

REGULAR MEETING

June 20, 2011

A regular meeting of the Town Board of the Town of Busti was held on June 20, 2011 at 6:45 p.m., at the Town Administration Building, 121 Chautauqua Avenue, Lakewood, New York with the following members present:

Supervisor Kathleen A. Sullivan
Councilman Richard A. Sanders
Councilwoman Marsha L. Hern
Councilman Jesse M. Robbins
Councilman Kenneth J. Lawton – absent

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

Present at the meeting were: Angelo & Diane Terrano, Lorie Robbins, Richard Thor, Tim Young, Richard Thor, Mr. & Mrs. Gerald Capelli, Michelle McIntyre, Lakewood-Busti Police Chief John Bentley, Busti-Lakewood Recreation Director Diana Peterson and Highway Superintendent Melvin J. Peterson.

Mr. & Mrs. Capelli, 1025 Wellman Road presented a petition requesting for a speed study for Wellman Road for a reduction to 45 mph and signs for “horse & buggy” on Wellman Road. Highway Superintendent Melvin J. Peterson will look into signage.

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

RESOLVED, that the town request the state to do a speed study on Wellman Road for a speed reduction to 45 mph.

Upon roll call vote,
Supervisor Sullivan, aye
Councilman Sanders, nay
Councilwoman Hern, aye
Councilman Robbins, nay
Motion failed.

Tim Young stated that the Busti Hamlet Development meeting is at the Busti Victorian Hall on Thursday, June 23rd at 7:00 p.m.

Lakewood-Busti Police Chief John Bentley reported 4,905 incidents to date.

Busti-Lakewood Recreation Director reported she has had requests for pickle ball in the town tennis courts. The board agreed that one court in Edward F. Loomis Jr. Park could be marked with chalk and one court at the Earl W. Lawson Town Park would be permanently marked for pickle ball.

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

RESOLVED, that Assessor Randall G. Holcomb be authorized to attend the Annual Meeting and Seminar on Assessment Administration in Buffalo, New York, September 10th- 14th, 2011 with all expenses to be paid by the town.

Upon roll call vote, all aye.

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

RESOLVED, that the public hearing on Local Law No. 3 of 2011 at 7:00 p.m. be declared open.

Upon roll call vote, all aye.

Proof of publication was placed on file.

Attorney Joel H. Seachrist reviewed the local law.

Supervisor Sullivan offered the following motion which was duly seconded by Councilman Robbins:

RESOLVED, that the public hearing be declared closed.

All aye.

Supervisor Sullivan made the following resolution adopting Local Law No. 3 Junked Vehicles which was duly seconded by Councilman Robbins:

WHEREAS, a resolution was duly adopted by the Town Board of the Town of Busti for a public hearing to be held by said Board on June 20, 2011 at the Town Hall, 121 Chautauqua Avenue, Lakewood, to hear all interested parties on a proposed Local Law to establish regulations and enforcement procedures for junked, discarded, dismantled or unlicensed motor vehicles on private property within the Town of Busti, and

WHEREAS, notice of said public hearing was duly published in the *Jamestown Post-Journal* on June 9, 2011, and posted in the Town Clerk's office on June 7, 2011, and

WHEREAS, said public hearing was duly held on June 20, 2011 at the said time and place and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to said proposed Local Law, or any part thereof, and

WHEREAS, the Local Law would be adopted pursuant to the general police powers of the Town and is not a zoning law, no referral pursuant to Section 239-m of the General Municipal Law is required, and

WHEREAS, the Town Board, after due deliberation, finds it in the best interests of the Town to adopt said Local Law, and

NOW, THEREFORE, be it resolved:

1. That the Town Board of the Town of Busti hereby finds that the enactment of the said Local Law No. 3 of 2011 is a Type II action for purposes of the State Environmental Quality Review Act inasmuch as it is a local legislative decision adopting regulations with regard to a matter of routine and continuing administration and management by its Code Enforcement Office and does not constitute a major reordering of priorities that may affect the environment, and be it further resolved

2. That the Town Board of the Town of Busti hereby adopts said Local Law as Local Law No. 3 of 2011, a copy of which is attached hereto and made a part hereof, and the Town Clerk hereby is directed to enter said Local Law in the minutes of this meeting and in the Local Law Book of the Town of Busti, and to give due notice of the adoption of the Local Law to the Secretary of State.

