

RUSH TOWN BOARD
Minutes of February 25, 2015

A regular meeting of the Rush Town Board, County of Monroe, was called to order by Supervisor Cathy Frank at 7:00 PM on February 25, 2015, at the Rush Town Hall, 5977 East Henrietta Road, Rush, New York. Everyone present participated in the Pledge of Allegiance.

PRESENT: Cathleen Frank	-----	Supervisor
Daniel Woolaver	-----	Councilperson
Kathryn Steiner	-----	Councilperson
Rita McCarthy	-----	Councilperson, Deputy Town Supervisor
Pamela Bucci	-----	Town Clerk
John Mancuso, Esq.	-----	Town Attorney

EXCUSED: Jillian Moore ----- Councilperson

Councilperson Moore is excused; she is on vacation.

OTHERS PRESENT:

Mark David	Resident, Highway Superintendent
Carol Barnett	Resident
Al Sweet	Resident
Dave Sluberski	Resident
Cecil Palmer	Resident, Rec. Agric. Use Citizen Cmt.
David Watson	Resident, Conservation Board Chair
Jeremy Tuke	Rochester Genesee Valley Railroad
Philip T. Dagger	Resident, Rec. Agric. Use Citizen Cmt.
Jim Smith	Resident, Rec. Agric. Use Citizen Cmt.
Joan Starkweather	Resident
Harvey Seymour	Resident
Gerry Kusse	Resident, Code Enforcement Officer
George Moore	Resident, Agric. Advisory Committee
Kathryn Hankins	Resident, Rec. Agric. Use Citizen Cmt.
Kirsten Flass	Resident, Library Director
Bill Chase	Resident, Agric. Advisory Committee
Julia Lederman	Resident, Conservation Board
Jeffrey H. Starkweather	Resident
Robert Kraus	Resident, Agric. Advisory Committee
Pat Kraus	Resident, Conservation Board
Beth Hoak	Resident
Don Sweet	Resident
Ted Strang	Resident, Rec. Agric. Citizen Cmt.
Marianne Rizzo	Resident, Rec. Agric. Use Citizen Cmt.
Ram Shrivastava	President, CEO of Larsen Engineers

Ben Frevert

Engineer, Larsen Engineers

I. OPEN FORUM

Supervisor Frank opened the floor to anyone wishing to address the Town Board. All those speaking were asked to state their name and address for record keeping purposes.

II. APPROVAL OF MINUTES

RESOLUTION #76-2015

Councilperson Steiner moved to approve the Meeting Minutes of February 11, 2015, as written by Town Clerk Pamela Bucci. Councilperson Woolaver seconded the motion.

Roll:

Councilperson Woolaver	aye
Councilperson Steiner	aye
Councilperson McCarthy	aye
Supervisor Frank	aye. carried.

III. APPROVAL OF ABSTRACT

RESOLUTION #77-2015

Councilperson Steiner moved Be It Resolved that having audited all the claims against the funds listed on Abstract of February 25, 2015 for vouchers #2015 185 through #2015 240 be allowed for payment in the amount of \$373,279.36. Councilperson McCarthy seconded the motion.

Roll:

Councilperson Woolaver	aye
Councilperson Steiner	aye
Councilperson McCarthy	aye
Supervisor Frank	aye. carried.

IV. CORRESPONDENCE

Supervisor Frank has received Building Inspector/Code Enforcement Officer Gerald Kusse's annual report of building permits and code violations.

Supervisor Frank read aloud the following Memorandum from the Town Board in response to filling of the Town Board vacancy:

On February 11, 2015, you provided a statement to the Town Board in which you contend that the Town Board failed to comply with the New York Open Meetings Law in filling the vacancy on the Town Board created by the resignation of then Councilwoman Frank. The Town Board has carefully reviewed your statement, including the advisory opinions from the New York State Committee on Open Government. The Town Board has prepared this memorandum in order to provide you and the public the background facts concerning Councilwoman Frank's

resignation and Councilwoman Moore's subsequent appointment, as well as the process followed by the Town Board in filling the vacancy. As discussed below, the Town Board believes it undertook an open, public process in filling the Town Board vacancy in compliance with New York law.

