

York Town Board Meeting
January 9th, 2024
7:00 p.m.

Present: Supervisor Gerald L. Deming, Council Members: Frank Rose Jr., Amos Smith, and Jason Swede

Absent: None

Others: James Campbell (Town Attorney), Dwight Kanyuck Esq. (Knauf, Shaw LLP), Davies Nagel, Ben Gajewski Executive Director, Genesee Valley Conservancy) Carl Peter (Zoning/Code Officer), Joe McIlroy, George Worden Jr. (Highway Supt), Emily Conable, Henry Fuller, Bill Bacon (Director, Liv. Co. Economic Development), Kirk Richenberg, John Morgan, Stephen Hint, Andy Walton, Becky Lewis, Celia Lewis and Eric Wies (CPL).

Supervisor Deming opened the Town Board meeting at 7:00 p.m. and invited Councilman Smith to lead in the Pledge of Allegiance.

MINUTES:

RESOLUTION offered by Mr. Smith and seconded by Mr. Swede to approve the minutes of the January 2nd Organizational meeting. Voted on and approved, Yes-4, No-0.

BILLS:

RESOLUTION offered by Mr. Swede and seconded by Mr. Rose to approve all claims brought before the Board. Voted on and approved, Yes-4, No-0.

• General Fund Claim	# 1-26	\$ 24,459.83
• Consolidated Water/Sewer	# 1-14	\$ 12,375.27
• Highway Fund	# 1- 9	\$ 2,794.15
• Youth Fund	# 1	\$ 115.30

PRIVILEGES OF THE FLOOR:

1)Dwight Kanyuck-Bill Bacon; Solar Update:

Mr. Kanyuck stated he has been working with Attorney Campbell on review of the White Creek Solar project. White Creek finally submitted their application with the Office of Renewal Energy Siting “ORES”, the first week of December. This project is expected to comply with local zoning, and is considered a Type 2 Solar Energy System, which is defined as a Ground Mounted Solar energy system intended to produce energy for offsite sale to and consumption by one or more customers. Development of Type 2 Solar Systems is not permitted on any property or lot that is designated as prime farmland or farmland of statewide importance. White Creek has asked for interpretations regarding the siting of landscaping, underground cabling, and improvements to existing farm roads on prime farmland on four areas of the proposed project. In such areas where the proposed siting is prohibited under the Zoning Law, they are asking the Town to consent

to a waiver of the requirement. The project is being reviewed pursuant to Executive Law Section 94-c.

Attorney Kanyuck commented that the Town has put in for intervener funds to pay for his and Attorney Campbell's fees for this project, as well as fees for MRB, the consulting engineers. Mr. Kanyuck stated that the review will not be on the schedule until springtime, with permits being issued by the State and the Town conducting compliance certification.

Supervisor Deming stated that we lose the control regarding the permitting process in this project that we had previously with the other two, which Attorney Kanyuck replied we do. Attorney Kanyuck outlined the (4) areas in White Creek's request where designated farmland siting issues arise and suggested the following responses:

AREA 1: Location near the intersection of Dow and Retsof Roads includes 5,500 sq. ft of disturbance of prime farmland, not to include any electrical equipment and is shown outside of the fence line. This area does not include the landscape buffer required to screen the facility. The Town agrees that this configuration is compliant with Zoning Law with regard to prohibition of Type 2 Solar Systems on designated farmland.

AREA 2: Located between Retsof Road and the Railroad tracks and outside of the fence line. Includes the improvement of about 340' of existing farm road and installation of a buried electrical collection line parallel to the existing farm road. To be buried at least three feet below and approximately five feet from the edge of the access road. Discussions will take place with the farmer on the property about whether they plan to continue to farm above the cable, and if so, the buried cable depth/location will be adjusted to ensure compliance with AG & Markets guidelines. The presence of the access road would be compliant with the Zoning Law prohibition of Type 2 Solar Energy Systems on designated farmland because it is not part of the Solar Energy System and would not be in conflict with the Zoning Law. Because the relative impact on the quality of designated farmland taken out of service is less than 5 feet wide parallel to the access road and area above the collection line may continue to farm, the town would support a waiver as long as either: (a) the line is sited within 5 feet of the access road or (b) the area above the collection line is made available for continuation of farming.

