impact report) statement. A positive declaration will require time beyond March 28, 2013.

Councilperson Frank asked about other adjoining town and how Rush would be affected if they approved such drilling activities. An audience member pointed out that if surrounding towns were to approve of this type of drilling, Rush would be at risk.

Resident Kathryn Hankins stated that she thought this to be a Type II action and the town attorney should recuse himself from the hydrofracking discussions.

Resident Dave Sluberski stated that to avoid conflict of interest, Attorney Pavia should recuse himself during discussions regarding hydrofracking.

Attorney Pavia clarified his position and prior recusal. The recusal was not for advising the Town Board on procedural aspects related to the moratorium, only on the substantive issues.

Resident Beth Hoag asked of the Board's vision of the empty buildings located in the hamlet. Supervisor Anderson answered that everyone wished to see those properties occupied, however, they are not town-owned parcels. The repair shop's parcel owner lives in Florida and interested buyers have noted that they are hard to contact. Supervisor Anderson has been told by the Rush Mart owners that they will be closing on that property along with the Valero property soon. A mini-mart party is supposedly the interested buyer.

Supervisor Anderson stated that the entire hamlet strip is an anomaly, zoned commercial. As most commercial properties fall over the years, grandfathering is in affect and presents problems with today's code. Today, Supervisor Anderson discussed the rezoning of the hamlet area with the Zoning Board Chair. Proposals are going to be sought for recommendations in fixing the zoning issues.

Resident MaryAnn Rizzo stated that it would make sense to use existing vacancies for commercial property use. Supervisor Anderson noted that the Master Plan shows the hamlet area as a central place where the town services, library and recreational areas are located. The Town is examining getting a workable plan for all the commercial properties located in the hamlet area.

Resident Jordan Kleiman asked that if David Slottje is invited to the next Town Board meeting, would Attorney Pavia be attending.

Supervisor Anderson stated that another attorney, at this point, has not been contracted. Both he and Attorney Pavia will be discussing the necessity.

Resident Matt Schwasman stated that his property is located peripherally to the property owned by Mr. Dorschel and requested that he be apprised of movement concerning that property. Attorney Pavia stated that the town advertises all appearances and agendas to the Town, Planning, Conservation and Zoning Boards. In addition a courtesy notice is sent from the Town Clerk's Office to property owners in close proximity to property being discussed at public hearings.

Resident Kathryn Hankins asked the Town Board who authorized an employee of the town to contact Mr. Dorschel regarding presenting his plan to the town. Supervisor Anderson stated that he could guarantee that he did not contact Rick Dorschel and was very confident that town board members did not contact him.

Resident Kathryn Hankins, after reviewing the comprehensive plan, realizes that the area is very rural. She did not believe that the Town would want sections of it, such as Routes 15 and 15A, to be tossed away as commercial. Mrs. Hankins mentioned flex space.

Resident Mariann Rizzo stated that she preferred no prefab commercial properties and that Rush to stay the best kept secret.

Resident Jim Bucci stated that he agreed with what Ms. Rizzo said, however, the town needs to have some growth in order to stabilize or reduce the town tax base. He stated that when the Rush Big M closed, many residents were angry that Rush no longer had a store. In order to keep commercial businesses, residents have to support them by using their services and purchasing from them. If small communities want businesses, they must support them. Buying a 25 cent coffee from Big M on a daily basis did not keep the Big M operating.

XI. OPEN FORUM

Supervisor Anderson continued to offer the open forum taking place.

Resident Dave Sluberski stated, regarding Rick Dorschel's project, he was curious about NYS saying that this project could have curb cuts, egresses, etc. Mr. Sluberski was concerned that Mr. Dorschel stated that a town employee phone him regarding time to re-submit a plan for his property and that there seems to

be a hidden agenda and lack of transparency. Mr. Sluberski stated the he was not against rezoning changes but concerned that vendors may change from the original plan. He also stated that it was not in the best interest of Rush to accept sewers.

Supervisor Anderson offered clarification. The informal proposal by Planned Unit Development (P.U.D.) was for a package plant, not a sewer. Lines would connect to the package plant. The town does not plan on being responsible for taking on the infrastructure of a package plan.

Sewers are connected to pure waters. Sewer costs are mostly installation costs. The benefit to the town would be a consideration.

Supervisor Anderson stated that NYSDOT previously was not in agreement with the curb cuts presented in earlier plans. Although he could not speak for the Zoning Board, Mr. Dorschel made a valid point that the property location next to Interstate 390 and Routes 15 and 251 is not enticing for building of a home.

In regard to the Landtech presentation, Resident Ted Barnett asked when the property was purchased, what was the intent, knowing that the property was zoned residential. Mr. Dorschel was interested in the 1.7 portion of the parcel that was already zoned commercial and there was no intent to develop the entire parcel.

XII. ADJOURNMENT

There being no further business, the meeting was adjourned by Supervisor Anderson at 8:10 PM and approved by common consent of all councilpersons present.

Respectively submitted,

Pamela J. Bucci
Town Clerk