

Regular Monthly Meeting, Hillsdale Town Board
Tuesday, December 20, 2011

I. Call to order

Supervisor Art Baer called to order the regular meeting of the **Hillsdale Town Board** at **7:30 pm** on **December 20, 2011**, in the **Hillsdale Town Hall**. The meeting began with the Pledge of Allegiance.

II. Attending

The following persons were present: Supervisor Baer, Board Members Carmen Barbato, Peter Cipkowski, Augie Sena, and Gillian Sims-Elster; Town Clerk Julie Kane, Highway Superintendent Richard Briggs, Tax Collector Joe Hanselman, Comprehensive Plan Review Committee Chair Tom Carty, Zoning Board of Appeals Chair Craig Norton; 12 members of the public and one member of the media.

III. Report from the Columbia County Sheriff

Senior Investigator William Foster discussed the recent crime on Cold Water Street, informing the Board and members of the public that it is the number one priority of the Sheriff and that the forensic investigation is progressing daily.

Deputy Wendy Gunner discussed matters of public safety such as installing motion lighting on private residences, reporting burned out street lights, and informing neighbors when a home will be empty. She then offered to train members of the community in establishing a Neighborhood Watch program. Mr. Baer requested the Hamlet Committee to facilitate by organizing a public meeting to discuss the Neighborhood Watch program.

IV. Committee Reports

- a) **SEWER COMMITTEE:** Mr. Sena reported that interest had been expressed by a number of residents in a second area to be served by the Sewer system. He added that some damage had been suffered by the sewer cap in the Hamlet Park but that it had been repaired.
- b) **PARKS AND RECREATION COMMITTEE:** Ms. Sims-Elster reported that the Hamlet Committee had selected the first piece of play equipment, one designed for one- to five-year-olds, to be installed in the Hamlet Park. She added that it will cost \$23,293, to be paid with the proceeds from the insurance claim for equipment damage, funds from the Flowers to Power luncheon, and fund from the 2012 Flea Market, and she requested the Board to approve a \$10,000 expenditure for the Parks and Recreation Fund to make up the balance.

Mr. Baer stated that the Town had delayed installing new play equipment because of the past vandalism but that the Sheriff's department now had the

ability to monitor the park from the Substation if the Town would purchase an additional camera for \$,3011 to add to their security array.

Mr. Carty said that he would like to use \$1,000 from the Comprehensive Plan Review budget toward the purchase of the camera.

On a motion by Ms. Sims-Elster, seconded by Mr. Sena,

Adopted by a vote of a vote of 5 ayes and 0 nays,

the Board resolved to use \$12,015 from the Park and Recreation Fund to purchase Phase I play equipment and a monitoring camera for the Hamlet Park.

- c) **COMMUNICATIONS COMMITTEE:** Mr. Cipkowski reported that the Town's e-newsletter continues to reach more readers and that the next two would be sent out December 30th and in February, 2012. He added that the new Town Hall sign was being constructed and would be installed soon, along with a public notice board for the Town Clerk's use.

Mr. Cipkowski also pointed out Board meetings were now being videotaped for posting to the Town web site. He then presented the new Town Seal which shows the new Town Hall.

- d) **HIGHWAY DEPARTMENT:** Richard Briggs, Highway Superintendent, reported that he had participated in a meeting with Mr. Barbato, Steve Tiger, incoming Board member, Joseph Regina, union shop steward, and Mr. Baer. He read the following response to the issues raised:

"Research Notes:

"I have researched the Town, Highway and General Municipal laws that govern the Highway Department and the Town and have opinions from various state offices, the Attorney General, the State Comptroller and other associations:

"Highway Committee:

"In response to my question about 'what role does the Town Highway Committee serve', you responded that it had been in existence since before your time as Supervisor and was a Legislative Committee at the County level, that it served to keep an eye on the money and the assets of the Highway Department.

"The Hillsdale Highway Committee is not a legislative committee, as it's members are not elected officials.

"During my two terms as Highway Superintendent the committee has never met. Occasionally members of the committee come to the Town Garage to chat but there have been no formal meetings.

