

Rush Town Board  
September 12, 2007

A regular meeting of the Rush Town Board was held on September 12, 2007 at the Rush Town Offices, 5977 East Henrietta Road and was called to order at 7:00 p.m.

Present: Councilman Donald Knab  
Councilman Richard Anderson  
Councilman Thomas Doupe  
Councilwoman Lisa Sluberski  
Supervisor William Udicious

Others: Frank Pavia, Attorney for the Town of Rush  
Gerald Kusse, Code Enforcement  
Pamela Bucci, West Henrietta Road  
Erica Bucci, "  
Zachary Bucci, "  
James Bucci, "  
Michael Terzo, Aprille Lane  
Michael Terzo Jr., "  
Diane Pfersick, Rush Lima Road  
Bob Faugh, Farmcrest Drive  
Jim McNeil, East River Road  
Rick Spencer, Rush Mendon Road  
James Rumsey, Rush West Rush Road  
Dan Wright, Works Road  
Robert Anderson, Rush Mendon Road

#### I Open Forum

Richard Spencer, Rush Mendon Road, expressed his concern about the agenda item concerning a rezoning request and the lack of information available about the property. He also asked for an update on the sale of Hart's Field.

Mr. Spencer was told that Hart's Field has not yet been sold.

Attorney Pavia explained that the resolution that was being suggested to be made at this meeting was the acknowledgement of the receipt of a petition requesting that property in Rush be rezoned. The application would then be passed on to the Planning Board for their review and consideration prior to their making a recommendation to the Town Board. The process that must be followed is dictated by Town Law and this acknowledgement is only the

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first step in a process that will include public hearings and a SEQRA determination made by the Town Board.

## II Minutes

Regular Meeting of August 8, 2007

### **RESOLUTION #138**

Councilman Doupe moved that the minutes of the regular Town Board meeting of August 8, 2007 be approved as presented. Councilman Knab seconded the motion.

Roll:	Councilman Knab	aye
	Councilman Anderson	aye
	Councilman Doupe	aye
	Councilwoman Sluberski	aye
	Supervisor Udicious	aye carried.

Workshop meeting of August 22, 2007

### **RESOLUTION #139**

Councilman Doupe moved that the minutes of the Workshop meeting of August 22, 2007 be approved as presented. Councilman Knab seconded the motion.

Roll:	Councilman Knab	aye
	Councilman Anderson	aye
	Councilman Doupe	aye
	Councilwoman Sluberski	abstained
	Supervisor Udicious	aye carried.

## III Transfer of Funds and Approval of Abstract

### **RESOLUTION #140**

Councilwoman Sluberski moved that the following transfers of funds be made:

Appropriation of unreserved fund balance or unanticipated revenue -

\$25,000.00 from A-3097, State Aid Construction to A-1620.2, Building Capital Outlay - grant for ADA Restrooms

\$13,200.00 from A-1990.4 Contingency, Contractual to A-1440.4 Engineering, Contractual - part of Town Park Phase I

\$1,650.00 from A-1355.4 Assessor, Contractual to A-1355.2 Assessor, Capital Outlay - computer purchase

\$#47.00 from A-9010.8 Fringe Benefits, Retirement to A-9040.8 Fringe Benefits, Works Comp - overage

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\$2,500.00 from A3410.4 Fire Marshal, Contractual to A-3410.1 Fire Marshal, Personal Services - return to employed Fire Marshal

\$500.00 from A1910.4 Unallocated Insurance to A-1310.4 Finance, Contractual - ADP increase & printing manual

\$1,500.00 from Unallocated Insurance to A-1620.4 Building, Contractual - corner property costs unbudgeted

\$2,000.00 from A1990.4 Supervisor, Contingency to A-1420.4 Law Contractual - services beyond retainer

\$2,700.00 Parks Contractual to A-8160.4 Landfill, Contractual - cost of tub grinding

\$15,000.00 from DA-5112.1 Road Construction, Per. Serv. to DA-5110.1 Maint. of Roads, Per. Serv. - payroll deficiency

\$2,500.00 from DA-5112.4 Road Const. Contractual to DA-5142.1 Snow Removal, Per. Serv. - payroll deficiency

\$9,000.00 from DA-5112.4 Road Const. Contractual to DA-5148.1 Serv. to Other Govt., Pers. Serv. - payroll deficiency

\$2,300.00 from DA-5110.4 Maint of Road, Contractual to DA-5148.1 Serv. To Other Govt., Per Serv. - payroll deficiency.

\$7,500.00 from DA-5110002.1 Road Const. Per Serv. to DA-5148.1 Serv. To Other Govt. Per Serv. - payroll deficiency

\$1,100.00 from DA-9010.8 Fringe Benefits, State Retire. To DA-9030.8 Fringe Benefits, Social Security

Councilman Knab seconded the motion.

