

RUSH TOWN BOARD
Minutes of June 12, 2013

A regular meeting of the Rush Town Board, County of Monroe, was called to order by Supervisor Richard Anderson at 7:00 PM on June 12, 2013, at the Rush Town Hall, 5977 East Henrietta Road, Rush, New York. Everyone present participated in the Pledge of Allegiance.

PRESENT: Richard Anderson ----- Supervisor
William Riepe ----- Councilperson, Deputy Town Supervisor
Cathleen Frank ----- Councilperson
Daniel Woolaver ----- Councilperson
Pamela Bucci ----- Town Clerk
John Mancuso, Esq. ----- Attorney for the Town
Charles Steinman, Esq. ----- Attorney for the Town

OTHERS

PRESENT: Mark David ----- Highway Superintendent, Resident
Ansgar Schmid ----- Resident
Gerald Kusse ----- Building Inspector, Resident
Beth Hoak ----- Resident
Carol Barnett ----- Resident
Ted Barnett ----- Resident
Kirsten Flass ----- Library Director, Resident
Marianne Rizzo ----- Resident
Joan Starkweather ----- Resident
Harvey Seymour ----- Resident
Sue Woolaver ----- Resident
Christopher Giordano ----- Resident
Julia Lederman ----- Resident
Robert Kraus ----- Resident
Jordan Kleiman ----- Resident
Robert Powers ----- Resident

I. OPEN FORUM

Supervisor Anderson opened the floor to anyone wishing to address the Town Board. He stated that all comments should be brief and any questions asked would be answered at that time or after research, responded to at a later date.

II. APPROVAL OF MINUTES

RESOLUTION #103-2013

Councilperson Riepe moved to approve the May 22, 2013, Minutes as presented by the Town Clerk. Councilperson Frank seconded the motion.

Roll:

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

III. TRANSFER OF FUNDS

Supervisor Anderson noted that transfers were not necessary.

IV. APPROVAL OF ABSTRACT

RESOLUTION #104-2013

Councilperson Steiner moved Be It Resolved, that having audited all the claims against the funds listed on Abstract 6-1 (#11), for vouchers #536 through #618, be allowed for payment in the amount of \$63,746.64. Councilperson Woolaver seconded the motion.

Roll:

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

V. CORRESPONDENCE

MS4 Letter – Supervisor Anderson received a request from New York State regarding Municipal Separate Storm Sewer System (MS4) which is basically representative of more than 1,000 in an urban area. The Town was erroneously placed in this category and steps have been taken to remove Rush from the listing.

New York State Equalization Rate – Assessor Dan Stanford has filed the Tentative 2014 Assessment Roll which classifies Rush at 100% equalization rate, therefore, no further adjustments are necessary.

Monroe County Sheriff's Department – Supervisor Anderson has received the Sheriff's Office B Zone Weekly Report of no crimes in Rush, however, stated that surrounding towns continue to have unlocked vehicles ransacked.

Fiscal Stress Monitoring Webinar, June 27th 1-4 PM – Supervisor Anderson and Finance Director Reynolds will be attending. It provides a 6 point test measuring town's fiscal well-being. Rush scored well last year. Possible changes will be viewed.

VI. REPORTS OF OFFICERS AND COMMITTEES

Councilperson Frank reported that the Library Board of Trustees met and is continuing their planning for the 100th year celebration.

Councilperson Woolaver had no report.

Councilperson Steiner attended the Conservation Board meeting who reviewed applications and made comments forwarded to the Planning and Zoning Boards. The Recreational Agricultural Citizens Committee held a 2-3 hour Clean-up Day at 6565 East River Road. RACC member Kathryn Hankins provided masks for the clean-up.

Town Attorneys had no report.

Town Clerk Bucci stated she received notice that Rush Creekside Inn has requested renewals of both bar and pavilion liquor licenses.

Highway Superintendent Mark David attended educational classes for Highway School.

Building Inspector/Code Enforcement Officer Gerry Kusse had no report.

Supervisor Anderson reported that the Finance Director has sent budget packages to all departments. All budget worksheets are to be returned to the Finance Director by July 25. Workshops will be held and notices posted. Although the law provides Monroe County additional time to prepare an approved budget, Monroe County requests that all towns submit their approved budgets by November 13, 2013, so that they can prepare their own. Rush will adhere to that schedule.

