

Regular Town Board meeting of the Milan Town Board held on 05/11/09 at 7:30 PM at the Milan Town Hall.

Present: Supervisor Richard Barrett  
Councilpersons David Byrne, Roberta Egan, Diane May & Ross Williams

The Supervisor opened the meeting with the pledge of allegiance.

The Supervisor then introduced Paul Finch, the Red Hook Superintendent, and Bruce Martin, the Business Manager. They gave a brief presentation on the up coming school budget.

**PUBLIC COMMENT:**

E. Bartin, a resident of Milan expressed some concerns that she had about the brush pile at the transfer station. She said that she noticed that the town had chipped the old brush pile but now there is a mound of chips and there is a mountain of brush there now. Ms. Bartin wanted to know if the town had a plan for this and wanted to know why the town does this. She recommended that chipping be done on site by the highway department. She felt that people were abusing this privilege.

The Supervisor explained to Ms. Bartin that this has been a policy for years and the town is required to grind up the brush pile once every three years. He continued to say that the reason why it is so bad this year was the recent ice storm. The Highway Department will go out and collecting the brush along the towns' roads but he said that he would expect that the residents that live on county roads might be taking their brush to the transfer station.

E. Bartin suggested or requested that the town visit this as an issue that it not longer be appropriate to have an open brush pile at the transfer station.

The Supervisor said that the board would have to discuss that.

E. Bartin brought up the web site and its design.

The Supervisor stated that he has an update for the board and that he has a trial website in about 2 weeks, recommendation, and go from there.

S. Buff said on her road, which is a county road they chip the brush in place.

The board continued to discuss what they would do with the chipped pile of brush.

Glenn Butler stated to the board that DEC does not specify what you have to do with the brush that the town chips.

The discussion continued.

**MINUTES** – Minutes of 03/30/09 Special Meeting – McCulloch Appeal – **MOTION** by Council. Egan seconded by Council. Byrne to accept these minutes. Roll was taken and carried.

YES - 3 Egan, Williams, Barrett

NO -0

ABSTAIN – 2 May, Byrne

**MINUTES** – Minutes of Regular Town Board Mtg. 04/13/09 – MOTION by Council. Byrne seconded by Council. Williams to accept these minutes. Roll was taken and carried.  
YES - 5 Egan, Byrne, May, Williams, Barrett  
NO – 0

#### **CORRESPONDENCE:**

Letter dated April 29, 2009 from Jo Ann Beard and Scott Spencer requesting the town to change the speed limit on Boice Road. Glenn Butler informed the Board that NYS changed their procedures for setting speed limits. He said that it is up to the town to do its own traffic study with our own engineer and then send that information to the state and they will approve it. The Board discussed this issue and the Supervisor asked Mr. Butler to find out from the engineer how much this would cost.

Council. May stated that the town had gotten CHIPS money in the amount of \$90,663.00. She also stated that there was a bill from Van De Water regarding the Red Wing litigation and they did not charge the town for about 4 ½ hrs work – should send a thank you. Council. Egan wanted to know what other bills they had.

#### **FINANCIAL REPORT**

The Supervisor reviewed the April financial report with the board.

Council. Williams handed to the board an “April Financial Review” with two pages of notes for consideration and recommendation on how to handle the errors that he came across. He talked about the financial report and the repeated problems that are occurring each month.

The Supervisor said that he would look at this document and review it. He informed the board that he had a woman that has certification in Quick Books come in and will be giving him her proposal. The Supervisor said that the woman was here for three hours and informed him the accounts were not set up correctly. She said that we should be using 2009 Quick Books not 2002. The Supervisor gave an update regarding the AUD and said that they were talking with the State Comptrollers Office. They informed the Supervisor that the accounts were not set up correctly, and informed him that some accounts were backwards. The State Comptrollers stated to the Supervisor that they would work with him regarding the AUD, which would not be until 3 or 4 weeks. The Supervisor said that they have the Bookkeeper, Joann Lown from Hyde Park, who has 23 experiences will be coming in to help our town's Bookkeeper.