Roll: Councilman Knab aye  
Councilman Anderson aye  
Councilman Doupe aye  
Councilwoman Sluberski aye  
Supervisor Udicious aye carried.

**RESOLUTION #141**

Councilman Anderson moved BE IT RESOLVED, that having audited all the claims against the funds listed on the abstract, I move that all claims in the amount of

\$32,928.38 be allowed for vouchers #872 through #934.

Councilman Doupe seconded the motion.

Roll: Councilman Knab aye  
Councilman Anderson aye  
Councilman Doupe aye  
Councilwoman Sluberski aye  
Supervisor Udicious aye carried.

IV Correspondence

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1. Judy Hawk, Farmcrest Drive - re: signs being erected around town in right of way and other properties

Supervisor Udicious explained that the opinion signs that were in place around town were permissible under freedom of speech provisions. The placement of signs was an issue that the Town Board must review as many other types of signs were also placed in or near the right of way of roads and the town might not want to prohibit those signs as they often reflected church, scouting or other charitable organizations events. The sign ordinance was under review at this time he stated.

#### V Reports of Officers and Committees

1. Town Board - Councilman Knab stated that three parking lot lights have been repaired and the rest will be done when the parts, which are on order, are received. Two contractors are bidding for the roof repair contract.

Councilman Anderson reported on the Quality Communities Grant program status. Underwater photos of the dam backside are being taken to use as background for the engineering study on the dam repair.

Councilman Doupe stated that the Rush Henrietta Rotary is developing an estimate on the construction of the gazebo for the Rush Library. A draft of the sign ordinance has been placed in each Town Board member's box. It will also be given to other town departments for their feedback.

Councilwoman Sluberski gave a report on the Recreation Departments preparations for the Fall Festival.

2. Supervisor Udicious stated that he had been contacted by Martha Mack and the Town Board was invited to participate in the Homecoming Parade on September 28<sup>th</sup>.

#### VI Presentation

##### **RESOLUTION #142**

Supervisor Udicious moved WHEREAS, James J. Bucci Jr. has faithfully and diligently served as a fireman with the Rush Fire Department servicing the needs of the Town of Rush and its residents; and

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WHEREAS, James J. Bucci, Jr. has received notice from the American Legion, Department of New York (the "American Legion"), that he is the recipient of the Fireman of the Year Award for 2006 and 2007; and

WHEREAS, the American Legion has also submitted Mr. Bucci's name to the National Organization for consideration of a national award for his services as a Fireman; and  
WHEREAS, the town Board wishes now to acknowledge Mr. Bucci's services and the prestigious award that he had received by resolution hereto.

NOW, BE IT RESOLVED, that fireman James J. Bucci, Jr. has been named the Fireman of the Year for the 2006 and 2007 years from the American Legion; and

BE IT FURTHER RESOLVED, that the Town Board of the town of Rush adopts this Resolution to honor and congratulate Mr. Bucci on the award he has received from the American Legion; and

BE IT FURTHER RESOLVED, that the Town Supervisor be, and hereby is authorized to direct to record and publish this Resolution honoring Mr. Bucci in a manner duly warranted. Councilman Anderson seconded the motion.

Roll:            Councilman Knab                            aye  
                  Councilman Anderson                    aye  
                  Councilman Doupe                        aye  
                  Councilwoman Sluberski                aye  
                  Supervisor Udicious                    aye    carried.

## VII Old Business

1. Update on Audit of Town Departments - Supervisor Udicious stated that the audit work has begun with the Court Offices due to the Office of Court Administration's request for a current audit. Once completed the auditors will move on to the Finance Office, Town Clerk and Library.
2. Rezoning Application - Attorney Pavia explained the process the town must follow when given a petition for rezoning of property as outlined in Town Law. At this meeting the Town Board must acknowledge the receipt of that petition and declare themselves as lead agency for the purposes of a SEQRA review. The petition could then be passed on to the Planning Board for their review and comments. If they wish an informational meeting may be held by that Board. The

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Town Board must then hold a public hearing and make a SEQRA determine on the impact of the proposal.

**RESOLUTION #143**

Councilman Knab moved WHEREAS, on August 22, 2007, the Town Board of the Town of Rush received a petition from Gorsline Real estate, Inc. on behalf of James Volpe to re-zone properties located at 6115 and 6123 Rush Lima road in the Town of Rush, a letter of intent regarding the petition and a map depicting the potential rezoning; and

WHEREAS, the properties located at 6115 and 6123 Rush Lima Road which petition seeks to rezone are located within an R-30 zoning district; and

WHEREAS, the petition seeks to rezone the property from R-30 to a RB zoning district; and

WHEREAS, on September 7, 2007 Mr. Volpe submitted to the Town a Short Environmental Assessment form (EAF) for the petition in accordance with the New York State Environmental Quality Review Act; and

WHEREAS, the town Board has reviewed the petition, the EAF, the site map and the other materials prepared and submitted by Mr. Volpe with respect to the petition.