In 2014, Supervisor Richard Anderson informed the Town Board that he intended on resigning the position of Town Supervisor. At that time, Councilwoman Frank (also Deputy Supervisor), indicated a desire to formally replace Supervisor Anderson as Town Supervisor for the balance of his term ending December 31, 2015. Based on guidance received from the Association of Towns, in order to ensure compliance with applicable New York State law governing the filling of Town Board vacancies, it was ultimately determined that Councilwoman Frank would have to resign her position as Town Board member prior to being considered for potential appointment as Town Supervisor. Accordingly, Councilwoman Frank tendered her resignation effective January 27, 2015.

The filling of a vacancy in the Town Board is governed by Section 64(5) of the New York Town Law. That section provides that "[w]hen a vacancy shall occur or exist in any town office, the town board or a majority of the members thereof, may appoint a qualified person to fill the vacancy." New York State law, including the Open Meetings Law, does not require a public hearing in order to fill a vacancy in the Town Board. Nevertheless, consistent with the process followed previously by the Town Board in filling vacancies, the Town Board advertised the vacancy in order to solicit qualified applicants as part of an open, public process. Ultimately, interviews were conducted and the remaining members of the Town Board determined that it was appropriate to introduce a resolution to appoint Ms. Jillian Moore to fill the vacancy. On January 28, 2015, Councilwoman Moore was appointed by a unanimous vote of the four (4) remaining members of the Town Board as required by the New York Town Law.

The Open Meetings Law does not govern the filing of a vacancy in the Town Board, but rather governs the conducting of public meetings by a public body such as the Town Board. The Open Meetings Law defines the term "meeting" as a "formal convening of a public body for the purpose of officially transacting public business." Not every assembling of the members of a public body is included within the definition of "meeting." The Town Board did not conduct private meetings closed to the public, enter into executive session after a public meeting, or take a vote outside of a public meeting in connection with the filling of the vacancy in the Town Board, as alleged in your February 11, 2015 statement.

Rather, as indicated by the January 28, 2015 meeting minutes of the Town Board, interviews were conducted during which certain members of the Town Board were present. However, the interview process did not constitute an official “meeting.” In undertaking the interview process, a quorum of the Town Board did not discuss their observations or potential votes during either the interview process, an executive session, or outside the January 28, 2015 meeting. Moreover, the interview of Councilwoman Moore was not a meeting, there was no need to prepare minutes.

For the reasons discussed above, the advisory opinions attached to your February 11, 2015 statement discussing the Open Meetings Law involved circumstances not implicated by the process leading to the appointment of Councilwoman Moore. For example, the Town Board did not withhold from the public the names of persons who have filed an application to fill a vacancy on the Town Board. Nor did the Town Board enter into an executive session to interview potential aspirants to fill the vacancy in the Town Board.

In sum, we have carefully reviewed the questions raised in your February 11, 2015 statement, and hope that this memorandum answers those questions and demonstrates that the Town Board followed the proper procedure in appointing Councilwoman Moore. From the time Supervisor Anderson informed the Town Board that he intended on resigning, the Town Board has engaged in an open, public process aimed at finding the most qualified individuals to serve as members of the Town Board. Through this process, the Town Board believes it has taken the necessary steps to not only ensure compliance with applicable law, but ultimately selected in Councilwoman Moore a highly-qualified replacement for Councilwoman Frank, who faithfully carried out her duties as a Town Board member.

V. REPORTS OF OFFICERS AND COMMITTEES

Councilperson Woolaver noted that the Zoning Citizens Committee had met and would be compiling recommendations to present to the Town Board at a later date.

Councilperson Steiner noted that the Recreational Agricultural Citizens Committee (RACC) met and would be making a presentation this evening.

Councilperson noted that the Library Board of Trustees would be meeting the following week.

Library Director Kirsten Flass had no comment.

Town Clerk Bucci noted that to date (1) \$3,818,458 has been collected for 2015 Town and County taxes; and(2) as previously stated, the Record Retention Disposition Schedule MU-1 is used by cities, towns, villages and fire districts as well as the Town Clerk's Office. Under the section of Personnel/Civil Services, applications for employment including resumes and applications of persons that are not hired are kept 3 years. There is nothing in the law that says they must be used in the next interview session. Following the MU-1, resumes are kept for 3 years. It is at the discretion of the interviewer to advertise for more applications and pull from the existing file; and (3) In response to a request, in 2014 the pavilion was rented by 44 non-residents and 41 residents, all of which netted \$10,640.

