

# REGULAR TOWN BOARD MEETING

January 27, 2010

## PLEDGE OF ALLEGIANCE:

### I. CALL TO ORDER: (7:00 P.M.)

#### Board Members Present

Gay H. Lenhard, Supervisor  
David F. Feeney, Councilman  
Thomas J. Cole, Councilman  
Malcolm E. Perry, Councilman  
Thomas J. Uschold, Councilman

#### Others Present

Lynn A. Bianchi, Town Clerk  
Daniel Schum, Town Attorney  
David Widger, Highway Superintendent  
Audrey Cooper, NYS Attorney General's Office

#### Purpose of the Meeting

To audit claims, act on monthly reports and remittances, and to transact such other business which may legally come before said meeting.

**7:00 p.m.—Public Hearing: Introductory Local Law #2-2010, amending Chpt. 210 of the Code of the Town of Ogden, proposing to remove condominiums.**

**Lynn Bianchi, Town Clerk**, read the Legal Notice.

**Supervisor Lenhard** declared the public hearing open and asked if anyone wished to address the Board.

**Councilman Uschold:** Dan, could you describe exactly what a condominium is?

**Dan Schum, Town Attorney:** A condominium is an ownership of a percentage of a piece of property as opposed to a description of an area. It can be in a building that is multi-storied or a one-story building. You own a particular portion of that building, but it may not have any physical contact with the ground. In a condominium development you also own an undivided interest in the remaining lands. It is a form of ownership that is somewhat less desirable and because of that, in the assessing of condominiums, you cannot assess the collective value of all of the units any greater than you can assess the full value of the parcel in which the units are a part of. You take the value of the whole and divide it among the number of units. It usually results in a lower assessment, which results in a lower tax.

**Supervisor Lenhard:** They have to be labeled condominiums.

**Dan Schum:** Yes, it is a form of sale. It is a particular type of title that you get.

There being no further questions, concerns or comments, **Supervisor Lenhard** declared the public hearing closed.

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**II. APPROVAL OF THE MINUTES:**

None

**III. PRIVILEGE OF THE FLOOR:**

**Audrey Cooper, NYS Attorney General's Office:** The Attorney General's Office has many different roles, but with respect to charities we have an oversight role with professional fund-raisers and solicitation of donations from the public. Whenever there is a trust or an estate that has a charitable beneficiary, the Attorney General's Office is required to have notice of the accounting for that trust and estate. We can review it and file objections to things like attorney's fees or executor's commissions. It is an important role because some charities are too small and cannot afford to have general counsel or legal departments on their staff. We fill that role, especially for smaller charities. Large charities and not-for-profits are very reluctant to file objections against sensitive things as attorneys' fees because they feel if they get a reputation for doing that, that attorneys will maybe try to talk their clients out of leaving money to that particular charity.

In the last ten years the Rochester Regional Office has indirectly recovered over \$4,000,000 for not-for-profits. So, our role is important. It is not an insignificant amount of money in today's economic climate. Not-for-profit organizations are having problems with people being more reluctant to donate money and keeping people. Giving to established organizations that have a track record of accomplishing their purpose is better than supporting a lot of smaller organizations. I discourage people who want to start not-for-profit organizations because the learning curve is very steep, and there is a lot of legal and regulatory work that goes into it in order to be in compliance.

There are a lot of scams, and I discourage people from giving money over the telephone with their credit cards. It is just too risky. We have a great public website ("Charities") that pulls up our report called "Pennies for Charity" which shows how much of the donated money goes to their mission and how much is administrative. The Better Business Bureau has come up with 35% as an acceptable administrative overhead.

**Supervisor Lenhard:** How do some of these organizations do it with 6 or 7%?

**Audrey:** They register with the Attorney General's Office and have to send annual financial reports.

**Dan:** With volunteer help.

**Councilman Uschold:** I spent many years on the Board of Directors for a very small agency where our total annual budget was \$100,000. or less. We had an employee. Fifty percent of the employee's time was administrative, but 50 percent of it was program.

