

Minutes of the regular monthly meeting of the Jerusalem Town Board held on October 17, 2007 at 7:00 P.M. PRESENT were: Supervisor Jones, Councilpersons Barden, Folts, Stewart, Highway Superintendent Payne, Town Engineer Ackart, Town Clerk McMichael.

GUESTS: Kathy Swarthout, Max Parson, William Pringle, Mike Hainsworth, Cynthia Geertson, David Geertson, Sally B. Ribble, Susan K. Close, Tom Close, Bob Evans, Taylor Fitch, Barb McGuffie, John Keidel and other unidentified guests.

Excused: Councilperson Hopkins.

Supervisor Jones called the meeting to order with the Pledge to the Flag at 7:00 P.M.

RESOLUTION #141-07
APPROVAL OF MINUTES

On a motion of Councilperson Barden, seconded by Councilperson Folts, the following was

ADOPTED	Ayes	4	Barden, Folts, Jones, Stewart
	Nays	0	

Resolved that the minutes of the September 19, 2007 meeting be approved as read.

PUBLIC HEARING - PROPOSED LOCAL F-2007 - PROVIDING ADDITIONAL PROTECTIONS AS TO ADULT USE BUSINESSES

With proof of notice having been duly published and posted, Supervisor Jones opened the Public Hearing at 7:02 P.M., asking for comments on the proposed amendments to Article XX of Chapter 160 providing additional protections as to Adult Use Businesses.

Supervisor Jones read the following from the Town of Jerusalem Residents for Effective Adult Entertainment Regulations October 11, 2007 letter:

Please read the first two pages of this open letter at the upcoming public hearing.

We, the concerned citizens of Jerusalem, have read the proposed *A Local Law Providing Additional Protections as to Adult Use Businesses*. Upon review of these regulations, we feel they include inadequate descriptions, subjective requirements open to discretion, and unrealistic location requirements which will be undefendable in court. It is our belief that a determined Adult Entertainment Business will make short work of these regulations thus leaving the town exposed with no defense other than this weak set of rules in which they will operate their business. The Town Board and the Planning Board have been asked since July 2007 to simply speak with an attorney that has distinguished proficiency in these matters. This appears not to have been done.

In the absence of that full counsel - enclosed are the amendments we feel are needed to strengthen **ARTICLE XX Adult Entertainment Use Establishments** (references enclosed). We understand these changes would have been easier to consider before this moment; however it appears our voices were not deemed necessary to the process.

We again extend our offer to help in any way we can. We believe that the Town Council, the Planning Board, and the Residents of Jerusalem can reach an agreeable conclusion to the Adult Entertainment Regulations in the presence of openness and concern.

Sincerely,

Town of Jerusalem Residents for Effective Adult Entertainment Regulations

c/o Cynthia Geertson

CC; Daryl Jones, Town Supervisor
Loretta Hopkins, Liason
Raymond Stewart
Michael Foltz
James Barden
Philip L. Bailey, Esq.

AMENDMENTS and ISSUES:

1. Deprived of stated, essential definitions, all references in **ARTICLE XX**. to the following terms are **subjective** (resulting from one's own feelings or thinking rather than from the plain facts) and are **not enforceable**:
 - ◆ "employee" and "agent"
 - ◆ "premises"
2. Again, too much subjective discretion by the ZBA could be perceived by a court to be unconstitutional regarding the following sections. Clarifications are essential!
 - ◆ Sections **§160-107** and **§160-108** regarding location restrictions.
 - ◆ Proposed **§160-108 Other Restrictions .O**. which has been inaccurately taken out of the context in which it was seen in the *Town of Arcadia Local Law #1,2005*.
 - ◆ In the absence of a town-wide Public Nudity Ordinance, two other paragraphs need to be included in **§160-108 Other Restrictions**. regarding public nudity.
 - ◆ What is the definition of a private school in **§160-107. Location Restrictions: A. (I)**. Does this include Mennonite schools and homeschools?
 - ◆ Transfer of ownership or control should be further addressed in **§160-106. Definitions**:
3. Proposed Amendment **§160-107. Location Restrictions A**.

- ◆ tends to encourage these businesses to locate in the more rural residential areas where police surveillance is extremely infrequent.

- ◆ Has the town adult use study included a plan to provide additional police protection for the rural residents of affected areas when adult businesses are directed into their neighborhoods?

4. If the number of sites “**available**” to adult entertainment businesses is not sufficient,

- ◆ Will the Town Council decrease or eliminate the proposed category setback planned for certain roads.
- ◆ It is extremely unwise to decrease the distance setback for residential dwellings or for other sensitive use sites to allow for the proposed expansion of a “new category” setback for certain roads.

5. The town is given the right by the State of New York to set the hours of operation .

- ◆ **§160-108 Other Restrictions. F.** currently permits hours of operation from 8:00 A.M. to 12:00 midnight.