TOWN OF BUSTI

LOCAL LAW NO. 3 FOR THE YEAR 2011 JUNKED VEHICLES

Be it enacted by the Town of Board of the Town of Busti, County of Chautauqua and State of New York, as follows:

SECTION 1. JUNKED VEHICLES LAW.

Local Law No. 3 of 2011, entitled “JUNKED VEHICLES”, is hereby adopted to add a new Article 59-100 to the Town of Busti Code, which shall read in its entirety as follows:

ARTICLE 59-100: JUNKED VEHICLES

Section 59-101. Title.

This Article may be cited as the “Junked Vehicles Law” of the Town of Busti, Chautauqua County, New York.

Section 59-105. Purpose.

The Town Board of the Town of Busti adopts this Article to establish regulations and procedures for junked, discarded, dismantled or currently unlicensed motor vehicles on private property within the Town of Busti so that the public health, safety, and welfare of its residents will not be jeopardized.

Section 59-110. Findings.

(a) It is hereby declared and found that junked, discarded, dismantled or currently unlicensed motor vehicles on private property within the Town of Busti affect the public interest and may constitute a nuisance. Such vehicles are generally unsightly, affecting the aesthetic quality of the Town and may depreciate the value of neighboring properties. Abandoned or junk vehicles may constitute an attractive nuisance to children and cause their safety to be jeopardized. If left unabated such storage may pose a dangerous hazard to the community.

(b) The control of abandoned, junked, discarded and unregistered motor vehicles on privately owned properties within the Town of Busti is found to be necessary for the preservation and protection of the health, safety and general welfare of the community.

Section 59-115. Authority.

The Town Board of the Town of Busti enacts this Article under the authority granted by:

- (a) Article IX of the New York State Constitution, §2(c)(10).
- (b) New York Statute of Local Governments, §10(1), (5) and (7).
- (c) New York Municipal Home Rule Law, §10(1)(i) and §10(1)(ii)(9-a), (11), (12), and (14).
- (d) New York Town Law §130 (11)(Peace, good order and safety) and (15)(Promotion of public welfare),
- (e) New York Town Law §64(17-a)(Protection of aesthetic interests), (23)(General powers).
- (f) The decision of the Court of Appeals of New York in *Lane v. City of Mount Vernon*, 38 N.Y.2d 344, 379 N.Y.S.2d 798 (1976)

Section 59-115. Definitions.

The following definitions shall apply in the interpretation and enforcement of this Article:

(a) JUNKED MOTOR VEHICLE - Any vehicle that is (1) unregistered and is not in condition for legal use on a public highway, or (2) unregistered or registered and is dismantled or partly dismantled and is being held or used for the purpose of resale in whole or in part, or for the purpose of reclaiming some or all of the materials therein for the purpose of disposing of the same. A motor vehicle shall be presumed to be a junked vehicle if it is not duly registered and is dismantled or partly dismantled or dilapidated or is in a rusted or wrecked condition or lacks equipment in good operating condition necessary to enable it to be operated or required by law to enable it to be registered. If a motor vehicle has remained unused for more than six months and is not in a condition to be moved under its own power, whether registered or unregistered, that shall be presumptive evidence that such motor vehicle is a junked motor vehicle.

(b) MOTOR VEHICLE - A machine intended to be propelled by any means other than human power, designed to travel along the ground by use of wheels, treads, runners or slides and transport persons or property or pull machinery and shall include, but not limited to, an automobile, bus, truck, tractor, trailer, mobile home, motorcycle or any other conveyance originally intended for use on public highways.

Section 59-120. Junked vehicles prohibited.

It shall be unlawful for any person, firm or corporation, either as owner, occupant, lessee, agent, tenant or otherwise, to place, park, store or deposit, or cause or permit to be placed, parked, stored or deposited, a junked motor vehicle upon any private land within the Town of Busti.