Building Inspector/Code Enforcement Officer Kusse had no report.

Highway Superintendent David had no report.

Attorney Mancuso had no report.

VI. OLD BUSINESS

There is no old Business.

VII. NEW BUSINESS

A. Amended Cell Tower Lease - Supervisor Frank reported that the Letter of Intent has been revised with verbiage supplied by Harris Beach. Crown Castle owns the tower and will be placing additional equipment on it. The modification provides the town a \$10,000 signing bonus and 20% of the revenue generated by a new customer.

RESOLUTION #78-2015

Councilperson Steiner moved to authorize the Supervisor to enter into a Letter of Intent with Crown Castle, 301 North Cattlemen Road, Suite 200, Sarasota, Florida 34232 in order to amend the Cell Towner Lease pending additional language approval with Crown Castle for a 20 year lease period commencing February 28, 2015. Councilperson McCarthy seconded the motion.

Roll:

Councilperson Woolaver	aye
Councilperson Steiner	aye
Councilperson McCarthy	aye
Supervisor Frank	aye. carried.

B. Renewable Energy Advisory Committee - Supervisor Frank stated that she has received the Renewable Energy Committee proposal submitted by Jordan Kleiman and Bob Powers and 9 letters of interest in being members of

the citizens committee. Once the attorneys have reviewed the information, a 9 person citizen committee will be formed.

Supervisor Frank stated that it is important that a public forum be available when a report of progress is being presented to the Town Board. The presentations are not intended to be interpreted as a public hearing but an information sharing process. There will be three presentations to the Town Board.

PRESENTATION TO TOWN BOARD:

1. Agricultural Advisory Committee - Introduction - Robert Kraus stated the Committee is comprised of three people including George Moore, Bill Chase and himself. The committee was established in 2012 on recommendations stemming from the adoption of Agricultural and Farmland Protection Plan by the Town Board. The committee's responsibilities include helping to resolve local farming disputes and contribute to modifications of local zoning, other land use regulations to farmland protection and periodically reviewing the Farmland Protection Plan as it relates to issues. The residents of Rush value the rural character and farming which plays a large role in the community. Farmland can be encroached upon by developers and careful consideration will be weighed to keep the town's character preserved. The committee will be consulted by town boards and officials when disputes arise and the committee will advise the town on relevant county and state matters. The Agricultural Advisory Committee members plan on introducing themselves at a future Planning and Zoning meeting.
2. Recreational and Agricultural Citizens Committee (RACC): Presentation on Progress - Kathryn Hankins opened the presentation by stating that all members would be reporting on the RACC's progress. The Committee was formed on August 22, 2012, and includes members Jim Smith, Ted Strang, Phil Daggar, Cecil Palmer, Marianne Rizzo and Kathryn Hankins. Councilperson Kathryn Steiner serves as the Town Board liaison and Recreation Supervisor Patricia Stephens has participated and contributed at committee meetings. They wish to engage other members of the community as they move forward.

The purpose of the advisory committee is to provide suggestions to the Town Board for uses of the former BOCES property located at 6565 East River Road and the former Division of Youth property located at 375 Rush Scottsville Road. The Committee is seeking approval to name the property The Rush Genesee River Reserve. The Committee's timeline from January 2012 until the Fall of 2014 was presented to the Town

Board which included a resolution to form a citizen's committee, an appointment of a chairperson, meeting, an inventory of the land and buildings, a clean-up day, structuring and drafting of a strategic plan, formation of committee regroups and restoration of trails which were opened with the help of the Town Highway Department. A trail signage plan was developed, no hunting monitored and tours for the Conservation Board and residents took place.