AREA 3: The location is east of River Road and north of Rt. 63, includes 1.18 acres of disturbance of prime farmland, not including any electrical equipment and is shown outside the fence line. Does not include the landscape buffer required to screen the facility. The Town agrees this configuration is compliant with the Zoning Law.

AREA 4: This area consists of an existing overhead electrical transmission line corridor cut through a wooded area of designated farmland, that is also used as a private light duty dirt lane for all terrain vehicles. The project would install 3 underground collection lines parallel to the existing overhead transmission lines within the existing utility corridor. The collection line is part of the Solar Energy System so it would not be compliant with

Zoning Law prohibition on siting solar energy systems on designated farmland. Because the designated farmland is very unlikely to be farmed due to the area solely consisting of an existing utility corridor, we believe no farmable designated farmland will be taken out of service. The Town would support a waiver for the collection line, to support the use of an existing utility corridor for the collection line.

Attorney Kanyuck stated with the four areas described, Areas 1 & 3 would not require waivers but for Areas 2 & 4 he would suggest that we could agree to consent to waivers.

Councilman Swede inquired if any other options were available.

Attorney Kanyuck replied with additional options, more disturbance of land for a transmission line would be involved; this way less prime farmland is being disturbed.

Attorney Campbell added he and Attorney Kanyuck have discussed the Project review at length and have tried to balance between very important regulations and those we are able to feel comfortable granting a waiver for. There are items of more significance that we will need to push for.

Attorney Kanyuck stated, thus far White Creek has been working well with the towns and have pushed the developer to work with us. We certainly want to preserve prime farmland.

Supervisor Deming inquired as to what other requests White Creek has made.

Attorney Kanyuck reviewed with the Board the second packet submitted to them this evening regarding White Creek's interpretations or waiver consents to the following:

- 1) Whether the 300' setback requirement to the Hamlet Residential Zoning District applies to underground cables, Mr. Kanyuck feels it complies with the Code; no waiver needed.
- 2) Whether the 15' height limitation for solar energy systems applies to substation components (Mr. Kanyuck feels that since the Code did not address substations as being a part of the definition of Solar Energy Equipment, it complies with regard to height)-equipment may be higher than 15 feet which is a gray area.
- 3) Whether side and rear setback waivers for contiguous parcels owned by different but participating landowners can be applied. (Mr. Kanyuck stated their agreement is more efficiency in less space; there is a compromise to the Town Board to consider if both neighbors sign off on the setbacks); Recommendation: give a conditional consent.
- 4) Noise standards of Zoning Law with regard to compliance with requirements related to pre-existing noise levels. (Mr. Kanyuck stated there is a significant standard for noise and is hesitant for a waiver, we would be abandoning our current noise ordinance and we

want to make sure this project does not affect the adjacent parcels. We must do a complete assessment and look at noise studies. He would not consent to a waiver on this)

Attorney Campbell stated he recently had a conversation with an engineer he works with regarding decibel level standards and was told that a refrigerator is at 55 decibels. Mr. Campbell agrees that he too is not keen on consenting to a waiver on this matter.

Attorney Kanyuck stated that White Creek has thoroughly reviewed the Town's regulations and is trying to work with them as much as possible.

Supervisor Deming inquired as to an expected answer.

Attorney Kanyuck replied he hopes for an answer by February.

Supervisor Deming suggested that Zoning & Code Officer, Mr. Peter and our Planning Board review the solar documentation, for a decision in February.

Mr. Bacon addressed the Board this evening on the Solar payment structure aspect.

