

04/16/08 Town Board Minutes

A regular meeting of the Elma Town Board was held on Wednesday, April 16, 2008, at 8:00 PM, Elma Town Hall, 1600 Bowen Road, Elma, New York, with the following members present:

Supervisor Michael Nolan
Councilwoman Susan Glownia
Councilman David Polak
Councilman Dennis Powers
Councilman Dean Puleo-Absent

Also: Deputy Town Attorney Rosemary Bapst
Building Inspector Joseph Colern
Highway Superintendent Wayne Clark
Water Superintendent Eugene Stevenson
Town Engineer James Wyzykiewicz

Approximately 31 people attended the meeting.

The meeting was opened with the reciting of the Pledge of Allegiance.

Making the Legal Notice for Local Law #4-2008 Imposing a Six Month Extension of the Moratorium on Land Use in the Commercial and Restricted Commercial Zone in the Town of Elma part of the minutes Supervisor Nolan opened the public hearing at 8:04PM. Speaking for was Diane Rohl. Supervisor Nolan closed the public hearing at 8:05PM.

Councilwoman Glownia made the motion and Councilman Powers seconded the motion to approve Local Law #4-2008 Imposing a Six Month Extension of the Moratorium on Land Use in the Commercial and Restricted Commercial Zone in the Town of Elma as follows: Section 1: Title. This Local Law shall be referred to as "Local Law Extending a Six Month Moratorium on Land Use Approvals or applications for Land Use Approvals or applications for Land Use in the Commercial and Restricted Commercial Zone in the Town of Elma." Section 2: Purpose and Intent. Pursuant to the statutory powers vested in the Town of Elma and its Town Board to regulate and control land use and to protect the

health, safety and welfare of its Residents; and to address present and future development within the Town; and Pursuant to the Comprehensive Plan adopted by the Town of Elma on May 21,2003; and to continue the update of the Town's Land Use Regulations, including but not limited to the Zoning Code of the Town of Elma; the Town Board of the Town of Elma hereby declares a six (6) month extension on the existing moratorium on the approval of land use or the application for land use in the commercial and restricted Commercial zones of the Town of Elma. At the discretion of the Town Board, there shall be the possibility of one (1) separate six (6) month period of extension imposed, after proper notice and a public hearing, to be held within forty-five (45) days prior to the expiration of said moratorium period. Section 3: Statutory Authority: Suppression. This Local Law is adopted pursuant to the authority granted to the Elma Town Board pursuant to section 10(1)(i); 10(1)(ii); 10(1)(iii)(3)(d); 20 and 27 of the Municipal Home Rule Law and in compliance with section 239-m of the General Municipal Law. A. This Local Law supersedes #144-71 through #144-86 (inclusive), #144-100 and #144-101 of the Codes of the Town of Elma, New York. Section 4: Term. This Local Law shall be in effect for a period of six (6) months. There shall be the possibility of one (1) more separate six (6) month period of extension imposed, after proper notice and a public hearing to be held within forty-five (45)days prior to the expiration of said moratorium period. Section 5: Scope of Controls. A. During the effective period of this Local Law: A. The Town Board of the Town of Elma shall not refer to the Planning Board any new request for Commercial site plans. B. The town of Elma Planning Board shall not make any recommendations or referrals to the Town Board or any other applicable Board of the Town for any approval, any commercial site plan, or other permit that would result in the development of a commercial property. C. The Town Board of the Town of Elma shall not grant any preliminary commercial business use permit for any project that requires new construction or significant renovation.

Section 6: Exceptions. A. This Local Law will not include or prohibit the consideration of any residential construction in the commercial zone. B. This Local Law shall not include or prohibit the consideration of any additional applications for subdivisions which have already received concept approval by the Elma Town Board, of any commercial construction that would not involve any Town Board or Town Planning Board approval. C. This Local Law shall not include any project that has received final approval, however, has not yet started construction. D. This Local Law shall not include any industrial project as defined and regulated in #144-87 through #144-93 (inclusive) and

