

Regular Town Board Meeting

Tuesday September 28, 2021

6:00 p.m.

Present were Supervisor Stephanie DeZalia, Councilman Marshall Gero, Councilman Robert Dobie, Councilwoman Maureen Marsden, Councilman Brian Caza, Town Clerk Martha (Candy) King and Town Attorney John Sivestri.

Guests in attendance were Brian DeZalia, Ryan Bessey, Tracee Parent and Jake Parent. Supervisor DeZalia called the meeting to order at 6:00 pm and led in the pledge to the Flag.

Approval of the August 17, 2021 minutes as amended.

Moved by Councilman Gero seconded by Councilman Dobie.

All in Favor

Ayes-5

Noes -0

Supervisors Financial Report

As of August 31, 2021

Checking Accounts

Town of North Hudson Checking	0.10%	\$ 639,417.85
General Fund		\$ 606,447.85
Fire District		\$ 32,970.00
Highway Fund Checking	0.10%	\$ 695,467.31
<u>Total All Funds</u>		<u>\$ 1,334,885.16</u>

Old Business

A. Bessey Easement

Supervisor began by reading the following prepared statement:

“We had previously agreed that the Town would hire and pay for a surveyor to mark our line so we could have the surveyor mark and give legal description of the needed easement over the Ryan and April Bessey property. Surveyor John Deming and crew came and marked the towns northern most line and there is a clear encumbrance of the cell tower underground lines onto the Bessey property. I have informed Crown Castle of this and I have given their contact information to Ryan. It does not appear an easement is needed for the road to the cell tower or the road leading to our upper lot that sits east of the Bessey property. It is also clear that at some point between 2003 and 2009, some trees were cut along the property line just north of the highway garage and some were from the property now owned by Bessey. It appears they were cut when owned by the previous owner. This possibly happened when the cell tower went in (2005) or when the highway garage was put in. The trees were not there when Mr. Bessey acquired the property in 2014. The highway department did have some items parked there, and when the Town received notice of the possible encumbrance from Ryan back in June we removed all of those items right away. It is clear at times we may have turned around or parked on the property of Bessey, but I think also the survey clearly shows there is not a need for an easement between the Town and Bessey. In the July meeting it was stated that Mr. Bessey was not concerned so much

with the trees or the underground wires but we believed we may need an easement for the cell tower road that may be encroaching on his property. So based on this information we all agreed on an amount for that easement, contingent upon the outcome of the survey. Now, considering the facts at hand, that we now know, the agreed upon amount and previous resolution for an easement need be rescinded or amended. We are under no legal obligation at this point to do anything. We are under Obligation to act in a fiscally responsible and fiducial manner. Please remember that as we move forward.

I will say, that I made a promise to all the residents and tax payers of North Hudson that I would do what is I the best interest of all. As we move forward on this, we could be setting precedent for all future easements the Town may need, all future land acquisitions, tree removal values and property disputes. I have absolutely nothing against Ryan and April and I am just trying to do this in a manner that is just to all and also in a manner that protects the Town in the future going forward.”

The Board reviewed dated property images from 2003- 2017. Supervisor DeZalia reminded them that the lines were bases on the Real Property tax maps not the survey line that was marked by the surveyor also printed information on the law pertaining to the taking of trees from someone’s property. The images clearly show that the taking of the trees was prior to 2014 when Mr. Bessey acquired the property. Supervisor DeZalia reminded the Board that they now have all the facts and this was the time to have any discussion on this. She encouraged them to speak on this matter at this time. Lengthy discussion followed.