Mr. Bacon explained the three ways the Town will get paid:

- 1) Real property taxes on Land Value (non-exempt)
- 2) PILOT amount; \$2,000 per MW (value will decrease over time). The Town's PILOT share will be 13.60%
- 3) The Town's Host Community Agreement share will be 78.60%; \$3,000 per MW

Mr. Bacon stated that \$5,000 per MW in today's market is at the top.

Attorney Campbell added there will be a 1% increase each year for 25 years. The first year the total will be close to \$370,000. Mr. Bacon continued by saying at year 25, the total cumulative share for the Town of York will be \$10.33 million dollars. This project is completely in the York Central School District, so they will be receiving 100% of the portion attributable to the school; \$7.37 million.

Supervisor Deming reported that the Town of Leicester's share will be a little under \$3 million.

Mr. Bacon stated that the Host Agreement funds are solely for the Towns.

Attorney Campbell commented that the towns should receive more of the funds than the school or County because the Town will have obligations like administrative work, inspections and possible enforcement for years to come.

Supervisor Deming stated once again the need for the Planning Board to receive copies of everything and asked Attorney Kanyuck for additional copies for the members.

The Board thanked Mr. Kanyuck and Mr. Bacon for attending this evening's meeting.

2)D.Nagel/B. Gajewski:

Mr. Nagel and Mr. Gajewski asked to speak with the Board tonight regarding a request from current landowners (Mark Occhioni & Davies Nagel) along with the Genesee Valley Conservancy for the Board to consider some of the solar funding for assistance in transferring Little Italy to the Conservancy.

Mr. Gajewski stated that both owners have maintained the nature preserve and want to see that it continues to be used by the public. Due to the fact that the land is privately owned, there are two issues. Currently there is no succession to ensure Little Italy remains open and grant funds are not normally available to private landowners; and is the reason they approached the Conservancy to obtain ownership. They are requesting of the Board financial support in the amount of \$51,000 for assistance in this transfer.

Mr. Nagel stated if the Board is uncomfortable rendering a decision tonight, his committee could reach out to the public to seek support of this, in order for the Town Board to decide at a later date.

Supervisor Deming inquired if the Conservancy has experienced this situation in other towns, which Mr. Gajewski replied different situations have taken place in other towns, with the Conservancy getting parcels off of the tax roll or receiving individual support. We have never asked towns previously for financial support.

Mr. Nagel commented after Mr. Occhioni received the land from the Mine, they discussed putting it into a preserve in order to protect it. Mr. Gajewski added that Mr. Nagel and Mr. Occhioni reached out to the Conservancy over two years ago trying to do just that, preserve and protect Little Italy. Mr. Nagel stated once again as private ownership, they were unable to apply for funding and get legal assistance.

Councilman Smith stated that he would like to hear from the public on whether to financially support Little Italy.

Mr. Nagel commented he is happy to reach out to the community, including York Central School and local businesses.

Councilman Rose asked if funding was obtained who would be receiving it. Mr. Gajewski replied, it would go through the Conservancy directly.

3)Emily Conable:

Ms. Conable asked to speak with the Board about the property she purchased at the corner of Main Street & York Road East, previously the Coleman/Gallo property. It is currently zoned Hamlet Residential and has been since 1910. Ms. Conable is attempting to obtain grant funding through the County and other avenues as a new business owner, but grants require her property to be zoned Hamlet Commercial.

Ms. Conable expressed her desire to ultimately conduct events such as gallery shows for YCS and other small events at the house and a co-op at the old bank location but again zoning must be addressed before funding can be applied for.

Zoning & Code Officer, Mr. Peter reported that Emily has a total of 3 parcels. Ms. Conable stated that just the bank parcel needs the zoning changed to Hamlet Commercial.

Mr. Peter recommended that all three (house, bank, and vacant land) should be Hamlet Commercial.

