

RUSH TOWN BOARD MINUTES
EXECUTIVE SESSION
October 26, 2016

An Executive Session meeting of the Rush Town Board, County of Monroe, was called by Deputy Town Supervisor Rita McCarthy at 8:45 PM on October 26, 2016, at the Rush Town Hall, 5977 East Henrietta Road, Rush, New York. Everyone present participated in the Pledge of Allegiance.

PRESENT:

Rita McCarthy	-----	Councilperson, Deputy Supervisor
Daniel Woolaver	-----	Councilperson
Gerald Kusse	-----	Councilperson
Pamela Bucci	-----	Town Clerk
John Mancuso, Esq.	-----	Attorney for the Town

EXCUSED: Cathleen Frank	-----	Supervisor
Jillian Coffey	-----	Councilperson

I. RETURN TO REGULAR SESSION

RESOLUTION #182-2016

Deputy Town Supervisor McCarthy moved to reconvene the meeting at 8:45 PM. Councilperson Woolaver seconded the motion.

Roll:	Councilperson Woolaver	aye	
	Councilperson Kusse	aye	
	Deputy Supervisor McCarthy	aye	carried.

Attorney John Mancuso stated that the matter before the Town Board is in regard to property owner David Capps and a Stop Work Order that was issued for the installation and foundation on his property relating to the setback. For purposes of the record, Mr. Capps made application to the Zoning Board of Appeals for a variance in violation of the setback requirement which was denied by that Board. The time within which the applicant could appeal the decision to the Supreme Court, according to statute, has since expired by approximately three weeks. The Building Inspector has concluded that Mr. Capps has resumed construction on the property but to what extent is unknown. There is, however, heavy construction equipment on the property. A Stop Work Order continues to be in place and is being violated. The attorneys provided an option to the Town Board and suggested authorizing the town attorneys to commence any proceedings against Mr. David Capps in Supreme Court to remedy the violations. A resolution for the Board's consideration and deliberation was presented.

The Board members reviewed the resolution.

Deputy Town Supervisor McCarthy noted that the Stop Work Order was given July 16, 2016. The Zoning Board of Appeals is the subject matter expert in this situation.

Councilperson Kusse stated that the matter is clean cut. The Stop Work Order was issued before the structure was started and the violation could have been avoided.

Councilperson Woolaver stated that Mr. Capps did not appeal the decision within the statute of limitations.

RESOLUTION #182-2016

RESOLUTION OF THE TOWN BOARD OF THE TOWN OF RUSH REGARDING LEGAL ACTION AGAINST DAVID CAPPS

Councilperson Woolaver moved

WHEREAS, property owner David Capps of 7935 West Henrietta Road, Rush, New York (the "Property") installed a new home foundation at the Property within the 110' front set back required by the Zoning Law of the Town of Rush (the "Zoning Law") Section 128-18; and

WHEREAS, on or about July 7, 2016 the Building Inspector of the Town of Rush found Mr. Capps constructing the foundation at issue several feet within the 110' front set back required by the Zoning Law and issued a stop-work order (the "Stop-Work Order"); and

WHEREAS, Mr. Capps thereafter applied to the Zoning Board of Appeals (the "ZBA") for an area variance, which was denied by resolution of the ZBA dated September 8, 2016; and

WHEREAS, despite the denial of the area variance and the issuance of the Stop-Work Order, Mr. Capps has not taken any action to correct his violation of the Zoning Law, and continues to conduct construction at the Property in violation of the Stop Work Order, Zoning Law and/or the Code of the Town of Rush (the "Town Code"); and

WHEREAS, the Town Board of the Town of Rush (the "Town Board") wishes to take any and all appropriate actions against Mr. Capps and any necessary parties in connection with such violation in order to obtain compliance with the Town Code, Zoning Law and/or applicable building codes.

NOW, THEREFORE, upon due consideration by the Town Board, it is hereby

RESOLVED that the Town Board hereby authorizes Harris Beach PLLC as attorneys for the Town of Rush to commence any and all necessary actions or proceedings, including but not limited to any actions or proceedings under the New York Town Law, Town Code and/or Zoning Law, on behalf of the Town of Rush, against David Capps and any other necessary parties, seeking appropriate legal and/or equitable relief in connection with violations by Mr. Capps of applicable New York State law, the Town Code, Zoning Law, the Stop-Work Order and/or applicable building codes. Councilperson Kusse seconded the motion.

Roll: Councilperson Woolaver aye
Councilperson Kusse aye
Deputy Supervisor McCarthy aye carried.

X. ADJOURNMENT

There being no further business to conduct, the meeting was ended by Deputy Town Supervisor McCarthy at 8:55 PM. The meeting was adjourned by common consent.

Respectfully submitted,

Pamela J. Bucci
Town Clerk