Council. May wanted to know who the other woman was. The Supervisor said Susan Simon.

The discussion continued and various comments were made.

Council. May then read an email that she sent to the State Comptrollers Office regarding the AUD Financial report.

Discussion continued.

The Supervisor informed the board that the town received sales tax revenue in the amount of \$28,448.97.

The Board discussed the Capital Project Fund and whether or not it should be closed out. After some discussion, the board decided to look into this further before they made a decision. The Supervisor stated that he would get in touch with the State

Comptrollers Office and maybe they would respond to this issue for the next board meeting.

**TREANSFERS:**

**RESOLUTION: #40 – 09 JACAP – GENERAL – Jury Box**

Resolution offered by Supervisor Barrett seconded by Council. Egan to transfer \$1828.90 from JACAP to the General Fund 3889S/A. Roll was taken and adopted.

YES - 5 Egan, Byrne, May, Williams, Barrett

NO – 0

**RESOLUTION # 41 – 09 JUSTICE INCREASE – Jury Box**

Resolution offered by Council. Egan seconded by Council. Byrne to increase 1110.4 by \$1828.90 . Roll was taken and adopted.

YES - 5 Egan, Byrne, May, Williams, Barrett

NO – 0

**RESOLUTION # 42-09 – Road Signs**

Resolution offered by Council. Egan seconded by Supervisor Barrett to transfer \$4,000.00 from 3310.4DA to 3310.2DA. Roll was taken and adopted.

YES - 3 Egan, Byrne, Barrett

NO – 0

ABSTAIN – 2 May, Williams

Tax Collector, Pamela Johnson handed out to the board her April monthly report. The penalties collected to date were \$3,549.32.

The Supervisor introduced David Groth who manages the cell tower on Woody Row Road. He presented to the board the Will Power/WKZE Lease for the Woody Row Cell Tower.

The Supervisor informed the board that the attorney, Pam Richardson emailed some additional documents late this evening but unfortunately they were some problems and probably for good reason. Her husband was in an accident and hospitalized with a head injury, so it interrupted her workflow. The Supervisor stated that Ms. Richardson had no problem with the lease and the board has had it for some time and sees no problem moving forward and adopting it tonight. The Supervisor also stated that this was a TYPE II Action under SEQR and no further review is required, a short form EAF was performed.

**Wood Row Road Cell Tower Agreement – WKZE Lease**

**RESOLUTION # 43-09 Agreement with WKZE – Will Power Radio**

Resolution offered by Council. Byrne seconded by Supervisor Barrett to authorize the Town Supervisor to execute the lease between the Town of Milan and Will Power Radio. Discussion followed. After reviewing the resolution and the permissive referendum and finding errors. Discussion continued as to how the board would handle this issue. The board decided to hold a special meeting. Roll was taken and adopted.

YES - 5 Egan, Byrne, May, Williams, Barrett

NO – 0

**MOTION** by Council. Byrne seconded by Council. May to hold a Special Meeting on 7:15 PM on 05/18/09 on the Woody Row Road Cell Tower Agreement (Resolution/Permissive Referendum) Roll was taken and carried.  
YES - 5 Egan, Byrne, May, Williams, Barrett  
NO – 0

**MOTION** offered by Council. Williams seconded by Council. Byrne to consent to the Town of Milan Planning Board serving as Lead Agency on the Subdivision Application/Lot Line Adjustment application – Cross Country Development. Roll was taken and adopted.  
YES - 5 Egan, Byrne, May, Williams, Barrett  
NO – 0

### **APPOINTMENT**

MOTION by Supervisor Barrett seconded by Council. Egan to appoint Darlene Palmatier as Records Management Clerk. Discussion. Roll was taken and carried.  
YES - 5 Egan, Byrne, May, Williams, Barrett  
NO – 0

### **LEIBELL GRANT**

Council. Egan announced that the town received the Leibell Grant for \$13,000. She handed out a spreadsheet to the board on the Community Projects Appropriation Agreement. It had a description of the items to be purchased, the estimate cost and whether or not it needed an RFP.