VII. OLD BUSINESS

A. Right to Farm Law Update – Supervisor Anderson noted that the Planning and Zoning Boards have been provided the state's Right to Farm Law template. Planning Board member Don Sweet will be providing the Board's comment.

VIII: NEW BUSINESS

A. The PinPoint Group Service Contract Renewal – Town Clerk Bucci stated that the PinPoint Group provides computer, email and network services for the Town. This service contract is for purchasing and support. An amount of \$5,000 is requested for approval and will be disbursed as services are used. The town's

service contract runs annually and remaining funds will be rolled into following years.

RESOLUTION #105-2013

Councilperson Steiner moved to authorize the Supervisor enter into a contract dated May 22, 2013, with The Pinpoint Group, PO Box 185, Churchville, New York for computer purchasing and support services not to exceed \$5,000.00. Councilperson Woolaver seconded the motion.

Roll:

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

B. Standard Workday Resolution (Retirement) – Supervisor Anderson stated that all elected and appointed officials enrolled in the NYS Retirement System are required to file a 3 month work schedule with the Town Clerk 150 days after taking office. The chart below establishes standard hours for each position and a specific formula calculates the retirement system activity. Supervisor Anderson read the standard number of hours for each position.

RESOLUTION #106-2013

Councilwoman Steiner, motioned BE IT RESOLVED, that the Town of Rush hereby approves and establishes the following as standard work days for elected and appointed officials and will report the following days worked to the New York State and Local Employees' Retirement System based on the record of activities maintained and submitted by these officials to the clerk of this body:

STANDARD WORKDAY RESOLUTION

					Participates				
			Std			in	Days/Month	Record of	
			Work			employer's	based on	Activities	
			Day			Keeping	Record of	Tier 1	Not
Title	First	Last	(Hrs/Day	Term Begins/Ends	System	Activities	Member	Submitted	
Elected Officials									
Supervisor	Richard	Anderson	6	01/1/12-12/31/13	N	22.06			
Town Clerk/Tax Collector	Pamela	Bucci	7	01/1/12-12/31/15	N	23.80			
Highway Superintendent	Mark	David	8	01/1/12-12/31/15	N	23.08			
Town Justice	Tom	Doupe	6	01/1/12-12/31/15	N	9.58			

Appointed Salaried Full Time						
Library	Kirsten	Flass	7	01/1/13-12/31/13	N	23.45
Appointed Salaried Part Time						
Assessor	Dan	Stanford	6	10/15/09-9/30/13	N	12.44
Building Insp./Code Enf. Officer	Gerald	Kusse	6	01/1/13-12/31/13	N	23.28
Fire Marshal/Emerg. Coord.	Richard	Tracy	6	01/1/13-12/31/13	N	8.72
Director of Fin./Budget Officer	Donald	Reynolds	6	01/1/13-12/31/13	N	18.33
Planning Board Chair	John	Felsen	6	01/1/13-12/31/17	N	1.44 X
Conservation Board Member	Julia	Lederman	6	01/1/13-12/31/17	N	0.25
Conservation Board Member	Susan	Woolaver	6	6/1/2012-12/31/13	N	X
Appointed Hourly Full Time						
Deputy Town Clerk	Meribeth	Palmer	7	01/1/13-12/31/13	Y	
Appointed Hourly Part Time						
Recreation Supervisor	Patricia	Stephens	6	01/1/13-12/31/13	Y	
Supervisor's Secretary	Valerie	Metsock	6	01/1/13-12/31/13	Y	
Court Clerk	Sally	Newell	6	01/1/13-12/31/13	Y	
Court Clerk	Stephanie	Anderson	6	01/1/13-12/31/13	Y	
Assessor Clerk	Colleen	Statskey	6	01/1/13-12/31/13	Y	

*Town officials are given credit for the same town holidays as town employees

Councilperson Riepe seconded the motion.

Roll:

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

Town Clerk Bucci stated that the workday resolution will be posted for 30 days as required.

IX. OPEN FORUM –

The floor opened to anyone wishing to address the Town Board.

PRESENTATION: 7:30 PM Hydrofracking Presentation and Q/A by Attorney David Slottje.