Section 59-125. Exceptions.

(a) This Article shall not apply to the storing of any motor vehicle in a wholly enclosed garage or similar structure, when said storage is in compliance with the requirements of the New York State Uniform Fire Prevention and Building Code and the Town of Busti Zoning Code.

(b) This Article shall not prohibit a person from keeping one unregistered motor vehicle on his own property provided that such unregistered motor vehicle has not been substantially dismantled or permitted to deteriorate and permitted to continue in that state for a period of at least three (3) months, after which time there shall be a presumption that there is no interest to make the vehicle fit to operate. As used in this subsection the term “property” shall include all contiguous land owned by a single owner in a particular location regardless of the actual number of parcels into which it may be divided on the official tax maps.

(c) This Article shall not apply to duly authorized motor vehicle service stations, nor to properties occupied and used for the repair, reconditioning and remodeling of vehicles in conformance with the Town of Busti Zoning Code.

(d) This Article shall not apply to properties that have been properly licensed to operate as junkyards in conformance with Article 35-100 of the Town of Busti Code.

(e) This Article shall not apply to farm equipment located on a parcel used for a farm operation.

Section 59-130. Enforcement procedure.

(a) Upon identifying a junked motor vehicle, the code enforcement officer shall serve written notice, either personally or by mail, on the person owning the parcel of property on which the junked vehicle is located, ordering such person to remove the same or cause the same to be removed therefrom within fifteen (15) days of the date of such service. The notice shall contain a description of the parcel of property, a statement as to the location thereon of a junked vehicle and a reference to this Article and to the fact that the location of such junked vehicle on such parcel of property is in violation hereof. If such parcel of property is owned by more than one (1) person, personal service on any one (1) of such owners shall suffice; however, as to any owner not personally served with such notice, or if no owner can be located upon whom to make personal service, the code enforcement officer shall mail such notice to owners not personally served or to the owner and/or all owners if no owner was personally served, by registered or certified mail to his or their last known address as shown on the latest completed assessment roll of the Town. In addition, the code enforcement officer shall post conspicuously a copy of such notice on the parcel of property upon which said junked motor vehicle is located.

(b) At the expiration of fifteen (15) days after the service or mailing and posting of such notice, if the junked motor vehicle has not been removed, the code enforcement officer is authorized to issue an appearance ticket or tickets for a violation or violations of this Article to recover penalties prescribed by Section 59-145 of this Article.

Section 59-135. Alternative Enforcement Procedure

In addition to any penalty, fine, or injunctive relief, as provided in Section 59-145 hereof, any junked motor vehicle may be removed from the premises upon which it is located in the following manner:

(a) Upon identifying a junked motor vehicle, the code enforcement officer shall serve written notice, either personally or by mail, on the person owning the parcel of property on which the junked vehicle is located, ordering such person to remove the junked vehicle or cause the same to be removed within fifteen (15) days of the date of such service. The notice shall contain a description of the parcel of property, a statement as to the location thereon of a junked vehicle and a reference to this Article and to the fact that the location of such junked vehicle on such parcel of property is in violation hereof. If such parcel of property is owned by more than one (1) person, personal service on any one (1) of such owners shall suffice; however, as to any owner not personally served with such notice or if no owner can be located upon whom to make personal service, the enforcement officer shall mail such notice to owners not personally served or to the owner and or all owners if no owner was personally served, by registered or certified mail to their or his last known address as shown on the latest completed assessment roll of the Town. In addition, the code enforcement officer shall post conspicuously a copy of such notice on the parcel of property upon which said junked motor vehicle is located.

(b) At the expiration of fifteen (15) days after the service or mailing and posting of such notice, if the junked motor vehicle has not been removed, the enforcement officer shall report such fact to the Town Board in writing. Such report shall cite the violation, the notices given as required hereunder and the failure to comply therewith and may include or refer to photographs of such junked vehicle and of the parcel of property upon which it is located. Such report shall be entered in the official minutes of the Town Board by the Town Clerk, and any such photographs shall be filed in the Town Clerk's Office.