#144-102 of the Code of the Town of Elma, New York. Section 7: Variances. A. Should any owner of property affected by this moratorium suffer an unnecessary hardship in the way of carrying out the strict letter of this moratorium, then the owner of said property may apply to the Town Board in writing for relief from strict compliance with this moratorium upon submission of proof of such unnecessary hardship. For the purpose of this moratorium, unnecessary hardship shall not be the mere delay in being permitted to make an application or writing for a decision on the application for a building permit, subdivision map, land division, variance, special permit, change of zone, or other approval during the period of the moratorium. B. Substantive requirements: No relief shall be granted hereunder unless the Town Board shall specifically find and determine and shall set forth in its resolution granting such exemptions that: a. Failure to grant an exemption to the petitioner will cause the petitioner unnecessary hardship, is substantially greater than any harm to the general public welfare resulting from the generating of the exemption; and b. The grant of the hardship, even if the project or activity for which exemption is sought is approved, will clearly have no adverse effect upon any of the Town's goals or objectives in undertaking the community planning effort or in adopting this moratorium, including but not limited to the effects resulting from uses detrimental to the community's resources or character, from loss or potential open space including areas important as wildlife habitat or from other adverse environmental impacts; and c. The project or activity for which the petitioner seeks an exemption is in harmony and consistent with any interim data or recommendations or conclusions that may be drawn from the Town or community-planning effort then progress; or the project or activity for which the petitioner seeks an exemption is submitted in connection with workforce or senior citizens affordable housing development; and d. The alleged extraordinary hardship is not the result of any delay, action or inaction by the applicant, the property owner, or predecessors-in interest and that such alleged hardship has not been self-created; and e. Failure to grant a hardship exemption to the applicant will cause hardship to the surrounding area, community, neighborhood, or general public welfare resulting from the granting of the exemption. In determining the magnitude of the alleged harm, the Town Board may consider the applicant's monetary investment in the completed application, prior to the moratorium, as applicable to such application; however, such monetary investment shall be only but one factor and shall not be the controlling factor in demonstrating extraordinary hardship. f. Procedure. Upon submission of a written application to the Town Clerk by the property owner seeking relief from this Moratorium, the Town Board shall, within thirty (30) days of receipt of said application, schedule a public hearing on said application upon five days written notice in the official newspaper

in the Town. At said public hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have the opportunity to be heard, and the Town Board shall, within thirty (30) days of the close of the public hearing, render its decision either granting or denying the application for relief from the strict requirements of this Moratorium. If the Town Board determines that the property owner will suffer an unnecessary hardship if this Moratorium is strictly applied to a particular property, then the Town Board shall grant relief from the moratorium to the minimum extent necessary to provide the property owner relief from strict compliance with this Moratorium. The town Board may impose any conditions on any grant that is deemed necessary. Section 8: Severability. Each separate provision of this local Law shall be deemed independent of all other provision herein, and if any provisions shall be deemed or declared invalid, all other provisions hereof shall remain valid and enforceable. Section 9: Effective Date. This Local Law shall take effect immediately upon filing in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law. Ayes-4. Noes-0. Carried.

Councilman Powers made the motion and Councilwoman Glowonia seconded the motion to approve the minutes from the April 2, 2008 meeting.
Ayes-4. Noes-0. Carried.

Department Reports

Town Engineer James Wyzykiewicz informed the Town Board that an open comment session needs to be on the next Town Board agenda in regards to the Stormwater Phase II program.

Building Inspector Joseph Colern informed the Town Board that legal action might need to be taken regarding two (2) properties on Clinton Street that have burned. Also to place Sarina Scaccia on the Agenda.

Water Superintendent Eugene Stevenson informed the Town Board that the antenna on the Jamison Road Water tank is just about complete.

Highway Superintendent Wayne Clark informed the Town Board that one sander is still in service, Creek Road Park and the Elma Village Green have been cleaned up and that cold patching has started. Also brush pick up will be starting on April 21, 2008.

Councilman Polak made the motion and Councilwoman Glowonia seconded the motion to approve a negative declaration on a short form SEQR for S.L. Installations Inc at 717 Jamison Road Suite #2 and #4.

Ayes-4. Noes-0. Carried.

Councilman Polak made the motion and Councilwoman Glownia seconded the motion to approve a Business Use Permit for S.L. Installations Inc at 717 Jamison Road Suite #2 and #4. Restrictions in "Use" no outside storage of any materials. Building Inspector notes permit required for advertising signs and a fire inspection on an annual basis. Ayes-4. Noes-0. Carried.

Councilman Polak made the motion and Councilwoman Glownia seconded the motion to approve a negative declaration on a short form SEQR for Samcoe Recreational Vehicles Inc at 1721 Transit Road. Ayes-4. Noes-0. Carried.

Councilman Polak made the motion and Councilwoman Glownia seconded the motion to approve a Business Use Permit for Samcoe Recreational Vehicles Inc at 1721 Transit Road. Restrictions in "Use" no junk vehicles to be stored on site. All outlined fire lanes to remain clear at all times. Building Inspector notes permit required for advertising signs and a fire inspection within 30 days of occupancy. Ayes-4. Noes-0. Carried.

Councilman Powers made the motion and Councilwoman Glownia seconded the motion to appoint Diane Rohl to the Conservation Board. Ayes-4. Noes-0. Carried.

Councilman Polak made the motion and Councilwoman Glownia seconded the motion to approve the installation of radio equipment on the repeater at the Jamison Road Water tower for the Town of Marilla to improve talk-out coverage for the fire fighters in Marilla and areas east of the Jamison site. Ayes-4. Noes-0. Carried.

Councilman Polak made the motion and Councilwoman Glownia seconded the motion issue a positive declaration on the Type I Coordinated Review SEQR for the Hesse property at Bullis and Girdle Roads. Ayes-3. Noes-1. (Councilman Powers voted no). Carried.

Councilman Polak made the motion and Councilman Powers seconded the motion to purchase a wireless access card for the Disaster Coordinator Edward Sauer at a monthly access charge of \$48.59. Ayes-4. Noes-0. Carried.

