

REGULAR MEETING
December 21, 2015

A regular meeting of the Town Board of the Town of Busti was held on December 21, 2015 at 6:45 p.m., at the Town of Busti Administration Building, 125 Chautauqua Avenue, Lakewood, New York with the following members present:

Supervisor Jesse M. Robbins
Councilman Jim Andrews
Councilman Todd M. Hanson
Councilman Kenneth J. Lawton
Absent:
Councilman Brett A. Muccheck

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

Present at the meeting were: Highway Superintendent Melvin Peterson, Lakewood Busti Police Chief John Bentley, Attorney Joel Seachrist, Highway Deputy Superintendent Randy Milks, Jack Knowlton, John Francisco, Susan Lane, Melanie Howard, Brad Lawson, Bob & Judy Schultz, Mike Gleason, Randy Gleason, Dave Higgs, Pat & Jim Fincher, John Young, Lakewood Fire Department Chief Kurt Hallberg, Randy Fosberg, Christine Schuyler, Valerie McDonald, Daniel McIntyre, Andy J.A. Byler, Ross Foti, John VanDewark, Rick Johnson, Busti Fire Department Chief Mike Volpe, Eugene Archer, Ken Waite, Thad Lund, Pat Woolschlager, Harry Blose, Harold Everhart, Brian & Darlene McIntyre, Jim Francisco, Gary Lucas, Jim McIntyre, Dave Bargar, Charlie Stafford, Phin DeMink, and Post Journal Reporter Mallory Diefenbach.

Town Clerk Darlene Nygren reported that the 2016 County & Town tax bills will be mailed January 8, 2016 and the first day of collection will be January 11, 2016.

Chief John Bentley reported 11,200 incidents YTD.

Highway Superintendent Melvin Peterson reported the Highway Department worked over the weekend to plow the recent snow. Superintendent Peterson signed a contract with Contech Engineered Solutions for the purchase of a Box Culvert and with Z&M Ag & Turf for a John Deere Z925M EFI Z-Track mower.

Busti Fire Department Chief Mike Volpe reported 529 incidents YTD; the new radio system will go online this week, all radios were purchased with grant funding. Lakewood Fire Department Chief Kurt Hallberg reported 875 incidents YTD; the department was called to a structure fire on Clark Street and called in assistance from other fire departments. The fire was a complete loss.

Supervisor Robbins moved the following resolution, which was duly seconded by Councilman Andrews:

RESOLVED, that Code Enforcement Officer Jeff Swanson be authorized to attend the 2016 Educational Conference with Finger Lakes Building Officials Association on March 14-17, 2016 at the cost of \$390.00.

Upon roll call vote, all aye, carried.

Supervisor Robbins moved the following resolution, which was duly seconded by Councilman Hanson:

RESOLVED, that payment be made in the amount of \$54,122.34 (\$41,500 principal and \$12,622.34 interest) effective December 16, 2015 on the BAN for the Five Corners Water Improvement Area.

Upon roll call vote, all aye.

Supervisor Robbins moved the following resolution, which was duly seconded by Councilman Hanson:

RESOLVED, that \$2,590.00 be encumbered from A7110.200 for the purchase of the John Deere Z925M EFI Z-Track mower from Z&M Ag and Turf and \$35,375.00 be encumbered from DA5120.200 for the purchase of a Box Culvert from Contech Engineered Solutions.

Upon roll call vote, all aye.

Supervisor Robbins noted it was 7:00 p.m. and time for the public hearing on the application of Southern Tier Brewing Company, LLC, 2072 Stoneman Circle, Lakewood, New York for a Special Use Permit for a band shelter allowing small music performances in the Industrial District. Said property is known as Section 385.00, Block 1, and Lot 44.2 of the official tax map of the Town of Busti.

Supervisor Robbins moved to open the public hearing which was seconded by Councilman Lawton:

Proof of publication was placed on file.

No one present spoke in favor or against the application.

Supervisor Robbins moved to close the public hearing which was seconded by Councilman

Lawton:

All aye.