Attorney John Silvestri stated” *The Town is under no legal obligation to Mr. Bessey to do anything. Under Municipal Law §50E Mr. Bessey had 90 days to file a notice of claim and the 3-year statute of limitations is up. Any claims of timber trespass are time barred. Timber trespass should not be considered by the Board.”*

Supervisor DeZalia added” *Everyone sees the road going to the cell tower and there is room on Town property to make it wider if needed”.*

Councilman Dobie spoke stated “*I believe the board owes Ryan something. He came in good faith and we all agreed to pay him. We made a deal with him for a considerable amount of money. How can Ryan now have any faith in us?”* Mr. Silvestri replied “*Do we pay for something we don’t need? No, we shouldn’t be paying for an easement that we don’t need.”* Supervisor DeZalia added “*When the prior agreements were made it was based on the belief that we were on his property, but clearly we are not.”*

Councilman Caza spoke “*I’m in disagreement with the survey. Someone cut these trees, why were these trees cut? Who gave the cell Tower company permission to put that road in? I think the Town just put in that road without a survey. Did the Town just assume we owned the land? The Town gave that easement.”* Supervisor DeZalia corrected this by stating” *there is no easement. Right on the front of the project plan it states if the contractor that puts anything where it is not indicated on the map then the contractor is responsible. We did not lay the cell tower lines; the cell company did. Ryan’s issue is with the cell company not the Town.”* Mr. Silvestri asked Councilman Caza “*Is there any proof, we put the lines in? Is there any proof the town cut the trees?”* Councilman Caza answered “No” to both.

Councilman Dobie added” *I sincerely doubt the town cut the trees, I think it was the people who owned it before.”* Supervisor DeZalia said since you were the only person who was there at that time it resolves the Town. Mr. Silvestri again stated “*There is no*

proof the Town did it, there is no proof of encroachment, it is a non-issue. There are no witnesses to this. No notice of claim was filed and there is no proof of the Town's encroachment. This was verified by the surveyor. The desire to compensate Mr. Bessey was based on the mistaken belief of an encroachment. The Town had a surveyor go out and determine this. There is no need for an easement. The only legitimate question I see before the Town Board is does the town need an easement on Mr. Bessey's property for the cell tower company to improve the Town road to continue to use this road? It appears there is no need for this."

Councilman Dobie then asked Mr. Silvestri *"Is there no moral obligation to the Town?"* Mr. Silvestri replied *"No. The Town is a fiduciary position, the Town has no authority other than the authority given to it by law, if you are going to compensate people you can't do it based on your own personal ethics or morality. I do not see any lack of morality here. There is no proof of timber cutting by the Town, there is no encroachment so there are no violations. If the cell tower company has encroached on Mr. Bessey's land he is in a better position to bring action against the cell company. Based on John Demings blaze there is no encroachment."*

Discussion followed regarding the Town's use of Ryan's land to store highway equipment over the years.

Councilman Caza asked Mr. Silvestri *"Should the Town do a right of way?"*

Mr. Silvestri answered *"No, Mr. Deming's survey shows the cell tower company went outside the line and placed the lines on to Ryan's property. It was a contractor error. They went outside the boundaries."* Supervisor DeZalia added that Niagara Mohawk also has wires on Ryan's property.

Councilman Dobie asked Mr. Silvestri *"Isn't there something you can do?"*

Mr. Silvestri suggested that Mr. Bessey hire an attorney to pursue this. "Councilwoman Marsden said she agreed with everything and her only question was *"since we have used his property since he has owned it, is there some way we can pay him some kind of rental for this use of his property?"* Mr. Silvestri asked Mr. Bessey if the Town had used his property in the last 90 days. Mr. Bessey replied, *"No."*

Mr. Silvestri replied *"The Town has zero liability; it has not used his property. The fact there are other people using his property is between Mr. Bessey and them."*

Councilman Caza stated *"This is all while the Town is benefiting and making a profit from this."* Supervisor DeZalia asked him to explain what he meant by profit. His reply was *"The Town is making a profit on this cell tower and if Mr. Bessey stops allowing them to use his property the Tower will cease to exist"*. Supervisor DeZalia corrected him by stating *"the Town is not making a profit; this revenue helps to lower the tax base"*.