### **RECREATION COMMITTEE/MILAN YOUTH GROUP**

Council. May had some questions regarding the presence of the “Friends of Milaners’ web site on the towns web site”. She wanted to know the flow of money and how does this organization kick in with the Rec. Youth Group Program.

Council. Byrne stated that he started this program with the internet that it would be under the umbrella of the Rec. program. He said that he re-read the towns web site policy guidelines and reviewed them with the board. Council. Byrne noted that the Friends of Milaners’ is a non-profit organization, they were established to support the Milaners’ program, and they file paper work to that effect. He continued to discuss this issue. Council. Byrne announced that next year the Milan Youth Program would be separate from the town because in order to have more flexibility for grant funding they need to do this. He said that the county only allows two grants and they have all ready received them.

### **HOYT/CORNELL BOND & ESCROW ACCOUNT**

Council. May asked the G. Butler if he had received the “as built” from Mr. Costa. Mr. Butler replied that he did not. She also asked the Town Clerk if she did an audit of the vouchers to see how much was owed to Mr. Costa. The Town Clerk replied that there was a sum of \$140 from escrow that was due to Mr. Hoyt.

## **FOIL – Waiver of Fee**

Council. Williams brought up the issue regarding whether state law supersedes town law with respect to revisions fees for FOIL. He said that town law does in fact prevail through information gathered by Council. Byrne from the Association of Towns. He wanted to revisit the waiver of the fee, he did not want to show special consideration for family of a board member, and said that we should rescind this motion because the town was not entitled to collect that fee. Council. Egan wanted to know why wasn't the town entitled? Council. Williams said because we do not have the provision in our law to charge fees for administration expense – salary expense. Council. Williams made the following MOTION seconded by Council. Egan that the town rescinds the motion in which it waived the fee for the William May FOIL request and instead acknowledges that no fee was appropriate in that situation per the Milan Town Code. Discussion followed. Council. Egan felt that Council. Williams was incorrect with regard to state law versus town law. She said that in our Town law it clearly states that the legislative intent was to follow state law, but unfortunately this law had not been updated or changed since 2006. She backed up her reasons with the information received by Council. Byrne and what she received from Mr. Freeman, the Executive Director of the Committee on Open Government, which stated that the FOIL law could only be changed by statute (state legislation) not by the town. The town can charge less but not more and that the state law in fact supersedes town law regarding FOIL. Council. Egan continued to discuss the electronic filing issue and Home Rule Law. She requested that a link to the FOIL from the state be put on the web site so everyone from the public can get the correct information since this is updated on a regular basis. The Supervisor said that this was done today. In response to Council. Egan, Council. Williams said that was a worthless interpretation. He said that it is irrelevant what the state law says, that it gives permission to the towns to charge that but you have to have that in your code to do that. Council. Williams said that we do not have that in our Code; therefore, we may not charge it. We are charging less than the state that is permitted under the state law. Council. Egan stated in order to charge less than the state you have to have it written into your code and we do not have it. They continued to go back forth on this issue regarding state law verses town law. Council. Williams felt that Council. Egan was interpreting the law how you want to interpret it and he did not believe that it was correct. Council. Egan suggested that Council. Williams speak with Mr. Freeman on this issue and Council. Williams stated that he would not speak with Mr. Freeman and would only speak with a responsible attorney to review this. Council. Egan response was that the Executive Director of the Committee on Open Government doesn't know what he is talking about? Council. Williams said he would not go there. Roll was taken and carried.