Supervisor Anderson stated that all Boards of the Town have received an entire package of documents presented on hydrofracking. All Boards have been requested to provide responses, if any, on the hydrofracking documentation to the Supervisor by June 26th. Supervisor Anderson introduced Attorney David Slottje and asked for questions or input from the Board and audience prior to Attorney Slottje's presentation.

Resident and Co-Chair Jordan Kleiman of the Citizens on Hydrofracking Committee stated that the committee researched and studied for 8 months on the subject and sought Attorney Slottje's expertise. Mr. Slottje stated that the most effective way to stop hydrofracking in Rush was to amend the zoning law to ban high volume hydrofracking. A free-standing law was not his recommendation.

Attorney Slottje stated that he had worked with numerous towns to protect them from hydrofracking. Many laws enacted have been written by Attorney Slottje. An analysis has been written for the Town of Rush.

The main issue of discussion was whether or not Attorney Slottje and Attorney Steinman agreed that a stand-alone law would protect a town from hydrofracking. The Town of Rush has two areas in its Code that may contradict with a stand-alone law and open the door to allow a property owner to drill even if the town enacts a local law to ban it.

Attorney Slottje agrees, crystal clear, with Attorney Steinman that hypothetically, theoretically, legally and in a vacuum a stand-alone law can protect a town. However, Attorney Slottje does not recommend it because of potential risk. The risk lies in the town's zoning code. Any law passed that has ambiguity when compared to the town's zoning code, will cause the law to rule against the municipality. Amending the Code itself will dismiss any ambiguity. The current Rush Town Code does present ambiguity and reason to rule against it. The Rush Code includes a parking table including verbiage of "other uses" and a lenient section on public utility.

Attorney Slottje stated that he has drafted, at no cost to the town, an amendment analysis to protect the town and has given Attorney Steinman permission to modify the draft to fit Rush.

Attorney Slottje addressed the difference between conventional versus unconventional gas drilling, i.e. fracking but does not reference them. He stated

that the statute does not give any legal authority the ability to regulate the gas industry. A town doesn't have legal authority to address the use of operations and processes of drilling.

Additionally, Attorney Slottje stated that if the Board decided to enact a banning of hydrofracking, a stand-alone law will not provide protection due to wording already included in the Rush Town Code.

Supervisor Anderson compiled a list of towns that had local laws and zoning laws on hydrofracking.

Question and Answer Session opened:

Councilperson Riepe asked if both passing a stand-alone law and changing a Town Code would protect the town more or less than simply enacting a stand-alone law or changing the Code.

Attorney Steinman stated that, regarding ambiguity, the Town may increase the risk of black letter law (a principle of law so notorious and entrenched that it is commonly known and rarely disputed); it should enact one but not both. The big problem is with the conflict in a zoning regulation that can affect a stand-alone ban.

Attorney Slottje stated that the only way to eliminate the ambiguity is to amend the zoning map. Attorney Steinman will review all the information provided with the Supervisor and Town Board and to what extent of modifications to the Code are necessary.

Resident Julia Lederman asked if the town could include verbiage in the stand-alone to supersede all other laws. Attorney Slottje stated that whether or not the verbiage was included in the stand-alone or not, the stand-alone came after the Town Code.

Attorney Steinman stated that the questions to address are simplicity and risk.

Resident Jordan Kleiman asked about the pre-emption issue of lower level court's ruling against the municipality versus higher courts ruling with the municipality. Attorney Slottje thought the above to be likely but not certain. Discussion continued regarding court decisions.

A Mendon resident present asked about the stand alone law land use prohibition of tanks, pits and wastes being initially held and used later. He also had a concern of conventional high volume horizontal drilling.

Attorney Slottje read the prohibitions from drafted paperwork. Federal regulatory commission regulates the big pipe lines. Towns have no jurisdiction. Middle size pipe lines are governed by the PFC – Public Service Commission. Towns have no jurisdiction. The smallest pipe lines called gathering lines can be addressed and prohibited by towns.

Resident Harry Seymour asked if there were specific definitions used with hydrofracking. Attorney Slottje stated that specific categories are used but not definitions. Support activities were read aloud.

X. ADJOURNMENT

There being no further business, the meeting was adjourned by Supervisor Anderson at 8:45 PM and approved by common consent of all councilpersons present.

Respectively submitted,

Pamela J. Bucci
Town Clerk