**Audrey:** A lot of charities depend on professional fund raisers, and they charge a lot. If you want to give money to an established charity, get the information directly from the charity, send them a check and cut out the middle man. You will have some assurance that the greater part of your dollars are going to their mission.

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Donors who make substantial gifts often attach restrictions. Sometimes they make gifts in the form of endowments which basically says you can't touch the principle, but you can use the income for whatever your mission is. There is some case law that suggests donors have a legal right to enforce those restrictions. One of the Attorney General's missions is to make sure that money donated for a particular purpose is used for that purpose.

Does anyone have any questions?

**Councilman Uschold:** Do you have the website title?

**Audrey:** Type in New York State Attorney General and it will come up. It has a lot of useful information. We do not represent the general public in civil cases, per se, but when we get a pattern of complaints about a particular establishment, then the Attorney General's Office moves on behalf of the consumers of the State of New York.

**Dan Schum:** I have referred clients to the Consumer Frauds Bureau of the NYS Attorney General's Office.

**Audrey:** People can be all against government regulations, but if we didn't have any, the crooks would be running the country. We get a lot of complaints about homeowners' associations. This is very problematic because we can't really do a lot about them, unless everybody in the homeowners' association gets together and files complaints.

**Supervisor Lenhard:** I thought homeowners' associations were regulated by the State? **Dan:** They are formed by the state, but once they are formed, the people who have a unit, have a vote, and they vote the board. Once the board gets voted in, they establish the budget.

**Audrey:** We try not to get too involved with social organizations or membership corporations because we have limited resources and they exist to benefit the membership and not the public at large. I often tell people to never let it get personal and never let personalities get in the way of the mission if they serve on not-for-profit boards.

Thank you all very much.

#### **IV. REPORTS AND REMITTANCES FROM TOWN OFFICERS:**

None

#### **V. TOWN AUDITS:**

##### **Resolution #72-1/10**

Introduced by Councilman Cole  
Seconded by Councilman Feeney

**BE IT RESOLVED**, that the General Fund, Part-Town Fund, Highway Fund, Drainage Fund, Lighting District Funds and Sewer District Funds being vouchered and submitted for audit, chargeable to the respective funds be approved:

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General Fund	\$ 211,595.75
Part-Town Fund	11,001.14
Highway Fund	201,664.42
Capital	1,717.20
Sewer Funds	<u>174,427.07</u>

**TOTAL..... \$ 600,405.58**

Vote of the Board:

Ayes: Cole, Feeney, Lenhard, Perry, Uschold

Nays: None

**VI. CORRESPONDENCE RECEIVED AND FILED:**

1. Copy of letter to Commander Mahoney, Sons of the American Legion, from Doug Nordquist, Chief of Police, thanking the Sons of the American Legion for providing food and gift certificates to needy people.
2. Copy of letter to Mr. & Mrs. Boughter from Doug Nordquist, Chief of Police, thanking them for donation to DARE Program.
3. Copy of letter to Mr. & Mrs. Lenhard from Doug Nordquist, Chief of Police, thanking them for donation to DARE Program.
4. Copy of letter to Mrs. Marilyn Burley from Doug Nordquist, Chief of Police, thanking her for donation to DARE Program.
5. Letter to Supervisor Lenhard from Dennis Elsenbeck, National Grid, enclosing National Grid Project courtesy notice.
6. Copy of letter to Hon. Jaclyn Brilling, State of New York Public Service Commission from Lisa Zafonte, Niagara Mohawk Power Corp. d/b/a National Grid, enclosing corrected sheets for previously filed application.

**VII. REPORTS FROM TOWN OFFICERS:**

**Gay H. Lenhard, Supervisor**

1. I had a meeting with a buyer of the Caldwell Manufacturing building. He has two potential lessees.
2. I went to the last DARE graduation for this semester at the Munn School last Thursday. The Chief and I are going to meet with the Superintendent of Schools to see if they will share some of the financial responsibility of that program.
3. Saturday I went to the grand opening of Tina Cimino's studio on Buffalo Road. I was very impressed with her products.
4. I applied for a Monroe County Community Development Block grant to have a handicap accessible sidewalk put in back of this meeting room. People kept falling no matter how many signs we put up. Automatic door openers may also be installed. This will solve a bad problem.
5. Today we had a meeting with Andy Gallina who is purchasing part of the Rivoli property near Rt. 531 for a Sheriff's substation.