Supervisor Deming and the Board briefly discussed the current zoning of Hamlet Residential and questioned how it ever became that because of the past usage, it should have been Hamlet Commercial years ago. Supervisor Deming stated because of a potential zoning change, if the Town Board wishes to proceed, we would have Attorney Campbell prepare the necessary wording by way of a Local Law.

Mr. Peter stated the corner where the old York Landing was & where Swedes' is located, is Hamlet Commercial and suggested including one additional structure (2 family residence) owned by Scott Chauncey as well in the updates.

Supervisor Deming asked the Board if they wish to proceed, which they all replied they would.

RESOLUTION offered by Mr. Smith and seconded by Mr. Swede authorizing Attorney Campbell to prepare the Local Law wording changing the Hamlet Residential to Hamlet Commercial distinction for (3) properties owned by Emily Conable and (1) 2-family parcel owned by Scott Chauncey. Voted on and approved, Yes-4, No-0.

4)Mr. Richenberg asked to speak with the Board this evening on two topics; Water District and Solar funds:

Q-Regarding Solar, is there any possibility for input from the public on the waivers?

Attorney Campbell replied the public comment period will be coming to ask questions and make comment on the White Creek Solar Project itself, but may not be specific on the waiver(s) items.

Q-Considering there are 8 different possible waivers, the public should have some input. Will the information discussed tonight be available?

Supervisor Deming answered that we have two extra copies of Attorney Kanyuck's presentation, and he will be sending additional copies to us for the Planning Board as well.

Q-What is the status of the grant funding for the Flats Road Pump Station?
Supervisor Deming responded that we did not get the grant funding and we are still waiting on the AKZO funding.

Q-What is the status of the County water?
Supervisor Deming replied we are waiting to hear from the Attorney General's office and DEC and hope to have an answer by the end of January.

Q-What is the status of the Piffard Water project...is it done yet?
Mr. Worden answered that it is not completed as of yet. With the cold weather upon us, I am hesitant to alter any piping right now.

Q-With the issue of one of the employees not being able to pass the sewer test, is there a pay differential?

Supervisor Deming responded that there is a pay differential and once all certifications have been met, an increase will take place. Mr. Deming added although certification has not been achieved yet, the employee is a very good worker. Mr. Worden agreed as well and mentioned that he will be able to re-test again in 3 months.

Q-Is there a possibility of putting solar on the Highway roof?
CPL Engineer, Mr. Wies replied, it would be his recommendation to avoid that.

Q-Are there any structural additions later?
Mr. Wies responded that was not part of the design.

Q-Any thoughts for an electric pickup?
Supervisor Deming and Mr. Worden answered no, not at this time

Q-Town Board thoughts on filling the Board vacancy?
Supervisor Deming stated that it will be discussed this evening.

HIGHWAY REPORT:

Mr. Worden reported the following for the Highway Department:

- We installed 4-way stop signs on Chandler & Retsof Roads...message board signs through the County were not available yet. Mr. Worden suggested adding an update to the website which Clerk Harris stated she will do.
- Salt Barn is erected, and CPL is conducting the inspections
- We have been plowing and salting as needed

- Had an issue with the 2018 1-ton which has now been rectified.

WATER/SEWER REPORT:

Mr. Worden reported the following for the Water & Sewer Department:

- The contractor unloaded more supplies for the UV project
- The Water/Sewer personnel have been conducting routine maintenance

NEW BUSINESS:

1)CPL:

a) Highway Garage Roof award:

Mr. Wies reported that three bids were received for the Highway Garage Roof Replacement Project. The Town had two options.; #1- Accept the base bid only (leaving the existing roof membrane & insulation in place) or #2- Accept the base bid & alternate #1 (removal of existing membrane insulation).