The 315 acre cumulative property is 165 year old. The property does have use restrictions which include use of the property only for "park and recreation and ancillary uses" as outlined in the Acquisition Agreement. At present, there is no drinking water or sewage system. It currently houses natural landscape areas that include field crops, low grass and hills, forests, a rivers edge, wetlands, trails, a museum and buildings. More than 100 acres borders the Genesee River. An established trail system of easy hiking now exists. In the past, retreats have been held there, horseback riding occurred, scouts, seniors and 4H groups have used it. There are many identified areas that need grooming and buildings/barns that require maintenance.

The actions and recommendations for land use include the following:

- Proposed name
- Protect and preserve land
- Field crops and grazing 2017
- Maintain trails
- Signs
- Strategies for enforcement
- Restore grassland and wetland areas
- Coordinate volunteer clean-up days
- Reject proposals that do not support education, recreation or agriculture

Low cost use possibilities include the following:

- Hikes
- Photographers, etc.
- Gardening
- RH Cross country racing
- Senior activities
- Scouts and 4H activity
- Home of Mounted Patrol
- Agriculture, livestock, horse events
- Educational programs

The power point presentation was provided by members offering additional details and will be placed on the town website at www.townofrush.com.

3. Larsen Engineering Solar Proposal – Supervisor Frank introduced Larsen Engineers, a firm in existence since 1955. Ram Shrivastava, President and CEO and Ben Frevert, Engineer provided a power point presentation. President Shrivastava stated that the Town of Williamson is a community

already using solar power to provide energy to run all of their municipal facilities.

Engineer Ben Frevert presented graphs explaining how solar power works and how it is provided, either through natural, nuclear and hydropower. The presentation also illustrated an economic analysis. New York State Energy Development and Research Authority (NYSERDA) provide blocks of grant money at rates per watt. With each block, NYSERDA's grant monies drop in economic profitability.

Larsen analyzed the town's municipal buildings power bills and meters on town-owned property were located. Multiple Meters are located on the former BOCES property at 6565 East River Road with some in close proximity to each other providing the possibility of a split system and higher incentive from NYSERDA and best case profitability for the town bill payers. Engineer Frevert categorized each of the 4 areas of the property for a possible solar location. With the split system locations, a cost can be obtained from an installer and the cost of the project.

Engineer Frevert reviewed the funding available at state and federal levels and stated that projected costs of electricity over the next 30 years are uncertain. Additionally, solar power provides sustainability during climate changes, offers clean energy and provides independence of costs.

The timing of selecting a site now provides a better NYSERDA block grant advantage of economic profitability. It will provide a cost savings, economic development, sustainability environmental stewardship and energy independence. Seeking and choosing a developer will lock in the grant block rate.

Supervisor Frank asked the Town Board for comment or questions but noted that the presentation is not considered a public hearing.

Councilperson McCarthy reiterated that the first 3 blocks of grant money at the highest profitability advantage of kilowatt use have already passed.

Supervisor Frank stated that the value of this project over 30 years will yield approximately \$1/2 million in savings.

Supervisor Frank asked about the micro-grid and solar technology that would lead to layers of competitive funding. Engineer Frevert replied offering detail about future technology including the NYS Prize Program which provides funds toward a micro-grid. When the power is off, the micro-grid provides energy to critical infrastructures which include but are not limited to

hospitals and public works buildings. The micro-grid system is in a competitive and trial stage.

Councilperson Steiner questioned if the project was placed on the former BOCES property would there be an educational opportunity. Engineer Frevert stated that there is great potential.

Engineer Shrivastava noted an example of panels that would collect rain water, snow harvesting which could be used for more than solar power. The system is an integrated approach to sustainability. Individuals can apply for New York State for government grants that are now available. Also noted was that Rush has 2 resources of natural power, the second resource is the Rush dam. A mill previously existed and a small mill could serve as a micro hydro location.

Councilperson Woolaver asked of any physical danger in installing the solar panels. Engineer Frevert stated that as a general rule, there is always danger in energy transferring, however, safety precautions would be met according to code and fencing would be included around the system.

VIII. OPEN FORUM

Supervisor Frank opened the floor and reminded all present that questions are for the Town Board and Larsen Engineers may take notes for future comment.

Resident Kathryn Hankins asked for confirmation that there are 10 site locations that are being considered and whether the committee could review the potential sites. Supervisor Frank responded that there are 10 meter locations and 2 acres will accommodate the amount in order to generate energy to cover the municipality building needs. As stated, a substantial benefit exists with splitting 2 meters.