"Therefore I suggest that if this committee is to be of any use to me and the Highway Department, we should meet at least once every quarter for a formal meeting. The meetings will have to take place either before the start of our workday or at the conclusion of our workday. The Deputy Superintendent and the union Shop Steward should be included in these meetings.

“Apple Tree Lane:

“A correction to your comment about the upkeep costs of the stretch of road.

“At the recommendation of FEMA we carried out repair work from 9/12/2007 – 9/20/2007 that cost approximately \$10,000.

“This was a onetime repair.

“Since that time the lane receives the same type of service as the other roads in Hillsdale, the cost of this service is not \$10,000 per year as you suggested.

“Contract: Collective bargaining agreement

“You stated that there were certainly things in the contract that needed to be looked at, sick leave etc. You stated that because the term ‘Town of Hillsdale’ was used on page 3 and on the last page of the contract and after a conversation with Quackenbush and the Town Attorney that the contract superseded Highway Law and therefore the Town has the right to hire and fire highway department employees.

“My research and consultation with legal counsel states that you are incorrect.

“Refer to (Highway Law, § 140[4].

“The town highway superintendent has express statutory responsibilities with respect to town highway personnel and the use of town highway equipment. With respect to highway department personnel, the superintendent is authorized, within the limits of town board budgetary appropriations, to hire highway laborers for the maintenance and repair of highways and bridges and the removal of snow, and to provide for the supervision of such persons.

“In consultation with legal counsel, they made the statement that although a town highway superintendent is bound by the provisions of a collective bargaining agreement entered into between the town and highway department employees, regardless of whether the Highway Superintendent was a party to such agreement it does not supersede the Highway Superintendents general authority over highway department employees.

“The Taylor Law governs the relationship between public employers and public employees at all levels of government. See Civil Service Law §200.

“In a subsequent conversation with the Union business agent Tom Quackenbush, on Friday December 16, he stated that the contract in no way supersedes Town Law or Highway Law.

“Projects: (additional duties)

“You stated that the Town has needs that are within the skill set of the highway employees.

“You stated that if I decide, as Highway Superintendent, not to do whatever it is that you ask and the Town has to get it done, the Town will privatize the job, contract it out or obtain shared service and take the cost out of the Highway Budget.

“You further stated that it was ‘more important to take care of the Town Hall Parking lot than to remove downed trees from Rockledge’.

“In answer to your statement: Town Law §321) provides that the Town Board may confer additional duties on a town Superintendent of Highways ‘not inconsistent with law’.

“In the NY State issued opinions these additional duties are to be reasonably related to the superintendent’s normal responsibilities, so long as those additional duties do not interfere with the performance of the superintendent’s regular statutory responsibilities.

“So the short answer is yes the Town Board may ask for additional work duties but they may not interfere with the primary responsibilities of the highway department.

“Projects: Charge backs and reimbursements for additional duties

“It is the opinion of the State Comptroller’s office that where a town highway superintendent performs work on town property which is not part of the town highway system, the cost of such work must be charged against the appropriate item in the general fund, rather than the highway fund.

“With the exception of costs of general town government, expenditures made by a town must be charged against the appropriate budget item on the basis of “purpose”.

“Certain costs of general town government may be charged to special districts.

“The State Comptroller has opined, ‘Where the town highway superintendent performs work for the benefit of the town on property, which is not part of the highway system, the cost of such work must be charged against the appropriate item in the general fund rather than the highway fund. This may be accomplished by having the superintendent present an itemized bill to the town board for the cost of the labor and materials once the work is finished. The town board may then charge these costs against the appropriate item in the general fund and credit these moneys to the highway fund’.

“There needs to be a procedure in place for the additional duties requested of the Highway Department, and the reimbursement of the costs associated with the project. A work order needs to be filled out, by the Town Board, Special District or Town Committee, and I would suggest given to the Town Board member on the Highway Committee, Steve Tiger. This can be done electronically.