- ◆ Children will be waiting for school buses at 8:00 A.M. (in areas near the potential locations of adult uses.)

- ◆ Documented increases in crime are directly related to late nighttime hours of operation of adult uses.

- ◆ Less controversy with the neighboring uses and more adherence to **ARTICLE XX.** by adult entertainment businesses are probable outcomes if adult use hours of operation were unlawful between 10:00 P.M. and 10:00 A.M.

6. **§160-105. Purpose.** and **§160-104 Intent.** need to be more specific to be upheld in court.

7. **If or when** adult businesses do arrive, they will tear apart anything not written and/or **not documented** correctly and sue for discrimination. Any planned regulations which are **not in effect** have **no effect**.

Supervisor Jones noted the correspondence also included a resume on Attorney Patrick A. Trueman who the Residents’ group recommends the Town seek a legal opinion from on this matter.

Kathy Swarthout pointed out to the Town Board that they were pitting one section of the Town against another, making reference to a map of the Town that marked areas within the Town with an “X” denoting where adult entertainment businesses are allowed. She urged the Town Board to adhere to the request of the Residents’ group and utilize the services of Attorney Trueman. She also questioned the availability of police protection to the secluded areas where adult entertainment establishments would be allowed,

especially in light of the current staffing shortage at the Yates County Sheriff's Department.

Cynthia Geertson stated that the Residents' group supports the Town Board if they are willing to continue this process beyond the amendments proposed tonight. If the Town Board feels this is the end and there are no more needed amendments, then the Residents' group does not support them.

Tom Close, retired Patent Attorney, reviewed the regulations from both the Town of Arcadia and Jerusalem at the urging of Mrs. Geertson. He felt there were inconsistencies in the law and urged the Town Board to obtain legal opinion from someone familiar with this type of regulation. He presented his written observations to the Supervisor.

John Keidel expressed his appreciation to the Town and Planning Boards for all the work they have done on these regulations, but urged the Board to continue to review and strengthen the regulations.

Supervisor Jones stated the proposed amendments are currently under review by Attorney Jason DiPonzio. The Board will not act on this matter tonight as we do not have his response to date.

The Public Hearing was left open

SEQR NEGATIVE DELCLARATION - PROPOSED LOCAL LAW F-2007 - PROVIDING ADDITIONAL PROTECTIONS AS TO ADULT USE BUSINESSES

The Short Environmental Assessment Form on Proposed Local Law F-2007 Providing Additional Protections as to Adult Use Businesses was reviewed. It was determined that this above action will not result in any significant environmental impacts. The Supervisor was directed to sign the Short Environmental Assessment Form indicating a negative declaration.

RESOLUTION #142-07

AUDIT OF CLAIMS

On a motion of Councilperson Barden, seconded by Councilperson Stewart, the following was

ADOPTED	Ayes	4	Barden, Folts, Jones, Stewart
	Nays	0	

Resolved that the bills be paid as presented in the following amounts with the exception of two highway vouchers. After the charge is researched with the Highway Superintendent and back-up is provided, payment will be made.

General	\$12,492.74
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Outside Village	\$ 926.00
Highway DA	\$ 4,477.10
Highway DB	\$69,391.11
Sewer	\$ 3,698.33
Water	\$42,963.53

September Utilities:	General	\$871.18
	Sewer	\$360.69
	Water	\$128.42

RESOLUTION #143-07

SUPERVISOR REPORT

On a motion of Councilperson Stewart, seconded by Councilperson Folts, the following was

ADOPTED	Ayes	4	Barden, Folts, Jones, Stewart
	Nays	0	

Resolved that the Supervisors' Report on the Town's finances for the month of September 2007 be accepted as presented.

REPORT OF TOWN OFFICIALS

HIGHWAY SUPERINTENDENT

Highway Superintendent Payne provided an update to his written report of road work for the month of September. (Report on file in the Office of the Town Clerk.) The salt and sand are in and ready for winter. The sander has been ordered and delivery will be mid-November.

RESOLUTION #144-07

INSURANCE RECOVERY CHECK

On a motion of Supervisor Jones, seconded by Councilperson Stewart, the following was

ADOPTED	Ayes	4	Barden, Folts, Jones, Stewart
	Nays	0	

Whereas the Town's 1955 Jeep Willy was involved in an accident on September 5, 2007 with another vehicle; and

Whereas their insured, Progressive Insurance, determined that they would cover the cost of certain repairs to the 1955 Jeep Willy; and

Whereas the Town has received an insurance check in the amount of \$711.28; now, therefore, be it

Resolved that the Highway DA 2007 budget be amended as follows:

Revenue code 2680	be increased	\$711.28
Expense code 5130.4	be increased	\$711.28