Supervisor Robbins moved to the following resolution which was duly seconded by Councilman Lawton:

RESOLVED, to consider the application of Southern Tier Brewing for a Special Use Permit for a recreation use secondary to its ongoing manufacturing concern, that would allow it to erect a band shelter and to have music performances on-stage during the Spring, Summer, and Fall months pursuant to Section 405(20)(B)(1) of the Town of Busti Zoning Code, on a parcel located at 2072 Stoneman Circle, designated on the Chautauqua County tax map as Section 385.00, Block 1, Lots 44.2.

WHEREAS, Southern Tier Brewing (hereinafter, the “Applicant”) has submitted an application for a Special Use Permit allowing it to erect a band shelter and to have music performances on-stage during the Spring, Summer, and Fall months pursuant to Section 405(20)(B)(1) of the Town of Busti Zoning Code, and

WHEREAS, the issue of compliance with the State Environmental Quality Review Act has been addressed, and a Negative Declaration has been issued after examination of the record and a public hearing, and

WHEREAS, the Town Board has considered all the facts and papers before it, and has heard those wishing to be heard at a public hearing held November 5, 2012 and finds justification to approve the application subject to the qualifications hereinafter set out,

NOW, THEREFORE, BE IT RESOLVED, that the application to erect and operate a band stand as a secondary recreational use at 2072 Stoneman Circle (the “Use”), be and hereby is authorized and approved subject to the conditions and requirements hereinafter set out:

1. The Applicant shall undertake the Use in accordance with the application submitted to the Town, except as hereinafter modified, and agrees to be bound by the terms of the application and the

conditions of this permit, including as follows:

- a. The band shelter may be used for musical performances during the Spring, Summer, and Fall months, no more than 3 days per week, and the performances shall end no later than 9:00 p.m.
 - b. The use of the band shelter for musical events on a Sunday shall be limited to no more than 8 events during the calendar year, which shall end no later than 6:00 p.m.
2. If operation of the Use has not commenced within one year of the issuance of this permit, this Special Use Permit shall become void and the Applicant shall be required to apply for a new permit should he intend to continue the project.
3. The terms, conditions, and requirements of this permit bind and obligate the Applicant, its successors, and assigns. This permit shall not be assigned or transferred, in whole or in part, without the prior written consent of the Town, except as otherwise herein noted.
4. Any failure or omission on the part of the Applicant to carry out any condition or requirement herein or in accordance with the terms or requirements of any statute, local law, ordinance or regulation, may be deemed a violation of the Town of Busti Zoning Law and unless corrected in not more than 10 days following the service of written notice of such violation upon the Applicant, may subject them to the penalties therein. Continued violations after written notice may result in revocation of this Special Use Permit.

5. THIS SPECIAL USE PERMIT SHALL BECOME EFFECTIVE AFTER THE APPLICANT APPROVES EACH AND EVERY PROVISION HEREOF AND AGREE TO BE BOUND BY ALL OF THE TERMS HEREIN CONTAINED IN CONSIDERATION OF THE GRANTING OF THIS SPECIAL USE PERMIT.

The Applicant, Southern Tier Brewing, agrees to abide by all the terms of this Special Use Permit.

Upon roll call vote, all aye.

Attorney Joel Seachrist noted that he had received a Stormwater Control Facility Maintenance Agreement. The agreement would be between the Town of Busti and RM 13A Holdings, LLC to provide a long-term maintenance and continuation of Stormwater control measures. This agreement is in regards to the Calamar Housing Project on Southwestern Drive and obligates them to maintain Stormwater retention, have periodic inspections and to repair the system if it were to fail. Mr. Seachrist requested that the board authorize Supervisor Robbins to sign the agreement.

Councilman Hanson moved to authorize Supervisor Robbins to sign the agreement, which was duly seconded by Councilman Andrews.

All aye, carried.

Supervisor Robbins moved the following resolution which was duly seconded by Councilman Lawton:

RESOLVED, that Supervisor Robbins be authorized and directed to pay the presented General Fund, Highway Fund, and the Joint Recreation Fund for Abstract No.24 from warrant #900 to and including warrant #930 in the amount of \$65,093.42.