CONTRACTOR	BASE BID	ALT. 1	TOTAL w/ALT.
1)Whitney East, Inc	\$304,500	\$36,500	\$341,000
2)RMG Custom Metal, LLC	\$289,510	\$53,390	\$342,900
3)Universal Builders Gen. Contractors, Inc.	\$394,759	\$68,216	\$462,975

RESOLUTION offered by Mr. Swede and seconded by Mr. Smith to accept the Base Bid submitted by RMG Custom Metal, LLC in the amount of \$289,510. Voted on and approved, Yes-4, No-0.

b) Retsof Sewer District Collection System:

Mr. Wies stated that 5 bids were received for the Retsof Sewer District Collection System Improvements Project:

Gen.Valley Construction, LLC
 Randsco Pipeline, Inc
 Villager Construction, Inc
 Rochester Earth, Inc
 Morsch Pipeline, Inc

Bidder	Base Bid A	Bid A-Alt 1	Bid A-Alt 2	Bid A w/1 &2	Base Bid B
Morsch Pipe.	\$1,666,265	\$1,749,890	\$1,747,865	\$1,831,490	\$2,057,605
Villager Con.	\$1,650,230	\$1,727,730	\$1,702,230	\$1,779,730	\$ 306,000

Gen. Valley Con.	\$ 830,450	\$ 880,450	\$ 877,950	\$ 927,950	\$ 131,750
Randsco Pipe.	\$1,299,652	\$1,374,652	\$1,354,652	\$1,429,652	\$ 85,000
Rochester Earth	\$1,704,275	\$1,932,275	\$1,967,775	\$2,195,775	\$ 263,500

Mr. Wies reported that Genesee Valley Construction was low bidder on both base bids plus the 2 alternates and recommends awarding both projects to them. Mr. Wies also mentioned that we estimated the entire project cost for these improvements to be in the neighborhood of \$1.77 million and we were pleased with the bid results, coming in under budget.

RESOLUTION offered by Mr. Smith and seconded by Mr. Rose to award Base Bid A and Alternates 1 & 2 for the Retsof Sewer District Collection System Improvements contract to Genesee Valley Construction, LLC in the amount of \$927,950 and award Base Bid B to Genesee Valley Construction for \$131,750 under a separate agreement. Voted on and approved, Yes-4, No-0.

2)Petty Cash Audit:

Supervisor Deming stated that he conducted earlier this evening the required yearly audit of the Town Clerk and Water Petty cash boxes and found both to be accurate.

RESOLUTION offered by Mr. Smith and seconded by Mr. Swede to approve the yearly Town Clerk and Water Petty cash audit submitted by Clerk Harris. Voted on and approved, Yes-4, No-0.

3)Battery Energy Storage System Regulation (“BESS”):

Attorney Campbell stated that the Board received from him a draft of the Battery Energy Storage System Local Law that he prepared back in 2022. Our current moratorium expires in April or May and he wanted to make sure we have enough time to take appropriate action before it expires. Mr. Campbell commented that we need to clean up wording and then schedule a Public Hearing for comments.

The Board discussed the possibility of creating a new local law, to not permit altogether, which under 94-c, the State would not allow.

Mr. Richenberg commented after having conversations with his son who is an engineer, Battery Energy technology is changing so quickly, we must stay on top of this information. Supervisor Deming agreed with Mr. Richenberg that it is imperative that we stay on top of the ever-changing regulations. Mr. Deming asked that Attorney Campbell send the proposed Local Law to the Planning Board members and Lance Brabant as well.

Attorney Campbell stated the Town needs to take some action because we do not want to be put in a position of not having proper regulations.

4)Water Adjustment Request:

a-Abbey of the Genesee:

Supervisor Deming reported that we received a letter from the Abbey of the Genesee informing us of a ruptured water line they experienced and now are requesting a water adjustment for the January billing cycle.

January 3rd, 2024

Mr. Gerald L. Deming
2668 Main Street
P.O. Box 187
York, NY 14592

Dear Mr. Deming,

Due to a rupture in one of our water lines, the water bill for the Abbey of the Genesee was approximately triple of what it normally would be for the past billing period. On behalf of the monastery I am requesting that the township kindly consider applying a credit to that bill. We have maintained a great deal of utility infrastructure here at the monastery at significant expense for over seventy years and I would imagine this has relieved that burden from other organizations over this expanse of time.