TOWN ENGINEER

- Town Engineer Ackart reported that the KPSW rented a backhoe and repaired 16 of 23 damaged curb stops. The remaining repairs will require assistance from a contractor.
- He commented on the water and sewer relevies to be presented tonight, pointing out the fact that we have 63 customers who did not make any payment on their account the entire year. Imposing a relevy fee will be looked into to address this situation.
- Genesee Finger Lakes Regional Planning Council requested the Town provide a list of our water and sewer customers to assist with the completion of the 2010 U.S. Census.
- He commented on the significant charges forthcoming due to operational problems at the Penn Yan Water Treatment Plant
- For safety reasons, the Keuka Park and Indian Pines Pump Station will be converted to all electric heat, eliminating open flames.
- We continue to work on completing the conveyance of the Assembly Avenue sewer from Keuka College to the Town.

RESOLUTION #145- 07

RESCIND RESOLUTION #105-07 - ZERGES WATER SERVICE CONNECTION

On a motion of Supervisor Jones, seconded by Councilperson Barden, the following was

ADOPTED	Ayes	4	Barden, Folts, Jones, Stewart
	Nays	0	

WHEREAS, in Resolution #105-07 passed July 18, 2007, the Town Board voted to continue their position of compliance in the matter of violation of Sections 152-3 and 152-11 of the Town Code concerning water service to 96 and 98 Esperanza Drive; and

WHEREAS it has now been determined that both the residence (96 Esperanza Drive) and the guest cottage (98 Esperanza Drive) are on the same parcel of property, not two separate parcels; now, therefore, be it

RESOLVED that the notice of violation be rescinded, and the Water and Sewer Office be directed to so inform the property owner.

SUPERVISOR

- The 2008 Preliminary Budget Hearing will be October 25 at 7:00 P.M. at the Town Hall.
- Supervisor Jones read a letter from John Sciarabba of Land Tech Surveying & Planning regarding a proposed residential development at 42 West Lake Road, Branchport.

RESOLUTION #146-07

REFER HARBOR VIEW PROPOSED DEVELOPMENT TO PLANNING BOARD

On a motion of Supervisor Jones, seconded by Councilperson Stewart, the following was

ADOPTED Ayes 4 Barden, Folts, Jones, Stewart
 Nays 0

Resolved that the Harbor View proposed residential development at 42 West Lake Road, Branchport, be referred to the Planning Board for further review and recommendation.

SUBCOMMITTEE REPORTS

- Wind Farm Subcommittee member Bill Pringle reported the bus trip to the town of Fenner was very informative. The Subcommittee will be meeting again in November.
- Councilperson Folts reported the Slopes Subcommittee will meet in early November. The draft regulations are still with Town Attorney Bailey for his review.
- Councilperson Barden stated the Subdivision Subcommittee is scheduled to meet on October 22 and then with the consultant, Andy Raus, on October 24. A public information meeting will be scheduled similar to the format used with the Comprehensive Plan.
- Planning Board Chair Bob Evans stated correspondence received from the Alconero's attorney has been referred to Town Attorney Bailey to respond.
- Zoning Review Subcommittee member Glenn Herbert stated their proposed R-1 zoning code amendments have been submitted to the Town Board for consideration at their November meeting.

RESOLUTION #147-07

USED 2001 PICKUP - SURPLUS TO BE SOLD BY BID

On motion of Councilperson Barden, seconded by Councilperson Stewart, the following was

ADOPTED Ayes 4 Barden, Folts, Jones, Stewart
 Nays 0

Whereas the 2001 Chevrolet pick up truck, used by the Code Enforcement Officer, has been replaced and is hereby declared surplus. This truck will be offered for sale through the bidding process. The Town reserves the right to reject any or all bids in lieu of taking said vehicle to auction should a fair price not be offered.

Bid forms and non-collusive statements should be included when bidding. The Town Clerk will advertise bid notices on October 24 and 31, 2007 with bids to be returned to the Town Hall by noon on

November 12, 2007. After review of bids received action on the truck will be taken at the regular November 14, 2007 Board Meeting.

RESOLUTION #148-07

SCHEDULE PUBLIC HEARING - PROPOSED LOCAL LAW F-2007 SIDEWALK MAINTENANCE

On a motion of Supervisor Jones, seconded by Councilperson Barden, the following was

ADOPTED	Ayes	4	Barden, Folts, Jones, Stewart
	Nays	0	

Resolved a public hearing on proposed Local Law F-2007 establishing standards for sidewalk maintenance be held at 7:00 P.M. on November 14, 2007; and, be it further

Resolved that a GML 239 Referral be submitted to the Yates County Planning Board for review on said local law; and, further

Resolved that the Town Clerk advertise for said Public Hearing in a manner consistent with law.