Upon roll call vote, all aye. Carried.

Supervisor Robbins moved to accept the town board minutes of December 7, 2015 which was

duly seconded.
All aye, carried.

Councilman Lawton reported the LoCo Bike Trail committee will be updating the preliminary engineering study in 2016, continuing to seek sources of funding, and hoping to collaborate with the Village of Lakewood and the Town of Busti. Councilman Lawton noted that he had been contacted by Coach Mark Genereo who requested that the town sponsor a Skills and Drills Basketball Program for 12 year old players to take place at Southwestern Central School. Councilman Hanson moved the following motion which was duly seconded by Councilman Lawton:

Moved that the town sponsor the Skills and Drills Basketball Program for 12 year old girls as requested by Mark Genereo with the understanding that any fees collected would be given to the town to offset liability insurance cost and authorize Town Clerk Nygren to contact the Southwestern Central School District to secure facility use for one of the gyms.
Upon roll call vote, all aye.

Town Clerk Nygren noted that the Department of State will be holding Local Government Webinars which will include one for Planning Board Overview and one for Zoning Board of Appeals Overview. She recommended that the board encourage the Planning and Zoning Board members who have not met their training requirement to participate in the applicable webinar; noting that Chautauqua County Planning Department is willing to setup a group webinar viewing session at their Jamestown Office if there was enough interest. Supervisor Robbins recommended that Town Clerk Nygren forward the above information to the Planning and Zoning Board members encouraging anyone who has not met the training requirement to participate in the webinar.

Supervisor Robbins noted it was 7:15 p.m. and time to open the public hearing for Local Law #3 for the year 2015 "AMENDING THE USES PERMITTED BY SPECIAL USE PERMIT IN THE CA and CAMP DISTRICTS & PROHIBITING OVERNIGHT PARKING IN TOWN PARKS".

Proof of publication was placed on file.

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

RESOLVED, that the public hearing be declared open.
All aye.

Attorney Joel Seachrist noted the following changes and additions have been made to the original proposed law that applies to sawmills:

hours of operation to 7:00 am to 5:00 pm;

no waste materials shall be disposed of by burning;

the operator of the sawmill must use the same lot as his primary residence;

the sawmill shall employ only the operator's immediate family plus one non-family employee;

and

"Only mills using a band saw shall be permitted. The size of the band saw blade shall be no more than 1 ½" by 16' 1" and, whether using one or more engines, shall total no more than 50 horsepower.

(12) No person shall be granted a permit under this provision of this section unless they have a valid sales tax permit number from the State of New York.

(13) Within 30 days after receiving a special use permit pursuant to this section, and before any saw mill operation has commenced, there shall be filed with the Town of Busti proof that the applicant has obtained a comprehensive general or commercial general liability insurance policy

or a certificate with minimum limits of coverage for bodily injury and property damage equal to \$1,000,000 per occurrence, combined single-limit bodily injury and property damage, and \$1,000,000 general aggregate and/or products completed, operations aggregate.

(14) Within 30 days after receiving a special use permit pursuant to this section, and before any saw mill operation has commenced, there shall also be filed a surety bond in the amount of \$500,000 in favor of the Town of Busti guaranteeing compliance with the provisions of this section and of the special use permit, or a certified check, payable to the Town of Busti, in the sum of \$50,000. The Town of Busti shall use all or any portion of said bond or cash necessary to reimburse the Town of Busti for any costs incurred in removing any accumulation of waste materials as a lawful charge against any applicant who fails to remove such materials in accordance with the requirements of this section.”

Supervisor Robbins noted that there were photos at the back of the room of existing sawmills both in the Town of Busti and other municipalities for review.

Those in attendance spoke both in opposition and in favor of the law, particularly in regards to allowing Special Use Permits that permit the use of sawmills.

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

RESOLVED, that the public hearing be declared closed.

All aye.

Councilman Hanson moved to table the decision until the January 4, 2016 Town Board meeting, which was duly seconded by Councilman Andrews. Discussion followed.
Councilman Hanson withdrew his motion.