Councilman Polak made the motion and Councilman Powers seconded the motion to approve County Clerk Kathy Hochul's proposed Erie County Department of Motor Vehicle mobile office at the Town Hall on Tuesdays, which will be full service. Ayes-4. Noes-0. Carried.

Councilman Powers made the motion and Councilman Polak seconded the motion to approve the alterations in the mail room for the DMV office with an approximate cost of \$2040. Ayes-4. Noes-0. Carried.

Councilman Powers made the motion and Councilwoman Glowina seconded the motion to approve the authorizing resolution for an easement to Verizon as follows: Whereas, Verizon New York, Inc ("Verizon") has requested that the Town grant an easement for the purposes of locating, relocating, erecting, constructing, reconstructing, installing, operating, maintaining, patrolling, inspecting, repairing, replacing, altering, extending, and/or removing one or more overhead and/or underground telecommunication cables and lines for communication, microwave and/or electricity and any necessary manholes, hand holes, equipment, poles, appurtenances and attachment incidental thereto for all the above purposes within, along under and across the Town's land, and Whereas, the easement is requested on land situated on the north side of Jamison Road, identified as SBL 154.00-2-19.1, Great Lot 68, township 10, Range 6, and Whereas, the Town does wish to grant such easement so that Verizon may continue to provide and improvement telecommunication services to Town residents, NOW, THEREFORE, be it RESOLVED, that the Town Board hereby grants easement and authorizes the Supervisor to sign the agreement with Verizon. Ayes-4. Noes-0. Carried.

Councilwoman Glowina made the motion and Councilman Powers seconded the motion to approve the easement for New York State Electric and Gas Corporation to install an electric line and maintain same on property located on Seneca Street for Verizon. Ayes-4. Noes-0. Carried.

Councilman Polak made the motion and Councilwoman Glowina seconded the motion to approve the following resolution for Motorcycle Safety Month: WHEREAS, motorcycle safety awareness is of critical importance to both riders and other potential victims; and WHEREAS, in the past year, Erie County has experienced more than a dozen mishaps

involving motorcycles, more than half ending in fatalities; and WHEREAS, no single cause is to blame; and WHEREAS, motorcycle safety awareness has been identified by Governor George Paterson, as well as other government officials, as a priority in traffic safety; NOW, THEREFORE WE the members of the Town Board of the Town of Elma, declare the month of May, 2008 as “Motorcycle Safety and Awareness Month” in our municipality; and FURTHERMORE, we take note of the Saturday, May 3rd assembly of area bikers sponsored by the Buffalo-Erie County Chapter, American Bikers Aimed Toward Education (ABATE) in the month of May; and FINALLY, WE RESOLVE that a copy of this proclamation be sent to Frank Martorana, Coordinator of ABATE, as well as to all Mayors and Supervisors who are members of the Association of Erie County Governments. Ayes-4. Noes-0. Carried.

Councilman Polak made the motion and Councilwoman Glownia seconded the motion to authorize Supervisor Nolan to sign the renewal contract with State Police for the Elma Satellite Office in the Town Hall. Ayes-4. Noes-0. Carried.

Councilman Polak made the motion and Councilwoman Glownia seconded the motion to approve the donation of old computer equipment to the Boys & Girls Club. Ayes-4. Noes-0. Carried.

Councilman Powers made the motion to approve the Service Award audit with Penflex at the cost of \$445 a year. Penflex will generate a LOSAP Audit Package for review. No one seconded the motion. This will be discussed at a Work Session.

Councilman Powers made the motion and Councilwoman Glownia seconded the motion to approve Warrant #4 claim #343 thru #452 with noted exceptions as follows:
General Fund \$69,346.96 Water District \$28,092.55
Highway Fund \$22,893.54 Special District \$ 2,651.92
Capital Project \$26,614.
Ayes-4. Noes-0. Carried.

All have received the Planning, Zoning, Conservation Board and Code Review Committee minutes that apply.

Supervisor Nolan noted that the next Work Session will be on April 23, 2008 at 6:00PM.

Councilman Polak made the motion and Councilwoman Glowina seconded the motion to add Sarina Scaccia to the Agenda for a Gelatto Stand at 6629 Clinton Street. Ayes-4. Noes-0. Carried.

Councilman Polak made the motion and Councilwoman Glowina seconded the motion to approve a Business Use Permit to Sarina Scaccia for Gelatino's at 6629 Clinton Street. Conditional upon Mrs. Scaccia completing a formal Business Use Permit on April 17, 2008 in the AM.
Ayes-4. Noes-0. Carried.

Kevin Gaughan gave a presentation on his view of local government under privilege of the floor.

Councilman Polak made the motion and Councilwoman Glowina seconded the motion to enter Executive Session at 9:30PM due to pending litigation and the Town Board will adjourn immediately following this session. Ayes-4. Noes-0. Carried.

Adjourned at 10:10PM.

Respectfully submitted,

Patricia King
Town Clerk