Councilman Dobie stated *"We have had 2 deals with Ryan now and I think morally we have to do something."*

Councilman Gero asked if Mr. Bessey had spoken to the cell tower company yet. Mr. Bessey replied *"No"*. Supervisor DeZalia added that it appears that Mr. Bessey needs two (2) easements, one with the cell tower company and one with Niagara Mohawk. She continued by stating *"we attempted to make this happen without a survey and our attorney. We now know the facts and have to proceed accordingly. Unfortunately, we let our emotions make our decisions. I would like this to be settled tonight."*

Mr. Bessey noted he was unaware of Niagara Mohawk using his property until this evening's Board meeting.

Ryan asked if he would be giving the town an easement? It was then clarified just a rental fee for the Town trucks being parked there.

John Silvestri stated *"You are bound by a 3-year statute of limitations. It's not the towns fault. You can't sit on something for 7 years and make more money. There is no proof of anything. It's not the towns fault Ryan didn't come forward sooner. He waived his right to make a claim by not coming forward. He can only go back 90 days from date he made his claims known. Ryan is at fault for not coming forth sooner, he had an obligation to do so. It was absolutely up to Mr. Bessey to put together a claim to present to the town. If the town waives the 90-day notice, which I don't think the Town can legally do, they are opening up a Pandora's box for anyone to come back. This could affect our claims going forward and will be a potential problem in the future. If the Board waives the 90 day notice it can only go back 90 days, not 3 years."* Councilman Dobie asked Mr. Silvestri if there was any way to remedy this with Ryan as he didn't do anything. Mr. Silvestri responded *"That's exactly right, he didn't do anything. He should have. Suppose we gave him the benefit of the doubt; he didn't file a proper claim. He should have come to me as the Towns Attorney not to Supervisor DeZalia then we would have had an itemized list of what his complaints were. If he filed, it properly in May it could only go back to Feb. I am advising to the Board against waiving the 90-day notice."*

The Board then had a lengthy discussion on the cost of storage fees.

Supervisor DeZalia made a motion to pay Mr. Bessey \$450.00 month for the use of his property since verbal notice was given in May equaling \$1800.00.

Second by Councilman Gero

Discussion:

Councilman Dobie *"it's a slap in the face, we had it at \$106,000.00 now this?"*

Roll Call:

Councilman Caza - No

Councilman Gero - No

Supervisor DeZalia - Aye

Councilman Dobie- No

Councilwoman Marsden - No

Councilman Gero moved to pay Ryan Bessey \$5,000.00, representing \$1,250 a month from February to May 2021 for the use of his property for Town storage.

Seconded by Supervisor DeZalia

Discussion:

Mr. Silvestri stated *"if the Town does decide to enter into this agreement with Mr. Bessey, there has to be a legal condition made that the money is to be paid only after Mr. Bessey signs a general release to the Town."*

Roll Call:

Councilman Caza - No

Councilman Gero - Aye

Supervisor DeZalia - Aye

Councilman Dobie- No

Councilwoman Marsden - No

Attorney Silvestri added that he couldn't understand Mr. Bessey's reluctance to deal with the cell tower company as he would make out well as they would rather settle with a private land owner prior to involving an attorney on these matters.

Supervisor DeZalia asked the Board *"Do we continue to make resolutions? The facts show that we are under no legal obligation. We are at an impasse. Do we just wait now and wait for Mr. Bessey to retain an attorney and then for Mr. Bessey to have his attorney contact our attorney?"*

Councilman Dobie asked Mr. Silvestri was asked if he could represent Ryan and write a letter to the cell tower company on Ryan's behalf. Attorney Silvestri stated he could not as it would be a conflict, however he could recommend a number of good attorneys to Mr. Bessey.

Councilwoman Marsden suggested perhaps the Town pay Mr. Bessey \$8,000.00 or \$10,000.00, for the use of his land for February, March, April and May 2021 for storage. Councilman Caza presented a motion to pay \$10,000.00 to Mr. Bessey for the use of his land for Town storage for months February 2021 through May 2021.

