

REGULAR MEETING, TOWN OF LIVONIA

January 17, 2013

A regular meeting of the Town Board of the Town of Livonia, County of Livingston and the State of New York was held at Livonia Town Hall, 35 Commercial Street, Livonia on January 17, 2013.

PRESENT: Eric Gott, Supervisor
Andy English, Councilmember
Matt Gascon, Councilmember
Frank Seelos, Councilmember
Colleen West, Clerk
Jim Campbell, Attorney, Town of Livonia

ABSENT: Angela Grouse, Councilmember

OTHERS PRESENT: Several Residents.

The meeting was called to order by Supervisor Gott at 7:00 PM.
Councilmember Seelos led the pledge.

PROPOSED LOCAL LAW #1-2013

Following distribution of the proposed Local Law to the Board members in December 2012, Notice of said Public Hearing was duly published in the Livingston County News on January 3 and January 10, 2013, with same being posted on the same date at the Town Hall, on the Town web site and at the Livonia Post Office.

Clerk West read the Notice of Hearing for the record.

Supervisor Gott asked Attorney Campbell to explain the provisions included in the proposed local law. Attorney Campbell stated that as we discussed last month, the town board periodically makes changes to the code. As we see the code applied, we make note of things that work or don't work, deficiencies, and inconsistencies, then we draft recommendations to present to the board to address these areas. Attorney Campbell explained the items that are addressed in this proposed local law:

Fire safety and property maintenance: This law reduces the frequency of certain inspection intervals to be in line with state requirements and to relieve some of the burden on the code enforcement department. This will help us to be more efficient and save costs.

Excavation: We found that although the word excavation is mentioned in the code, the term was not heretofore defined. The proposed law includes a definition of the term.

Permitted uses and non-permitted uses: Attorney Campbell explained that if a particular use is not expressly permitted in a zoning district, then it is deemed to be a non-

REGULAR MEETING, TOWN OF LIVONIA

January 17, 2013

permitted use. This idea is re-affirmed in multiple areas of the code in the proposed law.

Pre-existing, non-conforming uses and buildings: Attorney Campbell reported that there has been some confusion as to how parts of the code were written in reference to non-conforming uses and buildings. We knew what we wanted to accomplish, but it was not clear to others reading the code. This proposed law includes language that will hopefully be clearer to others.

Attorney Campbell reported that whenever we propose to make changes to zoning, it is required that we refer those changes to the county planning board for comment. We just received notification that they voted to approve the changes, with advisory comments:

- Notify surrounding municipalities. (This has already been done.)
- Before the proposed law is adopted, the town must go through the long form SEQR process.
- The town should consider amending the language regarding accessory uses. Attorney Campbell wants to talk with Heather Ferraro or Angela Ellis about this for clarification.
- Farming activities could be considered excavation. Attorney Campbell stated that this point is worthy of consideration before the local law is adopted.

MOVE TO SCHEDULED PUBLIC HEARING

Supervisor Gott declared the Public Hearing open at 7:08 PM.

Phil Recchio, 26 Summers St. – Mr. Recchio read the proposed law and had a question about excavation. He moved a concrete pillar in his yard this year. Would that have been excavation? Would that now be illegal? Attorney Campbell stated that yes, that would be considered excavation, however this law does not prohibit excavation, it simply regulates it. It is permitted in certain instances.

Phil Recchio – If he has sold his mineral rights, or leased them for gas drilling, would that be explicitly not permitted? Attorney Campbell replied that this local law is not a ban on gas drilling. That particular type of activity is not permitted under our code already, regardless of this local law. The fact that a property owner has signed those rights over to a gas company does not change what is permitted or not permitted. Companies lease or purchase those rights subject to what is allowed in that area.

Cindy Carestio, Hemlock – What is incentive zoning, and what is the variance process for that? Attorney Campbell explained that incentive zoning is not the same thing as applying for a variance, as defined by the state. He explained that there is a section in our code already regarding incentive zoning, which provides a mechanism for someone to

REGULAR MEETING, TOWN OF LIVONIA

January 17, 2013

petition the town board and propose an incentive that would benefit the town and/or townspeople in exchange for approving a deviation from the code. The town board has the right to refuse outright or to consider the proposal. If they decide to consider it, it is akin to a legislative act and requires a period for public input.

Cindy Carestio – Have transmission lines or compressor stations been discussed?

Attorney Campbell replied that the committee talked about storage of gas and waste, but transmission lines and compressor stations were not discussed. We have transmission lines in the town now, which tend to run across easements. As for the compressor stations, they would have to go through a pretty stringent design criteria, which would address noise, lighting, traffic, etc. Storage of waste and gas is not allowed in the current code.

Bob Nilsson, Harder Rd., Hemlock. – Bob thanked the board for taking the time to look at this issue and try to protect the town. We wanted to go on record that he would rather see an outright ban on hydrofracking. He also expressed his wish that the town board look at reducing their energy dependency by making use of energy alternatives.