Councilman Lawton moved the following resolution which was duly seconded by Councilman Hanson:

RESOLVED, to adopt the portion of Local Law #2015-3 that addresses overnight parking in the town parks. As follows:

**TOWN OF BUSTI
LOCAL LAW NO. 3 FOR THE YEAR 2015**

PROHIBITING OVERNIGHT PARKING IN TOWN PARKS

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. OVERNIGHT PARKING IN TOWN PARKS PROHIBITED

Section 382-4 of the Town of Busti Code is hereby amended to provide as follows:

§382-4 All-night parking.

- A. The parking of vehicles, except publicly operated buses for the purpose of receiving or discharging passengers, is hereby prohibited on streets and highways within the Town of Busti, except state highways, between the hours of 12:00 midnight and 7:00 a.m., during the period beginning November 1 and ending March 31 of each year.**
- B. The parking of motor vehicles is hereby prohibited within Town of Busti parks between the hours of 12:00 midnight and 7:00 a.m. at all times of the**

year.

SECTION 2. VALIDITY AND SEVERABILITY

If any part or provision of this Local Law shall be declared invalid, void, unconstitutional or 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 it being filed in the office of the Secretary of State.

Upon roll call vote, all aye.

Supervisor Robbins noted it was 8:40 p.m. and time to open the public hearing for Local Law #4 for the year 2015 “Regulating Electrical Inspectors”.

Proof of publication was placed on file.

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

RESOLVED, that the public hearing be declared open.

All aye.

Attorney Joel Seachrist explained that the proposed law would require that Electrical Inspectors be approved by the town prior to conducting a required electrical inspection. The inspectors would be required to provide insurance and be in good standing with other Chautauqua County municipalities. The law puts a process in place with penalties for non-compliance.

Mike Gleason state that he is an electrical inspector and most municipalities in the county have passed similar laws.

**TOWN OF BUSTI
LOCAL LAW NO. 4 FOR THE YEAR 2015**

REGULATING ELECTRICAL INSPECTORS

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. NEW CHAPTER REGULATING ELECTRICAL INSPECTORS

A new Chapter 230 is hereby added to the Town of Busti Code, which shall provide as follows:

CHAPTER 230: ELECTRICAL INSPECTIONS

§ 230-1. Approved firms.

The Town Board of the Town of Busti may, from time to time, approve independent electrical inspection firms to see that the properties and construction in the Town of Busti conform to the New York State Uniform Fire Prevention and Building Code and the local laws, ordinances, rules and regulations as the Town of Busti shall deem to apply. The approved independent

electrical inspection firms shall be those that:

- A. File with and keep in force a liability policy of \$1,000,000 issued by a company licensed to do business in New York State. The liability policy shall name the Town of Busti as an additional insured and shall, by its terms, protect the Town of Busti from any and all liability, active or passive, or claims or causes of action for personal injury or property damage that arise out of the actions of a member or representative of the approved electrical inspection firm performing electrical inspections in the Town of Busti, for or on the behalf of the Town of Busti, or to enforce code compliance with the New York State Uniform Fire Prevention and Building Code and the applicable standards of this code or any other code.
- B. In the sole opinion of the Town Board, maintain a suitable office and ample, trained staff to service the Town of Busti and its residents.
- C. In the sole opinion of the Town Board, have performed satisfactorily in services rendered in the Town of Busti and are capable of performing such services.
- D. Have an accreditation as an approved electrical inspection firm.
- E. Have the approval of the utilities serving the Town of Busti.
- F. In the sole opinion of the Town Board, maintain a record in good standing with other municipalities in Chautauqua County.

§ 230-2. Authorization to make inspections; list of inspectors.

The chief or supervising inspector and each of the duly appointed inspectors of any approved electrical inspection firm are hereby authorized and deputized as agents of the town to make inspections and re-inspections of all electrical installations hereinafter described and to approve or disapprove the same. In no event, however, will the cost or expense of such inspections and re-inspections be charged against the Town. The name of each deputy inspector who may perform service in Busti shall be filed with the Code Enforcement Officer in the Town of Busti, together with his name and address. Such filing shall be kept current at all times by the approved electrical inspection firm. The list shall be furnished and signed by an official of the firm.