Resolution #84 of 2021

Be it resolved that a payment of \$10,000.00 be made to Ryan and April Bessey for the use of land for storage by the Town for the months February through May 2021.

That being equal to a sum of \$2,500.00 a month based on a verbal notice given in May 2021. Payment is contingent upon Mr. Besseys signature on a general release of liability.

Moved by Councilman Caza second Councilman Dobie

Discussion:

Attorney Silvestri again advised the Board against waiving the 90-day notice." *The Town is setting precedent and creating a potential problem for this Town.*"

No further discussion.

Roll Call:

Councilman Caza - Aye

Councilman Gero - Aye

Supervisor DeZalia - Aye

Councilman Dobie- Aye

Councilwoman Marsden - Aye

Supervisor DeZalia then reminded the Board *"Make sure the Town doesn't put things on other people's property from now on as we just set precedent"*

Councilman Caza was excused from the meeting at 7:40 p.m. for work purposes.

Under advisement from the Town attorney the following resolution was brought forth.

Resolution # 85 of 2021

Resolution to rescind all prior resolutions in the matter of the Bessey easement.

Moved by Supervisor DeZalia seconded by Councilman Dobie

Roll Call:

Councilman Caza - absent

Councilman Gero - Aye

Supervisor DeZalia - Aye

Councilman Dobie- Aye

Councilwoman Marsden – Aye

Mr. Bessey thanked the Board and left the meeting this point. (7:44p.m.)

B. Health Insurance

Items have been sent to Public Sector and a ZOOM meeting has been scheduled for the following day with Supervisor DeZalia.

Attorney John Silvestri left the meeting at this point. (7:46p.m.)

C. Flashing Signs

Supervisor DeZalia updated the Board on the flashing signs. There is a delay due to the DOT applications requirement for an environmental review. She will be contacting Jim Dugan for his assistance on this. Signs have not been ordered at this time but will be as soon as all permits have been obtained. Underwood Club will be contributing the cost of the signs to be placed at the northern end of Town.

6. New Business

A. Department Reports

Supervisor-Supervisor DeZalia has been working on the tentative budget. She was still waiting on contract information from the ambulance and FD. She noted she has been given very little information from the Highway Department.

-The Board packets contain monthly reports from various departments.

Highway Department- Highway Superintendent Foster had presented a quote for a 2022 HV507 SFA 4x2 that is in stock at Clark Trucking. The total cost including needed accessories would be \$160,400.00. He had previously stated he wanted to get a Tandem as he believes it could be used for more things. Superintendent Foster has changed his mind and is now seeking to purchase the 2022 HV507 at Clarks. Board members questioned why he changed his mind about the tandem. The Highway Committee was asked to meet with Ken, remind him of the procurement policy and the need for the proper specs before it can go out to bid. Supervisor DeZalia asked the Highway committee to meet with Superintendent Foster soon. She added that Schroon Lake has a HX Auto Tandem and it is on order to come in April 2022 at a cost of \$216,000.00 from Clark Trucking.

Codes Department-Jon was busy with CO for the A-Frame in preparation for the opening.

-He is working on the required items needed for the Flood Damage Prevention Law.

-There have been no updates on status of the complaint/violation at 2491 US Rte. 9.

Assessors-Chairman of the Board of Assessors Michael Marsden has received a quote from the County IT department for a laptop and desktop. That department has needed an upgrade for some time. The total for both is \$1,413.70. In order to do this \$1,000.00 will need to be moved from account 1355.4 (Assessors Contractual) to 1355.2 (Assessors Equipment).

Resolution #86 of 2021

Resolved to move \$1,000.00 from account 1355.4 to account 1355.2 for the purpose of purchasing a new laptop and desktop for the assessor's office for a total of \$1,413.70.