YES - 3 May, Williams, Barrett

NO - 2 Egan, Byrne

**MOTION** by Supervisor Barrett seconded by Council. Byrne to rescind Local Law #4 of 2006 as it relates to FOIL. Discussion – Council. Williams stated that you could not do this. **MOTION was withdrawn!**

## **MEADOW MOWING**

Glenn Butler gave a brief update on the mowing of the meadows. He explained that he met with Frank Margiotta and looked at the properties. Mr. Butler said that they would be mowing the landfill in the fall, the wet areas near the Town Hall in the fall because it is too wet in the spring. He said the rest of the lots would be done next spring. Discussion followed.

**MOTION** by Council. May seconded by Council. Byrne to agree to follow the recommendation that was presented by Glenn Butler after discussion with Frank

Margiotta regarding the mowing of the meadows of the town grounds. Discussion - Council. Byrne brought up the Tick Signs – who would pick them up and the Blue Bird Boxes – Tony Goodnow probably interested. Roll was taken and carried.

YES - 5 Egan, Byrne, May, Williams, Barrett

NO – 0

## **WEBSITE**

The Supervisor gave a brief update on the website from Dick Wambach which was handed out to the board members. There was various comments and discussion.

## **ATTORNEY APPOINTMENT**

### **RESOLUTION #44-09 Attorney Appointment (J. Greco)**

Resolution offered by Council. Byrne seconded by Council. Egan to appoint John Greco as Town Board Attorney and Attorney to the Planning Board and Zoning Board of Appeals, at the rate of \$125.00 per hour, and to authorize Gellert and Klein to continue to provide legal advice to the Town of Milan on matters on which they are currently working on for the Town of Milan, to include: Highway Right of Way Utility Work Policy Permit, Proposed Amendment to Article 10 of Chapter 200, Woody Row Road Tower Lease and Carvel Tax Certiorari, until the resolution of those matters. Discussion followed – this does not affect any other legal services. (Van DeWater & Van DeWater, Town prosecutors). Council. Byrne discussed Mr. Greco background.

Roll was taken and adopted.

YES - 4 Egan, Byrne, May, Williams

NO – 1 Barrett

### **RESOLUTION #45-09 Control Legal Expenses**

Resolution offered by Council. Byrne seconded by Supervisor Barrett in order to control legal expenses and facilitate effective communication between the Town and Town Board Attorney, to authorize the Town Supervisor to continue to serve as the liaison between the Town Board and Town Board Attorney, and to authorize individual Town Board members to contact the Town Board Attorney directly when needed, in the course of the carrying out of their duties as either committee chairperson, board liaisons, or representatives of the town on projects or negotiations. Discussion followed and various comments were made by board members on this issue. Council. May did not want this motion to be as exclusive as was the prior attorney. Council. Byrne felt that the town should utilize the services of the Association of Towns and this would cut down the cost of attorney's fees. The Supervisor made a **MOTION** to amend seconded by Council. Egan that any attorneys reply would be distributed across the board.

Discussion Roll was taken and adopted.

YES - 5 Egan, Byrne, May, Williams, Barrett

NO – 0

**MOTION** by Council. May seconded by Council. Williams in addition to the resolution that was just passed Council. May wanted the word “authorize” deleted. She said that board members do not need the authorization from the Supervisor to ask questions that are important. Discussion followed. Roll was taken and defeated.

YES - 1 May

NO – 3 Egan, Byrne, Barrett

ABSTAIN – 1 Williams

### **Technology Committee Update**

Council. Williams gave a brief update on the technology committee meeting. He stated that there is a three part report - #1 – Inventory of what the town has. #2 – Replacement schedule and budget implications and #3 – Recommendations to the town on managing the site and resources. He said that right now Mr. Talmage, who is working with him on this committee, is doing a survey with individuals' users and getting input.