Jamie Carestio, Clay St., Hemlock – Jamie thanked the board for their consideration and for welcoming anyone who wished to speak. He also expressed his preference for a ban on hydrofracking. He asked the board to continue to educate themselves on this topic. Attorney Campbell remarked that this local law is not about protecting the town against the industry of hydrofracking. The belief of the town board and the committee is that hydrofracking is not currently allowed. This local law contains tweaks that we want to make to the code as previously explained.

Scott Williams, 105 Kensington Court – What is the difference between the existing code and a ban? What are the reasons for not enacting a ban? Attorney Campbell stated that it is a legal strategy question. As a lawyer, he feels that the current code has been in existence for some time without any challenges, which gives it greater validity. We do not know if the bans that have been enacted in other municipalities will hold up in court. By enacting a ban now, it could be construed that we are trying to regulate the industry of hydrofracking. As the code stands now, they cannot dispute that and say that we are trying to deal with them unfairly or single them out.

Supervisor Gott stepped in to say that he feels we are getting off topic. This is a Public Hearing on the proposed local law. If anyone wished to discuss another topic, they will be heard during the Open Session. He asked if there were any more comments specifically on this proposed local law.

Carol Williams, 105 Kensington Court – Carol stated that she appreciates the time the

REGULAR MEETING, TOWN OF LIVONIA

January 17, 2013

town board has taken to look at this. She thinks it is wise to take the time to look at the excavation part in terms of farming. Attorney Campbell remarked that farming is protected and regulated by New York State Department of Ag and Markets almost regardless of what we put in our code, but it is still worth looking at.

Rick Osicki, Hemlock – Does this restrict me from selling my mineral rights? Attorney Campbell replied that if he were selling any mineral rights he would want to be careful. Let the buyer beware. Generally these sellers will have reviewed the regulations.

There were no further comments on the local law. Supervisor Gott stated that they would leave the Public Hearing open until the end of the meeting.

OPEN SESSION

Bob Nilsson remarked that gas companies have already leased land in Livonia, so they must feel that they have every right to operate here. Attorney Campbell replied that they may have been working on the assumption that local municipalities would be pre-empted by the state. Those leases were signed before the Dryden-Middlefield decision that upheld Home Rule. Attorney Campbell informed everyone that Lenape is suing the Town of Avon and they are going to court on February 4 at 9:30 AM in Geneseo. This case will be something to watch and could have implications for the entire state.

Bob Thompson asked if there has been a county road use agreement. Supervisor Gott answered that the county has not adopted anything as far as he knows.

Cindy Carestio invited the board to two hydrofracking forums that are coming up in the Town of York in the near future.

TOWN CLERK'S REPORT

Clerk West gave the following financial report for December 2012.

<i>Paid To</i>	<i>Amount Remitted</i>
Supervisor (General Fund)	\$2,142.34
County Treasurer for Dog Licenses	\$175.00
NYS Comptroller for Games of Chance Licenses	\$611.25
NYS Ag & Mkts for Spay/neuter Program	\$59.00
NYS DECALS	\$44.40
State Health Department (Marriage Licenses)	\$0
Total Disbursements	\$3,031.99

REGULAR MEETING, TOWN OF LIVONIA
January 17, 2013

Web Site

Google did not send a web site traffic report for December. Becky Price is looking into it.

TOWN CLERK'S 2012 ANNUAL REPORT

<i>Paid To</i>	<i>Amount Remitted</i>
Supervisor (General Fund)	\$35,281.70
County Treasurer for Dog Licenses	\$3,286.50
NYS Comptroller's Office for Bingo and Games of Chance	\$675.00
NYS Ag & Mkts for Spay/neuter Program	\$1,273.00
NYS DEC for Hunting and Fishing Licenses	\$17,660.66
NYS Health Department for Marriage Licenses	\$832.50
Total Disbursements	\$59,009.36

Total disbursements were up \$5,400.08 over last year, largely due to an increase in building permit fees.

Supervisor Gott thanked Clerk West and Deputy Clerk Miles for all of their hard work. He reported that Clerk West applied for a grant which helped us get reimbursement for a scanner. The town was able to purchase a new computer for the Deputy Clerk last year, and we will be purchasing a new computer for Clerk West this year.

Supervisor Gott reported that Clerk West was named a Marriage Officer last year. He asked how many marriages she has performed since then, and how is it working out? Clerk West replied that she has performed six marriages since being appointed marriage officer last June. People are appreciative of having someone available to perform civil ceremonies in the town.

RESOLUTION 6-2013

ACCEPT DECEMBER TOWN CLERK'S REPORT

On motion of Councilmember Gascon seconded by Councilmember English the following resolution was

ADOPTED Ayes - 4 (Gott, English, Gascon, Seelos)
 Nays - 0

Resolved to accept the December 2012 Town Clerk's Report.

