

## REGULAR MEETING

March 3, 2008

A regular meeting of the Town Board of the Town of Busti was held on March 3, 2008 at 6:45 p.m., at the Town of Busti Administration Building, 121 Chautauqua Avenue, Lakewood, New York, with the following members present:

Deputy Supervisor Paul R. Hazzard  
Councilman Lyle T. Hajdu  
Councilman Richard a. Sanders  
Councilwoman Marsha L. Hern  
Supervisor Kathleen A. Sullivan - absent

Deputy Supervisor Hazzard called the meeting to order with the salute to the flag and a moment of silence was observed.

Those present at the meeting were: Highway Superintendent Melvin J. Peterson, Lakewood-Busti Chief John R. Bentley, Attorney Joel H. Seachrist, Zoning Officer Charles Stafford, Tim Young, Tim Wells and Angelo & Diane Terrano.

Highway Superintendent Melvin J. Peterson reported on the good weather break for the highway crew.

Lakewood-Busti Police Chief John Bentley reported 1,375 incidents to date.

Tim Young reminded the board of the next Busti Hamlet Development meeting on March 13<sup>th</sup> at 7:00 p.m. at the Busti Church of God.

Deputy Supervisor Hazzard noted the following reports & correspondence:

Lakewood Fire Department Annual Report 2007  
Town Clerk's 2007 Annual Report  
NYS Office of Real Property Services re: residential assessment ratio 100.25  
Notice of Public Hearing- Town of Ellicott Zoning Board of Appeals re: Trinity Electric, Inc., 315 Hunt Road and Gerry Homes d/b/a as the Heritage Group for permit for group housing for senior housing community.  
National Fuel – Contact Information  
Fessenden, Laumer & DeAngelo re: Town of Harmony proposed zoning change.  
Time Warner Cable re: rate changes effective April 1, 2008.

Deputy Supervisor Hazzard offered the following motion which was duly seconded by Councilwoman Hern:

RESOLVED, that Town Clerk Diane M. VanDewark be authorized to attend the New York State Conference on April 27-April 30<sup>th</sup> in Saratoga Springs, New York with all reasonable expenses to be paid by the town.

Upon roll call vote, all aye.

Attorney John H. Seachrist reviewed the proposed local law adopting waterfront

consistency regulations.

Councilwoman Hern offered the following motion to adopt the Chautauqua Lake Local Waterfront Revitalization Program which was duly seconded by Councilman Hajdu:

**WHEREAS**, the Towns of Chautauqua, Ellery, Busti, Ellicott and North Harmony and the Villages of Mayville, Bemus Point, Lakewood and Celoron began preparation of a Local Waterfront Revitalization Program in cooperation with the New York State Department of State, pursuant to Article 42 of the Executive Law; and

**WHEREAS**, a Draft Local Waterfront Revitalization Program was prepared and circulated by the Department of State to potentially affected State, Federal, and local agencies in accordance with the requirements of Executive Law, Article 42; and

**WHEREAS**, the Town of Chautauqua Town Board, as lead agency, pursuant to Article 8 of the Environmental Conservation Law (State Environmental Quality Review Act), filed a Negative Declaration - Notice of Determination of Non-Significance on March 30, 2006 for the preparation of the Local Waterfront Revitalization Program,

**NOW, THEREFORE, BE IT RESOLVED**, that the Chautauqua Lake Local Waterfront Revitalization Program is hereby adopted by the Town of Busti and that the Supervisor is authorized to permit submittal of the Local Waterfront Revitalization Program by the Town of Chautauqua, on behalf of the Town of Busti, to the New York State Secretary of State for approval, pursuant to the Waterfront Revitalization of Coastal Areas and Inland Waterways Act.

Upon roll call vote, all aye.

Deputy Supervisor Hazzard offered the following motion which was duly seconded by Councilman Sanders:

RESOLVED, that the public hearing on the application of Rodney L. Swanson, 652 Busti-Sugar Grove Road, Jamestown, New York, for a Special Use Permit to use existing building for auto service and repair, body shop be declared open.

All aye.

Deputy Supervisor Hazzard stated the following restrictions by the board:

First: That the sign to be used at the premises be limited to the size of the current sign with no flashing lights.

Second: That no more than four vehicles not utilized by employees employed at the business be outside the building at any time.

Deputy Supervisor Hazzard offered the following motion which was duly seconded by Sanders:

RESOLVED, that the town board postpone action on this application until Zoning Officer Charles Stafford confirms that he is in compliance with the stipulations that the board agreed upon.

All aye.

Deputy Supervisor Hazzard noted it was time for the second hearing Pennzoil United, Inc. to consider demolition of the structure and offered the following motion which was duly seconded by Councilman Hajdu:

RESOLVED, that the public hearing be declared open.  
Upon roll call vote, all aye.

Deputy Supervisor Hazzard duly noted publication of the hearing.

Attorney Joel Seachrist noted due service of notice of hearing upon the applicant.

Deputy Supervisor Hazzard offered the following motion which was duly seconded by Sanders:

RESOLVED, that the public hearing be declared closed.  
Upon roll call vote, all aye.