§ 230-3. Powers and duties of electrical inspectors.

- A. It shall be the duty of the inspector to report to the Code Enforcement Officer all violations of or deviations from or omissions of the electrical provisions of the New York State Uniform Fire Prevention and Building Code and the local laws, ordinances, rules and regulations of the Town of Busti. The inspector shall make inspections and re-inspections of electrical installations in and on properties in the town upon the written request of the Code Enforcement Officer or as herein provided.
- B. The inspector is authorized to make inspections and re-inspections of electrical wiring installations, devices, appliances and equipment in and on properties within the town where he deems it necessary for the protection of life and property.
- C. In the event of an emergency, it is the duty of the inspector to make electrical inspections upon the verbal request of an official or officer of the town or a Chief of a Fire Department

serving the Town of Busti or any part thereof.

- D. It shall be the duty of the inspector to furnish written reports to the proper officials of the town and owners and/or lessees of property where defective electrical installations and equipment are found upon inspection.
- E. He shall authorize the issuing of a certificate of compliance when electrical installations and equipment are in conformity with the New York State Uniform Fire Prevention and Building Code or with the local laws, ordinances, rules and regulations of the Town of Busti, and he shall direct that a copy of the certificate of compliance be sent to the Code Enforcement Officer.

§ 230-4. Schedule of rates.

The schedule of rates charged for inspections shall be filed with the Town Clerk and the Code Enforcement Officer. In no event may a fee be charged in excess of the rates on file at the time the inspection or re-inspection is performed.

§ 230-5. Disclaimer of liability.

This chapter shall not be construed to relieve from or lessen the responsibility of any person owning, operating, controlling or installing any electrical wiring, devices, appliances or equipment for loss of life or damage to persons or property caused by any defect therein, nor shall the Town or an approved electrical inspection firm be deemed to have assumed any such liability by reason of any inspection made pursuant to this chapter.

§ 230-6. Penalties for offenses.

- A. It shall be a violation of this chapter for any person, firm or corporation to install or cause to be installed or to alter or repair electrical wiring for light, heat or power in or on properties in the Town until an application for inspection has been filed with an approved electrical inspection firm.
- B. It shall be a violation of this chapter for a person, firm or corporation to connect or cause to be connected electrical wiring in or on properties for light, heat or power to any source of electrical energy supply prior to the issuance of a temporary certificate or a certificate of compliance by an approved electrical inspection firm.
- C. The provisions of this chapter shall be enforced in accordance with, and the penalties for violation thereof governed by, the provisions of Section 223-15 of this Code.

SECTION 2. VALIDITY AND SEVERABILITY

If any part or provision of this Local Law shall be declared invalid, void, unconstitutional or 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 it being filed in the office of the Secretary of State.

Supervisor Robbins moved the following resolution which was duly seconded by Councilman Hanson:

RESOLVED, that the preceding proposed law be adopted as Local Law 2015-4 as presented.

Upon roll vote, all aye.

Busti Fire Department Chief Mike Volpe spoke on behalf of the department and requested that the board consider reopening the current agreement which is for two years and return to a five year agreement with escalating contributions and the ability to reopen in three years. Lakewood Fire Department Chief Kurt Hallberg was in agreement with Mr. Volpe and stated that the department appreciates any financial help from the town. There was discussion regarding Ashville Fire District and the establishment of fire districts and the escalating cost of equipment. Supervisor Robbins moved the following resolution which was duly seconded by Councilman Hanson:

RESOLVED, that Supervisor Robbins be authorized to sign the agreement to include the following percentage of increase in contribution: 2016 – 2.5%, 2017 – 3%, 2018 – 3%, 2019 – 3%, and 2020 – 3%; and the ability to reopen the agreement in three years if needed.

Upon roll call vote, all aye.

Supervisor Robbins motioned to adjourn the meeting at 9:35 p.m. which was duly seconded.

Respectively Submitted by:

Darlene H. Nygren, Town Clerk