“The work order is then given to the Highway Superintendent who determines:

- If the work fits into the Highway Department schedule
- If it can be completed in the time frame requested
- If the costs are reasonable

“The Highway Superintendent advises Steve Tiger of the determination. The work order needs to be approved by the town supervisor prior to any work being carried out. If the work can be completed by the Highway Department the Highway Superintendent completes work order with the time and materials used for the job entered on the form and this document will be attached to the voucher, signed by the highway superintendent for credit to the highway fund.

“Refer to Highway Law §140 for the duties and responsibilities of the Highway Superintendent and Department.

“Ethics Policy and Nepotism:

“You stated that I am in violation of the nepotism clause in the Town Ethics Policy and that you were going to remove the Highway Department Deputy Supervisor Robert Briggs Jr, who is my brother. You further stated that under the collective bargaining agreement / contract that the Deputy is to be assigned dictated by seniority.

“I am not in violation of the Ethics policy.

“There is no violation as the town ethics policy does not contain and local legislation prohibiting a local highway official from hiring relatives.

“The Town Board resolved to accept the County Ethic Policy on November 17, 2009.

“Robert Briggs was hired on 5/1/2009.

“Nor am I in violation of the ethic policy in reference to appointing him as the Deputy.

“According to General Municipal Law §800(3) defining ‘interest’ on the part of Highway superintendent does not apply ‘to a contract that a municipality enters into with his parent, brothers, sisters, aunt, uncles etc’.

“Town Law §32(2) PROVIDES THAT THE DEPUTY WORKS AT THE DISCRETION OF THE Highway Superintendent. The Town Supervisor and Town board cannot remove the highway deputy.

“In fact by removing Robert Briggs you are in violation of the Town Law.

“In consultation with the Business agent for the union, Tom Quackenbush, he stated that ‘the appointment of a Deputy is at the discretion of the Highway Superintendent’.

“Part Time Employees:

“You stated that Willie Baker had accrued 80 hours for the past few pay periods and it we are violating labor laws.

“The Department of Labor has confirmed that Part Time employees can work as many hours as needed on a part time basis. This does not change their status to full time. Hours worked over and above 40 hours are paid at time and a half. Civil service law.

“Dept of Labor

“You also mentioned that there were 6 labor violations that resulted from a visit and meeting with Julie Kane, work place violence posting and training amongst them and that these issues had to be addressed by February.

“I have not received a visit or received or signed for any notifications of labor law violations at the Highway Garage.”

Mr. Baer responded, "I guess we have to disagree." He continued, in regards to Apple Tree Lane, that he would suggest the Town proceed with plans to privatize the road, making room for a school bus turn-around at the bottom.

Regarding the union contract, Mr. Baer stated that the language is very clear about the rights of the employer and that, if the Town is not the employer, the contract will have to be renegotiated.

Regarding additional duties, Mr. Baer said that the Town is requiring only tasks that are within the skill set of the Highway Department.

Finally, regarding the issue of nepotism, Mr. Baer stated that he will not sign a paycheck for the Highway superintendent's brother as deputy supervisor.

Mr. Baer then requested that Mr. Briggs provide the Board with an inventory of all department equipment by December 31, 2011, to serve as a basis for a 2012 audit.

- e) **BUILDING DEPARTMENT:** Mr. Sena reported that the departmental work level is still steady. Regarding the Town Hall, he informed the Board that some patching on the building will have to be done to protect the building from the winter weather. He added that a furnace back draft had been producing fumes in the building but that it was being addressed by the installation of an additional fan.

Mr. Baer reminded the Board that several trees behind the Town Hall would have to be removed before the winter snows and that three bids had been received for the work. On a motion by Mr. Sena, seconded by Mr. Cipkowski,

Adopted by a vote of a vote of 5 ayes and 0 nays,

the Board resolved to accept the lowest bid of \$2500.

Mr. Baer continued, stating there had been a leak in the small conference room and that the roof had been repaired, but that the roofer had said there would be more problems to come. Mr. Baer said that he would look into estimates to have the entire roof replaced.