REGULAR MEETING, TOWN OF LIVONIA

January 17, 2013

RESOLUTION 7-2013

ACCEPT 2012 ANNUAL TOWN CLERK'S REPORT

On motion of Councilmember English seconded by Councilmember Seelos the following resolution was

ADOPTED Ayes - 4 (Gott, English, Gascon, Seelos)
Nays – 0

Resolved to accept the 2012 Annual Town Clerk's Report.

RESOLUTION 8-2013

APPROVE MEETING MINUTES FROM 1/3/2013

On motion of Councilmember English seconded by Councilmember Gascon the following resolution was

ADOPTED Ayes - 4 (Gott, English, Gascon, Seelos)
Nays – 0

Resolved to approve the meeting minutes from January 3, 2013.

RESOLUTION 9-2013

RE-APPOINT MAE SHARMAN TO LIBRARY BOARD

On motion of Councilmember Seelos seconded by Councilmember Gascon the following resolution was

ADOPTED Ayes - 4 (Gott, English, Gascon, Seelos)
Nays – 0

Resolved to re-appoint Mae Sharman to the Library Board for the term January 1, 2013 through December 31, 2018.

RESOLUTION 10-2013

RENEW DOG CONTROL CONTRACT WITH LIVINGSTON COUNTY

On motion of Councilmember Gascon seconded by Councilmember English the following resolution was

ADOPTED Ayes - 4 (Gott, English, Gascon, Seelos)
Nays – 0

Resolved to approve the Dog Control Contract with Livingston County for an estimated cost of \$4,500.

DISCUSS APPOINTMENT OF LIBRARY CLERK

Supervisor Gott reported that he received a note from Councilmember Grouse that the Library is interested in hiring a new hire. He would like more detail about this. He is not sure if this would be an additional employee or if this is replacing someone. Since Councilmember Grouse was not at the meeting to answer those questions, the topic was tabled for the next meeting.

REGULAR MEETING, TOWN OF LIVONIA

January 17, 2013

FUND BALANCE

Supervisor Gott stated that we are close to closing the books for 2012. It looks like we will not need to touch the fund balance, and will probably be returning a substantial amount to the fund balance. We have been trying to draw that down. We appropriated a larger fund balance this year. He will have more information at the next meeting.

CORRESPONDENCE

Letter from Code Enforcement to an individual regarding an unsafe structure.

RESOLUTION 11-2013

CLOSE PUBLIC HEARING

Supervisor Gott asked if there were any further comments on the proposed local law. There were none.

On motion of Councilmember Gascon seconded by Councilmember English the following resolution was

ADOPTED	Ayes -	4 (Gott, English, Gascon, Seelos)
	Nays -	0

With everyone who wished to be heard having been heard, Resolved that the Public Hearing on proposed Local Law #1-2013 be closed at 7:55 PM.

OPEN SESSION

John Vanderkamp – When will the notice be in the paper regarding the mistake in the tax rate? Supervisor Gott answered that he thinks it will be in the paper next week. He explained that there was a mistake at the county that led to a miscalculation of the town tax rate. This is resulting in the town collecting \$54,000 more than they should. The money will be put into a reserve account, which will be applied to reduce the levy next year.

RESOLUTION 12-2013

EXECUTIVE SESSION

On motion of Councilmember Gascon, seconded by Councilmember English, the following resolution was

ADOPTED	Ayes	- 4 (Gott, English, Gascon, Seelos)
	Nays	- 0

Resolved that this board enter into Executive Session at 8:00 PM to discuss contract negotiations.

RESOLUTION 13- 2013

RESUME REGULAR SESSION

On motion of Councilmember Seelos, seconded by Councilmember Gascon, the following resolution was

ADOPTED	Ayes	- 4 (Gott, English, Gascon, Seelos)
	Nays	- 0

Resolved to resume regular session at 8:14 PM.

REGULAR MEETING, TOWN OF LIVONIA
January 17, 2013

RESOLUTION 14- 2013

CONTRIBUTE TO THE LIVINGSTON COUNTY DOWNTOWN PROGRAM

On motion of Councilmember English, seconded by Councilmember Gascon, the following resolution was

ADOPTED Ayes - 4 (Gott, English, Gascon, Seelos)
Nays - 0

Resolved to split the cost of the Livingston County Downtown Revitalization program with the Village of Livonia and contribute \$1,875.

RESOLUTION 15-2013

AUDIT OF CLAIMS

On motion of Councilmember Gascon seconded by Councilmember Seelos the following resolution was

ADOPTED Ayes - 5 (Gott, English, Gascon, Grouse, Seelos)
Nays - 0

Resolved to pay claims numbered 1143-1169 in the amount of \$19,479.15 from the 2012 Abstract dated January 17, 2013 and claims 9-30 in the amount of \$16,939.30 from the 2013 Abstract dated January 17, 2013.

With no further business, on a motion of Councilmember English seconded by Councilmember Seelos the meeting was adjourned at 8:16PM. Carried unanimously.

Respectfully Submitted,

Colleen M. West, Town Clerk