Roll Call:

Councilman Caza - absent

Councilman Gero - Aye

Supervisor DeZalia - Aye

Councilman Dobie- Aye

Councilwoman Marsden-Aye

B. County Reports

- Supervisor DeZalia is on the contract negotiations force. She has been attending numerous meetings and indicated there will be many meetings in October.
- She has met with Shaun, Jim Dougan and Community Resources regarding the Arena project on County property. County DPW will begin with some tree removal and stabilization of some buildings this fall.
- Supervisor DeZalia attended NYSAC conference in Syracuse September 13th-15th. There were many great topics covered, one being the legalization of marijuana.
- The need for upcoming special Board meetings and dates for them were discussed. At this time Councilman Gero briefly stepped out of the meeting.

Resolution #87 of 2021

Resolution setting a special Board meeting for the purpose of the Town Clerk to present the tentative budget on Tuesday October 5 at 2:00p.m.

Moved by Supervisor DeZalia second by Councilwoman Marsden

Councilman Caza - absent

Councilman Gero – stepped out

Supervisor DeZalia - Aye

Councilman Dobie- Aye

Councilwoman Marsden-Aye

Resolution #88 of 2021

Resolution setting a special Board meeting for the purpose of a workshop to be held prior to the Regular October 19, 2021 Board meeting. The Workshop will begin at 4:00pm followed by the regular Town Board meeting at 6:00p.m.

Moved by Supervisor DeZalia second by Councilwoman Marsden

Councilman Caza - absent

Councilman Gero – stepped out

Supervisor DeZalia - Aye

Councilman Dobie- Aye

Councilwoman Marsden-Aye

-The Supervisor will present the tentative Budget to the Town Clerk on or around October 22nd.

Resolution# 89 of 2021

Resolution setting a Public Hearing for the purpose of the proposed Local Law to Override the Tax Cap to be held on Thursday November 4, 2021 at 6:00p.m.

Moved by Supervisor DeZalia second by Councilman Gero

Councilman Caza - absent

Councilman Gero - Aye

Supervisor DeZalia - Aye

Councilman Dobie- Aye

Councilwoman Marsden-Aye

Resolution # 90 of 2021

Resolution setting a Public Hearing for the Purpose of presenting the Preliminary 2022 Budget as set forth to be held on Thursday November 4,2021 at 6:15p.m.

Moved by Supervisor DeZalia second by Councilwoman Marsden

Councilman Caza - absent

Councilman Gero - Aye

Supervisor DeZalia - Aye

Councilman Dobie- Aye

Councilwoman Marsden-Aye

-Supervisor DeZalia noted that the Local Law needs to be passed before the Board can adopt the final 2022 Budget. The final budget must be adopted by November 20th. She would like to do both at the November Town Board meeting scheduled for November 16th at 6:00p.m.

7.- Defensive Driving Course Supervisor DeZalia noted there will be a defensive driving course on October 23rd 9-3 in Schroon Lake at the Senior Center.

- If there are enough people interested in taking this course, there is a possibility of another one being held in North Hudson in November.

Resolution # 91 of 2021

Resolution of congratulation to Muhammad Ahmad on the opening of the Frontier Town Gateway A-Frame.

Moved by Supervisor DeZalia

Unanimous second

8.- General and Highway Abstracts

Motion to approve the General and Highway Abstracts by Councilman Dobie

Second Councilman Gero

All in favor

Ayes-5

Noes-0

9.- Audit of Judges Financial Report

Motion to approve the Audit of the Judges Financial report

Moved by Councilman Gero and second by Councilman Dobie

All in favor

Ayes-5

10.- Privilege of the Floor-

-Tracee Parent asked when the Town was going to fix the ditch. She asked when are they going to do something about the water coming onto her property.

-Discussion on the ad placed for HEO still in the paper and someone had already been hired. Supervisor DeZalia has asked her clerk to withdraw the ad.

Meeting Adjourned at 8:15 p.m.

Moved by Supervisor DeZalia second by Councilwoman Marsden

All if favor Ayes- 4, Noes-0, Absent -1

Respectfully Submitted

Martha M. King

Town Clerk