(c) The Town Board shall thereafter hold a public hearing on ten (10) days prior notice published in the official newspaper of the Town and posted on the signboard of the Town. The purpose of such hearing is to give the property owner and /or the owner of the junked vehicle an opportunity to be heard as to why the same has not been removed, for the Town Board to determine whether the continued presence of such vehicle constitutes a public nuisance and/or a threat to the health, safety and general welfare of the community, and also for the Town Board to receive proposals for the removal of such junked vehicle. Notice of this hearing shall be served upon the owner(s) of such parcel of property by certified mail addressed to the address shown on the latest assessment roll of the Town and to such other address as the Town Clerk may reasonably believe to give appropriate notice.

(d) After the hearing, if the Town Board has determined that the junked vehicle must be removed and such removal is not made within ten (10) days subsequent to the hearing or within such other time period as the Board may specify, the Town Board may contract for the removal of such junked vehicle. The expense of such removal may be assessed on the real property from which said junked vehicle was removed and shall constitute a lien and charge upon said real property until paid or otherwise satisfied or discharged as other town assessments.

Section 59-140.

Any junked motor vehicle found to have been abandoned on any highway or other public place in the Town in violation of Section 1224 of the Vehicle and Traffic Law of the State of New York shall be removed and disposed of in the manner as provided in said Section 1224. The code enforcement officer is authorized as the proper person to execute all notices and documents required to be given, mailed or filed with the Department of Motor Vehicles or any person.

Section 59-145. Penalties for offenses.

A. Any vehicle owner, property owner, occupant, lessee, agent or tenant who owns a junked motor vehicle, or who owns property on which there exists a junked motor vehicle, or who refuses to remove said junked motor vehicle as directed by this Article, or who shall fail or refuse to comply with the provisions of any notice herein provided for or who shall resist or obstruct the duly authorized agents, servants, officers and employees of the Town in the removal thereof shall, upon conviction thereof, be guilty of a violation punishable by a fine of up to one hundred dollars (\$100.00) for each violation, or by imprisonment for a term not exceeding fifteen (15) days, or by both such fine and imprisonment. The continuation of an offense against the provisions of this Article shall constitute, for each day the offense is continued after notice, a separate and distinct offense hereunder.

B. A violation of this Article shall also subject the violator to a civil penalty of one hundred dollars (\$100.00) for each violation, less any criminal monetary fine which may have been imposed. Each junked motor vehicle abandoned, stored, left or located in violation of this Article shall constitute a separate violation.

C. The Town Board of the Town of Busti also may maintain an action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of this Article.

Section 59-150. Supersession of State Law.

To the extent that any provisions of this Article are inconsistent with the New York State Vehicle and Traffic Law Section 1224, or Civil Practice Law & Rules Article 3, or Criminal Procedure Law Article 150, the Town Board of the Town of Busti hereby declares its intent to supersede those sections of the New York State Law, pursuant to its home rule powers under the Municipal Home Rule Law, Article 2, §10 *et seq.*, of the Consolidated Laws of the State of New York.

SECTION 2. SEVERABILITY.

If any part or provision of this Local Law shall be declared invalid, void, unconstitutional, unenforceable by a court of law, all unaffected provisions hereof shall survive such declaration and this Local Law shall remain in full force and effect as if the invalidated portion had not been enacted.

SECTION 3. EFFECTIVE DATE.

This Local Law shall take effect immediately upon having been filed with the Secretary of State of the State of New York.

Upon roll vote:

Supervisor Sullivan, aye
Councilman Robbins, aye
Councilwoman Hern, aye
Councilman Sanders, aye
Councilman Lawton, aye.
Carried.

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

RESOLVED, that Supervisor Sullivan be authorized and directed to pay the presented General Fund, Highway Fund, Joint Recreation Fund and the Hazeltine Public Library for Abstract No. 10 from warrant #393 to and including warrant #423 in the amount of \$33,976.88.

Upon roll call vote, all aye.

Upon motion duly made by Supervisor Sullivan the meeting adjourned at 7:40 p.m.

Diane M. VanDewark, Town Clerk