**Thomas J. Cole, Councilman**

No report.

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**David F. Feeney, Councilman**

No report.

**Malcolm E. Perry, Councilman**

1. Bernie Voorheis passed away. He had been going to the Senior Center for a couple of years. I know his son, Brian, and his grandchildren. He was a gentleman and bequests are coming in left and right in his honor and memory. Scott Caton's eulogy in the Suburban News was just terrific. The community has lost a good guy. The contributions will be going to SAHARO.

**Thomas J. Uschold, Councilman**

No report.

**David H. Widger, Highway Superintendent**

1. We have been working on our road program. We have surveyed and rated every road in the Town.
2. We have not had a bad fall or winter which has helped save money on salt.
3. I have a request from the State D.O.T for a cost report. They are looking to save money on their snow and ice contracts

**Lynn A. Bianchi, Town Clerk**

1. I have compared my revenues over the last five years, and I am pleased to report that 2009 was our best year. We had a large increase in passport revenues. We have been very fortunate that many of our residents and neighboring towns have chosen our office to process their passport applications. Many comment on our flexibility because we do not require an appointment.

**Daniel G. Schum, Town Attorney**

1. I finished up some resolutions on Blackwater Crossing.
2. I am finishing up some intermunicipal agreements with BOCES and the school district.
3. I got a check today from the Gilmore Family for their share of the Town and County taxes.
4. Today I got movement from the County Law Department on the Widger Road tank site. A new attorney has been assigned. They are going to take the tower down because it is not structurally sufficient for future needs. They will put up a new tower and do a new lease. It will move forward very quickly now.

In 1953 my dad and Bernie Voorhees started the "Biddy Basketball" league in the little gymnasium that is now in the Trowbridge Apartments. I was 5 years old, and Bernie played for the Rochester Royals as a professional. He was there teaching us how to play basketball. He was a great person.

**VIII. UNFINISHED BUSINESS:**

None

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**IX. NEW BUSINESS:**

**Resolution #73-1/10**

Introduced by Councilman Perry  
Seconded by Councilman Uschold

**WHEREAS**, there is a need for limited part-time help in the Recreation Department.

**NOW, THEREFORE BE IT RESOLVED:**

**SECTION I:** That the Town Board of the Town of Ogden does hereby approve **rehiring** the following, effective January 16, 2010:

Francis Bonn	\$7.25/hour	Recreation Attendant (Youth Programs)
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Vote of the Board:

Ayes: Cole, Feeney, Lenhard, Perry, Uschold  
Nays: None

**Resolution #74-1/10**

Introduced by Councilman Perry  
Seconded by Councilman Uschold

**WHEREAS**, there is a need for limited part-time help in the Recreation Department.

**NOW, THEREFORE BE IT RESOLVED:**

**SECTION I:** That the Town Board of the Town of Ogden does hereby approve **hiring** the following, effective January 25, 2010:

Albert LaVigueur, Jr.	\$8.91/hour	Recreation Attendant (Cleaner/Desk Attendant)
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Vote of the Board:

Ayes: Cole, Feeney, Lenhard, Perry, Uschold  
Nays: None

**Resolution #75-1/10**

Introduced by Councilman Uschold  
Seconded by Councilman Cole

**INTRODUCTORY LOCAL LAW #2-2010**

**Amending Certain Provisions of Chapter 210 of the Code of the  
Town of Ogden**

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**WHEREAS**, the Town Board did hold and conduct a public hearing at 7:00 p.m. on the 27<sup>th</sup> day of January 2010 to consider Introductory Local Law #2-2010; and

**WHEREAS**, all interested persons were heard concerning the subject matter thereof; and

**WHEREAS**, the Town Board feels that the enactment of Local Law #2-2010 will be in the overall best interest of the Town of Ogden.