Councilman Sanders offered the following resolution which was duly seconded by Councilman Hajdu:

**WHEREAS**, the Town Board on February 4, 2008, made a preliminary Unsafe Building Determination about the former gas station structure at 1786 Forest Avenue, located on property designated on the Chautauqua County tax map as Section 404.01, Block 2, Lot 2, of which the owner of record is Pennzoil United, Inc., and

**WHEREAS**, if the Town Board confirms the said Determination following a public hearing to be held on March 3, 2008, and Pennzoil fails to demolish and remove the structure in a timely manner, then the Town may effect such demolition and removal with its own forces, and

**WHEREAS**, the potential demolition and removal has been subject to environmental review pursuant to Article 8 of the New York State Environmental Conservation Law (State Environmental Quality Review Act), including the preparation and review of a short Environmental Assessment Form, and

**WHEREAS**, Part 617 of the implementing regulations pertaining to the State Environmental Quality Review Act requires this Board to determine and give notice of the environmental impact of the potential action, and

**WHEREAS**, the Board has determined that the potential action will not have a significant environmental impact,

**NOW THEREFORE BE IT RESOLVED**, that the Town Board hereby adopts Parts I and II of the Environmental Assessment Form for the potential action, issues the attached Notice of Determination of Non-Significance, also known as a Negative Declaration, and authorizes the Supervisor to sign Part III of the Environmental Assessment Form accordingly.

Upon roll call vote, all aye.

Councilman Sanders offered the following final resolution ordering the demolition and removal of the 1786 Forest Avenue which was duly seconded by Councilwoman Hern:

**WHEREAS**, Town Code Enforcement Officer Melanie Eddy made a formal investigation and submitted to the Town Board a report in writing of her findings and recommendations with regard to the former gas station building owned by Pennzoil United, Inc. (“Pennzoil”) at 1786 Forest Avenue (the “Structure”), on property designated as Chautauqua County Tax Map Section 404.01-2-2 (the “Premises”), and

**WHEREAS**, the said report found that the Structure is an unsafe structure as defined in the Town’s Unsafe Structures and Collapsed Buildings Law (Article 36-100 et seq.), is beyond repair, and should be demolished and removed, and

**WHEREAS**, based on this report, on February 4, 2008, the Town Board made an Unsafe Building Determination, which found that the Structure is unsafe, ordered its demolition, and set a public hearing on the topic for 7:00 p.m. on March 3, 2008, and

**WHEREAS**, upon receiving an opinion from counsel that no reasonable effort could locate an officer or agent of Pennzoil United, Inc. upon which personal service could be effected, the Town provided notice of the Unsafe Building Determination and public hearing to Pennzoil by (a) sending by certified mail a copy to Pennzoil’s last known address as it appears in the county tax records, the return receipt for which indicates delivery was made on February 19, 2008; (b) affixing a copy to the Structure; and (c) filing a copy in the office of the Chautauqua County Clerk, indexed against the Premises, and

**WHEREAS**, at the appointed time and place the Town Board met and heard all persons wishing to be heard on the topic, and

**WHEREAS**, Pennzoil failed to appear at the hearing or to otherwise contest the order and findings of the Town Board, and

**WHEREAS**, the potential action to demolish and remove the Structure has been subject to environmental review pursuant to Article 8 of the New York State Environmental Conservation Law (State Environmental Quality Review Act), including the preparation and review of a short Environmental Assessment Form, and the Board has determined that the action will not have a significant environmental impact, and has issued a Notice of Determination of Non-Significance therefore,

**NOW, THEREFORE, BE IT**

1. **RESOLVED**, that the Town Board hereby continues and affirms its earlier findings that the Structure is an unsafe structure as defined in Article 36-100 of the Town of Busti Code and hereby continues and affirms its order that Pennzoil United, Inc. demolish and remove the Structure; and be it further

2. **RESOLVED**, that Pennzoil United, Inc. shall complete said demolition and

removal by April 30, 2008, and be it further

3. **RESOLVED**, that should Pennzoil United, Inc. fail or neglect to comply with this Order within the time specified, the Town Board may provide by resolution that such Structure shall be demolished and removed by Town employees, by independent contractors, or by other lawful means available to the Town and the expense thereof shall be assessed against the and shall be levied and collected in the same manner as provided in Article 15 of the Town Law for the levy of an *ad valorem* levy.

Upon roll call vote,

Deputy Supervisor Hazzard, aye

Councilman Hajdu, aye

Councilman Sanders, aye

Councilwoman Hern, aye.

Carried.

Deputy Supervisor Hazzard noted that he and Councilman Sanders met with Robert Gray Insurance and reviewed the insurance policies for the town.

Deputy Supervisor Hazzard requested Attorney Joel Seachrist bring back to the board his suggestions on reducing lot sizes in the Agricultural-Residential area served by water starting on Orr Street continuing down Southwestern Drive to the Hamlet and Forest Avenue spoke.

Tim Wells asked the board for their decision to continue to plow of Canal Road. Councilman Hajdu stated that the status of the board would be discontinuing paying for the maintenance of the road.

Councilman Hajdu stated that he was approached by the Town of Kiantone Supervisor inquiring whether the town would be interested in selling water to individual uses in Kiantone on from the new South Main Street line. The board requested that Attorney Joel Seachrist research the possibility of Kiantone residents obtaining water through the town.

Deputy Supervisor Hazzard offered the following motion which was duly seconded by Councilman Hajdu:

RESOLVED, that the board go into executive session to discuss a real estate matter.

All aye.

Deputy Supervisor Hazzard offered the following motion which was duly seconded by Councilman Hajdu:

RESOLVED, that the board return from executive session. No action was taken.

All aye.

Deputy Supervisor Hazzard noted the town board meeting on April 7, 2008 6:45 p.m. will be held at the Busti Fire Department.

Deputy Supervisor Hazzard offered the following motion which was duly seconded by Councilman Hajdu:

RESOLVED, that Supervisor Sullivan be authorized and directed to pay the presented General Fund, Highway Fund, Joint Recreation Fund and Hazeltine Library bills for Abstract No. 4 for warrant #121 to and including #157 in the amount of \$38,499.44.

Upon roll call vote, all aye.

Upon motion duly made and seconded the meeting adjourned at 7:45 p.m.

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Diane M. VanDewark, Town Clerk