### **Highway Committee Update**

The Supervisor gave an update on the highway committee - he stated that what they are looking at is a 15- year time frame – 10 years for the life of the road – 5 years added with maintenance. He said that they are dividing it up into 5 year modules and determining how many miles of roads can be paved each year in conjunction with the number of roads to be maintained. The Supervisor stated that he was preparing a spread sheet to determine the cost and how the town would be able to fund this.

Council. May brought up how the town would fund this plan. She said that to fund this project the town would probably have to bond this plan. Council. May then read a statement from her email from the State Comptrollers Office. She said that they rely on the AUD to determine the worthiness of bonding of Highway projects.

### **Utility Work Permit**

**MOTION** by Council. Williams seconded by Council. May to have a Workshop on 05/26/09 at 7:30 PM on the Utility Work Permit and the Article X. Roll was taken and carried.

YES - 5 Egan, Byrne, May, Williams, Barrett

NO - 0

Council. May brought up the Tax Certiorari – she wanted to have a meeting with attorney Scott Volkman and Scott Hobson, Assessor Chairman to discuss this issue. Council. May also wanted to know a date of the settlement.

The Supervisor said that he received an email from Scott Volkman regarding this issue.

**MOTION** by Council. May seconded by ? to set an attorney client meeting on 05/28/09 at 7:30 PM at the Town Hall with Scott Volkman and Scott Hobson. Discussion followed. The Supervisor said that he would contact Mr. Volkman and see if he can attend. Discussion continued. The Supervisor said that he would contact him.

**NOTE: There was no second and no roll taken with this motion!**

Council. Williams expressed both his concerns and Council. May's regarding Mr. Volkman and his work that he has done with Tax Certiorari. Council. Williams felt Mr. Volkman was not on our team. He said that he would just cut our losses with him and go with Mr. Greco. Council. May agreed. She said that he non -responsive. Council May made the following **MOTION** seconded by Council. Williams – whereas, the Town Board of the Town of Milan has appointed John Greco as Attorney to the Town for the year 2009, now therefore, I move to assign the lawsuit entitled 1133 Taconic LLC vs.

The Town of Milan to John Greco, Town Attorney to the Town of Milan. Discussion followed. Council. Byrne said that he would like to speak with Mr. Greco first. Council. Egan felt that it was not a good time to change attorneys when there are negotiations going on right now. Discussion continued. Council. Williams said that he was going to withdraw his second if Council. May would talk to Mr. Greco and I would like not only to have Mr. Greco's willingness but I think given the time it is also important to see if he believes if he can get a continuance from the court on this if we change attorneys.

**MOTION was withdrawn.**

**MOTION** by Council. Williams seconded by Council. May to contact the Supervisor and Council. Williams and after Council. May's review and that with our agreement we have the authority to call a special meeting (two members can request a special meeting) and pending that review and discussion – the board will consider changing attorneys. Roll was taken and carried.

YES - 3 May, Williams, Byrne

NO- 2 Egan, Barrett

Glenn Butler wanted to know if the town had a signed contract for the Rock City Bridge Project. The Supervisor said that Paggi & Martin are working on it.

**BILLS** – Bills were presented to the Board for their and review. **MOTION** by Council. Egan seconded by Supervisor Barrett to pay General Abstract # 5 Claims 120-166, totaling \$17,245.14 – Highway Abstract #5 Claims 61-68, totaling \$14,082.45 – Escrow Abstract # 5 Claims 18 & 19, totaling \$ 407.40 and Capital Bridge Abstract #5 Claim #6, totaling \$415.00. Roll was taken and carried.

YES - 3 Egan, Byrne, Barrett

NO – 1 May – (Did not sign vouchers – not confident of the financial report)

ABSTAIN – 1 Williams

**MOTION** by Council. Egan seconded by Supervisor Barrett to adjourn this meeting.

(10:15 PM)

Roll was taken and carried.

YES - 5 Egan, Byrne, May, Williams, Barrett

NO – 0

Respectfully submitted,  
Catherine Gill, Town Clerk