V. Other Business

- a) **RAIL TRAIL:** Tom Carty reported that a Rail Trail Alliance has been formed and has raised \$4,200. He informed the Board that the next step would be to select an engineering firm to begin the development plans for the Trail with the goal of beginning construction in 2013.
- b) Town Clerk Julie Kane reported on her research into requirements for compliance with New York State's workplace violence prevention mandates and presented a revised statement of the Town's Workplace Violence Prevention Policy. On a motion by Mr. Sena seconded by Mr. Cipkowski,

Adopted by a vote of a vote of 5 ayes and 0 nays,

the Board resolved to adopt the revised Workplace Violence Prevention Policy.

On a motion by Mr. Cipkowski seconded by Mr. Barbato,

Adopted by a vote of a vote of 5 ayes and 0 nays,

the Board approved the following resolution:

WHEREAS the Hillsdale Town Board desires to provide a safe and secure workplace for all its employees; and

WHEREAS the Hillsdale Town Board recognizes that management commitment and employee involvement are essential to establishing an effective safety program;

Now therefore be it

RESOLVED that the Town Board of Hillsdale establish a Workplace Violence Prevention Taskforce, to consist of a member of the Town Board, an authorized employee representative, and a third member to be determined, and to be responsible for:

- Developing a Workplace Violence Prevention Program;
- For posting a Workplace Violence Policy Statement in each Town Building;
- For performing an annual review of the work environment, violence risk factors, and any incident reports.

c) DOG WARDEN: On a motion by Mr. Cipkowski, seconded by Mr. Sena,

Adopted by a vote of a vote of 5 ayes and 0 nays,

the Board resolved to appoint Wes Powell as Hillsdale Dog Control officer, effective January 1, 2012.

d) ZONING BOARD OF APPEALS: On a motion by Ms. Sims-Elster, seconded by Mr. Cipkowski,

Adopted by a vote of a vote of 5 ayes and 0 nays,

the Board resolved to re-appoint Howard Van Lenten to the Zoning Board of Appeals for another five-year term.

e) NEW CARPET: The Board extended an official thank you to Matthew White for the gift of a carpet for the meeting room in the Town Hall.

f) PUBLIC COMMENT: Richard W. Hotaling asked the Board if a Town employee could use Town funds or materials to do private work, and stated that Robert Briggs, Deputy Highway Superintendent, had done work for him

on two vehicles. Mr. Hotaling stated that, when asked for a bill, Mr. Briggs had replied, "Don't worry about it. The Town will take care of it."

Mr. Baer replied that this would be illegal and requested Mr. Briggs to begin the process of investigation. Mr. Baer later asked Mr. Briggs not to take any action, stating that a law enforcement officer would investigate.

- g) PUBLIC COMMENT: Hilary Petith addressed the Board, stating that she felt not enough was being done to protect the community after the recent murder in the Hamlet.
- h) PUBLIC COMMENT: Richard Briggs addressed the Board, stating that Richard Hotaling's wife had left him for Robert Briggs and suggesting that those circumstances might be the reason that Mr. Hotaling had made his complaint to the Board.
- i) PAY BILLS: On a motion by Mr. Sena, seconded by Ms. Baldwin,

Adopted by a vote of 5 ayes and 0 nays

It was resolved to pay the Town's bills in the following amounts:

General Fund	Voucher #284 - #320	\$ 30,845.05
Highway Fund	Voucher #220 - #237	\$ 55,833.91
Park & Rec. Fund	Voucher #49 - #55	\$ 1,821.72
Sewer District #1	Voucher #64 - #69	\$ 4,253.01

- j) Mr. Baer presented a budget amendment to the Board, which was approved by unanimous vote.
- k) The 2012 Organizational meeting was set for 3:00 pm on Tuesday, January 3, 2012.

VI. Adjournment

On a motion of **Mr. Barbato**, seconded by **Mr. Sena**,

Adopted by a vote of a vote of 5 ayes and 0 nays:

Supervisor Baer adjourned the meeting at **9:45 pm**.

Minutes submitted by: Julie Kane, Hillsdale Town Clerk