NOW, THEREFORE, upon consideration by the Town Board of the petition and the other materials submitted by Mr. Volpe, including the short EAF, and the Town Board having given the submitted documentation matter due consideration; it is

RESOLVED, that the Town Board declare itself Lead Agency for purposes of conducting an uncoordinated review of the petition, and making any necessary determinations of environmental significance under SEQRA; and it is further RESOLVED, that the Town Board classifies the petition as an "unlisted action" subject to an uncoordinated review under 6 N.Y.C.R.R. Sect. 617.6; and it is further

RESOLVED, that the Town Board refers the petition to the Planning Board for review, and requests that the Planning Board investigate the rezoning request identified in the petition; hold a public hearing, if necessary, on the petition; and ultimately report to the Town Board with the Planning Board's conclusions and/or recommendations regarding the petition and its potential impacts on the zoning and planning interest of the Town; and it is further RESOLVED, that notice of this resolution shall be filed and circulated to the extent required by any applicable provisions of the Code of the Town of Rush and/or any relevant statute or regulation.

Councilman Doupe seconded the motion.

Roll: Councilman Knab aye

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Councilman Anderson	aye	
Councilman Doupe	aye	
Councilwoman Sluberski	aye	
Supervisor Udicious	aye	carried.

#### VIII New Business

##### 1. Petition from residents of Rush View Heights -

Supervisor Udicious stated that the Town has received a petition from some of the residents of the Rush View Heights Subdivision (Farmcrest Drive/Harvest Lane area) for the town to assist in correcting some drainage problems in their area.

#### **RESOLUTION #143**

Councilman Knab moved that the Town Board acknowledges the receipt of a petition from some of the residents of the Rush View Heights Subdivision for assistance in correcting a drainage problem in their area. The request will be referred to the Highway Superintendent for his input. Councilman Doupe seconded the motion.

Roll:	Councilman Knab	aye
	Councilman Anderson	aye
	Councilman Doupe	aye
	Councilwoman Sluberski	aye
	Supervisor Udicious	abstained carried.

The petition will be also be passed on to the town attorney and town engineer.

2. Purchasing of Development Rights - Supervisor Udicious stated that he had requested the town assessor to give the board a map of all lands within the Town of Rush receiving an agricultural exemption. He hoped to have the information shortly.

Supervisor Udicious also noted that Genesee Valley Conservancy will be purchasing the development rights for about 320 acres of the Chase and Mulligan properties in the southern part of the Town. The Rush Town Board supported both these property owners in their applications with the Conservancy.

##### 3. Link to Town Website by Organizations -

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Supervisor Udicious explained that he has received requests from two different organizations for permission to link their websites to the Town Website. He explained that he had contacted the Association of Towns attorney on this matter and they provided information on what was allowed or not allowed. It was also advised it was not a wise decision to allow any links since the Town would not be able to choose which links it would prefer when the precedent was set. The requests were also referred to the Town Attorney for his opinion.

Attorney Pavia stated that in reviewing the legality of these links he reviewed case law and the Constitution of New York State. Mr. Pavia informed the Board that Article 8 of the Constitution of the State of New York states that a municipality's funds and resources are for the public trust. Case law from the New York State Court of Appeals states that municipal funds can not be used for political purposes. The Town Website was created and is maintained with municipal funds.

He further stated that although there were no cases that dealt directly with websites, there were cases that dealt with town newsletters and articles describing town events that are a-political in nature. But he felt the website was a natural extension of the rulings on newsletter, etc.

On the other hand organizations that are a-political and support the interests of the community could be allowed, because they are not politically partisan in nature.

Councilman Knab stated that the board needed to develop a policy on what would be allowable in terms of web links and until that policy was created, no links should be allowed. He felt that school districts and other municipality's policies might be reviewed for more insight on this matter.

#### IX Open Forum

Rick Spencer asked if the use of the town seal on something was the use of a town resource. It was felt that it depended on how it was used.

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Executive Session

Supervisor Udicious made a motion that the Board move into Executive Session for the discussion of litigation and personnel matters. Councilman Knab seconded the motion and the Board was all in agreement.

Time: 7:50 p.m.

The Board returned to regular session and adjourned by common consent.

Time: 8:45 p.m.

Respectfully submitted,

Linda G. Henry  
Town Clerk