Sincerely,

A handwritten signature in black ink that reads "John Vianney Hamill" with a large "J" and "H" and a smaller "V" and "H" below it.

Fr. John Vianney Hamill, O.C.S.O.

cc: via email to yorksupr@yorkny.org

Mr. Worden explained that they have a 2" line at the Monastery and questioned if they have ever received an adjustment prior, which he thought they had. Clerk Harris stated after the request arrived for the adjustment, she asked Water Billing Clerk, Mrs. Burger if one had already been granted, and was told there was no notation in the account for such.

Supervisor Deming reported that 1,550,000 gallons of water was billed this quarter totaling \$8478.50 and if the Town Board was to grant the adjustment, it would be a savings of \$2,129.15 making the adjusted bill \$6,349.35.

After some discussion...

RESOLUTION offered by Mr. Smith and seconded by Mr. Swede to approve the water adjustment to the Abbey of Genesee pending verification that no previous adjustment had been granted. Voted on and approved, Yes-4, No-0.

****Clerk Harris located in the minutes of September 27, 2001 a request by the Abbey of the Genesee for a water adjustment which was approved. The Town Board will not be able to grant any further adjustment per Town policy.**

5)Town Board vacancy replacement:

RESOLUTION offered by Mr. Smith and seconded by Mr. Rose to appoint Lynn Parnell to fill the current vacancy on the York Town Board until December 31, 2024. Voted on and approved, Yes-4, No-0.

6)Zoning Violations:

Mr. Campbell addressed once again the zoning violation on Genesee Street (Rt. 63), the Davis property. As we discussed previously, the owner of the property passed away last year, with his name being the only name on the deed. It presents unusual problems for us not being able to bring someone to court for the current violations. The estranged wife does not seem to want this parcel, but we are trying to seek pro-bono assistance for her, but unfortunately things are quite complicated. Attorney Campbell commented, this is more than an unsightly issue, there are health ramifications as well as issues the neighbors must endure.

Mr. Campbell explained the possibility of the Town to conduct a cleanup (or contract for it) and then add such fees to the Town/County tax bill. Attorney Campbell stated that the Town does have a Local Law on file from 2008, outlining unsafe buildings. The structure itself will certainly need attention but we first need to address the outside of the parcel.

Councilman Rose agreed we do need to move forward, and Supervisor Deming added this is without question a safety and health matter that must be rectified.

Councilman Swede inquired, what specifically would we present to the family of Mr. Davis.

Attorney Campbell replied there will be a list to review with the family, including deadlines. If they are unable to assist, we will then move forward with the clean up process and post charges onto the property tax bill.

Supervisor Deming stated that he feels terrible for the neighbors who have endured the mess over the years.

RESOLUTION offered by Mr. Smith and seconded by Mr. Rose authorizing the Town Attorney to proceed with property clean up for the Davis property, utilizing NYS Town Law Section 64 (5-a). Voted on and approved, Yes-4, No-0.

“64(5-a): provides that a town may require owners of real property to remove “brush, grass, rubbish or weeds” or to spray “poisonous shrubs or weeds”. Where the owner fails to perform the task, the Town may arrange for the required action and the total expense of such action may be assessed by the Town Board on the real property on which such brush, grass, rubbish, weeds or poisonous shrubs or weeds were found, and the expense so assessed shall constitute a lien and charge on the real property...and shall be collected in the same manner and at the same time as other town charges.

ADJOURNMENT

RESOLUTION offered by Mr. Smith and seconded by Mr. Rose to adjourn the Town Board meeting until February 13th. Voted on and approved, Yes- 4, No- 0.

The Town Board meeting closed at 9:11p.m.

Respectfully Submitted,
Christine Harris
Christine M. Harris, Clerk