RESOLUTION #149-07

ZONING BOARD RESIGNATION - JIM JAMESON

On a motion of Councilperson Stewart, seconded by Councilperson Folts, the following was

ADOPTED	AYES	4	Barden, Folts, Jones, Stewart
	Nays	0	

Resolved that the Town Board accept the letter of resignation from Zoning Board of Appeals member Jim Jameson effective December 31, 2007, with regrets; and, be it further

Resolved that the Supervisor draft a letter to Mr. Jameson thanking him for his service to the Town.

RESOLUTION #150-07

ZONING BOARD APPOINTMENT - JIM CREVELLING

On a motion of Councilperson Stewart, seconded by Councilperson Folts, the following was

ADOPTED	Ayes	4	Barden, Folts, Jones, Stewart
	Nays	0	

Resolved that Zoning Board alternate Jim Crevelling be appointed to fill the unexpired term of Jim Jameson effective January 1, 2008 through December 31, 2010.

RESOLUTION #151-07

ZONING BOARD APPOINTMENT - MIKE STEPPE

On a motion of Supervisor Jones, seconded by Councilperson Stewart, the following was

ADOPTED AYES 4 Barden, Folts, Jones, Stewart
Nays 0

Resolved that Mike Steppe be appointed to the vacant Zoning Board of Appeals alternate position that expires December 31, 2007.

RESOLUTION #152-07

ZONING BOARD APPOINTMENT - ED SEUS

On a motion of Supervisor Jones, seconded by Councilperson Folts, the following was

ADOPTED AYES 4 Barden, Folts, Jones, Stewart
Nays 0

Whereas Zoning Board of Appeals alternate Jim Crevelling was appointed to fill the unexpired term of Jim Jameson by resolution #150-07; now, therefore be it

Resolved that Ed Seus be appointed as the Zoning Board of Appeals alternate for a one-year term, January 1 through December 31, 2008.

RESOLUTION #153-07

HOLIDAY MEETING SCHEDULE

On motion of Supervisor Jones, seconded by Councilperson Stewart, the following was

ADOPTED Ayes 4 Barden, Folts, Jones, Stewart
Nays 0

Whereas the November Town Board Meeting originally scheduled for November 21, 2007 is felt to be very close to the impending Thanksgiving Holiday; now, therefore, be it

Resolved that the meeting date be moved to November 14, 2007 at 7:00 P.M.; and, further

Resolved that the Town Clerk place a legal notice in the newspaper that indicates said change in the regular Town Board Meeting schedule.

RESOLUTION #154-07

APPROVAL - KPSW RELEVIES

On a motion of Supervisor Jones, seconded by Councilperson Barden, the following was

ADOPTED AYES 4 Barden, Folts, Jones, Stewart
NAYS 0

Whereas, the Jerusalem Town Code provides for the collection of delinquent water and sewer bills by the County of Yates by the relevy of those accounts on the January tax bills; and

Whereas, the Town Water/Sewer office has compiled a listing of the 2007 water and sewer delinquent accounts in the following amounts:

Water	\$49,936.75
Sewer	\$16,423.04

Now, therefore, be it

Resolved, that the Jerusalem Town Board does hereby approve the transfer of these delinquent accounts to the County for relevy on their 2008 tax bills.

RESOLUTION #155-07

CLOSE PUBLIC HEARING - CHAPTER 160 ARTICLE XX ADULT USE BUSINESSES

On a motion of Councilperson Stewart, seconded by Councilperson Barden, the following was

ADOPTED	Ayes	4	Barden, Folts, Jones, Stewart
	Nays	0	

Resolved that the Public Hearing be closed at 8:10 P.M. and that the Board return to the Regular Town Board meeting.

PRIVILEGE OF THE FLOOR:

- Bill Pringle brought forth a hazardous situation on Lake Avenue where brush has been removed, exposing two areas that drop significantly toward the Lake. Highway Superintendent Payne will delineate the areas with reflectors.
- Mike Hainsworth inquired if the Town has any plans to run the water line up Skyline Drive. Town Engineer Ackart replied there were no immediate plans to expand there at this time. Extensions have been handled on a case-by-case scenario in the past. We will review it further if there are a sufficient number of residents interested, but the number of customers per mile of pipe is probably going to be a problem. Ackart offered to meet with Mr. Hainsworth to discuss this with him in further.

FURTHER ADULT ENTERTAINMENT INFORMATION:

Although the public hearing was closed, a lengthy discussion ensued regarding adult entertainment. It was agreed that the Town would forward comments received tonight from the Residents' group and Mr. Close to both Attorney DiPonzio and Attorney Trueman for their review and consideration. We will request they coordinate their

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review and provide a report prior to the November 14 Town Board meeting.

With there being no further business, on a motion of Councilperson Stewart, seconded by Councilperson Barden, the meeting was adjourned at 8:46 P.M.

Sheila McMichael, Town Clerk