Supervisor Frank requested Engineer Frevert to provide a written feasibility of the other meters for comparison purposes. Because Engineer Frevert is continuing a project started by a previous Larsen engineer, earlier information will have to be reviewed.

Resident Carol Barnett is interested in the comparisons of the other 10 sites.

Resident Jim Smith requested that sites 3 and 4 on the BOCES property not be used for the solar panels mainly because the areas offer prime farming opportunity.

Recreation Supervisor Patricia Stephens requested that the BOCES property be solely used for recreational, agricultural and ancillary uses.

Resident Kathryn Hankins asked if the meter had to be located on town-owned property, will the Town Board be seeking to work with other towns or creating a regional partnerships in obtaining solar grants and will the project be reviewed by the renewable energy advisory committee that is being formed, the recreational agricultural citizen's committee and the farmland advisory committee members. Will the proposal be available to review in depth and weigh in on the proposal by all committees.

Supervisor Frank answered that the meter must be owned by the town and the citizen committees will be able to review and provide advisory comments on the solar proposal.

Resident Sluberski suggested that the Town Board look at the fire hall and town hall as potential sites for the solar project. Supervisor Frank stated that only one meter exists at each of the fire hall and town hall with a major state road running in between them.

Resident Sluberski requested that the Memorandum read and the Code Enforcement Officer's report be placed on the town website. Supervisor Frank stated that it is possible.

Resident Sluberski suggested that as the budget process is viewed in 2015, a projection system and screen be placed in the meeting room. Supervisor Frank pointed out that cable has been installed and that a smart television system is being purchased.

Resident Hans Schmitthener, an environmentalist, supports the solar project and is curious of the RACC's opinion and wishes to see a cost analysis for the proposed solar system. . If the project is placed on the former BOCES property, it will encompass less than 2% of the acreage. Locating the solar system on the former BOCES property could provide an educational learning experience of old and new technology.

Supervisor Frank responded that it is a 315 kilowatt system which would be housed on 2 acres. The broad brush financial picture at a high level provides a net savings over 30 years of approximately \$1/2 million.

Resident Marianne Rizzo stated that as a member of the RACC prefers not to place the project on the property. Rushing into the project is not desirable.

Councilperson Steiner stated that the RACC is studying uses for the property.

In reference to the set of block grants, Resident Kathryn Hankins stated that a Governor Cuomo will be proposing additional grant opportunities. Also

asked, was if the town-assembled energy advisory committee could extensively review the solar project possibilities. Folks in Rush don't like to rush and want to protect the community. This is the first opportunity that the RACC has viewed the solar project.

Resident Carol Barnett asked for clarification of the block benefit at this point.

Supervisor Frank stated that one site must have the ability to connect to 2 meters. Supervisor Frank explained the percentage breakdown of using a split meter system. The NYSERDA block grant available at present provides more benefit for the first 50% used off of 2 meters rather than the benefit of using only 1 meter. As the block availability decreases, the benefits substantially decrease.

Resident Harvey Seymour raised question to Larsen Engineers regarding attractiveness in including the town residents in the block grant and how does it compare to Fairport Electric.

Engineer Shrivastava, who lives in Fairport, provided an explanation. The power companies allow a certain amount of their supply to be sold. The companies only allow a single user to obtain a supply at a different rate. In previous years, villages like Fairport formed electric utilities and received allocation for hydropower by purchasing only a certain number of kilowatt hours. Once the kilowatt hours have been used, a higher rate is charged back to the user. If you have a harsh winter or hot summer, residential bills in Fairport may get higher. Today, solar panels can be purchased by any individuals allowing for a decrease in personal utility bills. If all residents were included for purchasing power at a lower rate, there would be no power company.

Resident Marianne Rizzo asked if leasing was available. Supervisor Frank responded that there may be options.

IX. ADJOURNMENT

There being no further business to conduct, the meeting was adjourned by Supervisor Frank at 8:30 PM and approved by common consent of all councilpersons present.

Respectively submitted,

Pamela J. Bucci
Town Clerk