**NOW, THEREFORE BE IT RESOLVED:**

**SECTION I:** That the Town Board does hereby enact Local Law #2-2010, which local law amends Chapter 210 of the Code of the Town of Ogden, as follows:

**§ 210-6. Definitions.**

**Delete**CONDOMINIUM

**§ 210-35.1 SC Senior Citizens Housing District.**

B. (1) (a) Senior Apartments, Assisted Living or Independent Care Facilities and high density single-family homes for Senior Citizen dwellings by persons 55 years or older.

Vote of the Board:

Ayes: Cole, Feeney, Lenhard, Perry, Uschold  
Nays: None

**Resolution #76-1/10**

Introduced by Councilman Perry  
Seconded by Councilman Cole

**RESOLVED**, that the Supervisor, Gay H. Lenhard, be and hereby is authorized to sign the Health Consultant Services Participant Agreement between the Town of Ogden and the Child Care Council for the “Before and After School Program.”

Vote of the Board:

Ayes: Cole, Feeney, Lenhard, Perry, Uschold  
Nays: None

**Supervisor Lenhard:** The child care area is under a lot of state regulations. Peter is making sure that we are following all the rules, and this is one thing that has to be signed by me.

**Resolution #77-1/10**

Introduced by Councilman Cole

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Seconded by Councilman Feeney

**RESOLVED**, that the Supervisor be and hereby is authorized to sign the Ogden Police Club contract extending the terms of the 2011 contract through December 31, 2012.

Vote of the Board:

Ayes: Cole, Feeney, Lenhard, Perry, Uschold

Nays: None

**Supervisor Lenhard:** With all that I have heard about other unions, I have to compliment the Ogden Police Club on their willingness to do something in 2012 to help be part of the solution in these hard economic times.

**Resolution #78-1/10**

Introduced by Councilman Uschold

Seconded by Councilman Feeney

**WHEREAS**, the Town Board of the Town of Ogden did heretofore adopt Resolution #154-5/09, being a resolution and Notice of Determination declaring a Negative Declaration upon the application of Forest Creek Equity Corp. for the rezoning of certain lands on Brockport-Spencerport Road and Washington Street consisting of 26.79 acres from R-1 Single-Family Residential to R-B Restricted Business; and

**WHEREAS**, the applicant has modified its site plan and proposal for the use of the property and has now requested that the rezoning consists of a parcel of land consisting of 18.44 acres, all as more fully set forth in the map, plan and legal description presently on file with the Town Clerk; and

**WHEREAS**, this amendment to the application constitutes a substantial change in the application.

**NOW, THEREFORE BE IT RESOLVED** by the Town Board of the Town of Ogden, as follows:

**SECTION I:** That Resolution #154-5/09 be and the same is hereby rescinded in its entirety.

Vote of the Board:

Ayes: Cole, Feeney, Lenhard, Perry, Uschold

Nays: None

**Resolution #79-1/10**

Introduced by Councilman Uschold

Seconded by Councilman Perry

**WHEREAS**, the Town Board did heretofore introduce Resolution #155-5/09; and

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**WHEREAS**, said motion was thereafter tabled by the Board and has yet to be acted upon by the Board.

**NOW, THEREFORE BE IT RESOLVED** by the Town Board of the Town of Ogden, as follows:

**SECTION I:** That Resolution #155-5/09 be and the same is hereby withdrawn.

Vote of the Board:

Ayes: Cole, Feeney, Lenhard, Perry, Uschold

Nays: None

**Resolution #80-1/10**

Introduced by Councilman Uschold

Seconded by Councilman Feeney

**WHEREAS**, Westampton Properties, LLC is the owner of lands located on Brockport-Spencerport Road near Rt. 36, consisting of 18.44 acres; and

**WHEREAS**, Westampton Properties, LLC has requested that the Town Board of the Town of Ogden consider the rezoning of such lands, all as more particularly hereinafter described; and

**WHEREAS**, pursuant to the provisions of Article 16 of the Town Law, the Town Board of the Town of Ogden has been granted the power and authority to establish and amend zoning districts within the Town of Ogden; and

**WHEREAS**, pursuant to the provisions of Town Law and in order for the Town Board to consider such rezoning application, the Town Board must hold and conduct a public hearing thereon at which public hearing all interested persons may be heard concerning the proposed rezoning; and

**WHEREAS**, due legal notice of the conduct of such public hearing must be given by publication and posting as required by law; and

**WHEREAS**, the Town Board desires to hold and conduct such public hearing upon the request of Westampton Properties, LLC; and

**WHEREAS**, the Town Board will review at such public hearing the environmental effects arising from the proposed rezoning and uses of the property.

**NOW, THEREFORE BE IT RESOLVED** by the Town Board of the Town of Ogden, Monroe County, New York, as follows:

**SECTION I:** That the Town Board of the Town of Ogden shall hold and conduct a public hearing on the 24<sup>th</sup> day of February 2010 at 7:00 p.m. at the Ogden Community Center, 269 Ogden Center Road, Spencerport, New York to consider the rezoning of certain lands owned by Westampton Properties, LLC, as follows:

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- (a) To rezone 18.44 acres from R-1 Single-Family Residential to RB Restricted Business

as said parcel is more particularly hereinafter described.

**Description of Blackwater Crossing Office Park  
18.44 Acres**

**TO BE REZONED FROM R-1 TO RB**

**Brockport-Spencerport Road and Washington Street  
Town of Ogden, New York**

All that tract or parcel of land situated in the Town of Ogden, County of Monroe, State of New York, being part of Town Lot 39, Township 3, Range 1, of the Mill Seat Tract and Phelps & Gorham Purchase, and being more particularly described as follows:

Commencing at a point, the southwesterly property corner of N/F David Piccirillo, T.A. #085.04-02-016 and the southeasterly property corner of N/F Westampton Properties, LLC, T.A. #085.04-02-010 and the northerly highway boundary of Brockport-Spencerport Road being the point of beginning (P.O.B.); thence,

1. North 88°00'19" West, a distance of 166.61 feet to a point; thence,
2. North 78°31'23" West, a distance of 154.57 feet to a point; thence,
3. North 88°11'24" West, a distance of 244.75 feet to a point; thence,
4. North 01°40'41" East, a distance of 742.32 feet to a point; thence,
5. North 88°01'19" West, a distance of 328.50 feet to a point; thence,
6. North 01°40'41" East, a distance of 58.57 feet to a point; thence,
7. South 88°07'19" East, a distance of 297.00 feet to a point; thence,
8. North 01°40'41" East, a distance of 132.00 feet to a point; thence,
9. South 88°07'19" East, a distance of 912.01 feet to a point; thence,
10. South 01°39'44" East, a distance of 746.83 feet to a point; thence,
11. North 88°00'19" West, a distance of 159.17 feet to a point; thence,
12. North 01°59'41" East, a distance of 25.75 feet to a point; thence,
13. North 88°01'19" West, a distance of 200.00 feet to a point; thence,
14. South 01°59'41" West, a distance of 240.45 feet to the point of beginning.

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**SECTION II:** That the Town Clerk shall give due notice of such public hearing by publication and posting as required by law and shall give notice of such public hearing all as may be legally required by Section 264 of the Town Law.

**SECTION III:** That at such public hearing all interested persons shall be heard concerning the proposed rezoning and the environmental effects of the proposing rezoning and used of the property.

Vote of the Board:

Ayes: Cole, Feeney, Lenhard, Perry, Uschold

Nays: None

**X. ADJOURNMENT:**

**Resolution #81-1/10**

Introduced by Councilman Feeney

Seconded by Councilman Uschold

**RESOLVED**, that the Regular Meeting of the Town Board of the Town of Ogden be and hereby is adjourned to Work Session at 7:44 p.m., at which time the public was invited to attend, and hereby is adjourned at 8:30 p.m.

Vote of the Board:

Ayes: Cole, Feeney, Lenhard, Perry, Uschold

Nays: None

Respectfully submitted,

LAB/dmk

Lynn A. Bianchi, Town Clerk